

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

	:	
IN THE MATTER OF:	:	MB Docket No.
	:	14-82
PATRICK SULLIVAN	:	
(Assignor)	:	FRN 0003749041,
	:	0006119796,
and	:	0006149843,
	:	0017196064
LAKE BROADCASTING, INC.	:	
(Assignee)	:	Facility ID No.
	:	146162
Application for Consent to	:	
Assignment of License of FM	:	File No. BALFT-
Translator Station W238CE,	:	20120523ABY
Montgomery, Alabama	:	
	:	

Volume 6

Thursday,
May 4, 2017

Federal Communications Commission
445 12th Street, SW
Hearing Room A
Washington, D.C. 20554

The above-entitled matter came on for hearing,
pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,
Chief Administrative Law Judge

APPEARANCES:

On Behalf of Patrick Sullivan and Lake
Broadcasting, Inc.:

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On Behalf of The Federal Communications
Commission:

WILLIAM KNOWLES-KELLETT, ESQ.
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of: Federal Communications Commission
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ALSO PRESENT:

RACHEL FUNK, Clerk
PAMELA S. KANE, FCC

CONTENTS

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Dr. Ann Duncan-Hively		386		
Tammie Gremminger	448	450	521	528
<u>EXHIBIT NO.</u>	<u>DOCUMENT</u>		<u>MARK</u>	<u>RECD</u>
<u>Lake</u>				
3	Direct case for Dr. Ann Duncan-Hively		360	360
3A	Dr. Duncan Hively's professional background		360	360
3B	Psychological evaluation of Mr. Rice conducted by Drs. Hively and Duncan-Hively in 1991		360	360
3C	Psychological evaluation of Ms. Rice conducted by Drs. Hively and Duncan-Hively in 2014		360	360
 <u>EB</u>				
11	Abuse Prevention Program of the Center for Conflict Resolution		535	535
12	Missouri Sex Offender Notification for Mr. Rice		521	522

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P-R-O-C-E-E-D-I-N-G-S

(9:37 a.m.)

WHEREUPON

DR. ANN DUNCAN-HIVELY

was called as a witness by counsel for the assignor/assignee,
and having first been duly sworn, was examined as testified
as follows:

JUDGE SIPPEL: And what is it, Mr. Jacobs? You've
got a preliminary matter.

MR. JACOBS: At the conclusion of yesterday's
hearing session, I was directing questions to Mr. Michael Rice
about his translator station. And we were kind of hurried,
and I didn't have an opportunity to let him fully explain what
his station is all about. And the relevance is that it has
come up several times in yesterday's testimony that there were
activities going on around his station, so I wanted to focus
on the translator station which --

JUDGE SIPPEL: I'll let you call him as -- I'll let
you put him back on the stand for redirect and then cross-
examination.

MR. OSHINSKY: Your Honor, if I could just note
that Mr. Jacobs was asking questions after the cross.
Obviously, it was redirect. Nothing in the cross concerned
the station that at issue in the assignment. So, if he's
talking about --

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1 JUDGE SIPPEL: I think you're right. No, you're
2 absolutely -- well, he did touch on it, I think. Go ahead.

3 MR. KNOWLES-KELLETT: I also believe, Your Honor,
4 that what's at issue here is whether Mr. Jacobs -- whether
5 Lake Broadcasting is qualified to be a Commission licensee.

6 JUDGE SIPPEL: That's true.

7 MR. KNOWLES-KELLETT: And I don't think that it
8 really matters that this is a translator station. If he's
9 found qualified, he could turn around and get any broadcast
10 station he wants.

11 JUDGE SIPPEL: I realize that, but it's -- I don't
12 think it's going to take too long. I like the --

13 MR. KNOWLES-KELLETT: Okay.

14 JUDGE SIPPEL: I like the party that has the burden
15 of proof to put their case on, unless there's a strong reason
16 why not -- any confusion. And I don't think we're going to
17 have that problem here.

18 MR. KNOWLES-KELLETT: Fair enough.

19 JUDGE SIPPEL: So are you ready for your next
20 witness?

21 MR. JACOBS: Yes, Your Honor.

22 JUDGE SIPPEL: Okay. Please proceed.

23 MR. JACOBS: Our next witness is Dr. Ann Duncan-
24 Hively, and her direct case exhibit is found in our exhibit
25 book, Exhibit 3. And it has within it three parts. First,

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1 her background, Appendix A. The second, a psychological
2 evaluation that she and Dr. --

3 JUDGE SIPPEL: Mr. Jacobs, hold on just a -- the
4 witness is --

5 THE WITNESS: I need to get my glasses.

6 JUDGE SIPPEL: Oh, that's okay.

7 THE WITNESS: Please?

8 JUDGE SIPPEL: Sure.

9 THE WITNESS: Thank you.

10 JUDGE SIPPEL: Do you have to go over to the
11 Mandarin to get them?

12 THE WITNESS: Not quite, no. It's closer.

13 JUDGE SIPPEL: I'm sorry.

14 THE WITNESS: My apologies.

15 JUDGE SIPPEL: We're still on the record. You can
16 finish.

17 MR. JACOBS: And Appendix B is the psychological
18 evaluation that she and Dr. Hively prepared.

19 JUDGE SIPPEL: That's in 1991?

20 MR. JACOBS: Yes, the 1991 report. And Appendix
21 C is the 2014 psychological report that she and Dr. Hively
22 prepared. And I'd like to move those Appendices and her
23 direct case statement into evidence.

24 JUDGE SIPPEL: Any objection?

25 MR. KNOWLES-KELLETT: No, Your Honor.

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1 JUDGE SIPPEL: No objection, the document as
2 identified -- the exhibits as identified are marked for
3 identification and are received into evidence at this time.

4 (Whereupon, the above-referred to document was
5 marked as Lake Exhibits 3, 3A, 3B, and 3C for identification.)

6 (Whereupon, the above-referred to document was
7 received into evidence as Lake Exhibits 3, 3A, 3B, and 3C.)

8 JUDGE SIPPEL: Is it Ms. -- Dr. Duncan-Hively?

9 THE WITNESS: Yes, sir.

10 JUDGE SIPPEL: That's okay.

11 THE WITNESS: You can shorten it up to just Dr.
12 Duncan.

13 JUDGE SIPPEL: Well, thank you.

14 THE WITNESS: Whatever works.

15 JUDGE SIPPEL: At my advanced age, if I have to --
16 I'm still having trouble with Mr. Knowles-Kellett. It's been
17 20 years I think.

18 I'm sorry. Did you prepare this document yourself?

19 THE WITNESS: Yes, sir.

20 JUDGE SIPPEL: Nobody helped you at all?

21 THE WITNESS: Oh, no. It was in collaboration with
22 Dr. Hively, my husband, and --

23 JUDGE SIPPEL: Dr. Hively is in the court -- or was
24 in the court?

25 THE WITNESS: Yes. He's sitting to the right of --

1 JUDGE SIPPEL: Oh, yes. I see him.

2 THE WITNESS: -- Mr. Jacobs. And with Mr. Jacobs's
3 assistance.

4 JUDGE SIPPEL: Whose typewriter did you use?

5 THE WITNESS: It looks like mine.

6 JUDGE SIPPEL: Okay. And you are would you just
7 briefly restate your qualifications? PhD, clinical
8 psychologist, and you're a lawyer as well?

9 THE WITNESS: I have a law degree. I'm not sure
10 that makes me a lawyer, but I have a law degree.

11 JUDGE SIPPEL: I've got some things to say about
12 that, but I don't think I can say it. Not about you
13 personally.

14 THE WITNESS: I understand.

15 JUDGE SIPPEL: Not about you personally.

16 THE WITNESS: Briefly?

17 JUDGE SIPPEL: Yeah, sure. Please, go ahead.
18 Please explain. What year did you graduate?

19 THE WITNESS: Which one? '61 for college, '64 for
20 master's, '67 for a PhD. Then postdoc '68, and then professor
21 at Yeshiva University in New York City. Then the JD came from
22 the University of New Hampshire, previously known as Franklin
23 Pierce Law Center in New Hampshire in '81.

24 We were running a residential treatment center, my
25 husband and I. He was the director. And it gave me enough

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1 time to go to law school.

2 JUDGE SIPPEL: In New Hampshire?

3 THE WITNESS: Yes, sir.

4 JUDGE SIPPEL: Well, you certainly wouldn't have
5 had enough time in New York.

6 THE WITNESS: No.

7 JUDGE SIPPEL: Two different places.

8 THE WITNESS: Exactly. Two different worlds.

9 JUDGE SIPPEL: Let's just take our places. But
10 what prompted you to go to law school?

11 THE WITNESS: Well, we were running a treatment
12 center for disturbed children, sort of if you were in
13 Massachusetts and you were hard to handle and impossible to
14 handle, then Child and Family Services would send them to us
15 in New Hampshire. So we have 85 seriously-disturbed boys and
16 an autistic -- a unit for autistic children.

17 And I couldn't figure out why the law -- legal
18 system had so much power. So I ran into an attorney who had
19 been with the Southern Poverty Law Center, a constitutional
20 law professor named R.P. Sanders. And I was so taken by the
21 idea that it was understandable that I went back to law
22 school. Our youngest was three, and my husband turned into
23 chief cook and bottle washer.

24 And then, in '81, I graduated in May of '81. And,
25 one week later, he put me in a moving van and moved me to St.

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1 Louis. And we've been in St. Louis ever since.

2 JUDGE SIPPEL: Well, what prompted you to leave New
3 Hampshire and your 85 kids?

4 THE WITNESS: He was -- he took the job as director
5 of research for one of the educational think tanks that had
6 been constructed. There were five in the country, Central
7 Educational Midwestern Regional Laboratory. He was the
8 director of research, and he wanted to do the thing that he
9 loved the most, which was to try to figure out how to help
10 kids learn. So we moved to St. Louis, and we've been there
11 ever since.

12 JUDGE SIPPEL: I'm sorry. What was that date
13 again?

14 THE WITNESS: '81.

15 JUDGE SIPPEL: Okay.

16 THE WITNESS: We were in New Hampshire from '72 to
17 '81.

18 JUDGE SIPPEL: Got it, okay. Now was your practice
19 -- if I can call it that, was it limited to boys?

20 THE WITNESS: In the treatment center, yes.

21 JUDGE SIPPEL: Why is that?

22 THE WITNESS: Because putting very disturbed girls
23 and very disturbed boys together is not a good combination.

24 JUDGE SIPPEL: Well, but why not take a class of
25 boys and a class of girls separate?

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1 THE WITNESS: Because it was residential, and so
2 we --

3 JUDGE SIPPEL: Oh, I see.

4 THE WITNESS: -- had a full 24/7 program, which was
5 in the sleeping facility as well as in the educational
6 facility.

7 JUDGE SIPPEL: I've heard that there are some
8 esteemed universities that have that arrangement with men and
9 women on the same floor.

10 THE WITNESS: We weren't --

11 JUDGE SIPPEL: And they do have their problems.
12 I guess --

13 THE WITNESS: We weren't able to do that.

14 JUDGE SIPPEL: And they were supposedly normal
15 kids, and even they have a hard time hacking it.

16 THE WITNESS: Right. And so these were seriously-
17 disturbed -- in order for the State of Massachusetts, Rhode
18 Island, Connecticut to pay the tuition for the child to come,
19 they had to meet the criteria of very serious disturbance.

20 JUDGE SIPPEL: And what would that include? What
21 would be a very serious disturbance?

22 THE WITNESS: Well, actually, a broad range. We
23 had children who had psychotic episodes. We had children who
24 had particular fetishes. We had to -- it's okay?

25 JUDGE SIPPEL: Yeah, sure.

1 THE WITNESS: So we had children who were very
2 anxious and who had developed ritualized behaviors to manage
3 their anxiety. We had hyperactive, learning-disabled, and
4 autistic. So we had sort of a fairly broad range.

5 JUDGE SIPPEL: Were any of the children molested?

6 THE WITNESS: The statistics are one out of three
7 children are molested below the age of 18 if you're a woman,
8 and one out of five men are molested below the age of 18.
9 That's Finkelhor's research out of the University of New
10 Hampshire.

11 JUDGE SIPPEL: Okay. Well, I don't know Mr.
12 Finkelhor but --

13 THE WITNESS: It's an enormous number.

14 JUDGE SIPPEL: But just let me get -- formulate a
15 question here.

16 Do you -- when you get the paperwork with the
17 patient coming in, is there some kind of a background done on
18 him before --

19 THE WITNESS: Oh, certainly. No, we've --

20 JUDGE SIPPEL: Does any of them come up with
21 molestation?

22 THE WITNESS: Of course. A large majority of them.

23 JUDGE SIPPEL: Okay. A large majority of them?

24 THE WITNESS: Well, if it's one out of five and --

25 JUDGE SIPPEL: Yes.

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1 THE WITNESS: -- we had 85 boys, then you'd have
2 to think of proportionately, it was a fairly large number.

3 JUDGE SIPPEL: Unless you happen to have a very
4 unusual class that fell in the cracks somehow, that you didn't
5 get the one in five there; you got the one in 100, and
6 that's --

7 THE WITNESS: Right. And the ones who were
8 psychotic --

9 JUDGE SIPPEL: Too complicated for me. Pardon me?

10 THE WITNESS: But the ones who were psychotic were
11 more often than not not molested.

12 JUDGE SIPPEL: Do you have any idea why that is,
13 just your own thoughts on that?

14 THE WITNESS: Well, since my specialty is children
15 and child trauma, I'll give you a speculation. In order for
16 the molestation to occur, there needs to be a relationship.
17 And, in order to have a relationship, you have to be capable
18 of forming one. And some of our children in treatment did not
19 have that capability.

20 JUDGE SIPPEL: So it's kind of a defense mechanism
21 --

22 THE WITNESS: Well, in --

23 JUDGE SIPPEL: -- from being molester?

24 THE WITNESS: No, actually, it's really complicated
25 because it has to do with the issue of attachment.

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1 JUDGE SIPPEL: I understand that.

2 THE WITNESS: Okay. And whether or not, during the
3 process of attachment, in the primary family structure, the
4 child is insulated, if you will, by having adequate emotional
5 feeding by the parents. In the absence of that, they're
6 vulnerable, and they're vulnerable for a variety of reasons.
7 Often, we will see that the molestation happens to the
8 vulnerable children who are looking for a relationship in lieu
9 of what they didn't have when they were growing up.

10 JUDGE SIPPEL: And this is what the average
11 molester, if there is such a thing as that, he's able to spot
12 that; isn't that correct?

13 THE WITNESS: Actually, average molesters don't
14 exist. If you -- no, seriously --

15 JUDGE SIPPEL: Correct me. That's okay. Go on.

16 THE WITNESS: Ken Lanning worked for the FBI for
17 25 years, and he wrote probably the definitive book about
18 predators and child molesters. And fall into discrete
19 categories in terms of their personality structure. So we
20 don't have an average. We have -- Ken Lanning talks about six
21 different major types.

22 JUDGE SIPPEL: What I was thinking of -- I mean,
23 I've seen both the recent horror stories written in the
24 newspapers about the clergy, for example.

25 THE WITNESS: Yes, case in point.

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1 JUDGE SIPPEL: They seem to know their target.
2 They know -- of course, they know -- they have the history of
3 the child in the broad sense of the word. They know -- and
4 they've got somewhat -- but they don't got it if they don't
5 know the family that the person -- that he comes from.

6 THE WITNESS: Well, let me take exception to the
7 word target. What happens is they form a relationship. Let's
8 take the Catholic priest down the block. They form a
9 relationship. In the absence of a relationship in the child's
10 history, they attach to the male figure who's got power and
11 authority and righteousness, and all of the things that go
12 with being a priest. And they transfer their emotions to the
13 priest.

14 It isn't that the priest says, oh, there's a
15 vulnerable one. I'll go after him. It typically doesn't work
16 like that because --

17 JUDGE SIPPEL: The kid comes to him.

18 THE WITNESS: The kid comes to him, exactly.
19 Exactly, yeah.

20 JUDGE SIPPEL: That's very interesting.

21 THE WITNESS: There are predators. I mean, you
22 know, don't get me wrong. There are predators out there, but
23 85 percent of abuse happens within the family or a known
24 family member. The guy with the trench coat on the playground
25 doesn't really exist. So it isn't that there's a predator

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1 floating around. It's there are social systems that fail
2 these children.

3 JUDGE SIPPEL: And I'm just trying to be sure I
4 follow exactly what you're saying, but -- okay. Let me move
5 it closer to this case.

6 The kids that came to Mr. Rice --

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: -- would they be in -- can you
9 categorize them in some way even if -- I mean, you didn't
10 examine them so don't really know. What do you think the
11 typical kid was that came to Mr. Rice, the same type of person
12 as with the priest? Did he --

13 THE WITNESS: Yes, basically.

14 JUDGE SIPPEL: Basically, a family -- it all starts
15 in the family.

16 THE WITNESS: It does. And it starts with a
17 disruption with the attachment process. And there's also this
18 incredible curiosity that happens with the lens of hormones
19 that hit, with men trying to figure out what is that thing and
20 why does it do this thing, and why does it stick up like that
21 and what do I do, and can I touch it, and is it really okay
22 to do that?

23 So we have uninstructed young boys, particularly
24 early adolescence, who are looking for some kind of
25 instructional event, and they more often than not --

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1 JUDGE SIPPEL: They like instruction.

2 THE WITNESS: -- find it among themselves rather
3 than among the girls.

4 JUDGE SIPPEL: Do you have any particular age
5 you're talking about?

6 THE WITNESS: Well, you and I are of a similar age,
7 sir, so we have to do statistics then and statistics now. The
8 average age of intercourse for girls is 12 today.

9 JUDGE SIPPEL: In the States?

10 THE WITNESS: 12.

11 JUDGE SIPPEL: In the United States?

12 THE WITNESS: In the United States. Menarche, the
13 onset of periods, is happening younger and younger. At age
14 nine, for example, we're getting girls starting periods. So
15 this wave of hormonal investigation that used to be in high
16 school has now moved down into middle school.

17 JUDGE SIPPEL: Or junior high.

18 THE WITNESS: Junior high, right.

19 JUDGE SIPPEL: Middle school.

20 THE WITNESS: Uh-huh.

21 JUDGE SIPPEL: All right. Let me -- well, if
22 that's the case, as you said that, normally, this searching
23 for answers routine starts among boys and not girls.

24 THE WITNESS: Correct. That's correct.

25 JUDGE SIPPEL: And yet, if the girls are getting

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1 more available as they get younger, is there any noticeable
2 trend in the obvious direction?

3 THE WITNESS: At the risk of shocking you, my
4 practice consists of girls who provide blow jobs in the school
5 lavatory for not much compensation, and they're six, seventh,
6 and eighth graders. And, when I inquire to the boy who's the
7 recipient of that about the relationship, he said, oh, no.
8 We can't have sex. We don't know each other well enough yet.

9 So, in this --

10 JUDGE SIPPEL: Well, that's the whole thing that
11 is surprising because we know we had a president with that
12 same --

13 THE WITNESS: Yes, sir.

14 JUDGE SIPPEL: -- answer to the situation.

15 THE WITNESS: Yes, sir. So we do have this
16 cultural shift that's happening, where -- and sex is being
17 viewed perhaps much differently than for other generations
18 like yours or mine.

19 JUDGE SIPPEL: This is --

20 THE WITNESS: Sorry. Did I overload you?

21 JUDGE SIPPEL: No, no, you haven't. I just want
22 to -- I don't want to get too carried away with this, but I'm
23 trying to relate everything you're saying to the universe of
24 the young boys that Mr. Rice, his associations with.

25 THE WITNESS: He molested them, yes.

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1 JUDGE SIPPEL: Yes, he did.

2 THE WITNESS: He did, yes.

3 JUDGE SIPPEL: But were they coming to him as with
4 the priest analogy or was he a predator? Was he a -- I don't
5 want to say was he technically a predator but was he the first
6 mover?

7 THE WITNESS: I would suspect, based on the
8 information that I have available, which was testing him in
9 '91, that he was about 13 himself, that his emotional distress
10 was such that his judgment was left at the door. And he was
11 literally regressed into being one of the boys. And I think
12 that they did the thing that boys have done all of their
13 lives, circle jerks, how far can you pee, did you come farther
14 than I did, all of those male things that happened for years.
15 Usually, it was behind the barn, but now it's in the bathroom
16 at the school.

17 JUDGE SIPPEL: Well, boys are inclined to compete
18 at anything.

19 THE WITNESS: Exactly.

20 JUDGE SIPPEL: Anything at all.

21 THE WITNESS: Yes, sir. Yes. It might be genetic.

22 JUDGE SIPPEL: Yeah.

23 THE WITNESS: I'm not sure I answered your question
24 sufficiently.

25 JUDGE SIPPEL: No, you have. You have.

1 THE WITNESS: Okay.

2 JUDGE SIPPEL: I'm just trying to think. How would
3 you identify -- how would you define pedophilia?

4 THE WITNESS: The classic definition from DSM-5 and
5 quite nicely written by Dr. Weitzl that you'll get to meet
6 tomorrow --

7 JUDGE SIPPEL: Is that the current book?

8 THE WITNESS: Yes, this is 5.

9 JUDGE SIPPEL: The current DSM?

10 THE WITNESS: Uh-huh. Is a pervasive lifelong urge
11 to take sexual activity with young children, typically below
12 the age of 11. I can --

13 JUDGE SIPPEL: No, that's okay. No, that's --

14 THE WITNESS: Yeah.

15 JUDGE SIPPEL: I mean, counsel may want to ask you
16 these questions.

17 THE WITNESS: Sure.

18 JUDGE SIPPEL: But I don't want to get -- I want
19 to just -- I'm skimming the surface here.

20 THE WITNESS: Uh-huh.

21 JUDGE SIPPEL: Typically below the age of 11. Why
22 -- in layman's terms, why is there that cutoff?

23 THE WITNESS: The idea is that, at age 11, they
24 might be more willing and eager to initiate rather than be in
25 the standard victim posture.

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1 JUDGE SIPPEL: I just -- out of curiosity?

2 THE WITNESS: Partly, sure. If you have something
3 between your legs that you can't figure out what to do with
4 and you wake up with it in the morning, then you're very
5 curious about what else you should do with it.

6 JUDGE SIPPEL: Well, would that be equally a
7 characteristic of young girls?

8 THE WITNESS: No. Young girls are not allowed to
9 have that kind of emphasis on -- and their particular physical
10 construction doesn't equal the male construction.

11 JUDGE SIPPEL: I know that, but do you think -- I
12 mean, let's take it within a family. There's two young
13 children, nine and 10, male and female. And so they're in a
14 situation where they're undressed, a normal situation. And
15 she's going to -- you know, what's that thing there --

16 THE WITNESS: Right.

17 JUDGE SIPPEL: -- and how come I don't have one?

18 THE WITNESS: And they would touch each other,
19 which is very common.

20 JUDGE SIPPEL: That's where it stops?

21 THE WITNESS: Sometimes.

22 JUDGE SIPPEL: Well, yeah.

23 THE WITNESS: Sometimes. Or sometimes -- my area
24 of specialty is trauma, okay, and I work a lot with women
25 who've been sexually abused by their brothers or their fathers

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1 or their grandfathers. And, by the time they get to me,
2 they're in mid-thirties, early forties. And it's been
3 bubbling along, and it pops up under a family crisis, and they
4 end up in my office. So it is a very common phenomenon that's
5 not talked about a lot.

6 JUDGE SIPPEL: All right. Well, let's get back
7 down to the current case.

8 THE WITNESS: Sure.

9 JUDGE SIPPEL: Does Mr. Rice have any symptoms of
10 pedophilia?

11 THE WITNESS: Not now.

12 JUDGE SIPPEL: No, I'm talking about then.

13 THE WITNESS: Then, he was emotionally disturbed.
14 Our testing showed that he was bipolar, unable to regulate the
15 shift between too much energy and not enough energy. The
16 metaphor maybe is you're in a car with an accelerator, and you
17 just push as far as you can. And that was exactly what he was
18 doing. Or then you take the accelerator off, and you put the
19 brake on, and you do into depression.

20 So he was cycling probably -- I think Dr. Stillings
21 estimated sometime about 10 years before, it got so bad that
22 he molested children.

23 JUDGE SIPPEL: What would be the obligation of Dr.
24 Stillings or someone in your position to report that to the
25 authorities?

1 THE WITNESS: Oh, he was --

2 JUDGE SIPPEL: This was going on.

3 THE WITNESS: No, he was.

4 JUDGE SIPPEL: By who?

5 THE WITNESS: He got hotlined by the neighbor
6 parent, I believe, the boy's parent.

7 JUDGE SIPPEL: Right.

8 THE WITNESS: And Dr. Stillings --

9 JUDGE SIPPEL: One of the --

10 THE WITNESS: Right.

11 JUDGE SIPPEL: Dr. Stillings?

12 THE WITNESS: Right. Then Dr. Stillings got
13 involved with the case. He was diagnosed as having psychotic
14 features, so Dr. Stillings go in and then hospitalized him
15 immediately, and then brought us in to do an evaluation. So
16 this would have been '91 when we visited him in the hospital
17 and did an evaluation over -- I think we had four separate
18 days.

19 Dr. Stillings was trying to regulate the medication
20 to bring the psychosis under control.

21 JUDGE SIPPEL: It can be done chemically.

22 THE WITNESS: It was. He was on lithium. He put
23 him on lithium, which was the drug of choice in '91.

24 JUDGE SIPPEL: I think that comes from saltwater,
25 am I right?

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1 THE WITNESS: It does, yes. Good. And you have
2 to watch your liver.

3 JUDGE SIPPEL: But, I mean, it's cheap to
4 manufacture.

5 THE WITNESS: And you have to regulate it really
6 carefully because it will destroy your liver.

7 JUDGE SIPPEL: Really?

8 THE WITNESS: Uh-huh.

9 JUDGE SIPPEL: Well, let's not get into that.

10 THE WITNESS: Okay.

11 JUDGE SIPPEL: But, I mean, I'm interested in it.

12 What did you say the name of this FBI person was?

13 THE WITNESS: Lanning, L-A-N-N-I-N-G. If you go
14 on our website, he's listed as a resource. Ken Lanning. I
15 think it's something like 25 years of research.

16 JUDGE SIPPEL: Let me take a look at that.

17 THE WITNESS: Yeah. It's a good one to have on
18 your shelf if you have another case like this.

19 JUDGE SIPPEL: The lawyers would really question
20 me if I had that on my shelf.

21 Yeah. Your statement that he regressed to be one
22 of the boys, what caused that regression?

23 THE WITNESS: Mental illness.

24 JUDGE SIPPEL: And which mental illness was that,
25 bipolar?

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1 THE WITNESS: Bipolar.

2 JUDGE SIPPEL: Bipolar, is it generally, does that
3 do that?

4 THE WITNESS: It can under certain circumstances,
5 uh-huh. He was the perfect storm. He had failed
6 relationships. He was geeky from the beginning. One could
7 even say, if we had known enough back then, we probably would
8 have diagnosed him as Asperger's, high-functioning autism.

9 JUDGE SIPPEL: Is that what that is?

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Oh, yeah. I knew there's a
12 relationship between autism and Asperger's, but the -- because
13 I'm related by marriage to somebody who has a son in that
14 situation. But what about the -- well, how does that
15 Asperger's, does that tie in with the -- with what was it now,
16 the -- this condition that you've pointed to with respect to
17 Mr. Rice, the bipolar?

18 THE WITNESS: Well, if you start with a basic
19 personality structure. You're a number one and only kid.
20 Your mother is diagnosed schizophrenic. Your father is cold
21 and distant. You have attachment difficulties. You're a
22 geek, and then you're fat, okay? Got the image? And you're
23 Asperger's, so you have very few social skills. And what
24 social skills you have you don't know how to use. You're
25 terribly awkward.

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1 So his psychosocial development, starting probably
2 about 10, maybe 12 -- I think he was a late bloomer -- then
3 would mean that he would not go through the normal
4 developmental phases for developing heterosexual activity.
5 He was too shy. I think, in the report of Dr. Weitzl's and
6 mine, I think he had one date in high school.

7 JUDGE SIPPEL: Was he -- is that the beginning of
8 being homosexual?

9 THE WITNESS: There is some possibility that he is,
10 in fact, homosexual. And, in that day and age, that was an
11 anathema.

12 JUDGE SIPPEL: Oh, yes.

13 THE WITNESS: That was not allowed, either by his
14 mother, who was cold and distant, or by his father, who was
15 cold and distant. So there was no way for him to develop a
16 normal set of sexual activities. So he didn't.

17 And then he took his geekiness and developed the
18 skill of technology with the radio stations and with learning
19 how to work on making transmitters transmit and all of that
20 stuff I don't understand.

21 JUDGE SIPPEL: But he must have had that inherent
22 skill.

23 THE WITNESS: Oh, he's bright. Oh, he's bright.

24 JUDGE SIPPEL: But I mean, in that -- he would be
25 attracted to that whether he had this problem or not.

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1 THE WITNESS: Well, I think he's attracted to IT
2 because it was safe. I mean, if you're working in IT, you
3 don't have to have a big set of social skills, you know. And,
4 if you are successful in figuring out how to get -- go back.
5 I mean, electronics back in those days, that was a real skill
6 set for being able to figure out how to get things
7 transmitted, right?

8 JUDGE SIPPEL: I will agree.

9 THE WITNESS: Back in the day. Back then.

10 JUDGE SIPPEL: Yeah.

11 THE WITNESS: So what he got is --

12 JUDGE SIPPEL: Even now. Even now for me, beyond
13 turning a piece of equipment on is -- then it becomes
14 interesting.

15 THE WITNESS: At times. So we've got a guy who is
16 a single child who was raised in a difficult family
17 circumstance with lots of expectations for performance. He
18 has very few social skills. He's fat and doesn't have a group
19 of friends. Goes off to college and doesn't succeed. He's
20 terribly lonely. And I think his mental illness is beginning
21 to start at about that point. Early college days probably.
22 That might have contributed to the reason he dropped out of
23 the University of Missouri at the end of his freshman year.

24 JUDGE SIPPEL: Was his family, his mother and
25 father, were they well off? I mean, was it --

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1 THE WITNESS: Yeah. Yeah. Yes.

2 JUDGE SIPPEL: Does that usually play into it?

3 THE WITNESS: Well, it gives him some insulation,
4 gives him some protection so that he can buy the equipment
5 that he needs to learn how to make the stuff work, because
6 he's got --

7 JUDGE SIPPEL: And he wouldn't have to work for it.

8 THE WITNESS: Exactly. Right. And they'd feel
9 proud of him because he would be doing something that they
10 could understand and feel good about.

11 JUDGE SIPPEL: They were thinking, maybe we have
12 a Bill Gates here.

13 THE WITNESS: They probably felt that they had
14 something of value. And then mom got ill and began to sort
15 of lose it. And that, I think, was part of the
16 destabilization that led him to use poor judgment and have sex
17 with boys.

18 JUDGE SIPPEL: Was she under treatment?

19 THE WITNESS: My understanding is she was.

20 JUDGE SIPPEL: Okay. Do you agree with Dr.
21 Stilling's dissociation identity diagnosis?

22 THE WITNESS: Partly yes and partly no. Our
23 evaluation in '91 showed that he does have bipolar, and it can
24 present as dissociative disorder also.

25 JUDGE SIPPEL: Can you explain what that is?

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1 THE WITNESS: Sure. Dr. Stillings was of the
2 opinion that he had multiple personalities. That's the
3 dissociative disorder. And we didn't agree with him. We
4 didn't agree with Dr. Stillings. We didn't find evidence for
5 that in the testing.

6 Instead, what we found was hypomania, lots of
7 excessive verbalizations. I think, if you look at our '91
8 report, we put some examples of, during the testing, he would
9 go sideways off into a description. Oh, that looks like a
10 duck. Well, ducks quack. Well, maybe it's not a duck. Maybe
11 it's a turkey. Maybe -- and he would then associate, and
12 that's where the dissociation concept comes in.

13 JUDGE SIPPEL: But you describe it as what? You
14 had some other name for it, what he was doing.

15 THE WITNESS: We didn't agree with Stillings's
16 diagnosis of multiple personality disorder. We didn't find
17 that.

18 JUDGE SIPPEL: What did you think? You used the
19 word before.

20 THE WITNESS: We did the dissociative disorder and
21 bipolar.

22 JUDGE SIPPEL: Okay.

23 THE WITNESS: Right. Those were our diagnoses in
24 '91.

25 MR. KNOWLES-KELLETT: It might be helpful, Your

1 Honor, just to wait -- my questions lead her right through
2 that report, and you might get just what you want. Just
3 offering.

4 JUDGE SIPPEL: I can take the hint.

5 MR. KNOWLES-KELLETT: I don't run the show. You're
6 in charge.

7 JUDGE SIPPEL: No, you're probably right.
8 Okay. Let me cut off there. Hold on just a second.

9 Can you tell me, are multiple personality disorder
10 and bipolar equivalent or approximately equivalent or anything
11 like that?

12 THE WITNESS: No, sir. Let me clean up my
13 testimony.

14 We diagnosed Mr. Rice in '91 as dysthymic,
15 depressed.

16 JUDGE SIPPEL: Okay. That --

17 THE WITNESS: Right.

18 JUDGE SIPPEL: Dysthymic.

19 THE WITNESS: That was the word I think you heard.

20 JUDGE SIPPEL: That's right.

21 THE WITNESS: Uh-huh.

22 JUDGE SIPPEL: Okay. Go ahead.

23 THE WITNESS: And a dissociative disorder NOS. In
24 other words, it didn't fall into the multiple personality
25 categories that Stillings wanted it to. Bipolar affective

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1 disorder, mixed features, in remission, under medication, and
2 alcohol abuse. So those were our four diagnoses in '91.

3 JUDGE SIPPEL: What was in remission?

4 THE WITNESS: The bipolar disorder was in remission
5 under medication.

6 JUDGE SIPPEL: Oh, I got it.

7 THE WITNESS: That's why we tested him four
8 separate times, because we had him on meds. Then Dr.
9 Stillings took him off meds. We tested him. Dr. Stillings
10 put him back on meds, and we tested him. So we did an
11 empirical test on whether or not he was bipolar. And, because
12 of his reaction to the lithium, that was a confirmed
13 diagnosis.

14 JUDGE SIPPEL: I'm going to -- I'm going to let you
15 go in just a minute. What was --

16 THE WITNESS: You should have four. Do you have
17 four?

18 JUDGE SIPPEL: Well, I had Stillings had multiple
19 personalities.

20 THE WITNESS: Okay.

21 JUDGE SIPPEL: And I got you as dysthymic
22 depression.

23 THE WITNESS: Dysthymic.

24 JUDGE SIPPEL: Dysthymic?

25 THE WITNESS: Uh-huh.

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1 JUDGE SIPPEL: Depression.

2 THE WITNESS: Right.

3 JUDGE SIPPEL: NOS. And we've got remission from
4 bipolar.

5 THE WITNESS: That's affective bipolar disorder,
6 AFF.

7 JUDGE SIPPEL: Okay. This is probably on your
8 report?

9 THE WITNESS: Yes, sir.

10 JUDGE SIPPEL: Well, okay.

11 THE WITNESS: Page 213.

12 JUDGE SIPPEL: That's all right.

13 THE WITNESS: And don't forget alcohol abuse.

14 JUDGE SIPPEL: Right. That's right.

15 THE WITNESS: That's the one --

16 JUDGE SIPPEL: Okay. I'm going to pass the baton
17 to Mr. Knowles-Kellett.

18 THE WITNESS: Okay.

19 JUDGE SIPPEL: But thank you very much.

20 THE WITNESS: My pleasure, sir.

21 MR. KNOWLES-KELLETT: Okay. There are two sets of
22 page numbers on the 1991 report. I would note for the record
23 the page she just referred to, 213, is also page 9, so that
24 the page 9 starts at the beginning of that report. 213
25 appears to be a number where this report was entered into

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1 evidence somewhere else.

2 JUDGE SIPPEL: Okay.

3 THE WITNESS: Correct. Our page number of our
4 report was page 9. Thank you.

5 MR. KNOWLES-KELLETT: Okay.

6 JUDGE SIPPEL: Well, I've got here page 205.

7 MR. KNOWLES-KELLETT: Do you see another -- turn
8 to the second page, Your Honor, and you'll see there's a
9 second set of numbering up at the top of the pages.

10 JUDGE SIPPEL: Page 2.

11 MR. KNOWLES-KELLETT: Okay. Page 1, they didn't
12 put a number on.

13 JUDGE SIPPEL: Okay.

14 MR. KNOWLES-KELLETT: So, yeah.

15 JUDGE SIPPEL: I can usually figure that out. Some
16 people don't.

17 MR. KNOWLES-KELLETT: I can't figure out how to
18 make it go away a lot of days, Your Honor.

19 JUDGE SIPPEL: All right.

20 MR. KNOWLES-KELLETT: If it looks bad, I have to
21 call the help desk.

22 CROSS-EXAMINATION

23 BY MR. KNOWLES-KELLETT:

24 Q Good morning, Dr. Duncan-Hively.

25 A Good morning, sir.

1 Q You remember that I'm Bill Knowles-Kellett, and we
2 visited your offices in Missouri to take your deposition last
3 September?

4 A And we discussed that you're hyphenated and I'm
5 hyphenated, yes, we did.

6 Q Yeah. We have that special bond.

7 Okay. And I think, at that time, you noted that
8 you go professionally as Duncan-Hively most of the time now.
9 But, at times, you have gone by Dr. Duncan. So, if the
10 documents indicated Dr. Ann Duncan, that's you as well; is
11 that correct?

12 A Yes, sir.

13 Q Okay. And have a practice at 300 Chesterfield
14 Center, Chesterfield, Missouri?

15 A Yes.

16 Q Okay. And your partner is Dr. Wells-Hively?

17 A Yes.

18 Q And he's your husband?

19 A Yes.

20 Q And he helped prepared both reports in Lake Exhibit
21 Number 3?

22 A Yes.

23 Q Okay. And a specialty of your practice is trauma
24 and transition?

25 A Yes.

1 Q Okay. And many of your patients are referred from
2 pain management specialists and psychiatry attorneys and
3 physicians?

4 A Insurance companies, too.

5 Q Okay. Examples of this might include someone who
6 has a child who has a concussion playing sports, and you are
7 asked to determine whether they have post-traumatic stress
8 disorder or they simply had a concussion and accompanying
9 anxiety disorder. Is that a --

10 A We are -- we are --

11 Q That's like one of the examples of trauma?

12 A -- asked to do evaluations or we're asked to
13 perform treatment, yes.

14 Q Okay. And another trauma situation might be that
15 somebody falls off a -- a lineman falls off of an electric
16 pole and he or she gets a concussion or other serious -- and
17 you're asked to evaluate whether it's post-traumatic stress
18 disorder?

19 A That's correct.

20 Q And treat that person?

21 A Not necessarily. Usually, those are referrals
22 regarding liability issues, so we often don't treat those
23 people. We just do the evaluation.

24 Q Okay. And the transition part of your practice
25 very often refers to people who are undergoing big life

1 changes such as a family going through a divorce?

2 A Or death.

3 Q Okay. And you work with any of the various
4 different family members on how they're surviving that event?

5 A Yes.

6 Q Okay. And you also have an area of your practice
7 that evaluates the competency of a person to stand trial?

8 A Yes.

9 Q Okay. Let's turn to Lake Exhibit Number 3,
10 Appendix A, if you would. That's your curriculum vitae, I
11 believe.

12 A All right.

13 JUDGE SIPPEL: That's --

14 MR. KNOWLES-KELLETT: Lake Exhibit Number 3,
15 Appendix A.

16 JUDGE SIPPEL: Oh, yes. I have it.

17 MR. KNOWLES-KELLETT: If I get to the wrong place,
18 Mr. Jacobs, please let me know.

19 MR. JACOBS: Sure.

20 MR. KNOWLES-KELLETT: Okay.

21 BY MR. KNOWLES-KELLETT:

22 Q Okay. So you have a bachelor's degree from the
23 University of Minnesota?

24 A Yes.

25 Q A master's from the University of Minnesota?

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1 A Yes.

2 Q A PhD from the University of Kansas?

3 A Yes.

4 Q And a JD from Franklin Pierce Law School?

5 A Correct, now known as the University of New
6 Hampshire.

7 Q Okay. And you're a trained mediator?

8 A Yes.

9 Q You're licensed in New Hampshire, Missouri, and
10 registered in Bermuda?

11 A We were when we were employed in Bermuda.

12 Q Okay. So you're no longer registered in Bermuda?

13 A Correct.

14 Q Okay. And I think you explained to the judge that
15 you were in New Hampshire from 1974 until 1981.

16 A Yes.

17 Q And, there, you both had a practice, attended law
18 school, and clerked for a juvenile court judge?

19 A I did, yes.

20 Q Okay. And then you were in Bermuda for a number
21 of years; is that correct?

22 A Yes.

23 Q Oh, I'm sorry. You have a private practice in St.
24 Louis from '81 until 1999?

25 A Yes.

1 Q Okay. Following that, you went to Bermuda?

2 A Correct.

3 Q And you worked there both as a professor and worked
4 for the prosecution, which is referred to as the crown
5 council?

6 A You're doing the repetition of the deposition
7 beautifully. Yes.

8 Q Okay. This goes faster because you've already told
9 me the answers to my questions.

10 A Sure.

11 JUDGE SIPPEL: It's helpful for me, so please go
12 on.

13 MR. KNOWLES-KELLETT: So a good cross, I'm told,
14 I know the answers because I've already asked them. Then we
15 get you to make a nice, clean record for the judge.

16 THE WITNESS: That's right. And I affirm that they
17 are correct.

18 MR. KNOWLES-KELLETT: Exactly.

19 BY MR. KNOWLES-KELLETT:

20 Q Okay. One of the big things you did in Bermuda was
21 develop protocols for the interviewing of sexually abused
22 children?

23 A That's correct.

24 Q And you did that with Dr. Hively?

25 A I did.

1 Q Okay. Then you returned to St. Louis and worked
2 for the St. Louis Behavior Institute for two years?

3 A Behavior Medicine Institute, yes.

4 Q Okay. That was 2004 to 2006?

5 A Yes.

6 Q Okay. And then, in 2006, you opened your current
7 practice with Dr. Hively?

8 A Correct.

9 Q Okay. In 2008, your office got the franchise for
10 the Abel sex offender risk assessment?

11 A We did.

12 Q Okay. And many of the forensic sex offender risk
13 assessments your office now does involves this test?

14 A Correct.

15 Q You do approximately five to eight of these
16 assessments each year?

17 A Correct. It depends on the year. We do -- that's
18 just using the Abel, so let's make sure the record is clean.

19 Q Okay.

20 A You were inquiring about the Abel.

21 Q Right.

22 A And we got the franchise in 2008. We do five, six,
23 seven a year. But we do a lot of other evaluations for sex
24 offenders that may not include the Abel.

25 Q Okay. Do you do sex offender risk assessments for

1 people?

2 A We do.

3 Q How many?

4 A The Abels usually are included in that number.
5 And, for those cases where we don't do Abels, we're probably
6 three a month.

7 Q Okay.

8 A So what's that, 3 times 12.

9 Q One of your specialties is forensic psychology?

10 A We tend to get cases involving the legal system,
11 yes.

12 Q Okay. Forensic psychology refers to those cases
13 that involve the legal system?

14 A Yes.

15 Q Okay. So you use the -- just so that we're on the
16 same place with the term, okay?

17 Your forensic work comprises five to seven percent
18 of your practice, and the remainder is clinical?

19 A It varies from year to year, yes.

20 Q At your deposition, you reported to me that your
21 forensic practice comprises five to seven percent of your
22 practice.

23 A And I apologize if I didn't say it varies from year
24 to year.

25 Q Okay. Between 30 and 40 percent of Dr. Hively's

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1 clinical practice and between six and eight percent of your
2 clinical practice relates to the treatment of sex offenders?

3 A Correct.

4 JUDGE SIPPEL: How would you define sex offender?

5 THE WITNESS: The legal system defines it, Your
6 Honor.

7 JUDGE SIPPEL: Let's move on.

8 BY MR. KNOWLES-KELLETT:

9 Q In your current practice in the U.S. -- I'm not
10 referring back to Bermuda -- approximately 95 percent of your
11 forensic work involves working for the defense?

12 A That's true.

13 Q Okay. Have you -- and, when I asked you if you had
14 testified before, you said you had been deposed and testified
15 as an expert witness?

16 A Yes, sir.

17 Q Okay. In 2016 -- 2017 first, how many times have
18 you been deposed?

19 A We're in May. I'm sorry. I don't have my book
20 with me, but I think four or five times.

21 Q Okay. Have you testified as an expert witness this
22 year?

23 A Yes.

24 Q How many times?

25 A I think two.

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1 Q Okay. And, in 2016, would you have --

2 A I'm sorry. I didn't bring my book.

3 Q So you have no estimate?

4 A I don't have a way to give you a number.

5 Q Okay. So more than 10?

6 A I'm sorry.

7 JUDGE SIPPEL: Would it be fair to say that you --
8 part of your employment or part of your profession is to
9 testify?

10 THE WITNESS: No. The more fair thing to say is
11 that a case comes into an attorney and it's involving
12 allegations of sexual abuse. He sends the case to me, to Dr.
13 Hively and myself, to review. We take a look at all of the
14 data, and we do a work product letter back to them about, run
15 to the bargaining table; do not pass go. Or, here's the place
16 where you need more information. Or, I think you could pursue
17 this line of defense.

18 So we do the case analysis, which doesn't involve
19 testifying. It's just looking --

20 JUDGE SIPPEL: I know exactly what you're saying.
21 Do you -- if the case goes to trial -- and you have testified
22 in trials --

23 THE WITNESS: Yes, sir.

24 JUDGE SIPPEL: -- have you ever been asked by an
25 attorney to assess prospective jurors?

1 THE WITNESS: Yes, sir.

2 JUDGE SIPPEL: Okay. That's it.

3 BY MR. KNOWLES-KELLETT:

4 Q Have you ever testified in a sex offender risk
5 assessment case?

6 A Yes.

7 Q Okay. Do you many of those you've testified in?

8 A Sorry, I don't.

9 Q Okay. And you have no way of estimating that?

10 A No.

11 Q Okay.

12 A Can I clean up my answer? Maybe Gary wants to --
13 do you want to -- I can wait.

14 JUDGE SIPPEL: Are you talking about Mr. Oshinsky?

15 THE WITNESS: Yeah. Well, he wanted to ask Bill
16 a question.

17 BY MR. KNOWLES-KELLETT:

18 Q He just wanted to try to -- if you have -- is it
19 more than five sex offender risk assessment cases?

20 A I don't know.

21 JUDGE SIPPEL: You don't want to use first words
22 on the transcript. First names, I'm sorry.

23 THE WITNESS: I'm sorry. I'm sorry.

24 JUDGE SIPPEL: That's all right.

25 THE WITNESS: Mr. Oshinsky.

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1 JUDGE SIPPEL: No offense to Mr. Oshinsky.

2 THE WITNESS: Thank you. I apologize.

3 BY MR. KNOWLES-KELLETT:

4 Q Do you have an idea of the percentage of the time
5 you're testifying in a sex offender risk assessment case?

6 A No. But thank you for asking that question because
7 that lets me answer the thing that I was trying to answer
8 before. This is not our total area of expertise. We work in
9 this area but Dr. Weitzl is eminently more qualified than we
10 are to -- I mean, she's been in the trenches. She's worked
11 in the actual MOSOP program. So we're not trench workers.
12 We're more like outside consultants that get brought in, if
13 that helps make the distinction.

14 Q Okay. Yeah. I'd like you to turn to Appendix B,
15 the same report. It's your 1991 report regarding Michael
16 Rice.

17 A Yes, sir.

18 Q Now, just to make the record clear on this, this
19 was done -- if I understand it correctly, Mr. Rice had been
20 arrested. He had been hospitalized. He was being treated by
21 Dr. Stillings, and Dr. Stillings asked you to come evaluate
22 Mr. Rice; is that correct?

23 A Yes.

24 Q Okay. And your recollection is that Dr. Stillings
25 probably paid you because Mr. Rice was not functioning well

1 enough to actually physically pay the bill at that time?

2 A No. I think we billed his insurance.

3 Q Okay.

4 A That's my recollection. But it's '91, so --

5 Q Okay. You recollect that differently than you did
6 at your deposition when you told me that Dr. Stillings
7 probably paid you because Mr. Rice was not functioning at that
8 time?

9 A If that's what I testified, that's what I
10 testified.

11 Q Okay.

12 A But my recollection on today's date is that we
13 billed the insurance.

14 Q Okay.

15 A Because we were --

16 Q It's the --

17 A Right, because we're providers for that particular
18 insurance.

19 Q Okay. We're going great guns. Otherwise I'd pull
20 out the --

21 A That's okay.

22 Q I don't think it's important enough.

23 A Whatever you need.

24 Q Okay. At the bottom of page 1 or page 205 of that
25 report --

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1 A Yes.

2 Q -- it's a list of tests you ran, and you chose
3 those tests because they -- you believe those were the best
4 practices; is that correct?

5 A Yes.

6 Q Okay. And, at the top of page 2, it indicates that
7 they discontinued the lithium, which was -- Dr. Stillings was
8 using to treat Mr. Rice for his serious psychotic -- serious
9 mental illness at that time, so you could observe and test him
10 without the medicine; is that correct?

11 A Yes.

12 Q Turning to the bottom -- to page 3 at the bottom,
13 it indicates that, after the sale of station KIRL in 1979, Mr.
14 Rice became particularly depressed, became suicidal with plan,
15 and would dissociate into a hyperactive adolescent behavior
16 fueled by binge drinking. Am I correct on that?

17 A That's what we wrote, yes.

18 Q Okay. And so, at that time, you had an
19 understanding that his problems dated back to something like
20 1979?

21 A In the lead-up through the eighties, yes.

22 Q Okay. Did you know Mr. Rice before 1991 when you
23 did this report?

24 A I never met him before meeting him in the hospital?

25 Q Okay. So you became aware of this from Dr.

1 Stillings's history and by interviewing Mr. Rice?

2 A Correct.

3 Q Turning to page 4, you diagnosed Mr. Rice with a
4 massive learning disability?

5 A Yes.

6 Q As far as you know, that's the first time he had
7 been diagnosed with a learning disability?

8 A Somebody forgot to notice when he was in school.

9 JUDGE SIPPEL: I'm still on page 3.

10 MR. KNOWLES-KELLETT: Okay.

11 JUDGE SIPPEL: The same paragraph, okay, his
12 depressive behavior particularly acute, pattern to overwork
13 and then dissociate, fueled by binge drinking.

14 THE WITNESS: Correct.

15 JUDGE SIPPEL: And it was under all of these
16 circumstances that he allowed his house to become open. Now
17 is one or all of those things, those factors, causative? I
18 mean, this is what caused him to do that?

19 THE WITNESS: Yes. Well, that and the fact that,
20 as we talked about in his clinical/psychological history, all
21 of the factors that we talked about with --

22 JUDGE SIPPEL: Right.

23 THE WITNESS: -- Asperger's, geekiness --

24 JUDGE SIPPEL: Right.

25 THE WITNESS: -- lack of social skills, and then

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1 the mental illness on top of it.

2 JUDGE SIPPEL: But, if he didn't have those
3 conditions or if they were less intense at the time -- I mean,
4 I'm trying to think, well, what's the relationship between
5 having those distinct problems and being attracted to the
6 boys?

7 THE WITNESS: I'm not sure it's attracted.

8 JUDGE SIPPEL: Yeah, attracted is my word.

9 THE WITNESS: Yeah.

10 JUDGE SIPPEL: I know what you're saying.

11 THE WITNESS: I think it's more like the perfect
12 storm. You've got these psychological conditions. You've got
13 these environmental conditions. You've got delayed
14 adolescence for him. Probably he's gay initially, but
15 couldn't allow himself to be gay because, c'mon, it's the
16 seventies and the eighties. And so his sexual activity then
17 involved the boys who were at his house, or boy that was at
18 his house. So yes.

19 JUDGE SIPPEL: I'm just missing something.

20 THE WITNESS: Okay.

21 JUDGE SIPPEL: I'm just missing something.

22 THE WITNESS: Can I help?

23 JUDGE SIPPEL: I don't want to become your patient,
24 but I'm going to work with you on this one.

25 Supposing -- hypothetically, supposing someone

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1 became terribly -- well, here's a good situation. It was
2 recently -- we had this young -- not a young man, but a man
3 was on the telephone with his ex-girlfriend who he was mad at.
4 And, while he was on the phone with her, he was shooting
5 people arbitrarily. You know that story?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: Okay. Now what was the cause of him
8 doing that? Would it be the girl's breaking off with him?
9 Would it be one of these characteristics that you've testified
10 to? Or would it be a combination? I mean, obviously, this
11 is a hypothetical. You don't know all the facts.

12 THE WITNESS: Right. Hypothetically speaking, the
13 impulse control issue becomes paramount for you to look at,
14 whether or not he had a history of impulse control problems --
15 speeding tickets, thrown out of school, fistfights, DWIs. So
16 you look for his behavior pattern, which would say that, under
17 stress conditions, he would act impulsively.

18 Then you have the --

19 JUDGE SIPPEL: To the point of taking somebody's
20 life?

21 THE WITNESS: Yes. Yes, which is why mental
22 illness is really a priority for the budget.

23 JUDGE SIPPEL: Well, it almost sounds like -- is
24 there anybody that's free of some facsimile of these
25 conditions?

1 THE WITNESS: I think --

2 JUDGE SIPPEL: I mean, we're all born.

3 THE WITNESS: I think we all struggle. We all
4 struggle to put together the value system and the beliefs and
5 the behavior so that it functions.

6 JUDGE SIPPEL: Well, I don't want to pursue that.
7 I mean, I'm very interested by it, but -- I'm sorry. But I --
8 wait a minute. I was trying to -- I'm trying to get the
9 concept, are things causative? I mean, is there such a thing
10 as -- I think you'll probably accept there's such a thing as
11 free will.

12 THE WITNESS: I think mens rea is actually the term
13 that works best, where you form intent.

14 JUDGE SIPPEL: Yes. Latin words always work
15 better.

16 THE WITNESS: And that's what we're talking about.
17 Did Michael Rice have mens rea at the point where he was
18 drinking and the kid was in his house?

19 JUDGE SIPPEL: And your conclusion?

20 THE WITNESS: He's not a predator. He's not a lure
21 the kid in and pull his knickers down. That's not the way the
22 scenario goes.

23 JUDGE SIPPEL: He was a groomer?

24 THE WITNESS: No. He -- no. He is mentally ill.
25 He's recovering from his mental illness. He has a psychotic

1 break. He has an available, curious 13-year-old. And they
2 probably did the, I'll touch yours if you touch mine.

3 JUDGE SIPPEL: All right. Okay. So I just --
4 again, I'm bothered by this.

5 THE WITNESS: You're looking for cause and effect.

6 JUDGE SIPPEL: Exactly. And everybody, at some
7 stage -- well, they develop -- I'm still going to go back to
8 this. They establish a will.

9 THE WITNESS: Correct.

10 JUDGE SIPPEL: A will. And different people have
11 different points at which the will can be broken.

12 THE WITNESS: It depends on whether you're
13 psychotic and whether or not you're not thinking straight.
14 So if you add alcohol to extreme fatigue and a history of
15 mental illness in the genetic family, then you get this
16 cocktail which leads to acting out and inappropriate behavior.

17 JUDGE SIPPEL: All right. Okay. I agree with you.

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: I think we need a lot more money for
20 this. This and cancer, I would say.

21 THE WITNESS: I totally agree.

22 JUDGE SIPPEL: Go ahead, Mr. Knowles-Kellett.

23 BY MR. KNOWLES-KELLETT:

24 Q Okay. Page 7 of that report, if you would, the
25 bottom paragraph.

1 A Not 207, but 7?

2 Q It's 211 and 7.

3 A Thank you. I'm there.

4 Q Okay. He used intellectualization as a major
5 defensive tactic?

6 JUDGE SIPPEL: Where are you?

7 BY MR. KNOWLES-KELLETT:

8 Q Would you explain that term?

9 MR. KNOWLES-KELLETT: Bottom of page 7. Bottom
10 paragraph --

11 JUDGE SIPPEL: The bottom paragraph, okay.

12 THE WITNESS: We're talking about the first test,
13 which was the reference is the Rorschach.

14 BY MR. KNOWLES-KELLETT:

15 Q Okay.

16 A And I apologize. We only keep records for 12
17 years, and I don't have the original Rorschach, so I can't
18 tell you what his specific response was.

19 Q Okay.

20 A But I just am able to tell you that, when you take
21 a test as abstract and obtuse as the Rorschach -- these are
22 the inkblots -- and you're asked to look at it and tell me
23 what you see, he would form a response that was primarily
24 intellectual.

25 Q Okay. And you say that he suffered from faulty

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1 conceptualization; is that correct?

2 A Yes. That was one of the score qualities on the
3 test.

4 Q Okay. When you use this to describe Mr. Rice, you
5 means he forms a concept, but because of his learning
6 disability, it is not an accurate understanding of the world.
7 Yet he acts on the concept; is that correct?

8 A Where are you?

9 Q I'm actually in your deposition -- the answer you
10 gave to what faulty conceptualization in your deposition.

11 A Oh.

12 Q I have it if you want to look at it.

13 A I don't recall what I said in the deposition, so
14 if I said it in the deposition, I probably would say --

15 Q If you can, explain it.

16 A Okay.

17 Q Because this is one of those where you're just
18 explaining the terms to us.

19 Q Oh, faulty conceptualization?

20 A Yes. You said, with respect to -- it's --

21 Q Where are you, dear? What page?

22 A Let's see, page 31 of the deposition.

23 Q Okay. Faulty concept -- your answer, line 5, fault
24 conceptualization is, again, part of the legacy, we think, of
25 his learning disability where he forms a concept and it's not

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1 accurate. It's got holes in it. Yet, he behaves as if it is
2 a complete concept.

3 Does that refresh your recollection of the answer?

4 A It does, thank you.

5 Q Okay.

6 A And now you would like me to explain what faulty
7 conceptualization is?

8 Q Is this an accurate thing, using his learning
9 disability, he has a -- he forms a concept that's not accurate
10 and thinks it's accurate? If there's more explanation, I'm
11 happy for it.

12 A Okay. Let's talk a little bit about his learning
13 disability. I suspect it was undiagnosed because he's very
14 bright. Verbal IQ is, I think, 116. So average IQ of
15 attorneys is 114. Average IQ of physicians is 112. So he's
16 at 116. So a bright guy.

17 Then you look at his --

18 JUDGE SIPPEL: Physicians, they're lower than
19 attorneys?

20 THE WITNESS: Oh, God, yes. Sorry. Sorry. Oh,
21 yes, sir.

22 JUDGE SIPPEL: All right. I'm just surprised.

23 THE WITNESS: They're worker bees.

24 MR. KNOWLES-KELLETT: Okey-dokey.

25 JUDGE SIPPEL: I'm going to cut down on paying that

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1 much money to them.

2 BY MR. KNOWLES-KELLETT:

3 Q Okay. There also, the same paragraph. He had
4 difficulty with impulse control and tended to behave
5 immaturely?

6 A Yes.

7 Q And he assessed on this test as vulnerable to the
8 manipulation of others?

9 A That's from the test results, yes.

10 Q Okay. At this time, in 1991, you observed Mr. Rice
11 suffering from psychosis?

12 A Yes.

13 Q And, when they took the lithium off, it was florid,
14 I think was the term you used?

15 A Yes, florid is the term.

16 Q Okay. That means that it's rampant?

17 A No. It means that it's visible and obnoxious.

18 Q Okay. But it's not far from what I would use
19 rampant for, but I like yours better.

20 Okay. Turning to page 10 --

21 A All right. I'm off the deposition now?

22 Q Yes, back on the report. The deposition was just
23 --

24 A To clear up --

25 Q -- for an answer.

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1 A -- the conceptualization question.

2 Q To clean up my understanding. Thank you.

3 A Okay.

4 Q And, hopefully, it'll help the judge at the end.

5 Page 10, first paragraph: his bipolar disorder
6 alternates the mania with periods of intense depression. The
7 depression was treated with alcohol. A characteristic of this
8 mania is distorted thinking accompanied by reckless behavior.
9 In this state, he was vulnerable to extreme manipulation by
10 the boys who frequented his house.

11 My question is, did you meet those boys?

12 A No.

13 Q Okay. I think at the deposition you testified that
14 you did, however, see police reports at that time?

15 A Yes.

16 Q Do you know if those are the same police reports
17 that are included in our documents today, or do you not?

18 A I make that assumption.

19 Q Okay. Turning to page 11, you found that, if his
20 medication is vigorously controlled and he remains free of
21 alcohol, prognosis for successful treatment is good; is that
22 correct?

23 A Yes.

24 JUDGE SIPPEL: Which paragraph? I'm on page 11,
25 but --

1 MR. KNOWLES-KELLETT: I think that that's my
2 summary, Your Honor, of all -- of the whole page, mostly the
3 bottom half: We would recommend the following.

4 THE WITNESS: I think under paragraph two.

5 JUDGE SIPPEL: Number two?

6 THE WITNESS: Right. Yes. We need to rebuild his
7 personality structure, taking him from his adolescence into
8 full adulthood. He has intellectual insight and the framework
9 for shame and guilt, so reconstruction is needed. And that
10 was our recommendation.

11 BY MR. KNOWLES-KELLETT:

12 Q And number three at the bottom of that page, you
13 recommended that he not be incarcerated at that time; is that
14 correct?

15 A Right. The kind of treatment that he needed was
16 not available in the prison system.

17 Q Okay. And this -- okay. In the Stillings report
18 that you were confirming at that time, do you recall that Dr.
19 Stillings thought that Mr. Rice split into two personalities,
20 one of which he referred to as a hyperactive teenager called
21 Mike, Jr.?

22 A That was what I testified to previously with the
23 judge about our disagreement.

24 Q Right.

25 A We didn't agree with him.

1 Q You've indicated that you never met Mike, Jr., and
2 you just had a professional disagreement with Dr. Stillings
3 on whether it rose to the level of a separate personality
4 disorder?

5 A We never met Mike, Jr. I'm sorry. Would you
6 reframe that question? I'm having --

7 Q Did you ever meet Mike, Jr.?

8 A I met Mike, but --

9 Q Did you ever see a separate personality, Mike, Jr.?

10 A No. That's where --

11 Q Okay. That's --

12 A -- I disagreed with Dr. Stillings.

13 Q Correct. And you had a -- you described it, I
14 think, as a professional difference of opinion?

15 A Correct.

16 Q And you described it as not rising to the level of
17 a separate personality?

18 A Correct. We saw it much more as bipolar and the
19 mania phase, which Dr. Stillings gave the idea that it was a
20 separate personality, but we didn't. We thought he was much
21 more intact under the surface than Dr. Stillings did.

22 Q Okay. Is it correct that you believe Mr. Rice does
23 not have a recollection of all of the events relating to his
24 offenses, in part due to his dissociative disorder?

25 A That is our opinion, yes.

1 Q Okay.

2 A And so, when he's asked for details, he is hard-
3 pressed to come up with them because he was, in fact, out of
4 his mind at that point.

5 MR. KNOWLES-KELLETT: Okey-dokey. Could we take
6 a 10-minute break, Your Honor? I don't have very much left,
7 but I need to talk to Mr. Oshinsky about exactly what it is.

8 JUDGE SIPPEL: Let's see, what time is it?

9 MR. KNOWLES-KELLETT: Five to 11:00.

10 JUDGE SIPPEL: We'll take a -- well, I'll tell you
11 what. We'll take a 15-minute break and come back at 10 after
12 11:00.

13 MR. KNOWLES-KELLETT: That would be perfect, Your
14 Honor.

15 JUDGE SIPPEL: 10 after 11:00.

16 MR. KNOWLES-KELLETT: Thank you.

17 JUDGE SIPPEL: Okay. You're still under oath,
18 ma'am.

19 THE WITNESS: Yes, sir. And do not talk to
20 counsel.

21 JUDGE SIPPEL: That's right. Okay. We're off the
22 record.

23 (Whereupon, the above-entitled matter went off the
24 record at 10:54 a.m. and resumed at 11:19 a.m.)

25 JUDGE SIPPEL: Okay. Let's go back on the record.

1 BY MR. KNOWLES-KELLETT:

2 Q Okay. Turning to your current report, that's
3 direct case Exhibit -- the Lake direct case Exhibit 3,
4 Appendix C.

5 A Yes, sir.

6 Q Okay. And that's the one you did for this
7 proceeding; is that correct?

8 A Yes.

9 Q And you did it with Dr. Wells-Hively?

10 A Yes.

11 Q Okay. And do you recall at your deposition that
12 I asked you the basis for this report, and we went through
13 that?

14 A Yes.

15 Q Okay. The first part of the basis was the
16 Greenberg Forensic History; is that correct?

17 A Yes.

18 Q Okay. And then you did some other tests, the
19 Minnesota Multiphasic Personality Inventory, Caldwell scoring?

20 A Yes, 2.

21 Q The Rorschach test?

22 A Correct.

23 Q R-PAS scoring?

24 A Yes, sir.

25 Q Achenbach Self-Report?

1 A Yes.

2 Q And then you say the Greenberg, but that refers to
3 what we just covered, right?

4 A Yes.

5 Q Okay. And then I think, later on, you added that
6 you did a Static-99 that wasn't listed among these tests?

7 A Yes, and a Static-2002 also. We did both.

8 Q Okay.

9 A And we also -- sorry.

10 JUDGE SIPPEL: No, go ahead.

11 THE WITNESS: We did a Static-99 and a Static-2002.
12 We also did the Minnesota recidivism test. And then, later,
13 we did the Abel. So, yeah, we did four things that are not
14 listed in the report?

15 JUDGE SIPPEL: What does the term Static mean?

16 THE WITNESS: Statistical -- it's the test that
17 prison and parole use to predict recidivism. If you're a
18 high-risk person, they have nine factors that they assign a
19 weight score to, and that then gives you a cumulative total
20 to put you into low risk, medium risk, or high risk for
21 recidivism of the offense. In other words --

22 JUDGE SIPPEL: These are categories --

23 THE WITNESS: -- is he going to do it again?

24 JUDGE SIPPEL: -- 1, 2, 3?

25 THE WITNESS: Correct.

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1 JUDGE SIPPEL: Do you think there's any value to
2 that?

3 THE WITNESS: Oh, it's used all the time.

4 JUDGE SIPPEL: Yes, but is there any value to it,
5 professionally speaking?

6 THE WITNESS: Statistically speaking, the variables
7 that they look at are supposed by the data, by the research.

8 JUDGE SIPPEL: That's good enough.

9 THE WITNESS: Right?

10 JUDGE SIPPEL: Go ahead. I'm sorry.

11 BY MR. KNOWLES-KELLETT:

12 Q Okay. And then you looked at historical documents,
13 the Yarbrough polygraph, the documents from the probation and
14 parole file, the materials filed in this hearing, and the
15 certificate of completion of the MOSOP program, the
16 description of the MOSOP program, and the release that relates
17 to the MOSOP program; is that correct?

18 A Yes. And did you include Dr. Robinson's post-
19 release? Did I put that one in?

20 Q No.

21 A Oh, okay. My apologies.

22 Q Do you have a copy of that?

23 A Yes. The description of Dr. Robinson's post-
24 release program is in the file. We'll get it for you.

25 Q Okay.

1 A That's the 12-week program that Mike took after he
2 was released.

3 MR. KNOWLES-KELLETT: Got it.

4 JUDGE SIPPEL: When you say it's in the file, it's
5 not in the record here.

6 THE WITNESS: Sorry, sir. It's in my file.

7 JUDGE SIPPEL: In your file, okay.

8 THE WITNESS: Yes.

9 MR. JACOBS: I think we have previously --

10 MR. KNOWLES-KELLETT: Provided it?

11 MR. JACOBS: -- transmitted it, yes.

12 MR. KNOWLES-KELLETT: I'd love to just see it
13 before --

14 MR. JACOBS: Of course.

15 MR. KNOWLES-KELLETT:

16 Q Okay. And then you did certain collateral reports,
17 collateral interviews.

18 A I talked to the two probation officers that were
19 in charge of his case, Missy and Tom.

20 Q Okay. You didn't report --

21 A A telephone interview with them.

22 Q Okay. That was not on the -- at the time of the
23 deposition. Was that since the deposition?

24 A No, it was before I wrote the report.

25 Q Okay. At the deposition, you told me that you

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1 talked with Mark Robinson, Frank Utley, and Dr. Demetry. Do
2 you recall that?

3 A Well, those were -- Demetry is his primary care
4 physician. Frank is his boarder. Robinson was in charge of
5 the post-release treatment program.

6 Q Okay.

7 A And then I also talked to the two probation and
8 parole officers who were in charge of his case, which was
9 Missy -- and I'll get her last name as soon as I get my file
10 -- and --

11 Q Missy Cruz.

12 A Cruz, thank you again.

13 MR. KNOWLES-KELLETT: We can stipulate to that.

14 THE WITNESS: And Tom --

15 BY MR. KNOWLES-KELLETT:

16 Q Loudon.

17 A Thank you.

18 Q Is that correct?

19 A Yeah, Tom Loudon.

20 Q Okay.

21 A Those were the two probation officers that were his
22 primary case managers during his probation and parole.

23 Q Okay. And Mr. Robinson told you, I wouldn't have
24 graduated him if he hadn't passed all the criteria; is that
25 correct?

1 A Correct.

2 Q And Dr. Demetry says he sees him every -- sees Mr.
3 Rice every three months. He has him on 300 milligrams of
4 Wellbutrin. He's medically stable except for his diabetes,
5 and shows no signs of mental disturbance?

6 A That's correct.

7 Q Okay. And Mr. Utley, his boarder, reports he has
8 no problems with Mr. Rice and does not observe children or
9 teenagers coming to the house?

10 A That's correct.

11 Q Okay. And the interviews and testing you did with
12 Mr. Rice took nine hours?

13 A A total of, yes.

14 Q And four of those were yours, and five were Dr.
15 Wells-Hively?

16 A I believe that's true.

17 Q Okay. And then you testified that the Wellbutrin,
18 you think, treats his dysthymia?

19 A Dysthymia.

20 Q Dysthymia?

21 A Right.

22 Q And dysthymia is moodiness, depression?

23 A Low-level depression.

24 Q Okay. And you indicated that you need something
25 stronger than that to treat bipolar?

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1 A Typically, yes. Wellbutrin doesn't touch it
2 because it's not an SSRI.

3 Q Okay. On the basis of the tests you ran, he's not
4 a pedophile?

5 A Correct.

6 Q And that you believe his impulses are gone?

7 A They have either aged out, or he has recovered from
8 his bout of mental illness or a combination of the two.

9 Q Okay. At the time, you said that it was due to his
10 diabetes and the diabetic medicine, Metformin, which he
11 recently switched to Toujeo?

12 A That's correct.

13 Q And you explained that, in 1991, he would have
14 qualified as a pedophile under the DSM as a result of his
15 inappropriate sexual contact?

16 A In the -- in '91, all we had was the DSM-2, and we
17 didn't have the level of detail that we have in the DSM-5, so
18 yes. He would fit under the general category of child
19 molester, yes.

20 JUDGE SIPPEL: He wouldn't fit now?

21 THE WITNESS: He doesn't qualify now?

22 JUDGE SIPPEL: Under this?

23 THE WITNESS: Yeah, because of that, right.

24 JUDGE SIPPEL: Oh, because of the age?

25 THE WITNESS: Yeah, exactly. And no behavior. You

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1 can't diagnose something that doesn't exist.

2 BY MR. KNOWLES-KELLETT:

3 Q Okay. Are you being paid for your testimony today?

4 A I'm sorry?

5 Q Are you being paid for your testimony today? This
6 is a wrap-up.

7 A Nice try. I get paid for my time, just like you
8 do.

9 Q Okay.

10 A And, yes, I have been paid for my time.

11 Q And how much are you being paid?

12 A The retainer was 3,500.

13 Q Okay. And what's your hourly rate?

14 A For testimony, it's 500 an hour.

15 Q Have you ever treated Mr. Rice?

16 A No, that would be inappropriate.

17 Q Okay.

18 A I'm an evaluator, not a treater.

19 Q Okay. With other people, you treat them; is that
20 correct?

21 A I do, yes.

22 Q Okay. But, when you're doing an evaluation, you
23 don't turn around and treat?

24 A It's unethical.

25 Q Okay.

1 A It's called a dual relationship.

2 Q Is that why Dr. Stillings called you in to evaluate
3 him in '91?

4 A Well, he operates under a different code of ethics
5 because he was a psychiatrist.

6 Q Okay.

7 A I think he called us in because he knew that we had
8 some training and expertise in the area of sex offender.

9 MR. KNOWLES-KELLETT: Okay. That's all the
10 questions I have, Your Honor.

11 JUDGE SIPPEL: Mr. Jacobs?

12 MR. JACOBS: Yes, Your Honor, I need your guidance
13 at this point, please.

14 JUDGE SIPPEL: It's going to cost you 500 an hour.

15 MR. JACOBS: Well, that's okay. That's okay. I've
16 paid more. The odd way that the witnesses are being presented
17 creates an issue here. I heard --

18 JUDGE SIPPEL: Let's see. Wait a minute. What's
19 the odd way?

20 MR. JACOBS: Well, I'll explain. The problem is
21 that Dr. Weitl is the last witness, and she will not be
22 testifying until tomorrow. Yet her exhibit contains a number
23 of negative comments about the Duncan-Hively reports. Mr.
24 Knowles-Kellett did not touch on any -- or just about any of
25 those items.

1 I would like to ask Dr. Duncan to respond to these
2 attacks in Dr. Weitl's exhibit, and that's why I'm in a
3 quandary.

4 JUDGE SIPPEL: Well, you agreed with counsel for
5 the order of the witnesses.

6 MR. JACOBS: The problem with Dr. Weitl was not
7 available until Friday.

8 JUDGE SIPPEL: So you want -- what you're asking
9 is you think that Dr. Duncan should be able to respond to Dr.
10 Weitl's criticisms; is that what you're saying?

11 MR. JACOBS: Yes.

12 MR. KNOWLES-KELLETT: If that had been in her
13 direct testimony, I think it would have been fine. Oh, you
14 didn't have the direct testimony. I take it back.

15 THE WITNESS: Could I offer a solution here?

16 JUDGE SIPPEL: Sure, we'll listen to anything.

17 THE WITNESS: We're not going back until Saturday,
18 and I'm going to be here for Dr. Weitl's presentation. And
19 then I would be available if that would help you.

20 JUDGE SIPPEL: How's that?

21 MR. JACOBS: I don't think they were listening.

22 MR. JACOBS: Can we go off the record?

23 JUDGE SIPPEL: I'm sorry. Let's go off the record.

24 (Whereupon, the above-entitled matter went off the
25 record at 11:32 a.m. and resumed at 11:34 a.m.)

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1 JUDGE SIPPEL: Let's go back on the record.

2 MR. KNOWLES-KELLETT: The Bureau -- I think that
3 the proposal on the table was for her to testify after Dr.
4 Weitzl.

5 JUDGE SIPPEL: Dr. Duncan testifying after Dr.
6 Weitzl.

7 MR. KNOWLES-KELLETT: Tomorrow.

8 JUDGE SIPPEL: Yes, if it's -- well, yes, we know
9 it's necessary.

10 MR. KNOWLES-KELLETT: And the Bureau would like the
11 opportunity -- that would be in the nature of rebuttal. If
12 Dr. Weitzl would be here, hear the criticisms and could respond
13 to them afterwards, we're fine with that procedure.

14 We don't know that that's going to be necessary.
15 We have no idea what this is about. But we think that that's
16 probably the preferable thing than doing it right now.

17 JUDGE SIPPEL: Well, because that's the -- yes,
18 let's -- we're not going to do it now. We can't because Dr.
19 Weitzl hasn't testified.

20 MR. KNOWLES-KELLETT: Right.

21 JUDGE SIPPEL: But she could respond to points in
22 her written testimony, I mean Dr. Duncan could.

23 MR. KNOWLES-KELLETT: Yes, but -- we're fine with
24 her doing -- we think it would better to do it after Dr.
25 Weitzl, that that's the natural course. And Dr. Weitzl would

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1 be able to hear her criticisms and respond, if necessary. I
2 want to go home at the end of the day on Friday.

3 THE WITNESS: I'm confused.

4 JUDGE SIPPEL: We'll explain this. Mr. Jacobs,
5 what -- would that procedure be all right with you?

6 MR. JACOBS: Yes.

7 JUDGE SIPPEL: Now the next question is how long
8 is Dr. Weitzl's testimony going to be?

9 MR. JACOBS: How long is the cross? I should think
10 it would be no more than three hours.

11 JUDGE SIPPEL: Three hours, really?

12 MR. JACOBS: Well, we're beginning at, whatever,
13 9:30 or 10:30.

14 JUDGE SIPPEL: 9:30.

15 MR. JACOBS: It might be less. I don't know. I'm
16 just trying to judge from the depositions last September.

17 JUDGE SIPPEL: Well, as I say, I'm trying to -- I
18 mean, I'm trying to run a railroad here, and we want to finish
19 on Friday.

20 MR. JACOBS: Me, too. Me, too. And I have a
21 dinner appointment at 7:00.

22 JUDGE SIPPEL: Who am I to ask? That's fine. What
23 about -- okay, never mind. I'm going to leave the rest all
24 to you. I just know what time I want to be out of here
25 tomorrow. And since, Mr. Jacobs, you do have the burden of

1 proof, in all fairness, I'm more concerned about you getting
2 to ask the questions than I am about the Bureau. But I
3 understand that, too. If it's not too much, I have the
4 discretion to cut you off if this is going too far. We don't
5 want that to happen.

6 Okay. That's all right. I'm not --

7 MR. KNOWLES-KELLETT: I think we're talking, both
8 testimony, it's a very short matter.

9 JUDGE SIPPEL: I think so.

10 MR. KNOWLES-KELLETT: Is that correct?

11 MR. JACOBS: Yes. I mean, it's very clear that
12 pages 23 to 27 --

13 JUDGE SIPPEL: And a little bit of a short answer,
14 you think it's not going to be a big deal?

15 MR. JACOBS: Right.

16 JUDGE SIPPEL: Take too long?

17 MR. JACOBS: Right.

18 JUDGE SIPPEL: But it's got to be done?

19 MR. JACOBS: Yes. And it's --

20 JUDGE SIPPEL: Okay. And I agree with you. And
21 I agree with you.

22 MR. JACOBS: -- quite clear --

23 JUDGE SIPPEL: Don't argue -- hey, don't argue with
24 someone who's agreeing with you.

25 MR. JACOBS: All right.

1 JUDGE SIPPEL: Okay. Let's move on. We're going
2 to do that.

3 THE WITNESS: Point of information, Your Honor.
4 I found the description of the post-release treatment program
5 that Mr. Rice went through.

6 MR. KNOWLES-KELLETT: May I see that?

7 JUDGE SIPPEL: Do you have a copy?

8 MR. KNOWLES-KELLETT: I don't know that I do.

9 MR. OSHINSKY: Your Honor, can we assume then that
10 Mr. Jacobs doesn't have any redirect of Dr. Duncan-Hively at
11 this point?

12 JUDGE SIPPEL: I don't know. I don't know. Mr.
13 Jacobs.

14 MR. JACOBS: I think that my redirect is best
15 delayed until after Dr. Weitzl testifies.

16 MR. KNOWLES-KELLETT: If it has to do with today's
17 testimony, I think it should be today.

18 MR. JACOBS: It doesn't.

19 MR. KNOWLES-KELLETT: Okay. Can I keep this over
20 lunch and give it back to you?

21 THE WITNESS: Yes, sir. Only if you promise.

22 JUDGE SIPPEL: Well, I want copies of it, and I
23 want to put it in the record.

24 MR. KNOWLES-KELLETT: That's fair enough. Well,
25 I'll bring back four copies, Your Honor, if that works with

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1 you guys.

2 MR. JACOBS: I'm quite sure it was previously
3 submitted, but --

4 MR. KNOWLES-KELLETT: I don't think it said an
5 exhibit.

6 JUDGE SIPPEL: All right. Let's go.

7 MR. KNOWLES-KELLETT: I think we're finished.

8 JUDGE SIPPEL: You're finished and now he's -- the
9 witness, Dr. Duncan, is going to get redirected after Dr.
10 Weitl and everything is done.

11 MR. OSHINSKY: Your Honor, I think Mr. Jacobs just
12 said he doesn't have any direct of the cross-examination
13 today.

14 JUDGE SIPPEL: Oh, today?

15 MR. KNOWLES-KELLETT: He's got rebuttal tomorrow.

16 JUDGE SIPPEL: All right. Okay. I hear you.

17 MR. KNOWLES-KELLETT: Is it okay that we take a
18 break from now until 1:15?

19 JUDGE SIPPEL: Wait a minute. Wait a minute. I'm
20 not finished.

21 MR. KNOWLES-KELLETT: Okay.

22 JUDGE SIPPEL: Just relax. I just have a question
23 or two.

24 You testified that it was -- that is, your report
25 testifies that the boys manipulated Mr. Rice.

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1 THE WITNESS: Yes, that was probably a misuse of
2 a verb. They participated like --

3 JUDGE SIPPEL: Well, they took the lead?

4 THE WITNESS: I have not been able to ascertain an
5 accurate description of the activities except it was mutual,
6 and there was no force involved.

7 JUDGE SIPPEL: Well, there could have been some
8 kind of -- what about alcohol?

9 THE WITNESS: Absolutely.

10 JUDGE SIPPEL: Well, isn't that a form of
11 nonconsensual sex?

12 THE WITNESS: No, he didn't provide alcohol, at
13 least according to --

14 JUDGE SIPPEL: Well, conveniently, the boys
15 provided it for themselves.

16 THE WITNESS: Correct. And did he act in the
17 function of an adult? No, he didn't. And was he --

18 JUDGE SIPPEL: Well, he said that --

19 THE WITNESS: And was he -- and was he 13 and
20 mentally ill at the time? Absolutely. And did he do harm to
21 the boys? Yes.

22 JUDGE SIPPEL: Well, I was -- what I'm -- I guess
23 what I'm ultimately getting at is how can you reach any
24 conclusion with respect to the boys if they haven't been
25 examined?

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1 THE WITNESS: The only information that we have is
2 from the police reports and from their witness impact
3 statements. That's all we've got.

4 JUDGE SIPPEL: And, from those reports, you glean
5 that the boys were the -- I'm going to say it again, but the
6 boys were the originators of the --

7 THE WITNESS: No. And I didn't infer -- and I
8 apologize for the awkward phraseology. Let's put it this way.
9 If you have Asperger's, who's a putz, who's a geek, who has
10 resources, and he has a big house. And you can hang out in
11 it, and you can bring liquor to it. And he wants to show you
12 his because you're going to show him his -- yours, then that's
13 an activity between two people, both of whom were emotionally
14 aged 15. And was it appropriate? Not at all. But he's not
15 a predator in the sense of luring the boys in and plying them
16 with whatever in order to work his way with them.

17 We have had cases where there are clear predators,
18 and yes, the behavior is inappropriate. But it is not --
19 looking for the right word -- no preset plan, let's put it
20 that way.

21 JUDGE SIPPEL: Well, perhaps not with the first
22 time. But these visits were repeated.

23 THE WITNESS: They certainly were.

24 JUDGE SIPPEL: Particularly by the fellow next
25 door.

1 THE WITNESS: Right, CZ.

2 JUDGE SIPPEL: And it might be --

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: And it might be --

5 THE WITNESS: They had a relationship. And your
6 analogy to the priest is probably accurate, that there is a
7 relationship.

8 JUDGE SIPPEL: But the relationship isn't an equal
9 relationship; it's the boy is looking up to the older man.

10 THE WITNESS: Not necessarily, especially when you
11 think about how awkward Mr. Rice is.

12 JUDGE SIPPEL: Well, I'm not --

13 THE WITNESS: It's a difficult area. It's a very
14 difficult area. We would like to monsterize him, and we would
15 like to turn him into the --

16 (Simultaneous speaking.)

17 THE WITNESS: -- predator.

18 JUDGE SIPPEL: No, I don't want to say that. We're
19 not talking about monsterizing anybody.

20 THE WITNESS: Okay.

21 JUDGE SIPPEL: I'm trying to just understand what
22 you're saying with respect to the facts. That's all I'm
23 trying to do.

24 THE WITNESS: Okay. And the facts are that he set
25 up an environment where kids came and hung out and

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1 masturbated. And he masturbated them, and they masturbated
2 him. And that was a mutual activity that they participated
3 in.

4 JUDGE SIPPEL: Well, it even went beyond
5 masturbation. You know that.

6 THE WITNESS: My understanding is there was oral
7 sex involved, yes.

8 JUDGE SIPPEL: Well, that's a little bit different.
9 The same effect, but different. All right. Never mind. I'm
10 sorry. I don't mean to be rude about this.

11 The concept I'm having difficulty with is how --
12 where was he at that time, Mr. Rice, in his forties?

13 THE WITNESS: Your Honor, 39-40.

14 JUDGE SIPPEL: How does he go from 40 to 13
15 emotionally? And then the deed is done, the boys go home, and
16 he's going to pop back up to 40 again? Or does he stay at 13?

17 THE WITNESS: He stays at 13 for the emotional
18 exchange with the boys. And then he --

19 JUDGE SIPPEL: When that's over?

20 THE WITNESS: And then he gets in his car, and he
21 drives to work, and he turns into an IT geek who doesn't
22 interact with people but interacts with machines.

23 JUDGE SIPPEL: So does that make him --

24 THE WITNESS: And he was unmedicated.

25 JUDGE SIPPEL: But does that give him two

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1 personalities?

2 THE WITNESS: No. It gives him two different
3 behavior styles, not two personalities.

4 JUDGE SIPPEL: All right. I'm not going to argue
5 with you, but --

6 THE WITNESS: It might be easier for you to have
7 that concept, but I didn't find the data that supported that.

8 JUDGE SIPPEL: No, that's all right. That's all
9 right. I mean, he's -- there's got to be a stage of
10 responsibility. Again, we're into the mens rea. And he
11 intended to do all of this.

12 THE WITNESS: I totally agree.

13 JUDGE SIPPEL: And the fact that he -- in your
14 opinion, that he had regressed to age 13 is really not
15 relevant.

16 THE WITNESS: It's relevant in terms of his
17 behavior. If you, again, read Ken Lanning's book, you will
18 find that his behavior was very sophomoric. No money was
19 exchanged. He didn't engage in wild orgies. He didn't
20 present pornography and say, let's do one of those. It was,
21 in the lexicon of sexual activity, phenomenally primitive.

22 JUDGE SIPPEL: It sounds like you're describing for
23 me one of the former president's conduct. He was acting like
24 a teenager. I don't know what age you want to necessarily
25 give him. I think. Am I right? Do you agree with that?

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1 THE WITNESS: Well, the nuance, if you will, if
2 you're going to use that reference point, is an underlying
3 narcissistic personality disorder. Our data did not show --

4 JUDGE SIPPEL: And you don't have that. You don't
5 have it here?

6 THE WITNESS: No, I didn't have it here. What I
7 had was psychosis. What I had was distorted thinking. In
8 your other example and in our present configuration, we have
9 narcissistic personality disorder in all of its magnificent
10 flamboyance. We don't -- yes, we don't have that in this
11 case.

12 JUDGE SIPPEL: Well, the point -- the leap I was
13 going to make -- but I understand exactly what you're saying,
14 and I have no reason to disagree with it -- is when does a
15 person become responsible for their acts?

16 THE WITNESS: When their mental illness gets under
17 control and they have 84 sessions with Dr. Stillings after
18 release from prison. And in the course of 84 sessions,
19 individual, one-on-one, full-hour sessions with Dr. Stillings,
20 you grow up, and you learn how to become the person that you
21 saw today -- yesterday.

22 In other words, the part of therapy which is to
23 take the wounded person from their infantile state to a
24 functioning adult happened for Mr. Rice with the 84 sessions
25 with Dr. Stillings, whom he trusted. It also helped that both

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1 parents died. That helped.

2 JUDGE SIPPEL: Dr. Stillings is treating him for
3 multiple personalities.

4 THE WITNESS: Yes, Dr. Stillings was primarily
5 treating him for the bipolar disorder.

6 JUDGE SIPPEL: Well, the fact is that he could come
7 to the conclusion that he had multiple personalities.

8 THE WITNESS: He did.

9 JUDGE SIPPEL: You disagreed with that?

10 THE WITNESS: I did disagree.

11 JUDGE SIPPEL: Would the treatments be different
12 for multiple personalities?

13 THE WITNESS: Yes. And it's my belief, based on
14 my conversations with Dr. Stillings over the years, that he
15 was, in fact, doing what we call reparenting, which is helping
16 the mentally ill put their pieces back together and learn how
17 to be an adult. So that solidification is what we see, and
18 that's --

19 JUDGE SIPPEL: Is that what you -- did you pick up
20 on that? Is that what -- you continued that --

21 THE WITNESS: Well, that's what the testing showed.
22 That's what the testing in 2014 showed. He's baked. He's not
23 a kid anymore. Our testing in '91, and the report is full of
24 examples of his being silly and bizarre and impulsive. And
25 the rehabilitation effect of 23 years, 84 sessions with

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1 Stillings, and Dr. Robinson's program, is that, in our
2 testing, there is a low risk of re-offending. He's not going
3 to do it again.

4 JUDGE SIPPEL: You say that with some assurance.

5 THE WITNESS: Based on the data, that's where the
6 assurance comes from.

7 JUDGE SIPPEL: Have you ever reached that
8 conclusion with anybody else that you treated in a similar
9 pattern, you know, a similar in the sense of --

10 THE WITNESS: Right.

11 JUDGE SIPPEL: -- age and all of that kind of --

12 THE WITNESS: Sure. I have more success with the
13 crazy than the personality disorders. If you're psychotic or
14 bipolar, we can work with it. And it happens. We can --

15 JUDGE SIPPEL: What about schizophrenia?

16 THE WITNESS: That is a more difficult form of
17 treatment because you have to maintain rigid control over the
18 medication. Because, otherwise, you'll lose them, and then
19 you have to recycle, reboot. But, with this particular
20 disorder, the dissociative, the bipolar, with medication and
21 stabilization, you can get what we got. But, with personality
22 disorders, I'm not as successful.

23 JUDGE SIPPEL: Well, how -- all right. That was
24 an off-the-table question. But what about -- what I'm really
25 disturbed about or having difficulty with is that you never

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1 saw these boys, and yet you're biting around all of these
2 conclusions about them, even if maybe you've not come down
3 four-square on these conclusions, and you're sort of
4 characterizing them as being equal culprits in this.

5 THE WITNESS: You know, that is an unfortunate use
6 of the term manipulative. So, if we take the manipulative out
7 and we think of it as, how about a basket of puppies, okay?
8 Think about the 13-year-olds as a puppy, and Mr. Rice as a
9 puppy. And -- sorry. I think she wants to ask you something.

10 JUDGE SIPPEL: I'm sorry. Go ahead. Please
11 continue with the analogy. You've got the 13 puppies in a box
12 or something.

13 THE WITNESS: Well, again, my metaphor may be
14 inaccurate.

15 JUDGE SIPPEL: No, I can visualize. Sometimes
16 that's better than my glass analogies. But let's go with your
17 puppies.

18 THE WITNESS: Which I got lost in. Puppies engage
19 in all sorts of behavior. They roll around. They lick each
20 other. They tug on each other. They bite each other's ears.
21 We just got two new puppies, so that's probably why the
22 metaphor came through. And Mr. Rice, in his mental illness,
23 became a puppy.

24 JUDGE SIPPEL: So you throw him in as puppy number
25 14 with the other puppies.

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1 THE WITNESS: Got it.

2 JUDGE SIPPEL: But still, with the other puppies --
3 he's coming into the box as a puppy.

4 THE WITNESS: In his mental condition.

5 JUDGE SIPPEL: But he's going to go into the box
6 as a big dog.

7 THE WITNESS: Not necessarily, because you've --
8 you've observed him. There isn't hardly anything big dog
9 about him.

10 JUDGE SIPPEL: But I'm not into that. That has
11 nothing --

12 THE WITNESS: Okay, sorry. You wanted to use --

13 JUDGE SIPPEL: It is absolutely beyond my ken.

14 THE WITNESS: Okay.

15 JUDGE SIPPEL: The point is this.

16 THE WITNESS: You --

17 JUDGE SIPPEL: This I can identify with.

18 THE WITNESS: All right.

19 JUDGE SIPPEL: If you've got a box full of puppies,
20 and you put a big puppy in there with them --

21 THE WITNESS: Right

22 JUDGE SIPPEL: -- the small puppies are going to
23 give deference or give space to the big one. Oh, my God, it's
24 another big one.

25 THE WITNESS: Or they will figure out a way to get

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1 his attention, or they'll figure out a way to chew on his ear.
2 Or they'll figure out a way to engage in sexual activity with
3 him, yes. That's different than a predator, a hawk, over a
4 box of puppies who's going to pick a puppy up and take it out
5 and do terrible things to it, okay?

6 JUDGE SIPPEL: I'm with you so far, but all I'm
7 saying, without looking at the puppies, all you're doing is
8 looking at the big dog. And your testing shows that he's got
9 -- in that kind of a condition, he's got himself the age of
10 a puppy, but you don't -- all of these other conclusions that
11 you're reaching, the puppies would have found a way to bite
12 his ear and all of that, you don't know that.

13 THE WITNESS: Well, I do know, Your Honor,
14 respectfully, I work a lot with sex abuse victims. I work a
15 lot with boy sex abuse victims. Dr. Hively's specialty is
16 actually that.

17 JUDGE SIPPEL: No, I respect that.

18 THE WITNESS: And so there is a whole way that a
19 kid has of engaging an adult and getting an adult's attention.
20 And it's very difficult when the adult isn't an adult when he
21 needs to be.

22 And he did it. And he molested the kids. And he
23 was convicted, and he paid his time. And the question is, is
24 he going to do it again? Is there anything in the data that
25 says he's a risk to do it again? And the testing data says

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1 no.

2 Dr. Weitl will have a different opinion. She will
3 say he's absolutely classic, and he's going to grab a kid off
4 the street and do him again. And so there's your dilemma,
5 where you have one expert that says, our test data says
6 absolutely not, and Dr. Weitl, who says, based on her years
7 of experience, this one is a green-striped giraffe, and I know
8 he's a green-striped giraffe, and you better treat him like
9 a green striped giraffe.

10 So there's your dilemma.

11 JUDGE SIPPEL: So she could be right as well as
12 you? You think you're right, but she could be sitting where
13 I am if she tells me a convincing story.

14 THE WITNESS: She will. She's very convincing.
15 The only problem is she doesn't have any data. She didn't do
16 any testing.

17 JUDGE SIPPEL: Speaking of data, you said that --
18 in your testimony, that you did, what was it, you listed the
19 numbers, nine specific tests?

20 THE WITNESS: Well, and then I added four more.
21 We did the Abel. We did the sexual interest inventory. We
22 did the Minnesota, which is the risk of recidivism. We did
23 the Static-99, which is the old version. And we did the
24 Static-2002. So we did four checks on (A) is he sexually
25 interested in boys now? No. (B) Does he score high on the

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1 Minnesota recidivism test? No. Where is he on the Static-99?
2 He is in the low-risk category.

3 JUDGE SIPPEL: Okay. Does anybody else have any
4 questions based on my questioning?

5 MR. KNOWLES-KELLETT: No, Your Honor.

6 JUDGE SIPPEL: Mr. Jacobs?

7 MR. JACOBS: No, Your Honor.

8 JUDGE SIPPEL: You didn't list these reports --
9 these tests, rather, in the reports.

10 THE WITNESS: I think --

11 JUDGE SIPPEL: Why?

12 THE WITNESS: I think we mentioned the -- we
13 mentioned the Static-99. I think that's in there. That's in
14 the report. But we did the Abel screening after the
15 deposition because Dr. Weitl said that it was a really good
16 test to determine sexual interest in boys. She's --

17 MR. OSHINSKY: Your Honor, I need to interject at
18 this point. Dr. Weitl didn't say that.

19 MR. KNOWLES-KELLETT: Well, she at least corrected
20 it. And we can have her --

21 JUDGE SIPPEL: Well, that's note at least the
22 confusion in the record. You presented certain tests that you
23 administered?

24 THE WITNESS: Yes, sir.

25 JUDGE SIPPEL: And now you're -- and you're talking

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1 now about other tests that you did, but they are not in the
2 report.

3 THE WITNESS: That's correct.

4 JUDGE SIPPEL: Why is that?

5 THE WITNESS: Well, we asked to submit a
6 supplement. Are you ready for the sequence?

7 JUDGE SIPPEL: I understand.

8 THE WITNESS: Dr. Weitl got deposed. There is a
9 test for sexual interest that is valuable in the field called
10 the Abel screening. Dr. Weitl, to my recollection, said that
11 that was a test that she valued. We administered the Abel
12 after the deposition because --

13 JUDGE SIPPEL: Of you or of Dr. --

14 THE WITNESS: All of the depositions were done.

15 JUDGE SIPPEL: Okay.

16 THE WITNESS: And we finished it within the time
17 frame that we were given. So we did it like two days or three
18 days after the deposition. We submitted it, but it was
19 rejected, that we weren't allowed to submit a supplement to
20 our report.

21 JUDGE SIPPEL: But was that -- were these tests
22 that were not in the first report in the second report?

23 THE WITNESS: Yes. But we weren't allowed --

24 JUDGE SIPPEL: Well, I know you weren't allowed to
25 but --

1 THE WITNESS: Right.

2 JUDGE SIPPEL: -- physically speaking, they were
3 actually in the second report?

4 THE WITNESS: Well, they were in the supplement,
5 sir.

6 JUDGE SIPPEL: I mean in the supplement. I'm
7 sorry.

8 THE WITNESS: Right. Yes, sir.

9 MR. KNOWLES-KELLETT: If I might explain, Your
10 Honor. The court cases find the Abel test not reliable as a
11 predictor in a risk assessment.

12 JUDGE SIPPEL: Well, you're getting ahead of me
13 now. You're getting ahead of me.

14 MR. KNOWLES-KELLETT: Okay.

15 JUDGE SIPPEL: You can -- you can --

16 MR. KNOWLES-KELLETT: So you said no supplement.
17 I'm just reminding you. You looked at the court cases and
18 said no supplement.

19 MR. JACOBS: That's not an accurate statement.

20 MR. KNOWLES-KELLETT: Okay. What did he say?

21 MR. JACOBS: He said that we were late.

22 MR. KNOWLES-KELLETT: Okay. We have a difference
23 of opinion.

24 MR. JACOBS: And that the most that we could do was
25 present it as rebuttal. You never got into the substance of

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1 the Daubert test as to whether the Abel testing is acceptable.

2 MR. KNOWLES-KELLETT: He's refreshing my
3 recollection, and you offered him a chance then to justify his
4 rebuttal. He said it should come in as direct. You said no,
5 it will only be on rebuttal, and I'll consider it at the end.
6 I think that that is correct.

7 JUDGE SIPPEL: Do you have a citation to my order?

8 MR. KNOWLES-KELLETT: I don't have it --

9 MR. JACOBS: I have it right here.

10 JUDGE SIPPEL: I'm talking about just the number
11 I want, the M number or something.

12 MR. JACOBS: 16M-31.

13 JUDGE SIPPEL: Thank you. Thank you. I saw
14 something that was a supplement in one of the volumes.

15 MR. JACOBS: Well, most recently, we supplied the
16 declarations to go with the letters.

17 JUDGE SIPPEL: No, this has nothing to do with the
18 letters. There was something supplemental.

19 MR. JACOBS: Well, back in --

20 JUDGE SIPPEL: '91?

21 MR. JACOBS: No, in September --

22 JUDGE SIPPEL: Yes.

23 MR. JACOBS: -- we did file the Abel results.

24 JUDGE SIPPEL: And that was in a supplement form?

25 MR. JACOBS: In a supplement. And you rejected --

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1 JUDGE SIPPEL: But it's someplace in one of these
2 books, either his or yours. I mean, I saw it. I saw a
3 supplement.

4 MR. JACOBS: We did not submit the -- anything on
5 Abel in our direct case exhibits.

6 JUDGE SIPPEL: Because I said you were late?

7 MR. JACOBS: Right.

8 JUDGE SIPPEL: Well, okay, let's break for lunch,
9 and we can respectively take a look at our volumes and see
10 what -- maybe I'm mistaken, but I don't -- I swear I saw it.
11 I swear I absolutely am sure that I saw something called a
12 supplement. And I didn't get into the meat of it, but it was
13 something about a supplement of a report.

14 MR. KNOWLES-KELLETT: It should --

15 (Simultaneous speaking.)

16 MR. KNOWLES-KELLETT: -- our exhibits if it was a
17 supplemental answer.

18 JUDGE SIPPEL: All right. Well, okay. Let's just
19 break for lunch.

20 MR. KNOWLES-KELLETT: Can we go 1:15 or 1:30?

21 JUDGE SIPPEL: What time is it now?

22 MR. KNOWLES-KELLETT: Five after 12:00.

23 JUDGE SIPPEL: 1:15. How does that tie in with
24 your TV testimony?

25 MR. KNOWLES-KELLETT: We're going to start testing

1 it at 1:00. Can we just go 1:20?

2 JUDGE SIPPEL: Yes, 1:20 is fine.

3 MR. KNOWLES-KELLETT: Does that work? That's under
4 the hour and 15 that you asked for earlier.

5 JUDGE SIPPEL: All right. Now is this witness
6 finished?

7 MR. KNOWLES-KELLETT: Yes. Well, she's going to
8 be called as rebuttal tomorrow.

9 JUDGE SIPPEL: That's going to be tomorrow.

10 THE WITNESS: Yes, right. So I'm done today?

11 JUDGE SIPPEL: Okay. Yes, you're done today, but
12 you're still under oath.

13 THE WITNESS: Yes, sir.

14 JUDGE SIPPEL: And I don't want you talking about
15 your testimony with counsel.

16 THE WITNESS: Absolutely.

17 JUDGE SIPPEL: You can talk to him about anything
18 else.

19 THE WITNESS: Absolutely.

20 JUDGE SIPPEL: Okay. Then I have five after 12:00
21 by one of these working clocks.

22 MR. OSHINSKY: Yeah, that's correct.

23 JUDGE SIPPEL: And we're in recess until 20 after
24 1:00. Thank you.

25 (Whereupon, the above-entitled matter went off the

1 record at 12:05 p.m. and resumed at 1:25 p.m.)

2 JUDGE SIPPEL: Okay, we are on the record and we
3 are ready to proceed. And this is the Government's witness.
4 Is that correct?

5 MR. KNOWLES-KELLETT: Correct. Thanks, Your Honor.

6 (Off microphone comments.)

7 JUDGE SIPPEL: No, please no. It's too --- too
8 hot. Okay. Everybody here? Okay. I am going to administer
9 the oath, but you can stay seated. Did you hear me? Am I
10 getting --

11 MR. KNOWLES-KELLETT: I think they said a little bit
12 of a delay. Tammie, can you hear us?

13 (No response.)

14 MR. KNOWLES-KELLETT: I guess she can't. She could
15 hear me before.

16 JUDGE SIPPEL: Let's go off the record.

17 (Whereupon, the above-entitled matter went off the
18 record at 1:26 p.m. and resumed at 1:32 p.m.)

19 WHEREUPON,

20 TAMMIE GREMMINGER

21 was called as a witness by Counsel for the Government and,
22 having been first duly sworn, assumed the witness stand, was
23 examined and testified as follows:

24 JUDGE SIPPEL: This is not your witness. This is
25 the Bureau's witness.

1 MR. KNOWLES-KELLETT: Correct.

2 JUDGE SIPPEL: We are --- in effect we are taking
3 her out of order in order to get it accommodated. Well, no
4 because I do have to --- he is right. Mr. Jacobs is right.
5 I still haven't ruled on things like the ---

6 MR. KNOWLES-KELLETT: Yes.

7 JUDGE SIPPEL: The motions and that type of thing.

8 MR. KNOWLES-KELLETT: You haven't ruled on the
9 motion in limine. We would ask, Your Honor, that you take
10 this testimony as a proffer whether or not you disqualify her
11 is ---

12 JUDGE SIPPEL: Fair enough.

13 MR. KNOWLES-KELLETT: As a witness, so I don't think
14 that there is a --- I think we would take her testimony today
15 either way.

16 JUDGE SIPPEL: Sure.

17 MR. KNOWLES-KELLETT: Okay?

18 JUDGE SIPPEL: All right, let's go. You are under
19 oath now, ma'am.

20 THE WITNESS: Yes, sir.

21 JUDGE SIPPEL: Have you testified before?

22 THE WITNESS: I'm sorry?

23 JUDGE SIPPEL: Have you testified before?

24 THE WITNESS: Yes, I have.

25 JUDGE SIPPEL: Not in this case, but in other

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1 cases?

2 THE WITNESS: Correct.

3 JUDGE SIPPEL: Okay. I'm going to turn to you to
4 --- to the Bureau Counsel. You know him, I think. And we're
5 off to the races.

6 MR. KNOWLES-KELLETT: Okay, Ms. Gremminger, I'd like
7 you to turn in the book we sent you to EB-Exhibit 2.

8 JUDGE SIPPEL: What page is that on? That's on
9 page --- that's Tab ---

10 MR. KNOWLES-KELLETT: Tab 2.

11 JUDGE SIPPEL: Oh, I see now. I've got it.

12 MR. KNOWLES-KELLETT: And that is a nine-page
13 exhibit. Okay?

14 THE WITNESS: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. KNOWLES-KELLETT:

17 Q Do you recognize that as the testimony we prepared
18 in this hearing?

19 A Yes, sir.

20 Q And I apologize that --- I think it says in here
21 that you've been a parole officer for 30 years. Could ---

22 A That --- that is correct.

23 Q Okay, that seemed correct. Correct?

24 A Correct.

25 Q Okay, and then it goes on to say that you're a ---

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1 you became a parole officer in 1993?

2 A That is correct.

3 Q Okay. With that correction, is this testimony true
4 and correct?

5 A Yes, sir.

6 Q Okay. I think that it's Mr. Jacob's witness, Your
7 Honor.

8 JUDGE SIPPEL: You're tendering him for cross
9 examination?

10 MR. KNOWLES-KELLETT: Tendering her for --

11 JUDGE SIPPEL: Or tendering her, rather.

12 MR. KNOWLES-KELLETT: Yes.

13 JUDGE SIPPEL: Mr. Jacobs?

14 MR. KNOWLES-KELLETT: Okay, on direct, afterwards
15 what we would like to do is go through the MOSOP Report. I
16 don't think that that --- that illegible part and she can help
17 us read it.

18 JUDGE SIPPEL: Let's make the appropriate motion
19 at the appropriate time. Right now we have this witness and
20 we're going to get through her.

21 MR. KNOWLES-KELLETT: But she's the --- she's the
22 witness that ---

23 (Simultaneous speaking.)

24 JUDGE SIPPEL: -- I know. She's not going to go
25 away.

1 MR. KNOWLES-KELLETT: She's one of the witnesses to
2 help us. Okay. Okay.

3 JUDGE SIPPEL: Okay, now go on Mr. Jacobs. Do you
4 want to move up here to --- it almost looks like the seat in
5 the Game of Thrones.

6 MR. JACOBS: Thank you.

7 JUDGE SIPPEL: All right, now so we have the
8 witness. There is going to be a little lag in the time that
9 she is going to respond. So I have to adjust to that myself,
10 just to warn you. Okay, so go ahead.

11 CROSS EXAMINATION

12 BY MR. JACOBS:

13 Q Thank you. Good afternoon, Ms. Gremminger.

14 A Good afternoon.

15 Q Using this video transmission is a new experience
16 for me and perhaps for you. So we will proceed carefully,
17 subject to correction. If you don't understand my question,
18 please tell me so. I will try to rephrase it or ask it more
19 plainly so that we can make certain that you do understand
20 what I have asked you before you answer me. Okay?

21 A Okay. Yes.

22 Q Likewise, if you do not hear what I have asked you,
23 please tell me so.

24 A Okay.

25 Q I will try to keep my voice up, but if I do not

1 speak loud, I will repeat it. Okay?

2 A Okay.

3 Q I may --- if you need to take a break for any
4 reason, please let us know. You should feel free to ask for
5 a break. Okay?

6 A Okay. Yes, sir.

7 Q I am going to cross examine you based on the
8 Enforcement Bureau's direct case Exhibit No. 2 dated March 27,
9 2017 which is your direct case testimony. First I would like
10 to ask you are you familiar with research done by R. Karl
11 Hanson and Kelly Morton-Bourgon called Predictors of Sexual
12 Recidivism: an Updated Meta-Analysis?

13 A No, sir.

14 Q What about a study done by R. Karl Hanson, Andrew
15 J.R. Harris, Leslie Helmus, H-E-L-M-U-S, and David Thornton
16 entitled High Risk Sex Offenders May Not be High Risk Forever?

17 A No, sir.

18 Q Okay. Turning to your direct case exhibit. In
19 paragraph one you describe yourself as a sex offender
20 specialist in the Missouri Department of Corrections. In
21 paragraph two you state that you joined the Probation and
22 Parole Department of the Missouri Department of Corrections
23 in 1993 as a parole officer in the position of sex offender
24 specialist. As a sex offender specialist, my primary
25 responsibilities involve supervising the probation and parole

1 of sex offenders. Only specially trained probation and parole
2 officers supervise sex offenders, closed quotes. How did you
3 qualify as a sex offender specialist?

4 A I initially went through an interview process with
5 the department. After I was selected, after the interview,
6 I was subject to additional courses, worked with our treatment
7 providers, shadowed a probation parole officer that worked
8 with sexual offenders and then I was given my own case load
9 of sex predators to supervise.

10 Q And how long did that training period take?

11 A I would say approximately over --- over a six-month
12 period.

13 Q Six months?

14 A Correct.

15 Q What does it mean to supervise sex offenders?

16 A There are a lot of roles and duties. I supervise
17 individuals placed on probation in the court. I supervise
18 individuals placed on parole who are released from prison. I
19 supervise individuals that are released, civilly committed for
20 sex crimes. And I supervise individuals on what we call
21 lifetime supervision. I supervise their conditions of
22 probation and parole and implement them. I work with
23 therapists, law enforcement, courts, victims, advocates,
24 community, additional things in the community such as
25 churches, schools. I work with polygraph examiner, any kind

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1 of tools we have available to assess and address offenders to
2 be successful --- computer monitoring, GPS, polygraph testing.
3 I do home visits.

4 At the clients homes I --- families, friends,
5 individuals they are dating, significant others, family
6 members. I work with the chief law enforcement officials in
7 conducting home visits, random searches of residences and
8 attend group staffings with regards to clients. I attend
9 court hearings, revocation hearings, testify on different
10 aspects of sex offenders.

11 JUDGE SIPPEL: Is that enough?

12 (Simultaneous speaking.)

13 JUDGE SIPPEL: That sounds good enough. Mr.
14 Jacobs?

15 RESUME CROSS EXAMINATION

16 BY MR. JACOBS:

17 Q Okay. Have you ever supervised Michael Rice?

18 A No, sir.

19 Q Say again?

20 A No, sir.

21 Q Yes. Would you describe when and ---

22 JUDGE SIPPEL: Wait, did you hear the question?

23 (Simultaneous speaking.)

24 JUDGE SIPPEL: Oh, I'm sorry. I --- go ahead. Go
25 ahead.

1 MR. JACOBS: You answered ---

2 THE WITNESS: I never supervised him. My partner
3 at the time he was on parole supervised him.

4 RESUME CROSS EXAMINATION

5 BY MR. JACOBS:

6 Q Did you say then you did not supervise him?

7 A That is correct.

8 Q All right, you did not supervise him. And your
9 partner Missy Cruse was --- did supervise him? Right?

10 A That is correct.

11 Q And what was the period of that supervision by
12 Missy Cruse?

13 A I believe from the time he was released on parole
14 --- he paroled from the institution on December 29th, 2019 ---

15 Q Now, 1999.

16 A 1999, I'm sorry. And I believe she supervised him
17 up until Mr. Loudon took charge of his case in 2002

18 Q Okay. And then his parole ended in August 2002.

19 A Correct.

20 Q So that would have been a short period by Mr.
21 Loudon, I guess.

22 A Yes, sir.

23 Q In paragraph 2 you state that you attended and
24 graduated from the St. Charles County Law Enforcement Academy.
25 What was your period of attendance?

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1 A When I completed college I attempted to get hired
2 with the Missouri Board of Probation and Parole. They had a
3 job freeze. I began working at the St. Charles Sheriff's
4 Department. I went through their police academy. I also ---
5 during attending the police academy I worked as a correctional
6 officer as the deputy sheriff in the --- in jail at St.
7 Charles County Sheriff's Department.

8 Q I'm sorry. You used language a little bit
9 different from your statement which says St. Charles County
10 Law Enforcement Academy. Is that the same as the police
11 academy?

12 A Police academy, yes. I'm sorry.

13 Q And how long was that course?

14 A It was over a year.

15 Q A year?

16 A Mm-hmm.

17 Q And ---

18 JUDGE SIPPEL: You have to answer yes or no.

19 THE WITNESS: I'm sorry, yes, sir.

20 JUDGE SIPPEL: Let me ask you this too now while
21 I'm talking here. What happened to Missy Cruse?

22 THE WITNESS: Her husband worked at Boeing ---
23 currently, right now? Or then?

24 JUDGE SIPPEL: No, I --- I say what --- where is
25 she now? Missy Cruse? Where?

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1 THE WITNESS: Oh, she's at --- she left our agency
2 several times and then came back. She is a supervisor now.

3 JUDGE SIPPEL: And she's not available to testify
4 to this?

5 THE WITNESS: To my knowledge, nobody asked her to
6 testify.

7 JUDGE SIPPEL: All right. But she is available?
8 You don't know about ---

9 (Simultaneous speaking.)

10 JUDGE SIPPEL: But she is available in the sense
11 that she's with the organization?

12 THE WITNESS: Correct.

13 JUDGE SIPPEL: All right. Go ahead.

14 RESUME CROSS EXAMINATION

15 BY MR. JACOBS:

16 Q The St. Charles County Police Academy, so does this
17 mean that you were studying with police officers?

18 A It was academy for individuals that were ---

19 Q Would you say that again?

20 MS. FUNK: Ask her if she can hear us.

21 MR. JACOBS: Can you hear us?

22 JUDGE SIPPEL: Can you hear us, Ms. Gremminger?

23 (No response.)

24 JUDGE SIPPEL: No, we're getting -- can you hear
25 us now?

1 (No response.)

2 (Pause.)

3 MR. JACOBS: Are you hearing us now?

4 THE WITNESS: Yes, sir.

5 RESUME CROSS EXAMINATION

6 BY MR. JACOBS:

7 Q Okay. I was talking about your course work at the
8 Law Enforcement Academy. Can you tell me the period of time
9 --- the years? What year did you graduate?

10 A It was in '92 to early '93.

11 Q '92 to '93. Now, at the end of that course, did
12 you become a sworn police officer?

13 A Deputy sheriff's -- police --- deputy officer.

14 Q A deputy police officer?

15 A It was a sheriff's department. It is now a police
16 department, but it was sheriff's department.

17 Q And do you still hold such a title?

18 A No, sir.

19 Q No. So you're no longer a deputy police officer?

20 A No, sir.

21 Q No. Do you have a badge of any sort from your
22 current work as a sex offender specialist?

23 A A departmental badge.

24 Q Okay. Have you been issued a service weapon?

25 A Yes, sir.

1 Q Yes?

2 A Yes.

3 JUDGE SIPPEL: Yes, she said yes. Can I just
4 interrupt her a minute? How are you tendering this witness?

5 MR. KNOWLES-KELLETT: Yes, sir --- she is an expert
6 local law enforcement sex offender specialist.

7 JUDGE SIPPEL: All right. You can proceed Mr.
8 Jacobs.

9 RESUME CROSS EXAMINATION

10 BY MR. JACOBS:

11 Q You might have touched on this, but I would
12 appreciate it if you would tell us again the course of study
13 that you had at the law enforcement academy.

14 A It's a course that they offered that they paid when
15 I got hired on --- it was the police academy.

16 Q So it's --- was the standard course for future sex
17 offender specialists?

18 A No, sir. It was individuals going towards ---
19 attending to become a police officer.

20 Q Okay. Did you receive any academic degree or
21 certificate.

22 A The completion of the Academy.

23 Q And so what did the certificate say? Just Tammie
24 Gremminger completed the course at the St. Charles County Law
25 Enforcement Academy?

1 A Correct. Yes, sir.

2 Q In paragraph five you state that you have attended
3 40 training courses from 1997 through 2016 as a sex offender
4 specialist. And in paragraph six you indicate that from this
5 training I have learned to utilize the criteria and tools
6 provided by the State of Missouri to assess the risks posed
7 by sex offenders generally, and to recognize the specific risk
8 factors that elevate the risks posed by certain types of
9 offenders.

10 We are now going to review the 40 courses that you
11 took, one-by-one, and for each course I will ask you to tell
12 us how the course taught you to assess the risks posed by sex
13 offenders and to recognize risk factors. First course is sex
14 offender supervision.

15 A That was a course I took with regards to how our
16 department supervises individuals placed on probation and
17 parole for sex crimes.

18 Q And the next course I guess is the second day of
19 the first course, Sex Offenders Supervision.

20 JUDGE SIPPEL: Now, you --- now, just a minute.
21 You've asked her two, two-pronged answers. One was how it
22 helped her what, diagnose the condition? Can you just repeat
23 what you said? What are you asking her?

24 MR. JACOBS: I'm asking you to tell us how the
25 course taught you to assess the risks posed by sex offenders,

1 and to recognize risk factors.

2 JUDGE SIPPEL: Okay, well would you break the
3 questions down that way?

4 RESUME CROSS EXAMINATION:

5 BY MR. JACOBS:

6 Q Okay. So for this first course, Sex Offender
7 Supervision, would you please repeat what you said?

8 A In the first course, Sex Offender Supervision, it
9 entailed how to supervise individuals on probation and parole
10 and encompassed all points of --- assessment risks, working
11 with providers, treatments, programs, working with law
12 enforcement agencies.

13 Q All right. So you included in that taught you to
14 assess risks. That was part of it? Part of that training?

15 A Correct.

16 Q And the second day, I guess the same. What about
17 the next course? Child exploitation?

18 JUDGE SIPPEL: How do you assess the risks? In
19 other words, let's start with that.

20 THE WITNESS: Assess the risks of what they ---
21 children have been exposed to, how they've been manipulated,
22 groomed, accessed.

23 JUDGE SIPPEL: All right, what about recognizing
24 specific risk factors?

25 THE WITNESS: Risk factors that made it available

1 --- available for them to be chosen as victim.

2 JUDGE SIPPEL: Okay. Maybe you can ask the
3 questions that way?

4 RESUME CROSS EXAMINATION

5 BY MR. JACOBS:

6 Q All right. MOCASA and Sexual Violence. How did
7 that teach you to assess risks?

8 A Over that training there are numerous courses that
9 we attended throughout the day. Again, each seminar had
10 different topics, ways to deal with individuals, lower their
11 risks, assess when they are in high risk, how to manage high
12 risk behavior.

13 Q What is MOCASA? It's an acronym. I don't know
14 what it stands for.

15 JUDGE SIPPEL: Just answer the question. You do
16 --- what --- what does it mean?

17 THE WITNESS: Missouri --- it is Missouri Coalition
18 Association of Sex Offenders.

19 MR. JACOBS: Missouri --- what's the next word?

20 THE WITNESS: Missouri Coalition Association of Sex
21 Offenders.

22 MR. JACOBS: Coalition? Coalition.

23 THE WITNESS: Yes, sir.

24 RESUME CROSS EXAMINATION

25 BY MR. JACOBS:

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1 Q And in that course, how did it teach you to
2 recognize risk factors?

3 A Within that course there was different types of
4 groups we could participate in. We looked at different types
5 of sex offenders, different strategies we could use to assess
6 at risk level types of sex offenders.

7 JUDGE SIPPEL: How many --- what --- how many types
8 of sex offenders are you talking about?

9 THE WITNESS: They would be anywhere from hands-on,
10 computer-related, adult sex crimes.

11 JUDGE SIPPEL: Well, we're trying to narrow it down
12 to crimes against children or young people. Did --- did that
13 help you at all in detecting risks, and et cetera?

14 THE WITNESS: Yes, sir.

15 JUDGE SIPPEL: All right. Well don't --- don't
16 tell us anything about the adults unless you have to.

17 THE WITNESS: Okay.

18 JUDGE SIPPEL: I mean, because we have an adult
19 here who is the alleged perpetrator. But, you know what I'm
20 saying?

21 THE WITNESS: Absolutely. Yes.

22 JUDGE SIPPEL: Adult on adult doesn't count. Only
23 children.

24 THE WITNESS: Okay.

25 JUDGE SIPPEL: Okay, well, go ahead.

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1 RESUME CROSS EXAMINATION

2 BY MR. JACOBS:

3 Q The next course was Child Sexual Abuse. What did
4 that teach you about assessing risks?

5 A How individual children are subject to sexual
6 abuse, what they endure, the factors in which to look at when
7 interviewing and writing police reports with regards to areas
8 of assessing the risks of --- not only of the nature of the
9 offense, of how they were groomed and accessed.

10 Q Next, Sex Offender Registration. How did that
11 teach you to assess risks?

12 A Sex offender registration is individuals on
13 probation or parole who are placed --- convicted of a sex
14 crime. They are required in the State of Missouri to register
15 as sex offender. It engages risks and assessment based upon
16 if they're providing accurate information to keep law
17 enforcement such as their address, their phone numbers, their
18 vehicles they own and operate, where they work --- if they're
19 giving correct information within that documentation that is
20 provided, it keeps law enforcement and that's placed on the
21 internet.

22 So part of my job entails filling out the sex
23 offender registry form for clients and making sure that that
24 is correct and knowing that any additional information that's
25 changed, to report that to local law enforcement.

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1 JUDGE SIPPEL: Okay, Ms. Gremminger, your answers
2 don't have to be that long.

3 THE WITNESS: Okay.

4 JUDGE SIPPEL: If you can just specify what the big
5 thing that you do with respect to each of these courses. What
6 did it prepare you for? Because we understand to some degree
7 --- I knew about what a registration means.

8 THE WITNESS: Okay.

9 JUDGE SIPPEL: Okay?

10 THE WITNESS: Okay.

11 JUDGE SIPPEL: And he can follow --- you can answer
12 specific questions --- ask you specific questions if what
13 you're giving him is not enough. Okay, let's go.

14 RESUME CROSS EXAMINATION

15 BY MR. JACOBS:

16 Q Next, Understanding and Assessing and Treatment of
17 Sexual Offenders.

18 A Again, looking at sex offenders, assessing risk.
19 Individuals on probation for sex crimes.

20 JUDGE SIPPEL: What about treatment?

21 THE WITNESS: Noting risk of what's going on in
22 treatment and what high risk behaviors go on in treatment.

23 (Simultaneous speaking.)

24 JUDGE SIPPEL: You actually taught --- you're all
25 correlate the progression this person has made with the type

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1 of --- of treatment they are receiving? Does it this have to
2 do with psychological treatment?

3 THE WITNESS: It is cognitive-approached therapy.

4 JUDGE SIPPEL: Cognitive-approach therapy?

5 THE WITNESS: Mm-hmm.

6 JUDGE SIPPEL: Do you have any qualification in
7 that?

8 THE WITNESS: I have a minor in psychology.

9 JUDGE SIPPEL: And you --- any specific training
10 for it, you know, in the academy?

11 THE WITNESS: No, sir.

12 MR. KNOWLES-KELLETT: I --- there may be a
13 misunderstanding, Your Honor. She doesn't do the treatment,
14 she just monitors it.

15 JUDGE SIPPEL: I understand that.

16 MR. KNOWLES-KELLETT: Oh, okay.

17 JUDGE SIPPEL: I've asked -- my question was asked.

18 MR. KNOWLES-KELLETT: Sure.

19 JUDGE SIPPEL: You can't monitor what you don't
20 understand, can you?

21 MR. KNOWLES-KELLETT: I agree 100 percent, sir.

22 JUDGE SIPPEL: Okay. Next question.

23 RESUME CROSS EXAMINATION

24 BY MR. JACOBS:

25 Q MOCASA Stalking?

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1 A That was with regards to individuals on supervision
2 for stalking individuals.

3 JUDGE SIPPEL: I think we all know what stalking is.
4 You satisfied with that?

5 MR. JACOBS: Well, how does that relate? How does
6 that course relate to teaching you about risk assessment?

7 THE WITNESS: How individuals obsess about their
8 victims. What lengths they will go to seek out their victims,
9 record their victims, drive by their victims, take photos ---
10 different things of that nature.

11 RESUME CROSS EXAMINATION

12 BY MR. JACOBS:

13 Q All right. Next Violence, Risk and Threat
14 Assessment of Sex Offenders.

15 A Again that shows the course is with regards to how
16 perpetrators can be violent and use forceful --- whether it
17 be verbal, physical force.

18 Q Next, Protecting You and Your Kids. How does that
19 relate to risk assessment?

20 (Pause.)

21 MR. JACOBS: Did you hear me? Uh-oh.

22 JUDGE SIPPEL: Have we lost you?

23 (Pause.)

24 MR. JACOBS: Can you hear me now?

25 THE WITNESS: Yes, sir.

1 RESUME CROSS EXAMINATION

2 BY MR. JACOBS:

3 Q Okay. Protecting You and Your Kids, how does that
4 relate to risk assessment?

5 A Even with family members, victims of sexual offense
6 can protect their kids from sexual offenders.

7 Q I don't see anything about risk assessment in that.

8 A Taking the risk as far as not talking to strangers,
9 don't leave your children alone with somebody you don't know,
10 educating on ---

11 JUDGE SIPPEL: Okay, that's good enough for that
12 one. Let's try the next one.

13 MR. JACOBS: Sexual Predators on the Internet.

14 JUDGE SIPPEL: All right, well this case doesn't
15 involve any internet predatories does it? Predation, or
16 whatever it is.

17 MR. JACOBS: No, no.

18 JUDGE SIPPEL: Why don't we just skip by that one.

19 MR. JACOBS: FBI Internet Training and Supervision
20 of Sex Offenders in the Community.

21 JUDGE SIPPEL: We don't need to worry about that
22 one. What --- now, what about SAI? That's interesting. Sex
23 Offender Invention.

24 RESUME CROSS EXAMINATION

25 BY MR. JACOBS:

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1 Q Now what --- what does that mean? What is SAI?

2 A Sex Offender Inventory Test. It was a test that
3 we would utilize as an assessment that a sexual offender would
4 take a 500 questionnaire and then that questionnaire would
5 come back as an assessment of risk factors.

6 Q All right, so the word is not invention, it's
7 inventory?

8 A Correct, sir.

9 Q Right.

10 (Laughter.)

11 JUDGE SIPPEL Did you take that from some kind of
12 a textbook? Somebody may want to correct the textbook. Okay,
13 let's go.

14 RESUME CROSS EXAMINATION

15 BY MR. JACOBS:

16 Q MOSATSA Annual Conference --- what's MOSATSA?

17 A That's an annual conference that's comprised of
18 survey control through cross-community training for law
19 enforcement and different outside agencies. We've had the
20 conference held to discuss individuals, sexual offenders,
21 risks to the community and assessing risk.

22 Q Youth Violence Prevention Conference.

23 JUDGE SIPPEL: I think you can let that one go.

24 THE WITNESS: Yes.

25 JUDGE SIPPEL: Sexual predation, that's --- that's

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1 a good one.

2 RESUME CROSS EXAMINATION

3 BY MR. JACOBS:

4 Q What's that about?

5 A I don't recall that one, sir.

6 JUDGE SIPPEL: Now --- well, this was given you as
7 a course in the academy. Is that correct?

8 THE WITNESS: No, this was given --- all these are
9 within the Missouri Department of Corrections.

10 JUDGE SIPPEL: Well, is that part of the --- is the
11 --- well --- this is not offered by the academy, then? By
12 academy I mean is --- isn't it related to the police
13 department? The police academy?

14 (Pause.)

15 MR. KNOWLES-KELLETT: Okay, the top --- she will be
16 back one second. I might be able to clarify --- this is
17 paragraph five of the testimony. It says where she got these.
18 She got these as a parole officer after she left the police
19 academy. That's it right in the testimony.

20 JUDGE SIPPEL: Okay.

21 MR. KNOWLES-KELLETT: Ronny will be right back.

22 JUDGE SIPPEL: So it's not a formal education kind
23 of a thing? It's just a pick it up as you go?

24 MR. KNOWLES-KELLETT: More like CLEs, I think.

25 JUDGE SIPPEL: Oh, okay. Well, I want to go back

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1 and ask about that one. Because sexual --- well, never mind.

2 MR. JACOBS: Are you hearing us now?

3 THE WITNESS: Yes, sir.

4 JUDGE SIPPEL: Oh, I'm sorry. My gosh, I ought to
5 be careful what I say.

6 (Laughter.)

7 JUDGE SIPPEL: Sexual predation seems to be a very
8 significant thing in the case of someone like Mr. Rice as ---
9 as a category. And you can't recall anything about that
10 course or whatever it was? Program?

11 THE WITNESS: Predation --- I'm not --- I'm not
12 understanding that wording. So ---

13 JUDGE SIPPEL: Okay, that's your answer. So ---

14 RESUME CROSS EXAMINATION

15 BY MR. JACOBS:

16 Q What about criminal behavior research?

17 A That course is based on sexual offenders, their
18 criminal behavior. As far as risk assessment, process.

19 Q Human trafficking?

20 A That course is --- was based upon individuals,
21 children that were engaged in human trafficking.

22 Q How does that relate to risk assessment?

23 A The risk of how sexual offenders get access to
24 them. How they are able to manipulate, groom them and use
25 them in child trafficking cases.

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1 Q GPS, Global Positioning System?

2 A That's a device that we utilize on individuals
3 placed on probation or parole to monitor their behaviors and
4 activities.

5 JUDGE SIPPEL: All right. Well, when the --- does
6 this go beyond --- does that go beyond just the person's
7 location? You'll know where the person is ---

8 (Simultaneous speaking.)

9 JUDGE SIPPEL: No?

10 THE WITNESS: It's the person's --- tracking the
11 person's location at any time.

12 JUDGE SIPPEL: And is that it? Is that all it is?

13 THE WITNESS: Yes, sir.

14 JUDGE SIPPEL: All right.

15 RESUME CROSS EXAMINATION

16 BY MR. JACOBS:

17 Q Strength and unity, coming together to protect
18 children and families. How does that relate?

19 A That course that was developed on --- as community
20 and inter-departments coming together to protect children and
21 ways of protecting them from sexual offenders.

22 Q The next one I think I get. Understanding and
23 interviewing sex offenders. That's pretty clear. But after
24 that, stalking.

25 JUDGE SIPPEL: We had stalking before, didn't we?

1 MR. JACOBS: Well, we had yes, MOCASA Stalking, and
2 now five years later we have stalking. Risk assessment?

3 THE WITNESS: That is defined is how an individual
4 stalks an individual. Sexual offenders stalk their victims
5 to get access to them.

6 JUDGE SIPPEL: What about --- okay, one about
7 internet crimes -- we don't need that. The next one is ---
8 go ahead. It was sex offenders providers --- yes.

9 RESUME CROSS EXAMINATION

10 BY MR. JACOBS:

11 Q Sex offenders, providers and supervision.

12 A That's where training and working with --
13 treatment providers and engaging in supervision to come up
14 with strategies to lower risk, and to assess if a individual
15 who is high risk and how to go therefore.

16 JUDGE SIPPEL: Sex offender providers? You mean
17 the --- the criminal act of sexual offenders? They --- they
18 do the providing?

19 THE WITNESS: Who is doing the providers --- the
20 treatment providers who work as a team.

21 JUDGE SIPPEL Wait a minute, so this doesn't apply
22 to the individual actor? This applies to the people who are
23 supervising? Or who are ---

24 MR. JACOBS: Training ---

25 JUDGE SIPPEL: What do you mean by provider?

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1 THE WITNESS: Myself and the treatment providers,
2 working to come up with tools of assessing ---

3 JUDGE SIPPEL: All --- all right ---

4 THE WITNESS: -- managing offenders.

5 JUDGE SIPPEL: Okay, I understand now. Okay.

6 MR. JACOBS: Criminal behavior research?

7 JUDGE SIPPEL That would be irrelevant. Too broad
8 a topic. Treating compulsive behavior?

9 (Pause.)

10 MR. JACOBS: Now how does that fit in?

11 JUDGE SIPPEL: Did we lose it? Hi?

12 THE WITNESS: Individuals ---

13 JUDGE SIPPEL: Yes, please --- compulsive behavior.

14 MR. KNOWLES-KELLETT: They skipped down to the one
15 that says treating compulsive behavior.

16 THE WITNESS: Yes, sir.

17 MR. KNOWLES-KELLETT: How does that teach you to do
18 risk?

19 THE WITNESS: Determining if a offender is a
20 compulsive.

21 JUDGE SIPPEL: You're able to make that assessment?
22 Or the person is given to you or tended to you or assigned to
23 you as this kind of --- this person has a compulsive, whatever
24 it is, disease or ---

25 THE WITNESS: Whether reading it through the

1 therapist or acknowledging from what I've learned to see
2 compulsive behavior. As far as the length of time they call
3 me, the length of time they engage in deviant behavior.

4 JUDGE SIPPEL: You can make that --- you can make
5 that assessment independently?

6 THE WITNESS: As a team.

7 JUDGE SIPPEL: Who else would be on your team?
8 Missy?

9 THE WITNESS: I'm sorry?

10 JUDGE SIPPEL: Missy? Missy?

11 THE WITNESS: I'm sorry, I didn't understand that.

12 JUDGE SIPPEL: Well you said at the beginning that
13 the person who had the most contact with Mr. Rice was a woman
14 named Missy --- and I forgot the last name.

15 MR. JACOBS: Cruse. Cruse, Your Honor.

16 JUDGE SIPPEL: Cruse. Did we lose ---

17 (Simultaneous speaking.)

18 JUDGE SIPPEL: Yes, I'm sorry. Did we hear you?
19 Hello?

20 THE WITNESS: Yes, sir.

21 JUDGE SIPPEL: Did you not hear my question?

22 THE WITNESS: No, sir.

23 JUDGE SIPPEL: Okay, that's fair enough. You
24 testified earlier that Missy Cruse had --- had the most
25 contact with Mr. Rice in your office.

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1 THE WITNESS: Yes, sir.

2 JUDGE SIPPEL: All right. When you talk about your
3 team, okay, there is you and the other person was it Missy
4 Cruse?

5 THE WITNESS: Just --- I'm just talking in general.

6 JUDGE SIPPEL Well, okay, let me talk to you ---
7 you may answer this question separate. Specifically, who was
8 your team? Identify each person on your team and what they
9 do?

10 THE WITNESS: Currently?

11 JUDGE SIPPEL: Well, back in the days when you were
12 concerned with Mr. Rice.

13 THE WITNESS: Okay.

14 MR. KNOWLES-KELLETT: Did you hear the question?

15 JUDGE SIPPEL: We are waiting for an answer. Who
16 was the --- identify the people who were on your team.

17 (Pause.)

18 JUDGE SIPPEL: Lost again.

19 MR. JACOBS: No, her thumbs are moving. Do you
20 hear us?

21 THE WITNESS: Yes, I do. I was answering the
22 questions as it pertains to not Mr. Rice's case. I was
23 looking at everything generally as what I do.

24 JUDGE SIPPEL: Well, -- that's still --- my
25 question is, you made reference to a team. Are you hearing

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1 me?

2 THE WITNESS: Yes, sir.

3 JUDGE SIPPEL: Who was on the team? It's yourself
4 and who else?

5 THE WITNESS: Currently it's myself and treatment
6 providers, law enforcement officials.

7 JUDGE SIPPEL: Three of them?

8 THE WITNESS: No, there's prosecuting attorneys,
9 judges, victims' advocates, community.

10 JUDGE SIPPEL: And would ---

11 THE WITNESS: So there is a lot of people on within
12 the team.

13 JUDGE SIPPEL: The team, now. We're talking about
14 T-E-A-M.

15 THE WITNESS: Correct.

16 JUDGE SIPPEL: And so --- okay, I --- I --- I think
17 I understand what you're saying. But what was the makeup of
18 that team at the time that you were involved with Mr. Rice?

19 THE WITNESS: The time I was involved with Mr.
20 Rice. The same type of team.

21 JUDGE SIPPEL: Thank you.

22 RESUME CROSS EXAMINATION

23 BY MR. JACOBS:

24 Q The next item seems to duplicate one that is three
25 items above. It has the exact same wording. So I assume we

1 can delete it. Yes?

2 MR. KNOWLES-KELLETT: If it's got a different date,
3 it's a different training.

4 MR. JACOBS: No, it has the exact same date.

5 MR. KNOWLES-KELLETT: Oh, okay.

6 MR. JACOBS: Sex offender, providers and
7 supervision, 4-16-2007.

8 MR. KNOWLES-KELLETT: Okay.

9 MR. JACOBS: That is a duplicate, right?

10 JUDGE SIPPEL: Now, don't ask her whether it is.
11 You --- you've testified to this. Move on. I'm sorry Ms.
12 Gremminger.

13 MR. KNOWLES-KELLETT: We can stipulate to that, sir.

14 JUDGE SIPPEL: You don't need to.

15 RESUME CROSS EXAMINATION

16 BY MR. JACOBS:

17 Q Next item is prevention and intervention
18 conference.

19 A That's a course of how to, as officers, to engage
20 in preventing and assessing risks before victims or actions
21 are taking --- what interventions we can pose to limit high
22 risks from engaging in.

23 Q All right. Next one is sex offenders supervision,
24 which I assume is similar to the one from 1997. Next,
25 enhancing response to sexual assault victims. How is that

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1 relate to risk assessment?

2 A That one was ---

3 (Pause.)

4 Q I'm sorry, I didn't catch that answer.

5 (Pause.)

6 Q Do you hear me? Hello?

7 (Pause.)

8 Q I was asking about enhancing response to sexual
9 assault victims. How does that relate to risk assessment?

10 A That does not.

11 Q It does not? Okay. Sex offender management ---
12 I'll pass on that one. Next, remote computer monitoring for
13 sex offenders? How does that relate to risk assessment?

14 A It pertains to assessing individuals on computers
15 and monitoring risk and assessment because they're on a
16 computer-monitoring device.

17 JUDGE SIPPEL: Did you ever use a computer or
18 monitoring device with respect to Mr. Rice?

19 THE WITNESS: No.

20 JUDGE SIPPEL: Next one.

21 RESUME CROSS EXAMINATION

22 BY MR. JACOBS:

23 Q Total access GPS online training?

24 A Again, that's --- the equipment for our GPS
25 monitoring a client.

1 JUDGE SIPPEL: Well, we talked about that before.

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: Go to the next one.

4 RESUME CROSS EXAMINATION

5 BY MR. JACOBS:

6 Q Child annual prevention conference.

7 A That is with regards to --- a conference regarding
8 children of sexual abuse, what they've endured --- victim
9 empathy. That does not pertain to risk assessment sex
10 offenders.

11 Q Next one. The words confuse me. Community sex
12 offender treatment provider?

13 A Correct. That was a training in which we co-
14 facilitated with treatment providers and working with
15 individuals on probation and parole sex crimes --- going
16 through what types of programs they go through, what's
17 expected, what components of group --- group programs,
18 homework, how they determine risks and assessments.

19 Q Next de-sensitized to death: the lethality,
20 assessment and prosecution of strangulation.

21 JUDGE SIPPEL: Let's pass on that one.

22 MR. JACOBS: We --- yes.

23 JUDGE SIPPEL: Domestic violence ---

24 RESUME CROSS EXAMINATION

25 BY MR. JACOBS:

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1 Q Domestic violence, how does that relate to risk
2 assessment?

3 A With regards to how they got access to their
4 victims, means in which they manipulated, groomed, forced
5 their victims.

6 JUDGE SIPPEL What about the next one?
7 Strengthening partnerships?

8 THE WITNESS: Strengthening organizations within our
9 department and agencies that we work with on a daily basis to
10 reach the common goals of making the community safe with
11 regards to reducing the amount of sexual crimes posed against
12 children.

13 JUDGE SIPPEL: Do you --- do you ever recall ---
14 would you know, was there ever any complaints or advice from
15 the community with respect to Mr. Rice? Either good or bad?
16 Do you understand the question?

17 THE WITNESS: Complaints?

18 JUDGE SIPPEL: Well, complaints or just advice.
19 If someone calls you up and says I want you to know about
20 this.

21 THE WITNESS: I know that there were neighbors
22 reporting that there were children coming and going from the
23 residency.

24 JUDGE SIPPEL What did you do --- what would you
25 do in reaction to that?

1 THE WITNESS: Conduct home visits.

2 JUDGE SIPPEL: And what did you find out? Talking
3 about Mr. Rice now.

4 THE WITNESS: I'm sorry?

5 JUDGE SIPPEL: I'm talking about Mr. Rice.

6 THE WITNESS: Yes, sir.

7 JUDGE SIPPEL: So, you --- what exact --- did your
8 home visits --- what transpired at the home visits? What
9 results did you get?

10 THE WITNESS: Nothing that I recall of looking at
11 his --- what means he had accessible to gain or groom children
12 to come within inside of the residence. Found out that he had
13 a male individual that was living within his basement that we
14 were not aware of. He had not disclosed ---

15 JUDGE SIPPEL: When was that? Do you know,
16 roughly?

17 THE WITNESS: I do not recall.

18 JUDGE SIPPEL: Well, all right. All right.

19 MR. JACOBS: Well, just prior to his incarceration?

20 THE WITNESS: It was after his incarceration.

21 JUDGE SIPPEL: It was after his incarceration?

22 THE WITNESS: Yes, sir.

23 JUDGE SIPPEL: So in other words, when he was on
24 parole?

25 THE WITNESS: Yes, sir.

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1 JUDGE SIPPEL: Now, what were you told about
2 children going in and out of the house?

3 THE WITNESS: As seen by neighbors of individuals
4 going in and out of the house, decorations that were viewed
5 as items geared for children --- Halloween decorations,
6 Christmas decorations.

7 JUDGE SIPPEL: And what --- what did you conclude?

8 THE WITNESS: They were present.

9 JUDGE SIPPEL: I'm sorry? They were present?

10 THE WITNESS: Yes.

11 MR. JACOBS: Were these regarded as violations?

12 THE WITNESS: No, sir.

13 MR. JACOBS: So was any of what you described
14 treated as a violation?

15 THE WITNESS: No, sir.

16 MR. JACOBS: So it's just kind of irrelevant, isn't
17 it?

18 JUDGE SIPPEL: Well, I'm not convinced yet. If
19 there's a --- if there's a condition of --- I'm just asking
20 this as a general matter, if there's a condition of probation
21 that says that you can't have any contact with children, what
22 would happen --- or what would you have done in response to
23 the examples that you just gave about neighbors calling up and
24 saying that there's children going in and out of his house?
25 Do you ---

1 THE WITNESS: Providing local law enforcement with
2 the information obtained.

3 JUDGE SIPPEL: You didn't have to do that in this
4 case?

5 THE WITNESS: No, that was done.

6 JUDGE SIPPEL: Was done?

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: When you say was done, who did it
9 and how was it done?

10 THE WITNESS: I believe Missy Cruse contacted local
11 law enforcement.

12 JUDGE SIPPEL: And? And what happened then?

13 THE WITNESS: I don't know anything --- what
14 happened after that. But they were contacted.

15 JUDGE SIPPEL: You don't have any kind of --- it
16 wouldn't be in his files? Something must --- somebody from
17 the police force went out there, assumedly. And don't they
18 write something up all the time about it? We went out there
19 and we found this, that or the other thing. You know what I'm
20 saying?

21 THE WITNESS: They are supposed to but I haven't
22 --- Or I have nothing documented on that.

23 JUDGE SIPPEL: Well, I --- I mean, it almost sounds
24 like you have the wrong person on the stand.

25 MR. KNOWLES-KELLETT: Your Honor, her testimony is

1 what it is. The --- she's what we have.

2 JUDGE SIPPEL: Yes, but where is Missy?

3 MR. KNOWLES-KELLETT: We didn't offer her as
4 directly having supervised Mr. Rice. We ---

5 JUDGE SIPPEL: But she did. She called the police
6 on him.

7 MR. KNOWLES-KELLETT: Okay. We called Missouri law
8 enforcement and asked about getting a local risk assessment
9 on a sex offender, and we got Ms. Gremminger. And they're who
10 we said --- I didn't even know that Missy worked there again
11 until today. So this is what we have, Your Honor. This is
12 our case.

13 (Pause.)

14 JUDGE SIPPEL: I don't know. Okay, let's just keep
15 going.

16 RESUME CROSS EXAMINATION

17 BY MR. JACOBS:

18 Q Next course is the Vermont Assessment of Sex
19 Offender Risk. How does that relate to risk assessment? I
20 understand that's a --- a test, right?

21 JUDGE SIPPEL: Only for Vermont, though.

22 MR. JACOBS: It happens to be the name. I guess
23 it came from Vermont. But it's an assessment tool, right?

24 THE WITNESS: That is correct.

25 RESUME CROSS EXAMINATION

1 BY MR. JACOBS:

2 Q Yes. And last, treating sex offenders --- we'll
3 leave that one --- we'll leave that one alone. Coming back
4 to your statement. In paragraph seven you state that you have
5 testified as an expert in the area of risk assessment of sex
6 offenders, quote unquote, in cases in Missouri in which you
7 offered your opinion of the risk of re-offense by sexual
8 offenders convicted of similar offenses to those committed by
9 Michael Rice in the instant case. How many such cases have
10 you testified in?

11 A They asked me within the last four years how many
12 times I have testified, and I came up with 25 different cases
13 that I've testified.

14 Q But did those involve --- that was a total of 25
15 cases, right?

16 A Correct.

17 Q What about --- how many of those 25 related to
18 similar offenses to those committed by Michael Rice?

19 A Majority of those cases.

20 Q You also state that you have testified in
21 approximately 25 cases in the last four years that address sex
22 offenders that committed crimes against children. In each
23 case you address the risk of re-offense. All right, how many
24 of the 25 involved offenders who had completed their prison
25 terms, 17 or more years before?

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1 A Within that category, I --- when they asked me for
2 --- in the State of Missouri we testify on probation and
3 parole cases with regards to individuals coming out of prison,
4 we write a report to the Parole Board with our
5 recommendations.

6 Q Right, but those are ex-convicts who are just
7 coming out of prison. What about 17 years later? Have you
8 been writing any reports for such ex-convicts?

9 A I didn't calculate that. I wasn't asked to do
10 that. But I would say they were half --- half my caseload is
11 parolees coming out of prison.

12 Q Right. And then the other half maybe one, two,
13 three, four, five years. How many --- be 17 years. This must
14 be a very unusual case, isn't it?

15 A No. Mr. Rice's?

16 Q Yes.

17 A No.

18 Q In other words what you're saying is that you have
19 had other cases where you have been asked to do a risk
20 assessment of someone who has completed a prison term 17 or
21 more years before.

22 A In the span of ---

23 Q In the span of 30 years?

24 A I've worked for the department 25 years.

25 JUDGE SIPPEL: This is not going any place. Ask

1 your next question.

2 RESUME CROSS EXAMINATION

3 BY MR. JACOBS:

4 Q What do you know about risk assessment where an ex-
5 offender is almost 76 years old and has not re-offended in 26
6 years?

7 A What have I known?

8 Q Yes, about risk assessment? What --- what can you
9 say about the --- the chances of re-offense when an ex-
10 offender is almost 76 years old and has not re-offended in 26
11 years.

12 A A lot with regards to --- at face value you have
13 to look at all the programs they've been through, the
14 responsibility they've taken, the tests and the therapy. So
15 it's not just one thing I'm looking at --- just their age.
16 You have to look at it --- the whole picture to bring the
17 puzzle together.

18 JUDGE SIPPEL: Well what about access to children?
19 Wouldn't that be interesting to you?

20 THE WITNESS: Yes, sir.

21 JUDGE SIPPEL: And what happened in this case?
22 You've got the --- you were told by a --- a neighbor that
23 children were going in and out --- or, Missy was told that.

24 THE WITNESS: Correct.

25 JUDGE SIPPEL: What happened? I mean, that would

1 really be interesting to me if I were in your job.

2 (Pause.)

3 JUDGE SIPPEL: Did you hear me? Am I --- I'm
4 always getting cut off.

5 (Pause.)

6 JUDGE SIPPEL: Okay, I'm sorry. I'm back on. You
7 hear me?

8 THE WITNESS: Yes, sir.

9 JUDGE SIPPEL: Okay. My question was, if you had
10 information about children going in and out of Mr. Rice's
11 home, wouldn't that have triggered your interest, or the
12 interest of your office? I know ---

13 THE WITNESS: Yes, sir. Just as --- and the
14 reading all the documentation back to you when he was
15 committed of his offense that children continue to come in and
16 out of his residence, there's no reports of that on --- from
17 law enforcement that was given to probation parole officer.
18 It was just stated by law enforcement officials.

19 So whether someone didn't want to get involved, or
20 if it was anonymous calls that people did not want to get
21 involved with.

22 JUDGE SIPPEL: Well, it seems to me that --- I
23 mean, of all the things that you hear --- you're talking about
24 going through records and this, that and the other thing ---
25 you've got a situation right --- right there. And nobody's

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1 --- well yes, I guess I heard your testimony that they ---
2 Missy called law enforcement and law enforcement went out.
3 But that's the end of the trail. There was no report written
4 that you could find?

5 THE WITNESS: No, sir.

6 JUDGE SIPPEL: Have you talked to Missy about this
7 at all recently?

8 THE WITNESS: No, sir.

9 JUDGE SIPPEL: Why not?

10 THE WITNESS: I don't know. It was my impression
11 I was here to do a risk of assessment.

12 JUDGE SIPPEL: Well, what I am asking you is not
13 very clinical. I am simply asking you facts as to what
14 happened. And I would hope that you would be interested in
15 finding what the facts are before you came on, then, under
16 oath. But that's me, not you. This is very frustrating.

17 Well let me pass on to another thing and get it out
18 --- get it out of the way for me anyway. At one point you
19 were barred from communicating with us --- us being the
20 Commission. I'm not part of us, but --- of the --- with the
21 Enforcement Bureau because somebody had called and lodged a
22 complaint. Am I getting it right?

23 THE WITNESS: Yes, sir.

24 JUDGE SIPPEL: Do you know --- do you --- have you
25 done any --- has anything more been done to find out who the

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1 identity of this person is?

2 THE WITNESS: Not that I'm aware of.

3 JUDGE SIPPEL: You would be aware, wouldn't you?

4 THE WITNESS: No. They haven't put me in the loop,
5 so no.

6 JUDGE SIPPEL: Oh, the loop again. Okay. Do you
7 have any questions?

8 RESUME CROSS EXAMINATION

9 BY MR. JACOBS:

10 Q Oh, yes. In paragraph eight you state I remember
11 Michael Rice and I have reviewed his files and records in
12 order to refresh my recollection of his history, treatment and
13 test results as he passed through the parole and probation
14 process. My opinions are based upon my recollection of Mr.
15 Rice's performance during his parole and upon my review of
16 these records.

17 Now Ms. Gremminger we are talking about a parole
18 period for Mr. Rice that ran from January 2000 through August
19 2002, 15 or more years ago. And you testified at your
20 September 14, 2016 deposition that you only saw Mr. Rice once
21 during a home visit during that period.

22 MR. KNOWLES-KELLETT: Objection, Your Honor, he's
23 mischaracterizing the testimony.

24 MR. JACOBS: How so?

25 JUDGE SIPPEL: Just point her to the testimony.

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1 And then ask a --- then ask a specific fact --- a specific
2 question based on what is there.

3 (Pause.)

4 MR. JACOBS: I'm referring to pages 38 and 39 of
5 your deposition.

6 MR. KNOWLES-KELLETT: And I'd refer to pages 43 and
7 44 of her deposition where she attended group sessions with
8 Mr. Rice.

9 (Pause.)

10 JUDGE SIPPEL: Do we have those depositions?

11 MR. KNOWLES-KELLETT: We don't have copies of them,
12 Your Honor. Maybe Mr. Jacobs does.

13 JUDGE SIPPEL: Sir, do you have one other copy of
14 the deposition?

15 MR. JACOBS: No, I just have my own.

16 JUDGE SIPPEL: You have one? Okay.

17 RESUME CROSS EXAMINATION

18 BY MR. JACOBS:

19 Q Okay, the point I was making --- trying to make
20 --- is how many times did you ever speak to Mr. Rice? Now
21 what I think ---

22 (Simultaneous speaking.)

23 Q Pardon?

24 A I'm sorry, go ahead.

25 Q I'll leave it at that. How many times during that

1 two-and-a-half year period did you ever speak to Mr. Rice?

2 A I would say, it would be times Missy Cruse was out
3 of the office. Maybe one or two times. I don't have a copy
4 of what you're referring to.

5 MR. JACOBS: Well ---

6 JUDGE SIPPEL: Well, it's your deposition
7 testimony, September 2016. And in that --- in that page 43
8 you said you attended group therapy sessions --- and I think
9 you said this before --- group therapy sessions where Mr. Rice
10 would be involved. Is that correct?

11 THE WITNESS: Yes, and other group members that I
12 would supervise would be present at the group.

13 JUDGE SIPPEL: Well I don't care about that. But
14 you were there. This is a --- this is a group therapy session
15 that was being --- who --- who was in charge of presenting the
16 group therapy session?

17 THE WITNESS: At the time Mark Robertson.

18 JUDGE SIPPEL: Robertson. That name sounds
19 familiar. Okay. And in the same paragraph you say --- and
20 --- your recollection of going to his home visits, Missy Cruse
21 talked to me about his case. Recollection of going to his ---
22 I gather that would be Missy Cruse's going to his home visits?

23 I'm having trouble with that sentence. But Missy
24 Cruse talked to you about his case. She did. You testified
25 to that. Well, what did she talk to you about it?

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1 THE WITNESS: I don't remember. I'm not looking
2 at the form you are looking at.

3 JUDGE SIPPEL: It's not a form. It's a deposition.

4 MR. KNOWLES-KELLETT: She doesn't have a copy of
5 it, Your Honor.

6 JUDGE SIPPEL: All right. I can't --- I can't do
7 anything about it.

8 RESUME CROSS EXAMINATION

9 BY MR. JACOBS:

10 Q The point I'm trying to address is covered on pages
11 38 and 39 of the --- your deposition in which you say on page
12 38 --- so two-and-a-half years would be like 50 visits? Your
13 answer, it could be, yes. And you were present at one?
14 Answer, I can recall three times I was there. In all that
15 time, okay, you don't remember the dates I take it? No, I do
16 not.

17 Question --- and question, and when you were ---
18 let's say that one time you were inside or --- or three times,
19 and your partner --- is that supposed to be like, and I'm not
20 intending to be funny here, but the silent partner? Or were
21 you authorized or committed to speak as part of the --- we
22 were authorized to interject.

23 JUDGE SIPPEL: That's her answer.

24 MR. JACOBS: Question ---

25 JUDGE SIPPEL: Her answer is we --- what?

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1 MR. JACOBS: Question, and did you speak to Mr.
2 Rice? I don't recall ever speaking to him. And that's page
3 39 of this transcript.

4 JUDGE SIPPEL: Well, what's the question?

5 MR. JACOBS: Did you ever speak to Mr. Rice? And
6 the answer should be no. And ---

7 JUDGE SIPPEL: I don't think you have to tell her
8 the answer. I think she should tell her own answer.

9 MR. JACOBS: Well ---

10 JUDGE SIPPEL: That's the way it goes. You ask,
11 she answers.

12 MR. KNOWLES-KELLETT: I think --- I object, Your
13 Honor. I think that they --- if 20 years later she says I
14 don't recall specific instances I met with him. That's not
15 necessarily a no.

16 JUDGE SIPPEL: That's got nothing to do with the
17 question.

18 MR. KNOWLES-KELLETT: Yes, it ---

19 JUDGE SIPPEL: That's got nothing to do with the
20 question.

21 MR. KNOWLES-KELLETT: Okay.

22 JUDGE SIPPEL: Now you then go on to say --- let
23 me see what it was here --- and those three visits were all
24 with Missy? And you say correct. And the question, you smile
25 whenever I say Missy. Is that not what you --- blank. Oh, no,

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1 no, no, that's --- blank, blank, blank. All right, were you
2 ever alone with Mr. Rice during these visits? And your answer
3 is no.

4 MR. JACOBS: Okay, Your Honor ---

5 JUDGE SIPPEL: It's Missy is again --- that's just
6 the thing that I'm bugged about.

7 MR. KNOWLES-KELLETT: Okay, we are not offering her
8 as Mr. Rice's parole officer. We are offering her as a local
9 law enforcement sex offender risk assessor. There is a big
10 difference and he is ---

11 JUDGE SIPPEL: So she's not a fact witness?

12 MR. KNOWLES-KELLETT: She has a little bit of
13 factual knowledge, but ---

14 JUDGE SIPPEL: You don't hear my question.

15 MR. KNOWLES-KELLETT: Okay.

16 JUDGE SIPPEL: She's not being tendered as a fact
17 witness?

18 MR. KNOWLES-KELLETT: No.

19 JUDGE SIPPEL: So anything she says ---

20 MR. KNOWLES-KELLETT: Primarily she is a local law
21 enforcement risk assessor.

22 JUDGE SIPPEL: And you're saying that this --- this
23 is your expert on risk assessment?

24 MR. KNOWLES-KELLETT: One of two.

25 JUDGE SIPPEL: Well ---

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1 MR. KNOWLES-KELLETT: We have a doctor --- a
2 psychology doctor tomorrow.

3 JUDGE SIPPEL: Is that Dr. Weitl?

4 MR. KNOWLES-KELLETT: Correct.

5 JUDGE SIPPEL: Well that's not a --- all right, I
6 --- I am better informed now. I'm better informed.

7 MR. JACOBS: Well let me continue my ---

8 JUDGE SIPPEL: I'm going to. I'm going to. But
9 I'm just bothered by this --- I mean, in a sense, she doesn't
10 know what she's talking about.

11 MR. KNOWLES-KELLETT: Well, she's been through the
12 file.

13 JUDGE SIPPEL: Been through the file.

14 MR. KNOWLES-KELLETT: Correct.

15 JUDGE SIPPEL: She's talked to Missy.

16 MR. KNOWLES-KELLETT: Correct.

17 JUDGE SIPPEL: But we don't know where she is,
18 except she's in the office someplace.

19 MR. KNOWLES-KELLETT: Correct.

20 JUDGE SIPPEL: And has she ever done a risk
21 assessment on this --- Mr. Rice?

22 MR. KNOWLES-KELLETT: She did. That's what her
23 testimony is about --- her written testimony.

24 JUDGE SIPPEL: That's as far as it goes, though?

25 MR. KNOWLES-KELLETT: Correct.

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1 JUDGE SIPPEL: All right, well let's keep going
2 then. See if we can move it along.

3 RESUME CROSS EXAMINATION

4 BY MR. JACOBS:

5 Q So my question is, you testified at your September
6 14, 2016 deposition that you only saw Mr. Rice once during a
7 home visit during that period, did not speak to him and did
8 not have any notes about that visit or the two other times you
9 went to his home with Missy Cruse but did not go inside during
10 the two-and-a-half year period. Is it your testimony that
11 given all of these facts and your statement in paragraph two
12 that you have supervised more than 2,000 sex offenders over
13 the last 30 years, that you actually remember, quote unquote,
14 Mr. Rice and you have a recollection, quote unquote, of his
15 performance, quote unquote, during his parole?

16 (Simultaneous speaking.)

17 JUDGE SIPPEL: And what's the answer?

18 MR. JACOBS: That's the question.

19 JUDGE SIPPEL: Oh. Go ahead, I'm sorry. Repeat
20 your answer. Repeat your answer.

21 THE WITNESS: Through reviewing every file I have
22 on him with regards to his offense criminal records,
23 everything in the institution, everything on his release,
24 that's the knowledge I have of him. This is the knowledge I
25 would have of any of the ---

1 JUDGE SIPPEL: Fifteen minutes.

2 MR. JACOBS: Can you hear us? (Pause.) Hello?
3 Are you back with us?

4 THE WITNESS: Yes.

5 RESUME CROSS EXAMINATION

6 BY MR. JACOBS:

7 Q Okay. When was the last time that you participated
8 in any examination of or discussion with Mr. Rice?

9 A I'm sorry, could you repeat that?

10 Q When ---

11 MR. KNOWLES-KELLETT: Before he does, Your Honor,
12 could she repeat the answer to the prior question which got
13 cut off?

14 JUDGE SIPPEL: Well that's what I'm trying to get
15 at. What --- where do you stand on the prior question? Did
16 you get an answer?

17 MR. OSHINSKY: I believe she answered yes, Your
18 Honor.

19 MR. JACOBS: Well, I think what she ---

20 JUDGE SIPPEL: Let's ask her what she answered.
21 Remember the last question? I mean, the one before the last
22 one.

23 THE WITNESS: Vaguely.

24 JUDGE SIPPEL: Vaguely.

25 RESUME CROSS EXAMINATION

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1 BY MR. JACOBS:

2 Q Reworded it essentially was how could you recollect
3 --- recollect his performance after 15 or more years and 2,000
4 other people?

5 A Obtaining his records from the Department of
6 Corrections, police reports, MOSOP reports, victims
7 statements, participation reports, sex offender registry. All
8 documented official documents with regards to Mr. Rice's case,
9 sex offender therapy reports, sex offender evaluations that
10 were completed by two different people --- or actually three.
11 So those are the basis that I used as means of assessment of
12 risk.

13 Q All right. My next question then is when was the
14 last time that you participated in any examination of or
15 discussion with Mr. Rice?

16 A I would say back in two --- when he was on parole
17 with Missy Cruse and I was her partner.

18 Q I mean, sometime in 2002?

19 A Correct.

20 Q Was Michael Rice's case ever considered to be your
21 case?

22 A No, sir.

23 Q Were you ever officially his supervising probation
24 officer?

25 A No, sir.

1 Q Did you actually have a file for Mr. Rice in your
2 office?

3 A No, sir.

4 Q Did you ever prepare any written report of your
5 participation in Mr. Rice's supervision?

6 A No, sir.

7 Q Did you ever participate in any group meetings at
8 your office with respect to Mr. Rice?

9 A I might have. I might have seen him in the
10 probation office if his officer was out of the office.

11 JUDGE SIPPEL: You might have what --- you might
12 have? No, we want to know what --- I want to know what you
13 can remember, not what you might have. If you can't remember,
14 just say that.

15 THE WITNESS: I can't remember.

16 RESUME CROSS EXAMINATION

17 BY MR. JACOBS:

18 Q Or determinations with respect to his successful
19 completion of required sex offender treatment?

20 A I'm sorry, what's the question?

21 Q Whether you participated in any meetings in your
22 office with respect to determinations with respect to his
23 successful completion of required sex offender treatment?

24 A No, sir.

25 Q What about discussions of his progress?

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1 A At the time he was on parole, yes.

2 Q Or changing his conditions of supervision?

3 A I do not recall.

4 Q Did you ever have any specific duties other than
5 serving as a backup home visit officer with respect to Mr.
6 Rice's supervision?

7 A Backup --- backup officer entails home visits,
8 therapy ---

9 JUDGE SIPPEL: Well answer the question first, is
10 that what you were? A backup?

11 THE WITNESS: Correct. So if she wasn't present
12 I would --- I would supervise clients.

13 JUDGE SIPPEL: I'm sorry, I didn't hear that. You
14 would supervise what?

15 THE WITNESS: I would supervise Mr. Rice if Mrs.
16 Cruse was not in the office.

17 JUDGE SIPPEL: You would supervise Mr. Rice when
18 Ms. Cruse was not in the office. Is that right?

19 THE WITNESS: Correct.

20 JUDGE SIPPEL: By way of supervision did you happen
21 to visit him and talk to him?

22 THE WITNESS: If he reported to the office I would
23 talk to him. But doing home visits, I would do them with
24 Missy Cruse. I would not initiate my own.

25 JUDGE SIPPEL: So you were just kind of watching

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1 the phone in Missy's absence? You don't have to answer that.
2 Now you do say this is in your testimony in the deposition.
3 On page 42 you were asked did you ever prepare any written
4 report of your participation of your supervision? And your
5 answer is no, sir. So I mean --- you --- you were never
6 reduced to writing at the time of the event what it is that
7 you did. You're just sitting here today doing the best you
8 can to recall.

9 THE WITNESS: To the questions you're asking me,
10 yes.

11 JUDGE SIPPEL: Your answer is yes for what I asked?

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: How much more time do we have on
14 this? I don't think we need much more.

15 MR. JACOBS: Just about a page or two.

16 JUDGE SIPPEL: All right. Go ahead.

17 RESUME CROSS EXAMINATION

18 BY MR. JACOBS:

19 Q So we have your testimony today and your risk
20 assessment. What current tests or documentation support your
21 assessment?

22 A Numerous reports

23 Q Now, I say current tests or documentation. Not
24 things from 2002 or 1990.

25 A I think to get a good grasp of an individual's risk

1 to re-offend you have to look at everything. That is
2 everything from the police reports from the onset of the
3 offense to institutional adjustment, institutional programs,
4 community progress, polygraph testing, parole release,
5 treatment providers --- your, the tests that were provided to
6 me to look at to make a determination of risk.

7 Q But isn't it true that your file is basically empty
8 of any information after 2002?

9 A No.

10 Q What is in ---

11 A The file contains everything about Mr. Rice from
12 the onset of his charges. So ---

13 Q I understand that, but ---

14 (Simultaneous speaking.)

15 A -- into place.

16 Q But that was long before 2002. I'm just saying,
17 if you assembled all the papers in your file and you put the
18 most recent paper at the top, wouldn't the date on that paper
19 be something like 2002?

20 A I would say so, yes.

21 Q Yes, there is nothing after 2002?

22 A I do have a sex offender registry that is something
23 that I added.

24 JUDGE SIPPEL: What's the date of that?

25 THE WITNESS: Right after you -- 2015 and I read

1 a --- a sexual evaluation that was completed. I looked into
2 with regards to Mr. Rice's registration, if it was in
3 compliancy.

4 JUDGE SIPPEL: And what was the date on that? You
5 say was that --- what --- what ---

6 THE WITNESS: It was maybe February or March of
7 2015.

8 JUDGE SIPPEL: So it was March 2015, is that the
9 last date for an entry in your file?

10 THE WITNESS: Yes, that I was looking at.

11 JUDGE SIPPEL: Well, I haven't asked about what you
12 were looking at. But are you --- are you familiar with that
13 file?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: And can you tell me --- your
16 testimony is that the last entry as you go through the ---
17 with registration is 2015?

18 THE WITNESS: Correct.

19 JUDGE SIPPEL: All right.

20 THE WITNESS: His file was closed out by our
21 department in August 2002.

22 JUDGE SIPPEL: What's the significance of that?
23 Closed?

24 MR. JACOBS: That's when his parole ended.

25 JUDGE SIPPEL: But there still --- but there still

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1 is follow-up? I get --- after a file is closed, you have to
2 do certain follow-up things. Is that correct?

3 THE WITNESS: No, sir. His file was closed and I
4 was contacted by the FCC to review sex offender evaluations
5 that was completed on him, to give my expert opinion on them.
6 And we detect high risk behaviors. And ---

7 JUDGE SIPPEL: This is what the Bureau asked you
8 do to? Is that right? For this trial?

9 THE WITNESS: Yes, sir.

10 JUDGE SIPPEL: All right. And --- but you said
11 your last official entry --- well, I --- you didn't use the
12 word official. But the last entry had to do with something
13 that you supervised. And that is the report. The
14 registration report.

15 THE WITNESS: No, that came about from reading the
16 evaluations that I enquired to do my own investigation as far
17 as registration --- if he was in compliance with registration.

18 JUDGE SIPPEL: I see.

19 THE WITNESS: So that is something new. It was not
20 a part of the official records.

21 JUDGE SIPPEL: All right.

22 RESUME CROSS EXAMINATION

23 BY MR. JACOBS:

24 Q Did your superiors approve the contents of your
25 March 27 statement?

1 A I'm sorry, did they what?

2 Q Approve the contents of your statement? Your
3 exhibit.

4 A Approve it as far as --- what do you mean?

5 JUDGE SIPPEL: Let him get the answer. You're both
6 talking.

7 RESUME CROSS EXAMINATION

8 BY MR. JACOBS:

9 Q Please repeat your answer. Did they approve the
10 statement?

11 A Approve it as far as what?

12 Q Say it's okay, you can submit it?

13 A It wasn't something to submit to my subordinates.

14 Q What about your superiors?

15 A No.

16 Q So you didn't submit it to them.

17 A No.

18 Q For their approval? Okay. Are you here in any
19 official capacity?

20 A As far as ---

21 Q As an official representative of the Department of
22 Corrections?

23 A Yes, I've been subpoenaed to be.

24 Q You've been subpoenaed to come. But what --- what
25 title do you come --- do you come with the ---

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1 A Understanding as an expert witness and testifying
2 and making an opinion to risk assessment and sex offenders
3 within our community.

4 Q But you have no superior who signed off on ---

5 JUDGE SIPPEL: She's answered that. Asked and
6 answered. It's been asked and answered. Are we almost
7 finished here?

8 MR. JACOBS: Yes.

9 RESUME CROSS EXAMINATION

10 BY MR. JACOBS:

11 Q In paragraph 12 of your statement you fault Mr.
12 Rice for not taking a polygraph examination at the end of his
13 parole. But you failed to state that Mr. Rice has showed up
14 for the test with a note from his attending Psychiatrist,
15 Wayne Stillings, M.D., stating that Dr. Stillings felt that
16 Mr. Rice should be excused because he was under close
17 psychiatric supervision. Given those circumstances, the
18 polygraph technician, Sam Yarbrough, declined to administer
19 the test to Mr. Rice. Were you aware of these facts?

20 A Can you provide me the date again? Of the
21 polygraph?

22 Q No, I don't have the --- it would be near the end
23 of his probation. I assume some time in 2002.

24 (Pause.)

25 JUDGE SIPPEL: Did you ever --- I'm sorry, I'm

1 going to talk. Mr. Knowles-Kellett, do you have the results
2 of the Yarbrough ---

3 MR. KNOWLES-KELLETT: That's a different polygraph,
4 Your Honor. He's asking about one that he was supposed to
5 take ---

6 JUDGE SIPPEL: I understand that. But do you have
7 it in here?

8 MR. KNOWLES-KELLETT: Yes, the earlier ones in
9 here.

10 JUDGE SIPPEL: This is the last one that he did?

11 MR. KNOWLES-KELLETT: The last one that he did is
12 Exhibit 4.

13 JUDGE SIPPEL: That's good enough.

14 MR. KNOWLES-KELLETT: It's towards the beginning.
15 Page 4.

16 JUDGE SIPPEL: Thank you.

17 (Pause.)

18 JUDGE SIPPEL: Well, we don't have a date on here.

19 MR. OSHINSKY: There is a date.

20 JUDGE SIPPEL: It is?

21 MR. KNOWLES-KELLETT: It's a reference to the June
22 something or other ---

23 MR. OSHINSKY: The very first sentence.

24 JUDGE SIPPEL: June 6.

25 MR. OSHINSKY: June 6, 2000.

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1 JUDGE SIPPEL: Well, that's a nice place to put a
2 date. So we --- one item we have from Yarbrough is June of
3 2000. And the one that he --- that was not taken would have
4 been after that. Is that correct? Or have we lost you?

5 MR. KNOWLES-KELLETT: Can you hear us, Tammie?

6 (No response.)

7 JUDGE SIPPEL: Why do I always get on the end of
8 this thing?

9 MR. KNOWLES-KELLETT: I think it's bad luck, sir.

10 PARTICIPANT: Your voice must ---

11 JUDGE SIPPEL: Maybe my voice does it. Okay. Bear
12 with me I'm just trying to help here. The last item we have
13 of a Yarbrough test is in June of 2000. Yes, June of 2000.
14 Do you recall the time frame for the next one that he --- that
15 was not given because of the situation?

16 THE WITNESS: I do recall that.

17 JUDGE SIPPEL: Approximately when was that?

18 THE WITNESS: It was in 2002.

19 JUDGE SIPPEL: Thank you.

20 (Pause.)

21 RESUME CROSS EXAMINATION

22 BY MR. JACOBS:

23 Q But you're not aware that he received a --- a
24 letter from Dr. Stillings that Mr. Rice should be excused?

25 A I was aware that a letter needed to be obtained and

1 the officer needed to discuss that with a physician to explain
2 to him that --- the necessity for the polygraph. Thereafter,
3 nothing was followed-up on.

4 Q Do you have any independent knowledge of any of the
5 other hearsay statements in paragraph 14 of your testimony
6 concerning Mr. Rice's history, all of which are derived from
7 the previously-mentioned records of the probation and parole
8 office prepared during 1994 to 2000?

9 JUDGE SIPPEL: That's biting off too much that
10 anybody can chew. Why don't you get down point-by-point.
11 Where --- what are you reading from? What are you reading
12 from?

13 MR. JACOBS: My script.

14 JUDGE SIPPEL: Oh, script. Okay. Well, what are
15 the things that are listed there? Because she can't remember
16 all the hearsay to even know what it is. If you have an item
17 --- ask an item, ask an item, ask an item.

18 MR. KNOWLES-KELLETT: These are all items, Your
19 Honor, that were before her involvement in the case. She was
20 just in the records.

21 JUDGE SIPPEL: Well wait a minute -- don't start
22 skipping -- don't start suggesting answers.

23 MR. KNOWLES-KELLETT: They -- the things --

24 JUDGE SIPPEL: I just tried -- I'm trying to get
25 the form of the questions straightened out so the witness can

1 respond.

2 MR. KNOWLES-KELLETT: I object of the question, Your
3 Honor. He is asking for her independent recollection of
4 things where she testifies I've reviewed the files that say
5 these things.

6 JUDGE SIPPEL: All right.

7 MR. KNOWLES-KELLETT: So, it seems like he's wasting
8 our time.

9 JUDGE SIPPEL: I'll sustain the objection.

10 (Pause.)

11 RESUME CROSS EXAMINATION

12 BY MR. JACOBS:

13 Q At the end of paragraph 16 of your statement you
14 say I'm also concerned that returning to being a radio station
15 owner would increase the risk that he, Mr. Rice, would fall
16 back into his old behaviors. Are you aware of the kind of
17 station that is the subject of this proceeding?

18 A I'm sorry. Can you repeat that end part?

19 Q Are you aware of what type of broadcast station is
20 the subject of this proceeding? There are many different
21 kinds of broadcast stations. Are you aware the particular
22 type that is the subject of this proceeding?

23 A The type of roles he'll be engaging in?

24 Q The type of radio station? You say he's -- you're
25 concerned about his return to being a radio station owner that

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1 would increase the risk that he would fall back into his old
2 behaviors. Do you know what kind of station he is applying
3 for here?

4 A From official documentations, our capacity which
5 he held from '68 until his license was taken away. Anything
6 beyond that, I don't know what additional -- what he's
7 requesting for.

8 JUDGE SIPPEL: Yes, the Witness doesn't have the
9 expertise to get into this.

10 MR. JACOBS: My problem is this, Your Honor,
11 implicit in that statement is the thought and -- and Ms.
12 Gremminger will correct me if I'm wrong, that Mr. Rice would
13 potentially become the licensee of a station which has a
14 studio, an office, program origination facilities, microphones
15 --

16 JUDGE SIPPEL: She doesn't know -- well, I'm
17 assuming that she doesn't know anything about those things.
18 She knows about a station in the generic sense. But why don't
19 -- why don't you ask her the question straight on? Do you
20 know what a relay station is, Ms. Gremminger?

21 THE WITNESS: Yes, sir.

22 JUDGE SIPPEL: Explain what -- what your
23 understanding is.

24 THE WITNESS: Being in control of a radio station.

25 JUDGE SIPPEL: No, a translator station --

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1 translator license.

2 THE WITNESS: No, sir.

3 JUDGE SIPPEL: You know what the term relay means?

4 THE WITNESS: No.

5 JUDGE SIPPEL: It means when you're passing
6 something on. You know, you --

7 MR. KNOWLES-KELLETT: Okay --

8 JUDGE SIPPEL: The -- so apparent -- this was --
9 this was a station that was going to be forwarding some other
10 station's broadcasting and it doesn't include a studio. Is
11 that right?

12 MR. JACOBS: That's right.

13 MR. KNOWLES-KELLETT: Your Honor, I think that the
14 scope of this hearing is bigger than that, though. He's
15 implying like this isn't going to decide --

16 JUDGE SIPPEL: Can I get a factual answer out of
17 this witness?

18 MR. KNOWLES-KELLETT: Oh, I'm sorry, I thought you
19 did have answer. That she did not understand it.

20 JUDGE SIPPEL: No, I didn't get an answer. That's
21 what you're doing to me.

22 MR. KNOWLES-KELLETT: Okay, I apologize.

23 JUDGE SIPPEL: Because I'm on a link here which I
24 keep losing. Do you understand my question?

25 THE WITNESS: Yes, sir.

1 JUDGE SIPPEL: And do you have any knowledge of
2 what a transfer station does as I explained it? Or are you
3 learning it for the first time.

4 THE WITNESS: I'm learning it for the first time.

5 JUDGE SIPPEL: All right.

6 MR. KNOWLES-KELLETT: Okay.

7 JUDGE SIPPEL: Yes, okay, that's fine.

8 MR. KNOWLES-KELLETT: Now --

9 JUDGE SIPPEL: Wait a minute. Wait a minute. Are
10 you satisfied, Mr. Jacobs?

11 MR. JACOBS: No, I --

12 JUDGE SIPPEL: She doesn't know about it.

13 MR. JACOBS: There is an important flavor -- there
14 is an assumption by the two Bureau witnesses in this
15 proceeding that the station is going to be an attractive
16 nuisance.

17 JUDGE SIPPEL: Well why don't you ask her --

18 MR. KNOWLES-KELLETT: This is an argument for
19 proposed findings, Your Honor.

20 JUDGE SIPPEL: Wait a minute, it's just a question.
21 Why do you think going through all these? Ask the questions
22 straight on.

23 MR. KNOWLES-KELLETT: This is really an argument,
24 though. He's trying to argue -- this witness testified. She
25 knows nothing about the station.

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1 JUDGE SIPPEL: Wait, that's not -- what's not what
2 he's getting at.

3 MR. JACOBS: Correct.

4 JUDGE SIPPEL: Alls he wants to know is what does
5 she conceive -- what is her impression of what's going on at
6 this station?

7 MR. KNOWLES-KELLETT: Well, we'll stipulate, Your
8 Honor, that she thinks he's getting a broadcast license and
9 will be a broadcaster again.

10 JUDGE SIPPEL: And that's -- the -- okay.

11 MR. KNOWLES-KELLETT: Okay? And that's what I think
12 is at issue in hearing and that -- to the extent the Mr.
13 Jacobs wants to narrow it to something else, I disagree with
14 it being narrowed and you'll hear from me in proposed findings
15 that I think that that's what the issue --

16 JUDGE SIPPEL: No, I'm sure, but I know what he was
17 getting at.

18 MR. KNOWLES-KELLETT: Okay.

19 JUDGE SIPPEL: I know -- does that satisfy you?

20 MR. JACOBS: What? Does what satisfy me?

21 JUDGE SIPPEL: The stipulation that she's --

22 MR. JACOBS: No.

23 MR. KNOWLES-KELLETT: She's believes he's becoming
24 a broadcaster.

25 MR. JACOBS: No because she believes it's a

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1 particular kind of broadcast station which will be an
2 attractive nuisance.

3 MR. OSHINSKY: How does Counsel know that?

4 MR. JACOBS: Because it is implicit in what she is
5 saying.

6 MR. OSHINSKY: You never asked her that question.

7 MR. JACOBS: Okay.

8 MR. OSHINSKY: Have you?

9 MR. JACOBS: I asked her -- what did you mean --
10 maybe the -- are you -- do you have the capability of
11 repeating my question?

12 COURT REPORTER: Yes, it will take me a couple
13 minutes to actually play it back.

14 (Pause.)

15 JUDGE SIPPEL: Are you ready for me?

16 COURT REPORTER: Yes, did you want me to play the
17 question back?

18 JUDGE SIPPEL: No, no, no.

19 COURT REPORTER: Oh, okay.

20 JUDGE SIPPEL: I'm going to try to clear this up.
21 Are you ready for me?

22 COURT REPORTER: Yes.

23 JUDGE SIPPEL: Okay. Do you hear me, Ms.
24 Gremminger? Hello?

25 (Simultaneous speaking.)

1 JUDGE SIPPEL: Okay.

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: Here is the question. Your
4 testimony says I am also concerned that returning to being a
5 radio station owner would increase the risk that he would fall
6 back into his old behaviors. What did you mean by that?

7 THE WITNESS: Behaviors of accessing children and
8 grooming children and the prestige myth -- taking on a role --
9 a control, power; ability to gain access to children, parents
10 and their children.

11 JUDGE SIPPEL: You mean by virtue of them listening
12 on the radio to what's going on? Or by virtue of --

13 THE WITNESS: I mean by any means of him
14 broadcasting or his name coming about re-victimizes the
15 victims and it empowers him too. Yet he didn't take
16 responsibility for his offense, but giving him back what led
17 to his offenses in the first place empowers him.

18 JUDGE SIPPEL: But this is not like internet.
19 You're thinking of internet like where you can directly
20 communicate with somebody? This is broadcasting.

21 THE WITNESS: I think by any means.

22 JUDGE SIPPEL: By any means? But -- now -- what
23 is -- okay, then what is this old behavior that you're talking
24 about?

25 THE WITNESS: Behavior in which he engaged in

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1 deviant and sexual and inappropriate behaviors with young
2 boys, means of attracting boys, and means and ability and
3 access -- what he had access to. The prestige myth he had in
4 the company.

5 JUDGE SIPPEL: This is -- you're talking about in
6 2017?

7 THE WITNESS: Correct.

8 JUDGE SIPPEL: Now, he has a fancy red -- a fancy
9 red car I would think that that might be what you'd be more
10 concerned about than a radio station.

11 THE WITNESS: He also has a fancy vehicle right now
12 that he owns and operates, so I'm concerned about that. So
13 I think anything to do with his previous lifestyle, whether
14 it be engaging in the same type of radio station, it still
15 falls back on the precursors that led to his offending
16 behavior.

17 JUDGE SIPPEL: But this is not the same --

18 THE WITNESS: Because the radio station was a
19 factor that played a part in his offense. Any component of
20 working in a capacity -- whether form -- whether it be a
21 different form or a different format, still poses a position
22 that he's back with the company.

23 JUDGE SIPPEL: All right. That's her answer. Next
24 question.

25 RESUME CROSS EXAMINATION

1 BY MR. JACOBS:

2 Q What is the fancy automobile that you assert that
3 Mr. Rice has?

4 A It's a vehicle that I would describe as one that's
5 a -- would lure young boys to. He still continues to have a
6 2002 blue Corvette.

7 Q You're asserting that he has a 2002 Corvette?

8 JUDGE SIPPEL: And it's blue.

9 THE WITNESS: He has that listed on his sex
10 offender registry.

11 MR. JACOBS: All right.

12 JUDGE SIPPEL: Yes, all right. Can you move on to
13 the next question?

14 MR. JACOBS: I'm -- I'm finished.

15 MR. KNOWLES-KELLETT: Few questions, Your Honor.

16 EB Direct 12 --

17 JUDGE SIPPEL: Do we have 11 too? We have 10, I
18 know.

19 MR. KNOWLES-KELLETT: Eleven we asked --

20 JUDGE SIPPEL: Okay. That's all right. Yes. This
21 is 12.

22 MR. KNOWLES-KELLETT: EB 12. Okay, Tammie, can you
23 hear me?

24 THE WITNESS: Yes, sir.

25 MR. KNOWLES-KELLETT: Okay. The -- you testified

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1 that you had looked at the Missouri Sex Offender Registration
2 as of when we had the interaction with Carter Law at the
3 beginning of this case regarding the -- Mr. Rice's employment.

4 THE WITNESS: Yes, sir.

5 MR. KNOWLES-KELLETT: Okay, I'm showing the -- I'm
6 entering the 24-page document that you sent to us at that time
7 which you downloaded from the internet. Do you have a copy
8 of that there?

9 THE WITNESS: Yes, sir.

10 MR. KNOWLES-KELLETT: Okay. Can you look at the
11 page on vehicles?

12 JUDGE SIPPEL: What page is it?

13 MR. KNOWLES-KELLETT: I'm finding it, Your Honor.
14 It's after -- it's 13 or 14. Right.

15 To begin with there's a -- there's a page then there's 14
16 pages that comprises the next part.

17 JUDGE SIPPEL: I see it. I don't see where the
18 numbers are.

19 MR. KNOWLES-KELLETT: And then you go one of one --

20 JUDGE SIPPEL: I know.

21 MR. KNOWLES-KELLETT: Two of -- one of one --

22 JUDGE SIPPEL: It's one of fourteen. What page am
23 I looking for?

24 MR. KNOWLES-KELLETT: It's the last one with Mr.
25 Rice's picture.

1 JUDGE SIPPEL: I see it. It's page one of one.
2 Yes.

3 REDIRECT EXAMINATION

4 BY MR. KNOWLES-KELLETT:

5 Q Do you see that? Do you have that page? It
6 indicates he has a Corvette, a Ford Econoline and a Honda
7 Accord. Hi, can you hear us now?

8 A Yes, sir.

9 Q Okay. Can you go to the page where you were
10 reading what kind of car he has?

11 A Yes, sir.

12 Q Okay, it indicates he has a Corvette, a Ford
13 Econoline and a Honda Accord?

14 A Yes, sir.

15 Q Okay, your answer is that as of when you downloaded
16 this document in 2015 he had those cars. Correct?

17 A Correct, and I also downloaded it April 19th, 2017.

18 Q Oh, okay.

19 JUDGE SIPPEL: Where is -- where is that one? Is
20 that before it? Or --

21 MR. KNOWLES-KELLETT: No, I didn't download it that
22 day, Your Honor. I apologize.

23 JUDGE SIPPEL: Never mind, Never mind.

24 MR. KNOWLES-KELLETT: Because this is a basis
25 document and it's an official record, it's his sex offender

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1 registry, I ask that it be entered into evidence.

2 (Whereupon, the above-entitled document was marked
3 as Enforcement Bureau Exhibit No. 12 for
4 identification.)

5 JUDGE SIPPEL: Any objections?

6 MR. JACOBS: I -- well I would like to call Mr.
7 Rice to the stand to ask him if this is an accurate report.

8 We all know there are plenty of things that are filed which --

9 JUDGE SIPPEL: Why don't you just walk it down to
10 him and ask him? I don't want to take too much time here.
11 He's in the courtroom, so he can answer.

12 Sorry to be holding you up, Ms. Gremminger, but --
13 it's okay?

14 MR. JACOBS: Yes.

15 JUDGE SIPPEL: Okay. So we have it established
16 that this -- this is exactly the document that it is, that it
17 says it is. Now what's the question?

18 (Whereupon, the above-referred to document was
19 received into evidence as Enforcement Bureau
20 Exhibit No. 12.)

21 REDIRECT EXAMINATION

22 BY MR. KNOWLES-KELLETT:

23 Q Ms. Gremminger?

24 A Yes, sir.

25 Q Would you turn to page 15 -- paragraph 15 of your

1 testimony? It's on page eight. Okay, I'd ask you to look
2 briefly at that paragraph --- paragraph 15. It's --- and if
3 I tell you that the document prepared by Dr. Ann Hively that
4 you testified about at your deposition was dated in 2015,
5 would that refresh your recollection that you had documents
6 in your file more recent than 2002?

7 A That is correct.

8 Q Okay. Other than the sex offender registries you
9 testified about?

10 A That is correct.

11 Q Do you recall a long discussion about him saying
12 he was drinking to Dr. Hively?

13 A That is correct.

14 Q Okay. And did you have concerns that he was still
15 drinking?

16 A Yes, I did.

17 JUDGE SIPPEL: Well, on what factual situation do
18 you base those concerns?

19 THE WITNESS: He was using his alcohol as a crutch
20 or -- or an excuse as to why he victimized his sexual --
21 committed his sexual crimes against the teenage boys.

22 JUDGE SIPPEL: But that's not -- I thought that
23 wasn't a current assessment. Currently you have no idea about
24 his alcohol situation. Is that correct, or -- what can you
25 tell me about it?

1 THE WITNESS: Based upon the assessment evaluation
2 it was reported that he was consuming alcohol. That is of
3 concern that he is consuming alcohol. That's slipping back
4 in the same pattern he did when he committed the crimes
5 against children.

6 JUDGE SIPPEL: What is the same -- what is the date
7 -- the as-of date that you have that information in the
8 record.

9 THE WITNESS: The evaluation was conducted by Mr.
10 Hively in 2015.

11 JUDGE SIPPEL: Mister who?

12 THE WITNESS: Duncan Hively.

13 JUDGE SIPPEL: Oh, I'm sorry. Yes. Dr. Duncan.
14 Okay, well was there anything in -- that indicates in that
15 report or any of that -- your current information that he was
16 an alcoholic as opposed to being just that he drinks alcohol?

17 THE WITNESS: No, but if he went through any form
18 of treatment for alcohol or binge drinking or alcoholism, one
19 drink or socially drinking is not acceptable.

20 JUDGE SIPPEL: To who?

21 THE WITNESS: In these forms.

22 JUDGE SIPPEL: To who is not acceptable.

23 THE WITNESS: To rehabilitation.

24 JUDGE SIPPEL: Do you have a -- is there a specific
25 regulation or rule in Missouri that says that that's the case?

1 Or what -- what are you basing your answer on?

2 THE WITNESS: Based on research and the treatment
3 of sex offenders. Alcohol is an inhibitor. Alcohol is used
4 at the time of the crime and a reason for the abuse, yet he
5 continues to drink. That is of significance.

6 JUDGE SIPPEL: Well suppose he's just drinking a
7 glass of wine at dinnertime. Does that bother you?

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Why?

10 THE WITNESS: That's no different than if I was --
11 if he was viewing pornography. It's still --

12 JUDGE SIPPEL: Well --

13 THE WITNESS: The same risk factor.

14 JUDGE SIPPEL: Well, I -- I -- I have a glass of
15 wine at night usually and I don't equate it with pornography.
16 And even if I were --

17 THE WITNESS: However you're not a registered sex
18 offender who committed crimes against a child.

19 JUDGE SIPPEL: But that automatically make me a
20 risk if I have one glass of wine? Because I have registered
21 as a sex offender?

22 THE WITNESS: No, but if you used that as a
23 component of your offense and any treatment of sex offenders
24 and if you're working the program and working the relapse
25 prevention of treatment of having no more future victims,

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1 alcohol is not in the picture for a sex offender.

2 JUDGE SIPPEL: Well when you say it's not in the
3 picture, it means you have to be total abstinence? No more
4 demon rum?

5 THE WITNESS: Yes, sir.

6 JUDGE SIPPEL: Okay.

7 THE WITNESS: It's a trigger.

8 JUDGE SIPPEL: Okay.

9 MR. JACOBS: Your Honor, may I --

10 JUDGE SIPPEL: No.

11 MR. KNOWLES-KELLETT: I'm not finished.

12 The --- at the last page of the Sex Offender Risk Assessment
13 Document --- can you turn there?

14 JUDGE SIPPEL: That's Exhibit 12?

15 RESUME REDIRECT EXAMINATION

16 BY MR. KNOWLES-KELLETT:

17 Q Can you turn there? The registry. I'm sorry, the
18 registry. It's not --- you brought the copy along with you.
19 The one that had the Corvette in it?

20 A Yes, sir.

21 Q Okay, I'd like to draw your attention to the very
22 last paragraph.

23 JUDGE SIPPEL: What page are you on?

24 MR. KNOWLES-KELLETT: Twenty-four but I --- it's
25 not a numbered page, Your Honor. I'm sorry. They --- it's

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1 the --- there are some parole reports behind the Corvette.
2 Do you understand what I'm saying, Tammie?

3 THE WITNESS: Yes, sir.

4 RESUME REDIRECT EXAMINATION

5 BY MR. KNOWLES-KELLETT:

6 Q Okay, do you see the paragraph that begins because
7 of the nature of his past offenses? I don't think you're at
8 the right document. The sex offender registry that you
9 downloaded in 2015, the very last page, very last paragraph.
10 Are you there?

11 A Yes, I --- I'm not for sure what you're looking at.

12 Q Basically I can read it to you. What it says is
13 because of the nature of his past offenses, this officer and
14 his therapist consider him to be a high risk to re-offend.
15 And this --- this officer refers to the parole officer who
16 assumed supervision of Rice in April 2000. Okay. My question
17 is, is it routine that parole officers assess the risk of
18 parolees to re-offend?

19 A On a daily basis, yes.

20 MR. KNOWLES-KELLETT: Okay, that's it, Your Honor.
21 If I can't get her to the paragraph --- I have ---

22 JUDGE SIPPEL: Any more on that? Do you have any
23 questions on that?

24 MR. JACOBS: Yes. Well, first on the drinking.

25 JUDGE SIPPEL: Yes.

1 RECROSS EXAMINATION

2 BY MR. JACOBS:

3 Q In your statement, Ms. Gremminger, you say that,
4 in my opinion it is concerning that Mr. Rice admitted to Dr.
5 Duncan Hively during her examination of him that he has
6 continued to drink, quote-unquote, continued to drink. Now,
7 what did you mean by that?

8 A Continued to consume alcohol.

9 Q With what frequency?

10 JUDGE SIPPEL: We've already covered this.

11 MR. JACOBS: My point is, Your Honor, that Ms.
12 Gremminger has used language which, in common parlance, means
13 not a drink once a week or once a month, but maybe once a day.

14 JUDGE SIPPEL: I asked her --- don't you remember,
15 I asked her that line of questioning?

16 MR. JACOBS: Yes, but my point is that there is ---
17 it is not factually accurate that Mr. Rice drinks on a daily
18 basis. What you're ---

19 JUDGE SIPPEL: Well, if she says that --- she
20 certainly is going to have the same answer with respect to if
21 he drinks ten cases of beer a day or, let's say, a six pack
22 a day. It's going to be the same answer. If she's concerned
23 about one glass of wine at dinner, she's certainly going to
24 be concerned about more than that.

25 MR. JACOBS: What about one glass of wine a month?

1 JUDGE SIPPEL: All right, you can ask the question.

2 MR. JACOBS: Well ---

3 JUDGE SIPPEL: Ask the question.

4 RECROSS EXAMINATION

5 BY MR. JACOBS:

6 Q What about one glass of wine a month?

7 A Still concerned.

8 Q As to the last reference by Mr. Knowles-Kellett to
9 a probation report, I would like to draw the Court's attention
10 to the fact that that report is dated June 3, 2000.

11 JUDGE SIPPEL: I've got it.

12 MR. JACOBS: And Lake Broadcasting objects to the
13 use of business records in this way to try to testify that Mr.
14 Rice is likely to re-offend, et cetera, et cetera.

15 JUDGE SIPPEL: Well, it goes to the weight of that
16 --- I mean, the date goes to the weight of it. It's --- it's
17 in, it's in.

18 MR. KNOWLES-KELLETT: It's a public record, Your
19 Honor.

20 JUDGE SIPPEL: Well even --- yes --- why are you
21 arguing with me, if I'm giving it to you?

22 MR. KNOWLES-KELLETT: Thank you.

23 JUDGE SIPPEL: Are we going to move this in?

24 MR. KNOWLES-KELLETT: I already moved it.

25 JUDGE SIPPEL: You did? Is that right?

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1 MR. KNOWLES-KELLETT: Yes, and he checked with Mr.
2 Rice and it's in.

3 JUDGE SIPPEL: Okay. I got it. All right. Never
4 mind, Never mind. Anything more?

5 MR. KNOWLES-KELLETT: I'm finished.

6 JUDGE SIPPEL: Okay.

7 MR. KNOWLES-KELLETT: Thank you, Ms. Gremminger.

8 THE WITNESS: Thank you.

9 JUDGE SIPPEL: Thank you very much. This has been
10 very difficult.

11 (Laughter.)

12 JUDGE SIPPEL: Very, very difficult. I don't know
13 how we are ever going to handle net neutrality if we can't get
14 on a telephone and talk to people, even if there is a TV set.
15 What --- before you go I --- I'm concerned about this Missy
16 Cruse.

17 MR. KNOWLES-KELLETT: We don't intend to call Missy
18 Cruse. The facts of his parole to ---

19 JUDGE SIPPEL: All right, let me stop you right
20 there.

21 MS. KANE: Just want to make sure that the Witness
22 is dismissed, Your Honor.

23 JUDGE SIPPEL: Yes, you're dismissed, ma'am.

24 MR. KNOWLES-KELLETT: Thank you.

25 JUDGE SIPPEL: You're dismissed. Thank you very

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1 much. We won't be calling you again, I don't think.

2 (Laughter.)

3 MR. KNOWLES-KELLETT: Okay. The public records
4 exception, Your Honor --- exception indicates that the best
5 --- when they have 2,000 parolees, they have to go back over
6 their records. They can testify from the records, okay? Her
7 --- she's --- what she's doing is applying the Missouri
8 standards to what's going on in Mr. Rice and telling you her
9 risk assessment. That's what we're entering into evidence,
10 Your Honor.

11 The facts regarding his parole period are
12 sufficiently covered for our purposes in EB Exhibit 4. We
13 don't need Missy Cruse to talk about what happened on parole,
14 okay? That's not what the big issue is. The big issue is his
15 rehabilitation. And Missy Cruse, her supervision of him
16 stopped in 2002. We don't need her any more than we --- Ms.
17 Gremminger is adequate from the Bureau. They have the burden,
18 I think, with --- we don't have to go there.

19 JUDGE SIPPEL: Well, I mean --- I'm just --- I'm
20 just amazed by this. And I'm going to give you my take on
21 what I heard.

22 MR. KNOWLES-KELLETT: Okay.

23 JUDGE SIPPEL: Subject to reading the transcript
24 again, but I heard her say that Missy Cruse said, or she
25 observed, a report came from neighbors --- I'm sorry --- that

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1 there were children going in and out of the house, and this
2 was after he was released on parole.

3 MR. KNOWLES-KELLETT: Correct. That is ---
4 actually one of these parole reports at the back of this thing
5 says that. They --- it's the same thing that she said. They
6 --- but that doesn't make it --- you know, just because
7 somebody said a kid came in and out of the house, unless
8 somebody caught Mr. Rice doing it, it's not a factor in this
9 case.

10 JUDGE SIPPEL: Well, somebody apparently did catch
11 --- there's a neighbor who ---

12 MR. KNOWLES-KELLETT: I agree, Your Honor, there
13 were reports and that's what we know about it. That's all
14 that we know about it. We don't know that there was any
15 follow-up. We've asked.

16 JUDGE SIPPEL: Wait ---

17 MR. KNOWLES-KELLETT: If you want us to ask her,
18 to ask Missy Cruse ---

19 JUDGE SIPPEL: No, no, no. (Laughs.) If I --- if
20 I want to get anything from Missy Cruse, I want Missy Cruse.

21 MR. KNOWLES-KELLETT: Well ---

22 JUDGE SIPPEL: Don't worry. That --- that's okay.
23 Now show me where you have this reference to what I'm talking
24 about in the documents. Oh, here we go. All right.

25 MR. KNOWLES-KELLETT: She found it?

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1 JUDGE SIPPEL: Yes, Rachel found it for me.

2 MR. KNOWLES-KELLETT: Okay.

3 JUDGE SIPPEL: Same document. Same, so June 3,
4 2000. This --- conducted home visits and discovered that a
5 young man's vehicle had been parked in the driveway. This
6 officer has not confronted him on this issue yet. This
7 officer has some concerns that the young man could have been
8 a victim in the past, but is now an adult. This situation
9 will be discussed with him and if need be, a follow-up
10 polygraph will be required.

11 All right, well that only goes to a --- that does
12 not --- that does not match the report that was called in from
13 a neighbor. And I got the impression there was more than one.

14 MR. KNOWLES-KELLETT: I can't tell you they're the
15 same or separate, Your Honor.

16 JUDGE SIPPEL: Well, I can figure it out just from
17 what --- the way this is --- this is a young man who is now
18 an adult and he had been there before --- she thinks, or he
19 thinks. I'm not talking about that.

20 MR. KNOWLES-KELLETT: Okay.

21 JUDGE SIPPEL: But anyway, I see what you're
22 saying. You're saying that as long as the local law has been
23 complied with, that's --- that's the beginning and end of the
24 facts.

25 MR. KNOWLES-KELLETT: Correct.

1 JUDGE SIPPEL: All right.

2 MR. KNOWLES-KELLETT: It, you know, it gives us
3 notice of concern. Do we have a smoking gun? No.

4 JUDGE SIPPEL: Okay. I don't want to seem like I'm
5 more concerned about prosecution than I am defense, so I'll
6 let that go. I'm just scratching my head a little bit. What
7 else do we have today?

8 MR. KNOWLES-KELLETT: That --- can we go off the
9 record?

10 MS. KANE: Bill, you didn't submit your evidence
11 of the ---

12 MR. KNOWLES-KELLETT: Oh, yes. Thank you.

13 MS. KANE: Sure.

14 MR. KNOWLES-KELLETT: The document this morning
15 that you asked --- you wanted in the record, Your Honor.

16 JUDGE SIPPEL: That's right.

17 MR. KNOWLES-KELLETT: Where are the copies?

18 JUDGE SIPPEL: Okay, so that's going to be 11, is
19 that correct?

20 MR. KNOWLES-KELLETT: This is --- yes. She already
21 marked it 11.

22 MS. FUNK: I marked the one that didn't have all
23 the pages.

24 MR. KNOWLES-KELLETT: Okay, can you re-mark it?

25 MS. FUNK: Yes.

1 MR. KNOWLES-KELLETT: Thank you. We got --- we
2 ended up with a three-page exhibit ---

3 JUDGE SIPPEL: No, that's all right.

4 MR. KNOWLES-KELLETT: And a four-page original,
5 Your Honor.

6 JUDGE SIPPEL: I appreciate that very much. Okay.
7 And this --- I can write on this as Exhibit 11?

8 MR. KNOWLES-KELLETT: Correct.

9 JUDGE SIPPEL: I've got two of them. I don't need
10 two. Okay, and it's been --- this has been offered ---

11 MR. KNOWLES-KELLETT: Offered.

12 JUDGE SIPPEL: As EB Exhibit Number 11?

13 MR. KNOWLES-KELLETT: Yes.

14 JUDGE SIPPEL: It's marked for identification.

15 (Whereupon, the above-referred to document was
16 marked as Enforcement Bureau Exhibit No. 11 for
17 identification.)

18 JUDGE SIPPEL: Any objection, Mr. Jacobs?

19 MR. JACOBS: No.

20 JUDGE SIPPEL: It's received into evidence as
21 Enforcement Bureau Exhibit Number 11.

22 (Whereupon, the above-referred to document was
23 received into evidence as Enforcement Bureau
24 Exhibit No. 11.)

25 JUDGE SIPPEL: Okay.

1 MR. JACOBS: And the sex offender document is 12?

2 MR. KNOWLES-KELLETT: Correct.

3 JUDGE SIPPEL: That's exactly right.

4 MR. JACOBS: On that, Your Honor, I notice that
5 there is a page which has a --- a partial answer to the
6 question that had been raised about Mr. Rice's second
7 polygraph test. I don't know ---

8 MR. KNOWLES-KELLETT: I think the record speaks for
9 itself, Your Honor. He can point you to the page.

10 JUDGE SIPPEL: I know, I ---

11 MR. KNOWLES-KELLETT: I don't think he should
12 testify on the record.

13 JUDGE SIPPEL: No. Do you have --- do you have a
14 specific request or a specific question?

15 MR. JACOBS: Well, I'd like official notice taken
16 of this paragraph. Three pages from the end of Exhibit 12.

17 JUDGE SIPPEL: Well that would be redundant because
18 it's already in evidence as Exhibit 12.

19 MR. JACOBS: Well ---

20 JUDGE SIPPEL: Yes. You don't want it to come in
21 on the evidence of being an official record, then it's going
22 to be two. A twofer, or something like that.

23 MR. JACOBS: Well ---

24 JUDGE SIPPEL: We only need one.

25 MR. JACOBS: It ---

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1 JUDGE SIPPEL: Go on.

2 MR. KNOWLES-KELLETT: He can draw your attention
3 to it, Your Honor.

4 JUDGE SIPPEL: No, I ---

5 MR. KNOWLES-KELLETT: Thank you.

6 JUDGE SIPPEL: You've won. You've won.

7 MR. KNOWLES-KELLETT: Okay.

8 JUDGE SIPPEL: What I'm going --- well, okay, so
9 what are we doing tomorrow now?

10 MR. JACOBS: Well, before we get to that, we have
11 the objections to all of the Bureau's exhibits which you
12 haven't ruled on.

13 JUDGE SIPPEL: That's right.

14 MR. OSHINSKY: Actually, that's not correct, Your
15 Honor. Your Honor, you moved Exhibit 4 in.

16 JUDGE SIPPEL: I did. Oh, yes. Yes. I recall
17 that now. There was something --- yes.

18 MR. JACOBS: And we have the motion in limine to
19 disqualify Gremminger.

20 MR. KNOWLES-KELLETT: Okay, with it --- we have a
21 written opposition to his motion in limine.

22 MR. JACOBS: Sure.

23 JUDGE SIPPEL: Thank you. Thank you. I'll talk
24 about this tomorrow.

25 MR. JACOBS: Thank you.

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1 JUDGE SIPPEL: But this is how Mr. -- Mr. Knowles-
2 Kellett is making at his case. He's saying that Gremminger
3 has established herself as a --- an expert witness for
4 purposes of basically keeping track of previous sex offenders.
5 Why am I not on the record? Can you go back on the record?

6 COURT REPORTER: Were we off the record?

7 MS. FUNK: Oh, I thought --- okay.

8 JUDGE SIPPEL: We were on.

9 COURT REPORTER: Yes, I don't think we were off.

10 JUDGE SIPPEL: Oh, okay.

11 COURT REPORTER: Okay.

12 JUDGE SIPPEL: I'm paraphrasing what I'm hearing,
13 that Ms. Gremminger is only offered for the purpose of
14 establishing herself as a --- an expert sex offender follow-
15 upper or whatever that might be.

16 MR. KNOWLES-KELLETT: Supervisor, yes.

17 JUDGE SIPPEL: Supervisor.

18 MR. KNOWLES-KELLETT: And risk assessor.

19 JUDGE SIPPEL: And a risk assessor. Thank you.
20 And so that's as far as --- that's as far as it goes.

21 MR. KNOWLES-KELLETT: I think, Your Honor, by the
22 time you hear that she has more than 20 years of doing that,
23 she meets the standards in the rule of evidence to come in as
24 an expert opinion. And after that it all goes to her weight.
25 And you have the ability to appropriately weigh her evidence.

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1 JUDGE SIPPEL: Well, thank you. I don't see anything
2 more to bother with then. I mean, I've got to rule as to
3 whether or not she's --- she qualifies as an expert. I don't
4 have to do that here. I mean her --- her testimony is in the
5 record whether or not she qualifies as an expert or not.

6 MR. JACOBS: We have the whole kerfuffle about the
7 witness intimidation, which I think seriously challenges her
8 credibility.

9 JUDGE SIPPEL: Well, you can --- you can write your
10 brief that way. Whether there's enough information on the
11 record, I'm satisfied that if it goes up --- if the case goes
12 up on appeal to the Commission and/or above that there's going
13 to be something on the record for me to make a decision on.
14 That's all. That's the only thing I'm concerned about.

15 MR. KNOWLES-KELLETT: Credibility I don't think
16 goes to expertise, Your Honor.

17 JUDGE SIPPEL: Well, I'm not going to get that far.
18 But the point is, it's more important what you're offering her
19 for.

20 MR. KNOWLES-KELLETT: Correct.

21 JUDGE SIPPEL: Then, the more narrow your offering
22 is, the less I have to worry about. That's all I'm saying.
23 But I don't know which way I'm going to rule on this yet.

24 MR. KNOWLES-KELLETT: Okay.

25 JUDGE SIPPEL: And that's all --- I don't think

1 there's anything more to talk about. We're beating a dead
2 horse.

3 MR. JACOBS: We also have the objections to the
4 various passages in the Bureau's direct case exhibits. If you
5 have those ---

6 JUDGE SIPPEL: Is this the --- is this the in
7 limine?

8 MR. JACOBS: No.

9 MR. KNOWLES-KELLETT: The passages, though, were
10 objected to on the basis that they referred to hearsay in a
11 document that you admitted. So I think those objections are
12 all moot, Your Honor.

13 JUDGE SIPPEL: Well if --- if I've already ruled
14 on it, there's nothing more to talk about. If I haven't ruled
15 on it, I'd like to know about it.

16 MR. JACOBS: Well, I don't think you've ruled on
17 it. I hear what Mr. Knowles-Kellett is saying, which is kind
18 of working into it backwards. I mean, one would have to see
19 on what basis has Exhibit 4 been admitted into evidence?

20 MR. KNOWLES-KELLETT: Okay, also Your Honor ---

21 JUDGE SIPPEL: I take evidence whether it comes in
22 backwards or forwards.

23 MR. KNOWLES-KELLETT: The rule under 703 is that
24 they can look at hearsay documents as long as they're of the
25 type an expert would work at. And he didn't even allege that

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1 these aren't the type. And in fact, Dr. Duncan-Hively relied
2 on them, testified that they were the basis of her report ---
3 these very same documents. For him to object to testimony
4 relating to the same documents that provided the --- and she,
5 in her direct testimony ---

6 JUDGE SIPPEL: Dr. Duncan?

7 MR. KNOWLES-KELLETT: Dr. Duncan-Hively indicates
8 that her ethical standards require her to look at all
9 historical documents. And so my --- my experts would have
10 been remiss in not doing so. And to object on that basis
11 seems absurd.

12 JUDGE SIPPEL: Well they are business records and
13 they're reliable for that reason. They're reliable business
14 records. The only argument is whether or not you have
15 relevance.

16 MR. JACOBS: Well, I --- I go back to our basic
17 argument that the hearing designation order prohibited the re-
18 litigation of any facts or findings from the previous state
19 criminal proceedings.

20 JUDGE SIPPEL: Well, if that's what we did, it's
21 over and done with. So I can be chastised for --- in
22 violation of the hearing designation order. I don't think so.

23 MR. JACOBS: I think that the testimony today ---
24 or yesterday made it very clear that Mr. Rice was convicted
25 on a stipulated set of facts.

1 JUDGE SIPPEL: We know what that is. I was here.
2 I heard it too.

3 MR. JACOBS: Not those documents.

4 JUDGE SIPPEL: Let's not go --- what?

5 MR. JACOBS: Not the documents in Exhibit 4. They
6 were not part of his criminal case.

7 JUDGE SIPPEL: Well ---

8 MR. OSHINSKY: How do you know that?

9 MR. JACOBS: Because the case was decided on a
10 stipulated set of facts.

11 MR. OSHINSKY: Well what led to that stipulation
12 of facts?

13 MR. JACOBS: The decision is a written document
14 which lists the stipulated facts.

15 MR. KNOWLES-KELLETT: This is revisiting your
16 ruling on Exhibit 4, Your Honor. Those documents are in. His
17 expert relied on them for her risk assessment. Our expert
18 relied on them for our risk assessment. I don't think arguing
19 that paragraphs in our expert's testimony should be struck
20 because they looked at those documents. Should --- that's
21 been ruled on, Your Honor.

22 JUDGE SIPPEL: Is that what you are getting at?
23 You're --- you rely on that --- are you referencing that
24 deleted material --- the redacted material that was attached
25 to the stipulation that they used in the court in Missouri?

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1 MR. JACOBS: That document is part of the ---

2 JUDGE SIPPEL: You're --- I got the right document,
3 right? Let's agree with that.

4 MR. KNOWLES-KELLETT: No. No, Your Honor, his
5 objection is not based on that document.

6 JUDGE SIPPEL: He just said it was.

7 MR. KNOWLES-KELLETT: That document he put into
8 evidence without any objection.

9 MR. JACOBS: Well, no it supports our case. That
10 is the state court decision.

11 MR. KNOWLES-KELLETT: Is that the document you're
12 claiming our experts relied on, and you want to strike the
13 paragraphs ---

14 MR. JACOBS: Just the opposite.

15 MR. KNOWLES-KELLETT: Right, that's what ---

16 MR. JACOBS: They want to rely on things which are
17 not part of the state court decision.

18 JUDGE SIPPEL: I mean, I understand this. This is
19 not a hard thing to understand. But the point is that Mr.
20 Rice, in an attachment to that statement --- to that
21 stipulation, rather, says that none of the --- he doesn't
22 consider any of the facts therein true. He just wants to
23 accommodate the state so he can leave town earlier in his
24 Porsche or something. This is --- I mean, this is an --- this
25 business of stipulated facts is an accommodation. So I guess

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1 I'm --- I don't see any point in this. It is what it is.

2 MR. JACOBS: From Lake Broadcasting's point of
3 view, this hearing has turned out to be very different from
4 what it thought ab initio the hearing designation order was
5 talking about. If we review the totality of the evidence
6 presented, 80 percent, 90 percent relate to Mr. Rice's alleged
7 misconduct in 1990 or thereabouts.

8 MR. KNOWLES-KELLETT: Your Honor, there's no
9 alleged misconduct ---

10 JUDGE SIPPEL: No, let him finish.

11 MR. KNOWLES-KELLETT: Okay.

12 MR. JACOBS: I'll strike the word alleged. His
13 misconduct in 1990. The purpose of this hearing is to
14 determine whether he has been rehabilitated. And there's
15 hardly any discussion by anybody about that. About what
16 happened during the --- all of the years from 2002 to the
17 present day, about the absence of any criminal allegations or
18 proof. Everyone wants to harp about what he did in 1990 and
19 --- and before.

20 MR. KNOWLES-KELLETT: Your Honor.

21 JUDGE SIPPEL: Wait just a minute.

22 MR. JACOBS: And the question is how does that get
23 into rehabilitation. Now, it's very simple to say what is past
24 is prologue. Or, as Dr. Weitzl will testify tomorrow, once a
25 pedophile, always a pedophile. Well gee whiz, if that's the

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1 standard in this case, there's no need for a hearing.

2 JUDGE SIPPEL: It would make good bumper stickers
3 though, huh?

4 (Laughter.)

5 JUDGE SIPPEL: They --- listen, I want to be clear
6 about this. You have the burden of proof.

7 MR. JACOBS: Right.

8 JUDGE SIPPEL: So you have the burden of proving
9 rehabilitation ---

10 MR. JACOBS: Right.

11 JUDGE SIPPEL: Or the unlikelihood of repetition
12 --- recidivism, or whatever they call it. Is that right?

13 MR. JACOBS: Reoffending.

14 JUDGE SIPPEL: Exactly right. That's where the
15 burden lies.

16 MR. JACOBS: Right.

17 JUDGE SIPPEL: What the Bureau does is none of your
18 concern, unless they're bringing in false evidence, of course.
19 But if the --- if the Bureau is falling down on their part on
20 that issue, that's not your problem. So I don't understand
21 what this is all about. That's what I'm getting at.

22 MR. JACOBS: Well it's just very disconcerting.
23 We would feel that the playing field were a little bit more
24 even if we had questions about Mr. Rice's rehabilitation
25 activities, not what happened 25 years ago.

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1 JUDGE SIPPEL: Well we spent an awful lot of time
2 on that with Dr. Duncan. She's had 84 office visits. I mean,
3 that would be the down payment on a house would pay for that.

4 MR. JACOBS: Yes.

5 JUDGE SIPPEL: So I think he's --- I don't --- I
6 mean, I think there's been some tangible efforts made in that
7 --- in that regard. But I don't understand why --- that
8 doesn't affect you because you're the one who has to prove the
9 affirmative of proving the likelihood that he's not going to
10 do it again. So ---

11 MR. JACOBS: If the forum keeps on focusing on what
12 happened in 1990 and earlier, we're not going to be able to
13 prove it.

14 JUDGE SIPPEL: Well, you're proving the negative.
15 It's not going to happen again. I think Dr. Duncan's evident
16 testimony was quite clear on that. So I don't know what more
17 --- what more opportunity you want.

18 MR. JACOBS: Well, then I --- then I feel very calm
19 and happy.

20 JUDGE SIPPEL: Well, don't get too comfortable.
21 But I'm just simply saying that the record is what the record
22 is. And I'm giving you the opportunity to prove any way to
23 Sunday that you can the unlikelihood of repetition or
24 recidivism or any one of those words. You know what I'm
25 talking about.

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1 So if your case is closed, your case is closed.

2 MR. JACOBS: Well, we'll hear Dr. Weitl tomorrow.

3 JUDGE SIPPEL: Well, that's right. And you gave
4 me homework tonight and we'll get to that also. Can we start
5 --- now, what about tomorrow? Can we start like at 10:00?
6 Or what do you think? I'm looking at Mr. Knowles-Kellett.

7 MR. KNOWLES-KELLETT: Ten o'clock works for us,
8 Your Honor.

9 JUDGE SIPPEL: Yes, but I'm saying ---

10 MR. KNOWLES-KELLETT: In terms of getting finished,
11 it's really his cross, his rebuttal that we're dealing with.
12 And so you --- you know, we don't expect very many questions
13 before we tender the witness.

14 JUDGE SIPPEL: Does everybody agree with 10:00?
15 Okay. Don't bring your fishing poles with you. Okay, miss
16 --- I'm sorry, I don't --- you're all right with all this now?
17 I know what you don't like, but I mean basically is this okay?
18 We can get our work done today, can we come back tomorrow?

19 MR. JACOBS: Yes.

20 JUDGE SIPPEL: Okay, Mr. Jacobs. Anybody else have
21 anything more?

22 We're in recess. Go off the record. Thank you,
23 thank you, thank you.

24 (Whereupon, the above-entitled matter went off the
25 record at 4:01 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Patrick Sullivan and
Lake Broadcasting

Before: Federal Communications Commission

Date: 05-04-17

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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