

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.
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Volume 7

Friday,
May 5, 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 10:00 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:

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ALSO PRESENT:

RACHEL FUNK, Clerk
PAMELA KANE, FCC

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Lake

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

(10:03 a.m.)

JUDGE SIPPEL: Okay, we're on the record.

I'm going to tell you -- I have a preliminary matter right now. Mr. Jacobs, about your in limine motion, I'm going to write it up next week. I can't do it today. I've got too much going on.

MR. JACOBS: Sure.

JUDGE SIPPEL: And that's what happens when things come in in limine. I trip over them.

MR. JACOBS: Right.

JUDGE SIPPEL: So -- but it's going to get done.

MR. JACOBS: Okay, fine.

JUDGE SIPPEL: All right? Okay, what are we doing today? Are we doing Dr. Weitzl?

MR. OSHINSKY: Yes.

JUDGE SIPPEL: And that's the Bureau's witness?

MR. OSHINSKY: Yes, Your Honor.

JUDGE SIPPEL: Okay. Let's have your witness come up.

MR. OSHINSKY: Okay.

JUDGE SIPPEL: Let's go.

MR. OSHINSKY: Your Honor, just before you swear Dr. Weitzl --

JUDGE SIPPEL: I've done it already.

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1 MR. OSHINSKY: Oh, you have?

2 JUDGE SIPPEL: While everybody was talking.

3 MR. OSHINSKY: So, at this point, we'd like to
4 move in the remaining direct exhibits of the enforcement
5 bureau into evidence.

6 JUDGE SIPPEL: Direct exhibits?

7 MR. OSHINSKY: Yes, the whole book you admitted
8 in, Exhibit 4?

9 JUDGE SIPPEL: No I'm not -- I told -- I just
10 finished telling Mr. Jacobs I'm going to rule on his
11 motion.

12 MR. OSHINSKY: Right. There are some pending
13 motions, but you already admitted Exhibit 4.

14 JUDGE SIPPEL: Yes.

15 MR. OSHINSKY: And we're just moving the rest of
16 them. Dr. Weitzl's testimony, Ms. Gremminger's testimony,
17 so what --

18 JUDGE SIPPEL: Is there any objection?

19 MR. OSHINSKY: Recognizing the pending motion.

20 MR. KNOWLES-KELLETT: I had something to say
21 about Exhibit 4, but I'll save that for later.

22 JUDGE SIPPEL: Thank you.

23 MR. OSHINSKY: That's actually been admitted
24 already, Your Honor.

25 MR. KNOWLES-KELLETT: Except for the MOSOP.

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1 MR. OSHINSKY: Except for the MOSOP.

2 JUDGE SIPPEL: Yes, well, MOSOP stays out for
3 the time being but everything else --

4 MR. OSHINSKY: Well, we're actually going to
5 address that, Your Honor.

6 JUDGE SIPPEL: Well, I don't know, but you see
7 what you're doing to me. You're offering it into evidence
8 and it's in the book, and it's not ready for prime time
9 yet. MOSOP, okay.

10 MR. OSHINSKY: Yes, Dr. Weitzl is going to give
11 some background on it.

12 JUDGE SIPPEL: Okay, well --

13 MR. OSHINSKY: I mean, she's only here for
14 today.

15 JUDGE SIPPEL: Yes, but how do you give
16 background on something I can't read?

17 MR. OSHINSKY: Well, she's going to explain
18 that, Your Honor.

19 JUDGE SIPPEL: All right. So, again, is there
20 any objection? I know you object to Exhibit 4, but that's
21 in.

22 MR. JACOBS: In Exhibit 4, there's another
23 document which --

24 JUDGE SIPPEL: No, I'm sorry. My ruling was it
25 comes in, period. I was not making any exceptions. It's

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1 in.

2 MR. JACOBS: May I just point out --

3 JUDGE SIPPEL: You could, yes, yes, yes. Okay,
4 this is a point out, this is not an objection. Give me
5 your point out.

6 MR. JACOBS: The exhibit -- or the appendix
7 which begins on page 24 and runs to page 28, is an
8 investigation report from a Sammy Hartman.

9 JUDGE SIPPEL: Okay.

10 MR. JACOBS: My problem is, if you turn to page
11 25, you see that it is marked page 2 and clearly is the
12 second page of some document. And the cover sheet is not
13 page 1. So there is a page missing from this document.

14 JUDGE SIPPEL: Which page are you talking about?
15 In the beginning or at the end?

16 MR. JACOBS: In the beginning. This document
17 begins on page 2 --

18 JUDGE SIPPEL: I see that.

19 MR. JACOBS: -- in mid-sentence.

20 JUDGE SIPPEL: I see that.

21 MR. JACOBS: We don't know what page 1 says.

22 JUDGE SIPPEL: It could have been the caption of
23 the case.

24 MR. JACOBS: I don't think so.

25 JUDGE SIPPEL: This is addressed to Your

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1 Honorable Jack Edwards. It's gone to the judge. I mean
2 the judge in the --

3 MR. JACOBS: I'm just pointing out --

4 JUDGE SIPPEL: State court.

5 MR. JACOBS -- at this point that it's defective.

6 MR. JUDGE SIPPEL: -- well, I don't know about it
7 being defective, but can you give us any explanation to
8 that, Mr. Oshinsky?

9 MR. KNOWLES-KELLETT: These records come from 20
10 years ago, Your Honor, and these were the way they were
11 provided to us from the Probation and Parole officer --
12 Office and this is what they have. It's not -- that page
13 is just missing, and we have to make do with what we have.

14 We have almost no information from Mr. Rice from
15 this period. This is in evidence and if he wants to argue
16 that, you know, something else can't be relied on --

17 JUDGE SIPPEL: No, no, no. You're -- don't
18 argue more than you have to.

19 MR. KNOWLES-KELLETT: Okay, thank you.

20 JUDGE SIPPEL: Because you had the opportunity
21 when Ms. Gremminger was on the stand. I mean, she was the
22 only thing -- only person from that office.

23 She seems to be an expert in documents or
24 presumably is being proffered that way. You know, you lost
25 your opportunity.

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1 You have shown nothing and I can assume nothing
2 that there's anything defective in page 1, anything that
3 would prejudice your client. So that kind of is showing
4 it's going to stay the way it is. For what it is, it is.
5 It's in evidence.

6 Next point, anything else? Anything else? Mr.
7 Jacobs?

8 MR. JACOBS: No, sir.

9 JUDGE SIPPEL: Okay. Then exhibit -- I'm sorry
10 the Bureau -- pay attention, please.

11 The Bureau's Exhibits are received into
12 evidence.

13 (Whereupon, the documents previously marked as
14 Bureau's Exhibits 1-6 for identification was received into
15 evidence.)

16 MR. OSHINSKY: And, Your Honor, I would just note
17 that there is also a section on official Notice Exhibits
18 which we're asking the court -- that's in the same book.

19 JUDGE SIPPEL: Is that the evidence that the
20 Bureau Exhibits consist of?

21 MR. OSHINSKY: Part of it is direct case
22 exhibits, and others are official Notice Exhibits.

23 JUDGE SIPPEL: The whole binder is received in
24 evidence.

25 MR. OSHINSKY: Yes, okay.

1 JUDGE SIPPEL: We still have the in limine
2 motion. I have not forgotten that.

3 So okay, so now we're ready to go?

4 MR. OSHINSKY: Yes.

5 JUDGE SIPPEL: Okay. Dr. Weitl?

6 MR. OSHINSKY: And she's sworn?

7 JUDGE SIPPEL: Yes, she's sworn. She's waiting.

8 WHEREUPON,

9 KIMBERLY WEITL

10 was called as a witness for the Government and, having been
11 first duly sworn, assumed the witness stand, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSHINSKY:

15 Q Okay. So, Dr. Weitl, I want to turn your attention
16 to your CV which is Exhibit 7, in the first part -- the direct
17 case exhibits of the Bureau.

18 And just ask you a few questions briefly about your
19 background. Can you tell the court about your -- briefly
20 again, about your education, and -- start with your education.

21 A I received a bachelor's in science from Southeast
22 Missouri State University. My master's and doctorate were --
23 excuse me. Yes, my doctorate and master's degrees were in
24 clinical psychology from Argosy University in Chicago,
25 professional school.

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1 JUDGE SIPPEL: Argosy?

2 THE WITNESS: Yes, it was the Illinois Professional
3 School of Professional Psychologists. It's a private school
4 that gives -- instead of a PhD, it gives a doctorate in
5 psychology. More clinically oriented versus research
6 oriented.

7 JUDGE SIPPEL: But is the doctorate a PhD doctorate
8 or --

9 THE WITNESS: It's a doctorate, yes. Not like an
10 MD, like a PhD.

11 JUDGE SIPPEL: With a PhD, okay.

12 BY MR. OSHINSKY:

13 Q And then your professional degrees?

14 A Yes, then I got licensed in 2002 or -- excuse me,
15 2004 in Missouri after doing my internship with a woman --
16 excuse me, a therapist at the prison.

17 So my work consisted of helping her do sexually
18 violent predator evaluations, which is the high-risk sex
19 offenders.

20 And then -- you want me to -- that was my
21 education, pretty much.

22 Q Okay, but you have a number of professional
23 certifications.

24 A Yes. I have a license in Missouri as a
25 psychologist. In Illinois, I have a license as a professional

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1 psychologist, a clinical psychologist. I also have a license
2 as a sex offender evaluator and a license as a sex offender
3 treatment provider.

4 Q Okay, thank you.

5 JUDGE SIPPEL: Now with respect to those sex
6 offenders -- the two things you mentioned, how long have you
7 been doing those -- the activities in connection with that?

8 THE WITNESS: I've been doing the activities since
9 2004 and '05. The licensing bureau didn't offer those
10 licenses until 2014, and that's when I got those, in the sex
11 offenders specialty.

12 JUDGE SIPPEL: But you were doing the work?

13 THE WITNESS: Right, there just wasn't the specific
14 license for that work yet. Prior to that, we were members of
15 a Sex Offender Management Board, who kind of were our
16 overseers.

17 JUDGE SIPPEL: So you're introducing her as an
18 expert witness, but what period of time in her development are
19 you -- should she be considered an expert?

20 BY MR. OSHINSKY:

21 Q Well, I was just going to ask you. Do you have
22 specific training in sex offender treatment and risk
23 assessment and how long have you been doing that?

24 A Yes, besides some of the post graduate work I did
25 and post undergraduate, I started in 2005 -- excuse me, 2002,

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1 I started working with the mentally ill prisoners at the
2 Department of Corrections in Missouri.

3 I was the Institutional Chief of Mental Health
4 Services for a year in 2003 and 2004. And then in 2005, I
5 went to the Missouri Sex Offender Treatment Program and
6 started conducting the sexually violent predator evaluations.

7 So I reviewed all the files of men who were
8 convicted of violent sex offenses to opine to the Attorney
9 General's Office whether or not, in my opinion, they met the
10 criteria.

11 I also was -- my office was in the same building
12 as the sex offender program, so being the only other
13 psychologist at periods of time that I was there. I also did
14 programming for the program.

15 I supervised the therapists there at the treatment
16 program. I helped with treatment planning. So I was very
17 much involved in the treatment program while I was there. And
18 I worked there until 2012.

19 In 2007, I started with a contract with the
20 Illinois Department of Human Services doing their sexually
21 violent predator evaluations. This time, it was post probable
22 cause. So I was evaluating for the Department of Human
23 Services instead of the Department of Corrections.

24 I continue working for the Attorney General's
25 Office in Missouri to this day, working for them in a number

1 of different areas. Even as just a consultant with risk
2 assessment of sex offenders.

3 Q Okay. So actually you started talking about it.
4 Can you tell the court about your experience working with
5 Missouri law enforcement and also with the MOSOP program?

6 A Sure. Besides being centrally located with them,
7 I was involved in the program, treatment programming, signing
8 off on treatment plans, supervising the staff. I was involved
9 in pretty much anything except the termination process because
10 it was considered a conflict of interest because I was also
11 doing the risk assessments of offenders who qualified for the
12 sexually violent predator civil commitment.

13 JUDGE SIPPEL: Can you explain that a little bit?
14 What is the termination process that you felt you couldn't do?

15 THE WITNESS: Sure. Well, when an individual's in
16 the treatment program, if they complete treatment, they are
17 allowed an early release date, and it makes the likelihood
18 that they'll be civilly committed less.

19 JUDGE SIPPEL: Oh, this is the release of their
20 sentence of confinement?

21 THE WITNESS: Yes. They get offered an early out
22 date.

23 JUDGE SIPPEL: Yes, okay. No, I got you now.

24 THE WITNESS: Okay. So if I was involved in that
25 process, I could, for example, terminate. I could vote to

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1 terminate them, which could make them a higher risk and more
2 likely to be civilly committed.

3 I just felt like it was a conflict of interest to
4 be a part of that process. It's --

5 JUDGE SIPPEL: I appreciate that but you certainly
6 jumped over a lot of hurdles there. I mean, what are the --
7 if the person is ready for release, he's been given this whole
8 battery of testing and assessments and risk evaluations, by
9 the time he walks out the door, I mean, anything can happen,
10 but I mean, either people should be locked up for life or you
11 have to reach a cutoff at a point.

12 THE WITNESS: Right. And there were other people
13 that were qualified. Usually it was a panel of four or five
14 therapists and program director who voted on whether or not
15 the person should be terminated from treatment.

16 I just did not want to be part of that process.

17 JUDGE SIPPEL: No, and you shouldn't be. Of course
18 not. But does this thing work -- I mean, does this panel
19 consist of people that you come in contact with or frequently
20 work with in other capacities?

21 THE WITNESS: Yes, yes.

22 JUDGE SIPPEL: So they're part of the group, if I
23 can call it that?

24 THE WITNESS: Sure.

25 JUDGE SIPPEL: Not being any -- casting any

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1 aspersions by that, but that community, your community?

2 THE WITNESS: Correct.

3 JUDGE SIPPEL: Okay.

4 BY MR. OSHINSKY:

5 Q Can you tell us a little bit about your work and
6 helping with MOSOP and its development?

7 JUDGE SIPPEL: Let's find out what MOSOP is.

8 MR. OSHINSKY: Oh, certainly.

9 BY MR. OSHINSKY:

10 Q Please, tell us what MOSOP is.

11 A It's an acronym for the Missouri Sex Offender
12 Treatment Program. Like I was saying, I did just about
13 everything with that program except I didn't do therapy. I
14 didn't sit in on groups except to just observe -- supervising
15 the therapist doing the groups. If there was issues that they
16 needed help with, I would sit in and watch them.

17 JUDGE SIPPEL: Did you have anything to do with the
18 development of the tests?

19 THE WITNESS: Some of the tests. They had what we
20 called psycho-educational programs, like social skills,
21 substance abuse. I helped with the development of some of
22 those.

23 And I oversaw the phases of the program. We
24 developed Phase 1, Phase 2, Phase 3, Phase 4. For a while we
25 had a point system that I helped develop. So I was involved

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1 with the director on a lot of that stuff.

2 JUDGE SIPPEL: So is MOSOP -- is this is a battery
3 of tests, if I can use that term?

4 THE WITNESS: No, it's a treatment program. It's
5 inpatient treatment program within the Department of
6 Corrections. So in Farmington, Missouri, we have a prison
7 where all the men getting ready to be treated come there.

8 They all live in the same housing unit, and for
9 nine months they participate in treatment. So it's kind of
10 like an inpatient treatment program.

11 And while they're there, we do testing on them.
12 My role as the evaluator for the civil commitment was somewhat
13 different. It was not involved with the treatment part of it.
14 I was just helping them because of my locale and they needed
15 my help.

16 JUDGE SIPPEL: Okay.

17 BY MR. OSHINSKY:

18 Q Did you actually run the program for a time?

19 A I was the acting director in her absence. So if
20 you can call that running the program, yes.

21 Q And how long did that go?

22 A It was sporadic. Sometimes it'd be for a week,
23 sometimes it would be a day here and there.

24 Q Okay. And while working at the Missouri Department
25 of Corrections, did you get any special training for dealing

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1 with sex offenders and risk assessment?

2 A Yes. Starting in, I would say, 2004, I started
3 attending an international conference on a yearly basis. The
4 Association for the Treatment of Sexual Abusers, ATSA, is kind
5 of our standard.

6 So I attend their yearly conference, which is a
7 four-day conference. Missouri has continuing education
8 credits, so I would always pick trainings that had to do with
9 sex offender assessment or treatment.

10 Q And have you given these kind of trainings
11 yourself?

12 A I did. I was trying to remember -- I can look at
13 my vitae and look real quick.

14 Q Sure.

15 A I trained --

16 JUDGE SIPPEL: What exhibit are you looking at?

17 THE WITNESS: This is my vitae.

18 MR. OSHINSKY: Exhibit 7.

19 THE WITNESS: Exhibit 7.

20 MR. OSHINSKY: Curriculum vitae. It should be in
21 that book.

22 JUDGE SIPPEL: I understand that. Thank you. I
23 understand that.

24 THE WITNESS: I trained the probation and parole
25 officers on how to use the Static-99 in, I want to say, 2009.

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1 I'm not seeing it here. Oh, here, 2007 and 2008, I trained
2 the probation and parole officers on how to use the Static-99.
3 And we discussed other risk assessment things while we were
4 there.

5 BY MR. OSHINSKY:

6 Q And there's a MOSOP certificate present in this
7 particular case, what you report today, right?

8 A A MOSOP certificate?

9 Q In other words, a certificate that Mr. Rice
10 received?

11 A Yes.

12 Q Now, let's see. You said you're currently doing
13 work for the state of Missouri, what particular work are you
14 doing currently?

15 A I would have to call it consultant, because I
16 review files on men who are ready to be conditionally
17 released, and I offer my opinion on whether or not I think
18 they're ready for release.

19 I've been retained to do an evaluation as part of
20 their commitment process. Those are probably the two main
21 ways.

22 Q How much of that work are you currently doing?

23 A I'm actually doing quite a bit right now. I would
24 say I probably have 15 to 20 open cases with them right now.

25 Q And you would be testifying in court for that kind

1 of work?

2 A Correct. I proffer an examination -- or an
3 evaluation and then testify at the hearing.

4 Q About how many times have you done that?

5 A In Missouri, I've done that -- I've been qualified
6 as an expert over 100 times.

7 Q Okay.

8 MR. OSHINSKY: Excuse me, court's indulgence just
9 for a minute.

10 BY MR. OSHINSKY:

11 Q Did you do a sex offender evaluation and risk
12 assessment on Michael Rice for the matter that we're here for
13 and hearing today?

14 A Yes.

15 Q And did you meet with and interview Mr. Rice for
16 that report?

17 A Yes.

18 Q You furnished the Enforcement Bureau with a copy
19 of your report, is that correct?

20 A Yes.

21 Q Is that report an accurate reporting of your
22 examination and findings regarding Mr. Rice?

23 A It is.

24 Q And did you also give the Bureau your direct
25 written testimony?

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1 A Yes.

2 Q And does that direct written testimony accurately
3 reflect your findings and diagnosis regarding Mr. Rice and his
4 risk of sexual offending in the future?

5 A It does.

6 Q Based on your background, working in Missouri,
7 working at the attorney general's office and the other jobs
8 that you've stated, are you familiar with and have you
9 performed the risk assessment evaluations and procedures
10 recognized by local law enforcement in the state of Missouri?

11 A Yes.

12 Q And did you apply those standards of local law
13 enforcement in the state of Missouri in rendering your
14 evaluation and risk assessment of Mr. Rice?

15 A Yes.

16 MR. JACOBS: Your Honor, I'm puzzled here, with all
17 due respect.

18 MR. OSHINSKY: Your Honor, if there's an objection,
19 I'd like to hear it.

20 JUDGE SIPPEL: Yes, that's all you can do is object
21 to it.

22 MR. JACOBS: I object.

23 JUDGE SIPPEL: To what?

24 MR. JACOBS: To this whole line of discussion.

25 JUDGE SIPPEL: He is qualifying his witness. That's

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1 all he's doing. There's no big magic here.

2 MR. OSHINSKY: It's going to be much more extensive
3 than --

4 JUDGE SIPPEL: What I am going to do with
5 extensive? It is what it is. She's got an extensive CV.

6 MR. OSHINSKY: Yes.

7 JUDGE SIPPEL: It's really a fact, as CV's go in
8 my experience, this really isn't so bad, extensive-wise, I
9 mean. So the objection's overruled.

10 MR. OSHINSKY: Thank you, Your Honor.

11 BY MR. OSHINSKY:

12 Q Can you tell us what sources of information you
13 used to come to your conclusions about Michael Rice?

14 A I used the same things that we typically relied on
15 in Missouri to do these kinds of assessments. I had access
16 to his probation and parole records, I had access to his
17 previous evaluations that were completed on him.

18 Q And that's by Dr. Duncan-Hively?

19 A Correct. There was court documents, police
20 reports, victim impact statements, testing data that was
21 provided to me by Dr. Duncan-Hively. Obviously, the
22 information Mr. Rice gave me during the interview.

23 Q And can you tell us a little bit about the
24 importance of the parole and probation records that you looked
25 at in prep for preparing your opinion and conclusion?

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1 A Sure. They're very important. I can hardly do it
2 without, because not only do they summarize the criminal
3 history, they do a good job of giving me a social history
4 which tells me things about their relationships with their
5 family.

6 They also have their feet on the ground, per se,
7 and can see where the individual lives, they can tell me
8 things about they're dressed and what they look like in their
9 environment.

10 They can talk to his relatives and get information
11 from them. So it's probably only second to maybe a police
12 report or a victim's statement. They're very valuable.

13 Q And is it the kind of material that an expert in
14 your position would be using to make their conclusions and
15 findings?

16 A Yes, absolutely.

17 Q In fact, everybody, all the experts in this case
18 used them?

19 A Yes.

20 Q And did you see Dr. Stillings' reports as well?

21 A I did. I forgot to say that. Yes.

22 Q There was some confusion yesterday about why the
23 Bureau would offer both a psychologist and a parole and
24 probation agent, officer, excuse me, as experts in this case.

25 Would you provide us with a brief snapshot of what

1 the role of each one is?

2 A Sure. We work together as a partnership, kind of
3 where we both have somewhat different roles, where the risk
4 assessment is -- we both use Static-99Rs to come up with an
5 objective measure of risk.

6 But like I said before, the parole officer has this
7 day-to-day interaction or week-to-week, depending on their
8 supervision level. He or she's looking at different things
9 than I. I see them in more of a laboratory environment.

10 I see them when they come into the office for the
11 interview. I'm reading the records. This person has their
12 eyes and ears in the community. So together we can up with
13 a much better plan of action. Whether it's, you know,
14 supervision or treatment.

15 Q And does the risk assessment of a probation and
16 parole officer focus differently than one of a psychologist
17 in your position?

18 A A little bit. Like I said, we both have the same
19 base where we both use the same 99R. They look at some other
20 different things that, either I don't know about or that I
21 don't consider.

22 They just have different kinds of information about
23 the individual, more personal information.

24 Q And did you ever see the statement or the report
25 of Ms. Gremminger, I'm sorry, it's actually the direct

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1 testimony of Ms. Gremminger before --

2 JUDGE SIPPEL: What exhibit are we talking about?
3 Is it tabbed in there?

4 MR. OSHINSKY: Yes. I think it's 2, Exhibit 2, EB
5 Direct Case Exhibit 2 -- 2 and 3.

6 JUDGE SIPPEL: Well, 2. Start with 2.

7 THE WITNESS: I have not seen this.

8 BY MR. OSHINSKY:

9 Q So you came to your conclusions independently of
10 Ms. Gremminger?

11 A Correct.

12 Q You did talk to her about this MOSOP report I'm
13 going to bring up in a minute?

14 A I did. I spoke to her on the phone for about 15
15 to 20 minutes.

16 Q And that was about the illegibility of it?

17 A Correct.

18 Q So --

19 JUDGE SIPPEL: Wait a minute. Before that, you've
20 got Ms. Gremminger, what role, you were part of a team with
21 Ms. Gremminger, isn't that correct?

22 THE WITNESS: I was speaking more in general. I
23 work in teamwork with parole officers in general. I didn't
24 work with Ms. Gremminger.

25 JUDGE SIPPEL: At all?

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1 THE WITNESS: Specifically, no.

2 JUDGE SIPPEL: What about a woman named Missy --

3 MS. FUNK: Cruse.

4 JUDGE SIPPEL: -- Cruse?

5 THE WITNESS: No.

6 JUDGE SIPPEL: So who, how are you getting your
7 information? These were notations or these were reports in
8 the file?

9 THE WITNESS: Correct, reports.

10 MR. OSHINSKY: It's the documents that you have
11 before you in EB Exhibit 4, Your Honor.

12 JUDGE SIPPEL: Well, I was going to get that.

13 MR. OSHINSKY: Okay.

14 JUDGE SIPPEL: That's fine. But I'm trying to get
15 at is something else, though. Do you know, have you ever met
16 Ms. Gremminger?

17 THE WITNESS: Just by phone, no. Just talking to
18 her on the phone.

19 JUDGE SIPPEL: The phone's okay. You talked to her
20 on the phone?

21 THE WITNESS: I did, yes.

22 JUDGE SIPPEL: Was it over a period of time or was
23 it just a one-time call?

24 THE WITNESS: One time.

25 JUDGE SIPPEL: Okay. Ms. Gremminger is being

1 offered as an expert. Correct me if I'm wrong, on risk
2 assessment, is that what it is?

3 MR. OSHINSKY: That's correct, Your Honor.

4 JUDGE SIPPEL: What would you want to see for
5 somebody to be considered an expert in risk assessment?

6 THE WITNESS: I would want them to be familiar with
7 the Static-99R, the most popular used risk assessment tool.
8 I would also expect them to know other factors that increase
9 risk.

10 JUDGE SIPPEL: Such as what?

11 THE WITNESS: For example, say the offender says
12 I have a great support group -- my mom is a great support
13 person but the parole officer knows that mom thinks he's
14 innocent. She's not going to be good at keeping this guy
15 accountable.

16 Mom thinks he is innocent. He's going to let him
17 be around kids. So that's the kind of information that is
18 important to me from the parole officer.

19 I don't know, you know, what mom thinks about the
20 offense. So, does that answer your question?

21 JUDGE SIPPEL: Well, yes, you answered my question,
22 but now I've got another one.

23 THE WITNESS: Okay.

24 JUDGE SIPPEL: So, that sounds to me like a bit of,
25 not in the derogatory, but as a part of the picture you're

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1 trying to develop and it has to do with the fact, the fact is,
2 as observed by the risk test, let's say, a risk calculator,
3 she's saying that factually this is the way it is, doctor,
4 he's got a mother who's a facilitator almost.

5 She's not a resource but when you jump from that
6 to coming to a professional opinion, what could this person
7 give you as assistance, as a person as, you know, who's giving
8 you her professional opinion?

9 THE WITNESS: Well, if she gave me four or five
10 examples like that, because social support is very important.
11 An individual who's being held accountable by his coworkers,
12 by his family, by his friends, by his neighbors, is less
13 likely to re-offend.

14 There's also things about employment stability.
15 Can they get a job and keep a job? So, if the parole officer
16 can communicate a few of those other things along with it,
17 along with the scores we get from the testing, it can make a
18 big difference.

19 JUDGE SIPPEL: But this is all information that's
20 been accumulated?

21 THE WITNESS: Correct.

22 JUDGE SIPPEL: This is not a formulated opinion?
23 You're just getting the -- this is very important that you're
24 getting accurately prepared and reported information, which
25 is essential to you doing your job?

1 THE WITNESS: Correct.

2 JUDGE SIPPEL: Thank you. Now you said you dealt
3 with that one phone call. If you're going to deal, let's take
4 the average risk assessor, is that person, in your experience,
5 always or almost always the subject's parole director, or what
6 do they call him, parole advisor?

7 THE WITNESS: Parole officer.

8 JUDGE SIPPEL: Yes.

9 THE WITNESS: Yes and in fact, if there's has been
10 trouble out in the community when they've been on supervision,
11 they're the ones that actually make the recommendation to the
12 parole board.

13 This man is violating too much. He's going to
14 reoffend and needs to be revoked. So in that spectrum of the
15 world, they probably have more control over, or more opinion.
16 Because the parole board usually follows their
17 recommendations.

18 So they actually will write a report listing all
19 their reasons and then say we recommend this man be revoked
20 and returned to prison.

21 JUDGE SIPPEL: Yes, hang on. But, I mean, but the
22 people on the panel, since this is, in a community of people,
23 I'm not trying to say this in any kind of an evil sense, but
24 they kind of, as if they're doing this on a repetitive basis,
25 they're going to kind of get a feel for parole officers that

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1 they can rely on, or some are more reliable than others?

2 THE WITNESS: I would say that's probably true.
3 I think some of the parole officers are a little more lax
4 where some are more by the book. That's just the nature of
5 the job.

6 JUDGE SIPPEL: Yes. well, I see you're captain in
7 the Missouri Army National Guard or you were?

8 THE WITNESS: I was.

9 JUDGE SIPPEL: So you know what by the book means?

10 THE WITNESS: Yes, I do.

11 JUDGE SIPPEL: I do, too. I was in the military.

12 THE WITNESS: Oh.

13 JUDGE SIPPEL: And Mr. Engel was in the military,
14 sitting against the wall in the back.

15 THE WITNESS: Oh, nice.

16 JUDGE SIPPEL: I want to disclose all my biases.
17 So what about Ms. Gremminger, again, did you know she was not
18 a parole officer or she was not Mr. Rice's parole officer?

19 THE WITNESS: I do know that. I did know that,
20 yes.

21 JUDGE SIPPEL: You did know that?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: It was made clear to you?

24 THE WITNESS: Yes. When I spoke to her, I knew
25 that.

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1 JUDGE SIPPEL: Does that make her any less credible
2 to you?

3 THE WITNESS: No, even more so, because she didn't
4 develop a relationship with him so there was no chance of any
5 bias. She saw the records and was, she did what a supervisor
6 would do.

7 A supervisor would look over the records and then
8 come up and say, that was a good opinion, that was a good
9 recommendation. So I think actually in some ways, it's
10 better.

11 JUDGE SIPPEL: She was kind of a yes, ma'am, no
12 ma'am person?

13 THE WITNESS: I don't even know. I recognize the
14 name just because I've been in the Missouri business for so
15 long. I just don't know, I don't even know what her
16 reputation is.

17 I'm assuming that she's very respected if she would
18 have been recommended. I have not had problems with any of
19 them.

20 JUDGE SIPPEL: I have no reason to think otherwise
21 than what you're saying, but you mentioned something two
22 sentences ago that she was perhaps more reliable in what she
23 was giving you, information I mean, because she had not been
24 in a, knew the respondent, client, Mr. Rice well enough to
25 have formed some kind of a relationship with him?

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1 THE WITNESS: Right. There would be the chance of
2 some kind of bias there. I'm not saying there was but there'd
3 be a chance though.

4 JUDGE SIPPEL: No, but, no, I'm not asking about,
5 but is it, I mean, have you experienced this in your work that
6 some parole officers develop some kind of a relationship?

7 THE WITNESS: I think it's a risk in their
8 profession and my own that when you have contact with somebody
9 over a length of time repeatedly, that they either get on your
10 nerves or, you can like them too much and maybe, you know,
11 look the other way when they -- so I think as much as we try
12 to not let that happen, I think I'd be naive to think that it
13 doesn't sometimes.

14 JUDGE SIPPEL: Yes. I know. I know what you're
15 -- I understand that. You indicated that an added value was
16 when the parole officer has a personal knowledge, and Ms.
17 Gremminger was getting her knowledge from basically the same
18 sources that were available to you?

19 THE WITNESS: Right and, what I meant by personal
20 knowledge, I meant the personal knowledge they report. What
21 they put in the report. Things like the mother.

22 JUDGE SIPPEL: But they might have forgotten to put
23 something in there that's personal knowledge?

24 THE WITNESS: They could, but we have an old adage
25 that says if it's not written down, it didn't happen. So most

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1 of us are very good about documenting, but you're right.
2 Things could have happened that we didn't know about.

3 JUDGE SIPPEL: Sometimes the FBI has that problem.
4 Okay. All right. That's basically all I have for now, but
5 I do want to commend you on your military service and
6 appreciate it very, very much. Okay. You can continue.

7 MR. OSHINSKY: Thank you, Your Honor.

8 BY MR. OSHINSKY:

9 Q Dr. Weitl, do you utilize the risk assessments of
10 parole and probation officers like Ms. Gremminger in your
11 review and in your work as a psychologist?

12 A Yes. I make special attention to note when they
13 have recommended that the individual be revoked or when they
14 have concerns about a certain area, especially risk. But
15 maybe they've gotten phone calls that the neighbors are seeing
16 so-and-so with a kid. That kind of information is important
17 and I do rely on it.

18 Q So the risk assessment of a parole and probation
19 officer is important?

20 A Absolutely. Very important.

21 MR. OSHINSKY: Your Honor, so at this point, Your
22 Honor, we would offer Dr. Weitl as an expert in the area of
23 sex offenders and risk assessment of sex offenders and that
24 she met with and interviewed Mr. Rice and has provided her
25 evaluation and risk assessment for him.

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1 JUDGE SIPPEL: I don't think I've heard much
2 testimony about, did you personally meet Mr. Rice?

3 THE WITNESS: I did meet with Mr. Rice.

4 JUDGE SIPPEL: Okay. Over what period of time?

5 THE WITNESS: For about an hour and a half.

6 JUDGE SIPPEL: That's all?

7 THE WITNESS: That's typical for sex offender
8 evaluations.

9 JUDGE SIPPEL: Any objection? Mr. Jacobs?

10 MR. JACOBS: Objections to?

11 JUDGE SIPPEL: To taking her as an expert witness?

12 MR. JACOBS: No.

13 JUDGE SIPPEL: No?

14 MR. JACOBS: No, but I do plan to cross --

15 JUDGE SIPPEL: No, you're getting ahead of me.
16 Okay.

17 MR. OSHINSKY: So Your Honor, at this point --

18 JUDGE SIPPEL: Dr. Weitzl is proffered as an expert.

19 MR. OSHINSKY: Thank you, Your Honor. At this
20 point, Your Honor, I have questions for Dr. Weitzl regarding
21 Dr. Duncan-Hively's findings and her report and her direct
22 testimony.

23 However, because of the arrangement we made
24 yesterday whereby Dr. Duncan-Hively is going to testify about
25 things that Dr. Weitzl said in her direct testimony, and you

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1 indicated that you were willing to have Dr. Duncan-Hively
2 return to the stand in rebuttal and that the Bureau would be
3 able to call Dr. Weitzl in surrebuttal.

4 I can save my questions and I think prevent a lot
5 of duplication and loss of time if, after Mr. Jacobs has
6 finished his cross-examination, you bring Dr. Duncan-Hively
7 up to do her rebuttal and then we have Dr. Weitzl in
8 surrebuttal and she can answer the questions I would have
9 about Dr. Duncan-Hively's report and her finding.

10 JUDGE SIPPEL: You understand that, Mr. Jacobs?

11 MR. JACOBS: Yes, I do, sir.

12 JUDGE SIPPEL: You agree with that?

13 MR. JACOBS: Perfectly.

14 JUDGE SIPPEL: Okay. There you go, you have it.

15 MR. OSHINSKY: All right. So that's all I have for
16 Dr. Weitzl at this time, Your Honor.

17 JUDGE SIPPEL: All right, one minute now. Oh, did
18 you -- you seem to have supplied -- I mean, did any of your
19 work overlap with Dr. Duncan's?

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: Okay. So did you meet her or did
22 you talk to her? I mean, just out, you know, corridor talk?

23 THE WITNESS: No, but they provided me with some
24 testing data information which was above and beyond just me
25 having copies of their reports.

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1 JUDGE SIPPEL: Did it look like good stuff?

2 THE WITNESS: It was important information, yes.

3 JUDGE SIPPEL: Thank you. And it was volunteered?

4 THE WITNESS: Well, I think they were asked for it,
5 but they gave it.

6 JUDGE SIPPEL: They weren't subpoenaed?

7 THE WITNESS: I don't know if they were or not,
8 Your Honor.

9 MR. OSHINSKY: No.

10 THE WITNESS: No? Okay.

11 JUDGE SIPPEL: You're going to give an opinion, but
12 do you, do you consider yourself in any way, shape or form
13 being pro enforcement as aside from being, as contrasted with
14 pro defense? Does that enter into your --

15 THE WITNESS: I think --

16 JUDGE SIPPEL: Psyche?

17 THE WITNESS: I tend to work more for the state
18 because I'm on that side of the evaluation. But in Illinois,
19 I also work in the reentry process and I'm finding that much
20 more rewardable than being the one that says lock him up.

21 So I would say that my career is probably taking
22 a turn for more. I did some treatment in a halfway house in
23 East St. Louis, they lost their funding right after a drive-by
24 shooting, so I wasn't too bummed out about that. But, so I
25 think that as my profession changes, it's kind of evolving to

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1 more, I'm more interested about how we get these out and get
2 them successful.

3 JUDGE SIPPEL: That's very interesting. Yes. But,
4 okay, that's, I'm fine with that. But your main work, you are
5 under contract with the state of Missouri, is that right?

6 THE WITNESS: They retain me case-by-case basis.

7 JUDGE SIPPEL: Case-by-case.

8 THE WITNESS: Illinois, I actually have a contract.
9 I do their annual evaluations. So the men, once they're
10 committed, every year they get an evaluation to see if they're
11 ready to go home or get out and so I do those.

12 JUDGE SIPPEL: Okay.

13 THE WITNESS: And I testify for the defense in
14 those.

15 JUDGE SIPPEL: Thank you. Okay. Your witness, Mr.
16 Jacobs.

17 MR. JACOBS: I thought I heard -- you were about
18 to say something, no?

19 MR. OSHINSKY: No. Maybe I just look like I am.

20 MR. JACOBS: Okay.

21 JUDGE SIPPEL: False alarm.

22 MR. JACOBS: Please bear with me a moment.

23 JUDGE SIPPEL: Can I ask another question while
24 you're doing that, Mr. Jacobs?

25 MR. JACOBS: Please.

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1 JUDGE SIPPEL: If you had known -- and there was
2 testimony on this yesterday -- but if you had known that, with
3 respect to Mr. Rice, during his period of probation, that his
4 home had been visited -- this was reported by a neighbor, that
5 the home was visited by young boys and that Mr. Rice was kind
6 of inviting this with decorations and what not, Halloween
7 decorations and things like this, this is the impression of
8 a neighbor, and that was never entered in the reports by the
9 parole officer, how would you feel about that?

10 THE WITNESS: I'd be very concerned. We would call
11 that being in their cycle which means there's a pattern of
12 behavior that occurs before they re-offend and that's part of
13 his cycle.

14 Obviously, it's secondhand information which is
15 probably why it wasn't in the report, I don't know. Sometimes
16 they put it, sometimes they don't.

17 JUDGE SIPPEL: The police were called. They did
18 send the gendarmes down there to see what's going on.

19 THE WITNESS: I would be very concerned about that,
20 very.

21 JUDGE SIPPEL: Are we back -- thank you. Thank you.

22 THE WITNESS: You're welcome.

23 JUDGE SIPPEL: Have you found we're going, Mr.
24 Jacobs?

25 MR. JACOBS: Yes, I have, Your Honor.

1 JUDGE SIPPEL: I don't want to rush you but we're
2 losing time here. The chairman is being photographed and we
3 have to get out of here some time.

4 CROSS-EXAMINATION

5 BY MR. JACOBS:

6 Q Good morning.

7 A Good morning.

8 Q I'm going to start with your responses to Mr.
9 Oshinsky's further direct because I found it very interesting
10 and not something, of course, that we had been able to prepare
11 on.

12 I notice, and your curriculum vitae emphasizes,
13 that you were very involved with the MOSOP program for, I
14 think, five years or so, and --

15 A What tab was that?

16 Q MOSOP?

17 MR. OSHINSKY: MOSOP was 7.

18 THE WITNESS: My curriculum vitae, 7 --

19 JUDGE SIPPEL: Oh, I'm sorry, yes. Yes.

20 MR. KNOWLES-KELLETT: There's two 7s. There's a
21 set of official case exhibits in the back of --

22 MR. OSHINSKY: Yes, you have to be in the forward
23 7, one close to the front.

24 MR. JACOBS: Actually, it says on page 1 --

25 JUDGE SIPPEL: Well, what tab are you looking at?

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1 What tab did you pull that from?

2 THE WITNESS: Seven.

3 MR. OSHINSKY: It should be 7.

4 JUDGE SIPPEL: That's all I'm saying, we're still
5 on the same page.

6 MR. OSHINSKY: Right, it's her curriculum vitae.

7 JUDGE SIPPEL: I understand what it is but you said
8 you said it appears in two places.

9 MR. OSHINSKY: Yes, yes.

10 BY MR. JACOBS:

11 Q The bottom of page 1 says that you were with the
12 MOSOP program from March 2005 to May 2012?

13 A That's correct.

14 Q Seven years, actually.

15 A That's correct, yes.

16 Q All right, and you described for us your activities
17 in the program, and is it fair to say that you have a very
18 high opinion of that program?

19 A I don't think that I would say that. I think the
20 program has had good days and bad days, depending on the
21 administration. It's hard to keep staffed. So I would say
22 it fluctuates from year to year.

23 Q Okay. And part of the Missouri Correction Program
24 is that before a sex offender is permitted to be released, he
25 or she must participate in a MOSOP program, correct?

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1 A To get out early they have to participate.
2 Otherwise, they'll have to complete their sentence.

3 Q And how long is the program in duration?

4 A Nine month.

5 Q Nine months?

6 A Yes.

7 Q And the record contains a certificate of
8 completion, and I will show it to you.

9 MR. OSHINSKY: You should identify it, though.

10 MR. JACOBS: I'm sorry, I'm too slow for you.

11 MR. OSHINSKY: Oh, no, no, I'm sorry..

12 MR. JACOBS: I'm just an old man.

13 MR. OSHINSKY: I'm just getting ahead of you.

14 JUDGE SIPPEL: That's when you want to watch your
15 wallet, when somebody says that.

16 (Laughter.)

17 MR. JACOBS: Lake Exhibit 1, Appendix A.

18 JUDGE SIPPEL: Lake 1, Appendix A.

19 BY MR. JACOBS:

20 Q That is a certificate of completion of the MOSOP
21 program issued to --

22 A Yes.

23 Q -- issued to Michael Rice?

24 A Correct.

25 Q And it says that he has successfully completed

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1 Phases 1 and 2 of the program on March 17, 1999. And Mr. Rice
2 was given early release, correct?

3 A I would assume so, yes.

4 Q Now, at least one witness pooh-poohed the
5 importance of such a certificate, but Mr. Rice was quite proud
6 of it. What is your opinion having such a certificate?

7 A Well, I wouldn't pooh-pooh it, that's for sure.
8 Therapy is extremely difficult for some people. And nine
9 months of your life devoted to treatment is not something that
10 should be flippantly considered. It's an investment.

11 So I wouldn't minimize it, and I know the men are
12 proud of their certificates.

13 Q Okay. Thank you.

14 JUDGE SIPPEL: Well, it's a get out of jail card,
15 really.

16 THE WITNESS: Yes, sir.

17 MR. JACOBS: Or get out of jail early.

18 THE WITNESS: Yes, right.

19 JUDGE SIPPEL: That's a quibble. I'll accept it.
20 It says he received it, given at the FCC. Where is that?

21 THE WITNESS: Farmington Correctional Center South.

22 MR. JACOBS: A different FCC?

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: I wonder if the newspapers know
25 about that? No, I'm kidding. Let's go.

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1 BY MR. JACOBS:

2 Q In your recent testimony, you also pointed out your
3 important reliance on criminal history information?

4 A Yes.

5 Q And especially the documents which had been
6 supplied by Tammie Gremminger, I think?

7 A I'm not sure because all the records I have came
8 through the FCC. The probation and parole records. I don't
9 know if Tammie knows.

10 MR. OSHINSKY: We'll stipulate that they came from
11 Tammie and her office.

12 JUDGE SIPPEL: Tammie who?

13 MR. OSHINSKY: Gremminger, Tammie Gremminger. The
14 witness you heard from yesterday.

15 JUDGE SIPPEL: I knew her name was Tammie but I'd
16 like to hear it from you.

17 MR. OSHINSKY: Your Honor, it's actually, Mr.
18 Jacobs had recited it as Tamara, which it may be, Your Honor.

19 MR. JACOBS: That's her real first name.

20 JUDGE SIPPEL: Tamara?

21 MR. JACOBS: T-A-M-A-R-A.

22 MR. OSHINSKY: She goes by Tammie.

23 JUDGE SIPPEL: I figured that out. Yes. Thanks.
24 Okay, keep going.

25 BY MR. JABOBS:

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1 Q In this hearing, there has been much discussion
2 about the weight that should be given to the very kinds of
3 documents that you're talking about because they were never
4 introduced at trial, they're not sworn statements, and --

5 JUDGE SIPPEL: You're talking about the trial of
6 the -- state trial?

7 MR. JACOBS: Right. They are the reports of
8 detectives and whole variety of things

9 BY MR. JACOBS:

10 Q Knowing that their, I don't want to
11 authenticity, but the validity of the statements in them,
12 therefore, are controversial. Does that diminish at all the
13 weight that you give to such documents?

14 MR. OSHINSKY: Your Honor, I'd just like to object
15 to the form of the question. He assumed facts not in evidence.
16 There's no controversy been introduced here about the records.

17 JUDGE SIPPEL: Yes, unless you want to point to a
18 specific record and ask her her opinion of this, the rightness
19 or the wrongness or the significance of it, I don't think
20 that, I mean, the assessment of weight is -- I don't think
21 that's the thing that an expert like Dr. Weitzl would be
22 qualified to answer because of the legal aspect of it, not
23 because she doesn't know. You see what I'm saying?

24 MR. JACOBS: Well, Dr. Weitzl --

25 JUDGE SIPPEL: In other words, it's a legal

1 conclusion.

2 BY MR. JACOBS:

3 Q When weighing and making use of criminal history
4 documents, do you take into account what their sources are,
5 how old they are and anything else which would go to the
6 weight that should be given to the documents?

7 JUDGE SIPPEL: You're asking the same question
8 again. What are you talking about? The legal weight or the
9 weight in her mind?

10 MR. JACOBS: The weight in Dr. Weitzl's mind.

11 JUDGE SIPPEL: Personal opinion?

12 MR. JACOBS: Professional opinion.

13 THE WITNESS: Well, I think each document is
14 different. I put quite a bit of weight on police reports,
15 court documents. I don't automatically assume that everything
16 in those reports is a hundred percent accurate, but the basic
17 premise typically is.

18 After doing this for so long, I've read so many
19 statements that it seems like I'm able to give credibility in
20 places, and I'm speaking in general here because we haven't
21 got a specific document in front of me, but --

22 JUDGE SIPPEL: That's pretty critical. I wonder
23 if you have the other documents you could put in front of Dr.
24 Weitzl? That will make it clearer for all of us.

25 MR. JACOBS: Okay. We can do that.

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1 BY MR. JACOBS:

2 Q It is Exhibit 4, page 4, that is Bureau's Exhibit
3 4, page 4, a two-page report from the Yarbrough Polygraph
4 Services concerning Mr. Rice's June 6, 2000, polygraph test.

5 In your testimony in Exhibit 1, Paragraph 9, you
6 quote a significant number of sentences from Mr. Yarbrough's
7 report. And you seem to do so in an approving way and you
8 conclude at the end of Paragraph 9, that this appears to be
9 the only time Mr. Rice acknowledged the true extent of his
10 deviant sexual behavior.

11 My question is, your being familiar with that
12 report, how much weight do you give to it in terms of
13 authenticity, accuracy, not authenticity, accuracy, probative
14 value?

15 A Well, first I'd like to say that I've read hundreds
16 of Mr. Yarbrough's polygraph reports because he's one of the
17 few polygraphers in Missouri and done a lot of them. So I
18 find him very respected. He even does it in Illinois.

19 So that stance that I take of -- at face value, I
20 take his reports, I put a lot of weight in them. Regarding
21 Mr. Rice's statements, I also put a lot of weight on that
22 because, well, any time I quote something in my report,
23 obviously, I'm putting a lot of weight on it, but what Mr.
24 Rice told this evaluator during the pretest questionnaire was
25 what we hear in therapy all the time when an offender is being

1 honest.

2 When they are letting everything out of the basket,
3 if you will, these are the kinds of things we hear. This is
4 the kind of thing that, it's credible because it's what I see
5 all the time from someone who's in treatment.

6 Q It's puzzling though, to me, as an attorney
7 representing clients. In Paragraph 3 of his letter, he says
8 during a pretest interview with Mr. Rice, he was initially
9 very reluctant to proceed and so on.

10 And then Mr. Yarbrough proceeds to paraphrase what
11 he says Mr. Rice said -- Mr. Rice admits he has an extensive
12 history, blah, blah, blah. And I'm thinking to myself, this
13 is supposed to be a report of a polygraph test, and polygraph
14 tests consists of questions and answers.

15 I turn to the next page of his report and indeed,
16 he extracts a Question 5 and a Question 7, and gives us his,
17 what that exchange was. It seems to be that this is not, it's
18 kind of snookering the person who is the subject of the
19 examination.

20 A Well, what it does is, the pretest interview gives
21 the offender an opportunity to come clean, as we say, so he
22 can pass the test which, in my opinion, is what Mr. Rice did.

23 He wanted to pass this test very bad so he was
24 extremely honest up front. So, it may appear that he was
25 snookered, but he was actually given the opportunity to pass

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1 the test.

2 If he would've failed this test, he would've gone
3 back to prison, probably. He would've had his probation
4 revoked. So the pretest interview is a chance for them to
5 come clean before they get hooked up to the machine.

6 This is a chance for you to, you know, is there
7 anything that you haven't said that you need to say now. And
8 it's very important because we know polygraphs aren't
9 reliable. They can be deceived -- the opinion could be that
10 they were deceptive when they answered a question and the
11 questions are usually very vague and -- this is what's the
12 important information for someone like me.

13 JUDGE SIPPEL: What is this you --

14 THE WITNESS: The pre-interview, the pretest
15 interview.

16 JUDGE SIPPEL: Where do we have the pretest
17 interview?

18 THE WITNESS: Mr. Yarbrough, before he hooks the
19 man up for the polygraph --

20 JUDGE SIPPEL: Right. Now, do we have it?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Is there --

23 THE WITNESS: It's summarized here in Mr.
24 Yarbrough's report.

25 JUDGE SIPPEL: Do we have -- does he write this in

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1 a form of a report or write it down somehow and take, where
2 is it, where's the document?

3 THE WITNESS: We have it right here.

4 MR. OSHINSKY: It's on page 4, Your Honor, of
5 Exhibit 4 of EB direct exhibits.

6 JUDGE SIPPEL: So on page 4, I've got page 5 here.

7 MR. OSHINSKY: page 4 and 5 is the complete --
8 those two pages --

9 JUDGE SIPPEL: Yes, I see that. That's, I know,
10 but, he has talked to Mr. Rice before he wires him up and then
11 --

12 MR. OSHINSKY: Pretest interview -- I'm sorry.

13 JUDGE SIPPEL: -- but then after the results are
14 out, then this is his report on the whole process.

15 MR. OSHINSKY: Correct, Your Honor. It's --

16 JUDGE SIPPEL: Well, I'm asking where is the
17 documentation on his preliminary interview?

18 THE WITNESS: On the front page, Your Honor.

19 JUDGE SIPPEL: On the front page?

20 MR. OSHINSKY: Yes.

21 THE WITNESS: Yes, third paragraph. Well, second
22 paragraph.

23 JUDGE SIPPEL: I mean, he doesn't go down, I mean,
24 I don't, how long would that interview last, roughly?

25 THE WITNESS: Fifteen minutes to 30 minutes. They

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1 ask them if there's anything they want to tell. They
2 typically ask them, do you have any victims besides the ones
3 you were convicted of that you haven't told anybody about.

4 JUDGE SIPPEL: Well, is it recorded?

5 THE WITNESS: I don't know.

6 JUDGE SIPPEL: On a tape recorder?

7 THE WITNESS: No, I don't know.

8 MR. OSHINSKY: Actually, Your Honor. It is
9 recorded. We asked Mr. Yarbrough for a copy of the recording
10 but it's only kept for a year, a period of time for the person
11 who's being tested to contest the results.

12 Mr. Rice didn't do that and the recording was
13 destroyed, according to Mr. Yarbrough. This is based on a
14 telephone call with Mr. Yarbrough.

15 JUDGE SIPPEL: Well that goes to the weight of it.
16 I mean, it's, you would think that it'd be reduced, the table
17 would be reduced to writing and there'd be some record kept
18 of it, but I know everybody's got a bunch of problems.

19 MR. OSHINSKY: Right. Apparently, he does so many
20 of them that he can't store them for longer than a year.

21 JUDGE SIPPEL: He wasn't around when Jesse James
22 was, was he?

23 MR. OSHINSKY: No.

24 BY MR. JACOBS:

25 Q Let me switch to another topic. In your testimony

1 this morning, I think it's fair to say that you were quite
2 laudatory of the Static-99R and 2002-R, diagnostic tests?

3 A I mentioned the Static-99R as being the most
4 commonly used in risk assessments, yes.

5 Q In your written direct case testimony, you
6 discussed these two tests on pages 16 and 17.

7 A Can you tell me where you're at with that?

8 Q Your direct case, Exhibit 1 in that, pages 16 and
9 17. Bureau Exhibit 1, pages 16 and 17.

10 A Got it.

11 Q Now, in Paragraph 48, you state that Mr. Rice
12 yielded a score of 3 on the Static-99R, placing him in the
13 moderate-low risk category. But two sentences later, you say
14 the instrument significantly underestimated Mr. Rice's risk
15 to sexually re-offend based upon his age at the time of his
16 first conviction. What do you mean by that?

17 A The Static-99 has an item on there based on age.
18 The younger the person is, the higher their risk. So Mr. Rice
19 was an older gentleman when he was arrested, meaning that his
20 risk was decreased when it was clear his risk had not
21 decreased because he was arrested at an older age.

22 So he was given credit for being an older gentleman
23 when he probably shouldn't have been given credit because he
24 was clearly in the act of the sexual offense. There's other
25 reasons, but that's the age reason.

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1 Q We've heard testimony that he, in effect, reduces
2 to the age of 13 when he's working with boys.

3 A That might be on this 2002-R. It can take three
4 points away once the individual turns 60.

5 Q But let me understand this. You say on page 5,
6 Paragraph 8, that, well, there are two references to
7 Static-99R test. One is item N. You say Static-99 test of
8 Mr. Rice as scored by Duncan-Hively, on September 24, 2014 --

9 A She gave me a copy of her score sheet.

10 Q Right. And then --

11 JUDGE SIPPEL: Who?

12 THE WITNESS: Dr. Duncan-Hively.

13 BY MR. JACOBS:

14 Q And then Item P is the Static-99R test of Mr. Rice
15 that I, meaning Dr. Weitl, scored on March 10, 2016. So,
16 obviously, both of these tests occurred many, many years after
17 the conviction.

18 And so I come back to this question. You're saying
19 that in the year 2014 and 2016, a Static-99R test done at that
20 time, underestimates based upon his age at his time back in
21 1990?

22 A Right. I don't, it's an actuarial instrument that
23 deals with correlations, so the older the individual is the
24 less risk based on the research. But there are outliers.
25 There are certain people who don't fall into that group.

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1 And my opinion is that Mr. Rice did not fall into
2 that group because he was of an elderly age when he was
3 arrested. He wasn't 25 to, I think the cutoff is 35 for the
4 first cutoff.

5 Q And pardon me for saying, but what gives you the
6 authority to dispute the risk results in these studies?

7 A Because this, I have to be sure that this
8 instrument is describing Mr. Rice accurately. Whether it's
9 to his benefit or to his, increases his risk or lowers his
10 risk.

11 It only has ten items. I have to make sure that
12 it's accurately describing him.

13 Q In Paragraph 50, referring to the other test --

14 JUDGE SIPPEL: But before you go there, did you
15 come to these written -- wait. With relationship to these
16 conclusions, had you interviewed Mr. Rice before you reached
17 these conclusions?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: Thank you.

20 BY MR. JACOBS:

21 Q In Paragraph 50, you state that in his
22 Static-2002-R test, he scored 4, which put him in the
23 moderate-low risk category. Your next sentence is, though,
24 however, here again this instrument, in my opinion,
25 significantly underestimates Mr. Rice's risk to commit

1 continued acts.

2 Then, you know, what is the meaning of having these
3 tests if you can turn around and say, oh, no, this is
4 inaccurate.

5 A I'm not saying it's inaccurate. I'm saying that
6 it underestimates it somewhat. The Static-99 is an anchor
7 point. It's a beginning point and other risk factors present
8 in the individual can increase that or decrease that.

9 It doesn't change that score, but I can have an
10 opinion on how well that score describes him. These are group
11 estimates. So anybody with a score of 3 gets put in this
12 category. Whether the 3 points come from different items on
13 the test or not.

14 And as a clinical psychologist, I have the
15 experience and training on how to do that. How to use
16 specific things about Mr. Rice or whoever I'm evaluating.

17 For instance, his treatment participation is one
18 of the things we look at to see did that lower his risk. It's
19 not included in the Static. They don't ask about treatment
20 completion.

21 Q You do state in both instances that, in your
22 opinion, the particular instruments significantly
23 underestimates his risk. But this is just your opinion?

24 A Well, I think common sense tells you that if the
25 individual is 60 --

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1 JUDGE SIPPEL: Answer his question first.

2 THE WITNESS: I'm sorry. What was the question.

3 JUDGE SIPPEL: Your opinion.

4 BY MR. JACOBS:

5 Q This is just your opinion?

6 A No, it's not just my opinion.

7 Q How is it derived then?

8 A I think even a layperson can see that if the
9 individual gets 3 points taken away from their score, which
10 significantly decreases their risk, because they're of an
11 elderly age, but the individual is actually in the act of
12 committing an offense, we can clearly see his risk has not
13 decreased. That's what I'm talking about.

14 Q Well, Dr. Weitl, I'm confused here.

15 A Okay.

16 Q At the time of the offenses, Mr. Rice was 50?

17 A Yes.

18 Q He is now 75.

19 A Correct.

20 Q We are trying to measure his risk of re-offending
21 now --

22 A Right.

23 Q -- when he's 75?

24 A Right.

25 Q And it seems to me his age now is very relevant,

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1 isn't it?

2 A Well, what I'm trying to say is, his age, at 50,
3 was relevant, too, compared to the data. He would've gotten
4 a -1 point for being age 50. He gets -3 for being over age
5 70.

6 What I'm saying is that age is not a good way to
7 measure his risk. He was 50 when he was arrested. Typically,
8 at age 50, their risk is starting to decrease. His wasn't.
9 He was offending.

10 Q But now he is 75 --

11 A Correct.

12 Q -- and suffering from diabetes. And I believe, it
13 is in Dr. Duncan's report that, pardon me for saying it, he's
14 unable to get an erection --

15 A That's what he said.

16 Q -- because of his diabetes -- well, isn't that a
17 standard --

18 MR. OSHINSKY: I'm going to object to that, Your
19 Honor. I don't think information is in there and I'd ask
20 counsel to point to it if it's there. I haven't seen it.

21 JUDGE SIPPEL: Is it in your report?

22 DR. DUNCAN-HIVELY: It's in my report. It's in my
23 deposition.

24 MR. OSHINSKY: Not the deposition. I'm talking
25 about the report or the direct testimony.

1 JUDGE SIPPEL: Well, even the deposition is saying
2 the same result. Go ahead and ask your question, finish the
3 question.

4 MR. JACOBS:

5 Q You're not trying to maintain, are you, that at age
6 75, Mr. Rice poses as high a risk as when he was 50?

7 A Well, when I'm talking about the Static, I'm not,
8 I'm addressing the age. Yes and no. Yes, I'm saying age is
9 not a relevant factor for his risk. I believe Mr. Rice can
10 offend today just as well as he did when he was 50.

11 I don't think there's anything stopping him,
12 physically or by his age, from doing what he was doing then.

13 Q Well, I'm still very puzzled because then it sounds
14 to me that there's no sense in doing this study now, in 2014
15 and 2016. Wouldn't you just have relied on whatever tests
16 were done in 1990?

17 A Because he could be paralyzed in a hospital bed
18 right now. He could have completed treatment and demonstrated
19 that he internalized the treatment objectives. There could
20 be differences between then and now, but they're aren't, that
21 I see.

22 Q Would that show up in the Static reports?

23 A No. Those are static, those are historical
24 factors, but they would show up in other areas. They would've
25 shown up in the interviews with people, deposition.

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1 Q Well, it seems to me we're going around in circles.
2 You indicated that there is some importance to be given.

3 JUDGE SIPPEL: That's her answer. I mean, you got
4 her answer. You can't argue with her. You're not going to
5 convince -- you've got her answer.

6 Let me ask you this while you're looking for more
7 notes here, what, Dr. Weitl, do you have any familiarity with
8 the drug, was it Wellbutrin?

9 THE WITNESS: Wellbutrin.

10 JUDGE SIPPEL: Wellbutrin?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Does that have any negative impact
13 on the libido?

14 THE WITNESS: It could. It's an antidepressant.
15 We started, I don't personally prescribe the medication, but
16 as a treatment process, we have used Lupron and some other
17 antidepressants to help reduce libido. The problem is, it's
18 that libido is not just the problem.

19 Our brains are what tell us what we're sexually
20 attracted to. Our brains are the ones that fantasize and our
21 brains drive these urges. Whether or not we're able to get
22 an erection, isn't necessarily a pattern, it might be a part
23 of our cycle, might not be how we re-offend.

24 Mr. Rice's case, he was performing oral sex on the
25 boys. He wouldn't need an erection to do that.

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1 JUDGE SIPPEL: I see. So thank you. That's very
2 clear. Good and clear.

3 BY MR. JACOBS:

4 Q Going back to Mr. Yarbrough for a moment. You have
5 familiarity with him and you indicate he's very active in the
6 state correctional process. Isn't he obliged, therefore, if
7 he uncovers anything in his testing which suggests that other
8 crimes have been committed that he must report that to the
9 state officials?

10 A If he was given specific names and dates, I'm
11 thinking he would have to. He's probably a mandated reporter
12 or would have some stipulation he should report. Typically,
13 they don't elicit and don't receive that kind of, they don't
14 receive names, dates, enough that a prosecutor is going to
15 pick it up or police are going to arrest him.

16 Q So you're saying that the information in his report
17 is so vague that it doesn't pass muster to be passed on to
18 other state officials?

19 A Right. Regularly, men will give information just
20 like that in treatment, and there's no officials called,
21 because they give the information like, a hundred victims
22 between this year and this year, sometimes they'll give their
23 first name, Timmy, age 7, and that's all they give.

24 JUDGE SIPPEL: When you're talking about his
25 report, are you talking about Mr. Yarbrough or who are you

1 talking about?

2 MR. JACOBS: Right.

3 JUDGE SIPPEL: Okay. Thank you.

4 MR. JACOBS: I try and use pronouns too much.

5 BY MR. JACOBS:

6 Q You've also testified this morning, particularly
7 with relation to your contacts with Ms. Gremminger, that there
8 is a very nice saying in your office that if it's not written
9 down, it didn't happen.

10 A In my profession, yes.

11 Q In your profession. Well, there has been testimony
12 in this proceeding that there are no notes from Ms. Gremminger
13 concerning her contacts with Mr. Rice.

14 A Right. I haven't heard anything about that. But
15 I haven't read her testimony so I'm not a hundred percent sure
16 on that.

17 Q But did she give you some other documents which
18 pertain to Mr. Rice?

19 A No, she didn't give me anything. All the paperwork
20 that I got either came from Dr. Duncan-Hively's office or the
21 FCC Commission.

22 Q Now you testified that you received some background
23 notes, documents from Dr. Ann Duncan and Dr. Wells Hively as
24 part of your preparations in this case, right?

25 A Yes.

1 Q And are you aware that you were requested to
2 provide the same kind of information to us, to Lake
3 Broadcasting?

4 A I don't recall being asked for that.

5 Q Well, the Bureau would have been responsible for
6 relaying that information to you.

7 MR. OSHINSKY: Your Honor, again, I don't know
8 exactly the foundation for this question because it's new to
9 me. But, if counsel -- counsel's quizzing the witness about
10 what the Bureau's obligations are. It's not something she
11 would have any information on.

12 JUDGE SIPPEL: I'm sustaining the objection.

13 BY MR. JACOBS:

14 Q But you haven't turned over any of your notes to
15 Lake Broadcasting?

16 A I don't keep notes. The only thing that I would
17 have to offer would be the Static-99 and the Static 2002
18 Scoring Sheets and the consent form Mr. Rice -- I may have
19 submitted those with my report. Sometimes I do.

20 Q Well, in your direct testimony when you put things
21 in quotation marks, such as what appear to be quotes from Mr.
22 Rice and I'll --

23 JUDGE SIPPEL: What's the page and paragraph?

24 MR. JACOBS: Right.

25 BY MR. JACOBS: page 21, paragraph 64, you say 2,

1 4, 6 --

2 JUDGE SIPPEL: You talking about the word excuses?

3 MR. JACOBS: No.

4 BY JACOBS:

5 Q The victims enjoyed the abuse, you know, the abuse
6 wasn't planned. The victims were street kids. Those are all
7 in quotations. So that, to me, would imply that Mr. Rice
8 actually said those words?

9 A Correct.

10 Q How, but you have no notes?

11 A Well, how would that give me credibility just
12 because they were written down in a note, how is that any
13 different than me typing it here and saying he said it. I
14 don't --

15 Q Were you saying that you remembered those things
16 and wrote them down?

17 A Correct. I made notes during the interview. I
18 used my notes to type the report and then I destroyed the
19 notes.

20 Q Oh, that's your procedure?

21 A In every report I write, yes.

22 Q Destroying your notes?

23 A It's too much to keep. I didn't record it, you
24 know by auditory, or I didn't record it in any other manner.

25 Q If President Nixon only knew you.

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1 JUDGE SIPPEL: Well --

2 THE WITNESS: Anything that --

3 JUDGE SIPPEL: -- don't drag him into it. I think
4 that's enough about this. That's the way her procedure is.

5 Notes --

6 MR. JACOBS: Okay.

7 JUDGE SIPPEL: -- typed, throw them out.

8 MR. JACOBS: I'd now like to turn to what my
9 questions were going to be originally.

10 JUDGE SIPPEL: You mean these just were off the
11 cuff?

12 MR. JACOBS: Yes, isn't that impressive. Okay.

13 JUDGE SIPPEL: Back to the script.

14 BY MR. JACOBS:

15 Q Dr. Weitl, you are a licensed psychologist in
16 Missouri and a licensed clinical psychologist in Illinois?

17 A Yes.

18 Q You're about 50 years old?

19 A Yes, a little over.

20 Q And received your Doctorate of Clinical Psychology
21 degree in 2002 after about ten years of study?

22 A Yes, correct.

23 Q Is that the regular length of time to receive that
24 degree or were there gaps in your studies?

25 A No, that was the time it took to finish that

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1 degree, ten years.

2 Q In the Ethical Principles of Psychologists and Code
3 of Conduct, 2010 Edition, Section 901, it states: Bases for
4 assessments, psychologists base the opinions contained in
5 their recommendations, reports and diagnostic, or evaluation
6 statements, including forensic testimony, on information and
7 techniques sufficient to substantiate their findings.

8 And Section 2.04(b) states: Psychologists provide
9 opinions of the psychological characteristics of individuals
10 only after they have conducted an examination of the
11 individuals adequate to support their statements or
12 conclusions.

13 Is it your testimony that --

14 JUDGE SIPPEL: Why don't you ask the witness if
15 she's familiar with those provisions?

16 BY MR. JACOBS:

17 Q Are you familiar with those provisions?

18 A Yes.

19 Q Is it your testimony now that your 90-minute
20 interview of Mr. Rice, plus reading the documents that you
21 mentioned earlier, was sufficient to meet this standard of
22 substantiating your recommendations?

23 A Yes.

24 Q Are you a member in good standing of the American
25 Psychological Association?

1 A I was until two years ago. I stopped my membership
2 because it was expensive.

3 Q Well, I believe that while you were a member
4 anyway, you were required to follow the ethical standards of
5 the organization?

6 JUDGE SIPPEL: Well, you have to ask her that
7 question. It's not -- your belief is irrelevant. But, is
8 that true, that as a member she had these requirements.

9 BY MR. JACOBS:

10 Q When you were a member, were you required to follow
11 the ethical standards of that organization?

12 A Yes, but I would say that, even not being a member,
13 I still follow the ethical guidelines of the American
14 Psychological Association.

15 Q Has anyone over the years filed an ethics or other
16 complaint against you with the APA or any federal or state
17 court?

18 A No.

19 Q Are you a member of the Association for the
20 Treatment of Sexual Abusers?

21 A Yes.

22 Q Do they have a set of ethics that you have to
23 follow?

24 A Yes.

25 Q Is there a difference between treating a sexual

1 offender, either individually or in a group, and evaluating
2 a sexual offender?

3 A Yes, but the relationship is different.

4 Q What tools or techniques do you use in treatment
5 that are different from an assessment?

6 A I'm sorry, can you say that again?

7 Q What tools or techniques do you use in treatment
8 that are different from making an assessment?

9 A They're kind of like apples and oranges. In
10 treatment, my goal is to set treatment goals and to provide
11 therapy. As an evaluator, my job is to answer the question
12 being asked of me, whatever that question may be and offer my
13 professional opinion based on the diagnostic question. So I
14 don't know what you mean by tools.

15 Q Okay. What is the purpose of an assessment?

16 A It depends on the diagnostic question. What is
17 being asked? What's the question being posed to me about
18 this person?

19 Q Well in this case, the Bureau has asked you to do
20 a risk assessment, correct?

21 A Correct.

22 Q And what is the purpose of that? What do they want
23 to you to --

24 MR. OSHINSKY: Objection, Your Honor.

25 JUDGE SIPPEL: What?

1 MR. OSHINSKY: I'll withdraw my objection. Maybe
2 Mr. Jacobs can clarify what's he asking.

3 BY MR. JACOBS:

4 Q What did the Bureau ask you to do?

5 A To conduct an evaluation of Mr. Rice, to opine
6 whether or not he had been rehabilitated and his risk to re-
7 offend.

8 Q Is an assessment based on a careful review of risk
9 factors for future offending?

10 A I'm sorry. Can you say that again?

11 Q Is an assessment based on a careful review of risk
12 factors for future offending?

13 A In part, yes.

14 JUDGE SIPPEL: Why don't you just ask the question,
15 what steps did you take to reach your conclusions in this
16 assessment, assignment that you were given.

17 MR. JACOBS: Well, I think my question does that.

18 BY MR. JACOBS:

19 Q What are some of the standard risk factors to be
20 considered in doing an assessment?

21 A We follow the research, the literature. There's
22 been probably 30 to 40, maybe more, factors identified in men
23 who re-offend. They followed a group of men and there's been
24 several meta analyses that has examined that data, and we use
25 those factors and we examine and see if any of those factors

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1 apply to the client we're evaluating.

2 Q And how do you determine whether the risk factor
3 under review is present or absent?

4 A You look at his history, you ask him, you look at
5 the records.

6 Q Do you use any tests to conduct a risk assessment?

7 A The Static-99. There's probably ten other kinds
8 of actuarial scores that are used that aren't as popular or
9 frequently used. The Static-99 is pretty much the standard.

10 Q What about the Abel test?

11 A That is conducted prior to an individual going into
12 treatment, not as part of an assessment.

13 Q So basically you're looking at history to predict
14 the future occurrence of behavior?

15 A Yes, and using the research that shows us what kind
16 of people re-offend.

17 Q And you believe that that meets the ethical
18 requirement for an adequate foundation for a professional
19 opinion?

20 A Yes. I know it does.

21 Q Are you familiar with the research that suggests
22 that predicting future sexual offenses by a psychologist is
23 highly problematic?

24 A When using just clinical judgment instead of the
25 empirically based risk factors, it can be.

1 Q Now, let's look at what tests you administered to
2 Mr. Rice in your evaluation on December 2, 2015. Did you
3 administer any tests of your own?

4 A I'm not sure what you mean, tests of my own?

5 Q Did you do any testing of Mr. Rice on December 2nd?

6 A There are no tests -- are you talking about
7 psychological tests?

8 Q Well, like the Static-99. Did you do that?

9 A I did that, yes. Although that's done by file
10 material mostly so I may have even done that before but, no,
11 I think I did it after because of the date score sheet. But
12 yes, I did that.

13 JUDGE SIPPEL: Can we pick up the tempo a little
14 bit, Mr. Jacobs?

15 MR. JACOBS: I'm doing my best.

16 BY MR. JACOBS:

17 Q Static-99R test, you scored on March 10 and a
18 Static-2002-R test that you scored on March 10?

19 A Okay, so I probably did them later when I was
20 writing a report.

21 JUDGE SIPPEL: What year would that be?

22 THE WITNESS: 2016.

23 MR. JACOBS: Now those two static tests are not
24 actually real -- I mean they are static, meaning what?

25 THE WITNESS: Unchangeable, historical.

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1 BY MR. JACOBS:

2 Q Did your Doctor of Psychology program include
3 assessment training?

4 A Very much so, yes.

5 Q What are the standard tests that you have used in
6 the best practice model for doing assessments?

7 A The ones I used on Mr. Rice. The research has not
8 identified any other tests that give us any information about
9 risk. The MMPI doesn't give us any information about risk.

10 Q Are you qualified to administer the Rorschach?

11 A I would say I am qualified because I have had two
12 courses on it, but I haven't done enough of it since then to
13 say that I am -- I would have to refresh myself with either
14 a course or some training because it's just been, time has
15 passed.

16 Q So you didn't administer the Rorschach test to Mr.
17 Rice?

18 A It's a subjective examination. It would not have
19 given me any information about his risk.

20 Q Are you qualified to administer the Abel Assessment
21 for sexual interests?

22 A No. Dr. Abel does that training. I have not
23 attended that. I don't have the equipment either, so --

24 Q So you don't know if Mr. Rice could or could not
25 have passed the Abel Test because you didn't measure his

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1 current sexual interests?

2 A Well, it's not a pass or fail test. It's a measure
3 of sexual arousal based on how long they look at pictures.
4 So I can say that I did not administer that test to see if he
5 is aroused to certain things, I did not.

6 Q As a professional licenses psychologist what is
7 your definition of being rehabilitated?

8 A Being rehabilitated in real life world it means
9 bringing the person back to where they started. It means to
10 get them functioning at an appropriate level again, but in
11 psychology sometimes we don't have that starting point.

12 So I think rehabilitation is more have we gotten
13 them from the place of injury, with Mr. Rice we would say his
14 conviction and incarceration, has he taken that instance and
15 made improvements and changes that reflect improvements and
16 changes.

17 Fix, I think is the word that comes to mind, but
18 I don't like using that with people.

19 MR. JACOBS: How about the concept that in order
20 to be held responsible one first has to be competent and then
21 to make an informed choice of action depending on the
22 consequences of that choice or ignoring the consequences
23 attached?

24 MR. OSHINSKY: Your Honor, I would ask Mr. Jacobs
25 to clarify what that question is in reference to. He is

1 saying how about the concept of this, he is not relating it
2 to anything.

3 JUDGE SIPPEL: Sustain the objection. Go ahead.
4 You're getting into relevancy and not abstractions.

5 MR. JACOBS: In measuring rehabilitation how do you
6 understand the concept of making choices as part of it?

7 JUDGE SIPPEL: We already covered that with the
8 objection.

9 MR. JACOBS: All right. I thought I cleaned it up.

10 JUDGE SIPPEL: No, you didn't. I mean with respect
11 to Mr. Rice --

12 MR. JACOBS: Right.

13 JUDGE SIPPEL: -- you can ask her what she did, the
14 Dr. Weitzl what she did, but with respect to abstractions I
15 don't think --

16 MR. JACOBS: What questions did you ask Mr. Rice
17 about his choices since incarceration?

18 THE WITNESS: I'm having trouble understanding what
19 you mean, his choices. It's too general. I can't -- I don't
20 -- Are you talking about -- I don't understand the question,
21 I'm sorry.

22 JUDGE SIPPEL: Let's move on to something else.

23 MR. JACOBS: What other people did you interview
24 about Mr. Rice's current life, choices, activities, and
25 memberships?

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1 JUDGE SIPPEL: Well, you don't start off by asking
2 the question of when did you stop beating somebody. What did
3 she -- The question should be did she talk to anybody about
4 Mr. Rice.

5 MR. JACOBS: Did you talk to anyone about Mr.
6 Rice's current life, choices, activities, and memberships?

7 THE WITNESS: No. I had no conversations with
8 anyone about his life choices.

9 MR. JACOBS: Or activities?

10 THE WITNESS: Well, I talked to him about his
11 activities.

12 MR. JACOBS: Apart from Mr. Rice?

13 JUDGE SIPPEL: Anyone else?

14 THE WITNESS: No.

15 MR. JACOBS: And you spoke to Tammie Gremminger
16 though?

17 THE WITNESS: We just discussed that MOSOP report.

18 MR. JACOBS: Why did you not interview other
19 people?

20 JUDGE SIPPEL: No, that's not a good question.
21 That's not a good question. She does not have to sit here and
22 tell us why she didn't do something, the Doctor doesn't have
23 to do that.

24 MR. JACOBS: How much of your report focuses on the
25 years between leaving prison and the current time?

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1 THE WITNESS: Probably not a whole lot, because I
2 didn't have a lot of information about that.

3 BY MR. JACOBS:

4 Q But wasn't the focus of the assessment to be to
5 assess his progress or rehabilitation since he left
6 incarceration?

7 A Yes, but Mr. Rice wasn't having problems with his
8 activities in the community when he was offending. He was
9 running his business, he was -- On the appearance from the
10 outside he looked like he was a fine, upstanding citizen.
11 That's the problem.

12 Q You do not have a Ph.D.?

13 A It's called a PsyD, P-S-Y-D, correct.

14 Q Did you ever apply for admission to a Ph.D.
15 program?

16 A I did.

17 MR. OSHINSKY: Objection, Your Honor. I don't see
18 what relevance that has.

19 JUDGE SIPPEL: Yes, she's -- You got a qualified
20 expert witness here, I don't see the relevance at all of what
21 you are asking.

22 MR. JACOBS: Do you consider yourself an expert on
23 child sexual abuse?

24 THE WITNESS: No.

25 BY MR. JACOBS:

1 Q You are currently self-employed?

2 A Yes.

3 Q How much have you been paid by the Federal
4 Communications Commission for your April 3, 2017, assessment?

5 A I am still working to get the Government to issue
6 money.

7 Q Good luck.

8 A It happens a lot in my line of business. It's not
9 the first time I have waited for the Government to send a
10 check.

11 Q How much are you supposedly going to be paid by the
12 Commission for today's testimony?

13 A You know, I can't even remember. It was I want to
14 say \$1500 to \$2000. I can't -- That's with everything. It's
15 been awhile since I billed that out, I don't remember.

16 JUDGE SIPPEL: When you say that's with everything
17 do you mean the expense of getting here and hotel and all that
18 stuff?

19 THE WITNESS: Right.

20 MR. JACOBS: You began your practice your
21 professional work in Missouri, but then you moved to Alton,
22 Illinois, correct?

23 THE WITNESS: Correct.

24 MR. JACOBS: And why did you move?

25 JUDGE SIPPEL: And what's the relevance of that?

1 MR. JACOBS: I am trying to get a flavor for what
2 Dr. Weitl's practice is.

3 JUDGE SIPPEL: This is -- Cross examination is not
4 to get a flavor. You show her a document, or you show the
5 Doctor a document, you ask a matter of fact question and go
6 on from there. And a fact question, of course, would include
7 what she says about her opinion, since we have an expert.

8 MR. JACOBS: Would you consider yourself to be a
9 forensic psychologist?

10 THE WITNESS: Yes.

11 BY MR. JACOBS?

12 Q Tell us what that means?

13 A It means that I communicate psychology to the
14 court, kind of translating psychological terms to legal terms
15 and offering my opinion to the court in a language they can
16 understand.

17 Q And what special training, if any, did you have to
18 qualify as a forensic psychologist?

19 A Aside from trainings at conferences most of it just
20 came from experience. I just hit the ground running and was
21 testifying two or three times a month as soon as I got
22 started.

23 MR. JACOBS: What caused you to leave your job in
24 Missouri and come to Alton?

25 JUDGE SIPPEL: Again, it's not relevant to

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1 anything.

2 MR. JACOBS: How many cases have you done this past
3 year where you have been asked to conduct an assessment on a
4 convicted sex offender?

5 JUDGE SIPPEL: Are you talking about 2016?

6 MR. JACOBS: No, this --

7 JUDGE SIPPEL: 2017?

8 MR. JACOBS: Well, in the last 12 months.

9 THE WITNESS: I would say over 300. I have done
10 over 300 evaluations in the last six months.

11 BY MR. JACOBS:

12 Q Do you follow the same examination and evaluation
13 procedures with all of those clients or was the work with Mr.
14 Rice unusual in its brevity?

15 A It was typical, but the work I do of men that have
16 not been civilly committed who have years of treatment records
17 that I have to go through, so it wasn't as comprehensive as
18 those evaluations, but it was typical for what I do in
19 Missouri.

20 Q Are you familiar with the Journal of Interpersonal
21 Violence?

22 A I would say yes. It's one of the ones I read when
23 there is an article that has to do with sex offenders.

24 Q Do you subscribe to it?

25 A No.

1 Q What journals do you subscribe to and read on a
2 regular basis?

3 A As a member of the Association of the Treatment of
4 Sex Abusers I have access to Sage Journals, and I don't know,
5 I would say there is probably 30, 25 to 30 journals I have
6 access to. I don't know how many there are.

7 Q Who is Andrew Harris?

8 A He is an evaluator from Canada, or not an
9 evaluator, excuse me, he is a researcher from Canada.

10 Q At your deposition in September I handed you an
11 article co-authored by him entitled "High Risk Offenders May
12 Not be High Risk Forever" published online in March 2014. You
13 have looked at that article, correct?

14 A Yes.

15 Q What is your opinion of their conclusions?

16 A I would say that some sex offenders are not high
17 risk forever.

18 Q Do you know how old Mr. Rice is?

19 JUDGE SIPPEL: You just told -- You just answered
20 that for her, 76 years old --

21 (Simultaneous speaking)

22 MR. JACOBS: Almost, right. On June 30th we can
23 give him a cake I guess. Did any of his offenses include
24 violence or physical coercion?

25 THE WITNESS: Yes.

1 BY MR. JACOBS:

2 Q Yes?

3 A Yes.

4 Q Is that --

5 A He is convicted of deviant sexual assault, six
6 counts.

7 Q No.

8 A Sodomy is also a violent sex offense.

9 MR. JACOBS: Well, Your Honor, those views conflict
10 with conventional wisdom, but --

11 MR. OSHINSKY: Your Honor, I object.

12 JUDGE SIPPEL: You asked the question, she answered
13 the question.

14 MR. JACOBS: All right.

15 JUDGE SIPPEL: Think before you ask the question,
16 not afterwards. Do you have much more?

17 MR. JACOBS: Yes.

18 JUDGE SIPPEL: Well, this is going at an awfully
19 slow pace.

20 MR. JACOBS: I'm sorry, Your Honor. This is the
21 principle witness in this case.

22 JUDGE SIPPEL: I know that, but, you know, you are
23 supposed to have the -- come into the courtroom prepared to
24 ask questions.

25 MR. JACOBS: Well, what do I -- How can I --

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1 JUDGE SIPPEL: You are reading and then you are
2 asking. This is not the time to prepare. This is the time
3 to ask questions.

4 MR. JACOBS: I wrote these questions, but I have
5 to read them --

6 JUDGE SIPPEL: You're not asking them.

7 MR. JACOBS: What offenses has Mr. Rice committed
8 since 2002?

9 THE WITNESS: He hasn't been arrested for any
10 offenses since 2002.

11 JUDGE SIPPEL: Next question.

12 MR. JACOBS: In your report, your direct testimony,
13 you offer the final opinion on page 22 that "there is a high
14 risk that Mr. Rice will continue to engage in sexually deviant
15 behavior and, therefore, remains a risk to young boys and
16 their families and his community."

17 Please tell us the scientific basis for how you
18 determined that he is a high risk for future offending.

19 JUDGE SIPPEL: Well why don't you just ask her the
20 reasons that she came to that conclusion and, you know, then
21 we can go down the road on that one, but --

22 MR. JACOBS: That's what the question was.

23 JUDGE SIPPEL: -- you said science --

24 MR. JACOBS: Scientific basis for your
25 determination.

1 JUDGE SIPPEL: All right, I'm not going to argue
2 this.

3 (Simultaneous speaking)

4 THE WITNESS: I believe that's in my report, if I
5 could look at my report. I don't know where it is.

6 MR. JACOBS: Exhibit 1.

7 THE WITNESS: Well, that's my direct testimony.
8 I don't know if they are listed in there.

9 MR. OSHINSKY: Here is the report.

10 THE WITNESS: Thank you.

11 JUDGE SIPPEL: Is that an exhibit someplace?

12 THE WITNESS: I'm sure it is, Your Honor.

13 JUDGE SIPPEL: I'm trying to point it out.

14 THE WITNESS: Do you just want me to go through and
15 tell you what I have already written in my report?

16 MR. JACOBS: When you say "report" what document
17 are you referring to?

18 THE WITNESS: The evaluation I conducted on, that
19 I submitted on March 14, 2016.

20 JUDGE SIPPEL: Where is it?

21 MR. JACOBS: Was that in the record?

22 JUDGE SIPPEL: What exhibit are you talking about?

23 MR. OSHINSKY: Well, Your Honor, there is both a
24 report that Dr. Weitzl identified and her direct testimony.

25 JUDGE SIPPEL: She just referred -- I know, I want

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1 the report.

2 (Simultaneous speaking)

3 JUDGE SIPPEL: The report, the report, the report.

4 MR. OSHINSKY: The report is -- just a moment, Your
5 Honor. It's either --

6 MR. KNOWLES-KELLETT: Six, Tab 6.

7 MR. OSHINSKY: Thank you.

8 MR. JACOBS: Is it --

9 JUDGE SIPPEL: She is taking my copy which is wet
10 because I had it on the --

11 (Simultaneous speaking)

12 THE WITNESS: I found it, it's Tab 6.

13 JUDGE SIPPEL: Thank you.

14 MR. JACOBS: Yes, okay.

15 JUDGE SIPPEL: Nineteen and 21.

16 MR. OSHINSKY: Mr. Jacobs, do you want to ask about
17 the report not the direct testimony, is that correct?

18 JUDGE SIPPEL: No, he asked a question about what
19 she considered and the Doctor is trying to tell him that from
20 what she wrote in her report.

21 MR. OSHINSKY: Thank you, Your Honor.

22 THE WITNESS: So on page 19 I list the scientific
23 risk factors that make him a high risk and then I discuss the
24 possible protective factors.

25 JUDGE SIPPEL: All right, just stick with the

1 question that you were asked.

2 THE WITNESS: Okay. Do you want me to just read
3 it?

4 JUDGE SIPPEL: No, no, you don't have to do
5 anything. You've answered the question.

6 THE WITNESS: Thank you.

7 JUDGE SIPPEL: And we are not going to read those
8 for the record.

9 THE WITNESS: Thank you.

10 JUDGE SIPPEL: We've got the page and the
11 reference, that's the answer. Next question.

12 MR. JACOBS: Is it your opinion that sex offenders
13 never are rehabilitated?

14 THE WITNESS: No, that's not my opinion.

15 JUDGE SIPPEL: Next question.

16 MR. JACOBS: I'd like to focus on two diagnoses
17 that you gave to Mr. Rice. The first, Pedophilic Disorder,
18 provided that there is evidence for recurrent behaviors
19 persisting for six months, according to the DSM 5.

20 THE WITNESS: Yes.

21 MR. JACOBS: That's the --

22 JUDGE SIPPEL: Are you familiar with the DSM 5?

23 THE WITNESS: Yes, Your Honor.

24 JUDGE SIPPEL: Well, now, I'm not working for you,
25 Mr. Jacobs, come on.

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1 MR. JACOBS: Where in your records will I find
2 documentation that Mr. Rice currently experiences sexual urges
3 for young boys?

4 THE WITNESS: It is inherent in the nature of the
5 disorder. It's a sexual attraction, a sexual interest, hence
6 a sexual orientation, it doesn't go away.

7 JUDGE SIPPEL: Okay, she has --

8 MR. JACOBS: It lasts forever?

9 THE WITNESS: Correct.

10 JUDGE SIPPEL: She just -- The witness just said
11 that.

12 MR. JACOBS: Well, I wanted --

13 JUDGE SIPPEL: Well if doesn't go away it lasts
14 forever.

15 MR. JACOBS: Well I added the "it lasts forever."

16 JUDGE SIPPEL: I know it did. I don't want your
17 testimony, I want the witnesses testimony.

18 MR. JACOBS: That was a question.

19 JUDGE SIPPEL: That -- Well, it was an unnecessary
20 question.

21 MR. JACOBS: Does it last forever?

22 JUDGE SIPPEL: I'm trying to move this along.
23 Please.

24 MR. JACOBS: Aren't you required by your training,
25 your expertise, and your professional standards to indicate

1 that this is a diagnosis from 1991 with no current evidence
2 of its presence or that it's in remission?

3 JUDGE SIPPEL: Wait a minute. That question is
4 about five questions in one. Just ask her the conclusion that
5 you are asking. Is it -- Why -- Ask her did she do those
6 things, did she not do those things in her report.

7 MR. JACOBS: Is there any indication in the record
8 evidence since 1991 to support that diagnosis?

9 JUDGE SIPPEL: What's "that diagnosis?"

10 MR. JACOBS: Pedophilic Disorder.

11 THE WITNESS: The answer is the same. It's a
12 chronic lifelong disorder. He demonstrated it behaviorally
13 in 1991. He continues, in my opinion, based on this diagnosis
14 to have the urges and fantasies. He may or may not have acted
15 out on them, only he knows that.

16 MR. JACOBS: Do you believe that once a pedophile
17 always a pedophile?

18 THE WITNESS: It's not my belief, it's the
19 description of the disorder in the DSM and by experts in the
20 field.

21 MR. JACOBS: The second diagnosis I would like to
22 be --

23 JUDGE SIPPEL: What is it? What's the diagnosis?
24 Where are you --

25 MR. JACOBS: Narcissistic Personality Disorder.

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1 JUDGE SIPPEL: Are you familiar with that?

2 THE WITNESS: Yes, Your Honor.

3 JUDGE SIPPEL: Again, that's a DSM listed --

4 THE WITNESS: Yes, sir. Yes.

5 MR. JACOBS: The criteria require five specifics
6 out of nine to qualify for this diagnosis and can you tell us
7 which of those nine you have found in terms of Mr. Rice?

8 THE WITNESS: Well, I don't have the manual in
9 front of me and I didn't number them in my report.

10 JUDGE SIPPEL: We can get you one right now.

11 THE WITNESS: Okay.

12 DR. DUNCAN-HIVELY: May I approach the witness,
13 Your Honor?

14 JUDGE SIPPEL: Yes. Yes, please.

15 DR. DUNCAN-HIVELY: Dr. Weitl, my copy.

16 THE WITNESS: Thank you.

17 DR. DUNCAN-HIVELY: Yes.

18 JUDGE SIPPEL: Okay. While you are searching for
19 that, Doctor, this is page 21 of 21 of your report, the second
20 paragraph you talk about specific pedophilic disorder-
21 hebephilia, what's hebephilia?

22 THE WITNESS: It's the sexual interest in children
23 between the ages of 14 and I believe 17. So it's post-
24 pubescent, before puberty has ended.

25 JUDGE SIPPEL: Thank you.

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1 THE WITNESS: You're welcome.

2 Okay. It indicates that he meets five of the following.
3 Number 1, he has a grandiose sense of self-importance,
4 exaggerates achievements and talents, expects to be
5 recognized, is superior without --

6 JUDGE SIPPEL: Wait just a minute, Doctor.

7 THE WITNESS: Oh, I'm reading from --

8 JUDGE SIPPEL: I know you are, but does -- I am
9 trying to save time here.

10 THE WITNESS: Okay, good.

11 JUDGE SIPPEL: Do you have the DSM or -- Do you
12 have the reference that the Doctor is referring to?

13 MR. JACOBS: Yes.

14 JUDGE SIPPEL: Right in front of you? Okay. Now
15 ask a question about it. The Doctor has it, you have it, it's
16 even, ask the question.

17 MR. JACOBS: All right. The question is to
18 describe at least five of the factors that you found Mr. Rice
19 to still have, and I think Dr. Weitl was in the process of
20 numbering those.

21 JUDGE SIPPEL: I know, but we don't have to hear
22 what we can read. Maybe you want to ask her to explain how
23 she used that definition to conclude what she concluded. We
24 don't have to read it, we all know it. Well, we don't know
25 it, but we have access to it.

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1 MR. JACOBS: Your Honor, I'm just asking which of
2 those nine factors she found in --

3 JUDGE SIPPEL: If any.

4 MR. JACOBS: If any, yes.

5 (Simultaneous speaking)

6 JUDGE SIPPEL: If you don't identify the nine
7 factors you don't know what kind of answer you are going to
8 get. I don't -- This is 101 Cross Examination. We know its
9 subject matter, everybody has what you have, now ask her what
10 she -- with respect to that, that definition, what did she
11 consider. I'm sorry, what did the Doctor consider.

12 MR. JACOBS: All right. The nine specifics in DSM
13 5 are grandiose sense of self-importance, fantasy of unlimited
14 success, only understood by high status people, requires
15 excessive admiration, sense of entitlement, takes advantage
16 of others, lacks empathy, envious of others, shows arrogant,
17 haughty behaviors.

18 Now which, if any, of those nine items have you
19 identified as applying to Mr. Rice?

20 THE WITNESS: I think they are listed, but maybe
21 they are not. He has a grandiose sense of self-importance,
22 exaggerates achievements and talents, expects to be recognized
23 as superior, he is preoccupied with fantasies of unlimited
24 success, power, brilliance, believes he or she is special and
25 unique, can only be understood by people of high status,

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1 requires excessive admiration, has a sense of entitlement,
2 interpersonally exploitative, lacks empathy, I don't know that
3 he is envious of others, shows arrogant, haughty behavior.

4 So he has eight of the nine when he only needs five
5 of them to meet the criteria.

6 JUDGE SIPPEL: Okay, you have answered him. Next
7 question.

8 MR. JACOBS: And, again, you applied the diagnosis
9 as if it were a current condition?

10 THE WITNESS: Correct.

11 MR. JACOBS: And what secondary source people or
12 materials did you use to establish these requirements?

13 JUDGE SIPPEL: For the secondary?

14 MR. JACOBS: The ones that she identified as
15 showing that he has a narcissistic --

16 JUDGE SIPPEL: And she only has to find five of
17 those. Anybody using this can only -- If you find five,
18 that's what he is, so what did you want to know?

19 MR. JACOBS: What secondary source people or
20 materials --

21 JUDGE SIPPEL: Secondary source, you mean what
22 other -- Aside from what the definition is --

23 MR. JACOBS: People.

24 JUDGE SIPPEL: People? How about other texts?

25 MR. JACOBS: Or materials. I said what secondary

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1 source people or materials did you use.

2 JUDGE SIPPEL: Well --

3 THE WITNESS: Well, his personality characteristics
4 are described in the record all kinds of places. There was
5 also some indications on the MMPI testing that I was given,
6 but I would say the majority of it was based on my
7 interactions with him and what I read in the record about him,
8 statements he made.

9 MR. JACOBS: What testing did you use?

10 THE WITNESS: The MMPI is a personality test.

11 MR. OSHINSKY: She said she pulled from here.

12 MR. JACOBS: I'm sorry, I didn't hear that.

13 THE WITNESS: The MMPI, it's a Multiphasic
14 Personality Test in Minnesota. But there is nothing in the
15 criteria that says I need a secondary. I have been trained
16 and have experience in diagnosing personality disorders.

17 JUDGE SIPPEL: Next question.

18 DR. DUNCAN-HIVELY: If you can ask her where on the
19 MMPI she found Narcissistic Personality Disorder.

20 MR. JACOBS: You said that you relied on the MMPI,
21 right?

22 THE WITNESS: In part, yes.

23 MR. JACOBS: And can you show us where in that
24 there is a description of the narcissistic --

25 THE WITNESS: I don't believe it's in evidence yet.

1 JUDGE SIPPEL: Do we have it in -- Is it going to
2 be introduced or do we have it?

3 DR. DUNCAN-HIVELY: I'm sorry?

4 JUDGE SIPPEL: The MMPI?

5 MR. OSHINSKY: Your Honor --

6 DR. DUNCAN-HIVELY: I have the material. She is --

7 MR. OSHINSKY: We are going to actually address
8 that. I hadn't intended on doing it right now.

9 JUDGE SIPPEL: Well why don't we mark it and get
10 it into evidence and let the witness tell us what it's about.

11 MR. OSHINSKY: Your Honor, it actually involves
12 some matters I guess where we should go off the record and
13 speak to you. It deals with some confidentiality issues.

14 JUDGE SIPPEL: Attorney/client or --

15 MR. OSHINSKY: No.

16 THE WITNESS: It's testing results.

17 MR. OSHINSKY: His testing results.

18 JUDGE SIPPEL: What's wrong with talking about it
19 on the record?

20 THE WITNESS: I don't own them. I think if Dr.
21 Duncan wants to admit them it's fine.

22 JUDGE SIPPEL: Dr. Duncan, is there something you
23 have that we don't have?

24 DR. DUNCAN-HIVELY: Sorry, Your Honor. We
25 submitted all of our material to Dr. Weigl voluntarily, and

1 that included the printout of the MMPI. She in her response
2 just indicated she found traces of Narcissistic Personality
3 Disorder in that test.

4 So I was just giving it to Mr. Jacobs to find out
5 where she found that, because we didn't.

6 MR. OSHINSKY: Your Honor -- Oh, I'm sorry.

7 JUDGE SIPPEL: What? No, go ahead.

8 MR. OSHINSKY: If the MMPI is at issue then, of
9 course, we will produce a copy of it.

10 MR. KNOWLES-KELLETT: No, he should produce it.

11 THE WITNESS: They've got --

12 MR. OSHINSKY: They -- You do have the --

13 JUDGE SIPPEL: The only thing that needs to be
14 done, okay, is that Dr. Weigl has to look at what Dr. Duncan
15 had provided to her.

16 MR. OSHINSKY: Dr. Duncan, if you could provide a
17 copy of the raw test result then that's fine.

18 JUDGE SIPPEL: No, what -- Just -- I'm sorry. It's
19 what you have. I don't care you have to go out --

20 DR. DUNCAN-HIVELY: It's right there.

21 JUDGE SIPPEL: It's right here? It's right here?

22 THE WITNESS: Mark it as an exhibit?

23 JUDGE SIPPEL: Well, we'll take care of that, yes.

24 THE WITNESS: Okay.

25 JUDGE SIPPEL: Yes, but just, yes, hand it up.

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1 MR. JACOBS: This is the only copy we have.

2 THE WITNESS: I have one.

3 JUDGE SIPPEL: That's all right. That's all right.

4 You have one?

5 THE WITNESS: Yes, sir.

6 JUDGE SIPPEL: There you go. There you go.

7 THE WITNESS: I was just concerned that it wasn't
8 part of the record yet.

9 DR. DUNCAN-HIVELY: And that's what she relied on,
10 that she just testified to.

11 JUDGE SIPPEL: Okay. Now would you read -- We're
12 just identifying what that is.

13 THE WITNESS: Yes. This is a report about Mr.
14 Rice's personality testing, the MMPI.

15 JUDGE SIPPEL: Okay, that's it.

16 THE WITNESS: There are statements in here --

17 JUDGE SIPPEL: Wait, wait, that's it, just identify
18 what it is.

19 THE WITNESS: Sorry.

20 JUDGE SIPPEL: Okay. Mr. Oshinsky, do we have a
21 number for this?

22 MR. OSHINSKY: No, Your Honor, but they are --
23 (Simultaneous speaking)

24 THE WITNESS: No, it's not ours.

25 JUDGE SIPPEL: You want them to put it in?

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1 MR. OSHINSKY: Yes, if --

2 JUDGE SIPPEL: Okay.

3 MR. OSHINSKY: It's actually, it should be Mr.
4 Jacobs' exhibit.

5 MR. JACOBS: So our question, all right, now we
6 have the exhibit --

7 JUDGE SIPPEL: Just a minute. If you are
8 questioning one you have to put it into evidence and it has
9 to get an exhibit number.

10 MR. JACOBS: Okay. So what would be the --

11 JUDGE SIPPEL: It's your case, your exhibits, you
12 come up with the number.

13 MR. JACOBS: Exhibit 4, is that where we are,
14 reporter?

15 MR. OSHINSKY: Correct.

16 MR. KNOWLES-KELLETT: Exhibit 4.

17 JUDGE SIPPEL: It's Exhibit 4. Mark it as Exhibit
18 4 and we can make the copies later.

19 (Whereupon, the above-referred to document was
20 marked as Lake Broadcasting Exhibit No. 4 for identification.)

21 JUDGE SIPPEL: All right.

22 MR. JACOBS: All right.

23 JUDGE SIPPEL: So what you have before you is a
24 document that has just been marked Rice Exhibit 4 and you tell
25 us how many pages is it, do you see, doesn't look too long.

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1 THE WITNESS: Seven.

2 JUDGE SIPPEL: Okay. The question, ask the
3 question.

4 MR. JACOBS: The question is where in the report,
5 if anyplace --

6 JUDGE SIPPEL: Exhibit 4.

7 MR. JACOBS: -- of Exhibit 4 is there discussion
8 of Narcissistic Personality Disorder?

9 THE WITNESS: In the first paragraph on page 3.

10 JUDGE SIPPEL: Can you read it, please?

11 THE WITNESS: "Others would tend to describe his
12 close relationships as narcissistic and self-indulgent."

13 JUDGE SIPPEL: Next question.

14 DR. DUNCAN-HIVELY: Is that a disorder?

15 JUDGE SIPPEL: Is that a disorder?

16 THE WITNESS: It's evidence of narcissistic traits
17 in his personality. I didn't base my diagnosis on this report
18 alone.

19 JUDGE SIPPEL: So a disorder -- To come to a
20 disorder conclusion you would have to do more than just --

21 THE WITNESS: Right, just one report.

22 JUDGE SIPPEL: -- see it in a paragraph?

23 THE WITNESS: Correct.

24 JUDGE SIPPEL: Next question.

25 MR. JACOBS: Your hebephilia diagnosis on page 14

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1 --

2 JUDGE SIPPEL: So we are finished with narcissism?

3 MR. JACOBS: Yes.

4 JUDGE SIPPEL: Thank you.

5 MR. JACOBS: On page 14 of your report, that's
6 Paragraphs 38 and 39, they seem to be based on hearsay
7 unsubstantiated claims that Mr. Rice admitted molesting a
8 large number of underage boys for many years, is that correct?

9 THE WITNESS: It's a statement Mr. Rice is noted
10 as saying in the record, correct.

11 BY MR. JACOBS:

12 Q But those unsubstantiated and unpursued criminal
13 claims were made 16 or more years ago, how can they be given
14 credence today?

15 A Just as Pedophilic Disorder is a lifelong disorder.
16 The sexual attraction in hebephilia is also lifelong. The
17 sexual attraction to children age 13 and under and age 13 and
18 over is a sexual orientation. He can manage that, but it
19 won't go away.

20 Q page 15, your alcohol use disorder diagnosis, there
21 seems to be no substantiation that there is an ongoing
22 problem, is there?

23 A I could have added in a remission or -- I could
24 have added in remission.

25 Q All right. So at least that item is in remission?

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1 A I would say there is no evidence that it's not,
2 correct.

3 MR. JACOBS: But, you know, frankly, I mean
4 speaking as a layman these diagnoses with your conclusions
5 that they are lifelong problems make me wonder what is the
6 reason to have this rehabilitation?

7 MR. OSHINSKY: Your Honor, I have to object.

8 JUDGE SIPPEL: Objection sustained.

9 MR. JACOBS: Turning to Paragraph 3 --

10 JUDGE SIPPEL: Of what?

11 MR. JACOBS: Of your testimony.

12 JUDGE SIPPEL: That's the Bureau's Exhibit 1,
13 Paragraph 3?

14 MR. JACOBS: Yes.

15 JUDGE SIPPEL: Okay. I hope you have a specific
16 question about this.

17 MR. JACOBS: You expressed concern that Mr. Rice
18 is requesting to be placed in exactly the same position as he
19 held previously at the time of his offenses, "a radio station
20 owner and operator who uses his station to groom
21 impressionable young boys through the promise of jobs."

22 Please tell us what you know about the specific
23 type of radio station that Mr. Rice is seeking here, an FM
24 translator station?

25 THE WITNESS: I don't think that's relevant to my

1 statement. My statement is is that he used that position,
2 whether it's a translator station or he owns the station and
3 it's, you know, he's in there interviewing DJs, whatever, my
4 point is is that it was his status as being associated with
5 the radio business that he uses to groom children, not
6 necessarily what type of license he has.

7 MR. JACOBS: But --

8 JUDGE SIPPEL: Don't argue about it, that's her
9 answer. That's the Doctor's answer. It's like an attractive
10 nuisance. That's the answer, let's go.

11 MR. JACOBS: Mr. Rice is applying for an FM
12 translator station which is simply a piece of equipment the
13 size of a kitchen oven, which has no microphones --

14 JUDGE SIPPEL: I think the witness has already
15 offered her explanation, given her explanation, that that's
16 irrelevant for purposes of what might be attractive to a young
17 person.

18 It's the idea of having that this guy is a superman
19 because he is in radio, he is in communications.

20 MR. JACOBS: Well, my question is then how would
21 this be translated to the public when all he has is a piece
22 of equipment on a wall in a building with no studio, no
23 microphones, or nothing else.

24 JUDGE SIPPEL: No. I don't understand. You have
25 to explain what you mean by that. Can you restate that

1 question? How is it going to be available to the -- trailers
2 and --

3 (Simultaneous speaking)

4 MR. JACOBS: The notion is that his being a
5 licensee is a kind of attractive nuisance.

6 JUDGE SIPPEL: Well, that's just the term that I
7 used, but it's got nothing to do with how it's going to be
8 communicated.

9 MR. JACOBS: Isn't that what you are saying in your
10 --

11 JUDGE SIPPEL: Wait a minute. I want to be sure
12 you understand. We're talking about two different things.
13 I think what this witness is talking about is what I said and
14 the Doctor has acknowledged this.

15 The kids are going to be impressed with the fact
16 that he owns some kind of a communication system. They don't
17 care what kind it is. I mean they would be, of course, but,
18 no, the fact that he is in communications is a big deal to a
19 young kid if they have that interest. Right? Do you agree
20 with me?

21 THE WITNESS: Yes. Oh, sorry.

22 JUDGE SIPPEL: Do you agree, Doctor?

23 THE WITNESS: I do, yes.

24 JUDGE SIPPEL: All right. So you don't have to
25 worry about the public hearing about this or getting it

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1 transmitted out to the public. Are you with me?

2 MR. JACOBS: No. The --

3 JUDGE SIPPEL: All right --

4 MR. JACOBS: -- paradigm situation here, Your
5 Honor, is a station which has facilities and people come in
6 and they can broadcast, they can play around, they can do
7 anything they want.

8 I am trying to demonstrate that this has nothing
9 to do with any of that and that someone wouldn't even know
10 that Mr. Rice was a licensee.

11 JUDGE SIPPEL: That's got nothing to do with it.
12 That's got nothing to do with it. If he is in communications
13 and he has a station, that could be enough, not to use the
14 station for a tryst site.

15 This could get young people excited because they
16 think being in communications makes you big, powerful, and
17 something super-duper. Well, my words, but -- So I think
18 you'd better move on to something else. Did I paraphrase you
19 properly?

20 THE WITNESS: You did, sir, you did.

21 JUDGE SIPPEL: Oh, come on, Mr. Jacobs.

22 MR. JACOBS: Your Honor, I am going through these
23 things so that I don't have to say them.

24 JUDGE SIPPEL: Well, you -- Did you look at them
25 last night?

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1 MR. JACOBS: I looked at them this morning.

2 JUDGE SIPPEL: But you have --

3 MR. JACOBS: I'm trying to avoid duplication.

4 JUDGE SIPPEL: Don't worry about it, I'll tell you
5 if you are duplicating, just ask the question.

6 MR. OSHINSKY: Your Honor, I am wondering if Mr.
7 Jacobs has awhile to go maybe now would be a good time to take
8 a break for lunch.

9 MR. JACOBS: I don't have a lot more.

10 JUDGE SIPPEL: All right. Is the witness okay?

11 THE WITNESS: I can go for a little bit longer.

12 JUDGE SIPPEL: You tell us when you need to stop.

13 THE WITNESS: Okay. Like more than ten minutes or
14 15 minutes?

15 MR. JACOBS: That's what I think.

16 JUDGE SIPPEL: What do you think, ten --

17 MR. JACOBS: Ten, 15 minutes.

18 JUDGE SIPPEL: Well, I'll give you 15 minutes to
19 finish.

20 MR. JACOBS: According to Paragraph 2 of your
21 statement you were hired to give an expert opinion about Mr.
22 Rice being rehabilitated and you stated in Paragraph 2 you are
23 familiar with and had performed the risk assessment,
24 evaluations, and procedures recognized by local law
25 enforcement in the State of Missouri. What does that mean?

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1 THE WITNESS: It means that I am familiar with
2 Missouri's laws about sex offenses. I am familiar with their
3 treatment program. I am familiar with probation and parole.
4 I am familiar with the polygrapher that works in Missouri.

5 I have worked close with Mr. Mike Glass of the
6 Attorney General's Office for years. I understand how their
7 system works and what is considered risk and what is
8 considered rehabilitation.

9 MR. JACOBS: Originally when you worked in the
10 MOSOP program you were a gatekeeper as it were, am I correct?

11 MR. OSHINSKY: Your Honor, I would ask for a
12 clarification on what that means.

13 JUDGE SIPPEL: Clarify it, or rephrase it.

14 MR. JACOBS: In order to let people leave they had
15 to get your approval?

16 THE WITNESS: No.

17 JUDGE SIPPEL: Leave what? Before they leave
18 incarceration?

19 MR. JACOBS: Yes. No?

20 THE WITNESS: No. I evaluated men convicted of
21 violent sex offenses. If they met the criteria for civil
22 commitment then I forwarded that information on.

23 MR. JACOBS: Okay.

24 THE WITNESS: Just that group of men and women.

25 JUDGE SIPPEL: Somebody else makes the ultimate

1 decision?

2 THE WITNESS: Right.

3 MR. JACOBS: But you have also performed the
4 function of helping prosecution obtain initial convictions for
5 sexual offenses, is that correct?

6 JUDGE SIPPEL: Wait a minute, wait a minute.
7 That's way out of line. That's a big step. I mean I don't
8 think that's a fair question, one thing. Can you answer that
9 question?

10 THE WITNESS: I have never done that.

11 JUDGE SIPPEL: This is not what she's -- She is not
12 offered as a witness, that type of witness at all.

13 MR. JACOBS: Well, I'm trying to --

14 MR. KNOWLES-KELLETT: She has answered it, it's
15 done, right?

16 JUDGE SIPPEL: Well, yes, he's -- Let's keep
17 moving, please, please, please.

18 MR. JACOBS: I am inquiring whether you have
19 functioned as an opinion-giver before trial to help a
20 prosecutor obtain a conviction?

21 THE WITNESS: Never, not once.

22 JUDGE SIPPEL: Next question. Get out of that
23 subject completely, goodbye.

24 MR. JACOBS: Is part of your training to render
25 diagnoses for mental illness?

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1 THE WITNESS: Yes.

2 MR. JACOBS: You have a PsyD degree, not a Ph.D.
3 degree, can you please tell us the difference?

4 THE WITNESS: I believe when I first started I said
5 that PsyD is more a clinically-based degree where the Ph.D.
6 is more research oriented, more science.

7 JUDGE SIPPEL: It's been asked and answered. Go
8 on.

9 MR. JACOBS: Were you denied admission into a
10 regular program --

11 MR. OSHINSKY: Objection, Your Honor, and I object
12 --

13 (Simultaneous speaking)

14 JUDGE SIPPEL: Sustained, sustained, sustained.
15 If this is the best you can do, Mr. Jacobs, on your questions,
16 maybe we all can get a bite to eat. Mr. Jacobs, you are
17 testing, you are testing my patience.

18 MR. JACOBS: I'm sorry, Your Honor. I am fighting
19 for my client's life here.

20 JUDGE SIPPEL: Well, you don't -- That doesn't mean
21 you have to put a witness, take a witness on cross examination
22 and roast the witness. This is -- It's warm in here, it's
23 uncomfortable, and you are dillydallying to a fare thee well.

24 Okay, that's it, that's it. We are finished here
25 with this cross examination, we move on to the next phase when

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1 we come back from lunch, and then Dr. Duncan is going to come
2 up here, there is going to be an exchange between Dr. Duncan
3 --

4 MR. KNOWLES-KELLETT: We have some redirect, Your
5 Honor.

6 MR. OSHINSKY: Your Honor, I do have a few
7 questions on redirect.

8 JUDGE SIPPEL: Wait until it comes back.

9 MR. OSHINSKY: Yes, yes, when we come back.

10 JUDGE SIPPEL: Ask when it comes back. But I better
11 restrain myself. We are off the record.

12 (Whereupon, the above-entitled matter went off the
13 record at 12:28 p.m. and resumed at 1:51 p.m.)

14 JUDGE SIPPEL: We can start. Let's go back on the
15 record. Who can tell me the procedure we are going to follow
16 now with respect to these clarifying questions.

17 MR. OSHINSKY: Well, Your Honor, the redirect would
18 be next and then --

19 JUDGE SIPPEL: That's right. What about Mr.
20 Jacobs, the other witnesses aren't here? I mean Ms. Duncan,
21 Dr. Duncan is not here.

22 MR. JACOBS: I have an important announcement, Your
23 Honor.

24 JUDGE SIPPEL: Go ahead.

25 MR. JACOBS: At the beginning of this proceeding

1 we indicated that our burden of proof was to prove that Mike
2 Rice was rehabilitated, fully rehabilitated, and Lake
3 Broadcasting and he were fit to become licensees again.

4 We feel that we have met that burden and might even
5 be able to file a motion for summary decision. However,
6 looking at the whole picture our, my client's conclusion is
7 to withdraw his application and withdraw from the proceeding,
8 thereby ending the case.

9 JUDGE SIPPEL: So there won't be any proposed
10 findings and conclusions submitted?

11 MR. JACOBS: Right. I will file a motion to
12 dismiss our application on Monday.

13 JUDGE SIPPEL: Okay, wait a minute --

14 MR. OSHINSKY: Your Honor, could we have just a
15 moment to --

16 JUDGE SIPPEL: Off the record?

17 MR. OSHINSKY: Yes, we can go off the record.

18 JUDGE SIPPEL: Did you get this down, Ms. Reporter,
19 what this man said?

20 COURT REPORTER: Yes.

21 JUDGE SIPPEL: Okay.

22 (Whereupon, the above-entitled matter went off the
23 record at 1:53 p.m. and resumed at 1:55 p.m.)

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

25 MR. KNOWLES-KELLETT: Your Honor, our concern is

1 the expense we have gone through to try this hearing and we
2 haven't faced this situation before.

3 We think that the termination of the hearing, which
4 should be with prejudice, that we shouldn't have to designate
5 next week's application. Now --

6 (Simultaneous speaking)

7 JUDGE SIPPEL: Well, isn't it -- Go ahead.

8 MR. KNOWLES-KELLETT: But we would like the chance
9 to research it, so we are amenable to his proposal to file a
10 motion to dismiss on Monday and we will file an appropriate
11 response if there is some way to, you know, how we would like
12 to see it done.

13 JUDGE SIPPEL: No, that's fine, but I mean that's
14 -- You don't think -- You intend to, you are going to move to
15 dismiss the case based on the merits?

16 MR. JACOBS: Without prejudice.

17 JUDGE SIPPEL: Without prejudice on the basis of
18 withdrawal of the application. And I would suggest that you
19 attach the application to the motion, at least a copy of it.

20 And is there any certainty or any uncertainty about
21 his filing for another application in the future? I mean --

22 MR. JACOBS: No idea.

23 JUDGE SIPPEL: -- is he gone for good? I don't
24 mean to say it in that terms, but I mean, you know, he is
25 going to withdraw his application and that's going to be the

1 end of this case.

2 MR. JACOBS: It's clearly going to be --

3 JUDGE SIPPEL: How do we know two months from now
4 he isn't going to turn around and file again for --

5 MR. JACOBS: I have no idea what he will do in the
6 future.

7 JUDGE SIPPEL: Well, I think you'd better be
8 prepared to file a declaration with your motion from him
9 confirming everything that you said and also giving some,
10 confirming what I am thinking here about future applications.

11 In other words, otherwise we might as well stick
12 with this case and get it resolved. Do you understand what
13 I am saying?

14 MR. JACOBS: Of course I understand what you are
15 saying.

16 JUDGE SIPPEL: Okay, sir.

17 MR. JACOBS: But you are prejudging what the Bureau
18 is going to oppose. They are going to say, oh, no, you can't
19 dismiss it without prejudice, you have to dismiss it with
20 prejudice, and then you'll have to decide that, and if you
21 decide that it's dismissed with prejudice, fine, but I am not
22 going to lay that in your lap and tell you that we are never
23 going to -- I don't know the answer to that question and if
24 I did as an attorney I probably wouldn't be permitted to say
25 it, but I don't know.

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1 JUDGE SIPPEL: Well, your client would authorize
2 you to say it. But is he gone, has he left town?

3 MR. JACOBS: Yes.

4 JUDGE SIPPEL: Well, the next best thing is to get
5 him on the phone.

6 MR. KNOWLES-KELLETT: We'll address those issues
7 in the response --

8 JUDGE SIPPEL: I know.

9 MR. KNOWLES-KELLETT: -- and we have the same
10 concerns regarding the prejudice, Your Honor.

11 JUDGE SIPPEL: Okay, but I've got a different
12 concern than yours. That's fine, that's fine.

13 MR. KNOWLES-KELLETT: Okay.

14 JUDGE SIPPEL: The schedule is going to be -- You
15 are filing on Monday?

16 MR. JACOBS: Right.

17 JUDGE SIPPEL: Okay. And you will oppose by when,
18 Friday?

19 MR. KNOWLES-KELLETT: Can we have four plus three,
20 Your Honor?

21 JUDGE SIPPEL: Yes. What's the -- Just give me a
22 date.

23 MR. KNOWLES-KELLETT: If he's doing it on Monday
24 it would be by the following Wednesday.

25 JUDGE SIPPEL: The following Wednesday, all right.

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1 What date is Monday on the calendar?

2 FEMALE PARTICIPANT: Monday is the 8th, Your Honor.

3 JUDGE SIPPEL: Thank you.

4 MR. KNOWLES-KELLETT: That would be as provided by
5 in the Rules.

6 JUDGE SIPPEL: Okay. And what would be the number
7 of the day, that is what's the date of the following
8 Wednesday?

9 MR. KNOWLES-KELLETT: The 17th.

10 JUDGE SIPPEL: Okay. Any objection to that, Mr.
11 Jacobs?

12 MR. JACOBS: Let me check my calendar.

13 JUDGE SIPPEL: Well all you are going to do is just
14 receive their filing in the mail, or by -- of course, by
15 email, we use emails now.

16 MR. JACOBS: That's fine.

17 JUDGE SIPPEL: But I do want a declaration from Mr.
18 Rice that he is willing to accept what you laid out and we
19 will consider it at the appropriate time, but I am asking that
20 he also indicate in that same declaration, or represent in
21 that same declaration, that he has no intention of applying
22 for another license. Otherwise, we'll have to make that
23 decision when we come to it.

24 MR. OSHINSKY: Your Honor, if I may interject
25 something. In case there is a question in Your Honor's mind

1 about what you are going to see, and, of course, we don't know
2 what you are going to see exactly, but you will have to make
3 a ruling about Mr. Jacobs' motion.

4 Perhaps we should finish with my redirect of this
5 witness so that there is a complete and in the event you
6 should deny Mr. Jacobs' motion then you would have a complete
7 record on which to make another decision, a decision on the
8 merits.

9 JUDGE SIPPEL: Well, now how long do you think this
10 is going to take?

11 MR. OSHINSKY: Oh, God, ten, 15 minutes maybe.

12 JUDGE SIPPEL: You said you were considering a
13 motion for summary decision?

14 MR. JACOBS: That was half in jest.

15 JUDGE SIPPEL: Oh.

16 MR. JACOBS: We think we have made our case, but
17 it's quite clear that this forum does not, so --

18 JUDGE SIPPEL: What do you mean? What are you
19 talking about, this forum? I haven't gotten proposed
20 findings, I haven't gotten the transcripts, I haven't gotten
21 anything. I am just simply being -- I am just a traffic
22 director at this point.

23 MR. JACOBS: The overall aura here has been so
24 negative that our client just does not want to continue. He
25 sees the handwriting on the wall, whether findings have been

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1 submitted or not.

2 JUDGE SIPPEL: And did you agree with him?

3 MR. JACOBS: Yes.

4 JUDGE SIPPEL: I don't see -- Well, I can -- This
5 is all -- What you are hearing is a lot of frustration with
6 the progress of the case, not about the merits of the case,
7 but you have the right to do what you are doing and it is what
8 it is.

9 But I just feel very put out about the suggestions
10 that the deck is stacked against Mr. Price, that's all. I
11 mean Mr. Rice, I'm sorry. This is a forum and sometimes we
12 get blood on the walls, but that's the nature of litigation.

13 And I have never had a case yet where I haven't
14 gone into my decision-making role without an open mind. No
15 way of that. So I don't know if that's going to do any good
16 to your client, but I don't --

17 (Simultaneous speaking)

18 MR. JACOBS: Well, I'm sure that's true.

19 JUDGE SIPPEL: -- I personally don't operate that
20 way.

21 MR. JACOBS: I am sure that is true, Your Honor,
22 but the general flavor of the evidence presented here by the
23 Bureau is that Mr. Rice has not been rehabilitated and will
24 never be rehabilitated because of things that happened in
25 1990, and we just seem to be completely unable to overcome

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1 that attitude.

2 JUDGE SIPPEL: But we knew that coming in, didn't
3 we, that you were going to get this opposition about
4 rehabilitation?

5 MR. JACOBS: Well, I didn't know that. Maybe I
6 misread the hearing designation order. When they --

7 JUDGE SIPPEL: Oh, yes, I mean when you got a copy
8 of the evidence in advance of the case when you got the trial
9 brief. I mean this is not a big, it should not be a big
10 surprise.

11 MR. JACOBS: This is Year 3 of this proceeding.

12 JUDGE SIPPEL: Well, this is Day 3 of the trial.

13 MR. KNOWLES-KELLETT: Everybody's --

14 MR. JACOBS: Well, we were cockeyed optimists.

15 JUDGE SIPPEL: All right, well --

16 MR. JACOBS: After all, we presented witnesses,
17 also, but the --

18 JUDGE SIPPEL: I understand that. I understand
19 that, and that's what the nature of a trial is. I am the one
20 that gets stuck at the end with trying to figure who is on
21 first and as I say, I intentionally work hard to keep an open
22 mind.

23 My conduct in the trial is simply for purposes of
24 just trying to get things done. It's not because I am taking
25 any sides with anybody. But, anyway, if you would just relay

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1 that to your client I would appreciate it.

2 But, anyway, it is what it is, let's get this show
3 on the road right now.

4 MR. OSHINSKY: I will severely limit myself, Your
5 Honor.

6 JUDGE SIPPEL: No, don't severely do anything, just
7 get it done.

8 MR. OSHINSKY: All right.

9 JUDGE SIPPEL: You are going to be questioned,
10 redirect questions from Mr. Oshinsky.

11 THE WITNESS: Okay, thank you, Your Honor.

12 MR. OSHINSKY: All right.

13 JUDGE SIPPEL: You are still under oath, also.

14 THE WITNESS: Yes, correct.

15 WHEREUPON,

16 KIMBERLY WEITL

17 was called for examination by Counsel for the Assignee, having
18 been previously duly sworn, resumed the witness stand, was
19 examined and testified as follows:

20 REDIRECT EXAMINATION

21 MR. OSHINSKY: Dr. Weitzl, would you turn to the
22 Enforcement Bureau Direct Exhibits at page 7.

23 MR. KNOWLES-KELLETT: Four.

24 MR. OSHINSKY: Oh, I'm sorry, four, excuse me.

25 MR. KNOWLES-KELLETT: Exhibit 4, page 7.

1 MR. OSHINSKY: Exhibit 4, page 7.

2 JUDGE SIPPEL: Page 7?

3 MR. OSHINSKY: Yes. At the top of that page it
4 says "MOSOP Participation and Examination Report, Phase II,"
5 is that correct?

6 THE WITNESS: Yes.

7 BY MR. OSHINSKY:

8 Q Have you seen this before?

9 A Yes.

10 Q And have you seen a number of these before?

11 A Thousands, yes.

12 Q Thousands?

13 A Yes.

14 Q There has been a lot of testimony today about Mr.
15 Rice's participation in the MOSOP program and also that he,
16 how proud he is of his certificate of completion, is that
17 correct?

18 A Yes.

19 Q Looking at this document can you tell us what
20 important -- What is its significance, first, and then what
21 important information it relays?

22 A Significance is that this was his progress summary
23 of treatment, so it is important to know how he did when he
24 was there. Concerning are some of the phrases I can capture,
25 things like you can tell that they are describing his grooming

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1 process, turned his home into a teen attraction, come and go
2 as they please, so we have an idea that they were aware of
3 that anyway.

4 I can't tell for sure if he has acknowledged that
5 or if that's something they had gotten from the record.

6 JUDGE SIPPEL: Well, before -- Why is this document
7 in this condition? I mean that doesn't make any sense.

8 THE WITNESS: I know, Your Honor, it doesn't.

9 JUDGE SIPPEL: I'm not blaming anybody, but does
10 anybody have an explanation? Did --

11 MR. OSHINSKY: It seems -- As Mr. Knowles-Kellett
12 mentioned we actually issued a subpoena --

13 JUDGE SIPPEL: Yes.

14 MR. OSHINSKY: -- to the place that is officially
15 keeping these original reports.

16 JUDGE SIPPEL: Yes, I understand that.

17 MR. OSHINSKY: And they told us that their copy is
18 exactly the same as this, exactly the same thing.

19 JUDGE SIPPEL: Did they have any explanation as to
20 how it got that way?

21 MR. OSHINSKY: No. It's looks like some kind of
22 misprinting if I had to --

23 JUDGE SIPPEL: I would go the same way as you, but
24 it's very apparent from bringing it back just on the printer
25 that, hey, something, or something's wrong with the printer

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1 or somebody made a mistake.

2 Well, okay, I -- I hear what you are saying, but
3 in light of the fact of now the status of the case why not
4 just ask, or you can work with Dr. Weitzl in preparing what you
5 and she, what she believes to be the way this should appear.

6 MR. OSHINSKY: Well, that's actually what I would
7 like her to testify to, the information she is able to glean
8 from this report and --

9 (Simultaneous speaking)

10 JUDGE SIPPEL: But it's going to be sort of
11 meaningless to me. But if we had the -- If her interpretation
12 of the full meaning of each of these paragraphs and then
13 attach a copy of this unclear document to it.

14 MR. OSHINSKY: Yes, we're just asking for a couple
15 of highlights of information from this report.

16 JUDGE SIPPEL: And then you'll be satisfied?

17 MR. OSHINSKY: Yes.

18 JUDGE SIPPEL: Go to it.

19 MR. OSHINSKY: Okay. So, Dr. Weitzl, would you tell
20 the Court what significant and important information you are
21 able to get from this document even though it is partially
22 illegible?

23 THE WITNESS: It looks as, it appears as if he had
24 difficulties in treatment and they were dealing with those.
25 We haven't -- He was quiet in group, that he did just the

1 minimal to get by, seldom spontaneously offered feedback.

2 It just indicates that there was some issues with
3 his progress, that it wasn't so good, there was problems.

4 BY MR. OSHINSKY:

5 Q And does it talk about his risk of re-offense?

6 A And it does. It says that even though he completed
7 the program they still considered him to be high risk.

8 Q And that's on page 10, is that correct?

9 A Yes.

10 Q The last page, I believe?

11 A Yes.

12 MR. OSHINSKY: And so does this inform our --

13 JUDGE SIPPEL: Well, can you show exactly where you
14 come up with that conclusion.

15 MR. OSHINSKY: It's page --

16 THE WITNESS: Second paragraph, second line.

17 JUDGE SIPPEL: Of?

18 THE WITNESS: Page 10.

19 JUDGE SIPPEL: Page 10, okay.

20 MR. OSHINSKY: And does your familiarity with this
21 report give you more insight than say a layperson would have
22 into it?

23 THE WITNESS: Yes, and the fact that I know the
24 language MOSOP uses in these reports.

25 JUDGE SIPPEL: Oh, yes.

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1 THE WITNESS: I used to sign off on these reports
2 sometimes, too, so I kind of know the language they use.

3 JUDGE SIPPEL: Well, it says it right here.

4 THE WITNESS: Correct. We got a clear shot of --

5 JUDGE SIPPEL: "High risk to re-offend sexually."

6 I am reading from it.

7 THE WITNESS: Yes, that's clear.

8 JUDGE SIPPEL: "High risk."

9 MR. OSHINSKY: Okay. And now moving on from that,
10 Mr. Jacobs asked you about your, the amount of time you spent
11 with Mr. Rice evaluating him, is that the -- and you testified
12 that that was how long?

13 THE WITNESS: An hour and a half.

14 BY MR. OSHINSKY:

15 Q And is that the standard amount of time?

16 A Yes. As a matter of fact, about 50 percent of them
17 refuse to interview and I can still do an evaluation because
18 they don't typically admit to the things I need to know.

19 Q And Mr. Jacobs also asked you whether you had
20 relied only on historical information in evaluating Mr. Rice.
21 Did you rely on any recent information in evaluating Mr. Rice?

22 A Anything he would provide to me. He was able to
23 tell me anything he wanted about the present.

24 Q And what about the test results of Dr. Duncan-
25 Hively?

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1 A Correct. We had information from 2014.

2 Q So turning to those test results, specifically the
3 MMPI --

4 A Yes, and I don't think I have a copy in the book
5 up here.

6 Q I guess we need to have this -- Oh, maybe it was
7 marked.

8 A It is.

9 MR. KNOWLES-KELLETT: Yes, Lake Exhibit 4.

10 MR. OSHINSKY: Lake Exhibit 4.

11 JUDGE SIPPEL: Lake 4.

12 MR. OSHINSKY: Now can you tell us what the
13 significance of this test and the report is?

14 THE WITNESS: The significance is that it offered
15 information that was contradictory to what was in Dr. Duncan-
16 Hively's report.

17 BY MR. OSHINSKY:

18 Q Are you referring to her direct testimony or her
19 actual report?

20 A I was referring to her report.

21 Q Okay.

22 A That she describes the results of this test, and
23 it's not the way I am reading these results.

24 MR. KNOWLES-KELLETT: Could you look at Lake
25 Exhibit 3.

1 MR. OSHINSKY: Appendix C?

2 MR. KNOWLES-KELLETT: Appendix -- Yes, Lake Exhibit
3 3, Appendix C.

4 JUDGE SIPPEL: Lake Exhibit -- Oh, Lake Exhibit 3,
5 Appendix C.

6 MR. OSHINSKY: Right.

7 THE WITNESS: Those are in the back, the second set
8 of numbers.

9 JUDGE SIPPEL: I see them. I see them, yes.

10 MR. KNOWLES-KELLETT: Yes, it's the black book.

11 JUDGE SIPPEL: I've got it right here in front of
12 me.

13 MR. OSHINSKY: She doesn't have it.

14 JUDGE SIPPEL: Oh, you don't have it? I'm going
15 to give it to you. I'm going to give it to you right now.

16 THE WITNESS: Thank you.

17 JUDGE SIPPEL: Is this the Duncan-Hively
18 Psychological Services report?

19 THE WITNESS: Correct.

20 JUDGE SIPPEL: Okay, I have it.

21 MR. OSHINSKY: Appendix C, page 7.

22 JUDGE SIPPEL: Page 7.

23 MR. OSHINSKY: Can you tell us about what the test
24 results show as opposed to what Dr. Duncan-Hively reports in
25 her report, or states in her report?

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1 THE WITNESS: Yes. In page 7, actually there is
2 more on page 6, but page 7, I believe it's the one, two,
3 three, fourth paragraph, "Our testing was an opportunity for
4 Mr. Rice to be deceitful, obfuscate, lie, or misrepresent
5 himself. None of that was present in our assessment, instead
6 he produced valid, reliable results which should allow the
7 Commission to be reassured that he is not duplicitous" --

8 MR. OSHINSKY: Duplicitous.

9 JUDGE SIPPEL: Duplicitous.

10 THE WITNESS: Sorry, duplicitous. We don't use big
11 words. Okay, "with his request for reinstatement." And the
12 MMPI results indicate that's not the case, that he did, he was
13 dishonest on this test.

14 They have a scale called the L or lie scale, which
15 was elevated. He did try to present -- I'll read just from
16 page 2 of the MMPI.

17 JUDGE SIPPEL: I'm --

18 THE WITNESS: Page 2, the very first line. "He
19 made an intentional effort to look good on the MMPI."

20 JUDGE SIPPEL: I'm sorry -- Oh, is this -- Which
21 page?

22 MR. OSHINSKY: It's page 2 of the Lake Exhibit 4,
23 Your Honor.

24 JUDGE SIPPEL: Oh, oh, oh, okay.

25 THE WITNESS: Sorry, I jumped.

1 JUDGE SIPPEL: No, that's all right. Okay, page
2 2, where are we?

3 THE WITNESS: The very first line.

4 JUDGE SIPPEL: Oh.

5 THE WITNESS: "He made an intentional effort to
6 look good."

7 JUDGE SIPPEL: "To look good."

8 THE WITNESS: "Responding too positively." We call
9 it faking good, which means they present themselves in an
10 overly positive light.

11 JUDGE SIPPEL: Well --

12 MR. OSHINSKY: And so -- I'm sorry.

13 JUDGE SIPPEL: That's to be expected.

14 THE WITNESS: Right, but that's not what she --

15 MR. OSHINSKY: But the question is, yes, what was
16 reported by Dr. Duncan-Hively in her report in regard to this
17 test?

18 THE WITNESS: That he did not present himself that
19 way, that he did not lie and respond over -- we call it
20 defensive.

21 BY MR. OSHINSKY:

22 Q So in other words her report is contradictory to
23 the test result, would you say that?

24 A Correct.

25 Q And is this one of the tests that Dr. Duncan-Hively

1 referred to in her direct testimony as being an objective
2 test?

3 A Yes. It's actually the only objective test that
4 she rendered in 2014.

5 Q All right. Just a couple more questions, Your
6 Honor. We heard some testimony today about the Abel Test.
7 Is the Abel Test something that is normally used for sex
8 offender evaluation?

9 A No.

10 Q And why?

11 A Several reasons. It's very expensive equipment
12 with a lot of upkeep and training and it's not helpful in
13 these types of evaluations as it is in treatment.

14 In treatment they want a baseline measure of what
15 his attraction levels are when he starts treatment and they
16 want to see after treatment is he able to manage those levels.

17 Q So can you tell the Court what the Abel Test
18 consists of?

19 A Yes. It's called an attention test. So the
20 offender is just told stories or shown pictures and the idea
21 is the longer they stare at a picture that is showing that
22 they are interested in it.

23 Gene Abel has been doing attention testing since
24 the '50s. So that's the idea, the longer they stare at the
25 picture, so then they can come up with some -- They will also

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1 ask the offender, you know, are you attracted to children.

2 Q And so is this what we would call a subjective
3 test?

4 A In some ways. It has some -- In some ways it has
5 some objective measures. The objective part is the picture
6 looking at, but the subjective is the asking questions, self-
7 report.

8 Q And can a subject intentionally avoid looking at
9 certain pictures in order to manipulate the test?

10 A Correct, and that's why they are not good for
11 evaluations.

12 Q Okay. Just --

13 A They can distract themselves.

14 Q Just one minute to -- the Court's indulgence. You
15 testified that to you, based on Mr. Jacobs' question, to you
16 rehabilitation meant improvement, that rehabilitation shows
17 improvement and changes.

18 Has Mr. Rice shown that improvement and changes
19 based on the history you read, your interview, and all the
20 other sources you reviewed?

21 A No.

22 Q And can you tell us why?

23 A I don't see him honestly describing his offenses,
24 which is Step 101 of treatment. Aside from that one time in
25 the polygraph I think he actually was honest.

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1 If he would have stuck with that in treatment and
2 made some work toward managing that arousal -- I think honesty
3 is the biggest block for him.

4 Q And is that because there is, he can't be amenable
5 to treatment if he is not honest about what he is
6 experiencing?

7 A Right. You can't give somebody treatment for
8 something they don't have.

9 Q The American Psychological Association Standards
10 that Dr. Duncan-Hively refers to in her report can you tell
11 us how those would bear on a sexual offender risk assessment?

12 A They really don't apply in this sense because a sex
13 offender assessment is so specialized, the field is so
14 specialized. For instance, this MMPI gave us a little bit of
15 information about his personality disorder and whether or not
16 he was being honest, but it doesn't really tell me about his
17 risk to re-offend.

18 And research has shown that, they have given MMPIs
19 and it doesn't help with risk assessment. So the association
20 for the treatment of sexual abusers actually has guidelines
21 that we follow.

22 Q One other thing that Dr. Duncan-Hively referred to
23 in her report was the use of collateral sources. Could you
24 explain what those collateral sources, what bearing those
25 would have on this kind of risk assessment?

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1 A They don't help typically because these are
2 individuals that they are either friends of the person, they
3 have written letters of reference, they are not going to give
4 negative information, which, you know, are they sexually
5 attracted to children, they don't really know that unless they
6 have seen them molest a child and if that's the case then they
7 should have called the police, so I am not going to get much
8 information about risk from them.

9 Q So in other words Mr. Rice presents the same
10 impression, in your opinion, now as he probably did at the
11 time of his offenses?

12 A I think it's, yes, very similar. I think, you
13 know, he was a successful business owner.

14 Q And it's also your testimony that the ownership of
15 a broadcast station, be it a relay station or a regular
16 broadcast station, imparts a certain status to Mr. Rice which
17 is attractive to children, or he can make attractive to
18 children?

19 A Correct, correct.

20 MR. OSHINSKY: That's all I have, Your Honor.

21 JUDGE SIPPEL: Any recross on that?

22 MR. JACOBS: No, I'm not participating.

23 JUDGE SIPPEL: Oh, you're just -- Okay, all right.
24 Do we have anything else of a cleanup nature here?

25 MR. OSHINSKY: No, I think that was it, Your Honor.

1 We wanted to create a complete record for you.

2 JUDGE SIPPEL: Okay. Well, what I want to do is
3 I want to put these definitions into evidence as my exhibits.

4 MR. OSHINSKY: I think that's a very, very good
5 idea. I would say those definitions support the Bureau's
6 interpretation.

7 JUDGE SIPPEL: I'm just going to put them in for
8 whatever, but just bring them down to that reporter. Each one
9 is separate.

10 Let's go off the record.

11 (Whereupon, the above-entitled matter went off the
12 record at 2:19 p.m. and resumed at 2:24 p.m.)

13 JUDGE SIPPEL: We're back on the record. Madam
14 Reporter, you have been handed what have been marked as ALJ
15 Exhibits. I believe it's -- What are the numbers?

16 FEMALE PARTICIPANT: One through six.

17 JUDGE SIPPEL: One through six. One through five?
18 All right, well, you're going to get the sixth one.

19 (Whereupon, the above-referred to documents were
20 marked as ALJ Exhibit Nos. 1 through 6 for identification.)

21 JUDGE SIPPEL: And there have been no objection.
22 You don't have an objection?

23 MR. JACOBS: No.

24 JUDGE SIPPEL: They are marked as such and they are
25 now received in evidence as part of the record.

1 (Whereupon, the above-referred to documents were
2 received into evidence as ALJ Exhibit Nos. 1 through 6.)

3 JUDGE SIPPEL: Thank you.

4 (Whereupon, the above-entitled matter went off the
5 record at 2:25 p.m. and resumed at 2:27 p.m.)

6 JUDGE SIPPEL: Okay, I just want to say that since
7 we may not reconvene as we are today I just want to commend
8 all the counsel for your hard work and hard preparation.

9 This has not been an easy case, although the issue
10 sounds simple. It doesn't work out that way. It was a tough
11 case. So I appreciate all of the work you did and the same
12 as I said before, we are going to recess and we will see what
13 happens with the paperwork.

14 MR. OSHINSKY: Thank you, Your Honor.

15 MR. JACOBS: Thank you, Your Honor.

16 (Whereupon, the above-entitled matter went off the
17 record at 2:28 p.m.)

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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: 05-05-17

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

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