

1 not want to take this deposition.

2 This will give you a chance to talk to your client.
3 In fact, I think I better give you, I better give you at least
4 two weeks because you'll have a chance to get the transcript
5 back, and let your client read it.

6 Let's see. I'm trying to -- because we have other
7 issues here too. With respect to the, to the evaluation done
8 by your expert, I don't see any reason -- you wanted that --
9 well, all this is before me and in camera anyway, so right
10 now, it is not on the public record.

11 MR. JACOBS: How are --

12 ADMIN. JUDGE SIPPEL: It was the sense of the word
13 even.

14 MR. JACOBS: Our expert's assessment was attached
15 to our motion.

16 ADMIN. JUDGE SIPPEL: I know, I've got it. I've
17 read it. I know. And now you turn around saying it's
18 scandalous. There are scandalous things said in the statement
19 or the person you paid to write the damn thing. Excuse me.

20 Anyway, that is -- I didn't realize this was this
21 extensive. I knew it was -- I knew there was witness
22 immunity, but there's a paragraph in the Smikle case about
23 absolute witness immunity. So what are you worry about
24 scandal?

25 You hired this person as a witness, it's a work

1 product, but I think the work product has been waived, but,
2 again, I'm still sitting out in camera, so as far as I'm
3 concerned, it doesn't have to go on the record, not at this
4 point.

5 MR. JACOBS: No. Clarification. We, of course,
6 did not hire Dr. Weitzl.

7 ADMIN. JUDGE SIPPEL: No, no, no. I'm not talking
8 about Dr. Weitzl.

9 MR. JACOBS: The -- our assessment, we have no
10 problem with because it doesn't really spell out in --

11 ADMIN. JUDGE SIPPEL: I thought you were saying
12 that in your, in your motion.

13 Do you know, Oshinsky, do you know what I'm getting
14 at?

15 MR. OSHINSKY: If you're talking about Dr. Duncan.

16 ADMIN. JUDGE SIPPEL: That's correct. Lake is not
17 attached -- the evaluation because of the scandalous nature,
18 okay, I get that, I get that, but there was another reference
19 to scandalous -- I thought that the -- because the repeating
20 of it by the, by their evaluator --

21 MR. OSHINSKY: Yes, I think -- it's an allegation
22 that they're evaluating --

23 ADMIN. JUDGE SIPPEL: Here it is, yes.

24 MR. OSHINSKY: But they're -- she's including
25 language that's not in Dr. Weitzl's report.

1 ADMIN. JUDGE SIPPEL: Of course. Well, as I say,
2 where's the scandal? And I think -- now you seem to have
3 witness protection. These are the things I'm just not worried
4 about. We're talking about this on the record now, so, you
5 know, every time we open our mouths there's a little bit of
6 leakage.

7 Is there anything else we need to talk about? Am
8 I cutting this short?

9 MR. JACOBS: I don't think so, Your Honor.

10 ADMIN. JUDGE SIPPEL: Okay. Okay. Let me see.
11 So the vital evaluation that was written in March of 2016, and
12 that was obtained and paid for by the Bureau, correct?

13 MR. OSHINSKY: Correct.

14 ADMIN. JUDGE SIPPEL: And then the summary, the
15 Hively summary and assessment was done in April of 2016, and
16 that was paid for by your client.

17 MR. JACOBS: Right.

18 ADMIN. JUDGE SIPPEL: And then Tammy Gremminger,
19 of course, she's just being -- she -- is her -- are her
20 services being paid for?

21 MR. OSHINSKY: No, not at, not at this point. I
22 mean, she might -- if she has to come to testify, her
23 expenses, I think, the Bureau would cover those, but she's not
24 being paid for her testimony, no.

25 ADMIN. JUDGE SIPPEL: You mean she's a, she's a

1 volunteer?

2 MR. OSHINSKY: Yes.

3 MR. KNOWLES-KELLETT: She works for the State of
4 Missouri, Your Honor.

5 ADMIN. JUDGE SIPPEL: I know she does.

6 MR. KNOWLES-KELLETT: And we asked if we needed to
7 pay the Department of Corrections for her time, --

8 ADMIN. JUDGE SIPPEL: Yes.

9 MR. KNOWLES-KELLETT: -- and she says she's not
10 aware of any, but she'll check with her office, but she's just
11 purely a fact witness. You know, she has special expertise,
12 but --

13 ADMIN. JUDGE SIPPEL: Well, I --

14 MR. KNOWLES-KELLETT: -- she's not a paid expert.

15 ADMIN. JUDGE SIPPEL: Right now, I'm going to stay
16 with your first -- with -- I'm going to stay just what you're
17 saying. She's a fact witness. She's not being paid as an
18 expert, and I'm not expecting to hear any expert testimony
19 from her.

20 MR. OSHINSKY: Your Honor, she, she does have
21 expertise in her area.

22 ADMIN. JUDGE SIPPEL: She thinks she does.

23 MR. OSHINSKY: Well, Your Honor, of course, would
24 be the ultimate judge of that.

25 ADMIN. JUDGE SIPPEL: No, I realize that.

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1 MR. OSHINSKY: Yes, she's been doing this for about
2 30 years. If you look at her statement, you'll see that she
3 does these kind of risk assessments as a part of her job and
4 that she has custody of his past criminal record also as a
5 part of her job.

6 ADMIN. JUDGE SIPPEL: Well, why doesn't she charge
7 you a fee then?

8 MR. OSHINSKY: I'm sorry?

9 ADMIN. JUDGE SIPPEL: Why doesn't she charge a fee?

10 MR. OSHINSKY: As Mr. Knowles-Kellett indicated,
11 all we know is, to the best of our knowledge, she's saying
12 that the State of Missouri and the Department of Corrections,
13 wouldn't be charging the Bureau a fee for her testimony.
14 That's as far as she knows. It may well be that she does, but
15 it wouldn't be an expert witness fee per se.

16 ADMIN. JUDGE SIPPEL: Well, is she -- is she here
17 on vacation, --

18 MR. OSHINSKY: No. No, Your Honor.

19 ADMIN. JUDGE SIPPEL: -- or is she here on behalf
20 of the, of the Federal Government, or is she here on behalf
21 of the State of Missouri, or is she here on behalf of her
22 husband?

23 MR. OSHINSKY: She would be here, Your Honor, I
24 think as a courtesy to the Federal Government.

25 ADMIN. JUDGE SIPPEL: Wait a minute. Courtesy to

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1 the Federal Government?

2 MR. OSHINSKY: I believe so, Your Honor.

3 ADMIN. JUDGE SIPPEL: I don't think we have those.

4 MR. OSHINSKY: Well, there's not much of that
5 anymore.

6 ADMIN. JUDGE SIPPEL: No, I'm serious about that.
7 She's an expert. She's an expert. If I go out and I find
8 somebody on the street who knows something about this, they
9 might -- I can pull him in here and say, "Give me some advice
10 as an interested volunteer or something."

11 MR. OSHINSKY: Yes. I think --

12 MR. KNOWLES-KELLETT: Do you recall in Titus,
13 Detective Shilling was here? He was paid by the Seattle
14 Police Department, but he testified and everybody stipulated
15 that he had certain expertise. It was limited expertise, but
16 we all stipulated to that. This is the same sort of situation
17 where she is not a professional paid expert.

18 And, in fact, she was -- had some involvement with
19 Rice's parole. The extent of that involvement we -- not
20 making any representations about -- and she does risk
21 assessments for local law enforcement, and that's what the
22 Titus decision says we're supposed to look for.

23 ADMIN. JUDGE SIPPEL: Well, I'm going to -- I mean,
24 you know, you know the way that I cheated that testimony in
25 Titus. And, of course, I was -- I was told that maybe I

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1 shouldn't have done that, but I'm still stuck with the
2 situation here with we had a different case with a different
3 background pattern with different circumstances, and I don't
4 want to start weighing, you know, which unqualified witness
5 was better than the other or something.

6 But I know what the Commission told me to do, but
7 I'm still going to treat this like any other case on its
8 individual facts and we'll see where it comes. But I think
9 it's -- maybe I didn't push it as far in the Titus case, but
10 I'm just thinking this is really strange thing.

11 With some other jurisdiction -- I guess, maybe it's
12 not. Maybe it's not that strange. I'll think about it.

13 MR. OSHINSKY: I think it's a courtesy that law
14 enforcement officials do extend to each other in their own
15 purposes.

16 ADMIN. JUDGE SIPPEL: I wonder if there's ever been
17 that kind of a situation where the witness came into court and
18 said, "Oh, this, this defendant is just fine, don't worry
19 about it?" But I don't think that would happen.

20 MR. OSHINSKY: I don't know. Your Honor, if
21 expenses were required for her testimony --

22 ADMIN. JUDGE SIPPEL: Yes, sir.

23 MR. OSHINSKY: -- that we -- the Bureau would be
24 forthcoming.

25 ADMIN. JUDGE SIPPEL: I understand. I understand,

1 but that's expenses. That's not a fee.

2 MR. OSHINSKY: Right. We -- we don't know at this
3 point.

4 ADMIN. JUDGE SIPPEL: But you're paying Dr. Weitl
5 a fee. Is that correct?

6 MR. OSHINSKY: Yes, Dr. Weitl is an expert. He's
7 testified for the State of Missouri and the State of Illinois
8 many, many, many times.

9 ADMIN. JUDGE SIPPEL: She has?

10 MR. OSHINSKY: Yes, oh, yes, in this very area.
11 I have her curriculum vitae here if you --

12 ADMIN. JUDGE SIPPEL: Do you have a track record
13 though? How many convictions has she gotten or how many cases
14 has she gotten --

15 MR. OSHINSKY: I'm not sure it's relevant. Mr.
16 Jacobs has already stipulated to her expertise when he
17 forwarded his doctor's report to her. We went through some
18 back-and-forth about that.

19 He ultimately stipulated to her expertise once he
20 got her curriculum vitae. I have copies of that for Your
21 Honor. She's been doing this for some 25 years for testifying
22 for the state in criminal proceedings.

23 ADMIN. JUDGE SIPPEL: Well, that doesn't
24 necessarily give me comfort. Doesn't help my comfort level.
25 I mean, yes, in terms of her experience, it does, but has

1 there been analysis of -- do you know, Mr. Jacobs? Are we
2 finding out how consistent is she in coming out against --

3 MR. JACOBS: Well, we don't have any actual study,
4 Your Honor, but all we can say with some certainty from lexis
5 is that there are a lot of people who are suing her for --

6 MR. OSHINSKY: But -- I have to object to that,
7 Your Honor. We have no idea what the substances of the cases
8 are. I can tell, Your Honor, from my own knowledge that she
9 has testified for defendants in criminal cases. I can give
10 Your Honor the cite. I don't have it with me right now.

11 ADMIN. JUDGE SIPPEL: But not on behalf of the
12 state. These are --

13 MR. KNOWLES-KELLETT: Yes, she worked for the
14 prison system.

15 MR. OSHINSKY: She worked for the prison system and
16 testified on behalf of the defendant.

17 ADMIN. JUDGE SIPPEL: I see.

18 MR. OSHINSKY: So it is not a case where she is
19 prejudice against sexual offenders per se. She's just
20 somebody with a lot of expertise evaluating them, and that's
21 what her report shows.

22 ADMIN. JUDGE SIPPEL: I'll leave it there.

23 If anybody that wants to do anything with some
24 numbers, have a go at it. All I'm interested in is -- or what
25 -- I'm not interested really to the extent that I want the

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1 you're stuck with what you get, but you be careful enough to
2 pull that out, that's fine.

3 I don't want to -- I don't want to -- I want to
4 want clutter up the documents, or the record rather, with
5 particular stuff like that. Okay?

6 Dissatisfied? Sort of. It's not bad. Okay, we
7 are in recess then until, till next call. Thank you very
8 much.

9 (Whereupon, the above-entitled matter went off the
10 record at 11:52 a.m.)

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Patrick Sullivan and Lake Broadcasting, Inc.

Name of Hearing

EB DOCKET NO. 14-82

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

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Date of Hearing

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Name of Company: ___Neal Gross Co._____

May 17, 2016 Rosemarie Brown

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Name of Company: Neal Gross Co.

May 17, 2016 Ayanna Reese

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