

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LYUDMYLA ABID,

Appellant,

v.

SEAN ABID,

Respondent.

Supreme Court No. 69995

District Court Case No. D-10-424830-Z

Appeal from the Eighth Judicial District Court

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**APPELLANT'S APPENDIX**

**VOLUME 15**

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Nevada Bar No. 2791  
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4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7 SEAN R. ABID, )  
8 Plaintiff, ) CASE NO. D-10-424830-Z  
9 vs. ) DEPT. B  
10 LYUDMYLA A. ABID, )  
11 Defendant. )  
12 \_\_\_\_\_)

13 BEFORE THE HONORABLE LINDA MARQUIS  
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: EVIDENTIARY HEARING

16 WEDNESDAY, NOVEMBER 18, 2015

17 APPEARANCES:

18 The Plaintiff: SEAN R. ABID  
19 For the Plaintiff: JOHN D. JONES, ESQ.  
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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>FURTHER</u> <u>REDIRECT</u>
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Sean Abid	--	5/66	80	--	--
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DEFENDANT'S  
WITNESSES:

(None)

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I N D E X O F E X H I B I T S

<u>PLAINTIFF'S</u> <u>EXHIBITS:</u>	<u>ADMITTED</u>
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(None)

DEFENDANT'S  
EXHIBITS:

E	27
F	27
G	28
H	28
I	28

1 LAS VEGAS, NEVADA

WEDNESDAY, NOVEMBER 18, 2015

2 PROCEEDINGS

3 (THE PROCEEDINGS BEGAN AT 13:58:01)

4

5 THE COURT: We're back on the record in the matter  
6 of Joshua Smith --oh, no, we're not. It's on Abid and  
7 Lyudmyla Abid, D-10-424830-Z. The parties are present.  
8 Counsel, your appearances for the record.

9 MR. JONES: John Jones, bar number 6699, appearing  
10 on behalf of the Plaintiff.

11 MR. SMITH: I'm Radford Smith, 2791, on behalf of  
12 Lyudmyla Pit -- Pitsicova (sic).

13 MS. ABID: Penscosca (ph).

14 MR. SMITH: Close enough. Penscosca.

15 THE COURT: Much more beautiful.

16 MR. SMITH: And she's her present today and also  
17 present at bar, Your Honor, is Kim Madeena (ph) with the  
18 permission of the Court and Mr. Jones.

19 THE COURT: Good morning. And we left off with  
20 Mr. Abid. Back on the stand. We'll swear you in one more  
21 time.

22 THE CLERK: You do solemnly swear the testimony  
23 you're about to give in this action shall be the truth, the  
24 whole, and nothing but the truth, so help you God?

1 THE WITNESS: I do.  
2 THE CLERK: Thank you, you may be seated.  
3 THE COURT: Thank you, sir.  
4 THE WITNESS: You're welcome.  
5 THE COURT: Mr. Jones, are we back with you?  
6 MR. JONES: I think Mr. Smith was still going.  
7 THE COURT: Ah, with the deposition transcript.  
8 MR. SMITH: Correct.  
9 MR. JONES: Oh.  
10 THE COURT: All right. That's right. Here we go.  
11 Counsel, here's your original.  
12 MR. SMITH: Thank you, I -- I guess that the  
13 original goes for the --  
14 THE COURT: The witness?  
15 MR. SMITH: The witness, right, so we'll just keep  
16 this there, Your Honor, so it's handy. All right. Are you  
17 ready now?  
18 THE COURT: Go ahead.  
19 MR. SMITH: Yeah, okay, great.  
20 SEAN ABID  
21 having been called as a witness by the Plaintiff and being  
22 first duly sworn, testified as follows on:  
23 CROSS EXAMINATION CONTINUED  
24 Q Do you recall you testified yesterday in this

1 matter, correct?

2 A Yes, sir.

3 Q All right. And you've had a chance to talk to your  
4 Counsel about that testimony?

5 A Yes.

6 Q Okay. And you had discussions with him in regard to  
7 some of the aspects of it?

8 MR. JONES: Objection, Your Honor. Even the aspect  
9 that we even had a discussion invokes the privilege.

10 MR. SMITH: I don't believe so, Your Honor. Under  
11 Coyote Springs case, it's pretty clear that the Supreme Court  
12 has precluded any kind of privilege attaching to conversations  
13 between counsel --

14 THE COURT: Counsel, do you think Coyote Springs  
15 applies only to depositions?

16 MR. SMITH: Coyote Springs specifically mentions  
17 that the foundation of its ruling is those cases, and I can --  
18 if we look at the transcript or the -- is the -- the  
19 foundation of that is the federal case in that they based upon  
20 was a federal case that precluded contact or discussions  
21 between counsel and a witness during the time of trials, and  
22 we believe that there's a good faith argument for the  
23 extension of Coyote Springs to any proceeding in which a  
24 witness begins his testimony because the principles apply.

1           The principals in Coyote Springs were that the duty  
2 of the party that represents an individual is to prepare that  
3 individual for testimony not to provide pointers during the  
4 time of that testimony. That was the very core of the Coyote  
5 Springs decision, and, again, it was based upon a case in -- a  
6 federal case in which the Court found that this was not  
7 permitted during trial as well.

8           THE COURT: Counsel?

9           MR. JONES: By -- by asking him the -- if he asked  
10 if we had a conversation between last night and today, I think  
11 he might be allowed to ask that, but if he asks specifically  
12 if we spoke about his testimony yesterday, you're then  
13 invoking subject matter, and, I'm sorry, that's privileged,  
14 whether we talked about the weather is privileged, whether we  
15 talked about his tie today is privileged.

16           THE COURT: Is that what Coyote Springs says though?

17           MR. JONES: Judge, I don't have a copy of Coyote  
18 Springs, but I guess I could also object as to relevance with  
19 regard to he and I discussing anything but --

20           MR. SMITH: Well --

21           MR. JONES: -- it's always been my belief that when  
22 you get to an act even of me providing him something or me  
23 discussing something with him, whether -- even if you don't  
24 get into what I said or what he said, the fact that we



1 discussed any individual aspect talks about the subject  
2 matter.

3 THE COURT: And I think that you're correct  
4 pre-Coyote Springs.

5 MR. SMITH: That's right. It changed --

6 THE COURT: And -- and I'm not saying that I like  
7 Coyote Springs, and I'll give a opportunity to pull it up.  
8 I'll print it off for you.

9 MR. SMITH: It says, Your Honor, at page 270 of the  
10 decision and that's -- the citation for Coyote Springs is 347  
11 P.3d and three -- 267, and this is at 270 of the Pacific  
12 Reporter Third. It indicates that although noting that the  
13 conference may have addressed privileged information, the  
14 Court overruled the objection, given the timing of the  
15 communication between counsel and the witness, and allowed the  
16 questioning to continue.

17 Coyote Springs' counsel asked to voir dire  
18 Whittemore to establish compliance with In re Stratosphere  
19 Securities Litigation, 182 F.R.D. 614 District Nevada 1998, a  
20 case in which a federal district court addressed the propriety  
21 of an in-deposition conference, which the court permitted.

22 And then -- I'm sorry. That's the wrong quote, Your  
23 Honor.

24 THE COURT: We hold that attorneys may confer with

1 witnesses during requested recesses, requested recesses  
2 different than a scheduled recess, in depositions only to  
3 determine whether to assert a privilege.

4 MR. SMITH: Judge, I mean, you can make the  
5 distinction. You could say that the only time --

6 THE COURT: It wasn't a requested recess. It was  
7 the court's scheduled the recess. The court ordered the  
8 recess, and I think that --

9 MR. SMITH: That's true. That is a -- that is a  
10 distinction between the facts and the fact that it's a  
11 deposition a distinction, except that the principle applied in  
12 the case would apply to both circumstances. It would apply at  
13 a requested break or it would require (sic) to any break  
14 because the principle underlying the case is that we are the  
15 prepare our witnesses prior to the time of their testimony.  
16 We are not to help them answer once they know the questions  
17 that have been asked.

18 And I think it's specifically relevant in this case  
19 because I wasn't allowed to use the -- the -- for some period  
20 of time the deposition, and I think I'll be able to show today  
21 that his deposition testimony is different than what he  
22 testified in the time of -- at the time of the trial, and I  
23 think it -- it weighs heavily into the notion of whether or  
24 not he was prompted or helped with his testimony today to

1 perhaps address some of those inconsistencies.

2 THE COURT: Counsel?

3 MR. JONES: So the most sanctified privilege that we  
4 have in our business, he's purport -- he -- he's asking you to  
5 take a case that deals with a requested -- I mean, that --  
6 that's the difference, and that's why at the beginning of  
7 depositions, Judge, you give the list of -- of things that you  
8 can and can't do. One of which is, you know, if you need a  
9 break, take a break but not while a question's pending, an  
10 obviously Coyote Spri -- Springs extended that to request by  
11 either the litigant or the lawyer for the recess. That was  
12 not the case here.

13 You are invading the privilege without case  
14 authority. If you're going to invade this privilege, the case  
15 authority has to be directly on point. It actually has to say  
16 the Supreme Court held that if between 5:00 p.m. on day one  
17 and 1:30 p.m. on day two, there's a conversation by counsel,  
18 it's not privileged.

19 MR. SMITH: Um, actually what -- what's --

20 MR. JONES: I'm sorry. That's insane.

21 MR. SMITH: -- what the Supreme Court -- what the  
22 Supreme Court -- this is more -- I -- I -- let me just note  
23 there's a lot of hyperbole in the arguments that are made in  
24 this case and in these objections. I think what Mr. Jones is

1 trying to say is that the -- the privilege is -- is  
2 sanctimonious enough that it should only be applied in very  
3 strict circumstances of Coyote Springs.

4 Let me note that in Coyote Springs the Hall -- it  
5 says, and this is at page 272, after the Hall decision was  
6 published, the United States District Court for the District  
7 of Nevada concluded that the Hall court may have gone too far  
8 in its restriction of private conferences during depositions.  
9 In the In re Stratosphere court -- oh, actually that's what I  
10 -- I think it went back to where I was.

11 THE COURT: Oh, I think you're talking about in  
12 Hall, the U.S. District Court in the Eastern District --  
13 conferences between witness and lawyers are prohibited both  
14 during the deposition and during resarses -- recesses.

15 MR. SMITH: That's right.

16 THE COURT: Unless the conference concerns the  
17 assertion of a privilege.

18 MR. SMITH: Right. And so the objection could be  
19 that if they discussed assertions of privilege but in the  
20 context of this case, Your Honor, there was no issue  
21 associated with privilege. There was only the factual matter  
22 that came forward.

23 I actually disagree with -- with Mr. Jones'  
24 assessment of Coyote Springs because I think it's often in my

1 experience in over 30 years of doing this that witnesses'  
2 testimony will be tainted by lawyers who put words into their  
3 mouth even only after hearing subject matter, particularly in  
4 depositions or trial that they're not prepared for, and I  
5 think it's a -- it's a decent and good rule. I don't think  
6 there should be a privilege. I don't think lawyers should be  
7 telling clients how to testify at the time of trial.

8           Once they -- they're prepared, and they're testify,  
9 the idea is to get to the truth, and that was the -- the  
10 fundamental fold -- holding in Coyote Springs is that even  
11 though this may invade the privilege that the fundamental  
12 notion of having your client prepared was your duty as an  
13 attorney and that it didn't -- the rule would not harm the  
14 fundamental reason that we're here and that is to discern the  
15 truth.

16           MR. JONES: If you were to extend it as requested,  
17 Judge, I -- I think it would change the way every lawyer in  
18 every jurisdiction practices law. If you're saying that  
19 between sessions of trial you can't have strategy meetings  
20 without people being asked what they're talking about --

21           THE COURT: All right. I'm ready --

22           MR. SMITH: No, I think -- I think Mr. --

23           MR. JONES: I -- I'm sorry.

24           MR. SMITH: I just want to -- I want to address

1 that objection because Mr. Jones is misinterpreting the rule.  
2 The rule only applies when someone is on the stand during the  
3 -- the course of their testimony. Mr. Abid's testimony was  
4 clearly going to occur again today. He's up on the stand.  
5 He's been sworn (sic) in, so it would only apply to those  
6 circumstances where a witness was going to testify again on  
7 the stand, so it -- it's not as broad as -- as Mr. Jones would  
8 like to identify.

9 MR. JONES: But the holding, Judge, the conclusion  
10 is Coyote Springs requested a recess. Okay. If I requested a  
11 recess during his testimony that might get it there even  
12 though that's just a deposition not a trial, so he's asking  
13 you to broaden what was already and overreaching broadening of  
14 ignoring the privilege. I -- I don't think you can go beyond  
15 Coyote Springs, and Coyote Springs doesn't say -- if it said  
16 during a court ordered recess, that's a different ri -- that's  
17 a different story. It doesn't. You have to keep it as -- as  
18 narrow as possible.

19 MR. SMITH: The -- the distinction that is being  
20 made is a distinction without a difference to the principle  
21 underlying the case because the principle underlying the case  
22 is what I indicated, getting at the truth, preparing  
23 witnesses. And I know that the -- the reason why the  
24 counsel's request for the break was important is because that

1 was the purpose for the break itself, the fact that was a  
2 break, and, in fact, in the facts of the case there was the  
3 break was designed to meet with the client.

4 And there are other aspects of Coyote Springs that  
5 are designed to protect the privilege of advising your client  
6 about privileges, and that is that after that break an  
7 individual can -- an attorney can come forward, identify the  
8 nature of the discussion, identify the privilege that was  
9 discussed so as to make a record so that -- that we have  
10 protections against lawyers telling their witness  
11 (indiscernible) testimony because, frankly, I -- I -- I think  
12 it's an interesting issue.

13 The Judge is going to rule on it because we've had  
14 this discussion in front of Mr. Abid, I'm sure he's not going  
15 to remember anything about their conversations, but,  
16 nevertheless, I think it's an important point to make. I want  
17 to bring it to the attention of the Court. I -- I note that  
18 I'm bringing it to the attention of every court that I have an  
19 opportunity to because I think it's an important issue that  
20 the Court needs to decide.

21 THE COURT: All right. I'm holding that Coyote  
22 Springs does not extend to this instance in that Coyote  
23 Springs discusses a deposition not a trial and that the recess  
24 in question was requested in order to con -- conduct a private

1 conference with the witness in that case. Here the recess  
2 that was taken was a scheduled recess that the Court scheduled  
3 that no attorney or party requested.

4 And, in addition, Coyote Springs talks specifically  
5 about depositions and not about trial. While the principle  
6 underlying the case itself may encompass both trials and  
7 depositions, the Supreme Court had the opportunity to follow  
8 that and instead made a specific outline selecting depositions  
9 and requested resource -- recesses and made that specifically  
10 apparent in -- in that decision, so I'm not going to allow it.

11 MR. SMITH: All right.

12 BY MR. SMITH:

13 Q Mr. Abid, yesterday you had indicated that you  
14 talked to Ms. Olson (ph), the parole officer, only before  
15 2014; is that correct?

16 A No, that's not correct.

17 Q Okay. In fact, you did speak to her in January of  
18 2014, correct?

19 A January of 2014?

20 Q Yes.

21 A I don't recall that.

22 Q Okay. You also -- you also spoke to her at other  
23 times in the -- during the year of 2014, correct?

24 MR. JONES: Objection. Foundation, Your Honor. The



1 order was entered March of 2014, so he already went earlier  
2 than that yesterday. I think we need to try to keep him on  
3 the same restraints that he wanted me kept on.

4 MR. SMITH: Well, actually Mr. Jones was using the  
5 December '14 enforceable stipulation read into the record as  
6 the date of the order.

7 THE COURT: December 2013?

8 MR. SMITH: Excuse me. 2013. December '13  
9 stipulation that was read into the record of the Court which  
10 is an enforceable order under the Grisham case and under --

11 THE COURT: I think that's appropriate.

12 MR. SMITH: Okay. So Mr. --

13 THE COURT: Janu -- so January 2014 forward because  
14 the stipulation was entered into December 2013 and was  
15 enforceable under our rules in December of 2013.

16 MR. SMITH: Also makes it easier because then we  
17 just say 2014 so.

18 By MR. SMITH:

19 Q All right. So in 2014 you had conversations with  
20 Ms. Olson about Ricky Marquez, correct?

21 A On the single occasion is the only one I recall was  
22 the one that I referred to yesterday.

23 Q You -- you were aware that Ms. Olson had asked to  
24 have home visits on regular occasions in the home in which

1 Mr. Marquez resided in 2014, correct?

2 A Not aware of that at all. I wasn't told that.

3 Q In fact, you requested that certain home visits be  
4 made during that period of time; didn't you?

5 A That is absolutely incorrect.

6 Q You did speak to Mr. -- and I think I'm going to  
7 mess up his name again -- is it Dealiman (ph)? What --  
8 Bourbon (ph)? What's the other parole officer that you spoke  
9 to? Biden (ph)?

10 A Bowden (ph).

11 Q Bowden. Yes. And you spoke to him in January 2014.

12 A January of 2014?

13 Q Yes, sir.

14 A After -- no, not after the stipulation.

15 Q Okay. If you'll turn to page 41 in the deposition.  
16 Okay. And if you -- beginning at page 41 line 5. Question:  
17 Do you -- did you have further conversations with Mr. Bowden?  
18 Answer: Yes. When was that recur (sic)? Answer: I don't  
19 recall the exact date, but we had many conversations.

20 Question: Okay. When were the conversations? Over what  
21 period of time? Well, last -- I'd say the last time I ever  
22 spoke to Mr. Bowden was probably in the time of the hearing  
23 commenced and ended.

24 Question: Six when -- I don't know if that's

1 supposed to be six, but six when was that to your  
2 recollection? Oh, so when was that to your recollection?  
3 Sorry. My eyes are bad. Answer: Well, sometime around  
4 December, January 2014, December 2013. I believe somewhere in  
5 that time frame, but I don't know.

6 Does that refresh your recollection as to whether or  
7 not you believe that you had conversation with Mr. Bowden in  
8 2014?

9 A I -- I was speculating at that time. When you asked  
10 me yesterday I remembered that once Mr. Marquez was  
11 transferred here, there were no conversations after that.

12 Q Well, you know, that's odd to me because you had  
13 submitted in this deposition that -- if you'll close the  
14 deposition Mr. -- do you recall telling me that the reason why  
15 you called Mr. Bowden was to complain about the fact that he  
16 didn't advise you of the transfer of Mr. Marquez? Not what  
17 you just told us.

18 A That was in October.

19 Q But you just told us that you didn't call him after  
20 the transfer.

21 A I said after the stipulation. You're not paying  
22 attention. I said after the stipulation. The stipulation was  
23 not in October.

24 Q Okay. So you're saying that you had a conversation

1 with him that you expressed the disgust about him not  
2 providing you information about the transfer of Mr. Marquez  
3 and that was not in January of 2014 as you indicated in your  
4 deposition?

5 A You know, that's -- as I stated today and I --

6 MR. JONES: Objection, Your Honor. He's misstating  
7 the deposition testimony he just read. Can we read it again?

8 THE COURT: It does --

9 MR. JONES: Well, sometime around December, January  
10 2014.

11 MR. SMITH: Wait, wait, wait. This is an  
12 inappropriate objection.

13 THE COURT: Counsel. Okay. I -- your -- your  
14 question confused me.

15 MR. SMITH: Okay. Let me -- let me rephrase the  
16 question.

17 BY MR. SMITH:

18 Q Isn't it true that in January of 2014 you indicated  
19 to Mr. Bowden your disgust over the fact that Mr. Marquez was  
20 transferred -- or his parole was transferred without your  
21 knowledge?

22 A That was in October.

23 Q Okay. So that conversation happened in October of  
24 two thou --

1 THE COURT: Of what year?  
2 THE WITNESS: 2014. I mean 2013. Excuse me. 2013.  
3 THE COURT: Okay, thank you.  
4 THE WITNESS: He's going way back.  
5 THE COURT: Now I understand.  
6 THE WITNESS: Can I say something?  
7 THE COURT: No.  
8 THE WITNESS: Okay.

9 BY MR. SMITH:

10 Q And you believed -- you still have continuing  
11 concerns that Ricky Marquez is a member of the Mexican mafia,  
12 correct?

13 A The concern is based on my research that if someone  
14 is in the Mexican --

15 Q Is the answer, Mr. Abid, yes or no?

16 A Yes, absolutely.

17 Q Okay. And you had that concern prior to the taping  
18 in January of 2014, correct?

19 A I had it from the moment that he was involved with  
20 my son.

21 Q Is the answer yes, Mr. Abid --

22 A Yes.

23 Q -- or is it no? Yes?

24 A Yes.

1 Q Thank you.

2 THE COURT: Mr. Abid, all the questions going to ask  
3 you, the vast majority of them are going to require a yes or  
4 no answer, okay? Your lawyer's going to ask you some more  
5 questions, all right? If your lawyer decides he wants more  
6 information from you and will ask you some more open-ended  
7 questions that require more than a yes or no, he will, okay?

8 THE WITNESS: Okay.

9 BY MR. SMITH:

10 Q Your statement is that you had reason to believe  
11 that -- that you taped that you had reason to believe that  
12 Lyudmyla was continuing to bad mouth your chil -- or bad mouth  
13 you to your child, Sasha, correct?

14 A Yes.

15 Q But there were really -- you had indicated during  
16 that period of time you were having other problems with  
17 Lyudmyla, correct?

18 A I'm not sure what you're referring to.

19 Q You had problems with Lyudmyla in regard to the  
20 contact of Lyudmyla and the child aft -- after 3:30 on her  
21 designated days, correct? Because that was an issue for you.

22 A Yeah, that was an issue.

23 Q Okay. And you communicated her -- with her about  
24 that issue in -- in text, correct?

1 A Yes.

2 Q Okay. And you had an issue with Mr. Marquez that  
3 also weighed into your consideration associated with cutting  
4 off the time that -- frame that she would have associated with  
5 your son in the afternoons --

6 A He -- he wasn't part of that.

7 Q That wasn't part of that? All right. Let's take a  
8 look at your testimony on page 73 of your deposition. Okay.  
9 Let's go above that. But let me ask a couple foundational  
10 questions.

11 You had indicated that when you had heard your child  
12 say these things to you in or about the time prior to the time  
13 of taping that you felt that he had suffered actual physical  
14 symptoms associated with what you described as emotional  
15 abuse, correct?

16 A I think I was speaking general but yes.

17 Q Okay. And you believe those physical and -- tell me  
18 if you believe this is true, that at times -- and this is  
19 Sasha -- vacillates between reticence and being timid to  
20 hostility with his brothers and a lot of anger. He is very  
21 confused about whether he can love me and -- but physically  
22 he's very reticent. He cowers. He doesn't often exhibit the  
23 happy affect that you'd expect of a 6-year-old boy. That was  
24 your observation of your son, correct, at the time of your

1 deposition?

2 A Yes.

3 Q And you believe that's true. That's the way he  
4 acts.

5 A At times, yes.

6 Q The -- if you look at your deposition at page 71, I  
7 begin asking you a question, why do believe it's in the best  
8 interest of your son that he does not have contact with  
9 Lyudmyla on Mondays and Tuesdays that are her days during the  
10 week. And then you indicate you can start with the bad  
11 mouthing; you see that? It's on page 71 at line 9, right?

12 A Yes, I can see that.

13 Q And then on page 73 I ask you, okay, what are the  
14 other reasons. And you say, we had an agreement in place that  
15 was very difficult to acquiesce, just to let go of the Mr.  
16 Marquez factor. I mean, I had to accept the Court was not  
17 going to do anything about it, and so he was going to be  
18 around my son, and there wasn't anything I can do about it, so  
19 the agreement that I had I could live with as well. I'll be  
20 around my son Monday through Friday. I can read with him. I  
21 can participate in his education as a guidance counselor. I'm  
22 very passionate about what I use my time very practically with  
23 him so that's what I -- that's what the agreement brought me,  
24 and I'm satisfied with it.



1           So as I understand that, Mr. Abid, your concern  
2 included concern to make sure that you had adequate time to  
3 protect him from Mr. Marquez, correct?

4           A     I don't read it that way, no.

5           Q     Okay. And the last thing you recollected was a  
6 conversation with his kindergarten teacher and that was  
7 Ms. Abacher -- Abacherli, who testified yesterday, right?

8           A     Yes.

9           Q     Who failed to remember any kind of conversation with  
10 you advising you that there was a problem with your child;  
11 that -- that Ms. Aba -- Abacherli?

12          A     The same on that I met with in person, yes.

13          Q     You had -- the time that you advised Lyudmyla that  
14 you didn't want to have time with her, you acknowledge that  
15 there was this issue with the teacher, that you had said that  
16 the teacher had told you that he was provide -- or that he was  
17 having problems, correct?

18          A     Not completely. That's not the complete answer.

19          Q     Okay. Let's -- if you'll turn to the exhibit book  
20 that is our exhibit book.

21                THE COURT: The black one.

22 BY MR. SMITH:

23          Q     The black one. The -- if you'll turn to Exhibit E.  
24 At any time -- these are -- I'll represent to you that these

1 are emails or text messages between Lyudmyla and your wife,  
2 Angie (ph).

3 A Where -- what I am -- I'm the wrong section then.  
4 What section is --

5 Q Exhibit E.

6 THE COURT: Behind tab labeled E.

7 BY MR. SMITH:

8 Q Do you -- can you tell me what your wife Angie's  
9 phone number is?

10 A 2 -- 702-236-4442.

11 Q Okay. Were you aware during the period of time of  
12 September of 2014 -- well, actually from -- on from February  
13 through October of 2014 that Lyudmyla was having text  
14 conversations with your wife, Angie?

15 A Yes.

16 Q Okay. And, in fact, that she had met with her on  
17 several occasions to discuss issues between you and Lyudmyla,  
18 correct?

19 A Two -- only two meetings.

20 Q Two -- two meetings. Okay.

21 A Two meetings. Only one after the settlement. One  
22 was in 2012 so two.

23 Q Okay. So one of -- they -- they had a meeting  
24 together after the settlement to discuss issues that you were

1 having with Lyudmyla, correct?

2 A Correct.

3 Q Okay. You'll agree with me, Mr. -- and correct me

4 if I'm wrong, Mr. Abid, that there is no reference in these

5 text messages at all suggesting that Lyudmyla is saying

6 anything inappropriate to your son, correct?

7 A It's not the topic of the conversation, but you're

8 correct, yes.

9 Q And you'll agree with me that there's no suggestion

10 by Angie to Lyudmyla that there had ever been a problem with

11 him in terms of cowering or other behavioral problems that

12 were identified you as the result of emotional abuse, correct?

13 A In these texts, no.

14 Q Okay. Well, do you have reason to believe that

15 there are any other texts between your wife and Ms. -- and

16 Lyudmyla?

17 A There was conversations that you could ask her

18 about.

19 Q Okay.

20 A You could ask her about the conversation.

21 Q Okay. You're-- so --

22 A No. I'm not aware of any others besides these.

23 Q Okay. Looking now to --

24 MR. SMITH: Move for the admission of Exhibit E,

1 Your Honor.

2 MR. JONES: No objection.

3 THE COURT: It'll be admitted.

4 (DEFENDANT'S EXHIBIT E ADMITTED)

5 BY MR. SMITH:

6 Q Exhibit F, Mr. Abid, do you -- do you recognize  
7 those text messages?

8 A Yeah.

9 Q Okay. And do you recognize those to be text messages  
10 between you and Ms. -- between you and Lyudmyla?

11 A Yes, I do.

12 Q If you'll turn --

13 MR. SMITH: Well, first, move to admit the  
14 Exhibit F, Your Honor.

15 THE COURT: Counsel?

16 MR. JONES: No objection.

17 THE COURT: It'll be admitted.

18 (DEFENDANT'S EXHIBIT F ADMITTED)

19 By MR. SMITH:

20 Q Now turn to Exhibit G. Do you recognize these text  
21 messages?

22 A Yes.

23 Q And do you recognize them to be text messages  
24 between you and Lyudmyla?

1           A     I do.

2           MR. SMITH: Move for the admission of Exhibit G,  
3 Your Honor.

4           MR. JONES: No objection.

5           THE COURT: It'll be admitted.

6                   (DEFENDANT'S EXHIBIT G ADMITTED)

7           MR. JONES: No objection to H and I either.

8           MR. SMITH: Great. They're admitted by stipulation.

9           THE COURT: Those will be admitted.

10                   (DEFENDANT'S EXHIBITS H AND I ADMITTED)

11           MR. SMITH: Thank you.

12 BY MR. SMITH:

13           Q     If you know, Mr. Abid, do you believe that there  
14 are, or do you know that there are any text messages between  
15 you and Lyudmyla that are missing from the date of the text  
16 messages that begin and the date the text messages end that  
17 are contained in those exhibits?

18           A     I re -- reviewed what she submitted, and -- and I  
19 believe them to be accurate.

20           Q     And you believe those are all the text messages  
21 between --

22           A     Yeah, I believe they're con -- a very accurate,  
23 comprehensive list.

24           Q     All right.

1 THE COURT: Can I ask you a question?  
2 MR. SMITH: Yes.  
3 THE COURT: The text messages seem to change in  
4 format through G and H and I?  
5 MR. SMITH: I'm -- it's iPhone. Yeah, iPhone.  
6 So --  
7 THE COURT: Okay. And so but they are -- but they  
8 remain text messages.  
9 MR. SMITH: They do.  
10 THE COURT: All right.  
11 MR. SMITH: These are all text messages.  
12 THE COURT: That's fine. I just wanted --  
13 BY MR. SMITH:  
14 Q All right. So in -- one would expect that if you  
15 believe that someone who's trying to bad mouth their child  
16 that they would attempt to try to keep you from having contact  
17 with that child, correct?  
18 A I -- I don't really have answer for that.  
19 Q Well, you -- you did opine on the whole --  
20 A I could see -- well, I could see --  
21 Q -- notion of --  
22 A I could see -- I could see that -- I've read -- I  
23 read some literature when -- when the bad -- when the bad  
24 mouthing actually takes effect the parent actually pulls back

1 because they've already rejected the child. Oh, don't you  
2 want to go see your daddy? You don't want to? So, no, I  
3 don't believe that.

4 Q Okay. Well, let's talk about these facts. On  
5 February 2nd, 2014, on Lyudmyla's custodial day -- day, you  
6 asked her if you could take Sasha to a Super Bowl party at  
7 your friend Randy's home --

8 A Is there -- am I referencing a text?

9 Q No. I -- you -- you can. I mean, we can if we --  
10 we need to, but I want to ask you if you have any specific  
11 recollection of this first.

12 A I do, yeah.

13 Q And she said, fine, go to the -- the party, correct?  
14 She worked with you on that?

15 A She did.

16 Q All right. And then during spring break at school  
17 you asked her to give her custodial days of April 14th and  
18 15th to take Sasha to California on a trip, right?

19 A We exchanged days. She didn't give them up. We  
20 exchanged them but yeah. But she's doing it for Sasha not for  
21 me. That was --

22 Q Okay. So you -- you worked together with her on  
23 that occasion and you exchanged dates, correct?

24 A Yes. Uh-huh.

1 Q Okay. And then on June 5th during her four weeks of  
2 uninterrupted vacation, you -- you asked her to allow, I  
3 guess, you and -- and others to take Sasha to visit his  
4 grandmother in California --

5 MS. ABID: Grandfather, grandfather.

6 Q Did I say grandmother? Grandfather in California,  
7 and Sasha -- or Lyudmyla agreed to that as well, correct?

8 A Yeah, we traded weekends, yes.

9 Q Okay.

10 A Yeah.

11 Q And during the four-week vacation when Lyudmyla was  
12 at work, she allowed you to watch him while she was at -- to  
13 watch Sasha while you were -- she was at work, correct?

14 A Her daughter was in Ukraine, so she didn't have a  
15 babysitter, yeah.

16 Q Okay. And then on -- your vacation was to begin on  
17 June 30th, 2014, but you asked if she could -- you could take  
18 her -- excuse me -- Sasha on June 26th to your best friend  
19 Ticco (ph) Rodriguez (ph) because you had a wedding, and then  
20 -- and then Lyudmyla agreed to work around your schedule,  
21 correct?

22 A Correct.

23 Q When school started did Lyudmyla ever ask you if she  
24 -- you wanted her to pay for your Safekey -- or pay for



1 Safekey for her -- excuse me -- when Lyudmyla -- when --  
2 when --

3 A Are you referring to this year or 2014?

4 Q 2014. In 2014 when school started, did she ask you  
5 if -- let me make it simpler. Did you ask her to pay for  
6 Safekey for the -- your days as well and that you advised her  
7 that you would reimburse her later?

8 A I don't remember the specifics of the conversation,  
9 but I -- that sounds reasonable.

10 Q And then on August 29th you asked Lyudmyla if you  
11 could take Sasha to a football game with your friend Bobby,  
12 and she said fine, correct?

13 A Correct.

14 Q And on August 30, again, Lyudmyla's custodial day,  
15 Sean -- or you asked her if you could take Sasha to laser tag  
16 with Riley (ph), and she said that was fine, correct?

17 A Correct.

18 Q And then on September 12th, another custodial day,  
19 you asked if you could take foo -- Sasha to a football game,  
20 and Lyudmyla said fine.

21 A Correct.

22 Q And then on September 25th --

23 MR. JONES: Your Honor, can I just ask if he  
24 specifies the year?

1 MR. SMITH: 2014. These are all -- and Your Honor,  
2 if the record was unclear, all of the dates that I just  
3 referenced are 2014.

4 THE COURT: Thank you.

5 MR. SMITH: Thank you. Thank you, Mr. Jones.

6 BY MR. SMITH:

7 Q On September 12th, 2014, which was also Lyudmyla's  
8 custodial day, did you ask her if she (sic) could take Sasha  
9 to another football game?

10 A Yes.

11 Q Oh, I think I just said that -- on September 25th,  
12 on that custodial day, you asked if you could take Sasha to  
13 Utah to watch a football game, and -- and Lyudmyla said okay,  
14 right?

15 A Uh-huh (affirmative).

16 Q Yes?

17 A Dates were exchanged, yes.

18 Q Right. And then after time was when Lyudmyla  
19 started picking up the child -- well, it's in or about that  
20 time when he started school in August, that September area --

21 A A month before, yeah.

22 Q Yeah. She started picking up Sasha in the  
23 afternoons after school even on her -- on her custodial days,  
24 correct?

1 A At varying times, yes.

2 Q And then -- and you were working with her on that,  
3 correct?

4 A Yes, I was.

5 Q All right. And you -- you would agree with me at no  
6 time between February sec -- well, in no time between the time  
7 of the December stipulation and January 20th or 22nd, whenever  
8 it is that you taped the child because you -- you gave a  
9 different answer in the deposition, but if it was January  
10 22nd, at no time did you ever send her an email or a text  
11 message indicating that she was bad mouthing your son,  
12 correct?

13 A During those time periods I didn't send a text to --  
14 to that effect, no. No, I didn't.

15 Q In fact -- okay.

16 A I don't believe so.

17 Q You didn't send a text. You didn't send an email.  
18 You didn't send a letter. You didn't communicate it through a  
19 third party. You never expressed to her any notion that  
20 you've expressed to this Court today that Lyudmyla was bad  
21 mouthing your son -- your -- bad mouthing you to your son --

22 A You're saying only during --

23 Q -- Sasha?

24 A -- not -- in the entirety or just during those time

1 periods?

2 Q That period between September 2013 -- or excuse me  
3 -- December 2013 and January 22nd 2015 when you've told this  
4 Court --

5 A Yes, you -- you're --

6 Q -- that you wanted to tape bad mouthing that you had  
7 never communicated in any manner in writing or -- or  
8 electronically that she was bad mouthing you to Lyudmyla -- or  
9 to Sasha.

10 A During those specific time periods, no.

11 Q And even after the taping -- well, we'll get to  
12 that. The -- you actually stopped the contact and started  
13 making Lyudmyla stay even if she was at your home until 5:30  
14 in November, correct, early November not October.

15 THE COURT: What year?

16 BY MR. SMITH:

17 Q Of 2014.

18 A Yes.

19 Q Okay. And during that same period of time she had  
20 asked you to release the passport of the child, correct, to  
21 her?

22 A During that time period, yeah.

23 Q And you didn't agree to allow her to do that.

24 A I sent her an email. I wanted to discuss it with

1 her, and she refused and said that it was in her attorney's  
2 hands, so I did make an effort to discuss it because I wasn't  
3 just going to hand it over. I wanted to have a discussion  
4 about what her intentions were.

5 Q You said you sent an email?

6 A Yeah. There was an email on the record. I should  
7 -- there should be.

8 Q You mean a text message?

9 A No, email. It was in email.

10 Q The -- okay. During -- when he went to Twitchell  
11 Elementary, you thought it was important to meet with the  
12 principal of Twitchell and provide her information about  
13 Mr. Marquez, correct?

14 A Yes.

15 Q And you met with her.

16 A Yes, I did.

17 Q And during that period of time you provided her  
18 pleadings from this case, correct?

19 A No. They were not pleadings.

20 Q If you'll turn to --

21 A Oh, no. I'm sorry. I apologize. I did provide her  
22 with the stipulation, not pleadings, the stipulation order.

23 Q Well, let -- let's turn and see what you said in  
24 your deposition.

1 THE COURT: What page, Counsel?

2 MR. SMITH: I'm getting there, Your Honor. Ninety  
3 -- looks like 94.

4 MR. JONES: Mr. Smith, do you have notes in that  
5 transcript?

6 MR. SMITH: Yeah, why?

7 MR. JONES: I was going to offer you the one that's  
8 more readable in case you wanted to give me that one.

9 MR. SMITH: Oh, yeah. That would be actually a  
10 great idea because it's very hard to read this one, but I do  
11 have --

12 MR. JONES: Four-by-fours can be hard even for --

13 MR. SMITH: -- but I do have notes. So I thank Mr.  
14 Jones for the offer, but I'm going to continue with this  
15 microscopic transcript that I've been using.

16 BY MR. SMITH:

17 Q Okay. So if we look at -- actually it's beginning  
18 at 93. I ask you if you've had any conversations with  
19 Mabacari (ph) about Ricky Marquez, and you said you don't  
20 think so, and then I said did you ever provide her any  
21 pleadings. You said no. And then I asked you about  
22 Ms. Beckstead. Who is Ms. Beckstead?

23 A She's the principal of American Heritage Academy  
24 where he went to preschool.

1 Q Okay. You -- you did have a conversation with her,  
2 but you corrected me, and you indicated that the Twitchell  
3 principal would be Ms. Wooldridge, correct?  
4 A Yes.  
5 Q Okay. And that was in what? August or September of  
6 2014?  
7 A It would've been -- yeah, August --  
8 Q Shortly after you --  
9 A -- right at the start of school.  
10 Q Right around the time you met with the F.B.I.?  
11 A That would've been before. Before.  
12 Q You met with her before you met with the F.B.I. or  
13 that the meeting with the F.B.I. would be before?  
14 A I can't remember if school started because I start  
15 school two weeks before the kids come, so that's -- both those  
16 things could've happened in a -- in a window around the time  
17 school started.  
18 Q Okay.  
19 A Plus or minus.  
20 Q Okay. And then when you had indicated just that  
21 you'd provided her a copy of the latest order; you see that?  
22 That's on line 13, 94. Is that what you referred to as the  
23 stipulation and order?  
24 A Correct.

1 Q Okay. And then you talk about the substance of your  
2 conversation, and then you said -- and looking at your answer,  
3 the question was at the bottom of 94, 18.

4 And what was the substance of that conversation,  
5 again, referring to the conversation with Ms. Wooldridge, and  
6 I -- and you answered quote, I shared -- what did I share?  
7 Just that this -- this was not, you know, authorized to come  
8 get him from school. He's not, and they -- and they needed to  
9 know who would come pick him up, and it was me and his mom  
10 because Lyudmyla went down to the school and put him down as  
11 the father first. Because I work in the school district, I  
12 saw that so the school wouldn't correct it, and I provided  
13 documentation I was, indeed, the father. At that point I  
14 shared the pleadings, and I shared the case notes on Mr.  
15 Marquez.

16 So not only did you give pleadings to  
17 Ms. Wooldridge, you actually provided case notes on  
18 Mr. Marquez, correct?

19 A I spoke incorrectly. I gave her the stipulation  
20 that was the stipulation order that showed pick up. That's  
21 all she was interested in.

22 Q But you didn't show her the case notes on Marquez?

23 A Oh, I did. I'm just saying I'm correct --  
24 correcting that sentence.



1 Q Oh, I see. It wasn't pleadings. It was just one  
2 order.

3 A Just the order.

4 Q And then the question is, is there any pro --  
5 prohibition from Mr. Marquez you shared -- excuse me -- let me  
6 back up a second. What case notes about Mr. Marquez did you  
7 share? The files related to his court case. Question: His  
8 criminal action? Yeah, his criminal case.

9 So you provided the criminal files of Mr. Marquez to  
10 the teacher at the school, correct?

11 A The principal.

12 Q Principal. Excuse me.

13 A Yes.

14 Q Okay. And during that -- just so we're going in  
15 chronological order in your deposition, during that time you  
16 told me you had never seen the -- that Aleks had signed his  
17 name Aleksandr on a paper that you had received from the  
18 school; do you recall that?

19 A Did he sign his name Aleksandr?

20 Q Yeah. Well, let me ask just --

21 A I guess if I said that, I said --

22 Q -- independently. You can close the -- you close  
23 your deposition, Mr. Abid. At any time during the school year  
24 of '14 did you ever see that Aleksandr had signed his name as

1 Aleksandr on any paper that was -- was presented to you?

2 A I'm sure he had.

3 Q Didn't he -- you heard the testimony of Ms. Abach --  
4 Ms. Abacherli, she (sic) signed it that way every time.

5 A Most of the time when papers come home, there's no  
6 name on them, so he wasn't writing his name on it often but  
7 not a detail I paid close attention to.

8 Q Okay. And, again, in -- at 105 of your deposition  
9 you indicate that Sasha is showing si -- showing signs of  
10 emotional abuse. That's at 105 line 13. I asked you, well,  
11 was -- was it all time? She indicated although he was  
12 initially shy, within five minutes rapport was established and  
13 Sasha appeared at ease. Answer: No, that doesn't explain the  
14 totality of his behavior -- behavior. He vacillates between  
15 that. He can, you know -- he -- be reticent. Like I said, he  
16 shows a lot of signs of emotional abuse, but at times she's  
17 (sic) still the same -- same boy he was.

18 So you still think he shows signs of emotional  
19 abuse, correct?

20 A Absolutely.

21 Q And it doesn't mean anything to you that none of the  
22 teachers or this counselor you've set him up with or anyone  
23 else has said that he shows -- shows signs of emotional abuse?

24 A No, it doesn't change my opinion.

1 Q Okay. There -- let's talk about the recording  
2 device that you used to tape the conversations in January of  
3 2015. You used a flash drive that also had a recording  
4 device, correct?

5 A Yes.

6 Q Where is that flash drive today?

7 A I don't know. I probably just threw it away. I'd  
8 never use it again, just discarded it.

9 Q So the original of those -- of those recordings were  
10 -- were contained on that flash drive, correct?

11 A No. Once they were uploaded to the computer, they  
12 didn't remain on the flash drive.

13 Q But the original recordings were from that device  
14 that you said you threw away, correct?

15 A Not -- because if -- if you had two days, it  
16 couldn't hold all those days on it itself. It would only hold  
17 one recording at a time, so you'd have to erase one and put  
18 the other one back on.

19 Q Okay. But -- but both recordings were done on that  
20 device.

21 A Yes, sir.

22 Q So the original recordings were maintained on that  
23 device, correct?

24 A No. They were maintained on the hard drive.

7           Q     At -- you had indicated yesterday that the files  
8 came in in two separate sections, correct? That was your  
9 testimony yesterday, correct?

10          A     Yeah.

11          Q     They actually came in four separate sections or at  
12 least that's what you told me at your deposition. Is that  
13 your recollection or was it two?

14          A     If I told you two, it was -- the second recording  
15 only came in one and the first one came in four, so, yeah, it  
16 was four. Sorry.

17          Q     So -- and then you parsed those sections. You --  
18 you segregate -- and I think in your words, you truncated them  
19 so that they only got the sections that you --

20                THE COURT: Can we back a little bit? I'm sorry.  
21 So when you talk about sections, that the first day, the first  
22 recording came in four sections; what do you mean by the word

7 the flash drive device to your computer.

8 THE WITNESS: The computer. Yeah.

9 THE COURT: And you viewed them on your computer  
10 through the software as four separate audio files.

11 THE WITNESS: Yes.

12 THE COURT: Okay. I'm sorry. I just wanted to --

13 BY MR. SMITH:

14 Q And then you parsed out even those files based upon  
15 the time frames that you thought it was likely that there was  
16 a conversation between Lyudmyla and Sasha, correct?

17 A That's correct.

18 Q But in those -- even the time frames that you  
19 identified, there were conversations between Lyudmyla and  
20 other individuals, namely her daughter Ira (ph), correct?

21 A Not that I recall.

22 Q You can't recall that there was any communication

7 anything else bes -- besides when they were together talking  
8 with Sasha.

9 Q Did you have any role in preparing the condensed  
10 transcript of the discussions that appear in the pleadings  
11 that you filed in this case, namely the pleading filed, Your  
12 Honor, on February 4th, 2015?

13 A Uh-huh.

14 Q Is the answer yes --

15 A Yeah.

16 Q -- you did?

17 A Yes, yes, I did.

18 Q Okay. And you don't recall any conversations on  
19 those -- those tape -- or excuse me -- those recordings for  
20 your analysis between Ira and Lyudmyla?

21 A No.

22 Q All right. Okay. This is the part I want to go

7 -- that informed the decision.

8 Q Are you telling me that your -- your testimony now  
9 is that you never knew anything about the -- the one-party  
10 consent statute prior to the time that you taped these and  
11 provided these recordings?

12 A Well, I was aware of that, but I wasn't aware of  
13 rules of evidence or how it applied to a courtroom, but I knew  
14 that this was a one-party state. Yeah, I knew that.

15 Q And were you aware of the rule of informed consent?

16 A Informed consent?

17 MR. JONES: Objection.

18 BY MR. SMITH:

19 Q Excuse me. Vicarious consent.

20 A No, not at the time and not --

21 Q Okay. Well, let's go through your deposition.

22 Beginning at page 144 at the bottom --

23 THE COURT: Counsel, do you need me to unlock the

7 I'm just --

8 THE COURT: I'm sorry. I just thought it was an  
9 associate or somebody.

10 MR. JONES: No, no.

11 THE COURT: I didn't see who it was. Okay.

12 MR. JONES: I just don't know what I should tell  
13 her, meaning --

14 THE COURT: Counsel? Mr. Smith?

15 MR. JONES: -- I know she's not available tomorrow.  
16 Today was the only day she was available. I --

17 MR. SMITH: Judge, I -- I -- first of all, I think  
18 we need a ruling on the admissibility of this tape because the  
19 tape --

20 THE COURT: Before Dr. Holland -- and I absolutely  
21 agree.

22 MR. SMITH: Okay.



7 MR. JONES: But I guess my --

8 THE COURT: And I understand that.

9 MR. JONES: -- my question is --

10 THE COURT: A scheduling question, Counsel?

11 MR. JONES: -- a scheduling question, meaning I know  
12 that you didn't have dates off until February. If --

13 MR. SMITH: I'm truly -- I've got -- I can just tell  
14 you, I've gone through sections, so you've kind of seen the  
15 sections I've got through -- gone through. I've got one, two,  
16 three, four, five, six sections that are left to go through,  
17 and some of them will take 30 seconds. This one, however,  
18 will take a few minutes so if --

19 THE COURT: Okay. I'm concerned about the length of  
20 my decision. I need to -- and we're almost at 3 o'clock. I  
21 need to kind of digest the -- the factual findings that I'm  
22 making as we're going on.

7 THE COURT: And I think that those are separate  
8 issues.

9 MR. JONES: Well, and I have plenty of -- of  
10 redirect --

11 THE COURT: Redirect. We're not there.

12 MR. JONES: -- just on this issue, and then we're  
13 going to have a big argument. I don't even know if we'll  
14 finish the admissibility issue today.

15 THE COURT: That's what I'm thinking.

16 MR. SMITH: Let -- let me suggest this, Your Honor.  
17 The admissibility, I think you -- I think you do need to weigh  
18 this. It is an important issue. If --

19 THE COURT: No, it -- and I -- and I don't want to  
20 give you a short time.

21 MR. SMITH: I -- okay.

22 THE COURT: I'd rather sleep on it and give you a  
23 full decision

7 going to be necessary --

8 THE COURT: Okay.

9 MR. JONES: Well --

10 MR. SMITH: -- after we're done here.

11 MR. JONES: And I don't know that procedurally he  
12 gets to.

13 THE COURT: I don't think -- because we're on voir  
14 dire here.

15 MR. JONES: This is my case in chief.

16 MR. SMITH: Okay. That's fine.

17 THE COURT: So I don't think so.

18 MR. SMITH: That -- that's fine.

19 THE COURT: Okay.

20 MR. SMITH: It -- I don't think it's going to  
21 matter, but, look, the -- it seems to me that it'd make sense  
22 that you -- for you to spend some time with this, maybe not

7 MR. SMITH: Right.

8 THE COURT: -- I'm okay with taking a couple of  
9 weeks. These parties have been waiting a long time, and I  
10 hate to extend it, extend it.

11 MR. SMITH: But this -- but this is a motion to  
12 change the custody of a child who, by all accounts, is doing  
13 remarkably well.

14 THE COURT: Well, let's not argue it. Can we just  
15 let -- can we -- a scheduling issue, Mr. Smith.

16 MR. JONES: Judge --

17 THE COURT: So can -- what do you want to do?

18 MR. JONES: I -- I mean, I guess I should just go  
19 tell Dr. Holland in order to try to save my client some  
20 dollars -- although he may get charged for the half-day  
21 anyway, I guess, that'll be an issue we address later -- that  
22 she should go for today.

7 Christmas, I have depositions in New York.

8 THE COURT: Can we finish this issue, take -- in  
9 today. At the end of today, look at our calendars --

10 MR. SMITH: Sure.

11 THE COURT: -- and -- and find time the three of us  
12 that -- that we can make this work?

13 MR. SMITH: Okay. Well, part of it is if your  
14 determination is after today, Judge, I -- this is such a  
15 spoilation issue. I don't -- can't even see how this comes  
16 in, but the issue of whether or not you can use inadmissible  
17 evidence in this context, I think is a matter that should be  
18 briefed. I think that we should get your ruling on the  
19 admissibility of this evidence, and then we should brief the  
20 issue of whether or not Dr. Holland even has the right to  
21 testify based upon the fact that her report is replete from  
22 influences associated with this tape.

7 evidentiary rule that says experts can rely on things even if  
8 they're inadmissible, so -- so this idea that he now gets to  
9 undo a ruling you made two months before he got on the case  
10 is --

11 MR. SMITH: Show me that ruling. Where's that  
12 order?

13 MR. JONES: I'll -- you know what?

14 MR. SMITH: I'd be happy to see it.

15 MR. JONES: I'll get the video --

16 MR. SMITH: No, no, there's not -- a video's not an  
17 order.

18 THE COURT: Here, this is -- this is what -- this is  
19 what we're going to do.

20 MR. JONES: Then I'll prepare the order and submit  
21 it.

22 THE COURT: This is what we're doing.

7 in based on all of those objections.

8 MR. SMITH: Great.

9 THE COURT: Okay?

10 MR. SMITH: I think that's wise.

11 THE COURT: At that point once -- and I see these as  
12 two separate issues while it's like a great Venn diagram where  
13 they have a lot of overlap. I'm happy for you to make -- I  
14 know Counsel, I told you that you can make your record  
15 regarding Dr. Holland. I did say and I did order that she  
16 would be allowed to view those and that she could look at them  
17 as part of her writing of a report, but I'll allow you to make  
18 those same --

19 MR. SMITH: Okay. Wait a second. Lyudmyla is  
20 whispering in my ears. She says she would rather continue  
21 with Holland --

22 MS. ABID: Yes.

7 MR. SMITH: Well, let me -- let me consult -- yeah,  
8 let me consult with my --

9 THE COURT: Do you want to five minutes -- five  
10 minutes.

11 MR. SMITH: Yeah, let me get five minutes with my  
12 client.

13 MR. JONES: And I won't ask what --

14 (COURT RECESSED AT 14:58:09 AND RESUMED AT 15:15:27)

15 THE COURT: All right, okay. Counsel, did you have  
16 an opportunity to speak with -- and you can have a seat. Did  
17 you have an opportunity to speak with your client?

18 MR. SMITH: I did, Your Honor. And my client's  
19 concern is the cost associated with going forward and  
20 continuing days. I explained to her that we wouldn't be going  
21 forward tomorrow. I think what she -- she thought was that we  
22 would have to go tomorrow. We would have to another day for  
23 Holland. and then we would have to have another day for the



7 on that if that's okay with Counsel.

8 MR. JONES: Judge, it's -- it's your -- it's your  
9 circus. We're your monkeys, okay? So if that's how you want  
10 it --

11 THE COURT: Not very nice.

12 MR. JONES: -- as much as I would like --

13 THE COURT: To argue?

14 MR. JONES: -- argue, I'm fine putting it all down  
15 on paper.

16 MR. SMITH: Very good.

17 THE COURT: Okay.

18 MR. SMITH: I'll agree to that as well, Your Honor.  
19 That'll stay the cost.

20 THE COURT: Okay. So then we'll finish up today.  
21 We'll vacate tomorrow. We'll set for --

22 MR. SMITH: Right. So we'll just have one other day  
23 of hearing so it'll be the same cost. Right? Yes, full

7 MR. SMITH: Yeah, this is -- Judge --

8 THE COURT: So I can't -- I cannot make a promise  
9 that it's only going to be another half day.

10 MR. SMITH: Oh, no, I understand. But I can only  
11 say that this is the case. This is their case. This is --  
12 this tape is what they've presented on this case.

13 THE COURT: I don't know I could say that either.

14 MR. JONES: It -- it is absolutely not. In fact, I  
15 came very close to having the tapes not even be an issue,  
16 Judge.

17 MR. SMITH: Well, why don't you stipulate to not  
18 have them, and we can avoid all this?

19 MR. JONES: Because you believe that experts can't  
20 receive the tapes even though the Judge already ruled on it  
21 so.

22 THE COURT: Okay. So we can -- let's finish up, and

7 THE COURT: All right. So that puts us with  
8 Mr. Abid back on the stand. Thank you.

9 Counsel?

10 THE WITNESS: Do I need to be sworn in again, Your  
11 Honor?

12 THE COURT: No, no, no, we don't need to swear.  
13 We'll just remind you that you're still under oath.

14 Go ahead, Counsel, you can finish up.

15 BY MR. SMITH:

16 Q Looking at your deposition at page 145, Mr. Abid,  
17 and just to give us context, you just testified that you were  
18 not aware of the vicarious consent doctrine at the time of the  
19 recording. You indicate at line 16 on page 14 -- at least  
20 question is what was your understanding at the time that you  
21 placed the recording device in the backtack (sic) that you  
22 intended to be transported to Lyudmyla's home? Answer: I was  
23 under the impression we were a one-party state. Question:

7 it perfectly.

8           Question: Okay, I'm asking for your understanding  
9 of the law which you've stated you understood the statutes.  
10 That was your word, so what is it that you understood in  
11 regard to the law associated with the eavesdropping or  
12 recordation of someone in their home without their consent?

13 Answer: I just understood that we were a one-party state.  
14 That's what I --

15           Question: So what does that mean? What does -- is  
16 it you understood? Answer: That we were a one-party state.

17 Question: Again, what does that mean? Answer: One-party  
18 consent.

19           Question: Okay. So you understood at the time or  
20 your belief at the time was that you could record just by your  
21 own consent any conversation in Lyudmyla's home of anybody  
22 without their consent, correct? Answer: No, I knew that I

23 needed       Sasha needed to be part of the party to the

7                   Question: Okay, but that was your understanding in  
8 January of 2015? You understood what's -- now you understand  
9 to be the vicarious consent rules associated with -- with --  
10 answer: Yes, yes. Question: -- of recordation? Answer: I  
11 heard about them afterwards, but I knew -- I knew there was a  
12 consent, a doctrine. I knew there was a doctrine.

13                   Question: And how were you aware of that because  
14 your attorney has stated on the record that he never had a  
15 conversation with you about that. Answer: He didn't. It was  
16 not -- Question: So -- Answer: He didn't ask me. Question:  
17 So how did you know? Answer: I read. Question: Where did  
18 you read that? Answer: In Nevada statutes, and I read it,  
19 and there's many. There's a lot of case law so that's --

20                   Question: So you researched case law on the issue  
21 of the vicarious consent before you placed a tape? Answer:  
22 It was after. Question: Please allow me to finish my

7 of a tape recording device placed in a backpack prior to the  
8 time you did that? That's your testimony? Answer: I knew  
9 that vaguely. I had a conversation with somebody in law --  
10 law enforcement about it.

11 Did I quote that testimony correctly?

12 A You did.

13 Q So you didn't understand that that was the doctrine,  
14 but you had an understanding based on your conversation with  
15 law enforcement that you could place a device and record  
16 conversations through your -- the fact that you could give  
17 consent to Sasha, correct?

18 MR. JONES: Objection. Misstates his testimony that  
19 was just quoted.

20 MR. SMITH: I -- I think it accurately states his  
21 testimony, Your Honor.

22 MR. JONES: If you're going to summarize his  
23 testimony you actually have to summarize accurately and use

7 BY MR. SMITH:

8 Q -- that you could place the backpack in a home,  
9 record someone and have the child's consent just by granting  
10 it as a parent, correct?

11 A I had a vague understanding of that.

12 Q Okay. And that was based on conversations you had  
13 with the F.B.I.?

14 A No. I -- I watch a lot of true crime. I -- I read  
15 the paper. I mean, I'm sure that it's something like in -- a  
16 part of my general knowledge that I might have read without  
17 studying it, like I would know about many laws without ever  
18 delving into it. That's about the level of my understanding.

19 Q Okay. But your testimony was at your deposition,  
20 again, and turning to 148, answer: I knew vaguely. I had a  
21 conversation with somebody in law enforcement about it. And  
22 question: Who was the conversation with -- with? Answer: I

7 didn't recall what they had called you about; does that  
8 refresh your recollection that they called you about  
9 Mr. Marquez?

10 A That's what it says. That's -- that's what it says.

11 Q Well, that's you said, Mr. Abid.

12 A Yeah, that's what -- that's what I said at the  
13 deposition.

14 Q Okay. So you could remember that in -- in  
15 September, but you just didn't remember it today?

16 A I don't remember specifics about it, no, for  
17 yesterday.

18 Q Okay. Do you remember any specifics about what they  
19 talked to you about with Mr. Marquez? Does that ring any  
20 bell?

21 A No.

22 Q Okay. And you were sitting in front of two F.B.I.  
23 agents who were talking about this rule that you describe as



7 Q What was the location you went to when you were  
8 speaking to the F.B.I.?

9 A The Lake -- by Lake Mead and M.L.K. It was -- I  
10 think I took M.L.K. to -- it was on Martin Luther King,  
11 downtown. North town.

12 Q Martin Luth --

13 A North town.

14 Q Okay. Martin Luther King and what?

15 A I want to say it was Martin Luther King and Lake  
16 Mead, but it was --

17 Q Okay.

18 A -- it was North Las Vegas in --

19 Q And how was the building -- have a sign on the  
20 outside?

21 A No, they have like a little tower that you -- you go  
22 into, and you get scanned through, and you have to get a  
23 badge like a little place that you go to first to get

7           Q     Okay. And what did the -- when -- when you got  
8 through the screening, what did that sign say?

9           A     Oh, I -- I don't remember. I mean, it --

10          Q     Did it say F.B.I.?

11          A     I can't remember. I -- all I remember is it -- I  
12 drove up. I parked. There's a big fence. There was a little  
13 building, and I walked in the building, and there's a security  
14 guy greeting you there. That's all I remember about it.

15          Q     Did the agents identify themselves as F.B.I. agents?

16          A     This was the -- the security person. You can't --  
17 to even get back to what --

18          Q     Okay. So -- so once you got through and spoke with  
19 these people, did they identify themselves as F.B.I. agents?

20          A     Yeah, yeah.

21          Q     Okay. Were they with another agency? You're sure  
22 it was the F.B.I.?

--

7 of course, there were just agents coming through, walking  
8 through talking.

9 Q How did you know they were agents?

10 A Well, I knew I was in -- I mean, it said -- when I  
11 went into the major building, it says Federal Bureau of Edu --  
12 Investigation, and so I -- and I also knew from the -- the  
13 first phone call that this was legitimately who was contacting  
14 me.

15 Q I'm wondering how you identify two agents talking  
16 amongst themselves in the waiting area.

17 A Because the only per -- people that could be back  
18 there were F.B.I. personnel, you know, so --

19 Q Well, you were back there.

20 A Well, but I was the only one in the waiting area.  
21 These are people coming back behind doors, like you would come  
22 back behind there. If they're coming back and forth.

23 Q Did they identify themselves to you as F.B.I.

7 BY MR. SMITH:

8 Q Are you saying that the agents that you overheard  
9 talking about this consent doctrine were different than the  
10 agents that interviewed you?

11 A Yes.

12 Q The agents that -- the -- that identified themselves  
13 as F.B.I. agents that you spoke to, did they identify what  
14 branch of -- or what their focus was in the F.B.I.?

15 A I want to say -- I think they -- they -- it was  
16 Eastern European crime.

17 Q Okay. So you remember that now. You didn't  
18 remember that yesterday that the -- anything you talked about.  
19 Did you talk about Eastern European crime with them yesterday  
20 -- or excuse me -- with the agents when you met with them?

21 A I don't remember the specific questions, so I can't  
22 even -- I didn't say anything. They asked -- I mean, I -- I  
23 didn't ask them anything or get any information. They

7           A     I -- I wasn't clear what they wanted to know.

8           Q     Okay. But you did understand that they wanted about  
9 Mr. Marquez; didn't you?

10          A     That was what -- my -- my assumption, yeah, but they  
11 didn't share any information with me, so I don't know what  
12 they were after.

13          Q     Okay. Addressing this notion that the people who  
14 were discussing the one-party consent were different, I'd like  
15 you to turn to your deposition at page 144 -- 54. Question:  
16 How did the conversation turn to one-party consent stand --  
17 statute? Answer: We're waiting. I'm waiting for the meeting  
18 to visit. They're talking. Question: And in that meeting  
19 while you were present, they were talking about one-party  
20 consent statute? Answer: Yeah.

21                   Did I read that correctly. Mr. --

22          A     Yeah.

23          O     -- Abid? Could you close the deposition please.

7 Q The answer is yes?

8 A Yes.

9 Q But, in fact, there were multiple phone calls you  
10 had with the F.B.I. in the fall of 2014; weren't there?

11 A No.

12 Q Really? Let's look at your deposition. Question --

13 A What page am I on?

14 Q At 150 -- 155 line 19. Did you have any --

15 Question: Did -- did you have any further contact with the  
16 Federal Bureau of Investigation or investigators, employees,  
17 or agents of the Federal Bureau of Investigation? Answer:

18 Yes. When was that? Answer: I don't know. They called me  
19 at some point, called me a few other times. Question: Who  
20 called you? Answer: I don't remember the agent's name.

21 Question: Did you keep any notes of the

22 conversations with the F.B.I.? Answer: No. Was there any

23 person present other than the agents, yourself in the -- in these

7                   Question: Where was the meeting? Answer: I think  
8 it was down here on Lake Mead, wherever their headquarters are  
9 down there. Question: Did they show you any material or  
10 documents or other information at the time? And that -- and  
11 you answered, no, they didn't show me anything.

12                   So when you described how many time -- times they  
13 contacted you, you used the word -- called me on -- a few  
14 other times, correct?

15               A     Yeah. And that would be incorrect. I -- I spoke  
16 incorrectly. It was one call.

17               Q     Oh, I see. All right. So your -- your recollection  
18 then in September is different than your recollection today?

19               A     Today I -- I recall it was one phone call.

20               Q     Okay.

21                   MR. JONES: I guess at this point I should move to  
22 strike that entire line of questioning because the impeachment  
23 failed. He said several times -- several phone calls and

7 impeachment. I do think it impeached his testimony, but it  
8 can be used for any purpose -- purpose. It's not a --

9 THE COURT: I think it impeached him, and I'll allow  
10 it.

11 BY MR. SMITH:

12 Q How many times other than that instance have you met  
13 with F.B.I. agents?

14 A Never.

15 Q And, again, you now recollect that you were talking  
16 to them about Mr. Marquez, correct?

17 A I don't -- I really don't remember what they were  
18 asking me so if I said it in the deposition and then yesterday  
19 it was different, I'm sorry. But I just -- I don't have any  
20 recollection that can give you a concrete answer.

21 Q Well, let's look at your testimony in regard to the  
22 European crime section of your deposition. That'd be 160.

23 Question: So the only thing you remember about these



7 relatives -- has -- has he ever been involved --

8 MR. JONES: (Indiscernible) right? He. You said  
9 you.

10 MR. SMITH: Sorry.

11 BY MR. SMITH:

12 Q Has he ever been involved in business with any of  
13 Lyudmyla's relatives? Answer: Yeah. Lyudmyla told me they  
14 were going to start a door business in December. She told me  
15 that after the settlement.

16 So at the time you talked to these F.T.I. (sic)  
17 agents that were involved in the Eastern European crime  
18 portion, you just happened to know that Mr. Marquez was  
19 entering into a business with Lyudmyla's relatives in the  
20 Ukraine, correct?

21 A I knew that for months, so it was nothing new.

22 Q Did you? Your testimony is that Lyudmyla, who

7 business, he and -- Nikolai (ph) and -- and Ricky. And it was  
8 going -- it was going to take time. I remember that  
9 conversation so.

10 Q Do you recall where that was?

11 A It was -- oh, it was the day after the settlement.

12 Q Okay. And you were aware of that fact at the time  
13 that you met with the -- the agents at the F.B.I., correct?

14 A Yeah.

15 Q Okay. And you believe that Nikolai was part of the  
16 Rus -- Russian mafia?

17 A It's a possibility.

18 Q Okay.

19 A That's as I said in the testimony. It says that it  
20 was a possibility.

21 Q Okay. And Nikolai was the brother-in-law that you  
22 thought she was going into -- or that you thought Ricky  
23 Marquez was going into business with, correct?

7 That -- what -- at that time I was aware of that information  
8 when I met with the F.B.I., yes.

9 Q When I asked you to give me -- you -- you said that  
10 Nikolai was a shady businessman; do you recall that?

11 A Uh-huh.

12 Q Yes?

13 A Yeah.

14 Q And I asked you to give me any information or facts  
15 that you had that suggested to you that he was a shady  
16 businessman and you couldn't give me one fact; could you?

17 A No.

18 Q And, in fact -- no, you could not, correct?

19 A No, I could not.

20 Q And, in fact, you said, well, it's my opinion.

21 A Yeah.

22 THE COURT: Counsel, do we need to take a break

23 before 4 o'clock?

7 MR. JONES: Just before 4:00, I -- I will need to  
8 take a break.

9 THE COURT: Okay.

10 BY MR. SMITH:

11 Q Okay. So the -- going back now to the -- the  
12 software you had, that software was designed to truncate  
13 information contained on the tape, correct?

14 A Yeah.

15 Q Okay. That's the software that you used at that  
16 time, correct? At the time that you were recording the --  
17 putting the recording --

18 A Uploading it you mean?

19 Q -- device in the backpack, correct?

20 A And I got it back. Yes.

21 Q Okay. And that -- that software had to -- the  
22 ability to take one second out of the wav file or 13 hours  
--

7 to remove from the other portions of the tape was based upon  
8 your determinations of time of the overall tape, correct?

9 A Correct.

10 Q Okay. But, in fact, you actually had to guess as to  
11 the time frame associated with where you would take out the  
12 tape; didn't you?

13 A If you're asking me to answer yes or no, I'd have to  
14 give you that it was in four sections so I knew the two  
15 sections where it would be, so I didn't need to look at all  
16 four because I knew the two sections where to look.

17 Q But you had to guess, right? You had to guess --

18 A No.

19 Q -- which section?

20 A No, I didn't have to guess because simple math  
21 would've told me when 7 o'clock in the morning would've  
22 occurred.

7 file. Is that what you mean?

8 BY MR. SMITH:

9 Q Right.

10 A Yeah.

11 Q So you had to guess where that communication took  
12 place, correct?

13 A No, I didn't because I could tell --

14 Q Because you listened to the entirety of it.

15 A If there are four -- if there is four hours, and I  
16 start with 5:30, three sections would get me to 12 hours, so I  
17 -- I knew precisely. I didn't need to -- to speculate.

18 Q In your deposition you used the word guess. I'm at  
19 page 169.

20 A Well, then I was correct. It was a correct guess if  
21 you want to call it that. If I went to the trouble to check  
22 the -- the -- the sign-ins at Safekey --

7           Q     So -- and then you can put those truncated sections  
8 together, right?

9           A     No. Not that -- I -- I don't -- I don't know that  
10 feature, so it wasn't something that I knew was available.

11          Q     The -- so when you took out these sections that  
12 you've now presented, there was an original file remaining  
13 that was intact on your computer, correct?

14          A     At the time I -- I saved them, sure, yeah.

15          Q     And then you deleted those files.

16          A     That's correct.

17          Q     And then you also destroyed the -- or discarded the  
18 -- in your trash the --

19               MR. JONES: Objection, Your Honor. Asked and  
20 answered. He doesn't get to keep going over the same --

21               MR. SMITH: This is foundation, Your Honor, because  
22 yest --

23               MR. JONES: He asked it yesterday.

7           A     That and -- and I was afraid.

8           Q     Okay.  So, in fact, you got rid of that computer  
9 because you were more concerned that Lyudmyla was going to try  
10 to prosecute you, correct?

11          A     No, I was more afraid for my physical health.  I  
12 didn't know if because of this idea that I'm obsessed with  
13 them that they would've felt like they would want to get a  
14 hold of my computer.  I was going to be in Iowa for three  
15 months.  I didn't -- I didn't want something there that would  
16 entice somebody to break into my house.

17          Q     The --

18          A     But I did fear for my safety.

19          Q     You feared for your safety, so the answer -- let me  
20 look to your deposition at page 178.  Question -- at line 8 --  
21 so you got rid of that computly (sic) -- computer shortly  
22 thereafter?  Answer:  Yeah, because I knew she was more



7 THE COURT: Counsel, did you want to take your five  
8 minute break right now?

9 MR. JONES: Yeah, let's do that.

10 THE COURT: Let's do that. Five minutes we'll be  
11 right back.

12 (COURT RECESSED AT 15:44:44 AND RESUMED AT 15:52:10)

13 THE COURT: We're back on the record. Counsel, go  
14 ahead.

15 MR. JONES: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. JONES:

18 Q Mr. Abid, what time did you arrive at Court today?

19 A Sometime -- maybe twe -- 12:30 to 12:40, in that  
20 range.

21 Q And when you arrived was the Defendant and her  
22 husband here already?

23 A Yes.

7 Q -- that you typed out on her phone?

8 A Yes, on her notes on her iPhone. Yes.

9 MR. JONES: Your Honor, I'd like to re -- read into  
10 the record the recorded recollection of my client regarding  
11 the conversation between the Defendant and her husband that  
12 occurred a few hours ago.

13 MR. SMITH: I think this is pretty beyond the scope  
14 of the cross examination. It hasn't been disclosed prior to  
15 this time. He's known about it since at least 12:30. He  
16 could've given me a copy of it, so I'd have an opportunity to  
17 review it. It's -- it's not in the form of any kind of  
18 evidence that's admissible at this trial, not identified in  
19 any -- any kind of pleading.

20 We have another day in this trial, if he wants to  
21 give me the opportunity to review it and then have his client  
22 testify about it. I can't see how it's possibly relevant to

7 he's obsessed with a wonderful man, Ricky Marquez, and he's  
8 out to get Ricky Marques and the F.B.I. put him up to trying  
9 to record Ricky Marquez because Ricky's so great, right?  
10 That's the theory that they've put forth on this, okay?

11 I'm allowed to present evidence that if it's -- I  
12 mean, and -- and I'm sorry. I could have the wife come in and  
13 testify too that she heard it. You'd have two witnesses say  
14 exactly what Lyudmyla said and exactly what Ricky said.

15 MR. SMITH: Was she named as a witness?

16 MR. JONES: (Indiscernible) up, and I'll let the  
17 Court decide whether she allows a third-party rebuttal witness  
18 to come in and testify, but I don't need to because even  
19 without instruction from me, they prepared a memo with their  
20 phone creating a record, and I'll read the --

21 THE COURT: Tell me just -- just as an offer of  
22 proof what the -- what the -- what's the nature of the --

23 MR. JONES: Mr. Marquez instructing his wife to

7 bias which is always relevant.

8 MR. SMITH: Who's biased?

9 THE COURT: If -- if it's true. If -- if -- if --  
10 if somebody -- then on cross examination those are appropriate  
11 questions. Did somebody tell you what to say today?

12 MR. SMITH: Well, but except that how could this  
13 possibly have effected his state of mind at the time he  
14 entered into --

15 THE COURT: I'm getting there. I'm getting there.

16 MR. JONES: I'm going to get to that.

17 THE COURT: Okay. That's what I'm say -- it might  
18 be --

19 MR. JONES: I haven't been given the opportunity.

20 THE COURT: -- appropriate. How is it appropriate  
21 today?

22 MR. JONES: It -- okay. If their theory is he was  
23 out to get Ricky and this is how Ricky behaves, he probably

7 matter about which a witness once had knowledge -- I could ask  
8 him specifically what they said. He might not be able to tell  
9 us word for word what he said -- but now has insufficient  
10 recollection to enable him to testify fully and accurately is  
11 not inadmissible under the hearsay rule if it shown to have  
12 been made when the matter was fresh in his memory and to  
13 reflect that knowledge correctly. The memorandum or record  
14 may be read into evidence but may not itself be received  
15 unless offered by an adverse party.

16 THE COURT: Okay. So if it --

17 MR. JONES: So this is his recorded recollection.

18 THE COURT: If it is a recorded recollection, how is  
19 the information contained in it relevant because it shows  
20 Ricky's a bad guy --

21 MR. JONES: Well --

22 THE COURT: -- and their theory is he's a good guy?

7 here, you know, we -- we've lost sight during this entire  
8 exercise of Ricky Marquez that this is about a child. But if  
9 we're going to allow him to have the latitude that he was  
10 allowed to have to talk about all of the F.B.I. and Ricky  
11 Marquez stuff, I think Your Honor should hear whether or not  
12 even if it was about Ricky Marquez that it was justified.

13 I think you're going to conclude -- maybe you  
14 already have -- that the recording was only about his son, but  
15 if you have doubts whatsoever about whether he could've been  
16 acting in good faith trying to react -- or trying to record  
17 interactions between his son and Ricky Marquez, this evidence  
18 of Ricky telling his wife -- I mean, it--it's -- it's  
19 priceless. What to say to Your Honor and that she --

20 I -- I mean, I'm sorry, Judge, this issue is -- it  
21 will basically tear apart the entire exercise that we just  
22 went through talking about how Dad is out to get Ricky Marquez  
23 and not protect his son and there's no doubt that it's

7 the question the Court asked that this -- this portion of the  
8 hearing is designed to discover the state of mind of Mr. Abid  
9 at the time that he's entered -- or did the tapes. He's  
10 already testified under oath as to his state of mind and his  
11 statement as to why he did so.

12           Apparently the notion is is that if we can say  
13 enough bad things about Ricky Marquez, even doing the same  
14 exercise that Mr. Abid has done and put words in the mouth of  
15 others that won't be able to -- you know, what do you say when  
16 he says oh, the kid told me this. There's no objective  
17 evidence of that, but he's saying it happened.

18           Same thing here. Mr. Marquez will deny these things  
19 have ever been said if they're so damaging that -- you know,  
20 that he's -- that he's ever requested the perjury. I was in  
21 those conversations, so I'm a little concerned about what the  
22 nature of the -- the eavesdropping was --

23           MR. JONES: Mr. Smith, you had not arrived yet.

7                   And -- and I think it's telling that we have  
8 virtually no evidence to show the child was suffering from  
9 these things that he said he was suffering. We have no  
10 complaints by Mr. Abid to Lyudmyla about any kind of  
11 statements made to the child.

12                   MR. JONES: That's absolutely not true, Judge. You  
13 have in evidence --

14                   MR. SMITH: We have -- we have --

15                   MR. JONES: -- statements by Dad in October, three  
16 months before the recording. He admitted them into the  
17 evidence. I moved into evidence. I stipulated. He obviously  
18 didn't read them. We're going to go through the exercise of  
19 him saying why would you tell your son not to tell me things  
20 in a text message, so when he argues this --

21                   MR. SMITH: And I think that the -- the questions or  
22 the -- the statements that were made and the testimony and I  
23 -- I thought I saw that thing that said do not interrupt, so



7 THE COURT: That's what -- that's what someone told  
8 me. Not you, another attorney told me that.

9 MR. SMITH: Okay. Very good. So, Your Honor, so  
10 what we're faced with as we have no objective evidence of any  
11 -- for example, the -- I -- I think John was quick to point  
12 out that there was something about, well, you shouldn't say  
13 that -- or tell him to not tell me this, but that's not what  
14 was testified here.

15 What was testified was far more dramatic, far more  
16 hyperbole in that it was a called me a piece of whatever,  
17 called me -- told me that I can't love him, was dramatically  
18 crying. These are the type of things that common sense tells  
19 us someone would report to the other party, seek to have the  
20 child under counseling, et cetera. None of that was done.  
21 What we have is this tape, so the --

22 THE COURT: Okay. So I -- if we're looking -- if he  
23 had a good faith reason to objectively --

1 MR. SMITH: Right. No, there is. And -- and I  
8 think you've accurately stated, Your Honor, there are multiple  
9 facets associated with our doubt that his intent was in good  
10 faith. He didn't do the things necessary to address the  
11 problem. He didn't --

12 THE COURT: One of those things has been --

13 MR. SMITH: He -- that was one of those things --  
14 right.

15 THE COURT: -- his contact with the F.B.I.

16 MR. SMITH: And the other is his contact with the  
17 F.B.I., his destruction of the tapes.

18 THE COURT: So --

19 MR. SMITH: I mean, any number of things.

20 THE COURT: Well, and his contact with the parole  
21 office -- parole or probation officers, his constant contact,  
22 the giving -- those things, so I -- I -- that has been a  
23 portion of your case, so Mr. Marquez is on the outlie here

7 that's your line of questioning. That has been your theory.

8 That's where you're going. But that's a portion of --

9 MR. SMITH: That's right.

10 THE COURT: That's a portion.

11 MR. SMITH: So the question is does he think Ricky's  
12 a bad guy, and they're going to present evidence that he's  
13 more of a bad guy. How does that help them?

14 THE COURT: Well, okay. Relevant. Maybe. That's  
15 where I'm trying to get. I'm trying to get -- and I think  
16 Mr. Jones is trying not to say and exactly tell me what the  
17 conversation was.

18 MR. SMITH: Judge, it doesn't --

19 THE COURT: No, no -- so perhaps you need to show  
20 Mr. Smith if that --

21 MR. SMITH: It doesn't matter.

22 THE COURT: If -- if the conversation -- well, you

23 know what? Let me ask the witness the question he was asked.

7 MR. JONES: Are we staying on?

8 THE COURT: We'll stay on. I'm going to leave it  
9 unlocked. If the conversation is about that issue, about this  
10 good faith, about these facts and not all the other facts  
11 we're going to hear about, then tell me that so that I can  
12 make a relevant -- or show Mr. Smith and you guys look at it.

13 MR. SMITH: Let me make sure I understand that --  
14 that -- your -- your request.

15 THE COURT: I -- I want to narrow in the relevance.  
16 If it's about lie about that on, you know, Super Bowl Sunday  
17 we did X, Y, Z. That's not necessarily rel -- relevant to  
18 this good faith. So if it's so out of the way -- all --

19 MR. SMITH: She's not going to testify. What --  
20 what possible instruction could he be giving her that would be  
21 relevant to this portion of the case?

22 THE COURT: I don't know. I just want to make sure.  
23 You show him the -- I -- I don't want to know what it is, and

7 is it okay?

8 MR. SMITH: What's going on?

9 THE COURT: Let's go off the record.

10 MR. SMITH: I don't know who that is.

11 (COURT RECESSED AT 16:06:33 AND RESUMED AT 16:29:00)

12 THE CLERK: We are now back in session.

13 THE COURT: Okay. You can have a seat. We're back  
14 on the record. We had a moment. Let me first make a ruling  
15 as to the recorded recollection. I had an opportunity to  
16 speak with Counsel off the record while we were sorting some  
17 other things out, and my decision on that is that I find that  
18 it's relevant as to other issues in this case as -- as to the  
19 case as a whole, but I -- it's not relevant as to this issue  
20 of good faith and whether the Plaintiff had a reasonable  
21 belief that it was necessary and in the best child's interest  
22 to place the recording device.

7 actually submitted to raise our objections to it.

8 THE COURT: All right. And Counsel I know that you  
9 recently got it today, but you'll --

10 MR. JONES: I will be forwarding it to Mr. Smith  
11 tonight or tomorrow morning.

12 THE COURT: All right. Thank you so much. As to  
13 the other issues. It appears that there was an incident in  
14 the hallway, and there was an allegation that the Defendant's  
15 current spouse, Mr. Marquez, made some allegedly threatening  
16 comments to mis -- the Plaintiff's current wife. It's my  
17 understanding that the marshal's office is taking --  
18 investigating that, but they will pull the relevant video  
19 surveillance, and they will take statements from the witnesses  
20 that need to be taken.

21 The attorneys were updated on the status of that and  
22 the allegations by Lieutenant Wooten off the record, and he

7 | of finishing this issue and simply because I -- I don't --  
8 | after talking to my client in the hallway, I don't believe  
9 | he's in the right frame of mind to continue with his  
10 | examination right now.

11 |               THE COURT: Counsel?

12 |               MR. SMITH: I -- I believe this is exactly why these  
13 | allegations were remitted. I think this is -- particularly in  
14 | light of the Court's ruling this morning that he can speak to  
15 | his client and there be no discovery of that. I think that's  
16 | exactly what this is. They want to prep. They've created  
17 | this diversion. I've talked to Mr. Marquez. He said none of  
18 | that occurred. I've talked to my client. She indicates none  
19 | of that occurred. We're welcome to look at the video tape.  
20 | He's saying that he would con -- you can conduct a lie  
21 | detector test.

22 |               I mean, this is really, really underhanded nonsense,  
23 | and I want the Court record so that I strongly object to not

7 today --

8 MR. JONES: How did I from in this courtroom -- and  
9 -- and I'm offended by that, Judge. How did I from in this  
10 courtroom create what he's alleging -- I -- I guess I'm a  
11 party to it. I -- I guess this is now me --

12 MR. SMITH: I didn't -- I didn't allege -- I didn't  
13 allege Mr. Jones was a party --

14 MR. JONES: -- being unethical and fabricating  
15 evidence.

16 MR. SMITH: I think they --

17 MR. JONES: Your Honor, I saw his wife and the  
18 condition she was in. I'm sorry, Meryl Streep couldn't be  
19 making that up.

20 THE COURT: Well, let's put on the record the events  
21 as they happened. I want -- Counsel was attempting to get the  
22 recorded recollection into the record. There were arguments



7 want to let the parties know who are going to be witnesses my  
8 thought process and what I needed to know about those  
9 documents.

10 I saw a woman, who I don't know who she is but now I  
11 know that she's the Plaintiff's current wife, come in, talk to  
12 you. I believed it perhaps one of your colleagues, Mr. Jones.  
13 I didn't know who it was, and she said she needed to talk to  
14 you now, and you walked out and --

15 MR. SMITH: Your Honor --

16 THE COURT: -- that was the state of the record  
17 so --

18 MR. SMITH: Let me note the record, she was not  
19 crying.

20 MR. JONES: She -- she absolutely was.

21 MR. SMITH: She was not crying.

22 MR. JONES: Then you can swear me.

7 my client went to the anteroom. The Defendant went outside  
8 and had words with her husband, and that's when it happened.  
9 It wasn't until she actually went out in the hallway that the  
10 incident occurred.

11 THE COURT: Okay. So, Mr. Smith, I understand your  
12 concern, but I don't think that based on how that happened --  
13 nobody knew I was going to ask the parties to leave. Nobody  
14 knew what the issue was going to be. That was -- that was a  
15 surprise.

16 And so we'll come back tomorrow at 1:30. We will  
17 finish the Plaintiff's redirect. Mr. Smith indicated to me  
18 yesterday that he believed he'd go 20 or 30 minutes today.

19 MR. SMITH: Actually I'm -- I'm -- oh, today.

20 THE COURT: And -- and I told you I wouldn't hold  
21 you to that.

22 MR. SMITH: Good, thank you.

23 THE COURT: And -- and -- and you -- you -- but you

7 (PROCEEDINGS CONCLUDED AT 16:36:17)

8 \* \* \* \* \*

9  
10 ATTEST: I do hereby certify that I have truly and  
11 correctly transcribed the digital proceedings in the  
12 above-entitled case to the best of my ability.

13  
14 /s/ Kimberly C. McCright  
Kimberly C. McCright, CET

0  
7 SEAN R. ABID, )  
 )  
8 Plaintiff )  
 )  
9 vs. )  
 )  
10 LYUDMYLA ABID, )  
 )  
11 Defendant. )  
 )  
12 \_\_\_\_\_ )

CASE NO. D-10-424830-Z

DEPT. B

13 BEFORE THE HONORABLE LINDA MARQUIS  
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: JOINT PETITION FOR DIVORCE

16 THURSDAY, NOVEMBER 19, 2015

17 APPEARANCES:

18 The Plaintiff:  
19 For the Plaintiff:

SEAN R. ABID  
JOHN JONES, ESQ.  
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Las Vegas, Nevada 89135  
(702) 869-8801

21 The Defendant:  
22 For the Defendant:

LYUDMYLA ABID  
RADFORD SMITH, ESQ.  
2470 St. Rose Parkway  
Suite 206  
Henderson, Nevada 89117

7 DEFENDANT'S  
8 WITNESSES:

9 (None presented)

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12

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I N D E X O F E X H I B I T S

14

15 PLAINTIFF'S  
16 EXHIBITS:

ADMITTED

16

17 (None presented)

18

19 DEFENDANT'S  
20 EXHIBITS:

20

21 (None presented)

21

22

23

7 Counsel, your appearances for the record.

8 MR. JONES: John Jones, Bar Number 6699, appearing  
9 on behalf of the Plaintiff.

10 MR. SMITH: Radford Smith, 2791, Your Honor, on  
11 behalf of Lyudmyla --

12 THE COURT: All right.

13 MR. SMITH: -- who is present to my left. And also,  
14 Kim (indiscernible).

15 THE COURT: Good morning or good afternoon  
16 (indiscernible). All right. I think we are back to redirect  
17 and the Plaintiff was on the stand; is that right?

18 MR. SMITH: We were, Your Honor.

19 THE COURT: All right. Come on up, sir. Raise your  
20 right hand to be sworn. We'll swear you in again.

21 THE CLERK: You do solemnly swear the testimony  
22 you're about to give in this action shall be the truth, the  
23 whole truth and nothing but the truth so help you God?

6 MR. JONES: Thank you, Your Honor.

7 SEAN ABID

8 called as a witness on his own behalf as Plaintiff, testified

9 as follows on:

10 REDIRECT EXAMINATION CONTINUED

11 BY MR. JONES:

12 Q Let's talk a minute about the portions of the tape  
13 that you discussed briefly with Mr. Smith yesterday and how  
14 you determined which portions were Sasha. Yesterday you said  
15 something about safe key records and I think you got cut off  
16 and I wanted to understand or have the Court understand what  
17 safe key had to do with your understanding of what portions of  
18 the tape would include Sasha and his mother.

19 A During the school year, Sasha was in AN safe key and  
20 that was -- he would get -- every time he's brought there, he  
21 would be signed in. So just after 7:00 o'clock, it was  
22 typical and he would be dropped off. And when I would pick --  
23 because he was in afternoon safety as well for that -- during

6 Q And by knowing when he's dropped off, how would you  
7 know when the conversation between him and his mom would take  
8 place?

9 A Because I know it would take place before that time,  
10 so between 7:05 and 7:30 was when I expected that there would  
11 be conversation between Sasha and his mom or whoever took him  
12 to school. I was assuming his mom.

13 Q Okay. So -- and with regard to the other -- the  
14 first section of tape recorded, how would you know how far  
15 into the tape Sasha and his mom would be?

16 A I anticipated that the moment he walked into his  
17 door -- into the door, he would have a conversation with his  
18 mom. And so I -- that was a portion of time that I was  
19 interested in. I expected that he would have a conversation  
20 with his mom and that I anticipated that that's when the  
21 programming and badmouthing was occurring on a consistent  
22 basis.

23 Q And did you keep track of what time you turned the



6 recordings than the sections that you expected would have  
7 conversations between mom and Sasha?

8       A     No. Based on what I heard, I was satisfied that  
9 these things were established, that this was enough to show  
10 that Sasha was being bad mouthed. It's horrible to listen to,  
11 but those things I felt on there was enough to show what was  
12 happening, the programming, the badmouthing was all there. So  
13 I felt like that was all that was needed. I was satisfied.

14       Q     And were the things that you heard on the tape  
15 consistent with the statements that Sasha has made -- had made  
16 to you as you testified to on Tuesday?

17       A     Eerily consistent. But then, of course, even --  
18 even worse, absolute worse than I could imagine.

19       Q     Now, just so it's clear for the Court, did you place  
20 the recorder -- recording device in Sasha's backpack at the  
21 behest of the Federal Bureau of Investigation?

22       A     Absolutely not. I was only interested in providing  
23 this Court with the information necessary to make a decision

6 record anything having to do with Ricky Marquez?

7 A No.

8 Q Now, you were asked questions yesterday that kind of  
9 went back and forth across the line of December of 2000 -- or  
10 2013. I wanted the Court to understand exactly how many times  
11 you contacted any of the authorities associated with Ricky  
12 Marquez's probation or parole after the stipulation in  
13 December of 2013? And when I say you contacted, I mean you  
14 actually initiated the contact.

15 A I had said that one conversation with Elizabeth  
16 Olson and the meeting with the FBI in one follow up phone  
17 call.

18 Q You didn't request the meeting -- well, strike that,  
19 that was leading. Did you request the meeting with the FBI or  
20 did they?

21 A They did. I did not request that meeting.

22 Q So as far as you actually initiating contact with  
23 any member of the authorities, it's limited to -- after the

7 and parole and probation, it was one call after the  
8 stipulation up until the time that we filed this action?

9 A Correct.

10 Q When you were asked about your deposition testimony  
11 involving 200 friends or some phrase along those lines,  
12 discussions about Mr. Marquez and his past, was that something  
13 that frequently happened after the stipulation?

14 A Not -- not as frequently as before. When -- when I  
15 first found out, I was shocked, talked to a lot of people and  
16 I just didn't know what to think or -- I just processed it  
17 with a lot of friends, a lot of family. That's waned over  
18 time, but the -- initially, it was such a shock. I mean, the  
19 biggest shock being that -- that person's a part of my child's  
20 life and trying to deal with that on some level, which also  
21 which you'll probably get into later has a lot to do with why  
22 I sought therapy in July of 2013.

23 Q Now, when did you first start noticing changes --

7 Q Are the types of things Sasha reported to them  
8 consistent with the things that he was saying to you on or  
9 about or in or about October of 2014?

10 MR. SMITH: Objection, Your Honor. The reports of  
11 Dr. Holland and Dr. Chambers are not in evidence.

12 MR. JONES: And I'm not asking that any portion of  
13 them be read into the record. I'm asking if what he read in  
14 those reports was consistent with the things that Sasha was  
15 saying with him -- saying to him.

16 MR. SMITH: Again, he's commenting on evidence that  
17 has not been introduced.

18 THE COURT: Uh --

19 MR. JONES: I'm asking if it's consistent.

20 THE COURT: Only whether or not it's consistent,  
21 I'll allow.

22 MR. JONES: Right.

23 THE WITNESS: They were consistent.

6 he's had it as my duty as a parent.

7 Q Did you think it was in Sasha's best interest to  
8 find out what the source of his angst and statements to you  
9 were?

10 A Yes, his best interest and my obligation as a parent  
11 to protect.

12 Q Did you delete any of the audio files with the  
13 intent to harm the Defendant?

14 A No.

15 Q Did you replace your computer with the intent to  
16 harm the Defendant in any way?

17 A No.

18 Q How old was your computer?

19 A Probably -- before 2008. I don't know the exact  
20 year, but it was old. It was definitely older.

21 Q Now --

22 A And it was a PC. You know, it wasn't a laptop.

23 MR. SMITH: Objection, Your Honor. If he's going to

6 page starting with Exhibit G.

7 MR. JONES: Bates number, Counsel, 0131.

8 BY MR. JONES:

9 Q It's the text messages starting in about mid October  
10 between you and the Defendant. So starting with -- if you  
11 look at the bottom of the page, 226 in the lower right-hand  
12 corner --

13 A Okay.

14 Q -- or 0131 in the middle, because there's -- I think  
15 there's two Bates numbers here. Now, looking at the text  
16 message from August 15th, 2014 at 3:06 p.m., is that a text  
17 message from you to the Defendant?

18 A Yes, it is.

19 Q And what was the issue that you were encountering  
20 and trying to address with him?

21 A Just -- he was very tired when he would reach my  
22 house and when I'd start to homework with him and all the  
23 activities and we'd start primarily the homework. We'd have a

6       ... so that we could complete the school work and  
7 sports.

8               And at that time, with the sports, we were, you  
9 know, we were trying to teach him baseball in advance of this  
10 tryout that was coming in January, so it was something that he  
11 and I were really doing together. But he has to take naps and  
12 he's whining and he's crying. I just asked them for help.

13              MR. JONES: Your Honor, G's already been admitted.  
14 I don't know. Are you looking at it?

15              THE COURT: Yeah.

16              THE COURT: Okay. I just wanted to check.

17 BY MR. JONES:

18              Q     On October 15th, did you get a response in any way  
19 from the Defendant?

20              A     Yes.

21              Q     On October 15th, did you get a response from the  
22 Defendant?

23              A     Oh, not October 15th, no.

6 the lower right and number 0132 in the middle.

7 A Uh-huh.

8 Q Dated October 17th, what was this text message  
9 about?

10 A It was about that conference that I'd had with  
11 Ms. Abacherli (ph), who testified, his kindergarten teacher.  
12 And to me -- when I met with her, she gave me some information  
13 that showed where he placed relative to other students his  
14 age. And so --

15 MR. SMITH: Objection, Best Evidence Rule, Your  
16 Honor.

17 MR. JONES: Best Evidence?

18 MR. SMITH: Yes.

19 THE COURT: Counsel?

20 MR. JONES: Hearsay is probably the right objection,  
21 but --

22 MR. SMITH: No. He's talking about a specific  
23 document now that he claims that was given to him by



7 MR. JONES: Okay. I'm unconcerned with a document  
8 from Ms. Abacherli.

9 BY MR. JONES:

10 Q So let's just talk about what the purpose of this  
11 text message was to Lyudmyla.

12 A She exchanged information with me about his progress  
13 in all areas and he was -- the information that she gave me  
14 very succinctly, very clearly, that I recall was that he was  
15 behind other students in his class, other kindergarten  
16 students at Twitchell Elementary School. And to me, as  
17 someone who is very concerned about that area of my child's  
18 life, I wanted to -- I wanted to correct it and I felt like  
19 this -- and we had actually had a phone conversation on this  
20 day where I was reaching out to her for help.

21 THE COURT: To the Defendant?

22 THE WITNESS: Yeah, to the Defendant. To reach out  
23 for help to how we could correct this, because I felt like I

6 Q Okay. Looking at the rest of that page, is there a  
7 response from Lyudmyla on the 17th of October?

8 A No.

9 Q Looking at the next page, was there a response from  
10 Lyudmyla between October 17th and October 20th?

11 A No.

12 Q Okay. Now, on October 20th, there's a series of  
13 text messages --

14 A Uh-huh.

15 Q -- from you to Lyudmyla.

16 A Yeah.

17 Q Can you tell me what those and the photos in them  
18 are?

19 A Well, I didn't get any response as you just  
20 described as you went through those emails (sic), so I thought  
21 I'd try a different approach and so I just gave her some  
22 specific activities slash worksheets that she could try with  
23 him. And so that's what I did in the top two texts and you

6 | about. And then, the bottom, you know, that -- Ms. Abacher11  
7 | was talking about kids, you should know -- she's mentioning  
8 | you should know your alphabet when you're -- in October,  
9 | almost November. He didn't know his alphabet. This was a  
10 | crisis situation to me.

11 |       Q     Okay. Turning to Exhibit H, the first page of  
12 | Exhibit H is number 230 in the bottom.

13 |           THE COURT: (Indiscernible).

14 |           THE CLERK: Yes?

15 |           THE COURT: We have a -- I was asking has H been  
16 | admitted? We have a different courtroom clerk?

17 |           THE CLERK: (Indiscernible), yeah.

18 |           MR. JONES: I think I stipulated to. When he went  
19 | through each section individually, I just said --

20 |           THE COURT: Mr. Smith, is that your recollection as  
21 | well?

22 |           MR. JONES: I'll stipulate to H and I as well.

23 |           MR. SMITH: That's correct.

6 Q -- at text message date -- at a date and time of the  
7 -- October 28th at 2:59 p.m. Do you see that one?

8 A Uh-huh.

9 Q And this was another email regarding what -- or text  
10 message regarding what?

11 A It's he's falling asleep and whining and it's a new  
12 kind of pattern. You noticed it, the date -- you know, he'd  
13 been returned from a day at her house. So I'm just asking her  
14 -- said keeping him up late is hurting his ability to learn,  
15 because it was. If we hadn't stop this path we're on, he  
16 didn't know his alphabet in almost November, so I'm pleading  
17 with her. Now, you're his mother, you can do what you want,  
18 but it's having an impact. I was trying to say it  
19 diplomatically without getting her upset.

20 Q Now, looking at her response, she states that he got  
21 sick and my question is did you give him a jacket in the  
22 morning? Do you ever not send your son to school properly  
23 clothed?

7           A     Yeah.

8           Q     Do you give your son baths --

9           A     We do the --

10          Q     -- during your custodial time?

11          A     Yeah, yeah. Just to elaborate a little bit, not

12 only do I do the same thing, he comes home and he eats his

13 dinner, his snack. We do the homework. We do sight words,

14 whatever his school stuff is. When we're done, we go out and

15 we play a sport. We pick a sport, maybe it's baseball. After

16 that, we come back, you know, spend some family time, eat

17 dinner and then, he takes a bath at 7:00 o'clock and usually

18 with his little brother, so I mean I take a shower every day.

19 I don't understand the concept that I wouldn't bathe my child.

20 And I don't even understand how that's constructive. It's

21 definitely not -- this kind of text that I'm getting here,

22 it's just an accusation and -- okay. I'm sorry. I'm

23 rambling.

7 conveying to her there?

8           A     Let's see. It's a run on from the other one. I'm  
9 just telling her what happens.

10          Q     Starting at the 3 -- at the second one on the -- on  
11 that page and continuing to the next two, what is the issue  
12 that goes over the course of those two that you were trying to  
13 resolve with her?

14          A     Oh, now when we would, you know, he would talk to us  
15 about his life, he would tell us that he watches a lot of  
16 videos. That's how he spends his time. And -- and one of it  
17 -- and so we would ask him, you know, we'd just ask him in  
18 general way, how was your -- how was your night and he'd tell  
19 us what he did. And he would be candid at that time and say  
20 that, you know, I was watching videos and I was up late or  
21 whatever. So we -- and that what we -- it's what we felt was  
22 making him tired and it was giving -- having this -- having  
23 issues with his performance in school and him falling asleep

7           A     Yeah. That was the first day -- yeah, I remember I  
8 was in the backyard with him playing baseball when he had said  
9 that. And I just wanted to ask her about it, you know,  
10 because it concerned me and I was trying to do it in a way  
11 that wasn't going to get her upset. But the bottom line is,  
12 if you're asking to keep secrets, I would be okay with you  
13 telling me that's not a good idea.

14          Q     Right. But what is her response on -- at 3:44 p.m.?

15          A     Yeah. I will see my attorney. God as my witness, I  
16 tried to give you a chance. I will pick Sasha in five  
17 minutes. That's what started -- that is the initial text that  
18 from this point was what started the litigation.

19          Q     Now, in your response then to her saying she would  
20 pick up Sasha in five minutes, what is that photograph you  
21 sent her?

22          A     That's a picture of him knocked out at 4:07.

23          Q     Okay. And then, the following text from you to her?

6 to teach him. We get the job done every day. We finish the  
7 work and so I'm basically trying -- I need until 5:30 to do  
8 it.

9 Q And then, on page 233 -- skimming over 232. 233,  
10 there's a series of text messages regarding safe key and the  
11 second to the last text on the bottom from Lyudmyla is what?

12 A My attorney will sort this out and --

13 Q And that was November 5th?

14 A Yeah. So in the same tenure...

15 Q Okay. Skip ahead to page 236, starting with the  
16 Monday, November 17th, 3:34 p.m. There's a text from Lyudmyla  
17 asking to let Sasha outside. Do you see that?

18 A Uh-huh.

19 Q What was your response?

20 A We're not done yet. And that had a certain  
21 significance, because just -- if you're doing sight words with  
22 your kid everyday, you can tell if somebody else is doing it  
23 without asking because they -- they learn the words so slowly



6 to be difficult. I was doing it for my son.

7 Q And turning to 237, you text Lyudmyla at 3:38 p.m.,  
8 the one on the top.

9 A Uh-huh.

10 Q What did you -- what are you telling her here?

11 A He was going to have his first sight word test, so I  
12 was pretty focused on getting him ready for that.

13 Q And what did you tell Lyudmyla in the next text?

14 A He'll be ready by 5:30.

15 Q And what is her response at 3:40 p.m.?

16 A It's pretty typical of most of the responses I would  
17 receive from her when I was being diplomatic, you know, just a  
18 threat and nonsense. I mean, parental alienation because I'm  
19 doing sight words? I can't -- you know, I -- that's what I  
20 was dealing with.

21 Q And the court order says what about when she can  
22 pick him up --

23 A 5:30.

6 MR. JONES: Oh, it's Bates stamped 238. Well, 238  
7 in the upper right-hand corner of these, but we can go with  
8 0143 in the bottom middle as you look at it in landscape  
9 rather than portrait.

10 BY MR. JONES:

11 Q There's a text message at 15:42 that is from  
12 Lyudmyla saying bring him to me. Do you see that?

13 A Yeah.

14 Q What is your response?

15 A (Indiscernible) is here from Orlando and Sasha was  
16 playing with his sons. I said do you mind if we take him out  
17 to eat with us.

18 Q And what is her response?

19 A She assumed because I was asking him -- asking her  
20 if I could take him out to eat that I didn't feed him all,  
21 that I had starved him until 5:30. When, in fact, we do the  
22 same thing every day. He ate when he came home from school.  
23 But according to her, you know, she was very imperial and said

7 logical. They're not kind. They're not in the spirit of co-  
8 parenting. I can't even reason with somebody like that. So  
9 why would I -- we can't negotiate if you're going to accuse me  
10 -- it's disgusting because I allegedly didn't feed my kid or  
11 I'm stealing clothes as it says. So -- and the best thing for  
12 Sasha, let's not have any disputes out in the driveway. Let's  
13 just do -- it's just going to be what the order says.

14 Q You know, actually you're right. I didn't cover  
15 that one. Let's go back up a little further at 5:15:26 on --

16 A Okay.

17 Q -- the 21st of November.

18 A This is a common theme. This happens all the time.  
19 It still happens to this day. I get a text about where are  
20 his clothes, I'm stealing his clothes. You know, first of  
21 all, why would I steal his clothes? They don't fit me. I  
22 don't understand. He wears a uniform, so it wouldn't even be  
23 any different. And the mess -- it's still -- it's part of the

6 offer to do?

7 A Or I'll bring him to you.

8 Q Now, her response to that was to do what?

9 A She threatened that she was going to get it fixed  
10 through the parental coordinator -- and let me explain a  
11 little bit on this one. She says I'm going to go to your top  
12 supervisor, who would be Pat Scorcowski (ph). He's a friend  
13 of mine. I asked -- we didn't get full-day kindergarten last  
14 year. And so we only got half-day because of the lottery, so  
15 I called in a favor with Pat Scorcowski, so he put us in  
16 all-day kindergarten. And I told Lyudmyla at the time kindly  
17 don't tell this to anybody because he did me a favor and I  
18 don't want him to think that I, you know, betrayed his  
19 confidence. And so I think for whatever reason, she thought  
20 it was a good idea that she could say that and say that she  
21 was going to disclose all these other -- and this is a theme  
22 that has happened. This used to happen at custody exchanges  
23 in 2012.

7           THE WITNESS: The next day, when she apologizes, she  
8 really isn't apologizing, which is typical too, because part  
9 of the reason we are where we are is her inability to accept  
10 adult-levels of responsibility. So you're telling me that  
11 it's human nature because I pushed her too far. So you didn't  
12 really apologize to me, because you snapped because I pushed  
13 you too far in doing what? There's no evidence here that I  
14 pushed her too far.

15 BY MR. JONES:

16           Q     Well, was the fact that you were offering to bring  
17 him to her house at the hour that the order says she gets  
18 custody pushing her in your opinion?

19           A     No. And he was never late. I brought him at 5:30  
20 every day. I was never late. If I was going to be ever late,  
21 even a minute, I would give her a courtesy text, which I don't  
22 think I ever was.

23           Q     Now, let's turn to 240. Actually, you know what?

6 schedule and restore my mother's rights. And she was informed  
7 before that we had been practicing and Sasha had been telling  
8 -- practicing and tell her that he was practicing because our  
9 goal in September was that he could bypass t-ball and that we  
10 could, you know --

11 MR. SMITH: Let me object to the statement of the  
12 child in this context. His statements before went to whether  
13 or not he would tape because they claimed to be statements  
14 that would be covered by a state of mind exception. This one  
15 is -- this is just stating --

16 MR. JONES: That's fine.

17 MR. SMITH: -- what the child has said.

18 BY MR. JONES:

19 Q Try not to talk about just causal things about  
20 baseball that Sasha said to you.

21 A Well, can I at least say that it was something  
22 that's associated with me, that baseball is dad? You know, I  
23 played college sports and so even as a team sport, that's

7 THE COURT: Okay.

8 MR. JONES: I'm trying to find it.

9 (BRIEF PAUSE)

10 MR. JONES: For some reason, I'm actually not seeing  
11 it in their Exhibit, but I have another one.

12 THE COURT: Is it your proposed, Counsel?

13 MR. JONES: Yes. But the problem is, is the one  
14 page is --

15 THE WITNESS: Judge, is it okay for me to ask him a  
16 question about a page, if he's going to reference it?

17 THE COURT: Well, hold on a second.

18 MR. JONES: No. If we need to take a break, so I  
19 can get this straight, I'll take a break. I just -- I had set  
20 up text messages from --

21 THE COURT: Let's take a five-minute break, so you  
22 can --

23 MR. JONES: -- my client's source and --

7 MR. JONES: There's a run of text messages in Bates  
8 order, but then the jump in dates because there -- I was  
9 informed by Mr. Smith and his client that he changed either  
10 service providers or phone numbers, so they're tacked onto the  
11 end and I was just confused as to why it went from January to  
12 March, but the one I was looking for wasn't in there.

13 THE COURT: What page am I looking at, Mr. Jones?

14 MR. JONES: Well, we're going to start back at 240  
15 where --

16 THE COURT: Thank you.

17 MR. JONES: -- we left off before I got lost.

18 BY MR. JONES:

19 Q Now, after you get a response to do baseball on your  
20 days, what was your response to Lyudmyla?

21 A Pleading with her. We just had so much time in  
22 preparing for baseball and she knew this. She knew this was  
23 something we did every day and teaching baseball to a five-



6 included. I'm just basically proceeding with her, proceed,  
7 let's just -- you know, put it aside. Let's let him play  
8 baseball.

9 Q And then, on 241 at the bottom of Lyudmyla's  
10 response, what does she tell you that she's already done?

11 A At the bottom of her -- you're referring to in the  
12 bottom of --

13 Q The third line from the bottom of her response --

14 A Oh, okay.

15 Q -- which is the top half.

16 A I paid already to my attorney to resolve what I am  
17 dealing with at court. So --

18 Q So in response to you asking her to please reconsider  
19 her position on baseball since you can't do it half the time,  
20 her response was she's already paid her lawyer?

21 A On top of that, you know, she accuses me of  
22 harassment and being -- I hate -- I hate her husband, I'm  
23 harassing her. I don't know how I'm harassing her. We don't

7 MR. SMITH: Objection, speculation. Your opinion,  
8 this is not a fact. It's not testimony.

9 THE COURT: Next question, Counsel?

10 MR. SMITH: (Indiscernible).

11 BY MR. JONES:

12 Q Now, turn to page 251. (Indiscernible) 251.

13 THE COURT: What you're telling me is these were not  
14 in chronological order --

15 MR. JONES: Well, they were in chronological order  
16 up until the time that there was the change in the phone.

17 THE COURT: Okay.

18 MR. JONES: And then, they started over.

19 THE COURT: Okay.

20 MR. JONES: So this now is January --

21 MS. ABID: No, (indiscernible).

22 MR. SMITH: It's not -- just to correct the record.

23 Mr. Abid used both two sets of means of communication. One

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

THE COURT: Okay.

MR. SMITH: That's all.

THE COURT: Okay.

MR. JONES: They print them by source, rather than  
by date.

THE COURT: All right.

BY MR. JONES:

Q But looking at 251, at 7:57, you text Lyudmyla about  
the Call of duty; is that right?

A Yes.

Q What did you provide her in that text message?

A I provided her with a website that discussed a  
review of the game and which age groups it was appropriate  
for, included discussion of the pros and cons of kids at  
various ages playing this game. But the consensus was this  
was a -- this was a not a game designed for a five-year old.  
He was five at this time.

7 was excited. I picked him up at the bus the first time I  
8 found out, he's telling me that -- about his new game he's  
9 playing and I said -- I told Sasha, I don't think that's a  
10 good idea. At the time, I didn't know anything about call of  
11 duty. We never played it and I've never seen it.

12           And so when I came home, I discussed with Angela and  
13 I told Sasha, this isn't something we're going to play at my  
14 house. And what your mom does at her house is her choice, but  
15 I'm going to have a -- I'm going to reach out to her and ask  
16 her about this, because I don't -- this is not something you  
17 will play at our house. We don't have a gaming system anyway,  
18 but I -- when I finally went home and researched the game,  
19 that's when I sent the text. I couldn't believe that this is  
20 -- I just don't understand putting your child in front of that  
21 game. And --

22           Q           Now, she responds the way she responds. And then,  
23 you explain to her what you know. What did you specifically

6  
7 Q -- part that you say?

8 A And the secrets, because this to me is a big part of  
9 the badmouthing and alienation. You keep secrets from me.  
10 That means I'm not important enough to have information shared  
11 with me. This continues to this day. He's afraid to talk to  
12 me about anything.

13 Q And then, when you addressed the issue of her  
14 telling him to not to keep -- not to have him keep secrets  
15 from you, who do you get a response from there?

16 A Ricky introduce -- interjects himself into the  
17 conversation and, you know, tells me see you in court. Now, I  
18 don't know what spirit of co-parenting this is in, but I come  
19 with a very reasonable request as a parent. You're planting  
20 an M17 whatever game with this child. I'm asking you to take  
21 a look at this website. You basically tell me to -- no, and  
22 then you put your ex-husband or your husband on -- into the  
23 conversation just leave her alone and we'll see you in court.

7 you're keeping secrets. I just -- I'm -- at this point, I'm  
8 so frustrated. And then, on top of that, I'm hearing the  
9 things from my son as well at this point nonstop. Do they --

10 Q And that interruption of your attempt to have a  
11 dialogue with Lyudmyla was a few days before you first placed  
12 the recording device; is that right?

13 A Correct.

14 Q Now, the recordings that you provided to Mr. Smith  
15 in discovery, that we've provided to Dr. Holland, did you in  
16 any way alter or modify those portions of the total audio  
17 file?

18 A No.

19 MR. JONES: I pass the witness, Judge.

20 THE COURT: Okay.

21 RECROSS EXAMINATION

22 BY MR. SMITH:

23 Q All right. So let's go back to these -- the notion

7 BY MR. SMITH:

8 Q Okay.

9 A There was never -- there was never a break in the --  
10 in the badmouthing. There were peaks and crescendos, but  
11 there was never -- it never stopped.

12 Q My question wasn't about badmouthing, Mr. Abid. My  
13 question was about whether or not you observed this evidence  
14 of emotional abuse. You said he was reticent. He was shy.  
15 He didn't like to go out. He didn't have any friends. You  
16 said that was the nature of the emotional abuse.

17 A I did not say he did not have any friends. I never  
18 said those friends. You're misquoting me. Go ahead and look  
19 it up, but I didn't say that.

20 Q You said he didn't make friends easily or didn't  
21 want --

22 A That's what the teacher said, not me.

23 Q Well, let's see what -- what you said in your

6  
7 MR. SMITH: 72 of the deposition.

8 THE WITNESS: You got to provide me a copy to read  
9 it.

10 MR. SMITH: May I have the deposition, Madam Clerk?

11 THE CLERK: Was it published yesterday?

12 THE COURT: Right there on the --

13 MR. SMITH: Yeah, it's right here in front of you.

14 BY MR. SMITH:

15 Q You said he's very timid, but at times he vacillates  
16 between reticent and being timid to hostility with his  
17 brothers and a lot of anger. He is very confused about  
18 whether he can love me, but physically he's very reticent. He  
19 cowers. He doesn't often exhibit the happy effect you'd  
20 expect from a six-year-old boy. That identification of the  
21 effective emotional abuse, did you or did you not --

22 A I did say it and --

23 Q -- say it prior -- please, Mr. Abid.



6  
7 can't answer that.

8 BY MR. SMITH:

9 Q Are you okay, Mr. Abid?

10 A I'm fine. Are you okay?

11 Q All right. So the -- that behavior that you've just  
12 described in your deposition answer, did you notice that  
13 behavior before and after October '14 or has -- because in  
14 response to Mr. Jones' question, you said that you started  
15 noticing the behavior after October, so I'm confused. Which  
16 is it?

17 MR. JONES: That's actually not what he said. I'm  
18 going to object that it misstates his testimony.

19 THE COURT: It --

20 MR. SMITH: Let me rephrase the question.

21 THE COURT: That was very compound.

22 BY MR. SMITH:

23 Q Did you notice this behavior before and after

6

7

A Going back how far?

8

Q Well, let's talk about from August forward.

9

A So October --

10

THE COURT: August 2014, Counsel?

11

MR. SMITH: August 2014.

12

BY MR. SMITH:

13

Q I'm trying to get a read of where you two were at in  
14 about that time?

15

A We hadn't repaired things until -- things weren't  
16 kind of peaceful until the -- until school started, so end of  
17 August until when the exhibits that Mr. Jones was referring  
18 to.

19

Q Okay. So you would agree that you were cooperating  
20 well with Lyudmyla in the months of August and September of  
21 2014, correct?

22

A Deficient, yeah.

23

Q Well, she was cooperating with you, right?

1 Q Right. In fact, you felt so comfortable with her  
2 that she would ask you questions even about her other  
3 daughter, correct?

4 A One time, yeah.

5 Q Okay. And you felt comfortable giving her advice in  
6 that regard?

7 A Because I love her and I still would.

8 Q Okay. And her -- and by her, I'm sure you're  
9 referring Irena?

10 A Irena (indiscernible), yeah.

11 Q In regard to the communication, you had asked her  
12 for various different times or days and she was always  
13 amenable to granting you those days, correct?

14 A These were days that Sasha was asking me if I would  
15 ask him mom or he would ask his mom directly.

16 Q So on those days, when you -- well, let me just give  
17 you an example, several examples. And you're saying these are  
18 things that Sasha asked you to do. Let's look at 211 in  
19 Exhibit G. On the top of that page, Sean -- this is from  
20 Lyudmyla to you on August 28th at 2:45. Sean, you're keeping  
21 him tomorrow is my day. As agreed, you'll take him to  
22 football. Awesome, thank you is the response. Do you see  
23 that?

24 A Yeah.

1 Q Okay. Let's go to 213, because this begins the, I  
2 think, the school year. Oh, even more than that. Let's go to  
3 -- yeah, 212. You were exchanging gate codes when you -- and  
4 that was on 212, right? No problem.

5 A Yeah. She has a gate code. I do not.

6 Q Okay. So no problem, you guys were communicating  
7 well, correct?

8 A Correct.

9 Q And then, when you asked her for her information  
10 regarding her bank account information, no problem. She gave  
11 that to you right away?

12 A Provide her with child support, yeah.

13 Q Right. And then, the -- in terms of the going to  
14 school, she starts indicating -- or on this one, it says Sean,  
15 can Sasha call me tonight before he goes to sleep? You, yes,  
16 no problem. Weren't you concerned about her badmouthing you  
17 in that phone conversation that you agreed to?

18 A Sure, but there's a court order that says I have to  
19 allow this, so I'm following a court order.

20 Q Okay. So you wouldn't have then in the absence of  
21 the court order?

22 A I can't tell you what I heard that day or the day  
23 before, so you're asking for state of mind in a particular  
24 day. But it never stopped, so it would have to be dependent

1 on what I had heard and what his state of mind was at that  
2 time.

3 Q And that's what we're going to take from these text  
4 messages, that you two were in such a state that you were  
5 concerned about her ability to communicate with your son?  
6 That's what we're taking from these? That's your testimony?

7 A I don't understand your question.

8 Q That you were concerned about what she was saying to  
9 your son. That's what we should take from these emails  
10 (sic) --

11 A Throughout --

12 Q -- or excuse me, texts?

13 A -- this divorce, I'm concerned, so --

14 Q Okay.

15 A -- this is no exception.

16 Q All right. So this is Monday, September 8th and I  
17 -- we'll just go in order -- 2:14, those are the days she's  
18 there to pick up the child, correct, and she just says I am  
19 here, I'm outside. Do you see that?

20 A Uh-huh.

21 Q That's that what you were testifying that it only  
22 happened once that you can recall, that it was before 4:00?  
23 These just happened to be two days in a row where it was just  
24 right when she was coming off of work, that was just

1 coincidence?

2 A I didn't memorize them obviously, so --

3 Q Obviously not. Here's you saying on September 12th,  
4 would love to take you to the football game. Let me pick him  
5 up and you can later stop by (indiscernible) the game. Seems  
6 like good cooperation to me, wouldn't you agree?

7 A Sure.

8 Q Okay. And then, later on you say okay to pick up  
9 Sasha at 6:00 o'clock. Yes, we are here. Cooperation, right?

10 A (No audible response)

11 Q Right? Sasha, I'm picking the truck up at 10:00.  
12 Okay. More cooperation?

13 A Yeah.

14 Q Can you bring him? They changed me by the mile with  
15 this truck. I would really appreciate it. Can you bring him?  
16 Can Ricky help me unload truck before you go to the dump?  
17 This is you asking for her to allow Ricky to help you unload  
18 the truck, correct?

19 A Uh-huh.

20 Q Don't worry. I was able to do it myself. Truck is  
21 ready for you to take. And then, the -- Lyudmyla getting back  
22 to you. Thank you for info. We got a truck from Ricky's  
23 work. Just let me know when Sasha's ready to go home. More  
24 cooperation, do you agree?

1           A     Yeah.

2           Q     And then, this is the next time. September 15th

3 would be the next time that Mrs. Abid would pick up the child

4 at your home, right?

5           A     Uh-huh.

6           Q     These look like 3:45 and 3:38. These aren't after

7 4:30 or 5:30 --

8           A     It's also before Mrs. Masters' report to me, which

9 change --

10          Q     Oh, okay. All right. So --

11          A     That's also a key factor you're leaving -- you're

12 omitting.

13          Q     Okay. Well, we'll see if that's the reason why you

14 did it. In regard to the -- (indiscernible) I am here, no

15 problem, you send him out and he goes, correct?

16          A     Yep.

17          Q     Okay. What did Lyudmyla send you in the image

18 that's the September 19, 9:55 that caused you to say, wow,

19 good job, guys?

20          A     Oh, that was me sending it to her.

21                MS. ABID: I think he sent it to me.

22 BY MR. SMITH:

23          Q     Right.

24          A     I sent --

1 Q Okay.

2 A -- them a picture of Sasha playing baseball, so --

3 Q Oh, great. And what was her response? Wow, good

4 job, guys.

5 A Yeah, so she knew I was putting time into it and

6 then, told him he couldn't play baseball later. So --

7 Q Oh, but did he play baseball. She did agree to

8 allow --

9 A We'll get to that.

10 Q -- to play base --

11 A We'll get to that.

12 Q Oh, we'll get to that.

13 A Yeah.

14 THE COURT: Gentlemen, thank you. Next question?

15 BY MR. SMITH:

16 Q And then, the next opportunity for her to pick up

17 the kids is on September 22nd and 23rd. Low and behold, 3:31

18 and 3:16.

19 A And also before the report from Ms. Abacherli where

20 I determined he needed more time.

21 Q But your testimony was he didn't -- you didn't allow

22 her to pick up the child regularly because you knew the order

23 was that it was that it was 5:30, correct?

24 A No.



1 Q No?  
2 A No.  
3 Q You didn't testify to that?  
4 A I testify to what I just told --  
5 Q I'll -- I'll withdraw the question. So you wanted  
6 to change weekends in the -- September 25th. That's at 2:18  
7 on the same --  
8 A Sasha asked me to do that, yeah.  
9 Q Okay. Sasha asked you to do that and she said fine,  
10 let's fine, let's exchange --  
11 A Yeah.  
12 Q -- weekends, right?  
13 A Yeah, yeah.  
14 Q And then, she says on September 26th, on a Friday,  
15 Sean, can I call Sasha? We just got back. Sasha can call  
16 when you are ready.  
17 A Uh-huh.  
18 Q Great cooperation, right?  
19 A Fine.  
20 Q Okay. She tells you on safe key hey, Sean, I forgot  
21 to pay for safe key. You see that on page 220? Let me know  
22 if you want me to pay for yours too. Good cooperation,  
23 wouldn't you agree?  
24 A Yeah.

1 Q And, in fact, you said okay. She paid your safe  
2 key, didn't she?  
3 A No, I didn't say okay.  
4 Q Okay. So you didn't want him to --  
5 MS. ABID: (Indiscernible).  
6 BY MR. SMITH:  
7 Q You knew she paid your safe key, right?  
8 A No, I don't. I had a separate account. She  
9 couldn't pay my safe key. I have my own account.  
10 Q Okay. All right.  
11 A At \$2 a day, I don't think I'm sweating that.  
12 Q So on October 4th, Sasha got hurt, her -- his I  
13 think his pee pee means man parts, his penis was hurt?  
14 A That's according to her that I never had seen that,  
15 so this isn't something that I ever observed.  
16 Q But you would think that that would be an  
17 appropriate thing for a parent to do, that if she felt there  
18 was a problem with him physically, she should tell you?  
19 A And she did, yeah.  
20 Q Right. And she's told you --  
21 A Yeah, yeah.  
22 Q -- she was thinking about taking him to the doctor?  
23 A Yeah, yeah. So I said okay, yeah.  
24 Q Okay.

1           A     So yeah, it's about him.  
2           Q     Good cooperation?  
3           A     Yeah.  
4           Q     So then, at 2:56 on a Monday her time, Sean, let me  
5 know if you'll bring Sasha to my home or I can stop by on the  
6 way home. Hey, we're bringing Sasha now. His backpack is in  
7 my car. See that? Good cooperation.  
8           A     Uh-huh.  
9           MR. JONES: Actually, is that a question, Your  
10 Honor? I mean, I let it go, but just stating the word good  
11 cooperation is more like he's testifying here.  
12 BY MR. SMITH:  
13          Q     Is that good cooperation between parents that would  
14 be consistent with co-parenting in your mind?  
15          A     Uh-huh.  
16          Q     That answer is yes?  
17          A     Yes.  
18          Q     And in October 10th, your -- this is on page 224. I  
19 would love to take Sasha to our football game if you not have  
20 plans. Would you -- would -- we would leave about 5:30. And  
21 Lyudmyla says, Sean, bring him after game. Okay. Thank you.  
22          A     Uh-huh.  
23          Q     That would be consistent with good co-parenting,  
24 don't you agree?

1           A     I agree.

2           Q     And then, you indicate and you show her something.

3   What is this an image of?

4           A     This is from (indiscernible) campus. She hadn't set

5   up an account yet, so I was showing her an assignment that was

6   upcoming for Sasha with math, a counting assignment.

7           Q     Okay. And she said okay, we will try.

8           A     Yep.

9           Q     Sounds like a good idea, right? That's good co-

10   parenting?

11          A     Yeah. Then, I told her to try to work with him

12   every night. He's behind. He's already -- he should be able

13   to count to a hundred.

14          Q     Okay. And then, again on another of her days, the

15   Tuesday, Sean, I'm leaving work. Let me know if you need to

16   pick up Sasha from you on my way home.

17          A     Uh-huh.

18          Q     And you say no, I'll bring him to you. See that?

19          A     Yeah.

20          Q     That's good co-parenting cooperation.

21               MR. JONES: Which one? What page was that?

22               MR. SMITH: That was the bottom of page 225.

23   BY MR. SMITH:

24          Q     Okay. Then, on October 15th, you write her and say

1 every day Sasha is tired, every day you pick him up he's  
2 tired. And the inclination is that -- or the statement is  
3 that she's causing him to be tired.

4 A That's your interpretation. You're --

5 Q Isn't that what you were saying?

6 A No. I'm -- I'm -- you -- you are his mom. You can  
7 keep him up as late as you want, but this is causing a  
8 difficulty. I'm asking you to help.

9 Q All right. I --

10 A I'm not insulting her. I'm not condescending. I'm  
11 not pontificating. I'm simply stating this is what is. Okay.  
12 You're his mom, but if you keep him late, we can't get through  
13 what we need to get through and it's very difficult to  
14 complete sports and homework. He has to take a nap. That is  
15 -- he's so whiney and crying, he ends up taking a nap. I'm  
16 stating the facts.

17 Q But she's already told you that he goes to sleep at  
18 8:00.

19 A Well, clearly he's not.

20 Q Okay. You determined in your mind that he wasn't --

21 A He fell asleep. He obviously is tired.

22 Q If I may finish the question?

23 THE COURT: All right. Okay. Okay.

24 THE WITNESS: He's badgering me, so --

1 THE COURT: No, no. No.

2 MR. JONES: Just let him finish the question.

3 THE COURT: It's not an argument. It's not a  
4 conversation. Question/answer. Counsel?

5 BY MR. SMITH:

6 Q You determined, Mr. Abid, that the cause of his  
7 being tired was Lyudmyla keeping him up late at night,  
8 correct?

9 A I don't think so. I wouldn't interpret it that way.

10 Q Really? When you say -- let me ask this again. I  
11 think Sasha is exhausted every pick up after he's been at your  
12 house. You are his mom and you can keep him up at late as you  
13 want, but it is making it very difficult to complete school  
14 work and sports. You don't think that that's an indication  
15 that it's her fault for keeping him up late as --

16 A It's in her care, it is. But if he has to take a  
17 nap, obviously he's not getting enough sleep. And I tried to  
18 say that as diplomatically as I can, because I'm the one doing  
19 the homework every day and it's hard with a kid that's crying  
20 and whiney. And in my frustration, this is, I think, pretty  
21 reasonable.

22 Q Okay.

23 A And you're nitpicking it for -- and insinuating what  
24 I said.

1 THE COURT: Okay. It's not a conversation.  
2 BY MR. SMITH:  
3 Q When you did send her work that you felt needed to  
4 be addressed -- and this is at page 229, what was her response  
5 to you?  
6 A That was not work. That is ideas for things to  
7 teach him counting because I mentioned that he couldn't count  
8 to a hundred, so here are some activities that you can do with  
9 him. No comment. These are just examples.  
10 Q Okay. And then, she said I got it, thank you.  
11 That's at page --  
12 A Yeah.  
13 Q -- 229?  
14 A Uh-huh. And I said if you are committed to  
15 practicing with him each day, I think we'll get him up to  
16 where he needs to be.  
17 Q Okay. And she's never resisted that notion in any  
18 of these text messages, has she?  
19 A In those two that you mentioned? No.  
20 Q But then again, you start with -- on October 28th  
21 now, a couple weeks down the road, two days in a row Sasha is  
22 falling asleep and whining --  
23 THE COURT: What page? Counsel, what page?  
24 MR. SMITH: I'm sorry. 230, and I'm quoting from

1 October 28th, 2014 at 2:59.

2 THE COURT: Okay.

3 BY MR. SMITH:

4 Q Two days in a row, Sasha is falling asleep and  
5 whining when we're trying to complete his work. Keeping him  
6 up late is hurting his ability to learn. So you again, have  
7 concluded that the reason why he's tired is because Lyudmyla  
8 is doing something wrong, correct?

9 A He's falling asleep, so yeah, uh-huh.

10 Q Okay.

11 A Yeah, yeah. As a parent --

12 Q And then, she was --

13 A -- it's your duty to get him to bed at the time. So  
14 yeah, that would be -- I would consider -- I'm telling in a  
15 respectful way.

16 Q Right. That she's doing something wrong, correct?

17 A That's not what -- that's not what I wrote there.  
18 That wasn't the purpose. Who -- it's not -- the purpose of  
19 the sentence is not you're doing something wrong. Your son --  
20 your son's falling asleep. I'm doing my best over here with  
21 him every day. I need your cooperation.

22 Q And then, she says to you in the following response,  
23 Sean, I told you already he goes to sleep at 8:00. She had  
24 told you in the past that she (sic) goes to sleep at 8:00. So



1 essentially, you were calling her a liar, correct?

2 A Sasha is telling me that he's staying up on his own.  
3 I can tell when I put him to bed and he wants to stay up.  
4 There are things that I observed because I'm in tune that  
5 that's clearly not the case. And so I'm trying to tell her  
6 maybe if I telling her how it's affecting his school work, if  
7 no other reason, maybe that will bring her to action.

8 Q But Lyudmyla wasn't in tune to Sasha and when he  
9 goes to sleep at night. Is that what your statement is?

10 A She's not in tune -- not to the -- I don't consider  
11 her as committed as I am to structure and routine. I can  
12 assure you of that.

13 Q You think she's deficient in those areas, correct?

14 A I just think that that's something that I -- that's  
15 one of -- that's my strength and I think -- and it was noted  
16 in the reports that it's not her strength.

17 Q Okay. And that's why you told her that even though  
18 she had told you that he goes to sleep at night, you still  
19 accused her of --

20 A It's not about her. It's about Sasha. This is  
21 about getting the results --

22 Q I'm -- that's a yes or no question, Mr. Abid.

23 A No.

24 Q Please listen to the question.

1 A No. I answered no.

2 Q So the reason that you told her that she -- that  
3 even though she told you that he already goes to sleep at  
4 8:00, even though she had already told you that, you kept  
5 telling her that it was her fault for keeping him up because  
6 you don't believe she has structure in her home, correct?

7 A No. That's not -- no, no. It was all about getting  
8 the result --

9 THE COURT: Okay. No. No?

10 THE WITNESS: No.

11 THE COURT: Next question? Wrap it up.

12 BY MR. SMITH:

13 Q She indicated that he was whining at her home all  
14 the time, that he got sick and his question is that did you  
15 have a jacket in the morning. Do you know why she asked you  
16 that question?

17 A He has a jacket, so no, I don't.

18 Q Well, that's right. Maybe there wasn't a jacket.  
19 Did you ask her that in any subsequent email? Maybe you  
20 forgot one day, Mr. Abid, or is that possible?

21 A I'm sure it's possible.

22 Q And then, when she said that he was sick with a  
23 runny nose, is that something you would want to know?

24 A I would know, because I see him every day.

1 Q Okay. So you didn't believe her?  
2 A So she doesn't need to tell me -- she doesn't need  
3 to tell me. I see him.  
4 Q Okay. So she shouldn't tell you that, how he was  
5 when he was at his -- her house?  
6 A She can tell me, but I see him every day so --  
7 Q I want to make sure that --  
8 A So you can -- if I use your line of argument, I can  
9 say that --  
10 THE COURT: Okay. It's not a conversation.  
11 THE WITNESS: -- she's insulting me in this  
12 sentence.  
13 THE COURT: Ask a question, answer it yes or no or  
14 whatever.  
15 THE WITNESS: No.  
16 THE COURT: Let your lawyer do the arguing.  
17 THE WITNESS: Okay. Sorry. I apologize.  
18 MR. SMITH: It's a control issue. I want to ask you  
19 to make --  
20 THE COURT: My control issue. I do have control  
21 issues.  
22 MR. SMITH: No, no, no. His control.  
23 THE COURT: Question, answer.  
24 MR. SMITH: I understand.

1 THE COURT: Question, answer.

2 MR. SMITH: Thank you, Your Honor.

3 BY MR. SMITH:

4 Q She then says I would ask that you make sure that  
5 he has -- takes a bath every night. Did you ever ask her why  
6 she asked that question?

7 A Uh-huh.

8 Q Did you ask her?

9 A Yeah, we had conversations about it.

10 Q Right. And she told you that she thought he came  
11 dirty. In fact, the next line that she says is this last  
12 Friday, all his man stuff was red and on fire. You see?

13 A It wasn't. It wasn't, so that's incorrect. It's an  
14 attempt to insult me, but it's not -- it's inaccurate.

15 Q You didn't believe her, right?

16 A I saw him every day.

17 Q Okay.

18 A He wasn't dirty and his --

19 Q So --

20 A -- penis wasn't red, so it's fiction.

21 Q She said this is very serious and had pain only  
22 because he was dirty and didn't have a bath at your home. As  
23 mother, it breaks my heart that you didn't give him right  
24 care. Angie is pregnant with baby. I don't have the rights

1 to bother her about it. And this was because she had  
2 communicated with Angie previously about issues associated  
3 with Sasha, correct?

4 A I don't know why she wrote that. I don't know if  
5 they -- they were certainly not communicating at this time, I  
6 don't believe. I don't know. I don't know why she wrote  
7 that.

8 Q But you would agree though, if there was some  
9 problem with Sasha, you would want to know -- at her home, you  
10 would want to know about it, correct?

11 A If it was legitimate, which this isn't.

12 Q Right. You just thought she was lying.

13 A I saw him on the same day. It's not a matter of  
14 whether somebody's lying.

15 Q And then, you again indicate now, the next series of  
16 emails (sic), you indicate that not only is she keeping him up  
17 at night, but she just lets him watches video all day over at  
18 her house?

19 A That's true.

20 Q But do you think that's insulting to say to another  
21 parent, that all you do is watch him videos at your house?

22 A You're -- you're -- why don't you read the sentence?

23 Q It says he tells me he watches videos over there. I  
24 would never encourage a child to keep secrets from his

1 parent. That will foster many problems for --

2 A Yeah, so you're --

3 Q -- (indiscernible).

4 A You're interpreting that wrong. He in the backyard  
5 told me how he likes to watch videos. And then, he stopped  
6 and said I wasn't supposed to tell you that. I'm supposed to  
7 keep that a secret. And that -- and we were alarmed by that.  
8 And so the focus of that sentence is about the secret and that  
9 tendency and that propensity.

10 Q Okay. Now, you know, it seems that there's only  
11 these cooperative emails. There's a couple emails by you  
12 accusing her essentially of lying. And then, all of a sudden  
13 that's her reaction, I will see my attorney tomorrow. That  
14 seems kind of dramatic, don't you agree?

15 A It seems dramatic that you're saying they're  
16 accusations, which they aren't.

17 Q Well, don't you think it's dramatic that it changes  
18 so much in tone from one to another?

19 A I realize you only have two or three emails to work  
20 with to get me with, so I guess you're going to make them  
21 pretty dramatic and --

22 THE COURT: It's not a conversation.

23 MR. JONES: Sean, stop.

24 THE COURT: It's not an argument. John Jones is

1 pretty good at arguing, so let's let him do that. Okay?

2 THE WITNESS: All right.

3 THE COURT: And Mr. Smith can ask a good question.

4 I want you to give the answer.

5 BY MR. SMITH:

6 Q Mr. Abid, at the time that Lyudmyla had indicated I  
7 will see my attorney tomorrow. God as my witness, I tried to  
8 give you a chance. I will pick up Sasha in five minutes.  
9 Wasn't there something else that had happened prior to that,  
10 other than these conversations through text messages?

11 A Absolutely. Ms. Abacherli had the conference with  
12 and indicated that he --

13 Q No, no, no, no.

14 A -- was behind, so that was a big part of where all  
15 -- the tenure of this and what -- that was a chief, chief  
16 concern for me during that time period was addressing that he  
17 didn't know his alphabet and that he couldn't read and that he  
18 couldn't count to a hundred.

19 Q Isn't it true that on Monday, October 27th, when  
20 Ms. -- when Lyudmyla came to your home, there was an argument  
21 at your home; isn't that true?

22 A I think that's the last time we ever spoke.

23 Q Right. And, in fact, during that argument, you  
24 called her a moron?

1 A No.

2 Q Correct?

3 A No. No, that's hearsay and not it was an argument.

4 THE COURT: John Jones is also good at making

5 objections. And so you give the answer --

6 MR. JONES: Right.

7 THE COURT: -- and then, we'll let the lawyers --

8 THE WITNESS: I don't have -- I don't have much

9 practice at this.

10 THE COURT: I know. That's why I just want you to

11 focus on the answers.

12 THE WITNESS: I apologize.

13 THE COURT: No problem. Go ahead, Mr. Smith.

14 BY MR. SMITH:

15 Q At that time, you called her stupid, didn't you?

16 A No.

17 Q You indicated to her that you -- she would be stuck

18 in Las Vegas, that she was not going back to the Ukraine?

19 A No.

20 Q And you criticized her for being married to a felon?

21 A No.

22 Q None of those things happened?

23 A Absolutely not.

24 Q So this spirit of cooperation changed from a spirit



1 of cooperation to I'm going to see my attorney just based on  
2 the argument, correct?

3 A Well, get me fired and some other things too, yeah.

4 Q And it was after that argument on October 28th was  
5 the first time that you indicated you can pick him up at 5:30,  
6 correct?

7 A Yes.

8 Q And then, in a series of events that happened  
9 afterwards, you -- and so we can try to save some time on  
10 this, but if you want me to walk you through the texts, I  
11 will. You refused to pay for the safe key portion that she  
12 paid, correct?

13 A \$2?

14 Q Excuse me, lunch.

15 A Well, the -- I also -- I didn't -- he didn't eat  
16 lunch every day with me at school. We would make cold  
17 lunch --

18 Q But you refused to pay the portion that Lyudmyla had  
19 paid?

20 A No, because I giving him cold lunch. I didn't owe  
21 her anything.

22 Q But the answer is you refused to pay the portion  
23 that she paid on your behalf, correct?

24 A She did not pay it on my behalf. I gave him cold

1 lunch. There was nothing to pay.

2 Q You refused to provide her the -- her passport

3 because -- so that she could go to the Ukraine?

4 A I sent her an email offering --

5 Q Is the answer yes --

6 A No. I --

7 Q -- or no?

8 A No.

9 Q Okay.

10 A I offered -- I asked to talk to her about it in an

11 email, which you should have as an exhibit, for which she said

12 no, my attorney will sort this out and restore my custodial

13 time.

14 Q Did you or did not give her the passport?

15 A No. After she was offered a chance to discuss it,

16 she chose not to do that and take me to court. So there was

17 no opportunity.

18 Q Right. So you didn't give her the passport. You

19 refused to even grant her request to pay the money, whether

20 you thought you owed it or not. You didn't allow her to pick

21 up the child until 5:30, so when she showed up, you just said

22 wait -- wait -- you can wait until 5:30, right?

23 A When there's vitriol, I felt like it was in the best

24 interest of Sasha to --

1 Q You started not returning some of his clothes.  
2 A No.  
3 Q Really? She just out of the blue said where's his  
4 belt? That's your testimony? Yes?  
5 A Look. When we -- when he'd come home -- we'd play  
6 sports. We'd change clothes. He's six. I teach him to put  
7 his own stuff back. Sometimes he does, sometimes he doesn't.  
8 What in the world am I going to do with a belt?  
9 Q I don't know. Where -- but that was what you did,  
10 you failed to return the clothes, correct?  
11 A No, no.  
12 Q And at that point, do you recall that there was a  
13 parenting coordinator discussed, correct?  
14 A There was a parenting coordinator threat.  
15 Q Well, no, no, no. What the Court indicated in an  
16 order -- and this is by Judge Carter -- is that it would not  
17 order a parenting coordinator, but would order a parenting  
18 coordinator if it was necessary --  
19 A Yes.  
20 Q -- to do --  
21 A Yes.  
22 Q -- because of the parties? That was his order in  
23 effect, correct?  
24 A Yes.

1 Q So Lyudmyla, when there became problems, said let's  
2 take this to a parenting coordinator or words to that effect,  
3 correct?

4 MR. JONES: Actually, Your Honor --

5 THE WITNESS: No.

6 MR. JONES: -- I'm going to object to that. I'm  
7 going to let the text messages speak for themselves. They're  
8 already part -- they're already in evidence. His testimony  
9 about what her words were is not the best evidence.

10 BY MR. SMITH:

11 Q November 17th, 237, this --

12 THE COURT: What page? What page are you on,  
13 Counsel?

14 MR. SMITH: 237 in Exhibit H, Your Honor.

15 THE COURT: Thank you.

16 BY MR. SMITH:

17 Q She says this will be addressed by parent -- with  
18 parenting coordinator, correct?

19 MR. JONES: Can we have him read --

20 MS. ABID: Would you read the whole sentence?

21 MR. JONES: -- the entire entry?

22 BY MR. SMITH:

23 Q This is direct parenting alienation. You leave me  
24 no choice.

1           A     Wonder what's that choice?

2           Q     To have a parenting coordinator.

3           A     I don't think so.

4           Q     So at no -- at no point in time, you refused to have

5 a parenting coordinator, that's your testimony?

6           A     I'm not being offered the choice. She -- that's a

7 threat. I mean, would you like to go to a parenting

8 coordinator with me? Is that what she's saying here? I must

9 be comprehending incorrectly.

10          Q     Even after these events, when you asked her for

11 additional time, she granted you that time, correct?

12          A     She granted it to Sasha, which is what I am only

13 focused on, so --

14          Q     But at no time after that time did you allow her to

15 pick up the child as -- at 3:30 on her days as you had been

16 doing up until October of 2014?

17          A     Demands of school have become so much that I simply

18 can't and I'm grateful for that time that I have and it's

19 being used wonderfully.

20          Q     When you -- if you look now to Exhibit I, at some

21 point in time, she asked you to put him into a jujitsu class.

22 She calls it the Israeli class. Do you recall that?

23          A     Uh-huh. Yeah, I remember the discussion, yeah.

24          Q     Yeah. And you refused to do that?

1           A     Yeah. Well, I had a discussion and if I can  
2 elaborate, I told her that as a parent, just like a parent  
3 wouldn't want their kid to play football for fear of  
4 concussions, I don't like the idea of my kid getting involved  
5 in a fighting class. I just don't.

6           Q     But --

7           A     I don't want him to have that interest where he  
8 would get into MMA. I just -- I just don't. And if she had a  
9 schedule, I would have followed it and I did follow it. She  
10 put him in jujitsu or in fighting class that I took him to on  
11 my days. It was every Thursday to some Israeli fighting  
12 school. I took him. So if there's a schedule, I follow it.  
13 I just -- it's not my preference. I would rather not him get  
14 involved in an activity that might lead to an interest in MMA.

15          Q     And you indicated to her in response to her saying  
16 look, I'd like you to put him in Israeli class -- and when you  
17 said you told me you'd never put him in Israeli class, you  
18 said --

19               THE COURT: Counsel, what? I'm sorry. I'm not just  
20 following you.

21               MR. SMITH: We're looking at 241.

22               THE COURT: Oh. Okay.

23 BY MR. SMITH:

24          Q     She again asked you to put him in -- you indicates

1 that you refused to put him in the Israeli class. She  
2 indicates that she wants the passport. She asks you to stop  
3 harassing her husband and saying hateful things about him and  
4 she indicates that she will be flexible if you could do those  
5 things.

6 A Well, if take them one at a time, I took him to the  
7 Israeli class every Thursday when he was three-years old.  
8 That was my day. Number two, where is the evidence? Of all  
9 the texts you just went through, why don't you produce one  
10 where I express any hate for Mr. Marquez?

11 Q Well, you were careful not to do that, but we'll  
12 talk about that through your testimony.

13 MR. JONES: Objection, Your Honor.

14 THE COURT: It's not a conversation.

15 MR. JONES: Move to strike.

16 THE COURT: Not a conversation. Question, answer.

17 BY MR. SMITH:

18 Q In regard to the class, you had indicated -- and I  
19 take from your response -- that you were not interested in  
20 allowing him to sign up --

21 A Will you read the whole thing, so that I can get  
22 context?

23 Q Well, I think you should read the whole thing. It's  
24 on page 241.

1 THE COURT: All right. Okay. Please just answer  
2 the questions. Counsel, please --

3 BY MR. SMITH:

4 Q It indicates that --

5 THE COURT: -- just ask the question.

6 THE WITNESS: I don't even know what he's asking me.

7 BY MR. SMITH:

8 Q All right. On page 241 on the bottom, it says so  
9 that it is for sign ups tomorrow -- no for signs up tomorrow.  
10 FYI, we took Sasha to the fighting class you enrolled him in.  
11 You never consulted me beforehand. I treasure and value my  
12 time with Sasha during the week. He has to learn to read,  
13 because I spend one-on-one time with him every day teaching  
14 and coaching him. We don't spend our time watching movies and  
15 playing video games. Do you see that -- those comments as  
16 insulting to Lyudmyla?

17 A I seem them as entirely accurate.

18 Q I see.

19 A Yeah, absolutely. I think that the teacher --

20 THE COURT: Oh, no. No.

21 THE WITNESS: Okay. I'm sorry.

22 BY MR. SMITH:

23 Q And at no time did you ever indicate to her, yes,  
24 she could go to the -- he could go to the Israeli class,



1 correct?

2 A If you -- there are texts that say if you provide me  
3 with the schedule -- you're nit -- you're cherry picking.  
4 There's some in this string that you submitted where I said  
5 you provide me with the schedule and I'll take him. And so  
6 that would -- the answer would be no.

7 Q Do you believe that Lyudmyla is capable of doing  
8 homework with Sasha?

9 A Capable is --

10 THE COURT: Capable, yes or no?

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 BY MR. SMITH:

14 Q The January 19th email was -- or let's move to that.  
15 That's at page 156 in Exhibit --

16 MR. JONES: 156?

17 MR. SMITH: Well, let me just check the numbers,  
18 because I was using the (indiscernible). It is at 251 of  
19 Exhibit I.

20 BY MR. SMITH:

21 Q On this exchange with Mr. Marquez occurred on the  
22 19th, correct, as depicted on page 251 and 252?

23 A That's true.

24 Q And on -- it was on the 20th of January that you

1 took the first tape, correct?

2 A No. It was -- that would have been the -- close to  
3 it. I want to say it was Monday, because it was a holiday, so  
4 it was -- it was the day he returned from a holiday, Martin  
5 Luther King, with me. So very close to that time.

6 Q Now -- well, let me ask you this. Are you certain  
7 it was not on the 20th or are you just trying to -- it's just  
8 a recollection that maybe it wasn't and maybe it was?

9 A No. I'm just saying it was whatever Martin Luther  
10 King Day was, that was the day. When he returned from Martin  
11 Luther King with me, so it would have been Tuesday, whatever  
12 the day was.

13 Q All right. So it will be the Tuesday following  
14 Martin Luther King Day in 2014, correct?

15 A I believe so. That's my recollection, yeah.

16 Q Even after that and even after the problems that you  
17 were having with her with regard to baseball, I think she  
18 indicates that you -- that would be on 252, the 24th, during  
19 the time, that period that you were taping her.

20 A No. Yeah.

21 Q I have no problems with you taking him if you will  
22 agree to take him on the class on your days. I still have the  
23 deposit sitting there since (indiscernible). I believe this  
24 is a fair request. Do you see that?

1           A     I think for context though, you should include the  
2 message that I sent to her about her son being proud of  
3 himself. Actually, she's responding to my --

4           Q     I -- this has again turned into a conversation. The  
5 question was whether or not she had agreed to allow him to  
6 attend baseball in exchange for you allowing him again the  
7 class that she wanted him to attend. Do you see that?

8           A     No. Yes.

9           Q     I'm sorry. I'm trying to find that part where you  
10 said in the email that you said yeah, okay, he -- I'll take  
11 him to the class. Maybe you can help you with that, Mr. Abid?

12          A     Well, I --

13               MR. JONES: I don't think that's a question.

14               MS. ABID: -- it's in there and you --

15 BY MR. SMITH:

16          Q     Can you show me in these text messages where you  
17 agreed to take him to the class that she had agreed -- that  
18 she had allowed -- or that she had referenced in relation to  
19 the baseball?

20          A     I think it was before when you were at the -- the  
21 first one where she said she wouldn't and about harassing  
22 Ricky. I think -- I thought there was something about the  
23 schedule in there. It's in there. I mean, I -- if you want  
24 to sit here and look for it.

1 THE COURT: Do you want him to look through them?

2 MR. SMITH: All right. No.

3 BY MR. SMITH:

4 Q In regard to the --

5 A What page am I looking at now?

6 Q I'm sure Mr. Jones will bring it out if he can. I  
7 didn't see it. If it's there, it's there. But I don't know  
8 why she would -- well, in any event, the -- okay.

9 MR. SMITH: I'll pass the witness.

10 THE COURT: Just briefly, Mr. Jones.

11 MR. JONES: Really briefly.

12 THE COURT: Super brief.

13 REDIRECT EXAMINATION CONTINUED

14 BY MR. JONES:

15 Q Has Lyudmyla admitted to you that when it comes to  
16 reading with Sasha and reading comprehension and words that  
17 because of her accent, it's actually you're better at it?

18 A Yes. She said that, you know, because of English  
19 and that it's my native language that it was something that I  
20 was probably better suited to help him with.

21 Q And just so I know and maybe the Court knows, the  
22 Israeli class, was it a Krav Maga class?

23 A I don't know. I think so. That's Lyudmyla's --

24 Q Did you ever actually sit in on one of them?

1           A     Yeah, I took him.  
2           Q     Did it scare the doo-doo out of you?  
3           MR. SMITH: How in the world --  
4           THE COURT: Counsel?  
5           MR. SMITH: -- is this related to the intent  
6 associated with him taking the child out --  
7           MR. JONES: I'm just --  
8           THE COURT: You brought up the class. Ask the  
9 question.  
10          MR. JONES: I just --  
11          THE COURT: Clean up the language.  
12          THE WITNESS: He was -- he was really too small. I  
13 mean, it wasn't -- I don't blame her for doing it, but he was  
14 three and, you know, it was not really a good thing. He was  
15 trying.  
16 BY MR. JONES:  
17          Q     On the issue of tiredness, did he always need a nap  
18 on the days that you had custodial time the next day?  
19          A     No.  
20          Q     The prior day rather?  
21          A     No. Our bedtime was 7:00 and it was -- it never  
22 happened unless he was sick.  
23          MR. JONES: I don't have anything further.  
24          THE COURT: All right. Thank you. You can --

1 MR. SMITH: Just one follow up question.

2 RECROSS EXAMINATION CONTINUED

3 BY MR. SMITH:

4 Q You had indicated that the bedtime at your home was  
5 always 7:00 o'clock, correct?

6 A Between 7:00 and 7:30.

7 Q Okay. Was that true on days that he played  
8 baseball?

9 A No.

10 Q All right. Thank you.

11 THE COURT: Thank you. Thank you. Have a seat.

12 Counsel, it is almost 3:30. I indicated yesterday  
13 that I would appreciate supplemental briefs from Counsel as to  
14 the evidentiary issue -- issues presented relative to the tape  
15 and it's admission. I also indicated that I'm going to take  
16 those briefs and make a decision.

17 Counsel, how quickly do you think it's feasible,  
18 understanding that Thanksgiving is coming, that you can get  
19 those briefs to me? Next week is Thanksgiving week.

20 MR. JONES: The following Tuesday?

21 THE COURT: So we're talking about perhaps two weeks  
22 for supplemental briefs to be due? You can think you can  
23 handle that, Mr. Smith? Is that okay?

24 MR. SMITH: Yes.

1 THE COURT: All right. And then, I will set a --  
2 let's look at our calendars and set a time for my decision as  
3 to those issues. I will probably issue a written decision and  
4 I will write it so that you have that, but I'd like to set a  
5 date on the calendar and I'll issue that decision before that  
6 date. And then, we'll need a date after that for the  
7 remainder of our issues that are presented.

8 Realistically, Counsel, I have -- and I'm assuming  
9 you have your calendar -- oh, he's getting his calendar on the  
10 phone.

11 MR. JONES: I'll move whatever I have to move, Your  
12 Honor.

13 MR. SMITH: I have it. So what is the date, Your  
14 Honor?

15 THE COURT: Okay. So I have -- we have a different  
16 clerk, so let me --

17 THE CLERK: How far out do you want it, Judge?

18 THE COURT: We just had vacated a date, two dates  
19 actually.

20 (BRIEF PAUSE)

21 THE COURT: Monday, January 11th, full day.

22 MR. SMITH: Monday, January 11th, full day?

23 MR. JONES: And obviously nothing sooner?

24 THE COURT: I really don't. And I have booked five

1 days a week. What I will do as well, because I don't want to  
2 -- I'm going to book the morning of the Tuesday following the  
3 12th. I'm going to book that morning as well.

4 MR. JONES: Okay.

5 THE COURT: I see that I have a couple of little  
6 items on that day, on that morning.

7 THE CLERK: Uh-huh.

8 THE COURT: And so I'm going to move those to the  
9 following day, so that we can have that morning for  
10 continuity.

11 THE CLERK: So we're doing 1/11 and 1/12?

12 THE COURT: The morning of 1/12. I have another  
13 trial at 1:30.

14 THE CLERK: So we'll do the morning of 1/12.

15 THE COURT: Counsel, those dates work for you?

16 MR. JONES: I'll make them work.

17 MR. SMITH: Morning of the 12th?

18 MR. JONES: I can't not have it resolved by then.

19 MR. SMITH: Okay. Morning of the 12th is okay for  
20 me too.

21 THE COURT: Wonderful. Thank you. And so I'll  
22 expect briefs from you within two weeks. Then, let's set a --

23 MR. JONES: Can we have a time as well as a day that  
24 we'll exchange briefs or submit them at the exact --



1 THE COURT: So two weeks is December 3rd. Let's --  
2 MR. JONES: 5:00 o'clock?  
3 MR. SMITH: Since they are the proponent of the  
4 brief and we're filing an objection, shouldn't one of us go  
5 first?  
6 THE COURT: You know what? These are supplements to  
7 the arguments we've made three times already.  
8 MR. SMITH: Okay.  
9 THE COURT: And so you can submit those to me in  
10 chambers if you don't want to file them. And then, I'll have  
11 my chambers file them at a time after.  
12 MR. SMITH: No. I just meant in terms of like  
13 should their brief opposition --  
14 THE COURT: These are all supplements to things that  
15 -- and motions Counsel for the Defendant has filed two or  
16 three times previously. And so these are just supplements for  
17 your benefit to -- instead of closing arguments on the issues  
18 that were presented today.  
19 MR. SMITH: Judge, if you don't think you need the  
20 briefs, I think we -- but if you don't need the briefs, I'm  
21 prepared to argue the issues --  
22 THE COURT: I'd prefer the briefs only because I'm  
23 going to take some time with this issue and your arguments  
24 today. I think it's just better to give me -- give me

1   briefs --

2               MR. SMITH: No problem.

3               THE COURT: -- for my purposes. So by noon,  
4   December 3rd. Let's set it for decision --

5                       (BRIEF PAUSE)

6               THE COURT: Thursday, December 17th. And I may  
7   issue a written decision before that date. All right?

8               MR. SMITH: And so December 17th, we're to appear  
9   or --

10              THE COURT: I'm going to set it for --

11              MR. JONES: (Indiscernible).

12              THE COURT: I'm going to set it for 9:00 a.m. just  
13   so that it's on my calendar and we keep it. But I anticipate,  
14   Counsel -- that's the Thursday before that Christmas holiday.

15              MR. SMITH: Are you saying December 17th at 9:00  
16   a.m.?

17              MR. JONES: Did you say 9:00 a.m. on the 17th?

18              THE COURT: Yes, just for decision.

19                       (BRIEF PAUSE)

20              MR. JONES: Oh, December 17th.

21              THE COURT: Are you out --

22              MR. JONES: I won't be here.

23              THE COURT: Counsel, I remember you told me that --

24              MR. JONES: I'm gone the week of the 11th to the

1 18th.

2 MR. SMITH: I'm gone the week following.

3 THE COURT: As I am. If you feel comfortable not

4 sending that status check date, I'm going to issue a written

5 order.

6 MR. JONES: Okay. I think that's fine, Judge.

7 THE COURT: Let's just not have it.

8 MR. SMITH: Okay. Then, don't worry about that

9 date. Thanks.

10 THE COURT: Because we do have a date set out beyond

11 that. Okay?

12 MR. JONES: Okay.

13 THE COURT: Thank you so much.

14 MR. JONES: Judge, there's one other matter.

15 THE COURT: Yes, certainly.

16 MR. JONES: And I know it's been a long week on this

17 stuff --

18 THE COURT: That's all right.

19 MR. JONES: -- but I asked about the video from the

20 hallway yesterday at 4:00 o'clock and I guess it won't be

21 ready for a couple of days.

22 THE COURT: Okay. I don't know how that works.

23 MR. JONES: Yeah. Well, I talked to Greg because

24 (indiscernible) was doing detail for the Supreme Court today

1 and therefore wasn't here and he's in charge and he's putting  
2 all that stuff together.

3           Assuming for argument sake that a death threat was  
4 made by the defendant's husband against my client to his wife  
5 in the hallway out there, assuming that's true, which you can  
6 certainly allow her to testify when we come back to court, if  
7 that's true, there's real concerns on the part of my client  
8 about his child being exposed to that.

9           I mean, ignore all of the stuff with mom and the  
10 horrible things that she's said for years and years and years,  
11 through and including, you know, during this litigation, if  
12 this is true -- that's why I really wanted to try to see the  
13 video today, because it's real simple. You say you want the  
14 parties excluded while Mr. Smith and I argue. My client goes  
15 into the (indiscernible) room. The Defendant goes out into  
16 the hallway and speaks to her husband. If he didn't make a  
17 threat to my client's wife, he would not have risen from his  
18 chair and he would not have made it so that he could look at  
19 her and hopefully -- hopefully when we get the video, there  
20 will be the visibility of his lips moving and we can hire  
21 somebody who reads lips. I'm already looking into lip reading  
22 experts. They do exist.

23           But if that's true -- and I think we will all agree,  
24 that if he really didn't say anything threatening to my

1 client's wife, he wouldn't have gotten up from the chair. He  
2 wouldn't have gone out and around the little wall that comes  
3 out between certain sections of chairs out there and he  
4 wouldn't have looked at her and he wouldn't have said anything  
5 to her. There would be no reason for him to say a word to her  
6 under any circumstances.

7 If it's true that this happened and the video will  
8 probably shed a great deal of light about what happened in  
9 that hallway, wouldn't you feel like you were obligated to  
10 step in or if you were dad, wouldn't you feel like you were  
11 obligated to say, Judge, we've got a track break coming up  
12 from Thanksgiving until January, this child shouldn't be  
13 exposed to this type of hatred and vitriol now coming from  
14 stepdad on top of what comes from mom.

15 THE COURT: If, in fact, the evidence that of  
16 whatever happened that's gathered by people other than us  
17 sheds light or gives us new facts on the situation, you know,  
18 Counsel, you can file a motion, okay, to change -- to change  
19 things.

20 I think it's premature for us to argue about what  
21 those facts might be or the scenario. And so once we have the  
22 -- you have the video or Mr. Smith has the video and you have  
23 whatever statements or information you need, if it rises to  
24 the point where you need to file an emergency motion or you

1 file a motion with an OST, you know, we'll just deal with it.

2 MR. SMITH: I understand the representation that's  
3 being made by Mr. Jones is that Mr. Marquez after speaking to  
4 Lyudmyla and after she went into the home -- or excuse me --  
5 the (indiscernible) room, came back out and then went around  
6 the table. So --

7 MR. JONES: Yeah. That's what I'm saying.

8 MR. SMITH: -- I'm just trying to get the clear  
9 picture of --

10 MR. JONES: What I'm saying -- and it's probably  
11 better suited on the statement that she filled out yesterday  
12 and gave to the Marshals and that's why that -- that's part of  
13 the whole --

14 MR. SMITH: I don't have that statement, so  
15 you're --

16 MR. JONES: I don't have it either.

17 MR. SMITH: -- (indiscernible). So what is the --  
18 what is she alleging in terms of the --

19 MR. JONES: That she told him something and maybe  
20 while she was even still in the hallway --

21 THE COURT: She, the Defendant.

22 THE WITNESS: It was in the hallway.

23 MR. JONES: The -- Lyudmyla was still in the  
24 hallway --

1 THE COURT: Look. Here's the thing.

2 MR. JONES: -- when it was said.

3 MS. ABID: Yeah, my wife was sitting in the hallway.

4 THE COURT: Counsel, these facts are to be sorted  
5 out. Once Counsel has the facts and once you have the  
6 information, if it is an emergency, if it changes -- it's a  
7 change of circumstances, then you know you can file the  
8 appropriate motion.

9 MR. JONES: I understand, Judge. But, you know,  
10 obviously --

11 THE COURT: I think it's too soon for me to  
12 interject my feelings --

13 MR. JONES: (Indiscernible).

14 THE COURT: -- when I have no --

15 MR. SMITH: (Indiscernible).

16 THE COURT: I have no sense of what the facts are.

17 MR. SMITH: We just know what is in this record is  
18 they, I think, for a couple of years maybe --

19 MS. ABID: Two years.

20 MR. SMITH: -- brought police every time to  
21 exchanges before Ricky Marquez was even involved and after he  
22 was. But Lyudmyla even addresses this in the report and says  
23 if they continue to do this, it's an action to have something  
24 done. This is -- there is a long history in this case of

1 false allegations about --

2 MR. JONES: No, there isn't.

3 MR. SMITH: -- (indiscernible). In these emails  
4 that are before you, there's an email in which he says will  
5 you stop texting my wife. He says what is that, a threat? I  
6 mean, everything's a threat.

7 MR. JONES: It was a threat, because then he said he  
8 just went to the Henderson Police Department to swear out  
9 Ricky Marquez interrupts in their co-parenting attempts again,  
10 not just the one time. The second time was oh my gosh, I  
11 can't believe you're not going to bring him to his  
12 championship baseball game, he'll be crushed. And instead of  
13 her responding that sorry, Ricky's birthday is more important,  
14 Ricky took the phone and said stop harassing my wife --

15 THE COURT: Once --

16 MR. JONES: -- and I'm going to Henderson right now  
17 to swear out a complaint against you.

18 THE COURT: Once we have the facts regarding the  
19 incident from yesterday and you have the evidence you need, I  
20 trust Counsel will respond appropriately.

21 MS. ABID: But you --

22 MR. SMITH: That's all.

23 MR. SMITH: But these --

24 THE COURT: That's all. It's too easy -- it's too



1 soon to argue all of these facts.

2 MR. JONES: All right. Thank you, Your Honor.

3 THE COURT: Thank you.

4 (PROCEEDINGS CONCLUDED AT 15:37:10)

5 \* \* \* \* \*

6 ATTEST: I do hereby certify that I have truly and  
7 correctly transcribed the digital proceedings in the  
8 above-entitled case to the best of my ability.

9

10

11

/s/ Kimberly C. McCright  
Kimberly C. McCright  
Certified Electronic Transcriber

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LYUDMYLA ABID,

Appellant,

v.

SEAN ABID,

Respondent.

Supreme Court No. 69995

District Court Case No. D-10-424830-Z

Appeal from the Eighth Judicial District Court

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**APPELLANT'S APPENDIX**

**VOLUME 14**

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09-09-15

11-18-15

11-19-15

01-11-16

01-25-16

1507-1526

1           A     Yes.

2           Q     That was your testimony in your deposition --

3           A     Yes.

4           Q     And your testimony today is different; is that

5 right?

6           A     Yes, that's right.

7           Q     Have you ever told Sasha to lie to Sean about what

8 he does in your house?

9           A     No.

10          Q     Okay. Turning to the same page, line 19, the

11 question was, have you ever told him to lie to his Father

12 about what he does in your house? Answer, I don't remember.

13          A     Uh-huh (affirmative).

14          Q     You see that?

15          A     Yes.

16          Q     And so your testimony here today is different than

17 it was in your deposition, right?

18          A     Well, today I say, I don't teach my son to lie.

19 That's my testimony.

20          Q     Okay. I'll ask the question again. So your

21 testimony today is different than it was at your deposition,

22 right?

23          A     I do not remember the -- back then, because my

24 attorney told me this oldest accusations (indiscernible) from



1 the tapes. And they are inadmissible, and legal obtain, and  
2 heavily altered, modified. So I took it, time for myself, to  
3 think what it all really -- what did I say to my son? So I  
4 told you I don't remember.

5 Q Okay. So when I asked you the question at your  
6 deposition, did you think about what the answer would be, or  
7 should be?

8 A I was asked question on illegal obtained tape, which  
9 was modified and altered. So I thought it was an unfair. How  
10 can I testify what I said, Sash -- I'm not saying he -- he's a  
11 bad guy. And your tape says, he's a bad guy. How can I  
12 testify on that, John Jones?

13 Q So it's your belief that all of the questions I'm  
14 asking are from the tapes?

15 A A lot of them, yes.

16 Q And you've read Dr. Holland's report, right?

17 A Yes, I did.

18 Q And you've read Dr. Chambers' report?

19 A Unfortunately, no. I did not have a chance.

20 Q Have you ever called Sean and idiot to Sasha?

21 A I don't call Sean an idiot to Sasha. If I did, I  
22 may have --

23 MR. JONES: Objection --

24 BY MR. JONES:

1 Q Oh, okay. Go ahead. Sorry.

2 A If I did, I may have, and that was not really

3 programming my son, your Dad is an idiot. Absolutely not. I

4 don't think Seán is an idiot, and Sasha knows that.

5 Q At page 39, line 11, the question was asked, have

6 you ever called Sean an idiot to Sasha? Your answer was,

7 don't remember. Do you see that?

8 A Yes.

9 Q So your testimony here today is different than it

10 was at your deposition?

11 A The idiot was from the tapes, again. I never called

12 --

13 Q It --

14 A -- I -- I've never called Sean an idiot.

15 MR. JONES: Objection, move to strike.

16 THE COURT: Okay. So right now --

17 MR. JONES: So --

18 THE COURT: -- let me -- let me give you the scope

19 of what these questions are right now. The scope are, ever.

20 Okay? Not, on the tape, not on the tape. Okay? So I -- I

21 don't want you to focus on --

22 THE WITNESS: Okay. I --

23 THE COURT: -- on that.

24 THE WITNESS: -- I may have, yes. I will make my

1 answer. I may have in --  
2 BY MR. JONES:  
3 Q Okay.  
4 A -- one incident, yes.  
5 Q And my question to you was this, so your testimony  
6 here today is different than that on your -- at your  
7 deposition, correct?  
8 A They are more detailed, and more accurate.  
9 Q Well, your deposition, you said, don't remember,  
10 right?  
11 A Yes.  
12 Q I'm reading that correctly from the deposition?  
13 A Yes.  
14 Q Okay. And today, when I asked you the question, you  
15 didn't say, don't remember, right?  
16 A I did say to you in deposition, I don't remember.  
17 Q Right.  
18 A That's right.  
19 Q But when I asked you the same exact question here  
20 today, your answer was not, I don't remember, right?  
21 A Yes. I said I may have. Things happens.  
22 Q Okay. Did you tell Sasha that he couldn't play on  
23 his Xbox anymore because of all the things he'd told Dr.  
24 Holland?

1           A     No.

2           Q     Okay. Looking now at page 39, line 17. Question,  
3 did you tell Sasha that he couldn't play on his Xbox anymore  
4 because of all the things he'd told Dr. Holland? Answer,  
5 don't recall. Do you see that?

6           A     Yes.

7           Q     So your testimony here today is different than it  
8 was at your deposition, right?

9           A     I -- I didn't say this to my son, that he -- because  
10 he told Holland -- no.

11                   MR. JONES: Objection, move to strike.

12 BY MR. JONES:

13           Q     Your testimony here today --

14           A     Uh-huh (affirmative).

15           Q     -- is different than it was at your deposition,  
16 correct?

17           A     I said I don't recall. You said -- one said, you  
18 don't recall. I said, I don't remember. And --

19           Q     And then I asked you --

20           A     -- today -- today, I tell you, I -- I look at my  
21 memory, and I think I never said that to my son. That's my  
22 answer.

23           Q     Okay. And then I followed up that question with,  
24 and once again, when you say you don't recall, that doesn't

1 mean you didn't do it, right? And your answer was --  
2 A Can you please tell me what -- okay.  
3 Q It's the following line.  
4 A Uh-huh (affirmative).  
5 Q Line 21, page 39.  
6 A Uh-huh (affirmative).  
7 Q And your answer to that question was also, I don't  
8 remember, correct?  
9 A Uh-huh (affirmative).  
10 Q Have you ever told Sasha that his Father was sneaky?  
11 A No. Well -- no. I would say no.  
12 Q And at your deposition, you testified as follows,  
13 have you told Sasha that his Father was sneaky? Answer, I  
14 don't remember.  
15 A Uh-huh (affirmative).  
16 Q Right?  
17 A Uh-huh (affirmative).  
18 Q Have you ever told Sasha that his Father was nasty?  
19 A Where is it?  
20 Q It's a question I'm asking you here today.  
21 A Yes. I see that.  
22 Q Did you ever tell Sasha that his Father was nasty?  
23 A In 2013, I did say that on two occasions. And I  
24 really mad -- mean it. If so, in my life, if I was said that

1 he is nasty, mean person, I did say on two very disturbing  
2 occasions, extremely disturbing. And then I meant it.

3 Q And so when I asked you the same question, have you  
4 ever told Sasha that his Father was nasty, and you responded,  
5 I do not recall --

6 A Uh-huh (affirmative).

7 Q -- or I don't recall, that would be different than  
8 your testimony here today, right?

9 A I believe I -- being Russian, I misunderstand --  
10 misunderstand, have you ever told. You know, in like, what,  
11 five years, seven years since my son was born. And --

12 MR. JONES: Objection, move to strike --

13 THE WITNESS: -- I thought we're talking about the  
14 period of the --

15 THE COURT: Hold on one second. I'm going to strike  
16 that portion. But, Counsel, the Defendant indicated that  
17 she's Russian, and doesn't understand, have you ever, that  
18 term. Do you -- are you sufficiently -- are you okay with,  
19 Counsel, her going forward today without an interpreter?

20 THE WITNESS: Oh, I understand --

21 THE COURT: No; no; no. Mr. Smith --

22 MR. JONES: I think the question --

23 THE COURT: -- do you feel like your client has a  
24 command of the English language to the ability that she can

1 assist you today, and understands the questions and the  
2 proceedings today?

3 MR. SMITH: Let me ask the -- answer the question,  
4 too, is there's -- there's different ways of understanding the  
5 language. I can speak the language in conversational tone,  
6 she certainly can do that. Understanding the fine points of  
7 specific types of the language, I would note that even in this  
8 deposition, the court reporter said she couldn't understand  
9 her because of her heavy Russian accent.

10 And so in terms of an understanding each and every  
11 question, and all the ramifications that perhaps you and I  
12 understand, no, I don't think she can do that, unless it was  
13 translated into Russian. Can she answer colloquially things  
14 that you -- you could answer in a conversation on a perhaps  
15 teenage level? Yeah, she can do that pretty easily.

16 THE COURT: Counsel, you haven't had any problems  
17 understanding her, or problems with her understanding the  
18 proceedings this far?

19 MR. SMITH: I've had many problems understanding  
20 her, none that I thought were relevant to my representation of  
21 her overall. If I felt I needed a Russian interpreter for her  
22 expressing her notions in this, I would have brought one.

23 So the answer is, do I want a Russian interpreter  
24 here? I don't think it's necessary. But I do think we need

1 to consider that English is definitely not her first language,  
2 and she may or may not have understood completely --

3 THE COURT: All right.

4 MR. SMITH: -- what was being asked of her.

5 THE COURT: I'm going to strike that answer.  
6 Counsel, ask another question.

7 MR. JONES: Thank you.

8 BY MR. JONES:

9 Q My question was, so the -- so your testimony here  
10 today is different than it was at the time of your deposition,  
11 right?

12 A I believe in deposition I thought we're covering  
13 2013 --

14 Q Okay.

15 A -- up to date.

16 Q Okay. I -- I'm simply asking you a single yes or no  
17 question.

18 A It is no since 2013.

19 Q Is your testimony today different than it was at  
20 your deposition?

21 A I believe the way that you ask me today, you ask me  
22 if you ever. So I can go to 2013 and '12, and '11, and the  
23 events which happens those times were very disturbing so those  
24 --



1 Q Oh --

2 A -- times, I did have incident saying that.

3 Q Okay. I will ask you again.

4 MR. SMITH: Look, let me just tell you that -- let  
5 me just object that I believe this question is argumentative.  
6 Whether or not a question is different from how she answered  
7 in a Court is within the province of the Court to make a  
8 factual finding.

9 THE COURT: It's not argumentative. Just answer the  
10 question. Is it different --

11 THE WITNESS: Okay.

12 THE COURT: -- for whatever reason --

13 THE WITNESS: Yes. Okay.

14 THE COURT: -- than what you gave in your  
15 deposition?

16 BY MR. JONES:

17 Q So your testimony is different today --

18 A Okay.

19 Q -- than it was in your deposition?

20 A Okay.

21 Q Did you ever tell Sasha that his Father sneaks and  
22 takes his homework?

23 A That's what Sasha told me, not I did tell my Sasha.  
24 I haven't told him that, my son told me. Sasha, where's your

1 homework, why is not here? My Dad sneaks it, again. That was  
2 told me by my son.

3 Q So you've never told Sasha that his Father sneaks  
4 and takes his homework, right?

5 A No, my son told me that. I never did.

6 MR. JONES: Trying to find the quote, Judge, for  
7 just one minute.

8 BY MR. JONES:

9 Q Bottom of page 40, going on to page 41, question  
10 was, where would Sasha come up with the understanding that  
11 Sean sneaks and takes his homework so he can't do it in your  
12 house?

13 A Uh-huh (affirmative).

14 Q Objection, calls for speculation. Question, have  
15 you ever said those things to him?

16 A No.

17 Q Answer, I don't recall.

18 A Uh-huh (affirmative).

19 Q But you're now saying no is the answer, correct?

20 A Absolutely.

21 Q And so your testimony here today is different than  
22 it was at your deposition?

23 A My testimony today is more clear. No, I never said  
24 that. My -- and I clarify this to you. My son was told me

1 those things, that homework is not in bag, but because Dad  
2 sneaks it out, and took it.

3 Q But your testimony at your deposition, on September  
4 23rd, was that you don't recall ever saying that to Sasha,  
5 right?

6 A Yeah. I wasn't under pressure, so it was such a  
7 stressful time, so I really wasn't clear on those answers at  
8 that day.

9 Q Did you ever tell Sasha that Sean called the police  
10 on you so he could steal you from -- steal him from you?

11 A Uh-huh (affirmative).

12 Q Did you ever say that to Sasha?

13 A In 2013, when -- and you have my -- my respond below  
14 --

15 Q I'm asking you right now, here today, not -- not  
16 looking at the deposition --

17 A Since 2013 and now, no.

18 Q But you have said that to him, right?

19 A When police was present on every day, my son will  
20 ask me, why are there two police cars in 8:00 o'clock in the  
21 morning, standing next to our house --

22 MR. JONES: Objection, move to strike.

23 BY MR. JONES:

24 Q You said those things to him?

1 MR. SMITH: Wait, he can't object and move to strike  
2 when she's trying to give an explanation --  
3 MR. JONES: It's a yes or no question.  
4 MR. SMITH: It is not a yes or no question because  
5 you -- because she clarified that she did not -- that her  
6 answer was only relating to 2013 forward --  
7 THE COURT: All right.  
8 MR. JONES: I --  
9 THE COURT: Okay. Hold on --  
10 MR. JONES: -- but then I said --  
11 THE COURT: Hold on, full stop. At -- just answer  
12 the question.  
13 THE WITNESS: Uh-huh (affirmative).  
14 THE COURT: Just answer the question. Remember that  
15 I know you want to give me more information. Your attorney's  
16 going to have an opportunity to ask you questions. He will  
17 revisit these issues.  
18 THE WITNESS: Yes, yes.  
19 THE COURT: So answer the question so we can quickly  
20 get through this so that you'll have the -- more time for your  
21 attorney to ask you questions.  
22 THE WITNESS: I said I don't recall, and that was  
23 correct. And I thought we're talking about this period. But  
24 I explain what happen.

1 BY MR. JONES:

2 Q Is there any place in the deposition that you know  
3 of where I told you that we were talking about a specific time  
4 frame?

5 A I believe we're covering two years, since our last  
6 Court date.

7 Q But is there any place in the deposition that you  
8 could point to where I say that we're only talking about from  
9 2014 to the present?

10 A My attorney object a couple questions because they  
11 were 2013 questions.

12 Q Okay. I'll ask the question again. Do you have any  
13 knowledge of a portion of your deposition where I instructed  
14 you --

15 A No, you did not --

16 Q -- that all of my questions are only dealing with a  
17 specific time frame?

18 A I thought that you attorney justify that, that we're  
19 covering this two years.

20 Q Okay. I'll ask it a fourth time.

21 A No, you -- no, you did not.

22 Q Okay. Thank you.

23 A Yeah. In that way.

24 Q Did you ever tell Sasha that Sean says that you are

1 the worst Mother in the world?

2 A I'm sorry. Where is it?

3 Q It's not a question from the deposition yet.

4 A Say it again? I'm sorry.

5 Q Did you ever tell Sasha that Sean says you are the  
6 worst Mother in the world?

7 A No.

8 Q So if you testified that you don't recall at your  
9 deposition, your testimony here today would be different than  
10 at your deposition, right?

11 A I think I should have resisted your position,  
12 because I want to see what my answers are, to see what I was -  
13 - you just ask me straight question. I think I should really  
14 see it.

15 Q Sure, I'm happy to.

16 A Yeah, please --

17 Q Page 41, line 17. So did you ever tell Sasha that  
18 Dad called -- or no, strike that. Quote, line 20. Did you  
19 ever tell Sasha that Sean says that you're the worst mother in  
20 the world?

21 A Uh-huh (affirmative).

22 Q Answer, I don't recall.

23 A And I don't recall. I -- I really don't recall. I  
24 mean, no, I don't recall, it's almost the same to me.

1 Q But I -- but I asked you --

2 A But I'll say --

3 Q -- more than once --

4 A Well, Judge, I will tell you, I don't recall. I  
5 would repeat the same which is deposition. I'm sorry. I  
6 don't recall saying my -- my dad that Sean is telling me I'm  
7 the worst mom in the world. I don't recall saying this to my  
8 son, yes. I was (indiscernible).

9 Q Did you ever tell Sasha that everyone plays Call of  
10 Duty?

11 A No. I -- where is it?

12 Q I'm asking you just the question.

13 A I don't recall.

14 Q Okay. Have you -- you stated earlier that you've  
15 listened to the tapes, right?

16 A Yes.

17 Q And your voice is on those tapes, right?

18 A I guess yes.

19 MR. SMITH: Objection to the form of the question.  
20 He's now question -- he's now asking about evidence that's  
21 been stricken from this record. That's inappropriate.

22 THE COURT: Where are you going?

23 MR. JONES: I'm just asking if it was her voice.

24 MR. SMITH: No, it's -- it's inappropriate. It's

1 designed to ask and elicit information about the tape  
2 recording that's been stricken from -- illegally obtained  
3 that's been stricken from this record.

4 MR. JONES: And -- and I --

5 THE COURT: Where are you going with that, though?

6 MR. JONES: It's for foundation for Dr. Holland's  
7 testimony, Judge. She just said that the tapes were altered  
8 and modified, so I'm asking her simply that if it was her  
9 voice on those tapes that she listened to.

10 MR. SMITH: Those are questions for Dr. Holland as  
11 to what --

12 THE COURT: All right. Next question.

13 MR. JONES: Okay.

14 BY MR. JONES:

15 Q At the -- the times that we've been in court, at the  
16 initial two or three hearings, were the statements that you  
17 made in open court true and correct?

18 A Yes.

19 Q Because you, when you were addressing the Court or  
20 speaking loud enough that the Court could hear you, you were  
21 telling the truth, right?

22 A Yes.

23 MR. JONES: Pass the witness, Judge.

24 THE COURT: Counsel?



CROSS EXAMINATION

BY MR. SMITH:

Q The -- you had indicated that in the response, so did you ever tell Sasha that Dad called the police on you so he could steal you, you said you don't recall. What period of time frame were you referring to, that answer, you don't recall?

A These last two years, since the last Court order.

Q Why did you do that? Why did you limit your answers in the deposition to the last two years?

A I think I just convinced myself -- I don't blame you guys, but I'm covering this two years. But I explained that the police, what the question was about wasn't all 2013 and '12, year, which was extremely escalated conflict, harassment, and intimidation, so.

Q Okay. You don't need to testify about what happened before --

A Yes.

Q -- 2013.

A Okay.

Q Did -- what are -- what do the words, I don't recall, mean to you?

A It's almost like no.

Q Why do you say that?

1           A     Well, I believe I didn't say that.

2           Q     Do you recall ever striking Sasha in -- well, let me

3 ask the question this way. Have you ever struck Sasha --

4           A     Never.

5           Q     -- in a way that harmed him?

6           A     Never.

7           MR. JONES: Objection, Your Honor. Beyond the

8 scope. If he wants --

9           MR. SMITH: No, it's --

10          MR. JONES: -- to --

11          MR. SMITH: -- a language question, Your Honor.

12 It's foundational.

13 BY MR. SMITH:

14          Q     But you were able to answer that question, never.

15          A     Yes.

16          Q     So why didn't you answer those questions in the

17 deposition, never? Because I can assure you that the judge is

18 concerned about that.

19          A     Because I -- I believe -- well, if I've said, I

20 don't recall, because I don't -- I don't say that I was like,

21 perfect, robot person. And I believe there was stressful

22 time. And if I might said, if I may have, I just don't

23 remember.

24          Q     Okay.

1           A     Because when you're stressed, you can say some  
2 things, and then you don't even realize that something -- you  
3 don't even remember them saying.

4           Q     Have the representations that have been made about  
5 your statements to Sasha throughout this proceeding, not only  
6 in the questions by Mr. Jones, but throughout this proceeding,  
7 have they been accurate? In other words, have they accurately  
8 stated what you have said to Sasha?

9           A     Say it again. Is statement which they said?

10          Q     Yes. So during the course of this proceeding --

11          A     Okay.

12          Q     -- both in --

13          A     I think that --

14          Q     -- the motions that have been filed --

15          A     Uh-huh (affirmative).

16          Q     -- and in the statements that have been argued  
17 before this Court, and in the testimony that Mr. Abid has  
18 given, he has placed words into your mouth in regards to  
19 things that have said -- you said to Sasha. Are those  
20 allegations of what you said accurate?

21          A     No.

22          Q     The -- do you believe it's appropriate to -- and I'm  
23 going to use the word that's -- was used by Mr. Abid, badmouth  
24 Mr. Abid to Sasha?

1 A Say it again, I'm sorry.

2 Q Do you know what the word badmouth --

3 A Yes.

4 Q -- means?

5 A Yes.

6 Q That means to say something negative about another

7 person --

8 A Uh-huh (affirmative).

9 Q -- let's use that definition. Do you believe it's

10 appropriate for you to do that about -- in regard to Mr. Abid

11 --

12 A No --

13 Q -- to Sasha?

14 A -- it's inappropriate.

15 Q Why do you feel it's inappropriate?

16 A I -- it's inappropriate because I want my son have

17 relationship with his Father. And lie -- lives does not stop

18 here. And I want them to have throughout all their lives

19 relationships. So for me to badmouthing does not serve the

20 purpose. I want my son have help from his dad. He's a man,

21 he will grow up as a man, he will need man advice. And --

22 THE COURT: Why do you think it's important for

23 Sasha to have a relationship with his Dad?

24 THE WITNESS: I believe when Sasha will -- hit

1 through puberty, when he will start going to college, you  
2 know, socialize with other people as a man, I believe Dad,  
3 advice from his experience will be very necessary for -- like  
4 my father. And I believe there are things about Sean, he has  
5 some -- some expectations from people, and I want Sasha has  
6 it.

7 Sean goes and exercise in the gym. I don't mind  
8 Sasha exercise with his dad, and have a healthy lifestyle. I  
9 don't see even a purpose for me to destroy those  
10 relationships, so I don't badmouthing Sean to -- Sean to  
11 Sasha.

12 BY MR. SMITH:

13 Q What have you done to promote the relationship  
14 between Sean and Sasha?

15 A Every time when they have a -- like man event,  
16 football games, like the perfect example, a trip to the Miami  
17 because it was student of Sean got into the professional  
18 football, and Sean told me this is like, lifetime event,  
19 please let us go.

20 And it was my weekend, it was my Monday, so Sasha  
21 missed school. And I believe that's a great memories which  
22 they're going to establish for their life. So I said,  
23 absolutely, you can take him, it's not in the question. And I  
24 always, throughout, since we divorce, every time when there is

1 a time for them to go, summer vacation, or spring vacations,  
2 go -- they ask me if they can take Sasha to California during  
3 my vacation days. And I knew they're going to spend money,  
4 they're going to take him to California, and absolutely yes.  
5 Absolutely. You guys, go for it. So every single time there  
6 is any events which bring excitements and memories and  
7 experiences and -- I'm all about it. I never said no.

8 Q Are those experiences only for Sasha? Or are those  
9 experiences for both Sean and Sasha?

10 A I think for both Sean and Sasha.

11 Q What -- what -- why do you think those experiences  
12 are important? In other words, taking the fact that Sasha may  
13 be going to a pro football game or something like that, why do  
14 you think it's important for Sasha and Sean to have  
15 experiences together?

16 A Well, I think because we divorced, and -- and Sasha  
17 lives half time with me. And if those events happens on my  
18 days, and they are really can bring some good -- greatest  
19 memories in their life, why will there be on -- on the way? I  
20 -- I believe those will just enhance their relationships, bond  
21 them more, you know, like trips together to Miami.

22 I believe like you, you know, you just now two guys.  
23 You know, it's like I only see positives. Because he has  
24 brothers in the other home, and he comes to Dad half of the

1 time. So if there is a chance for them to go some events was  
2 to bond, and have this great life experience, I thought it was  
3 great.

4 Q Okay. So just going over the times that you've --  
5 you've done these things, do you recall whether in February of  
6 2014 Sean asked you take Sean -- Sasha to a Super Bowl party?

7 A Yes.

8 Q What was your position on that?

9 A Go for it.

10 Q And did you make arrangements for him to do that  
11 even on your time?

12 A That was my day, and I said --

13 Q Okay.

14 A -- go for it.

15 Q Did Sean ask you for any additional time during  
16 spring break?

17 A Yes. They said they're going to -- first, they said  
18 they're going to Santa Barbara, and they gave me the address  
19 of Four Seasons Hotel. And then when Sasha came back from  
20 vacation, they were in the Legoland with -- in -- in San  
21 Diego. So I gave it -- I gave them this opportunity, but they  
22 just failed to acknowledge where they're going.

23 Q When you found out that Sasha gave (sic) to  
24 Legoland, how did he like it?

1 A He loves it.

2 Q Okay.

3 A He --

4 Q And he -- he had good things to say about it?

5 A Yes. And --

6 Q Did you talk to -- or communicate with Sean about

7 taking him to Legoland, taking Sasha to Legoland?

8 A No. They told me they're going to Santa Barbara,

9 but instead, they went to Legoland.

10 Q Okay. But that didn't bother you, the fact that he

11 went to Legoland, correct?

12 A No.

13 Q Just the fact that they could have told you --

14 A Yes.

15 Q -- where he was going? On June 5th, during your

16 four weeks vacation --

17 A Uh-huh (affirmative).

18 Q -- you understood your vacation -- does -- does it

19 have interruptions in it, or no?

20 A It's no interruption.

21 Q Okay. But was there any -- did you interrupt the

22 time in your vacation for any reason?

23 A I was busy, I have busy schedule work. And I knew I

24 would work through -- during my vacation. So Sean asked me,



1 can I please watch Sasha, I'm off from school, we're going to  
2 go to pool, we're going to -- we'll have the (indiscernible)  
3 pool house. We're going to have fun, can I please watch him?  
4 I said, absolutely. So I allow Sean watch him on my days --

5 MR. JONES: Objection, foundation.

6 MR. SMITH: Okay.

7 THE COURT: Summer, 2015?

8 MR. SMITH: Yeah, this -- let me -- let me --

9 THE WITNESS: '14. I'm sorry.

10 MR. SMITH: That's okay. Let me --

11 THE COURT: Oh.

12 BY MR. SMITH:

13 Q 2000 -- in June of 2014 --

14 A Yes.

15 Q -- did Sean ask you for any additional time during  
16 your four weeks vacation in that period?

17 A Yes. He asked me -- so he was watching my son while  
18 I was at work, and then first weekend, he told me they're  
19 going to visit his father in Santa Barbara, Joe (ph) Abid,  
20 which I respect. And I said, absolutely. Joe did not see  
21 Sasha since I think one year, maybe. I said, go, go for it.  
22 Take him there.

23 Q Since we're talking about family, before I go  
24 through all these other events where you gave additional time

1 --

2 A Uh-huh (affirmative).

3 Q Are you -- do you know Sean's family? Did you meet

4 them --

5 A Yes.

6 Q -- during the time of your -- your marriage?

7 A Yes.

8 Q Have you ever objected to any of them caring for the

9 children?

10 A No. Sean's mom --

11 Q Or excuse me, for Sasha?

12 A -- and his sister, Linda (ph), they were watching

13 Sasha first two years. So I will go to work -- I will go to

14 work, I will drop Sasha at my mother-in-law house, and he went

15 -- and his sister will watch Sasha. Then Sean will come from

16 work, like 3:00 o'clock, so he will be able to spend two hours

17 with him. And then I will pick up Sasha.

18 Q Okay.

19 A And first -- yeah.

20 Q So you never had objections --

21 A Never.

22 Q -- to them caring for the child?

23 A No.

24 Q Did you have a good relationship with them --

1           A     Yes.

2           Q     -- during your marriage? Has that relationship  
3 changed over time?

4           A     I still have respect, and am grateful to Mary (ph),  
5 Sean's mom, for helping me with Sasha. And I'm by myself in  
6 America, and there is no hate from me to his family, no.

7           Q     Was there -- have you ever made arrangements so that  
8 Sean, when he has his family in town, could have a portion of  
9 your time?

10          A     Well --

11               MR. JONES: Objection, foundation.

12               THE COURT: Have you ever, and then when, and we'll  
13 --

14               MR. SMITH: There you go.

15               THE COURT: -- lay the foundation. Go ahead. Have  
16 you ever?

17               THE WITNESS: If -- if -- if --

18               MR. JONES: Well, are we talking about pre last  
19 order?

20               THE COURT: I --

21               MR. SMITH: That's fine.

22 BY MR. SMITH:

23           Q     Post 2013, December, 2013, have you ever -- do you  
24 ever recall a time in when you allowed Sean's family to --

1 well, that you allowed Sean to have additional time so that he  
2 could spend time with his family and Sasha? You've mentioned  
3 this --  
4 A Yes, those trips --  
5 Q -- but -- but the idea of him going to the Father --  
6 A -- to Santa Barbara, yes --  
7 Q Right. Okay.  
8 A -- and -- and while Sean was watching Sasha during  
9 my two -- first two weeks of my summer vacation, so Mom was  
10 able to come, and he will -- sometimes he will leave Sasha  
11 with his aunt or mom, so even -- even when I will pick up  
12 Sasha on my day, after work, sometimes I will be directed to  
13 go to my mother-in-law house, or Sean's Aunt Nila (ph) house,  
14 or Sean's friend, somewhere else. So I --  
15 Q And you have no problem doing that, correct?  
16 A No.  
17 Q And you've done that?  
18 A I've done it, yeah.  
19 Q So on -- on some occasions during 2014, when Sean  
20 has asked you to -- to drop off Sasha at his mother's house as  
21 opposed to making exchanges at his house, you've done that?  
22 A Yes.  
23 Q Okay. And --  
24 MR. JONES: Your Honor, how do you -- how do you

1 feel about the fact that we're way beyond the scope? I -- I  
2 mean, I don't have a problem if he wants to cover his case in  
3 chief, but I asked just questions about her deposition  
4 testimony.

5 MR. SMITH: Well, this is --

6 MR. JONES: That's all I asked.

7 MR. SMITH: -- their case. Their entire case now is  
8 composed --

9 THE COURT: Counsel, do --

10 MR. SMITH: -- of two witnesses.

11 THE COURT: -- do you plan to recall her, or --  
12 or --

13 MR. SMITH: I do plan on recalling her --

14 THE COURT: Okay.

15 MR. SMITH: -- but I think this is specifically  
16 relevant to her attitude in communication between her and  
17 Sasha as to promoting the relationship of --

18 THE COURT: I'm going to allow it. Go ahead.

19 BY MR. SMITH:

20 Q So -- so you have a good relationship with her --  
21 with his family, or you did.

22 A Yes.

23 Q And now, when you drop off the child at the mother's  
24 home, do you -- do you two converse?

1 A No, I drop Sasha in school, so --  
2 Q In school. Okay.  
3 A Yeah. I -- I only pick up Sasha from Sean at -- at  
4 5:35 --  
5 Q That's changed now because of --  
6 A Yes.  
7 Q -- the schedule?  
8 A Yes.  
9 Q Okay. The -- did Sean ever -- or in your  
10 observations of the relationship between Sean and his father,  
11 during the time that you were married, was it a close  
12 relationship?  
13 A I know when I married Sean --  
14 MR. JONES: Objection, relevance.  
15 MR. SMITH: Its relevance to show why she thinks  
16 it's important that Sean maintain a relationship with Sasha,  
17 because --  
18 THE COURT: I'll allow it.  
19 MR. SMITH: Thank you.  
20 THE WITNESS: I married Sean in 2006. They did not  
21 have relationship with his dad. So I was like a peacemaker.  
22 And we finally got together in 2006. Then we started visiting  
23 Joe in Santa Barbara on Thanksgiving or Memorial Day.  
24 When I divorce -- when we divorce in 2010, I find

1 out they're no longer speaking to each other. And my father-  
2 in-law told me that Sean came to Santa Barbara and told him,  
3 I'm going to take Sasha away from Lyuda, she's not good mom.  
4 And my father-in-law told him, if you ever have these doubts,  
5 I don't want you to be in my house. And I know they don't  
6 talk about it, they don't --

7 MR. JONES: Objection, Your Honor.

8 THE COURT: -- they don't talk to each other, but --

9 THE COURT: Hold on, hold on.

10 MR. JONES: We -- we now have -- we're talking about  
11 things long before the -- the December -- or the December of  
12 2013 order.

13 THE WITNESS: He has his --

14 THE COURT: Hold -- hold on --

15 MR. SMITH: These --

16 THE COURT: Go ahead.

17 MR. SMITH: -- statements are offered for her  
18 statement of mind. The question is, does she have an  
19 incentive to promote the relationship with Sasha, or does she  
20 have an incentive to -- to deny that relationship.

21 THE COURT: I think her answer is a little far --  
22 going a little far afield. But I'll allow --

23 MR. SMITH: Let me --

24 THE COURT: -- to the extent --

1 MR. SMITH: -- let me bring into to -- let me bring  
2 it back in, Your Honor.

3 THE WITNESS: Yeah, sorry.

4 BY MR. SMITH:

5 Q Miss -- I'm going to call you Lyuda, because --

6 A Yes.

7 Q -- I always butcher your last name. Lyuda, if you  
8 saw and heard of a strained relationship, that's what you  
9 believed, correct? A strained relationship between Sean and  
10 his father?

11 A I know they don't have relationships today.

12 Q Okay. Do you believe that that strain in that  
13 relationship is good for Sean, or bad for Sean?

14 A It's bad for Sean.

15 Q Do you believe Sean loves his father?

16 A He said he hates this man, but I believe his father  
17 loves him, and I believe they should reconcile and find peace.

18 Q Because you think it's important for a son to have a  
19 relationship with his father?

20 A I believe so, yes. And I believe my son today  
21 cannot see Joe Abid ever since, because the last trip was in  
22 June, 2014. And Sean's wife tried to reconnect with Joe Abid,  
23 but Sean was not there.

24 Q Okay.



1           A     So Sean refused to be there.

2           Q     In regard to -- to your understanding of that  
3 relationship, has that affected how you see Sasha's  
4 relationship with Sean, how -- how you've seen Sean's poor  
5 relationship with his own father?

6           A     I'm just surprised. I believe he -- he wants this  
7 relationship with his own son, but he completely so negative  
8 and hateful towards his own father.

9           Q     Do you think it -- that's bad for Sean?

10          A     It's bad for Sean and for Sasha, because Sasha loves  
11 Joe -- Joe Abid. He -- he is -- he was present in our life,  
12 his father.

13          Q     Okay. The -- going back to time frames. We were up  
14 in to June. When -- at some time in June did there become  
15 tension between you and Mr. Abid?

16          A     Yes.

17          Q     And what did you do about that?

18          A     I stopped his presence on my days. Sasha was in  
19 summer camp, and that's it.

20          Q     Did you seek a -- a resolution of that? Did you try  
21 to work through that in any manner?

22          A     First, Sean was harassing me, saying that again, I  
23 have -- I have private investigator against Ricky Marquez.  
24 Now they're looking into my brother-in-law (indiscernible).

1 And so I completely ignore his messages. And then he said,  
2 Lyuda, I apologize. I crossed my -- I crossed the line. And  
3 utterly apologized. I was --

4 Q Did you -- did you accept that apology?

5 A Yes.

6 Q And so that in June 30th, you -- did you ever have  
7 any -- did you ever allow additional time to Sean --

8 A I stopped my way --

9 Q -- associated with his friend, Tico Rodriguez (ph)?

10 A Well, I stopped my vacation, my four weeks. We  
11 caught -- we -- basically, originally, my vacation was until  
12 January 30. And then when Sean apologized, he said, you know  
13 what? I know it's your four weeks vacation, but can I please  
14 take Sasha early from you, on June 26th, because my friend  
15 Tico has wedding, and it's in different state, and we really  
16 -- you know, he's my best friends, he's going, can I please  
17 take Sasha, we're going?

18 And I said, okay, I'll give you Sasha, no problem.  
19 But in six weeks, when you come back from Iowa, I expect you  
20 to return me all my favors which I give you, the spring  
21 vacations, all the -- all the trips to -- to Santa Barbara.  
22 Or -- and -- and also, this -- the last, my -- my week was  
23 given to Sean. So I -- I -- I let them take time to go.

24 Q Okay. And did your receive the return of those

1 favors as you (indiscernible).

2 A I -- on August 7, I contact Sean, ask him, well, can  
3 I pick up Sasha? I was expecting him back with Sasha from  
4 Iowa. And the respond was, I never promised you any favors  
5 back, so you will get Sasha on Monday.

6 Q Okay. The -- in August, was there any time that you  
7 gave additional time to Sean in regard to him going to a  
8 football game?

9 A Yes, because when I raised this issue, he did give  
10 me my time back, after I call my attorney and -- he gave me my  
11 time back. But I found out my son was left in Iowa for one  
12 week. So Sean came to Las Vegas one week earlier, and left my  
13 son in Iowa with his wife and (indiscernible), so that was  
14 upsetting, too, actually.

15 Q So even though you were upset that way, and that was  
16 in August of 2014 --

17 A Yes.

18 Q -- you still cooperated with Sean in terms of --

19 A Yes.

20 Q -- time changes.

21 A Yes.

22 Q Like for example, on August -- do you recall on  
23 August 29th and 30th, in regard to --

24 MR. JONES: Objection, leading.

1 THE COURT: I'll allow it.

2 THE WITNESS: Uh-huh (affirmative).

3 BY MR. SMITH:

4 Q In regard to any exchanges Sean -- with time, in  
5 relation to a football game with his friend Bobby (ph)?

6 A Yes. I -- I let him --

7 Q Can you tell me about that?

8 A Well, I just want to say something. In --

9 Q I want you to answer that question.

10 A Yes. They have the football games, and Bobby's son,  
11 Ty (ph) and Sean, they were going there. So they asked me,  
12 can we take Sasha with us? Absolutely, yes.

13 Q Do you allow any -- allowing additional time when --  
14 in regard to Laser Tag?

15 A Yes. Riley (ph), his friend's son, Brag (ph), they  
16 were taking them to Laser Tag games, so I said, absolutely, go  
17 for -- have fun.

18 Q Okay. And then Laser Tag, it's a shooting game --

19 A Yes, it is --

20 Q -- did you have any objection to that?

21 A Well, I knew him and Riley were playing Call of  
22 Duty, like a allow --

23 MR. JONES: Objection --

24 THE WITNESS: -- so I thought it was their --

1 MR. JONES: -- move -- hearsay.  
2 THE COURT: Hold on --  
3 MR. JONES: Move to strike.  
4 THE COURT: -- hold on.  
5 THE WITNESS: I knew they were playing --  
6 THE COURT: Hold on; hold on. Counsel? The  
7 objection to hearsay --  
8 MR. SMITH: And to her state of mind as to whether  
9 or not she believed it was inappropriate activity for the  
10 child to play Laser Tag when Sean asked --  
11 THE COURT: I'll allow it --  
12 MR. SMITH: -- if they could --  
13 THE COURT: -- for that limited --  
14 MR. JONES: But -- but --  
15 THE COURT: -- determination as to what --  
16 MR. JONES: -- Judge --  
17 THE COURT: -- she thought about Laser Tag.  
18 MR. JONES: -- but it's non responsive then.  
19 THE COURT: I -- ask her the question then --  
20 MR. SMITH: I'll re-ask the question.  
21 THE COURT: Thank you.  
22 BY MR. SMITH:  
23 Q Did you think it was okay, even though Laser Tag  
24 involves shooting, to take him to that activity? Is the

1 answer yes or no?

2 A Yes --

3 Q Just give me a yes -- all right. The -- on

4 September -- in or about September, did Sean again ask to take

5 Sasha to a football game?

6 A Uh-huh (affirmative).

7 Q And did you allow him to do that?

8 A Yes.

9 Q Did you exchange time, or just grant him time?

10 A No, just granted.

11 Q On September -- that was in or about September 12th;

12 is that correct?

13 A Yes.

14 Q Do you recall also in September that Sean wanted to

15 take Sasha to Utah --

16 A Yes.

17 Q -- right? And do you recall that you -- did you

18 agree or disagree with that?

19 A I agree. I agree.

20 Q And did he take him to -- Sasha to Utah during that

21 time?

22 A He did, and Sasha got sick, yeah.

23 Q That was during your period of time, correct? Your

24 -- you would normally have had that time?

1 A Yes.

2 Q Now, during this period, in August, September, is  
3 when Sean was cooperating with you in terms of what you  
4 understood the order to be, that if you were off of work, you  
5 would have normally had that time?

6 A Yes.

7 Q And during this period, in August, September, is  
8 when Sean was cooperating with you in terms of what you  
9 understood the order to be, that if you were off of work, you  
10 would have him after school, correct?

11 A On August 20 --

12 MR. JONES: Objection, leading.

13 THE WITNESS: -- on -- on August 20 --

14 THE COURT: Hold on; hold on. I'll allow it. Go  
15 ahead.

16 THE WITNESS: On August 20, when we find out about  
17 all this vacation and refusal to pro -- give me favors back, I  
18 said, I have --

19 BY MR. SMITH:

20 Q Okay. Let's -- let's make this shorter. Just  
21 answer my question --

22 A I have -- I have conversation with Sean and his wife  
23 that we're going to move on, we're going to be nice to each  
24 other. And Sean's wife told me, Lyuda, I personally promise

1 you, we have no problems for you to pick up Sasha when you are  
2 in our hou -- in -- in our door. So you drive home, stop by,  
3 here's Sasha. We agree, if you change your work schedule, go  
4 for it. You have no problem with us.

5 Q Okay. Then -- then during that same period of time,  
6 in October, 2014, did he ever ask you again to take Sasha to a  
7 football game, and you said yes?

8 A Yes.

9 Q Did you -- after these proceedings started, and  
10 there were problems between you and Sean, did you seek any  
11 education in regard to communication with Sean?

12 A When I saw -- when I got the tapes, even though they  
13 were altered, modified heavily, I did recognize, I saw help  
14 with Wickman (ph). And I just realized I need something to  
15 learn how to disengage from the conflict. I just that Mom  
16 lost control and expose your weakness to your own son. I  
17 wasn't proud of it, and I want to be strong mentally, how --  
18 how -- how to disengage, how to dissolve, how to defuse the  
19 conflict, how to learn not to let this be under my skin. And  
20 Margaret Pickard was amazing. She -- she did a -- an amazing  
21 job. I think I -- I learned that --

22 Q So what was the course that you took?

23 A It was par -- co-parenting in high conflicts.

24 Q Did you learn anything in that course about -- let



1 -- let's stick to the subject that's been raised, and that's  
2 about saying negative things toward another parent. Did you  
3 learn anything about that in -- in Ms. Pickard's course that  
4 impressed you?

5 A Well, I -- I will repeat again, if I was said  
6 something inappropriate it was isolated incident. I do not  
7 badmouthing Sean. So the -- the problem -- the help which I  
8 got in this class is how the conflict impacts on children, how  
9 it's going to affect the future, how -- explanations why one  
10 parent is dragging the conflict. Because the -- it is the  
11 only way to communicate with other parent.

12 If there is no conflict, there is no communication.  
13 And I just learn how to take health from us from parents, how  
14 it -- how it takes on kids, and I learn -- I -- I learn from  
15 the interrupting other parents that I am exceptional mom, and  
16 I am exceptional ex-wife. Because what I heard there, how  
17 people --

18 MR. JONES: Objection, move to strike, hearsay.

19 THE WITNESS: -- so, yes --

20 THE COURT: I -- I -- I'm just going to strike what  
21 she --

22 MR. SMITH: That's fine.

23 THE WITNESS: I'm sorry.

24 THE COURT: But you -- you told us what you heard --

1 BY MR. SMITH:  
2 Q I want you to talk about the --  
3 THE COURT: -- next question.  
4 BY MR. SMITH:  
5 Q -- I -- I'm -- I'm talking about the class.  
6 A Uh-huh (affirmative).  
7 Q What -- what strategies did you take from the class  
8 in terms of what you identified as diffusing conflict?  
9 A Not engage in the --  
10 MR. JONES: Your Honor, is this not hearsay? What  
11 your professor tells you as far as strategies --  
12 THE COURT: Well, I'm going to allow it as her  
13 takeaway.  
14 MR. SMITH: As her understanding of the way to  
15 appropriately behave towards her children and diffuse  
16 conflict. I think that's relevant to this --  
17 THE COURT: Okay.  
18 MR. JONES: But the foundation --  
19 THE COURT: (Indiscernible) --  
20 MR. JONES: -- the foundation is --  
21 THE COURT: -- is still hearsay.  
22 MR. JONES: -- still hearsay.  
23 THE COURT: I'm going to allow it just -- just to  
24 move us along. What she took away, not what the teacher said.

1 THE WITNESS: I'm doing this today. When Sean  
2 attacks me, I'm not longer engaging. So in the past, I will  
3 start explanation, no, you're wrong, no I did not say that,  
4 and it will take a huge hit on me emotionally. And I see that  
5 now, all these attacks on me is just engage this conflict. So  
6 I said, I just do not engage anymore.

7 This class helped me tremendously. I said, thank  
8 you, Sean, okay. And I do not engage anymore. And I think  
9 it's helping a lot.

10 MR. SMITH: Pass the witness.

11 THE COURT: Counsel?

12 REDIRECT EXAMINATION

13 BY MR. JONES:

14 Q Offhand, do you know of any text messages, and the  
15 text messages that we went over during Sean's examination  
16 where Sean's attacking you?

17 A Yes. Not attacking me, but accusing me.

18 Q Okay. You said attack, so I just wanted to make  
19 sure there weren't any attack text messages in the list of  
20 text messages that you produced for discovery.

21 A No, I meant like, how -- how dare you -- which kind  
22 of Mother you are, you did not put Sasha on time, and now he's  
23 tired, and I cannot do homework with him. I thought it was  
24 attack without basis.

1 Q And you're saying there's a text message where he  
2 talks about Sasha's bed time, where he says, what kind of  
3 Mother are you?

4 A Well, that message, I -- I -- I hear. It says, you  
5 -- well, I -- I'm -- we can go through message and read this.  
6 It was in October, I think. We read them.

7 Q Okay. But right now, offhand, you can't tell me of  
8 any -- any text message where he attacks you?

9 A I need to -- I need to look at them. There are  
10 plenty of them. Well, I will say -- tell you, don't eff with  
11 my school, because I put my on my son pants, in February,  
12 2014, it was American Heritage school. And I -- it was winter  
13 time, so I put on Sasha velvet, navy blue pants. And I was  
14 attacked, how dare you to not follow uniform code. Don't eff  
15 with my school. That was his attack. And I -- I went and see  
16 him and his wife in the park, and says, Sean, again, what is  
17 going on?

18 Q Is there a text message --

19 A Yes.

20 Q -- in the text messages that are part of the  
21 exhibits that says, don't eff with my school?

22 A Yeah. We can look at this, yeah. I am -- I need to  
23 look at them. I just don't know -- I know it was in February,  
24 so two months after the court.

1 THE COURT: Counsel, why don't you ask another --  
2 THE WITNESS: It was on February 18.  
3 THE COURT: Oh, you found it?  
4 THE WITNESS: Yes.  
5 THE COURT: What page are you looking at, ma'am?  
6 THE WITNESS: 156, and it's (indiscernible).  
7 MR. SMITH: So it's Exhibit F; is that right, ma'am?  
8 THE WITNESS: Yes. I'm sorry.  
9 MR. JONES: February what?  
10 THE WITNESS: 18. Exhibit F.  
11 THE COURT: February 18th, what year?  
12 THE WITNESS: '14.  
13 THE COURT: Okay.  
14 BY MR. JONES:  
15 Q So you're talking about the text message that says,  
16 Sasha's school requires that he wear their uniform every day,  
17 shirt, pants, sweater?  
18 A Yes.  
19 Q So where does it say, don't eff with my school?  
20 A Wait. Let -- let's continue. I said, he does. He  
21 said, correct pants and sweater. So I went -- he said, he's  
22 in the park next to my house. And he writes to me, do not  
23 create a problem at my school. They sent a letter to all  
24 parents. They ask that all students wear the uniform.

1 Q And that's an example of attacking?  
2 A Sasha was wearing uniform. He's -- he was wearing  
3 -- when I went to the park and I speak with him --  
4 Q Okay.  
5 A -- and his wife --  
6 THE COURT: Just an --  
7 THE WITNESS: -- yes --  
8 THE COURT: Hold on; hold on. Just answer the  
9 question.  
10 BY MR. JONES:  
11 Q Yeah. My question was, is that an example of Sean  
12 attacking you?  
13 A That's example of this interaction.  
14 THE COURT: Okay.  
15 BY MR. JONES:  
16 Q Okay.  
17 A And it's message is (indiscernible) physical  
18 conversation with Sean and his wife. And he told me, don't  
19 eff with my school, yes.  
20 Q So is this an example of Sean attacking you via text  
21 message?  
22 A He said, do not create a problem at my school.  
23 THE COURT: Okay. Just --  
24 BY MR. JONES:

1 Q Is this an example of Sean attacking --  
2 A Sean --  
3 Q -- you in a text message?  
4 MR. SMITH: It's asked and answered.  
5 THE WITNESS: Yes. It --  
6 THE COURT: She hasn't answered it yet.  
7 MR. JONES: She hasn't answered it --  
8 THE COURT: Yes, finally. All right.  
9 MR. JONES: -- once.  
10 THE COURT: All right. Next.  
11 THE WITNESS: Yes. Yes.  
12 BY MR. JONES:  
13 Q Thank you. Okay. Now, I'm going to have you go  
14 back to the white book.  
15 A Okay.  
16 MR. JONES: Oh --  
17 THE COURT: No, we're going to keep going.  
18 MR. JONES: Okay.  
19 BY MR. JONES:  
20 Q At Exhibit 14.  
21 A Okay.  
22 Q Page 234, in the lower-right-hand corner.  
23 A Yes.  
24 Q Wednesday, November 5th --

1           A     Uh-huh (affirmative).  
2           Q     -- 2014, 7:44 a.m.  
3           A     Uh-huh (affirmative).  
4           Q     Your text to Sean, I spoke with Elizabeth (ph), and  
5 she told me that same as you used to call Scott (ph), you call  
6 her. Everybody told me Sean is no truthful person that can't  
7 keep promises, and is who is not looking for civil relations  
8 for Sasha's sake. I feel really disgusting that everybody was  
9 right about you, very sad my days are your concern, and then  
10 followed by not your concern.  
11          A     Yes.  
12          Q     Do you see that?  
13          A     Yes.  
14          Q     And that was a text from you to him, right?  
15          A     Yes.  
16          Q     Page 237, November 17th --  
17          A     Uh-huh (affirmative).  
18          Q     -- Sean says, his teacher will be evaluating him  
19 next week. I'm using my time to get him ready. He'll be  
20 ready by 5:30.  
21          A     Uh-huh (affirmative).  
22          Q     Your response, at 3:40 p.m. is, this will be  
23 addressed with parenting coordinator. This is direct  
24 parenting alienation. You leave me no choice.



1 A Uh-huh (affirmative).

2 Q Now, so what you were saying is that Sean keeping  
3 Sasha until 5:30, which is what the Court order says, was  
4 parenting alienation; is that right?

5 A I said this after physical interaction. I was in  
6 Sean's door that day, and you can turn the page prior to  
7 that --

8 Q 236, at 3:38 --

9 A Yeah. And at 3:44, I --

10 Q -- he --

11 A -- (indiscernible) I said, let Sasha out, I'm  
12 outside. He said, we're not done yet. I said, he will finish  
13 homework at home. I said, this is my day. I am outside  
14 waiting for my son. Let him out.

15 Q Right. But let me ask you this --

16 A Uh-huh (affirmative).

17 Q -- the Court order --

18 A Yeah --

19 Q -- that controlled your custodial arrangement at  
20 that time said that Sasha was with Sean from after school  
21 until 5:30, correct?

22 A No, the Court order did not state that.

23 Q Okay. Then we're going to read the Court order.

24 A I think that we need to look at the video of the --

1 Q I'm asking you what the Court order said.  
2 A I -- I know what the Court --  
3 Q Do you know what the Court order said?  
4 A Yes. Yes.  
5 Q Okay. What did the Court order say the time share  
6 was --  
7 A When I got -- take home the Court --  
8 Q Okay. I'm asking you --  
9 A -- from the trial settlement --  
10 Q I'll ask it this way.  
11 A It says until Mom get off from work.  
12 Q That's what the Court order says?  
13 A Yes.  
14 Q Okay. Let's -- let me find that order then.  
15 A The Court order which we have today is minutes,  
16 which were typed by the clerk, John Jones. The true Court  
17 order was never filed by you, so I cannot argue this. I'm  
18 sorry. I can repeat what settlements was about, work together  
19 --  
20 THE COURT: No, thank you. Just --  
21 THE WITNESS: Sorry.  
22 THE COURT: -- wait until he has a question for you.  
23 BY MR. JONES:  
24 Q Looking at page two --

1 THE COURT: Of the order dated what?  
2 BY MR. JONES:  
3 Q -- of three --  
4 MR. JONES: Order filed March 12th, 2014.  
5 MR. SMITH: March 12th?  
6 MR. JONES: Yeah. Notice of entry's March 17th, but  
7 the file date on the order is March 12th.  
8 MR. SMITH: Okay.  
9 THE WITNESS: This Court has mistake. That you can  
10 -- that Sean can pick up Sasha --  
11 THE COURT: Okay. Hold --  
12 THE WITNESS: -- on his custodial day.  
13 THE COURT: -- hold on --  
14 BY MR. JONES:  
15 Q You're right. You're absolutely right.  
16 A Not on my custody day, right? On his custody day  
17 only.  
18 Q That's what the order says.  
19 A Yes.  
20 Q That order was then modified to reflect that he  
21 could pick up Sasha on your custodial days, right?  
22 A No; no.  
23 Q Okay.  
24 A What modification came because when -- in March,

1 Sean told me --

2 Q And if your answer is no that the order was not  
3 amended --

4 A I have to explain.

5 Q -- then that's the only question I have.

6 A I have to explain, John Jones.

7 Q Well, I -- but I'm not asking you to explain.

8 THE COURT: He's just asking you the questions.  
9 Just answer --

10 BY MR. JONES:

11 Q So looking at that initial order --

12 A Uh-huh (affirmative).

13 Q -- does it say 5:30, or does it say when you get off  
14 work?

15 A I know what order was supposed to say. Yes, it did  
16 not clarify. But it says the communicate -- the parties shall  
17 exchange the child on exchange in positive and reasonable  
18 manner. Further, the parties will be reasonable and flexible  
19 with exchange times. John Jones, you specifically gave us  
20 example what that means, reasonable and flexible, in the trial  
21 on --

22 Q Okay.

23 A -- December 9.

24 Q Here --

1 A You said if I have a --  
2 Q -- here's my question.  
3 A -- you said --  
4 MR. SMITH: Wait; wait; wait --  
5 MR. JONES: Objection --  
6 THE COURT: Hold on; hold on --  
7 MR. JONES: -- move to strike. That's --  
8 THE COURT: -- hold on. Okay.  
9 MR. JONES: -- not what my question was.  
10 THE COURT: Okay. Hold on. Okay. Your --  
11 MR. JONES: Does it say --  
12 THE COURT: I know you want to tell me more, but  
13 this is the last time I'm going to remind you --  
14 THE WITNESS: Okay.  
15 THE COURT: -- okay?  
16 THE WITNESS: Sorry.  
17 THE COURT: You're going to have an opportunity to  
18 explain these answers. The ones that your lawyer wants you to  
19 explain --  
20 THE WITNESS: Okay.  
21 THE COURT: -- he's going to ask you questions  
22 about.  
23 THE WITNESS: Sorry. Yeah.  
24 MR. SMITH: Let me just say that the -- I think the

1 answer was responsive. The question was, does this order  
2 state that it would be based on time frame? She's  
3 interpreting the language, reasonable and flexible, to include  
4 that. Because as she explained, Mr. Jones said that at the  
5 hearing --

6 THE COURT: Okay.

7 MR. SMITH: -- of December 13.

8 THE COURT: And you can --

9 MR. JONES: Her statement was that --

10 THE COURT: Hold on; hold on --

11 MR. JONES: -- the order says when she gets off  
12 work.

13 THE COURT: Hold -- okay.

14 MR. JONES: That's what her statement was. That was  
15 what her testimony was.

16 THE COURT: We can all --

17 MR. SMITH: We're --

18 THE COURT: -- I -- the Court --

19 MR. SMITH: -- we're --

20 THE COURT: -- the Court can read the order.  
21 Counsel, you can tell us that she doesn't understand the order  
22 and interprets it another way, through questions in a moment.  
23 Go ahead.

24 MR. JONES: Thank you, Your Honor.

1 BY MR. JONES:

2 Q But you believed that Sean not letting Sasha out at  
3 3:38 was parenting alienation, right?

4 A I believe Matthew Carter (ph) said --

5 MR. JONES: Objection, move --

6 THE WITNESS: -- any problem arise --

7 MR. JONES: -- to strike.

8 THE COURT: Hold on; hold on.

9 BY MR. JONES:

10 Q I asked a yes -- I'm going to a yes or no question.  
11 You believed that Sean not letting Sasha out at 3:38 p.m. was  
12 parenting alienation, correct?

13 A I believed, based on our conversation August 20, yes  
14 --

15 MR. JONES: Objection, move to --

16 THE COURT: Okay.

17 MR. JONES: -- strike.

18 THE WITNESS: Yes. He -- the -- he was parenting  
19 alienate me, yes.

20 THE COURT: Okay.

21 THE WITNESS: I believe that. Absolutely.

22 BY MR. JONES:

23 Q Thank you. All right. Moving to page 238, which is  
24 now sideways, so we want to look at the page at the bottom,

1 it's 0143.

2 A Uh-huh (affirmative).

3 Q At 11/20 -- or I'm sorry. On -- on November 24th,

4 2014, Sean texts you --

5 A Uh-huh (affirmative).

6 Q -- Anthony (ph) is here and Sasha is playing with

7 his sons. Do you mind him -- mind if we take him out to eat

8 with us?

9 A Uh-huh (affirmative).

10 Q Your response is, this is unacceptable. Sasha

11 didn't eat while he was with you until 5:00 p.m. Just

12 disgusting.

13 A Uh-huh (affirmative).

14 Q Now, what part of Sean's prior text led you to

15 believe that Sasha did not have a snack after school?

16 A I pickup -- he brought Sasha to my house at 5:00

17 o'clock. I mean, around 5:00 o'clock. You could see --

18 immediately, I ask my son, so did you eat? No, I didn't. You

19 did not eat nothing since school? Nothing. So for me --

20 MR. JONES: Objection --

21 THE WITNESS: And I came to --

22 MR. JONES: -- move to strike, hearsay.

23 BY MR. JONES:

24 Q But -- but let's go back and read --



1           A     Let's look at --  
2           MR. SMITH: Wait; wait; wait. We need --  
3           THE COURT: Okay. Hold on; hold on.  
4           MR. SMITH: -- to rule on these objections --  
5           THE COURT: Hold on.  
6           MR. SMITH: -- because the -- the question was --  
7           THE COURT: Stop. I'm going to strike it. It's  
8 hearsay, what Sasha told you. Listen specifically to the  
9 question. I know that you have a lot to tell me.  
10          THE WITNESS: Sorry.  
11          THE COURT: Listen to the question, answer the  
12 question.  
13 BY MR. JONES:  
14          Q     So he -- let's go back then --  
15          A     Uh-huh (affirmative).  
16          Q     -- and start with the text that is at 15:41.  
17          A     Uh-huh (affirmative).  
18          Q     Actually, 15:40. Please let Sasha out. I'm outside  
19 at my friend car.  
20          A     Uh-huh (affirmative).  
21          Q     Sean's response, you can pick him up at 5:30, or we  
22 will bring him to you at 5:30.  
23          A     Uh-huh (affirmative).  
24          Q     Bring him to me.

1           A     Uh-huh (affirmative).  
2           Q     Okay. So at that point, you don't have Sasha,  
3 right?  
4           A     Yeah, I don't have Sasha.  
5           Q     Okay. Then Sean texts, Anthony is here, and Sasha  
6 is playing with his sons. Do you mind if we take him out to  
7 eat with us?  
8           A     Uh-huh (affirmative).  
9           Q     Okay?  
10          A     Uh-huh (affirmative).  
11          Q     So in that exchange on that date, where did Sean  
12 text you that Sasha had not eaten since school?  
13          A     My son told me.  
14          Q     Okay. You didn't have your son when you got that  
15 text from Sean, we just --  
16          A     No, I had my son --  
17          Q     -- established that.  
18          A     Yes. But I sense you -- you -- you read this wrong.  
19 I sent this message at 17:18. You -- you don't -- you -- you  
20 -- they do not line up time against the message. The message,  
21 this is unacceptable, Sasha did not eat, was sent to Sean at  
22 17:18, at 5:00 -- after 5:00 o'clock, when Sasha was delivered  
23 to my house. So I sent you -- Sean this message after I spoke  
24 with my son and I find out he did not eat for the last four

1 hours. No -- no snack, no nothing.

2 Q But Sean had asked you to let him come out to  
3 dinner, right?

4 A Yes, he asked me. And he did not give him anything  
5 to eat.

6 Q All right. Skipping ahead to page 152, at the  
7 bottom, in the center.

8 A Okay.

9 Q At 17:36:16, Sean texts you, Sasha's playoff game is  
10 Saturday at 8:00 a.m., it's important that he be there by  
11 7:30, and to warm up with his teammates. And your response  
12 was, we have plans. Do you see that?

13 A What's the -- I don't --

14 Q We have plans, sorry.

15 A Yes, yes.

16 Q Okay. And Sean responded, he will be devastated.  
17 It is their championship, right?

18 A Uh-huh (affirmative). Yes.

19 Q And then Sean writes, Sasha told me after missing  
20 the other games that you told him --

21 A Uh-huh (affirmative).

22 Q -- you are going to get even with me.

23 A Uh-huh (affirmative).

24 Q He is a six year old boy who loves the sport, and

1 you would know that if you had gone to any of his games.  
2 Sasha needs and has -- and -- and his development should be --  
3 should come before your hate for me.

4 A Uh-huh (affirmative).

5 Q Okay. That was Sean's text to you?

6 A Yes.

7 Q Response is, hey, this is Ricky, could you stop  
8 texting my wife. Do you see that?

9 A Yes.

10 Q Now, did you give Ricky the phone, or did he take it  
11 away from you and respond to Sean's texts?

12 A He sees that it's take health out of me, so he just  
13 wants us stop communicating. And he said, please stop  
14 harassing us.

15 Q Okay.

16 A And Sasha went --

17 Q Okay. All right.

18 A -- to this game --

19 MR. JONES: Objection, move to strike.

20 BY MR. JONES:

21 Q Did you give Ricky the phone?

22 A I --

23 Q Or did he take it from you and respond to Sean?

24 A Yeah, I give him the phone, yes.

1 Q And you believed that Sean expressing disappointment  
2 on behalf of Sasha that he was going to miss the championship  
3 game was harassment on Sean's part?

4 A He was -- he did not miss the game. This is the  
5 (indiscernible). Sasha went to his Dad, 7:15 in the morning,  
6 at -- that day, to this championship. I was visiting Margaret  
7 Pickard classes, so it's not like I was just, okay, you're not  
8 going to go. I -- my classes will start 9:00 o'clock. So I  
9 told him, no problem --

10 Q Okay.

11 A -- pick up Sasha.

12 Q I'll ask the question again.

13 A Yes.

14 Q Do you believe that Sean's expression of  
15 disappointment on behalf of Sasha was harassment?

16 A I believe at that time he was looking for any, any  
17 conflicts to start in this messages, anything.

18 Q Okay. I'll ask --

19 A I believe -- I believe the heat of our relationship  
20 was --

21 MR. JONES: Objection, Your Honor --

22 THE WITNESS: -- escalating.

23 MR. JONES: -- move to strike, non responsive.

24 THE COURT: I'm going to strike it.

1 THE WITNESS: Uh-huh (affirmative).

2 THE COURT: Just answer the question.

3 BY MR. JONES:

4 Q Okay. I'll ask it again. Do you believe that  
5 Sean's text to you expressing disappointment on behalf of  
6 Sasha --

7 A Uh-huh (affirmative).

8 Q -- was harassment?

9 A No. I mean, I cannot say it was harassment, no.

10 Q Okay.

11 A He was disappointed.

12 Q But Ricky said it was harassment, right?

13 A Ricky -- yes, Ricky said it was harassment, yes.

14 Q Okay.

15 A Because --

16 MR. SMITH: Were you referring to a specific part of  
17 -- in this text?

18 MR. JONES: Yeah, right after Sean's text.

19 MR. SMITH: Where Sean says, quit harassing me?  
20 That's what you're referring to Ricky, correct?

21 THE WITNESS: Yeah, that's Sean sent to my husband,  
22 yes.

23 BY MR. JONES:

24 Q That -- but that was Ricky?

1           A     No; no. That was --  
2           Q     I know; I know; I know. But it's -- it's in  
3 response to Ricky's --  
4           MR. SMITH: Stop texting my wife --  
5 BY MR. JONES:  
6           Q     Text.  
7           A     Yeah.  
8           MR. SMITH: Could you stop, it was a question.  
9 BY MR. JONES:  
10          Q     Now, there have been several occasions that Sean has  
11 been texting you, and Ricky has responded on your behalf; is  
12 that right?  
13          A     One more occasion.  
14          Q     Is it possible that there were two?  
15          A     Just -- just two since the --  
16          Q     Okay. Let's move to page 154 then. At 18:37, hi,  
17 Sean. This is Ricky. Our attorney will be contact -- will  
18 contact your attorney when you're four weeks vacation starts.  
19 Thank you for co-parenting with me. So that was Ricky  
20 responding via your phone. Do you see that?  
21          MR. SMITH: I'm sorry. Where are we at? 154?  
22          MR. JONES: 154, midway down, at 18:37:22.  
23          MR. SMITH: Thank you.  
24 BY MR. JONES:

1 Q Do you see that? It says, hi, Sean. This is Ricky?  
2 A Yes. Yes, I -- I do not remember that, but now I  
3 see it, yeah.  
4 Q Okay. So he did that time, as well, right?  
5 A Yes.  
6 Q Okay. Now turn to page 156.  
7 MR. SMITH: Okay. I'm --  
8 BY MR. JONES:  
9 Q Once again, at --  
10 MR. SMITH: -- what exhibit, Counsel?  
11 MR. JONES: It's still Exhibit 14  
12 THE COURT: Exhibit 14.  
13 MR. SMITH: 14. Okay. Sorry, I was looking in our  
14 exhibit book. All right. Thank you.  
15 BY MR. JONES:  
16 Q At 19:14:08, Sean explains to you --  
17 A What -- 19 -- okay.  
18 Q -- that Black Ops is not being played at Craig's  
19 (ph) house --  
20 A Uh-huh (affirmative).  
21 Q -- and he explains that -- please do the research on  
22 the game --  
23 A Uh-huh (affirmative).  
24 Q -- because he had sent you a link to an article



1 about Call of Duty being played at young ages, right?

2 A Uh-huh (affirmative).

3 Q Did you read that article?

4 A Yes.

5 Q So when he explains and asks you to please read the

6 article, or do the research, rather, and he then states, and

7 please stop asking him to keep things secret from me. My boy

8 loves me and won't lie to me, even when you ask him to.

9 A Uh-huh (affirmative).

10 Q Ricky responds to that one, as well, right?

11 A Yes.

12 Q And he's asking you to stop writing you about this

13 Call of Duty issue, right?

14 A He doesn't say, but he just asks him to stop writing

15 us.

16 Q But the text that he was writing right before that

17 was about Call of Duty, right?

18 A Not all of it. Because he saw me upset because Sean

19 is the one who introduced Sasha to all those games.

20 Q Okay. I'm going to ask you again --

21 A I was upset because --

22 MR. JONES: -- and I'm going to move to -- to strike

23 that, Judge.

24 THE WITNESS: Yes, he said -- yes.

1 BY MR. JONES:

2 Q So the three texts Sean sent you --

3 A Uh-huh (affirmative).

4 Q -- prior to Ricky telling him to stop writing you  
5 were about concerns for Sasha playing Call of Duty at a young  
6 age, right?

7 A Yes.

8 Q And --

9 A Well, it was about how possibly you argue that you  
10 should have more time with him. How -- how dare to ask more  
11 time with your son if he's playing Call of Duty? And we -- I  
12 believed that was form of harassment.

13 Q Okay.

14 A How dare you as Mother ask for time -- your time  
15 back, which was taken from me.

16 Q It -- it was taken from you, or you agreed to give  
17 him the time?

18 A I never agreed to -- to give my time --

19 Q In fact, actually, how quickly after the December,  
20 2013, order that said Sean had after school until 5:30 did you  
21 go to your employer and ask for a schedule change?

22 A I ask in August '14.

23 Q So August of '14 is when you actually went and  
24 asked, right? So it wasn't just they changed your schedule.

1 You went and made a specific request?

2 A Yes.

3 Q Now, turning back to page 156 --

4 A Uh-huh (affirmative).

5 Q -- Ricky goes on to say, hey, Sean, this is -- Ricky

6 knows how to spell Sean's name, right?

7 A No.

8 Q He doesn't? Okay. Because he spells it with an a-

9 w-n there.

10 A Uh-huh (affirmative).

11 Q This is Ricky, Lyuda's husband. Can you please stop

12 writing my wife. Enough now, just leave her alone. We'll see

13 you in court. Would appreciate it, exclamation point,

14 exclamation point. Do you see that?

15 A Yes.

16 Q And then Sean's response is, I simply want to make

17 sure Lyuda understands the damage this game can inflict on

18 young minds --

19 A Uh-huh (affirmative).

20 Q -- that's what co-parenting is about. This isn't

21 about Lyuda, this isn't about -- this is about what's best for

22 Sasha, end of story. Good night.

23 A Uh-huh (affirmative).

24 Q And Ricky responds, like I said, would appreciate it

1 if you would stop writing my wife. No need for good nights.  
2 Just stop writing unless emergency regarding Sasha, right?

3 A Yes.

4 Q Now, on the takeaways that you got from the class,  
5 did -- did you takeaway from the class that it's okay for your  
6 husband to interrupt attempts at co-parenting?

7 A There was conversation about it, and no, Margaret  
8 Pickard says, you better not get involved. It is between two  
9 parents. And at the same time, if you, as the second parent,  
10 see that you can emotionally help other parent --

11 MR. JONES: Objection, Your Honor. Now it's hearsay  
12 --

13 THE WITNESS: The --

14 MR. JONES: -- I just asked about the takeaways.

15 THE COURT: Okay. So what -- what did you -- what  
16 he's asking you is, at the end of the class, not what Margaret  
17 Pickard --

18 THE WITNESS: Yeah. I -- yeah --

19 THE COURT: -- told you, at the end of the class,  
20 your takeaway, was it that a -- a stepparent should be  
21 involved in communication?

22 THE WITNESS: No, they should not be involved in  
23 communication.

24 THE COURT: Okay.

1 MR. JONES: I pass the witness, Judge.

2 THE COURT: Counsel?

3 RECROSS EXAMINATION

4 BY MR. SMITH:

5 Q So looking back over these emails -- let's go  
6 backwards. We'll stay 156.

7 A Uh-huh (affirmative).

8 Q The -- the part that you thought was upsetting in  
9 Sasha's -- or excuse me -- Sean's email was, how can you  
10 possibly argue you should have more time with him if this is  
11 how he spends all his time with you?

12 A Yes.

13 Q Did you take offense to the notion that he spends  
14 all of his time sitting and playing Call of Duty?

15 A It's very offending.

16 Q Okay. And you -- one of the things that you had  
17 told us was your takeaway was to try to defuse the situation,  
18 correct?

19 A Yes.

20 Q Did that have any role into why Ricky responded to  
21 the --

22 A That's -- that's exactly why he step in  
23 (indiscernible).

24 Q Why?

1           A     He saw me being upset, because I said, Ricky, I  
2 mean, can you believe it? He's the one who introduced Call of  
3 Duty, were playing for three to six months in Riley house, and  
4 I'm now the bad guy who bought Xbox. Now I'm bad parent  
5 because on Christmas, Sasha was ask for all those things. And  
6 it was never discussed between us.

7                     And to me, all this argument, like -- like how --  
8 how dare you to (indiscernible) when I said, your friend is  
9 the one who introduce him to all those games? All those  
10 videos? I did not have iPhone before last December.

11           Q     So I get it. You were upset?

12           A     Yes, I was upset.

13           Q     So that's why Ricky intervened? All right. Looking  
14 back at 154, there was a conversation about the holiday time.  
15 Do you see that?

16           A     It's -- yes.

17           Q     About your four week -- well, hol -- I call it a  
18 holiday. It's your four week vacation. Was there -- was  
19 there a dispute over the vacation period, and when it would  
20 commence?

21           A     We never discussed in our order how we cope with  
22 when it's commence, but I thought since we have 11 weeks in  
23 summer vacation, so it's fair to have four weeks with one  
24 parent start from Monday, until Sunday. And from another

1 parent takes six weeks from Monday to Sunday. And our  
2 quantity of days was allowing us to -- to do that. So I  
3 thought, I will finish my regular week, and I will finish my  
4 weekend, Friday, Saturday, Sunday, and then starting Monday,  
5 this is when four weeks start. And I thought it was most fair  
6 because this way, nobody steals each other time.

7 Q But -- but Sean did not agree?

8 A No.

9 Q Was there any -- at that point in time, did you know  
10 you would only have four weeks of vacation?

11 A No, I did not know.

12 Q Okay. So at that point in time, there was all --  
13 there was also the dispute as to whether or not you would  
14 receive that amount of time, in or about the -- the 4th and  
15 5th of June, correct?

16 A No, I wasn't my granted my six weeks until Ms.  
17 Holland report came in.

18 Q Okay. Do you recall when Ms. Holland had  
19 communicated -- or when Mr. Jones had communicated to your  
20 counsel that you were not going to have that period of time?

21 A On June 5th, that day, when they refused to give me  
22 my son.

23 Q Okay. Let's look at Exhibit R.

24 MR. JONES: I don't have an R. I have a space where

1 there's an R, but I don't have an actual document.

2 THE WITNESS: Yes, I have it.

3 MR. SMITH: It's a series of emails.

4 THE WITNESS: I have it.

5 MR. JONES: I don't have an R. I -- my R space is  
6 empty.

7 MR. SMITH: You didn't put it out of there?

8 THE COURT: Here, Counsel --

9 MR. JONES: No. We -- we haven't talked about it  
10 yet.

11 THE COURT: Here's R. I haven't looked at it.

12 (COUNSEL CONFER BRIEFLY)

13 THE COURT: That's the Court's R, but I didn't look  
14 at it.

15 BY MR. SMITH:

16 Q Okay. Do you recognize the documents that are  
17 composed -- that compose Exhibit R?

18 A Yes.

19 Q And how did you come by these documents?

20 A Well, it was my understanding that on --

21 Q No; no. How did you get them? How did you get the  
22 documents?

23 A My attorney, Michael Balabon, forward them to me.

24 Q Was it the custom, habit, and practice of Mr.



1 Balabon to send you copies of email as they were received or  
2 written? In other words, when he got an email, did he send  
3 you a copy?

4 A Most -- most of the time, yes.

5 Q And when he sent an email, did he send you a copy?

6 A He -- yeah. He just forward this to me so I can see  
7 it.

8 Q Okay. And then -- all right. And do these  
9 constitute emails that were either forwarded to you by Mr.  
10 Balabon or have been received by him and then sent to you?

11 A Yes.

12 MR. SMITH: Move for the admission of R.

13 THE COURT: Counsel?

14 MR. JONES: Objection, Your Honor. Is he going to  
15 make the two lawyers a witness? She can't -- she can't  
16 authenticate them, she can't testify as to anything that's in  
17 these emails --

18 MR. SMITH: Is Mr. Jones denying that these are his  
19 emails, because I want that clear for the record.

20 THE COURT: No; no -- I --

21 MR. JONES: I'm not denying anything.

22 THE COURT: -- I don't know what's in these --

23 MR. JONES: Letters from counsel to counsel are  
24 never evidence. I can get you the case law over the break

1 that says, letters from counsel are not evidence.

2 THE COURT: How -- Counsel --

3 MR. SMITH: Well, they're not -- they're here to  
4 show what her understanding was when she had this  
5 communication with Sean in or about June 5th.

6 MR. JONES: You mean Ricky's communication with Sean  
7 --

8 THE WITNESS: No; no; no --

9 MR. SMITH: That's right. As to why she would be  
10 upset as the communication associated with the -- the way that  
11 this was presented is that she unreasonably made the  
12 determination that she wasn't going to speak about this co-  
13 parenting issue of the vacation, and had Mr. Marquez  
14 intervene. That's the way it's been presented to the Court.

15 I want to show the Court why miss -- why Lyuda was  
16 upset to the point where she had her husband answer, as  
17 opposed to answering herself. And the reason for that is  
18 contained in the communications that she had received that  
19 were exchanges between Mr. Jones and Mr. Balabon. And I'll --

20 THE COURT: Okay.

21 MR. SMITH: -- make an offer -- okay.

22 THE COURT: I -- I'm not going to allow the emails  
23 to come in. I will allow you to let her testify as to what  
24 her understanding was about the state of the litigation at the

1 time.

2 MR. SMITH: Just so I have for record, because these  
3 emails become increasingly important, Your Honor. What is the  
4 found -- the basis for not allowing them to --

5 THE COURT: Well, I think the -- they're covered by  
6 two things. First, I think they represent perhaps settlement  
7 negotiations between the attorney -- I haven't read them.

8 MR. SMITH: Okay.

9 THE COURT: Settlement negotiations between lawyers  
10 during --

11 MR. SMITH: That wasn't -- that wasn't the  
12 objection, by the way, Your Honor.

13 THE COURT: Okay.

14 MR. SMITH: There was no objection that these  
15 represent settlement negotiations. They do not.

16 THE COURT: The -- and that's my concern, that they  
17 --

18 MR. SMITH: Okay.

19 THE COURT: -- they rep -- they could contain  
20 settlement negotiations.

21 MR. SMITH: But that wasn't the objection.

22 THE COURT: Understand.

23 MR. SMITH: All right.

24 THE COURT: Between the lawyers during pending

1 litigation. And secondly, that she cannot say that she --  
2 she's not the recipient, she is not the author. There's some  
3 authentication issues --

4 MR. SMITH: Those authentication issues are waived  
5 under 16.2 within days of -- 21 days of receiving these, they  
6 have the oppor -- they have the opportunity and obligation to  
7 object, or these documents are deemed authentic.

8 MR. JONES: What --

9 MR. SMITH: Mr. Jones has never contended in any  
10 writing that these documents were not authentic, or were not  
11 statement -- or emails that were sent back and forth between  
12 him and Mr. Balabon. I think these emails have huge  
13 significance --

14 THE COURT: Counsel, just as --

15 MR. SMITH: -- including --

16 THE COURT: -- an offer of proof, tell -- tell me  
17 why -- why specifically --

18 MR. SMITH: An offer of proof is that --

19 THE COURT: No, not you, Counsel. Not you.

20 MR. SMITH: The offer of proof is that these emails  
21 suggest that Mr. Jones knew of Ms. Holland's -- or Dr.  
22 Holland's decision about the non-vacation, about changing the  
23 vacation terms before anyone else knew. And it suggests that  
24 there was an ex parte communication between Dr. Holland and

1 Mr. Jones.

2 MR. JONES: You know what's really interesting,  
3 Judge? I have had two circumstances under which I have moved  
4 to strike an expert's report and testimony. A Court appointed  
5 expert. One was Dr. Holland, because the day before trial,  
6 she spoke with Attorney Shapiro regarding her testimony. I  
7 said that was absolutely inappropriate. Okay? Because I know  
8 better.

9 And you can -- he can certainly ask Dr. Holland, but  
10 you can swear me right now. I have had discussions with her  
11 via text solely about when she can testify, when she can't  
12 testify. What happened as far as my belief that Dr. Holland  
13 was going to do an interim report is she told my client --

14 MR. SMITH: Look, now mister --

15 MR. JONES: -- that she had real concerns --

16 MR. SMITH: -- now Mr. Jones is testifying.

17 THE COURT: Well, hold on.

18 MR. JONES: But I -- I'm being accused --

19 THE COURT: The -- hold --

20 MR. JONES: -- of ex parte communication, Judge --

21 THE COURT: -- this --

22 MR. JONES: -- and I got a problem with that.

23 THE COURT: -- this --

24 MR. SMITH: I didn't say I accused him of it. I'm

1 saying it's reflected in the documents, and that's what the  
2 Court had asked.

3 THE COURT: Okay. I'm not going to allow them for  
4 this purpose right now. Not that they might not become ripe  
5 in this issue, become more ripe when Dr. Holland testifies.  
6 But as to what -- she can testify as to what her understanding  
7 was about what was going on, and the nature of the litigation  
8 at that time and what the vacation schedule was supposed to  
9 be, and that's why she took offense. That's fine. She  
10 doesn't need the -- the emails between the lawyers. I'm not  
11 going to allow them right now.

12 MR. SMITH: Okay.

13 THE WITNESS: Your Honor, if there's an email --  
14 BY MR. SMITH:

15 Q All right. So --

16 THE COURT: No; no --

17 BY MR. SMITH:

18 Q So -- no, it's okay. It's okay.

19 THE COURT: So you, Abid, you have a great lawyer as  
20 well.

21 THE WITNESS: Yeah.

22 THE COURT: Let him do his job.

23 MR. SMITH: Thank you for that, Your Honor.

24 BY MR. SMITH:

1 Q Miss -- Lyuda --  
2 A Uh-huh (affirmative).  
3 Q What was your understanding at the time that Ricky  
4 intervened in relation to your conversations about the  
5 vacation period?  
6 A We -- we --  
7 MR. JONES: Objection, foundation, conversation with  
8 whom?  
9 THE WITNESS: We -- we thought that --  
10 THE COURT: Well, hold on; hold on.  
11 MR. SMITH: I don't think I mentioned conversations.  
12 I said, what was your understanding --  
13 THE COURT: Her understanding.  
14 MR. SMITH: Right.  
15 MR. JONES: Based upon your conversations?  
16 MR. SMITH: Well, I didn't say that. I said --  
17 THE COURT: Okay. How -- the better --  
18 MR. JONES: Then we need to stop and play it back,  
19 Judge --  
20 THE COURT: The better question --  
21 MR. SMITH: Let me -- let me restate the question --  
22 THE COURT: No; no; no. Stop. Thank you.  
23 THE WITNESS: Okay.  
24 THE COURT: Hold on. He's asking a different

1 question.

2 THE WITNESS: Oh.

3 BY MR. SMITH:

4 Q Why did -- why did Ricky -- why did you have Ricky  
5 contact Sean in regard to this particular subject?

6 A If you look at the -- page 243, I forward to Sean my  
7 email from April 16, where I clearly said to him that my  
8 vacation would start Monday, June 8, to July 20th, 2015. So  
9 as -- I am, in advance, on April 16, discuss it in my email to  
10 Sean that I ask for my vacation to start in June, on June 8.  
11 And if you turn the page, I sent next email to John Jones,  
12 Michael Balabon, Sean, my -- and -- so and I -- I sent them  
13 copy of this April email --

14 MR. JONES: If -- if she's reviewing emails that  
15 aren't --

16 THE WITNESS: No, this is my email.

17 MR. JONES: -- in evidence.

18 THE WITNESS: This is my email.

19 THE COURT: Okay. Do me a favor --

20 THE WITNESS: Yes.

21 THE COURT: -- just shut that book, and then you --

22 THE WITNESS: Okay. This is my personal email.

23 THE COURT: I -- I know. Shut. Just shut --

24 BY MR. SMITH:



1 Q Testify from your recollection. That's what the  
2 Court's --

3 A Yes. Okay.

4 Q -- asking you to do.

5 A Yeah. So I -- Ricky knew that Sean knew that my  
6 vacation starts on June 8, and I sent him email regarding that  
7 on April 16, 2000 -- so for us, that he refused to give me my  
8 son on my Friday was a surprise. And I sent email to both  
9 attorneys, everybody, and says, this is what I informed Sean  
10 in April. Why my son was denied to me? Today's my -- my --  
11 my week -- weekly weekend.

12 Q Were you upset of his denial of that contact?

13 A Yes.

14 Q Were you concerned about not -- his allegation that  
15 you should not have your time during that period, your  
16 vacation time?

17 A He was bargaining with me. Like, if you ret --  
18 agree to return -- return Sasha that day, not that day. I  
19 mean, kind of was not -- not going nowhere conversation. I  
20 was upset. He was just trying to not returning my son.

21 Q Are your vacations important to you?

22 A Yes.

23 Q It's somewhat --

24 A That summer was extremely important to me.

1 Q Why was that important to you?

2 A Didn't see my -- my parents five years. And just  
3 find out my father is sick (indiscernible). So will he die in  
4 next nine months or not? And that was a chance for my son, my  
5 daughter, and myself to say bye. That's why.

6 Q Did you have arrangements -- had you made  
7 arrangements for travel to -- to where your parents -- where  
8 do your parents live, by the way?

9 A West Ukraine.

10 Q And had you made arrangements to travel to West  
11 Ukraine at or about that time?

12 A I -- I ask for Sasha's passport in November. In  
13 October, 2014, I said, Sean -- because usually, you have to  
14 buy tickets six, nine months prior. This is when you can get  
15 cheaper fare -- fare -- fare. So I -- I ask my son's  
16 passport. And I thought it was granted to me in order.

17 Q Okay. But that was after this six week period in  
18 the summer. I'm asking you if during that six week period  
19 that you -- did you intend to go see your parents during that  
20 period?

21 A Yes. I -- I was attempt -- I was intend to visit my  
22 parents in November, when I was trying to buy tickets.

23 Q Forget November. We're in June, when you --

24 A Oh, no.

1 Q -- had this conversation.  
2 A We were in court litigation. I --  
3 Q This is June of 2014. You -- or '15.  
4 A I was -- I was asking to go to Bulgaria or like some  
5 around, because Sean claimed that there is a war zone. So I  
6 was -- I was looking into this, yes.  
7 Q To this -- okay. So to this day, do you have the  
8 passport of --  
9 A No.  
10 Q Okay. So you asked for it in November of 2014,  
11 correct?  
12 A I ask in the -- in the --  
13 Q And that became part of your motion that was filed  
14 in this action?  
15 A Yes. That was a reason for that.  
16 Q Did you receive the passport after that time?  
17 A No.  
18 Q And then in 2015 is when you were attempting to go  
19 see your parents. I just want to make sure the time frame's  
20 right, correct?  
21 A Yes.  
22 Q All right. Okay. So -- and that's when you had  
23 Ricky talk to Sean, because you were upset?  
24 A Yes.

1 Q The other time that was referenced -- do you  
2 remember the reference, Kay (ph)? I'm not even worried about  
3 it. That's fine. And 17-36 -- all right.

4 MR. SMITH: The -- I have nothing further. There  
5 was nothing in there that I needed to --

6 THE COURT: Counsel, anything else?

7 FURTHER REDIRECT EXAMINATION

8 BY MR. JONES:

9 Q Just so we're clear, on this issue of your desire to  
10 go -- or your plan to go to the Ukraine, or to go to see your  
11 family anywhere, when we appeared at the first hearing --

12 A Uh-huh (affirmative).

13 Q -- which would have been -- let me see here.

14 A March 18.

15 Q March 18th, is that what you're saying?

16 A Yes.

17 Q As of March 18th, you told the Court you won't --  
18 you were not going to the Ukraine that summer, right?

19 A I did not know. I was go -- I wanted to, but I did  
20 not know.

21 Q But your attorney was present, and he said, no,  
22 she's -- it's too late. She's not going to go this summer,  
23 right?

24 A Was too late to buy tickets. I did not know if I

1 could afford at this point.

2 Q Okay. And then -- but so then in June, when you  
3 sent that text, or when Ricky intervened --

4 A Uh-huh (affirmative).

5 Q -- regarding when vacation started, you knew at that  
6 time you didn't have tickets, you didn't have plans, you  
7 didn't have anything going to the Ukraine.

8 A But I knew that -- that this was my weekend, and I  
9 knew Sean knew about it.

10 Q I understand.

11 A Yes.

12 Q You knew you weren't going to the Ukraine. You --  
13 you hadn't made any plans --

14 A I couldn't, yes. I -- I was -- I couldn't, yes.

15 Q And that was actually something that was revealed to  
16 the Court at the first hearing by your attorney, right?

17 A Yes.

18 Q Now, when did you take Margaret Pickard's class?

19 A I think I took it in April. April -- the -- it was  
20 the -- from April to June, I believe.

21 THE COURT: Of 2015?

22 THE WITNESS: Of 2015, yes.

23 BY MR. JONES:

24 Q So you had actually already taken the class --

1           A     Yes.

2           Q     -- where she says, don't let your significant other  
3 interfere, prior to the text messages we just went over?

4           A     No, it was like last -- last day, actually, of the  
5 class. It was very brief, actually. It was not like one --  
6 three hours about spouse. It -- it was last day of the class.  
7 And I brought Ricky to the class, actually.

8           Q     Okay.

9           A     We were asked to go.

10          Q     When did you complete the class?

11          A     I think it was June 9. I -- I need to see that. I  
12 -- I know it was.

13               MR. JONES: And I think it was filed at some point,  
14 Judge, as a --

15               THE COURT: Okay. I'll look.

16               MR. JONES: -- a filing. I don't have any further  
17 questions.

18               THE COURT: Counsel, anything else?

19               MR. SMITH: That's all I have.

20               THE COURT: All right. We -- thank you so much for  
21 your testimony. We will -- it was filed on June 16th with the  
22 Court. The letter attached from Ms. Pickard is dated June  
23 13th that it was completed, but it gives us no additional --

24               MR. JONES: Okay.

1 THE COURT: -- dates in reference to that. Let's  
2 take a break for lunch. Let's take an hour and 15 minutes.

3 MR. SMITH: Will Plaintiff be calling any additional  
4 witnesses?

5 MR. JONES: Other than Dr. Holland and potential  
6 rebuttal, I -- I guess -- I can't say I'm resting because I  
7 have Dr. Holland to go --

8 MR. SMITH: Okay. We would move at this time to  
9 dismiss under Rule 41. Particularly, there's been no showing  
10 of adequate cause for a hearing on the issue of primary  
11 custody. They've not gone through the relevant --

12 MR. JONES: I didn't rest, Judge. You can only make  
13 this motion when a party has been fully heard on an issue.

14 MR. SMITH: Yeah. The -- we believe that the report  
15 of Dr. Holland is not admissible for purposes of factual  
16 statements. In other words, the Court -- the Court cannot  
17 establish the factual prerequisites of an obligation -- or of  
18 -- unless those facts are in -- supported by the evidence or  
19 testimony that's for the trial. She can't testify as a fact  
20 witness --

21 THE COURT: Certainly.

22 MR. SMITH: -- she can only testify as a witness to  
23 -- as to certain scientific knowledge that could aid the Court  
24 in understanding the facts. The facts that have been

1 presented to the Court in the form of the testimony of Mr.  
2 Abid and his wife, which are the only two witnesses apparently  
3 they have, does not establish the elements of a claim for a  
4 change of custody.

5           It does not establish that the child has been --  
6 well, if we go through all the elements, there is -- there's  
7 no statement of preference of the child. There's no  
8 nomination that's applicable. Which parent is more likely to  
9 allow the child to have frequent associations? We would argue  
10 that it is -- the demonstrates that it's Lyuda who's more  
11 likely to allow frequent con -- associations, based upon the  
12 mountain of evidence of her allowing changes in the schedule,  
13 all the way through 2015.

14           The -- in regard to the -- the parent which -- or  
15 excuse me -- the level of conflict between the parents,  
16 although they've talked about conflict that existed in the  
17 past, presently, there was no citation of existing conflicts  
18 that are preventing them from co-parenting Sasha. In fact,  
19 even since again the -- the commencement of these proceedings,  
20 the parties have cooperated to do things like put Sasha in  
21 baseball, put Sasha in judo, allow the communication back and  
22 forth of -- in terms of additional times and time frames. The  
23 mental and physical health of the parents.

24           There's going to be no expert, not even Dr. Holland,



1 that will attest to any problems with mental or physical  
2 health of either party. The physical development and  
3 emotional needs of the child. There's been no testimony in  
4 regard to anything, and because of the -- the exclusion of the  
5 tape, there's been no evidence or factual statements that  
6 suggest that he's been harmed in any manner by the activities  
7 of either the Defendant or Plaintiff in his physical  
8 development or emotional needs.

9 More importantly, the testimony of the teachers that  
10 have testified, people who see him on a day to day basis, has  
11 testified that his physical development and emotional needs  
12 are quite well. And in fact, they -- the -- the child is --  
13 is doing extremely well. He's -- as Sean has indicated, he  
14 will get almost straight As in school. There was no  
15 behavioral problems that were identified.

16 There was nothing under that factor that would  
17 justify modification of custody. The nature of the  
18 relationship of the child with each parent. There was no  
19 testimony that the child's testimony with each parent was  
20 poor. Even in Dr. Holland's report, there's no suggestion of  
21 that. And again, my reference to Dr. Holland's report are  
22 simply anecdotal because we do not believe, regardless of the  
23 Court order, that it's legitimate for Dr. Holland's report to  
24 be utilized in the way that it's utilized.

1 But (indiscernible) again, if you give her the  
2 benefit of the doubt, she can't establish facts that are not  
3 testified to or presented at trial. There is no history of  
4 parental abuse or neglect of the child that should cause any  
5 concern to this Court. There's no effect of any kind of  
6 abuse, there's no effect of any kind of neglect. There is no  
7 statement that the child is alienated. There's no -- she  
8 doesn't -- even in Dr. Holland's conclusions, doesn't say that  
9 the child is alienated. There's nothing.

10 And I -- I mean, really, what they're relying on is  
11 a couple of tests and a statement that was made by Dr.  
12 Holland, none of which are sufficient to make a change, or  
13 overcome the presumption that joint custody is in the best  
14 interest of the child. There's no actions or act of domestic  
15 violence that they caught -- talk about, and there's no act of  
16 abduction.

17 We just don't think that there's an adequate basis  
18 for even a hearing on the issue of custody, but he's had one.  
19 He's presented his evidence, and we don't believe that he has  
20 a presentation of sufficient facts necessary to meet the  
21 criteria for a change of custody in the best interests of the  
22 child.

23 Let me also note that in October of last year, this  
24 -- the legislature passed what was an additional presumption,

1 and a presumption now that (indiscernible) all cases, that  
2 indicates that the -- the presumption would apply in all  
3 circumstances. But here, we don't even have to get there,  
4 because the presumption applies because the parties previously  
5 agreed that joint custody was in the best interest of the  
6 child.

7           So not only do they have the burden, Your Honor, to  
8 show that it's in the best interest of the child to change  
9 custody, but they have a -- a burden to overcome the  
10 presumption that it's in the best interest of the child to  
11 remain -- I think this is a case where if something's not  
12 broken, don't fix it. The child itself -- himself is fine.

13           If the Court wanted to issue interim orders in  
14 regard to behavioral orders, or counseling or additional  
15 courses they think either party should seek, that's something  
16 that the Court can do. But I don't believe they've made a  
17 prima facie case for a change of custody.

18           THE COURT: Counsel?

19           MR. JONES: Okay. He cited Rule 41, and I -- I  
20 don't think that's what he meant. I think he meant 52(c).  
21 But 52(c) requires that the non-moving party have his case  
22 fully heard. I haven't rested my case. He can't even make  
23 that motion. So do I need to argue merits? I -- I can.

24           THE COURT: It's denied at this time, but, Counsel,

1 you can re-raise it at the close of the Plaintiff's case. As  
2 far as scheduling, as we move forward, Counsel -- are you  
3 prepared, Mr. Smith, to call any witnesses today?

4 MR. SMITH: We -- I mean, we -- we could. Again,  
5 Your Honor, it's very difficult to understand what I would be  
6 rebutting. It -- I don't think that there's anything in the  
7 record that establishes that there's been harm to this child.  
8 There may be behaviors that the Court wants to address, but  
9 this is truly -- and Mr. Jones is -- is -- is wont to use  
10 hyperbole in his presentations.

11 This truly is the thinnest presentation of a claim  
12 for a full change of custody that I've seen in 30 years. This  
13 -- there's no establishment of any of these factors --

14 THE COURT: Okay. Counsel, before we waste time  
15 arguing that issue, Mr. Jones has an additional witness that  
16 will be available on the 25th.

17 MR. SMITH: All right.

18 THE COURT: You can make that argument at -- at the  
19 close of his case on the 25th. Let me ask you about  
20 scheduling. Do you prefer to wait until the 25th --

21 MR. SMITH: I would, Your Honor.

22 THE COURT: -- to put on your case?

23 MR. SMITH: I would -- I would prefer --

24 THE COURT: And I'll -- I'll --

1 MR. SMITH: -- I would prefer to -- what -- first of  
2 all, to determine whether or not the Court, after we brief  
3 this issue, will still feel that Dr. Holland has an adequate  
4 basis upon which -- after hearing this evidence, which I  
5 understand is the only factual evidence they're going to  
6 present, is -- there's an adequate basis to even have a report  
7 from her. If the Court finds that there is, then I --

8 THE COURT: And I -- and you --

9 MR. JONES: There are facts in the report --

10 THE COURT: Hold on. Stop; stop; stop. You keep  
11 saying report. Do you mean testimony?

12 MR. SMITH: Yes.

13 THE COURT: Okay. So --

14 MR. SMITH: Well, I assume part of the testimony  
15 will be the summation of her report.

16 THE COURT: Well, it -- maybe --

17 MR. SMITH: I don't have a --

18 THE COURT: -- or maybe not. I don't know.

19 MR. SMITH: Let -- let me just say --

20 THE COURT: That's -- that's up to him.

21 MR. SMITH: -- I don't have a problem with Dr.  
22 Holland testified about her observations or testing of the  
23 child. That is specified, specific, scientific knowledge that  
24 could aid the Court in its determination. I have a serious

1 problem with her talking about or making suppositions about  
2 factual information, or her reviewing and utilizing the tape  
3 as part of her consideration.

4 THE COURT: And -- and I think we'll get there.

5 MR. SMITH: Okay.

6 THE COURT: What --

7 MR. JONES: Well, you've already ruled --

8 THE COURT: -- hold on --

9 MR. JONES: -- on part of that, Judge.

10 THE COURT: The -- the appropriate time to get there  
11 is when Dr. Holland --

12 MR. SMITH: Is presenting --

13 THE COURT: -- testifies.

14 MR. SMITH: I understand.

15 THE COURT: And I don't want to assume or presume  
16 anything she's going to say, because I am surprised  
17 consistently in this case. So let me -- let me not dig myself  
18 in too deep about what I think she's going to say. I just  
19 don't know. And I think that we've talked about, and you both  
20 know what my concerns are, and I'm hopeful that she'll address  
21 those. And the teachers were very helpful in that. But I'd  
22 also like to see the -- the expert testimony.

23 MR. SMITH: And again, Your Honor, my not -- my  
24 objection is not to Dr. Holland having specific scientific or

1 factual -- or -- or knowledge and -- that would aid the Court.  
2 My problem is the way that the -- the tapes are utilized as  
3 part of her report. That can be -- you're right. That issue  
4 needs --

5 THE COURT: And -- and that has --

6 MR. SMITH: -- to be addressed.

7 THE COURT: -- that's up to Mr. Jones, how he  
8 presents that.

9 MR. SMITH: Okay.

10 THE COURT: And so I don't --

11 MR. SMITH: So from my -- from my standpoint, Your  
12 Honor, I think it would be beneficial. My client simply  
13 cannot afford this, I'll say that. So it would be beneficial  
14 to her, having heard this factual testimony, to wait to see  
15 what the nature of Dr. Holland's testimony is, and then  
16 present our case, and if necessary, our expert at that time.  
17 So if the Court would -- would allow that, that would be our  
18 preference.

19 THE COURT: Mr. Jones, I'm -- I'm inclined to allow  
20 them to do that.

21 MR. JONES: Well, and -- and frankly, I spoke to Mr.  
22 Smith to try to get a understanding of whether he wanted to go  
23 forward, and I told him flat out, I fully would respect if you  
24 don't want to start your case in chief in my -- until mine is

1 done --

2 MR. SMITH: So there's no objection --

3 THE COURT: Absolutely.

4 MR. JONES: -- because that's probably what I would

5 do.

6 MR. SMITH: Okay. But -- but look, the -- my

7 concern was that there was going to be a sufficient factual

8 basis that I needed to rebut that factual basis. I don't, as

9 I've indicated in my argument, I don't believe there is. But

10 we'll address that with once Dr. Holland is allowed to --

11 THE COURT: You can raise that argument --

12 MR. SMITH: -- testify --

13 THE COURT: -- again.

14 MR. SMITH: Yes.

15 THE COURT: So are you at -- are --

16 MR. SMITH: Yes.

17 THE COURT: -- is what you're asking me is on the

18 25th to only hear -- let's schedule to only hear from Dr.

19 Holland on that day?

20 MR. SMITH: I think we end today. We hear from Dr.

21 Holland -- Dr. Holland. Then -- then we will present -- if we

22 need to, we'll commence our case in chief --

23 THE COURT: On the 25th.

24 MR. SMITH: -- what we believe, on the 25th.



1 THE COURT: Okay. Is that okay with -- scheduling  
2 wise?

3 MR. JONES: Judge, I would never tell somebody how  
4 to try their case, and since that's how I would probably try  
5 mine, I -- I don't have an objection. I mean --

6 MR. SMITH: I appreciate that.

7 THE COURT: Thank you to everyone --

8 MR. JONES: The delay is concerning in that, you  
9 know --

10 THE COURT: Oh, no. The delay is concerning to  
11 everyone, certainly to all the parties, to counsel, and to the  
12 Court. Unfortunately -- if I had my way, we could do this all  
13 in one week. Unfortunately, I have about one thousand other  
14 cases on my calendar. The scope of my calendar --

15 MR. JONES: One thousand --

16 MR. SMITH: Just a thousand?

17 MR. JONES: -- that's it?

18 THE COURT: Sorry. The report just came out today,  
19 and there's -- there's some judges upset about how many cases  
20 we actually have (indiscernible). So a little less than one  
21 thousand. That was hyperbole, not on behalf of Mr. Jones, on  
22 behalf of the Court, that -- I have a lot of cases on my  
23 calendar, is just that -- that I can't move to accommodate the  
24 professional schedules of both counsel and the experts. And I

1 apologize. I wish it could go faster but it just --  
2 MR. SMITH: Judge --  
3 THE COURT: -- cannot.  
4 MR. SMITH: -- as the -- as things go, in other  
5 courtrooms, and -- and I hate to do --  
6 THE COURT: Oh, Mr. Smith. You're just going to say  
7 --  
8 MR. SMITH: -- (indiscernible) but this one's a  
9 compliment. This is not -- this is not --  
10 MR. JONES: This little thing doesn't say I can't  
11 call him a hypocrite, does it?  
12 MR. SMITH: No. You can -- if you think this is  
13 hypocritical, you can comment. But it's not. What I'm saying  
14 is that this is very standard for what we go through very  
15 typically in cases --  
16 THE COURT: Mr. Smith, although it's standard --  
17 MR. SMITH: -- I wish it -- I wish it wasn't --  
18 THE COURT: -- I wish it wasn't.  
19 MR. SMITH: I wish it wasn't, too.  
20 THE COURT: I want the parties to understand --  
21 MR. SMITH: Yes.  
22 THE COURT: -- and I understand that they're upset  
23 that it's not going quickly.  
24 MR. SMITH: And I want you to know that I prepared

1 my client fully for that -- this possibility, that we would go  
2 multiple days. And it, as I've indicated to you -- to you,  
3 it's not unusual at all. It's something that we all go  
4 through down here.

5 THE COURT: Nevertheless, I apologize. It's not my  
6 --

7 MR. SMITH: So --

8 THE COURT: -- great hope. All right. So we'll see  
9 everybody back on the 25th at 9:00 o'clock.

10 MR. JONES: And do you have the whole day available?

11 THE COURT: I do have the whole day on the 25th.

12 MR. JONES: Okay.

13 MR. SMITH: Very good. Thank you, Your Honor.

14 THE COURT: Thank you.

15 (PROCEEDINGS CONCLUDED AT 12:53:50.)

16

17 \* \* \* \* \*

18 ATTEST: I do hereby certify that I have truly and  
19 correctly transcribed the digital proceedings in the  
20 above-entitled case to the best of my ability.

21

22 /s/ Nita Painter

23 Nita Painter, Transcriptionist

24

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LYUDMYLA ABID,

Appellant,

v.

SEAN ABID,

Respondent.

Supreme Court No. 69995

District Court Case No. D-10-424830-Z

Appeal from the Eighth Judicial District Court

---

**APPELLANT'S APPENDIX**

**VOLUME 13**

---

RADFORD J. SMITH, ESQ.  
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RADFORD J. SMITH, CHARTERED  
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1507-1526

1 TRANS

2 COPY

3  
4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7 SEAN ABID, )  
8 Plaintiff ) CASE NO. D-10-424830-Z  
9 vs. ) DEPT. B  
10 LYUDMYLA ABID, )  
11 Defendant. )  
12 \_\_\_\_\_)

13 BEFORE THE HONORABLE LINDA MARQUIS, DISTRICT COURT JUDGE

14 TRANSCRIPT RE: NON-JURY TRIAL

15 MONDAY, JANUARY 11, 2016

16  
17 APPEARANCES:

18 The Plaintiff: SEAN ABID  
19 For the Plaintiff: JOHN JONES, ESQ.  
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21 The Defendant: LYUDMYLA ABID  
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1 LAS VEGAS, NEVADA

MONDAY, JANUARY 11, 2016

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

3 (THE PROCEEDINGS BEGAN AT 09:15:34.)

4

5 THE COURT: -- Is the matter of Abid versus Abid, D-  
6 10-424830-Z. Good morning. I informed the parties I need to  
7 take a break at 10:30 to hear another objection. It should be  
8 very brief, 10 minutes at the most. And I also have another  
9 small issue that I'll hear at 11:00, if the parties show up.  
10 I -- I'm not sure that they're even going to show up. So  
11 we'll keep moving. Based on the ruling that I issued since  
12 our last hearing, we will continue with that today. I know  
13 that we have another motion in limine that was filed since  
14 then. I'll hear arguments as to the motion in limine. I've  
15 reviewed your pleadings. Counsel, it's your motion.

16 MR. SMITH: Your Honor, because this was set in OST,  
17 we didn't have an opportunity to reply. I think there is  
18 statements in reply to the -- the cases that were cited --

19 THE COURT: Certainly.

20 MR. SMITH: -- by the Plaintiff. First of all, all  
21 the cases that were cited by the Plaintiff address the statute  
22 in the context of fourth amendment rights of a criminal  
23 defendant. These are not criminal defendants here. These are  
24 individuals who are not charged with any crime. There's no

1 prosecutorial overlay of the right of society to protect  
2 itself from criminal activity. Here, we have a conversation  
3 that took place in a location in which such conversations  
4 occur daily. In the -- the -- commonly, as you walk down this  
5 hallway, you can see the body language of individuals who are  
6 speaking privately in regard to matters that are otherwise  
7 privileged, matters between husband and wives.

8           And I think Mr. Jones has -- has misunderstood the  
9 import of the -- of the privilege. The import of the  
10 privilege, like the attorney client privilege, was the other  
11 thing that constantly happens in our hallway, is that the  
12 Court should give greater scrutiny to those types of  
13 conversations. Because by law, they're protected for societal  
14 reasons.

15           They're protected so -- so as to avoid disclosure of  
16 intimate conversations between husband and wife, even when  
17 husband and wife were subpoenaed to testify on those issues.  
18 The attorney client privilege applies so as to protect clients  
19 and attorneys, and allow them to strategize and to do the type  
20 of things they commonly do, particularly when, what often  
21 happens in that -- that hallway, and something we don't want  
22 to discourage, are communications regarding settlement or  
23 resolution of cases.

24           That -- I can't tell you how many cases that are

1 resolved, both in my practice, and in conversations with  
2 others, about -- about how they've resolved particular  
3 matters.

4           And in fact, on many occasions, the Courts will, and  
5 I'm sure this Court has done it, because it's done in cases  
6 I've been involved with this Court, will direct the parties to  
7 go outside and see if they can negotiate. One can only  
8 imagine if someone had an assistant nearby who picked up the  
9 negotiation content between a conversation between a -- a  
10 lawyer and his client, and the -- and the subject of those  
11 negotiations.

12           And the lawyer and the client, even though speaking  
13 in that hallway, may have no reason to believe that their  
14 conversation is being recorded, either because they don't know  
15 who the assistant is, or because they didn't see the assistant  
16 due to the barriers that are inherent in that -- the -- the  
17 hallway. The Court has been through the hallway many times,  
18 and there are large barriers in between certain seating. The  
19 only thing you can see by looking down the hall is shoes. You  
20 can't -- or legs.

21           You can't really see the individuals past that  
22 barrier, if you're sitting and you're -- you're talking to  
23 another individual. So one would have to note that the  
24 individual was close enough to hear, which is something in

1 estimation is very difficult.

2           And particularly with a recording device, because I  
3 would submit to Your Honor -- and we don't know in this case.  
4 This is another instance where we don't know the type of  
5 device, we don't know the original recording, we don't know  
6 how it was enhanced, and what we have in front of the Court is  
7 an enhanced recording that they've already talked about, even  
8 though it's never been admitted. We also have some  
9 (indiscernible) that the recording has been utilized by them  
10 in order to recall the conversation.

11           As you know, the -- they had originally submitted  
12 some writing with -- again, without acknowledging that there  
13 was the tape recording. That never happened. And then that  
14 writing was supposed to be a recorded recollection. Recorded  
15 recollections are only admissible once the person on the stand  
16 demonstrates they have no, and have exhausted their  
17 recollection about anything about the conversation. It's not  
18 proper to write down something and then submit it as a  
19 recorded recollection. And I think that suggests that what  
20 they did was they listened to their little tape, and they  
21 wrote down what they could.

22           And then when they could enhance it, then they --  
23 they decided that now they can testify and provide the tape,  
24 because now it's enhanced you and you can hear more on the

1 tape although admittedly in their own pleadings, they say, you  
2 can't hear everything. So in this instance, we have the  
3 whether or not the individuals who are in a -- a private  
4 communication in -- I don't think that there's any reasonable  
5 statement that talking between parties that are married, prior  
6 to a evidentiary hearing about that evidentiary hearing is not  
7 a private -- that they intended everybody else to hear that  
8 conversation.

9 I think you meet the criteria of subjective privacy.  
10 I think that they would have known that they were -- it was  
11 subjectively private in -- before they pulled out that tape  
12 recorder, it is the act of pulling out the tape recorder, or  
13 whatever device they used, that is the crime.

14 Because our statute doesn't require that there be a  
15 recording. Even the attempt to record, even if they had used  
16 that device and no recording was ever made, it would have been  
17 a crime. It is not the recording that's the issue under our  
18 statute. It's the attempt to record.

19 They would have had to anticipate the statement in  
20 the recording, pull out their recorder, hope that they're  
21 right, that there's something on there that's going to be  
22 valuable, and then hit that recorder and illegally tape. If  
23 we allow the parties to do that, because there is no sign out  
24 there, where private conversations exist, there's no sign that



1 says, you are subject to being recorded in this hallway.  
2 There's a videotape, but it's not my understanding that  
3 there's any audio. If there is, that should be posted. But  
4 the -- there should be signs out there, letting people know  
5 that if they talk to their lawyer in that conference -- in a  
6 conference, even if it's subjectively private and they're  
7 whispering, and nobody else -- they think nobody else can hear  
8 them, that somebody with a recording device can listen to that  
9 conversation.

10 That needs to be posted, if the Court rules today  
11 that a conversation that happens in that hallway is, as Mr.  
12 Jones argues, objectively not reasonably private because it's  
13 in that hallway.

14 The second criteria would be, ironically, I asked  
15 Mr. Abid in this case whether or not he had any conversations  
16 with Mr. Jones about this matter in between a break. That --  
17 those conversations would have happened in that hallway.  
18 Since Mr. Jones has indicated that conversations that happen  
19 in that hallway are not private conversations, then arguably,  
20 everything that he has said to his client in that hallway is  
21 subject to discovery.

22 That should not be the rule, because it would impede  
23 in a great manner the way that nor -- that -- that law is  
24 normally practiced in this community, and it invades a

1 privilege that should not be invaded.

2           So for us to now rule that we're going to -- to  
3 objectively find that any conversation that's held in the  
4 hallway, as opposed to an anteroom, which were locked at the  
5 time preceding the evidentiary hearing, or the smoking pit,  
6 which there's no statement as to whether or not there was any  
7 view of the smoking pit, as -- whether there were others were  
8 in that smoking pit, but more important, miss -- my client had  
9 objectively reasonable -- she was talking privately to her  
10 client, she couldn't see them, she did not consent or know  
11 that she was being recorded.

12           Under that circumstance, particularly because it's a  
13 privileged conversation, the law should be that people should  
14 not even attempt to make that con -- to record that  
15 conversation.

16           Now, I will submit to Your Honor, I have not  
17 reviewed the tape. The reason why is it involves an  
18 individual who's not my client. For me to review the tape is  
19 illegal, because the hearing of -- or dissemination of that  
20 tape is an illegal act, if it was an attempt to record a  
21 private conversation. So if the Court is going to find that  
22 this was not a private conversation, that somehow it's okay to  
23 record anybody sitting in that con -- that hallway, then I'm  
24 going to need time in order to go over my client the contents

1 of that agreement, if the Court can find that somehow she gave  
2 consent, which she did not. So if there is some sort of  
3 objective consent that she gave, then I spare myself from any  
4 objection by Mr. Marquez as to hearing that tape. Again, this  
5 involves a third party, who's not party to this action.

6           So, Your Honor, I think that is -- it's a very bad  
7 precedent. I think we would have to start putting up signs to  
8 notify people about their inability to have private  
9 conversations. I think it's the type of conversation we want  
10 to encourage, particularly if it's a conversation about the  
11 hearing itself. I don't think we want to get in the middle of  
12 conversations that happen that hallway, particularly how many  
13 settlement conversations happen, and we don't want them to be  
14 recorded. It's just not a way we want to promote the practice  
15 of law in this courthouse.

16           THE COURT: Let me just make sure that we can assume  
17 certain -- we're all on the same page with certain things. I  
18 assume that this is the conversation that occurred outside of  
19 the courtroom, and -- at a previous hearing where, Mr. Jones,  
20 you came in and blurted, and it was on the record that there  
21 was this conversation that occurred. You notified us that  
22 your client took some notes of that conversation while the  
23 conversation was occurring. Is the same?

24           MR. JONES: Correct.

1 THE COURT: And it -- it happened in the hallway of  
2 the courthouse? Just --

3 MR. JONES: Yes.

4 THE COURT: -- outside? All right. Are we to  
5 assume, then -- and I assume, Mr. Smith, that your client and  
6 Mr. Marquez did not consent to the recording?

7 MR. SMITH: Neither party did. Let me --

8 THE COURT: Or have knowledge --

9 MR. SMITH: -- let --

10 THE COURT: -- that that consent happened?

11 MR. SMITH: That's correct. Both will -- will  
12 attest, and I'll make an offer of proof, will attest that they  
13 didn't know they were being recorded, didn't know they could  
14 be heard, they looked around, they didn't believe they could  
15 be heard. They were speaking in a manner that was designed to  
16 have a private conversation.

17 I just want to make something clear for the record.  
18 The individual -- my recollection of the hearing, and again,  
19 it was a while ago, my recollection of the hearing was about  
20 three or four hours worth of testimony occurred before Mr.  
21 Jones noted this conversation. And the conversation was noted  
22 not as a tape recorded conversation, but instead as a recorded  
23 recollection --

24 THE COURT: Correct.

1 MR. SMITH: -- so the impression that was given --  
2 THE COURT: I'm sorry. Recorded versus recorded,  
3 that he wrote down notes.  
4 MR. SMITH: That's right.  
5 THE COURT: That was the impression I had at the  
6 last --  
7 MR. SMITH: Well, the -- the actual -- the -- I  
8 thought that the statement was that the wife wrote down notes.  
9 That's important, because Mr. Abid was testifying that day.  
10 He wouldn't have had an opportunity to write down notes. The  
11 only person that could have written down notes was his wife,  
12 who was sitting in the hallway. And we believe what occurred  
13 was she -- I -- I think the most logical presumption was that  
14 she listened to her tape recording, wrote down notes, and then  
15 not wanting to reveal to the Court that it was a tape  
16 recording, then stated that it was a recorded recollection.  
17 And again --  
18 THE COURT: Well --  
19 MR. SMITH: -- I'm going --  
20 THE COURT: -- well, look, I wouldn't deal with the  
21 recording issue today. And -- and my recollection of it is a  
22 little bit different, but Mr. Jones --  
23 MR. SMITH: And --  
24 THE COURT: -- if he tries to offer it in a

1 different way, we'll certainly --

2 MR. SMITH: -- I -- I --

3 THE COURT: -- will certainly lay out the facts a  
4 little better.

5 MR. SMITH: It could be different. Look, Judge, I  
6 didn't have an opportunity to review the videotape. But my  
7 recollection was, based upon what the Court said today, that  
8 it came later in the day.

9 In other words, it wasn't like they immediately came  
10 in and said, Judge, we have this tape recording that we'd like  
11 to play because we think it reveals something. I don't think  
12 that happened.

13 THE COURT: That --

14 MR. JONES: That's --

15 THE COURT: -- so --

16 MR. JONES: -- actually, again --

17 THE COURT: I -- I want to issue the --

18 MR. JONES: -- I -- I can -- I can clarify the  
19 entire --

20 THE COURT: -- clarify -- clarify the facts --

21 MR. JONES: -- factual basis, Judge.

22 THE COURT: -- so that we're -- we're good. But I  
23 don't want to deal with --

24 MR. JONES: I --

1 THE COURT: -- the iss -- evidentiary issue of a  
2 recorded recollection as in notes, not recording --

3 MR. JONES: Right.

4 THE COURT: -- coming in at this point. We're  
5 dealing with the recording itself.

6 MR. JONES: Right.

7 THE COURT: If you lay it -- an appropriate  
8 foundation, and -- and it go -- counsel will certainly object,  
9 and I'll make a determination at that point about written  
10 notes, if we even get to a -- a -- an opportunity for written  
11 notes. Counsel, go ahead.

12 MR. JONES: So what Counsel is inaccurate in his  
13 recollection about is we arrived at court. And when I put my  
14 client on the stand, the first thing I tried to cover was this  
15 conversation that occurred in the hallway. Meaning, trial  
16 started at 1:30. My client arrived at 12:30, 12:45, and the  
17 Defendant and her husband were already here. My client walks  
18 down the hallway, all six foot five of him, like he does every  
19 time he comes to court, and he chose a seat and sat down, he  
20 and his wife. Okay? They could hear loud words. In fact, in  
21 the notes, originally, it says, now yelling, Mr. Marquez was  
22 --

23 THE COURT: And let -- let's also make clear that  
24 the Court hasn't reviewed --

1 MR. JONES: No, you haven't.

2 THE COURT: -- the notes, the Court hasn't reviewed  
3 the recording. Counsel, have you had the opportunity to  
4 review the notes or the recording? You indicated you haven't  
5 reviewed the recording.

6 MR. SMITH: I did not review the recording. I did  
7 see the notes.

8 THE COURT: All right. Go ahead, Counsel.

9 MR. JONES: And so as this audible conversation is  
10 being heard, the voice memo on the phone, and the notes are  
11 taken. Okay? Originally, my client didn't believe he could  
12 hear anything --

13 THE COURT: Let me ask you --

14 MR. JONES: -- on the -- on the recording.

15 THE COURT: -- the voice -- voice memo is --

16 MR. JONES: It's like on your phone.

17 THE COURT: -- recording?

18 MR. JONES: Like a recording, correct.

19 THE COURT: Okay. So --

20 MR. JONES: Correct.

21 THE COURT: All right.

22 MR. JONES: It's an app --

23 THE COURT: So --

24 MR. JONES: -- that comes on every iPhone, it comes



1 on pretty much every other phone.

2 THE COURT: -- so your client was using the voice  
3 recording as his notes?

4 MR. JONES: No. No; no.

5 THE COURT: Oh.

6 MR. JONES: He turned on the recorder and started  
7 taking notes.

8 THE COURT: Okay.

9 MR. JONES: So the notes themselves are not based  
10 upon what's on the recording. In fact, he originally believed  
11 that the recording didn't pick up anything until he played it  
12 at a volume so loud that you could actually hear it. So it's  
13 not even like it was enhanced as -- as stated, meaning he  
14 could hear it when he played it louder, and that's when I  
15 produced the tape. Because I didn't even know --

16 THE COURT: Okay.

17 MR. JONES: -- the tape existed at that time. In  
18 fact, I didn't know the tape existed. I was presented, when I  
19 got there, with --

20 THE COURT: The notes.

21 MR. JONES: -- what had happened, that they had  
22 arrived, that they had sat down, and they heard this  
23 conversation, and gave me the notes that were already  
24 prepared. I didn't say, okay, write down these notes. The

1 notes were already prepared because they were being written  
2 down contemporaneously with the conversation.

3           So I clearly believe the notes come in as a recorded  
4 recollection, whether they are through my client or through my  
5 client's wife. I can ask what happened in the hallway, what  
6 was said by the Defendant --

7           THE COURT: Certainly. As to the recording, though  
8 --

9           MR. JONES: -- and -- as to the recording, Judge,  
10 it's primarily being offered so that we don't have the  
11 Defendant or the Defendant's husband saying, no, that never  
12 happened. It's a way to corroborate the accuracy of the  
13 notes. Now, the testimony would be, my offer of proof would  
14 be, yes, that -- these notes, as I read the recorded  
15 recollection into the record, are an accurate depiction of  
16 what we heard.

17           Did you review the audiotape once you were able to  
18 play it loud enough to hear it? Yes. Did the audio tape  
19 corroborate the notes that you took? Yes. And then the tape  
20 may not even be necessary. The tape was offered because as  
21 soon as I found out there was a tape, I felt I had an  
22 obligation to produce it to the other side.

23           So this issue of -- let -- let's talk about the  
24 privilege issue again. The privilege exists so that I can't

1 put husband on the stand and ask questions about what husband  
2 and wife said, or wife on the stand and ask questions about  
3 what husband and wife said. That's what the privilege stands  
4 for. It doesn't stand for anything else. It doesn't make  
5 what they say in the presence of third parties sacrosanct, and  
6 I cited the authority for that.

7 I mean, this idea that because a husband and wife  
8 say something to each other, it's somehow protected when it's  
9 in the presence of third parties is just making up the law.  
10 And -- and the argument that's been made so far is just, gee,  
11 this doesn't seem right. Well, they didn't have an  
12 expectation of privacy, particularly if he raised his voice to  
13 tell her to perjure herself, or to tell her how to testify, or  
14 to tell her what she needs to do. If he's raising his voice  
15 such that, you know, 15 feet down the hallway, their  
16 conversation is being heard in a public place, and they  
17 absolutely could have gone outside, they absolutely could have  
18 asked for access to an anteroom if they were going to have a  
19 private conversation.

20 Now, I've been down this road before on cases where  
21 a lawyer came up to me and said, hey, are you on the other  
22 case -- other side of that? Yes. Well, I just heard him  
23 telling his friend or whatever blah blah blah blah blah.  
24 I name that person as a witness, call them into court to

1 testify. Hey, this is what this person said in the hallway.  
2 Had it happen in three or four cases. Because what you say in  
3 that hallway is not privileged. I got sued for defamation  
4 because a former opposing party walked by and the client I was  
5 with said, yeah, that guy's a real jackass. I said that to my  
6 client, which was attorney client privilege. I got sued by  
7 the person because his friend overheard what I said. So I  
8 mean, this idea that what I say in that hallway is privileged  
9 is absurd. It is one of the most public places you could be  
10 uttering things.

11 Now, the cases that I've cited, as far as recording,  
12 even in a private area, even in the staging area where you're  
13 preparing your animals, no expectation of privacy. Even in  
14 your office, no expectation of privacy if you're talking loud  
15 enough to be overheard. They were talking loud enough to be  
16 overheard. And that's how the notes were written.

17 That's when the recording device was turned on.  
18 There was no plan. There was no hiding. The offer proof was  
19 that they walked down the hallway like they did every other  
20 time. Somehow, they weren't seen, and somehow, from that  
21 distance, they were able to hear this conversation, because it  
22 was so loud that it could be heard, that it could be picked up  
23 on a regular phone app, that it could be heard and notes  
24 taken.

1           Now, let's look at the bigger issue. The bigger  
2 issue, Judge -- and we're here once again solely trying to  
3 prevent the Court from knowing all it needs to know about the  
4 Defendant. While I believe the testimony of Dr. Holland will  
5 be quite illuminating as far as the tape recordings are  
6 concerned, she's here trying to prevent you from knowing that  
7 this wonderful husband of hers, who tells her what she has to  
8 and has to not testify to, and when you get to hear how she  
9 testified in her deposition, you'll know that what was written  
10 down in the notes is absolutely accurate, because she's being  
11 told, oh, no, you have to say you don't remember. That's what  
12 she said --

13           THE COURT: I --

14           MR. SMITH: Let me -- let me (indiscernible) the  
15 deposi -- the objection to Mr. Jones again referencing what he  
16 claims is in this tape recording, in defense of the motion in  
17 limine.

18           THE COURT: All right. I don't want to hear what's  
19 on the recording --

20           MR. JONES: I'm -- I'm not --

21           THE COURT: -- right -- my --

22           MR. JONES: -- talking about what's in the  
23 recording. I'm talking about what's in the notes.

24           THE COURT: And I wanted to -- I want --

1 MR. JONES: The notes that were taken --  
2 THE COURT: -- to make a decision --  
3 MR. JONES: -- contemporaneously.  
4 THE COURT: -- this morning, before we start with  
5 testimony, based on the recording itself, and not the notes.  
6 I think the notes are a much simpler issue --  
7 MR. JONES: And I think they are, too, Judge.  
8 THE COURT: -- and will be resolved should you even  
9 decide --  
10 MR. JONES: And -- and if --  
11 THE COURT: -- to introduce them.  
12 MR. JONES: -- the recording were offered, Judge, it  
13 would be solely to prevent further perjury about saying, no,  
14 we never said that, or I never said that. It's not -- it --  
15 it -- I guess it enhances the credibility of the notes, but if  
16 the notes were taken down contemporaneously, and they're  
17 offered as a recorded recollection, there's no way they're  
18 being kept out as far as being able to read them into the  
19 record. They don't come in as a -- as a document --  
20 THE COURT: This case has such interesting  
21 evidentiary issues. I want to make an -- and I revel in it,  
22 and I -- I look forward to the appeal from either side -- that  
23 I -- I want to make a clear determination as to the recording  
24 itself, and then -- for purposes of the record. And then make

1 a -- a clear determination.

2 MR. JONES: Well, then I'll -- I'll talk primarily  
3 about the recording, then, Judge. The -- it's simple. Okay?  
4 The statute, the criminal statute says that the conversation  
5 has to be private. If it could be heard from the distance  
6 that they were apart, it's not a private conversation. If it  
7 occurs in that hallway, it's not a private conversation. An  
8 example is, when we meet with our -- our clients, we go in the  
9 little anterooms to do it, not in the hallway. This idea that  
10 I guess in other cases, major conversations about the case  
11 between attorney and client are being done in the hallway is  
12 surprising to me, because I've never done it in my entire  
13 life. Because I wouldn't do it, because I would be afraid of  
14 just this.

15 Because it happens all the time, that somebody makes  
16 a statement against interests in the hallway, another lawyer  
17 hears it, and becomes a witness in the case, even though  
18 they're not related to the case whatsoever. Because you can't  
19 have that conversation so that people can actually hear it in  
20 that hallway, and expect that it's private. The fact that  
21 there is video camera, the fact that there could have been  
22 audio on that video camera, shows that there wasn't an  
23 expectation of privacy sitting in that hallway, not out on the  
24 balcony, not in an anteroom, but in that hallway. I'm sorry,

1 Judge, I've walked down that hallway and heard a lot of  
2 disturbing things, none of which would have ever been  
3 privileged if I were called as a witness. Because there is no  
4 expectation of privacy.

5 I mean, if you go through the case law that cite to  
6 these type of issues, the police put a -- and I understand --  
7 the cases I cited are all civil cases about whether or not the  
8 recording was proper, and whether or not the recording was an  
9 invasion of privacy. The invasion of privacy standard is much  
10 more appropriate for a civil context, rather than fourth  
11 amendment incrimination.

12 However, cases where the police have placed a  
13 recording device on a grave site, in the urn where the flowers  
14 are, and heard the family members conversations while they  
15 were visiting their dead child or grandchild, that was found  
16 not to be an improper recording because they didn't have a  
17 reasonable expectation of privacy at the grave stone. So this  
18 idea that you don't have a reasonable expectation of privacy  
19 in a private room -- and luckily, we have a couple of Nevada  
20 cases on point -- in a -- oh, geez, sorry. I didn't even know  
21 that that's on.

22 THE COURT: Are you recording us? Is that a  
23 recording of your dog barking?

24 MR. JONES: No. It's my phone ring.



1 MR. SMITH: The record reflect that that was a  
2 levity by the Court.

3 THE COURT: Oh, it -- yes, it was.

4 MR. JONES: It was levity by the Court.

5 MR. SMITH: (Indiscernible) anybody suggest  
6 (indiscernible) --

7 THE COURT: No, it was an attempt at levity.

8 MR. SMITH: Thank you, Your Honor.

9 MR. JONES: Well, you know, in my opinion, the  
10 conversations we're having right now, which are being  
11 recorded, are the same type of conversations as far as what we  
12 could expect to be privileged as out in that hallway. Because  
13 you don't have an expectation of privacy in that hallway.  
14 It's just that simple.

15 There's no case law cited by the Defendant that  
16 supports the contention that you could have a conversation  
17 loud enough for people to hear 10 or 15 feet down the hallway,  
18 in a public place, and expect them to be private. I mean, the  
19 case -- the employment case that I cited, Kemp versus Block,  
20 people are having an argument at work, two individuals.  
21 Another employee grabs his recording device and records the  
22 argument. They didn't have an expectation of privacy. The  
23 recording was found not to be improper. The guy was sued for  
24 invasion of privacy, the Court denied the claim. Because when

1 you have a conversation where other people can hear, it is not  
2 private under the statute.

3 And that's -- when we talk about the statute, it has  
4 to be private. And if I have a conversation with my wife loud  
5 enough for third parties to hear, it's not privileged, it's  
6 not private, particularly if I'm in that hallway.

7 THE COURT: Thank you.

8 MR. JONES: There's no authority that supports the  
9 position the Defendant takes. The Defendant just says, well,  
10 gee, it would be wrong if you were to punish people for being  
11 dumb enough to have a private conversation in a public place,  
12 loud enough for third parties to hear. That's not the  
13 standard, Judge.

14 The standard is whether or not they believed -- or  
15 that they reasonably had an expectation of privacy,  
16 objectively, not subjectively, which is where you come in and  
17 make the decision. And that it was loud enough and in a  
18 public place for people to hear it, take notes on it, and  
19 record it. You just can't get past that set of facts to find  
20 that there recordings could somehow be improper because the  
21 word private is inherent in the statute. That's the key  
22 factor.

23 You can record anything you want that's not private,  
24 whether you're a party to the conversation or not. That's

1 what the statute says. This was not a private conversation.  
2 It was loud enough to be heard. And if you needed to hear the  
3 testimony that it was loud enough to be heard, how else would  
4 they know to -- how else would he know to turn on the  
5 recording device if he didn't already hear the conversation  
6 starting?

7 THE COURT: Thank you. Counsel?

8 MR. SMITH: The -- Your Honor, what's missing from  
9 that discussion is the language of the statute does not  
10 include the overtones of either the privacy statutes or the  
11 fourth amendment cases. It just simply says private  
12 conversations. So we have to provide the definition for  
13 private within the facts and circumstances.

14 What's also not mentioned by Mr. Jones, and it is in  
15 all the cases he's cited, they go back to the Supreme Court  
16 standard of what constitutes a private conversation with both  
17 subjective and a reasonable objective determination of  
18 privacy.

19 Here, you would have to have a factual findings in  
20 regard to the nature of the conversation, what was had in the  
21 conversation.

22 But I would submit to Your Honor the facts, as the  
23 way this came down, were that it wasn't offered as testimony.  
24 It was offered as a recorded recollection. And again, I would

1 welcome the Court to look at the statute regarding recording  
2 recollection. It's a -- a exception to the hearsay rule. And  
3 it's only an exception when the exhaust -- we exhaust the  
4 knowledge of the individual in regard to the conversation they  
5 claim to have overheard.

6 I don't believe it's appropriate, as they've done,  
7 is to submit first the recorded recollection, and it -- it  
8 just indicates that what they've done is they've taken their  
9 tape, which now Mr. Jones admits his own client didn't tell  
10 him about, and he certainly didn't tell the Court about.  
11 Because I think that would have been a very different  
12 conversation on that day, that they would have said, yeah, we  
13 taped them in the hallway.

14 So we believe that it was purposely prevented from  
15 -- the Court from knowing that. This idea of the recorded  
16 recollection, which was later filed with the Court, which we  
17 think was inappropriate.

18 And then we have, after that, the tape recording. I  
19 think the tape recording is probably more sensitive than the  
20 human ear. I can -- I believe that we can show, if we're --  
21 have to present facts on this, that I can pick up a  
22 conversation standing probably way in the hall, into hear,  
23 that I can pick up that conversation.

24 So even if -- or even if that door's open, and that

1 door opens and you're having a private conversation with your  
2 clerk out there, I'm confident that with a recording device, I  
3 can catch that conversation. The question is here, under the  
4 facts and circumstances associated with this case, this was a  
5 -- this was something that was subjectively private. I don't  
6 think there's any question about that.

7 But the question, when they don't see the  
8 individuals, they don't understand that anybody's taping them,  
9 they're having a conversation about something that's private  
10 between husband and wife, that that's a conversation that  
11 somebody can not only record, but attempt to record.

12 What we want to stop is people opening up their  
13 recording devices. In all the examples Mr. Jones gave, they  
14 had nothing to do with tape recordings. They had to do with  
15 individuals who are standing next to individuals, overhearing  
16 what those individuals were saying.

17 All of the examples he gave, including the one where  
18 he was sued. That's not what happened here. They took out a  
19 recording device. And then not near enough, in my client's  
20 view, to even know that they were being taped, they tape  
21 recorded a conversation. That's not what Mr. Jones had  
22 testified about.

23 So, Your Honor, we believe that this is a matter  
24 that absolutely should -- the Court should look at the facts

1 and circumstances, and I think the Court should just not allow  
2 it, unless the Court is now going to say that all  
3 communication that occurs in this courthouse, even -- and  
4 those anterooms are not private. If I stand outside of an  
5 anteroom with that recorder, I'm confident I can get what's  
6 being said on that recorder.

7 In fact, I'm confident that when you're sitting in  
8 that back row, I can hear what's going on in the anteroom, if  
9 people raise their voice to a certain level. So if we're  
10 going to claim that everywhere in this courthouse is not a  
11 chance where you have to speak privately with anyone, then so  
12 be it. I'll -- you know, I'll accept that's the -- the  
13 opinion of the Court. But I don't think that should be the  
14 opinion.

15 First of all, we don't even need it. The allegation  
16 here is that somehow, it's going to change testimony that  
17 hasn't been given. I -- that, to me, is the most ludicrous  
18 part of it. You'll have an opportunity to hear her, just as  
19 you could judge the good faith or credibility of Mr. Abid,  
20 you'll have the same opportunity with Ms. Abid when she  
21 testifies.

22 If Mr. Jones asks her a series of questions that you  
23 believe reasonably or objectively she should know the answer  
24 to and she says, I don't remember, then you'll be able to

1 judge that without any tape recording. You'll be able to --  
2 to determine the merits and the credibility of her testimony.  
3 You don't need to be told what's being said to you.

4 And this is -- the final comment I'll make is the  
5 final -- the comment that I've said before to this Court.  
6 You're going to get a lot of this being in your first year of  
7 being a judge. And that is -- well, first and a half, I guess  
8 -- is that -- that -- is that people tell you other Courts do  
9 it a different way. That should never be part of your  
10 consideration.

11 It hasn't been in any of my experience of you, and  
12 I've heard it now happen not only in this case, but twice  
13 other in other cases I've been involved with. And I think the  
14 Court in this case should take the same tack. It should be  
15 based on the facts and the circumstances of this case, not  
16 somebody tells you --

17 THE COURT: Counsel, you know I don't care what  
18 another district Court does.

19 MR. SMITH: I do know.

20 THE COURT: And I don't think Mr. Jones --

21 MR. SMITH: And I understand that, but --

22 MR. JONES: I wasn't -- and I wasn't saying --

23 THE COURT: I don't think Mr. Jones thinks I care --

24 MR. SMITH: I want to comment for the record,

1 because I think alluding to -- I believe that it's unethical  
2 to allude to the decisions in even other District Court cases.  
3 I think that -- that may have now been tempered by the idea  
4 that even unpublished decisions can be identified. But I -- I  
5 just think it's an improper way of arguing a case.

6 THE COURT: Okay. I think that there are, no matter  
7 -- I -- and I told you before, I -- I look at these issues  
8 separately. The recorded recollection, as a written down  
9 notes, at -- written at the -- the time of the events, are one  
10 issue. And we will deal with that issue when we get to that  
11 issue.

12 As to the recording, I think that I have to make  
13 some factual findings first regarding the nature -- and I  
14 certainly can take judicial notice as to the geography of the  
15 hallway, certainly, as we've all walked out there many times.  
16 But I do need some factual foundation, and would make some  
17 factual findings based on some of the offers of proof we've  
18 had today, as to what time it was, the date, the -- where the  
19 parties were seated, if there were any other people in the  
20 hallway, all of those things.

21 Once I am able to make those factual findings, I --  
22 and the tape is offered, if -- if it needs to be offered, it  
23 may not need to be offered, and the manner in which it's  
24 offered as a prior inconsistent statement, as a standalone



1 evidence, I don't know, in whatever manner Mr. Jones seeks to  
2 offer it, then I'll make a determination as to this issue. I  
3 just think that I need some additional facts to make the  
4 appropriate decision that will be helpful to the parties in  
5 future reviews. So that being said, Counsel, you can continue  
6 with your witness.

7 MR. JONES: I would call Angie Abid, Your Honor.

8 THE COURT: Okay.

9 MR. SMITH: Let me just say, as a housekeeping  
10 matter --

11 THE COURT: Certainly.

12 MR. SMITH: -- and I don't know if this has gotten  
13 to the Court yet, but Mr. Jones had advised me that Dr.  
14 Holland was not available until the 25th of this month.

15 MR. JONES: Well, actually, the Court had the 25th  
16 available, and I made sure Dr. Holland was available on the  
17 25th, and they -- they've reserved the day for us on the 25th.

18 THE COURT: I --

19 MR. SMITH: Right. I just want to -- I want to  
20 state that on the record so that we know that Dr. Holland is  
21 not going to testify in the next two days, but she instead is  
22 scheduled to testify on the 25th.

23 THE COURT: My office did receive information from  
24 Mr. Jones that his expert was unable to testify on the days I

1 had set aside. But I did have the 25th open, although it's  
2 supposed to be my out of court date because we don't have  
3 enough court staff, and Judge Hoskins will be very upset with  
4 me, I've set it for the 25th.

5 MR. SMITH: Okay.

6 MR. JONES: And it's the Court's witness, not -- not  
7 mine, as well --

8 MR. SMITH: Okay. Well, then let me just say this.  
9 That I am not available on the 25th.

10 THE COURT: Oh, okay.

11 MR. SMITH: So if the Court is going to have that  
12 hearing, it's going to have to be conducted by another lawyer --  
13 attorney in my office. I think that would greatly prejudice  
14 --

15 THE COURT: Counsel, is there another date that  
16 works for you?

17 MR. JONES: I -- I have --

18 THE COURT: I -- I was unaware --

19 MR. JONES: -- email from your staff --

20 THE COURT: -- that it was --

21 MR. JONES: -- from Friday, saying you're available  
22 --

23 MR. SMITH: Oh, is it Monday? That's Monday, isn't  
24 it? I take that back. I'm -- I am available that Monday.

1 MR. JONES: Yeah. I spoke to you --

2 THE COURT: Of course I never would have set it on a  
3 date --

4 MR. SMITH: I -- right. No, I am available that  
5 Monday. I'm thinking it was Friday, it's not, it's Monday. I  
6 was doing the math in my head. That's right.

7 THE COURT: All right. I'm sorry, Counsel.

8 MR. SMITH: It is -- it is available.

9 THE COURT: All right.

10 MR. JONES: Right. Because I would --

11 MR. SMITH: It is available.

12 MR. JONES: -- I wouldn't have told the Court that  
13 we could do it on the 25th --

14 MR. SMITH: I was -- I was thinking it was a Friday.  
15 That Friday, I'm not available. Monday, I am.

16 THE COURT: Wonderful.

17 MR. JONES: Very good.

18 THE COURT: Counsel, Angie Abid?

19 MR. JONES: Yes.

20 (PAUSE)

21 THE COURT: Ma'am, come on up here to the witness  
22 stand, remain standing, and raise your right hand to be sworn.

23 THE CLERK: You do solemnly swear the testimony  
24 you're about to give in this action shall be the truth, the

1 whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. And for purposes of the  
4 record, can you please state and spell your first and last  
5 name?

6 THE WITNESS: Angela, A-n-g-e-l-a Abid, A-b-i-d.

7 THE CLERK: Thank you.

8 THE COURT: You can have a seat, ma'am. Thank you.  
9 Go ahead, Counsel.

10 MR. JONES: Thank you, Your Honor.

11 ANGELA ABID

12 having been called as a witness by the Plaintiff and being  
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JONES:

16 Q Ms. Abid, where are you currently employed?

17 A Desert Oasis High School.

18 Q And what is your position there?

19 A I'm a guidance counselor.

20 Q And how long have you been a guidance counselor?

21 A This is my fourth year.

22 Q Now, were you present in court on November 18th?

23 A I was here, in the hallway.

24 Q Yeah. Not in court, but --

1           A     Yes.

2           Q     -- at the courthouse --

3           A     Yeah.

4           Q     -- on November 18th. Do you recall what time --

5 well, did you come with Sean that day?

6           A     Yes.

7           Q     Do you recall what time you and Sean arrived?

8           A     Court started at 8:00. We were here, outside, about

9 a half an hour before that, so I want to say right at 7:30.

10          Q     If court started at 1:30 in the afternoon, it --

11 would that be consistent with your recollection as to when you

12 arrived?

13          A     Yes. I -- we came a half an hour before. We were

14 sitting in the hallway.

15          Q     When you arrived, did you walk down the hallway

16 outside of this courtroom, as you have every other time you've

17 come to court?

18          A     Yes.

19          Q     And Sean was with you?

20          A     Yes.

21          Q     Did you try to hide in any way as you were walking

22 down the hallway?

23          A     No.

24               MR. SMITH: Objection, relevance, this whole line of

1 questioning, Your Honor. How is this relevant to a claim of  
2 custody of a minor child, as to whether or not they were here  
3 before a hearing?

4 THE COURT: Counsel, are you trying to lay the  
5 foundation for the recording?

6 MR. JONES: Yes. And the --

7 THE COURT: I'll allow it.

8 MR. JONES: -- recorded recollection.

9 THE COURT: Go ahead.

10 MR. JONES: I'm basically answering the questions  
11 the Court has, I think.

12 BY MR. JONES:

13 Q Did you try to hide in any way as you were walking  
14 down the hallway?

15 A No.

16 Q Did Sean try to hide in any way?

17 A No.

18 Q When you turned the corner and began walking down  
19 the hallway, did you see Lyuda and Ricky?

20 A Yes.

21 Q Where were they seated?

22 A In relation to what? Because they were just --

23 Q In relation to this courtroom, let's just say.

24 A They were down a couple of -- so it wasn't right

1 across, it was a couple down.

2 Q Would it have been between the two doors that exit  
3 to the balcony?

4 A Yes.

5 Q And where did you and Sean sit?

6 A When we walked up and saw them, there was -- there  
7 was them, a partition, and then we sat on the side, there were  
8 about two seats on the other side of the partition.

9 Q So on the far side of the partition, right outside  
10 of the doors to the balcony?

11 A Yes.

12 MR. SMITH: Judge, I'm going to stand up. I can  
13 hear you. I'm just going to look in the hallway, because I'm  
14 just curious.

15 THE COURT: Absolutely. Go ahead.

16 MR. SMITH: Okay. Go ahead. I can hear you.

17 MR. JONES: Oh, I'll wait.

18 MR. SMITH: No; no; no. Go ahead, please.

19 MR. JONES: I -- I would hate to go forward without  
20 him being present.

21 THE COURT: He's just peeking.

22 MR. SMITH: I can hear you. It's fine. Go ahead.

23 THE WITNESS: Can I take my coat off?

24 THE COURT: Mr. Smith, the witness asked if she

1 could remove her (indiscernible).

2 MR. SMITH: I heard it. I heard it.

3 THE COURT: Go ahead.

4 BY MR. JONES:

5 Q Now, while you were sitting there, prior to my  
6 arrival, were you able to hear a conversation taking place  
7 between Lyuda and Ricky?

8 A Yes.

9 Q Was it loud enough that you could take notes and  
10 record what was being said?

11 A Yes.

12 Q Did you attempt to record the conversation on your  
13 telephone?

14 A Yes.

15 Q Were the notes taken solely based upon what you were  
16 hearing --

17 MR. SMITH: Objection, leading.

18 THE COURT: I'll allow it.

19 BY MR. JONES:

20 Q Were the -- were the notes taken based upon what you  
21 were hearing, rather than based upon what the recording was?

22 A Yes.

23 Q Do you recall, as you sit here today, exactly what  
24 was said in the conversation?



1 A Yes.

2 Q Do you recall hearing Ricky -- or what did you hear  
3 Ricky say to Lyuda?

4 A Well, when we first walked up, we sat down, I  
5 assumed they had seen us, and I heard them talking about  
6 something with the counselor. And so we kind of looked at  
7 each other like, okay, maybe they must not have seen us. And  
8 then I pulled out my phone and started typing -- I was  
9 dictating on my notes what I was hearing. They were talking  
10 about Sasha being in counseling at school, and about how -- it  
11 was something about the signature page, and how Ricky was  
12 telling Lyuda that she should be more forceful, and she should  
13 tell the counselor that she has every right to know what's  
14 going on, this is unheard of, why aren't you saying this to  
15 the counselor? And then Lyuda would -- she said she didn't  
16 want to cause the counselor more stress. And then Ricky's  
17 like, no, you have every right. And so at this point, I'm --  
18 I'm trying to dictate what I can hear, but --

19 THE COURT: Hold on. What does the word dictate  
20 mean to you?

21 THE WITNESS: Oh, I was typing on my phone.

22 MR. JONES: Okay.

23 THE COURT: Okay.

24 BY MR. JONES:

1 Q Dictate typically means you're speaking into  
2 something.

3 A Oh, sorry. Okay. Sorry.

4 Q You were trying to transcribe?

5 A I was transcribing, yes.

6 Q Okay.

7 THE COURT: You -- so you were typing notes on your  
8 phone?

9 THE WITNESS: Yes. And then at that point, we  
10 decided to record it, because there was a lot being said that  
11 --

12 BY MR. JONES:

13 Q Do you recall what, if anything, Ricky said to Lyuda  
14 about her testimony at trial?

15 A Yes. He had said something like, they're probably  
16 going to ask you about the times in your deposition when you  
17 said you don't recall. And so then -- it sounded like she was  
18 reading something, like maybe she was reading the deposition.

19 She would read the questions, and then he would say,  
20 no, you said this, this is how you need to answer. And then  
21 she would say, no, I think I should answer like this, and then  
22 he would say, no, you need to say you don't recall, that's how  
23 you said it in the deposition.

24 Q Did you hear any portion of a conversation that

1 dealt with her obtaining counseling?

2 A Yes.

3 Q What -- what was said?

4 MR. SMITH: I'm going to say, it's leading, but --

5 THE COURT: I'll allow it.

6 THE WITNESS: One of the questions that it sounded  
7 like she was reading from the deposition is, do you think you  
8 need counseling. And she said, no, I absolutely don't need  
9 counseling, there's nothing wrong with me. And then he said,  
10 no, you need to answer exactly the opposite of you don't need  
11 help. You say, yes, I need help. And then he even said  
12 something like, and then we come back in a year, and you get  
13 your custody back. It's not brain surgery.

14 BY MR. JONES:

15 Q Did -- what, if anything, did Ricky say to Lyuda  
16 about being candid with the Court?

17 MR. SMITH: Objection, leading, again.

18 THE COURT: Allow it.

19 THE COURT: Can you ask that again?

20 BY MR. JONES:

21 Q What, if anything, did Ricky say to Lyuda about  
22 being honest with the Court?

23 A He -- I don't know exactly what you're referring to.

24 Q Okay. If you don't recall, that -- that's fine.

1 A No, I don't.

2 Q Did Ricky tell Lyuda anything that would lead you to  
3 believe that he was instructing her to deceive the Court?

4 A Yes.

5 Q What did he say?

6 A He -- when she would say how she wanted to answer,  
7 he would say, no, you say it like this. You say, I don't  
8 recall. You say, I don't remember.

9 Q What, if anything, did Ricky say about whether she  
10 should keep the -- keep the judge guessing?

11 MR. SMITH: Objection, leading.

12 THE COURT: I'll allow it.

13 THE WITNESS: Ask me -- ask again? Sorry.

14 BY MR. JONES:

15 Q What, if anything, did Ricky say about whether or  
16 not she should be honest with the Court, or keep the Court  
17 guessing?

18 A Oh, he was -- he was telling her -- this part was  
19 hard to understand. I didn't get what he was saying. But he  
20 was saying something like that he thinks Lyuda talks too much,  
21 and that she needs to be silent. And the more you talk, the  
22 less power you have, and they need to make -- he said  
23 something about making a whole the size of the Grand Canyon,  
24 and keep them guessing.

1           And he kept saying, make them dig the hole. You  
2 don't dig the hole.

3           Q     Did Ricky give her any instructions about answering  
4 questions, such as whether or not she ever read text messages  
5 from Sean to her to -- to Sasha?

6           A     Yes.

7           Q     What did he say?

8           MR. SMITH: Again, the same objection. Leading.

9           THE COURT: I'll allow it.

10          THE WITNESS: She was reading a question, and it  
11 said, do you ever read text messages to Sasha from Sean, and  
12 she started to say no. And then -- and then she said, but  
13 then, if I say no, the tape has me saying it, so -- and then  
14 he's like, then you just say you don't recall.

15          MR. JONES: I don't have any further questions, Your  
16 Honor.

17          THE COURT: Counsel, anything?

18          MR. SMITH: I move to strike as irrelevant. I don't  
19 know how that testimony has anything to do -- first of all,  
20 she -- she didn't even testify as to anything that Lyuda said,  
21 except that she wants to answer the questions. It has no  
22 relevance to the determination of whether or not it's in the  
23 best interest of the child to be in Lyuda's.

24                I just don't understand how it's relevant to

1 anything that's happening in this case, so I'd move to strike  
2 the testimonies.

3 THE COURT: I'm going to allow the testimony. Do  
4 you have any questions for her, Counsel?

5 MR. SMITH: I do. And I assume this is her  
6 presentation in the case; is that correct, Your Honor?

7 THE COURT: I --

8 MR. SMITH: Because there's no other questioning  
9 other --

10 THE COURT: -- I am making the -- the same --

11 MR. SMITH: Okay. All right.

12 THE COURT: -- assumption.

13 CROSS EXAMINATION

14 BY MR. SMITH:

15 Q The -- in regard to the conversations you had with --  
16 - excuse me -- the -- the conversation you had with Sean in  
17 regard to taking down the information -- well, strike that.  
18 Have you ever been present when you -- when you and Sean have  
19 had a conversation with Sasha about this case?

20 A No.

21 MR. JONES: Objection, beyond the scope.

22 MR. SMITH: I --

23 THE COURT: I'll allow it.

24 BY MR. SMITH:

1 Q Did Sean -- have you ever been present at any time  
2 when Sean has mentioned to Sasha that the Court is going to  
3 make a decision about where he lives?

4 A No.

5 Q Have you ever told him that?

6 A No.

7 Q Have you recorded any other conversations, other  
8 than the one in the hallway, between Mr. Marquez and Lyuda?

9 A No.

10 Q Have you taken any other recordings of Lyuda?

11 A No.

12 Q The notes that you said that you were taking, were  
13 those an accurate representation of what was said during the  
14 conversation that you overheard?

15 A Yes, as quickly as I could type. I was -- it was  
16 close to what I'd heard, yes.

17 Q But you would agree that what you testified to today  
18 is beyond the information that was contained in your notes,  
19 correct?

20 A Yes.

21 Q And in fact, part of that was spurred by your  
22 recollection when you reviewed the audiotape, correct?

23 A In part, yes.

24 Q Yeah. And so after you reviewed the audio --

1     audiotape, you -- you understood the conversation that  
2     occurred more accurately?

3             A     It validated what I'd heard, yes.

4             Q     Right. And --

5             A     I --

6             Q     -- that -- that accuracy that you validated with the  
7     videotape is what you've testified here today?

8             A     Yes.

9             THE COURT: Was it -- I -- I think you meant to say  
10    audiotape, and I only want to correct you, Counsel, just so  
11    that we're clear.

12            MR. SMITH: No, let me restate the question just so  
13    it's --

14            THE COURT: Okay. I'm sorry.

15            MR. SMITH: -- I -- the Court is right. I didn't  
16    say that properly.

17            THE COURT: I don't want to -- I don't want to --

18            MR. SMITH: No; no. The Court is correct.

19    BY MR. SMITH:

20            Q     The -- the -- the conversation was made clearer in  
21    your mind, your recollection, after you -- you heard the  
22    audiotape of the recording?

23            A     Well, it was already clear in my mind, but yes. I  
24    -- what was in the audio also helped to make it clear, yes.



1 Q Okay. And the audiotape, you couldn't really hear  
2 everything that was being said by Lyuda and Ricky, correct?  
3 A Not everything, no.  
4 Q And that was true when you overheard them. You  
5 couldn't hear everything that they said?  
6 A I could hear more in person than I could in the  
7 audio.  
8 Q Okay. But you couldn't hear everything they said.  
9 A Yes.  
10 Q Yes, you could not?  
11 A Yes, true. I could not.  
12 Q Okay. But you could hear -- on the videotape, you  
13 were able to confirm those parts that you did hear, correct?  
14 A Yes.  
15 Q Okay. And that testimony -- or that -- hearing that  
16 -- the audiotape includes the testimony that you gave today  
17 that was beyond the written statement -- or the recorded  
18 recollection, as Mr. Jones likes to --  
19 A Yes.  
20 Q -- talk about it? All right. Where were you --  
21 well, you would agree, Ms. Abid, that Lyuda and Ricky could  
22 not see you from where you were located, correct?  
23 A We could see them, so I don't know how they didn't  
24 see us.

1 Q Well, they were -- you were on the same side of the  
2 aisle, correct?

3 A Uh-huh (affirmative). Yes.

4 Q Okay. And in between you was one of those barriers,  
5 correct?

6 A Yes.

7 Q All right.

8 THE COURT: Counsel, would you clarify what the  
9 barrier is for the record?

10 MR. SMITH: The -- the barrier, just so you know, is  
11 -- is on these seats, and that's kind of why I went outside.  
12 Because I want to make sure where the barriers were.

13 THE COURT: I just want to make the -- I want the  
14 record to be clear.

15 MR. SMITH: Okay.

16 BY MR. SMITH:

17 Q So there are seats along the side of the hallway, do  
18 you recall that?

19 A Yes.

20 Q And in between, at certain intervals, about every 15  
21 or 20 seats or so, there's a large concrete abutment that  
22 sticks out from the wall?

23 A Yes.

24 Q Okay. And if you're sitting in a seat near that

1 abutment, it's true that you cannot see the other seats that  
2 are on the opposite side of that abutment, correct?

3 A Yes. But -- but I could see them. I could see  
4 their feet.

5 Q You could see their feet?

6 A Yeah.

7 Q Okay. And did you make any noise to let them know  
8 that you were near them?

9 A No. But --

10 Q Were you two speaking loud enough so they would be  
11 able to hear you, to -- to know that they were speaking?

12 A We walked --

13 Q That's a question --

14 A Oh --

15 Q Were you speaking loud enough to let them know that  
16 you could hear them?

17 A Yes. When we first walked up, we were talking  
18 normally, so --

19 Q Okay.

20 A -- yes.

21 Q Did you -- did you ever advise either Ricky or Lyuda  
22 that you were audiotape -- making an audiotape of them?

23 A No.

24 Q Did you ever advise them that you were -- you were

1 close enough to hear them?

2 A No.

3 Q You did not know what was going to be said on the  
4 audiotape when you began to tape them, correct?

5 A Well, I knew what I'd already heard, so I was  
6 assuming it would be more that -- like that.

7 Q What you already heard was a conversation between  
8 the two about the counseling of the -- of the child at school,  
9 correct?

10 A Yes.

11 Q And it's your understanding that that counseling was  
12 sought and received at the behest of your husband, without the  
13 knowledge and consent of Ms. Abid, correct?

14 A I -- I think the principal actually recommended it.  
15 The principal recommended it to Sean, and he -- he didn't know  
16 that there was a group, and then he said yes.

17 Q Okay.

18 MR. SMITH: Going to move to strike with --

19 THE COURT: All right.

20 MR. SMITH: -- as it's not responsive.

21 THE COURT: So --

22 BY MR. SMITH:

23 Q So the question is --

24 THE COURT: Really specific answer to -- to his

1 question.

2 BY MR. SMITH:

3 Q -- you knew at the time that you heard this  
4 conversation between Ricky and Lyuda about counseling for the  
5 child, that they were referring to counseling at the school,  
6 correct?

7 A Yes.

8 Q And you knew prior to that time that your husband,  
9 Mr. Abid, had asked for that counseling without the knowledge  
10 and consent of Lyuda, correct?

11 A Well, I guess that's where my answer's no. Because  
12 he didn't ask for the counseling.

13 Q Okay.

14 A It was suggested --

15 Q So --

16 A -- to him.

17 Q Okay. It was suggested to him, and then he said to  
18 go ahead with it?

19 A Yes.

20 Q That's your understanding?

21 A Yes.

22 Q Okay. That's okay. And did you know -- did you  
23 know that Sean signed a form to permit that counseling?

24 A I found that out through this, yes.

1 Q Okay. But did you know at the time that you  
2 overheard this conversation between Lyuda and Ricky about  
3 counseling that he had signed that form?

4 A Yes.

5 Q Okay. So you overheard a conversation in which they  
6 were talking about counseling that had been imposed upon the  
7 child, and they were talking about -- and Mr. Marquez was  
8 saying to her that, I think you should be more assertive about  
9 that this was wrong, because it wasn't done with your consent,  
10 that that was sufficient for you to determine that the  
11 information that was going to be stated by these two was going  
12 to be something that you needed to record, correct?

13 A No. That's -- the way that you said that's not  
14 correct.

15 Q Well, isn't it true that the conversation that  
16 occurred before you hit that recorder was the conversation  
17 about the counseling, correct?

18 A Yes.

19 Q And that's what you understood at the time that you  
20 decided to take the recording?

21 A Yes.

22 (COUNSEL AND CLIENT CONFER BRIEFLY)

23 Q Have you ever recorded anyone else in a context of  
24 this -- this case?

1 A No.

2 Q Have you ever recorded any of the probation  
3 officers?

4 A No.

5 Q Didn't you, in fact, take a recording of Scott Riden  
6 (ph) --

7 A No, I did not --

8 Q -- Biden (ph), excuse me. You never made a  
9 recording? Did --

10 A I was sitting in the car --

11 Q You were sitting in the report when Sean made the  
12 recording? Is that the idea?

13 A No. No. I was sitting in the car when he was  
14 speaking with him, so I heard everything in the car audio.

15 Q Did you ever present with -- Dr. Paglini with a tape  
16 of that conversation?

17 A I did not, no.

18 Q Okay. Do you know if Sean did?

19 A No.

20 (COUNSEL AND CLIENT CONFER BRIEFLY)

21 Q Did you and Sean check the door to see if it was  
22 open, in the courtroom, before the hearing?

23 A Which hearing?

24 Q The hearing that you were -- right before you --

1 when you took the tape recording. Did you check this door if  
2 -- to determine whether or not any of the anterooms were  
3 available?

4 A No.

5 Q Could you, from where you were seated -- you were  
6 seated in front of the smoking area, correct?

7 A Yes.

8 Q Okay. So you couldn't -- well, I'm -- that's a part  
9 I'm -- that I'm a little bit confused about. So who was --  
10 here's the -- there's a smoking area outside where there's  
11 glass, right? Yes?

12 A Yes.

13 Q Okay. Who was sitt'd -- sit -- seated in front of  
14 the smoking area?

15 A So when you're looking at it, they would have been  
16 to the --

17 MR. JONES: Do you want to do a view?

18 THE COURT: No.

19 BY MR. SMITH:

20 Q Go ahead.

21 THE COURT: It was another appellate issue. Forget  
22 it.

23 BY MR. SMITH:

24 Q Go ahead. Do you recall -- do you recall who was



1 seated where? Were you seated in front of the smoking pit, or  
2 were Ricky and Lyuda sitting in front of the smoking pit?  
3 A If I'm thinking of the correct door, it's -- they  
4 were on one side of it, and we were on the other.  
5 Q Okay. So neither of you could see into the smoking  
6 pit, correct?  
7 A Correct.  
8 Q So you don't know if there were individuals standing  
9 in the smoking pit, correct?  
10 A Correct.  
11 Q Okay. And in the hallway, there was no one else in  
12 the hallway, correct?  
13 A False. There were other people in the hallway.  
14 Q Okay. What was the closest person to Lyuda and  
15 Ricky --  
16 A Right across --  
17 Q -- other than you --  
18 A -- from them there was a man sitting, and then on  
19 the other side of us, there was -- there were people sitting.  
20 Q Who were the people on the other side of you?  
21 A One of them was actually a nur -- a school nurse,  
22 and it was her brother-in-law.  
23 Q Did you overhear their conversation?  
24 THE COURT: Whose brother-in-law? You said her

1 brother-in-law. Who's her?

2 THE WITNESS: Our school nurse's brother-in-law was  
3 sitting next to us. We heard them -- he said his name, and  
4 then my husband was like, oh, do you know our school nurse?  
5 So he was sitting to our right?

6 BY MR. SMITH:

7 Q How far?

8 A There were probably three seats between us.

9 Q And you could see them?

10 A Yes. They were --

11 Q Because there was no barrier.

12 A -- they were in the same barrier area.

13 MR. SMITH: Okay. That's all I have.

14 THE COURT: Counsel, anything else?

15 MR. JONES: Yeah, just briefly.

16 REDIRECT EXAMINATION

17 BY MR. JONES:

18 Q Did -- at any time during the conversation that you  
19 heard, did Ricky raise his voice at Lyuda?

20 A Yes.

21 Q More than once?

22 A Yes.

23 Q And did your review of the audio recording confirm  
24 that the notes that you took were accurate?

1 A Yes.

2 MR. JONES: I have nothing further, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. SMITH:

5 Q So when you heard Ricky raising his voice to Lyuda,  
6 he was saying -- he was saying, essentially, testify  
7 consistently with your deposition, correct?

8 A Yes.

9 MR. SMITH: No further questions.

10 THE COURT: All right.

11 MR. JONES: I -- I do have a followup on that.

12 THE COURT: Go ahead.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. JONES:

15 Q Did Lyuda say she wanted to testify contrary to her  
16 deposition?

17 A Yes.

18 Q So is that what they were fighting about?

19 A Yes.

20 MR. JONES: Nothing further.

21 FURTHER RECROSS EXAMINATION

22 BY MR. SMITH:

23 Q In fact, what Lyuda had indicated was that since the  
24 time of the deposition, she had realized certain things, and

1 that she wanted to answer those things, as opposed to the I  
2 don't recalls that she answered in her deposition, correct?

3 A Can you rephrase that? I feel like I'd be  
4 speculating about what she --

5 Q So in other words, what Lyuda was saying -- what  
6 Ricky was saying was, look, answer as you did in your  
7 deposition. Lyuda's saying, no, no. I know the answer to  
8 that question, correct?

9 A Yes.

10 Q Thank you.

11 MR. SMITH: No further questions.

12 MR. JONES: Nothing further.

13 THE COURT: Thank you so much. We appreciate your  
14 testimony. Counsel, call your next witness.

15 MR. JONES: I would call Sean again.

16 THE COURT: Sir, come on up to the witness stand,  
17 raise your right hand to be sworn.

18 THE CLERK: You do solemnly swear the testimony  
19 you're about to give in this action shall be the truth, the  
20 whole truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. And for purposes of the  
23 record, could you please state your first and last name?

24 THE WITNESS: Sean Abid.

1 THE CLERK: Thank you.

2 THE COURT: Go ahead, Counsel.

3 MR. JONES: Actually, Your Honor, I think I'd rather  
4 call the Defendant before I call my client. Sorry.

5 THE COURT: All right.

6 MR. SMITH: I think when you call a witness, you  
7 should call a witness. But -- and so I'll have that objection  
8 for the record. But --

9 MR. JONES: Okay. I'll -- you know what? I'll --  
10 I'll ask him one question, I'll have him sit, and I'll recall  
11 him.

12 MR. SMITH: Call him as what? A rebuttal witness?

13 MR. JONES: I can take him on and off the stand as  
14 many times as I want during my case in chief.

15 MR. SMITH: I believe that's true.

16 MR. JONES: I've done it where I've called --

17 THE COURT: Now, Counsel --

18 MR. JONES: -- where I've called a witness to ask  
19 one question --

20 THE COURT: -- ask him the question you want to ask  
21 him, and then we'll call the Defendant.

22 MR. JONES: Actually, I'll just cover it right now.

23 SEAN ABID

24 having been called as a witness by the Plaintiff and being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. JONES:

4 Q Now, you spoke at length in the prior trial dates  
5 regarding the types of things that Sasha has said to you.  
6 Over the past few years, how have you coped with these types  
7 of issues?

8 A Started in July of 2013, I sought the help of a  
9 psychotherapist, Tricia Fox, she's an MFT. And so I've seen  
10 her weekly since then, to the -- to the current time.

11 Q And what types of issues do you see her for?

12 MR. SMITH: Objection. I don't believe Ms. Fox has  
13 been raised as a witness to this case?

14 MR. JONES: He -- she was named as a witness.

15 MR. SMITH: Is she going to testify?

16 MR. JONES: Doubt it.

17 THE COURT: Well, I'll allow it --

18 MR. JONES: I'm asking why he sought treatment.

19 THE COURT: Go ahead.

20 THE WITNESS: You said -- you're asking me the --  
21 the reason that I sought --

22 BY MR. JONES:

23 Q Yes.

24 A -- sought the treatment? Just to help me cope

1 better with something I felt was stressful, to keep my focus  
2 on doing the best that I can for Sasha, regardless. It didn't  
3 -- none of this is his creation, and that regardless of what  
4 happens, I try and do the best I can for him, and -- and --  
5 and dealing with things that arise day to day, week to week,  
6 just that in regards of it -- this case over the last three  
7 years, and just to keep me focused on his best interests and  
8 being the best father that I can be.

9 Q Has the treatment helped?

10 A It has. I -- I would certainly advocate it. I'm a  
11 counselor, so naturally, I believe in it. But being able to  
12 talk about how I feel, and how frustrated I feel, and -- and  
13 the hurt, it's a lot -- the deepest part of it is the hurt  
14 that -- that's associated with all of this, has been  
15 invaluable. And I'll continue to go, and -- and I would ad --  
16 I -- I -- it's been a godsend, to be honest.

17 Q Now, you were present at Lyuda's deposition, right?

18 A Yes, I was.

19 Q And you heard her responses to the questions that  
20 were asked?

21 A Yes.

22 Q What were your biggest concerns about her testimony?

23 A That -- just seemed to be continuing with refusal to  
24 accept adult levels of responsibility for the things she says

1 and does to her son, and to own her responsibility in his best  
2 interest. I didn't hear any of that, and I'm hearing things  
3 that -- she's saying, I don't recall, the things she clearly  
4 knows the answer to. And to me, ultimately, for her to move  
5 forward, she needs to acknowledge that she needs help, and she  
6 needs to take an honest look at -- at what she said. In -- in  
7 her definition (sic), it was hurtful, because she -- she just  
8 refused to own any responsibility.

9 Q Specifically, were there instances of her testimony  
10 in -- in which she stated she didn't recall of things that you  
11 believe she absolutely did know the answer to?

12 A Yeah. Virtually everything. She did know the  
13 answer to it. Specifically, the example of that she knows  
14 that she read text messages to Sasha. She knows she did that.  
15 Sasha told me that. And then she says, I don't recall. I  
16 don't remember. Or I don't remember saying disparaging things  
17 about me. You know you said them. Let's deal with that and  
18 move forward and get help.

19 Q Since the resolution of the prior litigation, have  
20 the instances of statements made by Sasha about what his  
21 mother says increased or decreased?

22 A Increased.

23 MR. SMITH: Again, this is hearsay, Your Honor. If  
24 we're going to have -- we had the child interviewed, and the



1 child had stated what he said. If they wanted the child  
2 interviewed again, they could have asked for it. They could  
3 have asked for the child to testify. They can't now talk  
4 about instances where the child has said something to the  
5 Father without doing one of those things, either having an  
6 interview or allowing the child to testify.

7 MR. JONES: He's already testified as to many of the  
8 things that the child said --

9 THE COURT: I was --

10 MR. JONES: -- the frequency --

11 THE COURT: -- waiting for the asked and answered  
12 objection.

13 MR. JONES: Well, but the frequency of -- all I  
14 asked about was the increase. I'm not asking about individual  
15 instances. We covered that.

16 MR. SMITH: Judge, those conversations happened in a  
17 different context, in which that was relevant because it was  
18 it was relevant to a subjective determination of the context  
19 in which he had (indiscernible). It has no relevance to the  
20 claim now before the Court, which is solely related to the  
21 best interests of the child. Those claims, whether they came  
22 in in a specific, particular instance, under an exception,  
23 cannot be viewed as part of an overall determination of the  
24 cust -- the care of the child. You can put anything in the

1 word of the child. This has become a common strategy of  
2 people who have no other evidence. They say, they child told  
3 me this, child told me that, child told me this. Those --  
4 that's why we have the process of either allowing them to  
5 testify, which is now common in our courts, or allowing them  
6 to be interviewed. And we had had an interview in this case.  
7 If they wanted him to be interviewed again, they should have  
8 asked for it.

9 THE COURT: Counsel, I'm assuming you're asking a  
10 next question because --

11 MR. JONES: I asked about the frequency, of the  
12 increase in incidence --

13 THE COURT: I'm going to allow the question as to  
14 frequency.

15 MR. JONES: It was just frequency, and I believe he  
16 already --

17 THE COURT: Go ahead.

18 MR. JONES: -- answered. But I'll ask it again,  
19 just so we're clear.

20 BY MR. JONES:

21 Q Has the frequency of statements made by Sasha that  
22 you would attribute to Lyuda increased or decreased, since the  
23 matter was resolved back in December of 2013?

24 A Increased --

1 MR. SMITH: Same objection, of course, Your Honor.

2 THE COURT: Okay.

3 BY MR. JONES:

4 Q Now, you and Lyuda were divorced when?

5 A February of 2010.

6 Q And after the divorce, how was your relationship  
7 with her daughter, Irena (ph)?

8 MR. SMITH: Irrelevance, Your Honor. And it's not  
9 admissible for the purpose unless we give a foundation as to  
10 the time.

11 THE COURT: Counsel, the relevance?

12 MR. JONES: Your Honor, it's relevant as to the  
13 Defendant's credibility, and the Defendant's bad faith, as you  
14 get to the further answers. This is more foundational than  
15 anything.

16 THE COURT: All right. I'll allow it briefly. Get  
17 there quickly.

18 THE WITNESS: It was -- it was good. Post divorce,  
19 I'd still pick her up from school, and do her homework with  
20 her for a period of time.

21 BY MR. JONES:

22 Q Was there a period of time when -- well, let me ask  
23 you this. How is that relationship now?

24 A There is no relationship. We don't have any

1 contact.

2 Q Why?

3 A That's -- that's what her -- her mother wanted.

4 Lyuda told me --

5 MR. SMITH: Objection, calls for speculation.

6 THE COURT: There's -- Lyuda told you --

7 MR. JONES: Lyuda told me isn't speculation.

8 THE COURT: I'll allow him to answer, and then I'll  
9 look at that objection.

10 THE WITNESS: She -- she told me --

11 THE COURT: Who told you?

12 THE WITNESS: -- that -- Lyuda --

13 THE COURT: Okay.

14 THE WITNESS: -- told me at the divorce that she  
15 would teach Irena to hate me.

16 BY MR. JONES:

17 Q Now, what if Lyuda, for the first time during these  
18 proceedings, testifies in the next 24 hours that she's willing  
19 to get therapy and help to -- to curb her badmouthing of you  
20 to Sasha? Do you think --

21 MR. SMITH: Objection, assumes facts not in the  
22 record. There's been -- at no point at this point that  
23 they've established that Lyuda has badmouthed the child to --  
24 or I mean (indiscernible) Sean to the child.

1 MR. JONES: I'm sorry, but then I was in a different  
2 courtroom on the 18th and 17th.

3 MR. SMITH: Again. Those -- those -- those comments  
4 had to do with his state of mind. They weren't offered for  
5 the purpose of the truth of the matter asserted in them. And  
6 now they're offered for the truth of what the child told.  
7 That's a different context.

8 THE COURT: Counsel --

9 MR. JONES: I -- I'm --

10 THE COURT: -- ask another question.

11 BY MR. JONES:

12 Q Do you think therapy will help for Lyuda?

13 A I don't think so, because just the act of take --  
14 you're receiving therapy doesn't mean that you're going to be  
15 contrite and open enough, and accept enough responsibility for  
16 their to be change. She's still in denial to this day that  
17 there is no problem, and the things that she said to Sasha are  
18 okay. And so she -- I don't know that just her being in  
19 therapy would -- would show that she has a correct amount of  
20 contrition and humility to take an honest look at her  
21 behavior, and how it affects Sasha. I don't think she's  
22 capable of acting in Sasha's best interest.

23 Q What do you think will happen if joint custody is  
24 maintained?

1           A     I think her behavior is going to get worse. Because  
2 right now, there's the threat of litigation, there's the  
3 threat of change of custody, this is the best she can do. And  
4 still, just last week, she told me that Sasha won't be  
5 participating in baseball in her custodial days. Because her  
6 husband made a death threat to me in the hallway and we filed  
7 a TPO, she made it so that we had to go to the police station  
8 to do exchanges. The threat wasn't made to her, the threat  
9 was made to me. So I -- I think the only thing keeping her  
10 from really resuming her came -- campaign in earnest is the --  
11 are these litigations.

12           Q     Did you make a request that the police station not  
13 be used for exchanges?

14           A     Yes, because I had to actually be late to work to do  
15 the exchange. She could have brought the child to my home,  
16 where my elderly mother cares for my youngest son. So she  
17 could have dropped the son -- my -- Sasha off at -- with my  
18 mom. And then -- she wouldn't have seen me, because I would  
19 have been at work. Instead, she made me wait to meet her at  
20 the police, 8:00 o'clock, on three occasions, and I'd be two  
21 and a half hours late to work. So -- and Sasha obviously is  
22 very confused about this, and why is this happening.

23           Q     Was the protective order that you obtained against  
24 Lyuda?

1           A     No. It was against Ricky, based on the threats that  
2 he made to my wife in the hallway on November 18th.

3           Q     So she could have done the exchanges at your house  
4 just without Ricky, right?

5           A     Yeah. And also, without me being there because I  
6 would have been at work. I wouldn't have been there, either.  
7 She was punishing me for filing a TPO, which she believes was  
8 based on lies. But sorry, if someone threatens my life, I'm  
9 going to file a TPO.

10          Q     What are you asking the Court to do in these  
11 proceedings, Sean?

12          A     I'm asking the Court to make a -- a judgment that's  
13 in Sasha's best interest, which I believe is primary custody.  
14 I -- I feel blessed that I have these five days with him  
15 during the week during school, and I think it's amazing that  
16 he's -- he flourishing like he is, in spite of all this. But  
17 I worry about him tremendously during breaks. This last  
18 period was awful. I worry about him over long periods during  
19 the summer. I just don't believe that he -- the -- the  
20 exposure to him is constructive when I'm not around. And I'm  
21 really worried that going forward -- he's in first grade. I  
22 can do all these things with him now, and I'm -- I'm able to  
23 fight off the -- the badmouthing. But I don't know how well  
24 I'm going to do as he gets older. I think primary custody --

1 I think I've shown my commitment as a father, to receive  
2 therapy, to seek help to be the best father that I can be, my  
3 actions as a father, and what I -- what I do with him on a  
4 daily basis show that I would be -- he's going to be -- he --  
5 as much protection as we can offer him as primary custody.  
6 Because that would allow -- it would minimize the damage that  
7 can be done, and has been done, and is being done.

8 Q And do you believe that a timeshare that reduces the  
9 amount of time that Sasha is exposed to this type of stuff is  
10 the answer?

11 A I believe it's the only answer. I actually believe  
12 that if we didn't have the -- the extra time from the previous  
13 order, that things would be so different. I think that that  
14 is a saving grace for him, to be able to be around a safe  
15 environment where he's allowed to love who he wants to love.  
16 And most importantly, he can love half of himself. And that -  
17 - also the, in terms of my participation in his life, and in  
18 the activities that I choose are the best thing to offset what  
19 is -- what's going on with him, and with his Mother.

20 Q After we resolved the matter back in December, 2013,  
21 and we had a -- a new custodial order, since that time, have  
22 you at any time badmouthed Lyuda to Sasha?

23 A I'll never do that in -- ever. Because I love him.  
24 And one reason I love my son as much as I love anything in



1 this world, and it -- it -- it just -- it disgusts me to think  
2 of trying to make him not have a -- not love himself. To  
3 destroy my own child's self esteem. I -- I just -- it -- it  
4 violates everything I -- I believe as a human being, as a  
5 counselor. It just -- it just disgusts me. I would never do  
6 it, and I -- I -- it's never happened, and it never will  
7 happen.

8 MR. JONES: Pass the witness, Judge.

9 THE COURT: Counsel?

10 CROSS EXAMINATION

11 BY MR. SMITH:

12 Q Your child still is getting good grades, correct?

13 A Yes. In fact, this -- I'm very excited that this  
14 semester that's going to end this Friday, and so the goal is  
15 that he'll hopefully have straight As.

16 Q And he's still acting appropriately in school,  
17 correct?

18 A He's -- I haven't spoke with the teacher since the  
19 testimony that you heard.

20 Q Okay. But to your knowledge, he's acting  
21 appropriately at school. Certainly, that's something that the  
22 teacher would have raised to you --

23 A He was acting appropriate on on track break, yeah.

24 Q Well -- okay. During the school time, to your

1 knowledge, he acted appropriately, correct?

2 A Went on track break immediately after the last  
3 session, so you're asking me about track break.

4 Q Okay. So you don't know if he's acted out in school  
5 or not, is that what your testimony is?

6 A As you -- you've asked me this question prior, so --

7 MR. SMITH: What I'm going to do, actually -- we're  
8 going to do this again, Your Honor. I just want simple  
9 answers to simple questions.

10 THE COURT: Okay. Is the question how has he  
11 behaved since his testimony last -- he hasn't been in school.  
12 That's what he's trying to say.

13 MR. SMITH: I think so.

14 THE COURT: Okay. So he hasn't been in school since  
15 the last time we were here? Okay.

16 MR. SMITH: Okay.

17 THE COURT: Are you asking him about since the  
18 beginning of school, this first grade?

19 MR. SMITH: Yes.

20 THE COURT: Okay. What about first grade. How has  
21 he been doing in first grade? Acting appropriately?

22 THE WITNESS: Just -- just as the teacher testified.

23 MR. SMITH: Okay.

24 THE COURT: All right.

1 BY MR. SMITH:

2 Q In regard to your knowledge, you don't have any  
3 dispute that Lyuda has taken -- well, let me -- strike that,  
4 because he didn't really address --

5 (COUNSEL AND CLIENT CONFER BRIEFLY)

6 Q Okay. Let -- let me -- let's just go over what  
7 you've testified here today. First, you started out by saying  
8 that you see this -- Mrs. Box (ph), correct?

9 A Fox.

10 Q Fox, yes. Did Mrs. Fox advise you that you should  
11 stop allowing the child to have afternoon time with -- with  
12 Lyuda, even though she was off during that period and --

13 MR. JONES: Objection, privilege, Your Honor.

14 BY MR. SMITH:

15 Q -- you've allowed it before?

16 MR. SMITH: Oh, he's waived that privilege by  
17 testifying how wonderful his conversations were, and how it  
18 helped him, and so forth.

19 MR. JONES: He didn't -- he didn't say anything  
20 about specific things that were said.

21 THE WITNESS: I don't -- I don't see why --

22 MR. JONES: He said why he sought treatment, and did  
23 it help.

24 THE COURT: The -- the --

1 MR. SMITH: You -- you --

2 THE COURT: Go ahead, Counsel.

3 MR. SMITH: I don't believe that you can testify as  
4 to the results and conversations of treatment without waiving  
5 the privilege.

6 THE COURT: I -- I'm going to find that the  
7 privilege is not waived. He testified to the duration of the  
8 treatment, the reason he sought treatment, his opinion of the  
9 treatment, that he felt it was good, he's an advocate of that  
10 treatment, and what he -- what he was working on, and that it  
11 helped. The specifics, what would -- of what was discussed  
12 beyond --

13 MR. SMITH: The specifics of what he was --

14 THE COURT: Each session.

15 MR. SMITH: Sessions? Okay. In other words, he  
16 didn't say what she said, and it's -- so that's the  
17 distinguishing factor. Because he did --

18 THE COURT: No, I think that there's a difference --

19 MR. SMITH: -- the subjects, right?

20 THE COURT: Counsel, I think there's a difference  
21 between, this is the reason why I went to treatment, or this  
22 is the reason why I sought any medical treatment, this was the  
23 course and dates of that treatment, and your opinion after the  
24 treatment.

1 MR. SMITH: Okay.

2 THE COURT: But he doesn't waive the privilege.

3 MR. JONES: Do you need to --

4 THE COURT: I don't. We don't need to break at  
5 10:30. We're going to continue. I'm sorry. Go ahead.

6 BY MR. SMITH:

7 Q The -- Lyuda continues to cooperate with you in  
8 regard to you seeing and having the child in your care, even  
9 after the commencement of these actions, correct?

10 A I don't think having me go to the police station and  
11 miss two hours of work --

12 Q So --

13 A -- would be considered cooperating, so no. The  
14 answer's --

15 Q Is your answer no --

16 A -- no.

17 Q Okay. So --

18 A The answer is no.

19 Q -- on my -- on Thanksgiving, you asked if you could  
20 have additional time to take Sasha to Miami, correct?

21 A Thanksgiving? No.

22 (COUNSEL AND CLIENT CONFER BRIEFLY)

23 Q Oh, I'm sorry. One month ago. When was it that you  
24 wanted to take Sasha to Thanks -- or to Miami?

1 A That would have been September.

2 (COUNSEL AND CLIENT CONFER BRIEFLY)

3 BY MR. SMITH:

4 Q Okay. So this year, you would have had -- or it  
5 would have been Lyuda's time for Thanksgiving, correct?

6 A Yes. We exchanged New Year's Even and New Year's  
7 Day for Thanksgiving --

8 Q Correct.

9 A -- so we exchanged dates.

10 Q And that's because you had requested a change of  
11 Thanksgiving because you had family in town?

12 A I had friends in town, yes.

13 Q Okay. And that was your request to Lyuda that she  
14 exchange that so you could -- you could have Sasha during the  
15 time that your friends were present, correct?

16 A Correct.

17 Q And lot -- and Sasha agreed to that exchange,  
18 correct?

19 A Sasha?

20 Q Oh, excuse me. Lyuda.

21 A Yes.

22 Q All right.

23 (COUNSEL AND CLIENT CONFER BRIEFLY)

24 THE COURT: All right. Hold on a second. Ma'am,

1 just so that you know, I -- I can see that it is distracting  
2 to your attorney, but it's also distracting to me when you --  
3 when you talk to him while he's trying to ask questions. And  
4 -- and I don't want to invade your ability to speak with him,  
5 and, Counsel, I'm certainly not trying to inhibit your ability  
6 to speak to --

7 MR. SMITH: Well, actually, it was somewhat helpful  
8 --

9 THE COURT: -- I don't --

10 MR. SMITH: -- Your Honor. I appreciate my --

11 THE COURT: But -- but perhaps maybe a notepad or  
12 something might be helpful to the Court. It's just that we're  
13 having a three-part conversation, and it's difficult for me --

14 MR. SMITH: I -- I'm -- let me -- let me just say  
15 for the record, Ms. Abid was providing me information because  
16 I had the information inaccurate. I appreciated it, and the  
17 concern on my face was concern that I had the information  
18 inaccurate.

19 BY MR. SMITH:

20 Q Nevertheless --

21 THE COURT: No; no; no -- I just --

22 BY MR. SMITH:

23 Q -- nevertheless, the -- you did -- she did allow you  
24 to go with Sasha to Miami at the time that you requested it,

1 correct?

2 A We exchanged weekends, yes.

3 Q Okay. The exchanges at the -- the police station  
4 were only during the time that TPO was in effect, correct?

5 A Yes.

6 Q And the TPO was in effect approximately from  
7 November 30th until it was quashed by the Court in November  
8 15, or --

9 MR. JONES: Objection to the phrasing of the word  
10 quashed.

11 THE WITNESS: It wasn't -- it wasn't quashed. It --  
12 it was dissolved because it -- the -- the Court here failed to  
13 follow through on the subpoena with the video and the  
14 statements. So we were -- were -- we were not able to come  
15 with those. So I -- it's a question of semantics.

16 BY MR. SMITH:

17 Q Okay. Let's use your semantics. It was dissolved  
18 on December 15th, correct?

19 A Yes.

20 Q And in was in between the time of November 30th and  
21 December 15th that the exchanges were at the court -- or the  
22 police station, correct?

23 A Yes.

24 Q Do you think there's any reason that Lyuda would



1 have not to trust you at this moment?

2 A That's a broad question. I don't really know what  
3 you're -- I'm not sure what you're asking me.

4 Q I'm asking you for an answer. I'm asking you if you  
5 believe in your mind there's any reason that Lyuda would have  
6 not to trust you?

7 A She probably shouldn't, because I'm always going to  
8 act in my son's best interest, and if you're going to lie and  
9 be dishonest, then you're going to have a problem with me. So  
10 yeah.

11 Q She shouldn't trust you?

12 A Until she gets help and acts in her son's best  
13 interest, she probably shouldn't.

14 Q The -- do you know whether she's taken any courses  
15 or other classes after the -- the initial proceedings in this  
16 case?

17 A We don't speak, so I would not know about that.

18 Q You didn't hear her testify as to anything about  
19 that in her deposition? Was that your recollection?

20 A Rephrase, because I'm not sure if you're asking me  
21 if courses above which -- what I already knew about, the --  
22 beyond the Ms. Pickard class. Is that what you're asking me?

23 Q So you do know that she took a course?

24 A Yeah. I -- I'm aware of it.

1 Q Okay. So what was the course that you knew that she  
2 took after the proceedings began?

3 MR. JONES: Objection, Your Honor. Is he the best  
4 witness to talk about whether she --

5 THE COURT: If --

6 MR. JONES: -- took a class?

7 THE COURT: -- you know. If you know. Do you --

8 MR. SMITH: Well, he's --

9 THE COURT: -- know if she took a class?

10 MR. SMITH: -- let me -- okay. Let me just say that  
11 -- that I think it's an odd objection, because the whole  
12 promotion here was the idea that he's in a position to  
13 determine that she would be best served by going to  
14 counseling, yet he's now -- so the question is now, what does  
15 she know that she's -- what does he know --

16 MR. JONES: He didn't testify to that. He said  
17 counseling --

18 THE COURT: Well, listen --

19 MR. JONES: -- wouldn't help.

20 THE COURT: -- I'll -- I'll allow it. Do you know  
21 what class she took?

22 THE WITNESS: I think she took the parenting class  
23 with Margaret Pickard -- Pickard, I think is the last name.

24 BY MR. SMITH:

1 Q Do you know anything about that class?

2 A Yeah, I do.

3 Q Have you taken it?

4 A No. I've -- I read about it.

5 Q The -- in regard to -- was -- is it your testimony -

6 - maybe I misunderstood the -- the direct examination. Your

7 testimony is that even if Lyuda got counseling, she wouldn't

8 be able to properly care for Sasha; is that correct?

9 A Well, your mischaracterizing my testimony.

10 Q Well --

11 A I said without the proper contrition and humility

12 and acknowledgment of what she's done, then the counseling

13 would be ineffective.

14 Q So in your deposition -- your -- her deposition,

15 your recollection is she never indicated that the -- the some

16 of the statements that she made were inappropriate?

17 A She's never acknowledged that -- the depth of the --

18 even of the specifics of what she said. No, she didn't.

19 Q Do you know -- you read Dr. Holland's report,

20 correct?

21 A Yes.

22 Q You read Dr. Chambers' report?

23 A Yes.

24 Q And it's still your testimony that she's never

1 indicated that -- to anyone that she -- the -- felt that the -  
2 - the statements that she made were inappropriate?

3 A She hasn't acknowledged saying them at all. She --  
4 she wants to select what she'll admit to. She hasn't admitted  
5 to everything that Dr. Holland observed and said that she's  
6 sorry, and I shouldn't have said it, and it's sick. No, she  
7 hasn't.

8 Q Through the tape. You mean Dr. Holland observed  
9 through the tape?

10 A No, she observed Sasha, and Sasha rejecting me, is  
11 what she observed at the end of that report, that my son was  
12 rejecting me.

13 Q That was your -- that was your read of Dr. Holland's  
14 report is that your son was rejecting you?

15 A That's what it said, that he had started to reject  
16 me. Why don't you read it?

17 THE COURT: Coun -- sir. Not starting down this  
18 road again today. It's not a conversation. You answer the  
19 question, he asks a question.

20 BY MR. SMITH:

21 Q Do you believe your own anger issues have gotten in  
22 the way of good co-parenting between you and Lyuda?

23 A No.

24 Q And again, the notion about baseball on custodial

1 days, that only had to do with the time period that the TPO  
2 was in effect, correct?

3 A No.

4 Q So are you saying that she's generally stated that  
5 he will not attend baseball any longer?

6 A Well, there's an -- there's an email that says he  
7 will not, because of the TPO. It doesn't say, once the TPO is  
8 dissolved, okay, then he can play baseball. It says, he will  
9 not be participating in baseball on her custodial days because  
10 I filed this TPO full of lies.

11 Q All right. Thank you. The -- you said your  
12 relationship with Irena had soured, correct?

13 A Yeah.

14 Q And you don't have any reason to understand why it  
15 is soured; is that correct?

16 A Oh, I do know why.

17 Q And you believe it's because Lyuda has filled her  
18 mind with negative things about you, or words to that effect?

19 A Yeah. Just as Dr. Paglini did, yeah.

20 Q So the -- when you indicate that you had no  
21 relationship with her, she's seen you at baseball games.  
22 Irena's seen you at baseball games, correct?

23 A The -- I don't know if that constitutes a  
24 relationship. I've seen her. I don't --

1 Q Okay. But she comes up and speaks to you at those  
2 games, doesn't she?

3 A No. She's said two words to me, maybe. Thank you,  
4 good bye.

5 Q Irena's never -- ever, at any time communicated with  
6 you that she wants no relationship with you, correct?

7 A She has. One time, Irena was present during an  
8 exchange, and her mom had swirled her up and convinced her  
9 that, you know, I was evil for wanting Sasha to spend the  
10 night. So she left me a voice mail on my phone telling me I  
11 was the worst man on the planet --

12 Q When was that --

13 A -- so then -- this was before the -- the last order,  
14 on the 13th.

15 MR. SMITH: Move to strike, Your Honor.

16 MR. JONES: He asked the question.

17 THE COURT: The question --

18 THE WITNESS: You asked it.

19 THE COURT: Hey. Listen, you got a lawyer. He's --

20 MR. JONES: Sean --

21 THE COURT: -- right there. He's a great lawyer.  
22 Don't do his job. You're not doing yourself any favors right  
23 now. Counsel, continue.

24 MR. SMITH: Thank you, Your Honor.

1 BY MR. SMITH:

2 Q In fact, in 2014, after that order, Lyuda  
3 communicated with you. I think this came out at the last  
4 hearing. She communicated with you that she'd like you to  
5 help Irena with her schoolwork, in terms of counseling her,  
6 correct?

7 A No, she asked me for an opinion --

8 Q (Indiscernible).

9 A She asked me for an opinion.

10 Q Okay. She actually brought Irena to your home to  
11 talk to her, correct?

12 A I just spoke with Lyuda. I didn't speak with Irena.

13 Q Is the answer yes?

14 A No. She brought her to my home to pick up Sasha.  
15 She spoke with me. She discussed the question with me. Irena  
16 didn't.

17 Q But she communicated to you -- if -- if you want me  
18 to get out the text messages, I will. But she communicated to  
19 you that she wanted you to talk to Irena?

20 A Yeah.

21 Q About her school?

22 A Yeah. But as a counselor, it's not -- I can't reach  
23 kids that don't respect me. If you don't respect me, I can't  
24 counsel you. So that's why I just spoke to Lyuda. I didn't

1 speak to Irena.

2 Q You chose not to speak to Irena, yes?

3 A The -- the dynamics of her coming into my house and  
4 Irena being in the car, I guess -- I -- I -- that's how I  
5 spoke to her. I spoke to her because she was one in my house.

6 Q Okay. Did Irena ever ask you to -- I mean, did  
7 Lyuda ever ask you to help Irena with volleyball?

8 A No, that I did on my own. I was -- the -- I was the  
9 one who started volleyball with Irena. Ever -- Lyuda -- Lyuda  
10 had Irena in Ukraine and she missed a try out, and so I  
11 arranged for her to -- to try out with the high school after  
12 the fact.

13 Q But in 2014, leading up to these -- the filing of  
14 these actions, Lyuda had brought Irena to your home for the  
15 purpose of having you help her with (indiscernible) the  
16 volleyball, correct?

17 A No.

18 Q Excuse me. Your school. Excuse me.

19 A Yeah. Yeah, she did. And the interaction was not  
20 with me.

21 Q Okay. But --

22 A (Indiscernible). There was no conversation with  
23 Irena and I.

24 Q But Lyuda brought Irena for the specific purpose, to



1 your school, so that you could help her with volleyball,  
2 right? Before, leading up to these -- the filing of these  
3 actions, correct?

4 A It was not for me to help her. It was another  
5 student that was going to help her. I was not the one  
6 involved. We don't have a relationship. I was kind enough to  
7 facilitate her some training, and -- and a physical. I had  
8 nothing to do directly with Irena.

9 We didn't have any conversation. I had texted Lyuda  
10 to tell her how to talk to Irena about the disappointment of  
11 not making the team. I didn't talk to Irena, because we don't  
12 have a relationship.

13 Q What have you done to promote your relationship  
14 between Irena, since December, 2013?

15 A To promote it?

16 Q In other words, what --

17 A When her -- when her --

18 Q -- have you reached out to her --

19 A -- Mom has asked me for help, I give Lyuda the help  
20 that she can then give to Irena. I don't see Irena to -- to  
21 talk to her, so I don't --

22 Q Did you ever text her?

23 A No.

24 Q Did you ever reach out to her via email?

1           A     Yes.

2           Q     And when did you send the email?

3           A     Sent the emails over the summer of 2014, so that she  
4 would be aware that there was volleyball tryouts and  
5 volleyball activities.

6           Q     Okay. Did you ever send an email that -- that --  
7 well, let me ask you the question this way. You never sent  
8 her an email saying, Irena, I want to see you, I want to have  
9 a relationship with you, or words to that effect, correct?

10          A     No.

11          Q     No, it is not correct, or it is correct?

12          A     I've never sent an email like that.

13          Q     Okay. And you've never asked Lyuda in any kind of  
14 recorded message, either in a text or an email, saying, you  
15 know, I really miss Irena, I'd love to see her again. You've  
16 never sent her any kind of message like that, or words to that  
17 effect, correct?

18          A     To Lyuda, no.

19          Q     No, it is correct? You have never sent --

20          A     It -- it's correct. I did not send that.

21          Q     You didn't buy her a birthday gift, Irena, correct,  
22 in 2014?

23          A     No.

24          Q     And you didn't send her -- her a card on her

1 birthday, correct?

2 A No, nor have I ever.

3 Q You never sent her a Christmas present, this year or

4 the year before, correct?

5 A No.

6 Q No, you did not, correct?

7 A No.

8 Q No, you did not?

9 A No, I did not send her --

10 Q Thank you.

11 A -- a Christmas present.

12 Q In fact, there's not even any communication to Lyuda

13 when you -- where you ask how Irena is doing, is there?

14 A We don't communicate, Lyuda and I, so --

15 Q Is the answer no, there's no --

16 A No, there isn't --

17 Q -- there's no such --

18 A -- there isn't any communication.

19 Q But you will acknowledge, mister -- and -- and I

20 hope I don't have to go these email -- these text message

21 again, but you acknowledge there's been positive communication

22 between you, Lyuda, in the times leading up to the filing of

23 this action, correct?

24 A Yes.

1 Q And there's been positive cooperation between you  
2 and Lyuda, in the times leading up to this -- filing of this  
3 action?

4 A Yes.

5 Q There's no allegation by you, other than your  
6 allegations about badmouthing, that she has otherwise harmed  
7 the child? In other words, she hasn't struck the child in any  
8 inappropriate way, correct? Let -- let's just answer that  
9 question. Do you believe that she's committed any kind of act  
10 of abuse upon -- physical abuse upon Sasha?

11 A Do I believe that she ever has?

12 Q Yes.

13 A Yes.

14 Q Okay. In -- since the time of the filing of this  
15 action? I mean, during the time of the filing of this action?

16 A Well, I know -- I know that that's her -- that's how  
17 she disciplines, so I'm -- I'm assuming that it would happen.

18 Q So now you're assuming, or you're just saying that  
19 that's just a general notion you have, or --

20 A I -- I lived in the home. I saw the physical  
21 discipline of Irena. I know that CPS was involved, so  
22 naturally, I'm never at peace that she would never harm Sasha,  
23 so --

24 Q So you -- your testimony now is that CPS was

1 involved in regard to a complaint against Lyuda in regard to  
2 her care of Irena?

3 A It's -- it's fact, yeah.

4 Q The -- you have never witnessed -- well, certainly,  
5 Mr. Abid, if you had witnessed or known that -- that Lyuda was  
6 physically abusing Sasha, you would have raised that to  
7 someone, either the police or CPS or this Court, correct?

8 A If I knew it, yeah.

9 Q And there is no such -- you don't know that. You  
10 don't know that she's physically harmed the child, and there's  
11 no evidence of her physically harming the child in any of the  
12 testimony that's been given in this case. You would agree?

13 A In -- in this testimony in this case, yes.

14 Q And you would agree that you don't have any specific  
15 knowledge of her ever harming Lyuda physically -- or excuse  
16 me, harming Sasha physically, correct?

17 A I -- well, I know that she struck him, yes.

18 Q Okay. Since December of 2013, you know that?

19 A You asked me ever, I said, yes, ever. I don't know  
20 --

21 Q Since December, 2013 --

22 A No. No, I don't know of a specific incident.

23 Q The -- so what you think needs to occur before Lyuda  
24 can properly parent Sasha, or adequately parent Sasha, would

1 be for her to admit that she'd done wrong towards Sasha; is  
2 that correct?

3 A That would be an important first step.

4 MR. SMITH: I don't have anything further.

5 THE COURT: Counsel, anything else?

6 MR. JONES: Yes, just briefly.

7 REDIRECT EXAMINATION

8 BY MR. JONES:

9 Q Sean, you were asked about anger issues, and whether  
10 or not you believe they had anything to do with -- with these  
11 matters. Is there anything that you're angry about at all,  
12 other than the fact that the Mother of your child is trying to  
13 destroy your relationship --

14 MR. SMITH: Objection, facts not --

15 BY MR. JONES:

16 Q -- with the child?

17 MR. SMITH: -- in evidence.

18 THE COURT: I'll allow it.

19 THE WITNESS: Just that I'm -- I'm very passionate  
20 about my son, and I'm very hurt by what's contained in those  
21 reports, and sometimes, that passion shows itself in different  
22 ways. But I'm not an angry person. I don't have any angry  
23 background, but I have a lot of passion for my son, and a lot  
24 of frustration. And I do have anger about what's in those

1 reports. I won't lie. It's -- it's hurtful.

2 BY MR. JONES:

3 Q And what -- what, if anything, did Lyuda say to you  
4 about your relationship with Irena, or her effecting it?

5 MR. SMITH: Objection, foundation.

6 THE COURT: Counsel, better foundation. When she  
7 said --

8 MR. JONES: Well --

9 THE COURT: Well, first, did you -- did she say  
10 anything to you? Sorry. Go ahead.

11 THE WITNESS: Yes.

12 BY MR. JONES:

13 Q What did she say to you?

14 MR. SMITH: Objection, foundation.

15 THE COURT: When?

16 MR. JONES: Oh.

17 MR. SMITH: Where, who was present, what was the  
18 context --

19 BY MR. JONES:

20 Q Do you recall when?

21 A It -- it happened at the time of the divorce.

22 Q And what did she say to you?

23 MR. SMITH: Objection, move to strike as irrelevant  
24 to these proceedings. Objection -- or facts that are relating

1 to time periods before the last custodial order are not  
2 admissible for the purpose of a change --

3 THE COURT: Okay. He --

4 MR. SMITH: -- of custody.

5 MR. JONES: His -- his line of question --

6 THE COURT: As -- hold on. As to -- at the time of  
7 the divorce, what -- what does that mean to you? I don't know  
8 what -- the day after the decree?

9 BY MR. JONES:

10 Q Can you be more specific as to when she would have  
11 said something to you about your relationship --

12 A February --

13 Q -- with Irena?

14 A -- 2010.

15 Q Now, you were asked a series of questions about  
16 whether you've done this, were you -- whether you've done  
17 that, as far as trying to maintain a relationship. Was there  
18 a reason that you didn't send gifts or emails or texts, or  
19 things like that that you were asked about?

20 A Yeah, because she told me that she was going to  
21 teach Irena to hate me, and so -- she was succeeding.

22 MR. JONES: Nothing further.

23 THE COURT: Counsel?

24 MR. SMITH: Nothing further.



1 THE COURT: Thank you. Counsel, it's almost 11:00.  
2 You have another witness?  
3 MR. JONES: I would call the Defendant next.  
4 THE COURT: Ma'am, come on up to the witness stand,  
5 raise your right hand --  
6 MR. JONES: Can we take a --  
7 THE COURT: -- to be sworn?  
8 MR. JONES: -- short break?  
9 THE COURT: Sure. Let's take a five minute break,  
10 Counsel, before the Defendant comes to the stand.  
11 (COURT RECESSED AT 10:54:44 AND RESUMED AT 11:12:02)  
12 THE CLERK: -- record. You do solemnly swear the  
13 testimony you're about to give in this action shall be the  
14 truth, the whole truth, and nothing but the truth, so help you  
15 God?  
16 THE WITNESS: I do.  
17 THE CLERK: Thank you. And for purposes of the  
18 record, can you please state your first and last name?  
19 THE WITNESS: My first name is Lyudmyla. It's L-y-  
20 u-d-m-y-l-a. Last name is Byankovska B-y-a-n-k-o-v-s-k-a.  
21 THE CLERK: Thank you.  
22 THE COURT: You can have a seat. Go ahead, Counsel.  
23 MR. JONES: Thank you, Your Honor.  
24 //

1 LYUDMYLA BYANKOVSKA

2 having been called as a witness by the Plaintiff and being  
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. JONES:

6 Q Ms. Abid, do you recall being present in my office  
7 for your deposition?

8 A Yes, I do.

9 Q And do you recall receiving the same oath at that  
10 deposition that you just received from the Court clerk?

11 A Yes.

12 Q And you testified at your deposition truthfully,  
13 right?

14 A Yes.

15 Q Now, at some point, did the court reporter send you  
16 a letter advising you that you needed to review and sign your  
17 transcript?

18 A You know, I did, and I -- I sent my attorney all  
19 corrections. But I just look at the deposition, it was not  
20 corrected, unfortunately. But there are not so many. But  
21 yes, I did.

22 Q Well, you got a letter saying you needed to review  
23 and sign it, right?

24 A Yes. And I -- I -- I promised my attorney to bring

1 this to your office, and I failed. But I did send my attorney  
2 corrections.

3 Q Now, have you told Sasha during a FaceTime session  
4 that when he's 12 years old, he can make his own decision, and  
5 move with you to San Diego?

6 A No.

7 Q So your deposition, when you said you don't recall,  
8 that was inaccurate?

9 MR. SMITH: I -- I think we need to actually --

10 THE WITNESS: Well --

11 MR. SMITH: -- read the question and the answer in  
12 order to use the deposition in the manner that Mr. Jones has  
13 prescribed. He can't just generally say what he thinks he  
14 remembers in the deposition, and then ask her --

15 MR. JONES: I was reading from the deposition.

16 MR. SMITH: Okay. If you can tell us what the page  
17 --

18 THE COURT: Right. In order to clarify for  
19 everyone, read from us what page you're on, Counsel?

20 MR. JONES: Page 25, line 13. Question --

21 THE COURT: I don't think it's up there, ma'am. You  
22 --

23 MR. JONES: It is, actually. It's Exhibit 13.

24 THE COURT: In which color book for her?

1 MR. JONES: In the -- in my book.  
2 THE WITNESS: Yes --  
3 MR. JONES: I think they're both white --  
4 MR. SMITH: (Indiscernible) --  
5 THE WITNESS: Yes, I have it.  
6 MR. SMITH: What does it look like?  
7 MR. JONES: Oh, no, yours was black.  
8 MR. SMITH: Okay.  
9 MR. JONES: Yeah, so in the --  
10 THE WITNESS: What page?  
11 MR. JONES: -- white book. It's Exhibit 13.  
12 THE WITNESS: And what page?  
13 BY MR. JONES:  
14 Q It's page 25. The copy that's there is a four by  
15 four.  
16 A Yes, I see it.  
17 Q Okay. So I -- I'll read the question asked at the  
18 deposition. Question, okay. Have you ever told Sasha during  
19 a FaceTime session that when he's 12 years old, he can make  
20 his own decisions, and move with you to San Diego? Answer, I  
21 don't recall.  
22 A Uh-huh (affirmative).  
23 Q Do you see that?  
24 A Yes.

1 Q And the next question, does that mean you didn't say  
2 it, or that you just don't remember it? Answer, I don't  
3 remember. Do you see that?

4 A Uh-huh (affirmative).

5 Q Okay. So now --

6 MR. SMITH: Wait, is he going to read the next  
7 question? Or, have you ever said anything like that to Sasha?  
8 No. I mean, I --

9 THE COURT: Oh, you can clarify it later, Counsel.

10 MR. SMITH: All right. All right. I'm sorry, Your  
11 Honor.

12 THE COURT: Go ahead. You can continue, Mr. Jones.  
13 BY MR. JONES:

14 Q Thank you. Have you ever read Sasha text messages  
15 from Sean to you?

16 A Yes, I did, on one occasion. And I was told to my  
17 attorney not talk about it, since it was captured on your  
18 tapes, and they -- those were extremely altered and modified.

19 Q So you now state that you have read text messages to  
20 Sasha?

21 A On one occasion, yes.

22 Q Okay. Now, at your deposition, I'll ask the  
23 question as to the deposition, do you ever read Sean's text  
24 messages to you to Sasha? Answer, I don't recall. Do you see

1 that? At line -- page -- same page, line 22?

2 A 22? Yes, I see it.

3 Q And then the following question is, so does that

4 mean you've never done it, or just that you don't remember

5 ever doing it? Answer, I don't remember. Do you see that?

6 A Yes.

7 Q I need to turn ahead to page 38. I'll ask you the

8 question here today.

9 A Uh-huh (affirmative).

10 Q Have you told Sasha that he's not allowed to tell

11 his Father what goes on in your house?

12 A I did say that in the way that we should not

13 investigate what is going each -- each homes. Not me asking

14 Sasha what's going on in Dad house, or Dad asking Sasha was

15 going his -- in my house. And with parenting cooperating

16 class, Dr. Margaret Pickard, she gave us those rules, which

17 kids give the parents. And she advised us to put on the

18 refrigerator.

19 Q Okay.

20 A And one of the rules is --

21 MR. JONES: Move --

22 THE WITNESS: -- not ask child about --

23 MR. JONES: -- objection. Move to strike, Your

24 Honor.

1 THE WITNESS: -- other parent home.  
2 MR. JONES: Non responsive.  
3 THE COURT: All right. Ask another question.  
4 MR. JONES: I'll ask the -- the --  
5 THE COURT: I'm going to be real -- I know you want  
6 to tell us --  
7 THE WITNESS: Okay. Sorry, Judge.  
8 THE COURT: -- additional information, but you just  
9 answer the question --  
10 THE WITNESS: Okay.  
11 THE COURT: -- that he asks you. Your lawyer's  
12 going to have an opportunity --  
13 BY MR. JONES:  
14 Q So your answer here today is that you have told  
15 Sasha not to tell his Father what goes on in your house, yes  
16 or no?  
17 A In -- in circumstances, which are -- I was, and the  
18 conversations that I have with my son, and what was told to me  
19 in -- from my son, yes, I said that.  
20 Q Okay. So -- and on page 38, line 16, question, have  
21 you told Sasha that he's not allowed to tell his Father what  
22 goes on in your house? Answer, I don't remember.  
23 A Yes.  
24 Q You see that?

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LYUDMYLA ABID,

Appellant,

v.

SEAN ABID,

Respondent.

Supreme Court No. 69995

District Court Case No. D-10-424830-Z

Appeal from the Eighth Judicial District Court

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**APPELLANT'S APPENDIX**

**VOLUME 12**

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pp. Transcript of 01-25-16 Hearing, vol II	01-25-16	1324-1506
qq. Minutes from Hearings	07-03-13 10-08-13 12-09-13 03-18-15 03-24-15 06-25-15 07-16-15 08-10-15	

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TRANS

**COPY**

**EIGHTH JUDICIAL DISTRICT COURT**  
**FAMILY DIVISION**  
**CLARK COUNTY, NEVADA**

SEAN R. ABID,	)	
	)	
Plaintiff,	)	CASE NO. D-10-424830-Z
	)	
vs.	)	DEPT. B
	)	
LYUDMYLA A. ABID,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE LINDA MARQUIS  
DISTRICT COURT JUDGE

TRANSCRIPT RE: EVIDENTIARY HEARING

TUESDAY, NOVEMBER 17, 2015

APPEARANCES:

The Plaintiff:	SEAN R. ABID
For the Plaintiff:	JOHN D. JONES, ESQ.
	10777 W. Twain Avenue
	Suite 300
	Las Vegas, Nevada 89135
	(702) 869-8801
 The Defendant:	 LYUDMYLA A. ABID
For the Defendant:	RADFORD SMITH, ESQ.
	2470 St. Rose Parkway
	Suite 206
	Henderson, Nevada 89074
	(702) 990-6456

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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>
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Sean Abid	54	82	--	--	--
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DEFENDANT'S  
WITNESSES:

Susan Abacherli	10	23	29, 31	29	26
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Amy Massa	32	36	42/49/51	--	46
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I N D E X O F E X H I B I T S

PLAINTIFF'S  
EXHIBITS:

ADMITTED

17	42
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DEFENDANT'S  
EXHIBITS:

B	14
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C	50
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1 LAS VEGAS, NEVADA

TUESDAY, NOVEMBER 17, 2015

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

3 (THE PROCEEDINGS BEGAN AT 13:44:29)

4

5 THE CLERK: We're on the record.

6 THE COURT: You can go off the record. Sorry.

7 (COURT RECESSED AT 13:44:32 AND RESUMED AT 13:49:11)

8 THE COURT: This is the matter of Sean Abid versus  
9 Lyudmyla Abid, D-10-424830-Z. The parties are present.

10 Counsel, your appearances for the record.

11 MR. JONES: John Jones, bar number 6699, appearing  
12 on behalf of the Plaintiff, who's also present.

13 MR. SMITH: Radford Smith, 2791, on behalf of  
14 Lyudmyla Abid, and she's to my left, Your Honor. Also present  
15 is Kim Madeena (ph) with permission of Mr. Jones and -- and  
16 Your Honor. Ms. Madeena is a recent law school graduate, who  
17 will be taking the bar in -- in February, and she's acting as  
18 my paralegal today.

19 THE COURT: All right, wonderful. All right. We  
20 talked briefly at the bench today just regarding the timing on  
21 -- and the issues for the next three days. It's my  
22 understanding that Mr. Smith, you have two teachers who are  
23 witnesses today, who are here today; is that right?

24 MR. SMITH: That's right.



1 THE COURT: Okay. And Mr. Jones agreed, while he  
2 wasn't planning to take them today, to allow them to testify  
3 out of order to accommodate their busy schedule so they can  
4 get back to their classrooms so.

5 MR. SMITH: Okay. So --

6 THE COURT: Do you want to waive opening arguments  
7 today, or do you -- either of you have openings?

8 MR. SMITH: Statements, opening statements, we --

9 MR. JONES: I think she knows both of us too well  
10 that she might assume that it would develop into an argument.

11 MR. SMITH: Well, let me say this. I think both  
12 parties have briefed their positions, and we're -- sort of  
13 have limited time, and the Court was concerned about that. If  
14 the Plaintiff is willing to his waive his opening statement,  
15 we would do so as well.

16 The only thing I would note, Your Honor, in the  
17 conversation we had before we went on the record, we believe  
18 that before we get to the issue of the Court's determination  
19 of the admissibility of the tape under the basis of informed  
20 consent that we believe the Court should first address whether  
21 or not the tape is actually -- meets evidentiary standards  
22 because we believe the evidence will show that it's been  
23 altered and ultimately the original tape was destroyed.

24 THE COURT: Counsel, I think you have several

1 evidentiary objections to the introduction of that audio tape  
2 in its present state, and so I think that it's best that you  
3 make those objections as -- as we go. I prefer to make a  
4 ruling on the admissibility of the tape before we get into  
5 other evidence, notwithstanding the teachers that we just --  
6 just talked about, and so you can make those objections while  
7 the Plaintiff is on the stand, and I indicated that I'd allow  
8 you to take him on voir dire about those evidentiary issues --

9 MR. SMITH: Okay.

10 THE COURT: -- surrounding the tape. I'll make a  
11 determination, and then we'll continue with his direct. And  
12 -- and -- and then you'll have an opportunity to cross him on  
13 -- on the other issues.

14 MR. SMITH: Very good.

15 THE COURT: I just think it makes more sense for  
16 everyone for me to make that determination earlier on.

17 MR. SMITH: Very good, Your Honor.

18 THE COURT: Correct?

19 MR. JONES: Yeah, and the only comment I have,  
20 Judge, is you made it pretty clear that -- and I understand  
21 the argument about whether or not this is the original tape  
22 and the spoliation argument, which I think you can adjudicate  
23 on its merits, but we've already gone down the road of  
24 vicarious consent, and you said you are going to apply

1 vicarious consent, and it was up to me and through my client's  
2 testimony to establish that he met the standard of good faith  
3 for the placement of the recording device, so I understand  
4 that there can be an argument upon my request to move to admit  
5 the tapes about the spoliation issue and the like, and I  
6 understand he gets to cross on those issues as part of sort of  
7 the initial testimony within testimony.

8 THE COURT: Joe, you can let him in. It's just  
9 another lawyer. I'm sorry. Go ahead.

10 MR. JONES: But that's all I really have on that  
11 issue.

12 THE COURT: Okay, all right.

13 MR. SMITH: Well, the only thing I would say about  
14 that is that I think what Counsel's referring to is the  
15 distinctions we made in regard to the vicarious consent  
16 argument and its application in the very few cases that have  
17 found that vicarious consent is a viable concept. In those  
18 cases, I don't believe there was a case that stood for the  
19 proposition that you could place the tape in another's home.  
20 The vicarious consent that was permitted was usually wire  
21 tapping of information that came into the home of the  
22 individual who did the wire tapping. That's our position, and  
23 I think we've set that forth in our brief, so unless the  
24 evidence establishes that this was a taping that occurred in

1 those manners, consistent with those cases, we would ask the  
2 Court to revisit the notion of vicarious consent.

3 THE COURT: Absolutely.

4 MR. SMITH: But those are all arguments that we'll  
5 make --

6 MR. JONES: But -- but -- but -- but, Judge, we  
7 actually already came in on a motion on this issue. It was  
8 briefed. You were provided more than just a few cases in  
9 which the facts were very similar, if not identical, and  
10 you've already determined, yes, I am going to for the purposes  
11 of this courtroom accept the vicarious consent doctrine. All  
12 you have to do is prove the placement was good faith. That's  
13 what you instructed me to do --

14 THE COURT: And I'm going to -- absolutely. I --  
15 I've made my determination --

16 MR. JONES: And I believe that issue to be decided.

17 THE COURT: I've made my determination on that  
18 issue. However, I am going to allow Counsel to make his  
19 record when that comes up. Okay.

20 MR. JONES: That's fine.

21 THE COURT: So he can make whatever record he needs  
22 to make. I doubt that I'm going to change my mind. I've made  
23 that evidentiary ruling, but you can make whatever record you  
24 need to make for purposes of appeal.

1 MR. SMITH: All right.

2 THE COURT: I'm happy to let you do that. All  
3 right? Okay. So --

4 MR. JONES: Very good, Your Honor. So --

5 THE COURT: Are you inclined to waive your opening,  
6 Counsel, or --

7 MR. JONES: Yes. Just, Your Honor, just simply to  
8 make sure that he can get the teachers in and out and back to  
9 their lives.

10 THE COURT: All right. Thank you, I appreciate  
11 that.

12 MR. SMITH: Very good. And we'll do the same based  
13 upon that stipulation. And so we would call Susan Abacherli,  
14 and I hope I'm not messing that name up too bad.

15 THE COURT: I'm sure you are.

16 MR. SMITH: Thank you, Your Honor.

17 THE COURT: Good morning, ma'am. Come on up to the  
18 witness stand.

19 MS. ABACHERLI: Hey, how are you?

20 THE COURT: Remain standing, raise your right hand  
21 to be sworn.

22 THE CLERK: You do solemnly swear the testimony  
23 you're about to give in this action shall be the truth, the  
24 whole, and nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. You may be seated.

3 SUSAN ABACHERLI

4 having been called as a witness by the Defendant and being  
5 first duly sworn, testified as follows on:

6 DIRECT EXAMINATION

7 THE COURT: Ma'am, have a seat and tell us your name  
8 and spell it for the record.

9 A It is Susan and the last name is Abacherli, A-b-a-c-  
10 h-e-r-l-i.

11 THE COURT: Thank you so much. Go ahead, Counsel.

12 MR. SMITH: Normal spelling of Abacherli.

13 THE COURT: You got it.

14 BY MR. SMITH:

15 Q All right. And -- and the Court was correct. I  
16 didn't get your name quite right that first time I pronounced  
17 it, but, Ms. Abacherli, can you tell me how your employed at  
18 the present time.

19 A I am a kindergarten teacher for the Clark County  
20 School District.

21 Q And where are you employed?

22 A At Twitchell Elementary.

23 Q How long have you been so employed?

24 A With Clark County this is my 25th year.

1 Q And at Twitchell?

2 A I've been at Twitchell, I believe this is my 12th  
3 year.

4 Q Were you the kindergarten teacher at -- were you a  
5 kindergarten teacher at Twitchell Elementary School during the  
6 school year 2014-15?

7 A Yes, I was.

8 Q And in that period, did you have Sasha Abid in your  
9 courtroom (sic)?

10 A I did.

11 THE COURT: Courtroom, classroom. Lawyer talk.

12 BY MR. SMITH:

13 Q Classroom. I'm so used to dealing with courtrooms  
14 that I -- I speak in terms of courtrooms. All right. So he  
15 was in your class --

16 A Yes, he was.

17 Q -- during that period. Tell me about your first  
18 experience of Sasha and where he was when he commenced at  
19 school, kindergarten in Twitchell.

20 A As far as his academics?

21 Q Yes, ma'am.

22 A He was where most kindergarten students are. He  
23 came in knowing a few letters and sounds. And he was at the  
24 beginning of reading and writing where I would expect most of

1 my children or at least a part of my children to come in at.

2 Q Was -- was there anything unusual about his level of  
3 progress?

4 A No.

5 Q Would you call it deficient in any manner?

6 A Deficient?

7 Q Yes. In other words, that his progress was poor or  
8 -- or a problem?

9 A No.

10 Q How did he progress in school academically?

11 A He did well. He progressed at a steady rate and  
12 ended the year where I would expect a kindergarten student to  
13 end. He had mastered the benchmarks and all of the skills  
14 that we deem necessary to be promoted to 1st grade.

15 Q And what kind of things do you do with Sasha in  
16 kindergarten? What kind of -- what kind of studies do you do  
17 to -- to help him learn? It's been a long time since I've  
18 been to kindergarten so walk me through that.

19 A As far as we teach them phonetic rules. We teach  
20 them the alphabet obviously and sight words so that he --  
21 they're able to learn to read. We teach them beginning math  
22 concepts. We teach them beginning writing skills. And then  
23 there is a portion of the day spent on social studies and  
24 science.



1 Q Okay. In this case -- did you bring any records  
2 with you today?

3 A I did not.

4 Q Okay. In this case, we had an opportunity to review  
5 Sasha's report card. Were you the one that prepared the  
6 reports that are contained on his report card?

7 A Yes.

8 Q Okay. And during the time that you had Sasha in  
9 your class, was there ever a time that you were concerned over  
10 the -- the progress that he was making in school?

11 A I did not have concern about the progress he was  
12 making academically. There were some comments made, I  
13 believe, on the report card or perhaps a progress report that  
14 said he was very social. He liked to talk to his peers, and  
15 sometimes that stopped him from getting his work done in the  
16 allotted time, but he always managed to finish it.

17 Q Is that a -- is that characteristic unusual for  
18 kindergartens?

19 A No.

20 Q So it -- it's -- it's nothing out of the ordinary  
21 for a kindergartner to be loquacious or to talk a lot during  
22 class?

23 A No.

24 Q No, it is not, right?

1 A No, it is not.

2 Q It's not unusual? Okay. All right. If you'll turn  
3 in -- one of the books that you have before you is called  
4 Defendant's Trial Exhibits.

5 THE COURT: The black one.

6 BY MR. SMITH:

7 Q It's the black one.

8 A Okay.

9 Q There you go. If you'll turn to tab B. Okay. So  
10 do you recognize this document?

11 A I do.

12 Q What is it?

13 A It is the kindergarten report card for -- from the  
14 Clark County School District.

15 Q Is that your signature?

16 A It is.

17 MR. SMITH: All right. Move for the admission of  
18 Exhibit B, Your Honor.

19 MR. JONES: No objection.

20 THE COURT: It'll be admitted.

21 (Defendant's Exhibit B Admitted)

22 BY MR. SMITH:

23 Q One of the things that I noticed about this card is  
24 the grades were remarkably consistent. That, in fact, on the

1 first content areas, he received nothing but 3s. Can you tell  
2 me about that? How is it -- is that a -- what is -- what is  
3 the significance of that grade?

4 A That means he has met the standards that were  
5 introduced during that semester and has satisfactorily  
6 demonstrated that -- that he can apply these concepts, and so  
7 he has -- he has mastered them.

8 Q Well, the grade level though goes to 1 through 4.  
9 Is there some reason why Sasha did not receive any 4s  
10 whatsoever?

11 A That's because under the academic areas as a grade  
12 level, we felt that children cannot really exceed knowing the  
13 alphabet. They either know 26 letters or -- or they don't, so  
14 we could not give exceeds in any areas with the exception of  
15 sight words because some children can exceed the number that's  
16 required. Fifty are required, and our school teaches 120, so  
17 we feel that they can exceed in that area.

18 Q Where would that be reflected on the content areas?

19 A That would be under foundational skills.

20 Q Okay. So the one 4 he could get would be on  
21 foundational skills. And in absence of that one, on every  
22 other grade for the content area, he received the highest  
23 score he could get, correct?

24 A Correct.

1 Q On special subjects, I noticed they had a different  
2 rate -- scale, correct?

3 A That is correct.

4 Q And what would -- those scales I think are the  
5 standards scales that we've seen for many years, where  
6 excellent would be E, S would be satisfactory, correct?

7 A Correct.

8 Q Now, did you -- were you the teacher for these  
9 various programs, the sort of special subjects like art and  
10 humanities and so forth?

11 A No, I was not.

12 Q But you reviewed the card to ensure that the grades  
13 were properly identified; is that correct?

14 A Correct.

15 Q And these are the accurate grades that he received  
16 in those study areas as well?

17 A That is correct.

18 Q All right. And this would -- on the successful  
19 learner behaviors, can you describe to me what those  
20 designate?

21 A Those designate the typical behaviors that we expect  
22 students to comply with as far as observing school rules,  
23 classroom rules, following directions, sort of the  
24 expectations of a student as a learner in the classroom.

1 Q And I notice that those were all S's. There was no  
2 E's. Is there any significance to that?

3 A No. I'm -- I'm not one who gives E's very -- you  
4 know, very easily, and I feel that for the most part most  
5 children, if they're doing what's expected that's a  
6 satisfactory job.

7 Q Okay. And that was true of Sasha.

8 A That is true.

9 Q All right. Let's look at your -- I assume the  
10 semester comments under semester one and two are your  
11 comments, correct?

12 A They are.

13 Q Okay. And so in semester one, it indicates that  
14 Aleksandr had been working very hard in class. Was that  
15 consistent throughout that semester?

16 A That was.

17 Q There was no difference when he first got there  
18 versus at the end of the semester to your recollection?

19 A As far as I can recall, that's correct.

20 Q Okay. And he continued in -- the remainder of that  
21 statement is -- is about the various academic accomplishments  
22 that he achieved all the way down through AZ Readers and  
23 second semester you said. Those are all normal progressions  
24 for a child of his age in -- in kindergarten?

1 A Yes.

2 Q Now, it's -- you indicate, I'm hopeful that his  
3 phonetic skills will enable him to continue to grow as a  
4 writer. Tell me about that. What's --

5 A Well, when teaching kindergarten, most five and  
6 six-year-olds are very hesitant to write because they can't  
7 spell, and so that's why we integrate the phonetic spelling  
8 with their actual written work, and it's a challenge for  
9 students because they don't want to -- they don't want to get  
10 it wrong. So with our phonetic program there, I was  
11 encouraged that with those skills that he developed, he would  
12 soon be able to put his -- his thoughts on paper by applying  
13 those skills.

14 Q Okay. Now, you continue with your analysis of his  
15 progress all the way down to he's consistently count sets 10  
16 with our goal being 20. Again, you would -- would you  
17 identify all of this progress as normal progress for him  
18 during that first semester?

19 A Yes, I would.

20 Q Okay. It also indicates, I think this is a comment  
21 on -- at the end. It says, Aleksandr enjoys his peers  
22 immensely and has adapted well to our classroom routine; do  
23 you see that?

24 A Yes.

1 Q Was there any suggestion in the way that you saw  
2 Aleksandr's -- excuse me -- well, it is Aleksandr's behavior  
3 -- that he was acting in a way that was shy or -- or somehow  
4 withdrawn?

5 A Not that I can recall. He was quiet at first as  
6 many students are. But he -- he quickly became friends with  
7 many of the children, and, as I've stated there, he enjoyed  
8 them very much.

9 Q Was there anything about his behavior that seemed  
10 overly rough or inappropriate with his friends?

11 A Not that I can recall.

12 Q And if there was something like that, that's  
13 something that you may have noted, correct?

14 A Correct.

15 Q Now, understanding that boys will be boys. I mean,  
16 boys will sometimes play rough. What I'm asking is did you  
17 notice anything unusual about him, if he had some obsession  
18 with fighting or anything along those lines?

19 A Not that I recall.

20 Q And is that true in both semester one and semester  
21 two?

22 A Correct.

23 Q Okay. So there was time that you see -- you ever  
24 recall him being overly aggressive or inappropriate with the

1 other children, correct?

2 A Not that I recall.

3 Q Do you recall him making any negative comments about  
4 either his mother or father?

5 A Not that I recall.

6 Q Do you recall him making any positive comments about  
7 either his mother or his father?

8 A I recall him recounting activities he did at home,  
9 playing with younger siblings and discussing going out to eat  
10 sushi with his mom.

11 Q Was there anything in his demeanor, statements, or  
12 actions that suggested to you that he had a problem with  
13 either of his parents?

14 A No.

15 Q Did you have an opportunity to speak to either of  
16 the parents during the school year?

17 A Yes, I did.

18 Q And when did you do that?

19 A I met with his mother in December. I believe I met  
20 with the father either October or November during the  
21 conference period.

22 Q Do you recall telling either of them that there was  
23 a significant problem with Aleksandr or Sasha's progress in  
24 school?



1 A Not that I recall.

2 Q Because there wasn't, correct?

3 MR. JONES: Objection. Leading.

4 BY MR. SMITH:

5 Q Was there a problem with his progress in school at

6 any time during the first semester?

7 A No.

8 Q The -- in the second semester comments it says,

9 Aleksandr has shown such growth this second semester. Can you

10 tell me what you mean -- meant by that?

11 A He had met the goals that I had set for learning all

12 of the letters and sounds by the beginning of that second

13 semester and that enabled me to teach the blending, the

14 segmenting, some of the other areas phonetically that children

15 need to accomplish in order to read.

16 Q It indicates about the middle of your comments in

17 the second semester he can write about many topics with

18 complete sentences using phonetic spelling and can identify

19 punctuation marks; do you see that?

20 A I'm sorry.

21 Q It's in the middle. I'm sorry. I -- I --

22 A He can write about many -- using phonetic -- yes.

23 Q Okay. And that was true, correct?

24 A Correct.

1 Q Okay. So one of the issues that's come up on this  
2 case is whether or not he could write his name. Could he  
3 write his name?

4 A He could. He did have, as all students have in my  
5 classroom, the nameplate that they can refer back to.

6 Q Okay. Is there anything unusual about a  
7 kindergartner -- artner misspelling or writing a letter poorly  
8 in their name?

9 A It's not unusual.

10 Q That's something that happens commonly, correct?

11 A It can happen.

12 Q Do you view that as an indication that the child is  
13 not progressing normally in his academic study?

14 A Not if that is the only -- the only thing.

15 Q Right. And there's nothing -- again, there's  
16 nothing about Aleksandr, even if he did spell his name wrong,  
17 which is somewhat of an unusual spelling, you'd agree,  
18 correct?

19 A Agree.

20 Q Even if he did spell his name wrong, that's not  
21 evidence that there was a lack of economic -- academic  
22 progress for this child, is there?

23 MR. JONES: Objection. Leading.

24 BY MR. SMITH:

1 Q Is -- I'll rephrase. Is the fact -- if -- if it  
2 were true that he couldn't spell his name perfectly every  
3 time, would that be in your mind, based upon your experience  
4 over nine months with this student, an indication that he did  
5 not make adequate academic progress during the school year of  
6 2014-15?

7 A I would be concerned if a student by the end of the  
8 year was still struggling to spell their name on a routine  
9 basis. Occasionally students when writing their names,  
10 especially in kindergarten, they can leave out a letter.

11 Q Right. But in this instance, was there any  
12 experience that you had at the end of the year that suggested  
13 to you that Aleksandr had the problem you just described?

14 A Not that I can recall.

15 Q Very good.

16 MR. SMITH: I'll pass the witness, Your Honor.

17 THE COURT: Counsel.

18 CROSS EXAMINATION

19 BY MR. JONES:

20 Q Now, at the October conference that you had with  
21 dad, isn't it true that you told him that Sasha's letter  
22 recognition and reading skills were on the low end for his  
23 age?

24 A Not that I can recall.

1 Q Now, you started teaching Sasha in August of 2014?  
2 A Correct.  
3 Q And you concluded in June of 2015.  
4 A Correct.  
5 Q Would you say that from the start -- well, you've  
6 kind of commented on your -- on your seme -- semester two  
7 comments, but would you say that his progress was significant  
8 during the period of time that you taught him?  
9 A It was steady.  
10 Q Did you recognize any improvement in his behavior  
11 over the course of the semester or the year rather?  
12 A Not that I can recall.  
13 Q Now, in kindergarten, reading is one of the most  
14 important things that you teach, right?  
15 A I would say so.  
16 Q And sight words are part of the daily homework.  
17 A Correct.  
18 Q And you start with 60 through the first semester and  
19 an -- and add another 60 in the second semester; is that  
20 right?  
21 A It depends on how the months fall. We teach them  
22 five letters per week -- five words per week.  
23 Q Now, were you aware of who, as between mom or dad  
24 worked with Sasha on his sight words during the time you

1 taught Sasha?

2 A Not that I can recall.

3 Q Other than the contact at the parent/teacher

4 conference in October, did you have regular contact with dad

5 during the course of Sasha's kindergarten year?

6 A Not that I can recall.

7 Q Do you think that for a child this age confidence is

8 an important aspect of being able to perform well in school?

9 A It's one component.

10 Q How would you assess Sasha's confidence by the end

11 of the second semester?

12 A I'm not sure what you're asking. On a scale of one

13 to ten?

14 Q Sure. As a scale -- on a scale of one to ten.

15 A What his confidence level would be? In what area?

16 Q In reading.

17 A I'd say about a seven.

18 Q And sight words?

19 A He did very well with sight words. I'd say, you

20 know, a nine or a ten.

21 Q Did it seem clear to you that someone at home was

22 working very diligently with him on his sight words during the

23 time you taught him?

24 A It would appear so.

1 MR. JONES: I don't have any further questions.

2 THE COURT: Counsel, anything else?

3 MR. SMITH: No.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q I have a couple. Sorry. How many students are in  
7 your class?

8 A Twenty-three.

9 Q Okay. And is it all-day kindergarten or half-day?

10 A All day.

11 Q And the majority of those students, when they reach  
12 you at the beginning of the year, do most of them not know  
13 their alphabet fully?

14 A Fully know their entire alphabet --

15 Q Yeah.

16 A -- both capital and lower case?

17 Q Yeah.

18 A You get -- it's a --

19 Q I know you get -- so you have students --

20 A -- a huge span.

21 Q You have students that went to pre-k. Students that  
22 didn't so.

23 A So you end up with pretty much a bell curve.

24 Q Okay. And so with that bell curve, where was Sasha

1 on that bell curve?

2 A When he started, towards the bottom end. He didn't  
3 have a lot of knowledge of letters and sounds.

4 Q Okay.

5 A But he picked it up very quickly and with -- with  
6 steady progress. As I introduced, he picked them up.

7 Q So he's a smart kid. He was able to do the work.

8 A Yes.

9 Q Okay. All right. You talked about the nameplate on  
10 their desks a bit. So you had this standard nameplate on the  
11 desk that had -- had their name on it. Did he ever have the  
12 opportunity to write his name without the nameplate?

13 A Yes.

14 Q Okay. So there was -- was there a time during the  
15 course of the year that you took the nameplates off or erased  
16 the name so that they had to write it on their own, or how did  
17 that work?

18 A No. They stayed on, but we added last names.

19 Q Okay.

20 A And if I recall correctly, I've taught many  
21 children.

22 Q That's all right, and I understand that. I --

23 A He came in writing Sasha, and I encouraged him to  
24 write Aleksandr because I thought it was a lovely name and

1 because I knew that later on in school, he would be asked to  
2 write that name. I have my own son who went through a similar  
3 situation, so I always encourage children to spell their given  
4 name.

5 Q Okay.

6 A And so that -- that was a little bit of a struggle.  
7 He wanted to write Sasha. I actually had another child in the  
8 classroom, a girl, named Sasha.

9 Q Okay.

10 A So there was going to be confusion on top of that.

11 Q There's going to be a problem. So what was the  
12 opportunity that he had to write Sasha or Aleksandr without  
13 the nameplate being there?

14 A Without it being there?

15 Q So the -- so when he wrote his name, the nameplate  
16 was always there.

17 A For all seat work, and that's usually when they  
18 wrote their name on a paper.

19 Q Right, okay. So some classes halfway through the  
20 year, the names come up and they have to -- but that never  
21 happened for him. It's always there.

22 A No, because I add the last name.

23 Q Okay. All right. I'm sorry to interrupt. You can  
24 go ahead.



1 MR. SMITH: I just -- I just have one question to  
2 follow up.

3 REDIRECT EXAMINATION

4 BY MR. SMITH:

5 Q You had indicated in response to the -- Judge  
6 Marquis' questions that Sasha seemed to get it right away.  
7 Was the -- his ability to recognize the letters and progress  
8 in that field something that you believe came from his innate  
9 intelligence?

10 A I would say so.

11 MR. SMITH: Thank you.

12 THE COURT: Mr. Jones, do you have any other  
13 questions for him (sic)? I'm sorry to interrupt and --

14 RECROSS EXAMINATION

15 BY MR. JONES:

16 Q Aside from innate intelligence, what role as far as  
17 his progress do you believe that his work with sight words  
18 played?

19 MR. SMITH: Calls for speculation.

20 THE COURT: If you know. If you don't know, you can  
21 say I don't know.

22 THE WITNESS: Rephrase it, please.

23 BY MR. JONES:

24 Q Do you believe that if he were working with sight

1 words on a daily basis that that would have also had a lot to  
2 do with how well he progressed?

3 MR. SMITH: Same objection.

4 THE COURT: I'll allow it.

5 THE WITNESS: Yes. I mean, practice obviously is  
6 what -- what works with kindergartners.

7 THE COURT: And were you -- which -- which list of  
8 sight words were you working with? The name of the sight  
9 words. Do you have own sight words or --

10 THE WITNESS: Oh, we have -- Twitchell has a set  
11 that's a combination of Fry and Dolch.

12 THE COURT: Okay. That's my next question was. And  
13 so then it was just those very beginning first 1 through 120  
14 Dolch/Fry sight words.

15 THE WITNESS: Yes.

16 THE COURT: Okay. Thank you.

17 MR. JONES: I just have -- I was still following up  
18 if --

19 THE COURT: Sorry. Oh, I'm sorry, Counsel.

20 MR. JONES: -- that was okay. It's okay.

21 BY MR. JONES:

22 Q Now, in response to the Judge's initial question  
23 about where he was at the beginning and where he ended up  
24 with, and you had the bell curve analogy. Just -- just so I

1 understand, there was significant progress over the course of  
2 the year.

3 A Yes.

4 Q Okay.

5 MR. SMITH: That -- may I follow up? Were you done?

6 MR. JONES: That's it.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. SMITH:

9 Q That progress also was evidenced during the months  
10 of September, October, and November, correct?

11 A He made steady progress.

12 MR. SMITH: Very good, thank you.

13 THE COURT: Thank you so much for being here today.  
14 We really appreciate it.

15 THE WITNESS: You're welcome. We're sorry to take  
16 you out of your classroom.

17 THE WITNESS: Thank you.

18 THE COURT: Have a great day.

19 Mr. Smith, who's your next witness?

20 MR. SMITH: The next witness, Your Honor, is  
21 Ms. Massa.

22 THE COURT: Good morning, ma'am. Come right up here  
23 to the witness stand and just remain standing to be sworn.  
24 Yep.

1 MS. MASSA: Right here?

2 THE COURT: Oh, you can just go -- step right up  
3 there. Thank you.

4 THE CLERK: Please raise your right hand. You do  
5 solemnly swear the testimony you're about to give in this  
6 action shall be the truth, the whole, and nothing but the  
7 truth, so help you God?

8 THE WITNESS: Yes.

9 THE CLERK: Thank you, you may be seated.

10 AMY MASSA

11 having been called as a witness by the Defendant and being  
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 THE COURT: Can you state your name and spell it for  
15 the record?

16 A My name is Amy Massa, A-m-y M-a-s-s-a.

17 THE COURT: Good morning, thanks for being here  
18 today.

19 A Morning.

20 THE COURT: Go ahead Counsel.

21 BY MR. SMITH:

22 Q Ms. Massa --

23 A Yes.

24 Q -- how are you employed?

1           A     I am a 1st grade teacher with Clark County School  
2 District at Twitchell Elementary School.

3           Q     How long have you been employed as a teacher?

4           A     Twenty years.

5           Q     And how long have you worked at Twitchell?

6           A     Eleven of those twenty.

7           Q     And is Aleksandr or Sasha Abid a student in your  
8 class?

9           A     He is.

10          Q     How is he doing?

11          A     He's doing very well.

12          Q     Tell me about that. What is -- what is -- how does  
13 that break down? Is he doing well in school academically?

14          A     Academically, he's on grade level in all his  
15 academic skills so able to do the 1st grade work, maybe  
16 slightly above in reading and writing. Math, right on grade  
17 level, is able to do any of the assignments I give him easily.

18          Q     Is -- is he a smart kid?

19          A     Yes. Very creative, smart.

20          Q     Naturally intelligent? Yes?

21          A     Yes. Sorry.

22                THE COURT: You kind of have to say it out loud --

23                THE WITNESS: Right. Okay.

24                THE COURT: -- because we have people. I apologize.

1 It's not normal.

2 BY MR. SMITH:

3 Q We like to think of ourselves as smart, but we're  
4 not that smart.

5 A Right.

6 Q The -- tell me how he's doing socially.

7 A He has good friends in class, has one friend in  
8 particular that's his very best friend, and they kind of  
9 gravitate towards each other --

10 Q Who is that?

11 A -- very often. His name is Arian (ph).

12 Q Arian.

13 A But he also in collaborative kind of activities, he  
14 participates and other kids choose him as partners.

15 Q Is --

16 A Doesn't seem to struggle in that area.

17 Q Is he talkative?

18 A Not particularly.

19 Q Is he -- is there anything about his nature in class  
20 that would suggest to you that he is withdrawn or shy?

21 A No.

22 Q And does he make friends easily?

23 A I guess in comparison to other kids maybe not quite  
24 as outgoing. He -- he really enjoys kind of doing his own

1 kind of creating something on his own, but he's not  
2 uncomfortable with other children either.

3 Q Has you -- have you noticed any behavior by  
4 Aleksandr or Sasha -- how do you refer to him? Aleksandr?

5 A Aleksandr.

6 Q Okay. Is there any behavior by Aleksandr that would  
7 be deemed by you to be overly aggressive towards any of the  
8 other children?

9 A No.

10 Q Has he shown any obsession with anything while he's  
11 there in school?

12 A No.

13 Q Has he shown any obsession with violent activity?

14 A No.

15 Q Is there anything about Sasha's demeanor that would  
16 suggest to you that he's abused in any manner?

17 A No.

18 Q Is there -- has Sasha ever spoken about his parents  
19 to you?

20 A I -- there was one -- the very first week of school  
21 and I honestly do not recall the exact words about reading  
22 with dad or, you know -- he speaks of them frequently as far  
23 as I'm doing this this weekend and I'm going to Florida this  
24 weekend. You know, he talks to me about his family life, but

1 I wouldn't say it's in particular my mom, my dad as -- as --

2 Q Is there -- at any time during those conversations  
3 that you've had with Sasha regarding his family life, has he  
4 ever suggested any problem with either parent?

5 A No.

6 Q Has he shown that to you that he likes both of his  
7 parents?

8 A Yes.

9 MR. SMITH: Pass the witness, Your Honor.

10 THE COURT: Counsel?

11 CROSS EXAMINATION

12 BY MR. JONES:

13 Q What is the -- the daily homework regimen in 1st  
14 grade?

15 A They have a front and back math practice page that I  
16 would think would take Sasha about five minutes probably.  
17 It's always very easy. And then they are to read at least 15  
18 minutes. They can read them -- you know, independently, or  
19 they can be read to, and then I expect that the title is  
20 recorded on a homework checklist. And then there is a list of  
21 spelling words, and I don't assign specific activities to  
22 study the spelling words, but I encourage that, you know,  
23 they're working on those spelling words as well as dictation  
24 sentences. And then there are between five and seven sight



1 words every week to study, and I do some kind of assessment  
2 about every two weeks, every three weeks to see how they're  
3 doing on their sight words.

4 Q How is Aleksandr doing on his sight words?

5 A Very well.

6 Q Now, what is the whole bookmark program?

7 A Twitch -- I think it's all Henderson schools have --  
8 it's a bookmark, and you -- a parent initials every 15 minutes  
9 or maybe it's gone to 30. I think it's still quarter hours.  
10 So every time you read for 15 minutes, your parent writes in  
11 their initials in a little quarter of an apple. And then once  
12 you've read -- I don't even know the number of hours it takes  
13 to fill up to the bookmark. But when you fill up the  
14 bookmark, you bring it back to school. You turn it in to the  
15 library, and you get a new bookmark, and then in May completed  
16 bookmarks are chosen for a drawing and prizes. And it's very  
17 encouraged at Twitchell.

18 Q Do you know -- do you actually see the bookmarks  
19 when Sasha brings them in?

20 A Yes, because I sign them.

21 Q And do you know whose initials are in the quarter  
22 apples?

23 A I do not.

24 Q How many bookmarks has Sasha turned in?

1           A     Two, I think. It could be three. Two or three.  
2 Can I say that?  
3           THE COURT: You can.  
4           THE WITNESS: Okay.  
5           MR. SMITH: That's the person you have to ask for --  
6           THE WITNESS: Okay.  
7           MR. SMITH: -- permission to do anything in this  
8 courtroom.  
9 BY MR. JONES:  
10          Q     You mentioned that Sasha had made a mention early on  
11 in the year about reading with his dad.  
12          A     Right.  
13          Q     Do you recall in what context?  
14          A     They -- we use a software program called Reading  
15 A to Z, and I use it in my classroom quite a bit, and Sasha  
16 told me that he uses that. That his dad has those books too,  
17 or that he was at level -- I don't -- I don't know -- level J  
18 or something, and I was giving him a level L book or  
19 something. He made note of that, that they read those books  
20 at home too.  
21          Q     Was he proud --  
22          A     Yes.  
23          Q     -- of being at level J?  
24          A     Yes. As well he should.

1 Q Now, over the course of the year that you've been  
2 teaching Sasha, I guess thus far -- what are we? August to  
3 November, three months. Have you seen improvements in Sasha's  
4 school performance?

5 A Yes.

6 Q Have you seen improvements in his behavior?

7 A Yes.

8 Q Did he have behavior issues at all?

9 A I wouldn't classify them as such. We've -- we -- we  
10 all have a learning curve at the beginning of the year. The  
11 kids take time to get to know my routines and expectations.

12 Q In his recent, and by recent meaning, signed by you  
13 November 6th which was 11 days ago, you wrote that one of your  
14 concerns is that --

15 MR. SMITH: That's the evidence rule, Your Honor.

16 MR. JONES: I'm sorry?

17 MR. SMITH: If we're going to quote from a document,  
18 you need to present that document.

19 BY MR. JONES:

20 Q If you would turn in the white book to Exhibit 17.  
21 It's the last page of the --

22 A They're in letter order.

23 Q Oh, I'm sorry. The --

24 THE COURT: Oh, you need that --

1 MR. JONES: It's the white book.

2 THE COURT: The white -- there's two books. It's

3 just the white book.

4 THE WITNESS: Sorry.

5 THE COURT: That's okay.

6 MR. JONES: It's okay.

7 THE COURT: Don't worry about it.

8 MR. JONES: You know what? Are you -- are you a

9 rookie to a courtroom?

10 THE COURT: You're doing great.

11 THE WITNESS: Yes, I am. Sorry. Exhibit --

12 BY MR. JONES:

13 Q Then I -- then you should be very happy about that.

14 A Okay.

15 Q In section 5 under concerns, you've listed that

16 Sasha is easily distracted, lots of progress from beginning of

17 year, gets off task quickly during collaborative activities.

18 A Correct.

19 Q Can you explain what that means?

20 A That means when they're either playing a math game

21 with partners or doing something at the table with a small

22 group, reading the same book or -- well, those are the top two

23 that come to my mind, that he can get silly and off task, and

24 I need to give him a reminder to usually that there's

1 something to accomplish, and he needs to, you know, let the  
2 silly stuff go and be a little more focused.

3 But I wrote lots of progress from beginning of the  
4 year because I wouldn't classify that as a behavior issue at  
5 the beginning of the year because I would need to say that my  
6 entire class of first graders have that behavior issue at the  
7 beginning of the -- so but I'm saying that from August to now,  
8 he needs -- meant does not need as many reminders that he has  
9 something that he needs to be doing, and he's much more  
10 engaged in the task where he -- he seems to be motivated by  
11 the task itself and wants to complete it. And even -- even if  
12 there is somebody to be silly with, he can kind of work  
13 through that with very few reminders.

14 Q Now, in section 3, you have current reading fluency,  
15 57 words per minute.

16 A Right.

17 Q Is that strong for first grade?

18 A Yes. Yes.

19 Q Does it seem clear to you that someone's working  
20 very diligently with him on his reading and his sight words?

21 A Yes.

22 MR. JONES: Move to admit 17, Your Honor.

23 THE COURT: Any objection?

24 MR. SMITH: No objection, Your Honor.

1 THE COURT: It will be admitted.

2 (Plaintiff's Exhibit 17 admitted)

3 BY MR. JONES:

4 Q Now, is Sasha currently seeing the school counselor?

5 A Yes.

6 Q What's that for?

7 A She call -- I don't know the exact name of what she  
8 calls it. I think Mr. Abid met with Michelle Wooldridge, the  
9 principal, and the principal told him that there was a -- I  
10 don't know. She comes and get -- the counselor comes and gets  
11 Aleksandr about once a week, and she -- we kind of have an  
12 area outside the classroom. She pulls him out of the  
13 classroom briefly, five minutes, maybe ten at the most, and  
14 they sit out. And I think she just checks in and asks him  
15 questions.

16 I'm never part of that conversation. I can't say  
17 much more than that. There was a sign -- parents had to sign  
18 to give permission for the counselor to remove him from the  
19 classroom for that brief amount of time.

20 MR. JONES: Pass the witness.

21 REDIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Have -- have you ever seen that docum -- the  
24 permission slip?

1 A Yes. I think I --

2 Q Was there --

3 A I sent it home in his backpack. It would've come in  
4 a sealed envelope, and I would have put it in his backpack.

5 Q Okay.

6 A And then when came back, I would've turned it into  
7 the counselor.

8 Q How many parents have to sign?

9 A I do not know.

10 Q Would it surprise you to learn that Ms. Abid was not  
11 aware of any of this? Of the counseling or the -- the  
12 permission form?

13 MR. JONES: Objection. Calls for speculation.

14 THE COURT: I'll allow it.

15 THE WITNESS: I don't know. I'm sorry. I --

16 BY MR. SMITH:

17 Q Is it the normal course for one parent to dictate  
18 that type of activity in the school for their child?

19 A I don't know. That didn't come through me.

20 Q But you do know that it was Mr. Abid who caused this  
21 to occur.

22 A I do not know. I'm sorry. I was -- I -- I thought  
23 that Mrs. Wooldridge expressed to me that that's -- that  
24 that's where it was coming -- or the counselor -- maybe it was

1 the counselor said that one par -- one parent had -- or a  
2 parent has to sign. I don't know that it's two. I don't  
3 know. I didn't -- I don't know that I've even seen the form.  
4 Like I said, it comes in an envelope. I stick it in the  
5 backpack or in the homework, and it goes home.

6 Q What is the name of the counselor that's seeing Sash  
7 -- Aleksandr?

8 A Her name is Jenna Miller.

9 Q Jenna Miller. And do you know what her  
10 credentialing is?

11 A School counselor.

12 Q School counselor. Okay. Do you know if she's a  
13 licensed social worker or an MFT or --

14 A I do not know.

15 Q Okay.

16 A No, I don't know.

17 Q And do you know the -- the nature of the issue  
18 that's causing her to have regular sessions with Sasha?

19 A They have -- it's a like -- I would say like a  
20 divorce support group, so she pulls -- she checks in with  
21 those kids, and then -- but that's -- I -- I'm never a part of  
22 those conversations, and she and I don't share what happened  
23 in those conversations afterward.

24 Q The protocol then would be that if she felt that



1 there was problem arising from the counseling, she would  
2 contact the parents?

3 A I don't know.

4 Q Do you -- have you had any experience with her  
5 finding an issue with any of the children and contacting the  
6 parents?

7 A No.

8 Q Is it unusual for her to meet with a child in your  
9 class? Are there more than Aleksandr that she's meeting with?

10 A Not this year. But --

11 Q So Aleksandr --

12 A -- in previous years, she --

13 Q Aleksandr is the only child that's being pulled out  
14 of the class to meet with a counselor?

15 A Right.

16 Q Was there anything about his behavior before this  
17 counseling started that would suggest to you that he was  
18 depressed?

19 A No.

20 Q Was there anything about this -- before he started  
21 meeting this counselor that would suggest to you that he was  
22 overly aggressive?

23 A No.

24 Q Was there anything about before he started meeting

1 with his counselor that would to you in your experience of  
2 first grade, as you said 20 years you've been teaching, that  
3 would suggest that you -- to you that he needed counseling?

4 A No.

5 Q Thank you.

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q I just have a couple of questions. All right. At  
9 his, I think this is a progress report, number 17, it says  
10 first grade, and you've written choosing books in 1.722.7  
11 band; is that first grade, seventh month?

12 A Correct.

13 Q Okay. Yes, all right. And you indicate at the  
14 bottom in language arts and in math both, consider additional  
15 academic support --

16 A No, I'm -- that was supposed to be everything but  
17 that.

18 Q Okay. So say -- explain that to me again.

19 A I -- I expressed in parent conference that all of  
20 the above -- everything that's above the X all seem like good  
21 ideas.

22 Q Okay.

23 A And I wasn't quite sure how I was to fill out this  
24 -- this form that we were supposed to fill out for parent

1 conferences.

2 Q Okay so these are just --

3 A So I do not -- and I tried to express, I do not  
4 think he needs additional --

5 Q But these are --

6 A -- academic support.

7 Q -- like Starfall and the others, these are just  
8 suggestions --

9 A Right.

10 Q -- of enrichment activities.

11 A And all -- all wonderful ideas. Right.

12 Q Okay, all right. Is his -- how many kids are in  
13 your class?

14 A Nineteen.

15 Q Okay. And how -- his reading level is a little bit  
16 higher than where he should be right now; is that right?

17 A Right.

18 Q Is that the vast majority of children in your  
19 classroom right now? Of the 19, are they at a similar --

20 A Yes.

21 Q -- reading level? Is there a lot better ahead of  
22 him?

23 A What do you mean by --

24 Q And you can --

1           A     -- a lot?

2           Q     Well, and I'm sorry.

3           A     A handful.

4           Q     Okay.

5           A     Five, six maybe that are ahead of him.

6           Q     Okay, okay, all right. That's all. I -- you know

7 what? He asked you about obsessions. You might have a girl

8 that all she can talk about is My Little Pony, and every

9 journal entry's about My Little Pony, and every book she reads

10 is about My Little Pony.

11          A     Right.

12          Q     And it may not be what we call an obsession because

13 that might be developmentally appropriate for a first grader

14 to really like; whatever. What does Aleksandr really like?

15 What themes reoccur?

16          A     You know what? He doesn't -- he doesn't talk to me

17 about that kind of thing.

18          Q     Okay.

19          A     I don't -- I think I've heard Minecraft maybe a

20 couple times. Right.

21          Q     Okay.

22          A     But I don't see a consistent kind of hobby or

23 something like that that he's --

24          Q     Focused on.

1           A     -- that he's focus -- yeah, he doesn't write about  
2 somethi -- one thing in particular day after day after day.

3           Q     Okay, all right.

4           THE COURT: I'm sorry. You may have some follow-up  
5 questions.

6                         REDIRECT EXAMINATION CONTINUED

7 BY MR. SMITH:

8           Q     Since the Court asked you about your progress, we  
9 might as well turn in the white book to Exhibit C. See, we  
10 have them color coded.

11          A     Right.

12          Q     Does that sound familiar? See, that's good.

13          A     Which -- what number? Sorry.

14          Q     C, letter C, it's in the white --

15                 MR. JONES: No, mine's the white book.

16                 THE COURT: A black book.

17                 MR. SMITH: Oh, in the black book. Okay. I don't  
18 even know the color code.

19                 MR. JONES: And it's no coincidence who's got the  
20 white books and who's got the black books.

21                 MR. SMITH: Yeah, yeah, of course.

22 BY MR. SMITH:

23          Q     So Ms. Massa and I have made the same analysis.

24          A     Okay. Go ahead.

1 Q All right. Good, we're akin. All right. So  
2 Exhibit C; do you recognize that document?  
3 A Correct, yes, I recognize it.  
4 Q Okay. And it -- what it -- what is it?  
5 A This is a progress re -- this is the first progress  
6 report sent home near the end of September. Just the last  
7 Monday of every month, we send a paper progress report with  
8 grades. This is his current --

9 Q And is that your writing on the report?

10 A Yes.

11 Q Okay. And so this is the report for Sasha?

12 A Right.

13 Q And, again, based on the Court's question, is there  
14 anything at all unusual about Sasha's progress in school to  
15 you?

16 A No.

17 MR. SMITH: I would move for the admission of  
18 Exhibit C.

19 THE COURT: Any objection?

20 MR. JONES: No objection.

21 THE COURT: It'll be admitted.

22 (Defendant's Exhibit C admitted)

23 BY THE COURT:

24 Q I had one other question. Do you send homework

1 packets home at the beginning of the week, or are you sending  
2 homework home every day?

3 A It's kind of a combination.

4 Q Okay.

5 A The spelling words and sight words and reading log  
6 is sent home on Monday.

7 Q Okay.

8 A And comes back and forth nightly.

9 Q Every night?

10 A And then -- every night. And then the math is sent  
11 home --

12 Q Every night.

13 A The math -- and I'm sorry I didn't mention, there's  
14 a phonics sheet that comes home in his homework, and you asked  
15 that earlier.

16 Q Okay.

17 A So the math and there's a phonics practice page that  
18 comes home nightly.

19 THE COURT: Okay. Any other questions?

20 MR. SMITH: Yes, I have a follow up from the Judge's  
21 question.

22 REDIRECT EXAMINATION CONTINUED

23 BY MR. SMITH:

24 Q Does the homework go home on Friday?

1 A No.

2 Q Okay. So are you of aware whether or not -- you  
3 said that there was progress in reading, and he had mentioned  
4 these books that you thought his father had. Did he mention  
5 that his mother has those books as well?

6 A No, he did not mention that.

7 Q Okay. Do you know whether or not she has those?

8 A I do not know.

9 Q Is that something you inquired about at any time  
10 that you talked to her?

11 A No.

12 Q Okay, all right. Very good. Thank you, Ms. Massa.

13 THE COURT: Anything else, Mr. Jones?

14 MR. JONES: No.

15 THE COURT: Thank you so much for being here. We  
16 really appreciate it, and you've helped us a lot.

17 And those were your two witnesses, Counsel, that we  
18 needed to take out of order?

19 MR. SMITH: That's right, in order to get them back  
20 to their classrooms.

21 THE COURT: Which I appreciate. All right.  
22 Mr. Jones?

23 MR. JONES: Yes.

24 THE COURT: Would you like to call the Plaintiff?



1 MR. JONES: I would.

2 THE COURT: All right.

3 MR. JONES: Does -- you want to address that --

4 we're going to -- I'm following your direction.

5 THE COURT: I'd like to, yes. I -- I think that's

6 appropriate and I --

7 MR. JONES: Do you want --

8 THE COURT: To take a brief break right now?

9 MR. JONES: Yeah, do you --

10 THE COURT: Let's take a five minute break now, and

11 then we'll go from there.

12 MR. SMITH: Okay.

13 MR. JONES: Push on through.

14 THE COURT: Thank you.

15 (COURT RECESSED AT 14:39:55 AND RESUMED AT 14:51:24)

16 THE CLERK: We're back on the record.

17 THE COURT: We're back on the record in Abid versus

18 Abid. I think we were at the point where the Plaintiff was

19 going to take the stand, so why don't you come on up and raise

20 your right hand to be sworn.

21 THE CLERK: You do solemnly swear the testimony

22 you're about to give is this action shall be the truth, the

23 whole, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

1 THE CLERK: Thank you, you may be seated.

2 THE COURT: Go ahead, Counsel.

3 MR. JONES: Thank you, Your Honor.

4 SEAN ABID

5 having been called as a witness on his own behalf and being  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JONES:

9 Q Mr. Abid, over the course of the last, let's just  
10 say few years, what, if any, problems have you had with Lynda  
11 (ph) as it pertains to supporting your relationship with  
12 Sasha?

13 MR. SMITH: Objection as to time frame, Your Honor.

14 THE COURT: Can we narrow down the --the time frame  
15 a little bit?

16 MR. JONES: Actually, Your Honor, this is where I  
17 have a couple of questions.

18 THE COURT: Okay.

19 MR. JONES: I guess we might as well jump into it  
20 now. The last order -- and so there -- there's two issues,  
21 and obviously Mr. Smith can respond. The last order was not a  
22 new custody order. It was main -- maintaining the prior  
23 custody order with a modification to the timeshare and a few  
24 other quid pro quos thrown in.

1 THE COURT: And it was based on a stipulation.

2 MR. JONES: And it was based upon a stipulation.

3 THE COURT: Okay.

4 MR. JONES: So question number one is, as it  
5 pertains to McMonigle-type issues is whether or not that  
6 constitutes the last custodial order, and I'm not sure I know  
7 the answer fully. It was actually something that came to me  
8 as I was preparing today as an issue that the Court might want  
9 to weigh in on as far as just the basic concept that typically  
10 we go back to the last custodial order that would have either  
11 established custody or changed custody. This was not one of  
12 those things so that's question number one.

13 Question number two is a -- more of a Martin and  
14 Castle v. Simmons issue. If you have a pervasive pattern of  
15 conduct that goes over the course of a time that falls on a  
16 new custody order or even the original custody order, is the  
17 Court inclined to consider the pattern of conduct and/or  
18 evidence from what occurred prior to the custody order?  
19 Because that Court and this Court certainly did not consider  
20 it at the time the order was entered.

21 THE COURT: Okay. Let's first deal with --

22 MR. JONES: So those are the two issues as far  
23 addressing the fact that what was happening in 2012 and 2013  
24 has gotten worse over the course of time, and I believe that

1 it's relevant for the Court particularly on the issue of dad's  
2 good faith --

3 THE COURT: Okay.

4 MR. JONES: -- to understand sort of the link to the  
5 things we know about that have occurred in the last year to  
6 the things that occurred in the years prior as it pertains to  
7 bad mouthing of dad in the presence or directly to the child,  
8 so from the --

9 THE COURT: Let's take the McMonigle issue first as  
10 to which order.

11 Counsel, your position?

12 MR. SMITH: Are you referring to me, Your Honor?

13 THE COURT: Yes.

14 MR. SMITH: Thank you. Your Honor, the focus of the  
15 Court in McMonigle and Castle v. Simmons was on the issue of  
16 res judicata. Res judicata as defined under our law states  
17 that those matters that were litigated or could have been  
18 litigated -- that's the York case -- are precluded from future  
19 litigation.

20 The Court found a very special limited public policy  
21 exception to that rule in the Castle v. Simmons case because  
22 it specifically addressed abuse that was occurring prior to  
23 the time of the entry of the most recent custodial order, and  
24 that abuse was significant enough as a public policy to -- to

1 undermine the rule in that limited circumstances (sic).

2           There was no statement, to my recollection, that a  
3 pervasive course of conduct, the words that were used by  
4 Counsel, was an exception to the McMonigle rule. The notion  
5 of res judicata is very important because Mrs. -- had  
6 Mrs. Abid, Mrs. Lyudmyla, known that these were going to be  
7 issues in the future beyond the order that resolved the  
8 request for a modification of custody that was in issue as of  
9 December of 2013, she could have opted to litigate those  
10 issues and to absolve herself of those issues by testimony and  
11 evidence that was available at that time. That included a  
12 full report and assessment by Dr. Paglini that came into  
13 evidence and was known to both parties as to the evidence and  
14 conclusions of Dr. Paglini that led to the order, so we  
15 strongly believe that the notion of res judicata that is inher  
16 -- inherent in McMonigle and the Castle v. Simmons case should  
17 be applied here so that the only acts or actions or facts that  
18 exist that could form the basis of a change of custody after  
19 the origi -- the second motion for change of custody was  
20 already adjudicated by voluntary entry of order that --

21           THE COURT: The question was which order do you  
22 think is appropriate for McMonigle.

23           MR. SMITH: That's the second issue that was raised  
24 -- well, the first issue, but the second in order that was

1 raised Mr. Jones. The order that was entered voluntarily  
2 adjudicated the -- the request for modification of custody,  
3 the hearing in Mr. Abid's request to relocate the -- with the  
4 minor child so that was a determination of a request to modify  
5 custody and, therefore, was a custody order. The fact that it  
6 was a stipulated order is of no effect, and there's nothing in  
7 McMonigle or Simmons that says that a stipulated order  
8 regarding the custody would not have that effect.

9           What Simmons says is that when something is not  
10 known to the parties or the Court, in other words, nobody knew  
11 about these events occurring, that's where -- that was the  
12 facts in -- in Simmons. It wasn't a matter of the parties had  
13 reached an agreement and -- it was a matter of neither the  
14 Court when it entered the stipulated order or the parties had  
15 understood that abuse was occurring. That is not even close  
16 to the facts of this case.

17           Mr. Abid had a report that addressed his allegations  
18 at that time that Mrs. Abid, in his words, were -- was bad  
19 mouthing him. And let me note that the report, if the Court  
20 is -- is going to allow this line of questioning beyond the --  
21 the McMonigle part, we'll now -- now have to hire Mr. Paglini  
22 to come in and address all the factual issues, relitigate that  
23 case so that we have all the facts associated with these  
24 allegations which are now stale and weren't presented by

1 Mr. Abid and expand the scope of this -- this case by a  
2 substantial amount.

3 THE COURT: All right. As -- go ahead.

4 MR. JONES: I have a couple of things to address  
5 there. First of all, if I recall the prior proceedings, the  
6 only witness to testify was Dr. Paglini regarding his report  
7 prior to the parties reaching a resolution so the -- the  
8 testimony and the evidence of the events that may or may not  
9 have been presented to Dr. Paglini given the timeline of when  
10 he actually takes the information and when he gets a report  
11 and when you get to trial so. And the distinction is or;  
12 meaning if you didn't know or she didn't know, not neither of  
13 you knew, as far as these events.

14 Now, the other aspect that -- if -- if Mr. Smith is  
15 arguing about the merits of a list of 42 instances instead of  
16 just a list of the 24 that have occurred in the last year, I  
17 think his argument is better founded. We're talking about  
18 good faith, whether him placing a recording device was in good  
19 faith. Okay. I think from the evidence that he will -- that  
20 you will hear regarding what led him to decide to do this that  
21 that will be sufficient.

22 However, when you put it in context of the same  
23 types of behaviors that have occurred year after year after  
24 year, i.e., you know, for example, similar problems that

1 you've already heard or seen in the pleadings, you have even  
2 more overwhelming evidence of a good faith reason to do this.  
3 So from an evidentiary standpoint, I think you could rule that  
4 you will consider this information for the purposes of good  
5 faith but not for the purposes of substantial change of  
6 circumstances warranting a change of custody or a best  
7 interest consideration.

8           You, Your Honor, just directed us to address this  
9 evidentiary issue. I think it is relevant to the evidentiary  
10 issue for you to hear more information than just the incidents  
11 that have occurred prior -- since December of '13 until today.

12           MR. SMITH: The hon -- Your Honor, in -- in every  
13 instance associated with McMonigle, someone could argue the  
14 very same simplistic argument. There'll be more evidence. I  
15 have a lot of good stuff. That's not the issue. That's not  
16 why they precluded the evidence in McMonigle and Simmmmons.  
17 They precluded it based upon the doctrine of res judicata. If  
18 you've got it, and you think it matters to the custodial care  
19 of your child, bring it but don't wait -- lie in wait and then  
20 somehow later say well, you know, she's told me this. She  
21 told me that. She told me this. When there's no opportunity  
22 to address that at a deposition because we were operating  
23 under the assumption that this was a McMonigle case. There  
24 was no opportunity to -- to present witnesses on these issues.



1           This was brought up, I think Mr. Jones said, well,  
2 he just thought about it when he was preparing his -- his  
3 brief. It's not fair. It would cause us to seek a  
4 continuance of this trial so that we can prepare the proper  
5 witnesses, retake Mr. Abid's deposition, and address these now  
6 new allegations that he's going to present to you.

7           MR. JONES: I put it in my brief, Judge.

8           THE COURT: No. It's in your brief. I -- I read it  
9 in your brief.

10          MR. JONES: I -- I wanted to give everybody the  
11 heads up that this is an issue that needs to be addressed  
12 because I think on -- you know, while I think it certainly  
13 would pass the Castle v. Simmons test and if we were only a  
14 January 1, 2016, I could cite to another case that I can't  
15 cite to until January of 2016 that's almost directly on point.  
16 But from the standpoint of whether the Court knew of these  
17 things, certainly you didn't, and, yes, there is some  
18 discussion of it in -- in Dr. Paglini's report which, you  
19 know, it is part of the record from the prior proceedings. It  
20 still doesn't change the fact that these things are relevant  
21 given the pattern of conduct --

22          THE COURT: All right.

23          MR. JONES: -- the worsening pattern of conduct.

24          THE COURT: This is what I'm going to do. I'm not

1 going to allow them based on McMonigle, I think McMonigle  
2 applies to the last stip and order in time. However, I -- I  
3 have reviewed the record, and I think Dr. Paglini's report,  
4 whether it's introduced in this trial or not, sets forth a  
5 factual basis that there were allegations that perhaps this  
6 was going on previously. Right. You can argue that point in  
7 closing, but it -- it's certainly -- he may say that it was  
8 going on previously. The Court notes that. We're not going  
9 to take that fact out. I'm not going to strike that fact. We  
10 already have that. It's already in the record. Beyond that,  
11 the specifics of what was going on post the -- or pre the last  
12 order, we're not going to get into. Okay? Go ahead.

13 MR. JONES: So can I ask him I guess if there -- if  
14 -- if it's been a historical problem in general?

15 THE COURT: Has it been a concern of his.

16 BY MR. JONES:

17 Q Now, you were a party to the resolution that ended  
18 with the most recent custody order from Decem -- from the  
19 evidentiary hearing of December, 2013.

20 A Yes.

21 Q Now, did you believe that that resolution was going  
22 to end some of the problems you had been having with your --  
23 the mother of your child?

24 A I didn't because based on what I know about bad

1 mouthing and the psychological foundation that is -- needs to  
2 be present for it occur, and I also believe that those  
3 statements and -- and the -- a campaign of bad mouthing cannot  
4 -- cannot be stopped or can -- a person cannot be ameliorated  
5 without intensive therapy. And so that never happened, and so  
6 I was incredulous that -- that it was going to change after  
7 that December 2013 stipulation.

8       Q     Now, since that time, since December of 2013, I  
9 believe the order was entered in -- sometime thereafter in  
10 March, but since the stipulation in December of 2013, what  
11 issues have you encountered with Sasha as far as your  
12 relationship is concerned?

13       A     I'm continually having to hear from him things that  
14 he repeats that are said by his mother, chiefly things that  
15 Daddy -- and often -- most always he's crying. Dad, why are  
16 you nasty? Why are you mean? Why are you sneaky? Why do you  
17 put me in cheap clothes? Why do you feed me cheap food? And  
18 he still asks me if my name is piece of shit because that has  
19 a history that's gone back. That one's never stopped. He  
20 asks me, Daddy, why are you a waste of life. Things that he  
21 po -- couldn't possibly have come up with on his own. Things  
22 that could only have been told to him and are just -- as a  
23 parent, they're just devastating. It's -- I -- I don't even  
24 -- obviously I can't say -- all I can tell him is you know

1 what, mommies aren't always right.

2 Q Now, when he says these things to you, what is his  
3 demeanor?

4 A He's often crying. The -- the worst one that  
5 happened in -- the first time I heard this was in October of  
6 2014. I picked him up from the bus stop as I do every day.  
7 We get in the car. He starts crying. He says, Daddy, I wish  
8 I could love you. I wish I could love both of you, but Momma  
9 says I can only love her. And that was it for me because  
10 she's not just saying that he can't love me. She's saying  
11 that he can't love half of himself. That that half of himself  
12 isn't good. Half of you is cheap. Half of you is nasty.  
13 Half of -- half of you is mean. I can't love half of you, and  
14 I can't love half of myself.

15 As a counselor, as -- as a -- as a human being, that  
16 -- those words should never be said to a child. I don't care  
17 what the excuse is. It's just should never happen. I would  
18 never dream of saying anything about his mother because that's  
19 half of who he is. It -- it -- it defies common sense and  
20 common decency that I even have to battle back these comments.  
21 And with the -- you know, with something like reading even,  
22 that is something that I do because I know that it builds a  
23 child's self-esteem. I -- everything I do is to try and build  
24 his self-esteem. It's as if when I was given him as a baby,

1 it's like I have this --

2 MR. SMITH: Just a brief -- this is now  
3 nonresponsive to the question that's before the Court.

4 THE COURT: On to another question.

5 BY MR. JONES:

6 Q Yes. Now, you mentioned being a counselor. What is  
7 your job?

8 A I'm a -- I'm a high school counselor, and in that  
9 position I guide, direct, motivate high school students, end  
10 goal hopefully being some kind of post in secondary education.  
11 I deal with crisis as they come up. I deal with suicide. I  
12 deal with kids that are dealing with divorce, depression,  
13 drugs. Outside of school I've done a lot of mentoring  
14 particularly with kids that are at-risk, first generation  
15 college graduates, a lot of athletes. So it's not just a  
16 school hours job. It's something that encompasses my whole  
17 life.

18 Q Now, have you received any awards or recognition for  
19 your role in children's lives?

20 A In 2012 I was nomi -- I was chosen as the national  
21 school counselor of the year by the no -- by NOSCA, which is  
22 the National Office for School Counselor Advocacy.

23 Q Now, in your -- how long have you been a counselor?

24 A This is my 20th year.

1 Q And what is your education and do you have to have  
2 certain credentials?

3 A You have to have a masters in a counseling related  
4 field which I do. My masters is in clinical psychology with  
5 an emphasis on marriage, family, and child counseling.

6 Q Have you ever encountered anything like what you've  
7 heard from your son in the time that you've been a counselor  
8 of children?

9 A I've seen the other end of it. I've seen the end  
10 when they're a teenager, and they're in shambles and their --  
11 their self-esteem is destroyed. Maybe they've lost the -- the  
12 most damning thing that I've seen is when they've -- the  
13 respect of that parent is so eroded that that parent's not  
14 able to be a part of their lives so as if -- it's like they're  
15 -- they have only one parent because the other parent's just  
16 not even valued or respected enough to really participate in  
17 that kid's life anymore. I have seen that.

18 Q Now, as it pertains to Sasha and your personal  
19 experience with him, what does this, I guess, situation do to  
20 him physically?

21 A I think he's -- he's frustrated, so he -- he's -- he  
22 does -- he gets angry. He's defiant towards me often, you  
23 know, at home when we're trying to do schoolwork. I mean,  
24 it's a commitment to be able to get him to sit down and read

1 and do homework, and I have to remind myself that, you know,  
2 he -- he didn't create this situation for himself. It's my  
3 choice if -- if I don't get involved with his mom, he doesn't  
4 exist, so my job is the same. But it's a challenge because  
5 he's defiant. He's often repeating these things that indicate  
6 he doesn't have to respect me or other adults. You know, and  
7 we've had trouble with baseball because he does -- he wasn't  
8 respecting some of the coaches, which I think is a extension  
9 of him not respecting me, so these things come up on a daily  
10 basis when I engage with him in schoolwork and just in -- in  
11 everyday life.

12 Q Now, what was -- was there a specific instance that  
13 occurred that caused you to decide you needed to obtain other  
14 evidence about what was going on?

15 A It -- it was a culmination of hearing these things,  
16 sometimes daily, sometimes weekly, that I could see what was  
17 happening to him. I could see just pieces of his self-esteem  
18 falling off of him with each comment, with each statement that  
19 he's repeating that his mother has told him. I'm not going to  
20 sit back and let my son be destroyed and have no dignity left.

21 And I grew up without a father. It's going to be  
22 like he's going to be -- grow up without a father because  
23 there will be no respect for me anymore. It's like a Lego  
24 castle. I can put the Legos back on when he's in kindergarten

1 and first grade because I can read with him, and I can do  
2 these things. But there's going to come a point where I can't  
3 keep up anymore. I can't keep reattaching these Legos to this  
4 little boy because he deserves to love who he wants, and she  
5 will not permit it.

6           It's -- she's sick. She is clearly sick and not  
7 well, will not seek help. She's unrepentant. In every one of  
8 these pleadings and everything she's said, she's unapologetic  
9 for what's she's done to her son. She's not doing it to me.  
10 She's -- as -- as much as she's destroying my relationship  
11 with him, she is destroying his self-esteem. She's caving in  
12 half of himself and doesn't see it, doesn't care, and as long  
13 as I get taken down in the process, that's a victory.

14           Q     Now, you've reviewed the two child interview reports  
15 that were performed in this matter; is that right?

16           A     I did.

17           Q     Did it concern you that some of the same things  
18 you've heard directly from Sasha are being repeated to the  
19 interviewer --

20           MR. SMITH: Objection, Your Honor. The -- the Court  
21 had indicated that the initial testimony was going to address  
22 the good faith in putting the tape -- these -- in the home.'  
23 These reports --

24           MR. JONES: I -- I withdraw the question. He's



1 absolutely right.

2 THE COURT: Okay.

3 BY MR. JONES:

4 Q Now, when you had this realization, how did you come  
5 up with the idea of recording interactions between Sasha and  
6 his mother?

7 A Well, it was clear from the -- the first proceeding  
8 that these things were being said.

9 THE COURT: What first procee -- what -- the --

10 THE WITNESS: The first -- the stipulation, that  
11 these things were being said. I provided statements of people  
12 who had heard Sasha repeat these --

13 MR. SMITH: Objection. Move to strike the testimony  
14 based upon the Court's prior ruling in regard to McMonigle.

15 THE COURT: Counsel, maybe you can ask some question  
16 about the date and time, what he's -- what he's talking about.  
17 I'm -- you think --

18 MR. JONES: He is actually talking about those  
19 things that occurred prior to the --

20 THE COURT: The stipulation.

21 MR. JONES: -- stipulation.

22 THE COURT: So he's talking about the hearing that  
23 led up -- or the number of hearings that led up to the  
24 stipulation being entered?

1 MR. JONES: Right.

2 THE COURT: Okay.

3 MR. JONES: So if -- if you're saying he can't link  
4 that historical -- those historical events, then I'll redirect  
5 him, Your Honor.

6 THE COURT: I'm not saying that. I'll allow him to  
7 testify regarding his -- what he thought after that hearing,  
8 after that -- those series of hearings that led up to the  
9 stipulation in 2013.

10 BY MR. JONES:

11 Q Now, had you previously recorded the sounds of your  
12 custody exchanges?

13 A Yes. In 2012, I had -- I would just leave my -- my  
14 phone pointed at Sasha in the backseat at some exchanges.

15 Q And were the things captured by the recordings  
16 similar to the things that Sasha's been saying to you  
17 recently?

18 A Quite similar.

19 Q Were threats made in the presence of Sasha?

20 A Yes.

21 Q Have threats been made during these proceedings?  
22 And when I say threats, I mean by --

23 A Yes.

24 Q -- by Mom.

1 A Through text message, yes.

2 Q Were there times where Mom's actions were consistent  
3 with the things that Sasha has said to you about cheap  
4 clothes?

5 MR. SMITH: Objection as to time frame.

6 MR. JONES: It's -- I'm following the Court's lead  
7 on that.

8 BY MR. JONES:

9 Q I -- I -- is -- during the -- the -- the time  
10 leading up to the stipulation.

11 A Yes.

12 Q Can you give the Court specifics?

13 A One instance --

14 MR. SMITH: Judge, again, may I have a continuing  
15 objection on specifics --

16 THE COURT: Okay. So here -- here's what I --

17 MR. SMITH: -- associated with events that occurred  
18 prior to the time --

19 THE COURT: This is -- this is what I want. I don't  
20 want him to talk about specific incidences, events that  
21 happened pre-stipulation.

22 MR. JONES: Okay.

23 THE COURT: If he wants -- or if you're going to ask  
24 him about his thoughts or what he understood after the series

1 of motions and hearings that led up to that stipulation --

2 MR. JONES: Okay.

3 THE COURT: -- what he believed the take away from  
4 all of that was --

5 MR. JONES: Okay. Thank you.

6 THE COURT: -- that's fine.

7 BY MR. JONES:

8 Q Now, given what you were able to record during those  
9 proceedings or prior to the initiation of those proceedings,  
10 did you understand that actually capturing Mom in her typical  
11 demeanor provided relevant evidence for the Court?

12 A Yes. Particularly because it was in front of Sasha  
13 that she was saying these things to me.

14 Q And was it based upon that history and the  
15 statements made by Sasha to you in the fall of 2014 that you  
16 decided that you needed to try to record more of those  
17 interactions between Mom and Sasha?

18 MR. SMITH: Objection. Leading.

19 THE COURT: That's not leading. Go ahead.

20 MR. SMITH: Was it be --

21 THE WITNESS: Because the totality --

22 MR. SMITH: He's -- he's stating the question and  
23 saying was it this reason that you did that. That's a leading  
24 question.

1 MR. JONES: Okay. I'll rephrase it.  
2 THE COURT: Isn't it true. That would be leading.  
3 THE WITNESS: It never stopped, so there's a history  
4 noted by Dr. Paglini, noted by myself --  
5 MR. SMITH: Objection. Move to strike.  
6 THE WITNESS: -- noted by my wife and never -- that  
7 never -- that never stopped.  
8 THE COURT: Hold on, hold on, hold on.  
9 MR. SMITH: Dr. Paglini's report. Please --  
10 MR. JONES: Stop. Stop.  
11 THE COURT: Stop. Stop.  
12 MR. JONES: So --  
13 THE COURT: Joe, you can let them in. You can --  
14 that's just FMC training. I don't want to know about the  
15 history. But ask another question.  
16 MR. SMITH: The objection related to Dr. Paglini's  
17 report, the Court's already referenced it. I -- I'm concerned  
18 now that we're going to need to call Dr. Paglini and have him  
19 give testimony. I mean, it's really --  
20 THE COURT: Did he not testify previously?  
21 MR. SMITH: He testified previously, but that's not  
22 part of this case, and that's the specific things that are  
23 precluded under McMonigle.  
24 THE COURT: I told -- I -- my ruling was that that

1 was an issue previously. I think the record that it was an  
2 issue previously, that Dr. Paglini testify regarding it and  
3 other things --

4 MR. SMITH: And issues associated with Mr. Abid, but  
5 I just don't think that that's -- it doesn't matter what he  
6 testified to. It's just inadmissible under the doctrine of  
7 res judicata. That's my objection, Your Honor.

8 THE COURT: The fact that it was brought up before  
9 just as the fact as they were married whenever they -- or a  
10 motion was filed at a certain time and these things happened  
11 are part of the record. Okay. Those facts are part of the  
12 record. The specifics, events or specific acts or specifics,  
13 events outside of this room, outside of this court record, I  
14 don't want to hear about.

15 MR. SMITH: If I understand the Court's ruling just  
16 for clarification. You're saying that because Dr. Paglini  
17 testified in a matter before the most recent order, that  
18 testimony is admissible in this action --

19 THE COURT: Not admissible. Not -- not admissible.  
20 The fac -- what I'm guessing what Mr. Jones -- where he's  
21 going and what I think is appropriate and relevant is that  
22 this issue of bad mouthing has been an issue before, whether  
23 or not it was evaluated by the Court or not, but that he's  
24 complained of this behavior before. Okay. I don't want to

1 hear the specifics about it. I don't want -- but that he  
2 filed a motion before about this. There were proceedings  
3 before about this. There were experts before about this. Not  
4 the report, not his testimony, but those -- that fact.

5 MR. SMITH: Except that he filed a motion to  
6 relocate, and he filed a motion asking that there be  
7 restrictions on the contact of Ricky Marquez, and so if we're  
8 going to start looking at his behavior in the past in terms of  
9 his motivation for doing this, we have to acknowledge that his  
10 motion in part was based upon, in fact, largely motivated by  
11 the marriage to Mr. Marquez. I --

12 THE COURT: It's -- and that fact --

13 MR. SMITH: I don't know -- but I just don't think  
14 any of that is relevant and any of that is admissible under  
15 McMonigle or Castle v. Simmons.

16 MR. JONES: And -- and I think I understood your  
17 ruling, Judge, and if we wanted to actually read the motion,  
18 motion to change custody was pled in the alternative to  
19 relocation, and in addition to concerns about the fact that  
20 within a couple of months of someone getting out of prison  
21 after 10 years of a drug and gun sentence, Mom marries him.  
22 That was one of the considerations, but there's a long list of  
23 the bad mouthing right in the motion. I made sure I read it  
24 just for this argument.

1 THE COURT: Well, and here's the thing. Does it  
2 matter so much if there's a long history of complaining about  
3 bad mouthing? Might be better for you. If it's suddenly  
4 started after McMonigle where -- that last hearing, we're so  
5 concerned about bad mouthing. I mean --

6 MR. SMITH: Look, I guess, I just want to be on the  
7 same playing field, not a different playing field, so if the  
8 Court is going to acknowledge the -- sort of the history of  
9 what was pled in this case, I just want to make sure it's  
10 complete because while Mr. Jones, who's very careful not to  
11 mention it, but what the obsession was at that time was  
12 Mr. Marquez. That was the focus of the motion. They had some  
13 other people who said this and that. Dr. Paglini's report  
14 didn't go much on that, says, oh, if she says it again, maybe  
15 she should get some counseling. There was -- that was not the  
16 focus of Dr. Paglini's report, and I understand you have an  
17 opportunity to review it. The focus was in part on Mr.  
18 Marquez and the relationship of the parties and the behavior  
19 of Mr. Abid, so I didn't know that I would -- I was going to  
20 have to address that playing field when I came here today, and  
21 I just want to know now I that I have to put on my case  
22 whether or not I should try to address that -- that behavior  
23 so as to prevent the Court --

24 THE COURT: If you -- if you want to highlight facts



1 and dates of things that she's complained of or that he  
2 complained of, that he complained of her contact or that he  
3 wanted her to be there and not -- that's fine. That that was  
4 complained of.

5 MR. SMITH: Okay.

6 THE COURT: The -- the veracity of that and there  
7 was no full evaluation by the Court --

8 MR. SMITH: Correct.

9 THE COURT: -- nobody had an opportunity to present  
10 all their witnesses because --

11 MR. SMITH: Right.

12 THE COURT: -- there was a stipulation. But the  
13 fact that it -- the motion was filed and that they complained  
14 of it, I -- I'm going to consider that fact.

15 MR. SMITH: Okay. Thank you.

16 THE COURT: I don't know --

17 MR. SMITH: That helps --

18 THE COURT: -- what weight it is due --

19 MR. SMITH: Can we --

20 THE COURT: -- if any at all, Mr. Smith.

21 MR. SMITH: Okay. I don't -- I think I -- I have  
22 made my clear on my objection, but understanding that is very  
23 helpful. That'll help me present the case to you.

24 THE COURT: All right. Thank you.

1 MR. SMITH: Thank you.

2 BY MR. JONES:

3 Q Now, those things that you heard from Sasha and his  
4 demeanor after the stipulation, were they far worse than  
5 anything you had encountered before?

6 A Far worse because he's getting older, and he has  
7 more language, and he understands more. When he tells me that  
8 if I love him, I would make things equal, obviously he doesn't  
9 even understand the concept of equal, but -- and he doesn't  
10 understand the concept of leveraging love, so they -- they --  
11 they ramped up. And everything he -- everything he says is --  
12 that comes from his mom denigrates me and denigrates my  
13 relationship with him, and it ramped up in 2014. It continues  
14 to this day.

15 Q Now, when you decided to place the recording device,  
16 where did you place it?

17 A In the -- in his backpack, there was a separate  
18 plastic container that held the sight words and the little  
19 Reading A to Z books. It was placed in there.

20 Q Was there a reason you chose the backpack rather  
21 than any other attempt?

22 A Because I knew it would be close to him, and I knew  
23 that the times that I expected that the bad mouthing would be  
24 -- would occur, the backpack would be next to him.

1 Q When you placed the recording device, did it have  
2 anything whatsoever to do with Ricky Marquez?

3 A No, no. As I said before, when he told me that he  
4 couldn't love me; he wished he could love both of us, but he  
5 could only love his mom, that and the -- the things that had  
6 gone on nonstop since the divorce, I wasn't going to stand by  
7 and let my son be destroyed. It's not going to happen.  
8 Whatever I have to do to show the Court the monster, to show  
9 the Court those words because before -- I -- I don't think  
10 there's any other way to -- to show somebody as a bad mouther  
11 unless you can hear their words.

12 Q Did you intend to record anyone but Sasha and his  
13 mom?

14 A No. Solely wanted to be able to show the Court  
15 what's being said to my son so that the Court can make a  
16 decision that's in his best interest.

17 Q How many times did you put the device in the  
18 backpack?

19 A Twice.

20 Q On each occasion, did you successfully capture bad  
21 mouthing on the part of Mom?

22 A Yes.

23 MR. SMITH: Move to strike, Your Honor.

24 MR. JONES: Was --

1 MR. SMITH: Until the admissibility of the tape,  
2 they're not permitted to present evidence in regard to its  
3 contents. We haven't moved the tape into -- to admission.  
4 You can't --

5 THE COURT: I'll strike it. Ask another question.

6 MR. SMITH: Thank you.

7 BY MR. JONES:

8 Q Did you record other noise on the recording device?

9 A The only recording that I heard was Sasha and his  
10 mother.

11 Q Okay. So how did that work when you got the device  
12 back?

13 A The device recorded for 15 straight hours so the --  
14 the device is a flash drive put into the computer. It's  
15 uploaded into four separate wave files.

16 Q So how did you know what portion was Sasha and what  
17 portion was other ambient noise?

18 A Well, often times when Sasha would be crying and --  
19 and -- and telling me these things that were said to him by  
20 his mom, I would ask him, you know, when -- when did this  
21 happen, and he would tell me. And so it seemed to be a theme  
22 that it -- that it was happening two specific times. One, as  
23 soon as he walked in the door when I dropped him off, and,  
24 two, when he was being driven to school in the morning by his

1 mother. And I knew from the Safe Key records precisely the  
2 time that he was checked in consistently, so I -- therefore, I  
3 knew on the recording there - there were two spots I was only  
4 interested in, the moment he walked in the door, the moment he  
5 was driven to school. That's it.

6 Q And how were you able to segregate that as far as  
7 the wave files?

8 A Because there's a timestamp that I could see what  
9 time the recording started, what time it ended.

10 Q And are -- are those the only recordings you  
11 listened to?

12 A Yes.

13 Q And are those the only recordings that you  
14 preserved?

15 A Yes.

16 Q Was any part of the recordings for those timestamps  
17 altered in any way by you?

18 A No.

19 Q Was any part of the conversation between Sasha and  
20 his mother deleted that would've otherwise had positive  
21 references to you?

22 A No.

23 Q Are the recordings that have been provided in  
24 discovery and provided to Dr. Holland and apparently Dr.

1 Chambers all of the recordings that involved Sasha and his  
2 mother?

3 A Yes.

4 MR. JONES: I pass the witness, Judge.

5 THE COURT: Counsel?

6 CROSS EXAMINATION

7 BY MR. SMITH:

8 Q So at the time that you made this recording, who did  
9 you understand resided with Lyudmyla in her home?

10 A Her husband, Sasha, and her daughter Ireena (ph).

11 Q And what do you -- did you understand that what  
12 Mr. Jones had just indicated at or about the time that you  
13 took this recording that Mr. Marquez was a felon?

14 A All I cared about was the recording, the interaction  
15 between my son and his mother.

16 Q Okay. That wasn't my question though. My question  
17 was were you aware at the time that you took the recording  
18 that Mr. Marquez was a felon?

19 A That was previously known to me.

20 Q Okay. And, in fact, you had contacted even after  
21 the time of September 2013 his parole officer, correct?

22 A On one single occasion since the stipulation I  
23 contacted his probation office.

24 Q Okay. So the answer is, yes, you did.

1 A Yes, one time.

2 Q Okay. And in that conversation you attempted to  
3 preclude her from having Mr. Marquez transfer his probation to  
4 the state of Nevada, correct?

5 A That's incorrect. Lyudmyla had made contact with me  
6 and indicated that she was no longer going to allow me to pick  
7 up Sasha after school, and she intended with -- through the  
8 help of Mr. Balabon that she'd already paid him, and she had a  
9 credit with him, that she was going to seek to have her time  
10 restored, so I was reaching out to the probations officer to  
11 make it clear that if they were going to attempt to vacate  
12 their part of the agreement, then I would vacate mine.

13 Q Okay. In other words, that you wanted Mr. Marquez  
14 to go back on to supervised visitation or supervised contact  
15 with Sasha, correct? That's your statement?

16 A That if they were not going to uphold their end,  
17 then I would not uphold my end.

18 Q Okay. And this was not the first time you had  
19 talked to Mr. Marquez's parole officer, correct?

20 MR. JONES: Objection. Foundation.

21 THE COURT: Can I just ask parole or probation?

22 MS. ABID: Probation.

23 MR. SMITH: Sorry. Probation.

24 THE COURT: He was in prison or he was not?

1 MR. SMITH: He was out.  
2 MR. JONES: But he was in prison for 10 years.  
3 THE COURT: So it is a parole officer?  
4 MS. ABID: No.  
5 THE COURT: A new offense?  
6 MR. SMITH: Yes, it is a parole off --  
7 MS. ABID: It's probation. But, it's -- it's over.  
8 MR. JONES: Well, but it's parole and probation I  
9 think is how they refer to it in the federal system.  
10 MR. SMITH: I -- I don't --you may know, Your Honor,  
11 more than, I think, the civil lawyers know.  
12 THE COURT: But, see, my question is was he -- he  
13 was in prison, released. Did he have another criminal --  
14 MR. SMITH: No.  
15 MR. JONES: No.  
16 MS. ABID: No.  
17 THE COURT: Okay. So parole. All right.  
18 MR. JONES: No.  
19 MR. SMITH: It was his parole --  
20 THE COURT: Go ahead.  
21 MR. SMITH: -- parole officer.  
22 THE COURT: Okay.  
23 BY MR. SMITH:  
24 Q So the -- you -- this was not the first time you



1 spoke to his parole officer, correct?

2 A The only time since the stipulation.

3 Q In fact, you spoke to two different parole officers

4 over time, correct?

5 A One since the stipulation.

6 Q Okay. But the answer to my question is you spoke to

7 different parole officers over time?

8 A Only prior to the order.

9 Q Okay. But the answer is yes, correct, Mr. Abid?

10 You had spoken to his parole officers; one before this one,

11 and you spoke to them more than one --

12 A Correct.

13 Q And you spoke to them more than once, correct?

14 A I spoke to the probation officer in California more

15 than once.

16 Q Okay. And you had learned facts that concerned you

17 about Mister -- or allegations that had concerned you about

18 Mr. Marquez, correct?

19 A From the probation officer in California.

20 Q And as you sit here today, you believe Mr. Marquez

21 is a member of the Mexican mafia?

22 A Yes.

23 Q And that knowledge caused you to seek out a meeting

24 with the Federal Bureau of Investigation and its

1 representatives in the summer of 2015, correct?

2 A Incorrect. They asked to meet with me.

3 Q Okay. And at that point you met with them, correct?

4 A They asked. Of course, I met with them.

5 Q The answer is, yes, you met with the Federal Bureau  
6 of Investigation representatives in or about the summer of  
7 2015, correct?

8 A Incorrect. 2014.

9 Q 2014. Thank you. In or about 2014, correct?

10 A Yes.

11 Q All right. And then you were in contact with those  
12 individuals subsequent to that time, sometime in the fall of  
13 2014, correct?

14 A I wouldn't call it contact. They made one phone  
15 call to me post-meeting.

16 Q Okay. So the answer to my question is you spoke to  
17 the representatives of the Federal Bureau of Investigation in  
18 the fall of 2014, correct?

19 A At their urging, yes.

20 Q Yes, and the subject of that conversation was  
21 Mr. Marquez, correct?

22 A I really don't recall.

23 Q The subject of the conversation you had with them in  
24 July was Mr. Marquez; wasn't it?

1           A     I didn't speak with them in July.

2           Q     Oh, excuse me. In the summer of 2014, was

3 Mr. Marquez, correct?

4           A     No, I don't remember the specifics of what they were

5 asking me. It was not -- information I don't recall.

6           Q     I just asked you the subject, Mr. Abid.

7           A     I don't remember.

8           Q     Was --

9           A     I don't remember.

10          Q     You don't recall a single thing that you talked

11 about with the Federal Bureau of Investigation agents in the

12 summer of 2014?

13          A     First of all, they don't --

14          Q     I'm -- I'm asking --

15          A     -- they do -- they -- they --

16          Q     -- you a question. It's a yes or no.

17          A     -- do the asking, so I didn't discuss anything with

18 them because I was only asked questions.

19          Q     Okay. It's a yes or no.

20          A     I wasn't allowed to ask questions so.

21          Q     It's a yes or a no, Mr. Abid. Did you, in fact,

22 have a discussion with anyone at the Federal Bureau of

23 Investigation regarding Mr. Marquez in the summer of 2014?

24          A     I answered some questions on a number of topics. I

1 don't remember.

2 Q But you don't remember a single thing you talked  
3 about?

4 A No, not specifically.

5 Q Well, then how about generally? What did you talk  
6 about?

7 A They had some questions about things that I don't  
8 recall. I don't re -- recall the conversation. I only was  
9 there 45 minutes, and I listened to them, and that -- and that  
10 was it.

11 Q Okay. You spoke to these individuals for 45  
12 minutes, and you don't remember a word that was said back and  
13 forth, correct? That's your testimony today.

14 A No.

15 Q No, you do not?

16 A No.

17 Q Okay. So you're answering, no, you do remember or,  
18 no, you don't remember?

19 A I don't remember any specifics. I don't remember  
20 any specifics.

21 Q I'm not asking you and specifics. Are you  
22 remembering any of the subjects that were referenced in the  
23 meeting with the Federal Bureau of Investigation in the summer  
24 of 2014?

1 A No.

2 Q And you don't remember -- let me-- let me ask you  
3 this. Do you remember anything that was discussed in the  
4 telephone conference with the Federal Bureau of Investigation  
5 in 2014 in the fall?

6 A Not specifically.

7 Q Didn't, in fact, you discuss the -- the issue of  
8 two-party communication with the Federal Bureau of  
9 Investigation and Nevada laws associated with two-party or  
10 taping communication in the summer of 2014?

11 A No. In fact, when I was in the waiting room, there  
12 were two officers that were talking about that subject.  
13 That's all I remember.

14 Q So let me get this straight, you don't remember any  
15 of the questions that were asked of you at this meeting, but  
16 you remember that officers were talking about the two-party  
17 consent rule -- rule regarding wire tapping at that -- well,  
18 when -- while you were waiting in the -- the conference room  
19 or waiting in the waiting room.

20 A Yeah, for some reason it -- it stuck with me.

21 Q But nothing else about that entire conversation  
22 stuck with you using your words?

23 A No.

24 Q Your testimony is that one of the considerations for

1 you in entering the agreement in 2013 was you having this  
2 additional time during Lynda's (ph) -- what was then Lynda's  
3 (ph) time with Sasha, correct?

4 A Yes.

5 Q That time was while Lynda (ph) was at work, correct?

6 A I believe so, yeah.

7 Q You understood at the time that that agreement was  
8 made and your -- your Counsel read it into the record  
9 stating --

10 MR. JONES: Objection, Your Honor. This is --

11 THE WITNESS: No, because --

12 MR. JONES: -- has nothing to do with --

13 THE COURT: Hold on, hold on.

14 MR. JONES: -- the topic we're covering.

15 THE COURT: Kind of beyond the scope of the  
16 evidentiary issue before us and -- and the tape.

17 MR. SMITH: Except it is -- we'll get there, Your  
18 Honor.

19 MR. JONES: Objection.

20 MR. SMITH: His -- his statements to this Court, his  
21 testimony to this Court, is that he -- one of the things that  
22 he just testified was that he was -- he had called the  
23 probation officer because Mrs. Abid was threatening to hire a  
24 counsel and file a motion, the motion that she ultimately did

1 hire, regarding the time frame of these children. His -- and  
2 I think the Court has recognized that his frame of mind as to  
3 the relationship of the parties, both before and after he  
4 commenced this taping, is important. It's important to  
5 understand the reasons why and what's motivating him to do  
6 that. This Court has recognized he already knew very well  
7 that at least from his point of view that there was caution --

8 THE COURT: I'll allow it if we're getting  
9 somewhere. I don't want -- I --

10 MR. SMITH: We --

11 MR. JONES: But -- but --

12 THE COURT: -- I don't want you to think of this as  
13 a free for all cross.

14 MR. JONES: But the -- the problem, Judge --

15 THE COURT: This is the tape.

16 MR. JONES: -- is now you're getting into  
17 substantive issues that would be part of my case in chief, and  
18 I think you have to determine right now if you believe -- in  
19 order for him to go any further with that line of questioning  
20 if you believe that the motivation to record had anything to  
21 do with the phone call to the probation officer.

22 THE COURT: I don't -- I don't -- I don't -- I'm not  
23 hooking up the probation officer and the FBI just yet.

24 MR. JONES: Their theory, Judge, is that he recorded

1 at the behest of the FBI to catch Ricky Marquez in some thing.  
2 I mean, that's how far afield we're going.

3 THE COURT: Is that your theory?

4 MR. SMITH: We don't believe -- we think the  
5 evidence to -- and the testimony, there's more than this. The  
6 testimony will reflect that part of his motivation for placing  
7 a recording -- you know what? Judge, I'd rather not state  
8 this and inform the witness --

9 THE COURT: Well, then can we just talk about it --

10 MR. SMITH: Let's do this on a sidebar.

11 THE COURT: -- because I -- because I'd like to  
12 know.

13 (COURT RECESSED AT 15:39:38 AND RESUMED AT 15:46:10)

14 THE CLERK: We're back on the record.

15 THE COURT: All right. We're back on the record. I  
16 had a conversation regarding this line of questioning off the  
17 record so that I could understand better where Counsel was  
18 trying to tie up this line of questioning. For the record,  
19 I'm going to allow Counsel to explore the issue of the FBI,  
20 meetings and parole office meetings in the summer of two  
21 thousand forwar -- 2014 and after that and as to the pick up  
22 and -- and drop-offs and the Plaintiff's behavior relative to  
23 visitation in the months before -- before the audio taping.  
24 BY MR. SMITH:



1 Q So, Mr. Abid, you had expressed concern regarding  
2 the behavior of Ms. Abid even prior to -- excuse me -- even  
3 after the September '13 or actually the September '14 order  
4 that was entered in the case, right?

5 A Yes.

6 Q And that concern was that she was doing something  
7 wrong while she had Sasha in her care, yes?

8 A She was bad mouthing me.

9 Q Yeah. Yet during that period of time you expanded  
10 her time under the order, correct?

11 A Not sure I understand what you're asking.

12 Q In your view, the order indicates that you will have  
13 the child on her days on -- on I think it's Thursday and  
14 Wednesday and Thursday --

15 MS. ABID: Monday, Tuesday.

16 BY MR. SMITH:

17 Q Oh, Monday, Tuesday from -- until 5:30. That's your  
18 understanding of the order, correct?

19 A That's not my understanding. My understanding is  
20 every oth -- every Monday, every Tuesday, and every other  
21 Friday.

22 Q Okay. So your understanding of that order was that  
23 was the time that you were allotted under the order that was  
24 entered in September of 2014, correct?

1 A Yes.

2 Q Yet in September, October, and portions of November,  
3 you expanded the time and allowed Ms. Abid additional time  
4 under that order during those periods you just described,  
5 correct?

6 A No and --

7 Q That would be a yes or no question, Mister --

8 A No, no.

9 Q So she never had time during those periods that I  
10 just referenced with you, correct? That's your testimony?

11 A I'm not -- I'm not clear what you're asking me.

12 Q Okay.

13 A You're asking me if I gave her more time? I -- I  
14 don't understand what you're asking.

15 Q Okay. The testimony is or the -- the order is that  
16 you have the child from 3:00 to 5:30 p.m. Monday, Tuesday, and  
17 Friday, correct? And alternate Fridays, correct?

18 A Yes.

19 Q Okay. But during the period between September and  
20 November of 2014 --

21 MR. JONES: Sorry. She's looking at that report.  
22 You just have to be careful.

23 MR. SMITH: She can look at the report.

24 MR. JONES: I know. I know, but, I mean, I didn't

1 want her taking it. I didn't know why he dropped it off in  
2 front of her.

3 MR. SMITH: He dropped it off because I wanted it,  
4 and she's perfectly will -- able to look at it.

5 MR. JONES: I'm not saying she can't read it. I  
6 just wanted to make sure you understood it was there.

7 MR. SMITH: I don't what that was about, but let the  
8 record reflect that Mr. Jones expressed concern over my client  
9 reviewing Dr. Paglini's report which is -- she's well able to  
10 do.

11 MR. JONES: Not reviewing it.

12 BY MR. SMITH:

13 Q All right. The -- in regard to the -- let's go back  
14 to the question so the record is clear. So you -- during the  
15 period of time in September, October, and November, you  
16 voluntarily allowed Ms. Abid to take the child earlier than  
17 4:30 -- excuse -- 5:30 on Mondays, Tuesdays, and alternative  
18 Fridays.

19 A Your -- your time period is incorrect.

20 Q Okay. What -- what time frame did permit that?

21 A It's not a matter of permitting it. On October  
22 19th, 2014, I had met with Ms. Abacherli --

23 Q Okay, all right.

24 MR. SMITH: Let -- let's --

1 THE WITNESS: She told me --

2 MR. SMITH: -- move to strike as nonresponsive.

3 BY MR. SMITH:

4 Q Mr. Abid, I'm just trying to find out whether at any  
5 period of time in the fall -- in September and October of  
6 2014, you allowed Ms. Abid to pick up Sasha early at -- at  
7 about 3:20 on the days that you -- that we just referenced  
8 that you believe you were supposed to have him in your care.

9 A 3:20 would not have happened because I wouldn't have  
10 got him home until 3 o'clock, so you're -- you're asking me to  
11 admit to facts that are incorrect.

12 THE COURT: Okay. How about this? At any time in  
13 the fall of 2014, did you allow the Defendant to pick Sasha up  
14 from your home prior to 5:30?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Do you know --

17 MR. SMITH: And on those -- okay --

18 THE COURT: -- approximately when that was?

19 THE WITNESS: Well, we would still -- we would still  
20 be doing homework. I mean, I pick him up from the bus at  
21 2:30. He'll be doing homework. We'd play sports in the  
22 backyard, so it would -- it would probably be 4:30, 4:00.

23 THE COURT: Okay, Counsel?

24 Was that every week? Was it regular? Was it every

1 week, or was it certain times? When was it? If you know.

2 Was it regular?

3 THE WITNESS: No, it was just -- it was  
4 intermittent, and it stopped around October when there was the  
5 threat of litigation.

6 (COUNSEL AND CLIENT CONFER BRIEFLY)

7 BY MR. SMITH:

8 Q During the time that you indicated that Lynda (ph)  
9 was bad mouthing you, she was also agreeing to things that  
10 were -- well, strike that. Let's look at -- so I want to be  
11 clear on your testimony. Your testimony is that you don't  
12 recall Lynda (ph) ever picking up the child prior to 4:00  
13 o'clock on those days or 4:30 on those days? Which is it?

14 A It wasn't -- the Judge asked me. She asked me when  
15 it typically was. It was typically between 4:00 or 4:30. Do  
16 I know the exact times? No.

17 Q Did she ever pick him up prior to 4:00 -- or 4:00 or  
18 4:30?

19 A I'm sure perhaps on a Friday maybe.

20 Q Okay. So just maybe one time?

21 A I don't know.

22 Q In fact, wasn't her custom and habit and practice to  
23 pick up the child as -- when she got off work during that  
24 period of time?

1           A     We had things we were doing, if we were finished,  
2 then she was free to pick him up until she threatened me with  
3 litigation, and I said it's just safer that we go to the order  
4 and follow the order.

5           Q     Okay. So that was peripherally okay until she  
6 threatened you with litigation on October 19th.

7           A     And also on October 19th, I met with  
8 Ms. Abacherli --

9           Q     Is the answer yes or --

10          A     No, no, it's not because you're not letting me  
11 complete what was the precipitating event.

12          Q     Okay. So the answer is no.

13          A     Well, ask -- ask the question. I don't -- I don't  
14 understand what you're asking.

15          Q     Your -- your claim is that on October 19th, she  
16 threatened litigation on you, right?

17          A     In the time period starting October 19th, I don't  
18 know the exact date, between there, October 4th, I don't -- I  
19 mean, November 4th, somewhere in that -- that range.

20          Q     And it's your testimony that the reason why you cut  
21 off Lynda (ph) from that time was because you had a  
22 conversation with Ms. Abacherli which she expressed concern  
23 about your son and his academic progress.

24          A     That coupled with the threat of litigation.

1 Q It's -- okay. But you -- your testimony is --

2 A A singular event.

3 Q Your testimony is that you had that conversation  
4 with Ms. Abacherli, the same Ms. Abacherli that was here  
5 today, correct?

6 A Yes, I did.

7 Q And that was the -- part of the motivation for you  
8 to stop him from having that contact with Lynda (ph), correct?

9 A No, it was that I needed him to learn those sight  
10 words. I needed to read with him. I needed to teach him to  
11 count. All the things that he couldn't do, so I took it upon  
12 myself when she refused to help me that I could use my time  
13 the best I could to -- truthfully to build up his self-esteem  
14 because it was her mission to destroy it.

15 Q Your -- the statement made by your Counsel during  
16 argument was that he understood that you had agreed that you  
17 would have the child at 5:30 as part of the deal, but that had  
18 nothing to do with the fact that Lynda (ph) worked, correct?

19 A It had nothing to do with it because at that time  
20 when we were in the settlement conference, she'd also  
21 mentioned that she had been working from home, so the truth is  
22 kind of elusive.

23 MR. SMITH: Okay. Move to strike as nonresponsive.

24 BY MR. SMITH:

1 Q It calls for a yes or no answer. Was it true or not  
2 true? Did you hear Mr. Jones' statement that this was not rel  
3 -- this was not related to her work hours, this stipulation  
4 was not related to her work hours?

5 A Yes, I heard that.

6 MR. JONES: Did I make that statement here today?

7 MR. SMITH: I believe you did.

8 MR. JONES: I think it might've been in the hallway  
9 and not here on the record but --

10 THE COURT: Well, he said he heard it so next  
11 question.

12 BY MR. SMITH:

13 Q Mister -- Mr. Abid, did you -- did you do any  
14 investigation into Mr. Marquez's background in 2014?

15 A 2014?

16 Q Yes.

17 A No.

18 Q Other than the FBI and his parole officer, did you  
19 speak to anyone else in regard to Mr. Marquez?

20 A Just, you know, people in my everyday life that I  
21 discuss my life with and who my son's exposed to so just in  
22 everyday parlance with coworkers, friends, you know, when  
23 you're going through something, so, yeah, I would discuss the  
24 -- the circumstances of my life which that is a part of.



1 Q As it -- as you sit here today, you believe that  
2 Mr. Marquez is still committing crimes, correct?

3 A I believe that his background is troubling.

4 Q You believe that he's still committing crimes,  
5 correct?

6 A No.

7 Q Well, in fact, you believe that he was committing  
8 crimes in or about the fall of 2014; didn't you?

9 A No, the -- the FBI asked to speak with me. I didn't  
10 ask to speak with them, so that wasn't my choice.

11 Q Did that -- did that foster a belief in you that  
12 Mr. Marquez was still committing crimes?

13 A No. And I don't concern myself with it because I  
14 don't have any power in that area. If -- if -- if something  
15 were to happen, I -- I trust that law enforcement would take  
16 care of it, but it's not something that I can -- I got to  
17 worry about my son. This is about my son and -- and -- and  
18 restoring his self-esteem and my other children. I don't have  
19 time to worry about him.

20 Q Well, you believe that he's part of the Mexican  
21 mafia, correct?

22 A I know that he is.

23 Q Okay. And you believe that's a prison gang,  
24 correct?

1           A     I know it to be a prison gang.

2           Q     And you believe that Mr. Marquez is always a member  
3 of the Mexican mafia and always will be, correct?

4           A     According to my research, it's a blood in, blood out  
5 membership, so he's still alive, therefore, he's still a  
6 member.

7           Q     And you -- you believed that in the fall of 2014,  
8 correct?

9           A     I believe it to this day.

10          Q     Okay. And you believe that -- that Mr. Marquez was  
11 one of the worst criminals in his -- in the district that he  
12 was incarcerated, correct?

13          A     That is a quotation from Scott Bowden (ph), not  
14 mine.

15          Q     And you believe that? And you believe that,  
16 correct?

17          A     That's what he told me. It doesn't -- I -- I don't  
18 necessarily believe it or not believe it. Those -- those are  
19 the facts as they were told to me.

20          Q     He said that -- and you believe that he was -- prior  
21 to drug trafficking, he was doing other kinds of drug  
22 trafficking; that's your belief, correct?

23          A     According to Mr. Bowden, he was trafficking MDMA,  
24 which is ecstasy and selling weapons.

1 Q And you believe that Ricky Marquez is human garbage,  
2 correct?

3 A I believe that's what Mr. Scott Bowden (ph) told me.  
4 And as a parent, that was pretty concerning whether or not I  
5 believed it or not. I don't know --

6 Q And that cause -- and that caused you to reach out  
7 to his probation officers, correct?

8 A No. I reached out to his probation officer because  
9 Lyudmyla did not share any information with me about  
10 Mr. Marquez and I -- I unearthed the information for myself  
11 six months later. When I found out who he was, I called  
12 Mr. Bowden (ph) on the phone. Mr. Bowden (ph) shared with me  
13 a number of things on the phone, one of which that he believed  
14 he was human garbage.

15 Q And you -- you then --

16 THE COURT: Who's Mr. Bowden (ph)?

17 MR. SMITH: He's the former parole officer.

18 BY MR. SMITH:

19 Q And you -- you contacted Lyudmyla's family members  
20 about Mr. Marquez, correct?

21 A No. I contacted -- I sent Ireena's (ph) father, who  
22 I'm friends with, who I've met, who's stayed in my home, I  
23 sent him all the records associated with the cases involving  
24 drug trafficking and weapons because I wanted him to have the

1 same information that I was kept from. That was my only  
2 motivation because I love that child.

3 Q So that was Ireena (ph), Lyudmyla's daughter,  
4 correct?

5 A Yeah.

6 Q Right. And --

7 A So her ex-husband, I sent that information to.

8 Q Right. And you mentioned it school officials,  
9 correct? You sent -- you told school officials about your  
10 thoughts about Mr. Marquez --

11 MR. JONES: Objection. Foundation as to when.

12 THE WITNESS: As a school district employee --

13 MR. JONES: Wait.

14 THE COURT: Hold on. Hold on. Just shorten it up.

15 MR. JONES: Do you have a time frame?

16 BY MR. SMITH:

17 Q At any time in 2014, did you talk to any member of a  
18 -- of the school about Mr. Marquez?

19 A In 2014?

20 Q Yes.

21 A No, I didn't speak with them in 2014.

22 Q But you spent --

23 A Oh, no, wait. I take that back. It would've been  
24 -- I spoke to the principal about the fact that his --

1 Lyudmyla had Ricky listed as the father on -- Infinite Campus,  
2 and I wanted it corrected, and so I had to bring in documents  
3 to show the custodial situation.

4 Q And you -- you recall telling hundreds of people  
5 about Mr. Marquez, correct?

6 A I don't know hundreds of people.

7 Q Well, let me -- let me -- let's -- let's go to your  
8 deposition then.

9 MR. SMITH: Your Honor, I'm going to publish the  
10 deposition of Sean Abid. It's under --

11 MR. JONES: Do you have a copy for me, Counsel?

12 MR. SMITH: It's under seal. No, nor do I need one.

13 MR. JONES: You want me to read along and verify  
14 what your quote is, I think I do need a copy.

15 MR. SMITH: I'm going to ask the witness to do that.

16 I'll show you, Your Honor, the deposition of Sean  
17 Abid taken on Friday, September 4th, 2015. I'm providing you  
18 the published original of that document.

19 BY MR. SMITH:

20 Q Mr. Abid, do you recall having your deposition taken  
21 on or about September 4th, 2015?

22 A Yes, I do.

23 Q Do you recall being present in my conference room?

24 A Yes, I do.

1 Q And do you recall taking an oath that you would tell  
2 the truth?

3 A Yes.

4 Q And do you recall telling me that if there was -- if  
5 you had an opportunity to change the answer to a question and  
6 if you changed your answer, I would have the opportunity and  
7 Mr. Jones would have the opportunity to comment about that?

8 Do you recall that?

9 A Yes, sir.

10 Q All right. And you understood at the time you were  
11 under a obligation to tell the truth, correct?

12 A Yes.

13 Q All right.

14 MR. SMITH: Your Honor, I would now like to publish  
15 and use the deposition of Mr. Marq -- Mr. Abid as part of the  
16 cross examination.

17 THE COURT: Go ahead.

18 BY MR. SMITH:

19 Q The -- if you'll turn to page 30 of the deposition.

20 MR. JONES: Your Honor, I -- I need to have a copy  
21 of the transcript.

22 THE COURT: Counsel, it's a transcript in -- is --  
23 is the copy of it in your exhibits or anything? Do you have  
24 an extra copy of it?

1 MR. SMITH: No.

2 MR. JONES: Because there's a rule of completeness,  
3 meaning if he reads any portion of the transcript, I can  
4 require him --

5 THE COURT: Do you mind if Mr. Jones stands over  
6 there and reads --

7 MR. SMITH: Yeah, as long as there's no  
8 communication between --

9 THE COURT: -- over his shoulder.

10 MR. SMITH: -- the part -- the --

11 THE COURT: Or do you want me to take a break and  
12 make a copy?

13 MR. JONES: Are there only certain sections that  
14 you're going to --

15 MR. SMITH: No -- nor -- look, I'm not aware of any  
16 rule that requires that Counsel who didn't order a copy is  
17 entitled to receive them.

18 THE COURT: Well, do -- you don't -- I mean, do you  
19 mind if he --

20 MR. SMITH: I don't mind as long as there's no  
21 communication between Mr. Jones and --

22 THE COURT: Oh, they're not going to talk. He could  
23 stand over there.

24 MR. JONES: Well, the problem is then I got to flip

1 through the pages to --

2 MR. SMITH: Well, no. I'm going to direct him to  
3 the pages. I don't think this is necessary, Your Honor. In  
4 every examination I'll have of him of any portions of the  
5 record, I will ask him -- I will read the record to him, and I  
6 will ask him if that is an accurate statement of what is  
7 contained in the record. That's all. So there's going to be  
8 no doubt as to whether or not it's accurate because Mr. Abid  
9 has it before him and can tell us if it is.

10 MR. JONES: Okay.

11 THE COURT: Well, I'll allow Mr. Jones to read it  
12 along with him and not communicate with him, so he can read  
13 along. Go ahead.

14 BY MR. SMITH:

15 Q On pa -- on page 30, well, it's actually beginning  
16 on page 29, I'm going to start reading at line 12. Prior to  
17 that call of Mr. Bowden, did you have any communication with  
18 other individuals regarding Mr. Marquez? Answer: Law  
19 enforcement or just -- question: Anyone. Answer: With  
20 knowledge of him? I mean, I talked to my friends. I don't  
21 know if you're asking me what type of individuals I spoke to.  
22 Question: Okay, so you related the information you had  
23 received about Mr. Marquez to various friends and family,  
24 correct? Answer: Uh-huh (affirmative). Question: Is that



1 yes? Answer: Yeah. Question: Okay. Answer: And then they  
2 would -- you know, they started their own research. My --  
3 many friends, many family members, different occupations and  
4 abilities to acquire information, so, yeah, I shared it with  
5 all my -- with my people.

6 Question: Okay. Who were the friends that you're  
7 referring to when you said you have various abilities to  
8 provide information? Answer: Well, that would -- that would  
9 mean every one of my friends have varying abilities.

10 Question: Okay. So who are that you're thinking of when you  
11 made that statement? Answer: Too many to mention. I mean, I  
12 have hundreds of people that I -- I contacted so. Question:  
13 Okay. You contacted hundreds of people? Answer: No, seeking  
14 information. Please allow me to complete my sentence.

15 You contacted hundreds of people trying to seek  
16 information about Mr. Marquez? Answer: That's not correct.  
17 I said I have communication with hundreds of friends and  
18 people, and if I share information about it with them, I mean,  
19 I don't know how many I did, but maybe for some of them I  
20 might've been interested and took a look on their own. Okay.

21 Question: Okay. Did anybody provide you information about  
22 Mr. Marquez? Answer: Yeah.

23 In or about that time? Answer: Yes.

24 Did I accurately state that testimony, Mr. Abid?

1           A     Yeah.

2           Q     Okay. Mr. Abid --

3                 MR. JONES: If you can give me one second, Counsel.

4                 MR. SMITH: Okay. If we could now close the

5 deposition, Mr. Jones.

6                 MR. JONES: Yeah, I just wanted to see -- because

7 the last question you asked --

8                 MR. SMITH: See, this is not appropriate, Your

9 Honor. I have an opportunity to cross examination without the

10 interference of Mr. Jones. The deposition is used, and I'll

11 take the deposition from him if I have to and keep putting it

12 back.

13                 MR. JONES: Well, actually, Judge, the rule about

14 using depositions, if you -- if you read any portion of a

15 deposition into the record, I'm allowed to require any other

16 portion of the deposition to be read into the record as well.

17 It's called the rule of completeness. We can get the rule

18 book out if you'd like.

19                 MR. SMITH: Yeah, but not right now.

20                 MR. JONES: I don't know that it specifies when.

21                 MR. SMITH: Look, I'll -- here's --

22                 THE COURT: All right. Shut -- give me --

23                 MR. SMITH: You should've ordered a copy.

24                 THE COURT: -- the deposition book. Okay. We're

1 going to take a break so that you finish your questions about  
2 the deposition. Then we'll have time for Mr. Jones to review  
3 the deposition.

4 MR. SMITH: I have a lot to go.

5 THE COURT: Through the deposition?

6 MR. SMITH: With regard to the deposition.

7 MR. JONES: Do -- do you have notes?

8 THE COURT: Can we just make a copy of the  
9 deposition for Counsel and for me to follow along?

10 MR. SMITH: Yes, I'd be happy to --

11 THE COURT: Alright, let's do that. Here --

12 MR. SMITH: I'd be happy to do that.

13 THE COURT: -- give me the deposition.

14 MR. SMITH: If - if the Court just wants to take the  
15 deposition, it can be utilized. It's the deposition of a  
16 party. It can be utilized for any purpose.

17 THE COURT: I'm going to make a copy of it for you  
18 and for me.

19 MR. SMITH: You can read it so.

20 THE COURT: And I'll be right back.

21 MR. SMITH: All right. Thank you.

22 (COURT RECESSED AT 16:07:46 AND RESUMED AT 16:24:33)

23 MR. SMITH: -- you know, I can -- I can ask the  
24 questions and then if you'll allow me some time, if --

1 THE COURT: No absolutely. I mean --

2 MR. SMITH: Maybe tomorrow, I'll just go over the  
3 rest of the in-depth questions of the deposition because I got  
4 a feeling the answers I'm going to get may be different than  
5 the answers I got at the deposition, so let's just --

6 THE COURT: Okay.

7 MR. SMITH: -- complete the questions.

8 BY MR. SMITH:

9 Q Mr. Abid, when you took this tape. You put this  
10 tape, you put it in the backpack, correct?

11 A This tape?

12 Q Excuse me. The recording device.

13 A Correct.

14 Q Okay. And the recording device you put in the  
15 backpack in sometime in January 2015; is that correct?

16 A The first time I put it was January 22nd.

17 Q Of 2015?

18 A 2015.

19 Q And you did not advise Ms. Lyudmyla Abid that you  
20 were doing that, correct?

21 A No.

22 Q And you didn't advise Mr. Marquez?

23 A No.

24 Q And you didn't advise Ireena (ph), the daughter of

1 Ms. Abid, correct?

2 A No.

3 Q And none of those individuals gave you any consent

4 to tape in their home, correct?

5 A Correct.

6 Q And you understood that the tape would tape anything

7 that was near the backpack, correct?

8 A It would have to be --

9 Q Is the answer yes or no, Mr. Abid?

10 A Well, yes.

11 Q And you understood that the backpack -- that you

12 would not have control of where the backpack was placed in the

13 home, correct?

14 A Correct.

15 Q And you understood that the backpack could tape the

16 conversations or record the conversations of other individuals

17 in that home, correct?

18 A That were right next to it, yes.

19 Q And you understood that -- that the backpack would

20 remain in the home at least for a period of approximately 30

21 hours or so, correct?

22 A How many hours?

23 Q Well, let me ask the question this way. How many

24 hours did you expect when you recorded that it -- the backpack

1 would remain in the home?

2 A Less than 24 hours because the next day, it would  
3 come back to school.

4 Q Okay. And that recording device picked up  
5 everything that was recorded within that period, correct?

6 A No, it only recorded for 15 hours, so I don't  
7 know --

8 Q Okay. Fifteen hours.

9 A Yeah. I don't know if that was the entirety.

10 Q So when you -- it recorded for 15 hours on the first  
11 time, on January 26th (sic), you got the tape back and --

12 THE COURT: Very --

13 BY MR. SMITH:

14 Q Excuse me. The recording device back.

15 THE COURT: 22nd?

16 MR. SMITH: January twenty --

17 MR. JONES: Second.

18 MR. SMITH: Did he say 22nd?

19 MR. JONES: Second.

20 BY MR. SMITH:

21 Q 2015. When you got it back, you -- well, then what  
22 did you do with it?

23 A I put it into my computer.

24 Q Okay. And you put it into your computer into

1 software, correct?

2 A No, I --

3 Q The answer is --

4 A -- just put it into the computer.

5 Q Okay. And you had downloaded software for the

6 purpose of manipulating the recording, correct?

7 MR. JONES: Objection to the term manipulating, Your

8 Honor.

9 THE COURT: I'll allow it.

10 MR. JONES: Vague and ambiguous.

11 THE COURT: Did you -- did you download software for

12 the purpose of manipulating the audio?

13 THE WITNESS: The purpose was not to manipulate the

14 audio, no.

15 BY MR. SMITH:

16 Q And, of course, that wasn't my question. My

17 question was did you -- did you download software for the

18 purpose of manipulating the recording?

19 THE COURT: Okay. I just said audio instead of

20 recording.

21 MR. JONES: And that's why I said it's vague and

22 ambiguous as to the definition of manipulating.

23 THE COURT: Okay. What's a better question?

24 MR. SMITH: All right. The --

1 THE COURT: Did you download software?

2 MR. SMITH: I'll rephrase -- I'll rephrase the  
3 question.

4 BY MR. SMITH:

5 Q You downloaded software, correct?

6 A Correct.

7 Q And the design of that software was to parse and  
8 separate portions of the tape or the recording, correct?

9 A I think that's a fair assessment.

10 Q Okay.

11 A That's correct.

12 Q But you can't tell us what that software was today;  
13 can you?

14 A No. I used it twice. I didn't --

15 Q And you --

16 A Got it on the internet. I don't -- I don't know. I  
17 couldn't tell you.

18 Q But the design of that software was to alter the  
19 tape or -- excuse me -- the recording that you received by  
20 separating that recording, correct?

21 A Yes.

22 Q And, in fact, you separated the recording into  
23 various parts, correct?

24 A Two parts.



1 Q And you then determined whether or not you would  
2 utilize either of those parts as part of this litigation,  
3 correct?

4 A I was using the parts to that were with my son and  
5 -- and his mother so that's all I was seeking, and that's what  
6 I used so.

7 Q And then you destroyed the -- you erased one of  
8 those parts, correct? Or did you erase both of them on  
9 January 22nd -- from the January 22nd tape.

10 A Both of what parts?

11 Q The parts that you had segregated the recording  
12 into.

13 A Did I delete what I saved; is that what you're  
14 asking me?

15 Q Yes.

16 A No, I didn't delete what I saved.

17 Q That's not what -- okay. Let me rephrase the  
18 question.

19 A I don't understand what you're asking me.

20 Q Did you delete any portion of that recording?

21 A Yes. I deleted everything that wasn't Sasha and his  
22 mother. In fact, I don't even -- I only looked at when he  
23 entered the door and when he was driven to school, and I knew  
24 exactly at what points those were, so there was no need to

1 even look at anything else.

2 Q So this software that you can't identify or remember  
3 allowed you to identify by time frame, specific hour and date,  
4 when the recording was taken.

5 A It tells you how long the recording is. By simple  
6 math, I could deduce that if I dropped him off at 5:30, and it  
7 started recording that it would continue recording until 8:30  
8 in the morning. I don't need a program to tell me that.

9 Q So the program didn't tell you that, but you just  
10 deduced it and then cut out the portions of the tape that you  
11 don't believe fit your time frame, that you didn't believe fit  
12 your time frame.

13 A I was only interested in the two time periods.

14 Q Is that correct, Mr. Abid? You cut out portions of  
15 the tape on the time frames that you're claiming you didn't  
16 want to listen to?

17 A Yeah.

18 Q And then you -- and this -- this information was all  
19 stored on your hard drive, correct? Of a computer that you  
20 had at the time, correct?

21 A Yeah.

22 Q The software was on that hard drive, correct?

23 A The software was on the hard drive, sure.

24 Q The -- the part you saved was on the hard drive,

1 correct?

2 A Yes.

3 Q And before you deleted it, the part of the tape that  
4 you deleted was on the hard drive as well, correct?

5 A Correct.

6 Q And then you taped a second time, correct?

7 A Yes.

8 Q And when was that?

9 A I believe that was -- I want to say Monday, January  
10 25th. It was -- it was a Monday, Monday evening.

11 Q And let -- let me -- before I go there. There is no  
12 way for us on any recording that you ever produced or -- or  
13 identified in this case to identify when that recording was  
14 taken versus by the time of day, correct? In other words,  
15 there's no markings on the recording that show time frame,  
16 like what time it is of day during that recording period.

17 A I don't know. I -- I didn't investigate that issue.

18 Q But you -- you are the only one that had the tape or  
19 the recording, so when you had the recording, did it have any  
20 time frames on it?

21 A Are you referring to the file itself?

22 Q I'm referring to how anyone could identify the --  
23 the hour of the day that the recording was taken.

24 A By listening to it.

1 Q So your testimony is that you only -- you cut out  
2 and removed any portion of the time frame that you didn't want  
3 and only listened to that time frame that you did want.  
4 That's your testimony.

5 A Exactly.

6 Q Okay. Then on the second occasion that you taped,  
7 did you tape the --

8 A You were just -- I thought you were just asking me  
9 about the second occasion. You just asked me when did I take  
10 -- tape -- tape on the second occasion. I told you January  
11 25th, so wasn't that what you were just asking me about?

12 Q Okay. Let's -- let's clarify that.

13 A Okay.

14 Q You destroyed a portion of the recording in the  
15 first recording on January 22nd, correct?

16 A Those are your words, destroyed. I preserved what I  
17 intended to preserve which was Sasha communicating with his  
18 mother. I didn't at that time even think the Court would care  
19 about anything except the abuse that was depicted in those  
20 recordings, so you can use any words -- verbiage you like. I  
21 only preserved what I believed to be relevant to this Court to  
22 make an informed decision about my son's best interest.

23 MR. SMITH: Moti -- motion to strike as  
24 nonresponsive.

1 THE COURT: All right. Okay.

2 MR. SMITH: Is the motion granted or denied?

3 THE COURT: Your -- lawyer -- yeah. I'm going to  
4 strike that portion. What I'd like you to do is listen  
5 carefully just to the question, just answer his question.  
6 Okay. This isn't the only time you're going to be testifying.  
7 This isn't the only time you're going to have to tell me  
8 information, so you don't need to feel like you need to --  
9 make complete answers but just give him the --

10 THE WITNESS: Okay.

11 THE COURT: -- answer he's -- to that question.

12 THE WITNESS: Yes, ma'am.

13 BY MR. SMITH:

14 Q You deleted -- in the January 22nd recording, you  
15 deleted that portion of the tape that you didn't believe was  
16 relevant to the issues that you wanted to present to the  
17 Court, correct?

18 A Correct.

19 Q On the January 25th recording, you did the exact  
20 same thing. You put it through this software you can't  
21 remember what it was. You parsed it into sections, and then  
22 you deleted those sections you didn't think were -- you wanted  
23 to present to the Court, correct?

24 A The battery wasn't fully charged when I used it the

1 second time so all I was able to capture was the moment he  
2 walked in the door.

3 Q But there's no way for us to know any of this is  
4 true because you destroyed the computer; didn't you?

5 A I recycled the computer.

6 Q Is the computer destroyed or not?

7 A It's not destr -- it's not destroyed.

8 MR. JONES: Objection. Argumentative, Your Honor.  
9 He was trying to answer the first question.

10 THE COURT: Okay. It's not destroyed.

11 BY MR. SMITH:

12 Q Okay. You got rid of the computer, correct?

13 A And it contained private information, pictures,  
14 passwords --

15 Q Is the answer yes or no? You got rid of the  
16 computer?

17 A I didn't destroy -- I didn't destroy a computer.

18 Q I said you got rid of it.

19 A You're - what did I blow it up? I didn't do that.  
20 I recycled --

21 Q Did you --

22 A -- the outdate -- the -- the metal, and I threw away  
23 the portions that had my private information and my -- there's  
24 actually stuff for my -- my entire life , she was so --

1 destroyed is --

2 Q Okay. Mr. Abid --

3 MR. SMITH: I move to strike the answer. But  
4 actually let me just ask the next -- another question. I  
5 withdraw the objection.

6 THE COURT: All right.

7 BY MR. SMITH:

8 Q Mr. Abid, you, in fact, destroyed the hard drive  
9 that contained the information associated with these  
10 recordings, correct?

11 A Correct.

12 Q And you destroyed the software in which you parsed  
13 up these recordings into pieces, correct, as part of that  
14 destruction of that hard drive? In other words, we can't --

15 A And, I -- I --

16 Q We don't know --

17 A -- deleted that when I was done using it.

18 Q Okay. So there's no way -- we don't even know what  
19 software you used. We don't know how you divided it up. We  
20 don't know what the divisions were, and we don't know what you  
21 saved and didn't save because you got rid of it.

22 A You know what I saved. You -- you say -- I saved  
23 child abuse. That's what I saved, and that's there for you to  
24 see.

1 Q Answer the question.

2 THE COURT: All right. Answer the -- what was the  
3 question?

4 BY MR. SMITH:

5 Q The question is, we don't -- there's -- is there any  
6 way for us to determine everything that was deleted from that  
7 computer?

8 A No.

9 Q Mr. Abid, you, in fact, talked to the probation  
10 officer of Ricky Marquez, Mr. Brayden (sic), I believe his  
11 name or --

12 A Bowden (ph).

13 Q Bowden (ph), in January of 2014, correct?

14 A I don't recall. I mean, I -- I've -- I've spoken to  
15 him many times. It -- was it -- I can't tell you the precise  
16 date, but I did speak -- speak to him many times.

17 Q And in January 2014 you knew he wasn't even  
18 remaining as the probation officer -- excuse me -- the parole  
19 officer of Mr. Marquez, correct?

20 A No, he was back and forth because he had first  
21 allowed him to move his probation here -- here, and then he  
22 rescinded it, so I don't think at that point I knew if he was  
23 still under his jurisdiction or not.

24 Q Well, the reason you called Mr. Bowden (ph) was



1 because you were unhappy that nobody had informed you that the  
2 parole was moved to Nevada, correct?

3 A That wouldn't have been in January though. That  
4 would've been in October.

5 Q Is that right? Well, okay.

6 A Well, if you're going to --

7 Q Well, we'll -- when I get his --

8 A -- if you're going to ask me the date, then have it  
9 correct.

10 Q --- deposition back, we'll address all -- all this.  
11 And, in fact, in January of 2014 when you spoke to Mr. Bowden  
12 (ph), you complained about the fact that he had advised you  
13 that the transfer of the -- of the probation had occurred,  
14 correct?

15 A Correct.

16 Q And you researched Mr. Marquez's business activities  
17 in regard to other members of businesses that he was involved  
18 with the flower shop; do you recall that?

19 A In the course of researching who he was, when I  
20 first found out, of course I did.

21 Q And you researched the individuals that were in that  
22 flower shop as well, the other owners, correct?

23 MR. JONES: Objection. Foundation as far as time  
24 frame.

1 THE COURT: Can we get a time frame, Counsel?  
2 MR. JONES: Is it before December of 2013?  
3 THE WITNESS: Well before.  
4 MR. JONES: So --  
5 MR. SMITH: Mister --  
6 MR. JONES: So I guess I'll make the same objection  
7 that was made when I went into specifics that predated two  
8 thousand -- December of '13.  
9 MR. SMITH: Fair enough. Fair enough.  
10 BY MR. SMITH:  
11 Q Let me ask a different question. Mr. Abid,  
12 subsequent to 2014, you made efforts with the parole officers  
13 to have Mr. Marquez's parole not -- rescinded from Nevada to  
14 California, correct?  
15 A Correct because Judge Harter had issued a no contact  
16 order, so I felt they needed to know about that.  
17 THE COURT: They had a no contact order to who?  
18 MS. ABID: Ms. (indiscernible) is there.  
19 MR. JONES: I think we have confusion on dates  
20 again.  
21 MR. SMITH: He -- he gave a supervised visitation  
22 order to Ricky Marquez -- to --  
23 (COUNSEL AND CLIENT CONFER BRIEFLY)  
24 MR. SMITH: The order was that if Lynda (ph) was

1 present, that was fine, but it had to be supervised.

2 THE COURT: Oh, okay.

3 MR. JONES: Meaning he couldn't be left --

4 THE COURT: No, no, I -- I got that.

5 MR. JONES: -- with the child alone.

6 THE COURT: But he said no contact order. That's  
7 not a no contact order, and I thought he meant -- that was a  
8 -- one of the elements of his probation that he have no  
9 contact with someone in this room.

10 MR. SMITH: No.

11 MR. JONES: No, it was Judge Harter who ordered  
12 that.

13 THE COURT: Okay.

14 BY MR. SMITH:

15 Q Now, I asked you earlier if you -- if you had  
16 destroyed the hard -- or if you had -- had eliminated,  
17 destroyed, whatever, with the hard drive. What was the reason  
18 that you had done that?

19 A Computer was old. It just was time for a new  
20 computer.

21 Q No other reason whatsoever, right?

22 A Not really.

23 Q There was no concern about what you had done in  
24 regard to the taping of other individuals, correct?

1 A No.

2 Q And you didn't understand that there was some danger  
3 of criminal prosecution or a threat of criminal prosecution at  
4 that time, correct? That's your testimony. And the time  
5 frame I'm talking about is at the time that you destroyed it,  
6 so let's establish that. When did you destroy the hard drive?

7 A To the best of my recollection -- best of my  
8 recollection I would say that maybe it was spring of -- of  
9 this year.

10 Q Spring of 2015?

11 A Yeah.

12 Q So is that -- does -- spring lasts from March  
13 through June, so which month was it?

14 A I -- I don't know exactly. I just know it was --

15 Q So it was sometime in -- after March of 2015?

16 A In that -- in that area.

17 Q During the time that Mrs. Abid was complaining about  
18 the tape. The tape had already been submitted to this Court,  
19 correct?

20 A No, she complained -- she was down at the Henderson  
21 police February 4th, so it had nothing to do with that. I  
22 wasn't -- I wasn't afraid of that.

23 Q So you understood that that recording was going to  
24 be evidence in this case at the time that you destroyed the

1 hard drive, correct?

2 A Absolutely not. I didn't know the rules of evidence  
3 at how the recording had to be and what tact or, you know, I  
4 assumed that I'm giving the -- the Judge sections of a tape  
5 that depict child abuse. That's all I thought I was doing.  
6 In retrospect, I don't know what I would've done if I had  
7 known these -- these rules, so my concern was my son, and  
8 protecting my son at any cost and --

9 MR. SMITH: Move to strike. This is so far beyond  
10 the question.

11 BY MR. SMITH:

12 Q The question is did you know that the recordings  
13 were going to be evidence in this case. Your testimony is,  
14 no, you didn't know that?

15 A Only the recordings that I preserved.

16 Q But you knew those recordings, the recordings that  
17 you'd taken, were going to be part of the evidence in this  
18 case, correct?

19 A That was my goal.

20 Q Okay. And at the time you destroyed the hard  
21 drives, you knew the original recordings that were contained  
22 on that hard drive would be destroyed with it, correct?

23 A Correct.

24 Q And, in fact, the reason why you destroyed the hard

1 drive is because Lyudmyla had threatened and gone to the  
2 police in regard to the taping of individuals other than her  
3 and the son, correct?

4 A Incorrect.

5 Q And you've never indicated that that was true,  
6 correct?

7 A That's not how I feel, so I guess not.

8 MR. SMITH: I -- I need the depo.

9 THE COURT: All right. Well, it -- it may be a good  
10 place --

11 MR. JONES: Yeah.

12 THE COURT: -- to stop for the evening anyway.

13 MR. SMITH: Okay.

14 THE COURT: I blew up the copy machine on the second  
15 floor, and so they're utilizing the one on the third floor,  
16 and we'll deliver it to you in a moment.

17 MR. SMITH: Let me-- let me move at this point, Your  
18 Honor, before we leave today that -- that this tape has  
19 obviously been altered. It's been destroyed. I have no --  
20 had -- never had any chance to review the original of the  
21 recording. The recording has been manipulated and that has  
22 been cut up for whatever purposes of Mr. Abid saw. We don't  
23 know whether he reviewed the recording because I can't see the  
24 digital footprint of the recording to determine whether it was

1 reviewed because he has admitted he destroyed the hard drive  
2 associated with that.

3 Had he not destroyed the hard drive, there's  
4 technology available to determine whether something is  
5 reviewed, and there's recall -- technology available to  
6 recover the deleted files. None of that is available to me  
7 because during the time of this litigation, after it was  
8 submitted to you, he destroyed it, and the evidence will show  
9 -- I'll make an offer of proof. In his deposition, he  
10 testified that he destroyed it because he knew Lyudmyla had  
11 contacted the police.

12 This is a clear case -- I don't care about the  
13 vicarious consent doctrine. Even if the Court were to find  
14 there was availability of vicarious consent, which we strongly  
15 disagree with, this is just a plain spoliation and destruction  
16 of evidence. We have not had a fair opportunity to review the  
17 evidence in its proper and original form.

18 MR. JONES: And the Court has an --

19 THE COURT: Counsel, as to --

20 MR. JONES: The Court hasn't heard redirect, Judge.

21 THE COURT: Okay.

22 MR. SMITH: Make an offer of proof. How in the  
23 world are we going to rehabilitate that testimony?

24 MR. JONES: Well, he testified that he didn't even

1 listen to the whole tape because he was only seeking to record  
2 a certain time. I guess the question would be, okay, let's  
3 say the recording device only recorded an hour at a time and  
4 in the process of transferring it to a format that could be  
5 submitted to the Court or to Counsel, some part was lost,  
6 whether it was intentionally or not intentionally, what if the  
7 first part was, you know, gibberish and someone in good faith  
8 just simply deleted it?

9 In this case he intentionally avoided anything that  
10 would not be Sasha. I'm sorry, but that supports good faith.  
11 It doesn't support spoliation, and if you want me to brief the  
12 spoliation issue, Judge, I'm happy to do so for tomorrow.  
13 Obviously making the motion now before his testimony is  
14 complete is premature, and I will address all of that --

15 THE COURT: Well, I'm not going to rule to --

16 MR. JONES: -- in his redirect.

17 THE COURT: I'm not -- I'm not going to rule yet on  
18 any of the evidentiary issues regarding the tape, but I've  
19 been researching those and continue to look at those. I'll  
20 look at those more tonight, and I'll be ready to make a  
21 decision tomorrow once we hear the rest of the testimony.

22 MR. SMITH: Very good.

23 MR. JONES: All right.

24 MR. SMITH: You don't need any additional briefing,



1 do you?

2 THE COURT: No.

3 MR. JONES: Do you know how much longer you're going  
4 to --

5 MR. SMITH: That will depend on the Judge's ruling  
6 tomorrow. If the Judge allows cross examination, I'm going to  
7 need at least to go through the deposition with Mr. Abid and  
8 -- and ask a couple more questions that are related to the  
9 deposition.

10 THE COURT: Well, if I allow cross examination about  
11 what?

12 MR. JONES: Well, he's still on cross.

13 MR. SMITH: I'm sorry?

14 THE COURT: About --

15 MR. SMITH: Well, I -- I haven't been able to use  
16 the deposition in regard to the motivation he had for  
17 destroying the evidence, so I -- I think that that's important  
18 to get on the record.

19 THE COURT: And I -- and I -- I'm going to allow  
20 that if you --

21 MR. SMITH: Yeah.

22 THE COURT: If -- so as long as you can show me that  
23 it's --

24 MR. JONES: Right.

1 THE COURT: -- relevant. How much longer do you  
2 think you have on that?

3 MR. JONES: I'm just trying to plan Dr. Holland.

4 THE COURT: No, no.

5 MR. SMITH: Well, if the tape doesn't come in, then  
6 Dr. Polland's (sic) report can't come in --

7 MR. JONES: That's absolutely insane.

8 MR. SMITH: -- because Dr. Holland's --

9 THE COURT: Two dif -- two different issues. Two  
10 different issues. Two different issues.

11 MR. JONES: That's absolutely contrary to the only  
12 clear Nevada law on any of these subjects.

13 THE COURT: Those are two different issues.

14 MR. SMITH: Absolutely not. These -- this issue is  
15 related because you cannot even provide a tape that was  
16 improperly taken without the consent of another party to  
17 another party. You can't do it. No expert --

18 MR. JONES: That's --

19 MR. SMITH: Imagine this scenario. Under Mister --  
20 and this is his in brief, so you can review this tonight, but  
21 imagine the scenario if we could allow -- so, for example,  
22 forced confessions, the tape of a forced confession. It  
23 couldn't come in because it was admitted. It was fruit of the  
24 poisonous tree. It was -- it -- it can't come in, but it can

1 be admitted because an expert gets to hear it, and then he can  
2 testify as to the level of guilt of the individual based upon  
3 the facts. I mean, there's no way. You can't just whitewash  
4 inadmissible, illegally obtained evidence by handing it to a  
5 expert and --

6 MR. JONES: The evid -- but, Judge, the evidence  
7 doesn't come in in and of itself. The rule is so crystal  
8 clear. I can't even believe it's being argued.

9 MR. SMITH: I -- I --

10 MR. JONES: That as long as it's materials that an  
11 expert routinely relies upon, even if the evidence is  
12 inadmissible, it can form the basis of an opinion of an  
13 expert.

14 MR. SMITH: There is not a single case that  
15 Mr. Jones has cited in his brief that stands for the  
16 proposition that illegally obtained evidence, which is not  
17 permitted to be admitted under our rules, is able to be  
18 admitted through the testimony of an expert.

19 MR. JONES: It's not being admitted.

20 THE COURT: Oh, hold on. This is what we're going  
21 to do.

22 MR. JONES: It's the foundation of an opinion.

23 THE COURT: We're going to deal with the video tape  
24 first, and then we are going to deal with whatever issues you

1 can raise as --  
2 MR. SMITH: Audio tape.  
3 THE COURT: -- to Dr. Holland.  
4 MR. SMITH: Just so the record's -- and -- but --  
5 THE COURT: It may change your -- I appreciate that  
6 you're telling me that this is what your argument is going to  
7 be. Those are two different issues for me. They may be  
8 related, but we'll -- we'll get there when we get there.  
9 MR. JONES: Thank you, Your Honor.  
10 MR. SMITH: All right. Thank you, Your Honor.  
11 THE COURT: Thank you. They will bring you your  
12 photocopies in a moment.  
13 MR. SMITH: Very good.  
14 MR. JONES: Well, in that case, I'll probably --  
15 MR. SMITH: I'll hang tight.  
16 MR. JONES: -- have Dr. Holland come at 3:00  
17 o'clock.  
18 THE COURT: How long, Counsel, do you think you have  
19 on cross regarding voir dire cross?  
20 MR. SMITH: I don't think very much longer.  
21 THE COURT: Okay.  
22 MR. SMITH: Yeah. Probably --  
23 THE COURT: Less than 45 minutes?  
24 MR. SMITH: -- 15, 30 minutes maybe.

1 THE COURT: Okay. He's -- 15, 30 minutes, and then  
2 you'll have some redirect.

3 MR. JONES: And then I'll probably have --

4 MR. SMITH: Don't hold me to that, that's what I'm  
5 estimating based upon my recollection of what's contained --

6 THE COURT: No. I only -- I only say that so we can  
7 have a sense of what we're going to do tomorrow. I'm not  
8 going to say after 15 minutes, that'll be all.

9 MR. SMITH: Well, you can. That's within your  
10 prerogative.

11 THE COURT: I won't. I'm telling you I won't do  
12 that.

13 MR. SMITH: What's -- what's -- Judge Marquis,  
14 what's with him, what I anticipate then, and correct me if I'm  
15 wrong and Mr. Jones can correct me if I'm wrong, is that Mr.  
16 Jones will consider -- will recommence his cross -- or his  
17 examination based on this issue alone, complete that, and then  
18 the Court will make a ruling as to that issue.

19 THE COURT: Yes.

20 MR. SMITH: Very good.

21 THE COURT: And then Mr. Jones can decide how he  
22 wants to continue with how he's going to present his case.

23 MR. SMITH: Yes, all right.

24 THE COURT: Okay. And if you have any issues about

1 Dr. Holland, we'll deal with that as she -- just before she  
2 comes to the stand, so she doesn't have to listen to it all.  
3 MR. SMITH: That's --  
4 THE COURT: Okay?  
5 MR. SMITH: That's a great idea.  
6 THE COURT: Since we know it's coming.  
7 MR. JONES: I -- I will -- I will tel you this, that  
8 there -- I had a similar -- well, I had an instance where she  
9 was testifying, and I had to ask the Court to have her leave  
10 the courtroom, but as I was arguing to have her excluded, I  
11 could see her peeking her ear around the corner of the -- of  
12 the public compartment eye ante room just so she could hear  
13 what I was saying.  
14 THE COURT: Okay. Well, Joe will make sure that  
15 Dr. Holland is well outside in the hallway.  
16 MR. SMITH: Well secured.  
17 MR. JONES: You won't -- in the -- in the morning,  
18 will you be using the witness stand? Can we just leave those  
19 two binders over there?  
20 THE COURT: You could -- I at -- tomorrow is  
21 adoption day, and so --  
22 MR. JONES: So people will be in the -- in the box?  
23 THE COURT: No. I don't put them in the box for  
24 that.

1 MR. JONES: Okay.

2 THE COURT: So go ahead and leave the exhibits

3 but --

4 MR. SMITH: Can we --

5 THE COURT: We have a --

6 MR. SMITH: Should we move them in some way or --

7 THE COURT: No. I'm going to -- they're usually

8 here. We're going to be happy and do happy things tomorrow

9 morning.

10 MR. SMITH: Adoption day is the only happy thing

11 that happens here, and it was truly one of the happiest days

12 of my life when we adopted our son.

13 THE COURT: So we have lots of gifts and excitement

14 and --

15 MR. SMITH: I know. It's great.

16 THE COURT: -- the festivities start at 8:00

17 o'clock.

18 MR. JONES: And then you have to follow that up with

19 day two of this.

20 THE COURT: Well, I have a couple motions --

21 MR. SMITH: That's so much fun.

22 THE COURT: I have a couple motions in the middle

23 to --

24 MR. JONES: Okay.

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MR. SMITH: All right.

THE COURT: -- ease me into it.

MR. JONES: To buffer you?

THE COURT: Thank you though.

(PROCEEDINGS CONCLUDED AT 16:50:02)

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and  
correctly transcribed the digital proceedings in the  
above-entitled case to the best of my ability.

/s/ Kimberly C. McCright  
Kimberly C. McCright, CET



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LYUDMYLA ABID,

Appellant,

v.

SEAN ABID,

Respondent.

Supreme Court No. 69995

Electronically Filed  
District Court Case No. JD-11-2016-0373 p.m.  
JUL 10 2016 3:03 PM  
Tracie K. Lindeman  
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court

**APPELLANT'S APPENDIX**

**VOLUME 11**

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11-18-15

11-19-15

01-11-16

01-25-16

1507-1526

1 TRANS

COPY

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EIGHTH JUDICIAL DISTRICT COURT

4

FAMILY DIVISION

5

CLARK COUNTY, NEVADA

6

SEAN R. ABID,

7

Plaintiff

8

vs.

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LYUDMYLA ABID,

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Defendant.

11

12

BEFORE THE HONORABLE LINDA MARQUIS  
DISTRICT COURT JUDGE

13

14

TRANSCRIPT RE: JOINT PETITION FOR DIVORCE

15

THURSDAY, JULY 16, 2015

16

APPEARANCES:

17

The Plaintiff:

For the Plaintiff:

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The Defendant:

For the Defendant:

22

23

24

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1 LAS VEGAS, NEVADA

THURSDAY, JULY 16, 2015

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

3 (THE PROCEEDINGS BEGAN AT 09:31:33)

4  
5 THE COURT: This is the matter of Sean Abid versus  
6 Lyudmyla Abid, D-10-424830-Z. The Defendant is present.

7 Counsel, your appearances for the record?

8 MR. JONES: John Jones, Bar Number 6699, appearing  
9 on behalf of the Plaintiff.

10 THE COURT: Good morning, Counsel.

11 MR. BALABON: Good morning, Your Honor. Michael  
12 Balabon, Bar Number 4436, appearing on behalf of the  
13 Defendant, who is present.

14 THE COURT: Good morning, Counsel. This is the time  
15 we set last week for arguments as to the motion, Defendant's  
16 motion, to strike. And you can have a seat, ma'am. Go ahead,  
17 Counsel. I read everything that you provided me with, but I'm  
18 happy to hear any additional arguments you may have.

19 MR. BALABON: Well, I guess first off for  
20 clarification's sake, does the Plaintiff intend to introduce  
21 the tape into evidence in this proceeding? And if so, is he  
22 going to attempt to produce the flash drive which contained an  
23 edited version of the tape or does he intend to try to produce  
24 the original?



1           THE COURT: All right. I don't want to speak for  
2 Counsel, but my understanding the last time was that Counsel's  
3 intention, that a portion of the flash drive has been -- well,  
4 let me say this. My understanding of the facts is this, that  
5 Plaintiff put a recording device in the minor child's  
6 backpack. Minor child went for his regular scheduled  
7 visitation to Defendant's house. During the course of that  
8 visitation, the recording device remained in the child's  
9 backpack. That during the course of that visit, it recorded  
10 approximately three days worth of time. That that recording  
11 picked up sounds or conversations between numerous people who  
12 were in the home, including the child.

13           When the child returned, the Plaintiff took the  
14 recording -- and let me say that the recording was not made at  
15 the suggestion of Mr. Jones, with the consent of Mr. Jones,  
16 upon the advice of Mr. Jones, it came to Mr. Jones' attention  
17 well after the recording had taken place.

18           At some point, the Plaintiff erased or destroyed  
19 portions of the tape or the recording that included sounds or  
20 conversations of those people or individuals other than the  
21 child. So if the child was engaged in the conversations,  
22 those recordings were kept. That -- and that was at the  
23 Plaintiff's doing.

24           The destruction of that was not at Mr. Jones'

1 suggestion, advice or consent and that Mr. Jones was made  
2 aware of it after it had -- portions of it had been destroyed  
3 or erased in some manner. That the portions -- the recording,  
4 whatever was produced to the Defendant, is the entirety of  
5 what remains.

6 Are there any of those facts that are not correct?

7 MR. JONES: Those facts are correct. I did verify  
8 prior to coming down that the recordings between child and  
9 Mom, the entirety of the recordings that are relevant --

10 THE COURT: That exist.

11 MR. JONES: -- that exist between child and Mom are  
12 what has been produced.

13 THE COURT: Okay.

14 MR. JONES: The fact that he deleted irrelevant or  
15 conversations between child and another person or two other  
16 people or five other people, I don't think is relevant to the  
17 Court's analysis here, but --

18 THE COURT: Well, it could -- it could be relevant.  
19 I just want it so that we agree on those facts. Do you agree  
20 as to those facts, that that's what we're left here with  
21 today's --

22 MR. BALABON: I don't agree with the assertion. I  
23 agree with the fact that he's destroyed the tape --

24 THE COURT: Okay.

1 MR. BALABON: -- at his discretion. That he picked  
2 and choose (sic) what he chose to delete and what he didn't  
3 delete.  
4 THE COURT: Okay.  
5 MR. BALABON: I disagree with their conclusion that  
6 he only deleted those portions that the child was not a party  
7 to the --  
8 THE COURT: Certainly. I think we don't know that  
9 for a fact.  
10 MR. BALABON: No. And we can't --  
11 THE COURT: I mean -- well, let me say --  
12 MR. BALABON: -- testify to that.  
13 THE COURT: Then let -- and he -- and he might  
14 later, but let me say this for today's purposes, that portions  
15 were erased. Portions, all of the portions that remain were  
16 produced.  
17 MR. BALABON: Correct.  
18 THE COURT: Okay. Is that --  
19 MR. JONES: Okay.  
20 MR. BALABON: And on that basis, my client objects  
21 strenuously. She has listened to the tape. She is adamant --  
22 THE COURT: Okay. Hold on. But before we get into  
23 argument --  
24 MR. BALABON: Okay.

1 THE COURT: -- these are the fact that we agree to.  
2 MR. BALABON: The question --  
3 THE COURT: Mr. Jones, he asked you are you going --  
4 MR. JONES: Am I going to offer it into evidence?  
5 THE COURT: Yes.  
6 MR. JONES: You know, Your Honor, it's funny. As I  
7 was preparing for today, I thought to myself, well, you know,  
8 I could put the Defendant on the stand, read from the  
9 transcript, did you say this to your son and if she lies and  
10 says no, I can play the tape, ask her if that's her voice and  
11 never move the tape into evidence and still impeach her on  
12 either her perjury or the things that she actually said.  
13 I would like to believe that I could say to her,  
14 ma'am, did you say the following sentence to your son? And  
15 she would say yes. I'd like to believe that, because that  
16 would be actually testifying truthfully under oath. Don't  
17 know that that's going to happen. But if I -- until such time  
18 as I actually move the recording into evidence, I can do a lot  
19 of things with it in the courtroom.  
20 I guess he can argue -- I don't actually don't know  
21 what he could argue against it --  
22 THE COURT: Well, for this --  
23 MR. BALABON: Well --  
24 THE COURT: At this juncture, let me say this. At

1 this juncture -- and I told you before that I had thought that  
2 this issue might not be right until Plaintiff seeks to  
3 introduce it into evidence. Defense Counsel has strenuously  
4 objected throughout this process and I'm treating his argument  
5 and motion as a motion in limine.

6 I don't need to know whether at this juncture  
7 whether or not Mr. Jones is going to try to do it. If he  
8 tries to do it, great. If he doesn't, I'll deal with that as  
9 a prior inconsistent statement for impeachment purposes  
10 perhaps at time of trial. Mr. Jones doesn't need to forecast  
11 what he's going to do. Those decisions I'm well equipped and  
12 can easily make at time of trial as we get there.

13 However, I'm going to treat Defense's request today  
14 as a motion in limine as to -- and I think, Counsel, you're  
15 asking me to do a few things. Not admit the recording at  
16 trial. You're asking me to strike any reference to it, the  
17 recording or any quote from the recording from all the  
18 pleadings ever filed in this case. You're asking me to strike  
19 the portions of it from Dr. Holland's report. You're asking  
20 me not to allow Dr. Holland to testify at time of trial  
21 because she's been tainted by the recording.

22 Is that an accurate picture of what you're asking me  
23 today or is there anything in addition to that you're asking  
24 me?

1 MR. BALABON: I'm seeking a ruling on the legality  
2 of the tape. I'm seeking a ruling as to whether or not the  
3 Court is implying the implied consent doctrine to the statute.  
4 I'm seeking a ruling from the Court as to whether or not the  
5 Plaintiff has satisfied his burden, if the Court does adopt  
6 the doctrine, whether the Plaintiff has satisfied his burden  
7 for admissibility --

8 THE COURT: I'll make a determination as to the  
9 things that you've asked me to do. How I get there is up to  
10 me and I'll make that determination. So you go ahead and make  
11 your argument and I'm happy to listen, so go ahead.

12 MR. BALABON: Well, since -- I mean, just -- since  
13 the tape has been destroyed, it puts my client in a hugely  
14 disadvantage -- advantageous (sic) position. It was never  
15 revealed to this Court at the time when we were debating  
16 whether or not Dr. Holland could review that tape, it was  
17 never revealed by the Plaintiff that the actual tape was a  
18 selectively-edited version of the tape.

19 There's things that could have been taken out of  
20 context. We will never know what was really the fully extent  
21 on that tape. There could have been mitigating that could  
22 have influenced Dr. Holland to come to a different conclusion.  
23 We firmly believe that the only thing Dr. Holland did was  
24 review the -- review the pleadings. I don't believe she

1 listened to the tape. I have attempted to listen to the tape.  
2 It's extremely difficult to ascertain what's being said.  
3 There's no question that she simply reviewed the pleadings.

4 The Nevada Revised Statute that I cited in my  
5 supplemental points and authorities yesterday plainly provides  
6 that if you're going to try to prove up the contents of the  
7 tape, you have to produce the original. And basically,  
8 they've been dancing around that. They've never come clean  
9 until the last hearing that the actual -- that the original  
10 has been destroyed.

11 The original has been destroyed at least to a  
12 ludicrous result in this Court, Your Honor. Mr. Jones and I  
13 would be guilty of malpractice if we have a client come into  
14 our office subsequent to this with a contested custody case to  
15 not advise that client to place a listening device in the  
16 child's backpack, gather as much evidence that's favorable to  
17 your side as you can, then you can selective edit that tape,  
18 delete the portions that don't favor you, include those  
19 provisions that you like into a pleading, don't seek to  
20 introduce the tape, because it's been destroyed, and then ask  
21 for an expert to be appointed and have that expert review only  
22 those portions of the tape that favor your side.

23 To me, that's a ludicrous result. It cannot happen.  
24 Clearly, Dr. Holland has been poisoned by this tape. She's

1 been unduly influenced by a tape that's been selectively  
2 edited by the Plaintiff. She can't testify, Your Honor.  
3 She's included -- her whole -- her whole report is based upon  
4 evidence of what was on the tape that was included in  
5 pleadings when the tape's not even admissible because it's  
6 been destroyed. It's -- to me, it's ludicrous. It's a  
7 ludicrous result.

8           What we -- and I understand that the Court is  
9 concerned about the best interest of the child. My client  
10 doesn't fail to recognize that she has flaws. That's why she  
11 completed the UNLV Cooperative Parenting Program. I think one  
12 way that we can deal with this issue or at least the Court can  
13 have a comfort, send the child down to FMC and observe the FMC  
14 techniques or rules with regard to the child interview. That  
15 the child interview not be provided with the selective -- I  
16 can't believe that you would allow a selectively edited tape  
17 to be reviewed by a professional. But I -- engage in the FMC  
18 protocol, have the child interviewed.

19           My child has had -- or my child -- this child has  
20 been in -- has been in joint physical custody situation, been  
21 in, you know, substantial custody of my client for what, four  
22 to five years now. If there was this pervasive parental  
23 alienation going on to the point that it -- that it results in  
24 parental alienation syndrome, that should be easily



1 recognizable by a professional at FMC.

2           They're going to, of course, say no, no, we can't do  
3 that. We need to be able to provide them with that tape so we  
4 can bias that evaluator so we can get the report that we want  
5 and I just think you should follow the FMC protocols, Your  
6 Honor, have the child interviewed at FMC. She's not afraid of  
7 that, because she knows that this child loves her father and  
8 that this parental alienation thing is a red herring. It  
9 doesn't exist.

10           There may -- as indicated in Paglini's (ph) report,  
11 you know, there have been some inappropriate things that are  
12 said. I think that there's inappropriate things that are said  
13 to children in high conflict cases in virtually every case  
14 that you're going to see in this court. But does it amount to  
15 parental alienation as that is defined by the experts?

16           We didn't get that conclusion in Holland's report.  
17 We certainly didn't get that conclusion. She didn't do a  
18 parental alienation assessment. She didn't interview the  
19 child in the presence of the parents. It was -- it's  
20 inadequate to proof of parental alienation in any event, but  
21 it's clearly biased based on a selectively-edited tape that  
22 was provided by the Plaintiff.

23           We had no opportunity to review that tape to  
24 determine whether or not it's authentic or that portions as

1 she alleges of things that she said were positive that were  
2 deleted that might have changed her opinion. So that's -- in  
3 that regard, that's what we're requesting is another interview  
4 at FMC.

5           The Court can get a comfort level with no  
6 participation or persuasion by the Plaintiff, who is vigorous  
7 in this case, who is determined to take this child away from  
8 Mom. Let's just have a neutral third-party assessment.  
9 That's what they do. They're not incompetent. They do it  
10 every day in this court and Judges constantly use them. We  
11 would suggest that you do that and we can get a subsequent  
12 report to determine if there are issues. She's willing to do  
13 that and pay for it.

14           With regard to the tape, back to that issue again,  
15 Your Honor, the problem with what Mr. Jones has said is I can  
16 just use it and cross examine her with it. The Court needs to  
17 make a determination as to whether the tape was legal. I say  
18 it's not legal. It's presumptively illegal, because he's  
19 destroyed the original. It's presumptively illegal. The  
20 Court needs to make a ruling as to whether or not the statute  
21 that deals with this issue is a two-party or a one-party  
22 consent statute. That's a legal ruling that needs to be made.

23           So we're looking for two legal rulings on the  
24 record. Does the implied consent doctrine apply to the Nevada

1 statute? Which is a pure legal ruling. We need to determine  
2 whether or not he satisfied the condition of that doctrine  
3 with a one -- you know, what we have to this point, Your  
4 Honor, and this is a motion in limine -- what we have at this  
5 point in terms of the proof as to the legitimacy of the  
6 placement of the device is one statement in a pleading that  
7 said based on things my son was telling me, I placed a  
8 listening device in his backpack. The Court needs to make a  
9 ruling if they made a sufficient proffer of evidence to  
10 support the application of the doctrine itself.

11           If you read it, every case cited by the Plaintiff,  
12 it requires a showing of good faith, legitimate good faith  
13 reason for the placement of the device. And he can argue and  
14 he make arguments, but you can't argument based on Paglini's  
15 report because Paglini didn't find parental alienation. All  
16 they have is one statement contained in an affidavit in a  
17 pleading. That's it as the support. This is a really  
18 important issue that needs to be resolved.

19           To what extent will the Court require a parent that  
20 places a listening device to prove up a legitimate good faith  
21 reason for the placement of that device? The reason that  
22 doctrine is contained in the doctrine or that aspect is  
23 contained in the doctrine is because it's ripe for abuse,  
24 which is what happened in this case. This was a fishing

1 expedition.

2           This thing was -- this thing was placed what, a week  
3 after he was served with the motion? If he was so concerned  
4 about Paglini's report, certainly he would have placed it a  
5 year earlier, if he was that concerned. And certainly, the  
6 Court can make -- draw some inferences as to why he did it.  
7 Because there's certainly no evidence on the record as to why  
8 he did it, other than one statement based on what my son was  
9 telling me, I decided to place a listening -- if that's the  
10 standard, Judge, then every litigant in this court should  
11 place a listening device, because every litigant in this court  
12 can simply state in an affidavit that they felt that the other  
13 party was saying bad things about me, so therefore, I placed a  
14 listening device.

15           I would think there needs to be some sort of  
16 evidence of misbehavior, some sort of problems with school,  
17 something more than a statement in an affidavit to justify the  
18 application of the doctrine. So we've got those issues. Is  
19 it a two-party consent statute? Does the implied consent  
20 doctrine apply? If it does apply, has he satisfied the  
21 evidentiary standard for the application of the doctrine to  
22 this case?

23           And then, we have the rule that requires the  
24 production. If you want to prove up the contents of an

1 original audio tape or of an audio tape, you have to produce  
2 the original. What they've done in this case, they've been  
3 able to dance around that since the original's been destroyed.  
4 So they placed the contents of the alleged tape of what --  
5 portions of it into pleadings to prove it up. That's contrary  
6 to the Nevada statute, Your Honor. It cannot be permitted to  
7 proceed.

8           The whole process has been tainted by this. The  
9 original tape has been destroyed. We don't know if he edited  
10 the original tape. There's no way for my -- it's so unfair to  
11 my client that it's unbelievable the fact that he's destroyed  
12 the original. I personally don't believe he did, but that's  
13 the representation that they're making. The destruction of  
14 the original also prevents us from making a determination with  
15 regard to the application of the implied consent doctrine,  
16 which I've quoted and I know you've read the stuff.

17           But the Lutent (ph) case in Nebraska cannot be  
18 ignored. The Lutent case in Nebraska provided -- the Lutent  
19 case, it was a Federal District Judge, where the mom in that  
20 case, or the dad, whatever it was, attempted to use that  
21 doctrine as a defense. The Federal District Court -- and this  
22 was after Pollack and after all the other decisions that had  
23 adopted the doctrine says it doesn't apply, because they  
24 placed the listening device in a place where it'd pick up

1 conversations --

2 THE COURT: And that was a civil case in federal  
3 court seeking civil relief, correct?

4 MR. BALABON: Yeah, but she sought to apply the  
5 doctrine as a defense and the court said you can't use it,  
6 because it intercepted conversations to which the child was  
7 not a party. I believe this is why he destroyed the tape. Of  
8 course, they'll deny it.

9 Because it did intercept conversations, therefore  
10 there's federal liability that attaches, not only to the  
11 Plaintiff, but to his law firm as well based on the Lutent  
12 decision. Because whether or not -- if he disseminated it,  
13 there's liability, if they find that the implied consent  
14 doctrine does not apply.

15 Now, we can't make that determination. And that's  
16 an important determination, because if it did intercept  
17 conversations in her home between Ricky and her, the doctrine  
18 doesn't apply, the tape is illegal. And if the tape is  
19 illegal, Judge, then you have to apply the ruling of Allstate.  
20 Why wouldn't we? Allstate provides -- the Supreme Court ruled  
21 on this issue. If there's an illegal tape -- Lane versus  
22 Allstate -- if there's an illegal taping or an illegal wire  
23 tap in that case, all evidence comes out. You can't refer to  
24 it, nor can a witness be called and asked about it. One

1 hundred percent exclusion in the Lane versus Allstate case.  
2 So if this tape is deemed to be illegal --  
3 THE COURT: But in Allstate, did they allow  
4 witnesses to testify who had listened to it --  
5 MR. BALABON: No.  
6 THE COURT: -- but they --  
7 MR. BALABON: No.  
8 THE COURT: -- were told they could not testify  
9 regarding it. It was the lawyers who continued to ask  
10 questions about it.  
11 MR. BALABON: Well, if my understanding of the Lane  
12 versus Allstate case is they could -- no witnesses can be  
13 cross examined or the issue cannot be brought up --  
14 THE COURT: Right. The issue cannot --  
15 MR. BALABON: -- with any witness.  
16 THE COURT: -- be brought up, no lawyer could ask a  
17 question about it. But the witnesses who had heard it or were  
18 aware of the tape were allowed to testify regarding other  
19 matters.  
20 MR. BALABON: Regarding other matters, yes, of  
21 course.  
22 THE COURT: Okay.  
23 MR. BALABON: Of course, that's why they reversed  
24 it. They said well, dismissal was too harsh of -- the

1 District Court, you know, I'd ask the Court to read the  
2 District Court's dismissal. I think it's accurate.

3 Now, there is some -- you know, it was a dissenting  
4 opinion, but they're not allowed to refer to the tape. So if  
5 he will not -- if you rule this tape's illegal, he destroyed  
6 the original, Your Honor, it's per se illegal, he can't cross  
7 examine her about it.

8 THE COURT: And that issue was in front of a jury.

9 MR. BALABON: Well, whether --

10 THE COURT: No, I'm just asking you.

11 MR. BALABON: I'm not sure.

12 THE COURT: The Allstate matter was a civil jury  
13 trial; is that correct?

14 MR. BALABON: I don't know if it was a civil jury  
15 trial or not. To me, the language couldn't be more clear that  
16 it has to be excluded.

17 THE COURT: Okay.

18 MR. BALABON: So for -- I'm sorry. Am I leaving  
19 anything out?

20 MS. ABID: Michael, give example, what I said there  
21 and it's not there.

22 MR. BALABON: Well, yeah. I've already --

23 MS. ABID: (Indiscernible).

24 MR. BALABON: You know, it's --



1 MS. ABID: (Indiscernible).

2 MR. BALABON: It's like she said, the unfairness of  
3 it is reflected by the fact that there's things that she said  
4 that she knows that she said that were cut from the tape that  
5 he provided.

6 MS. ABID: To my son.

7 MR. BALABON: It's fundamentally unfair to allow an  
8 expert to review a selectively-edited tape. This opens up a  
9 can of worms for this Court that is unbelievable, because  
10 anybody could do this. You --

11 MS. ABID: Your Honor, he --

12 MR. BALABON: Shh.

13 MS. ABID: I'm sorry. (Indiscernible).

14 MR. BALABON: In any case, you could say, okay, you  
15 can play a listening device in your child's backpack, get the  
16 tape back, selectively edit it and then destroy it and then,  
17 put the selectively-edited contents in a pleading and ask for  
18 the appointment of an expert and say that the expert can  
19 review it because it doesn't matter if it's illegal or doesn't  
20 come in, because the expert can review it. That cannot be the  
21 law.

22 It cannot be the law in this court. It violates  
23 that provision of the statute that requires the production of  
24 the original audio tape in order to prove contents. You do

1 not prove contents of an audio tape by placing them in  
2 pleadings and then providing them to an expert and then, the  
3 expert incorporates the contents of the alleged tape into her  
4 report.

5           It has to be stricken. The pleadings have to be  
6 stricken. The tape cannot be used. Without the tape, there  
7 is no case. Their whole case rests on this tape and they have  
8 destroyed the only evidence that supports their case. It's  
9 destroyed. This cannot be the case, Your Honor. Their case  
10 has to be dismissed.

11           And we should proceed at the evidentiary hearing  
12 based on our initial motion, which was more than reasonable.  
13 We've never sought to take the child away from Dad. We've  
14 only sought equal time in here and tried to get the passport.  
15 Pretty simple thing. And then, he does this, but he places a  
16 listening device and then subsequently destroys the tape.  
17 That is so unfair to my client that it defies belief that this  
18 would be allowed to proceed or that she would be allowed to  
19 testify based on a selectively-edited tape.

20           Now, kind of an unrelated issue with regard to Dad's  
21 vacation, I know it's not before the Court, but there was the  
22 video game issue. He's indicated that he's not returning him  
23 until August 13th and his -- it ends when?

24           MS. ABID: It ends August 21st.

1 MR. BALABON: I don't believe the Court --  
2 MS. ABID: (Indiscernible).  
3 MR. BALABON: I don't believe the Court extended  
4 Dad's vacation six weeks this year. He's entitled to four.  
5 MR. JONES: Yes, it did.  
6 THE COURT: I did at the last --  
7 MR. JONES: That's exactly what she did.  
8 MR. BALABON: You extended it to four?  
9 MR. JONES: She said he gets to pick up --  
10 MR. BALABON: (Indiscernible).  
11 MR. JONES: -- the two weeks earlier and if  
12 everything happens at trial, the way --  
13 MS. ABID: (Indiscernible).  
14 MR. BALABON: -- you think it might happen, then  
15 next year, she'll get the six weeks.  
16 THE COURT: Then she gets six weeks.  
17 MS. ABID: No, but you said four weeks was me, four  
18 weeks was him; is that correct?  
19 THE COURT: No.  
20 MS. ABID: You said he gets six weeks this year?  
21 THE COURT: Yes.  
22 MR. BALABON: Okay. We'll just let it go.  
23 MS. ABID: Your Honor, he provided me the  
24 address --

1 MR. BALABON: Shh.

2 MS. ABID: -- of the (indiscernible).

3 MR. BALABON: Just -- please. Do not talk. Please  
4 do not talk.

5 MS. ABID: Okay. Wow.

6 MR. BALABON: Well, I think I made all my arguments,  
7 Your Honor. All my arguments are contained in my pleadings as  
8 well and --

9 THE COURT: Thank you, Counsel. I appreciate it.  
10 Counsel.

11 MR. JONES: First of all, I knew nothing about the  
12 tapes until they were downloaded from the flash drive onto his  
13 computer and he did whatever he did about them. So the  
14 implication that we did anything, Ms. -- the Defendant has  
15 already filed a Bar complaint claiming I was the mastermind  
16 behind this and the Bar summarily dismissed it, so I'm tired  
17 of this nonsense from this side.

18 When you have the most despicable parent in the  
19 history of this building standing here trying to say that  
20 somebody else did something wrong, when she knows she said  
21 these things to her kid, it's getting a little bit  
22 intolerable. But let's talk about the law.

23 First of all, this red herring about a copy, we all  
24 know that if you look at a book, you'll see all the statutes

1 that deal with originals, copies and the like, rather than  
2 just getting online and seeing one statute at a time. There  
3 are multiple ways you can get the admissibility of duplicates  
4 under 52.245, recordings, deeds. There's case law that  
5 supports the ability to use duplicates.

6 As far as the original is concerned, it goes off of  
7 a flash drive onto the computer. And then, it is however  
8 managed into different MP3 files. I don't know how it all  
9 worked. I don't think it's relevant, because what is being  
10 offered is solely the recordings between the child and Mom.  
11 Because frankly, there are no other relevant recordings.

12 Now, had I know about it, I would have said keep the  
13 whole flash drive whole and we'll produce it and give it to  
14 whoever. That doesn't mean that there was any type of attempt  
15 to spoliolate evidence or anything. It was a preservation of  
16 that which was relevant.

17 Now, you've heard citations throughout the papers  
18 and pleadings filed by the Defendant to two-party consent  
19 statutes. Wire tapping statute in Nevada is a two-party  
20 consent statute. The ambient recording statute is a one-party  
21 consent. He's asked you to make a legal determination about  
22 whether this is a one-party consent. We know it wasn't over  
23 the phone, so 200.650 applies. And the last thing, unless  
24 authorized to do so by one of the persons engaging in the

1 conversation.

2           So we know that the statute about ambient recording  
3 with a recording device, which is also called the  
4 eavesdropping statute, is a one-party consent state. So we  
5 don't have to deal with any of the authorities argued. All of  
6 the cases that he talks about dealing with two-party consent,  
7 particularly Lane, have nothing to do with this case.

8           In fact, it's interesting. One of the cases he  
9 cited in his initial pleading, a case that I think you might  
10 have even commented that you were involved in at the D.A.'s  
11 office, with the California recording --

12           THE COURT: McClellan (indiscernible) state.

13           MR. JONES: Exactly.

14           THE COURT: I represented Mr. McCellan. We were  
15 trying to keep out the telephone conversation --

16           MR. JONES: Right.

17           THE COURT: -- from California to Nevada.  
18 California is a two --

19           MR. JONES: A one-party state.

20           THE COURT: -- one party telephone state. We are a  
21 two-party telephone state and it didn't go my way.

22           MR. JONES: Right. You know why? Because it's a  
23 one-party consent state. In this --

24           THE COURT: Thanks for reminding me. I really

1 appreciate it.

2 MR. JONES: I'm sorry, Judge. But they --

3 THE COURT: Not that I'm bitter.

4 MR. JONES: -- cited it. And when I actually went  
5 through and read the opinion, I'm like well, this is actually  
6 saying exactly what I'm saying. The Nevada Supreme Court has  
7 ruled on this exact issue and it is if it's a one-party  
8 consent state or one-party consent statute, it comes in.  
9 Well, we know that this recording, placing a recording device  
10 in a room and not being party to the conversation, implicates  
11 a one-party consent statute under the state of -- in the laws  
12 of the State of Nevada.

13 So the real question is are you going to apply the  
14 vicarious consent doctrine? Now, I've given you ample  
15 authority throughout the country of cases exactly on point in  
16 this instance. One-party consent, vicarious consent, tape  
17 comes in. I haven't found one that says no to the tape in a  
18 one-party consent statute. I tried, because I like to be, you  
19 know, as thorough as possible. It doesn't exist.

20 So you have this argument well, he hasn't  
21 established his burden of proof. You're right. You know why?  
22 That's what I do at trial. Mr. Jones, call your first  
23 witness. Mr. Abid. I go through all the reasons that he  
24 placed the recording device. I ask him about the history of

1 this case, about Paglini's report, about the things that, you  
2 know, the impact of what his son may have said or how he was  
3 acting, something that isn't hearsay and get the reasons why.

4           You can then after -- and Mr. Balabon can cross  
5 examine in on that limited issue. And you can then determine  
6 whether he's met the good faith reason for placing the  
7 recording device. If you don't find that we've met our  
8 burden, then the recording doesn't come in. It's that simple.  
9 But that's an evidentiary burden of proof, not a pleading  
10 burden of proof. Okay? You know what the law is. You know  
11 how you meet a burden of proof. You meet it in a courtroom,  
12 period, end of story. I think we made enough of a prima facie  
13 case to get an evidentiary hearing. Otherwise, you wouldn't  
14 have set it.

15           So on that issue, I agree with Mr. Balabon that I  
16 have to prove good faith for the reasons to record and that's  
17 when you'll make your determination. I thought at the initial  
18 hearing you basically said that and I don't know why we're  
19 re-arguing that. But since we are, that's what we intend to  
20 do.

21           Now, on this issue of whether or not I can ask Mom  
22 whether or not she said this, I can ask her that all day,  
23 whether it's based upon a recording or not. So, you know, if  
24 the cording is -- if the recording is kept out from these



1 proceedings -- and I don't mean from Dr. Holland, because I'll  
2 get to Dr. Holland in a minute -- there can still be cross-  
3 examination of the Defendant based upon the types of things  
4 that she has said to her son.

5           So that being said, let's talk about Dr. Holland.  
6 We know that there is a statute specifically on point that  
7 says if it is the type of matter that experts routinely rely,  
8 an expert can receive evidence even though it may not be  
9 admissible. Okay? When he stands up and says this cannot be  
10 the law of this court, it absolutely is. It has been the law  
11 of this court in virtually every custody evaluation I have  
12 ever had a case involved in.

13           I've had this exact issue actually. A recording was  
14 made of the home phone illegally. My client eventually was  
15 arrested for violated the wire tapping statute. Judge Richey  
16 said I'm not going to weigh in on the admissibility of it at  
17 trial, but Dr. Paglini can certainly listen to the tapes,  
18 because that is the type of information that experts routinely  
19 rely on, period.

20           When you have a custody evaluation, the parties  
21 bring stuff to the evaluator that even the lawyers don't know  
22 went to the evaluator. And that's why I always subpoena the  
23 file, you know, to see exactly what was provided, because it  
24 may be helpful, it may be harmful, but I want to know. But

1 there is information provided to experts in their role as an  
2 outsource evaluator by -- you know, for this court that never  
3 sees the light of day of a courtroom, that may never.

4 Hearsay documents between third parties, who won't  
5 ever come and testify, still are considered by the court.  
6 Collateral interviews of third parties who never see the  
7 inside of a courtroom, this collateral told me that dad beat  
8 the crap out of me 15 times while we were married. Okay?  
9 That person now lives in Tibet. They're not going to be here  
10 a trial, but the expert can certainly say well, yes, I was  
11 very concerned about issues of domestic violence. And after  
12 talking to this person, I then reviewed the TPO file. None of  
13 that comes into evidence, but it's all in the report and it's  
14 all something that shapes the expert's opinion.

15 Now, let's talk about the expert's opinion. And I  
16 think you made it clear last time we were in court that if  
17 there are no tapes, there is still major, major, major  
18 issues --

19 THE COURT: I thought I was clear.

20 MR. JONES: You were crystal clear. Major issues as  
21 it pertains to Mom. I mean, if we just getting into analysis  
22 of my client's text message to Mom saying hey, I'm really  
23 concerned about the call of duty issue, maybe you should  
24 review this article, providing her a link to the article and

1 her basically saying sorry, I'm not co-parenting. I'm not  
2 communicating. I'm going to let my son, who is six-years old,  
3 play call of duty.

4           There are a lot of grand theft auto references by  
5 the child, which is the most offensive video game that teaches  
6 misogyny, sex, how to dispose of a body if you kill a  
7 prostitute. I mean, this is what the child's now been exposed  
8 to. It's not just call of duty. It's going to be -- there  
9 are -- there is a mountain of evidence about the fact that it  
10 is not in the best interest of the child to continue to be  
11 exposed to this.

12           But getting back to Dr. Holland's report, her  
13 findings are 99.9 percent about her discussions with Sasha and  
14 the behavior of Sasha and have nothing to do with tapes. The  
15 part that this Court found very compelling is -- was his  
16 reaction when he was told he couldn't play fake call of duty  
17 anymore. That has nothing to do with the tape. When he acted  
18 out and threw toys and kicked the playhouse because he was  
19 told he couldn't do fake call of duty, that had nothing to do  
20 with the tapes, but it certainly shows a very disturbing issue  
21 that I'm sure Mom would like to ignore. I'm really sure she'd  
22 like to ignore all of the things that she has said and done.

23           Unfortunately, you are dealing with the best  
24 interest of the child. And if you go through the statutes,

1 all of the ones that actually apply; 200.650, the statute  
2 pertaining to what experts can and can't consider, the  
3 admissibility of duplicates, you get down to a point where all  
4 of the arguments, while Mr. Balabon passionately makes the  
5 argument, they don't have anything to do with the issues that  
6 are before this Court.

7           If I prove my client had a good faith reason to  
8 place the recording device and you believe that the vicarious  
9 consent doctrine legally should apply in this courtroom, the  
10 tapes are in, period. It's that simple. So when you hear  
11 these arguments about striking pleadings and striking -- first  
12 of all, the whole idea is to -- this isn't a criminal  
13 standard.

14           This is not a criminal courtroom and it's not in  
15 front of a jury. I actually had written down, not a jury  
16 trial, because Your Honor can weigh the evidence. A jury  
17 can't necessarily weigh the evidence. Your Honor can weigh  
18 credibility, can, you know, consider it for the -- for  
19 whatever it chooses to consider it.

20           THE COURT: Counsel, you're confident that if I was  
21 to strike or find inadmissible the tape that I would still be  
22 well suited to hear the rest of the evidence and make a  
23 determination and weigh only that evidence that I find  
24 admissible.

1 MR. JONES: Sure, absolutely.

2 Now, by the same token, I mean Dr. Holland's report  
3 contains, like I said, 99.9 percent of stuff having nothing to  
4 do with the tapes.

5 I haven't spoken to Dr. Holland. First time I'll  
6 ask her this question is going to be when I put her on the  
7 stand; how much of your concerns regarding Sasha have to do  
8 with your actual interviews with Sasha and your interaction  
9 with Sasha? Were -- you know, she'll be able to tell you  
10 whether or not she already had a bias after listening to the  
11 tapes, if she even listened to the tapes. I don't even know  
12 if she did. My guess is she did or someone did, but -- you  
13 know, one of her interns. But the conclusions that she  
14 reaches are based upon the interview.

15 But, you know, back to the issue of the tapes.  
16 They've been provided everything that exists. I can certainly  
17 ask my client if this Court has any concerns -- first of all,  
18 he'll testify that the only things he deleted were either no  
19 communications -- and the reason he put it -- you know,  
20 obviously, it's in the backpack.

21 In the history of this case, most of the terrible  
22 things that Mom said to the child were during custody  
23 exchanges. Dad -- or said to the child or to Dad in front of  
24 the child, were in custody exchanges. So Dad is placing the

1 child and Mom is saying what she's saying to Dad in front of  
2 the child.

3 My client figured the backpack will capture the  
4 conversation from school or from Sean's house to her house.  
5 And then, it will be left by the door and it probably won't  
6 capture anything until the trip to school. Okay? He can  
7 testify as to all of these things, all of these rationales as  
8 to what he expected to get and he can tell you what he got and  
9 what he deleted, if he deleted anything.

10 All I know is he preserved those things in which the  
11 child was having a conversation with Mom. He will testify  
12 that every single conversation between child and Mom was  
13 produced and was preserved. If there was a conversation where  
14 Mom said your Dad's a great guy, it would have been preserved.  
15 That's never happened in the history of the child's life, but  
16 that -- I guess we should ignore that. And that's when you  
17 get back into the discretion the Court certainly has in  
18 adopting the vicarious consent doctrine.

19 I believe that if you adopt it and there's an  
20 appeal, that the Supreme Court will adopt it for the State of  
21 Nevada wholeheartedly. I can't imagine a circumstance where  
22 they wouldn't say if the parent establishes a good faith  
23 reason then the recording comes in. Maybe we'll find out down  
24 the road if the Defendant appeals and you allow that

1 information in.

2 But at the end of the day, when you're exercising  
3 discretion, you're exercising it with the best interest  
4 involved, not best interest of the child involved, not the  
5 liberty interests of a defendant in a criminal matter, not the  
6 constitutional rights of a party in a real -- or an insurance  
7 contract. I mean --

8 THE COURT: Fourth Amendment rights certainly don't  
9 exist in this courtroom.

10 MR. JONES: So you have to look at this as, okay, if  
11 there is even a borderline call -- and I don't think it's a  
12 close call. If there is even a borderline call, I have to do  
13 what's in the best interest of the child.

14 Now, you could say, Mr. Jones, put on your case as  
15 if the tapes aren't going to come in and I'll tell you when  
16 you're done with that portion whether or not you even need to  
17 go into the next section. We could do that. You know, you  
18 wear the robe, you make the rules, because your discretion in  
19 child custody matters is almost unlimited. But fortunately  
20 for Sasha and for Dad and for this Court, we have lots of case  
21 law throughout the country. The majority rule is that  
22 vicarious consent applies.

23 And I did want to mention, alienating behaviors is  
24 not parental alienation syndrome. The syndrome was thrown out

1 of the law books and the psychological books ten years ago?

2 THE COURT: And I believe in this case and in all  
3 cases probably in the last seven months, I haven't uttered  
4 those words from this bench.

5 MR. JONES: Well, and the person who invented it  
6 when he -- his whole theory of a syndrome was discredited  
7 killed himself. Mr. Gardner, I believe, was his name. But  
8 his whole life's work was creating this myth that judges fell  
9 for for a period of years. And then, you know, some critical  
10 thinking said gosh, there really isn't a syndrome. It's more  
11 about a pervasive pattern of attempting to destroy the  
12 relationship between the child and the other parents.

13 So that's what has happened in this case. It was  
14 referenced in the Paglini report. It said, hey, this stuff is  
15 wrong. More importantly, if you read Dr. Holland's report,  
16 the child says who does Mom hate? Dad. Who does Dad hate?  
17 No one. I'm sorry. I can probably win a case on that alone  
18 and that had nothing to do with the tapes. So as far as the  
19 Holland report, it can't be touched, because we have a statute  
20 saying she can look at and consider anything as an expert  
21 appointed by this court.

22 This idea that you would send someone to FMC because  
23 their qualified to identify parental alienation -- I love the  
24 people at FMC. I've had two cases where the child walked into



1 the interviewed, walked in and before the interviewer said  
2 anything said I want to move to Israel with my mom or I want  
3 to live two weeks on with my mom -- or two weeks on with my  
4 dad and one week on with my mom.

5           Before being asked a question as to whether they  
6 knew why they were there, they walked in and parroted what  
7 they were told to do. And at the conclusion at the end of the  
8 report was, there was no apparent coaching. I'm sorry, Judge.  
9 They miss a lot this kind of stuff. And I would tell that  
10 them -- I would tell each of those interviewers to their face  
11 that this was clear evidence of coaching and every  
12 psychological expert would.

13           The reason why we used a Ph.D. is because of the  
14 issues, because of the nuanced alienation issues, alienating  
15 behavior issues, undermining issues, programming issue. Those  
16 are words that Dr. Holland used and she's used before, because  
17 once again, one of the only ways to preserve a relationship  
18 where one parent is constantly denigrating and undermining is  
19 to place the child primarily with the denigrated parent. It's  
20 what all of the psychological experts say.

21           It's what almost every Judge has ever done when  
22 there has been a case where alienation has been proven. And  
23 it isn't easy to prove. I mean, people say and do things to  
24 children that are horrific and get away with it every day. In

1 this case, legally Mom didn't get away with it. We have a  
2 recording of her voice and there is no authority that says I  
3 can't say to her, Mom, did you tell your child that your  
4 father blah, blah, blah, blah, blah?

5 And guess what, if she says no, I never said that,  
6 then you can just judge her credibility. Can I prove perjury?  
7 Probably not. Maybe. It's possible that the D.A. would  
8 consider it if I sent them the tapes about what her testimony  
9 under oath was. But I hope we don't have to get to that. I  
10 hope she would say yeah, I said that. I'm really sorry I said  
11 that. But she still said that and the problem continues. In  
12 the report, there's so much more than just the tape that, you  
13 know, that's why you said last time, we would still be going  
14 forward without the tapes, because the report is disturbing.  
15 And you can go to a million UNLV courses, after you've already  
16 tried to destroy your relationship for now since Paglini  
17 through now and it's not going to change anything.

18 So from the standpoint of this Court's order from  
19 today, I think you order that I obviously have to meet my  
20 burden of good faith and you'll decide once I've done that,  
21 whether I've done it and whether at that time, you're going to  
22 adopt vicarious consent. I guess you could say right now I'm  
23 going to adopt vicarious consent, but, Mr. Jones, you've got  
24 to prove that it was good faith or the tapes don't come in.

1 It's that simple.

2 It still doesn't change the report. It still  
3 doesn't change anything else. Pleadings are filled with  
4 hearsay that never see the light of day, so you don't strike  
5 pleadings because of hearsay. In this case, it happens to be  
6 the admission of a party or the statement of a party, so it  
7 could come in regardless.

8 But, you know, I understand the reasons Mr. Balabon  
9 is trying to fight so hard is because the tapes make the  
10 Defendant look exactly like who she is and that's got to suck  
11 as an advocate for a client. But it doesn't change the law or  
12 what is best for this child.

13 There was one other issue that was raised at the  
14 time of the last hearing, which I mentioned in my responsive  
15 pleading that I filed on Monday, was the school issue. I  
16 think the order is clear. And when it was raised at the last  
17 hearing, you said you'd talk about it today. I think -- and I  
18 didn't know at that time that the order was so clear that the  
19 child will go to school on a going forward basis in Dad's  
20 school zone.

21 Now, one of the reason that that would continue is  
22 Dad's custodial order is I get the child after school until  
23 5:30. So why would it -- why would it make sense to have it  
24 not be the school that he's zoned for?

1 MS. ABID: (Indiscernible).

2 MR. JONES: I mean, the Clark County policy school  
3 selection policy is that they generally would say that the  
4 parent who has most -- more school time is the parent whose  
5 zone the child goes into.

6 Regardless of that, the Track Five is as close to a  
7 nine-month school track as you can get. The time letting out  
8 for Sasha is the same time as the time letting out for Sean.  
9 He's -- you know, he works for a school. He works for the  
10 school district, instead of an extra hour and twenty minutes  
11 lost in time that they could spent together working on  
12 homework and the like.

13 And then, the other issue, which may be the real  
14 motivation is Sean's oldest child from his current marriage  
15 will be going to that school in a year. So as far as being  
16 able to pick up children all at one school -- there isn't a  
17 reason to modify the court order from they go to school in  
18 Sean's. It didn't say they go to school in Sean's, you know,  
19 area unless it goes to a year-round school. It doesn't say  
20 that in the order. It says period, they go to school in  
21 Sean's zone.

22 So I don't think that was properly before the Court,  
23 but since it was brought up, I mentioned it. But from the  
24 standpoint of the orders for today, I think you know what my

1 position is, Judge.

2 THE COURT: Counsel, anything else?

3 MR. BALABON: Just briefly, Your Honor.

4 THE COURT: Uh-huh.

5 MR. BALABON: There is no duplicate, so all of the

6 law that applies to the admission of duplicates is not

7 applicable as Mr. Jones knows. He's just -- he's trying to

8 minimize the outrageous conduct of the Plaintiff in deleting

9 the original tape. Why would he do that? Why would he do

10 that, Your Honor? You have to ask yourself that question.

11 Why is the original tape deleted, gone, not subject

12 to our review, not subject to determine whether or not it's

13 been altered or modified or were there positive things that

14 she may have said to the child that she says she did say about

15 Dad are not included. It's fundamentally unfair to provide an

16 evaluator with a selectively-edited sliced and diced version

17 of a tape prior to that evaluator conducting the interview.

18 She was automatically prejudiced. All she had to do was read

19 the pleading.

20 I understand the best interest. My client has

21 recognized that. The UNLV Cooperative Parenting Program is an

22 excellent program. There's no question. She's learned. But

23 the bottom line is, Your Honor, it cannot even be reasonably

24 argued in my opinion that the provision in a hotly contested

1 case such as this where the parties literally hate each other,  
2 that we're going to trust him to say, oh, I only just put the  
3 stuff that the child was a party to. That's all I did.

4 Are we going to trust him? He should have preserved  
5 that original tape. If he wants to introduce it, he needs the  
6 original. Any reference to it outside to prove the content is  
7 inadmissible. We still have rules in this court. I  
8 understand the best interest analysis. My client adamantly  
9 denies for the record systematic parental disparagement in  
10 this case and it's not reflected in the child's school  
11 performance, nor is it reflected in his attitude toward his  
12 father, which you would expect if this was going on for four  
13 years, a systematic disparagement and parental alienation.

14 I think after trial, you know, since he's going into  
15 some of the trial issues, you're going to find out that my  
16 client has tried vigorously to try to co-parent with Sean.  
17 She allowed the baseball that Sean unilaterally imposed upon  
18 her, despite the inconvenience that it caused her. She  
19 allowed all of these things. She has tried to co-parent with  
20 Sean. There's no systematic parental alienation going on in  
21 her home or there would be more evidence of it, some effect on  
22 the child other than the Call to Duty stuff.

23 And with regard to the call to duty stuff -- and,  
24 you know, I must submit, Your Honor, even though she has

1 certainly abided by the Court's order -- where it is?

2 MS. ABID: I gave it to you. It's in your -- yeah.

3 MR. BALABON: Judge Scalia said California had not  
4 shown that video games are harmful to minor. Psychological  
5 studies purported to show a connection between exposure to  
6 violent video games and harmful effects on children do not  
7 prove that such exposure causes minors to act aggressively.

8 We don't -- we don't know really why he acted  
9 aggressively, but I believe that the evaluator was immediately  
10 biased from the beginning by viewing the selected portions of  
11 the tape that were included in the pleadings, the pleadings  
12 that were provided to the evaluator prior to her child  
13 interview. It's fundamentally unfair to my client, Your  
14 Honor. You cannot say that experts reasonably relied in  
15 again, hotly contested cases on selectively-edited audio tapes  
16 prior to commencing with the evaluation.

17 I don't think that's reasonable. I don't think this  
18 Court had it known that he destroyed the original tape would  
19 have allowed her to review the selectively-edited version  
20 produced by the Plaintiff. It is fundamentally, impatiently  
21 unfair, inequitable and it's a violation of the Nevada statute  
22 that provides if you want to prove up the content of an audio  
23 tape, you have to produce the original. You can't put it in  
24 pleadings and you can't provide a selectively-edited version

1 to an evaluator that then incorporates those portions into her  
2 report.

3 I don't believe we can underestimate the effect that  
4 her reading these alleged quotes had on the evaluator prior  
5 and that things may have been taken out of context or may have  
6 -- you knows. We will never know because he's destroyed the  
7 original. That's the problem. That's the issue that  
8 Mr. Jones, who is very eloquent, very persuasive, has not  
9 addressed. The original has been destroyed.

10 THE COURT: All right. Let me be clear on the facts  
11 that I'm finding today in considering this motion in limine,  
12 some of which I alluded to previously so that I was sure  
13 Counsel was all on the same page.

14 But that at a certain point in time, Plaintiff  
15 contacted Defendant regarding the minor child's exposure to  
16 violent video games. At sometime after that, Plaintiff  
17 concedes he placed a recording device in his son's backpack  
18 and that the recording device recorded conversations while the  
19 son was in the Defendant's home or with the Defendant. The  
20 Defendant believes that there were three days, consecutive  
21 days, of recording.

22 MS. ABID: Thirty hours.

23 THE COURT: So the Plaintiff maintains that he  
24 deleted portions of the audio recording.



1 MR. BALABON: Your Honor, may I just interject? I'm  
2 sorry. I didn't address the school issue.

3 THE COURT: I'll get to that after --

4 MR. BALABON: Can we defer that to trial, so I can  
5 make an argument on it?

6 THE COURT: Certainly. I'll tell you what I'm  
7 inclined to do. The order is what the order is, unless you  
8 give me a really good reason to --

9 MR. BALABON: Well, part of our basis would be the  
10 fact that it's gone to a year-round school.

11 THE COURT: No. I understand that and you can give  
12 me that information at trial. But what I'm telling you is I'm  
13 inclined -- that's what the order said, that's what the  
14 parties agreed to. And I don't have all of the history on why  
15 the Judge made that order or --

16 MR. JONES: Well, actually it was agreed to.

17 THE COURT: And if it was agreed to --

18 MR. JONES: (Indiscernible).

19 THE COURT: -- I don't want to get into settlement  
20 negotiations of why it was, but if it was agreed to --

21 MR. JONES: Well, that was before it was a  
22 year-round school.

23 MS. ABID: It was agreed to.

24 MR. JONES: But that --

1 THE COURT: Sure. And I get that. I get that.  
2 MS. ABID: (Indiscernible).  
3 MR. JONES: You have to remember that we were at  
4 trial, Dr. Paglini had already testified and during the lunch  
5 hour --  
6 THE COURT: And then, you made a deal.  
7 MR. JONES: -- we worked out a settlement.  
8 THE COURT: All right.  
9 MR. JONES: And all of the bargain for exchanged  
10 stuff that my client get, she's now asked to undo; the time  
11 from --  
12 THE COURT: We'll deal with it at trial.  
13 MR. BALABON: (Indiscernible).  
14 MS. ABID: (Indiscernible).  
15 MR. JONES: (Indiscernible).  
16 THE COURT: It's more appropriate to deal with it at  
17 trial.  
18 MR. BALABON: (Indiscernible).  
19 THE COURT: It has a lot -- it has a lot to deal  
20 with the determination I make about custody. Okay? So let me  
21 make that determination about custody first and then, I think  
22 the school issue will naturally flow from there.  
23 All right. Plaintiff may --  
24 MS. ABID: (Indiscernible).

1 MR. BALABON: Shh. Shh.

2 THE COURT: Plaintiff maintains that he deleted  
3 portions of the audio recording. The Plaintiff filed his  
4 motion for change in custody and relied in part on those  
5 conversations. Whatever -- and let me say again that  
6 Mr. Jones in no way was a participant in the recording, did  
7 not advise the Plaintiff to make those recordings, did not  
8 know about the recordings until after the fact, did not know  
9 that portions of the recording were deleted and/or not  
10 preserved until after the fact.

11 The Court previously ordered a child interview  
12 through Dr. Holland and Dr. Holland reviewed numerous  
13 documents in preparation of her child interview, including a  
14 transcript of the audio recordings, portions of the audio  
15 recordings and portions of the actual recording. And  
16 Plaintiff turned over a digital recording of the remaining --  
17 all of the remaining portions of the recording to the  
18 Defendant.

19 The Defendant moves today -- I will treat his  
20 arguments and requests as a motion in limine to strike portion  
21 of the pleadings that discuss or incorporate the audio  
22 recording, strike Dr. Holland's entire report, strike  
23 Dr. Holland from the witness list and not allow her to testify  
24 and asked the -- he asked the Court to deny admission of the

1 audio tape at any time during the evidentiary hearing in this  
2 matter.

3           Most recently, in June of this year, the Nevada  
4 Supreme Court examined our wire tape and eavesdropping  
5 statutes in *Shark v. State*, 131 Advanced Opinion 32. The  
6 Court noted that a wire communication was still defined as it  
7 was in 1973 as any communication made in whole and in part  
8 through the use of facilities for the transmission of  
9 communications by aide of wire, cable or other connection  
10 between point of origin and point of reception.

11           The Supreme Court found that this included cellular  
12 telephone calls and text messages, because in part cellular  
13 telephone calls and text messages rely on the wire for  
14 transmission. On the other hand, NRS 200.650 governs  
15 authorized surreptitious intrusion of privacy by listening  
16 device states as follows: A person shall not intrude upon the  
17 privacy of other persons by surreptitiously listening to,  
18 monitoring or recording or attempting to listen, monitor or  
19 record by any means of any mechanical, electronic or other  
20 listening device of private conversation and it goes on.

21           I find that this is a recording by a recording  
22 device as defined in NRS 200.650. As such, it is a one-party  
23 consent. It is not a -- it does not fall under the wire  
24 communication definition. While the Plaintiff has not yet

1 sought to introduce the audio recording or any portion of the  
2 audio recording into evidence, again I'm treating Defendant's  
3 request as a motion in limine.

4 I will do this. Because I am finding it to be  
5 governed by NRS 200.650 and that it is one-party consent, I am  
6 inclined to adopt the vicarious doctrine. As such, Mr. Jones  
7 needs to prove much more than he is able to via motion in  
8 limine. I am not inclined to bifurcate this upcoming hearing  
9 in any way. Therefore, I will do this. I will -- let me save  
10 that for later.

11 As to Dr. Holland's report from the child interview,  
12 Dr. Holland's report does not deal with the recording. The  
13 meat, the vast majority and her biggest area of concern -- and  
14 as I stated my biggest area of concern in this case, continues  
15 to be, and it originated with the child exposure and  
16 preoccupation with graphic and violent video games, I will  
17 strike portions of Dr. Holland's report from the child  
18 interview that deal with the audio recording.

19 But I find that Dr. Holland has not been tainted so  
20 badly by exposure to that recording that she's unable to  
21 testify in this case. The vast majority of her report deals  
22 with issues outside wholly separate from the audio recording.  
23 And should the parties stipulate to the introduction of her  
24 report in lieu of her live testimony, I'll strike portions of

1 that report dealing with the audio recording.

2 But should the parties not stipulate to the  
3 admission of the report, under those circumstances and the  
4 Defendant require her live testimony or the Plaintiff wish to  
5 have her live testimony, I'm going to allow her to testify and  
6 I will allow the Defendant to ask Dr. Holland questions  
7 regarding her reliance on the audio recording as part of her  
8 ultimate expert opinion, if the Defendant wants to. That is  
9 the Defendant's option.

10 I will not allow the Plaintiff, unless the Defendant  
11 first opens the door, to ask her issues regarding that audio  
12 recording specifically. Just so you that you understand and  
13 we are clear, I will allow the Plaintiff or the Defendant to  
14 ask her questions about -- you know, and we can tell her --  
15 we're all professionals. We can tell her ahead of time that  
16 -- what my ruling is and that I don't want her to talk about  
17 that. And, you know --

18 MR. JONES: Can I send her the video of this  
19 hearing?

20 THE COURT: If the --

21 MR. JONES: Because she -- because I don't want to  
22 do a joint letter or have me do a letter and cc him.

23 MS. ABID: No.

24 THE COURT: If you'd stipulate to that, Counsel,

1 that's fine with me. That's my ruling. How we communicate  
2 that to her, I'm fine if you two take the lead. I'm fine to  
3 tell her that day on the stand. This is what my ruling is.  
4 This is what I want you to -- first, can you make that  
5 determination? Yeah. Okay. And let's move on. What I will  
6 allow the defense to do is retain absolutely their own expert.  
7 That expert doesn't need to rely on the audio recording if the  
8 Defendant doesn't want them to rely on the audio recordings.

9 MS. ABID: Your Honor, if I can ask the Court --

10 THE COURT: They can present their own information.  
11 They can do whatever they would like to do a present that  
12 evidence. I will allow -- if the defense does not have the  
13 money to employ an expert with Dr. Holland's similar  
14 credentials, I will allow an FMC, 45-minute routine interview  
15 of Sasha, if and when FMC has the ability to record those  
16 child interviews pursuant to Nevada statutes.

17 I do not want Sasha to be interviewed by FMC unless  
18 it is recorded, video recorded, so that we all can review the  
19 video recording. This case is simply one where I'm not  
20 willing to rely on FMC. Though they are very professional and  
21 I appreciate their hard work that they do every day for the  
22 court system on their report in this case given the  
23 circumstances and the extent of the complicated nature of this  
24 case.

1 I'm finding that NRS 50.285 applies and that experts  
2 can rely upon inadmissible evidence to make their  
3 determination. In this age of digital recordings, as we see  
4 with our wire taps -- wire tap statutes, as we see with our  
5 lack of vicarious liability direction from our lawmakers and  
6 our courts here in Nevada, our statutes don't keep up with the  
7 times in many cases.

8 This is a day of digital recordings and the statutes  
9 do not give us direction in those. But I will tell you that I  
10 don't need the original recording for it to be admissible.  
11 911 tapes are admissible. Those are digital recordings. They  
12 are admissible without the original. Because many experts  
13 will tell you and when there are digital recordings, there may  
14 not be what we call an original.

15 And so that's my ruling for today. I'm going to  
16 tell you this. That I've heard from Counsel that the whole  
17 case rests on this tape. That this is the only evidence. And  
18 I will remind you again, like I did at the last hearing and as  
19 I did today, that I am concerned with Dr. Holland's report.

20 MS. ABID: Can I please ask a question?

21 MR. BALABON: (Indiscernible).

22 THE COURT: I am concerned with her findings and the  
23 vast majority, the real meat of her report, her concerns deal  
24 not with any communication between Defendant and her child



1 regarding Dad. They deal with Defendant's, you know, allowing  
2 Sasha to play video games, which we see again today that the  
3 defense is again saying that Justice Scalia says it's okay to  
4 play violent video games, it should be okay and --

5 MR. BALABON: That's not what we said, Your Honor.

6 MS. ABID: That's not what we said.

7 MR. BALABON: I'm sorry.

8 THE COURT: I understand.

9 MR. BALABON: She has ceased. She's capable of  
10 learning --

11 MS. ABID: (Indiscernible) to the game.

12 THE COURT: I understand.

13 MS. ABID: (Indiscernible) the game.

14 MR. BALABON: We'll bring that up at trial.

15 THE COURT: Certainly. That's a trial issue.  
16 That's my ruling for today.

17 MR. BALABON: And Your Honor, we --

18 THE COURT: Now, I'm going to tell you this. If you  
19 want me to, I think Mr. Jones' suggestion that we go forward  
20 with this evidentiary hearing without that tape, without one  
21 word about that tape, and then let me make a ruling, I think  
22 is fine. You know, I'm inclined --

23 MR. BALABON: So that's what we're doing?

24 MR. JONES: No.

1 THE COURT: No, no. I -- I'm not saying --  
2 MR. JONES: I may -- I may choose --  
3 THE COURT: -- that's what we're doing.  
4 MR. JONES: -- to do that.  
5 MR. BALABON: I'm just -- I'm not clear and I'm  
6 sorry for --  
7 THE COURT: No, no. I think that it's a good  
8 suggestion. I want the parties to think about that. If you  
9 stipulate to that, I'd follow that. Okay? And remember, this  
10 is -- although I've made this ruling about the admissibility  
11 of it, Mr. Jones is within his tool chest as a trial lawyer  
12 not to try to seek it into admission. And he may do that.  
13 And if he does that --  
14 MR. BALABON: I'm just -- so you're ruling that the  
15 edited flash drive is admissible?  
16 THE COURT: No.  
17 MR. JONES: No.  
18 MR. BALABON: I'm sorry. I'm not clear on that. I  
19 apologize, Your Honor.  
20 THE COURT: Okay. My ruling is this. That it is a  
21 recording device. It is not a wire. Therefore, it is a one-  
22 party consent.  
23 MR. BALABON: Yes.  
24 THE COURT: I am inclined to accept the vicarious

1 consent doctrine for the State of Nevada, even though I have  
2 no direction on it. What I will do is I believe that Mr.  
3 Jones is unable at this point, because it's a motion in  
4 limine, to prove good faith on his client's part. He cannot  
5 do that and I can't make a ruling as to that right now. I  
6 need more evidence. I will not bifurcate this trial to have  
7 two hearings.

8           So at the beginning of the hearing, what we will do,  
9 should Mr. Jones decide to -- if and when you decide -- I  
10 don't know -- that you do want to seek it in to be admitted,  
11 your client would need to testify. What I would do is let him  
12 take him on voir dire and cross him on that issue. We'd only  
13 -- do you understand what I'm saying? So the Plaintiff would  
14 get on the stand, testify regarding good faith on direct with  
15 Mr. Jones. I'd allow you to cross him at that point and voir  
16 dire him as to that good faith issue. I'd make a  
17 determination about good faith. Then, you would move to  
18 admit.

19           MR. BALABON: Even though the tape has been edited?

20           THE COURT: Yes.

21           MR. JONES: It's not been edited.

22           MR. BALABON: Well, of course.

23           MR. JONES: There's a difference between altering  
24 the portions of the tape sought to be admitted and deleting

1 things. I mean, that would be like saying if I had a custody  
2 exchange recorded, 472 custody changes, on iPhone by leaving  
3 it on the dash of my car, and one out of 472 was very damning  
4 to the opposing party and I deleted the other 471, it doesn't  
5 change the admissibility of number -- of the one that matters.

6 THE COURT: What I'm making a determination on is  
7 that be -- I will allow -- that the fact that it's not an  
8 original is not an admissibility issue to me in this case.  
9 All right. There are other admissibility issues that have  
10 still yet to be resolved. This is where the train's going.  
11 Okay? These are the preliminary evidentiary issues I've made,  
12 but we still are not 100 percent of the way there, because  
13 Mr. Jones simply has to do more.

14 MR. BALABON: Now, she can hire her own expert at  
15 this point?

16 THE COURT: Absolutely. She always could.

17 MR. BALABON: (Indiscernible).

18 MS. ABID: Can I keep a list of questions which we  
19 want to ask Sean? Can we make specific questions to ask my  
20 child, Sasha?

21 THE COURT: No.

22 MS. ABID: Like if we want to know the truth, Sasha,  
23 who introduces the call of duty? Where did you learn to play  
24 the game? Where are you playing? Who were kids you were

1 playing with? Because I can prove that --  
2 THE COURT: I understand.  
3 MS. ABID: -- father --  
4 THE COURT: Counsel?  
5 MR. BALABON: Well, we --  
6 MR. JONES: My client doesn't even own call of duty.  
7 MR. BALABON: We've got limitations in terms of the  
8 discovery order, the trial order --  
9 THE COURT: What's the trial date?  
10 MR. JONES: It's --  
11 MS. ABID: 14th.  
12 MR. BALABON: -- within 30 days.  
13 MS. ABID: August 14th.  
14 MR. BALABON: So I mean -- I mean, we can --  
15 THE COURT: I have never, ever made a determination  
16 or made you think in this case that you didn't have the  
17 opportunity to hire an expert.  
18 MR. JONES: Right.  
19 MR. BALABON: That's correct. But we can get one  
20 now. That's what you're ruling, so --  
21 THE COURT: Sure, absolutely.  
22 MR. BALABON: Okay.  
23 MS. ABID: But can I ask you a question about the  
24 expert? Can I ask a question about the expert?

1 THE COURT: Yeah.

2 MS. ABID: Okay. When I read the Family Court

3 Procedures, it's very clear the expert should not have no

4 (indiscernible) information in order to have correct, fair

5 interview with the child. And Dr. Collins, she addresses with

6 me at our meeting. She said I'm not going to listen to tapes.

7 I'm not supposed to meet with you and Sean. I'm here only to

8 listen to child; how he's doing or what is going on. So she

9 completely did opposite. I would like to ask you --

10 THE COURT: We'll talk about --

11 MS. ABID: Can I -- can I still --

12 THE COURT: We'll --

13 MS. ABID: -- present the case, the expert, the way

14 how Sean did? Because I did not have a chance -- I can prove

15 that Sean is obsessive parenting alienation and I want to

16 claim that. And I --

17 THE COURT: All right.

18 MS. ABID: Your Honor, I have a tape which my

19 daughter made today --

20 MR. BALABON: No, no, no.

21 MS. ABID: -- (indiscernible) --

22 MR. BALABON: No, no, no.

23 MS. ABID: -- when my son was in the car with her.

24 MR. BALABON: No, no, no.

1 THE COURT: Counsel -- Counsel.  
2 MR. BALABON: Just (indiscernible).  
3 THE COURT: These are issues --  
4 MS. ABID: I want to be able to prove --  
5 MR. BALABON: No, no, no, no.  
6 MS. ABID: I want to prove that my son --  
7 THE COURT: The trial date is set. At that time,  
8 you can call any -- the witnesses you designated. Counsel,  
9 you better put that expert on the fast track. You've had the  
10 ability to do this from the beginning. You didn't like the  
11 expert, the Dr. Holland report, from the beginning. So, you  
12 know --  
13 MR. BALABON: Okay. Very well, Your Honor. So we  
14 can FMC, if they'll --  
15 THE COURT: If they'll record it.  
16 MR. BALABON: If they record it. Very well. I'll  
17 let -- and just for the record, I never meant to cast any  
18 dispersions on Mr. Jones and don't think --  
19 THE COURT: No, no, no. And I --  
20 MR. BALABON: -- (indiscernible). I don't think  
21 that I did in my argument.  
22 THE COURT: Counsel, I want --  
23 MR. JONES: Your client certainly has.  
24 MR. BALABON: Well --

1 THE COURT: Counsel -- Counsel, I'm not saying that  
2 you did.  
3 MR. JONES: No, he just did.  
4 THE COURT: No, no, no, I think he said your client  
5 did.  
6 MR. BALABON: Okay. Well --  
7 THE COURT: And I wanted the record to be clear as  
8 to Mr. Jones' involvement.  
9 MR. BALABON: Okay.  
10 THE COURT: And I -- and I didn't want in the future  
11 there to be any question about what I believed or the facts  
12 that I found regarding Mr. Jones' involvement.  
13 MR. JONES: Thank you, Your Honor.  
14 THE COURT: That's the only reason why I did that.  
15 I --  
16 MR. JONES: And just so the Court's aware, every  
17 judge that I appear in front of now, if there's any down time,  
18 you know, I tell them to look this issue up, because it's  
19 probably in the age of technology going to become more and  
20 more troubling.  
21 THE COURT: Certainly. Thank you.  
22 MR. BALABON: Thank you.  
23 MS. ABID: Thank you.  
24 (PROCEEDINGS CONCLUDED AT 10:41:08)



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ATTEST: I do hereby certify that I have truly and  
correctly transcribed the digital proceedings in the  
above-entitled case to the best of my ability.

/s/ Kimberly C. McCright  
Kimberly C. McCright  
Certified Electronic Transcriber

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*John H. Johnson*  
CLERK OF COURT

COPY

IN THE MATTER OF THE )  
JOINT PETITION FOR )  
DIVORCE OF: ) CASE NO. D-10-424830-Z  
)  
SEAN R. ABID AND ) DEPT. B  
LYUDMYLA A. ABID, )  
)  
Petitioners. )  
)

TRANSCRIPT RE: MOTION TO CONTINUE

MONDAY, AUGUST 10, 2015

APPEARANCES:

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FOR THE PETITIONER: JOHN JONES, ESQ.  
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(702) 990-6448

1 LAS VEGAS, NEVADA

MONDAY, AUGUST 10, 2015

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

3 (THE PROCEEDINGS BEGAN AT 8:54:46)

4  
5 THE CLERK: We're on the record.

6 THE COURT: This is the matter of Sean Abid versus  
7 Lyudmyla Abid, D-10-424830-Z. Mr. Jones is present, the  
8 Plaintiff is not present. Mr. Smith is present on behalf of  
9 Plaintiff -- Defendant. Counsel, are you stipulating in or just  
10 associating in?

11 MR. SMITH: I substituted as a matter of fact.

12 THE COURT: Oh.

13 MR. SMITH: I thought I was stipulating in, but --

14 THE COURT: I'm sorry.

15 MR. SMITH: -- I -- I received a substitution the  
16 other day, so I substituted --

17 THE COURT: Oh, you thought you were --

18 MR. JONES: Yeah, I saw -- I saw a notice of  
19 appearance but then I did get a substitution of attorney so --

20 THE COURT: All right. So I'll see counsel in the  
21 hallway.

22 MR. SMITH: Okay.

23 (COURT RECESSED AT 08:55 AND RESUMED AT 09:21)

24 THE CLERK: We're on the record.

1 THE COURT: Back on the record in the Abid matter. I  
2 spoke with counsel in the hallway regarding a possible  
3 continuance date. I'm inclined to grant Defendant's request for  
4 a continuance based on the appearance of new counsel in this  
5 case and I'm happy to do that. And you can have a seat, ma'am.  
6 I'm sorry. Counsel, have a seat.

7 The other issue is the issue of Defendant's consultant  
8 and/or expert. Counsel, I'll allow you to be heard on -- on  
9 that issue. You first hired Dr. Holland as an -- I'm sorry, not  
10 Dr. Holland, Dr. --

11 MR. SMITH: Mark Chambers, Your Honor.

12 THE COURT: -- Chambers, I'm sorry, as a consultant  
13 and you're looking to use him as an expert in this case. You're  
14 requesting that the child be interviewed again, is that correct?

15 MR. SMITH: Yes, Your Honor. The -- a couple things  
16 and -- and let me just sort of restate what I have indicated in  
17 the hall and that is Dr. Chambers is a Stanford undergrad  
18 northwestern expert. He's been used frequently in these courts  
19 and I've had him on the opposite side of cases and he's worked  
20 on cases that I was involved in.

21 In regard to his role, I think his role is important  
22 as an expert. The Court recognized that Ms. Abid would be  
23 entitled to have an expert and the child has been in the care of  
24 Mr. Abid since that time, since that hearing and so we think

1 it's important.

2 We think the interview is important because most of  
3 the observations -- in fact, all the observations that are made  
4 by Dr. Holland were either influenced by or directly from the  
5 audiotapes in this case that have been the subject of previous  
6 hearings. And -- and I don't need to go into those rulings, but  
7 we believe that that was -- that that evidence should never  
8 appear in this case.

9 We do however believe that the Court stated concerns  
10 that from review of the videotapes should be addressed and that  
11 is the ability of this child to basically function in a manner  
12 that's conducive to social interactivity in school. We think  
13 that that's an important consideration.

14 We also think it's important to determine what effect,  
15 if any, the playing of the video games and what that course  
16 would be. And as the Court knows from our pleadings, there is  
17 no further video games. And it's my understanding, and I'll  
18 verify this with my client, that the child is not allowed to  
19 watch video games being played by Ms. Abid's daughter as well  
20 and that would be completely ceased. In regard to  
21 the interview, the interview will be -- the information from Dr.  
22 Holland will be less -- any reference to the tape -- because as  
23 you recall from Dr. Holland's report -- and by the way, Mr.  
24 Jones was gracious enough to allow me to review that report

1 before I actually substituted in on the case. That report  
2 contains at the commencement a statement of what was on the tape  
3 and then attaches the transcript that was prepared I believe by  
4 Mr. Jones and his client of the portions of the tape that they  
5 felt were going to be useful in their case.

6 As stated, this is an extremely difficult and  
7 interesting legal issue as to the admissibility of the tape and  
8 the effect of the modification of the tape. I don't believe  
9 it's disputed by the Plaintiff that he actually altered the tape  
10 by taking out what he believed was not necessary without  
11 providing a full copy of the tape even after promising to do so.

12 Although in the hall, now he indicates that while the  
13 -- the drive itself was erased that he may have it on a computer  
14 somewhere, I think even that is insufficient. I think the only  
15 evidence that would be produced would be the entirety of the  
16 drive. And of course, our concern, Judge, is that of the 15  
17 minutes that was ultimately caught out of the 30 hours that the  
18 tape was there, there could have been conversations that clearly  
19 wouldn't have been subject to any vicarious doctrine. And  
20 therefore, because we don't have the entirety of the tape, we  
21 think it's inadmissable. But that may be an issue that we  
22 either resolve here or through review. More important  
23 I think, Your Honor, is that the -- Dr. Holland did not have the  
24 benefit of the teacher's report card. The report card indicates

1 -- and I believe we attached it to our pleading, but the report  
2 card indicates that his -- received nothing but satisfactory  
3 marks in everything except he received excellent marks in a  
4 couple of subjects.

5           There is -- the the reports that, you know, on the  
6 kindergarten reports, they actually write something. There was  
7 -- I think if you have an opportunity to read those, there's no  
8 suggestion whatsoever that he's either socially inept or that he  
9 has caused problems at the school. And in fact, the opposite --  
10 she said that she's -- he's very social and gets along well with  
11 others or words to that effect.

12           The other thing is the -- the Court has raised though  
13 -- however, we don't disregard the -- the questions the Court  
14 has raised and we're prepared to meet those evident --  
15 evidentiary hearing, but Dr. Holland's report is composed -- in  
16 addition to recommendations, is composed of -- of really just  
17 her observations of the child in specific context. For example,  
18 she plays guns with the child and then comments about his  
19 aggressive nature.

20           Those type of things I think should be addressed and  
21 reviewed by an expert psychologist without the emphasis or  
22 prejudice coming from the videotapes and that's what we intend  
23 to have Dr. Chambers do. One of the requests that was made by  
24 Mr. Jones is that the videotape be taped. Your Honor, it may be

1 that Dr. --

2 THE COURT: The interview be taped, counsel?

3 MR. SMITH: Excuse me. Did I -- what did I say?  
4 Videotape? Yeah.

5 THE COURT: That's all right. I just wanted to make  
6 sure I was clear.

7 MR. SMITH: You're clear, I'm not.

8 THE COURT: It's okay.

9 MR. SMITH: So let me restate that. The -- that Dr.  
10 Chambers' interview would be taped. I've had this issue in  
11 another case and I'm prepared to brief it for Your Honor if the  
12 Court so chooses, but the courts have almost uniformly come down  
13 on the side of allowing that determination to be made by the  
14 expert himself and that videotaping itself can be a form of  
15 changing the -- the scope or nature of the interview. So you  
16 have to rely on the credibility and the expertise of the party  
17 doing the interview. But nevertheless, that's -- that's  
18 something that we would leave in the -- in the hands of Dr.  
19 Chambers.

20 And we believe the perspective on -- once, you know,  
21 we have a chance to see the child outside of the perspective of  
22 the tapes and that we believe the interview will be different.  
23 The reason we initially named him as a consultant is because he  
24 was unaware of whether or not he would be available. That was



1 the first cause.

2 And the second was the notion here and the notion of  
3 -- of me coming to this case is not to simply argue a technical  
4 point, which I think is hugely important because I think it has  
5 ramifications far beyond this case but is to actually make  
6 things better. Again, we have eliminated any kind of use of the  
7 games with violent activity. That won't happen. We have made  
8 --

9 THE COURT: Mr. Smith, I -- I think that that's  
10 something -- and I'm -- I'm looking at how the minutes -- how  
11 they reflect my order and I want to make sure that we're all  
12 clear and -- and give you the opportunity --

13 MR. SMITH: Yes.

14 THE COURT: -- to -- to be privy to some of these  
15 conversations. My order was that Sasha no longer be able to  
16 play any video game that's not rated appropriate for his age.

17 MR. SMITH: Right.

18 THE COURT: So for a fi --

19 MR. SMITH: So that would be an E.

20 THE COURT: Right. So if -- for a five or  
21 six-year-old. And I include in that watch -- and let me be more  
22 pacific -- specific. Watching another person, any other person  
23 play rated mature games.

24 MR. SMITH: A hundred percent with you. In fact, we

1 had that --

2 THE COURT: Okay.

3 MR. SMITH: -- conversation in the hall about GTA V.

4 THE COURT: All right.

5 MR. SMITH: Completely unacceptable.

6 THE COURT: And watching on -- I know on YouTube you  
7 can watch other people play these type of games. So any -- any  
8 exposure to video games or any electronic or visual material  
9 that's not appropriate for his age.

10 MR. SMITH: I -- we have taken steps to make sure all  
11 of that happens. We certainly monitor any use of the computer  
12 these days allowing any child of whatever age to get on a  
13 computer unmonitored until they're capable enough to understand.  
14 The other day, for example, I was doing a search for toys and  
15 came up with inappropriate material.

16 If -- if someone can put toys in Google and come up  
17 with inappropriate [sic] material, any child on the internet is --  
18 is unsafe. And -- and my recommendation to my client, although  
19 we haven't had an extensive conversation, is -- is to use a  
20 program like Net Nanny or one of those -- those programs to  
21 work.

22 Look, there is -- there is work to be done on this  
23 case. There is certainly an interesting legal issue, but I  
24 think there's work to be done in terms of an overall better

1 communication between the parties, less finger pointing. This  
2 case has had nothing but litigation involved.

3 I'm hoping that we can address the Court's concerns.  
4 I mean, really, that's the -- the issues here is not winning or  
5 losing. It's addressing the Court concern and making sure this  
6 child is being handled appropriately. But that would include,  
7 you know, the Gestapo-like tactics to stop and the attitude that  
8 -- you know, sort of the I'm better attitude to stop. But  
9 that's all conversations we can have. We can all stop and, you  
10 know, develop plans for doing that.

11 I'm hoping to resolve this case with Mr. Jones. If we  
12 don't, we'll be prepared to try the case and address the various  
13 specifics that you have. And we appreciate the time because,  
14 again, I think the time is -- I don't want it to be a courtesy  
15 to me, I want it to be based upon the facts of -- I appreciate  
16 the courtesy, I -- I very much do.

17 But the facts of the case are that we need an  
18 interview of this child that isn't influenced by these tapes and  
19 really just to kind of a broad interview of where the child sits  
20 today. I think there -- that interview I will ask Dr. Chambers  
21 to include that interview and talk with the teacher and talk  
22 with his current teacher, his -- his -- just to kind of monitor  
23 how he's doing.

24 THE COURT: That was not -- going to be --

1 MR. SMITH: But that will be --

2 THE COURT: -- my next stipulation because I'm  
3 concerned. Sometimes in a classroom setting, all Ss in  
4 kindergarten instead of an S plus or an E minus or an E or an E  
5 plus sometimes represents a different curve than perhaps counsel  
6 and I are used to. And so --

7 MR. SMITH: Hundred percent. Well --

8 THE COURT: -- that -- those are some of my concerns.  
9 So dry report card is -- is -- does -- not very persuasive to  
10 me.

11 MR. SMITH: You raised some really good questions in  
12 the hallway. You said how many students are in the class, what  
13 kind of attention will the teacher have to determine whether or  
14 not -- I think what's meant by that, what kind of attention the  
15 -- will the -- the teacher have to determine whether somebody's  
16 acting out or acting inappropriately or is she just among 30  
17 kids and hoping to put out fires as she can.

18 How long is this school? Is it an all day school? Is  
19 it a half day? What was that the teacher observed -- when I --  
20 I was shocked to find that -- I don't believe the teacher is on  
21 the witness list, so one of the things I'm going to ask the  
22 Court today would at least allow the teacher to be interviewed  
23 in part of Dr. Chamber's interview but better yet to have her  
24 come testify and to answer these questions under oath as to what

1 does she observe in Sasha. What does she see?

2 And if we go through October, it's very likely that  
3 I'll subpoena the teacher that exists now as to how's he doing  
4 in school. What are his, you know -- how's -- what are his  
5 pluses? What are his minuses, et cetera. And one of the  
6 questions that's -- that's being raised now is now the child's  
7 school is a year round school. I don't know if that's something  
8 that we even care about but --

9 THE COURT: I think previously in the decree, counsel,  
10 correct me if I'm wrong, it indicates that Dad's home is always  
11 going to be the zone for the school?

12 MR. SMITH: They live close enough to where they're  
13 zoned for the same schools now so it's -- it's not much  
14 different. I -- I think the question of whether or not it's in  
15 the best interest of the child to have a year round or -- or a  
16 nine month school --

17 THE COURT: Think his siblings go to that school, is  
18 that correct?

19 MR. JONES: Yeah. Well, the -- the agreement we  
20 reached when we settled the -- the last time we had to come to  
21 court, for various actions on the Defendant's part --

22 THE COURT: Because we have brought this up already.

23 MR. JONES: -- was that the child would always go to  
24 school in Dad's zone. So the child is going to go to school in

1 Dad's zone. It happens to have just converted to year round.  
2 There would be no basis to change what the parties stipulated  
3 was in the best interest of the child a year and a half ago.

4 MR. SMITH: Well --

5 MR. JONES: Now he's on track five because my client  
6 works for the school district and was able to get him the track  
7 closest to a nine month school available. So I don't understand  
8 how this is even being discussed when there hasn't been a motion  
9 filed and we already have a court order specifically on the  
10 issue.

11 MR. SMITH: Yeah, again, the -- all orders in regard  
12 to the custody of a child are subject to review by this Court as  
13 its overall power to do what's in the best interest in the  
14 child, but I haven't raised that issue for that point. I have  
15 raised that issue simply because it's my intent to have a  
16 teacher from that school testify at the time of any contested  
17 evidentiary hearing because I do believe that teachers make  
18 valuable observations of children who are in their care six  
19 hours or seven hours a day every single day.

20 And I -- I think that they would have something to say  
21 about Sasha if she wa -- he was acting out, if he was  
22 aggressive, if he was demonstrating the kind of behavior, if he  
23 couldn't write his name, his school work was poor. So I think  
24 we should hear from those people and I think the Court would be

1 interested in hearing from those people.

2 I'm sure that all of us have gone to our teachers --  
3 our children's teachers and -- and learned what we think  
4 important information and sort of modify the way that we parent  
5 as a result. In some instances, as a result of things that are  
6 told to us or observations made by teachers, tutors, change in  
7 habits, sleep habits, et cetera, et cetera. So these are  
8 concerned.

9 One of the things that Mr. Jones had raised was the  
10 issue of extracurricular activities in the meantime. As I have  
11 relayed to Mr. Jones and I relayed again in our conversation in  
12 the -- in the hallway, my client has no problem with baseball.  
13 She did want him involved in judo. Mr. Jones has indicated his  
14 client will agree to judo provided it doesn't interfere with  
15 baseball. We'll certainly hope that that's the case and we'll  
16 schedule around that to make sure that that is the rule.

17 The one thing that my client has raised about baseball  
18 was that it went late at night. So I think all of us would  
19 agree that anything beyond 9:00 for a six-year-old is -- is not  
20 in its best -- his be -- best interest. If he's getting home at  
21 10:00, getting asleep by 11:00, it's probably not a good idea.  
22 So I know that the NYS in Henderson in that area which is where  
23 they're located offers, you know, programs that are Saturdays  
24 and normal, like they are right after school mostly for these --

1 these types of activities, so I don't know why there would be  
2 baseball practices way late in the evening. So we'll work on  
3 that. So baseball is agreed with the caveat that we don't want,  
4 you know, late night baseball for six-year-olds.

5 MR. JONES: I can't imagine that it even would exist  
6 past 8:00 or 9:00 p.m. --

7 THE COURT: I -- I -- I'm -- I'm hard --

8 MR. JONES: -- 8:00 or 8:30, so --

9 THE COURT: -- imagining that other than a long trek  
10 home. I --

11 MR. SMITH: No, he had -- he had games, I'm told. I  
12 wasn't --

13 THE COURT: Okay.

14 MR. SMITH: -- involved but I'm -- I'm told he had  
15 games as -- and practices as late as 9:00 o'clock in the evening  
16 and that'd be too late --

17 THE COURT: Okay.

18 MR. SMITH: -- for a chi -- I think we'd all agree  
19 that that's too late.

20 MR. JONES: We all agree on that.

21 MR. SMITH: Okay.

22 THE COURT: Okay. And -- and -- but, you know, the  
23 Court is reasonable in that if it's a game that goes late  
24 because the game before --



1 MR. SMITH: No, no, no. That's different.

2 THE COURT: -- it -- it's a Saturday and it goes until  
3 9:00 and it's --

4 MR. SMITH: Saturday -- no, it's different.

5 THE COURT: -- one out of five, I'm okay, but if it's  
6 a practice scheduled at 8:00 o'clock during the -- that --  
7 that's kind of strange to me.

8 MR. SMITH: They have baseball field problems. They  
9 -- they're crowded and they're --

10 THE COURT: Okay.

11 MR. SMITH: -- they're working in times but look, as  
12 long as we all agree that that's not going to be something that  
13 happens, we can work around the schedule so --

14 THE COURT: All right. Wonderful. Mr. Jones,  
15 anything else specifically as to the expert and the continuance?

16 MR. JONES: Yes, Your Honor. October 5 will work for  
17 us. Obviously, as much as I believe the matter has to be heard  
18 by the Court on the merits, when you're a new lawyer onto a  
19 case, particularly a case with as many wrinkles as this one, it  
20 would be unreasonable for me to insist that the trial go forward  
21 on Friday.

22 On the issue of the expert, the concern is this. The  
23 Court choose an expert and said okay, this is the person who's  
24 going to interview Sasha. Then the Court made a decision that

1 it was going to allow that expert to receive the tapes. Those  
2 issues have been ruled upon by the Court.

3 Now they're getting their -- I'm going to call him a  
4 hired gun. No matter what his credentials, he represents and is  
5 -- and -- well, we'll find out if he's an advocate for the  
6 Defendant or not, but he is paid by the Defendant to offer an  
7 opinion different than the Court appointed expert.

8 I have concerns about the legitimacy of the process,  
9 because I don't get access to the expert. I don't get to call  
10 him, I don't get to talk to him, I don't get to sit in the room  
11 and watch the interview. There has to be some oversight meaning  
12 the interview occurs. I'm not impugning Dr. Chambers at all.  
13 Interview occurs, child comes in, they talk nothing about the  
14 alienating statements Mom has made for years and years and years  
15 and years. They talk nothing about anything other than whether  
16 Call of Duty has affected his schooling. Okay.

17 Well that's kind of a waste of time, but it also -- I  
18 have to have an understanding about what he heard in order to  
19 determine whether his report -- and with a court appointed, you  
20 know that their obligation is to you. Dr. Chambers' obligation  
21 is either to Mr. Smith or Mr. Smith's client.

22 So I don't know how the Court wants to address whether  
23 or not the -- the session should be recorded. I certainly think  
24 the session should be recorded so that either, A, the court

1 appointed expert can listen to it and see if there was something  
2 new that either she missed or a lot of things that the expert  
3 hired by the Defendant missed or if I get a report and the  
4 report says what I expect it to say which is pretty much  
5 anything the mom wants it to say, I may need to hire my own  
6 expert, a rebuttal expert.

7           So then you can have a court appointed expert and then  
8 we can each have our own expert, but there's no way to verify  
9 the findings in a report without actually knowing what went on  
10 when you have an independent expert. Other experts like  
11 forensic accountants, business valuation guys, you know what  
12 they got because what they got is documents and what they -- you  
13 know, a lot of times they'll -- they'll make notes about their  
14 conversations.

15           I mean, sure, I can subpoena Dr. Chambers' file but  
16 the only way to know what the substance of the interviews were,  
17 particularly if he's going to interview multiple people, is if  
18 there's a record of it. And I think the only way to do that  
19 properly would either to be a tape recording or a video  
20 recording of the interview. I think it's within the Court's  
21 discretion to order it either way.

22           I think interviewing a child a second time in a  
23 proceeding just because you don't like the first result is  
24 almost never allowed. While he's entitled to his expert, you

1 never said that he was entitled to an expert who would then  
2 interview the child a second time, because you know what, maybe  
3 we can interview him 15 times and by the 15th time we'll have a  
4 different result than we got the first time. That's the problem  
5 with the process of being allowed to interview a child as an  
6 independent expert. It taints the entire process. That's why  
7 court appointed people are court appointed and have one  
8 obligation as that is as -- as an arm of the Court to  
9 investigate things independent of my opinion, independent of Mr.  
10 Smith's opinion.

11           The Court has, I think, almost unlimited discretion,  
12 I think Mr. Smith would agree, in determining whether or not it  
13 would be -- there would be a recording of any interviews of  
14 Sasha. I think under the circumstances, the way this case has  
15 proceeded, the fact that we already have a court appointed  
16 expert, there would be no reason not to have it recorded and  
17 have that recording made available to either myself or Dr.  
18 Holland or someone else that I might want to appoint if and when  
19 I get a report from Dr. Chambers.

20           On the issue of baseball and -- and judo, I think we  
21 have an agreement on that. The only other thing we discussed in  
22 the hallway that needs to be addressed is -- is counseling for  
23 Sasha to kind of help him cope with some of the stuff that's  
24 gone on. I -- I don't think Mr. Smith is in disagreement. I

1 suggested either Jamil Ali or Dr. -- or Nick Ponzo. I think  
2 he's going to talk to his client about either or. We'll be  
3 happy to agree to either one and we can pre -- prepare a  
4 stipulation.

5 I think that the counselor needs to be made aware of  
6 what's gone on in these proceedings so he knows exactly what  
7 he's dealing with. I don't know if Mr. Smith has a disagreement  
8 with regard to what can be provided to the counselor. I think  
9 he should see Dr. Paglini's report, I think he should see Dr.  
10 Holland's report, and I think he should see the relevant  
11 pleadings.

12 THE COURT: All right. As --

13 MR. SMITH: I don't -- I don't have any objection to  
14 providing that in -- that information to Dr. Holland. In fact,  
15 I was going to ask if we could provide the -- I mean, excuse me,  
16 to Dr. Chambers. I was going to ask if we could provide Dr.  
17 Paglini's report. I don't have any objection to that. Are you  
18 --

19 MR. JONES: No.

20 MR. SMITH: Are you done?

21 MR. JONES: I stipulated to that.

22 MR. SMITH: Are you done?

23 MR. JONES: I -- I stipulate that Dr. Paglini's report  
24 can be provided to Dr. Chambers.

1 MR. SMITH: I didn't know if you had more to say.

2 MR. JONES: Oh no. No. I'm done.

3 MR. SMITH: Okay. Your Honor, let me just --

4 THE COURT: Counsel, as to the recording -- and here's  
5 -- and -- and let me back up so that you're clear as we  
6 progressed.

7 The Defendant was at all times free and available to  
8 retain the services of expert witness in this case. I'm not  
9 continuing this case so that you can obtain an expert witness  
10 because she had that opportunity all along. I'm continuing it  
11 because there's been a substitution of counsel and in order for  
12 you to fully and adequately represent your client, you need some  
13 additional time. And -- and that's why I'm doing that.

14 Certainly counsel for the Plaintiff is -- has the same  
15 ability to go out and get additional experts in this case. I  
16 don't think more experts in this case would hurt this case. I  
17 think it would help this case. It would give us all a better  
18 view of this case.

19 I do think -- and I'm inclined to grant your expert  
20 the opportunity to interview the child in this case because I  
21 think -- I am just so concerned. And -- and he's so little and  
22 sometimes when you get a snapshot of a -- a little child that it  
23 may not be indicative of their behavior over time or previously.

24 And -- and I understand your argument and I want to

1 give you the opportunity to, you know, present to me the things  
2 you need to present to me with the understanding that it also --  
3 it -- it may cut both ways. It -- it may be negative for you  
4 but I then need to give counsel's expert, if he desires to get  
5 another expert the opportunity to interview the child again.

6 And the -- the state of conflict in this case is so  
7 high that I don't want to see you back in a year no matter what  
8 our decision or agreement or stipulation be in this case, and  
9 then want interviews again. So I'm -- I'm concerned with the  
10 amount of interviews. I -- I -- I'm concerned with those  
11 things. I want you to understand that my granting interviews  
12 now in this case will shade my decision making in the future  
13 should anytime in the future we make these type of requests  
14 again.

15 MR. SMITH: And -- and I understand. In other words,  
16 we don't want multiple, multiple interviews. This situation is,  
17 at least in my practice, unique. I have never seen a case in  
18 which someone planted a tape, provided that to a court appointed  
19 expert, and then that expert utilized that as part of the  
20 interview process. It's unique to my practice ever. And in  
21 fact, it's -- this is unique to my practice to see someone place  
22 a court recorder in a backpack of a child and then simply put  
23 that into the -- the home.

24 These are very unusual circumstances, it's why I'm

1 asking for the interview. I disagree with counsel. I -- I  
2 think it's a very cynical view that all experts are somehow paid  
3 guns, certainly Dr. Chambers isn't. In fact, one of the things  
4 I like about Dr. Chambers, and I think I said this in the hall,  
5 is that he really calls it as he sees it. He doesn't care.

6 And you're right, it may come back negative but -- and  
7 I told you my goal here isn't to win a case. My goal here is a  
8 fair understanding of what this child is going through and what  
9 it is that we can do as a court system to address any issues.

10 I -- I see the -- the report card and I give it a  
11 little bit more weight than the Court because I think that  
12 really if there's a problem with kids, that's something that  
13 teachers do identify. They don't go out of their way to say  
14 that he's doing well with others but I do think that they should  
15 be part of the process to tell us what's going on.

16 THE COURT: I'm fine with that, counsel.

17 MR. SMITH: Yeah.

18 THE COURT: How do you -- you didn't address how you  
19 felt about the teacher testifying, Mr. Jones. Would you  
20 stipulate to that? But you're okay with that?

21 MR. JONES: I -- he can call any witness he wants.

22 THE COURT: All right.

23 MR. SMITH: Okay. Well, we'll take that stipulation.

24 In regard to the -- the video taping of the interview, and I



1 don't know if the Court's going to require that, I would say --  
2 or the taping, do we have a tape of Dr. Holland's interview? I  
3 didn't --

4 THE COURT: We do not. It's my understanding we do  
5 not. I don't remember --

6 MR. SMITH: So Dr. Holland --

7 MR. JONES: I don't think we need one. She's court  
8 appointed.

9 MR. SMITH: Dr. Holl -- well, Dr. Holland would  
10 testify, I'm certain of it, and so will Dr. Chambers, that it  
11 doesn't matter whether they're hired by someone or whether  
12 they're court appointed. I understand these people are  
13 professionals that do this regularly. So the cynical view is  
14 that somehow they'll bend over backwards in a case, lose their  
15 credibility all over the fee that exists in the case. And in  
16 this case, it's a relatively small fee. It's just a silly view.

17 Dr. Chambers will interview the child. You'll have an  
18 opportunity to hear him on cross examination if it gets to that.  
19 Mr. Jones is welcome to take his deposition and I'll arrange for  
20 time for him to do that if he sees fit. So --

21 THE COURT: Let me --

22 MR. SMITH: -- Your Honor, I -- I think there's  
23 adequate --

24 THE COURT: Let me tell you my concern. Generally I

1 would say no, we're not going to videotape the interview. Okay.  
2 But my concern is this. The nature of Dr. Holland's report is  
3 observations, is his behavior, his inability to engage in  
4 conversation and move to Call of Duty, his inability to maintain  
5 focus, his aggressiveness. So those are all behaviors that have  
6 to be observed.

7 That is my only inclination in asking it to be  
8 recorded because those are behaviors that have to be observed.  
9 But what I'm going to do in this case is order that be in Dr.  
10 Chambers' discretion and in the discretion of whatever expert  
11 the Plaintiff may retain after that.

12 MR. SMITH: We're -- we're perfectly willing, Your  
13 Honor, in terms of them retaining a second expert, to provide  
14 the report to Dr. Holland and allow her to rebut that report.  
15 I know that Dr. Holland and Dr. Chambers have worked together in  
16 the past as experts on a case. It -- it may behoove them to  
17 even talk to each other to talk about the -- the -- and we  
18 wouldn't have any -- talk about the observations. We don't have  
19 any objection on that. Again, the goal here is to find out  
20 whether or not the Court's concerns and observations are  
21 something that we need to act upon.

22 THE COURT: But --

23 MR. JONES: What -- what -- if that's true, and if Dr.  
24 Holland thinks it would be valuable, how about if we have Dr.

1 Holland have the option of either having one of her interns or  
2 herself be present at the interview? We don't have to record  
3 it.

4 MR. SMITH: Again, I'd -- I'd be happy to brief this  
5 issue, but Judge, it's just not conducive to an environment  
6 that's -- that that works for that kind of interview and no  
7 court that I could find has ever required an expert to have the  
8 interview either recorded or have somebody present during the  
9 interview. This has been a common complaint, particularly in  
10 cases not like this where it's just an interview of a child, but  
11 when there's sexual abuse allegations. Even in those cases, the  
12 courts don't require -- and again, I'd be happy to brief this --  
13 the videotaping --

14 THE COURT: If Dr. Chambers and Dr. Holland speak and  
15 believe it's appropriate, Dr. Holland can be present, but the  
16 experts would need to agree. I'm going to allow that to be more  
17 of a -- a therapeutic directive rather than a court directive in  
18 this case. However, if he wants to videotape it, that's fine  
19 with me. Okay?

20 So we'll vacate the date for 8/14 at 10:30. We'll set  
21 the date for October -- what date did I give you previously, cou  
22 --

23 MR. JONES: Five.

24 MR. SMITH: Five. October 5, Your --

1 THE COURT: October 5th starting at 9:00 am. Coun --

2 MR. SMITH: So will you -- will you issue a new  
3 scheduling order, Your Honor?

4 THE COURT: I will and I can issue that now as you  
5 leave. Let me ask you this, counsel. Do you believe this is  
6 really a one day trial?

7 MR. JONES: Meaning do you want to go ahead and save  
8 another day?

9 THE COURT: I'm concerned that we need to save at  
10 least another half day.

11 MR. JONES: I think that makes a lot of --

12 THE COURT: Does --

13 MR. JONES: -- sense, Judge.

14 THE COURT: Mr. Smith, what -- only just to reserve it  
15 and if we don't use it, that's fine, but I -- I'm a little bit  
16 concerned.

17 MR. SMITH: I'm at the mercy of the Court. If the  
18 Court feels it needs more time, I -- I personally --

19 THE COURT: No, you tell me -- if you think you can  
20 get these two, maybe three experts in and out of here in one  
21 day.

22 MR. SMITH: Yeah, I -- I guess the answer would be I  
23 won't know until I see the results of the expert reports but it  
24 probably doesn't hurt to reserve the time.

1 THE COURT: And here's why -- I don't want to separate  
2 the days too far out. I'm going to reserve October 12th,  
3 Monday, October 12th as a second day. The next day -- the next  
4 week I'm at judicial college. That -- I -- I want to kind of  
5 keep that.

6 MR. SMITH: Yeah, a good way to head into judicial  
7 college. It'll give you a lot to talk about when you're at  
8 judicial college.

9 MR. JONES: Judge, the only other thing --

10 THE COURT: Perhaps you have a preconceived notion  
11 about judicial college, counsel.

12 MR. SMITH: I probably do. I have no --

13 THE COURT: I don't know that there's much discussion.

14 MR. JONES: It -- it's not an Algonquin Round Table,  
15 Radford.

16 THE COURT: I -- I -- the Court would be thrilled if  
17 it -- if it were like that, counsel. That would be wonderful.

18 MR. JONES: The only other issue, Judge, that I --  
19 I'll let the Court know and Mr. Smith know is with the  
20 additional expert, there's going to be a motion filed by our  
21 side for attorney's fees in the interim and potentially expert  
22 fees so I'm just throwing that out there as something for Mr.  
23 Smith to consider.

24 MR. SMITH: Well --

1 THE COURT: All right.

2 MR. SMITH: I --

3 THE COURT: Well, you don't need to respond, counsel  
4 but what I do think, and we talked about it briefly, that I  
5 think now that we have new counsel on this case, it's an  
6 opportunity for everybody to take a look and, you know, perhaps  
7 reach -- reach a settlement in this case.

8 MR. SMITH: We certainly hope to, Your Honor.

9 THE COURT: All right. Thank you. And actually, they  
10 have cha -- they have updated Odyssey, so that I cannot do that  
11 scheduling order for you right now. I'll have to -- I'm sorry.  
12 So I'll have to do that in chambers and I'll put it in your  
13 boxes.

14 MR. JONES: No problem.

15 MR. SMITH: Thank you, Your Honor.

16 THE COURT: Thank you. Thank you and good luck.

17 (PROCEEDINGS CONCLUDED AT 09:53:49)

18 \* \* \* \* \*

19 ATTEST: I do hereby certify that I have truly and  
20 correctly transcribed the digital proceedings in the above-  
21 entitled case to the best of my ability.

22

23

24

*Adrian Medrano*

Adrian N. Medrano

FILED

JUN 21 2016

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6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8

9 IN THE MATTER OF THE )  
10 JOINT PETITION FOR )  
11 DIVORCE OF: )  
12 SEAN R. ABID AND )  
13 LYUDMYLA A. ABID, )  
Petitioners. )

CASE NO. D-10-424830-Z

DEPT. B

14 BEFORE THE HONORABLE LINDA MARQUIS  
15 DISTRICT COURT JUDGE

16 TRANSCRIPT RE: MOTION

17 WEDNESDAY, SEPTEMBER 9, 2015

18 APPEARANCES:

19 THE PETITIONER:  
20 FOR THE PETITIONER:

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22 THE CO-PETITIONER:  
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1 LAS VEGAS, NEVADA

WEDNESDAY, SEPTEMBER 9, 2015

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

3 (THE PROCEEDINGS BEGAN AT 12:05:25)

4  
5 THE COURT: -- morning anymore.

6 MR. SMITH: No, we're -- we're into the afternoon. I  
7 understand Mr. Jones is going to appear telephonically.

8 THE COURT: Oh, he is?

9 THE CLERK: Oh, he is?

10 THE COURT: Okay.

11 THE CLERK: Oh.

12 THE COURT: All right.

13 MR. SMITH: That's what he told me. I didn't know --  
14 did he tell you?

15 THE CLERK: Well, yeah. I thought it was  
16 (indiscernible), but yeah.

17 THE COURT: You know, nobody tells me anything.

18 MR. SMITH: Okay.

19 THE CLERK: Okay. We'll try that.

20 THE COURT: Well, I'll call it while we get him on the  
21 phone. This is the matter of Sean Abid vs Lyudmyla Abid, D-10-  
22 424830. Mr. Smith is in the courtroom along with his client and  
23 I apologize. I probably mispronounced your name again.

24 MS. ABID: No, it's okay.



1           THE COURT:    I'm sorry.    You always say it so  
2 beautifully.  
3           MS. ABID:   Lyudmyla.  
4           MR. SMITH:   Lyudmyla.  
5           THE COURT:   Have a seat.  
6           THE CLERK:   Hello, Mr. Jones? Hi, this is Helen Green  
7 calling from Family Court and Judge Marquis had just called the  
8 case of Abid. Can you hold on the line one second while I put  
9 you on speaker? Thank you.  
10          THE COURT:   Mr. Jones, this is Judge Marquis, can you  
11 hear me? Mr. Jones?  
12          MR. JONES:   Yes.  
13          THE COURT:   Judge Marquis. Can you hear me?  
14          MR. JONES:   I can.  
15          THE COURT:   All right.  
16          MR. JONES:   You're faint, but I can hear.  
17          THE COURT:   Okay. Mr. Smith's in the courtroom along  
18 with his client. The Plaintiff is not present. Mr. Smith, I'm  
19 going to ask you to move down one so you can be by the  
20 microphone and Mr. Smith, you can have a seat. I apologize --  
21          MR. SMITH:   Okay.  
22          THE COURT:   -- in advance for our phone system. It's  
23 horrible. All right. This is Mom's motion to extend the  
24 deadline to produce Dr. Chambers' report. Counsel, is there any

1 opposition?

2 MR. JONES: There -- there is. Well, first of all,  
3 -- I can tell the Court that Mr. Smith and I are working ver  
4 hard to resolve the case and hope to have it resolved. The  
5 objection in the event all of our settlement efforts fail is  
6 simply that, you know, we had a scheduling order originally for  
7 the initial trial. That scheduling order required that an  
8 expert be identified by May 15th, 2015. No expert was ever  
9 identified. Okay.

10 Mr. Smith gets on the case August 7th. We -- you  
11 grant him his initial continuance request, but the second  
12 scheduling order placed the obligation to identify an expert  
13 witness for an October 5 trial date at July 7, once again,  
14 predating Mr. Smith getting on the case and predating his  
15 attempt to name Mark Chambers as an expert.

16 So we have two orders that weren't complied with even  
17 if you consider, you know, the continuance of the trial until  
18 October 5. So now we're being told that an expert that was not  
19 timely identified under either order is the reason why we can't  
20 have our trial October 5.

21 THE COURT: Well is that what --

22 MR. JONES: That --

23 THE COURT: -- you're asking or are you just asking  
24 for more time to get Chambers' report or is that going to impact

1 the trial date?

2 MR. SMITH: I -- it won't effect our --

3 MR. JONES: Well, but -- but whether he produces a  
4 report today, yesterday, or at the end of this month, as -- as  
5 far as identifying in a timely fashion an expert witness, that  
6 has never been done. So I know Your Honor made a comment I  
7 think the last hearing before Mr. Smith got on that obviously if  
8 the Defendant wanted to get her own expert, she had the ability  
9 to do so. Well, yeah, she had the ability to do so pursuant to  
10 the original scheduling order and then she had the ability to do  
11 so pursuant to the new scheduling order.

12 Now I understand the issue of Mark Chambers was  
13 already in play at the time of the initial continuance, but, you  
14 know, that was when we expected that we would be going to trial  
15 October 5 no matter what. If he produced a report on September  
16 20, there's no way for me to have an opportunity to take his  
17 deposition. There's no way for me to do anything before October  
18 5.

19 But by the same token, you already granted one  
20 continuance of a trial date and the motion before the Court  
21 today asks for extension of the discovery deadline which doesn't  
22 include the issue that the expert witness was supposed to be  
23 identified July 7th.

24 So I -- I have always had a problem with the idea that

1 even though the Court appointed an independent expert, you're  
2 now going to have somebody, you know, re-picking at this kid's  
3 brain particularly after, you know, Mom has the benefit of the  
4 independent report to then go to work on the child and I got  
5 multiple instances of -- of things that have occurred even since  
6 Mr. Smith got on the case, of what Mom seems to be saying and  
7 doing with the child such as, for example, I'm -- the child is  
8 upset because he doesn't have an Xbox anymore because he told  
9 Dr. Holland too much. He was supposed to tell her that he only  
10 played Call of Duty in paint ball mode and he didn't do it but  
11 he'll get it right next time. Well, I'm sure he's going to tell  
12 Dr. Chambers that he's only played it in paint ball mode because  
13 his mom told him he told Dr. Holland too much and these are the  
14 problems we have with continuing to delay these proceedings.

15 And while I -- I would probably understand Mr. Smith's  
16 reaction that gee, we're working so hard on settlement, how is  
17 this an issue. Because frankly, you know, you -- you don't get  
18 to just keep delaying something that this Court set so long ago.  
19 I mean, it was March 18th when we had the hearing at which you  
20 set the evidentiary hearing. So we're now talking about over  
21 six months mom had to get an expert and get a report and I  
22 understand Mr. Smith is new to the case, but my client continues  
23 to be prejudiced by the fact that none of this was done in the  
24 first place and none of it was done timely under either of the

1 Court's scheduling orders.

2 THE COURT: Thank you, counsel. Mr. Smith?

3 MR. SMITH: Your Honor, the -- it was surprising me to  
4 hear that --

5 MR. JONES: I actually can't hear Mr. Smith at all.

6 THE COURT: All right. I'm going to ask Mr. -- Mr.  
7 Smith is just going to come up here to the bench because the  
8 microphone's a little bit easier for him to speak into if that's  
9 all right with you, Mr. Jones.

10 MR. SMITH: Can you hear me now?

11 MR. JONES: Well, yes, I can.

12 MR. SMITH: Great. So I was surprised to hear the  
13 objection because at the last hearing, the bases -- basis for  
14 the continuance was so that we could have the child  
15 re-interviewed based upon our view that Dr. Holland who both  
16 quoted and cited the tape that as part of her interview we  
17 believe that if the tape is excluded, she would not have the  
18 ability to testify as to the tape. Mr. Jones feels differently.

19 That was the discussion that was had and so we hired  
20 Dr. Chambers with the notion that he would have a fresh  
21 interview, not a -- it's not a child custody assessment. It's  
22 simply just an -- an interview with the child to address the  
23 Court's concerns. And that was the Court -- the Court was  
24 concerned about his playing the game Call of Duty.

1           The Court was concerned about his scholastic  
2 development, his ability to -- to write and -- and do  
3 schoolwork. And the Court was concerned about the -- the  
4 inability to stay still and concentrate and focus. And the  
5 Court's expressed concern was that this could inhibit him in his  
6 ability to achieve scholastically.

7           So while Mr. -- all of that was -- was the basis for  
8 hiring Dr. Chambers and having Dr. Chambers interview. We had  
9 picked the date of October 5th as the date that Dr. Chambers was  
10 available and there was a discussion on that. So to now hear  
11 there's an objection to Dr. Chambers interviewing this child is  
12 a little bit surprising.

13           And let me also say that on both sides, you know --  
14 Mr. Abid likes to put words into the mouth of Mrs. Abid, but Mr.  
15 Abid, if we're going to talk about that sort of thing, has  
16 advised the child that the Judge is going to give me -- or you  
17 to me and that you'll be spending less time with your mother,  
18 which has greatly upset the child.

19           But in any event, the -- the Court should be happy to  
20 learn that we took the deposition of his last year kindergarten  
21 teacher.

22           THE COURT: Is that Ms. Masa (ph) or Ms. Abercheli  
23 (ph)?

24           MR. SMITH: Ms. -- I think it's Sa -- I think it

1 begins with an S but I'm -- I'm --  
2 THE COURT: Susan?  
3 MR. SMITH: Yeah, Susan. It's Ms. --  
4 THE COURT: Yeah.  
5 MR. SMITH: That one.  
6 THE COURT: Abercheli.  
7 MR. SMITH: Abercheli.  
8 THE COURT: I'm pronouncing it wrong.  
9 MR. SMITH: She -- she testified that what was  
10 interesting about his report card is he got all threes and we  
11 were concerned that this was just a standard sort of grant. But  
12 what she pointed out is that at Twitchell they don't give fours.  
13 So he got all the highest grades that you can get for his  
14 progress which was she said was well within the bounds of what  
15 normal children. She identified him as a happy child who was  
16 very -- he had good friends at the school. She identif -- he  
17 [sic] identified that he was more than fit scholastically, that  
18 he had made progress over the year that would be expected of a  
19 child of kindergarten age.  
20 When I asked her about his ability to stand -- stay  
21 still, she said like all kindergartners, he has -- you know,  
22 there are times where he'll stand up, but he focuses during the  
23 time and he's quiet during the times he's supposed to be quiet.  
24 And that's why he doesn't have any bad marks in -- in all --

1 they're all Ss.

2           And I asked her about that in terms of his behavioral  
3 information and she said they don't give Es. The only people at  
4 the time that they would might give an E is if he did a special  
5 class project and that wouldn't be under a cooperation type of  
6 scenario. She also identified that he -- you know, he did get  
7 Es in the other teachers' reports but she couldn't speak to that  
8 because those teachers do in the creative type of arts and so  
9 forth give Es.

10           So there was nothing about her deposition that has  
11 suggested that the child has been harmed in any manner. And to  
12 ease Mr. Jones' concern, and I'm sure the short -- short's --  
13 the Court's concern as well, he has no access to an Xbox at all.  
14 He may say as a person who wanted to play Xbox any number of  
15 things about an Xbox but the bottom line is he doesn't have one.  
16 And based upon what's occurred here, it's likely he won't have  
17 one for some time. When he does, it's gonna be appropriate  
18 rated games.

19           We have made progress in terms of settlement. I don't  
20 think this is the type of thing that will cause a delay in the  
21 hearing. The Court has the discretion. We said that we would  
22 be ready by the September 4th to provide that report. We're not  
23 at no fault of ours. As you saw the letter from Dr. Chambers  
24 was he was called to a hearing he thought that had already



1 resolved and so he's not going to be available.

2 But I -- I don't want to delay the hearing. I think  
3 the hearing needs to proceed forward. But again, I -- I think  
4 that this is just an interview that is designed to have the  
5 interview of the child without what we believe now after taking  
6 Mr. Abid's deposition on Friday is not only a tape that was  
7 improperly taken, it was taken for an improper purpose.

8 And in addition to the illegality of the tape and the  
9 damage to the tape caused by him splicing out the portions he  
10 didn't want, he admitted that the reason he destroyed the  
11 computer or gave away and threw away the hard drive on the  
12 computer was to avoid the claims by Ms. Abid that, you know, she  
13 would seek some prosecution for these crimes.

14 So not only is there the issue of the illegality of  
15 the tape and the inability of -- and -- to present it as a  
16 result of the cropping of the tape, but now there's a spoliation  
17 issue that would presume that the information contained on the  
18 tape portion that he didn't provide was damaging in fact to Mr.  
19 Abid and that damage would be of course him splicing out  
20 conversations that even by his own admission would be illegal --  
21 illegally taped.

22 I think this is an issue that should settle and I  
23 think that we have outlined some pretty good terms, but Judge,  
24 I do think it's fair in light of what's happened with this tape

1 and the fact that I don't think particularly after taking Mr.  
2 Abid's deposition that this tape will ever see the light of day  
3 in this action that we do have an interview to resolve the  
4 Court's concerns. Because Dr. Chambers -- we can -- we can  
5 choose another person if the Court tells me today no, Mr. Smith,  
6 either you get Dr. Chambers in or we don't, we can choose  
7 whoever the Court or somebody feels comfortable with.

8 But I want somebody who hasn't been influenced by this  
9 tape to address the Court's concerns which I think there are  
10 really the fundamental concerns and has this child been affected  
11 by any of the parties' actions? Has this child been affected by  
12 playing a game that was admittedly unsuitable for him at his  
13 age? And so those are the things I think that we need to  
14 address but I think in the way that we're discussing settlement,  
15 we're going to address that as well.

16 THE COURT: All right.

17 MR. SMITH: But Judge, I'd like to have the  
18 opportunity to present.

19 THE COURT: This is what I'm going to do. I'm going  
20 to allow the additional time for Dr. Chambers' -- Dr. Chambers'  
21 report. I understand that it's outside of the time limits  
22 initially set by this Court, an amended time limit set by this  
23 Court. But given the circumstances, I find that it's  
24 reasonable.

1           With that, I understand that counsel may not have the  
2 opportunity -- counsel for the Plaintiff may not have the  
3 opportunity to conduct a deposition or additional discovery  
4 relative to Dr. Chambers' report. I would be inclined to grant  
5 Mr. Jones' request, should there be one and there not be a  
6 settlement in this case, to continue the trial so that he could  
7 take the deposition of Dr. Chambers or do whatever he needs to  
8 do once he gets that report.

9           MR. SMITH: I think that's reasonable, Your Honor.  
10 Let me offer --

11           THE COURT: And I just wanted to let -- let you both  
12 know that at the outset I'm hopeful that negotiations will be  
13 successful in this case, but if they are not and Mr. Jones, you  
14 feel as though you need additional time to prepare for trial  
15 based on that late production of Dr. Chambers' report or that  
16 you need to conduct additional discovery, I'd be inclined --  
17 inclined to grant your request based on the circumstances. I  
18 hate that this case is so old. I hate that it's taking so long  
19 for us to get to this point. However, it's just been this  
20 series of new counsel and certainly granting you the courtesy --

21           MR. SMITH: Judge -- Judge, and I --

22           THE COURT: -- of additional time, but now that's  
23 created a situation where everything might get pushed back  
24 again.

1 MR. SMITH: Judge, I -- I appreciate it. We'll make  
2 -- if possible, we'll make Dr. Chambers, I can't speak for him,  
3 but we'll certainly make time on our schedules to make him  
4 available for deposition without the requisite 15 day notice if  
5 Mr. Jones feels that that's something that he wants to do so as  
6 to avoid any further continuance.

7 I can say that -- that I'll represent I think the time  
8 that we have spent has been well -- well used and Mr. Jones and  
9 I have worked very hard to try to reach middle ground and I  
10 think that progress is going to help these parties and  
11 particularly this child, so --

12 THE COURT: All right. So if you want to do a stip  
13 and order that resolves all this, I'll vacate those two days  
14 without an appearance. All right?

15 MR. SMITH: Very good. Thank you, Your Honor.

16 THE COURT: Thank you. Thank you, Mr. Jones.

17 MR. SMITH: I'll prepare a brief order --

18 MR. JONES: Thank you very much, Your Honor.

19 MR. SMITH: -- for today's proceedings.

20 THE COURT: Thank you.

21 MR. SMITH: Thank you.

22 (PROCEEDINGS CONCLUDED AT 12:21:25)

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ATTEST: I do hereby certify that I have truly and  
correctly transcribed the digital proceedings in the above-  
entitled case to the best of my ability.

*Adrian Medrano*

\_\_\_\_\_  
Adrian N. Medrano