

**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 17**

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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. ) VOL. II

12  
13 BEFORE THE HONORABLE LINDA MARQUIS  
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: NON-JURY TRIAL

16 MONDAY, JANUARY 25, 2016

17 APPEARANCES:

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1 THE COURT: You can have a seat. We're back on the  
2 record. Go ahead, Counsel.

3 MR. SMITH: Judge, if I could just have a few more  
4 minutes to review these. It might help streamline things --

5 THE COURT: Sure.

6 MR. SMITH: Thank you, Your Honor. So I'll probably  
7 need about 10 minutes, if that's acceptable to the Court.

8 MR. JONES: My client's gotta pay for this and  
9 discovery closed a long time ago. If he wanted her file he  
10 could have subpoenaed her file.

11 THE COURT: Counsel, you just want us to --

12 MR. SMITH: Over 10 minutes, that's the objection?  
13 That it's going to take too long? I mean, I have an  
14 opportunity to cross-examine this witness (indiscernible,  
15 cross-talk) --

16 THE COURT: And review her file while we wait.  
17 Okay. We'll wait 10 minutes.

18 MR. SMITH: Thank you.

19 THE REPORTER: Do you want me to go off the record?

20 THE COURT: No.

21 (PAUSE IN PROCEEDINGS)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SMITH:

24 Q Okay. Let me just go over some of these notes with

1 you. I've been -- the record will reflect it was three  
2 minutes, not 10.

3 So, Dr. Holland, when you interviewed Mr. Abid, he  
4 indicated that he did not respect Lyuda or believe she was a  
5 good mother, correct?

6 A I -- I mean, I'd have to see the notes.

7 Q Actually the notes of your colleague.

8 A Of -- okay.

9 Q Do you recall him saying that, or do you have any  
10 reason to understand why your colleague quoted him as saying  
11 that?

12 A (Whispers) good mother.

13 MR. JONES: Objection, calls for speculation.

14 THE COURT: If you know. If you don't know --

15 THE WITNESS: I mean, those are her notes. I -- you  
16 know, it says calls him a loser and --

17 BY MR. SMITH:

18 Q The note says, quote --

19 A Right.

20 Q -- does not respect her or believe she is a good  
21 mother --

22 A -- she is a good mother.

23 Q End quote.

24 A Right.

1 Q And you don't recall him saying that, do you?

2 A I don't. Again, it was in the context of  
3 understanding why Sasha was coming to see me, not evaluating  
4 them, you know, formally. So they -- a lot of times parents  
5 tell me a lot of different things. My job is to, when I'm  
6 conducting a child interview, is to try to get an  
7 understanding of what my role is and their perspective.

8 Q I'm surprised to learn that he does have a Wii,  
9 right?

10 A At Dad's?

11 Q Yeah.

12 A Yeah.

13 Q And plays Mario Cart.

14 A Uh-huh.

15 Q Okay. The -- in regard to the -- in your  
16 discussions with Sasha -- well, especially, your discussions  
17 with Lyuda, she did indicate to you that he plays Call of Duty  
18 online, correct? She was honest to you about that?

19 A Uh-huh.

20 Q Yes?

21 A Yes.

22 Q Okay. And she was also honest with you that they  
23 played in paintball mode, she -- that wasn't something that  
24 was newly made up. That was something that she told you at

1 the very beginning, correct?

2 A Okay.

3 Q Is that true?

4 A I believe --

5 Q Do you you want to look at your notes?

6 A No, I believe -- I believe you.

7 Q Okay. All right. Well, I'm not asking you if you

8 believe me. I'm asking you if that's what you recollect from

9 your notes.

10 A Paintball or no paintball, I mean, I don't think

11 it's appropriate for a six year old to play.

12 Q I understand. But she indicated to you that he

13 plays --

14 A Plays online --

15 Q No blood, green, see?

16 A Right. And not swearing.

17 Q And there's no swearing.

18 A Yes.

19 Q Okay. She also indicated to you that she was going

20 to Ms. Pickard's (ph) class, correct?

21 A Uh-huh, yes.

22 Q All right. You were (indiscernible) aware of that.

23 All right. So I'm a little confused, particularly in response

24 to your question from Mr. Jones, what is it that you think



1 that Ms. Abid misstated to you or misrepresented to you in any  
2 fashion? Anything?

3 MR. JONES: Objection. She didn't -- misstates her  
4 testimony.

5 MR. SMITH: Okay. Let me ask a question --

6 MR. JONES: The question was would it concern you --

7 MR. SMITH: -- independent of that last -- the first  
8 comment.

9 BY MR. SMITH:

10 Q Is there anything that Lyuda told you that you  
11 believe was inaccurate?

12 A (No audible response)

13 Q In your interview.

14 A You mean when I met with her for the interview and  
15 then when I met with Sasha?

16 Q I'm just asking you right now, is there anything in  
17 what she told you in her interview that you believe is  
18 inaccurate?

19 A Oh, I think -- I don't think -- and I don't know if  
20 we spoke in specifics about the amount of time or the  
21 frequency or duration of -- I think she relayed that he was  
22 allowed to play 30 minutes of video or Call of Duty, and I  
23 think that it was apparent that it was -- it was much more  
24 than that when I met with Sasha.

1 Q Okay. In your notes it says Call of Duty video 30  
2 minutes, busy. Do you know what that meant?

3 A Bedtime 8:30, bath, read, Call of Duty --

4 Q Didn't he indicate to you --

5 A -- Xbox --

6 Q -- in his schedule that he played Call of Duty for  
7 30 minutes?

8 A No. He indicated to me that he played Call of Duty  
9 pretty much whenever he wanted to.

10 Q Where is that in your notes, because it says a  
11 specific schedule. It has a half an hour or 30 minutes in  
12 your notes. It says 30 minutes, Call of Duty.

13 A Uh-huh, I could have asked him about that, and it  
14 also then just says busy.

15 Q Okay. In -- and also in his -- your notes you  
16 recognized that he played Call of Duty with Riley. Do you  
17 recall that?

18 A Yes.

19 Q Do you know who Riley is?

20 A A fam -- a neighbor or family friend -- I know  
21 they're older.

22 Q It's a friend of his father's, correct?

23 A Family friend.

24 Q Right. Well it's the friend of his father's. It's

1 a child of the friend of his father's.

2 A Uh-huh, sometimes plays with.

3 Q Right.

4 A Right.

5 Q Did you explore the amount of time that he was  
6 allowed to play at that house as to whether or not that was  
7 the extended period of time that he referenced?

8 A No, because he played both at home and at the other  
9 house.

10 Q Okay, but your notes at home, again, indicate 30  
11 minutes, but you said generally he plays with Riley. In fact,  
12 in his first comment to you he said the reason he has to get  
13 better, and then he references Riley, correct?

14 A I saw him four different times --

15 Q Let's look at your notes.

16 A -- and he was -- I'm confident that from Sasha's  
17 perspective he plays Call of Duty a lot. (Pause) I like Call  
18 of Duty. I wish I could play Call of Duty.

19 Q Did you -- was this -- it says sometimes I get into  
20 troubles when I throw up at Daddy's house.

21 A Uh-huh.

22 Q Did you explore that with him? I mean, typically  
23 children don't get into trouble when they throw up at a  
24 parent's house.

1           A     Uh-huh. And if I -- I would have followed up on  
2 that, and if it was anything significant or concerning or  
3 substantive I would have written it down.

4           Q     See, and he says Daddy thinks I'm doing it on  
5 purpose. That's your notes.

6           A     Uh-huh.

7           Q     Did that cause you any concern that his father was  
8 punishing him for puking at his house or throwing up at his  
9 house?

10          A     Obviously not to the point of me commenting on it.

11          Q     Okay. And then he indicates that when he talks to  
12 this line that you gave, a lot of guns, a lot of killing,  
13 Riley is better than Ira in Call of Duty.

14          A     Uh-huh.

15          Q     So there was specific reference to Riley in that  
16 context, correct?

17          A     Uh-huh.

18          Q     Yes?

19          A     Yes.

20          Q     All right.

21          A     Yeah. He plays with Ira, he plays with Riley.

22          Q     He also can -- he also indicated there were other  
23 things that he did, correct? In other words, he wasn't  
24 limited to playing -- what were the other things that he said

1 that he did when he was with his mother?

2 A Played Minecraft.

3 Q Let me refer to your report. He indicates in your  
4 report that he plays Call of Duty and he plays tennis. Do you  
5 recall that?

6 A Yes.

7 Q Okay. Did you explore the amount of time with him  
8 that he plays tennis?

9 A I don't recall that that was substantive time. Like  
10 I don't think he played -- I don't think he was -- were -- was  
11 in classes that he went on a regular basis. I think maybe he  
12 told me he played tennis. Maybe he had taken classes in the  
13 past. I know he was in ongoing baseball. He was upset that  
14 his mother didn't attend baseball. Practice.

15 Q Okay. In regard to -- you have the pictures here  
16 that he drew, correct?

17 A Yes.

18 Q Whose picture is that one?

19 A Well there's his mom's flowers.

20 Q But you said one of the distinctions he made between  
21 Mom and Dad's house was that Dad's house there was more dust  
22 than Mom's house.

23 A Right, well that was his comment. This was his  
24 dad's house and it was messy and dusty, and then this was his

1 mom's house with the pretty flowers on it.

2 Q Okay. Did you ask him about why he thought there  
3 were pretty flowers at the house?

4 A No. I don't -- I don't put a lot of credence -- I  
5 mean, I get -- I always have children draw pictures. But  
6 statistically there's not a lot of validity to pictures, so  
7 again, I look at things in context.

8 Q Thank you. You answered my next question.

9 A Yeah.

10 Q The -- okay. You had questions about Grand Theft  
11 Auto, correct?

12 A Uh-huh.

13 Q And that's in your notes.

14 A Yes.

15 Q And you -- but you don't recall him confirming ever  
16 that he played Grand Theft Auto, correct?

17 A Correct.

18 Q And that was something your father -- the father  
19 told you that he did do, correct?

20 A I believe so, yes.

21 Q And that didn't -- did that affect your view or the  
22 credibility of the information that was provided to you by Mr.  
23 Abid?

24 A Parents tell me a lot of things.

1 Q Okay. And when he destroyed the house, as you've  
2 described it --

3 A Uh-huh.

4 Q -- he said, Earthquake, right like that, right?

5 A Uh-huh.

6 Q And you think that that may have been reflective of  
7 his attitude toward his father?

8 A No. I mean, again, you can't take one -- I saw him  
9 over the course of four hours.

10 Q Okay.

11 A So I was looking at general, you know, themes about  
12 his mom, about his dad, about relationships, about his  
13 temperament. I'm not going to cherry pick or extrapolate one  
14 particular statement.

15 Q Right. I'm just going over the things you've  
16 highlighted as reflective of the confusion over his father and  
17 what reflects these -- the confusion.

18 A Uh-huh.

19 Q Isn't it common in your experience of young boys  
20 particularly that they will blow things up and pretend to blow  
21 things up?

22 A Absolutely. I have two boys. They blow everything  
23 up.

24 Q Right. In fact, little boys seem to love to blow

1 things up.

2 A They do.

3 Q All right. Okay. You have a series of emails  
4 between Mr. Balabon and Mr. Jones. Why do you have those, do  
5 you know?

6 A (No audible response)

7 Q Do you know who provided you those emails? Were  
8 they copied to you?

9 A Those are to Annie. That's my administrative  
10 assistant. See notes from the lawyers.

11 Q Okay.

12 A This is about Mom. Oh, pertaining to the letter  
13 that I wrote. So Mom was calling Annie --

14 Q Okay.

15 A -- my administrative assistant. So she would  
16 include that.

17 Q And then the letters between Mr. Balabon and Mr.  
18 Jones, can you (indiscernible, cross-talk) --

19 A This is after my --

20 Q Your report?

21 A My report.

22 Q Letter.

23 A Right.

24 Q The text messages that you have in here, who were



1 those provided by?

2 A It would be listed in the back of my report.

3 Q Okay.

4 A I believe Dad provided those.

5 Q Okay. All right. And then you were provided the  
6 minutes and then copies of the pleadings, correct?

7 A Correct.

8 Q All right. Thank you. One of the things that Mr.  
9 Abid emphasized to you when he first met with you that you  
10 must review the tapes, that this means nothing, this interview  
11 means nothing unless you review the tapes. Do you recall  
12 that?

13 A Yes.

14 Q He also advised you that he believed that Mr.  
15 Marquez was in the Mexican Mafia. Do you recall that?

16 A (No audible response)

17 Q You can refer to your notes if you'd like.

18 A I mean, I vag -- yeah, I don't think I put it in the  
19 report, and I vaguely -- I mean, again, parents tell me a lot  
20 of things. I vaguely, yes, I vaguely remember.

21 Q Wouldn't the idea that a parent has to a stepparent  
22 be significant in the level of communication or respect or co-  
23 parenting that an individual would share?

24 A I mean, if I were evaluating each of the parents and

1 stepparents, then, yes.

2 Q But that's not what you were doing here.

3 A Correct.

4 Q All right.

5 MR. SMITH: Pass the witness, Your Honor.

6 THE COURT: Counsel, you have 45 minutes until she  
7 has to go.

8 MR. JONES: I only need a -- I only need a few.

9 THE COURT: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. JONES:

12 Q The Oxford study that was referred to by Mr. Smith  
13 involved 12 and 13-year-olds, right?

14 A Yes, prepubescent adolescents.

15 Q So not particularly relevant for a six year old?

16 A Not at all.

17 Q You were asked if an appropriate reaction to  
18 learning that such video games are bad for a child could be --  
19 and then you were given examples. I'm going to ask you in a  
20 similar example. If after Dad forwarded to Mom an article  
21 regarding the damage these video games can cause to children  
22 Sasha's age, her response was to tell Sasha that she -- he  
23 needs to lie to his father about playing it, that would be an  
24 inappropriate response to learning that these games are

1 problematic, right?

2 A Highly, yes.

3 Q And if the evidence were exactly that, that within  
4 two days of Dad sending a article to Mom saying, hey, please  
5 read this and think about how much you're exposing him to  
6 this, her response was the derision and berating that you saw  
7 in the tapes, that would be a real problem, right?

8 A Yes.

9 Q With regard to the homework issue, initially in your  
10 report you reflect that Sasha said he did his homework in both  
11 houses, right?

12 A Yes.

13 Q You talked about activities Sasha was involved in.  
14 If one parent -- or if a child is in an activity which is  
15 primarily involved with one parent, can the other parent's  
16 interference with that activity also be a form of alienation?

17 A Yes.

18 Q Did you in your interview of Sasha receive any  
19 information from Sasha that would lead you to believe that Sa  
20 -- that Sean has ever said anything negative to Sasha about  
21 anyone in Mom's household?

22 A No. Not that I recall, no.

23 Q As far as this idea that alienation and programming  
24 can manifest itself and where it could manifest itself, could

1 it manifest itself simply by Sasha's behavior when he's around  
2 his father?

3 A Absolutely.

4 Q Is it more likely to manifest itself when he's in  
5 his father's home?

6 A Yeah, when he's at his -- yes, in his father's care,  
7 especially when he's young.

8 Q And any behaviors that Sean has noted that were  
9 concerning or problematic could be the manifestation that Mr.  
10 Smith talked about?

11 A Could be.

12 Q Now one last question. Can you think of any, and  
13 when I say any I'm talking about the realm of possible  
14 excuses, can you think of any excuse for the types of behavior  
15 and relentless -- I'm going to call it attack -- by Mom on  
16 Sasha?

17 MR. SMITH: Vague and ambiguous. Are we talking  
18 about the tapes?

19 MR. JONES: On the tapes.

20 THE COURT: Was that the end of the question?

21 MR. JONES: Yeah. I'll -- it was a little -- it was  
22 inartful.

23 THE COURT: Maybe a better question.

24 BY MR. JONES:

1 Q Mr. Smith asked you if Dad had suddenly enforced the  
2 court order so that he was keeping the time in the afternoon  
3 after school, could that be a legitimate reason for someone to  
4 be mad -- okay. So that's the context --

5 MR. SMITH: Misstates the question.

6 MR. JONES: I'm sorry?

7 MR. SMITH: It misstates the test -- the question.

8 MR. JONES: Okay. That's the context.

9 BY MR. JONES:

10 Q His examples of things that Sean might have done to  
11 make Mom unhappy with him is the context of this question.  
12 And this question is simply this: Can you come up with any  
13 excuse for a parent to say the types of things that Mom has  
14 said to Sasha as reflected on those tapes?

15 A No, and I think I already provided that testimony.

16 MR. JONES: No further questions.

17 THE COURT: Counsel, anything else?

18 MR. SMITH: One second, Your Honor. (Pause) Just  
19 making sure all my questions were asked.

20 RECROSS EXAMINATION

21 BY MR. SMITH:

22 Q Is it -- you've indicated that these activities --  
23 strike that.

24 Isn't it true that this type of alienation doesn't

1 really occur when parties have joint custody, that it's more  
2 likely to occur when one party has a greater period of time  
3 than the other party?

4 A I don't -- I --

5 Q I guess asking the question your way, is there a  
6 correlation between the amount of time a parent has and the  
7 effect of any -- in the child in their care and the effect of  
8 any alienating behaviors?

9 A I don't -- I don't -- I do not think so. I think  
10 when there is found to be negative effects or alienating  
11 behavior then time is important to consider and look at. But  
12 I can't say with confidence that research shows there's a  
13 difference between primary care or joint care when those  
14 behaviors are found. I don't know that.

15 Q You're saying that the alienation studies don't  
16 often or more often include parents who have children --  
17 particularly children that are alienated -- don't want to see  
18 their other parent, that sort of alienation, that occurs in  
19 households in which a parent has more time with the child,  
20 correct?

21 A I'm saying I don't know if the studies only reflect  
22 or primarily reflect when there's primary custody.

23 Q You had referenced the -- that there was a point in  
24 the -- I'll withdraw the question.

1 MR. SMITH: That's all I have, Your Honor.  
2 THE COURT: Counsel?  
3 MR. JONES: Nothing further.  
4 THE COURT: Doctor, thank you so much. We  
5 appreciate your testimony.  
6 THE WITNESS: You bet.  
7 THE COURT: Mr. Smith, are you prepared with any  
8 additional witnesses today?  
9 MR. SMITH: I am if it's necessary. Your Honor, I  
10 would still contend -- and this -- I assume this is the close  
11 of your case?  
12 MR. JONES: I rest.  
13 MR. SMITH: Okay. So I'm still --  
14 MR. JONES: Subject to rebuttal of anything --  
15 THE COURT: Certainly.  
16 MR. SMITH: I would still contend and under Rule 52  
17 there hasn't been a showing for a change of custody. There  
18 hasn't been a showing other than this -- these interviews by  
19 the child there's no manifestation of these behaviors  
20 anywhere, testified by anyone. The wife didn't testify it,  
21 the -- there's nothing in the school records, there's nothing  
22 in the testimony of the teachers, there's just nothing that  
23 would suggest that right now that Sasha is an alienated child.  
24 I think that the allegations of saying inappropriate

1 things can be addressed through counseling. The -- I note  
2 that there was a statement that I think implied that there was  
3 a finding of alienation by Dr. Paglini. That's not the case.  
4 In fact, he specifically indicated he did not find alienation.

5 I just don't think that there's enough here in the  
6 record to justify a change of custody, particularly in light  
7 of the fact that, Your Honor, the only -- her testimony was  
8 largely based, according to Dr. Holland, was largely based  
9 upon her review of those tapes. The things that constitute  
10 the bases for her other analysis, a picture that was drawn, a  
11 statement about Call of Duty, those are -- first of all,  
12 they're not psychological studies that she admitted. I don't  
13 think they require any specialized training or knowledge.

14 We could have had the child testify or interviewed  
15 by the Court, and the Court could come to the same conclusions  
16 that there was things about the child that suggested that he  
17 was conflicted.

18 But again, there's no -- other than her  
19 observations, there's nothing in the record now that suggested  
20 that the child is suffering from this kind of conflict, that  
21 he has a bad relationship, that Mrs. (sic) Abid, even through  
22 today, hasn't cooperated with him in terms of time frames and  
23 events and activities. In fact, the parties agreed early on  
24 on having the children -- child in baseball activities and



1 judo. They've agree -- we've agreed and we've transmitted a  
2 behavioral order that would eliminate this kind of behavior by  
3 order of the Court. I just don't see there's significant --  
4 under the factors that we would go through under -- and I went  
5 through those at the end of the last hearing. We don't have  
6 anything that would suggest a justification of change of  
7 custody, so I would move to direct the -- to deny that motion.

8 THE COURT: Counsel?

9 MR. JONES: Thank you, Your Honor. And this is the  
10 right time for him to make a motion for a judgment on partial  
11 findings --

12 MR. SMITH: I stand corrected on that. John was  
13 right about that, Rule 52.

14 THE COURT: I understand. Go ahead.

15 MR. JONES: However --

16 THE COURT: We took some of the witnesses out of  
17 order.

18 MR. JONES: However, the argument that best  
19 interests have not already been proven and exposed as far as  
20 how this could go on under the current circumstances ignores  
21 Dad's testimony.

22 Now, I give Mr. Smith some credit for trying to find  
23 something that he could attack in Dr. Holland's report and  
24 trying to make this case about anything but Sasha. Because

1 that's really what it's been. It's, hey, don't look un --  
2 don't look behind the curtain. Don't look at the truth about  
3 Mom and what she has said and done to this child and how it's  
4 affected this child, look at these other things. Let's  
5 mention the FBI and let's create a smokescreen. Now,  
6 fortunately for Dad and for Sasha, you're too smart for that.

7           The reality is this: When you look at what has been  
8 presented, Dad has established, incontroverted (sic), that the  
9 child has behavior issues in his house, the child acts out in  
10 his house, the child makes statements to Dad that he sees a  
11 conflict. I was surprised that there was cross-examination on  
12 the fact that what Dad complained of is exactly what Dr.  
13 Holland found in discussing things with Sasha.

14           This idea that everything's limited to the tapes is  
15 absurd. In fact, Dr. Holland completely debunked that. The  
16 idea that you can interview a child and have him reveal the  
17 types of things that he revealed and have it be exactly what  
18 Dad was concerned about four years ago, that were partially  
19 addressed by Dr. Paglini. Since he mentioned the report, the  
20 statement is these things have to stop. That report is part  
21 of the record. You can go back and look at it. Mom was told  
22 that what she says and does has to stop. It hasn't stopped;  
23 it's gotten worse.

24           I couldn't believe we actually just heard an attempt

1 to make excuses. Well what if Dad started enforcing the order  
2 all the time? And he even tried to couch it if what if Dad  
3 took away her time? It was Dad's time. There's a court order  
4 for Dad's time. That's how absurd this argument is, the types  
5 of things that they're trying to make the issues that are  
6 clearly not issues.

7           What is true is that the child has been affected and  
8 it's been affected in the one place Dr. Holland said that it's  
9 most likely going to be affected, in Dad's home with Dad's  
10 relationship with the child. These are the second worst  
11 things that a parent has ever said to a child in Dr. Holland's  
12 vast experience.

13           Now, the funny thing is this. You just heard the  
14 argument, oh, well that can just be addressed in therapy.  
15 Sasha doesn't need therapy. He didn't do anything wrong.  
16 There's no self-awareness, and that's a lawyer's argument and  
17 a lawyer's trick. That's not what Mom says. Mom has no  
18 regrets, no remorse, has no compunction about what she did,  
19 and you heard the testimony regarding the conversation in the  
20 hallway about that she didn't need therapy. Now, knowing that  
21 oh, my gosh, this was probably the most damning testimony in a  
22 custody case that the Court's ever heard, I'm now going to  
23 say, oh, well, she'll go get therapy now, you don't have to  
24 change custody.

1 Well, Judge, I'm happy for them to put on their  
2 case. I have met my burden. To simply show best interest you  
3 can ask yourself is -- is Mom allowing Ricky to take the phone  
4 away from her when Dad is trying to co-parent best interest?  
5 Is the child being exposed to these things best interest? Is  
6 the child being exposed to Call of Duty -- and that's the part  
7 that somehow got missed by Mr. Smith is Dad expresses his  
8 concerns about Call of Duty and gives her the article. Her  
9 response is not what he asks Dr. Holland about, oh, gee, I'm  
10 going to stop him from playing. Because he's still playing by  
11 the time he goes to see Dr. Chambers. Okay. And he continues  
12 to play. Now today --

13 MR. SMITH: First of all, it's a misrepresentation  
14 of a report that's not even in the record. I mean, if you're  
15 going to -- if we're going to make arguments, at least make  
16 them truthful.

17 THE COURT: Right. So Mr. Smith's request is  
18 denied. We're going to move forward with the hearing.

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: Mr. Smith, for you and your witnesses  
21 it's just past 12:30 now. Would you like to take a break --

22 MR. SMITH: Yeah.

23 THE COURT: -- or would you like to move forward?

24 MR. SMITH: We would like to take a break.

1 THE COURT: Okay. We'll take one hour, so I'll see  
2 everyone back at 1:30.

3 (COURT RECESSED AT 12:34:34 AND RESUMED AT 13:37:57)

4 THE COURT: We're back on the record in the Abid  
5 matter. Counsel, call your first witness.

6 MR. SMITH: We would call Ricky Marquez, Your Honor.

7 THE COURT: Okay.

8 (PAUSE)

9 THE COURT: Mr. Marquez, you can come on up here to  
10 the witness stand, raise your right hand, remain standing to  
11 be sworn.

12 THE CLERK: You do solemnly swear the testimony you  
13 are about to give in this action shall be the truth, the whole  
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you.

17 RICKY MARQUEZ

18 called as a witness on behalf of the Defendant and being first  
19 duly sworn, testified as follows on:

20 DIRECT EXAMINATION

21 THE COURT: You can have a seat. Will you state and  
22 spell your first name for the record.

23 THE WITNESS: First name R-i-c-k-y, Ricky.

24 THE COURT: And Marquez for us as well.

1 THE WITNESS: And Marquez, M-a-r-q-u-e-z.

2 THE COURT: Thank you. Go ahead, Counsel.

3 BY MR. SMITH:

4 Q Mr. Marquez, where do you live?

5 A 2167 Montana Pine Drive.

6 Q And the Defendant, Lyudmyla --

7 A Abid.

8 Q Pyankovskaya is your wife, correct?

9 A Correct.

10 Q When were you two married?

11 A Excuse me?

12 Q When were you married?

13 A Like, a couple years ago. (Laughter) Two years ago  
14 maybe.

15 MR. JONES: I thought it was just me.

16 BY MR. SMITH:

17 Q Okay. Did you have a formal ceremony or was it --  
18 did you get married in the --

19 A In the courts kind of thing.

20 Q All right. So, during that period of time have you  
21 resided with -- I'm going to call her Lyuda --

22 A Yes.

23 Q -- for purposes of identification. Lyuda?

24 A Uh-huh.

1 Q When did you first -- the answer is yes?  
2 A Yes.  
3 Q Okay. When did you first begin residing full time  
4 with Lyuda?  
5 A Let's see. I'll say November maybe, something like  
6 that.  
7 Q November of what year?  
8 A Of, what was it, two thousand -- I don't really  
9 recall, about 2012.  
10 Q Was it last November, so just a few months ago?  
11 A No, no. It was a couple years.  
12 Q Okay. And during that period of time you physically  
13 resided in a home with Lyuda here in Clark County?  
14 A Yes.  
15 Q Prior to that time where did you reside?  
16 A San Diego.  
17 Q Okay. And during that period of time you've had the  
18 chance to interact with Sasha, the --  
19 A Yes.  
20 Q -- child of Mr. Abid and Lyuda. Tell me about your  
21 observations of Sasha. What were -- what are his basic  
22 activities over your house on a regular day, a school day?  
23 How does that work?  
24 A Before everything happened or right when I started

1 living there?

2 Q Just as time has gone on, what's his regular  
3 schedule on -- at school?

4 A I mean, my wife would usually take him to the park  
5 and, you know, he'd play games inside. But he started school  
6 I think about a year ago, I would say. But before then it was  
7 just little activities in the house, whatever we could do, was  
8 usually going to the park. I like to play tennis so I got the  
9 kids into tennis and he would ride his bike around there or go  
10 on the swing.

11 Q How often do you go and play tennis or ride a bike  
12 and do that sort of activity with Sasha?

13 A When I first was there I was doing it pretty much  
14 every day, when I was there --

15 Q On the days that you would have had him?

16 A Yeah, when we had him we were doing it pretty much  
17 every day because I'm very active in skateboarding, BMX,  
18 surfing, you name it, jet skiing, motocross. I do just about  
19 every sport. Playing chess, I was actually teaching him how  
20 to play chess because I'm at a 1700 level in chess in  
21 tournaments and everything, and I was actually teaching him  
22 how to play and how to set up the board.

23 Q Does -- did Ricky enjoy -- or, excuse me. Did Sasha  
24 enjoy those activities?



1 A Yes, especially skateboarding.  
2 Q Okay. And has he continued to skateboard?  
3 A No.  
4 Q Why not?  
5 A Too many concerns. I mean, my friends own shops who  
6 are actually professional skateboarders. They gave him  
7 equipment. Mr. Abid text my wife that he had a concussion,  
8 that he was going to the doctors, that may be abuse, so I  
9 didn't even want to take him to the skateboard park anymore.  
10 MR. JONES: Objection, foundation.  
11 THE COURT: Counsel, I'm hopeful you'll --  
12 THE WITNESS: I just didn't want to have problems --  
13 THE COURT: Hold on. Hold on. Ask him some  
14 foundational questions.  
15 BY MR. SMITH:  
16 Q When did that occur?  
17 A I would say about the last time we were in court. I  
18 would say maybe two years ago, somewhere around -- right  
19 around there for skateboarding I stopped.  
20 Q So in December of 2013 this -- so I just want to get  
21 to understand what you mean by the last time we were in court,  
22 because you've been in -- Lyuda's been in court a lot.  
23 A Oh, yeah. Yeah.  
24 Q So December of 2013 was the agreement that was made

1 prior to the commencement of proceedings that led to these  
2 hearings.

3 A Uh-huh.

4 Q So are you referring to the proceedings in these  
5 hearings or are you referring to --

6 A No, on the last one I -- on the last one.

7 Q So the last one would be sometime in 2013?

8 A Yeah.

9 Q Yes?

10 A Yes.

11 Q Okay. So, have the level of activity --

12 MR. JONES: I would move to strike the testimony  
13 regarding that which occurred prior to December of '13.

14 THE COURT: All right. Mr. Marquez, we're going to  
15 try to focus our attention -- or we are going to focus our  
16 attention --

17 THE WITNESS: Okay.

18 THE COURT: -- and I know that you didn't know --  
19 from the last hearing forward.

20 THE WITNESS: Gotcha.

21 THE COURT: Okay?

22 THE WITNESS: Okay.

23 THE COURT: And so when they're asking you  
24 questions, we're going to be highlighting that specific area.

1 THE WITNESS: Within the last couple months or so?  
2 MR. SMITH: No, no, no.  
3 THE COURT: Not the last couple months, just from  
4 the last time we were in court --  
5 THE WITNESS: Okay.  
6 THE COURT: -- and the last time the parties reached  
7 an agreement to today.  
8 BY MR. SMITH:  
9 Q So December 2013 till today.  
10 A Okay. Right.  
11 Q So tell me about your activity -- or the activities  
12 that you testified to that you participated in which Sasha --  
13 is that consistent from December 2013 to today or they have --  
14 has that changed in any way?  
15 A That's -- it would be some of it (indiscernible)  
16 today, but it would be more surfing now that I got him into  
17 the surfing.  
18 Q Okay. Well there's no beach around here so  
19 (indiscernible, cross-talk) --  
20 A Well I -- when we -- when he gets the chance I would  
21 take him to San Diego, yeah.  
22 Q Okay. And what about normal activities around --  
23 what type of things do you do now? Do you still play tennis  
24 with him?

1           A     The last time we played tennis was a while back. It  
2 wasn't too far back, but it was when it was a little warmer,  
3 you know, from the cold. I don't like to be out in the cold  
4 too much.

5           Q     What type of activities now? What type of things  
6 does he do?

7           A     Mostly just games in the house. We got him a drone  
8 so we'll go and fly it in the backyard a little bit, or when  
9 my wife can get me to go to the park I'll go and kick the ball  
10 with them, you know.

11          Q     Does he ride his bike around the neighborhood?

12          A     Yes.

13          Q     Okay. Does he have friends in your neighborhood?

14          A     There's a few little kids up there.

15          Q     Okay. And do they play together at the park and the  
16 -- in those areas or is it --

17          A     When they -- when they set it up one of them does,  
18 yes, Tyler.

19          Q     Okay. And what about Lyuda, does she engage in  
20 these activities with Sasha as well?

21          A     Yeah.

22          Q     Okay. And how does that go? In other words, does  
23 she take him to the park and those sort of things, engage in  
24 the -- the activities at home with the drone and so forth?

1           A     Yes. Usually they go to the park. Lyuda's been  
2 playing basketball. And that's not my sport, but Lyuda will  
3 go there and shoot basketball hoops with him.

4           Q     Does Lyuda play basketball?

5           A     I guess so. She used to play in school, but, yeah,  
6 that's surprising.

7           Q     All right. So in regard to those activities, is  
8 that -- you had indicated before that those type of activities  
9 occur on a daily basis when he was with you previously. Is  
10 that still occurring --

11          A     Yeah, they go to the park.

12          Q     -- each day that you have Sasha in your care?

13          A     Uh-huh.

14          Q     Is that yes or --

15          A     Yes.

16          Q     Okay. So you had indicated that you played games at  
17 home. Do you recall that?

18          A     We would try and play, like I said, I was trying to  
19 teach him to play chess, you know, little -- was getting there  
20 -- we have a neighbor and he plays chess. He's a little bit  
21 older than Sasha but, you know, they were getting a little  
22 discouraged when, you know, kids lose so I kind of split it up  
23 for a little bit.

24          Q     Okay. So what about at any time did you learn that

1 an Xbox had come into your home?

2 A Uh-huh.

3 Q Is that yes?

4 A Yes.

5 Q Yeah. For the record, you have to say yes.

6 A Yes. Okay.

7 Q So when did you first learn that there was an Xbox

8 in your home?

9 A My wife had told me she had bought it on Christmas

10 Eve.

11 Q Okay. And that was Christmas Eve of 2014?

12 A Yes.

13 Q All right. You didn't own an Xbox, did you --

14 A No.

15 Q -- prior to that time? Did you own any other kind

16 of video --

17 A I don't play video games at all.

18 Q All right. And so did you ever know Lyuda to play

19 video games prior to that time?

20 A Excuse me again?

21 Q Did Lyuda play video games prior to that time?

22 A No.

23 Q Did she have any other kind of game apparatus?

24 A They had a Wii, I believe, but it was always in the

1 closet. It was never connected to the TV.

2 Q Okay. Who else resides with you at your home with

3 Lyuda?

4 A Irena.

5 Q And Irena also goes by Ira, correct?

6 A Ira. That's what I usually call her.

7 Q Okay. And Ira, for the record, is spelled I-r-a,

8 correct?

9 A Yes.

10 Q At any time -- well, do you interact with Ira as

11 part of your -- there at the home with --

12 A Yes.

13 Q How would you describe your relationship with Ira?

14 A I would say very well, like she's my own daughter.

15 Q And how about her relationship with Sasha, what have

16 you observed?

17 A It's -- it's like normal brother-sister, you know,

18 they're -- they play together, once a time, you know,

19 everything's good, sometimes they'll argue with each other

20 over certain things, you know, whether watch TV. Normal kid

21 activity.

22 Q Nothing unusual?

23 A Nothing unusual.

24 Q Do they seem to care about each other?

1 A Yes.

2 Q And how have you observed that interaction? What  
3 are the things that you can remember that represent to you  
4 that, you know, Ira cares about Sasha or vice-versa?

5 A Just the way they always, like, you know, they hug  
6 each other. I mean, I grew up with brothers and sisters. I  
7 never seen like a family, you know, like how they really care  
8 for each other so much.

9 Q Are they affectionate toward each other?

10 A Affectionate. They're very affectionate, kissing  
11 each other, you know.

12 Q And does Ira take care of Sasha, like some of his  
13 needs when --

14 A Absolutely.

15 Q All right. So as a sign of caring?

16 A I would see like in the summertime she would take  
17 him with him (sic), and she's a little bit older, and she  
18 would take him to their friend's house, they would enjoy the  
19 swimming pool at a neighbor's house, and Sasha was always part  
20 of that.

21 Q How old is Ira?

22 A She is now 15.

23 Q Are you aware of how she's doing socially and in  
24 school?



1 A She's doing very well.  
2 Q How is she doing in school?  
3 A Very proud of her. Straight A's.  
4 Q Okay. Where does she attend school?  
5 A At Coronado High School.  
6 Q The -- and when was the last time you knew that she  
7 was receiving straight A's, and how did you know that?  
8 A Well, you know, usually I talk with her and I always  
9 try to tell her, you know, do well in school, and give her a  
10 little bit of advice.  
11 Q Has she had a report card this year?  
12 A Yes.  
13 Q And how --  
14 A I mean she usually would text me and tell me what  
15 she would get. She would tell me I got A's or I got a B in  
16 this and --  
17 Q Has she brought the homework -- or the report card  
18 home?  
19 A I haven't seen it. I would just see on, you know,  
20 from the texts that she would show me the pictures and my wife  
21 would tell me about it.  
22 Q Okay. And you're -- you understood that Lyuda had  
23 reviewed the --  
24 A Yes.

1 Q And that was consistent with her understanding that  
2 Ira had gotten straight A's?

3 A Yes.

4 Q All right. Is Ira socially active? Is she -- does  
5 she have any problems at school or (indiscernible, cross-talk)  
6 --

7 A No. She's a very good student and I have her in  
8 Gracie jiu-jitsu. I mean she's a very good student, you know.  
9 I have a lot of friends that are jiu-jitsu masters and they  
10 would give them lessons, and right now they accepted Ira.  
11 She's doing extremely well.

12 Q Is Ira -- have you had any circumstances in which  
13 Ira has done anything inappropriate toward Sasha?

14 A No.

15 Q And does -- is that vice-versa, has Sasha gotten  
16 into any situations where he's done something inappropriate  
17 toward Ira?

18 A No, just normal children things, you know, like I  
19 said, where they're fighting over food, what, you know, he did  
20 or -- nothing -- nothing big, or not sharing, you know.  
21 Nothing unusual though.

22 Q Is there -- do you have a structured timetable for  
23 the children when they're at home with you, or is it just  
24 whatever they want to do?

1           A     No. I always tell Ira right when she gets home she  
2 has to do -- start her homework. That was my first thing --  
3 it was one of the rules that I started when I got there.

4           Q     Okay. And --

5           A     Clean your room, you know. I always had chores, you  
6 know. Same thing with Sasha.

7           Q     Is that something that you had discussed with Lyuda  
8 before imposing in terms of, you know, how you would structure  
9 the chores and the like?

10          A     Well, Lyuda's the -- when Lyuda was talking with me  
11 and everything and she would come to see how I lived in my  
12 home, she just always said I want you to teach my children  
13 this, you know, just to, you know, clean up after themselves,  
14 you know, make your bed before you get up, in order to get  
15 up --

16          Q     Are you a bit of a neat freak, Mr. Marquez?

17          A     They say I'm excessive.

18          Q     Okay. And do you make sure that your home is clean?

19          A     Absolutely spotless.

20          Q     And is that part of your interaction with Lyuda as  
21 well is that you --

22          A     Yes. I mean, I -- she -- she -- when I started  
23 living there she always said that's what I want you to teach  
24 my kids, to -- how you -- how you do things, you know.

1 Q And has that worked, has that had an effect on the  
2 children? Have they become more neat and focused on that sort  
3 of thing?

4 A Absolutely.

5 Q All right. Do you make them do cleaning chores  
6 themselves? Does Riley -- excuse me, does Riley -- does Sasha  
7 and Ira have chores for --

8 A I have chores for Ira to unload the dishwasher. I  
9 always make a deal with her. I'll load them, you unload them.  
10 That's all she has to do, just I'll load, you unload. On  
11 Sundays I'll vacuum the whole house and she mops the floors.

12 Q How about Sasha, does he have any chores?

13 A His is clean your room and put your toys away.

14 Q And is he pretty good about that?

15 A I -- I always tell him if you -- if you don't put  
16 them away I'll throw them away. So that's --

17 Q That encourages him?

18 A -- that's the -- that's the rule.

19 Q All right. I've heard that rule before. The -- in  
20 regard to the -- in terms like meal times and so forth, do you  
21 have a standard meal and bedtimes?

22 A Yes.

23 Q Tell me about that.

24 A Usually I cook, I have everything ready for them.

1 When Ira gets home she gets a little bit hungry so either I'll  
2 make her a snack, but usually food's at 6:00. So I'll make  
3 dinner, it's ready at 6.

4 Q Are you the cook in the family?

5 A Yes. Well, Lyuda cooks too, but a lot of times I'll  
6 cook.

7 Q Okay. And do you primarily cook and eat at home or  
8 do you eat out?

9 A We mostly eat at home. We're just kind of -- like  
10 to just stay at home. But as for cooking, that's --

11 Q So you have dinner around 6:00, and then what is the  
12 typical activities in the home on the days that Sasha is  
13 there?

14 A On the days that Sasha's there, you know, my wife  
15 will take him to the park. If it's too late she won't take  
16 him to the park, you know, but during the summertime and  
17 everything, spring, got a little more light, it's always we go  
18 to the park.

19 Q And in terms of when he goes to bed, what is his  
20 typical bedtime?

21 A I try to have Sasha in bed I always tell Lyuda no  
22 later than 8:00, 8, 8:30, max is 8:30.

23 Q Okay. And --

24 A Lyud -- Ira is 9:30.

1 Q My experience with children, even though you shoot  
2 for 8 and 8:30, is it sometimes later than that?  
3 A Not -- not for Sasha.  
4 Q Does Sasha know how to tell time?  
5 A I don't know because sometimes he'll tell me it's --  
6 it's not 8:00 yet, it's not 8:00 yet. But usually I'll tell  
7 him, gotta get him in the bath by 7, you know.  
8 Q But to your knowledge does he know how to tell time?  
9 A To my knowledge, I gotta say I think he does.  
10 Q In regard to the -- at one point you learned, I  
11 think you said in December of 2014, that there was a Xbox in  
12 your home, correct?  
13 A Correct.  
14 Q What were the games that were being played on the  
15 Xbox and by whom?  
16 A Well, when she brought the game into our home there  
17 was two games that were brought in, I believe. It was Call of  
18 Duty, which I didn't know what it was, and another game which  
19 was Lego, I want to say Lego Superman or Batman or one of the  
20 -- I think Spiderman or --  
21 THE DEFENDANT: Minecraft.  
22 MR. SMITH: Sh, sh, sh.  
23 THE WITNESS: Yeah, and a Minecraft. Yeah,  
24 something like that.

1 BY MR. SMITH:

2 Q And so in those -- with those games did you have any  
3 discussion with Lyuda in regard to the use of those games in  
4 the home?

5 A I mean, not too much. I didn't really want to  
6 interfere too much there. I've never been a video game (sic)  
7 as a -- as a kid. I've really never cared for video games at  
8 all, so I didn't want to oppose it, hey, guys, you know. I  
9 don't really care for video games, never --

10 Q Did Ira and Sasha play video games together, to your  
11 knowledge?

12 A Yes.

13 Q Were they allowed to play video games for hours at a  
14 time or was there some sort of rules about them?

15 A No, there was a limit.

16 Q And what was the limit?

17 A I mean, we wouldn't let them play more than, max, an  
18 hour, max.

19 Q Okay. Did you have a regular time that they would  
20 play, like on the normal days?

21 A Well, when it was raining outside and everything we  
22 allowed them just because they couldn't do nothing outside,  
23 but most of the time if it was a nice day, no, they weren't  
24 allowed to play. It was outside.

1 Q Did you ever notice or believe that Sasha had a --  
2 an obsession with video games?

3 A I noticed that, yeah, he liked to play games. I  
4 started to see that both the kids started to like the video  
5 games, and that's when we started, hey, no more than an hour.  
6 That's it for you guys.

7 Q Did you and Lyuda discuss the con -- your concerns  
8 about the video games and the use of video games?

9 A Well, towards the end after Mr. Abid, you know,  
10 sense of concern and everything I -- I kind of stepped in and  
11 said, listen, you know, no more of this, you know. Bottom  
12 line is I didn't want to have no problems.

13 And I told Lyuda he's got his bike now, we need to  
14 start taking off these training wheels, you know. I had told  
15 Ira I'll -- I'll put you -- I'll take you to classes if you  
16 want to join jiu-jitsu or boxing. I have friends that have  
17 boxing camps here or training places here and they invited --  
18 they invited her to go there.

19 Q What about the -- at some point in time did you  
20 understand that there was no longer an Xbox in your home?

21 A I was the one who took it, actually.

22 Q Okay. Tell me about that.

23 A I just see how it's just affecting my wife's health,  
24 you know, the constant attack on her. And I said, listen, you



1 know, this is just a bad idea to have it here so I -- I took  
2 it physically from the kids. I went over there and I said,  
3 listen, that's it, guys. I unplugged it and -- at one time my  
4 wife was like maybe we should just get rid of it. I said I  
5 don't want to get rid of it completely. I'm going to take it  
6 away, we'll see how it goes for a few months and see how  
7 everything goes, and --

8 Q Has there any -- been any need to reattach it?

9 A They -- well, the way I -- they don't care about it  
10 anymore. So the way I see it is why bring it back? That's  
11 what I was telling Lyuda, you know. It's gone, it's been gone  
12 for months. I don't even know how long it's been already.  
13 It's been quite a while. And Ira did ask me the other day  
14 when can we get it back or can we get it back? I said there's  
15 no need for it, you know. And I do remember when we did take  
16 it, the day we took it, they were a little upset when I took  
17 it so I took them all jet skiing to Lake Las Vegas.

18 Q Okay. Did Lyuda come?

19 A Yes, it was all of us.

20 Q In regard to the -- your interactions. You've  
21 referenced interactions with Mr. Abid.

22 A Uh-huh.

23 Q In fact, let me show you Exhibit (indiscernible).

24 MR. SMITH: Thank you.

1 BY MR. SMITH:

2 Q So it's been established in this case, Mr. Marquez,  
3 that on a couple of occasions during times that there was  
4 interaction between Sean and Lyuda that you actually got on  
5 the text and indicated please don't email -- or excuse me,  
6 please don't text my wife. Do you recall that?

7 A Yes.

8 Q Why did you do that?

9 A I just -- I just see how, you know, he just knows  
10 how to push her buttons and I -- I always try to tell her, you  
11 know, just -- just let it go. Don't even respond. But I see  
12 how she's been getting fidgety. I mean, she's no longer the  
13 person I knew three years ago. I mean, I see it. And that  
14 was just -- I had to take the phone from her because she was  
15 so stressed out. I put please -- Hi, Sean, this is Ricky,  
16 please stop texting my wife unless it's an emergency about  
17 Sasha. I just couldn't understand why he kept texting her  
18 when he has the child. I don't understand.

19 Q Let's stop right there. At the times that you  
20 texted Sean, I think that we identified two times, at those  
21 times where was Riley --

22 THE DEFENDANT: Sasha.

23 BY MR. SMITH:

24 Q -- excuse me, Sasha? Was he in your care or in Mr.

1 Abid's care?

2 A Mr. Abid's care.

3 Q So why did that matter to you? Why was that -- that  
4 a focus of yours?

5 A Because, you know, we have another child. We're --  
6 it's our time and we're together. We either -- we have movie  
7 night, I mean we have activities that we do and it just -- I  
8 just see my wife just getting so frustrated, and I see it, you  
9 know. And I just -- I've always told her, you know, if he  
10 texts just don't text back. Just look at it and put it away.  
11 Just do not answer. But she has -- for some reason she would  
12 get and just they would start texting each other. And it was  
13 to the point where I just -- I couldn't understand it so I had  
14 to physically take the phone and say, please, Sean, stop  
15 texting her, you know.

16 And the first time when I did that he wrote back  
17 politely, just said -- I forgot what he said, that, you know,  
18 it was just some concerns that he had. And I said that's  
19 fine, there's no need for apology, just please stop texting  
20 unless it's an emergency.

21 It was the second time when I wrote again -- when he  
22 kept doing it and I'm like, Sean, just, you know, just please  
23 stop texting Lyuda, you know. And that's when he said are you  
24 threatening me? I was shocked, you know.

1 Q Did you say anything or text anything to him that  
2 you believe was threatening?

3 A Unless you call please stop texting my wife that's  
4 what he considered a threat, I mean, I went directly to the  
5 police station the following day to show it and document it  
6 and --

7 Q Why were you concerned about that?

8 A Why was I concerned?

9 Q Why were you concerned enough about that interchange  
10 -- or exchange to go to the police and --

11 A I mean, his constant attacks on me, his slandering.  
12 And, you know, I've always had this mentality sticks and  
13 stones, I mean, his words never bother me, you know, and I  
14 just left it like that but --

15 Q What is it -- what do you understand to be -- when  
16 you're refer to his attacks on you or his statements about  
17 you, what is it you understand he's done or said?

18 A Well, I mean, I would have neighbors, I know some of  
19 the neighbors, there was times where I either helped them hang  
20 a door or, you know, I had a ladder and they didn't and  
21 changed some things that they couldn't do for them. And they  
22 would tell me, you know, that Sean would send emails to them  
23 about me and they would ask me. I said, this is, you know --

24 MR. JONES: Objection, hearsay. Move to strike.

1 THE COURT: All right. So you can't testify as to  
2 what another person said other than these two.

3 THE WITNESS: Okay.

4 THE COURT: Okay? Outside of this courtroom, okay?  
5 And I know you didn't know that, but --

6 BY MR. SMITH:

7 Q Were you ever prevented from retrieving Sasha at  
8 school, to your knowledge?

9 A Was I ever -- excuse me again?

10 Q Prevented from retrieving Sasha at school?

11 A Well, I mean, I never went to go pick Sasha at  
12 school, so.

13 Q Okay. So let me ask you this. In fact, I didn't  
14 cover this, is -- what do you do for a living?

15 A Right now I'm working for ourselves. I was working  
16 for a window and door company. I started off in the sales end  
17 of it -- well actually the installation end of it to learn the  
18 whole business, and then after --

19 Q What was the name of that business?

20 A That was Master Craftsman.

21 Q And how long did you continue to work at that  
22 company?

23 A I was there two years.

24 Q Okay. And what is your current employment?

1           A     Now that I broke off from him I actually went  
2 basically to learn the installation part of it, went into the  
3 sales part of it, and once I figured I knew enough of it I  
4 already had a plan to start our own business in the window  
5 industry as a broker.

6           Q     Have you done that?

7           A     I have.

8           Q     Do you have any dealings with anyone in the Ukraine?

9           A     Yes.

10          Q     Tell me about that.

11          A     We actually -- my wife's family has a -- she has a  
12 brother-in-law that owns a company called Viknastyle, which is  
13 a manufacturing company of German engineered windows.

14          Q     And is that company -- does it serve other clients?  
15 In other words you --

16          A     Yes. It -- from what I believed when I talked with  
17 him, they're -- that's what interested -- he was living with  
18 us for like I would say a couple months or so and --

19          Q     He was here to get surgery, correct?

20          A     Yes. And I ended up picking up as we were speaking  
21 I just started to learn about the -- I didn't know anything  
22 about windows and I started to learn about, you know, that  
23 there was a good business. As I started to learn about it  
24 with him he was telling me that he was trying to get contracts

1 in I want to say Portugal and he was going to Italy a lot, and  
2 that's when I told him that, you know, that I wouldn't mind  
3 maybe learning about this business. So that's when I went to  
4 go work for Master Craftsman and I went in to the owner and  
5 basically told him I'd never done it before but --

6 Q But now you do business with the --

7 A With -- yes.

8 Q -- brother-in-law in the Ukraine --

9 A Yes. I've been doing business with him now for --  
10 we started off with the samples. I would say our first  
11 container came in maybe two, three months ago, October, so our  
12 first container --

13 Q So now you're selling those --

14 A That was a 40-foot container came in and it sparked  
15 big interest in New Mexico, Arizona, and San Diego.

16 Q Are you being -- are you successful at your  
17 business? Are you doing well?

18 A We're doing very well.

19 Q All right. In regard to the -- in regard to your  
20 home and your home life and your experience in your home life,  
21 how often does the subject of Sean Abid come up?

22 A I would say we try to bring up his name as little as  
23 possible, and --

24 Q Why is that?

1           A     It's just -- it's our time, like I said, I have a  
2 rule in there it's just better not to bring anything up. It's  
3 -- we talk about our activities. When Sasha gets home, you  
4 know, Lyuda would like to say how was school? What'd you do  
5 in school? You know, with Ira it's the same thing. She tells  
6 us everything from violin, what she did, to the new friends  
7 that she met or kind of choke me out with new jiu-jitsu moves  
8 that she's done, you know. But that's about it. I mean, we  
9 -- we -- it's like nothing existed, like, you know, when Sasha  
10 leaves that's his time.

11           Q     Have you ever been present where Lyuda has  
12 disparaged Sean to Sasha?

13           A     Can you repeat that again?

14           Q     Yeah. Have you ever been present where Lyuda and  
15 Sasha are present and Lyuda is saying bad things about Sean?

16           A     Never.

17           Q     In regard to Ira, have you ever heard Ira say bad  
18 things to Sasha about Sean?

19           A     Never.

20           Q     Is it even part of your normal existence to speak  
21 about Sean or his wife or his family?

22           A     Absolutely not.

23           Q     What is your experience of Sasha? Is he -- does he  
24 seem like a normal happy child? Does he have an aggressive



1 streak? Is he anti-social? What's your experience with him?  
2 MR. JONES: Objection to foundation --  
3 A I think he's an exceptional kid.  
4 MR. JONES: -- as to --  
5 THE WITNESS: I --  
6 THE COURT: Hold on, hold on.  
7 MR. JONES: -- whether he knows what a normal happy  
8 child is.  
9 THE WITNESS: Excuse me?  
10 MR. SMITH: I don't even understand the objection.  
11 THE WITNESS: That was a --  
12 MR. SMITH: That he lacks foundation --  
13 THE COURT: Okay. Hold on.  
14 MR. SMITH: -- to understand what a happy child is?  
15 THE COURT: I think that was the objection.  
16 MR. SMITH: I don't even know how to address that.  
17 I mean, he's a normal human being. He lives with the child.  
18 THE COURT: All right. What do you think about  
19 Sasha?  
20 THE WITNESS: I think he's a great kid.  
21 THE COURT: Okay. Have you been around other kids  
22 before?  
23 THE WITNESS: Absolutely.  
24 THE COURT: When?

1 THE WITNESS: All the time. My friends -- you want  
2 to talk about my friends in La Jolla? I have friends that are  
3 stockbrokers, owners of --

4 THE COURT: Do they have kids?

5 THE WITNESS: -- Warner Brothers, you know --

6 THE COURT: I don't care what they do. Do they have  
7 kids?

8 THE WITNESS: Yeah. I know their kids, yeah.

9 THE COURT: All right. So you've been around how  
10 many kids you think?

11 THE WITNESS: I've been around a lot of kids.

12 THE COURT: Lot of kids.

13 THE WITNESS: And babysitted (sic).

14 THE COURT: All right. And Sasha seems pretty  
15 normal?

16 THE WITNESS: Yeah.

17 THE COURT: All right.

18 BY MR. SMITH:

19 Q Does Sasha ever reveal a streak that you would  
20 consider violent beyond the normal activities of a little boy?

21 A No.

22 Q Does -- when you go to the park and so forth, do you  
23 play with a gun or gun-like things?

24 A No.

1 Q How about NERF guns? Do you ever play NERF guns  
2 with Sasha?  
3 A No.  
4 Q You don't. Okay. Do you know if Sasha has a NERF  
5 gun?  
6 A I think he does have one.  
7 Q Do you know how he got it?  
8 A I -- I don't know how he got it. I've seen it  
9 there. Does he play with it? No.  
10 Q Okay. All right. How would you describe Lyuda's  
11 relationship with Sasha?  
12 A I think it's a great relationship.  
13 Q Are they affectionate?  
14 A Yes, very.  
15 Q And does Sasha react well to Lyuda?  
16 A Yes.  
17 Q How does she discipline him?  
18 A I mean, if he doesn't eat his food he can't leave  
19 the table till he finishes his food, you know. That's what I  
20 see. Or, you know, I mean, I've never seen her spank him  
21 ever, you know. Other than that --  
22 Q Would you describe your home as a happy home or a  
23 sullen home or a quiet home? How would you describe your  
24 home?

1           A     I would say it's a happy, quiet home, you know.

2           Q     Is there a lot of humor? Is there laughing? Do you

3 sit around --

4           A     Yeah. Yeah.

5           Q     -- how does it work?

6           A     I mean, there's humor. There's a lot of humor in

7 the house.

8           Q     And does -- do Sasha and Ira, do you they ever work

9 on the jiu-jitsu moves and things like that?

10          A     Sasha used to. Not so much anymore. He'll come out

11 sometimes in his -- I had bought him all his gear so he'll

12 come out once in a while (indicating) doing little crazy

13 things and I'll film it just for laughs, but -- they'll do

14 dancing, you know. Ira likes to dance a lot in the house and

15 Sasha will copy her, you know. There's a lot of humor where

16 we're laughing about stuff like that.

17          Q     Did -- have you ever seen Sasha play with other

18 children?

19          A     Yes.

20          Q     Have you ever noticed any behavior that you would

21 consider violent or inappropriate on Sasha's behalf?

22          A     Absolutely not. No. He's a -- he's a good kid. I

23 mean, I've never seen a kid share so much, you know.

24          Q     Does he seem to get along with other children?

1 A Yes.

2 Q Have you ever heard him say anything negative about  
3 his father?

4 A No.

5 Q Have you ever heard him talk about his father?

6 A He never really talks about it, not when -- not when  
7 I'm around at least, never brings anything up.

8 Q Did he ever talk about -- does he ever talk about  
9 going to football games or playing baseball or things like  
10 that?

11 A He used to say things like -- like he would -- he  
12 liked baseball for a while and, you know, football games. He  
13 did bring up his dad's name a couple times that he was going  
14 to go to a football game.

15 Q Was anything about those conversations with him or  
16 anything about his statements negative toward Mr. Abid?

17 A No.

18 MR. SMITH: Pass the witness, Your Honor.

19 THE COURT: Counsel?

20 CROSS EXAMINATION

21 BY MR. JONES:

22 Q Now, you are a convicted felon, correct?

23 A Yes.

24 MR. SMITH: Objection, not admissible. The -- it

1 has -- first of all, you can't do it that way. It has to be  
2 within 10 years and it has to be a crime of (indiscernible),  
3 if it's going to be admissible, none of which are true.

4 MR. JONES: That's actually --

5 MR. SMITH: Even if he's on probation --

6 MR. JONES: Do you want to read the statute? He's  
7 just making stuff up, Judge.

8 THE COURT: What's your response? What --

9 MR. JONES: For the purpose of attacking the  
10 credibility of a witness, evidence that he has been convicted  
11 of a crime is admissible but only if the crime was punishable  
12 by death or imprisonment for more than one year --

13 THE COURT: Felony.

14 MR. JONES: Correct -- under the law under which he  
15 was convicted. Evidence of a conviction is inadmissible under  
16 the section if a period of more than 10 years has elapsed  
17 since the date of the release of the witness from confinement.

18 THE COURT: Correct. So I'm hopeful you'll -- as an  
19 offer of proof that it's within that time.

20 BY MR. JONES:

21 Q And you served how long in prison?

22 A About nine years.

23 Q And you were released when?

24 A 2012. Either '12 or '13.

1 Q And the crimes that you pled guilty to --  
2 A Conspiracy.  
3 Q -- were conspiracy to distribute 33,000 ecstasy  
4 tablets, right?  
5 A Uh-huh.  
6 Q And possession of an unregistered firearm, right?  
7 A Yes.  
8 Q And the unregistered firearm was a Bushmaster rifle  
9 modified to automatic with a silencer, right?  
10 A No. They never said it was a silencer. It wasn't.  
11 A silencer is a life imprisonment.  
12 Q Okay.  
13 A It's an unlicensed firearm.  
14 MR. JONES: May I approach the witness with his plea  
15 agreement, Judge?  
16 THE DEFENDANT: (Indiscernible).  
17 MR. SMITH: This has never been produced at any  
18 time, nor is it certified to my knowledge. Your Honor --  
19 THE COURT: Yes?  
20 MR. SMITH: -- I object to the witness reviewing  
21 this unless it's just to review (indiscernible, cross-talk) --  
22 THE COURT: I'm assuming that he's refreshing his  
23 recollection whether or not there's a silencer.  
24 MR. JONES: Right. Yes.

1 MR. SMITH: Yes.

2 THE COURT: All right. Take a look at it.

3 BY MR. JONES:

4 Q I'm going to show you what --

5 MR. SMITH: He can't refer to the document that's

6 used just for the purpose of recollection --

7 THE COURT: Hold on. Take a look at it.

8 THE WITNESS: Yeah. Give me a second. I can do

9 that.

10 BY MR. JONES:

11 Q And can you tell me if that's your signature on page

12 17?

13 THE COURT: Hold on a second.

14 MR. SMITH: Can't refer to the document ---

15 THE COURT: Hold on. Hold on. Let him take a look

16 at it. Does that refresh your recollection as to what the

17 charge was in reference to the firearm?

18 THE WITNESS: I know what the charges were. I'm

19 just trying to find out where it says silencer, because I

20 stood up when they brought this up, I said unlicensed

21 firearm --

22 THE COURT: Okay. You don't have to tell me. Just

23 take a look at it.

24 THE WITNESS: Yeah.



1 THE COURT: Tell me when you're done or you've  
2 gotten to the part that refreshes your recollection.

3 MR. JONES: If it will assist the witness, it's at  
4 the bottom of page 6.

5 (COUNSEL AND DEFENDANT CONFER BRIEFLY)

6 THE WITNESS: So I see that I signed it, but no --  
7 this -- this gun was not a silencer and we made that very  
8 clear. I see that I signed this, but I was there in the  
9 court --

10 THE COURT: So, are you -- I guess let me --

11 MR. SMITH: It doesn't indicate that, Your Honor.  
12 And let me just say that --

13 MR. JONES: Actually this is --

14 THE WITNESS: And it was never shot, for one --

15 THE COURT: Hold on. Hold on.

16 MR. JONES: I'll ask -- I'll ask a question then  
17 about his signature that he just testified to.

18 BY MR. JONES:

19 Q Right about your signature on page 17 it reads, In  
20 addition to --

21 MR. SMITH: You cannot refer to a document --

22 THE DEFENDANT: This is ridiculous.

23 MR. SMITH: -- for purposes of refreshing  
24 recollection. You can ask him if he has a recollection --

1 BY MR. JONES:

2 Q Do you recall signing a document that says that you  
3 swear under penalty of perjury that the factual allegations  
4 contained in the factual basis paragraphs are true?

5 A So where does it say a silencer again, on this page?  
6 It -- yes, that's my signature --

7 Q Bottom of page 6, factual basis --

8 A -- absolutely.

9 Q -- for possession of unregistered firearm.

10 A Signing of the plea agreement (whispers) -- yeah, I  
11 see my signature, Mr. Jones, but I still don't see where  
12 you're trying to say that the gun had a silencer.

13 MR. SMITH: Again, Judge, this is completely and  
14 utterly improper. You can hold -- hand the document to him to  
15 see if he (sic) refreshes your recollection. You take the  
16 document back and then you ask him if it refreshes your  
17 recollection. Any other procedure is beyond our Rules of  
18 Evidence. And this is just an attempt to get a document  
19 that's never been produced, provided, or is not certified into  
20 the record of this court and it's improper.

21 THE COURT: All right. And I believe that he's  
22 correct --

23 MR. JONES: It actually was -- it actually was  
24 produced back at the time of the prior litigation.

1 THE COURT: I think he's correct about refreshing  
2 his recollection. He has been unable to answer the question,  
3 so nobody -- did it refresh your recollection?

4 THE WITNESS: Um, I'll be honest with you --

5 THE COURT: Did it refresh your --

6 THE WITNESS: No.

7 THE COURT: No.

8 THE WITNESS: No.

9 THE COURT: Reviewing it does not refresh your  
10 recollection.

11 THE WITNESS: I mean, I just -- I remember I never  
12 signed something for -- as a silencer.

13 THE COURT: Okay.

14 THE WITNESS: It was an unlicensed firearm I pled  
15 guilty to.

16 THE COURT: All right. It doesn't refresh his  
17 recollection.

18 BY MR. JONES:

19 Q So if the plea agreement states as a --

20 MR. SMITH: Objection. Again, this is just an  
21 attempt, with all the other underhanded attempts to get non-  
22 evidence in, to get something in evidence that cannot be in  
23 evidence in the manner that he's provided it. It's not only  
24 now he's gone beyond the idea that it's not evidence, he's

1 gone in part into the unethical by stating what he knows is  
2 not admitted into evidence. That's grossly improper. So we  
3 would ask the Court to not allow this --

4 MR. JONES: Well, I'm just going to ask him a  
5 hypothetical.

6 MR. SMITH: You can't ask a non-opinion witness a  
7 hypothetical.

8 MR. JONES: If the document doesn't -- says  
9 something that he says it doesn't --

10 THE COURT: Hold on.

11 MR. SMITH: The document doesn't say that. If  
12 you're going to insist on it --

13 THE COURT: Well hold on. Hold on, everyone. If a  
14 document -- that document does not refresh his recollection  
15 that is a strange circumstance. He said he signed it. I  
16 didn't ask him that. So ask him other questions.

17 BY MR. JONES:

18 Q So turning to page 6 at the bottom --

19 MR. SMITH: Again --

20 BY MR. JONES:

21 Q -- does paragraph --

22 MR. SMITH: You cannot ask him questions about --

23 THE COURT: Counsel --

24 (indiscernible, cross-talk)

1 MR. SMITH: -- about that particular document --

2 THE COURT: I'm going to direct his attention -- you  
3 can direct his attention to a specific area of that document.  
4 Make sure that he read it properly and does that refresh his  
5 recollection.

6 BY MR. JONES:

7 Q Paragraph 3 at the bottom of page 6. Will you  
8 please read that document and tell me if that refreshes your  
9 recollection regarding machine gun and silencer.

10 A First of all, we did go to a shooting range, we did  
11 bring a Bushmaster 223, it was -- this one was not fully -- or  
12 was fully -- I do not remember. What they write here and what  
13 they make me sign is two different things, you know. They  
14 made me sign something for a deal, but that was never -- and  
15 they even say that, I remember there was a report, it was  
16 never tested fully automatic. Because where we were at, these  
17 people were ex-SEALs and they allow you to shoot there, but  
18 you would have to call the Marshal to shoot the fully  
19 automatic. So it was never shot fully automatic. Could it  
20 shoot automatic? I believe it could. Was it equipped with a  
21 silencer? Absolutely not. They had a problem with the  
22 silencer and a suppresser. They couldn't figure out what the  
23 difference was. The difference is one is a silencer and one  
24 suppresses.

1 THE COURT: All right. Mr. --  
2 MR. JONES: So --  
3 THE COURT: Hold on. Mr. Marquez, I'm going to ask  
4 you some really pointed questions.  
5 THE WITNESS: Uh-huh.  
6 THE COURT: And I know that you have a lot of  
7 information to tell us.  
8 THE WITNESS: Right.  
9 THE COURT: But I'd like you just to answer that  
10 question.  
11 THE WITNESS: Yes.  
12 THE COURT: So does the document refresh your  
13 recollection as to whether or not you were convicted of  
14 possessing an unregistered firearm with a silencer?  
15 THE WITNESS: I remember signing and --  
16 THE COURT: No, no, no. Does that document --  
17 THE WITNESS: It's not gonna -- no, it doesn't,  
18 because I never signed for a fully automatic. I remember  
19 standing up in the court when they asked me and I was like I'm  
20 not signing that. And they said, well, it was an unlicensed  
21 firearm.  
22 THE COURT: Okay.  
23 THE WITNESS: That's what, yeah, I agreed on.  
24 THE COURT: That's all.

1 MR. JONES: I don't have any further questions,  
2 Judge.

3 THE COURT: Counsel, anything else?

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q In fact, the reason why this doesn't refresh your  
7 recollection is because it doesn't say that it was a silencer,  
8 correct?

9 A Correct. Correct.

10 MR. JONES: That just opened the door, Judge.

11 THE WITNESS: I mean, I don't remember that. I  
12 remember not signing for a silencer.

13 BY MR. SMITH:

14 Q All that was said was that it could successfully  
15 operate as one, correct?

16 A Yes. Yes. It can -- it could. It has threads.  
17 Absolutely. Was a silencer on it? Absolutely not.

18 MR. SMITH: Okay. Since that's the bulk of his  
19 testimony, that's -- I don't have anything further.

20 THE COURT: All right. Thank you, Mr. Marquez. I  
21 appreciate your testimony. Counsel, call your next witness.

22 MR. SMITH: The next witness is the Defendant, Your  
23 Honor.

24 THE COURT: Lyuda, I'm going to call you Lyuda only

1 because Mr. Smith does. Come on up.

2 MR. SMITH: It's much easier than Ms. Pyankovskaya.

3 THE COURT: I wish I could say your last name as  
4 beautifully as you do.

5 THE WITNESS: Thank you.

6 THE CLERK: You do solemnly swear the testimony you  
7 are about to give in this action shall be the truth, the whole  
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 LYUDMYLA ABID

11 called as a witness on her own behalf and being first duly  
12 sworn, testified as follows on:

13 DIRECT EXAMINATION

14 THE COURT: Have a seat.

15 THE WITNESS: Thank you.

16 THE COURT: Go ahead, Mr. Smith.

17 BY MR. SMITH:

18 Q Lyuda, have you -- you testified so far and so  
19 certain things have been said. I'm going to ask you a couple  
20 questions. Have you ever been diagnosed as having any kind of  
21 psychological issues?

22 A No, never.

23 Q And have you ever taken any medication for  
24 psychological issues whatsoever?



1 A No.

2 Q I want to walk you through some of the things that  
3 we haven't addressed or haven't had an opportunity to address.  
4 So, after December of 2013, what efforts did you make to co-  
5 parent with Mr. Abid?

6 A Well the first effort was for Sean asking to settle  
7 and reach a peace because they lied about relocation to Iowa,  
8 and when it was obvious that custody will not be changed they  
9 ask us to reach a peace. So we sit together, Ricky, me --

10 MR. JONES: Objection, move to strike.

11 THE WITNESS: -- and we --

12 MR. JONES: Just discussed everything that occurred  
13 prior to December of 2013.

14 THE WITNESS: Okay. I'm sorry. Okay.

15 BY MR. SMITH:

16 Q Okay. Let me make this simpler because we've talked  
17 some about this. The -- you've -- did you or did you not  
18 arrange to have the schedule that you and Mr. Abid had agreed  
19 to in December of '13 altered in certain occasions to allow  
20 him to have more time with Sasha?

21 A Sean asked me to do that since you're working till  
22 5:00 don't you think it would be beneficial for us. While  
23 you're at work I will finish school -- school homework for  
24 Sasha --

1 Q Forget about 5:00. What I'm asking you is did you  
2 make changes in the schedule in order to grant --

3 A The change was I will --

4 Q -- to grant Sean more time? Like did he ever ask  
5 you I want to take Sasha to a football game, or I want to take  
6 him to a --

7 A Throughout till today when it was about events, any  
8 things about Sasha and Dad I was always for it. I also  
9 allowed him to pick up my son.

10 Q Okay. And I think in the last testimony -- I'm just  
11 going to go over areas --

12 A Okay.

13 Q -- we've already gone over. You did -- were -- and  
14 we went over all the emails in which you allowed him to take  
15 additional time; do you recall that?

16 A Yes.

17 Q All right. And you agreed for -- to enroll him in  
18 sports, correct?

19 A Yes.

20 Q (indiscernible, cross-talk) discuss that. Did --  
21 and you also at one point in time asked him to talk to your  
22 daughter about her situation, correct?

23 A Yes.

24 Q All right. So tell me about the things -- we've

1 talked about those things, and we've -- so tell me about the  
2 things that Sean did that were contrary to you having a good  
3 relationship or co-parenting relationship with him.

4 A You mean what good things he did for me or what? I  
5 don't understand.

6 Q This is the language thing. No. What -- if -- let  
7 me just ask the questions this way. Did Sean co-parent with  
8 you in regard to Sasha's homework?

9 A No.

10 Q And tell me about that. Why didn't he? Why didn't  
11 (indiscernible, cross-talk) --

12 A The first -- the first year -- the first  
13 kindergarten of school we have t-shirt which we will give  
14 (indiscernible) on Monday and we will expect home will be  
15 returned on Thursday. So the first year I will get school  
16 stuff like two weeks later, but I will miss homework on daily  
17 basis in the backpack. So sometimes --

18 Q Did you ever -- how did you go about finding this  
19 out? Did you just look through Sasha's backpack? Did you  
20 discuss it with Sasha?

21 A The minute when we got in argument in November  
22 basically I will get empty backpack without no flash cards,  
23 nothing. I -- I mean, literally empty backpack.

24 THE COURT: November what?

1 THE WITNESS: November '14. And when I filed --  
2 BY MR. SMITH:  
3 Q November of 2014, correct?  
4 A Yes. So when I filed to court I addressed -- I said  
5 I am completely alienated from school activities.  
6 THE COURT: Okay. So we're kind of jumping around,  
7 Mr. Smith.  
8 THE WITNESS: Yes.  
9 THE COURT: So kindergarten, give it on Monday, turn  
10 -- I just want to make sure that we're really clear.  
11 THE WITNESS: Yeah.  
12 THE COURT: Given on Monday, turn it in on  
13 Thursday --  
14 THE WITNESS: Yeah, and not with first grade.  
15 MR. SMITH: I'll give you some time frames, but  
16 again, there's a language issue here.  
17 BY MR. SMITH:  
18 Q But the time frames are September is when he started  
19 school in kindergarten, correct?  
20 A Yes, September '14.  
21 Q Okay. And did -- were you seeing Sasha in the  
22 afternoons during that period of time --  
23 A Yes.  
24 Q -- after he started in --

1           A     As we agreed with Sean, August '14 I was picking up  
2 Sasha at 3:30, 3:40 on my way home from work.  
3           Q     On what days?  
4           A     On -- on my days, ever (sic) Monday, Tuesday --  
5           Q     What are those days?  
6           A     Monday, Tuesday and every another (sic) Friday.  
7           Q     Okay. So the homework would come home on Monday,  
8 correct?  
9           A     Homework will come on Monday and then will --  
10          Q     Okay. So during that period of time when Sasha  
11 brought his backpack was there homework in it?  
12          A     Yes, and in September I will see that in the folder.  
13 But when the arguments start in November it was out  
14 completely.  
15                THE COURT: Did you pick up -- sorry, Counselor. I  
16 just want to make sure that we're -- did you pick up at 3 or  
17 3:30 from school or aftercare from --  
18                THE WITNESS: No, from -- from that, yes.  
19                THE COURT: Okay.  
20                MR. SMITH: We went through this. I'll go through  
21 it again if we need to. It's all in the --  
22                THE COURT: No. No. I just wanted -- I'm confused  
23 -- she was confusing me.  
24                MR. SMITH: Okay.

1 THE COURT: I just wanted to clarify.

2 MR. SMITH: Okay. All right. We established in  
3 all the various text messages that she is --

4 THE COURT: Got it. I understand.

5 MR. SMITH: (indiscernible, cross-talk) --

6 THE COURT: But I just wanted to make sure that I'm  
7 100 percent clear.

8 MR. SMITH: All right. Okay. All right. Okay.

9 BY MR. SMITH:

10 Q So in the August through November period you had no  
11 problem getting the homework, correct?

12 A Yes. I -- I --

13 Q Were you working with Sasha on the homework?

14 A We -- we will have reading left, so we will read  
15 books in the evening, but I will see the homework what was  
16 there because it's done. Basically I will get Sasha home and  
17 all we have left is reading in the evening.

18 Q Okay. And then in November that stopped. Was there  
19 events that led to that stopping? What were those events?

20 A It was a physical interruption when we -- there was  
21 two incident when I-- when Sean accuse me of this, I don't  
22 put Sasha to sleep on time, and I said well, I also have  
23 problems Sasha couldn't pee because he don't give him bath.  
24 And it was next to his house he -- I told you he started

1 calling me a moron, I'm going to take primary custody from  
2 you, your attorney's a joke, my attorney's a star. And second  
3 time was when I said -- so I (indiscernible) keep calling says  
4 3:40, please, I'm outside, give me Sasha. Well he refused to  
5 give me my son. We --

6 Q But that was after the event that you described  
7 earlier --

8 A Yes.

9 Q -- when you had the interaction in front of the  
10 house?

11 A Yes.

12 Q Was Sasha present during that event?

13 A Sasha was inside of the house. He might heard, I  
14 don't know, but --

15 Q So this was outside of Sean's home?

16 A Yes. Next to his door, yes.

17 Q Okay. So and that was the day in which you stopped  
18 -- that he stopped providing the homework?

19 A Yeah. He saw me, I was upset, and he will, like,  
20 almost like insult me. So everything from the backpack will  
21 be gone. And when they said they send me flash cards to the  
22 backpack with hidden device is absolutely lie. Absolutely not  
23 true. I saw device. I touched device. And I bought Sasha  
24 backpack. It has huge zippers, you know, like to zip the

1 backpack on the pockets and two on the main entrance of the  
2 backpack, and two of them suddenly disappeared. And I'm like,  
3 Sash, what happened to the zippers? I don't know.

4 And then one day I get backpack and one of them is  
5 on the back but has different texture. I touch, it's kind of  
6 rubber or kind of tape around it. And I'm like, Sash, you and  
7 Daddy fixed the zipper. Good job, guys. Tell Daddy thank  
8 you. You know, again --

9 Q Okay. So this was when? When did that occur with  
10 his backpack?

11 A I -- the backpack like I noticed the zipper  
12 somewhere -- somewhere around January.

13 Q Okay. So the tapes that have been now allowed to be  
14 discussed through --

15 A Court.

16 Q -- Dr. Holland's report, those were taken in -- I  
17 think the -- in the letter -- the second -- well I guess the  
18 middle and --

19 A It was January 20 -- 20, 21st, and 26th.

20 Q Okay. On -- during that period of time were you  
21 still trying to co-parent with Sean?

22 A Yes.

23 Q Did you do anything that suggested you were still  
24 trying to work with Sean in terms of co-parenting?



1           A     When he recorded me on January 21st -- 20 and 21st,  
2 was Tuesday, and morning Wednesday. On Thursday he send me  
3 message, Lyuda, please consider put Sasha in baseball, we're  
4 practicing, please tell me if you will agree. I said, Sean,  
5 absolutely I agree, but please consider my judo class  
6 enrollment. So --

7           Q     Okay.

8           A     -- after he got those tapes and he knew what he was  
9 doing, he was asking me questions about the judo, and it was  
10 January 24th to be exact on the exhibits, and I said  
11 absolutely, I'm for it, let's enroll him in baseball.

12           THE COURT: Counsel, I still have some questions  
13 about the homework.

14           MR. SMITH: Yes.

15           THE COURT: I don't -- do you mind --

16           MR. SMITH: I don't mind at all, Your Honor.

17           THE COURT: Unless you're going to come back to it.

18           MR. SMITH: Yeah, go ahead.

19           THE WITNESS: Yes.

20           THE COURT: Only -- because I just want to see it  
21 all.

22           So, when we talk about the flash cards and the A to  
23 Z reading books.

24           THE WITNESS: Yes.

1 THE COURT: And then the homework packet.  
2 THE WITNESS: Yes.  
3 THE COURT: How much homework was coming home for --  
4 I know you told me Monday and --  
5 THE WITNESS: From November -- in November when  
6 accident happened, nothing. It's like I will open --  
7 THE COURT: No, no. I want to know -- go back to  
8 the beginning of school in kindergarten and you --  
9 THE WITNESS: The teacher will give them paper --  
10 paper books which she has them rotate between kids --  
11 THE COURT: Okay, so hold on. Okay.  
12 THE WITNESS: Yes.  
13 THE COURT: So those are the A to Z books?  
14 THE WITNESS: Yes.  
15 THE COURT: Is that what they're -- okay. And those  
16 are the ones that are kind of checked out, the teacher assigns  
17 to them?  
18 THE WITNESS: Yes.  
19 THE COURT: And they're little, right?  
20 THE WITNESS: Yes. Yeah, they're like the tiny  
21 ones.  
22 THE COURT: Okay. So how much homework though were  
23 they supposed to do every night? You said it was a packet, it  
24 went home on Monday and it had to be turned in on Thursday.

1 So, like one page a night or what -- or what?

2 THE WITNESS: Well the -- Your Honor, the problem  
3 is, like I said, even when the September and August happened,  
4 they will give me those homeworks (sic) back two weeks after  
5 they happen. So I will not get actual package. And I will --

6 THE COURT: So -- hold on.

7 THE WITNESS: Yeah.

8 THE COURT: So are you saying -- and I'm sorry to  
9 interrupt you, but I just want it to be clear to me. In  
10 August, September when school started in 2014 --

11 THE WITNESS: Yes.

12 THE COURT: -- and he was starting kindergarten,  
13 even at the beginning you didn't see any homework coming home?

14 THE WITNESS: They will give me after the fact,  
15 after it was checked by teacher.

16 THE COURT: Checked by the teacher?

17 THE WITNESS: Yes.

18 THE COURT: So even in the beginning of school 2014  
19 when he started kindergarten --

20 THE WITNESS: I won't say like hundred percent, I  
21 will say maybe one week I will see some of it and then I will  
22 not see some of it, but I will get a book to read, like you  
23 said --

24 THE COURT: Okay, the little book.

1 THE WITNESS: -- so at least something so when I  
2 will pick him up at 3:30 so we will have something to do in  
3 our -- at our home.

4 THE COURT: So when you did see the homework, how  
5 much homework was it a night? Was it just one little work --

6 THE WITNESS: It was very simple. It's like  
7 nothing.

8 THE COURT: -- tiny, little --

9 THE WITNESS: It's a joke. It's very simple.

10 THE COURT: Okay. So, yeah. So for Sasha, would  
11 that be something that he could complete pretty quickly?

12 THE WITNESS: It was very quickly homework.

13 THE COURT: Okay. All right. So it wasn't --

14 THE WITNESS: No, nothing --

15 THE COURT: -- a lot of time.

16 THE WITNESS: No.

17 THE COURT: Okay. Now, the flash cards. Were the  
18 flash cards something that the teachers gave to you guys --

19 THE WITNESS: No.

20 THE COURT: -- or that was something that you made  
21 or Dad made? What were the flash cards?

22 THE WITNESS: Dad claims he made flash cards and  
23 Sasha told me they did have flash cards. They were never in  
24 my house, ever.

1 THE COURT: Okay. So it wasn't as though the  
2 teacher sent home --  
3 THE WITNESS: No.  
4 THE COURT: Because some of the -- the A to Z  
5 book --  
6 THE WITNESS: I never see that.  
7 THE COURT: And you always got the A to Z book,  
8 right?  
9 THE WITNESS: Sometimes.  
10 THE COURT: Sometimes.  
11 THE WITNESS: I'm -- in November I will get like  
12 completely alienated.  
13 THE COURT: Nothing. Okay.  
14 THE WITNESS: And especially --  
15 THE COURT: But before --  
16 THE WITNESS: Yeah.  
17 THE COURT: Before November would you get the flash  
18 cards?  
19 THE WITNESS: No. I will not get flash cards.  
20 THE COURT: Never or just sometimes?  
21 THE WITNESS: Never.  
22 THE COURT: Okay. And so the flash cards were not  
23 something that the teacher created that had to go home with  
24 each child?

1 THE WITNESS: I'm not aware. They were there.  
2 THE COURT: Okay. All right. I'm sorry, Counselor.  
3 I just wanted to --  
4 MR. SMITH: No, no, no. And I --  
5 THE WITNESS: But, Your Honor, in November I  
6 completely was out of picture.  
7 THE COURT: I got that. Now let him take over.  
8 BY MR. SMITH:  
9 Q Do you remember the teacher's testimony in regard to  
10 sight words? Do you recall that?  
11 A Yes.  
12 Q And do you recall that Mr. Abid's testimony in  
13 regard to having these sight words in a particular box?  
14 A Yes.  
15 Q And explained, I think you referenced earlier --  
16 A Yes.  
17 Q -- that that's where he put the recording --  
18 A Yes. It's absolutely not true.  
19 Q Okay. Well, do you recall ever seeing that box with  
20 the sight words in it?  
21 A No.  
22 Q So do you know whether or not it was something that  
23 the teacher gave him or that Sean gave him or what the sight  
24 words were?

1           A     No. Sean -- Sean in October sent me a couple things  
2 like this is things you can do with Sasha on the side, but  
3 they were not from the school so he will just kind of, okay,  
4 this is piece of what you can do. Basically his suggestion  
5 was I am doing this, you can read with him. So when you pick  
6 him up, I will make sure everything is done.

7           Q     Do you read with Sasha?

8           A     Yes, we do read with Sasha.

9           Q     What kind of things did you read?

10          A     Sometimes we got into our (indiscernible) library,  
11 we'll get some books, hard books, sometimes -- I mean, I have  
12 books from my mother-in-law's sister, Linda, have like shelves  
13 of those.

14          Q     Okay.

15          A     So we'll read those.

16          Q     Do you recall the titles to any of the books or  
17 anything like that?

18          A     No. They're American names. I mean, I read him  
19 Russian in English stories, fairytales as we read -- when I  
20 read to him. But Dr. Seuss, I mean, those simple ones.

21          Q     I don't think I've ever asked you, do you teach him  
22 any Russian?

23          A     We try but not enough time with us.

24          Q     Does Ira speak Russian?

1 A Yes.

2 Q Okay. The -- okay. So that's the school. Let's  
3 talk about the clothing. Did you ever have a problem with  
4 clothing?

5 A I do have problem with clothing. I do care how my  
6 kids look. And school starts I buy him seven pair of pants in  
7 Gap, brand new shirts, everything, backpack. And they steal  
8 my clothes. I mean, at least four sets of clothes are gone.  
9 So I'll -- I will --

10 THE COURT: Who's they?

11 THE WITNESS: My ex-husband. So I will bring my son  
12 to school, and then when I pick him up Monday my son wears his  
13 casual clothes, not the ones which they were provided for  
14 school one day, another day, and I'm -- I'm at least missing  
15 four sets of clothes.

16 BY MR. SMITH:

17 Q And you never got those back?

18 A No. I -- with backpack -- I bought Sasha backpacks.  
19 Last year he has two backpacks. This year they took my  
20 backpack, brand new backpack, and gave Sasha old high school  
21 backpack for the players who play volleyball. And I said  
22 where's your backpack? I don't know. So they -- they take my  
23 clothes, they dictate which backpack would Sasha wear. I'm  
24 like -- I'm like, I mean, those are my -- they're little



1 things but they irritate, you know. It's like, I care, I go,  
2 I shop with my son. I provide for it. I don't -- I don't  
3 mind to share, but return what was provided by me. They did  
4 not buy him winter jackets, shoes, everything is provided by  
5 me.

6 Q The -- let's talk about the lunches. Was there any  
7 issue in regard to lunches?

8 A Yes. September 2014, you can open exhibit, it's not  
9 like I'm hearsay, it's documented. And Sean says, Lyuda, in  
10 September, Lyuda, let's stop bring Sasha cold lunch because  
11 food gets spoiled and it's mushy, it's like -- it's not really  
12 good for him. I will open account with school and we will put  
13 money there. I said great idea. And Sean put \$22 I think on  
14 October 4th, and entire school first year I was providing  
15 lunch money and they just took advantage of it. And what I  
16 heard here is they were providing cold lunch, which is not  
17 true.

18 Q Is it -- is the issue the money that you put toward  
19 the account?

20 A No, it's not the issue of the money. Of course not.  
21 I will make sure my son is not hungry. It's just I don't like  
22 when somebody claimed that they take care of child so much but  
23 they take care of with somebody's else cost. They use my  
24 clothes, they use my money. Simple thing, insurance for my

1 son.

2 Q Who provides haircuts for your son?

3 A Me and Ricky. We -- we -- they -- they in -- my son  
4 is going to be seven years old in February. I will tell you  
5 there is only one time Sean's wife took Sasha to get haircut.  
6 All haircuts done by me.

7 Q Who provides the health insurance?

8 A I provide health insurance. And May 2014 I asked  
9 Sean, I said, Sean, you know, with Obamacare now I have  
10 deductible. So if something serious happens, well, the  
11 deductible would be \$1500 cash and we have to come up with  
12 this. You have teacher insurance, which is so much better.  
13 Let's put Sasha under your plan. It doesn't cost me money. I  
14 have one kid or two kids, it's the same cost. But let's put  
15 you as the primary insurance so Sasha -- no, follow court  
16 order, so Sasha's under my insurance.

17 Q When -- now when you pick up Sasha or have him on  
18 the days that he's in school, does he have homework? Is the  
19 homework provided now?

20 A This year teacher demand school homework be returned  
21 every day. So now I see homework, yes. But homework is  
22 done --

23 Q So but that's changed. In other words, over the  
24 period of time that this action's been going on Sean now

1 provides you the homework, correct?

2 A The difference is now I get homework incomplete. If  
3 it's math it's done with mistakes. So Sasha gets home, I  
4 review whole homework, and I have pictures on my cell phone,  
5 tons of pages where four -- I mean four mistakes on one page?  
6 It's like --

7 Q Okay, but you're doing homework with Sasha now?

8 A I'm redoing this, basically.

9 Q I understand.

10 A Yeah.

11 Q In regard to --

12 A At 6:00.

13 Q In regard to activities for Sasha --

14 A Yes.

15 Q -- you heard Ricky's testimony as to some of the  
16 activities you engage in. What do you recall as the  
17 activities you engage in with Sasha when he's at your home?

18 A Well, we bought him on his birthday nice bike so he  
19 rides it all the time.

20 Q Do you have a bike?

21 A Yes, we have bike, we have scooter, we have  
22 electrical truck, we have all kind of soccer balls, basketball  
23 balls, we have --

24 Q Did you really play basketball in school?

1           A     I was playing basketball, yes.

2           Q     And did you play basketball with Sasha?

3           A     We -- I want to -- I want him to start doing

4 basketball because he's going to be a tall boy and I want -- I

5 love the sport. It's my sport.

6           Q     Here, here. So the -- in regard to other type of

7 sporting activities, did you -- you heard Ricky talk about the

8 things that were done, the water skiing --

9           A     Uh-huh.

10          Q     -- the surfing, did you participate with Sasha in

11 those events?

12          A     Yes. We -- we are family. We have fun together.

13          Q     You're in good health?

14          A     I hope so.

15          Q     You're physically fit?

16          A     I hope so. With this --

17          Q     The answer is yes?

18          A     Yes.

19          Q     All right. In terms of the activities, were there

20 -- you said that Sasha played baseball because he -- Sean

21 asked you and you did that. So --

22          A     This is what happened --

23          Q     Was there any other activities that you wanted Sasha

24 to be involved in?

1           A     Yes. In the past I enrolled Sasha in soccer, and  
2 the response was from Dad you cannot enroll Sasha on my days.  
3 Please plan your activities according to your days.

4           MR. JONES: Objection, foundation.

5 BY MR. SMITH:

6           Q     When was that? Was that prior to 2013?

7           A     It was -- yes, it was prior.

8           Q     Okay. So --

9           A     Yeah.

10          MR. SMITH: No objection to the objection.

11          THE WITNESS: Yeah.

12 BY MR. SMITH:

13          Q     So let's define it within the terms of December '13  
14 forward.

15          A     Yes. When Sean asked me in January one day when  
16 recording me about baseball, and I said, you know, it will be  
17 fair if you want baseball I want judo. Isn't fair.  
18 Originally they said yes, and as you know they refuse to take  
19 him to judo. I lost \$250. I enrolled Sasha in judo, I  
20 provide them with schedule, and Dad wrote to me that on my  
21 days I only can enroll Sasha after 5:30. So basically it's  
22 not about Sasha, because the judo class starts 4:00, 4 p.m.,  
23 and Dad told me he will go on your days, Lyuda, after 5:30  
24 when I will be finishing my time.

1 Q Did you offer to change days with him so that you  
2 (sic) could take judo (indiscernible, cross-talk) --

3 A I asked to change days. And on baseball Sasha is on  
4 my days till 9:00 and I'm there with -- I'm attending -- I did  
5 not miss no one game or no one practice, which was right now.

6 Q So this year in baseball, he's doing baseball since  
7 the beginning of this year?

8 A He was -- he was doing baseball. And like I said, I  
9 spend money on judo and they did not take him no one time --

10 Q Okay, wait, wait. Listen.

11 A Yeah.

12 Q Listen to the words. So baseball, you're playing  
13 baseball -- or the first year there was baseball, right?

14 A Uh-huh, yeah.

15 Q And now the second year there's also baseball,  
16 correct?

17 A Yes.

18 Q And so you enrolled him -- you agreed to enroll him  
19 in baseball if Sean would enroll him in judo; do I understand  
20 that right?

21 A Yes, right.

22 Q And you did enroll him in judo but it was 4:15 on  
23 one of Sean's days, correct?

24 A And Sean refused to take him.

1 Q But on your baseball you took him even on your days?  
2 A It was all my days. It was Monday, Tuesday, all my  
3 days. So I will have to wait till 5:30 to get my son and I  
4 have to in one hour in the practice or game, so my entire time  
5 is stolen.  
6 Q Okay. But it wasn't stolen because your son was  
7 playing baseball, correct? Did he enjoy the baseball?  
8 A Say -- yes. Yes.  
9 Q Okay. Did you enjoy the baseball?  
10 A I did, yes.  
11 Q Okay. So and in regard to judo, why do you want him  
12 to be in martial arts or judo of some kind?  
13 A I believe they have discipline, they teach kids  
14 respect. I -- I -- my friend has both kids enrolled in  
15 martial art and it's amazing --  
16 Q But didn't Sean explain to you that if you didn't  
17 have him on 4:00 it would work -- it would eat into the time  
18 he has for homework for Sasha?  
19 A He -- we have baseball sometimes scheduled so early,  
20 so it's not --  
21 Q So it didn't make sense to you?  
22 A No.  
23 Q All right.  
24 A It doesn't make sense to me.

1 Q In regard to -- let's talk about -- now about the  
2 tapes that have essentially come into evidence through --  
3 A Yes.  
4 Q -- Dr. Holland's testimony. Were those accurate  
5 recordings?  
6 A Absolutely not.  
7 Q Did the record -- were the recordings complete?  
8 A They were -- like I said in my previous testimony,  
9 they were altered --  
10 Q Again I'm asking --  
11 A They were altered and doctored.  
12 Q Okay. Hold on. I'm asking you from the statements  
13 that were made by Dr. Holland in her report --  
14 A Uh-huh.  
15 Q -- as to what was on those tapes.  
16 A I think it's just not fair because she's --  
17 Q But it -- was it accurate, that's what I'm asking  
18 you.  
19 A No, it's not accurate.  
20 Q Okay.  
21 A Absolutely not.  
22 Q Was there portions -- Dr. Holland had identified  
23 certain portions of the tape.  
24 A Yes.



1 Q Do you recall that?

2 A Yes.

3 Q Were there portions that she left out that you think  
4 are important?

5 A Well, I believe when she said that I claimed that  
6 Mother rules is more important than Dad's rules, the whole  
7 conversation was so taken in the short consent that it's  
8 completely erased what it was about. I actually told both my  
9 kids, my daughter and my son, that I never told you to not  
10 love your fathers. You should love your fathers. And the  
11 whole -- for me frustration how somebody can testify on  
12 something which altered to this extent --

13 Q What caused you to say that, what you just  
14 described, that you should love your father but -- and then  
15 the --

16 A Well --

17 Q I think that statements -- I want to be clear for  
18 the record -- the statements that were identified by Dr.  
19 Holland in her report were that you were the mother, that you  
20 had suckled her (sic) on your breast, that you should love me,  
21 do you --

22 A No.

23 Q Okay. So tell me the context in which that  
24 conversation took place.

1           A     Sasha -- well --

2           Q     At least based upon what Dr. Holland said was on the

3 tape.

4           A     Sasha, what really was disturbing, Sasha was telling

5 me, and this is not first time, that he cannot tell his dad

6 that he loves me or miss me when he's in Dad care. So Angie

7 will tell him, Sash, don't say those things to Dad, it's going

8 to hurt his feelings.

9                     And we were talking about parents in general, we

10 should love both Mother and Father. There is -- and -- and my

11 daughter on those tapes, if somebody will actually listen to

12 them, she -- she has conversation with me, Mom, you know, I

13 love Dad and you equally --

14           MR. JONES: Objection, hearsay.

15           THE WITNESS: It's on the tapes. And Holland

16 completely disre --

17           MR. SMITH: Okay, wait. See --

18           MR. JONES: (indiscernible, cross-talk) --

19           MR. SMITH: This is the part that I don't understand

20 how to address, Your Honor. Maybe I can get some guidance --

21           THE WITNESS: Okay, sorry.

22           MR. SMITH: -- because these tapes have essentially

23 come in through the testimony of Dr. Holland, yet now I don't

24 have the opportunity to address what's on the tapes as

1 expressed by Dr. Holland? I mean, I'm at a loss. I don't  
2 want to waive any kind of objection to the tapes themselves,  
3 but to me I just don't understand how Dr. Holland can testify  
4 to the tapes and she can't say that that testimony in regard  
5 to the tapes was either incomplete or inaccurate?  
6 THE COURT: Well I think she said that it was --  
7 THE WITNESS: Yeah.  
8 THE COURT: -- other than those words, incomplete or  
9 inaccurate. And she's testified to that. I don't want to  
10 give you and I can't give you the line at which if -- should  
11 you cross it you -- but --  
12 MR. SMITH: Well I think -- I don't -- the only  
13 questions I'd ask --  
14 THE COURT: But we heard very limited testimony from  
15 Dr. Holland regarding those tapes.  
16 MR. SMITH: All right.  
17 THE COURT: What I think is appropriate and I think  
18 the question you want to perhaps ask is, is this a pattern of  
19 behavior? Is this --  
20 MR. SMITH: Yeah, I'm --  
21 THE COURT: You know, those kinds of things  
22 certainly --  
23 MR. SMITH: We'll get there, Judge. We'll -- that  
24 one we'll get there.

1 THE COURT: -- but I don't know that we need to get  
2 into what Mom wants me to hear on the tape.

3 BY MR. SMITH:

4 Q Okay. Let me ask the questions -- the concern of  
5 Dr. Holland as she expressed were the specific statements that  
6 she identified and statements made that she indicated that  
7 Sasha made when she interviewed him, do you recall that?

8 A Yes.

9 Q Are the -- I can't specifically say it, I can't  
10 specifically say what led to Sasha saying things in the  
11 interview, but the statements that she identified were on the  
12 tape. Are those typical of what the type of conversations  
13 that you have with Sasha?

14 A Absolutely not.

15 Q Are they a representative of --

16 A Absolutely not.

17 Q -- an accurate representation of the conversations  
18 you even had with Sasha at that time?

19 A The only -- the only -- what I felt it was  
20 inappropriate is when I said to my son why are you telling  
21 this idiot everything? This is one time in my life I said  
22 something like that. And I actually did not feel proud of it.  
23 And that's the only correct statement on those tapes which I  
24 actually said.

1 Q Well one of the concerns that Dr. -- she  
2 characterized them this way. She characterized what she heard  
3 as Sasha crying and trying to tell you that he wanted to love  
4 both parents and you insisting that he couldn't.

5 A No.

6 Q Do you -- is that a fair and accurate representation  
7 of what is contained even on the tapes? Let's start with the  
8 tapes.

9 A I want to start with the tapes, Sasha --

10 Q Is it an accurate representation of what is  
11 contained on the tapes?

12 A Absolutely not.

13 Q All right. In regard to your communication with  
14 Sasha, is it an accurate representation of any conversation  
15 you have ever had where he was crying and telling you that he  
16 wanted to love both parents and you were telling him not to do  
17 that?

18 A Abs -- it's absolute -- absolutely not accurate.  
19 Absolutely not true. Sasha was crying because I told him that  
20 evening you done with Call of Duty. You're not going to play  
21 Call of Duty. And he was crying about the game and nothing  
22 else.

23 Q What prompted you to say that to him? What did he  
24 tell you that evening when he came home?

1           A     When he came home he has this memorized speech which  
2     Dad prepared for him, which of course was deleted there, so it  
3     was --  
4           Q     Deleted where?  
5           A     From the tape.  
6           Q     Okay. So what was the speech that Sasha gave that  
7     evening?  
8           A     The speech was, Mom, there was research about this  
9     game --  
10           MR. JONES: Objection, hearsay, Your Honor.  
11           THE WITNESS: -- and --  
12           THE COURT: Hold on. Hold on.  
13           THE WITNESS: -- I should not play with this, and I  
14     said, well you're not going to play this --  
15           THE COURT: Hold on. Hold on. Counsel?  
16           MR. SMITH: This is about the conversation that was  
17     represented by Dr. Holland to have been a complete  
18     conversation. So here it's to -- it's her state of mind in  
19     entering into the words that Dr. Holland, and according to my  
20     client inaccurately, stated she said on these tapes. So I  
21     think my client should have the opportunity --  
22           THE COURT: I'm going to allow it. I don't think  
23     Dr. Holland said it was a full conversation, but I am going to  
24     allow it for her state of mind and how she responded.

1 THE WITNESS: Okay.

2 MR. JONES: But --

3 THE COURT: Counsel, go ahead.

4 MR. JONES: State of mind is more about the

5 statement of the declarant, not the -- not what here state of

6 mind in responding was. I guess she can testify --

7 THE WITNESS: Show us original tape.

8 THE COURT: I -- I'm --

9 MR. SMITH: These are about statements that --

10 THE COURT: Hold on, hold on. I'm going to allow

11 it.

12 MR. JONES: Okay.

13 THE COURT: Because her contention is that it wasn't

14 a full representation --

15 MR. JONES: At some point, Judge, then we're going

16 to need to admit the tapes.

17 MR. SMITH: You're not going to need to admit the

18 tapes.

19 THE WITNESS: (Indiscernible).

20 MR. SMITH: We're going to need -- all she's

21 testifying is to what she heard that day that led her to the

22 testimony that's already been testified by Dr. -- and she's

23 already indicated that was omitted --

24 THE WITNESS: Your Honor, they have original

1 tapes --

2 THE COURT: Okay, hold on, hold on, hold on.

3 THE WITNESS: They have original tapes.

4 THE COURT: You really got -- you have great  
5 lawyers.

6 THE WITNESS: I'm sorry.

7 THE COURT: Let them do their job.

8 BY MR. SMITH:

9 Q So, Ms. -- let's move it this way. Without telling  
10 what Sasha said, was there something that caused you that he  
11 said that seemed unusual for him to say when he arrived home  
12 that day?

13 A Yes, it was a memorized speech which he was  
14 instructed to give Mom at home.

15 Q And was that speech depicted in Dr. Holland's  
16 recitation of what was contained on the tapes?

17 A No, it was erased.

18 Q All right. In regard to the -- let's just leave it  
19 at that. In regard to the -- well, let me ask you this  
20 question. Do you believe that Sasha should have a  
21 relationship with Sean?

22 A I think I -- I stated this on many occasions. I  
23 believe -- and I actually proved that I'm not alienating  
24 parent because I have daughter who has great relationship in



1 Ukraine with her father. Her father was visiting me in  
2 America, was staying in my own home. So I already proved  
3 record that I am normal, civil person who respect rights of  
4 other parent. And was -- we have expression, action speaks  
5 louder than words. My every single --

6 Q We have that expression, too, by the way.

7 A I have every single action which I have with Sean,  
8 games, his time with Sasha, everything what I've done was  
9 about my son and about him, too, having a relationship. So  
10 for me, I was slandering to this crazy mom who wants destroy  
11 his relationship. I do not see the benefits for me when my  
12 son will have -- for me to -- first car. Do you think if he  
13 will have bad relationship with his father his father will  
14 help me out to provide him car? What about his college  
15 tuition? Who is going to pay for it? It's going to be me and  
16 Dad. If he want relationship with his dad, it's got -- it's  
17 gotta be me.

18 Q I think you meant -- you've indicated earlier that  
19 you like the idea that he goes to sports and plays sports with  
20 his father.

21 A Yes.

22 Q Do you have a sports background?

23 A I -- I do. I was run --

24 Q Do you think that sports are important --

1 A Absolutely.

2 Q -- to the development of a child?

3 A Absolutely.

4 Q Is that why you agreed to baseball?

5 A Absolutely.

6 Q You play any baseball in the Ukraine?

7 A I agree to baseball --

8 Q Did you play any baseball in Ukraine?

9 A No, we don't have baseball. That's new game for me.

10 Q Okay. So, but you agreed to it.

11 A Yes.

12 Q In regard to the contact -- or the statements about

13 Sean, I want to talk to you about the things that Dr. Holland

14 has said and indicated -- and you indicate to me whether you

15 agree or not.

16 Dr. Holland has indicated that disparaging, using

17 words like idiot or sneak or something along those, to the

18 other -- with regard to the other parent to the child is

19 inappropriate and a bad thing for the child. Do you agree or

20 disagree?

21 A I agree. Absolutely, yes.

22 Q Do you agree that having a -- telling a child that

23 he can't love his father, that would be a bad idea?

24 A Absolutely. I never said that in my entire life.

1 Q Okay. I got it, I got it, I got it. But you agree  
2 that that's a bad idea?

3 A Yes. It's a --

4 Q Did you ever apologize -- or there were statements  
5 of Dr. Holland that you felt some of the things that you have  
6 said were inappropriate.

7 A Yes. I sent you my email. It was my declarations  
8 and some -- I sent you three files. My email, I said, Dr.  
9 Holland, Sean pushed by buttons, and what happened to this  
10 game? It was one isolated incident. I do not commit any  
11 parenting alienation. I told her about it. And I said there  
12 are things which I said which were inappropriate and I took  
13 actions. And it was my conversation, I said I'm going to  
14 Margaret Pickard (ph) class, I need to learn how to not engage  
15 in conflicts and this tag war and this non-stop messaging,  
16 explanation. They -- they don't lead us nowhere.

17 And I told him this, I said, you know, even -- I'll  
18 listen myself like -- like if -- like I said, the idiot, idiot  
19 word, I'm not proud of it. I said, Sasha, don't tell this  
20 idiot everything what happens in our house. I thought it was  
21 inappropriate, absolutely.

22 Q Do you -- look. You -- one of the things the Court  
23 is going to be concerned about is whether or not you are going  
24 to disparage Sean in your home or privately when the lawyers

1 and the experts and everybody's not around.

2 A Absolutely not. And I --

3 Q Why should the Court believe that that's not going  
4 to happen?

5 A I think Court should look at the bigger picture and  
6 recognize that Father filing second time to get primary  
7 custody, this is his lifetime obsession, and he joined this  
8 forum for fathers how to file expert, how to --

9 MR. JONES: Objection, hearsay.

10 THE WITNESS: Lifetime sentence is a primary  
11 custody. Last time they came they said they're relocating to  
12 Iowa, which was not true. They lie to Court.

13 MR. JONES: Objection again on the timing.

14 THE WITNESS: Yeah, so --

15 THE COURT: Remember we're going to focus on  
16 December 2013.

17 THE WITNESS: Yeah, but --

18 MR. SMITH: Let's --

19 THE WITNESS: Your Honor, I just want you to see  
20 that I'm the one who actually wants to co-parent and I'm the  
21 one who actually do everything to have peace between us. I --  
22 how many times I told Sean, if you will pull my message on  
23 June 19, 2014, in the exhibits, and I said, Sean, I says,  
24 Sean, I cannot co-parent like this. I need to be mentally

1 stable for my family. I want peace. I -- I mean, June 19,  
2 2014. I asked about it --

3 BY MR. SMITH:

4 Q Okay. Let's -- since you've mentioned it --

5 MR. SMITH: Your Honor, I'm going to hand her the  
6 exhibit book from the clerk.

7 (TELEPHONE RINGING)

8 THE WITNESS: I will -- it's page 186, it's Exhibit  
9 G.

10 MR. SMITH: Okay, if I -- I don't have another book,  
11 Your Honor. I think you have a book.

12 THE COURT: Yes.

13 BY MR. SMITH:

14 Q It's Exhibit G that's been admitted into evidence.

15 A It's right here. And I wrote Sean, I said, Sean,  
16 there is no need for meeting since words and promises has no  
17 value at this point based on history. After you come back  
18 from Iowa, you decide how you want relation between us to be.  
19 American way 50/50 by court or normal human and most  
20 beneficial for Sasha. I'm tired that every time when I'm nice  
21 to you for sake of my son I get back threats of court, insults  
22 towards my family -- I can't read this.

23 Q Okay. So that's the email that you were referring  
24 to in your text message --

1 A That's a different message. What I said --

2 Q Or your text message. And this text message is --

3 A I said your behavior was putting me in stressful  
4 mode, which is cruel to my family. And I want that stopped.  
5 I can't live around your mood switches. And I'm looking for  
6 stable, predictable life.

7 Q Okay. So what would you --

8 A Yeah.

9 Q -- suggest to the Court that the Court could do or  
10 order that would help you in your relationship with Sean and  
11 in co-parenting Sasha?

12 A I believe, I'll be honest with you, I went to  
13 Margaret Pickard class and she mentioned parallel parenting.  
14 One of the reasons, such a high conflict, that she said the  
15 best way to resolve it is for two years these parents cannot  
16 interact physically on -- on -- with the child. She said the  
17 best way to put these parents in peace --

18 MR. JONES: Objection, hearsay.

19 THE WITNESS: And I really would like this Court  
20 consider that.

21 THE COURT: Okay. Don't tell me what she said, but  
22 tell me what you want. What do you want?

23 THE WITNESS: I would like --

24 THE COURT: Parallel parenting --

1 THE WITNESS: Yes.

2 THE COURT: -- no contact two years?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 THE WITNESS: I would like to be able to do homework  
6 with my son, sit -- because I have masters degree of  
7 accounting analogies (sic), I'm straight A student. My  
8 daughter is doing very well, and I'm actually extremely  
9 pushing her and encouraging her to get college degree and be  
10 somebody in her life. I'm very high standard person. I'm not  
11 just something -- I have very respectful job and I'm working  
12 with very respectful people in this city. I'm dealing with  
13 unions, I control labor costs, when all this (indiscernible)  
14 --

15 BY MR. SMITH:

16 Q Okay, but we're talking about --

17 A And --

18 Q -- what is it that you want the judge to do? So you  
19 talk about parallel parent, you said no physical contact.  
20 What about communicating --

21 A No child exchanges. We -- every time when my  
22 husband -- my ex-husband has this privilege to take Sasha on  
23 my day from school he gets all activities from the school. I  
24 don't know -- Your Honor, I don't know they have barbeque with

1 parents at school, I don't know they have -- I find out about  
2 graduation in school from my son.

3 Q But can't you find all this out from Infinite  
4 Campus?

5 A No. No. I -- the parenting portal, you go to the  
6 portal for each parent they have. I only see Sasha grades.  
7 There is no calender which teacher will put for us, let's say  
8 we have barbecue with parents this day. So when I -- when Dad  
9 gets this package from school they take it, everything out.  
10 The only papers he will share with me is if I need to pay for  
11 something. Nothing else.

12 Q Okay. So one of the things, you wanted to make sure  
13 there was a method to make sure that you were being informed  
14 about Sasha's school events.

15 A I wanted -- I -- I changed my work schedule so I can  
16 actually sit with my son, do homework, and have this quality  
17 time with my son. I got the job which allows me to do. And  
18 today, I was told I have to wait until 5:30 on my day to do  
19 homework with my own son.

20 Q Was there anything that suggested to you that --  
21 well in your -- let's go back to the agreement that was  
22 entered and the order that was entered. Did you --

23 THE COURT: Counsel, I'm sorry, is there anything  
24 else that she wants?



1 MR. SMITH: Anything else --

2 THE COURT: Now is the time to tell me.

3 THE WITNESS: Your Honor, I want -- I mean, the best  
4 solution would be one week off, one week on. And Sasha's  
5 seven years old in couple weeks. I want be able to do  
6 homework with my son, I want us agree on one sport. If it's  
7 baseball I will buy equipment on my days and I don't mind.  
8 But if I have my sport, at least want him to acknowledge that.  
9 And also participate, because it cannot be just one way.  
10 Sasha is in baseball because I realize if I will not agree to  
11 his sport Sasha will be nowhere, he will not participate in  
12 any sport. Because I can do same as him, be stubborn, say no,  
13 not, and that's it.

14 THE COURT: Okay. Anything else? Agree on one  
15 sport?

16 THE WITNESS: I would like the insurance for Sasha  
17 because if something happens, if his insurance is better than  
18 mine then let's make his insurance primary, mine secondary.

19 THE COURT: Okay. Anything else?

20 THE WITNESS: I want us have Family Wizard so he  
21 cannot harass me with his messages on daily basis, accusing  
22 me. I want Court to see who is really co-parenting, who's  
23 not. I want everything to be documented in the court.

24 THE COURT: Anything else?

1 THE WITNESS: Your Honor, if Sean wants to call  
2 Sasha -- we have FaceTime. We just -- this conflict came to  
3 the point where I don't call him, he doesn't call me. So  
4 we're both not call each other homes. To your records I have  
5 no problem. If he wants to talk to my son, he can call him,  
6 so he knows and do not claim that I have prohibited that.

7 THE COURT: Okay. Thank you. I just wanted to make  
8 sure we got it all.

9 MR. SMITH: All right.

10 BY MR. SMITH:

11 Q So before -- let me just go back to this idea that  
12 you said that you wanted to have Wednesdays -- or excuse me,  
13 Mondays and Tuesdays in the afternoon at 3:00 when you get  
14 off, right? That was the --

15 A The original pleadings, (indiscernible).

16 Q So when you -- you started doing that you said in  
17 August, correct?

18 A Yes.

19 Q Was there any communication that you received from  
20 Sean or his representative that suggested to you that they  
21 understood that there was an agreement that if you stopped  
22 working during that period of time --

23 A No.

24 Q Let me show you what's Exhibit (indiscernible). Do

1 you recognize that document?

2 A If we --

3 Q Do you recognize that document?

4 A Yes, I do recognize, yes.

5 Q Where did you come by that document?

6 A That was when I decided --

7 Q How did you get it? How did you -- what is -- how

8 did you come by that document? How did you get it?

9 A My -- Michael Balabon forward me this email.

10 Q Okay. And what is it?

11 A I changed my work schedule --

12 Q What is the document?

13 A It's email.

14 Q Okay. And it's an email from whom?

15 A Between John Jones and Michael Balabon.

16 Q And what was the subject matter of that email?

17 A It was --

18 MR. JONES: Objection, Your Honor. It's not in

19 evidence --

20 THE WITNESS: It was about --

21 THE COURT: Hold on, hold on.

22 MR. JONES: She can't read from the document.

23 THE COURT: Hold on. Counsel, is this settlement

24 negotiations?

1 THE WITNESS: No, it's not.  
2 THE COURT: No, stop. Hold on.  
3 MR. JONES: It actually is.  
4 MR. SMITH: First of all --  
5 MR. JONES: Says do I need to file a motion, is my  
6 email.  
7 MR. SMITH: No, the --  
8 MR. JONES: And we -- and if you're gonna do the  
9 exchange --  
10 MR. SMITH: No.  
11 MR. JONES: If you're gonna go into one single email  
12 you need all the exchanges leading up to it.  
13 THE WITNESS: Well --  
14 THE COURT: Hold on, hold on. I don't want you to  
15 talk right now. Just wait.  
16 MR. SMITH: No, and first of all --  
17 THE COURT: It's not settlement?  
18 MR. SMITH: -- even if it was a settlement  
19 negotiation it would be useful for the purpose I'm using it  
20 for, but more important it did not address the agreement that  
21 had already been -- that Mr. Jones was threatening to file a  
22 motion for. That agreement was a document he provided to Mr.  
23 Balabon. It was a document that changed the original  
24 statement of Plaintiff and Defendant because that was done

1 erroneously the first time. Mr. Jones asked that it be  
2 corrected, he sent a document to Mr. Balabon.

3 The conversation after that had nothing to do with  
4 settlement; it had to do with Mr. Balabon saying, hey, she is  
5 now not working and Mr. Jones acknowledging that if she's not  
6 working the schedule would have to change --

7 MR. JONES: Then, Judge, you're going to need to  
8 swear me as a witness so I can explain the whole thing.

9 THE COURT: Hold on. Hold on.

10 MR. JONES: I mean, that's why you don't bring  
11 lawyer letters and emails into evidence.

12 THE WITNESS: Your Honor, can we put minutes --

13 THE COURT: No, no, no. No, no, no. Just wait one  
14 second.

15 I'm not -- first, I'm not sure that even if the  
16 email says as it does and Mr. Jones acknowledges in the email  
17 then it would go -- then the visitation schedule would revert  
18 back to something else. I'm not sure that that's dispositive  
19 on the issue. What Mr. Jones thought or thinks or thought at  
20 that time --

21 MR. SMITH: There is an ambig --

22 THE COURT: -- I don't know that I --

23 MR. SMITH: There's an ambiguity in the way that  
24 that agreement was interpreted.

1 THE COURT: And there certainly is. And I under --  
2 and from all of the testimony and information we're getting,  
3 everybody thinks that was done for another reason, and I will  
4 have to make that determination. But I don't want to know  
5 what the lawyers thought about that and how the lawyers spoke  
6 about that outside of the courtroom.

7 MR. SMITH: Judge, the only way that you could  
8 determine what the intent of the agreement was is by accepting  
9 parole evidence. If you're not accepting any parole evidence --

10 THE COURT: No, no. Well, and I --

11 MR. JONES: It's not an agreement, it's an order.

12 THE WITNESS: (Indiscernible).

13 MR. JONES: There's no such thing as parole evidence  
14 on an order.

15 THE WITNESS: (indiscernible, cross-talk) --

16 MR. SMITH: It is a stipulated agreement.  
17 Stipulated agreements under *Grisham* are determined by the  
18 provision of contract law. Here, from the get-go, there was a  
19 misunderstanding as to the effect of that agreement. Let me  
20 note, if the Court looks at the record upon which that  
21 stipulation was read into the record, Mr. Jones said because  
22 Ms. Abid is working we're going to agree that she will pick up  
23 the child at 5:30, and then he acknowledges that later. I  
24 think that those two acknowledgments are acknowledgment of the

1 interpretation of the agreement that was alleged by Mrs. Abid.

2 MR. JONES: And I can tell you, as a matter of fact,  
3 that if it was ever represented that Mom within months of the  
4 order being finalized was going to go and change her schedule  
5 on purpose that wouldn't have been any discussion. I mean,  
6 this isn't her schedule changed from these days to these days  
7 because her employer said so. She made a deal upon which my  
8 client got, you know, the benefit of his bargain -- if we're  
9 gonna talk about contracts -- and she immediately went about  
10 taking away what he bargained for.

11 MR. SMITH: The question is what was the bargain?  
12 The bargain was --

13 THE COURT: Well, and certain --

14 MR. JONES: But he got the extra time to work with  
15 his son.

16 THE COURT: Here's my -- here's my concern, Counsel,  
17 is that --

18 THE WITNESS: It's about my son.

19 THE COURT: Hold -- okay. Please stop talking. My  
20 concern is that if these were settlement negotiations made by  
21 the parties that there were many things outstanding at that  
22 time, there were many considerations and that four individuals  
23 went in the back room and made a deal, that deal was based on  
24 a lot of things. I mean, we've heard some from her today and

1 other things and other concerns. If that deal blows up and I  
2 start taking in additional things, now we'll be here for days.

3 MR. SMITH: Okay, look. I'm -- it's --

4 THE COURT: So my concern is that then we will hear  
5 many of those issues. I don't want to open the door to hear  
6 -- because this is a complicated settlement that settled many  
7 things, and it wasn't just about those days.

8 MR. SMITH: All right. So --

9 THE COURT: So I'm not going to allow it.

10 BY MR. SMITH:

11 Q In regard to the -- you indicated that you wanted  
12 communication through Family Wizard, correct?

13 A Yes.

14 Q You would agree that neither of you should disparage  
15 each other, correct?

16 A Absolutely agree.

17 Q You would agree -- well, you prepared a proposed  
18 behavioral order.

19 A Yes.

20 Q Okay. I want to go through the provisions of that  
21 order and tell me if this is what you would like the Court to  
22 -- to order.

23 THE COURT: Mr. Jones, would you stipulate to a  
24 behavior order?



1 MR. SMITH: He already has --  
2 MR. JONES: I haven't had an opportunity to review  
3 it, Judge.  
4 THE COURT: My standard behavior order?  
5 MR. JONES: Judge, there's never a problem with, you  
6 know, what the Court feels is appropriate. Certainly not a  
7 Band-Aid to the situation at this point, but --  
8 THE COURT: No, no, but --  
9 MR. SMITH: I haven't seen the Court's standard  
10 behavior order. It may be similar to mine because -- well,  
11 this behavior order --  
12 THE COURT: Well, I think that a behavior order is  
13 appropriate in this case --  
14 MR. SMITH: Okay.  
15 THE COURT: -- that it be a mutual behavior order  
16 and -- to the, you know, time that it (indiscernible, cross-  
17 talk) --  
18 MR. SMITH: This will take two minutes to go  
19 through, because I think we'll all agree.  
20 THE COURT: Okay, go ahead.  
21 MR. JONES: Well --  
22 BY MR. SMITH:  
23 Q The -- you would agree that -- you've asked that  
24 your communication be limited through Family Wizard except for

1 an emergency involving the child, correct?

2 A Yes. Yes.

3 Q You would agree that no name-calling, foul language,  
4 or abusive telephone calls apart of any communication?

5 A Absolutely.

6 Q Would you agree that neither party should disparage  
7 each other or any other family members to the child?

8 A Agree (indiscernible).

9 Q You believe that there should -- there should not be  
10 any conflict, arguments, or disputes with the other parent's  
11 significant other?

12 A Yes.

13 Q Would you agree that you should not engage in any  
14 harassing behavior at the other's place of employment and not  
15 come to that place of employment?

16 A Yes.

17 Q Do you agree that you shouldn't criticize the other  
18 parent to relatives and friends and advise the relatives and  
19 friends not to disparage or criticize or harass the other  
20 parent around Sasha?

21 A Yes.

22 Q That you shouldn't engage in any behavior that's  
23 designed to harass or annoy the other party; would you agree  
24 to that?

1           A     Yes.

2           Q     That would include stalking, excessive phone calls  
3 or messages or texts.

4           A     Yes.

5           Q     You shall -- neither of you should commit acts of  
6 violence or threaten to commit acts of violence against each  
7 other, correct?

8           A     Correct.

9           Q     You would agree that all custody and exchange vis --  
10 exchanges, which assuming from your testimony you don't want  
11 th exchanges to happen at each other's homes?

12          A     I don't want --

13          Q     You want to do it through school, after school?

14          A     I want to drop my son in school, pick him up from  
15 school.

16          Q     You would agree that neither party shall interrogate  
17 the child in regard to other activities in the home, in the  
18 other parent's home? Let me ask you about that because Judge  
19 -- or Dr. Holland had testified that she thought it was  
20 important that the child be able to speak of things that  
21 happened in the other home to the other parent.

22          A     I --

23          Q     Do you disagree with that?

24          A     I encourage Sasha. I said tell Daddy we went to,

1 you know, it was the -- his friend and play in this park, or  
2 we went to this place. We went to park and you were rolling  
3 with your scooter. I encourage him to tell him about our fun  
4 things, absolutely.

5 Q Okay. But this is a good time to talk about Call of  
6 Duty.

7 A Yes.

8 Q You brought -- you bought that game.

9 A Yes.

10 Q Did you tell Sasha not to tell his dad that he was  
11 playing that game?

12 A You know, when he -- when the recordings was going  
13 on and --

14 Q I don't want to talk about the recordings.

15 A Yeah.

16 Q I'm just asking you, did you tell him that?

17 A When -- when he starts crying, like, please, can I  
18 play? I said, no, you're not going to play today. Can I play  
19 -- can I, Mom, please? He's crying. Said you will play  
20 sometimes. And then I said, just without even thinking, you  
21 know, just don't tell Daddy so he won't get upset.

22 Q Do you think that's appropriate? Do you think it's  
23 appropriate to keep secrets from the other parent about things  
24 that are going on in your household?

1           A     When I heard Ms. Holland and Margaret Pickard, it  
2 was not said in this consent (sic), like keep secrets. It was  
3 not really like -- I did not mean like to -- let's have a  
4 secret with each other and not telling Dad. I just said it  
5 because my son was crying and I just, like, don't just tell  
6 Daddy. And it was not really like --

7           Q     So tell me this.

8           A     Yeah.

9           Q     Do you believe that's a good practice?

10          A     No. No.

11          Q     Do you believe telling any kind of -- saying, look,  
12 we got a secret, don't -- it's our little secret --

13          A     No. No. And I would like to have -- I would like  
14 my son freely tell me if he needs to tell me something about  
15 his dad's house.

16          Q     In regard to Call of Duty, when you purchased the  
17 game did you understand what rating systems were on --

18          A     No, I did not.

19          Q     Okay.

20          A     I --

21          Q     Were you -- had you ever bought a video game in your  
22 lifetime?

23          A     We never have Xbox, I never have a son in my life  
24 before Sasha. So when we got the game, my daughter, who is

1 15, she said, Mom, come here so you don't lie (sic) at me --  
2 you don't yell at me later, here is a parental control. So,  
3 look, I'm going to restrict the blood, the bad language, the  
4 violence, the -- so she's showing me. I restricted everything  
5 so you do not go back at me that I'm this bad guy. And I was  
6 like, wow.

7 Q Did you watch the game played with those  
8 restrictions?

9 A I did. I -- I saw the game.

10 Q In your view did you think it was something that  
11 would damage Sasha by playing with his sister in that game?

12 A I --

13 Q In that method.

14 A I mean, I saw things which we see on the TV, but  
15 there was green blood, it was not like red blood, I saw that  
16 it was six people teamed together, they running, they  
17 communicating, they planning, and it wasn't like somebody die  
18 and it's like a treasure. It's just like a competition, who  
19 is fastest, who is -- who plans, who is communicating with  
20 team members.

21 Q When you die in that game you immediately get back  
22 up, correct?

23 A Say it again?

24 Q You're resurrected immediately, correct?

1           A     I mean, we all were fascinated.

2           Q     Do you know?

3                 MR. JONES:   Respawn.

4  BY MR. SMITH:

5           Q     Respawn.   You respawn immediate --

6                 MR. JONES:   Not immediate.

7  BY MR. SMITH:

8           Q     In other words, even when you're shot -- well, okay.

9  Within a brief period --

10          A     Yeah, you -- you don't even die.

11          Q     -- like 10 seconds later you're back up --

12          A     No, you -- no, like immediately.   You don't even

13 feel like you died or you kill someone.

14          Q     Does Sasha -- what about the idea of playing with

15 guns, is -- do you think that's appropriate?

16          A     Well, Dad bought him a AK, whatever it was, for his

17 birthday, and it's actually in my house and it's on the

18 pictures --

19          Q     But that's a NERF gun.

20          A     No, the NERF gun was by -- bought by me, so he has

21 two guns in the house.

22          Q     Show me the picture that you're referring to.

23          A     They are in exhibits.   I know for a fact I put them

24 there.

1 (COUNSEL AND DEFENDANT CONFER BRIEFLY)  
2 BY MR. SMITH:  
3 Q Okay. While we're at it, do you recognize the  
4 pictures that are in Exhibit J?  
5 A Yes.  
6 Q Did you take those pictures?  
7 A Yes.  
8 Q Do the pictures depict an accurate representation of  
9 what's contained in the photographs?  
10 A The picture from his room is not here --  
11 Q Do the pictures contain an accurate --  
12 A Yes.  
13 Q -- representation of what --  
14 A Yes.  
15 Q Have they been altered in any manner?  
16 A No. This is my house, yeah.  
17 Q Okay. Have the pictures been altered in any manner?  
18 A No. No. No.  
19 Q Okay.  
20 MR. SMITH: Move for the admission of Exhibit J,  
21 Your Honor.  
22 MR. JONES: No objection.  
23 THE COURT: They'll be admitted.  
24 (DEFENDANT'S EXHIBIT J ADMITTED)



1 BY MR. SMITH:

2 Q Okay. On the -- show me the gun that you were  
3 referring to, if it's in these pictures.

4 A I have four pages. There's only three here.

5 Q Okay.

6 A So I don't have it.

7 Q So in regard to you're saying that there was some  
8 sort of gun that was purchased by Sean for Sasha to play with?

9 A Yes.

10 Q And did he play with that gun?

11 A Yes.

12 Q Did he play with his friends?

13 A Yes.

14 Q Did they make, like most kids do, depictions of  
15 dying and being shot and so forth?

16 A They running like boys. They just -- yeah. It's  
17 just boy thing.

18 Q When Sean told you that this was -- he sent you some  
19 material that said, look, this is a bad thing, don't have him  
20 play this game, why didn't you stop at that time?

21 A You know, I felt like it was just another argument  
22 Sean raised. But because I knew Sasha was playing with Riley  
23 and because I knew the parental control was implemented so I  
24 -- I thought, okay, I took my precautions.

1           And the other thing which really messed me up, I  
2 went to the toy store and there is a Call of Duty toy line,  
3 you know, like you can go to Legoland and you can see the Call  
4 of Duty new toys, in Toys R Us, Target. So for me, okay then,  
5 now they have this game for the kids, and I did not really  
6 make sure that it's -- this is the case. So when I saw the  
7 parenting control, okay, there is a parenting control, there  
8 is no blood work, not bad language, not violence. Because I  
9 ask IT guys at my work and I hear people who playing this  
10 game, and they explain to me, Lyuda --

11           MR. JONES: Objection, Your Honor, hearsay.

12           THE WITNESS: The M rated star --

13           MR. JONES: Hearsay.

14           THE WITNESS: It's not hearsay.

15           THE COURT: Hold on.

16           MR. SMITH: (Laughter) (indiscernible, cross-talk) -

17 -

18           THE COURT: Okay. You know what? This -- you two  
19 get -- are a lot alike.

20           THE WITNESS: Sorry.

21           THE COURT: Lawyers make objections. That's why you  
22 pay them. All right.

23           MR. SMITH: Your Honor, the -- I think this -- I  
24 don't -- I think she's answered the question, to be perfectly

1 honest and so --

2 THE COURT: Next question.

3 MR. SMITH: -- let me go to the next question.

4 BY MR. SMITH:

5 Q The -- in regard to once you received Dr. Holland's  
6 report, though, the testimony is that you took the Xbox out of  
7 your house.

8 A Yes, Xbox is no longer.

9 Q Why did you do that?

10 A I -- the first thing I opened the reviews, even the  
11 parents says nine years okay and many parents too say it's  
12 okay. When read your report that she believes this can cause  
13 him being aggressive and this can -- preoccupation with the  
14 games can distract him from maybe socializing in school, I  
15 said -- (indiscernible) my daughter needs to be in college and  
16 I need to really -- I cannot take those chances.

17 Q Okay. So you haven't re-hooked up the game,  
18 correct?

19 A No.

20 Q And he doesn't play it any time?

21 A Never. Ever since.

22 Q Is it your intent to allow him to play video games  
23 in the future?

24 A No. It's going to be -- I don't think so.

1 Q Okay. But you'll make that decision when you come  
2 to it, like when he's older.

3 A He has iPod, some children apps. But, no, Xbox is  
4 like, I'm done with this game.

5 Q In regard to the game itself in terms of how long he  
6 played, the allegation has been that he had no restrictions on  
7 time --

8 A Uh-huh.

9 Q -- in your home in regard to the play of the game;  
10 is that true?

11 A This is not true and I want to explain to Judge.  
12 When -- the game was purchased on Christmas, December 24th.  
13 The weekend when Sasha actually touched the game second time  
14 -- and the game is very -- not easy. When you just touch the  
15 game the remote is very difficult to operate. So the --  
16 January 17 and 18, if you pull the forecast, it was rain, it  
17 was cold. We couldn't go to the park, and they were stuck in  
18 the house. That's the only one time when Sasha actually tried  
19 to play this game and he saw this game second time. Because  
20 if you look at the -- December 24th and look at the schedule,  
21 the weeks when he was with Dad and me, it was really his  
22 second time touching this game. And when Sasha was enrolled  
23 in baseball and on my days, every Monday, every Tuesday, he  
24 did not play the game at all.

1 Q But that's like -- you said that he also played with  
2 Riley, however.

3 A Yes. That Riley --

4 Q Do you know how often he played --

5 MR. JONES: Objection, foundation.

6 MR. SMITH: I'm getting there.

7 THE WITNESS: I just told -- right now my son  
8 came --

9 THE COURT: Hold on, hold on, hold on.

10 BY MR. SMITH:

11 Q I'm asking you those questions --

12 MR. SMITH: I'll ask the foundational questions,  
13 Your Honor.

14 BY MR. SMITH:

15 Q Who is Riley?

16 A Riley is the son of Sean's friend, a friend, Greg  
17 Kadickaly (ph) and Angie Kadickaly. They are both teachers in  
18 Clark County School District. She's a chemistry teacher, and  
19 Greg, he's working for -- training of teachers.

20 Q To your knowledge do they have an Xbox in their  
21 home?

22 A They have a Station 4 --

23 MR. JONES: Objection, foundation --

24 THE WITNESS: They have --

1 THE COURT: Hold on, hold on.

2 MR. JONES: -- as to the basis and the knowledge.

3 BY MR. SMITH:

4 Q Have you been in their home?

5 A Long time ago.

6 Q Okay. Did they have an Xbox at that time?

7 A They are gamers. They have a station game which you  
8 have in the -- you know, like --

9 MR. JONES: Objection, non-responsive.

10 THE WITNESS: -- Chuck E. Cheese, they have all  
11 those --

12 THE COURT: Hold on, hold on.

13 BY MR. SMITH:

14 Q Did they have an Xbox at that time? Did they have  
15 games, video games in their home at the time?

16 A Yes. Yes.

17 Q And how old is their son?

18 A They have a girl who is one year younger than Sasha,  
19 her name is Chloe, and they have Riley who is two years older  
20 than Sasha. He is eight.

21 Q And you heard Dr. --

22 A Holland.

23 Q -- Holland's testimony that Sasha had indicated he  
24 played Call of Duty with Riley --

1           A     Yes, (indiscernible, cross-talk) --  
2           MR. JONES:  Objection, that was not her testimony.  
3           MR. SMITH:  That was her testimony.  
4           MR. JONES:  It was a discussion for what was in her  
5 notes.  She did not say that Sasha said that to her.  
6           THE COURT:  All right, so --  
7           MR. SMITH:  The record will stand for itself, Your  
8 Honor, but I'm confident she did say that he said he played  
9 with Riley.  
10          THE COURT:  I'll review it.  Okay.  
11       BY MR. SMITH:  
12          Q     In regard to the -- all right.  In your  
13 communications with Sean about this issue, you reference that  
14 he has played this game with Riley.  
15          A     Yes.  
16          Q     And you let Sasha -- or you let Sean know that?  
17          A     Yes, and the response was arrogant, never it was  
18 happening in Greg house.  It was just lie, as usually.  
19          Q     All right.  In regard to the -- in regard to the --  
20 there was an allegation in this case that you were essentially  
21 told by Ricky to testify in a particular way in this case.  Do  
22 you recall that?  
23          A     Yes.  
24          Q     Did Ricky tell you that you should testify in a

**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 16**

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bb. Defendant's Errata to Motion In Limine to Exclude Recording Surreptitiously Obtained Outside the Courtroom on November 18, 2015, Sanctions and		

Attorney's Fees	01-04-16	0543-0545
cc. Finding of Facts and Conclusions of Law and Decision	01-05-16	1528-1538
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ff. Transcript of 03-18-15 Hearing	03-18-15	1507-1580
gg. Transcript of 06-25-15 Hearing	06-25-15	1581-1616
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oo. Transcript of 01-25-16 Hearing, vol I	01-25-16	1221-1323
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1 TRANS

2 COPY

3  
4 EIGHTH JUDICIAL DISTRICT COURT  
5 FAMILY DIVISION  
6 CLARK COUNTY, NEVADA

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

13 BEFORE THE HONORABLE LINDA MARQUIS  
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: NON-JURY TRIAL

16 MONDAY, JANUARY 25, 2016

17 APPEARANCES:

18 The Petitioner: SEAN R. ABID  
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1 LAS VEGAS, NEVADA

MONDAY, JANUARY 25, 2016

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

3 (THE PROCEEDINGS BEGAN AT 9:22:31)

4

5 THE COURT: All right. This is the matter of Abid  
6 vs. Abid, D-10-424830-Z. The parties are present. Counsel,  
7 your appearances for the record.

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

10 MR. SMITH: Radford Smith, 2791, on behalf of the  
11 Defendant, Lyudmyla --

12 THE COURT: Good morning.

13 THE DEFENDANT: Pyankovskaya.

14 MR. SMITH: -- Pyankovskaya, who is to my left, Your  
15 Honor.

16 THE COURT: Thank you, good morning. Mr. Jones  
17 asked prev -- prior to us going on the record if the clerk or  
18 I had a copy of the June 5th or June 22nd letters from the  
19 expert in this matter. My general practice is that those  
20 items, if they are sent to me, are left-hand side filed or  
21 confidential filed into Odyssey prior to me even receiving a  
22 copy of them.

23 At the June 25, 2015 hearing, I certainly referenced  
24 those and we discussed those. Looks like those were not left-



1 hand side filed into the case and I don't see them being made  
2 part of the record through Court's exhibit during that  
3 hearing. So that's the status of the information that I have.

4 MR. SMITH: And as I referenced, Your Honor, we had  
5 -- we had leveled and continue to level an objection to the  
6 admission of the report. That doesn't necessarily exclude Dr.  
7 Holland from testifying.

8 THE COURT: Sure.

9 MR. SMITH: In fact, the data upon which her report  
10 is based is in part unrelated. She didn't -- she didn't opine  
11 on the sort of veracity of the tape or the admission of the  
12 tape. But let me just note that, and I'll voir dire if  
13 necessary, but it's inconceivable that illegally obtained  
14 taped material that's been altered would be a commonly used  
15 evidence for the purpose of determining child custody or if  
16 we're interviewing a child. I can't imagine Dr. Holland's  
17 going to say that it is, and it -- since the Court has already  
18 excluded -- Court acted that -- found that he did not act, Mr.  
19 Abid did not act, in good faith in securing the taped  
20 conversations.

21 In light of the fact that it was obviously  
22 admittedly altered by Mr. Abid, and we don't know in which way  
23 because we don't have the software, we don't have the original  
24 tape, et cetera, we just don't know. Mr. Abid has said he

1 didn't tape it, but as the Court found in other types of  
2 testimony it wasn't credible and he didn't act in good faith.  
3 I think it would just be a mistake for us to have gone through  
4 -- I mean the bulk of this case has been in regard to the  
5 admission of that tape, the tape is not admitted, and somehow  
6 feel that it can be admitted.

7           The Court's citation in its order is in a case  
8 that's just inapposite to this. It has no relation. The fact  
9 that a expert can use even hearsay information or non-  
10 admissible material is not the same as allowing the admission  
11 of material that's been explicitly excluded from evidence into  
12 evidence. That is a very different proposition, and that was  
13 not what was addressed by the case that was cited by the  
14 Court.

15           In fact, there is no case that I could find anywhere  
16 that suggests that an expert can utilize specifically excluded  
17 information for the purpose of forming a report. I -- The  
18 notion would be similar to police exacting an inadmissible  
19 confession, yet allowing that confession to be referenced by  
20 an expert in the trial. The analogies (sic) is the same. It  
21 wouldn't be true in either the civil or criminal context, so  
22 we would ask that the report not be admitted because the  
23 report not only references the tape, and it provides the  
24 transcript I think that was provided by Mr. Abid.

1           Let me also note that we think that the testimony  
2 has been tainted by the tape, the admission or the review by  
3 the -- Dr. Holland of that material, and we believe that  
4 should be a basis for excluding the testimony, but that can  
5 only be determined upon cross-examination of --

6           THE COURT: And I appreciate that -- you making that  
7 record and letting me know kind of where you're heading. I  
8 think many of these things, including whether or not you're  
9 going to seek admission of the report, may be too early to  
10 assume.

11           So I'm going to allow her to testify. Whether or  
12 not you seek admission of the report, I don't know, and then  
13 there'll be the appropriate objection and arguments at that  
14 point, so.

15           MR. JONES: Well, and, Judge, I guess my question  
16 and concern is this was ruled upon by Your Honor. There are  
17 remedies available to the Defendant. I guess this is an oral  
18 motion for reconsideration, which doesn't provide us any due  
19 process or ability to be prepared.

20           However, I will point out, particular to some of the  
21 comments made, that the case authority submitted in the most  
22 recent brief that deal with a video and audiotape being taken  
23 on a daily basis by someone and being -- the parts in between  
24 that weren't relevant being deleted by the person taking the

1 video and the video is still being admitted into evidence, you  
2 know, it cuts against this entire concept that he's arguing  
3 that this can't possibly be used in court.

4           Now, I understand the Court's ruling with regard to  
5 hearing the tapes directly yourself. I don't obviously  
6 necessarily agree with that; however, the rule is really clear  
7 that if it's something upon which experts routinely rely, and  
8 I have -- I'm sure Mr. Smith has had many, many custody  
9 evaluations and forensic interviews where GPS data from an  
10 illegally dropped GPS on a car is provided to a shrink. Audio  
11 videotape, improperly recorded telephone calls, these are  
12 commonplace in custody evaluations, because the expert is  
13 expected to take everything in, assimilate it, and make a  
14 recommendation or offer an opinion regarding the best interest  
15 of the child.

16           That's another reason why we're talking about the  
17 fact that an expert -- if you were going to expand the rule,  
18 which you don't even need to, it would certainly be more  
19 expanded rather than contracted as it pertains to child  
20 custody matters. But, once again, my initial response is  
21 you've ruled, we're here today to hear from Dr. Holland, I  
22 intend to move the reports into evidence. I guess we just  
23 need to have the copies, I guess.

24           THE COURT: All right. Let's call her. Bring her

1 in.

2 MR. JONES: Do you --

3 THE COURT: I don't think I have the copies. When I  
4 do, if they're searching upstairs -- do you want to have Dr.  
5 Holland send them over -- office send them over again? That's  
6 all -- perhaps she has a copy with her that's clean.

7 MR. SMITH: She typically does bring a copy of her  
8 exhibit.

9 THE COURT: Do you want to ask her, Mr. Jones?

10 MR. JONES: Yes.

11 THE COURT: We can take a quick break.

12 MR. SMITH: I'll ask her.

13 MR. JONES: I can have my assistant -- because the  
14 ones that were scanned into my system are clean.

15 THE COURT: Okay.

16 MR. JONES: It's just --

17 THE COURT: It's just --

18 MR. JONES: -- the hard copy I wrote on so I can't  
19 have it copied.

20 THE COURT: Mr. Smith is asking her. She may just  
21 have one with her.

22 MR. SMITH: So I've asked Dr. Holland to have -- she  
23 doesn't have a clean copy of the report or the letter but I've  
24 asked her to email a copy to Your Honor.

1 THE COURT: Wonderful. Let's take a five minute  
2 break. As soon as I receive a copy of that we'll come back on  
3 the record.

4 MR. JONES: I'm having Cheryl, my assistant, do it  
5 as well because I think the copies that were scanned are  
6 clean.

7 THE COURT: All right. Thank you so much.

8 MR. SMITH: Thank you.

9 (COURT RECESSED AT 9:34:13 AND RESUMED AT 9:45:09)

10 THE COURT: We're back on the record in the Abid  
11 matter. We have the documents from Dr. Holland. Counsel, are  
12 you going to call Dr. Holland?

13 MR. JONES: I am, Your Honor. Are you planning to  
14 refer to them as Court's 1 and 2 or should they --

15 THE COURT: That's your preference. We can do that.

16 MR. SMITH: That's fine with me.

17 THE COURT: All right. Then let's do that.

18 MR. SMITH: Not fine in the sense that they're  
19 admissible; fine in the sense that that they'll be identified  
20 in --

21 THE COURT: As of how we will reference them.

22 MR. SMITH: -- that particular matter. Thank you,  
23 Your Honor.

24 THE CLERK: So we're going to do Court's Exhibit 1

1 as the letter, and 2 as the --  
2 MR. JONES: Report.  
3 THE CLERK: -- report.  
4 THE COURT: Chronological order.  
5 MR. JONES: I don't think this letter on top is  
6 needed.  
7 THE CLERK: Okay. So then we're just going to do --  
8 MR. JONES: I'm, sorry, you okay with that?  
9 THE CLERK: Court's Exhibit 1?  
10 MR. JONES: Well the letter of June 5 is longer.  
11 It's about --  
12 THE CLERK: Okay, that I don't --  
13 MR. JONES: -- five pages long, three pages long.  
14 THE CLERK: I think we have the wrong letter, Judge.  
15 THE COURT: Great. Do we have the report?  
16 THE CLERK: (Indiscernible, cross-talk) dated June  
17 5th and this one is dated --  
18 THE COURT: All right. Can we start while we wait  
19 for the letter dated June 5th?  
20 MR. JONES: Sure. And I believe my assistant  
21 (indiscernible).  
22 (CLERK AND COUNSEL CONFER BRIEFLY)  
23 THE COURT: Good morning.  
24 THE WITNESS: Good morning.

1 THE COURT: Raise your right hand to be sworn.

2 THE CLERK: You do solemnly swear the testimony you  
3 are about to give in this action shall be the truth, the  
4 whole, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 STEPHANIE HOLLAND  
7 called as a witness on behalf of the Plaintiff and being first  
8 duly sworn, testified as follows on:

9 DIRECT EXAMINATION

10 THE COURT: Have a seat. State and spell your name  
11 for the record.

12 THE WITNESS: Stephanie Holland, H-o-l-l-a-n-d.

13 THE COURT: Thank you so much. Counsel, go ahead.

14 BY MR. JONES:

15 Q Dr. Holland, how long have you been on the court  
16 approved list for outsource providers?

17 A Since 1999.

18 Q In that time, can you estimate how many child  
19 interviews you've done for family court?

20 A Probably between 75 and a hundred.

21 Q And have you been qualified as an expert in Family  
22 Court previous to today?

23 A I have.

24 MR. JONES: Do you need me to cover credentials?



1 MR. SMITH: (Indiscernible).  
2 MR. JONES: No?  
3 MR. SMITH: Your Honor, we'll stipulate to Dr.  
4 Holland as qualified to conduct the child interview where the  
5 Court has directed at this time.  
6 THE COURT: Thank you.  
7 BY MR. JONES:  
8 Q Now in the custody evaluations and interviews you've  
9 done in the past, you receive any number of documents and  
10 evidence that parents bring to you for the purposes of your  
11 evaluation; is that fair to say?  
12 A Correct.  
13 Q You receive audio recordings, you receive video  
14 recordings. Have you ever relied on those in previous  
15 evaluations?  
16 A I have.  
17 Q Private investigator reports?  
18 A Yes. I tell parents anything and everything they  
19 think that will be helpful for me to review and consider.  
20 Q Recorded phone conversations?  
21 A Yes.  
22 Q And you also conduct collateral interviews of third  
23 parties? Is that usually a common occurrence?  
24 A Yes.

1 Q And your reports are oftentimes based upon those  
2 types of witness statements, right?

3 A Correct.

4 Q And you review medical records and the like if it's  
5 appropriate for the case?

6 A Yes.

7 Q Do you ever know when you're performing your court-  
8 appointed tasks whether or not the things that you're relying  
9 upon are admissible in evidence at the time of trial?

10 A No.

11 Q And are those the types of materials that you and  
12 your colleagues routinely rely on when conducting interviews  
13 and evaluations?

14 A Yes.

15 Q How did you come to meet the parties and their son,  
16 Sasha?

17 MR. SMITH: May I voir dire the witness, Your Honor,  
18 on that issue of the use of that type of material as described  
19 by Mr. Jones?

20 THE COURT: Certainly. Go ahead.

21 VOIR DIRE EXAMINATION

22 BY MR. SMITH:

23 Q Dr. Holland, in this case have you been advised  
24 about the disposition of the Court's ruling on the videotape

1 or the admissibility of the -- or excuse me, the audiotape?

2 A I was advised the last time that I was present here  
3 for the hearing that there was disagreement or controversy of  
4 whether or not tapes that I reviewed would be admissible.

5 Q The Court has subs -- I would inform you that the  
6 Court has subsequently ruled that those tapes are not  
7 admissible because they were illegally obtained. The tape  
8 recording of another individual's conversation between two  
9 parties without one of their consent is an illegal act. And  
10 the Court found that --

11 MR. JONES: Objection to the fact that this is not a  
12 question.

13 THE COURT: Counsel?

14 MR. SMITH: It's foundation, Your Honor.

15 MR. JONES: It wasn't even a foundational question.  
16 It was a statement of fact which I believe is absolutely  
17 inaccurate pursuant to the Court's ruling.

18 MR. SMITH: No. The -- I think that that's a --  
19 first of all, that's a statement, not an objection, so let me  
20 rephrase the question.

21 BY MR. SMITH:

22 Q Were you aware that in Nevada if you tape a  
23 conversation between two parties without the consent of one of  
24 those parties that that's an illegal act?

1           A     Yes.

2           Q     The Court has ruled in this case that the tape is  
3 inadmissible because there was no basis that would allow the  
4 taping pursuant to that statute. I want you to understand  
5 that because that's the ruling of the Court.

6           MR. JONES: Objection. The order speaks for itself.  
7 I don't believe that was a ruling --

8           THE COURT: Counsel --

9           MR. SMITH: I can provide the Court's order --

10          THE COURT: Counsel, her -- what -- Doctor, I'm sure  
11 you're a wonderful doctor -- I don't care what she thinks  
12 about my legal decision.

13          MR. SMITH: No, I understand, but Your Honor --

14          THE COURT: And her interpretation of the legal  
15 issues and evidentiary issues are not relevant.

16          MR. SMITH: It's relevant in the sense that she had  
17 in response to the questions made answers that suggest that  
18 she didn't care as to whether or not tapes were illegally  
19 obtained and suggested that those were regularly utilized by  
20 experts in her position to support these reports. And that --

21          THE COURT: And I think that's relevant, so ask  
22 those questions.

23          MR. SMITH: Well, I have to have a foundation that  
24 the -- I -- the tape has not been admitted by any other

1 purpose before I can ask that question.

2 BY MR. SMITH:

3 Q But let me ask that question, Dr. Holland. Is it  
4 common when an expert performing a child custody matter, is it  
5 a regular course of practice that is informed that a piece of  
6 evidence is illegal and has been excluded to utilize that  
7 piece of evidence as part of a report?

8 A That's a complicated question because there's  
9 usually controversy surrounding whether or not it's, quote-  
10 unquote, illegal or illegally obtained.

11 Q Had you been advised when you were first presented  
12 with the tape that it was illegally obtained and there was no  
13 good faith reason to take the tape, would you have reviewed it  
14 and utilized it as part of your report?

15 A It depends.

16 Q What would it depend on?

17 A The information that I was trying to seek in the  
18 evaluation, the content of what was on the tapes reportedly,  
19 and the information that I'm obtaining from both parties about  
20 the manner in which it was obtained.

21 Q So you believe it would be within the standard of  
22 care of your practice after being advised that a tape was  
23 illegally obtained and inadmissible to utilize that tape  
24 depending on its content; is that your testimony?

1           A     Not if I was informed by both -- by either the Court  
2 or by both parties' counsel simultaneously or independently  
3 that there was a mutual agreement by everyone that it was  
4 illegally obtained, then -- then, no, I would -- I would not  
5 consider that information.

6           Q     Let me make sure that we're looking at the same  
7 hypothetical, says --

8           A     Uh-huh.

9           Q     -- that the Court has ordered that the tape is  
10 inadmissible and the Court has ordered that it was illegally  
11 obtained or has suggested that it was illegally obtained  
12 because there's no basis for it to come in otherwise. So, my  
13 hypothetical is if you were presented with that order of the  
14 Court at the time someone presented you this tape, would it be  
15 your testimony that it would be your practice to review the  
16 tape and utilize it as part of your report?

17          A     This is a hypothetical question, not this case,  
18 because that --

19          Q     That's right. Well, it -- I'm asking you  
20 essentially if the Court -- if you had the Court's order that  
21 has already now been issued, at the time before you reviewed  
22 this tape would you have reviewed it and utilized it as part  
23 of your report?

24          A     No.

1 Q Secondly, is it the common practice of experts in  
2 your area who are performing child custody analyses to use  
3 material that had been found to be illegal or inadmissible by  
4 the Court?

5 A No. Again, if directed by the Court that something  
6 has been found to be inadmissible or illegally obtained by the  
7 Court --

8 Q Right.

9 A -- then -- then -- then the answer would be no.

10 Q Right. That wouldn't be a common practice for --

11 A Correct.

12 Q -- for folks in your field. And if you found that a  
13 tape that was provided to you -- let's take the order of the  
14 Court out of the hypothetical. Now you're provided just with  
15 a tape, and you found that tape has been altered in a manner  
16 that is -- since the original tape doesn't exist we can't even  
17 determine how it's been altered, would it be your custom and  
18 habit or the cust -- let's talk about your custom and habit  
19 first. Would it be your custom and habit to utilize that  
20 tape?

21 A I would -- I would tend to use it, but I think more  
22 the question would be the amount of weight given.

23 Q Were you advised at the time that you were provided  
24 the tape in this matter that it had been altered?

1           A     (No audible response)

2           MR. JONES:  Objection, assumes facts not in

3 evidence, Judge.  There is no evidence that the tape was ever

4 altered.

5           MR. SMITH:  He testified --

6           MR. JONES:  Define altered.

7           THE COURT:  So answer the question, if you know, or

8 what you think altered means.

9           THE WITNESS:  Right.  I don't -- I don't -- I don't

10 believe so.  I mean, I don't recall a substantive conversation

11 about the altering of a tape.

12 BY MR. SMITH:

13          Q     Dr. Holland, you have concerns about the credibility

14 of the evidence that's provided to you, correct?

15          A     In this case?

16          Q     In any case.

17          A     In any case.  Certainly.

18          Q     In other words, you -- in fact, one of the

19 disclaimers that you and all other psychologists place in

20 their reports is that if the facts upon which you've relied in

21 this report turn out to be different or turn out to be found

22 by the Court to be different then your conclusions may be

23 different?

24          A     Certainly.



1 Q And that's certainly the case in this case, correct?

2 A As in any case, yes, if the information that I am  
3 presented and gave weight to and considered to come to my  
4 conclusions is not accurate then, yes, that potentially would  
5 change my conclusions.

6 MR. SMITH: Your Honor, based upon the testimony of  
7 Dr. Holland in response to my voir --

8 MR. JONES: Don't I get to continue?

9 MR. SMITH: You may.

10 MR. JONES: I get to follow up his questions, right?

11 THE COURT: Mr. Smith, what -- what's your -- are  
12 you making an oral motion? Go ahead.

13 MR. SMITH: The oral motion would be to exclude the  
14 report because of the references to the illegally obtained and  
15 inadmissible material that was found by this Court to be  
16 preclude -- procured by Mr. Abid in bad faith -- or not in  
17 good faith I suppose -- and that had been altered by Mr. Abid  
18 in a manner we can't determine because we don't have the  
19 original tape, the software that did it, or the manner in  
20 which it was altered. So on those grounds, Your Honor, I  
21 would ask that the report be excluded.

22 And again, as I indicated before, I don't believe  
23 the entirety of Dr. Holland's report was based upon the tape.  
24 I think there are other matters that were addressed that were

1 not on the tape. So I don't have any objection to her  
2 testifying as to those matters.

3 THE COURT: Counsel?

4 MR. JONES: Yes, Your Honor. First of all, deleting  
5 sections of a tape that are not relevant does not mean we  
6 altered the tape. The *Bersoni* (ph) case, that is a Nevada  
7 case, was someone edited audio and video to only include  
8 instances where the animal trainer was beating the animals,  
9 and it was found to be admissible even though the chunks where  
10 he wasn't beating the animals were deleted. I mean, this is  
11 actual controlling case law in this court.

12 More importantly, as it pertains to Dr. Holland, we  
13 came to court and we argued and we briefed long before Mr.  
14 Smith's involvement the issue of whether Dr. Holland could get  
15 the tapes. And you issued an order saying give Dr. Holland  
16 the tapes. I mean, this has now been ruled upon twice by Your  
17 Honor, once when you said give her the tapes, and twice when  
18 you said regardless of whether it's admissible -- I don't care  
19 if it's illegally obtained. I don't care if it came from  
20 aliens as the reason for not being admissible. There is no  
21 distinction in the rule that says illegally obtained versus  
22 legally obtained inadmissible evidence. It's inadmissible  
23 evidence. If it's the type of evidence upon which an expert  
24 routinely relies.

1           She testified that she doesn't ask about the  
2 evidentiary value of doc -- of documents provided. She relies  
3 on hearsay as a matter of course. I couldn't bring in a  
4 witness statement and move it into evidence, but she can rely  
5 on it.

6           THE COURT: Counsel, I'm going to allow it. Dr.  
7 Holland, go ahead.

8           MR. JONES: Thank you.

9           THE COURT: Counsel?

10                         DIRECT EXAMINATION CONTINUED

11 BY MR. JONES:

12           Q     Okay. So, how did you come to meet the parties and  
13 their son, Sasha?

14           A     The Court ordered a child interview of the minor  
15 child, Sasha. My administrative assistant contacted the  
16 parties and obtained consent and interviews were scheduled  
17 with both Mom and Dad prior to seeing Sasha. I saw Sasha a  
18 total of four times, Mom bringing him twice and his father  
19 bringing him twice.

20           Q     And you spoke to both parents?

21           A     I did. I spoke to Mom first and I spoke to Dad  
22 second.

23           Q     Why is it important to talk to both parents?

24           A     I think it's important, although they're not being

1 formally evaluated, I think it's important to get their  
2 historical perspective regarding the concerns, their  
3 perspective of their child's temperament and personality, what  
4 has led up to while -- why they are in court and their  
5 understanding of what my role is and is not.

6 Q And why is it important to interview Sasha more than  
7 once?

8 A Best practice in -- in our training as forensic  
9 clinicians is to see a child more than one time, minimally  
10 twice. And depending upon the ability to establish a rapport  
11 with that child, their own personality characteristics, their  
12 temperament, ability to separate from their parents, age,  
13 sometimes you need to see them additional times, and in this  
14 case I did. Some of the behaviors and observations,  
15 impressions that I made with Sasha were pretty atypical for  
16 his age, and so I felt that it was prudent to see him more  
17 than twice. Whenever I see -- I try to keep things balanced,  
18 and so I wanted Mom and Dad the opportunity to bring him equal  
19 amounts of time, although I saw him individually.

20 Q Now, why is it important that each parent bring the  
21 child to the interview at least once?

22 A Sometimes, not all the time, but sometimes children  
23 will present differently when brought to the office by one  
24 parent. Sometimes there's outside influences that are present

1 that can be observed. Sometimes when children spend time with  
2 one parent prior to coming to talk with me they act  
3 differently, they tell you different things, so -- and  
4 sometimes, sometimes that's not the case, but you want to rule  
5 that out.

6 Q Now, do you have a copy, a clean copy of your report  
7 here? I'm going to hand you that. It's being designated as  
8 Court's Exhibit 1 --

9 THE CLERK: 2. The letter's 1, so this makes --

10 MR. JONES: Oh, the -- do you have the June 5  
11 letter? Okay. That's Court's Exhibit 2, what we'll refer to  
12 it as. Do you have it?

13 THE CLERK: This will be (indiscernible).

14 MR. JONES: Okay.

15 MR. SMITH: And, Your Honor, since we were  
16 discussing this in the context not before he -- before he  
17 moved for the use of the reports, we would renew our  
18 objection. We understand the Court's ruling.

19 THE COURT: Thank you, Counsel.

20 MR. JONES: And to the extent that the Court --  
21 well, let me just go through this.

22 THE COURT: I'll note a continuing objection --

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: -- by the defense --

1 MR. JONES: (Indiscernible) --

2 THE COURT: -- testimony to reference the report,  
3 just so that the record's clear.

4 BY MR. JONES:

5 Q Can I have you take a look at what I've handed you  
6 as Court's Exhibit 2. It's a letter, appears to be on your  
7 letterhead dated June 22nd. Do you see that?

8 A Yes.

9 Q Is this a copy of the report that you submitted to  
10 the Court in response to the outsource evaluation assignment?

11 A I did.

12 Q And looking at the pages, do you believe it to be a  
13 true and correct copy of that report?

14 A Yes.

15 Q And on page 8 at the very top, is that your  
16 signature, 8 of 14?

17 A Yes.

18 MR. JONES: Move to admit Exhibit 2, Your Honor,  
19 Court's Exhibit 2.

20 MR. SMITH: And same objection that we've --

21 THE COURT: It'll be admitted despite defense  
22 counsel's continuing objection.

23 (COURT'S EXHIBIT 2 ADMITTED)

24 BY MR. JONES:

1           Q     Now, with regard to your interview of Mom, which you  
2 discuss beginning on page 2 of your report, in the second full  
3 paragraph you indicate that she told you Dad had been  
4 harassing her and her husband in addition to placing a  
5 recording device. Did she tell you specifically how he was  
6 harassing them?

7           A     No. Not that I recall. Just that it was evident  
8 from what she was telling me that they had a problematic co-  
9 parenting relationship and that she felt harassed and hounded,  
10 my word not hers, by her ex-husband.

11          Q     Now, in the same paragraph she states to you that  
12 Dad was with -- was violating the Court order by refusing to  
13 give her Sasha's passport. Did she show you a court order  
14 that required Dad to give Sasha's passport?

15          A     No.

16          Q     And next she reports that her husband had been  
17 incarcerated due to various felony convictions. Did she tell  
18 you what the nature of the convictions were?

19          A     I don't believe so.

20          Q     Did she tell you that they were drug and firearms  
21 related?

22          A     You know what, I take that back. She did say that  
23 there were some charges related to drug offenses, not to  
24 firearms.

1 Q Now, at some point, and I'll try to direct you to  
2 the paragraph, she referenced that there was prior litigation;  
3 is that right?

4 A Yes.

5 Q And that Dr. Paglini had prepared a report?

6 A Correct.

7 Q And she stated that claims of parental alienation  
8 were reportedly not substantiated. Did you review the Dr.  
9 Paglini report during the course of this evaluation?

10 A I did not.

11 Q Now, turning to page 3 of your report, Mom admits  
12 that she has told Sasha not to tell his father what occurs in  
13 her home; is that right?

14 A Yes.

15 Q Now, is that problematic?

16 A Yes.

17 Q How so?

18 A Children should be able to speak freely from one  
19 home to another home regarding and relating to anything and  
20 everything that they feel comfortable doing so.

21 Q And is that type of direction a form of alienating  
22 behavior?

23 A It can be.

24 Q How so?



1           A     Well, whenever that type of restriction is placed on  
2 a child it causes confusion, it can cause distress, it can  
3 cause -- emotional confusion at best, going back and forth,  
4 not knowing what information can be shared, should be shared.  
5 It creates what's called a loyalty bind for children, and  
6 especially for young children who can't sort that out  
7 themselves, it can be, you know, mildly, moderately,  
8 significantly problematic.

9           Q     Now in the top of page 3, that last paragraph  
10 regarding Mom's interview, you state that she minimized the  
11 statements on the recordings. Do you recall specifically what  
12 she said?

13          A     I do because I was surprised at the lack of  
14 responsibility that she took regarding the comments that were  
15 made and the conversations that ensued on the tapes, really  
16 downplaying that her child was, frankly, in some pretty overt,  
17 and direct distress. And while she acknowledged, you know,  
18 making some inappropriate remarks, didn't seem to have much,  
19 if any, insight into how that would affect her son in any way.

20          Q     Did she show any remorse for having said these  
21 things to her son?

22          A     No, not -- no. No. She -- I think if anything  
23 voiced feeling the same while acknowledging trying to not  
24 share those feelings with Sasha presently.

1 Q Now, she also admitted Sasha played Call of Duty in  
2 -- in her home; is that right?

3 A Yes. She shared that her -- that the homes are  
4 structured differently and that she considers Dad's home to be  
5 more rigid and her home to be more -- not -- permissive was  
6 not her word, but more free flowing, more unstructured, and  
7 that she allowed her children to play video games, to include,  
8 sometimes, she said things like Call of Duty.

9 Q And she specified that he was allowed to play 30  
10 minutes per day; is that right?

11 A Yes.

12 Q Did she mention to you anything about the game being  
13 in paint ball mode during your interview?

14 A Not in -- no. Not initially.

15 Q Now, you interviewed Dad prior to seeing Sasha as  
16 well, right?

17 A Yes.

18 Q What did he report was the reason for the interview?

19 A He had concerns regarding the differences between  
20 the homes, the parenting style and structure, the amount of  
21 exposure that Sasha had to video games that he felt were  
22 inappropriate for his child's age, the lack of parental  
23 involvement and oversight at Mom's house. He was concerned  
24 that Mom was not supportive of his relationship with Sasha and

1 that she was not able to foster a co-parenting relationship as  
2 a result.

3 Q Now, at the bottom of page 3 on your report in  
4 discussing your interview with Sean, it states that Sean  
5 expressed concerns regarding the six week vacation that Sasha  
6 was about to embark on with his mother. Do you see that?

7 A Yes.

8 Q Now, at some point a couple of weeks prior to --  
9 well, I guess exactly 17 days prior to issuing this report,  
10 you sent a letter to the court regarding the vacation issue;  
11 is that right?

12 A Yes, on June 5th.

13 Q I think you just picked up the exhibit, Court's  
14 Exhibit 1. Is that a letter that you authored to the Court on  
15 or about June 5th?

16 MR. SMITH: Same objection, Your Honor, that we --

17 THE COURT: All right.

18 MR. SMITH: -- in regard to the influence of the  
19 tapes on this (indiscernible).

20 BY MR. JONES:

21 Q And that's your signature on page 2?

22 A Yes.

23 MR. JONES: Move to admit Exhibit 2 (sic), Your  
24 Honor, Court's Exhibit 2.

1 MR. SMITH: Same objection.

2 THE COURT: It'll be admitted despite the continuing  
3 objection.

4 (COURT'S EXHIBIT 1 ADMITTED)

5 BY MR. JONES:

6 Q Now, did any communication from my office result in  
7 this letter being authored by you?

8 A No.

9 Q Why did you author this letter?

10 A I had significant concerns regarding Sasha traveling  
11 with his mother for six -- a six week period of time, not  
12 having access to his father, being away from his father,  
13 realizing what I believed and in my opinion was harmful  
14 information being relayed by Mom to Sasha regarding his  
15 father. Because of his young age and the significant amount  
16 of time that Mom was going to be traveling I was -- I had some  
17 very significant concerns about that and wanted the Court to  
18 be aware and requested that the Court reconsider that length  
19 of time being away from Dad.

20 Q Now, at the bottom of page 1 of the June 5 letter,  
21 you write, Statements from Sasha during all four interviews  
22 suggest that Sasha's thoughts and feelings regarding his  
23 father are being directly affected by his mother's  
24 unconstructive influence. Sasha's view of the world around

1 him and his relationships with his parents are becoming  
2 polarized, directly resulting from what appears to be parental  
3 programing.

4 Is parental programming the new word for alienation  
5 these days?

6 A One of them. It's, you know, when a parent directly  
7 overtly attempts to influence a child's belief system  
8 regarding the other parent. And it was quite clear that that  
9 was happening in this case.

10 Q And based upon how you wrote that sentence it states  
11 that statements from Sasha during the interviews drew you to  
12 that conclusion; is that right?

13 A Yes.

14 Q And at the bottom of the top paragraph on page 2,  
15 you state that he's confused by statements she makes about his  
16 father and as a result is beginning to reject him. Is that  
17 the end result of programming and alienating behavior is the  
18 rejection of the alienated parent?

19 A Yes, confusion and then rejection and then  
20 estrangement, yes.

21 Q And just on another unrelated matter, have you and I  
22 ever had a conversation regarding your testimony here today  
23 other than scheduling?

24 A No.

1 Q Have I ever sent you a script of the questions I was  
2 going to ask you?

3 A No.

4 Q Have any communications between my office and your  
5 office been anything but scheduling?

6 A Only scheduling, finances, scheduling.

7 Q Now, in your interviews with Sasha which, the  
8 discussion, if we go back to Court's Exhibit 2, begin on page  
9 4, is the report regarding those interviews of Sasha, which is  
10 covered from page 4, I believe, to page 7, is that a summary  
11 of all four interviews?

12 A Yes.

13 Q Was Sasha's behavior and statements to you  
14 consistent over the course of the four interviews?

15 A They were.

16 Q And according to page 1 of your report, those four  
17 interviews occurred from May 12 to May 28, so about 16 days;  
18 is that right?

19 A Yes.

20 Q Now, when you interviewed Sasha did you tell him  
21 what was on the tapes?

22 A No.

23 Q You wouldn't do that, right?

24 A No.

1 Q Did you ever tell him anything that his mother had  
2 said in these recordings or that the recordings even existed?  
3 A No, I did not.  
4 Q Now, and did you conduct your interviews of Sasha in  
5 the same manner you would in a case where there were no  
6 recordings?  
7 A Yes.  
8 Q Now, in the first paragraph of the substance of your  
9 report, which is the second paragraph on page 4, you state  
10 that Sasha was heavily preoccupied with Call of Duty. Was  
11 that true throughout all four interviews?  
12 A Yes, it was.  
13 Q Was his level of preoccupation consistent with his  
14 mother's statements that he only plays 30 minutes a day?  
15 A No.  
16 Q And, in fact, you quote Sasha as stating that his  
17 mother says everyone plays Call of Duty. Did you find that  
18 statement by Sasha to be credible?  
19 A His statement that -- can you say it -- can you  
20 repeat that?  
21 Q That his mom had told him that everyone plays Call  
22 of Duty.  
23 A Did I find that credible by -- from Sasha?  
24 Q Yes.

1           A     That his mother said that?

2           Q     Yes.

3           A     Yes.

4           Q     And did you think it was possibly just an

5 exaggeration?

6           A     I didn't know at the time that he said that. I was,

7 you know, that was one of the very first times I was spending

8 time with him so I wasn't sure. I was -- I was taken aback a

9 little bit by the comment.

10          Q     In fact, later when he talks about the rules in his

11 house, one of the rules in his mother's house was to play Call

12 of Duty; is that right?

13          A     Right. Well he says I have to practice it or I get

14 bad. I don't know if that's a rule.

15          Q     Well, turning to the third full paragraph of the

16 Sasha section, you state, Sasha was asked to describe the

17 rules in both homes. He identifies Father's rules as never

18 play Minecraft videos, never play Call of Duty, never lie,

19 tease, be mean or bully. In contrast, he indicated the rules

20 at his mother's house are play tennis and play Call of Duty.

21          A     Right. Right. I didn't know if those are self-

22 imposed rules or, you know, it wasn't clear if those are Mom's

23 rules or self-imposed rules while at Mom's house.

24          Q     Now, why do you ask children in interviews about the



1 rules in their respective homes?

2 A I like to just get a sense of what the differences  
3 are. The younger a child is the greater need for consistency  
4 and predictability, so I'm looking for, you know, what that  
5 looks like, along with what their temperament is. Children  
6 who have easier temperaments are -- have an easier time going  
7 back and forth with homes that have less consistency. I'm  
8 looking at how they interpret their parents' parenting style  
9 and discipline, so I'm getting a sense from just -- from their  
10 lens what it looks like, their experience going back and  
11 forth.

12 Q Does a stark contrast in the rules between the two  
13 households cause problems?

14 A For young children more often than -- than not, yes.

15 Q Now, at the bottom of the third full paragraph you  
16 asked Sasha about his homework. What did he indicate as far  
17 as where he does his homework?

18 A Sasha indicated he completes his work at both  
19 houses; however, during a later interview he stated my dad  
20 sneaks and takes my homework so I can't do it at my mom's  
21 house.

22 Q The dad sneaking statement.

23 A Yes.

24 Q Did he state that as a fact?

1           A     Yes. Well, Sasha told me, you know, many things  
2 about his dad and then -- that he was sneaky, that he was  
3 mean, but then when I asked him follow-up questions he would  
4 also quickly tell me that, you know, those were things that  
5 his mom had told him about his dad. They were also in  
6 contradiction to other things that he shared with me about his  
7 dad, so they were in contrast -- what he was saying was in  
8 contrast to experiences that he appears to be having with his  
9 father.

10          Q     Is there a difference between a child asserting  
11 something as a fact, like my dad takes my homework so that I  
12 can't do it with my mom, versus an opinion?

13          A     (No audible response)

14          Q     Like the child thinks that Dad does this?

15          A     Can be.

16          Q     What can it be a sign of?

17          A     Somebody telling him what's happening as opposed to  
18 it actually happening. A six year old typically wouldn't make  
19 that statement. They wouldn't know that a parent is sneaking  
20 their homework. I mean, so it's out of context for a six year  
21 old to say something like that.

22          Q     And did he say it as if he had no doubt whatsoever  
23 that it was true?

24          A     He just said it, you know, matter of factly. So, it

1 raises question in my mind about where he's getting that  
2 information. And, you know, when I asked him follow-up  
3 questions, it became clear that, you know, he was -- that  
4 wasn't his experience but that he was being told that by his  
5 mom.

6 Q Can statements of fact of that nature, and as  
7 referenced throughout your report, be evidence that a child  
8 has in fact been alienated or programmed?

9 MR. SMITH: Objection, vague and ambiguous as to  
10 statements throughout the report.

11 MR. JONES: Okay.

12 THE COURT: New question?

13 BY MR. JONES:

14 Q Statements such as that, we'll just refer to it as  
15 that and we'll cover each individual one as we go along. But  
16 statements by a child, statements of fact by a child that  
17 something is true that ends up not being true, can that be  
18 evidence that the child has been programmed or alienated from  
19 the p -- from the other parent?

20 A Yes, that they're, you know, there's purposefully --  
21 they're purposefully being targeted against one parent, yes.

22 Q Now, looking at the final paragraph on page 4, you  
23 talk about Sasha identifying his parents. I believe it's the  
24 fifth line from the bottom, starting with Sasha identified.

1 How did Sasha identify his father?

2 A As a person who likes the cat and dislikes no one.

3 Q And how did he identify his mother?

4 A In an overly positive light, acknowledging that  
5 she's the person who listens, gives him affection, who helps  
6 him, and with whom he would like to spend all of his time.

7 Q Now, let's talk about that, that last statement, he  
8 would like to spend all of his time with his mother. Is  
9 another example of programming and/or alienation the over-  
10 glorification of the alienating parent?

11 A It can be. Can also be with the parent who is much  
12 more permissive and allows a child to do, you know, what they  
13 -- what they want to do. And at six years old that can be  
14 very compelling to want to stay with a parent where they don't  
15 -- where they have a lot less structure and rules. So it can  
16 -- can mean many things.

17 Q And then when he was asked to identify who his  
18 mother dislikes who did he say?

19 A My real dad.

20 Q And by that you took Sean?

21 A Yes.

22 Q Is that correct?

23 A Yes. That was -- that was pretty clear throughout  
24 all four interviews.

1           Q     Now, turning to page 5 of the first full paragraph,  
2 you engaged him in a draw the two homes exercise. What is  
3 that?

4           A     Right. So that's where we build several different  
5 cardboard homes and we have children take paper dolls, they're  
6 able to pick people in their families who represents people in  
7 their family, and then we talk about different scenarios. For  
8 instance, you know, this person in your family is really nice  
9 to you; this person helps you with your homework; this person  
10 is not so nice, and they're able to -- especially for young  
11 children it helps them be able to verbalize how they feel,  
12 sometimes verbally but also sometimes non-verbally.

13          Q     And is that a typical exercise in a child interview  
14 of this nature?

15          A     Yes.

16          Q     What did Sasha say about his father's home?

17          A     Oh, he told me that -- that his dad's house is not a  
18 real house, that it's a fake house where his dad lives because  
19 there's a lot of dust and there's an earthquake and his real  
20 house is at -- where his mom lives.

21          Q     Now when he said that his dad's house was a fake  
22 house, did he state that as a matter of fact?

23          A     Uh-huh, yes.

24          Q     And his mom's house he said there was no dust there.

1 What -- how, if at all, does that concern you?

2 A Well, it's -- it's not one, you know, that one  
3 statement. You have to take it in the context of the whole  
4 conversation. But, you know, when a child says, well, I don't  
5 have -- you know, I only have one real house and that's with  
6 my mom. What do you mean you have one house? How about your  
7 dad's house? Oh, that's a fake house. What do you mean  
8 that's a fake house? Well there's too much dust, or there's  
9 too much this, or my mom tells me that, you know, the only  
10 house I'll ever have is with her.

11 So it's not just one statement, it's a series of  
12 statements over time, if there's a pattern that can cause  
13 concern, and it did in this case, that lead you to believe or  
14 have the opinion that one parent is sharing information or  
15 directly telling the child an opinion, a negative opinion,  
16 about the other parent.

17 Q In your experience, is the conclusion that a house  
18 -- one of his homes is a fake house a statement consistent of  
19 what a six year old would typically say?

20 A No. No.

21 Q Later you then ask him to choose which house he  
22 wants to play in. This is still part of the same two homes  
23 exercise?

24 A Uh-huh, yes.

1 Q What is that supposed to reveal?

2 A Well, you can't -- I mean, you look for themes. So  
3 not one particular question is -- is supposed to reveal, you  
4 know, one particular outcome. Again you're looking for  
5 themes. In this construct what I found really interesting, I  
6 mean, this little boy was clearly not only distressed but  
7 confused. Again, what he reports doing with his father, you  
8 know, playing baseball, doing homework, is clearly in contrast  
9 to other statements that he's making that he's, you know,  
10 nasty, and sneaky, and lives in a fake house. And at his age,  
11 six at the time when I talked with him, just clearly trying to  
12 sort through conflicting information that he's being told.

13 Q Sasha also indicated in this exercise that he always  
14 plays Call of Duty on Xbox Live. Was that consistent with  
15 Mom's report of the frequency of his play?

16 A No.

17 Q Does it concern you when the child's report of a  
18 simple fact like that reveals that one or the other parent was  
19 likely dishonest to you?

20 A Yes.

21 Q You expect parents to be honest with you when they  
22 come and report their circumstances for these exercises,  
23 right?

24 A Yes.

1 Q Now, what did Sasha in this exercise do to his  
2 father's home?

3 A Oh, what -- oh, he destroy -- I think he, like,  
4 smashed it, he destroyed it, said it was having an earthquake.  
5 There was a lot of aggressive undertones that Sasha displayed,  
6 whether we were playing Call of -- imaginative Call of Duty or  
7 house or trying to engage him in other activities. You know,  
8 he was pretty difficult to redirect and I would say mildly to  
9 moderately aggressive.

10 Q What if anything does the destruction of his  
11 father's house in this exercise indicate to you?

12 A I, you know, again, I wouldn't want to have one  
13 specific conclusion because of one act or statement from a  
14 child, but clearly again, the contradictions that he is  
15 reporting over the course of about four hours was striking.  
16 Which, that to me is the most important.

17 Q And what was the recurring theme over the course of  
18 that time?

19 A That what he's being told by his mother is that his  
20 father is not a good person, and that's not his experience  
21 with his dad.

22 Q And does that, in your opinion, cause a great deal  
23 of emotional stress on a six year old?

24 A Yes, and I think that that was also very clear in



1 his actions, which is why you're seeing contradictions and why  
2 you're seeing some confu -- what looks like confusion and  
3 aggression and -- yeah, he's six years old. He's not quite  
4 sure what to -- what's going on and he's --

5 Q And that type of internal conflict, I'm assuming, is  
6 not in a child's best interest?

7 A No, not at all.

8 Q Now, do you believe that Call of Duty is age  
9 appropriate for a five or six year old?

10 A No, I don't.

11 Q And you're familiar with the research on these  
12 subjects?

13 A Yes, I am.

14 Q Do you believe that Dad's rule against it is  
15 appropriate?

16 A Yes.

17 Q Do you believe Mom, if she did in fact encourage it  
18 or allow it, should have been doing so at his age?

19 A I don't think there's any mental health professional  
20 who would agree with or without any type of controls that a T-  
21 or M-rated video game for a five or six year old is  
22 appropriate.

23 Q Can the fact that Mom knows that Dad does not allow  
24 something in his house and she then chooses to allow it

1 whenever the child's want -- child wants create further  
2 alienation of a child?

3 A Well, first -- certainly. But first it causes  
4 confusion and then a loyalty bind further and distress and  
5 then collusion forces a child to pick sides and then become  
6 manipulative and all kinds of things, certainly.

7 Q Now, on page 6 in the second full paragraph, this is  
8 sort of your conclusions, summary section. The second  
9 sentence you write, It was apparent that Sasha is learning to  
10 significantly favor his mother, which is corroborated by  
11 Sasha's statements, behavior, and test results, as well as --  
12 as well as the recordings regarding his relationship with his  
13 father as evidenced by statements suggesting a decrease in  
14 desire to spend time with his father. Is that what you see  
15 has happened to Sasha with -- as a result of these types of  
16 statements by Mom?

17 A It w -- it appeared as though that was what was  
18 beginning to happen.

19 Q Now, were you able to draw that conclusion just upon  
20 -- just based upon Sasha's statements in the interview?

21 A That he was beginning to want to spend more time  
22 with Mom and not with Dad because of the content of the  
23 interviews?

24 Q Yes.

1           A     Yes.

2           Q     And that would be without any independent  
3 consideration of the tapes?

4           A     Correct.

5           Q     In fact, your concerns regarding programming and the  
6 impact on Sean's relationship with his dad, were they as much  
7 based upon the interviews as they were anything else?

8           A     Yes. I don't -- I -- I would have to look in my  
9 notes. I didn't -- I know that I didn't even listen to the  
10 tapes minimally until after the second interview, maybe after  
11 the third, but I certainly didn't listen to them prior to  
12 meeting Sasha. That's something that I would -- I routinely,  
13 regularly would not do.

14          Q     Did Sasha during the course of your interviews with  
15 him say or do anything that led you to believe that his dad  
16 was saying anything negative about his mom?

17          A     No.

18          Q     Now, when you did eventually listen to the tapes,  
19 what was your initial reaction?

20          A     Oh, I was deeply disturbed, quite frankly, and felt  
21 -- a lot of what Sasha was saying in the interviews I think  
22 made much more sense after listening to the tapes, especially  
23 that just incongruency and the conflict that was so evident in  
24 the interviews. But really I -- I was -- I was more concerned

1 about what I heard with Sasha and the distress in his voice  
2 and crying and continued distress as much as I was what Mom  
3 was saying. I -- it was really -- it was really quite sad.

4 Q Now, Dad characterized Mom's statements to the child  
5 and the manner in which she did it as relentless. Would you  
6 say that's consistent with your view of the recordings?

7 A Absolutely. Unwilling to stop, unwilling to  
8 consider her child's plea to stop, questions, statements,  
9 disregard for her child's emotional well-being, complete lack  
10 of insight for her child's emotional well-being. Yes, very  
11 purposeful, very direct, and very disturbing, yes.

12 Q And obviously based upon those statements being  
13 exposed to that type of lack of insight and relentlessness  
14 would be contrary to Sasha's best interest; is that fair to  
15 say?

16 MR. SMITH: Objection. It calls for the ultimate  
17 conclusion (indiscernible).

18 THE COURT: Ask another question, Counsel. I'm not  
19 going to allow it.

20 BY MR. JONES:

21 Q In general, is the exposure of any child to that  
22 type of relentlessness in the child's best interest?

23 A No.

24 Q Now, during the course of your professional career

1 have you encountered other cases regarding alienation or  
2 allegations of alienation?

3 A Yes.

4 Q Have you -- are you familiar with the research and  
5 articles and books written by various scholars?

6 A Yes.

7 Q Have you done any specialized training in this area?

8 A Yes.

9 Q What -- what type of specialized training?

10 A I've attended many conferences through AFCC, I've  
11 actually put on two trainings over the past five years on  
12 parental alienation and parental roadblocks, gatekeeping,  
13 looking at especially younger children in the course of  
14 estrangement, alignment, and alienation, kind of looking at  
15 the spectrum of when children start to resist contact with one  
16 parent and why that might be, because sometimes it's not  
17 alienating or gatekeeping behavior. It can be for all  
18 different types of reasons. So, I've done a lot of training  
19 but also educating colleagues and trainees who work with me  
20 and under me on the topic.

21 Q In your experience, as you've reflected it in your  
22 report, does Sasha show signs of being programmed or alienated  
23 from his father?

24 A Sasha shows significant signs of being distressed,

1 confused, and internalizing a belief system that is not his.  
2 And I say that with confidence because of the confusion  
3 surrounding his -- his statements.

4 Q Is it possible for a alienated child or a child  
5 who's been affected by this type of programming to still do  
6 well in school?

7 A Sure.

8 Q Is that particularly true of a six year old who's in  
9 early -- or early grade school?

10 A I'd have to -- I mean, I don't -- I don't know of  
11 any specific research that correlates academic achievement and  
12 alienation.

13 Q Could a parent who is still willing to swap out days  
14 or make additional time available for the other parent still  
15 be an alienating parent?

16 A Certainly.

17 Q Now, if this type of badmouthing had occurred over  
18 the course of two or three or four years, would that cause you  
19 even greater concern?

20 A Yes, especially in the formative years when children  
21 don't have the capacity to understand -- I mean it's  
22 detrimental at any age, truly detrimental, but the younger the  
23 child is, when they just don't have the fortitude, the  
24 cognitive or emotional capacity to sort through what's

1 happening, again, it's -- it's more significant.

2 Q If back in 2012 Dr. Paglini specifically told the --  
3 told Mom that she needed to stop these types of negative  
4 statements about Dad and they continued to this level, would  
5 that cause you concern?

6 MR. SMITH: Objection. Dr. Paglini's report was  
7 specifically not reviewed by this party --

8 MR. JONES: It's a hypothetical.

9 MR. SMITH: It doesn't matter. You can't use a  
10 hypothetical of something she didn't study. It would be like  
11 talking about a study that she didn't review for the purposes  
12 of this report. She -- you can't just ask her to review -- or  
13 whether or not she would review something, set it up in a  
14 particular manner and say that's a hypothetical. She didn't  
15 review the report as part of her report.

16 MR. JONES: I didn't. I -- okay.

17 BY MR. JONES:

18 Q Let me ask it this way. If the Court specifically  
19 directed Mom to stop these types of alienating behaviors and  
20 it continued for three years, would that cause you a -- even  
21 more concerns?

22 A Yes.

23 Q If anyone in the world suggested to her, hey, you  
24 need to stop doing this, and she continued to do it, would

1 that cause you concerns?

2 A Certainly.

3 Q If Sasha said to his father that he wishes he could  
4 love both him and Mom, but Mom says that he can't, would that  
5 be an example to you of alienation?

6 A Yes, and I've -- it's in the records that he's  
7 pleading with his mother to love them both.

8 Q If Mom read Sean's text to Sasha, meaning Sean's  
9 text to Mom, is that a problem?

10 A Depends on the content of the text.

11 Q Now, as it pertains to your review of the tape, on a  
12 scale of one to 10, 10 being the worst examples that you've  
13 ever personally heard, how would you rate the types of  
14 treatment Mom -- by Mom of Sasha?

15 A There's only one other case that the recordings that  
16 I listened to were as distressing or worse that I can recall.

17 Q Now, turning to page 11 of your report, which I  
18 believe is a reference to -- it's Appendix A, records review.  
19 This is where you discuss the actual recordings. What does a  
20 statement like do you want your daddy to take you away from me  
21 do to a six year old?

22 A Places him in -- in a bind. It causes -- probably  
23 depending upon the child, but all children it imbalances their  
24 sense of security and sense of belongingness. So it, you



1 know, trust becomes significantly in question.

2 Q What does a statement like do you want Angie, or any  
3 stepmother for that matter, to be your mother do to a six year  
4 old?

5 A Probably confuses them because he's not quite sure  
6 why that would be being asked.

7 Q What impact is being told directly by one parent to  
8 lie to the other have on the child?

9 A Well, it teaches them -- it depends what they're  
10 asked to be -- to lie about. When, you know, your child --  
11 after you're told to lie about something and your child  
12 questions that and tries to help you understand that what  
13 you're being told to do is a lie, that's really problematic,  
14 especially when you continue to disregard what your child is  
15 saying.

16 Q And along those lines, is punishing a child for  
17 telling the other parent the truth equally as bad?

18 A Yes. Especially when the child's in distress and  
19 you can hear it and you continue.

20 Q What do statements like I carried you in my belly  
21 and gave you milk as a comparison to the other parent do to a  
22 child?

23 A Well, just makes -- again, depending upon the child,  
24 but, you know, typically it makes a child feel responsible for

1 the emotional well-being of that -- of that parent and  
2 devalues the other parent. So it's --

3 Q Go ahead.

4 A Just, you know, somehow that one parent who, you  
5 know, carried, Mom in this case, you know, highlights her  
6 importance or her value and not the other parent.

7 Q And how does calling the other parent an idiot to a  
8 six year old have an impact on the child?

9 A Any name calling, you know, harms the emotional  
10 well-being of -- of a child, especially when they see that  
11 parent as their protector and their parent. It also calls  
12 into question their own identity because they are that  
13 parent's child, so.

14 Q Now, at one point on the tapes Lyuda tells Sasha  
15 that his dad is sneaky. Was that exactly what Sasha said to  
16 you prior to listening to the tapes?

17 A Yes.

18 Q And is that evidence that because he made that  
19 statement of fact that the statements that his mother is  
20 making to him are working?

21 A I mean, it certainly raises the question, yes.  
22 Whenever a child, you know, parrots or repeats back the same  
23 verbiage or the same statements, yes, obviously, especially  
24 that type of verbiage. Yeah, it raises the question of where

1 they're hearing that information, whether or not it's their  
2 own feelings, beliefs, thoughts, or somebody else's.

3 Q And telling a child that they need to tell everyone  
4 that they love their mom more than their dad, how is that  
5 problematic?

6 A I mean, I don't think you need to hear from a  
7 psychologist how that's problematic. It's significantly  
8 problematic. Bordering on abuse, quite frankly. It's --  
9 especially to a six year old.

10 Q Now, if after your report came out Sasha came to  
11 Sean crying about the fact that he could no longer play Call  
12 of Duty because of what he told you, what would that tell you?

13 A If he -- I'm sorry, repeat that?

14 Q If Sasha told Sean that he was no longer able to  
15 play Call of Duty because of what he told you, Dr. Holland,  
16 how would that be problematic?

17 A Well, I don't -- I mean, I guess that would just  
18 solidify my concerns.

19 Q Would that indicate to you that Lyuda shared with  
20 Sasha the contents of your report?

21 A Certainly.

22 Q Now, have you had an opportunity to review Dr.  
23 Chambers's report?

24 A I have.

1 MR. SMITH: Objection, Your Honor. Dr. Chambers's  
2 report is our report from our expert and Dr. Cham -- it has  
3 not been admitted, nor has Dr. Chambers testified.

4 MR. JONES: And I'm not asking her to talk about  
5 anything specifically in his report.

6 THE COURT: I'll allow it.

7 BY MR. JONES:

8 Q Dr. Chambers interviewed Sasha approximately four  
9 months after your interviews. Would it be concerning to you  
10 that even four months later, during the course of this  
11 litigation, Sasha was continuing to make the same statements  
12 he made to you?

13 A Yes.

14 Q Would it concern you if Sasha told Dr. Chambers that  
15 he couldn't play Call of Duty because what he told you?

16 MR. SMITH: Objection to the reference to Dr.  
17 Chambers in the context of what Sasha told him. It's an  
18 indirect reference to a claimed presence in his report.

19 MR. JONES: It's a hypothetical, Judge. These are  
20 all if this actually occurred. You ask expert witnesses  
21 hypotheticals based upon --

22 THE COURT: I'll allow it.

23 MR. JONES: -- that they don't know all the time.

24 BY MR. JONES:

1 Q Would that cause you concerns as well?

2 A Absolutely.

3 Q Now, what does the literature in your field say  
4 about increasing the time share with the alienated parent as a  
5 means of combating this type of programming?

6 MR. SMITH: Objection, vague and ambiguous as to  
7 literature in the field.

8 THE COURT: Counsel, maybe another question?

9 MR. JONES: Okay.

10 BY MR. JONES:

11 Q What is -- what is your opinion of the increase in  
12 the time share of the alienated parent as a way of combating  
13 alienation?

14 A Well, there are multiple factors that the Court and  
15 one needs to consider when you look at obviously time share in  
16 children. One of those is -- is gatekeeping issues, and when  
17 one parent has an inability or unwillingness to support the  
18 relationship with the other parent, either directly or  
19 indirectly, purposefully or not purposefully, overtly or  
20 covertly, the question becomes does that child need to spend  
21 more time with the parent who is being alienated against or  
22 programmed against, undue influenced, to offset what is being  
23 relayed directly or indirectly so that they can have  
24 meaningful experiences that combat what they're being told.

1           There are evidence-based programs now that make  
2 direct recommendations to have actually very limited time,  
3 depending upon the degree and the severity of the alienating  
4 tactics and behaviors by one parent to actually have very  
5 limited contact with that parent until they are able to  
6 augment or change their behaviors and until they are able to  
7 support and facilitate a relationship in an appropriate  
8 manner. So, there's varying degrees and lots of factors that  
9 need to be taken into -- into place, you know, into play, but.

10           Q     Would you consider the alienation and programming  
11 that's occurred in this case to be severe?

12           MR. SMITH: Objection, Your Honor. We're asking for  
13 conclusions that are not made by Dr. Holland in her report.  
14 In other words, we're asking her to make further and more  
15 conclusions than are contained in the report itself. That's  
16 inappropriate. Dr. Holland hasn't made a finding in regard to  
17 the severity of the alienation. She hasn't made a finding  
18 that he -- there should be a limitation of time. She has not  
19 made a finding that she's even performed a full custody  
20 assessment, nor she has -- she made recommendations. To now  
21 all of a sudden decide on the day of trial that she's going to  
22 enter into greater opinions is a denial of due process to my  
23 client, and I would ask that the question be -- or the  
24 objection be sustained.

1 MR. JONES: I am able to ask if this would be --  
2 she's stated -- made a statement about what is accepted in her  
3 field regarding time share issues as it pertains to  
4 alienation. No objection. The words she used was sev --  
5 depending on the severity. So I'm simply asking if she would  
6 characterize the alienation in this case as severe.

7 THE COURT: I'm going to allow it.

8 THE WITNESS: I, you know, this was a very limited  
9 in scope assessment. It was not a comprehensive evaluation.  
10 I did not formally assess Mom or Dad, and I did not conduct  
11 objective testing with Sasha. I saw him numerous times and he  
12 certainly was forthcoming. I feel that I gained -- obtained  
13 substantive information and was able to generate, with  
14 psychological certainty, good, solid impressions of him that  
15 were concerning to a significant degree.

16 To formally opine the extent of the alienation, I  
17 think I would -- I would really be cautious in making that  
18 kind of a statement because I did not evaluate Mom and Dad  
19 formally. But this little boy is certainly being affected to  
20 a significant degree, I -- I can say with certainty. And if  
21 it continues, it will become more and more problematic.

22 BY MR. JONES:

23 Q And even taking it outside of the realm of the  
24 severity of the alienation, a six-year-old boy being subjected

1 to statements and actions by Mom that, as you stated, are  
2 bordering on abuse would not be in his best interest; is that  
3 right?

4 A It's not in any child's best interest to be told  
5 repeatedly and consistently that one parent is nasty, mean, an  
6 idiot, less than, horrible. It's not in anybody's best  
7 interest, but especially a child.

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

9 THE COURT: Counsel?

10 CROSS EXAMINATION

11 BY MR. SMITH:

12 Q Dr. Holland, you have not made any finding or  
13 recommendation regarding the custody of this child, correct?

14 A Correct.

15 Q In fact, it wouldn't be appropriate to do so based  
16 on these limited data that have acquired through the  
17 interviews of Sasha, correct?

18 A Correct.

19 Q In fact, it would be inappropriate for you to render  
20 an opinion as to whether or not Sasha has been alienated and  
21 by whom in the con -- with the limited data that you have?

22 A I think I just -- I think I just spoke to that, yes.

23 Q All right. And it would be improper for you to  
24 render an opinion as to the time share of Sasha without



1 further study, correct?

2 A Absolutely. And I state that in my report as well.

3 Q Yes. And in fact, your recommendations are perhaps  
4 that Dr. Paglini could do more work since he had done a child  
5 custody assessment previously.

6 A Yes.

7 Q All right. You did not -- one of the things that  
8 you would typically do in an assessment is to try to interview  
9 people who regularly interact with Sasha, correct?

10 A Yes.

11 Q And in fact, some of those people would include  
12 family members that regularly interact with him, correct?

13 A Yes.

14 Q And others would include the teachers that he sees  
15 on a daily basis.

16 A Yes.

17 Q And that -- those interactions would be influential  
18 because, as you would agree, sometimes children can act  
19 differently in the interview context than they can act in  
20 their regular day -- their day-to-day lives, correct?

21 A I -- I would -- depending upon what the behaviors  
22 were, I may or may not talk with teachers. I would be hard  
23 pressed to have a child interact with me on four separate  
24 occasions consistently and have that be something inconsistent

1 with how he is with everyone else.

2 Q Right. In other words, you would expect that the  
3 type of behaviors, the statements about his father -- let's  
4 start with the types of behaviors that you've seen. We'll  
5 categorize them and you can tell me if this is fair.

6 One of the catorgaz -- categorization of behaviors  
7 that you saw with Sasha was his statements about name calling  
8 of his father. In other words, calling his father an idiot or  
9 sneaky or the other things that you took from either your  
10 interviews or the tapes that you reviewed, correct?

11 A Yes.

12 Q And you would expect that he would have said those  
13 things to others if he was regularly repeating them to you in  
14 these interviews, correct?

15 A It depends.

16 Q You wouldn't expect him to actually say that to his  
17 teacher when describing his father?

18 A I don't know if his teacher asks about his father,  
19 to be -- sometimes teachers do and sometimes teachers don't.

20 Q Well if teacher -- his teacher has testified in this  
21 manner that -- or in this matter that they had conversations  
22 with him about the father and don't recall any kind of name  
23 calling or any kind of derisive or derogatory remarks, would  
24 that affect your view or view of this case?

1           A     Maybe, maybe not.

2           Q     Okay. So it would -- you would just ignore that  
3 fact, you would ignore the fact that he's never made these  
4 statements in any other context other than in your interviews;  
5 is that your testimony?

6           A     No, but my role and a teacher's role is -- is very  
7 different, and so I would want to -- I would want to talk with  
8 the teacher and find out what -- in what context she was  
9 asking and he was reporting. I mean, I had a very specific  
10 role and a teacher has a very specific role. So I -- I  
11 wouldn't answer that black or white. I think it depends.

12          Q     Wouldn't someone other than you have heard these  
13 statements by the child?

14               MR. JONES: Objection, calls for speculation

15          A     I think Dr. Chambers did.

16               THE COURT: Hold on.

17               MR. JONES: Actually I withdraw the objection, Your  
18 Honor.

19               MR. SMITH: Move to strike the statement.

20 BY MR. SMITH:

21          Q     I think you've previously testified that you did not  
22 review Dr. Chambers's report, correct?

23               MR. JONES: That would be contrary to her testimony,  
24 Counsel.

1 THE COURT: She said she did.

2 MR. SMITH: Okay. So --

3 THE COURT: Is that -- is that not what I heard when  
4 you asked her, that she said she (indiscernible, cross-talk) -  
5 -

6 MR. SMITH: (indiscernible, cross-talk) --

7 MR. JONES: I did ask her and she said, yes, I did  
8 review it.

9 THE WITNESS: Yeah.

10 THE COURT: Go ahead.

11 BY MR. SMITH:

12 Q In regard to this child, what behaviors would you  
13 expect to see in his development that would suggest that he  
14 was suffering from the type of problems that you would expect  
15 to manifest as a result of his confusion or stress that you  
16 identified?

17 A What --

18 Q What would we see? Would do we expect to see from  
19 him in his behaviors in the real world?

20 A Like in school or in --

21 Q Anywhere. I'm trying to identify a specific  
22 behavior that would be your fear. In other words, what would  
23 happen as a result of these things that you claim happened in  
24 your interview?

1 THE COURT: In the future or right now? What -- I  
2 just didn't understand your question.

3 MR. SMITH: At any time.

4 BY MR. SMITH:

5 Q In other words, if -- since you've had this  
6 interview, you have these concerns about his confusion, about  
7 his attitude toward his father. What would you have expected  
8 to -- how would that behavior manifest itself? Let's talk  
9 between these interviews and now. It's been, what, almost six  
10 to eight months?

11 A Uh-huh.

12 Q What would you have expected to see as the  
13 manifestation of that problem -- those problems?

14 A Probably -- and I say probably because children are  
15 different and so they're going to exhibit symptoms  
16 differently. But probably making similar statements to  
17 extended family members, stepparents, people he, you know, who  
18 -- people who he talks regularly to about family relations,  
19 possibly.

20 Q If you felt that one parent was -- has appropriate  
21 boundaries, another parent has no boundaries, you would expect  
22 that other children in the no boundary parent's home would  
23 also have problems or problems because they didn't have these  
24 kind of behaviors that were identified for them that they had

1 to abide by, or rules they had to abide by. Let me rephrase  
2 that question.

3 Is it true that you found that there is a difference  
4 in the households between Mr. Abid and Mrs. Abid's household,  
5 correct?

6 A Just per Sasha. I don't know -- I mean, I don't --  
7 I didn't evaluate their homes. But per Sasha's reports,  
8 that's what was reported.

9 Q Okay. And did Sasha report his bedtime?

10 A He did.

11 Q At 9:00, correct?

12 A Right. I think there was about an hour difference  
13 what he said.

14 Q There was nothing in the way that he testified or  
15 anything he told you that suggested that wasn't correct, was  
16 there?

17 A I don't know -- I didn't have any way to -- to  
18 verify that.

19 Q So, the other thing that you based your idea that  
20 there were different rules was the fact that he was allowed to  
21 play Call of Duty in his mother's home, correct?

22 A That there was no structure around use of time,  
23 frequency, duration regarding video games.

24 Q Okay. So what would be the -- what would you expect

1 to be the appropriate reaction of a parent who's criticized in  
2 that manner? What would they do once it's brought to their  
3 attention that this was a problem with the child and that  
4 playing Call of Duty was a problem with the child?

5 A Well I spoke with Mom about --

6 Q No, no, no. I'm asking you generally, what would be  
7 the appropriate reaction in your view of a parent who's told  
8 and indicated that this would be an inappropriate behavior?  
9 What would be the appropriate thing for that parent to do?

10 A Talk with the child about changing their behaviors,  
11 maybe sit down, maybe reduce the time that they were playing,  
12 replace the video game with another video game.

13 Q One might be to eliminate the games altogether; in  
14 other words, eliminate the use of the -- of that game,  
15 correct?

16 A If they truly thought that it was harmful to the  
17 child, yes.

18 Q Is it harmful for the child to -- for any child to  
19 play violent video games?

20 A Any child? No.

21 Q Any child.

22 A No. There's a lot of research, especially for older  
23 children, if you don't have a violent child that it is not  
24 harmful. But for young children, the use of video games there

1 is concern surrounding what it takes away.

2 Q Okay. But there is no definitive study that  
3 indicates -- well, let me ask you this. In a recent study --  
4 were you aware that there were recent studies done by Oxford  
5 University that were published in the *American Psychological*  
6 *Association's* journals? Were you aware of that?

7 A I'm aware of the Vanderbilt studies.

8 Q What about the Oxford University studies, you  
9 haven't reviewed those? Those were -- those were published in  
10 April of 2015.

11 A Tell me a little bit more. I -- I think I'm -- I do  
12 think I know what articles you're talking about and they're  
13 talking specifically about pre-adolescence behavior and  
14 attitudes towards --

15 Q Right.

16 A Yes.

17 Q About a thousand of them, do you recall, both girls  
18 and boys were tested --

19 A Yes.

20 Q -- in regard to --

21 A Adolescents.

22 Q Right. But what they --

23 A Right.

24 Q But what they found was that it wasn't necessarily



1 the violence in the games, it was the amount of time that they  
2 spent playing.

3 A Right, not early childhood children. Adolescents,  
4 those studies --

5 Q That's right. That study didn't address early  
6 childhood children --

7 A Yes.

8 Q -- but there are no -- you would agree that there  
9 are no childhood children studies that address Call of Duty,  
10 correct?

11 A There are actually studies, the Vanderbilt studies,  
12 that do address amount of time, screen time, for children ages  
13 six and under and the exposure to violence, yes. Both time --

14 Q Yes. But both of those, both of those the  
15 correlating factor was the amount of time that they -- between  
16 any kind of aggressive behavior was the amount of time that  
17 they played the game, correct?

18 A Amount of time and exposure to violence for ages six  
19 and under.

20 Q Okay.

21 A Yes. Very different studies for those children than  
22 for adolescents.

23 Q Okay. But that correlation was primarily -- the  
24 violent behavior was primarily correl -- in the Vanderbilt

1 studies was primarily correlated to the amount of time that  
2 children played, you don't agree?

3 A No, there's two separate, two separate things that  
4 they -- factors that they were looking at. The amount of time  
5 that children were exposed to any kind of screen time, any  
6 kind, even ed -- even educational games.

7 Q Even Tetris. Do you recall that being part of the  
8 Vanderbilt study?

9 A Even -- even -- even, yeah -- even educational  
10 screen time.

11 Q In fact, you will recall in the Tetra -- in the  
12 Vanderbilt study that even playing those type of games,  
13 educational games, for extended period of times could lead to  
14 aggressive behavior; do you recall that?

15 A I don't think it was to aggressive behavior. They  
16 recommended --

17 Q Or emotional issues.

18 A Yes. They recommended very limited exposure time to  
19 any type of screen time for children ages six and under.

20 Q You would agree that it -- the appropriate reaction  
21 to learning of those studies and learning of your report would  
22 be to limit the amount of time that Sasha would play or  
23 interact with video games, correct?

24 A I -- I -- I would expect the parent to read the back

1 of a video game before they open it.

2 Q Okay. But --

3 A And not need a professional to tell them that an M-  
4 rated game is inappropriate for a six year old. That's what I  
5 would hope.

6 Q Right. But you --

7 A And expect.

8 Q Have you played Call of Duty?

9 A I have.

10 Q Okay. Have you played it on paintball mode?

11 A I have.

12 Q And would you agree that that interaction is no less  
13 violent than what we see on prime time TV?

14 A I would agree that there are ratings on video games  
15 for a specific reason --

16 Q No, no, no. Please don't -- don't, Dr. Chamber --  
17 Dr. Holland, please answer my question.

18 THE COURT: No. Let her answer the question.

19 MR. SMITH: Well, but she isn't answering the  
20 question.

21 MR. JONES: Well then the appropriate thing to do  
22 would be to move to strike, not to tell the witness what not  
23 to do and what to do.

24 BY MR. SMITH:

1 Q Okay. Well, Dr. Holland, please answer my question.  
2 My question is don't you agree that in paintball mode Call of  
3 Duty is no worse than the violence you see in prime time  
4 television?

5 A I think a lot of prime time television is  
6 inappropriate for six year olds.

7 Q Right. Hard to tell though when that violence is  
8 going to come on until you see the violence, correct?

9 A Parents have a responsibility to turn TV off, to  
10 look at the TV guide, to be responsible for the viewing of  
11 their children. And it's different when they're six and  
12 they're 16.

13 Q Right. So in this instance, again, it would be  
14 appropriate for Mom to take away the Xbox or to limit the  
15 amount of time that the child plays the game after receiving  
16 information that the game was harmful to the child?

17 A Absolutely.

18 Q Okay. So in regard to the -- you would also expect  
19 if there were problems caused by Mom's behavior in relation to  
20 the methods she's used for parenting for that child that that  
21 would be reflected on other children that were in the home as  
22 well, correct?

23 A Children are different so I can't -- I mean --

24 Q But would you expect that her behavior would change

1 in regard to how she parented between one child and another?

2 A Probably not, but that doesn't mean that the other  
3 child in the home would be affected the same.

4 Q Okay. In regard to the -- if in fact no one in the  
5 home has indicated that they -- that in Lyuda's home has heard  
6 Sasha say negative things about his father over the course,  
7 since the time that this has commenced, would that be  
8 something that you were interested in? In other words, since  
9 the time that you conducted these interviews, if Sasha had not  
10 said anything negative about his father would that be an  
11 influential factor?

12 A You mean not during -- not what I reviewed in the  
13 tapes but since then?

14 Q That's right.

15 A Well certainly. I would -- I would hope that there  
16 has been a significant and complete turnaround.

17 Q Well, and that significant and complete turnaround,  
18 the only way we would be able, here in the court, to  
19 understand is to look at the behavior of the child in every  
20 other context; in other words, we would have to see something  
21 that suggested he still had this dislike of his father that  
22 you saw or concluded based upon your interactions with him?

23 A No, I think there would be other ways.

24 Q What other way? Well, that would be one way, you

1 would agree --

2 A That would be one way, certainly.

3 Q Okay. What would be other ways?

4 A Oh, communication between the parents, evidence that  
5 the one parent was supporting and facilitating a positive  
6 relationship between the child and the parent, made amends  
7 with, took responsibility for the inappropriate behaviors.  
8 There's all kinds of things that could have helped support  
9 that.

10 Q So, for example, one of the things you would look to  
11 is whether a parent would cooperate another (sic) in terms of  
12 time with Sasha, correct? That would be a manifestation of  
13 co-parenting?

14 A Uh-huh, the manner in which -- how that -- how --  
15 certainly how that was done, yes.

16 Q How about through an email exchange, I'd like to  
17 have Sasha for a particular time and then acquiescence to that  
18 time?

19 A Uh-huh, in a positive --

20 Q That would be a positive cooperation?

21 A Uh-huh, yes.

22 Q If you saw a series of that cooperation, even since  
23 the time that Mr. -- or the time that Mr. Abid had moved to --  
24 moved the children to -- or child to Iowa and therefore limit

1 the contact of Ms. Abid, if you saw that kind of cooperation  
2 even after that time, would that suggest to you that there was  
3 some level of cooperation between the parents?

4 A Possibly.

5 Q If you had learned that what had manifested this  
6 even were particular things that happened between the parties  
7 that were inconsistent with how they were acting before that  
8 time -- let me give you -- let me give you a hypothetical.

9 Let's say the parents are communicating relatively  
10 well, they're exchanging time with the -- the child; in other  
11 words somebody wants to take the child to a football game,  
12 that's allowed, a trip, an extra time frame, that's all  
13 permitted and worked out between the parties without incident.  
14 Okay?

15 A Okay.

16 Q And then one of the parties has the view that  
17 they're supposed to have Sasha in the afternoons during the  
18 particular time and that occurs for a period of about two  
19 months. Okay? But then suddenly the other parent cuts off  
20 that time and says you can't have that time because I'm better  
21 at taking care of the child during school -- in preparation  
22 for school and you don't do that. Okay, let's assume that's  
23 true.

24 A Okay.

1 Q And let's assume that in the exact same period of  
2 time one of the parents asked the other for a passport so she  
3 can visit her parents and that parent says no, I'm not going  
4 to give that to you. And let's again assume that after that  
5 time the other parent who cut off the time with the child and  
6 cut off the passport started not providing or returning  
7 clothing during this period of time. Okay?

8 A Okay.

9 Q And let's assume that during this period of time  
10 that parent also began saying to the other parent that she was  
11 not properly parented the child by allowing him to stay up  
12 late at night. Okay?

13 A Okay.

14 Q In that con -- in that context, who is the parent  
15 that's showing non-cooperative behavior toward parenting?

16 A (Pause) I don't -- I mean, I don't know all of the  
17 facts. The facts that you presented, it would appear that the  
18 parent who is, you know, taking time away from the other  
19 parent, I don't know if it's merited or not --

20 Q What would be -- what would be the expected reaction  
21 to a parent who has time in the afternoon with their child,  
22 who's taken -- changed their schedule at work to do so and  
23 then is abruptly cut off --

24 A Uh-huh --



1 Q -- what would be the expected return --  
2 A Various reactions.  
3 Q But one of those reactions might -- they might be  
4 upset and angry, correct?  
5 A Yes, but not to express that anger to their child.  
6 Q Okay.  
7 A They can absolutely be angry, yes.  
8 Q Okay. And then the -- in terms of the passport,  
9 this is the only chance they have to expose the child to their  
10 parents, what would -- their grandparents, the child's  
11 grandparents, what would you expect the reaction to be there?  
12 A Again, even possibly -- probably justifiably upset  
13 and frustrated. But when they are unable to maintain  
14 appropriate boundaries and they cross over and share those  
15 feelings and opinions and thoughts with children, that's when  
16 it becomes highly problematic.  
17 Q Right. But you have to view that behavior in that  
18 context, correct, you can't review it in a vacuum.  
19 A No, I -- no, I can. I can tell a parent it is 100  
20 percent inappropriate at any time to share those opinions.  
21 Q Yes. It may be inappropriate at any time, but we  
22 have to be non-human beings to not understand that people can  
23 get angry and do inappropriate things in a context where  
24 they're accused of -- so, for example, in this case she was

1 accused of allowing the child to play Call of Duty  
2 incessantly, all weekend was the statement. So she said  
3 something about Call of Duty. We can expect that to occur in  
4 normal human behavior, correct?

5 A (Pause) In -- in normal human behavior?

6 Q Yes.

7 A I -- I don't know. I -- I don't think that what I  
8 viewed on those types I would consider to be normal, normally  
9 adjusted human behavior.

10 Q Really? It was the -- yes --

11 A It was deeply concerning, frankly.

12 Q Because of what you heard on the tapes, correct?

13 A Yes.

14 Q Yes.

15 A Yes.

16 Q In regard to the interactions with Sasha, you did  
17 not conduct any formalized tests; in other words, having him  
18 write down something, that's not part of a norm -- a  
19 formalized, accepted, peer-reviewed, psychological testing  
20 method for a determination of the psychological best interests  
21 of a child, correct?

22 A No, I was just doing a child interview.

23 Q Right.

24 A I didn't -- I wasn't conducting a --

1 Q You didn't conduct -- this idea that you were  
2 conducting -- or the interviews that you had -- when you  
3 observed him make certain statements, there's no psychological  
4 testing done in that context either.

5 A That was not my scope, correct.

6 Q And as you indicated to Mr. Jones, it would not have  
7 taken an expert to understand that the statements that were  
8 being made that you reviewed were -- were statements that were  
9 harmful to a child, correct? You would agree with that, we  
10 didn't need an expert to review that, did we?

11 A What he was relaying to me or what was on the tapes?

12 Q Let's talk about what you reviewed on the tapes.

13 A I don't think so.

14 Q Okay. And you really -- what he was revealing to  
15 you, I mean, the fact that he's blowing up his father's house,  
16 the fact that he's talking to you about his father being  
17 sneaky, those are all factual things. They have nothing to do  
18 with any specialized expertise or knowledge that you brought  
19 to this case, do they?

20 A Oh, I think the interactions that I had with -- with  
21 him actually do because there was so many conflicting  
22 statements and his behaviors were -- were conflicting, versus  
23 the tapes are very straightforward, and I don't think that one  
24 needed much, if any, expertise to realize that those were

1 highly problematic.

2 Q So you're saying that one could not interview that  
3 child and observe the same things that you claim you observed  
4 and come to the conclusion that there's a conflict with this  
5 child? You're saying that that required some sort of  
6 specialized education or knowledge?

7 A Yes, when a child says contradictory statements, to  
8 be able to piece that information together, yes, I think that  
9 requires some amount of knowledge, experience, and training to  
10 understand the backdrop of when a child says my father is, you  
11 know, sneaky, to be able to ask a question, what question to  
12 ask, or to leave that statement as is and move on.

13 Q Well, okay. In regard to that, if the child brought  
14 his backpack to mom and the homework was just not in there  
15 what would you expect the child to conclude from that, even at  
16 six years old?

17 A Oh, all kinds of things, but not -- I don't think  
18 that his father is sneaky would be something that would come  
19 to mind of a six year old.

20 Q Really? So he didn't take the homework out of the  
21 backpack, his mother is asking what did you do with the  
22 homework, where is it, what would he conclude if that happened  
23 consistently after he left his father's house?

24 A I -- I do -- I think it would be very atypical for a

1 six year old to form the opinion that his father was, quote-  
2 unquote, sneaky and manipulative to go and plan, yes, I do.

3 Q So he --

4 A I do. Six year olds -- they probably would say I  
5 don't know, I don't know, can I go and play now? They -- yes,  
6 I think it would very atypical.

7 Q Because they're not very good reporters at six years  
8 old?

9 A They are -- they believe that when an authority  
10 figure is asking them a question, especially their mom or  
11 their dad, that there must be an answer that they should  
12 provide. What they tend to say is I don't know, I don't know  
13 what happened to my homework.

14 Q So when an authority figure asks them questions  
15 about Call of Duty, they tend to think there must be an answer  
16 I should provide, correct?

17 A Possibly.

18 Q Okay. So let's go back to this taking the homework  
19 out, because this is -- this, to me, I'm trying to understand  
20 what you think a child's reaction would be to consistently  
21 going to his mother's house, his mother asking him to help him  
22 with his homework and finding that his homework has been taken  
23 from his backpack, what would he conclude?

24 A Again, I think more often than not six year olds

1 would say I don't know.

2 Q But don't you think that would cause him concern  
3 about what his father was doing, taking his homework out and  
4 getting in trouble with his mom?

5 A I -- I don't think six year olds have the ability to  
6 extrapolate that.

7 Q In regard -- they don't have the ability to figure  
8 out that somebody took his homework out of his backpack? You  
9 don't think a six year old can figure that out?

10 A I -- no. I really think that -- I really think the  
11 more appropriate answer would be that they don't know -- that  
12 they don't know, that they wouldn't assume that a parent would  
13 do something malicious at six years old.

14 Q The -- in regard to the -- isn't it true that  
15 children can become aligned to parent -- you're familiar with  
16 the studies on alienated children by Dr. Kelly and Dr.  
17 Johnson, correct?

18 A Uh-huh, and Olson, yes.

19 Q Probably one of the most seminal pieces on the issue  
20 of the alienated -- alienation of children, you would agree?

21 A Yes.

22 Q Yet in that study they indicate that there are  
23 different varies -- varying levels of either estrangement or  
24 actually attachment of one parent to the other depending on

1 the developmental age, correct?

2 A Right. That's what I was speaking to earlier.

3 Q Okay.

4 A Alignment, estrangement, alienation and abuse.

5 Q Very different sorts of spectrums, correct?

6 A Yes.

7 Q And the fact a child can be aligned or even

8 estranged from a parent and that may have nothing to do with

9 the alienating behaviors even if such alienating behaviors

10 exist, correct?

11 A Yes.

12 Q It may be the alignment is just something that she

13 (sic) feels about the parent; in other words, she (sic)

14 doesn't -- she's (sic) more closely aligned to a particular

15 parent?

16 A Yes. I just did a --

17 Q And that may come --

18 A Yes.

19 Q That may come from the fact that in this case the

20 mother allowed him to play Call of Duty, that that was

21 something he liked and he was more aligned to the mother,

22 correct?

23 A Oh, I have no doubt that that contributed.

24 Q Okay.

1 A I have no doubt that that --

2 Q And there was no doubt that he -- she was happy that  
3 the way that she (sic) related to her (sic) mother -- his  
4 mother was different than how he related to his father,  
5 correct?

6 A Yes, he had more -- in his eyes a six year old's  
7 viewpoint, his father is more strict and his mom is more  
8 lenient. Absolutely.

9 Q So there's nothing unusual about that that suggest  
10 that the child is so alienated that he should be taken from  
11 one parent or another and given to the custody of the other  
12 parent, correct?

13 MR. JONES: Objection, Your Honor. He made the same  
14 objection when I got near that -- near those types of  
15 decisions for Your Honor.

16 THE COURT: Not going to allow it. Rephrase it.  
17 BY MR. SMITH:

18 Q In regard to the alignment or the relationship  
19 between parents, you would agree very complicated to make  
20 those determinations and necessitate actual interviews and  
21 psychological analysis of the parents to make a conclusion  
22 about those relationships, correct?

23 A Yes and no. Yes and no. It -- it is very clear,  
24 and it doesn't require excessive interviews with parents to



1 determine when a child tells you that I'm not allowed to tell  
2 one parent something because the other parent told me I'm not  
3 able to, that is clearly problematic and that's very black and  
4 white. That doesn't require extensive interviewing.

5 Q But --

6 A What you're talking about is, is when a child has an  
7 affinity to be with a parent or in a parent's home more than  
8 the other parent because they have more lenient rules. Yes,  
9 and that makes absolute sense.

10 But what you also were referring to was a clear  
11 crossing of a boundary where a parent says do not relay this  
12 information, or keep this as a secret, that -- that doesn't  
13 require --

14 Q So -- so you've identified one behavior that you  
15 would find is inappropriate and always harmful to a child;  
16 that's essentially what you're saying, correct?

17 A (No audible response)

18 Q But that behavior does not lead to the conclusion  
19 that a child has been alienated.

20 A Right. Correct. That one. Right. It takes  
21 multiple -- it takes multiple factors.

22 Q And before you could ever come to a conclusion under  
23 the APA guidelines of ethical responsibility in a forensic  
24 analysis, before you ever could come to the conclusion that

1 this child is suffering from any kind of alienation that would  
2 affect his ability to have time with either parent, you must  
3 interview those parents and conduct psychological studies and  
4 you must review other individuals who have regular contact  
5 with this child, correct?

6 A I -- I don't think I'm making those statements. I  
7 think I'm --

8 Q No, no. I'm asking you if that's correct. Wouldn't  
9 that be correct that in order to do your job ethically under  
10 the guidelines -- you recognize the APA Guidelines, correct,  
11 you recognize that those are guidelines that you try to  
12 follow?

13 A I recognize the speciality guidelines through both  
14 APA, NAFCC.

15 Q Okay. And those guidelines would instruct you, Dr.  
16 Holland, that before any recommendation in regard to taking  
17 away time from one parent to another, you would be required to  
18 do much more than what you've done presently, correct?

19 A It -- I have -- absolutely, yes.

20 Q All right. In regard to the questions that you --  
21 and conclusions that you came in regard to the behaviors that  
22 you -- was in -- or that you saw in Sasha, isn't it fair to  
23 say that you were influenced significantly by the tape  
24 recordings when you did your final report and assessed the

1 behavior of Sasha?

2 A I guess you'd have to define significantly. I mean,  
3 I was disturbed when I met with him the first and second time  
4 prior to listening to the tapes. So did they underscore my  
5 concern? Yes, absolutely. But I was already concerned.

6 Q Okay. You were already concerned but the concern  
7 was greatly increased by you listening to the tapes, correct?

8 A Yeah. I mean, again, you have to define greatly. I  
9 mean, was it increased? Yes. Greatly? I -- you have to  
10 define greatly.

11 Q Do you want me to pull out a dictionary?

12 A I -- was it increased? Yes.

13 Q Like you were able to ask degrees about the worst,  
14 you know, alienation you ever heard but you're not able to ask  
15 the degree about how you were affected by listening to the  
16 tape?

17 A It increased my concern.

18 Q Significantly, correct?

19 A Greatly.

20 Q Materially. Greatly, thank you.

21 A Greatly.

22 Q Did you conduct all the interviews?

23 A Yes.

24 Q Okay. And what was the role that your -- you said

1 that you were aided by your assistant. What was the role that  
2 your assistant --

3 A Dr. Dubois (ph), yes. She helped go through the  
4 records, she sat in on the interviews with Mom and Dad, two of  
5 the interviews with Sasha, went through the tapes initially.  
6 I don't know if she contacted -- I think that's it.

7 Q Okay. You -- have you brought your whole file here  
8 today?

9 A Yes.

10 Q May I see it?

11 A Yes.

12 MR. SMITH: Your Honor, may I approach?

13 THE COURT: Certainly.

14 BY MR. SMITH:

15 Q Is this it? This is the file?

16 A Yes.

17 Q In your file is a copy of the report with  
18 handwriting and notes on there. Are those your notes?

19 A Some are my notes, some are Dr. Dubois's notes. She  
20 typically takes notes because I'm interacting with Sasha.

21 Q Oh, this is of the report, so she wasn't taking  
22 notes when she interacted with you on this report --

23 A Oh, sorry. Those are my notes on the report,  
24 correct.

1 MR. SMITH: I'd like to -- this might be easier if  
2 I'm standing next to Dr. Holland. Would it be all right?

3 THE COURT: Go ahead, Counselor.

4 MR. SMITH: Thank you.

5 THE WITNESS: Sorry. I didn't know what notes you  
6 were referring to.

7 MR. SMITH: No, I understand.

8 BY MR. SMITH:

9 Q So these were notes that were taken by whom?

10 A These are mine. These are my notes.

11 Q And these are in preparation for today?

12 A Yes.

13 Q Okay. And then this one, there's a second report  
14 that also has notes on it.

15 A Yes. These are my notes.

16 Q And these were in preparation for today as well?

17 A Yes.

18 Q Why two separate ones?

19 A Because this is my report that I generated and this  
20 is Dr. Chambers' report.

21 Q Oh, I see. Okay. And then the notes that the  
22 1/22/15 -- are these notes that you prepared? It looks like a  
23 transcript of the audio.

24 A Correct.

1 Q Okay. Were these something that you prepared or was  
2 this something that was provided to you?  
3 A These would have been -- well when you say provided  
4 by --  
5 Q Did somebody give them to you or did you prepare  
6 them?  
7 A Well they would have been given to me and then Dr.  
8 Dubois would have looked through them and then I would have  
9 reviewed them.  
10 Q Okay. So this is something that Mr. Abid gave to  
11 you, correct?  
12 A Yes.  
13 Q Okay. So, and that was a transcript of -- or his  
14 transcript of the tapes, correct?  
15 A Correct.  
16 Q All right. And then these are your notes --  
17 A Yes.  
18 Q -- about the interviews?  
19 A Correct.  
20 Q And this is your notes in regard to your first  
21 meeting with Lyuda?  
22 A Yes.  
23 Q Okay. So she had told you that he had placed the  
24 device in the backpack, correct?

1           A     Yes.

2           Q     And you haven't modified these notes since the date

3 that's indicated on them that's 5/15?

4           A     Correct, 5/5.

5           Q     Okay. 5/5, excuse me, 5/5/15, correct?

6           A     Correct.

7           Q     All right. And those notes and that date indicate

8 the time at which the interview was conducted, right?

9           A     Yes. Unless we're wrong.

10          Q     I'm sorry?

11          A     Unless we were wrong.

12          Q     Unless you looked at the time and you got it wrong?

13          A     Unless we -- right.

14          Q     Okay. It's possible but not likely, correct? It's

15 likely that is the time and the date that you took the

16 interview, right?

17          A     Correct.

18          Q     Were you -- did you have any concerns -- I see a

19 note here that the exchanges were at a police statement (sic)

20 for six months and that they were taking videotapes of her.

21 What would be the effect on a child of having exchanges at a

22 police station (indiscernible, cross-talk) --

23               MR. JONES: Objection, Your Honor, to the extent

24 that it's referring to the exchange at the police station

1 before the last order, I think we've already covered that. If  
2 he's referring to the ones recently --

3 MR. SMITH: One of the things --

4 THE COURT: I'll allow it, generally, at a police  
5 station.

6 THE WITNESS: Not good.

7 BY MR. SMITH:

8 Q Not good. It'll create some tension, correct?

9 A Sure, especially if they're aware, if they're old  
10 enough to aware (sic) -- you know, that they're aware that  
11 it's a police station and Mom and Dad's attitudes and tension  
12 and -- yeah.

13 Q Yeah. Even at four years old you would expect  
14 someone to understand that something's wrong about this?

15 A Yes.

16 Q All right. So his feelings -- and the way that I  
17 would tie that into this is that his feelings or the problems  
18 between his parents could have been generated long ago, it may  
19 not have anything to do with recent --

20 A Had started long ago, yes.

21 Q Okay. So you would agree that not all of the things  
22 that were contained in your notes were translated into your  
23 report, correct?

24 A Right, they're summarized.



1 Q Okay.

2 A Especially with Mom and Dad because, again, the  
3 Court asked for a child interview, so.

4 Q Okay. The -- did you have any discussions with  
5 Sasha about being enrolled in various events or activities?

6 A Uh-huh, baseball comes to mind. I'd have to look at  
7 my note -- I mean, baseball comes to mind.

8 Q Okay. And was that an activity that he indicated he  
9 enjoyed with his father?

10 A Yes.

11 Q Okay. You have here in your notes, Asked son, where  
12 is your home? Is that what that means, H-M?

13 A Homework probably.

14 Q Homework. And what is said about Ricky?

15 A Right. So --

16 Q Did you ask him what was said about Ricky in --  
17 because that doesn't come out in your report.

18 A So if I -- so I'd have to look through my notes to  
19 see if we did. If we did, nothing substantive, you know, came  
20 out of that.

21 Q Okay. So nothing substantive, you don't recall  
22 asking, but if there was something that would have -- and that  
23 was significant you would have asked him about it.

24 A Right, and I would have put it in the report. And I

1 believe I did put in the report that he -- that he likes  
2 Ricky, that he -- there's information in there about him.

3 Q All right. And so you interviewed Mr. Abid on May  
4 5th, 2015 -- five -- or I think this is '15, right, 2015?

5 A Yes.

6 Q And you indicated 45 minutes. Was that the end of  
7 the interview, you came back to the top of the page and wrote  
8 45 minutes, is that how you did that?

9 A Uh-huh, yes.

10 Q Yes, okay. Okay. And he had indicated that the  
11 child had played Grand Theft Auto?

12 A Yes.

13 Q And did you watch a video of the child speaking  
14 about that? Did you ever see a video?

15 A (No audible response)

16 Q Because in your report you reference videos.

17 A I was gonna --

18 Q I didn't see any videos in the report other than the  
19 fact that you looked at one.

20 A But I don't recall Sasha talking about Grand Theft  
21 Auto, which is why I don't think I put it in the report.

22 Q Okay. In fact, he never referenced that he played  
23 Grand Theft Auto, correct?

24 A Correct. That's why I don't think I put it in the

1 report.

2 Q Did you ask him about it? Did you ask him whether  
3 or not he'd ever played it?

4 A No. I would have maybe -- they're called seedlings,  
5 like I -- like I might say something about Grand Theft Auto,  
6 but I don't directly ask a six year old because, again,  
7 they're going to think that they need to respond. Those are  
8 called forced choice questions and they're typically -- aren't  
9 appropriate to ask.

10 Q What was the video that you saw? Because you  
11 reference -- if you look at your report --

12 A Right.

13 Q -- it says --

14 A Oh, it's of the exchange.

15 Q The video that says that --

16 A Yeah, it's an exchange with Sasha in the back seat  
17 of the car.

18 Q Of whose car? It says Mr. Abid submitted video and  
19 audio recordings of Ms. Abid and Sasha's interactions. He had  
20 a video recording of Mrs. Abid and Sasha's interactions?

21 A Yes. There's a -- and Sasha's in the back seat of  
22 the car, I believe, if I recall correctly.

23 Q And it's a video?

24 A I believe so, yes.

1 Q Do you --

2 A Like during an exch -- maybe during an exchange.

3 Q Do you know who was doing the exchange or did Mr.

4 Abid surreptitiously video tape?

5 A No. I don't know. It didn't seem like that. I

6 think he was videoing an exchange, like maybe either putting

7 him in the car, Sasha was in the back seat. It wasn't like a

8 secret video. It certainly didn't appear like that.

9 Q What was the significance of the video?

10 A There was -- and I believe that it's outlined in the

11 transcripts what they're talking about.

12 Q Okay. So is it -- it was something that's in the

13 transcripts.

14 A Yes.

15 Q All right. Thank you.

16 A Yes, uh-huh.

17 Q Did -- in your interview with Mr. Abid, did he

18 mention anything about the problem that they had in regard to

19 the time that Mrs. Abid wanted after school with Sasha? Does

20 that sound familiar to you?

21 A No. The time after school? No.

22 Q Yeah. In other words, Mr. -- Ms. Abid wanted time

23 after school with Sasha and there was a dispute. In fact, the

24 first motion filed in this action addressed that, not this

1 video.

2 A Right. No. Because again, I was just trying to get  
3 a general sense of what the concerns were.

4 Q Okay. And he indicated -- in your notes it says  
5 that you -- and I think this is the interview with Mr. Abid,  
6 but correct me if I'm wrong but --

7 A Yes.

8 Q Sasha is exhibiting aggression.

9 A Right, to the two young -- to his two younger  
10 siblings.

11 Q Okay. Did he indicate that -- those younger  
12 siblings would be very young, correct?

13 A Yes.

14 Q Did he identify for you any other context at all  
15 where some third party would see the child exhibiting  
16 aggression?

17 A This -- his stepmom, but not outside the home.

18 Q Okay. Do you know sitting here whether there was an  
19 exhibition of aggression by Sasha at school at any time?

20 A I didn't -- I mean, I didn't -- again I -- this was  
21 just a child interview so I didn't -- I wouldn't ask those  
22 types of questions or interview any of those types of people.

23 Q Would that be something that you would expect based  
24 on the behavior you saw in Sasha that he wouldn't be able to

1 -- or he would be aggressive?

2 A You mean secondary to playing Call of Duty or just  
3 because of Dad's --

4 Q No, based upon what you observed in Sasha --

5 A Oh.

6 Q -- would that be a behavioral problem that you would  
7 expect to occur?

8 A Possibly. Maybe if the teachers -- if he wanted to  
9 play Call of Duty and they didn't let him. I don't -- I don't  
10 know. I mean, maybe, maybe not.

11 Q In regard to the -- I didn't -- is there anything in  
12 your notes, and maybe you can check that quicker than I do,  
13 about this concern about the upcoming visit -- vacation?

14 A The upcoming vacation?

15 Q Yeah. In other words, you indicated that Mr. Abid  
16 had talked to you about a vacation --

17 A Oh, that was my concern. Well, that was more of my  
18 concern that generated --

19 Q I just wanted to see where in your notes there was  
20 any discussion of that vacation. Do you have it there?

21 A Well, it would have been -- I only met with him  
22 once, so that would have been --

23 Q Right, so it should be in your notes.

24 A It would have probably just said six weeks.

1 Q Let's see if there's anything in there like that.

2 (Pause) So there's nothing in your notes, right?

3 A No. That could have been -- this is Dr. Dubois's --

4 Q The answer is no, there's nothing in your notes in  
5 regard to that discussion --

6 A I didn't -- I looked. Yeah, I didn't see any.

7 Q Okay. Anything in Ms. -- or Dr. Dubois's?

8 A (No audible response)

9 Q Okay. One of the things that Dr. Dubois noticed,  
10 just as we're looking through the notes --

11 A Uh-huh.

12 Q -- is that Dad had reported that he contact -- the  
13 FBI had contacted him and that he believed that there was  
14 illegal activity going on in the Ukraine. Do you see that?

15 A Uh-huh.

16 Q Wouldn't that be significant if one parent felt that  
17 the other person was living with someone who is conducting  
18 illegal activity? Wouldn't that be something that could be  
19 influential in terms of the child if he was representing those  
20 things to the child?

21 A If he was representing them to the child?

22 Q Yes.

23 A Yes.

24 Q You don't believe he was?

1           A     I -- I mean, I didn't -- Sasha didn't relay anything  
2 to me pertaining to that.

3           Q     So you'll also agree that in the notes that Dr.  
4 Dubois took she emo -- the very same words that you've used  
5 today, that Sean told you that the child was being emotionally  
6 abused, that he could not love his father, that the contact --  
7 and the words were -- there's internal conflict, right? Is  
8 that --

9           A     No internal conflict.

10          Q     That is in the doing is good to child. In other  
11 words, he's -- she's saying -- what he told you was that no  
12 internal conflict, using your words, internal conflict, that  
13 she is doing is good to child?

14          A     Uh-huh.

15          Q     So the very same observations that you made after  
16 your interviews are the very observations that Sean had  
17 indicated to you he had made after he interacted with Sasha,  
18 correct?

19          A     I -- I'm -- I guess I'm not following you.

20          Q     The very same language, the internal conflict, the  
21 emotional abuse --

22          A     I don't know if I said internal conflict in my  
23 testimony. I think I said internal distress, confusion.

24          Q     All right. Let's take a look at the other notes.



1 Did you find any notes between your communications, either Dr.  
2 Dubois or your communications, about this vacation?

3 A Not yet.

4 Q Okay. Well this is your communication. This is Dr.  
5 Dubois's notes regarding Lyudmyla, correct?

6 A These are mine.

7 Q Okay.

8 A Like a -- just a notation that there was an upcoming  
9 -- that she was planning on taking this. That's what -- what  
10 you're looking for?

11 Q Anything that would suggest that you had concerns  
12 about this vacation. It says summer, four to six weeks, flip-  
13 flop, do you see that?

14 A Uh-huh, Uh-huh.

15 Q But those are your notes about flip-flopping them,  
16 correct?

17 A Well that she was -- so, I don't necessarily write  
18 down everything that's being said, right? So there was  
19 obviously some discussion about summer, four to six weeks,  
20 then whoever was talking to me at that time wanting to -- hope  
21 -- wanting to flip-flop that. This is Mom.

22 Q Right.

23 A So that she was planning to go away for four to six  
24 weeks.

1 Q Okay.

2 A So maybe she relayed that to me.

3 Q I thought your testimony was is that it was Mr. Abid  
4 had addressed some concern about that to you.

5 A I was concerned.

6 Q Okay. Is there any way that your office in any  
7 manner of any kind communicated either to Mr. Abid or John  
8 Jones that you were going to make the finding that she  
9 shouldn't have that six week period?

10 A I could -- I could have communicated to them that I  
11 was -- that I was concerned about --

12 Q To who?

13 A To either Mr. Abid or John Jones's office that I was  
14 going to write a letter because I was concerned about the  
15 length of time and Mom going --

16 Q So now even though you had indicated earlier you  
17 don't recall any communication with his office that you're  
18 saying now --

19 A No, with him. With him. With him.

20 Q Okay. So now it's with his office; is that right?

21 A Correct.

22 Q Okay. Got it.

23 A Yeah. I never got on the phone with Mr. Jones and  
24 said, you know, this is something that I -- or he never called

1 me and said this is something that I want you to do. Could I  
2 have called his office? Could I have had Annie, my assistant,  
3 call Mr. Abid and say I understand -- and it probably was  
4 after I talked with Mom and she's planning on going on a six  
5 week vacation and I'm concerned about that after my second or  
6 third time seeing Sasha? Yes.

7 Q Okay.

8 A And actually that --

9 Q Okay. So --

10 A This is now with Sasha. These are notes I believe.

11 MR. JONES: Judge, would it be possible to take a  
12 short break?

13 MR. SMITH: Sure.

14 MR. JONES: I don't know if Mr. --

15 MR. SMITH: I don't have any objection.

16 MR. JONES: -- Smith has any longer to go but --

17 THE COURT: Mr. Smith, it's almost noon. What is  
18 your -- (indiscernible) if you need a short break, we're going  
19 to at a minimum take a short break, but what's your preference  
20 about lunch hour or length of time you think that you need?

21 MR. SMITH: We have all day today?

22 THE COURT: We do.

23 MR. SMITH: Okay, great.

24 THE COURT: I don't --

1 THE WITNESS: I don't though.

2 MR. SMITH: Okay. So I'd like to -- if we could  
3 take a --

4 THE COURT: Doctor, what time --

5 THE WITNESS: Sorry.

6 THE COURT: What -- Doctor, what time are you  
7 available to today?

8 THE WITNESS: 1:00.

9 THE COURT: What did you just say?

10 THE WITNESS: I'm sorry, 1:00.

11 MR. SMITH: Okay. If you'll allow me to -- a few  
12 minutes, maybe take a break with Mr. Jones, a few minutes to  
13 review this material.

14 THE COURT: Let's take a five minute break and then  
15 we'll push through until 1:00, okay?

16 MR. SMITH: Very good. Thank you, Your Honor.

17 (COURT RECESSED AT 11:54:34 AND RESUMED AT 11:59:46)

18 C E R T I F I C A T E

19 I do hereby certify that I have truly and correctly  
20 transcribed the digital proceedings in the above-entitled case  
21 to the best of my ability.

22

23

24

/s/ Lee Ann Nussbaum  
Lee Ann Nussbaum, CET-517  
Certified Electronic Transcriber

**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-110-2016-0374 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 15**

RADFORD J. SMITH, ESQ.  
Nevada Bar No. 2791  
RADFORD J. SMITH, CHARTERED  
2470 Saint Rose Parkway, Suite 206  
Henderson, Nevada 89074  
Attorneys for Appellant

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11-19-15

01-11-16

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1 TRANS

2 COPY

3  
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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21 The Defendant: LYUDMYLA A. ABID  
22 For the Defendant: RADFORD SMITH, 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)

\* \* \* \* \*

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>
--	-----------------

(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

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

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15 PLAINTIFF'S  
16 EXHIBITS:

ADMITTED

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(None presented)

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19 DEFENDANT'S  
20 EXHIBITS:

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(None presented)

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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.

0 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

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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 you're 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 RE CROSS 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.

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/s/ Kimberly C. McCright  
Kimberly C. McCright  
Certified Electronic Transcriber

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