

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

JANET SOLANDER,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

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Case No. 76228

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**RESPONDENT'S APPENDIX  
Vol. 2**

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## **CERTIFICATE OF SERVICE**

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1 MS. BLUTH: Because she writes CPS and says this is  
2 exactly what I'm seeing, and CPS still isn't do anything. And  
3 if she's there documenting her own document, it's not hearsay.

4 THE COURT: Well, yes, it's still an out of court  
5 statement --

6 MR. FIGLER: Correct.

7 THE COURT: -- whether she authenticates it or not. I  
8 mean, she can say I sent a letter to CPS and this is what I  
9 observed, but her letter is still a hearsay statement. It's  
10 still an out of court statement in the letter. If the point is  
11 I sent a letter and you want to prove she sent the letter --

12 MS. BLUTH: Yeah.

13 THE COURT: -- I mean, is that the point as opposed to  
14 the contents of the letter? Because she can testify as to  
15 whatever information is in the letter. But the letter itself,  
16 the information imparted in the letter is an out of court  
17 statement.

18 MR. FIGLER: Right.

19 THE COURT: It's still hearsay. That's hearsay.

20 MS. BLUTH: But the part about hearsay, though, is  
21 that there's a general element of trustworthiness. And if --

22 THE COURT: Well, that -- that's an exception to it,  
23 but it would still be hearsay. It's still a hearsay document.

24 MR. FIGLER: Correct.

25 THE COURT: I mean, whether it's admissible or not,

1 her letter is still a hearsay document. I don't -- I mean, I  
2 don't know why we need to put the letter in, but if you -- was  
3 it to show that she notified CPS?

4 MS. BLUTH: Yeah. Uh-huh.

5 MR. HAMNER: I mean, there's a couple of ways that the  
6 document would come in. So if it's really -- one would be under  
7 the general liability, but additionally it would be present  
8 sense impressions if she's detailing the things that she's  
9 observing inside the home that she's relaying to them.

10 THE COURT: At the time she's observing them.

11 MR. HAMNER: Correct. Well, and --

12 MR. FIGLER: We don't know if the --

13 MS. BLUTH: Or shortly thereafter.

14 MR. HAMNER: Or shortly thereafter. Additionally, it  
15 reflects the state of mind and the feeling of the declarant,  
16 which is important, and additionally it can come in for a  
17 non-hearsay purpose, which would be the effect on CPS, that when  
18 receiving that letter, it calls them, then, to do something  
19 subsequently. So the bottom line is there's a number of  
20 different reasons why it would be admissible at trial and,  
21 accordingly, should be admitted for an opening statement.

22 THE COURT: I don't -- Mr. Figler, my only -- from  
23 everything I've heard, the only thing I'm sort of concerned with  
24 is the pictures of the Solanders. You didn't put words over  
25 that; right?

1 MS. BLUTH: No.

2 THE COURT: Okay.

3 MS. BLUTH: I mean, the fact of the matter is they  
4 were arrested. They're going to hear that they were arrested.  
5 I mean --

6 THE COURT: What are the pictures of the girls? What  
7 did you put --

8 MS. BLUTH: So in the beginning there is -- in the  
9 beginning of my PowerPoint there's a picture of the three little  
10 girls before they get to the Solanders. And in that picture --

11 THE COURT: That's fine.

12 MS. BLUTH: -- I'm explaining their names, okay. Then  
13 I explain to the jurors that through this trial the State will  
14 present to you, and hold on, I want to think about my exact  
15 words because I don't want to get it wrong, but I say something  
16 like the State will present evidence to you and you will enter  
17 into the world of child abuse, and then world of child abuse  
18 comes up.

19 There's nothing -- I mean, obviously, I know I can't  
20 put guilty and drop it over the defendant's head. I mean, I  
21 just -- I guess I'm a little bit frustrated in the fact that  
22 this isn't my first rodeo. I definitely haven't been doing it  
23 as long as some people in this room, but I have been doing it  
24 for ten years. I know what I can and can't do in an opening  
25 statement. I don't need to give my -- if you want me to do

1 that, I will, but I don't -- I've never had, in ten years, to  
2 give over my opening PowerPoint for an in camera review.

3 THE COURT: Well --

4 MS. BLUTH: I mean, I know what -- I know --

5 THE COURT: -- I'm not asking you, but I think Mr.  
6 Figler -- you know, I don't know what other judges do. My  
7 policy is to, if you're going to use exhibits, to give the  
8 defense a heads up as to what the exhibits are, give them an  
9 opportunity to make an objection. If it's something that  
10 clearly is objectionable, not just to object to things that  
11 everybody knows are coming in, if they want to do that, and then  
12 to make a Court's exhibit of the PowerPoint. I don't really  
13 want to look at the PowerPoint in camera. I don't think I need  
14 to do that. But I do think, again --

15 MS. BLUTH: Sure.

16 THE COURT: -- as I've said several times, I think  
17 that the defense has a right to see what exhibits. Now, if  
18 they're likely to be admitted in the trial, then they can show  
19 them in the PowerPoint. If there is a legitimate question as to  
20 whether or not they will be admitted during the trial, then I'd  
21 ask the State or the defense or the, in a civil case, the  
22 plaintiff's lawyer or whoever it may be to take them out.

23 MS. BLUTH: I understand.

24 THE COURT: So --

25 MS. BLUTH: And I did show him my slides. He had a

1 problem with the mug shots, the letter, and me superimposing  
2 "world of child abuse".

3 THE COURT: Right. My only concern is, as we know,  
4 Judge Barker was reversed in a trial because there is a picture  
5 of the defendant and then the word "guilty" over the picture.  
6 And I just don't want something similar to that with the -- like  
7 the victim of something like that that the Supreme Court could  
8 see as prejudicial in the same way.

9 MS. BLUTH: Me saying the State is going to present  
10 evidence --

11 THE COURT: What does it look like? I mean, I don't  
12 know. Do you have --

13 MS. BLUTH: Yeah.

14 THE COURT: -- a hard drive of it or --

15 MS. BLUTH: I have it right here.

16 THE COURT: I mean, not --

17 MS. BLUTH: May I approach with it?

18 THE COURT: Sure.

19 MR. FIGLER: And just so -- there's one other area of  
20 concern. I didn't get a chance to get to it.

21 MS. BLUTH: So it comes out like this, right. Here's  
22 the -- sorry, here's the little girl, little girls.

23 THE COURT: Wait, who is that random little girl?

24 MS. BLUTH: That's her book.

25 THE COURT: Oh. Okay. So that came from the

1 defendant herself?

2 MS. BLUTH: Yeah.

3 THE COURT: Okay.

4 MS. BLUTH: It was impounded in evidence.

5 THE COURT: No, no. That's fine. I thought it was  
6 like some picture or something.

7 MS. BLUTH: And then I talk about the world of child  
8 abuse. I don't say -- I'm not saying of three victims or -- if  
9 you want, I can take it off their faces and put it on the next  
10 slide.

11 THE COURT: I don't think -- I think -- I don't think  
12 that makes a difference.

13 MR. FIGLER: So, I mean, that's our concern is it just  
14 in opening statement is putting child abuse on the faces of the  
15 -- the three victims.

16 THE COURT: All right. So, Mr. Figler, would you feel  
17 better if she took it off the children's picture and put it as  
18 part of her, you know, outline of --

19 MR. FIGLER: That's fine, Your Honor.

20 THE COURT: -- points.

21 MR. FIGLER: Yes. I would --

22 THE COURT: Okay.

23 MR. FIGLER: -- prefer that it not be --

24 THE COURT: Do that, Ms. Bluth.

25 MR. FIGLER: -- on the child faces.



1 MS. BLUTH: Yes, Your Honor.

2 THE COURT: All right. What else?

3 MR. FIGLER: And then if Your Honor were to have gone  
4 and looked at that in camera, you would see an inordinate, in  
5 the defense opinion, devotion of information and pictures that  
6 relate to the Diaz-Burnett kids and the Stark kids.

7 And for a case where they are not being victims and  
8 where the defense has been exhibiting concern from the onset of  
9 learning late in the game, in January of this year, that the  
10 State was intending to introduce this information to the jury  
11 that the defense would be in the untenable position of also  
12 having do these little mini trials as to whether or not the  
13 Solander's actions towards the Diaz-Burnett kids and the Stark  
14 kids was justified or not justified or reasonable or not  
15 reasonable, and to defend against the existence and the truth  
16 and the veracity of those individuals, as well, even though none  
17 of those are charges in this case.

18 And there is a heavy emphasis, as we anticipated, in  
19 the opening statement. And presumably, in the very broad  
20 strokes that the State is going to indicate, because it's  
21 essentially creating two mini trials as we anticipated,  
22 regarding the veracity and the importance of the Diaz, Burnett,  
23 and the Stark children. And we'd ask the Court once again to  
24 revisit.

25 We appreciate that Your Honor limited what could come

1 in, but that you just, in finality and to protect this record,  
2 disallow any references to the Diaz, Burnett, or the Stark  
3 children in their treatment, and allow the State to call them as  
4 they may for percipient information about what they witnessed or  
5 didn't witness, but that all these acts that are directed  
6 towards -- allegedly towards the -- those children be excluded  
7 from this trial. There's pictures of --

8 MS. BLUTH: Autumn and Ivy and Areahia.

9 MR. FIGLER: Right. And it has lists of all the  
10 complaints that the Court has still allowed to come in listed  
11 next to it, etcetera. And this is confusing to the jury. It is  
12 going to put the defense in this untenable position.

13 And, again, we still just have these pre-Solander  
14 records of these children, and we have not even had a chance to  
15 look and investigate to counter these type of broad-stroke,  
16 inappropriate, and prejudicial arguments of the State. And so  
17 we'd ask that they be stricken from the opening, and that Your  
18 Honor just disallow anything except percipient testimony to go  
19 forward in this particular case.

20 THE COURT: Well, what do you have -- can you print  
21 this out for me? Can you -- you know how you can print out a  
22 PowerPoint? Can you just print it out?

23 MS. BLUTH: Yeah. I mean, I'm --

24 THE CLERK: Do you want to forward it to Krystal and  
25 I'll --

1 MS. BLUTH: No, they -- they can't electronically do  
2 that.

3 THE COURT: So what do you have regarding the  
4 Diaz-Burnett children? What do you have, a picture of the  
5 Diaz-Burnett children?

6 MS. BLUTH: No, I have -- so in my PowerPoint I also  
7 have like driver's license photos of the babysitter so that it's  
8 not just a bunch of words on the screen.

9 THE COURT: No, they're allowed to show --

10 MS. BLUTH: Right.

11 THE COURT: -- this witness --

12 MR. FIGLER: I didn't object to that.

13 THE COURT: -- is going to testify --

14 MS. BLUTH: Right. And that's what I have.

15 THE COURT: -- blah blah blah blah blah.

16 MS. BLUTH: So I have one picture, the only picture  
17 that I have of Autumn and Ivy is a picture that Janet sent of --  
18 took of them and sent to Dwight. I found it on the email  
19 searches.

20 THE COURT: Okay.

21 MS. BLUTH: And they're just dressed standing there,  
22 so it's not peeing or poo. I mean, I do have --

23 THE COURT: So what are you going to say about Autumn  
24 and Ivy?

25 MS. BLUTH: So in regards to Autumn and Ivy. All

1 right. So in regards to Autumn and Ivy that there was similar  
2 issues in the home revolving around toilet and -- toileting and  
3 eating, that they had to ask to use the bathroom, that -- ask to  
4 use the bathroom, had to ask before eating, that they're toilet  
5 paper was limited, that they remember cameras and gates being  
6 put up in the house, that the defendant discussed with Autumn  
7 that she had stomach issues and that she was lactose intolerant  
8 and, therefore, that she would have to eat by her -- that she  
9 was not allowed to take anything from others at school and that  
10 she needed to be segregated from the major group, that she had  
11 to provide her backpack to the bus driver, and that her -- that  
12 the school office staff looked at her lunch -- or let me get the  
13 particulars on that one. Yeah, that her lunch was turned into  
14 the front office, which is what she testified to.

15 THE COURT: Yeah, I don't remember her saying anything  
16 about a bus driver.

17 MS. BLUTH: I did, and I did specifically talk to her  
18 and Cherina Davidson about that.

19 THE COURT: About the bus driver?

20 MS. BLUTH: Yeah.

21 THE COURT: Okay.

22 MS. BLUTH: And so Cherina -- and so then Cherina  
23 Davidson is going to come in and say that toileting and eating  
24 seem to be a common theme in the home, and that Janet would just  
25 not let up on the toileting, that it was said that while Autumn

1 was at the -- while Autumn was at home she was into pullups and  
2 that the bedwetting was out of control.

3 But Autumn is saying, no, my sister had some issues  
4 before we got there, and still while we were there, but I didn't  
5 have those type of issues. And so it's this constant theme that  
6 she's presenting to CPS about toileting and eating, and that's  
7 it.

8 THE COURT: And then what are you going to say about  
9 the Diaz-Burnett children, and what pictures are you using about  
10 the Diaz-Burnett children?

11 MS. BLUTH: I only have one picture of Areahia, and  
12 I'll bring it to Your Honor. It's the -- it was a picture that  
13 CPS took at her house. She's reading a book on a chair. It's  
14 nothing.

15 THE COURT: Okay.

16 MS. BLUTH: The -- in regards to Areahia, she'll say  
17 that bathroom and eating was a major theme within the home, that  
18 toilet paper was limited, they had to ask to use the bathroom,  
19 and that because of these things, accidents between her and  
20 Kaeshia and -- it's spelled Demyer, but his name is pronounced  
21 Damar, so I always get thrown off -- became normal and that her  
22 siblings were disciplined quite harshly for the accidents.

23 They would be pulled up and down the stairs by their  
24 hair, kicked up and down the stairs, that the defendant accused  
25 her of stealing food at school from other classmates, so then

1 from that point on she wasn't allowed to take food from other  
2 students, and she was made to sit in the main office to eat by  
3 herself segregated from other students. And then I go into the  
4 constant battle between Lori Wells and the defendant and Dwight,  
5 and then CPS's involvement in regards to that.

6 THE COURT: Mr. -- I mean, or maybe Ms. McAmis, isn't  
7 that all going to come out anyway how CPS finally got involved  
8 in this investigation? I mean, isn't that going to necessarily  
9 come out that the girls were in Florida, and then as a result of  
10 Ms. Wells and her concerns over the Diaz-Burnett girls CPS  
11 finally gets involved? I mean, isn't all of that going to come  
12 in?

13 MS. McAMIS: Well, Your Honor, it's, again, our  
14 position that it should not come in. And it really complicates  
15 the issues because these specific issues, she's -- she's talking  
16 about the toileting concerns, she's talking about, you know,  
17 Areahia and the -- and Lori Wells.

18 Lori Wells is a concern. She did not get along with  
19 the Solanders; she did not agree with their discipline methods.  
20 She kept turning them in to CPS, and CPS kept investigating, and  
21 then took Lori Wells off the case and the girls went to someone  
22 else for therapy. And the girls were removed from her -- from  
23 the Solander home subsequently.

24 THE COURT: Are you talking about the Solander girls,  
25 or the Diaz-Burnett children?

1 MS. McAMIS: You're right. I meant the Diaz-Burnett  
2 children. And that's -- that's also part of the problem.  
3 There's so many sibling groups that the jury is going to be  
4 confused. This is absolutely going to complicate the jury  
5 trying to discern between what's actually charged and what's not  
6 charged. I mean, getting into --

7 MR. FIGLER: Lori Wells had no contact with the  
8 Solander kids.

9 MS. McAMIS: I'm sorry?

10 MR. FIGLER: Lori Wells had no contact with the  
11 Solander kids.

12 MS. McAMIS: Well, and that's true.

13 THE COURT: Yeah.

14 MS. McAMIS: Lori Wells was not the therapist and she  
15 didn't have any contact with the Solander girls.

16 THE COURT: So what is Lori Wells going to say, just  
17 that --

18 MS. BLUTH: That there was a constant obsession with  
19 eating and toileting, and that any time she spoke to the  
20 Solanders about the methods that they were using and how that  
21 was harmful, the Solanders were not listening. And she would  
22 not give up. She contacted CPS over and over and over again,  
23 and it wasn't until her and Nurse Schweiger, who I'm not allowed  
24 to get into, will not let go that CPS starts interviewing  
25 Areahia.

1           And then once they start interviewing Areahia about  
2 these things, then that's when Yvette Gonzales goes in to say  
3 we're taking these kids out because I've come here, I've heard  
4 what Areahia has said, these children all are very thin, they're  
5 eyes are sunken in, they've got bruises all over their faces and  
6 their heads, they're leaving, where are the Solander girls? Ms.  
7 Solander, they're with my parents -- or I don't know or I'm not  
8 telling you. Tell us where they are. They're with my parents.  
9 Can we have that contact information? No, you cannot.

10           Then they go and put in a missing persons report.  
11 Someone makes contact with Dwight the next day, he tells them  
12 where they are. So, I mean, I did it as an OBA. Looking back,  
13 hindsight is 20/20, I should have done it as a res gestae issue  
14 because but for Lori Wells and Carron Schweiger, we would have  
15 never known where the Solander girls were and they wouldn't have  
16 been taken out of the home.

17           But I guess what the problem is I'm having, this is --  
18 I literally -- we literally have relitigated this bad acts every  
19 single day. Every single day. The Court made a ruling, we knew  
20 exactly what was coming in and exactly what was not coming in.  
21 The State understands that ruling. We've stuck by it. I did a  
22 complete opening PowerPoint, but -- and I understand Mr. Figler  
23 has a job to do, but we can't keep re-litigating every single  
24 day.

25           THE COURT: Right. Well, to be fair to Mr. Figler and



1 Ms. McAmis, they didn't see the PowerPoint or the exhibits, and,  
2 you know, he is right, and I -- when you and I did that panel in  
3 front of Mr. Wolfson's class I said this, technically exhibits  
4 are not supposed to go into an opening statement.

5           And that's kind of a new thing that everybody is  
6 doing, criminal and civil, a lot of personal injury lawyers are  
7 doing it, and it's kind of become accepted. But Mr. Figler is  
8 right, the traditional way is not to allow any exhibits into an  
9 opening statement. Like I said, it's kind of become, I don't  
10 want to say a standard of practice, but it's become accepted,  
11 especially here in the -- you know, I can't speak to what  
12 they're doing in --

13           MS. BLUTH: Sure.

14           THE COURT: -- Washoe and what not --

15           MS. BLUTH: But I understand --

16           THE COURT: -- but it's become -- and like I said, we  
17 see it in personal injury cases all the time. But, you know, to  
18 be fair to Mr. Figler, he hadn't seen the PowerPoint until  
19 today.

20           MS. BLUTH: But he knows what we're talking -- like  
21 what is in my PowerPoint is what we've said is coming in.  
22 There's nothing in my PowerPoint that the Court has ever said is  
23 not coming in. Like we've all known Lori Wells is testifying.  
24 We all heard her testify. She was on the stand for hours.

25           THE COURT: Right. And I -- as you all know, I

1 instructed them --

2 MS. BLUTH: Yes.

3 THE COURT: -- to admonish her on these things.

4 MS. BLUTH: And I did. But nothing in my PowerPoint  
5 is something that you told me I can't get into.

6 MR. HAMNER: And the concern is is that the argument  
7 that Mr. Figler is making now is not so much about his concern  
8 about whether a particular picture exhibit will be admissible  
9 during the course of the trial, it's simply that he disagrees  
10 with the OBA ruling and he would like essentially for a  
11 PowerPoint in opening statement to suppress all references to  
12 what's already been granted until we actually get into the case  
13 in chief. And I think that's where Ms. Bluth's frustration is.

14 MS. BLUTH: Right. That's --

15 MR. FIGLER: Well, it's -- it's -- it's partially  
16 correct what the State just says because now the amplification  
17 of the prejudice is enhanced through not only the PowerPoint  
18 itself, but the clear indication of where the State is going  
19 with this extra information, and so it should give the Court  
20 pause. And the reason why we keep talking about it and keep  
21 parrying in differing things and talking about these aspects is  
22 because it is a cloudy, cloudy record which is -- which is  
23 cleaned up by its exclusion.

24 And just because the Court has ruled that some of it  
25 comes in, the method that the State is going to use it is

1 potentially going to draw objections, which the Court would have  
2 to rule on, or at least a continuing objection, and the manner  
3 in which they bring it in could renew the cause for regard to  
4 the prejudicial impact being more evident as the State goes  
5 forward, and that's clearly what's going on.

6           Look, we were nervous initially about them bringing  
7 this in at this late juncture, that we hadn't done a proper  
8 investigation to counter it, they said, oh, no, it's very  
9 limited, it's very narrow. And then all of the sudden this very  
10 limited, very narrow, despite the fact that Your Honor has pared  
11 it down even further, seems to be growing and growing and  
12 growing like a twice-rising yeast. And the point is going to  
13 come when the entire cake is going to fall under the weight of  
14 prejudice, and that's what's going on here.

15           This is not a case about whether Lori Wells was right  
16 or wrong, whether the Diaz children were mistreated or not  
17 mistreated. It's whether or not the State can prove beyond a  
18 reasonable doubt every element of the offense in that 46-count  
19 Information that she was charged with.

20           And by including this, and I'm sorry that the State  
21 takes offense that I'm asking Your Honor to take a look at it as  
22 new developments occur, but the defense is absolutely in an  
23 untenable position having not thoroughly investigated these  
24 allegations. And now knowing that it's going to be presented in  
25 a way where the jury is going to be presented with, well, if

1 Solander was violating the rights and abusing the Diaz-Burnett  
2 and Stark children, well, clearly she was also doing the same  
3 with the Solander kids.

4 And that's my record if I get a conviction I have to  
5 take up to the Nevada Supreme Court and then it all gets hashed  
6 out, whereas I think that the Court has a very simple remedy in  
7 allowing those witnesses to only testify as to what their  
8 percipient knowledge of and their direct knowledge of is.

9 THE COURT: Well, I mean, here's the thing, Mr.  
10 Figler.

11 MR. FIGLER: That's why it keeps coming up.

12 THE COURT: Well, no.

13 MS. McAMIS: Well, and I would also point --

14 THE COURT: Excuse me. Here's the thing, Mr. Figler.  
15 If the ruling on allowing this additional information, and,  
16 again, I want to be clear, either way the Diaz-Burnett girl  
17 would be allowed to testify as to what she observed in the home.  
18 Either way, the Stark girls would be allowed to testify as to  
19 what they observed in the home.

20 So it's only for each child a little bit more possibly  
21 as to, well, I only got a few pieces of toilet paper, well, I  
22 ate in the office, or whatever. So to be clear, much of their  
23 testimony would come in anyway because they were in the home  
24 observing these things, number one.

25 Number two, you know, the ruling is either right or

1 wrong. I don't see the impact of the ruling being made more  
2 wrong by virtue of the fact that that they're allowed to  
3 summarize what the testimony is in their opening statement,  
4 because that's what opening statements are. They are allowed to  
5 say these are the witnesses you're going to hear from and these  
6 are what the witnesses are going to testify to. They're allowed  
7 to do that.

8           So either the ruling is right, or the ruling is wrong.  
9 And if it's wrong, it's wrong. And if it's right, then I don't  
10 -- or marginally right or whatever, I don't see that somehow  
11 that's going to tip the scale one way or the other. Because, as  
12 I said, if they're going to testify, they're allowed to say in  
13 their opening statement, you're going to hear from this other  
14 child who was in foster care who lived in the home and this is  
15 what she's going to tell you. They're allowed to do that.

16           And, you know, they're putting it in written form in  
17 their PowerPoint. So, you know, I just don't really see that  
18 that somehow is creating a greater impact in this because  
19 they're also -- let's cut to the chase. They're allowed to do  
20 that in their closing argument. They're allowed to say and you  
21 heard from, and this is what they told you.

22           So, like I said, I mean, if a witness is allowed to  
23 testify, it's either a right ruling or it's a wrong ruling.  
24 It's not made more wrong by virtue of the fact they can  
25 summarize the anticipated testimony in their opening statement.

1 I mean, that's kind of the point of the opening statement to go  
2 through who is going to be testifying.

3 MR. FIGLER: Well, our concern is that it exceeds the  
4 scope of the ruling.

5 THE COURT: No, I get it. It makes it more  
6 prejudicial.

7 MR. FIGLER: Right.

8 MS. McAMIS: Well, particularly because they want to  
9 say that Areahia was one of the children subject to a hyper  
10 focus on eating and control of the food intake when she has a  
11 separate diabetic issue, which Your Honor said don't get into.

12 THE COURT: Yeah, I did kind of say on her I was -- I  
13 was concerned about really getting into the weight management  
14 and all of that because a) in the records before she even got to  
15 the Solanders, there was a focus on getting a nutritionist --

16 MS. BLUTH: And I'm not saying any of that.

17 THE COURT: -- and the tapdancing classes. And, you  
18 know, with her obesity, look, I mean, some weight management was  
19 appropriate.

20 MS. BLUTH: Right. And I didn't say any -- in regards  
21 to Areahia, in regards to the other little children, the  
22 therapist keeps saying they're coming, they're ravenous, they're  
23 emaciated, they say they're not being fed. But the only thing I  
24 got into with Areahia is the fact that she was taken away from  
25 the other students, accused of stealing food, and fed

1 separately, which is exactly what happened to the Solander  
2 girls, and is exactly what happened to the Stark girls. I  
3 understand the Court's ruling. I will not -- I won't go out --

4 THE COURT: I mean, the door may be opened on the  
5 other side.

6 MS. BLUTH: Right. But I understand that. I mean --

7 THE COURT: And that's why I just, as I said, I think  
8 that with Areahia the situation may be somewhat more complex  
9 because of her obesity and because there may have been a  
10 hypoglycemic issue.

11 MS. BLUTH: Right. But the only thing -- sorry. Can  
12 I just have one more point in regards to the records. I just  
13 want to make sure that this record is clear because Mr. Figler  
14 keeps saying about the late disclosure. The records that I gave  
15 in regards to the Diaz-Burnett children that we plan on getting  
16 into our case in chief and that are in my openings were given to  
17 them a month -- a long time ago at the file review and the day  
18 after the file review.

19 I haven't even had the opportunity, Judge, to look at  
20 what you've released, what you've released to us additionally  
21 just because there's not enough time in the day for me to just  
22 -- you know what I mean? So I want to be very clear because  
23 there is a difference between the records that the State gave  
24 the defense in file review and the records that the Court is  
25 giving. Nothing in my PowerPoint or in my case in chief is from

1 the records that the Court disclosed.

2 THE COURT: Okay. And the -- and those records,  
3 again, were given to me on a Friday --

4 MS. BLUTH: Yes.

5 THE COURT: -- at 10:30 after the evidentiary hearing.

6 MS. BLUTH: Yes.

7 MS. McAMIS: Yes, but now the defense is in a position  
8 where we have a side litigation issue on the treatment of the  
9 Stark and the Diaz-Burnett children before they got into foster  
10 care because the State is trying to imply that Janet was the one  
11 who made them emaciated when they actually, the youngest three  
12 of the Diaz-Burnett sibling group came from a home where they  
13 weren't getting food, there was no power, there was no water.

14 And so now there's this whole side issue on two  
15 separate homes, and now the Stark children, that one or both of  
16 them was subject to sexual abuse, and that actually may  
17 scientifically contribute to why they have bedwetting or  
18 soiling, soft soiling issues.

19 So now the jury is faced with trying to assess and  
20 discern between the Solander group, the Diaz-Burnett sibling  
21 group, and the Stark group, and that these two side groups,  
22 we're only now getting this information disclosed because it  
23 was, again, a late bad acts hearing. We didn't even have all of  
24 this at the time of the bad acts hearing.

25 THE COURT: Well, I think --



1 MS. BLUTH: There's no late --

2 THE COURT: -- the State has acknowledged that they're  
3 not contesting that with respect to Ivy Stark, who was the  
4 victim of sexual abuse, they're not contesting that there was  
5 bedwetting.

6 MS. BLUTH: No.

7 MR. FIGLER: Do we get to get into that with the jury,  
8 then? We can present all that information to the jury and  
9 explore it at length about the sexual abuse, the -- the  
10 malnutrition of the children before they came in the Solanders.  
11 All of that is going to come in front of the jury now because  
12 the State has put it in play and issue.

13 So I just want to make sure that we're not going to be  
14 objected to or precluded from bringing in that defense because  
15 the State has put into play that somehow Ms. Solander is  
16 responsible for all the ailments and worries of the Diaz-Burnett  
17 and the Stark children.

18 MS. BLUTH: Yep.

19 MR. FIGLER: So we're going to have --

20 MS. BLUTH: That's totally fine because the  
21 Diaz-Burnett kids, they were with her for like 14 months. So at  
22 some point you don't become emaciated anymore. Because when she  
23 went to Montevista, she got fattened up, and then as soon as she  
24 got out, she got emaciated again. So I'm happy to have them get  
25 into all that.

1 THE COURT: Right.

2 MR. FIGLER: Right. So we would ask for a continuance  
3 of two weeks so that we could examine the new documents that  
4 Your Honor gave us today.

5 THE COURT: Yeah. There's -- I mean, honestly, I've  
6 already gone over what's in the new documents. I don't really  
7 think that there -- I mean, I think I've stated what I saw as  
8 relevant, but I gave you everything, including, you know, they  
9 had severe dental issues. I mean, it's just --

10 MR. FIGLER: That also does seem to go --

11 THE COURT: Eating.

12 MR. FIGLER: -- to the ability to eat and nutrition.  
13 So, I mean, God bless that this is the way the State wants to go  
14 and they'll have to live and die by what the record that they  
15 make is, but this is going to actually probably last an extra  
16 week because we have to litigate the responsibility and the  
17 criminality of the Diaz-Burnett and the Stark children, as well.  
18 And we'll do it as best we can without having any investigation  
19 on that other than what was provided to us in the form of the  
20 pre-Solander involvement, which, for the record, we got today.

21 THE COURT: Well, I mean, realistically, Mr. Figler,  
22 what additional investigation would there --

23 MR. FIGLER: Well, I'm going to call the dentist,  
24 which if I could find that dentist and, you know, see if Mr.  
25 Christensen will appoint us an investigator to go out and

1 interview the dentist and see if the dentist is available for  
2 rebuttal, and anyone else who saw these children during any of  
3 that time, which is now reflected in these notes. So any  
4 individual who is referenced needs to be talked to, and I'm  
5 making a record right now that the defense has not talked to a  
6 single individual --

7 THE COURT: All right.

8 MR. FIGLER: -- in any of the records that Your Honor  
9 gave us today.

10 THE COURT: Well, and I'll make a record, Mr. Figler,  
11 that no one has requested, as far as I know, the appointment of  
12 an investigator.

13 MR. FIGLER: That's correct. It hasn't happened yet  
14 because there didn't seem to be a need until this bad act motion  
15 came in. And, look, I cannot speak for my predecessor, but I  
16 take responsibility for where we are in the course because I am  
17 attorney of record, along with Ms. McAmis, despite the fact that  
18 she is lead counsel.

19 There's a lot of new stuff, and it demands under the  
20 indigent rules, and we're appointed counsel, under the rules of  
21 indigent defense, it requires us to do a thorough investigation.  
22 And I can tell you right now for the record, there has been zero  
23 investigation on the records that have been handed to us in the  
24 last week.

25 THE COURT: Well, and just to be clear, the records

1 you got, I mean, it shouldn't -- there's not that many. And  
2 like I said, out of an abundance of caution, I gave you anything  
3 that refers to any kind of dental appointment, dental issue,  
4 health issue, anything like that, so --

5 MR. FIGLER: We'll do our best because we're --

6 THE COURT: No, no.

7 MR. FIGLER: -- required to do our best.

8 THE COURT: No, I know you'll do your best.

9 MR. FIGLER: But that's my record.

10 MS. BLUTH: Judge, I need to make a record, though. I  
11 find Mr. Figler's representations to be absolutely reckless when  
12 he makes a record like this. They have been on this case for  
13 four years. They have had the interviews of the Burnett, Diaz,  
14 and Stark girls for four years.

15 And so now, first of all, there is no time limit on  
16 bad acts motions. There isn't. There's no rule in any court  
17 that says I have to have a bad acts motion. I filed it three  
18 weeks, four weeks before this trial. So for him to say we don't  
19 -- we're getting all these new records dropped on us, we haven't  
20 done one ounce of investigation?

21 This is what he does. He doesn't get what he wants,  
22 and then he tries to make a record so that if there is a  
23 conviction, it's reversed, and it is reckless. It is reckless  
24 to do that. They've had this case for four years. To say that  
25 they have never had an investigator or done one damn thing is

1 absolutely reckless and I have a problem with it. He doesn't  
2 get his way, so we just keep relitigating, relitigating,  
3 relitigating. And then it's I'm not -- I haven't done anything  
4 that I'm supposed to do.

5 THE COURT: Well, and I will say this, and I said this  
6 earlier today, you know, you stepped in at the last minute.  
7 Apparently, that was approved by Mr. Christensen. But Ms.  
8 Wildeveld was appointed on this and she's had the case. So  
9 whatever decisions were made, I don't remember exactly what  
10 happened when we set this trial, but this trial was a firm set,  
11 okay, and she had the case.

12 I guess she's too busy or whatever. I still don't  
13 know why she's -- she -- you filled in at the last minute, but  
14 Ms. Wildeveld then says, well, she has a case in front of Judge  
15 Johnson set for February 26th. But as I recall, I could be  
16 wrong, when we set this, the conflict was with the Thursday and  
17 Friday of the first week. And I said, okay, well, we can be  
18 dark that Thursday and Friday, and that was the accommodation  
19 for Ms. Wildeveld.

20 So then at calendar call, all of the sudden now Ms.  
21 Wildeveld is too busy to handle this case that she had a firm  
22 set on for a relatively long period of time and has been counsel  
23 of record on for, what, four years? So I don't understand why,  
24 frankly, all of the sudden Ms. Wildeveld was too busy when the  
25 conflict we were told about was a two-day conflict, and that was

1 accommodated.

2           So, Mr. Figler, do you want to speak to that, why all  
3 of the sudden now Ms. Wildeveld is so busy and why this trial  
4 was set as a firm set up against the trial on the 26th?

5           MR. FIGLER: So, I don't --

6           THE COURT: And just to add this, even without any of  
7 the records and the Diaz-Burnett girls and the Stark girls  
8 testifying, this case still would have probably taken at least  
9 two weeks into a third week. And so I don't think a reasonable  
10 excuse would be that, oh, well, there's these new things with  
11 the Diaz-Burnett girls or the Diaz-Burnett children and the  
12 Stark girls. So I don't -- I mean, that -- that I don't  
13 understand.

14           And, you know, number two is whether you agree with  
15 Ms. Wildeveld's prior decision on this case, you've got to live  
16 with her prior decisions over the four-year period of what she  
17 did or didn't do. And may I also point out, this was on a firm  
18 set, was it years ago or months ago, when Ms. Solander had back  
19 surgery.

20           MS. BLUTH: August of 2016.

21           THE COURT: And it was moved. And so everything  
22 should have been ready for August of 2016. Now, I get that they  
23 hadn't filed --

24           MR. FIGLER: '17.

25           THE COURT: -- the bad acts motion, then.

1 MR. FIGLER: Right. And that's the big difference.

2 MS. McAMIS: That's -- that's been the big change.

3 When we were preparing this case, the case was -- the focus was  
4 on the Solanders. We have the preliminary hearing testimony.  
5 We had all of the statements from the other children, but they  
6 were focused on the conduct as to the Solander children. Now we  
7 have all these side issues about withholding food or stealing  
8 food or there's all these side issues now on the Stark and  
9 Diaz-Burnett children that are not relevant to any conduct as to  
10 the Solanders.

11 THE COURT: Well, except it's the same conduct with  
12 the Solander girls. But back to my initial question is I don't  
13 -- I don't understand what happened with Ms. Wildeveld and why  
14 when we were told, as I recall, I could be mistaken, but as I  
15 recall there was a conflict of two days, the Thursday and  
16 Friday. Why now is Ms. Wildeveld too busy and she can't do the  
17 trial and --

18 MR. FIGLER: Well, I mean, I don't think it really  
19 makes a difference at this point because --

20 THE COURT: Well, it makes a difference to me. It  
21 makes a difference, I'm sure, to the Office of Appointed  
22 Counsel. And it also makes a difference, Mr. Figler, when, you  
23 know, you're tacitly questioning decisions that were made by Ms.  
24 Wildeveld, it seems like to me.

25 MR. FIGLER: No. I --

1 THE COURT: And so it does make a difference.

2 MR. FIGLER: Okay. So let me just say that I'm not  
3 tacitly questioning the decisions of Ms. Wildeveld. However,  
4 let's look at the first instance. I discovered a potential  
5 constitutional defect in the statute of limitations defect. I  
6 have a duty under the indigent defense standards to bring that  
7 to the Court's attention.

8 The Court can make the determination if it's timely or  
9 not. That's on me for my involvement or, perhaps, on Ms.  
10 Wildeveld or whatever. I'm not suggesting she did it wrong or  
11 right, just new eyes on the case. Perhaps I saw something she  
12 didn't see. So that's not in any way criticizing Ms. Wildeveld.

13 Likewise, my entire focus with regard to the need for  
14 an investigator, the need for the investigation, and the need  
15 for the continuation is solely, and absolutely solely, and I do  
16 not want to mix this up, it's solely from the point of the  
17 Court's evidentiary hearing forward on that bad acts motion,  
18 that when Your Honor granted the bad acts motion what it made  
19 relevant was all the pre-contact with the Solanders as it  
20 related to all those children.

21 As that result, we have been getting a steady stream  
22 of new documents on that issue, right. And we also made a  
23 request for anything that was post the Solanders, and we've  
24 never gotten that and the State says they don't have it and it  
25 doesn't exist. So we are somewhat limited. This puts us in a



1 noose.

2           So whether it's myself or Ms. Wildeveld or Ms. McAmis  
3 who has been the steady constant throughout the entirety from  
4 the appointment on and with the approval of the Office of  
5 Appointed Counsel and all the limitations they put on it with us  
6 being here, that has been the focus.

7           But for this information that we have now received,  
8 and but for the Court's ruling on the bad acts motion which was  
9 just a matter of weeks ago, there is no issue with regard to the  
10 additional investigation based on my assessment, based on our  
11 requirements under indigent requirements. So Ms. Wildeveld and  
12 her prior activity or preparation for this trial is not involved  
13 at all.

14           Now, we do have a small office. We do consult a lot  
15 with each other. I think Your Honor is aware of the  
16 longstanding relationship that exists there. Ms. McAmis is lead  
17 counsel, but the Office of Appointed Counsel suggested that  
18 because of the -- because of her experience level with regard to  
19 life consequence cases versus another case, etcetera, that it  
20 would be in the interest of sustaining the indigent standard to  
21 have either myself or Ms. Wildeveld present at some time.

22           So we worked it out amongst ourselves so that there  
23 would be a continuity of trial without any disruption, and that  
24 puts me in here more than Ms. Wildeveld. That's it. So I don't  
25 believe that there's any other record that needs to be made on

1 that.

2 I obviously take offense to it being said that it's  
3 reckless. I'm just palling what the record is as it is. If  
4 there is bad acts stuff coming in, which we just found out about  
5 in this calendar year and which we've just been litigating up  
6 until about a week ago, and all these new records, if they don't  
7 exist, none of this is being made as a record. But I have an  
8 obligation to make this record.

9 THE COURT: Right. Let me just ask you this. Of  
10 course, you knew that the Diaz-Burnett children, or Areahia,  
11 could be -- and the Stark girls, could be testifying --

12 MR. FIGLER: As to what they saw.

13 THE COURT: -- as to what they saw and what --

14 MR. FIGLER: On the Solanders.

15 THE COURT: -- went on in the home and all of that.

16 MR. FIGLER: Well, and let's just say this. I would  
17 clearly agree with the Court that any observations of any of the  
18 conduct alleged in the Solander house, which is charged in the  
19 Amended Information, could be testified to as to the  
20 Diaz-Burnett. They're percipient witnesses.

21 THE COURT: Sure.

22 MR. FIGLER: No issue there. What I would be low to  
23 anticipate prior to the bad acts motion and the Court's ruling  
24 and the other stuff is that they would get to testify as to what  
25 happened to them. And the Court has made its ruling and we have

1 to live with it, but that's where we find ourselves in a  
2 quandary. That's the thing we didn't anticipate. That's the  
3 thing that's new. That's the thing that was triggered the  
4 second that the State filed their bad acts motion and sealed  
5 after the evidentiary hearing and the Court made its particular  
6 rulings.

7           THE COURT: Right. I mean, I think a lot of this is  
8 res gestae because, honestly, it wouldn't make a lot of sense  
9 for them to say, well, the Solander girls can only use six  
10 pieces of toilet paper because then everyone would be wondering,  
11 well, did you get to use six pieces of toilet paper or twelve  
12 pieces of toilet paper or whatever toilet paper you wanted.

13           MR. FIGLER: I get that.

14           THE COURT: Do you see what I'm saying?

15           MR. FIGLER: But today is the first day that res  
16 gestae has been even suggested as far as that, and res gestae  
17 has its limitations, as well, and we have not yet argued what  
18 the parameters of res gestae are.

19           THE COURT: No, I'm just saying I think a lot of this  
20 would have been admissible anyway.

21           MR. FIGLER: Possibly. But not without argument  
22 and --

23           THE COURT: Because a lot of the girls, you know, the  
24 treatment was the -- seems to be the same. And the rules were  
25 the same on many of these things, and I think that that's the

1 point of the testimony.

2 MR. FIGLER: But our concern is that some of the  
3 medical and/or mental issues are the same, but while we explored  
4 that for the Solander kids, we weren't able to explore that for  
5 the Diaz-Burnett or Stark kids. That's all.

6 MS. BLUTH: Go ahead, Chris.

7 MR. HAMNER: I just -- the only brief point I want to  
8 make with respect to this idea that they somehow have been  
9 unfairly surprised by a timely filed other bad acts motion, all  
10 of this information, these statements from these -- the  
11 Diaz-Burnett children, the Stark girls, the caretakers of them  
12 at that time or CPS workers that were concerned about these two  
13 sets of girls, they have had these for four years.

14 And the concern, what is incredible about their  
15 representation that they're surprised is that these issues are  
16 very -- the toileting issues were as clear as day, and they've  
17 been there for four years. The food issues have been there for  
18 four years. The idea that they couldn't ferret out or  
19 anticipate potentially the State might do this, that's what's  
20 incredible about the argument. You should have seen it coming  
21 down the pipe.

22 So the idea to say that the only time that we react to  
23 an OBA motion is the moment in which it's filed when you've had  
24 four years to review this and now they're claiming, well, now  
25 we're unfairly put in the situation. I just don't think it

1 holds a lot of water when there's a clear connect. You need to  
2 prepare for those sort of things, and so --

3 THE COURT: Well, I don't want to -- I don't think  
4 it's right to put an unfair burden on the defense to say that  
5 they have to prepare for any potential motion that could come  
6 down the pike, so I don't really accept that. The issue is  
7 whether they've had the records. And a lot of this would have  
8 come in anyway is my point as these witnesses -- as percipient  
9 witnesses to what occurred in the home. And if they felt they  
10 needed more records as to those girls and their mental state and  
11 what not, then they could have endeavored to obtain those  
12 records much earlier.

13 MS. BLUTH: Judge, I just have one other thing.

14 THE COURT: And that -- and that, Mr. Figler, goes to  
15 just the girls testifying as to what they observed in the home  
16 and what the treatment was and whatnot, so --

17 MS. BLUTH: Judge, I just have one thing -- a couple  
18 things to say. Number one, I do think you've made a record that  
19 you gave them two additional days, and then Mr. Figler asked for  
20 an additional week, which the Court gave him. Now, because the  
21 defendant was in the hospital, we then got an extra three, four,  
22 five days, okay.

23 But what the Court makes a point of is what would we  
24 not be entitled -- when I made my motion, I did it out of an  
25 abundance of caution because there's a ton of things that I

1 don't consider bad acts, limiting toilet paper, not letting kids  
2 go to the bathroom on time. Things like that where in regards  
3 to the Diaz-Burnett kids it wasn't being done exactly like the  
4 Solander kids.

5           So I think I still, even without a bad acts motion, I  
6 would have been able to, was your toilet paper limited, were you  
7 timed when you were going to the bathroom, things like that.  
8 But I did it out of an abundance of cation. The only things  
9 that I think are truly bad acts would be the physical abuse in  
10 regards to the Diaz-Burnett children when they did have  
11 accidents.

12           If you really look at what I'm trying to get into,  
13 what really is an other bad act or, you know, other criminal act  
14 is her using physical abuse to Demyer -- or Demyer and Kaeshia  
15 for when they had accidents. Everything else is not criminal in  
16 nature.

17           Also, I would like the Court to -- in regards to the  
18 amount of papers that you have given us, documents, what would  
19 -- would you say that was like a hundred pages? What would you  
20 -- do you know -- what would you -- that you've released to us.

21           THE COURT: I can --

22           MR. FIGLER: Since we've started distributing papers,  
23 I would say it's somewhere between 150 and 200 pieces of paper.

24           THE COURT: What does that look like, a quarter of an  
25 inch from today, and maybe less than that yesterday?

1           MR. FIGLER: And there were days prior, and then there  
2 was the --

3           MS. BLUTH: It was one day prior.

4           MR. FIGLER: -- the Friday.

5           THE COURT: There were -- there were three days. You  
6 got what had been given to me Friday. Okay. And to be clear,  
7 it was Friday the 2nd, February 2nd; is that right? Okay. That  
8 you got. I immediately looked at -- I got a big huge stack,  
9 those records. And those were represented to be the CPS records  
10 for the Diaz-Burnett children when they were with the Solanders.  
11 You got all of those records. We emailed Ms. Bluth Friday  
12 around 11:00 and told her to email those to the defense.

13           MS. BLUTH: Which I did.

14           THE COURT: And Krystal acknowledged that you received  
15 the email.

16           MS. BLUTH: Yes.

17           THE COURT: So that was done. That was Friday,  
18 February 2nd, okay. We started the trial -- we were supposed to  
19 start the trial January 29th; is that right?

20           MS. McAMIS: That's right.

21           MS. BLUTH: Oh, yeah, that's the first one. Yeah.

22           THE COURT: January 29th. At Mr. Figler's request,  
23 and that was agreed to by the State, we passed that a week. So  
24 you got three days; right? The 29th, the 30th, and the 31st.  
25 Then we had the evidentiary hearing the 1st and the 2nd;

1 correct?

2 MS. BLUTH: Right.

3 THE COURT: We then started the trial now a week  
4 later, February 5th. We had the 5th and the 6th full days of  
5 jury selection. Ms. Solander went to the hospital on the 7th.  
6 So we didn't have any trial on the 7th. She was in the hospital  
7 on the 8th. We had no trial on the 8th. You'll recall around  
8 lunch time I said I'm kicking this panel, I'm not making these  
9 people come back another day, so you had the full day of  
10 February 9th. And now we're back here this week, and this is  
11 our third day of jury selection.

12 So essentially, not counting the two days you were  
13 tied up in the hearing, you had been given an extra six working  
14 days. I mean, I know -- let's just be -- maybe five because the  
15 half days were tied up in --

16 MR. FIGLER: Right. And we were also dealing with  
17 the --

18 THE COURT: No, I'm saying --

19 MR. FIGLER: -- medical issues of Ms. Solander.

20 THE COURT: -- half of the days were tied up with  
21 trying to talk to the doctor and representatives of UMC, so --

22 MR. FIGLER: And multiple trips over to UMC, etcetera.

23 THE COURT: Right. So --

24 MR. FIGLER: And absorbing --

25 THE COURT: -- it wasn't a full --



1 MR. FIGLER: -- these documents.

2 THE COURT: -- it wasn't a full day.

3 MR. FIGLER: Look, I'm just reporting back to the  
4 Court where we are. That's all I'm doing. And, you know, the  
5 Court -- you control your record, Your Honor. You control your  
6 courtroom. You tell us what to do, and we'll do it. And so,  
7 you know, my only obligation both under the model rules and the  
8 indigent standard rules is to make and build as much of an  
9 appropriate record as I deem fit and so that there is no  
10 question.

11 THE COURT: Well, and a) I'm allowing you to do that.

12 MR. FIGLER: And you are. You are 100 percent.

13 THE COURT: And b) I feel like if I disagree with your  
14 representations or I feel like they -- they needed to be added  
15 to or clarified in some way, then I think it's my obligation to  
16 make that record.

17 MR. FIGLER: We take no quarrel with that, Your Honor.

18 THE COURT: And so, like I said, you know, you didn't  
19 get full days, so I'm going to take a whole day off for you  
20 having to get the medical records and go to UMC, but you did  
21 have some extra time because of Ms. Solander's medical  
22 situation.

23 MR. FIGLER: Right. And I can assure the Court that  
24 we've been working very diligently trying to do the best to  
25 present the defense for Ms. -- Ms. Solander.

1 THE COURT: Okay. Well, the --

2 MR. FIGLER: The other part of the record that I don't  
3 want to forget to put on is the bench conference that we had  
4 that talked about the racial composition of the Court and the  
5 exercise of peremptories. We don't have to do that right now.  
6 It's almost 6:00. I understand, Your Honor. I just want to  
7 make sure that that record gets made, as well. That's all.

8 MS. BLUTH: And we can make that whenever. But the  
9 one thing that I didn't get to is the fact that if Mr. Figler is  
10 stating that all he needs to do all of these investigating  
11 things, then I'd like to know what if he were given a six-month  
12 continuance, what is it that he needs to do? What investigation  
13 is it that he needs to do?

14 MS. McAMIS: Well, specifically the Stark children are  
15 being alleged to have bathroom issues and emaciation issues as a  
16 result of being placed with Janet Solander.

17 MS. BLUTH: I just need --

18 THE COURT: I don't think --

19 MS. BLUTH: -- to make a clarification --

20 THE COURT: -- that's the allegation.

21 MS. BLUTH: -- because I'm not -- we're not --

22 THE COURT: She's stipulating. She's already said  
23 she's stipulating that Autumn had hard stools, and she's  
24 stipulating that Ivy had other, you know, bedwetting and other  
25 issues.

1 MS. BLUTH: Yeah.

2 THE COURT: So that's stipulated to --

3 MS. BLUTH: And that's --

4 THE COURT: -- so I don't know what needs --

5 MS. BLUTH: We seem --

6 THE COURT: -- to be investigated.

7 MS. McAMIS: That's information we knew --

8 MS. BLUTH: I'm sorry. I just want to clarify because

9 I do think that I somehow confused this, and I really want to

10 make sure we're on the same -- I just want to make sure the

11 defense knows where we're going with that. With the -- just so

12 it's clear, with the Stark girls, we're not saying that she was

13 doing those things. We're saying that she's representing to CPS

14 that there are all of these issues, and that that's not true.

15 THE COURT: But the hard stools is true.

16 MS. BLUTH: Yeah, that's why we're not --

17 THE COURT: And the bed --

18 MS. BLUTH: -- even getting into it.

19 THE COURT: And the bedwetting is true.

20 MS. BLUTH: Not to the degree that Janet is explaining

21 it, though, to -- to CPS.

22 THE COURT: How are you going to establish that?

23 MR. FIGLER: Right.

24 MS. BLUTH: Because of what Autumn said. Autumn

25 openly said my -- we can't take a little girl's word for it who

1 says -- she's obviously credible. She says my little sister  
2 comes, she had bedwetting issues before and she had bedwetting  
3 issues there. I myself didn't have any of those issues, I was  
4 in regular school, and once a month, because of my stomach  
5 issues, I would poop the bed. She was very honest about it.

6 THE COURT: Okay. So Autumn is not going to testify  
7 about Ivy's issues. She's going to testify about her own  
8 issues.

9 MS. BLUTH: Yes.

10 THE COURT: Okay. I misunderstood you.

11 MS. BLUTH: Yeah. For sure.

12 MR. FIGLER: Well, I'm still -- you asked the question  
13 how they were going to show that Janet is making  
14 misrepresentations, and they still haven't answered that  
15 question. The answer was Autumn.

16 MS. BLUTH: Because she talked to Cherina Davidson who  
17 testified to that at the evidentiary hearing.

18 MR. HAMNER: And it's an admission by a party.

19 MS. BLUTH: And it's the defendant's statement.

20 THE COURT: Well, they're not quibbling with that.  
21 They're --

22 MS. BLUTH: No, he is quibbling with that.

23 MR. FIGLER: Well, I'm quibbling about the veracity of  
24 that and that -- look, anything that Janet said about the  
25 Solander kids to anyone --

1 THE COURT: Is clearly --

2 MR. FIGLER: -- party admission.

3 THE COURT: -- fair game.

4 MR. FIGLER: We get that. What we did not anticipate  
5 is that Janet's statements about a non-victim in this case were  
6 -- were going to have to be evaluated, as well. And so the  
7 veracity and the accuracy of those witnesses, if that's what  
8 they're going to testify to in front of the jury under oath  
9 needs to be challenged, and that hasn't been looked at yet.

10 THE COURT: Okay. Let me --

11 MR. FIGLER: That sort of thing.

12 THE COURT: Mr. Figler, what -- okay. Based on  
13 everything you have, recognizing you didn't go through this, do  
14 you think that's fair, about a quarter-inch?

15 MS. BLUTH: Yes, Your Honor.

16 MR. FIGLER: Sure.

17 THE COURT: It looks like this quarter-inch today,  
18 what additional investigation would you do?

19 MR. FIGLER: Okay. So with regard to the entirety of  
20 the Stark and Diaz-Burnett children, I would want to go through  
21 every provider who has ever interacted with them, touched them.  
22 I would want to go through a little bit more specifically the  
23 nature of their injuries or their -- what they presented when  
24 they arrived at the Solander house and what might very well be  
25 expected there.

1 I mean, theoretically, depending on interviews with  
2 those medical providers and CPS providers, and seriously, unless  
3 there's some -- there are some CPS providers, I'm assuming,  
4 through the unity notes, etcetera, that have not been noticed,  
5 who have not been talked to about this at all, I'd like to talk  
6 to them, as well.

7 And then we can make a determination whether or not we  
8 need at this juncture to bring in some manner of expert or not,  
9 depending on what that investigation would either provide or  
10 lead to. And so, you know, right now the defense has noticed no  
11 expert witnesses because it did not seem, to be theoretically --

12 THE COURT: Well --

13 MR. FIGLER: -- needed as part of a case in chief.  
14 And, you know, I can't change that. But, you know, I don't know  
15 because having absorbed all this information about these  
16 non-victim children and all the -- the things that they've been  
17 through and the suggestion by the State that this is a pattern  
18 of conduct, I have to show that that was legitimized, too, that  
19 that was a medical necessity, too, that Janet was being  
20 reasonable or that the CPS is misinterpreting or misrepresenting  
21 their unity notes or that there were other CPS investigators who  
22 did not see the same thing or other DFS officials who under the  
23 foster care system did not note any of those things and have all  
24 those people called as witnesses, as well. But none of them  
25 have been talked to because we're just finding out those names

1 in the last couple days.

2 THE COURT: Well, my only comment would be, to me, the  
3 only medical providers that would be germane would be medical  
4 providers like pediatrician or provider or relative to the  
5 bathroom issues.

6 MR. FIGLER: Or the dentist providing relative to  
7 maybe --

8 MS. McAMIS: The nutrition.

9 MR. FIGLER: -- some nutrition things that seem to be  
10 being raised, as well. Sure. I mean, it might be limited, but,  
11 again --

12 THE COURT: Right. But a lot of the --

13 MR. FIGLER: -- it's a different situation that  
14 existed.

15 THE COURT: -- a lot of the dental stuff, I mean, if  
16 you wanted to, you could get it in through the CPS people that,  
17 you know, they had significant dental issues.

18 MR. FIGLER: Sure. I mean, perhaps. I mean, perhaps  
19 there's a lot of crossover of the witnesses who have already  
20 been noticed, and maybe we'll have an opportunity to get into it  
21 if we can figure that out in time. It just puts us in a  
22 quandary.

23 And this is all stuff that would not have been -- I  
24 appreciate Mr. Hamner's comments that we had the statements of  
25 the children, but I think any reasonable practitioner would

1 think that that would be the limitation of how that would be  
2 presented, that as percipient witnesses they were going to talk  
3 about what they saw Janet Solander do to the Solander kids, that  
4 the medical histories and how they present and any maladies  
5 would not be assigned to our case for defense. And so that is  
6 something new and it could not have been anticipated.

7 THE COURT: All right. I don't know that anything  
8 more needs to be said, so we'll see everybody back at 10:30 for  
9 openings.

10 MS. BLUTH: Yes, Your Honor.

11 THE COURT: And then my plan would be to do the  
12 openings until lunch time. I mean, I don't really like to break  
13 them up. If you're going -- unless you're going to reserve your  
14 opening.

15 MR. FIGLER: No, we're not going to reserve opening.  
16 And from the PowerPoint, unless it's significantly altered that  
17 Ms. Bluth's is probably somewhere between 45 minutes and an  
18 hour?

19 MS. BLUTH: I would say, yeah. I'd put it a little  
20 over an hour.

21 MR. FIGLER: Okay. And the defense anticipates about  
22 the same amount of time. So if that gives the Court an  
23 indication.

24 THE COURT: Okay. So unless we get a late start,  
25 we'll do the openings and then take lunch. If we get a late



1 start, we might do Ms. Bluth's opening, take lunch, and then do  
2 your opening.

3 MS. BLUTH: Okay.

4 MR. FIGLER: If you could just make a note for us to  
5 make a quick record about that bench conference right before we  
6 start, that would be awesome so we don't forget.

7 THE COURT: Okay. Well, maybe --

8 MS. BLUTH: Start before tomorrow? Like can we do it  
9 -- so the jury is not waiting, can we do it --

10 THE COURT: No, no. I was going to say let's do it at  
11 the lunch break.

12 MS. BLUTH: Yeah, that's fine. I just didn't want to  
13 -- I mean, they -- at 10:30 let's --

14 THE COURT: No, as soon as I'm done with my calendar  
15 we'll start.

16 MR. FIGLER: Thank you, Your Honor.

17 MS. BLUTH: Oh, you have civil. Okay.

18 THE COURT: I have criminal.

19 MR. FIGLER: And the defense does appreciate you  
20 allowing us to make the record. That's never an issue.

21 THE COURT: All right. We'll see everyone tomorrow.

22 MS. BLUTH: Thank you.

23 (Court recessed at 6:03 p.m., until Thursday,

24 February 15, 2018, at 11:01 a.m.)

25 \* \* \* \* \*

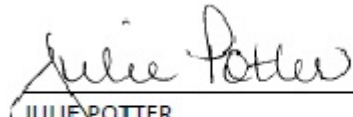
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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