

ERIN M. NELSON, PSY.D., 10/10/2019

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ERIN M. NELSON, PSY.D.

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ERIN M. NELSON, PSY.D., 10/10/2019

1 VIDEOTAPED DEPOSITION OF ERIN M. NELSON, PSY.D.,
2 commenced at 1:05 p.m. on October 10, 2019, at the law
3 offices of Osborn Maledon, P.A., 2929 North Central
4 Avenue, Suite 2100, Phoenix, Arizona, before KELLY SUE
5 OGLESBY, a Certified Reporter, CR No. 50178, in and for
6 the County of Maricopa, State of Arizona, pursuant to the
7 Rules of Civil Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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ALSO PRESENT:

Peter Davis
Rick Van Norman, Legal Video Specialists

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1 Phoenix, Arizona
2 October 10, 2019
3 1:05 p.m.

4 * * *

5 (Deposition Exhibit No. 1162 and 1163 were
6 marked for identification.)

7 VIDEOGRAPHER: This is the videotaped deposition
8 of Dr. Erin Nelson taken by the plaintiff in cause number
9 CV2017-013832, styled Peter Davis, as Receiver of DenSco
10 Investment Corporation, versus Clark Hill PLC, et al.
11 It's filed in the Superior Court of the State of Arizona,
12 in and for the County of Maricopa.

13 Today is October the 10th, 2019. The time is
14 1:05 p.m. Our location is 2929 North Central Avenue,
15 Phoenix, Arizona.

16 Kelly Oglesby is the certified shorthand
17 reporter with JD Reporting. Their address is 1934 East
18 Camelback Road in Phoenix, Arizona.

19 I'm Rick Van Norman, a certified legal video
20 specialist, with Legal Video Specialists. Their address
21 is 3033 North Central Avenue, Phoenix, Arizona.

22 Counsel may state their name, their firm -- the
23 firm, and whom they represent, beginning with plaintiff's
24 counsel.

25 MR. STURR: Geoffrey Sturr, Osborn Maledon,
representing the plaintiff, Peter Davis, as Receiver of

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1 DenSco Investment Corporation.

2 MR. DeWULF: John Dewulf, Coppersmith
3 Brockelman, for defendants.

4 MR. STURR: Good afternoon, Dr. Nelson.

5 THE WITNESS: Good afternoon.

6 VIDEOGRAPHER: Please stand by.

7 MR. STURR: Oh, sorry.

8 VIDEOGRAPHER: The court reporter may swear the
9 witness at this time.

10

11 ERIN M. NELSON, PSY.D.,
12 called as a witness herein, having been first duly sworn,
13 was examined and testified as follows:

14

15 EXAMINATION

16

17 Q. (BY MR. STURR) Good afternoon, Dr. Nelson.

18 A. Good afternoon.

19 Q. You are licensed to practice psychology in the
20 state of Arizona, is that correct?

21 A. Yes.

22 Q. And you have had that license, as I understand
23 it, since 2005?

24 A. Yes.

25 Q. And you are also licensed in California, and my

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1 understanding is that was approximately 2012.

2 Is that correct?

3 A. Yes.

4 Q. And you have a license in the State of
5 New Mexico, correct?

6 A. Yes.

7 Q. When did you acquire that license?

8 A. After California, but I don't remember exactly.
9 It should be right on my CV.

10 Q. Your CV didn't have any dates, is why I'm asking
11 you about it.

12 A. Oh, I'm sorry. Well, probably 2015-ish, but I
13 could look it up for you.

14 MR. DeWULF: We can provide that for you.

15 Q. (BY MR. STURR) Are you licensed in any other
16 states?

17 A. No.

18 Q. You are -- you have described yourself as both a
19 forensic and a clinical psychologist, is that correct?

20 A. Yes.

21 Q. Okay. Would you tell us what a forensic
22 psychologist, what's the role of a forensic psychologist?

23 A. Sure. Forensic psychology is generally the
24 interface of psychological or mental health concepts and
25 the law. When you are acting as a forensic practitioner

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1 instead of a clinician, you are offering independent
2 objective opinions, as opposed to engaging in a treatment
3 relationship with someone.

4 Q. Would you agree that the foundation of your role
5 as a clinical psychologist is objectivity?

6 A. Well, a clinical psychologist is.

7 Q. I'm sorry. As a -- did I say clinical? I meant
8 forensic.

9 A. Yes.

10 Q. You would agree with that --

11 A. Yes.

12 Q. -- as a forensic psychologist, the foundation
13 would be objectivity?

14 A. Yes.

15 Q. What is a clinical psychologist?

16 A. A clinical psychologist is someone who engages
17 in the treatment of patients.

18 Q. How much of your current time in the past year
19 was devoted to clinical psychology?

20 A. None.

21 Q. How long has it been since you have treated
22 patients as a clinical psychologist?

23 A. Probably my last patient was about four years
24 ago. I stopped accepting new patients.

25 Q. I understand you are an educator. Correct?

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1 A. Yes.

2 Q. Okay. How much of your time is devoted to
3 teaching?

4 A. A little more than half of my time now, maybe
5 three-quarters. It shifts in my role in medical education
6 as both a professor and administrator. So the time I
7 spend in that capacity is more than in forensic practice
8 if you split it out over the course of a year, but any
9 given week, it could be either.

10 Q. Okay. That's what I'm trying to get at, is your
11 time right now is, professional time is divided between
12 forensic psychology and education, correct?

13 A. Yes.

14 Q. Okay. Roughly how much of your time, if you
15 can -- if you can do that, is devoted to forensic
16 psychology?

17 A. This is always such a challenging question,
18 because it makes you think as if there is a 40-hour
19 workweek for any of us.

20 I would still say probably a little over half my
21 time would be more towards medical education right now
22 than in forensic practice.

23 Q. In previous years has it -- has it fluctuated,
24 say, between 40 and 60 percent of time devoted to forensic
25 psychology? would that be fair?

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1 A. In the last couple years and before that, it was
2 much heavier forensic. As my roles in medical education
3 have increased, things have sort of balanced out.

4 Q. Okay. And what is your affiliation, I should
5 have asked this, but with Steven Pitt & Associates? What
6 is Steven Pitt & Associates?

7 A. Well, Steven Pitt was a forensic and general
8 psychiatrist that was one of my mentors that I have been
9 working with since I graduated undergrad. He,
10 unfortunately, was the victim of homicide, that's when we
11 were evaluating last May. So he was a mentor and a
12 colleague for many years, and was killed at our office.

13 Q. No. My question was not him personally. It was
14 Steven Pitt & Associates. I'm sorry if I wasn't clear.

15 A. I apologize. That was his practice.

16 Q. And what is your involvement in Steven Pitt &
17 Associates? Are you an owner?

18 A. Steven Pitt & Associates doesn't exist anymore.

19 Q. Okay. Oh, I see. I'm looking at billing
20 statements.

21 well, they are still issued by Steven Pitt &
22 Associates. When did Steven Pitt & Associates stop
23 existing?

24 A. Steven Pitt & Associates stopped existing on the
25 day of his murder. Subsequent billing would have been

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1 under me, as a separate practitioner. I was an
2 independent contractor before his murder.

3 Q. Okay. All right. I'm trying to -- I want you
4 to help me today, because this is the first time I have
5 had an opportunity to question someone with your
6 experience. So I want to get an understanding, if I can,
7 generally about how you go about your work as a forensic
8 psychologist.

9 So what I would like to start with is -- well,
10 let me just establish, you have been retained in this case
11 by the law firm that is defending the defendants Clark
12 Hill and David Beauchamp, correct?

13 A. That's correct.

14 Q. And the person who, one of the persons who
15 retained you is Mr. Dewulf, who is here today, correct?

16 A. That's correct.

17 Q. Okay. I'm going to hand you what's been marked
18 as Exhibit 1162.

19 A. I need to grab my glasses. They are in my bag.
20 Sorry. It's relatively new in the last couple years.

21 Q. And I'm also putting in front of you what's been
22 marked as Exhibit 1163.

23 Dr. Nelson, Exhibit 1162 is a disclosure of
24 expert witness, it's captioned Defendants' Disclosure of
25 Expert Witness Dr. Erin Nelson, correct?

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1 A. Yes.

2 Q. And attached to that is a report dated April 4,
3 2019, is that correct?

4 A. Yes.

5 Q. That's a report you prepared?

6 A. Yes.

7 Q. Exhibit 1163 is captioned Defendants'
8 Supplemental Disclosure of Expert Witness Dr. Erin Nelson,
9 attached to which is a report dated October 7, 2019,
10 correct?

11 A. Correct.

12 Q. And you authored that as well?

13 A. Yes, I did.

14 Q. I wanted to start, Dr. Nelson, with Exhibit
15 1162, your April report, and can you turn to Exhibit B.
16 It's one of the last couple of pages.

17 That's described as a testimony list. What's
18 your understanding of the purpose of this list?

19 A. That you needed to keep the last several years
20 of testimony so that you could provide it to counsel when
21 it's in a federal case.

22 Q. So this is a summary of cases in which you have
23 given testimony in a -- in a proceeding, either by
24 deposition or hearing, is that correct?

25 A. Correct.

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1 Q. Okay. Just so I can get a sense of the kind of
2 work you do, I'd like to go through the cases and just get
3 an understanding of what the cases were and your role.

4 The first is captioned Wilson v. Dillard's.

5 Do you see that?

6 A. Yes.

7 Q. And the date is May of 2018.

8 It's my understanding, from looking at court
9 records, that's an employment case in which a female
10 plaintiff employee of Dillard's alleged sexual harassment
11 and retaliation.

12 Is that consistent with your memory?

13 A. Yes.

14 Q. Okay. What was your role in that case?

15 A. I conducted an evaluation, a psychological
16 evaluation of plaintiff and offered opinions about her
17 diagnosis, prognosis, and treatment recommendations.

18 Q. So you conducted a psychological evaluation, and
19 then did you author a report in that case?

20 A. Yes.

21 Q. Morgan v. Chao, as I understand, that's the next
22 case here.

23 I'm sorry. In that case you testified at a
24 hearing, is that correct, sorry, Wilson versus Dillard's?

25 A. Yes.

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1 Q. Morgan v. Chao is an employment case as well, as
2 I understand it, a male FAA, Federal Aviation
3 Administration, employee alleged discrimination.

4 what was your role in that case?

5 A. I conducted an evaluation of Mr. Morgan.

6 Q. Who hired you?

7 A. The U.S. Attorney's office.

8 Q. And the previous case, Wilson versus Dillard's,
9 the defendant Dillard's hired you?

10 A. Correct.

11 Q. And so you -- in Morgan you conducted a
12 psychological evaluation?

13 A. Yes.

14 Q. What is Salaz v. Pima County, if you can recall?
15 It's the third case listed here. What type of case was
16 it?

17 A. It was a woman who was injured in a collision
18 with, I believe, a DPS officer, who was -- had emotional
19 damages claims.

20 Q. And who hired you in that case?

21 A. The Arizona -- the State of Arizona.

22 Q. And what was your role in that case?

23 A. I conducted an evaluation of Ms. Salaz.

24 Q. A psychological evaluation?

25 A. Yes. Any of -- yeah. I'm sorry.

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1 Q. I'm sorry. And you issued a report?

2 A. Yes.

3 Q. Okay. Riall versus Valley Enterprises, looking
4 at the Superior Court document, it appears to be some sort
5 of medical malpractice case, but I'm not sure. Why don't
6 you tell me what it was about.

7 A. It's Valley ENT, for ear, nose and throat, and
8 it was a medical malpractice claim.

9 Q. What was your role?

10 A. My role was to evaluate claims for emotional
11 damages.

12 Q. Who -- and who did you evaluate?

13 A. Mr. Riall, Calen Riall.

14 Q. So the defense hired you to do an evaluation of
15 the plaintiff?

16 A. Yes.

17 Q. Okay. And did you conduct a psychological
18 assessment in that case?

19 A. Yes, I did.

20 Q. What's Michaca versus Forest River, which is
21 listed as a San Bernardino Superior Court case?

22 A. That was an employment case. We are going to
23 start to test my memory, but that was an employment case.
24 I can't remember specifically if it was -- I think it was
25 wrongful termination and emotional damage.

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1 Q. Do you recall who hired you?

2 A. I don't even know what firm this is.

3 Q. Is that a case where you performed a
4 psychological evaluation?

5 A. Yes, it is.

6 Q. Okay. Gillen versus Arizona, as I understand
7 it, the plaintiff was a former chief of police and mayor
8 of Hayden, Arizona.

9 A. Yes.

10 Q. And he brought a 1983 action after he was
11 arrested, among other things.

12 what was your role in that case?

13 A. To conduct an evaluation of Chief Gillen.

14 Q. So you did a psychological evaluation of Chief
15 Gillen?

16 A. Yes.

17 Q. And issued a report?

18 A. Yes.

19 Q. The last case on your list is -- sorry, it's not
20 the last case -- is Cushing versus Lifetime Fitness. As I
21 understand it from court records, that's a personal injury
22 claim brought against Lifetime Fitness.

23 A. Yes.

24 Q. Is that consistent with your memory?

25 A. Yes.

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1 Q. And what was your role?

2 A. I evaluated Mr. Cushing.

3 Q. So you did a psychological evaluation of
4 Mr. Cushing?

5 A. Yes.

6 Q. Okay. Last case on this list is Cox versus
7 State of Arizona. What was that?

8 A. That was a -- I believe that was a sexual abuse
9 case by someone who was in State custody, but I -- there
10 might have been more than one Cox.

11 Q. Is that a case, again, in which you were
12 retained to conduct a psychological evaluation of a party
13 to a case?

14 A. Yes.

15 Q. Okay. All right. I'm -- I'm -- there are, I
16 assume, Dr. Nelson, that in addition to these half dozen
17 or so cases over the last four years, you have been
18 retained in other cases that -- that you -- in which you
19 may not have testified, to perform a psychological
20 assessment. Is that correct?

21 A. Yes.

22 Q. Okay. How many -- can you estimate over the
23 last year, if that's an easy metric, how many times you
24 have been retained in a -- in a legal case of some sort, a
25 legal proceeding to conduct an assessment of a party or a

1 person?

2 A. I'm trying to think of how to quantify. Any
3 time I get -- when I get initially retained, it's not
4 always to conduct an evaluation, so I want to make sure
5 I'm accurate. Active cases, gosh, over the past year, 20.

6 Q. Okay.

7 A. But that --

8 Q. I want to distinguish between cases in which you
9 may just be consulting and cases in which you have
10 performed some evaluative work.

11 So would the number be approximately 20?

12 A. Yes, it would still be approximately 20, but
13 often -- I mean, I'm just trying to contemplate if there
14 are cases right now that are recently opened, that there
15 are some that have been evaluations, some that haven't
16 been scheduled yet, but probably 20, yes.

17 Q. Okay. I'm going to -- I want to ask you about a
18 case that I found through court records that is called
19 Rahn, R-a-h-n, versus City of Scottsdale.

20 Do you have a memory of that case?

21 A. Yes.

22 Q. Tell me about that case, if you would. What was
23 the nature of case?

24 A. Erica Rahn was suing the City of Scottsdale, and
25 my role had to do with emotional damages or emotional

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1 claims that she put forth as a result of her arrest and
2 detention.

3 Q. And you conducted a psychological assessment of
4 her in that case, is that correct?

5 A. Yes.

6 Q. And as I understand it, there was a dispute in
7 that case as to whether or not you could conduct your
8 psychological evaluation outside the presence of counsel.

9 Is that a fair way of describing the dispute?

10 A. I don't remember.

11 MR. STURR: Let's mark this, please.

12 (Deposition Exhibit No. 1164 was marked for
13 identification.)

14 Q. (BY MR. STURR) Dr. Nelson, the court reporter
15 has handed you what's been marked as Exhibit 1164, which
16 is captioned Affidavit of Erin Nelson, Ph.D. or --

17 what is -- how do you pronounce that correctly?

18 A. Psy.D.

19 Q. Psy.D. Thank you.

20 A. You are welcome.

21 Q. Have you seen this document before?

22 A. Not in this format, but I'm familiar with what
23 it is, yes.

24 Q. Have you reviewed it recently?

25 A. No.

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1 Q. It's dated October 7, 2017.

2 Do you recall giving this, this affidavit?

3 A. I didn't recall this being an issue in this
4 particular case, but, yes. I mean, that's my words.

5 Q. And your testimony in this affidavit -- let me
6 just click through a couple things -- you have, I'm
7 looking at paragraph 3, you video recorded hundreds of
8 independent psychological examinations in both civil and
9 criminal matters.

10 what is an independent psychological
11 examinations?

12 A. All of the cases that we were talking about,
13 independent psychological evaluation is what I conducted.

14 Q. Can you elaborate, for a layperson, what is an
15 independent psychological evaluation?

16 A. As we were discussing earlier in forensic versus
17 clinical, an independent psychological evaluation means
18 that there is no treatment relationship being formed. I
19 am evaluating someone to offer specific opinions and
20 perhaps recommendations, but there is no doctor/patient
21 relationship.

22 Q. And who -- is it the court that directs an
23 independent psychological evaluation, examination be done
24 or do one of the parties request that? How -- if you
25 know?

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1 A. Typically in cases I'm retained in, it's one of
2 the parties. However, the court could also do that. Or I
3 have had cases where people, both sides stipulate that I
4 will do the evaluation.

5 Q. Okay. Paragraph 5 you state, "It has been my
6 position for several years that the presence of a third
7 party adverse to the process can interfere with an
8 independent psychological examination."

9 And can you just elaborate on that?

10 when you are conducting an independent
11 psychological evaluation and you are examining the
12 subject, you don't want anyone else present, is that
13 correct?

14 A. That's correct. That's why I video.

15 Q. And so you videotape or alternatively record
16 your interviews, correct?

17 A. It's always my present (as spoken) to videotape.
18 If I am precluded from doing that somehow, I will audio
19 record. I would not proceed with an evaluation without at
20 least audio recording.

21 Q. Why is it important to have an audio recording
22 of an evaluation?

23 A. I want to have a verbatim record of everything
24 that I said and everything that the evaluatee said so that
25 there is no question about how I formed my opinions, and

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1 that that can be provided to both sides. It holds my work
2 product up to scrutiny, as I mention here, and it protects
3 the integrity of the process.

4 Q. Okay. And paragraph 7 is, just to elaborate, I
5 want to be clear about it, it is your practice to record
6 through the use of audio and video recording all forensic
7 interviews, is that correct?

8 A. Yes.

9 Q. And you said you regularly use this method of
10 examination on cases for which you have testified as an
11 expert, correct?

12 A. Yes.

13 Q. Okay. In the course of preparing for this
14 deposition and searching public records, I came across
15 testimony you gave in the case of Atwood versus Ryan.

16 Do you recall that case?

17 A. Yes.

18 Q. And in that case, you conducted a psychological
19 assessment, you issued a report, and you gave testimony,
20 correct?

21 A. Yes.

22 Q. Have you ever had an opportunity to review the
23 testimony you gave in that case?

24 A. Maybe many years ago.

25 Q. In the interest of -- I have a copy. Rather

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1 than ask you questions about something, I'd like to put it
2 in front of you.

3 MR. STURR: So let's go ahead and mark this, if
4 we could, Kelly.

5 (Deposition Exhibit No. 1165 was marked for
6 identification.)

7 Q. (BY MR. STURR) Dr. Nelson, I apologize, it's
8 bulky. Court reporters like single-sided copies. It
9 makes their lives easier.

10 A. I like them, too.

11 Q. And just for the record, I will state this is a
12 document that was obtained from PACER, which is the
13 recordkeeping for the federal courts. It's the transcript
14 of an Evidentiary Hearing held on October 7, 2013, in the
15 case of Frank Jarvis Atwood versus Ryan, correct?

16 A. Yes.

17 Q. I put it in front of you in case you want to
18 look at it, but I'd like to -- to help me better
19 understand your work, I wanted to ask you questions about
20 the testimony you gave in this case. Okay?

21 A. Sure.

22 Q. Okay. The index indicates that your testimony
23 begins on page 173. I don't know that you need to look at
24 it, but in case you wanted to have it, it's there.

25 Now, in this case, you were retained by the

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1 Arizona Attorney General's Office, correct?

2 A. Yes.

3 Q. And the purpose of the retention was to conduct
4 a psychological evaluation of Mr. Atwood, correct?

5 A. Yes.

6 Q. Mr. Atwood was a prisoner; he had been convicted
7 of murder, and he was pursuing a habeas corpus petition --

8 A. Correct.

9 Q. -- correct?

10 Okay. In that case, you testified that you
11 received from the Attorney General's Office what you
12 called referral questions, the questions that you were
13 asked to answer.

14 Is that a term you frequently use, a referral
15 question from a lawyer asking you about an evaluation?

16 A. Yes.

17 Q. Okay. And you said this is a fundamental
18 feature of a forensic evaluation, is that the mental
19 health professional is asked a referral question.

20 Is that consistent with your -- I am quoting
21 here, but is that -- is that your -- is that your
22 position?

23 A. Yes, it is.

24 Q. All right. And you said you are asked a
25 specific question by counsel, and then you give -- you

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1 answer, you try to set out to answer that question,
2 correct?

3 A. Yes.

4 Q. Okay. And in that case, the question that was
5 put to you was does Mr. Atwood suffer from a mental
6 disease or defect, and is there any causal connection
7 between any mental disease or defect and the murder of
8 which he was convicted.

9 Is that consistent with your memory?

10 A. Yes, generally. I don't remember if that's
11 verbatim what they asked, but yes.

12 Q. All right. Now, I just want to -- so -- so
13 ultimately you wrote a report, correct?

14 A. Yes.

15 Q. And that report would have set forth all of your
16 opinions and the information you considered, correct?

17 A. Correct.

18 Q. And the report had attached -- and this is in
19 the transcript. I actually don't have the report, because
20 it's sealed, but the report included DSM criteria, capital
21 D, capital S, capital M, which you appended to your report
22 as an index.

23 Would you tell -- tell us, please, what is --
24 what is DSM, generally?

25 A. Sure. DSM is the Diagnostic and Statistical

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1 Manual of Mental Disorders. We are now on the fifth
2 edition, so it's DSM-5. I think that might have been the
3 DSM-IV TR back then. And it's the manual used, published
4 by the American Psychiatric Association, but used by
5 psychologists and psychiatrists to offer diagnostic
6 opinions. It has the criteria for diagnostic conditions
7 that are necessary to diagnose somebody.

8 Q. So for a particular mental disease or defect, it
9 would enumerate the diagnostic conditions that are needed
10 to diagnose that condition?

11 A. Right. The diagnostic criteria for everything
12 that is a recognized mental illness or personality
13 disorder are listed in that -- in that manual.

14 Q. Okay. And just to quickly recap what you did
15 here, as you testified, you conducted an in-person
16 interview of Mr. Atwood?

17 A. Yes.

18 Q. You recorded that interview?

19 A. Yes.

20 Q. You transcribed it?

21 A. Yes.

22 Q. You attached the transcription of the interview
23 to your report?

24 A. Yes.

25 Q. And in the -- correct me if I'm not

1 understanding this process.

2 In the course of your -- is the right term you
3 use "evaluation" when you -- it's not an interview. When
4 you meet with someone, what's the term I should use?

5 A. Well, that's a psychological interview when I do
6 that part. The evaluation is in total, when you also add
7 psychological testing and collateral sources.

8 Q. Okay. I want you to help me walk through this.

9 So when you interviewed him, is it in the course
10 of that interview that you were forming diagnostic
11 impressions?

12 A. That is a part of how you form diagnostic
13 impressions, yes.

14 Q. Okay. So do the diagnostic impressions come
15 later, after the testing and other pieces?

16 A. Yeah. Typically you form a diagnosis after you
17 have all of that information.

18 Q. Okay. So what are you doing in the course of
19 the interview? Are you forming impressions, or is there
20 any technical term that you would use as you are asking
21 questions of the -- of the subject?

22 A. So a general psychological interview has major
23 subject areas --

24 Q. Okay.

25 A. -- that you include when you are interviewing

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1 somebody. Their -- their psychological history, their
2 educational history, vocational history, medical
3 conditions, relationship history. You need to understand
4 that person's view.

5 And then you -- and you also ask specific
6 symptom questions, as if you are looking at a diagnosis or
7 you are starting to rule diagnoses in or out --

8 Q. Okay.

9 A. -- based on the information you are getting from
10 the person, and then typically you would have some sort of
11 objective psychological testing as well.

12 Q. Okay. I want to stop right there.

13 So that's the first part. Then do you a
14 diagnostic test, a psychological test, correct?

15 And in this case you administered the MMPI-2,
16 which is the Minnesota Multiphasic Personality
17 Inventory-2, correct?

18 MR. DeWULF: Object to form.

19 THE WITNESS: Yes.

20 MR. STURR: What's the objection?

21 MR. DeWULF: I don't think you let her answer
22 the prior question, and I think you -- I think she was
23 about to give you additional information. And I think
24 your predicate for the question may have misstated what
25 her testimony was.

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1 MR. STURR: Oh, thank you, John.

2 Q. (BY MR. STURR) I didn't mean to tread on your
3 answer.

4 Did I cut you off before you answered my
5 question?

6 A. I can't even remember what that question was
7 right now. I'm sorry.

8 Q. John will keep me honest. I'm not trying to cut
9 you off, Dr. Nelson, so let me ask the question again.

10 In Mr. Atwood's case, you did administer a
11 psychological test, correct?

12 A. That's correct.

13 Q. Okay. And what was the test you administered to
14 Dr. -- to Mr. Atwood, if you can recall?

15 A. I don't independently remember, but -- and it
16 would have been likely the Minnesota Multiphasic
17 Personality Inventory-2.

18 Q. Okay. And if you -- I can point you to the
19 page, if you want to look at it. It's page 188.

20 A. That's okay.

21 Q. Again, I'm not trying to put words in your
22 mouth.

23 You described in there testimony, the MMPI-2 as
24 the gold standard personality test, correct? wait.
25 Sorry.

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1 Would you use those terms today?

2 A. Yes, that would be a yes, and there is another
3 test in the years that have -- since this, that has really
4 come to be almost equivalent, or not almost, equivalent
5 measure.

6 Q. What is that? Sorry. What is that test?

7 A. The Personality Assessment Inventory.

8 Q. And as I understand it -- and, again, I'm just
9 trying to get a general sense here -- you would never use
10 test results alone to diagnose a psychological condition,
11 correct?

12 A. That's correct.

13 Q. And in your testimony in court, you said it's a
14 way of taking another look at your impressions as you are
15 developing them, and you see if they are -- and I'm just
16 summarizing here -- you want to see if a test result is
17 consistent with your diagnostic impressions to make sure
18 that -- that they are consistent, the test results and the
19 impressions.

20 Is that a fair statement of what you do?

21 A. Yeah. It's another check and balance so that
22 you can see if they are consistent, and if not, seek to
23 understand why there is a discrepancy.

24 Q. Okay. And you refer to the term "check and
25 balance."

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1 So part of the process that you followed here
2 was in administering the test, you -- as I understand from
3 your testimony, you enter the test results multiple times
4 to make sure they are accurately entered, roughly? Is
5 that fair to say?

6 A. There are different scoring services. Sometimes
7 you can just mail the form in and a computer will score
8 it. I have the software myself, so you hand enter them,
9 and I always do the -- hand entered them all a second time
10 to make sure that there wasn't any, you know --

11 Q. Correct.

12 A. -- click typo, I guess.

13 Q. And then, as I understand it, you just get --
14 you then get a summary, a computer-generated summary
15 report, correct?

16 A. Correct.

17 Q. And, again, you wouldn't rely on that alone for
18 a diagnosis, correct?

19 A. Certainly not.

20 Q. Okay. That's just another layer or another way
21 of verifying the opinions or the conclusions you are
22 reaching, correct?

23 A. Verifying or helping me understand and make sure
24 I'm accurate.

25 Q. Right. Okay.

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1 And then in addition to conducting in this case,
2 I'm staying with Atwood, so you conducted the test, you
3 interviewed him, is -- is another stage in the process you
4 described in your testimony as reviewing written records.
5 And in that case you testified that you reviewed
6 approximately 12,000 pages of records.

7 Is that what you were referring to before as
8 collateral source? How would you describe these records
9 that you reviewed in the Atwood case?

10 A. Many boxes. I -- there were criminal records
11 and police reports and correctional health records and
12 medical records, and, I mean...

13 Q. I just want to get the terminology correct.
14 That's collateral source information.

15 Is that the correct term? I think you -- I read
16 that in the testimony. Is that how you describe those
17 records?

18 A. Yes.

19 Q. Okay. And what is the importance of collateral
20 source information in performing a psychological
21 assessment?

22 A. You are try -- well, especially when you are
23 doing a forensic assessment, you want to have as much
24 information as you can, instead of relying solely on an
25 interviewee.

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1 In a clinical setting, you might want to, it
2 might be a nice practice if somebody has had a prior
3 treater, to get that information, but it's not as
4 imperative.

5 Q. Okay. And then, again, so you have compiled
6 this information, and then when you write a report, your
7 testimony indicated that you gave what are called
8 diagnostic impressions.

9 Is that a term that you commonly use in -- when
10 you have completed a psychological assessment?

11 A. Yes.

12 Q. Okay. And does -- if I'm correct in reading
13 your testimony then, the diagnostic impressions are built
14 upon the interview, the test, the collateral sources, and
15 you are then addressing the diagnostic standards in the
16 DSM in reaching the conclusion.

17 Is that a fair summary?

18 A. The diagnostic conclusions are a result of the
19 totality of the interview, the psychological testing, and
20 the additional records, yes.

21 Q. Okay. But help me, then.

22 So -- and the conclusions then are grounded in
23 or based upon the DSM?

24 Am I misunderstanding this process?

25 A. All right. So the DSM simply outlines what is

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1 essential to diagnose someone as particular -- meeting the
2 criteria for post-traumatic stress disorder or meeting the
3 criteria for a major depressive disorder. The DSM lets
4 you know this is what must be present in some combination
5 of forms in order to qualify for this diagnostic label.

6 Q. And in the course of rendering this opinion in
7 your written report, was it important that your report
8 contain all of the relevant information that you relied
9 upon so that it can be assessed and evaluated by another
10 psychologist?

11 A. So all of those collateral sources would be
12 listed in the source list so that another psychologist
13 could see exactly what I had, and if they were requested,
14 another psychologist could request my test results.

15 Q. It was a poor question. Let me start over
16 again.

17 In that case there was another psychologist who
18 testified on behalf of Mr. Atwood, correct?

19 A. Yes.

20 Q. You testified on behalf of the State.

21 Is it -- is it important for you, as a forensic
22 psychologist, to present a report that could be assessed
23 and evaluated by -- by another psychologist, to ensure
24 that it -- it met standards for giving, for clinical
25 psychologists?

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1 Not a great -- I'm sorry. It's a long-winded
2 question, but I'm trying to -- let me try again.

3 Is it important in issuing a report that it
4 contain all of the opinions, the diagnostic opinions or
5 impressions that you reached?

6 A. If I'm asked to diagnose someone, then I would
7 want to outline why, how I arrived at my diagnosis.

8 Q. And the report would be supported by information
9 that was relevant to your assessment?

10 A. I would include a narrative that explained how I
11 arrived at my conclusion or data that supported that, but
12 you couldn't encompass every single thing that --

13 Q. No. Understood.

14 A. Okay.

15 Q. Understood.

16 And what I meant by that was you listed, and,
17 again, I don't have the report, but you listed all the
18 sources that you considered.

19 I think you testified that the MMPI test you
20 listed as a references, not as something that you relied
21 on, but you put it there so people knew that you had done
22 that, correct?

23 A. I don't remember saying that, but that makes
24 sense.

25 Q. And then for certain critical pieces of

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1 evidence, like the interview of Mr. Atwood, the transcript
2 was attached?

3 A. Yes. I always attach the transcript, unless the
4 court says not to.

5 Q. Okay. Okay. All right. Now I want to ask you
6 about another case in which you testified, and you were
7 not doing a forensic assessment. Excuse me. You
8 testified in another case where you did not do a clinical,
9 excuse me, a psychological evaluation, and that case is
10 Kaori, K-o- -- -a-o-r-i, Stearney, S-t-e-a-r-n-e-y, v.
11 United States of America.

12 Do you recall that case?

13 A. Yes.

14 Q. Okay. I'm going to -- let's go ahead and mark
15 that.

16 (Deposition Exhibit No. 1166 was marked for
17 identification.)

18 Q. (BY MR. STURR) How did I get off? I'm off
19 track. Got it. Thank you.

20 Dr. Nelson, the court reporter has handed you
21 what's been marked as 11 -- Exhibit 1166. This was a
22 document that was obtained, again, from PACER, the federal
23 court record system, and it's captioned, United States'
24 *Amended* Motion to Preclude Plaintiffs' Psychology Expert
25 Dr. Scott J. Hunter's Testimony Regarding PTSD Pursuant to

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1 Daubert, D-a-u-b-e-r-t.

2 Have you seen this document in the past?

3 A. Yes.

4 Q. When -- when is the last time you saw this
5 document?

6 A. Right after it came out.

7 Q. This is a motion, Dr. Nelson, that was filed by
8 the U.S. Attorney's Office in this case. Attached to it
9 is one of your reports.

10 Did you assist in the preparation of this -- of
11 this motion --

12 A. Yes.

13 Q. -- drafting this motion?

14 A. In the part -- in my language, yes.

15 Q. Okay.

16 A. I wrote my language.

17 Q. Okay. In this case -- and, again, I want to,
18 using -- if you turn to, let's try to get on the same
19 page -- Exhibit 3. So it comes --

20 A. I got it.

21 Q. Okay. Are you there?

22 A. Uh-huh.

23 Q. Exhibit 3 is a declaration that you gave.

24 Do you see that?

25 A. Yes.

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1 Q. Okay. There are some numbers at the top of that
2 page. If you turn to the number 25 of 40, that's a letter
3 to you from Laurence G. Tinsley, T-i-n-s-l-e-y, at the
4 U.S. Attorney's Office, correct?

5 A. Yes.

6 Q. And that's the letter pursuant to which you were
7 engaged to give an opinion in this -- in that case,
8 correct?

9 A. Correct.

10 Q. So to use the term we used before, can I call
11 that a referral question?

12 A. Yes.

13 Q. Okay. In this case, as I understand the facts,
14 this was a -- and correct me if you have a different
15 recollection -- it was a wrongful death action where a
16 drunk driver had collided with a -- with a van in which
17 the Hirayama, H-i-r-a-y-a-m-a, family was driving on the
18 Navajo Reservation, and it was a -- in that accident, the
19 father, the mother, the son were killed, and only a
20 nine-year-old child survived whose initials were RH, and
21 it was a lawsuit against the Navajo Nation Police
22 Department for causing this accident.

23 Is that consistent with your memory of the basic
24 facts in the case?

25 A. Yes.

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1 Q. Okay. And in that case, Dr. Nelson, the
2 plaintiff had retained a psychologist, his name is
3 Dr. Hunter, to give an opinion that RH suffered from PTSD
4 or met the profile for PTSD.

5 A. Do you recall that?

6 A. Yes.

7 Q. Okay. You were not hired in that case to
8 conduct a psychological evaluation, were you?

9 A. No.

10 Q. You were hired in that case to, is it fair to
11 say, critique Dr. Hunter's work, the rendering of an
12 opinion?

13 A. Yes, methodology.

14 Q. Let me -- actually, I should ask you, how would
15 you describe your role in that case, with respect to
16 Dr. Hunter?

17 A. Sure. I was asked to look more broadly at
18 Dr. Hunter, his credentials and so forth, and then
19 formally to say here is everything he had and did, here is
20 his report. Is this consistent with the standard of
21 practice or with the methodology that you would use as a
22 psychologist?

23 Q. Okay. And your -- your conclusion is that
24 Dr. Hunter had not met those standards and that his -- his
25 report and opinions were unreliable.

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1 Is that fair to say?

2 A. I had the opinion that his methodology was not
3 adequate.

4 Q. Okay. I want to make sure I understand that.
5 So let's go to paragraph 6 in your declaration. And in
6 the paragraph 5 before that is a reference to the
7 "Specialty Guidelines for Forensic Psychology," and a copy
8 of the Specialty Guidelines are attached to the report.

9 Is that correct?

10 A. I believe so. It should have been. Yes.

11 Q. Okay. Although they are attached to the report,
12 I want to ask some questions about that, so let me just
13 take a minute and mark a copy of the Specialty Guidelines.

14 MR. STURR: So, Kelly, can you mark that as an
15 exhibit.

16 (Deposition Exhibit No. 1167 was marked for
17 identification.)

18 Q. (BY MR. STURR) Dr. Nelson, the court
19 reporter -- please keep your declaration out, but the
20 court reporter has marked what's been -- as Exhibit 1167
21 the "Specialty Guidelines for Forensic Psychology."

22 There is a related document that I'm going to
23 want to ask you about, so let me mark that now.

24 MR. STURR: And let's mark that as 1168.

25 (Deposition Exhibit No. 1168 was marked for

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1 identification.)

2 Q. (BY MR. STURR) Dr. Nelson, I have handed -- the
3 court reporter has handed you what's been marked as 1168,
4 which is a document that I obtained from the American
5 Psychological Association, which is the "Ethical
6 Principles of Psychologists and Code of Conduct."

7 Do you recognize that document?

8 A. Yes, but we have it in several forms.

9 Q. Is that consistent with your -- with the form
10 that you have seen?

11 A. Yes.

12 Q. Okay. All right. Before I ask you questions
13 about your declaration, tell me what the specialty
14 Guidelines are, Exhibit 116 --

15 MR. DeWULF: 7.

16 Q. (BY MR. STURR) -- 7.

17 A. Sure. So there are -- the American
18 Psychological Association puts forth outlines, standards
19 that people in different specialties should strive to
20 employ, to adhere to, and this is the guideline for people
21 who engage in the practice of forensic psychology.

22 Q. Okay. So within the APA, as I understand it,
23 there are different, for lack of a better word, chapters
24 or divisions, and you are part of the -- part of the
25 chapter or division that engages in forensic psychology,

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1 is that right?

2 A. So the American Psychological -- I think it's
3 called the American Psychology Law Society, or Division 41
4 of APA, is the division that people with forensic interest
5 join.

6 Q. Oh, I see.

7 A. And I have been a member of it for years,
8 although it makes me think of whether I added that to my
9 dues statement this year.

10 Q. Forget -- forget I even asked that question.

11 For psychologists like yourself who practice
12 clinic -- forensic psychology, these are guidelines that
13 are intended to guide your practice.

14 Fair to say?

15 A. Fair to say.

16 Q. Okay. The guidelines themselves state, however,
17 that they are guidelines and that are aspirational,
18 whereas the "Ethical Principles of Psychologists and Code
19 of Conduct" are mandatory.

20 Is that your understanding?

21 A. Yes, even in the -- although even in the broader
22 ethical principles, there is sections that are said to be
23 aspirational in the big document as well.

24 Q. Understood. Understood.

25 But there are -- there are cross references in

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1 the guidelines to the ethical principles, correct?

2 A. Correct.

3 Q. Okay. Let's go back to your opinion, so -- your
4 declaration.

5 Paragraph 6 says, "The Specialty Guidelines
6 explain that, when acting as a forensic practitioner,
7 psychologists, in part," and then you cite to certain
8 paragraphs or principles in the guidelines, correct?

9 A. Yes.

10 Q. And they are to acquire collateral/third party
11 information, section 8.03; use multiple sources of
12 information, section 9.02, correct?

13 A. Correct.

14 Q. Seek to obtain sufficient data and document
15 their efforts to do so, section 9.03, correct?

16 A. Yes.

17 Q. And then d., must only provide written or oral
18 evidence about the psychological characteristics of
19 particular individuals when they have sufficient
20 information or data to form an adequate foundation for
21 their opinion, and that again cites to section 9.03.

22 A. Correct.

23 Q. So I want -- I want to just make sure I'm
24 understanding how this works.

25 So when I go to the guidelines and look at

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1 Section 9.03 -- why don't you follow along with me, if you
2 would, please, Exhibit 1167.

3 So when I look at Section 9.03, the first
4 sentence states -- and I think this is what you were
5 quoting from or summarizing here -- "Forensic
6 practitioners recognize their obligations to only provide
7 written or oral evidence about the psychological
8 characteristics of particular individuals when they have
9 sufficient information or data to form an adequate
10 foundation for those opinions or to substantiate their
11 findings."

12 And then there is -- this is my question for
13 you. Then there is a citation to EPPCC Standard 9.01.
14 And then if you could go to Exhibit 1168, there is 9.01,
15 Bases for Assessment has -- has two sections, (a) and (b).

16 My questions for you are, are these mandatory,
17 the requirements of Section 9.01(a) and (b), for
18 psychologists?

19 A. Well, that's -- that's a really broad question.
20 For psychologists doing what, in what context?

21 Q. Well, that's my question.

22 So for a psychologist who is performing clinical
23 psychological services or assessments, rather, pursuant to
24 the guidelines, they are to follow the guidelines, but
25 there is a cross reference to EPPCC Standard 9.01.

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1 So my question is, for a clinical psychologist
2 such as yourself, are you required to follow
3 section 9.0(a) and (b) of the EPPCC when you are rendering
4 opinions as a clinical psychologist?

5 MR. DeWULF: Object to form.

6 THE WITNESS: A clinical psychologist is
7 different.

8 Q. (BY MR. STURR) I'm sorry. I keep -- thank you
9 for correcting me. Forensic psychologist. I meant to say
10 forensic psychologist.

11 MR. DeWULF: I object to form.

12 THE WITNESS: So here in this 9.03, yes. If you
13 are -- I haven't read this one in a long time, so I'm
14 trying to look at 9.01 and see what it says, but the short
15 answer is yes. If you are not examining someone, you are
16 required to express that your opinion is limited that
17 way --

18 Q. (BY MR. STURR) Okay.

19 A. -- if you are offering diagnostic opinions.

20 Q. Okay. I'll get to that in a second.

21 Okay. So now I want to go back to -- I want to
22 continue on. I'm back to your declaration.

23 You summarize in -- I'm on page 4, paragraph e.,
24 and again, we were summarize -- you were summarizing what
25 the specialty Guidelines require, correct?

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1 A. Page 5?

2 Q. I'm on page 4 of 7 of your declaration. Sorry.
3 It's page 5 at the top.

4 A. Okay.

5 Q. Sorry. I don't mean to be confusing. Sorry.

6 A. Oh, okay.

7 Q. Are you with me?

8 A. Yes.

9 Q. Okay. Again, you were summarizing what the
10 guidelines require, correct?

11 A. Correct.

12 Q. And e., you wrote, "when it is not possible to
13 conduct an examination, strive to make clear the impact of
14 such limitations on the reliability and validity of their
15 opinions," correct?

16 A. Correct.

17 Q. All right. So -- so you summarize those
18 standards and Dr. Hunter, in giving testimony, was
19 required to comply with these guidelines, in your opinion?

20 MR. DeWULF: Object to form.

21 THE WITNESS: It was necessary for it to be
22 adequate. I mean, you don't have to adhere to -- if you
23 are not a forensic psychologist or you aren't licensed or
24 consider yourself to be, I guess he could choose not to
25 abide by the ethical standards.

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1 Q. (BY MR. STURR) I understand he could choose not
2 to, but as a -- as a clinical psychologist, excuse me, as
3 a psychologist who was giving forensic psychology
4 testimony, he is expected to comply with the guidelines?

5 A. Yes.

6 Q. Is that a better way of phrasing it?

7 A. Sorry. Yes.

8 Q. All right. And in your opinion, you offered
9 certain critiques of Dr. Hunter's performance in this
10 case. He gave an opinion about the subject, RH's, whether
11 the subject RH was suffering from PTSD or had PTSD
12 symptoms, correct?

13 A. Yes, he did.

14 Q. Okay. You summarized, when you reviewed his
15 work, you focused first on interviews. You have a section
16 here marked interview data, correct?

17 A. Correct.

18 Q. You noted that he had not interviewed or
19 examined RH, correct?

20 A. Correct.

21 Q. You noted that he had made no attempt to seek
22 collateral interviews with any parties or persons who have
23 been -- who may have been able to provide relevant data
24 about RH, correct?

25 A. Correct.

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1 Q. And that's something that he should have done,
2 in your opinion?

3 A. In order to render his diagnostic opinions, yes.

4 Q. You also focused in your critique on collateral
5 and corroborating data. It's paragraph 9 of your
6 declaration, correct?

7 A. Yes.

8 Q. And you did not -- if I am reading this
9 correctly, you found fault in Dr. Hunter because he did
10 not request, obtain and review any medical, psychological,
11 or academic records, correct?

12 A. Correct.

13 Q. And that's something he should have done before
14 rendering an opinion, a diagnostic opinion?

15 A. In this case, Dr. Hunter expressly stated that
16 RH's academic performance had declined, that -- and
17 described other symptoms that he didn't have any record to
18 say that.

19 Q. And then you also noted that -- and I'm looking
20 at paragraph -- in your summary conclusions, in
21 paragraph 10.

22 So paragraph 10, if you are with me, this is
23 page 6 of 7, you said that Dr. Hunter's methodology does
24 not meet the applicable or generally accepted standard of
25 practice, nor does it provide sufficient foundational

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1 support for the scope of the opinions he rendered, and you
2 give various reasons.

3 One of those, Dr. Nelson, is that he did not
4 provide reasonable qualifying language about the
5 significant limitations and the nature and quality of the
6 data upon which his opinions were based, is that correct?

7 A. Yes.

8 Q. And you noted earlier in your declaration that,
9 this is paragraph 8a., it's professionally acceptable to
10 render limited opinions in the absence of direct contact
11 with the subject individual, but it is imperative that the
12 resultant limitations with respect to reliability and
13 validity be expressly conveyed, correct?

14 A. Correct.

15 Q. That's your opinion?

16 A. Yes.

17 Q. Okay. Now, in this case --

18 MR. STURR: Why don't we take a quick break. We
19 have gone about an hour.

20 THE WITNESS: Sure.

21 VIDEOGRAPHER: This ends video number one of the
22 ongoing deposition of Dr. Erin Nelson. We are off the
23 record at 1:58.

24 (A recess was taken from 1:58 p.m. to 2:08 p.m.)

25 (Deposition Exhibit No. 1169 was marked for

1 identification.)

2 VIDEOGRAPHER: This begins media number two of
3 the ongoing deposition of Dr. Erin Nelson. We are back on
4 the record at 2:08.

5 Q. (BY MR. STURR) All right, Dr. Nelson. I think
6 you can -- you can set aside those documents for a second.

7 To your knowledge, has -- have you ever been the
8 subject of a Daubert motion?

9 A. Not to my knowledge, no.

10 Q. Before this case, Dr. Nelson, have you ever been
11 retained to render psychological opinions about someone
12 you have not -- you have not examined?

13 A. Yes.

14 Q. On how many occasions?

15 A. I would be reluctant to offer a guess number,
16 but there are certainly and have been occasions when, for
17 a variety of reasons, the subject isn't evaluated.

18 Q. Can you give me a number? I guess is it -- is
19 it more than ten?

20 A. Probably, yes.

21 Q. What is the most recent case you can recall when
22 you did that?

23 A. Now I'm going to start getting embarrassed.

24 Give me a second.

25 I feel like the -- one of the most recent times

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1 would have been where somebody was deceased.

2 Q. And what was the purpose of -- so you were
3 hired.

4 Do you recall the name of the decedent or the
5 parties?

6 A. No. I have been retained in a few cases
7 regarding, like, estate disputes, where there were
8 questions about a decedent's psychological status.

9 Q. So I want to be clear about this.

10 So you have a few -- now you are saying there
11 are a few cases in which you were retained to give an
12 opinion about a decedent's psychological status, correct?

13 A. Yes. At first I said I can't remember a number.
14 You asked if it's more than ten, yes, but a few is just
15 more a way to summarize multiple.

16 Q. Okay. So -- and -- and the type of case, so I'm
17 clear about this, would be a probate proceeding in which
18 there is a question raised about the decedent's mental
19 state?

20 A. You asked which I was most recent, sort of
21 scenario. That's my word, not yours.

22 Q. That's the most recent?

23 A. Yes.

24 Q. Okay. And I'm trying to understand the
25 circumstances in which you are retained, so you have given

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1 me one example, which is, as I have just described, in a
2 probate case where you have been retained to give a
3 psychological opinion about the decedent's mental state or
4 condition, correct?

5 A. Correct.

6 Q. Okay. And that's one type of case.

7 Can you give me another type of case where you
8 have been retained to give a psychological opinion about
9 an individual you did not examine?

10 A. Yes. I don't recall the name, but I
11 specifically recall there being a young girl, who was
12 young at the time, still a teenager, that had been
13 repeatedly sexually assaulted and put through several
14 evaluations, and I didn't -- I said in my judgment, it
15 wasn't necessary to subject her to another evaluation.

16 Q. Did you give an opinion about her psychological
17 condition?

18 A. Yes.

19 Q. What was the nature of that case? Was it a
20 criminal or a civil case?

21 A. I don't remember. I know the reason it's so
22 vivid is because I didn't offer a diagnostic opinion. It
23 was about the -- I was being asked about the general
24 treatment protocol that she was provided.

25 Q. So you did not give a diagnostic opinion. You

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1 gave an opinion only about the sufficiency of the
2 treatment protocol, correct?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I wouldn't want to misspeak in
5 that limited, in that level of specificity. I don't
6 recall specifically the referral question I was requested,
7 but I am thinking about the case and that I recall saying
8 I can't offer a diagnosis, but the diagnoses all seemed
9 very accurate, and it's not worth putting this person
10 through another evaluation, so -- I'm sorry.

11 Q. (BY MR. STURR) No. I was just moving my head.
12 I wasn't trying to stop you from answering the question.

13 A. Okay. And so as I recall, the question that I
14 was asked had to do with is this an expected response to
15 treatment and what are the -- it had to do with the
16 treatment protocols for someone that was similarly
17 situated.

18 Q. Okay. And then to render that opinion, did you
19 review the prior assessments that had been conducted in
20 medical records?

21 A. Yes, I did.

22 Q. All right. That's -- I'm just trying to get
23 categories here, Dr. Nelson. So that's a second category
24 of instances or cases in which you have rendered a
25 psychological opinion without conducting an examination.

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1 Are there any others?

2 A. Not to be nitpicky, but if we are talking about
3 the difference between consulting and formal reports and
4 testimony, and I have been consulted on cases dating back
5 to Columbine where you offer opinions --

6 Q. Excuse me. I don't mean to cut you off. I'm
7 going to exclude consulting. I'm asking when you have
8 given a written report or other form of opinion. That's
9 what I want to focus on. I want to make sure I understand
10 the circumstances in which -- in cases in which you have
11 issued an opinion or report in which you have not examined
12 the subject. Okay?

13 So as I understand it, we have got one category
14 that we have just talked about, which is where you gave an
15 opinion about the treatment protocol, the one you just
16 described, correct?

17 A. Correct.

18 Q. We have cases in which -- in a probate case in
19 which you were retained to give an opinion about the
20 decedent's mental state or condition, correct?

21 A. Correct.

22 Q. Okay. Are there any other categories?

23 A. Not that I can think of.

24 Q. Okay. So let me go back to the probate cases.

25 You said there have been more than one, but you

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1 can't tell me how many?

2 A. That's correct.

3 Q. Okay. Can you give me the names of the parties
4 or -- or of any of those cases?

5 A. Oh, I can't. I'd have to pull up my records and
6 look at case files. I can't remember their names.

7 Q. Would you be able to provide us with a list of
8 those cases?

9 A. I would want to look and make sure that they are
10 cases that I had been disclosed in.

11 Q. The question I'm asking is whether or not you
12 gave a report, an opinion.

13 So you may have issued a report that was not
14 disclosed?

15 A. That's -- that's beyond my role in the case.

16 Q. Okay. Okay. Again, I want to stay focused on
17 your practice as a forensic psychologist, and I'm
18 particularly interested in when you have expressed an
19 opinion for use in a court proceeding.

20 So limit -- so limited, would you be able to
21 provide to me, through Mr. Dewulf, a list of probate cases
22 in which you have issued an opinion about the conduct of
23 a -- of a decedent who you did not examine in these
24 probate cases?

25 A. I should be able to do that.

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1 Q. Now, in those types of cases, so in the cases
2 that you can recall, who hired you?

3 A. It could have been either side of the case.

4 Q. Okay.

5 A. Counsel, a lawyer.

6 Q. A lawyer.

7 And what was the referral question, if you can
8 recall?

9 A. Oh, we are talking about several cases. So
10 generally, if I'm retained by a lawyer in a case where
11 somebody has passed away, it's a question of what their
12 cognitive situation was, were they able to make decisions,
13 was there undue influence. Those are the sort of issues,
14 but I can't even think of the actual -- of a case name
15 right now to tell you what a specific --

16 Q. Okay.

17 A. -- referral question would be.

18 Q. That's fine.

19 So the referral question, broadly speaking,
20 would be what were the decedent's -- what were the
21 decedent's cognitive abilities and were they under --
22 subject to undue influence?

23 MR. DeWULF: Object to form.

24 THE WITNESS: That would be one of the examples
25 of questions I could then be asked.

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1 Q. (BY MR. STURR) Okay. And in the absence of the
2 ability to interview the decedent, tell me what steps you
3 would follow to conduct an assessment of the decedent's
4 psychological condition?

5 A. Sure. I would look at the -- again, ask for the
6 collateral source records, pleadings, testimony of
7 relevant witnesses and parties, and may or may not also
8 conduct collateral interviews.

9 Q. I want to break this down. So you have used two
10 terms, collateral interviews and collateral source.

11 So a collateral source, if I may, you referred
12 to pleadings, testimony.

13 Is a medical record a collateral source?

14 A. Yes. And I should clarify, collateral
15 interviews would technically fall under the broad category
16 of collateral sources. One source could be interviews,
17 another could be medical records, another could be
18 deposition testimony, and so on.

19 Q. Okay. So in order to -- so let me talk about
20 medical records.

21 So you would, in order to determine the
22 decedent's cognitive state, you would review available
23 medical records, generally?

24 A. Yes.

25 Q. Okay. So, for example, if the decedent had

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1 been, I'm speaking hypothetically, in a nursing home, the
2 chart may reflect testing that was conducted or reports or
3 analyses of the decedent's mental state?

4 A. If a decedent was in a nursing home, you would
5 want to look at the medical records and see if there was a
6 diagnosis of dementia, other sort of mental health
7 history, of other diagnoses that could interfere with your
8 mental state.

9 Q. Okay. But those would be important records for
10 you in order to render an opinion about the decedent's
11 psychological condition, would be medical records showing
12 either past assessments or tests?

13 A. Yes, that would be one piece of data I would
14 want in order to offer that opinion.

15 Q. Okay. would it also be important to you to
16 conduct, I think you used the term collateral, collateral
17 interviews?

18 A. There are some cases where I feel like that's
19 something I need to do in order to offer an opinion about
20 what I'm being asked, and other times it's not necessary.

21 Q. Give me an example when it wouldn't be
22 necessary?

23 A. For example, if there are multiple affidavits or
24 deposition testimony of parties, there are times when I
25 will say it is not necessary for me to reinterview

1 someone.

2 Q. why?

3 A. It depends on the nature of the question I'm
4 being asked.

5 Q. well, wouldn't it be important, in order to
6 develop your own independent opinion, to conduct an
7 interview --

8 MR. DeWULF: Object.

9 Q. (BY MR. STURR) -- as opposed to relying on
10 questions that were asked by someone else in a deposition?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Not necessarily. If I have -- if
13 I am looking at -- and we are, I presume, still talking
14 about the hypothetical nursing home person as the example,
15 then if there are deposition -- if there is deposition
16 testimony of other residents and of staff and of other
17 people or medical providers, it wouldn't be necessary
18 automatically for me to reinterview those people.

19 Q. (BY MR. STURR) Okay. What if there were not
20 medical records and there was not, for example, any -- any
21 diagnosis of dementia or other mental condition? would --
22 and there were family members who had interacted with the
23 decedent.

24 would it be important to you to conduct an
25 interview of those family members in order to arrive at an

1 opinion?

2 MR. DeWULF: Object to form.

3 THE WITNESS: If I'm being asked to render a
4 diagnostic opinion with no medical records, then that
5 seems like a more likely scenario, that I would want to
6 reinterview folks as opposed to their deposition
7 testimony.

8 Q. (BY MR. STURR) Help me understand. You have
9 used this term "diagnostic opinion."

10 what -- what do you mean by a diagnostic
11 opinion?

12 A. That's back to what we had talked about with the
13 DSM and with Dr. Hunter saying that somebody qualifies for
14 a particular diagnosis.

15 Q. So in the nursing home case, if you were asked
16 to give an opinion about whether a decedent lacked
17 capacity to make informed decisions, would you need to
18 make a diagnosis about the decedent's mental state?

19 A. You may, but that -- to answer that question,
20 that wouldn't be -- it wouldn't be essential to offer a
21 diagnostic label.

22 Q. Why not?

23 A. Because you could have, again, hypothetically,
24 you could have compromised judgment without me knowing
25 whether you had a medical diagnosis of dementia.

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1 Q. Okay. But my question, again, is -- I'm still
2 trying to understand the difference between the -- what's
3 the -- what is --

4 You have described a diagnostic opinion, and I
5 understand that to be an opinion in which you are
6 diagnosing the subject's mental state or capacity,
7 correct?

8 MR. DeWULF: Object to form.

9 THE WITNESS: Correct. When we were in --
10 looking at the Atwood report and it said diagnostic
11 impressions and I offered specifically diagnostic labels
12 that I attributed to him.

13 Q. (BY MR. STURR) Okay. What other forms of
14 opinion, psychological opinion can you give or do you give
15 if it's not a diagnostic opinion?

16 A. That depends entirely on the nature of what I'm
17 being asked and what my role in the case is.

18 Q. If you are asked to give an opinion about a
19 subject -- subject's ability to make decisions or
20 otherwise act, what would you call that opinion, if you
21 give an opinion?

22 A. The -- well, let me make sure we are on the same
23 page.

24 Q. I'm trying to find an alternative to diagnostic,
25 so just help me understand the types of opinions that you

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1 can give. Let me ask it that way.

2 A. Sure. You could be asked about somebody's
3 behavior. You could be asked about their capacity to
4 change their will or to make other types of decisions.
5 And you can look at their behavior and decision-making, as
6 opposed to simply whether they had met the diagnostic
7 criteria for dementia or some other sort of cognitive or
8 psychological emotional condition.

9 Q. So if you are giving an opinion about behavior
10 and decision-making, what label do you put on that
11 opinion? Again, I'm trying to find something other than
12 diagnostic.

13 A. That could be a general psychological opinion.

14 Q. And if you -- again, have there been
15 circumstances in -- in these types of cases, again, where
16 you are asked to give an opinion about a deceased person,
17 where you have conducted a collateral interview?

18 A. Yes.

19 Q. Okay. On how many occasions, can you recall?

20 A. I can't remember the number of cases I have done
21 this, but I don't know the answer to that. The answer is
22 definitely yes.

23 Q. So hypothetical, again, I'm trying to understand
24 your world, so you could have a family fight over a will,
25 there is a question about the testator's intent, testator

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1 is dead, and you have been asked to give an opinion, a
2 general psychological opinion about the testator's
3 decision-making abilities.

4 And in a case like that, you may conduct a
5 collateral interview of, say, family members, correct?

6 A. Correct.

7 Q. Okay. How would you go about conducting those
8 interviews?

9 A. I would request from -- tell counsel I think
10 this is essential in order for me to be able to offer an
11 opinion.

12 Q. Okay.

13 A. And then I would ask them to -- I mean, there
14 are cases where I have asked them to schedule it or help
15 me schedule it, or to give me phone numbers or, I mean...

16 Q. Would you record by video or audio the
17 interview?

18 A. Definitely by audio at least. I can -- I can --
19 again, trying to think of the context, but I believe there
20 is a case where I had, you know, set my recorder by a
21 phone, because somebody lived out of the state, et cetera,
22 and did an audio telephonic interview.

23 Q. Are there -- is there literature that you rely
24 upon when you are conducting a non-diagnostic assessment,
25 when you are conducting interviews and trying to gather

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1 information about a subject's character and
2 decision-making?

3 MR. DeWULF: Could you read that back, Kelly.

4 (The requested portion of the record was read.)

5 THE WITNESS: Oh. Sorry.

6 MR. DeWULF: You can answer.

7 THE WITNESS: I don't really understand what you
8 are asking in that question.

9 Q. (BY MR. STURR) Well, what I'm trying to
10 understand is when you go about -- is there a framework in
11 the profession, established by practice or publications,
12 for conducting a non-diagnostic assessment of a -- of a
13 person who you are not able to interview?

14 A. There is not any particular reference, because
15 that's another -- it could be any time you are
16 interviewing anybody, or not interviewing. I apologize.
17 Let me restate that. Any time you are asked to share your
18 psychological expertise or impression that's not
19 diagnostic, would fall into what you just described.

20 Q. Okay. But -- but regardless of -- well, even in
21 a non-diagnostic setting, if you were asked to conduct a
22 non-diagnostic assessment, you would still be obligated,
23 would you not, to comply with the specialty guidelines?

24 A. Yes.

25 Q. Okay. So you would need to acquire collateral

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1 and third-party information?

2 A. Correct.

3 Q. You would need to use multiple sources of
4 information?

5 A. Correct.

6 Q. Okay. And what I'm trying to understand is can
7 the referral question limit the scope of what -- of the
8 examination or the assessment that you conduct?

9 A. The referral question wouldn't limit the scope
10 of what I do. It may limit what's -- or certainly could
11 limit what's necessary to answer the question I'm being
12 asked.

13 Q. How can a referral question limit what is
14 necessary? Help me understand that.

15 A. So if I am being asked to offer a diagnostic
16 opinion, then I would need to interview the person, see
17 testing, so on. If I'm being asked is this treatment
18 consistent with this diagnosis, I would not need to do
19 that.

20 Q. I'm more focused, Dr. Nelson, on when you are
21 asked to provide a psychological assessment of an
22 individual, and that psychological assessment is of an
23 individual who is no longer living, can the referral
24 question limit the extent or scope of your assessment?

25 A. I'm trying to think of the questions that I have

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1 been asked, but always, as a matter of forensic practice,
2 you need to have sufficient information to render the
3 opinion you are rendering.

4 So if an opinion was -- if I'm asked a limited
5 question, then I would gather everything I needed to do to
6 answer that question, but it may not be necessary to do
7 other work.

8 Q. Okay. All right. Let me ask you about this
9 case.

10 You have been retained, as we discussed at the
11 outset of the deposition, by Mr. Dewulf's law firm. As I
12 understand it, you did not issue -- there is not an
13 engagement letter that you or Mr. Dewulf are aware of. Is
14 that correct?

15 A. Yes, and I don't -- I don't typically -- I know
16 some experts demand those. I haven't, typically.

17 Q. So there is nothing from Mr. Dewulf's firm that
18 sets out what we have been calling a referral question, is
19 that correct?

20 A. I thought we were talking about something
21 different, so let me clarify. I thought you were talking
22 about initially, like, we have retained you to review
23 these documents.

24 Q. Well, that's what I'm trying to get my arms
25 around, so let me -- let me step back.

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1 So we have received today from Mr. Dewulf, at my
2 request, some billing statements that were issued for your
3 work. Let me hand you what's been marked as Exhibit 1169.

4 Can you identify for the record, Dr. Nelson,
5 Exhibit 1169, please?

6 A. Yes. This appears to be the billing records
7 that I submitted in this or the bills that I submitted in
8 this matter.

9 Q. Okay. And the first entry here is February 20,
10 2018, correct?

11 A. Correct.

12 Q. Which you describe as an initial telephonic
13 contact with Mr. Dewulf, correct?

14 A. Correct.

15 Q. Okay. Have you worked with Mr. Dewulf or anyone
16 from his law firm before?

17 A. No.

18 Q. Okay.

19 A. Well, I don't know who else is in his law firm,
20 but...

21 Q. But you have not worked with Mr. Dewulf before?

22 A. Correct.

23 Q. Okay. And these billing statements then
24 describe various work you performed.

25 You do not have an engagement letter that

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1 confirms your retention and rates and things like that,
2 correct?

3 A. Correct.

4 Q. Did you at any time receive from Mr. DeWulf,
5 Mr. Ruth, or Ms. Patki what we have been calling a
6 document that set forth referral questions?

7 A. No.

8 Q. Okay. How did you receive the referral
9 questions in this case?

10 A. Verbally.

11 Q. Do you recall when you received those?

12 A. Not specifically. Early on, it was -- there
13 wasn't a specific question from phone call one in this
14 case, which is also not uncommon. It was: we think there
15 is some psychological things perhaps going on here and we
16 are not psychologists, so can you have an initial
17 impression? The specific scope of what I would answer, I
18 don't remember, but it was much later.

19 Q. Okay. All right. well, let me just ask you
20 generally, you have issued a written report in this case
21 and a supplement. Tell us in your own words what you were
22 asked to do.

23 A. From the beginning or in issuing my report?

24 Q. Is there a difference? What -- were you asked
25 to do something differently at the beginning?

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1 A. Just what I just explained to you, that it was
2 broader, we think there is some psychological concept
3 here. By the time it got to the report, I was
4 specifically asked to look at the relationship dynamic
5 between Denny Chittick and Scott Menaged during January
6 to, I believe, May of 2014.

7 Q. Before that, before you said you got to the
8 report, were you asked to provide information or
9 assistance to Mr. Dewulf on other issues, without telling
10 me the substance of your communications?

11 A. No. Generally they said we think that there is
12 some sort of psychological concept that we need a
13 psychologist to look at.

14 Q. Okay. And so generally you were asked to look
15 at the relationship between Mr. Chittick and Mr. Menaged
16 in the time period January '14 to May 14, is that correct?

17 A. Correct.

18 Q. Okay. How did you go about doing that?

19 A. I started by reading -- well, not started.
20 started and continued to read voluminous records in this
21 case that are all included in my source list.

22 Q. Your report refers to a record review and
23 analysis.

24 what is a record review and analysis in the
25 field of forensic psychology?

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1 A. I identified that to make very clear that this
2 was simply, or not simply, nothing is simple, but a --
3 specifically a record review opinion as opposed to one
4 where I collected a psychological evaluation.

5 Q. So you are -- okay. So you use that term
6 specifically to say you are not -- you did not conduct a
7 psychological evaluation?

8 A. That I didn't conduct a face-to-face evaluation
9 of a person; that I'm offering psychological opinions
10 based on a record review.

11 Q. Is that -- is that to distinguish this from
12 diagnostic opinions?

13 A. In part, that's a part of it, but not the
14 totality. The totality is because I want to make very
15 clear to the audience that my impressions are based on a
16 review of records.

17 Q. Okay. And my question, in the field of forensic
18 psychology, is the term "record review and analysis" a
19 recognized term?

20 A. It could be record review report. I mean, it
21 might not necessarily say record review and analysis. It
22 could. An evaluation of the records. It's just that you
23 need to distinguish that you are only reviewing records as
24 opposed to conducting independent psychological
25 evaluation, as we talked about earlier.

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1 Q. Okay. And so to be clear, then, the opinions
2 that you have based are -- are based solely on the records
3 that you have identified in your initial and supplemental
4 report?

5 A. Correct.

6 Q. And what is -- what is your opinion? What
7 opinions did you form on the basis of the record review?

8 A. Ultimately, that during that specific timeframe,
9 Scott Menaged had significant influence over Denny
10 Chittick's decision-making.

11 Q. Scott Menaged had significant influence over
12 Denny Chittick's decision-making, that is your opinion?

13 A. Yes.

14 Q. In the time period January through May 2014?

15 A. Correct.

16 Q. When you say that Scott Menaged had significant
17 influence, what do you mean by "significant"?

18 A. I'm trying to think of synonyms. Substantial,
19 weighty.

20 Q. And what -- have you formed an opinion about
21 specific decisions that Denny Chittick did or did not make
22 on the basis of that opinion that you have reached that
23 Mr. Menaged had significant influence?

24 A. General decisions.

25 Q. What I'm trying to understand, Dr. Nelson, is

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1 you are rendering an opinion that Mr. Menaged had
2 significant influence over Denny Chittick's
3 decision-making in this time period, correct?

4 A. Correct.

5 Q. Is that the only opinion you are -- you have
6 reached in this case?

7 A. Yes.

8 Q. You are not giving an opinion about any specific
9 decisions that were made?

10 A. I believe I outline in my report examples to
11 explain how I arrived at that opinion, but that is the
12 only opinion I have to offer.

13 Q. The only opinion you are offering is this
14 opinion that Scott Menaged had significant influence over
15 Denny Chittick's decision-making between January and
16 May 2014?

17 A. That's correct.

18 Q. There are no other opinions you have reached in
19 this case?

20 A. That's correct.

21 Q. Okay. How did you -- I want to just make sure I
22 understand your process from -- as a forensic
23 psychologist, what process did you follow to reach that
24 opinion?

25 A. I reviewed, as I said, volumes of electronic

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1 mail correspondence, written correspondence, deposition
2 testimony, pleadings, many, many documents that, again, I
3 can't list them all for you. That's where they are on
4 the -- in my report.

5 Q. Well, let's take a look at your report. Let's
6 start with your first report, Exhibit 1162.

7 A. Oh.

8 Q. You have on page 4, you have a heading Sources
9 of Information.

10 Do you see that?

11 A. Yes.

12 Q. Okay. This -- this goes on for a number of
13 pages, to page 14, correct?

14 A. Correct.

15 Q. And I want to be clear about this. The --
16 because I think you say this at the end of the opinion,
17 your opinion is based solely on the sources of information
18 that are listed on pages 4 to 14, correct?

19 A. Yes.

20 Q. And you have identified the sources of
21 information as pleadings, deposition transcripts,
22 miscellaneous transcripts and additional documents,
23 correct?

24 A. Yes. I wasn't sure, I mean, I was trying to be
25 as clear as possible in separating out categories, but I

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1 wasn't sure how to characterize, other than additional
2 documents.

3 Q. How did you -- how did you first receive
4 documents relating to this case?

5 A. I can't remember which mechanism they used, but
6 ShareFile or something to that effect.

7 Q. Let me rephrase the question.

8 So I'm looking at your billing statement, and on
9 February 20, 2018, you have initial telephone conference
10 with Mr. Dewulf; on March 5, 2018, you have a longer
11 telephone conversation; and on March 12, 2018, you had a
12 brief telephone conversation, correct?

13 A. Correct.

14 Q. And then that's followed by approximately seven
15 hours of record review between -- on March 19 and
16 March 20, correct?

17 A. Correct.

18 Q. How did the documents that you reviewed on those
19 two dates get compiled? How were they selected, rather?

20 A. I would have asked them, I mean, I don't
21 remember verbatim what I said to Mr. Dewulf, but my
22 typical process is to say to get started, I would like
23 some general pleadings that outline the, you know, issues
24 in the case and, you know, whatever other record, I don't
25 remember what I asked them specifically for, but I would

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1 have asked for a set of records to have initial review and
2 a little more informed conversation than just relying on
3 what counsel described.

4 Q. But in that conversation, did you rely on
5 Mr. Dewulf and his colleagues to assemble what documents
6 might be relevant for your review?

7 A. I would have asked for the type of document,
8 but, yes, they would have had to put them together for me.

9 Q. Can we take a quick break?

10 A. Certainly.

11 VIDEOGRAPHER: This ends media number two of the
12 ongoing deposition of Dr. Erin Nelson. We are off the
13 record at 2:41.

14 (An off-the-record discussion.)

15 VIDEOGRAPHER: This begins media number three of
16 our ongoing deposition of Dr. Erin Nelson. We are on the
17 record at 2:42.

18 Q. (BY MR. STURR) So just before we took that
19 quick break, so you received -- after receiving documents
20 from Mr. Dewulf and his colleagues, do you recall asking
21 for additional documents?

22 A. Yes.

23 Q. What do you recall asking for?

24 A. I don't recall specifically. There were more,
25 but over the course of this case -- I don't recall

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1 specifically at the beginning, but over the course of this
2 case, they were -- continually were taking the depositions
3 of these people, were gathering or have sent out requests,
4 and I always want to obtain those documents.

5 MR. STURR: Let's go ahead and mark this,
6 please.

7 (Deposition Exhibit No. 170 was marked for
8 identification.)

9 Q. (BY MR. STURR) Dr. Nelson, the court reporter
10 has handed you what's been marked as Exhibit 1170.

11 Do you recognize that document?

12 A. Yes.

13 Q. My understanding is that this is -- this
14 document is identified in your report as Chronology for
15 E. Nelson?

16 A. Yes.

17 Q. Did you ask for this document?

18 A. I don't remember in this case, but it's -- I
19 would have very likely. When -- whenever there is a case,
20 particularly with voluminous records, I will ask counsel
21 if they have a chronology that I can use or, an
22 alternative, I will create one myself, just to sort of
23 orient to where source documents are.

24 Q. So just to be clear, this is a document that was
25 prepared by defense counsel in this case, correct?

1 A. Correct.

2 Q. And it's a document that you reviewed and relied
3 upon in forming your opinion?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I would never rely on a chronology
6 provide -- provided by counsel in forming my opinion. I
7 would use it to orient me chronologically, and then if
8 there was something -- because I have all the source
9 records, to go back and pull the original document.

10 And just to clarify also, the way that it -- I
11 don't know if they just prepared it for me. The reason
12 it's written that way on my source is because that's
13 how -- that's what the label of the document was when it
14 came to me, so I don't know if they have given it for
15 other people.

16 Q. (BY MR. STURR) And it's your understanding that
17 this is a document, a chronology that was prepared by
18 defense counsel to provide you with a timeline of relevant
19 events and documents?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Again, I'm not sure if it was
22 prepared just for me, that's why I want to clarify the way
23 I wrote it there. I don't know what their initial purpose
24 was, but that's how I would have used it, as another piece
25 of information, having to sort of effectively let me go

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1 back and reference where source documents that I already
2 had were.

3 Q. (BY MR. STURR) Okay. So let me make sure I
4 understand this.

5 So you -- your opinion is based on certain -- on
6 these documents, which includes deposition transcripts.

7 Looking at your -- at your reports, do you know
8 that you reviewed every deposition that was -- the
9 transcript of every deposition that was taken in this
10 case?

11 A. I have no idea.

12 Q. Did you ask to see all the deposition
13 transcripts?

14 A. No.

15 Q. Why not?

16 A. I would have specifically, likely in a case like
17 this, felt that it would have been not a -- what's the
18 word I want to use -- would not be unreasonable for me to
19 be reviewing stacks of depositions related specifically
20 only to financial matters that weren't relevant to my
21 opinion.

22 Q. Your opinion is based in part on, as I
23 understand it, you were focused on a particular time
24 period, January to May 2014, correct?

25 A. Correct.

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1 Q. In -- in -- in the process of gathering
2 information to form that opinion, let me start with that
3 time period, what was important to you in understanding
4 relevant information?

5 A. As I said, in the beginning I would want and
6 continuing to have pleadings that outlined both -- both or
7 multiple parties' views of the story, what happened to
8 whom, the major participants, and people who would have
9 relevant information to the specific referral question I'm
10 being asked.

11 I could certainly -- at some point I make an
12 ethical decision that to bill, to continue to bill extra
13 time on reading things that won't -- that I don't believe
14 will offer substantive addition, I just don't do it.

15 Q. Let me rephrase my question, Dr. Nelson.

16 A. Okay.

17 Q. You have given an opinion that in the time
18 period, you were asked to address the level of influence,
19 if any, Scott Menaged had over Denny Chittick's
20 decision-making and conduct on or about January 2014
21 through May 2014, correct? That's the referral question?

22 A. That's correct.

23 Q. Okay. So I want to make sure I'm understanding
24 your process.

25 In order to answer that question, what documents

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1 did you identify that you needed to review for that
2 particular time period?

3 A. We had specific -- I don't recall every
4 conversation that we would have. I would have
5 conversations with counsel where they would explain they
6 were taking the depositions of these people, and I would
7 say I want that deposition, I want this deposition. I
8 would ask are there depositions of friends, associates,
9 family members, partners. I wanted as much of that
10 information as possible.

11 I also would have said if a deposition is
12 specifically, for example, a financial expert, I don't
13 need to read that. That's not going to be useful time or
14 budget or whatever, anybody's time or resource, for me to
15 be reviewing that.

16 Q. I want to focus on documents, Dr. Nelson.

17 You are rendering an opinion about
18 Mr. Chittick's decision-making with respect to business
19 matters and other matters in a time period, January to
20 May 2014, correct?

21 A. Business and other matters, to his general -- to
22 the level of influence another person had over him.

23 Q. Right. And so what would be relevant to that
24 question would be any communication or interaction between
25 Mr. Chittick and Mr. Menaged.

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1 Would you agree?

2 A. All of those communications would be relevant,
3 yes.

4 Q. All right. Did you ask to ensure -- did you ask
5 Mr. DeWulf to provide you with every written communication
6 between Mr. Chittick and Mr. Menaged between January and
7 May 2014?

8 A. I can't remember phrasing it that way, but I
9 assure you they are very clear that I wanted all that
10 information. You were asking me earlier about
11 depositions.

12 Q. Did you -- can you say with certainty today that
13 you received every written communication between
14 Mr. Chittick and Mr. Menaged between January and May 2014?

15 A. I could not guarantee that.

16 Q. So you relied on counsel to provide you with
17 those documents, correct?

18 A. Yes.

19 Q. Okay. What other records -- would you also
20 agree with me that records of Mr. Chittick's
21 communications with David Beauchamp between January and
22 May 2014 would be important and relevant to your giving an
23 opinion on the referral question?

24 A. To the extent that they are related to
25 Mr. Menaged and the -- yes.

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1 Q. You understand that Mr. Beauchamp was the lawyer
2 for DenSco Investment Corporation, correct?

3 A. Yes.

4 Q. And Mr. Beauchamp was providing advice to
5 Mr. Chittick with respect to various legal matters between
6 January and twenty -- January and May 2014, correct?

7 A. It's my understanding that's a critical period
8 for everyone in this case, yes.

9 Q. That's your referral question, Dr. Nelson.

10 A. My referral question was not about David
11 Beauchamp.

12 Q. Your -- Dr. Nelson, I want to be clear about
13 this.

14 You are rendering an opinion about Denny
15 Chittick's -- the extent to which Scott Menaged had
16 influence over Denny Chittick's decision-making and
17 conduct between January and May 2014, correct?

18 A. Yes.

19 Q. Okay. I just want to make sure. Forgive me for
20 stumbling through this question. I want to make sure I
21 understand.

22 So tell me again, I want to focus on that time
23 period, step one, what documents -- so I have asked you
24 before. You have not -- you cannot say with certainty
25 that in the course of rendering an opinion, and in

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1 response to the referral question, you reviewed every
2 written communication between Denny Chittick and Scott
3 Menaged that was authored between January and May of 2014,
4 correct?

5 A. Of course not.

6 Q. If Mr. Chittick had communications with David
7 Beauchamp that related to decisions he was making on
8 behalf of DenSco Investment Corporation in a transaction
9 involving Scott Menaged, would it be important for you to
10 review all of those written communications?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I would want all of that, yes.

13 Q. (BY MR. STURR) Can you tell me today that in
14 rendering this opinion you reviewed every written
15 communication between David Beauchamp and Denny Chittick
16 between January and May of 2014?

17 MR. DeWULF: Object to form.

18 THE WITNESS: No, I can't guarantee that.

19 Q. (BY MR. STURR) And the way I can test,
20 Dr. Nelson, whether you have done so is I can look at your
21 report and I can pull out these documents and I can see if
22 all of those communications are present, correct?

23 A. Yes.

24 Q. Because your report stands exclusively on the
25 documents identified in your initial and supplemental

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1 report, correct?

2 A. Correct.

3 Q. I want to -- now I want to focus for a minute,
4 if I can, on some other documents you reviewed.

5 Under Additional Documents, you have item 1 is
6 Chittick Estate Documents - Personal Journals.

7 Do you see that?

8 A. Yes.

9 Q. Did you review the personal journals?

10 A. Yes. And I just want to clarify, that -- these
11 are how the documents are labeled to me, so I will have
12 made -- written specifically exactly what the label of the
13 document was.

14 Q. Understand.

15 A. Okay.

16 Q. But you did review a document that is generally
17 described as a personal journal, correct?

18 A. Yes.

19 Q. And you did -- did you review and rely upon
20 the -- what's been described as a corporate journal that
21 Mr. Chittick kept?

22 A. All of the information on the source list are
23 pieces of data. I can't tell you right now what I read,
24 which was in which one, the personal or corporate journal.

25 Q. But every document on this list would have in

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1 some way informed the opinion you have given in this case?

2 MR. DeWULF: Object to form.

3 THE WITNESS: Some will be relevant, perhaps
4 others are not relevant, but I want to make clear that
5 everything is identified.

6 Q. (BY MR. STURR) Okay. You -- let me focus on
7 depositions for a second. I'm on page 5 of your report.

8 You -- you reviewed the two volumes of
9 Mr. Beauchamp's deposition, correct?

10 A. Correct.

11 Q. It doesn't indicate that you reviewed the
12 exhibits to those depositions.

13 Do you know why you did not?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't, as I typically try to
16 identify if there were exhibits, so I don't.

17 Q. (BY MR. STURR) would it have been important to
18 you, in rendering an opinion, to review the deposition
19 transcripts of any individual who had a personal
20 relationship with Mr. -- and a business relationship with
21 Mr. Chittick and testified about that relationship?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Personal and a business
24 relationship?

25 Q. (BY MR. STURR) Yes.

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1 A. Sure, I would want that.

2 Q. You would want all of those?

3 A. Yes.

4 Q. Did you take steps -- can you tell -- to ensure
5 that you were given copies of and reviewed every such
6 deposition?

7 A. Other than asking them to send them to me, I
8 don't know if they took more.

9 Q. So if there is -- if there is a deposition, for
10 example, of an investor who had a long-time relationship
11 with Mr. Chittick, you would want to have read that in the
12 course of forming this opinion?

13 A. Yes.

14 Q. Did you take any steps to ensure that you
15 received all such transcripts?

16 A. Other than asking them for them, no.

17 Q. You are aware, Dr. Nelson, that in many, if not
18 all, of the depositions that Mr. Dewulf and his colleagues
19 have taken of investors and others who knew Denny
20 Chittick, they have asked questions about Mr. Chittick's
21 psychology or personality.

22 Do you recall those questions?

23 MR. DEWULF: Object to form.

24 THE WITNESS: Generally speaking.

25 Q. (BY MR. STURR) Did you give any advice, by the

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1 way, to Mr. Dewulf and his colleagues about psychological
2 questions that should be asked in those -- in those
3 depositions?

4 A. In our early conversations, I explained to them
5 the type of information I would want to know about
6 Mr. Chittick, so yeah, I would have told them the type of
7 information I was looking to know about him.

8 Q. So you -- you -- tell me what the type of
9 information was that you would like to know about
10 Mr. Chittick?

11 A. Similar to what we had discussed earlier, more
12 broadly I would like to know about friendships, interests,
13 hobbies, passions, relationships. I want to understand
14 who he is, to the best of my ability, or who he was.

15 Q. And that -- and you would also want to know
16 about his relationship with Scott Menaged?

17 A. Correct.

18 Q. Okay. And based on your review of the
19 depositions that have been taken in this case, many
20 witnesses have testified about Mr. Chittick's personality
21 characteristic, et cetera?

22 A. That's correct.

23 Q. And is it also your understanding that those
24 witnesses have given opinions, have been asked to give
25 opinions and given opinions about, if they can offer them,

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1 why Mr. Chittick behaved in the way he did?

2 A. Opinions in their -- what do you think happened,
3 not legal opinions or forensic opinions. Just asking
4 someone what -- I recall seeing them ask what do you think
5 happened, not using that specific verbatim question.

6 Q. So a layperson could give an opinion, who knew
7 Mr. Chittick well, and could give an opinion that they
8 thought that Mr. Chittick was somehow under Mr. Menaged's
9 influence?

10 MR. DeWULF: Object to form.

11 THE WITNESS: A human being answering a question
12 in a deposition could certainly give their opinion or
13 impression.

14 Q. (BY MR. STURR) Haven't some of the witnesses in
15 this case given that opinion, based on their knowledge and
16 history with Mr. Chittick?

17 A. Sure.

18 Q. How was your opinion any different than theirs?

19 A. I was asked to help explain to them how this --
20 how that could have happened, using a psychological
21 background and training and expertise.

22 Q. Is that -- excuse me. That's not in your
23 opinion.

24 You have given an opinion that there was a
25 presence of influence.

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1 MR. DeWULF: Object to form.

2 Q. (BY MR. STURR) The opinion you were proposed to
3 give is the same opinion that witnesses in this case have
4 expressed in the deposition transcripts you have read,
5 correct?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I -- yes. I explained in my
8 narrative how I arrive at that opinion.

9 Q. (BY MR. STURR) What scientific or psychological
10 principles do you identify in your report that you rely
11 upon in arriving at that opinion?

12 A. I explain that my opinion is based on all of
13 this information that I had available, and how, and gave
14 examples of how I formed it.

15 Q. I didn't ask that question.

16 A. Oh.

17 Q. I said what psychological principles do you
18 identify in your report that you rely upon in rendering
19 your opinion?

20 A. I guess I'm not understanding what you are
21 asking. I explain it from a behavioral science
22 perspective.

23 Q. You -- you provide background about how you
24 arrive at that conclusion from a -- based on your
25 experience, correct?

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1 A. Training, experience and expertise, yes.

2 Q. But not on anything else? You are not relying
3 on, for example, a publication? You are not relying on
4 any testing or diagnostic methods, correct?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I -- I'm not rendering a
7 diagnosis, no.

8 Q. (BY MR. STURR) So -- so the -- what I'm trying
9 to understand is apart from your training and experience,
10 that is, you are not identifying anything else in your
11 report that you rely upon in rendering your opinion, is
12 that correct?

13 MR. DeWULF: Object to form.

14 THE WITNESS: well, no, I am applying my
15 training and expertise and experience to all of this
16 information, and then providing an opinion based on it.

17 Q. (BY MR. STURR) And the opinion is limited to
18 that, in your opinion, Scott Menaged had influence over
19 Denny Chittick between January -- his decision-making
20 between January and May of 2014, correct?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I think you missed the word
23 "significant," but yes.

24 Q. (BY MR. STURR) Significant.

25 But that's the sum -- that's the only opinion

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1 you are giving in this case, correct?

2 A. Correct.

3 Q. Okay. All right. Now, I want to understand,
4 Dr. Nelson, just so I'm clear, the -- you have not -- you
5 have only relied, as I understand it, and correct me if
6 I'm wrong, you have only relied upon the documents that
7 are listed in your initial and supplemental report,
8 correct?

9 A. Correct.

10 Q. Did you ask or attempt to obtain any of Denny
11 Chittick's medical records?

12 A. Yes.

13 Q. How did you do that?

14 A. I asked Mr. Dewulf, and I can't remember if it
15 was Vidula or Mr. Ruth, if we could have -- if I could
16 have medical records pertaining to Denny Chittick.

17 Q. And what did he tell you?

18 A. They are not available.

19 Q. How do you know they are not available?

20 A. I don't.

21 MR. DEWULF: Object to form.

22 THE WITNESS: I asked them.

23 Q. (BY MR. STURR) So you relied on counsel to tell
24 you that there are no available medical records?

25 A. Yes.

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1 Q. Did you ask Mr. DeWulf if they could serve a
2 subpoena to attempt to obtain medical records?

3 A. I don't recall asking it verbatim, but, yes, I
4 asked them if I could have medical records.

5 Q. Would medical records have been relevant to your
6 work here in rendering an opinion?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Well, I don't know what they would
9 have said, but, yes, that's why I asked for them, to see
10 if they would be helpful.

11 Q. (BY MR. STURR) And -- but the extent of your
12 efforts to obtain them were simply to ask counsel?

13 A. Yes. I asked counsel to provide me with medical
14 records.

15 Q. Did you ask for any of Mr. Chittick's academic
16 records or work records?

17 A. I can't remember. I don't think I would have
18 asked for his academic records in this case, because I was
19 looking at the specific timeframe. And I believe I had a
20 lot of his work records, so I don't recall if I asked them
21 for that. I'm not referencing his academics. I know he
22 graduated from Arizona State.

23 Q. Did you ask Dr. Nelson if you could conduct a
24 collateral interview of David Beauchamp?

25 A. No.

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1 Q. Why not?

2 A. Because I'm not testifying about David
3 Beauchamp, and I have read two of his depositions.

4 Q. Are you saying, Dr. Nelson, that in the course
5 of trying to render an opinion about whether Denny
6 Chittick was -- his decision-making was influenced by
7 Scott Menaged between January and May of 2014, it was
8 not -- it wouldn't have been useful or appropriate to
9 conduct an interview of David Beauchamp?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I did not think that was necessary
12 for my opinion, no.

13 Q. (BY MR. STURR) I'm still struggling with why.
14 You have testified before that in other cases
15 you have wanted -- you criticized Dr. Rawling in the other
16 case for not conducting collateral interviews. You
17 could -- excuse me. Let me stop. I'm going to -- I
18 withdraw the question.

19 MR. DeWULF: Don't -- yeah. Don't do that.

20 MR. STURR: I withdraw -- I withdraw the
21 question, John.

22 MR. DeWULF: All right.

23 Q. (BY MR. STURR) David Beauchamp was the lawyer
24 for DenSco Investment Corporation, correct?

25 A. Correct.

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1 Q. David Beauchamp was providing advice to Denny
2 Chittick between January and May of 2014 on matters
3 involving Scott Menaged, correct?

4 A. Correct.

5 Q. You have testified earlier that in forming this
6 opinion, it was relevant for you to review all written
7 communications between Denny Chittick and David Beauchamp
8 in that time period, correct?

9 A. I think you asked if I would have wanted to see
10 them, and I said yes.

11 Q. Okay. Why wouldn't you want to conduct a
12 forensic interview of David Beauchamp to understand from
13 him his perceptions about his dealings with Scott Menaged?

14 A. Again, I feel like from what I was being asked
15 to answer, reading the deposition transcripts was more
16 than sufficient for me, for my opinion.

17 Q. So in other words, you elect -- you could have
18 asked, made that request, correct?

19 A. I could have asked them for anything.

20 Q. But you did not?

21 A. I did not think it was necessary for me to
22 interview David Beauchamp.

23 Q. And instead you relied on deposition testimony
24 only?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: In addition to all of the
2 electronic and written communications that I do have.

3 Q. (BY MR. STURR) That you did in fact review?

4 A. Correct.

5 Q. But you didn't -- and just to be quite clear,
6 and you did not ask to conduct an interview of Scott
7 Menaged, correct?

8 A. Correct.

9 Q. And so the two people that dealt most -- mostly
10 with Denny Chittick in this time period on the issues that
11 you are evaluating, you elected not to interview?

12 A. Well, I did not ask to do any collateral
13 interviews. I did review all of the documentation I have
14 and observed Mr. Menaged's testimony in person.

15 Q. For one day of his testimony?

16 A. Yes, absolutely. One day of his testimony.

17 Q. So to be clear then, you are rendering an
18 opinion that is based solely on a review of documents
19 only?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Yes.

22 Q. (BY MR. STURR) And you have elected not to --
23 not to attempt to obtain any collateral interviews?

24 A. Yes, I did not ask for any collateral
25 interviews.

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1 Q. You did not ask to interview Ranasha Chittick,
2 correct?

3 A. Still no.

4 Q. Or any investors or anyone else who knew Denny
5 Chittick well?

6 A. Still no.

7 Q. And so your opinion is based exclusively on the
8 documents identified in your report?

9 A. Still yes.

10 MR. STURR: Let's take another break.

11 VIDEOGRAPHER: Okay. This ends media number
12 three of our ongoing deposition of Dr. Erin Nelson. We
13 are off the record at 3:08.

14 (A recess was taken from 3:08 p.m. to 3:18 p.m.)

15 VIDEOGRAPHER: This begins media number four of
16 our ongoing deposition of Dr. Erin Nelson. We are back on
17 the record at 3:18.

18 Q. (BY MR. STURR) Dr. Nelson, your report has a
19 section captioned Limitations on page 14.

20 A. Yes.

21 Q. Do you see it?

22 Is it your view that your discussion of the
23 limitations on your opinion meet the standards of the APA
24 guidelines, Specialty Guidelines for forensic psychology?

25 A. Yes. That's the purpose for having it there.

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1 Q. Is stating that there is no limitation?

2 A. Correct.

3 Q. Do the guidelines also require or not require
4 you, Dr. Nelson, in stating the limitation to clarify the
5 probable impact of that information on the reliability and
6 validity of your opinions? I'm reading from the ethical
7 guidelines now, Section 9.01(b). I'm sorry. I was
8 asking -- let me restate it. I was asking about
9 guidelines.

10 MR. DeWULF: It's Exhibit 1167, Erin.

11 Q. (BY MR. STURR) I'm going to switch to a
12 different. I'll move over.

13 1168, this is the Ethical Principles of
14 Psychologists and Code of Conduct.

15 Do you have that in front of you?

16 A. Yes.

17 Q. Section 9.0, are you there?

18 A. Yes.

19 Q. As I read 9.10(b) (sic), it states: when,
20 despite reasonable efforts, such an examination is not
21 practical, psychologists document the efforts they made
22 and the result of those efforts, clarify the probable
23 impact of the limited -- of their limited information on
24 the reliability and validity of their opinions, and
25 appropriately limit the nature and extent of their

1 conclusions or recommendations.

2 Do you see that?

3 A. Yes.

4 Q. Okay. Where in your written report do you -- do
5 you clarify the probable impact of limited information on
6 the reliability and validity of your opinion?

7 A. As I just said, didn't my -- that was my
8 intention with this paragraph.

9 Q. Well, I understand that. But if you are not a
10 psychologist and you are reading this report without the
11 benefit of your experience, how does the fact that you did
12 not conduct face-to-face evaluations of Mr. Chittick or
13 conduct any collateral interviews have an impact on the
14 reliability and validity of your opinions?

15 A. I would be thinking of adding that specifier
16 were I to be talking in -- about testing or psychological
17 diagnoses that someone else has made. So if I should have
18 clarified that more, then that's certainly something I can
19 do. It was my intention for this to meet that standard.

20 Q. Well, would you please tell me now, in what way
21 is the opinion you are giving affected, is the reliability
22 and validity of your opinion affected by the limited
23 review you have conducted?

24 A. So maybe that's part of where I'm struggling
25 with this, because I am very comfortable that I have

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1 offered a reliable and valid opinion.

2 And I'm trying to explain here that I did not
3 evaluate him, but really the reliability and validity
4 portion would be if I tried to say I believe John Doe has
5 met criteria for a diagnosis, and here is what ten other
6 people have said about him and that's why I think it. I
7 would need to say I am not -- I didn't interview them. I
8 didn't do testing.

9 I guess I'm just -- I'm trying to think how I
10 would clarify that for you if I had the opportunity.

11 Q. What I'm trying to understand, Dr. Nelson, is
12 you have said here that this was limited both because he
13 is -- you didn't have the opportunity to examine him, but
14 you also said you did not conduct any collateral
15 interviews. You have not explained in this report how the
16 absence of a collateral interview affects the reliability
17 and validity of the opinion you have rendered.

18 Is it your opinion or is it your view that you
19 don't need to state any limitation, because you did not
20 conduct any collateral interviews?

21 MR. DeWULF: So I'm going to object, because I
22 think there are a series of questions there. There are
23 statements leading to a question, so could we have just
24 the question read back for this witness.

25 (The requested portion of the record was read.)

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1 THE WITNESS: I did state a limitation.

2 Q. (BY MR. STURR) Understood. Okay. You have
3 stated that.

4 Now my question is, again, maybe I am
5 misunderstanding the standard --

6 A. Okay.

7 Q. -- 9 -- and I am looking at the ethical
8 standard, 9.01(b) says you need to clarify the probable
9 impact of your -- of psychologists' limited information on
10 the reliability and validity of their opinions, and
11 appropriately limit the nature and extent of their
12 conclusions or recommendations.

13 You have simply stated in your report that you
14 did not conduct any collateral interviews. You do not say
15 anything more than that.

16 And I'm asking you, is the absence of a
17 collateral interview a limitation on the reliability and
18 validity of the opinion you are giving in this case?

19 A. No. I believe I have sufficient information to
20 offer the opinion I'm giving in this case.

21 Q. And so you believe that you have met your
22 obligations or you have fulfilled the guideline
23 requirement to gather sufficient information in order to
24 give the opinion that you have given?

25 A. Yes.

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1 Q. Okay. When you say in your opinion, on the
2 last -- I'm in the initial opinion on page 20. You state,
3 "It is my opinion to a reasonable degree of psychological
4 probability that, on or about January 2014 to May 2014
5 Scott Menaged had substantial influence over Denny
6 Chittick's decision-making and resulting conduct."

7 what is a reasonable degree of psychological
8 probability?

9 A. Essentially that is interchangeable with
10 psychological certainty. I speak in terms of probability,
11 meaning that based on all of the information and training
12 and expertise I have, this is more likely than not, and I
13 feel that I have substantial basis to make that statement,
14 whatever the statement is that follows it.

15 Q. Do you think there is any dispute in this case
16 that you have seen at all in your record review that
17 Mr. Menaged had influence over Denny Chittick between
18 January and May 2014?

19 MR. DeWULF: Object.

20 Q. (BY MR. STURR) Influence over his
21 decision-making?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Sure.

24 Q. (BY MR. STURR) What have you seen?

25 A. Well, I can't recall a specific line or who said

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1 it, but I do recall there being general discussions of
2 maybe Denny Chittick knew more than -- than he -- people
3 thought or more than he said, or maybe he was influenced
4 by other factors. I can't -- I'm going down a line where
5 I can't remember specifics, so I don't want to go further.

6 Q. And what you are referring to is testimony you
7 have read, correct?

8 A. I just said I can't remember. I mean, I can --
9 I remember concepts, but in this voluminous record, I
10 can't tell you where it came from.

11 Q. Okay. Have you been asked to give an opinion or
12 render an opinion as to Mr. Chittick's -- I'm trying to
13 think of the right word, Dr. Nelson -- his responsibility,
14 his ability to -- to make decisions?

15 And you are not saying that -- let me ask you
16 this question. You are not saying he was incapable of
17 making decisions. Your opinion is that Scott Menaged had
18 substantial influence over his decision-making and his
19 conduct, correct?

20 A. That's correct.

21 Q. Have you been asked to give any conduct as to
22 whether -- as to Denny Chittick's conduct?

23 MR. DeWULF: Object to form.

24 THE WITNESS: I -- can you do that one again,
25 please.

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1 Q. (BY MR. STURR) Okay. I'm trying to -- you have
2 been asked to give an opinion about Scott Menaged's
3 influence over Mr. Chittick's decision-making and
4 resulting conduct, correct?

5 A. Correct.

6 Q. Have you given any -- have you been asked to
7 give any opinions as to Mr. Chittick's responsibility for
8 his own decision-making and his conduct?

9 A. No.

10 Q. You are not? You weren't asked that at all?

11 A. To Mr. Chittick's level of responsibility?

12 Q. Yes.

13 A. No.

14 Q. His responsibility in the case.

15 Are you aware in this case that the defendants
16 have asserted that Mr. Chittick is responsible for the
17 harm that befell DenSco Investment Corporation?

18 A. I have seen those themes --

19 MR. DeWULF: Let me -- I'll object to form on
20 that.

21 THE WITNESS: I have seen the themes in the
22 various pleadings of people describing who was
23 responsible, and there being themes that Mr. Chittick
24 withheld information from Mr. Beauchamp.

25 Q. (BY MR. STURR) And you are not giving any

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1 opinion as to -- as to Mr. Chittick's behavior with
2 respect to his dealings with investors, correct?

3 MR. DeWULF: Object to form.

4 THE WITNESS: well, I am aware that he withheld
5 information from them, but I'm not opining about that.

6 Q. (BY MR. STURR) And you are not giving any
7 opinion at all as to whether or not Mr. Chittick withheld
8 information from Mr. Beauchamp?

9 MR. DeWULF: Object to form.

10 THE WITNESS: well, again, I'm aware of
11 documentation to that effect, but that is not my opinion.
12 I mean, it's not an opinion I'm offering.

13 Q. (BY MR. STURR) This opinion that you have
14 offered, is it -- is it -- again, I want -- I want to make
15 sure I'm understanding this.

16 what -- you are familiar with the Daubert
17 standard, because you have given an expert opinion on
18 that -- in that standard, so tell me what scientific
19 method or recognized method of forensic psychology did you
20 apply in this case?

21 A. Again, the method was reviewing all of the
22 records that are listed and applying my training and
23 knowledge and expertise of human behavior, of victims and
24 predators, everything that I have brought with me to
25 looking at this data, to offer an opinion about that, and

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1 stated I felt clearly, perhaps not as clearly as it could
2 have been articulated, the limitations associated with
3 doing a record review only.

4 Q. I'm still struggling with the limitations. I'm
5 not hearing you tell me what the limitations are.

6 A. Well --

7 Q. A limitation suggests that there could -- that
8 there is some question about the reliability of your
9 opinion.

10 A. So --

11 MR. DeWULF: Object to form. I don't think
12 that's a question, unless are you asking to a degree?

13 Q. (BY MR. STURR) It is -- it is conceivable,
14 Dr. Nelson, that another psychologist could say,
15 consistent with the guidelines, I think it would be
16 beneficial to conduct an interview of David Beauchamp,
17 correct? Another psychologist could reach that
18 conclusion?

19 MR. DeWULF: Object to form.

20 THE WITNESS: Sure. Another psychologist could
21 reach any conclusion.

22 Q. (BY MR. STURR) In the course of trying to come
23 up with an opinion about Scott Menaged's influence over
24 David Beauchamp, another psychologist could conclude that
25 a collateral interview of the individuals who were

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1 interacting with David, excuse me, Denny Chittick in the
2 relevant time period would be a relevant source of opinion
3 for developing, excuse me, a relevant source of
4 information to render an opinion?

5 MR. DEWULF: Would you read that back, Kelly,
6 because I didn't follow it.

7 THE WITNESS: I'm sorry. That's what I was
8 going to ask. I don't understand what you just asked.

9 Q. (BY MR. STURR) So you could have in this case,
10 Dr. Nelson, decided that it would be -- that David
11 Beauchamp possesses relevant information about Scott
12 Menaged's influence over Denny Chittick, that was not
13 evident from his deposition transcripts and the documents
14 that you reviewed? Is that possible?

15 A. Sure.

16 Q. Okay. And if you had done so, you could have
17 conducted an interview of David Beauchamp, correct?

18 A. I could have requested one. I don't know if
19 that would have transpired, but sure.

20 Q. And if you had done so, there would be a
21 transcript that you would prepare, correct?

22 A. Correct.

23 Q. And so if someone else were to examine the
24 reliability of your opinion, they could not only look at
25 the documents referenced in your report, but they could

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1 also read a transcript of Mr. Beauchamp's interview,
2 correct?

3 A. I'm not offering an opinion about Mr. Beauchamp.

4 Q. You are offering an opinion about whether or not
5 Scott Menaged had influence over Denny Chittick, and
6 Mr. Beauchamp possesses relevant information to that
7 inquiry, correct?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I feel like I had sufficient
10 information from him from the deposition testimony, that
11 any other psychologist could also review.

12 Q. (BY MR. STURR) It is your testimony today,
13 Dr. Nelson, that there was sufficient questioning of
14 Mr. Beauchamp about his dealings with Denny Chittick to
15 shed light on the extent to which Scott Menaged had
16 influence over him?

17 A. I'm not just relying on Mr. Beauchamp's
18 testimony. I'm relying on several pages worth of -- I
19 mean, pages and pages and pages worth of documents that I
20 arrived on that conclusion. I did not feel like I needed
21 to interview Mr. Beauchamp.

22 Q. Were you instructed by Mr. DeWulf not to
23 interview Mr. Beauchamp?

24 A. No. I didn't ask for any collateral interviews.
25 I felt like I had sufficient information to render the

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1 limited opinion that I rendered.

2 Q. Okay. So it is limited -- can you agree with
3 me, Dr. Nelson, that it is limited in part because you did
4 not conduct a forensic collateral interview of David
5 Beauchamp?

6 A. No.

7 MR. DeWULF: Object to form.

8 THE WITNESS: What I was trying to -- using the
9 word "limited" interchangeably, I meant focused or narrow
10 or precise opinion, as opposed to more broad.

11 Q. (BY MR. STURR) And similarly you did -- it
12 would have been -- had you interviewed Scott Menaged, you
13 would have obtained information about his relationship
14 with Mr. Chittick that might not have been available from
15 the deposition that you attended and the transcripts you
16 read?

17 MR. DeWULF: Object to form.

18 THE WITNESS: That's an endless question. I
19 can't know every single thing that he would have said to
20 anyone beyond those, but I felt like I have sufficient
21 information from those transcripts as well.

22 Q. (BY MR. STURR) But here is what I'm struggling
23 with, Dr. Nelson. You are a professional who has had
24 hundreds of interviews of individuals where you have an
25 objective in mind. You have your psychological training

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1 and you are trying to understand and develop information
2 in order to reach a -- a sufficient foundation to render a
3 psychological opinion, and you elected not to use those
4 skills to interview David Beauchamp, and instead simply
5 relied on a deposition transcript taken by an opposing
6 lawyer --

7 MR. DeWULF: Object to form.

8 Q. (BY MR. STURR) -- and the documents that you
9 have identified in your report.

10 MR. DeWULF: Object to form.

11 THE WITNESS: Again, I feel like with all of the
12 training, expertise and experience I bring, in addition to
13 all of the volumes of records in this case, I had more
14 than adequate information to answer the question that I
15 was being asked.

16 Q. (BY MR. STURR) Is there any publication,
17 peer-review journal that you can point to that would
18 support the methodology that you used in this case?

19 A. I can -- there is -- there is volumes and
20 volumes of explanations of what forensic psychological
21 opinions are and what you -- when you need to state
22 limitations in a record review. I can't -- I don't have
23 one.

24 Q. I'm asking about your methodology --

25 A. Yes.

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1 Q. -- Dr. Nelson. And in a case in which you
2 have -- you are rendering an opinion about the conduct of
3 a person you have not examined, and you elect to rely
4 exclusively on deposition transcripts and documents, and
5 you have forgone any collateral interview, is there a
6 peer-reviewed publication that tells me that that is an
7 appropriate methodology?

8 MR. DeWULF: Object to form.

9 THE WITNESS: Any publication would discuss or
10 talk about the scope, the breadth and depth of the opinion
11 you are offering. All of them would say you need
12 sufficient information to offer that opinion, which is my
13 position.

14 Q. (BY MR. STURR) And how -- if we were to try to
15 replicate or reproduce your opinion, there is no method to
16 do that? Am I right? Because it's based exclusively on
17 your subjective views of the documents you have read. You
18 don't have any other source information?

19 A. They are my subjective views based on my
20 professional training and experience. And you could
21 certainly -- that's why the sources are listed the way
22 they are. You could have another psychologist read all of
23 the same documents and ask them the same question, and ask
24 them to base it on their psychological expertise and
25 training.

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1 Q. I want to make sure I understand your
2 methodology, which is you did not think it was necessary
3 to conduct any collateral interviews or review other
4 collateral documents, and you -- because the information
5 that you have identified in your report is sufficient for
6 you to reach that, the opinion you have reached?

7 A. You just added "other collateral documents," and
8 I don't know what you are referring to.

9 Q. Well, collateral interviews we have talked
10 about. Collateral documents, by that I mean you said you
11 asked for medical records and you were told they were not
12 available.

13 Are there other collateral documents that you
14 would have wanted to review but did not review?

15 A. And, again, as we mentioned earlier, I can't
16 recall if I asked for other work records, but what you
17 need to have in order to address a question depends on the
18 scope of your question.

19 And in this case, I believe I have sufficient
20 information to render the opinion that I did. I do not
21 think I needed additional information to render the
22 opinion that I did.

23 Q. Okay. And if -- and is it your testimony that
24 you obtained all relevant records that were created in the
25 course of the litigation that were relevant to your

1 opinion?

2 A. Just like I said before, if I don't have
3 something and I don't know it exists, I believe I have
4 sufficient information to answer my referral question.

5 Q. Did you read, only read Mr. Beauchamp's
6 transcript? Did you watch -- and did you also watch the
7 video of it?

8 A. I don't remember. I don't think I watched the
9 video, but I don't -- I don't recall.

10 Q. Have you attempted to assess other individuals
11 who had influence over Mr. Chittick's decision-making in
12 January to May 2014, or is the only subject of your
13 analysis Scott Menaged?

14 A. That was the question I was asked, was about
15 Scott Menaged. I haven't answered a question about
16 anybody else.

17 Q. So the referral question did not ask you about,
18 in any way to assess David Beauchamp's relationship with
19 Mr. Chittick and Mr. Beauchamp's ability to influence
20 Mr. Chittick's decision-making and conduct?

21 MR. DeWULF: That's two questions. I'll object;
22 form.

23 THE WITNESS: Obviously the relationship or
24 Mr. Beauchamp's relationship and the correspondence
25 between all of them was another piece of data, but I was

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1 not asked to analyze Mr. Beauchamp's influence.

2 Q. (BY MR. STURR) You were not asked to analyze in
3 any way the degree to which Mr. Beauchamp, the level of
4 influence, if any, that Mr. Beauchamp had on David -- on
5 Denny Chittick's decision-making and conduct between
6 January 2014 through May 2014?

7 A. That is not an opinion that I'm offering.

8 Q. The -- your report, Exhibit 1162, has as
9 appendix A, Dr. Nelson, your resumé or CV?

10 A. Yes.

11 Q. And it's stated updated January 2019.

12 Is that current or is there any material change
13 to that, that you are aware of?

14 A. Yes, there is change.

15 Q. What is that?

16 A. I am now the assistant dean of admissions and
17 outreach for the Texas Christian University and University
18 of Texas North. University -- it's such a long name. We
19 don't call it -- we just say TCU and UNT, so...

20 Q. It is TCU?

21 A. It's Texas Christian University School of
22 Medicine, but if the University of North Texas Health
23 Science Center ever read this, they would be offended that
24 I shortened it to that.

25 Q. Congratulations.

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1 A. Thank you.

2 Q. Dr. Nelson, I just wanted -- if I could take --
3 I think I'm done. Can we just take a quick break?

4 MR. DeWULF: Sure. We'll just wait.

5 THE WITNESS: Of course.

6 VIDEOGRAPHER: Sure. This ends video number
7 four of the ongoing deposition of Dr. Erin Nelson. We are
8 off the record at 3:45.

9 (A recess was taken from 3:45 p.m. to 3:46 p.m.)

10 VIDEOGRAPHER: This begins media number five of
11 our ongoing deposition of Dr. Erin Nelson. We are back on
12 the record at 3:46.

13 Q. (BY MR. STURR) Just before we leave today,
14 Dr. Nelson, I want to make sure I understand this concept
15 of a psychological impression, and I'm referring to page 4
16 of your report.

17 what is a psychological impression?

18 A. I think what I'm trying to articulate here is
19 the distinction between offering a diagnosis of someone,
20 and explaining that this is my opinion, impression, based
21 on my knowledge and training and years of experience in
22 the field of behavioral science and psychology. It's my,
23 I guess I could have said professional impressions. It's
24 based on my training.

25 Q. But the distinction, just to go back to the

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1 beginning of our conversation today when I asked you to
2 explain what you did in Atwood and other cases, is when
3 you are doing it, when you have a diagnostic impression,
4 is it fair to say that the diagnostic impression is based
5 on an established scientific or psychological method?

6 MR. DeWULF: Object to form.

7 THE WITNESS: well, not necessarily. It should
8 be. You could go to a primary care office and have them
9 write that they think that you have depression.

10 Q. (BY MR. STURR) Forgive me. I'm sorry. I
11 didn't mean to cut you off.

12 In the context of forensic psychology, so for a
13 forensic psychologist to give a diagnostic impression, if
14 I'm -- I just want to make sure I understand this --
15 requires you to do certain things, such as conducting the
16 examination or interview, using a personality test, taking
17 other steps to corroborate the diag -- the impressions,
18 and then articulate diagnostic impressions that are
19 grounded in the DSM?

20 MR. DeWULF: Object to form.

21 Q. (BY MR. STURR) Am I -- am I -- just help me
22 understand that.

23 That is -- to my understanding, there is an
24 established method, methodology for reaching diagnostic
25 impressions.

1 Am I correct?

2 A. So the last question, there -- the established
3 methodology to reaching diagnostic impressions is that you
4 have to understand or believe that a person, someone you
5 are examining or a patient, meets the specific criteria
6 before you could assign any label.

7 So if I say you have major depressive disorder,
8 I have to be able to show that you meet all of these
9 criteria. Some of the ways people do that is by talking
10 to their patient, reading other records, administering
11 psychological testing.

12 Q. Okay. But -- but in -- would -- you say some
13 would. But for a forensic psychologist to give a
14 diagnos -- an opinion, a diagnostic impression or opinion,
15 it necessarily must be based, am I wrong, on conducting an
16 interview and then applying established methods to
17 corroborate the information obtained?

18 MR. DeWULF: Object to form.

19 Q. (BY MR. STURR) Are you saying that you don't
20 need to do those things? I thought we went through all of
21 that.

22 A. Well, you are saying "necessarily must," and I'm
23 trying to imagine the most, you know, any plausible
24 scenario where I might be asked, as a psychologist in a
25 forensic context, which means not treatment, but --

1 Q. Right.

2 A. -- anything else, did you think that this person
3 meets the criteria for a diagnosis? And I have records
4 from several years of treatment saying they met the
5 diagnosis, they met the diagnosis, here is somebody else's
6 testing, they met the diagnosis, they met the diagnosis,
7 that I could plausibly say, look, I didn't interview them
8 myself, but here is all the 20 years of information that
9 says they meet this diagnosis, so they probably meet this
10 diagnosis.

11 Q. I'm sorry. I'm -- but in that case you
12 weren't -- you wouldn't be giving a diagnostic impression
13 because you didn't examine them, right?

14 A. That's what I was just trying to explain. I'm
15 trying to find a, make a hypothetical scenario where I
16 could potentially say, yes, I think this person meets the
17 diagnostic criteria for something, when I didn't interview
18 them. That's what I was just trying to explain.

19 Q. Okay. But you haven't done that in your career
20 as a -- as a forensic psychologist? You have not given an
21 opinion, a diagnostic opinion when you have not examined
22 someone?

23 Am I right about that?

24 A. I don't believe I have given a diagnostic
25 opinion when I haven't examined someone. That would not

1 be my practice.

2 Q. Okay. So when you are giving a diagnostic
3 opinion and you formed diagnostic impressions, there is a
4 record on which to test and corroborate your impressions.

5 Is that a fair statement?

6 A. Lots of psychologists don't have -- don't --

7 Q. I'm asking about you, Doctor.

8 A. Oh, for me?

9 Q. Yeah.

10 A. That's why I audio record and would have the
11 transcript and the list of sources of everything that I
12 relied upon.

13 Q. Okay.

14 A. And yeah.

15 Q. So that would be objectively -- that would be an
16 objective assessment, supported by data that could be
17 verified and checked by someone?

18 A. In the same way that anyone could look at all
19 the sources I gave in this report.

20 Q. I'm not asking about that yet.

21 A. Okay.

22 Q. I want to understand the distinction.

23 So when you are giving a diagnostic -- a
24 diagnostic impression or a diagnostic opinion, it is based
25 on first an assessment, and then other factors that you

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1 use to corroborate the assessment?

2 A. A diagnostic opinion could be rendered by -- in
3 a forensic context or a clinical context.

4 Q. I'm sorry. I'm sticking to forensic.

5 A. Okay. So in a forensic context, the only thing
6 that you have to do is be able to demonstrate how a --
7 give a diagnosis, is how did -- how do you know that they
8 meet these different criteria that are in the DSM.

9 The way that you would go about doing that would
10 be to read other records, interview them, and administer a
11 psychological test.

12 Q. And when you do those things and you say, you
13 render an opinion to a reasonable degree of psychological
14 certainty, that reasonable degree of psychological
15 certainty is based on testing, interviews, et cetera, that
16 form -- that are the foundation for the opinion you have
17 given?

18 MR. DeWULF: Object to form.

19 THE WITNESS: It's based on the totality of
20 information available to me.

21 Q. (BY MR. STURR) Okay. What I'm struggling with
22 and just trying to understand, in this case you are not
23 giving a diagnostic opinion or impression, correct?

24 A. That's correct.

25 Q. You are giving a psychological impression about

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1 Mr. Chittick's behavior that is based on the documents you
2 have identified and your training and experience.

3 MR. DeWULF: Object to form.

4 Q. (BY MR. STURR) And --

5 MR. DeWULF: I'm sorry.

6 Q. (BY MR. STURR) And, again, how can someone
7 assess whether you have done that to a reasonable degree
8 of medical probability or psychological probability?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I'm applying psychological
11 concepts and theories, understanding of human behavior, to
12 the records that I have reviewed, and I believe that I
13 have outlined that more than sufficiently, that another
14 psychologist could read all of these records and read my
15 rationale and opinion and render their own. There will
16 be -- there is no secret as to how I arrived at my
17 conclusion.

18 MR. STURR: You have been very patient with me,
19 Dr. Nelson. Thank you. Those are the questions I have
20 for you today.

21 THE WITNESS: Thank you.

22 This is the part where I'm very careful not to
23 pick any of these up.

24 VIDEOGRAPHER: Read and sign?

25 MR. DeWULF: Yes.

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1 VIDEOGRAPHER: This ends media number five of
2 our ongoing deposition of Dr. Erin Nelson. We are off the
3 record at 3:55.

4 (3:55 p.m.)

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ERIN M. NELSON PSY.D.

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BE IT KNOWN that the foregoing proceeding was taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing is a true and correct transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and ability.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

- Review and signature was requested.
- Review and signature was waived.
- Review and signature was not requested.

I CERTIFY that I have complied with the ethical obligations in ACJA Sections 7-206(F)(3) and 7-206-(J)(1)(g)(1) and (2).

<i>Kelly Sue Oglesby</i>	10/20/2019
Kelly Sue Oglesby	Date
Arizona Certified Reporter No. 50178	

I CERTIFY that JD Reporting, Inc. has complied with the ethical obligations in ACJA Sections 7-206(J)(1)(g)(1) and (6).

<i>Jane M. Doyle</i>	10/20/2019
JD REPORTING, INC.	Date
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