John E. DeWulf (006850)
Marvin C. Ruth (024220)
Vidula U. Patki (030742)
**COPPERSMITH BROCKELMAN PLC**
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 224-0999
F: (602) 224-0620
jdewulf@cblawyers.com
mruth@cblawyers.com
vpatki@cblawyers.com

*Attorneys for Defendants*

**SUPERIOR COURT OF ARIZONA**

**COUNTY OF MARICOPA**

| | |
|---|---|
| Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation,<br><br>Plaintiff,<br><br>v.<br><br>Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife,<br><br>Defendants. | No. CV2017-013832<br><br>**DEFENDANTS' DISCLOSURE OF EXPERT WITNESS DR. ERIN NELSON**<br><br>(Commercial Case)<br><br>(Assigned to the Honorable Daniel Martin) |

Pursuant to the Court's May 16, 2018 Scheduling Order, Defendants Clark Hill PLC and David G. Beauchamp, hereby disclose the attached report of Dr. Erin Nelson.

DATED this 5th day of April, 2019.

**COPPERSMITH BROCKELMAN PLC**

By: _____
John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants

**ORIGINAL** of the foregoing e-mailed/mailed this 5th day of April, 2019 to:

Colin F. Campbell, Esq.
Geoffrey M. T. Sturr, Esq.
Joshua M. Whitaker, Esq.
OSBORN MALEDON, P.A.
2929 N. Central Ave., Suite 2100
Phoenix, AZ 85012-2793
*Attorneys for Plaintiff*

Ψ
**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology

April 4, 2019

John E. DeWulf, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Marvin C. Ruth, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

***Re: Peter S. Davis v. Clark Hill***
**Maricopa County Superior Court Case No. CV-2017-013832**

Dear Mr. DeWulf and Mr. Ruth:

Pursuant to your request, I recently performed a record review and analysis pertaining to the above captioned matter.

## BACKGROUND INFORMATION

Denny Chittick was a 48-year-old, divorced, Caucasian father of two at the time of his July 28, 2016 death by suicide. Mr. Chittick obtained a Bachelor of Science degree in Business Finance from Arizona State University.[1] Mr. Chittick was the Senior Vice President and CIO of Insight Enterprises, Inc., at the time of his retirement in 1997.[2] Mr. Chittick subsequently founded, and was the president and sole shareholder of, DenSco Investment Corporation ("DenSco"). Over the years Mr. Chittick/DenSco developed a substantial base of investors, many of whom were his family and friends.

Given your familiarity with the events leading up to the instant record review, I will forgo a detailed review of that information. Suffice it to say, David Beauchamp served as legal counsel to the decedent, Denny Chittick, for many years. Toward the end of Mr. Chittick's life, he withheld critical information from Mr. Beauchamp, particularly as it pertained to the scope and magnitude of his unfortunate business dealings with Mr. Scott Menaged.

[1] BC_000296
[2] BC_000296

2415 E. Camelback Road, Suite 700
Phoenix, Arizona 85016
p: 480.250.4601 e: drerinmn@gmail.com

When he took his own life, Mr. Chittick/DenSco's financial losses related to his involvement with Mr. Menaged was in the tens of millions of dollars. Mr. Menaged is currently incarcerated as a result of crimes perpetrated against Mr. Chittick/DenSco and others.

As outlined in Defendants' Sixth Supplemental Disclosure Statement[3], David Beauchamp served as counsel for Denny Chittick/DenSco Investment Corporation ("DenSco") dating back to the early 2000's. In 2013, Mr. Beauchamp discussed with DenSco that it should update its Private Offering Memorandum ("POM"). This update was initiated but not completed. In June 2013, Mr. Chittick advised Mr. Beauchamp that DenSco, along with Scott Menaged, had been sued by FREO Arizona, LLC. Although Mr. Beauchamp did not represent DenSco in that matter, he did advise Mr. Chittick, in part, that the litigation should be disclosed in DenSco's 2013 POM. Mr. Chittick represented to Mr. Beauchamp that Scott Menaged was "...someone he had 'done a ton of business with...hundreds of loans for several years'..." In December 2013, Mr. Chittick advised Mr. Beauchamp that several of DenSco's loans to Mr. Menaged were in jeopardy as a result of double-lien issues. Mr. Chittick indicated to Mr. Beauchamp that he intended to pursue a remediation plan independently and directly with Mr. Menaged. In January 2014, Mr. Chittick described Mr. Menaged as someone he had lent a "...total of $50 million since 2007 and that he'd 'never had a problem with payment or issue that hasn't been resolved'." However:

> While it was true that DenSco had lent Menaged approximately $50 million since 2007, DenSco had lent Menaged $31 million in 2013 alone, and had $28.5 million in loans to Menaged outstanding as of the end of 2013, a large portion of which were more than six months past due, including a significant number of 2012 loans. Further, Mr. Chittick had known as of September 2012 that Menaged had double-liened multiple properties with DenSco loans, thereby jeopardizing DenSco's lien position, yet not only did he keep this a secret, Mr. Chittick thereafter drastically increased DenSco's lending to Menaged, from $4.65 million outstanding at the end of 2012 to more than $28 million outstanding by the end of 2013 (all of which Mr. Chittick also failed

[3] Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement, dated March 13, 2019

to timely disclose to Mr. Beauchamp). Rather than provide Mr. Beauchamp with any of this information, Chittick instead misrepresented to Mr. Beauchamp in January 2014 that Menaged was a good borrower with a sterling track record. Mr. Chittick made similar misrepresentations to Mr. Beauchamp regarding his positive lending relationship with Menaged when he disclosed the FREO lawsuit.

Mr. Chittick further explained that Menaged's wife had become critically ill in the past year, and that Menaged had turned the day-to-day operations of his companies over to his cousin. According to Mr. Chittick, the cousin would receive loan funds directly from DenSco, then request loans for the same property from another lender, including the Miller Lenders. The other lenders, who had funded their loans directly to the trustee, would record their deed of trust, as would DenSco, leaving DenSco in second position. The cousin, unfortunately, then purportedly absconded with the funds DenSco lent directly to Menaged. This "double lien" issue consequently jeopardized DenSco's secured position and its loan-to-value ratios. Mr. Chittick feared that a lawsuit with the Miller Lenders would jeopardize DenSco's entire enterprise.

According to Mr. Chittick's email, Menaged purportedly found out about his cousin's scam in November and revealed the fraud to Mr. Chittick at the time. Yet rather than consult legal counsel, Mr. Chittick devised a plan to fix the double lien issue with Menaged. The initial plan included DenSco paying off the other lenders. That required additional capital, which Menaged and Mr. Chittick agreed would come from DenSco lending Menaged an additional $1 million and Menaged investing additional capital, including $4-$5 million from the liquidation of other assets, as set forth in a term sheet DenSco and Menaged signed after having already put their plan into effect. As the scope of the problem appeared to grow, Mr. Chittick and Menaged agreed to terms of an expanded plan, which included further investment from both DenSco and Menaged, who would also continue to flip and rent homes to raise the necessary profits needed to pay off the other lenders.

> Unbeknownst to Mr. Beauchamp, and according to Mr. Chittick's January 7, 2014 email, DenSco and Menaged had already been "proceeding with this plan since November [2013]."...In other words, by the time Mr. Chittick approached Mr. Beauchamp with a partial disclosure of the issues in late 2013 and early 2014, Mr. Chittick had already agreed to a business plan with Menaged to work out the double lien problems, and had already advanced Menaged significant sums pursuant to that agreement. As Mr. Beauchamp explained in a February 20, 2014 email to his colleagues, Mr. Chittick "without any additional documentation or any legal advice...has been reworking his loans and deferring interest payments to assist Borrower...When we became aware of this issue, we advised our client that he needs to have a Forbearance Agreement in place to evidence the forbearance and the additional protections he needs."[4]

The instant record review and analysis was requested in order to provide my psychological impression(s) pertaining to the relevant behavior of Denny Chittick and factors that may have influenced such behavior. Specifically, you asked me to address the level of influence, if any, Scott Menaged had over Denny Chittick's decision-making and conduct on or about January 2014 through May 2014.

**SOURCES OF INFORMATION:**

**Pleadings:**

1. Complaint
2. Defendants' Initial Rule 26.1 Disclosure Statement
3. Plaintiff's Initial Rule 26.1 Disclosure Statement
4. Plaintiff's Notice of Service of Preliminary Expert Opinion
5. Plaintiff's Disclosure of Areas of Expert Testimony (9/7/18)
6. Defendants' Disclosure of Areas of Expert Testimony (9/7/18)
7. Defendants' 6th Supplemental Disclosure Statement

[4] Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement, dated March 13, 2019

**Deposition Transcripts:**

1. July 19, 2018 Deposition of David Beauchamp (Vol. I)
2. July 20, 2018 Deposition of David Beauchamp (Vol. II)
3. August 22, 2018 Deposition of Shawna Heuer
4. November 16, 2018 Deposition of Peter Davis (w/Exhibits)
5. December 3, 2019 Deposition of Steve Bunger (w/Exhibits)
6. December 17, 2018 Deposition of Victor Gojcaj (w/Exhibits)
7. December 12, 2018 Deposition of Brian Imdieke (w/Exhibits)
8. February 20, 2019 Deposition of Russ Dupper
9. March 7, 2019 Deposition of Barry Luchtel
10. March 9, 2019 Deposition of DoriAnn Davis

**Miscellaneous Transcripts:**

1. 2016-08-26 Scott Menaged 341 Testimony
2. Menaged Rule 2004 Testimony
3. Transcript of Interview of Menaged in ACC Litigation
4. Audio & Transcript of Chittick and Menaged Conversation

**Additional Documents:**

1. Chittick Estate Documents – Personal Journals
2. October 20, 2017 Menaged Judgment in a Criminal Case
3. Chittick Corporate Journals
4. Chittick Letter to Investors
5. Chittick Letter to Robert Koehler
6. Chittick Letter to Shawna Heuer
7. Chittick To Do List
8. Menaged Indictment
9. Menaged Information-Indictment
10. Menaged Plea Agreement
11. Chronology for E. Nelson
12. DOCID_00383613
13. DOCID_00386378
14. DOCID_00432523
15. DOCID_00432524
16. CTRL_00062082
17. DOCID_00432525

18. Misc Chittick Device Documents
19. DOCID_00074182
20. DOCID_00074098
21. DOCID_00074789
22. DOCID_00074413
23. DOCID_00074416
24. DOCID_00074399
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324. DP000190
325. DP0000296-340
326. RECEIVER_00000l
327. RECEIVER_000044
328. RECEIVER_000093
329. RECEIVER_000136

330. R-RFP-Respons.000014
331. R-RFP-Response000911

**QUALIFICATIONS OF EXAMINER:**

I have enclosed a copy of my curriculum vitae which outlines my qualifications to perform this analysis *(Exhibit "A")*. I have also attached my Testimony List and Fee Schedule (*Exhibits "B" and "C"*).

**LIMITATIONS:**

The observations/opinions provided herein are based on my training and experience as well as my review of the information listed in the Sources of Information section of this report. I did not conduct a face-to-face evaluation of Mr. Chittick prior to his death, nor have I conducted any collateral interviews. As such, my opinions are thereby limited.

**FORENSIC OPINIONS:**

**Note: This report includes multiple footnote citations. The citations are not intended to be all inclusive/exhaustive. Rather, they are intended to highlight salient examples of a given point.**

As previously stated, the instant record review was requested in order to provide my psychological impression(s) pertaining to the relevant behavior of Denny Chittick and factors that may have influenced such behavior. Specifically, you asked to me to address the level of influence, if any, Scott Menaged had over Denny Chittick's decision-making and conduct on or about January 2014 through May 2014.

Available records suggest that Mr. Chittick was a highly competitive and driven man who placed tremendous value on money and equated the accumulation of wealth as a primary marker of success.[5] Notwithstanding his apparent focus on financial achievement, by many accounts, Mr. Chittick was not lavish in his spending habits.[6] To the contrary, he was relatively frugal. Although

[5] CH_REC_CHI_0074014

[6] D. Beauchamp deposition, 202:13-16 and 206:06-07; CH_EstateSDT_0039964; CH_EstateSDT_0040401;

he had numerous personal and professional associates, Mr. Chittick seems to have been guarded interpersonally and to have had few trusted relationships.[7] It appears that Mr. Chittick was deeply devoted to his wife prior to discovering her infidelity in 2009, and remained deeply devoted to his children until the time of his death.[8] In fact, despite his wife's perceived betrayal, Mr. Chittick postponed divorce for three more years as he believed this to be in the best interest of his children.[9]

Mr. Chittick began doing business with Scott Menaged in approximately 2007.[10] For the first several years of their relationship, Mr. Menaged demonstrated the capacity to fully execute and fulfill his professional obligation(s) to Mr. Chittick.[11] Mr. Menaged appears to have sought, obtained, and nurtured Mr. Chittick's trust. Although it is unclear precisely when Mr. Menaged began to violate that trust, available records suggest that Mr. Chittick first became aware of any wrongdoing by Scott Menaged sometime in the fall of 2012.[12] At that time, and despite the disturbing nature of his discovery, Mr. Chittick apparently chose to address the problem with Mr. Menaged privately and elected to withhold the information from his counsel and his investors. Moreover, it appears that rather than limit the scope of his business with Mr. Menaged in response to his discovery, Mr. Chittick expanded the amount and number of loans provided to Menaged exponentially.[13] Mr. Chittick's collective business dealings with Menaged put him in violation of representations and/or commitments made to his investors. Over the next

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CH_EstateSDT_0040837; CH_EstateSDT_0065302

[7] R. Dupper deposition, 17:5-15; B. Luchtel deposition, 67:17-68:6; D. Davis deposition, 17:1-3; D. Davis deposition, 30:25.

[8] CH_EstateSDT_0027935; B. Luchtel deposition, 36:15-16.

[9] CH_REC_CHI_0095659

[10] DIC0007135

[11] DIC0007135

[12] CH_REC_CHI_0009504; CH_REC_CHI_0009542

[13] Counsel has represented to me that the balance of loans made by DenSco to Mr. Menaged between the fall of 2012 and fall of 2013 grew from less than $5 million to approximately $25.5 million. In November 2013 when Mr. Menaged revealed more detail about the double-lien issue to Mr. Chittick, Mr. Chittick loaned Mr. Menaged another $3 million before the end of the year. I anticipate receipt of documentation of these figures will be forthcoming.

12-14 months, Mr. Chittick continued to withhold information about the problems with Mr. Menaged from critical vested parties. Unfortunately, Denny Chittick remained inextricably intertwined with Scott Menaged for the remainder of his life.[14]

Specifically, as it pertains to the January to April 2014 time period in question, I have several noteworthy observations. Those observations include, but are not limited to:

- On January 7, 2014, Denny Chittick sent an e-mail message to David Beauchamp that purported to explain the scope of Mr. Menaged's misuse of DenSco's funds.[15]

- However, Mr. Chittick's January 7, 2014 email contained inaccuracies that suggest he was deliberately deceiving Mr. Beauchamp. For example, Mr. Chittick wrote, in part, "...I have never had problem with payment or issue that hasn't been resolved."[16]

- A January 7, 2014 email from Mr. Chittick to Mr. Beauchamp also referenced a series of issues with DenSco's lien positions. In this email, Mr. Chittick also outlined a "plan to fix" the problem that he and Mr. Menaged crafted and had already begun to implement.[17]

- On January 9, 2014, Mr. Chittick and Mr. Menaged met with David Beauchamp. During this meeting, Mr. Chittick and Mr. Menaged broadly explained the nature of the problem with the liens and cited Mr. Menaged's personal difficulties (e.g., wife's cancer, cousin's mishandling of funds) as the explanation for their predicament.[18]

- With respect to their aforementioned explanation, it is now clear that the personal difficulties Mr. Menaged put forth were fiction.[19] That said, there is no evidence to suggest that Mr. Chittick was aware of

[14] Transcript of Recorded Conversation between Chittick and Menaged
[15] DIC0007135
[16] DIC0007135
[17] DIC0007135
[18] DIC0005403
[19] Menaged 2004 Testimony

Mr. Menaged's deception in January 2014. In fact, it is unclear if Mr. Chittick ever seriously doubted the veracity of Menaged's story.

- After the January 9, 2014 meeting, Mr. Chittick and Mr. Menaged, along with their respective counsel, engaged in a lengthy negotiation in order to document the terms of Mr. Chittick and Mr. Menaged's proposed solution.[20] Note: This was ultimately memorialized on April 16, 2014.[21]

- During the course of the January-April 2014 negotiations, Mr. Chittick repeatedly acquiesced to Mr. Menaged's attempts to manipulate the agreement in his own interest.[22]

- During the course of the January-April 2014 negotiations, Mr. Beauchamp repeatedly advised Mr. Chittick against Mr. Menaged's revisions and insisted that he protect DenSco's interests and investors.[23]

- Also during the course of the January-April 2014 negotiations, and despite David Beauchamp's explicit advice to the contrary, Mr. Chittick persisted in sharing information with Mr. Menaged.[24]

- During this same time period, Scott Menaged repeatedly made significant unfulfilled promises to Mr. Chittick about potential solutions to their financial woes.[25]

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[20] DIC0006242; DIC0006068; DIC0006528; DIC0006079; DIC0006615; DIC0006602; DIC0007598; DIC0007630

[21] DIC0008036

[22] DIC00006242; DIC0006261; DIC0006221; DIC0005418; DIC0006673; CH_0002080; DIC0006707

[23] DIC0006625; DIC0006707; DIC0006803

[24] CH_REC_MEN_0031108; CH_REC_MEN_0027195; CH_REC_MEN_0026580; CH_0000915

[25] CH_REC_CHI_0060228; DIC0007075; CH_REC_MEN_0014382; CH_REC_CHI_0068720; CH_REC_CHI_0062356; DIC0007135; CH_REC_CHI_0065965; CH_REC_MEN_0025912

- As of April 2014, Mr. Menaged was indebted to Mr. Chittick/DenSco for almost $40 million.[26]

- Mr. Beauchamp continually advised Mr. Chittick about his disclosure obligations before and after the April 16, 2014 memorialization.[27]

- Despite the gravity of the position Mr. Menaged put him in, Mr. Chittick appears to have remained steadfast in his trust in, and support of, Mr. Menaged.

- In an effort to conceal the seriousness of the problems created by Mr. Menaged, Mr. Chittick intentionally misled (by omission and/or commission) his closest associates, including his accountant, investors, family and friends.[28]

- It appears as if Mr. Chittick disliked lawyers (and legal fees). Throughout Mr. Beauchamp's representation of Mr. Chittick, Mr. Chittick routinely made disparaging comments about Mr. Beauchamp professionally, as well as the legal profession generally.[29]

- According to David Beauchamp's testimony, as of May 2014, Mr. Chittick was unwilling to finalize preparation of documents to inform DenSco's investors of the Menaged-associated problems.[30]

- According to David Beauchamp's testimony, Mr. Chittick would not agree to update the investors as Mr. Beauchamp advised.[31]

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[26] DIC0008036

[27] DIC0006673; DIC0006707; DIC0006803; DIC0006656

[28] RECIEVER_002570; 2013 Tax Return & Work Papers; DIC0007135; S. Heuer deposition, 45

[29] CH_REC_MED_0026584; CH_REC_MEN_0026600; CH_REC_CHI_0067611; CH_REC_CHI_0084775

[30] D. Beauchamp deposition, 279:13-14; D. Beauchamp deposition, 408:12-21

[31] D. Beauchamp deposition, 164:1-14

- According to David Beauchamp's testimony, he terminated representation of Mr. Chittick in May 2014.[32]

- Between January 2013 and June 2016, Mr. Menaged obtained approximately 2,712 loans from DenSco. Of those, only 96 involved actual property transactions. The remaining 2,712 were fraudulent/phantom properties.[33]

- Not only did Mr. Menaged utilize DenSco funds for personal luxury (trips to Las Vegas, gambling, cars, etc.), he also used the fraudulent loans to pay back prior DenSco loans in order to conceal the embezzlement.[34]

- Over the course of their relationship, Mr. Menaged defrauded Mr. Chittick/DenSco out of at least $34 million.[35]

- DenSco was not Scott Menaged's only victim. Mr. Menaged was indicted for crimes committed against a number of entities, including but not limited to, banks and financial institutions.[36]

- Scott Menaged is currently serving a 17-year sentence with the Federal Bureau of Prisons.

By all outward appearances, Denny Chittick was an intelligent, driven, successful businessman. He seems to have cared deeply about the perception of others and worked hard to portray himself as having full command of his personal and professional lives. However, in Mr. Chittick's case, there was a disconnect between external appearance and internal reality. Although many people thought they knew Mr. Chittick, and he had many positive acquaintances, he appears to have had few intimate personal relationships. Mr. Chittick married his first love, Ranasha, in September 2000. Unfortunately, he appears to have been devastated by his wife's repeated infidelity. Ranasha was one of the few people who Mr. Chittick "let in" and the

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[32] D. Beauchamp deposition, 121:22-122:1
[33] Menaged Plea Agreement
[34] Menaged Plea Agreement
[35] Menaged Plea Agreement
[36] 2017-10-20 Menaged Judgment In a Criminal Case

demise of their relationship seems to have had an indelible impact. Unfortunately for Mr. Chittick, one of the only other people he appears to have placed his full faith in was Scott Menaged.

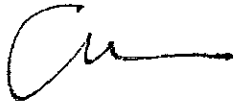
It is not uncommon for bright, well-educated people to fall prey to financial crime. In fact, financial predators engage a wide range of victims. In their effort to identify and cultivate a potential target, offenders typically seek to establish a trusting relationship. The preliminary demonstration of credibility becomes the foundation upon which the fraud can be built. The victim's trust is reinforced by the "reward" of initial follow-through. Once trust is established, the loyalty of the victim is a conduit for exploitation. In Mr. Chittick's case it seems his vulnerability was, in part, borne of a need to avoid failure, not only in the eyes of others, but also to himself. To this end, Mr. Chittick appears to have employed the most pervasive and effective of defense mechanisms – denial.

Although in retrospect it may seem counterintuitive, Mr. Chittick's decision to "double down" on his attachment to Mr. Menaged's false narrative, is consistent with a typology of victims of financial crime. It is not uncommon for vulnerable parties, especially those whose conduct is incongruent with their self-perception, to cling to their course no matter how problematic. In the face of a reality that is too much to bear, people often engage in seemingly irrational decisions to avoid confronting the truth. While in hindsight a better course of action may seem obvious, for the individual at a given period in time, internal and external psychological mechanisms can eclipse logic and reason. Mr. Chittick's behavior, prior, during and subsequent to the time period in question, reveals a pattern of enduring and intensifying attachment to his relationship with Mr. Menaged. Mr. Chittick's decision-making demonstrates his capacity to essentially discount information that interfered with his tightly held belief that Scott Menaged would not only of rectify the problems he caused, but would be a central figure in his (Mr. Chittick's) future success.

In sum, based on the totality of information available to me, it is my opinion to a reasonable degree of psychological probability that, on or about January 2014 to May 2014 Scott Menaged had substantial influence over Denny Chittick's decision-making and resultant conduct.

My opinions are based on the information listed at the beginning of this report. I reserve the right to supplement and/or modify my opinions as additional information becomes available. To this end, please forward any additional records/discovery to my office. Please do not hesitate to contact me at 480.250.4601, if I can be of any further assistance.

Respectfully submitted,



Erin M. Nelson, Psy.D.
Forensic and Clinical Psychologist

Enclosures: Curriculum Vitae: Erin M. Nelson, Psy.D. *(Exhibit "A")*
Court Testimony List: Erin M. Nelson, Psy.D. (*Exhibit "B"*)
Fee Schedule: Erin M. Nelson, Psy.D. (*Exhibit "C"*)

**EXHIIT "A"**

# ERIN M. NELSON, PSY.D.

(Updated: January 2019)


**Contact Information:**

2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016
P: 480.250.4601
E: drerinmn@gmail.com
W: www.nelsonforensicpsychology.com


**Licensure:**

Arizona – License #3697
California – License #PSY25135
New Mexico – License #1367

**Professional & Clinical Positions:**

Forensic and Clinical Psychologist
Erin M. Nelson, Psy.D.
Phoenix, Arizona
January 2005 - Present

Forensic and Clinical Psychologist
Steven Pitt & Associates
Scottsdale, Arizona & Century City, California
January 2005 – June 2018

Director, Preparation for Practice Course
Texas Christian University & University of North Texas
Health Sciences Center School of Medicine
Fort Worth, Texas
May 2017 - Present

Director, Psychological & Behavioral Science Curriculum
Texas Christian University & University of North Texas
Health Sciences Center School of Medicine
Fort Worth, Texas
May 2017 - Present

Director, Behavioral and Social Sciences Curriculum
University of Arizona College of Medicine – Phoenix
November 2010 – January 2018

Director, School Training
Threat Assessment Group, Inc. (TAG)
Newport Beach, California
June 2011 – Present

**Teaching Appointments:**

Associate Professor, Medical Education
Texas Christian University/University of North Texas
Health Sciences Center School of Medicine
May 2017 - Present

Associate Professor, Psychiatry
The University of Arizona College of Medicine – Phoenix
July 2016 – Present

Associate Professor, Bioethics and Medical Humanism
The University of Arizona College of Medicine – Phoenix
July 2016 - Present

Clinical Assistant Professor, Psychiatry
Louisiana State University School of Medicine – New Orleans
July 2003 – Present

**Consulting Positions:**

Phoenix Police Department
Phoenix, Arizona
November 2008 - Present

Park Dietz & Associates (PD&A), and
Threat Assessment Group, Inc. (TAG)
Newport Beach, California
April 2002 – Present

**Committee Appointments:**

Chair, Admissions Committee
Texas Christian University & University of North Texas Health Sciences Center School of Medicine
Fort Worth, Texas
November 2017 - Present

Executive Team – Curricular Evaluation
University of Arizona College of Medicine - Phoenix
May 2015 – January 2018

First Responder Traumatic Incident
Support and Response Task Force
City of Phoenix
November 2014 – Present

Chair, Theme and Topic Management Team
University of Arizona College of Medicine - Phoenix
June 2013 – December 2017

Curriculum Committee
University of Arizona College of Medicine - Phoenix
December 2012 – December 2017

Admissions Committee - Selection Subcommittee
University of Arizona College of Medicine - Phoenix
June 2011 – December 2017

**Education:**

Doctor of Psychology, Clinical Psychology
Arizona School of Professional Psychology/Argosy
Phoenix, Arizona
July, 2003

Master of Arts, Clinical Psychology
Arizona School of Professional Psychology/Argosy
Phoenix, Arizona
June, 2000

Master of Arts, Clinical Psychology
Sam Houston State University, Huntsville, Texas
December, 1996

Bachelor of Arts, Psychology
Arizona State University, Tempe, Arizona
May, 1992

**Honors:**

Honoree: Arizona Foothills Magazine; Women who Move the Valley; January 2009
Certificate of Merit: American Psychological Association Division 18, Psychologists in Public Service; May 2002
Outstanding Advocacy Award: Argosy University; May 2002
Magna Cum Laude Graduate, Arizona State University; May 1992

**Professional Affiliations:**

American Psychological Association
Division 18: Psychologists in Public Service
Division 41: American Psychology-Law Society
Arizona Psychological Association
California Psychological Association

**Past Professional and Clinical Positions:**

Director, Special Projects
Steven Pitt & Associates
Forensic and General Psychiatry
December 1993 – August 2003

Associate Clinical Psychologist, III
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch
Huntsville, Texas
April 1997 - June 1998

Clinical Case Manager
Community Partnership for Behavioral Health Care
Phoenix, Arizona 85029
October 1992 - August 1994

**Past Teaching Appointments:**

Assistant Professor, Psychiatry
The University of Arizona College of Medicine – Phoenix
October 2011 – July 2016

Assistant Professor, Bioethics and Medical Humanism
The University of Arizona College of Medicine – Phoenix
April 2014 – July 2016

Clinical Assistant Professor
Clinical Psychology Program, College of Health Sciences
Midwestern University School of Medicine
August 2008 – February 2011

Associate Adjunct Faculty
Arizona School of Professional Psychology
Phoenix, Arizona
August 1999 - August 2000

Graduate Teaching Assistant
Arizona School of Professional Psychology
Phoenix, Arizona
April 2000 - July 2000

**Past Consulting Positions:**

Baseline Serial Killer Task Force
Phoenix Police Department
Phoenix, Arizona
July 2006 – December 2006

Phoenix Police Department - Homicide Division
Phoenix, Arizona
July 2003 – November 2008

Arizona Response Crisis Team
Arizona Department of Public Safety
Phoenix, Arizona
June 2002 – January 2005

Threat Assessment Group, Inc.
Newport Beach, California
Research Director, Columbine Psychiatric Autopsy Project
April 2001 – 2002

Joel A. Dvoskin, Ph.D., A.B.P.P. (Forensic)
Forensic and General Psychology
Tucson, Arizona
August 1998 – October 2003

Centers for Disease Control and Prevention
Macro International
Calverton, Maryland
Youth Risk Behavior Survey
Time-limited research: February - April 1997

**Training:**

Professional Program in Neuropsychological Assessment
University of California Berkeley
Behavioral Health Sciences Extension
Berkeley, California
April 2013 - May 2015

Postdoctoral Fellow
Steven Pitt & Associates
Forensic and General Psychiatry
Scottsdale, Arizona
August 2003 – January 2005

Psychology Intern
Louisiana State University Health Sciences Center
School of Medicine – New Orleans
Department of Psychiatry, Division of Psychology
New Orleans, Louisiana
July 2002 – June 2003

Psychology Intern
United States Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution and Federal Prison Camp
Phoenix, Arizona
September 2000 - July 2001

Psychology Intern
Maricopa Integrated Health System
Maricopa Medical Center
Inpatient Psychiatric Annex
Phoenix, Arizona
September 1999 - July 2000

Counselor Intern
Texas Department of Criminal Justice
Institutional Division
University of Texas Medical Branch
Wynne Unit, Huntsville, Texas
August 1996 - December 1996

**Research Positions:**

Graduate Research Assistant
Sam Houston State University
Department of Psychology, Huntsville, Texas
Forensic Research Grant
Master's Thesis: Bale, E.M. (1996) Reliability of Criteria Based Content Analysis as Applied to Alleged Cases of Child Sexual Abuse.
July 1995 - December 1996

Graduate Assistant
Sam Houston State University
Division of Health and Kinesiology, Huntsville, Texas
Grant funded by the Texas Commission on Alcohol and Drug Abuse (TCADA)
July 1995 - December 1996

**Past: Committee Appointments:**

Eastern Region Designated Representative
Internal Audit/Review Board
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch - Correctional Managed Care
June 1997 – June 1998

Unit Post-Trauma Support Team, Crisis Response Division
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch - Correctional Managed Care
June 1997 – June 1998

**Presentations:**

Nelson, E.M. & Pitt, S.E.: Forensic Files – Behavioral Sciences and the Law. University of Arizona College of Medicine - Phoenix Mini-Medical School Community Lecture Series, Phoenix, Arizona, May 2016

Nelson, E.M.: The Art & Science of Human Behavior. Arizona Association of Certified Fraud Examiners, AZ ACFE Spring Conference, Phoenix, Arizona, April 2016

Manriquez, M., Mendez, M.D., Nelson, E.M., Venegas, V., Page, A.S.: Screening for Sex Trafficking: Using Standardized Patients to Teach Residents and Students During Ob-Gyn Objective Standardized Clinical Examination (OSCE) Sessions. The Big and Not So Easy, Today's Challenges in Medical Education – 2016 Council on Resident Education in Obstetrics and Gynecology, Association of Professors of Gynecology and Obstetrics; New Orleans, Louisiana, March 2016

Nelson, L.R., Nelson, E.M. & Barcellona, D.S.: Integration of Basic Science with Behavioral Science and Ethics Material in the Preclinical Curriculum covering Sexuality, Gender Identity and Reproduction. Sex and Gender Medical Education Summit – Mayo Clinic School of Continuous Professional Development; Rochester, Minnesota, October 2015

Hartmark-Hill, J., Nelson, E.M. & Gardner, A.: Interprofessional Integration and the Program for Narrative Medicine and Medical Humanities at the University of Arizona College of Medicine – Phoenix. Association for Behavioral Science in Medical Education – IPECP: Linking the Arts and Sciences to Promote Patient-Centered Care; Minneapolis, Minnesota, October 2015

Nelson, E.M. & Standley, E.S.: Art in Medicine: Structured Observation and Patience Care. Association for Behavioral Science in Medical Education – IPECP: Linking the Arts and Sciences to Promote Patient-Centered Care; Minneapolis, Minnesota, October 2015

Pitt, S.E. & Nelson, E.M.: Mass Shooters and Mental Illness: Fact vs. Fiction. Arizona Osteopathic Medical Association, 34th Annual Fall Seminar - Back to Basics; Tucson, Arizona, November 2014
Nelson, E.M., Hartmark-Hill, J., Lundy, M., Sell, M., Shepherd, T,

Bonifas, R., Coplan, B., Babock, E. & Sayles, J. Cultural Sensitivity, Communication and the Interprofessional Healthcare Team: An Inter-Institutional Collaboration. Association for Behavioral Science in Medical Education – The Behavioral Science of Interprofessional Education: Confronting Issues of Hierarchy and Power; Newport Beach, California, October, 2014

Nelson, E.M. & Dvoskin, J.A.: Campus Violence Prevention. College and University Professional Association for Human Resources 2014 Conference; Prescott, Arizona, June 2014

Nelson, E.M.: A Transportation Safety Culture – Why Aren't We There Yet? Arizona Department of Public Safety, Arizona Department of Transportation Strategic Highway Safety Summit. Phoenix, Arizona, November 2013

Restifo, K., Nelson, E.M., Dietz, P., & Nicholson, C.: Threat Assessment in the Medical School Environment – What is Being Done, What Should be Done, What Can be Done. AAMC Western Regional Conference, University of California School of Medicine; Irvine, California, May 2013

Nelson, E.M.: Promising Practices in Threat Management. Tennessee Department of Education, School Safety Summit; Nashville, Tennessee, January 2013

Nelson, E.M.: Violence Prevention at School. Tennessee School Personnel Officer's Association; Nashville, Tennessee, October 2012

Nelson, E.M.: Keeping Schools Safe. Tennessee School Plant Managers Association; Murfreesboro, Tennessee, June 2012

Nelson, E.M.: Postvention Lessons from the Columbine Tragedy. State of Tennessee, Safe Schools Conference; Nashville, Tennessee, April 2012

Nelson, E.M.: Supporting a Safe and Respectful School – A Program to Train Supervisors, Managers, and Administrators. Threat Assessment Group, Inc. & The Tennessee Department of Education, Office of School Safety; Nashville, Tennessee, February 2012

Pitt, S.E., Nelson, E.M.: Child Abduction and Murder: What Happens After the Arrest? Arizona Missing Persons Association; Glendale, Arizona, November 2011

Dvoskin, J.A. & Nelson, E.M: Assessing Risk for Violence. Arizona Psychological Association 2011 Annual Conference: Together Through Challenge and Change; Scottsdale/Fountain Hills, Arizona, October 2011

Nelson, E.M.: Supporting a Safe and Respectful School – A Program to Train Supervisors, Managers, and Administrators. Threat Assessment Group, Inc. & The Tennessee Department of Education, Office of School Safety; Knoxville, Tennessee, August 2011; Jackson, Tennessee, August 2011; Nashville, Tennessee, September 2011

Nelson, E.M. & Culbertson, K.: Clinicians and the Court. Arizona Psychological Association 2010 Annual Conference: Advancing the Profession of Psychology – Diversity, Relevancy and Collaboration; Tucson, Arizona, October 2010

Nelson, E.M: Psychology and the Law: Expert Consultation in Criminal Cases. Pima County Bar Association; Tucson, Arizona, May 2010

Pitt, S.E. & Nelson, E.M.: Information Gathering: The Forensic Psychiatric Evaluation and Beyond...Strategies to Maximize Success. Forensic Trends: Psychiatric and Behavioral Issues; Las Vegas, Nevada, May 2010

Pitt, S.E. & Nelson, E.M.: Media and Forensic Psychiatry: Practical Considerations. Forensic Trends: Psychiatric and Behavioral Issues; Las Vegas, Nevada, May 2010

Pitt, S.E. & Nelson, E.M.: The Forensic Psychiatric Evaluation: Civil and Criminal Case Applications. Arizona Paralegal Association; Phoenix, Arizona, May 2010

Nelson, E.M & Pitt, S.E.: Forensic Psychiatric and Psychological Expert Consultation in Criminal Cases. Maricopa County Bar Association. Phoenix, Arizona, March 2010

Pitt, S.E. & Nelson, E.M.: Behind Closed Doors: Understanding the Human Side of Hoarding. Petsmart® Charities Feline Forum; Chicago, Illinois, September 2009

Stefan, S., Joyce, M., Dvoskin, J.A., Nelson, E.M. & Pitt, S.E.: Right to Refuse Medication Hearings. National Association for Rights Protection and Advocacy Conference; Phoenix, Arizona, September 2009

Pitt, S.E. & Spiers, E.M.: Difficult Physician Behavior: The Role of the Forensic Psychiatric Evaluation. Arizona Health Care Lawyers Association; Phoenix, Arizona, May 2009

Pitt, S.E., Spiers, E.M. & Hayes, J.: Back to Basics: The Independent Forensic Evaluation. Office of the Arizona Attorney General; Phoenix, Arizona, March 2009

Pitt, S.E., Spiers, E.M. & Hayes, J.: Back to Basics: The Art of Interviewing. Arizona Psychiatric Society 2007 Spring Scientific Conference; Scottsdale, Arizona, April 2007

Pitt, S.E., Hayes, J. & Spiers, E.M.: Links Between Animal Cruelty and Violence Toward People. Arizona Humane Society, Law Enforcement Animal Protection Program; Phoenix, Arizona, March 2007

Pitt, S.E., Dietz, P.E., Dvoskin, J.A. & Spiers, E.M.: The Importance of Video Recording Forensic Evaluations. American Academy of Psychiatry and the Law, 35th Annual Meeting; Scottsdale, Arizona, October 2004

Spiers, E.M.: Understanding Psychological Evaluations. Arizona Bar Association Annual Conference; Scottsdale, Arizona, June 2004

Spiers, E.M., Dvoskin, J.A., Pitt, S.E., Dietz, P.E. & Walker, R.P.: Columbine: Understanding Why – Implications for Psychologists. American Psychology-Law Society Annual Conference; Scottsdale, Arizona, March, 2004

Spiers, E.M.: Introduction to Forensic Mental Health. Louisiana State University School of Medicine – New Orleans; New Orleans, Louisiana, January, 2004

Pitt, S.E., Dietz, P.E., Dvoskin, J.A., Spiers, E.M., Walker, R.P., & Kurtis, B.: Columbine: Understanding Why. American Academy of Psychiatry and the Law, 34th Annual Meeting; San Antonio, Texas, October, 2003

Spiers, E.M.: Psychological Autopsy: Methods, Procedures, and Indications. Louisiana State University Health Sciences Center, Grand Rounds; New Orleans, Louisiana, October, 2003

Spiers, E.M.: The Columbine Psychiatric Autopsy – A Videotape Presentation. The New Orleans Adolescent Hospital; New Orleans, Louisiana, June 2003

Pitt, S.E., Spiers, E.M. & Dvoskin, J.A.: What has been learned from Columbine: The signs that were missed and how this can be avoided in our own backyards. Mental Health Association of Arizona, Arizona Department of Health Services – Division of Behavioral Health. 15th Annual Seeds of Success Symposium; Phoenix, Arizona, October 2002

Pitt, S.E. & Spiers, E.M.: Trauma and Crisis Response: Expectations and Interventions. Arizona Coalition for Victim Services, Arizona Response Crisis Team (ARCT); Phoenix, Arizona, June 2002

Pitt, S.E. & Spiers, E.M.: Trauma and Crisis Response: Expectations and Interventions. Arizona Coalition for Victim Services, Arizona Response Crisis Team (ARCT); Phoenix, Arizona, April 2002

Spiers, E.M.: Mass Media and Interpersonal Violence: Influence and Implications. Midwestern University College of Medicine; Glendale, Arizona, March 2002

Pitt, S.E. & Spiers, E.M.: Dangerousness and Firearms: Assessing the Risk for Violence in Teens and Adults. Midwestern University College of Medicine; Glendale, Arizona, November, 2000

Pitt, S.E. & Spiers, E.M.: Assessing the Risk for Domestic Violence. Arizona School of Professional Psychology - Survey of Forensic Psychology; Phoenix, Arizona, November, 2000

Dvoskin, J.A. & Spiers, E.M.: Violence and Mental Illness. Vernon State Hospital; Denton, Texas, November, 2000

Dvoskin, J.A. & Spiers, E.M.: Preventing Suicide in Adult Prisons. Georgia Department of Corrections; Atlanta, Georgia, October, 2000

Pitt, S.E. & Spiers, E.M.: Necrophilia and Necrosadism: Identifying and Assessing the Offender. Mesa Community College, Department of Mortuary Science; Mesa, Arizona, October, 2000

Spiers, E.M.: Youth and Violence: Juvenile Firesetting. Arizona State University Department of Criminal Justice; Tempe, Arizona, April, 2000

Spiers, E.M.: The Psychologist's Role in Corrections. Peoria Unified School District, Cactus High School, Elective Law; Glendale, Arizona, February, 1999

Pitt, S.E. & Spiers, E.M.: Searching for Mental Illness in Firesetters. Maricopa County Attorney's Office Arson Investigation Seminar; Mesa, Arizona, February, 1999

Pitt, S.E. & Spiers, E.M.: Toward an Understanding of Infant Murder. Northern New Jersey Maternal Child Health Consortium Hot Topics in Obstetrics and Pediatrics V; West Orange, New Jersey, November, 1998

Spiers, E.M.: Toward an Understanding of Serial Murder. Mesa Community College, Department of Criminal Justice; Mesa, Arizona, October, 1998

Spiers, E.M.: Career Directions in the field of Psychology. Paradise Valley Unified School District, North Canyon High School, Advanced Psychology; Paradise Valley, Arizona, September, 1998

Bale, E.M.: The Clinical Assessment of Feigned versus Actual Mental Illness. Texas Department of Criminal Justice/University of Texas Medical Branch, Eastern Regional Continuing Education Seminar; Huntsville, Texas, October, 1997

Bale, E.M.: Suicide Risk Assessment and Prevention: Texas Department of Criminal Justice/University of Texas Medical Branch. Bi-monthly training of new employees and correctional officers; October 1997 - June 1998

Pitt, S.E. & Bale, E.M.: Neonaticide, Infanticide, and Filicide: Two Case Reports and Review of the Literature. Good Samaritan Regional Medical Center, Department of Psychiatry, Grand Rounds Presentation; Phoenix, Arizona, May, 1995

Pitt S.E. & Bale, E.M.: Women who Murder Their Children. American College of Neuropsychiatrists' Mid-year Meeting and Scientific Seminar; Phoenix, Arizona, April, 1995

Pitt, S.E. & Bale, E.M.: Post-Traumatic Stress Disorder and DSM-IV: For Better or For Worse? Arizona Trial Lawyers Association; Medical Experts Speak: A Melange of Riveting Medical Topics; Phoenix, Arizona, December, 1993

Pitt, S.E. & Bale, E.M.: The Diagnosis and Treatment of Depression for the Family Practitioner. Phoenix General Hospital and Medical Center; Phoenix, Arizona, September, 1993

Pitt, S.E. & Bale, E.M.: Confidentiality and Privilege: Are you Protecting Your Patient's Rights? 71st Annual Arizona State Osteopathic Medical Association Convention; Phoenix, Arizona, April, 1993

Pitt, S.E. & Bale, E.M.: Preparing for Courtroom Testimony. 71st Annual Arizona State Osteopathic Medical Association Convention; Phoenix, Arizona, April, 1993

**Publications:**

Pitt, S.E., Nelson, E.M., Chapman, B. & Lamoreux, I. (2018) Handling Suspects' Claims of Insanity During Interrogation. In Police/Law Enforcement, 42(9), 66-70

Kane, A.W., Nelson, E.M., Dvoskin, J.A., & Pitt, S.E. (2012) Evaluation for Personal Injury Claims. In R. Roesch & P.A. Zapf (Eds.). Forensic assessments in criminal and civil law: A handbook for lawyers. NY: Oxford University Press.

Dvoskin, J.A., Pitt. S.E., Dietz, P.E., Spiers, E.M. & Walker, R.P. (2008) Making America's Schools Safer www.TeachSafeSchools.Org

Dvoskin, J.A., Spiers, E.M. & Brodsky, S.L. (2007) Correctional Psychology: Law, Ethics, & Practice. In A.M. Goldstein (Ed): Forensic Psychology: Emerging Topics and Expanding Roles. New York: Wiley

Spiers, E.M., Pitt, S.E., & Dvoskin, J.A. (2006) Psychiatric Intake Screening. In Puisis, Michael (Ed): Clinical Practice in Correctional Medicine, Second Edition. Philadelphia: Elsevier Health Sciences

Dvoskin, J.A. & Spiers, E.M. (2004) On the Role of Correctional Officers in Prison Mental Health Care. Psychiatric Quarterly.

Dvoskin, J.A. & Spiers, E.M. (2003) Commentary on Munetz, M.R., Galon, P.A., & Frese III, F.J. The Ethics of Mandatory Community Treatment. Journal of the American Academy of Psychiatry and Law, 31(2), 184-188.

Glancy, G.D., Spiers, E.M., Pitt, S.E., & Dvoskin, J.A. (2003) Commentary on Chen Y-H, Arria A.M., & Anthony J.C. Firesetting in adolescence and being aggressive, shy, and rejected by peers: New epidemiologic evidence from a national sample survey. Models and correlates of firesetting behavior. Journal of the American Academy of Psychiatry and Law.

Dvoskin, J.A., Spiers, E.M., Metzner, J.L., & Pitt, S.E. (2003) The Structure of Correctional Mental Health Services. In Rosner, R. (ed.), Principles and Practice of Forensic Psychiatry, Second Edition. London: Arnold Publishing.

Spiers, E.M., Dvoskin, J.A., & Pitt, S.E. (2002) Mental health professionals as institutional consultants and problem-solvers. In Fagan, T, and Ax, B (Eds) Correctional Mental Health Handbook Lanham, MD: American Correctional Association.

Pitt, S.E., Spiers, E.M., Dietz, P.E., & Dvoskin, J.A. (1999) Preserving the integrity of the interview: The value of videotape. Journal of Forensic Sciences, 44 (6), 1287-1291.

Pitt, S.E. & Bale, E.M. (1995) Neonaticide, Infanticide, and Filicide: A Review of the Literature. The Bulletin of the American Academy of Psychiatry and the Law, 23(3), 375-386.

Pitt, S.E. & Bale, E.M. (1993) Neonaticide: Mothers Who Kill their Newborn - A Case Report and Preliminary Review of the Literature. AOMA Digest, 8, 6-7, 16

**EXHIBIT "B"**

**ERIN M. NELSON, PSY.D.** **TESTIMONY LIST**

| DATE | CASE CAPTION | COURT | CIV/CRM | PROCEEDING | RETAINED BY |
|---|---|---|---|---|---|
| 5/24/18 | WILSON V. DILLARDS | UNITED STATES DISTRICT COURT - ARIZONA | CIVIL | HEARING | CAROLINE LARSEN, ESQ. |
| 9/26/17 | MORGAN V. CHAO | UNITED STATES DISTRICT COURT - ARIZONA | CIVIL | DEPOSITION | KRISSY MORRISON, ESQ. |
| 9/11/17 | SALAZ V. ARIZONA | PIMA COUNTY SUPERIOR | CIVIL | DEPOSITION | JENNIFER SANDERS, ESQ. |
| 5/19/17 | RIALL V. VALLEY ENT | MARICOPA COUNTY SUPEROR | CIVIL | DEPOSITION | CHRIS HOLDEN, ESQ. |
| 5/10/17 | MICHACA V. FOREST RIVER | SAN BERARDINO SUPERIOR | CIVIL | DEPOSITION | PETER SCHNIATMAN, ESQ. |
| 6/23/16 | GILLEN V. ARIZONA | UNITED STATES DISTRICT COURT - ARIZONA | CIVIL | DEPOSITION | MARTIN BIHN, ESQ. |
| 6/8/16 | CUSHING V. LIFETIME FITNESS | UNITED STATES DISTRICT COURT - ARIZONA | CIVIL | DEPOSITION | ERICA SPURLOCK, ESQ. |
| 1/26/16 | COX V. STATE OF ARIZONA | MARICIOPA COUNTY SUPERIOR | CIVIL | DEPOSITION | JAMES BOWEN, ESQ. |

**LAST UPDATED: JANUARY 2019**

***EXHIBIT "C"***

Ψ

# ERIN M. NELSON, PSY.D.

## FEE SCHEDULE

P: 480.250.4601
E: drerinmn@gmail.com

$425.00 per hour for all work (e.g., telephone calls, record review, psychological evaluation/testing, analysis of test data, collateral interview(s), research, consultation, correspondence, report writing, travel, preparation for deposition/hearing/trial and testimony). Psychological test scoring fees and transcription fees are billed separately. Out of state travel is based on a 10-hour day with airfare and lodging expenses billed at cost.

$185.00 per hour for preparation of database/chronology (with prior authorization).

Administrative surcharge: A 10% administrative surcharge is added to invoices to cover the costs of administrative support, telephones, copying, storage, and other office expenses that are not itemized on invoices. Only exceptional charges (e.g., research resources, high volume copying, courier services) are itemized.

Cancellation policy: Cancellations made less than 48 hours in advance will result in a full-day (8.0 hour) charge.

JANUARY 2019

John E. DeWulf (006850)
Marvin C. Ruth (024220)
Vidula U. Patki (030742)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 224-0999
F: (602) 224-0620
jdewulf@cblawyers.com
mruth@cblawyers.com
vpatki@cblawyers.com

*Attorneys for Defendants*

**SUPERIOR COURT OF ARIZONA**

**COUNTY OF MARICOPA**

| | |
|---|---|
| Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation,<br><br>Plaintiff,<br><br>v.<br><br>Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife,<br><br>Defendants. | No. CV2017-013832<br><br>**DEFENDANTS' SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS DR. ERIN NELSON**<br><br>(Commercial Case)<br><br>(Assigned to the Honorable Daniel Martin) |

Pursuant to Rule 26.1(d), Defendants provide notice that they have served the Addendum Report of Dr. Erin Nelson, attached hereto.

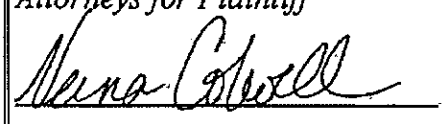
DATED this 8th day of October, 2019.

COPPERSMITH BROCKELMAN PLC

By _____
John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants

**ORIGINAL** of the foregoing e-mailed/mailed this 8th day of October, 2019 to:

Colin F. Campbell, Esq.
Geoffrey M. T. Sturr, Esq.
Joshua M. Whitaker, Esq.
OSBORN MALEDON, P.A.
2929 N. Central Ave., Suite 2100
Phoenix, AZ 85012-2793
*Attorneys for Plaintiff*



Ψ

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology

October 7, 2019

John E. DeWulf, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Marvin C. Ruth, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

***Re: Addendum Report - Peter S. Davis v. Clark Hill***
**Maricopa County Superior Court Case No. CV-2017-013832**

Dear Mr. DeWulf and Mr. Ruth:

Pursuant to your request, I am providing a supplement to my report dated April 3, 2019 (see attached).

**UPDATED SOURCES OF INFORMATION**

**In-person Observation:**

1. September 23, 2019 Deposition testimony of Yomtov Scott Menaged

**Pleadings:**

2. Plaintiff's Seventh Disclosure Statement, dated September 13, 2019
3. Defendant's Eighth Supplemental Rule 26.1 Disclosure Statement, dated September 13, 2019

**Deposition Transcripts:**

1. March 20, 2019 Deposition of Warren Bush
2. April 16, 2019 Deposition of Judith E. Siegford
3. April 18, 2019 Deposition of Ranasha Chittick
4. April 23, 2019 Deposition of Gregg Reichman

2415 E. Camelback Road, Suite 700
Phoenix, Arizona 85016
p: 480.250.4601 e: drerinmn@gmail.com

5. Jun 20, 2019 Deposition of Scott Allen Gould
6. September 23-24, 2019 Deposition of Yomtov Scott Menaged

**Additional Documents:**

1. July 1, 2019 Correspondence from Scott Menaged to Mr. Anderson

**LIMITATIONS:**

The observations/opinions provided herein are based on my training and experience as well as my review of the information listed in the Sources of Information section of this report. I did not conduct a face-to-face evaluation of Mr. Chittick prior to his death, nor have I conducted any collateral interviews. As such, my opinions are thereby limited.

**FORENSIC OPINIONS:**

**Note: This addendum includes footnote citations. The citations are not intended to be all inclusive/exhaustive. Rather, they are intended to highlight salient examples of a given point.**

As stated in my April 3, 2019 report, I was asked to provide my psychological impression(s) pertaining to Denny Chittick and factors that may have influenced his behavior. Specifically, you asked to me to address the level of influence, if any, Scott Menaged had over Denny Chittick's decision-making and conduct on or about January 2014 through May 2014.

Subsequent to the submission of my initial report, I had the opportunity to review additional discovery (as outlined in the Updated Sources of Information section above) and to personally observe a portion of the deposition of Yomtov Scott Menaged. After reviewing the aforementioned records and witnessing Mr. Menaged's testimony, you asked me to provide you with a brief written supplement as it pertains to my opinions in this matter, including whether or not my impressions changed, required modification or remained the same.

The additional information I reviewed did not change the opinion outlined in my April 3, 2019 report. Rather, subsequent collateral data was markedly

consistent with the impression previously offered. Additional discovery underscored, in part:

- Denny Chittick was an intelligent, driven businessman with tightly held focus and determination.
- Denny Chittick placed a high value on the accumulation of wealth.[1,2,3]
- Denny Chittick was relatively frugal with respect to his spending.[4,5,6]
- Denny Chittick held disdain for attorneys and legal fees.[7,8,9,10]
- Denny Chittick had few close personal relationships.[11,12,13]
- Denny Chittick placed his trust in Scott Menaged "completely."[14]
- Scott Menaged explicitly sought to gain Mr. Chittick's trust and engender himself to Mr. Chittick as a friend, confidant, and colleague.[15]

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[1] Deposition Testimony of Warren Bush, Page 75-76
[2] Deposition Testimony of Scott Gould, Page 99-102
[3] Deposition Testimony of Yomtov Scott Menaged, Page 43; 59
[4] Deposition Testimony of Renasha Chittick, Page 71-72
[5] Deposition Testimony of Scott Gould, Page 94-96
[6] Deposition Testimony of Yomtov Scott Menaged, Page 59
[7] CH_REC_CHI_0060457
[8] CH_REC_MEN_0027814
[9] CH_REC_MEN0027218
[10] Deposition Testimony of Yomtov Scott Menaged, Page 37-38; 229
[11] Deposition Testimony of Renasha Chittick, Page 96-97
[12] Deposition Testimony of Scott Gould, Page 94-96
[13] Deposition Testimony of Yomtov Scott Menaged, Page 29-31; 46-47
[14] Deposition Testimony of Greg Reichman, Page 68; Page 76
[15] Deposition Testimony of Yomtov Scott Menaged, Page 46-479

- Scott Menaged intentionally exploited Mr. Chittick's trust and deliberately mislead him with false explanations, reassurances and promises.[16,17,18,19,20]

- Scott Menaged's pervasive deception created a stranglehold on Mr. Chittick, rendering him essentially incapable of identifying or engaging a rational remedy.

- Scott Menaged crafted and nurtured a narrative whereby he was the only person who could help "save" Mr. Chittick from financial catastrophe.

- As time went on, and the pressure mounted, Mr. Chittick clung desperately to what he saw as the only way out – help from Scott Menaged.

- Ultimately, Denny Chittick succumbed to the painful realization that Scott Menaged could not, and would not, be able to extricate him from the results of his (Mr. Chittick's) misplaced faith and trust.

Superficially, it may be difficult to understand how Denny Chittick, an intelligent successful businessman could not only be lured in by someone like Scott Menaged but could allow himself to be repeatedly jeopardized and manipulated. When viewed through the lens of psychological/behavioral science, however, the relationship between Mr. Chittick and Mr. Menaged can be explained through basic tenets of human behavior. Mr. Chittick's faith in Mr. Menaged was built on a foundation of positive reinforcement. Mr. Menaged followed through on early promises and demonstrated himself to be a reliable colleague and business associate. As their relationship evolved the positive reinforcement pattern continued. Mr. Chittick's attachment to Mr. Menaged intensified as Mr. Menaged ingratiated himself in Mr. Chittick's world beyond the workplace. By the time Mr. Menaged's double-lien practice was initially discovered for example, Mr. Menaged was a central figure in Mr.

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[16] Deposition Testimony of Greg Reichman, Page 142
[17] Deposition Testimony of Yomtov Scott Menaged, Page 126-127
[18] CH_REC_CHI_0042251-59
[19] CH_REC_CHI_0058450-59
[20] CH_REC_MEN_0026749-50

Chittick's life. This allowed Mr. Menaged to capitalize on the foundation of faith and good will he had developed with Mr. Chittick. Although clearly troubling for him, Mr. Chittick had already become attached to Mr. Menaged, and, as a result, his internal need to rely upon Mr. Menaged was again reinforced - now by his desire to alleviate stress associated with financial losses. Repetition ensued and the feedback loop was solidified. Engrained patterns of behavior are not easily extinguished, especially when complicated by a veiled power differential. Mr. Menaged relied on Mr. Chittick's sense of fairness and reciprocity to manipulate Mr. Chittick into a series of poor decisions, each predicated on the prior, digging himself deeper and deeper into an insurmountable deficit. Concurrently, Mr. Chittick became increasingly desensitized to the situation as he was no match for the duplicity of Mr. Menaged's tactics. As the gravity of the situation emerged as unavoidable, Mr. Chittick's lens narrowed. From his perspective, and with intentional crafting of the message from Mr. Menaged, Mr. Chittick came to believe that Scott Menaged was the only hope he had left. Not unlike a person who has lost significant money at the racetrack, only to "bet it all" on one more race, or the person who has lost significant money in a slot machine, but is driven to keep going, with the perception that the very next pull of the handle could bring everything back into balance. Mr. Chittick's attachment to Mr. Menaged was perpetuated at each step in the process and Mr. Menaged's exploitation of Mr. Chittick persisted in kind.

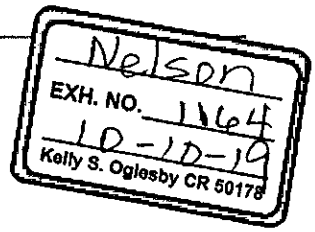
In sum, based on the totality of information available to me, it remains my opinion, to a reasonable degree of psychological probability, that on or about January 2014 to May 2014 Scott Menaged had substantial influence over Denny Chittick's decision-making and resultant conduct.

My opinions are based on the information listed at the beginning of this report. I reserve the right to supplement and/or modify my opinions as additional information becomes available. To this end, please forward any additional records/discovery to my office. Please do not hesitate to contact me at 480.250.4601, if I can be of any further assistance.

Respectfully submitted,

Erin M. Nelson, Psy.D.
Forensic and Clinical Psychologist

*Enclosures: (Exhibit "A" Report Re: Peter S. Davis v. Clark Hill Maricopa County Superior Court Case No. CV-2017-013832, dated April 3, 2019)*




2017 WL 5523843 (Ariz.Super.) (Expert Report and Affidavit)
Superior Court of Arizona.
Maricopa County

Erica RAHN,
v.
CITY OF SCOTTSDALE.

No. CV2012017693.
October 7, 2017.

**Affidavit of Erin M. Nelson, Psy.D.**

**Case Type:** Civil Rights & Constitutional Law >> False Arrest
**Case Type:** Malicious Prosecution & Abuse of Process >> N/A
**Case Type:** Privacy >> N/A
**Jurisdiction:** Maricopa County, Arizona
**Name of Expert:** Erin M. Nelson, Psy.D.
**Area of Expertise:** Health Care-Physicians & Health Professionals >>Psychologist
**Area of Expertise:** Social Science >> Behavioral Science

**Representing:** Unknown

State of Arizona )

County of Maricopa )

I, Erin M. Nelson, declare:

My name is Erin M. Nelson, Psy.D. I am of legal age and competent to testify in Court. The facts stated herein are based on my personal knowledge, and I could and would testify to these facts in a court of law if asked to do so.

1. I am a forensic and clinical psychologist licensed in the states of Arizona and California.

2. In addition to my private forensic and clinical practice, I am the Director of the Behavioral Sciences curriculum for the University of Arizona College of Medicine - Phoenix. I am also an Assistant Professor in the College of Medicine's Departments of Psychiatry and Bioethics and Medical Humanisim. See *Exhibit "A"*, Curriculum Vitae.

3. As a forensic psychologist, I have video-recorded hundreds of independent psychological examinations in both civil and criminal matters.

4. I have extensively researched the use of video recording forensic mental health evaluations and co-authored an article that was published in the Journal of Forensic Sciences about this subject entitled, *Preserving the Integrity of the Interview· The Value of Videotape.* See *Exhibit "B"*.

5. It has been my position for several years that the presence of a third party adverse to the process can interfere with an independent psychological examination. The presence of a third party during a one-on-one examination unavoidably changes

the interaction between interviewer and subject. The validity of the examination will be adversely affected and the third person's presence to monitor me transforms the evaluation into an adversarial process. Ms. Rahn may respond differently than she would out of the presence of the third person. Ms. Rahn might, without realizing it, respond to questions in ways that she ordinarily would not but for the presence of the third person in the interview, which fundamentally changes the nature of the interview.

6. While the presence of a third party adverse to the process can be a disruptive influence, there is no objective data to suggest that the presence of audio or video recording equipment is a distraction, will diminish the accuracy of the process, or distort psychological openness or effect the spontaneity of the process.

7. It is my practice to record, through the use of both audio and video recording, all forensic interviews. A third person is not present during the interview. I have regularly used this method of examination on cases for which I have testified as an expert.

8. In my opinion, the use of video recording enables the interviewer to capture the subject's unique image, as well as all verbalizations and non-verbal behavior. It allows all interested parties to see the demeanor, body language and subtle aspects of the interview that cannot be captured with note taking or audio recording by itself. Audio and video recording eliminate the need for the examiner to take notes during the interview and eliminate the possibility of any unintentional bias in the selection of what is documented by the note-taker. The recordings preserve the data in order for all subsequent evaluators (*including plaintiff's counsel and plaintiff's* own expert) to have access to equivalent material. This method also creates an unbiased record; it holds the examiner up to scrutiny, but protects her against unfounded claims of impropriety from the fallible memory of a live witness. Further, video and audio recording the examination eliminates the need for a third person in the room. In a forensic psychological examination, this third person witness is disruptive and adversely affects the interview. In short, it is my opinion that the combination of audio and video recording is an unparalleled instrument for preserving the integrity of a forensic psychological interview.

9. It has been my experience that the use of video and audio recording equipment has no substantive effect on the overall emotional well-being of the examinee.

10. Video recording forensic psychological examinations is the best way to insure the integrity of the process. Video recording forensic psychological examinations also serves as a safeguard and protection for both the evaluator and evaluee. This procedure will record the honesty, thoroughness and objectivity of the evaluator's work and will not interfere unnecessarily with the evaluation.

I declare under penalty of perjury of the laws of the United States and the State of Arizona that the foregoing is true and correct.

State of Arizona )

)

County of Maricopa )

I hereby certify that the foregoing Affidavit was subscribed and sworn to before me on this 7th day of October 2014, by Erin M. Nelson, Psy.D.

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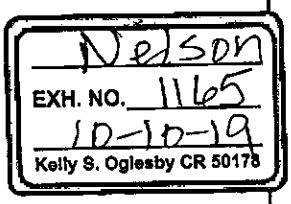
IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA




| | |
|---|---|
| FRANK JARVIS ATWOOD, Petitioner, | |
| vs. | CV-98-00116-TUC-JCC |
| CHARLES L. RYAN, et al., Respondent. | Tucson, Arizona October 7, 2013 |

BEFORE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE
405 W. CONGRESS
TUCSON, ARIZONA 85701

EVIDENTIARY HEARING - DAY 1

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER: MS. PAULA K. HARMS
ASST. FEDERAL PUBLIC DEFENDER

MS. GOLNOOSH FARZANEH
ASST. FEDERAL PUBLIC DEFENDER

MR. LARRY HAMOND
OSBORN MALEDON
ATTORNEY AT LAW

ON BEHALF OF THE RESPONDENT: LACEY STOVER GARD
ASST. ATTORNEY GENERAL

CHRIS WALLACE, RPR, CRR

405 W. CONGRESS, SUITE 1500
TUCSON, ARIZONA 85701
(520)205-4268

Proceedings prepared by computerized realtime translation.

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P R O C E E D I N G S

THE CLERK: In civil matter 98116, Frank Jarvis Atwood versus Charles L. Ryan, et al, on for evidentiary hearing.

Counsel, please state your appearance.

MS. HARMS: Paula Harms for Petitioner Frank Atwood.

MS. FARZANEH: Golnoosh Farzaneh for Petitioner Frank Atwood.

THE COURT: Spell your last name.

MS. FARZANEH: F-a-r-z-a-n-e-h.

MR. HAMMOND: Good morning, Your Honor.

Larry Hammond on behalf of Frank Atwood.

MS. GARD: Lacey Gard for the State.

THE COURT: Spell your last name, please.

MS. GARD: G-a-r-d.

Also present at counsel table, is our paralegal for the State and our expert witness.

THE COURT: Is there anything we need to take up before we start with the evidence?

MS. HARMS: I don't believe so, Your Honor.

MS. GARD: Your Honor, I don't know if we need to formally move to admit Stan Bloom's deposition transcript or testimony. I don't know how we're going to handle that.

THE COURT: Were you planning to play the video of his testimony?

MS. HARMS: We were not, Your Honor.

MS. GARD: No, Your Honor, but --

THE COURT: I want to watch some of it, maybe a half hour or so.

And that raises another question. Have either of you -- I was surprised in his deposition that there was no questioning regarding his experience in capital cases.

Did any of you plan on offering anything in that regard?

MR. HAMMOND: Your Honor, maybe I should respond to that. Would you like me to --

THE COURT: Sure.

MR. HAMMOND: There is some questioning in the deposition about his prior experience, but it's very limited. We were not calling him as an expert. We have, as you know, other people who have provided declarations, so we were not asking him to serve as an expert in the case.

THE COURT: Actually, I wouldn't have expected you to ask the questions. I was surprised that the respondent didn't ask.

MS. GARD: Well, Your Honor, I felt it had been adequately covered by the questions Mr. Hammond asked and I also thought that the primary issue was not necessarily his expertise, but was the decisions that he made in this particular case.

THE COURT: I'm going to tell you what I'm going to do. I'm going to direct the respondent to respond to an interrogatory; and you will have to consult with Mr. Bloom in responding to this. But I want to know the number of capital cases where he has represented a defendant prior to this trial -- not this hearing, but the trial of this case in 1986 -- the number of capital trials he had, the number of felony trials he had had, and the number of capital sentences, if there are any, in addition to the others that I have asked about.

MS. GARD: Yes, Judge.

MR. HAMMOND: Your Honor, might I suggest a short amendment to that interrogatory?

THE COURT: Sure.

MR. HAMMOND: Mr. Bloom had practiced both in Illinois and in Arizona. And at that time, of course, the systems had some distinct differences, so it might be wise to inquire of Mr. Bloom all of those questions both by Illinois and Arizona.

THE COURT: Let's do that.

MS. GARD: Yes, Judge.

THE COURT: Okay. Call your first witness.

MS. HARMS: Petitioner calls Dr. Donna Schwartz-Watts to the stand.

EVIDENCE ON BEHALF OF THE PETITIONER

DONNA SCHWARTZ-WATTS,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your full name and spell your last name for the record.

THE WITNESS: Yes, ma'am. I was recently married, so my married name is Donna Schwartz-Maddox, S-c-h-w-a-r-t-z, Maddox, M-a-d-d-o-x.

But I am still in the process of changing my medical license, Your Honor, so my professional name and my medical licensure is still under the name Donna Schwartz-Watts, S-c-h-w-a-r-t-z, hyphen, W-a-t-t-s.

DIRECT EXAMINATION

BY MS. HARMS:

Q. Thank you.

And what is your profession?

A. Presently, I have two jobs. In my State of South Carolina job, I am a senior psychiatrist at Harris Psychiatric Hospital, but I also have a practice in forensic psychiatry.

Q. And we can start talking about your background a little bit with your CV, which has been marked Exhibit 1 in this case.

Where are you licensed as a psychiatrist?

A. In South Carolina.

Q. Okay. And where did you obtain your undergraduate degree?

A. I went to college at a private university in South Carolina, Furman University.

Q. And did you graduate with any honors?

A. I did. I had a Bachelor of Arts in psychology and I graduated cum laude.

Q. And then where did you go to medical school?

A. I went to medical school from 1985 through 1989 at the University of South Carolina School of Medicine.

Q. And where did you do your residency?

A. I did a residency in general psychiatry from 1989 to 1993 at the Department of Mental Health in the University of South Carolina School of Medicine in Columbia and then I completed an additional year of residency in forensic psychiatry also in Columbia, South Carolina.

Q. So how many years have you been a physician?

A. I got my -- finished medical school in 1989, so about 23 years now.

Q. And are you certified in any forms of psychiatry?

A. I am. I have -- I'm board certified in general psychiatry and I have added qualifications in forensic psychiatry.

Q. Did you have to do any additional schooling to get

the certification for forensic psychiatry?

A. I did. Forensic psychiatry, it's a subspecialty just like cardiology is a subspecialty of internal medicine, so it requires additional study and I spent an additional year of residency. So that would have been five years in total, four years to become a general psychiatrist and then an additional year to obtain the degree in forensic psychiatry.

Q. Are there any areas that you specialize in?

A. Yes.

Q. Could you talk about those.

A. Sure. Over the years, I've worked in a number of positions, but I did have some expertise in sexual disorders. I had some specialized training probably compared to other forensic psychiatrists. I was -- I spent -- actually did an internship with John Bradford. He was a forensic psychiatrist in Canada who is a national expert in sexual disorders.

And I probably would also have some specialized expertise in juvenile justice. I worked in South Carolina for 15 years. One of my contract positions was at the Department of Juvenile Justice, so I treated adolescents. And other, other specialties, but those are certainly some areas where I've had further training or experience.

Q. And so you've done work in correctional psychiatry

also; correct?

A. Yes, I have. In South Carolina, Your Honor, I also worked in our Department of Corrections at the psychiatric hospital there for four years.

Q. Could you talk a little bit about your work with sex offenders and your past experience. I think you've mentioned to me you are a Rappeport Fellow.

Can you explain to the Court what that was about.

A. Yes. During the fourth year of residency in general psychiatry, there was a scholarship that was started for young residents who showed promise in forensic psychiatry and that program was sponsored through the American Academy of Psychiatry and the Law. And the year that I was awarded that, it was a fellowship or a scholarship that was given to, I believe, four other doctors in the country.

And what that meant is I was allowed to go up as a general resident and have training with forensic psychiatrists. We were also assigned a mentor, someone in the field who would follow our practice and assist us. And my mentor happened to be Dr. John Bradford who is an expert in paraphelias, which are deviant sexual disorders. So during that fellowship year, I trained with Dr. Bradford. I got to spend some time with him.

And then over the years, South Carolina, we developed a sexually violent predator statute in 1999. So

actually, for probably the first six or seven years of that statute, I was the person for the state that was designated to perform the evaluations to determine if someone was a sexually violent predator.

Then there was a period of time where I had a contract with the Department of Mental Health and I also treated the sexually violent predators. I went into that unit weekly and prescribed antiandrogens or medications that are used to control deviant sexual drive.

And then more recently, I'm involved again. This time, I presently have a contract -- Your Honor, our sexually violent predators are allowed a yearly annual evaluation to determine if they are safe to be at large. And so I'm presently with the Department of Mental Health conducting those evaluations of the annual reviews. And I do -- in fact, I saw two this week. I'm contracted with them to perform at least forty a year for them.

Q. And do you have any teaching appointments?

A. I do.

Q. Okay. Could you discuss those a little bit.

A. Yes. I have four now. For a number of years, I worked at the University of South Carolina School of Medicine and while I was there, I was promoted to the rank of clinical professor.

I left there, but I still maintain the rank. I'm

considered a DMH professor of psychiatry. And what I do is I teach the medical students. I have two working with me right now. But I teach the medical students at the university.

I also am appointed a clinical professor at the Medical University of South Carolina and that's with their forensic psychiatry department. And I teach their fellows in forensic psychiatry; I lecture them.

And then more recently, I moved to a small town, Anderson, South Carolina, and I have two new appointments there. I'm actually working with the Greenville hospital system where I'm an assistant professor and teach the medical students. And then we have another new hospital. It's a DO hospital. And I also am an assistant professor there and teach their medical students.

Q. And you previously worked at the University of South Carolina School of Medicine for about 17 years?

A. That's correct.

Q. Okay. And you were director of forensic services there?

A. Yes.

Q. Okay. Could you explain the nature of your work there.

A. Yes. I have done a number of things there. First and foremost, I was -- I was a director of forensic services, so most of my work actually involved forensic psychiatric

work. And that would be any area where there was a mental health issue and a legal issue involved.

And so for a number of years, that was the main crux of my job. I would perform evaluations, whether they would be civil evaluations, criminal evaluations. Some were court-ordered. I did also do some court-ordered evaluations for the United States Government.

I also had to teach. I also had to do research. And then I also treated a number of patients in various capacities. I worked at the Department of Juvenile Justice. I worked at the Department of Corrections. I worked at our sexually violent predator unit.

I also had a private practice within the university. I mainly treated outpatient general psychiatric issues like patients that were involved in workers compensation issues, but I also treated patients without criminal charges or legal issues as well.

Q. And so you currently have both a forensic practice and the clinical practice; correct?

A. Yes.

Q. And you currently treat patients with PTSD?

A. Yes.

Q. And you currently treat payments that are victims of childhood sexual abuse?

A. Yes.

Q. Okay. Do you have experience testifying in the sentencing phase of a capital case?

A. I do.

Q. Have you been retained by the State in capital cases to testify?

A. I have.

Q. And you've also done competency to be executed evaluations; correct?

A. I have.

Q. And you've testified for the state that the inmate is competent; correct?

A. Yes.

Q. Okay. Have you given any presentations or trainings to prosecutors?

A. I have.

Q. Can you talk a little bit about some of those.

A. Yes. When I was employed at the University of South Carolina -- we are very fortunate in Columbia that we have the National Advocacy Center, which is a beautiful training facility there, and it trains all of the United States Attorneys. And I believe also each of the states -- the local prosecutors also contract and receive their training there.

And with the United States Attorneys, I provided -- I would actually write reports for their training with

various issues, that I was instructed to help them learn certain issues. I also served as a mock expert for them where they could practice cross-examination techniques of a defense expert. And I've also worked with our South Carolina Attorney General's Office. I provided training to them on Internet crimes.

Q. And you spent some time on the forensic certification committee for the American Board of Psychiatry and Neurology?

A. I did.

Q. Okay. You're a member of the American Academy of Psychiatry and the Law?

A. I am.

Q. And you've served on several committees with them?

A. Yes, I have.

Q. Okay. You have also offered several publications over the years that have been published?

A. I have.

Q. Okay. And you've included articles dealing specifically with forensic practice in capital proceedings; correct?

A. Yes.

Q. Okay. And do you currently have any grants going on?

A. I do.

And I forgot to mention I am also working with the United States Government on a grant as well. We have a grant -- we were working with the Project Safe Childhood with some of the Internet crimes, a colleague of mine Dr. Gregg Dwyer, who's at the Medical University of South Carolina. And he and I have a few grants right now. We're looking at the profiles of the Internet predators, working on how to better communicate -- when they're in sting operations, how to better communicate with them.

But the main thrust of that research is the effects that prosecuting these cases have on the United States Attorneys. They're often traumatized by having to watch horrible videos, those sorts of things. And so the project was also developed to make sure that the United States Attorneys remain healthy when they're having to do this kind of work.

Q. I'm going to move on to your involvement in this case.

You authored two reports; correct?

A. Yes.

Q. Okay.

MS. HARMS: And those are Exhibits 2 and 3, Your Honor.

BY MS. HARMS:

Q. How did you become involved in this case?

A. Your office -- you contacted me.

Q. Okay. And I asked you to do a mental health evaluation; correct?

A. That's correct.

Q. And that was prior to any hearing being ordered in this case; correct?

A. Yes.

Q. And you understood that we were trying to present mitigating mental health evidence that could have been presented at the original sentencing; correct?

A. That's correct.

Q. Okay. And you understood that our mitigation investigation was still ongoing when we asked you to do the evaluation?

A. Yes.

Q. Okay. You understood the nature of the crime?

A. Yes.

Q. You understood that Mr. Atwood had a history of priors with children?

A. Yes.

Q. Okay. And you understood that he had been treated at Atascadero State Hospital in California because of these priors?

A. Yes.

Q. Okay. And Mr. Atwood was at Atascadero from 1975 to

1978; correct?

A. Yes.

Q. Okay. And you understood from the review of the documents that we gave you, that he had previously been diagnosed as antisocial personality disorder?

A. Yes, I was aware of that diagnosis. He also had been diagnosed with a schizoid personality disorder. But I was aware of that, yes.

Q. And also immature personality disorder?

A. Yes.

Q. Okay. And you also knew that he had been diagnosed with pedophilia?

A. Yes. Both attracted to males and females.

Q. Okay. How is it that you came to author a second report in this case?

A. Well, a number of reasons. I've learned that the case would be presented to the Court and so I wanted to have a complete and more thorough report for the litigation purposes. Secondly, new information was uncovered that needed to be addressed and I was able to obtain more history from Mr. Atwood.

Q. Also, between the timing of the two reports, the DSM-5 was published; is that correct?

A. Yes, it was. There are some changes there

Q. Okay. So in the first report, you used the DM-IV

criteria to diagnose PTSD?

A. That's correct.

Q. And in the second report, you used the DSM-5?

A. Correct.

Q. Okay. And you listed in your reports the various documents you reviewed, but you've also reviewed additional documents since those reports; correct?

A. Yes.

Q. Including police reports?

A. Yes.

Q. What we have called in this case the Bersienne letters?

A. Yes.

Q. And basically all the exhibits in this case for both sides?

A. Yes.

Q. One of your main findings was that Mr. Atwood suffers from PTSD. Could you just first speak generally to what PTSD is.

A. Yes. Your Honor, with the DSM-5, there's a little bit of differences in how the disorder's classified. When it was first diagnosed and recognized as a mental illness up until the latest edition of the DSM, it was considered an anxiety disorder. There's another classification, and it's considered under stress -- let me get the exact nomenclature

because it has changed.

It's classified now as a trauma and stressor-related disorder. And basically what that is, it's a mental illness. It's coded on Axis I. It's a major mental illness that can cause impairment in functioning and it has a number of criteria that must be met in order to reach that diagnosis. In a nutshell, one has to have been exposed to trauma. And there's resultant features clinically that you see in order to diagnose that.

Q. Could you explain to us how it would impair everyday life for someone who suffers from it.

A. Sure. Persons with this disorder often experience anxiety. And anxiety has physical manifestations. Increased heart rate, shortness of breath, difficulty sleeping. It's associated with a lot of emotional symptoms, including in Mr. Atwood's case specifically but even in other cases, irritability, aggressiveness, reactiveness.

It's also characterized by what's called hypervigilance where you're very aware of your surroundings. You can startle easily. So it has a number of dysfunctions. And when you're in a situation where you're exposed to things that remind you of your trauma or you're in an environment that's not safe, you will have numerous symptoms throughout the day, anxiety symptoms, panic symptoms. So it affects you on an everyday level when you're having the symptoms.

Q. I want to go through the criteria for PTSD and talk about each one and then how it fits this case.

The first criteria, as I understand it to apply in this case, is exposure to serious injury or sexual violence by directly experiencing.

Could you talk about the first trauma involved in this case and how it fits that criteria for Mr. Atwood.

A. Yes. I've learned through the investigation and also reviewing some records, that Mr. Atwood was the victim of a sexual assault when he was 14 years of age.

And my understanding of what had happened, he and a younger -- one of his younger friends were out looking for -- they were on the street and were in search of drugs. They were approached by a stranger in a car. He asked them if they would like to accompany him and he would help them find drugs and maybe some girls. They were taken to his home. He molested Mr. Atwood. Also molested the other child involved. In the meantime, the parents had called the police.

When Mr. Atwood and the other victim were returned home, the police were already there. The defendant had -- the perpetrator had dropped them off and was found later sound asleep in his car and was apprehended. And Mr. Atwood had to testify against him in court.

Q. Now, this first sexual assault at age 14, if that had been the only incident, that wouldn't be enough to fit

the criteria for the first prong of PTSD; correct?

A. Absolutely.

Q. Okay. The criteria for PTSD also allows for witnessing a trauma, learning about it, or experiencing repeated details. That's not the case here.

We're talking about directly experiencing all these traumas; correct?

A. That's correct. He was the victim in this case.

Q. Okay. In terms of sexual development, the fact that the molestation happened at age 14, is there anything particularly important about that age in terms of sexual development?

A. Yes, there is.

Q. Could you talk about that a little bit.

A. Yes. Your Honor, in studying normal sexual development, from ages zero to 10, it's considered a time where children are not very sexually active or sexually oriented. They don't really have the hormones or the things that you see with adolescents yet.

So it's very common from ages zero to 10, boys tend to hang out with boys and girls tend to affiliate with girls. And we all know when you hear little children saying boys have germs, if they're girls, and that sort of thing. So children from ages zero to 10 will normally affiliate with the same peer group.

Ages 10 to 14 is a time when sexual development occurs and there's hormones involved. The child is maturing. And that's also the age where there's a lot of experimentation that may or may not take place. So it's not uncommon at all from ages 10 to 14 that children may -- a boy may have a sexual encounter with another boy, a girl may have another sexual encounter with a girl where they're exploring or developing. And so that's a very confusing period of time in terms of sexual development.

After age 14, your development, if you're heterosexual or homosexual or bisexual, it's usually more determined by that period of time. But ages 10 to 14 are considered the identity -- the period where the sexual identity is forming.

Q. So is it fair to say, then, a molestation at that age could skew normal sexual development?

A. Yes.

Q. And PTSD is kind of unique as a psychiatric diagnosis because you have to identify an external cause for it; correct?

A. That's correct. It's one of the few disorders in the DSM where something had to have happened to you. It's a response to some trauma.

Q. And sexual assault is a common triggering event?

A. It is.

Q. How long has sexual assault been known as a cause of PTSD?

A. Well, the -- PTSD wasn't diagnosed -- it wasn't codified as a diagnosis until, I believe, the mid '80s or so. But it's always been recognized that sexual assaults will have effects on people's development. But it was not really codified until the DSM-II.

Q. Right. And that was 1980.

A. Yes.

Q. Okay. So sexual assault was in the DSM-II in 1980 as a cause of PTSD?

A. Yes.

Q. Okay. So it would be well-established by 1986 and '87 that sexual assault could cause PTSD?

A. Yes.

Q. I wanted to go to some of the records that corroborate that this molestation happened at 14.

MS. HARMS: Can we bring up Exhibit 10, please.

If you could highlight the portion.

Up above that.

BY MS. HARMS:

Q. Okay. So this report shows that Mr. Atwood was reporting being molested at 14 by a man who used force who was subsequently convicted of the offense.

So this corroborates in the record that this

happened; correct?

A. Yes.

MS. HARMS: And I'd like to go now to Exhibit 11.

And just for the record, this is an Atascadero record from 1978.

BY MS. HARMS:

Q. Do you find it significant that he was disclosing that information?

A. Yes.

Q. Can you explain that a little bit.

A. Many times persons will not report an assault. And he was in a treatment center and so he was disclosing that, so, yes, it's significant that he told someone.

Q. In Exhibit 11, it also talks about, "The patient told me that he was molested at 14 when a 24-year-old man forced the patient to allow him to fellate the patient. The man was convicted of the offense."

And you also reviewed Exhibit 5; correct, which is the declaration of Shelia Greger?

A. I did.

Q. And you also interviewed Ms. Greger on the phone; correct?

A. On two occasions, yes.

Q. Can you explain who she is.

A. Yes. Ms. Greger was a neighbor of Mr. Atwood and

his parents. And she reported that Mr. Atwood -- I believe they moved into her neighborhood when Mr. Atwood would have been one year of age. He was also a friend to one of her children.

Q. And it was actually one of her sons that was molested along with Mr. Atwood; correct?

A. That's correct.

Q. Did she say how her son reacted afterwards?

A. Yes, she did. She said there was a period of time where he was very -- she described him as weepy and frightened and -- but she reported that he recovered. But there was a period of time where he was very anxious.

Q. And so all those details you testified to earlier about the police being at her house waiting for the boys to come home, you obtained those from Ms. Greger; correct?

A. Yes. And I believe there's also another report that indicated the police were there when they returned.

Q. And she also recalled that Mr. Atwood had to testify regarding the molestation and the kidnap?

A. Yes.

Q. Okay. And Ms. Greger was never previously interviewed by any prior defense team for Mr. Atwood; correct?

A. Not that I'm aware of.

Q. In the hundreds of pages of Atascadero records that

represent Atwood's treatment from 1975 to '78, is there any indication that his molestation was ever a specific focus of his treatment?

A. No.

Q. Does it need to be and why?

A. Yes.

Q. Would you explain that.

A. Certainly.

When giving treatment to sex offenders, Your Honor -- there are many people who perpetrate sexual crimes that have been sexually abused. That doesn't mean that you're at increased risk to molest children as you age, but it's a factor that has to be considered when you're treating them.

For example, if you have been sexually abused, it's going to be more difficult -- if you, indeed, have post traumatic stress disorder, it's more difficult to disclose in group settings. There's issues where you're developing trust with others and so they don't tend to do as well in group settings.

Many times they require individual or separate treatment for the post traumatic stress disorder symptoms and they can be integrated into the group setting. But it's just -- it's a complication that has to be considered and addressed so that the person can fully benefit from -- back

then especially, which was the group treatment.

Q. So in your opinion, part of the reason Mr. Atwood did not respond well to treatment at Atascadero was that his underlying PTSD was never addressed for the prior molestation?

A. There are some records that indicate that; that's correct. And also, you know, there may have been his -- how much he contributed, how much he was willing to. But that's certainly an issue. And there's references in the notes there, that there were times where he didn't want to disclose or he was anxious. So I think it is important.

Q. And we wouldn't expect to see a mention of PTSD in the ASH records because it was not in the DSM in 1975 to 1978; correct?

A. That's correct.

Q. Absent even a diagnosis of PTSD, can you explain the significance of sexual assaults in childhood and the potential effects that can cause, especially in regard to male victims of sexual assault.

A. Yes. And again, as I mentioned, while we know -- just being sexualized as a youth does not predict whether you're going to be a sex offender as you mature. But what we do know is around the period of time when a child is victimized, they can have sexualized behaviors.

So it's not uncommon at all in adolescence and even

in latency-age children, if they've been sexually abused or traumatized, that you can see acting out or mimicking of sexual activity, number one. Secondly, in the males, there is a subset of them that become aggressive or they have difficulties adjusting.

Q. And the sexualization you're talking about, is sometimes the term called hypersexualized?

A. Yes.

Q. Can you explain a little bit of what that means.

A. Yes. Again, around the period of time when one is sexualized by an event, there may be more sexualized behaviors in that person. Say, for example, if a child is molested, you may see them acting out some of the same behaviors on an animal or another peer or a stuffed toy, or things like that, that they will mimic those behaviors.

Q. And soon after the molestation, Mr. Atwood began a sexual relationship with a peer soon after; correct?

A. Yes, he did.

Q. And he was arrested and convicted as a juvenile at age 16 for sexually assaulting someone; correct?

A. A 4-year-old girl; correct.

Q. And he also began prostituting himself in West Hollywood with much older men; correct?

A. Yes.

Q. And that was as a teenager?

A. Yes.

Q. I want to talk a little bit about substance abuse.

Is that a potential effect or something that happens after someone is sexually abused sometimes?

A. Yes. There's a large subset of persons with post traumatic stress disorder that develop complications or co-morbid illnesses and substance abuse is a very common one.

Q. Now, Mr. Atwood began using drugs prior to the molestation.

What was the extent of the drug use prior to the molestation?

A. He admitted -- and I believe there may be all -- some cross-references. He was in military school -- this was shortly before the time of his being molested -- and he was using barbiturates, a sedative hypnotics. I believe they were Seconals, a medication he had obtained from a peer who had stolen them from his father who, I believe, was in the healthcare field. And he was also using some marijuana.

Q. After the molestation, did the extent of the drug use change?

A. Yes.

Q. And how so?

A. Many more substances were involved. It ranged from LSD -- he used that quite a bit. And then it eventually progressed to methamphetamines, heroin, cocaine. So many

more drugs over time.

Q. And there's some corroboration in the record for -- that the drug use really began at age 14; correct?

A. Yes.

MS. HARMS: I'd like to turn to Exhibit 12.

BY MS. HARMS:

Q. And under the 2-25-75 entry, it says -- this is an ASH record -- "He considers that his problems lays in its unreliability and misbehavior began at age 14 when he began taking drugs, LSD, reds, et cetera."

So even though Mr. Atwood doesn't mention the molestation here, he reports that his problems with drugs started around the same time; correct?

A. Yes.

Q. Okay.

MS. HARMS: I'd like to turn now to State's Exhibit 107, page 2. This is an ADOC psych eval.

BY MS. HARMS:

Q. And in that, the psychologist reports that he said he began using drugs at age 14; is that correct?

A. Yes.

Q. Do you see that in there? Okay.

So we just talked about the initial sexual assault. I want to turn now to the other sexual assaults that happened after the initial one at age 14. Some of these cases are

primarily based upon Mr. Atwood's self-report.

Why is it that you find these reports to be credible?

A. Well, for a number of reasons. Victims of sexual assault often do not disclose the specifics of the assault for various reasons. And certainly someone that's in a correctional setting is less likely to do that for a number of reasons.

There's all implications if you're identified as a victim of sexual abuse that can make adjustment to incarceration maladaptive; and then, secondly, it requires trust or some level of safety to disclose those things.

So, for example, if someone's coming to do a 20-minute evaluation to determine what custody level he needs, he's not likely -- one would not be likely to disclose such a secretive and shameful thing.

What you see oftentimes in people that have been victims of sexual abuse is they're ashamed or they somehow blame themselves. And so that's not something that's easily disclosed.

Q. I want to talk about the first assault after the one at age 14.

And this was when Mr. Atwood was at a juvenile facility?

A. Yes.

Q. And he was 16 years old?

A. Yes.

Q. Can you talk about what happened.

A. Yes. Mr. Atwood reported -- and this -- in the second evaluation, Your Honor, I did get more details about what had happened.

But he had been -- while he was confined in the Youth Authority, he had been the target of some sexual pressure. And on this occasion specifically, he was out in the yard and states that he was lured near the fence with some young men who told him that they knew how he could escape from the facility or look at getting out.

He went over there and reports that he was forced to perform fellatio on two or three individuals and that they ejaculated on him. He states that he actually, unbeknownst to him, was discharged that day, was released that day and states that he was not -- did not have time to bathe. That he got into the vehicle with his father and his father noticed an odor and asked him what had happened.

Q. He did not report it otherwise to the correctional facility?

A. No.

Q. Now, you worked for 15 years approximately in the juvenile justice setting. How common is it for juvenile males to be assaulted at these facilities?

A. It happens and it's not uncommon. The actual rates, I don't know. But certainly, many of the children that I treated were victims of sexual assault while they were confined in the Youth Authority.

Q. And it's common for it to go unreported?

A. Absolutely. Even when one suspects it.

Q. The next sexual assault occurred when he was vacationing with his parents in Aspen. Can you talk about that a little bit.

A. Yes. Mr. Atwood stated he had -- I believe he had tickets to a Leon Russell concert and was at a bar and was talking to a stranger and asking to purchase drugs. And the stranger took him to his home, which was remote, and reported to him he would perform sex or he would be left out in the middle of nowhere.

Q. And then finally, there was another sexual assault while he was at Atascadero?

A. Yes.

Q. Okay. There is some record of this assault in the ASH records.

MS. HARMS: Could you bring up Exhibit 21, please.

And the last entry on the page for July 16th, a copy of the special incident report.

BY MS. HARMS:

Q. This report said he went to get some drugs from

another inmate and then was sodomized.

Do you see that?

A. Yes.

Q. Okay. And then above, it says that he was examined for rectal trauma and none was found.

Does that mean that a rape did not occur?

A. No, not at all. But I'm not able to see -- can we move that up to the exact...

Q. Oh, the exam part of it?

A. Yes.

MS. HARMS: Yes, so the entries above it.

THE WITNESS: Yes, the statement.

There was -- the ward staff desired a rectal examination for purposes of determining whether penile penetration of the anus took place.

BY MS. HARMS:

Q. And then in the entries above it?

A. Then it states, "Refer back to the ward doctor. Unable to give examination at this time."

And that was authored by a Dr. Sandry (ph).

Q. And then above that is a nurse note.

A. And the nurse's notes, it's entitled: Medical Examination of Patient.

Q. Uh-huh.

A. And it states, "Mr. Atwood was referred to the

medical clinic for purpose of rectal examination to determine whether penile" -- excuse me, there's a typo; I think they meant penile -- "penetration of anus took place. Medical clinic did not carry out an examination according to D. Wilkie. Patient was referred back to the ward physician by Dr. Hiller, the program director, to rule out trauma to rectum alleged by patient." It states, "Patient examined by Dr. Rogers at 4:00 p.m. with, quote, no findings, end quote."

Q. But there wouldn't necessarily need to be findings in order for a rape to have occurred; correct?

THE COURT: You're leading.

MS. HARMS: I'm sorry.

BY MS. HARMS:

Q. So this record doesn't necessarily mean did a rape take place or not?

A. Well, there's two things that stand out in this record. Again, I don't see the physician's exam, which causes me concern. So I don't know what examination took place. I don't know if he, indeed, had had a rectal exam. I don't know if it was an examination by observation. The nurse is the one that quoted those findings, so I'm not sure.

But certainly if there -- penetration can take place without tearing of the rectal tissue.

MS. HARMS: I would now like to go to State's Exhibit 177. This is a California Department of Corrections

record at Bates page 10279. This is in 1979.

And if you could highlight the section starting "during county jail confinement".

A little bit above that. That's okay.

BY MS. HARMS:

Q. Anyway, this paragraph talks about, "During confinement in Orange County, he was housed in a homosexual tank and apparently, there were numerous inmates who were transported with him from Orange County who are now aware of his homosexual orientation. There has yet to be any homosexual pressure. However, the possibility of such does exist and he is of the personality type to succumb to the pressure as opposed to alerting staff and/or attempting to handle the situation by himself."

Could you discuss the term "sexual pressure" and what it means in correctional facilities.

A. Certainly. Again, being solicited for sex. And some levels of force may be involved and some not. It can also just be other inmates asking you for sex or teasing you about your orientation.

Q. Did Mr. Atwood speak with you about any other instances of sexual pressures short of sexual assault while in prison and --

A. Yes.

Q. -- other facilities?

Could you speak to some of those occasions.

A. Yes. And those came, Your Honor, in the second evaluation. In the first evaluation, he had not disclosed those events. In the second evaluation, he gave a number of them, specific examples.

He states when he was -- in 1974 when he was at the Youth Authority, that -- or that may be Chino. I'm sorry. I'm not from this area.

But he states that there was an inmate playing a saxophone who came to talk to him. And they both enjoyed music. And that the inmate unzipped his pants and asked him to "take care of this for me". He states his roommate saw this and ran the gentleman off.

He reports that in the Youth Authority, he was pressured a lot, Your Honor. He gave examples that they had coed parties on Friday nights usually at the Youth Authority and they would have dances. And that he would often return after the dance and males would solicit him for sex, telling him that he was more attractive than the girls. And that happened quite often.

He reports that when he was in the LA County jail, that inmates would often sit on his bed and proposition him and that his nickname was Betty Boop, that that's what they called him because of his curly hair. He gives instances where they would physically grab his hand and place it on

their crotch area.

Q. Go ahead.

A. There are other incidents. In the LA County jail, he said that inmates would come to his cell and ask him for sexual favors. He also said at Soledad, that he had a roommate named Criswell who told him they were going to have sex after dinner that night. And so he reported that pressure and was transferred and stated that he stayed in the hole rather than have him as a cell partner.

Then he states when he was at San Quentin, he was threatened because another inmate learned that he had told on Criswell, his former roommate, and was told that they would get him in the yard.

He also talks about when he was raped at -- in Atascadero, that the person who was the lookout when that rape occurred, he later ran into him in the yard, I believe, at Soledad or one of the other institutions and had an intimidating smile from that person.

Q. Does it surprise you that Mr. Atwood began remembering all these additional incidents after you first saw him?

A. No, not at all.

Q. Can you explain why that is.

A. Sure. One of the symptoms, Your Honor, what you see of the PTSD disorders or people that have been abused, is

they avoid thinking about those things. It causes anxiety. It makes your heart rate increase. And it's easier to not think about those things.

And then in Mr. Atwood's own statement to me, he also stated that he had not thought about those things until we were specifically asking him about what's happened to him. And so he was able to go back through his institutionalizations and think about some of the events that had happened.

Q. And these incidents of sexual pressure, how are they important in terms of the PTSD diagnosis?

A. Well, it's very important. One of the symptoms, Your Honor, we'll talk about is there's -- called a trigger. There's things that can remind you of your past assaults that provoke anxiety. So not only does he have reminders, he's actually physically in an environment where he is dealing with those pressures. And those triggers are real when they're there and so they cause him much anxiety.

Q. And on page 9 of your second report, you talk about documents in 1982 and 1983, records that indicate he informed staff of the sexual pressure and requested protective housing.

Now, is that significant to you?

A. Yes.

Q. And why is that?

A. Again, he's trying to remove himself. He's avoiding being in a situation where he's going to be exposed to further -- first of all, to further trauma. And that would make him quite anxious.

Q. Protective housing is -- the circumstances of that would be such that no one would normally request to be there; correct?

A. No. We -- in South Carolina, we call that protective custody. It may be referred to in different terms in other jurisdictions.

But normally, that's a higher level of confinement. You don't have as much movement because you're there to be kept safe. So you don't get nearly the amount of movement that you would in a normal yard and you don't get the same amount of rec time or the same privileges.

Q. So you wouldn't request it unless you felt threatened?

A. Unless -- that's correct.

THE COURT: Counsel, you're leading.

BY MS. HARMS:

Q. I want to go now to the second criteria for PTSD, intrusion symptoms.

A. Yes.

Q. Can you talk a little bit about that.

A. Yes. The intrusion symptoms -- I'm going to use my

DSM-5, Your Honor, because again, some of the terminology has changed.

You have to have one or more of them that's associated with a traumatic event; and Mr. Atwood has two. The first is, "Intense or prolonged psychological distress at exposure to internal-external cues that symbolize or resemble an aspect of the traumatic event."

And what that means just basically, if you're exposed to something that reminds you that you may associate with that molestation, it causes you distress. And Mr. Atwood has reported to me that he has -- when he sees certain African-American males in the prison population, that that causes him anxiety and symptoms. Especially that resemble the male who attacked him at Atascadero and also the males that he reported attacked him when he was at the Youth Authority.

Q. And do the records bear out that there are actually frequent threats from other inmates against Mr. Atwood?

A. Yes. And that would be the second aspect, the marked physiologic reactions to internal or external cues that symbolize or resemble an aspect of the trauma.

THE COURT: I want you to focus on the --

MS. HARMS: Okay. Sorry, Your Honor.

I want to bring up State's Exhibit 109 at Bates 10034.

And if you could highlight the portion about "expressed concern about housing".

BY MS. HARMS:

Q. So what does this document indicate?

A. In this document it reports, "He expressed concern about housing staffing. That he only attends rec one or two times per week because he is afraid of being darted. Inmate" -- excuse me -- "informed inmate to tell security. He agreed to do so."

MS. HARMS: I want to go now to Exhibit 109 which is page 10040.

If you could highlight the handwritten part, please, at the bottom.

THE WITNESS: Yes, ma'am. It's -- and I'm not sure what this stands for. It says, "Denied DTS, slash" -- it looks like "DTO". I'm not sure what that stands for.

But the rest of it states, "Inmate indicated feeling threatened by inmates in C cluster, as inmate was recently moved for H to C. Inmate believes that inmates will break down cell door to attack him."

And this was January 10th, 2012.

BY MS. HARMS:

Q. Knowing what security is like at Browning, what does this document say to you?

A. Well, in my opinion -- I've been to Browning, Your

Honor. I don't think a cellmate could probably break down the door. Maybe it could happen, but I would be very surprised. They seem pretty sturdy and reinforced, but...

Q. So this is supportive of PTSD?

A. What it indicates -- again, there are times where he has reactivity, he's fearful, he's afraid something will happen to him. And he's in an environment where he is often threatened and so he's gotten to the point -- in some of these instances, he's reporting these threats. But one can see the anxiety and the fears. He's avoiding going to rec. He will report that he does not feel safe.

Q. These constant triggers, do they explain that he has suffered from PTSD?

A. Oh. Well, there's certainly -- if you go back in time, there is -- and throughout his correctional records, there's histories where he has felt threatened and has made some reports about that. So certainly, it shows that it's -- he's had those -- that anxiety about being attacked or fearful of being attacked by other inmates and has gone to lengths to avoid that happening.

Q. And what is the third criteria for PTSD?

A. That's the avoidance of the stimuli that's associated with a traumatic event; and he has two of those symptoms. He avoids dealing with the distressing memories or the thoughts. And again, we've seen that. Those were not

things he readily disclosed. He did not offer those; he did not volunteer those symptoms when I interviewed him.

And then secondly, avoidance of effort -- or efforts to avoid the external reminders. And that's more what you're seeing in the prior documents, Your Honor, that he will avoid going in the yard. He will avoid interactions with other inmates so he's not in situations where he will be reminded of what's happened to him or also, to prevent it from happening again.

Q. And what is the fourth criteria for PTSD?

A. This is a new one, Your Honor. It's called negative alterations in your cognition, the way you think or in your mood. And for some people, they can't remember some of the events. That's not really Mr. Atwood's symptoms.

He has a number of them, though. The first would be a persistent and exaggerated negative belief or expectation of himself or the world. And very specific examples of that would be he believed very early on that authority was not to be trusted. That's a very common negative cognition that you develop with PTSD. Blaming himself that he was the cause of what happened to him because he didn't say no.

Also, you can see a persistent negative emotional state. And for him, he -- I think the records specify him as angry. And certainly the Atascadero records, I think they characterize him as rebellious and angry. He's very

irritable.

His records are replete with examples. For example, a corrections officer may discipline him and he gets very explosive and very threatening, says very crude remarks to them. And that can be associated with a cognitive and emotional state.

Q. What about the number of records where Mr. Atwood discusses the molestation and he says "I liked it"? How does that work with --

A. That's very consistent with the distortion where you blame yourself or you think -- because you didn't say no. That happens to many victims. There is -- victims of molestation, especially if they have physiologic response, they have orgasms in response to the molestation, they feel very guilty and somehow believe that that means they enjoyed it or they deserved it.

Q. Over the years, has Mr. Atwood been given any medications for anxiety?

A. Yes, many.

Q. Could you name some of those.

A. Sure. He's received numerous antidepressants that are also indicated for the treatment of anxiety, Your Honor, one being Sinequan, which is an antidepressant that's got sedating effects. He's received some antidepressants known as selective serotonin reuptake inhibitors; and those are

medications like Paxil and Celexa and Zoloft. He's also received anti-anxiety agent known as Atarax or it's often called Vistaril, which is for anxiety. And he's more recently been prescribed an anti-anxiety agent known as Buspar.

MS. HARMS: I want to bring up Exhibit 163, which is the psychological report that was done in 1973 which is three years after the molestation.

Could you highlight the sentence that says -- I'm sorry, start a little earlier than I have -- "he is a person". Next to the last paragraph.

Could you highlight a little more, down a little.

THE WITNESS: It's not very clear and it's not the fault, but excuse me if I have an error when I read it.

"He is a person who makes inadequate and/or ineffectual responses to emotional, social, intellectual, and vocational demands placed upon him. While he is certainly not mentally deficient, he does show considerable inadaptability, ineptness, and poor judgment, particularly in situations he finds stressful, which may appear to be minimal to others."

BY MS. HARMS:

Q. Does that statement have any meaning to you in terms of the diagnosis of PTSD?

A. Yes. That one especially. That's what we call

numbing. That was -- in the DSM-TR, that was more used. There are times where people don't really have the emotional responses you would expect.

MS. HARMS: I'd like to go now to Exhibit 23. And this is a December 19th, 1977 record from Atascadero.

If you could highlight the section that says "appears tense" from the first paragraph.

THE WITNESS: Yes. It states -- there is some writing before that, but it states, "Appears tense. Firmly biting jaws. Advise of patient's request for meds for anxiety and tension."

BY MS. HARMS:

Q. And does it indicate he was given anything?

MS. HARMS: I think down a little further, it does maybe.

THE WITNESS: "Patient is more agitated and requesting medication to help calm him down. The" -- I believe it says -- "MD notified and ordered Thorazine, 25 milligrams, IM stat."

BY MS. HARMS:

Q. Is that significant to you?

A. Yes. There's a number of things significant about this -- these entries. These entries were -- he was at Atascadero State Hospital and this actually was after the time where he had been given the recommendation to be

released and then later, that recommendation was rescinded.

And there was a period of time that he began decompensating and complaining of severe anxiety. And the fact he was given Thorazine -- Thorazine is a medication -- that's actually a antipsychotic medication, Your Honor. But when given IM, it has very sedating effects and it can calm you down very quickly. But that was a very strong medicine to give under that circumstance.

And secondly, the Thorazine is very thick. So when you get that medication in a shot, it is quite painful. That is not a medication routinely requested by any of my patients.

MS. HARMS: I'm going to go now to Exhibit 171. This is a 1979 psychologist report where he was given a personality test.

If you could highlight the part that says "has great difficulties with worry".

In the second paragraph near the top.

THE WITNESS: Yes. And -- oh, yes. This is significant. He had received a psychological test that looked at his personality profile during this period of time.

And the test results indicate that, "This is a person with a chronic personality disorder who has great difficulties with worry, rumination, introspection, and poor ego strength. He has a history of vague and unusual physical

complaints. People like this generally maintain their social distance and they feel social inadequacy. There is a lack of interpersonal trust and an inability to express anger in a modulated fashion."

BY MS. HARMS:

Q. Are these results consistent with someone with symptoms of PTSD?

A. Certainly. Again, it highlights the anxiety that you see, the lack of socialization. And it's also symptoms that I see still presently in Mr. Atwood that I have incorporated into my diagnosis of him.

Q. And I want to bring up some records which indicate he was treated with medication.

MS. HARMS: Exhibit 33 is a Pima County jail record. And the last sentence.

BY MS. HARMS:

Q. What does this record indicate?

A. Yes. This was -- I'm sorry, Your Honor. I'm trying to find what year he was at Pima County. But it was continuing his Sinequan. Sinequan is an anti-depressant that's given at night because it has sedating qualities and it's used for anxiety as well.

MS. HARMS: And Exhibit 36. There are two entries near the top. This is in 1985.

A little bit below. Okay.

THE WITNESS: Yes. In this one, it states that he's receiving Atarax, 50 milligrams at 1400 hours and 100 milligrams at night. Atarax is an antihistamine with anxyolitc properties. And that's a pretty high dose. The max you can have is 200 milligrams a day and he's given 50 milligrams in the morning and 100 at night.

MS. HARMS: And then if you will turn to page 5 of that exhibit, the 10-10-85 entry, "inmate receiving Atarax".

THE WITNESS: Again, "Call received. Inmate receiving Atarax, but complains of headaches which have been attributed to nervous tension."

BY MS. HARMS:

Q. Is nervous tension something that you might see in someone with PTSD?

A. Certainly. That's a symptom of anxiety, yes.

MS. HARMS: And now I want to look at Exhibit 110, which is the health needs request from May of 2011.

If you could highlight the handwritten part in the middle.

THE WITNESS: This looks like Mr. Atwood requesting he'll -- "I'm again in a situation where anxiety, lack of appetite, difficulty sleeping infect (sic) my mental health. And bad thoughts keep attacking me. Feel out of control. Please help me."

BY MS. HARMS:

Q. Would that be consistent with PTSD?

A. Yes. And anxiety disorders and certainly consistent with post traumatic stress disorder.

MS. HARMS: And then if you could bring up State's Exhibit No. 111, please.

And if you could highlight the handwritten part in the middle.

THE WITNESS: This states, "After nearly four weeks of Zoloft, I am enduring bad effects, including nausea, dizziness, lethargy, slash, apathy" -- and then in parentheses, "to the point of depression," end parentheses -- "exhaustion," -- but I believe that's misspelled -- "headache, anxiousness, tremors even with minimal dosage. Feels like anxiety disorder is worse. Can you please add or change the Buspar, please. Hope this can be done soon." And then in parentheses, "Feel awful," end parentheses, "Thanks."

BY MS. HARMS:

Q. Can the symptoms of PTSD, such as anxiety, can they sometimes manifest in physical complaints?

A. Absolutely. Anxiety does have a physical component. You have increased heart rate, you sweat, fearful. Yes. You can even have increased blood pressure at times if you're extremely anxious.

Q. What about headaches?

A. Certainly.

Q. Do the records show anything about headaches for Mr. Atwood?

A. Yes. He has a long history of documented headaches. He's been worked up for them. It looks like they mostly have been attributed to muscle tension headaches, which you can see in anxiety. When you're anxious, your muscles are tense, you hold your posture differently. And it's not uncommon to have headaches.

Q. MS. HARMS: I'd like to go now to Exhibit 65. This is a ADOC record from 12-16-93. If you could highlight the first entry, the top four lines.

THE WITNESS: This is what's called a SOAP note, Your Honor, and SOAP notes are written by physicians or medical practice. S means subjective; that's what the patient complains of. And the subjective part of this note says, "Oh, I feel better now. It was anxiety." And --

BY MS. HARMS:

Q. And why was he feeling anxiety?

A. I'm sorry?

Q. I said why was he feeling anxiety?

A. It states on -- on the O, which is the objective part which would be the person's observation who's authoring the note, it states, "He feels better since he has been moved from 1-A wing. Says he felt threatened there."

MS. HARMS: I'd like to now go to State's

Exhibit 109. This is the psychiatric ADOC record.

And if you could highlight the first written portion.

BY MS. HARMS:

Q. Does that indicate additional treatment for anxiety?

A. Yes. And also, the physical symptoms of anxiety. "Takes Buspar for anxiety. Complains of feeling dizzy sometimes. Always distracted. Gets frustrated easily and anger, agitation. Feels hopeless" -- I'm sorry. I cannot read -- I'm not sure what --

Q. Well, what you have read so far, is that consistent with PTSD?

A. It's a physiologic manifestation of anxiety. And anxiety and the somatic complaints are seen -- can be seen with post traumatic stress disorder.

MS. HARMS: And if you go a little further down on the document, there's a box for existing diagnosis. Would you highlight that.

With the handwritten portion in it. There we go.

THE WITNESS: Yes. The person diagnosing him put, "Depression not otherwise specified, slash, anxiety."

BY MS. HARMS:

Q. So this is ADOC psychiatric staff diagnosing him with anxiety?

A. May I look at -- and see who wrote -- the author of the note. If I could look at the bottom.

MS. HARMS: Highlight the bottom of it.

THE WITNESS: I'm not -- it looks like -- I'm not sure if that's a medical doctor. There's a name there, but it -- I don't know what P -- it looks like PRN 2. I'm not sure what that stands for.

BY MS. HARMS:

Q. Now, without knowing a history of sexual trauma, would you expect them to diagnose PTSD?

A. No. No. Again, you'd have to have the history. You'd have to know about the first criteria, whether someone was exposed to trauma, witnessed trauma, or is exposed to trauma chronically.

MS. HARMS: If we could go to the fourth page of that exhibit. And this is months prior to that.

If you'd again just highlight the existing diagnoses section with the handwriting.

THE WITNESS: Yes. And there he's diagnosed with anxiety disorder not otherwise specified.

And I'll back up. I looked at the top of that page. It does say "psychiatric follow-up note," and it's the same person, it looks like, that authored the other note. But again, I'm not sure what PRN 2 means.

But he's clearly diagnosed with anxiety disorder not

otherwise specified.

MS. HARMS: And then if we can go to the next page.

And if you could highlight the comment section.

THE WITNESS: Yes. And this note is authored by a psychologist. I can read it's a PhD. I cannot see his name. But it states, "Provided grounding techniques and breathing exercises."

BY MS. HARMS:

Q. So is this something he was advising Mr. Atwood to do in order to cope?

A. Well, it looks like it's -- those are certainly behavioral techniques or things that you can use to help people deal with anxiety.

Q. So I won't belabor this further with more records, but these psychiatric notes in ADOC indicate several diagnoses under anxiety?

A. Yes. The records reflect that his anxiety has gotten to the point where he's seeking help for it and he's receiving medications for it and he's being given some behavioral treatments for it.

MS. HARMS: And then if we could go to Bates 10048 of this exhibit. It says "psychiatric follow-up from 6-23-11".

And if you could highlight the written portion, please.

THE WITNESS: "He says he has been having a problem with shortness of breath. He's been checked out medically and says he was told it was -- it was something due to anxiety."

MS. HARMS: Okay.

THE WITNESS: "He wants to start Zoloft. Says his wife recommended it."

BY MS. HARMS:

Q. Okay. I think I'd like to turn now to the fifth criteria for PTSD.

Could you explain what that is.

A. Yes. That's just the -- that's the old -- Your, Honor, I have to go back -- and I apologize. The DSM-5 just came out and said this is a little bit different. Normally I could tell you these things, spew them off.

It's been changed and now what this is, is a marked alteration in arousal and reactivity associated with a traumatic event. And what this is -- that's a physiologic manifestation that may be able to be observed by others. And the symptoms that he has, irritable behavior and angry outbursts with little or no provocation. Typically expresses verbal or physical aggression towards people or objects.

And again, as I mentioned, his records were replete -- there were many times where he's approached by a corrections officer for something and in some cases they're

minor and in some cases, they're not. In some cases, he's felt threatened and he's reported that.

But there are many times where he has been explosive and he will threaten to rape family members of corrections officers or to harm them. And it has been with little provocation, although he's certainly upset at the time.

And the second symptom that I observed directly is called hypervigilance. And what that is, is you're scanning the environment. You're looking for danger. You're aware of -- you're easily distracted and looking for things so that you are making sure that you are safe.

And the second time that I evaluated Mr. Atwood when we were at the Browning unit, that was -- the staff were kind enough -- they allowed me to go on a day that's normally not reserved for experts because I had flown in from South Carolina. And so on that date, there were other visitors in the area.

We were in a separate area, Your Honor, where it's locked and quiet, but you can hear other inmates. And Mr. Atwood, every time a door shut, everyone he heard -- every time he would hear someone talk -- not every time, but often -- he would stop and look around. He was much more distractible and less able to pay attention than he was on his first evaluation.

And then the third symptom you can see that showed

the marked alterations in arousal is sleep disturbance. And his records are replete -- there are, again, many instances where he's asking for sleeping medications. He reports a long history of not being able to rest well.

MS. HARMS: I want to look now at Exhibit 25. If you could highlight the last four sentences for me.

I believe this is an Atascadero record. Yes, it is.

Last paragraph is fine, too.

Actually, could you go up a little bit before that.

THE WITNESS: This states, "Frank was surprisingly honest. He listed his problem areas as one, misdirection on people; number two, drug abuse. I don't like to admit it. I think it is an escape. Frank exhibits demanding body language presenting himself as hostile and angry. He lacks social skills, specifically in relating to women. Frank also needs to improve his self-image and become more trusting. I feel Frank is a frightened individual. It would also be a good idea for Frank to talk to the staff on a regular basis."

BY MS. HARMS:

Q. And what does this record say to you about the PTSD diagnosis?

A. Again, this goes back to some of the second symptoms we were talking about. You can have persistent emotional states where -- I think the fact that he's angry and hostile, that's been consistent with observations.

Also, I think he reports here the staff notices that he's not very trusting and they noticed that he's frightened, which can be a symptom of anxiety.

Q. So anger can be a symptom of PTSD?

A. Certainly.

Q. And this same behavior can also be used to support a diagnosis of antisocial?

A. Certainly. Well, that's -- anger is a symptom, aggression is a behavior. So as with any kind of medical illness, a symptom can be reflective of many diagnosis (sic). But certainly persons with antisocial personality can be aggressive and angry at times. Absolutely.

Q. And under the fifth criteria, what is that?

A. (No response)

Q. I'm sorry. It also lists reckless and self-destructive behavior?

A. For anti -- I'm sorry. I'm not following the question.

Q. Under the fifth criteria for PTSD?

A. Yes, it does. The second criteria -- I've -- that wasn't the ones I necessarily noticed in Mr. Atwood.

But yes, one of the -- arousal or reactive states associated with post traumatic stress disorder can be reckless or self-destructive behavior.

Q. Would substance abuse be included in that?

A. Sure.

Q. Prostituting yourself in West Hollywood?

A. That -- certainly. Especially in that period of time where the AIDS epidemic was beginning. Absolutely.

Q. Are there any records about suicide, attempts or ideation?

A. Yes.

Q. Do the records also speak to his ability to participate in group therapy?

A. Yes.

MS. HARMS: I want to look at Exhibit 32.

If you could highlight the next to the last sentence, "subject stated".

I'm sorry. This is a California DOC record.

THE WITNESS: "Subject stated he did not want to talk about his offense in a therapy group, but would discuss it on a one-to-one basis."

BY MS. HARMS:

Q. Is that consistent with someone who has PTSD?

A. Yes, and it ties back to what I mentioned earlier. You have to address that individually and help control those symptoms or give therapy to the patient so they're able to better benefit from the group therapies that are offered for sex offenders.

Which I see all the time. Many of the evaluations I

do, the person may have had a preexisting trauma that's not been explored, that's not been addressed in treatment and they don't participate -- they don't get the full benefits of the group treatments.

MS. HARMS: Could you bring up Exhibit 59 and highlight the 2-4-77 entry, "Frank attended men's sex ed. class," those three sentences.

Yes, the whole entry is fine.

THE WITNESS: It states -- can you...

MS. HARMS: A little further. Yeah.

THE WITNESS: "Frank attended men's sex ed. class for two hours today. He did not participate in the group discussion, nor ask any questions on the material during the class. He slipped down in his chair and stayed in this position throughout the class."

BY MS. HARMS:

Q. Is that consistent with what you were saying earlier?

A. It could be. He also may have been bored that day or not participating. But often in people if they have some anxiety, they may not participate in group, so it would not be inconsistent.

MS. HARMS: Could you go to Exhibit 62 and highlight the first half of the paragraph that says "no involvement at all".

THE WITNESS: This is a therapy group note that states, "Frank spent the first half of the group looking bored, smoking cigarettes, and showing no involvement at all in one of the group members who had the floor. When his behavior was pointed out to him, he stated: Not getting anything out of group and not wanting to be part of it. He stated: Not trusting anybody in the group, particularly staff as he would only get in trouble if he did open up. He supposedly" --

BY MS. HARMS:

Q. That's okay.

So is that consistent with someone with PTSD?

A. Well, it's consistent with someone who's been abused. They don't feel comfortable disclosing in a group and that's a symptom that you -- certainly a symptom that you can see in post traumatic stress disorder.

I just want to say for the record, all of these -- a lot of the things that you're giving me and showing me are consistent with anxiety. PTSD does not have a check box where you can say -- but these are associated features and things that you can see in persons with this disorder.

Q. I want to talk some now about sleep disturbance.

MS. HARMS: Could you bring up Exhibit 26 and highlight the 2-22-77 entry about halfway down, more than halfway down.

THE WITNESS: Yes. As I mentioned, there are many records that document his inability to sleep.

This states, "During this session, he talked about his inability to sleep, the fact that he has used" -- I can't read that -- "available resources to try to go to sleep. And states a lot -- he states that none of these has helped him. He is insistent that he -- that the only other available alternative is to be placed on drugs."

BY MS. HARMS:

Q. I want to talk now about the sixth and seventh criteria of PTSD.

Could you explain that.

A. Sure. And, Your Honor, those are just kind of probably more for insurance and coding things.

But the symptom has to last more than one month. And the reason being, there are some people you can have -- be exposed to some sort of trauma and perhaps you don't -- you may have those symptoms for a period of time, but they may not persist. And so that -- the symptoms have to last more than a month.

And then one of the more important factors is the disturbance has to cause distress or an impairment in your functioning. So some people can have those symptoms and they're still able to work, they're able to function, and they're not in situations where they have impairments in

functioning. So you have to have impairments in the way that you're able to adapt.

THE COURT: Let's take a brief recess.

(Brief recess taken)

BY MS. HARMS:

Q. When we left off, I think we were talking about the sixth and seventh criteria and impairments and functioning.

Are one of those impairments occupational functioning?

A. It can be, yes.

Q. What is Mr. Atwood's job history like?

A. I think it's very fair to say he's never had substantial gainful employment. There was a period of time where he worked for his father, I believe, in the cable industry. I believe he reports there was one period of time where he worked very briefly at a radio station. And then it looks like there was a period of time where he was confined, that he was serving as a legal aide. But he's not had long-standing gainful employment.

Q. Are there any social impairments?

A. Yes.

Q. I would like to look at Exhibit 51. It's an Atascadero record noting objectives and plans.

If you could highlight the second section on the right. Yes.

A. Yes. It looks like one of the -- it's a treatment plan, section of what you had up earlier.

It states, "As a plan, patient will daily initiate at least five conversations with anyone on the ward for at least twenty minutes in duration. LOC staff will observe and document daily."

Q. What does that indicate to you?

A. That one of the plans for him is to interact more socially.

Q. And what is the final criteria for PTSD?

A. You have to make sure it's not from a medical condition or a substance abuse, Your Honor. There's many substances you can withdraw from that cause anxiety.

For example, if you're withdrawing from alcohol or medications like Xanax or Ben- -- they're called benzodiazepines -- you can have a physiologic withdrawal that looks like anxiety. And there's many medical conditions -- thyroid conditions, those sorts of things -- that can mimic anxiety.

Q. And what is the relative rate of PTSD among survivors of sexual assault?

A. Well, they know that the highest rates of PTSD are seen in victims of sexual assault, if you're a victim of torture, or in military experiences.

Q. What about the existence of other mental disorders

and PTSD?

A. Our DSM-5 is very nice, Your Honor. It actually puts some good descriptors in there. And it states that 80 percent of patients diagnosed with post traumatic stress disorder, up to 80 percent can have a co-morbid condition.

Q. Now, you did not diagnose pedophilia, but you put pedophilia by history.

Can you explain that.

A. Yes. This was a very difficult case, Your Honor. Technically, one could diagnose Mr. Atwood with pedophilia just based on the behaviors alone. The DSM over the years, it's changed. And early on, it required that persons had to admit to that. And as you can imagine, people that perpetrate behaviors that are illegal are not usually going to volunteer that. So it was changed over time to include that you could make that diagnosis based on behaviors alone.

So I acknowledge that he has clearly been identified and diagnosed with pedophilia in the past and he technically meets that criteria because he's had three different behaviors over a period of time that would qualify for that diagnosis.

I put my history, and I have not made that an active diagnosis at this point for a number of reasons. You can be a child molester, but not necessarily be a pedophile. You can abuse children and not necessarily be a pedophile.

Pedophilia is a psychiatric diagnosis in our book and it's characterized by symptoms and it's routinely worked up when I -- I perform these evaluations many times. And when I'm evaluating someone for pedophilia, I do a complete workup. I order lab tests. And you have to order lab tests. You have to look at hormones. There's many -- and I don't mean to be sexist, but there are more men that are caught and evaluated for this disorder than there are women.

But there's hormonal imbalances that you can see at times that can -- you have to rule out as a cause for that behavior. And I've seen it. And that would be a high testosterone level. So you have to check blood levels.

The other thing that we commonly do is you do psycho-physiologic assessments. And that's recommended in our DSM as well. There's a lot of psychological tests that you can use to compare how Mr. Atwood would think to other people who have been child molesters, to look at the thoughts they have in common, the behaviors they have in common.

And there's also physiologic testing that would show whether he has arousal to children or not. So he has not had that workup. I have seen nowhere in his record where at any point in time, including now, where he's ever had the evaluation that's normally rendered under those circumstances. So that's one caution I have.

The other concern I have is in the work I have done

with people who are pedophiles, they usually groom. They know how to groom victims. They can have relationships with victims. They're liked. They're normally people with personality profiles that children are drawn to them. And he does not fit any of those criteria that you clinically see in persons with pedophilia.

And then the other concern I had on some of the sex offenses, Your Honor -- and it was through no one's fault. In fact, I think I was -- since the last time I spoke with Ms. Gard, there's actually a little bit more information I was able to uncover in reviewing records.

But some of these offenses, there were not a lot of details available; the offenses were old. And so, for example, the offense against the 4-year-old girl when he was 16, I had some questions about that, that I think needed to be clarified before rendering that diagnosis.

Finally, and I think foremost importantly, in forensic psychiatry, we are cautioned you have to be very careful about the diagnoses you make. So, for example, if someone is charged with arson and you come in and you diagnose that person with pyromania, your diagnosis can be very prejudicial to that person.

And so because he's not had the workup, because there's still some questions I have about some of the offenses themselves, and what I know clinically about

pedophiles, I acknowledge that diagnosis, but I put my history.

MS. HARMS: I want to turn to Exhibit 57, which is an Atascadero record.

If you could first highlight under paragraph A under rationale, the sentence that starts "his history of three arrests".

THE WITNESS: Yes. This states, "His history of three arrests and two convictions for child molesting occurred in the context of extensive adolescent rebellion and drug use. The question of dangerousness probably centers around whether he has resolved his authority struggle and can remain free of drug use."

BY MS. HARMS:

Q. What does that say to you about the molestation behaviors?

A. Well, this was very important. This document was very important, in my opinion. These were the group of people that were treating him, Your Honor, and this was part of a community placement summary. So these were the people that had worked with Mr. Atwood. And actually, the persons who authored this document were a physician and, I believe, a psychologist that were involved in his treatment.

And it looks like that part of their working diagnosis or part of their basis for looking at his sex

offending behavior is they attributed some of it to adolescent rebellion. And again, that's consistent with what I said. Some people can be child molesters, but not necessarily pedophilia.

And so that, to me, indicates that at that period of time, that they saw that there was some rebellion. He was adolescent. They're particularly talking about the first charge he had with the 4-year-old girl when he was 16 years of age, would be my opinion.

MS. HARMS: And if you could go down to the next paragraph and highlight where it starts "a lot of therapy work". A few sentences.

THE WITNESS: Yes. It states, "A lot of therapy work is focused on Mr. Atwood's relationship with his parents. And they have participated in therapy sessions with him and a much more comfortable relationship now exists between them. This should diminish the potential for rebellious acting out behavior."

BY MS. HARMS:

Q. So that's consistent with what you were stating earlier?

A. Yes.

Q. Okay. I want to move on now to talk just about developmental history.

Can you speak to the importance of that.

A. Yes. In developmental history, Your Honor, that's the period of time where a child from the time they're in utero until they reach early adulthood, you're looking for important things. Medically, you're looking for, for example, certain medical illnesses. You're looking for difficulties with psychological development.

You're looking at the environment in which that child was raised, looking for things that are abnormal in development. Abnormal development can be a precursor of mental illness. It can be a precursor for personality disorders. It's associated with many things, but it's very important history to obtain.

Q. And so to get that information, you review records; correct?

A. Yes.

Q. And did you --

A. If people are available, yes. And if people are available, you try to interview them. That would have that kind of history.

Q. And who did you interview in this case?

A. Well, in this case, Mr. Atwood's mother died in 2011; his father died in 2008. I attempted to call -- he has an aunt, a paternal aunt. There was a declaration from her I reviewed. I attempted to call her, but she did not return my call.

And so some of the developmental history was also obtained by the neighbor Ms. Greger who -- Mr. Atwood lived in her neighborhood since he was one year of age. And so I was able to obtain some history -- it's very limited because she's a neighbor -- from her.

And then I also was able to look at some of the old records that reference -- Ms. Atwood was certainly alive -- Mr. and Mrs. Atwood were certainly alive when Mr. Frank Atwood was in treatment and so I'm able to collate some of that data from there as well.

Q. Did you speak to a Dr. Crausman?

A. I did.

Q. Could you explain who he is.

A. Yes. Dr. Crausman was a psychologist who treated Mr. Atwood's mother. Mr. Atwood would have been latency aged at the time that -- latency age at ages probably 3 to 8 around the period of time that Dr. Crausman treated Mr. Atwood's mother. And he had some observations of Mr. Atwood that were also helpful.

Q. Did the information you obtained from Dr. Crausman change your opinion on the developmental period at all?

A. Yes.

Q. And how is that?

A. Well, in the original report, Your Honor, my -- the records and my assessment, I indicated that I -- well,

Mr. Atwood had a normal development up to the age of 14. Originally, my opinion was that he was well-adjusted. He grew up in a family. His father was obviously very successful vocationally; he was a brigadier general. His parents were married. You don't often see that in a lot of our inmates that we evaluate. He was raised in an intact family. And it looked originally that he was functioning well until he was molested at age 14.

However, upon conducting further evaluation and -- also, Dr. Nelson very astutely in her report noted that he was even having some problems developmentally even before he was molested at age 14. So in looking at all of those things and speaking with the neighbor and talking with Dr. Crausman, we learned that Mr. Atwood was exposed to some very abnormal family circumstances while growing up.

Q. Could you explain those, please.

A. Yes. Dr. Crausman reported that he was treating Mr. Atwood's mother for anxiety and depression. And my understanding was she had been in psychotherapy with him on a weekly basis for a number of years and then eventually, it went to every other week. And then eventually, she quit receiving treatment from him.

Mr. and Mrs. Atwood, Mr. Atwood's parents, were having some marital discord and that one was one of the focuses of treatment as well.

Two things that Dr. Crausman reported to me that indicated some abnormal development on Mr. Atwood's part. First, there was some concern that Mr. Atwood, even at the ages of approximately 6 or 7 was still sleeping in the same bed with his mother. And this was of concern to Dr. Crausman for various reasons.

And secondly, it was learned that Mr. Atwood's father had some sexually deviant behavior. And I don't know how specific you would like me to be, but it was of concern and certainly affected Mr. and Mrs. Atwood's relationship and ultimately how Mr. Atwood was raised.

Q. Did he speak to the relationship between Mr. Atwood and his mother because of the marital discord?

A. Yes. Dr. Crausman had the opinion that Mrs. Atwood -- her husband, because of the -- some of the behaviors he was engaging in, there was some marital discord. And Dr. Crausman believed that Mr. Atwood's mother was replacing his father with him and that was some of the concern. They had a very enmeshed relationship.

Q. Did Dr. Crausman find any records indicating that he treated Mrs. Atwood?

A. No, and -- but when I spoke with him, he did not have those records. But I've learned subsequently, he did find, I believe, an appointment book that listed some of the dates he treated her. But as far as I know, there were no

records.

Q. But the appointment books do indicate that he treated her for quite a lengthy period of time?

A. Yes.

Q. And Dr. Crausman spoke about Mr. Atwood sleeping in the same bed with his mother at age -- I think up to age 8, the whole night?

A. Yes. 6 and 7 for sure and then upward to the age of 8, he recalled.

Q. Did he advise Frank's mother about this?

A. Yes. He stated to me clearly that he told her this was not healthy, to stop those behaviors; and that it still continued.

Q. So that would be significant to you from the developmental perspective?

A. Absolutely.

MS. HARMS: I would like to look at Exhibit 162 now. This is a psychological report from 1981.

If you could highlight the paragraph midway down after "personality evaluation".

THE WITNESS: Yes, it says, "The inmate feels that parental expectations for him since he was a young child have remained fixed at about the 1- or 2-year-old level. In other words, he is expected to feed himself and not to soil or wet himself and that is about all. It seems to him that he must

remain in this infantile role in order to ensure parental concern and attention and that to step out of this role would risk parental rejection."

BY MS. HARMS:

Q. Does this say anything to you about the relationship with his mother?

A. Well, I don't -- let me qualify that answer. I'm not sure if the person writing this report had access to the information I did.

But considering what was going on with his home in his early developmental years with a father who had a sexual disorder that was resultant in marital discord because of that. The mother was depressed and anxious and she certainly was engaging in behaviors that prevent healthy development.

There are some cultures where children do sleep with their parents. I'm not saying as a psychiatrist that any child that sleeps with their parents, that's a developmental impairment. But at that age, that's not normal.

There's many times as a parent, your child may be 3 or 4 and have a nightmare and want to come in the room. But to consistently sleep with the opposite sex parent at that age is abnormal.

Q. Did Dr. Crausman have any memories of Mr. Atwood as a child?

A. He did.

Q. Is there a psychologist that Mr. Atwood saw as a child?

A. Yes.

Q. And who was that?

A. Dr. Brandt, B-r-a-n-d-t.

MS. HARMS: I want to bring now up Exhibit 8. This is the January 1975 evaluation of Dr. Coodley.

If you could go to the second page and highlight the section where it says "I called Dr. Brandt".

THE WITNESS: It states, "I called Dr. Brandt with parental and legal permission and he indicated the boy had been in therapy with him intermittently for about six years, but he had not seen him in the past two years."

BY MS. HARMS:

Q. So doing the math, Frank would be about 11?

A. That's correct.

Q. So the therapy continued until about age 16?

A. Correct.

THE COURT: Counsel --

MS. HARMS: Leading? Sorry.

THE COURT: -- please refrain from leading.

MS. HARMS: Would you bring up --

THE COURT: I want to hear the testimony from the witness. I don't want it from you.

MS. HARMS: Okay. Sorry, Your Honor.

Could you bring up Exhibit 64, please.

Could you bring up the sentence that says "however".

THE WITNESS: It states, "However, there has been need for psychiatric help since this young man was 10 years of age. In researching this case and consulting with his juvenile probation officer, the continuing pattern of narcotics involvement was pointed out."

BY MS. HARMS:

Q. Is there any significance to you that Mr. Atwood began seeing a psychiatrist at such a young age?

A. I believe Dr. Brandt was a psychologist. I'm not sure, but --

Q. I'm sorry.

A. Yes, sure. Anybody -- that's a young age. Normally that stage of development in latency age is a time -- it's a quiet time for children in terms of psychological and emotional issues. They're in school, they're learning how to play with others and socialize. And so that's not a common time, unless there's a mental illness or something going on within the family, that a child would normally come to clinical attention.

And so that's of concern. That's young. It's not uncommon at all for an adolescent, for example. That's many times when patients will be brought in because that's a developmental phase that they're going through and there's

issues involved with that. But younger than that, that's not as common.

Q. Could you explain what a pre-traumatic risk factor for PTSD is.

A. Yes. The DSM-5 now has -- they look at some of the illnesses, Your Honor -- one of the changes they've made -- and they try to list some things. That before the trauma happened, that's a risk factor; after the trauma's happened, that's a risk factor; and while the trauma occurs, that's a risk factor. And so they do have -- I believe they call it pre-traumatic risk factors. And that means it happened before the trauma and it could predispose you. It's a risk factor that could place you at risk for developing that disorder.

Q. Would childhood emotional problems be one of those?

A. Yes.

Q. Prior mental disorders?

A. Yes.

Q. In your review of documents and interviews, did you learn anything about the mental health of Mrs. Atwood?

A. Yes.

Q. What did you learn?

A. She had a history of depression and anxiety and was treated for that. And then subsequently, we received her St. Joseph's records and she was later diagnosed with

dementia.

Q. Did Ms. Greger say anything about Ms. Atwood in terms of her demeanor?

A. Yes.

Q. And what did she say?

A. She was noted to be erratic. Ms. Greger's words were "erratic", that -- and she was also described by, I believe, her paternal -- would have been paternal sister-in-law as moody, that there were variance in the way she acted; that she could be nice at one moment and then arguing and yelling at the next. And so there was some mood variability noted.

Q. Did she have any problems bearing children?

A. Yes.

Q. Could you speak to those a little bit.

A. Yes. Just we know from Ms. Greger -- we did not -- Your Honor, I did not see medical records from Ms. Alice Atwood that would confirm that. But it's based on report that she had had -- and I believe Mr. Atwood's father testified to that as well, I think, in the sentencing phase transcript. But that she had had a miscarriage before Mr. Atwood was born and another after he was born.

Q. And Mr. Atwood actually witnessed one of these miscarriages as a child?

A. I'm not sure to what degree, but --

THE COURT: Counsel, that's the problem with leading. The witness needs to testify. Please don't ask leading questions. If you can't deal with it, then we'll have to ask somebody else to do the examination.

MS. HARMS: Okay. Sorry, Your Honor.

Would you bring up Exhibit 4, please.

BY MS. HARMS:

Q. This is the birth certificate?

A. Yes.

MS. HARMS: Actually, could you go to the next page, I think. Well, this is not very legible, so...

BY MS. HARMS:

Q. Did Ms. Greger say anything about the Atwood marriage?

A. Yes.

Q. What did she say?

A. She reported -- it was very interesting, her take on kind of how the relationship was. Her impression was that everyone liked Mr. Atwood's father, that he was a very good person and was well-liked and respected in the community.

And she did not have a very high opinion Mr. Atwood's mother. It was very clear that she thought that -- she purported to me that she overindulged Mr. Atwood at times and other times was protective. And at other times, was critical and sometimes would -- even to the point that --

overly critical of him. So she noted that she did not think she was a very good parent and noted that there was some discord in the marriage at times.

Q. Did you learn anything about the earlier background of Mrs. Atwood that was significant?

A. I did.

Q. And what was that?

A. She had been -- she was from Austria, Your Honor. She was of Jewish descent and that her family and she also had -- were able to escape Austria before the Nazi invasion.

MS. HARMS: Just a second.

BY MS. HARMS:

Q. Are there any reports of hospitalizations for mental health of Mrs. Atwood?

A. Yes and no. There were some -- the complaints for mental health, but it appears in the St. Joseph's records that she was -- the final diagnosis was more medical; it was dementia. But the records, I think, alluded that she had been on various antidepressants in the past.

Q. Did the Atascadero records reveal anything about the mother and the state of the family?

A. Yes. She was often referred to. The records are also replete with that, Your Honor, that she would be overprotective. She was intrusive into his treatment. It was known that she would frequently make phone calls

oftentimes stating that the staff were not being fair to her son. So there were times that she was viewed as overprotective.

And also, there are records that indicate that she was also very demeaning of Mr. Atwood sometimes. And so the staff, especially at Atascadero State Hospital, felt that his returning home to that environment was not healthy for him.

MS. HARMS: Could you bring up Exhibit 16, please. This is a 1978 Atascadero record.

Could you highlight "I experience her as still relating".

THE WITNESS: This states, "I experience her as still relating to Frank as a 14-year-old boy with a strong desire to return to that level of relationship with her son."

MS. HARMS: Could you go to Exhibit 19 on page 2. This is another 1975 Atascadero record.

Highlight the portion where it says "also the patient's mother".

THE WITNESS: It states, "Also, the patient's mother is presently quite mentally ill, but they do not want the patient to be told this."

And if I may, I think this was -- this is -- the aunt was calling and giving some history, I believe, to the staff at Atascadero. And I don't know if that's her words, but that's what was written.

MS. HARMS: Could you highlight a little further down on the page, the telephone call.

THE WITNESS: Yes. You'd like me to read that entire?

MS. HARMS: You don't have to read the entire thing, but just could you explain what it says.

THE WITNESS: Sure.

"Patient assisted in placing a collect telephone call to his aunt as requested. She told him his 17-year-old cousin had received recognition for modeling. His 24-year-old male cousin formerly was an acid freak and just like a vegetable, according to patient. His aunt said he had recently gotten in touch with them and said he had recovered and had been working for two years. Patient seemed pleased with the contact. He said he plans never to use hard drugs or alcohol again, although he might use marijuana on special occasions."

BY MS. HARMS:

Q. Is there any history of substance abuse in this case?

A. Yes.

Q. Could you explain that.

A. Yes. The paternal aunt -- I believe her name is Ms. Ellis. I'm sorry if I get the name wrong. She reports in her own declaration that she was a recovering substance

abuser and these are her children who also had a history of substance abuse. So there's definitely a paternal family history of substance abuse for Mr. Atwood.

MS. HARMS: Could you go to Exhibit 20, please. It's an Atascadero record.

Highlight where it says "she went on to state".

That's good.

THE WITNESS: Yes. It states, "She went on to state she has a nervous condition and can't make the trip to visit with her son very often due to her nerves at this time."

And this is in reference to Mrs. Atwood giving a statement.

MS. HARMS: Could you go now to Exhibit 5, another Atascadero record, and highlight "I feel he has a major problem".

THE WITNESS: This is a nursing evaluation that states, "I feel he has a major problem in dealing with his parents, primarily his mother. And that his lack of sexual knowledge is of a secondary nature and could easily be resolved on a supplemental treatment basis."

MS. HARMS: Could you go now to Exhibit 53 and highlight No. 5, family skills.

THE WITNESS: It states, "Family skills. This skill remains a big problem. He doesn't want to break the ties with his mother. That relationship is unhealthy. He will

get his mother to take his side and defend him and take no responsibility for his misconduct."

MS. HARMS: Can we go now to Exhibit 54.

Can you go to the second paragraph, highlight that, please.

THE WITNESS: "While his offense was of a sexual nature, I feel that his problem is his rebellious, hostile attitude towards his parents. Even in here, he is continuing to rip them off and they are allowing him to make them his victims. I recommend that he be referred back to family interaction."

BY MS. HARMS:

Q. Does this echo what you were saying earlier about the pedophilia?

A. Well, to a degree, yes. Again, what I was saying, just to be clear, is that the people that are child molesters and people that go on to develop the sexual disorders known as pedophilia -- and this is -- comes -- you have to take this in context. This comes from Atascadero, the persons that were rendering him treatment. And it's clear that they felt that part of his sexual acting out was a rebellion against his parents.

Q. Are there any recommendations in these records about what should happen upon release?

A. Yes. Again, Your Honor, I'm not real clear on what

happened in the Atascadero records. It's clear that there's a point where they were recommending him for release into the community. He had had a separate set of evaluations. There was a discharge plan and that plan had recommended that he not return to his parents home, that he was to go to a halfway house. He was to follow some parameters of supervision.

But around 1977, something happened that that recommendation was taken back and it was recommend that he remain in treatment. But it was very clear during that period of time that it was a recommendation he not return to the home.

Q. Is there any family history of mental illness?

A. Yes.

Q. Could you speak to that.

A. Yes. Again, we know with Ms. Alice Atwood, his mother, that she had some treatment for depression and anxiety. And then there's a not substantiated reference and no records, but there's reports that Ms. Atwood's brother was mentally disordered and in an institution.

Q. Is the family history of mental illness significant to you?

A. Absolutely.

Q. And how so?

A. Because, again, it's a -- in medicine all the time,

we have to look at risk factors and what predisposes you to certain illnesses. For example, heart disease; we know that it has a genetic component, as do many of the mental illnesses.

And so if you have a family history of anxiety or depression, you're -- that's certainly going to be a factor we look for and that's not inconsistent. You have the family history of those illnesses. Also, in his case, he's got the substance abuse and there's usually -- that's also got a genetic component and tends to run in families. So it's very important to get the family history.

Q. Did you review the school records of Mr. Atwood?

A. I did.

Q. And what do they show?

A. They show a number of things that are interesting to me. There's periods of time where he did well and then there's periods of time shortly before his molestation where he was beginning to have some difficulty in his grades and some of his behaviors. And then clearly after the episode of him being molested, his grades even further worsened.

The records are also significant that he went to six different schools around that period of time and so there was a lot of difficulty with school placement. The other thing that's significant, is here is a man with an above average IQ that quit school in the 11th grad and later obtained a GED.

So he did not -- I think in later years, it's very -- well, it's fair to say he didn't adjust well and did not make good grades in school.

Q. Can you talk about PTSD and how it might affect a child in school.

A. Sure. One of the things, Your Honor, is that you can have the cognitive deficits. People that are anxious, sometimes it's hard for them to concentrate. As I mentioned earlier, you can have the physiologic reactivity. If you're distracted, if you're hearing noises and you're looking around, sometimes your concentration isn't as good. So it's not uncommon that they can have periods of time where they may have difficulty performing well in school when tests, those sorts of things.

MS. HARMS: Can you bring up Exhibit 9 at page 9, please. It's a June '73 University High record.

THE WITNESS: It states, "Frank enrolled in English and math courses, but did not complete. His classroom behavior is disruptive. When he is in class, he does nothing. He was sent home twice because of insolence and obscene language. The consensus is that he needs professional help. It is recommended that he return to University High."

BY MS. HARMS:

Q. Was Mr. Atwood ever sent to any psychiatric

treatment places as a teenager?

A. Yes.

MS. HARMS: Could you bring up Exhibit 9.

The last page. I'm sorry.

BY MS. HARMS:

Q. And is one of those places -- is it Rest Haven that he was sent?

A. Yes.

Q. What is your opinion regarding the role that substance abuse played in Mr. Atwood's life and around the time of the crime?

A. Well, I think one of the most -- in terms of evidence and in terms of all the documents that we do have, I think everyone would agree that he has a very severe substance abuse problem, Your Honor. He has a genetic predisposition for it because of his paternal family history.

He was already beginning to use substances around the time that he was molested. And after his molestation, that substance abuse increased. It was very severe and it's very prevalent. Many of his criminal activities have been involved -- have had substance abuse involved in them to the point that he's had some charges because of possessing drugs.

He reports that on some of the offenses he's committed, that he was intoxicated with drugs. It's very clear in looking at his records, basically, each time he was

released from a facility where he was confined, that he began using drugs very heavily. There's reports he even used drugs while he was confined. And that's a little more difficult to do, although it happens.

He was a chronic substance abuser in the Atascadero records, if you look at those records as well. So I think it's very fair to say he's had a long-standing pattern of substance abuse and it's affected his development. It's affected his judgment. It's caused some legal problems. He hasn't had a lot of physical problems from them, but he certainly has had many legal, social problems from his substance abuse.

Q. Why didn't you diagnose Mr. Atwood as antisocial personality disorder?

A. And again, Your Honor, I did put antisocial personality disorder by history because there is evidence there. If you look at the criteria for antisocial personality disorder. He certainly -- from ages 15 on, there has been a long-standing pattern of some of those features.

And the main pattern that you see in Mr. Atwood is he's been very irresponsible. He's not sustained work. He's gotten in repeated trouble. He's had repeated crimes.

But there's some criteria of antisocial personality disorder that also have to be considered. First and foremost, you have to have a pattern of conduct disorder,

behavior, before the age of 15. And while he had some events, there certainly was not a pattern there.

He didn't get into legal trouble until he -- after this event of the molestation occurred. So you have to look at his prior functioning. He may have done some things wrong, but there's no record of them other than his report. There is no evidence that he had conduct disorder. He was not diagnosed with that. I see no proof of that.

Secondly, the DSM-5 says that you have to look at substance abuse and the co-morbidity with antisocial personality disorder. Many persons, when you're addicted to drugs, they perform repeated illegal acts and that that has -- that's a caution as well.

And then the third factor that renders me not diagnosing that today, is that's not a pattern he has now. It's been my opinion he suffers from what's called avoidant personality disorder. And so I do not see that those features have persisted into late adulthood.

Q. Did you review the MPI results of Dr. Nelson?

A. I did. Not the -- I just want to say on the record as well, not the individual test questions. I am not licensed to interpret that test and for me to look at that data -- I did not look at the raw data because that's a violation of the copyright of that test. Thousands and thousands of dollars have been spent on that test to norm

that test and so for someone to have access to those answers, that's not ethical. So I did not look at that.

But what I did look at, and which I commonly rely upon in my practice, is that when you administer the test, it has a very nice summary that will tell you some of the scales and some of the answers. And so I did review that summary.

Q. Those are the interpretive reports?

A. Yes.

Q. Okay.

MS. HARMS: Can you bring up Exhibit 81 at page 5.

Can you highlight where it says "people with this profile are predisposed".

I'm sorry. Just the first paragraph, if you can highlight that.

BY MS. HARMS:

Q. When it talks about physical symptoms under stress, what does that say to you?

A. It states, "In interpreting the profile, the practitioner should also consider any prominent" -- excuse me; I don't know if you're referring to this part -- "any prominent clinical scale elevations that are close in elevation to the prototype. This client's profile presents a broad and mixed picture in which physical complaints and depressed affect are likely to be salient features. This client is exhibiting much somatic distress and may be

experiencing a problem with his psychological adjustment. His physical complaints are probably extreme, possibly reflecting a general lack of effectiveness in life. There are likely to be long-standing personality problems predisposing him to develop physical symptoms under stress. He is probably feeling quite tense and nervous and may be feeling that he cannot get by without help for his physical problems."

Q. Would that be consistent with some possible symptoms of PTSD?

A. Yes. And it's very consistent with what my observations of him have been. I think what's important, number one, there's no mention that he's antisocial; that he's doing -- that's not considered in the profile here. That he's more seen as a anxious and depressed person who manifests those symptoms in physical complaints.

You can see that with depression. There's a whole group of disorders in the DSM that are focused on body complaints. There's a whole group of those disorders. And so his recent test results are consistent with the clinical observation I had of his personality structure and his PTSD.

MS. HARMS: Could you highlight the section where it says he seems plagued by anxiety.

That's the right one -- paragraph.

THE WITNESS: "He feels regretful and unhappy about

life and he seems plagued by anxiety and worry about the future."

BY MS. HARMS:

Q. Would that be consistent with PTSD?

A. Yes, it --

THE COURT: This was done while he was incarcerated; correct?

MS. HARMS: Yes.

THE COURT: It had nothing to do with the fact that he was on death row?

THE WITNESS: Oh, certainly, Your Honor. There's a number of things that you have to take in context here. This was a very recent test, so it's the more recent that we have.

And there are certainly -- I think there's a couple of reasons that explain why this happened. First of all, he was not receiving the medication he had been prescribed for chronic pain. He has a medical disease called spina bifida where his spine didn't close. And so he's had a long-term history of being treated for pain and some of those medications have been stopped.

But it certainly -- being condemned and having upcoming legal proceedings could account for some of that as well, yes.

MS. HARMS: Could you turn to page 7 of the report where it says "very introverted person".

The second paragraph.

THE WITNESS: Yes. "He is a very introverted person who has difficulty meeting and interacting with other people. He is shy and emotionally distant. He tends to be very uneasy, rigid, and over-controlled in social situations."

BY MS. HARMS:

Q. Is that consistent with your diagnosis?

A. Yes, it is in the sense that he's avoidant. He's not meeting people and he's -- the emotional distance is -- in the old terms, we used to say the psychic numbing that you can see.

It's consistent with somebody that's not outgoing. For example, somebody with antisocial behavior, antisocial personality, they tend to be the ones that are getting into more trouble, more extroverted, going into -- having more relationships and more dealings with other inmates.

MS. HARMS: Could you go a little further down in the next paragraph, the end of the next -- I'm sorry. The very last paragraph. The last -- no, I'm sorry.

The last paragraph under the "interpersonal relations," the last couple sentences.

THE WITNESS: "The client's scores on the content scales suggest the following additional information concerning his interpersonal relations: He feels intensely angry, hostile, and resentful of others and he would like to

get back at them. He is competitive and uncooperative, tending to be very critical of others. His social relationships are likely to be viewed by others as problematic. He may be visibly uneasy around others, sits alone in group situations, and dislikes engaging in group activities."

BY MS. HARMS:

Q. Dr. Nelson places great significance in all the prior records and all the psychiatric scrutiny, and there's no mention of trauma or response to trauma.

What do you say to that?

A. Well, I have probably a lot of answers to that. But, first and foremost, Your Honor, you have to look at all the records. That's what we're limited to. Unfortunately at this point in time, people that would have been helpful for -- any of the mental health professionals to interview are dead.

Unfortunately, We don't have the records from Rest Haven Psychiatric Hospital which would have been very helpful. We don't have the record from the Cedar Sinai Clinic where he had gone in briefly, and we lost a lot of information that would have been very helpful under that circumstance.

We don't have the therapy notes from Dr. Brandt who treated him when he was very young. And that would have

given us a lot of insight into what was going on with him at that point. So there's a lot of history we don't have because we're here in 2013 and we don't have access to that information. So you have to keep that in mind.

Secondly, I look at all the information that's obtained and you have to look at the context in which those evaluations were done. The context of the evaluations at Atascadero State Hospital, his focus was on his sex offending. That's what he's in treatment for. And so to have those records and learn about how he interacted with others, that's helpful, but you have to look at what the evaluations were done for, what the purposes were.

Thirdly, you have to take the diagnosis of post traumatic stress disorder. And when you've been the victim of a rape and you're in a correctional setting where -- if you're identified as someone that's engaged in homosexual activity, you will get targeted. That is not a safe environment to disclose those things.

And so his lack of disclosure is not surprising to me at all. And it's only at this point where he's being questioned about it, there's records that can refresh his memory, that it comes to light.

Q. Earlier we talked about your experience in capital cases.

Have you worked with capital defense counsel?

A. Yes.

Q. Have you had any experiences where they think nothing is mentally wrong with their client?

A. That -- not only capital counsel. There's a lot of attorneys that -- they're not trained in psychiatry or psychology. They can't know those things. So there's many times where I've been asked or retained by either a prosecutor or attorney or even a judge where the person had a mental disorder that was not brought to attention previously and it was first diagnosed through evaluation.

Q. PTSD might be one of those diagnoses that you don't catch as a layperson?

A. Certainly. And oftentimes, it's not caught when you do a mental health evaluation unless you ask the questions. For example, some people have been traumatized so much, Your Honor, if you just say have you ever been molested or sexually abused, they may say no, because they may have a different definition.

You have to be very specific when you get these histories. You have to say: Tell me every -- have you ever been touched inappropriately? What was the age? You have to ask very specific questions and you can't just ask general questions.

MS. HARMS: Thank you. That's all I have.

I would like to move Exhibits 1, 2 and 3, her CV and

two reports into evidence.

MS. GARD: No objection.

THE COURT: It may be admitted.

Cross examination?

CROSS EXAMINATION

BY MS. GARD:

Q. Good morning, Doctor.

A. Good to see you.

Q. Good to see you as well.

Let's try to hone in on this PTSD diagnosis.

Okay. You have identified what the triggering event is; right?

A. Yes.

Q. Or what the potential earliest triggering event is?

A. Correct.

Q. And that's the molestation at 14 years old; right?

A. Yes.

Q. But you can't tell us at what point in time he actually developed the remainder of the PTSD criteria; correct?

A. That's correct.

Q. That's correct.

So for all you know, he could have developed it right after the 14-year-old molestation; correct?

A. Sure.

Q. Or he could have developed it as a response to what he's encountering in prison now?

A. Yes. And it also could have been from other adverse events. When you have -- if you look at the risk factors that the DSM has listed --

Q. Well, I'm not really interested in going into the risk factors right now. Just --

THE COURT: Hold on.

Go ahead and finish your answer.

THE WITNESS: Yes.

If you look, the DSM-5 lists -- we now know that there's some risk factors. And one of the risk factors post trauma is that if you're continuously subjected to adverse events. So you're correct. At what point in time when he was 14 did he develop those symptoms, we don't know. But we do know that if you're further exposed, that that also can account for it.

BY MS. GARD:

Q. Okay. But we don't know if he had PTSD, say, in 1975?

A. That's correct.

Q. And we don't know if he had it in 1984?

A. There's symptoms there, but you're correct. The records that probably would have been most helpful, he --

Mr. Atwood told me he disclosed to Dr. Brandt. Dr. Brandt was treating him during the period of time when this molestation occurred. He was treating him before, he was treating him during, and he treated him after.

And you're correct. Without those records, we're -- have to base a lot of the opinion and the diagnosis on Mr. Atwood's admissions, number one; and secondly, look through the records for things that would support it. But you're absolutely correct.

Q. Okay. And in terms of the Atascadero records, that was an inpatient facility; right?

A. Yes.

Q. Okay. And so he was under 24-hour supervision there --

A. Yes.

Q. -- right?

A. Absolutely.

Q. And you're familiar with these types of facilities; right?

A. Yes.

Q. And the people that are employed at these types of facilities are trained to look for mental disorders; right?

A. Some training. It depends. There's different levels of staffing. Many of those places are not necessarily staffed with PhDs or MDs, as we're lucky today. But

certainly they've had some training to recognize, I think, more behaviors that would be indicative of mental problems.

Q. And no one in those records has indicated any sort of indication that he was traumatized?

A. Well, not -- other than the Atascadero records where he's reporting that he was molested.

Q. Right.

A. You're correct. You don't see any therapist, Your Honor, that say because he reports this trauma and because of this, he wasn't participating. That's very fair to say.

Q. Okay. Did you also review a set of records from the California Department of Corrections?

A. I did.

Q. And there were medical records contained in that as well?

A. Yes.

Q. And those were after Atascadero; right?

A. That's correct.

Q. So the chronology here -- tell me if you agree -- he is convicted of this lewd and lascivious conduct charge; right, involving the young girl?

A. Yes, sir.

Q. And --

A. Yes, ma'am. I'm sorry. The 4-year-old, yes.

Q. Right.

And that lands him at Atascadero?

A. Yes.

Q. Okay. And he ultimately fails treatment in Atascadero; right?

A. Correct.

Q. Okay. And so he's discharged?

A. Yes.

Q. Bounces in and out of prison on parole; right?

A. Yes.

Q. Okay. And then ultimately in -- I think it's 1980, he commits another sex offense; right?

A. Yes.

Q. Okay. And that one involves a 10-year-old boy; right?

A. Yes.

Q. And what were the facts of that one, as you remember?

A. That there was a young boy at the park playing. And the child reported that Mr. Atwood was watching him and as he left to ride home on his bike, that Mr. Atwood approached him -- I believe he was on a motorcycle -- and asked the boy for directions. I'm sorry. I don't remember the exact city. And that the boy -- or Sunset Boulevard. I believe it was Sunset Boulevard or Street. And the child offered to ride his bike and allow him to follow him.

And the child states that he said, "No." And Mr. Atwood snatched him from the bike, put him on his motorcycle, drove him to a remote location, made him pull down his pants, and Mr. Atwood performed oral sex on the child. And then told the child -- excuse me, but quote, "suck", and had the child perform oral sex on him. The child also reported that he threatened to harm him.

Q. He threatened to kill him, didn't he?

A. Yes, yes. I didn't know the exact -- I knew it was kill him, but I don't remember the context.

And that he drove the child back to the bike. And that the child immediately was crying and found some friends and told them what happened. And that Mr. Atwood was apprehended.

Q. And there was actually penetration -- rectal penetration, right, with his fingers to both of them?

A. Yes, that's correct. The child stated that Mr. Atwood used the finger to penetrate his rectal area.

Q. Okay. And this lands him into the California Department of Corrections?

A. Yes.

Q. And there were records available to you from those facilities where he was?

A. Yes.

Q. And there was no PTSD diagnosis anywhere in there;

right?

A. Not at all.

Q. And that was at a time when PTSD had been added to the DSM-III; correct?

A. That's correct.

Q. Okay. And there is no indication of trauma-related symptoms; right? There's no indication of trauma response anywhere in those; right?

A. I'm not sure what you mean by --

Q. Let me --

A. -- "trauma response".

Q. -- ask the question a little better.

There's no concern that he is exhibiting behavior that would be consistent with being traumatized?

A. I may beg to differ with you. I'm not sure -- on the exhibit that we saw earlier, I believe, when he was -- and this may -- I may be one incarceration too early.

But when he was in the Orange County Detention Center in the homosexual tank, I believe -- and I may be wrong, but I think he went to the California Department of Corrections from there and so there was some concern that he was at risk. But in terms of actually someone documenting it, no. Not that I saw.

Q. And the concern that he was at risk, was that because of people's knowledge of what he was there for?

A. Well, in that record, I think the risk was because he was -- inmates that had transferred to that prison --

Q. Uh-huh.

A. -- from the Orange County Detention Center knew that he was housed with other homosexuals. So that specific incident, I think, was related more to his classification when he'd come in.

But I think very fairly -- and it's very common and I've worked in prisons and juvenile prisons. People who are accused of child molestation, they're often targeted because of the nature of their crime. Other inmates don't like that. They don't like other inmates that offend children.

Q. Right. And I was going to ask you about this.

People who are in prison for offenses against children, particularly sexual offenses, would you agree that they are viewed as kind of at the bottom of the hierarchy among other inmates?

A. Absolutely. And probably with law enforcement officers. But, yes, absolutely. They are universally not liked.

Q. And they're frequently targeted for violence?

A. Absolutely.

Q. And for threats; right?

A. Sure.

Q. Because the other inmates don't like what they have

been convicted of doing; fair?

A. That's correct.

Q. Just going through the other instances that -- well, let's stick with that molestation at 14. And I'm just trying to go through the events that you've identified that could meet that gatekeeping criteria.

That 14-year-old molestation, you acknowledge, don't you, that he had started substance abuse prior to that event?

A. Yes. There was reports that he had been using the barbiturates in the military school and some marijuana. And even on that evening, I think he was in search of drugs.

Q. And he was, in fact, expelled from the military academy for his drug use by that point?

A. That's correct.

Q. And as you mentioned, when this occurred, he was in search of drugs; right?

A. Yes.

Q. One question: The younger boy that was with him, was he molested as well?

A. Yes. Evidently, yes

Q. Where did you learn that from?

A. The mother. His mother, Ms. Greger.

Q. Did you review Dr. Nelson's discussion with Mr. Atwood?

A. I did.

Q. And do you recall him telling Dr. Nelson that the other little boy was put into a closet while this event happened?

A. That's correct. And that's the same thing he told me as well.

Q. That's the same thing Mr. Atwood told you?

A. Yes.

Q. But Ms. Greger is telling you that both boys were actually molested?

A. Yes.

Q. The other little boy that's the son of Ms. Greger, is the same son -- well, are you aware that Ms. Greger had a son that was helped through West Point by Mr. Atwood's father?

A. I am.

Q. Is this the same son?

A. I don't think it was. I've -- got a little confused on that as well. She has one son that's evidently a billionaire and then another that, I believe -- I don't know if he actually went to West Point, but there was some help along the way.

Q. I'm sorry. What was the first thing that you said, the --

A. She has one son that she reports is a billionaire and I don't -- I think she has two children, the best I was

able to tell and I'm not --

Q. One son is a billionaire?

A. That's what she says.

Q. And the other son is now -- we don't know, but he may have gone to West Point?

A. I thought he did; and the second time I spoke with her on the phone, she corrected me. So I'm not sure, Ms. Gard.

Q. Okay. You reviewed the letters Mr. Atwood wrote to -- and I have never understood how to pronounce this man's name, but Bersienne?

A. Yes.

Q. You've read those letters and do you recall that he discusses the molestation in one of those letters?

A. Yes. Especially of boys. And it's very clear in looking at those letters that he had sexual attraction to young boys, that he was fantasizing about young boys. That's the period of time where, by his own admission -- and he even told me that there was a period of time where he thought it was okay to have sex with boys. So there's definitely -- in those letters, I think it tells you what his thinking was around that period of time.

Q. In one letter, he does tell Mr. Bersienne that he was not traumatized by this molestation essentially; right?

A. Sure.

Q. And he's not reacting there to someone questioning him, asking him about it; correct?

A. No. But that is one of the common things you see, and that's what the DSM -- that's why they spell this out. People often blame themselves. They don't see it as molestation.

It's not until -- you've got to remember when this happened to him, he was 14 years old. He wasn't an adult like he is now. And so he's going to look back at it through adult eyes and rationalize it however he does. And that's very common, that a lot of people who are molested do not see that as traumatic.

Q. Well, let's look at that exhibit. That's Exhibit 1999. And I think you should have a copy over there.

A. It's in this pile?

Q. Yes, there should be a copy in the folders.

A. Yes, ma'am.

Thank you. I do have it.

Q. You do have it? Okay.

A. Yes, ma'am.

Q. I'll try to use this viewfinder.

Okay. So let's look at the context here. I think we're all familiar with what this letter is; right?

A. Yes.

Q. So he's talking about how this is time for true

confessions; right?

A. Yes.

Q. And then he spontaneously sort of just goes into telling the story about being molested. I'm directing your attention to this bottom part here (indicating) --

A. Yes. Thank you.

Q. -- "when I was 14".

Can you just read that, actually.

A. Certainly.

When I was 14, I was molested by a 24-year-old man. I use the term "molested" only as a formal way to explain my encounter. This man did nothing but to teach me how to French kiss and gave me some head. Quite honestly, I really enjoyed it. Unfortunately, I had a 10-year-old friend with me and his parents were freaked out that he didn't come home for supper. When we were driven home, the police were all over. They took this man to jail for child molesting. He was convicted and sent to Atascadero State Hospital. I related this experience to you to show how some of my thoughts concerning sex were formed.

Q. And in the remainder of that letter, as he continues, he describes additional sexual encounters; right?

A. Yes.

Q. Including the one involving the 4-year-old girl?

A. Yes.

Q. And he describes his arrest for child molesting; right?

A. Absolutely.

Q. So when he's making this description of this molestation that happened, he's doing it spontaneously; right?

A. Yes. To someone he trusted and to appear -- and you have to look at the context of the letter. It's someone he was also trying to impress and that he was interested in having a relationship with.

Q. But this isn't a situation where he's being asked, you know, were you ever touched in a certain way and he says no; I was, but it's no big deal. I mean, he's --

A. That's correct.

Q. -- he's recounting this as a prior sexual -- you know, consensual sexual encounter; right? Even though under the law, it wasn't. But that's how he's --

A. I don't think he's even codifying that as a sexual encounter. He said he just didn't use the word "molest," that that was a formal way.

Q. Well, he says he uses it only as a formal way to explain the encounter; right?

A. Yes, but he didn't say that he asked. Consensual would mean that he agreed. He said "all the person did". So

he still focused that in a way the perpetrator was the one that initiated the acts.

Q. But you agree he's voluntarily disclosing this information?

A. Certainly. And again, what's important, it's not to a stranger. It's to someone he's known. It's to someone he's communicating with, to someone he sees as a peer and that he's got -- he wants to have a relationship with.

So it's just not someone that he met the first time that's a clinical counselor in an environment. And also, the expectation was that letter probably would not get published to other inmates or to -- other people would see it.

Q. Did you also review a police report where he made a similar statement to Detective Buckner, I believe it was?

A. Absolutely. Yes, ma'am.

Q. The incident that happened in Aspen; right?

A. Yes.

Q. You learned that from Mr. Atwood?

A. Yes.

Q. And there is no record that you're aware of corroborating that?

A. Not -- not at all.

Q. And there's no third-party informant who would corroborate that?

A. Unfortunately not. Probably the most we could have

gotten is maybe if his parents had said indeed, we'd gone to Aspen on a vacation. But you're correct. There's nothing to -- that one is based on his words alone.

Q. Did he tell you that?

He told you that in his your first interview with him; right?

A. Yes.

Q. And it's not discussed in your first report, is it?

A. I forgot. I'm so sorry. When I was writing that report, it was a very small section and I just didn't include it.

Q. Okay. And that report was designed to focus on mitigation; right?

A. That's correct.

Q. Okay. The purpose of that report, as you understood it, was to provide reasons to the Court why Mr. Atwood should get a hearing --

A. Correct.

Q. -- right?

I mean, that was what you were told to do?

A. Yes.

Q. So let's sidetrack and talk about that for just a second.

You were not asked at that time to perform a comprehensive mental health evaluation; right?

A. Yes and no. I was asked not to -- if I could -- as part of my evaluation, I'll do some of those things anyway. But I was asked to focus on mitigation and put that in the report.

Q. And you weren't asked to complete a comprehensive report until this hearing was ordered; right?

A. That's correct.

Q. How many hours did you spend on this case?

A. Gosh. I'd say probably about 45 at this point.

Q. And of those hours, how many have you spent reviewing records; do you know?

A. Oh, a great deal of that. Probably 15 hours or so.

Q. And did you review approximately well over 11,000 pages?

A. I didn't count, but it sure seems like that much. I know it was a lot.

Q. Did you see numbers on the Bates stamping that were in the 11,000s?

A. I didn't notice that, but it was a lot.

Q. And how much have you billed to date?

A. I billed -- what I did, each one of these -- I charge $300 per hour. And so the way I've done this billing, I just billed each time that I actually had to fly to Arizona from South Carolina.

Q. Uh-huh.

A. So what I did is each one of those times, I billed for 15 hours which is $4500. Except the second time, I accidentally told you wrong on the deposition. It was a little bit less than that.

But what I do is during those periods when I'm flying, even though I've reviewed records previously, I just include the record review during that day that I have to spend traveling. It takes about seven and a half hours.

So, for example, yesterday on the plane, I read and so I'll include those times that I review those records in the billing time when I fly out here just in fairness to the parties. Because otherwise, it would be very expensive.

Q. Returning back to this Aspen incident. That happened also in the context of him attempting to obtain drugs; right?

A. I'm sorry. Which incident?

Q. The one in Aspen.

A. Yes. Absolutely.

Q. And he encountered this person at a bar; right?

A. Yes.

Q. And left with this person, I think?

A. Yes.

Q. Under the impression they were going to do drugs?

A. Yes.

Q. And then there was a sexual encounter that happened after that; right?

A. Yes.

Q. The incident at the California Youth Authority involving the oral sex?

A. Yes.

Q. That also comes from Mr. Atwood; right?

A. Yes.

Q. No third-party informants there?

A. I found one document that makes an allusion to it, but it doesn't describe it. There's a -- one of the family court records, I believe, one of the juvenile evaluations he has, there's a mention of a record that says that he -- I want to quote it exactly for you, if I can, Ms. Gard.

It stated that he was performing sexual favors in an attempt to go AWOL. There was some reference that something happened, but it was a very different spin. The record seemed to indicate that there was some acknowledgement that there was some sexual activity. So I actually did find something later on, but certainly not in that detail and from no other source.

Q. Do you recall if that record had a Bates number on it?

A. I had it. It's one of the juvenile family court evaluations, I believe, he had over time.

Q. Okay.

A. If I can find that for you, I'll be glad to show it at some recess. It --

Q. At a recess perhaps.

And the Atascadero incident -- which is the fourth one that satisfies the gatekeeper criteria; right?

A. Yes.

Q. Okay.

MS. GARD: And if we could just -- if I could get Exhibit 2.

BY MS. GARD:

Q. This is the record that shows the report of the sodomy; right?

A. Yes.

Q. Now, incidentally, Mr. Atwood, when you first met with him, didn't remember the name of the person; right?

A. That's correct.

Q. But then when you went back to speak to him, he remembered the name?

A. Yes, he did.

Q. And that was one of many things that he remembered between those two evaluations; right?

A. Yes.

Q. Because he had sat and he had thought about the questions that you had asked; right?

A. Sure.

Q. And perhaps even the questions that Dr. Nelson had asked; right?

A. Sure. Sure.

Q. Okay. So you agree, then, that the documentation here establishes -- or that it says here in this record that he was examined by Dr. Rodgers at 4:00 p.m. with no findings; right?

A. I will acknowledge that a nurse wrote that. I again do not see any report from Dr. Rodgers and I don't see a report of what the examination was.

Q. Okay.

A. So there's limits. But it seems very apparent that someone saw him and some exam was done, but there is no record of that from the doctor himself.

Q. And you see no record showing that there -- documenting some sort of anal injury from this incident?

A. No.

Q. You agree, don't you, that just because someone experiences a triggering event does not mean they're going to develop PTSD; right?

A. That's correct.

Q. And you would also agree that because someone may be exposed to what you have termed pre-traumatic risk factors does not mean that that person will develop PTSD; right?

A. That's correct.

Q. There's no guarantees; right?

A. No. Everyone's individual. It depends on a lot of things. It depends on your genetics; it depends on the age that something happens; it might depend on how severe the trauma, how repetitive the traumas are.

There's a lot of factors that -- you know, everyone is different. And two people can go through the same exact event and maybe one develops post traumatic stress disorder and the other doesn't. So there's a lot of variability in that.

Q. Okay. Do you know whether Ms. Greger's son developed PTSD? Do you have any information on that?

A. I haven't evaluated him. She reported -- the most she reported to me, there was a period of time where he was upset. But based on her -- again, she's not a psychiatrist and I don't have any medical records. But she didn't seem to think that he did.

Q. Okay. You talked about his intrusion symptoms --

A. Yes.

Q. -- right?

And intrusion symptoms seemed to focus on this fear that he has for his physical safety in a prison environment; right?

A. Yes.

Q. You would agree, though, would you not, that that is a rational fear?

A. Absolutely.

Q. He really is in danger in prison; right?

A. Absolutely. But I think what differentiates it a little bit -- and I tried to think of an example and I probably should come up with a better one, but this is the one that comes to mind.

If you're a race car driver and you got in a really bad wreck in the car during the race, you're going to have -- you know, you might have PTSD. But if you have to keep going back to the racetrack, you're going to get very anxious. If you have to -- say, for example, if you had to keep that job and keep going to the same racetrack, he's going to have a lot of anxiety based on his past experiences and then the fact that he's still in a very dangerous environment

Q. Right.

Because it's a dangerous -- it's inherent in the environment; right?

A. That's correct.

Q. So anytime he's afraid of something now, is that going to be attributed to PTSD? Where do you draw the line here?

A. No. And that's a really good question.

It's hard to know because anxiety is a symptom and

the problem is anxiety presents the same -- every time you're anxious, you have an increased heart rate. You might have some somatic complaints. You might be sweating. And so there's a lot of things that cause anxiety. So to tease each one out, that's a very difficult thing to do.

I think some -- there are some examples that are probably more related to some of the post traumatic stress disorder and that's why the DSM-5 -- if I may.

That's why they changed it. They don't classify it as an anxiety disorder anymore. They classify it as a stress-related disorder. And that's because they now know that there are some people that will have fear-based reactions when they're exposed to triggers and there's other people that they say have a phenotype, that they're aggressive and irritable. So they acknowledge that you might have some changes in the way that you react.

But you're right. It's hard -- you can't take each little episode and say this was from post traumatic stress disorder. This one's because an inmate really did threaten him. This one's because he has a family history of an anxiety disorder. So you're correct.

Q. And anxiety disorders obviously can exist independent of PTSD; right?

A. Sure. There's lots of different anxiety disorders. There's panic disorders. There's obsessive-compulsive

disorders. There's lots of other different anxiety disorders.

Q. And prison is, you would agree, an anxiety-producing environment?

A. Absolutely. And especially if you're a convicted child molester. Absolutely.

Q. Right.

THE COURT: Take a recess and start up at 1:30.

(Thereupon, luncheon recess was had and the proceedings resumed at 1:30 p.m.)

AFTERNOON SESSION

MS. GARD: Your Honor, if I may take up one matter. We still don't have a ruling on our motion to preclude testimony from Carla Ryan.

THE COURT: I will let her testify.

Motion is denied.

MS. GARD: So the motion is denied.

THE COURT: Although I want you to listen carefully to her testimony, I am not interested in what she has to say about Mr. Bloom and his performance.

MS. GARD: Thank you.

May I resume cross?

THE COURT: Yes.

MS. GARD: Okay.

CROSS EXAMINATION (RESUMED)

BY MS. GARD:

Q. Hi, Doctor.

Continuing on our discussion about PTSD just to run through some of the remaining factors.

The avoidance criteria; right?

A. Yes.

Q. Your opinion is that Mr. Atwood avoids interaction with other inmates; right?

A. Yes.

Q. But you're aware and you acknowledge that he acted as an inmate's legal adviser; right?

A. Yes.

Q. Did he tell you that he did this to gain favor?

A. Two things. I believe that he was actually compensated for it and I may stand corrected, but I think it was actually a position.

But, secondly, he reported to me that one of the things he would do and that is try to do a really good job to gain favor and work very hard for the other inmates who he was supposed to file suit on behalf of.

Q. So would you characterize that as an adaptive effort, then, on his behalf?

A. Sure.

Q. Okay. And he told Dr. Nelson, right, that he had some friends on death row; correct?

A. Yes, he -- one inmate I know that he mentioned was a friend was executed; and I believe he had another who was also recently executed. But he did have a few persons that he talked with and considered himself friends with.

Q. And in fact, do you recall reading a medical record from 2012, suggesting that he reported feeling depressed because a friend had been executed?

A. Yes.

Q. Do you recall that?

So he had some close friends as well; right?

A. Sure.

Q. Do you have Exhibit 138 up there still next to you?

A. Yes, ma'am.

Q. You've offered the opinion that Mr. Atwood is frequently threatened and bullied on death row; right?

A. Yes.

Q. And we discussed about how the nature of his charges may make him more of a target and you would agree with that; right?

A. Yes.

Q. But there are occasions in the record where Mr. Atwood has initiated problems with other inmates; right?

A. Absolutely.

Q. I'm showing you Exhibit 138 as an example of that. This is an incident report from 2000; right?

A. Yes, ma'am.

Q. Okay. And that refers to Mr. Atwood being a constant disrespect issue in the pod; right?

A. Yes.

Q. This is coming from the other inmates?

A. Yes.

Q. And bulldogging the older man next to him?

A. Yes.

Q. And you reviewed that as well; right?

A. Yes, ma'am.

Q. Okay. So you acknowledge that this is not just a one-sided abuse of Mr. Atwood; right?

A. No. And I acknowledge that Mr. Atwood certainly has displayed some antisocial behaviors over the years. But I think if you look in the totality, though, he is more often targeted than he has targeted other inmates.

Q. But he does target others as well?

A. Certainly.

Q. And he is targeted because of what he is in prison for, in large part?

A. Yes.

Q. I want to go back and clarify because I wasn't exactly clear on how much time you spent and how many records you've reviewed.

Am I correct in understanding, then, that you had read approximately the 11,000 records in the case?

A. Yes.

Q. And that you had spent about 15 hours on that or is that --

A. Around that period of time.

Q. Reading those 15,000 pages?

A. Yes. And I'm sorry I -- the way my billing is, if I billed, like, per hour, it would probably have been a little

bit more easy to give you that exact number. But a lot of times when I read, I didn't bill. I billed during the period of time that I would have been traveling. So I probably read more than that, but that's what I've accounted for.

Q. That's a rough approximation of 15 hours?

A. Yes, ma'am.

Q. Let's jump back to some of these pre-trauma risk factors you talked about.

And we talked about Dr. Crausman; right?

A. Yes.

Q. Now, you didn't record either of your interviews with him; right?

A. I'm sorry?

Q. You did not audio record your interviews?

A. No, ma'am. And I only spoke with him once.

Q. Oh, I apologize. I thought there were two interviews.

There was only one?

A. No, two of Ms. Greger and one of Dr. Crausman.

Q. His statement, is it fair to say, forms a large part of your opinion that Mr. Atwood's development prior to 14 was abnormal?

A. Yes, I think it was important. I think I mentioned to you earlier, I called it a data point. But it was very important when -- there were other indications that there

were some developmental abnormalities in him, but that was certainly a big one.

Q. Okay. He didn't have any records relating to this treatment; right?

A. No.

Q. And his recollection is that he did not treat Mr. Atwood; right?

A. That's correct.

Q. But Mr. Atwood's recollection is that he received treatment from Mr. Crausman; right?

A. That's correct.

Q. So we have a discrepancy there?

A. Yes.

Q. But we know he treated the mother; right?

A. Yes.

Q. Okay. And that treatment -- as I look at his declaration and do the math, the most recent treatment that he gave her was 49 years ago. Is that about right?

A. That would seem correct. Yes, ma'am.

Q. 1964? Okay.

And he began treating her 54 years ago; right?

A. Yes.

Q. 1959; right?

A. Yes.

Q. And Mr. Atwood at that point would have been 3 --

A. Correct.

Q. -- right? Okay.

Do you know what, if any, diagnosis he assigned Mr. Atwood's mother?

A. No, he -- excuse me. I didn't mean to be colloquial and say no.

He told me that he treated her for depression, anxiety, marital problems.

Q. Okay. Now, you've alluded to the father having a sexual dysfunction -- deviation, you said.

A. Yes.

Q. Can you explain to us exactly what that was.

A. Yes.

THE COURT: I don't think it's necessary to go into that.

MS. GARD: Well, Your Honor, it's --

THE COURT: It's bad enough to get into the man's reputation based upon what a doctor said somebody else said to him.

MS. GARD: Right. Okay. My concern was that it had been implied that this was something really bad and that's certainly not my interpretation of what the facts are and that's why I wanted to get into it.

I also feel the door has been opened, so --

THE COURT: I don't think so.

MS. GARD: Okay. Thank you, Judge.

BY MS. GARD:

Q. But in any event, as the Judge just said, what you learned, you learned from Dr. Crausman?

A. That's correct.

Q. Who learned it at the earliest, 49 years ago?

A. That's correct. From Mrs. Atwood.

Q. From Mrs. Atwood, and you have no records; right?

A. That's correct.

Q. And you have no one else to corroborate this; right?

A. No. I asked Mr. Atwood specifically about some of those behaviors and he had no recollection of them. And he had not observed any such thing.

Q. He didn't observe any of these things that went on between Mr. Atwood and the mother?

A. Not that he reported to me. He was aware of some marital tension. Now, he did have some recollections of that, but not the behaviors that were reported to Dr. Crausman.

Q. Right.

And the same thing is true, right, about Mr. Atwood sleeping in his mother's bed; right?

A. Correct.

Q. He doesn't specifically remember that?

A. No, he doesn't. But that's a very good question.

I confronted him about that when I saw him the second time, Your Honor, to try to understand if those were any things he had recollections. The most he could remember, he remembered that his parents had wallpaper above their beds. So he -- his words were: I guess I must have been in there some because I remember the view from the bed.

But that was the most that he had a recollection. He had no recollection of him sleeping there. He did state that his parents had twin beds and they did sleep separately in the same room.

Q. Okay. But he had no recollection of sleeping there on a nightly basis --

A. No.

Q. -- up through the age of 7?

A. No.

Q. No recollection of that. Okay.

About Mr. Atwood's father, he was well-regarded in the community; right? He was --

A. Absolutely.

Q. And even Ms. Greger spoke positively of him; right?

A. Absolutely.

Q. And there's no evidence that he was abusive towards Mr. Atwood in any way?

A. No. I think Mr. Atwood's always spoken very highly of his father.

Q. And notwithstanding the potential co-sleeping issue, there was no evidence of the mother abusing Mr. Atwood sexually; right?

A. No.

Q. That was not what you're implying?

A. No. No one's alleged that and there's no reports of that.

Q. Okay. Are you diagnosing the father -- we don't have to get into the specifics, but are you diagnosing him as having a sexual dysfunction?

A. No. And for many of the same reasons as Mr. Atwood. He's not -- first of all, he's not around to even interview. Those are behaviors, but that doesn't necessarily indicate that it's a paraphilia.

Q. Okay.

A. So not at all.

Q. When you say "the same reasons as Mr. Atwood," is that because that would be a prejudicial diagnosis?

A. Well, there's more information to be gleaned. There's not enough information. There has not been a workup that -- I have a methodology that I use to make that diagnosis. And so Mr. Atwood's father is certainly not here for me to evaluate, so I would never diagnose him with that.

Q. Okay.

A. It's the name of the behavior.

Q. Okay. And the records that you reviewed relating to Mrs. Atwood having anxiety issues and dementia issues, were those from approximately 2009; correct?

A. Yes.

Q. And she was well into her 90s or at least into her 90s at that point?

A. Absolutely. She died in 2011 and she was, I think, either late 80s or early 90s.

Q. And you did not receive any records relating to her at all predating those St. Joseph records; right?

A. No, not at all.

Q. Your conversations with Ms. Greger, you also did not record those, so we don't have a record of those; right?

And you didn't speak to her before writing your first report; right?

A. That's correct.

Q. You spoke to her after for the second report and because -- is that because counsel asked you to do that?

A. Well, in part. They asked me to call. But it was important and I'm glad I did because as I told you in our earlier talks, that gave me a lot of information about what was going -- that had been not been presented previously about how Mr. and Mrs. Atwood were getting along and some of

the circumstances. So it was helpful.

Q. And you spoke to her -- the second time you spoke to her, that was as a result of your deposition actually; right?

A. That's correct.

Q. Okay.

A. To clarify what indeed -- whether her son -- I didn't realize at the time I'd spoken with her or for some reason, I didn't have the recollection, Your Honor, that her son was also the one that was with Mr. Atwood when he was 14 years old and was abused. So it was to just get more details on that.

Q. Oh, okay. And part of the reason she told you she didn't like Mrs. Atwood was because Mrs. Atwood was an attractive woman; is that right?

A. She didn't put -- that was the summation I made of it. She mentioned that Mr. Atwood was very nice. She was moody. But then in the course -- I detected that there may have been some animosity between them and found out the -- Mr. Atwood certainly thought his mother was attractive and so there may have been issues there as well.

Q. Okay. Now, Mr. Atwood had a fairly privileged childhood; would you agree?

A. Yes.

Q. The family was relatively well off financially;

right?

A. Certainly compared to other families. Absolutely.

Q. Okay. And would you agree that he had many opportunities to succeed in life?

A. Sure.

Q. And that his parents -- notwithstanding that the mother may have been overly involved, the parents appeared to be genuinely concerned for his welfare?

A. Absolutely.

Q. Okay. And it would appear from the records that the mother was motivated out of a desire to protect him; right?

A. Absolutely.

Q. And to shield him from unpleasant experiences; right?

A. Certainly. She was protective and caring and trying to make sure he was okay.

Q. Okay. Let's talk about pedophilia.

I'm a little confused from your report. So you've said here this morning that you're not making this diagnosis?

A. No. And you're correct. There is some confusion there. When you write "by history," that means you're acknowledging that it's been a diagnosis and that there's some -- and also "by history" means that I acknowledge I can see how that diagnosis was made. I have no qualms with that.

I chose not to diagnose it for the reasons I stated.

But there's enough evidence -- there's certainly enough evidence there just based on the behaviors alone. Any mental health professional that saw him would have a basis to make that diagnosis just based on the three convictions.

Q. But you choose not to make that diagnosis, in part, because of the prejudicial diagnosis?

A. Well, no. That's not the reason I'm not making it. But when you're making a prejudicial diagnosis, I think it requires a methodology that is a level above just reviewing records and basing it on history.

I think that more needs to be done. You need to have psycho-physiologic assessments and you have to be very careful because it is prejudicial. So I didn't not diagnose it because it's prejudicial.

Q. Well, the DSM does not require that physiological testing; right?

A. No, but it recommends it. If you look at the new DSM-5, they're -- it recommends that there's other tests that can be done. So it's recommended.

Q. But it's not one of the criteria for the diagnosis?

A. Not at all, no.

Q. Okay.

A. Because that has a whole -- that's also subject to a lot of litigation and there -- you know, it's a newer science

and things are being developed. And you're correct. It doesn't say anywhere in that diagnostic criteria that you have to do those tests.

Q. Okay. And you didn't order those tests to be performed; right? Or you didn't ask for them to be performed?

A. Well, I certainly recommended. But I haven't been in too many situations where any attorney wants that information, given the nature of this case.

Q. But you did recommend it?

A. I offered I would more than gladly have those tests done.

Q. Okay. You were shown records from Atascadero during direct that referred to some of his problems as being connected to adolescent rebellion; right?

A. Yes.

Q. Issues with his parents; right?

A. Yes.

Q. And you would agree, wouldn't you, that virtually within a year or so of getting out of Atascadero, he engaged in the same behaviors; right?

A. Yes. He reoffended with another female, yes.

Q. Right.

Well, it was with a male, wasn't it?

A. Yes. I'm sorry.

Q. Okay. And that was when he was well into his 20s, if I do the math correctly. Right?

A. Yes.

Q. And also regarding the Atascadero records, there are indications -- now, you reviewed all 400 some pages of those; right?

A. Yes, ma'am.

Q. And there are indications that they were aware of his experience being molested; right?

A. Yes.

Q. Okay. So the doctors there that were treating him knew about his history?

A. I don't think it was a doctor per se. The documents Ms. Harms showed me, I think there was a social worker that he told that to. So in terms of the actual psychologist or psychiatrist, I can't say. But certainly -- in the document she showed, there was a social worker who was aware of that.

Q. Okay. But the staff was aware?

A. I don't know how well they communicated those things. I don't know. I don't see a notation where anyone else put that they were aware of that.

Q. But it is documented; right?

A. Yes.

Q. Okay. Let's talk about the criteria, specific DSM

criteria for pedophilia.

A. Yes.

Q. The first criteria is a requirement of over a period of at least six months, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with prepubescent child or children; right?

A. Correct.

Q. And he admitted to you and Dr. Nelson that he was once attracted to children; is that right?

A. To boys.

Q. To boys.

A. Yes. To me, he admitted to males.

Q. To males.

A. Yes.

Q. But still prepubescent males; right?

A. Absolutely.

Q. And we have discussed the letter from Mr. Bersienne, that he did opine that this should be legal, in fact; right?

A. Yes.

Q. And you're aware that he also told Mr. Bersienne that he had at one point considered picking up a child and that he would make sure the child did not talk; right?

A. Yes.

Q. Were you asked to review a large stack of

handwritten material consisting of, generally speaking, pornographic stories involving sex with children?

A. I don't recall reviewing that.

Q. Okay. Let's get Exhibit 204. It should be in front of you up there.

MS. GARD: And, Judge, if I may approach and just take her a copy and put it on the viewfinder.

THE WITNESS: Certainly. Thank you.

BY MS. GARD:

Q. Did you see this letter at all?

A. No. I probably should have because -- I believe all the letters were included if they were the ones that you all provided, but I didn't recall this one specifically, no.

Q. Okay. And you've looked at this as you've been sitting up there?

A. Yes. Yes, ma'am.

Q. Generally, it appears to be a fantasy story involving sex with a child; right?

A. Absolutely.

Q. Okay. Now, you reviewed Dr. Hinson's affidavit; right?

A. Yes.

Q. Is that correct?

A. Yes.

MS. HARMS: Your Honor? I'm sorry. Can I just

point out for the record that that letter was addressed to Mr. Atwood.

THE COURT: The letter is what the letter is.

MS. GARD: I have questions, Your Honor, that will clarify that.

THE COURT: Go ahead.

BY MS. GARD:

Q. Dr. Hinson, right, you'll recall -- and I'm going to refrain from putting this on the viewfinder because I did realize it does have the names of minors in it.

But in paragraph -- page 7, paragraph 3 of Exhibit 108?

A. I'm sorry. Would you state the paragraph again.

Q. I'm sorry. It's paragraph C.

A. Thank you.

Q. Oh, no, no, no. I apologize. Paragraph E.

A. Okay.

Q. Okay. And he states there that he's "reviewed pages and pages of letters, sections of magazines, photographs, predominantly homosexual or pedophile materials and fantasies approximately three or four inches thick, all of which appear to" --

THE COURT: Slow down, if you would, please.

MS. GARD: All right.

BY MS. GARD:

Q. -- "all of which appear to have been seized -- to be seized by Parole Agent McLain on September 14th, 1984."

A. Okay. And I need to apologize. I'm on the -- I found E, but I think I'm on the wrong number. I'm sorry.

Q. Page 7 --

A. Yes, ma'am.

Q. -- paragraph E.

A. Thank you.

Yes.

Q. And do you know who Parole Agent McLain is?

A. No.

Q. If I told you that Parole Agent McLain was Mr. Atwood's parole officer and had seized these, would you find it relevant if someone maintains things like this in their possession?

Would you find it relevant to your diagnosis of pedophilia?

A. Sure.

Q. How would you find it relevant?

A. Well, for a number of reasons. I think the most -- it's very fair to have diagnosed Mr. Atwood with pedophilia, sexually attracted to boys based on his on own admission. He admitted that he sexually offended the boy. And he certainly has these letters which are dated certainly six months after the time of the offense that indicate that he's still aroused

to those kinds of fantasies. So yes, that would be important.

Q. And if you can keep that Exhibit 108 in front of you.

Dr. Hinson also identifies Mr. Atwood using a highly consistent pattern of increasing force, threats, and intimidation; right, in his offenses?

A. Yes.

Q. Paragraph -- page 8, paragraph C?

A. Yes.

Q. Page 9, paragraph 14, that he controlled his parents through intimidation; right?

A. Yes.

Q. And you reviewed his DOC inmate file as well; right, Mr. Atwood's?

A. Yes, ma'am.

Q. And did you see a record in there indicating that Mr. Atwood had attempted to sponsor a child through one of these child-sponsoring institutes?

A. I did.

Q. And a handwritten letter requesting photographs of the child?

A. I did.

Q. You're aware of that?

And that was in 1995; right?

A. Yes.

Q. And that was not discussed in your report, was it that incident?

A. No.

Q. And so criteria B, that he is -- of pedophilia according to the DSM, he's committed at least three offenses against prepubescent children; right?

A. Yes.

Q. And is that really disputed here, that there are three?

A. Not at all.

Q. So we have the one involving the little 4-year-old girl; right?

A. Yes.

Q. Then the 10-year-old; right?

A. Correct.

Q. And then the little boy; right?

A. Yes.

Q. And criterion C also is not really in dispute either, that the individual is 16 years older; right?

A. Correct.

Q. Now, when you talked to him, he denied any present attraction disorder; right?

A. That's correct.

Q. And he suggested that this was something that had

gone on in the past; right?

A. Yes.

Q. Okay. But does that mean that any interest that he had in children had gone away?

A. No, not at all. He's just not reporting it. He could have it and he could be lying about it. He may not have it. The studies show that if you have one of the sexual disorders, a paraphilia, that when you're confined, that deviant drive usually is lower. But that doesn't mean that the person is not having it. You're going to be at the mercy of their report.

Q. And what happens upon release, then, with those individuals?

A. They've done studies and if you indeed have a paraphilia, about a year you're confined, your deviant drive will return. It can return. I mean, as you get older, of course -- after the age of 45 because of normal aging process and the effects on testosterone, it's not as high.

And as you get older, your risk is a little bit lower with age. But it's the -- whether it's there or not, only he would know that. Or you could do some of the testing that would give you that information.

That physiological testing you referred to earlier?

A. Yes, ma'am.

Q. And so with antisocial personality, it's sort of the

same thing; right? You're making a diagnosis --

A. Yes.

Q. -- which is an acknowledgement that grounds exist to make the diagnosis; right?

A. Certainly. The only argument I have with that -- again, one of the criteria is you have to have the presence of a conduct disorder. And there are certainly some behaviors he had, but I would probably quibble with that. I don't think there's enough records. The only evidence we really have is a lot of Mr. Atwood's admissions again. So you would need to verify that more.

And then the only other quibble I have with that is it cautions you that if many of the antisocial acts were associated with substance abuse or obtaining substances, those need to be look at. But certainly I -- I could very well see anyone diagnosing that and he would have met the diagnostic criteria. Especially around the time of his original trial.

Q. He would have met the -- in 1984 --

A. Yes.

Q. -- in other words?

A. Because I've had the luxury of seeing him many years later and so, you know, I've had a little bit more time to look at --

THE COURT: The trial was in '86.

MS. GARD: Oh. I'm sorry, Your Honor. The trial was in '86, the offense was in '84.

BY MS. GARD:

Q. What about in 1984 at the time of the offense?

A. He certainly -- the police write-ups or write-ups he was having, the problems he was having adapting to the jail and those sorts of things, there would have been ample evidence of that.

Q. And he's been diagnosed with it since he's been in the Department of Corrections; right?

A. Yes. He's had other personality diagnoses as well. But yes, that's been the predominant one.

Q. And there have been notations of antisocial conduct throughout his records; right?

A. Yes. Many.

Q. Okay. And antisocial personality disorder is -- as all personality disorders, is a static condition; is that right?

A. It's a life-long pattern, a maladaptive pattern of dealing with situations, yes.

Q. Okay. So if he had antisocial before, he still has it; right?

A. If he indeed had it, yes.

Q. If he indeed had it?

A. Sure.

Q. Do you have Exhibit 107 in front of you?

A. (No response)

Q. I can just put it up, actually.

This is the report from Dr. Sheldon and a person with a master's degree named Walt Walton.

This report also talks about him denying threats from other inmates; right?

A. (No response)

Q. Okay. "This individual denies that he has had threats from other inmates in the past, which records show, but still wants to try living in a less restrictive setting."

Right?

A. Yes.

Q. So he is in this report -- and I think he discusses it again later on page 2, the last line, "He has had threats from inmates in the past regarding his offense. He denies this, though."

Right?

A. Yes.

Q. So he's telling this doctor at least, notwithstanding these records that you have, that he's not being threatened by -- okay.

A. That's correct.

Q. A criteria of antisocial personality disorder is a pervasive pattern of disregard for and violation of the

rights of others occurring since 15 years; right?

A. Yes.

Q. And you are certainly aware of, and you conceded that you're aware of, a large amount of antisocial acts?

A. Absolutely.

Q. But it seems to me that you are attributing those acts to post traumatic stress disorder in large part.

A. No, more -- no. They're more attributed really to the substance abuse. If you look at some of his -- you know, certainly his -- before the Department Of Corrections -- you have to go back in time and a lot of the antisocial acts were related to his obtaining or using substances.

Once he was confined, his antisocial acts -- some of them have been foolish. Again, a psychiatrist -- I'm a doctor, I'm not a mind reader. We can't know whether someone's telling the truth or not.

But I think it's very fair to say a lot of his actions were sociopathic. They were to get something he wanted. They were to manipulate. But there's certainly other ones.

And very specifically, some of the interactions he had with some of the corrections officers where he gets very vehement and aggressive and threatens them in a situation where he's being denied something or feels he's in danger. I think some of those are attributable to post traumatic stress

disorder.

Q. So you acknowledge, then, in the Atascadero records that there are repeated references of manipulative conduct; right?

A. Absolutely.

Q. And that is a hallmark of antisocial personality; right?

A. It certainly can be. And it's also very common amongst inmates as well. So you also have to keep in context where the person is as well. But yes, that's -- it's indicative of antisocial acts.

Q. And antisocial personality is also common among the inmate population; right, as a --

A. Yes, ma'am.

Q. -- as a common disorder?

A. Yes, ma'am.

Q. Deceitfulness or conning others; right? That goes along with the manipulation; right?

A. Yes. I can --

Q. Kind of --

A. -- I can think of one instance, but I'm not sure how long that's been a pattern for him, but it's -- certainly, there's evidence of it.

Q. And impulsivity, we have that; right?

A. Yes.

Q. Tremendous amount of impulsivity throughout his history?

A. Yes.

Q. Reckless disregard for the safety of himself or others; right?

A. Yes.

Q. Again, we have that.

I mean, that's satisfied also by his drug use; right?

A. Yes and no. The DSM cautions you to make sure if that's the situation, you should diagnose the substance abuse.

Q. Now, the issue of irresponsibility, that's another DSM criteria for antisocial; right?

A. Yes.

Q. Okay.

A. In my opinion, the ones -- he definitely met that one. He met number one to me and number six.

Q. So that was my question.

Because it seemed to me that you had discussed -- in the context of PTSD, you had discussed him not holding a job as evidence of post traumatic stress disorder; right?

A. Yes. But you can also see that. And I also considered and factored that in for antisocial as well.

Q. Okay.

A. That's correct. The antisocial personality disorder, they have absenteeism from work, they don't maintain jobs from long periods of time, and they're irresponsible.

Q. And that goes along with the impulsivity; right?

A. It can. And it can also just be that you don't feel obligated to be responsible, so -- and that's part of the personality disturbance.

Q. Okay. As an example, that I believe we have a story of him leaving a job to go up the coast. Right? Go up north and then he loses that job; right?

A. Yes.

Q. And then irritability and aggressiveness can be satisfied by, you know, repeated physical altercations; right?

A. I don't believe he -- to me, he doesn't meet that criteria. He's irritable and aggressive. That, I attribute to -- but irritability and aggressiveness you see in Mr. Atwood is more directed at corrections officers and I think it's very limited to his correctional setting.

So I don't agree that he has that criteria and that's indicative of antisocial personality disorder. For him. Although I can certainly see how somebody can look at those records -- he's not had many assaults. I think he's had some over time, but not with -- not the number and the

amount of assaults you see in somebody with antisocial personality disorder.

Q. What I was curious about is if his PTSD, in your opinion, stems from these sexual assaults; right?

A. Yes, ma'am.

Q. Some of which occurred in prison?

A. Yes.

Q. So why is he acting out on guards?

A. It's part of the irritability and aggressiveness you have with post traumatic stress disorder. Again, as I mentioned, they separate it. It's not necessarily an anxiety disorder anymore. There's two prongs of PTSD now. One, they think that you can have a fear- and anxiety-based reaction.

And now the DSM talks about that there's a phenotype of somebody that's constantly irritable and aggressive and he would fall more into that characteristic. Which is why they have changed some of the criterion.

But it's usually because they're denying him of something or he was in a situation where he felt he was threatened and they haven't acted quickly enough. But he is definitely very aggressive and very verbally aggressive to many of the COs that have had dealings with him.

Q. You recall reading a record, for example, that indicated that he had threatened to harm an officer's family; right?

A. Yes.

Q. Not just harm them, but kill the family; right?

A. Correct.

Q. So Exhibit 165 is a disciplinary report, Mr. Atwood being advised -- 2006, being advised that he was on report. And we won't read his response into the record.

But what I find notable about this -- and maybe you can explain to me -- would it be typical of someone with antisocial personality disorder, this type of behavior, to tell the officer that he is going to contact his lawyer, tell him that he's assaulted by staff, and "to get that" --

MS. GARD: I apologize, Your Honor.

BY MS. GARD:

Q. -- "get that fucking sergeant fired" because he was on death row and the lawyers and the courts listen to them more?

Is that an example of manipulation?

A. Yes.

Q. It would be; right?

A. Yes, a threat.

Q. And then -- I'm sorry?

A. A threat, yes.

Q. A threat.

And then on further down when he injures his hands, he starts blaming the officers for that; right?

A. Yes.

Q. Blaming others for your problems, that's another example of antisocial behavior; right?

A. Yes.

Q. Okay. And that's different than just reactionary behavior attributable to PTSD?

A. Well, except there's some reactionary behavior in that, too. If you notice, early on what happened is he would -- they used the words "he was throwing a tantrum".

Q. Right.

A. And so some of that -- some of that acting out and anxiety, that's similar to what you can see. But certainly I think there's both of those components involved in that incident, without a doubt.

I mean, he did -- he was definitely being disrespectful of authority. He was manipulating. He was threatening. But his emotions were not controlled, and I think a tantrum was a very good word to describe that.

Q. And disrespect for authority is another hallmark of a antisocial; correct?

A. Yes, except it can also be seen in PTSD, too, as we talked about with the negative cognitive emotion. You may not trust establishment. But yes, it can be seen in both.

Q. And about not trusting establishment, when he was in the community -- I mean, the last time he was in the

community for any appreciable period of time was in the '60s and '70s; right?

A. Yes.

Q. And he --

A. A very long time ago.

Q. -- he was involved at that point in counter-culture activities; right?

A. Yes.

Q. That are characterized by distrust of authority; right?

A. Yes. But if I may. I think another thing that was very important, one of the basis where he developed some of that thinking, he reported to me that he felt forced to testify in the case against -- when he was 14 years old and he was assaulted. And he reports that the police told him he was going to charge him with underage in possession if he didn't testify against the assailant.

So some of the stemmings (sic) of where he developed the mistrust of authority came when he was victimized and felt that he was forced to testify and he didn't want to. And those are his words.

Again, there's no independent verification that someone told him they were going to charge him. But that -- it also stemmed from that incident as well. And then, of course, all the counter-cultural activities he was involved

in.

Q. But he was, in fact, a minor in possession at that point, wasn't he?

A. Yes, but --

Q. So there was a basis for that charge; right?

A. Sure. Sure.

Q. So it wasn't just an abstract threat?

A. No.

Q. I just want to return to the PTSD for a few minutes. In terms of his impairment, right --

A. Yes.

Q. -- the PTSD, your opinion is that he has shown impairment in functioning?

A. Absolutely.

Q. But you're aware, aren't you, that Mr. Atwood's earned several degrees on death row; right?

A. Yes.

Q. And that he's actually published books?

A. Yes.

Q. And that he has -- well, you opine that he was socially impaired as well?

A. That's correct.

Q. Okay.

A. And that's the impairment you see with him. It's he's more isolated. He has more social impairment. But he

definitely has excelled and had degrees and writes and reads very frequently. He's very busy. He keeps his mind very active.

Q. And in terms of the social impairment, he doesn't really have all that much opportunity to interact socially with other inmates; right?

A. I don't know. I'm not sure I can answer that fully. I know that inmates communicate; they have ways. The physical setting at Browning -- I've been to the visitation, but not in the back. But I know that you can communicate with each other. You pass each other at times going to rec and those sorts of things. I mean, by his reports, he's very limited in his communications.

Q. Well, he's been married since he's been on death row; right?

A. Yes.

Q. So he's had that social relationship?

A. He has a good support network. He has a wife and a priest and he maintains very close contact and frequent contact with them.

Q. So he's not devoid of social interaction with others?

A. No, not at all.

Q. Right.

A. Just his social ability -- the adaptation he's made

in the prison with the other social relationships with both his peers and the inmates are affected.

Q. In terms of your interviews with Mr. Atwood. So your first report we've talked about was just for mitigation; right?

A. Yes.

Q. And so you did not acknowledge in that report pedophilic disorder?

A. That's correct.

Q. Because that's not terribly mitigating, is it?

A. Well, that would be one reason. And then I had not -- I haven't -- had not investigated that enough at that time to even come up with a diagnosis. But I certainly was aware of the acts of molestation.

I've seen the Atascadero records and knew that they had certainly diagnosed him with pedophilia. The issue I've had back then and that persisted to the second report is I wasn't sure if he could qualify that he's attracted to the females. That was the issue most for me in terms of how to characterize that as well. And that's still been an issue that's not been clear.

Q. Despite the two prior -- and is that because there's no expressed admission to attraction to females?

A. No. No, not at all. The first event when he's 16 years old and the child is 4, that is close to the time that

he was molested.

And we do know that just because -- as I said -- I can say this over and over again. When you're molested as a child, that doesn't mean that you're going to grow up to be a pedophile. That has no correlation. It's not positive or negative.

If you'd look at the research, two-thirds of people that are sex offenders have reported child abuse, but they've done studies and there's not any study that showed it increases your risk to reoffend or it decreases your risk. There's no science on that at all at this point.

But what happens -- we know that when you're abused as a child, there is a period of time where you do have sexualized behaviors. And in my opinion, that first offense occurred in that window of time. He molested a child and then he had a lot of sexual acting out. He was going to Hollywood and having sex with strangers. And so there was a period of time. So in that instance, it was difficult for me to determine whether that would represent pedophilia or not.

The second instance, absolutely. I think it was indicative of pedophilia. The third where -- with the boy was the most convincing because he was also able to give history to corroborate that.

The problem is for the female -- to be diagnosed with pedophilia sexually attracted to female, you have to

have that six-month period. And so he had the one offense in adulthood and there was no evidence, no records or anything that I could find that said he was still attracted to females. And so that was the issue. And then absent that workup, it just made it very difficult to diagnose.

Q. Okay. You mentioned going and having the sex in Hollywood and --

A. Yes.

Q. -- he was doing that to obtain drugs, he told Dr. Nelson; is that right?

A. Well, for me, he also said money. What would happen, he -- although he had money, if you went to Hollywood, he reported that he could be offered $70 to allow someone to fellate him and so he would allow that.

Q. At the point you wrote your first report, you had Dr. Abe's psychological report; right?

A. I did.

Q. Which found him to be a mentally disordered sex offender?

A. Yes.

Q. Okay. And Dr. Coodley's report?

A. Yes. And actually, I think Dr. Abe's, if I'm correct -- I reviewed that. He diagnosed him with a personality disorder and I'm not sure in that report when he deemed him a mentally disordered offender, that he put the

sexual. Dr. Coodley did. But I recall in reviewing Dr. Abe's, I didn't see that language.

Q. It's Exhibit 176.

I'll just put it on the viewfinder.

A. Thank you.

Q. Page 3 of 176.

A. Yes.

Q. Which is the report of Dr. Abe.

A. Yes.

Q. Page 3. "Opinion: It is felt that the defendant is a mentally disordered sex offender due to a personality disorder predisposing him to be dangerous to the health and safety of minor" --

THE COURT REPORTER: Could you just slow a little bit.

MS. GARD: Sorry.

THE WITNESS: Yes, ma'am. And that's what I was referring to. He didn't put pedophilia. He put a personality disorder. Which was of interest to me.

BY MS. GARD:

Q. Okay. And Dr. Abe also agreed that he was a mentally disordered sex offender?

A. Yes. And Dr. Coodley did -- now, Dr. Coodley did write in his report pedophilia.

Q. Okay.

A. Yes.

Q. Okay. But you -- and you didn't mention those reports because those aren't mitigating either; right?

A. I think I referred that he had been deemed unamenable to treatment. He had been in Atascadero, but that's -- at that point, that's correct.

There was a history. It was already -- but when asked -- when Ms. Harms and I were discussing it, there was a history. It was known that he had had those diagnosis (sic). Those were records available.

We were looking for things that could have been presented that were not presented at that time. And so there was plenty of information, of course, by history to make both of those diagnosis, both the antisocial and the pedophilia, which is what I did in the second report.

Q. Were you asked not to discuss those in your first report?

A. No, I was asked -- I was allowed to do the interview. But they asked that I present the mitigators and stick -- and they very specifically asked me to please limit my report to the mitigators in this case.

Q. At some point before your second interview -- well, let me back up a little bit.

Once you do your second report, right, you expanded the factual basis for a lot of --

A. Yes. I was given more information. Yes, ma'am. I was provided with much more information.

Q. So you received records that you weren't given the first time around; right?

A. Correct.

Q. And did I understand your testimony correctly on direct that you were attempting to shore your opinion up with this additional information?

A. Well, there were three reasons to. And you'll see the changes I made in the first and second. It was to ask more -- to shore the diagnosis, I meant to get more information. I had found out and discovered some things that I needed to ask Mr. Atwood.

Very specifically, if I may. If he indeed remembered sleeping with his mother; if he was aware of some of the behaviors that were alleged by his father. And then, thirdly, if he had recalled any other instances of sexual harassment or abuse within the correction system.

So those were the goals that I had -- the focus I had in that interview just because there was new information and I needed to get more information from him.

Q. But at some point before your second interview, he received a copy of your report; right?

A. Evidently, yes. And I didn't know that. But when I saw him the second time, he had made some references to my

report.

Q. Okay. And that first report that you had listed the DSM-IV criteria for PTSD; right?

A. Yes.

Q. And it included the factors that you felt were significant and why he met each criterion; right?

A. Yes.

Q. Okay. And also by the time that you spoke to him the second time, he had reviewed Dr. Nelson's report; is that right?

A. Yes.

Q. Okay.

A. And also her -- the transcript, very kindly that someone had recorded that, and a transcript of her interview with him as well.

Q. Okay. And you didn't record either of your interviews; right?

A. No.

Q. Okay. And Dr. Nelson, you recall having reviewed her report, that she includes the discussion of the DSM-5 criteria also; right?

A. Yes.

Q. And then the second time that you met him, he remembered more details?

A. Not more details, different instances. He didn't

necessarily provide any more detail to the four acts that he described, but he was able to give many more examples of pressure and things that had happened to him while he was confined.

Q. And it's interesting you use the term "sexual pressure" because I don't know if you noticed -- or did you notice, I guess, that when he was talking to Dr. Nelson, he uses that exact same term at various points in that interview, "sexual pressure"?

A. He may, but also he actually used that word with me as well. And where that came from, one of the things he told me in the second interview, is when he read the report. There was evidently an allusion I had made in one of the records to sexual pressure and that made him start thinking about that. So that may have been -- that's the reason he gave me that -- he chose those words, but...

Q. But in any event, he did recall additional instances --

A. Yes.

Q. -- of sexual pressure; right?

A. Yes.

Q. And while incarcerated?

A. Yes.

Q. And he actually told you, right, that he had thought about this in between your two interviews and he tried to

think up some more things that had -- he tried to remember more things that had happened; right?

A. Yes.

Q. And then at the end of your first interview, you told him you believed that he suffered from PTSD?

A. I think I told you on deposition -- normally, what I'll do, Your Honor, if I have a diagnosis of someone, I will give them at the conclusion -- if I thought that was the only time I would have been seeing Mr. Atwood at that point and so I will give a diagnosis.

I don't know if I did or not. If he said I did or if someone said I did, I wouldn't be surprised because my methodology normally at the conclusion of an interview if someone has a mental illness, I will tell them and if they need to refer themselves to treatment.

Because there are times I may only see someone one time, and so that certainly has been my methodology. So I don't have a specific recollection that I said this is your diagnosis. But if I did, that would certainly be consistent with the methodology I use.

Q. Did you tell him at any point that he could have been misdiagnosed as having sociopathic tendencies, that that's often misdiagnosed as PT -- or PTSD is often misdiagnosed?

A. I don't -- I don't know if I would --

Q. Do you remember him telling Dr. Nelson that you said that?

A. Yes.

Q. Okay. But you don't remember saying that?

A. I -- he -- if -- he may have a better memory than I. I know that he referred to himself as antisocial and sociopathic and had given himself that diagnosis. And I told him that there were many other factors. I do recall that conversation.

He's referred to himself as antisocial. He told me that he was a bad person; that he couldn't understand why he had been given so many gifts in life and squandered them. So he had a very negative self-image and I told him that that was a psychiatric diagnosis and there's other factors and you can have similar behavior. So that probably would have been the more appropriate context of that conversation.

Q. Okay. Just a few more questions.

We discussed how you can't say when he develops PTSD; right?

A. That's correct.

Q. But you can't say that he had PTSD in 1984?

A. Gosh. I would have -- probably based on the information that I have now --

Q. Uh-huh.

A. -- going back from 1984 back and not having present

information, I probably would have diagnosed it had he given me the same history. But again, in time, I can't say because what information was available at -- I saw him in 2013, so it's hard for me to go back and say what he would -- or what I've had back then because I didn't see him.

Q. So as you're sitting here today, though, your opinion is he has it today?

A. Yes.

Q. But you don't know when he developed the disorder?

A. That's correct.

Q. He could have developed it based on what he experienced in death row; right?

A. He could. That could be possible. Sure.

Q. If he's being threatened all the time --

A. Sure.

Q. -- and his life's in danger on a constant --

A. Sure.

Q. -- basis; right? Okay.

Does it affect, in your opinion, his ability to control his behavior?

A. Only for certain things. And probably the only time that I've seen any evidence where he would have some difficulty controlling his behavior for PTSD is when he gets explosive and very verbally aggressive and says some very hurtful things. I think that would be the only period of

time that I think his PTSD has something to do with his behaviors.

And probably the only other time is if he's not very socially active, if he's -- for perhaps refusing things, refusing a rec, refusing maybe certain activities. That would be related to that.

Q. You cannot say or you're not offering the opinion, right, that PTSD caused him to commit this offense?

A. Not at all.

Q. That it made him unable to control his behavior at the time of the offense?

A. No.

Q. That it really had any direct relationship to this offense at all?

A. No. The only -- the only connection, the only nexus I can make to what happened to him in these charges, that we know that post traumatic stress disorder, it's a chronic disorder. It's a life-long disorder. And you can have periods where your symptoms come and go.

It depends on your environment. It depends on many things. And that a common complication of post traumatic stress disorder is substance abuse and those certainly played a role. So I can make the connection to some of the poor coping strategies, the poor judgment, the substance abuse. But in terms of him saying that he killed this child because

of PTSD, that is not my opinion.

MS. GARD: Judge, may I have one moment?

THE COURT: Yes.

MS. GARD: No further questions, Judge.

THE COURT: Any redirect?

MS. HARMS: No, I do not.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness left the stand)

MS. HARMS: Your Honor, the parties had agreed that we would do all the mental health experts today, so they were going to call Dr. Nelson.

THE COURT: All right.

MS. GARD: Call Dr. Nelson, Your Honor.

EVIDENCE ON BEHALF OF THE RESPNDENT

ERIN NELSON,

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your full name and spell your last name for the record.

THE WITNESS: My name is Erin Nelson, N-e-l-s-o-n.

DIRECT EXAMINATION

BY MS. GARD:

Q. Hi, Dr. Nelson.

A. Hello.

Q. You are a psychologist; correct?

A. That's correct.

Q. Okay. Can you tell me a little bit about your educational background.

A. Sure. I have a PsyD, which is a doctoral level degree in psychology. It's a Doctor of Psychology. I also have two master's degrees in clinical psychology.

I'm sorry. Did you just ask education or training?

Q. Let's start with education.

A. Okay. So, yeah, I have two master's degrees and a doctoral level degree.

Q. And when did you obtain your doctoral degree?

A. In 2003, I believe, is when I graduated.

Q. Okay. And are you currently licensed to practice psychology in Arizona?

A. Yes. I'm licensed in Arizona and California.

Q. How long have you been licensed?

A. In Arizona, I believe it was 2005 when I gained my licensure. After we finish doctoral training, we have to do 2,000 hours of supervised post-doctoral practice, so it was 2005 when I was granted my license in Arizona. And I recently sat for the California licensure within the last year or so. I don't know the date.

Q. Do you have any specialties within the field of

psychology?

A. I'm both a forensic and a clinical psychologist. I treat patients and I -- although the bulk of my practice is forensic in nature.

Q. How long have you practiced forensic?

A. I've been working in the same forensic practice for almost 20 years. In Arizona, you don't practice psychology until the level of your doctoral training is complete. So I've been in the field for almost 20 years. I haven't been working as a psychologist until after I was licensed.

Q. Are you part of a larger practice group?

A. Yes. I am a member of the firm Steven Pitt & Associates, which is a forensic and general psychiatric and psychological practice.

Q. You should have a binder in front of you that's marked Exhibit 28.

A. Right in front of me.

Q. Can you turn to Tab F.

A. Yes, I'm there.

Q. Is that a copy of your current CV?

A. Yes. This is June 2013. I don't believe I've updated it since then.

Q. In addition to your forensic practice, do you have teaching appointments as well?

A. Yes. I am an adjunct professor, a clinical

assistant professor at the Louisiana State University School Of Medicine in New Orleans and that -- I'm less involved with them.

I am very actively involved in the University of Arizona College of Medicine here in Phoenix. I am the director of the behavioral sciences curriculum for the medical school and I'm also an assistant professor in the department of psychiatry.

Q. And do you also maintain a clinical practice?

A. Yes, I do.

Q. How much time would you say you spend with your clinical practice?

A. My clinical practice is very small. I keep a handful of patients -- or I keep a case load of a few patients. I used to see along the lines of five to ten, but now I only have a couple, in that, my educational role has increased substantially and I just don't have time.

Q. Have you treated patients who have PTSD?

A. Yes, I have.

Q. Are you currently treating any?

A. One of the patients that I don't see very often but is on my active case load does hold that diagnosis, yes.

Q. Have you ever treated patients who had a history of sexual abuse?

A. Yes, I have.

Q. Do you currently treat any of those patients?

A. The same patient I was just referring to.

Q. Can you turn to Tab G of your reports.

A. Yes.

Q. Is that a list of cases in which you've previously been retained?

A. This is a list of cases that I've testified in.

Q. Testified?

And you prepared that list?

A. Yes.

Q. If you could just in a nutshell tell us what the practice of forensic psychology involves.

A. Forensic -- it's a broad term. It generally means the interface of psychology or psychiatry, depending on which profession you're talking about, the way that interfaces with the law.

Q. When you're starting a forensic assessment, how do you go about beginning an assessment?

A. The hallmark of a forensic evaluation as opposed to a clinical evaluation is the absence of the doctor-patient relationship and that it's founded on objectivity. The goal is to conduct an assessment to gather information and render an opinion as opposed to offer some sort of treatment plan.

Q. You were asked to conduct a psychological evaluation of Frank Atwood; correct?

A. That's correct.

Q. Okay. Who asked you to do that?

A. The Attorney General's Office.

Q. Okay. And can you turn to Tab A of Exhibit 98.

A. Yes.

Q. And that appears to be a piece of written correspondence; correct?

A. That's correct.

Q. And who signed that correspondence?

A. You did.

Q. And did that letter ask you to answer two questions?

A. Yes, it did.

Q. Okay. Are those called referral questions?

A. Yes, and I should have added that earlier. One of the fundamental features of a forensic evaluation is that the mental health professional is asked to -- asked a referral question as opposed to a clinical evaluation where you may be doing broad strokes to understand someone. You're asked a specific question and then you set out to answer the questions posed to you.

Q. Okay. What were the questions you were asked to answer?

A. I was asked, number one, does Mr. Atwood suffer from a mental illness or disorder; and number two, if so, what, if

any, causal connection exists between the conditions and the murder. For example, did the illness or disorder affect Mr. Atwood's decision to abduct and murder the victim and does it impede his ability to know right from wrong.

Q. Is that the totality of what you were asked to do in this case?

A. Yes, it is.

Q. Okay. And ultimately, you authored a report, did you not?

A. Yes, I did.

Q. Okay. Is that report contained within the binder marked Exhibit 98?

A. Yes, it is.

Q. And did that report include all your opinions and conclusions in this matter?

A. Yes.

Q. Okay. Now, there's a typographical error in that report; right?

A. Yes, there is.

Q. All right. Let's deal with that.

Is that on page 15 of the report?

A. I believe I should have a page.

Yes, it is on page 15.

Q. Okay. And did you list a person there named Mr. Hampton?

A. I guess I did.

Q. Okay. Do you know who Mr. Hampton is?

A. I don't know him personally. I know that's the name of another case that is in our office. I've never met Mr. Hampton.

Q. So is it fair to say, then, you haven't evaluated him either?

A. No, I have not.

Q. Do you know how his name came to be?

A. I have racked my brain for that. The only thing that I can think of is that as I was typing this section of the report, somehow or another the other case came into my mind and I wrote his name.

Q. Did you rely on Mr. Hampton's report at all to write Mr. Atwood's report?

A. No, certainly not.

Q. And are the opinions in your report based on your evaluation of Mr. Atwood?

A. Absolutely.

Q. Entirely?

A. Entirely.

Q. And there are a couple of other tabs in Exhibit 98 we haven't discussed.

Is Tab C a copy of Dr. Schwartz-Watts' report?

A. Tab C is a copy of Dr. Schwartz-Watts' January 9th,

2013 report.

Q. And is Tab D and E, are those DSM disorder criteria?

A. Tab D is the DSM-5 criteria for pedophilic disorder and Tab E is the DSM-5 criteria for antisocial personality disorder.

Q. Okay. And did you rely on those documents to form your opinions?

A. Yes. In fact, I believe these are exhibits to my report.

Q. And also as an exhibit to your report, is there a transcript?

A. Yes. I'm trying to see what tab it is. It looks like it's Tab B. Tab B is a full verbatim transcript of my interview with Mr. Atwood.

Q. And so that interview -- was that interview audio recorded?

A. Yes, it was.

Q. Okay. Is that your standard practice?

A. Yes. My standard practice is to minimally audio record and my preference is to also video record forensic evaluations.

Q. Why is that your practice?

A. In my professional opinion, the audio or video recording is the absolute best way to preserve the integrity

of the interview. It -- not only does it hold my work product up to scrutiny, but also allows me the luxury of focusing on the person in front of me, of not having to take extensive notes, of being able to not wonder to try to remember verbatim what -- or try to wonder what was said or transpired during a long, intensive interview. It allows me the opportunity to go back and see word-for-word what took place and it allows all of you to do the same.

Q. Okay. And did you cause that transcript to be prepared somehow?

A. Yes. I have a transcriptionist.

Q. And have you read the transcript and assured that it's accurate?

A. Yes.

Q. I'm handing you Exhibit 206. It appears to be the DVD.

A. Yes, this is the disk.

Q. And did you prepare that disk?

A. Yes, I did.

Q. Does it contain a recording of your interview with Mr. Atwood?

A. Yes. I use a digital audio recorder during my interview and then I put the audio files onto a disk for the Court.

Q. Is that a true and accurate copy of your interview

with Mr. Atwood?

A. Yes.

MS. GARD: Your Honor, I move to admit Exhibit 98 and Exhibit 206.

MS. HARMS: We object to the admission of the audio tape and the transcript of it for the reasons we stated in our earlier motion.

THE COURT: Objection is overruled.

BY MS. GARD:

Q. Doctor, how many hours have you spent on this case so far?

A. I added that up in order to say so today and I believe at last count, it was about -- just under a hundred, 98.2 as of my most recent accounting.

Q. Okay. And you billed the State of Arizona for your services; correct?

A. That's correct.

Q. What is your hourly rate?

A. My hourly rate is $375 an hour to the firm. I myself receive $275 an hour.

Q. How much have you billed total?

A. You know, I added up how much I received, which was around 25,000. I didn't add up the total bill to the firm. That would include what, you know, the firm gets and the cost of transcription. But I have my billing available.

Q. Can you give us an estimate of how many pages -- how many pages of documents you reviewed in this case.

A. Over 11,000 pages of documents. I don't believe that those Bates stamps, and that includes all of the page numbers and all the depositions. And so at best guess, I would say it may be closer to 12,000.

Q. Do you have an opinion on how important record review is to a forensic assessment?

A. Record review or what we call collateral source information is fundamental to a forensic eval. While -- when we're doing treatment of somebody, we like to get other records. We like to see what other professionals have said and gather that.

In a medical/legal context, it's critical that you evaluate records from other sources in order to corroborate or substantiate what you're seeing and what the evaluee is presenting to you.

Q. Would it be accurate to say that Mr. Atwood has spent a substantial portion of his adult life incarcerated somewhere?

A. Yes.

Q. So would it be fair to say that his history is well-documented?

A. Yes.

Q. Okay. And the specific documents that you reviewed,

you list those in your report; correct?

A. That's correct.

Q. And you relied on all those documents to form your opinion?

A. That's correct.

Q. Are there additional documents you've received since writing your report?

A. Yes. Since witting my report, I received medical records pertaining to Mr. Atwood's mother. I have received declarations of Dr. Crausman. I have received other declarations. I can't remember all of the names of the other people that I've also received, but several more records.

Q. Okay. Did any of the records that you've received since writing your report materially change your opinions as stated in your report?

A. No, they did not.

Q. Okay. Did you meet with Mr. Atwood on June 24th of this year?

A. June 26th.

Q. Okay. I apologize. June 26th.

Where did you meet with him?

A. At the Browning unit in -- I believe it's a shift commander's office. I believe that's what they call it.

Q. Were you aware at the time that Mr. Atwood had reviewed Dr. Schwartz-Watts' report at the time that you met

with him?

A. I wasn't aware when I arrived there that he had reviewed it, but he told me -- or gave me -- he told me during our discussion about his conversations with Dr. Schwartz-Watts.

Q. Did that cause you any sort of concern?

A. I think it would be our preference as forensic evaluators to not have had the person that we're seeing have reviewed DSM criteria. And since Dr. Schwartz-Watts' report did detail all of the DSM criteria, you know, it's of some concern that he had those when I met with him, yes.

Q. Okay. And if I asked you this before, I apologize.

But does recording an interview compromise its reliability in any way?

A. Not in my opinion. There is some debate in the field about whether or not audio and video recording is indicated and it -- but the reality is it's used all the time. It's used in therapy settings. It's used in training settings. And I see no evidence that an unobtrusive recording is at all disruptive. And in fact, the benefits of having a verbatim transcript far outweigh any concern.

Q. Did you perceive from Mr. Atwood any sort of hesitation to discuss any topics in your interview?

A. No, not at all. Mr. Atwood was very verbally proficient, very conversational. He seemed quite comfortable

to me.

Q. Did he complain of any present anxiety that day?

A. No. He did explain that he had some physical pain when we met and I was concerned whether or not his physical pain would interfere with his ability to engage in an interview or sustain. But he said he was fine.

Q. At any point during the interview, did you become concerned that maybe he wasn't involved because of the pain?

A. No, not at all. He seemed to be able to attend and engage all the way through our interview.

Q. What was the room like where you had the interview with Mr. Atwood?

A. It's a small office that's sort of separate, but has a large mirror placed over Mr. Atwood's head. And outside the door, it would open into a CO, a correctional office.

Q. Did he a appear jumpy at all or?

A. No.

Q. Did he appear hypervigilant, in your opinion?

A. No, not at all.

Q. And did you say already that he was cooperative with your questioning?

A. Yes, he was cooperative.

Q. Okay. And you administered a psychological test?

A. Yes, I did.

Q. What test was that?

A. The Minnesota Mulitphasic Personality Inventory 2 commonly known as the MMPI-2.

Q. Why did you administer that test?

A. The MMPI-2 is gold standard personality test and it captures Mr. Atwood's self-report about his feelings at this moment in time. And part of the reason that I give that when I'm doing a forensic evaluation is not because it's some magical window into the past and how he was functioning then, but I like to use it as a way to hold my own thinking and processing up to another level of scrutiny.

So I give that evaluation and I look at the results and see if they are generally consistent with what my view and my diagnostic impression is or if there's something different. And if there was a notable difference, then I would need to further explore that, challenge myself to understand how or why that difference is there, and to see if there's any indication that while I felt like Mr. Atwood was being forthcoming, perhaps the test results show us otherwise and that would give me pause. But the results in this case were consistent.

Q. Would you ever use the MMPI results standing alone to diagnose any psychological condition?

A. Absolutely not. That would be a gross misuse of a psychological test instrument.

Q. Okay. Would you ever use the -- well, how is the

test scored?

A. Well, the test is -- there's 567 questions. They're raw data. I myself have the test-scoring software which is produced by the test makers. And so I sit and enter true-false, true-false all the way through.

And then there is another mechanism right after you finish entering that data that asks to verify. So it's another check and you go back over and re-enter all of them again to make sure you didn't get off on any, you know, bullet points. And then there is a computer-generated profile report that you're able to obtain.

Q. Is that the report that Dr. Schwartz-Watts addressed this morning?

A. Yes, it is.

Q. Is it appropriate to use that summary report alone to diagnose a psychological condition?

A. No. The summary report is another piece of data. It's my standard practice to look at the profile sheet first and to have my own interpretation based on my training. And then I use, again, the computer-generated report in order to further see is what I'm seeing hanging together with what he's seeing, hanging together with the test results. It's another layer of sort of verification of what's happening.

The problem with the computer report and with the test in itself is that it doesn't know the person sitting in

front of you. For example, Mr. Atwood's test, if you just looked at it at face value, you would call him a somaticizer.

I don't think that's the case. I think he was in genuine pain, but the -- you know, or has medical complaints that are genuine. But the tests and the computer don't know that and so this is something that you're challenged to understand and interpret. And that's the whole reason why we don't just use computer reports.

Q. Were Mr. Atwood's results in any way significant to you?

A. Significant only to the extent that it was pretty consistent with what he had to say to me.

Q. Okay. Let's talk about your diagnostic impressions.

THE COURT: Let's take a 15-minute recess.

MS. GARD: Okay.

(Brief recess taken)

BY MS. GARD:

Q. Dr. Nelson, we left off talking about the MMPI.

In your report, you don't discuss the results of the MMPI. Is there a reason for that?

A. Sure. I list the MMPI on my sources. It's certainly no secret that it was administered. However, the interpretation of this test, not particularly relevant to the questions at hand.

Again, I give it as another way to corroborate or

make sure the information I'm seeing in my interview with him and my diagnostic impressions are as accurate. But there was nothing that would be added to answer the referral questions in the report.

Q. Let's turn to the referral questions and how you answered them.

So the first question: Does Mr. Atwood suffer from a mental illness or disorder.

And would you agree the answer to that question is kind of a threshold to the second question; right?

A. That's correct.

Q. Right.

So you begin your diagnostic impressions on page 46 of your report, Exhibit 98; right?

A. Let me get there.

Yes, that's correct.

Q. What were your diagnostic impressions of Mr. Atwood?

A. I believe that Mr. Atwood has a variety of diagnoses. I list them each. To begin, I concur with Dr. Schwartz-Watts that he had significant substance use and abuse disorders. I added a couple more specific categories based on his report than she had, but generally both are in complete agreement about an extensive history of substance abuse disorders.

The next diagnosis that I have for Mr. Atwood is that he does indeed meet the criteria for pedophilic disorder.

Q. Let's spend some time talking about that one.

First of all, tell us what this disorder is.

A. Well, pedophilic disorder is, as you've covered extensively earlier, indicated when someone has a period of at least six months of recurrent intense sexually arousing fantasies or urges or behaviors as it pertains to prepubescent children; and is also indicated when someone has acted on those urges or fantasies and when it is someone who was at least 16 years of age or 5 years older than the victim. All of which Mr. Atwood absolutely meets.

Q. Is there any type of physiological testing required to make this diagnosis?

A. No, it's not. And the DSM does say that at times physiologic testing can be helpful. That would particularly be in a case if there is some equivocation about the diagnosis. In Mr. Atwood's case, I see absolutely no room for equivocation about his diagnosis.

Not only does he meet the full criteria as required by the DSM, he also -- there's only one associated feature that's listed as being required and it is the use of pornography depicting prepubescent children or essentially the possession of child -- pornographic-related materials

related to children, of which it sounds like perhaps Dr. Schwartz-Watts didn't see. But I did see voluminous materials that were in his possession at the time of his arrest.

Q. And now, when you say "pornographic materials," is it correct you did not receive any actual pornographic images?

A. No, the images were redacted. But there were extensive and detailed written fantasy stories specifically addressing children.

Q. And were those significant to your conclusions?

A. I would have already been clear that he met the diagnostic criteria; however, that's just additional evidence.

Q. What did you find significant in concluding that he arrived at the criteria?

A. Well, several things. First of all, we have the first criteria which demonstrate -- which is the multiple offenses. And we have his telling me -- that's detailed in the transcript and apparently Dr. Schwartz-Watts as well -- that there were periods of time when he was physically attracted or sexually aroused to children, or male children in particular. And the age differences are well-documented.

I know that earlier Dr. Schwartz-Watts was saying that some of what, as I understood, her struggle was the

specifier in which you can say if somebody is sexually attracted to males or females or both and that there apparently, in her opinion, wasn't sufficient -- or she didn't have a sufficient capture of which was going on for him, males or females.

But it's not necessary to know that. Specifiers are intended to add a level of information. It's not required to say that he meets the criteria for pedophilic disorder.

Q. So in other words, it's fair to say that the diagnosis could be made without the specifier?

A. Sure. Yes. I mean, that it certainly is an added level of nuance if you have it, but it's not necessary.

Q. Okay. Did you find his criminal history significant in making this diagnosis?

A. Yes.

Q. Okay. How so?

A. To the extent that there is a documented history of offenses against children.

Q. Okay. And you mentioned earlier that he admitted to you an attraction to children?

A. Yes. He admitted that there was a time when he was attracted to children.

Q. Did he say whether he's still attracted to children?

A. I don't remember the quote. I believe he denied

that presently.

Q. And do --

A. Or -- I'm sorry. At the time we met.

Q. -- do you have an opinion on whether one who suffers from pedophilic disorder will stop being attracted to children without some sort of intervention or therapy or something to that nature?

In other words, is it possible to treat this disorder?

A. Well, there are certainly people who work very hard to try and treat this disorder. The recidivism rates show that as a field, we aren't that great at it at this point.

But as was pointed out earlier, somebody's libido in general tends to decline with age. And certainly Mr. Atwood and anyone else diagnosed with this disorder is in command of their behavior. So whether or not their actual interest changes, someone could elect not to engage or be in a situation where there's no opportunity to engage in that type of behavior.

Q. So is it fair to say, then, that this disorder does not compromise someone's ability to choose whether to engage in crimes against children or sex with children?

A. Absolutely.

Q. Okay. Mr. Atwood received treatment; right, for pedophilic disorder?

A. Yes. His treatment at Atascadero was specifically targeted or an attempt to address his pedophilic disorder.

Q. What, if anything, did you find significant -- well, did you review the Atascadero records?

A. Yes, I did.

Q. And was that about 445 pages or so --

A. Ish.

Q. -- those records?

A. Yes.

Q. And what, if anything, did you find significant about those records?

A. Well, there are a few things that were significant to me about those records. First of all, Mr. Atwood was repeatedly diagnosed with pedophilic or antisocial type personality disorders. The names change with different iterations of the DSM and so the words that they were using at the time were based on what the DSM was at the time.

But what was most noteworthy was the entire absence of any discussion of trauma. Not necessarily PTSD, which may not have been a formal diagnosis or wasn't at the time there. But no description of any of what we would be looking for in terms of trauma-related behaviors or symptoms.

Q. What kind of things might you be looking for?

A. I would have looked for any indication of nightmares, of hypervigilance, of flashbacks. All I see, his

behavior at the time is much better accounted for by the diagnoses he was assigned at the time.

And I find it very difficult to imagine that regardless of what the formal diagnoses were, that he was under intensive psychiatric and psychological scrutiny, and no one made reference even in a description to what we now call post traumatic stress disorder.

Q. Are you familiar with these inpatient facilities and how they operate?

A. Generally.

Q. Generally?

And if someone had noticed that, should it have been documented?

A. Certainly. The records in an inpatient facility are typically designed so that you can communicate among staff. So people put in staffing notes, nurses put in notes, doctors put in notes, psych techs put in notes in the hospital and then the record is available for other professionals.

Q. You diagnosed antisocial personality as well, didn't you?

A. Yes, I did.

Q. Okay. Tell me a little bit about how you determined -- well, let's just go down the list of criteria.

Why do you think that Mr. Atwood meets the criteria for antisocial personality?

A. Based on the review of the records and all of the other mental health professionals and my interview of him, Mr. Atwood meets virtually every single criterion for antisocial personality disorder.

Q. How many are required for a diagnosis?

A. Three.

Q. How many total criteria are there?

A. Well, let me say in the DSM under criterion A is the pervasive pattern of disregard for or violation of the rights of others. And of that, they give a list of seven examples in which you only need to have three to make the diagnosis.

An argument could be made for all of them, but only three are necessary. So we have failure to conform to social norms with respect to lawful behaviors. Well-documented in a variety of contexts, both sex offenses and a variety of other things.

Deceitfulness as indicated by repeated lying or conning others for personal profit or pleasure. His record is replete with reference to --

Q. And can you give me an example of that.

A. I can give an example of that as recently as after this arrest when Mr. Atwood explained to me that he was going to marry a nurse that he met in Pima County for the purpose of having her bring drugs into the correctional system.

Impulsivity or failure to plan ahead. Well, there

are multiple references to impulsivity in the record. Although in -- Dr. Schwartz-Watts appears to be attributing that more to post traumatic stress disorder, I believe that it's better subsumed here. That's just --

Q. Let me stop you right there and ask you why you think it's better explained by antisocial?

A. So in general, what I have is a person who meets all of the criteria, has a well-documented history of, and clearly is indicated for all of these -- for both antisocial and pedophilic disorder.

Then we have another diagnosis of PTSD, which there certainly is a plausible argument for some of those criteria as we sit here today. But you don't -- you diagnose what is the best capture of somebody's presentation. And to my mind in my professional opinion, there is absolutely no doubt that the pervasive pattern of behavior dating back extensively in his history and continuing and repetitive behavior is perfectly captured by this diagnosis.

Q. Now, you mentioned that it continues through today. Dr. Schwartz-Watts indicated that maybe he's not engaging in as many antisocial acts.

Is it possible that that's because of his age?

A. Certainly. And I would agree with her in that regard. But in the DSM itself, it says that antisocial personality has a chronic course, but may become less evident

or remit with age.

And it actually -- it says particularly by the fourth decade of life. So we do expect and we know by history that people who are more violent or engage in more antisocial type behavior, there does tend to be a decline with age in what we see.

And also, there can be a decline with constraints on your opportunity. And despite constraints on his opportunity by being incarcerated, Mr. Atwood has still managed to manifest antisocial conduct.

Q. Okay. You were going down the criteria. What's the next one?

A. Oh, sorry. The next one is a reckless disregard for safety of self or others.

Q. And how did you find that met?

A. Well, I mean, I think it's evident both by the offenses in and of themselves to -- and Mr. Atwood's own acknowledged behavior. And then also by other behaviors that he reported to me that are beyond what's been listed here.

He reported to me times of making pipe bombs and damaging people's cars as he's driving through them. And then we went through traffic, and we have his engagement, as was discussed earlier, post incarceration threats against officers, and there's many.

Q. What's the next criteria?

A. Consistent irresponsibility as indicated by repeated failure to sustain consistent work behavior or honor financial obligations.

Q. Now, Dr. Schwartz-Watts again views Mr. Atwood's failure to hold a job as evidence of PTSD.

Do you disagree with that?

A. Well, I can understand how -- I mean, the criteria is in both. There's a lot of symptom overlap in the DSM. So part of what we do is look at the symptoms. We could go through the DSM and find where impulsivity is asymptomatic of many diagnoses in here.

So I, in my opinion, look at the totality of the information available to me, and it appears that his impulsivity is best captured by antisocial personality disorder -- I'm sorry, is that what we're on?

Irresponsibility. Irresponsibility, I'm sorry. Again, we have a long-standing history of irresponsible behavior, which Mr. Atwood describes himself.

Q. Are there other criteria as well?

A. There's also lack of remorse as indicated by being indifferent or rationalizing having hurt, mistreated, or stolen from another.

Q. Did you see any evidence of that?

A. Yes. There -- well, the rationalizing, I believe there are times when Mr. Atwood's discussion of offending

against children should be legal or that he himself rationalizing it wasn't harm -- or that sexual relations between adults and children aren't harmful.

Q. An example of that being the letter that we viewed this morning during Dr. Schwartz-Watts's testimony? Would that be an example?

A. That would be an example, yes.

And as I said, that's all seven. You only need three to make the diagnosis.

Q. Okay. Now, you disagree -- we've touched on it. But do you disagree with Dr. Schwartz-Watts' diagnosis of PTSD?

A. I do. I professionally, in my professional opinion, do not believe that Frank Atwood has post traumatic stress disorder right now.

However, I can certainly see how if Dr. Schwartz-Watts and I were sitting together at a staffing table talking about someone that we both evaluated, that we could have an intriguing discussion about our different view and agree to disagree. I don't think that her assessment of the symptoms is -- I mean, it's reasonable what she's saying about him as he sits here today.

Q. So when you say "as he sits here today," you mean as he's currently presenting; right?

A. Yes. I can see how an argument could be made for --

as we sit in this courtroom or as of the time that I evaluated him and Dr. Schwartz-Watts evaluated him, that he could meet the criteria for post traumatic stress disorder.

However, I see a large amount of the evidence for that happening post incarceration. So it would be much more likely that the data fits somebody having it -- if he does have it right now -- that that having been acquired after this arrest.

Q. Okay. So let me make sure I understand.

The evidence of him being threatened in prison; right?

A. Correct.

Q. How does that factor into your opinion? Can you clarify that a little bit.

A. Sure.

Q. So post arrest on death row when you said...

A. Sure. I, seeing Mr. Atwood, do not diagnose him with post traumatic stress disorder. However, I can see how looking at some of the complaints today in terms of -- for example, hypervigilance, for one. While he did not appear hypervigilant to me when we were sitting together, that doesn't mean that he isn't when he is on his tier.

I just see that as a very reasonable and very rational reaction to being threatened by other inmates. I think when you are in a dangerous situation, it makes perfect

sense to respond with fear and hypervigilance. And when you have been attacked or assaulted by other inmates, it makes perfect sense that you might then develop, even to the level of a post traumatic stress disorder, a physiological reaction, a hypervigilance, anxiety manifestation of that.

I just see that the vast majority of evidence for that is happening -- to the extent one believes that he has that diagnosis, it is not evident at the time of this arrest or when he was first incarcerated. It is evident that it has developed since as a result of things that have happened since.

Q. Okay. In terms of the time of his arrest back in 1984, you reviewed records relating to that arrest; right?

A. Yes.

Q. Did you see any suggestion or any concern that he might have PTSD at that time?

A. No.

Q. Okay. Did you see anything in the record that led you to believe that maybe he could not control himself when he committed this offense?

A. Absolutely not. To the contrary. At the time of his arrest for this offense, Mr. Atwood was engaged in a rather elaborate substance abuse ring that included multiple states and multiple people that he was organizing.

Q. And was that something he told you?

A. Yes.

Q. And incidentally, during your interview, did he also tell you that he had in the past been able to fool psychologists?

A. Yes, he did. He said -- I don't remember verbatim. It's in the transcript. But he said something to the extent of he had fooled many, many mental health professionals over the years.

Q. Okay. This kind of brings us to the second question that you were asked to answer, which deals with the causal relationship.

Does the DSM contain any kind of cautionary language on how to gauge the significance of a diagnosis?

A. Yes. Part of the issue with the DSM in these types of conducts is that our diagnostic scheme and what we use is intended for clinicians, for Dr. Schwartz-Watts and I or our colleagues to communicate with each other about symptoms that we see that informs treatment.

The DSM, although it's used all the time in a legal context, that wasn't the intention or the spirit of it. And so particularly in this version, it makes a very clear statement, although it's always been true, about trying to apply legal concepts to our clinical formulation.

And it says: "Even when diminished control over one's behavior is a feature of the disorder" -- so, for

example, PTSD, recent impulsivity, even antisocial -- "even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in and of itself does not demonstrate that any particular individual is or was unable to control his or her behavior at a particular time."

So as it applies to Mr. Atwood, even if he was -- even if we agreed on the post traumatic stress diagnosis and even if that diagnosis, which it does, includes outbursts and aggressiveness and impulsivity, even that would not render him incapable of controlling his behavior at a given point in time.

Q. You mentioned previously that you saw no evidence that he was not able to control his behavior at the time of this murder; right?

A. That's correct.

Q. Okay. What facts do you rely on to make that decision?

A. When we're looking back at a particular period of time -- especially in retrospect because as Dr. Schwartz-Watts pointed out, neither one of us were there back then -- you look at someone's behavior. You look at their conduct. You try to hone in on what was happening and how were they behaving around the time so we can see to the best of our ability retrospectively how a mental health disorder, if present, influenced that behavior.

And in Mr. Atwood's case, clearly he was engaging in a series of specific goal-directed behaviors that he was choosing to engage in. And that's the best indicator of the extent to which mental health did or didn't influence his behavior at the time.

Q. What are some examples of those behaviors?

A. I listed some in my report. What time period would you like me to focus on?

Q. Well, just the time period around September 17th of 1984.

A. Around? I'm sorry.

Q. Around the time of the offenses.

A. Okay. Well, Mr. Atwood was describing to me that he himself -- he -- I include in my report a large excerpt of our time together. And he describes in detail that he was on his way to go -- he was traveling across the state to look at some sort of marijuana crop in order to set up his drug trade that he had organized. He was going to meet with somebody in Oklahoma and come back. And he had gone through Texas and he was on his way to organize that at the time of the offense.

Q. That's an example of goal-directed behavior?

A. Yes. He was engaged -- it requires a certain capacity or -- it certainly requires a capacity to organize your thoughts, to reason, to plan, to engage in those types of behaviors and thinking and critical thinking in order to

put something like that together. It's absolutely counter to someone who is out of control and absent the ability to plan or reason.

Q. Did you see any other evidence to indicate that he was able to control his behavior?

A. In the pre-offense?

Q. Pre or post.

A. Yes. Certainly that behavior continued post offense. As I list in my report, his -- we don't -- Mr. Atwood is -- continues to, at least as my time with him, deny the actual offense. So we don't -- I don't have information specifically from him about that.

But in terms of post offense behavior, he was able to go back and forth across the country by car. He made stops, was engaging with other people. He borrowed money. He was able to figure out how to get money to stop and pawn a tape recorder.

He actually stopped for gas and was logical and goal-directed enough to take a license plate off of another car and cover up his license plate in order to steal gas. He went in and out of Mexico. He engaged in a host of behaviors that clearly indicate someone who's in command of their decision-making.

Q. Okay. Now, you're certainly -- well, you're a person that's from a psychological -- this issue of a causal

connection.

Is it correct that you are approaching this from just a psychological point of view; right? I mean, a scientific point of view as opposed to a legal point of view.

A. Yes. I responded to your question in terms of -- in my role as a psychologist.

Q. Okay. So are you saying that something can't be considered mitigating if there's no causal connection?

A. No, certainly -- no. I'm certainly not.

Q. Okay.

THE COURT: How much more direct do you have of this witness?

MS. GARD: Maybe five or ten minutes.

THE COURT: We are going to stop at 4:00. We could interrupt her testimony so that if Dr. Schwartz-Watts wants to be put on for rebuttal, if you wish, and then you can resume with her testimony and you could cross her after Dr. Watts.

MS. GARD: Well, if I may have just one moment to discuss this?

THE COURT: Yes.

(Thereupon, counsel conferred off the record)

MS. GARD: Your Honor, if I could ask a couple of more questions and then I'll be done with direct.

THE COURT: Sure.

BY MS. GARD:

Q. Dr. Schwartz-Watts testified this morning about -- and I'm jumping back now to the PTSD issue.

A. Okay.

Q. You don't dispute that his molestation at age 14 would meet the gatekeeper criteria; right?

A. No, it absolutely meets the gatekeeper criteria.

Q. Okay. But you dispute that Mr. Atwood showed a traumatic response to that; right?

A. I do not see any evidence -- impressive evidence in any of the records or history that he developed a traumatic response to that event.

Q. How do you respond to Dr. Schwartz-Watts' testimony this morning that -- well, first of all, did you review his comments to Mr. Bersienne about the event, about it not really being a molestation and he kind of liked it.

A. Yes, I read that.

Q. And did you review a police report that also said something similar to where he was -- a quote like that, that was attributed to him?

A. Yes, I did.

Q. And how do you distinguish that between whether he's minimizing or whether he actually is not traumatized?

A. Well, to begin with, I certainly agree that victims can minimize the effect of their molestation; and certainly

if we're looking at patterns, male victims may be more likely to do that.

However, it's noteworthy that in these cases -- number one, in the letter that we referenced this morning, as Dr. Schwartz-Watts pointed out, he was talking to someone that he trusted then and spontaneously providing this information as opposed to someone saying well, weren't you traumatized by that and him saying no, that wasn't a big deal. He was spontaneously and of his own volition explaining that.

And again, the bigger issue to me is that when you look back at his hours and hours and hours of scrutiny by mental health people, they didn't have to have the same label we do now, but they would have had to have documented something that looks like a traumatic response.

Q. Okay. So just to wrap up, is it fair to say that regardless of who is correct here, you or Dr. Schwartz-Watts about the PTSD -- or neither of you; maybe neither of you are correct.

In your opinion -- assuming, of course, you got it right and Mr. Atwood murdered Ms. Hoskinson -- that he made a choice to do that? Is that correct?

A. Yes. That's my opinion.

Q. Okay. Did he know, in your opinion, whether that choice was the wrong choice?

A. Certainly.

Q. Okay. And had he chosen to do so, would he have been able to conform his conduct to the law?

A. Yes.

Q. And would he have been able to control his behavior?

A. Absolutely.

Q. Even if he had PTSD at that time?

A. Yes, even if he had PTSD at that time.

MS. GARD: I have no further questions.

THE COURT: Do you need to interrupt?

MS. HARMS: Your Honor, I don't think we need to call Dr. Schwartz-Watts in rebuttal. I can just cross.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. HARMS:

Q. Good afternoon.

A. Good afternoon.

Q. I'm basically going to go over what we already did at our deposition in August.

You went to Argosy University in Phoenix?

A. That's correct.

Q. And you confirmed for me that although the school offers an online degree in clinical psychology, all your classes were on campus?

A. Yes.

Q. And you work for Steven Pitt & Associates.

Now, Dr. Pitt has testified in several capital cases; correct?

A. I don't know how many capital cases he's testified in.

Q. But you yourself have never testified in the sentencing phase of a capital case?

A. That's correct.

Q. And in your disclosures to me of your prior cases, you indicated you testified for the defense in a case of *State versus Jennifer Mally* in 2008?

A. Yes. And that is one that I think wasn't on my list, yes.

Q. And that case involved a teacher who had sex with one of her students?

A. That's correct.

Q. And you did not diagnose her as a pedophile; correct?

A. That's correct.

Q. And you testified that she was not at risk to reoffend; correct?

A. That's correct. She did not meet the criteria that we've just gone over several times.

Q. And you also testified that she had the maturity of

a 16-year-old?

A. Yes.

Q. And I think you said this before, but you actually only treat two patients currently?

A. Presently.

Q. Okay. And as you said in your deposition, you would not characterize PTSD as a specialty of yours?

A. No more than any other mental disorder.

Q. Okay. But as you also said, it would be fair to say there may be psychologists at Steven Pitt & Associates who have more of a focus on PTSD in their practice than you do?

A. Sure.

Q. And you've never published anything on PTSD; correct?

A. That's correct.

Q. And you've never published anything specifically relating to sexual trauma or its effects?

A. That's correct.

Q. Okay. In doing the math, it looks like you've been paid about $36,825 -- or Steven Pitt & Associates have been. Does that sound right?

A. I added up mine, which was 25-, so I won't dispute that if you added up the total.

Q. Okay. I want to talk now about the case in particular.

At the deposition, you agreed with me that it was an important piece of data that Mr. Atwood began seeing Dr. Brandt at approximately age 11 and that this treatment continued off and on for about six years; is that right?

A. I don't remember in what way we were talking about important, but it's significant.

Q. And we don't have records from his treatment of Dr. Brandt; correct?

A. I have never seen any.

Q. But that would be important if we did have those records; correct?

A. Sure. If we had it, I would very much like to see them.

Q. And at the time of your deposition, you were not cognizant of the fact that the PTSD was not yet in the DSM during the time period that Mr. Atwood was at Atascadero?

A. I don't recall what year it was added.

Q. And you noted at your deposition, there's really no dispute that rape or sexual assault has always been considered a gatekeeper event for the diagnosis of PTSD?

A. Sure.

Q. And as you did at your deposition, you agreed with me that the DSM-5 lists one of the diagnostic features as that the person may be quick-tempered, engage in aggressive verbal and physical behavior with little or no provocation;

correct?

A. As a diagnostic feature of PTSD?

Q. Yes. It's on page 275 of Exhibit 14, the DSM-5.

A. That's fine. I have the DSM here. And that certainly is a diagnostic feature.

Q. Okay. And you agree that another diagnostic feature of PTSD is reckless or self-destructive behavior?

A. Yes.

Q. And that would include dangerous driving, excessive alcohol or drug use? It's on page 275 if you're looking at it.

A. No, that's fine. Yes, those would be reckless behaviors.

Q. And would you agree that the DSM-5 also says that the highest rates for PTSD are found among survivors of rape?

A. Sure.

Q. And would you agree that the DSM-5 states that among older individuals, social isolation may exacerbate PTSD symptoms?

A. I don't remember what page that's on. But yes, I believe that's the case.

Q. Okay. And you agree that the Browning unit where Mr. Atwood is, is a socially isolating atmosphere?

A. Sure.

Q. And you also agree that the DSM-5 states that in

older individuals, PTSD is associated with negative health perceptions?

A. Yes.

Q. And you agree, as you did at the deposition, that the records show that Mr. Atwood writes quite a few health needs request forms?

A. Yes, he does.

Q. And you agree that the DSM-5 lists pre-traumatic risk factors as childhood emotional problems; correct?

A. Yes, it does.

Q. And it also lists a pre-traumatic risk factor as a family psychiatric history; correct?

A. Yes.

Q. And you agreed with me at the deposition that generally speaking, if someone was molested and they had to relive that event through a court proceeding, that might increase the risk for PTSD in the sense that one of the post traumatic risk factors is subsequent exposure to upsetting reminders of the event?

A. Yes.

Q. And you agree that generally speaking, resistance to treatment can be common in PTSD because treatment is a reminder of the event?

A. Yes.

Q. And you also agree that it would be possible that if

an initial sexual trauma was later repeated, it could make it more likely that PTSD would develop; correct?

A. Sure.

Q. Do you agree the effects of PTSD can be debilitating?

A. They can be.

Q. You stated that you have personally experienced clinically, as it says in the DSM, that individuals who have been exposed to a traumatic event exhibit angry and aggressive symptoms.

You've actually seen that in your practice?

A. Yes, I have.

Q. And as you noted in your report on page 62, you said, "There is little doubt, based on his history of molestation, that Mr. Atwood could meet the gatekeeper criterion for PTSD simply based upon that initial molestation."

Correct?

A. Yes.

Q. And you agree that Mr. Atwood has experienced symptoms of depression and anxiety over the years?

A. Yes, he has.

Q. In the DSM, it also says that under -- I think it's under differential diagnoses -- specifically --

A. I'm sorry. For PTSD?

Q. Yes.

A. Okay.

Q. I'm sorry. I don't have the exact page number.

A. That's okay. I can get there.

Q. Specifically in regard to personality disorders, it says that, quote, Interpersonal difficulties that have their onset or were greatly exacerbated after exposure to a traumatic event may be an indication of PTSD rather than a personality disorder?

A. Yes, it says that that may be.

Q. Okay. You already talked quite a bit about the overlap of symptoms, anger outbursts, irritability, impulsiveness; correct, between ASPD and PTSD?

A. Yes.

Q. Okay. On page 662 of the DSM-5 under cultural factors, it says, "Concerns have been raised that the diagnosis may at times be misapplied to people in settings in which seemingly antisocial behavior may be a part of a protective survival strategy."

And we talked about that some in the deposition and I think you agreed with me, theoretically at least, that prison might be exactly that kind of setting, that it might be necessary to be somewhat more aggressive and macho in a prison setting?

A. Sure.

Q. And you agree that antisocial and PTSD can co-exist in an individual?

A. Absolutely.

Q. And do you agree that the DSM-5 says that, "Children with conduct disorder are also at a risk for anxiety disorders and PTSD"?

A. I don't have -- are you going back to the conduct disorder page?

Q. You know, I looked for the page number and I couldn't find it.

A. That's okay. I can find it.

Q. We can move on. You don't have to find it. It's in the DSM.

And you agree that if someone did have antisocial personality disorder, you would not consider them mentally healthy?

A. That's correct.

Q. And the DSM-5 actually states that, "A personality disorder is a pattern of behavior that leads to distress or impairment in daily life."

Is that right?

A. I'm looking at the antisocial page. Are you talking about personality disorders in general?

Q. Yes, I think so.

Does that sound right to you as a psychologist?

A. I don't see the distress as a diagnostic feature of antisocial personality disorder. So I just want to make sure we're talking about the same thing.

Q. Okay. Well, actually, I think under antisocial, it says "significant function impairment," but I'll move on.

A. Well, actually, I don't see that.

Q. Now, antisocial must be preceded by a diagnosis of conduct disorder?

A. It has to be preceded by evidence of conduct-disordered behavior.

Q. And that conduct must be shown before age 15; correct?

A. That's correct. But to be specific, it doesn't require that he was ever diagnosed -- or anyone, not just Mr. Atwood. It does not require that someone was diagnosed with conduct disorder.

Q. Understood.

I want to turn now to the effects of sexual trauma more generally, not just -- absent a diagnosis of PTSD, just the effects of sexual trauma.

You agree that Mr. Atwood, being a victim of molestation at 14, that that can have a negative impact on mental health or development regardless of whether there is a diagnosis of PTSD?

A. Sure.

Q. And then you agree that the more incidents of sexual assault, the greater the likelihood of a negative impact; correct?

A. Correct.

Q. And you agree that a child who has been sexually assaulted may experience a decline in academic performance?

A. Sure.

Q. They might engage in disruptive behavior?

A. Yes.

Q. Do you agree that a major side effect of childhood sexual trauma are deficits in the ability to regulate emotion?

A. That's one of the things you would expect to see.

Q. The child might become impulsive, aggressive, or edgy?

A. Sure.

Q. And that being sexually molested can cause hypervigilance?

A. Yes.

Q. And it's fair to say that hypervigilance, that term includes perceiving threats even in a neutral or a friendly situation?

A. Yes.

Q. And you agree that a child that has been molested can show out of place sexual behaviors that would not

normally be expected in a child?

A. Yes.

Q. And as you said at your deposition, you agree that Mr. Atwood exhibited sexual behaviors not expected of his age such as when he became a prostitute as a teenager in West Hollywood?

A. Yes.

Q. And you agreed with me that boy victims of sexual abuse might act out with behavior problems?

A. Sure.

Q. And you agree that some of Mr. Atwood's behaviors as an adolescent might be attributable to being a victim of sexual assault?

A. Sure.

Q. And you agree it's possible that being sexually abused as a child inappropriately shapes your sexual development?

A. Yes.

Q. And you agree that a common long-term effect of childhood sex abuse is that the victim develops problems with drugs and alcohol?

A. Yes, that's very common.

Q. And another potential pattern of behavior is self-harm?

A. Yes.

Q. So would you agree with the general proposition that childhood sexual trauma can negatively affect the type of adult the child becomes?

A. Sure.

Q. And you agree that a traumatic childhood experience can be a crucial factor in the development of serious psychological disorders in childhood and adulthood?

A. Yes, it can be.

Q. You agreed with me at the deposition that the molestation could have contributed to Mr. Atwood's conduct-disordered behavior; correct?

A. Yes, it could have contributed.

Q. And you agree that sexual molestation of males is under-reported compared to sexual abuse generally?

A. Yes.

Q. And you agree that studies have shown that a significant percentage of adult male sex offenders have sexual abuse history?

A. Yes.

Q. So some of the other effects might be confusion about sexual self-concepts?

A. Effects of child molestation? Yes.

Q. May cause promiscuity and prostitution?

A. Yes.

Q. May lead to vulnerability to later abuse?

A. Yes.

Q. May lead to delinquency and aggressive behaviors?

A. Yes.

Q. Now, on pages 17 through 22 of your report, you have a section entitled: Personal and Psychiatric History?

A. Yes.

Q. And within that, you've included a timeline of significant events in Mr. Atwood's life in terms of his mental history; correct?

A. Yes, starting on page 19.

Q. But you did not include in that timeline there the fact that Mr. Atwood was kidnapped and molested at age 14 and the assaults after that?

A. Yeah. As I explained to you in the deposition, I believe that was well-covered elsewhere in the report.

Q. Do you agree with the general proposition that sexual assaults in incarcerated settings are fairly common?

A. It depends on the institution.

Q. That they often go unreported if there is a sexual assault?

A. Yes.

Q. And as you said in your deposition, your impression of Mr. Atwood when you spoke with him was that he was forthcoming about his past?

A. Yes.

Q. And you said that you did not think that Mr. Atwood was lying to you about being assaulted as a juvenile?

A. No.

Q. And that you considered it as having occurred in determining whether or not he had PTSD?

A. Yes.

Q. In addition to the one at age 14?

A. Yes, I took what he told me into account.

Q. I wanted to move a little bit now to substance abuse.

You said you agree he has a significant history of substance abuse?

A. That's correct.

Q. And you said he has multiple substance abuse.

Do you agree that this would have a significant negative impact on his behavior?

A. That his substance abuse would?

Q. Yes.

A. Yes.

Q. Do you agree that the DSM-5 discusses the fact that antisocial personality disorder and substance abuse may co-exist and some of the antisocial acts may be a consequence of the substance abuse disorder?

A. Yes, it does. In fact, the DSM says that when you see behaviors that are indicative of both, you should

diagnose both. Which I did.

Q. And you agree that childhood sexual trauma can also cause antisocial behaviors that we just discussed previously about aggressive behavior?

A. I just want to be careful about mixing behavior from diagnosis.

Q. That's --

A. When you say "antisocial behaviors," the types of behaviors we see, yes.

Q. I want to move on now and talk about Mr. Atwood's family.

As you said at the deposition, you agree that the Atascadero records indicate some level of family dysfunction?

A. Yes.

Q. And do you agree that the DSM-5 said something about evidence of neuro development perturbation in utero increases the probability of development of pedophilic orientation?

A. Well, I think we both agreed that it says that; although no one is quite sure what they mean by that.

Q. Okay. But you recall that there was some issue with Mrs. Atwood's pregnancy with Mr. Atwood?

A. I remember seeing that in the record.

Q. And I think you explained to me that perturbation in utero -- I'm sure I'm butchering that term -- simply

indicates to you broad, general problems with pregnancy?

A. Yes. That's the best that we could decipher.

Q. Okay. And you also had agreed with me that it was possible that Mr. Atwood's interest in the Child Reach organization, adopting a child and giving them money, that it's possible his motive was altruistic?

A. Well, anything is possible.

Q. And you agree that everything contained within medical treatment records or prison records may not be true or completely accurate; correct?

A. Yes.

Q. And it's possible that mental health professionals sometimes report the history of their patients inaccurately or perhaps they just don't have the information?

A. Sure.

Q. And you believed that Mr. Atwood was being truthful with you when he made statements to you about getting sexual pressure in an incarcerated setting?

A. Sure.

Q. Now, you drafted your report and when you were deposed, you did not know about the information contained in Dr. Crausman's declarations; correct?

A. That's correct.

Q. You didn't know that Mrs. Atwood saw Dr. Crausman weekly for about five years?

A. No. I believe that Mr. Atwood told me that he and his mother saw both Dr. Crausman and Dr. Brandt and there was somebody else, Reid or -- see, I can't recall the name. I knew she had treatment.

Q. I want to turn now -- finally, I'm almost done -- to the MMPI-2, the personality tests that you gave.

A. Sure.

Q. In psychology, the administration of psychometric testing is fairly common; correct?

A. Correct.

Q. And in this case, you gave the MMPI; that's the only test you gave?

A. Yes.

Q. But you did not include any mention of it in your report?

A. That's correct.

Q. And you also --

A. Aside from the source list.

Q. Okay. You're also currently working as a state's competency expert, the AG's Office in the capital case of Robert Cromwell?

A. That's correct.

Q. And you authored a report in September of this year where you recently found him competent?

A. That's correct.

Q. And you administered a personality test to him also; right, the PAI?

A. That's correct.

Q. And in your report for Mr. Cromwell, you have a section dealing with the results of your testing; correct?

A. Specifically relevant to the referral question in that case.

Q. But you did agree when we talked earlier in the deposition that the results of the testing showed that he developed physical complaints under stress?

A. Yes.

Q. And that the test results also showed he could be tense?

A. Sure.

Q. And these results are pretty consistent with what he told you?

A. Yes.

Q. Okay. Now, you said that the results of the testing were not relevant to the antisocial personality diagnosis?

A. There is evidence of antisocial practices. But again to emphasize, the test is not intended to be used for specific diagnostic purposes in and of itself, so --

Q. Okay. But there is a scale that measures antisocial behavior?

A. Yes, the Scale 4. Psychopathic deviance is what

it's referred to on the test. And it's highly elevated, along with many other scales.

Q. And there's also an anxiety scale on the MMPI; correct?

A. That's correct.

Q. And Mr. Atwood's anxiety score was elevated?

A. Yes. Along with many other scales.

MS. HARMS: I think that's all I have, Your Honor.

THE COURT: Any redirect?

MS. GARD: Briefly, Judge.

REDIRECT EXAMINATION

BY MS. GARD:

Q. About The MMPI, Doctor, do you always discuss your results of the MMPI in the report?

A. No.

Q. And here, was it terribly relevant either way to the referral questions?

THE COURT: Leading.

MS. GARD: I'm sorry, Judge.

BY MS. GARD:

Q. Was it relevant to the referral questions?

A. No. Again, I listed it on the source as what -- and Mr. Atwood certainly knows it was administered and it's not a secret. It just is I had -- that the findings were not significant to respond to the questions posed to me.

Q. What is the proper use of the MMPI test, the proper function of it?

A. Any of the --

THE COURT: She testified about that on direct.

BY MS. GARD:

Q. Did you assign any significance to his elevated anxiety score?

A. I believe he was anxious. I mean, in general. I have already said that he has symptoms of anxiety in general. I don't believe that they're best captured by post traumatic stress disorder. But again, that's a snapshot of how he is at this point in time, not how he was at the time of this offense.

Q. In terms of his molestation, you were questioned about it not being discussed in the timeline of the report.

Did you discount that event?

A. Absolutely not. And I discussed it elsewhere.

Q. Did you consider it in forming your conclusions?

A. Certainly.

Q. Did you consider the possibility that he had PTSD?

A. Yes.

Q. Are there symptom overlaps between antisocial and PTSD?

A. Yes, there are.

Q. And so is it fair to say that some of his behavior

could fit the criteria for either diagnosis?

A. Yes.

Q. But how have you made the decision that one diagnosis is more fitting than the other?

A. Based on the totality of the information available, it was very clear to me, in my professional opinion, that Mr. Atwood's presentation is best captured by antisocial personality disorder.

Q. For the reasons that you've told us on direct?

A. Yes.

Q. You were questioned about the PTSD, whether or not it was in the DSM at the time he was in Atascadero.

Is that terribly significant in the grand scheme of things?

A. Again, the DSM changes and the criteria, as Dr. Schwartz-Watts explained several times this morning. The criteria change and the DSM 5 is new; the DSM-IV and so on. Really, it's not terribly significant. What matters is the behavior that manifests and how we understand that clinically.

Q. Okay.

MS. GARD: That's all I have, Judge.

THE COURT: Any recross?

MS. HARMS: No.

THE COURT: You may step down.

We will recess until 9:00 tomorrow morning.

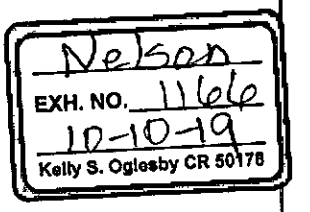
C E R T I F I C A T E

I Chris Wallace, certify that I took the shorthand notes in the foregoing matter; that the same was transcribed under my direction; that the preceding pages of 233 typewritten matter are a true, accurate and complete transcript of all the matters adduced, to the best of my skill and ability.

s/Chris Wallace

CHRIS WALLACE, RPR, CRR

Dated: October 21, 2013




ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona
LAURENCE G. TINSLEY, JR.
Arizona State Bar No. 012581
ELIZABETH K. SICHI
Illinois State Bar No. 6271368
Assistant U.S. Attorneys
Arizona State Bar No. 012581
Two Renaissance Square
40 North Central Ave., Suite 1800
Phoenix, Arizona 85004-4449
Telephone: 602-514-7500
Facsimile: 602-514-7760
Email: Laurence.Tinsley@usdoj.gov
Elizabeth.Sichi@usdoj.gov

*Attorneys for Defendant United States of America*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Kaori Stearney, et al.,

Plaintiffs,

v.

United States of America,

Defendant.

Case no. 3:16-CV-08060-DGC

**UNITED STATES' *AMENDED* MOTION TO PRECLUDE PLAINTIFFS' PSYCHOLOGY EXPERT DR. SCOTT J. HUNTER'S TESTIMONY REGARDING PTSD, PURSUANT TO *DAUBERT***

Pursuant to *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), Defendant moves to preclude Psychologist Dr. Scott J. Hunter, PhD, from testifying, stating or opining (1) that Plaintiff RH (RH) suffers from Post-Traumatic Stress Disorder (PTSD) as a diagnosis, (2) that she meets a "profile" for PTSD, or (3) otherwise imply that she suffers from PTSD, because the limited methodology by which he reached these opinions is so lacking in supporting data as to be non-reliable and thus is not generally accepted in the scientific community, and thus will not assist the Court. [1]

[1] Counsel for Defendant has conferred with counsel for Plaintiff regarding this motion, and have not reached an agreement. *See* Certification, attached as **Exhibit 4**.

**I. Factual background.**

This case concerns a two vehicle head-on collision involving a pickup truck driven by an impaired and intoxicated driver, Kee Brown, who crossed a center line of a two lane highway in northern Arizona, into the path of a mini-van driven by RH's father, Tomohiro Hirayama. Five people died in the crash including Tomohiro, his wife Sachiyo, and son Yuki, who all were killed by blunt force trauma. Kee Brown and his passenger Lee Tohannie also died.

Nine year old RH survived the crash through the efforts of Navajo Police Officer Nicole Yellow, whom her attorney now points to as an at fault party. Plaintiffs, RH and Kaori Stearney, a Conservator for RH and her brother's Estate, bring this claim.

Plaintiffs allege that the Hirayama family members were killed because numerous Navajo Police Officers engaged in a high speed pursuit of Brown. However, the evidence shows that at most *only one* officer, Sgt. David Butler, was arguably involved in a pursuit – though he was miles away from the crash when it occurred. He did not arrive at the scene until two minutes after the crash. At the time of the crash, Butler was not in pursuit, since he had terminated it miles before. Rather, he was looking for the suspect vehicle that had driven out of his sight at the time.

Further, Yellow was following Butler, but like him, arrived at the scene after the crash had already occurred, approximately one minute after Butler. Yellow estimated she had not seen the pickup truck for 15 minutes before the crash. All the other testifying officers stated that they were on a different highway at the time of the crash, and arrived on the accident scene well after the fact.

Plaintiffs claim that in addition to personal injuries and economic losses, RH suffered PTSD, based on a report by a Psychologist named Scott J. Hunter, PhD., whose report is attached as **Exhibit 1**.

***A. Dr. Hunter's limited opinions.***

Dr. Hunter's methodology is at issue because he performed a highly limited

review of this case to reach an opinion on which Plaintiffs now rely as the basis of their claim that RH suffers from PTSD. At his deposition, Hunter testified that one evening, three years after these events, he placed a long distance call from Chicago, and conducted a telephonic interview of RH's grandfather in Japan with the use of an interpreter on the line. Deposition Excerpts of Dr. Hunter, attached as **Exhibit 2** at 12, 97. The translation with the grandfather was done sequentially, meaning that each speaker spoke one at a time. *Id.* at 67. Thus, accounting for the number of persons involved in the call, and for the way the translation occurred, the actual substance of the two hour interview was likely only an hour. *See* Nelson Declaration, attached as **Exhibit 3** at 4, n.2.

Hunter admitted that he never observed, interviewed or evaluated RH. **Exhibit 2** at 13, 14, 21. Hunter's opinions are based on this single long distance, telephonic interview of her grandfather who was on a different continent at the time.

Hunter has no experience in the Japanese language (*Id.* at 8), but claims to have a good understanding of Japanese culture from "course work" and through Japanese friends and colleagues who have consulted and taught in Japan, with whom he has conferred in the past. *Id.* at 8, 9. He claims to have a long history of working with and understanding individuals who are of "varying Asian cultures as well as other cultures." *Id.* at 110.

All Hunter knows about RH's current status came from her grandfather's description of her. *Id.* at 75. But he could not state how much time the grandfather spent with RH before the accident (*Id.* at 51-52), and was unaware of whether the grandfather had reviewed her school records beforehand to validly opine that her school work had suffered. *Id.* at 54, 56. Hunter himself did not look at any of her school records from before or after the accident. Nor did he evaluate her cognitive or academic skills to support his claim that her school work suffered due to the accident. *Id.* at 15. Yet Hunter opined about a decline in RH's academic performance without confirming or corroborating this claim, such as by requesting a review of her report cards or other

school records.

Further, Hunter never reviewed or attempted to review any of RH's medical records showing her current medical condition. *Id.* at 19, 57. His review was limited to records close in time to the accident, when the events were still acutely recent. *Id.* at 56-57. Three years after the fact, he never talked to her current teachers (*Id.* at 55), health care providers, school counselors (*Id.* at 143), or peers (*Id.* at 13). He agrees that RH's school psychology records would be important to bolster his opinions, but did not request them. *Id.* at 142.

Hunter admitted that he did not make a formal diagnosis. *Id.* at 18. Rather, based on the single telephonic interview of the grandfather, Hunter said he believed she had PTSD symptoms and created a "profile" of those symptoms and their relationship to PTSD. *Id.* at 18-19. He testified that he is merely identifying specific challenges and concerns "that are consistent with the diagnostic criteria." *Id.* at 18, 72. Thus, Plaintiffs want it both ways: even though Hunter testified he could not characterize this as a formal diagnosis, his report, on which Plaintiffs wish to rely, states the opposite: there, Hunter purports to offer his definitive "opinion regarding this minor's psychological injuries." **Exhibit 1** at 1. He opines that her symptoms are "highly consistent with the experience of a long-standing Post-Traumatic Stress Disorder (PTSD) presentation." **Exhibit 1** at 3.

Yet Hunter admitted that one must do an assessment or testing to make a formal PTSD diagnosis. **Exhibit 2** at 18. He admitted (1) he could not assess whether RH suffered symptoms of PTSD such as avoidance, resistance or hostility without conducting an interview of RH (*Id.* at 25), which he never did, and (2) he never performed any direct assessment or testing of her. *Id.* at 19, 62. He admitted that one cannot actually know if PTSD exists without actual testing. *Id.* at 81-82. He admitted that testing and inventories for PTSD are designed to confirm that diagnosis, but he administered none of those in this case – though they are designed to confirm the validity and reliability of the studies that use them. *Id.* at 123. Without actual testing and

assessment, Hunter simply cannot assist the trier of fact in assessing whether RH truly has PTSD as he opines; the record shows that Hunter did not perform any type of tests or assessments on RH to determine whether she had PTSD, and did not use scientific, standardized protocols.

Though Hunter did not want to admit that his opinions are merely "preliminary" (*Id.* at 18, 89), he admitted that he could not make this diagnosis without testing RH, and that any future health care provider who might treat RH would have to conduct his or her own testing independent of Hunter's opinions;[2] in other words, a subsequent treater would have to perform his or her own evaluation of RH to form an actual diagnosis. *Id.* at 90-91. Hunter thus admitted that his approach was not an "optimal approach." *Id.* at 100. Despite how Hunter characterized it, his opinions *are* the functional equivalent of merely a *preliminary* opinion of RH's condition. It is therefore not an opinion that will assist the trier of fact.

Without ever talking to her, Hunter opines that RH is showing symptoms consistent with a diagnosis that he characterized as PTSD in his report, and for which he now suggests a treatment plan in Japan, at facilities with which he has no personal familiarity. But he also admitted that her symptoms, behavior and attitude are consistent with other diagnoses, such as bereavement or acute stress disorder (*Id.* at 145-46), or general anxiety disorder (*Id.* at 129), or teen behavior; he admitted that sullenness, cynicism, anger can occur in teens without loss of parent. As such, his opinions have no foundation and will not assist the trier of fact. Plaintiffs thus want all the benefit of placing a scientifically-sounding opinion that RH suffers PTSD before the Court, without having to provide a definitive evidence of a diagnosis.

***B. Dr. Nelson's opinions on the lack of reliability of Dr. Hunter's opinions.***

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[2] Hunter testified as follows:

> Q: Even if they – the future treating provider had your report and had the medical records that you looked at…they could not make a diagnosis of PTSD based solely on that data, could they?
>
> A: They would want to see [RH], yes. *Id.* at 91.

Dr. Erin Nelson, Psy.D., reviewed Hunter's report, deposition and methodology. *See* **Exhibit 2**. She opines that Hunter's opinions do not meet the standard of *Daubert*, because numerous examples, including those outlined above, show his failure to obtain relevant data and source documents which renders his opinions invalid and unreliable.

First, and most fundamentally, Hunter does not state limitations of his study of RH in his report as he is ethically required to do by the Specialty Guidelines for Forensic Psychology.[3] Further, he did not request, obtain or review any of RH's medical, psychological, or academic records for the three year period after the accident. While he purports to opine about RH's psychological status, mood affect, interpersonal relationships, academic performance, and future psychiatric needs and treatment, he did so without requesting or reviewing a single source document pertaining to RH after her return to Japan.

Dr. Nelson also notes that Hunter made no attempt to corroborate or refute the information provided by the grandfather. He did not address or discuss the potential for intentional or unintentional bias in the grandfather's perception. Hunter did not obtain any collateral or corroborating data beyond the limited, older records provided by Plaintiffs' counsel.

Dr. Nelson notes that while Hunter denies acting as forensic psychologist, he admitted that he was hired by Plaintiffs' counsel to be a psychology expert. **Exhibit 2** at 33. Thus the Specialty Guidelines, *supra*, apply to him since he is offering expert opinions about RH's psychological issues in the form of testimony. He is thus required to document any limitations of the validity or reliability of his opinions, and to seek multiple sources of information.

She testified that "the methodology employed by Hunter does not meet the

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[3] While Dr. Hunter tries to minimize the significance of this requirement, this ethical violation would not have come to light without his deposition; his report places no such qualifications on his opinions, and a trier of fact would not necessarily know of their limitations because his report contains no statement of its limitations - precisely what the ethical norms seek to address.

applicable or generally accepted standard of practice, nor does it provide sufficient foundational support for the scope of the opinions he rendered." **Exhibit 3** at 6.

**II. Dr. Hunter's opinions do not meet the reliability standards of *Daubert* and are thus inadmissible.**

Under *Daubert v. Merrell Dow Pharms., Inc.,* 509 U.S. 579 (1993), the Court must act as a gatekeeper to ensure that expert testimony is both relevant and reliable as required by Rule 702. *See also Kumho Tire Co., Ltd. v. Carmichael,* 526 U.S. 137 (1999). Following *Daubert,* the Ninth Circuit articulates various factors a district court may consider to determine whether expert testimony is based on reliable methodology: "1) whether a theory or technique can be tested; 2) whether it has been subjected to peer review and publication; 3) the known or potential error rate of the theory or technique; and 4) whether the theory or technique enjoys general acceptance within the relevant scientific community." *United States v. Hankey*, 203 F.3d 1160, 1167 (9th Cir.2000), *citing Daubert*, 509 U.S. at 592-94 (1993). Whether these specific factors are "reasonable measures of reliability in a particular case is a matter that the law grants the trial judge broad latitude to determine." *Kumho Tire*, 526 U.S. at 153.

The Court should conclude that Hunter's methodology – coming to a psychological opinion without ever interviewing, observing or evaluating the actual patient, based on a single interview of a relative, with no contemporaneous source material – is inadmissible because it is *not* "the product of reliable principles and methods." F.R.E. 702

First, Hunter admitted that his interview was not formally structured, but rather consisted of his own internal technique based on how he regularly interviews persons that he has "adapted across time." **Exhibit 2** at 127. He apparently had no written prepared questions and stated that he based his interview of the grandfather on many different models from which he has developed his own particular way of approaching

individuals.[4] *Id.* at 135. He admitted, however, that well-recognized studies involving PTSD recommend structured interviews of children actually thought to be suffering the disorder. *Id.* at 131. He admitted that PTSD is generally confirmed with inventories utilizing structured questions to confirm the disorder's existence. Dr. Hunter utilized none of those in coming to his opinions. *Id.* at. 130.

Nor does Hunter's report state any authorities or citations supporting his opinions. He simply provides opinions without any reference to any supporting literature. Instead, he testified that he is a "clinical psychologist who has substantial experience diagnosing and treating individuals who have experienced trauma," who has a "very detailed professional knowledge" that he draws from "both through [his] learning, expertise and day to day clinical practice," as well as his teaching and research. *Id.* at 118-19. He declared that this provides him a "much greater level of certainty in my opinion given how I performed an appropriate interview, given how I obtained appropriate data." *Id.*

Hunter's recitation of his own qualifications is insufficient to meet the *Daubert* criteria, particularly when he admits that his technique in this case was not "an optimal approach." *Id.* at 100. *Daubert* and *Kumho Tire* hold that an expert's opinion must have some objective basis and cannot be mere conjecture -- no matter how well-qualified the expert may be. *Hutton v. Globe Hoist Co.* 158 F.Supp.2d 371, 376 (S.D.N.Y.2001). The courts have recognized that where the basis for an expert's opinion is not explained nor accompanied by any citation to authoritative literature pertinent to the field of expertise being offered, the Court should be concerned that there is no way of determining reliability of the methodology or approach used. For instance, the Supreme Court has made clear that "where [expert] testimony's factual basis, data, principles, methods, or their application are called sufficiently into question...the trial judge must

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[4] Under *Daubert*, a key question in determining whether a technique is scientific knowledge that will assist the trier of fact is whether it can be tested. *Daubert*, 509 U.S. at 593. Hunter's free-wheeling interview approach does not allow for testing since it is esoteric to him.

determine whether the testimony has 'a reliable basis in the knowledge and experience of [the relevant] discipline."' *Kumho Tire*, 526 U.S. at 149, *quoting Daubert,* 509 U.S. at 592.

In *Figueroa v. Torres*, 2003 U.S.Dist.LEXIS 10264 (D.P.R., June 16, 2003), the court excluded both the report and testimony of a well-respected psychiatrist as conclusory because, though well qualified, the expert did not refer to any source in the scientific community to support his analysis. His report was unsupported by comprehensive scientific knowledge, and he did not display the method he used to reach his conclusions. *Id.* at 8. The Court concluded that the opinions would not assist the trier because the expert did no more than present a speculative argument, despite his qualifications. *Id.*

The courts interpreting F.R.E. 702 require that "[e]xpert testimony...be both relevant and reliable." *United States v. Vallejo*, 237 F.3d 1008, 1019 (9th Cir.2001). Plaintiffs, the proponents of Dr. Hunter's opinions, bear the burden of establishing their admissibility by a preponderance of the evidence. Plaintiffs must show that his opinions and findings have reliable bases and are sufficiently tied to facts that will aid the finder of fact resolving factual issues in the case. *Daubert*, 509 U.S. at 591. Plaintiffs fail to meet their burden of proof.

Further, "reliability" focuses on whether the expert testimony reflects "scientific knowledge" and "whether their findings are 'derived by scientific method,'" and the product of "good science." *In re Apollo Group Inc. v. Securities Litigation*, 527 F.Supp. 2d 957, 959 (D.Ariz.2007). The duty falls squarely upon the district court to assess the reliability of the purported scientific opinions the party is advocating.

Here, Hunter's opinions are neither valid nor reliable for the reasons outlined above. As Dr. Nelson states, "the opinions proffered by Dr. Hunter, including any formal or informal diagnostic impressions and/or treatment recommendations, are inherently invalid or unreliable" because of his many "methodological omissions." This includes his failure to request or review collateral source interviews, his failure to request

or review current objective medical, psychological or academic records, his reliance on remote and limited records, and his reliance on a single anecdotal account of RH's status. **Exhibit 3** at 7.

The reliability standard requires the Court to determine whether an expert witness' testimony is based upon a reliable methodology, rather than subjective belief or unsupported speculation. Hunter's opinions fail to meet that standard. Hunter failed to consider missing data, corroborating evidence, or other potential disorders or causes of what RH is purportedly undergoing. He based his opinions solely on what a family relative related to him. *Daubert* recognized that

> expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses.

*Id.*, 509 U.S. at 595. Here the probative value is outweighed by the prejudicial effect. Merely allowing this information into evidence because a psychologist with a well-credentialed resume said so would violate *Daubert*. Further, the Court should consider that Hunter's opinions are not governed by any standards and his hypothesis has not been tested. *See Oddi v. Ford Motor Co.*, 234 F.3d 136, 156, 158 (3rd Cir.2000) (excluding expert who failed to test his hypothesis because a key factor in determining the admissibility of expert testimony is whether it can be and has been tested). Plaintiffs cannot meet their burden of reliability or general acceptance and Hunter must therefore be excluded.

**Conclusion**

Plaintiffs seek to put the *imprimatur* of a psychologist on RH's emotional damage claim, by calling it "PTSD." The Court will recall that Plaintiffs had stated in written discovery that they were making a claim for emotional damages for the deaths of RH's family (*i.e.*, claims for "garden variety" emotional distress that did not put her psychological condition at issue (*see e.g., Sabree v. United Brotherhood of Carpenters & Joiners of America, Local No. 33,* 126 F.R.D. 422, 426 (D.Mass.1989)). Plaintiffs

subsequently disclosed Hunter's infirm opinions, as shown above.

The Court bears an obligation "to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the practice of an expert in the relevant field." *Kumho Tire,* 526 U.S. at 152. Given the record, Dr. Hunter's opinions are not grounded in a reliable methodology generally accepted in the field of psychology.

For all these reasons, Dr. Hunter's testimony and his opinions must be precluded.

Respectfully submitted this 4th day of March, 2019.

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona

*s/Laurence G. Tinsley, Jr.*
LAURENCE G. TINSLEY, JR
Assistant U.S. Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following registrant of the CM/ECF System:

**Dennis T. Schoen**
**Jennie Elizabeth Miskell**
DENNIS T. SCHOEN, P.C.
1 E. Wacker Drive, 2020
Chicago, Illinois 60601
*Attorney for Plaintiffs*

**Richard D. Lyons, PLC**
16427 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85254
*Attorney for Plaintiffs*

*s/ Lauren M. Routen*
U.S. Attorney's Office

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona
LAURENCE G. TINSLEY, JR.
Arizona State Bar No. 012581
ELIZABETH K. SICHI
Illinois State Bar No. 6271368
Assistant U.S. Attorneys
Arizona State Bar No. 012581
Two Renaissance Square
40 North Central Ave., Suite 1800
Phoenix, Arizona 85004-4449
Telephone: 602-514-7500
Facsimile: 602-514-7760
Email: Laurence.Tinsley@usdoj.gov
Elizabeth.Sichi@usdoj.gov

*Attorneys for Defendant United States of America*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Kaori Stearney, et al.,

Plaintiffs,

v.

United States of America,

Defendant.

Case no. 3:16-CV-08060-DGC

**EXHIBIT INDEX**

| Exhibit | Description | |
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| 1 | Report of Plaintiffs' Expert Dr. Scott Jay Hunter, PhD | |
| 2 | Excerpts of Deposition of Dr. Scott Jay Hunter, PhD (Deposition taken February 20, 2018) | |
| 3 | Declaration of Dr. Erin M. Nelson, Psy.D. | |
| | Exhibit A | Curriculum Vitae of Dr. Erin M. Nelson, Psy.D. |
| | Exhibit B | Correspondence from AUSA Laurence G. Tinsley, Jr. to Dr. Erin M. Nelson, Psy.D., dated February 4, 2019 |
| | Exhibit C | Specialty Guidelines for Forensic Psychology |
| 4 | Certification of Conferral | |

# EXHIBIT 1

# EXHIBIT 1

THE UNIVERSITY OF CHICAGO MEDICINE
Comer Children's
CELEBRATING 10 YEARS

**Pediatric Neuropsychology Service**

*Department of Psychiatry & Behavioral Neuroscience*
*Section of Child and Adolescent Psychiatry*
*5841 S. Maryland Avenue, MC 3077*
*Telephone: 773-702-2227*

*Chicago, Illinois 60637-1470*
*fax: 773-702-9929*

31 October 2017

Dennis Schoen, JD
Dennis T. Schoen, PC
221 North LaSalle Street, Suite 663
Chicago, IL 60601

RE: RH

Dear Mr. Schoen:

Thank you for the opportunity to provide consultation regarding RH, a Japanese minor born on 8/4/2004, and her current status, post surviving a serious motor vehicle accident on 3/28/ 2014, when she was 9 years of age, that led to the death of her parents and her older brother. This accident occurred when RH and her family were living in Illinois, and subsequently traveling around the U.S. In response to your request for this consultation, I have had the opportunity to participate in a two-hour long interview by phone with RH's grandfather, Tashiaki Motoshige, through the assistance of a professional Japanese language interpreter. Our discussion focused both on Mr. Motoshige's knowledge of his granddaughter's psychological and academic development prior to the accident, and current presentation, specifically her ongoing emotional difficulties that are impacting her daily life, as well as that of her grandparents, who are supporting her. Through my interview with Mr. Motoshige and my review of documents provided by you regarding the accident and subsequent treatment RH underwent in the US, including a description of the accident and the psychological consultation notes from her hospitalization post-accident at Phoenix Children's Hospital, I am able to offer you my opinion regarding this minor's psychological injuries secondary to the loss of her immediate family, its impact on her continued development to date, and her need for specialized intervention in order to progress towards adulthood.

Pertinent to this consultation, and my role as an expert, I will outline my credentials. I am a clinical child psychologist and pediatric neuropsychologist, licensed in the states of Illinois and Indiana since 1999, and Virginia since 1998. I hold a PhD in Clinical and Developmental Psychology, with specialization in neurodevelopmental disorders and behavioral neuroscience, from the University of Illinois at Chicago. I completed a predoctoral internship in Clinical Psychology at the Stone Institute of Psychiatry, Northwestern University Medical School and Northwestern Memorial Hospital, and completed a Leadership and Education in Neurodevelopmental and Related Disorders (LEND) postdoctoral fellowship in Pediatric Neuropsychology and Neurodevelopmental Disorders at the University of Rochester. I am presently Professor of Psychiatry and Behavioral Neuroscience, and Pediatrics at the University of Chicago, in the Pritzker School of Medicine and the Biological Sciences Division of the College. I have been a member of the University of Chicago faculty since 1999; prior to this, I was on the faculty of the University of Virginia. I am presently also the Director of

Neuropsychology for the University of Chicago Medicine and Comer Children's Hospital. My clinical practice within the medical center focuses on the psychological and neuropsychological functioning of children, adolescents, and emerging adults, and includes expertise in the intersection of trauma and neurodevelopment. My research addresses the impact of medical, neurodevelopmental, and traumatic adversity on neuropsychological and behavioral development. As such, I have substantial experience in addressing the impact of adversity on developmental challenges and how they are best addressed psychologically and educationally.

As discussed in the records provided, RH was a restrained passenger in an automobile driven by her father. Her mother and brother were also passengers. On 3/28/14, in the midst of a high-speed pursuit chase by Navajo Nation police, the automobile that the family was riding in was struck head on by the individual under pursuit, when he reportedly drove across the center line of the highway. This collision led to the death of both of RH's parents and her brother. She survived, with extensive physical injuries, including a right humerus fracture, right tibia fracture, right distal radius fracture, right 4th and 5th metacarpal fractures, left clavicle fracture, and intra-abdominal injury (a stomach perforation, that was surgically repaired). Following emergency stabilization and surgery, she underwent medical care and initial rehabilitation to address her physical injuries in Phoenix Children's Hospital (following life flight transport from Tuba City, AZ, where the incident took place). Her maternal grandparents came from Japan to support and care for her during her recovery. When she was deemed appropriate for discharge, RH then accompanied her grandparents to their home in Japan, which is located approximately 30-40 minutes outside of Tokyo. RH has remained living with her grandparents since her return to Japan. She attends school in their town; however, this is not where she originally began her education, according to her grandfather. Notedly, RH was reportedly going to return to her previous school in Tokyo, where arrangements had been made for her reintegration and support, but she requested instead to attend school in her grandparent's town, where she was subsequently required to make a significant transition into the school's social and academic structure once she enrolled. It is reportedly very uncommon for such a change to occur for Japanese children; Mr. Motoshige stated however that he was counseled to consider allowing this, to provide support for his granddaughter. Unfortunately, the school system was, he came to learn, less equipped to support RH's emotional needs; he shared with this consultant that there is limited available psychological care in the small town's schools, and the system has supported keeping the incident that occurred quite secret, in response to family requests that this not be shared. This is a direct result of RH herself demanding of her grandparents that her situation not be shared publically.

It is important to review what Mr Motoshige described as having taken place since the return of his granddaughter to Japan, in an effort to make sense of the depth of RH's emotional struggle. In order to accommodate her needs, a room was made up for her in their home; however, she has reportedly refused to sleep or stay in this bedroom. Instead, RH is described as having taken over a room in the family's home where her parents' and brothers' urns were initially placed – and where they still remain at her insistence, since they were brought back to Japan and the family's home. The family is Buddhist and Mr. Motoshige reported that it is typical for initial mourning to take place with the urns at home, before they are then buried in a set plot. RH, in her ongoing mourning, depression, and related difficulty accepting her parents' and brothers' deaths, has refused to allow the urns to leave the home. While this has been deemed acceptable by the local priests, in order to support RH, it is nonetheless a challenge because it contributes to RH spending significant time with the urns, talking and crying to them. The room where the urns are kept is where she spends most of her time when she is home; she does so with the door shut according to her grandfather, and the grandparents do not disturb her. Both he and his wife have allowed this, in order to maintain peace within the home, given the emotional challenge attempting to separate RH from the room has contributed to.

Notedly as well, RH will, when not sleeping in the room with the urns, typically sleep with her grandparents in their bed. She indicates to them that she is unable to be alone when sleeping and requires the safety being with them provides. This is highly unusual for a typically developing adolescent of 13 years; however, it is clearly indicative of the intense discomfort RH experiences secondary to her loss and her feelings of depression. Mr. Motoshige shared further that RH has instructed her grandparents that they are not allowed to discuss her parents' and brothers' death, and particularly not with others outside the home. Although Mr. Motoshige admitted that he and his wife have shared information with the school principal and teacher, they are sworn to not share this openly at school; notably, this has remained the case in the almost four years since RH has been living with them.

Mr. Motoshige described significant challenges in regard to meeting typical developmental milestones of preadolescence. His granddaughter refuses to engage socially outside of school, is unkempt in her appearance in comparison with her peers, shows no interest in typical topics and subjects her peers engage in, and she is described as having lost her interest in and commitment to academic success. She reportedly informs peers that her parents remain in the US and that her brother is attending University. She refuses to allow her grandparents to attend any events at school that would be typically attended by parents. She will not invite friends over, nor does she typically engage with peers beyond what is done at school and after school activities. Her mood is described as sullen and frequently flat. Crying and even anger are not unusual emotions. According to Mr. Motoshige, there is little cooperation with suggestions made towards seeking greater engagement or interest in activities. There has been little cooperation with efforts to support her mood made by her grandparents. Appetite and sleep are both described as perfunctory and requiring intervention by RH's grandparents to ensure that she remains healthy.

It is important to highlight how this profile now differs from how Mr. Motoshige recalls about his granddaughter before the accident and loss. He described a highly engaged, social, and academically achieving youngster. RH studied two languages, Japanese and English, partook in many extracurricular activities, and was studious. Since returning to Japan and fully confronting her loss, she has shown extended periods of mourning behaviors, that are now descriptively consistent with symptoms of a sustained major depressive disorder, of severe presentation. She shows significant anxiety about the safety of herself and her grandparents; she reportedly experiences frequent nightmares, shows avoidance of, and denial publically regarding the reality of her parents' and brother's deaths, shares that she speaks with them, and hides her loss from others. These symptoms are highly consistent with the experience of a long-standing Post-traumatic Stress Disorder (PTSD) presentation, secondary to both her own experience of the accident and the losses she has incurred.

In order for RH to make advances developmentally, she and her grandparents are going to require significant psychological and psychiatric intervention. First and foremost, RH will benefit significantly from engagement with a highly skilled mental health clinician experienced in treating trauma from a multicultural perspective. This will require someone trained in current empirically supported approaches to managing trauma symptoms, through implementation of trauma-focused cognitive-behavioral therapy (TF-CBT). However, this must be provided within a focused cultural lens appropriate to Japanese, and specifically Buddhist beliefs regarding death and loss. Psychiatric consultation, again with a skilled clinician who understands how to utilize pharmacotherapies within a culturally appropriate framework, is also strongly advised. Engagement in treatment in a setting where RH can explore beginning to share her losses with others, and allowing the caretaking that supportive knowledge of such losses will foster for her through a well-understanding and informed social network, is also required. Family connection with appropriate faculty at the Hyogo Institute of Traumatic Stress in Kobe, Japan, or with the Department of Neuropsychiatry at Iwate Medical University, both settings where research has been conducted on loss and trauma and its treatment in Japan, and where appropriate professionals who have expertise in treating

children and adolescents with severe trauma are available, is strongly advised as a first step. These settings can provide a thorough diagnostic assessment of RH, and develop a treatment plan that is highly sensitive to her and her grandparents' needs.

To not address these issues both assertively and directly is to introduce a very probable negative outcome for RH; this opinion is held to a significant degree of neuropsychological and psychological certainty. RH has struggled now for an extended period of time secondary to her substantial losses, physical injuries, and her emotional response to these experiences. She will require significant psychological and psychiatric support and intervention to move forward and reach functional independent adulthood. RH is at a particularly vulnerable time, adolescence, for directly intervening; given the time since the accident and losses of her family members, and the challenges that have taken place in stabilizing her since then, she is vulnerable to developing a more debilitating depressive disorder, avoidance of society, and potential for suicide.

Thank you again for the opportunity to assist with RH's needs. Please do not hesitate to contact me for further assistance with this case as required.

Respectfully submitted,

[electronically signed by Scott J. Hunter, Ph.D., 8 November 2017 at 9:30 AM CST]

Scott J. Hunter, Ph.D.
Professor of Psychiatry& Behavioral Neuroscience, and Pediatrics
Director of Neuropsychology
Coordinator, Child Psychology Training Program
Faculty Affiliate, The Center for Health and the Social Sciences (CHeSS)
Vice-Chair, University of Chicago Medicine and Biological Sciences Division
Institutional Review Board
Licensed Clinical Psychologist

# EXHIBIT 2

# EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT

FOR THE THE DISTRICT OF ARIZONA

| | | |
|---|---|---|
| KAORI STEARNEY, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs | ) | No. 3:16-CV-08060-DGC |
| | ) | |
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Defendant. | ) | |

VOLUME I

The discovery deposition of SCOTT JAY HUNTER, Ph.D., called by the Defendant, for examination, pursuant to notice, taken before LORI ANN ASAUSKAS, CSR, RPR, a notary public within and for the County of Cook and State of Illinois, at Room W-410, 5841 South Maryland Avenue, Chicago, Illinois, on Tuesday, February 20, 2018, scheduled to commence at 2:00 o'clock p.m.

here at the University of Chicago and also on a teaching staff?

A. I am a member of the college and medical school faculty.

Q. And what do you teach here?

A. I teach pediatric clinical neuroscience and child psychology.

Q. And what level do you teach?

A. I teach predominantly medical students through residents and postgraduate fellows and that would be for both and I do teach some undergraduates with them coming and working in my lab.

Q. Do you have any experience in the Japanese language?

A. I am not someone who has experience in the Japanese language.

Q. Do you feel that you are well-versed in Japanese culture?

A. I think I do have a good understanding of Japanese culture, yes.

Q. Where did you get that good understanding from?

A. Through coursework and then through having Japanese friends as well as having

colleagues who have consulted and taught in Japan with whom I have conferred because I am a consultant often in China.

Q. Have you conferred with any of those colleagues regarding this case?

A. Not with regard to this case, no.

Q. Who are those colleagues in Japan who you do confer with when you do confer?

A. No one from Japan. Here in the United States.

Q. And who are those people?

A. The person locally is ^^Leanine Witterd Soused.

Q. And I take it you have not consulted with this person on this case?

A. No.

Q. That is correct?

A. That is correct.

Q. What information do you have about the culture of Japanese adolescence?

A. I think that is an incredibly broad question. Could you be more specific?

Q. Have you treated Japanese nationals or adolescence?

A. I have.

certainly is somebody, based on her experience, who met the qualifications.

Q. Do you know whether she is certified to be a translator interpreter throughout the court system?

A. That I'm not aware of.

Q. Okay. I take it as part of your review in this case you interviewed the grandfather?

A. That is correct.

Q. And his name is what?

A. Mr. Motoshige, M-O-T-O-S-H-I-G-E.

Q. Motoshige?

A. Yes.

Q. And aside from Mr. Motoshige, did you interview anyone else?

A. No.

Q. With regard --

A. It was not possible for me to do so.

Q. Did you interview RH?

A. I did not.

Q. Can we refer to her as RH or RH today, is that okay with you Dennis?

MR. SCHOEN: Either one is fine with me.

BY THE WITNESS:

A. [RH] is fine with me.

BY MR. TINSLEY:

Q. You did not interview [RH]?

A. I did not interview [RH].

Q. You did not interview Ms. Motoshige?

A. His wife, no, she was actually not able to be interviewed.

Q. Do you know why not?

A. She was ill and is actually undergoing a medical procedure.

Q. She was ill at the time as well?

A. Yes.

Q. What was the nature of her medical procedure?

A. I do not recall.

Q. You did not interview any of [RH]'s teachers?

A. I did not.

Q. You did not interview any of her peers?

A. I did not.

Q. All told what amount of time did you spend with Mr. Motoshige?

A. Two hours.

Q. That was telephonic?

A. That was telephonic.

Q. And where was he located when he was interviewed?

A. In a town about 30 minutes outside of Tokyo.

Q. Do you know the name of the town?

A. I don't recall it.

Q. Is that a large town, a small town?

A. Small town.

Q. Do you know the population?

A. I don't know the population.

Q. Do you know how many schools are there?

A. I do not know the number of schools, no.

Q. [RH] at this point in time would be what age?

A. She is 13.

Q. And what grade is she in?

A. She is in -- it's not completely equivalent to ours, but it would be equivalent to the 7th to 8th grade.

Q. Aside from the interview that you had with Mr. Motoshige, have you had any other contact with him or his family including [RH] outside the context of that interview?

A. No, I have not.

Q. Okay. I take it that you did not interview [redacted], you did not evaluate her academic skills?

A. I did not do a specific evaluation of her cognitive or academic skills, no.

Q. Did you look at any of her academic records from Japan?

A. No.

Q. Did you look at any of her academic records for the time that she lived in Japan before she came to the United States?

A. No, I spoke with her grandfather about both current and past.

Q. You didn't look at any of her records though?

A. No, I did not.

Q. Did you talk to her or anyone about her language skills, verbal comprehension or fluency?

A. I spoke with her grandfather about them.

Q. Aside from speaking to her grandfather about that, any other review or study of those issues?

Q. So you have not made a formal diagnosis, correct?

A. I have not made a specific diagnosis, no.

Q. I assume that you would need to make a formal diagnosis or could only make a formal diagnosis after doing an assessment or testing of her, correct?

A. It would be important to utilize a more detailed evaluation of [RH] specifically to make a formal diagnosis.

Q. So the opinions that you are expressing are really preliminary or could be deemed preliminary to a formal diagnosis, correct?

A. I don't know if I would say that they are preliminary. I would say that they are identifying specific challenges and concerns that are consistent with the diagnostic criteria that can then be confirmed through further evaluation.

Q. So without the further evaluation, you really don't have a specific diagnosis that you can articulate today, you just have an opinion of what it may be, correct?

A. I have an opinion about what it is more

than likely.

Q. Okay. Based on the interview of the grandfather, but not based on any assessment, testing or any personality inventory, correct?

A. Based on the interview and the description of the symptoms and the level to which they are interfering with her life, but they are not a formal diagnosis, no.

Q. Okay. And all of the information that you have with regard to the level that they are interfering with her life comes from your interview from the grandfather, correct?

A. That is correct.

Q. Have you reviewed any of her medical records from Japan?

A. From Japan, no.

Q. I take it you interview -- or I take it you reviewed the medical records from Phoenix Children's Hospital?

A. Yes, I did.

Q. And also from a hospital here in Chicago, which I believe is Lurie's?

A. Yes.

Q. You saw those records?

A. I did.

grandfather.

Q. Did you make an effort to interview RH?

A. I asked. It was refused.

Q. When you say you asked and it was refused, who did you ask and who refused?

A. I asked her grandfather if it would be possible to speak with her and she already made it clear that she was not going to be involved in discussing anything.

Q. So in other words, the refusal came directly from her but it was conveyed to you through the grandfather?

A. Correct.

Q. Do you know what the form of the refusal was, was it in writing, was it verbal, do you know?

A. As I understand, it was verbal.

Q. Okay. Did you take notes from your meeting?

A. I did.

Q. Do you have those notes with you today?

A. I do.

Q. Okay. Did you make a copy of your entire file for me as was requested in the

Q. And that would be one way to assess and account for her motivation and effort, correct?

A. Again, yes, I believe that certainly one of the things that would be important to pay attention to in interviewing her is, in fact, her engagement, her motivation and her effort, yes.

Q. And that would allow you to assess for things like avoidance, correct?

A. Certainly that would be able to see that with her directly, yes.

Q. It would allow you to assess any resistance?

A. It could, yes.

Q. Any hostility?

A. It could, yes.

Q. And also any lack of cooperation, correct?

A. Directly, yes.

Q. Without interviewing her, you are not able to completely assess those issues, correct?

A. I had only what was recorded by her grandfather, correct.

Q. So the answer to my question yes?

A. I would say yes.

making sure she had the final report and then my bill for the work at that time.

Q. What's your total bill for the work?

A. That should be included. Overall it was ten hours so $4,500.

Q. Okay. And you were hired by Mr. Schoen, right?

A. That is correct.

Q. Hired to render opinions, right?

A. That is correct.

Q. Hired to write a report?

A. That is correct.

Q. And you agree that you would be considered the plaintiff's psychological expert in this matter?

A. I believe so.

Q. You would not consider yourself an independent expert, would you?

A. Independent meaning that I am not working for a particular attorney, no. I am hired by Mr. Schoen.

Q. Hired by the plaintiff's counsel in this case, correct?

A. That is correct.

Q. Not hired by the court?

coming to the United States or currently?

A. Prior to coming to the United States.

Q. So he would actually help her with her homework at that time?

A. There were times when she was actually at their home doing homework, yes.

Q. How many times would that have occurred, do you know?

A. I have no idea.

Q. The other piece of information that he knew regarding her academic development came from her mother?

A. He shared that her mother, [redacted]'s mother, spoke with him about how the children were doing, yes.

Q. Aside from that information, his helping her with homework on several occasions and speaking with the mother, any other knowledge that you are aware of that he had regarding her academic development?

A. I think it would be fair to say that it's more than just on several occasions he was involved. As I said, there was a close family relationship and my understanding is that she spent significant time with her grandparents. I

don't know the exact number of visits by any stretch, but what he described to me was, in fact, a very close family relationship.

Q. Okay. You don't know how -- how long those visits would last or the frequency of the visits, you just know generally it was a close family relationship and more than several times?

A. It was many visits as I would state that I understood. There were times when both he and his wife were taking care of the grandchildren, yeah, so I would say that probably like many -- and, in fact, in Japanese families there is a much greater closeness than there is in regard to family relationships for a lot of U.S.-based families.

Q. And your knowledge of that comes from where?

A. From my work with Japanese families and again from what I learned taking courses about Asian cultures.

Q. What courses have you taken about Asian cultures?

A. As part of my undergraduate study. I can't give you specific names. I don't recall.

Q. How many courses?

Q. The answer to my question is no then?
A. The answer to your question is no.
Q. Do you know whether the grandfather reviewed any of [RH]s prior school records prior to your interview with him?
A. I don't know that.
Q. And when I say prior school records, I'm talking about the records that would have been generated before they came to the United States.
A. I understand that.
Q. Okay. You don't know if he reviewed those?
A. I do not.
Q. Did he know what schools she attended?
A. Yes, he did.
Q. Do you know the names of those schools?
A. I do not.
Q. Did he report those names to you?
A. He used those names, yes.
Q. Are those in your notes?
A. I noted because I did not feel that I needed to know the exact names of the schools. I just noted about the schools.
Q. Do you know whether he interviewed any

of her prior teachers?

A. That I can't answer.

Q. Did you interview any of her prior teachers?

A. I did not.

Q. Did he interview, prior to his discussion with you, any of her current teachers?

A. He was in touch with and speaking with on a regular basis her current teachers.

Q. Did he discuss these issues particularly in anticipation of the meeting that you held with him or was it more what he was doing as a concerned grandfather?

A. I believe that he was able to share with me both the substance of his interactions with the teachers and the administration at the current school --

Q. Uh-huh.

A. -- and their concerns as well as he and his wife's concerns about [redacted] and about the challenges that they have observed with her in comparison with her successes at her former school.

Q. Now, those teachers were not aware of

her successes at her prior school based on personal knowledge, were they?

A. I would say that they were not.

Q. Do you know how frequently he had contact with the teachers or administrators at the current school?

A. That, I don't know.

Q. Do you know whether he reviewed any of her current academic records such at transcripts or tests or report cards prior to your interview with him?

A. I don't know if he reviewed any of them, no.

Q. Now, I think in your report you indicated that you reviewed records provided to you by Mr. Schoen, correct?

A. Correct.

Q. And those would include records regarding the accident?

A. Correct.

Q. Would that include the police report?

A. It would include the police report, yes.

Q. Did it include the PCH, Phoenix Children's Hospital records?

A. Yes.
Q. Did it include the Lurie's Children's Hospital records --
A. Yes.
Q. -- in Chicago?
A. Yes.
Q. Any other documents that you reviewed?
A. No, as I said before.
Q. And would all of those records be included in Exhibit 2?
A. Exactly.
Q. Did you make notations on any of those records?
A. I didn't make specific notations, no.
Q. Did you have sticky notes that you subsequently removed from those records?
A. No, I did not.
Q. And I think you told me that you have not seen any records from any medical providers in Japan, correct?
A. I have not.
Q. Okay. Do you know whether she has sought or been referred to any psychologist, psychiatrist or counselor from any provider or any provider of that nature in Japan?

is a likely thing. The degree to which they would diminish, I can't say.

Q. Without further evaluation, assessment or testing?

A. Well, it would be -- I don't think you can make that determination even with those components of assessment. To be able to say how much, no, you can't say that.

Q. You indicated that the decision to not seek treatment was a joint one with her refusing and the grandparents, if you will, acquiescing to her preferences, correct?

A. I would say it wasn't necessarily just acquiescing to her preferences. This is not a normal process for most individuals who are Japanese to seek out treatment psychiatrically.

Q. It's more of a cultural sort of phenomenon that they won't seek out treatment in the Japanese culture for this event?

MR. SCHOEN: Objection to calling it medical. I believe the doctor said psychological.

BY MR. TINSLEY:

Q. Okay. Psychological then.

A. I am not providing a diagnosis of depression. I am describing how she is meeting a criteria towards that.

Q. Is that true with the PTSD, you're not providing a diagnosis, you're providing a criteria that points towards that?

A. I am indicating that she is expressing and showing symptoms that are consistent with that diagnosis.

Q. But you don't have that diagnosis at this point, correct?

A. I have not made those formal diagnoses specifically, no.

Q. You also stated that she has had the grandparents swear to secrecy regarding her parents' death and I don't mean to say that in a casual way, but I'm trying to summarize what you stated that in your report?

A. I stated that, yes. That's what was shared with me.

Q. You stated she is unkempt in her appearance?

A. Correct.

Q. Can you describe what he meant by that?

A. She does not comb her hair. They have

academic records?

A. No, based on Mr. Motoshige's description.

Q. Okay. You indicated she has a sullen and flat affect, correct?

A. I do. I did say that, yes.

Q. And everything that we just described, the items that we just talked about, her appearance, her social activities, her peers, her performance and her affect are all based on what you were told by the grandfather?

A. That is correct and that I asked questions specifically about.

Q. Okay. And she has anger and crying?

A. She was told -- she was said to be showing both of those.

Q. How often?

A. She cries regularly, not every day but more days than not. Anger comes up when they attempt to push her.

Q. More days than not, how many days a week?

A. That could be anywhere from three to five days a week.

Q. Is that in your notes?

questions about the presentation of difficulties that RH is having and the relationship of that presentation to her history. I did not again make a formal diagnosis. I indicated that she strongly presents with symptoms that are consistent with that diagnosis and with a formal evaluation of RH, I believe that that will be a diagnosis that is made given everything that I understand.

Q. It's consistent with PTSD in your opinion, correct?

A. It is based on the DSM and the criteria as they are defined in the diagnostic manual.

Q. And absent the actual testing or diagnosis by a provider who actually treats her or evaluates her, we don't know for certain what the mood disorder is, do we?

A. What I can say is that we know with a greater than likely -- a greater chance of likelihood that this is the challenge that she is presenting with, that this is the disorder she is most likely to be identified with.

Q. That's based on your opinion and talking to Mr. Motoshige for two hours and the records that you were provided by Mr. Schoen?

A. That is correct.

MR. SCHOEN: And your background and experience.

MR. TINSLEY: Well, he's already said that.

MR. SCHOEN: So have I.

MR. TINSLEY: Is that an objection?

MR. SCHOEN: No, that's just me babbling.

MR. TINSLEY: Right. Babbling in order to get more information on the record from Dr. Hunter, I assume.

MR. SCHOEN: If you have another question to ask, go ahead and ask it. If you don't, then turn it over to me.

MR. TINSLEY: I have plenty of questions. Why don't you let me conduct the deposition without objections.

MR. SCHOEN: Well, I'm going to object if I feel like I need to object. You go ahead and do whatever you feel you need to do. I won't stop you.

MR. TINSLEY: That was not an objection.

A. It is definitely the case that that is part of what is recommended, yes.

Q. And you are not making a definitive diagnosis because you do not have that form of data at this point?

A. That is correct.

Q. You quibbled with me when I asked you whether yours was a preliminary opinion?

A. Uh-huh.

Q. But you also recommend treatment in your report for [redacted], correct?

A. Yes, I do.

Q. You agree that someone -- anyone providing treatment would have to test her?

A. They would assess her. There is a difference between assessing and testing.

Q. Okay. Tell me what the difference is.

A. Assessing is actually either using interviews or maybe inventories or measures of mood versus doing frank assessment of her symptoms through actual physical tests.

Q. All right. Assessment, inventories, administration of different profiles, that sort of thing?

A. So there are definitely a number of

different processes that would be allowable and considered valid and reliable for determining interviewing. Someone like her grandfather is considered one of those important components.

Q. So anyone who is going to provide treatment would have to assess her using the instruments that you just described?

A. They would use what they understand to be their standard of practice.

Q. And they would do that for what reason?

A. They would look to be able to come to an understanding of what specifically is at play. They would make a formal diagnosis most likely and then they would recommend the procedures for engaging in treatment.

Q. So they would need to do the testing or the inventory, the assessment, the administration of the various profiles that we talked about to determine what's at play?

A. They would make a definitive diagnosis, yes.

Q. Okay. And I take it you cannot make a formal definitive diagnosis with the data that you have, correct?

A. I do not believe that I can make a

definitive diagnosis nor am I recommended to do so. I have data that gives me an ability to offer an opinion of what the challenges are and what is likely at play and what would be needed to actually address that.

Q. Even if they -- the future treating provider had your report and had the medical records that you looked at --

A. Yes.

Q. -- they could not make a diagnosis of PTSD based solely on that data, could they?

A. They would want to see [redacted], yes.

Q. They would want to interview her, assess her, review the records that we talked about that you did not have access to?

A. Ideally.

Q. Okay.

A. My guess is that they would do less than that and that is done every day psychiatrically as well what I would say is that they would also ascertain her ability to actually engage with them and whether that would provide further trauma at this time. There are ways of actually beginning the process of treatment and then making better decisions about

grandfather?

A. What do you mean?

Q. Did you consult with anyone in Japan who might specialize in this issue such as those that you stated on Page 3 of your report?

A. No, I did not consult with any of those individuals.

Q. Okay. Did you consider whether any of those individuals would better be able to interview Mr. Motoshige?

A. I did not.

Q. I take it your interview was done telephonically?

A. As we have said repeatedly, yes.

Q. Okay. I take it it wasn't VTC sort of presentation, was it?

A. It was done on this telephone here behind me.

Q. Which does not have VTC capability, does it?

A. I don't believe it does.

Q. Okay. Have you ever checked?

A. I know it does not.

Q. I thought you did, but the way you phrased your question was a little interesting

then to work to build forward what is required next.

Q. I believe you told me, sir, that you have about 200 cases of patients you treat a year?

A. In the -- in our program, yes.

Q. And you have been treating patients here in this program for how many years?

A. I have been here for 19 years.

Q. So would that be 200 patients for 19 years approximately?

A. I would say it varies.

Q. Varies year-to-year?

A. Yes.

Q. Is that a fair or reasonable estimate on my part?

A. I would say anywhere from 150 to 200, yes.

Q. And in your practice you said maybe over a dozen times where you have not actually met the person you are evaluating, right?

A. When I have offered an initial framework of understanding what their concerns are, yes.

Q. And that would be a valid approach for

Q. Okay. And they recommend that for provision of these services, populations that are new to them should be studied and you should receive training, education, supervised experience for those cultures, right?

A. They state that in the guidelines, yes.

Q. You told us about some coursework that you did with various Asian cultures, correct?

A. I have done, yes.

Q. But not specifically for the Japanese culture for this case, correct?

A. I did not take any specific coursework for this case, no. I have a very long history of working with and understanding individuals who are of varying Asian cultures as well as other cultures.

Q. And you agree that the guidelines say that you must account for and state limitations in your report of the various factors including race, ethnicity, culture and natural origin?

A. I believe that that is addressed.

Q. Not specifically addressed in your report however?

A. Okay. I would disagree and I believe that I addressed that this is actually the case

A. I'm not sure what you're talking about.
Q. In other words, any time someone provides someone a piece of information, that person can come up with an opinion about it, right?
A. Again, I don't quite understand the question you're asking me.
Q. Okay. So if, for instance, someone tells me the president of the United States Tweeted a particular inflammatory piece of information, I could have an opinion about that, right?
A. You could have an opinion about it, sure.
Q. And I could always say my opinion is right because it's my opinion, right?
A. Sure, you could say that.
Q. Isn't that essentially what you're doing --
A. No.
Q. -- saying this is the information I had, I had an opinion about the information and, therefore, it's right?
A. No. What I'm doing is actually acting as a clinical psychologist who has substantial

experience diagnosing and treating individuals who have experienced trauma. I have a very detailed professional knowledge base that I draw from both through my learning, my expertise and my day-to-day clinical practice as well as my teaching and my research. And I can use that information to provide a much greater level of certainty in my opinion given how I performed an appropriate interview, given how I obtained appropriate data that allowed me to understand the situation at this time.

Q. All the information you were provided came from what either Mr. Schoen provided you or what the grandfather told you?

MR. SCHOEN: Objection. He's already said that he has been provided with records. I mean, we're going over the same stuff and I guess you're trying to see if you can get him to say something contrary to what you asked him ten minutes ago. You have a stack of records he's been provided who have other authors besides me and whoever else he just mentioned so let's not reask --

Q. I take it you did not administer any of those scales in that case?

A. I did not.

Q. And these tests that we just mentioned are designed to confirm validity or reliability of studies or opinions, right?

A. They are tools that can be used. It is also very much a part of psychological and psychiatric practice that we can incorporate the questions from those tools in our interviews and that is what I did.

Q. And you would agree that without using these inventories, your opinion has not been independently verified by any other provider or expert in this matter, correct?

A. Those wouldn't do so either.

Q. You agree that those tests can give you some objective measures or confirmations that would validate your opinions?

A. They can be helpful, yes. They are also often what is utilized to build an interview such as what I have done.

Q. And to the extent of using those to confirm objective measures of your opinions, to that extent, your opinion could be deemed to be

tell me when you're done looking at it, just flip through it quickly.

A. I'm done.

Q. Okay. Do you agree that this is the type of instrument that could help assess PTSD?

A. I have no idea.

Q. Okay. Do you have an opinion whether you could use this instrument to assess PTSD and come to a diagnosis?

A. I don't have an opinion about it because I don't know it.

Q. When you interviewed the grandfather, did you follow any sort of a format or was it more of a free willing interview of the grandfather?

A. I have an internal structure that is based on how I give interviews on a regular basis.

Q. And is that based on your own work or did you have a format that you follow or a model of it?

A. It is based on my own work that has certainly been adapted across time from what I have learned as part of my training and my experience.

Q. Would you call it your form of adapted interview for PTSD or for grievance?

A. I would call it my form of a clinical interview that is done with an individual who experiences challenges or circumstance that could be also including trauma.

Q. So you would characterize your form of interview as your adapted --

A. I use my standard clinical interview approach.

Q. Interview approach?

A. Yes. It is informed by the literature on PTSD particularly as it pertains to children.

Q. I'm sorry?

A. It is informed by my knowledge and experience of diagnosing and treating trauma and trauma-related challenges as well as broader challenges in children adolescence.

Q. Do you have a copy of your --

A. I don't have a structured interview that I use, no. I have a format that is internal.

Q. By internal just based on what is in your head at the time?

A. Yes.

the broad range of adjustment disorder to frank mood disorder including major depressive disorder, generalized anxiety disorder, specific anxiety disorders.

Q. You told me earlier a childhood grief trauma syndrome is not something you're familiar with?

A. It is not a formal diagnostic term.

Q. How about phobic traveling anxiety, have you heard of that term?

A. I heard the term related to a phobia about being in the car, yes.

Q. In forming your opinion if she meets the criteria for PTSD, have you considered major depressive disorder?

A. I indicated that I believe that, in fact, that is one of the other likely diagnoses for her.

Q. How about a general anxiety disorder?

A. I believe that that is something that needs to be further determined at this time.

Q. How about specific anxiety disorder?

A. Again, that would need to be more thoroughly assessed.

Q. By assessed, do you mean some of the

assessments we talked about earlier?

A. I mean, meeting with an appropriate clinician that has the experience and use the appropriate tools.

Q. In the studies that we talked about so far, do you agree that the opinions come from structured interviews with the child?

A. What studies have we talked about so far?

Q. Well, we talked about the inventories that we covered just a few minutes ago.

A. You mentioned the inventories. We didn't talk about the research that's been done with them, no.

Q. Let's talk about some of that.

With regard to those inventories, those are performed by administering them to children through a structure set of questions and answers, correct?

A. The inventories have a set of questions that are posed to the child that they then answer. It could be done verbally or they can write it. It is a structured approach, yes.

Q. Okay. Are you familiar with the work

by R.H. Lubit, Post-Traumatic Stress Disorder in Children?

A. I don't know that specifically with just that author, no.

Q. Are you familiar with Heilbronner, H-E-I-L-B-R-O-N-N-E-R, American Academy of Clinical Neuropsychology Practice Guidelines for Neuropsychological Assessment and Consultation, are you familiar with that one?

A. I am familiar about that one.

Q. And that particular study --

A. That's actually a list of recommendations. It's not a study.

Q. Okay.

A. That is actually an article about recommendations for clinical neuropsychologists and their professional practice.

Q. And those opinions recommend structured interviews with children, correct?

A. Yes.

Q. What about the study by Bryant Psychological Consequences of Road Traffic Accidents for Children and Their Mothers, have you heard of that study?

A. I have not.

found in any textbook, is it?

A. It is based on many different models that have been developed. I utilize in research something that always informs how I approach clinically, but I am, as a clinician, someone who has developed in a particular way of approaching individuals who I interact with to get information that will allow me to understand and also test its validity.

Q. So which textbooks did you rely on to develop your standard internalized interview approach?

A. I can't give you the name of which textbooks. It's been many years of training and experience, sir.

Q. What written series of questions supports your standard internalized interview approach?

A. It includes questions from the UCLA PTSD index. It includes questions that are part of the schedule for effective disorders assessment that is a highly structured approach. It is based on many years of training and experience doing these interviews. That's, in fact, what the science becomes for clinical

discussed ways of trying to get her help and they have utilized the resources that are available in her town through school.

Q. What resources are they utilizing that's available through their town or school?

A. The school does have a school psychologist.

Q. Has she seen the school psychologist?

A. There has been interaction with the school psychologist, yes.

Q. Have you looked at those notes or records?

A. I do not have those notes or records.

Q. Is that something that would be important to you in bolstering your opinions?

A. It might be.

Q. Have you requested those records?

A. I have not at this time.

Q. Do you plan to?

A. It's a possibility now.

Q. Do you know how often she has seen the school psychologist?

A. I do not.

Q. Is your source of that information also from the grandfather?

A. All the information about her at the present time is through my interview with the grandfather.

Q. What did he specifically say about that interaction with the school psychologist?

A. My understanding is that she really would not interact with the school psychologist to talk about the challenges.

Q. In other words, there has been an attempted interaction with the psychologist?

A. Yes.

Q. And it may be that the psychologist has documented that attempted interaction?

A. It's possible.

Q. You don't know that for sure?

A. I do not.

Q. Have you taken any steps yourself to reach out to the school psychologist?

A. I have not.

Q. Are you aware of any eating disorders that she has?

A. I am not aware of an eating disorder that she has.

Q. Sexual acting out?

A. That was not described.

A. I don't recall that that was described specifically.

Q. Aside from the discussions she's had with the urns, has she engaged any re-enactment of trauma?

A. Not that I have an awareness of.

Q. Has she drawn any pictures related to trauma?

A. Not that I'm aware of.

Q. Have you heard of acute stress disorder?

A. I am familiar with that.

Q. Was that another potential bereavement sort of mood disorder?

A. Bereavement would not in and of itself be a situation that leads to that. It would be the experience of trauma that may have contributed to also having bereavement, but it is related to a traumatic event, not just that.

Q. So that would be a separate sort of mood disorder separate and apart from PTSD, correct?

A. It is generally the more common presentation that individuals have following a trauma.

Q. Do you agree that 15 percent of children who have been involved in a traumatic event will have acute stress disorder?

A. I don't have an opinion yes or no.

Q. Do you have an opinion as to how many children involved in a traumatic event suffer PTSD?

A. I understand that there are varying results because of studies. My clinical experience is one that falls within that range that has been identified and it can be definitely in excess of 50 percent.

Q. In excess of 5-0?

A. Yes.

Q. But not every child will experience PTSD after a traumatic event of this nature?

A. That is correct.

Q. There are studies that distinguish between normal grief reactions, pain and sadness, loneliness longing for the deceased and PTSD, correct?

A. Yes.

Q. And the items that I just mentioned, the normal grief reactions, pain, sadness, loneliness, these could be intensely experienced

STATE OF ILLINOIS )
) SS.
COUNTY OF C O O K )

I, LORI ANN ASAUSKAS, a notary public within and for the County of Cook and State of Illinois, do hereby certify that heretofore, to-wit, on the 20th day of February, A.D., 2018, personally appeared before me at Room W-410, 5841 South Maryland Avenue, in the City of Chicago, County of Cook and State of Illinois, SCOTT JAY HUNTER, Ph.D., a witness, called by the Plaintiffs in a certain cause now pending and undetermined in the United States District Court for the District of Arizona, wherein KAORI STEARNEY, et al., are the plaintiffs and UNITED STATES OF AMERICA is the defendant.

I further certify that the said witness, SCOTT JAY HUNTER, Ph.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to writing by means of shorthand in the presence of said witness and afterwards transcribed upon a computer, and the foregoing is a true and correct transcript of

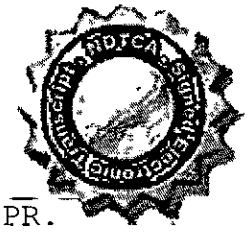
the testimony so given by him as aforesaid.

I further certify that the reading and signing of said deposition will be determined at the completion of the deposition.

I further certify that the taking of the deposition was pursuant to notice, and that there were present at the taking of the deposition the aforementioned parties.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 26th of February, A.D., 2018.



LORI ANN ASAUSKAS, CSR, RPR.
Notary Public, Cook County, IL
Illinois License No. 084-002890

# EXHIBIT 3

# EXHIBIT 3

**DECLARATION OF ERIN M. NELSON, PSY.D.**

State of Arizona )
)
County of Maricopa )

I, Erin M. Nelson, Psy.D., declare:

I am of legal age and competent to testify in court. The facts and opinions stated herein are based on my personal knowledge, and I could and would testify to these facts in a court of law if asked to do so.

1. I am a forensic and clinical psychologist licensed in the states of Arizona, California and New Mexico.

2. In addition to my private practice, I am an Associate Professor of Medical Education at the Texas Christian University/University of North Texas Health Sciences Center School of Medicine. I am also an Associate Professor in the Departments of Psychiatry and Bioethics and Medical Humanism at the University of Arizona College of Medicine - Phoenix *(Exhibit "A" - Curriculum Vitae)*.

3. In the matter of *Kaori Stearney v. USA* (Court No.: 3:16-CV-08060-DCG; USAO No.: 2016V00320) I was provided with the following records:

   a. Amended Complaint;
   b. Answer;
   c. Joint Status Report;
   d. Plaintiff's Initial Disclosure
   e. Documents with Plaintiff's Initial Disclosures (STEAR-PLA-000001-000979);
   f. Plaintiff's Supplemental Disclosure;
   g. Documents submitted with Plaintiff's Supplemental Disclosure (STEAR-PLA-001066-001517);
   h. Plaintiff's Second Supplemental Disclosure;
   i. Documents submitted with Plaintiff's Second Supplemental Disclosure (STEAR-PLA-001518-001578);
   j. Plaintiff's Third Supplemental Disclosure;
   k. Documents submitted with Plaintiff's Third Supplemental Disclosure (STEAR-PLA-001657-001749);
   l. Plaintiffs Fourth Supplemental Disclosure;
   m. Documents submitted with Plaintiffs Fourth Supplemental Disclosure (STEAR-PLA-001750-001874);
   n. Plaintiffs Answers to US's 1st Interrogatories;

o. Documents submitted with Plaintiffs Answers to US' s 1st Interrogatories (STEAR-PLA-001579-001628);
p. Plaintiffs Response to US's 1st Request for Production;
q. Documents submitted with Plaintiffs Response to US's 1st Request for Production (STEAR-PLA-001629-001656);
r. Plaintiffs Response to US's 2nd Interrogatories;
s. Documents submitted with Plaintiffs Response to US's 2nd Request for Production;
t. Plaintiffs Rule 26(1)(2) (A)-(C) Disclosures (Expert Disclosures):
    i. Expert Report of George L. Kirkham, D. Crim. (STEAR-PLA-001907-001947);
    ii. Expert Report of Michael W. Rogers, P.E. (STEAR-PLA-001948-001969);
    iii. Scott Jay Hunter, PhD Curriculum Vitae & Report (STEAR-PLA-002029-002093);
u. Defendant's 4th Supplemental Disclosure Statement – inclusive;
v. Medical Records Summary;
w. Arizona Department of Public Safety Records:
    i. Accident Report (STEAR-AZDPS-000001-0014);
    ii. Documents provided by Officer Milius (STEAR-AZDPS-MILIUS-000001-000150);
x. Bureau of Indian Affairs (STEAR-BIA-000001-000850);
y. Ann & Robert H. Lurie Children's Hospital of Chicago (STEAR-LCHC-000001-000032);
z. Dr. Michelle Sagan, Ann & Robert H. Lurie Children's Hospital of Chicago (STEAR-SAGAN-000001-000024);
aa. Northern Arizona Healthcare (STEAR-NAH-000001-000110);
bb. Guardian Air (STEAR-NAH-000111-000120);
cc. Phoenix Children's Hospital Re: [redacted] (STEAR-PCH-000001-000566);
dd. Transcript of Deposition of Scott Jay Hunter, Ph.D., Volume I, dated February 20, 2018, with exhibits);
    i. Exhibit 1: Curriculum Vitae of Scott Jay Hunter, PhD
    ii. Exhibit 2: Notes from Dr. Hunter interview of Mr. Motoshige;
    iii. Exhibit 3: Report prepared by Dr. Hunter, dated October 31, 2017, with testimony list; and
    iv. Exhibit 4: Hunter Appendix A, MVA Interview.

4. In correspondence from Laurence G. Tinsley, Jr., Esq., dated February 4, 2019 (*Exhibit "B"*), I was asked to provide my opinion as to whether the methodology employed by Scott J. Hunter, Ph.D. - as it pertained to the opinion(s) he proffered in the *Stearney v. USA* matter – met the standard of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, (1993).

5. The Specialty Guidelines for Forensic Psychology (*Exhibit "C"*) define forensic psychology as "...professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. Application of the Guidelines does not depend on the practitioner's typical areas of practice or expertise, but rather, on the service provided in the case at hand. These Guidelines apply in all matters in which psychologists provide expertise to judicial, administrative and educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, or administrative proceedings; offering expert opinions about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in and adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others..."[1]

6. The Specialty Guidelines explain that, when acting as a forensic practitioner, psychologists, in part:

   a. Acquire collateral/third party information (8.03);

   b. Use multiple sources of information (9.02);

   c. Seek to obtain sufficient data and document their efforts to do so (9.03);

[1] In his Deposition, Dr. Hunter testified that he does not "identify" as a forensic psychologist. However, he also testified that he was hired by Plaintiff's counsel to be a psychological expert in this matter (Page 33); was serving as a clinical psychology consultant to counsel (Page 108) and; was using his professional knowledge to provide expertise in this matter (Page 118-119).

d. Must only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for their opinion (9.03);

e. When it is not possible to conduct an examination, strive to make clear the impact of such limitations on the reliability and validity of their opinions (9.03); and

f. Document all data considered with sufficient detail to allow for reasonable scrutiny and adequate discovery by all parties (10.06);

7. Dr. Hunter is a well-credentialed psychologist with demonstrated expertise in his specialty area. However, in the *Stearney v. USA* matter, his methodology does not meet the applicable or generally accepted standard of practice standard of practice.

8. Interview Data:

a. Dr. Hunter did not conduct an interview or examination of RH. While it is professionally acceptable to render limited opinions in the absence of direct contact with a subject individual, it is imperative that the resultant limitation(s) with respect to reliability and validity be expressly conveyed.

b. The only interview Dr. Hunter conducted in this matter consisted of a single 2-hour international telephonic conversation with RH's grandfather, Tashiaki Motoshige, which was translated by an interpreter.[2]

c. Dr. Hunter did not document the date of Mr. Motoshige's interview in his report. During his deposition, Dr. Hunter was uncertain of the date of his interview with Mr.

[2] In my experience, even by conservative estimate, the use of a foreign language interpreter essentially doubles the time required to conduct an interview. Stated in reverse, one half of the total time spent is used to acquire actual interview data, while the remaining half of the time is subsumed by the exchange between the translator and interviewer and/or the translator and the interviewee.

Motoshige, but estimated it took place toward the end of October 2017.[3]

d. Dr. Hunter did not interview RH's grandmother, as she was reportedly "ill" at the time of his aforementioned contact with RH's grandfather. Dr. Hunter made no attempt to conduct an interview with Mrs. Motoshige at a later date.

e. In fact, Dr. Hunter made no attempt to seek collateral interviews with *any* parties or persons who may have been able to provide relevant data about RH, either prior or subsequent to the accident, including, but not limited to:

   i. Teachers;

   ii. Other school officials/personnel;

   iii. Extended family/friends; and/or

   iv. Medical providers.

f. Dr. Hunter made no effort to seek any information to either corroborate or refute the information provided by Mr. Motoshige.

   i. Dr. Hunter testified that he was comfortable with the information provided by Mr. Motoshige.

   ii. Dr. Hunter did not address or discuss the marked potential for intentional or unintentional bias in Mr. Motoshige's perception.

9. Collateral/Corroborating Sources:

   a. In his report, Dr. Hunter did not clearly identify the sources of information he reviewed.

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[3] Later in the deposition (following a break) Dr. Hunter was able to determine when the interview of Mr. Motoshige took place and provided a date for the record.

b. Dr. Hunter did not request, nor did he obtain, any collateral or corroborating data beyond the limited records initially provided by counsel.

i. To the extent Dr. Hunter did review the records initially provided, it is noteworthy that the entirety of those records were proximal to the March 28, 2014 accident and reflect RH's status approximately three years prior to the date of Dr. Hunter's report.

ii. Dr. Hunter did not request, obtain or review any medical, psychological or academic records pertaining to RH's status or care during the three intervening years.

iii. Dr. Hunter did not request, obtain or review, any documentation pertaining to RH's pre or post-accident educational or academic performance.

1. Dr. Hunter relied on Mr. Motoshige's account of RH's pre-accident academic performance yet acknowledged that he was unaware of whether or not Mr. Motoshige ever had access to RH's pre-accident educational records.

2. Although Dr. Hunter indicated that Mr. Motoshige did have access to RH's post-accident educational records, he was not aware if Mr. Motoshige reviewed those records prior to their interview.

10. In the *Stearney v. USA* matter, the methodology employed by Scott J. Hunter, Ph.D. does not meet the applicable or generally accepted standard of practice, nor does it provide sufficient foundational support for the scope of the opinions he rendered.

a. Dr. Hunter addressed and/or opined about RH's psychological status, mood, affect, interpersonal relationships, academic performance, educational engagement, marked psychological/psychiatric treatment needs and prognosis for the future. He did so without

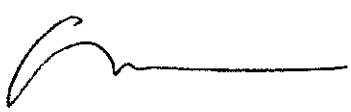
requesting or reviewing a single source document or record pertaining to RH after her return to Japan.

b. The totality of interview data Dr. Hunter relied upon in forming his opinions about RH consisted of a single, translated, international telephone call with her grandfather.

c. Dr. Hunter did not provide reasonable qualifying language about the significant limitation(s) in the nature and quality of the data upon which his opinions were based.

11. Collateral data is fundamental to the integrity, foundation and formation of forensic psychological opinions. The collection and review of multiple relevant sources of information substantiates reliability, mitigates intentional and/or unintentional bias and allows for scrutiny of convergent and divergent validity. In the *Stearney v. USA* matter, Dr. Hunter's methodological omissions include the failure to request or review any collateral source interviews; the failure to request or review sufficient objective medical, psychological or academic records; the reliance upon chronologically remote and limited objective documentation; the reliance upon a single anecdotal account of RH's status over several years leading up to the production of his opinions; and the failure to articulate resultant limitations. As a result, the opinions proffered by Dr. Hunter, including any formal or informal diagnostic impressions and/or treatment recommendations, are inherently invalid and unreliable.

I declare under penalty of perjury of the laws of the United States and the State of Arizona that the foregoing is true and correct.



2.21.19

Erin M. Nelson, Psy.D.
Forensic & Clinical Psychologist

Date

**EXHIBIT "A"**

# ERIN M. NELSON, PSY.D.

(Updated: January 2019)

**Contact Information:**
2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016
P: 480.250.4601
E: drerinmn@gmail.com
W: www.nelsonforensicpsychology.com

**Licensure:**
Arizona – License #3697
California – License #PSY25135
New Mexico – License #1367

**Professional & Clinical Positions:**

Forensic and Clinical Psychologist
Erin M. Nelson, Psy.D.
Phoenix, Arizona
January 2005 - Present

Forensic and Clinical Psychologist
Steven Pitt & Associates
Scottsdale, Arizona & Century City, California
January 2005 – June 2018

Director, Preparation for Practice Course
Texas Christian University & University of North Texas Health Sciences Center School of Medicine
Fort Worth, Texas
May 2017 - Present

Director, Mental & Behavioral Health Curriculum
Texas Christian University & University of North Texas Health Sciences Center School of Medicine
Fort Worth, Texas
May 2017 - Present

Director, Behavioral Sciences Curriculum
University of Arizona College of Medicine – Phoenix
November 2010 – January 2018

Director, School Training
Threat Assessment Group, Inc. (TAG)
Newport Beach, California
June 2011 – Present

**Teaching Appointments:**
Associate Professor, Medical Education
Texas Christian University/University of North Texas Health Sciences Center School of Medicine
May 2017 - Present

Associate Professor, Psychiatry
The University of Arizona College of Medicine – Phoenix
July 2016 – Present

Associate Professor, Bioethics and Medical Humanism
The University of Arizona College of Medicine – Phoenix
July 2016 - Present

Clinical Assistant Professor, Psychiatry
Louisiana State University School of Medicine – New Orleans
July 2003 – Present

**Consulting Positions:**

Phoenix Police Department
Phoenix, Arizona
November 2008 - Present

Park Dietz & Associates (PD&A), and
Threat Assessment Group, Inc. (TAG)
Newport Beach, California
April 2002 – Present

**Committee Appointments:**

Chair, Admissions Committee
Texas Christian University & University of North Texas Health Sciences Center School of Medicine
Fort Worth, Texas
November 2017 - Present

Executive Team – Curricular Evaluation
University of Arizona College of Medicine - Phoenix
May 2015 – January 2018

First Responder Traumatic Incident
Support and Response Task Force
City of Phoenix
November 2014 – Present

Chair, Theme and Topic Management Team
University of Arizona College of Medicine - Phoenix
June 2013 – December 2017

Curriculum Committee
University of Arizona College of Medicine - Phoenix
December 2012 – December 2017

Admissions Committee - Selection Subcommittee
University of Arizona College of Medicine - Phoenix
June 2011 – December 2017

**Education:**

Doctor of Psychology, Clinical Psychology
Argosy University, Phoenix, Arizona
July, 2003

Master of Arts, Clinical Psychology
Argosy University, Phoenix, Arizona
June, 2000

Master of Arts, Clinical Psychology
Sam Houston State University, Huntsville, Texas
December, 1996

Bachelor of Arts, Psychology
Arizona State University, Tempe, Arizona
May, 1992

**Honors:**

Honoree: Arizona Foothills Magazine; Women who Move the Valley; January 2009
Certificate of Merit: American Psychological Association Division 18, Psychologists in Public Service; May 2002
Outstanding Advocacy Award: Argosy University; May 2002
Magna Cum Laude Graduate, Arizona State University; May 1992

**Professional Affiliations:**

American Psychological Association
Division 18: Psychologists in Public Service
Division 41: American Psychology-Law Society
Arizona Psychological Association
California Psychological Association

**Past Professional and Clinical Positions:**

Director, Special Projects
Steven Pitt & Associates
Forensic and General Psychiatry
December 1993 – August 2003

Associate Clinical Psychologist, III
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch
Huntsville, Texas
April 1997 - June 1998

Clinical Case Manager
Community Partnership for Behavioral Health Care
Phoenix, Arizona 85029
October 1992 - August 1994

**Past Teaching Appointments:**

Assistant Professor, Psychiatry
The University of Arizona College of Medicine – Phoenix
October 2011 – July 2016

Assistant Professor, Bioethics and Medical Humanism
The University of Arizona College of Medicine – Phoenix
April 2014 – July 2016

Clinical Assistant Professor
Clinical Psychology Program, College of Health Sciences
Midwestern University School of Medicine
August 2008 – February 2011

Associate Adjunct Faculty
Arizona School of Professional Psychology
Phoenix, Arizona
August 1999 - August 2000

Graduate Teaching Assistant
Arizona School of Professional Psychology
Phoenix, Arizona
April 2000 - July 2000

**Past Consulting Positions:**

Baseline Serial Killer Task Force
Phoenix Police Department
Phoenix, Arizona
July 2006 – December 2006

Phoenix Police Department - Homicide Division
Phoenix, Arizona
July 2003 – November 2008

Arizona Response Crisis Team
Arizona Department of Public Safety
Phoenix, Arizona
June 2002 – January 2005

Threat Assessment Group, Inc.
Newport Beach, California
Research Director, Columbine Psychiatric Autopsy Project
April 2001 – 2002

Joel A. Dvoskin, Ph.D., A.B.P.P. (Forensic)
Forensic and General Psychology
Tucson, Arizona
August 1998 – October 2003

Centers for Disease Control and Prevention
Macro International
Calverton, Maryland
Youth Risk Behavior Survey
Time-limited research: February - April 1997

**Training:**

Professional Program in Neuropsychological Assessment
University of California Berkeley
Behavioral Health Sciences Extension
Berkeley, California
April 2013 - May 2015

Postdoctoral Fellow
Steven Pitt & Associates
Forensic and General Psychiatry
Scottsdale, Arizona
August 2003 – January 2005

Psychology Intern
Louisiana State University Health Sciences Center
School of Medicine – New Orleans
Department of Psychiatry, Division of Psychology
New Orleans, Louisiana
July 2002 – June 2003

Psychology Intern
United States Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution and Federal Prison Camp
Phoenix, Arizona
September 2000 - July 2001

Psychology Intern
Maricopa Integrated Health System
Maricopa Medical Center
Inpatient Psychiatric Annex
Phoenix, Arizona
September 1999 - July 2000

Counselor Intern
Texas Department of Criminal Justice
Institutional Division
University of Texas Medical Branch
Wynne Unit, Huntsville, Texas
August 1996 - December 1996

**Research Positions:**

Graduate Research Assistant
Sam Houston State University
Department of Psychology, Huntsville, Texas
Forensic Research Grant
Master's Thesis: Bale, E.M. (1996) Reliability of Criteria Based Content Analysis as Applied to Alleged Cases of Child Sexual Abuse.
July 1995 - December 1996

Graduate Assistant
Sam Houston State University
Division of Health and Kinesiology, Huntsville, Texas
Grant funded by the Texas Commission on Alcohol and Drug Abuse (TCADA)
July 1995 - December 1996

**Past: Committee Appointments:**

Eastern Region Designated Representative
Internal Audit/Review Board
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch - Correctional Managed Care
June 1997 – June 1998

Unit Post-Trauma Support Team, Crisis Response Division
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch - Correctional Managed Care
June 1997 – June 1998

**Presentations:**

Nelson, E.M. & Pitt, S.E.: Forensic Files – Behavioral Sciences and the Law. University of Arizona College of Medicine - Phoenix Mini-Medical School Community Lecture Series, Phoenix, Arizona, May 2016

Nelson, E.M.: The Art & Science of Human Behavior. Arizona Association of Certified Fraud Examiners, AZ ACFE Spring Conference, Phoenix, Arizona, April 2016

Manriquez, M., Mendez, M.D., Nelson, E.M., Venegas, V., Page, A.S.: Screening for Sex Trafficking: Using Standardized Patients to Teach Residents and Students During Ob-Gyn Objective Standardized Clinical Examination (OSCE) Sessions. The Big and Not So Easy, Today's Challenges in Medical Education – 2016 Council on Resident Education in Obstetrics and Gynecology, Association of Professors of Gynecology and Obstetrics; New Orleans, Louisiana, March 2016

Nelson, L.R., Nelson, E.M. & Barcellona, D.S.: Integration of Basic Science with Behavioral Science and Ethics Material in the Preclinical Curriculum covering Sexuality, Gender Identity and Reproduction. Sex and Gender Medical Education Summit – Mayo Clinic School of Continuous Professional Development; Rochester, Minnesota, October 2015

Hartmark-Hill, J., Nelson, E.M. & Gardner, A.: Interprofessional Integration and the Program for Narrative Medicine and Medical Humanities at the University of Arizona College of Medicine – Phoenix. Association for Behavioral Science in Medical Education – IPECP: Linking the Arts and Sciences to Promote Patient-Centered Care; Minneapolis, Minnesota, October 2015

Nelson, E.M. & Standley, E.S.: Art in Medicine: Structured Observation and Patience Care. Association for Behavioral Science in Medical Education – IPECP: Linking the Arts and Sciences to Promote Patient-Centered Care; Minneapolis, Minnesota, October 2015

Pitt, S.E. & Nelson, E.M.: Mass Shooters and Mental Illness: Fact vs. Fiction. Arizona Osteopathic Medical Association, 34th Annual Fall Seminar - Back to Basics; Tucson, Arizona, November 2014
Nelson, E.M., Hartmark-Hill, J., Lundy, M., Sell, M., Shepherd, T,

Bonifas, R., Coplan, B., Babock, E. & Sayles, J. Cultural Sensitivity, Communication and the Interprofessional Healthcare Team: An Inter-Institutional Collaboration. Association for Behavioral Science in Medical Education – The Behavioral Science of Interprofessional Education: Confronting Issues of Hierarchy and Power; Newport Beach, California, October, 2014

Nelson, E.M. & Dvoskin, J.A.: Campus Violence Prevention. College and University Professional Association for Human Resources 2014 Conference; Prescott, Arizona, June 2014

Nelson, E.M.: A Transportation Safety Culture – Why Aren't We There Yet? Arizona Department of Public Safety, Arizona Department of Transportation Strategic Highway Safety Summit. Phoenix, Arizona, November 2013

Restifo, K., Nelson, E.M., Dietz, P., & Nicholson, C.: Threat Assessment in the Medical School Environment – What is Being Done, What Should be Done, What Can be Done. AAMC Western Regional Conference, University of California School of Medicine; Irvine, California, May 2013

Nelson, E.M.: Promising Practices in Threat Management. Tennessee Department of Education, School Safety Summit; Nashville, Tennessee, January 2013

Nelson, E.M.: Violence Prevention at School. Tennessee School Personnel Officer's Association; Nashville, Tennessee, October 2012

Nelson, E.M.: Keeping Schools Safe. Tennessee School Plant Managers Association; Murfreesboro, Tennessee, June 2012

Nelson, E.M.: Postvention Lessons from the Columbine Tragedy. State of Tennessee, Safe Schools Conference; Nashville, Tennessee, April 2012

Nelson, E.M.: Supporting a Safe and Respectful School – A Program to Train Supervisors, Managers, and Administrators. Threat Assessment Group, Inc. & The Tennessee Department of Education, Office of School Safety; Nashville, Tennessee, February 2012

Pitt, S.E., Nelson, E.M.: Child Abduction and Murder: What Happens After the Arrest? Arizona Missing Persons Association; Glendale, Arizona, November 2011

Dvoskin, J.A. & Nelson, E.M: Assessing Risk for Violence. Arizona Psychological Association 2011 Annual Conference: Together Through Challenge and Change; Scottsdale/Fountain Hills, Arizona, October 2011

Nelson, E.M.: Supporting a Safe and Respectful School – A Program to Train Supervisors, Managers, and Administrators. Threat Assessment Group, Inc. & The Tennessee Department of Education, Office of School Safety; Knoxville, Tennessee, August 2011; Jackson, Tennessee, August 2011; Nashville, Tennessee, September 2011

Nelson, E.M. & Culbertson, K.: Clinicians and the Court. Arizona Psychological Association 2010 Annual Conference: Advancing the Profession of Psychology – Diversity, Relevancy and Collaboration; Tucson, Arizona, October 2010

Nelson, E.M: Psychology and the Law: Expert Consultation in Criminal Cases. Pima County Bar Association; Tucson, Arizona, May 2010

Pitt, S.E. & Nelson, E.M.: Information Gathering: The Forensic Psychiatric Evaluation and Beyond...Strategies to Maximize Success. Forensic Trends: Psychiatric and Behavioral Issues; Las Vegas, Nevada, May 2010

Pitt, S.E. & Nelson, E.M.: Media and Forensic Psychiatry: Practical Considerations. Forensic Trends: Psychiatric and Behavioral Issues; Las Vegas, Nevada, May 2010

Pitt, S.E. & Nelson, E.M.: The Forensic Psychiatric Evaluation: Civil and Criminal Case Applications. Arizona Paralegal Association; Phoenix, Arizona, May 2010

Nelson, E.M & Pitt, S.E.: Forensic Psychiatric and Psychological Expert Consultation in Criminal Cases. Maricopa County Bar Association. Phoenix, Arizona, March 2010

Pitt, S.E. & Nelson, E.M.: Behind Closed Doors: Understanding the Human Side of Hoarding. Petsmart® Charities Feline Forum; Chicago, Illinois, September 2009

Stefan, S., Joyce, M., Dvoskin, J.A., Nelson, E.M. & Pitt, S.E.: Right to Refuse Medication Hearings. National Association for Rights Protection and Advocacy Conference; Phoenix, Arizona, September 2009

Pitt, S.E. & Spiers, E.M.: Difficult Physician Behavior: The Role of the Forensic Psychiatric Evaluation. Arizona Health Care Lawyers Association; Phoenix, Arizona, May 2009

Pitt, S.E., Spiers, E.M. & Hayes, J.: Back to Basics: The Independent Forensic Evaluation. Office of the Arizona Attorney General; Phoenix, Arizona, March 2009

Pitt, S.E., Spiers, E.M. & Hayes, J.: Back to Basics: The Art of Interviewing. Arizona Psychiatric Society 2007 Spring Scientific Conference; Scottsdale, Arizona, April 2007

Pitt, S.E., Hayes, J. & Spiers, E.M.: Links Between Animal Cruelty and Violence Toward People. Arizona Humane Society, Law Enforcement Animal Protection Program; Phoenix, Arizona, March 2007

Pitt, S.E., Dietz, P.E., Dvoskin, J.A. & Spiers, E.M.: The Importance of Video Recording Forensic Evaluations. American Academy of Psychiatry and the Law, 35th Annual Meeting; Scottsdale, Arizona, October 2004

Spiers, E.M.: Understanding Psychological Evaluations. Arizona Bar Association Annual Conference; Scottsdale, Arizona, June 2004

Spiers, E.M., Dvoskin, J.A., Pitt, S.E., Dietz, P.E. & Walker, R.P.: Columbine: Understanding Why – Implications for Psychologists. American Psychology-Law Society Annual Conference; Scottsdale, Arizona, March, 2004

Spiers, E.M.: Introduction to Forensic Mental Health. Louisiana State University School of Medicine – New Orleans; New Orleans, Louisiana, January, 2004

Pitt, S.E., Dietz, P.E., Dvoskin, J.A., Spiers, E.M., Walker, R.P., & Kurtis, B.: Columbine: Understanding Why. American Academy of Psychiatry and the Law, 34th Annual Meeting; San Antonio, Texas, October, 2003

Spiers, E.M.: Psychological Autopsy: Methods, Procedures, and Indications. Louisiana State University Health Sciences Center, Grand Rounds; New Orleans, Louisiana, October, 2003

Spiers, E.M.: The Columbine Psychiatric Autopsy – A Videotape Presentation. The New Orleans Adolescent Hospital; New Orleans, Louisiana, June 2003

Pitt, S.E., Spiers, E.M. & Dvoskin, J.A.: What has been learned from Columbine: The signs that were missed and how this can be avoided in our own backyards. Mental Health Association of Arizona, Arizona Department of Health Services – Division of Behavioral Health. 15th Annual Seeds of Success Symposium; Phoenix, Arizona, October 2002

Pitt, S.E. & Spiers, E.M.: Trauma and Crisis Response: Expectations and Interventions. Arizona Coalition for Victim Services, Arizona Response Crisis Team (ARCT); Phoenix, Arizona, June 2002

Pitt, S.E. & Spiers, E.M.: Trauma and Crisis Response: Expectations and Interventions. Arizona Coalition for Victim Services, Arizona Response Crisis Team (ARCT); Phoenix, Arizona, April 2002

Spiers, E.M.: Mass Media and Interpersonal Violence: Influence and Implications. Midwestern University College of Medicine; Glendale, Arizona, March 2002

Pitt, S.E. & Spiers, E.M.: Dangerousness and Firearms: Assessing the Risk for Violence in Teens and Adults. Midwestern University College of Medicine; Glendale, Arizona, November, 2000

Pitt, S.E. & Spiers, E.M.: Assessing the Risk for Domestic Violence. Arizona School of Professional Psychology - Survey of Forensic Psychology; Phoenix, Arizona, November, 2000

Dvoskin, J.A. & Spiers, E.M.: Violence and Mental Illness. Vernon State Hospital; Denton, Texas, November, 2000

Dvoskin, J.A. & Spiers, E.M.: Preventing Suicide in Adult Prisons. Georgia Department of Corrections; Atlanta, Georgia, October, 2000

Pitt, S.E. & Spiers, E.M.: Necrophilia and Necrosadism: Identifying and Assessing the Offender. Mesa Community College, Department of Mortuary Science; Mesa, Arizona, October, 2000

Spiers, E.M.: Youth and Violence: Juvenile Firesetting. Arizona State University Department of Criminal Justice; Tempe, Arizona, April, 2000

Spiers, E.M.: The Psychologist's Role in Corrections. Peoria Unified School District, Cactus High School, Elective Law; Glendale, Arizona, February, 1999

Pitt, S.E. & Spiers, E.M.: Searching for Mental Illness in Firesetters. Maricopa County Attorney's Office Arson Investigation Seminar; Mesa, Arizona, February, 1999

Pitt, S.E. & Spiers, E.M.: Toward an Understanding of Infant Murder. Northern New Jersey Maternal Child Health Consortium Hot Topics in Obstetrics and Pediatrics V; West Orange, New Jersey, November, 1998

Spiers, E.M.: Toward an Understanding of Serial Murder. Mesa Community College, Department of Criminal Justice; Mesa, Arizona, October, 1998

Spiers, E.M.: Career Directions in the field of Psychology. Paradise Valley Unified School District, North Canyon High School, Advanced Psychology; Paradise Valley, Arizona, September, 1998

Bale, E.M.: The Clinical Assessment of Feigned versus Actual Mental Illness. Texas Department of Criminal Justice/University of Texas Medical Branch, Eastern Regional Continuing Education Seminar; Huntsville, Texas, October, 1997

Bale, E.M.: Suicide Risk Assessment and Prevention: Texas Department of Criminal Justice/University of Texas Medical Branch. Bi-monthly training of new employees and correctional officers; October 1997 - June 1998

Pitt, S.E. & Bale, E.M.: Neonaticide, Infanticide, and Filicide: Two Case Reports and Review of the Literature. Good Samaritan Regional Medical Center, Department of Psychiatry, Grand Rounds Presentation; Phoenix, Arizona, May, 1995

Pitt S.E. & Bale, E.M.: Women who Murder Their Children. American College of Neuropsychiatrists' Mid-year Meeting and Scientific Seminar; Phoenix, Arizona, April, 1995

Pitt, S.E. & Bale, E.M.: Post-Traumatic Stress Disorder and DSM-IV: For Better or For Worse? Arizona Trial Lawyers Association; Medical Experts Speak: A Melange of Riveting Medical Topics; Phoenix, Arizona, December, 1993

Pitt, S.E. & Bale, E.M.: The Diagnosis and Treatment of Depression for the Family Practitioner. Phoenix General Hospital and Medical Center; Phoenix, Arizona, September, 1993

Pitt, S.E. & Bale, E.M.: Confidentiality and Privilege: Are you Protecting Your Patient's Rights? 71st Annual Arizona State Osteopathic Medical Association Convention; Phoenix, Arizona, April, 1993

Pitt, S.E. & Bale, E.M.: Preparing for Courtroom Testimony. 71st Annual Arizona State Osteopathic Medical Association Convention; Phoenix, Arizona, April, 1993

**Publications:**

Pitt, S.E., Nelson, E.M., Chapman, B. & Lamoreux, I. (2018) Handling Suspects' Claims of Insanity During Interrogation. In Police/Law Enforcement, 42(9), 66-70

Kane, A.W., Nelson, E.M., Dvoskin, J.A., & Pitt, S.E. (2012) Evaluation for Personal Injury Claims. In R. Roesch & P.A. Zapf (Eds.). Forensic assessments in criminal and civil law: A handbook for lawyers. NY: Oxford University Press.

Dvoskin, J.A., Pitt. S.E., Dietz, P.E., Spiers, E.M. & Walker, R.P. (2008) Making America's Schools Safer www.TeachSafeSchools.Org

Dvoskin, J.A., Spiers, E.M. & Brodsky, S.L. (2007) Correctional Psychology: Law, Ethics, & Practice. In A.M. Goldstein (Ed): Forensic Psychology: Emerging Topics and Expanding Roles. New York: Wiley

Spiers, E.M., Pitt, S.E., & Dvoskin, J.A. (2006) Psychiatric Intake Screening. In Puisis, Michael (Ed): Clinical Practice in Correctional Medicine, Second Edition. Philadelphia: Elsevier Health Sciences

Dvoskin, J.A. & Spiers, E.M. (2004) On the Role of Correctional Officers in Prison Mental Health Care. Psychiatric Quarterly.

Dvoskin, J.A. & Spiers, E.M. (2003) Commentary on Munetz, M.R., Galon, P.A., & Frese III, F.J. The Ethics of Mandatory Community Treatment. Journal of the American Academy of Psychiatry and Law, 31(2), 184-188.

Glancy, G.D., Spiers, E.M., Pitt, S.E., & Dvoskin, J.A. (2003) Commentary on Chen Y-H, Arria A.M., & Anthony J.C. Firesetting in adolescence and being aggressive, shy, and rejected by peers: New epidemiologic evidence from a national sample survey. Models and correlates of firesetting behavior. Journal of the American Academy of Psychiatry and Law.

Dvoskin, J.A., Spiers, E.M., Metzner, J.L., & Pitt, S.E. (2003) The Structure of Correctional Mental Health Services. In Rosner, R. (ed.), Principles and Practice of Forensic Psychiatry, Second Edition. London: Arnold Publishing.

Spiers, E.M., Dvoskin, J.A., & Pitt, S.E. (2002) Mental health professionals as institutional consultants and problem-solvers. In Fagan, T, and Ax, B (Eds) Correctional Mental Health Handbook Lanham, MD: American Correctional Association.

Pitt, S.E., Spiers, E.M., Dietz, P.E., & Dvoskin, J.A. (1999) Preserving the integrity of the interview: The value of videotape. Journal of Forensic Sciences, 44 (6), 1287-1291.

Pitt, S.E. & Bale, E.M. (1995) Neonaticide, Infanticide, and Filicide: A Review of the Literature. The Bulletin of the American Academy of Psychiatry and the Law, 23(3), 375-386.

Pitt, S.E. & Bale, E.M. (1993) Neonaticide: Mothers Who Kill their Newborn - A Case Report and Preliminary Review of the Literature. AOMA Digest, 8, 6-7, 16

**EXHIBIT "B"**

U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 N. Central Ave., Suite 1200
Phoenix, AZ 85004-4408

Main: (602) 514-7500
Civil Fax: (602) 514-7760
Main Office Fax: (602) 514-7693

February 4, 2019

*Via E-Mail & U.S. Mail*

**PRIVILEGED AND CONFIDENTIAL**

Erin M. Nelson, Psy.D
2415 E. Camelback Road, Suite 700
Phoenix, AZ 85016

Re: *Kaori Stearney v. USA*
*Court No: 3:16-CV-08060-DGC*
*USAO No.: 2016V00320*

Dear Dr. Nelson:

Thank you for assisting the United States in this matter. This is our request that you offer your opinions and observations regarding the methodology of Plaintiff's Psychological Expert Dr. Scott Jay Hunter, under the standards stated in Dau*bert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, (1993).

In *Daubert*, the United States Supreme Court has suggested that the following, non-exclusive factors can be used to determine the reliability of expert testimony: 1) whether a theory or technique can be tested; 2) whether it has been subjected to peer review and publication; 3) the known or potential error rate of the theory or technique; and 4) whether the theory or technique enjoys general acceptance within the relevant scientific community. *See Daubert*, at 592-94 (1993).

We have provided to you the relevant medical records, Dr. Hunter's report, and Dr. Hunter's deposition, as well as the Plaintiff's expert disclosure statement regarding his opinions. Given this data, please provide us your opinions and observations in the form of a declaration or report on whether Dr. Hunter's methodology meets the *Daubert* standards stated above.

I look forward to your response.

Sincerely yours,

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona

Laurence G. Tinsley, Jr.
Assistant United States Attorney

LGT/gim

**EXHIBIT "C"**

# Specialty Guidelines for Forensic Psychology

American Psychological Association



In the past 50 years forensic psychological practice has expanded dramatically. The American Psychological Association (APA) has a division devoted to matters of law and psychology (APA Division 41, the American Psychology–Law Society), a number of scientific journals devoted to interactions between psychology and the law exist (e.g., *Law and Human Behavior; Psychology, Public Policy, and Law; Behavioral Sciences & the Law*), and a number of key texts have been published and undergone multiple revisions (e.g., Grisso, 1986, 2003; Melton, Petrila, Poythress, & Slobogin, 1987, 1997, 2007; Rogers, 1988, 1997, 2008). In addition, training in forensic psychology is available in predoctoral, internship, and postdoctoral settings, and APA recognized forensic psychology as a specialty in 2001, with subsequent recertification in 2008.

Because the practice of forensic psychology differs in important ways from more traditional practice areas (Monahan, 1980) the "Specialty Guidelines for Forensic Psychologists" were developed and published in 1991 (Committee on Ethical Guidelines for Forensic Psychologists, 1991). Because of continued developments in the field in the ensuing 20 years, forensic practitioners' ongoing need for guidance, and policy requirements of APA, the 1991 "Specialty Guidelines for Forensic Psychologists" were revised, with the intent of benefiting forensic practitioners and recipients of their services alike.

The goals of these Specialty Guidelines for Forensic Psychology ("the Guidelines") are to improve the quality of forensic psychological services; enhance the practice and facilitate the systematic development of forensic psychology; encourage a high level of quality in professional practice; and encourage forensic practitioners to acknowledge and respect the rights of those they serve. These Guidelines are intended for use by psychologists when engaged in the practice of forensic psychology as described below and may also provide guidance on professional conduct to the legal system and other organizations and professions.

For the purposes of these Guidelines, *forensic psychology* refers to professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. Application of the Guidelines does not depend on the practitioner's typical areas of practice or expertise, but rather, on the service provided in the case at hand. These Guidelines apply in all matters in which psychologists provide expertise to judicial, administrative, and educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, or administrative proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research in connection with, or in the anticipation of, litigation; or involvement in educational activities of a forensic nature.

Psychological practice is not considered forensic solely because the conduct takes place in, or the product is presented in, a tribunal or other judicial, legislative, or administrative forum. For example, when a party (such as a civilly or criminally detained individual) or another individual (such as a child whose parents are involved in divorce proceedings) is ordered into treatment with a practitioner, that treatment is not necessarily the practice of forensic psychology. In addition, psychological testimony that is solely based on the provision of psychotherapy and does not include psycholegal opinions is not ordinarily considered forensic practice.

For the purposes of these Guidelines, *forensic practitioner* refers to a psychologist when engaged in the practice of forensic psychology as described above. Such professional conduct is considered forensic from the time the practitioner reasonably expects to, agrees to, or is legally mandated to provide expertise on an explicitly psycholegal issue.

The provision of forensic services may include a wide variety of psycholegal roles and functions. For example, as

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These Specialty Guidelines for Forensic Psychology were developed by the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) and the American Academy of Forensic Psychology. They were adopted by the APA Council of Representatives on August 3, 2011.

The previous version of the Guidelines ("Specialty Guidelines for Forensic Psychologists"; Committee on Ethical Guidelines for Forensic Psychologists, 1991) was approved by the American Psychology–Law Society (Division 41 of APA) and the American Academy of Forensic Psychology in 1991. The current revision, now called the "Specialty Guidelines for Forensic Psychology" (referred to as "the Guidelines" throughout this document), replaces the 1991 "Specialty Guidelines for Forensic Psychologists."

These guidelines are scheduled to expire August 3, 2021. After this date, users are encouraged to contact the American Psychological Association Practice Directorate to confirm that this document remains in effect.

Correspondence concerning these guidelines should be addressed to the Practice Directorate, American Psychological Association, 750 First Street, NE, Washington, DC 20002-4242.



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researchers, forensic practitioners may participate in the collection and dissemination of data that are relevant to various legal issues. As advisors, forensic practitioners may provide an attorney with an informed understanding of the role that psychology can play in the case at hand. As consultants, forensic practitioners may explain the practical implications of relevant research, examination findings, and the opinions of other psycholegal experts. As examiners, forensic practitioners may assess an individual's functioning and report findings and opinions to the attorney, a legal tribunal, an employer, an insurer, or others (APA, 2010b, 2011a). As treatment providers, forensic practitioners may provide therapeutic services tailored to the issues and context of a legal proceeding. As mediators or negotiators, forensic practitioners may serve in a third-party neutral role and assist parties in resolving disputes. As arbiters, special masters, or case managers with decision-making authority, forensic practitioners may serve parties, attorneys, and the courts (APA, 2011b).

These Guidelines are informed by APA's "Ethical Principles of Psychologists and Code of Conduct" (hereinafter referred to as the EPPCC; APA, 2010a). The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive, and they are not intended to take precedence over the judgment of psychologists.

As such, the Guidelines are advisory in areas in which the forensic practitioner has discretion to exercise professional judgment that is not prohibited or mandated by the EPPCC or applicable law, rules, or regulations. The Guidelines neither add obligations to nor eliminate obligations from the EPPCC but provide additional guidance for psychologists. The modifiers used in the Guidelines (e.g., *reasonably, appropriate, potentially*) are included in recognition of the need for professional judgment on the part of forensic practitioners; ensure applicability across the broad range of activities conducted by forensic practitioners; and reduce the likelihood of enacting an inflexible set of guidelines that might be inapplicable as forensic practice evolves. The use of these modifiers, and the recognition of the role of professional discretion and judgment, also reflects that forensic practitioners are likely to encounter facts and circumstances not anticipated by the Guidelines and they may have to act upon uncertain or incomplete evidence. The Guidelines may provide general or conceptual guidance in such circumstances. The Guidelines do not, however, exhaust the legal, professional, moral, and ethical considerations that inform forensic practitioners, for no complex activity can be completely defined by legal rules, codes of conduct, and aspirational guidelines.

The Guidelines are not intended to serve as a basis for disciplinary action or civil or criminal liability. The standard of care is established by a competent authority, not by the Guidelines. No ethical, licensure, or other administrative action or remedy, nor any other cause of action, should be taken *solely* on the basis of a forensic practitioner acting in a manner consistent or inconsistent with these Guidelines.

In cases in which a competent authority references the Guidelines when formulating standards, the authority should consider that the Guidelines attempt to identify a high level of quality in forensic practice. Competent practice is defined as the conduct of a reasonably prudent forensic practitioner engaged in similar activities in similar circumstances. Professional conduct evolves and may be viewed along a continuum of adequacy, and "minimally competent" and "best possible" are usually different points along that continuum.

The Guidelines are designed to be national in scope and are intended to be consistent with state and federal law. In cases in which a conflict between legal and professional obligations occurs, forensic practitioners make known their commitment to the EPPCC and the Guidelines and take steps to achieve an appropriate resolution consistent with the EPPCC and the Guidelines.

The format of the Guidelines is different from most other practice guidelines developed under the auspices of APA. This reflects the history of the Guidelines as well as the fact that the Guidelines are considerably broader in scope than any other APA-developed guidelines. Indeed, these are the only APA-approved guidelines that address a complete specialty practice area. Despite this difference in format, the Guidelines function as all other APA guideline documents.

This document replaces the 1991 "Specialty Guidelines for Forensic Psychologists," which were approved by the American Psychology–Law Society (Division 41 of APA) and the American Board of Forensic Psychology. The current revision has also been approved by the Council of Representatives of APA. Appendix A includes a discussion of the revision process, enactment, and current status of these Guidelines. Appendix B includes definitions and terminology as used for the purposes of these Guidelines.

## 1. Responsibilities

### *Guideline 1.01: Integrity*

Forensic practitioners strive for accuracy, honesty, and truthfulness in the science, teaching, and practice of forensic psychology and they strive to resist partisan pressures to provide services in any ways that might tend to be misleading or inaccurate.

### *Guideline 1.02: Impartiality and Fairness*

When offering expert opinion to be relied upon by a decision maker, providing forensic therapeutic services, or teaching or conducting research, forensic practitioners strive for accuracy, impartiality, fairness, and independence (EPPCC Standard 2.01). Forensic practitioners rec-

ognize the adversarial nature of the legal system and strive to treat all participants and weigh all data, opinions, and rival hypotheses impartially.

When conducting forensic examinations, forensic practitioners strive to be unbiased and impartial, and avoid partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact. This guideline does not preclude forceful presentation of the data and reasoning upon which a conclusion or professional product is based.

When providing educational services, forensic practitioners seek to represent alternative perspectives, including data, studies, or evidence on both sides of the question, in an accurate, fair and professional manner, and strive to weigh and present all views, facts, or opinions impartially.

When conducting research, forensic practitioners seek to represent results in a fair and impartial manner. Forensic practitioners strive to utilize research designs and scientific methods that adequately and fairly test the questions at hand, and they attempt to resist partisan pressures to develop designs or report results in ways that might be misleading or unfairly bias the results of a test, study, or evaluation.

### Guideline 1.03: Avoiding Conflicts of Interest

Forensic practitioners refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to impair their impartiality, competence, or effectiveness, or expose others with whom a professional relationship exists to harm (EPPCC Standard 3.06).

Forensic practitioners are encouraged to identify, make known, and address real or apparent conflicts of interest in an attempt to maintain the public confidence and trust, discharge professional obligations, and maintain responsibility, impartiality, and accountability (EPPCC Standard 3.06). Whenever possible, such conflicts are revealed to all parties as soon as they become known to the psychologist. Forensic practitioners consider whether a prudent and competent forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is likely to become impaired under the immediate circumstances.

When a conflict of interest is determined to be manageable, continuing services are provided and documented in a way to manage the conflict, maintain accountability, and preserve the trust of relevant others (also see Guideline 4.02 below).

## 2. Competence

### Guideline 2.01: Scope of Competence

When determining one's competence to provide services in a particular matter, forensic practitioners may consider a variety of factors including the relative complexity and specialized nature of the service, relevant training and experience, the preparation and study they are able to devote to the matter, and the opportunity for consultation with a professional of established competence in the subject matter in question. Even with regard to subjects in which they are expert, forensic practitioners may choose to consult with colleagues.

### Guideline 2.02: Gaining and Maintaining Competence

Competence can be acquired through various combinations of education, training, supervised experience, consultation, study, and professional experience. Forensic practitioners planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies that are new to them are encouraged to undertake relevant education, training, supervised experience, consultation, or study.

Forensic practitioners make ongoing efforts to develop and maintain their competencies (EPPCC Standard 2.03). To maintain the requisite knowledge and skill, forensic practitioners keep abreast of developments in the fields of psychology and the law.

### Guideline 2.03: Representing Competencies

Consistent with the EPPCC, forensic practitioners adequately and accurately inform all recipients of their services (e.g., attorneys, tribunals) about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications, and how they were obtained (EPPCC Standard 5.01).

### Guideline 2.04: Knowledge of the Legal System and the Legal Rights of Individuals

Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients (EPPCC Standard 2.01).

Forensic practitioners aspire to manage their professional conduct in a manner that does not threaten or impair the rights of affected individuals. They may consult with, and refer others to, legal counsel on matters of law. Although they do not provide formal legal advice or opinions, forensic practitioners may provide information about the legal process to others based on their knowledge and experience. They strive to distinguish this from legal opinions, however, and encourage consultation with attorneys as appropriate.

### Guideline 2.05: Knowledge of the Scientific Foundation for Opinions and Testimony

Forensic practitioners seek to provide opinions and testimony that are sufficiently based upon adequate scientific foundation, and reliable and valid principles and methods that have been applied appropriately to the facts of the case.

When providing opinions and testimony that are based on novel or emerging principles and methods, forensic practitioners seek to make known the status and limitations of these principles and methods.

### Guideline 2.06: Knowledge of the Scientific Foundation for Teaching and Research

Forensic practitioners engage in teaching and research activities in which they have adequate knowledge, experience, and education (EPPCC Standard 2.01), and they acknowledge relevant limitations and caveats inherent in procedures and conclusions (EPPCC Standard 5.01).

### Guideline 2.07: Considering the Impact of Personal Beliefs and Experience

Forensic practitioners recognize that their own cultures, attitudes, values, beliefs, opinions, or biases may affect their ability to practice in a competent and impartial manner. When such factors may diminish their ability to practice in a competent and impartial manner, forensic practitioners may take steps to correct or limit such effects, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

### Guideline 2.08: Appreciation of Individual and Group Differences

When scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences affects implementation or use of their services or research, forensic practitioners consider the boundaries of their expertise, make an appropriate referral if indicated, or gain the necessary training, experience, consultation, or supervision (EPPCC Standard 2.01; APA, 2003, 2004, 2011c, 2011d, 2011e).

Forensic practitioners strive to understand how factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences may affect and be related to the basis for people's contact and involvement with the legal system.

Forensic practitioners do not engage in unfair discrimination based on such factors or on any basis proscribed by law (EPPCC Standard 3.01). They strive to take steps to correct or limit the effects of such factors on their work, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

### Guideline 2.09: Appropriate Use of Services and Products

Forensic practitioners are encouraged to make reasonable efforts to guard against misuse of their services and exercise professional discretion in addressing such misuses.

## 3. Diligence

### Guideline 3.01: Provision of Services

Forensic practitioners are encouraged to seek explicit agreements that define the scope of, time-frame of, and compensation for their services. In the event that a client breaches the contract or acts in a way that would require the practitioner to violate ethical, legal or professional obligations, the forensic practitioner may terminate the relationship.

Forensic practitioners strive to act with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services. Forensic practitioners are not bound, however, to provide services not reasonably anticipated when retained, nor to provide every possible aspect or variation of service. Instead, forensic practitioners may exercise professional discretion in determining the extent and means by which services are provided and agreements are fulfilled.

### Guideline 3.02: Responsiveness

Forensic practitioners seek to manage their workloads so that services can be provided thoroughly, competently, and promptly. They recognize that acting with reasonable promptness, however, does not require the forensic practitioner to acquiesce to service demands not reasonably anticipated at the time the service was requested, nor does it require the forensic practitioner to provide services if the client has not acted in a manner consistent with existing agreements, including payment of fees.

### Guideline 3.03: Communication

Forensic practitioners strive to keep their clients reasonably informed about the status of their services, comply with their clients' reasonable requests for information, and consult with their clients about any substantial limitation on their conduct or performance that may arise when they reasonably believe that their clients expect a service that is not consistent with their professional obligations. Forensic practitioners attempt to keep their clients reasonably informed regarding new facts, opinions, or other potential evidence that may be relevant and applicable.

### Guideline 3.04: Termination of Services

The forensic practitioner seeks to carry through to conclusion all matters undertaken for a client unless the forensic practitioner–client relationship is terminated. When a forensic practitioner's employment is limited to a specific matter, the relationship may terminate when the matter has been resolved, anticipated services have been completed, or the agreement has been violated.

## 4. Relationships

Whether a forensic practitioner–client relationship exists depends on the circumstances and is determined by a number of factors which may include the information exchanged between the potential client and the forensic practitioner prior to, or at the initiation of, any contact or service, the nature of the interaction, and the purpose of the interaction.

In their work, forensic practitioners recognize that relationships are established with those who retain their services (e.g., retaining parties, employers, insurers, the

court) and those with whom they interact (e.g., examinees, collateral contacts, research participants, students). Forensic practitioners recognize that associated obligations and duties vary as a function of the nature of the relationship.

### Guideline 4.01: Responsibilities to Retaining Parties

Most responsibilities to the retaining party attach only after the retaining party has requested and the forensic practitioner has agreed to render professional services and an agreement regarding compensation has been reached. Forensic practitioners are aware that there are some responsibilities, such as privacy, confidentiality, and privilege, that may attach when the forensic practitioner agrees to consider whether a forensic practitioner–retaining party relationship shall be established. Forensic practitioners, prior to entering into a contract, may direct the potential retaining party not to reveal any confidential or privileged information as a way of protecting the retaining party's interest in case a conflict exists as a result of pre-existing relationships.

At the initiation of any request for service, forensic practitioners seek to clarify the nature of the relationship and the services to be provided including the role of the forensic practitioner (e.g., trial consultant, forensic examiner, treatment provider, expert witness, research consultant); which person or entity is the client; the probable uses of the services provided or information obtained; and any limitations to privacy, confidentiality, or privilege.

### Guideline 4.02: Multiple Relationships

A multiple relationship occurs when a forensic practitioner is in a professional role with a person and, at the same time or at a subsequent time, is in a different role with the same person; is involved in a personal, fiscal, or other relationship with an adverse party; at the same time is in a relationship with a person closely associated with or related to the person with whom the forensic practitioner has the professional relationship; or offers or agrees to enter into another relationship in the future with the person or a person closely associated with or related to the person (EPPCC Standard 3.05).

Forensic practitioners strive to recognize the potential conflicts of interest and threats to objectivity inherent in multiple relationships. Forensic practitioners are encouraged to recognize that some personal and professional relationships may interfere with their ability to practice in a competent and impartial manner and they seek to minimize any detrimental effects by avoiding involvement in such matters whenever feasible or limiting their assistance in a manner that is consistent with professional obligations.

### Guideline 4.02.01: Therapeutic–Forensic Role Conflicts

Providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm. Therefore, when requested or ordered to provide either concurrent or sequential forensic and therapeutic services, forensic practitioners are encouraged to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider. If referral is not possible, the forensic practitioner is encouraged to consider the risks and benefits to all parties and to the legal system or entity likely to be impacted, the possibility of separating each service widely in time, seeking judicial review and direction, and consulting with knowledgeable colleagues. When providing both forensic and therapeutic services, forensic practitioners seek to minimize the potential negative effects of this circumstance (EPPCC Standard 3.05).

### Guideline 4.02.02: Expert Testimony by Practitioners Providing Therapeutic Services

Providing expert testimony about a patient who is a participant in a legal matter does not necessarily involve the practice of forensic psychology even when that testimony is relevant to a psycholegal issue before the decision maker. For example, providing testimony on matters such as a patient's reported history or other statements, mental status, diagnosis, progress, prognosis, and treatment would not ordinarily be considered forensic practice even when the testimony is related to a psycholegal issue before the decision maker. In contrast, rendering opinions and providing testimony about a person on psycholegal issues (e.g., criminal responsibility, legal causation, proximate cause, trial competence, testamentary capacity, the relative merits of parenting arrangements) would ordinarily be considered the practice of forensic psychology.

Consistent with their ethical obligations to base their opinions on information and techniques sufficient to substantiate their findings (EPPCC Standards 2.04, 9.01), forensic practitioners are encouraged to provide testimony only on those issues for which they have adequate foundation and only when a reasonable forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is unlikely to be impaired. As with testimony regarding forensic examinees, the forensic practitioner strives to identify any substantive limitations that may affect the reliability and validity of the facts or opinions offered, and communicates these to the decision maker.

### Guideline 4.02.03: Provision of Forensic Therapeutic Services

Although some therapeutic services can be considered forensic in nature, the fact that therapeutic services are ordered by the court does not necessarily make them forensic.

In determining whether a therapeutic service should be considered the practice of forensic psychology, psychologists are encouraged to consider the potential impact of the legal context on treatment, the potential for treatment to impact the psycholegal issues involved in the case, and whether another reasonable psychologist in a similar position would consider the service to be forensic and these Guidelines to be applicable.

Therapeutic services can have significant effects on current or future legal proceedings Forensic practitioners

are encouraged to consider these effects and minimize any unintended or negative effects on such proceedings or therapy when they provide therapeutic services in forensic contexts.

### *Guideline 4.03: Provision of Emergency Mental Health Services to Forensic Examinees*

When providing forensic examination services an emergency may arise that requires the practitioner to provide short-term therapeutic services to the examinee in order to prevent imminent harm to the examinee or others. In such cases the forensic practitioner is encouraged to limit disclosure of information and inform the retaining attorney, legal representative, or the court in an appropriate manner. Upon providing emergency treatment to examinees, forensic practitioners consider whether they can continue in a forensic role with that individual so that potential for harm to the recipient of services is avoided (EPPCC Standard 3.04)

## 5. Fees

### *Guideline 5.01: Determining Fees*

When determining fees forensic practitioners may consider salient factors such as their experience providing the service, the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the service, the fee customarily charged for similar forensic services, the likelihood that the acceptance of the particularba employment will preclude other employment, the time limitations imposed by the client or circumstances, the nature and length of the professional relationship with the client, the client's ability to pay for the service, and any legal requirements.

### *Guideline 5.02: Fee Arrangements*

Forensic practitioners are encouraged to make clear to the client the likely cost of services whenever it is feasible, and make appropriate provisions in those cases in which the costs of services is greater than anticipated or the client's ability to pay for services changes in some way

Forensic practitioners seek to avoid undue influence that might result from financial compensation or other gains. Because of the threat to impartiality presented by the acceptance of contingent fees and associated legal prohibitions, forensic practitioners strive to avoid providing professional services on the basis of contingent fees. Letters of protection, financial guarantees, and other security for payment of fees in the future are not considered contingent fees unless payment is dependent on the outcome of the matter.

### *Guideline 5.03: Pro Bono Services*

Forensic psychologists recognize that some persons may have limited access to legal services as a function of financial disadvantage and strive to contribute a portion of their professional time for little or no compensation or personal advantage (EPPCC Principle E).

## 6. Informed Consent, Notification, and Assent

Because substantial rights, liberties, and properties are often at risk in forensic matters, and because the methods and procedures of forensic practitioners are complex and may not be accurately anticipated by the recipients of forensic services, forensic practitioners strive to inform service recipients about the nature and parameters of the services to be provided (EPPCC Standards 3.04, 3.10).

### *Guideline 6.01: Timing and Substance*

Forensic practitioners strive to inform clients, examinees, and others who are the recipients of forensic services as soon as is feasible about the nature and extent of reasonably anticipated forensic services.

In determining what information to impart, forensic practitioners are encouraged to consider a variety of factors including the person's experience or training in psychological and legal matters of the type involved and whether the person is represented by counsel. When questions or uncertainties remain after they have made the effort to explain the necessary information, forensic practitioners may recommend that the person seek legal advice.

### *Guideline 6.02: Communication With Those Seeking to Retain a Forensic Practitioner*

As part of the initial process of being retained, or as soon thereafter as previously unknown information becomes available, forensic practitioners strive to disclose to the retaining party information that would reasonably be anticipated to affect a decision to retain or continue the services of the forensic practitioner.

This disclosure may include, but is not limited to, the fee structure for anticipated services; prior and current personal or professional activities, obligations, and relationships that would reasonably lead to the fact or the appearance of a conflict of interest; the forensic practitioner's knowledge, skill, experience, and education relevant to the forensic services being considered, including any significant limitations; and the scientific bases and limitations of the methods and procedures which are expected to be employed.

### *Guideline 6.03: Communication With Forensic Examinees*

Forensic practitioners inform examinees about the nature and purpose of the examination (EPPCC Standard 9.03; American Educational Research Association, American Psychological Association, & National Council on Measurement in Education [AERA, APA, & NCME], in press). Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's records; the voluntary or involuntary nature of participation, including potential consequences of par-

ticipation or nonparticipation, if known; and, if the cost of the service is the responsibility of the examinee, the anticipated cost.

### Guideline 6.03.01: Persons Not Ordered or Mandated to Undergo Examination

If the examinee is not ordered by the court to participate in a forensic examination, the forensic practitioner seeks his or her informed consent (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

### Guideline 6.03.02: Persons Ordered or Mandated to Undergo Examination or Treatment

If the examinee is ordered by the court to participate, the forensic practitioner can conduct the examination over the objection, and without the consent, of the examinee (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider a variety of options including postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

When an individual is ordered to undergo treatment but the goals of treatment are determined by a legal authority rather than the individual receiving services, the forensic practitioner informs the service recipient of the nature and purpose of treatment, and any limitations on confidentiality and privilege (EPPCC Standards 3.10, 10.01).

### Guideline 6.03.03: Persons Lacking Capacity to Provide Informed Consent

Forensic practitioners appreciate that the very conditions that precipitate psychological examination of individuals involved in legal proceedings can impair their functioning in a variety of important ways, including their ability to understand and consent to the evaluation process.

For examinees adjudicated or presumed by law to lack the capacity to provide informed consent for the anticipated forensic service, the forensic practitioner nevertheless provides an appropriate explanation, seeks the examinee's assent, and obtains appropriate permission from a legally authorized person, as permitted or required by law (EPPCC Standards 3.10, 9 03).

For examinees whom the forensic practitioner has concluded lack capacity to provide informed consent to a proposed, non-court-ordered service, but who have not been adjudicated as lacking such capacity, the forensic practitioner strives to take reasonable steps to protect their rights and welfare (EPPCC Standard 3.10). In such cases, the forensic practitioner may consider suspending the proposed service or notifying the examinee's attorney or the retaining party.

### Guideline 6.03.04: Evaluation of Persons Not Represented by Counsel

Because of the significant rights that may be at issue in a legal proceeding, forensic practitioners carefully consider the appropriateness of conducting a forensic evaluation of an individual who is not represented by counsel. Forensic practitioners may consider conducting such evaluations or delaying the evaluation so as to provide the examinee with the opportunity to consult with counsel.

### Guideline 6.04: Communication With Collateral Sources of Information

Forensic practitioners disclose to potential collateral sources information that might reasonably be expected to inform their decisions about participating that may include, but may not be limited to, who has retained the forensic practitioner; the nature, purpose, and intended use of the examination or other procedure; the nature of and any limits on privacy, confidentiality, and privilege; and whether their participation is voluntary (EPPCC Standard 3.10).

### Guideline 6.05: Communication in Research Contexts

When engaging in research or scholarly activities conducted as a service to a client in a legal proceeding, forensic practitioners attempt to clarify any anticipated use of the research or scholarly product, disclose their role in the resulting research or scholarly products, and obtain whatever consent or agreement is required.

In advance of any scientific study, forensic practitioners seek to negotiate with the client the circumstances under and manner in which the results may be made known to others. Forensic practitioners strive to balance the potentially competing rights and interests of the retaining party with the inappropriateness of suppressing data, for example, by agreeing to report the data without identifying the jurisdiction in which the study took place. Forensic practitioners represent the results of research in an accurate manner (EPPCC Standard 5.01).

## 7. Conflicts in Practice

In forensic psychology practice, conflicting responsibilities and demands may be encountered. When conflicts occur, forensic practitioners seek to make the conflict known to the relevant parties or agencies, and consider the rights and interests of the relevant parties or agencies in their attempts to resolve the conflict.

### Guideline 7.01: Conflicts With Legal Authority

When their responsibilities conflict with law, regulations, or other governing legal authority, forensic practitioners make known their commitment to the EPPCC, and take steps to resolve the conflict. In situations in which the

EPPCC or the Guidelines are in conflict with the law, attempts to resolve the conflict are made in accordance with the EPPCC (EPPCC Standard 1.02).

When the conflict cannot be resolved by such means, forensic practitioners may adhere to the requirements of the law, regulations, or other governing legal authority, but only to the extent required and not in any way that violates a person's human rights (EPPCC Standard 1.03).

Forensic practitioners are encouraged to consider the appropriateness of complying with court orders when such compliance creates potential conflicts with professional standards of practice.

### *Guideline 7.02: Conflicts With Organizational Demands*

When the demands of an organization with which they are affiliated or for whom they are working conflict with their professional responsibilities and obligations, forensic practitioners strive to clarify the nature of the conflict and, to the extent feasible, resolve the conflict in a way consistent with professional obligations and responsibilities (EPPCC Standard 1.03).

### *Guideline 7.03: Resolving Ethical Issues With Fellow Professionals*

When an apparent or potential ethical violation has caused, or is likely to cause, substantial harm, forensic practitioners are encouraged to take action appropriate to the situation and consider a number of factors including the nature and the immediacy of the potential harm; applicable privacy, confidentiality, and privilege; how the rights of the relevant parties may be affected by a particular course of action; and any other legal or ethical obligations (EPPCC Standard 1.04). Steps to resolve perceived ethical conflicts may include, but are not limited to, obtaining the consultation of knowledgeable colleagues, obtaining the advice of independent counsel, and conferring directly with the client.

When forensic practitioners believe there may have been an ethical violation by another professional, an attempt is made to resolve the issue by bringing it to the attention of that individual, if that attempt does not violate any rights or privileges that may be involved, and if an informal resolution appears appropriate (EPPCC Standard 1.04). If this does not result in a satisfactory resolution, the forensic practitioner may have to take further action appropriate to the situation, including making a report to third parties of the perceived ethical violation (EPPCC Standard 1.05). In most instances, in order to minimize unforeseen risks to the party's rights in the legal matter, forensic practitioners consider consulting with the client before attempting to resolve a perceived ethical violation with another professional.

## 8. Privacy, Confidentiality, and Privilege

Forensic practitioners recognize their ethical obligations to maintain the confidentiality of information relating to a client or retaining party, except insofar as disclosure is consented to by the client or retaining party, or required or permitted by law (EPPCC Standard 4.01).

### *Guideline 8.01: Release of Information*

Forensic practitioners are encouraged to recognize the importance of complying with properly noticed and served subpoenas or court orders directing release of information, or other legally proper consent from duly authorized persons, unless there is a legally valid reason to offer an objection. When in doubt about an appropriate response or course of action, forensic practitioners may seek assistance from the retaining client, retain and seek legal advice from their own attorney, or formally notify the drafter of the subpoena or order of their uncertainty.

### *Guideline 8.02: Access to Information*

If requested, forensic practitioners seek to provide the retaining party access to, and a meaningful explanation of, all information that is in their records for the matter at hand, consistent with the relevant law, applicable codes of ethics and professional standards, and institutional rules and regulations. Forensic examinees typically are not provided access to the forensic practitioner's records without the consent of the retaining party. Access to records by anyone other than the retaining party is governed by legal process, usually subpoena or court order, or by explicit consent of the retaining party. Forensic practitioners may charge a reasonable fee for the costs associated with the storage, reproduction, review, and provision of records.

### *Guideline 8.03: Acquiring Collateral and Third Party Information*

Forensic practitioners strive to access information or records from collateral sources with the consent of the relevant attorney or the relevant party, or when otherwise authorized by law or court order.

### *Guideline 8.04: Use of Case Materials in Teaching, Continuing Education, and Other Scholarly Activities*

Forensic practitioners using case materials for purposes of teaching, training, or research strive to present such information in a fair, balanced, and respectful manner. They attempt to protect the privacy of persons by disguising the confidential, personally identifiable information of all persons and entities who would reasonably claim a privacy interest; using only those aspects of the case available in the public domain; or obtaining consent from the relevant clients, parties, participants, and organizations to use the materials for such purposes (EPPCC Standard 4.07; also see Guidelines 11.06 and 11.07 of these Guidelines).

## 9. Methods and Procedures

### *Guideline 9.01: Use of Appropriate Methods*

Forensic practitioners strive to utilize appropriate methods and procedures in their work. When performing examinations, treatment, consultation, educational activities, or scholarly investigations, forensic practitioners seek to

maintain integrity by examining the issue or problem at hand from all reasonable perspectives and seek information that will differentially test plausible rival hypotheses.

### Guideline 9.02: Use of Multiple Sources of Information

Forensic practitioners ordinarily avoid relying solely on one source of data, and corroborate important data whenever feasible (AERA, APA, & NCME, in press). When relying upon data that have not been corroborated, forensic practitioners seek to make known the uncorroborated status of the data, any associated strengths and limitations, and the reasons for relying upon the data.

### Guideline 9.03: Opinions Regarding Persons Not Examined

Forensic practitioners recognize their obligations to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings (EPPCC Standard 9.01). Forensic practitioners seek to make reasonable efforts to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony.

When conducting a record review or providing consultation or supervision that does not warrant an individual examination, forensic practitioners seek to identify the sources of information on which they are basing their opinions and recommendations, including any substantial limitations to their opinions and recommendations.

## 10. Assessment

### Guideline 10.01: Focus on Legally Relevant Factors

Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007).

Forensic practitioners are encouraged to consider the problems that may arise by using a clinical diagnosis in some forensic contexts, and consider and qualify their opinions and testimony appropriately.

### Guideline 10.02: Selection and Use of Assessment Procedures

Forensic practitioners use assessment procedures in the manner and for the purposes that are appropriate in light of the research on or evidence of their usefulness and proper application (EPPCC Standard 9.02; AERA, APA, & NCME, in press). This includes assessment techniques, interviews, tests, instruments, and other procedures and their administration, adaptation, scoring, and interpretation, including computerized scoring and interpretation systems.

Forensic practitioners use assessment instruments whose validity and reliability have been established for use with members of the population assessed. When such validity and reliability have not been established, forensic practitioners consider and describe the strengths and limitations of their findings. Forensic practitioners use assessment methods that are appropriate to an examinee's language preference and competence, unless the use of an alternative language is relevant to the assessment issues (EPPCC Standard 9.02).

Assessment in forensic contexts differs from assessment in therapeutic contexts in important ways that forensic practitioners strive to take into account when conducting forensic examinations. Forensic practitioners seek to consider the strengths and limitations of employing traditional assessment procedures in forensic examinations (AERA, APA, & NCME, in press). Given the stakes involved in forensic contexts, forensic practitioners strive to ensure the integrity and security of test materials and results (AERA, APA, & NCME, in press).

When the validity of an assessment technique has not been established in the forensic context or setting in which it is being used, the forensic practitioner seeks to describe the strengths and limitations of any test results and explain the extrapolation of these data to the forensic context. Because of the many differences between forensic and therapeutic contexts, forensic practitioners consider and seek to make known that some examination results may warrant substantially different interpretation when administered in forensic contexts (AERA, APA, & NCME, in press).

Forensic practitioners consider and seek to make known that forensic examination results can be affected by factors unique to, or differentially present in, forensic contexts including response style, voluntariness of participation, and situational stress associated with involvement in forensic or legal matters (AERA, APA, & NCME, in press).

### Guideline 10.03: Appreciation of Individual Differences

When interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations (EPPCC Standard 9.06). Forensic practitioners strive to identify any significant strengths and limitations of their procedures and interpretations.

Forensic practitioners are encouraged to consider how the assessment process may be impacted by any disability an examinee is experiencing, make accommodations as

possible, and consider such when interpreting and communicating the results of the assessment (APA, 2011d).

### Guideline 10.04: Consideration of Assessment Settings

In order to maximize the validity of assessment results, forensic practitioners strive to conduct evaluations in settings that provide adequate comfort, safety, and privacy.

### Guideline 10.05: Provision of Assessment Feedback

Forensic practitioners take reasonable steps to explain assessment results to the examinee or a designated representative in language they can understand (EPPCC Standard 9.10). In those circumstances in which communication about assessment results is precluded, the forensic practitioner explains this to the examinee in advance (EPPCC Standard 9.10).

Forensic practitioners seek to provide information about professional work in a manner consistent with professional and legal standards for the disclosure of test data or results, interpretation of data, and the factual bases for conclusions.

### Guideline 10.06: Documentation and Compilation of Data Considered

Forensic practitioners are encouraged to recognize the importance of documenting all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery by all parties. This documentation includes, but is not limited to, letters and consultations; notes, recordings, and transcriptions; assessment and test data, scoring reports and interpretations; and all other records in any form or medium that were created or exchanged in connection with a matter.

When contemplating third party observation or audio/video-recording of examinations, forensic practitioners strive to consider any law that may control such matters, the need for transparency and documentation, and the potential impact of observation or recording on the validity of the examination and test security (Committee on Psychological Tests and Assessment, American Psychological Association, 2007).

### Guideline 10.07: Provision of Documentation

Pursuant to proper subpoenas or court orders, or other legally proper consent from authorized persons, forensic practitioners seek to make available all documentation described in Guideline 10.05, all financial records related to the matter, and any other records including reports (and draft reports if they have been provided to a party, attorney, or other entity for review), that might reasonably be related to the opinions to be expressed.

### Guideline 10.08: Record Keeping

Forensic practitioners establish and maintain a system of record keeping and professional communication (EPPCC Standard 6.01; APA, 2007), and attend to relevant laws and rules. When indicated by the extent of the rights, liberties, and properties that may be at risk, the complexity of the case, the amount and legal significance of unique evidence in the care and control of the forensic practitioner, and the likelihood of future appeal, forensic practitioners strive to inform the retaining party of the limits of record keeping times. If requested to do so, forensic practitioners consider maintaining such records until notified that all appeals in the matter have been exhausted, or sending a copy of any unique components/aspects of the record in their care and control to the retaining party before destruction of the record.

## 11. Professional and Other Public Communications

### Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception

Forensic practitioners make reasonable efforts to ensure that the products of their services, as well as their own public statements and professional reports and testimony, are communicated in ways that promote understanding and avoid deception (EPPCC Standard 5.01).

When in their role as expert to the court or other tribunals, the role of forensic practitioners is to facilitate understanding of the evidence or dispute. Consistent with legal and ethical requirements, forensic practitioners do not distort or withhold relevant evidence or opinion in reports or testimony. When responding to discovery requests and providing sworn testimony, forensic practitioners strive to have readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards (AERA, APA, & NCME, in press; Committee on Legal Issues, American Psychological Association, 2006; Bank & Packer, 2007; Golding, 1990).

When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion (EPPCC Standard 5 01). This does not preclude forensic practitioners from forcefully presenting the data and reasoning upon which a conclusion or professional product is based.

### Guideline 11.02: Differentiating Observations, Inferences, and Conclusions

In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand.

### Guideline 11.03: Disclosing Sources of Information and Bases of Opinions

Forensic practitioners are encouraged to disclose all sources of information obtained in the course of their professional services, and to identify the source of each piece of information that was considered and relied upon in formulating a particular conclusion, opinion, or other professional product.

### Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony

Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony, forensic practitioners strive to offer a complete statement of all relevant opinions that they formed within the scope of their work on the case, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support of the opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law (EPPCC Standard 4.04).

### Guideline 11.05: Commenting Upon Other Professionals and Participants in Legal Proceedings

When evaluating or commenting upon the work or qualifications of other professionals involved in legal proceedings, forensic practitioners seek to represent their disagreements in a professional and respectful tone, and base them on a fair examination of the data, theories, standards, and opinions of the other expert or party.

When describing or commenting upon clients, examinees, or other participants in legal proceedings, forensic practitioners strive to do so in a fair and impartial manner.

Forensic practitioners strive to report the representations, opinions, and statements of clients, examinees, or other participants in a fair and impartial manner.

### Guideline 11.06: Out of Court Statements

Ordinarily, forensic practitioners seek to avoid making detailed public (out-of-court) statements about legal proceedings in which they have been involved. However, sometimes public statements may serve important goals such as educating the public about the role of forensic practitioners in the legal system, the appropriate practice of forensic psychology, and psychological and legal issues that are relevant to the matter at hand. When making public statements, forensic practitioners refrain from releasing private, confidential, or privileged information, and attempt to protect persons from harm, misuse, or misrepresentation as a result of their statements (EPPCC Standard 4.05).

### Guideline 11.07: Commenting Upon Legal Proceedings

Forensic practitioners strive to address particular legal proceedings in publications or communications only to the extent that the information relied upon is part of a public record, or when consent for that use has been properly obtained from any party holding any relevant privilege (also see Guideline 8.04).

When offering public statements about specific cases in which they have not been involved, forensic practitioners offer opinions for which there is sufficient information or data and make clear the limitations of their statements and opinions resulting from having had no direct knowledge of or involvement with the case (EPPCC Standard 9.01).

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# Appendix A
## Revision Process of the Guidelines

This revision of the Guidelines was coordinated by the Committee for the Revision of the Specialty Guidelines for Forensic Psychology ("the Revisions Committee"), which was established by the American Academy of Forensic Psychology and the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) in 2002 and which operated through 2011. This committee consisted of two representatives from each organization (Solomon Fulero, PhD, JD; Stephen Golding, PhD, ABPP; Lisa Piechowski, PhD, ABPP; Christina Studebaker, PhD), a chairperson (Randy Otto, PhD, ABPP), and a liaison from Division 42 (Psychologists in Independent Practice) of APA (Jeffrey Younggren, PhD, ABPP).

This document was revised in accordance with APA Rule 30.08 and the APA policy document "Criteria for Practice Guideline Development and Evaluation" (APA, 2002). The Revisions Committee posted announcements regarding the revision process to relevant electronic discussion lists and professional publications (i.e., the Psy-law-L e-mail listserv of the American Psychology–Law Society, the American Academy of Forensic Psychology listserv, the American Psychology-Law Society Newsletter). In addition, an electronic discussion list devoted solely to issues concerning revision of the Guidelines was operated between December 2002 and July 2007, followed by establishment of an e-mail address in February 2008 (sgfp@yahoo.com). Individuals were invited to provide input and commentary on the existing Guidelines and proposed revisions via these means. In addition, two public meetings were held throughout the revision process at biennial meetings of the American Psychology–Law Society.

Upon development of a draft that the Revisions Committee deemed suitable, the revised Guidelines were submitted for review to the Executive Committee of the American Psychology–Law Society (Division 41 of APA) and the American Board of Forensic Psychology. Once the revised Guidelines were approved by these two organizations, they were submitted to APA for review, commentary, and acceptance, consistent with APA's "Criteria for Practice Guideline Development and Evaluation" (APA, 2002) and APA Rule 30-8. They were subsequently revised by the Revisions Committee and were adopted by the APA Council of Representatives on August 3, 2011.

*(Appendices continue)*

# Appendix B
# Definitions and Terminology

For the purposes of these Guidelines:

***Appropriate***, when used in relation to conduct by a forensic practitioner means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is apt and pertinent and is considered befitting, suitable, and proper for a particular person, place, condition, or function. ***Inappropriate*** means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is not suitable, desirable, or properly timed for a particular person, occasion, or purpose; and may also denote improper conduct, improprieties, or conduct that is discrepant for the circumstances.

***Agreement*** refers to the objective and mutual understanding between the forensic practitioner and the person or persons seeking the professional service and/or agreeing to participate in the service. See also Assent, Consent, and Informed Consent.

***Assent*** refers to the agreement, approval, or permission, especially regarding verbal or nonverbal conduct, that is reasonably intended and interpreted as expressing willingness, even in the absence of unmistakable consent. Forensic practitioners attempt to secure assent when consent and informed consent cannot be obtained or when, because of mental state, the examinee may not be able to consent.

***Consent*** refers to agreement, approval, or permission as to some act or purpose.

***Client*** refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

***Conflict of Interest*** refers to a situation or circumstance in which the forensic practitioner's objectivity, impartiality, or judgment may be jeopardized due to a relationship, financial, or any other interest that would reasonably be expected to substantially affect a forensic practitioner's professional judgment, impartiality, or decision making.

***Decision Maker*** refers to the person or entity with the authority to make a judicial decision, agency determination, arbitration award, or other contractual determination after consideration of the facts and the law.

***Examinee*** refers to a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

***Forensic Examiner*** refers to a psychologist who examines the psychological condition of a person whose psychological condition is in controversy or at issue.

***Forensic Practice*** refers to the application of the scientific, technical, or specialized knowledge of psychology to the law and the use of that knowledge to assist in resolving legal, contractual, and administrative disputes.

***Forensic Practitioner*** refers to a psychologist when engaged in forensic practice.

***Forensic Psychology*** refers to all forensic practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive).

***Informed Consent*** denotes the knowledgeable, voluntary, and competent agreement by a person to a proposed course of conduct after the forensic practitioner has communicated adequate information and explanation about the material risks and benefits of, and reasonably available alternatives to, the proposed course of conduct.

***Legal Representative*** refers to a person who has the legal authority to act on behalf of another.

***Party*** refers to a person or entity named in litigation, or who is involved in, or is witness to, an activity or relationship that may be reasonably anticipated to result in litigation.

***Reasonable*** or ***Reasonably***, when used in relation to conduct by a forensic practitioner, denotes the conduct of a prudent and competent forensic practitioner who is engaged in similar activities in similar circumstances.

***Record*** or ***Written Record*** refers to all notes, records, documents, memorializations, and recordings of considerations and communications, be they in any form or on any media, tangible, electronic, handwritten, or mechanical, that are contained in, or are specifically related to, the forensic matter in question or the forensic service provided.

***Retaining Party*** refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

***Tribunal*** denotes a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

***Trier of Fact*** refers to a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

# EXHIBIT 4

# EXHIBIT 4

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona
LAURENCE G. TINSLEY, JR.
Arizona State Bar No. 012581
ELIZABETH K. SICHI
Illinois State Bar No. 6271368
Assistant U.S. Attorneys
Arizona State Bar No. 012581
Two Renaissance Square
40 North Central Ave., Suite 1800
Phoenix, Arizona 85004-4449
Telephone: 602-514-7500
Facsimile: 602-514-7760
Email: Laurence.Tinsley@usdoj.gov
Elizabeth.Sichi@usdoj.gov

*Attorneys for Defendant United States of America*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Kaori Stearney, et al.,

Plaintiffs,

v.

United States of America,

Defendant.

Case no. 3:16-CV-08060-DGC

**CERTIFICATION OF CONFERRAL**

(Pursuant to LRCiv 7.2(l))

Defendant hereby submits this Certification of Conferral, pursuant to LRCiv 7.2(l). Assistant U.S. Attorney Laurence G. Tinsley, Jr., certifies that he conferred with Plaintiffs' counsel, Dennis Schoen, on March 1, 2019, regarding Defendant's Motion to Preclude Plaintiffs' Psychology Expert Dr. Scott J. Hunter's Testimony Regarding PTSD, pursuant to *Daubert*, and we have not reached an agreement.

ELIZABETH A. STRANGE
First Assistant U.S. Attorney
District of Arizona

*s/Laurence G. Tinsley, Jr.*
LAURENCE G. TINSLEY, JR
Assistant U.S. Attorney

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Kaori Stearney, et al.,

Plaintiffs,

v.

United States of America,

Defendant.

Case no. 3:16-CV-08060-DGC

**ORDER**

The Court having considered Defendant United States' *Amended* Motion to Preclude Plaintiffs' Psychology Expert Dr. Scott J. Hunter's Testimony Regarding PTSD, pursuant to *Daubert* (Doc. _____ ), and good cause appearing,

IT IS HEREBY ORDERED granting Defendant's *Amended* Motion (Doc. _____ ), and precluding testimony of Plaintiffs' psychology expert Dr. Scott J. Hunter from testifying regarding PTSD, for reasons stated on the record.

# Specialty Guidelines for Forensic Psychology

American Psychological Association

In the past 50 years forensic psychological practice has expanded dramatically. The American Psychological Association (APA) has a division devoted to matters of law and psychology (APA Division 41, the American Psychology–Law Society), a number of scientific journals devoted to interactions between psychology and the law exist (e.g., *Law and Human Behavior; Psychology, Public Policy, and Law; Behavioral Sciences & the Law*), and a number of key texts have been published and undergone multiple revisions (e.g., Grisso, 1986, 2003; Melton, Petrila, Poythress, & Slobogin, 1987, 1997, 2007; Rogers, 1988, 1997, 2008). In addition, training in forensic psychology is available in predoctoral, internship, and postdoctoral settings, and APA recognized forensic psychology as a specialty in 2001, with subsequent recertification in 2008.

Because the practice of forensic psychology differs in important ways from more traditional practice areas (Monahan, 1980) the "Specialty Guidelines for Forensic Psychologists" were developed and published in 1991 (Committee on Ethical Guidelines for Forensic Psychologists, 1991). Because of continued developments in the field in the ensuing 20 years, forensic practitioners' ongoing need for guidance, and policy requirements of APA, the 1991 "Specialty Guidelines for Forensic Psychologists" were revised, with the intent of benefiting forensic practitioners and recipients of their services alike.

The goals of these Specialty Guidelines for Forensic Psychology ("the Guidelines") are to improve the quality of forensic psychological services; enhance the practice and facilitate the systematic development of forensic psychology; encourage a high level of quality in professional practice; and encourage forensic practitioners to acknowledge and respect the rights of those they serve. These Guidelines are intended for use by psychologists when engaged in the practice of forensic psychology as described below and may also provide guidance on professional conduct to the legal system and other organizations and professions.

For the purposes of these Guidelines, *forensic psychology* refers to professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. Application of the Guidelines does not depend on the practitioner's typical areas of practice or expertise, but rather, on the service provided in the case at hand. These Guidelines apply in all matters in which psychologists provide expertise to judicial, administrative, and educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, or administrative proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research in connection with, or in the anticipation of, litigation; or involvement in educational activities of a forensic nature.

Psychological practice is not considered forensic solely because the conduct takes place in, or the product is presented in, a tribunal or other judicial, legislative, or administrative forum. For example, when a party (such as a civilly or criminally detained individual) or another individual (such as a child whose parents are involved in divorce proceedings) is ordered into treatment with a practitioner, that treatment is not necessarily the practice of forensic psychology. In addition, psychological testimony that is solely based on the provision of psychotherapy and does not include psycholegal opinions is not ordinarily considered forensic practice.

For the purposes of these Guidelines, *forensic practitioner* refers to a psychologist when engaged in the practice of forensic psychology as described above. Such professional conduct is considered forensic from the time the practitioner reasonably expects to, agrees to, or is legally mandated to provide expertise on an explicitly psycholegal issue.

The provision of forensic services may include a wide variety of psycholegal roles and functions. For example, as

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These Specialty Guidelines for Forensic Psychology were developed by the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) and the American Academy of Forensic Psychology. They were adopted by the APA Council of Representatives on August 3, 2011.

The previous version of the Guidelines ("Specialty Guidelines for Forensic Psychologists"; Committee on Ethical Guidelines for Forensic Psychologists, 1991) was approved by the American Psychology-Law Society (Division 41 of APA) and the American Academy of Forensic Psychology in 1991. The current revision, now called the "Specialty Guidelines for Forensic Psychology" (referred to as "the Guidelines" throughout this document), replaces the 1991 "Specialty Guidelines for Forensic Psychologists."

These guidelines are scheduled to expire August 3, 2021. After this date, users are encouraged to contact the American Psychological Association Practice Directorate to confirm that this document remains in effect.

Correspondence concerning these guidelines should be addressed to the Practice Directorate, American Psychological Association, 750 First Street, NE, Washington, DC 20002-4242.



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researchers, forensic practitioners may participate in the collection and dissemination of data that are relevant to various legal issues. As advisors, forensic practitioners may provide an attorney with an informed understanding of the role that psychology can play in the case at hand. As consultants, forensic practitioners may explain the practical implications of relevant research, examination findings, and the opinions of other psycholegal experts. As examiners, forensic practitioners may assess an individual's functioning and report findings and opinions to the attorney, a legal tribunal, an employer, an insurer, or others (APA, 2010b, 2011a). As treatment providers, forensic practitioners may provide therapeutic services tailored to the issues and context of a legal proceeding. As mediators or negotiators, forensic practitioners may serve in a third-party neutral role and assist parties in resolving disputes. As arbiters, special masters, or case managers with decision-making authority, forensic practitioners may serve parties, attorneys, and the courts (APA, 2011b).

These Guidelines are informed by APA's "Ethical Principles of Psychologists and Code of Conduct" (hereinafter referred to as the EPPCC; APA, 2010a). The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive, and they are not intended to take precedence over the judgment of psychologists.

As such, the Guidelines are advisory in areas in which the forensic practitioner has discretion to exercise professional judgment that is not prohibited or mandated by the EPPCC or applicable law, rules, or regulations. The Guidelines neither add obligations to nor eliminate obligations from the EPPCC but provide additional guidance for psychologists. The modifiers used in the Guidelines (e.g., *reasonably, appropriate, potentially*) are included in recognition of the need for professional judgment on the part of forensic practitioners; ensure applicability across the broad range of activities conducted by forensic practitioners; and reduce the likelihood of enacting an inflexible set of guidelines that might be inapplicable as forensic practice evolves. The use of these modifiers, and the recognition of the role of professional discretion and judgment, also reflects that forensic practitioners are likely to encounter facts and circumstances not anticipated by the Guidelines and they may have to act upon uncertain or incomplete evidence. The Guidelines may provide general or conceptual guidance in such circumstances. The Guidelines do not, however, exhaust the legal, professional, moral, and ethical considerations that inform forensic practitioners, for no complex activity can be completely defined by legal rules, codes of conduct, and aspirational guidelines.

The Guidelines are not intended to serve as a basis for disciplinary action or civil or criminal liability. The standard of care is established by a competent authority, not by the Guidelines. No ethical, licensure, or other administrative action or remedy, nor any other cause of action, should be taken *solely* on the basis of a forensic practitioner acting in a manner consistent or inconsistent with these Guidelines.

In cases in which a competent authority references the Guidelines when formulating standards, the authority should consider that the Guidelines attempt to identify a high level of quality in forensic practice. Competent practice is defined as the conduct of a reasonably prudent forensic practitioner engaged in similar activities in similar circumstances. Professional conduct evolves and may be viewed along a continuum of adequacy, and "minimally competent" and "best possible" are usually different points along that continuum.

The Guidelines are designed to be national in scope and are intended to be consistent with state and federal law. In cases in which a conflict between legal and professional obligations occurs, forensic practitioners make known their commitment to the EPPCC and the Guidelines and take steps to achieve an appropriate resolution consistent with the EPPCC and the Guidelines.

The format of the Guidelines is different from most other practice guidelines developed under the auspices of APA. This reflects the history of the Guidelines as well as the fact that the Guidelines are considerably broader in scope than any other APA-developed guidelines. Indeed, these are the only APA-approved guidelines that address a complete specialty practice area. Despite this difference in format, the Guidelines function as all other APA guideline documents.

This document replaces the 1991 "Specialty Guidelines for Forensic Psychologists," which were approved by the American Psychology–Law Society (Division 41 of APA) and the American Board of Forensic Psychology. The current revision has also been approved by the Council of Representatives of APA. Appendix A includes a discussion of the revision process, enactment, and current status of these Guidelines. Appendix B includes definitions and terminology as used for the purposes of these Guidelines.

## 1. Responsibilities

### *Guideline 1.01: Integrity*

Forensic practitioners strive for accuracy, honesty, and truthfulness in the science, teaching, and practice of forensic psychology and they strive to resist partisan pressures to provide services in any ways that might tend to be misleading or inaccurate.

### *Guideline 1.02: Impartiality and Fairness*

When offering expert opinion to be relied upon by a decision maker, providing forensic therapeutic services, or teaching or conducting research, forensic practitioners strive for accuracy, impartiality, fairness, and independence (EPPCC Standard 2.01). Forensic practitioners rec-

ognize the adversarial nature of the legal system and strive to treat all participants and weigh all data, opinions, and rival hypotheses impartially.

When conducting forensic examinations, forensic practitioners strive to be unbiased and impartial, and avoid partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact. This guideline does not preclude forceful presentation of the data and reasoning upon which a conclusion or professional product is based.

When providing educational services, forensic practitioners seek to represent alternative perspectives, including data, studies, or evidence on both sides of the question, in an accurate, fair and professional manner, and strive to weigh and present all views, facts, or opinions impartially.

When conducting research, forensic practitioners seek to represent results in a fair and impartial manner. Forensic practitioners strive to utilize research designs and scientific methods that adequately and fairly test the questions at hand, and they attempt to resist partisan pressures to develop designs or report results in ways that might be misleading or unfairly bias the results of a test, study, or evaluation.

### *Guideline 1.03: Avoiding Conflicts of Interest*

Forensic practitioners refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to impair their impartiality, competence, or effectiveness, or expose others with whom a professional relationship exists to harm (EPPCC Standard 3.06).

Forensic practitioners are encouraged to identify, make known, and address real or apparent conflicts of interest in an attempt to maintain the public confidence and trust, discharge professional obligations, and maintain responsibility, impartiality, and accountability (EPPCC Standard 3.06). Whenever possible, such conflicts are revealed to all parties as soon as they become known to the psychologist. Forensic practitioners consider whether a prudent and competent forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is likely to become impaired under the immediate circumstances.

When a conflict of interest is determined to be manageable, continuing services are provided and documented in a way to manage the conflict, maintain accountability, and preserve the trust of relevant others (also see Guideline 4.02 below).

## 2. Competence

### *Guideline 2.01: Scope of Competence*

When determining one's competence to provide services in a particular matter, forensic practitioners may consider a variety of factors including the relative complexity and specialized nature of the service, relevant training and experience, the preparation and study they are able to devote to the matter, and the opportunity for consultation with a professional of established competence in the subject matter in question. Even with regard to subjects in which they are expert, forensic practitioners may choose to consult with colleagues.

### *Guideline 2.02: Gaining and Maintaining Competence*

Competence can be acquired through various combinations of education, training, supervised experience, consultation, study, and professional experience. Forensic practitioners planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies that are new to them are encouraged to undertake relevant education, training, supervised experience, consultation, or study.

Forensic practitioners make ongoing efforts to develop and maintain their competencies (EPPCC Standard 2.03). To maintain the requisite knowledge and skill, forensic practitioners keep abreast of developments in the fields of psychology and the law.

### *Guideline 2.03: Representing Competencies*

Consistent with the EPPCC, forensic practitioners adequately and accurately inform all recipients of their services (e.g., attorneys, tribunals) about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications, and how they were obtained (EPPCC Standard 5.01).

### *Guideline 2.04: Knowledge of the Legal System and the Legal Rights of Individuals*

Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients (EPPCC Standard 2.01).

Forensic practitioners aspire to manage their professional conduct in a manner that does not threaten or impair the rights of affected individuals. They may consult with, and refer others to, legal counsel on matters of law. Although they do not provide formal legal advice or opinions, forensic practitioners may provide information about the legal process to others based on their knowledge and experience. They strive to distinguish this from legal opinions, however, and encourage consultation with attorneys as appropriate.

### *Guideline 2.05: Knowledge of the Scientific Foundation for Opinions and Testimony*

Forensic practitioners seek to provide opinions and testimony that are sufficiently based upon adequate scientific foundation, and reliable and valid principles and methods that have been applied appropriately to the facts of the case.

When providing opinions and testimony that are based on novel or emerging principles and methods, forensic practitioners seek to make known the status and limitations of these principles and methods.

### Guideline 2.06: Knowledge of the Scientific Foundation for Teaching and Research

Forensic practitioners engage in teaching and research activities in which they have adequate knowledge, experience, and education (EPPCC Standard 2.01), and they acknowledge relevant limitations and caveats inherent in procedures and conclusions (EPPCC Standard 5.01).

### Guideline 2.07: Considering the Impact of Personal Beliefs and Experience

Forensic practitioners recognize that their own cultures, attitudes, values, beliefs, opinions, or biases may affect their ability to practice in a competent and impartial manner. When such factors may diminish their ability to practice in a competent and impartial manner, forensic practitioners may take steps to correct or limit such effects, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

### Guideline 2.08: Appreciation of Individual and Group Differences

When scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences affects implementation or use of their services or research, forensic practitioners consider the boundaries of their expertise, make an appropriate referral if indicated, or gain the necessary training, experience, consultation, or supervision (EPPCC Standard 2.01; APA, 2003, 2004, 2011c, 2011d, 2011e).

Forensic practitioners strive to understand how factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences may affect and be related to the basis for people's contact and involvement with the legal system.

Forensic practitioners do not engage in unfair discrimination based on such factors or on any basis proscribed by law (EPPCC Standard 3.01). They strive to take steps to correct or limit the effects of such factors on their work, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

### Guideline 2.09: Appropriate Use of Services and Products

Forensic practitioners are encouraged to make reasonable efforts to guard against misuse of their services and exercise professional discretion in addressing such misuses.

## 3. Diligence

### Guideline 3.01: Provision of Services

Forensic practitioners are encouraged to seek explicit agreements that define the scope of, time-frame of, and compensation for their services. In the event that a client breaches the contract or acts in a way that would require the practitioner to violate ethical, legal or professional obligations, the forensic practitioner may terminate the relationship.

Forensic practitioners strive to act with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services. Forensic practitioners are not bound, however, to provide services not reasonably anticipated when retained, nor to provide every possible aspect or variation of service. Instead, forensic practitioners may exercise professional discretion in determining the extent and means by which services are provided and agreements are fulfilled.

### Guideline 3.02: Responsiveness

Forensic practitioners seek to manage their workloads so that services can be provided thoroughly, competently, and promptly. They recognize that acting with reasonable promptness, however, does not require the forensic practitioner to acquiesce to service demands not reasonably anticipated at the time the service was requested, nor does it require the forensic practitioner to provide services if the client has not acted in a manner consistent with existing agreements, including payment of fees.

### Guideline 3.03: Communication

Forensic practitioners strive to keep their clients reasonably informed about the status of their services, comply with their clients' reasonable requests for information, and consult with their clients about any substantial limitation on their conduct or performance that may arise when they reasonably believe that their clients expect a service that is not consistent with their professional obligations. Forensic practitioners attempt to keep their clients reasonably informed regarding new facts, opinions, or other potential evidence that may be relevant and applicable.

### Guideline 3.04: Termination of Services

The forensic practitioner seeks to carry through to conclusion all matters undertaken for a client unless the forensic practitioner–client relationship is terminated. When a forensic practitioner's employment is limited to a specific matter, the relationship may terminate when the matter has been resolved, anticipated services have been completed, or the agreement has been violated.

## 4. Relationships

Whether a forensic practitioner–client relationship exists depends on the circumstances and is determined by a number of factors which may include the information exchanged between the potential client and the forensic practitioner prior to, or at the initiation of, any contact or service, the nature of the interaction, and the purpose of the interaction.

In their work, forensic practitioners recognize that relationships are established with those who retain their services (e.g., retaining parties, employers, insurers, the

court) and those with whom they interact (e.g., examinees, collateral contacts, research participants, students). Forensic practitioners recognize that associated obligations and duties vary as a function of the nature of the relationship.

### Guideline 4.01: Responsibilities to Retaining Parties

Most responsibilities to the retaining party attach only after the retaining party has requested and the forensic practitioner has agreed to render professional services and an agreement regarding compensation has been reached. Forensic practitioners are aware that there are some responsibilities, such as privacy, confidentiality, and privilege, that may attach when the forensic practitioner agrees to consider whether a forensic practitioner–retaining party relationship shall be established. Forensic practitioners, prior to entering into a contract, may direct the potential retaining party not to reveal any confidential or privileged information as a way of protecting the retaining party's interest in case a conflict exists as a result of pre-existing relationships.

At the initiation of any request for service, forensic practitioners seek to clarify the nature of the relationship and the services to be provided including the role of the forensic practitioner (e.g., trial consultant, forensic examiner, treatment provider, expert witness, research consultant); which person or entity is the client; the probable uses of the services provided or information obtained; and any limitations to privacy, confidentiality, or privilege.

### Guideline 4.02: Multiple Relationships

A multiple relationship occurs when a forensic practitioner is in a professional role with a person and, at the same time or at a subsequent time, is in a different role with the same person; is involved in a personal, fiscal, or other relationship with an adverse party; at the same time is in a relationship with a person closely associated with or related to the person with whom the forensic practitioner has the professional relationship; or offers or agrees to enter into another relationship in the future with the person or a person closely associated with or related to the person (EPPCC Standard 3.05).

Forensic practitioners strive to recognize the potential conflicts of interest and threats to objectivity inherent in multiple relationships. Forensic practitioners are encouraged to recognize that some personal and professional relationships may interfere with their ability to practice in a competent and impartial manner and they seek to minimize any detrimental effects by avoiding involvement in such matters whenever feasible or limiting their assistance in a manner that is consistent with professional obligations.

### Guideline 4.02.01: Therapeutic–Forensic Role Conflicts

Providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm. Therefore, when requested or ordered to provide either concurrent or sequential forensic and therapeutic services, forensic practitioners are encouraged to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider. If referral is not possible, the forensic practitioner is encouraged to consider the risks and benefits to all parties and to the legal system or entity likely to be impacted, the possibility of separating each service widely in time, seeking judicial review and direction, and consulting with knowledgeable colleagues. When providing both forensic and therapeutic services, forensic practitioners seek to minimize the potential negative effects of this circumstance (EPPCC Standard 3.05)

### Guideline 4.02.02: Expert Testimony by Practitioners Providing Therapeutic Services

Providing expert testimony about a patient who is a participant in a legal matter does not necessarily involve the practice of forensic psychology even when that testimony is relevant to a psycholegal issue before the decision maker. For example, providing testimony on matters such as a patient's reported history or other statements, mental status, diagnosis, progress, prognosis, and treatment would not ordinarily be considered forensic practice even when the testimony is related to a psycholegal issue before the decision maker. In contrast, rendering opinions and providing testimony about a person on psycholegal issues (e.g., criminal responsibility, legal causation, proximate cause, trial competence, testamentary capacity, the relative merits of parenting arrangements) would ordinarily be considered the practice of forensic psychology.

Consistent with their ethical obligations to base their opinions on information and techniques sufficient to substantiate their findings (EPPCC Standards 2.04, 9.01), forensic practitioners are encouraged to provide testimony only on those issues for which they have adequate foundation and only when a reasonable forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is unlikely to be impaired. As with testimony regarding forensic examinees, the forensic practitioner strives to identify any substantive limitations that may affect the reliability and validity of the facts or opinions offered, and communicates these to the decision maker.

### Guideline 4.02.03: Provision of Forensic Therapeutic Services

Although some therapeutic services can be considered forensic in nature, the fact that therapeutic services are ordered by the court does not necessarily make them forensic.

In determining whether a therapeutic service should be considered the practice of forensic psychology, psychologists are encouraged to consider the potential impact of the legal context on treatment, the potential for treatment to impact the psycholegal issues involved in the case, and whether another reasonable psychologist in a similar position would consider the service to be forensic and these Guidelines to be applicable.

Therapeutic services can have significant effects on current or future legal proceedings. Forensic practitioners

are encouraged to consider these effects and minimize any unintended or negative effects on such proceedings or therapy when they provide therapeutic services in forensic contexts.

### *Guideline 4.03: Provision of Emergency Mental Health Services to Forensic Examinees*

When providing forensic examination services an emergency may arise that requires the practitioner to provide short-term therapeutic services to the examinee in order to prevent imminent harm to the examinee or others. In such cases the forensic practitioner is encouraged to limit disclosure of information and inform the retaining attorney, legal representative, or the court in an appropriate manner. Upon providing emergency treatment to examinees, forensic practitioners consider whether they can continue in a forensic role with that individual so that potential for harm to the recipient of services is avoided (EPPCC Standard 3.04).

## 5. Fees

### *Guideline 5.01: Determining Fees*

When determining fees forensic practitioners may consider salient factors such as their experience providing the service, the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the service, the fee customarily charged for similar forensic services, the likelihood that the acceptance of the particularba employment will preclude other employment, the time limitations imposed by the client or circumstances, the nature and length of the professional relationship with the client, the client's ability to pay for the service, and any legal requirements.

### *Guideline 5.02: Fee Arrangements*

Forensic practitioners are encouraged to make clear to the client the likely cost of services whenever it is feasible, and make appropriate provisions in those cases in which the costs of services is greater than anticipated or the client's ability to pay for services changes in some way.

Forensic practitioners seek to avoid undue influence that might result from financial compensation or other gains. Because of the threat to impartiality presented by the acceptance of contingent fees and associated legal prohibitions, forensic practitioners strive to avoid providing professional services on the basis of contingent fees. Letters of protection, financial guarantees, and other security for payment of fees in the future are not considered contingent fees unless payment is dependent on the outcome of the matter.

### *Guideline 5.03: Pro Bono Services*

Forensic psychologists recognize that some persons may have limited access to legal services as a function of financial disadvantage and strive to contribute a portion of their professional time for little or no compensation or personal advantage (EPPCC Principle E).

## 6. Informed Consent, Notification, and Assent

Because substantial rights, liberties, and properties are often at risk in forensic matters, and because the methods and procedures of forensic practitioners are complex and may not be accurately anticipated by the recipients of forensic services, forensic practitioners strive to inform service recipients about the nature and parameters of the services to be provided (EPPCC Standards 3.04, 3.10).

### *Guideline 6.01: Timing and Substance*

Forensic practitioners strive to inform clients, examinees, and others who are the recipients of forensic services as soon as is feasible about the nature and extent of reasonably anticipated forensic services.

In determining what information to impart, forensic practitioners are encouraged to consider a variety of factors including the person's experience or training in psychological and legal matters of the type involved and whether the person is represented by counsel. When questions or uncertainties remain after they have made the effort to explain the necessary information, forensic practitioners may recommend that the person seek legal advice.

### *Guideline 6.02: Communication With Those Seeking to Retain a Forensic Practitioner*

As part of the initial process of being retained, or as soon thereafter as previously unknown information becomes available, forensic practitioners strive to disclose to the retaining party information that would reasonably be anticipated to affect a decision to retain or continue the services of the forensic practitioner.

This disclosure may include, but is not limited to, the fee structure for anticipated services; prior and current personal or professional activities, obligations, and relationships that would reasonably lead to the fact or the appearance of a conflict of interest; the forensic practitioner's knowledge, skill, experience, and education relevant to the forensic services being considered, including any significant limitations; and the scientific bases and limitations of the methods and procedures which are expected to be employed.

### *Guideline 6.03: Communication With Forensic Examinees*

Forensic practitioners inform examinees about the nature and purpose of the examination (EPPCC Standard 9.03; American Educational Research Association, American Psychological Association, & National Council on Measurement in Education [AERA, APA, & NCME], in press). Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's records; the voluntary or involuntary nature of participation, including potential consequences of par-

ticipation or nonparticipation, if known; and, if the cost of the service is the responsibility of the examinee, the anticipated cost.

### Guideline 6.03.01: Persons Not Ordered or Mandated to Undergo Examination

If the examinee is not ordered by the court to participate in a forensic examination, the forensic practitioner seeks his or her informed consent (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

### Guideline 6.03.02: Persons Ordered or Mandated to Undergo Examination or Treatment

If the examinee is ordered by the court to participate, the forensic practitioner can conduct the examination over the objection, and without the consent, of the examinee (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider a variety of options including postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

When an individual is ordered to undergo treatment but the goals of treatment are determined by a legal authority rather than the individual receiving services, the forensic practitioner informs the service recipient of the nature and purpose of treatment, and any limitations on confidentiality and privilege (EPPCC Standards 3.10, 10.01).

### Guideline 6.03.03: Persons Lacking Capacity to Provide Informed Consent

Forensic practitioners appreciate that the very conditions that precipitate psychological examination of individuals involved in legal proceedings can impair their functioning in a variety of important ways, including their ability to understand and consent to the evaluation process.

For examinees adjudicated or presumed by law to lack the capacity to provide informed consent for the anticipated forensic service, the forensic practitioner nevertheless provides an appropriate explanation, seeks the examinee's assent, and obtains appropriate permission from a legally authorized person, as permitted or required by law (EPPCC Standards 3.10, 9.03).

For examinees whom the forensic practitioner has concluded lack capacity to provide informed consent to a proposed, non-court-ordered service, but who have not been adjudicated as lacking such capacity, the forensic practitioner strives to take reasonable steps to protect their rights and welfare (EPPCC Standard 3.10). In such cases, the forensic practitioner may consider suspending the proposed service or notifying the examinee's attorney or the retaining party.

### Guideline 6.03.04: Evaluation of Persons Not Represented by Counsel

Because of the significant rights that may be at issue in a legal proceeding, forensic practitioners carefully consider the appropriateness of conducting a forensic evaluation of an individual who is not represented by counsel. Forensic practitioners may consider conducting such evaluations or delaying the evaluation so as to provide the examinee with the opportunity to consult with counsel.

### Guideline 6.04: Communication With Collateral Sources of Information

Forensic practitioners disclose to potential collateral sources information that might reasonably be expected to inform their decisions about participating that may include, but may not be limited to, who has retained the forensic practitioner; the nature, purpose, and intended use of the examination or other procedure; the nature of and any limits on privacy, confidentiality, and privilege; and whether their participation is voluntary (EPPCC Standard 3.10).

### Guideline 6.05: Communication in Research Contexts

When engaging in research or scholarly activities conducted as a service to a client in a legal proceeding, forensic practitioners attempt to clarify any anticipated use of the research or scholarly product, disclose their role in the resulting research or scholarly products, and obtain whatever consent or agreement is required.

In advance of any scientific study, forensic practitioners seek to negotiate with the client the circumstances under and manner in which the results may be made known to others. Forensic practitioners strive to balance the potentially competing rights and interests of the retaining party with the inappropriateness of suppressing data, for example, by agreeing to report the data without identifying the jurisdiction in which the study took place. Forensic practitioners represent the results of research in an accurate manner (EPPCC Standard 5.01).

## 7. Conflicts in Practice

In forensic psychology practice, conflicting responsibilities and demands may be encountered. When conflicts occur, forensic practitioners seek to make the conflict known to the relevant parties or agencies, and consider the rights and interests of the relevant parties or agencies in their attempts to resolve the conflict.

### Guideline 7.01: Conflicts With Legal Authority

When their responsibilities conflict with law, regulations, or other governing legal authority, forensic practitioners make known their commitment to the EPPCC, and take steps to resolve the conflict. In situations in which the

EPPCC or the Guidelines are in conflict with the law, attempts to resolve the conflict are made in accordance with the EPPCC (EPPCC Standard 1.02).

When the conflict cannot be resolved by such means, forensic practitioners may adhere to the requirements of the law, regulations, or other governing legal authority, but only to the extent required and not in any way that violates a person's human rights (EPPCC Standard 1.03).

Forensic practitioners are encouraged to consider the appropriateness of complying with court orders when such compliance creates potential conflicts with professional standards of practice.

### Guideline 7.02: Conflicts With Organizational Demands

When the demands of an organization with which they are affiliated or for whom they are working conflict with their professional responsibilities and obligations, forensic practitioners strive to clarify the nature of the conflict and, to the extent feasible, resolve the conflict in a way consistent with professional obligations and responsibilities (EPPCC Standard 1.03).

### Guideline 7.03: Resolving Ethical Issues With Fellow Professionals

When an apparent or potential ethical violation has caused, or is likely to cause, substantial harm, forensic practitioners are encouraged to take action appropriate to the situation and consider a number of factors including the nature and the immediacy of the potential harm; applicable privacy, confidentiality, and privilege; how the rights of the relevant parties may be affected by a particular course of action; and any other legal or ethical obligations (EPPCC Standard 1.04). Steps to resolve perceived ethical conflicts may include, but are not limited to, obtaining the consultation of knowledgeable colleagues, obtaining the advice of independent counsel, and conferring directly with the client.

When forensic practitioners believe there may have been an ethical violation by another professional, an attempt is made to resolve the issue by bringing it to the attention of that individual, if that attempt does not violate any rights or privileges that may be involved, and if an informal resolution appears appropriate (EPPCC Standard 1.04). If this does not result in a satisfactory resolution, the forensic practitioner may have to take further action appropriate to the situation, including making a report to third parties of the perceived ethical violation (EPPCC Standard 1.05). In most instances, in order to minimize unforeseen risks to the party's rights in the legal matter, forensic practitioners consider consulting with the client before attempting to resolve a perceived ethical violation with another professional.

## 8. Privacy, Confidentiality, and Privilege

Forensic practitioners recognize their ethical obligations to maintain the confidentiality of information relating to a client or retaining party, except insofar as disclosure is consented to by the client or retaining party, or required or permitted by law (EPPCC Standard 4.01).

### Guideline 8.01: Release of Information

Forensic practitioners are encouraged to recognize the importance of complying with properly noticed and served subpoenas or court orders directing release of information, or other legally proper consent from duly authorized persons, unless there is a legally valid reason to offer an objection. When in doubt about an appropriate response or course of action, forensic practitioners may seek assistance from the retaining client, retain and seek legal advice from their own attorney, or formally notify the drafter of the subpoena or order of their uncertainty.

### Guideline 8.02: Access to Information

If requested, forensic practitioners seek to provide the retaining party access to, and a meaningful explanation of, all information that is in their records for the matter at hand, consistent with the relevant law, applicable codes of ethics and professional standards, and institutional rules and regulations. Forensic examinees typically are not provided access to the forensic practitioner's records without the consent of the retaining party. Access to records by anyone other than the retaining party is governed by legal process, usually subpoena or court order, or by explicit consent of the retaining party. Forensic practitioners may charge a reasonable fee for the costs associated with the storage, reproduction, review, and provision of records.

### Guideline 8.03: Acquiring Collateral and Third Party Information

Forensic practitioners strive to access information or records from collateral sources with the consent of the relevant attorney or the relevant party, or when otherwise authorized by law or court order.

### Guideline 8.04: Use of Case Materials in Teaching, Continuing Education, and Other Scholarly Activities

Forensic practitioners using case materials for purposes of teaching, training, or research strive to present such information in a fair, balanced, and respectful manner. They attempt to protect the privacy of persons by disguising the confidential, personally identifiable information of all persons and entities who would reasonably claim a privacy interest; using only those aspects of the case available in the public domain; or obtaining consent from the relevant clients, parties, participants, and organizations to use the materials for such purposes (EPPCC Standard 4.07; also see Guidelines 11.06 and 11.07 of these Guidelines).

## 9. Methods and Procedures

### Guideline 9.01: Use of Appropriate Methods

Forensic practitioners strive to utilize appropriate methods and procedures in their work. When performing examinations, treatment, consultation, educational activities, or scholarly investigations, forensic practitioners seek to

maintain integrity by examining the issue or problem at hand from all reasonable perspectives and seek information that will differentially test plausible rival hypotheses.

### Guideline 9.02: Use of Multiple Sources of Information

Forensic practitioners ordinarily avoid relying solely on one source of data, and corroborate important data whenever feasible (AERA, APA, & NCME, in press). When relying upon data that have not been corroborated, forensic practitioners seek to make known the uncorroborated status of the data, any associated strengths and limitations, and the reasons for relying upon the data.

### Guideline 9.03: Opinions Regarding Persons Not Examined

Forensic practitioners recognize their obligations to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings (EPPCC Standard 9.01). Forensic practitioners seek to make reasonable efforts to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony.

When conducting a record review or providing consultation or supervision that does not warrant an individual examination, forensic practitioners seek to identify the sources of information on which they are basing their opinions and recommendations, including any substantial limitations to their opinions and recommendations.

## 10. Assessment

### Guideline 10.01: Focus on Legally Relevant Factors

Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Assocation, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007).

Forensic practitioners are encouraged to consider the problems that may arise by using a clinical diagnosis in some forensic contexts, and consider and qualify their opinions and testimony appropriately.

### Guideline 10.02: Selection and Use of Assessment Procedures

Forensic practitioners use assessment procedures in the manner and for the purposes that are appropriate in light of the research on or evidence of their usefulness and proper application (EPPCC Standard 9.02; AERA, APA, & NCME, in press). This includes assessment techniques, interviews, tests, instruments, and other procedures and their administration, adaptation, scoring, and interpretation, including computerized scoring and interpretation systems.

Forensic practitioners use assessment instruments whose validity and reliability have been established for use with members of the population assessed. When such validity and reliability have not been established, forensic practitioners consider and describe the strengths and limitations of their findings. Forensic practitioners use assessment methods that are appropriate to an examinee's language preference and competence, unless the use of an alternative language is relevant to the assessment issues (EPPCC Standard 9.02).

Assessment in forensic contexts differs from assessment in therapeutic contexts in important ways that forensic practitioners strive to take into account when conducting forensic examinations. Forensic practitioners seek to consider the strengths and limitations of employing traditional assessment procedures in forensic examinations (AERA, APA, & NCME, in press). Given the stakes involved in forensic contexts, forensic practitioners strive to ensure the integrity and security of test materials and results (AERA, APA, & NCME, in press).

When the validity of an assessment technique has not been established in the forensic context or setting in which it is being used, the forensic practitioner seeks to describe the strengths and limitations of any test results and explain the extrapolation of these data to the forensic context. Because of the many differences between forensic and therapeutic contexts, forensic practitioners consider and seek to make known that some examination results may warrant substantially different interpretation when administered in forensic contexts (AERA, APA, & NCME, in press).

Forensic practitioners consider and seek to make known that forensic examination results can be affected by factors unique to, or differentially present in, forensic contexts including response style, voluntariness of participation, and situational stress associated with involvement in forensic or legal matters (AERA, APA, & NCME, in press).

### Guideline 10.03: Appreciation of Individual Differences

When interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations (EPPCC Standard 9.06). Forensic practitioners strive to identify any significant strengths and limitations of their procedures and interpretations.

Forensic practitioners are encouraged to consider how the assessment process may be impacted by any disability an examinee is experiencing, make accommodations as

possible, and consider such when interpreting and communicating the results of the assessment (APA, 2011d).

### Guideline 10.04: Consideration of Assessment Settings

In order to maximize the validity of assessment results, forensic practitioners strive to conduct evaluations in settings that provide adequate comfort, safety, and privacy.

### Guideline 10.05: Provision of Assessment Feedback

Forensic practitioners take reasonable steps to explain assessment results to the examinee or a designated representative in language they can understand (EPPCC Standard 9.10). In those circumstances in which communication about assessment results is precluded, the forensic practitioner explains this to the examinee in advance (EPPCC Standard 9.10).

Forensic practitioners seek to provide information about professional work in a manner consistent with professional and legal standards for the disclosure of test data or results, interpretation of data, and the factual bases for conclusions.

### Guideline 10.06: Documentation and Compilation of Data Considered

Forensic practitioners are encouraged to recognize the importance of documenting all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery by all parties. This documentation includes, but is not limited to, letters and consultations; notes, recordings, and transcriptions; assessment and test data, scoring reports and interpretations; and all other records in any form or medium that were created or exchanged in connection with a matter.

When contemplating third party observation or audio/video-recording of examinations, forensic practitioners strive to consider any law that may control such matters, the need for transparency and documentation, and the potential impact of observation or recording on the validity of the examination and test security (Committee on Psychological Tests and Assessment, American Psychological Association, 2007).

### Guideline 10.07: Provision of Documentation

Pursuant to proper subpoenas or court orders, or other legally proper consent from authorized persons, forensic practitioners seek to make available all documentation described in Guideline 10.05, all financial records related to the matter, and any other records including reports (and draft reports if they have been provided to a party, attorney, or other entity for review), that might reasonably be related to the opinions to be expressed.

### Guideline 10.08: Record Keeping

Forensic practitioners establish and maintain a system of record keeping and professional communication (EPPCC Standard 6.01, APA, 2007), and attend to relevant laws and rules. When indicated by the extent of the rights, liberties, and properties that may be at risk, the complexity of the case, the amount and legal significance of unique evidence in the care and control of the forensic practitioner, and the likelihood of future appeal, forensic practitioners strive to inform the retaining party of the limits of record keeping times. If requested to do so, forensic practitioners consider maintaining such records until notified that all appeals in the matter have been exhausted, or sending a copy of any unique components/aspects of the record in their care and control to the retaining party before destruction of the record.

## 11. Professional and Other Public Communications

### Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception

Forensic practitioners make reasonable efforts to ensure that the products of their services, as well as their own public statements and professional reports and testimony, are communicated in ways that promote understanding and avoid deception (EPPCC Standard 5.01).

When in their role as expert to the court or other tribunals, the role of forensic practitioners is to facilitate understanding of the evidence or dispute. Consistent with legal and ethical requirements, forensic practitioners do not distort or withhold relevant evidence or opinion in reports or testimony. When responding to discovery requests and providing sworn testimony, forensic practitioners strive to have readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards (AERA, APA, & NCME, in press; Committee on Legal Issues, American Psychological Association, 2006; Bank & Packer, 2007; Golding, 1990).

When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion (EPPCC Standard 5.01). This does not preclude forensic practitioners from forcefully presenting the data and reasoning upon which a conclusion or professional product is based.

### Guideline 11.02: Differentiating Observations, Inferences, and Conclusions

In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand.

### Guideline 11.03: Disclosing Sources of Information and Bases of Opinions

Forensic practitioners are encouraged to disclose all sources of information obtained in the course of their professional services, and to identify the source of each piece of information that was considered and relied upon in formulating a particular conclusion, opinion, or other professional product.

### Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony

Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony, forensic practitioners strive to offer a complete statement of all relevant opinions that they formed within the scope of their work on the case, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support of the opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law (EPPCC Standard 4.04).

### Guideline 11.05: Commenting Upon Other Professionals and Participants in Legal Proceedings

When evaluating or commenting upon the work or qualifications of other professionals involved in legal proceedings, forensic practitioners seek to represent their disagreements in a professional and respectful tone, and base them on a fair examination of the data, theories, standards, and opinions of the other expert or party.

When describing or commenting upon clients, examinees, or other participants in legal proceedings, forensic practitioners strive to do so in a fair and impartial manner.

Forensic practitioners strive to report the representations, opinions, and statements of clients, examinees, or other participants in a fair and impartial manner.

### Guideline 11.06: Out of Court Statements

Ordinarily, forensic practitioners seek to avoid making detailed public (out-of-court) statements about legal proceedings in which they have been involved. However, sometimes public statements may serve important goals such as educating the public about the role of forensic practitioners in the legal system, the appropriate practice of forensic psychology, and psychological and legal issues that are relevant to the matter at hand. When making public statements, forensic practitioners refrain from releasing private, confidential, or privileged information, and attempt to protect persons from harm, misuse, or misrepresentation as a result of their statements (EPPCC Standard 4.05).

### Guideline 11.07: Commenting Upon Legal Proceedings

Forensic practitioners strive to address particular legal proceedings in publications or communications only to the extent that the information relied upon is part of a public record, or when consent for that use has been properly obtained from any party holding any relevant privilege (also see Guideline 8.04).

When offering public statements about specific cases in which they have not been involved, forensic practitioners offer opinions for which there is sufficient information or data and make clear the limitations of their statements and opinions resulting from having had no direct knowledge of or involvement with the case (EPPCC Standard 9.01).

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# Appendix A
## Revision Process of the Guidelines

This revision of the Guidelines was coordinated by the Committee for the Revision of the Specialty Guidelines for Forensic Psychology ("the Revisions Committee"), which was established by the American Academy of Forensic Psychology and the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) in 2002 and which operated through 2011. This committee consisted of two representatives from each organization (Solomon Fulero, PhD, JD; Stephen Golding, PhD, ABPP; Lisa Piechowski, PhD, ABPP; Christina Studebaker, PhD), a chairperson (Randy Otto, PhD, ABPP), and a liaison from Division 42 (Psychologists in Independent Practice) of APA (Jeffrey Younggren, PhD, ABPP).

This document was revised in accordance with APA Rule 30.08 and the APA policy document "Criteria for Practice Guideline Development and Evaluation" (APA, 2002). The Revisions Committee posted announcements regarding the revision process to relevant electronic discussion lists and professional publications (i.e., the Psy-law-L e-mail listserv of the American Psychology–Law Society, the American Academy of Forensic Psychology listserv, the American Psychology–Law Society Newsletter). In addition, an electronic discussion list devoted solely to issues concerning revision of the Guidelines was operated between December 2002 and July 2007, followed by establishment of an e-mail address in February 2008 (sgfp@yahoo.com). Individuals were invited to provide input and commentary on the existing Guidelines and proposed revisions via these means. In addition, two public meetings were held throughout the revision process at biennial meetings of the American Psychology–Law Society.

Upon development of a draft that the Revisions Committee deemed suitable, the revised Guidelines were submitted for review to the Executive Committee of the American Psychology-Law Society (Division 41 of APA) and the American Board of Forensic Psychology. Once the revised Guidelines were approved by these two organizations, they were submitted to APA for review, commentary, and acceptance, consistent with APA's "Criteria for Practice Guideline Development and Evaluation" (APA, 2002) and APA Rule 30-8. They were subsequently revised by the Revisions Committee and were adopted by the APA Council of Representatives on August 3, 2011.

(*Appendices continue*)

# Appendix B
# Definitions and Terminology

For the purposes of these Guidelines:

*Appropriate*, when used in relation to conduct by a forensic practitioner means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is apt and pertinent and is considered befitting, suitable, and proper for a particular person, place, condition, or function. *Inappropriate* means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is not suitable, desirable, or properly timed for a particular person, occasion, or purpose; and may also denote improper conduct, improprieties, or conduct that is discrepant for the circumstances.

*Agreement* refers to the objective and mutual understanding between the forensic practitioner and the person or persons seeking the professional service and/or agreeing to participate in the service. See also Assent, Consent, and Informed Consent.

*Assent* refers to the agreement, approval, or permission, especially regarding verbal or nonverbal conduct, that is reasonably intended and interpreted as expressing willingness, even in the absence of unmistakable consent. Forensic practitioners attempt to secure assent when consent and informed consent cannot be obtained or when, because of mental state, the examinee may not be able to consent.

*Consent* refers to agreement, approval, or permission as to some act or purpose.

*Client* refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

*Conflict of Interest* refers to a situation or circumstance in which the forensic practitioner's objectivity, impartiality, or judgment may be jeopardized due to a relationship, financial, or any other interest that would reasonably be expected to substantially affect a forensic practitioner's professional judgment, impartiality, or decision making.

*Decision Maker* refers to the person or entity with the authority to make a judicial decision, agency determination, arbitration award, or other contractual determination after consideration of the facts and the law.

*Examinee* refers to a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

*Forensic Examiner* refers to a psychologist who examines the psychological condition of a person whose psychological condition is in controversy or at issue.

*Forensic Practice* refers to the application of the scientific, technical, or specialized knowledge of psychology to the law and the use of that knowledge to assist in resolving legal, contractual, and administrative disputes.

*Forensic Practitioner* refers to a psychologist when engaged in forensic practice.

*Forensic Psychology* refers to all forensic practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive).

*Informed Consent* denotes the knowledgeable, voluntary, and competent agreement by a person to a proposed course of conduct after the forensic practitioner has communicated adequate information and explanation about the material risks and benefits of, and reasonably available alternatives to, the proposed course of conduct.

*Legal Representative* refers to a person who has the legal authority to act on behalf of another.

*Party* refers to a person or entity named in litigation, or who is involved in, or is witness to, an activity or relationship that may be reasonably anticipated to result in litigation.

*Reasonable* or *Reasonably*, when used in relation to conduct by a forensic practitioner, denotes the conduct of a prudent and competent forensic practitioner who is engaged in similar activities in similar circumstances.

*Record* or *Written Record* refers to all notes, records, documents, memorializations, and recordings of considerations and communications, be they in any form or on any media, tangible, electronic, handwritten, or mechanical, that are contained in, or are specifically related to, the forensic matter in question or the forensic service provided.

*Retaining Party* refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

*Tribunal* denotes a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

*Trier of Fact* refers to a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

# American Psychological Association



## Including 2010 and 2016 Amendments



## Introduction and Applicability

The American Psychological Association's (APA) Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the Ethics Code) consists of an Introduction, a Preamble (?item=2) , five General Principles (?item=3) (A-E) and specific Ethical Standards (?item=4) . The Introduction discusses the intent, organization, procedural considerations, and scope of application of the Ethics Code. The Preamble and General Principles are aspirational goals to guide psychologists toward the highest ideals of psychology. Although the Preamble and General Principles are not themselves enforceable rules, they should be considered by psychologists in arriving at an ethical course of action. The Ethical Standards set forth enforceable rules for conduct as psychologists. Most of the Ethical Standards are written broadly, in order to apply to psychologists in varied roles, although the application of an Ethical Standard may vary depending on the context. The Ethical Standards are not exhaustive. The fact that a given conduct is not specifically addressed by an Ethical Standard does not mean that it is necessarily either ethical or unethical.

This Ethics Code applies only to psychologists' activities that are part of their scientific, educational, or professional roles as psychologists. Areas covered include but are not limited to the clinical, counseling, and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design

and evaluation; and administration. This Ethics Code applies to these activities across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions. These activities shall be distinguished from the purely private conduct of psychologists, which is not within the purview of the Ethics Code.

Membership in the APA commits members and student affiliates to comply with the standards of the APA Ethics Code and to the rules and procedures used to enforce them. Lack of awareness or misunderstanding of an Ethical Standard is not itself a defense to a charge of unethical conduct.

The procedures for filing, investigating, and resolving complaints of unethical conduct are described in the current Rules and Procedures of the APA Ethics Committee (/ethics/code/committee) . APA may impose sanctions on its members for violations of the standards of the Ethics Code, including termination of APA membership, and may notify other bodies and individuals of its actions. Actions that violate the standards of the Ethics Code may also lead to the imposition of sanctions on psychologists or students whether or not they are APA members by bodies other than APA, including state psychological associations, other professional groups, psychology boards, other state or federal agencies, and payors for health services. In addition, APA may take action against a member after his or her conviction of a felony, expulsion or suspension from an affiliated state psychological association, or suspension or loss of licensure. When the sanction to be imposed by APA is less than expulsion, the 2001 Rules and Procedures do not guarantee an opportunity for an in-person hearing, but generally provide that complaints will be resolved only on the basis of a submitted record.

The Ethics Code is intended to provide guidance for psychologists and standards of professional conduct that can be applied by the APA and by other bodies that choose to adopt them. The Ethics Code is not intended to be a basis of civil liability. Whether a psychologist has violated the Ethics Code standards does not by itself determine whether the psychologist is legally liable in a court action, whether a contract is enforceable, or whether other legal consequences occur.

The modifiers used in some of the standards of this Ethics Code (e.g., reasonably, appropriate, potentially) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated. As used in this Ethics Code, the term reasonable means the prevailing professional judgment of psychologists engaged in similar activities in

similar circumstances, given the knowledge the psychologist had or should have had at the time.

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.

## Preamble

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations, and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. This Ethics Code provides a common set of principles and standards upon which psychologists build their professional and scientific work.

This Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists. It has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students, and the public regarding ethical standards of the discipline.

The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues; and to consult with others concerning ethical problems.

# General Principles

This section consists of General Principles. General Principles, as opposed to Ethical Standards, are aspirational in nature. Their intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose.

**Principle A: Beneficence and Nonmaleficence**

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

**Principle B: Fidelity and Responsibility**

Psychologists establish relationships of trust with those with whom they work. They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work. They are concerned about the ethical compliance of their colleagues' scientific and professional conduct. Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage.

**Principle C: Integrity**

Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. In these activities psychologists do not steal,

cheat or engage in fraud, subterfuge, or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.

**Principle D: Justice**

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices.

**Principle E: Respect for People's Rights and Dignity**

Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

## Section 1: Resolving Ethical Issues

**1.01 Misuse of Psychologists' Work**

If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

**1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority**

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known

their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

**1.03 Conflicts Between Ethics and Organizational Demands**

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

**1.04 Informal Resolution of Ethical Violations**

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority (#102) , and 1.03, Conflicts Between Ethics and Organizational Demands (#103) .)

**1.05 Reporting Ethical Violations**

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard 1.04, Informal Resolution of Ethical Violations (#104) , or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority (#102)

.)

**1.06 Cooperating with Ethics Committees**

Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they address any confidentiality issues. Failure to cooperate is itself an ethics violation. However, making a request for deferment of adjudication of an ethics complaint pending the outcome of litigation does not alone constitute

noncooperation.

### 1.07 Improper Complaints

Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

### 1.08 Unfair Discrimination Against Complainants and Respondents

Psychologists do not deny persons employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

## Section 2: Competence

### 2.01 Boundaries of Competence

(a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies (#202) .

(c) Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies new to them undertake relevant education, training, supervised experience, consultation, or study.

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are

not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study.

(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients, and others from harm.

(f) When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles.

### 2.02 Providing Services in Emergencies

In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

### 2.03 Maintaining Competence

Psychologists undertake ongoing efforts to develop and maintain their competence.

### 2.04 Bases for Scientific and Professional Judgments

Psychologists' work is based upon established scientific and professional knowledge of the discipline. (See also Standards 2.01e, Boundaries of Competence (#201e) , and 10.01b, Informed Consent to Therapy (?item=13#1001b) .)

### 2.05 Delegation of Work to Others

Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently. (See also Standards 2.02, Providing Services in Emergencies (#202) ; 3.05, Multiple Relationships (?item=6#305) ; 4.01, Maintaining Confidentiality (?item=7#401) ; 9.01, Bases for Assessments (?item=12#901) ; 9.02, Use of Assessments (?item=12#902) ; 9.03, Informed Consent in Assessments (?item=12#903) ; and 9.07, Assessment by Unqualified Persons (?item=12#907) .)

### 2.06 Personal Problems and Conflicts

(a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties. (See also Standard 10.10, Terminating Therapy (?item=13#1010) .)

## Section 3: Human Relations

### 3.01 Unfair Discrimination

In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.

### 3.02 Sexual Harassment

Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist, and that either (1) is unwelcome, is offensive, or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts. (See also Standard 1.08, Unfair Discrimination Against Complainants and Respondents (?item=4#108) .)

### 3.03 Other Harassment

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

### 3.04 Avoiding Harm

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with

whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(a).

### 3.05 Multiple Relationships

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm (#304) , and 3.07, Third-Party Requests for Services (#307) .)

### 3.06 Conflict of Interest

Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom

the professional relationship exists to harm or exploitation.

### 3.07 Third-Party Requests for Services

When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. (See also Standards 3.05, Multiple relationships (#305) , and 4.02, Discussing the Limits of Confidentiality.)

### 3.08 Exploitative Relationships

Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants, and employees. (See also Standards 3.05, Multiple Relationships (#305) ; 6.04, Fees and Financial Arrangements (?item=9#604) ; 6.05, Barter with Clients/Patients (?item=9#605) ; 7.07, Sexual Relationships with Students and Supervisees (?item=10#707) ; 10.05, Sexual Intimacies with Current Therapy Clients/Patients (?item=13#1005) ; 10.06, Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients (?item=13#1006) ; 10.07, Therapy with Former Sexual Partners (?item=13#1007) ; and 10.08, Sexual Intimacies with Former Therapy Clients/Patients (?item=13#1008) .)

### 3.09 Cooperation with Other Professionals

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard (javascript:goToItem(7);) 4.05, Disclosures (?item=7#405) .)

### 3.10 Informed Consent

(a) When psychologists conduct research or provide assessment, therapy, counseling, or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards 8.02, Informed Consent to Research (?item=11#802) ; 9.03, Informed Consent in Assessments (?item=12#903) ; and 10.01, Informed Consent to Therapy (?item=13#1001) .)

(b) For persons who are legally incapable of giving informed consent, psychologists

nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 8.02, Informed Consent to Research (?item=11#802) ; 9.03, Informed Consent in Assessments (?item=12#903) ; and 10.01, Informed Consent to Therapy (?item=13#1001) .)

### 3.11 Psychological Services Delivered to or Through Organizations

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

### 3.12 Interruption of Psychological Services

Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations. (See also Standard 6.02c, Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work (?item=9#602c) .)

# Section 4: Privacy and Confidentiality

### 4.01 Maintaining Confidentiality

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard 2.05, Delegation of Work to Others (?item=5#205) .)

### 4.02 Discussing the Limits of Confidentiality

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard 3.10, Informed Consent (?item=6#310) .)

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

### 4.03 Recording

Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representatives. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research (?item=11#803) ; 8.05, Dispensing with Informed Consent for Research (?item=11#805) ; and 8.07, Deception in Research (?item=11#807) .)

### 4.04 Minimizing Intrusions on Privacy

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

### 4.05 Disclosures

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard 6.04e, Fees and Financial Arrangements (?item=9#604e) .)

### 4.06 Consultations

When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard 4.01, Maintaining Confidentiality (#401) .)

### 4.07 Use of Confidential Information for Didactic or Other Purposes

Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients, or other recipients of their services that they obtained during the course of their work, unless (1) they take reasonable steps to disguise the person or organization, (2) the person or organization has consented in writing, or (3) there is legal authorization for doing so.

## Section 5: Advertising and Other Public Statements

### 5.01 Avoidance of False or Deceptive Statements

(a) Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae, or comments for use in media such as print or electronic transmission,

statements in legal proceedings, lectures and public oral presentations, and published materials. Psychologists do not knowingly make public statements that are false, deceptive, or fraudulent concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated.

(b) Psychologists do not make false, deceptive, or fraudulent statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings.

(c) Psychologists claim degrees as credentials for their health services only if those degrees (1) were earned from a regionally accredited educational institution or (2) were the basis for psychology licensure by the state in which they practice.

### 5.02 Statements by Others

(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item. (See also Standard 1.01, Misuse of Psychologists' Work (?item=4#101) .)

(c) A paid advertisement relating to psychologists' activities must be identified or clearly recognizable as such.

### 5.03 Descriptions of Workshops and Non-Degree-Granting Educational Programs

To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

### 5.04 Media Presentations

When psychologists provide public advice or comment via print, Internet, or other electronic transmission, they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient. (See also Standard 2.04, Bases for Scientific and Professional

Judgments (?item=5#204) .)

### 5.05 Testimonials

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

### 5.06 In-Person Solicitation

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not preclude (1) attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient or (2) providing disaster or community outreach services.

## Section 6: Record Keeping and Fees

### 6.01 Documentation of Professional and Scientific Work and Maintenance of Records

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality (?item=7#401) .)

### 6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards 4.01, Maintaining Confidentiality (?item=7#401) , and 6.01, Documentation of Professional and Scientific Work and Maintenance of Records (#601) .)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques

to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards 3.12, Interruption of Psychological Services (?item=6#312) , and 10.09, Interruption of Therapy (?item=13#1009) .)

### 6.03 Withholding Records for Nonpayment

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

### 6.04 Fees and Financial Arrangements

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

(b) Psychologists' fee practices are consistent with law.

(c) Psychologists do not misrepresent their fees.

(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards 10.09, Interruption of Therapy (?item=13#1009) , and 10.10, Terminating Therapy (?item=13#1010) .)

(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards 4.05, Disclosures (?item=7#405) ; 6.03, Withholding Records for Nonpayment (#603) ; and 10.01, Informed Consent to Therapy (?item=13#1001) .)

### 6.05 Barter with Clients/Patients

Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards 3.05, Multiple Relationships (?item=6#305) , and 6.04, Fees and Financial Arrangements (#604) .)

### 6.06 Accuracy in Reports to Payors and Funding Sources

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality (?item=7#401) ; 4.04, Minimizing Intrusions on Privacy (?item=7#404) ; and 4.05, Disclosures (?item=7#405) .)

### 6.07 Referrals and Fees

When psychologists pay, receive payment from, or divide fees with another professional, other than in an employer-employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative, or other) and is not based on the referral itself. (See also Standard 3.09, Cooperation with Other Professionals (?item=6#309) .)

## Section 7: Education and Training

### 7.01 Design of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that the programs are designed to provide the appropriate knowledge and proper experiences, and to meet the requirements for licensure, certification, or other goals for which claims are made by the program. (See also Standard 5.03, Descriptions of Workshops and Non-Degree-Granting Educational Programs (?item=8#503) .)

### 7.02 Descriptions of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that there is a current and accurate description of the program content (including participation in required course- or program-related counseling, psychotherapy, experiential groups, consulting projects, or community service), training goals and objectives, stipends and benefits, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

### 7.03 Accuracy in Teaching

(a) Psychologists take reasonable steps to ensure that course syllabi are accurate regarding the subject matter to be covered, bases for evaluating progress, and the

nature of course experiences. This standard does not preclude an instructor from modifying course content or requirements when the instructor considers it pedagogically necessary or desirable, so long as students are made aware of these modifications in a manner that enables them to fulfill course requirements. (See also Standard 5.01, Avoidance of False or Deceptive Statements (?item=8#501) .)

(b) When engaged in teaching or training, psychologists present psychological information accurately. (See also Standard 2.03, Maintaining Competence (?item=5#203) .)

**7.04 Student Disclosure of Personal Information**

Psychologists do not require students or supervisees to disclose personal information in course- or program-related activities, either orally or in writing, regarding sexual history, history of abuse and neglect, psychological treatment, and relationships with parents, peers, and spouses or significant others except if (1) the program or training facility has clearly identified this requirement in its admissions and program materials or (2) the information is necessary to evaluate or obtain assistance for students whose personal problems could reasonably be judged to be preventing them from performing their training- or professionally related activities in a competent manner or posing a threat to the students or others.

**7.05 Mandatory Individual or Group Therapy**

(a) When individual or group therapy is a program or course requirement, psychologists responsible for that program allow students in undergraduate and graduate programs the option of selecting such therapy from practitioners unaffiliated with the program. (See also Standard 7.02, Descriptions of Education and Training Programs (#702) .)

(b) Faculty who are or are likely to be responsible for evaluating students' academic performance do not themselves provide that therapy. (See also Standard 3.05, Multiple Relationships (?item=6#305) .)

**7.06 Assessing Student and Supervisee Performance**

(a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

### 7.07 Sexual Relationships with Students and Supervisees

Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority. (See also Standard 3.05, Multiple Relationships (?item=6#305) .)

## Section 8: Research and Publication

### 8.01 Institutional Approval

When institutional approval is required, psychologists provide accurate information about their research proposals and obtain approval prior to conducting the research. They conduct the research in accordance with the approved research protocol.

### 8.02 Informed Consent to Research

(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research (#803) ; 8.05, Dispensing with Informed Consent for Research (#805) ; and 8.07, Deception in Research (#807) .)

(b) Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research (1) the experimental nature of the treatment; (2) the services that will or will not be available to the control group(s) if appropriate; (3) the means by which assignment to treatment and control groups will be made; (4) available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and (5) compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought. (See also Standard 8.02a, Informed Consent to Research (#802a) .)

### 8.03 Informed Consent for Recording Voices and Images in Research

Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless (1) the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm, or (2) the research design includes deception, and consent for the use of the recording is obtained during debriefing. (See also Standard 8.07, Deception in Research (#807) .)

### 8.04 Client/Patient, Student, and Subordinate Research Participants

(a) When psychologists conduct research with clients/patients, students, or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(b) When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

### 8.05 Dispensing with Informed Consent for Research

Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

### 8.06 Offering Inducements for Research Participation

(a) Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

(b) When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations, and limitations. (See also Standard 6.05, Barter with Clients/Patients (?item=9#605) .)

### 8.07 Deception in Research

(a) Psychologists do not conduct a study involving deception unless they have

determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational, or applied value and that effective nondeceptive alternative procedures are not feasible.

(b) Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

(c) Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data. (See also Standard 8.08, Debriefing (#808) .)

### 8.08 Debriefing

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

(b) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(c) When psychologists become aware that research procedures have harmed a participant, they take reasonable steps to minimize the harm.

### 8.09 Humane Care and Use of Animals in Research

(a) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state, and local laws and regulations, and with professional standards.

(b) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.

(c) Psychologists ensure that all individuals under their supervision who are using animals have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role. (See also Standard 2.05, Delegation of Work to Others (?item=5#205) .)

(d) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.

(e) Psychologists use a procedure subjecting animals to pain, stress, or privation only

when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.

(f) Psychologists perform surgical procedures under appropriate anesthesia and follow techniques to avoid infection and minimize pain during and after surgery.

(g) When it is appropriate that an animal's life be terminated, psychologists proceed rapidly, with an effort to minimize pain and in accordance with accepted procedures.

**8.10 Reporting Research Results**

(a) Psychologists do not fabricate data. (See also Standard 5.01a, Avoidance of False or Deceptive Statements (?item=8#501a) .)

(b) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

**8.11 Plagiarism**

Psychologists do not present portions of another's work or data as their own, even if the other work or data source is cited occasionally.

**8.12 Publication Credit**

(a) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have substantially contributed. (See also Standard 8.12b, Publication Credit (#812b) .)

(b) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as department chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are acknowledged appropriately, such as in footnotes or in an introductory statement.

(c) Except under exceptional circumstances, a student is listed as principal author on any multiple-authored article that is substantially based on the student's doctoral dissertation. Faculty advisors discuss publication credit with students as early as feasible and throughout the research and publication process as appropriate. (See also Standard 8.12b, Publication Credit (#812b) .)

**8.13 Duplicate Publication of Data**

Psychologists do not publish, as original data, data that have been previously

published. This does not preclude republishing data when they are accompanied by proper acknowledgment.

### 8.14 Sharing Research Data for Verification

(a) After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release. This does not preclude psychologists from requiring that such individuals or groups be responsible for costs associated with the provision of such information.

(b) Psychologists who request data from other psychologists to verify the substantive claims through reanalysis may use shared data only for the declared purpose. Requesting psychologists obtain prior written agreement for all other uses of the data.

### 8.15 Reviewers

Psychologists who review material submitted for presentation, publication, grant, or research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

## Section 9: Assessment

### 9.01 Bases for Assessments

(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments (?item=5#204) .)

(b) Except as noted in 9.01c (#901c) , psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence (?item=5#201) , and 9.06, Interpreting Assessment Results (#906) .)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

**9.02 Use of Assessments**

(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

(c) Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

**9.03 Informed Consent in Assessments**

(a) Psychologists obtain informed consent for assessments, evaluations, or diagnostic services, as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional, or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

(b) Psychologists inform persons with questionable capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

(c) Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on

the data obtained. (See also Standards 2.05, Delegation of Work to Others (?item=5#205) ; 4.01, Maintaining Confidentiality (?item=7#401) ; 9.01, Bases for Assessments (#901) ; 9.06, Interpreting Assessment Results (#906) ; and 9.07, Assessment by Unqualified Persons (#907) .)

### 9.04 Release of Test Data

(a) The term *test data* refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security (#911) .)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

### 9.05 Test Construction

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

### 9.06 Interpreting Assessment Results

When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence (?item=5#201b) , and 3.01, Unfair Discrimination (?item=6#301) .)

### 9.07 Assessment by Unqualified Persons

Psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision. (See also Standard 2.05, Delegation of Work to Others (?

item=5#205) .)

### 9.08 Obsolete Tests and Outdated Test Results

(a) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(b) Psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

### 9.09 Test Scoring and Interpretation Services

(a) Psychologists who offer assessment or scoring services to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(b) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations. (See also Standard 2.01b and c, Boundaries of Competence (?item=5#201b) .)

(c) Psychologists retain responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

### 9.10 Explaining Assessment Results

Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative unless the nature of the relationship precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), and this fact has been clearly explained to the person being assessed in advance.

### 9.11 Maintaining Test Security

The term *test materials* refers to manuals, instruments, protocols, and test questions or stimuli and does not include *test data* as defined in Standard 9.04, Release of Test Data (#904) . Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

# Section 10: Therapy

### 10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent (?item=6#310) , psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers. (See also Standards 4.02, Discussing the Limits of Confidentiality (?item=7#402) , and 6.04, Fees and Financial Arrangements (?item=9#604) .)

(b) When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation. (See also Standards 2.01e, Boundaries of Competence (?item=5#201e) , and 3.10, Informed Consent (?item=6#310) .)

(c) When the therapist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client/patient, as part of the informed consent procedure, is informed that the therapist is in training and is being supervised and is given the name of the supervisor.

### 10.02 Therapy Involving Couples or Families

(a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset (1) which of the individuals are clients/patients and (2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained. (See also Standard 4.02, Discussing the Limits of Confidentiality (?item=7#402) .)

(b) If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately. (See also Standard 3.05c, Multiple Relationships (?item=6#305c) .)

### 10.03 Group Therapy

When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.

### 10.04 Providing Therapy to Those Served by Others

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

### 10.05 Sexual Intimacies with Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

### 10.06 Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

### 10.07 Therapy with Former Sexual Partners

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

### 10.08 Sexual Intimacies with Former Therapy Clients/Patients

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or

actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships (?item=6#305) .)

**10.09 Interruption of Therapy**

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient. (See also Standard 3.12, Interruption of Psychological Services (?item=6#312) .)

**10.10 Terminating Therapy**

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.
(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.

## History and Effective Date

The American Psychological Association's Council of Representatives (/about/governance/council) adopted this version of the APA Ethics Code during its meeting on Aug. 21, 2002. The Code became effective on June 1, 2003. The Council of Representatives amended this version of the Ethics Code on Feb. 20, 2010, effective June 1, 2010, and on Aug. 3, 2016, effective Jan. 1, 2017. Inquiries concerning the substance or interpretation of the APA Ethics Code should be addressed to the Director, Office of Ethics, American Psychological Association, 750 First St. NE, Washington, DC 20002-4242. The standards in this Ethics Code will be used to adjudicate complaints brought concerning alleged conduct occurring on or after the effective date. Complaints will be adjudicated on the basis of the version of the Ethics Code that was in effect at the time the conduct occurred.

The APA has previously published its Ethics Code as follows:

American Psychological Association. (1953). *Ethical standards of psychologists.* Washington, DC: Author.

American Psychological Association. (1959). Ethical standards of psychologists. *American Psychologist, 14*, 279-282.

American Psychological Association. (1963). Ethical standards of psychologists. *American Psychologist, 18*, 56-60.

American Psychological Association. (1968). Ethical standards of psychologists. *American Psychologist, 23*, 357-361.

American Psychological Association. (1977, March). Ethical standards of psychologists. *APA Monitor*, 22-23.

American Psychological Association. (1979). *Ethical standards of psychologists.* Washington, DC: Author.

American Psychological Association. (1981). Ethical principles of psychologists. *American Psychologist, 36*, 633-638.

American Psychological Association. (1990). Ethical principles of psychologists (Amended June 2, 1989). *American Psychologist, 45*, 390-395.

American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist, 47*, 1597-1611.

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist, 57*, 1060-1073.

American Psychological Association. (2010). 2010 amendments to the 2002 "*Ethical Principles of Psychologists and Code of Conduct.*" *American Psychologist, 65*, 493.

American Psychological Association. (2016). Revision of ethical standard 3.04 of the "*Ethical Principles of Psychologists and Code of Conduct*" (2002, as amended 2010). *American Psychologist, 71*, 900.

Request copies of the APA's Ethical Principles of Psychologists and Code of Conduct from the APA Order Department, 750 First St. NE, Washington, DC 20002-4242, or phone (202) 336-5510.

# Amendments to the 2002 "Ethical Principles of Psychologists and Code of Conduct" in 2010 and 2016

## 2010 Amendments

**Introduction and Applicability**

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner~~. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority~~ in keeping with basic principles of human rights.

**1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority**

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. ~~If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.~~Under no circumstances may this standard be used to justify or defend violating human rights.

**1.03 Conflicts Between Ethics and Organizational Demands**

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and ~~to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code.~~take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

## 2016 Amendment

**3.04 Avoiding Harm**

(a) Psychologists take reasonable steps to avoid harming their clients/patients,

students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(a).

**Find this article at:**
https://www.apa.org/ethics/code/

**ERIN M. NELSON, PSY.D.**
STEVEN PITT & ASSOCIATES
15849 NORTH 71ST STREET, SUITE 100
SCOTTSDALE, ARIZONA 85254-2179
T: 480.250.4601
E: DRERINMN@GMAIL.COM

# FIRST INTERIM STATEMENT

**VIA ELECTRONIC MAIL ONLY**

Nelson
EXH. NO. 1169
10-10-19
Kelly S. Oglesby CR 50178

**TO:** JOHN DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, STE. 1900
PHOENIX, ARIZONA 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

**DATE:** MARCH 30, 2018

**RE:** DAVIS V. CLARK HILL

| DATE | RESPONSIBLE PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 02/20/18 | EN | INITIAL TELEPHONIC CONTACT WITH MR. DEWULF | N/A | @ $425.00/HR | NO CHARGE |
| 03/05/18 | EN | EXTENDED TELEPHONIC CONTACT WITH MR. DEWULF AND MR. RUTH | 0.4 | @ $425.00/HR | $170.00 |
| 03/12/18 | EN | BRIEF TELEPHONIC CONTACT WITH MR. DEWULF | <0.1 | @ $425.00/HR | NO CHARGE |
| 03/19/18 | EN | RECORD REVIEW | 5.2 | @ $425.00/HR | $2,210.00 |
| 03/20/19 | EN | RECORD REVIEW | 2.0 | @ $425.00/HR | $850.00 |
| 03/28/18 | EN | EXTENDED TELEPHONIC CONTACT WITH MR. DEWULF AND MR. RUTH | 1.0 | @ $425.00/HR | $425.00 |
| | | | | (EN) 8.6 HOURS AT $425.00/HR | $3,655.00 |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $365.50 |
| | | | | **AMOUNT DUE UPON RECEIPT** | **$4,020.50** |

| | |
|---|---|
| PLEASE MAKE PAYABLE TO: | STEVEN PITT & ASSOCIATES<br>FORENSIC AND GENERAL PSYCHIATRY |
| TAX ID NUMBER: | 47-3213638 |
| PLEASE REMIT TO: | STEVEN E. PITT, D.O., P.L.L.C.<br>FORENSIC AND GENERAL PSYCHIATRY<br>15849 NORTH 71ST STREET, SUITE 100<br>SCOTTSDALE, ARIZONA 85254-2179 |

**ERIN M. NELSON, PSY.D.**
STEVEN PITT & ASSOCIATES
15849 NORTH 71ST STREET, SUITE 100
SCOTTSDALE, ARIZONA 85254-2179
T: 480.250.4601
E: DRERINMN@GMAIL.COM

# SECOND INTERIM STATEMENT

**VIA ELECTRONIC MAIL ONLY**

**TO:** JOHN DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, STE. 1900
PHOENIX, ARIZONA 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

**DATE:** MAY 25, 2018

**RE:** DAVIS V. CLARK HILL

| DATE | RESPONSIBLE PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 05/01/18 | EN | MEETING WITH MR. DEWULF AND MR. RUTH | 1.8 | @ $425.00/HR | $765.00 |
| 05/02/18 | EN | RECORD REVIEW | 2:0 | @ $425.00/HR | $850.00 |
| | | | | (EN) 3.8 HOURS AT $425.00/HR | $1,615.00 |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $161.50 |
| | | | | **AMOUNT DUE UPON RECEIPT** | **$1,776.50** |

| | |
|---|---|
| PLEASE MAKE PAYABLE TO: | STEVEN PITT & ASSOCIATES<br>FORENSIC AND GENERAL PSYCHIATRY |
| TAX ID NUMBER: | 47-3213638 |
| PLEASE REMIT TO: | STEVEN E. PITT, D.O., P.L.L.C.<br>FORENSIC AND GENERAL PSYCHIATRY<br>15849 NORTH 71ST STREET, SUITE 100<br>SCOTTSDALE, ARIZONA 85254-2179 |

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 3RD INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 09/30/18

**TO:** JOHN DE WULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 07/16/18 | EN | TELEPHONIC CONTACT WITH MR. DEWULF AND MR. RUTH | 1.0 | @ $425.00/HR | $425.00 |
| 09/06/18 | EN | RECORD REVIEW | 0.1 | @ $425.00/HR | $42.50 |
| 09/07/18 | EN | TELEPHONIC CONTACT WITH MR. DEWULF AND MR. RUTH | 0.5 | @ $425.00/HR | $212.50 |
| 09/21/18 | EN | RECORD REVIEW | 3.1 | @ $425.00/HR | $1,317.50 |
| 09/23/18 | EN | RECORD REVIEW | 1.9 | @ $425.00/HR | $807.50 |
| 09/27/18 | EN | TELEPHONIC CONTACT WITH MR. DEWULF | 0.3 | @ $425.00/HR | $127.50 |
| | | | 6.9 | HOURS AT $425.00/HR | $2,932.50 |
| | | | | **SUB-TOTAL** | **$2,932.50** |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $293.25 |
| | | | | **TOTAL DUE UPON RECEIPT** | **$3,225.75** |

**PLEASE MAKE PAYABLE TO:**

**ERIN M. NELSON, PSY.D.**

**TAX ID NUMBER:**

**83-1061942**

**PLEASE REMIT TO:**

**ERIN M. NELSON, PSY.D.**
**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 4TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 01/31/19

**TO:** JOHN DE WULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 01/11/19 | EN | TELEPHONIC CONTACT WITH MR. DEWULF AND MR. RUTH | 1.6 | @ $425.00/HR | $680.00 |
| 01/14/19 | EN | RECORD REVIEW | 2.0 | @ $425.00/HR | $850.00 |
| 01/31/19 | EN | TELEPHONIC CONTACT WITH MR. DEWULF | 0.2 | @ $425.00/HR | $85.00 |
| | | | 3.8 | HOURS AT $425.00/HR | $1,615.00 |
| | | | | **SUB-TOTAL** | **$1,615.00** |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $161.50 |
| | | | | **TOTAL DUE UPON RECEIPT** | **$1,776.50** |

**PLEASE MAKE PAYABLE TO:**

**ERIN M. NELSON, PSY.D.**

**TAX ID NUMBER:**

**83-1061942**

**PLEASE REMIT TO:**

**ERIN M. NELSON, PSY.D.**
**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 5TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 02/26/19

**TO:** JOHN DE WULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 02/04/19 | EN | RECORD REVIEW | 3.0 | @ $425.00/HR | $1,275.00 |
| 02/05/19 | EN | RECORD REVIEW | 4.1 | @ $425.00/HR | $1,742.50 |
| 02/06/19 | EN | RECORD REVIEW | 2.8 | @ $425.00/HR | $1,190.00 |
| 02/25/19 | EN | MEETING WITH MR. DEWULF AND MR. RUTH | 3.0 | @ $425.00/HR | $1,275.00 |
| | | | 12.9 | HOURS AT $425.00/HR | $5,482.50 |
| | | | | **SUB-TOTAL** | **$5,482.50** |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $548.25 |
| | | | | **TOTAL DUE UPON RECEIPT** | **$6,030.75** |

PLEASE MAKE PAYABLE TO:

**ERIN M. NELSON, PSY.D.**

TAX ID NUMBER:

**83-1061942**

PLEASE REMIT TO:

**ERIN M. NELSON, PSY.D.**
**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 6TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 03/31/19

**TO:** JOHN E. DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 03/07/19 | EN | RESEARCH/RECORD REVIEW | 4.1 | @ $425.00/HR | $1,742.50 |
| 03/11/19 | EN | TELEPHONIC CONTACT WITH MR. DEWULF, MR. RUTH AND MS. PATKI | 2.0 | @ $425.00/HR | $850.00 |
| 03/15/19 | EN | TELEPHONIC CONTACT WITH MS. PATKI | 0.2 | @ $425.00/HR | $85.00 |
| 03/16/19 | EN | RECORD REVIEW/REPORT PREPARATION | 3.0 | @ $425.00/HR | $1,275.00 |
| 03/17/19 | EN | RECORD REVIEW/REPORT PREPARATION | 1.3 | @ $425.00/HR | $552.50 |
| 03/22/19 | EN | BRIEF TELEPHONIC CONTACT WITH MR. RUTH | <0.1 | @ $425.00/HR | NO CHARGE |
| 03/26/19 | EN | RECORD REVIEW AND MEETING WITH MR. DEWULF AND MR. RUTH | 4.0 | @ $425.00/HR | $1,700.00 |
| 03/27/19 | EN | MEETING WITH MR. DEWULF, MR. RUTH AND MS. PATKI | 4.0 | @ $425.00/HR | $1,700.00 |
| 03/31/19 | EN | RECORD REVIEW/REPORT PREPARATION | 2.0 | @ $425.00/HR | $850.00 |
| | | | 20.6 | HOURS AT $425.00/HR | $8,755.00 |
| | | | | **SUB-TOTAL** | **$8,755.00** |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $875.50 |
| | | | | **TOTAL DUE UPON RECEIPT** | **$9,630.50** |

**PLEASE MAKE PAYABLE TO:**

**ERIN M. NELSON, PSY.D.**

**TAX ID NUMBER:**

**83-1061942**

**PLEASE REMIT TO:**

**ERIN M. NELSON, PSY.D.**
**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 7TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 04/30/19

**TO:** JOHN E. DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 04/02/19 | EN | RECORD REVIEW/REPORT PREPARATION | 3.8 | @ $425.00/HR | $1,615.00 |
| 04/03/19 | EN | RECORD REVIEW/REPORT PREPARATION | 1.5 | @ $425.00/HR | $637.50 |
| 04/03/19 | EN | TELEPHONIC CONFERENCE WITH MR. DEWULF, MR. RUTH AND MS. PATKI | 2.0 | @ $425.00/HR | $850.00 |
| 04/03/19 | EN | TELEPHONIC CONFERENCE WITH MR. DEWULF AND MR. RUTH | 0.5 | @ $425.00/HR | $212.50 |
| | | | 7.8 | HOURS AT $425.00/HR | $3,315.00 |
| | | | | **SUB-TOTAL** | **$3,315.00** |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $331.50 |
| | | | | **TOTAL DUE UPON RECEIPT** | **$3,646.50** |

**PLEASE MAKE PAYABLE TO:**

**ERIN M. NELSON, PSY.D.**

**TAX ID NUMBER:**

**83-1061942**

**PLEASE REMIT TO:**

**ERIN M. NELSON, PSY.D.**
**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 8TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 05/31/19

**TO:** JOHN E. DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 05/08/19 | EN | TELEPHONIC CONTACT WITH MS. PATKI AND MS. TOLMAN | 0.2 | @ $425.00/HR | $85.00 |
| 05/19/19 | EN | RESEARCH/RECORD REVIEW | 5.1 | @ $425.00/HR | $2,167.50 |
| 05/20/19 | EN | RECORD REVIEW | 3.0 | @ $425.00/HR | $1,275.00 |
| 05/23/19 | EN | MEETING WITH MR. DEWULF, MR. RUTH MS. PATKI AND MS. TOLLMAN | 2.0 | @ $425.00/HR | $850.00 |
| 05/24/19 | EN | RESEARCH/RECORD REVIEW | 2.0 | @ $425.00/HR | $850.00 |
| | | | 12.3 | HOURS AT $425.00/HR | $5,227.50 |
| | | | | SUB-TOTAL | $5,227.50 |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $522.75 |
| | | | | TOTAL DUE UPON RECEIPT | $5,750.25 |

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Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 9TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 06/30/19

**TO:** JOHN E. DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 06/10/19 | EN | TELEPHONIC CONTACT WITH MS. PATKI AND MS. TOLMAN | 0.3 | @ $425.00/HR | $127.50 |
| 06/11/19 | EN | MEETING WITH MR. DEWULF AND MS. PATKI | 1.8 | @ $425.00/HR | $765.00 |
| 06/15/19 | EN | RECORD REVIEW | 3.8 | @ $425.00/HR | $1,615.00 |
| 06/26/19 | EN. | TELEPHONIC CONTACT WITH MR. DEWULF AND MS. PATKI | 1.0 | @ $425.00/HR | $425.00 |
| 06/29/19 | EN | RECORD REVIEW | 5.0 | @ $425.00/HR | $2,125.00 |
| 06/30/19 | EN | RECORD REVIEW | 5.8 | @ $425.00/HR | $2,465.00 |
| | | | 17.7 | HOURS AT $425.00/HR | $7,522.50 |
| | | | | **SUB-TOTAL** | **$7,522.50** |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $752.25 |
| | | | | **TOTAL DUE UPON RECEIPT** | **$8,274.75** |

**PLEASE MAKE PAYABLE TO:**

**ERIN M. NELSON, PSY.D.**

**TAX ID NUMBER:**

**83-1061942**

**PLEASE REMIT TO:**

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**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 10TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 07/31/19

**TO:** JOHN E. DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 07/12/19 | EN | RECORD REVIEW | 6.0 | @ $425.00/HR | $2,550.00 |
| 07/21/19 | EN | RECORD REVIEW | 5.2 | @ $425.00/HR | $2,210.00 |
| 07/29/19 | EN | MEETING WITH MR. DEWULF AND MS. PATKI | 3.5 | @ $425.00/HR | $1,487.50 |
| | | | 14.7 | HOURS AT $425.00/HR | $6,247.50 |
| | | | | **SUB-TOTAL** | $6,247.50 |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $624.75 |
| | | | | **TOTAL DUE UPON RECEIPT** | $6,872.25 |

**PLEASE MAKE PAYABLE TO:**

**ERIN M. NELSON, PSY.D.**

**TAX ID NUMBER:**

**83-1061942**

**PLEASE REMIT TO:**

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**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**

**ERIN M. NELSON, PSY.D.**
Forensic & Clinical Psychology
p: 480.250.4601 e: drerinmn@gmail.com

# 11TH INVOICE

Via Electronic Mail Only
Due Upon Receipt

**RE:** DAVIS V. CLARK HILL

**DATE:** 09/30/19

**TO:** JOHN E. DEWULF, ESQ.
C/O COPPERSMITH BROCKELMAN, P.L.C.
2800 NORTH CENTRAL AVENUE, SUITE 1900
PHOENIX, AZ 85004
P: 602.381.5475
E: JDEWULF@CBLAWYERS.COM

| DATE | PARTY | DESCRIPTION | HOURS | RATE | AMOUNT |
|---|---|---|---|---|---|
| 09/13/19 | EN | TELEPHONIC CONTACT WITH MR. DEWULF AND MS. PATKI | 2.0 | @ $425.00/HR | $850.00 |
| 09/19/19 | EN | BRIEF TELEPHONIC CONTACT WITH MS. PATKI | <0.1 | @ $425.00/HR | NO CHARGE |
| 09/20/19 | EN | RECORD REVIEW | 2.6 | @ $425.00/HR | $1,105.00 |
| 09/22/19 | EN | TRAVEL TO EL PASO, TEXAS - 1/2 DAY | 5.0 | @ $425.00/HR | $2,125.00 |
| 09/23/19 | EN | FULL DAY TRAVEL - ON SITE IN EL PASO, TEXAS - OBSERVATION OF DEPOSITION OF YOMTOV SCOTT MENAGED, LA TUNA FEDERAL CORRECTIONAL INSTITUTION | 10.0 | @ $425.00/HR | $4,250.00 |
| 09/24/19 | EN | TRAVEL FROM EL PASO, TEXAS - 1/2 DAY | 5.0 | @ $425.00/HR | $2,125.00 |
| 09/28/19 | EN | RECORD REVIEW | 0.8 | @ $425.00/HR | $340.00 |
| | | | 25.4 | HOURS AT $425.00/HR | $10,795.00 |
| | | | | TRAVEL EXPENSES (AIRFARE & RENTAL CAR - RECEIPTS ATTACHED) | $810.85 |
| | | | | SUBTOTAL | $11,605.85 |
| | | | | 10% ADMINISTRATIVE SURCHARGE | $1,160.59 |
| | | | | **TOTAL DUE UPON RECEIPT** | $12,766.44 |

PLEASE MAKE PAYABLE TO:

**ERIN M. NELSON, PSY.D.**

TAX ID NUMBER:

**83-1061942**

PLEASE REMIT TO:

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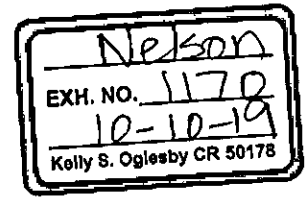
**FORENSIC & CLINICAL PSYCHOLOGY**
**2415 E. CAMELBACK ROAD, SUITE 700**
**PHOENIX, ARIZONA 85016**




| Date | Event | Source Document |
|---|---|---|
| 09/16/2001 | D. Chittick writes letter to Ranasha for first anniversary. Overjoyed to be married. Notes that extended families are happy about marriage. "We are very fortunate to have our families and for them to care about each of us at they do. I think you nearly bring my sisters to tears every time they speak of you marrying me. I know they were convinced that no one would put up with me, understand me, and loved me the way they do. My parents were probably worried that they failed to raise a son that could be loved and would love as they have shown me over the years. . . . I know that I am not the easiest person to get a long with." | CH_EstateSDT_0028087; CTRL_00062033 |
| 09/16/2002 | D. Chittick writes letter to Ranasha for anniversary. D. Chittick was building and designing home at the time. Notes that in building home, "I'll question everything on cost and practicality." | CH_EstateSDT_0028091; CTRL_00062037 |
| 09/15/2003 | D. Chittick writes letter to Ranasha for anniversary. "When I look back at the three years of marriage and being together for five years, it's truly been the best time of my life." | CH_EstateSDT_0028090; CTRL_00062036 |
| 09/15/2004 | D. Chittick writes letter to Ranasha for anniversary. "I'm really glad that the Suns season and Mercury dancing is behind us. I know you enjoyed it all. I enjoyed watching you, and seeing you perform. . . . I know you are going through lots of changes both with your hormones and your body. I'm not dealing, thinking, or acting anywhere close to you. You always tell me 'you don't understand' for as much as you don't think that I understand, you equally don't understand." | CH_EstateSDT_0028086; CTRL_00062032 |
| 09/16/2005 | Ransha apparently had miscarriage before Dillon was born. | CH_EstateSDT_0028085; CTRL_00062031 |
| 09/16/2006 | D. Chittick writes letter to Ranasha on anniversary. Notes that a year ago, they didn't know they were pregnant with Ty. Notes that pregnancy with Ty was much smoother than Dillon, which he is happy about because he didn't "want to be tested again. I think it's healthy. I know your priorities will be with the boys, but to build something yourself, make it successful, there is just a certain satisfaction that you can't describe until you accomplish it. I will support you 100%. I will try to be more patient and understanding with you as you learn about business. I know you are smart; it's just a new field for you." | CH_EstateSDT_0002326; CTRL_00003201 |

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| | Is effusive about how important family is, and notes that Ranasha "caught the business bug. It's not what I thought you might want to do, but I'm glad you have a diversion from motherhood."<br><br>Notes that the two have been together for 8 years. | |
| 01/01/2007 | D. Chittick writes a note to Don, noting that he had an influence on him and directed his career path into business. Notes that Don gave Dillon his name. "With Dillon Cash, bearing the name that you gave him, he'll always be linked to you." | CH_EstateSDT_0028107 |
| 05/07/2007 | D. Chittick writes letter to Mr. P. "I started my business, which after six years, I feel more proud of this accomplishment then all the things I did at Insight in 10 years. I take all the credit and all the blame, which in my mind is the best way to be successful. . . . I wanted you to know, how much you have meant to me and that you've played a big part in my life's accomplishments and successes, Thank You." | CH_EstateSDT_0002430 |
| 05/07/2007 | Writes letter to Pianna (likely nickname), signs off with nickname "Den Den." Appears to be close to Pianna's family. "Once I was asked what I was doing still hanging around you and your sisters. I wasn't blood, never married in to the family, yet I'm still going to games, events and celebrations." | CH_EstateSDT_0028114 |
| 06/01/2007 | First Private Offering Memorandum drafted<br>• Engaged in 975 loan transactions<br>• LTV should not exceed 70%<br>• Loans not to exceed $1 million<br>• Company's base of borrowers exceeds 200 qualified borrowers. Goal is to eventually have 500 qualified borrowers.<br>• All money raised from investors is through sale of promissory notes<br><br>D. Chittick asks if he needs D. Beauchamp's "blessing" before he prints it. | DIC0000965<br>DIC0002491 |
| 09/16/2007 | In anniversary letter to Ranasha notes that he doesn't have the energy to "wander."<br><br>Notes that the two have "done a poor job as spending time together. Even if it's as small as watching a movie or something on TV together, and I don't mean while I watch it and you fall asleep. We have to make that effort. It's important for us and our relationship." | CH_EstateSDT_0002570;<br>CTRL_00004946 |

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|---|---|---|
| 09/16/2008 | D. Chittick sends letter to Ranasha for 8 year anniversary. Reminds Ranasha to "take some time to with Ty each day. . . Take the time, it won't be available too much longer, and you'll never regret the time you spent with him. . . I don't want to be blind sided with situations when they've become a bigger issue and it could have been more helpful if we could have headed them off before they became emergencies. I'm really not trying to meddle in your affairs as much as to help. . . . I hope that you are finding life fulfilling and exciting, with a touch of wonder every now and again. I don't want life to be running long in a rut. Sometimes you have to work at improving it and making sure it's going in the direction you want it to go in. I love you and our boys more then anything in the world. I look forward to what comes next with their growth and our experiences." | CH_EstateSDT_0028084; CTRL_00062030 |
| 04/01/2009 | D. Chittick asks D. Beauchamp if an update needs to be done on the POM. D. Beauchamp responds "Given the economy and real estate collapse, it is pretty important that we do an update." | BC_000756 |
| 04/23/2009 | D. Beauchamp emails D. Chittick and notes that DenSco could be subject to some applicable licensing requirements required by ADFI | BC_000208 |
| 06/01/2009 | DenSco Private Offering Memorandum<br><br>D. Beauchamp writes in notes of what Denny needs to change and be added or confirmed, including:<br>• The houses owned and leased by DenSco after foreclosure<br>• Number of foreclosed homes owned by company is intended to be kept to a minimum to maintain a diversified financing operation<br>• Confirm status of applicable FHA regulations<br>• "As of the date of this Memorandum, Mr. Chittick has experienced only ___ loan defaults requiring initiating foreclosure, and no loans that resulted in principal losses."<br>• Asks for update of operating history<br>• Asks for addition of decrease in value of collateral for the loans in Company's Portfolio | BC_000296 |

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| | • Notes that Denny needs to describe the risk to the Company and indirectly to Notes and Investors<br>• Asks Denny to confirm sole ownership<br>• Asks Denny to check numbers regarding prior performance<br>• Asks Denny if they need to specify if any subordination is written | |
| 09/16/2009 | Ranasha sends D. Chittick an anniversary note that apologizes. "I am sorry Denny. Thank you for not kicking me out of the house, thank you for supporting me despite my wishes and my coldness, thank you for carrying our family and taking care of the home and boys while I flounder through life these days trying to figure out what my life has been and through recovery. Than you for putting up with my moods and crazy schedule. Thank you for trying, thank you for putting gup with my audacity to distrust you and thank you for understanding. . . I know this is not a happy anniversary but know that I today, although sad for our loss of the life we once knew, I am grateful and humbled." | CH_EstateSDT_0027935 (CTRL_00061690) |
| 05/12/2010 | D. Chittick and Sharla Chittick (Denny's sister) have exchange about differences in opinion over government/money. Sharla tells Denny that he "worships the holy dollar . . . You must find it ridiculous that your kids are taught in school to share, apologize, hold hands, use their words, be polite, be honest, and make-up after arguments." Then goes on to say "I will always be slightly saddened, however, that I never cultivated a health relationship with you. I also fully realise you keep me somewhat near you in hope that you can offer my son some salvation in your religion, just as I exhaust myself engaging in conversation with you in the hopes that I can keep a relationship with my nephews and sister-in-law. After our row two years ago, I thought maybe you might just leave me off your sermon mailing list, but this particular email was sent twice this year, so you obviously enjoy provoking me."<br><br>D. Chittick refuses to respond and Sharla emails back and says (among other things) "I love you deeply and you have been the challenge of my life. You are the one man I can not break up with or divorce. I try so desperately hard to make some form of a relationship work, but I feel detested by you most of the time. I truly thought things were getting better. I thought we would just leave our differences aside, but twice | DOCID_00058805 |

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| | in the last few months you send the same email. Why? The first time I simply said 'If Obama was a socialistic, he would support a single payer system.' That was it. I refrained from anything. But then you send it again . . . I just don't get you." | |
| 2011 | Tax return for DenSco notes following:<br><br>• Balance of loans made to Scott Menaged personally is $2,666,000<br>• Value of mortgage and real estate loans at beginning and end of tax year is $16,467,372 and $27,859,162, respectively<br>• Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is not identified<br>Total liabilities and shareholders' equity at beginning and end of tax year is $23,066,833 and $32,412, 716, respectively | DP000046-100 (DOCID_00470833); 2011 Tax Return & Work Papers |
| 2011 | Documents disclosed by D. Preston note that DenSco's income was $377,042 and Chittick salary was $186,765 | R-RFP-Response000014 |
| 07/01/2011 | D. Beauchamp emails D. Chittick about changes to POM. Asks:<br><br>• Did you receive the changes we sent to you concerning the descriptions of the loan loss reserves?<br>• How soon do you think that you will be able to complete the prior performance chart for the POM?<br>• Will you give me an opportunity to look at it before you circulates the POM to your investors so that I can try to make sure that it is clear and even an attorney can understand it? | BC_000003 |
| 07/01/2011 | DenSco Confidential private Offering Memo drafted. Notes offered in $50k initial investment, with additional increments of $10k.<br><br>Notes that:<br>(1) in past ten years since April 2001, DenSco engaged in 2,622 loan transactions<br>(2) DenSco intends to not exceed maximum loan size of $1 million<br>(3) DenSco will maintain loan-to-value ratio below 70% in aggregate for all loans in loan portfolio | DIC0008660 |

| | | |
|---|---|---|
| | (4) DenSco is dependent on continued services of D. Chittick<br>(5) History of how much money was raised each year over the last 10 years | |
| 07/17/2011 | Arden Chittick makes joke about Dillon Chittick (D. Chittick's son) going to law school. D. Chittick responds that "my son will never go to law school! At least with me paying for it. They can be anything they want in the world except a lawyer!" | DOCID_00061118-1 |
| 09/09/2011 | D. Chittick emails Mark Cardwell asking for search of Ranasha's computer and various devices for key words that are "anything sexual in nature." Asks that Mark give him the chat names and email addresses. Pornographic images found on both hard drives.<br><br>D. Chittick complains about how long it is taking to find data and how much it is costing.<br><br>An excel spreadsheet noting all the numbers Ranasha called with notes about those numbers provided. | CH_EstateSDT_0039964 (DOCID_00108863); CH_EstateSDT_0040401 (DOCID_00109300); CH_EstateSDT_0040837 (DOCID_00109736); CH_EstateSDT_0065302 (DOCID_00383613) |
| 10/2011 | D. Chittick and Mark Cardwell exchange emails where D. Chittick frustrated with how long it is taking Mark to find materials on Ranasha's devices | CH_EstateSDT_0040401<br>CH_EstateSDT_0040837 |
| 2012 | Tax return for DenSco notes following:<br><br>• Balance of loans made to Scott Menaged personally is $4,650,000<br>• Value of mortgage and real estate loans at beginning and end of tax year is $27,859,162 and $38,238,134, respectively<br>• Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is $31,038,925 and $40,557,053<br>• Total liabilities and shareholders' equity at beginning and end of tax year is $32,412,716 and $42,873,421, respectively | DP000101-189 (DOCID_00470834); 2012 Tax Return & Work Papers |
| 2012 | Documents disclosed by D. Preston indicate that DenSco income was $1,046,307 and salary of Chittick was $115,956 | R-RFP-Response000014 |
| 05/05/2012 | Writes letter to someone named SK. "All my life I've give out nicknames to people. . . When I was in your class I wondered how you could teach with such enthusiasm | CH_EstateSDT_0028117 |

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| | every day . . . I remember how proud you were of your new lectern that some kids made for you in shop class." | |
| 07/30/2012 | D. Chittick emails family to let them know that Ranasha moved out and divorce should be final in the next 10 days. Notes that "[t]his has been a long time coming and it's finally here. I know your first reaction is to be upset and call, but don't worry it's for the best, and the last thing I need is any emotional support. I waited until it actually happened before telling you because this isn't the first time she's threatened, and I didn't want to run you all through it again."<br><br>Notes that the most important thing is the boys and that though they will split custody, the boys will spend most of their time with D. Chittick. | DOCID_00063731 |
| 08/2012 | Parenting Plan for Dillon and Ty executed between D. Chittick and Ranasha<br><br>Agreed to joint legal custody but that parenting time will not necessarily be equal. | CH_EstateSDT_0028106 (CTRL_00062054) |
| 08/13/2012 | D. Chittick emails a document to self and Mo Sam Chittick with title ELDON. Document appears to be letter to Chittick's father from mother. Unclear who wrote it, but metadata suggests that Chittick himself wrote it from mother's perspective. Key excerpts:<br><br>"Every time I think about what your face looked like, I start shaking all over again. In fact, I am shaking writing this to you.<br><br>Your face was full of hatred towards me, for me & to me. The RAGE you exhibited was something I would never have believed or anyone that know you would or could ever picture or believe could have come from you – Eldon Vern CHittick. I, for sure, never thought I would see that kind of violence toward me or anyone else for that matter.<br><br>(There was the time you threw Denny into the wall. – that also had a Sharla involvement. And, then your pushing the camera into the guys face in Southern Idaho. That did not have a Sharla involvement) Okay, I guess you can lose control.) | DOCID_00063842 |

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| | I never thought I would ever see that kind of violence toward me or anyone else for that matter. Sorry I am repeating myself! And I would never have believed you would intentionally hurt me physically. ****BUT now I know you would and could!<br><br>Letter goes on to encourage Eldon to file for divorce.<br><br>Notes that Eldon could not handle diagnosis of MCI (appears to be Mild Cognitive Impairment?). | |
| 09/21/2012 | Gregg Reichman from Active Funding emails S. Menaged:<br><br>"From reading the chain there are DOTs recorded from both companies. We are senior on all 3 deals and Denny's DOT is recorded behind ours."<br><br>"Both Densco and AFG have loans on those properties. Veronica told me that Densco has been paid off and she was waiting for releases. I just spoke with Denny. He indicated that he has not been paid off. Please get this squared away as this is troubling."<br><br>"OK – it's an important matter. It looks like these three deals of yours were **double pledged** to both AFG and Densco.<br>37209 12th St<br>6507 Straight Arrow<br>28631 46th Way<br>From reading the chain there are DOT's recorded from both companies. We are Sr. on all 3 deals and Denny's DOT is recorded behind ours. Do you remember these at all and what happened with them?"<br><br>S. Menaged responds that he doesn't remember the properties, but "it's impossible" that they are double liened.<br><br>Greg responds: "Not impossible, I'm looking at the chains of title sitting in front of me. Both Densco and AFG have loans on those properties. Veronica told me that Densco has been | DOCID_00074251 |

| | | |
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| | paid off and she was waiting for releases. I just spoke to Denny. He is indicated that he has not been paid off. Please get this squared away as it is troubling." | |
| 09/24/2012 | G. Reichman emails S. Menaged "Over the weekend we pulled chains on all properties we have with you that we provided financing on, which have not been paid off. There are DOT's from AFG and DOTs from Densco on all of them. They appear to all be double pledged. I spoke to Denny on three of them and he indicates that he has not been paid off on them, and AFG has not been paid off on them either. I have not yet been able to discuss the other ones with him."<br><br>G. Reichman then identifies all the properties that are double liened: "Over the weekend we pulled chains on all properties we have with you that we provided financing on, which have not been paid off. There are DOT's from AFG and DOTs from Densco on all of them. They appear to all be double pledged. I spoke to Denny on three of them and he indicates that he has not been paid off on them, and AFG has not been paid off on them wither. I have not yet been able to discuss the other ones with him. Please give this the first priority when you are back at your office this morning and we will do the same but absent proof of payoff we believe these are valid deeds and that represents a very serious issue that needs to be resolved today."<br><br>G. Reichman then emails S. Menaged and says: "We are on for 10am tomorrow. We just wanted to set some minimum goals for the meeting. First, please bring a check to get all loan payments current and down payments met as they are almost all past due. Secondly, our expectation is that by the end of the meeting, our deployed capital will be secured or recovered by either repayment of funds in cash, or substitute collateral being pledged to us as a replacement for defective collateral that has been double pledged. Any of the above will be acceptable for a near term solution." | DOCID_00074248 |

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| | S. Menaged responds and says, "I appreciate the emails and I want to make you as comfortable as possible. I did not benefit from this mess. In fact losing a million and a half dollars only with you . . . I am discovering other issues with my stores. Please don't put unrealistic demands on me right now as the focus of this meeting is to make you whole."<br><br>G. Reichman replies, "<br>We do not have unrealistic expectations, we would ask the same from you as this is a significant problem with significant ramifications. At minimum we would like payments and down payment requirements brought current and we can't see any reason why that would be objectionable to you, is it? If you have other assets which we believe you do they should be offered to us as additional collateral." | |
| 09/24/2012 | D. Chittick emails S. Menaged and says that Gregg Reichman from Active Funding has called him about double liened properties. He writes to Menaged, "He called me again. He has more properties that he feels that we both have loans on, he swears you never gave him a check to payoff the first three loans in question. The list has grown, he is reviewing all of your loans to see if there are more." Lists allegedly double liened properties and then tells Menaged, "We've got to get this straightened out today."<br><br>D. Chittick later asks S. Menaged what Menaged's research on the double liened properties showed. Tells Menaged, "I never heard back from Greg either." | DOCID_00017178 |
| 09/26/2012 | D. Chittick emails S. Menaged about Gregg at Active Funding. Says "He just blamed his past employees and quickly got off the phone. Trust me my books are golden, down to a gnats ass crack." | DOCID_00017206 |
| 09/26/2012 | G. Reichman tells S. Menaged, "You talked about 60 rentals, you gave us 36 properties to run. I assume you just forgot some. At the bottom I have listed the other properties you or Easy own and I ran them as well. Total is 61. If you could please write your values next to my values, and then the amount of debt you have | DOCID_00074233 |

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| | on each, and how much you would propose to pledge at payoff for each we can move to getting documentation completed assuming we agree." | |
| 09/27/2012 – 09/28/2012 | G. Reichman emails S. Menaged, "This will help you. 10 free and clear properties indicated with asterisks**." G. Reichman later emails S. Menaged and says "On the free and clear properties we would expect at least 80% because that would put them "in line" with what we would normally lend we can lay the paper off to our investors to recapture our capital. The situation is creating significant financial harm damages to us because we now have over $1,000,000 which we have paid to you and our security interest in those assets is likely defective so we can't lay them off to investors and replenish our cash. With the free and clear assets we could lay them off because our security interest would not be defective." | DOCID_00074229; DOCID_00074228 |
| 10/01/2012 – 10/02/2012 | G. Reichman emails S. Menaged, "We are in agreement with what you wrote with the following structural suggestions: The following properties are carved out since they are free and clear and we can lay off the paper: We will do individual DOT's on these so we can assign our beneficial interest to our Investors in lieu of the defective collateral we now have. We won't get made whole but it's a start. In addition, if any of the other properties listing your Dad as 1st position are actually paid off please tell us and lets add to the carve out list. This is causing us the most heartburn. On the rest, we can do a blanket DOT for the full amount we deployed on the defective collateral $1,400,000. We will list out all of the other properties on my summary, excluding "carved out" collateral above. We prepare a memorandum of understanding/agreement that relates to the security interest that has the following terms: 1. You agree to keep current on all interest due per the terms of the notes in place. 2. In addition to payments due, you agree to make a principal pay down on the 1st of each month in the amount of $30,000.00. This is credited to principal reduction provided you are current on all other payments. 3. On any collateral already pledged where Short Term or a family member or related entity has a security position that is superior to the AFG position you agree to get that position released. 4. You agree to begin marketing the properties for sale at market, | DOCID_00074222 |

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| | retail price (hopefully with our brokerage) and continue to try to sell them until we are paid off. 5. On a sale by sale basis, property by property by piece basis we agree to release our security interest on each specific asset in exchange for fifty percent (50%) of the net distributable cash at closing, after closing costs are paid. This needs to be a "pure" calculation of net cash available with no fees or other charges being distributed to you or an entity of yours before the split is calculated. 6. The agreement will carry your personal guarantee in addition to the company guarantee."<br><br>S. Menaged emails G. Reichman and responds, "All notes are correct with short term as you see them. Please let me know what time docs will be ready for signature." Then later emails G. Reichman and says, "My sister went into labor just now . . . Can I come to your office at 10 am tomorrow to sign . . . I want to be with her."<br><br>G. Reichman responds, "I guess so. Scott, the delay is making us very uncomfortable and I am sure you can understand why. What hospital is she at? I thought she was divorced." | |
| 10/02/2012 | Easy Investments executes promissory note for $1.4 million in favor of Active Funding | R-RFP-Response000911 |
| 10/17/2012 | Active funds another deal for S. Menaged. While working out financing, G. Reichman emails S. Menaged, "I am assuming Denny (or anyone else) has no knowledge of [property] so we won't have to deal with him recording a DOT in front of us, correct?" | DOCID_00074182 |
| 10/30/2012 | G. Reichman emails S. Menaged. Subject line is "Some more loans." Body of email says "I have an idea I Would like to discuss with you. Please call me." | DOCID_00074172 |
| 11/10/2012 | S. Menaged emails G. Reichman, "SUBJECT: Scotty – if Ok with you we will take Denny out of these loans...call me<br>Just got your message... Thanks I am ok! I did respond, I said we will talk on Monday and I'll get payoffs from Denny Monday" | DOCID_00074097 |

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| 11/14/2012 | G. Reichman emails S. Menaged and says, " Please let Denny know that he will receive a single wire in the amount of $415,733.00 today for full payoff of the following assets... The wire will come from Note Acquisition Company, LLC Please let him know that tomorrow e will receive a second wire, also from Note Acquisition Company, LLC in the amount of $350,655.25 for full payoff of the following assets:" | DOCID_00074080 |
| 2013 | Tax return for DenSco notes following:<br>• Balance of loans made to Scott Menaged personally is $12,937,000<br>• Balance of loans made to AHF is $15,368,400<br>• Balance of loans made to EI is $149,332<br>• Value of mortgage and real estate loans at beginning and end of tax year is $38,238,134 and $58,327,810, respectively<br>• Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is not provided<br>• Total liabilities and shareholders' equity at beginning and end of tax year is $42,873,421 and $58,894,465, respectively | DP000190-244 (DOCID_00470830); 2013 Tax Returns & Work Papers |
| 2013 | Documents disclosed by D. Preston indicate that DenSco income was $1,166,960 and salary of Chittick was $258,312 | R-RFP-Response000014 |
| 05/2013 | D. Beauchamp circulates draft of POM | BC_002982 |
| 06/01/2013 | D. Chittick tells D. Beauchamp that he has 114 individuals who hold investor notes and 80 families | BC_002000 |
| 06/14/2013 | D. Chittick emails D. Beauchamp about Freo lawsuit and says "I have a borrower, to which I've done a ton of business with, million in loans and hundreds of loans for several years, he's getting sued along with me. . . . Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it, Easy Investments is willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney." | BC_001979 |

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| 07/01/2013 | G. Reichman tells Veronica Gutierrez (works for S. Menaged) that Active will not be funding any more loans under the name of Easy Investments. "Scott will be using a different entity for his purchases that are financed with AFG from this point forward." | DOCID_00075465 |
| 07/10/2013 | G. Reichman emails S. Menaged:<br><br>"...here is a summary as you requested. There are 3 "asset categories" as detailed in our prior agreement.<br>1. Properties listed on Exhibit "A": AFG is to receive 100% of the distributable cash available after any secured lender receives its required payoff.<br>2. Properties listed on Exhibit "B": AFG is to receive 50% of the distributable cash available after any secured lender receives its required payoff.<br>3. Properties listed on Exhibit "C": These properties were free and clear at the time of the agreement. AFG is to receive 80% of the distributable cash available after payment of Escrow/Title fees but in no event less than the original principal amounts reflected in the recorded deeds of trust for these assets."<br><br>Attorney Scott Gould is inadvertently copied on email. And Menaged asks why he is copied. Reichman responds that it was sent in error, but that Gould does "not have any idea what the actual agreement is just a few components and he has no idea what drove the need for the agreement in the first place." | DOCID_00075439 |
| 9/10/2013 | G. Reichman asks S. Menaged if he is okay and that he is worried about him. Menaged responds that he is "[g]oing thru a hard personal time with my family. I'll call you later because I need a friend to talk to." Reichman responds, "Ok. I am here for you and happy to listen." | DOCID_00075186 |
| 11/27/2013 | S. Menaged meets with D. Chittick to tell him that certain properties guaranteeing loans by DenSco have been used as security for one or more loans from one or more other lenders and that loans from DenSco may not be in the first lien position.<br><br>S. Menaged acknowledges at that meeting that AHF and EI (both owned by S. Menaged), as borrowers of loan, had obligation to discharge the liens of the other | DIC0005570 |

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| | lenders or to take such other actions to comply with section 5 of the deed of trust within 10 days (referenced in forbearance agreement).<br><br>Agreement includes a mutual release and covenant not to sue AHF, EI or S. Menaged. | |
| 12/18/2013 | Clark Hill invoice reflects that D. Chittick and D. Beauchamp chatted on telephone for .2 hours. | CH_0009806;<br>12/18/2013 CH invoice |
| 12/18/2013 | D. Chittick sends email to D. Beauchamp noting that 2013 POM was never finished. | CH_0000637 (DOCID_ 00002169) and CH_0000708 (DOCID_00002171) |
| 2014 | Tax return for DenSco notes following:<br><br>• Tax returns stop identifying balance of loans to Menaged and Menaged-controlled entities.<br>• Value of mortgage and real estate loans at beginning and end of tax year is $58,327,810 and $54,846,456, respectively<br>• Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is not identified<br>• Total liabilities and shareholders' equity at beginning and end of tax year is $58,894,465 and $59,336,655, respectively | DOCID_00470840;<br>2014 Tax Return & Work Papers |
| 2014 | Documents disclosed by D. Preston indicate that DenSco income was $1,349,671 and salary of Chittick was $246,100 | R-RFP-Response000014 |
| 01/01/2014 | D. Chittick emails S. Menaged and says that he will have 4 million by July 15. S. Menaged responds and says "Between the million I forwarded cheap, the million from PV house, plus profits! We can have this wrapped up this year easy, then send u on a two yr flip spree to earn back ur net worth". Then asks what D. Chittick's thoughts are about subordination. "Active is now saying as we'll they want that or will begin foreclosures [on double liened properties where DenSco and Active both had competing positions]." | DOCID_00046170 |
| 01/06/2014 | Other lenders who loaned money to buy homes send demand letter to DenSco demanding that DenSco subordinate its claims to other lenders. Threaten to bring | DIC0007145<br>DIC0008607 |

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| | claims for (i) fraud and conspiracy to defraud, (ii) negligent misrepresentation and (iii) wrongful recordation. | |
| 01/06/2014 | D. Beauchamp had call with D. Chittick where D. Chittick told D. Beauchamp that the largest borrower was getting 2 loans on each property | DIC0005405 |
| 01/07/2014 | D. Chittick emails D. Beauchamp explaining issue and proposed plan to repay lenders. Notes that had loaned S. Menaged $50 million since 2007. Provides that:<br><br>"I've been lending to Scott Menaged through a few different LLC's and his name since 2007. I've lent him 50 million dollars and I have never had a problem with payment or issue that hasn't been resolved."<br><br>The proposed plan is:<br>• All lenders will be paid their interest, except me, I'm allowing my interest to accrue.<br>• I'm extending him a million dollars against a home at 3%<br>• He is bringing in 4-5 million dollars over the next 120 days from liquidating some assets as well as getting some money back that the cousin stole, and other sources.<br>• He's got a majority of these houses rented, this brings in a lot of money every month.<br>• The houses that he's buying now and will be flipping will bring in money every week starting next week or two.<br>• As the houses become vacant either because of ending the lease or the tenant leaves, scott will fix up the house and sell it retail. This will drive the order in which the houses will be sold.<br>• He also owns dozens of houses that only have one lien on them and have substantial equity in them, and he'll be selling these as the tenants vacate.<br>"I've been over this plan 100 times and the numbers and I truly believe this is the right avenue to fix the problem. We have been proceeding with this plan since November and we've already cleared up about 10% of the total $'s in question. | DIC0007135 – DIC0007138 |

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| | That's in the slowest part of the selling season. We feel once things pick up seasonally we can speed this up."<br><br>"What we need is an agreement that as long as the other lenders are being paid their interest and payoffs continue to come, (we have 12 more houses in escrow currently, all planned to close in the next 30 days), that no one initiates foreclosure for obvious reasons, which will give us time to execute our plan. " | |
| 01/09/2014 | D. Beauchamp meets with D. Chittick and S. Menaged and summarizes issues:<br>1. S. Menaged told D. Beauchamp that put cousin in charge, but doesn't know what happened to money<br>2. Plan is to pay off other lenders through:<br>a. Raising coverage and loan amount<br>b. Raising money from other investors to help S. Menaged come up with balance. | DIC0005403 |
| 01/09/2014 | D. Chittick emails D. Beauchamp and explains that "I could wire Scott the money, he could produce a cashiers check that says remitter is DenSco and it would have the exact same affect as if I got cashiers check that said I'm the remitter. I don't just do this with scott, I do this with 90% of the guys that I fund at the auctions. 90% of the time there is an intermediary between my borrower and the trustee, a bidding co. everyone wires the money to the bidding co and the bidding co' gets the cashiers check saying remitter is the buyer. Put aside the logistics for a second, what proof or what guarantee is there by my cutting the check and handing it to suzy at the trustees office rather than my borrowers?"<br><br>D. Beauchamp responds that "Let me see what the other lenders for form the Trustee and we can make a better decision. There is either another way to do it or someone described a procedure that does not work." | DIC007125-26 |
| 01/12/2014 | D. Chittick tells D. Beauchamp that he "spent the day contacting every investor that has told me they want to give me more money. I don't have an answer on | DIC0007085 |

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| | specifically how much I can raise, I'll know that in a day or two. I have 3 million in my acct. I still have to fund my regular business at the same time. I've got a few million closing in the next 10 business days. I feel like if all goes well, I'll have my money in total of rought 5-6 million in this time frame.<br>. . .<br><br>If both scott and I can raise enough money, we should be able to have this all done in 30 days easy, less than three weeks would be my goal."<br><br>D. Chittick alludes that the plan he sent to D. Beauchamp went to spam folder and then says "that's my plan, shoot holes in it."<br><br>D. Beauchamp tells D. Chittick that he "should feel very honored that you could raise that amount of money that quickly." | |
| 01/12/2014 | D. Chittick emails S. Menaged and tells him that David "[j]ust emailed me and said he would have plan tomorrow." | DOCID_00044968 |
| 01/13/2014 | D. Chittick emails S. Menaged and says that "Dave has asked me, because the Bob lawyer for Dan and group would like to know the agreement that you have with your friend/investor that is providing you capital."<br><br>S. Menaged emails D. Beauchamp and says that "I understand the other side wants to know my agreement with my friend who will provide me some capital. I will be able to borrow up to 1,000,000 as a personal loan with a balloon in December 2015."<br><br>D. Chittick then emails S. Menaged and says Miller had "some dumb ass demands." Concludes that "skip all their bullshit, this is what is going to happen. They are going to get a list to us, we can double check it, send it to escrow. We'll determine if the property is in escrow, we'll let it go through, or if we just pay it off." D. Chittick says willing to make an agreement with Miller as long as there is a confidentiality agreement, which D. Beauchamp signed off on. | DOCID_00044967<br><br>DIC0007075 |

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| 01/16/2014 | D. Beauchamp emails D. Chittick about Term Sheet and tells him not to accept changes made by S. Menaged on Term Sheet. Notes that the changes "still leaves open the question of whether Scott intended for DenSco to be in the first position. Ideally, Scott would make the acknowledgment (which would be an admission of default should DenSco be determined to not be in first position), but Scott would be protected by the terms of the forbearance agreement." Tells him that "the whole consideration to DenSco (and protection to you) is for Scott to acknowledge he is in default. In exchange, DenSco agrees not to take certain actions and to provide funding to Borrowers to assist Borrower to resolve these disputes. . . . Without Scott's admission here, you are left on your own to deal with Miller's clients. . . I think it is not in your legal best interest to agree to all of your commitments in this term sheet without getting this admission from Scott."<br><br>D Chittick notes that S. Menaged will personally guarantee the loans in Term Sheet.<br><br>D. Schenck emails D. Chittick and writes that "[a]ttached is the revised Term Sheet with the changes that Scott requested and that David discussed with you. As requested, we revised the language so that the Borrower is not expressing its intent on which lender was supposed to be in first position. As David mentioned, we don't recommend that you accept these changes because it still leaves open the question of whether Scott intended for DenSco to be in the first position. Ideally, Scott would make the acknowledgment (which would be an admission of default should DenSco be determined to not be in the first position), but Scott would be protected by the terms of the forbearance agreement.<br><br>D. Chittick emails D. Beauchamp and notes that "scott just texted me said he's willing to sign it. If you are telling me it puts me in a bad situation, then we need to find middle ground to where I'm not in a weaker position and he' snot in a position of admitting guilt." | DIC0006242<br>DIC0006261<br>DIC0006420<br>CH_0001015 |
| 01/18/2014 | Carlene Chittick (D. Chittick's mother) emails D. Chittick about visit with family. Notes that Carlene spoke with Sharla, but did not speak with Sharla and Eldon | DOCID_00069048 |

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| | together. "When the two of them are in a discussion of any kind, I usually do not participate! I do a lot of listening! She is my first born daughter, I love her BUT – we are not close and will never be! After the experience I had with her and Eldon in August '12! I will never come between those two again! Because I know where I stand! Please don't miss understand this, but she has always come first in my eyes since the day she was born! I think you, Shawna, and maybe, Quilene realize that – but it is something I will not discuss with Eldon!" Says that she wants to keep email between D. Chittick and her."<br><br>D. Chittick responds that "[a]s far as her priority in dad's life, we have learned to accept it and doesn't bother us in the least." | |
| 01/2014 | Undated, signed term sheet provides:<br><br>"The provisions of this Term Sheet are intended only as an expression of intent on behalf of DenSco and Menaged, AHF, EI and possibly other entities owned by or under the control of Scott Menaged used to purchase real property from trustee sales. These provisions are not intended to be legally binding on DenSco or Borrower and are expressly subject to the execution of an appropriate definitive agreement."<br><br>• DenSco has advanced several loans to the Borrowers entities. These loans are secured by a Mortgage/Deed of Trust, which was intended to be in first lien position on each of the properties owned by the Borrower.<br>• Certain of Borrower's properties were used as security for loans from other lenders and for loans from DenSco.<br>• Certain of these other lenders have retained Bryan Cave to represent them in connection with the liens of these Other Lenders and the liens of DenSco which were each supposed to be in first lien position on the respective property. | DIC0007521 |

- DenSco and Borrower agree to cooperate and assist each other in connection with resolving the dispute with the Other Lenders concerning these Conflict Properties.
- As each of the Conflict Properties are sold through an escrow, Borrower is to pay any shortfall of funds required to satisfy the liens of the Other Lenders and DenSco on or prior to the closing of the sale of such Conflict Property.
- Borrower and DenSco will work with the other Lenders to obtain a Priority List of the Conflict Properties from the Other Lenders. This Priority List will list the order in which the Other Lenders want each Conflict Property to be refinanced so that the respective Other Lender is paid in full for the loan secured by such Conflict Property and its corresponding lien will be released on such Conflict Property.
- Borrower agrees to continue to pay the interest due to each of the Other Lenders
- Borrower has arranged for private outside financing in the amount of approximately $1 million ("Outside Funds") which is to be provided to Borrower on or before February 28, 2014. Such outside funds shall be used exclusively for the pay-off of the Other Lenders and any other similarly situated lender.
- Borrower has agreed to inform DenSco of all of the terms of Borrower's transaction to obtain the Outside Funds and the security provided for such Outside Funds. DenSco agrees to keep such information on a confidential basis, provided, however, DenSco will be able to provide such terms and information to its investors, legal counsel, accountants and other applicable professionals
- Borrower agrees to provide any additional security to DenSco, as may be requested by DenSco, to secure Borrower's existing obligations to DenSco and to secure the additional obligations that DenSco is agreeing to provide pursuant to this forbearance/workout agreement
- Borrower agrees to use its good faith efforts to: (i) liquidate other assets, which is expected to generate approximately 4 to 5 million US Dollars; (ii)

apply all net proceeds from the rental of Borrower's homes, or the net proceeds from the acquisition and disposition of additional homes by Borrowers, and (iii) apply all funds received from Borrower's continued good faith efforts to recover any other assets that can be recovered from the missing proceeds from the multiple loans that were advanced from DenSco and other lenders with respect to certain properties as referenced above. Any additional funds obtained and/or made available to Borrower pursuant this subsection shall be made available to and used by Borrower in connection with the resolution of the lien disputes between DenSco and other lenders as referenced above

- Borrower agrees to provide DenSco a life insurance policy in the amount of $10 million, insuring the life of S. Menaged with DenSco named as the sole beneficiary, until all obligations pursuant to the forbearance/workout agreement have been fully satisfied; and
- Borrower agrees to provide DenSco with a personal guaranty from S. Menaged, guaranteeing all of Borrower's obligations pursuant to the forbearance/workout agreement. Further, Borrower agrees to provide re-affirmation and consent from S. Menaged to restate and re-affirm his personal obligations as set forth in his outstanding personal guarantees of DenSco's loans to Borrower, so that the terms and provisions of the forbearance/workout agreement will not cause or create any waiver of such guarantees, but rather will ratify and guarantee all of the Borrower's obligations, as such obligations may be increased by the actions of DenSco and Borrowers pursuant to the terms and provisions of the forbearance/workout agreement
- DenSco will defer the collection of interest from the Borrowers on DenSco's loans to the Borrowers.
- DenSco will provide a new loan to Borrower in the amount of up to $1 million
- So long as Borrower is in compliance with the terms of the forbearance and workout agreement and any other agreements with DenSco, DenSco agrees

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| | to comply with its obligations set forth elsewhere in this Term Sheet, including the obligation to modify its existing loans to the Borrower that are secured by the Conflict Properties, so that the amount of such loans shall be increased to 95% LTV as indicated above. | |
| 01/16/2014 | S. Menaged objects to many of the provisions in the term sheet:<br><br>1. Says that verbage needs to be changed to state that DenSco believes it should be in the first position, and that S. Menaged is not admitting that it should be in first position.<br><br>D. Beauchamp advises D. Chittick to not accept these changes and that S. Menaged must admit that he is in default. "Without Scott's admission here, you are left on your own to deal with Miller's clients. . . . I think it is not in your legal best interest to agree to all of your commitments in this term sheet without getting this admission from Scott." | DIC0006221 |
| 01/17/2014 | D. Chittick emails S. Menaged and says "[w]e need to accelerate payoffs, we can start with requesting more today. From the million I am extending u, u have room to do more, u have cash coming in next week I hope, then with the PV house I could pay that off his first, then extent money above that loan say by 400k, that would perhaps payoff as many as another dozen loans." | DOCID_00044808 |
| 01/17/2014 | D. Chittick emails D. Beauchamp with draft email to Dan Diethelm of Geared Equity and notes "[w]e have agreed upon terms sheet for the work out that Scott and I are committed to performing on. I'm not sure what your status is with change of representation. However, I think we can use the same non-disclosure/confidentiality agreement and then we can forward over the terms sheet so you have confidence that we have a working plan in order.<br>. . .<br><br>Again, I want to reaffirm my commitment in getting you paid off as quickly as possible." | DIC0006435<br>CH_0001113 |

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| | D. Beauchamp responds and says "A litigation attorney would tell you not to send it, because certain parts might be construed to work against you. However, I agree with every word you said and I think it is merely following up what you agreed to do. So send it."<br><br>Dan Diethelm responds to email with "We did not ask for a plan, we asked for subordination."<br><br>D. Beauchamp tells D. Chittick to send following: "Your counsel advised that if a subordination was not possible, that you wanted to see how this could be resolved in the next 45 days. We have worked diligently toward that despite Scott's limited availability. If you are to be paid off before you could even get a hearing in court with respect to any litigation, why not explore that first." | |
| 01/20/2014 | S. Menaged emails D. Chittick about plan to payoff "Gregg" (presumably hard money lender suing DenSco), but Chittick does not seem to understand plan. (Plan too long to include in full here.) D. Chittick also notes that "[t]he flexibility I can legally do with David will have to be determined." | DOCID_00044736<br><br>DOCID_00044785 |
| 01/20/2014 | D. Chittick tells S. Menaged that there are 170 properties with second loans. | DOCID_00044787 |
| 01/21/2014 | S. Menaged apparently works out some of the loan issues with Bryan Cave and tells D. Beauchamp about it. D. Beauchamp responds that this is great, but that he still strongly recommends finalizing the Forbearance Agreement to document "the concessions, the guarantees, the additional security for you and the right to reimbursement for your costs. In addition, this will give you protection if any of your investors raise questions."<br><br>D. Beauchamp notes that he is "very concerned about the payoffs getting so far ahead of the documentation. I have authorized the preparation of the Forbearance Agreement and the related documents. Under normal circumstances, this should be finalized and signed before you advance all of this additional money. We plan to get the documents to you and Scott later this week." | DIC0006068<br>DIC0006528 |

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| 01/21/2014 | D. Chittick emails D. Beauchamp about paying off double encumbered properties. Notes that "we have a plan I just need your blessing."<br><br>D. Beauchamp responds by asking D. Chittick to call him. | DIC0006463 |
| 01/21/2014 | D. Chitttick tells S. Menaged "david is beating me up about keeping it through title for multiple reasons, he wants us to use multiple escrow co's if that's the bottle neck" | DOCID_00044699 |
| 01/21/2014 | D. Schenck emails D. Chittick regarding documents needed to complete forbearance agreement. Asks Chittick to send loan agreement and deed of trust<br><br>Chittick sends a deed and note used for every loan<br><br>D. Beauchamp emails Chittick and provides that "I have authorized the preparation of the Forbearance Agreement and the related documents. Under normal circumstances, this should be finalized and signed before you advance all of this additional money. We plan to get the documents to you and Scott later this week. Hopefully, we can get the documents signed later this week." D. Beauchamp sends another email to Chittick the same day and says "I still strongly recommend that we finalize the Forbearance Agreement to document the concessions, the guarantees, the additional security for you and the right to reimbursement for your costs. In addition, this will give you protection if any of your investors raise questions." | DIC0006738<br>DIC0006528<br>DIC006068 |
| 01/31/2014 | J. Goulder notes that he spoke to S. Menaged about draft forbearance and will have comments next week.<br><br>D. Beauchamp advises D. Chittick that "[u]ntil you have the Forbearance Agreement and the other documents in place, you are not protected with respect to Scott OR your investors. You have no rights to any of the additional collateral that Scott has agreed to give you, until the Forbearance Agreement is signed and the other documents are also signed and filed as may be necessary." | DIC0006079<br>DIC0006615 |
| 02/03/2014 | D. Beauchamp emails J. Goulder (S. Menaged attorney) about Forbearance Agreement and says that "DenSco has been very straightforward and cooperative | DIC0006602 |

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| | with your client throughout this process. DenSco has gone out of its way to help your client for a situation that your client created. . . . By Friday, DenSco will have advanced approximately $8 million in loans to your client in excess of its authorized leverage ratios and will have deferred significant amounts of interest." Goes on to say that S. Menaged is stalling signing agreement, which is unacceptable. | |
| 02/03/2014 | Notes explain that D. Beauchamp explained that "we followed Denny's instructions + prepared the agmt as fair to Borrower as possible – did not leave room for negotiation."<br><br>Notes further provide that "Denny understands our concern if we have to get back into negotiations." | DIC0005418 |
| 02/03/2014 | D. Beauchamp asks D. Chittick to prepare Exhibit A to Forbearance Agreement. This exhibit should "list all of the properties affected by this double-funding' with "separate sublists showing the properties that have already been resolved. Also include the other properties that are security for other outstanding loans you have made to the Borrowers. If possible, please prepare the lists and send them to me to review."<br><br>D. Chittick says that he won't have a complete list until he is done funding all the loans which will be another 3 weeks. "I think my goal is to have them done by end of this month."<br><br>D. Beauchamp responds that "[w]e need to know the list that existed when this problem was first recognized and you started to correct it in November and the changes since that time until the Forbearance Agreement is signed." | DIC0006633<br>DIC00006600<br>DIC0006627 |
| 02/04/2014 | D. Beauchamp emails D. Chittick and informs him that many of the changes that J. Goulder (S. Menaged's attorney) made to forbearance agreement transferred risk to D. Chittick and investors. "Jeff deleted whole sections of the Forbearance Agreement. Jeff even deleted that Scott is to pay your attorneys' fees in connection with this matter, which Scott offered in the very first meeting with you and me. Jeff also has you waiving many, many rights that are standard in a forbearance | DIC0006625 |

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| | agreement, including the right to collect default interest if the Borrower defaults under the Forbearance Agreement, and the cross-default provision that is referenced as a standard provision in your loans in DenSco's POM for your investors. [BOTTOM LINE: JEFF'S CHANGES ARE NOT JUST WORD CHANGES, BUT SUBSTANTIVE CHANGES THAT CLEARLY TRANSFER SIGNIFICANT RISK TO YOU AND YOUR INVESTORS.]"<br><br>D. Beauchamp warns D. Chittick that if even a portion of J. Goulder's edits are allowed to remain, this is no longer an "industry standard" forbearance agreement "in the description that you HAVE to provide to your investors." | |
| 02/04/2014 | D. Beauchamp emails D. Chittick about changes that J. Goulder made to forbearance agreement.<br><br>Notes that "*At your request,* I did not include any harsh or significantly pro-lender provisions." States the changes from Jeff are "cutting muscle and bone that are needed to protect you."<br><br>Notes that they need to be clear about what D. Chittick can and can't do without going back to all of the investors for approval. Notes that "[w]e have a deal that works for you, your investors and is fair to Scott." Concludes that "[y]ou can help and have helped Scott, but you cannot OBLIGATE DenSco to further help Scott, because that would breach your fiduciary duty to your investors."<br><br>States in earlier email that day that "Although I have asked for this and we have discussed this several times, we still do not have an actual copy of any of the loan documents for any of the loans that you made to Scott that are the subject of this problem. This is really important for many different reasons, but a key reason is the 'guarantee' at the bottom of the note that Scott signed."<br><br>D. Chittick responds that "I understand ur concerns. I talked to scott three times today over certain points so that we r on the same page. We worked through | DIC0006673 |

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| | several things. Noen of them r ones u brought up. It is like scott and I talk, u and I talk, we r ok Jef enters and it is like a different language. I will talk to scott but I am not sure what will be the next step. | |
| 02/07/2014 | Notes provide that "Scott + Denny talked," and that "Jeff does not want Scott admitting to any fraud."<br><br>D. Beauchamp has call with both S. Menaged and D. Chittick about "problem." (Problem is unspecified)<br><br>Notes further provide that "title insurance on a required basis." | DIC0005413<br>DIC0005414 |
| 02/07/2014 | D. Beauchamp emails J. Goulder and notes that edits from J. Goulder are unacceptable. "Based on your previous changes, the Forbearance Agreement would be prima facie evidence that Denny Chittick has committed securities fraud because the loan documents he had Scott sign did not comply with DenSco's representations to DenSco's investors in its securities offering documents. Unfortunately, this agreement needs to not only protect Scott from having this agreement used as evidence of fraud against him in a litigation, the agreement needs to comply with Denny's fiduciary obligations to his investors as well as not become evidence to be used against Denny for securities fraud."<br><br>"The previous version that I had sent to you was basically a complete rewrite of our standard forbearance agreement that I have used in almost 200 forbearance agreements over the last 10 years. The previous version that I sent to you was intended to be as fair as possible while setting forth all of the business points that both Denny and Scott had told me in a meeting and over several conference calls."<br><br>"In addition to the business points, we had intended to make the document as balanced as possible. We wanted the document to set forth the necessary facts for Denny to satisfy his securities obligations to his investors . . . without having Scott have to admit facts that could cause trouble to him." | DIC0006656 |

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| | "Referencing the language of the Loan Documents is needed to satisfy Denny's fiduciary obligations, but I have also modified the other provisions so that Borrower is not admitting that it was required to provide first lien position in connection with the loans."<br><br>"Bottom line: Borrower does not admit that the existing loans were to be secured in the first lien position, nor that the modified loans will be in first lien position. However, Borrower will obtain a lender's title insurance policy in favor of Lender that will insure Lender in first lien position as the other liens are extinguished on each Property (unless DenSco is paid off). Correspondingly, the respective provisions in the Loan Documents are referenced to satisfy Denny's fiduciary duties to his investors and the Default is acknowledged so that this workout is consistent with the limitations of the scope of Denny's authority." | |
| 02/07/2014 | D. Beauchamp emails D. Chittick with additional modifications to Forbearance Agreement. Notes that "the previous language could be construed that you also agreed that Scott was not at fault. Since Jeff will not allow us to put the facts of what happened in this document, you need to be protected if you subsequently learn that something different happened. You should not waive your rights without having a sworn set of facts that you can rely upon." | CH_0002080-2082 |
| 02/09/2014 | D. Beauchamp emails D. Chittick about ongoing edits that S. Menaged is making to agreement. Notes that edits are limited because D. Chittick has a fiduciary duty to investors in Forbearance Agreement, which makes drafting document a "difficult balancing act."<br><br>D. Chittick responds "I trust that we are in balance and I have even more confidence that scott and I can solve this problem with out issue and we never have to use the document that we've worked so long on getting completed."<br><br>D. Beauchamp then responds "Your point is understood. If possible, please recognize and understand that you will 'use' the document even if you and Scott never refer to it again. It has to have the necessary and essential terms to protect | DIC0006702<br>DIC0006703<br>DIC0006707 |

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| | you from potential litigation form investors and third parties." D. Chittick responds "I understand, I just want to get it done and I will continue on working on the solving the problem."<br><br>D. Beauchamp also comments that he "gave away the store" in the forbearance agreement according to a litigation partner. | |
| 02/10/2014 | D. Chittick emails D. Beauchamp noting that that he agrees he won't pursue a civil fraud case, but that he wants his money back. | DIC0005412 |
| 02/11/2014 | Meeting between D. Beauchamp, S. Menaged and attorney J. Goulder with litigators Notes document issue of Material Disclosure – "exceeds 10% of the overall portfolio" | DIC0005410 |
| 02/13/2014 | D. Beauchamp asks D. Chittick if he was able "to obtain the information from Scott for the dates and amounts for his additional funding so that I can insert it with my other changes". | DIC0006111 |
| 02/14/2014 | D. Beauchamp emails D. Chittick about changes J. Goulder keeps making after D. Beauchamp and D. Chittick talk. "Every time that Scott has gone to you after talking to Jeff, you are only told half of the story and less than half of the negative impact for you from a change they request. So Scott and Jeff believe with both of us in the room, that they will push you to reach an agreement over my objections and you will not listen to me. As Jeff told me, Scott has previously told Jeff that you will do anything to avoid litigation, so Jeff said that I am in a bad negotiation position. Jeff clearly thinks he can force you to agree to accept a watered down agreement and give up substantial rights that you should not have to give up. Unfortunately, it is not your money. It is you investors' money. So you have a fiduciary duty."<br><br>Also warns D. Chittick that he could "face an action by the SEC or by the Securities Division of the ACC if an investors is able to convince someone in a prosecutor's office that you somehow assisted Scott to cover up this fraud or you were guilty of gross negligence by failing to perform adequate due diligence (on behalf of you investors' money) to determine what was going on. If Scott performs the Agreement in full and everything goes right, then those claims are unlikely to | DIC0006803 |

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| | happen, but Scott will control the future events, so his FUTURE actions directly affect the likelihood of any action being brought against you."<br><br>I know you want this over and done, but Jeff just keeps trying to whittle away at your protections so that you are not protected in the future. Jeff's basic argument is how he construes "fairness" to Scott. However, your duty and obligation is not to be fair to Scott, but t completely protect the rights of your investors. I am sorry if Scott is hurt through this, but Scott's hurt will give Scott the necessary incentive to go after his cousin. You job is to protect the money that your investors have loaned to DenSco.<br><br>Title of email is "Denny: Please Read This But do NOT Share with Scott: Attorney Client Privileged!!!"<br><br>D. Chittick responds "I understand the situation. I understand I need to protect myself and my responsibility to my investors. At this point I don't' think I've jeopardized any of that. An agreement has to be reached between Scott and my self, which protects me and my investors and allows Scott and I solve the problem created by scott. What do you recommend to do?" | |
| 02/20/2014 | Meeting between J. Goulder, S. Menaged, D. Chittick and D. Beauchamp summarizing what needs to be in Exhibit A and various terms of agreement and status of loans outstanding | DIC0005444 |
| 02/20/2014 | D. Beauchamp emails BK attorneys asking for advice in how to protect D. Chittick in Forbearance Agreement. Good summary of what D. Beauchamp understand factual background to be that prompted Forbearance Agreement. D. Beauchamp forwards email to D. Chittick so D. Chittick can see how D. Beauchamp has characterized issue.<br><br>Notes that D. Beauchamp advised D. Chittick that a Forbearance Agreement needed to be put in place when he became aware of D. Chittick reworking loans and deferring interest payments to pay off some duplicate loans. | DIC0006729<br>DIC0006822<br>DIC0006736 |

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| | At the time, 145 loans made to Menaged entities were not in first positions. | |
| 02/25/2014 | D. Beauchamp tells D. Chittick that J. Goulder's "demands and changes have pretty much killed your ability to sign the Forbearance Agreement, which I believe Jeff wanted to do from the beginning. I did send the revisions back to the head of our lending group and he said that Jeff's changes are clearly intended to prevent the parties from reaching any agreement.<br><br>D. Beauchamp finds changes made to release section particularly problematic.<br><br>William Price of Clark Hill says client should not sign Forbearance Agreement. | DIC0006759<br>DIC0006691 |
| 02/25/2014<br>–<br>02/26/2014 | S. Menaged emails D. Chittick and says "Gregg wants to meet to figure out the plan. I will meet him tomorrow morning to discuss with him." (Presumably about how to handle the double liened properties where Active and DenSco had competing interests.)<br><br>D. Chittick responds, "That worries me." Then says, "U know u can't explain in any detail to Greg how we r working this out?"<br><br>S. Menaged responds, "Yes I know! That's what will make it difficult! I am trying to figure that out."<br><br>D. Chittick writes, "Gregg does not have to know how I am secured. This is necessary for my purposes.<br><br>S. Menaged responds, "He will probably say it is necessary for his purposes as well." | DOCID_00078185<br><br>DOCID_00078185 |
| 02/26/2014 | | |
| 02/26/2014 | D. Chittick emails D. Beauchamp and says that "I'm no longer in violation of anything with my investors. I'm in possession of money that now I can put to work with new loans that are actually paying me interest versus right now that I'm have no interest coming in. or I can return the money to investors if I can't put it to work." | DIC0006680 |

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| 02/27/2014 | Notes recount that D. Chittick has talked to S. Menaged "four hours" over the last 2 days. "Jeff told Scott that Jeff can beat every argument why this is a fraud." Notes further provide that "Denny willing to take loss this year – so long as DenSco gets some cash back – so DenSco can return cash to investors + reduce interest obligation."<br><br>"Denny needs this resolved because Denny is losing money to make payments to his investors if DenSco is not getting paid interest from Scott."<br><br>Notes also recite that "[h]ow to write this up for investors" discussed. Notes conclude that need a forbearance agreement because it will be less problematic. Forbearance agreement will explain procedure and protect D. Chittick for previous revisions.<br><br>"Will need multiple advance note (unsecured) so DenSco can advance cash on houses or double loans to be sold." | DIC0005439 |
| 03/07/2014 | D. Chittick emails S. Menaged regarding presumably Forbearance Agreement and says "I just got off the phone with david, he never told me what the delay has been, I guess busy. " | DOCID_00049186 |
| 03/13/2014 | D. Beauchamp tells D. Chittick that negotiations regarding language are problematic because they are already "very late in providing information to your investors" about loan problems. | DIC0006904 |
| 03/13/2014 | D. Beauchamp does complete rewrite of Confidentiality provision of Forbearance Agreement.<br><br>Advises D. Chittick to look at it before circulating to S. Menaged. Tells D. Chittick that he is "**very late** in providing information to your investors about this problem and the resulting material changes from your business plan. We cannot give Scott and his attorney any time to cause further delay in getting this Forbearance Agreement finished and the necessary disclosure prepared and circulated. | DIC0006904<br>DIC0006901<br>DIC0005849 |

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| | Incorporated into draft. | |
| 03/17/2014 | Changes to Forbearance Agreement to reflect changes suggested by D. Chittick<br>• Section 7.A. – LTV changed from 95% to 120%<br>• Suggests that in addition to $1 million line of credit, also extend $5 million line<br><br>Prior to this, when Chittick made suggestions to Forbearance, D. Beauchamp said that he was "concerned about disclosure to your investors." | DIC0005902<br>DIC0006958<br>DIC0006968 |
| 03/17/2014 | After D. Chittick is sent invoice for legal work, he forwards to S. Menaged and says "not nearly as bad as I feared!" S. Menaged responds that "it could have been worse! I can't stand these bills though!" D. Chittick responds that "I slow pay lawyers!" | DOCID_00049396 |
| 03/18/2014 | D. Chittick emails S. Menaged and says that he is working on "getting david to change the wording for the 1 million at 3%. Because you are selling the house we have to have it lay it out somewhere else that I'm lending 1 million at 3%." | DOCID_00049465 |
| 03/19/2014 | D. Chittick and D. Beauchamp exchange emails about language of forbearance agreement. Conversation reflects that D. Chittick getting lots of input from S. Menaged about what agreement should say about fraud. "Scott wants eliminated last part of the last sentence. . . . the Borrower and/or Gurantor. – then from 'in connection . . .' to be stricken, doesn't want it said fraud anywhere." D. Beauchamp apparently made changes in response to comments from S. Menaged.<br><br>Forbearance agreement modified to read that DenSco agrees to "execute a mutual release and covenant not to sue (or pursue) the Borrower and/or Guarantor in any action based upon the facts set forth in the Recitals to this Agreement." | DIC0006303<br>DIC0006308 |
| 03/20/2014 | D. Chittick reviews changes to Forbearance Agreement and notes that "rather unique way of doing the 1 million but I think it will work." Tells S. Menaged that he told D. Beauchamp that "I had told him that 5 million should be the max of the work out loan. When I told him that 1 million would come off of your house and then that would be needed to give me the flexibility to either put it on a house(s) or add it to the work out loan total, which I would account for differently of course." | DOCID_00049595 |

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| 03/25/2014 | D. Beauchamp sends email to D. Chittick asking "some hard legal issues in order to finalize the closing documents." These issues are:<br><br>1. What is the health status of S. Menaged's wife? This affects the ability of S. Menaged to bind the assets of the marital community.<br>2. Does S. Menaged have a family trust or other estate planning entity to hold or own marital community assets? This also affects the guaranty and the ability of D. Chittick to have "legal recourse to Scott's assets to support his obligations pursuant to the documents."<br><br>D. Chittick responds that he doesn't know answers, but asks D. Beauchamp to send specific questions to send on to S. Menaged, which D. Beauchamp does. | DIC0006175<br>DIC0006179 |
| 03/26/2015 | S. Menaged sends back answers to questions | DIC0006182 |
| 3/30/2014 | D. Chittick asks "Should we just have Scott's wife sign a disclaimer instead of adding her to everything? He says he owns it all sole and separate"<br><br>D. Beauchamp says that is fine. "Since we do not have a detailed financial statement indicating what assets are owned by who or what entity, we probably should have a document that Scott and his wife signs where Scott indicates how he hold his assets (no family trust, no family partnership entity, Etc.) and have his wife sign agreeing with the representations and disclaiming her community property interest in Scott's assets."<br><br>D. Beauchamp later tells D. Schenck that D. Schenck needs to prepare a Representation and Disclaimer Agreement and delete Scott's wife as a signer on the other documents.<br><br>Note: D. Chittick suggests disclaimer idea after S. Menaged proposes it. | DIC0006203<br><br>DOCID_00049870 |
| 04/03/2014 | S. Menaged emails D. Chittick and says "I have signed the Notes and Agreement even though it is not anymore a true understanding of what we are doing. . . . So | DOCID_00049977 |

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| | lots of this is no longer valid or True, but I signed it so at least you have it for and not to have Dave Change it again and again with every move we make." | |
| 04/04/2014 | DenSco lends to AHF, EI. Furniture King and S. Menaged $5 million. Properties listed as collateral for loan. DenSco makes an additional $1 million loan, guaranteed by Furniture King and other liens on homes.<br><br>Chart of loans found at DIC0005548 | DIC0005689 |
| 04/04/2014 | Secured line of credit promissory note signed.<br><br>Exhibit A to Forbearance Agreement is DIC0005550 and DIC0005558 | DIC0005700 |
| 04/11/2014 | Paralegal Jessica Zaporowski from Clark Hill send to D. Chittick the following that D. Beauchamp drafted:<br>• Forbearance agreement<br>• $5 million promissory note<br>• $1 million promissory note<br>• Security agreement and Guaranty agreement (Furniture King)<br>• Guaranty agreement (Menaged)<br>• Representation and Disclaimer agreement | DIC0005387 |
| 04/14/2014 | Forbearance Agreement executed.<br><br>Parties to agreement are AHF and EI (collectively Borrower), S. Menaged (Guarantor), Furniture King (New Guarantor) and DenSco (Lender).<br><br>Forbearance Agreement notes that Borrower indebted to Lender under certain loans and loans are secured by Deed of Trust. Guarantor guaranteed payment and performance of each loan in favor of Lender.<br><br>Forbearance Agreement notes that Borrower will discharge any lien that has priority over Forbearance Agreement's Deed of Trust. | DIC0008036 |

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| | Agreement notes that on 11/27/2013, Guarantor met with D. Chittick to inform Lender that "certain of the Properties had also been used (though Guarantor acknowledged no fault) as security for one or more loans from one or more other lenders . . . and the Loans from Lender may not be in the first lien position on each respective Property." Also at that meeting, Guarantor "acknowledged to Lender that Borrower had an obligation to discharge the liens of the Other Lenders or to take such other actions to satisfy Section 5 of each Deed of Trust within 10 days."<br><br>Loan balance is for $39,116,888.<br><br>Borrower agrees:<br>1. Generate income to recover proceeds from missing assets<br>2. To maintain life insurance policy for $10 million insuring S. Menaged's life, payable to Lender<br>3. To provide Lender with a separate personal guaranty from Guarantor, guaranteeing all of Borrower's obligations under the Loan Documents<br>4. To provide separate corporate guaranty from New Guarantor, guaranteeing all of Borrower's obligations<br>5. To pay the interest due to the other lenders for loans secured by any of the Properties<br>6. To arrange for private outside financing to pay off the other lenders and any other similarly situated lender. Borrower will also inform Lender of the terms of Borrower's transactions to obtain outside funds.<br><br>Guarantor consents to terms of Forbearance Agreement and agrees to be bound by all terms and provision.<br><br>Confidentiality provision built into Agreement, but there is an exception for Lender to disclose information needed by Lender's current or future investors. Disclosure is limited to applicable SEC Regulation D disclosure rules. Lender can describe: (1) the multiple Loans secured by the same Properties, which created the Loan Defaults, (2) | |

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| | the work-out plan pursuant to this Agreement in connection with the steps to be taken to resolve the Loan Defaults, (3) the work-out plan shall also include disclosing the previous additional advances that Lender has made and the additional advances that are intended to be made by Lender to Borrower pursuant to this Agreement in connection with increases in the loan amount of certain specific Loans, the additional advances pursuant to both the Additional Loan and the Additional Funds Loan and (4) the cumulative effect that all of such additional advances to Borrower will have on Lender's business plan that Lender has previously disclosed to its investors in Lender's private offering docs and which Lender committed to follow. | |
| 04/16/2014 | S. Menaged executes guaranty agreement regarding Forbearance Agreement. | DIC0010755 |
| 04/16/2014 | Secured Line of Credit Promissory Note executed between DenSco (lender) and Arizona Home Foreclosures (borrower) for $1 million | DIC0010791 |
| 04/16/2014 | Parties execute an authorization to update forbearance documents, which notes that CH has authority to insert replacement pages into forbearance agreement. Changes seem to be fairly minor (making dates line up, getting loan amounts correct, etc.)<br>• Amount of funds advanced to borrowers pursuant to $1M secured line of credit promissory note is $915,167.89 and updated figure under $5M secured line of credit promissory note is $1,780,239.76 | DIC0005823<br>DIC0008036 |
| 04/18/2014 | Daniel Schenck notes that there are discrepancies on loan work out documents between March 1 and April 16. "Several of the agreements refer to the balance of the Loans, as of March 1st, as $39,116,888, consisting of $37,133,019 in principal and $1,983,869 in accrued interest." April 16th version listed $39,752,893.28, with $37,456,620.47 in principal and $2,296,272.81 in accrued interest."<br><br>Also notes that there is a discrepancy in the amount of credit advances and that S. Menaged needs to confirm what the correct amount advanced is. | DIC0007341 |
| 04/18/2014 | D. Chittick emails D. Schenk and wants to know if the dollar amounts can be changed in the documents. | CH_0004241 |

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| | D. Beauchamp notes that there are huge risks with changing the numbers without S. Menaged's written permission. "There are so many arguments that could be made to a court to make all of the documents void and ineffective is we start changing more than just a few dates." | |
| 05/15/2014 | D. Beauchamp emails D. Chittick and says that need authorization from S. Menaged, S. Menaged's wife, and D. Chittick to finalize various changes to Forbearance Agreement. Initially requested email authorization, but after he never received it, noted that needed a more formal process to approve changes given time lapse in June 2014. | DIC007165-68<br>DOCID_00019226 |
| 2015 | Tax return for DenSco notes following:<br>• Balance of loans made to Scott Menaged personally and his entities is not identified<br>• Value of mortgage and real estate loans at beginning and end of tax year is $54,846,456 and $50,889,115, respectively<br>• Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is $55,530,688 and $49,803,682<br>• Total liabilities and shareholders' equity at beginning and end of tax year is $59,336,655 and $54,215,578, respectively | DP000296-340;<br>2015 Tax Returns & Work Papers |
| 2015 | Documents disclosed by D. Preston indicate that DenSco income was $823,780 and salary of Chittick was $215,600 | R-RFP-Response000014 |
| 03/13/2015 | D. Beauchamp emails D. Chittick to say that he wants to "talk about how things have progressed . . . . I would like to listen to you about your concerns, and frustrations with how the forbearance settlement and the documentation process was handled. I have thought back to it a lot and I have second guessed myself concerning several steps in the overall process, but I wanted to protect you as much as I could. . . . I acknowledge that you were justifiably frustrated and upset with the expense and the how the other lenders (and Scott at times) seemed to go against you as you were trying to get things resolved last year for Scott." | CH_0006604 |
| 03/13/2015 | D. Chittick forwards email from D. Beauchamp to S. Menaged and says "I have some legal reporting obligations that r the real rub, I will see what he has to say." | DOCID_00030170<br>DOCID_00030177 |

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| | S. Menaged then appears to ask if can delay reporting "a bit more till the dealership opens" so "we can make real headway on the workout." D. Chittick responds "That's what I have to find out is the timing of the need to report and stay in compliance and be able to show something that isn't scary enough to start a stampede on the bank!" S. Menaged advises "Hopefully you can show things in general terms and not specific. He will say no but there is no choice right now. Remember if you listened to him a year ago we would never be where we are now." D. Chittick responds, "I will be as general as I can, becuz I don't want to get him on a roll." | |
| 06/02/2015 | D. Chittick emails S. Menaged says "I think the best thing is to do is suspend, defer the interest on the workout. If you can make 100k payments a week to all principle the total will stop going up so fast and then will start working itself down in the next 60 days or so. I know you keep saying you don't want to. However, this solves a couple of problems. The balance goes the right direction, because with David, this is going to be a huge issue. Since our agreement says 5 million. The balance goes down and shows just mentally progress. I'll keep track of it and down the road we'll work that out. . . .<br><br>You are eating up 75% of my available cash right now. I can't have it go much further, otherwise I'm not going to have much of a business." | DOCID_00033018 |
| 03/16/2016 | AZ Department of Financial Institutions sends letter to D. Chittick noting that Department believes that DenSco had violated or is violating laws. | DIC0009149 |
| 07/18/2016 | S. Menaged texts D. Chittick and tells him he is leaving his bankruptcy attorney's office. | CH_EstateSDT_0035736 |
| 07/22/2016 | Ranasha texts D. Chittick and writes "I fear the enlightenment will be very dark." | CH_EstateSDT_0035820 |
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| 08/03/2016 | D. Beauchamp emails investors about D. Chittick's passing and wrapping up DenSco matters. | DIC0011830 |

**Undated Entries**

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| D. Chittick writes letters to each son on each year of his life.<br><br>Ty (year 1): discusses the thought Ranasha and D. Chittick put into having children and highlights the sacrifice Ranasha made to have children. Comments on miscarriage between Dillon and Ty.<br><br>Ty (years 2 and 3): effusive about how much Ty has grown<br><br>Ty (year 4): "I'm a different person. I'm probably short temper and not very fun loving a rarely laugh. I can assure you that I have done everything I can to be as good as father to you as I could. The things your mother has done, have affected me so strongly that I cannot fake my way through life being someone I'm not. I am disappointed that you won't have found memories of the fun loving somewhat crazy dad that I was before this year. . . . One day I will explain everything to you." Goes on to give usual updates. Notes that Ranasha swam with boys only twice all year. Also notes that when he took the boys to Costco once, "there was a 400 lb woman, and you yelled 'daddy there is big, bigger and biggest, she she's the biggest of everyone!' We left quickly! Though it was funny, just one of those times I Wanted to crawl under a rock!" Also notes that Ranasha did little to comfort boys when a scary incident involving a neighbor occurred. Concludes letter with "I hope you don't remember me with a short temper with you boys. I can tell you when I've lost my temper it's because your mother's actions have put me in a bad mood and you guys just end up suffering the outburst from it, for that apologize."<br><br>Ty (year 6): "In late February, you and Dillon said to me, 'daddy, why don't you ever laugh!?' you said 'ya you are the no laugh daddy!' Sometimes Brian makes you laugh, but we never see you laugh!' Now you know what I was dealing with and that day your mom told me she was moving out and wanted a divorce. I had been dealing with this for three years and it will be nearly another six months before we told you. Sorry, I hope you don't have memories of me being the no laugh daddy and no fun. I really tried my best for you." | CH_EstateSDT_0028092<br>CH_EstateSDT_0028093<br>CH_EstateSDT_0028094<br>CH_EstateSDT_0028095<br>CH_EstateSDT_0024437 |
| D. Chittick appears to write letter to self about Ranasha. Notes all the things she has done that upset him. Filled with resentment. | CH_EstateSDT_0024322 |
| Ranasha writes letter to D. Chittick about fight over going to Vegas and going to meetings to help resolve conflict. Apologizes to Denny. | CH_EstateSDT_0024321 |

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| Letter drafted to Eldon by D. Chittick from mother's perspective. Notes various instances of abuse against D. Chittick and other family members, and how Eldon dissatisfied in marriage (specifically with sex life and with mother's medical condition). | CH_EstateSDT_0064769 |
| D. Chittick writes suicide letter to someone named Adwee (likely nickname). Notes that "you taught me unconditional love. It was such a gift. . . . I hope you will remember me in a positive influence in your life." | CH_EstateSDT_0024416 |
| D. Chittick writes suicide letter to "Ally-Coo Man Choo!" Notes that "I have kept the picture of you at our wedding on my credenza all this time. It's just beautiful innocent photo that I always treasured. I hope you treasure my memory and I'm sorry for the sadness I've brought you." | CH_EstateSDT_0024417 |
| D. Chittick writes letter to Blonde (Sharla, his sister). "I know I've always been a sense of conflict and love for you. I apologize for not being more patient and understanding. I've always struggled to relate to you, I know it's my short coming. I've always been impressed by your accomplishments because I knew they were ones I could never attain! I'm sorry to send you in to a depression over this." | CH_EstateSDT_0024418 |
| D. Chittick writes suicide letter to Carol (presumably Patton, Mr. P's wife). "I never did anything intentional wrong like someone else you remember. . . . I helped you in your time of need, I need the favor returned. . . . You and Mr. P were great people and I was always proud to be considered family." | CH_EstateSDT_0024421 |
| D. Chittick writes suicide letter to CB. "Now you know why I kept pushing you away. I've been dealing with this since 2013. . . . I enjoyed all the time we spent together, you are an incredible woman in many ways." | CH_EstateSDT_0024422 |
| D. Chittick writes two suicide letters to Ranasha (nickname FACSLIB).<br><br>In first he writes, "You had nothing to do with my demise. Although you had everything to do with my sadness in my life. I hope you have conquered your demons and can dedicate your life to ensuring our boys have the best life they can and not fuck it up like you did yours and my life. Now you'll have to deal with my sister for the next ten years or so. . . . You were the only woman that I truly ever loved. But I guess that's not true since love is only possible when it's both ways. Several times you told me you never loved me. That's too bad I think I was worth it."<br><br>In second, gives instructions on what to do. "Also writes, "Iggy will of course be in charge of the boys trust. . . . She's knows you'll need help." Notes that he is "desperately afraid" of boys' anger. Explains that he is doing this because "[t]he consequences are so harsh that I believe I will end up in jail for a long time, completely financially ruined." Writes "I know you are going to hate me too. I understand. But I can promise you this, with all that you did to me and us; I never spoke badly of you in front of the boys. ½ of them was you. If I tear you down I'm tearing ½ of them down."<br><br>Appears to leave directions on what to do. | CH_EstateSDT_0024425<br>CH_EstateSDT_0024426<br>CH_EstateSDT_0025541 |

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| D. Chittick writes letter to unspecified person. "I did everything I could to make things rights once I found out how messed it was. I'm sorry I failed you, I did what you could have wanted to do. I just didn't use a gun!" | CH_EstateSDT_0024427 |
| D. Chittick writes letter to Heuey. "The one kid that wasn't supposed to be is the one that no one can imagine life without you! The closeness you have with your cousins will be a relationship you can carry through life. . . . I'm sorry I'm not able to watch, it would be quite entertaining! I'm sorry for the sadness and please be there for your cousins." | CH_EstateSDT_0024428 |
| D. Chittick writes letter to Jen. "I know this will take me off the pedestal of a great father that you had put me on. In time I think you'll agree it what was best for them. . . . I really enjoyed the time we shared through the struggles." | CH_EstateSDT_0024432 |
| D. Chittick writes suicide letter to Mike. "You are the oldest friend I have." | CH_EstateSDT_0024435 |
| D. Chittick writes suicide letter to Maxx. "I really enjoyed having you at me house. . . . Who knows where things will go with Petra." | CH_EstateSDT_0024434 |
| D. Chittick writes suicide letter to Iggy (Shawna). "I'm so sorry for the pain I've caused you and your kids, stress in your marriage and certainly all the issues I'm asking you deal with. . . . it's wrong for me to burden you with this shit. However, you are the one person in the world I can trust more than anyone to do the right thing. . . . I'm sorry that you have to now deal with her all the time. I know you hate her as much as I do. The only thing that got me to not say anything and do the things I did, was one thought. What was best for the boys? I hope that will guide you through this journey in hell." | CH_EstateSDT_0024430 |
| D. Chittick writes suicide letter to Mo and Sam. "I can't even imagine the unbearable hell I have just put you in. I am so sorry for bringing that pain to you. . . . You gave me the best upbringing a son could have. . . .I've failed as a son, and now as a father." | CH_EstateSDT_0024436 |
| D. Chittick writes suicide letter to Brian. "you became a very close friend and I enjoyed the talks, education and neighborly activities. . . . Perhaps that's my short lack of understanding of friendship, but when it comes to this kind of money, friendship means nothing; I lost that when I discovered the fraud and couldn't fix it." | CH_EstateSDT_0024420 |
| D. Chittick writes suicide letter to boys and gives advice on number of topics, including:<br><br>Relationships: "The less people you have sexual relations with the fewer problems you'll have with the opposite sex."<br><br>Money: Notes that making money was a challenge and "one that I enjoyed. . . . It may not make sense to you now, but trust me I was never frivolous with my money, you should remember I was cheap. I would spend it on experience way more easily than on objects. . . . If you need advice ask Aunty Iggy." | CH_EstateSDT_0024419 |

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| School/College<br><br>Notes that "your family will always be there. . . . Your mom and I didn't have that growing up.. You are lucky to have your grandparents and cousins in your life." | |