

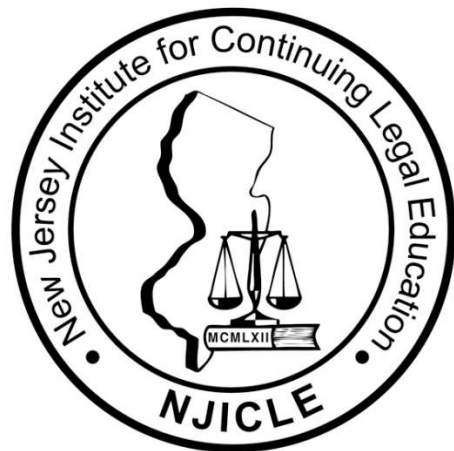
WORKING WITH MENTAL HEALTH EXPERTS IN FAMILY LAW CASES

2023 Seminar Material

M0785.23

New Jersey Institute for
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WORKING WITH MENTAL HEALTH EXPERTS IN FAMILY LAW CASES

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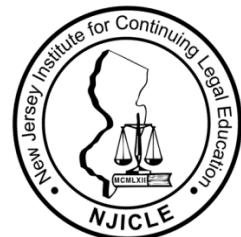
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In cooperation with the New Jersey State Bar Association **Family Law
Section** **M0785.23**



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Are Child Custody Evaluations Bound By Anything Other Than the Evaluator's Value System?

By Ronald G. Lieberman

Are child custody evaluations hemmed in by any approaches, methodologies, practices, or procedures ("AMPP") across the child custody field, or are they subject to the individual whims of the child custody evaluator? Without knowing the answer, why do we even use child custody evaluations when Evaluator #1 can use one set of AMPP while Evaluator #2 can use another and Evaluator #3 can use yet another, and all three of them can be correct?

Child custody evaluations are among the most important yet difficult to unwrap for practitioners for many reasons. An attorney may have a different view of the purpose of the evaluation than a judge because of their different roles in the legal system. What are the reasons that an attorney would seek a child custody evaluation other than parental conflict? Could a child custody evaluation be used for relocation cases or even the more unusual cases where a child is expressing a preference for custody? If so, are there different AMPP which apply in each of those situations?

How important exactly is any one provision or part of the child custody evaluation? As practitioners know, the reports include presentations on the strengths and weaknesses of the parents; recommendations for custody and parenting time; observations of the child and parent interaction; psychological testing of both parties; and interviewing of collateral witness. But on a practical glidepath, can an evaluator offer any standards or guidelines determining how many weeks should be allocated for an evaluation and a report? The answer is "no."

What about the quality of the contents of the report? A practitioner can delve into the quality controls surrounding psychological testing. But how can a practitioner tell if there were deficiencies in the child-parent observation? What can be used to suspect an incomplete listing of the documents reviewed? How useful is evidence from collateral sources? Do letters from collateral witnesses even matter?

Unfortunately, practitioners will not find clear guidelines for child custody evaluations because there are at least three different sets of them which have been promulgated. One is the "Guidelines for child custody evaluations in divorce proceedings" from the American Psychological Association; another is the "Practice parameters for child custody evaluations" from the American Academy of Child and Adolescent Psychiatry; and a third is "Model standards of practice for child custody evaluation" by the Association of Family and Conciliation Courts. These guidelines are aspirational, not binding on an evaluator. So, does it matter if the child custody evaluation falls below any of these guidelines? How can someone lock in an evaluator into any of these guidelines if they are merely aspirational? The question then poses is will the evaluation itself even be relevant?

No doubt the evaluation provides information but where are the guidelines for the forensic interview? Where are the guidelines determining which psychological test should be performed? In fact, can a practitioner name a psychological tests that actually directly measures parenting capacity? This author is not aware of any of them although some of them may draw

inferences such as the MMPI-2 and the MCMI-III. Evaluators will invariably provide direct observations of the parent-child interaction but where are guidelines for it? How many interactions should be observed; in what order should they occur; and what is it the evaluator is actually looking for? Should the parent-child interaction be structured or unstructured?

Evaluators will almost always seek interviews with collateral sources and review follow-up records. Who decides which records are relevant? How does an evaluator decide which witnesses to talk to in a case? How many witnesses should be interviewed?

It is not as if the practitioner himself or herself is immune from second-guessing. What AMPP do practitioners use in deciding who to hire as an expert witness for child custody evaluations? Have attorneys thought about whether it is important for the expert to have a certain number of years of professional experience in the field? What about the expert's professional reputation or educational background? Does the cost play into the equation? How about the knowledge that the expert would have of the legal system or the expert's publications in that field? So, the practitioner is likely choosing an expert based on subjective criteria.

With all these questions remaining to be answered about a child custody evaluation, the unanswered question still waiting for an answer is "Are Child Custody Evaluations Bound By Anything Other Than The Evaluator's Value System?"

CROSS-EXAMINATION

- Confirmatory bias: inclination to seek information that will confirm an initially generated hypothesis and the disinclination to seek information that will disconfirm that hypothesis.
 - Would you so agree?
- Are you familiar with the principle of primacy?
 - That principal basically means that when faced with conflicting stories the story we hear first we generally tend to believe?
- You met with Mr. XXXX first for an initial interview for two hours, correct?
- During that interview, Mr. XXXX told you many negative things about Ms. XXXX, for example
 - On page 16 of your report, you said that when the parties were living in Maryland she reportedly resented him and she was identifying him as the reason for their unpleasant circumstances;
 - On page 17 of your report, you said that he had an emerging sense that Ms. XXXX was unfairly criticizing him at every turn;
 - On page 17 you stated that he and Ms. XXXX had some agreement there would be no visitors to the home yet he had visitors come to the home in the first two days
 - On page 17, you wrote Mr. XXXX said that he was concerned about her parents increasingly meddlesome involvement in their lives and the discord which arose because of it.

- On page 17 you wrote Mr. XXXX believed Ms. XXXX sided with her parents and their ever more frequent disputes and he just wanted to spend time with her and their child alone;
 - # Aware H would go out on boys trips?
 - # Aware H had them to go to his family for Xmas Eve instead as a family?
 - # aware W would try to wake H for nighttime feedings and his door was locked with white noise machine on
- Also on page 17 you wrote Ms. XXXX began saying he threatened her and began filing police reports saying she wanted him to look like an abusive person.
- On page 17, you wrote Ms. XXXX began to isolate him from their son and it was more than he was willing to take so he filed for divorce;
- On page 17-18 you wrote Ms. XXXX was constantly micromanaging and criticizing Mr. XXXX every parenting decision with Child. According to him and she installed cameras throughout the home in an unsuccessful attempt to draw him into an argument that she could record;
 - # Aware no interior cameras were installed or located by H?
 - # Aware only camera was exterior Ring Camera?
- On page 18 you wrote Mr. XXXX said custody exchanges at the police station came about because of his ongoing fear that she will falsely accuse him of misbehavior;
 - # Aware H had body camera for custody exchanges?
 - # Consider body camera to be intimidating by one parent toward the other?

- On page 18 you wrote of Mr. XXXX's claim she is generally uncompromising and rigid regarding alterations in the parenting schedule going so far as to say she will never compromise;
 - # Aware W asked H to change parenting time due to snow storm and H refused?
 - # Aware W asked H to change parenting time due to tornado in her path and H initially refused?
- On page 18 you wrote that he said Ms. XXXX's criticisms of him are not constructive in any way.
- Doctor, from this information is it true that you formed some initial impressions from the data that was presented to you?
 - And there is some literature to the effect that psychiatrists frequently formed diagnostic impressions very early in the clinical examination, sometimes in a matter of minutes?
 - Doctor, is there literature and research in your field that this situation occurs?
 - Is there a body of research showing that initial beliefs are often maintained even in the face of counterevidence?
 - Is there a body of literature indicating that once clinicians have taken a position or adopted a conclusion they apply high standards of rigor to any contradictory evidence and will accept a lower standard of rigor from any data that supports their position?
- Doctor, are you familiar with the term "premature closure"?
 - Does that term refer to a tendency to form conclusions very early in the data collection process?

- Does the literature show that "premature closure" sometimes results in being resistant to data which might indicate that initial conclusions were wrong?
- We've established that you heard from the father for two hours as the initial interview in your forensic analysis?
- Doctor, you are not claiming that because you are a psychiatrist you are different from other human beings regarding the effects of confirmatory bias? or premature closure? or the principle of primacy?
- In fact Doctor on page 36 of your report in paragraph 2 you indicated that Ms. XXXX's parenting schedule reflected frustration with Co-parenting and animus towards Mr XXXX?
- Further you question Ms. XXXX's interest in actively facilitating a positive relationship between the child and father in page 36?
- Your statements in page 36 were in part based upon your interviews with him alone?
- You did not meet with Ms. XXXX for the first time until 12 days after you met with Mr XXXX, true?
- You met with Mr. XXXX and Child first and then waited 37 days to see Ms. XXXX and Child together?
 - True scheduled for 8/16/21; you confirmed it on 8/8/21 and she followed up on 8/9/21; you did not show on 8/16/21; W emailed you on 8/16/21; not done until 8/27/21
 - During that delay, you only had Mr. XXXX version of events to consider?
- You care about the people involved in the cases in which you are a forensic evaluator, correct?
- And even after you see an individual you reflect upon the clinical examination, review your notes, think about impressions, and possible conclusions?

- And did this reflection occur during the 12-day interval between your initial interview with Mr XXXX and your initial interview with Ms. XXXX?
- Doctor you were the one who arranged the appointments in the sequence of events regarding the forensic evaluation correct?
 - You determined the length of the interviews?
 - You determined the place of the interviews?
 - You determined the collateral sources that would be contacted?
 - You had the option did you not to see each parent on the same day for the same amount of time?
 - For example, you could have seen the mother for an hour and the father for an hour in the same day correct?
- Had you seen each parent on the same day, you would have had input from both parents as to the formulation of your initial impressions in your initial data collection?
- Had you seen each parent on the same day, you would have mitigated or ameliorated if not eliminated the effects of confirmatory bias, the principal of primacy, and premature closure?
- Doctor would you agree that when the parents meet with you they are under a certain amount of stress and anxiety because of the circumstances surrounding their visit with you
- Doctor is there a substantial body of scientific and professional literature indicating that the general circumstances under which a forensic examinations are conducted, meaning the time and the place and the purpose, affects the kind of information or data that emerges in the examination?

- Doctor isn't there research showing that such factors affect the kind of information that is obtained in the interview?
- Forensic evaluations depend upon situation effects in which it is taking place?
 - The existence of a divorce and a custody case could qualify as such situational effects correct?
 - In fact the DSM-V describes marital breakup as a psychosocial problem that can affect diagnosis and prognosis?
 - The breakup of a marriage especially when a young child is involved is a highly stressful situation for most normal people right?
 - The behavior observed under the circumstances may not be representative of the individual's behavior in the more normal, less stressful circumstances true?
 - Not only do we have the strain of the circumstances relating to the divorce and the issue of child custody but the additional strain of the circumstances of this clinical examination taking place?
- Doctor in addition to the psychological stresses of a divorce and custody proceeding is it not a fact that a clinical examination is also affected by the examiner himself?
 - The attitudes of the examiner?
 - The personality of the examiner?
- Doctor, have learned in your studies that some examiners with one childrethical orientation might record data different, obtain data differently, and interpret the data differently then would an examiner of a different childrethical orientation correct?
 - Similarly examiners with different personalities might get some different kinds of information from the people they examine, true?

- Is that true because people respond differently to different types of people, is that not so?
- What the examiner perceives, remembers, and records is also subject to various influences right?
- There may be distortion or bias due to the theoretical orientation of the examiner? the values and attitudes of the examiner? and other characteristics of the examiner?
- The examiner's interpretation of the data collected is subject to influence, distortion and bias due to those same factors correct?
- In addition forensic evaluation cases like this one necessarily involve a prediction?
- Doctor, isn't it a fact that a prediction in this field is speculative?
- And one examiner or clinician can base his or her conclusions on theories of child development that may differ from another examiner or clinician?
- You've seen those differences during your career?
- There are different and competing theories of child health?
- You offered one theory of child health in your report?
- Doctor you provided what would be called a clinical judgment correct?
- And isn't there a substantial body scientific and professional literature indicating that there are several serious flaws and problems with clinical judgment meaning it lacks validity and cannot be relied upon?
- The purpose of a child custody evaluation is to assess the best psychological interest per the guidelines for child custody evaluations in divorce proceedings issued by the APA, 1994 correct?

- Going back to your report, on page 19, you reported Ms. XXXX was friendly and respectful and had no difficulties of focusing?
- On page 20 she brought a binder full of notes correct?
- On pages 33-34 you wrote that Ms. XXXX cares about and is attuned to Child's needs?
- You further wrote Child clearly views his mother as a valued person in his life?
- You also wrote that you were struck by the natural and easy quality of their interactions?
- You further wrote their attachment is strong healthy and reciprocal?
- You had the opportunity to see Mr XXXX interact with Child and Ms, XXXX do the same?
- You then summarized what you reviewed from each of your visits, with your summary on page 28 of what you noticed for Mr XXXX and on page 30 for what we noticed for miss XXXX?
- Your summary of your home visit with Mr XXXX and his son spanned four page (starting on page 25 and continued through page 28)?
- Your summary of your visit with Ms. XXXX and Child spanned three pages (starting on the bottom of page 28 and through page 30)?
- You used the term "maternal" in discussing Ms. XXXX, right?
- Yet you did not use the term "paternal" in discussing Mr. XXXX, right?
- You indicated on page 34 that you questioned what may have been a burn on Child's leg?
 - It was a burn according to Ms. D?
 - She showed you records and documents about it?
 - Offered them to you?
- The child custody evaluator recognizes the importance of securing information from collateral sources?

- Done to explore alternate hypothesis concerning issues pertinent to the valuation?
 - Such collateral sources would include oral or written reports from doctors?
 - Do you know that Child had to be taken to the doctor did you not?
 - You received and records showing bruises and marks on Child when she said he would come back for Mr XXXX correct?
 - Yet on page 35 of your report you stated her allegations against him any lack a good faith basis?
- Doctor would it be fair to say that you asked the parties to provide you with collateral witnesses?
 - Nothing in your report indicates who you spoke to or when you spoke to anyone other than XXXXX?
 - Should not a child custody evaluator take into account social support networks whose availability to the child depends on the custody arrangement?
 - Those social supports would include grandparents or other family members and friends right?
 - There was nothing in your report about any social network Ms. XXXX, correct?
 - The Journal of the American Academy of Child Adolescent Psychiatry from October 1997 said that reports should avoid inflammatory statements or comments that could be seen as a value judgment, correct?
 - Yet on page 35 of your report you indicated that you pondered whether Ms. XXXX's actions were purposeful and disingenuous designed to try to take advantage in this case?
 - You had both parties complete a psychological test called the personality assessment inventory (PAI) correct?

- PAI is a personality test designed to provide information relevant for a clinical diagnosis and to measure the severity and breadth of any psychological defects?
- It helps predict future violence and recidivism?
- You weren't providing a clinical diagnosis here were you?
- You were here to evaluate?
- Clinical scales in PAI assess Somatic Complaints, anxiety, anxiety related disorders, depression, mania, paranoia, schizophrenia, borderline features, antisocial features, alcohol problems and drug problems?
- Most of these clinical scales also have subscales including the anti social feature scale including subscales of antisocial behaviors, egocentricity, and stimulus seeking?
- The interpersonal skills would have assessed the levels of dominance and warmth that the test takers display in their relationship with others?
- I'm correct in that PAI still bears the copyright dates 1990 and 1991 thus has not been changed since then?
- Isn't it true that the professional manual for the PAI says that the scaled were selected to reflect the 5 constructs believed to be the "most pertinent to a broad banded assessment of mental disorders"?
- I'm correct in saying that there are no published data specifically approving of the use of the PAI in child custody evaluations?
- The scoring was done by way of computer correct?
- You don't know the skill level or the training of the individual who handled the computer scoring right?

- Just because something was scored by a computer doesn't mean it was etched in stone correct?
- You should review the scoring for completeness and accuracy?
- Yet there is nothing in your report indicating that you reviewed the computer scoring of the PAI?
- You would expect someone in a divorce setting where child custody is involved to present herself in the unreasonably favorable lights?
- There is published data regarding the use of the Minnesota multiphasic personality inventory-2 as a personality test?
- You could have used the MMPI-2 right?
- Your only contact with XXXXX was one phone conversation on October 8, 2021 correct?
 - You had no in person meeting with him?
 - How long did that telephone call last?
 - Did you take any notes?
 - Do you have those original notes?
 - Did you read any notes that Dr Booker may have taken during his sessions with Mr XXXX?
 - So you basically took XXXX word for what he said without any form of corroboration through original notes or other data?
 - Did you ever know or converse with XXXX prior to that one phone call?
 - Are you familiar with his reputation within the professional mental health community?
 - So whether he was an accomplished and highly respected mental health professional or a quack you had no way of knowing?

- Doctor, while recognizing that you are not a lawyer, I know you've had extensive courtroom experience, so you are aware of what is known as hearsay, true?
 - Hearsay to your understanding is basically out of court statements to prove a relevant fact in the case correct?
 - And would you agree with me that the portion of your report relating to Dr Booker are out of court statements upon which you have relied?
- Doctor, there is a segment of your report entitled "summary and formulation"?
 - That starts on page 30 correct?
 - And that section actually contains your conclusions and opinions about the issues involved?
 - Doctor there is a difference between expert opinions and subjective opinions correct?
 - You understand Doctor that in terms of professional opinions it is implicit that the opinion be stated in terms of reasonable professional certainty?
 - And to give an opinion based on a reasonable professional certainty it must be grounded upon studies, research, literature in the field, and empirical data known to the mental health professional?
 - So what is known or relied upon by a mental health professional is that which is established and verified as reported in peer reviewed professional literature, not what you as an individual may conclude idiosyncratically from intuition or personal value judgments?
 - You are familiar with the peer review process?
 - By peer, you mean people in your area of expertise?

- So the peer review process involves a review of one's opinions of his expert peers of colleagues?
 - It allows one to get valuable feedback from other experts in your field about what they think of your opinions?
 - It provides a sense of whether your opinions are generally regarded as supportable and reliable by other experts in your field?
 - Peer review can be very valuable in the expert process, correct?
 - One form of peer review involves standing up at meetings and sharing your views with peers of fellow colleagues?
 - And you are discussing the bases of your opinions with them?
 - This allows your peers to comment on the strength or weaknesses of your opinions?
 - You have been involved in this case for several months, correct?
 - You have never stood in front of a group of your fellow colleagues to share with them the opinion you shared with us today on direct examination?
 - Another form of peer review is publishing articles?
 - When you submit an article to a professional journal, the article is peer reviewed before it is published?
 - This too can be a valuable part of the process?
 - It might help you weed out mistakes or junk science?
 - You have never submitted a manuscript stating your opinions as expressed to us today to a journal for publication?
- In your 38-page report did you cite to any studies, literature, research, or empirical data?

- Doctor, would you agree with me that different backgrounds of psychiatrists predispose them to reach different conclusions based upon the same data?

Working with Experts in Family Law Cases

Materials by Matheu D. Nunn, Esq.

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Exhibit D, Disability Expert: Excerpt of cross-examination where expert wrote 4 reports and all underlying collateral information was provided by litigant who retained expert

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Twenty Five “Do’s” and “Don’ts” Of Cross-Examination

1. **Do** prepare – thoroughly.
 - a. You must know the facts better than the expert and you must know the expert’s report better than the expert.
 - b. The expert’s report in your case could be inconsistent with recommendations or assertions from reports or articles written by that expert. (See **Exhibit A; Exhibit B**).

2. **Don’t** try to learn as much about the expert’s *field* as the expert – *you will never know as much about the expert’s field as the expert*.
 - a. But, do not fret, you do not need to know as much about the field as the expert because you will know the facts of your case better than the expert.
 - b. You may want to obtain prior articles written by the expert if for no other reason than to let him/her know you did your homework. (See **Exhibit C**).

3. **Do** obtain any treatises, articles, or any other materials cited to by the expert in his or her report.
 - a. These materials are readily available on JSTOR, Amazon.com, the APAs website, your own expert may have them, etc. (See **Exhibit C**).
 - b. Make sure you get the edition or version cited to by the expert – *and, then, if there is a more recent edition, get that one too*.

4. **Don’t** assume that the expert actually (or recently) read the entirety of the treatise, article, or other materials cited to in his or her report. (See **Exhibit B**).

5. **Do** take the expert’s deposition if the expert did not cite to any authoritative materials or rely on any psychological/scientific principles in his report.
 - a. Depending on what happens in the Deposition, you may be able to get the expert’s report barred.

6. **Don’t** always take an expert’s deposition – you may tip him or her off to your cross-examination strategy.

7. **Do** ask leading questions.
 - a. In terms of importance, this is right behind “preparation” in your arsenal.

8. **Don't** be afraid to take a calculated risk through a question calling for a narrative response.
 - a. If you have an expert on the ropes and you have impeachment material for either direction the expert may go with his or her narrative response, you may want to take the risk. A fumbling expert who tries to escape through a long-winded narrative response is bad; a fumbling expert who tries to escape through a long-winded narrative response and then gets impeached even further is worse.

9. **Do** be yourself.

10. **Don't** try to be someone you are not.
 - a. Some attorneys use a broad outline; some attorneys use detailed notes.
 - b. Some attorneys yell; some attorneys use inflection in their voices to highlight an important point.
 - c. Be comfortable in your approach, which will make you more effective.

11. **Do** have an agenda.
 - a. If any of you are baseball fans, think of cross-examination in the same way Greg Maddux approached pitching.
 - b. Greg Maddux threw pitches in the first inning – *including ones that Maddux knew may result in a single or a base on balls* – to set the batter up for the batter's eighth inning at-bat. (See **Exhibit A and B**).

12. **Don't** have a script from which you refuse to depart.
 - a. I use detailed notes.
 - b. I frequently depart from them, which leads to the next “**Do**”.

13. **Do** listen to the expert's answer.

14. **Don't** let the expert hijack the question with his or her answer.
 - a. You are asking leading questions for a reason.
 - b. Some experts will say "I cannot answer that question 'yes' or 'no'".
 - c. There are several ways around this, which I will discuss – but they all require you to assert your control (and a willing judge).

15. **Do** know the elements that the expert is trying to prove, or psycho-legal question he or she is trying to answer through his or her testimony.

16. **Don't** feel the need to disprove every element/factor.
 - a. Look at cross-examination like a game of Jenga.
 - b. You do not win Jenga by pulling every single piece out of the stack.
 - c. You win Jenga by methodically picking away the stack.
 - d. When enough pieces are pulled away, the stack falls – and so will the expert's opinion.

17. **Do** know the New Jersey Rules of Evidence.
 - a. You must be prepared to meet your adversary's evidence objections.
 - b. I do not care what anyone says, "asked and answered" is not a proper objection; there is an objection on this score that can be found in the Rules of Evidence and it relates to the cumulative presentation of evidence. Find it.
 - c. Other important ones for Cross-examination: N.J.R.E. 104; N.J.R.E. 106; N.J.R.E. 401-405; N.J.R.E. 602; N.J.R.E. 607-609; N.J.R.E. 611-613; N.J.R.E. 701-705; N.J.R.E. 801-803; N.J.R.E. 806; N.J.R.E. 808;

18. **Don't** be afraid to make a thorough record in response to an objection.
 - a. Some judges try to "shut down" argument over evidence issues, particularly in Family Part matters.
 - b. Do not be afraid to object and state – in a respectful manner – that you would like to place your response to the objection and the reason that the evidence is relevant and admissible.
 - c. You may have an appeal; the Appellate Division will only have the "record."

19. **Do** try to get an expert to use words like “always” or “never”.
 - a. Especially if you have impeachment material in the form of prior testimony.

20. **Don't** allow the expert to explain “why” he or she said “always” or “never”.

21. **Do** attack the expert's failure to connect the facts of your case with the recommendations.

22. **Don't** forget to “un”connect-the-dots through the use of hypothetical questions based on evidence that the expert failed to consider.
 - a. But, be careful in this approach.
 - b. You do not want to ask the following: “Dr. _____, *if you learned that _____, your opinion would change, correct?*” **UNLESS** you have something with which to impeach the expert (*I like to wait until later on to use it*) such that you do not care what answer he or she provides.

23. **Do** take as much time as you need to cross-examine the expert.

24. **Don't** ask one too many questions.

25. **Do** have fun.

EXHIBIT A

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CROSS-EXAMINATION BY MR. MUNN:

Q. Doctor, you have your report in front of you?

A. I do, sir.

Q. Can you turn to page 44.

A. I'm sorry, 44?

Q. 44.

A. Okay, I'm there.

1 Q. You concluded -- the data I have collected
 2 through interviews, observations and collateral sources
 3 clearly reveals that receives consistent, warm and
 4 empathetic care from Ms. while the care he receives
 5 from Mr. lacks consistency and empathy, correct?

Remember this...

6 A. Yes, I did right then.
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Q.

A.

Q. You reviewed the plaintiff's Answers to Interrogatories, correct?

A. Yes.

Q. Your report does not reflect that you reviewed the defendant's Answers to custody interrogatories, correct?

A. Correct.

Q. You reviewed Mr. deposition transcript?

A. Yes.

Q. Did you review Mrs. deposition transcript?

A. Yes.

Q. So, you're aware of her approach to scheduling doctors' appointments, correct?

A. I'm not sure what you mean by her approach.

Q. Her feelings about discussing the doctors' appointments with Mr. prior to scheduling them?

A. My understanding is that she does not clear that with him before she makes the appointment, correct.

Q. Now, are there any cases in which you've awarded joint legal custody, but allowed one party, one parent to have certain purview of responsibilities?

1 A. Well, I mean, not to be picky, but I don't award, I
2 just recommend.

3 Q. Okay.

4 A. But yes, I have recommended that.

5 Q. So, for example, one party could be responsible
6 for scheduling medical appointments?

7 A. That could happen.

8 Q. Or activities?

9 A. I'm not sure I actually recommended that, but it
10 could happen.

11 Q. You did it in (phonetic) very
12 recently, correct?

13 A. Yes. That was -- that was very recent, yes.

14 Q. And you recommended 50/50 parenting in that
15 case?

16 A. I did.
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→ I had a copy of the report from this case.

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The other case, most recently in . I think,
one of the parents would not tell the other parent who
the doctor was that the child was being brought to, would
not tell the other parent any results or even when the
appointments were scheduled. So, basically one parent
was excluding the parent, the other parent from
involvement in the child's medical history, medical life.

Q. And you would make a recommendation like that
because a person's behavior in the past is the best
predictor of their behavior in the future in a comparable
situation, correct?

A. Unless something gets intervened, that's correct.

Q. Correct? Will you turn to page 30 of your
report?

A. I'm there.

Q. You wrote "Ms. also pointed out that even
though Mr. says he has flexible work hours, he has
not been able to join her for doctors'
appointments, even though she has given him a significant
amount of advance notice of his appointments," correct?

A. That's what she said, yes.

*I know
how he would
answer*

1 Q. So, did you accept what she told you as true?

2 A. No.

3 Q. Right? You're going to compare it with
4 collateral information?

5 A. And the doctor's -- and the medical records?

6 Q. And that's a collateral source of information?

7 A. Yes.

8 Q. And you obtain doctors records?

9 A. Yes.

10 Q. You obtained them for a Dr.

11 A. I did.

12 Q. The child's dermatologist?

13 A. Yes.

14 Q.

15 Turn to page 41 in your report.

16 A. I'm there.

17 Q. The records you reviewed revealed that the
18 child suffered from atopic dermatitis?

19 A. Yes.

20 Q. He has eczema?

21 A. Yes.

22 Q. Correct?

23 A. Correct.

24 Q. The records revealed that . . . had his first
25 appointment with Dr. . . . in April 2015?

Set-up



Dr. thinks I am asking about appointments and only appointments.

1 A. Yes.

2 Q. Both parents attended?

3 A. I believe so.

4 Q. May 2015 was the second appointment?

5 A. I would have to look -- there it is, yeah. Yes, they were. That was the second appointment.

7 Q. Both parents attended?

8 A. I would have to check and see.

9 Q. Appointment in July 2015?

10 A. Yes. Both parents were present for all three
11 appointments.

12 Q. Appointment in August 2015?

13 A. Yes, there was an appointment then.

14 Q. And based on your review of the records, you
15 don't know whether both parents were present, correct?

16 A. Correct.

17 Q. And the final visit that's referred to in your
18 report is December 10th, 2015?

19 A. Correct.

20 Q. So, it is possible Mr. attended four out
21 of the five visits, correct?

22 A. Yes.

23 Q. Because Mr. didn't attend the December
24 10th one; is that correct?

25 A. Correct.

1 Q. Ms. -- excuse me. Dr. advised the parties
2 to apply hydrocortisone ointment to the child's affected
3 areas, correct?

4 A. Yes.

5 Q. To face, right?

6 A. Yes.

7 Q. To his body?

8 A. Yes.

9 Q. Okay. And they revised to follow the ointment
10 with a heavy emollient, such as Aveeno eczema cream,
11 correct?

12 A. Yes.

13 Q. Now, you conducted a home visit with Mr.
14 on July 20th, correct?

15 A. Yes.

16 Q. He bathed right?

17 A. Yes.

18 Q. He fed, prior to bathing him?

19 A. Yes, he did.

20 Q. And Mr. then took him in the basement.

21 A. Yes.

22 Q. And he applied emollient to the child?

23 A. He did.

24 Q. Correct?

25 A. Yes.

Set-up

→ I changed inflection 176

1 Q. That shows a lack of empathy?

2 A. No.

3 Q. Okay. It shows empathy, doesn't it?

4 A. Caring certainly.

5 Q. Right?

6 A. Yes.

7 Q. You did Mrs. visit on July 7th, correct?

8 A. Yes.

9 Q. She fed

10 A. Yes.

11 Q. Bathed

12 A. Yes.

13 Q. Your report doesn't reflect that she put any
14 cream on correct?

15 A. Correct.

16 Q. And if she had, you would have noted that in
17 your report, correct?

18 A. I would have noticed it in my report. I would have
19 noticed it, and I did not notice it, correct.

20 Q. You obtained records from a

21 A. Yes.

22 Q. That's the child's pediatrician?

23 A. Yes.

24 Q. You reviewed those records?

25 A. I did.

There were no examples of lack of empathy listed in report.

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EXHIBIT B

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Q. Now, the third phase of the formation of attachments is referred to as the attachment phase?

A. Yes.

Q. Correct? This occurs between seven months and two years?

A. Yes.

Q. *And the final phase is referred to as the Goal Corrected Partnership Phase?* [Nunn's italics]

A. I'm not – okay.

Q. You can disagree with it.

A. No, I'm not disagreeing.

Q. *Okay. And this is from two years of age to four years of age?* [Nunn's italics]

A. All right. Correct.

Q. And again, agree or disagree. Most children in two-parent families form attachments to both parents?

A. Agreed.

Q. Most Infants in two-parent families form attachments to both parents at about the same age?

A. Agreed.

Q. And this is typically around six to seven

[20+ pages later]

Q. You cited to an article from *Lamb and Kelly* from 2000, correct? [Nunn's italics]

A. Kelly and Lamb, yes.

Q. Kelly and Lamb. Now can you go to page 44 of your report?

A. Yes.

Q. I asked you earlier about the final attachment phase, correct?

A. You did.

Q. And you agreed with me that this occurs between

[Nunn: he actually cut me off to answer!]

A. Two and four.

Q. Two and four?

A. Mm-hmm.

Q. And you cited to Kelly Lamb?

A. Yes.

MR. NUNN: Judge, may I approach the witness?

THE COURT: That's fine.

MR. NUNN: And I am going to – this is not going to be marked as an exhibit, I am proffering that this is a learned treatise that the doctor himself

Q. Well, first off, *would you agree that this is the article that you were referring to in the reference section of your report?* [Kelly/Lamb] [Nunn's italics]

A. Yes.

Q. Okay, will you turn to page 4?

A. The pages aren't numbered, so –

Q. Understood.

A. Okay, I'm on page 4.

Q. What are the last words at the bottom of page 4?

A. Goal Corrected Partnerships.

Q. Okay. Can you turn the page? Can you read the first sentence?

A. *“Finally, the Goal Corrected Partnerships Phase occurs between 24 and 36 months of age.”* [Nunn's italics]

Q. That's it. Not 48 months of age, correct?

A. Thirty six months, correct.

Q. *So, you mis-cited this article, correct?* [Nunn's italics]

A. *I did.* [Nunn's italics]

[Nunn: The child in this custody case was almost 3 years old.]

Q. So we've already established that ____ is attached to both parents, correct?

A. Yes.

Q. He's thriving?

A. That's my opinion, yes.

Q. Spends about equal time with his parents, right?

A. Hour-wise, yes.

Q. And in both your report and your testimony today, *you misrepresented*, the final phase is from 24 months to 40 years, correct?

[Nunn's italics]

A. I am – I stand corrected, correct.

Q. Okay. You believe Ms. _____ is _____ primary attachment figure, correct?

A. No. **[Nunn's italics]**

Q. You don't?

A. No. *She said she was.* I didn't say she was. **[Nunn's italics]**

[Nunn: Expert later admits child attached to both parents equally.]

EXHIBIT C

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CROSS-EXAMINATION BY MR. NUNN:

9

Q Dr. you're looking at D-85A?

10

A Yes, I am.

11

Q You recognize that?

12

A Yes, I do.

13

Q Was that the report that you were discussing
this morning in court?

14

15

A Yes, it is.

16

Q You were retained in this case by Mrs.

17

correct?

18

A Yes.

19

Q She was referred to you, however, by Mr.

20

office, correct?

21

A Yes.

22

Q What's the date on that report?

23

A June 2nd, 2014.

24

Q Have you had any interviews since that time

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with Mrs.

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The DSM-5 also contains a section on malingering,
correct?

A Yes, it does.

Q And although it may have moved places in the
fifth version from the fourth version, you're familiar

1 with it?

2 A Yes, I am.

3 Q You didn't cite to the DSM-5's definition of
4 malingering, did you?

5 A Oh, no, I don't think I did.

6 Q Okay. Do you know it off the top of your
7 head?

8 A Yes. It's -- in a litigated situation, it's a
9 person who is attempting to avoid work to avoid
10 military service. In a -- where there's the
11 possibility of secondary gain which is usually
12 financial.

13 Q This is it, right? This is the DSM-5? And
14 that's what you used regarding the PTSD diagnosis?

15 A Yes.

16 Q Correct.

17 A Yes.

18 Q And, again, this is a standard reference in
19 your field, correct?

20 A Yes.

21 Q You've lectured on the subject of malingering
22 before, correct?

23 A Yes, I have.

24 Q Specifically, in the personal injury context,
25 correct?

1 A Yes.

2 Q How many times have you lectured on
3 malingering?

4 A The most recently was a week and a half ago.

5 Q Was that with Mr from my office?

6 A No that was not.

7 Q He could probably benefit from that seminar
8 as well, correct?

9 A I --

10 THE COURT: From his malingering. Are we
11 saying Mr. is --

12 MR. NUNN: We're not going to give him this
13 transcript however.

14 THE COURT: He can always get it on
15 CourtSmart.

16 THE WITNESS: I presented on
17 on
18 malingering and somatic symptom disorders in adults
19

20 BY MR. NUNN:

21 Q Okay.

22 A And prior to that, I have presented at ICLE --

23 Q With Dr. correct?

24 A I'm sorry?

25 Q Was it Dr.

1 A Oh, wow, that was -- that was a long time ago.
2 You did your homework.

3 Q Just asking the question.

4 A No, no, no, that's fine.

5 Q Now, considering that you've lectured on the
6 subject, correct?

7 A Yes.

8 Q And you're familiar with the subject?

9 A Yes.

10 Q And you're familiar with the DSM-5 definition
11 on the subject?

12 A Yes.

13 Q You cited to articles before, correct?

14 A Yes, I have.

15 Q You're familiar with Dr. ()
16 correct?

17 A Yes, I am.

18 Q And he publishes a book on the subject,
19 correct?

20 A He what?

21 Q He has a book on this subject?

22 A I think he has at least three.

23 Q One of them is the *Clinical Assessment of*
24 *Malingering and Deception*, correct?

25 A Yes.

1 Q And you're very familiar with that?

2 A I am.

3 Q That's kind of like the Bible of this area?

4 A I wouldn't go that far.

5 Q Okay. Would you agree with me that it's
6 relied upon in this area?

7 A I would say it's one of the sources that's used,
8 yes.

9 Q Would you say that you use it on this
10 subject?

11 A I -- I will use it, yes.

12 Q Okay. And you're a member of the APA,
13 correct?

14 A Yes, I am.

15 Q What is the APA?

16 A The American Psychological Association.

17 Q So if the APA referred to that book as widely
18 regarded as the standard reference in the field, would
19 you agree or disagree with that statement?

20 A Read the sentence again please.

21 Q Sure. Widely regarded as the standard
22 reference in the field.

23 A What year was that written from the APA?

24 Q Well, I'm going to ask you generally do you
25 agree with that statement or no?

1 A I wouldn't say it is the standard, I'd say it's
2 one of the standards that's used.

3 Q Do you own that book?

4 A Yes.

5 Q Would you purchase that book if it wasn't
6 something that you thought would be useful in your
7 profession?

8 A Sometimes I purchase books that weren't useful in
9 my profession.

10 Q But you cited to correct?

11 A I did cite yes.

12 Q And has cited to correct?

13 A I'm sorry?

14 Q And has cited to correct?

15 A Oh, I don't know that did.

16 Q Would you like for me to show you an article
17 of yours in which you cite to both of those?

18 A Sure.

19 Q I'm going to bring you back.

20 A Yes, you are.

21 MR. NUNN: May I approach?

22 THE COURT: Yes, of course. And mark this
23 what?

24 MR. NUNN: I believe this is P-172.

25 THE COURT: 172?

1 MR. NUNN: Yes.

2 THE COURT: Okay.

3 (Exhibit P-172 marked for identification.)

4 THE COURT: Okay.

5 BY MR. NUNN:

6 Q Time machine.

7 A Oh, my God. This -- how old is this? Oh, 2009.

8 Wow.

9 Q You remember this?

10 A Vaguely.

11 Q Why don't you take a look at it.

12 A Okay.

13 Q And I've included in this the table of
14 contents.

15 A Okay.

16 Q And what was the title of the article that
17 you wrote?

18 A

19

20 Q Would you agree with me that somewhat similar
21 to what you're doing here today?

22 A Yes.

23 Q Okay. Do you have any independent
24 recollection of this specific article that you wrote?

25 A In what way?

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And I'm not sure how you answered this question.
Would you agree with me that Dr. Rogers is an expert in
the field of malingering?

A Yes, I would.

Q Okay. So then we may not need that article
at all, you can close it.

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Q You'd agree with me that a sophomore in high school is about 15 or 16 years of age?

A Yes.

Q So you'd agree with me that this incident happened 20 years ago?

A Yes.

Q And she remembered the subject matter of the bullying?

A Yes.

Q That she was suspended?

A Yes.

Q She was suspended for one day?

A Yes.

Q That there was an embrace or a hug upon the return after this suspension?

A Yes.

Q Would you agree with me that 20 years is long-term memory?

A Yes.

Q She advised you that she went to the University of Kentucky, correct?

A Yes.

Q And that she then went onto I believe it's Eastern Kentucky?

- 1 A Yes.
- 2 Q She -- she said she transferred?
- 3 A Yes.
- 4 Q Did she tell you she did anything else while
5 she was at Eastern Kentucky University?
- 6 A No, not that I recall other than she was also
7 working.
- 8 Q Of beauty school?
- 9 A Yeah.
- 10 Q She recalled that she met Mr. on
11 vacation at in correct?
- 12 A Yes.
- 13 Q She recalled sitting with her mother at a
14 table at a bar, right?
- 15 A Yes.
- 16 Q Mr. invited her over several times?
- 17 A Yes.
- 18 Q He gave her his business card?
- 19 A Yes.
- 20 Q She recalled that the abuse started on the
21 honeymoon, right?
- 22 A Yes.
- 23 Q Mr. called her fat?
- 24 A Yes.
- 25 Q Said, "Shut the fuck up"?

- 1 A Right.
- 2 Q And I'm quote -- those are quotes, correct?
- 3 A That's right.
- 4 Q That's specifically what she told you?
- 5 A Yes.
- 6 Q Do you know what year Mr. and Mrs. [redacted] got
7 married?
- 8 A In [redacted]
- 9 Q And how many years ago would that have been
10 from June of 2014?
- 11 A
- 12 Q Would you agree with me that's long-term
13 memory also?
- 14 A Yes.
- 15 Q She recalled that a few weeks after getting
16 pregnant, he began -- he is Mr. [redacted] correct?
- 17 A Yes.
- 18 Q Shoving, pushing, and grabbing the skin
19 between her thighs and twisting them?
- 20 A Yes.
- 21 Q She contemplated having an abortion?
- 22 A Yes.
- 23 Q But she told you that as a Southern Baptist,
24 she could not?
- 25 A Right.

1 Q She didn't mention Native American Priestess
2 in that dialog, did she?

3 A She did not.

4 Q She recalled that during her fifth month of
5 pregnancy, Mr. took her hands and hit her in the
6 lip with her own hands, correct?

7 A Yes.

8 Q She said fifth month, right?

9 A Yes.

10 Q Not fourth month, not sixth month, right?

11 A Yes.

12 Q Do you know how old the children are?

13 A I think they're now 10 years old, 10, 11 years
14 old.

15 Q Okay. And you'd agree with me that she would
16 have to be pregnant before she had children, right?

17 A Yes.

18 Q Okay. So you'd agree with me that this
19 incident happened 11 years ago?

20 A Yes.

21 Q She remembered these details about it,
22 correct?

23 A Yes.

24 Q And 11 years is long-term memory, right?

25 A Yes.

1 Q Page 7, she talked about Mr. body
2 slamming her, correct?

3 A Yes.

4 Q What was the date of that incident? She
5 didn't give a specific date, did she?

6 A She said he -- well, he -- that he did it the day
7 before her brother came for Christmas.

8 Q What date did her brother come for Christmas?

9 A I don't know. My -- my thought was the 24th.

10 Q Well, did she tell you?

11 A No, she didn't.

12 Q Did she say it was one body slam?

13 A At that -- at that time, yes, it was one body
14 slam.

15 Q She told you that he tried to shave her head?

16 A Yes.

17 Q What date was that?

18 A I don't recall.

19 Q Would you like to look at your report?

20 A Okay. I'm not finding it.

21 Q She didn't give you a date, did she?

22 A I -- I don't think so.

23 Q She advised that he put her head in the
24 toilet?

25 A Yes.

- 1 Q What date was that?
- 2 A I don't recall.
- 3 Q That he spit on her?
- 4 A Yes.
- 5 Q That he shoved her into a glass table?
- 6 A Yes.
- 7 Q She specifically said glass table, correct?
- 8 A Yes.
- 9 Q Did she say which table that was?
- 10 A I think she said it was in the living room.
- 11 Q So are you guessing or do you believe that's
12 what she told you?
- 13 A I believe that's what she said. I'd have to check
14 my notes to verify.
- 15 Q Did she give you a date when that incident
16 took place?
- 17 A No.
- 18 Q Did she say whether the glass table broke?
- 19 A She did not. I don't recall that.
- 20 Q That he sprayed Clorox in her eyes?
- 21 A Yes.
- 22 Q What date was that?
- 23 A I don't know.
- 24 Q She specifically said Clorox, right?
- 25 A Yes.

1 Q In April 2012, he slammed her head in the
2 door?

3 A Yes.

4 Q Which door is that?

5 A I don't know.

6 Q With respect to the children she told you,
7 Mr. does not let the children speak to her when
8 they are with him? Page 7.

9 A Okay. Oh, okay.

10 Q She said that?

11 A Yes.

12 Q Did she tell you a specific day or days that
13 that took place?

14 A No, but it was my understanding --

15 Q It's a yes or no.

16 A I'm sorry?

17 Q It's a yes or no question.

18 A Say the question again please.

19 Q Did she provide you with a specific day?

20 A No, she did not.

21 Q Did she provide you with any phone records to
22 confirm that she called Mr.

23 A No, she did not.

24 Q Did she tell you what the custody schedule
25 was with Mr.

1 A I don't recall.

2 Q She advised you that they, they means the
3 children --

4 A Yes.

5 Q -- told her they do not want to see or spend
6 time with him?

7 A Yes.

8 Q When did that take place?

9 A I don't know.

10 Q She told you, "The children are so frightened
11 of Mr. that they sleep in her bed"?

12 A Yes.

13 Q And you addressed that in the recommendation
14 portion of your report, right?

15 A Yes.

16 Q Because that -- a 10-year old boy shouldn't
17 be sleeping in bed with their mother, correct?

18 A Right.

19 Q How about 11-year old boys?

20 A No.

21 Q When the children were three or four, Mr.
22 smacked one of the children upside the head for
23 eating Halloween candy?

24 A Yes.

25 Q Did you talk to anyone else that confirmed

1 that?

2 A I did not.

3 Q Ms. . . . told you that?

4 A Yes.

5 Q This past year during Take-Your-Child-to-Work
6 Day, Mr. . . . threw a water bottle against the wall
7 above the children's heads and it exploded?

8 A Yes.

9 Q She told you that. Did she tell you that she
10 was in Mr. . . . office?

11 A No.

12 Q Did she tell you that the children told her
13 that?

14 A I believe the children told her that.

15 Q And so you believed her to be a reliable
16 informant of that information, correct?

17 A Yes.

18 Q Pages 8 and 9 of your report, you talk about
19 health history, correct?
20
21
22
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1

2

Q She's taken Xanax, right?

3

A Yes.

4

5

Q And she told you that she believed she had been diagnosed with PTSD?

6

A Where?

7

Q By Dr.

8

A Yes.

9

10

Q So as she presented to you in June of 2014, she already knew that there was such a thing as PTSD, correct?

11

12

A Yes.

13

14

Q And she actually was told that she already suffered from it, correct?

15

A Yes.

16

17

Q All of the things that I just went over in here, they're all things that Mrs. told you, correct --

18

19

A Yes.

20

Q -- in the interview segment, correct?

21

A Yes.

22

23

Q That would be -- the term would be self-reporting, correct?

24

A That's right.

25

Q And so you'd agree with me that just a

1 general subject matter we've discussed education?

2 A Yes.

3 Q Physical health?

4 A Yes.

5 Q Mental health?

6 A Yes.

7 Q Physical abuse?

8 A Yes.

9 Q Employment?

10 A Yes.

11 Q The parties' children, right?

12 A Yes.

13 Q And you conclude at page 14 of your report
14 that based upon the evaluator's observations,
15 interviews and test results, profile is
16 consistent with other women who have suffered abuse,
17 right?

18 A Yes.

19 Q Reports by other professionals and from her
20 friends provide corroborating information to support
21 the allegation that was abused during the
22 marriage, right?

23 A Yes.

24 Q That's from your own report?

25 A That's right.

1 Q And so what you're saying is that the
2 collateral information you obtained supported the self-
3 reporting?

4 A Yes.

5 Q And you spoke to her boyfriend?

6 A Yes.

7 Q Her friend, Laura, --

8 A Yes.

9 Q Her friend, Robyn:

10 A Yes.

11 Q Her friend Heidi

12 A Yes.

13 Q And --

14 A Yes.

15 Q Did you speak to her brother?

16 A I did not.

17 Q Anyone else in her family?

18 A No.

19 Q Did you make attempts to?

20 A No.

21 Q You didn't speak to Mr.

22 A No.

23 Q You -- although you made attempts, you didn't
24 speak to any of her physicians, right?

25 A I did my best to speak to them.

1 Q You made attempts, though?

2 A Yes.

3 THE COURT: But you weren't successful?

4 THE WITNESS: Right.

5 THE COURT: Okay. And just for the record,
6 we keep referring to _____ as doctor, but she's
7 not a doctor as I see it, she's an LCSW. Am I correct?

8 MR. NUNN: Yes.

9 BY MR. NUNN: .

10 Q And on page 14 of your report you wrote that
11 _____ performance does not support the hypothesis
12 that she is malingering on the cognitive and
13 personality test”?

14 A Yes.

15 Q We've already talked about the short-term
16 memory, right?

17 A Yes.

18 Q And you'd agree with me that her performance
19 on the objective testing indicated that she had at
20 least average short-term memory? If you don't agree
21 with that, you can say I don't agree with that.

22 A Let me double check. Yes, I would agree with
23 that.

24 Q And her weaknesses are recalling factual
25 information for long-term memory?

BRITTANY TRANSCRIPTION, LLC

see prior set-up

1 A Yes.

2 Q With the exception of the holy story, right?

3 A Yes.

4 Q But you'd agree that was long-term memory?

5 A Yes.

6 Q She gave you many details about it?

7 A Yes.

8

9

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17

BY MR. NUNN:

18

Q The bottom of page into page 10.

19

THE COURT: Okay. Let's go to page 9 to 10

20

if we can, Doctor.

21

BY MR. NUNN:

22

Q Are you there?

23

A Yes.

24

Q And this is the WAIS-4 test, correct?

25

A Yes.

1 Q Can you read the last sentence on page 9 into
2 page 10?

3 A "More specifically, at the subtests, her relative
4 strength is in her ability to scan abstract visual
5 symbols and to attend to details, symbol search and her
6 relative weakness is in her ability to retrieve
7 information from long-term memory and factual knowledge
8 information."

9 Q Do you believe that that sentence with
10 respect to that test is applicable to Mrs. in
11 general?

12 A Yes.

13 MR. NUNN: Your Honor, does that satisfy Your
14 Honor's inquiry?

15 THE COURT: Mm-hm, yes, it does. Thank you.

16 BY MR. NUNN:

17 Q Again, Doctor, in your own words, tell me
18 what malingering is.

19 A It is a -- it occurs in litigated situations when
20 a person is attempting to avoid something like prison,
21 the military, work and there's a financial incentive.

22 Q Is there a financial incentive in this case?

23 A I believe there is in terms of, you know, whatever
24 would be determined in terms of alimony.

25 Q Mrs. is seeking damaged related to her

1 emotional distress, correct?

2 A I'm sorry.

3 Q Mrs. is seeking damages, correct?

4 A She did not say that exclusively and that was not
5 something explicitly stated, but that was a
6 presumption.

7 Q Have you ever testified in a personal injury
8 case where the plaintiff was not seeking damages?

9 A No, I don't recall.

10 MR. NUNN: Judge, may I have a marking?

11 THE COURT: Yes. What do we have?

12 BY MR. NUNN:

13 Q Doctor, again, you recognize this, right?

14 A Yes.

15 MR. NUNN: For the record, this was a purple
16 DSM file.

17 THE COURT: Okay. So what are we -- what are
18 we, we're P-173?

19 MR. NUNN: Yes.

20 THE COURT: I told you I have good memory.
21 And just for the record, so everybody is aware, we have
22 some interns, summer interns who are in the courtroom
23 observing the proceedings. That's the only reason
24 there's additional people in the courtroom. Okay.
25 Thank you.

1 MR. I presumed it was somebody
2 allowed, Your Honor.

3 THE COURT: Yeah.

4 MR. That you didn't kick them out.

5 THE COURT: I just -- I don't want to alarm
6 anybody that's what we're -- that's --

7 BY MR. NUNN:

8 Q And, Doctor, in fairness to you, I'm going to
9 also bring the purple book up, so you don't think I'm
10 trying to pull a fast one on you. But can you look at
11 P-173.

12 A Yes.

13 Q And, again, if you want to turn to the page
14 in the actually DSM-5, please feel free to do so.

15 So I'm going to ask you to read -- and, Judge, I'm
16 going to ultimately be offering this as a learn
17 treaties --

18 THE COURT: Okay.

19 MR. NUNN: -- under 803, I think, it's C-18.
20 And under that rule, the actual book and documents
21 don't come in, however, the witness --

22 THE COURT: Can testify.

23 MR. NUNN: -- can read into the record this
24 book. And I believe I've laid an adequate foundation
25 that this is a standard reference in this field?

1 THE COURT: Any objection, Mr. --

2 MR. . . . No objection, Your Honor.

3 THE COURT: Okay.

4 BY MR. NUNN: " . . . "

5 Q Would you read the entirety of the DSM-5 on
6 malingering?

7 A "The essential feature of malingering is the
8 intentional production of false or grossly exaggerating
9 physical or psychological symptoms motivated by
10 external incentives such as avoiding military duty,
11 avoiding work, obtaining financial compensation,
12 evading criminal prosecution or obtaining drugs.

13 Under some circumstances, malingering may
14 represent adaptive behavior. For example, fainting
15 illness while the captive of the enemy during wartime.
16 Malingering should strongly be suspected if any
17 combination of the following is noted.

18 1) Medical/legal context of presentation e.g. the
19 individual is referred by an attorney to the clinician
20 for examination or the individual self-refers while
21 litigation or criminal charges are pending;

22 2) A marked discrepancy between the individual's
23 claimed stress or disability and the objective findings
24 and observations;

25 3) Lack of cooperation during the diagnostic

1 evaluation and in complying with the prescribed
2 treatment regimen;

3 4) The presence of anti-social personality
4 disorder.

5 Malingering differs from fictitious disorder in
6 that the motivation or the symptom production in
7 malingering is an external incentive wherein as
8 fictitious disorder, external incentives are absent.
9 Malingering is differentiated from conversion disorder
10 and somatic symptom-related mental disorders by the
11 intentional production of symptoms and by the obvious
12 external incentives associated with it.

13 Definite evidence of fading such as clear evidence
14 that the loss of function is present during the
15 examination, but not at home would suggest a diagnosis
16 of factitious disorder if the individual's apparent aim
17 is to assume the sick role or malingering if it is to
18 obtain an incentive such as money."

19 Q Thank you. You can -- thank you.

20 So, number 1, if the individual is referred by an
21 attorney during litigation, would you agree with me
22 that she was referred to you --

23 A Yes.

24 Q -- by Mr. We've established she's
25 seeking damages, correct?

- 1 A Yes.
- 2 Q So there's an external incentive, correct?
- 3 A Yes.
- 4 Q A discrepancy between claimed stress or
5 disability in the objective findings and observations.
6 Mrs. [redacted] claimed that she could not stand for long
7 periods of time, correct?
- 8 A Yes.
- 9 Q She claimed that she had flashbacks, correct?
- 10 A Yes.
- 11 Q That she has anxiety attacks, right?
- 12 A Yes.
- 13 Q That she tries to avoid Mr.
- 14 A Yes.
- 15 Q That she shakes if she gets an email from
16 him?
- 17 A Yes.
- 18 Q Shakes if she gets a call from him?
- 19 A Yes.
- 20 Q And that she would have the same reactions if
21 she heard, for example, the garage door open?
- 22 A Yes.
- 23 Q Number 3, lack of cooperation during the
24 evaluation and in complying with treatment?
- 25 A Yes.

1 Q You recommended a neurological evaluation;
2 correct?

3 A Yes.

4 Q Your report was issued on June 2nd, 2014,
5 correct?

6 A Yes.

7 Q What's the name of the doctor with whom Mrs.
8 retained a neurological evaluation?

9 A In the report?

10 Q No.

11 A I don't know.

12 Q Okay. If she has not obtained one since
13 you're before it, would you agree with me that she
14 didn't follow that recommendation?

15 A No, I -- I can't say that because I have not done
16 a re-evaluation of her since the date the report was
17 done. She may have.

18 Q What I'm asking you is -- let's start over.
19 You recommended that she get one?

20 A Yes.

21 Q You gave her a copy of this report?

22 A No, I did not.

23 Q Did you give one to her attorney?

24 A Yes.

25 Q Okay. Are you aware of her receiving any --

1 her, Mrs. _____ receiving a neurological evaluation
2 at any time after June 2nd of 2014?

3 A I -- I don't know if she did or didn't.

4 Q Let's assume that she didn't for the purposes
5 of this question.

6 A Okay.

7 Q Would that be against -- would she have
8 followed your recommendation?

9 A If she had gotten a --

10 Q If she had not gotten one?

11 A No, then she would not be following my
12 recommendation.

13 Q You recommend that she treat with a
14 psychotherapist?

15 A Yes, okay.

16 Q Do you know the names of any psychotherapist
17 that Mrs. _____ has treated with since June 2nd of
18 2014?

19 A I know that she is seeing Dr.

20 Q Do you know how that came about?

21 A No, I do not. Yes, I do.

22 Q How?

23 A Mr. _____ told me that Dr. Fridman had
24 recommended Dr.

25 Q Would it be -- if you were made aware that

1 between June 2nd of 2014 and the treatment of Dr.

2 Mrs. . . . did not have any psychotherapy?

3 A I don't know if that's -- I don't know if that's
4 true. I don't know if she continued with Ms.

5 after my report. I don't know when she began seeing

6 Dr. . . . I have no information on that.

7 Q I want you to assume that the evidence in
8 this trial is that Mrs. . . . started treatment, okay,
9 psychotherapy, after Dr. Fridman recommended it. Okay.

10 A Okay.

11 Q Assume that for this question.

12 A When did --

13 Q Just assume that.

14 A Okay.

15 Q If she, Mrs. . . . did not seek
16 psychotherapy between the date in your report and the
17 date of the Dr. Fridman report, would you agree with me
18 that she did not follow your recommendation?

19 A Well, I don't know, she may have continued in
20 treatment with Ms.

21 Q Assume she didn't.

22 A Okay.

23 Q Assume, again, she did not treat with anyone
24 during that time period, psychotherapy --

25 A Okay.

1 Q -- on her own. Okay. Would you consider
2 that to be Mrs. -- following your recommendation?

3 A Well, as I recall there was -- one of the issues
4 that arose with her going for therapy was that she
5 didn't have the money to pay even the co-pay for some
6 of the appointments. So I could be that being an
7 obstacle with her continuing or her even resuming with
8 someone who -- who would be new to her. And the way
9 the insurance system is set up these days, who knows
10 what's available.

11 MR. NUNN: Move to strike, Judge. That's not
12 responsive to my question. I just asked whether that
13 would be following her recommendation. I didn't ask
14 for anything about the insurance industry --

15 THE COURT: Okay.

16 MR. NUNN: -- or why or why she didn't do it.

17 THE COURT: Do you understand the objection?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Any position, Mr.

20 MR. No.

21 THE COURT: Okay. We're going to strike that
22 answer. And I appreciate, Dr. you're
23 attempting to explain, but, again, this has been a
24 recurring problem in this trial. I'd appreciate if
25 you'd listen to the question, just answer the question

1 as it is asked. If Mr. wishes to redirect your
2 testimony, he can do so.

3 THE WITNESS: Okay.

4 BY MR. NUNN:

5 Q Do you need me to ask the question again?

6 A Go ahead.

7 Q Your report was issued on June 2nd of 2014.

8 A Yes.

9 Q You recommended that she treat with a
10 psychotherapist, correct?

11 A Yes.

12 Q Are you aware of, other than Dr. ,
13 and other than what was recommended in Dr. Frigman's
14 report, any other psychotherapist that Mrs.
15 treated with after June 2nd of 2014?

16 A I am not.

17 Q I want you to assume for the purposes of this
18 question she did not treat with anyone. Would you deem
19 that to be having complied with your
20 recommendation or followed your recommendation?

21 A Under those circumstances, yes.

22 Q Yes, she --

23 A She had not complied.
24
25

- 1
- 2 Q I believe you are aware that the court
- 3 ordered Mrs. to obtain a psychiatric evaluation?
- 4 A Yes.
- 5 Q Had that existed prior to June 2nd of 2014
- 6 that would have been something that you would have
- 7 found relevant in this analysis, correct?
- 8 A Yes.
- 9 Q Very relevant?
- 10 A Yes.
- 11 Q And you'd want to see the findings?
- 12 A Yes.
- 13 Q And you'd want to see the treatment
- 14 recommended?
- 15 A Yes.
- 16 Q Doctor, you'd agree with me there are
- 17 different levels of malingering?
- 18 A What do you mean?
- 19 Q Okay. Have you heard of the concept of pure
- 20 malingering?
- 21 A Yes.
- 22 Q What does that mean?
- 23 THE COURT: Pure is that what you --
- 24 MR. NUNN: Pure, P-U-R-E.
- 25 THE COURT: Okay.

1 THE WITNESS: I believe that is a term -- I'm
2 not sure if it's used by Dick Fredericks or by Slick in
3 terms of quantifying malingering according to their
4 diagnostic schema.

5 BY MR. NUNN:

6 Q Would you agree with me that pure
7 malingering, in essence, is just completely fainting
8 symptoms related to something?

9 A I -- I can't answer that because I would need time
10 to think more about exactly how I would classify
11 something as pure malingering.

12 Q Okay. Fair enough. How about partial
13 malingering, have you ever heard of that terminology?

14 A Yeah, that -- that comes from that same scheme of
15 either Slick or Fredricks.

16 Q And you'd agree with me that in a partial
17 malingering situation, the person may have symptoms and
18 may exaggerate the symptoms?

19 A Before I agree with that, I'd want to check my
20 resources --

21 Q Okay.

22 A -- before I -- I could say to you that I agree
23 with your use of it or your not use of it.

24 Q Okay. Fair enough.

25 A Similar to the way we were talking before about

1 immediate memory and short-term memory --

2 Q Yes.

3 A -- and working memory.

4 Q Fair enough. How about the concept of false
5 incutation [sic]?

6 A What?

7 Q False incutation.

8 A I'm not familiar with that.

9 MR. NUNN: Judge, Mr. has asked that
10 the witness could spell out the names of the
11 individuals about what she was just testifying.

12 MR. I think you said Slick and
13 Frederick.

14 THE WITNESS: Yeah.

15 THE COURT: Slick like Sly Slick?

16 THE WITNESS: Yeah, Slick, S-L-I-C-K.

17 MR. And was I correct in Frederick
18 or Fredricks?

19 THE WITNESS: Yeah, Drew Fredericks --
20 Richard Fredricks. And I think is a Slick is a
21 neuropsychologist, so his understanding may be a little
22 different than what -- what would be used in this kind
23 of a context. And I think it comes from Slick 1999.
24 That's the criteria. I think that's where he -- it's
25 talked about.

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BY MR. NUNN:

Q I'm going to be fair again to you and give you both of the photocopies in the actual book.

THE COURT: And I -- may I assume -- well, I shouldn't assume. What do you want to do with this?

MR. NUNN: This is the Rogers' book that we were talking about before, correct?

THE COURT: Mm-hm.

THE WITNESS: Mm-hm. This is the most recent.

BY MR. NUNN:

Q Sorry?

A His most recent.

Q Yes, thank you.

MR. NUNN: And I'll approach the witness.

THE COURT: Mm-hm.

MR. NUNN: I stole the witness' copies, so I'll just -- I don't want to do anything with it yet,

1 but I want to have it up there for you.

2 BY MR. NUNN:

3 Q You're being offered as an expert in this
4 case, correct?

5 A Yes.

6 Q And you'd agree with me that whether it's in
7 this setting or as a custody evaluator, it's important
8 that you confirm this self-reporting, correct?

9 A Yes.

10 Q You want to investigate, correct?

11 A Yes.

12 Q You want to talk to collateral people,
13 correct?

14 A Yes.

15 Q You want to review documents?

16 A Right.

17 Q Right. And that's important because you want
18 to report that's based on all of the information,
19 right, not just one side of the information.

20 Do you agree with me again we went through
21 education, right?

22 A Yes.

23 Q We talked about that. University of
24 Kentucky.

25 A Yes.

1 Q Did you get any transcripts from that school?
2 A I did not.
3 Q And, Doctor, please don't look at that book
4 yet.
5 A Okay.
6 Q You didn't get any transcripts, correct?
7 A I did not.
8 Q And Eastern Kentucky University, no
9 transcripts?
10 A No transcripts.
11 Q Talk to any professors?
12 A No, I did not.
13 Q Receive any grades from that school?
14 A No, I did not.
15 Q Doctor, what college did you attend?
16 A What college did I attend?
17 Q Yeah.
18 A With graduate or undergraduate?
19 Q Let's start with undergraduate?
20 A The College of New Jersey.
21 Q Okay. What about graduate?
22 A Yeshiva University.
23 Q Okay. Both are very fine schools, I mean,
24 now.
25 If you wanted to obtain a transcript from one of

1 those schools, what would you do?

2 A Write a letter to the Registrar.

3 Q Okay.

4 A Call the Registrar up, find out what the fee would
5 be to get my transcripts, and then write a letter
6 enclosing a check for whatever it is, whatever the fee
7 is to get the transcript.

8 Q Would you be surprised to learn that here we
9 are seven months into trial and Mrs. has not
10 produced a transcript for either one of those schools?

11 A Why -- why would she -- what would be the need for
12 her to produce her transcript?

13 Q You just got done telling me that it's
14 important to corroborate information.

15 A Right. Oh, you mean in terms of my testifying
16 here?

17 Q In terms of ever in this case. Would it
18 surprise you to learn that despite repeated requests
19 Mrs. has never furnished a transcript from the
20 University of Kentucky?

21 A I didn't -- no, I didn't know that.

22 Q It's not a terribly arduous process to get a
23 transcript, is it?

24 A No.

25 Q Nor has she produced one from Eastern

1 Kentucky. Again, you don't think that would be an
2 arduous process, do you?

3 A No.

4 Q You didn't review any class schedules?

5 A No.

6 Q You didn't talk to any classmates?

7 A No.

8 Q As you sit here today, you have no idea
9 whether Mrs. . . . actually attended the University of
10 Kentucky?

11 A All I have is that she told me that she did.

12 Q Same question with respect to Eastern
13 Kentucky?

14 A Yes.

15 Q With respect to Mrs. . . . physical
16 health, you can talk to treating physicians, right?

17 A Yes.

18 Q You didn't speak to anyone?

19 A No.

20 Q You could review a treating physician's file,
21 right? You keep a file, right?

22 A Yes.

23 Q Both in the expert setting and in the clinic
24 setting?

25 A Yes.

1 Q You take notes?

2 A Yes.

3 Q You make diagnosis. You didn't review any of
4 that with respect to Mrs. . physical health?

5 A Her what?

6 Q You didn't review any of those types of
7 documents with respect to Mrs. . physical
8 health, did you?

9 A I did not.

10 Q In fact, the -- we went over earlier the
11 documents that you did review. You did review an MRI
12 report, correct?

13 A Yes.

14 Q Do you have -- happen to have that in front
15 of you, the MRI report?

16 A The actual report?

17 Q Yes.

18 A I have it in my folder, in my notebook, I mean, in
19 my briefcase.

20 Q Well, we definitely have a copy here so. I'm
21 going to make life easy.

22 THE COURT: What are we going to, Mr. Nunn,
23 which -- which exhibit?

24 MR. NUNN: Judge, it's been marked before.

25 THE COURT: Yeah, I'm sure it has. But what

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BY MR. NUNN:

Q Is that the MRI report that you're -- that
you reviewed in conjunction with your evaluation?

A Yes.

Q Do you recognize it?

A Yes.

Q Just put that to the side for a moment. I'm

1 going to hand you again P-174.

2 A Yes.

3 Q If you want to look in the actual book that's
4 fine.

5 MR. NUNN: I'm sorry, did I do that?

6 BY MR. NUNN:

7 Q Can you turn to page 111 of either the
8 photocopies or the book?

9 A Yes.

10 Q On the right-hand side of the page, do you
11 see a section entitled "Malingering"?

12 A Yes.

13 Q And at the top of the page, the very top of
14 the page, what is this chapter?

15 THE COURT: The upper left-hand corner?

16 MR. NUNN: No, the very top center.

17 THE COURT: Oh, okay.

18 THE WITNESS: Post-traumatic disorders.

19 BY MR. NUNN:

20 Q In the malingering section, do you see that
21 on this page there are two paragraphs?

22 A Yes.

23 Q Would you be so kind as to read the second
24 paragraph into the record in its entirety through the
25 end of it on page 112, that paragraph?

1 A "Malingering can be further categorized into pure
2 malingering, partial malingering, and false imputation.
3 When an individual fakes a disorder that does not exist
4 at all, this is referred to as pure malingering.

5 When an individual has actual symptoms or
6 consciously exaggerates them it is partial malingering.

7 False imputation refers to the attribution of
8 actual symptoms to a cost consciously recognized by the
9 individual as having no relationship to the symptoms."

10 You want me to go on?

11 Q Yes.

12 A "For example, a male claimant who is aware that he
13 is suffering from PTSD due to an earlier trauma may
14 falsely ascribe the symptoms to a car accident in order
15 to gain monetary compensation.

16 False imputations were difficult to identify as
17 malingering because the individual can, from personal
18 experience, accurately describe the symptoms.

19 In addition, some individuals fail to recognize
20 that consecutive events do not necessarily have a
21 causal relationship. Such misattribution can be
22 genuine and must be differentiated from malingering.
23 Of these response styles, partial malingering that uses
24 existing symptoms as the most common pattern. Pure
25 malingering is much less common."

1 Q Okay. I'm going to give you a hypothetical
2 and I want you to tell me whether you believe that that
3 would qualify as pure malingering. Okay?

4 A Okay.

5 Q Suppose Mrs. ... testified in this case
6 that in July of 2012, Mr. ... , threw her down a
7 flight of steps in ... , and as a result
8 she injured her back. Assume that that event never
9 happened, yet, Mrs. ... claims to suffer back pain
10 and other related discomfort, would that qualify as
11 pure malingering?

12 A How would I know the event never happened?

13 Q It's a hypothetical.

14 THE COURT: It's hypothetical whether it
15 happened or it didn't happen. Okay. You're just being
16 asked if.

17 THE WITNESS: Yes, that would qualify as pure
18 malingering.

19 BY MR. NUNN:

20 Q Different hypothetical. Suppose in December
21 of 2011, Mrs. ... injured her back while moving a
22 pile of leaves and suffered a disc herniation. Four
23 years later she testified during this trial that Mr.
24 ... body slammed her 9, 10 or 11 times resulting in
25 back injury. Would you agree with me that that would

1 be a situation of a false imputation?

2 A Yes.

3 Q And that would be because Mrs. would
4 be falsely imputing the leave earlier injury to body
5 slamming?

6 A Yes.

7 Q Do you have P-175 in front of you?

8 A Yes.

9 Q This is the MRI that you referred to in your
10 report, correct?

11 A Yes.

12 Q I want you to take a moment and look at this
13 in your entirety and let me know if you see

14 or Mr. anywhere on this page, the words
15 "Mr. or

16 A No, I do not.

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CROSS-EXAMINATION BY MR. NUNN CONTINUED:

Q Doctor, can you turn to page 10 of your report, about D-85A. Not that I believe it will be different but.

A Yes.

Q Okay. There's a section on malingering, correct?

A Yes.

Q There are two paragraphs in that section?

A Yes.

Q In the second paragraph there are three sentences?

A Yes.

Q Can you read the second sentence out loud?

A "Her cognitive ability is lower than expected for a person who attended two colleges and has licenses as a beautician and a realtor."

1 Q Okay. Did you review any documents regarding
2 Mrs. . beautician license?

3 A I did not.

4 Q Okay. Did you review any documents in the
5 broad category of Mrs. 'being a beautician?

6 A I did not.

7 Q Did you review a transcript from the Roman
8 Academy of Beauty Culture? And if you'd like to refer
9 to your report, it's page 3.

10 A Yes, I did.

11 Q Okay. Can you read the -- the final sentence
12 of this section?

13 A "Research has shown that women who have been in
14 abusive relationships have difficulty in tests of
15 cognition and memory."

16 Q And is there a footnote?

17 A Yes, there is.

18 Q And the footnote is to an article?

19 A Yes, by Valera Berenbaum -- by Valera and
20 Berenbaum.

21 Q And what's the title of the article?

22 A Battered -- *Brain Injury in Batted Women*.

23 Q Okay. And in that article -- are you
24 familiar with that article?

25 A Yes.

1 Q Okay. The participants in this study or the
2 subject matter of the study are women who have been
3 established ~~had~~ been abused, correct?

4 A Yes.

5 Q And so in this ~~case~~ if the judge found that
6 Mrs. had not been abused by Mr. you'd
7 agree with me that that article would not be applicable
8 to this case, correct?

9 A Yes.

10 Q Did you speak to anyone from the Roman
11 Academy of Beauty Culture?

12 A I did not.

13 Q Okay. Did you receive any other documents
14 from that institution?

15 A Well, there was like a letter of recommendation or
16 a statement from Paul (phonetic) of the school.

17 Q Did you speak to Paul?

18 A No, I did not.

19 Q And who physically provided you with the
20 letter?

21 A I don't remember. I don't remember if it was sent
22 to Mrs. or if he sent it to me.

23 Q Can you read the second sentence of the
24 second paragraph and omit the references to two
25 colleges?

1 A Okay. "Her cognitive ability is lower than
2 expected for a person who would -- who has licenses as
3 a beautician and a realtor."

4 Q Now, you'd agree with me that you did not
5 receive a single document related to the University of
6 Kentucky?

7 A Yes.

8 Q Nor did you receive anything from Eastern
9 Kentucky?

10 A That's correct.

11 Q And you didn't see any class photos of Mrs.
12

13 A I did not.

14 Q You didn't talk to any classmates?

15 A That is correct.

16 Q You would not have written that sentence if
17 you didn't make the assumption that she attended two
18 colleges, would you?

19 A That is correct.

20 Q You reviewed the letter from Dr.
21 correct?

22 A Yes.

23 Q And I'm going to approach. I believe that's
24 appended to D-85. Is that the letter that you referred
25 to in your report?

1 A Yes.

2 Q What's the date of that letter?

3 A February 25th, 2014.

4 Q Okay. Can you read that letter out loud?

5 A "Re: The above patient was seen
6 here from 7/22/2008 to 3/18/2009. Throughout the time
7 she was seen, she stated that she had severe
8 depression, sleep disturbances, and anxiety. On
9 9/6/2008, she stated that she was severely depressed
10 because her husband was 'totally unsympathetic,
11 narcissistic and self-centered'. She was referred to
12 Dr. to treat her for depression.

13 On October 14th, 2008, I emphasize this again by
14 noting that she was" -- "and this word is in caps --
15 'VERY DEPRESSED'. It is unfortunate that the patient
16 did not feel comfortable sharing the horrors that she
17 apparently endured at that time. Sincerely,

18

19 Q Does that letter say anything about physical
20 abuse?

21 A No, it does not.

22 Q

23

24

25

1 THE COURT: Okay.

2 THE WITNESS: Okay.

3 BY MR. NUNN:

4 Q It doesn't mention any abuse from Mr.
5 correct?

6 A It does not, that's correct.

7 Q It refers to Lyme's Disease, correct?

8 A Yes.

9 Q And it refers to many of the symptoms of
10 which Mrs. had been complaining, correct?

11 A Yes.

12 Q Chest pain?

13 A Yes.

14 Q Dizziness?

15 A Yes.

16 Q Joint pain?

17 A Yes.

18 Q A sleep disorder?

19 A Yes.

20 Q Severe light and sound sensitivity?

21 A Yes.

22 Q Neck pain?

23 A Yes.

24 Q And mood changes?

25 A Yes.

1 Q There are additional symptoms of weakness?

2 A Yes.

3 Q Arthritis and objective neurological
4 abnormalities?

5 A Yes.

6 Q And then there's an asterisk, correct?

7 A Yes.

8 Q And the asterisk says "This was chronic and
9 had probably existed since the memory loss two years
10 prior to 7/2008?"

11 A Yes.

12 Q Your report refers to sleep disturbances?

13 A Yes.

14 Q Is it fair to say that Mrs. [REDACTED] had sleep
15 disturbances for many years before you ever met with
16 her?

17 A It may be.

18 Q And if Mrs. [REDACTED] testified that she had had
19 memory issues dating back many years and I'll be more
20 specific until at least 2008, you would agree with me
21 that that's four years before the Complaint for divorce
22 was filed, correct?

23 A Yes.

24 Q And you testified yesterday that you have not
25 reviewed a single medical document prior to March of

1 2012 in which Mrs. [redacted] alleges Mr. [redacted] abused
2 her?

3 A Yes.

4 Q You did review [redacted] Hospital records,
5 correct?

6 A Yes.

7 Q From April of 2012?

8 A Yes.

9 Q And you agree April 2012 was after the
10 Complaint for divorce?

11 A Yes.

12 Q Now, if you had been made aware by Mrs.
13 that she had access to medical records of her
14 own dating back to 2006, you would have wanted to
15 review those, correct?

16 A Yes.

17 Q And the reason you would want to do that is
18 because one of the PTSD factors requires you to
19 determine whether the symptoms could be related to
20 another illness, correct, --

21 A Yes.

22 Q -- or medication, something like that.

23 Now, there's a glass table referred to in your
24 report, correct?

25 A Yes.

1 Q Do you know what room the glass table was in?

2 A I believe it was the living room, but I'm not 100
3 percent sure.

4 Q Can you turn to page 16 of your report?

5 A Okay.

6 Q Page 16 is your finding that Mrs.
7 suffers from PTSD, correct?

8 A Yes.

9 Q And you cite to the various DSM factors,
10 correct?

11 A Yes.

12 Q And you apply your -- strike that.

13 * 你 You apply what you learned from Mrs. to the
14 factors, correct?

15 A Well, what I learned from her and also from the
16 test results and when I spoke to the collaterals and
17 the documents that were provided to me.

18 Q Now, you've already agreed with me yesterday
19 that not a single person that you spoke to witnessed
20 any abuse, correct?

21 A Yes.

22 Q And other than Dr. , no one ever heard
23 Mr. , being verbally abusive to Mrs. .

24 A Yes.

25 Q And you agreed with me that you didn't even

1 know whether it was someone named Dr. -- strike
2 that.

3 You didn't even know whether you were really
4 talking to the Dr. correct?

5 A Yes.

6 Q And here we are today with a new sheriff's
7 officer, it could have been him you were talking to?

8 A Yes.

9 Q Because you got the number from Mrs.
10 The contact numbers.

11 A Yes.

12 Q Just like each of the people you spoke to got
13 their allegations of abuse from Mrs. correct?

14 A Yes.

15 Q You'd agree with me that every allegation of
16 abuse contained in your report stems from a self-report
17 of Mrs.

18 A Yes.

19 Q In your report, you indicate that Mrs.
20 told you she suffers from anxiety attacks, correct?

21 A Yes.

22 Q And that when Mr. calls or emails she
23 jumps?

24 A Yes.

25 Q She starts to shake?

1 A Yes.

2 Q Her nerve endings feel shaky and swollen?

3 A Yes.

4 Q That she wakes up in shock?

5 A Yes.

6 Q We established yesterday that you're familiar
7 with Dr. correct?

8 A Yes.

9 Q And you're aware that he was involved in this
10 case as a custody evaluator?

11 A Yes.

12 Q He had already testified in this case?

13 A Yes.

14 Q If he testified that during the joint
15 interview, Mr. and Mrs. sat right next to one
16 another and Mrs. showed no emotion, would that
17 be consistent with the claims that Mrs. made to
18 you?

19 A It would depend. I mean, there could be various
20 reasons why she didn't show any emotion while sitting
21 next to her husband.

22 Q My question was not what the reasons were, it
23 was she showed no emotion, would no emotion be
24 synonymous with jumping?

25 A No.

1 Q Shaking?

2 A No.

3 Q And anxiety attacks?

4 A No.

5 Q And if Mrs. testified during this
6 trial as recently as last week that she attempted in
7 2014 to have a family dinner with Mr. would you
8 believe that would be something that would be
9 consistent with Mrs.' claims?

10 A Claims of?

11 Q Emotional reactions to the mere presence of
12 Mr.,

13 A I know that you would like a yes or no answer, but
14 it's difficult for me to answer that as yes or no.

15 Q Well, Mr. will have an opportunity to
16 question you.

17 A Okay.

18 Q So my question is if Mrs. jumps,
19 shakes, feels shaky, is in shock and has anxiety
20 attacks at the mere receipt of an email from Mr.

21 does a person who experiences those symptoms
22 schedule family dinners with their husband who causes
23 those symptoms?

24 A They may.

25 Q Okay. And if Mrs. testified that in

1 July of 2012 she went to with Mr. , for a
2 vacation, would that be consistent with the actions of
3 someone who has anxiety attacks, shakes, jumps, wakes
4 up in shock, has swollen nerve endings at the mere
5 receipt of an email from her husband?

6 A It -- that also may happen, yes.

7 Q Now, Mrs. told you that the receipt of
8 a phone call caused some of these emotional reactions,
9 correct?

10 A Yes.

11 Q So then you'd be surprised to learn that
12 she's called him during this trial on the telephone?

13 A No, why would I be surprised about that?

14 Q Is it your testimony that someone who has
15 anxiety attacks as a result of a phone call, a mere
16 phone call, would seek to speak on the telephone to the
17 person who causes the anxiety attack?

18 A Sometimes people do, yeah. I don't have the
19 impression that she's in the constant state of anxiety.

20 Q What causes the anxiety in your report? What
21 did you put in there?

22 A I put down that she said that she feels she has
23 anxiety attacks when he calls her.

24 Q Okay. And it's your testimony that it would
25 be -- you would believe that Mr. . . . calling her

1 causes an anxiety attack even knowing that Mrs.
2 still called Mr. .during this trial?

3 A Yes.

4 Q And sent him emails.

5 A Yes.

6 Q And sat in this courtroom and looked at him
7 and didn't shake, do you believe that to be credible?

8 A Based on my understanding of anxiety with people,
9 people do respond that way. Sometimes they could be
10 very anxious and at other times they're just not as
11 anxious.

12 Q But you didn't review an email, correct?

13 A I did not.

14 Q So you really have no idea whether Mr. ,
15 even emails Mrs. .

16 A That is correct.

17 Q Nor do you know if he's ever called Mrs.

18

19 A Well, she had told me that he calls her.

20 Q Other than her telling you?

21 A No, I don't.

22 Q And let's establish this. Okay. Any of the
23 documents referred to on page 4 of your report --

24 A Yes.

25 Q -- you didn't speak to those individuals,

1 correct?

2 A That is correct.

3 Q You spoke to five people, Mrs.

4 A Yes.

5 Q Dr.

6 A Yes.

7 Q Laura

8 A Yes.

9 Q Robyn

10 A Yes.

11 Q Heidi

12 A Yes.

13 Q Okay. You've already agreed with me that all
14 of the allegations in this report are self-reported by
15 Mrs..

16 A Yes.

17 Q Okay. P-108.

18 THE COURT: P-108.

19 COURT CLERK: I probably have it.

20 THE COURT: I'm sure. Somehow the number
21 sounds familiar. Is it -- yep, here it is. I got it.
22 Go ahead, Mr. Nunn.

23 MR. NUNN: Could we have one copy made?

24 THE COURT: Sure. I don't want to give you
25 mine because mine has some notes on it so.

1 COURT CLERK: Sorry, it's very --

2 MR. NUNN: No problem. Thank you very much,
3 I appreciate it.

4 Judge, may I approach?

5 THE COURT: Yes.

6 BY MR. NUNN:

7 Q Doctor, I'm showing you what's been marked as
8 P-108. Would you turn to the last page of that
9 exhibit?

10 THE COURT: Well, the last page says "Would
11 like to speak" so do you mean page 3?

12 MR. NUNN: I apologize, yes.

13 THE COURT: That's okay.

14 BY MR. NUNN:

15 Q I'm directing your attention to the bottom of
16 that page. What is that?

17 A It's an email from to

18 Q who?

19 A Mink.

20 Q Do you know who that is?

21 A Yeah, it's yes.

22 Q Yes, Mrs. What's the date of it?

23 A Friday, February 13th, 2015.

24 Q Okay. And that's after your report, correct?

25 A Yes.

1 Q And if I told you the trial started on
2 January 26th of 2015, that would be during the trial?

3 A Yes.

4 Q Is there something above that email?

5 A Yes, there is.

6 Q Just what is that generally?

7 A An email from

8 Q To?

9 A Presumably

10 Q Okay. Can you then go to the next page?

11 A Yes.

12 Q And what is on that page?

13 A An email from to

14 Q And can you keep flipping the pages?

15 A And then there's an email from to

16 Q And what's the date of that email?

17 A February 13th, 2015.

18 Q So you'd agree with me that Mrs. who

19 shakes at the thought of getting an email from Mr.

20 is still emailing Mr.

21 A Yes.

22 Q Can you turn back to pages 14 and 15 of your
23 report?

24 A Okay.

25 Q Now, what is contained on pages 14 and 15 of

1 your report?

2 A It says emotional abuse during the marriage.

3 Q What's at the bottom of the page?

4 A The criteria from the DSM-5 for PTSD.

5 Q Okay. And that's also located on page 15,
6 correct?

7 A Yes.

8 Q It goes into page 16, correct?

9 A Yes.

10 Q And then you through this report go through
11 the various factors, correct?

12 A Yes.

13 Q What is Criteria A in DSM-5?

14 A "Exposure to actual or threatened death, serious
15 injury or sexual violence in one or more of the
16 following ways. Directing experiencing the traumatic
17 events. Witnessing in person the events as -- as it
18 occurred to others. Learning that the traumatic events
19 occurred to a close family member or friend. In cases
20 of actual or threatened death of a family member or
21 friend, the events must have been violent or
22 accidental. Experiencing repeated or extreme exposure
23 to a verse of details of the traumatic events such as
24 first responders collecting human remains, police
25 officers repeatedly exposed to details of child abuse.

1 Criteria 4 does not apply to exposure through
2 electronic media, television, movies, pictures, unless
3 this exposure is work related."

4 Q Now, you already testified yesterday that,
5 for example, if Mr _ didn't directly experience
6 the traumatic event, this factor wouldn't apply,
7 correct?

8 A Yes.

9 Q And this factor is a pre-requisite to a
10 finding of PTSD, correct?

11 A Yes.

12 Q Meaning without this, you don't go on to the
13 other factors?

14 A Correct.

15 Q Factor number 2 under A, "Witnessing the
16 person, the event as it occurred to others." Do you
17 agree with me, the only other allegation of abuse in
18 your report unrelated to Mrs. is an allegation
19 that Mr. abused the children?

20 A Yes.

21 Q Okay. And that came from Mrs.

22 A Yes.

23 Q And we went over this yesterday, but you
24 didn't review the PCP file?

25 A Right.

1 Q Any pediatrician records?

2 A Right.

3 Q Nothing else to corroborate that Mr.
4 ever physically abused these children?

5 A Yes.

6 Q Okay. And with respect to Number 1, we've
7 already agreed that all of the alleged acts of abuse
8 were self-reporting by Mrs.

9 A Yes.

10 Q And, in fact, the only medical documentation
11 you reviewed prior to the Complaint of divorce doesn't
12 mention Mr.

13 A Yes.

14 Q And that would be the MRI report --

15 A Right.

16 Q -- from 2011, correct?

17 A Yes.

18 Q No mention of Mr.

19 A Correct.

20 Q The documents from Dr.

21 A Yes.

22 Q And so if Mrs. did not actually
23 experience those events that she relayed to you, that
24 would get you malingering, right?

25 A Yes.

1 Q And this factor would not apply?

2 A That is correct.

3 Q And so you would not have diagnosed Mrs. i
4 as suffering from PTSD under those
5 circumstances?

6 A Correct.

7 Q Same question with respect to the children.
8 If, in fact, Mr. did not abuse the children, you
9 could not have made a finding that Mrs. suffered
10 from PTSD, correct?

11 A You're right.

12 Q So you wouldn't have moved on to the other
13 factors?

14 A That is correct.

15 Q Now, let's go to page 16 where you then go
16 through the application of the various factors. Your
17 report states "According to Criteria A,
18 experienced numerous episodes of serious violence such
19 as being pushed down the stairs, body slammed and her
20 head was slammed into doors by her husband." Mrs.

21 didn't actually tell you that her husband pushed
22 her down the stairs, correct?

23 A I believe she did. I think that's in the report.

24 Q Isn't in true that Robyn told you
25 that?

1 A I don't recall offhand.

2 Q Would you like to review your report?

3 A Yes.

4 Q And I'll start with directing you to page 13
5 where Mrs. is referenced.

6 A Yes, that is correct.

7 Q Did Mrs. make any claims to you about
8 an incident in Bayhead, New Jersey?

9 A No, she did not.

10 Q How about an incident in July of 2012?

11 A Yes.

12 Q Do you recall what she told you about that
13 incident? Doctor, refer to your report if you need to.
14 That's perfectly acceptable.

15 A That's when her -- that was just before her
16 brother came for Christmas and her husband --

17 THE COURT: If you need to look at the
18 report, Doctor, that's fine. Just -- just tell us
19 where you're looking?

20 THE WITNESS: I'm sorry. I am.

21 THE COURT: That's quite all right.

22 THE WITNESS: I'm looking at the report and -

23 -

24 THE COURT: Take your time.

25 THE WITNESS: I'm sorry, what was the date

1 again please?

2 BY MR. NUNN:

3 Q July 2012.

4 A Oh, July 2012, that is when she said -- it's on
5 page 7 of my ~~reports~~ reports. The first full paragraph. On the
6 4th of July or when my family came, he'd be mean to me.
7 Now, she had just made statements that he would be
8 moody, degrading or spit in her face and that he
9 enjoyed watching her cry. On July 4th or when my family
10 came, he'd be really mean. He body slammed me just
11 before my brother came for Christmas.

12 Q Did she say anything to you about rum being
13 poured in her car in July of 2012? Doctor, I'll direct
14 your attention to page 9, the third full paragraph.

15 A Yes.

16 Q Okay. And you didn't review Mrs.
17 Answer and Counterclaim, did you?

18 A I'm sorry?

19 Q You did not review Mrs. Answer and
20 Counterclaim, did you?

21 A No, I did not.

22 Q Okay. And Mrs. did not tell you that
23 she was pushed down the stairs at any point in time,
24 correct?

25 A No, as I see this now, no.

1 Q And she did not tell you that Mr.
2 sexually assaulted her in July of 2012?

3 A She did not tell me that.

4 Q And she didn't tell you that Mr.
5 dragged her down the stairs in July of 2012?

6 A No.

7 Q Dragged her down by -- dragged her down the
8 stairs by the feet of July of 2012?

9 A No.

10

11

12

13

14

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Q Would it strike you as strange that Mrs.
provided multiple and different explanations of
the very same incident?

18 A Yes, it would.

19 Q And, by the way, would it surprise you to
20 note that a police report was generated out of a July
21 12 incident between Mr. and Mrs.?

22 A Yes.

1 (Recess taken.)

2 THE COURT: Go ahead, Mr. Nunn.

3 BY MR. NUNN:

4 Q Doctor, we left off talking about Criterion A
5 from your report, correct?

6 A Yes.

7 Q The next episode of serious violence referred
8 to in here is body slammed?

9 A Yes.

10 Q And, again, the source of this information
11 was Mrs. correct?

12 A Right.

13 Q And you did not speak to any eyewitnesses?

14 A That's correct.

15 Q And you didn't review anything in writing --

16 A Yes.

17 Q -- related to this incident?

18 A Right.

19 Q And the next example is "Her head was slammed
20 into doors by her husband?"

21 A Yes.

22 THE COURT: And what page are you on, Mr.
23 Nunn?

24 MR. NUNN: I believe this is 16. 16.

25 THE COURT: Okay.

1 BY MR. NUNN:

2 Q She told you about two separate head to door
3 incidents, correct?

4 A Yes.

5 Q So pages 6 and 7 of your report?

6 A Mm-hm.

7 Q Did she provide a specific date for either of
8 those episodes?

9 A No.

10 Q Did she say which door for either of those
11 episodes?

12 A No.

13 Q Did she say where this took place for those
14 episodes?

15 A No.

16 Q Again, this came from Mrs.

17 A Yes.

18 Q Now, there are other examples in your report
19 of active abuse alleged by Mrs..

20 A Yes.

21 Q Spitting?

22 A Yes.

23 Q You didn't speak to anyone who observed Mr.
24 spitting on Mrs.

25 A That is correct.

1 Q The head in the toilet.

2 A Yes.

3 Q Mrs. 'told you that?

4 A Yes.

5 Q Shaving of the head?

6 A Yes.

7 Q Mrs.' told you that?

8 A Yes.

9 Q Clorox to the face, Mrs. told you
10 about the Clorox, correct?

11 A Yes.

12 Q One of the collaterals you spoke to told you
13 that Mr. sprayed cleaning fluid in Mrs.
14 face, correct?

15 A Yes.

16 Q Didn't use the word "Clorox", correct?

17 A Correct.

18 Q And that person specifically told you they
19 heard about it from

20 A Yes.

21 Q Okay. And, so, to summarize with this
22 factor, both on page 16 and throughout your report,
23 again, all of the acts of abuse contained in your
24 report stem from allegations made by Mrs.;

25 A Yes.

1 Q 'alleged that she had a herniated
2 disc in her back, correct?

3 A Yes.

4 Q Resulting from a December of 2011 body
5 slamming incident?

6 A Yes.

7 Q Okay. Don't you think it would have been
8 important for you to know that through January of 2014,
9 Mrs. was still teaching exotic dance?

10 A Yes.

11 Q And, in fact, there was a video of her doing
12 it for 45 minutes. You would have liked to see that,
13 correct?

14 A Yes.

15 Q But no one provided you to -- provided you
16 with that, correct?

17 A Correct.

18 Q And Mrs. didn't tell you about that,
19 correct?

20 A Right.

21 Q You would want an opportunity to review all
22 of the information in this case and reevaluate whether
23 Mrs. suffers from PTSD?

24 A Yes, I would.

25 MR. NUNN: No further questions.

EXHIBIT D

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- A. Yes.
 Q. And that was said to you on March 28th of 2018
- A. Yes.
 Q. He told you that his accountant made an error that caused him to take a lot of money out of his savings to give to the IRS; correct?*
- A. Yes.
 Q. And you've opined that financial stress is a contributing factor to his disability, correct?*
- A. Contributing factor, yes.
 Q. Did you speak to his accountant?
- A. Nope.
 Q. Did you speak to anyone at the IRS?
- A. No.
 Q. Did you review any records that would corroborate that statement about the accountant making a mistake?
- A. I did not.
 Q. Because they weren't provided to you; correct?
- A. Correct.
 Q. Mr. _____ told you that his daughter asked him for money for her wedding; correct?*
- A. Yes.
 Q. He told you that his daughter said he could come to the ceremony, but that – but not the reception.*
- A. Correct.
 Q. And that added a level of, again, sadness to his overall presentation, correct? He wasn't happy –
- A. He also said it. It upset him.
 Q. It upset him.
- A. Yeah.
 Q. He wasn't happy about it.
- A. Right.
 Q. You didn't speak with his daughter about that; right?
- A. Right. No, I did not.
 Q. Mr. _____ denied that his new family was a precipitating factor in the disputes with his ex-wife and adult children; correct?*
- A. Yes.
 Q. The only source of that information came from Mr. _____, correct?
- A. That's true.
 Q. Mr. _____ told you that he is constantly worrying; correct?
- A. Yes.

***Nunn: These questions verbatim from report.**

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- Q. Told you that he's worried about losing his home; correct?
- A. Yes.
- Q. He's worried about his financial situation, correct?
- A. Yes.
- Q. Over the course of your four reports, you did not review a single financial record of Mr. ____; correct?
- A. Correct.
- Q. Because none was provided to you; correct?
- A. Correct.
- Q. Did he tell you that he spent thousands and thousands of dollars on IVF treatments?*
- A. That's – in one of the interviews, he did mention that he had had IVF.
- Q. Did he tell you how much money he spent on it?
- A. I know what IVF tends to cost, and he had two kids.
- Q. And this is someone whose is constantly worrying about finances; correct?
- A. Yes.
- Q. Mr. ____ told you that his PTSD stems from childhood trauma and abuse; correct?
- A. Yes.
- Q. And this was the second report where you mentioned childhood trauma and abuse; correct?
- A. Correct.
- Q. And he advised you – in this time, he advised you he was let go from ____; correct?
- A. Where is that?
- Q. Page 3 at the bottom of this report.
- A. Page 3?
- Q. Towards the bottom?
- THE COURT: Four lines from the bottom, five lines from the bottom.
- THE WITNESS: Thank you.
- A. Yeah, right. Got it.
- Q. But in your first evaluation, he told you he left on his own correct?
- A. I think the truth was, if I remember correct –
- Q. That's not what I asked you, though.
- A. Can I – that, I can't do a yes or no on.
- THE COURT: Okay.
- Q. So let's back up.
- THE COURT: All right. I'll allow the

***Nunn: Litigant “told” him, but it was not in the reports.**

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answer to stand. If you want to rephrase the question, go ahead.

Q. In your first evaluation, he told you he left on his own. Yes or no?

A. Yes.

Q. Okay. This time when you interviewed him, he said he was *let go* [Nunn's italics] from _____. Did he say those words to you?

A. Yes, but there's some context to it.

Q. Did you – did you quote him accurately by saying he was let go from _____?

A. Yes, but there's some context to it.

Q. Okay. Did you speak to anyone from _____ about Mr. _____ departure from _____?

A. No, I didn't.

Q. Do you – did you review any court documents related to that litigation?

A. I did not.

Q. You're aware that _____ filed a lawsuit against _____; correct?

A. I was, yeah.

Q. Mr. _____ told you that: "Being let go brought back all those traumas which I was previously able to compartmentalize."*

A. Right.

Q. You'd agree with me that the word "traumas" is a general term, correct?

A. Yes.

Q. Mr. _____ told you that he was seven years old when he experienced repeated trauma; correct?

A. Right.

Q. He told you that he still gets flashbacks of the trauma?

A. And, at that point, he did tell me more about _____.

Q. Okay.

A. What happened.

Q. Where in your report do you have any details about the traumatic events?

A. He asked me not to put it in, but I will – I will state – that he was sexually abused by a camp counselor at summer camp.

Q. Okay.

A. According to him.

Q. According to him.

A. Yes, according to him.

Q. He's the lone source of that information –

A. Absolutely.

Q. Correct?

A. Yes.

*Nunn: From report.

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THE COURT: All Right. Did you show them to Mr. ____?

MR. NUNN: I'm going to hand them to him now, your Honor.

THE COURT: And just tell me the title of it again? I know you've given me a copy.

MR. NUNN: "Specialty Guidelines For Forensic Psychologically." And I apologize. I have run out of D Exhibit Stickers.

THE COURT: We'll just write it on this one. We have them over here.

(Whereupon a discussion was held off the record at clerk's table.)

(Exhibit marked for identification.)

MR. NUNN: May I approach, Judge?

THE COURT: Yes, go right ahead. Thank you.

Q. Doctor, you're familiar with these, right?

A. I am.

Q. You believe you followed them in this case?

A. I believe that I asked for the records that were available. I believe that, you know, I had sufficient sources of information on which to base my opinion. So, yes.

Q. Can you look at guideline 8.03 on page 14?

A. Yeah, which is what I said, that I --

THE COURT: Well, he just asked you to look at it.

THE WITNESS: Yeah. I mean, I already -- I already figured that's where he was going, and I already said I thought that --

THE COURT: Okay. Just, just --

THE WITNESS: Okay.

THE COURT: Just let him ask the questions.

THE WITNESS: Sure.

Q. So you believe you complied with this guideline, 8.03.

A. I would have liked to have seen the relevant discovery. That's the one part that I wish I had seen.

Q. Okay. So --

A. And I had asked for the full amount of documents, and I didn't get those, but I wish I had seen those.

Q. Okay. So --

A. But other than that, no.

Q. Would you agree with me that this guideline is titled "Acquiring Collateral and Third-Party Information"?

A. Yes.

Q. And it reads: "Forensic Practitioners strive to access information or records from collateral

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sources with the consent of the relevant attorney or the relevant party, or when otherwise authorized by law or court order.”

A. Yes.

Q. I read that accurate?

A. Yes.

Q. You received information from _____ [litigant] -- Dr. _____, [treating physician #1] correct?

A. Yes.

Q. _____ Dr. Moreines. [treating physician #2]

A. Yes.

Q. Dr. _____ got her information from Mr. _____. [litigant]

A. Yes.

Q. And Dr. _____ got his information from Mr. _____ [litigant] and you have no idea what Mr. _____ [litigant] told Dr. _____ prior to January of 2016, correct?

A. Yes.

Q. Okay. Can you also turn to Guideline 9.02?

A. Yep.

Q. Would you agree with me that that guideline is titled “Use of Multiple Sources of Information”?

A. Yes.

Q. It reads: “Forensic practitioners ordinarily avoid relying solely on one source of data and corroborate important data whenever feasible,” and then there are citations, correct?

A. And I would argue that I used batteries of psychological and neuropsychological tests in order to meet that standard.

Q. Okay. It continues on though: “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 then the reasons for relying upon the data.

A. And I make that clear at the end of my report, in which I say that I based my opinions on the information that was available to me at the time I was writing the opinion, and that I am open to revising my opinion in the event that any additional information is received.

Q. And Mr. _____ [litigant] is the one who took the tests; correct?

A. Yes.

Q. And gave you the information in the interviews.

A. Yes.

Q. And so you were limited by what was provided to you in terms of documentation. Is that fair?

Filed, Clerk of the Appellate Division

A. Yes.

MR. NUNN: Judge, no further questions.

THE COURT: Thank you.

Working with Mental Health Experts in Family Law Cases

Eileen A. Kohutis, Ph. D.

Selecting the Expert

- ▶ What do Attorneys Look for
- ▶ What Matters

What is the Role of the Expert?

- ▶ Custody Neutral
- ▶ Brief Focused

Forensic Reports use a Scientific Method

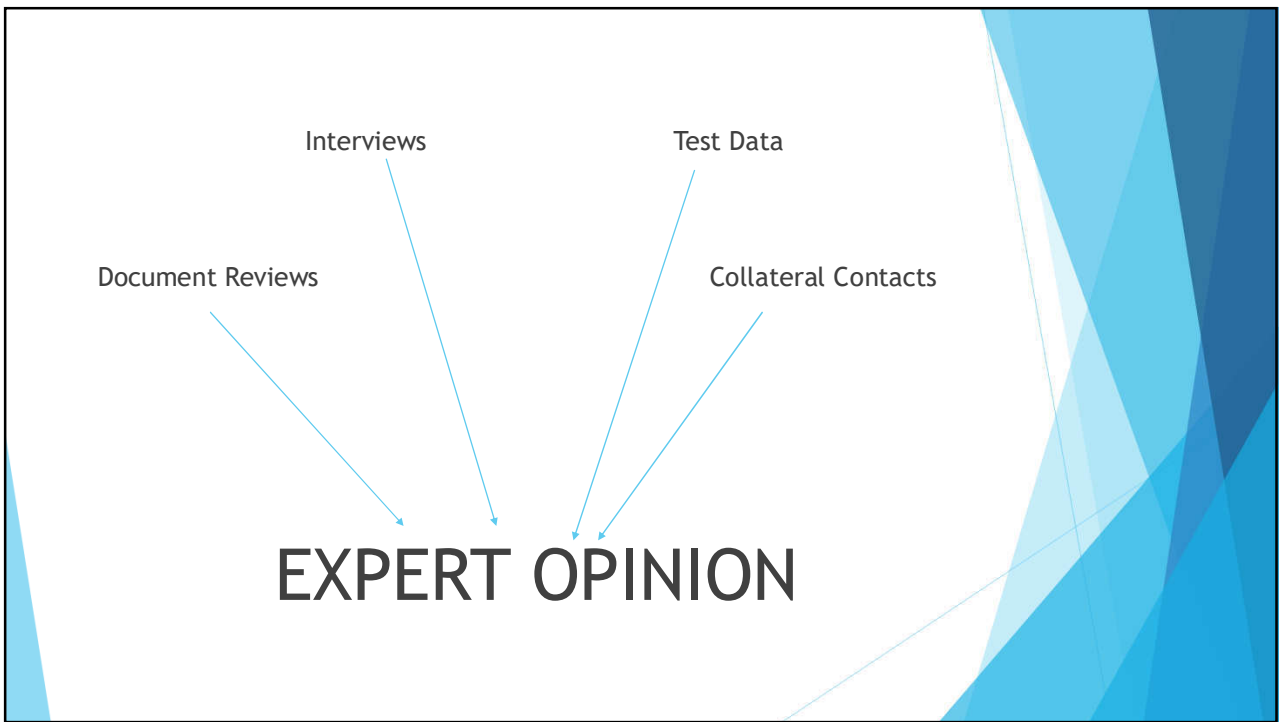
- ▶ To integrate clinical methods with scientific reasoning
- ▶ To incorporate information gathered from various sources and obtained with various methods

Clinical Method

- ▶ To interview parents
- ▶ To test parents
- ▶ To observe parent-child interaction
- ▶ To reviewing documents

Scientific Method

- ▶ To decrease subjectivity factors by integrating scientific data with clinical expertise
- ▶ To minimize bias
- ▶ To offer multiple hypotheses about the data
- ▶ To corroborate or disconfirm offered data
- ▶ To determine which tests are used for the evaluation



Reliability in Forensic Reports

- ▶ Psychological Perspective

Cross-Examination Issues

- Attacks on Legal Grounds?
- Attacks on Factual Grounds?
- Facts ignored by Expert

Reliability from an Admissibility View

The Report

- ▶ Are there Best Practices?
- ▶ Are there Objective Guidelines?
- ▶ Differences between Guidelines and Standards?

The Report

- ▶ What's included?
- ▶ What's left out?
 - ▶ Why?
 - ▶ What weight do you assign to data you consider?

Working Together to get to the Best Interests of the Child

- ▶ Recommendations
- ▶ Factors

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Eileen A. Kohutis, Ph. D.*Licensed Psychologist NJ #2623**2 W. Northfield Road Suite 209**Livingston, NJ 07039**Tel: (973)716-0174**Fax: (973)241-3120**www.drkohutis.com***Rebuttal Expert or Trial Consultant**

As a rebuttal expert or peer-reviewer with possible testimony, I will review the report by looking at the strengths and weaknesses. I will give verbal feedback about the report based on the method, data, and conclusions that were reached by the evaluator and whether the evaluator's conclusions are supported by the data. I only want to review the report and any other data the evaluator used. I do not want to meet your client until I testify. I will not provide you with strategy because once I work on helping the legal team prevail, my objectivity may be questioned. If you want me to testify, only give me the information I ask for and do not share your thoughts about strategy with me because the contents of my entire file including communications is discoverable. My goal is to assist the court. If I were to meet your client prior to my testifying, I would be subject to attack based on various reasons. For instance, I met with your client but I did not meet with the other litigant. Being able to state that I have not met your client, while I am testifying enhances my objectivity of the report.

As a trial consultant, I am working directly with the legal team to help it prevail or to advocate for its client. In this case, I also provide a thorough analysis of the report, but I will offer avenues to pursue for direct and cross examination. I will review the scientific literature for your use at trial and at trial I will help you deal with unexpected statements made by the witness. Because I am part of the legal team, I cannot testify. If I were to testify, I would be placed in a dual role and my entire file discoverable. As a trial consultant, I will want to see everything about the file because it should be protected by attorney work-product and attorney-client confidentiality. My goal is to assist the legal team. In this instance I would meet with your client.

If you are unsure prior to retaining me which role you would need, it is best if we work on the assumption that I am going to testify. This means that I will review the report and give you feedback if you want me to testify, then I remain in that role. But, if you decide that you do not want me to testify, you may ask me to close the file or state that you want me to become a trial consultant. As a trial consultant, I now shift from providing objective testimony to the court to assist you in your advocacy.

Before signing the retainer, please do not discuss anything me about your strategy or anything that you do not want your opponent to know about.

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About the Panelists...

Honorable Lisa F. Chrystal, PJFP (Ret.) is counsel to Brach Eichler, LLC in Roseland, New Jersey, where she concentrates her practice in alternative dispute resolution, mediation and arbitration, and discovery management. She is a former Presiding Judge, Family Division, Union County, and sat in Elizabeth, New Jersey. Appointed to the bench in 2000 by Governor Christine Todd Whitman, she also sat in the Civil Division.

Prior to her appointment to the bench, Judge Chrystal maintained a solo litigation practice in Scotch Plains, New Jersey. She also served as Assistant Union County Counsel and was a civil litigator for two law firms before opening her own office. Judge Chrystal served on the Supreme Court Model Jury Charge Committee and is a former Co-Chair of the Union County Minority Concerns Committee. A former Trustee of the Union County Bar Association, she is a member of the Supreme Court Committee on Diversity, Inclusion and Community Engagement, and the Supreme Court Family Practice Committee, where she serves on the FM/FD Subcommittee. Judge Chrystal is a member of the New Jersey State and Union County Bar Associations, and serves on the Executive Committee of the NJSBA Family Law Section. She has also served on the Family Subcommittee on Mentoring of New Judges.

A former Master of the Richard J. Hughes American Inn of Court, Judge Chrystal is a member of the Barry I. Croland American Inn of Court and The Justice Virginia Long Hudson County American Inn of Court. She has trained newly-appointed judges and those transferring to the Family Division in the Comprehensive Judicial Orientation Program (C.J.O.P.) and co-authored the judges' "Dissolution Manual." Judge Chrystal has taught CLE classes for the Union County Bar Association and Ethics for Trial Attorneys for ICLE, and was an Adjunct Legal Writing Instructor at Seton Hall Law School. In 2022 she was the recipient of the prestigious William J. McCloud Award bestowed by the Union County Bar Association which recognizes significant contributions to the administration of justice in the Family Part.

Judge Chrystal is a graduate of Syracuse University and a *cum laude* graduate of Seton Hall University School of Law.

Eileen Kohutis, Ph.D. is a licensed psychologist in private practice in Livingston, New Jersey. She conducts evaluations for child custody, Tevis claims (marital tort) and personal injury cases, and her areas of expertise are psychological testing, Munchausen by proxy (now called factitious disorder imposed on another) and reunification. She is also a rebuttal expert.

A member of the International and state chapter of the Association of Family and Conciliation Courts, Dr. Kohutis is a Trustee of the New Jersey Psychological Association Foundation and a member of the American and New Jersey Psychological Associations. She is a member of the American Psychological Association Divisions 41 (America Psychology-Law Society) and 42 (Psychologists in Independent Practice), and is the Editor of the *Independent Practitioner* of the latter. She is a former Program Chair of the New Jersey Chapter of the Association of Family and Conciliation Courts (NJ-AFCC) and is on the Medical Staff at St. Barnabas Medical Center in Livingston, New Jersey.

Dr. Kohutis is the co-author of "The Eggshell and Crumbling Skull Plaintiff: Psychological and Legal Considerations for Assessment" which was published in *Psychological Injury and Law* as

well as another article, with Thomas DeCataldo, "The Legal and Scientific Perils of Modifying New Jersey's Custody Statute to Include a Presumption of Equal Custody" which appeared in *New Jersey Family Lawyer*. The author of articles on joint v. physical custody, she has presented locally, nationally and internationally on malingering, psychological testing somatic disorders and factitious disorders imposed on another (formerly called Munchausen syndrome by proxy).

Dr. Kohutis received her B.A. from Trenton State College and her M.A. and Ph.D. in Psychology from Yeshiva University. She also holds Certificates in Psychoanalysis and Psychoanalytic Psychotherapy from the Institute for Psychoanalysis and Psychotherapy of New Jersey.

Ronald Lieberman, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey and as a Board-Certified Family Trial Lawyer by the National Board of Trial Advocacy, is a Shareholder in Rigden Lieberman, LLC in Moorestown, New Jersey. His practice is limited to family law issues including matrimonial law, divorce, child custody, child support, parenting time, domestic violence and appellate work.

Admitted to practice in New Jersey, New York and Pennsylvania, and before the United States District Court for the District of New Jersey, the Third Circuit Court of Appeals and the United States Tax Court, Mr. Lieberman is Past President of the Camden County Bar Association, has served as Co-Chair of the Association's Family Law Committee and is Past Chair of the New Jersey State Bar Association Family Law Section. A Fellow of the American Academy of Matrimonial Lawyers (AAML), he is President-Elect of the AAML New Jersey Chapter and has also been a long-standing member of the Supreme Court's Family Law Practice Committee. He has been Chair of the NJSBA Legal Education Committee and has served on the Scholarships Committee and *Respect* Newsletter Editorial Board of the New Jersey State Bar Foundation.

A former Master of the Thomas S. Forkin Family Law American Inns of Court, Mr. Lieberman has lectured on family law topics for ICLE, the New Jersey Association for Justice, Sterling Educational Services, the National Business Institute and the New Jersey State, Burlington County and Camden County Bar Associations. He has been Executive Editor of the *New Jersey Family Lawyer*, has authored articles which have appeared in the publication and has been quoted in the *Courier Post*, *U.S. News and World Report*, *The New York Times* and on CBS 3 Philadelphia. He is the recipient of the 2014 Camden County Martin Luther King, Jr., Freedom Medal and several other honors.

Mr. Lieberman received his B.A. from the University of Delaware and his J.D. from New York Law School. He was Law Clerk to the Honorable F. Lee Forrester, P.J.F.P. (Ret.).

Matheu D. Nunn is a Partner in Einhorn, Barbarito, Frost & Botwinick, P.C. in Denville, New Jersey, where he chairs the firm's Family Law Practice and General Appellate Practice, and handles litigation in a variety of fields. He has been counsel of record in numerous Appellate Division and Supreme Court matters, including *Bisbing v. Bisbing*, *Quinn v. Quinn*, *In re J.E.V. adoption cases* and *Clark v. Clark*.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Mr. Nunn is a member of the New Jersey State and Morris County Bar Associations, and a former Trustee of the latter. He is Vice Chair of the NJSBA *Amicus*

Committee, a member of the NJSBA Family Law Section Executive Committee and was a member of the NJSBA Appellate Practice Committee from 2013-2016.

Mr. Nunn has lectured on appellate practice, family law and criminal law topics, and volunteers for several community organizations. He is the recipient of several honors.

Mr. Nunn received his B.A. from the University of Delaware and his J.D., with honors, from Rutgers School of Law-Camden, where he was an editor of the *Law Review*. During law school, he worked in the legal department of ING Direct and completed externships for the Honorable Joseph A. Falcone, J.S.C., and the Morris County Prosecutor's Office. Following law school, he clerked for the Honorable B. Theodore Bozonelis, A.J.S.C. (Ret.) and for the Honorable Jack M. Sabatino, P.J.A.D.

Mark Singer, Ed.D. is a licensed psychologist at the Office of Dr. Mark Singer in Livingston, New Jersey, where he performs evaluations and provides treatment in several areas including child custody, parental alienation, and other issues relating to child protection/abuse/ custody. He is also a retired Police Sergeant from the West Orange Police Department.

Dr. Singer has testified as an expert witness in the New Jersey Superior Court in issues related to parental capacity, parental alienation, child abuse and neglect, child custody and visitation, and termination of parental rights. He has provided services as a consultant for the Department of Child Protection and Permanency, the Office of the Law Guardian, the Office of the Public Defender and to private attorneys. Dr. Singer has previously presented to professional groups and agencies on the topics of psychological assessment and measurement in child protection cases, evaluation and related issues in child custody, parental alienation, and other issues related to child protection, abuse and custody. In addition, he has consulted with law enforcement agencies on personnel selection and risk assessment.

Dr. Singer received his Doctorate in Counseling Psychology from Rutgers University with a specialized track in multi-cultural counseling.

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