

In The Matter Of:

Pledger v.

Janssen

(Jury Trial-Afternoon Session)

Vol. VII

February 3, 2015

John J. Kurz, RMR-CRR, Official Court Reporter

City of Philadelphia

First Judicial District Of Pennsylvania

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Min-U-Script® with Word Index

1 IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
 2 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
 3 CIVIL TRIAL DIVISION
 4 -----
 5 IN RE: RISPERDAL® LITIGATION :
 6 March Term, 2010, No. 296 :
 7 Philip Pledger, et al., :
 8 Plaintiffs, : APRIL TERM, 2012
 9 v. : NO. 01997
 10 Janssen Pharmaceuticals, Inc., :
 11 Johnson & Johnson Company, :
 12 and Janssen Pharmaceutical :
 13 Research and Development, :
 14 L.L.C. :
 15 Defendants. :
 16 -----
 17
 18 TUESDAY, FEBRUARY 3, 2015
 19
 20 COURTROOM 425
 21 CITY HALL
 22 PHILADELPHIA, PENNSYLVANIA
 23
 24
 25 B E F O R E: THE HONORABLE RAMY I. DJERASSI, J.,
 and a Jury
 JURY TRIAL - VOLUME VII
 - AFTERNOON SESSION -
 REPORTED BY:
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 CERTIFIED REALTIME REPORTER
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1 **COURT CRIER:** Come to order, please.
 2 **THE COURT:** All right. Please be
 3 seated everybody.
 4 Counselor, I think you should be
 5 aware that we are going to adjourn today at
 6 4:15.
 7 **COURT CRIER:** All rise as the jury
 8 enters the room.
 9 - - -
 10 (The following transpired in open
 11 court in the presence of the jury:)
 12 - - -
 13 (Whereupon the jury entered the
 14 courtroom at 1:55 p.m.)
 15 - - -
 16 **THE COURT:** All right. Please be
 17 seated everybody.
 18 All right. We're ready to continue
 19 the examination of Mr. Gilbreath.
 20 **MR. KLINE:** Yes. Ready to continue
 21 the cross-examination, sir. Thank you.
 22 Good afternoon, Your Honor.
 23 And good afternoon all.
 24 **JURY PANEL:** Good afternoon.
 25 - - -

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1 A. Of course.
 2 **Q. -- and discuss with you the 1,205 .2-milligram**
 3 **doses.**
 4 **Now, if we were to look at it**
 5 **somewhat differently, we know, because we've**
 6 **established from the label, the 2006 label, that the**
 7 **adult schizophrenic dose was 1 milligram, which was**
 8 **the only indication back in 2002, '03, when we're**
 9 **talking about.**
 10 **If we were to look at it this way,**
 11 **correct me if I'm wrong, 1,205 milligrams were**
 12 **dropped off in one day. And if I divide 1,205 by**
 13 **365, since it was 1-milligram-a-day adult dose, you**
 14 **dropped off enough medicine that day, sir, to last**
 15 **in one patient 3.3 years for one -- how do you spell**
 16 **schizophrenic?**
 17 A. S-C-H-I-Z-O-P-H-R-E-N-I-A.
 18 **Q. You dropped off in that doctor's office that**
 19 **day, in that child neurologist office, 3.3 years of**
 20 **medication for one schizophrenic patient, correct?**
 21 A. Is that in the 1-milligram dosing? I don't
 22 know if I'm fully following you.
 23 **Q. Yes. At what we saw on the package, the**
 24 **starting dose for a schizophrenic patient, the**
 25 **recommended starting dose, not somebody who might**

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1 **CROSS-EXAMINATION**
 2 - - -
 3 **BY MR. KLINE:**
 4 **Q. At the lunch break, sir -- hi.**
 5 A. Yes. Good afternoon.
 6 **Q. Hi. How are you?**
 7 A. I'm well. Thank you.
 8 **Q. We were on 3/11/03.**
 9 **And I want to try something now that**
 10 **the jury is in.**
 11 **MR. KLINE:** And I'll be responsible
 12 to get it out of the way, too, Your Honor. I
 13 promise. It's just in the corner over there.
 14 (Referring to the easel.)
 15 **THE COURT:** Counsel, one of you might
 16 want to go over there. It's hard for us to
 17 see it, including the witness, Mr. Kline.
 18 **MR. KLINE:** Okay. I see those
 19 issues.
 20 Okay. I'll go back.
 21 I see that issue.
 22 I'm just struggling with the
 23 demonstrative issues. Okay.
 24 **BY MR. KLINE:**
 25 **Q. I'd like to pick up, sir --**

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1 **have a problem, not somebody who might be an**
 2 **oddball, but the starting dose in the label, it**
 3 **would be -- you dropped off 3.3 years' worth for a**
 4 **schizophrenic patient, correct?**
 5 A. I understand the milligrams, yes, that -- the
 6 amount of samples was provided.
 7 **Q. And this date was 3/11/03.**
 8 **MR. KLINE:** Next exhibit number,
 9 please, Mr. Gomez.
 10 **MR. GOMEZ:** 62-G.
 11 **MR. KLINE:** P-62-G is this chart.
 12 (Exhibit P-62-G marked for
 13 identification.)
 14 **BY MR. KLINE:**
 15 **Q. And let's move back to our going through it.**
 16 **So now we established in the**
 17 **beginning that you had been there 21 times, and**
 18 **we've gone through four of them. And also just to**
 19 **keep a running record, we have 1,205 .25-milligram**
 20 **dose equivalents, 330 equivalents, and 280**
 21 **equivalents so far, correct, sir?**
 22 A. I see what you're referring to.
 23 **Q. Doing the math.**
 24 A. Yes.
 25 **Q. Okay. So let's move forward.**

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1 **By the way, were these samples free?**
 2 A. Yes. They were provided to the physician for
 3 use in their patients if they wanted to start
 4 someone or if someone was in between pharmacy visits
 5 and they needed kind of a bridge medication, we
 6 provided it to them, the doses of .25, all the way
 7 up to 2 milligrams.
 8 **Q. My only question, sir, was: Is it free? Yes**
 9 **or no?**
 10 A. Yes.
 11 **Q. Okay. So let's use the same format as we go**
 12 **along: Date, presentation, number, samples.**
 13 **Date, whether there was a**
 14 **presentation.**
 15 **Okay. Next time you're in this**
 16 **office of Dr. Mathisen was 8/5/03.**
 17 **Did you do a presentation, according**
 18 **to the -- oh, and we've marked it as Plaintiff's**
 19 **Exhibit -- it would have a letter number, Mr. Gomez.**
 20 **MR. GOMEZ: H.**
 21 **MR. KLINE: H. The number?**
 22 **MR. GOMEZ: 62-H.**
 23 **MR. KLINE: 62-H. That would be**
 24 **helpful.**
 25 **(Exhibit P-62-H marked for**

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1 identification.)
 2 **BY MR. KLINE:**
 3 **Q. 62-H is in front of the jury on the screen.**
 4 **My developing chart is in front of the jury with my**
 5 **hand, and I am at 8/03.**
 6 **MR. KLINE: Do you need the call-out**
 7 **numbers, Cory, or are you okay as we follow**
 8 **these?**
 9 **Okay.**
 10 **BY MR. KLINE:**
 11 **Q. And so we have 8/5/03; is that correct?**
 12 A. Yes. That's what I see.
 13 **Q. And it says you did a presentation only,**
 14 **correct?**
 15 A. Yes.
 16 **Q. And the spot for the notes, sir --**
 17 A. Yes.
 18 **Q. -- as to anything you said to him and he said**
 19 **to you, blank, correct?**
 20 A. It is blank.
 21 **Q. And you have no specific recollection of that**
 22 **day, correct, sir?**
 23 A. No. I can only speak to what was commonplace
 24 at the time.
 25 **Q. Yes. No, sir. My questions will go to not**

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1 **what was commonplace, but rather what you actually**
 2 **remember at the time not having written a note.**
 3 A. Sure.
 4 **Q. Do you remember anything?**
 5 A. No, not from the specific interaction.
 6 **Q. Do you remember any specific interaction --**
 7 **rather than saying this was commonplace, this is**
 8 **what I would have done, this is what I usually do,**
 9 **do you have any specific recollection of any**
 10 **interaction with you and Dr. Mathisen on all these**
 11 **visits?**
 12 A. No, not verbatim. I know what --
 13 **Q. No. My question isn't not verbatim. My**
 14 **question is: Do you have any specific recollection**
 15 **of anything that happened in these office visits**
 16 **with Dr. Mathisen? Yes or no, sir?**
 17 A. Yes.
 18 **Q. Okay. Tell me what you remember so that when**
 19 **I get there, I know what you specifically remember.**
 20 A. I remember him asking specifically, you know,
 21 about Risperdal. Me asking him about his
 22 opportunity to treat adult patients with
 23 schizophrenia; him telling me how he had them. And
 24 then I also remember him at another time inquiring
 25 about an article for the use of autism.

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1 **Q. Okay. That's what you remember.**
 2 **Do you remember when you had this**
 3 **discussion about him telling you that he treated**
 4 **adult schizophrenic patients?**
 5 A. No, I don't remember the exact date. It would
 6 have been one of our first interactions.
 7 **Q. And you're not privy to what he told the jury**
 8 **here about only treating adult patients that carried**
 9 **over from his children's practice; you're not privy**
 10 **to that, correct?**
 11 A. No. But that's somewhat what he referred to
 12 me -- mentioned to me when I asked the question as
 13 well. That's my recollection.
 14 **Q. Okay. And you do have a specific recollection**
 15 **of when he asked you for the New England Journal**
 16 **article? something that we're going to get to.**
 17 A. Yes.
 18 **Q. Okay. And the --**
 19 A. And the reason I do is I saw it in a -- I did
 20 see the call note for that where that was a specific
 21 call-out.
 22 **Q. Well, I know that it says that in the note,**
 23 **but do you actually remember? When I say do you**
 24 **remember, do you like in your mind say I can**
 25 **remember being there?**

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1 A. Oh, no, I don't remember that.
 2 **Q. That's what I'm asking you.**
 3 A. No. I apologize.
 4 **Q. I'm asking like I remember -- I remember last**
 5 **December 25th standing in front of the Christmas**
 6 **tree, that kind of recollection. Do you remember**
 7 **that?**
 8 A. I do not recall the actual interaction with
 9 Dr. Mathisen that day.
 10 **Q. Okay. Of any of these days?**
 11 A. The initial ones where we had the discussion
 12 as to how he had patients with adults -- or excuse
 13 me, patients that were adults with schizophrenia. I
 14 do remember that interaction.
 15 **Q. Oh, you remember that very specifically?**
 16 A. Yes, I do, just because it was, you know --
 17 **Q. Sure.**
 18 A. -- I asked the question. He was a child
 19 neurologist. And I had a similar recollection with
 20 other folks who -- where I needed to ask the
 21 question especially.
 22 **Q. Yeah.**
 23 **Okay. Now, let's continue on, sir.**
 24 **We're by 8/5. We're at 8 -- that was**
 25 **8/5/03, correct?**

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1 **The next visit is marked as 62-I.**
 2 **And it's 8/26/03.**
 3 **(Exhibit 62-I marked for**
 4 **identification.)**
 5 **Now, you're back just a few weeks**
 6 **later, correct?**
 7 A. Yes.
 8 **Q. Was that, sir -- I probably drew the line too**
 9 **quick.**
 10 **Was that, sir, because you were, you**
 11 **know, running low that day? You probably didn't**
 12 **have any samples, so you were back three weeks later**
 13 **when you had a fresh supply?**
 14 A. You know, I really don't recall the exact
 15 reason that I was back at that time. It could have
 16 been just due to scheduling, calendaring, things
 17 like that.
 18 **Q. Well, you didn't usually see him every three**
 19 **weeks and you didn't have any pills to give out or**
 20 **any bottles to give out or you didn't give out any**
 21 **bottles on 8/5. So would it make sense, based on**
 22 **custom and practice which you've been telling the**
 23 **jury about, that the reason is that you got back**
 24 **here three weeks later because the good doctor might**
 25 **need some samples?**

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1 A. No, I don't remember that, because I remember
 2 no time when we did not have the availability of
 3 samples when a physician requested them. So I don't
 4 think that would be the reason for the increased or
 5 decreased visit.
 6 **Q. You tried to keep your sample supply healthy,**
 7 **correct, sir?**
 8 A. What do you mean by "healthy"?
 9 **Q. Healthy meaning a full supply so you didn't --**
 10 **you tried not to run out, correct?**
 11 A. Yes. Again, I mean, we were provided the
 12 ability to obtain samples when we needed them and
 13 there was a frequency with that.
 14 **Q. Yeah. Samples were an important part of**
 15 **promoting the product, correct?**
 16 A. It was an important part of what we did.
 17 Physicians requested them.
 18 **Q. No, that wasn't my question.**
 19 **My specific question was: It was an**
 20 **important part of promoting the product? Yes or no?**
 21 A. No.
 22 **Q. Well, now let's see what happened here on**
 23 **8/26. Was there a presentation? Yes.**
 24 **I assume, once again, you're deep**
 25 **into adult schizophrenics; is that correct?**

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1 A. Yes. That would have been correct with any
 2 interaction at that time.
 3 **Q. No; I meant on this visit. You would have**
 4 **been discussing adult schizophrenics again, correct?**
 5 A. Yes, like I would have on any visit with any
 6 physician.
 7 **Q. And what did your presentation on this day**
 8 **involve about adult schizophrenics?**
 9 A. It would have involved the package insert that
 10 was --
 11 **Q. First of all, do you have any recollection?**
 12 A. No.
 13 **Q. Okay. Then you don't know.**
 14 **Now, let's see -- we do know that you**
 15 **dropped off a lot of samples. What did you drop off**
 16 **that day? Let's see what you have going here.**
 17 **First of all, you have five .5s, five**
 18 **half milligrams, 4 by 20s.**
 19 **Now, I haven't seen that before.**
 20 **What are the 4 by 20s?**
 21 A. Just another, I guess, packaging, as the way
 22 it's packaged.
 23 **Q. Well, explain it for us. Four times 20, how**
 24 **many pills does that total?**
 25 A. I'm quite certain it was 20. I --

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1 **Q. So you had four 20-packs; is that correct?**
 2 A. Yes, I think that is correct.
 3 **Q. Four 20-packs. 20-packs last longer than the**
 4 **ones we saw, correct, before?**
 5 A. If there's more medication in them, yes.
 6 **Q. Because we were watching -- we were seeing one**
 7 **by sevens, which were seven-packs. Now we have 4 by**
 8 **20s. Would that be -- did they have a name for it?**
 9 **Like was it a super starter pack?**
 10 A. I don't recall.
 11 **Q. And that would be 80 pills. Of course, we**
 12 **have to -- we now know that if we wanted to look at**
 13 **the .25 equivalent, it would be eighty .50s or 160**
 14 **.25s, correct?**
 15 A. I'm following your math, but, yes.
 16 **Q. I think that's correct, right?**
 17 A. Yeah.
 18 **Q. A hundred and sixty .25s.**
 19 **Okay. And let's see what else. Was**
 20 **that the end of it or did you give out more?**
 21 A. I also provided another strength of the
 22 1-milligram samples.
 23 **Q. So you gave him the 1-milligram tablets. And**
 24 **that would be -- was that 4 by 20s, too?**
 25 A. Yes. It indicates it was 4 by 1 by 20.

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1 **Q. What does 4 by 1 by 20 mean? Four times 1**
 2 **milligram times 20 tablets?**
 3 A. That's my understanding. I don't -- I
 4 actually don't remember exactly what that makeup
 5 was, but as I understand, it would be that. It
 6 would be four -- four blister packs.
 7 **Q. Blizzard packs?**
 8 A. Blister packs.
 9 **Q. Oh, blister packs. I thought you said**
 10 **"blizzard."**
 11 A. They're the ones, you know, you peel off the
 12 back and get the pill out of there, that type of
 13 thing. These -- I don't think these -- these were
 14 M-Tabs. I don't think you pressed these through
 15 because they were soft.
 16 But nonetheless, the way I understand
 17 the packaging on it is it was four blister packs, so
 18 each one of those had medication with 20, I guess,
 19 dosages in there. So I really don't have a specific
 20 recollection. I'm sure we could refer to the
 21 package insert to be crystal clear on what was
 22 represented in that.
 23 **Q. Were they childproof?**
 24 A. I don't recall them being childproof, no.
 25 **Q. So four -- let me understand -- 4 by 1 by 20,**

- JASON GILBREATH - AS ON CROSS - Page 19

1 so that would be 80 pills. And 80 pills, they're
 2 hundreds this time. So it's 8, 4 -- so it's 320 .25
 3 doses, .25-milligram doses, correct?
 4 A. I follow your math, yes.
 5 **Q. Okay. So that day -- and we can move on to**
 6 **the next day -- that day you did 160 .25s and 320**
 7 **.25 equivalents.**
 8 So we have 480 .25s if someone were
 9 to break them apart or if someone were to use them
 10 as .25s, correct?
 11 A. Yes, if they were to use them in that manner.
 12 **Q. Yeah. Someone like a pediatric, or someone**
 13 **like a child neurologist's patients, if they were to**
 14 **use them that way, correct?**
 15 **MR. MURPHY:** Objection, Your Honor;
 16 argumentative.
 17 **MR. KLINE:** Okay. Now, let's --
 18 **THE COURT:** Sustained.
 19 Do you have another one?
 20 **MR. KLINE:** Yes. Next one.
 21 62-J.
 22 (Exhibit P-62-J was marked for
 23 identification.)
 24 **BY MR. KLINE:**
 25 **Q. 62-J, the date on it is 9/12/03. Eighteen**

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1 days later you're back in his office doing another
 2 presentation, sir. It says here you checked
 3 "presentation."
 4 A. Yes.
 5 **Q. Uh-huh. Another adult schizophrenia**
 6 **presentation again?**
 7 A. Yes. That would have been the context of that
 8 call as well.
 9 **Q. Sure. To the child neurologist, correct?**
 10 A. Yes.
 11 **Q. Yeah. Okay. I get it.**
 12 **And, by the way, let's see how much.**
 13 **Are you giving out samples that day?**
 14 A. Yes, I did.
 15 **Q. Oh, oral solution.**
 16 **Did you have a fresh stock of oral**
 17 **solution, sir?**
 18 A. I don't recall if the stock was fresh or not.
 19 **Q. This stuff has expiration dates on it, this**
 20 **medication, correct?**
 21 A. It does have -- all medications have an
 22 expiration date on them.
 23 **Q. Yes. I asked about this medication. It has**
 24 **an expiration date?**
 25 A. Yes, this medication would have an expiration

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1 date on it also.
 2 **Q. Okay. And, by the way, sir, on these**
 3 **entries -- I'll cover all entries with this one --**
 4 **you're the one who's writing this in because you're**
 5 **the only one who knows the amounts that you're**
 6 **giving out, correct? Correct?**
 7 A. Yes. The way this would have worked, it would
 8 have been a drop-down menu on the medication, the
 9 strength and dosage, if you will. That would have
 10 been selected. I would have physically typed in the
 11 amount, you know, "10," and that would have been the
 12 extent of what I would have captured and entered
 13 freehand.
 14 **Q. Well, for those of us who use computers a lot,**
 15 **sir, this would actually -- you wouldn't have to**
 16 **type it in. You would just have to click and the**
 17 **click would -- you got a preset menu and you just**
 18 **would click and Risperdal 30-milliliter oral**
 19 **solution would come in. You didn't have to type**
 20 **that each time.**
 21 A. Correct. It would have been a drop-down menu,
 22 and I would have selected Risperdal 30-milliliter
 23 oral solution.
 24 **Q. But that's not what you said a minute ago.**
 25 **You said you typed it in. It's a drop-down menu,**

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1 **correct?**
 2 A. I believe it to be a drop-down menu, yes.
 3 **Q. Okay. And let's see -- let's see what you --**
 4 **what free samples you handed out that day. Ten**
 5 **30-milliliter solutions, correct?**
 6 A. Yes.
 7 **Q. A milliliter equaling a milligram. The**
 8 **liquid, by the way, you don't have to -- you don't**
 9 **have to either chop up or cut up. It's just liquid.**
 10 **You use it as much or as little as you need,**
 11 **correct?**
 12 A. Yes, it is.
 13 **Q. By the way, .25 milliliter, give us an idea,**
 14 **is that a teaspoon?**
 15 A. No. It's a very small amount.
 16 **Q. Is it a -- when you say a small amount, is it**
 17 **two, three drops, five drops?**
 18 A. I don't know the exact number of drops
 19 actually.
 20 **Q. How is it used? Like how would you give it to**
 21 **a child?**
 22 A. It would be -- there's a little dispenser
 23 that's in the bottle like any type of medication,
 24 like oral medication dispenser like we are
 25 accustomed to.

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1 **Q. Like a little thing with a plunger on the top?**
 2 A. Yes, I believe that's what it was.
 3 **Q. And it was right there in that bottle, too,**
 4 **wasn't it?**
 5 A. I think so, yes.
 6 **Q. Yeah. So you can dispense little amounts,**
 7 **correct?**
 8 A. The needed amount, yes.
 9 **Q. Yeah.**
 10 **And how much would a full milliliter**
 11 **be, equivalent to a milligram, would that be a**
 12 **teaspoon?**
 13 A. I don't think so.
 14 **Q. Would it be near a teaspoon; do you know? You**
 15 **did it.**
 16 A. Probably near. I actually don't know exactly.
 17 **Q. Well, you wouldn't need that little -- that**
 18 **little -- what do you call that? I call it a**
 19 **plunger. The little...**
 20 **MR. ITKIN: Droplet.**
 21 **BY MR. KLINE:**
 22 **Q. Droplet. Little droplet. You wouldn't need**
 23 **the little dropper if you were just doing it by**
 24 **teaspoon, would you?**
 25 A. I really can't answer that question. I've

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1 never used it myself personally.
 2 **THE COURT: Next.**
 3 **BY MR. KLINE:**
 4 **Q. Let's look, ten times 30 is -- that would be**
 5 **30 milliliters, and it would be 10 times 30 is 300.**
 6 **And if you divide it by four, that would be**
 7 **30-milligram equivalent. So it would be the**
 8 **equivalent of 1,200 .25s, correct?**
 9 A. Yes, if you're going, again, by .25
 10 increments.
 11 **Q. Yes.**
 12 **Next one is 10/14/03.**
 13 **You gave another one of these**
 14 **presentations on schizophrenia, correct?**
 15 A. Yes, I did.
 16 **MR. MURPHY: I'm sorry. Counsel, is**
 17 **this marked as an exhibit?**
 18 **MR. GOMEZ: 62-K.**
 19 **MR. KLINE: Oh, yes, 62.**
 20 **MR. GOMEZ: K.**
 21 **MR. KLINE: K.**
 22 **(Exhibit P-62-K marked for**
 23 **identification.)**
 24 **BY MR. KLINE:**
 25 **Q. And did you give out samples that day?**

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1 A. Yes, it's indicated that I did.
 2 **Q. Okay. And what did you give out that day?**
 3 A. It looks like I gave five of the .5-milligram
 4 samples.
 5 **Q. And, by the way, .5s, putting aside the .25,**
 6 **.5 is half a dose, correct? Half an adult dose?**
 7 A. It depends on the adult. And that would be
 8 only in consultation with a physician.
 9 **Q. .5 is only half of the recommended adult dose,**
 10 **correct?**
 11 A. Of the recommended starting adult dosage,
 12 generally speaking, per the label language, yes.
 13 **Q. Yes.**
 14 **Okay. So you had five, and let's see**
 15 **what these packs were. It says they're 1 by 7s,**
 16 **correct?**
 17 A. Yes.
 18 **Q. And is there anything else that you handed out**
 19 **that day?**
 20 A. I don't see it, if there was.
 21 **Q. So what you have here is 7 times 5 is 35. You**
 22 **have thirty-five .5s; thirty-five .50s equal seventy**
 23 **.25s. That would be the math, correct?**
 24 A. Yes.
 25 **Q. 62-L.**

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1 (Exhibit P-62-L marked for
 2 identification.)
 3 **BY MR. KLINE:**
 4 **Q. 62-L is 11/17/03.**
 5 **You indicate here -- and we'll put it**
 6 **up there -- that you did another presentation,**
 7 **correct?**
 8 A. Yes.
 9 **Q. Does a presentation include any slide show or**
 10 **any -- any handouts or anything like that? I**
 11 **haven't asked you that.**
 12 A. No. A presentation really only indicated that
 13 we had a face-to-face discussion with the physician.
 14 So there were no slide shows or anything like that.
 15 But that might have involved a brochure or clinical
 16 study or certainly the package insert, but the
 17 presentation really only indicates that a in-person
 18 discussion took place.
 19 **Q. And you got -- on this visit let's see what**
 20 **you did. Let's go to your -- let's go to your**
 21 **sample handouts.**
 22 **Among -- let's see here, you gave a**
 23 **free handout of five times .50s. And it looks like**
 24 **it's a 1-by-7 packet.**
 25 A. Correct.

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1 **Q. And so what you were giving out was the same**
 2 **as before, thirty-five .50s; seventy .25s, correct?**
 3 A. Yes.
 4 **Q. Next.**
 5 **Next exhibit is 62-M.**
 6 **THE COURT: 64-M.**
 7 **COURT CRIER: Sixty-two.**
 8 **THE COURT: 62-M.**
 9 **MR. KLINE: Yeah.**
 10 **THE COURT: Okay.**
 11 **MR. KLINE: 62-M.**
 12 - - -
 13 (Exhibit P-62-M marked for
 14 identification.)
 15 - - -
 16 **BY MR. KLINE:**
 17 **Q. Okay. And according to this on 12/9/03, this**
 18 **was a presentation, another presentation on adult**
 19 **schizophrenia, correct?**
 20 A. Yes, that would be correct.
 21 **Q. And it looks like you're there on 12/9/03.**
 22 **This is the holiday season, correct?**
 23 A. Yes. It was December. It was the holiday
 24 season.
 25 **Q. And you had 13 packets on -- 13 December**

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1 **packets, correct?**
 2 A. I would not call them that; but that we
 3 provided 13 quantities of the Risperdal oral
 4 solution.
 5 **Q. Well, actually, you provided 13 bottles of the**
 6 **solution. So that would be 13 times 30, 393. And**
 7 **if someone were using it in .25s, that would be**
 8 **times four.**
 9 **1,592 .25s for this child**
 10 **neurologist, correct, sir?**
 11 A. Yes.
 12 **Q. It was a holiday season. Did you say "Merry**
 13 **Christmas" to him?**
 14 **MR. MURPHY: Objection, Your Honor.**
 15 **THE COURT: That's sustained.**
 16 **BY MR. KLINE:**
 17 **Q. And you're right back in January.**
 18 **62-N, N as in Nancy.**
 19 - - -
 20 (Exhibit P-62-N marked for
 21 identification.)
 22 - - -
 23 **BY MR. KLINE:**
 24 **Q. Now, you're back. It's a new year, January 3**
 25 **of '04. According to your notes, you said**

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1 **"presentation." Do you see that?**
2 A. I do.
3 **Q. May I ask you a question, sir?**
4 A. Of course.
5 **Q. Would it be fair to say -- would it be fair to**
6 **say really that you didn't do a presentation on**
7 **adult schizophrenics every time? Would it really be**
8 **fair to say that?**
9 A. No, it would not be fair to say that. That
10 was the context of our discussions on each and every
11 call because that's what the label supported at the
12 time.
13 **Q. Because that's what the law required. That's**
14 **why you're saying that, correct?**
15 **MR. MURPHY:** Objection, Your Honor.
16 **THE WITNESS:** Yes. And I could have
17 lost my job had I not followed the company
18 policy.
19 **MR. MURPHY:** Objection.
20 **THE COURT:** All right. That's
21 sustained. Sustained. Sustained.
22 **BY MR. KLINE:**
23 **Q. Let's talk about that. Let's talk about that.**
24 **Did you ever have any discussions**
25 **with any of the higher-ups at Janssen as to whether**

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1 **they really knew what they were doing here with the**
2 **1.26 million children prescriptions?**
3 **MR. MURPHY:** Objection.
4 **BY MR. KLINE:**
5 **Q. Did you have any discussions with them about**
6 **that?**
7 **MR. MURPHY:** Objection, Your Honor.
8 **THE COURT:** That's sustained, as to
9 that number. He testified earlier he didn't
10 know about that number.
11 **BY MR. KLINE:**
12 **Q. Did you ever have any discussions with the**
13 **Janssen higher-ups as to whether, sir, that they**
14 **knew that this was being prescribed, these samples**
15 **were being prescribed to children? Did you ever**
16 **have any discussions?**
17 A. No. I would have not had discussions for
18 that. It wouldn't have helped me in my job.
19 **Q. It wouldn't have come up in your mind, right?**
20 A. No, not really. We had the label. And what
21 we were asked to do is to represent within the scope
22 of the FDA label; and if at some point there was an
23 indication or an approved usage, well, then, by all
24 means. But before that it was off-limits.
25 **Q. Oh, it was off-limits. It was off-limits to**

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1 **kids, wasn't it?**
2 A. Yes. It was off-limits for me to discuss. I
3 mean, it's the physician's discretion how they would
4 want to use it.
5 **Q. So it's off-limits for you to discuss, but not**
6 **off-limits for you to give the samples; is that your**
7 **belief? Was that your belief back then?**
8 A. We provided samples if the physicians --
9 **Q. Was that your belief back then?**
10 **MR. MURPHY:** Objection, Your Honor.
11 **THE COURT:** Overruled.
12 **BY MR. KLINE:**
13 **Q. That's the question.**
14 **MR. MURPHY:** He's answering the
15 questions.
16 **MR. KLINE:** No, he wasn't.
17 **BY MR. KLINE:**
18 **Q. Was it your belief back then that it was**
19 **illegal to talk about it but legal to give the drugs**
20 **out? Yes or no?**
21 **MR. MURPHY:** Objection.
22 **THE WITNESS:** It was --
23 **BY MR. KLINE:**
24 **Q. Yes or no?**
25 **MR. MURPHY:** He's asking about

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1 legality, Your Honor.
2 **THE COURT:** Overruled.
3 **THE WITNESS:** It was the belief that
4 I had that any samples we provided would be
5 in the sole custody of the physician to use
6 in the discretion of their practice, and
7 anything I discussed was within the scope of
8 the label. And so if it's their judgment
9 that they need to use it in this population
10 or this one or this patient or that one, that
11 was their discretion.
12 **BY MR. KLINE:**
13 **Q. Right. At their discretion. And you**
14 **certainly empowered them to do it because you gave**
15 **it to them for free, correct?**
16 **MR. MURPHY:** Objection;
17 argumentative, Your Honor.
18 **THE COURT:** All right. That's
19 sustained. Sustained.
20 **MR. KLINE:** I'll move on.
21 **BY MR. KLINE:**
22 **Q. 1/3/04, you're back in the office.**
23 A. It's actually 1/13.
24 **Q. 1/13/04.**
25 A. Yes.

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1 Q. Presentation?
 2 A. Yes.
 3 Q. Any samples?
 4 A. No.
 5 Q. Well, sir, would a doctor who was just given
 6 1,592 doses of .25 milligrams, would a child
 7 neurologist who had been given those doses need any
 8 samples a month later?
 9 MR. MURPHY: Objection, Your Honor.
 10 THE COURT: All right. That's
 11 sustained. Sustained.
 12 BY MR. KLINE:
 13 Q. Did you have a discussion with him that day
 14 that amounted to "I don't need any samples because I
 15 have plenty from before," sir? Does that jog your
 16 recollection as to what might have happened that
 17 day?
 18 A. No, I don't have a specific recollection of
 19 that specific day.
 20 Q. Next. 62-O.
 21 (Whereupon Exhibit P-62-O was marked
 22 for identification.)
 23 BY MR. KLINE:
 24 Q. 62-O is from 2/12/04. It says you did a
 25 presentation. You checked that box, correct?

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1 A. (No response.)
 2 Q. Do you see when it says "presentation and
 3 samples," sir?
 4 A. You're referring to 2/12, and this one is
 5 indicative of 3/2.
 6 Q. Ah, yeah.
 7 MR. KLINE: Do we have 2/12/04, which
 8 is Bates number ending in 130?
 9 (Technician complied with request.)
 10 (Displaying document on screen.)
 11 MR. KLINE: Which we've marked as
 12 60-O. And, for the record, it's in the 60 as
 13 in a letter O.
 14 COURT CRIER: Sixty-two.
 15 MR. KLINE: Sixty-two, yes. Thank
 16 you. Thank you, Marianne.
 17 62-O.
 18 BY MR. KLINE:
 19 Q. Sir --
 20 A. Yes.
 21 Q. -- it says here -- do you see where it says
 22 "presentation and samples"?
 23 A. I do.
 24 Q. I neglected to ask you, sir, is that just a --
 25 is that a click-on box, too? There would be a box

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1 that says "presentation." There would be a box that
 2 says "presentation and samples"?
 3 A. Yes. As I recall, there were a couple of
 4 boxes there. One would be "presentation," which
 5 suggested a discussion took place. Presentation
 6 with sample, a discussion took place and samples
 7 were requested and provided. And then there was one
 8 for "service." That means I went by and attempted
 9 to visit or see the physician but was unable to do
 10 so.
 11 Q. 2/12/04, you -- let's see what you gave.
 12 Five. You gave five 4 by 1 by 20s?
 13 A. Yes.
 14 Q. Of .50s.
 15 So you gave -- you gave eighty .50s,
 16 which would be the equivalent of 160 .25s, correct?
 17 A. Yeah, I'm following your math.
 18 Q. Okay. Next.
 19 We would be at 62-P.
 20 - - -
 21 (Exhibit P-62-P marked for
 22 identification.)
 23 BY MR. KLINE:
 24 Q. Which is 3/2/04.
 25 A. Yes.

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1 Q. Back within about three weeks to see him
 2 again, correct?
 3 A. Yes.
 4 Q. It says you did a presentation again, correct?
 5 A. Yes, that's correct.
 6 Q. And you had at that point, you gave out --
 7 let's get to the sample, see what you handed out
 8 that day. Five 4 by 1 by 20s.
 9 A. Yes.
 10 Q. So we have the same thing. Within three weeks
 11 you give him eighty .50s, equivalent of 160 .25s,
 12 correct?
 13 A. Yes, using the methodology, yes.
 14 MR. KLINE: 62-Q.
 15 We're getting there.
 16 - - -
 17 (Exhibit P-62-Q marked for
 18 identification.)
 19 - - -
 20 BY MR. KLINE:
 21 Q. You gave -- this time were you there 4/5?
 22 A. The one I see is 5/18.
 23 Q. 4/5/04. Another presentation, correct, sir?
 24 A. The one I see is 5/18.
 25 Q. Now, can I ask you a question, sir --

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1 THE COURT: Wait, Counsel.
 2 MR. KLINE: Oh.
 3 THE COURT: Is this 5/18?
 4 MR. KLINE: Oh, I've marked 62-Q.
 5 MR. MURPHY: It's 5/18.
 6 MR. KLINE: Which is 4 -- I'm not
 7 sure. What's the question being asked?
 8 THE COURT: What's the date we're
 9 looking at? The one after March 2nd.
 10 MR. KLINE: 4/5.
 11 COURT CRIER: No. That's not Q.
 12 MR. MURPHY: That's not the next one
 13 in the order.
 14 COURT CRIER: Okay.
 15 MR. KLINE: Okay. Let me get the
 16 next one in order.
 17 I have by my tally, which I thought I
 18 went through carefully next, is 4/5/04.
 19 There is a 4/5/04 visit.
 20 THE COURT: All right. If you have
 21 it, we'll return to it. Right now we're
 22 looking at 5/18/04.
 23 MR. KLINE: Okay. Well, maybe Cory
 24 is a step ahead of me, but I want 4/5/04.
 25 You don't have 4/5/04?

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1 (Conferring with technician.)
 2 Here. We all know what it looks
 3 like. But we'll mark 4/5/04 as what number,
 4 62-Q. We'll do it right from here. Put it
 5 in front of the witness, please. We don't
 6 have to display it. We all know what these
 7 look like now.
 8 Do you have it, Mr. Murphy, 4/5/04?
 9 MR. MURPHY: Yes, I do.
 10 MR. KLINE: Okay. Thank you, sir.
 11 Marianne is making a copy for
 12 convenience, Your Honor.
 13 VIDEO TECHNICIAN: It's out of order.
 14 MR. KLINE: Okay. It's out of order
 15 and found it.
 16 Quickly, I know that this has been
 17 tedious, 4/5/04.
 18 62-Q is now displayed to the jury.
 19 BY MR. KLINE:
 20 Q. Five 1 milligram by 7 unscored. What does
 21 "unscored" mean, sir?
 22 A. That means that, to the best of my knowledge,
 23 it does not have a line across the center of the
 24 pill. That way it would not be easy to break in an
 25 even half.

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1 Q. Uh-huh.
 2 And if it doesn't have unscored, then
 3 it would be the opposite, it would be, correct?
 4 A. It would.
 5 Q. Breakable?
 6 A. If it was scored, it would have a line across
 7 it that would, yeah.
 8 Q. But the only time that an indication is given
 9 here in this whole two years that we've been
 10 discussing is this one time when you gave one
 11 milligram unscored. Every other time it doesn't say
 12 that they were unscored, correct?
 13 A. I don't recall seeing any other time, no.
 14 Q. Yeah. That's my question.
 15 A. No, I don't see it.
 16 Q. Okay. So here five 1 by 7s. It's seven fives
 17 are 35. Thirty-five one milligrams. And if you
 18 were to do it in .25-milliliter doses, it would be
 19 140 .25s, the equivalent of, correct?
 20 A. Yes, using that math.
 21 Q. And, sir, even not using that, it's 35
 22 one-milligram pills, correct?
 23 A. (No response.)
 24 Q. Thirty-five one-milligram pills is what you
 25 dropped off that day, correct?

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1 A. Yes, that is correct.
 2 Q. The next one is 62-R.
 3 MR. KLINE: I only have one copy for
 4 some reason of this, Marianne.
 5 COURT CRIER: I have it.
 6 MR. KLINE: You have it already?
 7 COURT CRIER: I do.
 8 MR. KLINE: And this is 5/18/04.
 9 - - -
 10 (Exhibit P-62-R marked for
 11 identification.)
 12 - - -
 13 THE WITNESS: Yes, I see that.
 14 BY MR. KLINE:
 15 Q. It says you gave a presentation, correct?
 16 A. Yes.
 17 Q. By the way, sir, when it says you did a
 18 presentation on adult schizophrenia, is -- did -- I
 19 mean, is there something about Dr. Mathisen that he
 20 would have to be given the same -- the information
 21 one, two, three, four, five times in five months?
 22 A. Yes. Any physician that we saw would have
 23 been the discussion in the context of the label,
 24 which was for adults with schizophrenia. But there
 25 are multiple topics contained within that. You have

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1 the efficacy, the clinical studies, the safety
 2 information, dosing, things like that. So the
 3 interaction did not last -- it was not a very
 4 lengthy interaction, and so we would talk about any
 5 of those things, any number of those things.
 6 **Q. But you don't remember any of them on this**
 7 **visit either, correct?**
 8 A. No. I actually don't have specific
 9 recollection of this visit.
 10 **Q. Can I just look and see if there's a place**
 11 **there for -- no, above there. Above where it**
 12 **says -- where there's a place for notes. Yes.**
 13 **Blank again, correct, sir?**
 14 A. Yes, that is blank.
 15 **Q. It's always blank, isn't it? Except for one**
 16 **time, that we're going to go to, when he asked for a**
 17 **New England Journal article.**
 18 **Let's look at 5/18. Is that correct,**
 19 **sir? It's always blank other than that one time**
 20 **when he looked for a New England Journal article?**
 21 A. Okay.
 22 **Q. Well, you've reviewed them as well before**
 23 **coming in here; am I correct?**
 24 A. I did not this week, no. I did, I think, as
 25 part of the deposition. But the only one I do

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1 recall that there was entries on was the one where
 2 he had the special request.
 3 **Q. Right. Now, 5/18, you gave five 1 by 7 --**
 4 A. Yes, that's correct.
 5 **Q. -- unscored?**
 6 A. Yes, that's what it says.
 7 **Q. Which is the equivalent of 140 .25s, correct?**
 8 A. Yes, using the .25.
 9 **Q. You do know -- okay. Moving on. Two more.**
 10 **The next to the last visit.**
 11 **And, by the way, sir, sometimes you**
 12 **gave out what you had, meaning there were some times**
 13 **when you didn't have a full complement of oral .25s,**
 14 **.50s, and therefore, when you went to see a doctor,**
 15 **even if he had a request for .25s or .50s, you'd say**
 16 **hey, this is all I have? That happened on occasion,**
 17 **not just with Dr. Mathisen but other doctors,**
 18 **correct?**
 19 A. I don't recall that happening per se, but
 20 certainly I could not provide something that I
 21 didn't have.
 22 **Q. And we now get to 62-S.**
 23 - - -
 24 **(Exhibit P-62-S marked for**
 25 **identification.)**

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1 **BY MR. KLINE:**
 2 **Q. 62-S is 6/1/04. And it says you gave a**
 3 **presentation again?**
 4 A. Yes.
 5 **Q. And samples?**
 6 A. Yes.
 7 **Q. Hmm. Ten .5?**
 8 A. Yes.
 9 **Q. One by 7s?**
 10 A. That's correct.
 11 **Q. It would be seventy .50s, or if you broke them**
 12 **in half, it would be a hundred and forty .25s,**
 13 **correct?**
 14 A. Yes.
 15 **Q. And I haven't used this term, but I think you**
 16 **use this term in the pharma world: All courtesy of**
 17 **Janssen, correct? You use that term, don't you?**
 18 **MR. MURPHY:** Objection, Your Honor.
 19 **MR. KLINE:** "Courtesy."
 20 **THE COURT:** Overruled.
 21 **THE WITNESS:** No, I do not use that
 22 term. And I don't recall it being used --
 23 what -- I don't really know if I really
 24 understand the context of the question.
 25 **BY MR. KLINE:**

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1 **Q. Okay. And now if we go to the June 30th.**
 2 **Okay. Here we go. Wow, 6/30.**
 3 **Twenty-nine days later. And another one of them**
 4 **presentations, sir?**
 5 A. Yes. It says a "presentation and sample."
 6 **Q. Was it -- was there no -- I haven't asked you**
 7 **this.**
 8 **On the drop-down menu, there was no**
 9 **choice to say anything other than you gave a**
 10 **presentation, on the drop-down menu, correct?**
 11 A. No. There was a presentation; presentation
 12 with samples, both of which indicated a in-person
 13 discussion took place; and then there was one to say
 14 "service," if you went by and were unable to have a
 15 discussion.
 16 **Q. Was there a fourth box which said "samples**
 17 **only"?**
 18 A. No. We only provided samples when the
 19 physician could sign in person and in which a
 20 discussion would have taken place.
 21 **Q. My question was -- I want to make sure I pin**
 22 **it down.**
 23 **Was there a box that said "samples**
 24 **only"? Yes or no?**
 25 A. Not that I recall.

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1 **Q. And, sir, you've said this two or three times**
2 **today; this thing about doctors signing for them.**
3 A. Yes.
4 **Q. So you give a form and the doctor signed on**
5 **the form?**
6 A. Yes. It's a sample request form. It
7 stated -- not only for the doctors to sign, it said
8 the request is made for the samples listed above and
9 that was what the physician requested.
10 **Q. All right. Let me understand it, then. You**
11 **go in, you cold call a doctor. You know what it**
12 **means by cold call. You just show up at the**
13 **doctor's office, correct?**
14 A. I did not cold call Dr. Mathisen. He had
15 called and requested me to visit him.
16 **Q. On the first time. You already told us hours**
17 **ago that you would go to his office and you would**
18 **see him if he was available during a certain**
19 **prescribed period.**
20 A. Yes. But he requested --
21 **Q. It was okay to get in?**
22 A. He requested us to come by with a certain
23 frequency over time.
24 **Q. Well, is that written down anywhere?**
25 A. (No response.)

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1 **Q. Where's any of this correspondence? Is there**
2 **a memo about that?**
3 A. No, I don't recall a memo about that.
4 **Q. Do you have any notes about any conversations**
5 **you had with Dr. Mathisen?**
6 A. Uhhh...
7 **Q. Nothing?**
8 A. No. The call note is what would be the record
9 of my interaction with Dr. Mathisen.
10 **Q. Nothing else?**
11 A. No. I don't recall anything else being
12 captured.
13 **Q. And here, let's see what happened on that day.**
14 **Well, twenty .5s.**
15 **And, by the way, there's something**
16 **here which I haven't covered this whole time. What**
17 **are M-Tabs? You see right up there.**
18 **Could we just take everything down**
19 **but M-Tabs.**
20 A. Yes.
21 **Q. What are M-Tabs?**
22 A. It's an orally disintegrating tablet. Meaning
23 it actually dissolves in your mouth.
24 **Q. Right. Easy for a kid to use?**
25 **MR. MURPHY:** Objection.

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1 **BY MR. KLINE:**
2 **Q. Dissolves right in your mouth, correct? And**
3 **you knew it?**
4 **MR. MURPHY:** Objection, Your Honor;
5 argumentative.
6 **THE COURT:** Well, sustained as
7 phrased.
8 **MR. KLINE:** I'll ask it in the form
9 of a question.
10 **BY MR. KLINE:**
11 **Q. Is a dissolvable tablet in the mouth easier to**
12 **use for a child than a swallowable pill? Yes or no,**
13 **sir?**
14 A. I can't really answer that in a yes-or-no
15 question.
16 **Q. Do you have any --**
17 A. I can tell you that due to the nature of the
18 illness, patients with severe mental illness
19 oftentimes thought their medication was poison or
20 something like that. And something like with a
21 pill, they could hold it in their cheek and then
22 when people were gone, they would spit it out. So
23 they would not get their medication and they
24 obviously wouldn't get the benefit from it.
25 So I know the M-Tab was a orally

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1 disintegrating tablet to help for purposes like
2 that.
3 **Q. Yeah. And, of course, that would have nothing**
4 **to do with some of the children that were being**
5 **treated by a child neurologist, correct?**
6 A. I do not know if Dr. Mathisen prescribed the
7 M-Tab product to children.
8 **Q. Did you ever have a discussion -- you don't**
9 **know if he prescribed it for children?**
10 A. I don't.
11 **Q. He's a child neurologist, sir. And you**
12 **dropped off -- you dropped off twenty .5 by 4 by**
13 **20s. So let's look at that.**
14 **These are M-Tabs. You prescribed in**
15 **.5, four times 20, that's 80, equaling 160 .25s,**
16 **correct?**
17 A. Yes, if you did the .25 methodology, yes.
18 **Q. Yeah.**
19 **And, sir, up until this time, during**
20 **this whole -- up and through this entire time**
21 **period, had you had any training in pediatric uses**
22 **of medications? Yes or no?**
23 A. No. I would not have expected to have
24 training on pediatric uses.
25 **Q. Well, you certainly would expect it if a large**

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1 part of the use of the drug was in children
 2 off-label. You would certainly have expected to
 3 know something, wouldn't you?
 4 MR. MURPHY: Objection, Your Honor;
 5 argumentative.
 6 MR. KLINE: I'll rephrase.
 7 THE COURT: Overruled.
 8 MR. KLINE: I'll rephrase.
 9 THE COURT: I'll let him answer that.
 10 I'll let him answer that. I'll surprise you.
 11 Go ahead.
 12 Answer that.
 13 THE WITNESS: No, I wouldn't expect
 14 to know that. And the reason being is any
 15 discussion that I had regarding children
 16 would have been inappropriate; or if a
 17 question was posed to us from a physician, we
 18 would have acknowledged that your question or
 19 comment was resulting from an off-label use
 20 and I'm not able to speak about that. If you
 21 have a question or something you need
 22 information on, you know, state what that is
 23 and I will provide it to the -- provide your
 24 question to the appropriate department and
 25 they can respond.

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1 BY MR. KLINE:
 2 Q. That's how you were handling it in this
 3 period, '02 to '04, when you were visiting
 4 Dr. Mathisen, just what you told the jury is how you
 5 saw it, correct?
 6 A. Yes.
 7 Q. Okay. Did you know that the jury knows that
 8 20 percent of the drug was being sold off-label to
 9 children? Did you know that fact sitting here
 10 today?
 11 A. I did not know that fact.
 12 Q. Did you know that fact back then, sir? Yes or
 13 no?
 14 A. No, I didn't.
 15 Q. If you knew that fact, sir, back then, that
 16 20 percent, one out of five, doses were being used
 17 for children, would you have educated yourself? Yes
 18 or no?
 19 MR. MURPHY: Objection, Your Honor;
 20 irrelevant.
 21 BY MR. KLINE:
 22 Q. Yes or no?
 23 THE COURT: Would he have educated
 24 himself?
 25 MR. KLINE: Yes; on children.

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1 BY MR. KLINE:
 2 Q. Would you have educated yourself on the use of
 3 this in children? Yes or no?
 4 THE COURT: Sustained. Sustained.
 5 Sustained.
 6 BY MR. KLINE:
 7 Q. Did the company ever tell you, sir -- under
 8 oath tell us this --
 9 A. Sure.
 10 Q. -- did the company ever tell you that the drug
 11 had as much as a 2.3 percent incidence of
 12 gynecomastia in children and adolescents? Yes or
 13 no?
 14 A. The company did make that available in the
 15 label once the FDA reviewed it and approved the
 16 label.
 17 Q. Okay. Let's do it the hard way.
 18 A. Sure.
 19 Q. Did the company ever tell you any time between
 20 2002 and 2004 when you were in Dr. Mathisen's office
 21 that they had information that the incidence of
 22 gynecomastia in children and adolescents was at
 23 least 2.3 percent; were you ever told that?
 24 MR. MURPHY: Objection.
 25 THE WITNESS: No, I wasn't, because

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1 we were --
 2 BY MR. KLINE:
 3 Q. Not "because," sir. Were you ever told it?
 4 Yes or no?
 5 A. We were told that the usage that we spoke to
 6 was in adults and we were not trained on children.
 7 Q. If you knew that, sir, would you have told --
 8 MR. MURPHY: Your Honor, objection.
 9 THE COURT: Is there an objection?
 10 MR. MURPHY: Yes, there is an
 11 objection.
 12 THE COURT: That's been overruled.
 13 He asked for a yes or a no, and I didn't get
 14 that.
 15 MR. MURPHY: My objection is that the
 16 witness had not been allowed to answer the
 17 question that was posed.
 18 THE COURT: Right now it's either yes
 19 or no and then he'll ask another question.
 20 MR. KLINE: Yes.
 21 THE WITNESS: I apologize, rephrase
 22 the question. I'm sorry.
 23 MR. KLINE: Sure.
 24 THE WITNESS: Or the same question.
 25 I apologize. So rephrase. You can ask the

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1 question again. I just don't recall it
2 exactly.

3 **THE COURT:** John, what's the
4 question?

5 **MR. KLINE:** I'll -- I know where I
6 am, Your Honor.

7 **THE COURT:** You got the question?

8 **MR. KLINE:** I know where I am. I do.

9 **BY MR. KLINE:**

10 **Q. I want to ask whether he knew a bunch of**
11 **stuff.**

12 **THE COURT:** Yes or nos. Are these
13 yes or nos, Counsel?

14 **MR. KLINE:** Yeah, these are -- yeah.
15 I believe the next few questions are
16 susceptible to yes-or-no questions.

17 **THE WITNESS:** I think you asked me
18 did I know, did the company tell us, that
19 that known risk was with hyperprolactinemia
20 or gynecomastia; was that the question?

21 **BY MR. KLINE:**

22 **Q. No. But you're ahead of me, because you now**
23 **know that there's a risk of hyperprolactinemia,**
24 **correct? You know that sitting here today?**

25 A. That's in the label, yes.

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1 **Q. You know that the drug is worse than the other**
2 **competitor drugs as to hyperprolactinemia, correct?**

3 A. For prolactin elevation, yes.

4 **Q. When did you first learn that, sir?**

5 A. When it went into the label.

6 **Q. That's the first time you learned it?**

7 A. Yes. One thing that was known in the entire
8 community, the psychiatric community, was that
9 drugs --

10 **MR. KLINE:** Objection, Your Honor.
11 He doesn't know what's known in the
12 psychiatric community.

13 **MR. MURPHY:** Objection, Your Honor.
14 Does he decide what the answer is?

15 **THE COURT:** Right now I'm going to
16 permit him to answer and go from there.

17 **MR. KLINE:** Take it from there.

18 **BY MR. KLINE:**

19 **Q. What was known in the psychiatric community,**
20 **sir, that the drug was worse than the other**
21 **competitors' drugs?**

22 A. Let me rephrase.
23 It was known in my study of
24 psychiatric medications and through my interactions
25 with psychiatrists and other mental health

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1 professionals that drugs with a strong dopamine
2 blockade, Dopamine-2 specifically, could be
3 associated with elevated prolactin levels.

4 **Q. Let's look at the 2006 label. I'm going to**
5 **have two questions for you, sir.**

6 A. Sure.

7 **Q. By the way, when you were in a pediatric child**
8 **neurologist's office, sir --**

9 A. Yes.

10 **Q. -- in a child neurologist's office, in 2002**
11 **and 2003, like we're looking at, did you believe**
12 **that you had an obligation to know how this drug**
13 **interacted with children? Yes or no?**

14 **MR. MURPHY:** Same objection, Your
15 Honor.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** No. I wouldn't expect
18 to have training or knowledge of the use in
19 children.

20 **BY MR. KLINE:**

21 **Q. And why did you go to a pediatric neurologist**
22 **to start?**

23 A. Because he requested --

24 **MR. MURPHY:** Objection; asked and
25 answered.

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1 **THE COURT:** Overruled. Overruled.
2 Why did you go there?

3 **BY MR. KLINE:**

4 **Q. Why did you go there?**

5 A. Because he requested the visit.

6 **Q. Once you found out that he was a child**
7 **neurologist, didn't you say "I can't treat -- I**
8 **can't give stuff to a child neurologist," sir? Did**
9 **you say that?**

10 A. No, I didn't. Actually --

11 **MR. MURPHY:** Objection, Your Honor.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** Once I found out that
14 he treated adults was the basis of our
15 discussion.

16 **BY MR. KLINE:**

17 **Q. What if you had found out that he only treated**
18 **a few adults who followed through from the**
19 **childhood, would you have then stopped --**

20 **MR. MURPHY:** Objection. This is the
21 fifth time.

22 **THE COURT:** All right. That's
23 sustained.

24 "What ifs" are sustained.
25 **MR. KLINE:** My word.

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1 BY MR. KLINE:
2 Q. Let's look at the 2006 label. You said you're
3 familiar with it. There are two things in the 2006
4 label as to children which stand out like a sore
5 thumb, correct, sir?
6 A. I don't know what you're referring to,
7 actually.
8 Q. Well, let's look at one thing.
9 A. Sure.
10 Q. 2.3 percent of children and adults -- children
11 and adolescents. We have it right up in front of
12 us. In clinical trials in 1,885 children and
13 adolescents --
14 A. Yes.
15 Q. -- with autistic disorders and other
16 psychiatric disorders treated with risperidone,
17 gynecomastia was reported in 2.3 of
18 risperidone-treated patients.
19 I have a few very simple, basic
20 questions, sir. You ready for them?
21 Did you know that fact in 2002 and
22 2003?
23 A. No, I did not.
24 Q. Did you know whether Janssen knew those facts
25 in 2002, 2003?

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1 A. I do not know.
2 Q. Did you know anything about a study that we've
3 spent a day on in this courtroom called RIS-41,
4 which was known by 2001 to have gynecomastia rates
5 in children and adolescents of somewhere in the
6 neighborhood of 5.1 percent? Did you know about
7 that study?
8 A. No, of course not. We were trained on the
9 label which was for adults. And I would -- for my
10 responsibilities, only after that information came
11 inside the label was I permitted to speak about it.
12 Q. Sir, did you rehearse the testimony before
13 giving it?
14 MR. MURPHY: Objection, Your Honor.
15 THE COURT: All right. That's
16 sustained.
17 We're going to take a recess shortly.
18 So do you have much more?
19 MR. KLINE: Yes; on this I'd like to
20 finish this question.
21 THE COURT: All right. Go ahead.
22 BY MR. KLINE:
23 Q. You didn't know -- that's what I want to know.
24 Did you or didn't you know about the 2.3 increase
25 when you were visiting that child neurologist 21

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1 times? Did you or didn't you know?
2 MR. MURPHY: Objection; asked and
3 answered.
4 THE WITNESS: No.
5 THE COURT: Overruled. Overruled.
6 Just answer the question one way or the
7 other.
8 BY MR. KLINE:
9 Q. Did you or didn't you know?
10 A. No, I did not know that.
11 Q. I'm going to ask you one more thing.
12 A. Yes.
13 Q. There's something else in the 2006 label that
14 we now know was known to Janssen back in 2000 and
15 2001. Let me show it to you.
16 A. Okay.
17 Q. Risperidone is associated with higher levels
18 of prolactin elevation than other antipsychotic
19 drugs; do you see that?
20 A. Yes, I do.
21 Q. When's the first time you learned that, sir?
22 A. Whenever it came into the label, I suppose.
23 Q. You didn't know it before 2006, correct?
24 A. No. I knew that Risperdal was a strong D2
25 blocker.

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1 Q. No, sir. I'm looking at those words.
2 We know it's a strong D2 blocker. We
3 know that other drugs are strong D2 blockers. I'm
4 talking about this sentence, sir.
5 When did you learn -- when did you
6 learn that risperidone is associated with higher
7 levels of prolactin elevation than any other
8 antipsychotic drugs? When did you learn that?
9 MR. MURPHY: Objection; asked and
10 answered.
11 THE COURT: Overruled.
12 BY MR. KLINE:
13 Q. When did you learn that?
14 A. That would have been made known to me when it
15 came into the label. But from day one we knew that
16 Risperdal was a strong dopamine drug due to the way
17 it worked, along with other Risperdal -- or excuse
18 me, along with other dopamine drugs.
19 Q. Are you suggesting that you knew this before
20 or after it came into the label in October 2006;
21 that it was worse than the other drugs and that it
22 elevated it more? Did you know that at any time
23 before '06?
24 A. Actually, I am suggesting I knew what was in
25 the label prior to this particular label; and

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1 prolactin was mentioned in the label before.
 2 **Q. That's another talking point, sir, correct?**
 3 **MR. MURPHY:** Objection.
 4 **THE COURT:** All right.
 5 **MR. KLINE:** May I, please?
 6 **BY MR. KLINE:**
 7 **Q. Was that a talking point of Janssen, what you**
 8 **just said?**
 9 A. The entire safety profile was, which included
 10 verbiage on hyperprolactinemia.
 11 **Q. So you would have told doctor -- if**
 12 **Dr. Mathisen had asked the question, well, how does**
 13 **this drug compare on gynecomastia, you would have**
 14 **told him that it's no different than any of the**
 15 **others, correct?**
 16 A. I would have pointed him to the FDA-approved
 17 label at the time, which was within the scope of my
 18 responsibility.
 19 **Q. And if he said is it any better or worse than**
 20 **the others, what would you say?**
 21 A. I would have pointed him to the label.
 22 **Q. And the label said that gynecomastia is rare;**
 23 **did you know that fact?**
 24 A. I don't know that specific fact, but I know it
 25 was included in the package insert.

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1 **Q. You don't know sitting here today that that**
 2 **label says that gynecomastia is less than one in a**
 3 **thousand?**
 4 A. As part of the deposition --
 5 **Q. In 2002 --**
 6 **MR. MURPHY:** Your Honor --
 7 **BY MR. KLINE:**
 8 **Q. Did you know back -- I have a specific**
 9 **question.**
 10 **Did you know back in 2002 and 2003,**
 11 **did you know that the label said at the time that**
 12 **gynecomastia was rare, meaning less than one in a**
 13 **thousand? Yes or no?**
 14 A. If it was in the label, yes, I would have
 15 known it. I would have known what the label stated.
 16 **Q. And what you didn't know was that risperidone**
 17 **is associated with higher levels of prolactin**
 18 **elevation than other antipsychotic agents back when**
 19 **you were in the child neurologist, Mathisen's**
 20 **office, correct?**
 21 A. I would have known what was in the label at
 22 the time.
 23 **Q. Sir, can you answer my question? You wouldn't**
 24 **have known what ended up in the 2006 label, which is**
 25 **risperidone is associated with higher levels of**

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1 **prolactin elevation than other antipsychotic agents**
 2 **because you learned that for the first time in 2006,**
 3 **correct?**
 4 A. I don't know exactly when that verbiage went
 5 into the label.
 6 **Q. October 2006. Is that when you would have**
 7 **first known it?**
 8 A. If that's when it went into the label, that's
 9 when I would have first known it.
 10 **Q. Okay.**
 11 **MR. KLINE:** If Your Honor would like
 12 a break, it's a good time.
 13 **THE COURT:** You're not concluded with
 14 this witness?
 15 **MR. KLINE:** Pardon me? Oh, no. I
 16 have to go through the ends of the things
 17 with him.
 18 **THE COURT:** All right. We'll take a
 19 recess for a few minutes and then we'll
 20 resume.
 21 **COURT CRIER:** All rise as the jury
 22 exits.
 23 - - -
 24 (Whereupon the jury exited the
 25 courtroom at 2:59 p.m.)

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1 - - -
 2 (Whereupon a recess was taken.)
 3 - - -
 4 **COURT CRIER:** The Judge would like to
 5 see you in the back.
 6 - - -
 7 (The following discussion transpired
 8 in the Judge's robing room, out of the
 9 hearing of the jury and the parties in the
 10 courtroom:)
 11 (The Judge, Mr. Kline, Mr. Sheller,
 12 Mr. Gomez, Mr. Itkin, Ms. Sullivan, Mr.
 13 Murphy, and Ms. Brown present.)
 14 - - -
 15 **THE COURT:** Okay. Have a seat.
 16 I just want to go over a situation
 17 that arose this morning regarding the whole
 18 situation involving Dr. Goldstein, because I
 19 want the parties to be very clear about this.
 20 I have not promised that the expert
 21 witness could be changed. So I want to be
 22 very clear about that. There's a lot of law
 23 involving this that we've researched today.
 24 So there's a possibility that that
 25 witness may not be replaceable, so that's

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1 really up to the plaintiff.
 2 The problem here is, is that the
 3 fault is on the plaintiff for the plaintiff's
 4 unavailability. If there was an upon cause
 5 shown as part of the Rules of Evidence --
 6 Rules of Civil Procedure that I looked at
 7 earlier, that might be a different situation.
 8 So I do not want the child to just go
 9 to random, willy-nilly, to any particular
 10 doctor in Alabama or Tennessee or wherever or
 11 Philadelphia, for that matter, on the
 12 assumption that I'm going to make that ruling
 13 in favor of a new one.
 14 There is, however, the possibility
 15 that upon some argument and research, we
 16 could be persuaded to grant an IME in
 17 Philadelphia, with the possibility of taking
 18 a day or two off from this trial in order,
 19 once and for all, to get a diagnosis for this
 20 child. Because it is a shame to suspend all
 21 this time and money, on the jurors' parts and
 22 the Court's time, in the case that does
 23 exist.
 24 **MS. SULLIVAN:** And, Your Honor, the
 25 problem with that obviously is we have framed

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1 our whole case based on the causation expert
 2 they've submitted. We've got expert reports
 3 lined up and experts directly responsive to
 4 him. I opened in large measure on the
 5 specific causation --
 6 **THE COURT:** Well, there wouldn't be
 7 any undue surprise.
 8 **MS. SULLIVAN:** Specifically, Your
 9 Honor, it was a specific causation opinion.
 10 **THE COURT:** I have not made a ruling.
 11 I would like argument in that one way or the
 12 other, because it is in my power upon a
 13 motion to grant an IME.
 14 But I think the preferable route is
 15 to go with this particular doctor.
 16 **MR. KLINE:** He's not available, Your
 17 Honor. I sent him home.
 18 **THE COURT:** Then we may have to
 19 call -- this case may be nonsuited, or we may
 20 put it into an IME, because all the research
 21 that I've seen about this case is without the
 22 specific causation -- what was that case,
 23 India? -- without the specific causation,
 24 we've got a problem here, according to the
 25 Superior Court two years ago.

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1 **MR. KLINE:** May I be heard?
 2 **THE COURT:** Yes.
 3 **MR. KLINE:** Okay. Based on the
 4 Court's statements on the record last night
 5 and based upon the direction and the ruling,
 6 we took the following actions: I told
 7 Dr. Goldstein that he was dismissed. I also
 8 had a discussion with him about it and he
 9 told me he's not available. He has a -- he's
 10 not available. He's not in the jurisdiction.
 11 Now, here's the steps that we have
 12 taken, to no prejudice to the defendants, if
 13 I'm allowed to speak long enough to say it on
 14 the record.
 15 They are -- they knew for a year
 16 about this problem. Let me just say -- let
 17 me just lay it out. They knew for a year.
 18 For a year they claim that they knew about
 19 what they claim to be a crime. Whether
 20 they're right about that or not is another
 21 story. And they did nothing, nothing.
 22 Number two, they've done nothing --
 23 they did nothing but come in here yesterday
 24 to try to chill a plaintiff's ability to
 25 obtain justice. And, by the way, they did it

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1 by essentially in that paper using a threat
 2 that he was somehow subject to -- that the
 3 plaintiff's expert was subject to some kind
 4 of criminal prosecution.
 5 Whether right or wrong, Judge, that
 6 is a violation. And I did the research on
 7 that. That's a separate violation. And
 8 everyone knows what I'm talking about. And
 9 that's an issue that the Court will have to
 10 wrestle with as to whether or not to report
 11 that.
 12 **THE COURT:** Well, I'm --
 13 **MR. KLINE:** Number three --
 14 **THE COURT:** Well, the reporting
 15 aspects of this are really --
 16 **MR. KLINE:** Different stories.
 17 **THE COURT:** Different issues.
 18 **MR. KLINE:** Different issues.
 19 Number three, if they really believe
 20 that and really knew that, but even what they
 21 did was they used this paper yesterday to try
 22 to chill our witness and destroy our witness
 23 from coming into the courtroom. How dare
 24 they. That's how I feel.
 25 **THE COURT:** All right. You're

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1 talking about the motion that I had ruled
 2 yesterday was untimely?
 3 **MR. KLINE:** Yes, yes. Your Honor,
 4 any record that's reviewed by any appellate
 5 court will see that Your Honor was furious
 6 about it, rightly so.
 7 **THE COURT:** Well, I can say this and
 8 then I'll hear from the plaintiff. I can say
 9 this: I can always reverse my order
 10 yesterday as to this particular matter being
 11 untimely under the circumstances and have it
 12 ruled on on the merits.
 13 **MR. KLINE:** Okay. Well, I'm going to
 14 suggest merits.
 15 **THE COURT:** And if it was ruled on on
 16 the merits and I was forced to exclude this
 17 person because on the merits it was unfair,
 18 then we have upon cause shown in order to
 19 permit an IME or a new -- so the issue is
 20 whether I need to or should reverse my order,
 21 because I do recall yesterday I did not give
 22 Mr. Kline a chance to argue.
 23 Now, he may or may not have realized
 24 that the upon cause shown depended on whether
 25 or not this particular motion was denied.

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1 But I am prepared, under these
 2 circumstances, to reverse my order and to
 3 permit argument on the merits of that
 4 particular motion that was filed yesterday,
 5 motion to exclude.
 6 **MS. SULLIVAN:** And, Your Honor --
 7 **MR. KLINE:** Here's -- I thought I
 8 still had the floor long enough to lay out
 9 the plaintiff's position.
 10 We're going to be out of court,
 11 Judge, I'm telling you right now. We're not
 12 going to have an expert. And we'll take this
 13 up. And I guess the case will end up in The
 14 Hague or the US Supreme Court or the
 15 Pennsylvania Superior Court. But this is a
 16 disgrace here, what's happened here.
 17 **MS. SULLIVAN:** It's a disgrace you
 18 guys didn't look at the law.
 19 **MR. KLINE:** No, no. It's a disgrace
 20 that you thought there was a crime and sat on
 21 it.
 22 **MS. SULLIVAN:** No, no. We thought
 23 you actually complied with the law.
 24 **MR. KLINE:** I'm not going to get
 25 drawn into an argument with her. I'm not

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1 going to get drawn in an argument with her.
 2 **THE COURT:** Anyway --
 3 **MR. KLINE:** I want to be able to
 4 finish.
 5 **THE COURT:** -- from my point of view,
 6 why don't you finish laying out the record.
 7 And the reason I wanted a sidebar now is
 8 because there are issues that are involved as
 9 to whether or not there is a remedy, short of
 10 a nonsuit or a mistrial, that are available
 11 after so much effort has been put into by
 12 this jury.
 13 And the way I see it is the motion
 14 that was filed yesterday was in fact a motion
 15 that should have been filed before this trial
 16 began to give the other side a chance to ask
 17 for a new IME or whatever was necessary. And
 18 since it wasn't filed and it was done under
 19 that pretext, I made a ruling that was late.
 20 However, given the ramifications
 21 under the law as I see it of a waiver here,
 22 I'm prepared to reverse that ruling and to
 23 hear the whole matter on the merits, because,
 24 frankly, fair play is at stake here.
 25 **MR. KLINE:** Okay.

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1 **THE COURT:** Not whether or not a case
 2 management rule was complied with or not.
 3 **MR. KLINE:** Well, I know -- I'm
 4 sorry, Your Honor.
 5 I just would like some opportunity to
 6 lay out what is a grave injustice here. So
 7 when I have the chance, I would like to be
 8 able to do it.
 9 **THE COURT:** You have the chance. Go
 10 ahead. I've said what I have to say.
 11 Because this is not going to be resolved now.
 12 **MR. KLINE:** Okay. This change --
 13 **THE COURT:** You know --
 14 **MR. KLINE:** I can tell the Court what
 15 I'm doing today, so that you know.
 16 I'm in the process of getting a new
 17 expert. On the merits, there's no prejudice
 18 here. It is downright somewhere between
 19 silly and ridiculous. And if I could be
 20 heard long enough without being interrupted,
 21 I will tell you why.
 22 **THE COURT:** All right.
 23 **MR. KLINE:** First of all, this case
 24 involves a -- this case involves right now a
 25 jury which has heard a couple of weeks of

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1 testimony. I have been directed by the Court
 2 under an order on this record that I was
 3 allowed to get a new expert yesterday.
 4 What I did was, I dismissed
 5 Dr. Goldstein for all times.
 6 **THE COURT:** I did not say that. I
 7 want to be clear. I want the record to be
 8 clear.
 9 **MR. KLINE:** I'm telling you what I
 10 did.
 11 **THE COURT:** You did. But I did not
 12 instruct you that I was going to permit it.
 13 **MR. KLINE:** Your Honor, I don't want
 14 to argue, honestly. The last thing in the
 15 world I want to do is have a dispute with
 16 Your Honor.
 17 But let me tell you what the
 18 consequences are and aren't on the merits.
 19 On the merits, I just want to be able to say
 20 what the merits are.
 21 **THE COURT:** No. But you're
 22 misrepresenting the record, if I may. I did
 23 not by any means make any other ruling other
 24 than the motion to exclude was dismissed
 25 based on lateness. Other than that, I made

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1 no promise whatsoever. That is in fact why
 2 we're having the discussion now -- to clear
 3 up any understanding that you're going to
 4 have a new expert witness examine this boy
 5 without understanding ahead of time that it
 6 may not be admissible. That's why we're
 7 having this discussion at this hour.
 8 **MR. KLINE:** Okay. Now, what I'll --
 9 okay. Here's -- when I say "okay," I hear
 10 you. I don't know that I agree. But I'm
 11 certainly entitled to not. And I know Your
 12 Honor respects that.
 13 Here's where I am: I don't have
 14 Dr. Goldstein. I have a new -- here's what
 15 I've put into place, and here's why there's
 16 no prejudice on the merits, okay: The simple
 17 issue that needs to be addressed in this case
 18 is causation. It is no secret and no
 19 surprise to anybody that we say that it's
 20 prolactin, gynecomastia from Risperdal and
 21 they say it t'ain't. And they say it's
 22 something different.
 23 Now, I have -- there are a variety of
 24 experts who could say that.
 25 What I've done is based upon what was

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1 said in this courtroom yesterday, which was I
 2 should have a discussion with Dr. Goldstein,
 3 I dismissed Dr. Goldstein, and he wants no
 4 part of this anymore.
 5 So my expert is somewhere between he
 6 is not available; he is ruined; and he is,
 7 rightly so, chilled.
 8 Now, what I've done, all as a result
 9 of what happened, what I've done is I have
 10 immediately, so as not to delay the trial, I
 11 might add, I have flown the boy up at my
 12 expense. Having him examined tonight at 5
 13 o'clock, and expect to have a report
 14 tomorrow, and expect to have a witness on the
 15 stand Thursday to say one simple thing, by
 16 the way, which is the same thing that
 17 Dr. Goldstein was going to say, nothing
 18 different.
 19 **THE COURT:** What's that?
 20 **MR. KLINE:** Which is that this boy
 21 has gynecomastia which was induced by
 22 Risperdal.
 23 **THE COURT:** No.
 24 **MR. KLINE:** Now --
 25 **THE COURT:** One second. I'm going to

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1 ask that the jury -- we're going to have to
 2 dismiss the jury and discuss this. We're not
 3 going to be able to resolve this today right
 4 now, unless you want to go back to it.
 5 That is not acceptable at this point.
 6 And we can go back to the transcripts of
 7 yesterday. I did not authorize that. And
 8 I'm trying to see whether -- you haven't had
 9 the boy examined yet. It may be that we can
 10 figure out a lawful response to this
 11 situation.
 12 **MR. KLINE:** I thought you had.
 13 **THE COURT:** But that is not
 14 authorized.
 15 **MR. KLINE:** Well --
 16 **THE COURT:** You can do what you want
 17 to do. You can have him -- it may not be
 18 admissible. You can have him --
 19 **MR. KLINE:** You totally changed your
 20 mind.
 21 **THE COURT:** All right. Off the
 22 record.
 23 **MR. KLINE:** I don't want to argue
 24 about it.
 25 (Whereupon an off-the-record

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1 discussion was held.)
 2 **THE COURT:** I'm going to ask you to
 3 look at the transcripts from yesterday. But
 4 I am certain that I made no ruling yesterday
 5 other than to deny the motion to exclude.
 6 Off the record.
 7 - - -
 8 (Whereupon an off-the-record
 9 discussion was held.)
 10 - - -
 11 **THE COURT:** All right. We'll excuse
 12 the jury.
 13 - - -
 14 (Whereupon an off-the-record
 15 discussion was held.)
 16 - - -
 17 (Whereupon the sidebar discussion was
 18 suspended.)
 19 (Whereupon a short recess was taken.)
 20 - - -
 21 **THE COURT:** All right. Marianne,
 22 let's bring the jury in. We're going to
 23 dismiss them and then we're going to have the
 24 argument here.
 25 **COURT CRIER:** Yes, Your Honor.

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1 (Pause.)
 2 **COURT CRIER:** May I, Your Honor?
 3 **THE COURT:** Yes.
 4 **COURT CRIER:** All rise as the jurors
 5 enter the room.
 6 - - -
 7 (Whereupon the jury entered the
 8 courtroom at 3:30 p.m.)
 9 - - -
 10 (The following transpired in open
 11 court in the presence of the jury:)
 12 - - -
 13 **THE COURT:** All right. Please be
 14 seated.
 15 All right. Members of the jury,
 16 there's always a wrinkle in everything, and
 17 that's like a snow day, and that's what's
 18 happening to us right now as far as -- we're
 19 going to continue this matter until tomorrow,
 20 okay? We're going to continue the case till
 21 tomorrow. There's some legal discussions
 22 that need to be made, and right now we think
 23 that -- or I think anyway that the best time
 24 to do it is right now.
 25 So instead of going forward with the

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1 continuation of the examination of
 2 Mr. Gilbreath, we will wait on that till
 3 tomorrow morning and you are excused for the
 4 rest of the day, okay? How about that.
 5 All right. Now, wait, wait. This is
 6 a reminder, this is a reminder again that the
 7 same rules, same instructions apply, all
 8 right? This is like an early dismissal.
 9 Wear the yellow badges, okay? Please
 10 remember to keep an open mind about the case.
 11 Far from over. And also to make sure that
 12 you do not discuss this case with anybody or
 13 be involved in any way with the TV, media,
 14 Internet, radio, newspapers, magazines.
 15 Anything that might have to do with this
 16 case, please ignore it or don't even look at
 17 it, how's that? Okay. Thank you.
 18 See you tomorrow. Try to be here for
 19 9:30.
 20 **COURT CRIER:** All rise as the jury
 21 exits.
 22 - - -
 23 (Whereupon the jury exited the
 24 courtroom at 3:32 p.m.)
 25 - - -

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1 (The following transpired in open
 2 court outside the presence of the jury:)
 3 - - -
 4 **THE COURT:** All right.
 5 Mr. Gilbreath, you are excused till tomorrow
 6 as well. You're still under oath and you're
 7 also still under this examination, so I'm
 8 going to ask you not to discuss this case now
 9 with any lawyers whatsoever --
 10 **THE WITNESS:** Okay.
 11 **THE COURT:** -- involved in this case.
 12 **MR. KLINE:** Or any Janssen people.
 13 **THE COURT:** Or any lawyers; or any
 14 people from your employer.
 15 **THE WITNESS:** Okay.
 16 **THE COURT:** Okay?
 17 **THE WITNESS:** Agreed.
 18 **THE COURT:** All right. Thank you.
 19 You're excused.
 20 **THE WITNESS:** Thank you.
 21 (Witness excused.)
 22 **THE COURT:** All right. You may be
 23 seated everybody.
 24 As soon as we have this door closed.
 25 All right. This is now a follow-up

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1 on the discussion first raised yesterday by a
 2 motion that had been filed on -- when was
 3 that filed formally, Mr. Murphy? You're
 4 talking about the Defendants, Janssen
 5 Pharmaceuticals, Johnson & Johnson Bench
 6 Memorandum.
 7 **MR. MURPHY:** It was filed yesterday,
 8 Your Honor.
 9 **THE COURT:** Yesterday being
 10 February 2nd.
 11 **MR. KLINE:** In the afternoon.
 12 **THE COURT:** In the afternoon.
 13 I'm not clear, to be very clear, how
 14 much time the plaintiffs had in order to
 15 review that document.
 16 How much time did you have in order
 17 to review that document?
 18 **MR. KLINE:** None. I was handed the
 19 document and the Court at -- sometime, I
 20 believe, after the noon hour. And I
 21 literally was reviewing it while I was
 22 dealing with Dr. Kessler's testimony.
 23 **THE COURT:** All right.
 24 **MR. KLINE:** I had no time at all.
 25 **THE COURT:** So without a doubt, there

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1 was no time for any office study of that
 2 particular document?
 3 **MR. KLINE:** None. I can tell the
 4 Court what I did was I looked at it for the
 5 first time then and assessed it, but had no
 6 time to do any -- to do anything.
 7 **THE COURT:** All right.
 8 **MR. MURPHY:** Your Honor --
 9 **THE COURT:** Please be seated.
 10 I am laying out the scenario for the
 11 record and also for review and for
 12 resolution.
 13 **MR. MURPHY:** Your Honor, just if I
 14 may. I understand.
 15 **THE COURT:** Yes, sir.
 16 **MR. MURPHY:** It was not formally
 17 filed.
 18 **THE COURT:** Pardon me?
 19 **MR. MURPHY:** It was not formally
 20 filed. It was handed up as a bench memo to
 21 you when it was provided to counsel.
 22 **THE COURT:** All right. Well, that
 23 makes it even clearer then as to the
 24 resolution of this matter.
 25 **MS. SULLIVAN:** And, Your Honor, the

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1 issue is joined by the de bene esse.
 2 So what happened here is, there was a
 3 statute always on the books in Alabama.
 4 **THE COURT:** No, no. I'm not getting
 5 to the merits yet. I'm right now just laying
 6 out what happened, because now I'm being told
 7 this motion wasn't even formally filed, even
 8 though it was considered and ruled on by this
 9 Court.
 10 **MS. SULLIVAN:** Well, Mr. Murphy filed
 11 it -- or he moved orally, Your Honor, to
 12 exclude it.
 13 **THE COURT:** I think I was handling it
 14 as if it were an oral motion. But at the
 15 same time, it is clear that the plaintiff did
 16 not have an opportunity to review the actual
 17 document or to study it for any ramifications
 18 as to what may -- might occur if this matter
 19 was resolved without its complete review.
 20 The reason I say that is because
 21 ultimately this Court made a ruling without
 22 the benefit of plaintiff's argument on the
 23 procedural aspect of this filing -- or this
 24 motion.
 25 And this Court ruled that it was

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1 untimely according to the case management
 2 order, which was an argument never made by
 3 the plaintiff. And I now believe that my
 4 ruling on this matter was unripe for actual
 5 decision because the particular grounds that
 6 I found it on was not argued by plaintiff and
 7 may in fact be prejudicial to their interests
 8 in this case.
 9 Therefore, I vacate that order of
 10 yesterday. And this particular matter,
 11 Defendant Janssen, if you wish it considered,
 12 you may have it considered, if it has been
 13 filed or not filed. If it's been reviewed by
 14 this Court, I consider it to be filed. And
 15 I'm prepared to hear argument on this
 16 particular motion at this time.
 17 Because I presume by now plaintiffs
 18 have had the chance, the opportunity to
 19 review this document and be prepared for this
 20 particular matter.
 21 Is that correct, Mr. Kline?
 22 **MR. KLINE:** No, it would not be
 23 correct. I'll tell you why, Your Honor,
 24 because -- because -- because the Court --
 25 I -- the Court said specifically: "And for

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1 that reason I will" -- and I'm talking about
 2 Page 141 of the transcript. The Court
 3 said -- and I will -- and I will talk about
 4 the merits in a moment, if I may.
 5 **THE COURT:** Well, let me -- I don't
 6 mean to cut you off exactly, but I know what
 7 I said, which is I would provide the
 8 plaintiff with a remedy, which I am doing.
 9 **MR. KLINE:** I think I could prove to
 10 the Court that I deserve a remedy under the
 11 merits.
 12 **THE COURT:** That's exactly where
 13 we're going, Mr. Kline.
 14 **MR. KLINE:** Okay.
 15 **THE COURT:** If you allow me to follow
 16 up.
 17 I never promised that I was going to
 18 allow a new expert witness to testify or be
 19 examined unless we had such an order. You do
 20 not have such an order now.
 21 What I did provide was -- and it's
 22 all over the record yesterday -- that you
 23 were the victim of unfair surprise in the
 24 filing of that particular motion to exclude a
 25 particular witness when the facts known

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1 concerning that witness were known as early
 2 as a motion to exclude back in March of 2014.
 3 So from that point of view, I am
 4 vacating the order that I made yesterday.
 5 This particular motion on the merits is on
 6 the table, and that's where we are.
 7 **MR. KLINE:** Okay.
 8 **THE COURT:** You ready to proceed?
 9 **MR. KLINE:** I think even I get it.
 10 **THE COURT:** Okay.
 11 **MR. KLINE:** I'm sometimes accused of
 12 being a little slow and sometimes not.
 13 Your Honor, for the record, I plan to
 14 argue this motion, but I would like to
 15 reserve, if I'm not persuasive enough on
 16 this, I would say to the Court that based on
 17 what happened yesterday -- not to recite
 18 everything -- I certainly did nothing but
 19 devote my energies to getting a new expert.
 20 So just so you know, I haven't been
 21 pouring over their papers.
 22 **THE COURT:** No; I understand that.
 23 **MR. KLINE:** I viewed their papers
 24 as --
 25 **THE COURT:** I understand. But you

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1 were -- I don't mind on the record now a
 2 complete procedural review of the issue
 3 involving Dr. Goldstein and Alabama and the
 4 ethical or criminal rules down there and the
 5 knowledge that was involving the parties.
 6 Obviously this matter is going to be
 7 reviewed. I have no problem with it being
 8 reviewed, but I do want a fair trial. No
 9 surprises.
 10 **MR. KLINE:** All we wanted ever was a
 11 fair trial, Your Honor.
 12 And I might add, it is the most
 13 difficult, laborious task to try a case
 14 against a pharmaceutical company. I'll start
 15 with that. And it is about the most
 16 challenging professional experience that a
 17 plaintiff's lawyer could have. Because right
 18 here as we're sitting here, according to
 19 their records, there are 12 lawyers who get
 20 the live feed and in the courtroom. So make
 21 no mistake about it, this is not easy
 22 business.
 23 Now, I've never been in this position
 24 before, Your Honor. I've been doing this 37
 25 years and I've never been in this position,

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1 never. Never heard of it, frankly, before
 2 yesterday, this attempt to sabotage the case.
 3 I've heard Ms. Sullivan say at least
 4 a half a dozen times some utter, complete
 5 nonsense about we were tipped off to this the
 6 first time that they wanted to take a
 7 deposition. I want to start there.
 8 We wanted to take -- that has nothing
 9 to do with anything. I had a science teacher
 10 at Albright College who said, What does that
 11 have to do with the price of peas in Peru?
 12 Used to say that all the time. Has nothing
 13 to do with the price of peas in Peru.
 14 What that was all about -- and you
 15 need to understand the background -- was
 16 Dr. Goldstein who is a physician in Missouri,
 17 out of this venue and out of this
 18 jurisdiction, I might add -- and not within
 19 my subpoena power either -- came here all
 20 last week and sat around. And I might add, I
 21 would be unhappy if I sat around all week
 22 while another witness testified. And I
 23 cajoled him into coming back after, to come
 24 back, and I wanted to take a deposition of
 25 him, not because I knew some nefarious --

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1 like I had some nefarious plot in my mind.
 2 I'll represent to you as an officer
 3 of the court I didn't have any idea that
 4 there was any issue about this witness,
 5 despite all of the pretrial contact, despite
 6 all of the litigation, and I might add, sir,
 7 despite all of the rancor and difficulty it
 8 is to deal with the other side in this case.
 9 And maybe we're a little difficult
 10 too. But, my word, we can't get anything.
 11 We can't agree on the -- on the time of day
 12 sometimes.
 13 Now -- and that's part of the
 14 difficulty and challenge. But they never
 15 once said anything about this or they never
 16 once say we have a problem or we have an
 17 issue with your expert or anything.
 18 They want to say that because I
 19 wanted to de bene esse him -- by the way,
 20 what I wanted to do was -- and, by the way,
 21 if you notice, Your Honor ruled against me on
 22 that before I could even say anything.
 23 **THE COURT:** Absolutely. Absolutely.
 24 **MR. KLINE:** And, by the way, I didn't
 25 try to say anything because I understand, by

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1 the way.
 2 **THE COURT:** Well, that, for the
 3 record, is a decision that this Court made
 4 not to permit a motion for Dr. Goldstein to
 5 have a videotaped deposition, trial
 6 deposition done at 6 o'clock p.m. last night
 7 after a full day of trial. Yes, I ruled that
 8 out of hand.
 9 **MR. KLINE:** Okay. I didn't -- you
 10 didn't hear me arguing about it or anything.
 11 **THE COURT:** Right.
 12 **MR. KLINE:** But I do want to tell the
 13 Court what was going on.
 14 The man -- there's nothing
 15 nefarious -- it's against my interest to have
 16 him on videotape, against my interest. But
 17 you know what, I wanted to make sure that I
 18 got him in and out of town and I got it
 19 preserved. And, frankly, he's the causation
 20 expert. He's a half-an-hour witness. He's a
 21 "Good morning, Doctor, do you know, have you
 22 examined the boy?" "Have you done the" --
 23 "Witness: Do you believe the boy's
 24 gynecomastia was caused by this?" "Do you
 25 know and understand and appreciate the

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1 medical literature?"
 2 And, of course, knowing me by now,
 3 Your Honor, you know I'll say something like,
 4 "And did you know this drug was worse than
 5 any other drug in producing gynecomastia?"
 6 And then they would cross-examine him either
 7 on a video or not.
 8 Your Honor said we couldn't do that,
 9 okay. So I was prepared --
 10 **THE COURT:** Not on video anyway, no.
 11 **MR. KLINE:** So I was prepared. I had
 12 him in town.
 13 **THE COURT:** Not at that hour.
 14 **MR. KLINE:** What's that?
 15 **THE COURT:** Not on video and not at
 16 that hour, the night before the trial.
 17 **MR. KLINE:** Okay. No, no. I'm not
 18 complaining.
 19 **THE COURT:** That's right.
 20 **MR. KLINE:** But I do want you to know
 21 and understand that contrary to what she
 22 represents, which is often, frankly, a
 23 misrepresentation --
 24 **MS. SULLIVAN:** Here we go.
 25 **MR. KLINE:** -- when she says -- what

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1 she tries to say to the Court is that there's
 2 some way that I knew that my witness was like
 3 a felon and I wanted to hide it, like she
 4 couldn't ask the question on a videotape
 5 under bright lights. It's palpably absurd.
 6 Now, I had him here -- this is an
 7 important part on the merits. I had him here
 8 in Philadelphia, prepared to testify Tuesday
 9 morning until they -- and, by the way, had I
 10 put him on, had I put him on the witness
 11 stand, they presumably could have said to
 12 him, Dr. Goldstein, did you know -- right
 13 here, right in this seat, they could have
 14 said, Dr. Goldstein, did you know that you
 15 were violating Alabama law? And they could
 16 have made him look foolish if they thought
 17 they could. They could have said a whole
 18 bunch of stuff. I would have objected. I
 19 think the Court would have kept it out
 20 because there's no -- because that statute --
 21 please, just if you'd indulge me, Your Honor,
 22 I would appreciate it.
 23 **THE COURT:** No, no, no. The issue
 24 from -- we researched this issue overnight.
 25 Unless there's some issue of competency, it

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1 would have been permitted in this Court most
 2 likely.
 3 **MR. KLINE:** Okay. So there you have
 4 it.
 5 Now, the issue on -- the issue on --
 6 **THE COURT:** His testimony would have
 7 been permitted most likely since I have not
 8 seen anything that would have ruled out his
 9 competency to testify. The weight of it,
 10 absolutely, but not the competency.
 11 **MR. KLINE:** Okay. Now, on the
 12 merits, to continue on the merits, and I'm
 13 going to cite the rule to the Court as well.
 14 On the merits, so where we are is we
 15 then have a hearing or we have a discussion
 16 about it, and the record says what it says.
 17 And I don't want to fight with Your Honor
 18 about this, but it does say [reading]: And
 19 for that reason I will permit a new report or
 20 a new IME. [reading]: Or we can have the
 21 doctor conduct another investigation over the
 22 next week will be permitted.
 23 And it was further said -- that was
 24 on Page 141 of yesterday's testimony. It was
 25 further said [reading]: I would give the

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1 plaintiff the opportunity to have a new IME
 2 produced because of the untimeliness of your
 3 motion.
 4 Now, I want to talk merits. I don't
 5 want to go back there. But I do want to tell
 6 you where I stand and what happened to me as
 7 counsel -- and I would add, however this
 8 cuts -- hardly inexperienced counsel, I would
 9 concede.
 10 And so where this cuts is, okay, so
 11 I'm now told what I can do by a court. And
 12 so I would never -- I won't do it then, and I
 13 won't do it now, I won't be part of
 14 subjecting Dr. Goldstein, a nice man of
 15 50-some-year practitioner, or 50 years I
 16 think he told me, I'm not sure the exact
 17 math, a sweet man, I might add, and somebody
 18 who is going to spend the rest of his life
 19 doing this. His wife's a lawyer, by the way.
 20 And so he doesn't only have me, he's got, as
 21 I like to say, a lawyer in the bedroom. And
 22 he is under a cloud by what they say.
 23 Now, there are a number of tentacles
 24 to this, including I don't want to get sued
 25 by the man. I don't want my client to be

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1 subjected to this. They started this fight,
 2 Your Honor. They injected this -- this
 3 Molotov cocktail into this litigation on the
 4 eve before he's going to testify.
 5 Now, what's a fair remedy, under all
 6 these circumstances? That's really what you
 7 have to --
 8 **THE COURT:** No. What's a fair remedy
 9 under the law is where we're going.
 10 **MR. KLINE:** Okay. Of course. Under
 11 the law and the rules, of course. Of course.
 12 First of all, first of all, this is
 13 the way I see it: I think I have a pretty
 14 good understanding of the appellate law of
 15 this state. Since I was a law clerk for the
 16 Honorable Thomas Pomeroy in 1978, I think I
 17 have a pretty good understanding of what's
 18 discretionary and what's not. And it is my
 19 view, Your Honor, for what it's worth in your
 20 consideration, that what you have here is a
 21 discretionary ruling to be applied under a
 22 discretionary rule on the merits. And what
 23 we have is they've asked to knock him out.
 24 Their -- they want to have it both ways.
 25 They don't want to file the motion and then

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1 they ask in their bench memo for him to be
 2 disqualified because he's no longer competent
 3 to testify. And they don't file it in a
 4 timely manner. That's what they say in that
 5 motion.
 6 By the way, I haven't studied it, but
 7 I can read English. And what they say is
 8 that they should get the benefit of throwing
 9 him -- throwing him and, therefore, the
 10 plaintiff out of court because they
 11 discovered something a year ago, a year ago.
 12 Now, under that circumstance, their
 13 motion can be granted. Now, of course if
 14 their motion is granted, they asked to have
 15 this witness disqualified. Well, the logic
 16 of that should be he shouldn't be
 17 disqualified and then us left with nothing
 18 based on the conduct that we've had here by
 19 them, my word.
 20 What we are entitled to is to put on
 21 our case and get our case heard.
 22 Now, this abject silliness about the
 23 hammering of prejudice, oh, prejudice,
 24 prejudice, prejudice. My word, Your Honor.
 25 We're dealing with a team of 12 lawyers, with

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1 a lawyer who is seen and known to be among
 2 the most skillful in the country, and says
 3 so, by the way, herself.
 4 **THE COURT:** All right. You're no
 5 first-year rookie yourself.
 6 **MR. KLINE:** I'm not any first-year
 7 rookie, but I've never been in this position
 8 before, nor put in that position. I am no
 9 rookie, that's correct.
 10 I tried my first one of these, a
 11 Bendectin case 32 years ago -- a Dalkon
 12 Shield case 32 years ago in federal court. I
 13 volunteered for this one, "volunteered."
 14 Help Mr. Sheller, my friend.
 15 **THE COURT:** You don't pick your
 16 witnesses. That's what they used to say in
 17 criminal court when I was doing prosecution
 18 or defense. You don't pick your clients,
 19 okay.
 20 **MR. KLINE:** You don't -- well,
 21 actually I did pick my clients. When I
 22 examined this, I knew that that woman has a
 23 wonderful, beautiful son, and I felt that
 24 they deserved representation.
 25 **THE COURT:** Got it.

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1 **MR. KLINE:** Now, now, here's where we
 2 are --
 3 **THE COURT:** I understand the
 4 situation, believe me. I want to hear from
 5 the other side.
 6 **MR. KLINE:** Sure. I want to get to
 7 the end point on the merits.
 8 **THE COURT:** What is the remedy that
 9 you're proposing?
 10 **MR. KLINE:** End point on the merits.
 11 The simple solution is, based on
 12 their motion, which was to knock out our
 13 witness, based upon the Court's ruling on
 14 the -- I understand. It was a procedural
 15 ruling yesterday. I get that. But based
 16 upon where we are, the Court has to decide
 17 the following, I believe -- and, again, I
 18 didn't scour the books last night. I was
 19 doing other stuff in case that wasn't evident
 20 in the courtroom today.
 21 The rule that they cited -- and, by
 22 the way, there may be other applicable rules
 23 and I don't want to waive anything because I
 24 didn't come prepared to argue this exactly,
 25 but 4003.5(b), I believe. "An expert witness

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1 whose" -- and this may not be the only
 2 section that applies, or this may not --
 3 sorry. I'm trying to be careful.
 4 But if you just look at that section
 5 it says, "An expert witness whose identity is
 6 not disclosed in compliance with
 7 the subdivision" -- okay. We wouldn't have
 8 provided an expert -- "shall not be permitted
 9 to testify on behalf of the defaulting
 10 party."
 11 First of all, I'm not a defaulting
 12 party. But this does give you guidance, the
 13 next sentence, I believe. "The failure to
 14 disclose the identity of a witness" -- which
 15 is what they're basically saying, we wouldn't
 16 have had identity of this witness -- "is the
 17 result of extenuating circumstances."
 18 Well, my word, we couldn't have more
 19 extenuating circumstances than a motion by
 20 the defendant to knock out a witness that
 21 they sat on for a year.
 22 And it says here, "Is beyond the
 23 control of the defaulting party." I guess
 24 that would be me. It says here, "The court
 25 may grant a continuance" -- we don't want a

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1 continuance -- "or other appropriate relief."
 2 It's wide open. Other appropriate relief.
 3 Well, this is ripe for the other
 4 appropriate relief. If ever there were a
 5 discretionary call by a court on a matter, it
 6 would be this one.
 7 Now, last points. What would be the
 8 prejudice? Let's look at this. I'm going to
 9 get another expert, okay. The expert is
 10 going to provide a report under the rules. I
 11 can represent to the Court that the report
 12 will, I believe -- I'm hoping -- will be
 13 essentially consistent with the ultimate
 14 opinions of Dr. Goldstein.
 15 There's this kind of fantasy argument
 16 out there that they "structured" their whole
 17 case around that. Well, no one could believe
 18 that --
 19 **THE COURT:** It's a three-page report,
 20 from what I could tell, four pages.
 21 **MR. KLINE:** It is a report, yes, much
 22 of which would not have even been in
 23 evidence. I plan to put in --
 24 **THE COURT:** The only part of which
 25 that is really particular to your client is

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1 the diagnosis of gynecomastia?
 2 **MR. KLINE:** Gynecomastia. And that's
 3 what I'm -- that's all I need.
 4 **THE COURT:** Well, isn't that all you
 5 need, is just some kind of independent
 6 diagnosis of the disease itself?
 7 **MR. KLINE:** And, well, I need someone
 8 who also can say that it is a -- that it is
 9 causally related; that it is a substantial
 10 contributing factor.
 11 **THE COURT:** So two questions.
 12 Dr. Goldstein is not available for that part
 13 of the testimony?
 14 **MR. KLINE:** He has -- it's a separate
 15 issue, Your Honor.
 16 He has been thrown into this morass.
 17 And he has been based on what I believed -- I
 18 guess you could say I was wrong, but I
 19 certainly don't see it from what I read the
 20 words in front of me -- what I believed was
 21 permissible. I dismissed him. And he told
 22 me that he was going away. And he
 23 essentially told me, as I heard it, that he
 24 wanted no part of this.
 25 Now, I have all kinds of

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1 disadvantages and prejudice by that. I have
 2 a witness who's being thrown under the bus --
 3 **THE COURT:** All right. You're saying
 4 he's not available.
 5 **MR. KLINE:** -- and run over.
 6 **THE COURT:** Because he for some
 7 reason is --
 8 **MR. KLINE:** He's been thrown under
 9 the bus and run over.
 10 **THE COURT:** -- he's been chilled or
 11 something like that.
 12 **MR. KLINE:** He has been. And --
 13 **THE COURT:** All right. Let me ask
 14 you this: See, the way I see the --
 15 **MR. KLINE:** And I can't get him back
 16 here. He's told me he's not available.
 17 **THE COURT:** The way I see the expert
 18 report of Dr. Goldstein, there were two parts
 19 to that. One is the overall relationship
 20 between prolactin and gynecomastia; and the
 21 other is as related to the specific child or
 22 young man.
 23 **MR. KLINE:** Yes.
 24 **THE COURT:** You don't have any other
 25 experts that are known to the plaintiff -- to

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1 the defense?
 2 **MR. KLINE:** Yes.
 3 **THE COURT:** As to the first part?
 4 **MR. KLINE:** Yes. I can tell you what
 5 I have. And this is another reason why
 6 they're not prejudiced, but since the Court
 7 asked, I will play the card, okay. I know
 8 who my --
 9 **THE COURT:** See, there are two
 10 aspects of this. Because what we don't have
 11 in this case, as far as I can tell, a true
 12 surprise one way or the other, is the actual
 13 diagnosis of this boy, unless you have some
 14 testimony about that. And that apparently is
 15 what you were relying on Dr. Goldstein for.
 16 **MR. KLINE:** Yes. And I --
 17 **THE COURT:** And that is the part that
 18 cannot be duplicated short of another
 19 examination by another doctor.
 20 **MR. KLINE:** Right. And I plan to
 21 have him examined.
 22 **THE COURT:** All right. Well, if
 23 that's going to be admissible, I would
 24 recommend that you do that. We're not quite
 25 there yet. But let me hear now from the

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1 defense.
 2 By the way, so that we can frame the
 3 defense argument, you are mentioning in
 4 particular 4003.5, I think it's 3(b).
 5 **MR. KLINE:** I was on 4003.5. But,
 6 Your Honor, I didn't come prepared today --
 7 **THE COURT:** Well, I'm going to
 8 suggest to you that the Court is also looking
 9 at another one of that particular rule.
 10 **MR. KLINE:** Which is what?
 11 **THE COURT:** It is 4003.5(2). "Upon
 12 cause shown --
 13 **MR. KLINE:** Yes.
 14 **THE COURT:** -- "the court may order
 15 further discovery by other means, subject to
 16 such restrictions as to scope and such
 17 provisions concerning fees and expenses as
 18 the court may deem appropriate."
 19 **MR. KLINE:** My question --
 20 **THE COURT:** You like that one better?
 21 **MR. KLINE:** I like them both. But I
 22 like that better. And it goes to show you,
 23 the Court knows more.
 24 **THE COURT:** I didn't know more. I
 25 just had more time.

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1 MR. KLINE: Yeah. But the -- yes.
 2 That's applicable.
 3 I would add one more thing. There
 4 will be no prejudice as well because I'm
 5 having the plaintiff seen by --
 6 THE COURT: Well, let's hear the
 7 argument. I haven't granted anything. I
 8 want to hear from the defense point of view.
 9 The concern I have from the defense
 10 point of view was what I related earlier in
 11 the discussion when I said -- and I'd like an
 12 answer to this. Yesterday on February 2,
 13 2015, Page 141 of the transcript, this Court
 14 specifically said [reading]: "And I see this
 15 as really a tactical measure by the defense
 16 in order to cause some kind of unfair
 17 surprise. And for that reason I will in fact
 18 permit a new report or a new IME."
 19 All right. I said that because at
 20 the time that we did the argument and we had
 21 the discussion, that's how I saw it.
 22 So I'm prepared now, Ms. Sullivan,
 23 for your response to Mr. Kline and then we'll
 24 have a ruling on this and then we'll go from
 25 there.

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1 MR. KLINE: I have one other point
 2 and I promise to sit down. I think it's an
 3 important piece of information.
 4 THE COURT: Yes, sir.
 5 MR. KLINE: He's being seen at 5
 6 o'clock today by a physician who has rendered
 7 multiple reports in this litigation, who is
 8 well-known to the defense --
 9 THE COURT: No. Well, let's --
 10 MR. KLINE: -- and who's been deposed
 11 twice.
 12 THE COURT: All right. I don't want
 13 anything specific.
 14 MR. KLINE: Including by Mr. Campion,
 15 one of the most famous lawyers in town.
 16 THE COURT: I don't want to get
 17 specific yet.
 18 The rules do not require an IME under
 19 4003.5(b).
 20 But let me hear from Ms. Sullivan, a
 21 response to this Court's concern yesterday
 22 about this entire procedure that was used in
 23 order to, essentially, scare off a witness,
 24 from what Mr. Kline is saying.
 25 MS. SULLIVAN: Your Honor, thank you.

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1 First, Judge, I'm not going to
 2 respond to the personal attacks, but they've
 3 been ongoing throughout this trial.
 4 Second, the problem was caused by the
 5 plaintiffs, not by us. They have an army of
 6 lawyers as well. We all do IMEs all the
 7 time. Different states have different rules.
 8 They didn't check Alabama's statute. We did.
 9 We got a local guy. They did not. We had
 10 given them the benefit of the doubt that they
 11 had at least satisfied the second prong of
 12 Alabama's law, which is if Dr. Goldstein had
 13 consulted with a local lawyer, he could come
 14 in and testify. And we were prepared to get
 15 that information from him.
 16 Then we saw the de bene esse notice
 17 and we said, well, maybe they didn't do it.
 18 I raised it with Mr. Kline in the morning,
 19 and I said you've got a big problem if we
 20 don't have this. And they didn't have it.
 21 They didn't do it. The first time we got
 22 confirmation that they did not comply with
 23 the law. They're officers of the court.
 24 We're officers of the court. Everybody was
 25 on notice of this statute. They caused this

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1 problem, not us.
 2 And the Court and Mr. Kline are
 3 suggesting that Janssen should be punished by
 4 their failure to secure an expert who
 5 conducted an exam in compliance with
 6 applicable law. They didn't do it.
 7 And one thing you didn't hear, Judge,
 8 is that Dr. Goldstein did not violate the
 9 law, because he clearly did. And the
 10 plaintiffs asked him to do it. He did it at
 11 their request. They caused this problem.
 12 And so now what Mr. Kline is suggesting is
 13 that the Court cure his problem at great
 14 prejudice to us.
 15 And the problem, Your Honor, with
 16 permitting a new expert in the middle of a
 17 trial -- I mean, we've had three -- two
 18 cross-examinations already, much of which was
 19 focused on the specifics of Dr. Goldstein's.
 20 He's not just a specific causation expert in
 21 this case, Your Honor. He is their major
 22 general causation expert. He's got two
 23 reports. Major general causation expert and
 24 major specific causation experts.
 25 We cross-examined Dr. Kessler and the

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1 prescriber with specific knowledge of what
2 Dr. Goldstein had found and said in terms of
3 timing, severity, dosing. We framed our
4 entire defense on this general and specific
5 causation report. We opened to the jury. I
6 spent at least ten minutes of my opening on
7 Dr. Goldstein's exam and the Holiday Inn in
8 Alabama, unlicensed, et cetera. We framed
9 our entire defense. We were on notice of
10 Dr. Goldstein's report more than a year ago.
11 We got experts lined up who specifically
12 respond, in their expert reports, to
13 Dr. Goldstein's general and case-specific
14 opinions.
15 To now completely throw a wrench,
16 it's clearly prejudicial. They're going to
17 say, oh, any guy can come in and say specific
18 and general causation. But Dr. Goldstein
19 made very specific findings on severity, on
20 timing, based on photographs. The
21 cross-examination of Mrs. Pledger, we can't
22 do it without knowing what their expert's
23 going to say on the history and causation
24 experts.
25 This trial, Your Honor, cannot

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1 proceed in any fair fashion at this juncture
2 if you're going to permit them to have a
3 whole new expert after cross-examination of
4 their liability expert and the key
5 prescriber, which was keyed in part to
6 Dr. Goldstein's opinions. Clearly
7 prejudicial, and a prejudice that they caused
8 by not complying with the Alabama law.
9 And, Your Honor, looking at 4003.5,
10 it says that an expert -- and, Your Honor, I
11 think the -- and I submit to the Court that
12 4003.5(a)2 that the Court cites relates to
13 discovery, not trial. Section 3(b) that we
14 cited to the Court relates to expert
15 witnesses at trial. And it says plainly that
16 the court shall not -- not discretionary --
17 they shall not be permitted to testify... an
18 expert witness who wasn't disclosed if the
19 failure to disclose the identity of the
20 witness is the result of extenuating
21 circumstances beyond the control of the
22 defaulting party.
23 It was not beyond their control.
24 They caused it. They caused the extenuating
25 circumstances. They are the ones who failed

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1 to comply with the clear statutory dictates
2 of doing an IME in Alabama.
3 As the Court made clear, Mr. Kline,
4 Mr. Sheller, they're not rookies. When you
5 do an IME, check the -- check the rules.
6 They didn't. They caused this problem. And,
7 Your Honor, I understand you may rule that
8 Dr. Goldstein can testify. We think that he
9 violated the law, and so I'm not sure we
10 should all be officers of the court
11 supporting a felony. But certainly you can't
12 let them change an expert in the middle of
13 the game. Clear prejudice.
14 Our experts are lined up and have
15 been prepared and have written extensive
16 reports in direct response to Dr. Goldstein's
17 medical history, his finding, his opinions on
18 timing and dosing, on background rates of
19 gynecomastia. It changes the entire case.
20 We opened based on their causation opinions.
21 We cross-examined based on it. It's clear
22 prejudice, not caused by us, Your Honor, but
23 caused by their failure to comply with the
24 law here. And I submit Your Honor should not
25 permit it.

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1 Thank you.
2 **THE COURT:** Okay. All right. Well,
3 let me just see something here. I was -- I
4 did look at your opening argument yesterday
5 as related to Dr. Goldstein. I just want to
6 see where that is.
7 **MS. BROWN:** Your Honor, I think the
8 references in the opening are at 95, 6 to 20;
9 96, 15 to 19; and 98, 9 to 13.
10 **THE COURT:** Well, I've read it. It
11 was Page 96. But there's a reference to ten
12 minutes of argument. It was Page 95, 96 and
13 97.
14 **MS. BROWN:** 98 as well.
15 **THE COURT:** Yeah. A couple minutes
16 talking about Goldstein.
17 I'm not convinced that there's a -- I
18 mean, I have no idea what the new -- what the
19 new expert testimony is; and until I see it,
20 I can't rule on it as to whether or not it's
21 something that could not be responded to
22 given the amount of time that would be
23 available to the defense.
24 I mean, the way I see this case is
25 we're not even completed with the plaintiff's

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1 case yet, let alone a couple of days that I
 2 might give the defense in order to prepare
 3 for any such report and excuse the jury for a
 4 couple of days. So I don't see that the
 5 prejudice part necessarily will come into
 6 play here.
 7 What I do see is a situation where
 8 what Mr. Kline was suggesting was he was
 9 prepared to put on a witness; and if he put
 10 on that witness first, he wouldn't have had
 11 the motion to exclude. And at that point
 12 circumstances changed. A witness of theirs
 13 took a few days and now all of a sudden, he
 14 has a motion to exclude; and as a result of
 15 that motion to exclude, his witness has been
 16 chilled.
 17 I have no idea whether Alabama law
 18 would or would not prosecute this doctor. I
 19 doubt it, as a matter of fact, based on what
 20 I have read. The question in Alabama law
 21 would probably revolve around whether or not
 22 Dr. Goldstein was practicing medicine when he
 23 took an examination at a hotel room in order
 24 to prepare for this trial and to check to see
 25 whether he was prepared to testify as an

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1 expert in this case. It also has to do with
 2 a wrinkle in Alabama law as to whether or not
 3 a visiting doctor who's licensed in another
 4 state is permitted to practice in Alabama for
 5 less than ten days.
 6 I have no idea under Alabama law
 7 whether that is permissible.
 8 What I do know is that almost
 9 certainly -- though we wouldn't argue this
 10 directly -- that his competency to testify at
 11 this civil trial here would not have been
 12 precluded.
 13 So, therefore, under the
 14 circumstances here, I do see cause, cause,
 15 because this particular motion was held by
 16 the defense in order to provide unfair
 17 surprise and to put the plaintiff in this
 18 position here. Therefore, I find under
 19 4003.5(2), that upon cause shown -- and I
 20 find there has been cause shown here of
 21 unfair surprise -- the Court may order
 22 further discovery, which I do, subject to
 23 such restrictions and to scope -- which I am
 24 prepared to discuss now -- and such
 25 provisions concerning fees and expenses --

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1 which I will discuss now -- as the Court may
 2 deem appropriate. And that is the ruling of
 3 this Court.
 4 **MS. SULLIVAN:** And, Your Honor, if
 5 you're going to permit this, we need
 6 obviously discovery. We need the ability to
 7 get new experts, supplemental expert reports.
 8 We can't --
 9 **THE COURT:** You will have -- first of
 10 all, the first thing's first is the question
 11 of who is this doctor and whether it should
 12 be permitted under this Rule 4003.5 or under
 13 a different rule, 4010.1, the IME statute. I
 14 believe that either one is applicable here.
 15 **MS. SULLIVAN:** And, Your Honor, just
 16 for the record, you are denying our motion
 17 for an injunction to prevent a new witness, a
 18 new expert witness from them?
 19 **THE COURT:** The first thing I'm doing
 20 is, as far as your particular motion is
 21 concerned, the one that is on the record now,
 22 I am ruling that it is moot, under the unfair
 23 surprise. It is just not -- I cannot address
 24 the merits of that particular issue because
 25 it was unfair.

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1 So, therefore, that bench memorandum
 2 is moot. Is denied as moot.
 3 I am ruling that under 4003.5,
 4 because of the filing of the motion and
 5 because of the chilling effect that evidently
 6 occurred with this particular witness, that
 7 fairness requires, cause has been shown, for
 8 a discovery to continue in this matter and
 9 now for this Court to address particular
 10 incidentals regarding this Court order.
 11 **MS. SULLIVAN:** Then, Your Honor, then
 12 we move for a mistrial.
 13 **THE COURT:** And that is denied.
 14 **MS. SULLIVAN:** And then, Your Honor,
 15 we move for a stay so we can take it up to
 16 the Superior Court.
 17 **THE COURT:** That is denied.
 18 **MS. SULLIVAN:** Thank you, Your Honor.
 19 **THE COURT:** Okay. Now, as far as the
 20 question, whether it's 4003.5 to operate
 21 under or 4010, does it make a difference?
 22 **MR. KLINE:** Well, I think we're under
 23 4003.5.
 24 **THE COURT:** Well, there's another one
 25 that provides for IME. Neither one are final

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1 orders. So we have checked that.
 2 **MR. KLINE:** We -- are you asking me?
 3 **THE COURT:** The question is the
 4 mechanism. I want -- what's most important
 5 to this Court is to have a diagnosis that is
 6 essentially an independent diagnosis.
 7 **MR. KLINE:** I plan to provide,
 8 barring some unforeseen circumstance, I plan
 9 to have this young man examined tonight. I
 10 plan to provide a report sometime tomorrow,
 11 barring some unforeseen circumstance, and --
 12 **THE COURT:** Well, what I'm trying to
 13 get at is for the Court's purposes, I would
 14 like a report from a doctor who, as far as
 15 I'm concerned, is also provided by the
 16 defense.
 17 **MR. KLINE:** Well, I can't do that.
 18 **THE COURT:** Well --
 19 **MR. KLINE:** They --
 20 **THE COURT:** Well, then I don't want
 21 to come back and say, you know, that doctor
 22 is wrong, that doctor -- I want --
 23 **MR. KLINE:** Your Honor, at issue,
 24 respectfully, at issue, this isn't a
 25 court-ordered exam.

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1 **MS. SULLIVAN:** They don't want the
 2 truth.
 3 **THE COURT:** Well, that's what I'm
 4 saying, whether we go --
 5 **MR. KLINE:** I don't want a -- when
 6 you say --
 7 **MS. SULLIVAN:** They don't want the
 8 truth, Judge.
 9 **MR. KLINE:** That's right, we don't
 10 want the truth. You want the truth.
 11 You heard the truth here today. You
 12 heard the truth about off-label promotion
 13 where a company was fined 2.8 million --
 14 billion dollars. \$2.2 billion.
 15 **MS. SULLIVAN:** Not to children,
 16 Mr. Kline.
 17 **MR. KLINE:** Oh, yeah.
 18 **MS. SULLIVAN:** Not to children.
 19 **MR. KLINE:** Attorney General Holder
 20 said that Janssen Pharmaceuticals and Johnson
 21 & Johnson's conduct --
 22 **MS. SULLIVAN:** Not to children. Get
 23 it right.
 24 **MR. KLINE:** Johnson & Johnson's
 25 conduct as to children --

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1 **MS. SULLIVAN:** Get it right.
 2 **MR. KLINE:** -- as to children was
 3 shameful.
 4 **MS. SULLIVAN:** Not to children.
 5 **MR. KLINE:** Shameful. That's who you
 6 represent.
 7 **THE COURT:** All right, Mr. Kline --
 8 **MR. KLINE:** Shameful. Attorney
 9 General of the United States.
 10 **THE COURT:** All right. Mr. Kline, I
 11 do understand the passion involved on this
 12 case. However, what I'm interested in from a
 13 Court's perspective is some kind of
 14 resolution from the morass that has been --
 15 **MR. KLINE:** I can give it to you.
 16 **THE COURT:** Well, I don't want to
 17 then have a -- well, are you requesting a
 18 IME?
 19 **MS. SULLIVAN:** Your Honor --
 20 **MR. KLINE:** They already have an IME.
 21 **MS. SULLIVAN:** Well, Your Honor,
 22 here's our issue: We have, in response to
 23 Dr. Goldstein's report, we have experts who
 24 have specifically responded to his opinions.
 25 **THE COURT:** Have they themselves --

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1 **MS. SULLIVAN:** We had a local Alabama
 2 doctor, in compliance with the law, do an
 3 IME. If everybody's going to get new
 4 experts, we'd like that opportunity as well,
 5 Judge, because the whole game is changing.
 6 **THE COURT:** I haven't seen that
 7 report from that other -- was that an IME?
 8 **MR. KLINE:** We're not having an IME,
 9 Your Honor.
 10 **THE COURT:** Well, why is she
 11 referring to an IME?
 12 **MR. KLINE:** Because she's trying to
 13 muddy it up, as usual.
 14 **THE COURT:** Did you agree to an IME
 15 for some doctor in Alabama?
 16 **MS. SULLIVAN:** No; I'm sorry.
 17 **MR. KLINE:** When I get the floor, I
 18 will explain.
 19 **MS. SULLIVAN:** Your Honor --
 20 **MR. KLINE:** Whenever I get the floor.
 21 **MS. SULLIVAN:** And just so the record
 22 is clear, you are denying our request to
 23 enjoin a new expert for them?
 24 **THE COURT:** I haven't made -- this is
 25 the first time I heard such a motion.

1 MS. SULLIVAN: Okay. Your Honor,
 2 we're moving to enjoin a new expert in this
 3 case from the plaintiff.
 4 THE COURT: To enjoin?
 5 MS. SULLIVAN: Yes, Your Honor.
 6 THE COURT: What do you mean by that?
 7 MS. SULLIVAN: We're moving for an
 8 injunction to prevent a new expert in this
 9 case, because it's enormously prejudicial,
 10 irreparable harm to Janssen and our defense.
 11 We're moving for an injunction to prevent a
 12 new expert.
 13 THE COURT: There is no such motion
 14 in Pennsylvania civil procedure. If you can
 15 show it to me, I will look at it.
 16 MS. SULLIVAN: Very good, Your Honor.
 17 MR. KLINE: Whenever I have a chance
 18 to explain, I will.
 19 THE COURT: I am specifically --
 20 MS. SULLIVAN: Your Honor --
 21 THE COURT: I am specifically
 22 following Rule 4003.5 in which the remedy
 23 falls to the Court, absent abuse of
 24 discretion, upon cause shown, the Court may
 25 order further discovery by other means,

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 2
 3 I hereby certify that the proceedings
 4 and evidence are contained fully and
 5 accurately in the notes taken by me on the
 6 trial of the above cause, and that this copy
 7 is a correct transcript of the same.
 8 I further certify that I am not a
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1 subject to such restrictions as to scope and
 2 such provisions concerning fees and expenses
 3 as the Court may deem appropriate.
 4 There is no enjoinder rule or
 5 statute that applies to that particular Rule
 6 of Civil Procedure.
 7 Therefore, I will permit at this
 8 point for the examination of this patient to
 9 take place at 5 o'clock today, and we'll go
 10 from there.
 11 MR. KLINE: Yes.
 12 THE COURT: This Court is adjourned.
 13 MR. KLINE: Thank you, Your Honor.
 14 - - -
 15 (Court adjourned at 4:15 p.m.)
 16 - - -
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