

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

IN RE: RISPERDAL LITIGATION
March Term, 2010, No. 296

ANDREW BENTLEY, a minor, by Jennie Rolen, Guardian and Jennie Rolen, Individually, Plaintiffs	JANUARY TERM, 2010
Vs.	
JANSSEN PHARMACEUTICALS, INC., JOHNSON & JOHNSON and JANSSEN RESEARCH & DEVELOPMENT, LLC, EXERPPTA MEDICA; and ELSEVIER, INC.	NO. 649

September 24, 2012
City Hall, Courtroom 246
Philadelphia, Pennsylvania
TRIAL - VOLUME I

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18 C.F.S.A., Rule 3926, Theft of Services, and the
last page of this transcript.

B E F O R E: THE HONORABLE MARK I. BERNSTEIN
REPORTED BY: Maureen McCarthy, RMR, CRR

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11:19:17AM 2 everything that is said and everything
 11:19:19AM 3 that occurs throughout the trial, so when
 11:19:22AM 4 it comes time for you to deliberate,
 11:19:27AM 5 discuss the evidence and render a
 11:19:29AM 6 verdict, the evidence will be clear in
 11:19:30AM 7 your collective recollection.
 11:19:33AM 8 I'm Judge Bernstein and I'm going to
 11:19:36AM 9 preside over this trial.
 11:19:37AM 10 Plaintiff's counsel may make an
 11:19:49AM 11 opening address to you in which he
 11:19:51AM 12 outlines his case. Defense counsel can
 11:19:53AM 13 then make an opening address or they can
 11:19:56AM 14 reserve their right to address you at a
 11:19:58AM 15 later point in the trial.
 11:20:00AM 16 After the opening statements,
 11:20:03AM 17 plaintiff's counsel will present
 11:20:05AM 18 evidence. He can call witnesses to the
 11:20:07AM 19 stand. He may offer exhibits or
 11:20:11AM 20 documents, conceivably even physical
 11:20:14AM 21 objects into evidence.
 11:20:15AM 22 Each witness called by the plaintiff
 11:20:18AM 23 will be questioned by the plaintiff. We
 11:20:21AM 24 call that direct examination; and then
 11:20:23AM 25 will be cross-examined by defense

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11:21:28AM 2 makes a record of everything that is said
 11:21:30AM 3 throughout the trial.
 11:21:31AM 4 When you go to the jury room to
 11:21:34AM 5 deliberate on your verdict, if you find
 11:21:37AM 6 that your recollection of a particular
 11:22:17AM 7 piece of testimony has become uncertain
 11:22:17AM 8 or confused, you may, I may, at your
 11:22:17AM 9 request, allow the court reporter to read
 11:22:17AM 10 a portion of the testimony back to you.
 11:22:17AM 11 You should not rely on getting this
 11:22:17AM 12 kind of help from the court reporter.
 11:22:17AM 13 It's my expectation that this case is
 11:22:17AM 14 going to take about three weeks, and
 11:22:17AM 15 unfortunately, there's several scheduling
 11:22:17AM 16 problems that I'll discuss with you later
 11:22:17AM 17 on in the day.
 11:22:17AM 18 So it's going to be a little bit of
 11:22:17AM 19 an extended time, but I'm confident that
 11:22:17AM 20 if you, as you attentively pay attention
 11:22:24AM 21 to every witness, testimony will be clear
 11:22:26AM 22 in your collective recollection when it
 11:22:28AM 23 comes time to deliberate.
 11:22:31AM 24 Now, this courtroom is right where
 11:22:35AM 25 Broad Street hits City Hall, and there

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11:20:26AM 2 counsel.
 11:20:26AM 3 Cross-examination is questioning
 11:20:29AM 4 designed to test the truthfulness and
 11:20:31AM 5 accuracy of what was presented to you in
 11:20:35AM 6 direct examination.
 11:20:36AM 7 At the conclusion of the plaintiff's
 11:20:40AM 8 case, defense counsel will have an
 11:20:43AM 9 opportunity to call witnesses, and any
 11:20:45AM 10 witnesses called by defense will be
 11:20:48AM 11 subject to cross-examination by
 11:20:50AM 12 plaintiff's counsel.
 11:20:51AM 13 After all the evidence has been
 11:20:55AM 14 presented to you, the attorneys for each
 11:20:57AM 15 side will have a final opportunity to
 11:21:00AM 16 make closing arguments.
 11:21:02AM 17 I will give you the final
 11:21:03AM 18 instructions as to everything you need to
 11:21:07AM 19 know in order to render a proper verdict;
 11:21:10AM 20 and perhaps I'll add some additional
 11:21:13AM 21 guidance about how you may properly
 11:21:15AM 22 conduct your deliberations as you will
 11:21:18AM 23 then retire to the jury room to begin
 11:21:20AM 24 your deliberations and reach a verdict.
 11:21:24AM 25 We do have a court reporter who

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11:22:40AM 2 must be a regulation of some sort that
 11:22:41AM 3 says emergency vehicles are supposed to
 11:22:44AM 4 turn on their siren when they hit that
 11:22:46AM 5 corner.
 11:22:47AM 6 We've got a crowded courtroom. It
 11:22:50AM 7 may get hot. We'll try to keep the air
 11:22:54AM 8 conditioners off, but sometimes we'll
 11:22:56AM 9 have to turn them on.
 11:22:58AM 10 This may make it difficult to hear.
 11:23:02AM 11 Any combination of these things, maybe an
 11:23:04AM 12 attorney or witness speaks softly.
 11:23:08AM 13 You'll have trouble hearing.
 11:23:09AM 14 If at any time you're having any
 11:23:10AM 15 difficulty hearing, signal Charles,
 11:23:13AM 16 signal me, do something and we will do
 11:23:15AM 17 everything necessary to make sure you
 11:23:18AM 18 hear all the evidence.
 11:23:19AM 19 Please do it as soon as you start
 11:23:22AM 20 having any problems. If you stand up and
 11:23:24AM 21 say, Judge, I haven't heard anything for
 11:23:26AM 22 the last 20 minutes, there's nothing I
 11:23:29AM 23 can do about it.
 11:23:29AM 24 Counsel, with respect to the sirens,
 11:23:31AM 25 if a siren starts, which they will, you

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11:23:34AM 2 can just stop, wait until it passes a
 11:23:38AM 3 little bit and then start over. You
 11:23:39AM 4 don't need any permission. Everybody
 11:23:41AM 5 will understand what's going on.
 11:23:43AM 6 You have notes and are permitted to
 11:23:52AM 7 take notes, but you're not required to
 11:23:53AM 8 take notes; and if you choose to take
 11:23:55AM 9 notes, you don't have to take extensive
 11:23:58AM 10 notes.
 11:23:58AM 11 If you take extensive notes for the
 11:24:01AM 12 first week, you don't have to keep it up
 11:24:04AM 13 in the second week. Those notes are
 11:24:09AM 14 reminders to yourself and you can take as
 11:24:11AM 15 much or as little as you want.
 11:24:13AM 16 One of the most important things of
 11:24:17AM 17 a juror is to evaluate -- perhaps the
 11:24:19AM 18 most important thing for a juror is to
 11:24:22AM 19 evaluate the testimony being given to
 11:24:24AM 20 you.
 11:24:24AM 21 You have to judge the credibility of
 11:24:28AM 22 each witness. Credibility is the
 11:24:30AM 23 truthfulness and accuracy of what the
 11:24:33AM 24 witnesses say in their testimony.
 11:24:36AM 25 So note-taking should not be allowed

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11:24:39AM 2 to divert your attention from evaluating
 11:24:44AM 3 the witness' credibility.
 11:24:45AM 4 They're merely memory aids. They're
 11:24:50AM 5 not evidence or any kind of official
 11:24:52AM 6 record. So jurors who take few notes or
 11:24:55AM 7 don't take any notes should not be
 11:24:58AM 8 influenced by the fact that somebody else
 11:25:01AM 9 wrote something down.
 11:25:04AM 10 They may have gotten it wrong. They
 11:25:07AM 11 may have gotten the texture a little bit
 11:25:09AM 12 wrong. They may have written one thing
 11:25:10AM 13 down and they said the opposite in their
 11:25:13AM 14 testimony. If a note helps you to
 11:25:16AM 15 remember, yeah, that is what the witness
 11:25:17AM 16 said, that's fine.
 11:25:18AM 17 But you're not to think something is
 11:25:21AM 18 accurate or even important just because
 11:25:25AM 19 somebody wrote it down.
 11:25:27AM 20 The notes are confidential. They're
 11:25:30AM 21 not going to be read by anybody else.
 11:25:34AM 22 When you leave the courtroom, turn it
 11:25:37AM 23 upsidedown. At the end of the day,
 11:25:40AM 24 Charles will collect them and give them
 11:25:40AM 25 back to you the next day.

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11:25:43AM 2 You're not to share your notes with
 11:25:44AM 3 anybody. At the end of the day, we're
 11:25:46AM 4 going to collect it at the end of the
 11:25:48AM 5 trial, we're going to collect them and
 11:25:50AM 6 shred them without anybody reading them.
 11:25:53AM 7 The only time you can use your notes
 11:25:55AM 8 is during deliberations. You are
 11:25:58AM 9 permitted at that time, if you choose, to
 11:26:01AM 10 share your notes with anybody you want to
 11:26:04AM 11 share it with.
 11:26:05AM 12 Before that, you're not even to show
 11:26:07AM 13 your notes to anyone.
 11:26:09AM 14 As I mentioned, the most important
 11:26:16AM 15 job of the jury is to judge the
 11:26:18AM 16 credibility of the witnesses and to
 11:26:20AM 17 evaluate what weight is to be given to
 11:26:23AM 18 the evidence.
 11:26:23AM 19 By credibility, I mean the witness'
 11:26:27AM 20 testimony's truthfulness and accuracy.
 11:26:30AM 21 In judging credibility, you should
 11:26:33AM 22 use your own understanding of human
 11:26:38AM 23 nature and common sense. Observe each
 11:26:39AM 24 witness as he or she testifies; alert for
 11:26:43AM 25 anything in his or her words, demeanor or

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11:26:47AM 2 behavior on the witness stand or for
 11:26:49AM 3 anything in the other evidence in the
 11:26:51AM 4 case, which might help you to judge the
 11:26:54AM 5 truthfulness and accuracy of the
 11:26:56AM 6 testimony and thereby determine what
 11:27:01AM 7 weight that testimony should receive.
 11:27:05AM 8 One of the things that you could
 11:27:06AM 9 look for is whether the witness answers
 11:27:09AM 10 in a straightforward manner or whether
 11:27:12AM 11 the witness' answers are given in any
 11:27:16AM 12 kind of evasive manner.
 11:27:19AM 13 It's my responsibility to decide all
 11:27:22AM 14 questions of law and, therefore, you must
 11:27:25AM 15 accept and follow my rulings as to
 11:27:28AM 16 matters of law.
 11:27:28AM 17 But I'm not the judge of any of the
 11:27:37AM 18 facts and it's not my responsibility to
 11:27:40AM 19 determine what are the true facts
 11:27:42AM 20 concerning the claims presented.
 11:27:44AM 21 You, the jurors, are the only judges
 11:27:46AM 22 of the facts. So your primary
 11:27:50AM 23 responsibility, the only ones with that
 11:27:53AM 24 responsibility, is to weigh and evaluate
 11:27:55AM 25 the evidence, to find facts and applying

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11:27:59AM 2 the rules of law as I give them to you to
 11:28:02AM 3 the facts as you find them to be to
 11:28:06AM 4 determine whether the plaintiff have
 11:28:07AM 5 proven any of the claims presented.
 11:28:10AM 6 As we go through this trial, you're
 11:28:15AM 7 to keep an open mind. The oath you just
 11:28:17AM 8 took, you swore to do so; and that means
 11:28:20AM 9 you should avoid forming opinions about
 11:28:22AM 10 any disputed questions until you begin
 11:28:25AM 11 your deliberations.
 11:28:26AM 12 You should not talk to anyone about
 11:28:29AM 13 the evidence or the case until it is time
 11:28:33AM 14 to deliberate.
 11:28:33AM 15 When I say you should not talk to
 11:28:37AM 16 anyone, that includes the 15 of you.
 11:28:39AM 17 When you assemble in the morning or when
 11:28:41AM 18 you are asked to step out of the
 11:28:45AM 19 courtroom or having lunch, you can
 11:28:47AM 20 discuss anything in the world that you
 11:28:50AM 21 want to talk about, except the case.
 11:28:51AM 22 Only when you have heard all the
 11:28:55AM 23 evidence and all the arguments and the
 11:28:58AM 24 law from me do you know enough to
 11:29:01AM 25 reasonably and properly discuss the case.

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11:29:04AM 2 So I say again: You're not to
 11:29:07AM 3 discuss the case with anyone, and that
 11:29:09AM 4 includes discussions amongst yourselves.
 11:29:13AM 5 You're not to read any newspaper
 11:29:20AM 6 stories about the trial. Avoid any radio
 11:29:24AM 7 or television which might refer to the
 11:29:26AM 8 trial.
 11:29:27AM 9 And you're not to read any Internet
 11:29:36AM 10 about the trial or messages about trial.
 11:29:38AM 11 You're not to use social media to
 11:29:42AM 12 communicate about the trial.
 11:29:44AM 13 In the old days, we used to lock up
 11:29:47AM 14 jurors until the trial was over to make
 11:29:50AM 15 sure there was no such communications,
 11:29:52AM 16 but just looking at you, I know we don't
 11:29:55AM 17 need to do that.
 11:29:56AM 18 But you're not to communicate to
 11:30:00AM 19 anyone by any means about the trial, and
 11:30:02AM 20 with respect to the Internet, you're not
 11:30:06AM 21 to look up terms or situations or any
 11:30:10AM 22 explanations that you want to get; and
 11:30:13AM 23 the reason is that the case has to be
 11:30:16AM 24 decided on the basis of the evidence
 11:30:18AM 25 presented in open court; the evidence

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11:30:22AM 2 that each side knows about, the evidence
 11:30:25AM 3 that each side confronts, the evidence
 11:30:28AM 4 that each side has a right to
 11:30:31AM 5 cross-examine about.
 11:30:31AM 6 If you're going to get any outside
 11:30:34AM 7 influences, whether it's your grand
 11:30:38AM 8 niece's comment or your neighbor's
 11:30:40AM 9 thought or what somebody posted on
 11:30:45AM 10 Wikipedia, they don't even know that's
 11:30:47AM 11 part of what they have to deal with in
 11:30:49AM 12 deliberations.
 11:30:50AM 13 To the lawyers, the only things that
 11:30:52AM 14 exist are the things that happen in open
 11:30:55AM 15 court.
 11:30:55AM 16 This is a very serious instruction;
 11:30:59AM 17 you are not to discuss the case with
 11:31:01AM 18 anyone. You're not to report on the case
 11:31:02AM 19 to anyone and you're not to use any
 11:31:06AM 20 social media about the case.
 11:31:08AM 21 Now, what happens if you open the
 11:31:10AM 22 paper tomorrow and there's a big headline
 11:31:13AM 23 about the case? Well, first thing you do
 11:31:15AM 24 is stop reading and the second thing you
 11:31:18AM 25 do is tell Charles about it.

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11:31:20AM 2 It's no big deal if you see
 11:31:22AM 3 something, if you let us know about it;
 11:31:24AM 4 but you're to avoid it. I'm not telling
 11:31:28AM 5 you you can't watch the news. But if TV
 11:31:33AM 6 comes on about Courtroom 246, shut it
 11:31:38AM 7 out.
 11:31:38AM 8 You're not to visit the scene of any
 11:31:46AM 9 incident or to make any investigation of
 11:31:49AM 10 your own or conduct experiments of your
 11:31:51AM 11 own.
 11:31:51AM 12 It's just the same thing I've been
 11:31:53AM 13 telling you: The only information about
 11:31:56AM 14 this case, the only information on which
 11:31:59AM 15 this case can properly be decided is what
 11:32:02AM 16 comes to you while you are altogether
 11:32:05AM 17 acting as a jury in the presence of the
 11:32:07AM 18 Court and the attorneys.
 11:32:10AM 19 It's your recollection when you
 11:32:15AM 20 deliberate. It will be your recollection
 11:32:16AM 21 of the evidence, not mine or the
 11:32:18AM 22 attorneys on which you're going to have
 11:32:20AM 23 to rely.
 11:32:21AM 24 I'm telling you specifically, you're
 11:32:26AM 25 not required to follow any opinion that

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11:32:29AM 2 you think the attorneys have expressed.

11:32:32AM 3 In fact, you're not even required to

11:32:34AM 4 follow any opinion that you think I

11:32:37AM 5 expressed throughout the trial.

11:32:39AM 6 Let me tell you, I'm not going to

11:32:41AM 7 express any opinion throughout the trial;

11:32:43AM 8 but if you mistakenly think I do, when

11:32:46AM 9 you deliberate, I'm telling you

11:32:50AM 10 explicitly, you're not required to follow

11:32:52AM 11 any opinion that you think I have

11:32:56AM 12 expressed.

11:32:56AM 13 The statements and arguments that

11:32:59AM 14 the attorneys make, they are not binding

11:33:02AM 15 on you. They're not even evidence.

11:33:05AM 16 Nonetheless, it is proper for you to be

11:33:07AM 17 guided by what the attorneys say to you

11:33:10AM 18 at the points where they're allowed to

11:33:12AM 19 simply talk to you.

11:33:14AM 20 It's proper for you to be guided by

11:33:17AM 21 what they say if their statements and

11:33:20AM 22 arguments are supported by the evidence

11:33:23AM 23 and if they appeal to your own reason and

11:33:26AM 24 judgment.

11:33:27AM 25 The questions that attorneys put to

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11:33:31AM 2 the witnesses are not evidence. It's the

11:33:35AM 3 answers that the witnesses give under

11:33:39AM 4 oath which is the evidence in the case.

11:33:42AM 5 You should not speculate that a fact

11:33:45AM 6 is true because an attorney asked the

11:33:49AM 7 question or even a whole series of

11:33:51AM 8 questions that assume or suggest that a

11:33:54AM 9 fact is true.

11:33:55AM 10 It's the answer which is the only

11:33:58AM 11 evidence. So when the attorneys suggest

11:34:02AM 12 something and the witness says no, the

11:34:06AM 13 evidence is no. Not what the attorneys

11:34:11AM 14 suggested in the question.

11:34:12AM 15 It's possible but unlikely that I

11:34:15AM 16 may question some of the witnesses

11:34:17AM 17 myself. In the event that occurs, the

11:34:20AM 18 questions will not reflect any opinion on

11:34:22AM 19 my part about the case or the witness.

11:34:25AM 20 My only purpose will be to inquire

11:34:27AM 21 about matters that counsel may not have

11:34:29AM 22 fully explored or to seek to simplify

11:34:33AM 23 issues which, in my opinion, had become

11:34:37AM 24 unnecessarily confused.

11:34:38AM 25 And the most common example of that

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11:34:40AM 2 is where it's clear to me the witness

11:34:42AM 3 doesn't understand one of the words and

11:34:44AM 4 the lawyer hasn't picked up on that, so I

11:34:47AM 5 may clarify use of different words.

11:34:51AM 6 The admission of evidence at trial

11:34:53AM 7 is governed by rules of law and,

11:34:55AM 8 therefore, it's my duty to rule on

11:34:59AM 9 objections to the evidence made by

11:35:01AM 10 attorneys.

11:35:02AM 11 Objections occur in every case and

11:35:06AM 12 there's absolutely nothing unusual about

11:35:08AM 13 them. What might be a little unusual, if

11:35:11AM 14 you watch courtroom things on TV, is the

11:35:16AM 15 way I run my courtroom.

11:35:21AM 16 I don't allow the attorneys to make

11:35:23AM 17 argument in front of you. Generally, if

11:35:24AM 18 they object, I'll just rule. If I ask

11:35:27AM 19 them to say anything in front of you,

11:35:28AM 20 it's going to be just a legal question, a

11:35:32AM 21 legal basis, just to make sure it's not

11:35:35AM 22 something I'm missing.

11:35:36AM 23 If there's any argument that is

11:35:39AM 24 needed, we'll do it at sidebar. We'll do

11:35:42AM 25 it in chambers if it's more complicated.

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11:35:47AM 2 I may even ask you to step outside so I

11:35:49AM 3 can hear oral argument or maybe even

11:35:53AM 4 listen to a witness before I make a

11:35:55AM 5 ruling.

11:35:55AM 6 So I think you'll find with respect

11:35:56AM 7 to objections, my rulings will either be

11:35:59AM 8 like that (indicating) or I may take much

11:36:02AM 9 longer than maybe you might expect to

11:36:05AM 10 make sure that I get a proper ruling.

11:36:07AM 11 My job is to make sure you hear the

11:36:13AM 12 right evidence. Your job is to evaluate

11:36:15AM 13 that evidence.

11:36:21AM 14 If I sustain an objection, the

11:36:27AM 15 witness should not answer and you should

11:36:29AM 16 not consider any answer you may have

11:36:30AM 17 heard.

11:36:31AM 18 I say "should not" because

11:36:33AM 19 sometimes, for many reasons, a witness

11:36:35AM 20 will answer a question even though there

11:36:37AM 21 has been an objection or perhaps even

11:36:39AM 22 after an objection has been sustained.

11:36:41AM 23 Maybe I took too long in ruling and

11:36:45AM 24 they thought they were allowed to answer.

11:36:48AM 25 Maybe they're just unfamiliar with court

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11:36:52AM 2 and they didn't know they weren't
 11:36:55AM 3 supposed to answer. Maybe they
 11:36:56AM 4 intentionally snuck in an answer to make
 11:36:58AM 5 sure that my objection was meaningless.
 11:37:00AM 6 There are lots of reasons; maybe
 11:37:04AM 7 they didn't even hear the objection, said
 11:37:07AM 8 it softly. There's lots of reasons why a
 11:37:10AM 9 witness might answer a question even
 11:37:12AM 10 though there has been an objection.
 11:37:13AM 11 If that occurs, I may not say
 11:37:18AM 12 anything. If there is an objection
 11:37:20AM 13 sustained and you heard an answer,
 11:37:22AM 14 disregard it.
 11:37:23AM 15 I also may use some magic words like
 11:37:26AM 16 the jury is to disregard that answer, the
 11:37:30AM 17 objection is sustained, or the answer is
 11:37:33AM 18 stricken. Magic words, stricken from the
 11:37:37AM 19 record.
 11:37:37AM 20 If you hear any of that, then you
 11:37:40AM 21 are to disregard the answer, not discuss
 11:37:42AM 22 it in deliberations and not even think
 11:37:45AM 23 about it.
 11:37:46AM 24 Now, should that happen, if I say
 11:37:55AM 25 some answer is stricken from the record,

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11:37:56AM 2 I got to make two decisions. The one
 11:37:58AM 3 decision is: Are you able to ignore what
 11:38:01AM 4 you heard? Is it so overwhelmingly
 11:38:05AM 5 significant that it's too much to expect
 11:38:08AM 6 you to ignore what you heard?
 11:38:10AM 7 If that's the case, that's my
 11:38:13AM 8 conclusion, then I got to send you all
 11:38:16AM 9 home and start over with another 15
 11:38:21AM 10 jurors.
 11:38:23AM 11 Obviously, we don't want to do that,
 11:38:26AM 12 particularly not after two and a half
 11:38:27AM 13 weeks of trial.
 11:38:29AM 14 But there's another decision that I
 11:38:30AM 15 got to make. It's not just, can you.
 11:38:33AM 16 The other decision I got to make is that
 11:38:37AM 17 you ignore it; and if for whatever reason
 11:38:40AM 18 -- I think jurors could, but this jury is
 11:38:45AM 19 not going to ignore it, I got to do the
 11:38:49AM 20 same thing. Excuse you all for your
 11:38:52AM 21 service and start over.
 11:38:53AM 22 I point this out only to emphasize
 11:38:56AM 23 the importance of the case being decided
 11:38:59AM 24 on proper evidence. So if I sustain an
 11:39:03AM 25 objection and you hear an answer, if I

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11:39:06AM 2 strike something from the record, if I
 11:39:09AM 3 tell you to disregard the answer, you got
 11:39:12AM 4 to do it.
 11:39:13AM 5 If you're not going to do it, I got
 11:39:17AM 6 to start over. That's if I sustain an
 11:39:25AM 7 objection. If I overrule an objection,
 11:39:27AM 8 the witness will answer and the answer is
 11:39:30AM 9 in evidence.
 11:39:37AM 10 As I mentioned, we'll do a lot of
 11:39:39AM 11 work at sidebar. We'll go to chambers.
 11:39:41AM 12 Maybe in the morning when you arrive,
 11:39:43AM 13 like this morning, there will be some
 11:39:46AM 14 things that the attorneys and I have to
 11:39:48AM 15 talk about.
 11:39:49AM 16 You should not concern yourself with
 11:39:50AM 17 what goes on outside of your presence.
 11:39:52AM 18 My job is to make sure you hear the
 11:39:55AM 19 right evidence. Your job is to evaluate
 11:39:59AM 20 that evidence.
 11:40:00AM 21 With those preliminary instructions,
 11:40:04AM 22 whenever you're ready, counsel, you may
 11:40:06AM 23 address the jury.
 11:40:07AM 24 MR. HILLIARD: Thank you, Your
 11:40:08AM 25 Honor.

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11:40:08AM 2 May it please the Court, this part
 11:40:23AM 3 of the case allows me to share with you
 11:40:24AM 4 what you're going to hear over the next
 11:40:27AM 5 few weeks. We've been working on this
 11:40:28AM 6 case for a number of years.
 11:40:30AM 7 Now it comes to this. I want to
 11:40:32AM 8 briefly acknowledge the 12 of you as the
 11:40:37AM 9 jury allowed under the amendment to our
 11:40:40AM 10 Constitution, given the way the world is
 11:40:42AM 11 today, the power that you 12 have in the
 11:40:45AM 12 United States is unparallel.
 11:40:49AM 13 It's appreciated by both sides, but
 11:40:52AM 14 just as a group, before you get down to
 11:40:54AM 15 the work of this case, understand both
 11:40:58AM 16 how rare it is and how much power our
 11:41:03AM 17 Constitution gives this jury; and I thank
 11:41:07AM 18 you for that.
 11:41:08AM 19 This case, at the end of the trial,
 11:41:10AM 20 the evidence I believe will convince you
 11:41:15AM 21 by what's called a preponderance of the
 11:41:16AM 22 evidence; and His Honor will tell you at
 11:41:17AM 23 the end of the trial what that means,
 11:41:19AM 24 preponderance of the evidence.
 11:41:21AM 25 See those scales over there on the

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11:41:22AM 2 Court's bench? I bring my own with me
 11:41:25AM 3 when I go around. They've been following
 11:41:26AM 4 me around for a long time, but
 11:41:28AM 5 preponderance of the evidence, as the
 11:41:30AM 6 judge will tell you, just means the
 11:41:33AM 7 greater weight of credibility of
 11:41:34AM 8 evidence; and the only reason I start
 11:41:36AM 9 with this at the end of the trial, I'm
 11:41:38AM 10 going to remind you of that when you
 11:41:39AM 11 weigh the evidence, you have to make a
 11:41:40AM 12 decision which evidence tips the scales.

11:41:44AM 13 Please keep that in mind.

11:41:46AM 14 I believe that the evidence will be
 11:41:49AM 15 overwhelming at the end of this case,
 11:41:52AM 16 that this company made a drug called
 11:41:56AM 17 Risperdal, a drug that was not approved
 11:42:03AM 18 for use in children. It was a very
 11:42:07AM 19 strong, very powerful antipsychotic
 11:42:12AM 20 designed for schizophrenia in adults.

11:42:19AM 21 You'll learn schizophrenia is one of
 11:42:22AM 22 the most frightening mental illnesses we
 11:42:24AM 23 have to deal with as a community. This
 11:42:26AM 24 company, the evidence will show you,
 11:42:28AM 25 decided that schizophrenia in the United

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11:42:34AM 2 States did not meet the marketing
 11:42:37AM 3 requirements to make enough money for
 11:42:42AM 4 this drug.

11:42:49AM 5 I'm going to show you slides, but
 11:42:50AM 6 give you an overview what the evidence
 11:42:52AM 7 is. So they made a decision that they
 11:42:55AM 8 would start to market and promote this
 11:42:58AM 9 very powerful drug designed for adults
 11:43:01AM 10 with schizophrenia to children, to the
 11:43:08AM 11 most vulnerable, the most needing of
 11:43:13AM 12 protection.

11:43:14AM 13 And instead of children with
 11:43:17AM 14 schizophrenia, they decided they would
 11:43:19AM 15 market it and promote it to children who
 11:43:21AM 16 had symptoms of mood disorders, conduct
 11:43:27AM 17 disorders, you're going to learn; so
 11:43:32AM 18 you'll see a drug designed specifically
 11:43:35AM 19 for a very -- to be very powerful because
 11:43:38AM 20 they call it antipsychotic was used and
 11:43:43AM 21 marketed very aggressively and very
 11:43:44AM 22 successfully, as you'll find out, very
 11:43:47AM 23 successfully for kids.

11:43:52AM 24 My client, who you're going to hear
 11:43:54AM 25 from, probably at lunch now back in

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11:43:56AM 2 school, but he'll be here to talk to us,
 11:43:59AM 3 was prescribed this drug, and there was a
 11:44:04AM 4 devastating side effect.

11:44:07AM 5 Again, you're going to learn that
 11:44:09AM 6 Johnson and Johnson, J & J, and Janssen
 11:44:12AM 7 knew about it, did not warn, and actually
 11:44:18AM 8 covered evidence concerning -- I'm going
 11:44:23AM 9 to tell you what it is, it's a word
 11:44:24AM 10 you're going to hear a lot; and before I
 11:44:26AM 11 got involved in the case the first time,
 11:44:28AM 12 I heard that word. First, I kept
 11:44:30AM 13 mispronouncing it, then I misspelled it.

11:44:33AM 14 But we got used to it so we used it
 11:44:37AM 15 a lot. When you hear it, you're not
 11:44:38AM 16 going to know what it is. Gynecomastia.
 11:45:10AM 17 I guess if you hear this word once,
 11:45:13AM 18 you're going to hear it 500 times.
 11:45:14AM 19 You're going to see it on exhibits
 11:45:16AM 20 admitted into evidence. Experts will
 11:45:18AM 21 talk about it every time you hear this
 11:45:20AM 22 word in regards to Andrew Bentley.

11:45:47AM 23 Gynecomastia is female breast growth
 11:45:49AM 24 in boys. Gynecologists, female, gyne,
 11:45:56AM 25 gynecomastia, female breast growth in

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11:45:59AM 2 boys. You'll hear that word a lot.
 11:46:01AM 3 Every time you do, please keep in mind
 11:46:04AM 4 this is what it means.

11:46:11AM 5 I'm going to speak louder because of
 11:46:14AM 6 the acoustics and Maureen is taking
 11:46:16AM 7 everything down. I'm going to show you
 11:46:17AM 8 some slides of some of the evidence
 11:46:19AM 9 you're going to see right now.

11:46:20AM 10 Risperdal is available in two forms.
 11:46:38AM 11 Andrew took it orally.

11:46:43AM 12 What antipsychotics are designed to
 11:46:48AM 13 do, you'll learn, is disrupt normal
 11:46:50AM 14 functioning along the brain pathways; and
 11:46:52AM 15 you'll hear from a doctor named Dr.
 11:46:54AM 16 Glaser who will be here tomorrow.

11:46:59AM 17 He'll speak to you about what it
 11:47:00AM 18 does medically. Keep in mind the reason
 11:47:03AM 19 this is important is because we have
 11:47:06AM 20 developing children's minds that Johnson
 11:47:12AM 21 and Johnson, you're going to learn,
 11:47:13AM 22 decided to market not based on the
 11:47:15AM 23 science but based on the arithmetic of
 11:47:19AM 24 the dollars.

11:47:26AM 25 You're going to hear, I have --

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11:47:30AM 2 you'll see that around here -- atypicals?
 11:47:34AM 3 You will hear that word a lot, but for
 11:47:38AM 4 some reason, they decided there was a
 11:47:40AM 5 first generation antipsychotics and a
 11:47:42AM 6 second generation, and they decided that
 11:47:44AM 7 the second generation will be called
 11:47:46AM 8 atypicals because the first generation
 11:47:48AM 9 was typical.
 11:47:50AM 10 It means nothing more than that's
 11:47:52AM 11 the name they gave it. So if you hear
 11:47:54AM 12 atypicals, that just means second
 11:47:56AM 13 generation. You're going to find out
 11:47:58AM 14 that there were a number of different
 11:48:00AM 15 options in second generation atypicals.
 11:48:05AM 16 And the reason you're going to learn
 11:48:08AM 17 that that is important is because of this
 11:48:47AM 18 prolactin at the end of this case, long
 11:48:50AM 19 after it's over, you will always probably
 11:48:53AM 20 remember gynecomastia and prolactin
 11:48:54AM 21 because you're going to hear it a lot,
 11:48:56AM 22 prolactin, increase in prolactin, causing
 11:49:15AM 23 a side effect of gynecomastia.
 11:49:19AM 24 Right now, I'm giving you the road
 11:49:22AM 25 map of just the words so you'll be

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11:49:25AM 2 familiar with it. At the end of the
 11:49:29AM 3 case, the evidence will show you that the
 11:49:36AM 4 simpleness of the facts in this case,
 11:49:37AM 5 you'll learn after all the testimony is
 11:49:38AM 6 in, is that a drug never meant for kids
 11:49:41AM 7 was marketed illegally and promoted
 11:49:45AM 8 illegally for kids in order to do one
 11:49:48AM 9 thing for the company that decided to do
 11:49:49AM 10 it; and you'll see the documents and
 11:49:52AM 11 you'll hear the testimony of the very
 11:49:55AM 12 first witness, as a matter of fact.
 11:49:58AM 13 There was only one atypical that
 11:50:19AM 14 raises prolactin, and this evidence is
 11:50:25AM 15 going to come in to show you that there
 11:50:28AM 16 were options if an antipsychotic was
 11:50:31AM 17 really needed for a high functioning
 11:50:33AM 18 Asperger young man.
 11:50:36AM 19 If, indeed, it was, there were other
 11:50:39AM 20 options they did not use. You're going
 11:50:43AM 21 to learn how those other options were
 11:50:48AM 22 shot down by Johnson and Johnson when the
 11:50:49AM 23 drug rep went into the doctors' offices
 11:50:53AM 24 and they had addressed this very issue
 11:50:56AM 25 with the doctors and they did it very

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11:50:59AM 2 aggressively, you'll learn.
 11:51:00AM 3 They did it disingenuously. I think
 11:51:09AM 4 the strongest evidence is they did it
 11:51:14AM 5 untruthfully.
 11:51:15AM 6 For 13 years from the time the drug
 11:51:31AM 7 got on the market until 2006, Risperdal
 11:51:37AM 8 was not approved by the FDA for use in
 11:51:45AM 9 children.
 11:51:46AM 10 Once it went on the market in '93,
 11:51:55AM 11 it spent the last seven years of the last
 11:51:58AM 12 century unapproved for children, and the
 11:52:00AM 13 evidence you'll learn is it was marketed
 11:52:02AM 14 during that time and promoted during that
 11:52:06AM 15 time by Johnson and Johnson and Janssen
 11:52:12AM 16 drug reps all over the country and in
 11:52:15AM 17 Texas and to this little boy's doctor for
 11:52:23AM 18 symptoms not diagnosed. Keep that in
 11:52:31AM 19 mind.
 11:52:31AM 20 In '97, they asked the FDA, can we
 11:52:40AM 21 be allowed to use this drug, this
 11:52:43AM 22 Risperdal for children? The FDA says,
 11:52:52AM 23 no, absolutely not. Here's why: You'll
 11:52:55AM 24 see the document that says you have not
 11:52:57AM 25 identified any pediatric indications for

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11:52:59AM 2 which you believe Risperdal could be
 11:53:01AM 3 approved and you have provided no data.
 11:53:05AM 4 Keep in mind, ladies and gentlemen,
 11:53:07AM 5 that the evidence will be that the data J
 11:53:10AM 6 and J. Relied on to do this was not
 11:53:14AM 7 scientific data. It was math. It was
 11:53:16AM 8 arithmetic.
 11:53:17AM 9 But the FDA doesn't want to hear
 11:53:21AM 10 math and arithmetic. They want to see
 11:53:25AM 11 the scientific data. The FDA finally
 11:53:28AM 12 said, if we approved this, it would serve
 11:53:30AM 13 only to promote the use of this drug in
 11:53:32AM 14 pediatric patients without any
 11:53:34AM 15 justification.
 11:53:36AM 16 You'll hear from my first witness is
 11:53:55AM 17 a -- he was a loyal Janssen drug
 11:54:02AM 18 representative promoted to being the
 11:54:10AM 19 boss. His name is Tony Jones,
 11:54:15AM 20 quarterback for Oklahoma State four years
 11:54:18AM 21 only, one never to be starting
 11:54:20AM 22 quarterback for four years.
 11:54:24AM 23 He had a long time at Janssen, and
 11:54:27AM 24 what he was trained to do and what he
 11:54:29AM 25 trained the folks under him to do and

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11:54:30AM 2 what he did with the doctors, you'll
 11:54:32AM 3 learn, and what was the national
 11:54:34AM 4 directive, because the evidence is going
 11:54:37AM 5 to show you that they are not allowed to
 11:54:40AM 6 go off the reservation. They have to
 11:54:43AM 7 follow the directives of what Johnson and
 11:54:46AM 8 Johnson or Janssen tells them in relation
 11:54:49AM 9 to the marketing.
 11:54:50AM 10 You know what I mean? He calls it
 11:54:52AM 11 meetings in a box. They would actually
 11:54:55AM 12 get a box that had all the information
 11:54:57AM 13 that they had to use in order to market
 11:54:59AM 14 this drug. They couldn't deviate from
 11:55:02AM 15 it. They couldn't add their own
 11:55:04AM 16 additions to it. It was the national
 11:55:08AM 17 directive on how to market this drug to
 11:55:10AM 18 children and here's why:
 11:55:13AM 19 There's just not enough
 11:55:15AM 20 schizophrenics in the United States to
 11:55:17AM 21 make the kind of money that marketing
 11:55:22AM 22 documents you will see said they need to
 11:55:25AM 23 make for this drug. Instead, they
 11:55:29AM 24 started looking at moods and suddenly,
 11:56:12AM 25 you'll learn from the evidence, that the

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11:56:12AM 2 world financially opened up to Johnson
 11:56:12AM 3 and Johnson in regard to the marketing
 11:56:12AM 4 opportunities for very powerful adult
 11:56:12AM 5 schizophrenic drugs as soon as they said
 11:56:12AM 6 we're not going to do just schizophrenics
 11:56:12AM 7 in adults anymore, we're going to move
 11:56:12AM 8 away from that and start -- look not at
 11:56:12AM 9 the diagnosis of adult schizophrenia but
 11:56:12AM 10 just at the moods that psychiatrists may
 11:56:12AM 11 find their patients, their pediatric
 11:56:12AM 12 patients, to have.
 11:56:12AM 13 And you'll also learn that this
 11:56:12AM 14 marketing strategy and that's what it
 11:56:14AM 15 was -- you're going to see a document
 11:56:18AM 16 called the Risperdal Pediatric Marketing
 11:56:22AM 17 Opportunity. You're going to hear
 11:56:26AM 18 testimony about the fact that in 2000,
 11:56:30AM 19 when this drug is not approved to be used
 11:56:32AM 20 for kids, Johnson and Johnson is actually
 11:56:35AM 21 creating a document to show how to market
 11:56:37AM 22 to kids.
 11:56:38AM 23 So the Risperdal pediatric market
 11:56:44AM 24 opportunity spoke to the open market if
 11:56:49AM 25 you can go after symptoms, not just

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11:56:53AM 2 symptoms in adults but symptoms in
 11:56:56AM 3 children. I'm going to come back to this
 11:56:59AM 4 in just a minute.
 11:57:01AM 5 One thing you're going to learn is
 11:57:07AM 6 the way it works, a drug company only has
 11:57:12AM 7 -- there are book ends within which
 11:57:14AM 8 they're going to make the money on the
 11:57:15AM 9 drug, then lose what's called their
 11:57:17AM 10 patent protection, and then the generics
 11:57:25AM 11 come in and cut the prices.
 11:57:27AM 12 So this is really the time period
 11:57:29AM 13 that Janssen and Johnson and Johnson had
 11:57:33AM 14 to make all the money they could make.
 11:57:35AM 15 This is another phrase that is
 11:57:48AM 16 unique to this case, but you'll learn a
 11:57:50AM 17 lot about it. Off-label use. Off-label
 11:57:56AM 18 means this label was designed by the, and
 11:57:58AM 19 approved by the FDA for one thing and,
 11:58:00AM 20 that is schizophrenia in adults.
 11:58:03AM 21 If you go off the label, that means
 11:58:05AM 22 you are using it for something that the
 11:58:07AM 23 label says it's not approved for, off
 11:58:09AM 24 label.
 11:58:09AM 25 It is illegal for a drug company

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11:58:17AM 2 through its reps to suggest, encourage,
 11:58:21AM 3 compensate, recommend or tout Risperdal
 11:58:23AM 4 for use in kids once they're inside a
 11:58:25AM 5 doctor's office, because that is off
 11:58:27AM 6 labeling.
 11:58:28AM 7 They cannot suggest. They cannot
 11:58:32AM 8 encourage. They cannot compensate,
 11:58:36AM 9 recommend or tout.
 11:58:38AM 10 The evidence in this case is that
 11:58:40AM 11 Johnson and Johnson did every single one
 11:58:43AM 12 of those in this case through the drug
 11:58:51AM 13 reps, and the evidence will be that it
 11:58:54AM 14 worked that this little boy was given
 11:58:57AM 15 this drug because this doctor was given
 11:58:59AM 16 information by this drug company which
 11:59:01AM 17 was not true, not complete and
 11:59:05AM 18 inaccurate.
 11:59:05AM 19 This gentleman right here is Tony
 11:59:13AM 20 Jones. Tony Jones did it better than
 11:59:18AM 21 anyone else you'll learn. He'll be here
 11:59:20AM 22 this afternoon to talk to you about it.
 11:59:22AM 23 This is him receiving the award, the
 11:59:24AM 24 president's award for how successful he
 11:59:27AM 25 was for doing what he did for the

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11:59:28AM 2 company.

11:59:28AM 3 And you'll learn that he says, look,

11:59:30AM 4 I was an African-American straight out of

11:59:33AM 5 college. They took a chance on me. I

11:59:35AM 6 was going to be loyal for them and I was

11:59:37AM 7 going to ride for the break. They told

11:59:39AM 8 me to do it. I did it.

11:59:41AM 9 And he did, and he'll look you in

12:00:15PM 10 the eye and he'll tell you that. This

12:00:15PM 11 man right here (indicating) is now the

12:00:15PM 12 CEO of the entire company, Alex Gorsky.

12:00:15PM 13 He was the head of this unit at the time,

12:00:15PM 14 this Risperdal growth unit, and you'll

12:00:15PM 15 learn that, under his watch, it went from

12:00:15PM 16 200 million to a billion dollar drug.

12:00:15PM 17 He was then promoted to the head of

12:00:15PM 18 Johnson and Johnson, the international

12:00:15PM 19 company. He runs it.

12:00:15PM 20 Tony Jones will tell you that it was

12:00:17PM 21 Janssen's and J & J's national following

12:00:20PM 22 to promote and market Risperdal for use

12:00:22PM 23 in kids.

12:00:23PM 24 It came from the top.

12:00:31PM 25 The drug reps that went into this

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12:00:36PM 2 doctor's office, you'll learn he knew

12:00:37PM 3 those drug reps. He was in the same

12:00:39PM 4 region. He attended and got the same

12:00:41PM 5 information they got.

12:00:44PM 6 There's going to be some science in

12:00:52PM 7 this about prolactin; and what prolactin

12:00:57PM 8 does is when a woman gets pregnant, the

12:01:01PM 9 body says I'm pregnant, the pituitary

12:01:03PM 10 glands allow prolactin to come out and

12:01:06PM 11 then the breasts grow and begin to

12:01:09PM 12 lactate. So when the baby is born, there

12:01:11PM 13 will be nursing.

12:01:13PM 14 That is the only reason for

12:01:18PM 15 prolactin; and as you may have put

12:01:22PM 16 together, you're going to hear from the

12:01:23PM 17 evidence that when a drug increases

12:01:24PM 18 prolactin in a boy, the prolactin doesn't

12:01:31PM 19 know it's in the boy. It just knows it's

12:01:35PM 20 supposed to do what God designed bodies

12:01:37PM 21 to do.

12:01:37PM 22 And as a fact, it did. And you'll

12:01:42PM 23 learn that, as a fact, this company knew

12:01:45PM 24 that it would; and you'll learn how they

12:01:50PM 25 tried to hide that fact.

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12:01:58PM 2 The evidence will show you that if

12:01:59PM 3 the truth of the test results came out,

12:02:02PM 4 that this drug does this to boys, they

12:02:05PM 5 couldn't sell a pill. No mom is ever

12:02:08PM 6 going to say -- you'll learn that sure --

12:02:11PM 7 try it on my son.

12:02:13PM 8 You'll learn testimony about how

12:02:38PM 9 they knew early on this would occur.

12:02:49PM 10 You're going to see this document and be

12:02:51PM 11 able to look at it yourself.

12:02:52PM 12 But in 2000, before the first pill

12:02:56PM 13 went into my client, inside their own

12:03:06PM 14 document, in their marketing document,

12:03:09PM 15 they have something called barrier to

12:03:12PM 16 using, obstacles to using Risperdal:

12:03:16PM 17 Number one: Lack of FDA approval in

12:03:20PM 18 pediatric patients, and I think the

12:03:23PM 19 evidence will be that's where the

12:03:24PM 20 analysis should have ended.

12:03:27PM 21 Okay, they're not proof. Move on.

12:03:30PM 22 But they go on besides not being

12:03:33PM 23 approved, is there anything else that it

12:03:35PM 24 may do? If we go ahead and promote it

12:03:37PM 25 and market it to children, despite the

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12:03:40PM 2 fact it's not approved?

12:03:40PM 3 Inside their own documents, nothing

12:03:45PM 4 my experts have brought to you, but their

12:03:46PM 5 own documents that we have: There are

12:03:48PM 6 side effects, weight gain, lactation.

12:03:58PM 7 Lactation is not gynecomastia. Is it?

12:04:00PM 8 Well, you go to the page you're

12:04:02PM 9 going to see later and this is a page

12:04:03PM 10 called Risperdal Disadvantages. In the

12:04:08PM 11 marketing plan, they say one disadvantage

12:04:10PM 12 is more likely to cause increased

12:04:13PM 13 prolactin levels, gynecomastia and

12:04:18PM 14 lactation.

12:04:23PM 15 2000, six mores years of off-label

12:04:26PM 16 marketing in front of them, they were

12:04:29PM 17 aware of what would happen to this young

12:04:33PM 18 man. When a drug is approved by the FDA,

12:05:10PM 19 as you will see from the evidence, they

12:05:13PM 20 have to give a warning and they have to

12:05:14PM 21 tell doctors who read that warning what

12:05:16PM 22 the results of the tests are so that

12:05:18PM 23 doctors can look at it and make what's

12:05:20PM 24 called a risk benefit analysis.

12:05:21PM 25 Is the risk of giving this drug

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12:05:24PM 2 based on the side effects I know of
 12:05:26PM 3 outweighed by the benefit of what this
 12:05:28PM 4 drug may do for my patient?
 12:05:30PM 5 Rare means one in 1,000.
 12:05:40PM 6 Infrequent, one in 100. You'll see two
 12:05:45PM 7 tests, two studies that this company ran
 12:05:50PM 8 to determine what the effects of this
 12:05:53PM 9 drug was in children called.
 12:05:56PM 10 Study 41 and study 70. Study 41 and
 12:06:00PM 11 study 70 showed that boys got
 12:06:04PM 12 gynecomastia, not rarely, not
 12:06:06PM 13 infrequently, not even frequently, but
 12:06:10PM 14 4.8 percent of the time and 12.5 percent
 12:06:15PM 15 of the time; and the reason that will be
 12:06:16PM 16 important, when you hear the doctor's
 12:06:19PM 17 testimony, Dr. Johnson, and he sees that
 12:06:22PM 18 -- you'll watch his video. He's from
 12:06:24PM 19 Sherman, Texas. I believe you will see
 12:06:27PM 20 the shock on his face when he sees this
 12:06:29PM 21 result. His testimony will be that: I
 12:06:31PM 22 would have told mom.
 12:06:36PM 23 One of the issues you may be asked
 12:06:47PM 24 to consider is did they warn about this
 12:06:50PM 25 problem and this drug? You'll see the

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12:06:57PM 2 label itself. Right there, you're going
 12:07:00PM 3 -- gynecomastia is considered what's
 12:07:01PM 4 called an endocrine disorder, and in
 12:07:04PM 5 their warning, they say in their label,
 12:07:08PM 6 very end of their label, they say that
 12:07:11PM 7 gynecomastia is what they label rare.
 12:07:15PM 8 So you can learn when a doctor reads
 12:07:17PM 9 that and he sees that gynecomastia, which
 12:07:19PM 10 is a debilitating and embarrassing and
 12:07:23PM 11 devastating side effect is to occur, will
 12:07:26PM 12 be rare, one in 1,000. What he would not
 12:07:28PM 13 see is that at the time of test results,
 12:07:33PM 14 41 showed 5.5 and 70 shows 12.5.
 12:07:41PM 15 Those two tests you're going to hear
 12:07:45PM 16 about. You're going to hear direct
 12:07:46PM 17 testimony on. You're going to see the
 12:07:48PM 18 results. You're going to see the
 12:07:50PM 19 children who Janssen recognized and
 12:07:53PM 20 acknowledged had gynecomastia from the
 12:07:55PM 21 use of those pills.
 12:08:03PM 22 So there's no doubt you're going to
 12:08:05PM 23 learn from the evidence that
 12:08:06PM 24 gynecomastia, female breast growth, is a
 12:08:08PM 25 frequent side effect of this pill, and

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12:08:10PM 2 that they say to doctors of the world:
 12:08:13PM 3 It is a rare side effect. That's the
 12:08:16PM 4 doctor. You'll see his video deposition.
 12:08:20PM 5 You're going to hear, the reason
 12:08:25PM 6 alternate drugs to Risperdal is important
 12:08:28PM 7 is because this is a defective drug, will
 12:08:31PM 8 be the evidence will show because of what
 12:08:32PM 9 it does to the prolactin level and the
 12:08:34PM 10 side effects of gynecomastia, and that
 12:08:37PM 11 there were drugs that were not defective.
 12:08:39PM 12 If they decided an antipsychotic was even
 12:08:41PM 13 really necessary, that would not have
 12:08:43PM 14 done this.
 12:08:44PM 15 But the doctors did not consider
 12:08:46PM 16 that option because the information given
 12:08:48PM 17 to them was false or misleading.
 12:08:50PM 18 You see up here there's Risperdal
 12:08:56PM 19 and Invega. The patent ended in 2007.
 12:09:04PM 20 Well, J & J or Janssen started making
 12:09:06PM 21 another drug called Invega, which had the
 12:09:09PM 22 same problem.
 12:09:15PM 23 You'll see that, as soon as the
 12:09:18PM 24 patent ended and the generics could step
 12:09:21PM 25 in, Invega came into the picture.

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12:09:24PM 2 February 21st, 1995 is when Jennie
 12:09:28PM 3 had a little boy named Andrew. Andrew
 12:09:33PM 4 has Asperger Syndrome. You'll get to
 12:09:38PM 5 talk to him. You'll learn that Asperger
 12:09:41PM 6 Syndrome is high functioning. They focus
 12:09:44PM 7 on things they like.
 12:09:44PM 8 He loves his Internet radio that he
 12:09:47PM 9 started and you're going to hear, I
 12:09:49PM 10 promise you, all about it because that's
 12:09:51PM 11 his life. No doubt he'll share that with
 12:09:58PM 12 you.
 12:09:59PM 13 So he starts Risperdal at age five.
 12:10:02PM 14 He's on it about five months. He then
 12:10:08PM 15 goes on it again; and keep in mind, as
 12:10:14PM 16 you see this, you're going to hear from
 12:10:18PM 17 Tony Jones, the drug rep, that drug reps
 12:10:20PM 18 go to the doctor's office and talk with
 12:10:21PM 19 the doctors about, are your patients on
 12:10:23PM 20 Risperdal or I notice you took a patient
 12:10:25PM 21 off of Risperdal, can we talk about that?
 12:10:28PM 22 That's the conversation and the scrips
 12:10:30PM 23 that you will see drug reps use with
 12:10:32PM 24 doctors such as Dr. Johnson.
 12:10:38PM 25 2007, Jennie notices that Andrew has

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

12:10:45PM 2 developed breasts. An ultrasound that
 12:10:53PM 3 you'll see confirms gynecomastia, breast
 12:10:58PM 4 tissue inside this little boy. This is
 12:11:11PM 5 one of the callers for this doctor, and
 12:11:14PM 6 the J & J drug rep on 1-16-03.
 12:11:25PM 7 On 1-16-03, you're going to learn
 12:11:30PM 8 Andrew is not on Risperdal right now so
 12:11:32PM 9 the drug rep goes to this doctor on
 12:11:34PM 10 January 16th, '03 and these are the
 12:11:38PM 11 comments.
 12:11:38PM 12 The doctor is a big Risperdal
 12:11:40PM 13 supporter/speaker, and child and what
 12:11:44PM 14 Tony Jones will tell you, they would
 12:11:46PM 15 recruit doctors to be speakers,
 12:11:52PM 16 compensated speakers. They would fly
 12:11:54PM 17 them to -- for this doc, Beverly Hills,
 12:11:57PM 18 Four Seasons in California to be a
 12:12:00PM 19 speaker; and I think you're going to hear
 12:12:02PM 20 from the testimony that the connection of
 12:12:04PM 21 those dots is not rocket science.
 12:12:07PM 22 That's the ultrasound confirming
 12:12:15PM 23 gynecomastia.
 12:12:16PM 24 I want to briefly share with you --
 12:12:26PM 25 I have it written. I'm not going to take

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12:12:28PM 2 these documents out, but you will see
 12:12:30PM 3 them. There's three issues through this
 12:12:34PM 4 witness stand and the documents that
 12:12:36PM 5 you're going to learn about that go to
 12:12:41PM 6 the gross negligence and punitive damage
 12:12:43PM 7 part of this case.
 12:12:44PM 8 Issue one: Drug reps were taught to
 12:12:47PM 9 tell these doctors that this gynecomastia
 12:12:52PM 10 was a class effect. That means they all
 12:12:55PM 11 do it, all of the drugs do it, not just
 12:12:59PM 12 Risperdal.
 12:13:00PM 13 Flat and false. You will see an
 12:13:07PM 14 internal document where a Johnson and
 12:13:11PM 15 Johnson scientist says: We can't say
 12:13:13PM 16 that. Not true.
 12:13:14PM 17 But Tony Jones will tell you, if a
 12:13:17PM 18 doctor says, what about this breast
 12:13:19PM 19 growth in boys? Their response they were
 12:13:21PM 20 trained and told to say was, look, Doc,
 12:13:24PM 21 they all do it. It's not just us. It's
 12:13:26PM 22 just atypical antipsychotics, and Tony
 12:13:30PM 23 Jones will tell you the doctor will say,
 12:13:32PM 24 okay, I get it.
 12:13:33PM 25 Absolutely a false fact.

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12:13:39PM 2 The second one is the one I told you
 12:13:41PM 3 about before. Rare. Remember that?
 12:13:43PM 4 They say in their warning that it's rare
 12:13:46PM 5 when their own test results say it's more
 12:13:49PM 6 than frequent. It was hid. It was not
 12:13:52PM 7 shared. There were consequences as a
 12:13:54PM 8 result of it.
 12:13:54PM 9 The third one is the biggest, and
 12:13:56PM 10 you'll learn about it through two
 12:14:00PM 11 experts. Some time in '06, Johnson and
 12:14:07PM 12 Johnson or Janssen went to the FDA again,
 12:14:10PM 13 and they had been going back to the FDA
 12:14:13PM 14 in the early 2000s; yeah, we really want
 12:14:15PM 15 to get Risperdal approved. The FDA would
 12:14:17PM 16 say, no, you'll see the document saying
 12:14:19PM 17 not approved, and it happened a number of
 12:14:21PM 18 times.
 12:14:22PM 19 Finally, they provided the FDA with
 12:14:25PM 20 what you're going to learn is the Finley
 12:15:04PM 21 Paper. The Finley Paper was presented to
 12:15:06PM 22 the FDA and as a result of the Finley
 12:15:11PM 23 Paper, the FDA approved Risperdal for the
 12:15:14PM 24 limited purpose of irritability and
 12:15:17PM 25 autism.

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12:15:18PM 2 You're going to find out when you
 12:15:19PM 3 look at the Finley Paper that there was a
 12:15:22PM 4 result in the Finley Paper that showed a
 12:15:27PM 5 connection between Risperdal and
 12:15:29PM 6 gynecomastia that never made it to the
 12:15:31PM 7 final paper.
 12:15:37PM 8 In other words, yes was changed to
 12:15:38PM 9 no. You'll see the yes. You'll see the
 12:15:42PM 10 final paper. More importantly, you will
 12:15:45PM 11 see a document presented to the FDA by
 12:15:47PM 12 this company that makes an absolutely 100
 12:15:50PM 13 percent false statement, unequivocally
 12:15:53PM 14 false.
 12:15:54PM 15 And after that, this drug was
 12:15:55PM 16 approved; and I tell you this because one
 12:15:57PM 17 of this jury's responsibilities in this
 12:16:00PM 18 case is to determine, okay, what do we do
 12:16:02PM 19 about it? The Finley study was a false
 12:16:04PM 20 study based on the science, but it
 12:16:06PM 21 worked; and they got FDA approval.
 12:16:09PM 22 The human consequence to this little
 12:16:23PM 23 boy when you hear from his mom and you'll
 12:16:26PM 24 hear from him, but you're not going to
 12:16:28PM 25 hear about it from him. You'll hear

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12:16:31PM 2 about it from her.

12:16:38PM 3 You're going to appreciate this

12:16:42PM 4 little boy who has what's called texture

12:16:44PM 5 sensitivity. That means a lot of

12:16:47PM 6 Asperger children don't like things on

12:16:49PM 7 their skin; it feels bad and they can't

12:16:52PM 8 get comfortable with it, and he has that.

12:16:56PM 9 You're going to see photographs of

12:16:57PM 10 his breasts. When I was talking to him,

12:17:01PM 11 you're going to learn he gave his

12:17:03PM 12 permission, and it's personal and

12:17:07PM 13 embarrassing, but it's what happened.

12:17:11PM 14 And his hope is that he will have --

12:17:14PM 15 he'll, as you'll learn, he'll get surgery

12:17:18PM 16 to have them removed, but the sensitivity

12:17:24PM 17 of his breasts and nipples are

12:17:26PM 18 excruciating; and as he tells his mom, a

12:17:29PM 19 man should be able to walk around without

12:17:31PM 20 a shirt, and he can't.

12:17:32PM 21 So you're going to hear about the

12:17:35PM 22 effect on him and the effect on this very

12:17:39PM 23 dedicated mother; and it is part of this

12:17:43PM 24 case. It is part of no sympathy

12:17:46PM 25 involved.

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12:17:47PM 2 It is the true consequence of

12:17:50PM 3 conduct that this jury is going to have

12:17:51PM 4 to consider in order to determine what to

12:17:56PM 5 do, and you can't do it till you know,

12:17:57PM 6 and you will know at the end from the

12:17:59PM 7 testimony of Jennie and from the spirit

12:18:06PM 8 of this young man.

12:18:08PM 9 Ladies and gentlemen, I do

12:18:09PM 10 appreciate you're on this jury, and thank

12:18:11PM 11 you on behalf of plaintiffs in being

12:18:16PM 12 willing to sit in Judge Bernstein's

12:18:18PM 13 court, and I really look forward to

12:18:20PM 14 trying this case.

12:18:21PM 15 Thank you very much.

12:18:21PM 16 THE COURT: Do you choose to open or

12:18:28PM 17 are you reserving?

12:18:30PM 18 MS. SMITH: I choose to open.

12:18:31PM 19 THE COURT: It's my understanding

12:18:32PM 20 that defense opening may be as long as an

12:18:34PM 21 hour and a half, so we're going to break

12:18:36PM 22 for lunch at this time.

12:18:37PM 23 I will ask you to return at 1:40.

12:18:42PM 24 Between now and when you return, you're

12:18:43PM 25 to keep an open mind and don't discuss

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

12:18:45PM 2 the case with anyone.

12:18:53PM 3 (Jury panel departs courtroom at

12:18:58PM 4 12:18 p.m.)

12:19:25PM 5 THE COURT: Counsel, we've got a

12:19:27PM 6 minor potential problem. You're going to

12:19:30PM 7 have exhibits on the podiums. When we're

12:19:34PM 8 leaving the jury, whoever is responsible,

12:19:37PM 9 let's make sure there's no possibility of

12:19:40PM 10 any juror slipping or tripping.

12:19:43PM 11 Anything further before we break for

12:19:45PM 12 lunch? See you at 20 to 2.

12:19:59PM 13 (Luncheon recess.)

14 - - -

15 (Jury panel reenters courtroom at

16 1:40 p.m.)

17 - - -

18

19

20

21

22

01:43:51PM 23 MR. HILLIARD: With the Court's

01:43:52PM 24 permission, I'm going to move so I can

01:43:56PM 25 watch the exhibits.

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01:43:56PM 2 THE COURT: Sure.

01:50:43PM 3 MS. SMITH: Ladies and gentlemen of

01:50:44PM 4 the jury, as you know, I'm Laura Smith

01:50:47PM 5 and with me is Bill Essig and Greg

01:50:47PM 6 Mackuse.

01:50:51PM 7 We're honored to be here today and

01:50:53PM 8 for as long as this trial may take

01:50:56PM 9 representing Janssen Pharmaceuticals. As

01:50:59PM 10 we discussed during jury selection last

01:51:01PM 11 week, Johnson and Johnson is also a

01:51:04PM 12 defendant we represent.

01:51:06PM 13 Janssen is a wholly owned subsidiary

01:51:09PM 14 of Johnson and Johnson, but Johnson and

01:51:12PM 15 Johnson is not involved with the drug,

01:51:15PM 16 Risperdal.

01:51:16PM 17 We also represent Janssen Research

01:51:18PM 18 and Development which is, as you can

01:51:22PM 19 imagine, the company that researches and

01:51:24PM 20 develops new drugs.

01:51:26PM 21 They're a defendant too, but I think

01:51:28PM 22 this will become very clear; they too

01:51:31PM 23 were not involved in the issues in this

01:51:31PM 24 case.

01:51:33PM 25 So throughout the case, I will refer

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01:51:35PM 2 to Janssen Pharmaceuticals as Janssen,
01:51:39PM 3 and I think you will hear other witnesses
01:51:41PM 4 do that too.

01:51:41PM 5 Let me say, on behalf of Janssen, at
01:51:46PM 6 the very beginning of this case, that we
01:51:49PM 7 deny the allegations that Mr. Hilliard
01:51:53PM 8 just went through with you. This case is
01:51:59PM 9 about one person, Andrew Bentley.

01:52:01PM 10 You will see that Andrew had and
01:52:04PM 11 still has very serious mental problems
01:52:08PM 12 and diseases. You will see, primarily
01:52:13PM 13 through his treating physician, that
01:52:15PM 14 Risperdal really helped Andrew.

01:52:19PM 15 The only injury, the only injury
01:52:25PM 16 being claimed in this case is the
01:52:27PM 17 development of small breast growth, and I
01:52:31PM 18 anticipate that not one witness, not even
01:52:35PM 19 the ones Mr. Hilliard hired, will get on
01:52:38PM 20 that witness stand and tell you that they
01:52:41PM 21 know whatever kind of breast growth
01:52:45PM 22 Andrew had when he was going through
01:52:48PM 23 puberty was due to Risperdal.

01:52:50PM 24 I know you will hear that Risperdal
01:52:53PM 25 has been continuously on the market for

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01:52:57PM 2 almost 20 years, fully approved by the
01:53:00PM 3 FDA.

01:53:02PM 4 As we go through this trial, I think
01:53:05PM 5 it will become abundantly clear to you
01:53:08PM 6 that Risperdal, in fact, was a very good
01:53:12PM 7 choice of Andrew's treating physician to
01:53:15PM 8 treat him.

01:53:15PM 9 I know you didn't exactly volunteer
01:53:23PM 10 to be a juror and volunteer to be here,
01:53:26PM 11 but our system of justice only works with
01:53:30PM 12 the jury system.

01:53:31PM 13 Anybody can sue anybody else and
01:53:34PM 14 claim anything they want to claim, and it
01:53:38PM 15 comes down to you, as a juror, listening
01:53:42PM 16 to the testimony and finding the truth
01:53:46PM 17 based on the evidence and the law that
01:53:48PM 18 His Honor will give to you.

01:53:52PM 19 The Court gives us this one chance
01:53:55PM 20 to talk to you about what we anticipate
01:54:02PM 21 the testimony and issues will be. It's
01:54:05PM 22 called an opening statement.

01:54:06PM 23 I think of it like if any of you do
01:54:09PM 24 jigsaw puzzles, I think of it like the
01:54:13PM 25 front of a jigsaw puzzle box, but it's a

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01:54:16PM 2 word picture of the case as a whole.

01:54:19PM 3 Over the next two to three weeks,
01:54:21PM 4 you will get pieces of this picture one
01:54:25PM 5 witness at a time or one exhibit at a
01:54:29PM 6 time, and I hope you can refer to this
01:54:32PM 7 opening statement to see how all of the
01:54:35PM 8 pieces fit together for the complete
01:54:39PM 9 picture.

01:54:39PM 10 I want to thank you on behalf of
01:54:43PM 11 Greg and Bill and Janssen for your
01:54:49PM 12 undivided attention while you're here in
01:54:51PM 13 this courtroom.

01:54:51PM 14 After you listened to Mr. Hilliard a
01:54:55PM 15 few minutes ago, you may think this case
01:54:58PM 16 is about something that happened at the
01:55:00PM 17 national office, but it's not.

01:55:03PM 18 This case is about one person,
01:55:07PM 19 Andrew Bentley. Andrew is 17; and as a
01:55:11PM 20 minor, he cannot file a lawsuit himself,
01:55:13PM 21 so it was brought in the name of his
01:55:15PM 22 mother; but this case is about him.

01:55:22PM 23 It is complicated and simple. I
01:55:27PM 24 know you think that's lawyer talk, but in
01:55:30PM 25 a minute, I think I'll show you these are

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01:55:31PM 2 the witnesses that I anticipate you will
01:55:35PM 3 hear from. Can you all see this okay
01:55:37PM 4 over there?

01:55:37PM 5 Of these witnesses, these right here
01:55:43PM 6 under "facts" are the only ones that have
01:55:48PM 7 factual knowledge of what's involved in
01:55:52PM 8 Andrew's particular case.

01:55:54PM 9 Dr. Vernon Johnson -- and we'll talk
01:55:57PM 10 more about him in a minute, but he's been
01:55:59PM 11 Andrew's treating psychiatrist since
01:56:02PM 12 Andrew was four and a half years old,
01:56:04PM 13 continuously; Andrew himself and his
01:56:06PM 14 mother.

01:56:07PM 15 There will be three psychiatrists
01:56:10PM 16 that testify because issues in this case
01:56:13PM 17 concern psychiatry. Two of them, Dr.
01:56:19PM 18 Johnson, the treating physician, and Dr.
01:56:21PM 19 Ellen Gandell ^ are pediatric
01:56:25PM 20 psychiatrists.

01:56:26PM 21 Dr. Johnson, you will hear, has a 60
01:56:30PM 22 percent practice in pediatrics and 40
01:56:32PM 23 percent in child and adolescents, and Dr.
01:56:35PM 24 Gandell is solely child and adolescents.

01:56:37PM 25 The red dots are the witnesses that

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01:56:41PM 2 we will call in our case. If, for some
01:56:45PM 3 reason, they don't play Dr. Johnson's
01:56:47PM 4 video, we, of course, will, but those are
01:56:49PM 5 the witnesses we will call.

01:56:50PM 6 Endocrinologists, you will hear that
01:56:54PM 7 endocrinologists study the endocrine
01:57:00PM 8 system. Prolactin, as Mr. Hilliard told
01:57:02PM 9 you, you're going to be experts on
01:57:04PM 10 prolactin at the end of this trial, but
01:57:06PM 11 that falls squarely in the specialty
01:57:11PM 12 field of endocrinology.

01:57:12PM 13 The issues in this case concern the
01:57:15PM 14 FDA and the label by Janssen for the
01:57:19PM 15 drug, Risperdal, as you will hear from
01:57:22PM 16 two witnesses on that, and we're going to
01:57:25PM 17 talk more in a minute.

01:57:26PM 18 But the Pharmacovigilance is the
01:57:29PM 19 safety, the study of the safety of a
01:57:31PM 20 drug, and you're going to hear a lot
01:57:33PM 21 about that; and clinical trials is a big
01:57:36PM 22 part of this case.

01:57:37PM 23 So those are going to be the
01:57:40PM 24 witnesses that you will hear from.

01:57:42PM 25 When I look at a case, I always want

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01:58:17PM 2 She took him to be evaluated for the
01:59:19PM 3 first time when he was two years old, and
01:59:22PM 4 he spent the next two and a half years in
01:59:26PM 5 an outpatient preschool setting with a
01:59:30PM 6 rehabilitation center in Sherman, Texas.

01:59:33PM 7 If any of you know where Dallas is,
01:59:36PM 8 Sherman is about 60 miles north of Dallas
01:59:40PM 9 so it's in that area of Texas.

01:59:42PM 10 You will hear that from the time he
01:59:45PM 11 was two years old, Andrew was found to
01:59:47PM 12 have a very severe language problem,
01:59:51PM 13 which you'll hear about, and severe
01:59:54PM 14 problems with fine motor activity,
01:59:59PM 15 hand-eye coordination.

02:00:00PM 16 He spent about two and a half years
02:00:03PM 17 in a preschool program at the
02:00:05PM 18 rehabilitation center and his mother took
02:00:08PM 19 him out when he was going to start
02:00:10PM 20 preschool in the fall, and he went in a
02:00:15PM 21 school for disabled children in the fall
02:00:17PM 22 of 1999.

02:00:18PM 23 She will tell you and the records
02:00:21PM 24 show that it became apparent almost
02:00:24PM 25 immediately that Andrew's problems were

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01:57:47PM 2 to start with what are the basic
01:57:50PM 3 questions? Because every single witness,
01:57:54PM 4 every single witness will address one or
01:57:58PM 5 more of these questions.

01:58:14PM 6 So I want to start with the first
01:58:18PM 7 question because this is what the case is
01:58:21PM 8 about.

01:58:22PM 9 As you know from what Judge
01:58:25PM 10 Bernstein told you, the plaintiffs go
01:58:27PM 11 first in calling their witnesses, and
01:58:30PM 12 they can call them in whatever order they
01:58:33PM 13 want to, so I don't know when, in the
01:58:36PM 14 course of this trial, you will hear
01:58:38PM 15 exactly from Ms. Rolan, Andrew and Dr.
01:58:42PM 16 Johnson, and I think knowing Andrew's
01:58:45PM 17 particular history is exceptionally
01:58:50PM 18 important in getting the big picture of
01:58:52PM 19 what this case is actually about.

01:58:54PM 20 His history is taken solely from the
01:58:59PM 21 medical records, and therefore, this part
01:59:01PM 22 is undisputed. Andrew was born in
01:59:05PM 23 February of 1995. His mother will tell
01:59:09PM 24 you that he was delayed in his
01:59:13PM 25 development from the very beginning.

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02:00:28PM 2 much more than just language and fine
02:00:32PM 3 motor.

02:00:32PM 4 She took him to see a psychiatrist,
02:00:36PM 5 Dr. Vernon Johnson, and for the next all
02:00:40PM 6 the way up to the present, 13 years,
02:00:42PM 7 Andrew has been under Dr. Johnson's
02:00:46PM 8 continuous care.

02:00:47PM 9 He has seen other physicians and we
02:00:51PM 10 will talk about them as the trial goes
02:00:54PM 11 forward; but for his mental and
02:00:56PM 12 behavioral issues, Dr. Johnson has been
02:00:58PM 13 his primary physician.

02:01:00PM 14 When Dr. Johnson first saw Andrew in
02:01:05PM 15 1999, he immediately started him on
02:01:09PM 16 psychiatric medications, and he's
02:01:12PM 17 remained on various psychiatric
02:01:14PM 18 medications up to the present time.

02:01:18PM 19 Some people may question the use of
02:01:22PM 20 such strong medications as Andrew has
02:01:26PM 21 been taking for the last 13 years,
02:01:32PM 22 especially starting when he was so young,
02:01:34PM 23 but no one in this case questions that.

02:01:38PM 24 These decisions were made by Dr.
02:01:42PM 25 Johnson, his treating physician, and

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02:01:45PM 2 every single person involved in this case
02:01:48PM 3 dealing with this issue acknowledged that
02:01:51PM 4 Andrew needed the medications that Dr.
02:01:57PM 5 Johnson prescribed for him.

02:01:58PM 6 So as to question number 1, the
02:02:02PM 7 answer will be undisputed that he needed
02:02:06PM 8 those medications. What were Andrew's
02:02:17PM 9 problems? Mr. Hilliard said it's just
02:02:19PM 10 Asperger Syndrome, but I think when you
02:02:21PM 11 see the medical records and we go through
02:02:24PM 12 Dr. Johnson's history and you hear
02:02:28PM 13 everyone, you will see that Andrew's
02:02:30PM 14 problems are much more diverse and much
02:02:36PM 15 more severe than just Asperger Syndrome.

02:02:40PM 16 You will hear testimony during this
02:02:43PM 17 trial about each one of these, and you
02:02:46PM 18 again are going to know more than most
02:02:48PM 19 people about these various diagnoses
02:02:53PM 20 before this trial is over.

02:02:54PM 21 At the bottom, you will see a list
02:02:58PM 22 of medications. These are all of the
02:03:03PM 23 medications, the psychiatric medications
02:03:06PM 24 that Andrew has taken throughout his
02:03:10PM 25 life.

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02:03:12PM 2 There's been antibiotics, all of the
02:03:15PM 3 other kind of medications, but
02:03:17PM 4 psychiatric medications, these are the
02:03:18PM 5 ones that Andrew has been on.

02:03:22PM 6 All of them were prescribed by Dr.
02:03:24PM 7 Johnson, when you hear him testify as to
02:03:29PM 8 why, why he believed these were very
02:03:33PM 9 important to Andrew.

02:03:34PM 10 This first heading is called
02:03:38PM 11 Antipsychotics, and you heard a little
02:03:40PM 12 bit from Mr. Hilliard about that. You
02:03:44PM 13 will hear that there are two generations,
02:03:47PM 14 really, one is old and the other is new,
02:03:51PM 15 although the new is now old.

02:03:52PM 16 But of all of the first generation,
02:03:56PM 17 Haldol was a first generation, and that
02:04:00PM 18 is one of the medications Andrew took.
02:04:01PM 19 You will hear Dr. Johnson tell you he
02:04:03PM 20 didn't like to use Haldol, but his
02:04:07PM 21 neurologist put Andrew on Haldol; so Dr.
02:04:10PM 22 Johnson continued it.

02:04:11PM 23 But all of the rest of them are
02:04:15PM 24 second generation, and you will see by
02:04:18PM 25 the end of this trial that Andrew has

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

02:04:20PM 2 tried, through Dr. Johnson's
02:04:23PM 3 prescriptions, almost every one, if not
02:04:26PM 4 every one, second generation
02:04:29PM 5 antipsychotics.

02:04:30PM 6 The psychiatrist will tell you that
02:04:35PM 7 even before -- even before the second
02:04:39PM 8 generation came out -- and Risperdal was
02:04:42PM 9 the first one in 1993, all they had were
02:04:46PM 10 these older antipsychotics; none of them
02:04:49PM 11 were approved to be used in children.
02:04:51PM 12 None of them.

02:04:52PM 13 But the psychiatrist gave them to
02:04:55PM 14 the children because they needed them in
02:04:58PM 15 order to function.

02:04:59PM 16 They will tell you that there were
02:05:02PM 17 limitations with those, and that's why,
02:05:05PM 18 when the second generation came out, it
02:05:07PM 19 was such a blessing.

02:05:09PM 20 You will hear about positive and
02:05:16PM 21 negative symptoms, and I'm going to --
02:05:18PM 22 we're going to get to that as it goes,
02:05:21PM 23 but you're going to hear why Risperdal
02:05:24PM 24 was felt to be such a miracle drug when
02:05:28PM 25 it first came out.

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02:05:29PM 2 The older ones only treated positive
02:05:33PM 3 symptoms like hallucinations and
02:05:36PM 4 dilutions and hearing voices, and Andrew
02:05:39PM 5 had all of that; but the newer ones,
02:05:42PM 6 Risperdal and the other newer ones, also
02:05:46PM 7 treated negative symptoms like withdrawal
02:05:49PM 8 from social interaction and emotions and
02:05:53PM 9 disorganized thoughts and Andrew had all
02:05:55PM 10 of that.

02:05:56PM 11 The second generation also had fewer
02:05:59PM 12 of the worse side effects, like sedation
02:06:02PM 13 and heart problems and motor disorders.

02:06:06PM 14 So I think the testimony will
02:06:09PM 15 actually be undisputed that Risperdal,
02:06:12PM 16 when it came out on the market in 1993,
02:06:17PM 17 was a miracle drug for many people.

02:06:21PM 18 Mr. Hilliard said many times it was
02:06:26PM 19 for treatment of schizophrenia only. I
02:06:30PM 20 believe you'll see when the testimony
02:06:32PM 21 comes that the first approval was
02:06:35PM 22 management of the manifestations of
02:06:38PM 23 psychotic disorder, a symptom-based
02:06:41PM 24 indication; and we're going to go through
02:06:44PM 25 all the different times that the FDA

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02:06:48PM 2 approved additional indications, but the
 02:06:51PM 3 very first one was for the manifestation
 02:06:55PM 4 of psychotic disorder.
 02:07:00PM 5 So you get back to all of these
 02:07:04PM 6 medications that were being prescribed
 02:07:07PM 7 for Andrew. Dr. Johnson will tell you
 02:07:11PM 8 that Andrew had, in addition to the
 02:07:15PM 9 actual diagnosis, he had an inability to
 02:07:20PM 10 function at school or at home because of
 02:07:22PM 11 his physical aggression and because of
 02:07:26PM 12 his behavioral problems.
 02:07:28PM 13 I think you'll understand Andrew
 02:07:31PM 14 couldn't prevent many of these. It's not
 02:07:33PM 15 his fault. They were part of his
 02:07:36PM 16 disease.
 02:07:36PM 17 When his mother testifies, I
 02:07:40PM 18 anticipate she will tell you Andrew
 02:07:41PM 19 wanted to be able to control himself, and
 02:07:45PM 20 these medications gave him that ability.
 02:07:46PM 21 You will hear that he has a history
 02:07:53PM 22 of facial ticks and excessive eye
 02:07:57PM 23 blinking. Some of these medications were
 02:07:59PM 24 to help him with that. Some of them made
 02:08:01PM 25 him worse.

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02:08:02PM 2 He has a history of flapping his
 02:08:04PM 3 hands and chattering his teeth, and some
 02:08:07PM 4 of these medications were to take care of
 02:08:09PM 5 that so that he could function on a
 02:08:12PM 6 day-to-day basis.
 02:08:13PM 7 The undisputed evidence will be that
 02:08:16PM 8 his problems are real, and they're quite
 02:08:21PM 9 serious; but with these medications, he
 02:08:24PM 10 has been able, for the most part, to live
 02:08:27PM 11 at home. He's been in units on a few
 02:08:31PM 12 occasions, but he's been returned to the
 02:08:34PM 13 home.
 02:08:35PM 14 I understand now he's in the 11th
 02:08:37PM 15 grade. He's described in the school
 02:08:40PM 16 records as a self-contained student with
 02:08:43PM 17 resource support, but he can function in
 02:08:47PM 18 day-to-day life.
 02:08:48PM 19 We talk about all of this because I
 02:08:56PM 20 think you have to understand it to
 02:08:58PM 21 understand the medication.
 02:08:59PM 22 But you will hear that nobody
 02:09:03PM 23 believes in any form or fashion these
 02:09:07PM 24 diagnoses can be cured, and nobody
 02:09:11PM 25 believes that any person, company or

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

02:09:14PM 2 other entity, caused any of them.
 02:09:18PM 3 Whether by fate or genetics, these are
 02:09:23PM 4 what Andrew was born with.
 02:09:24PM 5 So is there any question about
 02:09:28PM 6 whether Risperdal was effective in
 02:09:30PM 7 treating Andrew?
 02:09:32PM 8 You have to look at Dr. Johnson's
 02:09:38PM 9 testimony on this issue, and I want to
 02:09:43PM 10 start with when he actually took
 02:09:45PM 11 Risperdal.
 02:09:46PM 12 You will hear from Dr. Johnson that
 02:09:51PM 13 there are three different time periods
 02:09:53PM 14 when Andrew took Risperdal. You will
 02:09:58PM 15 hear that on the other occasions, he took
 02:10:03PM 16 one of these other drugs, you know, we're
 02:10:05PM 17 going to go through all of that, and Dr.
 02:10:08PM 18 Johnson will tell you that when you have
 02:10:10PM 19 a child on long-term psychiatric
 02:10:15PM 20 medication, as the child grows and
 02:10:19PM 21 changes, the medication works
 02:10:21PM 22 differently; and he will tell you, of the
 02:10:25PM 23 medications over the years, he has had to
 02:10:27PM 24 stop on a medication and start another.
 02:10:30PM 25 And so for Risperdal, we have these

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02:10:33PM 2 three time periods. Mr. Hilliard had his
 02:10:36PM 3 date wrong, but one was for four months
 02:10:40PM 4 in 2000, nine months from November, '01
 02:10:44PM 5 through August, '02, and 29 months or two
 02:10:49PM 6 and a half years from November, '04 to
 02:10:52PM 7 May, '07.
 02:10:54PM 8 So when you're looking at this
 02:10:56PM 9 question, did Risperdal help -- was it
 02:11:00PM 10 effective in treating Andrew? We asked
 02:11:03PM 11 that question of his treating physician,
 02:11:06PM 12 because Dr. Johnson is the one who knew,
 02:11:11PM 13 the one who prescribed it, and Dr.
 02:11:13PM 14 Johnson will tell you, because he's told
 02:11:15PM 15 us, Risperdal is uniquely beneficial in
 02:11:21PM 16 treating the symptoms of irritability and
 02:11:24PM 17 aggression like Andrew had.
 02:11:26PM 18 And he will tell you, I kept him on
 02:11:30PM 19 Risperdal during this last period because
 02:11:33PM 20 it was definitely his longest period of
 02:11:39PM 21 stability.
 02:11:39PM 22 So when this case is over, that
 02:11:45PM 23 question will be undisputed also. No
 02:11:47PM 24 one, no one will tell you Risperdal was
 02:11:51PM 25 not effective in treating Andrew.

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02:11:54PM 2 Everyone will agree it was.

02:11:55PM 3 So you get to the third step, and

02:11:59PM 4 that is, did Andrew develop gynecomastia?

02:12:08PM 5 Mr. Hilliard described it as just an

02:12:11PM 6 enlargement of the breast.

02:12:14PM 7 I think you will hear that it's

02:12:15PM 8 actually the abnormal development of the

02:12:18PM 9 mammary glands in males that results in

02:12:22PM 10 breast enlargement. It's more than just

02:12:26PM 11 hypertrophy. It's more than just

02:12:29PM 12 enlargement. So looking at this issue,

02:12:32PM 13 you start on this time line in 2009.

02:12:39PM 14 Andrew has been on Risperdal for two

02:12:42PM 15 years.

02:12:45PM 16 The testimony will be -- because

02:12:47PM 17 Mrs. Rolen said to us, that she became

02:12:50PM 18 aware at about that time period, May,

02:12:55PM 19 2009, that there were attorneys in

02:12:58PM 20 Philadelphia willing to pursue a case, if

02:13:01PM 21 an adolescent took Risperdal and

02:13:04PM 22 developed gynecomastia.

02:13:06PM 23 She knew Andrew had taken Risperdal.

02:13:10PM 24 I think she had forgotten. I think

02:13:13PM 25 she'll tell you it had been over two

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02:13:15PM 2 years since he stopped, and she knew he

02:13:18PM 3 had some small breast growth.

02:13:20PM 4 I anticipate she will tell you --

02:13:23PM 5 because she told us -- that she had not

02:13:26PM 6 been at all concerned with the breast

02:13:30PM 7 growth because she had talked to several

02:13:32PM 8 friends and she knew that having some

02:13:36PM 9 small breast growth during puberty was

02:13:39PM 10 normal.

02:13:41PM 11 I think she'll tell you, because she

02:13:43PM 12 told us, that it was of such little

02:13:47PM 13 concern to her that she never took Andrew

02:13:52PM 14 to a doctor. She never told Dr. Johnson

02:13:55PM 15 about it. She didn't tell any of his

02:14:00PM 16 psychotherapists. She mentioned it to

02:14:04PM 17 nobody.

02:14:04PM 18 But when she made contact with this

02:14:07PM 19 lawfirm, at their request, she took

02:14:09PM 20 photos, and Mr. Hilliard told you about

02:14:12PM 21 the photos.

02:14:13PM 22 He didn't show them to you, but the

02:14:16PM 23 testimony will be that in May, 2009, she

02:14:19PM 24 took really close-up pictures of Andrew's

02:14:23PM 25 chest, not far away, close up, and sent

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02:14:27PM 2 them to the lawyers; and I anticipate

02:14:30PM 3 she'll tell you that, at that time, for

02:14:34PM 4 the first and only time, she took Andrew

02:14:37PM 5 to a doctor right after she talked to the

02:14:41PM 6 lawyers.

02:14:42PM 7 This is the record that we have from

02:14:44PM 8 that encounter. You will see that in

02:14:49PM 9 May, 2009, Andrew is being seen at the

02:14:54PM 10 doctor's office. Somebody in the

02:14:57PM 11 doctor's office wrote: Breast growth,

02:15:01PM 12 took Risperdal for an extended time.

02:15:04PM 13 We couldn't find this person, but

02:15:08PM 14 Mrs. Rolen will tell you she didn't tell

02:15:11PM 15 him he had been off Risperdal for over

02:15:13PM 16 two years.

02:15:14PM 17 This doctor sent Andrew -- or this

02:15:19PM 18 was someone in the doctor's office, a

02:15:21PM 19 nurse or assistant, sent Andrew to have

02:15:24PM 20 an ultrasound. It's a special kind of

02:15:27PM 21 x-ray but an ultrasound of the breast.

02:15:32PM 22 This ultrasound stated indications

02:15:37PM 23 of breast hypertrophy, suspect reaction

02:15:41PM 24 to medication change, and ended with:

02:15:46PM 25 Findings are most consistent with

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02:15:48PM 2 bilateral gynecomastia. Clinical

02:15:52PM 3 correlation is recommended. May, 2009.

02:15:58PM 4 For reasons unknown to us, there has

02:16:04PM 5 never, to date, been any clinical --

02:16:08PM 6 MR. HILLIARD: I'm going to object.

02:16:33PM 7 - - -

02:16:33PM 8 (An off-the-record discussion was

02:16:33PM 9 held at side bar as follows:)

02:16:39PM 10 - - -

02:16:39PM 11 MR. HILLIARD: Based on the premise

02:16:40PM 12 of the question for reasons unknown to us

02:16:43PM 13 that the answer is going to be -- the

02:16:45PM 14 next part of the statement is going to be

02:16:47PM 15 speculation, and it's not going to be

02:16:49PM 16 based on any evidence.

02:16:49PM 17 THE COURT: I don't know what you're

02:16:52PM 18 talking about.

02:17:35PM 19 What's the objection?

02:17:36PM 20 MR. HILLIARD: If the statement is

02:17:38PM 21 for reasons unknown to us, that's not --

02:17:41PM 22 the reasons unknown to them is never

02:17:44PM 23 going to be evidence in this case. An

02:17:45PM 24 opening statement is what the evidence

02:17:46PM 25 is. For reasons unknown --

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02:17:49PM 2 THE COURT: How are you going to
 02:17:50PM 3 finish that sentence?
 02:17:51PM 4 MS. SMITH: That's it. To date,
 02:17:53PM 5 it's never been done.
 02:17:55PM 6 THE COURT: If it's never been done,
 02:17:57PM 7 then it's not much to say for reasons
 02:18:00PM 8 unknown to us. It's never been done.
 02:18:02PM 9 MR. HILLIARD: I didn't realize she
 02:18:04PM 10 was done, done with the full thought
 02:18:05PM 11 process.
 02:18:06PM 12 THE COURT: So you're withdrawing
 02:18:07PM 13 the objection?
 02:18:08PM 14 MR. HILLIARD: I am.
 02:18:09PM 15 THE COURT: In the future, when
 02:18:10PM 16 there's an objection that you think might
 02:18:12PM 17 depend on what's to be said next, instead
 02:18:15PM 18 of objecting and pulling us to sidebar,
 02:18:17PM 19 appropriately pulling us to sidebar -- in
 02:18:19PM 20 fact, I'm the one who pulled us to
 02:18:21PM 21 sidebar -- ask to speak to counsel, and
 02:18:23PM 22 see whether there is an objection.
 02:18:23PM 23 - - -
 02:18:46PM 24 THE COURT: The objection is
 02:18:47PM 25 overruled.

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02:18:47PM 2 Counsel, you may continue or back up
 02:18:49PM 3 if you need to for context.
 02:18:52PM 4 MS. SMITH: For reasons unknown to
 02:18:55PM 5 us, to date, there has never been any
 02:18:57PM 6 clinical correlation.
 02:18:58PM 7 The testimony will be that Andrew
 02:19:02PM 8 has never seen a physician, never, for an
 02:19:06PM 9 examination of his breast to confirm
 02:19:10PM 10 whether or not he had gynecomastia then
 02:19:14PM 11 or now.
 02:19:15PM 12 You will hear Dr. Johnson testify at
 02:19:21PM 13 his deposition that was taken November of
 02:19:24PM 14 last year that he had no idea Andrew was
 02:19:30PM 15 even claiming -- Andrew's mother was even
 02:19:32PM 16 claiming that she -- he had developed
 02:19:38PM 17 gynecomastia from Risperdal, no idea.
 02:19:39PM 18 You will hear Dr. Johnson say that
 02:19:43PM 19 every time Andrew came in to visit me, he
 02:19:48PM 20 directed -- he led the discussion about
 02:19:52PM 21 what was bothering him. If this was
 02:19:55PM 22 present, it was not something that seemed
 02:19:58PM 23 to occupy or even serve as a
 02:20:03PM 24 preoccupation for him.
 02:20:04PM 25 So that is all of the testimony we

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02:20:10PM 2 know about that exists in relation to
 02:20:14PM 3 question number 3; did he develop
 02:20:19PM 4 gynecomastia as opposed to simply some
 02:20:22PM 5 enlargement of his breast in 2009.
 02:20:28PM 6 Then you get to question 4: If, in
 02:20:32PM 7 fact, there was gynecomastia that no
 02:20:35PM 8 doctor would ever diagnose, when did it
 02:20:39PM 9 develop?
 02:20:40PM 10 The only proof on this issue is Mrs.
 02:20:50PM 11 Rolan says that when all of this happened
 02:20:54PM 12 in 2009, I was trying to think back and I
 02:21:01PM 13 think he started two years earlier.
 02:21:03PM 14 She will tell you, however, I really
 02:21:07PM 15 don't know.
 02:21:08PM 16 It was when he was going through
 02:21:12PM 17 puberty, and I really don't remember.
 02:21:19PM 18 Once you get through it, I can understand
 02:21:21PM 19 you don't remember.
 02:21:22PM 20 Here's the only evidence that will
 02:21:24PM 21 be presented: In May, 2008, there is a
 02:21:27PM 22 note in Dr. Johnson's office records that
 02:21:31PM 23 says -- and it's concerning Andrew --
 02:21:35PM 24 since starting puberty, Andrew complains
 02:21:39PM 25 of -- and then he lists some things

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02:21:43PM 2 Andrew was complaining of; so we know
 02:21:45PM 3 Andrew was in puberty in May, 2008.
 02:21:49PM 4 It is undisputed that not on that
 02:21:54PM 5 visit or any other visit ever did Andrew
 02:21:57PM 6 say I've developed breasts that bother
 02:21:59PM 7 me. So that will be the only testimony
 02:22:03PM 8 is that one photo that says, in 2008.
 02:22:10PM 9 Why does this become important?
 02:22:12PM 10 Because Risperdal had stopped in May,
 02:22:15PM 11 2007.
 02:22:16PM 12 So you get to the question of
 02:22:25PM 13 puberty, and that's going to become a big
 02:22:27PM 14 issue in this case. We all know what it
 02:22:29PM 15 is; but the medical definition is the
 02:22:33PM 16 process of physical changes in a child's
 02:22:40PM 17 body as it matures into an adult capable
 02:22:45PM 18 of sexual reproduction; and the
 02:22:47PM 19 endocrinologists who are experts in this
 02:22:50PM 20 field will tell you that, in boys, it
 02:22:51PM 21 starts between the ages of 10 and 12.
 02:22:54PM 22 So all we know from the actual
 02:23:01PM 23 records are that some time during
 02:23:03PM 24 puberty, Andrew developed some
 02:23:07PM 25 enlargement in this area that was in his

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02:23:11PM 2 breasts that were taken pictures of in
 02:23:14PM 3 2009 that may or may not have been
 02:23:17PM 4 gynecomastia that has not been documented
 02:23:21PM 5 by any physician or therapist since that
 02:23:24PM 6 one ultrasound in May, 2009 two years
 02:23:31PM 7 after he stopped Risperdal.
 02:23:32PM 8 I anticipate that is all you're
 02:23:36PM 9 going to get proof-wise on number 4
 02:23:39PM 10 because that's all that's been produced
 02:23:41PM 11 during this case.
 02:23:41PM 12 You get to the next one. The cause
 02:23:50PM 13 of gynecomastia, and this is what a lot
 02:23:52PM 14 of this trial will center around, so I
 02:23:56PM 15 want to stop for a minute and talk about
 02:23:58PM 16 that.
 02:23:58PM 17 Every witness that testifies -- but
 02:24:02PM 18 this is primarily something that the
 02:24:06PM 19 endocrinologist deals with;
 02:24:11PM 20 endocrinologists will tell you there's
 02:24:15PM 21 actually three times in a male's life
 02:24:17PM 22 that the development of gynecomastia can
 02:24:21PM 23 occur.
 02:24:22PM 24 The first is when you're first born
 02:24:24PM 25 and only lasts for a week or two. The

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02:25:56PM 2 of medications that increase the risk of
 02:26:00PM 3 someone developing gynecomastia separate
 02:26:04PM 4 from those that develop it during
 02:26:06PM 5 puberty.
 02:26:06PM 6 And this is where the science gets
 02:26:10PM 7 kind of complicated; and I'm not going to
 02:26:13PM 8 spend much time now on this, but the
 02:26:15PM 9 testimony from -- and I think they will
 02:26:18PM 10 all tell you -- science hadn't gotten to
 02:26:21PM 11 the point we really understand it, but
 02:26:24PM 12 this is what they will tell you we think
 02:26:27PM 13 is the mechanism, that if you have
 02:26:32PM 14 hyperprolactinemia-evaluated prolactin
 02:26:37PM 15 levels and you have decreased
 02:26:39PM 16 testosterone levels at the same time,
 02:26:42PM 17 that can result in breast tissue
 02:26:45PM 18 occurring while you're on the medication.
 02:26:49PM 19 So you got to have, on the
 02:26:51PM 20 medication, increased prolactin,
 02:26:55PM 21 decreased testosterone, and the actual
 02:26:59PM 22 presence of breast tissue, that that's
 02:27:02PM 23 the mechanism scientists currently
 02:27:05PM 24 believe results in gynecomastia from
 02:27:10PM 25 medications.

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02:24:27PM 2 other is when you get older, which isn't
 02:24:31PM 3 involved here, but the testimony in
 02:24:33PM 4 puberty by Mr. Hilliard's own witnesses
 02:24:37PM 5 as well as ours will be that developing
 02:24:42PM 6 actual gynecomastia during puberty is not
 02:24:46PM 7 rare. It's common.
 02:24:49PM 8 His witnesses will say up to 69
 02:24:51PM 9 percent, and it's a wide range for the 69
 02:24:57PM 10 percent will develop some amount of
 02:25:00PM 11 gynecomastia during puberty. For some of
 02:25:04PM 12 them, it doesn't resolve until they're 18
 02:25:07PM 13 or older.
 02:25:07PM 14 All we know are the pictures, but
 02:25:14PM 15 you will see that whatever it was Andrew
 02:25:17PM 16 had back in 2009 was very mild. There
 02:25:21PM 17 can be severe gynecomastia that occurs in
 02:25:25PM 18 men.
 02:25:25PM 19 But they will tell you every witness
 02:25:28PM 20 that comes and testifies that some time
 02:25:31PM 21 during puberty, it develops in between
 02:25:35PM 22 four and 69 percent of the men.
 02:25:41PM 23 It is also known to occur secondary
 02:25:48PM 24 to medications; and the testimony will be
 02:25:52PM 25 that there are a lot of different kinds

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02:27:10PM 2 The testimony will be that it hasn't
 02:27:16PM 3 been absolutely proven as to which
 02:27:20PM 4 medicines cause it and which don't, but
 02:27:22PM 5 the labels that -- you're going to hear a
 02:27:25PM 6 lot about labels during this trial.
 02:27:27PM 7 The labels for a number of
 02:27:30PM 8 medications include in them that there is
 02:27:35PM 9 an association between the medication and
 02:27:37PM 10 the development of gynecomastia, not that
 02:27:40PM 11 it's caused by, but that one occurs while
 02:27:44PM 12 the other -- gynecomastia occurs by their
 02:27:48PM 13 own patient.
 02:27:49PM 14 There is no doubt that is true with
 02:27:51PM 15 Risperdal, and we're going to talk about
 02:27:53PM 16 that in our label. But every other one
 02:27:58PM 17 of these medications that has a red mark,
 02:28:00PM 18 the label reflects these are the ones
 02:28:03PM 19 Andrew actually took.
 02:28:05PM 20 The label for these medications
 02:28:07PM 21 reflect that there is an association with
 02:28:14PM 22 gynecomastia.
 02:28:15PM 23 So what is the testimony going to
 02:28:18PM 24 be? I anticipate everyone who testifies
 02:28:22PM 25 will tell you that while these are all

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02:28:26PM 2 prerequisites, Andrew had none of them.
02:28:30PM 3 He never had any laboratory value showing
02:28:36PM 4 high prolactin and it was measured.

02:28:39PM 5 This wasn't measured because his
02:28:41PM 6 doctor saw no reason to, but there was
02:28:42PM 7 never decreased testosterone; and that
02:28:46PM 8 was never confirmed, presence of breast
02:28:49PM 9 tissue.

02:28:57PM 10 On the other hand, and truly, this
02:29:00PM 11 is a big point because I anticipate every
02:29:03PM 12 single witness who addresses this point
02:29:07PM 13 will tell you that whatever kind of
02:29:10PM 14 breast growth Andrew had in 2009 is
02:29:15PM 15 totally consistent with changes during
02:29:19PM 16 puberty unrelated to any medication, and
02:29:24PM 17 I anticipate that every single witness,
02:29:29PM 18 even the ones Mr. Hilliard is bringing,
02:29:32PM 19 will say that they cannot say puberty
02:29:34PM 20 didn't cause whatever kind of breast
02:29:36PM 21 growth Andrew had; and that's what I
02:29:43PM 22 anticipate the testimony will be on this
02:29:44PM 23 issue.

02:29:46PM 24 And I think you ought to ask
02:29:50PM 25 yourselves as we go through this trial,

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02:29:53PM 2 when you're looking at Andrew, not
02:29:55PM 3 everything else, but you look at the
02:29:57PM 4 plaintiff in this case to ask yourself:
02:30:00PM 5 Why did they sue Janssen for whatever
02:30:04PM 6 breast growth Andrew had?

02:30:06PM 7 We asked Mrs. Rolan that question,
02:30:09PM 8 and she told us -- and I'm sure she's
02:30:12PM 9 going to tell you too -- I just left that
02:30:14PM 10 to the lawyers, I didn't know, I thought
02:30:18PM 11 it was a normal thing to happen in
02:30:21PM 12 puberty.

02:30:28PM 13 Let me take a moment and tell you
02:30:30PM 14 what this case is not about.

02:30:31PM 15 Janssen is a world-wide company.
02:30:36PM 16 Johnson and Johnson is a world-wide
02:30:37PM 17 company. They produce a lot of
02:30:39PM 18 medications and a lot of products and
02:30:42PM 19 they sell them all over the world.

02:30:44PM 20 And to compete, they have to have --
02:30:47PM 21 companies that compete worldwide have to
02:30:51PM 22 have departments in their companies to do
02:30:53PM 23 all the different things you have to do
02:30:55PM 24 to stay in business.

02:31:00PM 25 You will hear testimony that there

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02:31:01PM 2 is a large department whose only job is
02:31:05PM 3 to plan ahead. They make business plans
02:31:08PM 4 and they make tactical plans, and I think
02:31:13PM 5 His Honor said use your common sense. It
02:31:15PM 6 makes good sense to plan.

02:31:18PM 7 In order to continue to provide
02:31:23PM 8 research, new medications to help
02:31:25PM 9 patients and doctors, you have to plan
02:31:29PM 10 ahead.

02:31:29PM 11 You will hear testimony -- Mr.
02:31:34PM 12 Hilliard talked about that we first tried
02:31:37PM 13 to get the indications for children in
02:31:39PM 14 1997. We started this way back right
02:31:44PM 15 after it was approved.

02:31:47PM 16 I'm going to talk more about that in
02:31:49PM 17 a minute, but we planned -- Janssen
02:31:51PM 18 planned -- for years to get the approval
02:31:55PM 19 for indications from children and
02:31:59PM 20 adolescents.

02:32:00PM 21 So you're going to hear -- you may
02:32:02PM 22 hear -- testimony that there were a lot
02:32:05PM 23 of planning about using the drug in
02:32:08PM 24 children and adolescents and boys, that's
02:32:11PM 25 true; they planned for a long time.

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02:32:14PM 2 There's another department that does
02:32:17PM 3 marketing and advertising and the like,
02:32:21PM 4 and you may see some of that during this
02:32:22PM 5 trial.

02:32:23PM 6 You will hear testimony that every
02:32:25PM 7 single piece of paper -- and I mean every
02:32:28PM 8 single piece of paper that a
02:32:31PM 9 pharmaceutical company gives to a doctor
02:32:33PM 10 or to anyone else outside the company has
02:32:39PM 11 to be scrutinized and approved by the
02:32:42PM 12 FDA.

02:32:42PM 13 There is nothing ever shown to a
02:32:45PM 14 physician that the FDA hadn't blessed in
02:32:50PM 15 advance, and that's another whole part of
02:32:52PM 16 the company; and there's another big part
02:32:55PM 17 of the company called sales, and you will
02:33:01PM 18 hear testimony that this is where
02:33:03PM 19 products -- and it includes Risperdal and
02:33:05PM 20 every other medication and product -- is
02:33:07PM 21 promoted so that it can be sold, and
02:33:11PM 22 there's plans; they plan ahead so they
02:33:14PM 23 know how many employees they need and
02:33:16PM 24 they plan all of this ahead.

02:33:18PM 25 So yes, there is a lot of planning

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02:33:22PM 2 in advance. You will hear testimony that
02:33:26PM 3 it takes millions of dollars to get a
02:33:31PM 4 drug from the concept to something the
02:33:36PM 5 FDA says you can use in trials to the FDA
02:33:42PM 6 approving it.

02:33:43PM 7 It takes millions and millions of
02:33:45PM 8 dollars, and for every drug that gets to
02:33:47PM 9 where Risperdal did, there are literally
02:33:51PM 10 hundreds that have failed.

02:33:53PM 11 So yes, the company has to plan
02:33:56PM 12 ahead. The question in this case, in
02:34:00PM 13 this case, is simply: What do the
02:34:04PM 14 plaintiffs contend Janssen did wrong as
02:34:09PM 15 it pertains to Andrew?

02:34:13PM 16 Andrew Bentley is the focus of this
02:34:14PM 17 case. So what is it they're contending
02:34:19PM 18 in this case as effects to Andrew? And I
02:34:27PM 19 want go back and talk about how we get to
02:34:31PM 20 the children and adolescents. Without a
02:34:35PM 21 doubt, there will be no question
02:34:40PM 22 whatsoever that it was known from the
02:34:41PM 23 beginning that Risperdal increased
02:34:43PM 24 prolactin levels.

02:34:45PM 25 Everyone knew that, and you're going

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02:34:48PM 2 to see in a minute it was all over our
02:34:51PM 3 label. It was known from the very
02:34:54PM 4 beginning that gynecomastia is associated
02:34:58PM 5 with Risperdal when there's high
02:35:01PM 6 prolactin levels and low testosterone
02:35:05PM 7 levels.

02:35:05PM 8 It has been known for literally
02:35:07PM 9 decades that all of the antipsychotics do
02:35:12PM 10 that. It has been known for decades that
02:35:15PM 11 it absolutely occurs in adolescents.

02:35:17PM 12 So when Janssen started -- first,
02:35:21PM 13 they just did it for adults because, you
02:35:23PM 14 know, it's hard to do clinical trials for
02:35:25PM 15 children. There's a whole lot more
02:35:30PM 16 rules, as there should be.

02:35:32PM 17 So the child and adolescent trials
02:35:34PM 18 didn't start till after '93, and early
02:35:40PM 19 on, there were more; and we're going to
02:35:43PM 20 see these trials in a few minutes, but it
02:35:45PM 21 was known to occur from the very
02:35:46PM 22 beginning.

02:35:46PM 23 You will see that the scientists at
02:35:54PM 24 Janssen from the very beginning, but
02:35:59PM 25 especially when children and adolescent

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02:36:03PM 2 testing started, focused on the gathering
02:36:06PM 3 of safety data.

02:36:09PM 4 Another really big department in
02:36:12PM 5 Janssen, but a really big department at
02:36:19PM 6 Janssen, is the Pharmacovigilance or the
02:36:22PM 7 safety; and Dr. Coppola will be here
02:36:26PM 8 herself to talk to you about that when we
02:36:28PM 9 get to put on our case.

02:36:30PM 10 The other big area is clinical
02:36:32PM 11 trials, and Dr. Pandina is the one who
02:36:35PM 12 did that.

02:36:36PM 13 Mr. Hilliard will argue we didn't
02:36:42PM 14 have a safe drug and we hid information.
02:36:45PM 15 This is how we're responding to that,
02:36:47PM 16 because you're going to see that in the
02:36:51PM 17 gathering of safety data just for
02:36:54PM 18 children and adolescents -- there's a
02:36:57PM 19 whole other area for adults -- but until
02:37:01PM 20 we got the approval in 2006, we had
02:37:05PM 21 started early. There are 18 clinical
02:37:08PM 22 trials; and you're going to hear all
02:37:11PM 23 about them, and we're going to spend a
02:37:13PM 24 lot of time on these.

02:37:14PM 25 In addition, Pharmacovigilance means

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02:37:18PM 2 it's not just the clinical trial, but
02:37:21PM 3 it's the gathering of safety data, like
02:37:25PM 4 if the doctor is giving someone a drug
02:37:28PM 5 and they have an adverse reaction to it,
02:37:30PM 6 the doctor sends a report either to the
02:37:33PM 7 FDA or to the drug company. So it's the
02:37:37PM 8 gathering of data.

02:37:38PM 9 This area is limited to information
02:37:42PM 10 in the trials. This area is the
02:37:45PM 11 gathering of data worldwide; and you're
02:37:50PM 12 going to hear a lot of testimony about
02:37:54PM 13 these two departments and the work they
02:37:59PM 14 did at Janssen.

02:38:00PM 15 Dr. Coppola, who is in the
02:38:03PM 16 pharmacovigilance, or safety data, will
02:38:05PM 17 tell you that her group -- she's a
02:38:07PM 18 physician and a scientist. Her group has
02:38:11PM 19 nothing whatsoever to do with sales or
02:38:14PM 20 marketing. You got to have all those
02:38:17PM 21 different groups, but hers is only
02:38:20PM 22 looking at the safety of a drug.

02:38:23PM 23 And Dr. Pandina will tell you his
02:38:26PM 24 only role is looking at information from
02:38:30PM 25 clinical trials. All of this information

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02:38:43PM 2 from the very first day and you remember
02:38:45PM 3 the time line that it started, the
02:38:49PM 4 clinical trials actually started in the
02:38:52PM 5 '80s; so all of this information is
02:38:54PM 6 gathered and provided to the FDA.

02:38:57PM 7 And you're going to see a lot of
02:39:00PM 8 labels during this trial, and you're
02:39:03PM 9 going to hear a lot of testimony, because
02:39:04PM 10 the label is totally controlled by the
02:39:08PM 11 FDA.

02:39:09PM 12 You're going to hear if you all ever
02:39:11PM 13 seen one -- they're so hard to read
02:39:13PM 14 because the print is so small, you're
02:39:15PM 15 going to hear that the FDA -- they
02:39:18PM 16 control the font, the size of the letters
02:39:22PM 17 where you put things, what kind of paper
02:39:25PM 18 they have to be on, everything, and every
02:39:27PM 19 word in there is approved by them.

02:39:30PM 20 And you're going to see that from
02:39:32PM 21 the very beginning, there was lots of
02:39:34PM 22 information in the label, in the places
02:39:38PM 23 where the FDA told us to put it about
02:39:42PM 24 prolactin and about gynecomastia.

02:39:43PM 25 The facts in this case start in

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02:39:49PM 2 2000, even though he only took Risperdal
02:39:53PM 3 for a few months in 2000; but all of this
02:39:55PM 4 information is still in this (indicating)
02:40:00PM 5 but I wanted to pull out this statement.

02:40:07PM 6 It was -- this is what the label
02:40:09PM 7 says about pediatrics, safety and
02:40:11PM 8 effectiveness in children have not been
02:40:14PM 9 established. That's required language by
02:40:18PM 10 the FDA; and you will hear testimony that
02:40:25PM 11 that language has to be in there.

02:40:28PM 12 We will call Dr. Janet Aerosmith who
02:40:30PM 13 is a physician and a former long-time
02:40:34PM 14 employee of the FDA; and she will explain
02:40:37PM 15 why all of this information has to be
02:40:41PM 16 where it is in the label.

02:40:43PM 17 I want to come back to this in a
02:40:46PM 18 minute, but this comment has been in
02:40:49PM 19 every single label since day one that
02:40:52PM 20 rare events -- this is the FDA's language
02:40:56PM 21 -- are fewer than one in 1,000, and
02:40:59PM 22 gynecomastia is reported as a rare event.

02:41:02PM 23 So Janssen -- and you will hear
02:41:08PM 24 testimony -- started early trying to get
02:41:12PM 25 approval for children, as you will hear

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02:41:15PM 2 why, that they learned that physicians
02:41:17PM 3 truly were using this medication for
02:41:20PM 4 children, and they wanted to do the study
02:41:24PM 5 so that they could put that information
02:41:26PM 6 in the label about children.

02:41:28PM 7 And there was a '97 -- I think there
02:41:32PM 8 was another one in early 2000s, but
02:41:34PM 9 October, 2006, while Andrew was still on
02:41:38PM 10 Risperdal, it was approved for the use in
02:41:41PM 11 children. Additional approvals came the
02:41:44PM 12 next year.

02:41:45PM 13 You will hear testimony that every
02:41:50PM 14 other one of the medications Andrew was
02:41:52PM 15 on -- do you remember that long list of
02:41:56PM 16 antipsychotics? None of them were
02:41:59PM 17 approved for use in children at that
02:42:01PM 18 time.

02:42:02PM 19 So that will be the testimony.

02:42:10PM 20 The question is what is it they're
02:42:14PM 21 contending Janssen did wrong? What is
02:42:20PM 22 it? It's in the label. It's everywhere.
02:42:25PM 23 What is it they're contending? And one
02:42:27PM 24 of those allegations, as Mr. Hilliard
02:42:30PM 25 told you, is that we promoted it

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02:42:32PM 2 off-label, we promoted it for the use in
02:42:37PM 3 children.

02:42:37PM 4 And I want to focus on that for a
02:42:40PM 5 moment because there's a big difference
02:42:42PM 6 here that you need to understand. Every
02:42:44PM 7 witness that's called will tell you, it
02:42:47PM 8 is perfectly, totally, completely
02:42:50PM 9 legitimate for a physician to prescribe a
02:42:53PM 10 medication or something not approved by
02:42:59PM 11 the FDA. That is prescribing it
02:43:00PM 12 off-label.

02:43:01PM 13 As you will hear testimony -- you'll
02:43:09PM 14 hear testimony from Dr. Johnson that
02:43:12PM 15 every one of these antipsychotics, when
02:43:19PM 16 he prescribed them initially for Andrew,
02:43:22PM 17 were not approved for the use in
02:43:25PM 18 children.

02:43:25PM 19 As you will hear him and all the
02:43:27PM 20 other psychiatrists explain to you, that
02:43:31PM 21 the first generation weren't approved
02:43:33PM 22 either; but these drugs were the most
02:43:37PM 23 effective drugs in treating these kinds
02:43:41PM 24 of problems like Andrew had, the
02:43:45PM 25 irritability associated with autism and

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02:43:51PM 2 the other things.

02:43:52PM 3 And they will tell you that it

02:43:55PM 4 became standard of care for a

02:43:57PM 5 psychiatrist who wanted to help their

02:44:01PM 6 pediatric patients to prescribe these

02:44:03PM 7 antipsychotics.

02:44:04PM 8 "They" being -- even Mr. Hilliard's

02:44:07PM 9 witnesses will tell you that Janssen was

02:44:11PM 10 a pioneer in performing 18 clinical

02:44:14PM 11 trials seeking approval for use in

02:44:17PM 12 children; so that dosing could be placed

02:44:20PM 13 in the label.

02:44:21PM 14 They did more and faster than any

02:44:26PM 15 other company making any of these

02:44:28PM 16 medications. So off-label is fine for

02:44:34PM 17 doctors.

02:44:35PM 18 As Mr. Hilliard told you, there will

02:44:38PM 19 be lots of testimony -- it will come from

02:44:42PM 20 us too -- that until the approval, until

02:44:47PM 21 2006, when it was actually approved for

02:44:50PM 22 use in children with autistic and

02:44:58PM 23 irritability associated with it, we could

02:45:00PM 24 not promote the drug for use in children

02:45:01PM 25 and neither could any other manufacturer

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02:45:07PM 2 promoted for the use in children.

02:45:09PM 3 You will hear testimony, as we go

02:45:11PM 4 through this case and at the end of this

02:45:13PM 5 case, that at issue is simply promoting

02:45:19PM 6 to Dr. Johnson as Andrew's physician.

02:45:24PM 7 Let me back up on that.

02:45:26PM 8 Mr. Hilliard just told you that he

02:45:30PM 9 intends to call today a former sales rep

02:45:34PM 10 of Janssen whose name is Mr. Tony Jones,

02:45:38PM 11 and I've not met him. I don't know what

02:45:41PM 12 he's going to say.

02:45:42PM 13 But Mr. Hilliard told you that Mr.

02:45:44PM 14 Jones is going to say that they were

02:45:47PM 15 promoting off-label where he's from.

02:45:50PM 16 He's from Houston, which is South Texas;

02:45:54PM 17 and Mr. Jones will tell you, I'm sure,

02:45:56PM 18 because it's absolutely true, he doesn't

02:45:59PM 19 know Vernon Johnson and he never had

02:46:02PM 20 anything to do with Dr. Johnson.

02:46:03PM 21 Mr. Jones, I'm sure, will tell you

02:46:06PM 22 that Janssen had a very strong policy,

02:46:10PM 23 and you're going to see it -- that if

02:46:13PM 24 anybody promoted off-label, if you

02:46:17PM 25 promoted for children and adolescents,

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02:46:19PM 2 you would be terminated.

02:46:22PM 3 In this case, whether somebody

02:46:25PM 4 somewhere to someone promoted off-label,

02:46:30PM 5 I believe will become irrelevant because

02:46:33PM 6 number 6 is: Andrew Bentley. The

02:46:37PM 7 question, if asked to -- and you will

02:46:41PM 8 hear it from Dr. Johnson -- did Dr.

02:46:43PM 9 Johnson, did anyone -- Dr. Johnson, did

02:46:46PM 10 anyone from Janssen ever promote to you

02:46:50PM 11 for use in your children and adolescents

02:46:52PM 12 patients before October, 2006?

02:46:56PM 13 And Dr. Johnson affirmatively said

02:47:00PM 14 no. I knew -- he will tell you, I knew

02:47:06PM 15 it wasn't FDA-approved. I made that

02:47:10PM 16 choice myself. Not only with Risperdal,

02:47:15PM 17 but with all of the other antipsychotics

02:47:18PM 18 that he prescribed for Andrew.

02:47:25PM 19 I believe that when this case, at

02:47:28PM 20 the end of it, and you're looking at the

02:47:30PM 21 question: Was there any promoting of

02:47:34PM 22 off-label to Dr. Johnson? The testimony

02:47:37PM 23 will absolutely and unequivocally be no;

02:47:40PM 24 so I'm not sure what all Mr. Jones is

02:47:43PM 25 going to say, but I'm positive he doesn't

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02:47:46PM 2 know Dr. Johnson.

02:47:47PM 3 So then you look at the question:

02:47:51PM 4 What else are they alleging?

02:47:52PM 5 Mr. Hilliard told you that the

02:47:56PM 6 second thing is that somehow information

02:48:01PM 7 was withheld; and if you remember, he

02:48:05PM 8 talked about two trials.

02:48:10PM 9 Well, I'm going to tell you right

02:48:12PM 10 now, we're going to talk about all 18

02:48:15PM 11 during the course of this case, because

02:48:17PM 12 this is -- this tells the Janssen story.

02:48:22PM 13 These are only clinical trials

02:48:26PM 14 dealing with children and adolescents.

02:48:29PM 15 There's hundreds more even on Risperdal.

02:48:32PM 16 This is just those, and there's been more

02:48:35PM 17 since; but this is leading up to the

02:48:38PM 18 first approval in October, 2006. 18

02:48:43PM 19 different studies.

02:48:44PM 20 The testimony will be undisputed

02:48:48PM 21 that every single piece of paper in every

02:48:53PM 22 one of these studies was given to the

02:48:56PM 23 FDA. There is nothing they can point to

02:49:00PM 24 that was withheld from the FDA.

02:49:02PM 25 The testimony will be undisputed

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02:49:05PM 2 that every single one was published in
 02:49:08PM 3 the medical literature.
 02:49:11PM 4 Let me tell you why that's
 02:49:13PM 5 important. You will hear evidence that
 02:49:15PM 6 before October of 2006, when we got the
 02:49:20PM 7 first indication for children, Janssen
 02:49:24PM 8 could not put information in its label
 02:49:28PM 9 about its use for children because the
 02:49:30PM 10 FDA wouldn't let you do that.
 02:49:32PM 11 What they could do and did was do
 02:49:37PM 12 these clinical studies; and the
 02:49:40PM 13 physicians involved in these clinical
 02:49:42PM 14 studies could then publish the results,
 02:49:45PM 15 so everything was provided to all of the
 02:49:51PM 16 treating physicians, and we will be
 02:49:57PM 17 introducing this information.
 02:49:58PM 18 Mr. Hilliard spent just a moment,
 02:50:01PM 19 but I want to talk about this because
 02:50:03PM 20 this is going to be the focus of where I
 02:50:05PM 21 anticipate he's going. He wanted to talk
 02:50:08PM 22 about only two trials, 41, which as you
 02:50:14PM 23 can see, was a year trial during this
 02:50:17PM 24 time, and 70.
 02:50:20PM 25 We're going to talk about all of

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02:50:22PM 2 them, but I want to focus on these just a
 02:50:26PM 3 moment. If you look over here, for
 02:50:27PM 4 patients on Risperdal with new reports of
 02:50:31PM 5 gynecomastia, you can see that the number
 02:50:35PM 6 is quite low, except for one study.
 02:50:40PM 7 You will hear testimony that this
 02:50:43PM 8 was the very first study that had a large
 02:50:48PM 9 number, like, almost -- 90 percent of
 02:50:52PM 10 those participating were males, and had a
 02:50:56PM 11 large number of males going through
 02:50:58PM 12 puberty, and it was a larger report of
 02:51:01PM 13 gynecomastia.
 02:51:02PM 14 You will hear testimony that as soon
 02:51:05PM 15 as this information was known, Janssen
 02:51:09PM 16 retained two pediatric endocrinologists
 02:51:14PM 17 to study this to see is this something
 02:51:17PM 18 different? We have all these other
 02:51:19PM 19 reports, what's different about this?
 02:51:22PM 20 As you will hear testimony that
 02:51:24PM 21 these two, not our employees,
 02:51:29PM 22 independent, very well-respected
 02:51:31PM 23 pediatric endocrinologists studied this
 02:51:34PM 24 data and then participated in writing of
 02:51:37PM 25 an article, concluding -- this included a

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02:51:43PM 2 lot going through puberty, and the reason
 02:51:46PM 3 it was evaluated was because of
 02:51:50PM 4 puberty-induced gynecomastia.
 02:51:51PM 5 Mr. Hilliard's argument -- and I
 02:51:55PM 6 know this because we get to take
 02:51:57PM 7 depositions beforehand and we know what
 02:51:59PM 8 experts are going to say -- is focused
 02:52:02PM 9 just on this study; and 70 is actually an
 02:52:07PM 10 extension, you know, where you're going
 02:52:10PM 11 to stop a study and some of them continue
 02:52:12PM 12 on to another one.
 02:52:13PM 13 His witnesses say, on the basis of
 02:52:17PM 14 that one study or two studies, everything
 02:52:23PM 15 should have changed. You're going to
 02:52:26PM 16 hear testimony that, instead of looking
 02:52:30PM 17 at one study or two studies, you need to
 02:52:33PM 18 look at all the studies.
 02:52:36PM 19 Mr. Hilliard said his numbers were a
 02:52:39PM 20 little off on 41 and way off on 70.
 02:52:43PM 21 We'll go through that at trial, but if
 02:52:45PM 22 you look at all of the studies that were
 02:52:47PM 23 done, you'll see the percentage of
 02:52:53PM 24 recorded cases of gynecomastia coming out
 02:52:56PM 25 to be in 2.3 percent. Every single

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02:53:00PM 2 piece, every single piece of this data
 02:53:02PM 3 goes to the FDA.
 02:53:04PM 4 As you will then hear testimony from
 02:53:08PM 5 those involved in that process that the
 02:53:12PM 6 FDA said, don't take one study and don't
 02:53:15PM 7 take two. Don't take the 0 and don't
 02:53:19PM 8 take the five percent. Don't take the
 02:53:23PM 9 .9; take all of them and put that in your
 02:53:27PM 10 label; and that's exactly what Janssen
 02:53:29PM 11 did, where in this part of the label, it
 02:53:33PM 12 talks about the clinical trials being 2.3
 02:53:37PM 13 percent.
 02:53:39PM 14 In the bottom, where it talks about
 02:53:41PM 15 all studies together, that's the
 02:53:44PM 16 pharmacovigilance, all adults, all
 02:53:48PM 17 children is still rare; but in '06 is the
 02:53:53PM 18 first time we could set out pediatrics.
 02:53:57PM 19 That's the part of the case that's a
 02:53:59PM 20 little more complicated. It took me
 02:54:01PM 21 awhile to go through it; and we will
 02:54:03PM 22 spend some time on that as we go through.
 02:54:17PM 23 But you get down to this case, and
 02:54:19PM 24 this case, Andrew Bentley is one patient
 02:54:20PM 25 who was prescribed Risperdal, so the

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

02:54:21PM 2 question ought to be: What did Dr.
02:54:25PM 3 Johnson know, not the world, and not even
02:54:29PM 4 someone's little world; what did Dr.
02:54:31PM 5 Johnson know about Risperdal and about
02:54:35PM 6 the chance of it causing elevated
02:54:39PM 7 prolactin, decreased testosterone and
02:54:41PM 8 resulting in gynecomastia? When did he
02:54:49PM 9 know it?

02:54:49PM 10 And the last question is: Would he
02:54:50PM 11 have still prescribed Risperdal to Andrew
02:54:53PM 12 if he knew every single detail about
02:54:55PM 13 every single clinical study and adverse
02:55:00PM 14 events collected by Janssen?

02:55:03PM 15 These questions were asked of Dr.
02:55:05PM 16 Johnson in his deposition; and if you go
02:55:08PM 17 back to this time line, Dr. Johnson will
02:55:29PM 18 tell you that -- these studies didn't
02:55:30PM 19 come out till after '01. He will tell
02:55:37PM 20 you, no, I didn't know it in 2000.

02:55:38PM 21 Everyone else will tell you that
02:55:40PM 22 part of it wasn't known. We knew it
02:55:42PM 23 raised prolactin. We knew all of that,
02:55:44PM 24 but everything else wasn't known until
02:55:46PM 25 after '01.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

02:55:47PM 2 He will tell you -- because he told
02:55:49PM 3 us -- I don't remember when I knew. I
02:55:56PM 4 know it was after '01, but I don't
02:56:02PM 5 remember otherwise; and the question is
02:56:03PM 6 asked of him: Would you have done
02:56:04PM 7 anything any differently?

02:56:07PM 8 And he said, well, I would have
02:56:08PM 9 discussed it with Mrs. Rolen, which I'm
02:56:14PM 10 sure he did later, because it was
02:56:16PM 11 published in the article. Somebody
02:56:18PM 12 actually asked that question.

02:56:20PM 13 But the question that matters is,
02:56:22PM 14 the only one, would you have still
02:56:25PM 15 prescribed Risperdal for Andrew?

02:56:27PM 16 You're going to hear Dr. Johnson
02:56:31PM 17 tell you Risperdal was uniquely
02:56:35PM 18 beneficial for Andrew, and he will not
02:56:40PM 19 say I would not have prescribed it.

02:56:43PM 20 So when you get down to this
02:56:45PM 21 question -- we're going to spend a lot of
02:56:47PM 22 time during this trial about that -- the
02:56:49PM 23 focus will be: How does it relate to Dr.
02:56:55PM 24 Johnson? Whose testimony I hope you get
02:56:58PM 25 to hear pretty soon.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

02:57:00PM 2 By the end of this trial, I hope
02:57:05PM 3 this picture -- and I know it's long and
02:57:09PM 4 I appreciate your patience, but it's
02:57:11PM 5 important, and I hope you can look back
02:57:14PM 6 to it to put into focus the issues that,
02:57:19PM 7 while Andrew had some type of breast
02:57:23PM 8 enlargement in '09, there has been
02:57:27PM 9 nothing, nothing since then to in any way
02:57:31PM 10 show of it being a continuing problem.

02:57:34PM 11 More importantly, I hope it will be
02:57:37PM 12 clear that Janssen, through its
02:57:40PM 13 scientists and its physicians, were very
02:57:43PM 14 diligent in studying Risperdal with
02:57:45PM 15 children and adolescents; and that they
02:57:49PM 16 reported everything they knew, everything
02:57:54PM 17 they knew to the FDA and to the
02:57:58PM 18 prescribing physicians as soon as they
02:58:01PM 19 could get it published in the literature.

02:58:07PM 20 I hope it will be clear that Dr.
02:58:12PM 21 Johnson's care and treatment of Andrew
02:58:14PM 22 was what Dr. Johnson felt was in Andrew's
02:58:17PM 23 best interest, and I think the records
02:58:19PM 24 will show Andrew has done well and that
02:58:23PM 25 Dr. Johnson would have prescribed it for

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

02:58:26PM 2 him at the time he did regardless of what
02:58:29PM 3 Mr. Hilliard argues about.

02:58:31PM 4 Over these next two to three weeks,
02:58:35PM 5 His Honor told you and will tell you more
02:58:37PM 6 later, but there's going to be some
02:58:40PM 7 breaks because of schedule issues and
02:58:42PM 8 it's going to be hard to keep the big
02:58:45PM 9 picture in mind.

02:58:47PM 10 I would just ask you to keep an open
02:58:49PM 11 mind. Every single day, tell yourself
02:58:53PM 12 this is only one part of the story, we
02:58:56PM 13 won't have the whole story till the end
02:58:59PM 14 of trial, and to keep your mind open
02:59:02PM 15 until then; because at the end, you will
02:59:06PM 16 have to focus on the main questions and
02:59:13PM 17 sift through that which is not as
02:59:14PM 18 important.

02:59:15PM 19 I want to thank you for being
02:59:18PM 20 patient with me today and throughout this
02:59:21PM 21 trial. On behalf of Janssen and Johnson
02:59:24PM 22 and Johnson, thank you.

03:00:21PM 23 (Jury panel departs courtroom at 3
03:00:28PM 24 o'clock p.m. for recess).

03:21:35PM 25 - - -

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 03:21:35PM 2 (Discussion held off the record in
 03:22:12PM 3 judge's chambers as follows:)
 03:22:12PM 4 - - -
 03:22:34PM 5 MR. HILLIARD: Couple of things. By
 03:22:35PM 6 way of background, the state of Texas and
 03:22:38PM 7 37 other states sued Janssen for
 03:22:40PM 8 off-label marketing allegations to
 03:22:44PM 9 children.
 03:22:44PM 10 Tony Jones testified in the case in
 03:22:45PM 11 Austin, Texas and the case resolved for
 03:22:49PM 12 \$180 million.
 03:22:50PM 13 THE COURT: What does resolved mean?
 03:22:52PM 14 MR. HILLIARD: Settled. There's
 03:22:54PM 15 limine that we cannot speak of that and
 03:22:57PM 16 because of that limine --
 03:22:58PM 17 THE COURT: You just did.
 03:22:01PM 18 MR. HILLIARD: Once the limine is
 03:22:03PM 19 granted, the only way to find out if we
 03:22:05PM 20 can speak of it is to approach you and
 03:22:08PM 21 say, Judge, we believe that we are now
 03:22:09PM 22 allowed to speak of it and here's why.
 03:22:11PM 23 During Ms. Smith's opening
 03:22:16PM 24 statement, she estimated -- Mr. Jones,
 03:22:18PM 25 I'm sure, will tell you that Janssen had

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 03:22:19PM 2 a very strong policy, and you're going to
 03:22:22PM 3 see that if anybody promoted off-label if
 03:22:24PM 4 you promoted for children and
 03:22:25PM 5 adolescents, you would be terminated.
 03:22:27PM 6 Besides the fact Mr. Jones is going
 03:22:29PM 7 to say that's exactly opposite of what
 03:22:31PM 8 they were told to do, that is what they
 03:22:34PM 9 were sued for in Texas by the State of
 03:22:39PM 10 Texas, and I have the petition and I have
 03:22:41PM 11 the settlement where there's a permanent
 03:22:43PM 12 injunction from them continuing to do
 03:22:45PM 13 exactly that.
 03:22:47PM 14 THE COURT: Did they admit
 03:22:48PM 15 liability?
 03:22:48PM 16 MR. HILLIARD: No, not in the
 03:22:49PM 17 settlement, they didn't, but they did
 03:22:52PM 18 not --
 03:22:52PM 19 THE COURT: Are we going to litigate
 03:22:54PM 20 whether they settled in order to minimize
 03:22:57PM 21 their liability or they settled because
 03:22:59PM 22 they knew they were guilty and would be
 03:23:01PM 23 found guilty?
 03:23:02PM 24 Is that where this trial is going?
 03:23:04PM 25 MR. HILLIARD: It is not.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 03:23:05PM 2 THE COURT: Isn't that where it's
 03:23:06PM 3 going if that comes in?
 03:23:09PM 4 If that comes in, don't they have a
 03:23:11PM 5 right to explain why they settled,
 03:23:13PM 6 particularly for \$180 billion or whatever
 03:23:16PM 7 it was, and why it should not be
 03:23:21PM 8 interpreted as any kind of admission that
 03:23:24PM 9 they ever did it since they didn't admit
 03:23:26PM 10 it in their papers?
 03:23:29PM 11 Can't they do that?
 03:23:31PM 12 MR. HILLIARD: If that was where we
 03:23:34PM 13 were going but that's not.
 03:23:35PM 14 THE COURT: Where are you going?
 03:23:36PM 15 MR. HILLIARD: The only place that I
 03:23:37PM 16 am going is the fact that for the
 03:23:39PM 17 off-label marketing that she says they
 03:23:41PM 18 don't do and fire people for, and they
 03:23:43PM 19 were sued by 37 of the states for the
 03:23:46PM 20 exact same thing.
 03:23:47PM 21 THE COURT: That's even worse. Have
 03:23:48PM 22 any of those 37 suits gone to verdict?
 03:23:52PM 23 MR. HILLIARD: None of them.
 03:23:53PM 24 THE COURT: Now they get to litigate
 03:23:56PM 25 all 37? Excuse me, only one attorney can

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 03:24:01PM 2 speak on one subject.
 03:24:04PM 3 Do you want to talk to counsel?
 03:24:04PM 4 I'll wait.
 03:24:18PM 5 (Off-the-record discussion).
 03:25:14PM 6 THE COURT: What else?
 03:25:15PM 7 MR. HILLIARD: There have been three
 03:25:17PM 8 cases brought by different states that
 03:25:20PM 9 have gone to verdict.
 03:25:21PM 10 However, those verdicts are still on
 03:25:22PM 11 appeal; so they're not a final judgment.
 03:25:24PM 12 So your point is well-taken in that
 03:25:26PM 13 regard. I'm just making that one
 03:25:29PM 14 clarification.
 03:25:32PM 15 THE COURT: What were the verdicts?
 03:25:34PM 16 MR. HILLIARD: Big.
 03:25:37PM 17 THE COURT: Big for plaintiffs?
 03:25:43PM 18 MR. HILLIARD: Big for plaintiffs.
 03:25:43PM 19 THE COURT: Three big plaintiffs'
 03:25:45PM 20 verdicts?
 03:25:46PM 21 MR. HILLIARD: Yes. My
 03:25:49PM 22 understanding of a Motion in Limine is if
 03:25:50PM 23 it's granted and a position is taken
 03:25:53PM 24 contrary to the truth of the evidence
 03:25:56PM 25 that we have in limine from speaking of,

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:25:58PM 2 we can approach and say, we believe that
03:26:00PM 3 now that we can speak of it, I understand
03:26:03PM 4 and appreciate that the indication is no
03:26:06PM 5 and I will --

03:26:06PM 6 THE COURT: I don't exactly know
03:26:07PM 7 what the position is taken means, but the
03:26:10PM 8 law of Pennsylvania, if testimony is let
03:26:14PM 9 in over objection, that opens the door.
03:26:19PM 10 Then, of course, you get to counter it,
03:26:21PM 11 sure.

03:26:23PM 12 I don't think the party gets to
03:26:27PM 13 counter something that's let in without
03:26:30PM 14 objection, by the way.

03:26:31PM 15 What would Mr. Jones say? He would
03:26:41PM 16 say, I testified in a lawsuit. My
03:26:43PM 17 understanding of what that lawsuit was
03:26:45PM 18 about was blah, blah, blah; and some time
03:26:47PM 19 later, I heard or read in the newspaper
03:26:49PM 20 that it settled?

03:26:51PM 21 Is that what his testimony will be?

03:26:52PM 22 MR. HILLIARD: His testimony would
03:26:55PM 23 be that I testified in the lawsuit where
03:26:57PM 24 the State of Texas sued Janssen for
03:27:02PM 25 Janssen off-label marketing to children.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:27:52PM 2 with respect to that, you're right.

03:27:54PM 3 THE COURT: If I'm asked to take
03:27:57PM 4 judicial notice, I'll rule on whether I
03:27:59PM 5 should take judicial notice.

03:28:00PM 6 Then his testimony is going to be I
03:28:02PM 7 read in the paper three weeks later that
03:28:04PM 8 it settled for some huge amount?

03:28:08PM 9 MR. HILLIARD: My belief is, Judge,
03:28:09PM 10 that the settlement itself, given the
03:28:15PM 11 language of the settlement agreement,
03:28:19PM 12 should not come in, even if the Court
03:28:21PM 13 determines the door is open for the fact
03:28:23PM 14 that the lawsuit, the state -- the states
03:28:26PM 15 have sued them.

03:28:28PM 16 THE COURT: The only thing you want
03:28:30PM 17 in is they paid a ton of money in Texas?

03:28:36PM 18 MR. HILLIARD: No. The only thing I
03:28:40PM 19 want in is they are not fired for
03:28:42PM 20 off-label marketing. They actually have
03:28:45PM 21 been sued by 37 states for doing the
03:28:46PM 22 off-label marketing.

03:28:47PM 23 THE COURT: Got it. Nobody said he
03:28:54PM 24 couldn't testify that they were not fired
03:28:56PM 25 for it.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:27:05PM 2 THE COURT: That would be his
03:27:06PM 3 understanding of what the lawsuit was
03:27:08PM 4 about that he testified to in?

03:27:11PM 5 MR. HILLIARD: Correct.

03:27:14PM 6 THE COURT: Is he a lawyer?

03:27:16PM 7 MR. HILLIARD: He is not a lawyer.

03:27:18PM 8 THE COURT: That would be his
03:27:19PM 9 understanding based on what somebody or
03:27:21PM 10 many people told him or he read in the
03:27:23PM 11 paper as to what the lawsuit was about,
03:27:25PM 12 and he would say, I was called as a
03:27:27PM 13 witness or voluntarily showed up as a
03:27:29PM 14 witness and testified at that trial;
03:27:33PM 15 right?

03:27:33PM 16 MR. HILLIARD: Yes.

03:27:33PM 17 THE COURT: What else would he be --

03:27:36PM 18 MR. HILLIARD: On that point, if I
03:27:38PM 19 may, the Court could decide to take
03:27:40PM 20 judicial notice of the State's complaint
03:27:42PM 21 against Janssen where the allegation is
03:27:44PM 22 made as to this issue.

03:27:45PM 23 THE COURT: With respect to that, we
03:27:47PM 24 don't need him at all. Do we?

03:27:50PM 25 MR. HILLIARD: We do not need him

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:28:56PM 2 MR. HILLIARD: I appreciate that.

03:28:58PM 3 THE COURT: Nobody testified that --
03:29:01PM 4 nobody has ruled he couldn't put up that
03:29:04PM 5 nice picture of his great award, and he
03:29:07PM 6 can testify that he got it for such a
03:29:08PM 7 good job selling Risperdal to kids;
03:29:11PM 8 right?

03:29:11PM 9 MR. HILLIARD: Right.

03:29:13PM 10 THE COURT: Anything further?

03:29:15PM 11 MS. SMITH: I do.

03:29:17PM 12 THE COURT: One of the things that I
03:29:19PM 13 don't like is lawyers who don't ask
03:29:21PM 14 questions but rather make statements.
03:29:25PM 15 Statements like, anything further?
03:29:29PM 16 Whereas the question is: Is there
03:29:31PM 17 anything further that we need to discuss
03:29:33PM 18 here?

03:29:36PM 19 MS. SMITH: Yes, Your Honor.

03:29:37PM 20 THE COURT: I was just pointing out
03:29:38PM 21 that I do what I'm going to stop you all
03:29:40PM 22 from doing.

03:29:41PM 23 MS. SMITH: Mr. Hill has shown me
03:29:43PM 24 some documents he says he intends to use
03:29:46PM 25 with Mr. Jones.

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03:29:47PM 2 I have several objections to them.

03:29:50PM 3 THE COURT: Wait a minute. I'm lost

03:29:53PM 4 already.

03:29:54PM 5 Wasn't there a pretrial listing of

03:29:58PM 6 exhibits?

03:29:59PM 7 MS. SMITH: Thousands and thousands.

03:30:00PM 8 THE COURT: So the answer is, yes,

03:30:02PM 9 there was a pretrial listing of exhibits

03:30:04PM 10 which numbered in the thousands?

03:30:06PM 11 MS. SMITH: Correct.

03:30:07PM 12 THE COURT: Are these documents on

03:30:12PM 13 the list of exhibits?

03:30:13PM 14 MS. SMITH: Some were and I don't

03:30:14PM 15 know if he's withdrawn the ones I've

03:30:17PM 16 questioned.

03:30:17PM 17 THE COURT: Let's start with the

03:30:18PM 18 ones that were.

03:30:20PM 19 How come you have an objection that

03:30:23PM 20 you haven't seen them? Why didn't you

03:30:25PM 21 say, turn them over, let me see them.

03:30:27PM 22 MS. SMITH: My objections to the one

03:30:29PM 23 I'm aware of isn't that I haven't seen

03:30:31PM 24 them, is that they're not proper in this

03:30:33PM 25 case and/or through this witness.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:30:35PM 2 THE COURT: So when he tries to pass

03:30:38PM 3 something up, you'll object at that time

03:30:41PM 4 since it wasn't raised in limine, and

03:30:43PM 5 we'll go to sidebar or I'll see you,

03:30:46PM 6 we'll deal with it one at a time.

03:30:48PM 7 Don't do it in a way that you're

03:30:50PM 8 telling him everything that's in there

03:30:52PM 9 before -- you know what I'm talking

03:30:54PM 10 about?

03:30:55PM 11 MR. HILLIARD: I do.

03:30:55PM 12 THE COURT: Those that aren't on the

03:30:59PM 13 list, sure, you should object. You can't

03:31:03PM 14 use them, I don't think, in direct

03:31:05PM 15 examination.

03:31:06PM 16 But to be honest with you, I don't

03:31:08PM 17 know quite what the rules are of this

03:31:11PM 18 mass tort program; so we'll deal with it

03:31:14PM 19 when it first happens.

03:31:15PM 20 MS. SMITH: One additional thing,

03:31:16PM 21 Your Honor. This wasn't a Motion in

03:31:18PM 22 Limine. There was a ruling. My question

03:31:23PM 23 -- it concerns the fact that under Texas

03:31:25PM 24 law, promoting has to be directed to the

03:31:29PM 25 prescribing physician.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:31:35PM 2 His testimony is unrelated to the

03:31:38PM 3 prescribing physician. That's admitted.

03:31:41PM 4 He had no involvement.

03:31:42PM 5 THE COURT: I don't know they're

03:31:42PM 6 admitting unrelated --

03:31:45PM 7 MS. SMITH: They've admitted in

03:31:47PM 8 their pleadings he had no contact with

03:31:50PM 9 this prescribing physician; so I would

03:31:51PM 10 otherwise be objecting to relevance on

03:31:54PM 11 his testimony in its entirety.

03:31:57PM 12 I hope our Motion in Limine covers

03:31:59PM 13 it.

03:31:59PM 14 THE COURT: I think your Motion in

03:32:01PM 15 Limine does cover that if there's some

03:32:04PM 16 other more specific relevance that has to

03:32:08PM 17 be objected to; but as I understood your

03:32:12PM 18 motion, it was, don't let him testify to

03:32:15PM 19 anything about what he did or what the

03:32:19PM 20 company told him to do because he never

03:32:22PM 21 personally spoke to this doctor.

03:32:24PM 22 And that Motion in Limine has a

03:32:28PM 23 definitive ruling overruling the

03:32:32PM 24 objection and makes it preserved for

03:32:35PM 25 appeal, in my opinion.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

03:32:38PM 2 Is that what you're looking for?

03:32:39PM 3 MS. SMITH: That's correct.

03:32:45PM 4 MR. MACKUSE: Gregg Mackuse on

03:32:47PM 5 behalf of plaintiffs.

03:32:51PM 6 THE COURT: Where are you from?

03:32:52PM 7 MR. MACKUSE: Mechanicsburg,

03:32:54PM 8 Pennsylvania.

03:32:54PM 9 THE COURT: Glad to see you in

03:32:55PM 10 Philly.

03:32:57PM 11 MR. MACKUSE: We would expect Mr.

03:33:00PM 12 Jones we'd like for him to be able to

03:33:03PM 13 comment on testify about some national

03:33:05PM 14 documents as to which he is not the

03:33:08PM 15 authenticating witness.

03:33:09PM 16 There will be testimony later in the

03:33:11PM 17 case where we can put on deposition

03:33:13PM 18 testimony, if necessary, to authenticate,

03:33:16PM 19 render admissibility of those documents,

03:33:18PM 20 but we'd like to be able to show them to

03:33:21PM 21 him now in his testimony and have them

03:33:24PM 22 comment on it.

03:33:24PM 23 THE COURT: Has he ever seen them?

03:33:26PM 24 MR. MACKUSE: He did not see them

03:33:29PM 25 during the course of scope of his

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 03:33:11PM 2 employment.
 03:33:31PM 3 THE COURT: Has he ever seen them?
 03:33:34PM 4 MR. MACKUSE: Yes, he has.
 03:33:36PM 5 THE COURT: In preparation for
 03:33:38PM 6 testimony?
 03:33:38PM 7 MR. MACKUSE: In preparation for the
 03:33:39PM 8 testimony, yes.
 03:33:43PM 9 THE COURT: Did you talk to counsel
 03:33:45PM 10 about it?
 03:33:46PM 11 MS. SMITH: No, but if I had, we
 03:33:48PM 12 would have told him we would object.
 03:33:50PM 13 THE COURT: Do you know what
 03:33:50PM 14 documents he's talking about?
 03:33:53PM 15 MS. SMITH: I do not.
 03:33:54PM 16 THE COURT: Sufficient unto the day
 03:33:56PM 17 is the trouble thereof. You show it to
 03:33:57PM 18 counsel and I'll see you before you want
 03:34:00PM 19 to use them.
 03:34:00PM 20 If you know there's an objection,
 03:34:02PM 21 come and ask me to go to sidebar.
 03:34:02PM 22 - - -
 03:34:46PM 23 (Back in courtroom.)
 03:34:46PM 24 - - -
 03:34:46PM 25

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:42PM 2 THE COURT: I did tell you there
 04:22:42PM 3 would be times when we have to discuss
 04:22:42PM 4 things outside of your presence; right?
 04:22:42PM 5 A trial is like a steam locomotive
 04:22:42PM 6 with 100 cars behind it. When it first
 04:22:42PM 7 gets going, it's very slow to get up to
 04:22:42PM 8 speed. This one will be slower than
 04:22:42PM 9 most. Once it gets going and rolling.
 04:22:42PM 10 There are significant chunks of time
 04:22:42PM 11 we're not going to be able to be in
 04:22:42PM 12 session.
 13 - - -
 14 (TONY JONES, after having been duly
 15 sworn, was examined as follows:)
 16 THE COURT: Counsel?
 17 - - -
 18 DIRECT EXAMINATION
 19 - - -
 20 BY MR. HILLIARD:
 04:22:46PM 21 Q. Mr. Jones, tell us where you are from.
 04:22:46PM 22 A. Originally, I'm from Tulsa, Oklahoma.
 04:22:46PM 23 Q. Let me get that microphone in front of
 04:22:46PM 24 you.
 04:22:46PM 25 Let me ask you to give the jury a little

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:46PM 2 bit about your educational background, please.
 04:22:46PM 3 A. I went to Oklahoma State University, and
 04:22:46PM 4 I majored in speech communication, minor in
 04:22:46PM 5 business.
 04:22:46PM 6 Q. When were you at Oklahoma State?
 04:22:46PM 7 A. I was there '93 to '97, '93 to '97.
 04:22:46PM 8 Q. Does it have a football team?
 04:22:46PM 9 A. Oklahoma State Cowboys.
 04:22:46PM 10 Q. Did you play any collegiate sports?
 04:22:46PM 11 A. Yes, started as a quarterback there a few
 04:22:47PM 12 years and also played baseball there as well.
 04:22:47PM 13 Q. It's my understanding you were starting
 04:22:47PM 14 quarterback as a true ^ freshman?
 04:22:47PM 15 A. Yes.
 04:22:47PM 16 Q. Has that happened since you've been
 04:22:47PM 17 there, since you left?
 04:22:47PM 18 A. Actually, there's a true freshman there
 04:22:47PM 19 now that has the opportunity; so it's a very
 04:22:47PM 20 unique opportunity. ^
 04:22:47PM 21 Q. Besides football, did you play any other
 04:22:47PM 22 sports while at Oklahoma State?
 04:22:47PM 23 A. Yes, baseball mainly senior year because
 04:22:47PM 24 the coaches wouldn't let me go out. So senior
 04:22:47PM 25 year, I had a chance to go out and play.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:47PM 2 Q. You graduated from Oklahoma what year?
 04:22:47PM 3 A. '97.
 04:22:47PM 4 Q. So we understand your time at Johnson and
 04:22:48PM 5 Johnson -- while I'm on that, let me ask you
 04:22:48PM 6 this.
 04:22:48PM 7 Would you explain to these folks the
 04:22:48PM 8 relationship between Johnson and Johnson and
 04:22:48PM 9 Janssen Pharmaceutical?
 04:22:48PM 10 A. Yes.
 04:22:48PM 11 MS. SMITH: Objection, Your Honor.
 04:22:48PM 12 - - -
 04:22:48PM 13 (An off-the-record discussion was
 04:22:48PM 14 held at side bar as follows:)
 04:22:48PM 15 - - -
 04:22:48PM 16 THE COURT: What's his answer going
 04:22:48PM 17 to be?
 04:22:48PM 18 MR. HILLIARD: Based on his time
 04:22:48PM 19 there, he's going to say Janssen was a
 04:22:48PM 20 wholly owned subsidiary of Johnson and
 04:22:48PM 21 Johnson.
 04:22:48PM 22 MS. SMITH: If that's all he's going
 04:22:48PM 23 to say, he doesn't know that. I don't
 04:22:48PM 24 object.
 04:22:48PM 25 THE COURT: Wait. The objection is

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:48PM 2 taken care of because if that's what he's
 04:22:48PM 3 going to say, there's no objection?
 04:22:48PM 4 MS. SMITH: Correct.
 04:22:48PM 5 - - -
 04:22:48PM 6 (Pertinent portion was read by the
 04:22:48PM 7 court reporter).
 04:22:48PM 8 - - -
 04:22:48PM 9 A. Yes. So Johnson and Johnson is like this
 04:22:48PM 10 big umbrella. It has like 178 --
 04:22:48PM 11 MS. SMITH: Objection.
 04:22:48PM 12 A. -- companies.
 04:22:48PM 13 THE COURT: Objection is sustained.
 04:22:48PM 14 The objection had to do with the
 04:22:48PM 15 relationship between two companies,
 04:22:48PM 16 Johnson and Johnson and Janssen
 04:22:48PM 17 Pharmaceuticals.
 04:22:48PM 18 Do you know the relationship?
 04:22:48PM 19 THE WITNESS: Yes. Janssen
 04:22:48PM 20 basically is under the Johnson and
 04:22:48PM 21 Johnson umbrella.
 04:22:48PM 22 MS. SMITH: We still have an
 04:22:48PM 23 objection.
 04:22:48PM 24 THE COURT: Overruled.
 04:22:48PM 25 BY MR. HILLIARD:

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:49PM 2 Q. Once you graduated, where did you go and
 04:22:49PM 3 what did you do. First, you graduated May or
 04:22:49PM 4 December?
 04:22:49PM 5 A. Actually, December.
 04:22:49PM 6 Q. When does the NFL draft occur?
 04:22:49PM 7 A. In spring.
 04:22:49PM 8 Q. Any phone calls?
 04:22:49PM 9 A. No phone calls.
 04:22:49PM 10 Q. Time to go to work?
 04:22:49PM 11 A. Time to go to work.
 04:22:49PM 12 Q. Where did you go and what did you do?
 04:22:49PM 13 A. After my collegiate career, I went to
 04:22:49PM 14 Janssen as a sales rep in Oklahoma City in
 04:22:50PM 15 April of '98, 1998.
 04:22:50PM 16 Q. April of '98, you went to Janssen
 04:22:50PM 17 Pharmaceutical where?
 04:22:50PM 18 A. In Oklahoma City, Oklahoma.
 04:22:50PM 19 Q. What did you do?
 04:22:50PM 20 A. Primary care sales representative; so
 04:22:50PM 21 basically, the baseline of sales at entry
 04:22:50PM 22 level, and I called on primary care physicians
 04:22:50PM 23 and their products within therapeutic, the
 04:22:50PM 24 products that they have for that sales force.
 04:22:50PM 25 Q. Before you started doing that out in the

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:50PM 2 field, did you receive training or direction
 04:22:50PM 3 from Janssen on how to do your job?
 04:22:50PM 4 A. Yes. Before in those days, we had three
 04:22:50PM 5 weeks of sales training where you would go to
 04:22:50PM 6 New Jersey, Princeton area and you would train
 04:22:50PM 7 on the products for three weeks.
 04:22:51PM 8 Q. Then you would come back and do what?
 04:22:51PM 9 A. After you successfully completed the
 04:22:51PM 10 training, you had to do an assessment is what
 04:22:51PM 11 we would call get-out-of-jail. You came back
 04:22:51PM 12 on the field and then had another trainer that
 04:22:51PM 13 would help you integrate into the field and
 04:22:51PM 14 really learn how to sell to the physicians
 04:22:51PM 15 within our, you know, target customer base.
 04:22:51PM 16 Q. You did that in Oklahoma from '98 until
 04:22:51PM 17 when?
 04:22:51PM 18 A. Till 2000, which, you know, summer of
 04:22:51PM 19 2000, somewhere in there.
 04:22:51PM 20 Q. What happened in the summer of 2000?
 04:22:51PM 21 A. I was promoted to Houston. I relocated
 04:22:51PM 22 from Oklahoma City to Houston, and there is a
 04:22:52PM 23 sales force called CNS, Central Nervous
 04:22:52PM 24 System, that basically focused on calling
 04:22:52PM 25 psychiatry which was, at Janssen, the top

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:52PM 2 sales force in Janssen.
 04:22:52PM 3 So I was promoted to that division in
 04:22:52PM 4 2000 to sell Risperdal.
 04:22:52PM 5 Q. When, during the summer of 2000, did you
 04:22:52PM 6 first hear of this Risperdal?
 04:22:52PM 7 A. I heard about it before then, but, you
 04:22:52PM 8 know, obviously, during training, I learned
 04:22:52PM 9 more about just about the intricacies of the
 04:22:52PM 10 product.
 04:22:52PM 11 Q. So if you'll just explain to these folks,
 04:22:52PM 12 once you started your job in Houston promoting
 04:22:52PM 13 Risperdal what your job description was, how
 04:22:52PM 14 you went about doing it; and may I interrupt
 04:22:53PM 15 you and start with a preliminary question, and
 04:22:53PM 16 that is: Did you receive any additional
 04:22:53PM 17 training on Risperdal prior to beginning going
 04:22:53PM 18 out in the field?
 04:22:53PM 19 A. It's ongoing training all the time, so
 04:22:53PM 20 when I was promoted in 2000, I went to sales
 04:22:53PM 21 training, had field training, and then you
 04:22:53PM 22 would have a mentor that would train you, you
 04:22:53PM 23 know, to insure that you were executing the
 04:22:53PM 24 way that the company wanted you to, and then
 04:22:53PM 25 you said -- what was the other question? I'm

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 sorry.
 3 Q. That's it. We were first making sure
 4 whether or not you had any training specific
 5 to Risperdal.
 6 A. Yes. That's when I learned more about
 7 it.
 8 Q. Then we'll go back to the question that
 9 we had pushed the pause button on, and that
 10 is: How did you go about doing the actual
 11 field work promoting Risperdal?
 12 A. Well, how I went about it is, basically,
 13 I was trained from the company, and which was
 14 to go out and call them -- we have a list of
 15 customers that are provided from the company
 16 that we went and called on.
 17 We had to make eight calls a day or so,
 18 and that's pretty much what we did every day.
 19 We sampled our key customers. We did business
 20 analytics, determined who our top doctors
 21 were; and so there's a lot involved, you know,
 22 managing a territory, you know, within the
 23 pharmaceutical business, so --
 24 Q. During that time, did you become familiar
 25 with whether or not Janssen had a national

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 policy on the promotion of Risperdal off-label
 3 in the pediatric area?
 4 A. During that time, what Janssen would do,
 5 they would talk about different areas that we
 6 would focus on.
 7 However, you know, back in those days, it
 8 was a little different than it is today, so it
 9 wasn't as restricted; and so they would, you
 10 know, we would talk about different disease
 11 states that Risperdal treated, which was for
 12 adults. It was also for a child in
 13 adolescence and also for patients that had
 14 mood disorders as well, bipolar, those type of
 15 patients.
 16 Q. Mr. Jones, did you have an understanding
 17 during the time period you were promoting
 18 Risperdal that it was not approved by the FDA
 19 for use in children?
 20 MS. SMITH: Objection, Your Honor.
 21 THE COURT: Legal basis?
 22 MS. SMITH: Leading.
 23 (Pertinent portion was read by the
 24 court reporter).
 25 THE COURT: Rephrase.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 BY MR. HILLIARD:
 3 Q. During that time period, what was your
 4 understanding with regards to the FDA, of the
 5 drug, Risperdal?
 6 A. At that time, Risperdal was for
 7 schizophrenia only.
 8 Q. You started this in 2000. How long did
 9 you do this, promote Risperdal?
 10 A. Well, I was a field rep from 2000 to
 11 2002, and I was quite successful in selling
 12 Risperdal in the Houston market.
 13 We would have what we call president's
 14 trophy trips; so we'd go on trips based on our
 15 sales, so I had the opportunity to do that in
 16 2000 and also in 2001.
 17 During that time frame, the reason I was
 18 promoted in 2002 is because I had one of the
 19 highest market shares at Janssen selling
 20 Risperdal, which was roughly around 50
 21 percent, so we did very well selling Risperdal
 22 in the Houston market.
 23 So my manager at the time stepped down
 24 and so I was in management training. So in
 25 2000, November of 2002, I was promoted and,

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 typically, when you're promoted within, you
 3 know, Johnson and Johnson, I would say Johnson
 4 and Johnson, not just Janssen you're not
 5 promoted within the team you work with; you
 6 have to relocate or move to a different
 7 district.
 8 Well, I was promoted within the team that
 9 I worked with. So obviously, they felt very
 10 -- that I had a leadership skill so forth to
 11 be able to handle a very tenured team; so in
 12 2002, I was promoted to the manager role.
 13 Q. Now, as a manager, did you receive
 14 directives from the national office in regards
 15 to how to promote Risperdal?
 16 A. Correct. That's the only way that we
 17 would go out and promote Risperdal, is based
 18 upon what was given to us from sales training
 19 or the marketing sales director.
 20 Q. Did that training in the national
 21 direction, if you know, was it pinpointed to
 22 the Houston area region?
 23 MS. SMITH: Objection, Your Honor.
 24 BY MR. HILLIARD:
 25 Q. Or was it pinpointed to more of, if it

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:58PM 2 was, more of a different --
 04:22:58PM 3 THE COURT: Objection sustained as
 04:22:58PM 4 phrased. Next.
 04:22:58PM 5 BY MR. HILLIARD:
 04:22:58PM 6 Q. Explain to these folks a connection, if
 04:22:58PM 7 there is one, between Houston and Dallas in
 04:22:58PM 8 regards to the natural policy in promotion of
 04:22:58PM 9 Risperdal in the pediatric area?
 04:22:58PM 10 MS. SMITH: Objection.
 04:22:58PM 11 THE COURT: Overruled.
 04:22:58PM 12 A. So Dallas and Houston were in the system
 04:22:58PM 13 region; so whatever sales direction was sent
 04:22:58PM 14 from home office, Princeton area, whether or
 04:22:58PM 15 not you were in California, Minneapolis, down
 04:22:58PM 16 in Houston or even on the East Coast, we all
 04:22:58PM 17 followed the same sales direction.
 04:22:58PM 18 We didn't make it up on our own. Really,
 04:22:58PM 19 during my tenure there, I never recall a rep
 04:22:58PM 20 getting fired because of off-label marketing.
 04:22:58PM 21 MS. SMITH: Objection.
 04:22:58PM 22 THE COURT: Sustained. You've gone
 04:22:58PM 23 beyond the question.
 04:22:58PM 24 Next question.
 04:22:58PM 25 BY MR. HILLIARD:

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:59PM 2 Q. Mr. Jones, would you tell the jury
 04:22:59PM 3 whether or not you received national direction
 04:22:59PM 4 to promote Risperdal to kids?
 04:22:59PM 5 A. Yes.
 04:22:59PM 6 Q. How was that done?
 04:22:59PM 7 A. Sales training.
 04:22:59PM 8 Q. By agreement and with the Court's
 04:22:59PM 9 permission, I'm going to put up a map of the
 04:22:59PM 10 State of Texas to get a sense of where Houston
 04:22:59PM 11 is in relation to Sherman and the region
 04:23:00PM 12 you're speaking of.
 04:23:00PM 13 If you would orient the jury in regards
 04:23:00PM 14 to where your region was, where it extended,
 04:23:00PM 15 Dr. Vernon Johnson's region and explain
 04:23:00PM 16 generally how it worked in the State of Texas.
 04:23:00PM 17 A. Okay. This was my region here
 04:23:00PM 18 (indicating), and that was the Dallas area,
 04:23:00PM 19 Sherman, Texas, here. Our region was called
 04:23:00PM 20 the South Central Region; so that encompasses
 04:23:00PM 21 all of Texas and also it had Oklahoma.
 04:23:00PM 22 Q. So South Central Region, is that how the
 04:23:00PM 23 national office recognized Dallas, Fort Worth,
 04:23:00PM 24 Sherman and Houston?
 04:23:00PM 25 MS. SMITH: Objection, leading.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:01PM 2 THE COURT: Overruled. You may
 04:23:01PM 3 answer.
 04:23:01PM 4 A. Correct, yes.
 04:23:01PM 5 Q. South Central?
 04:23:01PM 6 A. South Central Region.
 04:23:01PM 7 Q. How would a national directive from the
 04:23:01PM 8 home office get to you in regards to what you
 04:23:01PM 9 should or should not do as it relates to
 04:23:01PM 10 marketing and promoting of Risperdal?
 04:23:01PM 11 A. So we would have manager meetings
 04:23:01PM 12 typically in the Dallas area, and we would
 04:23:01PM 13 have our sales training or even the field
 04:23:01PM 14 sales director come down to provide us
 04:23:01PM 15 direction on how to market Risperdal.
 04:23:01PM 16 In addition to that, sales training would
 04:23:01PM 17 come down as well at our manager meetings to
 04:23:01PM 18 basically share what the sales forecast was
 04:23:01PM 19 and sales messaging and so forth.
 04:23:01PM 20 Q. The equivalent of Tony Jones in the area
 04:23:02PM 21 of Sherman, Dallas and Fort Worth, what was
 04:23:02PM 22 his name?
 04:23:02PM 23 A. At that time, his name was Hayes
 04:23:02PM 24 Clifford.
 04:23:02PM 25 MS. SMITH: Can we have a time

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:02PM 2 frame?
 04:23:02PM 3 MR. HILLIARD: I will do that,
 04:23:02PM 4 Judge.
 04:23:02PM 5 BY MR. HILLIARD:
 04:23:02PM 6 Q. Mr. Jones, without talking about the
 04:23:02PM 7 specific contents of P-1, can you identify
 04:23:02PM 8 what it is generally?
 04:23:02PM 9 A. It's an organizational chart.
 04:23:02PM 10 Q. And what does that organizational chart
 04:23:02PM 11 purport to reflect?
 04:23:02PM 12 A. Well, it's an organizational chart of the
 04:23:02PM 13 management team across the country.
 04:23:02PM 14 Q. Is your name on it?
 04:23:02PM 15 A. Yes.
 04:23:02PM 16 Q. The gentleman you identified as being the
 04:23:02PM 17 equivalent of Tony Jones up in the top part of
 04:23:02PM 18 the same region, is his name on it as well?
 04:23:03PM 19 A. His name is on there as well, yes.
 04:23:03PM 20 Q. And does that organizational chart also
 04:23:03PM 21 show who both you and he answer to?
 04:23:03PM 22 MS. SMITH: Objection, Your Honor.
 04:23:03PM 23 THE COURT: Legal basis?
 04:23:03PM 24 MS. SMITH: Leading.
 04:23:03PM 25 THE COURT: Overruled.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:03PM 2 A. Yes, it does. We both reported to Rob
 04:23:03PM 3 Craner at the time, which his title was
 04:23:03PM 4 regional business director.
 04:23:03PM 5 Q. And what time period are we talking about
 04:23:03PM 6 of this organizational chart, generally?
 04:23:03PM 7 A. Yes. This was -- were at 2002 to at
 04:23:03PM 8 least -- I'm trying to find --
 04:23:03PM 9 Q. Right now, we're just putting --
 04:23:03PM 10 THE COURT: Whoa. Do you know what
 04:23:03PM 11 time frame that applies to?
 04:23:04PM 12 THE WITNESS: Yes.
 04:23:04PM 13 THE COURT: What time?
 04:23:04PM 14 THE WITNESS: 2002 to 2006.
 04:23:04PM 15 MR. HILLIARD: We would offer P-1.
 04:23:04PM 16 MS. SMITH: My objection would be --
 04:23:04PM 17 THE COURT: Your objection would be
 04:23:04PM 18 at sidebar.
 04:23:04PM 19 - - -
 04:23:04PM 20 (An off-the-record discussion was
 04:23:04PM 21 held at side bar as follows:)
 04:23:04PM 22 - - -
 04:23:04PM 23 THE COURT: What's the problem?
 04:23:04PM 24 MS. SMITH: There's no date on the
 04:23:04PM 25 list.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:04PM 2 THE COURT: Okay. Any other
 04:23:04PM 3 problem?
 04:23:04PM 4 MS. SMITH: When he first started,
 04:23:04PM 5 he was guessing, and Your Honor
 04:23:04PM 6 interrupted him; but this particular
 04:23:04PM 7 document has no -- there's no foundation
 04:23:04PM 8 that it existed at the time he said it
 04:23:04PM 9 did.
 04:23:04PM 10 THE COURT: Overruled. You can
 04:23:04PM 11 cross-examine back in court.
 04:23:04PM 12 - - -
 04:23:04PM 13 THE COURT: This has previously been
 04:23:04PM 14 marked P-1 and accepted into evidence.
 04:23:04PM 15 BY MR. HILLIARD:
 04:23:04PM 16 Q. Do you still have your laser pointer?
 04:23:04PM 17 A. Yes.
 04:23:04PM 18 MR. HILLIARD: Could the Court
 04:23:04PM 19 inquire as to whether the jury can see
 04:23:05PM 20 this?
 04:23:05PM 21 THE COURT: They can't. I cannot.
 04:23:05PM 22 Can you see that?
 04:23:05PM 23 BY MR. HILLIARD:
 04:23:05PM 24 Q. Mr. Jones, do you think Plaintiff's
 04:23:05PM 25 Exhibit No. 1 -- and with your pointer, can

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:05PM 2 you explain to the jury the connection, if
 04:23:05PM 3 there is one, between Mr. Clifford, who you
 04:23:05PM 4 identified as being the Tony Jones in this
 04:23:05PM 5 region, and yourself and the superiors that
 04:23:05PM 6 you answered to?
 04:23:05PM 7 A. Okay. I had the Houston district.
 04:23:05PM 8 Clifford had the Dallas, and we reported to
 04:23:05PM 9 Rob Craner, and Rob reported to Dave Meek, who
 04:23:05PM 10 was a field sales rep.
 04:23:05PM 11 Q. If information came down from home office
 04:23:05PM 12 in regards to the promotion and marketing of
 04:23:06PM 13 Risperdal off-label to children, how would it
 04:23:06PM 14 come down through these names on this list?
 04:23:06PM 15 A. First, number one, my initial predicate
 04:23:06PM 16 question is: Did it come down? Basically, to
 04:23:06PM 17 answer, it will come down from this level
 04:23:06PM 18 here, from Jeff Bailey, Mike Walsman down to
 04:23:06PM 19 Dave Meek down to Rob Craner.
 04:23:06PM 20 As you can see the line there, he would
 04:23:06PM 21 deliver the sales direction to the district
 04:23:06PM 22 managers.
 04:23:06PM 23 Q. Are you familiar with the phrase "meeting
 04:23:06PM 24 in a box?"
 04:23:06PM 25 A. I am.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:06PM 2 Q. Can you explain to the jury what that is
 04:23:06PM 3 in relation to information that comes down
 04:23:06PM 4 from the top of the food chain to the Tony
 04:23:06PM 5 Joneses?
 04:23:06PM 6 A. Correct. So to insure that there was no
 04:23:06PM 7 deviation from what, as I share with you, Rob
 04:23:07PM 8 Craner would provide us, they would send us
 04:23:07PM 9 meetings in a box where everything -- we would
 04:23:07PM 10 have meetings with our teams, so you have all
 04:23:07PM 11 the managers here.
 04:23:07PM 12 Then we'd have ten reps we each would
 04:23:07PM 13 have that we deliver sales direction to so
 04:23:07PM 14 they would deliver them meeting in a box where
 04:23:07PM 15 we didn't have to really do anything but
 04:23:07PM 16 communicate what came to us from home office.
 04:23:07PM 17 So it was very simple; you couldn't
 04:23:07PM 18 deviate from it.
 04:23:07PM 19 It was a couple of them actually was on a
 04:23:07PM 20 DVD where you would play the DVD and it would
 04:23:07PM 21 basically share what sales direction, what the
 04:23:07PM 22 forecast was targeting and everything.
 04:23:07PM 23 Q. Do you know whether or not Mr. Clifford
 04:23:08PM 24 in the northern part of your district received
 04:23:08PM 25 the same information that you received,

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:23:08PM 2 specifically in regards to the national
04:23:08PM 3 directive to market and promote Risperdal to
04:23:08PM 4 children?
04:23:08PM 5 MS. SMITH: Objection.
04:23:08PM 6 THE COURT: Overruled.
04:23:08PM 7 A. Yes. He received the same exact
04:23:08PM 8 information that I received.
04:23:08PM 9 Q. Explain to me, once you received that
04:23:08PM 10 information, how do you take that information
04:23:08PM 11 out into the field and do what you've been
04:23:08PM 12 told to do?
04:23:08PM 13 A. Well, we'd go out and deliver the sales
04:23:08PM 14 message that the company provided to the
04:23:08PM 15 different patient types that we were targeting
04:23:08PM 16 for Risperdal; and typically, what that looked
04:23:08PM 17 like.
04:23:08PM 18 We'd have new sales aids every cycle or
04:23:09PM 19 every quarter, and it would basically provide
04:23:09PM 20 us direction in terms of how we were to do our
04:23:09PM 21 jobs in front of our customers.
04:23:09PM 22 Q. From the national office where you
04:23:09PM 23 trained on what you were allowed to do in
04:23:09PM 24 regards to encouraging, if you did encourage,
04:23:09PM 25 doctors to prescribe Risperdal to children?

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:23:09PM 2 A. Yes. We were trained on that, and we
04:23:09PM 3 would focus on symptoms.
04:23:09PM 4 Q. Can you explain that, please?
04:23:09PM 5 A. Yes. So basically, there were three, I'd
04:23:09PM 6 say, three buckets, if you will. We had a,
04:23:09PM 7 you know, a positive symptom bucket that we
04:23:09PM 8 would focus on, which primarily were for the
04:23:09PM 9 adult patients.
04:23:09PM 10 Then we would have a negative symptom
04:23:09PM 11 bucket with social withdraw, flat affect that
04:23:10PM 12 also was more for adult patients; but then
04:23:10PM 13 there was a hostility, another bubble where it
04:23:10PM 14 had hostility, excitement, irritability,
04:23:10PM 15 agitation and aggression. That would be the
04:23:10PM 16 third bucket.
04:23:10PM 17 And we would show that to the physicians;
04:23:10PM 18 and they knew exactly what we were talking
04:23:10PM 19 about, because they would -- as you know, we
04:23:10PM 20 come in after patients; and many times, the
04:23:10PM 21 physicians would either have seen those
04:23:10PM 22 symptoms or think about a patient that has
04:23:10PM 23 those symptoms.
04:23:10PM 24 And when you really focus on those, the
04:23:10PM 25 irritability, agitation, aggression, many

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:23:10PM 2 patients thought of the pediatric patient
04:23:10PM 3 type, and that's where they would use
04:23:10PM 4 Risperdal at lower doses.
04:23:10PM 5 MS. SMITH: I object.
04:23:10PM 6 THE COURT: Overruled.
04:23:10PM 7 BY MR. HILLIARD:
04:23:10PM 8 Q. In describing those buckets in the
04:23:11PM 9 promotion of Risperdal in that way, would it
04:23:11PM 10 help you in your explanation to diagram it for
04:23:11PM 11 the jury?
04:23:11PM 12 A. Sure, I can do that.
04:23:11PM 13 MR. HILLIARD: With the Court's
04:23:11PM 14 permission.
04:23:11PM 15 THE COURT: Sure.
04:23:11PM 16 A. You had a sales aid that would have
04:23:11PM 17 Risperdal.
04:23:11PM 18 THE COURT: Sales aid?
04:23:11PM 19 A. Yes, sir. So you had sales aid.
04:23:11PM 20 You'd have a circle like this, three
04:23:11PM 21 circles. This one would be for positive
04:23:11PM 22 symptoms, hallucinations, dilutions, so forth.
04:23:11PM 23 Then there would be another circle that
04:23:11PM 24 had negative symptoms which were like flat
04:23:11PM 25 affects, social withdrawal, so forth.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:23:11PM 2 Then you would have the last circle, and
04:23:11PM 3 here's where this last circle was; the biggest
04:23:12PM 4 opportunity for Risperdal.
04:23:12PM 5 Q. Let me interrupt you and ask you to
04:23:12PM 6 explain what you mean by the word
04:23:12PM 7 "opportunity."
04:23:12PM 8 A. Well, the opportunity for growth for this
04:23:12PM 9 product, because when you look at these two
04:23:12PM 10 circles, these two circles really represent in
04:23:12PM 11 terms of general population is one percent.
04:23:12PM 12 That's only one percent.
04:23:12PM 13 So this over here, when you look at
04:23:12PM 14 hostility, aggression, agitation, this was a
04:23:12PM 15 -- I mean, a significant opportunity for
04:23:12PM 16 growth for Risperdal, because we weren't
04:23:12PM 17 really winning in this area here; our
04:23:12PM 18 competitors were.
04:23:13PM 19 That's in a nutshell what our sales aid
04:23:13PM 20 would look like; and when we would go in to
04:23:13PM 21 talk to physicians, we would talk about these
04:23:13PM 22 symptoms with the focus here; thus, yeah, I
04:23:13PM 23 have, you know, the younger population has
04:23:13PM 24 hostility, aggression, those type of symptoms;
04:23:13PM 25 and thus, they would use Risperdal for those

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 patients.
 3 Q. Mr. Jones, when you used the phrase
 4 "growth opportunity", can you explain to the
 5 jury what that means in relation to sales?
 6 A. Well, so what does that mean in terms of
 7 sales?
 8 Well, the growth opportunity, how it
 9 relates to sales would be, you know, how do
 10 you take that one percent to make it bigger?
 11 So how do you grow a product from 250 million
 12 to a billion dollars?
 13 And when you look at, you know, those
 14 buckets that I, you know, the circles, again,
 15 you know, Risperdal was in 1993 launched into
 16 the market. It was doing well, because it was
 17 the first.
 18 Then competition came on board and that's
 19 how --
 20 MS. SMITH: I object.
 21 THE COURT: Hold on.
 22 (Pertinent portion of the notes of
 23 testimony was read.)
 24 THE COURT: Were you with the
 25 company in 1993?

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 THE WITNESS: Me? No, sir.
 3 THE COURT: Objection is sustained.
 4 Next question.
 5 BY MR. HILLIARD:
 6 Q. Please limit your answer only to the time
 7 you were with the company in regards to the
 8 opportunity for growth as it relates to the
 9 description that you have -- I need to
 10 identify this for the record.
 11 MR. HILLIARD: We would offer P-2.
 12 MS. SMITH: Objection.
 13 THE COURT: Overruled. Accepted
 14 into evidence.
 15 BY MR. HILLIARD:
 16 Q. In regards to P-2 and your explanation
 17 and the question earlier about opportunity for
 18 growth, limiting your answer only to the time
 19 that you were actually at Janssen, can you
 20 explain to the jury how P-2 related to what
 21 the opportunity for growth actually was?
 22 MS. SMITH: Objection, Your Honor.
 23 THE COURT: Basis?
 24 MS. SMITH: Outside what his
 25 knowledge base is based on how he's been

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 introduced.
 3 THE COURT: Overruled. Proceed.
 4 What was the opportunity? Did you ever
 5 hear in any of these situations where
 6 they were telling you how to market
 7 things, the words, "opportunity for
 8 growth"?
 9 THE WITNESS: Absolutely.
 10 THE COURT: Did you ever hear with
 11 respect to Risperdal?
 12 THE WITNESS: Every meeting.
 13 THE COURT: You may state the
 14 question again.
 15 The objection is overruled.
 16 BY MR. HILLIARD:
 17 Q. As to the opportunity for growth that you
 18 heard at the meetings, meetings that Mr.
 19 Clifford also attended?
 20 A. Yes.
 21 Q. As to the specific drug Risperdal, would
 22 you please explain the connection between
 23 opportunity for growth in relation to P-2, how
 24 P-2 translates into opportunity for growth?
 25 A. Very simply.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 Janssen wanted Risperdal to be a billion
 3 dollar product. That right there led to how
 4 we were able to communicate with our
 5 physicians to grow the brand to a billion
 6 dollars during my time I sold Risperdal.
 7 Q. In order to follow what Janssen wanted in
 8 regards to Risperdal becoming a billion dollar
 9 product, did you receive instruction from the
 10 national headquarters to market and promote
 11 Risperdal to children?
 12 MS. SMITH: Objection.
 13 THE COURT: Overruled.
 14 A. Yes. That was one of the focused areas
 15 that when you look at how the company was
 16 going to grow to be a billion dollars, that
 17 was the area that we were going to focus on.
 18 Q. My question again goes to your counter
 19 part up in Dallas. Did Mr. Clifford also
 20 receive the same information?
 21 A. Yes.
 22 Q. On how to market and promote to children?
 23 A. Yes, he did.
 24 Q. Once you were promoted, once you became
 25 the team leader, were there ways that you

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:18PM 2 conveyed to the drug reps under you this
 04:23:18PM 3 information and this directive from the
 04:23:18PM 4 national office?
 04:23:18PM 5 A. Yes.
 04:23:18PM 6 Q. How did you do that?
 04:23:18PM 7 A. Well, I would go out in the field and
 04:23:18PM 8 work with the rep while I would observe their
 04:23:18PM 9 calls with physicians in the Houston area; and
 04:23:18PM 10 also I wrote field contact reports to
 04:23:18PM 11 basically hold them accountable for what the
 04:23:18PM 12 company has asked us to do in terms of sales
 04:23:18PM 13 direction and so forth.
 04:23:18PM 14 Q. Was there ever a time when the national
 04:23:18PM 15 office tied bonuses into the marketing of
 04:23:18PM 16 Risperdal and the promoting of Risperdal to
 04:23:18PM 17 children?
 04:23:18PM 18 A. Yes. Well, it was all part of our, what
 04:23:18PM 19 we call, incentive compensation package; and
 04:23:18PM 20 basically, the company provided the sales
 04:23:18PM 21 direction, and they just wanted marketshare
 04:23:18PM 22 increase. They wanted growth.
 04:23:18PM 23 And so whether it was -- and
 04:23:18PM 24 schizophrenia or outside of that, they wanted
 04:23:18PM 25 Risperdal to be utilized within that

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:19PM 2 physician's office, and so that's how we were
 04:23:19PM 3 bonused each quarter on sales growth for
 04:23:19PM 4 Risperdal.
 04:23:19PM 5 Q. During the time that you were in Houston,
 04:23:19PM 6 did you, from time to time, receive at-a-boy
 04:23:19PM 7 letters, written letters where your bonus is
 04:23:19PM 8 described and you were congratulated for what
 04:23:19PM 9 you were doing?
 04:23:20PM 10 MS. SMITH: Objection.
 04:23:20PM 11 THE COURT: Overruled.
 04:23:20PM 12 A. Yes. I have a pretty thick booklet of
 04:23:19PM 13 at-a-boy for not only when I was a rep, but
 04:23:20PM 14 also a manager for my team in terms of how we
 04:23:20PM 15 were out-selling, you know, most of the other
 04:23:20PM 16 districts across the country.
 04:23:20PM 17 So we would get very frequent at-a-boys,
 04:23:20PM 18 if you will, based on our sales growth within
 04:23:20PM 19 my district.
 04:23:20PM 20 Q. Please assume that this jury, during
 04:23:20PM 21 opening statements, heard a statement from the
 04:23:20PM 22 defense attorney that said --
 04:23:20PM 23 MS. SMITH: Objection.
 04:23:20PM 24 THE COURT: Objection sustained.
 04:23:20PM 25 BY MR. HILLIARD:

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:20PM 2 Q. Promoting Risperdal off-label would get
 04:23:20PM 3 you fired?
 04:23:20PM 4 MS. SMITH: Objection, leading.
 04:23:20PM 5 THE COURT: It wasn't a question.
 04:23:21PM 6 Rephrase the question.
 04:23:21PM 7 BY MR. HILLIARD:
 04:23:21PM 8 Q. Mr. Jones, in your experience, would
 04:23:21PM 9 promoting Risperdal off-label to children get
 04:23:21PM 10 you fired?
 04:23:21PM 11 A. No.
 04:23:21PM 12 Q. Would it get you a bonus?
 04:23:21PM 13 A. Yes.
 04:23:21PM 14 Q. Of your at-a-boy letters, I've pulled a
 04:23:21PM 15 few out and I'm going to ask Charles to pass
 04:23:21PM 16 them to you.
 04:23:21PM 17 THE COURT: Do the two of you want
 04:23:21PM 18 to talk off the record? That would be
 04:23:21PM 19 fine. Is there an objection? What's
 04:23:21PM 20 happening?
 04:23:21PM 21 MS. SMITH: I do have an objection.
 04:23:21PM 22 THE COURT: Talk to counsel and
 04:23:21PM 23 let's see if we need to go to sidebar.
 04:23:21PM 24 - - -
 04:23:21PM 25 (An off-the-record discussion was

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:21PM 2 held at side bar as follows:)
 04:23:21PM 3 - - -
 04:23:21PM 4 THE COURT: What's the objection?
 04:23:21PM 5 MS. SMITH: There's no relevance to
 04:23:21PM 6 any issue in this case. That has nothing
 04:23:23PM 7 to do, being paid for promoting to
 04:23:25PM 8 children, and it's irrelevant.
 04:23:26PM 9 THE COURT: Okay. Overruled.
 04:23:32PM 10 MS. SMITH: I think he's going -- I
 04:23:36PM 11 don't know how many of them --
 04:23:37PM 12 MR. HILLIARD: About six.
 04:23:38PM 13 MS. SMITH: Can I have the same
 04:23:39PM 14 objection to all of them?
 04:23:40PM 15 THE COURT: Sure. Why don't you do
 04:23:42PM 16 all six at once rather than dramatically
 04:23:46PM 17 wasting 15 minutes.
 04:24:06PM 18 Would that be a good place to break
 04:24:08PM 19 for the day after the at-a-boys?
 04:24:10PM 20 MR. HILLIARD: It would, Your Honor.
 04:24:15PM 21 THE COURT: How much longer do you
 04:24:17PM 22 think you'd be with this witness?
 04:24:19PM 23 MR. HILLIARD: 45 minutes.
 04:24:19PM 24 - - -
 04:24:21PM 25 MR. HILLIARD: I'm going to mark a

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:24:22PM 2 number of them at once and hand them to
 04:24:25PM 3 him. So if you'll help me with that.
 04:26:26PM 4 THE COURT: Pass that up to the
 04:26:27PM 5 witness now.
 04:26:39PM 6 BY MR. HILLIARD:
 04:26:41PM 7 Q. Mr. Jones, if you would simply read the P
 04:26:45PM 8 numbers to me.
 04:26:46PM 9 A. Okay. P-3, P-4, P-5, P-6, P-7, P-8, P-9
 04:27:01PM 10 and the last one is P-10.
 04:27:03PM 11 Q. Generally, very briefly, with no
 04:27:07PM 12 specifics as to the contents, will you
 04:27:10PM 13 describe each exhibit?
 04:27:11PM 14 A. Describe them?
 04:27:12PM 15 Q. Yes.
 04:27:14PM 16 A. P-3 basically is a letter for sales
 04:27:23PM 17 performance. That's when I was a rep.
 04:27:26PM 18 Q. Thank you.
 04:27:27PM 19 MS. SMITH: Can he state dates?
 04:27:29PM 20 THE COURT: That would be good, yes.
 04:27:32PM 21 A. 2001 when I was -- as I mentioned, 2001,
 04:27:35PM 22 I was a sales rep.
 04:27:37PM 23 THE COURT: Does it have a specific
 04:27:38PM 24 date?
 04:27:42PM 25 THE WITNESS: December, 2001.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:27:43PM 2 THE COURT: Keep going..
 04:27:48PM 3 THE WITNESS: This does not have a
 04:27:49PM 4 date on it that I see. This is P-4, and
 04:27:54PM 5 this particular document is when I worked
 04:27:57PM 6 with the brand team, CNS brand team in
 04:28:07PM 7 field testing at the new sales aid, as I
 04:28:12PM 8 mentioned to you earlier.
 04:28:13PM 9 P-5, I was an advisor at a product
 04:28:18PM 10 training class.
 04:28:19PM 11 MS. SMITH: Again, I don't know if
 04:28:22PM 12 he doesn't tell me a date and I didn't
 04:28:23PM 13 have that last one.
 04:28:26PM 14 A. My apologies. January 25th, 2002. I was
 04:28:29PM 15 a what they call initial product training
 04:28:35PM 16 advisor; so that's a letter for that.
 04:28:37PM 17 April 8th, 2002 -- P-6, this is a field
 04:28:51PM 18 day letter coming from Rob Craner, who's my
 04:28:54PM 19 regional business director, and I was still a
 04:28:58PM 20 rep at this time; and when he had come out
 04:29:02PM 21 into the field to work with me.
 04:29:03PM 22 P-7, April of 2002, this is when I was
 04:29:12PM 23 promoted as an institutional specialty
 04:29:21PM 24 training representative; so now I was able to
 04:29:24PM 25 train people across the country.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:29:26PM 2 P-8, this doesn't have a date on it.
 04:29:39PM 3 There's actually several dates but no specific
 04:29:41PM 4 date. This is my letter announcing my
 04:29:45PM 5 promotion to the district manager, Houston
 04:29:47PM 6 district manager.
 04:29:51PM 7 P-9, September 13th, 2002. This was
 04:30:08PM 8 actually another letter, but this comes from
 04:30:10PM 9 -- this comes from Rob Craner again about the
 04:30:14PM 10 promotion being a district manager.
 04:30:18PM 11 Then the last one, P-10, was in September
 04:30:20PM 12 10th, 2001 was another letter from my district
 04:30:25PM 13 -- my former district manager when I was a rep
 04:30:28PM 14 for the bonus and also the performance that I
 04:30:33PM 15 was able to accomplish during that time.
 04:30:36PM 16 MR. HILLIARD: We would offer the
 04:30:37PM 17 previously identified -- previously
 04:30:39PM 18 identified Plaintiff's Exhibits.
 04:30:43PM 19 MS. SMITH: Same objection.
 04:30:44PM 20 THE COURT: I'm not quite sure I
 04:30:46PM 21 understand that. I'll hold off on ruling
 04:30:51PM 22 on that objection.
 04:30:52PM 23 MR. HILLIARD: I have a question in
 04:30:54PM 24 regards to those exhibits generally, not
 04:30:56PM 25 specific to the content, Judge, so I

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:30:58PM 2 don't think it's subject to the Court's
 04:30:59PM 3 objection.
 04:30:59PM 4 BY MR. HILLIARD:
 04:31:00PM 5 Q. During the time that you were given those
 04:31:04PM 6 letters, Mr. Jones, professionally, were you
 04:31:11PM 7 and your team promoting and marketing
 04:31:15PM 8 Risperdal off-label to children?
 04:31:18PM 9 A. Yes.
 04:31:21PM 10 THE COURT: Is this a good place to
 04:31:22PM 11 break?
 04:31:23PM 12 MR. HILLIARD: It is.
 04:31:24PM 13 THE COURT: Step down, please.
 04:31:26PM 14 Ladies and gentlemen of the jury,
 04:31:27PM 15 we're going to break at this time. The
 04:31:28PM 16 attorneys and I have a couple things to
 04:31:31PM 17 go over that might help speed things
 04:31:33PM 18 along.
 04:31:35PM 19 I'm going to ask you to return at
 04:31:37PM 20 9:30 tomorrow morning. Between now and
 04:31:39PM 21 when you return, you're to keep an open
 04:31:42PM 22 mind. You haven't even heard all the
 04:31:44PM 23 evidence from the very first witness, and
 04:31:47PM 24 you're not to discuss the case with
 04:31:48PM 25 anyone.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:31:50PM 2 That includes your husband or wife
 04:31:52PM 3 or great niece who says to you when you
 04:31:55PM 4 first walk in the door: What happened in
 04:31:56PM 5 court today?
 04:31:57PM 6 You're to say: We heard opening
 04:32:01PM 7 statements, heard some testimony. If you
 04:32:08PM 8 want to say the judge kept you waiting,
 04:32:11PM 9 you can say that too, but then you are to
 04:32:13PM 10 say: And the judge said I may not say
 04:32:16PM 11 anything further.
 04:32:18PM 12 Blame me. I am saying that. You're
 04:32:22PM 13 going to be on this jury for three, four,
 04:32:25PM 14 five -- three, four weeks. I'm hoping
 04:32:33PM 15 three, three weeks; and you're going to
 04:32:38PM 16 get that same question every time you
 04:32:42PM 17 come home.
 04:32:43PM 18 And unless you establish tonight
 04:32:46PM 19 that you are not going to discuss the
 04:32:47PM 20 case, you're going to get more and more
 04:32:50PM 21 questions and they will come at a time
 04:32:52PM 22 three days from now, three weeks from
 04:32:54PM 23 now, over time when I'm in Chicago when
 04:32:57PM 24 you realize, I'm saying too much, I
 04:33:02PM 25 better shut up.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:33:04PM 2 It's going to be so much harder for
 04:33:06PM 3 you to convince them that you're not
 04:33:09PM 4 going to discuss the case than it will be
 04:33:13PM 5 tonight.
 04:33:13PM 6 When the case is over, you can
 04:33:14PM 7 discuss any and all aspects of this jury
 04:33:17PM 8 and this trial with anybody you want to.
 04:33:20PM 9 But until that time, you are not to
 04:33:23PM 10 discuss the case with anyone.
 04:33:26PM 11 You're not to Tweet about it, blog
 04:33:31PM 12 about it. You're not to do any of that
 04:33:34PM 13 stuff; and blame me: And the judge says
 04:33:36PM 14 I may not say anything further.
 04:33:38PM 15 One other thing. You've noticed
 04:33:42PM 16 that we keep you separate from all the
 04:33:44PM 17 witnesses and interested parties and
 04:33:47PM 18 parties and lawyers and paralegals and
 04:33:52PM 19 whoever else is around. We get ourselves
 04:33:54PM 20 situated, then bring you in and keep
 04:33:57PM 21 everyone seated until we bring you out.
 04:34:00PM 22 Then you all mingle in the same
 04:34:03PM 23 elevators.
 04:34:03PM 24 You're going to be -- as best as
 04:34:11PM 25 possible, it would be good to stay

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:34:13PM 2 separate, but you're going to be mingled.
 04:34:15PM 3 There are going to be times when you
 04:34:17PM 4 come back from lunch and get in the
 04:34:21PM 5 elevator and there had been parties and
 04:34:22PM 6 lawyers.
 04:34:23PM 7 Well, the last thing anybody wants,
 04:34:25PM 8 anybody, but particularly the lawyers, is
 04:34:29PM 9 an accusation that they said anything
 04:34:33PM 10 improper to you.
 04:34:33PM 11 So if people you've been seeing day
 04:34:36PM 12 after day for four days get into the
 04:34:38PM 13 elevator with you or pass you going into
 04:34:42PM 14 City Hall and they don't say a word, they
 04:34:44PM 15 don't even acknowledge that you exist,
 04:34:47PM 16 it's really the proper thing to do.
 04:34:49PM 17 They're not insulting you. They're just
 04:34:51PM 18 trying to make sure nobody gets a
 04:34:54PM 19 mistaken idea they said something
 04:34:56PM 20 improper to you.
 04:34:57PM 21 With those instructions, we'll see
 04:35:04PM 22 you back here 9:30 tomorrow morning.
 04:35:29PM 23 (Jury panel departs courtroom at
 04:35:34PM 24 4:30 p.m.)
 04:36:58PM 25 - - -

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**

04:36:58PM 2 (Discussion held off the record in
 04:43:19PM 3 judge's chambers:)
 04:43:19PM 4 THE COURT: What's your objection to
 04:43:20PM 5 P-3?
 04:43:22PM 6 MS. SMITH: Your Honor, I would
 04:43:23PM 7 probably -- well, P-3, the fact that his
 04:43:28PM 8 -- this letter telling him what his pay
 04:43:32PM 9 is is irrelevant to any issue in this
 04:43:32PM 10 case.
 04:43:42PM 11 THE COURT: "With your support, I
 04:43:42PM 12 know that the Houston district will have
 04:43:47PM 13 a very successful 2001 as we grow
 04:43:47PM 14 Risperdal business to new and higher
 04:43:49PM 15 levels."
 04:43:51PM 16 Objection is overruled. How about
 04:44:27PM 17 P-4?
 04:44:27PM 18 For the record, that was reading
 04:44:27PM 19 from P-3.
 04:44:27PM 20 MS. SMITH: Same objection. Plus,
 04:44:27PM 21 this has no time frame.
 04:44:27PM 22 THE COURT: Reading from P-4: As
 04:44:27PM 23 you know, Risperdal brand team introduced
 04:44:27PM 24 a new sales aid to the CNS sales force at
 04:44:27PM 25 the national sales meeting. The success

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:44:27PM 2 of this piece would not have been
 04:44:28PM 3 possible without the time and resource
 04:44:31PM 4 you and five of your peers committed when
 04:44:35PM 5 field testing a new sales aid."
 04:44:39PM 6 Your objection is overruled. P-5?
 04:44:52PM 7 MS. SMITH: Same objection. It's
 04:44:52PM 8 irrelevant to any issue in this case.
 04:44:52PM 9 THE COURT: This doesn't mention
 04:44:57PM 10 Risperdal. It says: Thank you for your
 04:45:00PM 11 outstanding effort as an advisor during
 04:45:09PM 12 January, 2002 CNS initial product
 04:45:09PM 13 training class.
 04:45:09PM 14 Is that what we referred to in the
 04:45:09PM 15 earlier letter?
 04:45:22PM 16 Objection is overruled.
 04:45:48PM 17 MS. SMITH: My objection is it's
 04:45:50PM 18 irrelevant to the issues in this case.
 04:45:50PM 19 THE COURT: P-6. "As we discussed,
 04:46:09PM 20 continued to use the Sirnaski (ph) data,
 04:46:19PM 21 whatever that is, as a key tool to
 04:46:19PM 22 differentiate Risperdal on efficacy."
 04:46:19PM 23 That's accepted into evidence,
 04:46:19PM 24 whatever that is me talking, not
 04:46:21PM 25 reading. P-7.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:46:36PM 2 MS. SMITH: Same objection,
 04:46:36PM 3 irrelevant.
 04:46:37PM 4 THE COURT: P-7 refers to -- it's
 04:46:42PM 5 Mr. Jones' appointment to something: "He
 04:45:49PM 6 was a member of the recruiting club in
 04:45:51PM 7 1999 and 2001: Tony was instrumental in
 04:45:59PM 8 establishing Risperdal as the number one
 04:46:02PM 9 prescribed antipsychotic within the East
 04:46:05PM 10 Texas MHMR system in 2001."
 04:46:07PM 11 It's accepted into evidence.
 04:46:08PM 12 P-8.
 04:46:10PM 13 MS. SMITH: Same objection,
 04:46:11PM 14 relevance.
 04:46:12PM 15 THE COURT: P-8 talks about sales
 04:46:16PM 16 representative and Risperdal.
 04:46:19PM 17 Objection overruled. P-9?
 04:46:24PM 18 MS. SMITH: It's the same objection
 04:46:26PM 19 on relevance for P-9.
 04:46:28PM 20 THE COURT: P-9 also. It does not
 04:46:37PM 21 talk about Risperdal: Congratulations
 04:46:42PM 22 and welcome to the CNS South Central
 04:46:45PM 23 Management Team appointment as Houston
 04:46:48PM 24 CNS district manager.
 04:46:56PM 25 Objection is overruled.

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 04:47:05PM 2 P-10?
 04:47:08PM 3 MS. SMITH: Same objection,
 04:47:09PM 4 relevance.
 04:47:10PM 5 THE COURT: P-10 I think does
 04:47:12PM 6 mention Risperdal. It does: "Tony, you
 04:47:15PM 7 continue to display an enthusiasm for
 04:47:18PM 8 success as you confront many challenges.
 04:47:20PM 9 I appreciate all of your efforts. With
 04:47:24PM 10 your support, I know that the Houston
 04:47:25PM 11 district will have a very successful 2001
 04:47:28PM 12 as we grow Risperdal business to newer
 04:47:33PM 13 and higher levels."
 04:47:35PM 14 Accepted into evidence.
 04:47:35PM 15 Does that resolve these specific
 04:47:37PM 16 questions?
 04:47:38PM 17 MS. SMITH: Yes, Your Honor.
 04:47:38PM 18 THE COURT: With respect to these
 04:47:39PM 19 exhibits, I noticed that you've got a
 04:47:41PM 20 list of exhibits. 1147, 1386, 14 --
 04:47:56PM 21 looks like 1448, and the ones that you
 04:47:59PM 22 have numbered 1 through 9 are not 1
 04:48:03PM 23 through 9 on this list.
 04:48:05PM 24 I don't care if you want to do a
 04:48:09PM 25 different list, but you'll have them

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 04:48:11PM 2 marked at the beginning of the day and
 04:48:13PM 3 give counsel a copy, either at the
 04:48:18PM 4 beginning of the day, as would be most
 04:48:20PM 5 professional and courteous or as you use
 04:48:23PM 6 it.
 04:48:23PM 7 And having said that, I expect it to
 04:48:26PM 8 be complied with, and I understand
 04:48:28PM 9 sometimes something happens and you don't
 04:48:30PM 10 have something marked and you got to use
 04:48:30PM 11 it.
 04:48:32PM 12 But then I certainly expect you'll
 04:48:34PM 13 have enough copies for everybody. You
 04:48:38PM 14 know you're going to use it, let's have
 04:48:40PM 15 them marked in duplicate so that we don't
 04:48:43PM 16 have to waste time marking and so that
 04:48:47PM 17 counsel gets exactly what the witness
 04:48:48PM 18 gets.
 04:48:49PM 19 MR. HILLIARD: Yes, sir.
 04:48:50PM 20 THE COURT: Any questions about
 04:48:51PM 21 that?
 04:48:52PM 22 MR. HILLIARD: No.
 04:48:54PM 23 THE COURT: I looked over the
 04:48:57PM 24 verdict forms, and plaintiff's forms say
 04:49:02PM 25 nothing about Johnson and Johnson or

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04:49:04PM 2 Janssen research.

04:49:17PM 3 They talk about defendants. The

04:49:18PM 4 defendants are clearly in different

04:49:20PM 5 categories. Your own witnesses made them

04:49:22PM 6 different categories, and you got to give

04:49:25PM 7 me verdict sheets that spell out the

04:49:29PM 8 questions the jury has to ask to find

04:49:32PM 9 liability for these three entities.

04:49:35PM 10 Defendants have given me three sets

04:49:37PM 11 of verdict sheets, one for each of them.

04:49:42PM 12 If you want to say, do that, Judge, that

04:49:45PM 13 solves -- that complies with what I'm

04:49:48PM 14 ordering to be done.

04:49:49PM 15 But it's also inviting a mistrial

04:49:52PM 16 when the jury gives us 22 different

04:49:54PM 17 versions of inconsistent verdicts; and

04:49:57PM 18 what I heard from you is that there's a

04:50:00PM 19 relationship between these that makes one

04:50:03PM 20 liable to the activities of the other.

04:50:05PM 21 So I think it should -- could be

04:50:09PM 22 done in the form of -- ^ and then we can

04:50:15PM 23 mold the verdict.

04:50:17PM 24 Everyone clear on that?

04:50:19PM 25 MR. HILLIARD: Yes.

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04:50:19PM 2 THE COURT: When are you going to do

04:50:21PM 3 that?

04:50:21PM 4 How about Thursday morning?

04:50:22PM 5 MR. HILLIARD: Thursday morning.

04:50:24PM 6 THE COURT: Good enough? Enough

04:50:27PM 7 time?

04:50:29PM 8 MR. HILLIARD: Yes.

04:50:31PM 9 THE COURT: I want to give you more

04:50:34PM 10 than enough so there's no reason you

04:50:37PM 11 can't have it done by then.

04:50:39PM 12 I think that's all on my list.

04:50:41PM 13 MR. HILLIARD: Judge, if Laura and I

04:50:43PM 14 discuss scheduling issues and reach an

04:50:45PM 15 agreement regarding scheduling, would the

04:50:48PM 16 Court object to him leaving and coming

04:50:50PM 17 back?

04:50:50PM 18 THE COURT: If there's an

04:50:51PM 19 agreement --

04:50:52PM 20 MR. HILLIARD: I'm not saying there

04:50:53PM 21 will be.

04:50:54PM 22 THE COURT: If there's an agreement,

04:50:57PM 23 I won't interject a judicial objection,

04:51:06PM 24 but I don't like the idea of breaking not

04:51:17PM 25 at a natural point break, like, after

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04:51:19PM 2 direct examination or something like

04:51:20PM 3 that.

04:51:35PM 4 MS. SMITH: I heard Mr. Hilliard say

04:51:37PM 5 they can bring him back next week, which

04:51:39PM 6 brings up the question we're trying to

04:51:41PM 7 revamp, and he's told us he's finishing

04:51:45PM 8 on Friday.

04:51:46PM 9 THE COURT: He's finishing what on

04:51:47PM 10 Friday?

04:51:48PM 11 MS. SMITH: His case.

04:51:49PM 12 THE COURT: This Friday?

04:51:51PM 13 MS. SMITH: Correct.

04:51:51PM 14 THE COURT: He's joking.

04:51:53PM 15 MS. SMITH: He might be.

04:51:53PM 16 THE COURT: He's trying to sucker

04:51:57PM 17 you into relaxing.

04:51:58PM 18 MS. SMITH: We've changed it three

04:52:00PM 19 times now.

05:00:52PM 20 (Off-the-record discussion.)

05:00:52PM 21 THE COURT: I keep getting more and

05:00:54PM 22 more surprised about what the claims are.

05:01:00PM 23 Mr. Hilliard, as I understand it,

05:01:03PM 24 you are presenting a claim for the child;

05:01:07PM 25 right? The child who's now an adult;

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05:01:09PM 2 right?

05:01:09PM 3 MR. HILLIARD: The child who's still

05:01:11PM 4 a child.

05:01:11PM 5 THE COURT: Still a child? I didn't

05:01:13PM 6 realize that.

05:01:14PM 7 You are presenting a claim for

05:01:17PM 8 damages sustained by the child; correct?

05:01:23PM 9 MR. HILLIARD: Correct.

05:01:23PM 10 THE COURT: Are you presenting an

05:01:24PM 11 independent claim for damages sustained

05:01:29PM 12 by the mother?

05:01:30PM 13 MR. HILLIARD: Yes.

05:01:31PM 14 THE COURT: What exactly are the

05:01:34PM 15 damages that you think the jury should be

05:01:38PM 16 permitted to award the mother for her

05:01:40PM 17 claims as mother?

05:01:43PM 18 MR. HILLIARD: Loss of consortium.

05:01:45PM 19 THE COURT: Now, I know the answer

05:01:51PM 20 is you don't know or you're not sure, but

05:01:53PM 21 I just want to put it on the record.

05:01:55PM 22 Is there anything in your verdict

05:01:57PM 23 Interrogatories about the mother's

05:02:00PM 24 independent individual claim?

05:02:02PM 25 MR. HILLIARD: Do not.

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05:02:06PM 2 THE COURT: Is there anything on
05:02:08PM 3 your point for charge about the mother's
05:02:10PM 4 independent claim?
05:02:11PM 5 MR. HILLIARD: Again, I do not know.
05:02:14PM 6 THE COURT: What did I say? By
05:02:15PM 7 Thursday, I want to know what the jury
05:02:18PM 8 verdict Interrogatories are as to the one
05:02:24PM 9 two, three defendants that you've sued.
05:02:27PM 10 I also want verdict Interrogatories
05:02:30PM 11 if you're pursuing independent claims as
05:02:34PM 12 to the child and as to the mother. And
05:02:38PM 13 also with respect to the points for
05:02:40PM 14 charge.
05:02:43PM 15 I'm directing you by Thursday
05:02:45PM 16 afternoon, Thursday morning, to have gone
05:02:48PM 17 through all of this stuff that's been
05:02:49PM 18 filed and submitted to me to tell me
05:02:52PM 19 where it is or that you're dropping it or
05:02:57PM 20 understand that I'm going to deem it
05:03:01PM 21 waived if it's not in there. Got me?
05:03:04PM 22 MR. HILLIARD: I do.
05:03:05PM 23 THE COURT: Since it seems to be a
05:03:21PM 24 moving target of some sort, list every
05:03:24PM 25 claim, just a chart or a list, plaintiff

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CERTIFICATION

4 I hereby certify that the
5 proceedings and evidence are contained
6 fully and accurately in the notes taken
7 by me on the hearing of the above cause,
8 and this copy is a correct transcript of
9 the same.

Maureen McCarthy

Maureen McCarthy, RMR, CRR
Official Court Reporter

15
16
17 (The foregoing certification of this
18 transcript does not apply to any
19 reproduction of the same by any means
20 unless under the direct control and/or
21 supervision of the certifying reporter.)
22
23
24
25

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05:03:28PM 2 versus defendant, what the names of the
05:03:33PM 3 claimants are, plaintiff versus Johnson
05:03:36PM 4 and Johnson, and what the claims are and
05:03:38PM 5 if there are two plaintiffs, do the same
05:03:41PM 6 thing for two.
7 - - -
8 (Concluded chambers discussion.)
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