

In The Matter Of:

Pledger v.

Janssen

(Morning Session)

Vol. X

February 6, 2015

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

City of Philadelphia

First Judicial District Of Pennsylvania

100 South Broad Street, 2nd Floor

Philadelphia, PA 19110

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

4 -----
5 IN RE: RISPERDAL® LITIGATION :
6 March Term, 2010, No. 296 :
7 ----- :
8 Philip Pledger, et al., :
9 Plaintiffs, :
10 v. :
11 :
12 Janssen Pharmaceuticals, Inc., :
13 Johnson & Johnson Company, :
14 and Janssen Pharmaceutical :
15 Research and Development, :
16 L.L.C. :
17 Defendants. :
18 -----

19 - - -
20 FRIDAY, FEBRUARY 6, 2015
21 - - -
22 COURTROOM 425
23 CITY HALL
24 PHILADELPHIA, PENNSYLVANIA

25 - - -
26 B E F O R E: THE HONORABLE RAMY I. DJERASSI, J.,
27 and a Jury
28 - - -

29 JURY TRIAL - VOLUME X
30 - MORNING SESSION -

31 REPORTED BY:
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Also Present:

Priscilla M. Brandon, Esq., Sheller, P.C.
Marianne Mari, Tipstaff
Cory Smith, Video Technician
Ken Reed, Video Technician
Thomas F. Champion, Esquire
Mrs. Pledger

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- I N D E X -

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1 (The following transpired in open
2 court outside the presence of the jury:)

3 - - -

4 COURT CRIER: All rise.

5 (Call to order at 10:16 a.m.)

6 THE COURT: All right. Good morning,
7 everybody. Thank you for your patience. I
8 had a family matter.

9 All right. Let me see all the
10 exhibits again.

11 (Pause.)

12 All right. Regarding the issue of
13 Dr. Mark Solomon, I have now reviewed all the
14 exhibits that have been presented to me in
15 this case. I have reviewed both of the
16 depositions that were provided. I've
17 reviewed Dr. Vaughan's report, and then I
18 think there were three of them from
19 Dr. Braunstein. I've read all three. And
20 I've read "Be Well Philly." I've read Mark
21 P. Solomon's -- his -- copies of his Web
22 page, his hard copy copies of his website.
23 And I've read something called "The Grip
24 System," which is Court 15-C. I read
25 something from the Plastic Surgery Channel,

1 "Collagen and Fillers," Court 15-D. And I
2 have read a chapter on gynecomastia. I'm not
3 sure that I actually read "Injectables" by
4 Mark Solomon, but I did read a "Gynecomastia:
5 Two Perspectives," on surgery.
6 "Gynecomastia," Chapter 16, of "Male
7 Aesthetic Surgery," Court 16.

8 That was in a book that was -- among
9 the editors of that book was Dr. Solomon,
10 Mark P. Solomon.

11 One second.

12 The think the reason I didn't read it
13 is that I didn't have it. Maybe that's why I
14 didn't read it.

15 Is it important for me to read this?
16 "Injectables" by Mark P. Solomon, Page 93. I
17 did not read that, I don't think, because I
18 don't think it was provided.

19 What I did read was a chapter called,
20 Chapter 16 called "Gynecomastia: Two
21 Perspectives," by Gary J. Rosenberg and
22 Gustavo A. Colon. And that was from that
23 book.

24 And I believe I also read another one
25 about the same subject from a different

1 doctor that was in this book about
2 gynecomastia.

3 MS. SULLIVAN: And, Your Honor, that
4 was submitted because the plaintiffs had
5 advised the Court that Dr. Solomon wrote the
6 chapter on gynecomastia. He didn't. But he
7 wrote a chapter on male wrinkles and --

8 THE COURT: Oh, I see. Well, I
9 didn't read that chapter at all. But I am
10 disclosing that I did read a chapter called
11 "Gynecomastia: Two Perspectives," by Gary J.
12 Rosenberg and Gustavo A. Colon, from what was
13 provided to me in a book that was edited by
14 Dr. Solomon.

15 MR. KLINE: Yes, which is what I
16 represented, not that he wrote that chapter,
17 as just represented by counsel.

18 THE COURT: Whatever. I don't think
19 it would have affected a decision by the
20 Court in this case in any way, because I
21 would conclude that the testimony, proffered
22 testimony, expert testimony of Dr. Solomon
23 will be permitted at this trial. There are a
24 lot of law -- there's a lot of law that I
25 believe supports this decision; but

1 fundamentally, for a long time in
2 Pennsylvania, the standard by which an expert
3 witness is qualified has been a liberal one.
4 And I'm quoting now from Lira versus Albert
5 Einstein Medical Center versus Pearlstein at
6 559 A.2d 550, Superior Court, 1989.

7 For a long time, as cited there, if a
8 witness has any reasonable pretension to
9 specialized knowledge on the subject under
10 investigation, he may testify and the weight
11 to be given to his testimony is for the jury.
12 And based on all the material that I have
13 read, it is clear that this particular
14 proffered witness does have more than a
15 reasonable pretension to specialized
16 knowledge on the subject of gynecomastia and
17 its relationship to drugs, and he is
18 qualified in his own field to offer a
19 causation opinion in this case.

20 I have also now read Dr. Braunstein's
21 reports and Dr. Vaughan. And this Court
22 concludes that the parties are permitted to
23 present the expert testimony on this fairly
24 novel question of causation, which has not
25 been fundamentally determined by any source

1 that I had seen. So the various experts can
2 give relevant testimony to this question; and
3 to the extent that they themselves qualify
4 under the expert witness standard that I've
5 just read and others are permitted to
6 testify. So the next question would be -- if
7 they're qualified.

8 The next question would be on the
9 issue of prejudice to the defense. And I
10 believe that there is no real surprise in the
11 testimony proffered by Dr. Solomon, and that
12 is based for a number of reasons, most
13 especially the nature and the extent of the
14 deposition that took place in the Goldenberg
15 matter, I believe, where virtually the entire
16 career of Dr. Solomon was inquired at length
17 by -- including many, many questions on his
18 knowledge as to gynecomastia and in the
19 relationship between his patients and those
20 who have taken drugs, his education, his
21 skill set, his mindset in terms of diagnosis,
22 how he goes about conducting gynecomastia
23 diagnoses, all of that was reviewed and
24 deposed in great detail. So there is no
25 surprise about this particular witness.

1 And the other aspects of the matter
2 all go to the weight that I've seen; namely,
3 the fact that all of these doctors that are
4 proffered here have very large private
5 practices of their own, in multiple fields,
6 in multiple issues ranging from endocrinology
7 to surgery and plastic surgery; and all of
8 that, all of the biases and self-promotions
9 are open for cross-examination as to the
10 weight of their testimony as viewed by the
11 jury.

12 In the end, our system provides for a
13 lay jury to make the decisions in this case
14 concerning causation; and the purpose of
15 expert witness testimony is to help the jury
16 in reaching those decisions. And I believe
17 that Dr. Solomon and the others, if they
18 qualify, should aid the jury in their sworn
19 duty. And that is the ruling of this Court.

20 MS. SULLIVAN: And, Your Honor, two
21 issues. First, the defendants renew their
22 motion for a mistrial based on the reasons
23 already articulated.

24 And second, Your Honor, their new
25 expert, Dr. Solomon, has significant

1 scheduling issues. We've been advised that
2 he can only give a deposition on Sunday; and
3 he can only testify for a half a day on
4 Monday, which I don't believe will complete
5 his testimony. And he can't come back on
6 Tuesday. And so that puts everybody in a
7 difficult situation.

8 What we don't want to do, Your Honor,
9 and we would object to, is starting our case
10 before we ever get to cross-examine --

11 THE COURT: I haven't researched the
12 law on that, to be honest.

13 MS. SULLIVAN: -- Dr. Solomon.

14 THE COURT: If you have some law for
15 me, both parties, by 3 o'clock today on the
16 question of whether or not I abuse my
17 discretion by forcing a party to start before
18 the conclusion of the other party, I'd be
19 happy to examine it.

20 But if that is the posture of the
21 case, then I may have to change my ruling
22 about this and make the Sunday matter a
23 videotaped trial deposition.

24 MS. SULLIVAN: And, Your Honor, the
25 second issue -- there's two issues. One,

1 inserting a witness before -- inserting a
2 witness in our case. But the second issue is
3 more prejudicial, not being able to
4 cross-examine the witness.

5 THE COURT: That's why I may make the
6 Sunday one now, based on this information, a
7 videotaped trial deposition. Because now
8 that I have completed all of the reading in
9 this matter, now that I've completed all the
10 reading in this matter, you have a lot of
11 knowledge and ammunition in which to
12 cross-examine, as on trial, Mark Solomon on
13 Sunday as a trial video deposition.

14 MS. SULLIVAN: Is Your Honor
15 suggesting --

16 THE COURT: I don't -- I really -- I
17 have no qualms that the record will show that
18 you are prepared for his testimony.

19 MS. SULLIVAN: And, Your Honor, we're
20 not prepared for his testimony in this case.
21 He's just been designated as a witness in
22 this case. We haven't taken a deposition of
23 him in this case. They have taken multiple
24 depositions of Dr. Braunstein, including a
25 lengthy one in this case, our expert.

1 THE COURT: Well, I will do it this
2 way: I'll permit a deposition to take place,
3 and then the trial deposition to take place
4 about an hour or two later. Because as far
5 as I can see the trial, the deposition that
6 you need on this case should not last more
7 than half an hour, because it's based on one
8 examination of this particular child.

9 Everything else that you may want to
10 ask Dr. Solomon based on the Goldenberg
11 deposition is there for you to cross-examine
12 with.

13 MS. SULLIVAN: And, Your Honor, they
14 took a much lengthy -- much more lengthy
15 deposition of our expert witnesses on
16 causation in connection with this specific
17 case.

18 THE COURT: I understand that. But
19 you have to remember that part of -- actually
20 the cause for all of this lays in the hands
21 of the defense.

22 I'm willing to accommodate, but I'm
23 not willing to ruin the lives of my jury.

24 MS. SULLIVAN: And, Your Honor, we
25 respectfully would ask that Dr. Solomon,

1 their major causation witness, be brought
2 live in this case and that we at least have
3 time to prepare after a deposition for a
4 cross-examination.

5 THE COURT: Well, you know --

6 MS. SULLIVAN: They want to insert a
7 witness --

8 THE COURT: You know, fairly
9 honestly, I haven't heard from the plaintiff
10 in this, so let me hear from plaintiff.

11 There is some truth to the fact that
12 once a person is on the stand, his other
13 associations and involvements in life must
14 cease. There is some truth to that. So if
15 you want to present him, I can't bend over
16 backwards to accommodate a busy doctor, just
17 like I can't do that for any government
18 official or anybody else who wants to testify
19 here in court. There has to be some
20 accommodation for a court.

21 MR. KLINE: Good morning, Your Honor.

22 We're prepared to proceed as the
23 Court just suggested, which would assure that
24 we have no issues, and we can have this
25 testimony.

1 I believe that Dr. Solomon's
2 testimony will be, on direct examination,
3 something at or less than an hour. And I
4 would expect, I can't believe that
5 cross-examination on an hour witness could or
6 should be longer than some reasonable
7 multiple of that. So we're prepared to
8 proceed on the Court's directive, which is
9 we'll produce him Sunday. We can take a
10 break. We can video him. It is the best way
11 to have this case just simply move forward
12 without further adieu.

13 So that's what we suggest.

14 THE COURT: All right. So let me
15 hear that.

16 MS. SULLIVAN: And, Your Honor,
17 that's enormously prejudicial. Your Honor
18 had ruled that Dr. Goldstein had to come
19 live. I mean, they're inserting a new
20 witness and now they want to hide him from
21 the jury and give us no time to prepare for
22 his cross-examination.

23 THE COURT: I'm not sure why you're
24 saying hiding him from the jury. This is the
25 Court's request.

1 But if you're objecting to it, I
2 don't have a problem with that, I really
3 don't. I had just said the position of the
4 Court is once a live witness testifies here,
5 I cannot guarantee his entry, nor will I
6 disjoin the testimony.

7 There's been enough accommodations by
8 the Court now for the plaintiff's situation
9 that I need some accommodation from all the
10 other parties in this case.

11 This case is -- this Court already
12 has delayed this case for a day or two
13 because of the cause made by the defense and
14 the decision made by plaintiff's witness.

15 MS. SULLIVAN: So, Your Honor, is
16 Dr. Solomon coming live to testify on Monday?

17 THE COURT: I don't know. At the
18 moment, we can address that later. I do know
19 that there will be a full opportunity that is
20 satisfactory to the Court.

21 But I can understand Mr. Kline's
22 position. If I were the trial lawyer on
23 this, I would also say that his testimony can
24 be completed in an hour, but I cannot promise
25 to you how long the cross-examination would

1 take before I start getting itchy.

2 So, you know, you may want to make a
3 call to Dr. Solomon to postpone his clients
4 for a day. Most of them are elected surgery
5 anyway.

6 MR. KLINE: Yeah. I would think
7 that -- I've urged him to do that, Your
8 Honor, so that you know.

9 THE COURT: All right. Well --

10 MR. KLINE: And believe me, I'm
11 trying to -- I'm trying to cooperate. In
12 fact, in fact, I had offered the defense the
13 other alternative which the Court had
14 suggested -- I'm not in favor of it, but you
15 should know --

16 THE COURT: The other suggestion I
17 can make to you, sir, is if Tuesday is a
18 better day for him guaranteed.

19 MR. KLINE: Tuesday is a day,
20 contrary to everything that's been
21 represented about him, Tuesdays he is at
22 Shriner's Hospital doing essentially
23 missionary work.

24 THE COURT: All right. So,
25 therefore, those, as I understand it, are

1 serious nonelective health matters as I read
2 in the depositions, so, therefore, Monday is
3 the day that he has to cross out his schedule
4 if he's going to be available to testify at
5 all in this case.

6 MR. KLINE: I will have him on -- I
7 would simply request that if we -- I'm going
8 to tell him that. And I'm going to also make
9 him available for his brief deposition on
10 Sunday. And I'm also going to have him very
11 briefly on Monday. If we can start early on
12 Monday, maybe he can do both. But I plan to
13 have him as a very brief witness, so --

14 THE COURT: All right. I understand
15 that.

16 MR. KLINE: -- I hear the Court.

17 THE COURT: But if I were him, he's
18 getting no promise from the Court that I
19 would allow him to leave.

20 MR. KLINE: Understood. Understood.

21 THE COURT: If he is here on Monday
22 morning.

23 MR. KLINE: I told Dr. --

24 THE COURT: I will get itchy, I'm
25 sure -- if it's a relatively straightforward

1 direct examination -- sure, after a few
2 hours, unless there's something
3 noncumulative. I will control that.

4 But based on this particular
5 deposition right here, which was dated
6 August -- the one that I'm relying on --
7 August 20, 2014, this deposition must have
8 lasted three hours.

9 MR. KLINE: No. I think more like --
10 more like --

11 MR. GOMEZ: Three.

12 MR. KLINE: Three. Okay.

13 THE COURT: Three hours, yeah.

14 So I would not -- I would not expect
15 a cross-examination of less than three hours
16 in this case.

17 MR. KLINE: Okay.

18 THE COURT: All right.

19 MR. KLINE: Yes.

20 THE COURT: So who do we have today?

21 MR. KLINE: Mom, Mrs. Pledger, ready
22 to go. And I don't expect to be overly long
23 with her.

24 THE COURT: Okay. Are there any
25 other witnesses today?

1 MR. KLINE: No. We're done with --
2 we have mom and we have Dr. Solomon. That's
3 our case. The burden is on them to get
4 moving.

5 THE COURT: Well, where's Dr. Solomon
6 today?

7 MR. KLINE: Oh, in New York City,
8 seeing patients, a full load of patients.

9 THE COURT: So we could not do a
10 deposition today?

11 MR. KLINE: No.

12 THE COURT: Okay.

13 MR. KLINE: He had a full load of
14 patients today.

15 THE COURT: All right. Fine.

16 MS. SULLIVAN: And he can't do one
17 Saturday, Your Honor.

18 MR. KLINE: That's correct. He's
19 back -- he's back on Sunday. And we've been
20 through this, Your Honor. You can never
21 reach an end point with defense counsel,
22 never.

23 MS. SULLIVAN: Here we go.

24 MR. KLINE: We've been through this
25 over and over and over again.

1 THE COURT: Well, I'm aware that is
2 an issue as we go forward. But I do need to
3 have your -- I'm aware that could be an issue
4 as we go forward. But, you know, we spent
5 about -- if we didn't have this wrinkle, your
6 case-in-chief would have been about two
7 weeks. So I'm going to tell the jury to
8 expect another two weeks once we get to their
9 case.

10 MR. KLINE: I would hope less, but I
11 understand.

12 MS. SULLIVAN: And, Your Honor, just
13 one brief issue on Mrs. Pledger's exam. They
14 have pictures of the plaintiff that they want
15 to hand out to the jury. I understand Your
16 Honor's ruling about the medical exam
17 pictures. But other pictures of him sort of
18 living normal life, to have them handed out
19 to the jury, I would believe, is unduly
20 prejudicial. The jury is not being passed
21 around other evidence in the case. It gives
22 undue weight to one piece of evidence versus
23 others. And it also takes away from the
24 jurors listening to the actual testimony. So
25 I would object to that, other than the

1 medical exam pictures that I understand Your
2 Honor doesn't want shown on the screen.

3 MR. KLINE: I actually thought of
4 that, Your Honor. In typical fashion,
5 counsel didn't approach me about it. The
6 answer would be a simple one. I would expect
7 only to show the photos -- only to attempt to
8 pass the photos of Austin that are of his
9 exposed chest to the jury. I have one or two
10 pictures of him in front of a bus and as a
11 youngster that I would just display
12 ordinarily, unless the Court -- unless the
13 Court directs me that those photos should be
14 done some other way.

15 THE COURT: No. Is there an
16 objection to --

17 MS. SULLIVAN: I haven't seen them,
18 Judge.

19 MR. KLINE: Well, she knows those
20 photos, too.

21 THE COURT: Well, why don't you take
22 a look at them. I mean, I think that the
23 jury should be entitled to see the boy in the
24 proper attire and have the respect given to
25 this young man.

1 MS. SULLIVAN: Which are the photos,
2 Counsel, that you want to pass around to the
3 jury?

4 MR. KLINE: I have an intention to
5 pass the photo of him coming out of the pool.
6 I am not going to display it in public, but
7 only to the Court.

8 I think you know it. It's this one.

9 MS. SULLIVAN: Is that the only one?

10 MR. KLINE: Of the pool, yes.

11 MS. SULLIVAN: Any others that you're
12 going to pass out?

13 MR. KLINE: Yes, the most recent one,
14 which would be the logical one, to show his
15 current condition which was taken in
16 connection with Dr. Solomon's exam, which is
17 this photo here.

18 MS. SULLIVAN: I have no objection to
19 the last photo being shown to the jury
20 privately.

21 The one in the pool is a public photo
22 and so I would -- I think that that should be
23 shown on the screen instead of the undue
24 weight that the jury would give it being
25 passed around.

1 THE COURT: May I see the photos,
2 please?

3 MR. KLINE: Sure.

4 MS. SULLIVAN: And it's also attached
5 to his public deposition that you guys filed
6 in the case, the pool picture.

7 - - -

8 (Handing photos to the Court.)

9 - - -

10 COURT CRIER: I think we have those.

11 MR. KLINE: Bear with me, Your Honor.

12 MS. SULLIVAN: Your Honor, that
13 picture has been filed by the plaintiffs
14 publicly.

15 THE COURT: Okay.

16 MR. KLINE: I don't have a problem
17 with that.

18 THE COURT: Is that the one picture
19 we're talking about?

20 MR. KLINE: The picture of the pool
21 shows him at about age 11.

22 THE COURT: You want to do what with
23 this picture, sir? You want to have it
24 published? You want to put it up on the
25 screen?

1 MR. KLINE: I would rather show it to
2 the jury.

3 THE COURT: Okay. That's permitted.

4 MR. KLINE: And this is the current
5 picture.

6 THE COURT: That's the one from one
7 of the exhibits today?

8 MR. KLINE: Yeah.

9 THE COURT: That's the one that's
10 sealed, though.

11 MR. KLINE: Yes, that's right.

12 THE COURT: So are those the two you
13 want to publish to the jury today?

14 MR. KLINE: Yes. So the Court has an
15 advance, I would publish all five of the
16 Solomon photos, pass them to the jury during
17 his testimony.

18 THE COURT: All right.

19 MR. KLINE: But today I only need
20 this one.

21 THE COURT: So you're talking about
22 this one. This one here, why don't you have
23 this marked in advance and that one, because
24 I want to make sure that the second picture
25 here remains sealed.

1 MR. KLINE: Let me make sure that I
2 have the one that I have --

3 COURT CRIER: 71 and '2, I think.

4 - - -

5 (Exhibits P-71 and 72, photos, were
6 marked for identification.)

7 - - -

8 THE COURT: Just for a point of
9 information, Ms. Sullivan, before we proceed,
10 in the event that we are fortunate enough to
11 conclude this case as far as the plaintiff's
12 testimony on Monday, what are your plans as
13 far as Tuesday is concerned?

14 Because very honestly, I will be
15 here, but I had called a meeting in which
16 people from around the country are going to
17 be present, which I don't have to be at, and
18 I was planning not to be at. But now that if
19 there's a possibility that I could actually
20 attend this meeting and start at -- the court
21 would start at 1 o'clock on Tuesday, I might
22 want to do that.

23 MS. SULLIVAN: Ms. Brown is telling
24 me, whatever the Court wants. We can make it
25 work, Judge.

1 THE COURT: All right. So we'll see
2 where we are then at that point, okay.

3 MR. KLINE: Would that involve some
4 time off on Monday or Tuesday?

5 THE COURT: Not on Monday. I was
6 planning -- because of this situation, I was
7 planning to go right through it and just meet
8 everybody and then come back here. But if
9 we're at a natural stopping point by then,
10 then, yes, I would like to be at that
11 meeting.

12 MS. SULLIVAN: And, Your Honor, at
13 the end of their case, we'll have a motion
14 for nonsuit as well.

15 THE COURT: Absolutely.

16 That meeting is scheduled for 10:45
17 to 1 o'clock in this building.

18 MR. KLINE: Do you anticipate some
19 testimony Tuesday or is it --

20 THE COURT: Oh, I would love to have
21 a full day -- a full afternoon of testimony.
22 It's just whether we start at a normal time
23 or like 1 o'clock.

24 MR. KLINE: Okay. Got it. Thank
25 you.

1 MS. SULLIVAN: That's fine, Judge.

2 MS. BROWN: That's good.

3 COURT CRIER: So, Your Honor, marking
4 for the record a photo of the plaintiff in a
5 pool, P-71; and a photo of the plaintiff
6 present day, P-72.

7 THE COURT: All right. Well, why
8 don't we reverse it. The first one you're
9 going to show is the swimming pool one,
10 right?

11 MR. KLINE: Yes.

12 THE COURT: P-71. And P-72 is the
13 other one. Okay. Got it.

14 All right.

15 (Pause.)

16 MR. KLINE: Your Honor, I don't know
17 the jury's -- I don't know the jury issues,
18 but is there any chance of starting on Monday
19 at 9:00 so that we would have a chance --

20 THE COURT: I will ask them to come
21 in at 9:00. I can't control when they show
22 up. We are having a lot of issues with this
23 jury, no question.

24 Yes. You can tell the doctor we will
25 ask everybody to come in at 9:00 so we can

1 start at 9:30. 9:15, 9:30. There's no
2 promises.

3 MR. KLINE: Understood.

4 THE COURT: My point is not to convey
5 to Dr. Solomon I'm promising anything.

6 MR. KLINE: Understood. It will not
7 surprise Your Honor that I have conveyed
8 that.

9 THE COURT: Pardon me?

10 MR. KLINE: It will not surprise Your
11 Honor that I've conveyed that before being
12 told by the Court. I'm pretty good at
13 anticipating Your Honor at this point.

14 And I told him I wasn't going to
15 fight about it either.

16 THE COURT: No. I mean, I do
17 recognize that patients of his may have to
18 wait to get their operation again, but they
19 might have to wait in line, but...

20 MR. KLINE: Apparently it's a long
21 line.

22 MS. SULLIVAN: Not going to say
23 anything.

24 THE COURT: Well, he has repeat
25 customers.

1 (Laughter in the courtroom.)

2 MR. KLINE: Hey, we laughed here
3 today, all of us together.

4 THE COURT: He has repeat customers,
5 according to the literature.

6 COURT CRIER: All rise as the jury
7 enters the courtroom.

8 - - -

9 (The following transpired in open
10 court in the presence of the jury:)

11 - - -

12 (Whereupon the jury entered the
13 courtroom at 10:43 a.m.)

14 - - -

15 THE COURT: All right. Please be
16 seated.

17 All right. Good morning, everybody.
18 It seems like a long time ago. But we're on
19 track now for another witness today, and then
20 I have to tell you that most likely we will
21 be adjourning sometime either before lunch or
22 after -- shortly after lunch, sometime during
23 the afternoon, so it will be a fairly short
24 day. And then we're going to come back on
25 Monday. And I'm going to ask you on Monday

1 to do me a favor, if you can, to try to be
2 here by 9 o'clock, okay?

3 All right. So right now we are going
4 to continue with the testimony here of the
5 plaintiff's case.

6 And, Mr. Kline, when you're ready,
7 you may proceed.

8 MR. KLINE: I am.

9 Again another good morning, Your
10 Honor.

11 Good morning, everyone.

12 JURY PANEL: Good morning.

13 MR. KLINE: Thank you for being here.

14 Your Honor, plaintiff calls Benita
15 Pledger.

16 THE COURT: Yes.

17 - - -

18 (Witness took the stand.)

19 - - -

20 COURT CRIER: Remain standing. State
21 your name and spell it, please.

22 THE WITNESS: Benita Pledger,
23 B-E-N-I-T-A, P-L-E-D-G-E-R.

24 COURT CRIER: Raising your right
25 hand.

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- - -

... BENITA PLEDGER, after having been first duly sworn, was examined and testified as follows:

- - -

MR. KLINE: Proceed, Your Honor?

THE COURT: Yes.

- - -

DIRECT EXAMINATION

- - -

BY MR. KLINE:

Q. I get to formally call you Mrs. Pledger, and I get to formally say good morning again.

A. Good morning.

Q. Good morning.

Would you speak directly into the microphone so that everyone can hear you. That's a little awkward, but you might want to pull it up a little bit.

A. Okay. Is that better?

Q. Yes. You want to make sure you're going through the microphone.

A. Okay.

Q. You've spent a bunch of time in our city.

A. Yes.

1 Q. And do you like it?

2 A. It's -- it's a lot different than where I
3 live, and I am enjoying some of it.

4 Q. Good.

5 You're staying nearby the courthouse?

6 A. Yes.

7 Q. And you're here on behalf of your son, Austin?

8 A. Yes.

9 Q. He is, we know, an autistic young man,
10 correct?

11 A. Yes.

12 Q. Why don't you tell us in your own words, a
13 paragraph, about Austin.

14 A. Well, other than he's just -- he's just such a
15 blessing. He's a wonderful person. He's a loving
16 person. He's growing and changing every day. He's
17 already gone way past my imagination could take him.
18 All my hopes for him are happening. He's -- he's
19 learning to talk better and communicate and grow
20 every day. He's not finished. He's very smart. He
21 surprises us.

22 Q. We hear you're from Thorsby, Alabama?

23 A. Yes.

24 Q. And do you live with your husband?

25 A. Yes.

- 1 Q. How long have you been married?
- 2 A. Thirty-three years.
- 3 Q. And do you and your husband -- your husband is
- 4 Philip?
- 5 A. Yes.
- 6 Q. Your husband is Philip Pledger?
- 7 A. Yes.
- 8 Q. And is he Philip Austin Pledger as well?
- 9 A. No.
- 10 Q. Your husband is Philip...
- 11 A. Lynn Pledger.
- 12 Q. And your son is?
- 13 A. Philip Austin Pledger.
- 14 Q. And of course you call him "Austin"?
- 15 A. Yes.
- 16 Q. You and your husband have raised this young
- 17 man?
- 18 A. Yes.
- 19 Q. Do you still call him a boy?
- 20 A. Yes.
- 21 Q. Is he, although 20 years old, very much like a
- 22 boy?
- 23 A. Yes, he is.
- 24 Q. And does he speak?
- 25 A. Yes.

- 1 Q. Can you communicate with him?
- 2 A. Yes.
- 3 Q. Is he well-controlled today?
- 4 A. Yes, he -- he is, very well.
- 5 Q. And is he very much in a routine? Do you have
- 6 him very much in a routine?
- 7 A. He -- he likes to know what his next day is
- 8 going to be and his week ahead of him. He likes to
- 9 know different things.
- 10 Q. Is it a challenge being a parent of an
- 11 autistic child?
- 12 A. Yes, it is.
- 13 Q. And have you accepted that challenge?
- 14 A. Oh, yes.
- 15 Q. Is Austin your, essentially, your life work?
- 16 A. Oh, definitely, definitely.
- 17 Q. Do you work outside of the house?
- 18 A. No.
- 19 Q. And does Phil work outside of the house, your
- 20 husband?
- 21 A. Yes, he does.
- 22 Q. And what does he do?
- 23 A. He's an auto mechanic. He works near home, so
- 24 it works out well when I need him to come help me.
- 25 Q. And does he essentially do small repairs on

1 cars?

2 A. Yes.

3 Q. Okay. Under the name --

4 A. Pledger's Shop.

5 Q. Pledger's Shop?

6 A. Uh-huh.

7 Q. And the town that you live in is -- what's the
8 official name of the town?

9 A. Well, my address is Thorsby, but we live
10 between Thorsby and Clanton. Both are small towns.

11 Q. And how far is that from Birmingham?

12 A. An hour.

13 Q. Okay. I want you to give the jury a sense of
14 some of the things that Austin can and can't do so
15 they have a sense of his capacity to understand.

16 Can he -- first of all, has he been
17 in school all these years since he's been a child?

18 A. He has been in school since he was three; and
19 at 15 he got into the high school, which was a
20 different school than -- same school system. And
21 they really weren't equipped for him. And they
22 wanted him to be a homebound student after that.
23 And until he's age 21 or at the end of this school
24 year, they still send a teacher two days a week.
25 Uhmm, I think that was the question about his

1 education.

2 Q. Yes. And do you participate in his education?
3 Do you participate in teaching Austin things?

4 A. Oh, yes. Yes.

5 Q. Let's talk about some of the things that he
6 can and can't do.

7 A. Okay.

8 Q. Does he have a -- does he have a tablet like I
9 have in front of me?

10 A. Yes.

11 Q. And I think it's a -- I think it's a Verizon
12 tablet?

13 A. Yes.

14 Q. And does he use it?

15 A. Yes, he does.

16 Q. Okay. So he's able to navigate the tablet?

17 A. Very well.

18 Q. Okay. And can he -- does he -- does he find
19 things on it through the, you know, through the
20 process --

21 A. Yes.

22 Q. -- that we're familiar with?

23 A. He figures it out. I -- I don't do it. I
24 don't know how to do it. But he looks up the things
25 that he's interested in on YouTube, which are Wheel

1 of Fortune and all the Nick Jr. shows and Gullah
2 Island. All his favorite shows.

3 Q. Is your son an aficionado of Wheel of Fortune?

4 A. I'm not sure what "aficionado" means.

5 Q. Is he a -- does he have a highly developed,
6 acquired taste for Wheel of Fortune?

7 A. Very much. He guesses them way before we do.
8 I think he can picture the letters that are missing
9 somehow. It's even -- it's even phrases that -- for
10 example, before I came here, we watch it every night
11 together. He comes in the living room, and it's a
12 big event. Every night we don't miss it. And he
13 picked -- he doesn't understand what "birthday suit"
14 is. But it was funny, he guessed "birthday suit"
15 with three letters up there. So we were shocked.
16 And that's just one example. He does it every
17 night.

18 Q. But there's something else he really likes
19 about Wheel of Fortune.

20 A. Well, he likes Vanna. And he likes to guess
21 what she's going to wear. And if she ever talks --
22 she doesn't talk much -- so if she talks, he has to
23 really be quiet and listen and then he'll repeat it.
24 He likes to know what she has to say.

25 Q. Does Austin often repeat things?

1 A. Yes.

2 Q. Okay. So if you say -- give us an example of
3 something, how you would talk to Austin and what he
4 would say back, just briefly.

5 A. Well, it's -- it's evolved. With autism
6 there's a lot of echolalia. And he doesn't do it to
7 that point. Echolalia, I found out, I would say
8 "Austin, do you want to go to school today?" And he
9 would say, "Do you want to go to school today?
10 Yes." But he's kind of gotten away from that as
11 he's gotten older.

12 And now if it's something new, since
13 he was -- when -- if it's time to have his fun day
14 out and I'll ask him where he wants to go, he can
15 come up with things independently. He doesn't just
16 have to repeat what I say. So he doesn't use so
17 much the echolalia.

18 But he does repeat. If it's
19 something new he's never heard or he wants to
20 remember it, he almost repeats it to put it in
21 that -- in his brain to remember.

22 Q. Does he have the capacity to understand things
23 around him, people around him and the like?

24 A. Oh, yes, yes.

25 Q. And does he recognize people?

1 A. Yes.

2 Q. And he'll remember people who he meets.

3 A. Yes, he remembers their names.

4 Q. Also, do you have him on a daily routine,
5 pretty much a routine?

6 A. Somewhat. Each day is -- some days -- there's
7 certain things and every day they're exactly the
8 same: The times that he eats. Wheel of Fortune
9 every night at 6:30. He goes to his granny's in the
10 morning after his breakfast and he stays a few
11 minutes and sees her and then he walks back down to
12 the house. Some days are exactly the same, and then
13 different days that he looks forward to are
14 different occasions that come up, holidays. He
15 plans the zoo for St. Patrick's Day. That's his new
16 thing, and just different -- he likes to have that,
17 but he has to know about it. He likes to know about
18 it ahead of time.

19 Q. Does he have an understanding of things like
20 money?

21 A. Yes. One thing, when he started school and of
22 course at three and being autistic, we didn't know
23 how far he would go. I did ask the school to please
24 help me teach him math, reading, telling time,
25 counting money. I thought those were important

1 things for him to know and he knows them. And he
2 does -- he does real well with them. And even now
3 when his teacher comes to the house, I set up a
4 store, we call it. And that gives him -- we put
5 price tags and that gives him a chance to learn how
6 to pay for something. And we do that when we go
7 to -- well, we used to do that when we go shopping
8 for groceries. Now he has a debit card, and that's
9 easier. But he knows about counting money. He can
10 count money, and I believe because of Wheel of
11 Fortune, large amounts of money. He understands
12 even that. But we do dollar bills and coins, and
13 then he has to tell the teacher how much he has left
14 over, so he knows about that.

15 Q. I want to run through a couple of things
16 really quickly.

17 Does he have a capacity to memorize
18 things?

19 A. Yes; he always has.

20 Q. Is he good at that? Like you'd say something,
21 he memorizes it back?

22 A. Yes. And he memorizes TV shows and books.

23 Q. And does he repeat things? Does he want to
24 see the same thing again and again often?

25 A. Pardon me?

1 Q. Does he want to see things again like a second
2 time or a third time?

3 A. Oh, yes.

4 Q. Okay. Does he use a calculator?

5 A. Yes.

6 Q. Can he do long division?

7 A. Yes.

8 Q. For example, if I gave him a problem like
9 let's say 30 divided by 592 --

10 A. Yes.

11 Q. -- he could actually divide that?

12 A. Yes.

13 Q. Like that particular number?

14 A. Yes.

15 Q. Okay. I get it.

16 Now, does he have a religious -- does
17 he have a religious understanding?

18 A. Ummm, yes, he does. We've been -- I had tried
19 prior to take him to church when he was younger, and
20 it was hard. He'd get into the Sunday school class
21 and there would be TV there or a mirror or
22 something, and so it would be hard. So we really
23 didn't get to start taking him to church full-time
24 till ten years ago. And he goes every Sunday. I
25 didn't know what he was gaining from that. But he

1 does understand. He said several things to me that
2 I know he's comprehending and listening to what the
3 preacher says. So that's really neat for us to find
4 that out.

5 Q. For example, a real quick one?

6 A. Well, the sad thing is my mother -- I lost my
7 father when Austin was eight months old, but my
8 mother remarried about seven years later, and very
9 sweet man. We've lost him now. And we went back to
10 Illinois for his funeral and he was with me. So we
11 explained to him that he had died and gone to heaven
12 to be with Jesus. So when my mother comes for the
13 winter and stays near us in Alabama, he said
14 grandma, grandpa, oh, I'm sorry, mommy, grandpa's in
15 heaven with Jesus. And I said that's right. And we
16 don't try to be sad. That's a good thing.

17 And I have to tell the funny story.
18 He came up to me last -- this last December, and I
19 never thought he'd ask me this question in his whole
20 life because he's not a big question,
21 straightforward what is? That's a hard concept for
22 him. And so he walked up to me and he said, "Mommy,
23 what is a virgin?" And I was shocked. I didn't
24 know what to say. And I said, "Uhhh, it's a -- it's
25 a woman who's never had a child." And he said,

1 "Mary, baby Jesus, mommy." And I just couldn't
2 believe it.

3 And I told my preacher that. He felt
4 a little uncomfortable when I was telling him. But
5 we were -- we were really proud of him for really
6 paying attention to what the preacher was saying, so
7 it shocked me.

8 Q. Tell us -- tell us about -- it sounds to me
9 like you have help. You mentioned that your mom
10 comes down during the winter months.

11 A. Yes.

12 Q. She lives in Illinois, but has a little place
13 near you?

14 A. Yes.

15 Q. And she spends the winters?

16 A. Yes.

17 Q. And then he has Phil's mom as well?

18 A. Yes.

19 Q. So you got a lot of ladies to take care of
20 this young man?

21 A. Yes.

22 Q. Okay. And one grandmom is 82, I believe, you
23 once told me.

24 A. Eighty-one. And he sees her every day of his
25 life and his uncle every day of his life, my

1 husband's brother, and of course my husband and I
2 until I came here. I've never been away from him.

3 Q. Can he count?

4 A. Yes.

5 Q. And up to ten, could he count in any other
6 language?

7 A. Oh, he counts. He counts by fives. He counts
8 by tens. He counts as high as he wants to.

9 Q. In the past year or two, has he developed more
10 than he had in terms of his capacity to speak,
11 understand, and the like now that he's 19 and 20?

12 A. Oh, yes. And that's -- and because he can
13 communicate better, that's really helped the
14 frustration. Because autism, to be an autistic
15 person has got to be frustrating.

16 Q. Can he spell?

17 A. Oh, yes.

18 Q. Can you give me an example of a complex word
19 that he'd spell?

20 A. I don't know if it's complex, but I would --
21 he can read anything he wants. And I would just
22 have a mind blank and I'd be writing something, for
23 example, and I'd say -- across the room my son would
24 be sitting there and I was talking to my husband and
25 I would say, "How do you spell elephant?" And I

1 just couldn't think, and Austin will just spit it
2 out. Any word that is said, he just spells out. He
3 surprises us. I don't know how complex that is,
4 but...

5 Q. Okay.

6 A. But he can read. He doesn't choose to, but he
7 could read the paper, the newspaper. He's a very
8 good reader.

9 Q. Does he understand that he has a chest that's
10 different than -- does he -- let me ask it this way:

11 Does he have an understanding of his
12 chest?

13 A. Yes.

14 Q. Tell the members of the jury about it before
15 they see photos and before we discuss it further.

16 A. Well, as a mother, you know, I don't want him
17 to feel bad about himself. We do call it a "chest."
18 We don't say to him he has breasts. But he bathes
19 himself, and we're proud of that. And he takes care
20 of himself in a lot of ways, but I go into the
21 bathroom after he gets out of the shower and help
22 him dry his hair. He has real thick hair and it
23 just drips all on him. And he likes to lay the
24 towel around his neck and he lays it down like that,
25 and then he -- he admires himself in the mirror

1 because he can see himself without his breasts.
2 And, you know, that breaks my heart. But I smile
3 and say, oh, you're so handsome. I'm trying to make
4 him feel good about himself. I never -- no mother
5 wants their child not to feel good about themselves.

6 And he swims with his shirt on. I
7 try to get the little silk shirts for swimming, so
8 if someone comes over, happens to come over, they
9 don't feel uncomfortable. He doesn't feel
10 uncomfortable. And he'll wait by the door while I
11 go get his swim shirt. And one day I walked in, and
12 it was sweet, but it's hard, because he had his arms
13 folded up over his breasts and he had them smashed
14 down and he was just admiring himself and smiling,
15 and you could just see he felt real proud of that.
16 And that's hard, because I know he can't say to me
17 why. He can't say to me why am I different. And he
18 can see me. I mean, he can see me with my clothes
19 on. He can see my husband without his shirt on and
20 he knows, and his friends. He knows. He just
21 doesn't have the capacity to ask me why.

22 Q. Uh-huh.

23 Swimming, you have an aboveground
24 swimming pool?

25 A. Yes.

1 Q. And does he like to go in that pool?

2 A. Yes. He loves to swim.

3 Q. And now that he's -- now that he's growing
4 older, does he like facial hair? He's grown himself
5 a little bit of facial hair?

6 A. Yes.

7 Q. And does he like that concept of masculinity?

8 A. Yes. He told me before he could ever -- I
9 didn't even know he knew the word "sideburn." But
10 my husband has a mustache and at times a beard and
11 at times just the hair here, but he's always had a
12 mustache. So he always would want a mustache. But
13 several years ago, before he started having much
14 facial hair, just a little fuzz on his lip, he'd say
15 "sideburns, beard, mommy." "Sideburns, beard,
16 mustache."

17 So he takes great pride in his little
18 patch here. And I have to keep his sideburns shaved
19 because I don't want him to look like he has Elvis
20 sideburns because they grow way down here. But he's
21 very proud of his facial hair.

22 When he turned 20, I told him he was
23 a very good boy, and he said "man." He wanted me to
24 know now he was a man.

25 Q. Sometimes he talks in one word?

1 A. Yes. Yes.

2 Q. And tell me about -- and I don't want to
3 belabor it. But was there an incident at one time
4 when he was in school, back when he was in school
5 with his breasts?

6 MS. SULLIVAN: And, Your Honor, I'm
7 going to object to the hearsay part of this
8 testimony in terms of what somebody else
9 might have said.

10 THE COURT: Sustained in that
11 fashion.

12 BY MR. KLINE:

13 Q. Well, let's see, without telling us what
14 someone said, can you tell us the end result as to
15 whether Austin felt badly after an incident that
16 occurred in school? Yes or no.

17 A. Yes.

18 Q. And did it make him sad?

19 A. It made him sad and frustrated and he cried.

20 Q. Was it something that a teacher said or did?

21 A. Yes.

22 Q. Okay. Now, let's talk about Austin today in
23 terms of his control.

24 As an autistic child over the years,
25 has Austin had some difficulties with self-control

1 and behavior?

2 A. Yes.

3 Q. And are these like -- are these like we think
4 of sometimes our normal children might act up or is
5 this something totally different?

6 A. Oh, no, it's totally different.

7 Q. As for today, Austin's on medication?

8 A. Yes.

9 Q. Okay. And is he well-controlled?

10 A. Yes.

11 Q. And does he occasionally have a problem when
12 he's outside of his environment and outside of his
13 conditioning?

14 A. Yes. If there's a change, an unexpected
15 change, it can throw him. It can make him -- at
16 this point in time, can I describe what happens?

17 Q. Yes. Are you -- well, I'll take it one at a
18 time.

19 A. Okay.

20 Q. Are you a pretty good predictor of whether
21 he'll be able to -- as to what will take him just
22 totally outside of his -- you know, you use the word
23 "meltdown," correct?

24 A. Yes. Yes.

25 Q. Are you a pretty good predictor as to what

1 kinds of stimuli will cause him to have a meltdown?

2 A. Yes. We anticipate it. When we see what's
3 going to happen, we know before other people do. We
4 can see it coming on by just a sound he can make
5 even.

6 Q. Would being in a room like this with
7 everything that's going on here be that kind of
8 environment?

9 A. He wouldn't understand -- he wouldn't
10 understand the breaks, when we -- when we stand --
11 we stand up when you walk in or when we stand up
12 when the judge walks in. He wouldn't understand all
13 that. He would think that it was over, it was time
14 to go. And when it was break time, it would be time
15 to go.

16 And he -- he sits in church very
17 well. But it's okay if he talks or if he's loud.
18 They want him in church. And so he wouldn't
19 understand he couldn't sit here and clap or talk to
20 me or say something, or if you looked at him and he
21 thought that -- I don't know what he thinks. But he
22 would look -- if he made eye contact with someone
23 and he said "excuse me," and you didn't acknowledge
24 that he said "excuse me," he would want -- he would
25 do like that, wanting you to. He would feel upset.

1 So it would be very difficult for him to be in here.

2 Q. Okay. Now, Austin was actually examined as
3 part of the court proceedings here. Was he brought
4 up by your husband, Philip, and examined by a
5 physician two days ago who will be prepared by early
6 next week to give a current condition of Austin?

7 A. Yes, he was.

8 Q. And has he now been -- has he now gone back
9 with Phil?

10 A. Yes; they're home.

11 Q. And have you and Philip made that decision?

12 A. Yes. Yes.

13 Q. Okay. And you got word they're safe and back
14 home?

15 A. Yes, they are.

16 Q. Okay. And is your husband, Philip, his
17 caretaker until you get back home?

18 A. Yes, he is.

19 Q. Now, let's go into Austin taking this drug,
20 Risperdal.

21 Your son was treating with -- he came
22 to treat with a physician who we saw in the
23 courtroom. You saw Dr. Mathisen.

24 A. Yes.

25 Q. And you came to know Dr. Mathisen as Austin's

1 physician?

2 A. Yes.

3 Q. And you went to see Dr. Mathisen in April of
4 2002, and tell us what was going on with Austin and
5 on that visit and why you were at a child
6 neurologist's office.

7 A. Uhmm --

8 Q. Before we get there, let me step back. Before
9 we get there, you were in Dr. Mathisen's office how
10 many -- we know there were 21 visits, okay.

11 Did he have more than one waiting
12 room?

13 A. He had one waiting room, yes.

14 Q. One big waiting room?

15 A. Yes, one.

16 Q. Would you describe that waiting room to the
17 members of the jury.

18 A. When you walked into the waiting room it was,
19 of course, the desk, you go tell the, you know, sign
20 in, and there was little chairs and then the chairs
21 for the parents and a little TV with movies on and a
22 little movie selection. They had paintings on the
23 wall, like the circus, and he liked that. And it
24 was -- it wasn't a real big room, but there was
25 usually three or four children waiting, so it wasn't

1 too crowded, too feeling like it was too crowded for
2 him. And they didn't try to make us wait a long
3 time either. They usually tried to get all the
4 children, because all the children had issues of
5 different kinds, so...

6 Q. Did you ever see any adults hanging around
7 there?

8 A. Just the moms and occasionally a dad, but
9 mostly it was moms.

10 Q. With the children?

11 A. Yes. Yes.

12 Q. And in all the times that you were there, did
13 you ever see anyone who appeared to be an adult
14 patient waiting?

15 A. No.

16 Q. And was the waiting room itself clearly a
17 pediatric waiting room?

18 A. Oh, yes.

19 Q. And did the -- and next to the door when you
20 walked in, what did it say?

21 A. "Pediatric neurology."

22 Q. So you went to see Dr. Mathisen now. On the
23 first visit, on the first office visit, did you
24 discuss the drug, Risperdal?

25 A. Uhmm, I don't believe we discussed Risperdal.

1 He discussed there were -- that there was that
2 option of giving him medicine. Uhmm, we had worked
3 hard to get him; and, of course, like most parents,
4 we wanted to take very good care of him, so we
5 weren't real sure about starting him on medicine.
6 He was just having a lot of difficulties, mostly --
7 well, not mostly. But he was having a lot of
8 difficulties at home. But mostly at school was the
9 issue, because they weren't the parents and they had
10 other children to deal with, and it was just hard.
11 It was hard for him at school and the change and the
12 fire drills and the other children. The whole
13 concept of school was hard for him, the environment,
14 so they were interested in me going, you know, to
15 talk to Dr. Mathisen and see what he -- if he had
16 any ideas to help us, so...

17 Q. When you say -- and real briefly, when you say
18 worked hard to get him, what do you mean?

19 A. Oh, we were actually married 13 years before
20 he was born. And I tried every -- the whole
21 marriage we knew we were going to have problems and
22 we always tried to have children. And I had lots of
23 procedures and treatments and different things done
24 trying to have a child. That's what I wanted. I
25 wanted a family. And we were finally able to have

1 one, so we felt very fortunate.

2 Q. And you still feel fortunate?

3 A. Oh, yes.

4 Q. Now, at the second office visit, you went
5 back?

6 A. Yes.

7 Q. The first office visit, you discussed
8 medications?

9 A. There were -- yeah. He said there were
10 different -- he said there was medication that we
11 could consider. And I was not real big on the idea
12 of trying -- starting medicine, but it wasn't out of
13 my realm of thinking. I knew that that was probably
14 going to be what we were going to have to do at some
15 point.

16 Q. So you went back on a second office visit,
17 June 17th, we know the records show.

18 And at that time, did you have
19 another discussion with Dr. Mathisen?

20 A. Yes. We talked about his behavior again.
21 We talked about his behavior every time, his
22 different meltdowns. It was more severe when he was
23 younger. He's gotten better at this point in his
24 life, but they're still happening. But then it was
25 very upsetting for the school system and, of course,

1 for us. We didn't want him hurt. We didn't want
2 anyone else hurt, so we did. We talked to
3 Dr. Mathisen about starting him -- or I talked to
4 Dr. Mathisen about starting him --

5 Q. I was going to ask, who was "we"?

6 A. Yeah. I took him.

7 Q. You took him to the --

8 A. Yeah. I take him to all the doctor's visits.

9 Q. Okay. And on that -- and, by the way, we know
10 from Dr. Mathisen that he saw Austin these many,
11 many times. At any time did Dr. Mathisen take
12 Austin's shirt off?

13 A. No.

14 Q. And during that period of time, did Austin
15 gain, at least during some part of that time, did
16 Austin gain weight?

17 A. Yes.

18 Q. And were there discussions about the weight
19 gain?

20 A. He told -- yes. He told me that the
21 medication did have a side effect of weight gain.
22 And I told him that I could work on that. I would
23 work hard to keep him from gaining weight, the best
24 I could, to encourage him to eat healthy. And with
25 autism it's not always -- it's only certain foods

1 sometimes that he'll eat.

2 Q. And did you ever at any time have any
3 discussion or any thought in your head that my boy
4 is developing actual breast tissue?

5 A. No. I thought it was the weight gain, and I
6 thought that as long as I kept trying to help him
7 with his weight and exercise, that's all I could do.
8 I would just have to fight the weight as much as
9 possible. I did not know that his breasts were for
10 any other reason than that.

11 Q. Okay. And did you at any time know that there
12 was any increased risk, of any kind, of your son
13 developing what we in this courtroom have been
14 calling gynecomastia?

15 A. No. I knew nothing of that or called
16 anything. I did not know boys could develop breasts
17 or it was a side effect from the medicine at all. I
18 knew nothing about that.

19 Q. If you knew that, would you have allowed your
20 son to be on this drug?

21 A. No.

22 Q. Can you tell that to us absolutely and
23 categorically?

24 A. Absolutely not. I -- I can -- I can't fight
25 breast growth. I felt like with the weight gain, we

1 could exercise. I could get -- keep him active. I
2 could keep encouraging healthy food. You can't
3 fight something like that. I didn't even know that
4 was a possibility.

5 Q. Okay. Now, Austin was also seeing another
6 doctor whose name has been mentioned and he's been
7 referred to I think a number of times as a
8 pediatrician, Dr. Dy, D-Y?

9 A. Yes.

10 Q. You remember Dr. Dy?

11 A. Yes.

12 Q. First of all, to your understanding, is he a
13 pediatrician?

14 A. He's not.

15 Q. And were there adult patients in that office
16 as well?

17 A. Yes.

18 Q. What kind of doctor was he, to your
19 understanding, family doctor-type?

20 A. Yeah. He's just a -- I would guess a family
21 doctor. There's -- he sees young people, but -- for
22 instance, Austin is usually fairly healthy, so I
23 don't even like to take him to the doctor for his
24 yearly checkup because most of the time the office
25 is full of very sick adults coughing, and I try to

1 keep him away from that. But he's got a pretty good
2 immune system. So he just goes once a year for a
3 checkup usually.

4 Q. This Dr. Dy, does he continue to see Austin?

5 A. He sees him once a year for a checkup.

6 Q. And Dr. Dy, does he speak with an accent?

7 A. Yes.

8 Q. Do you have difficulty understanding him?

9 A. Yes. And I don't think he understands
10 sometimes what I'm saying as far as -- for example,
11 more than one time he's told me -- we've talked
12 about his weight, and he's given me ideas, and he
13 said "no more sodas." I said, "He's never drank
14 sodas in his life." I wasn't raised drinking Cokes
15 and I don't think kids need that. So he's never
16 drank that. And I've told him more than once and he
17 still calls him Philip. And it's not like he really
18 knows him. He doesn't even know him well enough to
19 call him by his name, so...

20 Q. Does anybody who knows your son call him
21 Austin, not Philip?

22 A. Oh, yes. He goes by Austin only.

23 Q. When Austin was put on the Risperdal -- I just
24 want to move to the first prescription when you
25 started to fill them. You fill the prescriptions

1 where?

2 A. When I had his prescriptions filled, it was
3 always at Walmart.

4 Q. And did you use the liquid form?

5 A. Yes.

6 Q. And was Austin able to take pills or was he
7 only able to take a liquid form?

8 A. Well, he had never taken a pill, and so when
9 the doctor told me it came in liquid form, that was
10 good because he had never taken one at that time.
11 So I didn't -- I don't necessarily say he couldn't.
12 He just never had, so...

13 Q. Well, then did it come that when he was on the
14 Risperdal and he started to gain weight, did the
15 doctor then put him on another drug?

16 A. Yes.

17 Q. And what was that other drug?

18 A. Topamax.

19 Q. And was that a liquid?

20 A. No. It was a pill.

21 Q. So was Austin taking a pill in addition to
22 taking this liquid medication?

23 A. Yes.

24 Q. So if it were suggested that he could only
25 take a liquid during that time, was that true in

1 terms of medication?

2 A. No, it wasn't true.

3 Q. Now, in June of 2002, you are in
4 Dr. Mathisen's office, and would it be fair to say
5 that you agreed to -- that you were going to try the
6 Risperdal?

7 A. Yes.

8 Q. And when you were given the prescription and
9 you were about to have your son on the Risperdal,
10 did you make a phone call on or about June the 20th,
11 2002?

12 A. About the medicine?

13 Q. About the medicine.

14 A. Yes.

15 Q. Was there a information line of the -- of the
16 pharmaceutical company?

17 A. Yes.

18 Q. Okay. Which you know now to be -- was it
19 Janssen or Johnson & Johnson or don't you remember
20 which?

21 A. I don't remember. I got the phone number off
22 of the foldout from the medicine bottle.

23 Q. Okay. And did you make a call?

24 A. Yes.

25 Q. And their records show that you asked very

1 specifically -- I'm going to mark it as Exhibit 73.

2 It's Bates No. ending in 529.

3 - - -

4 (Whereupon Exhibit P-73 was marked
5 for identification.)

6 - - -

7 COURT CRIER: Thank you.

8 MS. SULLIVAN: No objection, Your
9 Honor.

10 And, Your Honor, this is missing some
11 pages. I don't know if you have the complete
12 copy, Counsel.

13 MR. KLINE: I have what I believe to
14 be the germane copy, which is the page that
15 I'm about to display and the next page
16 dealing with the two --

17 THE COURT: Wait. Wait. Let's not
18 put anything up yet.

19 MR. KLINE: May I display?

20 THE COURT: Well, I don't know if
21 there's an objection or not.

22 MS. SULLIVAN: And, Your Honor, I'm
23 just objecting. It's missing the last two
24 pages.

25 THE COURT: Do you have them?

1 MS. SULLIVAN: Yes.

2 THE COURT: Okay. As long as you
3 have them, then you can use them if you need
4 to.

5 MR. KLINE: I actually thought this
6 was just a stand-alone page, but let me see.

7 Oh, okay.

8 THE COURT: You ready?

9 MR. KLINE: Yes.

10 THE COURT: All right. You may
11 proceed with P-73.

12 BY MR. KLINE:

13 Q. There was a contact between you and the
14 company. And if we can just go right to the -- this
15 is a contact form that I know you've never seen, but
16 I just want to put this in perspective. Can I just
17 have where it says "information on how RIS helps"?

18 (Technician complied with request.)

19 BY MR. KLINE:

20 Q. Did you call the information line at the
21 Janssen Pharmaceutical Company and ask them, if you
22 remember, the questions of how Risperdal helps
23 autistic child; how often it's used; if it does
24 help, what will it do?

25 A. Yeah.

1 Q. Are those the kinds of questions you would
2 have asked?

3 A. Yes.

4 Q. And do you see the question there, which we'll
5 highlight: "What are the dangers of this product?"

6 A. Yes.

7 Q. You see that?

8 Okay. So did you, mom, a mom in
9 Thorsby, Alabama, make this call on behalf of your
10 young boy who was about to take this medication?

11 A. Yes.

12 Q. Is that the kind of mom you were, to want to
13 know about whether a drug had any danger to your
14 son?

15 A. Well, I had never given him any medicine, and
16 I think as a first-time mom and a first time to ever
17 give him any kind of medicine, that I was more
18 nervous about it. I wanted more -- as much
19 information about it as I could.

20 Q. Now, when you asked that information -- we can
21 take this down -- when you asked that information,
22 did you get to talk to a human being?

23 A. No. I left a message.

24 Q. In other words, you called up and there wasn't
25 a person on the other end to talk to?

1 A. No.

2 Q. There was an answering machine to talk to,
3 correct?

4 A. Yes.

5 Q. And these are the questions -- because we have
6 their records -- that you asked them, correct?

7 A. Yes.

8 Q. If you had been told, ma'am, that we're
9 currently doing studies, as you've seen in this
10 courtroom -- I'll ask you a general question.

11 If you've seen what you saw in this
12 courtroom, would you ever put your son on the drug?

13 A. I never would have put him on it.

14 Q. So you went about your business. Did you sit
15 at the phone waiting for them to call you back?

16 A. Well, I -- I had hoped that they would call me
17 back. It was a very upsetting time.

18 Q. Did you tell them that your preferred method
19 of response was US mail?

20 A. I don't remember telling them that. I thought
21 they'd call me back or send me information, either
22 way, about the drug and answer my questions.

23 Q. Okay. And that was on June the 20th.

24 So not having had a call back, did
25 you start the medication?

1 A. Yes.

2 Q. And did you still have a question, still have
3 another question?

4 A. I -- because it was a powerful drug, and even
5 now, any medicine I give him, I find out if it
6 interacts with something. Every medicine I've ever
7 given him, even if it's an over-the-counter, I
8 always ask my pharmacy now. But then I called
9 because the doctor wanted to start him on another
10 medication for another reason and I didn't want them
11 to interact and be in a negative way.

12 Q. And the other medication we're going to learn
13 and that we're learning right now was Zyrtec?

14 A. Yes.

15 Q. Z-Y-R-T-E-C?

16 A. Yes.

17 Q. Who prescribed the Zyrtec?

18 A. I believe it was Dr. Dy.

19 Q. And what was the Zyrtec for, as you understood
20 it?

21 A. Allergies.

22 Q. So now you had -- he was a boy. He was at the
23 time seven years old?

24 A. Yes.

25 Q. Wasn't even eight?

1 A. No.

2 Q. Hadn't turned eight.

3 When's his birthday? I didn't ask
4 you. When's his birthday?

5 A. July 15.

6 Q. July 15, 1994 is the date of birth of your
7 son?

8 A. Yes.

9 Q. Did you have a question: Now I'm going to
10 have a son who's on Risperdal and Zyrtec?

11 A. Yes.

12 Q. Did you call the information line of the
13 Janssen Pharmaceutical Company again?

14 A. Yes.

15 Q. This time did you talk to someone?

16 A. I believe I did. And I asked them if it was
17 okay for him to take the Zyrtec with the Risperdal.

18 Q. And while this document doesn't -- the next
19 document doesn't particularly go to anything that
20 you know, it fits in here, and I'm sure we won't
21 have an objection. I'm going to mark the contact
22 sheet from the Janssen company as P-74, dated
23 6/25/02.

24 Hearing no objection --

25 MS. SULLIVAN: No objection.

1 MR. KLINE: -- and the Court's
2 approval, I'll display it.

3 It would be ending in 532, Cory.

4 - - -

5 (Whereupon Exhibit P-74 was marked
6 for identification.)

7 - - -

8 MR. KLINE: And we'll just go right
9 up to the top for the information.

10 BY MR. KLINE:

11 Q. That record, which is a business record of the
12 Janssen Pharmaceutical Company, says that it's a
13 contact with you, Ms. Benita Pledger, and 310 Co.
14 Road 229, Thorsby, Alabama 35171. That's your
15 information, correct?

16 A. Yes.

17 Q. We now know where to write to you.

18 A. Yes.

19 Q. And it says, "compatible liquids for mixing,
20 is Zyrtec a problem? RESP, per PI," they say -- I
21 don't expect you to interpret this. I just want to
22 ask you if it refreshes your recollection -- "no
23 specific drug-to-drug interaction, referred back to
24 doctor."

25 So when you called the second time,

1 mom from Alabama calling Janssen Pharmaceutical
2 Company the second time, you talked to a person.
3 And did that person say anything like, oh, you're
4 Mrs. Pledger from Alabama who called asking if there
5 are any dangers about our drug?

6 A. No.

7 Q. And was there any discussion about the fact
8 that you had called asking specifically about
9 whether there was any dangers?

10 A. No.

11 Q. And you were referred back to the doctor. And
12 I assume you went to the doctor to find out if there
13 was a problem in the interaction?

14 A. Uhmm, I believe I probably called my pharmacy
15 at that point. I started doing that after. That
16 was how I could get my information.

17 Q. Okay. There appears to be, at least in the
18 Janssen records, a form letter that they -- and this
19 was the other documents that counsel for the -- the
20 company lawyer handed over here. It's Exhibit 531.
21 Do you recall getting a letter from Janssen in the
22 mail?

23 A. Vaguely. Vaguely. I don't remember exactly
24 what it said.

25 Q. Do you recall any letter that said anything

1 like what we've heard in this courtroom about the
2 issues?

3 A. Oh, no. It wasn't to answer the questions
4 that I had called about or give me any of the
5 information I found out during this trial.

6 Q. Okay. Now, when Austin was on the drug for a
7 short period of time, did he develop -- as you now
8 put this all together, was there a point in time
9 when he actually started to develop these breasts?

10 A. Well, he started getting heavier and with the
11 weight; he started getting heavy around his nipples.
12 Like I thought was from the weight. I noticed it
13 starting slowly.

14 Q. How long after he was on the drug?

15 A. That I started noticing this?

16 Q. Yes, ma'am.

17 A. Two months, two and a half. It wasn't very
18 long.

19 Q. Okay. And are there any pictures -- are there
20 any photographs from that era, from that year that
21 you've had that you found?

22 A. Oh, that I found and provided?

23 Q. Yes. Yes.

24 A. Yes.

25 Q. Okay. Any with his chest? Any with his shirt

1 off?

2 A. Yes.

3 Q. Okay. Let's -- and that's from sometime in
4 2005?

5 A. Yes. That wasn't at that moment. That was
6 later.

7 Q. Okay.

8 A. While he was taking the drug.

9 Q. Let me just show a photo or two of Austin, if
10 I may.

11 We have one.

12 MR. KLINE: I'm going to depend on my
13 colleague, Mr. Gomez, for a moment.

14 COURT CRIER: Do you want to use
15 these?

16 MR. KLINE: No, we're not there yet.
17 Nowhere near that. Thanks, though. We have
18 some photos to display up on the screen
19 before we get there.

20 COURT CRIER: Oh, okay.

21 MR. KLINE: Thank you, though,
22 Marianne.

23 P-75.

24 P-75, I believe will be unobjected
25 to, but we'll check with counsel.

1 MS. SULLIVAN: No objection.

2 MR. KLINE: To see if I have -- if
3 there's another document that might be
4 attached or anything.

5 Is this okay to display?

6 THE COURT: One second.

7 Sure. P-75.

8 MR. KLINE: Yes.

9 - - -

10 (Whereupon Exhibit P-75 was marked
11 for identification.)

12 - - -

13 MR. KLINE: Diane, Ms. Sullivan, no
14 objection?

15 MS. SULLIVAN: No objection.

16 MR. KLINE: Thank you very much.

17 Your Honor, I'm displaying P-75.

18 (Document displayed.)

19 BY MR. KLINE:

20 Q. Well, those T-shirts where they put the date
21 on them are convenient, aren't they? Because this
22 is a -- this is a photo some time at or around or
23 after 2001, correct?

24 A. It was 2001. It was Special Olympics that
25 year.

1 Q. Okay. Tell us briefly. We don't need to know
2 anything. I see he has a couple of ribbons; yes?

3 A. Yes.

4 Q. Okay. He was proud of himself and you were
5 proud of him, I'm sure.

6 A. Oh, yes.

7 Q. And -- oh, indulge us. What did he win, real
8 quick?

9 A. Well, he got a blue ribbon and I believe that
10 was for the softball throw. And then this year he
11 got the yellow, which was 3rd place in the relay,
12 the little run. They had all the kids do different
13 little things. They always rewarded them for
14 trying.

15 Q. Okay. Good.

16 And so this is a photo at the Special
17 Olympics in front of the school bus, obviously.

18 A. Uh-huh.

19 Q. What month and year would this be,
20 approximately?

21 A. It's the end of the school year. They usually
22 have it within the -- I'm not sure what month
23 because like --

24 Q. End of school year is usually June-ish?

25 A. Yeah. In Alabama we -- I know we start in

1 August. I'm not quite sure, because he has
2 year-round, he had year-round.

3 Q. Mid-2001, can we make this?

4 A. Oh, yes.

5 Q. So to the extent that there are descriptions
6 of Austin during this period of time and whether he
7 was "obese" or anything like that, is what we have
8 in front of us what your little boy looked like in
9 the middle of June approximately, or the middle of
10 2001, somewhere about a year before he started to
11 take the Risperdal?

12 A. Yes.

13 Q. Okay. Now, you don't -- Austin wasn't big on
14 photos, correct?

15 A. Uhmm, well, he didn't -- I have photos of him,
16 but I haven't taken a lot.

17 Q. Okay.

18 A. As he's gotten older, I take them, but I'm
19 careful how I take them.

20 Q. Well, now it's easier to take photos, isn't
21 it?

22 A. Yeah.

23 Q. Because you have a phone?

24 A. A phone, yes.

25 Q. Right. And did you have a phone back then,

1 you know, an iPhone?

2 A. No.

3 Q. Or a handheld device?

4 A. No.

5 Q. Okay. Now, that will take us to a photo that
6 you do have of him, which we are not going to
7 display on the screen and which the Court has
8 directed us, our photos that are under seal.

9 A. Okay.

10 Q. And I have a photo that was taken that I'd
11 like you to describe and then, with the Court's
12 permission, which I expect to be granted, I will
13 pass to the jury a photo of Austin.

14 A. Okay.

15 Q. Do you have a photo, if I may, just wait for
16 one minute, please.

17 Do I have a photo -- did you provide
18 to me a photo when you were asked do you have any
19 photos which would show his chest development with
20 his shirt off at any time related to when he was
21 taking the Risperdal; and you provided a photo,
22 correct?

23 A. Yes.

24 Q. Okay. You happen to have the one of him
25 coming out of the swimming pool, correct?

1 A. Yes.

2 Q. And where was that taken?

3 A. At our house, coming out of his pool.

4 Q. This aboveground pool that you have?

5 A. Yes.

6 Q. What is it, about 18-foot diameter?

7 A. Yes.

8 Q. I asked you to actually measure it?

9 A. Yes.

10 Q. And Phil measured it for us?

11 A. Yes.

12 Q. So you have an aboveground 18-foot pool, and
13 he is coming out of the pool.

14 The year of this photo is about 2005?

15 A. Uhmm, I'm not -- I'm not sure. It wasn't --
16 he was older, you can tell. He was older than that.

17 Q. Well, you have to give us an idea. Why don't
18 I hand it to you on the stand before it goes to the
19 jury.

20 A. Okay.

21 Q. If the court officer would hand you the photo
22 of the pool, P-71. And you can to your best
23 recollection and consistent with what you have --
24 with what you believe, tell us.

25 COURT CRIER: P-71 to the witness.

1 BY MR. KLINE:

2 Q. Tell us about that particular photo.

3 A. Yeah. I would guess around 2005, looking at
4 him and guessing his age to be -- well, he has a
5 birthday in the summer. So maybe 10, 11, by looking
6 at him.

7 Q. Okay. And to my understanding, you correct
8 this if I'm wrong, I'll go scrambling, you have no
9 other photos with the chest exposed and this is what
10 you have, correct?

11 A. Yeah.

12 My husband didn't really like for me
13 to take pictures of him without his shirt on because
14 of -- of that.

15 Q. Okay. At the time that he was in this photo,
16 would that be consistent with when he was still on
17 Risperdal?

18 A. Oh, yes.

19 MR. KLINE: With the Court's
20 permission and out of the presence of the
21 public, we would like to pass it among the
22 jurors.

23 THE COURT: Any objection?

24 MS. SULLIVAN: Your Honor, this was
25 the photo that's been filed publicly, but

1 whatever the Court wants. The plaintiffs
2 filed it.

3 THE COURT: Well, this is a public
4 document, but we're not putting it up on the
5 screen. So this was a swimming pool?

6 MR. KLINE: If Ms. Sullivan insists,
7 Your Honor, that that would be pertinent to
8 their case and she wants this young boy's
9 photo, this guy, shown, then we will allow
10 it. We will not object if that's what she
11 wants.

12 MS. SULLIVAN: Your Honor, Your
13 Honor, that's not proper.

14 MR. KLINE: That's exactly what she
15 said.

16 MS. SULLIVAN: I defer to the Court,
17 Your Honor. They filed it publicly with the
18 Court. Whatever the Court wants is fine.

19 THE COURT: Is this the swimming
20 pool?

21 MR. KLINE: Yes.

22 THE COURT: Yes. We can show this
23 any way you want, Mr. Kline. Any way you
24 want. The second one is the one that's under
25 seal.

1 MS. SULLIVAN: Agreed, Your Honor.

2 MR. KLINE: Okay.

3 I would request that we pass it to
4 the jury as we had discussed before the jury
5 came in.

6 THE COURT: All right. Okay.

7 COURT CRIER: P-71 to the jury.

8 - - -

9 (Photograph, P-71, published to the
10 jury at this time.)

11 COURT CRIER: P-71 has been published
12 to the jury, Your Honor.

13 THE COURT: That's P-71.

14 COURT CRIER: Yes.

15 THE COURT: All right.

16 MR. KLINE: Yes.

17 Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. KLINE: Thank you very much.

20 BY MR. KLINE:

21 Q. Okay. Now, you accompanied Austin to a -- and
22 that picture would have been when he was about
23 eleven?

24 A. Yes.

25 Q. Or thereabouts?

1 A. Yes, he looks it.

2 Q. And are you confident that that would be about
3 correct?

4 A. Oh, yes.

5 Q. You accompanied Austin to a visit of a surgeon
6 whose name is Dr. Solomon in Philadelphia, who I
7 would expect the jury to hear from Monday, on --
8 let's see. You were there on the day before
9 yesterday.

10 A. Yes.

11 Q. Correct?

12 A. Yes.

13 Q. Okay. And Dr. Solomon took photographs --

14 A. Yes.

15 Q. -- of your son?

16 A. Yes.

17 Q. Okay. And I'm going to -- I'm going to ask a
18 photograph to be handed to you, which is marked as
19 P-72.

20 COURT CRIER: P-72 to the witness.

21 BY MR. KLINE:

22 Q. And this photograph has been directed by the
23 Court to be under seal and not to be published
24 publicly.

25 This photograph, is this a photograph

1 of your son's current condition as of two days ago?

2 A. Yes.

3 Q. Of his chest?

4 A. Yes.

5 MR. KLINE: Okay. With the Court's
6 permission, I would like to publish it to the
7 jury.

8 THE COURT: Any objection?

9 MS. SULLIVAN: No objection, Your
10 Honor.

11 THE COURT: All right. Go ahead.

12 COURT CRIER: P-72 to the jury.

13 - - -

14 (Photograph, P-72, published to the
15 jury at this time.)

16 - - -

17 COURT CRIER: Your Honor, P-72 has
18 been published to the jury.

19 THE COURT: All right.

20 MR. KLINE: Okay. Your Honor, thank
21 you very much.

22 Now I have a few more things.

23 BY MR. KLINE:

24 Q. Your son as an autistic child, has he had
25 difficulty with weight gain and weight control?

1 A. Yes.

2 Q. Is some of that related to his -- his urges
3 for food?

4 A. Yes. He gets -- we have to put him on a
5 schedule. He wants to eat more than he should. I
6 don't know if -- I know it's about the autism. He
7 gets fixated on what he gets to eat, when he gets to
8 eat. And so we set breakfast, lunch at 11:00,
9 supper at 4:30; and after Wheel of Fortune, snack,
10 and then no more. And I fix his food. And I've
11 always tried to feed him as healthy as possible.
12 And he gets to eat out once a week. He only gets to
13 drink water and 1 percent milk. I don't give him
14 juices and sodas because of the sugar. But, yes,
15 with autism, it is a big factor on obsession with
16 the food and what's -- when's the next meal and
17 when's he going to get -- what's he going to get to
18 eat.

19 Q. Is it a constant struggle?

20 A. It always has been.

21 Q. And in fact, in fact, Mrs. Pledger, does he
22 have a significant girth? Does he have a
23 significant body?

24 A. Yes, he does.

25 Q. And is that different in your mind from these

1 breasts that he has?

2 A. Well, he doesn't -- he's not active as he
3 should be because of autism. He exercises. He
4 doesn't have good posture. And we hold our stomachs
5 in, and he doesn't understand, you know, hold your
6 stomach in to look thinner. But, yeah, it's part of
7 the eating and the weight, and we know that.

8 Q. Yes.

9 MR. KLINE: And, by the way, Your
10 Honor, I have another -- I have another photo
11 which I would like to do the same thing. I
12 don't believe there will be an objection, but
13 let me see.

14 MS. SULLIVAN: No objection.

15 MR. KLINE: Okay.

16 THE COURT: Okay. No objection.

17 P-76.

18 MR. KLINE: Yes.

19 And I would ask for the same
20 consideration to this photo as the prior.

21 THE COURT: All right. Let me just
22 see it for a second.

23 MR. KLINE: Sure.

24 MS. SULLIVAN: No objection, Your
25 Honor.

1 THE COURT: Okay. P-76 may be shown
2 to the witness. It will be placed under seal
3 and it can be published, if that's -- is that
4 authenticated for us?

5 MR. KLINE: Yes. I'll authenticate
6 it.

7 - - -

8 (Whereupon Exhibit P-76 was marked
9 for identification.)

10 - - -

11 BY MR. KLINE:

12 Q. Briefly, this is a photo which was taken by
13 you, I believe, with your cell phone?

14 A. My little flip phone.

15 Q. Your little flip phone.

16 A. Yes.

17 Q. And is that a picture taken within the past
18 year or so?

19 A. No.

20 Q. When was that taken?

21 A. This one was taken -- October was three years
22 ago.

23 Q. Oh, okay. And was he a lot heavier then?

24 A. Yes. We had actually started a diet in
25 October and started questioning about Halloween, so

1 we started doing treasure hunts after that. But he
2 was quite a bit heavier in this photo.

3 Q. Okay. Can some of us who have constant weight
4 problem get in on your treasure hunts?

5 A. Yes.

6 Q. Do you have -- so the photo that we're about
7 to see was taken a few years ago when he was
8 significantly heavier, correct?

9 A. Yes.

10 Q. And he's lost a bunch of weight since then?

11 A. Yes; a lot.

12 Q. Okay. Like how much?

13 A. He lost in a year and a half 73 pounds.

14 Q. Okay.

15 A. And he has maintained 68 of it.

16 Q. Maintained 68 off?

17 A. Continued to keep the 68 of the initial 73
18 off.

19 Q. And during Austin's struggle, did he -- when
20 he was on -- had he gained weight, some weight
21 before he was on Risperdal, or don't you remember?

22 A. I thought he looked normal size before he
23 started Risperdal in the --

24 Q. When he was on the Risperdal, the records are
25 going to show he gained about a hundred pounds; does

1 that sound about right?

2 A. Oh, yeah. He gained weight throughout the
3 Risperdal treatment.

4 Q. Okay. When he was on Risperdal, he also lost
5 weight during that treatment --

6 A. Yes.

7 Q. -- correct?

8 A. Yes.

9 Q. So he gained a lot of weight, lost some, and
10 then gained some more during Risperdal?

11 A. Yes.

12 Q. And after he was off Risperdal, he had gained
13 apparently a lot of weight afterwards?

14 A. He did.

15 Q. Okay. And at one point had gotten as high as
16 over 300 pounds?

17 A. Yes.

18 Q. And he's now about 250 or thereabouts?

19 A. Yes. Yes.

20 Q. Okay. I want to show this picture, but I want
21 to make sure we're clear. This was -- this picture
22 they're going to see is before he lost all the
23 weight?

24 A. Absolutely.

25 Q. Because I want the jury to see it all.

1 A. I had actually started his diet less than a
2 week before this picture was taken.

3 Q. And that photo that the jury is going to see
4 when he was -- is this about when he was at his
5 heaviest or near his heaviest?

6 A. This was his heaviest, yes.

7 Q. Even when he was at his heaviest,
8 Mrs. Pledger, did he still have these very
9 distinguishable breasts that you observed?

10 A. Yes.

11 Q. Okay.

12 MR. KLINE: With the Court's
13 permission.

14 THE COURT: Yes. It may be published
15 now. This is P-76.

16 COURT CRIER: P-76 to the jury.

17 - - -

18 (Exhibit P-76 published to the jury
19 at this time.)

20 - - -

21 COURT CRIER: P-76 published to the
22 jury.

23 THE COURT: All right. P-76 has been
24 published to the jury. It is also sealed.

25 We would like to take a break

1 shortly, and before any cross, so...

2 MR. KLINE: I'm very close.

3 THE COURT: Okay.

4 MR. KLINE: Very close.

5 Thank you, everyone, for your
6 indulgence with me.

7 BY MR. KLINE:

8 Q. So we've now had an opportunity to see three
9 photos of your boy. And do you at least as a mom
10 believe that he has, to use words I've heard you
11 use, women's breasts?

12 MS. SULLIVAN: Objection, Your Honor.
13 That's -- it's the plaintiff's case.

14 MR. KLINE: I'll rephrase the
15 question.

16 MS. SULLIVAN: It's not proper for
17 this witness, Your Honor.

18 THE COURT: That's overruled.

19 BY MR. KLINE:

20 Q. You can answer.

21 A. Yes, he does.

22 Q. And in fact does he himself make the
23 comparison between him and you?

24 A. Yes, he does.

25 Q. Did any of your doctors make the diagnosis?

1 A. No.

2 Q. Did you see an ad on TV?

3 A. Yes, I did.

4 Q. Did you see those darn plaintiffs' lawyers
5 advertising for cases?

6 A. Yes.

7 Q. Were any of them me, by the way?

8 A. No.

9 Q. Or Mr. Gomez?

10 A. No.

11 Q. Lawyers in Texas?

12 A. Yes, they were.

13 Q. Did you -- tell us how you felt when you saw
14 that advertisement.

15 A. Well, it caught my attention. There's so many
16 of them on TV. But it caught my attention because
17 of the Risperdal. And I had never heard the word
18 "gynecomastia." And I didn't know that -- that it
19 could cause him to grow breasts. So I was still
20 thinking it was weight and it was unfortunate. And
21 I didn't know that that could happen, so it -- my
22 husband was gone that night and it was very
23 upsetting, because I never told people about his
24 chest because it's not something you are proud of.
25 I didn't want anyone to see him like that. And I

1 see him every day and I love him and I think he's
2 beautiful, but I hated that part for him. And I saw
3 him through a mother's eyes. I didn't see what the
4 picture shows.

5 So when I saw the ad, I didn't know
6 what to do. And I thought -- I was scared to call,
7 and I was nervous about it, and I was upset. But I
8 thought I'm going to call, and I did. And they told
9 me they needed to see pictures.

10 So I told my son that I would like to
11 take pictures of him showing me his muscles -- I
12 didn't want to tell him why -- and that he was doing
13 really good on his diet. We had just started, but
14 we were talking it up. And so let me take his
15 picture. And he did not know I wasn't taking all of
16 him. And I texted the pictures to the number I
17 called, and they contacted me back and they said,
18 yes, in their opinion, I did make the right decision
19 to call them.

20 And I was scared to tell my husband
21 because I didn't think he'd like that. I didn't
22 think he'd like me to have made that phone call,
23 because it's just not something we ever thought ever
24 in our lives we'd do anything -- like go through
25 anything like this. It was so beyond my realm of

1 thinking. And when he got home from -- he was in a
2 band with some friends; and when he got home from
3 band practice, he was mad. He was mad that this was
4 done to his son. He was still thinking like I was.
5 Well, even though we knew he was overweight, why was
6 this happening? But we didn't know why. And that
7 kind of opened our eyes to it.

8 Q. Do you understand that your son's condition is
9 a permanent one?

10 A. Yes.

11 Q. That it's not going to go away?

12 A. Yes, I do.

13 Q. And without getting into any details, have you
14 at least tried to get a -- an appointment with a
15 breast surgeon?

16 A. Yes, I did.

17 Q. And was that -- was that denied?

18 A. Yes.

19 Q. Okay. And are you glad that you've done this,
20 ma'am?

21 A. Yes, I am.

22 MR. KLINE: Okay. I have nothing
23 further.

24 THE COURT: Okay. Members of the
25 jury, let's take our break here. We will go

1 straight into cross-examination. And if
2 we're not completed, we'll go after lunch and
3 continue cross-examination and redirect. But
4 let's take our break right here for about ten
5 minutes.

6 COURT CRIER: All rise as the jury
7 exits.

8 - - -

9 (Whereupon the jury exited the
10 courtroom at 11:57 a.m.)

11 - - -

12 THE COURT: All right. We're in
13 recess for ten minutes.

14 MR. KLINE: Thank you.

15 - - -

16 (Whereupon a recess was taken.)

17 - - -

18 THE COURT: Okay.

19 COURT CRIER: All rise as the jury
20 enters.

21 - - -

22 (Whereupon the jury entered the
23 courtroom at 12:15 p.m.)

24 - - -

25 THE COURT: All right. Please be

1 seated.

2 All right. When you're ready
3 cross-examination, Ms. Sullivan, when you're
4 ready.

5 MS. SULLIVAN: Thank you, Your Honor.
6 Good afternoon, jurors. How are you?

7 JURY PANEL: Good afternoon.

8 - - -

9 CROSS-EXAMINATION

10 - - -

11 BY MS. SULLIVAN:

12 Q. Mrs. Pledger, good afternoon.

13 A. Good afternoon.

14 Q. We met when the case just started in jury
15 selection, right?

16 A. Yes.

17 Q. For the first time?

18 A. Yes.

19 Q. And actually, that was the first time you met
20 your lawyer, Mr. Kline, right?

21 MR. KLINE: Your Honor, objection.

22 That is really, really --

23 THE COURT: Overruled. Overruled.
24 Overruled.

25 Go ahead.

1 BY MS. SULLIVAN:

2 Q. Ms. Pledger, it's true you met Mr. Kline the
3 same time you met me. The first time you met him
4 was when you walked in when the case started for
5 jury selection?

6 A. Yes.

7 Q. And, Mrs. Pledger, you showed the jurors some
8 pictures of your son and one when he was coming out
9 of the pool when he was younger?

10 A. They were shown to them, yes.

11 Q. Yeah. And your best recollection is the one
12 when he was coming out of the pool was when he was
13 on Risperdal; that's your best recollection?

14 A. Oh, he was.

15 Q. And the two others when he had gained more
16 weight and was bigger, those two were taken years
17 after he stopped taking Risperdal?

18 A. Yes, both of them.

19 Q. Yeah.

20 A. Yes.

21 Q. So the one in the pool, your best
22 recollection, he was on Risperdal?

23 A. He was.

24 Q. The two when he was much bigger were taken
25 years after he stopped taking Risperdal?

1 A. Yes. He was older and bigger.

2 Q. And, Mrs. Pledger, you talked about your son,
3 and you've done a terrific job trying to bring him
4 along and learn things.

5 A. Thank you.

6 Q. Et cetera, by all accounts.

7 But you're suing here on behalf of
8 him because he's been declared not competent to
9 bring the lawsuit, right?

10 A. Yes.

11 Q. You're suing on his behalf?

12 A. Yes.

13 Q. And you also -- he's also -- you made a claim
14 and he's been established disabled by the
15 government, right?

16 A. I -- I don't understand. I made a claim that
17 he was disabled by the government?

18 Q. Maybe it's --

19 A. As far as guardianship?

20 Q. In terms of disability benefits.

21 MR. KLINE: Oh, Your Honor, Your
22 Honor, objection.

23 THE COURT: Sustained.

24 MR. KLINE: Objection under
25 Pennsylvania law. And she knows better.

1 THE COURT: Sustained. Absolutely.

2 MS. SULLIVAN: Well, Your Honor,
3 this --

4 THE COURT: It's not relevant.

5 MS. SULLIVAN: I'm sorry?

6 THE COURT: It's not relevant here.

7 MS. SULLIVAN: Your Honor, I just
8 like to show, without talking about any
9 benefits, show the form that talks about the
10 level of his disability, which is relevant.

11 THE COURT: Overruled -- I mean
12 sustained. We're just not going to get
13 into the -- there's many other methods of
14 doing that without relying on any
15 government-type determinations.

16 MS. SULLIVAN: Okay.

17 BY MS. SULLIVAN:

18 Q. Ms. Pledger --

19 MR. KLINE: Your Honor, would you
20 instruct the jury that that was improper?

21 THE COURT: All right. Yeah.

22 Ladies and gentlemen, for the purpose
23 that Ms. Sullivan wants to discuss the mental
24 state or capacity of this witness, the
25 particular document she wants to use or

1 anything, a determination by the government
2 is not relevant. If there was an issue about
3 this issue, I would have heard about it and
4 made a separate ruling about it. But I have
5 not had that chance to do so. So, therefore,
6 this particular issue through the government
7 is ruled for you not to consider.

8 BY MS. SULLIVAN:

9 Q. Ms. Pledger, have you stated in -- in a form
10 that your son needs assistance with everything?

11 A. Uhmm, at this point in his life not
12 everything, but, yes, he needs assistance.

13 Q. And have you said that as early as last year?

14 A. Well, he has -- someone has to stay with him.
15 He --

16 Q. And have you said, Ms. Pledger, that you have
17 to assist him with bathing and dressing?

18 A. He started bathing himself, and he dresses
19 himself. He has done that for several years.

20 Q. Okay. But as of last year, you didn't -- you
21 didn't say that he needs assistance?

22 A. I don't know what paper -- I don't know what
23 information you've got.

24 Q. And, Your Honor --

25 A. But he dresses himself.

1 MS. SULLIVAN: May I show this
2 defense exhibit, which is Mrs. Pledger's
3 statement? I'm sorry.

4 THE COURT: Is there an objection?

5 MR. KLINE: Your Honor, I haven't
6 seen it.

7 THE COURT: So why don't we look at
8 it. Let's do it the old-fashioned way.

9 MR. KLINE: I haven't seen it.

10 MS. SULLIVAN: Ms. Brown. And, Your
11 Honor, I'm happy to cover up any
12 objectionable subject matter. I just wanted
13 her statement.

14 THE COURT: I just don't know if
15 there's any inconsistent statement, to be
16 honest, at this point on this.

17 MS. SULLIVAN: I'm not -- I'm just --

18 THE COURT: So then I don't know.
19 Show it to the counsel and see if there's an
20 objection.

21 MS. SULLIVAN: Sure.

22 THE COURT: I don't know what purpose
23 it's being used for.

24 (Showing counsel.)

25 MR. KLINE: It is not inconsistent,

1 Your Honor. But I don't have an objection so
2 long as she doesn't try to get into things
3 that she knows are prejudicial like she
4 usually does.

5 MS. SULLIVAN: Your Honor, I object
6 to that. I'm just trying to get the evidence
7 in here. I object to the constant --

8 MR. KLINE: She's trying to get
9 evidence in that Your Honor tells her that
10 she can't.

11 But I have no objection to this. Go
12 do it. Go do it.

13 THE COURT: Okay. There's no
14 objection. And we'll see the document, and
15 we'll go do it. I don't have a problem with
16 it.

17 MS. BROWN: D-29.

18 MS. SULLIVAN: And if we could put
19 up --

20 THE COURT: Well, no one's putting up
21 anything yet until I this see this document.

22 What number is this?

23 COURT CRIER: This is D-29.

24 MR. KLINE: Your Honor, there are
25 certain things. I don't have a problem with

1 the content...

2 THE COURT: I'll tell you what, why
3 don't you ask questions based on this
4 document.

5 Do you want the witness to read the
6 document?

7 I mean, I don't understand what the
8 nature of using this document is for. To
9 refresh her memory?

10 MS. SULLIVAN: No.

11 THE COURT: I mean, I'm old school
12 here.

13 MS. SULLIVAN: No, Your Honor.
14 Mr. Kline went into the level of
15 Mr. Pledger's understanding, and I wanted to
16 show some of Mrs. Pledger's statements on
17 that very issue.

18 THE COURT: Okay. One moment.

19 MR. KLINE: It's nearly two years
20 old, Your Honor, the document, and consistent
21 with what she said.

22 THE COURT: Well, either you're
23 objecting or you're not.

24 MR. KLINE: Yes. Now I'll object.
25 It's consistent with everything she said

1 here.

2 THE COURT: That's sustained.

3 BY MS. SULLIVAN:

4 Q. And, Ms. Pledger, have you said as early as
5 last year that your son does not understand simple
6 things like most people?

7 A. There are very simple things he doesn't
8 understand.

9 Q. And have you said that he'll never hold a job?

10 A. I don't believe he will.

11 Q. And he has trouble communicating?

12 A. He's autistic. That's what autism is.

13 Q. And that he mostly sits home during the day
14 and watches about ten hours of TV?

15 A. He watches a lot of TV, or plays on his tablet
16 or computer or listens to his music; but, yes, he
17 spends the majority of his days at home with me.

18 Q. And he can say a few words but can't carry on
19 a conversation?

20 A. Uhhh, not like you and I do. He does say a
21 lot of words. But he doesn't understand the
22 back-and-forth communication.

23 Q. And that he has -- you've said that he has a
24 five-year-old mindset?

25 A. Yes, at times he does. He's still a little

1 boy. He loves Barney.

2 Q. He still loves Barney?

3 A. Yeah.

4 Q. Ms. Pledger, I want to go back to when your
5 son first -- when you first took him to see
6 Dr. Mathisen, if I could.

7 A. Okay.

8 Q. And you have described some of the challenges
9 you and your family faced dealing with a child with
10 autism, right?

11 A. I think I've -- I don't know what description
12 I've given about Austin, but --

13 Q. But you and your husband have had to deal with
14 some of the behavioral issues that go with autism?

15 A. Oh, yes. Oh, yes.

16 Q. And I think you've talked about some of them,
17 the tantrums?

18 A. Yes.

19 Q. And you told our jurors that it's not like a
20 kid who doesn't have autism tantrums, it's something
21 completely different?

22 A. Oh, it's totally different, yes.

23 Q. And can you describe -- and so in the time
24 before you took your son to see Dr. Mathisen, can
25 you describe for us the kinds of things that drove

1 you to see a doctor for your son to try to address
2 these behavioral issues? What are the kinds of
3 things that you were facing in terms of the
4 behavioral issues?

5 A. Ummm, he was, and was for many years before we
6 started Risperdal and during -- he's much different
7 now -- but he would hit himself. And the doctors
8 even told me it could be he has a headache. It
9 could be out of frustration, but he would hit
10 himself before Risperdal, but over the years it's
11 always been something. He -- he'll scream or be
12 frustrated or there were years where he bit himself.
13 It's just a lot of -- the world is a frustrating
14 place for an autistic person.

15 Q. And, Mrs. Pledger, you had described constant
16 screaming tantrums that could happen, as many as
17 eight times a day?

18 A. Oh, well --

19 Q. Before Risperdal?

20 A. -- not constant, but, yes. When I worked, I
21 worked until he was five, and then it just got to
22 the point where I couldn't. I had to be with him
23 for many reasons. But, yes, he can be very loud
24 when he gets upset. He screams and he will throw
25 himself on the ground and hit his head. And he's

1 just frustrated, and he didn't have the words to
2 tell me why. So that was his way of acting out.

3 Q. And, Mrs. Pledger, in addition to having
4 problems at home, it sounded like he was having
5 problems at school, and some of the teachers spoke
6 to you about some of the problems he was having in
7 school when he was 6 or 7 years old?

8 A. Oh, absolutely. We communicated every day by
9 at least letter; and once I quit working, I was at
10 the school a lot. But we wrote back and forth to
11 each other different things. And they didn't know
12 him as well as we did. And we were struggling, so
13 we knew they were struggling.

14 Q. And is it one of the teachers that in fact
15 recommended that you try to get some medicine for
16 your son?

17 A. Actually, it was his teacher's aide; and her
18 sister went to Dr. Mathisen, so she referred
19 Dr. Mathisen to me.

20 Q. Okay. So he was having these sort of severe
21 behavior problems at home and at school and one of
22 the teacher's aides said there's some medicine
23 and --

24 A. No. She said that there was a good doctor.

25 Q. Okay.

1 A. And that maybe he would have some ideas to
2 help us.

3 Q. Okay. So --

4 A. And we were -- before we took him, my husband
5 was pretty sure he didn't want to even try medicine,
6 but of course we discussed it.

7 Q. And then you went to see Dr. Mathisen?

8 A. Yes.

9 Q. And Dr. Mathisen talked to you about the fact
10 that he had treated other children with autism?

11 A. Yes.

12 Q. And talked to you about the fact that he had
13 prescribed Risperdal for kids with autism, and it
14 had helped them?

15 MR. KLINE: Objection. I object only
16 to the extent that this is all hearsay and
17 she had an opportunity to ask Dr. Mathisen
18 all of this.

19 MS. SULLIVAN: We did.

20 MR. KLINE: To the extent that this
21 mother says something, I have no objection.
22 I do have an objection to the hearsay.

23 THE COURT: Well, that's overruled.

24 MR. KLINE: Especially since --

25 THE COURT: That's overruled.

1 MR. KLINE: Especially since the
2 doctor was here.

3 THE COURT: That's overruled. Go
4 ahead.

5 THE WITNESS: Please say that again.

6 MS. SULLIVAN: Sure.

7 BY MS. SULLIVAN:

8 Q. Mrs. Pledger, Dr. Mathisen told you that he
9 had treated other kids with autism and had some
10 success using Risperdal; that it helped some other
11 children?

12 A. On my second visit, he did say that.

13 Q. Yes.

14 A. I knew he had -- he saw autistic children on
15 our first visit, too.

16 Q. And on the second visit, he said he had
17 prescribed Risperdal for other children with autism
18 and it helped on these bad behavioral issues?

19 MR. KLINE: Same objection. It has
20 to do with other children and hearsay.

21 THE COURT: All right. That's
22 sustained.

23 You can ask without leading on
24 something like this as to what she understood
25 from Dr. Mathisen.

1 BY MS. SULLIVAN:

2 Q. And, Mrs. Pledger, it sounded like you thought
3 long and hard about whether or not to put your son
4 on a medicine?

5 A. It was a hard decision.

6 Q. And a decision that no parent really wants to
7 face in terms of a serious medicine?

8 MR. KLINE: Objection as to any
9 parent. She would have no idea.

10 THE COURT: Yeah. Please limit it to
11 what her experience was. This is a single
12 case here.

13 BY MS. SULLIVAN:

14 Q. Mrs. Pledger, you made the decision to start
15 your son on Risperdal because you felt like he
16 needed a medicine?

17 A. I didn't start him on Risperdal because I felt
18 like he needed a medicine. It was something we
19 could try, the doctor suggested; and my husband and
20 I discussed it.

21 Q. And you discussed it and decided that he
22 needed help?

23 A. We discussed it and decided we were hoping it
24 would help.

25 Q. And it did?

1 A. It did.

2 Q. And the jury has seen some of the medical
3 records, and you were pretty candid in your
4 deposition on the serious behavioral issues,
5 including his behavior at school. Risperdal really
6 helped Austin?

7 A. It did help him.

8 Q. And in fact you kept him on Risperdal for
9 about five years?

10 A. Yes.

11 Q. And when Dr. Mathisen first prescribed
12 Risperdal to you, did he tell you that the medicine
13 was not FDA approved for children?

14 A. I believe his words were that it was not
15 approved yet and that it had helped children,
16 autistic children, through his experience.

17 Q. And I'm going to show you, Mrs. Pledger -- I'm
18 going to show the witness -- and if we could have
19 Alli give it to Mrs. Pledger and to counsel.

20 Mrs. Pledger, I'm going to show you
21 Page 39. You gave a deposition in this case?

22 A. Yes.

23 Q. And I'm going to show you some of that
24 testimony.

25 A. Okay.

1 MR. KLINE: Wait.

2 THE COURT: One second. Is this
3 marked? One second, please.

4 Please do not put anything up yet.

5 And it is not the Court's practice to
6 put deposition transcripts on the screen.

7 COURT CRIER: D-30.

8 - - -

9 (Whereupon Exhibit D-30 was marked
10 for identification.)

11 - - -

12 THE COURT: Because if we did that,
13 we'd have to read the whole deposition to put
14 everything in play.

15 MS. SULLIVAN: I can read the
16 question and answer, Your Honor.

17 MR. KLINE: Your Honor, I object.
18 There's no inconsistency.

19 THE COURT: All right. Right now
20 we're at D-30. This is a transcript of a
21 deposition taken on Friday, November 8, 2013.
22 And what page are we looking at?

23 MS. SULLIVAN: Page 39, Your Honor,
24 Line 19 to 21.

25 THE COURT: Well, that --

1 MR. KLINE: It's totally consistent.

2 THE COURT: Well, is there anything
3 inconsistent with what's been said so far?
4 What's the purpose?

5 MS. SULLIVAN: It's inconsistent with
6 the last question and answer.

7 THE COURT: Number 21?

8 MR. KLINE: It says the exact same
9 thing. Object.

10 THE COURT: Well, I think you
11 asked that. We can take a break right here
12 and go to lunch.

13 MS. SULLIVAN: Sure, Your Honor.

14 THE COURT: All right. We're going
15 to go to lunch then right here.

16 Ladies and gentlemen, can we come
17 back at 1:30? And it looks like we may have
18 the afternoon in session today. It's okay,
19 you know. We're paid for a living here.

20 So 1:30, come back here. Have a good
21 lunch. Again, the same rules now, very
22 important. The yellow badges for the reasons
23 we already know. To keep an open mind in
24 this case. Definitely have ways to go. To
25 not discuss this matter with each other or

1 anybody else, and obviously not to read
2 anything or listen to anything or watch
3 anything about this particular case, okay?

4 All right. Thank you very much
5 everybody.

6 COURT CRIER: All rise as the jury
7 exits.

8 - - -

9 (Whereupon the jury exited the
10 courtroom at 12:33 p.m.)

11 - - -

12 (The following transpired in open
13 court outside the presence of the jury:)

14 - - -

15 THE COURT: All right. As soon as
16 you are -- we're going to go over the
17 evidentiary issues for this particular
18 document and probably for some others, so you
19 may step outside for a few minutes.

20 THE WITNESS: Okay.

21 - - -

22 (Witness exited the courtroom.)

23 - - -

24 THE COURT: All right. Everyone be
25 seated. I'd like to ask our court reporter,

1 John, to read to me now what were
2 Ms. Sullivan's questions to this witness
3 concerning the FDA label as far as what she
4 was told by Dr. Mathisen and what her answers
5 were.

6 COURT REPORTER: Yes, Your Honor.

7 THE COURT: In fact, why don't you
8 flash that on the screen. It will be helpful
9 for me. We'll flash the realtime -- or right
10 now what we're talking about -- not from the
11 deposition. I'm talking about the -- if we
12 can flash this realtime transcript up there.
13 Can we do that?

14 MR. KLINE: Yes. If not, I have it
15 on my iPad.

16 MR. MURPHY: It's at 12:30.

17 MS. SULLIVAN: And, Your Honor, the
18 inconsistency -- and, Your Honor, I can read
19 it -- is that Ms. Pledger testified here that
20 Dr. Mathisen did tell her it wasn't FDA
21 approved. She testified to the opposite at
22 her deposition.

23 MR. KLINE: That's not --

24 THE COURT: I didn't hear that,
25 Counsel. I didn't see that myself.

1 MR. KLINE: That's not correct. I
2 have it right here.

3 MR. MURPHY: It's at 12:30.

4 MR. KLINE: I have it right here. I
5 can hand you my iPad.

6 THE COURT: Well, I need to place on
7 the record is what we're going to do. Place
8 on the record what the questions were. I
9 certainly did not hear that she heard it was
10 FDA approved.

11 MS. SULLIVAN: That was a different
12 question.

13 THE COURT: I am not going to make
14 any rulings without knowing exactly what was
15 asked before.

16 (The Court Reporter handed the Judge
17 an iPad with Mrs. Pledger's testimony in
18 realtime for readback.)

19 - - -

20 (Pause.)

21 - - -

22 THE COURT: Okay. So here's the
23 actual question and answer, and we'll go over
24 this and then we're going to set some ground
25 rules here.

1 The question, I think, that
2 Ms. Sullivan is suggesting is inconsistent is
3 at 12:30:22: "When Dr. Mathisen first
4 prescribed Risperdal to you, did he tell you
5 that the medicine was not FDA approved for
6 children?"

7 And the answer is: "I believe his
8 words were that it was not approved yet and
9 that it had helped children, autistic
10 children, through his experience."

11 Okay. And that's what we're talking
12 about.

13 MS. SULLIVAN: Yes, Your Honor. And
14 the impeachment is at Page 39, Line 19 of her
15 deposition where she's asked "Question: Did
16 he tell you that that was a use that was not
17 approved by the FDA at that time?"

18 "Answer: No."

19 And I submit that's --

20 MR. KLINE: Read the next --

21 MS. SULLIVAN: -- dramatically
22 inconsistent.

23 MR. KLINE: Read the next question
24 and answer.

25 THE COURT: And then the next

1 question and answer at that deposition was,
2 "Did you have an understanding that it was
3 approved for use at that time?"

4 The answer being "no."

5 MS. SULLIVAN: No understanding, but
6 the question --

7 MR. KLINE: No; that's her
8 interpretation.

9 THE COURT: So I'm going to rule that
10 there is no inconsistency there that is
11 worthy of impeachment, unless you want to go
12 back to the word "yet." That's the only
13 thing that I've heard so far that is a little
14 different from the -- from the thing.

15 And so, you know, you can go back on
16 the "yet" if that's important enough to you
17 as a distinction.

18 But, Ms. Sullivan, I am going to
19 advise you that having sat through a
20 cross-examination of yours before, we're
21 going to be watching this very, very
22 carefully, because I do not want to go back
23 and forth, back and forth on matters that are
24 not inconsistent or consistent.

25 MS. SULLIVAN: Your Honor, that's

1 dramatically --

2 THE COURT: Excuse me. We had a lot
3 of questions that you asked in previous
4 cross-examinations that were in fact
5 consistent statements and then not really
6 ones that were properly admissible because
7 they were not based on fabrications.

8 So all I know is that I'm going to be
9 watching this very carefully. I'm going to
10 admonish you in front of the jury if
11 necessary.

12 Please, please, be mindful of the
13 fact that all deposition testimony is not
14 going to be broadcast on the screen; and that
15 if you have an inconsistency, you show it to
16 counsel first, and that the witness then
17 reads it ahead of time, just like you know
18 how to do, and then ask the question. That's
19 how we're going to do it in this courtroom.

20 We are adjourned till 1:30.

21 - - -

22 (Whereupon a luncheon recess was
23 taken from 12:41 to 1:32 p.m.)

24 - - -

25 (Whereupon the Afternoon Session was

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reported and transcribed by Judy Romano, CRR,
Official Court Reporter.)

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(Morning session concluded.)

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C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

I further certify that I am not a relative or employee of any attorney or counsel employed in this case.

John J. Kurz, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter

(The foregoing Certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

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