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

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

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

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

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

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APPEARANCES:

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

THE COURT: Are we ready to begin?
CRIER: Please remain seated until the jury reaches the jury box.
(Jury panel enters courtroom at 11:17 a.m.)
CRIER: Do you solemnly swear or if you affirm, do you affirm that you will faithfully listen to the evidence, determine the true facts and apply the law in this case?
(Jury panel responds: "I do").
THE COURT: Ladies and gentlemen of the jury, congratulations. You've been selected to perform one of the most solemn duties of citizenship. You're to sit in judgment of a claim brought by one of your fellow citizens against others of your fellow citizens.
The services which you render in this matter are as important to the administration of justice as those rendered by me, the judge or the attorneys for their respective sides.
If you pay close attention to

5		7	
1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I	1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	everything that is said and everything	2	makes a record of everything that is said
3	that occurs throughout the trial, so when	3	throughout the trial.
4	it comes time for you to deliberate,	4	When you go to the jury room to
5	discuss the evidence and render a	5	deliberate on your verdict, if you find
6	verdict, the evidence will be clear in	6	that your recollection of a particular
7	your collective recollection.	7	piece of testimony has become uncertain
8	I'm Judge Bernstein and I'm going to	8	or confused, you may, I may, at your
9	preside over this trial.	9	request, allow the court reporter to read
10	Plaintiff's counsel may make an	10	a portion of the testimony back to you.
11	opening address to you in which he	11	You should not rely on getting this
12	outlines his case. Defense counsel can	12	kind of help from the court reporter.
13	then make an opening address or they can	13	It's my expectation that this case is
14	reserve their right to address you at a	14	going to take about three weeks, and
15	later point in the trial.	15	unfortunately, there's several scheduling
16	After the opening statements,	16	problems that I'll discuss with you later
17	plaintiff's counsel will present	17	on in the day.
18	evidence. He can call witnesses to the	18	So it's going to be a little bit of
19	stand. He may offer exhibits or	19	an extended time, but I'm confident that
20	documents, conceivably even physical	20	if you, as you attentively pay attention
21	objects into evidence.	21	to every witness, testimony will be clear
22	Each witness called by the plaintiff	22	in your collective recollection when it
23	will be questioned by the plaintiff. We	23	comes time to deliberate.
24	call that direct examination; and then	24	Now, this courtroom is right where
25	will be cross-examined by defense	25	Broad Street hits City Hall, and there
6		8	
1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I	1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	counsel.	2	must be a regulation of some sort that
3	Cross-examination is questioning	3	says emergency vehicles are supposed to
4	designed to test the truthfulness and	4	turn on their siren when they hit that
5	accuracy of what was presented to you in	5	corner.
6	direct examination.	6	We've got a crowded courtroom. It
7	At the conclusion of the plaintiff's	7	may get hot. We'll try to keep the air
8	case, defense counsel will have an	8	conditioners off, but sometimes we'll
9	opportunity to call witnesses, and any	9	have to turn them on.
10	witnesses called by defense will be	10	This may make it difficult to hear.
11	subject to cross-examination by	11	Any combination of these things, maybe an
12	plaintiff's counsel.	12	attorney or witness speaks softly.
13	After all the evidence has been	13	You'll have trouble hearing.
14	presented to you, the attorneys for each	14	If at any time you're having any
15	side will have a final opportunity to	15	difficulty hearing, signal Charles,
16	make closing arguments.	16	signal me, do something and we will do
17	I will give you the final	17	everything necessary to make sure you
18	instructions as to everything you need to	18	hear all the evidence.
19	know in order to render a proper verdict;	19	Please do it as soon as you start
20	and perhaps I'll add some additional	20	having any problems. If you stand up and
21	guidance about how you may properly	21	say, Judge, I haven't heard anything for
22	conduct your deliberations as you will	22	the last 20 minutes, there's nothing I
23	then retire to the jury room to begin	23	can do about it.
24	your deliberations and reach a verdict.	24	Counsel, with respect to the sirens,
25	We do have a court reporter who	25	if a siren starts, which they will, you

	9		11
1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I	1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
11:23:34AM 2	can just stop, wait until it passes a	11:25:43AM 2	You're not to share your notes with
11:23:38AM 3	little bit and then start over. You	11:25:44AM 3	anybody. At the end of the day, we're
11:23:39AM 4	don't need any permission. Everybody	11:25:46AM 4	going to collect it at the end of the
11:23:41AM 5	will understand what's going on.	11:25:48AM 5	trial, we're going to collect them and
11:23:43AM 6	You have notes and are permitted to	11:25:50AM 6	shred them without anybody reading them.
11:23:52AM 7	take notes, but you're not required to	11:25:53AM 7	The only time you can use your notes
11:23:53AM 8	take notes; and if you choose to take	11:25:55AM 8	is during deliberations. You are
11:23:55AM 9	notes, you don't have to take extensive	11:25:58AM 9	permitted at that time, if you choose, to
11:23:58AM 10	notes.	11:26:01AM 10	share your notes with anybody you want to
11:23:58AM 11	If you take extensive notes for the	11:26:04AM 11	share it with.
11:24:01AM 12	first week, you don't have to keep it up	11:26:05AM 12	Before that, you're not even to show
11:24:04AM 13	in the second week. Those notes are	11:26:07AM 13	your notes to anyone.
11:24:09AM 14	reminders to yourself and you can take as	11:26:09AM 14	As I mentioned, the most important
11:24:11AM 15	much or as little as you want.	11:26:16AM 15	job of the jury is to judge the
11:24:13AM 16	One of the most important things of	11:26:18AM 16	credibility of the witnesses and to
11:24:17AM 17	a juror is to evaluate -- perhaps the	11:26:20AM 17	evaluate what weight is to be given to
11:24:19AM 18	most important thing for a juror is to	11:26:23AM 18	the evidence.
11:24:22AM 19	evaluate the testimony being given to	11:26:23AM 19	By credibility, I mean the witness'
11:24:24AM 20	you.	11:26:27AM 20	testimony's truthfulness and accuracy.
11:24:24AM 21	You have to judge the credibility of	11:26:30AM 21	In judging credibility, you should
11:24:28AM 22	each witness. Credibility is the	11:26:33AM 22	use your own understanding of human
11:24:30AM 23	truthfulness and accuracy of what the	11:26:38AM 23	nature and common sense. Observe each
11:24:33AM 24	witnesses say in their testimony.	11:26:39AM 24	witness as he or she testifies; alert for
11:24:36AM 25	So note-taking should not be allowed	11:26:43AM 25	anything in his or her words, demeanor or
	10		12
1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I	1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
11:24:39AM 2	to divert your attention from evaluating	11:26:47AM 2	behavior on the witness stand or for
11:24:44AM 3	the witness' credibility.	11:26:49AM 3	anything in the other evidence in the
11:24:45AM 4	They're merely memory aids. They're	11:26:51AM 4	case, which might help you to judge the
11:24:50AM 5	not evidence or any kind of official	11:26:54AM 5	truthfulness and accuracy of the
11:24:52AM 6	record. So jurors who take few notes or	11:26:56AM 6	testimony and thereby determine what
11:24:55AM 7	don't take any notes should not be	11:27:01AM 7	weight that testimony should receive.
11:24:58AM 8	influenced by the fact that somebody else	11:27:05AM 8	One of the things that you could
11:25:01AM 9	wrote something down.	11:27:06AM 9	look for is whether the witness answers
11:25:04AM 10	They may have gotten it wrong. They	11:27:09AM 10	in a straightforward manner or whether
11:25:07AM 11	may have gotten the texture a little bit	11:27:12AM 11	the witness' answers are given in any
11:25:09AM 12	wrong. They may have written one thing	11:27:16AM 12	kind of evasive manner.
11:25:10AM 13	down and they said the opposite in their	11:27:19AM 13	It's my responsibility to decide all
11:25:13AM 14	testimony. If a note helps you to	11:27:22AM 14	questions of law and, therefore, you must
11:25:16AM 15	remember, yeah, that is what the witness	11:27:25AM 15	accept and follow my rulings as to
11:25:17AM 16	said, that's fine.	11:27:28AM 16	matters of law.
11:25:18AM 17	But you're not to think something is	11:27:28AM 17	But I'm not the judge of any of the
11:25:21AM 18	accurate or even important just because	11:27:37AM 18	facts and it's not my responsibility to
11:25:25AM 19	somebody wrote it down.	11:27:40AM 19	determine what are the true facts
11:25:27AM 20	The notes are confidential. They're	11:27:42AM 20	concerning the claims presented.
11:25:30AM 21	not going to be read by anybody else.	11:27:44AM 21	You, the jurors, are the only judges
11:25:34AM 22	When you leave the courtroom, turn it	11:27:46AM 22	of the facts. So your primary
11:25:37AM 23	upsidedown. At the end of the day,	11:27:50AM 23	responsibility, the only ones with that
11:25:40AM 24	Charles will collect them and give them	11:27:53AM 24	responsibility, is to weigh and evaluate
11:25:40AM 25	back to you the next day.	11:27:55AM 25	the evidence, to find facts and applying

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

11:27:59AM 2 the rules of law as I give them to you to
11:28:02AM 3 the facts as you find them to be to
11:28:06AM 4 determine whether the plaintiff have
11:28:07AM 5 proven any of the claims presented.

11:28:10AM 6 As we go through this trial, you're
11:28:15AM 7 to keep an open mind. The oath you just
11:28:17AM 8 took, you swore to do so; and that means
11:28:20AM 9 you should avoid forming opinions about
11:28:22AM 10 any disputed questions until you begin
11:28:25AM 11 your deliberations.

11:28:26AM 12 You should not talk to anyone about
11:28:29AM 13 the evidence or the case until it is time
11:28:33AM 14 to deliberate.

11:28:33AM 15 When I say you should not talk to
11:28:37AM 16 anyone, that includes the 15 of you.
11:28:39AM 17 When you assemble in the morning or when
11:28:41AM 18 you are asked to step out of the
11:28:45AM 19 courtroom or having lunch, you can
11:28:47AM 20 discuss anything in the world that you
11:28:50AM 21 want to talk about, except the case.

11:28:51AM 22 Only when you have heard all the
11:28:55AM 23 evidence and all the arguments and the
11:28:58AM 24 law from me do you know enough to
11:29:01AM 25 reasonably and properly discuss the case.

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

11:29:04AM 2 So I say again: You're not to
11:29:07AM 3 discuss the case with anyone, and that
11:29:09AM 4 includes discussions amongst yourselves.

11:29:13AM 5 You're not to read any newspaper
11:29:20AM 6 stories about the trial. Avoid any radio
11:29:24AM 7 or television which might refer to the
11:29:26AM 8 trial.

11:29:27AM 9 And you're not to read any Internet
11:29:36AM 10 about the trial or messages about trial.
11:29:38AM 11 You're not to use social media to
11:29:42AM 12 communicate about the trial.

11:29:44AM 13 In the old days, we used to lock up
11:29:47AM 14 jurors until the trial was over to make
11:29:50AM 15 sure there was no such communications,
11:29:52AM 16 but just looking at you, I know we don't
11:29:55AM 17 need to do that.

11:29:56AM 18 But you're not to communicate to
11:30:00AM 19 anyone by any means about the trial, and
11:30:02AM 20 with respect to the Internet, you're not
11:30:06AM 21 to look up terms or situations or any
11:30:10AM 22 explanations that you want to get; and
11:30:13AM 23 the reason is that the case has to be
11:30:16AM 24 decided on the basis of the evidence
11:30:18AM 25 presented in open court; the evidence

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

11:30:22AM 2 that each side knows about, the evidence
11:30:25AM 3 that each side confronts, the evidence
11:30:28AM 4 that each side has a right to
11:30:31AM 5 cross-examine about.

11:30:31AM 6 If you're going to get any outside
11:30:34AM 7 influences, whether it's your grand
11:30:38AM 8 niece's comment or your neighbor's
11:30:40AM 9 thought or what somebody posted on
11:30:45AM 10 Wikipedia, they don't even know that's
11:30:47AM 11 part of what they have to deal with in
11:30:49AM 12 deliberations.

11:30:50AM 13 To the lawyers, the only things that
11:30:52AM 14 exist are the things that happen in open
11:30:55AM 15 court.

11:30:55AM 16 This is a very serious instruction;
11:30:59AM 17 you are not to discuss the case with
11:31:01AM 18 anyone. You're not to report on the case
11:31:02AM 19 to anyone and you're not to use any
11:31:06AM 20 social media about the case.

11:31:08AM 21 Now, what happens if you open the
11:31:10AM 22 paper tomorrow and there's a big headline
11:31:13AM 23 about the case? Well, first thing you do
11:31:15AM 24 is stop reading and the second thing you
11:31:18AM 25 do is tell Charles about it.

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

11:31:20AM 2 It's no big deal if you see
11:31:22AM 3 something, if you let us know about it;
11:31:24AM 4 but you're to avoid it. I'm not telling
11:31:28AM 5 you you can't watch the news. But if TV
11:31:33AM 6 comes on about Courtroom 246, shut it
11:31:38AM 7 out.

11:31:38AM 8 You're not to visit the scene of any
11:31:46AM 9 incident or to make any investigation of
11:31:49AM 10 your own or conduct experiments of your
11:31:51AM 11 own.

11:31:51AM 12 It's just the same thing I've been
11:31:53AM 13 telling you: The only information about
11:31:56AM 14 this case, the only information on which
11:31:59AM 15 this case can properly be decided is what
11:32:02AM 16 comes to you while you are altogether
11:32:05AM 17 acting as a jury in the presence of the
11:32:07AM 18 Court and the attorneys.

11:32:10AM 19 It's your recollection when you
11:32:15AM 20 deliberate. It will be your recollection
11:32:16AM 21 of the evidence, not mine or the
11:32:18AM 22 attorneys on which you're going to have
11:32:20AM 23 to rely.

11:32:21AM 24 I'm telling you specifically, you're
11:32:26AM 25 not required to follow any opinion that

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

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

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

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

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

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

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

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

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

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

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

11:32:56AM 12 expressed.

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

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

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

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

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

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

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

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

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

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

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

11:33:26AM 24 judgment.

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

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

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

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

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

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

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

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

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

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

11:35:01AM 10 attorneys.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:33:54AM 9 fact is true.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:34:37AM 24 unnecessarily confused.

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

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

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

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

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

11:35:55AM 5 ruling.

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

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

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

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

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

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

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

11:36:15AM 13 that evidence.

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

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

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

11:36:30AM 17 heard.

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

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

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

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

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

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

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

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

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

11:36:52AM 2 and they didn't know they weren't
11:36:55AM 3 supposed to answer. Maybe they
11:36:56AM 4 intentionally snuck in an answer to make
11:36:58AM 5 sure that my objection was meaningless.

11:37:00AM 6 There are lots of reasons; maybe
11:37:04AM 7 they didn't even hear the objection, said
11:37:07AM 8 it softly. There's lots of reasons why a
11:37:10AM 9 witness might answer a question even
11:37:12AM 10 though there has been an objection.

11:37:13AM 11 If that occurs, I may not say
11:37:18AM 12 anything. If there is an objection
11:37:20AM 13 sustained and you heard an answer,
11:37:22AM 14 disregard it.

11:37:23AM 15 I also may use some magic words like
11:37:26AM 16 the jury is to disregard that answer, the
11:37:30AM 17 objection is sustained, or the answer is
11:37:33AM 18 stricken. Magic words, stricken from the
11:37:37AM 19 record.

11:37:37AM 20 If you hear any of that, then you
11:37:40AM 21 are to disregard the answer, not discuss
11:37:42AM 22 it in deliberations and not even think
11:37:45AM 23 about it.

11:37:46AM 24 Now, should that happen, if I say
11:37:55AM 25 some answer is stricken from the record,

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

11:37:56AM 2 I got to make two decisions. The one
11:37:58AM 3 decision is: Are you able to ignore what
11:38:01AM 4 you heard? Is it so overwhelmingly
11:38:05AM 5 significant that it's too much to expect
11:38:08AM 6 you to ignore what you heard?

11:38:10AM 7 If that's the case, that's my
11:38:13AM 8 conclusion, then I got to send you all
11:38:16AM 9 home and start over with another 15
11:38:21AM 10 jurors.

11:38:23AM 11 Obviously, we don't want to do that,
11:38:26AM 12 particularly not after two and a half
11:38:27AM 13 weeks of trial.

11:38:29AM 14 But there's another decision that I
11:38:30AM 15 got to make. It's not just, can you.
11:38:33AM 16 The other decision I got to make is that
11:38:37AM 17 you ignore it; and if for whatever reason
11:38:40AM 18 -- I think jurors could, but this jury is
11:38:45AM 19 not going to ignore it, I got to do the
11:38:49AM 20 same thing. Excuse you all for your
11:38:52AM 21 service and start over.

11:38:53AM 22 I point this out only to emphasize
11:38:56AM 23 the importance of the case being decided
11:38:59AM 24 on proper evidence. So if I sustain an
11:39:03AM 25 objection and you hear an answer, if I

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

11:39:06AM 2 strike something from the record, if I
11:39:09AM 3 tell you to disregard the answer, you got
11:39:12AM 4 to do it.

11:39:13AM 5 If you're not going to do it, I got
11:39:17AM 6 to start over. That's if I sustain an
11:39:25AM 7 objection. If I overrule an objection,
11:39:27AM 8 the witness will answer and the answer is
11:39:30AM 9 in evidence.

11:39:37AM 10 As I mentioned, we'll do a lot of
11:39:39AM 11 work at sidebar. We'll go to chambers.
11:39:41AM 12 Maybe in the morning when you arrive,
11:39:43AM 13 like this morning, there will be some
11:39:46AM 14 things that the attorneys and I have to
11:39:48AM 15 talk about.

11:39:49AM 16 You should not concern yourself with
11:39:50AM 17 what goes on outside of your presence.

11:39:52AM 18 My job is to make sure you hear the
11:39:55AM 19 right evidence. Your job is to evaluate
11:39:59AM 20 that evidence.

11:40:00AM 21 With those preliminary instructions,
11:40:04AM 22 whenever you're ready, counsel, you may
11:40:06AM 23 address the jury.

11:40:07AM 24 MR. HILLIARD: Thank you, Your
11:40:08AM 25 Honor.

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11:40:08AM 2 May it please the Court, this part
11:40:23AM 3 of the case allows me to share with you
11:40:24AM 4 what you're going to hear over the next
11:40:27AM 5 few weeks. We've been working on this
11:40:28AM 6 case for a number of years.

11:40:30AM 7 Now it comes to this. I want to
11:40:32AM 8 briefly acknowledge the 12 of you as the
11:40:37AM 9 jury allowed under the amendment to our
11:40:40AM 10 Constitution, given the way the world is
11:40:42AM 11 today, the power that you 12 have in the
11:40:45AM 12 United States is unparalleled.

11:40:49AM 13 It's appreciated by both sides, but
11:40:52AM 14 just as a group, before you get down to
11:40:54AM 15 the work of this case, understand both
11:40:58AM 16 how rare it is and how much power our
11:41:03AM 17 Constitution gives this jury; and I thank
11:41:07AM 18 you for that.

11:41:08AM 19 This case, at the end of the trial,
11:41:10AM 20 the evidence I believe will convince you
11:41:15AM 21 by what's called a preponderance of the
11:41:16AM 22 evidence; and His Honor will tell you at
11:41:17AM 23 the end of the trial what that means,
11:41:19AM 24 preponderance of the evidence.

11:41:21AM 25 See those scales over there on the

25		27	
1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I	1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	Court's bench? I bring my own with me	2	school, but he'll be here to talk to us,
3	when I go around. They've been following	3	was prescribed this drug, and there was a
4	me around for a long time, but	4	devastating side effect.
5	preponderance of the evidence, as the	5	Again, you're going to learn that
6	judge will tell you, just means the	6	Johnson and Johnson, J & J, and Janssen
7	greater weight of credibility of	7	knew about it, did not warn, and actually
8	evidence; and the only reason I start	8	covered evidence concerning -- I'm going
9	with this at the end of the trial, I'm	9	to tell you what it is, it's a word
10	going to remind you of that when you	10	you're going to hear a lot; and before I
11	weigh the evidence, you have to make a	11	got involved in the case the first time,
12	decision which evidence tips the scales.	12	I heard that word. First, I kept
13	Please keep that in mind.	13	mispronouncing it, then I misspelled it.
14	I believe that the evidence will be	14	But we got used to it so we used it
15	overwhelming at the end of this case,	15	a lot. When you hear it, you're not
16	that this company made a drug called	16	going to know what it is. Gynecomastia.
17	Risperdal, a drug that was not approved	17	I guess if you hear this word once,
18	for use in children. It was a very	18	you're going to hear it 500 times.
19	strong, very powerful antipsychotic	19	You're going to see it on exhibits
20	designed for schizophrenia in adults.	20	admitted into evidence. Experts will
21	You'll learn schizophrenia is one of	21	talk about it every time you hear this
22	the most frightening mental illnesses we	22	word in regards to Andrew Bentley.
23	have to deal with as a community. This	23	Gynecomastia is female breast growth
24	company, the evidence will show you,	24	in boys. Gynecologists, female, gyne,
25	decided that schizophrenia in the United	25	gynecomastia, female breast growth in
26		28	
1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I	1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	States did not meet the marketing	2	boys. You'll hear that word a lot.
3	requirements to make enough money for	3	Every time you do, please keep in mind
4	this drug.	4	this is what it means.
5	I'm going to show you slides, but	5	I'm going to speak louder because of
6	give you an overview what the evidence	6	the acoustics and Maureen is taking
7	is. So they made a decision that they	7	everything down. I'm going to show you
8	would start to market and promote this	8	some slides of some of the evidence
9	very powerful drug designed for adults	9	you're going to see right now.
10	with schizophrenia to children, to the	10	Risperdal is available in two forms.
11	most vulnerable, the most needing of	11	Andrew took it orally.
12	protection.	12	What antipsychotics are designed to
13	And instead of children with	13	do, you'll learn, is disrupt normal
14	schizophrenia, they decided they would	14	functioning along the brain pathways; and
15	market it and promote it to children who	15	you'll hear from a doctor named Dr.
16	had symptoms of mood disorders, conduct	16	Glaser who will be here tomorrow.
17	disorders, you're going to learn; so	17	He'll speak to you about what it
18	you'll see a drug designed specifically	18	does medically. Keep in mind the reason
19	for a very -- to be very powerful because	19	this is important is because we have
20	they call it antipsychotic was used and	20	developing children's minds that Johnson
21	marketed very aggressively and very	21	and Johnson, you're going to learn,
22	successfully, as you'll find out, very	22	decided to market not based on the
23	successfully for kids.	23	science but based on the arithmetic of
24	My client, who you're going to hear	24	the dollars.
25	from, probably at lunch now back in	25	You're going to hear, I have --

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11:47:30AM	2 you'll see that around here -- atypicals?
11:47:34AM	3 You will hear that word a lot, but for
11:47:38AM	4 some reason, they decided there was a
11:47:40AM	5 first generation antipsychotics and a
11:47:42AM	6 second generation, and they decided that
11:47:44AM	7 the second generation will be called
11:47:46AM	8 atypicals because the first generation
11:47:48AM	9 was typicals.
11:47:50AM	10 It means nothing more than that's
11:47:52AM	11 the name they gave it. So if you hear
11:47:54AM	12 atypicals, that just means second
11:47:56AM	13 generation. You're going to find out
11:47:58AM	14 that there were a number of different
11:48:00AM	15 options in second generation atypicals.
11:48:05AM	16 And the reason you're going to learn
11:48:08AM	17 that that is important is because of this
11:48:17AM	18 prolactin at the end of this case, long
11:48:20AM	19 after it's over, you will always probably
11:48:23AM	20 remember gynecomastia and prolactin
11:48:24AM	21 because you're going to hear it a lot,
11:48:26AM	22 prolactin, increase in prolactin, causing
11:49:15AM	23 a side effect of gynecomastia.
11:49:19AM	24 Right now, I'm giving you the road
11:49:22AM	25 map of just the words so you'll be

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

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

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

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11:54:30AM 2 what he did with the doctors, you'll
11:54:32AM 3 learn, and what was the national
11:54:34AM 4 directive, because the evidence is going
11:54:37AM 5 to show you that they are not allowed to
11:54:40AM 6 go off the reservation. They have to
11:54:43AM 7 follow the directives of what Johnson and
11:54:46AM 8 Johnson or Janssen tells them in relation
11:54:49AM 9 to the marketing.

11:54:50AM 10 You know what I mean? He calls it
11:54:52AM 11 meetings in a box. They would actually
11:54:55AM 12 get a box that had all the information
11:54:57AM 13 that they had to use in order to market
11:54:59AM 14 this drug. They couldn't deviate from
11:55:02AM 15 it. They couldn't add their own
11:55:04AM 16 additions to it. It was the national
11:55:08AM 17 directive on how to market this drug to
11:55:10AM 18 children and here's why:

11:55:13AM 19 There's just not enough
11:55:15AM 20 schizophrenics in the United States to
11:55:17AM 21 make the kind of money that marketing
11:55:22AM 22 documents you will see said they need to
11:55:25AM 23 make for this drug. Instead, they
11:55:29AM 24 started looking at moods and suddenly,
11:56:12AM 25 you'll learn from the evidence, that the

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11:56:53AM 2 symptoms in adults but symptoms in
11:56:56AM 3 children. I'm going to come back to this
11:56:59AM 4 in just a minute.

11:57:01AM 5 One thing you're going to learn is
11:57:07AM 6 the way it works, a drug company only has
11:57:12AM 7 -- there are book ends within which
11:57:14AM 8 they're going to make the money on the
11:57:15AM 9 drug, then lose what's called their
11:57:17AM 10 patent protection, and then the generics
11:57:25AM 11 come in and cut the prices.

11:57:27AM 12 So this is really the time period
11:57:29AM 13 that Janssen and Johnson and Johnson had
11:57:33AM 14 to make all the money they could make.

11:57:35AM 15 This is another phrase that is
11:57:48AM 16 unique to this case, but you'll learn a
11:57:50AM 17 lot about it. Off-label use. Off-label
11:57:56AM 18 means this label was designed by the, and
11:57:58AM 19 approved by the FDA for one thing and,
11:58:00AM 20 that is schizophrenia in adults.

11:58:03AM 21 If you go off the label, that means
11:58:05AM 22 you are using it for something that the
11:58:07AM 23 label says it's not approved for, off
11:58:09AM 24 label.

11:58:09AM 25 It is illegal for a drug company

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11:56:12AM 2 world financially opened up to Johnson
11:56:12AM 3 and Johnson in regard to the marketing
11:56:12AM 4 opportunities for very powerful adult
11:56:12AM 5 schizophrenic drugs as soon as they said
11:56:12AM 6 we're not going to do just schizophrenics
11:56:12AM 7 in adults anymore, we're going to move
11:56:12AM 8 away from that and start -- look not at
11:56:12AM 9 the diagnosis of adult schizophrenia but
11:56:12AM 10 just at the moods that psychiatrists may
11:56:12AM 11 find their patients, their pediatric
11:56:12AM 12 patients, to have.

11:56:12AM 13 And you'll also learn that this
11:56:12AM 14 marketing strategy and that's what it
11:56:14AM 15 was -- you're going to see a document
11:56:18AM 16 called the Risperdal Pediatric Marketing
11:56:22AM 17 Opportunity. You're going to hear
11:56:26AM 18 testimony about the fact that in 2000,
11:56:30AM 19 when this drug is not approved to be used
11:56:32AM 20 for kids, Johnson and Johnson is actually
11:56:35AM 21 creating a document to show how to market
11:56:37AM 22 to kids.

11:56:38AM 23 So the Risperdal pediatric market
11:56:44AM 24 opportunity spoke to the open market if
11:56:49AM 25 you can go after symptoms, not just

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11:58:17AM 2 through its reps to suggest, encourage,
11:58:21AM 3 compensate, recommend or tout Risperdal
11:58:23AM 4 for use in kids once they're inside a
11:58:25AM 5 doctor's office, because that is off
11:58:27AM 6 labeling.

11:58:28AM 7 They cannot suggest. They cannot
11:58:32AM 8 encourage. They cannot compensate,
11:58:36AM 9 recommend or tout.

11:58:38AM 10 The evidence in this case is that
11:58:40AM 11 Johnson and Johnson did every single one
11:58:43AM 12 of those in this case through the drug
11:58:51AM 13 reps, and the evidence will be that it
11:58:54AM 14 worked that this little boy was given
11:58:57AM 15 this drug because this doctor was given
11:58:59AM 16 information by this drug company which
11:59:01AM 17 was not true, not complete and
11:59:05AM 18 inaccurate.

11:59:05AM 19 This gentleman right here is Tony
11:59:13AM 20 Jones. Tony Jones did it better than
11:59:18AM 21 anyone else you'll learn. He'll be here
11:59:20AM 22 this afternoon to talk to you about it.

11:59:22AM 23 This is him receiving the award, the
11:59:24AM 24 president's award for how successful he
11:59:27AM 25 was for doing what he did for the

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11:59:28AM	company.
11:59:28AM	And you'll learn that he says, look,
11:59:30AM	I was an African-American straight out of
11:59:33AM	college. They took a chance on me. I
11:59:35AM	was going to be loyal for them and I was
11:59:37AM	going to ride for the break. They told
11:59:39AM	me to do it. I did it.
11:59:41AM	And he did, and he'll look you in
12:00:15PM	the eye and he'll tell you that. This
12:00:15PM	man right here (indicating) is now the
12:00:15PM	CEO of the entire company, Alex Gorsky.
12:00:15PM	He was the head of this unit at the time,
12:00:15PM	this Risperdal growth unit, and you'll
12:00:15PM	learn that, under his watch, it went from
12:00:15PM	200 million to a billion dollar drug.
12:00:15PM	He was then promoted to the head of
12:00:15PM	Johnson and Johnson, the international
12:00:15PM	company. He runs it.
12:00:15PM	Tony Jones will tell you that it was
12:00:17PM	Janssen's and J & J's national following
12:00:20PM	to promote and market Risperdal for use
12:00:22PM	in kids.
12:00:23PM	It came from the top.
12:00:31PM	The drug reps that went into this

1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
12:00:36PM	doctor's office, you'll learn he knew
12:00:37PM	those drug reps. He was in the same
12:00:39PM	region. He attended and got the same
12:00:41PM	information they got.
12:00:44PM	There's going to be some science in
12:00:52PM	this about prolactin; and what prolactin
12:00:57PM	does is when a woman gets pregnant, the
12:01:01PM	body says I'm pregnant, the pituitary
12:01:03PM	glands allow prolactin to come out and
12:01:06PM	then the breasts grow and begin to
12:01:09PM	lactate. So when the baby is born, there
12:01:11PM	will be nursing.
12:01:13PM	That is the only reason for
12:01:18PM	prolactin; and as you may have put
12:01:22PM	together, you're going to hear from the
12:01:23PM	evidence that when a drug increases
12:01:24PM	prolactin in a boy, the prolactin doesn't
12:01:31PM	know it's in the boy. It just knows it's
12:01:35PM	supposed to do what God designed bodies
12:01:37PM	to do.
12:01:37PM	And as a fact, it did. And you'll
12:01:42PM	learn that, as a fact, this company knew
12:01:45PM	that it would; and you'll learn how they
12:01:50PM	tried to hide that fact.

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12:01:58PM	The evidence will show you that if
12:01:59PM	the truth of the test results came out,
12:02:02PM	that this drug does this to boys, they
12:02:05PM	couldn't sell a pill. No mom is ever
12:02:08PM	going to say -- you'll learn that sure --
12:02:11PM	try it on my son.
12:02:13PM	You'll learn testimony about how
12:02:38PM	they knew early on this would occur.
12:02:49PM	You're going to see this document and be
12:02:51PM	able to look at it yourself.
12:02:52PM	But in 2000, before the first pill
12:02:56PM	went into my client, inside their own
12:03:06PM	document, in their marketing document,
12:03:09PM	they have something called barrier to
12:03:12PM	using, obstacles to using Risperdal:
12:03:16PM	Number one: Lack of FDA approval in
12:03:20PM	pediatric patients, and I think the
12:03:23PM	evidence will be that's where the
12:03:24PM	analysis should have ended.
12:03:27PM	Okay, they're not proof. Move on.
12:03:30PM	But they go on besides not being
12:03:33PM	approved, is there anything else that it
12:03:35PM	may do? If we go ahead and promote it
12:03:37PM	and market it to children, despite the

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12:03:40PM	fact it's not approved?
12:03:40PM	Inside their own documents, nothing
12:03:45PM	my experts have brought to you, but their
12:03:46PM	own documents that we have: There are
12:03:48PM	side effects, weight gain, lactation.
12:03:58PM	Lactation is not gynecomastia. Is it?
12:04:00PM	Well, you go to the page you're
12:04:02PM	going to see later and this is a page
12:04:03PM	called Risperdal Disadvantages. In the
12:04:08PM	marketing plan, they say one disadvantage
12:04:10PM	is more likely to cause increased
12:04:13PM	prolactin levels, gynecomastia and
12:04:18PM	lactation.
12:04:23PM	2000, six more years of off-label
12:04:26PM	marketing in front of them, they were
12:04:29PM	aware of what would happen to this young
12:04:33PM	man. When a drug is approved by the FDA,
12:05:10PM	as you will see from the evidence, they
12:05:13PM	have to give a warning and they have to
12:05:14PM	tell doctors who read that warning what
12:05:16PM	the results of the tests are so that
12:05:18PM	doctors can look at it and make what's
12:05:20PM	called a risk benefit analysis.
12:05:21PM	Is the risk of giving this drug

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

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

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

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

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12:10:45PM 2 developed breasts. An ultrasound that
12:10:53PM 3 you'll see confirms gynecomastia, breast
12:10:58PM 4 tissue inside this little boy. This is
12:11:11PM 5 one of the callers for this doctor, and
12:11:14PM 6 the J & J drug rep on 1-16-03.

12:11:25PM 7 On 1-16-03, you're going to learn
12:11:30PM 8 Andrew is not on Risperdal right now so
12:11:32PM 9 the drug rep goes to this doctor on
12:11:34PM 10 January 16th, '03 and these are the
12:11:38PM 11 comments.

12:11:38PM 12 The doctor is a big Risperdal
12:11:40PM 13 supporter/speaker, and child and what
12:11:44PM 14 Tony Jones will tell you, they would
12:11:46PM 15 recruit doctors to be speakers,
12:11:52PM 16 compensated speakers. They would fly
12:11:54PM 17 them to -- for this doc, Beverly Hills,
12:11:57PM 18 Four Seasons in California to be a
12:12:00PM 19 speaker; and I think you're going to hear
12:12:02PM 20 from the testimony that the connection of
12:12:04PM 21 those dots is not rocket science.

12:12:07PM 22 That's the ultrasound confirming
12:12:15PM 23 gynecomastia.

12:12:16PM 24 I want to briefly share with you --
12:12:26PM 25 I have it written. I'm not going to take

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

12:12:28PM 2 these documents out, but you will see
12:12:30PM 3 them. There's three issues through this
12:12:34PM 4 witness stand and the documents that
12:12:36PM 5 you're going to learn about that go to
12:12:41PM 6 the gross negligence and punitive damage
12:12:43PM 7 part of this case.

12:12:44PM 8 Issue one: Drug reps were taught to
12:12:47PM 9 tell these doctors that this gynecomastia
12:12:52PM 10 was a class effect. That means they all
12:12:55PM 11 do it, all of the drugs do it, not just
12:12:59PM 12 Risperdal.

12:13:00PM 13 Flat and false. You will see an
12:13:07PM 14 internal document where a Johnson and
12:13:11PM 15 Johnson scientist says: We can't say
12:13:13PM 16 that. Not true.

12:13:14PM 17 But Tony Jones will tell you, if a
12:13:17PM 18 doctor says, what about this breast
12:13:19PM 19 growth in boys? Their response they were
12:13:21PM 20 trained and told to say was, look, Doc,
12:13:24PM 21 they all do it. It's not just us. It's
12:13:26PM 22 just atypical antipsychotics, and Tony
12:13:30PM 23 Jones will tell you the doctor will say,
12:13:32PM 24 okay, I get it.

12:13:33PM 25 Absolutely a false fact.

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12:13:39PM 2 The second one is the one I told you
12:13:41PM 3 about before. Rare. Remember that?
12:13:43PM 4 They say in their warning that it's rare
12:13:46PM 5 when their own test results say it's more
12:13:49PM 6 than frequent. It was hid. It was not
12:13:52PM 7 shared. There were consequences as a
12:13:54PM 8 result of it.

12:13:56PM 9 The third one is the biggest, and
12:14:00PM 10 you'll learn about it through two
12:14:07PM 11 experts. Some time in '06, Johnson and
12:14:10PM 12 Johnson or Janssen went to the FDA again,
12:14:13PM 13 and they had been going back to the FDA
12:14:15PM 14 in the early 2000s; yeah, we really want
12:14:17PM 15 to get Risperdal approved. The FDA would
12:14:19PM 16 say, no, you'll see the document saying
12:14:21PM 17 not approved, and it happened a number of
12:14:22PM 18 times.

12:14:25PM 19 Finally, they provided the FDA with
12:15:04PM 20 what you're going to learn is the Finley
12:15:06PM 21 Paper. The Finley Paper was presented to
12:15:11PM 22 the FDA and as a result of the Finley
12:15:14PM 23 Paper, the FDA approved Risperdal for the
12:15:17PM 24 limited purpose of irritability and
12:15:20PM 25 autism.

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12:15:18PM 2 You're going to find out when you
12:15:19PM 3 look at the Finley Paper that there was a
12:15:22PM 4 result in the Finley Paper that showed a
12:15:27PM 5 connection between Risperdal and
12:15:29PM 6 gynecomastia that never made it to the
12:15:31PM 7 final paper.

12:15:37PM 8 In other words, yes was changed to
12:15:38PM 9 no. You'll see the yes. You'll see the
12:15:42PM 10 final paper. More importantly, you will
12:15:45PM 11 see a document presented to the FDA by
12:15:47PM 12 this company that makes an absolutely 100
12:15:50PM 13 percent false statement, unequivocally
12:15:53PM 14 false.

12:15:54PM 15 And after that, this drug was
12:15:55PM 16 approved; and I tell you this because one
12:15:57PM 17 of this jury's responsibilities in this
12:16:00PM 18 case is to determine, okay, what do we do
12:16:02PM 19 about it? The Finley study was a false
12:16:04PM 20 study based on the science, but it
12:16:06PM 21 worked; and they got FDA approval.

12:16:09PM 22 The human consequence to this little
12:16:23PM 23 boy when you hear from his mom and you'll
12:16:26PM 24 hear from him, but you're not going to
12:16:28PM 25 hear about it from him. You'll hear

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 about it from her.
 3 You're going to appreciate this
 4 little boy who has what's called texture
 5 sensitivity. That means a lot of
 6 Asperger children don't like things on
 7 their skin; it feels bad and they can't
 8 get comfortable with it, and he has that.
 9 You're going to see photographs of
 10 his breasts. When I was talking to him,
 11 you're going to learn he gave his
 12 permission, and it's personal and
 13 embarrassing, but it's what happened.
 14 And his hope is that he will have --
 15 he'll, as you'll learn, he'll get surgery
 16 to have them removed, but the sensitivity
 17 of his breasts and nipples are
 18 excruciating; and as he tells his mom, a
 19 man should be able to walk around without
 20 a shirt, and he can't.
 21 So you're going to hear about the
 22 effect on him and the effect on this very
 23 dedicated mother; and it is part of this
 24 case. It is part of no sympathy
 25 involved.

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 2 It is the true consequence of
 3 conduct that this jury is going to have
 4 to consider in order to determine what to
 5 do, and you can't do it till you know,
 6 and you will know at the end from the
 7 testimony of Jennie and from the spirit
 8 of this young man.
 9 Ladies and gentlemen, I do
 10 appreciate you're on this jury, and thank
 11 you on behalf of plaintiffs in being
 12 willing to sit in Judge Bernstein's
 13 court, and I really look forward to
 14 trying this case.
 15 Thank you very much.
 16 THE COURT: Do you choose to open or
 17 are you reserving?
 18 MS. SMITH: I choose to open.
 19 THE COURT: It's my understanding
 20 that defense opening may be as long as an
 21 hour and a half, so we're going to break
 22 for lunch at this time.
 23 I will ask you to return at 1:40.
 24 Between now and when you return, you're
 25 to keep an open mind and don't discuss

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 the case with anyone.
 3 (Jury panel departs courtroom at
 4 12:18 p.m.)
 5 THE COURT: Counsel, we've got a
 6 minor potential problem. You're going to
 7 have exhibits on the podiums. When we're
 8 leaving the jury, whoever is responsible,
 9 let's make sure there's no possibility of
 10 any juror slipping or tripping.
 11 Anything further before we break for
 12 lunch? See you at 20 to 2.
 13 (Luncheon recess.)
 14 - - -
 15 (Jury panel reenters courtroom at
 16 1:40 p.m.)
 17 - - -
 18
 19
 20
 21
 22
 01:43:51PM 23 MR. HILLIARD: With the Court's
 01:43:52PM 24 permission, I'm going to move so I can
 01:43:56PM 25 watch the exhibits.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 THE COURT: Sure.
 3 MS. SMITH: Ladies and gentlemen of
 4 the jury, as you know, I'm Laura Smith
 5 and with me is Bill Essig and Greg
 6 Mackuse.
 7 We're honored to be here today and
 8 for as long as this trial may take
 9 representing Janssen Pharmaceuticals. As
 10 we discussed during jury selection last
 11 week, Johnson and Johnson is also a
 12 defendant we represent.
 13 Janssen is a wholly owned subsidiary
 14 of Johnson and Johnson, but Johnson and
 15 Johnson is not involved with the drug,
 16 Risperdal.
 17 We also represent Janssen Research
 18 and Development which is, as you can
 19 imagine, the company that researches and
 20 develops new drugs.
 21 They're a defendant too, but I think
 22 this will become very clear; they too
 23 were not involved in the issues in this
 24 case.
 25 So throughout the case, I will refer

1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	to Janssen Pharmaceuticals as Janssen, and I think you will hear other witnesses do that too.
3	
4	
5	Let me say, on behalf of Janssen, at the very beginning of this case, that we deny the allegations that Mr. Hilliard
6	just went through with you. This case is
7	about one person, Andrew Bentley.
8	
9	
10	You will see that Andrew had and still has very serious mental problems
11	and diseases. You will see, primarily
12	through his treating physician, that
13	Risperdal really helped Andrew.
14	
15	The only injury, the only injury being claimed in this case is the
16	development of small breast growth, and I
17	anticipate that not one witness, not even
18	the ones Mr. Hilliard hired, will get on
19	that witness stand and tell you that they
20	know whatever kind of breast growth
21	Andrew had when he was going through
22	puberty was due to Risperdal.
23	
24	I know you will hear that Risperdal
25	has been continuously on the market for

1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	almost 20 years, fully approved by the
3	FDA.
4	
5	As we go through this trial, I think
6	it will become abundantly clear to you
7	that Risperdal, in fact, was a very good
8	choice of Andrew's treating physician to
9	treat him.
10	
11	I know you didn't exactly volunteer
12	to be a juror and volunteer to be here,
13	but our system of justice only works with
14	the jury system.
15	
16	Anybody can sue anybody else and
17	claim anything they want to claim, and it
18	comes down to you, as a juror, listening
19	to the testimony and finding the truth
20	based on the evidence and the law that
21	His Honor will give to you.
22	
23	The Court gives us this one chance
24	to talk to you about what we anticipate
25	the testimony and issues will be. It's
	called an opening statement.
	I think of it like if any of you do
	jigsaw puzzles, I think of it like the
	front of a jigsaw puzzle box, but it's a

1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	word picture of the case as a whole.
3	Over the next two to three weeks,
4	you will get pieces of this picture one
5	witness at a time or one exhibit at a
6	time, and I hope you can refer to this
7	opening statement to see how all of the
8	pieces fit together for the complete
9	picture.
10	
11	I want to thank you on behalf of
12	Greg and Bill and Janssen for your
13	undivided attention while you're here in
14	this courtroom.
15	
16	After you listened to Mr. Hilliard a
17	few minutes ago, you may think this case
18	is about something that happened at the
19	national office, but it's not.
20	
21	This case is about one person,
22	Andrew Bentley. Andrew is 17; and as a
23	minor, he cannot file a lawsuit himself,
24	so it was brought in the name of his
25	mother; but this case is about him.

It is complicated and simple. I know you think that's lawyer talk, but in a minute, I think I'll show you these are

1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	the witnesses that I anticipate you will
3	hear from. Can you all see this okay
4	over there?
5	Of these witnesses, these right here
6	under "facts" are the only ones that have
7	factual knowledge of what's involved in
8	Andrew's particular case.
9	Dr. Vernon Johnson -- and we'll talk
10	more about him in a minute, but he's been
11	Andrew's treating psychiatrist since
12	Andrew was four and a half years old,
13	continuously; Andrew himself and his
14	mother.
15	
16	There will be three psychiatrists
17	that testify because issues in this case
18	concern psychiatry. Two of them, Dr.
19	Johnson, the treating physician, and Dr.
20	Ellen Gandell ^ are pediatric
21	psychiatrists.
22	Dr. Johnson, you will hear, has a 60
23	percent practice in pediatrics and 40
24	percent in child and adolescents, and Dr.
25	Gandell is solely child and adolescents.

The red dots are the witnesses that

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 2 we will call in our case. If, for some
 3 reason, they don't play Dr. Johnson's
 4 video, we, of course, will, but those are
 5 the witnesses we will call.
 6 Endocrinologists, you will hear that
 7 endocrinologists study the endocrine
 8 system. Prolactin, as Mr. Hilliard told
 9 you, you're going to be experts on
 10 prolactin at the end of this trial, but
 11 that falls squarely in the specialty
 12 field of endocrinology.
 13 The issues in this case concern the
 14 FDA and the label by Janssen for the
 15 drug, Risperdal, as you will hear from
 16 two witnesses on that, and we're going to
 17 talk more in a minute.
 18 But the Pharmacovigilance is the
 19 safety, the study of the safety of a
 20 drug, and you're going to hear a lot
 21 about that; and clinical trials is a big
 22 part of this case.
 23 So those are going to be the
 24 witnesses that you will hear from.
 25 When I look at a case, I always want

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 to start with what are the basic
 3 questions? Because every single witness,
 4 every single witness will address one or
 5 more of these questions.
 6 So I want to start with the first
 7 question because this is what the case is
 8 about.
 9 As you know from what Judge
 10 Bernstein told you, the plaintiffs go
 11 first in calling their witnesses, and
 12 they can call them in whatever order they
 13 want to, so I don't know when, in the
 14 course of this trial, you will hear
 15 exactly from Ms. Rolen, Andrew and Dr.
 16 Johnson, and I think knowing Andrew's
 17 particular history is exceptionally
 18 important in getting the big picture of
 19 what this case is actually about.
 20 His history is taken solely from the
 21 medical records, and therefore, this part
 22 is undisputed. Andrew was born in
 23 February of 1995. His mother will tell
 24 you that he was delayed in his
 25 development from the very beginning.

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 2 She took him to be evaluated for the
 3 first time when he was two years old, and
 4 he spent the next two and a half years in
 5 an outpatient preschool setting with a
 6 rehabilitation center in Sherman, Texas.
 7 If any of you know where Dallas is,
 8 Sherman is about 60 miles north of Dallas
 9 so it's in that area of Texas.
 10 You will hear that from the time he
 11 was two years old, Andrew was found to
 12 have a very severe language problem,
 13 which you'll hear about, and severe
 14 problems with fine motor activity,
 15 hand-eye coordination.
 16 He spent about two and a half years
 17 in a preschool program at the
 18 rehabilitation center and his mother took
 19 him out when he was going to start
 20 preschool in the fall, and he went in a
 21 school for disabled children in the fall
 22 of 1999.
 23 She will tell you and the records
 24 show that it became apparent almost
 25 immediately that Andrew's problems were

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 2 much more than just language and fine
 3 motor.
 4 She took him to see a psychiatrist,
 5 Dr. Vernon Johnson, and for the next all
 6 the way up to the present, 13 years,
 7 Andrew has been under Dr. Johnson's
 8 continuous care.
 9 He has seen other physicians and we
 10 will talk about them as the trial goes
 11 forward; but for his mental and
 12 behavioral issues, Dr. Johnson has been
 13 his primary physician.
 14 When Dr. Johnson first saw Andrew in
 15 1999, he immediately started him on
 16 psychiatric medications, and he's
 17 remained on various psychiatric
 18 medications up to the present time.
 19 Some people may question the use of
 20 such strong medications as Andrew has
 21 been taking for the last 13 years,
 22 especially starting when he was so young,
 23 but no one in this case questions that.
 24 These decisions were made by Dr.
 25 Johnson, his treating physician, and

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 2 every single person involved in this case
 3 dealing with this issue acknowledged that
 4 Andrew needed the medications that Dr.
 5 Johnson prescribed for him.
 6 So as to question number 1, the
 7 answer will be undisputed that he needed
 8 those medications. What were Andrew's
 9 problems? Mr. Hilliard said it's just
 10 Asperger Syndrome, but I think when you
 11 see the medical records and we go through
 12 Dr. Johnson's history and you hear
 13 everyone, you will see that Andrew's
 14 problems are much more diverse and much
 15 more severe than just Asperger Syndrome.
 16 You will hear testimony during this
 17 trial about each one of these, and you
 18 again are going to know more than most
 19 people about these various diagnoses
 20 before this trial is over.
 21 At the bottom, you will see a list
 22 of medications. These are all of the
 23 medications, the psychiatric medications
 24 that Andrew has taken throughout his
 25 life.

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 2 There's been antibiotics, all of the
 3 other kind of medications, but
 4 psychiatric medications, these are the
 5 ones that Andrew has been on.
 6 All of them were prescribed by Dr.
 7 Johnson, when you hear him testify as to
 8 why, why he believed these were very
 9 important to Andrew.
 10 This first heading is called
 11 Antipsychotics, and you heard a little
 12 bit from Mr. Hilliard about that. You
 13 will hear that there are two generations,
 14 really, one is old and the other is new,
 15 although the new is now old.
 16 But of all of the first generation,
 17 Haldol was a first generation, and that
 18 is one of the medications Andrew took.
 19 You will hear Dr. Johnson tell you he
 20 didn't like to use Haldol, but his
 21 neurologist put Andrew on Haldol; so Dr.
 22 Johnson continued it.
 23 But all of the rest of them are
 24 second generation, and you will see by
 25 the end of this trial that Andrew has

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 tried, through Dr. Johnson's
 3 prescriptions, almost every one, if not
 4 every one, second generation
 5 antipsychotics.
 6 The psychiatrist will tell you that
 7 even before -- even before the second
 8 generation came out -- and Risperdal was
 9 the first one in 1993, all they had were
 10 these older antipsychotics; none of them
 11 were approved to be used in children.
 12 None of them.
 13 But the psychiatrist gave them to
 14 the children because they needed them in
 15 order to function.
 16 They will tell you that there were
 17 limitations with those, and that's why,
 18 when the second generation came out, it
 19 was such a blessing.
 20 You will hear about positive and
 21 negative symptoms, and I'm going to --
 22 we're going to get to that as it goes,
 23 but you're going to hear why Risperdal
 24 was felt to be such a miracle drug when
 25 it first came out.

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 2 The older ones only treated positive
 3 symptoms like hallucinations and
 4 dilusions and hearing voices, and Andrew
 5 had all of that; but the newer ones,
 6 Risperdal and the other newer ones, also
 7 treated negative symptoms like withdrawal
 8 from social interaction and emotions and
 9 disorganized thoughts and Andrew had all
 10 of that.
 11 The second generation also had fewer
 12 of the worse side effects, like sedation
 13 and heart problems and motor disorders.
 14 So I think the testimony will
 15 actually be undisputed that Risperdal,
 16 when it came out on the market in 1993,
 17 was a miracle drug for many people.
 18 Mr. Hilliard said many times it was
 19 for treatment of schizophrenia only. I
 20 believe you'll see when the testimony
 21 comes that the first approval was
 22 management of the manifestations of
 23 psychotic disorder, a symptom-based
 24 indication; and we're going to go through
 25 all the different times that the FDA

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2 approved additional indications, but the
 3 very first one was for the manifestation
 4 of psychotic disorder.

5 So you get back to all of these
 6 medications that were being prescribed
 7 for Andrew. Dr. Johnson will tell you
 8 that Andrew had, in addition to the
 9 actual diagnosis, he had an inability to
 10 function at school or at home because of
 11 his physical aggression and because of
 12 his behavioral problems.

13 I think you'll understand Andrew
 14 couldn't prevent many of these. It's not
 15 his fault. They were part of his
 16 disease.

17 When his mother testifies, I
 18 anticipate she will tell you Andrew
 19 wanted to be able to control himself, and
 20 these medications gave him that ability.

21 You will hear that he has a history
 22 of facial ticks and excessive eye
 23 blinking. Some of these medications were
 24 to help him with that. Some of them made
 25 him worse.

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2 He has a history of flapping his
 3 hands and chattering his teeth, and some
 4 of these medications were to take care of
 5 that so that he could function on a
 6 day-to-day basis.

7 The undisputed evidence will be that
 8 his problems are real, and they're quite
 9 serious; but with these medications, he
 10 has been able, for the most part, to live
 11 at home. He's been in units on a few
 12 occasions, but he's been returned to the
 13 home.

14 I understand now he's in the 11th
 15 grade. He's described in the school
 16 records as a self-contained student with
 17 resource support, but he can function in
 18 day-to-day life.

19 We talk about all of this because I
 20 think you have to understand it to
 21 understand the medication.

22 But you will hear that nobody
 23 believes in any form or fashion these
 24 diagnoses can be cured, and nobody
 25 believes that any person, company or

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2 other entity, caused any of them.
 3 Whether by fate or genetics, these are
 4 what Andrew was born with.

5 So is there any question about
 6 whether Risperdal was effective in
 7 treating Andrew?

8 You have to look at Dr. Johnson's
 9 testimony on this issue, and I want to
 10 start with when he actually took
 11 Risperdal.

12 You will hear from Dr. Johnson that
 13 there are three different time periods
 14 when Andrew took Risperdal. You will
 15 hear that on the other occasions, he took
 16 one of these other drugs, you know, we're
 17 going to go through all of that, and Dr.
 18 Johnson will tell you that when you have
 19 a child on long-term psychiatric
 20 medication, as the child grows and
 21 changes, the medication works
 22 differently; and he will tell you, of the
 23 medications over the years, he has had to
 24 stop on a medication and start another.

25 And so for Risperdal, we have these

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2 three time periods. Mr. Hilliard had his
 3 date wrong, but one was for four months
 4 in 2000, nine months from November, '01
 5 through August, '02, and 29 months or two
 6 and a half years from November, '04 to
 7 May, '07.

8 So when you're looking at this
 9 question, did Risperdal help -- was it
 10 effective in treating Andrew? We asked
 11 that question of his treating physician,
 12 because Dr. Johnson is the one who knew,
 13 the one who prescribed it, and Dr.
 14 Johnson will tell you, because he's told
 15 us, Risperdal is uniquely beneficial in
 16 treating the symptoms of irritability and
 17 aggression like Andrew had.

18 And he will tell you, I kept him on
 19 Risperdal during this last period because
 20 it was definitely his longest period of
 21 stability.

22 So when this case is over, that
 23 question will be undisputed also. No
 24 one, no one will tell you Risperdal was
 25 not effective in treating Andrew.

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2 Everyone will agree it was.

3 So you get to the third step, and

4 that is, did Andrew develop gynecomastia?

5 Mr. Hilliard described it as just an

6 enlargement of the breast.

7 I think you will hear that it's

8 actually the abnormal development of the

9 mammary glands in males that results in

10 breast enlargement. It's more than just

11 hypertrophy. It's more than just

12 enlargement. So looking at this issue,

13 you start on this time line in 2009.

14 Andrew has been on Risperdal for two

15 years.

16 The testimony will be -- because

17 Mrs. Rolen said to us, that she became

18 aware at about that time period, May,

19 2009, that there were attorneys in

20 Philadelphia willing to pursue a case, if

21 an adolescent took Risperdal and

22 developed gynecomastia.

23 She knew Andrew had taken Risperdal.

24 I think she had forgotten. I think

25 she'll tell you it had been over two

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2 years since he stopped, and she knew he

3 had some small breast growth.

4 I anticipate she will tell you --

5 because she told us -- that she had not

6 been at all concerned with the breast

7 growth because she had talked to several

8 friends and she knew that having some

9 small breast growth during puberty was

10 normal.

11 I think she'll tell you, because she

12 told us, that it was of such little

13 concern to her that she never took Andrew

14 to a doctor. She never told Dr. Johnson

15 about it. She didn't tell any of his

16 psychotherapists. She mentioned it to

17 nobody.

18 But when she made contact with this

19 lawfirm, at their request, she took

20 photos, and Mr. Hilliard told you about

21 the photos.

22 He didn't show them to you, but the

23 testimony will be that in May, 2009, she

24 took really close-up pictures of Andrew's

25 chest, not far away, close up, and sent

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2 them to the lawyers; and I anticipate

3 she'll tell you that, at that time, for

4 the first and only time, she took Andrew

5 to a doctor right after she talked to the

6 lawyers.

7 This is the record that we have from

8 that encounter. You will see that in

9 May, 2009, Andrew is being seen at the

10 doctor's office. Somebody in the

11 doctor's office wrote: Breast growth,

12 took Risperdal for an extended time.

13 We couldn't find this person, but

14 Mrs. Rolen will tell you she didn't tell

15 him he had been off Risperdal for over

16 two years.

17 This doctor sent Andrew -- or this

18 was someone in the doctor's office, a

19 nurse or assistant, sent Andrew to have

20 an ultrasound. It's a special kind of

21 x-ray but an ultrasound of the breast.

22 This ultrasound stated indications

23 of breast hypertrophy, suspect reaction

24 to medication change, and ended with:

25 Findings are most consistent with

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2 bilateral gynecomastia. Clinical

3 correlation is recommended. May, 2009.

4 For reasons unknown to us, there has

5 never, to date, been any clinical --

6 MR. HILLIARD: I'm going to object.

7 - - -

8 (An off-the-record discussion was

9 held at side bar as follows:)

10 - - -

11 MR. HILLIARD: Based on the premise

12 of the question for reasons unknown to us

13 that the answer is going to be -- the

14 next part of the statement is going to be

15 speculation, and it's not going to be

16 based on any evidence.

17 THE COURT: I don't know what you're

18 talking about.

19 What's the objection?

20 MR. HILLIARD: If the statement is

21 for reasons unknown to us, that's not --

22 the reasons unknown to them is never

23 going to be evidence in this case. An

24 opening statement is what the evidence

25 is. For reasons unknown --

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

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

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

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

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2 breasts that were taken pictures of in
 3 2009 that may or may not have been
 4 gynecomastia that has not been documented
 5 by any physician or therapist since that
 6 one ultrasound in May, 2009 two years
 7 after he stopped Risperdal.

8 I anticipate that is all you're
 9 going to get proof-wise on number 4
 10 because that's all that's been produced
 11 during this case.

12 You get to the next one. The cause
 13 of gynecomastia, and this is what a lot
 14 of this trial will center around, so I
 15 want to stop for a minute and talk about
 16 that.

17 Every witness that testifies -- but
 18 this is primarily something that the
 19 endocrinologist deals with;
 20 endocrinologists will tell you there's
 21 actually three times in a male's life
 22 that the development of gynecomastia can
 23 occur.

24 The first is when you're first born
 25 and only lasts for a week or two. The

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2 other is when you get older, which isn't
 3 involved here, but the testimony in
 4 puberty by Mr. Hilliard's own witnesses
 5 as well as ours will be that developing
 6 actual gynecomastia during puberty is not
 7 rare. It's common.

8 His witnesses will say up to 69
 9 percent, and it's a wide range for the 69
 10 percent will develop some amount of
 11 gynecomastia during puberty. For some of
 12 them, it doesn't resolve until they're 18
 13 or older.

14 All we know are the pictures, but
 15 you will see that whatever it was Andrew
 16 had back in 2009 was very mild. There
 17 can be severe gynecomastia that occurs in
 18 men.

19 But they will tell you every witness
 20 that comes and testifies that some time
 21 during puberty, it develops in between
 22 four and 69 percent of the men.

23 It is also known to occur secondary
 24 to medications; and the testimony will be
 25 that there are a lot of different kinds

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2 of medications that increase the risk of
 3 someone developing gynecomastia separate
 4 from those that develop it during
 5 puberty.

6 And this is where the science gets
 7 kind of complicated; and I'm not going to
 8 spend much time now on this, but the
 9 testimony from -- and I think they will
 10 all tell you -- science hadn't gotten to
 11 the point we really understand it, but
 12 this is what they will tell you we think
 13 is the mechanism, that if you have
 14 hyperprolactinemia-evaluated prolactin
 15 levels and you have decreased
 16 testosterone levels at the same time,
 17 that can result in breast tissue
 18 occurring while you're on the medication.

19 So you got to have, on the
 20 medication, increased prolactin,
 21 decreased testosterone, and the actual
 22 presence of breast tissue, that that's
 23 the mechanism scientists currently
 24 believe results in gynecomastia from
 25 medications.

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2 The testimony will be that it hasn't
 3 been absolutely proven as to which
 4 medicines cause it and which don't, but
 5 the labels that -- you're going to hear a
 6 lot about labels during this trial.

7 The labels for a number of
 8 medications include in them that there is
 9 an association between the medication and
 10 the development of gynecomastia, not that
 11 it's caused by, but that one occurs while
 12 the other -- gynecomastia occurs by their
 13 own patient.

14 There is no doubt that is true with
 15 Risperdal, and we're going to talk about
 16 that in our label. But every other one
 17 of these medications that has a red mark,
 18 the label reflects these are the ones
 19 Andrew actually took.

20 The label for these medications
 21 reflect that there is an association with
 22 gynecomastia.

23 So what is the testimony going to
 24 be? I anticipate everyone who testifies
 25 will tell you that while these are all

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 2 prerequisites, Andrew had none of them.
 3 He never had any laboratory value showing
 4 high prolactin and it was measured.
 5 This wasn't measured because his
 6 doctor saw no reason to, but there was
 7 never decreased testosterone; and that
 8 was never confirmed, presence of breast
 9 tissue.
 10 On the other hand, and truly, this
 11 is a big point because I anticipate every
 12 single witness who addresses this point
 13 will tell you that whatever kind of
 14 breast growth Andrew had in 2009 is
 15 totally consistent with changes during
 16 puberty unrelated to any medication, and
 17 I anticipate that every single witness,
 18 even the ones Mr. Hilliard is bringing,
 19 will say that they cannot say puberty
 20 didn't cause whatever kind of breast
 21 growth Andrew had; and that's what I
 22 anticipate the testimony will be on this
 23 issue.
 24 And I think you ought to ask
 25 yourselves as we go through this trial,

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 2 when you're looking at Andrew, not
 3 everything else, but you look at the
 4 plaintiff in this case to ask yourself:
 5 Why did they sue Janssen for whatever
 6 breast growth Andrew had?
 7 We asked Mrs. Rolen that question,
 8 and she told us -- and I'm sure she's
 9 going to tell you too -- I just left that
 10 to the lawyers, I didn't know, I thought
 11 it was a normal thing to happen in
 12 puberty.
 13 Let me take a moment and tell you
 14 what this case is not about.
 15 Janssen is a world-wide company.
 16 Johnson and Johnson is a world-wide
 17 company. They produce a lot of
 18 medications and a lot of products and
 19 they sell them all over the world.
 20 And to compete, they have to have --
 21 companies that compete worldwide have to
 22 have departments in their companies to do
 23 all the different things you have to do
 24 to stay in business.
 25 You will hear testimony that there

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 2 is a large department whose only job is
 3 to plan ahead. They make business plans
 4 and they make tactical plans, and I think
 5 His Honor said use your common sense. It
 6 makes good sense to plan.
 7 In order to continue to provide
 8 research, new medications to help
 9 patients and doctors, you have to plan
 10 ahead.
 11 You will hear testimony -- Mr.
 12 Hilliard talked about that we first tried
 13 to get the indications for children in
 14 1997. We started this way back right
 15 after it was approved.
 16 I'm going to talk more about that in
 17 a minute, but we planned -- Janssen
 18 planned -- for years to get the approval
 19 for indications from children and
 20 adolescents.
 21 So you're going to hear -- you may
 22 hear -- testimony that there were a lot
 23 of planning about using the drug in
 24 children and adolescents and boys, that's
 25 true; they planned for a long time.

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 2 There's another department that does
 3 marketing and advertising and the like,
 4 and you may see some of that during this
 5 trial.
 6 You will hear testimony that every
 7 single piece of paper -- and I mean every
 8 single piece of paper that a
 9 pharmaceutical company gives to a doctor
 10 or to anyone else outside the company has
 11 to be scrutinized and approved by the
 12 FDA.
 13 There is nothing ever shown to a
 14 physician that the FDA hadn't blessed in
 15 advance, and that's another whole part of
 16 the company; and there's another big part
 17 of the company called sales, and you will
 18 hear testimony that this is where
 19 products -- and it includes Risperdal and
 20 every other medication and product -- is
 21 promoted so that it can be sold, and
 22 there's plans; they plan ahead so they
 23 know how many employees they need and
 24 they plan all of this ahead.
 25 So yes, there is a lot of planning

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2	in advance. You will hear testimony that
3	it takes millions of dollars to get a
4	drug from the concept to something the
5	FDA says you can use in trials to the FDA
6	approving it.
7	It takes millions and millions of
8	dollars, and for every drug that gets to
9	where Risperdal did, there are literally
10	hundreds that have failed.
11	So yes, the company has to plan
12	ahead. The question in this case, in
13	this case, is simply: What do the
14	plaintiffs contend Janssen did wrong as
15	it pertains to Andrew?
16	Andrew Bentley is the focus of this
17	case. So what is it they're contending
18	in this case as effects to Andrew? And I
19	want go back and talk about how we get to
20	the children and adolescents. Without a
21	doubt, there will be no question
22	whatsoever that it was known from the
23	beginning that Risperdal increased
24	prolactin levels.
25	Everyone knew that, and you're going

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2	to see in a minute it was all over our
3	label. It was known from the very
4	beginning that gynecomastia is associated
5	with Risperdal when there's high
6	prolactin levels and low testosterone
7	levels.
8	It has been known for literally
9	decades that all of the antipsychotics do
10	that. It has been known for decades that
11	it absolutely occurs in adolescents.
12	So when Janssen started -- first,
13	they just did it for adults because, you
14	know, it's hard to do clinical trials for
15	children. There's a whole lot more
16	rules, as there should be.
17	So the child and adolescent trials
18	didn't start till after '93, and early
19	on, there were more; and we're going to
20	see these trials in a few minutes, but it
21	was known to occur from the very
22	beginning.
23	You will see that the scientists at
24	Janssen from the very beginning, but
25	especially when children and adolescent

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2	testing started, focused on the gathering
3	of safety data.
4	Another really big department in
5	Janssen, but a really big department at
6	Janssen, is the Pharmacovigilance or the
7	safety; and Dr. Coppola will be here
8	herself to talk to you about that when we
9	get to put on our case.
10	The other big area is clinical
11	trials, and Dr. Pandina is the one who
12	did that.
13	Mr. Hilliard will argue we didn't
14	have a safe drug and we hid information.
15	This is how we're responding to that,
16	because you're going to see that in the
17	gathering of safety data just for
18	children and adolescents -- there's a
19	whole other area for adults -- but until
20	we got the approval in 2006, we had
21	started early. There are 18 clinical
22	trials; and you're going to hear all
23	about them, and we're going to spend a
24	lot of time on these.
25	In addition, Pharmacovigilance means

1	Bentley vs. Janssen - Trial - 9/24/12 - Volume I
2	it's not just the clinical trial, but
3	it's the gathering of safety data, like
4	if the doctor is giving someone a drug
5	and they have an adverse reaction to it,
6	the doctor sends a report either to the
7	FDA or to the drug company. So it's the
8	gathering of data.
9	This area is limited to information
10	in the trials. This area is the
11	gathering of data worldwide; and you're
12	going to hear a lot of testimony about
13	these two departments and the work they
14	did at Janssen.
15	Dr. Coppola, who is in the
16	pharmacovigilance, or safety data, will
17	tell you that her group -- she's a
18	physician and a scientist. Her group has
19	nothing whatsoever to do with sales or
20	marketing. You got to have all those
21	different groups, but hers is only
22	looking at the safety of a drug.
23	And Dr. Pandina will tell you his
24	only role is looking at information from
25	clinical trials. All of this information

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 2 from the very first day and you remember
 3 the time line that it started, the
 4 clinical trials actually started in the
 5 '80s; so all of this information is
 6 gathered and provided to the FDA.
 7 And you're going to see a lot of
 8 labels during this trial, and you're
 9 going to hear a lot of testimony, because
 10 the label is totally controlled by the
 11 FDA.
 12 You're going to hear if you all ever
 13 seen one -- they're so hard to read
 14 because the print is so small, you're
 15 going to hear that the FDA -- they
 16 control the font, the size of the letters
 17 where you put things, what kind of paper
 18 they have to be on, everything, and every
 19 word in there is approved by them.
 20 And you're going to see that from
 21 the very beginning, there was lots of
 22 information in the label, in the places
 23 where the FDA told us to put it about
 24 prolactin and about gynecomastia.
 25 The facts in this case start in

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 2 2000, even though he only took Risperdal
 3 for a few months in 2000; but all of this
 4 information is still in this (indicating)
 5 but I wanted to pull out this statement.
 6 It was -- this is what the label
 7 says about pediatrics, safety and
 8 effectiveness in children have not been
 9 established. That's required language by
 10 the FDA; and you will hear testimony that
 11 that language has to be in there.
 12 We will call Dr. Janet Aerosmith who
 13 is a physician and a former long-time
 14 employee of the FDA; and she will explain
 15 why all of this information has to be
 16 where it is in the label.
 17 I want to come back to this in a
 18 minute, but this comment has been in
 19 every single label since day one that
 20 rare events -- this is the FDA's language
 21 -- are fewer than one in 1,000, and
 22 gynecomastia is reported as a rare event.
 23 So Janssen -- and you will hear
 24 testimony -- started early trying to get
 25 approval for children, as you will hear

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 2 why, that they learned that physicians
 3 truly were using this medication for
 4 children, and they wanted to do the study
 5 so that they could put that information
 6 in the label about children.
 7 And there was a '97 -- I think there
 8 was another one in early 2000s, but
 9 October, 2006, while Andrew was still on
 10 Risperdal, it was approved for the use in
 11 children. Additional approvals came the
 12 next year.
 13 You will hear testimony that every
 14 other one of the medications Andrew was
 15 on -- do you remember that long list of
 16 antipsychotics? None of them were
 17 approved for use in children at that
 18 time.
 19 So that will be the testimony.
 20 The question is what is it they're
 21 contending Janssen did wrong? What is
 22 it? It's in the label. It's everywhere.
 23 What is it they're contending? And one
 24 of those allegations, as Mr. Hilliard
 25 told you, is that we promoted it

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 2 off-label, we promoted it for the use in
 3 children.
 4 And I want to focus on that for a
 5 moment because there's a big difference
 6 here that you need to understand. Every
 7 witness that's called will tell you, it
 8 is perfectly, totally, completely
 9 legitimate for a physician to prescribe a
 10 medication or something not approved by
 11 the FDA. That is prescribing it
 12 off-label.
 13 As you will hear testimony -- you'll
 14 hear testimony from Dr. Johnson that
 15 every one of these antipsychotics, when
 16 he prescribed them initially for Andrew,
 17 were not approved for the use in
 18 children.
 19 As you will hear him and all the
 20 other psychiatrists explain to you, that
 21 the first generation weren't approved
 22 either; but these drugs were the most
 23 effective drugs in treating these kinds
 24 of problems like Andrew had, the
 25 irritability associated with autism and

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 2 the other things.
 3 And they will tell you that it
 4 became standard of care for a
 5 psychiatrist who wanted to help their
 6 pediatric patients to prescribe these
 7 antipsychotics.
 8 "They" being -- even Mr. Hilliard's
 9 witnesses will tell you that Janssen was
 10 a pioneer in performing 18 clinical
 11 trials seeking approval for use in
 12 children; so that dosing could be placed
 13 in the label.
 14 They did more and faster than any
 15 other company making any of these
 16 medications. So off-label is fine for
 17 doctors.
 18 As Mr. Hilliard told you, there will
 19 be lots of testimony -- it will come from
 20 us too -- that until the approval, until
 21 2006, when it was actually approved for
 22 use in children with autistic and
 23 irritability associated with it, we could
 24 not promote the drug for use in children
 25 and neither could any other manufacturer

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 2 you would be terminated.
 3 In this case, whether somebody
 4 somewhere to someone promoted off-label,
 5 I believe will become irrelevant because
 6 number 6 is: Andrew Bentley. The
 7 question, if asked to -- and you will
 8 hear it from Dr. Johnson -- did Dr.
 9 Johnson, did anyone -- Dr. Johnson, did
 10 anyone from Janssen ever promote to you
 11 for use in your children and adolescents
 12 patients before October, 2006?
 13 And Dr. Johnson affirmatively said
 14 no. I knew -- he will tell you, I knew
 15 it wasn't FDA-approved. I made that
 16 choice myself. Not only with Risperdal,
 17 but with all of the other antipsychotics
 18 that he prescribed for Andrew.
 19 I believe that when this case, at
 20 the end of it, and you're looking at the
 21 question: Was there any promoting of
 22 off-label to Dr. Johnson? The testimony
 23 will absolutely and unequivocally be no;
 24 so I'm not sure what all Mr. Jones is
 25 going to say, but I'm positive he doesn't

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 2 promoted for the use in children.
 3 You will hear testimony, as we go
 4 through this case and at the end of this
 5 case, that at issue is simply promoting
 6 to Dr. Johnson as Andrew's physician.
 7 Let me back up on that.
 8 Mr. Hilliard just told you that he
 9 intends to call today a former sales rep
 10 of Janssen whose name is Mr. Tony Jones,
 11 and I've not met him. I don't know what
 12 he's going to say.
 13 But Mr. Hilliard told you that Mr.
 14 Jones is going to say that they were
 15 promoting off-label where he's from.
 16 He's from Houston, which is South Texas;
 17 and Mr. Jones will tell you, I'm sure,
 18 because it's absolutely true, he doesn't
 19 know Vernon Johnson and he never had
 20 anything to do with Dr. Johnson.
 21 Mr. Jones, I'm sure, will tell you
 22 that Janssen had a very strong policy,
 23 and you're going to see it -- that if
 24 anybody promoted off-label, if you
 25 promoted for children and adolescents,

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 2 know Dr. Johnson.
 3 So then you look at the question:
 4 What else are they alleging?
 5 Mr. Hilliard told you that the
 6 second thing is that somehow information
 7 was withheld; and if you remember, he
 8 talked about two trials.
 9 Well, I'm going to tell you right
 10 now, we're going to talk about all 18
 11 during the course of this case, because
 12 this is -- this tells the Janssen story.
 13 These are only clinical trials
 14 dealing with children and adolescents.
 15 There's hundreds more even on Risperdal.
 16 This is just those, and there's been more
 17 since; but this is leading up to the
 18 first approval in October, 2006. 18
 19 different studies.
 20 The testimony will be undisputed
 21 that every single piece of paper in every
 22 one of these studies was given to the
 23 FDA. There is nothing they can point to
 24 that was withheld from the FDA.
 25 The testimony will be undisputed

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2 that every single one was published in
3 the medical literature.

4 Let me tell you why that's
5 important. You will hear evidence that
6 before October of 2006, when we got the
7 first indication for children, Janssen
8 could not put information in its label
9 about its use for children because the
10 FDA wouldn't let you do that.

11 What they could do and did was do
12 these clinical studies; and the
13 physicians involved in these clinical
14 studies could then publish the results,
15 so everything was provided to all of the
16 treating physicians, and we will be
17 introducing this information.

18 Mr. Hilliard spent just a moment,
19 but I want to talk about this because
20 this is going to be the focus of where I
21 anticipate he's going. He wanted to talk
22 about only two trials, 41, which as you
23 can see, was a year trial during this
24 time, and 70.

25 We're going to talk about all of

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2 them, but I want to focus on these just a
3 moment. If you look over here, for
4 patients on Risperdal with new reports of
5 gynecomastia, you can see that the number
6 is quite low, except for one study.

7 You will hear testimony that this
8 was the very first study that had a large
9 number, like, almost -- 90 percent of
10 those participating were males, and had a
11 large number of males going through
12 puberty, and it was a larger report of
13 gynecomastia.

14 You will hear testimony that as soon
15 as this information was known, Janssen
16 retained two pediatric endocrinologists
17 to study this to see if this something
18 different? We have all these other
19 reports, what's different about this?

20 As you will hear testimony that
21 these two, not our employees,
22 independent, very well-respected
23 pediatric endocrinologists studied this
24 data and then participated in writing of
25 an article, concluding -- this included a

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2 lot going through puberty, and the reason
3 it was evaluated was because of
4 puberty-induced gynecomastia.

5 Mr. Hilliard's argument -- and I
6 know this because we get to take
7 depositions beforehand and we know what
8 experts are going to say -- is focused
9 just on this study; and 70 is actually an
10 extension, you know, where you're going
11 to stop a study and some of them continue
12 on to another one.

13 His witnesses say, on the basis of
14 that one study or two studies, everything
15 should have changed. You're going to
16 hear testimony that, instead of looking
17 at one study or two studies, you need to
18 look at all the studies.

19 Mr. Hilliard said his numbers were a
20 little off on 41 and way off on 70.
21 We'll go through that at trial, but if
22 you look at all of the studies that were
23 done, you'll see the percentage of
24 recorded cases of gynecomastia coming out
25 to be in 2.3 percent. Every single

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2 piece, every single piece of this data
3 goes to the FDA.

4 As you will then hear testimony from
5 those involved in that process that the
6 FDA said, don't take one study and don't
7 take two. Don't take the 0 and don't
8 take the five percent. Don't take the
9 .9; take all of them and put that in your
10 label; and that's exactly what Janssen
11 did, where in this part of the label, it
12 talks about the clinical trials being 2.3
13 percent.

14 In the bottom, where it talks about
15 all studies together, that's the
16 pharmacovigilance, all adults, all
17 children is still rare; but in '06 is the
18 first time we could set out pediatrics.

19 That's the part of the case that's a
20 little more complicated. It took me
21 awhile to go through it; and we will
22 spend some time on that as we go through.

23 But you get down to this case, and
24 this case, Andrew Bentley is one patient
25 who was prescribed Risperdal, so the

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 2 question ought to be: What did Dr.
 3 Johnson know, not the world, and not even
 4 someone's little world; what did Dr.
 5 Johnson know about Risperdal and about
 6 the chance of it causing elevated
 7 prolactin, decreased testosterone and
 8 resulting in gynecomastia? When did he
 9 know it?
 10 And the last question is: Would he
 11 have still prescribed Risperdal to Andrew
 12 if he knew every single detail about
 13 every single clinical study and adverse
 14 events collected by Janssen?
 15 These questions were asked of Dr.
 16 Johnson in his deposition; and if you go
 17 back to this time line, Dr. Johnson will
 18 tell you that -- these studies didn't
 19 come out till after '01. He will tell
 20 you, no, I didn't know it in 2000.
 21 Everyone else will tell you that
 22 part of it wasn't known. We knew it
 23 raised prolactin. We knew all of that,
 24 but everything else wasn't known until
 25 after '01.

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 2 He will tell you -- because he told
 3 us -- I don't remember when I knew. I
 4 know it was after '01, but I don't
 5 remember otherwise; and the question is
 6 asked of him: Would you have done
 7 anything any differently?
 8 And he said, well, I would have
 9 discussed it with Mrs. Rolen, which I'm
 10 sure he did later, because it was
 11 published in the article. Somebody
 12 actually asked that question.
 13 But the question that matters is,
 14 the only one, would you have still
 15 prescribed Risperdal for Andrew?
 16 You're going to hear Dr. Johnson
 17 tell you Risperdal was uniquely
 18 beneficial for Andrew, and he will not
 19 say I would not have prescribed it.
 20 So when you get down to this
 21 question -- we're going to spend a lot of
 22 time during this trial about that -- the
 23 focus will be: How does it relate to Dr.
 24 Johnson? Whose testimony I hope you get
 25 to hear pretty soon.

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 2 By the end of this trial, I hope
 3 this picture -- and I know it's long and
 4 I appreciate your patience, but it's
 5 important, and I hope you can look back
 6 to it to put into focus the issues that,
 7 while Andrew had some type of breast
 8 enlargement in '09, there has been
 9 nothing, nothing since then to in any way
 10 show of it being a continuing problem.
 11 More importantly, I hope it will be
 12 clear that Janssen, through its
 13 scientists and its physicians, were very
 14 diligent in studying Risperdal with
 15 children and adolescents; and that they
 16 reported everything they knew, everything
 17 they knew to the FDA and to the
 18 prescribing physicians as soon as they
 19 could get it published in the literature.
 20 I hope it will be clear that Dr.
 21 Johnson's care and treatment of Andrew
 22 was what Dr. Johnson felt was in Andrew's
 23 best interest, and I think the records
 24 will show Andrew has done well and that
 25 Dr. Johnson would have prescribed it for

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 2 him at the time he did regardless of what
 3 Mr. Hilliard argues about.
 4 Over these next two to three weeks,
 5 His Honor told you and will tell you more
 6 later, but there's going to be some
 7 breaks because of schedule issues and
 8 it's going to be hard to keep the big
 9 picture in mind.
 10 I would just ask you to keep an open
 11 mind. Every single day, tell yourself
 12 this is only one part of the story, we
 13 won't have the whole story till the end
 14 of trial, and to keep your mind open
 15 until then; because at the end, you will
 16 have to focus on the main questions and
 17 sift through that which is not as
 18 important.
 19 I want to thank you for being
 20 patient with me today and throughout this
 21 trial. On behalf of Janssen and Johnson
 22 and Johnson, thank you.
 23 (Jury panel departs courtroom at 3
 24 o'clock p.m. for recess).
 25 - - -

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

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

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

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

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 2 we can approach and say, we believe that
 3 now that we can speak of it, I understand
 4 and appreciate that the indication is no
 5 and I will --
 6 THE COURT: I don't exactly know
 7 what the position is taken means, but the
 8 law of Pennsylvania, if testimony is let
 9 in over objection, that opens the door.
 10 Then, of course, you get to counter it,
 11 sure.
 12 I don't think the party gets to
 13 counter something that's let in without
 14 objection, by the way.
 15 What would Mr. Jones say? He would
 16 say, I testified in a lawsuit. My
 17 understanding of what that lawsuit was
 18 about was blah, blah, blah; and some time
 19 later, I heard or read in the newspaper
 20 that it settled?
 21 Is that what his testimony will be?
 22 MR. HILLIARD: His testimony would
 23 be that I testified in the lawsuit where
 24 the State of Texas sued Janssen for
 25 Janssen off-label marketing to children.

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 2 THE COURT: That would be his
 3 understanding of what the lawsuit was
 4 about that he testified to in?
 5 MR. HILLIARD: Correct.
 6 THE COURT: Is he a lawyer?
 7 MR. HILLIARD: He is not a lawyer.
 8 THE COURT: That would be his
 9 understanding based on what somebody or
 10 many people told him or he read in the
 11 paper as to what the lawsuit was about,
 12 and he would say, I was called as a
 13 witness or voluntarily showed up as a
 14 witness and testified at that trial;
 15 right?
 16 MR. HILLIARD: Yes.
 17 THE COURT: What else would he be --
 18 MR. HILLIARD: On that point, if I
 19 may, the Court could decide to take
 20 judicial notice of the State's complaint
 21 against Janssen where the allegation is
 22 made as to this issue.
 23 THE COURT: With respect to that, we
 24 don't need him at all. Do we?
 25 MR. HILLIARD: We do not need him

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 2 with respect to that, you're right.
 3 THE COURT: If I'm asked to take
 4 judicial notice, I'll rule on whether I
 5 should take judicial notice.
 6 Then his testimony is going to be I
 7 read in the paper three weeks later that
 8 it settled for some huge amount?
 9 MR. HILLIARD: My belief is, Judge,
 10 that the settlement itself, given the
 11 language of the settlement agreement,
 12 should not come in, even if the Court
 13 determines the door is open for the fact
 14 that the lawsuit, the state -- the states
 15 have sued them.
 16 THE COURT: The only thing you want
 17 in is they paid a ton of money in Texas?
 18 MR. HILLIARD: No. The only thing I
 19 want in is they are not fired for
 20 off-label marketing. They actually have
 21 been sued by 37 states for doing the
 22 off-label marketing.
 23 THE COURT: Got it. Nobody said he
 24 couldn't testify that they were not fired
 25 for it.

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 2 MR. HILLIARD: I appreciate that.
 3 THE COURT: Nobody testified that --
 4 nobody has ruled he couldn't put up that
 5 nice picture of his great award, and he
 6 can testify that he got it for such a
 7 good job selling Risperdal to kids;
 8 right?
 9 MR. HILLIARD: Right.
 10 THE COURT: Anything further?
 11 MS. SMITH: I do.
 12 THE COURT: One of the things that I
 13 don't like is lawyers who don't ask
 14 questions but rather make statements.
 15 Statements like, anything further?
 16 Whereas the question is: Is there
 17 anything further that we need to discuss
 18 here?
 19 MS. SMITH: Yes, Your Honor.
 20 THE COURT: I was just pointing out
 21 that I do what I'm going to stop you all
 22 from doing.
 23 MS. SMITH: Mr. Hill has shown me
 24 some documents he says he intends to use
 25 with Mr. Jones.

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03:29:47PM 2 I have several objections to them.
 03:29:50PM 3 THE COURT: Wait a minute. I'm lost
 03:29:53PM 4 already.
 03:29:54PM 5 Wasn't there a pretrial listing of
 03:29:58PM 6 exhibits?
 03:29:59PM 7 MS. SMITH: Thousands and thousands.
 03:30:00PM 8 THE COURT: So the answer is, yes,
 03:30:02PM 9 there was a pretrial listing of exhibits
 03:30:04PM 10 which numbered in the thousands?
 03:30:06PM 11 MS. SMITH: Correct.
 03:30:07PM 12 THE COURT: Are these documents on
 03:30:12PM 13 the list of exhibits?
 03:30:13PM 14 MS. SMITH: Some were and I don't
 03:30:14PM 15 know if he's withdrawn the ones I've
 03:30:17PM 16 questioned.
 03:30:17PM 17 THE COURT: Let's start with the
 03:30:18PM 18 ones that were.
 03:30:20PM 19 How come you have an objection that
 03:30:23PM 20 you haven't seen them? Why didn't you
 03:30:25PM 21 say, turn them over, let me see them.
 03:30:27PM 22 MS. SMITH: My objections to the one
 03:30:29PM 23 I'm aware of isn't that I haven't seen
 03:30:31PM 24 them, is that they're not proper in this
 03:30:33PM 25 case and/or through this witness.

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03:30:35PM 2 THE COURT: So when he tries to pass
 03:30:38PM 3 something up, you'll object at that time
 03:30:41PM 4 since it wasn't raised in limine, and
 03:30:43PM 5 we'll go to sidebar or I'll see you,
 03:30:46PM 6 we'll deal with it one at a time.
 03:30:48PM 7 Don't do it in a way that you're
 03:30:50PM 8 telling him everything that's in there
 03:30:52PM 9 before -- you know what I'm talking
 03:30:54PM 10 about?
 03:30:55PM 11 MR. HILLIARD: I do.
 03:30:55PM 12 THE COURT: Those that aren't on the
 03:30:59PM 13 list, sure, you should object. You can't
 03:31:03PM 14 use them, I don't think, in direct
 03:31:05PM 15 examination.
 03:31:06PM 16 But to be honest with you, I don't
 03:31:08PM 17 know quite what the rules are of this
 03:31:11PM 18 mass tort program; so we'll deal with it
 03:31:14PM 19 when it first happens.
 03:31:15PM 20 MS. SMITH: One additional thing,
 03:31:16PM 21 Your Honor. This wasn't a Motion in
 03:31:18PM 22 Limine. There was a ruling. My question
 03:31:23PM 23 -- it concerns the fact that under Texas
 03:31:25PM 24 law, promoting has to be directed to the
 03:31:29PM 25 prescribing physician.

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03:31:35PM 2 His testimony is unrelated to the
 03:31:38PM 3 prescribing physician. That's admitted.
 03:31:41PM 4 He had no involvement.
 03:31:42PM 5 THE COURT: I don't know they're
 03:31:42PM 6 admitting unrelated --
 03:31:45PM 7 MS. SMITH: They've admitted in
 03:31:47PM 8 their pleadings he had no contact with
 03:31:50PM 9 this prescribing physician; so I would
 03:31:51PM 10 otherwise be objecting to relevance on
 03:31:54PM 11 his testimony in its entirety.
 03:31:57PM 12 I hope our Motion in Limine covers
 03:31:59PM 13 it.
 03:31:59PM 14 THE COURT: I think your Motion in
 03:32:01PM 15 Limine does cover that if there's some
 03:32:04PM 16 other more specific relevance that has to
 03:32:08PM 17 be objected to; but as I understood your
 03:32:12PM 18 motion, it was, don't let him testify to
 03:32:15PM 19 anything about what he did or what the
 03:32:19PM 20 company told him to do because he never
 03:32:22PM 21 personally spoke to this doctor.
 03:32:24PM 22 And that Motion in Limine has a
 03:32:28PM 23 definitive ruling overruling the
 03:32:32PM 24 objection and makes it preserved for
 03:32:35PM 25 appeal, in my opinion.

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03:32:38PM 2 Is that what you're looking for?
 03:32:39PM 3 MS. SMITH: That's correct.
 03:32:45PM 4 MR. MACKUSE: Gregg Mackuse on
 03:32:47PM 5 behalf of plaintiffs.
 03:32:51PM 6 THE COURT: Where are you from?
 03:32:52PM 7 MR. MACKUSE: Mechanicsburg,
 03:32:54PM 8 Pennsylvania.
 03:32:54PM 9 THE COURT: Glad to see you in
 03:32:56PM 10 Philly.
 03:32:57PM 11 MR. MACKUSE: We would expect Mr.
 03:33:00PM 12 Jones we'd like for him to be able to
 03:33:03PM 13 comment on testify about some national
 03:33:05PM 14 documents as to which he is not the
 03:33:08PM 15 authenticating witness.
 03:33:09PM 16 There will be testimony later in the
 03:33:11PM 17 case where we can put on deposition
 03:33:13PM 18 testimony, if necessary, to authenticate,
 03:33:16PM 19 render admissibility of those documents,
 03:33:18PM 20 but we'd like to be able to show them to
 03:33:21PM 21 him now in his testimony and have them
 03:33:24PM 22 comment on it.
 03:33:24PM 23 THE COURT: Has he ever seen them?
 03:33:26PM 24 MR. MACKUSE: He did not see them
 03:33:29PM 25 during the course of scope of his

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 2 employment.
 3 THE COURT: Has he ever seen them?
 4 MR. MACKUSE: Yes, he has.
 5 THE COURT: In preparation for
 6 testimony?
 7 MR. MACKUSE: In preparation for the
 8 testimony, yes.
 9 THE COURT: Did you talk to counsel
 10 about it?
 11 MS. SMITH: No, but if I had, we
 12 would have told him we would object.
 13 THE COURT: Do you know what
 14 documents he's talking about?
 15 MS. SMITH: I do not.
 16 THE COURT: Sufficient unto the day
 17 is the trouble thereof. You show it to
 18 counsel and I'll see you before you want
 19 to use them.
 20 If you know there's an objection,
 21 come and ask me to go to sidebar.
 22 - - -
 23 (Back in courtroom.)
 24 - - -
 25

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

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

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

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 04:22:48PM 2 taken care of because if that's what he's
 04:22:48PM 3 going to say, there's no objection?
 04:22:48PM 4 MS. SMITH: Correct.
 04:22:48PM 5 - - -
 04:22:48PM 6 (Pertinent portion was read by the
 04:22:48PM 7 court reporter).
 04:22:48PM 8 - - -
 04:22:48PM 9 A. Yes. So Johnson and Johnson is like this
 04:22:48PM 10 big umbrella. It has like 178 --
 04:22:48PM 11 MS. SMITH: Objection.
 04:22:48PM 12 A. -- companies.
 04:22:49PM 13 THE COURT: Objection is sustained.
 04:22:49PM 14 The objection had to do with the
 04:22:49PM 15 relationship between two companies,
 04:22:49PM 16 Johnson and Johnson and Janssen
 04:22:49PM 17 Pharmaceuticals.
 04:22:49PM 18 Do you know the relationship?
 04:22:49PM 19 THE WITNESS: Yes. Janssen
 04:22:49PM 20 basically is under the Johnson and
 04:22:49PM 21 Johnson umbrella.
 04:22:49PM 22 MS. SMITH: We still have an
 04:22:49PM 23 objection.
 04:22:49PM 24 THE COURT: Overruled.
 04:22:49PM 25 BY MR. HILLIARD:

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

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

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

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:53PM 2 sorry.
 04:22:53PM 3 Q. That's it. We were first making sure
 04:22:53PM 4 whether or not you had any training specific
 04:22:53PM 5 to Risperdal.
 04:22:53PM 6 A. Yes. That's when I learned more about
 04:22:54PM 7 it.
 04:22:54PM 8 Q. Then we'll go back to the question that
 04:22:54PM 9 we had pushed the pause button on, and that
 04:22:54PM 10 is: How did you go about doing the actual
 04:22:54PM 11 field work promoting Risperdal?
 04:22:54PM 12 A. Well, how I went about it is, basically,
 04:22:54PM 13 I was trained from the company, and which was
 04:22:54PM 14 to go out and call them -- we have a list of
 04:22:54PM 15 customers that are provided from the company
 04:22:54PM 16 that we went and called on.
 04:22:54PM 17 We had to make eight calls a day or so,
 04:22:54PM 18 and that's pretty much what we did every day.
 04:22:54PM 19 We sampled our key customers. We did business
 04:22:54PM 20 analytics, determined who our top doctors
 04:22:54PM 21 were; and so there's a lot involved, you know,
 04:22:55PM 22 managing a territory, you know, within the
 04:22:55PM 23 pharmaceutical business, so --
 04:22:55PM 24 Q. During that time, did you become familiar
 04:22:55PM 25 with whether or not Janssen had a national

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:55PM 2 policy on the promotion of Risperdal off-label
 04:22:55PM 3 in the pediatric area?
 04:22:55PM 4 A. During that time, what Janssen would do,
 04:22:55PM 5 they would talk about different areas that we
 04:22:55PM 6 would focus on.
 04:22:55PM 7 However, you know, back in those days, it
 04:22:55PM 8 was a little different than it is today, so it
 04:22:55PM 9 wasn't as restricted; and so they would, you
 04:22:55PM 10 know, we would talk about different disease
 04:22:55PM 11 states that Risperdal treated, which was for
 04:22:55PM 12 adults. It was also for a child in
 04:22:55PM 13 adolescence and also for patients that had
 04:22:55PM 14 mood disorders as well, bipolar, those type of
 04:22:56PM 15 patients.
 04:22:56PM 16 Q. Mr. Jones, did you have an understanding
 04:22:56PM 17 during the time period you were promoting
 04:22:56PM 18 Risperdal that it was not approved by the FDA
 04:22:56PM 19 for use in children?
 04:22:56PM 20 MS. SMITH: Objection, Your Honor.
 04:22:56PM 21 THE COURT: Legal basis?
 04:22:56PM 22 MS. SMITH: Leading.
 04:22:56PM 23 (Pertinent portion was read by the
 04:22:56PM 24 court reporter).
 04:22:56PM 25 THE COURT: Rephrase.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:56PM 2 BY MR. HILLIARD:
 04:22:56PM 3 Q. During that time period, what was your
 04:22:56PM 4 understanding with regards to the FDA, of the
 04:22:56PM 5 drug, Risperdal?
 04:22:56PM 6 A. At that time, Risperdal was for
 04:22:56PM 7 schizophrenia only.
 04:22:56PM 8 Q. You started this in 2000. How long did
 04:22:56PM 9 you do this, promote Risperdal?
 04:22:56PM 10 A. Well, I was a field rep from 2000 to
 04:22:56PM 11 2002, and I was quite successful in selling
 04:22:56PM 12 Risperdal in the Houston market.
 04:22:56PM 13 We would have what we call president's
 04:22:56PM 14 trophy trips; so we'd go on trips based on our
 04:22:56PM 15 sales, so I had the opportunity to do that in
 04:22:56PM 16 2000 and also in 2001.
 04:22:56PM 17 During that time frame, the reason I was
 04:22:56PM 18 promoted in 2002 is because I had one of the
 04:22:56PM 19 highest market shares at Janssen selling
 04:22:56PM 20 Risperdal, which was roughly around 50
 04:22:56PM 21 percent, so we did very well selling Risperdal
 04:22:56PM 22 in the Houston market.
 04:22:56PM 23 So my manager at the time stepped down
 04:22:56PM 24 and so I was in management training. So in
 04:22:56PM 25 2000, November of 2002, I was promoted and,

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:56PM 2 typically, when you're promoted within, you
 04:22:56PM 3 know, Johnson and Johnson, I would say Johnson
 04:22:56PM 4 and Johnson, not just Janssen you're not
 04:22:56PM 5 promoted within the team you work with; you
 04:22:57PM 6 have to relocate or move to a different
 04:22:57PM 7 district.
 04:22:57PM 8 Well, I was promoted within the team that
 04:22:57PM 9 I worked with. So obviously, they felt very
 04:22:57PM 10 -- that I had a leadership skill so forth to
 04:22:57PM 11 be able to handle a very tenured team; so in
 04:22:57PM 12 2002, I was promoted to the manager role.
 04:22:57PM 13 Q. Now, as a manager, did you receive
 04:22:57PM 14 directives from the national office in regards
 04:22:57PM 15 to how to promote Risperdal?
 04:22:57PM 16 A. Correct. That's the only way that we
 04:22:57PM 17 would go out and promote Risperdal, is based
 04:22:57PM 18 upon what was given to us from sales training
 04:22:57PM 19 or the marketing sales director.
 04:22:57PM 20 Q. Did that training in the national
 04:22:57PM 21 direction, if you know, was it pinpointed to
 04:22:57PM 22 the Houston area region?
 04:22:58PM 23 MS. SMITH: Objection, Your Honor.
 04:22:58PM 24 BY MR. HILLIARD:
 04:22:58PM 25 Q. Or was it pinpointed to more of, if it

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:22:58PM 2 was, more of a different --
 04:22:58PM 3 THE COURT: Objection sustained as
 04:22:58PM 4 phrased. Next.
 04:22:58PM 5 BY MR. HILLIARD:
 04:22:58PM 6 Q. Explain to these folks a connection, if
 04:22:58PM 7 there is one, between Houston and Dallas in
 04:22:58PM 8 regards to the natural policy in promotion of
 04:22:58PM 9 Risperdal in the pediatric area?
 04:22:58PM 10 MS. SMITH: Objection.
 04:22:58PM 11 THE COURT: Overruled.
 04:22:58PM 12 A. So Dallas and Houston were in the system
 04:22:58PM 13 region; so whatever sales direction was sent
 04:22:58PM 14 from home office, Princeton area, whether or
 04:22:58PM 15 not you were in California, Minneapolis, down
 04:22:58PM 16 in Houston or even on the East Coast, we all
 04:22:59PM 17 followed the same sales direction.
 04:22:59PM 18 We didn't make it up on our own. Really,
 04:22:59PM 19 during my tenure there, I never recall a rep
 04:22:59PM 20 getting fired because of off-label marketing.
 04:22:59PM 21 MS. SMITH: Objection.
 04:22:59PM 22 THE COURT: Sustained. You've gone
 04:22:59PM 23 beyond the question.
 04:22:59PM 24 Next question.
 04:22:59PM 25 BY MR. HILLIARD:

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

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

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

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

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

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

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

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

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

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

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

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

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 2 THE WITNESS: Me? No, sir.
 3 THE COURT: Objection is sustained.
 4 Next question.
 5 BY MR. HILLIARD:
 6 Q. Please limit your answer only to the time
 7 you were with the company in regards to the
 8 opportunity for growth as it relates to the
 9 description that you have -- I need to
 10 identify this for the record.
 11 MR. HILLIARD: We would offer P-2.
 12 MS. SMITH: Objection.
 13 THE COURT: Overruled. Accepted
 14 into evidence.
 15 BY MR. HILLIARD:
 16 Q. In regards to P-2 and your explanation
 17 and the question earlier about opportunity for
 18 growth, limiting your answer only to the time
 19 that you were actually at Janssen, can you
 20 explain to the jury how P-2 related to what
 21 the opportunity for growth actually was?
 22 MS. SMITH: Objection, Your Honor.
 23 THE COURT: Basis?
 24 MS. SMITH: Outside what his
 25 knowledge base is based on how he's been

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 introduced.
 3 THE COURT: Overruled. Proceed.
 4 What was the opportunity? Did you ever
 5 hear in any of these situations where
 6 they were telling you how to market
 7 things, the words, "opportunity for
 8 growth"?
 9 THE WITNESS: Absolutely.
 10 THE COURT: Did you ever hear with
 11 respect to Risperdal?
 12 THE WITNESS: Every meeting.
 13 THE COURT: You may state the
 14 question again.
 15 The objection is overruled.
 16 BY MR. HILLIARD:
 17 Q. As to the opportunity for growth that you
 18 heard at the meetings, meetings that Mr.
 19 Clifford also attended?
 20 A. Yes.
 21 Q. As to the specific drug Risperdal, would
 22 you please explain the connection between
 23 opportunity for growth in relation to P-2, how
 24 P-2 translates into opportunity for growth?
 25 A. Very simply.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 Janssen wanted Risperdal to be a billion
 3 dollar product. That right there led to how
 4 we were able to communicate with our
 5 physicians to grow the brand to a billion
 6 dollars during my time I sold Risperdal.
 7 Q. In order to follow what Janssen wanted in
 8 regards to Risperdal becoming a billion dollar
 9 product, did you receive instruction from the
 10 national headquarters to market and promote
 11 Risperdal to children?
 12 MS. SMITH: Objection.
 13 THE COURT: Overruled.
 14 A. Yes. That was one of the focused areas
 15 that when you look at how the company was
 16 going to grow to be a billion dollars, that
 17 was the area that we were going to focus on.
 18 Q. My question again goes to your counter
 19 part up in Dallas. Did Mr. Clifford also
 20 receive the same information?
 21 A. Yes.
 22 Q. On how to market and promote to children?
 23 A. Yes, he did.
 24 Q. Once you were promoted, once you became
 25 the team leader, were there ways that you

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:18PM 2 conveyed to the drug reps under you this
 04:23:18PM 3 information and this directive from the
 04:23:18PM 4 national office?
 04:23:18PM 5 A. Yes.
 04:23:18PM 6 Q. How did you do that?
 04:23:18PM 7 A. Well, I would go out in the field and
 04:23:18PM 8 work with the rep while I would observe their
 04:23:18PM 9 calls with physicians in the Houston area; and
 04:23:18PM 10 also I wrote field contact reports to
 04:23:18PM 11 basically hold them accountable for what the
 04:23:18PM 12 company has asked us to do in terms of sales
 04:23:18PM 13 direction and so forth.
 04:23:18PM 14 Q. Was there ever a time when the national
 04:23:18PM 15 office tied bonuses into the marketing of
 04:23:18PM 16 Risperdal and the promoting of Risperdal to
 04:23:19PM 17 children?
 04:23:19PM 18 A. Yes. Well, it was all part of our, what
 04:23:19PM 19 we call, incentive compensation package; and
 04:23:19PM 20 basically, the company provided the sales
 04:23:19PM 21 direction, and they just wanted marketshare
 04:23:19PM 22 increase. They wanted growth.
 04:23:19PM 23 And so whether it was -- and
 04:23:19PM 24 schizophrenia or outside of that, they wanted
 04:23:19PM 25 Risperdal to be utilized within that

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:19PM 2 physician's office, and so that's how we were
 04:23:19PM 3 bonused each quarter on sales growth for
 04:23:19PM 4 Risperdal.
 04:23:19PM 5 Q. During the time that you were in Houston,
 04:23:19PM 6 did you, from time to time, receive at-a-boy
 04:23:19PM 7 letters, written letters where your bonus is
 04:23:19PM 8 described and you were congratulated for what
 04:23:20PM 9 you were doing?
 04:23:20PM 10 MS. SMITH: Objection.
 04:23:20PM 11 THE COURT: Overruled.
 04:23:20PM 12 A. Yes. I have a pretty thick booklet of
 04:23:19PM 13 at-a-boy for not only when I was a rep, but
 04:23:20PM 14 also a manager for my team in terms of how we
 04:23:20PM 15 were out-selling, you know, most of the other
 04:23:20PM 16 districts across the country.
 04:23:20PM 17 So we would get very frequent at-a-boys,
 04:23:20PM 18 if you will, based on our sales growth within
 04:23:20PM 19 my district.
 04:23:20PM 20 Q. Please assume that this jury, during
 04:23:20PM 21 opening statements, heard a statement from the
 04:23:20PM 22 defense attorney that said --
 04:23:20PM 23 MS. SMITH: Objection.
 04:23:20PM 24 THE COURT: Objection sustained.
 04:23:20PM 25 BY MR. HILLIARD:

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:20PM 2 Q. Promoting Risperdal off-label would get
 04:23:20PM 3 you fired?
 04:23:20PM 4 MS. SMITH: Objection, leading.
 04:23:20PM 5 THE COURT: It wasn't a question.
 04:23:21PM 6 Rephrase the question.
 04:23:21PM 7 BY MR. HILLIARD:
 04:23:21PM 8 Q. Mr. Jones, in your experience, would
 04:23:21PM 9 promoting Risperdal off-label to children get
 04:23:21PM 10 you fired?
 04:23:21PM 11 A. No.
 04:23:21PM 12 Q. Would it get you a bonus?
 04:23:21PM 13 A. Yes.
 04:23:21PM 14 Q. Of your at-a-boy letters, I've pulled a
 04:23:21PM 15 few out and I'm going to ask Charles to pass
 04:23:21PM 16 them to you.
 04:23:21PM 17 THE COURT: Do the two of you want
 04:23:21PM 18 to talk off the record? That would be
 04:23:21PM 19 fine. Is there an objection? What's
 04:23:21PM 20 happening?
 04:23:21PM 21 MS. SMITH: I do have an objection.
 04:23:21PM 22 THE COURT: Talk to counsel and
 04:23:21PM 23 let's see if we need to go to sidebar.
 04:23:21PM 24 - - -
 04:23:21PM 25 (An off-the-record discussion was

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:23:21PM 2 held at side bar as follows:)
 04:23:21PM 3 - - -
 04:23:21PM 4 THE COURT: What's the objection?
 04:23:21PM 5 MS. SMITH: There's no relevance to
 04:23:21PM 6 any issue in this case. That has nothing
 04:23:23PM 7 to do, being paid for promoting to
 04:23:25PM 8 children, and it's irrelevant.
 04:23:26PM 9 THE COURT: Okay. Overruled.
 04:23:32PM 10 MS. SMITH: I think he's going -- I
 04:23:36PM 11 don't know how many of them --
 04:23:37PM 12 MR. HILLIARD: About six.
 04:23:38PM 13 MS. SMITH: Can I have the same
 04:23:39PM 14 objection to all of them?
 04:23:40PM 15 THE COURT: Sure. Why don't you do
 04:23:42PM 16 all six at once rather than dramatically
 04:23:46PM 17 wasting 15 minutes.
 04:24:06PM 18 Would that be a good place to break
 04:24:08PM 19 for the day after the at-a-boys?
 04:24:10PM 20 MR. HILLIARD: It would, Your Honor.
 04:24:15PM 21 THE COURT: How much longer do you
 04:24:17PM 22 think you'd be with this witness?
 04:24:19PM 23 MR. HILLIARD: 45 minutes.
 04:24:21PM 24 - - -
 04:24:21PM 25 MR. HILLIARD: I'm going to mark a

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:24:22PM 2 number of them at once and hand them to
 04:24:25PM 3 him. So if you'll help me with that.
 04:26:26PM 4 THE COURT: Pass that up to the
 04:26:27PM 5 witness now.
 04:26:39PM 6 BY MR. HILLIARD:
 04:26:41PM 7 Q. Mr. Jones, if you would simply read the P
 04:26:45PM 8 numbers to me.
 04:26:46PM 9 A. Okay. P-3, P-4, P-5, P-6, P-7, P-8, P-9
 04:27:01PM 10 and the last one is P-10.
 04:27:03PM 11 Q. Generally, very briefly, with no
 04:27:07PM 12 specifics as to the contents, will you
 04:27:10PM 13 describe each exhibit?
 04:27:11PM 14 A. Describe them?
 04:27:12PM 15 Q. Yes.
 04:27:14PM 16 A. P-3 basically is a letter for sales
 04:27:23PM 17 performance. That's when I was a rep.
 04:27:26PM 18 Q. Thank you.
 04:27:27PM 19 MS. SMITH: Can he state dates?
 04:27:29PM 20 THE COURT: That would be good, yes.
 04:27:32PM 21 A. 2001 when I was -- as I mentioned, 2001,
 04:27:35PM 22 I was a sales rep.
 04:27:37PM 23 THE COURT: Does it have a specific
 04:27:38PM 24 date?
 04:27:42PM 25 THE WITNESS: December, 2001.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:27:43PM 2 THE COURT: Keep going..
 04:27:48PM 3 THE WITNESS: This does not have a
 04:27:49PM 4 date on it that I see. This is P-4, and
 04:27:54PM 5 this particular document is when I worked
 04:27:57PM 6 with the brand team, CNS brand team in
 04:28:07PM 7 field testing at the new sales aid, as I
 04:28:12PM 8 mentioned to you earlier.
 04:28:13PM 9 P-5, I was an advisor at a product
 04:28:18PM 10 training class.
 04:28:19PM 11 MS. SMITH: Again, I don't know if
 04:28:22PM 12 he doesn't tell me a date and I didn't
 04:28:23PM 13 have that last one.
 04:28:26PM 14 A. My apologies. January 25th, 2002. I was
 04:28:29PM 15 a what they call initial product training
 04:28:35PM 16 advisor; so that's a letter for that.
 04:28:37PM 17 April 8th, 2002 -- P-6, this is a field
 04:28:51PM 18 day letter coming from Rob Craner, who's my
 04:28:54PM 19 regional business director, and I was still a
 04:28:58PM 20 rep at this time; and when he had come out
 04:29:02PM 21 into the field to work with me.
 04:29:03PM 22 P-7, April of 2002, this is when I was
 04:29:12PM 23 promoted as an institutional specialty
 04:29:21PM 24 training representative; so now I was able to
 04:29:24PM 25 train people across the country.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:29:26PM 2 P-8, this doesn't have a date on it.
 04:29:39PM 3 There's actually several dates but no specific
 04:29:41PM 4 date. This is my letter announcing my
 04:29:45PM 5 promotion to the district manager, Houston
 04:29:47PM 6 district manager.
 04:29:51PM 7 P-9, September 13th, 2002. This was
 04:30:08PM 8 actually another letter, but this comes from
 04:30:10PM 9 -- this comes from Rob Craner again about the
 04:30:14PM 10 promotion being a district manager.
 04:30:18PM 11 Then the last one, P-10, was in September
 04:30:20PM 12 10th, 2001 was another letter from my district
 04:30:25PM 13 -- my former district manager when I was a rep
 04:30:28PM 14 for the bonus and also the performance that I
 04:30:33PM 15 was able to accomplish during that time.
 04:30:36PM 16 MR. HILLIARD: We would offer the
 04:30:37PM 17 previously identified -- previously
 04:30:39PM 18 identified Plaintiff's Exhibits.
 04:30:43PM 19 MS. SMITH: Same objection.
 04:30:44PM 20 THE COURT: I'm not quite sure I
 04:30:46PM 21 understand that. I'll hold off on ruling
 04:30:51PM 22 on that objection.
 04:30:52PM 23 MR. HILLIARD: I have a question in
 04:30:54PM 24 regards to those exhibits generally, not
 04:30:56PM 25 specific to the content, Judge, so I

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:30:58PM 2 don't think it's subject to the Court's
 04:30:59PM 3 objection.
 04:30:59PM 4 BY MR. HILLIARD:
 04:31:00PM 5 Q. During the time that you were given those
 04:31:04PM 6 letters, Mr. Jones, professionally, were you
 04:31:11PM 7 and your team promoting and marketing
 04:31:15PM 8 Risperdal off-label to children?
 04:31:18PM 9 A. Yes.
 04:31:21PM 10 THE COURT: Is this a good place to
 04:31:22PM 11 break?
 04:31:23PM 12 MR. HILLIARD: It is.
 04:31:24PM 13 THE COURT: Step down, please.
 04:31:26PM 14 Ladies and gentlemen of the jury,
 04:31:27PM 15 we're going to break at this time. The
 04:31:28PM 16 attorneys and I have a couple things to
 04:31:31PM 17 go over that might help speed things
 04:31:33PM 18 along.
 04:31:35PM 19 I'm going to ask you to return at
 04:31:37PM 20 9:30 tomorrow morning. Between now and
 04:31:39PM 21 when you return, you're to keep an open
 04:31:42PM 22 mind. You haven't even heard all the
 04:31:44PM 23 evidence from the very first witness, and
 04:31:47PM 24 you're not to discuss the case with
 04:31:48PM 25 anyone.

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

04:31:50PM 2 That includes your husband or wife
04:31:52PM 3 or great niece who says to you when you
04:31:55PM 4 first walk in the door: What happened in
04:31:56PM 5 court today?

04:31:57PM 6 You're to say: We heard opening
04:32:01PM 7 statements, heard some testimony. If you
04:32:08PM 8 want to say the judge kept you waiting,
04:32:11PM 9 you can say that too, but then you are to
04:32:13PM 10 say: And the judge said I may not say
04:32:16PM 11 anything further.

04:32:18PM 12 Blame me. I am saying that. You're
04:32:22PM 13 going to be on this jury for three, four,
04:32:25PM 14 five -- three, four weeks. I'm hoping
04:32:33PM 15 three, three weeks; and you're going to
04:32:38PM 16 get that same question every time you
04:32:42PM 17 come home.

04:32:43PM 18 And unless you establish tonight
04:32:46PM 19 that you are not going to discuss the
04:32:47PM 20 case, you're going to get more and more
04:32:50PM 21 questions and they will come at a time
04:32:52PM 22 three days from now, three weeks from
04:32:54PM 23 now, over time when I'm in Chicago when
04:32:57PM 24 you realize, I'm saying too much, I
04:33:02PM 25 better shut up.

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

04:33:04PM 2 It's going to be so much harder for
04:33:06PM 3 you to convince them that you're not
04:33:09PM 4 going to discuss the case than it will be
04:33:13PM 5 tonight.

04:33:13PM 6 When the case is over, you can
04:33:14PM 7 discuss any and all aspects of this jury
04:33:17PM 8 and this trial with anybody you want to.
04:33:20PM 9 But until that time, you are not to
04:33:23PM 10 discuss the case with anyone.

04:33:26PM 11 You're not to Tweet about it, blog
04:33:31PM 12 about it. You're not to do any of that
04:33:34PM 13 stuff; and blame me: And the judge says
04:33:36PM 14 I may not say anything further.

04:33:38PM 15 One other thing. You've noticed
04:33:42PM 16 that we keep you separate from all the
04:33:44PM 17 witnesses and interested parties and
04:33:47PM 18 parties and lawyers and paralegals and
04:33:52PM 19 whoever else is around. We get ourselves
04:33:54PM 20 situated, then bring you in and keep
04:33:57PM 21 everyone seated until we bring you out.
04:34:00PM 22 Then you all mingle in the same
04:34:03PM 23 elevators.

04:34:03PM 24 You're going to be -- as best as
04:34:11PM 25 possible, it would be good to stay

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

04:34:13PM 2 separate, but you're going to be mingled.
04:34:15PM 3 There are going to be times when you
04:34:17PM 4 come back from lunch and get in the
04:34:21PM 5 elevator and there had been parties and
04:34:22PM 6 lawyers.

04:34:23PM 7 Well, the last thing anybody wants,
04:34:25PM 8 anybody, but particularly the lawyers, is
04:34:29PM 9 an accusation that they said anything
04:34:33PM 10 improper to you.

04:34:33PM 11 So if people you've been seeing day
04:34:36PM 12 after day for four days get into the
04:34:38PM 13 elevator with you or pass you going into
04:34:42PM 14 City Hall and they don't say a word, they
04:34:44PM 15 don't even acknowledge that you exist,
04:34:47PM 16 it's really the proper thing to do.
04:34:49PM 17 They're not insulting you. They're just
04:34:51PM 18 trying to make sure nobody gets a
04:34:54PM 19 mistaken idea they said something
04:34:56PM 20 improper to you.

04:34:57PM 21 With those instructions, we'll see
04:35:04PM 22 you back here 9:30 tomorrow morning.
04:35:29PM 23 (Jury panel departs courtroom at
04:35:34PM 24 4:30 p.m.)
04:36:58PM 25 - - -

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

04:36:58PM 2 (Discussion held off the record in
04:43:19PM 3 judge's chambers:)

04:43:19PM 4 THE COURT: What's your objection to
04:43:20PM 5 P-3?

04:43:22PM 6 MS. SMITH: Your Honor, I would
04:43:23PM 7 probably -- well, P-3, the fact that his
04:43:28PM 8 -- this letter telling him what his pay
04:43:32PM 9 is is irrelevant to any issue in this
04:43:32PM 10 case.

04:43:42PM 11 THE COURT: "With your support, I
04:43:42PM 12 know that the Houston district will have
04:43:47PM 13 a very successful 2001 as we grow
04:43:47PM 14 Risperdal business to new and higher
04:43:49PM 15 levels."

04:43:51PM 16 Objection is overruled. How about
04:44:27PM 17 P-4?

04:44:27PM 18 For the record, that was reading
04:44:27PM 19 from P-3.

04:44:27PM 20 MS. SMITH: Same objection. Plus,
04:44:27PM 21 this has no time frame.

04:44:27PM 22 THE COURT: Reading from P-4: As
04:44:27PM 23 you know, Risperdal brand team introduced
04:44:27PM 24 a new sales aid to the CNS sales force at
04:44:27PM 25 the national sales meeting. The success

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

2 of this piece would not have been
 3 possible without the time and resource
 4 you and five of your peers committed when
 5 field testing a new sales aid."

6 Your objection is overruled. P-5?

7 MS. SMITH: Same objection. It's
 8 irrelevant to any issue in this case.

9 THE COURT: This doesn't mention
 10 Risperdal. It says: Thank you for your
 11 outstanding effort as an advisor during
 12 January, 2002 CNS initial product
 13 training class.

14 Is that what we referred to in the
 15 earlier letter?

16 Objection is overruled.

17 MS. SMITH: My objection is it's
 18 irrelevant to the issues in this case.

19 THE COURT: P-6. "As we discussed,
 20 continued to use the Sirnaski (ph) data,
 21 whatever that is, as a key tool to
 22 differentiate Risperdal on efficacy."

23 That's accepted into evidence,
 24 whatever that is is me talking, not
 25 reading. P-7.

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

2 MS. SMITH: Same objection,
 3 irrelevant.

4 THE COURT: P-7 refers to -- it's
 5 Mr. Jones' appointment to something: "He
 6 was a member of the recruiting club in
 7 1999 and 2001: Tony was instrumental in
 8 establishing Risperdal as the number one
 9 prescribed antipsychotic within the East
 10 Texas MHMR system in 2001."

11 It's accepted into evidence.

12 P-8.

13 MS. SMITH: Same objection,
 14 relevance.

15 THE COURT: P-8 talks about sales
 16 representative and Risperdal.

17 Objection overruled. P-9?

18 MS. SMITH: It's the same objection
 19 on relevance for P-9.

20 THE COURT: P-9 also. It does not
 21 talk about Risperdal: Congratulations
 22 and welcome to the CNS South Central
 23 Management Team appointment as Houston
 24 CNS district manager.

25 Objection is overruled.

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

2 P-10?

3 MS. SMITH: Same objection,
 4 relevance.

5 THE COURT: P-10 I think does
 6 mention Risperdal. It does: "Tony, you
 7 continue to display an enthusiasm for
 8 success as you confront many challenges.
 9 I appreciate all of your efforts. With
 10 your support, I know that the Houston
 11 district will have a very successful 2001
 12 as we grow Risperdal business to newer
 13 and higher levels."

14 Accepted into evidence.

15 Does that resolve these specific
 16 questions?

17 MS. SMITH: Yes, Your Honor.

18 THE COURT: With respect to these
 19 exhibits, I noticed that you've got a
 20 list of exhibits. 1147, 1386, 14 --
 21 looks like 1448, and the ones that you
 22 have numbered 1 through 9 are not 1
 23 through 9 on this list.

24 I don't care if you want to do a
 25 different list, but you'll have them

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

2 marked at the beginning of the day and
 3 give counsel a copy, either at the
 4 beginning of the day, as would be most
 5 professional and courteous or as you use
 6 it.

7 And having said that, I expect it to
 8 be complied with, and I understand
 9 sometimes something happens and you don't
 10 have something marked and you got to use
 11 it.

12 But then I certainly expect you'll
 13 have enough copies for everybody. You
 14 know you're going to use it, let's have
 15 them marked in duplicate so that we don't
 16 have to waste time marking and so that
 17 counsel gets exactly what the witness
 18 gets.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: Any questions about
 21 that?

22 MR. HILLIARD: No.

23 THE COURT: I looked over the
 24 verdict forms, and plaintiff's forms say
 25 nothing about Johnson and Johnson or

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:49:04PM 2 Janssen research.
 04:49:17PM 3 They talk about defendants. The
 04:49:18PM 4 defendants are clearly in different
 04:49:20PM 5 categories. Your own witnesses made them
 04:49:22PM 6 different categories, and you got to give
 04:49:25PM 7 me verdict sheets that spell out the
 04:49:29PM 8 questions the jury has to ask to find
 04:49:32PM 9 liability for these three entities.
 04:49:35PM 10 Defendants have given me three sets
 04:49:37PM 11 of verdict sheets, one for each of them.
 04:49:42PM 12 If you want to say, do that, Judge, that
 04:49:45PM 13 solves -- that complies with what I'm
 04:49:48PM 14 ordering to be done.
 04:49:49PM 15 But it's also inviting a mistrial
 04:49:52PM 16 when the jury gives us 22 different
 04:49:54PM 17 versions of inconsistent verdicts; and
 04:49:57PM 18 what I heard from you is that there's a
 04:50:00PM 19 relationship between these that makes one
 04:50:03PM 20 liable to the activities of the other.
 04:50:05PM 21 So I think it should -- could be
 04:50:09PM 22 done in the form of -- ^ and then we can
 04:50:15PM 23 mold the verdict.
 04:50:17PM 24 Everyone clear on that?
 04:50:19PM 25 MR. HILLIARD: Yes.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:50:19PM 2 THE COURT: When are you going to do
 04:50:21PM 3 that?
 04:50:21PM 4 How about Thursday morning?
 04:50:22PM 5 MR. HILLIARD: Thursday morning.
 04:50:24PM 6 THE COURT: Good enough? Enough
 04:50:27PM 7 time?
 04:50:29PM 8 MR. HILLIARD: Yes.
 04:50:31PM 9 THE COURT: I want to give you more
 04:50:34PM 10 than enough so there's no reason you
 04:50:37PM 11 can't have it done by then.
 04:50:39PM 12 I think that's all on my list.
 04:50:41PM 13 MR. HILLIARD: Judge, if Laura and I
 04:50:43PM 14 discuss scheduling issues and reach an
 04:50:45PM 15 agreement regarding scheduling, would the
 04:50:48PM 16 Court object to him leaving and coming
 04:50:50PM 17 back?
 04:50:50PM 18 THE COURT: If there's an
 04:50:51PM 19 agreement --
 04:50:52PM 20 MR. HILLIARD: I'm not saying there
 04:50:53PM 21 will be.
 04:50:54PM 22 THE COURT: If there's an agreement,
 04:50:57PM 23 I won't interject a judicial objection,
 04:51:00PM 24 but I don't like the idea of breaking not
 04:51:17PM 25 at a natural point break, like, after

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 04:51:19PM 2 direct examination or something like
 04:51:20PM 3 that.
 04:51:35PM 4 MS. SMITH: I heard Mr. Hilliard say
 04:51:37PM 5 they can bring him back next week, which
 04:51:39PM 6 brings up the question we're trying to
 04:51:41PM 7 revamp, and he's told us he's finishing
 04:51:45PM 8 on Friday.
 04:51:46PM 9 THE COURT: He's finishing what on
 04:51:47PM 10 Friday?
 04:51:48PM 11 MS. SMITH: His case.
 04:51:49PM 12 THE COURT: This Friday?
 04:51:51PM 13 MS. SMITH: Correct.
 04:51:51PM 14 THE COURT: He's joking.
 04:51:53PM 15 MS. SMITH: He might be.
 04:51:53PM 16 THE COURT: He's trying to sucker
 04:51:57PM 17 you into relaxing.
 04:51:58PM 18 MS. SMITH: We've changed it three
 04:52:00PM 19 times now.
 05:00:52PM 20 (Off-the-record discussion.)
 05:00:52PM 21 THE COURT: I keep getting more and
 05:00:54PM 22 more surprised about what the claims are.
 05:01:00PM 23 Mr. Hilliard, as I understand it,
 05:01:03PM 24 you are presenting a claim for the child;
 05:01:07PM 25 right? The child who's now an adult;

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 05:01:09PM 2 right?
 05:01:09PM 3 MR. HILLIARD: The child who's still
 05:01:11PM 4 a child.
 05:01:11PM 5 THE COURT: Still a child? I didn't
 05:01:13PM 6 realize that.
 05:01:14PM 7 You are presenting a claim for
 05:01:17PM 8 damages sustained by the child; correct?
 05:01:23PM 9 MR. HILLIARD: Correct.
 05:01:23PM 10 THE COURT: Are you presenting an
 05:01:24PM 11 independent claim for damages sustained
 05:01:29PM 12 by the mother?
 05:01:30PM 13 MR. HILLIARD: Yes.
 05:01:31PM 14 THE COURT: What exactly are the
 05:01:34PM 15 damages that you think the jury should be
 05:01:38PM 16 permitted to award the mother for her
 05:01:40PM 17 claims as mother?
 05:01:43PM 18 MR. HILLIARD: Loss of consortium.
 05:01:45PM 19 THE COURT: Now, I know the answer
 05:01:51PM 20 is you don't know or you're not sure, but
 05:01:53PM 21 I just want to put it on the record.
 05:01:55PM 22 Is there anything in your verdict
 05:01:57PM 23 Interrogatories about the mother's
 05:02:00PM 24 independent individual claim?
 05:02:02PM 25 MR. HILLIARD: Do not.

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 THE COURT: Is there anything on
 3 your point for charge about the mother's
 4 independent claim?
 5 MR. HILLIARD: Again, I do not know.
 6 THE COURT: What did I say? By
 7 Thursday, I want to know what the jury
 8 verdict Interrogatories are as to the one
 9 two, three defendants that you've sued.
 10 I also want verdict Interrogatories
 11 if you're pursuing independent claims as
 12 to the child and as to the mother. And
 13 also with respect to the points for
 14 charge.
 15 I'm directing you by Thursday
 16 afternoon, Thursday morning, to have gone
 17 through all of this stuff that's been
 18 filed and submitted to me to tell me
 19 where it is or that you're dropping it or
 20 understand that I'm going to deem it
 21 waived if it's not in there. Got me?
 22 MR. HILLIARD: I do.
 23 THE COURT: Since it seems to be a
 24 moving target of some sort, list every
 25 claim, just a chart or a list, plaintiff

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 CERTIFICATION
 3
 4 I hereby certify that the
 5 proceedings and evidence are contained
 6 fully and accurately in the notes taken
 7 by me on the hearing of the above cause,
 8 and this copy is a correct transcript of
 9 the same.
 10
 11
 12 **Maureen McCarthy**
 13 Maureen McCarthy, RMR, CRR
 14 Official Court Reporter
 15
 16
 17 (The foregoing certification of this
 18 transcript does not apply to any
 19 reproduction of the same by any means
 20 unless under the direct control and/or
 21 supervision of the certifying reporter.)
 22
 23
 24
 25

1 **Bentley vs. Janssen - Trial - 9/24/12 - Volume I**
 2 versus defendant, what the names of the
 3 claimants are, plaintiff versus Johnson
 4 and Johnson, and what the claims are and
 5 if there are two plaintiffs, do the same
 6 thing for two.
 7 - - -
 8 (Concluded chambers discussion.)
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