1 **STRIKE THIS PAGE**
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1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COLA, ET AL
3 LOS ANGELES, CALIFORNIA MONDAY, FEBRUARY 6, 2017
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ELORA DORINI, CSR NO. 13755
7 TIME: 8:34 A.M.
8
9 ---OOO---
10
11 THE COURT: WE'RE ON THE RECORD. THIS IS
12 DUVAL VERSUS COUNTY OF LOS ANGELES. MR. MCMILLAN,
13 MR. PRAGER, MR. DANER APPEARING FOR THE PLAINTIFF.
14 MS. SWISS -- GOOD MORNING. MS. NAGY.
15 GOOD MORNING.
16 MS. SWISS: GOOD MORNING.
17 THE COURT: AND I DON'T KNOW --
18 MS. MACKER: MS. MACKER.
19 THE COURT: GOOD MORNING.
20 ALL RIGHT. AND WE HAVE ON CALENDAR THIS
21 MORNING DEFENDANT'S MOTION FOR A NEW TRIAL AND/OR
22 REMITTITUR, MOTION FOR JUDGMENT NOTWITHSTANDING THE
23 VERDICT, DEFENDANT'S MOTION FOR STAY OF EXECUTION WITH
24 A JUDGMENT, AND THE DEFENDANT'S ELECTION TO MAKE
25 PERIODIC PAYMENTS AND MOTION FOR AN ORDER SETTING --
26 CONFIRMING -- OR PERMITTING THE PERIODIC PAYMENTS.
27 WHO IS GOING TO DO THE ORAL ARGUMENT FOR
28 DEFENSE?

1 MS. NAGY: YOUR HONOR, I AM GOING TO ARGUE ALL
2 THREE OF THE MOTIONS, BUT I'D ASK THE COURT TO ALLOW
3 MS. SWISS TO ARGUE SOME OF THE EVIDENCE, WHICH SHE VERY
4 WELL MAY KNOW BETTER THAN I DO.
5 THE COURT: ALL RIGHT. LET ME START -- THE
6 DEFENDANT'S MOTION FOR STAY OF EXECUTION AND JUDGMENT
7 WAS STIPULATED/AGREED TO BY THE PLAINTIFF. THE MOTION
8 WILL BE GRANTED, AND COURT ORDERS ANY EXECUTION ON THE
9 JUDGMENT ENTERED HEREIN SHALL BE STAYED UNTIL TEN DAYS
10 AFTER A NOTICE OF APPEAL CAN BE FILED.
11 ON THE DEFENDANT'S ELECTION AND MOTION THEREON
12 FOR AN ORDER SUBMITTING PERIODIC PAYMENTS, DEFENDANT
13 REQUESTED TEN WEEKS. PLAINTIFF OPPOSED THE MOTION, BUT
14 SUGGESTED THAT IF IT WAS GRANTED, I THINK A MINIMUM --
15 OR A MAXIMUM OF THREE WEEKS.
16 MR. MCMILLAN: YOUR HONOR, THAT WAS TEN YEARS,
17 AND 3 YEARS WAS THE ALTERNATIVE FOR THE PERIODIC
18 PAYMENTS.
19 THE COURT: FOR TEN YEARS?
20 MR. MCMILLAN: AND OUR ALTERNATIVE IF, IN
21 FACT, THE MOTION IS GRANTED, WOULD BE THREE YEARS.
22 THE COURT: ALL RIGHT. DOES ANYONE WANT TO
23 SAY ANYTHING FURTHER ON THAT?
24 MS. NAGY: YOUR HONOR, I THINK WE'VE FAIRLY
25 WELL BRIEFED THE ISSUE. I HAVE NOTHING ADDITIONAL TO
26 ADD.
27 THE COURT: ALL RIGHT. DO YOU HAVE IN
28 ADDITION TO ADD?

1 MR. MCMILLAN: I BELIEVE IT WAS -- ACTUALLY
2 EVERYTHING WE HAD IN OPPOSITION TO THE MOTION WAS
3 BROUGHT UP IN THE OPPOSITION. AND WE FILED A
4 SUPPLEMENTAL BRIEF REGARDING THE INDIVISIBILITY OF THE
5 1983 DAMAGES.
6 AND OTHER THAN WHAT'S IN THOSE PAPERS, I DON'T
7 BELIEVE WE HAVE ANYTHING TO ADD.
8 THE COURT: ALL RIGHT. THAT MATTER WILL BE
9 SUBMITTED.
10 ON THE DEFENDANT'S MOTION FOR A NEW TRIAL
11 AND/OR REMITTITUR, THERE'S A PLAINTIFF'S -- THAT I'M
12 GOING TO ASK YOU TO ADDRESS FIRST ON BEHALF OF THE
13 DEFENDANT -- THERE'S A PLAINTIFF'S OBJECTION TO THE
14 DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN
15 SUPPORT OF THE MOTION ON THE GROUND THAT IT EXCEEDS THE
16 PAGE LIMITATION SET FORTH IN CALIFORNIA RULE OF COURT
17 RULE 3.1113(D).
18 AND SECONDLY, THERE IS PLAINTIFF'S OBJECTION
19 TO THE COURT'S CONSIDERATION OF THE SUPPLEMENTAL
20 DECLARATION -- MS. NAGY, SUBMITTED BY YOU -- ON THE
21 GROUND THAT IT RAISES NEW ARGUMENTS AND SUBMITS NEW
22 EVIDENCE IN VIOLATION OF CASE LAW FOR A REPLY.
23 SO I DON'T CARE WHEN YOU ADDRESS BOTH OF THOSE
24 OBJECTIONS. I WILL STATE, ALSO, THAT THERE ARE SIMILAR
25 OBJECTIONS TO THE DEFENDANT'S MOTION FOR JNOV.
26 THE FIRST ONE BEING ALSO AN OBJECTION THAT THE
27 MOTION EXCEEDS THE PAGE LIMITATION SET FORTH IN
28 CALIFORNIA RULE OF COURT RULE 3.1113(D). AND THE

1 SECOND OBJECTION WAS ALSO TO THE EXCEEDING THE PAGE
2 LIMITATION FOR A REPLY.
3 IT APPEARS TO ME THAT IN EACH OF THESE
4 DOCUMENTS THAT YOU DID IN THE MOTION FOR A NEW TRIAL,
5 AND IN THE MOTION FOR JNOV, AND IN THE REPLY TO THE
6 OPPOSITION, MOTION JNOV, EXCEED THE PAGE LIMITATION
7 WITHOUT AN APPLICATION TO THE COURT OR PERMISSION OF
8 THE COURT TO EXCEED THE PAGE LIMITATION SET FORTH IN
9 THE CALIFORNIA RULE OF COURT THAT I'VE RECITED.
10 I MUST SAY THAT AFTER HAVING AN OBJECTION TO
11 EACH OF YOUR MOTIONS FOR EXCEEDING THE PAGE LIMITATION,
12 YOU WENT AHEAD AND EXCEEDED YOUR PAGE LIMITATION IN
13 YOUR REPLY AS WELL, ALBEIT BY ONE PAGE IN YOUR REPLY,
14 BUT IT DOES SEEM TO ME THAT YOU -- AND IT MAY APPEAR TO
15 SOME -- THAT YOU DECIDED YOURSELF AS TO WHAT YOU WERE
16 GOING TO DO REGARDLESS OF WHAT THE CALIFORNIA RULES OF
17 COURT STATE, AND REGARDLESS OF THE FACT THAT YOU HAD AN
18 OPPORTUNITY TO APPLY TO THE COURT FOR AN EXCEPTION.
19 SO I DON'T CARE WHEN YOU ADDRESS THOSE
20 OBJECTIONS. IT MAY BE -- IT'D BE UP TO YOU AS TO HOW
21 YOU WANT TO GO ABOUT. BUT WE'LL START WITH THE MOTIONS
22 FOR A NEW TRIAL.
23 AND JUST REMEMBER, AT SOME POINT, I'LL WANT TO
24 RESPOND TO THOSE OBJECTIONS.
25 MS. NAGY: YOUR HONOR, I CAN RESPOND TO THOSE
26 OBJECTIONS NOW. I APOLOGIZE TO THE COURT AND THE
27 PARTIES FOR GOING OVER.
28 I -- IN OUR RESPONSE TO THEIR OBJECTIONS, WE

1 DID, HOWEVER BELATEDLY ON FRIDAY, ASK THE COURT TO
2 EXERCISE ITS DISCRETION TO ACCEPT THE OVERLONG BRIEFS
3 IN ADDITION TO THE OVERLONG REPLY BRIEF.
4 SOME -- THE TIME CONSIDERATIONS AND THE
5 COMPLEXITY OF THE SUIT, AND THE FACT THAT IT WAS, IN
6 FACT, TWO VERDICTS THAT WE WERE ADDRESSING DID CAUSE US
7 TO HAVE TO CRAM A LOT OF MATERIALS IN THERE, AND ALSO
8 IT DID DIMINISH OUR ABILITY TO EDIT SOMEWHAT.
9 I WOULD SUGGEST THAT WE WOULD HAVE BEEN WITHIN
10 OUR RIGHTS TO HAVE FILED TWO MEMORANDUM OF LAW, ONE FOR
11 EACH VERDICT BECAUSE IF IT'S --
12 THE COURT: I DON'T THINK SO. WE USE TWO
13 VERDICTS FOR THE SAKE OF CONVENIENCE DURING THE TRIAL
14 TO ISOLATE THE ISSUES. BUT THE ISSUES INVOLVED IN THE
15 SECOND VERDICT WERE SIMPLY AS A RESULT OF A FINDING IN
16 THE FIRST. SO I DON'T AGREE.
17 YOU'RE LIMITED TO ONE -- ONE MOTION IN THIS
18 REGARD. BUT GO AHEAD. AND, LOOK, I AGREE THAT THIS
19 WAS A CASE OF COMPLEXITY AND ALSO A GREAT DEAL OF
20 EVIDENCE.
21 AND THAT MAY BE ONE OF THE CONSIDERATIONS FOR
22 THE PROVISION IN RULE 3.1113 THAT PERMITS A PARTY TO
23 APPLY TO THE COURT FOR PERMISSION TO EXCEED THE LENGTH.
24 AND SO I AGREE WITH WHAT YOU'RE SAYING.
25 BUT I GUESS MY QUESTION IS WHY DIDN'T YOU ASK
26 THE COURT? WHY DIDN'T YOU FOLLOW THE RULES AND ASK THE
27 COURT RATHER THAN JUST GO AHEAD ON YOUR OWN?
28 MS. NAGY: I HAVE NO --

1 THE COURT: NOTHING FURTHER?
2 MS. NAGY: I HAVE NO GOOD REASON FOR THAT,
3 YOUR HONOR. I APOLOGIZE.
4 THE COURT: OKAY. OKAY.
5 MS. NAGY: I KNEW VERY WELL WHAT THE PAGE
6 LIMIT IS, BUT I ASSUMED THAT GIVEN THE COOPERATIONS
7 BETWEEN THE PARTIES THAT A SMALL ADDITION TO THE
8 MEMORANDUM WOULDN'T HAVE BEEN OBJECTED TO.
9 BUT I WAS WRONG IN THAT --
10 THE COURT: COULD I SUGGEST IN THAT REGARD
11 THAT MAYBE A DISCUSSION WITH MR. MCMILLAN WOULD HAVE
12 BEEN PERHAPS A REASONABLE ALTERNATIVE TO MAKE THE
13 APPLICATION TO THE COURT? YOU WERE HERE FOR PARTS OF
14 THE TRIAL, BUT NOT FOR THE ENTIRE TRIAL.
15 SO I DON'T REMEMBER WHEN YOU WERE HERE
16 SPECIFICALLY AND WHEN YOU WEREN'T, ALTHOUGH IT WAS
17 TOWARDS THE LATTER STAGES OF THE TRIAL WHEN YOU WERE
18 HERE ON A FAIRLY REGULAR BASIS WHEN WE WERE DISCUSSING
19 INSTRUCTIONS AND CERTAIN OTHER ISSUES IN THE CASE THAT
20 I GENERALLY BELIEVE IN MAKING THINGS WORK.
21 BUT RULES TELL US WHAT TO DO. IF THERE ARE
22 MORE TO BE SAID, THEY CAN BE SAID IN THE PAGE
23 LIMITATION THAT THEY SET FORTH. I WILL ALSO SAY THAT
24 THERE ARE SEVERAL PAGES IN THE MOTION THAT WERE
25 ADDRESSED TO TELLING ME WHAT A MOTION FOR A NEW TRIAL
26 IS AND WHAT THE COURT CAN DO AND NOT DO AND SO ON.
27 THAT CERTAINLY IS USEFUL, BUT SEEMS TO ME YOU
28 COULD HAVE SAVED ON SOME SPACE THERE. BUT ANYWAY,

1 ENOUGH SAID ON THIS. I'VE RAISED THE ISSUE BECAUSE
2 IT'S BEEN RAISED BY THE PLAINTIFF.
3 SO UNLESS THERE'S SOMETHING FURTHER ON THOSE
4 OBJECTIONS FOR A MOTION FOR A NEW TRIAL, THEN THE --
5 WE'LL MOVE ON TO THE MOTION FOR A NEW TRIAL.
6 HOWEVER, THE SECOND OBJECTION, WHICH I
7 RECEIVED JUST THIS LAST FRIDAY, WAS THE OBJECTION TO
8 CONSIDERATION OF YOUR SUPPLEMENTAL DECLARATION BECAUSE
9 IT RAISED NEW ARGUMENTS AND SUBMITTED NEW EVIDENCE TO
10 THE COURT.
11 THAT ALSO IS A SEPARATE ONE FOR THE MOTION FOR
12 A JNOV. BOTH OBJECTIONS WERE SIMPLY TO THE LENGTH.
13 AND SO -- THE OBJECTION, HOWEVER, TO THE NATURE OF THE
14 REPLY TO THE OPPOSITION TO THE MOTION FOR A NEW TRIAL,
15 YOU MIGHT WANT TO ADDRESS AS WELL.
16 MS. NAGY: I WILL, YOUR HONOR. CODE OF CIVIL
17 PROCEDURE SECTION 659A SAYS THAT THE DEADLINE -- I'M
18 SORRY -- THE MOVING PARTY SHALL HAVE FIVE DAYS AFTER
19 THAT SERVICE TO FILE ANY REPLY BRIEF AND ACCOMPANYING
20 DOCUMENTS.
21 SO THE CODE SUGGESTS THAT ALONG WITH REPLY
22 BRIEF, THERE MAY BE SOME OTHER DOCUMENTS. HERE,
23 BECAUSE THERE'S BEEN A TRIAL, AND ALL THE EVIDENCE HAS
24 BEEN OUT ON THE TABLE, IT'S BEEN THOROUGHLY VETTED.
25 THERE ISN'T A DUE PROCESS VIOLATION AS THERE
26 WOULD BE, FOR INSTANCE, IN A MOTION FOR A SUMMARY
27 JUDGMENT WHERE THE COURT WOULD BE LIMITING THE RIGHT TO
28 A TRIAL ON THE PAPERS BEFORE ALL OF THE EVIDENCE HAD

1 BEEN FULLY ESTABLISHED.
2 HERE, THE EVIDENCE HAS BEEN FULLY ESTABLISHED.
3 IT'S -- AND UNDER, I THINK IT'S 660, THE RULES SAY THE
4 COURT DECIDES THE MATTER ON THE MINUTES OF THE COURT.
5 AND SO THE NEW EVIDENCE THAT WE SUBMITTED WITH MY
6 SUPPLEMENTAL REPLY IS JUST MORE MINUTES OF THE COURT.
7 THOSE ARE ADDITIONAL DAYS OF TESTIMONY WHICH
8 THE COURT HAS ALREADY HEARD, THE PARTIES HAVE ALREADY
9 HEARD. UNLIKE A MOTION FOR SUMMARY JUDGMENT WHERE NOT
10 ALL THAT EVIDENCE IS OUT HERE, THE EVIDENCE IS ALL IN
11 THE RECORD.
12 WE WERE JUST BASICALLY UNDERLINING IT FOR THE
13 COURT'S AND THE PARTY'S BENEFIT, BUT IT ISN'T ANYTHING
14 NEW. SO I THINK THAT THE CODE CONTEMPLATES THAT THE
15 MINUTES OF THE COURT, AND SO ANY ADDITIONAL DOCUMENTS
16 WILL INCLUDE MINUTES OF THE COURT.
17 THERE'S BEEN NO NOTICE DEFICIENCY FOR
18 PLAINTIFF. SECOND, THE CASES THEY POINT TO, SAN DIEGO
19 WATERCRAFT IS AN MSJ CASE. AND THE OTHER CASE -- ITS
20 NAME ESCAPES ME AT THE MOMENT -- IT PERTAINS TO
21 BRINGING UP NEW ARGUMENTS ON REPLY ON AN APPEAL.
22 SO IT APPEARS IN A FOOTNOTE. THERE'S A STRING
23 CITE. BUT IT'S REALLY ABOUT NOT BRINGING UP ARGUMENTS
24 IN THE TRIAL COURT AND THEN BRINGING THEM UP FOR THE
25 FIRST TIME IN THE REPLY ON APPEAL.
26 SO WHETHER OR NOT THE COURT WOULD LIKE TO
27 ADDRESS ANY OF THESE ISSUES THAT THE PLAINTIFF'S CLAIMS
28 ARE NEW ON MY PART, I HAVE TO BRING THEM UP NOW,

1 BECAUSE OTHERWISE, I DON'T GET TO BRING THEM UP IN THE
2 COURT OF APPEAL.
3 SO I LEAVE IT TO YOUR HONOR TO DECIDE WHICH
4 ISSUES I'M PRECLUDING FROM BRINGING, BUT, YOU KNOW, I
5 AM GOING TO MAKE A RECORD OF THINGS I THINK REQUIRE
6 BEING STATED. BUT IT'S UP TO YOUR HONOR TO DETERMINE
7 THOSE THINGS OR NOT.
8 I DON'T BELIEVE THAT THEY'RE NEW, BUT
9 PLAINTIFF BELIEVES THAT THEY'RE NEW ARGUMENTS AND I'M
10 PRECLUDED.
11 THE COURT: ALL RIGHT. SO DO YOU WANT TO MOVE
12 ON AND THEN ADDRESS THE MOTION FOR A NEW TRIAL?
13 MS. NAGY: YEAH. I WILL DO THAT.
14 THE COURT: OKAY. I HAVE READ ALL THAT'S BEEN
15 FILED. AND I'LL CERTAINLY GIVE YOU SOME LATITUDE TO
16 DISCUSS MATTERS THAT ARE IN THE PAPERS. I'M NOT GOING
17 TO LIMIT YOU TO MATTERS THAT ARE NOT IN THE MOTION OR
18 IN THE REPLY.
19 BUT IF YOU DO WANT TO ADDRESS MATTERS THAT
20 HAVE ALREADY BEEN PRESENTED TO THE COURT IN WRITING, I
21 THINK THOSE REFERENCES SHOULD BE SUCCINCT AND NOT
22 LENGTHY.
23 BECAUSE I HAVE READ AT GREAT -- I SPENT A LOT
24 OF TIME READING WHAT YOU'VE SUBMITTED AND WHAT'S BEEN
25 SUBMITTED IN OPPOSITION.
26 MS. NAGY: YEAH, YOUR HONOR. I DON'T INTEND
27 TO REPEAT WHAT'S IN OUR PAPERS. I THINK AS TO THE
28 MOTION FOR NEW TRIAL, WE'VE STATED OUR BEST ARGUMENTS

1 AND THE EVIDENCE IN SUPPORT OF THOSE ARGUMENTS.
2 AND THERE'S REALLY NOT MUCH MORE TO SAY. YOUR
3 HONOR HAS SAID AS TO THE 13TH JUROR AS TO THE DAMAGES
4 ISSUE, I WILL ACKNOWLEDGE THAT WATSON IS A NINTH
5 CIRCUIT CASE.
6 AND SO THE COURT'S UNDER NO PARTICULAR
7 OBLIGATION TO FOLLOW IT, BUT IT IS BASED UPON REASONING
8 IN A SUPREME COURT CASE, CAREY V. PIPHUS, IS IT, AND
9 THAT CASE HAS TO DO WITH STANDARDS OF CAUSATION, WHERE
10 THERE'S BEEN A PROCEDURAL BUT NOT A SUBSTANTIVE
11 VIOLATION OF DUE PROCESS.
12 SO I THINK THAT THE SUPREME COURT CASE WOULD
13 MOTIVATE THIS COURT'S DECISION. WATSON WAS INTERESTING
14 BECAUSE IT WAS IDENTICAL FACTUALLY, SO THAT MIGHT BE
15 PERSUASIVE TO THE COURT. WE RECOGNIZE THAT THE COURT'S
16 UNDER NO OBLIGATION TO FOLLOW IT.
17 BUT I THINK WHAT'S INTERESTING ABOUT THIS CASE
18 IS IT STANDS FOR THE UNREMARKABLE PROPOSITION THAT
19 COMPENSATORY DAMAGES AREN'T PRESUMED WHERE THERE'S A
20 PROCEDURAL VIOLATION -- A VIOLATION OF DUE PROCESS
21 RIGHTS.
22 HERE, THE DECISION OF THE COURT WOULD HAVE CUT
23 OFF ANY SUBSTANTIVE DUE PROCESS CLAIMS. SO EVEN IF
24 THERE HAD BEEN A WARRANT ON THAT VERY DAY,
25 NOVEMBER 3RD, THE PRESUMPTION IS THAT IT WOULD HAVE
26 BEEN GRANTED ON THAT DAY.
27 SO THERE IS A DELAY IN THE WARRANT, BUT THE
28 WARRANT WOULD HAVE BEEN GRANTED, AND WE CAN PRESUME

1 THAT BY VIRTUE OF THE FACT THAT IT WAS GRANTED -- THAT
2 THE PETITION WAS GRANTED THREE DAYS LATER.
3 SO IN WATSON, THE COURT DECIDED THAT
4 $3 MILLION WAS, ON ITS FACE, TOO MUCH UNDER THE
5 EVIDENCE. AND WE WOULD ARGUE THE SAME THING. IT'S FAR
6 TOO MUCH FOR WHAT SHOULD HAVE BEEN A NOMINAL DAMAGE
7 AWARD.
8 SO THAT -- WE -- I DON'T SEE -- WE'VE ALREADY
9 BROUGHT OUR OBJECTIONS TO YOU WITH RESPECT TO THE
10 EVIDENTIARY RULING, WHICH WE THINK AFFECTED THE JURY'S
11 UNDERSTANDING.
12 I THINK NOT HAVING HAD AN ADEQUATE
13 UNDERSTANDING OF HOW, YOU KNOW, WEEKS AND WEEKS OF
14 EVIDENCE ABOUT HOW THE SOCIAL WORKERS LIED AND HOW THEY
15 DECEIVED, NONE OF THAT WAS ULTIMATELY FOUND TO BE
16 MATERIAL TO THE FINDING OF PROBABLE CAUSE.
17 SO HAVING HEARD OF THAT, I THINK THAT AFFECTED
18 THE JURY WITH A SENSE OF, YEAH, THERE WAS SOMETHING
19 TERRIBLY, TERRIBLY WRONG THAT HAPPENED HERE, EVEN
20 THOUGH IT WAS NO LEGAL -- NO LEGAL IMPORT IN THE SENSE
21 THAT THE COURT MADE A DECISION ON MATERIALITY.
22 AND, REALLY, THERE NEEDED TO BE A VERY CLEAR
23 AND BRIGHT LINE DRAWN FOR THE JURY, AND THAT'S NOT
24 CRITICAL. NONE OF THAT THAT HAPPENED AFTERWARDS YOU
25 CAN CONSIDER WHEN CONSIDERING DAMAGES.
26 SO, YOU KNOW, WITH THAT, THAT IS ESSENTIALLY A
27 QUICK SUMMATION OF WHAT'S ALREADY IN THE PAPERS. AND
28 I'D LIKE TO RESERVE THE OPPORTUNITY TO ADDRESS ANYTHING

1 THEY HAVE TO SAY.
2 THE COURT: OKAY. THANK YOU. MR. MCMILLAN.
3 MR. MCMILLAN: THANK YOU, YOUR HONOR --
4 THE COURT: WE'LL LIMIT OURSELVES TO THE
5 MOTION FOR NEW TRIAL RIGHT NOW.
6 MR. MCMILLAN: YES.
7 THE COURT: AND THEN WE'LL HEAR AGAIN FOR
8 MOTION FOR JNOV.
9 MR. MCMILLAN: I WILL ONLY BE ADDRESSING --
10 JUST SO EVERYBODY'S CLEAR, I WILL ONLY BE ADDRESSING
11 THE OPPOSITION TO THE MOTION FOR A NEW TRIAL.
12 MR. DANER AND MR. PRAGER WILL BE ADDRESSING THEIR
13 RESPECTIVE ISSUES ON THE JNOV.
14 FIRST AND FOREMOST, BEFORE I DIVE INTO IT,
15 THERE'S THE ISSUE OF THE OBJECTIONS TO THE -- AND THESE
16 ARE TO BE TREATED AS LATE-FILED PAPERS. THE RULES OF
17 COURT ARE VERY CLEAR ON THAT.
18 THAT WHERE THERE'S A PAPER FILED THAT EXCEEDS
19 THE PAGE LIMITATIONS, IT SHALL BE TREATED AS A
20 LATE-FILED PAPER. UNDER NORMAL CIRCUMSTANCES, THAT
21 MIGHT NOT BE SUCH AN IMPORTANT THING BECAUSE THE COURT
22 ALWAYS HAS DISCRETION TO ACCEPT OR REJECT LATE-FILED
23 PAPERS IN MOST CIRCUMSTANCES.
24 HERE, WHERE WE'RE DEALING WITH A MOTION FOR A
25 NEW TRIAL, AND A MOTION FOR JNOV -- AND I'LL LEAVE THAT
26 TO MR. DANER -- WITH THE MOTION FOR A NEW TRIAL, THERE
27 ARE VERY STRICT CODE REQUIREMENTS.
28 NEW TRIAL MOTIONS, THE WAY IT'S SET UP IN

1 CALIFORNIA, IT IS A CREATURE OF STATUTE. IT IS A
2 TECHNICAL STATUTE, AND THE PRACTICE GUIDES TELL US THAT
3 IT MUST BE ADHERED TO COMPLETELY AND STRICTLY.
4 SO UNDER THAT BACKDROP, WE HAVE A LATE-FILED
5 PAPER, ESSENTIALLY DID NOT MEET THE DEADLINES REQUIRED
6 UNDER THE CODE BECAUSE IT'S LATE. IN OUR VIEW, THE
7 MOMENT THAT HAPPENS, THE COURT LOSES JURISDICTION TO
8 DECIDE THE ISSUE BECAUSE IT'S NOT TIMELY AND PROPERLY
9 BROUGHT.
10 THAT BEING SAID, I DO NOTE THAT AT NO POINT IN
11 TIME DID THE DEFENDANTS APPLY -- THEY HAD PLENTY OF
12 TIME TO APPLY FOR A TEN-DAY CONTINUANCE TO GET
13 TRANSCRIPTS AND ALL SORTS OF THINGS.
14 IN THAT SAME PROCESS, I WOULD HAVE THOUGHT
15 THEY WOULD APPLY FOR -- WHAT DO YOU CALL IT -- RELIEF
16 FROM THE PAGE LIMITATIONS ON THEIR BRIEFING, BUT THEY
17 DIDN'T.
18 EVEN NOW, EVEN AFTER TODAY, AFTER WE RAISED
19 THE OBJECTION -- WHAT WAS IT? A WEEK AGO -- NO PHONE
20 CALLS, NO NOTHING, TO SAY, "HEY, LOOK, WE OVERSTEPPED A
21 LITTLE BIT. CAN WE WORK THIS OUT?"
22 NOTHING. THE FIRST TIME WE HEAR ANYTHING
23 ABOUT THEM SEEKING ANY KIND OF RELIEF IS IN THE
24 RESPONSE TO THE OBJECTION TO THEIR REPLY. AND I NOTE
25 THE SAME THINGS THAT YOUR HONOR NOTED. IT LOOKS ODD.
26 WE ALL KNOW THE RULES.
27 FOR WHATEVER REASON, THEY DIDN'T FOLLOW THEM.
28 BUT THE OUTFALL OF ALL OF THAT, AGAIN, IS WE HAVE THIS

1 LATE-FILED PAPER ON A NEW TRIAL MOTION WHERE THE
2 COURT'S JURISDICTION TO EVEN RULE ON THE MOTION IS
3 STRICTLY CIRCUMSCRIBED BY THE STATUTE. AND THAT'S
4 WHERE WE HAVE A PROBLEM, IN OUR VIEW.
5 MOVING ON TO THE OPPOSITION TO THE NEW TRIAL,
6 SHOULD YOUR HONOR ELECT TO CONSIDER IT, FIRST OF ALL,
7 IT DOESN'T ADDRESS BOTH VERDICTS. THE NEW TRIAL MOTION
8 ACTUALLY ONLY ADDRESSES THE 1983 VERDICT, HAS NOTHING
9 TO -- DOESN'T EVEN MENTION THE $165,000 DISCRIMINATION
10 VERDICT.
11 SO USING THAT AS SOME POTENTIAL EXCUSE THAT
12 THIS WAS SUPER COMPLEX, THAT WE HAD TWO VERDICTS AND
13 THIS AND THAT, NO. THE NEW TRIAL MOTION WAS VERY
14 SPECIFIC, VERY DIRECTED, VERY TARGETED AT THE 1983
15 CLAIMS.
16 WITH RESPECT TO THE OBJECTION ON THE
17 SUPPLEMENTAL DECLARATION OF MS. NAGY, AGAIN, AS THE
18 MOVING PARTY ON A MOTION FOR A NEW TRIAL, IT'S THEIR
19 BURDEN TO COME FORWARD WITH EVERYTHING THEY HAVE THAT
20 THEY THINK SUPPORTS THEIR POSITION SO WE HAVE AMPLE
21 OPPORTUNITY TO REVIEW ALL OF IT AND COME UP WITH WHAT
22 OUR OPPOSITION IS, COME UP WITH OUR OBJECTIONS TO IT.
23 BY TAKING SUBSTANTIAL, EVEN THOUGH IT WAS
24 ADDRESSED AT TRIAL, WE ALL KNOW WHAT THE ENTIRE BODY OF
25 EIGHT WEEKS OF TESTIMONY WAS. ALTHOUGH, WE DON'T HAVE
26 ALL THE TRANSCRIPTS. I KNOW THEY DO. THEY ORDERED ALL
27 OF THEM. WE'RE ON A LIMITING BUDGET SO WE COULDN'T DO
28 THAT.

1 BUT WHAT NORMALLY IS CONTEMPLATED IN A DUE
2 PROCESS ANALYSIS IS THAT THE MOVING PARTY WILL PUT
3 THEIR BEST FOOT FORWARD, BRING EVERYTHING THEY HAVE
4 THAT SUPPORTS THEIR POSITION AND PUT IT IN FRONT OF THE
5 CIRCUIT COURT AND THE OPPOSING PARTY SO THE OPPOSING
6 PARTY WILL DO A DETAILED ANALYSIS TO PICK AND CHOOSE
7 THE THINGS THEY THINK THEY NEED TO ADDRESS.
8 WE'RE DEPRIVED OF THAT OPPORTUNITY IN
9 SITUATIONS -- AND YEAH, SAN DIEGO WATERCRAFT IS A
10 SUMMARY JUDGMENT SITUATION -- ABSOLUTELY, WE AGREE.
11 BUT THE CONCEPT IS THE SAME. IN ORDER TO DO A
12 FULL-THROATED OPPOSITION, WE HAVE TO KNOW WHAT'S THERE.
13 AND THEY CAN'T BRING IN, IN A REPLY, NEW
14 EVIDENCE. THEY CAN MAKE THEIR ARGUMENTS, BUT THEY
15 CAN'T BRING IN NEW EVIDENCE. AND THAT'S WHAT THEY'RE
16 DOING HERE. AND THAT'S WHAT WE'RE COMPLAINING ABOUT.
17 WITH RESPECT TO THE ISSUE ON THE DAMAGES,
18 FIRST OF ALL, I DON'T AGREE THAT WATSON IS IDENTICAL TO
19 THIS CASE HERE. IN WATSON, THAT WAS ACTUALLY A CASE
20 THAT MR. POWELL TRIED WITH CO-COUNSEL, AS LEAD COUNSEL,
21 LIKE TWO YEARS AGO.
22 BUT IT'S NOT IN THE RECORD, AND I DIDN'T HAVE
23 ENOUGH TIME TO ACTUALLY GET DECLARATIONS ON THEM, BUT
24 IT'S APPARENT ON THE FACE OF THE COURT OF APPEAL
25 OPINION THAT THERE WAS NO SPECIFIC EVIDENCE ADMITTED AT
26 TRIAL TO TIE THE DAMAGES -- THE NON-ECONOMIC DAMAGES --
27 SPECIFICALLY TO THE WARRANTLESS SEIZURE.
28 THERE WAS NO EVIDENCE OF THAT. THERE WAS

1 EVIDENCE OF DAMAGES THAT OCCURRED LATER. AND THERE WAS
2 SOME TESTIMONY, I BELIEVE, ON THE PART OF ONE OF THE
3 CHILDREN THAT SHE STILL HAD THIS FEAR OF POLICE. BUT
4 THAT WAS THE EXTENT OF THE EVIDENCE ON THE ISSUE OF
5 CAUSATION.
6 AND THE PROBLEM WITH IT WAS THAT IT DID NOT
7 SPECIFICALLY TIE ANY INJURY TO THE WARRANTLESS SEIZURE
8 ITSELF. ANOTHER THING THAT'S IMPORTANT ABOUT WATSON IS
9 BOTH THE POLICE AND SOCIAL WORKERS WERE INVOLVED IN
10 THAT CASE, ALONG WITH THE COUNTY.
11 AND THE SOCIAL WORKERS AND THE COUNTY SETTLED
12 OUT FOR A SUBSTANTIAL SUM OF MONEY BEFORE TRIAL. ALL
13 THAT WAS LEFT WAS THE POLICE WHO WERE ON SCENE AT THE
14 SITE OF THE SEIZURE.
15 SO IT'S A FACTUALLY DISTINGUISHABLE
16 CIRCUMSTANCE. HERE WE ACTUALLY HAVE EVIDENCE -- AND I
17 DON'T KNOW IF YOU NEED ME TO GO INTO IT IN DETAIL, I'VE
18 DONE THAT IN PAPERS -- BUT WE HAVE EVIDENCE
19 SPECIFICALLY TYING HER INJURY -- MS. DUVAL'S INJURY --
20 TO THE SEIZURE ITSELF.
21 AND I THOUGHT ABOUT THIS LAST NIGHT. AND I
22 THOUGHT THE BEST WAY TO ILLUSTRATE IT IS IF WE LIKEN
23 THE MOMENT OF SEIZURE TO A PIECE OF PAPER AND WE RIP
24 IT. THERE IS NOTHING THAT THE JUVENILE COURT CAN DO --
25 THE JUDGE THERE CANNOT WAIVE A MAGIC WAND AND MAKE THAT
26 GO AWAY, THAT RIFT, THAT DAMAGE, THAT INJURY.
27 IT DOESN'T GO AWAY JUST BECAUSE THE JUDGE MADE
28 A FINDING. AND EVEN IF BY SOME FICTION -- SOME LEGAL

1 FICTION -- WE CAN TAPE THE PAPER BACK TOGETHER AS A
2 WHOLE PIECE, THERE'S STILL THAT SCAR. THAT SCAR STILL
3 EXISTS, AND IT WILL EXIST FOR THE REST OF MS. DUVAL'S
4 LIFE.
5 AND THAT'S WHAT WE ARGUED TO THE JURY, AND
6 THAT'S WHAT -- AT LEAST CONCEPTUALLY, THAT'S WHAT WE
7 ARGUED TO JURY, AND THAT'S WHAT THEY AWARDED ON.
8 THAT'S WHY WE HAD THE JURY INSTRUCTION ON LIFE
9 EXPECTANCY.
10 BECAUSE IT SEEMS -- MAYBE NOT OBVIOUS TO
11 EVERYBODY, BUT IT SEEMS OBVIOUS TO ME THAT EMOTIONAL
12 INJURIES LIKE ANY OTHER INJURIES -- I HAD SURGERY ON MY
13 SHOULDER AS A CHILD. I STILL HAVE A SCAR THERE. IT'S
14 A HUGE SCAR.
15 THOSE THINGS NEVER GO AWAY. AND THAT SCAR, IT
16 CONTINUES ON FOREVER. OBVIOUSLY, THE PAIN, THE
17 VISIBILITY OF THE INJURY, HOW IT'S PERCEIVABLE BY
18 OTHERS, THAT DIMINISHES OVER TIME. WE KNOW THAT.
19 WHAT'S THE SAYING? TIME HEALS ALL WOUNDS. THAT'S A
20 TRUISM, BUT THEY DON'T GO AWAY.
21 AND THAT'S WHAT THE JURY AWARDED HER, IS FOR
22 THAT INJURY THAT DOESN'T GO AWAY AND WILL NEVER GO
23 AWAY. HAS NOTHING TO DO WITH WATSON. WITH RESPECT TO
24 CAREY, THEY DIDN'T SAY IN CAREY THAT THERE'S A DAMAGE
25 THAT'S PRESUMED THAT'S NOMINAL, AND THAT'S ALL YOU GET.
26 WHAT CAREY WAS ALL ABOUT WAS THE UNREMARKABLE
27 PROPOSITION THAT YOU HAVE TO PROVE AS A PLAINTIFF THAT
28 WHATEVER IT IS THAT THE GOVERNMENT AGENCY DID ACTUALLY

1 CAUSED YOUR INJURY.

2 AND WE DID THAT. WE HAVE A JURY INSTRUCTION

3 THAT WAS NOT OBJECTED TO. IT'S INSTRUCTIONS 430 AND

4 431. STANDARD MEASURE OF CAUSATION.

5 AND THAT'S ALL CAREY SAYS IS WE HAVE TO APPLY

6 CAUSATION RULES TO DETERMINE THE INJURY -- THE EXTENT

7 OF THE INJURY AND THE CAUSE OF THE INJURY. THAT'S ALL

8 WE HAVE HERE.

9 AND WITH RESPECT TO THAT, I BELIEVE I'VE

10 COVERED ALL THE POINTS I WANTED TO ADDRESS UNLESS YOUR

11 HONOR HAS QUESTIONS.

12 THE COURT: OKAY. I DIDN'T WANT TO INTERRUPT

13 YOUR TRAIN OF THOUGHT, BUT I THINK THAT THE POINT THEY

14 WERE MAKING OVER -- THERE WERE SEVERAL POINTS THEY MADE

15 IN CONNECTION WITH THE DAMAGES.

16 BUT I THINK ONE OF THEM WAS THAT THEY FEEL THE

17 INSTRUCTION TO THE JURY AS TO WHAT DAMAGES WOULD BE

18 COMPENSABLE IN THE CASE WAS NOT ADEQUATE TO MAKE THE

19 DISTINCTION IN THE -- FOR THE JURY THAT YOUR CLIENT WAS

20 NOT ENTITLED TO DAMAGES FOR EMOTIONAL DISTRESS ARISING

21 FROM ANY ORDER MADE BY THE JUVENILE COURT, INCLUDING

22 THE DETENTION OF THE CHILD, THE PLACING OF CUSTODY WITH

23 THE FATHER AND EVEN ISSUES OF VISITATION, WHICH ARE --

24 SOME OF THOSE ISSUES ARE STILL ONGOING IN A DIFFERENT

25 FORM NOW.

26 AND I THINK THAT WAS -- AS I READ IN THEIR

27 POINTS AND AUTHORITIES, IT SEEMED TO ME THAT WAS THE

28 MAJOR BASIS FOR THEIR CONTENTION THAT THE DAMAGES ARE

1 EXCESSIVE, THAT THEY FEEL THAT THE INSTRUCTIONS OF THE
2 COURT WERE NOT ADEQUATE TO CAUSE THE JURY TO BE ABLE TO
3 MAKE THAT DISTINCTION.
4 THAT IS SOMETHING, WHICH ALL COUNSEL WHO WERE
5 ENGAGED IN THE TRIAL, WE DID DISCUSS ON SEVERAL
6 OCCASIONS. I THINK SOME OF THOSE DISCUSSIONS WERE
7 PROBABLY NOT ON THE RECORD, AND IT DOESN'T MAKE ANY
8 DIFFERENCE WHETHER THEY WERE OR NOT.
9 BUT WE HAD DISCUSSED -- AND I KNOW AMONG US
10 THAT -- MEANING COUNSEL FOR PLAINTIFF AND COUNSEL FOR
11 THE DEFENSE AND THE COURT -- WE ALL AGREE THAT THERE
12 WAS NO ENTITLEMENT TO DAMAGES AS A RESULT OF ORDERS
13 MADE BY THE JUVENILE COURT.
14 AND AS A RESULT OF THAT, I THINK THE
15 CONTENTION IS THAT THE INSTRUCTION -- I FORGET, WAS
16 THAT NUMBER 37?
17 MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR.
18 THE COURT: YES. INSTRUCTION NUMBER 37,
19 BASICALLY -- THEY DIDN'T COUCH IT QUITE SO
20 CRITICALLY -- BUT THE UNDERLYING -- THEY'RE SAYING THAT
21 THE WORDING WAS INADEQUATE IN THEIR VIEW TO BE
22 UNDERSTOOD BY THE JURY.
23 SO I THINK THEY'RE COMPLAINING BOTH ABOUT THE
24 WORDING, NUMBER 1. AND NUMBER 2, THE RESULT OF A
25 SUBSTANTIAL DAMAGE AWARD TO THEM, I THINK, CONFIRMS
26 THAT THE JURY PROBABLY DID NOT APPRECIATE THE
27 DISTINCTION THAT THE COURT WAS ATTEMPTING TO MAKE.
28 SO THAT'S MY VIEW OF ONE OF THE MAJOR ISSUES I

1 THINK THEY'VE RAISED.
2 MR. MCMILLAN: WELL, FIRST OF ALL, IF WE LOOK
3 AT THAT, WE CAN START WITH THE -- START THE ANALYSIS
4 WITH THE RULE THAT THE COURT IS NOT REQUIRED TO DIVINE
5 APPROPRIATE INSTRUCTIONS ON BEHALF OF THE PARTIES.
6 IT'S THE PARTY'S RESPONSIBILITY TO CRAFT
7 PROPER, CORRECT JURY INSTRUCTIONS THAT ADEQUATELY
8 ADDRESS ALL THEORIES OF THEIR CASE.
9 THE COURT: LET ME STOP YOU RIGHT THERE AND
10 SAY THEY ALSO SUBMITTED AN INSTRUCTION I DECLINED TO
11 GIVE, AND COMPOSED AN ALTERNATIVE WORDED INSTRUCTION.
12 SO THE SUBJECT WAS BEFORE US.
13 AND I AGREE THAT IN MOST INSTANCES THE COURT
14 HAS NO OBLIGATION TO INSTRUCT ON SOMETHING -- ON AN
15 ISSUE NOT RAISED BY THE PARTIES, BUT THIS ISSUE WAS
16 RAISED.
17 MR. MCMILLAN: SURE. AND I UNDERSTAND THAT.
18 AND I WAS GETTING TO THAT. BUT I HAVE A TWO-STEP
19 APPROACH --
20 THE COURT: OKAY. I APOLOGIZE.
21 MR. MCMILLAN: NO PROBLEM. IT'S OKAY.
22 FIRST BEING OBVIOUSLY THAT YOU'RE NOT
23 REQUIRED -- THE COURT'S NOT REQUIRED TO FASHION THE
24 INSTRUCTIONS. THAT'S THE RESPONSIBILITY OF THE
25 PARTIES. I AGREE THE ISSUE WAS RAISED.
26 THEY PROPOSED AN INSTRUCTION THAT PLAINTIFF --
27 AND THE COURT AGREED -- WAS CONFUSING IN OUR VIEW -- I
28 DON'T THINK IF THE COURT AGREES WITH THAT PART --

1 THE COURT: I STATED IT ON THE RECORD.
2 MR. MCMILLAN: IT IS ON THE RECORD.
3 THE COURT: -- ON OCTOBER 31ST, I STATED ON
4 THE RECORD THE REASON I WAS DECLINING THEIR INSTRUCTION
5 IS BECAUSE I THOUGHT IT WAS UNCLEAR, CAPABLE OF BEING
6 MISCONSTRUED.
7 MR. MCMILLAN: I BELIEVE THAT'S CORRECT. I
8 DON'T --
9 THE COURT: I'M NOT QUOTING WHAT I SAID AT THE
10 TIME, BUT I KNOW THAT I DID -- A PARTIAL TRANSCRIPT OF
11 THE EVENTS ON OCTOBER 31ST WAS PROVIDED TO THE COURT IN
12 CONNECTION WITH THE MOTION.
13 SO I DID REREAD THAT.
14 MR. MCMILLAN: RIGHT. WELL, MY POINT WITH ALL
15 OF THAT, YOUR HONOR, IS THAT IN OUR VIEW, THE
16 INSTRUCTION PROVIDED BY DEFENDANTS WAS INADEQUATE AND
17 INCORRECT IN THE LAW.
18 AND I AGREE WITH YOUR HONOR, AT LEAST, YOUR
19 HONOR'S DECISION AT THE TIME, THAT IT WAS POSSIBLE OF
20 BEING MISCONSTRUED OR CONFUSING TO THE JURY.
21 YOUR HONOR IS -- BY REJECTING THEIR
22 INSTRUCTIONS, YOU PUT THEM ON NOTICE THAT IF THEY HAD
23 SOME OTHER ALTERNATIVE INSTRUCTION THAT THEY THOUGHT
24 WOULD COMPORT WITH THE LAW OR BE APPROPRIATE, THEY
25 COULD GIVE IT.
26 THEY NEVER DID. INSTEAD, PLAINTIFF PROPOSED
27 AN ALTERNATIVE INSTRUCTION THAT SPECIFICALLY ADDRESSED
28 THE COURT'S CONCERNS AT THE TIME, AND THAT WAS THAT THE

1 JURY COULD AWARD ONLY FOR THE UNWARRANTED SEIZURE ONLY
2 IF THEY FIND AGAINST -- AND THEN, YOU KNOW, TWO OTHER
3 THINGS: MS. SCHEELE AND DISCRIMINATION.
4 THERE'S NO -- I DON'T KNOW THAT THERE'S ANY
5 NEED TO FURTHER ELUCIDATE WHAT IS MEANT BY UNWARRANTED
6 SEIZURE. THAT'S A PRETTY CLEAR TERM, AND I DON'T KNOW
7 THAT ANY OF THE JURORS MISUNDERSTOOD THAT.
8 NOW, THE NEXT STEP IN THE ANALYSIS IS, OKAY,
9 WE CAN ONLY AWARD DAMAGES FOR THE UNWARRANTED SEIZURE.
10 BUT WE KNOW THAT WE CAN'T JUST LOOK AT A SINGULAR
11 INSTRUCTION. WE HAVE TO LOOK AT THE CHARGE AS A WHOLE.
12 SO WHAT DO WE HAVE IN TERMS OF INSTRUCTIONS
13 THAT ADDRESSES ANY CONCERN THERE MAY BE THAT THE
14 JURY -- NOW IT'S BEEN TOLD IT CAN ONLY FIND UNWARRANTED
15 SEIZURE AND NOTHING MORE.
16 WHAT INSTRUCTION DO WE HAVE TO TELL IT HOW FAR
17 IT CAN GO IN AWARDING THOSE DAMAGES? IT'S 430 -- CACI
18 430 AND 431. THEY BOTH TELL US SUBSTANTIAL FACTOR'S
19 THE RULE, IF YOU FIND THAT EVENT, THE UNWARRANTED
20 SEIZURE WAS A SUBSTANTIAL FACTOR IN CAUSING THIS HARM,
21 THAT'S WHAT YOU DO.
22 SO WE HAVE TO TAKE JURY INSTRUCTION 37, 430,
23 431, TOGETHER AS A WHOLE, TO DECIDE WHETHER OR NOT WITH
24 THAT CHARGE THE JURY -- IT WOULD HAVE BEEN CLEAR TO THE
25 JURY WHAT THEY WERE DOING.
26 AND PLAINTIFF'S POSITION IS IT WOULD HAVE
27 BEEN -- OR IT WAS.
28 THE COURT: OKAY.

1 MR. MCMILLAN: IF YOUR HONOR HAS FURTHER
2 QUESTIONS, OR IF -- I HOPE I ADDRESSED THAT QUESTION.
3 THE COURT: YOU DID ADDRESS WHAT I WAS ASKING.
4 AND I'M LEAVING IT UP TO YOU -- MS. NAGY WAS PRETTY
5 SUCCINCT IN HER ARGUMENT. AND IF THERE'S SOMETHING
6 ELSE YOU WANT TO RESPOND TO, YOU'RE WELCOME.
7 I HAVE -- I WON'T STATE AGAIN -- I'VE READ
8 EVERYTHING WITH INTEREST, AND THAT -- AND IF THERE'S
9 SOMETHING ELSE YOU FEEL COMPELLED TO RAISE, YOU MAY DO
10 SO.
11 MR. MCMILLAN: YOUR HONOR, THERE REALLY IS
12 NOTHING FURTHER, I THINK. UNLESS THERE'S QUESTIONS,
13 I'M DONE.
14 THE COURT: MS. NAGY?
15 MS. NAGY: VERY BRIEFLY.
16 SO THERE'S THE LEGAL ADEQUACY OF THE
17 INSTRUCTION THAT WE'VE RAISED, BUT ALSO THE SUFFICIENCY
18 OF THE EVIDENCE.
19 SO ON 10/31 WHEN THE COURT INDICATED THAT IT
20 WASN'T GOING TO GIVE THE INSTRUCTION THAT WE REQUESTED,
21 AND WE SENSED THE WEEK BEFORE THAT THAT WAS A -- WHEN
22 WE WERE IN THE JURY ROOM DISCUSSING THE VARIOUS
23 INSTRUCTIONS AND THE COURT WAS INCLINED NOT TO GIVE IT.
24 WE HAD LONG DISCUSSIONS WITH THE PARTIES AND
25 THE COURT. SO ON 10/31 WHEN THE COURT ANNOUNCED ITS
26 FINAL DECISION, THE JURY WAS WAITING. THERE WASN'T A
27 LOT OF TIME TO CRAFT AN ALTERNATE INSTRUCTION.
28 IF THE COURT HAD ALREADY MADE ITS DECISION,

1 FURTHER OBJECTION ON OUR PART WOULD HAVE BEEN
2 POINTLESS.
3 WITH RESPECT TO THE LEGAL SUFFICIENCY OF ANY
4 OF THE EVIDENCE, I KNOW THAT URBANA DUVAL AND PLAINTIFF
5 HERSELF NOTE THAT THE NIGHT THAT THE CHILD WAS REMOVED
6 AND PUT IN THE CUSTODY OF THE FATHER, THEY COULDN'T
7 SLEEP.
8 THAT WAS THEIR COMPLAINT, THAT THEY WERE --
9 THEY COULDN'T SLEEP. AND THEY SAID, "OH, GOD," AND
10 "OH, GOD," AND "OH, GOD," OVER AND OVER. THAT'S WHAT
11 THEY SAID.
12 A FEW DAYS LATER AT THE MOTHER'S UP-FRONT
13 ASSESSMENT PERFORMED BY HILLSIDES, THE PUBLIC SOCIAL
14 WORKERS, THE MFT -- OR MS. BUSTOS -- SAID THAT SHE
15 NOTED THAT PLAINTIFF HAD A FLAT AFFECT, HAD
16 DEPERSONALIZED, REFERRED TO HER CHILD AS A LITTLE
17 CREATURE, HAD AN INAPPROPRIATE EMOTIONAL RESPONSE, AND
18 THAT WAS SHORTLY AFTER THE REMOVAL.
19 SO THAT IS KIND OF THE BEST EVIDENCE WE HAVE
20 THAT SIX DAYS AFTER -- SEVEN DAYS AFTER NOVEMBER 10TH
21 AT THIS UP-FRONT ASSESSMENT THAT -- AND MS. DUVAL'S OWN
22 TESTIMONY, I MEAN, THEY -- I DON'T WANT TO MINIMIZE,
23 RIGHT, WHAT A MOTHER FEELS AS A RESULT OF THIS.
24 BUT THE SUPREME COURT SAYS -- AND THIS IS IN
25 WATSON, QUOTING CAREY V. PIPHUS, IN CASES WHERE A
26 DEPRIVATION IS JUSTIFIED BUT PROCEDURES ARE SUFFICIENT,
27 WHATEVER DISTRESS A PERSON FEELS MAY BE ATTRIBUTABLE TO
28 THE JUSTIFIED DEPRIVATION RATHER THAN TO THE

1 DEFICIENCIES IN PROCEDURE.

2 SO WITH THAT, I REALLY HAVE -- I THINK I'VE

3 SAID EVERYTHING WE HAVE TO SAY ABOUT THAT.

4 THE COURT: THANK YOU. IF WE COULD ADDRESS,

5 THEN, THE MOTION FOR JUDGMENT NOTWITHSTANDING THE

6 VERDICT. AND, AGAIN, YOU WOULD BE FIRST ON THAT,

7 MS. NAGY.

8 MS. NAGY: OKAY. YOUR HONOR, THERE IS A CASE

9 THAT WE DID NOT CITE IN OUR PAPERS, AND I'M QUITE SURE

10 THE PLAINTIFF WILL OBJECT NOW, BUT IT HAS COME UP IN

11 THE COURSE OF THE CASE QUITE A BIT.

12 THE CASE IS JENKINS V. COUNTY OF ORANGE, 1989

13 212 CAL.APP.3D 278. AND IN THIS CASE, THE CALIFORNIA

14 COURT OF APPEAL 4TH DISTRICT IS CONSIDERING THE

15 QUESTION IN THE 1983 CASE OF WHETHER A PROSECUTOR WHO

16 REMOVES A CHILD IN THE COURSE OF AN INVESTIGATION

17 WITHOUT A COURT ORDER IS ENTITLED TO QUALIFIED IMMUNITY

18 OR ABSOLUTE IMMUNITY.

19 AND AT THE TIME, THE SUPREME COURT HAD

20 RECENTLY ISSUED DESHANEY V. WINNEBAGO. AND DESHANEY V.

21 WINNEBAGO SAID THERE IS NO OBLIGATION IN THE

22 CONSTITUTION FOR PUBLIC -- FOR SOCIAL WORKERS OR PUBLIC

23 CHILD SERVICES TO INTERVENE IN CHILD ABUSE CASES.

24 AND AS A RESULT OF THAT, THE 4TH DISTRICT

25 SAID: "SO WE'RE CONCERNED THAT THAT LEAVES THE CHILD

26 SOMEWHAT DEFENSELESS" BECAUSE THEY DON'T HAVE TO GET

27 INVOLVED -- WHAT MOTIVATES -- I DON'T WANT TO PUT WORDS

28 IN THE DECISIONS THAT ISN'T THERE.

1 BUT ESSENTIALLY, THE RULE DECIDED IN JENKINS
2 WAS THAT SOCIAL WORKERS ENJOY ABSOLUTE OR PROSECUTORIAL
3 IMMUNITY IF THEY ACT WITHIN THE SCOPE OF THEIR
4 EMPLOYMENT IN INVESTIGATING REPORTS AND TAKING THE
5 CHILD INTO CUSTODY WITHOUT A COURT ORDER.
6 THE COURT LOOKS THROUGH THE VARIOUS CIRCUIT
7 CASES IN THE FEDERAL CIRCUIT AND CHOSE AMONG THE
8 CIRCUIT MODELS THAT EXISTED AT THE TIME. THIS CASE,
9 JENKINS, WAS SUBSEQUENTLY AFFIRMED IN ALICIA T. V.
10 COUNTY OF LOS ANGELES, 222 CAL.APP.3D 869 1990. SO
11 THESE TWO CASES HAVE NEVER BEEN OVERTURNED.
12 I DID A SEARCH FOR JENKINS. AND I KNOW THAT
13 THE ONLY TWO CASES THAT SPOKE OF IT NEGATIVELY, ONE WAS
14 A 2004 DISTRICT COURT CASE, PARKS V COUNTY OF SAN
15 DIEGO, AND THE OTHER WAS ONE OF THE EARLY UNPUBLISHED
16 COUNTY OF KERN CASES, AND IT REALLY JUST SPOKE TO THE
17 STATE IMMUNITY BUT TO THE FEDERAL IMMUNITY.
18 SO JENKINS V. COUNTY OF ORANGE, ALICIA T.,
19 THIS IS GOOD LAW IN CALIFORNIA. THESE ARE -- THIS IS
20 COMPELLING, SOLID LAW THAT HAD NEVER BEEN OVERRULED IN
21 CALIFORNIA. THAT IS THE ABSOLUTE IMMUNITY.
22 NOW, I DIDN'T BRING UP ABSOLUTE IMMUNITY IN MY
23 JUDGMENT -- IN MOTION FOR JUDGMENT NOTWITHSTANDING THE
24 VERDICT. BUT I'M PUTTING THIS ON THE RECORD. AND I
25 THINK IT IS RELEVANT TO OUR SECOND PRONG OF THE SAUCIER
26 ANALYSIS. AND WHY DO I SAY THAT?
27 BECAUSE SAUCIER, THE SECOND PRONG ASKS -- OF
28 COURSE, WE SAID IT OVER AND OVER -- WHAT A REASONABLE

1 SOCIAL WORKER WOULD BELIEVE IN 2009. WOULD THEY
2 BELIEVE THAT THEIR TAKING A CHILD INTO CUSTODY WITHOUT
3 A COURT ORDER WOULD BE LAWFUL?
4 IN CALIFORNIA, I THINK THEY HAD A VERY DECENT
5 CHANCE OF BEING AT LEAST CONFUSED ABOUT THE STATE OF
6 THE LAW BECAUSE IF THE CALIFORNIA COURT OF APPEAL SAID
7 YOU CAN DO IT, AND THERE ARE THESE SUBSEQUENT FEDERAL
8 CASES THAT SAID YOU CAN'T DO IT, WHERE DOES THAT LEAVE
9 THE SOCIAL WORKER WITH RESPECT TO THE CLARITY OF THE
10 LAW?
11 SO THIS IS A NEW ARGUMENT THAT I THINK -- BUT
12 I THINK ON THE BASIS OF THE LAW, IT'S A COMPELLING ONE.
13 WE ALSO ARGUED THAT BECAUSE OF THE VARIOUS DEFINITIONS
14 OF THE LAW THAT CAME DOWN IN CALIFORNIA, THE PENAL CODE
15 DEFINITIONS OF SEVERE NEGLECT, WE FEEL THAT A
16 REASONABLE SOCIAL WORKER CAN HAVE MADE A MISTAKE.
17 THAT WOULD BE THE FIRST PRONG OF SAUCIER. BUT
18 EVEN SO, IF WE'RE WRONG, THE SECOND PRONG OF SAUCIER
19 HAS BEEN SPOKEN TO IN KIRKPATRICK. AND SO THAT'S THE
20 MOST RECENT NINTH CIRCUIT ITERATION.
21 AND THE COURT CAN FIND IT PERSUASIVE OR NOT.
22 BUT KIRKPATRICK ESSENTIALLY LOOKS AT THE FEDERAL CASE
23 LAW AND SAYS, "NO. WE DON'T THINK EXIGENCY WAS
24 ESTABLISHED IN 2008." AND HERE IT IS IN 2016, AND
25 NOTHING HAS CHANGED.
26 SO WITH THIS DIFFERENCE, RADICAL DIFFERENCE,
27 CALIFORNIA APPELLATE LAW AND FEDERAL APPELLATE COURT
28 LAW, I THINK A COMPELLING ARGUMENT CAN BE MADE THAT

1 THERE IS NO WAY THAT THESE SOCIAL WORKERS COULD HAVE
2 UNDERSTOOD THE LIMITS OF THE CONSTITUTION ON
3 NOVEMBER 3RD, 2009.
4 I'LL GET A BREATH AND KEEP GOING.
5 SO I THINK THIS IS UNDERSCORED AS WELL BY THE
6 CACI EXCEPTIONS TO THE WARRANT REQUIREMENT. THERE ARE
7 TWO INSTRUCTIONS. ONE IS FOR EXIGENCY AND ONE IS FOR
8 EMERGENCY.
9 EXIGENCY HAS TO DO IN THE CACI WITH THE
10 PRESERVATION OF EVIDENCE AND THE PREVENTION OF
11 ABSCONDING WITNESSES, AND THESE SORTS OF LAW
12 ENFORCEMENT EXIGENCIES.
13 EMERGENCY HAS TO DO WITH IMMINENT HARM AND
14 SERIOUS INJURY OF DEATH. SO THESE ARE THE TWO WARRANT
15 REQUIREMENTS. AND IN CALIFORNIA, AND UNDER FEDERAL
16 LAW, FOR THAT MATTER -- I TAKE THAT BACK.
17 ONLY IN THE FEDERAL LAW EXIGENCY AND EMERGENCY
18 ARE USED INTERCHANGEABLY. NOW, IN THE FOURTH AMENDMENT
19 CASE, THEY HAVE VERY DISTINCT MEANINGS, BUT IN THESE
20 SOCIAL WORKER CASES, THEY ARE USED IDENTICALLY,
21 CONFUSINGLY.
22 EXIGENCY MEANS IMMEDIATE IMMINENT HARM. I
23 DON'T KNOW THAT THAT'S ADEQUATE. I DON'T THINK THAT
24 THERE'S SPECIFIC LAW THAT WOULD PUT A SOCIAL WORKER ON
25 NOTICE WHAT IS EXIGENCY AS OPPOSED TO WHAT IS
26 EMERGENCY.
27 NOW, AND THAT, I WOULD ADD, IS ALSO IN
28 KIRKPATRICK CITING TO MINCEY V. ARIZONA SUPREME COURT

1 COURT CASE WHERE THEY TALK ABOUT EXIGENCY NOT BEING
2 THE -- NOT THE SAME AS EMERGENCY.
3 SO THEY USED THE EXIGENCY STANDARD AS -- JUST
4 TO TALK ABOUT LAW ENFORCEMENT REQUIREMENTS. SO WHEN WE
5 TALK ABOUT WHAT'S EXIGENCY HERE, IT'S NOT THAT THE
6 CHILD WAS IN IMMINENT DANGER OF DYING IN THE NEXT FOUR
7 HOURS.
8 COULD IT ALSO HAVE BEEN THAT THERE WAS SOME
9 NEED TO PRESERVE THE STATUS QUO WITH RESPECT TO A
10 COMPELLING GOVERNMENTAL INTEREST IN LAW ENFORCEMENT?
11 THIS -- YOU KNOW, SEVERE NEGLECT IS A VIOLATION OF THE
12 PENAL CODE.
13 SO IN ANY EVENT, THIS ALL BOILS DOWN TO THE
14 SECOND PRONG OF SAUCIER, WHETHER THESE TWO SOCIAL
15 WORKERS SHOULD BE IMMUNIZED, AND I BELIEVE THEY SHOULD
16 BE.
17 THE SECOND MAJOR POINT I'D LIKE TO MAKE IS
18 WITH RESPECT TO THE MONELL ARGUMENT. AND I KNOW THAT
19 THERE HAS TO BE A MOTIVATING FACTOR. AND WHEN WE LOOK
20 AT TRAINING -- AND I WENT THROUGH PLAINTIFF'S CLOSING
21 ARGUMENTS ON THIS ISSUE, AND I COULDN'T -- I DIDN'T
22 HAVE ANY SENSE OF WHAT IS THE POLICY AT ISSUE.
23 WHAT IS THE TRAINING AT ISSUE? THERE ARE
24 TRAININGS. THERE IS POLICY. HOW IS THIS DEFICIENT? I
25 NOTE IN THE VERY FIRST QUESTION ON VERDICT 1, THERE IS
26 NO STATE OF MIND IN EVIDENCE HERE.
27 IT DOESN'T ASK WHETHER THERE WAS A DELIBERATE
28 INDIFFERENCE, OR WHETHER THERE WAS AN INTENTIONAL

1 VIOLATION OF THE RIGHTS OF MS. DUVAL, WHICH IS A
2 NECESSARY FINDING.
3 SECOND, WHEN WE GET TO THE ACTUAL MONELL
4 CLAIMS IN THE FIRST VERDICT, RIGHT, THERE ISN'T ANY
5 QUESTION THAT TIES THE POLICY INTO THE ACTUAL INJURY.
6 AND AS WE SAID IN OUR PAPERS, THE ONLY TWO
7 PERSONS WHO MADE THE DECISION TO DO IT SAID "WE DID IT
8 ON THE BASIS OF WHAT PRESENTED ITSELF TO US, ON THE
9 BASIS OF THE TOTALITY OF THE CIRCUMSTANCES."
10 "WE DIDN'T DO IT BECAUSE WE WERE TOLD TO DO
11 IT" OR "WE THOUGHT THAT WAS RIGHT" OR "WE HAD A
12 MISAPPREHENSION OF THE LAW." THEY KNEW WHAT THE LAW
13 WAS. THEY THOUGHT THEY HAD THE RIGHT OPPORTUNITY.
14 SO IF YOU CANNOT TIE THE COUNTY'S LIABILITY
15 INTO THE ACTUAL CONSTITUTIONAL DEPRIVATION, IT JUST
16 BECOMES ANOTHER FORM OF RESPONDEAT SUPERIOR LIABILITY,
17 WHICH IS WHAT WE HAVE HERE, TAKING THE LIABILITY OF THE
18 EMPLOYEES FOR THE SEIZURE AND PROJECTING IT ON TO THE
19 ENTITY SIMPLY BECAUSE THEY EMPLOYED THEM.
20 THERE ISN'T ANYTHING SPECIFIC -- TIME SPECIFIC
21 IN THE TESTIMONY OF COX AND POWELL AND THESE OTHERS
22 THAT WOULD ESTABLISH WHEN DID THE COUNTY KNOW -- WHAT
23 DID THEY KNOW AND WHEN DID THEY KNOW IT.
24 THERE WAS NO TIME SPECIFICS TO LET US KNOW
25 ABOUT THE GENERAL DETAILS ABOUT THESE OTHER CASES,
26 NOTHING TO FIND THEM COMMENSURATE OR COMPARABLE TO WHAT
27 HAPPENED HERE.
28 SO WITHOUT THAT KIND OF DETAIL, THERE'S NOT --

1 YOU CAN'T ESTABLISH THAT THE COUNTY HAD ANY NOTICE.
2 CERTAINLY JUDGE NASH HAD A COMMENT ABOUT IT, BUT HE
3 DIDN'T KNOW, PERSONALLY, WHAT THE PRACTICE WAS.
4 AND THAT HAPPENED A YEAR -- AT LEAST A YEAR
5 LATER. SO THAT DOES NOT ESTABLISH WHAT THE COUNTY KNEW
6 AND WHEN THEY KNEW IT FOR PURPOSES OF DELIBERATE
7 DIFFERENCE. ALL RIGHT. SO THAT'S ONE THING.
8 AND THEN WE HAVE THIS PROBLEM WITH CAUSATION
9 THAT ISN'T WELL ESTABLISHED. AND AS MARSHALL SAYS,
10 IT'S NOT JUST NO THEY WERE FOLLOWING POLICY, THERE
11 REALLY HAS TO BE A GREATER SHOWING.
12 THAT'S IN CHOATE AS WELL. WE CITED THAT IN
13 OUT PAPERS. I WON'T BELABOR IT. MOVING ALONG TO
14 VERDICT NUMBER 2, AS A MATTER OF SUBSTANTIAL EVIDENCE,
15 THERE REALLY ISN'T ANYTHING THERE AS A MATTER OF LAW.
16 BECAUSE IF YOU'RE GOING TO RELY ON A
17 REGARDED-AS STANDARD, THERE HAS BEEN TO BE SOME
18 OBJECTIVE REASONABLENESS, LIKE AN OBJECTIVELY -- AN
19 OBJECTIVE PERCEPTION OF SOMEONE'S SUBSTANTIAL
20 LIMITATION IN A MAJOR LIKE ACTIVITY.
21 AND SO PLAINTIFF IS NOT SUBSTANTIALLY LIMITED.
22 SHE ARGUED THAT SHE DIDN'T NEED TO DO THAT. SHE JUST
23 NEEDED TO SAY THEY REGARDED HER AS.
24 IF THAT'S TRUE, THAT IS A GIGANTIC HOLE IN THE
25 ADA, WHERE ANYONE COULD JUST COME IN AND SAY, "OH, THEY
26 JUST REGARDED ME AS. I DIDN'T HAVE TO BE DISABLED.
27 THEY JUST REGARD ME AS DISABLED."
28 BUT HER BURDEN OF PROOF WAS TO ESTABLISH THAT

1 SHE, IN FACT, HAD AN OBJECTIVE CONDITION, OBJECTIVELY
2 PERCEIVABLE, THAT ANYONE WOULD SAY, "YES. SHE HAS A
3 DISABILITY THAT SUBSTANTIALLY LIMITS A MAJOR LIFE
4 ACTIVITY."
5 AND SHE COMPLETELY DISAVOWED THAT. SO THEY
6 HAVEN'T BEEN ABLE TO BRIDGE THAT GAP FOR THE ADA OR THE
7 UNRUH ACT. AND FINALLY, AS WE SAID -- AND I DON'T WANT
8 TO REPEAT IT -- THERE WAS JUST NO SERVICES DENIED AS A
9 RESULT OF.
10 FAMILY REUNIFICATION HAPPENED FOR VERY
11 SPECIFIC REASONS. SHE WAS DENIED THOSE REASONS FOR
12 SPECIFIC REASONS. THERE'S NO CAUSATION. IT HAS NOT
13 BEEN ESTABLISHED.
14 AND WITH THAT, I RESERVE A LITTLE BIT OF REPLY
15 TIME.
16 THE COURT: ALL RIGHT. THANK YOU. MR. DANER,
17 YOU STOOD UP, WHICH MEANS YOU'RE THE VOLUNTEER TO
18 RESPOND.
19 MR. DANER: I AM. I DON'T KNOW HOW THEY GOT
20 ME TO DO IT, BUT I'M DOING IT.
21 I NEED TO FIRST RAISE AND TOUCH UPON SOME OF
22 THE OBJECTIONS. ONE OF THE OBJECTIONS I'M NOT SURE THE
23 COURT HAD LOOKED AT YET WAS TO THE JNOV, WE ACTUALLY
24 HAD AN OBJECTION BASED ON THE DEFENDANT'S FAILURE TO
25 PRESENT THE EVIDENCE IN LIGHT FAVORABLE TO THE
26 PLAINTIFF.
27 NOW, THE LAW TELLS US THAT IS ACTUALLY A
28 PREREQUISITE FOR THE COURT TO EVEN CONSIDER THIS

1 MOTION. THE REASON WHY IT'S NECESSARY HERE -- THIS IS
2 NOT A SUMMARY JUDGMENT MOTION WHERE THE PLAINTIFFS ARE
3 REQUIRED TO GO BACK AND TRY TO ISOLATE ALL THE FACTS IN
4 EVIDENCE THAT ARE FAVORABLE.
5 INSTEAD, THIS IS A RESPONSE TO A TEST ON THE
6 SUFFICIENCY OF THE EVIDENCE SAYING THAT AS A MATTER OF
7 LAW, ALL THE EVIDENCE VIEWED MOST FAVORABLE TO THE
8 PLAINTIFF, ALL INFERENCES DRAWN WHERE THEREFROM, AS A
9 MATTER OF LAW, IS THERE NOT ANY EVIDENCE TO SUPPORT
10 THIS VERDICT.
11 BECAUSE THAT DIDN'T OCCUR HERE, THE COURT
12 SHOULD NOT EVEN BE CONSIDERING THE JNOV BECAUSE THERE'S
13 AN OBLIGATION, AND THAT'S STATED IN OUR OBJECTION.
14 ANOTHER THING I JUST WANTED TO REITERATE WHAT
15 MR. MCMILLAN SAID EARLIER WITH REGARD TO THE OVERSIZED
16 MEMORANDUM, THIS IS A SITUATION ON THE JNOV WHERE THE
17 POINTS AND AUTHORITIES WERE FIVE PAGES OVERSIZED.
18 IT WASN'T, AS THEY SAID IN THEIR RESPONSE TO
19 THE OBJECTION, JUST A LITTLE ONE- OR TWO-PAGE OVERAGE.
20 THIS IS A FIVE-PAGE OVERAGE. IN THE LIGHT OF THAT,
21 THEY STILL WENT ON THE REPLY KNOWING WHAT THEY WERE
22 GOING THROUGH.
23 AND, AGAIN, AS YOUR HONOR POINTED OUT, THEY
24 STILL WENT OVER ON THE REPLY. DIDN'T MAKE ANY
25 REQUESTS. DIDN'T MAKE ANY EMAILS TO US. DIDN'T MAKE
26 ANY COMMUNICATIONS. THEY JUST WENT OVER THE PAGE LIMIT
27 AGAIN. RAN ROUGHSHOD OF THE CALIFORNIA RULES OF COURT
28 HERE.

1 TO ADDRESS THE OUTSET AS WELL, THE ISSUES ON
2 THIS JNOV ARE LIMITED TO THOSE RAISED IN THE NOTICE.
3 NOW, THE COUNTY WAS INITIALLY ARGUING WITH REGARDS TO
4 MONELL AND TALKING ABOUT THE SUFFICIENCY OF EVIDENCE IN
5 THE MONELL CLAIM, BUT THAT WASN'T RAISED IN THE NOTICE.
6 THE ONLY CHALLENGE TO THE MONELL CLAIM THAT
7 WAS RAISED IN THE NOTICE WAS A CLAIM THAT IF THE
8 INDIVIDUALS ARE ENTITLED TO QUALIFIED IMMUNITY, THEN
9 MONELL CLAIM MUST FAIL AGAINST THE COUNTY.
10 THAT'S THE ONLY ISSUE BEFORE THIS COURT AS TO
11 THE MONELL CLAIM. NOW, AS DISCUSSED IN THE PAPERS, THE
12 COUNTY IS NOT ENTITLED TO QUALIFIED IMMUNITY IF THE
13 INDIVIDUALS ARE.
14 AND WE LOOKED AT THAT. IT'S BRIEFED
15 IN THERE -- KIRKPATRICK EVEN HAS THAT THE INDIVIDUALS
16 VIOLATED THE CONSTITUTION.
17 THEY FOUND IT WAS -- QUALIFIED IMMUNITY
18 APPLIED TO THE INDIVIDUALS, BUT STILL SAID, REGARDLESS,
19 THE COUNTY IS STILL GOING TO BE LIABLE UNDER MONELL
20 BECAUSE THERE'S STILL NO QUALIFIED IMMUNITY THAT CAN
21 TRANSFER TO THEM.
22 TO ADDRESS SOME OF THE OTHER POINTS THAT WERE
23 RAISED, I WOULD ALSO REQUEST IF THE COURT WAS GOING TO
24 BE CONSIDERING ANYMORE ARGUMENT AS IT RELATES TO THE
25 CASE JENKINS VERSUS THE COUNTY OF ORANGE THAT WAS
26 CITED, I WOULD ASK THE COURT TO DO SOME SUPPLEMENTAL
27 BRIEFING ON THAT.
28 BUT JUST BRIEFLY, I WILL NOTE THAT JENKINS

1 VERSUS COUNTY OF ORANGE IS A 1989 CASE. THE LAW
2 CHANGED SUBSTANTIALLY SINCE THEN. MOST NOTABLY,
3 WALLACE CAME OUT. BELTRAN CAME OUT.
4 WALLIS DEALS SPECIFICALLY WITH THE WARRANTLESS
5 SEIZURE, ARCE ALSO CAME OUT AFTERWARDS. AND THERE'S A
6 CASE CALLED A LACEY V. MARICOPA COUNTY WHERE A
7 PROSECUTOR ARRESTS -- EFFECTUATES A WARRANTLESS ARREST,
8 AND THE NINTH CIRCUIT COURT OF APPEALS SAYS YOU DO NOT
9 GET ABSOLUTE IMMUNITY FOR THAT CONDUCT.
10 THINGS HAVE CHANGED SINCE JENKINS CAME OUT IN
11 1989. IF THE COURT IS GOING TO BE RELYING ON THAT,
12 AGAIN, I WOULD REQUEST SOME SUPPLEMENTAL BRIEFING TO
13 ADDRESS MORE OF THOSE CHANGES AND MORE OF THOSE ISSUES
14 THAT HAVE BEEN RE-EVALUATED SINCE THEN.
15 SOME CASE -- SOME ISSUES ALSO TO RAISE IS IN
16 THE REPLY, THERE WAS A COMMENT ATTEMPTING TO USE THE
17 SUBSEQUENT JUVENILE DEPENDENCY PROCEEDINGS AND THE
18 FINDINGS BASED ON THOSE PROCEEDINGS OVER THE COURSE OF
19 THE -- HOWEVER LONG THE JUVENILE PROCEEDINGS LASTED --
20 TO NEGATE THE IMPACT OF THE WARRANTLESS SEIZURE SAYING
21 THAT THIS CASE IS DIFFERENT BECAUSE, IN ALL OTHER
22 CASES, THE CHILD IS RETURNED TO THE PARENT'S CARE, AND,
23 THEREFORE, THERE SHOULD BE AN IMPACT ON THE WARRANTLESS
24 SEIZURE.
25 THIS ACTUALLY IS NOT THE CASE, YOUR HONOR.
26 TWO CASES RIGHT OFF THE BAT: IN MAY, THE CHILD WAS NOT
27 RETURNED TO THE PARENTS' CUSTODY. THE CHILD REMAINED
28 IN THE DCFS -- IN CHILD PROTECTIVE CUSTODY UNTIL THE

1 CHILD AGED OUT AT THE AGE OF 18.
2 AND THEN THERE WAS A LAWSUIT BROUGHT IN 1983,
3 AND FOUND THAT THERE WAS A WARRANTLESS SEIZURE, AND
4 THAT CONSTITUTED A VIOLATION OF THAT.
5 THE OTHER CASE I'D LIKE TO CITE TO IS
6 ANDERSON-FRANCOIS V. COUNTY OF SONOMA. NOW, THIS
7 ISN'T -- CITES IN TWO PARTS: IT'S FOR THE DISTRICT
8 COURT CASE, WHERE IT BRINGS A FACTUAL STATEMENT.
9 IT'S 2009 US DISTRICT LEXUS 44167 WITH A
10 PINPOINT CITE AT 8211. AND THE NINTH CIRCUIT COURT OF
11 APPEAL EVALUATION OF THIS CAN BE FOUND AT 451 FED
12 APPX 6 WITH A PINPOINT CITE OF 829.
13 WHAT HAPPENED IN ANDERSON-FRANCOIS IS A CHILD
14 WAS REMOVED WITHOUT A WARRANT, THE PETITION WAS FILED;
15 THEY WENT THROUGH THE JUVENILE DEPENDENCY PROCEEDING;
16 PARENTAL RIGHTS WERE TERMINATED. AN APPEAL WAS FILED.
17 THE COURT OF APPEAL AFFIRMED TERMINATION OF THE
18 PARENTAL RIGHTS.
19 DESPITE THIS, THE NINTH CIRCUIT COURT OF
20 APPEALS ALLOWED THE WARRANTLESS SEIZURE CLAIM SAYING
21 THAT THE WARRANTLESS SEIZURE CLAIM -- AND THIS
22 EVALUATION WAS DONE IN THE CONTEXT OF A COLLATERAL
23 ESTOPPEL -- SAYING THE WARRANTLESS SEIZURE CLAIM WAS
24 NOT IMPACTED AT ALL BY THESE JUVENILE PROCEEDINGS
25 BECAUSE YOU LOOK AT DIFFERENT REQUIREMENTS.
26 THE WARRANTLESS SEIZURE WAS SPECIFICALLY ON
27 FEDERAL LAW, REQUIRING SPECIFIC ARTICULABLE EVIDENCE,
28 OUTLINED UNDER WALLIS AND ITS PROGENY, WHILE

1 CALIFORNIA'S REMOVAL STATUTE -- 306, I BELIEVE IT IS --
2 WHILE IT MIGHT BE SIMILAR, IS SEPARATE FROM WHEN YOU'RE
3 CONSIDERING A CONSTITUTIONAL VIOLATION.
4 AND THAT'S WHAT WE HAVE HERE. IF YOU LOOK AT
5 SOME OF THE CASES: MARTINEZ V. CALIFORNIA, FELDER V.
6 CASEY. THOSE CASES ARE ALL SAYING THAT STATE LAW
7 IMMUNITIES, OR STATE LAW, CANNOT GOVERN AND IMPAIR THE
8 CONSTITUTIONAL RIGHTS.
9 YOU HAVE TO FOLLOW THE FEDERAL LAW THAT'S
10 THERE. THERE'S NO STATE LAW THAT APPLIES TO A FEDERAL
11 CONSTITUTIONAL CAUSE OF ACTION. ONE SECOND, YOUR
12 HONOR. I LOST MY NOTES.
13 THE REPORTER: (REPORTER CLARIFICATION).
14 MR. DANER: FOLLOWING UP WITH SOME OF THAT, IN
15 KIRKPATRICK, IF WE GO AND LOOK AT THAT, THAT'S ANOTHER
16 SITUATION WHERE A CHILD STILL HAD A WARRANTLESS SEIZURE
17 CLAIM AFTER BEING SEIZED FROM BOTH HER MOM AND HER DAD.
18 THAT CLAIM STILL SURVIVED REGARDLESS OF THE
19 FACT THAT THE PARENTAL RIGHTS WERE TERMINATED AS TO THE
20 MOTHER. SHE -- AFTER THE SEIZURE, SHE JUST SKIPPED
21 TOWN.
22 TO TAKE A LOOK AT THE QUALIFIED IMMUNITY
23 ASPECT, THE QUESTION HERE IS NOT WHETHER THERE'S A CASE
24 ON ALL FOURS, IF EVERY SINGLE DETAIL HAS BEEN OUTLINED
25 BY A CASE. THE QUESTION IS WHETHER THERE'S FAIR
26 WARNING.
27 NOW, THE COURTS INSTRUCT THAT TO MAKE THIS
28 DETERMINATION, YOU LOOK AT ALL THE CASE LAW OUT THERE:

1 UNPUBLISHED DECISIONS, STATE COURT DECISIONS, DISTRICT
2 COURT DECISIONS.
3 AND IN DOING SO, THE CASE THAT STRIKES ON ALL
4 FOURS HERE IS GOING TO BE ROGERS. NOW, ROGERS TELLS
5 WHEN THERE'S A CHILD WHO IS MALNOURISHED AND HAS -- IN
6 A SITUATION THAT MIGHT BE CHRONIC, MIGHT NEED LONG-TERM
7 CARE, THAT DOES NOT AMOUNT TO AN EXIGENCY.
8 NOW, THE COUNTY OF LOS ANGELES HAS MADE THIS
9 ARGUMENT HERE BEFORE ABOUT WHETHER OR NOT FAILURE TO
10 THRIVE -- THE DIAGNOSIS OF FAILURE TO THRIVE -- WOULD
11 APPLY TO -- WHETHER ROGERS WOULD APPLY TO A FAILURE TO
12 THRIVE DIAGNOSIS.
13 AND BAKER VERSUS COUNTY OF LOS ANGELES, THEY
14 HAVE ARGUED THAT IT WAS NOT CLEARLY ESTABLISHED THAT
15 ROGERS WOULD MAKE IT. SO A FAILURE TO THRIVE DIAGNOSIS
16 WAS JUSTIFIED WITHOUT A WARRANT -- A SEIZURE WITHOUT A
17 WARRANT.
18 YET IN THEIR REPLY BRIEF, AND HERE TODAY, THE
19 COUNTY HAS IGNORED THAT DECISION. NOW, THAT DOES HAVE
20 AN IMPACT HERE.
21 BUT WHAT THAT BAKER COURT DECIDED WAS THAT
22 ROGERS WAS SUFFICIENT TO GIVE FAIR WARNING TO A SOCIAL
23 WORKER THAT MALNOURISHMENT OF A CHILD, FAILURE TO
24 THRIVE OF A CHILD WAS NOT SUFFICIENT TO JUSTIFY A
25 WARRANTLESS SEIZURE.
26 SO WHEN WE APPLY THAT HERE, ROGERS WOULD BE
27 SUFFICIENT TO SAY -- TO ADVISE A SOCIAL WORKER THAT
28 THERE WAS NO JUSTIFICATION TO SEIZE A CHILD HERE

1 WITHOUT A WARRANT.
2 IN ADDITION, LOOKING AT THE FACTUAL
3 SITUATION -- THIS IS ANOTHER REASON IT TIES BACK TO OUR
4 OBJECTION -- AND IF YOU LOOK AT THE FACTS MOST
5 FAVORABLE TO THE PLAINTIFF, YOU START SEEING THAT THIS
6 IS CLEARLY ESTABLISHED BY LAW.
7 WHAT THEY'RE TRYING TO BRING HERE IS
8 INACCURATE IN THAT WE HAVE MEDICAL OPINIONS SAYING,
9 "THIS IS FAILURE TO THRIVE, BUT DON'T WORRY. IT'S NOT
10 GOING TO CAUSE ANY DELAYS HERE. COME BACK IN A MONTH."
11 AND "WE'RE GOING TO MONITOR THIS. THERE'S NO
12 EMERGENT CARE. THE CHILD IS NOT SEVERELY MALNOURISHED.
13 WE'RE GOING TO RELEASE FROM THE HOSPITAL." HOWEVER,
14 HOURS LATER, THE SOCIAL WORKERS, KNOWING ALL THAT,
15 SEIZE WITHOUT A WARRANT.
16 NOW, ROGERS ALSO TELLS US WHEN THERE'S
17 SUFFICIENT TIME TO GET A WARRANT, YOU HAVE TO GET THE
18 WARRANT. AND DELAY MILITATES AGAINST EXIGENCY.
19 KNOWING THAT, THE SOCIAL WORKER WAS STILL DELAYED FOR A
20 SUBSTANTIAL PERIOD OF TIME IN THE COURSE OF A DAY TO
21 SEIZE THIS CHILD.
22 SO THAT WAS ALWAYS CLEARLY ESTABLISHED THAT
23 THIS DELAY MILITATED AGAINST EXIGENCY. I THINK, YOUR
24 HONOR, THAT TOUCHED UPON THE POINTS RAISED HERE AND FOR
25 SOME RAISED IN THE REPLY.
26 A LOT OF THE OTHER ASPECTS ARE IN THE PAPERS.
27 IF YOU HAVE ANY FURTHER QUESTIONS, I'D BE HAPPY TO
28 ANSWER THEM HERE.

1 THE COURT: I DON'T. EVERYONE'S POINTS AND
2 AUTHORITIES IN THIS CASE I THINK WERE QUITE COMPLETE.
3 MR. PRAGER: OH, GOOD MORNING, YOUR HONOR.
4 THE COURT: GOOD MORNING, MR. PRAGER.
5 MR. PRAGER: PLEASURE TO SEE ALL THE COURT AND
6 YOUR HONOR AGAIN.
7 LET ME JUST SAY WITH REGARD TO THE PAGE LIMIT
8 ISSUE, THERE WERE SOME THINGS THAT WE WOULD HAVE LIKED
9 TO HAVE SAID, WE COULDN'T HAVE SAID BECAUSE WE DID
10 ABIDE BY THE PAGE LIMIT.
11 THE ONE THING THAT THE DEFENSE FOCUSES ON ON
12 VERDICT NUMBER 2 IS THIS CONCEPT OF OBJECTIVE
13 DISABILITY, AS I THINK YOU MIGHT SUMMARIZE IT.
14 OBJECTIVELY, THEY MUST DEMONSTRATE SHE HAD A
15 DISABILITY THAT RESULTED IN HER BEING DENIED SERVICES.
16 TWO THINGS ON THAT POINT: FIRST OF ALL, MOST
17 DISCRIMINATION CASES ARE PROVEN BY CIRCUMSTANTIAL
18 EVIDENCE.
19 IN THIS CASE, WE HAVE DIRECT EVIDENCE THROUGH
20 COUNTY ADMISSIONS THAT THEY DENIED SERVICES. WE HAVE
21 CITED THEM IN OUR PAPERS. JUST ON -- I'M JUST GOING TO
22 GIVE THE CATEGORIES, NOT ALL THE EVIDENCE -- THERE WAS
23 ADMISSION THAT SHE WAS FAMILY REUNIFICATION.
24 THERE WAS A RECOMMENDATION THAT SHE WAS DENIED
25 FAMILY REUNIFICATION SERVICES, WHICH, BY ITSELF, IS A
26 VIOLATION. THERE WAS THE LETTERS, WHICH THE COURT
27 DESCRIBED IN THE CASE AS ADMISSIONS, OR TREATED THE
28 LETTERS AS ADMISSIONS THAT WERE BOTH SENT TO MS. DUVAL

1 SAYING SHE WAS A VICTIM OF DISCRIMINATION.
2 AND, OF COURSE, LETTERS FROM
3 MS. MORGAN-NICHOLS TO THE STATE THAT THE COURT WAS VERY
4 INTERESTED IN AS FURTHER ADMISSION THAT THE DEPARTMENT
5 HAD ADOPTED THE DISCRIMINATION, AND HAD TRANSMITTED
6 INFORMATION TO THE STATE THAT THERE WAS DISCRIMINATION.
7 AND THEN, OF COURSE, THERE WAS THIS BUSINESS
8 ABOUT THE FINAL LETTER OF DETERMINATION, WHICH GIVES
9 RISE TO MS. DUVAL'S APPELLATE RIGHTS.
10 SO WHAT WE HAVE HERE IS THE COUNTY SAYING,
11 "WELL, WE DID SAY THESE BAD THINGS HAPPENED. AND THEN
12 WE TOOK THESE BAD THINGS BACK. AND WE WANT YOU, JUDGE,
13 TO SAY IT'S OKAY BECAUSE WE TOOK THEM BACK."
14 THE JURY CLEARLY VIEWED THE PLAINTIFF'S CASE
15 AND FOUND FOR THE PLAINTIFF. BUT HERE, THEY FAILED TO
16 EXPLAIN, WHICH IS THEIR BURDEN -- WHICH I WON'T
17 REPEAT -- WHY THE JURY WAS WRONG IN RELYING ON THESE
18 ADMISSIONS TO REACH THE CONCLUSIONS THAT MS. DUVAL WAS
19 THE VICTIM OF DISCRIMINATION.
20 THEY DIDN'T MENTION THEM AT ALL. THEY SIMPLY
21 SAID, "THERE'S NO EVIDENCE. WE DON'T MEET THE
22 SUFFICIENCY OF THE EVIDENCE." BUT THERE'S BEEN A
23 DEARTH OF INFORMATION ON THAT POINT.
24 NOW, ON THE OBJECTIVE ISSUE, LET ME DIRECT THE
25 COURT TO, I THINK, SOME CITES THAT WILL AUTHORITATIVELY
26 ANSWER THE QUESTION ABOUT OBJECTIVELY -- WHAT THIS
27 OBJECTIVE STANDARD THE DEFENSE IS ADVOCATING FOR AND
28 THE FACT IT DOES NOT EXIST.

1 WE USED YOUR CACI INSTRUCTIONS, YOUR HONOR,
2 WHEN WE WERE BACK IN THE JURY ROOM. I'VE GOT MY OWN
3 SET OF CACIS. I THINK THEY'RE A BIT OLDER. THERE IS A
4 2017 VERSION OF CACI ONLINE.
5 I'M GOING TO REFER TO A PAGE IN THAT ONLINE
6 INSTRUCTION FROM THAT JUDICIAL COUNCIL ON THE CACI
7 INSTRUCTIONS. AT PAGE 214, THEY'RE TALKING ABOUT CACI
8 VERDICT FORM 3060, WHICH IS THE UNRUH VERDICT FORM THAT
9 WE USED IN THIS CASE.
10 AND THEY CITE A USE NOTE OR A CASE. MAUREEN
11 K. V. TUSCHKA, 2013 215 CAL.APP.4TH 519. THE INTERNAL
12 CITE IS 529 THROUGH 530. AND I WILL SUMMARIZE FOR YOU,
13 OR READ IT DIRECTLY.
14 BUT WHAT THE CASE IS ABOUT IS A WOMAN WHO HAD
15 HIV. AND THE CASE THAT THEY USE HERE AS A USE NOTE FOR
16 THE ACTUAL CACI INSTRUCTION SAYS:
17 "EVEN IF SHE WAS ASYMPTOMATIC AND HAD
18 AIDS, WHEN THE ORGANIZATION TREATS HER
19 AS REGARDED" OR "REGARDED" QUOTE OR
20 "TREATED" QUOTE, "AS HAVING OR HAD ANY
21 PHYSICAL CONDITION THAT MAKES
22 ACHIEVEMENT OF A MAJOR LIFE ACTIVITY
23 DIFFICULT OR MAY DO SO IN THE FUTURE,
24 EVEN IF SHE'S OUTWARDLY ASYMPTOMATIC,
25 SHE'S PROTECTED BY THE UNRUH ACT."
26 THIS USE NOTE SAYS THIS SECTION CASTS EVEN A
27 "BROADER NET" TO PEOPLE WHO ARE -- THAT'S A DIRECT
28 QUOTE, "BROADER NET," -- TO PEOPLE WHO AREN'T EVEN

1 DISABLED BUT ARE TREATED AS IF THEY'RE DISABLED.
2 AND IN THE CASE, MS. DUVAL SATISFIED THAT WITH
3 THE EVIDENCE SHE'S OFFERED TO THE JURY. AND WE'VE
4 OFFERED THAT IN OUR PAPERS. SO I SIMPLY OFFER TO YOU
5 TO REFUTE THE IDEA THAT SHE MUST OBJECTIVELY
6 DEMONSTRATE THAT HER DISABILITY LIMITS A SUBSTANTIAL
7 LIFE ACTIVITY.
8 THE ISSUE HERE IS THAT SHE IS PERCEIVED AS
9 HAVING A DISABILITY BY THE ORGANIZATION, AND THUS THEY
10 TREAT HER IN A DISCRIMINATORY FASHION. OBJECTIVELY,
11 VERY OFTEN SUCH A PERSON COULD NEVER SHOW THEY HAVE
12 THIS DISABILITY BECAUSE THEY ARE ARGUING THEY WERE
13 REGARDED AS UNDER THE STANDARD.
14 SO THAT, I THINK, THEY'RE SETTING A BAR THAT
15 NO PLAINTIFF COULD SATISFY. WE PUT IT IN OUR PAPERS --
16 I'LL GIVE YOU A MORE DIRECT CITE -- 28CFR PART 35. THE
17 FEDERAL GOVERNMENT OFFERS THREE TESTS TO DEFINE
18 REGARDED AS. A, B, C. C IS THE REGARDED-AS TEST.
19 AND I BELIEVE I'VE ACCURATELY SUMMARIZED IT
20 FOR YOU. I DON'T WANT TO REPEAT IT. I OFFERED IT IN
21 CASE YOU WANT TO TRY TO FIND IT.
22 THANK YOU.
23 THE COURT: THANK YOU.
24 MS. NAGY, ANYTHING FURTHER?
25 MS. NAGY: NO. WE'VE ADDRESSED THE ROGER CASE
26 IN OUR PAPERS AND WON'T REPEAT THAT. I DON'T THINK
27 THAT THERE IS ANY MERIT TO THIS NEW REFERENCE TO
28 PAGE 214 OF THE CACI WITH RESPECT TO SOMEONE WHO HAS

1 HIV WHO ACTUALLY HAS HIV.
2 SO THAT WOULD BE THE DISTINGUISHING POINT
3 HERE. THEY'RE ARGUING THAT SOMEONE WHO DOESN'T HAVE
4 ANYTHING, AND DOESN'T SHOW ANY SIGNS OF HAVING
5 ANYTHING, WAS REGARDED AS HAVING SOMETHING. SO THIS IS
6 A HUGE DIFFERENCE.
7 OTHER THAN THAT, I BELIEVE WE'VE COVERED IT
8 ALL IN OUR PAPERS.
9 THE COURT: ALL RIGHT. THANK YOU. THE MATTER
10 IS SUBMITTED?
11 MR. MCMILLAN: THANK YOU, YOUR HONOR.
12 MR. DANER: THANK YOU, YOUR HONOR.
13 THE COURT: SO TWO THINGS. THE -- IN TERMS OF
14 TIMING, I'M WELL AWARE OF THE 60-DAY LIMITATION.
15 JUDGMENT WAS ENTERED. NOTICE GIVEN, AS I RECALL, ON
16 DECEMBER 13TH, WHICH MEANS THE 60 DAYS WOULD RUN ON
17 FEBRUARY 11TH.
18 FEBRUARY 11TH IS THIS COMING SATURDAY.
19 ACCORDING TO THE CODE OF CIVIL PROCEDURE, IF THE TIME
20 LIMITATION -- IT'S SPECIFICALLY UNDER 659 AND 660 OF
21 THE CCP -- FALLS ON A WEEKEND OR A HOLIDAY, THE LAST
22 DAY IS THE NEXT BUSINESS DAY.
23 IT HAPPENS THAT, IN THIS INSTANCE, MONDAY OF
24 NEXT WEEK, WHILE NOT A FEDERAL HOLIDAY, IS A STATE
25 HOLIDAY, WHICH MEANS THAT THE 60 DAYS WILL RUN NEXT
26 TUESDAY, A WEEK FROM TOMORROW.
27 I DO INTEND TO A HAVE A DECISION BEFORE THEN.
28 BUT I'M JUST CALLING IT TO YOUR ATTENTION. I'M WELL

1 AWARE OF THE TIME LIMITATION. IF YOU THINK I'M
2 INCORRECT ON WHEN THE TIME LIMITATION WOULD RUN, YOU'RE
3 WELCOME TO CORRECT ME.
4 THE OTHER THING I WONDERED, I HAVE A PARTIAL
5 TRANSCRIPT OF THE PROCEEDINGS ON OCTOBER 31ST. I WAS
6 WONDERING IF I COULD GET THE COMPLETE TRANSCRIPT OF
7 THAT DAY. AND IF I COULD, I'D LIKE TO GET IT BY NO
8 LATER THAN TOMORROW SO I HAVE...
9 THE REPORTER: I CAN GET IT TO YOU BEFORE I
10 LEAVE TODAY.
11 THE COURT: THAT WOULD BE -- THAT WOULD
12 SATISFY THAT.
13 SO THE MATTER IS SUBMITTED UNLESS THERE'S
14 SOMETHING ELSE. THANKS VERY MUCH.
15
16 (WHEREUPON, AT THE HOUR OF 9:47 A.M.,
17 THE PROCEEDINGS WERE ADJOURNED.)
18
19 ---OOO---
20
21 (END OF PROCEEDINGS)
22
23
24
25
26
27
28