

1 word referring, what I should have said  
2 is re-referring I guess.

3 Q. Because --

4 MR. FOCHT: Referring back.

5 A. Referring back.

6 BY MR. MAXWELL:

7 Q. Because you weren't the original  
8 referring physician?

9 A. Correct.

10 Q. True?

11 A. Correct.

12 Q. Which is what the statute  
13 requires, right?

14 A. That the consultant send the  
15 patient to the abortion doctor?

16 Q. Let's look at the statute again.  
17 What does the statute require there to  
18 your understanding, first paragraph.

19 A. My understanding is that he has  
20 to have a second opinion.

21 Q. It says documented referral,  
22 right?

23 A. Correct.

24 Q. So the physician is supposed to -  
25 - who does the abortion is supposed to

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000829

1 have a referral from some other  
2 physician?

3 MR. FOCHT: Well I object to the  
4 form of the question. That's  
5 argumentative. You've told him what  
6 your understanding is and he's trying to  
7 argue with you.

8 A. It seems like this is semantics.  
9 I don't understand the purpose.

10 BY MR. MAXWELL:

11 Q. Well I'm just trying to figure  
12 out why --

13 A. Why the word referring is in  
14 there.

15 Q. -- why you put the word referring  
16 in this letter?

17 A. Because that's what the attorney  
18 said to do, and it probably should have  
19 been looked at a little more closely. I  
20 should have said re-referring or  
21 referring back.

22 Q. Okay.

23 A. I'm sorry, and I will change  
24 that.

25 Q. Okay. Then the second sentence

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1 says the patient would suffer  
2 substantial and irreversible impairment  
3 of a major physical or mental function  
4 if she were forced to continue the  
5 pregnancy, and then that letter is  
6 signed by you, right?

7 A. Yes.

8 Q. Okay. What is it -- is there  
9 anything in this file that -- where you  
10 concluded that, to show what that --  
11 what supported that? What -- what  
12 irreversible impairment was present?

13 A. Well, like I said, all we're  
14 doing is making the best judgment that  
15 we can. If I suggest to someone that  
16 they have a quadruple bypass, I'm doing  
17 that based on my opinion that if they  
18 don't they'll have a heart attack or  
19 something at some point in the future.  
20 This is the same thing.

21 If a 14-year-old is forced to carry a  
22 pregnancy, drop out of school, take care  
23 of a baby when she's not even legally  
24 able to work, there is some presumption  
25 that in the long run that's going to

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1 have an adverse effect on all of her  
2 ability to function, so that would have  
3 been the primary focus of my interview  
4 would be on whether or not this 14-year-  
5 old was capable of becoming a  
6 functioning parent at her age or deal  
7 with the consequences of worrying about  
8 where her child was for the rest of her  
9 life, and that's based on my many years  
10 of experience in dealing with patients  
11 dealing with situations of unwanted  
12 pregnancy.

13 Q. Okay. What I'm asking is what  
14 irreversible impairment did you find?

15 MR. FOCHT: Object to the form of  
16 the question.

17 A. It is impossible to know what all  
18 that would be, but certainly at the  
19 point she was experiencing anxiety --  
20 extreme anxiety, and at her age it's  
21 very likely -- and I don't have my  
22 records -- it's very likely that  
23 understanding the consequences of her  
24 situation would have been beyond her  
25 means even so. It's very difficult to

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1 actually, you know, without seeing my  
2 notes. I don't really remember the  
3 details.

4 BY MR. MAXWELL:

5 Q. Okay. What did you diagnose her  
6 with?

7 A. Anxiety disorder, nonspecific.

8 Q. Not otherwise specified?

9 A. Right.

10 Q. And that's under DSM-IV 300.00?

11 A. Correct.

12 Q. That's the paragraph number under  
13 DSM-IV?

14 A. Correct.

15 Q. And you used the diagnostic tree  
16 to do that?

17 A. Right.

18 Q. Right. Is anxiety disorder  
19 irreversible?

20 A. Many times, yes.

21 Q. My question is is it  
22 irreversible?

23 MR. FOCHT: I object to the form  
24 of the question. It's been asked and  
25 answered. He just wants to -- he just

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1 want to argue with you. You've answered  
2 the question.

3 A. It's hard to say.

4 BY MR. MAXWELL:

5 Q. Many times.

6 A. It's hard to say.

7 Q. You said it was many times  
8 irreversible. Is it always  
9 irreversible?

10 A. Not 100 percent of the time, no.

11 Q. So -- so it's not something that  
12 you know you are going to have for the  
13 rest of your life once you obtain --  
14 once you have it to begin with?

15 A. Not 100 percent of the time, no.

16 Q. And what did -- you saw Doctor  
17 Tiller's -- or actually you did --  
18 what's a GAF report?

19 A. Global Assessment of Functioning.

20 Q. You did that in this case, right?

21 A. Uh-huh.

22 Q. Okay. And there's actually a  
23 two-page document that talks about that,  
24 right?

25 A. Out of order.

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1 Q. Right, it's out of order. This  
2 is the way the file was assembled?

3 A. Right.

4 Q. But the GAF report, would that  
5 have been done before or after the  
6 abortion?

7 A. Before.

8 Q. Before. And in the findings in  
9 the GAF report, could you -- could you  
10 tell any of the impairment that you  
11 found in the GAF report?

12 A. Well unfortunately the way it's  
13 printed out it doesn't actually say the  
14 things that are chosen by the person  
15 using it. It's automated. But  
16 basically I'm eliminating some of the  
17 things that would make your GAF score  
18 lower. So it doesn't actually  
19 specifically say -- what was the  
20 question?

21 Q. Well let's just -- let's just do  
22 it the easy way. What is in the second  
23 page of the GAF report of the second  
24 page is page 30-007. It lists -- on the  
25 last four items it says the GAF rating

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1 is not in the range of 31 to 40 because  
2 of the following criteria. And would  
3 you read those criteria into the record?

4 A. Those are all the things that  
5 it's ruled out.

6 Q. I know.

7 A. She's not having -- there is no  
8 significant impairment in communication,  
9 and that has to do with psychotic  
10 conditions.

11 Q. Right. So she has no significant  
12 communication -- or impairment in  
13 communication?

14 A. No symptoms of psychosis  
15 essentially.

16 Q. What's the second thing?

17 A. Delusions and hallucinations.

18 MR. FOCHT: Get your voice up  
19 please.

20 A. These are symptoms of psychosis.

21 BY MR. MAXWELL:

22 Q. Okay. And what's the third one  
23 say?

24 A. The patient is not presented with  
25 major impairment in areas such as work,

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000006



1 school or family relations. The next --  
2 this level of diagnosis, the 45 would  
3 mean the next thing is significant, so  
4 the next level down would mean that the  
5 patient had -- had presented with  
6 significant impairment in areas such as  
7 work or school or family relationships.  
8 It's not major, but it is significant.  
9 What this does is rule out the major and  
10 put it at the level of significant.

11 Q. So what you're saying here in  
12 these four little sections of this  
13 report is saying --

14 A. It's ruling out the more serious  
15 condition.

16 Q. She shows no significant  
17 impairment in communication.

18 A. Right.

19 Q. No significant impairment in --  
20 or as far as delusions or  
21 hallucinations, correct?

22 A. Yes.

23 Q. And that she has no impairment in  
24 her judgment, thinking or mood?

25 A. Correct.

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1 Q. And that she has no -- has not  
2 presented with major impairment in work,  
3 school, family, judgment, 'thinking or  
4 mood?

5 A. Correct, the next level down is  
6 significant. Hers -- in my opinion, the  
7 way that she had been functioning was  
8 more on the level of significant rather  
9 than major. And generally that has to  
10 do with the level of denial and  
11 dissociation of her experience which is  
12 generally higher in these younger  
13 patients.

14 Q. Okay.

15 A. So what I endeavored to do with  
16 this is to make it as accurate as  
17 possible. You know, it's possible that  
18 she could have had a worse level of  
19 functioning, but I make sure that the  
20 level that I enter is no worse than what  
21 they've actually experienced. In her  
22 case -- this is not -- it's not telling  
23 you what it isn't printing. What it  
24 isn't printing is that the person is  
25 having significant impairment, but not.

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1 major. In other words it's not  
2 disrupting three or more elements of her  
3 life on a daily regular basis.

4 Q. This is document -- is there any  
5 other documents in the file that you  
6 contain in your office other than these?

7 A. Probably.

8 Q. Probably. Okay. You diagnosed  
9 her with anxiety disorder not otherwise  
10 specified, right?

11 A. Correct.

12 Q. What did Doctor Tiller diagnose  
13 her with?

14 A. Adjustment disorder with mixed  
15 anxiety and depressed mood.

16 Q. Okay. Different DSM-IV  
17 diagnosis, true?

18 A. Uh-huh.

19 Q. Is adjustment disorder with mixed  
20 anxiety and depressive mood -- depressed  
21 mood an irreversible condition?

22 A. Once again it's hard to say. It  
23 depends on if the cause of the  
24 adjustment disorder is -- is still  
25 present.

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1 Q. You mean if somebody has an  
2 adjustment disorder that means they're  
3 -- they're having trouble adjusting to  
4 their current circumstances in their  
5 life?

6 A. Well say for example that you  
7 fall off a horse and break your neck and  
8 you're on ventilator. You know, if that  
9 condition isn't remediated, you're not  
10 going to be able to eventually get over  
11 it.

12 Q. I guess the question then becomes  
13 is everyone who -- everyone who is  
14 diagnosed with adjustment disorder with  
15 mixed anxiety and depressed mood going  
16 to have that condition for the rest of  
17 their lives?

18 A. Not everyone, no.

19 Q. So it's not irreversible?

20 MR. FOCHT: Excuse me, object to  
21 the form of the question. It may be  
22 irreversible in that person but not in  
23 everyone.

24 A. You can't know from that second  
25 whether or not it will be or not. It's

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000530

1 a judgement call.

2 BY MR. MAXWELL:

3 Q. Okay. Okay. So what we have  
4 here is you -- you don't -- we don't  
5 necessarily have everything you based  
6 your opinion on, and we'll need your  
7 file?

8 A. Possibly.

9 Q. Okay. All right. This was a 14-  
10 year-old that you said earlier she was  
11 -- obviously a crime was committed on  
12 her, because as you pointed out sex with  
13 a 14-year-old no matter who does it is  
14 illegal, fair?

15 A. Right, although I'm not sure if  
16 the Romeo law had been overthrown by  
17 2003, the consensual sex between minors  
18 of only two years difference.

19 Q. That just makes it a lower level  
20 crime?

21 A. Right, right.

22 Q. But still a crime?

23 A. Right, technically, yes.

24 Q. Okay. So everybody -- anybody  
25 who had sex with this 14-year-old, it

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000841

1 was a crime. Did -- you're a doctor and  
2 you found -- you interviewed this child,  
3 right?

4 A. Uh-huh.

5 Q. Okay. And you recognize she was  
6 pregnant by somebody who committed a  
7 crime. Did you report it or do you have  
8 a documentation of a report to S.R.S.?

9 A. I make sure that it's been done.  
10 I just make sure somebody has done it,  
11 that it's been done. Generally these  
12 people come -- this one you can't tell,  
13 but generally they have police  
14 information on here see, no police  
15 report in this case, so -- but  
16 generally --

17 Q. Is there any documentation in the  
18 file that you can see that a report was  
19 made to law enforcement?

20 A. Here, number 30-044 I don't  
21 know --

22 THE REPORTER: I can't hear you.

23 A. Reported to Kansas Child  
24 Protective Services, S.R.S. with a  
25 telephone number, or forwarded to CPS in

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1 child's home state. There's a telephone  
2 number here. Spoke to Ray Ellen 7-25-03  
3 at 11:35 a.m. Report not accepted as  
4 there are not substantial grounds by New  
5 York State law.

6 BY MR. MAXWELL:

7 Q. Okay, that's what I wanted to  
8 know. And you would have made sure in  
9 every minor under 16 that you either did  
10 it or somebody had done it, true?

11 A. In general that's my practice. I  
12 -- I can't say that I -- there may be  
13 possibly some case when I didn't  
14 actually see that paperwork.

15 Q. All right. Did -- what was your  
16 understanding of your obligation of the  
17 law to report?

18 A. All physicians are mandatory  
19 reporters of any child abuse.

20 Q. What do you have -- what triggers  
21 a report by you?

22 A. Any unlawful abuse of a minor.

23 Q. Which is defined as if a minor is  
24 pregnant?

25 A. That's physical abuse, mental

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1 abuse, abandonment.

2 Q. Would it be fair to say that if a  
3 minor shows up in front of you under 16  
4 and she's pregnant, there has been some  
5 sexual contact?

6 A. Apparently there's been some  
7 illegal intercourse, right.

8 Q. Okay. So you would have to  
9 report that?

10 A. Correct.

11 Q. Okay.

12 MR. MAXWELL: Let's go off the  
13 record a minute. Jack, can I talk to  
14 you for a minute.

15 (THEREUPON, a discussion was had  
16 off the record.)

17 BY MR. MAXWELL:

18 Q. Back on the record. Ms. Neuhaus,  
19 you would have a file in every one of  
20 these cases, right. And I've got 60  
21 files sitting over here. These all  
22 occurred in 2003. You would have a file  
23 because under the law you're required to  
24 keep the files for five years.

25 A. Right. That's right, uh-huh.

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1 Q. It's still within five years, so  
2 you still have them, is that fair?

3 A. Uh-huh.

4 Q. Somewhere in your basement?

5 A. Correct, in my office.

6 Q. We're going to have to subpoena  
7 these files to reset your inquisition.  
8 That's what I just talked to your  
9 attorney about because we need to --  
10 obviously it's -- it's based on your  
11 testimony today, you need to be able to  
12 see your own file to see what you  
13 concluded in order so that we can talk  
14 about that because you may have  
15 documents that aren't contained in here,  
16 okay.

17 Now obviously here is the way it  
18 works. We don't necessarily need to see  
19 your files. But you need to be able to  
20 sit on the other side of the table from  
21 me and be able to refer to your file.

22 What I don't want to happen is I'm  
23 not going to -- these files were a legal  
24 battle for two years. We have no desire  
25 to see the identities of any of these

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1 people. So I'm not going to necessarily  
2 subpoena your files to produce them to  
3 me, but I am going to subpoena you again  
4 back to an inquisition to bring your  
5 files with you so that you can sit on  
6 the other side of the table and when I  
7 pull out a file you can look at it and  
8 be able to testify about it; do you see  
9 what I am saying.

10 A. Uh-huh.

11 Q. Is that -- does that sound  
12 reasonable?

13 MR. FOCHT: Well, what I --  
14 counsel, I understand what you say, but  
15 the minute you want to look at anything  
16 she brings with you it would produce the  
17 same kind of problem you just indicated.

18 MR. MAXWELL: Right, but what we  
19 can do, Jack, is this; is if that  
20 becomes an issue during the review, what  
21 you can do is just redact right at the  
22 point -- right at that point and make a  
23 copy and redact it yourself so that  
24 you're comfortable that it's not  
25 identified.

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1 MR. FOCHT: I would much prefer  
2 that the Court review anything that's  
3 being done.

4 MR. MAXWELL: True, but I don't  
5 anticipate that we're going to be that  
6 big of an issue. What I just want to  
7 make sure of is that she -- that she  
8 designates what she's got and that we --  
9 that she gives her opinion without  
10 saying well; I don't know what else I  
11 have here so that we -- so that we know  
12 where we're at.

13 MR. FOCHT: Just so it's clear,  
14 what I'm saying, if you want to see any  
15 piece of paper she brings with her, at  
16 that point I think it's necessary for us  
17 to stop the deposition or not deposition  
18 -- inquisition, statement, and have some  
19 sort of hearing about that. If she is  
20 only referring to it to answer your  
21 questions and you don't want to look at  
22 it or anybody associated with you,  
23 that's a different matter.

24 MR. MAXWELL: Right, that's what  
25 I want to start out with, okay. I want

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1 to start out that way so we can make  
2 this as quickly as possible so we don't  
3 have to -- to, you know, have a long  
4 protracted where the Court has to review  
5 them and everything. Because it just  
6 doesn't seem to me to be irrelevant.  
7 But it seems to me that we need to go  
8 far enough that we need to be able to --  
9 she needs to have her files so that she  
10 can understand what she's doing and what  
11 -- you got files for 2003. How many do  
12 you suppose there are?

13 THE WITNESS: 150 maybe.

14 MR. MAXWELL: Okay. We probably  
15 don't have -- we don't near -- have near  
16 150 files. What we have is about 60.  
17 So we have 60 out of that 150.

18 MR. FOCHT: Could you give her  
19 the names of the people that she ought  
20 to be looking for.

21 MR. MAXWELL: We don't have the  
22 names. That's the problem. Here's the  
23 -- here's the way we -- and that's why  
24 I'm not -- and that's why this has to  
25 first happen this way. What I suggest

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1 we do is -- is she can either do it one  
2 of two ways. Tiller knows the names.

3 MR. FOCHT: Of what he furnished  
4 to you?

5 MR. MAXWELL: Oh, yeah,  
6 absolutely. So she can either contact  
7 Tiller or his attorney or you can  
8 contact his attorneys and -- and  
9 facilitate those files that she needs to  
10 bring or we'll just have to have her  
11 bring them all in 2003 and then you'll  
12 have to match them up as we're talking  
13 about them.

14 THE WITNESS: How would I be able  
15 to do that?

16 MR. MAXWELL: Well you -- I think  
17 you -- it's got patient identification  
18 numbers.

19 THE WITNESS: Dates and stuff.

20 MR. MAXWELL: It's got -- it's  
21 got enough identifying information here.

22 THE WITNESS: Well we can go by  
23 the dates.

24 MR. FOCHT: Go by the what?

25 THE WITNESS: The dates.

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000849

1 MR. MAXWELL: The dates. There  
2 is not more than usually one a day.

3 MR. FOCHT: Can you provide us a  
4 list of dates, that would help.

5 MR. MAXWELL: No, because what  
6 they did was -- I wish I could, but what  
7 they did was they blacked out the --

8 THE WITNESS: They've got a  
9 month.

10 MR. MAXWELL: They've got a month  
11 and a year, but the date has been  
12 blacked out.

13 MR. FOCHT: We know it's 2003.

14 MR. MAXWELL: Right. So what --  
15 the best -- easiest way would be for you  
16 -- I mean you guys are all doctor -- you  
17 guys are doctors. You guys get the  
18 names -- the list of names from Tiller.  
19 You pull those names and bring them with  
20 you. But -- but if -- if they don't  
21 want to do it that way that's fine.  
22 Then we'll just have her bring them all  
23 and then we will try to match them up.

24 MR. FOCHT: Okay. You're --  
25 you're going to serve on me a subpoena

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1 duces tecum for her to bring the files  
2 unredacted and not produce them at this  
3 point.

4 MR. MAXWELL: Right. So that she  
5 can refresh her recollection or whatever  
6 you want to call it. And you're  
7 accepting the subpoena on the record?

8 MR. FOCHT: Is it okay with you  
9 if I accept the subpoena rather than  
10 make Mr. Williams wander out to the  
11 hinderlands again.

12 THE WITNESS: Yes.

13 MR. MAXWELL: And that's fine,  
14 that's fine.

15 MR. FOCHT: Let's talk about a  
16 date though. How long is it going to  
17 take you to get through and find all  
18 these things?

19 THE WITNESS: I don't know.

20 MR. FOCHT: First of all, let's  
21 assume that I can contact Mr. Tiller's  
22 lawyers and get a list of the names.  
23 Would that be what you'd want?

24 THE WITNESS: That would be  
25 easier than -- well I guess.

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1 MR. FOCHT: Of what they produced  
2 to you, is that it?

3 MR. MAXWELL: Well they have it  
4 obviously. Right, I mean I don't have  
5 the names.

6 MR. FOCHT: Would they be in  
7 violation of some court order if they do  
8 that?

9 MR. MAXWELL: Not giving you the  
10 names in order for you to facilitate.

11 MR. FOCHT: I don't want to put  
12 anybody in violation of any seal.

13 THE WITNESS: Can we decide that  
14 later? There is no guarantee that he's  
15 going to agree to do that.

16 MR. FOCHT: I know. I know.

17 MR. MAXWELL: But there is still  
18 a finite number of files and we can get  
19 through them. It will just take us  
20 longer.

21 THE WITNESS: They're in a box.

22 MR. MAXWELL: Right, it's just  
23 take us longer to -- to do them without  
24 the names. That's the only reason.

25 THE WITNESS: Right, right.

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1 MR. MAXWELL: You know, I'm  
2 thinking, you know, maybe next week.

3 MR. FOCHT: We're not going to be  
4 able to do it early next week. Let me  
5 see, no that's this week. I'm almost  
6 out of pocket until the 18th and then  
7 I'm free.

8 MR. MAXWELL: Let's do it the  
9 18th.

10 MR. FOCHT: No, after the 18th.  
11 I've got a summary judgment motion due  
12 on the 18th.

13 MR. MAXWELL: Let's do it the  
14 19th.

15 MR. FOCHT: Does that work for  
16 you?

17 THE WITNESS: What day of the  
18 week is that?

19 MR. FOCHT: That's a Tuesday.

20 THE WITNESS: That's not a good  
21 day for me.

22 MR. FOCHT: Okay. How about  
23 Wednesday then?

24 THE WITNESS: That would be okay.

25 MR. FOCHT: Wednesday the 20th?

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1 MR. MAXWELL: 20th is fine.

2 MR. FOCHT: Could you make it a  
3 little later here?

4 MR. MAXWELL: 10 o'clock?

5 MR. FOCHT: 10 o'clock okay? And  
6 I will be in correspondence with you  
7 about trying to -- trying to get the  
8 records. If there is some hang up or  
9 there's something we can see if we can  
10 work that out.

11 MR. MAXWELL: Well, and -- and I  
12 can -- you also have to understand that  
13 the Court we need to -- Jack and I need  
14 -- your attorney and I need to get the  
15 Court on the line, which we can do,  
16 because he ordered the subpoena not to  
17 be revealed to anybody. You read that  
18 language on the subpoena.

19 So what we need to do is get the  
20 Court's permission or your attorney to  
21 contact the Tiller's attorneys to see if  
22 they'll provide the names, and that's  
23 the easiest most simplest way to do  
24 this.

25 MR. FOCHT: And I haven't even

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1 thought about that.

2 MR. MAXWELL: That's right. But  
3 I mean we will -- at 10 o'clock on the  
4 20th. What we're going to do is we're  
5 going to provide the subpoena that will  
6 basically say that you're to bring the  
7 records with you but not produce them to  
8 us, so that you can, you know, you can  
9 refresh your recollection. So you know  
10 when I ask you questions --

11 MR. FOCHT: Why don't you just  
12 say what you really want to do in the  
13 subpoena, you know, and that will --  
14 that will work, won't it?

15 MR. MAXWELL: Right. I mean do  
16 you see what I'm saying?

17 THE WITNESS: Why don't you just  
18 write it down --

19 MR. MAXWELL: Right.

20 THE WITNESS: -- the language,  
21 then I don't have to produce it. I just  
22 refer to it.

23 MR. MAXWELL: Right. That's kind  
24 of what we're talking about.

25 THE WITNESS: Okay.

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1 MR. FOCHT: And if I can -- we  
2 can get permission from the Court for me  
3 to talk to those guys that will  
4 certainly make the job easier. Whether  
5 they will or not.

6 MR. MAXWELL: Whether they will.

7 MR. FOCHT: Well I understand  
8 they've got to represent their client.

9 MR. MAXWELL: Let -- let me --  
10 Jack, we can close the record for right  
11 now. Would you be available on that day  
12 so we can reconvene?

13 THE WITNESS: Sure.

14 MR. MAXWELL: The 20th at 10  
15 o'clock? We'll give your attorney the  
16 subpoena if that's okay with you.

17 THE WITNESS: That's fine.

18 (THEREUPON, the inquisition was  
19 adjourned at 11:15 a.m.)  
20  
21  
22  
23  
24  
25

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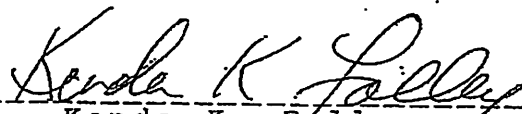
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COUNTY OF SHAWNEE

I, Kenda K. Falley, a Certified Shorthand Reporter, commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A. 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this  
11th day of December, 2006.

  
Kenda K. Falley  
C.S.R. - No. 1003

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