

1 SUPREME COURT STATE OF NEW YORK

2 COUNTY OF WESTCHESTER: MATRIMONIAL PART
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3 ALLAN KASSENOFF,

4 Plaintiff,

5 -against- Index No.
58217/18

6 CATHERINE KASSENOFF,

7 Defendant.

-----X

8 BENCH TRIAL:

9 County Courthouse
111 Dr. Martin Luther King Blvd.
10 White Plains, N.Y. 10601
11 July 17, 2020

12 B E F O R E:

13 HON. NANCY QUINN KOBA,
14 Justice

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24

25 MICHAEL A. DeMASI, Jr.
Senior Court Reporter

1 THE COURT: Okay. So on the record.

2 Ms. Spielberg, you can call your witness.

3 MS. SPIELBERG: Okay. Judge, my client has some
4 housekeeping issues.

5 THE DEFENDANT: Your Honor, just a couple of
6 housekeep issues if I may: As the Court is aware, I have
7 not had access to my home since March 25th. I have made
8 numerous attempts to coordinate with the plaintiff to try to
9 find a time that's suitable.

10 I desperately need clothing. I'm wearing the same
11 clothes, the same shoes every single day. It's come to a
12 point where it's just incredibly difficult for me. I can't
13 keep going out and buying things. I've been thwarted in
14 every single effort I make. Either I'm told an hour before
15 the scheduled time that, you know, that's convenient, and by
16 then, the person who's trying to help me is no longer
17 available or I'm told that the times never work, and I
18 fortunately was able to get the Larchmont Police Department
19 to be available Saturday morning before noon.

20 I emailed Mr. Dimopoulos last night. I asked for
21 an immediate response so that this can get set up finally
22 and I'm still waiting to hear from him. I mean, I need to
23 nail this down.

24 THE COURT: Well, that's okay. I believe I said
25 the other day, when you get a time from the Larchmont Police

1 Department when they're available to go to the house then
2 that's when they're going, Ms. Kassenoff.

3 MR. DIMOPOULOS: Your Honor, that's fine. My
4 client will make arrangements, but to email me at, you know,
5 the day before when we're in the middle of trial and expect
6 me to coordinate, up until yesterday she didn't acknowledge
7 she needed a police officer.

8 So now that we have that covered, my client doesn't
9 have child care to get the kids out of the house on the
10 weekends, so that's why we asked for a weekday. So he will
11 figure out a way to get the children out of there -- at what
12 time, 11:00 a.m.?

13 THE DEFENDANT: That's fine.

14 MR. DIMOPOULOS: My client -- remember, your Honor,
15 we said, what are you going to get. If there's a clear list
16 of the clothing --

17 THE DEFENDANT: Your Honor, we generated the list.
18 We sent you toilet trees, we sent you clothing. We told you
19 this is what I need.

20 MR. DIMOPOULOS: I don't remember getting a list,
21 but that may be true.

22 THE DEFENDANT: This is getting to a point --

23 THE COURT: It's very simple: E-mail the list to
24 my clerk, we'll print it out and we'll have it here in
25 court.

1 MR. DIMOPOULOS: That's fine.

2 MS. SPIELBERG: Thank you, Judge.

3 THE DEFENDANT: So are we good for 11:00 a.m.? May
4 I represent to the Larchmont P.D. that 11:00 a.m. works on
5 Saturday?

6 MS. SPIELBERG: Judge, I just want to say that to
7 the extent that I'm involved in these conversations that are
8 being misconstrued, we obviously --

9 THE COURT: I understand. I remember the record
10 from two days ago.

11 MS. SPIELBERG: No. I just want to say that we
12 acknowledge the police were necessary. I tried to forward
13 it wight months before. He said she only acknowledged it
14 yesterday. Obviously, last week when I was trying to
15 coordinate with the police I was acknowledging that the
16 police had to be there.

17 THE COURT: Okay. Great. Since that conversation
18 happened in front of me, I would call it. We don't have to
19 keep reiterating everything. So, just so the record is
20 clear, Mr. Kassenoff, 11:00 a.m. on Saturday morning, she
21 will be there with the Larchmont Police Department.

22 MR. KASSENOFF: Your Honor, my nanny does not work
23 on the weekends. I can ask her as a courtesy to watch the
24 kids. She told me already she's going away this weekend.
25 She has her granddaughter's something or other in

1 Pennsylvania. So the choices are either: I will not be
2 there or the kids will be there. I've been advised by Mr.
3 Dimopoulos that either of those are acceptable.

4 THE COURT: The children can't be there.

5 MR. DIMOPOULOS: The children aren't going to be
6 there. Your Honor, I'm sorry, but I'm not -- I'm going to
7 urge your Honor not to allow Mrs. Kassenoff in the house
8 without both the police and Mr. Kassenoff.

9 It is going to devolve into a debacle. I believe
10 things will taken or tried to be taken. The only thing I
11 can think of is if there is a clear list ordered by this
12 Court that the police can have and that's all she's allowed
13 to take, then I think we get past that risk.

14 THE COURT: Absolutely. That's what I always do in
15 the order. So send the list to Maria. We'll print it out
16 and do it right here in court.

17 THE DEFENDANT: Judge, my inability to present like
18 specific items of clothing is that I haven't been there long
19 enough to remember exactly what's what and what exactly I
20 need.

21 THE COURT: Listen, I've issued many TOPs in my
22 time as a judge in the town court. Okay. You list
23 generally, right, female clothing.

24 THE DEFENDANT: Right.

25 THE COURT: Your clothing, your toilet tress.

1 THE DEFENDANT: I did.

2 THE COURT: You can't go in there and take
3 computers or jewelry or any other. So it's going to have a
4 list like that, I think we can distinguish it between your
5 clothing and Mr. Kassenoff's clothing. So it's a broad
6 category on your clothing.

7 THE DEFENDANT: Okay. Thank you.

8 THE COURT: It's like when people try to go in and
9 take out TVs and recorders and jewelry and personal papers
10 and you can get in trouble and it's why we have lists.

11 So e-mail your list to Maria Baratta. She'll print
12 it out during the trial and we'll have it signed before you
13 leave today.

14 THE DEFENDANT: I just have one other issue if I
15 may.

16 THE COURT: Absolutely.

17 THE DEFENDANT: As the Court is aware, I was
18 intending to move into my other home that the tenant was
19 suppose to vacate in July. I discovered, of course, that
20 Mr. Kassenoff entered some sort of side agreement with the
21 tenant in which she's now staying until July the 1st. I
22 accept that --

23 MS. SPIELBERG: August.

24 THE DEFENDANT: August the 1st, excuse me. That
25 was done without my consent. I'd asked that the plaintiff

1 make a representation to this Court that there's no
2 additional lease beyond August 1st so that I can arrange for
3 utilities, I can arrange to move my stuff into that house.
4 And I'm not going to be phased with a tenant who says, I'm
5 sorry, but I have another lease. Sorry, Catherine, you
6 can't move into your home.

7 So can you ask the plaintiff to confirm on the
8 record --

9 THE COURT: You seem to be missing something here
10 what I said multiple times on Zoom. Neither of you, or Mr.
11 Kassenoff, can remove this woman from the house under the
12 current state of the law. Okay. Governor Cuomo has put a
13 stay on all evictions.

14 THE DEFENDANT: Understood, Judge. What I'm saying
15 is, I just want to have a representation that he has not
16 entered into a new lease starting August the 1st. In other
17 words, I understand that she's suppose to vacate under the
18 current lease, but if she doesn't she, you know, pursuant to
19 the executive order, that may happen. You're right. But I
20 just want a representation that there's not a new lease in
21 place.

22 THE COURT: Mr. Kassenoff, have you entered into a
23 new lease agreement with the tenant?

24 MR. KASSENOFF: Your Honor, we've been over this 50
25 times.

1 THE COURT: Just a yes or no.

2 MR. KASSENOFF: No, I have not.

3 THE COURT: Thank you.

4 THE DEFENDANT: Thank you, Judge.

5 MR. KASSENOFF: Can I just raise one point in
6 response to that, your Honor?

7 THE COURT: Sure.

8 MR. KASSENOFF: Even after you instructed
9 Mrs. Kassenoff repeatedly to refrain from contacting the
10 tenant, the tenant still let's me know that Mrs. Kassenoff
11 is contacting her. I shared it with Mr. Dimopoulos. We
12 decided to let it go hoping that it would eventually stop,
13 but I think another instruction given this conversation
14 maybe warranted.

15 MR. DIMOPOULOS: It happened on the first day of
16 trial.

17 THE DEFENDANT: Judge, I was not aware that I was
18 not permitted to speak to my own tenant. I was told, and
19 this was a conference that I was not present for, that I
20 should not be overly zealous in trying to, you know, talk to
21 her about leaving. I sent her three text messages.

22 MR. DIMOPOULOS: Yeah. When are you leaving, when
23 are you leaving, when are you leaving.

24 THE DEFENDANT: Well, I wasn't getting a response
25 and I was suppose to move in. So it was three very harmless

1 text messages. Please can you let me know, give me the
2 courtesy of letting me know and we are now elevating this to
3 harassment like they do with everything that they say. And
4 I'm really getting kind of tired with it. I am an owner of
5 this home. I am permitted to speak to my tenant.

6 MR. KASSENOFF: Your Honor, you ordered her not to.
7 I mean, we all heard it.

8 THE COURT: Yeah. She wasn't on that video because
9 I had to leave, but her attorney was on the video and
10 there's a transcript of it.

11 MS. SPIELBERG: Judge, my understanding was not
12 that she wasn't entitled to communicate at all, but you said
13 not to be harassing. I mean, there's nothing wrong with --
14 they were friends prior to --

15 THE COURT: I remember that.

16 MS. SPIELBERG: If the order was no communication
17 whatsoever, then I missed that, Judge, and that's my fault.
18 I told her she's got to stop repeatedly texting. If she's
19 not responding to the text then she's not going to respond
20 to the text so stop texting about that, but if she -- they
21 had some other friendship or if she was writing about other
22 things, it was not my understanding from your directive,
23 Judge, that she was not entitled to communicate at all with
24 her.

25 THE COURT: No, I don't do that. It was basically,

1 you can't keep communicating with her about leaving the
2 house because you cannot take any legal action against
3 tenants at the present time.

4 MS. SPIELBERG: That's what I believe I
5 communicated.

6 THE COURT: My understanding is that order goes
7 until August 19th.

8 MR. DIMOPOULOS: Your Honor, but that's exactly
9 what happened.

10 THE COURT: And then I said, be nice, so that in
11 fact why would she actually leave on July 31st. Because you
12 have no remedy at this point.

13 THE DEFENDANT: I understand that.

14 MR. DIMOPOULOS: If you harass someone to leave or
15 pester them or whatever, leave, leave, leave, leave, leave,
16 and then you're told not to, and then afterwards in a semi
17 nice tone you say, when are you leaving three times, it goes
18 to the very nature of the communication. If she wants to
19 communicate with her about her art work or the, you know,
20 whatever, that's fine, but stop asking this woman when she's
21 leaving.

22 THE DEFENDANT: Judge, the other reason I was
23 asking is because she and I had come up with an agreement
24 where I was going to be in the house with her at the same
25 time, because we were, as I represented to the Court, we

1 were actually friendly. So not -- some of it wasn't even
2 about her leaving. Some of it was about her staying and me
3 staying at the same time with her and reducing her rent. So
4 there was a lot of discussions.

5 THE COURT: I'm going to make this very clear
6 Mrs. Kassenoff, you can communicate with the tenant on a
7 friendship level if that's what you have, hi, how are you,
8 what are you doing, et cetera. No discussion about when
9 she's leaving the house.

10 You should make arrangements, its if she's leaving
11 on July 32st, which is the what the time is now so you can
12 call ConEd, call whoever you need to call and all like that.
13 If in fact you find out on August 1st that she's still
14 there, then under the law, there's not much you can do until
15 they change it. Right now they're not even doing evictions
16 in the courts. The point is just -- I recognize that you're
17 anxious to move into a permanent place.

18 THE DEFENDANT: I really am.

19 THE COURT: I get that, but as difficult as it is,
20 sort of have to bring that in a little bit and understand
21 where we are at this particularly unique COVID-19 world.

22 So if you want to call and say, hi, how are you,
23 that's fine. No discussions about when she's leaving. Make
24 your plans as if she's leaving by July 31st and we'll go
25 from there.

1 THE DEFENDANT: Thank you. That's all I needed to
2 ask. And then just one last quick application: My mother
3 has been trying to reach the children by phone. And she's
4 being told -- when she calls the home it rings and rings and
5 rings, and apparently the line has actually been
6 disconnected. She's unable to talk to her grandchildren.
7 You know, I would just ask that the landline be restored so
8 that she is able to speak to them by phone. That's her
9 application, not mine.

10 THE COURT: Okay. I thought we installed a
11 landline in the house.

12 MR. KASSENOFF: Your Honor, if I may: Mrs.
13 Kassenoff's mother whenever she wants to talk to the kids
14 she texts me and says, can I speak to the kids.

15 Every single time I either respond absolutely.
16 More often than not I immediately FaceTime her with the
17 kids. I have no idea about this new plan where she's
18 calling the landline. I never heard of that. I can show
19 you a whole string of text messages from her mom to me
20 saying, can I speak to the kids.

21 So I don't understand this whole landline issue.
22 If her mother would like to speak to the kids, which I'm
23 more than willing to do, in fact I've been begging the
24 defendant to invite her mother, pre-divorce to come, but
25 that's a whole 'nother story. She should text me like she

1 always does and I will set up the call.

2 THE COURT: I think maybe she figured she can pick
3 up the phone and call her grandchildren.

4 MR. DIMOPOULOS: Your Honor, you have to remember
5 one thing: This is the same grandmother that got involved
6 with Charlotte's suicide and then facilitated her e-mail to
7 the school therapist, a contravention of the school order.

8 THE DEFENDANT: Excuse me, Mr. Dimopoulos.

9 MR. DIMOPOULOS: This is the same grandma.

10 THE DEFENDANT: Mr. Dimopoulos, she's the
11 grandmother --

12 MR. DIMOPOULOS: She can be whatever she wants. I
13 have evidence that I will deduce in her cross-examination
14 that during the period of June 1st to June 4th, during the
15 Charlotte suicide escapade, that this grandmother contacted
16 the child via e-mail to facilitate the child emailing the
17 school therapist in order to report the suicide, but not the
18 father. So this grandmother's hands are not clean and yet
19 my client continues, but he will not allow unsupervised
20 communication in light of the fact that four weeks ago she
21 got involved in the manipulation. That said, when she wants
22 to be a grandma and call and he's there, he'll allow it
23 whenever she wants.

24 THE DEFENDANT: Judge, if I may. Just a couple
25 things. First of all --

1 THE COURT: I thought I issued an order that
2 precluded the grandmother from speak to the grandchildren.

3 MR. DIMOPOULOS: That's right, your Honor.

4 THE DEFENDANT: I'm sorry, Judge, there's no
5 other --

6 MR. DIMOPOULOS: My client has parental discretion --

7 THE DEFENDANT: Judge, my mother was obviously very
8 concerned about her granddaughter. And I think it's
9 actually perfectly appropriate, even if that did happen, I'm
10 not sure it happened in the way he just described it, but to
11 tell her granddaughter, which came actually probably from me
12 saying maybe she needs to reach out to a therapist, for her
13 to reach out to her therapist. I don't understand why
14 that's at all problematic.

15 THE COURT: Here's the problem, and this is one of
16 the cruxes of the issues that are here: The thing that we
17 all can't get beyond is the note came on June 1st. Nobody
18 notified the primary custodial parent. I understand there
19 were other things that were done in the meantime and you
20 haven't testified. So there's no -- whatever, but I'm sure
21 that's where it comes from. Stop. Let them speak to the
22 grandma. Okay.

23 MS. SPIELBERG: Judge, my client will testify --

24 THE COURT: No. I assume she's going to testify.

25 MS. SPIELBERG: -- to all the allegations.

1 THE COURT: Okay. Any other housekeeping issues?

2 THE DEFENDANT: No thanks, Judge.

3 THE COURT: All right. Let's call your witness.

4 MS. SPIELBERG: I call Dr. David Pogge to the
5 stand.

6 THE COURT: Before he comes in, on the issue of the
7 CPS report, Ms. Spielberg, the Court's ruling is that the
8 CPS report is not coming into evidence. You can use it for
9 impeachment purposes, though.

10 (Whereupon, the witness enters the courtroom and takes the
11 witness stand.)

12 THE COURT: Do you swear or affirm to tell the
13 truth, the whole truth and nothing but the truth?

14 THE WITNESS: I do.

15 THE COURT: I'm just going to ask you, because we
16 have the air conditioner on and I will not shut that off, to
17 please keep your voices very loud because Ms. Most has
18 trouble hearing sometimes and I have trouble hearing
19 sometimes. Thank you. You may have a seat.

20 MS. MOST: Thank you, Judge.

21 MS. SPIELBERG: May I inquire, Judge?

22 THE COURT: Yes, you may.

23 DIRECT EXAMINATION

24 BY MS. SPIELBERG:

25 Q Good morning, Dr. Pogge.

1 A Good morning.

2 Q Can you tell the Court briefly his -- I know that your
3 résumé is I believe almost 40 pages long.

4 MR. DIMOPOULOS: Once again, Judge, I read the 40
5 page resume. I have no objection to certifying him as an
6 expert. We can save some time.

7 MS. SPIELBERG: I would like to elicit some of his
8 qualifications.

9 THE COURT: I didn't read the whole report as of
10 yet.

11 Q Could you tell the Court about your educational
12 background, please.

13 A I graduated from college in 1979, Creighton University
14 with a major in psychology. I was -- I attended graduate school
15 at The University of New Mexico from 1980 to 1986 where I
16 received a master's science degree and a doctorate in clinical
17 psychology, with minors in neuropsychology and learning memory
18 and cognition.

19 I did a two-year internship at The New York Hospital of
20 Cornell Medical Center in Manhattan and then a one-year post
21 doctoral fellowship the following year. In 1988 I joined the
22 staff of Four Winds Hospital where I've been director of
23 psychology for the last almost 32 years.

24 During that time my primary emphasis has been in
25 psychological assessment of various kinds and doing research on

1 psychological assessment of various kinds, training people in
2 psychological assessments of various kinds. I've also been on
3 the faculty of doctoral program in clinical psychology at
4 Fairleigh Dickinson University for the last 30 years. There my
5 primary teaching role has been in teaching clinical assessment,
6 psychological assessment to doctoral students.

7 Q You answered all my questions in that very long
8 response. Have you received honors or achievement awards?

9 A I am a fellow of the Society for Personality Assessment
10 and I'm a diplomate of the American Board of Assessment
11 Psychology.

12 Q Have you published articles?

13 A Over the last 30 years I have published I think close
14 to 50 articles in referee journals. The majority of that
15 research has involved assessment, psychopathology and
16 neuropsychology.

17 Q At Four Winds what is the clientele of your patients,
18 generally?

19 A The hospital is an inpatient psychiatric facility. We
20 treat patients down to age five and as old as elderly adults.
21 My primary role there is to run the psychological assessment
22 service. So we do psychological testing, evaluation of children
23 adolescents and adults as inpatients. In addition to that, we
24 do outpatient psychological assessment taking referrals from a
25 variety of places, including school districts, clinicians of

1 various kinds and the Department of Probation here in
2 Westchester County.

3 Q Have you been appointed as a neutral forensic expert in
4 court proceedings before?

5 A Yes, I have.

6 Q About how many times?

7 A Over the years I would estimate probably a hundred
8 times. I don't have the exact count.

9 Q And have you been hired as a peer reviewer for forensic
10 evaluation before?

11 A No. This is the first time I've been asked to do that.

12 Q And have you been hired a rebuttal expert in the past?

13 A I believe once I was asked to do that, yes.

14 Q Have you been qualified as an expert in matrimonial and
15 custody proceedings before?

16 A Yes, I have.

17 MS. SPIELBERG: At this time, Judge, I would offer
18 Dr. Pogge as a certified expert in forensic psychology.

19 THE COURT: Yes. He's accepted.

20 Q Who retained you in connection with this proceeding?

21 A You did.

22 Q Are you being paid for your time here today?

23 A Yes, I am.

24 Q Can you tell the Court how much.

25 A \$200 an hour.

1 Q And what were you tasked to do in this case?

2 A You asked me to review Dr. Abrams' report and to review
3 some of the materials that were available to support that
4 report. Particularly his interview notes and his psychological
5 test data. And you asked me to offer my evaluation of his
6 report.

7 Q Did you interview any parties or nonparties?

8 A No, I did not.

9 Q In addition to reviewing Dr. Abrams' file and his
10 report, what else did you review?

11 A I also looked at some brief video clips that you
12 provided me.

13 Q Did you prepare a report in connection with your
14 evaluation of Dr. Abrams' report?

15 A Yes, I did.

16 MS. SPIELBERG: At this time, Judge, I offer Dr.
17 Pogge's report into evidence as Defendant's Exhibit -- would
18 it be 7As at this point? I think it's A times seven because
19 I believe Dr. Cling was A times six.

20 THE COURT: I'm sorry, is it A?

21 MS. SPIELBERG: A times seven.

22 THE COURT: Any objection?

23 MR. DIMOPOULOS: Your Honor, I would just reserve
24 my cross-examination of the witness to explore what he did
25 and what he didn't do before I allow the report into

1 evidence. I just want to confirm what I already believe,
2 which is Dr. Pogge undertook this peer review precisely the
3 right way and having followed all ethical obligations,
4 however, I just want to delve into cross before. I do not
5 anticipate having an objection. Perhaps if she just asks a
6 few more questions about the sources of information, we can
7 do that now.

8 Q Dr. Pogge, you testified that you reviewed a few video
9 clips. Do you know who supplied those video clips to Dr.
10 Abrams?

11 A I don't know for sure that those video clips were
12 supplied to Dr. Abrams. They were given to me by you. You told
13 me that you obtained them from Mrs. Kassenoff. I would point
14 out that I did not view those until after I had written my
15 report. So they didn't in any way influence what I wrote in my
16 report.

17 MR. DIMOPOULOS: Your Honor, may I ask a few
18 questions?

19 THE COURT: You can voir dire him.

20 MS. SPIELBERG: That's fine.

21 THE COURT: Mr. Dimopoulos, you want to voir dire
22 him?

23 MR. DIMOPOULOS: Very briefly.

24 VOIR DIRE

25 BY MR. DIMOPOULOS:

1 Q Dr. Pogge, in undertaking this peer review, did you
2 review Dr. Abrams' notes?

3 A I attempted to review them. They were illegible.

4 MR. DIMOPOULOS: I agree.

5 Q Did you review -- well, let me ask you this: Did you
6 review anything other than the raw data, Dr. Abrams' raw data
7 provided to you by Ms. Spielberg, and whatever video clips her
8 office provided you; did you review anything else?

9 A No.

10 Q Okay. Did you speak with Mrs. Kassenoff?

11 A No, I did not.

12 MR. DIMOPOULOS: Okay. I have no objection.

13 THE COURT: Okay. That's in evidence as A times
14 seven.

15 MS. SPIELBERG: Thank you, Judge.

16 (Whereupon, Defendant's Exhibit AAAAAAA, previously marked for
17 identification, is received in evidence.)

18 Q Dr. Pogge, does this look familiar to you?

19 A Yes.

20 Q Okay. If you have a copy of your report, and if it's
21 easier for you to read it from the paper, then that's fine.
22 Whatever is better.

23 A Thank you. I do.

24 Q On the first page of your report you discuss that there
25 are four sources of data that can be used when developing a

1 psychological formula of a person.

2 Can you tell the Court what those four sources are.

3 A Well, the four kinds of information you have when you
4 conduct a psychological evaluation, including this kind of
5 psychological evaluation, are your observations of the person as
6 you interact with them.

7 For example, in this kind of an evaluation, you're
8 typically going to interview each of the parties several times.
9 And in doing that you get to observe how they speak, how they
10 present themselves, their fluctuation and emotions, their tone,
11 their choice of words. You get to observe their behavior and
12 that's a very important source of information, because it shapes
13 how you interpret everything else.

14 And so that behavioral observations as we refer to them
15 are the cornerstone of an evaluation. They're a critical part
16 of interview process. In addition to the direct observations,
17 you also have the history that a person provides.

18 Now, we use the term, history, because the person is
19 referring to what's happened in the past, but it's probably more
20 accurately characterized as the story they tell you. When you
21 talk to someone and ask them, you know, what's happened in your
22 life, how did you grow up, tell me about your marriage, things
23 like that, you don't get an exact rendering of what really
24 happened. You get their version of events that's influenced by
25 the situation and the agenda that they have. It's influenced by

1 the adequacy of their recollection and how they recorded things
2 at the time. It's influenced by the ways in which one's memory
3 naturally modifies information over times, and it's also
4 influenced by the person's agenda during the interview itself.

5 All those things influence what kind of story the
6 person tells you. And you can combine that with the quality of
7 their presentation to try and draw inferences about how they see
8 the world, how they see themselves, how they've experienced
9 important events in their lives, how they deal with those
10 events, how they see other important people in their life, their
11 children, their spouse, et cetera.

12 And from the combination of those two things you start
13 to develop a picture of the person. In addition to that in some
14 evaluations you have collateral information. That can be things
15 like the video clips records, e-mails from people, conversations
16 with other parties who have some contact with the individual
17 you're evaluating. Family members, therapists, in this case
18 nannies. People, you know, people at the school.

19 These are all collateral sources of information and
20 they are interesting as long as you remember what they are.
21 They're that person's opinion of what happened. They're that
22 person's recollection of what happened. And it's influenced by
23 all the same things that influence how the person you're
24 evaluating presents information.

25 So the collateral information can be very helpful, but

1 again, it's not in any way a precise rendering of what really
2 happened. It's just additional supplementary information.

3 And then if you're a psychologist doing this kind of an
4 evaluation, you also have the option to give psychometric tests.
5 Psychometric tests are standardized instruments that have been
6 validated to measure specific psychological attributes, things
7 like intellectual abilities, self-esteem, coping style, very
8 psychological constructs.

9 And there you're presenting a person with a structured
10 standardized tool that's always administered in the same way
11 that then generates a score and then you compare that score to
12 the appropriate normative sample to see where this person falls
13 on the given attribute in question. And then you use the
14 scientific knowledge about that attribute to make predictions
15 about this person's behavior to understand their psychological
16 makeup.

17 In the end, if you have those four sources of
18 information you can put them together to create a picture of the
19 person, a formulation of who they are, what they're like, how
20 they're likely to behave in the future in various situation and
21 that's essentially how any psychological evaluation is done.

22 Q And in your review of Dr. Abrams' report, is it your
23 understanding that he utilized all four types of data in
24 connection with his report?

25 A I'm sorry. Could you repeat the question.

1 Q In your review of Doctor Abrams' report, is it your
2 understanding that he used all four sources of data?

3 A Yes.

4 Q In rendering his report?

5 A Yes. It appears so.

6 Q In your report on page two, in the last full paragraph,
7 you write: Psychometric data representing candidate's actual
8 behavior under known conditions and standardized -- under known
9 and standardized conditions rather than someone else's
10 collective recollection or the interviewer's judgment,
11 concerning an interviewee's behavior during an interview, thus
12 psychometric tests are more reliable and better validated than
13 the other sources of information. What did you mean by that?

14 A What I meant by that is that psychometric data like the
15 observations you make during an interview actually occur there
16 in your office. They're not something you hear about
17 second-hand, they're something you actually observed. Unlike
18 the interview data, however, the psychometric tests are always
19 done the same way. They have the same rules, they present the
20 same stimuli to anybody taking that test.

21 As opposed to an interview where you never ask the same
22 questions twice. The direction of the interview flows, has a
23 natural flow to it that varies from instance to instance. And
24 the inferences you draw from the interview are based on your
25 personal judgment and experience.

1 With the psychometric tests, the inferences you draw
2 are based on these data, these behavioral samples that were
3 collected under standardized conditions and quantified and then
4 they're compared to norms to draw inferences about the person,
5 so they have the advantage of consistency across situations.

6 They have the advantage of allowing you to draw on the
7 scientific literature about the test to know what it is a given
8 score means about a person. And they tell you something about
9 the limitations of that score. For any test there has to be
10 data about that test in a manual and in other sources telling
11 you how reliable those scores are, how well validated they are.
12 If it's a specific prediction what their error rate is.

13 So unlike, for example, my interview which I have to
14 assume is imperfect, but nobody's ever gone through the trouble
15 to study scientifically and establish my validity and error
16 rate. With the psychometric test I know those things. So you
17 know more about the limits and imperfections of the test, you
18 know more about their strengths than you do about the other
19 sources of information.

20 Q You go on to say: However, they also have their
21 limitations. What did you mean by that?

22 A Well, they're limited in a number of ways. One
23 limitation of the test is they only measure what they measure.
24 So every test is designed to measure a few constructs and they
25 those tests don't tell you about the constructs they don't

1 measure. They tell you where a person falls on a given
2 attribute, but to actually understand their behavior, you have
3 to embed that with things like a given situation, the events
4 that led up to it, the context.

5 So while tests can tell me about the attributes of
6 people in a quantitative way that I understand, it's still up to
7 me to try and determine how those constructs that I got from the
8 tests fit with everything else I've learned. And I have to keep
9 in mind that there's many important things about a person that
10 are not based on psychological constructs. So they're good for
11 what they're good for.

12 Q In your review of Dr. Abrams' report, could you tell
13 how Doctor Abrams used the psychometric data in forming his
14 conclusion?

15 A Not really. One of the problems I have, and really the
16 primary problem I have with his report is I could not tell where
17 he was drawing his conclusions from. I assume and there are
18 some qualities to the statement he made that suggest they
19 probably came from the test data.

20 There are other statements he made that suggest that
21 his conclusions are being drawn based on other things, like his
22 observations, like the history he was told and things like that,
23 but he doesn't really lay out in his report in a way that I
24 could see a clear discussion of these are the following things
25 that I learned about this person from this source and this

1 source and this source and they then lead me to this
2 understanding of this person, and, therefore, this prediction
3 about their behavior.

4 It just seems as though that the many steps involved in
5 getting from all of those different kinds of data to the
6 conclusions and recommendations were not spilled out in the
7 report.

8 Q Typically, in the course of your teachings and in your
9 experience about evaluating people, is it your experience that
10 these reports should explain more fully how these conclusions
11 were arrived at?

12 A I believe it is better practice to do that. That's how
13 I train my students. I believe that since you're trying to
14 provide the Court with a psychological understanding of each of
15 the parties, and then make recommendations that flow and
16 predictions that's flow from that psychological formulation, it
17 works better, it equips the Court to better evaluate those
18 conclusions if they can see where your thinking came from and
19 how you assembled your thoughts about the person, your judgments
20 about the person that lead to your recommendations about the
21 person.

22 Ultimately, my understanding, when I used these kinds
23 of evaluations and I'm trying to provide the Court with input
24 that it can use in its decision making, and so the clearer I can
25 make my thinking, the better position the Court is in to decide

1 if they agree or disagree with me. If I just give them my
2 conclusions I'm sort of asking to take it on faith that I must
3 be right and I don't feel that that's as an effective way to
4 communicate.

5 Q Were you able to ascertain whether or not you agreed
6 with Dr. Abrams' findings?

7 A Not specifically, because, again, like I said, I could
8 not -- I couldn't extract from his notes the quality of the
9 observations. You know, the behavioral things that he saw in
10 the interviews. I was not able to differentiate when he
11 presented the history. I was not able to differentiate the
12 version of the history provided by Mrs. Kassenoff from the
13 version of the history providing by Mr. Kassenoff.

14 It's been my experience in these evaluations that the
15 two parties usually have a very different version of what's
16 happened, both in terms of raising the children and in terms of
17 their relationship with each other.

18 And it's in the difference, the comparing and the
19 contrasting of those two things that I get a lot of insights
20 into each of the parties. I couldn't tell in the history he
21 presented what was coming from who, what part of it he was
22 inferring, what part of it he was quoting directly. When he's
23 describing to the parties psychologically, I was never sure what
24 part of that was based on his test data, what part of that was
25 based on his qualitative observations, what part of that was

1 based on the history. It was largely unclear to me how he got
2 to his conclusions.

3 Q So because we don't know from the report how the
4 testing data factored in, did you endeavor to review the testing
5 data in order to provide the Court with the conclusions of the
6 data itself?

7 A Yes. Since that was the one part of the file that I
8 could read and I could make sense out of and starting with the
9 assumption that the tests were administered and scored
10 correctly, that's data that I can interpret. That's data I can
11 look at and see what's its meaning is. So I did focus on that
12 information.

13 Q Okay. So let's go to page four. You looked first at
14 Mrs. Kassenoff's data; is that correct?

15 A Yes.

16 Q And did you agree with Dr. Abrams' assessment of the IQ
17 test?

18 A Pardon me?

19 Q Did you agree with Dr. Abrams' assessment of the IQ
20 test?

21 A Yes. She's clearly an extremely intelligent
22 individual.

23 Q Can you tell the Court what the MMPI-2-RF is briefly.
24 I'm sure there's plenty you can say about it.

25 A It's a questionnaire measure that's designed to provide

1 information about a variety of different kinds of psychological
2 problems and symptoms. It also include scales that provide
3 information about how the person approached the test, whether
4 they responded consistently, whether they were obviously trying
5 to exaggerate or minimize things about themselves. And there
6 are a few scales in there that relate more to personality
7 constructs, but primarily it's a measure of different kinds of
8 psychopathology and psychological problems.

9 Q And in connection with that test -- withdrawn.

10 Do you recall whether Dr. Abrams diagnosed
11 Mrs. Kassenoff in any way?

12 A Dr. Abrams did offer a diagnosis of Mrs. Kassenoff. I
13 don't know which test or what information that diagnosis was
14 based on.

15 Q From -- as you go through these test results, I'm going
16 to ask you to refer back to the diagnoses that Dr. Abrams
17 arrives at.

18 Do you recall what his opinion was with respect to any
19 possible personality disorders of Mrs. Kassenoff?

20 A As I recall, he diagnosed Mrs. Kassenoff as having a
21 personality disorder.

22 Q And do the -- did the MMPI results support that
23 conclusion?

24 A No. There was no indication of any psychopathology in
25 the MMPI.

1 Q The next test that you looked at was the MCMI-IV, and
2 correct me if I'm referring to these wrong. Can you tell the
3 Court about this test.

4 A This is also a questionnaire measure. The test is
5 based on a personality theory by a psychologist named Theodore
6 Millon. It's a personality theory that is highly respected,
7 widely used.

8 It's a personality theory that posits that there are a
9 collection of normal personality traits. That if they're more
10 pronounced to be called personality styles and if they're
11 extreme they can be diagnosed as personality disorders.

12 So his test is primarily geared towards deciding what
13 outstanding personality traits a person may display and whether
14 or not they rise to the level of a diagnosable personality
15 disorder.

16 The test also includes scales to tell you how a person
17 approached the test, whether they approached it with a bias in
18 trying to make themselves look good or make themselves look bad,
19 and includes scales that are designed to detect specific
20 psychological symptoms; things like depression, anxiety,
21 symptoms, things like that.

22 Q And what conclusions did you come to with respect to
23 your review of this test data?

24 A Well, Mrs. Kassenoff's approach to the test was fairly
25 typical of the approach of people who are completing this test

1 in the context of custody a evaluation. It's, you know,
2 research has shown that when some people have to fill out a test
3 like this in a custody evaluation, they tend to elevate on the
4 desirability scale, because not surprisingly, they want to look
5 good.

6 Fortunately, the test is designed in a way that when a
7 person is presenting themselves with that kind of tilt in the
8 how they're talking about themselves, there are statistical
9 adjustments made to other scales to take that into account. So
10 there's an effort to get around that.

11 And her desirability scale elevation was not so high
12 that it invalidated the test, so those adjustments should have
13 worked. The personality disorder scales all require an
14 elevation of 85 or more for you to consider the person to have
15 an attribute that's sufficiently extreme that it would qualify
16 as a personality disorder. She didn't have any scales that
17 elevated to that level.

18 So based on that test alone, there's no support for
19 idea that she has a personality disorder. She did have some
20 significant elevations. She was elevated on the histrionic and
21 turbulent scales. She was elevated a level that suggested that
22 those are prominent features of her personality, but, again,
23 prominent personality features are a normal thing. Everybody
24 has them, but there's was no indication that they were so extreme
25 that they would constitute a personality disorder.

1 Q Now, in and of themselves, histrionic and turbulent
2 personality styles, in your experience, do these inhibit a
3 person to make sound decisions for their children?

4 A Not per se. I mean, your personality influences your
5 decision making, obviously. And so her decision making is going
6 to be colored by those personality traits, but they'd be colored
7 by any other personality traits she had, but they're certainly
8 by themselves not a sufficient basis for concluding that
9 somebody would necessarily do a poor job of parenting.

10 Q And is there a type of -- withdrawn.

11 People with histrionic personality traits, are those
12 common in certain types of people versus others; do you -- have
13 you in your experience correlated it with any types of
14 profession or?

15 A No, not necessarily. I mean, histrionic traits
16 generally describe -- if you describe a person as histrionic,
17 you're saying that they tend to be more emotional. They tend to
18 have a higher need for the attention of others. They tend to
19 have a high need for approval. So they tend to be drawn to
20 roles, both at work and in their personal life, that provide
21 those things. But you can find niches in almost any profession
22 for that kinds of a personality need.

23 In terms of turbulent -- the turbulent scale refers
24 more to a person that tends to have a lot of very complex
25 emotional responses to things and is a highly emotional

1 individual. So the simultaneous elevations of those two things
2 would suggest that Mrs. Kassenoff is the kind of person who
3 likes experiences that have a lot of emotional tone to them.
4 That she would probably prefer or be happier in relationships
5 and occupations that provided emotional stimulation.

6 But I would also note that she elevated on two other
7 scales, two sub-scales: One is the expressively disciplined
8 scale, which means that through her responses to this
9 questionnaire she described herself as someone who keeps a type
10 control of how she expresses her emotions. So the combination
11 of those things would suggest she's very emotional, but she
12 controls how she expresses that. And the reliable self-image
13 scale which suggests that she sees herself as somebody who is
14 highly reliable, predictable, dependable.

15 Q And the next test that you applied was the MIPS-R test.
16 Can you tell the Court about that test?

17 A That's another one of the Millon scales. It's based on
18 same theory, but while the MCMI is designed to detect clinically
19 abnormal presentations, it's designed to diagnose personality
20 disorder, the Millon inventory of personality styles, the MIPS,
21 is designed for non-clinical settings. It's designed for normal
22 people so that you can get -- in the same theory, you can get a
23 sense of what their personality was like.

24 Q And what did you find through your review of those
25 testing results?

1 A Well, based on the way she described herself on that
2 test, she seems to be somebody who's more motivated by the
3 pursuit of pleasure rather than the avoidance of pain. She's
4 somebody who finds primary reinforcement in her interactions
5 with others, the nurturing of others, the caring for others.
6 She described herself as someone who's more externally focussed
7 than internally focussed. She described herself as somebody
8 more pragmatic, less intuitive in nature. She described herself
9 as somebody who's more likely to stick with familiar tried and
10 true solutions to things rather than go in the direction of more
11 innovative kinds of things.

12 She described herself as somebody who tends to be more
13 cooperative and try to work things out rather than somebody who
14 tends to be more contentious and tries to get things by argument
15 and by resisting being told what to do.

16 Q Now, when you say, she described herself, can you tell
17 the Court, educate all of us maybe, on what the test actually
18 looks like.

19 A It's a booklet of brief declarative statements. You
20 know, I am X, and you answer by saying true or false for that as
21 a description of you. One of reasons that you use a test like
22 the MCMI, which has the same format with a clinical population,
23 is it's designed with scales to control for things like response
24 biases. The tendency to present yourself overly favorably or
25 overly negatively, because, obviously, you're asking the person

1 to describe themselves on a questionnaire. You're asking them
2 to agree or disagree with things about themselves. The
3 assumption with the MIPS is that you're giving it to normal
4 people who don't have any particular agenda in how they describe
5 themselves, so their self description is more likely to be an
6 accurate representation of how they really see themselves, and
7 since you're giving this to someone in the normal population,
8 you're assuming that they would be about as self aware as the
9 average adult.

10 Q Now, the last test that was given to Ms. Kassenoff was
11 the Rorschach test; is that correct?

12 A Rorschach.

13 Q Rorschach. Sorry. And what does that test look like?

14 A That's what we call a performance-based test. Rather
15 than having the person answer true or false to declarative
16 statements about themselves, we ask them to do something where
17 we know based on research, different kinds of performances
18 correlate with psychological qualities.

19 In the case of the Rorschach test what we do is we show
20 the person what we refer to as an inkblot, but it's basically a
21 design on a card and we ask them to tell us what this looks
22 like. And then after they've gone through all ten of these
23 cards, we go back to each of the responses and ask them to
24 explain what parts of the inkblot they were referring to, what
25 were the qualities of the inkblot that made it look that way to

1 them and then we go through all of that verbalization and we
2 code different aspects of their response.

3 You know, did they respond to areas of the inkblot most
4 people respond to or did they respond to areas that are less
5 frequently focussed on. Did they -- in their explanation of the
6 response what did they refer to; did they refer to the shape,
7 did they refer to the shading, did they refer to the color, and
8 so on.

9 We count up those different elements in their
10 verbalizations and those different elements have been found to
11 correlate with different personality traits. We look at the
12 person's frequency of those elements compared to the norms for
13 the appropriate reference group to see if this person has more
14 or less of whatever attribute that score correlates with.

15 Q What did you find upon reviewing her responses to these
16 tests?

17 A Well, one of the things that stood out the most in her
18 responses is she gave a higher than normal number of responses
19 that correlate with a very self-critical focus. She looks like
20 somebody who when she looks at herself tends to focus on what
21 she sees as her shortcomings and we -- and it looks like she's
22 somebody who because of that feels bad about herself a
23 significant amount of the time.

24 She looked like somebody who has considerable coping
25 resources. Somebody who can be subjected to a higher than

1 normal amount of psychological stress without becoming
2 overwhelmed, without starting to act in ways that are
3 disorganized or impulsive. And she looked like somebody who at
4 the time of the testing was nowhere near being overwhelmed by
5 psychological stressors.

6 In terms of her cognitive style, as it's reflected on
7 this test, it looks like she's somebody who scans very
8 carefully, tries to take in a lot of information, tries to pull
9 it together in complex ways. This is not uncommon in highly
10 intelligent people, especially people who work in intellectual
11 kinds of lines of work.

12 She does not look like somebody who tends to
13 misperceive things more frequently than most adults. The
14 pattern of her scores suggests that when she does misperceive
15 things that it's probably in highly emotional situations.

16 So you predict that her judgment might not be as good
17 when she's in a very highly emotionally charged situation than
18 when she's in a calmer, more familiar situation. She does not
19 look like she has any fundamental problem maintaining her grasp
20 on reality.

21 Q Would you say that going through a custody --
22 withdrawn.

23 Would you say that going through a divorce would be an
24 event that would result in a highly-emotionally charged time?

25 A Yes.

1 Q Did the test results show that her behavior is likely
2 to be different while going through a divorce as opposed to not?

3 A Well, based on her Rorschach what I would say is: To
4 the extent that what she's going through in the divorce or
5 elsewhere is for her extremely emotionally fraught, then she's
6 more likely to misperceive things. She's more likely to form
7 erroneous judgements than she would under other conditions.
8 That's not an extremely unusual quality. I mean, most people,
9 when they're extremely emotionally aroused are more likely to
10 exercise bad judgment.

11 Q Would the experience of going through cancer treatment
12 result in similar reactions to situations?

13 A It could. Again, you know, it's -- a lot of this has
14 to do with how the person experiences it. Different people
15 might experience the same objective stressor very differently,
16 but to the extent that she was experiencing some sort of medical
17 problem, some sort of threat to her, her marriage, a threat to
18 her relationship with her children, to the extent that any of
19 those things were experienced by her is intensely emotional,
20 extremely challenging, than she might be more likely to
21 experience some misperceptions or some lapses in judgment that
22 aren't characteristic of her in other times.

23 Q On page five, you say in your last paragraph with
24 respect to the testing data: Taken -- just up a little bit,
25 Roy, the last paragraph above Mr. Kassenoff: Taken together,

1 the psychological test data on Mrs. Kassenoff would appear
2 likely to be a valid reflection of her psychological function.

3 Do you still agree with that conclusion?

4 A Yes. Yes.

5 Q They do not suggest that she's likely to have suffered
6 from any diagnosable mental disorder at the time she was tested
7 nor do they suggest that she's likely to have had personality
8 problems sufficiently severe to warrant a personality diagnosis.

9 Do you continue to agree with your own opinion there?

10 A Yes.

11 Q Was there anything in the psychological test data to
12 suggest that her personality traits were severe or unusual?

13 A They weren't severe enough or unusual enough to warrant
14 a personality disorder diagnosis. Based on her psychological
15 testing, she clearly has some outstanding features in her
16 personality, some of which I would characterize as problematic.
17 And those probably had something to do with why her marriages
18 have broken up, why she's in this struggle now.

19 They will certainly influence her parenting and her
20 ability to cooperate with her spouse on co-parenting, but many
21 people -- everybody has a personality and that's going to
22 influence their parenting and their co-parenting. Some of the
23 issues she has are significant, but they aren't beyond the range
24 of personality issues you see in people who are raising their
25 children every day.

1 Q Did you also review the test data from Mr. Kassenoff?

2 A Yes, I did.

3 Q And did you review the test data for all four tests as
4 you did or I guess five that you did for Mrs. Kassenoff?

5 A Yes.

6 Q Did you agree with Dr. Abrams with respect to the test
7 data for Mr. Kassenoff's IQ?

8 A Yes. He's clearly an extremely intelligent individual.

9 Q And, the MMPI, did you agree with Dr. Abrams'
10 conclusions there?

11 A Well, I don't know exactly what Dr. Abrams' conclusions
12 were about the MMPI. Like I said before, in his report he
13 doesn't go through and spell out, I think this based on this, I
14 think this based on that. My review of the MMPI was that there
15 was no indication of any significant psychopathology.

16 Q In your review of the MCMI, you found -- what
17 conclusion did you come to with respect to Mr. Kassenoff through
18 that test data?

19 A He looked like he responded in an honest and forthright
20 manner. He did not elevate on any scales to the level that
21 would raise concerns about personality disorder. He did not
22 elevate on any of the scales that would suggest acute mental
23 disorder. He did elevate on scales that would suggest that he
24 tends to be somewhat more attention seeking than the average
25 person, somewhat more grandiose about himself than the average

1 person, somewhat more angry and hostile than the average person.
2 And that he sees himself as an unusually reliable individual.

3 Q And with respect to -- withdrawn.

4 Did you feel that Dr. Abrams' report reflected those
5 conclusions?

6 A I don't specifically recall him stating those
7 conclusions. I remember that in his report he made a point of
8 saying that Mrs. Kassenoff had unusually high self-esteem. He
9 referred to her as narcissistic. I didn't see any evidence of
10 that in her testing. There is evidence of that in Mr.
11 Kassenoff's MCMI.

12 Q In review of the MIPS test, what did you conclude from
13 that data?

14 A He described himself also as somebody who's more
15 motivated by pursuing reward than avoiding punishment. He
16 described him as somebody who is equally likely to deal with
17 things in a passive way or a more active and initiating way. He
18 indicated as well that he's highly motivated by being in a
19 position to nurture and care for others.

20 He also described himself as more focussed on the
21 external world than on his internal thoughts and ideas, and he
22 indicated as well that he prefers to stick with a familiar way
23 of doing things and be pragmatic in his approach to things. He
24 described himself as somebody who is very drawn to the
25 interpersonal world, is very confident and assertive, but is

1 very respectful of tradition and tends to approach interpersonal
2 relationships in a more forceful but cooperative fashion.

3 Again, this is his description of himself.

4 Q And with respect to the Rorschach test, what was your
5 conclusion?

6 A Well, the amount that you can draw from the Rorschach
7 test is affected by how much the person says in the course of
8 the test. Mr. Kassenoff gave a normal number of responses, but
9 he elaborated on them much less than Mrs. Kassenoff did on her
10 responses, much less than the average person does.

11 His approach was when you go back through the test the
12 second time and ask the person to explain their responses, he
13 said very little. This often happens when people are
14 uncomfortable taking this test. You know, it's when you fill
15 out a questionnaire you usually think you know what you're
16 saying about yourself. You may not, I mean, it may not work the
17 way you think it does, but at least you think you know what
18 you're saying about yourself.

19 When you're looking at the inkblots, you generally
20 don't know how this works and for somebody who is concerned
21 about what they're reviewing about themselves, what kind of
22 picture they're portraying themselves, this is more
23 disconcerting. Now, one thing you might do in that situation is
24 just refuse to take the test, but in this kind of situation that
25 would be so inappropriate that it's pretty rare.

1 What people who are uncomfortable with this test do
2 instead is they try and say as little as possible, and that
3 seems to be what Mr. Abrams' (sic) approach is. It wasn't so
4 extreme that it invalidated the test, but it did limit the
5 number of inferences that could be drawn about his personality
6 from the test. You know, the number of inferences you can draw
7 is dependent on how much verbalization you did during the course
8 of the test.

9 Q In the middle there you referred to Mr. Abrams. Did
10 you mean Mr. Kassenoff?

11 A Excuse me, Mr. Kassenoff, not Mr. Abrams. I don't know
12 what his Rorschach was.

13 Q What did the responses that Mr. Kassenoff did give tell
14 you about him?

15 A Well, they don't suggest that he has any difficulty
16 maintaining his grasp on reality. They do suggest that when he
17 looks at the world he tries to take in a lot of information and
18 put it together in a very complex, which is to be expected of
19 somebody who is highly intelligent and intellectual.

20 They also suggest that he tends to be very egocentric.
21 He tends to be very focussed on himself and to interpret things
22 in terms of himself much more than the average person. And his
23 test performance suggests that he's likely to be more
24 narcissistic than the average person's.

25 Now what I mean by that is he's likely to approach life

1 with sort of a bedrock belief that he's special, that he's
2 unique, that he's better than other people. And this is likely
3 to be a premise that colors how he approaches the world. It
4 isn't necessarily something that he says out loud to himself all
5 the time, but it's more the stance he's likely to adopt
6 psychologically towards the world, to feel special, unique,
7 above other people.

8 And because of his egocentricity, he's going to tend to
9 interpret things that happen around him more in terms of his
10 self-esteem and what they say about him than the average person.
11 His testing suggests that his actual level of insight about
12 himself is likely to be somewhat limited. It's likely to be
13 based more on the things he identifies with than any real
14 thoughtful introspection. And it did suggest that he may have
15 some reluctance to form attachments to other people.

16 Q Did his responses to this test inform you as to how he
17 might act in the context of his marriage?

18 A Well, I would expect all these personality traits to be
19 the part of how he behaves in his marriage. I mean, they
20 couldn't not be.

21 Q The second paragraph on the last -- the second sentence
22 in the last paragraph above, summary and conclusion, Mr.
23 Kassenoff's personality traits seem likely to contribute to the
24 difficulties in his marriage and they're likely to affect his
25 parenting and co-parenting.

1 Do you still agree with that conclusion?

2 A Yes.

3 Q In your experience, Dr. Pogge, in teaching people how
4 to perform these evaluations and assist the Court in so doing,
5 would you have expected these results to have appeared in Dr.
6 Abrams' report?

7 A Yes.

8 Q Could you determine prior, to reviewing the raw data,
9 what the -- what part of his opinion came from the testing and
10 what part came from other sources?

11 A No.

12 Q As a result of that -- withdrawn.

13 Were you able to determine what part of his opinions
14 and conclusions came from what he observed as opposed to what he
15 might have read in the tests?

16 A No.

17 Q When you teach your students about how to render a
18 report, do you suggest that they explain to the Court to aid the
19 trier of fact, what they specifically relied upon for their
20 most-prominent conclusions?

21 A Yes. I try to teach my students to make their
22 reasoning as clear and transparent for the Court as they can.
23 On the assumption that if their reasoning is sound and if their
24 data makes sense, then that will be more persuasive to the Court
25 and it will provide the Court with a better understanding of the

1 person about whom they're making a decision.

2 Q When Dr. Abrams testified the other day, he said that
3 in order to do that, he would have had to render a hundred-page
4 report and would only be able to do one of these examinations a
5 year.

6 Do you agree with that?

7 A No, I don't. I think that a lot of this has to do with
8 your skill at putting this stuff together and putting it into
9 words and writing about it. Certainly in these kinds of
10 evaluations, the reports do tend to be quite long, but the
11 notion that the report would have to be a hundred pages or more
12 and would take a year to do, I haven't found that in my
13 experience when I've done these evaluations.

14 Q In Dr. Abrams' report he addresses the collateral
15 sources that he relied upon. And the first one he addresses, he
16 inserts a declaration from one of the nannies of the family.

17 Do you recall that?

18 A Yes.

19 Q He says, just prior to it, the examiner always prefers
20 to have a two-way communication with a collateral contact
21 source. Due to current circumstances that was not possible.
22 Additionally, her email to this examiner spoke for itself and
23 this examiner had no reason to doubt the sincerity and honesty
24 of what she wrote. And then he attaches the e-mail.

25 In your practice, do you rely upon declarations from

1 people without being -- having a chance to talk to them?

2 A No.

3 Q Why not?

4 A Well, for the same reason that I don't take somebody's
5 report of their history as a factual record of their history.
6 Everybody has their agenda, everybody has a personality,
7 everybody has issues. Those things influence what they say. In
8 my job as a clinical psychologist, I need to try and evaluate
9 those things in order to figure out what their actual
10 significance and value of somebody's collateral report might be.
11 And I don't believe that you can take that simply from reading a
12 written document. I think you have to talk to the person.

13 Also there seemed to me in reading that to be a lot of
14 things I would have liked to ask more questions about and not
15 having had a chance to talk to the person and ask those
16 questions, I would then be reluctant to rely too heavily on that
17 information, because I would feel like I'm not in a position to
18 really evaluate its quality.

19 While Dr. Abrams is willing to trust the sincerity and
20 honesty of the person, I've sort of been trained as a
21 psychologist to never trust anybody's honesty and sincerity. To
22 really feel like you got to meet people and talk to them to get
23 to the bottom of things.

24 And so while I found that document very interesting and
25 compelling, I, like a lot of things in this evaluation, I wasn't

1 sure what weight to give it.

2 Q And how do you determine who to contact on a collateral
3 list?

4 A When I do these evaluations I make that determination
5 on the basis of what I think they have to offer me that I'm not
6 getting from talking to the parties themselves. And I balance
7 that against the fact that I have to make an informed judgment
8 about the input from the collaterals.

9 And so at some point you almost have to put in as much
10 time with a collateral source of information to figure out what
11 their information really means and what weight to give it as
12 you're putting it in and talking to the parties themselves. And
13 that isn't always, in my opinion, cost-effective.

14 Most people seem to be quite adept of coming up with a
15 stack of people who will say nice things about them and bad
16 things about the other party. And, you know, at some point when
17 you're comparing the height of those stacks, it becomes kind of
18 meaningless in the mission of trying to understand what these
19 people are really like.

20 That's the psychologist's job. Is to tell the Court,
21 in my opinion, I think this is the kind of person you're dealing
22 with in these individuals and this is how it will effect them.
23 So you're not really investigating to uncover the truth about
24 what happened in the past. You're trying to understand the
25 person. Collaterals sometimes help with that, but more often

1 than not, they don't really.

2 Q And if you were to communicate with a collateral
3 source, how long do you typically spend talking to the
4 collateral source?

5 A It depends on what I'm trying to learn from them. If
6 I'm speaking to someone's therapist and my goal is simply to
7 find out if they've been showing up for their sessions and
8 participating, it could be a very brief conversation.

9 If I'm talk to a member of the extended family to try
10 and understand their perception of one of the parties or both of
11 the parties, that could be a very long conversation, because I'm
12 not just asking for simple facts. I'm trying to get at
13 opinions, impressions, and then evaluate the quality of those.
14 So that, like I said, can become very lengthy and has to be
15 weighed against the potential value.

16 Q And what about with respect to a conversation with a
17 nanny?

18 A It would depend on what I was trying get from them. If
19 I was trying to get from them, you know, how long they worked
20 for the people and whether they paid their bills and so forth,
21 it might be a very brief conversation.

22 If I was trying to get a description of the attitudes
23 and feelings each parent had towards each of the children, their
24 concept of parenting and how they implemented it and things like
25 that, that would be a much longer conversation. And part of

1 that would be because I have to understand the nanny's
2 perspective.

3 The nanny might have ideas about what's good parenting
4 that I don't necessarily agree with. And if she's simply
5 telling me this parent did a bad job, I might not think that
6 judgment is correct. So I need to get to the bottom of why
7 she's thinking those things and what it's based on. And that
8 can be a fairly lengthy conversation.

9 Q Dr. Abrams spoke with the therapist for the children
10 and he reiterates the context of the conversation in his report.

11 Would you be surprised to know that Dr. Adler gave her
12 opinion with respect to what she believed the custody agreement
13 -- custody arrangement should be after having only one meeting
14 with the mother?

15 A I would be -- I would be reluctant to place too much
16 weight on that kind of opinion if it was based on that brief a
17 contact, but that would depend in part what happened in that
18 contact. I mean, if the behavior that came out of that took
19 place during that contact was so outrageous that there was no
20 reasonable way to account for it, that might be enough basis to
21 be pushed to that kind of recommendation, but if it was more
22 conventional parental sort of behavior, then I might give much
23 less weight to the recommendation if it was based on just a
24 single content. You know, most people can keep up a good front
25 for 45 minutes.

1 Q She says that we can only assume that Dr. Abrams is
2 telling us that -- what Dr. Adler said from her one meeting with
3 Mrs. Kassenoff when she says, Dr. Adler stated that
4 Mrs. Kassenoff appeared to be anxious and depressed with what
5 was going on.

6 Do you think that that's a normal reaction from a
7 parent going through a divorce and a custody battle?

8 A Yes. It seems to be a pretty common reaction.

9 Q If a parent is making allegations of domestic violence,
10 or abuse or neglect by the other parent, would you think it
11 appropriate for the therapist to know what the context and
12 content of those allegations are?

13 A It would depend on what the therapist was trying to do.
14 It would depend on who the therapist was working with. It would
15 depend on whether those are past allegations or something that
16 might be going on right now. There's a lot of elements to that
17 determination. I mean, if I'm somebody's therapist, how far I
18 should go into discussing those issues.

19 Q Well, hypothetically, if there was a therapist treating
20 children, and one of the parents was making allegations of past
21 and ongoing maltreatment of the children, would you think that
22 it would be appropriate that that children's therapist have
23 access to that information?

24 MR. DIMOPOULOS: Your Honor, objection. We're
25 getting way beyond the report here. Asking hypotheticals

1 about other aspects of the case.

2 THE COURT: Sustained.

3 MS. SPIELBERG: Judge, Dr. Abrams reiterates
4 Dr. Adler's opinion. She's not going to be testifying, so
5 we can't cross-examine it. And I think that the basis for
6 Dr. Adler's opinion, which is then reiterated by Dr. Abrams,
7 none of which we can cross examine. I have the forensic
8 psychologist who's an expert. I think his expert opinion as
9 to whether this account and reiteration of Dr. Adler should
10 be credible, know and we have to tell -- know what that
11 therapist knew in rendering her opinion which Dr. Abrams not
12 only relies upon, but reiterates as his ultimate conclusion.

13 MR. DIMOPOULOS: I object to the motion to reargue.
14 Same objection.

15 THE COURT: It's sustained. Next question.

16 Q In your own practice and when you teach your students,
17 do you suggest that there be an even number of collaterals
18 contacted for one party or another?

19 A No.

20 Q How do you advise that the collateral sources be vetted
21 so as to ensure that people from supporting both parties are
22 respected?

23 A Well, as I said before, I place limited value on the
24 collaterals. And when I conduct one of these evaluations, I
25 only approach collateral parties when I think that there's some

1 specific information that they have to offer me that I can't get
2 any other way. So I tend to discourage contacting lots of
3 collateral parties. And I encourage people -- I follow the
4 practice and I encourage my students to follow the practice of
5 thinking through very carefully who you're going to talk to and
6 why before you go through the trouble to contact anybody.

7 Again, as I said before, a lot of that rests on the
8 fact that all of the same biases and agendas and human
9 imperfections and so forth that make it difficult to interpret
10 the statements of both parties when you're interviewing them,
11 apply to the statements of the collaterals when you're
12 interviewing them.

13 And so the more you're asking for information that
14 involves judgments and opinions and things outside of simple
15 objective facts, the more you're making it necessary that you
16 conduct almost as thorough an evaluation of each collateral as
17 you're conducting of the parties themselves. And at some point
18 it becomes an infinite regress.

19 Q If hypothetically the father gives the assistant
20 principal of the school and the mother gives the principal of
21 the school, if you were to contact, say the father's collateral
22 first and she gave a somewhat puzzling, regardless of what
23 response she gave you, would you think that it would be
24 appropriate to contact the parallel person that's on the
25 mother's list?

1 A If I thought there was any point at all in contacting
2 either of those parties, then I might feel that it was
3 worthwhile to contact both of them, but I might just as likely
4 decide that it isn't worthwhile contacting either of them.

5 And, again, you know, my approach to these kinds of
6 evaluations is not to try and see how many people will say good
7 things about one party and how many people will say good things
8 about the other party, or how many people will say bad things
9 and bad things, it's to try to come up with a psychological
10 formulation of each of the parties and the opinions, impressions
11 of collateral sources are not always of great value in doing
12 that.

13 Q Dr. Abrams in his report renders an opinion that
14 recommends sole legal custody to the father in this case. Can
15 you tell the Court what in Dr. Abrams' report leads you to
16 believe that that recommendation is appropriate?

17 A I didn't see anything in his report that made that
18 recommendation seem appropriate. When I got that recommendation
19 I was surprised. That doesn't mean that he doesn't have a
20 reason for it, but I didn't see it in the report.

21 Q Would you expect to see it in the report if it's taking
22 decision making away entirely from who he himself admits was the
23 primary caretaker of the children their whole lives?

24 A My belief when you do these kinds of evaluations is the
25 reason for all of your conclusions and all of your

1 recommendations should be laid out in your report so that the
2 Court can understand them. And if -- I would regard it as a
3 shortcoming of one of my evaluations if when somebody got to the
4 end and they were surprised at what I was saying.

5 Q Dr. Abrams opines with respect to which parent is more
6 likely to foster a relationship between the child and the other
7 parent. When asked about this conclusion, during his testimony,
8 Dr. Abrams said, well, I didn't see any evidence to support Mr.
9 Kassenoff not fostering a relationship between the children and
10 Mrs. Kassenoff.

11 In your experience, in your professional opinion, if
12 you have no information about that, is that something you would
13 have asked about?

14 A Yes. Normally in my evaluation in these kinds of
15 cases, I spend a considerable amount of time talking to each
16 party about their views about parenting, their views of their
17 spouse about parenting, their views of each of the child and
18 from those kinds of -- from the responses I get to those kinds
19 of things, I try to develop a concept of what this person -- how
20 this person is going to feel about having to collaborate with
21 this other parent, how this person is going to feel about these
22 children that are half the product of this other parent, and try
23 to make inferences about how they're going to foster or impede
24 the development of a relationship with the other parent based on
25 their view of the other parent as a parent.

1 People don't like each other when they're divorcing
2 each other, but they often can see that the other party has
3 value as a parent. And if they do, they can typically describe
4 that to you, often quite eloquently.

5 On the other hand, some parties will present to me that
6 they see absolutely no value in the other party as a parent.
7 They see them as evil to the core and destined to destroy the
8 children.

9 When I hear that sort of thing from a parent I assume
10 they're going to do a very poor job of collaborating with the
11 other parent and they're going to communicate to the children in
12 a variety of ways that they hold the other parent in very little
13 regard.

14 Q In your experience evaluating families during a custody
15 dispute, do you ever encounter a situation where the parenting
16 abilities of a parent are significantly improved just by
17 changing this -- changing the living situation where both
18 parties no longer live together?

19 MR. DIMOPOULOS: Objection. It's outside the
20 bounds of the report.

21 THE COURT: Also could you rephrase the question.
22 I'm going to allow the answer, but you need to rephrase.

23 Q When you evaluate families during custody disputes, in
24 your experience, do you see the ability to parent in a balanced
25 way improve once the parties and their acrimony are separated?

1 A I have seen cases where once the situation was resolved
2 and each party, you know, and there was a decision by the Court,
3 and each party was -- established their own home, that a lot of
4 the hostility and conflict diminished significantly.

5 You know, that's one of the issues that in these kinds
6 of evaluations you're always trying to figure out. How much of
7 this is the hostility that goes to the fact that these people
8 are now embroiled in a divorce and are clearly at a point where
9 they have very negative feelings about each other, how deep does
10 that go, how much is that going to stay with them once it's all
11 finally decided and they can move on.

12 And I have seen that there are times when once things
13 are finally decided and people can start to move forward, a lot
14 of the hostility starts to abate and people start to get on with
15 their lives.

16 Q How -- Dr. Abrams opines in his report that
17 Mrs. Kassenoff gaslights those around her.

18 Did you see -- could you tell from Dr. Abrams' report
19 why he came to that conclusion?

20 A No, I couldn't.

21 Q And, Dr. Abrams, in his recommendations, recommends
22 unsupervised weekends, but videotaping of daily phone calls.
23 What did you think of those conclusions together?

24 A I found that somewhat surprising.

25 Q Why?

1 A If he is so concerned about the negative impact of the
2 mother's communication with the children, that he feels it needs
3 to be recorded and checked up on, I would then be -- wonder why
4 he would be comfortable having them be alone with her for
5 extended periods of time where there's no way of keeping track
6 of how she's communicating with the children.

7 Q Can you infer anything or draw any conclusions,
8 professional conclusions, with respect to credibility from the
9 psychological testing data?

10 A Whose credibility?

11 Q The person taking the test.

12 A Pardon?

13 Q The person taking the test.

14 A Yes.

15 Q And were there any remarkable results from
16 Mrs. Kassenoff's testing that would suggest that she was not
17 credible?

18 A As I said, on the MCMI she was elevated on the social
19 desirability scale, which suggests that she -- when she was
20 responding to that test was tending to present herself in a more
21 socially desirable light. As I said before, that's not at all
22 unusual in these situations and the test is designed to control
23 for that. There wasn't anything in any of the other tests that
24 would suggest that she was responding in a biased way or in a
25 way that would affect the validity of the test data.

1 Q And did you see any efforts on the part of either party
2 to conceal elements of themselves when answering the test
3 questions?

4 A Well, the social desirability bias in Mrs. Kassenoff's
5 MCMI would suggest that on that particular test she was trying
6 to put the best foot forward and not emphasizing what she would
7 see as her shortcomings. That was not evident on the other
8 tests and she was very -- she gave a very full Rorschach. So
9 there's no indication of any defensiveness there.

10 In Mr. Kassenoff's case on none of the questionnaires
11 was there any indication of any bias. But, like I said, the
12 Rorschach seemed constricted in a way that often appears in
13 people who are trying to limit the amount they reveal about
14 themselves on a test where they feel like they don't know what
15 they're seeing.

16 Q Could you tell anything about Mr. Kassenoff's equipness
17 to parent, to be a sole custodial parent from Dr. Abrams'
18 report?

19 A From Dr. Abrams' report, I gathered that it was his
20 judgment that Mr. Kassenoff does very well financially. That
21 he's very smart and successful professionally. And that he
22 doesn't have any major psychological problems that would make
23 him a bad parent. That was the impression of Mr. Kassenoff that
24 I got from reading Dr. Abrams' report.

25 Q Did Dr. Abrams give any examples of things that he had

1 done that would suggest that he would be the appropriate parent
2 to be a sole custodian of these three children? So, a basis for
3 him to give custody to Mr. Kassenoff?

4 A In reading the report, I didn't see a very clear
5 description of what his parenting qualities are like. Why Dr.
6 Abrams would feel that he was likely to be a particularly good
7 parents. You know, I didn't see a lot of things in there to
8 suggest that he wouldn't be a good parent. I didn't see a lot
9 of things in there to suggest that he would be a good parent.

10 MS. SPIELBERG: I have nothing further.

11 MR. DIMOPOULOS: Can we take a quick bathroom break
12 before the discussion?

13 THE COURT: Absolutely.

14 (Whereupon a recess is taken.)

15 MS. SPIELBERG: Judge, I just have a few more
16 questions.

17 THE COURT: Okay.

18 Q Dr. Pogge, in your review of Dr. Abrams' report, did
19 you see what evidence Dr. Abrams relied upon to come to his
20 conclusions with respect to domestic violence?

21 A No, I didn't. He didn't explain what he based that
22 opinion on.

23 Q And did you see in his report a discussion by Dr.
24 Abrams about the affect that Mrs. Kassenoff's cancer may have
25 had on the family?

1 A No. He mentioned her cancer in passing, but there was
2 really no discussion of anything about it really.

3 Q And Dr. Abrams says in his report that Mrs. Kassenoff
4 has a sadistic personality trait. From the information you
5 reviewed, did you see any evidence of that?

6 A No. I do not know where that came from.

7 MS. SPIELBERG: Okay. I'm done. Thanks, Judge.

8 THE COURT: Okay. Cross-examination.

9 MR. DIMOPOULOS: Dr. Pogge, first of all, I am
10 familiar with your work at Four Winds. It is an incredible
11 institution. You've done great work.

12 THE WITNESS: Thank you.

13 CROSS EXAMINATION

14 BY MR. DIMOPOULOS:

15 Q This is your first peer review; correct?

16 A Yes.

17 Q Why did you not speak with Mrs. Kassenoff before
18 rendering your report?

19 A I wasn't asked to evaluate Mrs. Kassenoff. I didn't
20 evaluate Ms. Kassenoff.

21 Q If you were asked to speak to Mrs. Kassenoff prior to
22 rendering your peer review, would you have?

23 A Right off the top of my head, I don't see what
24 relevance that would have had. As I understood it, I was asked
25 to look at the report that Dr. Abrams wrote an offer an opinion

1 about that.

2 Q Would it surprise you if I agree with you 100 percent?

3 A No. It would delight me.

4 Q Well, I do. So far this cross-examination is going
5 swimmingly.

6 A Better than usual.

7 MS. SPIELBERG: Nobody's happier than me.

8 Q Were you asked to review -- withdrawn.

9 You've done a number of neutral forensic reports;
10 correct?

11 A Yes.

12 Q You understand that it would be virtually impossible
13 for the Court to make a determination of the best interests of
14 the child with your report alone; correct?

15 A Yes.

16 Q You understand that, in fact, it's a logical
17 possibility because there would be testimony at trial; correct?

18 A Correct.

19 Q And you understand in most instances, the neutral
20 forensic evaluator is called to testify; correct?

21 A Correct.

22 Q And during that testimony the neutral forensic
23 evaluator would be asked questions by both parties generally
24 about why he or she came to his conclusions beyond that which is
25 written in his report. Do you understand that?

1 A Yes.

2 Q And you understand the Court itself could ask questions
3 and delve into reasons for conclusions or recommendations.

4 Do you understand that?

5 A Yes.

6 Q Have you ever testified?

7 A Yes.

8 Q About your report?

9 A Yes.

10 Q How many days did the testimony last, in one instance?

11 A In one instance, it lasted about four hours.

12 Q Has it ever lasted longer than that?

13 A No.

14 Q Dr. Abrams is going to testify on Monday again for the
15 third day. And he may not be done, maybe a fourth day.

16 Would you imagine that during that four days of direct
17 examination and cross examination, Dr. Abrams would be able to
18 assist Judge Koba in understanding how he reached his
19 conclusions and recommendations?

20 MS. SPIELBERG: Objection to form.

21 THE COURT: What's the objection?

22 MS. SPIELBERG: Three days, maybe a fourth day. I
23 don't know what that's with respect to.

24 THE COURT: Sustained. Rephrase.

25 Q During those three or four days of testimony, you might

1 imagine that Dr. Abrams would be able to explain some of things
2 that you believe are missing from his report.

3 Would you agree with me?

4 A Yes.

5 Q Still going well. Okay. Are you able to gather from
6 Dr. Abrams' report whether or not he -- well, let me withdraw
7 that and tell you you and I agree about another thing, which is
8 that there are four general sources of data in rendering a
9 forensic evaluation. We agree on that totally.

10 Would you be able to in your impressible opinion, to
11 diagnose someone with a personality disorder or any other mental
12 condition using solely the testing that you reviewed in this
13 case?

14 A Are you asking me if the testing by itself would lead
15 me to a diagnosis of personality disorder in this case?

16 Q No. I'm asking a different question. And I'm sure
17 based upon my lack of experience and education in your field
18 that it's not coming out right, but let me try it again.

19 Is it possible to diagnose, in general, a personality
20 disorder using solely one of the four or five tests that you
21 discussed in your report?

22 A Yes. People routinely do that.

23 Q Because the scores are elevated; correct?

24 A Correct.

25 Q Okay. Is it also possible to reach a diagnosis that's

1 not conclusive on testings, but relies on other sources of data?

2 A People routinely make diagnoses on bases other than
3 testing.

4 Q In fact, you can diagnose someone with personality
5 disorder without ever administering those tests; correct?

6 A Correct.

7 Q Do you know whether or not Dr. Abrams reached his
8 conclusions and recommendations based solely on his diagnosis of
9 Mrs. Kassenoff?

10 A I do not.

11 Q He could have relied on many other things; correct?

12 A I would hope so.

13 Q In fact, might you and I agree that just because
14 someone has been diagnosed with a mental illness, that they're
15 not a good parent?

16 A Most people who have mental disorder diagnoses would be
17 perfectly capable of being parents.

18 Q You and I agree again. It is not mutually exclusive;
19 correct?

20 A Not at all.

21 Q You must, in the course of being a forensic evaluator,
22 rely on many sources of data; correct?

23 A Correct.

24 Q I will also tell you -- pay you more one more
25 compliment, that I have cross examined my fair share of peer

1 reviewers and forensic examiners and I've never heard anyone
2 explain the testing better than you.

3 A Thank you.

4 Q And specifically with the MCMI-IV test and the
5 elevations and your testimony on histrionics and turbulence.

6 I will ask you this question: These tests have a
7 margin of error, do they not?

8 A Yes, they do.

9 Q What's the margin of error on the MCMI? If you don't
10 know offhand I wouldn't discredit you I would just --

11 A It's approximately five base rate points.

12 Q And do you know what or can you look at something to
13 tell us what Mrs. Kassenoff's scale was on the MCMI?

14 A I can go through my folders and find it if you'd like.

15 Q Is it easy?

16 A It's a lot of stuff.

17 Q Okay. All right.

18 A But I can do it if you want me to.

19 Q Maybe we'll come back to it.

20 A Okay.

21 Q Do you remember taking note of the fact that her test
22 result was within the margin of error?

23 A I'm not sure what you mean by, within the margin of
24 error.

25 Q You made note in your report that -- I think the number

1 was 85.

2 A 85 is the clinically significant elevation.

3 Q Correct. Do you remember what her elevation was?

4 A Not off the top of my head.

5 Q Okay. Now, let's help me and help the Court understand
6 how the forensic evaluation testing goes.

7 So you're doing an evaluation, you call someone to your
8 office. Do you do all the tests on the same day?

9 A I usually do, yes.

10 Q Okay. How many hours is that?

11 A Four to six, depending on the number of tests.

12 Q So someone is in the middle of a custody evaluation and
13 they're called to a doctor's office who they probably never met
14 before and they're asked to sit there for four to six hours
15 taking tests that they know are going to be used to determine
16 whether or not they have less time or more time with their
17 children; correct?

18 A That wouldn't be correct for the way I do it.
19 Typically I save the testing until after I've met with the
20 person several times and conducted several lengthy interviews.

21 Q Okay.

22 A So I'm not a complete stranger to them at that point.
23 We've spent several hours together talking. Whatever rapport we
24 can build we build. And I typically have talked to them at
25 length before the day of the testing about what the day of the

1 testing would involve, what the demands would be of them. I
2 explain to them things about how the tests are designed and so
3 forth to make it less intimidating than it might otherwise be.

4 Q And the reason for that is so that you can compare data
5 points between clinical data that you gathered and test results;
6 correct?

7 A Yes.

8 Q In fact you cannot do your job that has been ordered by
9 the Court for you to do without comparing, contrasting various
10 data points from different sources as begins the testing?

11 A Yes.

12 Q You were at a disadvantage in this case because all you
13 have is the testing data; right?

14 A Yes. In fact that's the basic point in my peer review
15 is that most of the information doesn't appear in the report.
16 So it's very hard to know how Dr. Abrams got to his conclusions.

17 Q And I fully understand that and I respect that. I
18 understand that.

19 MR. DIMOPOULOS: Roy, can you put up the testing.
20 I don't think there's going to be objection. I'm going to
21 introduce both parties testing results provided by Dr.
22 Abrams. Do you have any objection?

23 MS. SPIELBERG: I have no objection.

24 MR. DIMOPOULOS: Move it into evidence Plaintiff's
25 Exhibit 112.

1 THE COURT: In evidence.

2 MR. DIMOPOULOS: I'm sorry. I misspoke. This is
3 just Ms. Kassenoff's testing.

4 (Plaintiff's Exhibit 112, previously marked for identification,
5 is received into evidence.)

6 Q By the way, how old was Rorschach when he died?

7 A I believe he was 28.

8 MR. DIMOPOULOS: I knew he would know the answer.

9 Q So Rorschach in what year?

10 A His test was published in 1928.

11 Q 1928. So some hundred years ago. And I'm not trying
12 to say the test is not a reliable source. It is genuinely
13 accepted throughout the entire industry. Please don't
14 misconstrue what I'm saying, but how do you administer this
15 test, Doctor?

16 A I administer this test using the procedure that was
17 developed by John Exner under the rules of what he refers to as
18 the comprehensive system, where you explain to the person before
19 you start that you want them to look at each card and tell you
20 what it looks like or what it might be.

21 You then hand the person the first card and say, what
22 might this be, and you write down verbatim what they say. When
23 they finished responding to the card, they hand it back to you
24 and you hand them the next card and so on all the way through.

25 Q Is this one card?

1 A Pardon?

2 Q Is this one card?

3 A No, that's all ten cards -- oh, that's actually the
4 first. There's all ten cards. Now you're seeing them.

5 Q Okay. So I'm just going to approach the screen and ask
6 you to give us an example. Pretend that this is the card here.

7 A Yes.

8 MR. DIMOPOULOS: And for the record, I'm pointing
9 to the second -- the entry on the right on the second row
10 from the top. Okay.

11 THE WITNESS: That's card five.

12 Q What would you ask me if I were in your office about
13 that?

14 A Pardon?

15 Q I'm sorry. What would you ask me if I were in your
16 office as an interviewee about that?

17 A Well, this is the fifth card in the series. So at this
18 point I'd just be handing it to you and I'd be writing down what
19 you said it looked like.

20 Q So you'd ask me what does it look like?

21 A No. I would have handed you the first card and said,
22 what might this be? And I would have written down what you
23 said. Then assuming that your behavior indicated you understood
24 the test, I would be doing that with each card. I would just be
25 handing it to you and writing down your responses as you told me

1 what it might be.

2 Q Okay. Assume I answered, a bat; would you have a
3 follow-up question for me?

4 A Once we got through all ten cards and you had given me
5 all of your responses, then we'd go back to card number one and
6 I would say, okay, now I'm going to show you each card again and
7 I'm going to read you exactly what you said, and what I want you
8 to tell me is where whatever you saw is on the card. Show me on
9 the card where it is, and then explain to me what it was about
10 the card that made it look that way.

11 So if we are now on card five, we're now five cards
12 into the test, I would hand you the card and I would say, okay,
13 on this one you said, a bat; show me that. And I would have you
14 show me, you know, whether you used the whole inkblot or just
15 part of the inkblot, show me what you were responding to when
16 you told me it looked like a bat.

17 Q So I might say, I don't know, it just looks like a bat.

18 A No. I'd say, show me where on the card you see the
19 bat.

20 Q Right there.

21 A Trace it for me.

22 MS. SPIELBERG: I would object to this, Judge, but
23 I'm interested to later ask him what this means about Mr.
24 Dimopoulos.

25 Q I see a bat here. There's the bat's antenna, I think

1 he's got feet and wings; that's what I see.

2 Do you have a follow-up question for me?

3 A Once I had gotten you to show me exactly part of the
4 inkblot you were using for -- if you were using the whole thing
5 how you were seeing it, but you did in that case and you made it
6 clear that you saw the sides as looking like wings, and the top
7 looking like antennas and so forth, then I would say, and what
8 was it about the inkblot that made it look like that.

9 Q What Ms. Spielberg really wants to know is am I a
10 narcissist because I did that?

11 A Not because of that.

12 MS. SPIELBERG: I would have drawn my other sources
13 of data to decide that.

14 A That would only be one response.

15 Q I understand.

16 Do you agree that child care providers sometimes make
17 reliable sources of information as a collateral in a forensic
18 evaluation?

19 A Yes. Sometimes.

20 Q Do you agree that the in-court testimony of a child
21 care provider that talks about one party mistreating the
22 children, the specific examples, is a reliable piece of data in
23 a forensic evaluation?

24 A It's a piece of data. How reliable it is would depend
25 on the person and how they answered the questions and so on and

1 so forth. I mean, it seems to me that part of the task of the
2 Court is to listen to the testimony and decide whether the Court
3 believes the testimony or not.

4 So, you know, on its face nothing is necessarily
5 reliable, but it's not necessarily unreliable.

6 Q You say in your report that Dr. Abrams repeatedly fails
7 to explain what data he is basing his statements on or how he
8 has combined these various sources of information to arrive at
9 his conclusions.

10 Does that mean his conclusions are incorrect?

11 A Not at all.

12 Q Assume what I'm going to tell you is true: That Dr.
13 Abrams' report was issued on March 25th, 2020 and following the
14 report, the Court in this case issued an order granting my
15 client, Mr. Kassenoff, temporary sole legal and physical
16 custody. And assume that there were various motions filed, both
17 in support of that position, against that position.

18 Assume there were 20 -- ten conferences with the Court,
19 and assume that there are multiple videos showing conduct that
20 is relevant to the issue of custody in this case.

21 Would you, as the forensic evaluator testifying in a
22 custody trial, want to review the data that happened after the
23 forensic evaluation in rendering a final conclusion?

24 A If I thought that that information might affect my
25 opinion about, my formulation of, one or both of the parties,

1 sure. I would want more information.

2 Q Have you ever done an update to one of your neutral
3 reports?

4 A I've never been asked to do that.

5 Q If you could, and just based on what I've learned in
6 this case, I know this is a difficult question and probably a
7 difficult answer, but we'll work through it.

8 If you and I were having a conversation, and I'm a
9 layman, which I am, and you're a professional and a doctor,
10 which you are, and I said to you, Dr. Pogge, if someone has a
11 personality disorder, like what are the things that they do, or
12 how do you -- what kind of traits do they have, what type of
13 conduct do they have; is that a question you can answer?

14 A It can be answered in a general sense of, what do you
15 mean by a personality disorder, but there are many different
16 kinds of personality disorders, but in general, yeah, we have an
17 agreed upon general definition of what constitutes a personality
18 disorder.

19 Q Okay. Can you tell me what the generally accepted
20 definition is?

21 A The generally accepted definition is that you got an
22 individual who has a lifelong pattern of thinking about things
23 or reacting emotionally to things or managing their behavior in
24 ways or interacting with other people in ways that are not
25 typical of people in the place where they live. They aren't

1 typical of their culture, they aren't typical of their
2 environment, and they are so pronounced, so extreme, so rigid,
3 so maladaptive that they persistently interfere with that
4 person's life course. They interfere with that person's
5 functioning in the world in situation after situation after
6 situation. And that this pattern dates back to at least
7 adolescence. And was clearly present, perhaps not as severely,
8 but was clearly present back in their childhood development and
9 it persists and shows itself across the workplace, intimate
10 relationships, recreational activities, life choices of all
11 kinds.

12 The reason we use the term, personality disorder, is
13 that it's -- the idea is this person's whole way of approaching
14 life for some reason does not work well and doesn't change.

15 Q What is the best known treatment, in your professional
16 opinion, for somebody with a personality disorder?

17 A The only treatment that's ever been shown to be
18 effective is extended psychotherapy, but different personality
19 disorders are more or less likely to engage in and participate
20 in and benefit from psychotherapy.

21 But other than psychotherapy, the only thing that might
22 change an individual's personality, other than a massive brain
23 injury or something like that, would be cumulative life
24 experiences gradually forcing them to change the way they are,
25 but that tends not to happen in the kinds of people you would

1 assign that label to.

2 Q Do you agree with me that personality disorders are
3 extremely difficult to treat?

4 MS. SPIELBERG: I'm just going to object. I don't
5 have a particular problem with this, but it's outside Dr.
6 Pogge's report, number one. Number two, it would fall into
7 the same category where I was headed and asking him general
8 information about his general expertise.

9 If your Honor is inclined to allow Mr. Dimopoulos
10 to continue doing this, then I would like to continue my
11 line of questioning with respect to what's generally
12 acceptable for a therapist to look to when treating
13 children.

14 So either way, I just would like to be able to ask
15 my questions.

16 THE COURT: Sustained.

17 Q Just briefly, the video clips that you were provided by
18 Ms. Spielberg's office, did you watch them?

19 A I glanced briefly at a few of them.

20 Q Okay. The ones you did see, do you remember anything
21 about them?

22 A Very little.

23 Q In fact, would you agree with me that in rendering a
24 peer review, it's irrelevant?

25 A The reason I didn't spend much time looking at them is

1 I didn't feel that they were relevant to what I was being asked
2 to do.

3 Q I don't know if there's an answer to this question
4 either: But is there a particular mental illness or personalty
5 construct for which the test that we've been discussing today
6 doesn't particularly work for -- let me ask it another way.

7 I realize that I'm probably sounding like a ninth
8 grader to you right now but.

9 Is there a type of condition that one may have that
10 this testing -- it's not effective for that type of personality
11 or mental issue?

12 A These tests are good for what they're designed to do.
13 There are many things that are not covered by any particular
14 test. The primary, the major personality disorders that we
15 currently recognize in the world, the MCMI is designed to assess
16 those, and it's probably one of the best validated instruments
17 around for that purpose.

18 The tests measure the personality traits and constructs
19 that they're designed to measure, but they don't cover
20 everything that could be said about a person. They don't cover
21 everything about the psychology of a person exhaustively, but
22 the tests that were used in this case are some of the most
23 widely recognized best validated tests and they do cover most of
24 the major issues that I would be interested in if I was trying
25 to evaluate somebody to formulate a picture of them in this kind

1 of situation.

2 MR. DIMOPOULOS: Roy, can we put up Dr. Pogge's
3 report, page two. Paragraph starts, finally. The last few
4 sentences.

5 Q Ms. Spielberg delved into this issues, Thus,
6 psychometrics are reliable that are validated, however, they
7 have their limitations. The key, in my opinion, to your
8 conclusion here is that -- comes two sentences down: They do
9 not provide information about historical events in a person's
10 life, and -- but they can help formulate hypothesis.

11 What information in conjunction with the testing
12 results would you have looked for in doing a neutral forensic
13 evaluation?

14 A The other kinds of information I would have looked for
15 is the other kinds of information I described in my report. I
16 would have looked at the qualities that the person manifested in
17 the hours I spent interviewing them. I would have listened to
18 their version of their history.

19 I would have compared and contrasted that with the
20 version of the history of events I got from the other party and
21 I would have looked at those things together. What does the
22 psychological testing tell me about this person's basic
23 personality makeup, how do they convey that in their behavior
24 with me during the interviews. How does that fit with the story
25 of their life they're telling me.

1 Because my goal if I were doing this evaluation would
2 be to provide the Court with a formulation of this person: What
3 is this person really like, what are the real issues, how are
4 those likely to influence his parenting, how is it likely to
5 effect his ability to collaborate with the other parent. So I
6 would want to look at all of that information and combine it
7 together in trying to draw a picture of this individual.

8 MR. DIMOPOULOS: Your Honor, can I have a
9 two-minute break?

10 THE COURT: Sure.

11 MR. DIMOPOULOS: Just to discuss with my client one
12 point.

13 THE COURT: Yes. You can take a break.

14 MR. DIMOPOULOS: Thank you.

15 (Whereupon a recess is taken.)

16 MR. DIMOPOULOS: Your Honor, I have no further
17 questions for Dr. Pogge. Thank you very much.

18 MS. MOST: I'm going to try to finish fast, Judge.

19 MR. DIMOPOULOS: We finished on a good note too.

20 CROSS EXAMINATION

21 BY MS. MOST:

22 Q So would you agree that you did not have --

23 MS. MOST: Am I coming through loud enough?

24 THE COURT: You can come over here, Ms. Most.

25 MS. MOST: Sorry.

1 Q Would you agree you did not have all of the information
2 that Dr. Abrams had to complete his report?

3 A Yes.

4 Q And you weren't able to read any of his notes; were
5 you?

6 A No.

7 Q So when you read about the treatment of the children by
8 the mother that was cruel and sadistic and emotionally harmful,
9 you didn't know what that treatment was, did you?

10 A No.

11 MS. SPIELBERG: Objection, Judge, to
12 characterization of Dr. Abrams' report.

13 THE COURT: Rephrase the question.

14 Q So you read there were certain characteristics that Dr.
15 Abrams used to describe the mother's behavior; correct?

16 A Yes.

17 Q What were those characteristics?

18 A Off the top of my head I don't recall the exact
19 language he used, but he described her as basically -- as I read
20 it, he described her as basically a nurturing, caring empathic
21 person, but he indicated that he felt that she was deliberately
22 acting to try to alienate the children from their father.

23 Dr. Abrams also discussed at some length how he felt
24 there had been problems in the relationship with the oldest
25 daughter and part of that seemed to be based on the statements

1 of the nannies or one of the nannies.

2 Q So did he describe that behavior as being sadistic
3 behavior?

4 A No. He referred to her as having a sadistic
5 personality.

6 Q And didn't he also describe the behavior as being
7 sadistic?

8 A I don't remember him saw saying that, no.

9 MS. SPIELBERG: Objection. Asked and answered.

10 THE COURT: Overruled.

11 Q So you didn't have any of that information. So I'm not
12 going to, but I could give you a list of things that Dr. Abrams
13 was aware of that made up that conduct. You didn't have that
14 information, did you?

15 A No.

16 Q So you don't even know if that information was correct?

17 A No.

18 Q That's not what I meant to say. I meant to say it's
19 possible that information was very correct so that Dr. Abrams'
20 formulation is correct based just on that information?

21 A Well, that additional information would be important.
22 It's entirely possible that Dr. Abrams' conclusions in there
23 totality are correct. It's entirely possible that I would agree
24 with him completely if I had been able to see all the
25 information he was basing this on and if he had explicated his

1 reasoning, his thinking in putting it all together in the way he
2 did, but since he didn't provide any of that, he just provided
3 the conclusions that I have no way of knowing whether I would
4 agree with him or not. And that's, I think, is the heart of
5 what I've tried to say in my evaluation.

6 Q So just as an example, if somebody exhibited behavior
7 and I'm going to use a word that I know is out voted now, like
8 sociopathic behavior, you know, such as somebody who would show
9 cruelty to an animal, or cruelty to a child, would that not be
10 enough to make a diagnosis without the psychometric testing?

11 A That one bit of behavior by itself it would be
12 inappropriate to draw a diagnosis, especially a personality
13 disorder.

14 Q If there was several of those kinds of conducts?

15 A In order to appropriately offer a diagnosis of a
16 personality disorder, you need to have evidence of a lifelong
17 pattern that's extended through many relationships, many
18 situations.

19 The fact that somebody may have behaved cruelly or
20 angrily towards a particular individual in a particular
21 situation is certainly something I would disapprove of and it's
22 something I would want to understand, but differentiating
23 whether that was unique to that particular situation, or unique
24 to that particular moment, or unique to that particular
25 relationship, or extended throughout the person's approach to

1 life, and should be characterized as part of their personality
2 disorder, that's a distinction that requires much more than a single
3 instance of bad behavior, even if it's very bad behavior.

4 Q So assume it to be true that Dr. Abrams did testify
5 about those incidents over a life long behavior, and gave
6 incidents of those kinds of behaviors that he considered when he
7 made his diagnosis, that would be a fair way of making a
8 diagnosis then; correct?

9 A It would, but you have to account for all your data.
10 Okay. If he says, I have this information about how this person
11 has lived in the past, but I have this other information that
12 doesn't agree with it, for example, for psychometric testing,
13 then it's his test to resolve that, because all the information
14 comes from the same person.

15 If all of the information is going to the same
16 direction, then you can offer an opinion with a high level of
17 confidence, because you have convergence among multiple sources
18 of data. But one reason a good evaluation relies on multiple
19 sources of data is because they don't always converge, and when
20 they don't converge then it's your task as a clinician to come
21 up with some understanding of why that's true.

22 Now, there's a lot of potential explanations for that
23 lack of convergence, but it can't simply be ignored. In other
24 words, it's not good practice, in my profession, to say, I got
25 some information over here that fits with this description. I

1 got some other equally good information over here that doesn't,
2 but I'm going just going to throw it out because I like this
3 information better. We're not allowed to do that.

4 Q So long as Dr. Abrams testified that he made that
5 convergence, you would agree with his report; correct?

6 A If I heard the data he was basing his opinions on and I
7 heard his reasoning, I might very well find it persuasive.

8 Q So as you sit here today, you're not disagreeing with
9 his report, are you?

10 A No. I'm saying that I just don't understand from his
11 report.

12 Q Okay.

13 MS. MOST: Okay. Thank you very much. No further
14 questions.

15 THE COURT: Ms. Spielberg.

16 MS. SPIELBERG: I just have five minutes of
17 re-direct and we can allow Dr. Pogge to be on his way.

18 RE-DIRECT EXAMINATION

19 BY MS. SPIELBERG:

20 Q Would you expect many examples over the course of time
21 of this behavior to be given to support a personality diagnosis?

22 A That's really essential. I mean, one of the critical
23 defining features of a personality disorder is it isn't just a
24 single instance, it isn't just a single moment. It's something
25 that's -- that in various forms has been showing up again and

1 again throughout a person's life.

2 Q And if you were to endeavor to gather information
3 during a forensic evaluation, and you think to yourself, I might
4 be heading in the direction of a personality disorder, would --
5 would you want to gather information and examples of that from
6 both parties or would you rely simply on it from one party or
7 the other?

8 A When I'm doing this kind of evaluation, I don't view
9 either party as a reliable source of information about the other
10 party. I tell them at the start of the evaluation, as you talk
11 to me about the spouse you're not doing your best to the unlove,
12 I want you to understand that I assume that you dislike this
13 person for some reasons. And I'm going to listen to what you
14 say as a way of understanding of how you see the world, as a way
15 of understanding how you experience this relationship, but I'm
16 not going to see you as the reliable source of information about
17 what he actually did or vice versa.

18 Q Would you consider a friends of 20 or 30 years as a
19 good collateral contact to potentially ask about one of the
20 parties behavior over a long period of time if you thought you
21 might be diagnosing one of the parties with a personality
22 disorder?

23 A Possibly, but not definitely. First of all, if I'm
24 asking somebody who you're describing as a friend of 20 or
25 30 years, I would assume that they have a pretty positive view

1 of you. And if they've been your friend during the time in
2 which your marriage is deteriorating and you're struggling over
3 the custody of your children, they might even be an ally of
4 yours. And so I would have to weigh through any potential
5 agenda or biases they might have in trying to figure out what to
6 believe from the things they said.

7 Now, it's possible that somebody -- I might after I've
8 talked to somebody who's known this person a long time, I might
9 conclude that the information they're giving me is reliable, but
10 I couldn't assume that and depending upon who's being cited as
11 the potential collateral, I might not feel that it's worth the
12 time or the effort to try and figure that out from talking to
13 the person, especially since in the case of a personality
14 disorder, they're usually broader, more visible patterns of
15 behavior that the person will reveal in giving you their history
16 that tend to bolster your decision with the person they have a
17 personality disorder.

18 Q In the Rorschach testing that we went through with Mr.
19 Dimopoulos, is it typical for somebody, you hand them the card,
20 they say what they see. Then on round two, show me where you
21 saw that is I believe what you said; is that right? Is it
22 typical for somebody then, the tester, to administer to say, do
23 you see anything else?

24 A No, because that's a departure from standard procedure.
25 First you go through and get all the responses, then you go

1 through and do what we call the inquiry, where you find the
2 location on the card and you get an explanation of why they saw
3 it that way.

4 Q How might asking that additional question affect the
5 test scores?

6 A It's a departure from the way the test was standardized
7 and norms. So you have no way of knowing what impact that had
8 on the validity of the test.

9 Q You talked about looking at -- in looking at a history
10 in -- of a person in order to diagnose a personality disorder.
11 You talked about looking at employment history. Would you --
12 how -- how do you measure a person's employment history to be
13 stable or unstable?

14 A If they keep changing jobs a lot, very precipitously in
15 an unplanned way. If they move from good jobs to bad jobs in
16 ways that seem to reflect no life plan, if they move from jobs
17 to different kinds in a way that suggest they're not following
18 any sort of career plan, those would be signs to my mind about
19 stable employment, especially if they couldn't give me some
20 explanation for those changes that really made it seem like it
21 was beyond their control.

22 Q But you has asked -- do you tell questions about --

23 A Yeah.

24 Q -- the reason for the change in job?

25 A Yes.

1 Q And you look for gaps in employment?

2 A Yes.

3 Q I believe that Mr. Dimopoulos asked whether -- just
4 because Dr. Abrams didn't give the reasoning as to how he got to
5 his conclusions, doesn't mean that his conclusions are wrong.
6 Do you recall that?

7 A Yes.

8 Q And you said, it doesn't mean that they're wrong;
9 right?

10 A Correct.

11 Q Does it mean they're right?

12 A No.

13 Q And -- withdrawn.

14 Nothing -- the results of the raw data would not --
15 withdrawn.

16 Would the results of the raw data change in light of
17 the fact that you did not have access to the other pieces of
18 data that Dr. Abrams had access to?

19 A I don't understand what you mean when you say, the raw
20 data.

21 Q I'm sorry. Would the results from the testing -- your
22 analysis of the results from the testing change at all in light
23 of the fact you did not have access to the three other
24 categories of information that Dr. Abrams had?

25 A It might change significantly if I had that other

1 information.

2 Q But without it, those conclusions can stand alone for
3 what they are; is that correct?

4 A What I've given you is what I think the testing means
5 as it stands alone. With other context, I might interpret it
6 differently.

7 Q And the scoring of the testing is not affected by the
8 other areas of information; is that right?

9 A No. They're very specific rules for how the tests are
10 scored. The people who use the test are trained to use them.
11 They're always the same with everybody. That's part of the
12 standardization that makes testing what it is.

13 MS. SPIELBERG: I have nothing further, Judge.

14 MR. DIMOPOULOS: Your Honor, I have nothing
15 further. Thank you.

16 THE COURT: Ms. Most.

17 MS. MOST: I'm okay. Thank you.

18 MS. SPIELBERG: We moved his report into evidence;
19 right, Judge?

20 MR. DIMOPOULOS: To the extent I didn't consent, I
21 consent.

22 THE COURT: Yes. Dr. Pogge's report is in
23 evidence. Dr. Pogge, thank you for your time.

24 THE WITNESS: Thank you, your Honor.

25 (Whereupon, the witness is excused and leaves the stand.)

1 THE COURT: So we're continuing with the cross of
2 Mr. Kassenoff?

3 MS. SPIELBERG: Yes.

4 THE COURT: Mr. Kassenoff, you can take the stand.
5 (Whereupon, the witness, Allan Kassenoff, retakes the stand.)

6 MS. SPIELBERG: Judge, I just want to bring to the
7 Court's attention a housekeeping matter before I forget.

8 THE COURT: Okay. You can go ahead while he's
9 taking the stand.

10 MS. SPIELBERG: On Monday, at 10:00, I have my own
11 child IP meeting which cannot be rescheduled. I waited
12 three weeks for this. So I know that they wanted to recall
13 Carmen. Maybe she can be at 9:30 and then we can take a
14 break at 10.

15 MR. DIMOPOULOS: Is that on the phone?

16 MS. SPIELBERG: No. No. On the phone.

17 MR. DIMOPOULOS: Oh, okay.

18 MS. SPIELBERG: Yeah. I just need to call in. It
19 shouldn't be more than a half an hour, but I have to -- it
20 might be faster. I don't know.

21 THE COURT: All right. Let's just coordinate
22 around Dr. Abrams coming in. That's all.

23 MS. SPIELBERG: That's what I was going to say.
24 Should we schedule Carmen so that he doesn't have to get
25 here until 10:30?

1 MR. DIMOPOULOS: We can certainly try. We'll talk
2 over the weekend and I will reach out.

3 MS. SPIELBERG: I had scheduled it for Monday
4 because I thought we were going to finish Friday and it took
5 me months to get it.

6 THE COURT: We will just coordinate so Dr. Abrams
7 doesn't wait in the hall while we do that. Okay. You may
8 proceed with Mr. Kassenoff.

9 Mr. Kassenoff, I'm just going to urge you to keep
10 your voice up.

11 CROSS EXAMINATION

12 BY MS. SPIELBERG:

13 Q Okay. Mr. Kassenoff, since you were awarded sole legal
14 custody or temporary sole legal custody of the children on
15 March 27th, isn't it true that you have kept your wife out of
16 decision making for the children?

17 A I don't know what you mean by, kept her out.

18 Q Isn't it true that you have not included her in
19 doctors' appointments?

20 A Again, what do you mean by, included? As far as I
21 know, I brought Alexandra to a doctor when she fell off her
22 bike. I brought her to urgent care. I immediately notified
23 Ms. Kassenoff as I was going to urgent care. I then was
24 instructed to bring her to an orthopedic surgeon to get a cast
25 put on. Ms. Kassenoff was told about that. Then I had made an

1 appointment with -- for Charlotte with an endocrinologist based
2 upon her getting her period very early and Ms. Kassenoff was
3 told about that as well.

4 Q When you --

5 MS. SPIELBERG: Roy, can you put up Exhibit R times
6 four.

7 Q You testified that you called Mrs. Kassenoff right away
8 and told her to -- about Allie's injury. Is that what you just
9 testified to?

10 A No.

11 Q Tell me what you said.

12 A I said I told her. I don't think I called her. I
13 think I e-mailed her.

14 Q You e-mailed her right away?

15 A Yeah.

16 Q When Mrs. Kassenoff wanted information, did you give it
17 to her?

18 A I don't know when she wanted the information, when,
19 about what, maybe not on the instant she demanded it. She was
20 told everything as to Allie hurting her wrist.

21 Q Okay. But when you first spoke to her after Allie hurt
22 her wrist, did you or did you not say, go away, Allie hurt
23 herself, and we are at urgent care, learn to prioritize. Did
24 you say that?

25 A I had already emailed her before --

1 Q Did you say that; yes or no?

2 A No, I didn't say that. I wrote that.

3 Q You did.

4 MS. SPIELBERG: At this time, Judge, I would like
5 to move R times 4 into evidence.

6 MR. DIMOPOULOS: No objection.

7 THE COURT: In evidence.

8 (Whereupon, Exhibit RRRR, previously marked for identification,
9 is received into evidence.)

10 Q So is this the first time that Mrs. Kassenoff had heard
11 from you after the accident?

12 A Again, I don't believe so.

13 Q You believe you e-mailed her; is that right?

14 A That's my recollection.

15 Q When you got to urgent care, at any time did you call
16 Mrs. Kassenoff?

17 A I said, I didn't call her.

18 Q Did you allow Allie to call her?

19 A No. She was permitted at that time, one Zoom call per
20 day. I'm not understanding your question.

21 Q When you -- you referred to making an endocrinologist
22 appointment for Charlotte. Did you not?

23 A Yes.

24 Q And that was in connection with Charlotte getting her
25 period early; right?

1 A That's what I said, yes.

2 Q When she got her period, did you reach out to
3 Mrs. Kassenoff?

4 A I don't remember. It was a while ago. I know
5 Charlotte told Mrs. Kassenoff about it on their Zoom call. I
6 can't remember if I told her before that Zoom call or not, to be
7 honest.

8 Q Did you look for a way for Charlotte to talk to her
9 mother about such an important life event?

10 A Yeah. They had a Zoom call.

11 Q Did you have Charlotte discuss it with another woman
12 prior to talking to her own mother about it?

13 A Yeah, several.

14 Q Who did you have her talk to?

15 A Just a couple of my friends. I know she also spoke to
16 our nanny, Maggie, Ms. Heffernan, who testified earlier.

17 Q Who was the first person she spoke to about it?

18 A I honestly don't remember. It was -- it was a friend
19 of mine. I don't recall. I think she spoke to two of my
20 friends and Maggie. I don't recall.

21 Q Was one of them your girlfriend?

22 A No.

23 Q So who were they?

24 A I wasn't dating anyone at the time, nor am I dating
25 anyone now, so it wasn't a girlfriend. I honestly don't recall.

1 It could have been a colleague from work. It could have been a
2 friend. I don't recall.

3 Q Was it somebody she had ever met before?

4 A I don't think so. Charley doesn't know most of my
5 friends.

6 Q So you had your nine-year old girl call a stranger to
7 talk about getting her period. Is that your testimony, Mr.
8 Kassenoff?

9 A No. That's not my testimony.

10 Q When Charlotte got her period, the pediatrician
11 suggested that you make an appointment with the endocrinologist;
12 correct?

13 A Yes.

14 Q Dr. Adler first suggested that you reach out to the
15 pediatrician; is that right?

16 A I believe I told Dr. Adler I was reaching out to
17 pedestrian and I believe Dr. Adler agreed that was the
18 appropriate thing to do.

19 Q Did you ever reach out to the pediatrician?

20 A I've called the pediatrician many times and I've left
21 several messages. Ultimately they returned my call.

22 Q In your experience with your pediatric practice, do
23 they typically ignore many calls from you in the past?

24 A I don't believe they ignored my call. I think they're
25 very busy these days. I assume they're very busy with Corona

1 Virus. I assume they're probably understaffed. They probably
2 have bigger issues than returning a call in that regard. I know
3 that one of the doctors returned a call and I was on a work call
4 when that happened so we missed each other, so it took a little
5 while to connect.

6 Q Is it true that Catherine waited three weeks for some
7 information from the pediatrician before she reached out to the
8 pediatrician herself?

9 A I have no idea.

10 Q Well, she reached the pediatrician first; right?

11 A She did.

12 Q And the pediatrician said that they had a referral list
13 of endocrinologist; correct?

14 A I don't know what they told her.

15 Q Well, she communicated it to you on a call on a
16 conference that we were all on. Do you recall that?

17 A No. I don't remember specifically.

18 Q Well, when you ultimately got the name of the
19 endocrinologist, did you allow Catherine to participate in the
20 appointment?

21 A I discussed that with Mr. Dimopoulos and basically his
22 advice was, no.

23 Q Well, you're not going to have Mr. Dimopoulos if and
24 when you have sole custody of your girls.

25 So what did you think was appropriate?

1 A What do you mean I'm not going to have Mr. Dimopoulos?

2 Q Is part of your plan if and when you have custody of
3 these girls to call Mr. Dimopoulos when you don't know what to
4 do as a parent?

5 A I haven't really thought about it, but if there a was
6 legal issue that I thought was appropriate, I would call him.

7 Q How is whether or not to involve a mother in an
8 endocrinologist appointment for your nine-year old a legal
9 issue, Mr. Kassenoff?

10 A It was a legal issue because it relates to a custody
11 proceeding where Mr. Dimopoulos knows her behavior, not as well
12 as me, but almost as well as me, and I thought it was
13 appropriate to discuss with him whether or not she should be
14 involved on a call after all of the other disturbing things that
15 occurred.

16 Q So you prioritize legal strategy over the health of
17 your daughter; is that your testimony?

18 A Absolutely not.

19 Q So explain this to me, Mr. Kassenoff. If it wasn't for
20 legal strategy, what was the reasoning behind excluding
21 Charlotte's mother, who by the way, has a history of breast
22 cancer related to hormones, what would have suggested that it
23 was a bad idea to involve her in the doctors' appointments?

24 A Foe example when you call -- when you call the child
25 line institute when we were ordered to by the court, the child

1 line institute is appointed by the Court, Catherine and I called
2 together and the intake call was an absolute disaster.

3 I was concerned that it would be the same thing here.
4 The endocrinologist would do exactly what the child line
5 institute was, which would be punt us outside the environment
6 and say I don't want to deal with the people. I ran this by Mr.
7 Dimopoulos and we arrived at the decision we made.

8 Q So you thought that Mrs. Kassenoff would somehow give
9 information to an endocrinologist about your daughter's period
10 in the same way she gave information to a psychiatrist or
11 psychologist evaluating a child?

12 A That's not what I said.

13 Q I think it's exactly what you said, Mr. Kassenoff, but
14 for the avoidance of doubt, let's look at Exhibits T times four.
15 T, like Tom.

16 On Wednesday, June 3rd, do you recall Catherine
17 e-mailing you and copying Carol, what time is the appointment
18 and which doctor?

19 I will just remind that the subject is endocrinologist
20 for the avoidance of doubt.

21 Do you remember receiving that e-mail?

22 A I mean, I'm looking at the e-mail right below it where
23 I wrote, Charlotte's appointment is scheduled for July 7th, FYI,
24 and then I see Ms. Kassenoff responded copying herself and
25 Ms. Most saying, what time is the appointment, which doctor and

1 she would like to call into it.

2 MS. SPIELBERG: Move to strike as nonresponsive. I
3 asked him a yes or no question.

4 THE COURT: Yeah. Mr. Kassenoff, you need to just
5 answer the question.

6 A I see she responded to my e-mail in the way you
7 referred.

8 Q Okay. Let's see how you responded to her:

9 Catherine, there's no reason for you to be on the call.
10 If you have any specific questions or concerns, let me know in
11 advance and I will ask the doctor. I will take notes and report
12 back to you in an e-mail. Thanks.

13 Did you write that back to her?

14 A Yes, I did.

15 Q In your experience when talking to a doctor of your
16 children, again, assuming that you have some experience with
17 that, isn't it usual that a doctor may bring up a point and that
18 there may be a followup question that you might not have had at
19 the beginning of the appointment?

20 A I don't -- say that one more time.

21 Q Isn't it possible that in the context and during a
22 conversation with a medical provider, this they may say
23 something or ask a question that may prompt a further question
24 of yours that you did not have at the beginning of an
25 appointment?

1 A Yeah.

2 Q Okay. So would it have been possible for Catherine to
3 give you all of her specific questions and concerns about this
4 issue without hearing what the doctor had to say first?

5 A Probably not.

6 Q So, wouldn't you have thought that it would be
7 appropriate, and actually in the best interest of your
8 children's medical care, to have both parents, in particular,
9 the mother, present for that appointment?

10 A No. I answered your question now several times.

11 Q When you got to the doctor, did they ask you for a
12 medical history?

13 A It was a Zoom call or like a FaceTime call. So you go
14 to the doctor on the call. The doctor asked for some medical
15 history.

16 Q And were you able to give him a full recitation of
17 Mrs. Kassenoff's history?

18 A I wasn't even able to give a full recitation of my
19 history. I did the best of my ability to give a recitation of
20 both sides.

21 Q Did the doctor comment on whether or not the mother's
22 health history would be relevant to his care for Charlotte?

23 A The doctor didn't comment one way or the other. She
24 asked for the health history of both sides, not just mine, not
25 just Catherine's, but both sides.

1 Q Did you tell the doctor about Catherine's history with
2 hormone-related cancer?

3 A I believe I said she had breast cancer. I don't
4 believe I used the words, hormone-related.

5 Q Can we agree that that would have been relevant to
6 Charlotte's treatment?

7 A I don't know. I'm not an endocrinologist.

8 Q What if it was relevant, were you able to provide the
9 information to the doctor?

10 A The doctor asked me for health histories on both sides.
11 I provided health histories of both sides. So, yes, I was able
12 to provide the information.

13 Q Is it your opinion, now that you've told us you left
14 out the hormone-related parts of her breast cancer diagnosis,
15 that you gave the doctor all the information she needed?

16 MR. DIMOPOULOS: At what point are we going to get
17 into evidence that her breast cancer was hormone-related?

18 MS. SPIELBERG: When she testifies.

19 MR. DIMOPOULOS: Okay. So maybe we save that for
20 later.

21 THE COURT: Well, subject to connection, obviously,
22 she doesn't use evidence that it's hormone-related and that
23 goes to the weight of the questioning, but right now
24 Mrs. Kassenoff hasn't testified.

25 Q Let's see how this e-mail exchange continues.

1 Allan, what is the doctor's name? I am very concerned
2 about Charlotte and I am her mother, so that is the reason for
3 me to be on the call. I don't understand how you can say
4 otherwise.

5 Did you respond to that?

6 A I don't remember.

7 Q Well, she sent that e-mail on June 3rd. On June 11th
8 she wrote, Allan, is the plan to include me on the call to
9 answer my questions or are you going to continue excluding me
10 here?

11 Did you respond to that e-mail?

12 A I think we're at the point in time -- well, I don't
13 know. I don't believe so.

14 Q Okay. Then again on June 12th at 8:34, me again,
15 Allan, does that refresh your memory as to whether or not you
16 responded to her?

17 A Again, I don't remember. I get a lot of e-mails from
18 your client.

19 Q Wouldn't you say something as important as the health
20 condition of Charlotte would be at the top of list of things you
21 might respond to?

22 A Again, I run these decisions by -- through my counsel.

23 Q Ultimately, when you went to the endocrinologist, did
24 you impede Catherine's many requests to be involved in that
25 appointment?

1 A I already answered your question. No, based upon the
2 advice of counsel.

3 Q Did you ask her to give you a full health history so
4 that you can best inform the doctor?

5 A I asked her to give me her specific concerns and
6 questions and she didn't give me anything.

7 Q As you sit here today, do you think that was a good
8 decision?

9 A I'm sorry?

10 Q As you sit here today, do you think it was a good
11 decision to exclude Mrs. Kassenoff?

12 A You know, that's a hard question to ask.
13 Mrs. Kassenoff makes every action in life extremely difficult.
14 Maybe if her behavior had been different over the past 13 or
15 14 years and she was more cooperative, she would have been
16 involved in that meeting with the doctor and these things would
17 have gone much more smoothly. Based upon all the actions that
18 I've seen over the long period of time, in my opinion, it made
19 more sense and was much more in the best interest of the child
20 for me to handle that meeting alone.

21 Q So it's your testimony that you knew this was how she
22 was when you entered into the 50-50 nesting agreement; right?

23 A What do you mean by --

24 Q You just told me that this is how Mrs. Kassenoff has
25 always been. It's always been difficult to deal with her.

1 So you knew that when you agreed to have a 50-50
2 nesting arrangement, which included joint custody of
3 Mrs. Kassenoff; correct?

4 A That's not fully correct.

5 Q You didn't know it?

6 A I knew how difficult she was. I didn't know that she
7 had a mental illness that would be diagnosed by a psychiatrist
8 -- by Dr. Abrams. I don't know his official title.

9 Q You know, I know that you now have that to rely upon,
10 but does it really matter what's it called, Mr. Kassenoff? You
11 knew that she acted the way she acted. By your own testimony
12 you just said it's been 13 years of this that you dealt with;
13 right?

14 A She's very difficult, yes. I've known that for a long
15 time.

16 Q And in fact, even before you went into the shared
17 custody nesting arrangement, when you filed for divorce, you
18 asked for joint legal custody, didn't you?

19 A I don't remember.

20 Q Assume I'm right. You knew all of the 13-year history
21 when you asked for that, didn't you?

22 A I did not know her mental diagnosis.

23 Q And that somehow changes the game, is that your
24 testimony, Mr. Kassenoff?

25 A Yeah. It changes it a lot.

1 Q You left the medical care of your children in
2 Mrs. Kassenoff's hands for 11 years; right?

3 A I don't agree with you.

4 Q Well, we talked yesterday about your lack of
5 involvement with Dr. Kusher over the course of four years;
6 right?

7 A I was not -- oh, yes, that's correct.

8 Q And we talked about the fact that you never took Allie
9 to therapy because of the demands of your job; right?

10 A No, that's not correct.

11 Q Well, didn't you write that in an e-mail when Catherine
12 was so excited that she got Allie into the program that Dr.
13 Kusher had recommended and she said, you might need to help
14 picking her up from Rye Brook you said, thanks, about but sorry
15 I won't be able to do so given my job requirements?

16 A If your question is that one Rye Brook place, that's
17 correct, but you said therapy, generally.

18 Q Isn't it true that sometimes it would be difficult on
19 the part of both of you to conduct the FaceTime calls exactly
20 when they were suppose to be scheduled to occur prior to the
21 Zoom calls being recorded?

22 A When you say, difficult for the -- there's two sides.
23 There's the person with the child, the children, and the person
24 who's calling the children, so.

25 Q Well, isn't it true that sometimes it would be

1 difficult for you to make it and sometimes Mrs. Kassenoff would
2 have to have it be a different time, a few minutes here or
3 there, isn't that right?

4 A Well, I'll answer for myself. There were times where
5 her call was scheduled for 7:30 and I was with the kids and I
6 would e-mail her and say, listen, I'm running 15 minutes late,
7 can we push it to 7:45.

8 Q And were there times that happened with Mrs. Kassenoff?

9 A I believe so.

10 Q But you agree at the time she was entitled to her call;
11 correct?

12 A There was a court order that permitted each side to
13 have a call.

14 MS. SPIELBERG: Roy, can you put up P, like Peter,
15 times four.

16 Judge, I would will like to move Exhibit T times four
17 into evidence.

18 MR. DIMOPOULOS: No objection.

19 THE COURT: In evidence.

20 (Whereupon, Defendant's Exhibit TTTT, previously marked for
21 identification, is moved into evidence.)

22 Q On October 11th, 2019, that was prior to the Zoom
23 calls; correct?

24 A I'm sorry?

25 Q October 11th, 2019.

1 A Oh, before the March Zoom calls, yes.

2 Q And there was no time limit on those calls at the time,
3 was there?

4 A I don't agree with you.

5 Q You don't agree with me?

6 A No, I don't.

7 Q Were the calls suppose to be from 7 to 7:30?

8 A I believe they were scheduled for 7:30.

9 Q Okay. And it would be entirely reasonable, wouldn't
10 you agree, for Mrs. Kassenoff to schedule things around those
11 phone calls?

12 A I have no idea what she would do.

13 Q Well, wouldn't you schedule things around those phone
14 calls?

15 A There were plenty of times -- no, I didn't schedule
16 things around those phone calls. I don't understand your
17 question. I would do my best to make the calls at the
18 appropriate time.

19 Q Okay. So you e-mailed her on October 11th, 2019 at
20 7:32; The girls won't be ready until 8.

21 Do you see that?

22 A Yeah, I see that.

23 Q And she says, why don't you tell me until after 7:32.
24 I will speak with them extra tomorrow; right?

25 A I see that.

1 Q You said, no, you won't.

2 A Okay.

3 Q Why would you have said that?

4 A I don't remember the specific e-mail. There were a lot
5 of difficulties with these Zoom calls. I'm sorry -- with the
6 FaceTime calls.

7 Q Do you recall --

8 THE COURT: Hold on. I just realized it's 12:30.

9 MS. SPIELBERG: Can I just move T times 4 into
10 evidence?

11 MR. DIMOPOULOS: No objection.

12 THE COURT: It's in evidence and then we'll resume.
13 After lunch.

14 (Whereupon, a lunch recess is taken.)

15

16 * * * * *

17 THIS IS TO CERTIFY THAT THE FOREGOING

18 IS A TRUE AND ACCURATE TRANSCRIPTION

19 OF THE ORIGINAL STENOGRAPHIC RECORD.

20

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22 _____
Michael A. DeMasi, Jr.

23 Senior Court Reporter

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