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IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

- - -

John Doe, etc., et al.,
Plaintiffs,

vs.

The Child and Adolescent Service Center, et al.,
Defendants.

Case No. 2000 CV 01703

- - -

Deposition of Mark-David Janus, Ph.D., a witness herein, called by the Plaintiffs for Examination under the statute, taken before me, Rose Marie Prater, Registered Professional Reporter and Notary Public in and for the State of Ohio, by agreement of counsel without notice or other legal formality, at the offices of the deponent, 1706 East Broad Street, Columbus, Ohio, on Monday, June 4, 2001, beginning at 10:03 o'clock a.m. and concluding on the same day.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

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ON BEHALF OF THE DEFENDANTS:

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S T I P U L A T I O N S

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It is stipulated by and between counsel for the respective parties herein that the deposition of Mark-David Janus, Ph.D., a witness herein, called by the Plaintiffs for Examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notary taking it.

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I N D E X

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P R O C E E D I N G S

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Monday, June 4, 2001

Morning Session

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Thereupon, Janus Exhibit Nos. 1 and 2 were marked for purposes of identification.

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(Witness placed under oath.)

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MARK-DAVID JANUS, Ph.D.

of lawful age, being by me first duly placed under oath, as prescribed by law, was examined and testified as follows:

EXAMINATION

BY MR. YOUNG:

Q. Dr. Janus, would you state your full name and spell your name for the record, please?

A. Mark-David Janus, J-a-n-u-s.

Q. Dr. Janus, what is your address here, your business address?

A. 1706 East Broad Street, in Columbus, Ohio.

Q. Mr. Comstock has provided us with a CV, which we've marked for identification purposes as Janus Exhibit 2; is it current?

A. Yes.

Q. And we have a report from you dated May 18th, I believe, of 2001, which we've marked Janus Exhibit 1; is that current?

A. Yes.

Q. You have **no** supplements **or** any change of opinions since the date of that report?

A. **No** change of opinion. There's some -- There are some typos, but that's really all that there's --

Q. But the opinion itself has not changed?

A. No change.

Q. Have you received any materials since the time of the preparation of that report?

A. I did receive two sets of materials.

Q. What did you receive?

A. I believed notes from Dr. Bello, and I received notes from Chris Wurst.

Q. And when you say that you received notes, you're talking about office records or notes that they've taken in the examination --

A. Yes.

Q. -- or treatment?

A. Yes.

Q. In addition to that, have you received any other depositions since the date of your report?

A. No, sir.

Q. Do you have a file on this matter?

A. Yes.

Q. May I see it, please.

(Witness leaves the room and returns with a box.)

BY MR. YOUNG:

Q. For the record, you've produced a box, which appears to be the size of a banker's box, which I should take a look at.

Do you have a listing of materials that you received in review of this case?

MR. COMSTOCK: You have the instruments in your

report.

THE WITNESS: Yes, the instruments. Yes.

MR. COMSTOCK: I'm sorry. Excuse me. They are listed --

THE WITNESS: In the review of records?

MR. COMSTOCK: Yeah, I think so.

BY MR. YOUNG:

Q. Let me ask the question this way. Would all of the materials that you've received be referenced or listed in your report?

A. Yes, sir.

Q. All right. Did you receive any depositions in this case?

A. Depositions, there are two depositions. Well, the depositions from Kimberly Cooper and Thomas Data.

Q. And those were the only depositions that you received?

A. Yes, sir.

Q. You did not receive the deposition of Dr. Bello --

A. No, sir.

Q. -- of Dr. Getz?

A. No, sir.

Q. Okay. Anything that you did receive would be referenced in some way in the report --

A. Yes.

Q. -- is that correct?

A. Yes, correct.

Q. All right. And you've just testified that that would be other than the notes of Dr. Bello and the notes of Chris Wurst that you received after preparation of your report?

A. That's correct.

MR. COMSTOCK: I should tell you, Chuck, for the record, the notes of Chris Wurst are the progress notes in his handwriting that you have a copy of. In other words, he translated those progress notes because they were very difficult to read; so I sent those to Dr. Janus.

MR. YOUNG: And have we received a copy of that translation, David?

MR. COMSTOCK: No. No, you have not.

MR. YOUNG: Would you be kind enough to provide that to us?

MR. COMSTOCK: I will.

MR. YOUNG: And was that prepared by Chris Wurst?

MR. COMSTOCK: Yes.

MR. YOUNG: All right.

MR. COMSTOCK: I'll try to have it for you tomorrow at the pretrial.

MR. YOUNG: Thank you.

BY MR. YOUNG:

Q. Doctor, can you tell me, are you familiar at all with the Child and Adolescent Service Center, other than your review

of the materials in this case?

A. No, sir.

Q. Have you ever treated any people in connection with the Child and Adolescent Service Center or been professionally linked to them in any way?

A. Not that I'm aware of, no.

Q. Have you ever met any of the people who have worked there since, say, 1987, to your knowledge?

A. To my knowledge, no.

Q. Are you familiar with a gentleman by the name of Michael Johnson?

A. No, sir.

Q. Jon Thomas?

A. No, sir.

Q. Randy Laws?

A. No, sir.

Q. Randi Motz?

A. No, sir.

Q. Andrea Tuscan?

A. No, sir.

Q. All right. Do I understand that your involvement in this case came as a result of a contact from Mr. Comstock?

A. That's correct.

Q. He approached you and asked you if you'd be willing tc review this matter?

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A. Yes, sir.

Q. When I take a look at your report, you make reference to the fact that his firm contacted you to provide an independent psychological evaluation of Thomas Data, and an expert opinion on the impact of a previous incident of sexual abuse on his current psychological functioning.

Now, when I read that, that appears to be a limitation of your assignment to his current condition; is that accurate?

A. Yes.

Q. All right. Now, did you make any attempt to determine any injury or damage that Tom Data had suffered from the sexual abuse by Gary Kovacik from the time of the incident, September or October of '98, until the time of your examination?

A. I made every effort to trace the history of that as it was present in the records that were before me; so I -- so the hospital records and other notes and other records, I observed that carefully. Others had made note of that.

Q. Do I understand that your opinion, however, deals with the current status of Tomy Data from the time that he appeared for your examination?

A. That's correct.

Q. All right. And while you may have read notes and diagnoses of others, do I understand that you have no opinion concerning injury or damage to him from the time of the incident until the time of your examination?

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A. I'm not sure I understand the question.
Q. Okay.
A. You said --
Q. I'm trying to understand --
A. Right.
Q. -- just where your opinions lie in this case.
A. My opinion lies on my evaluation of this young man, as I -- as I met him on -- whatever the date -- May the 4th, and my evaluation of him, then looking at the records, all the records that I received prior to that period of time, which gave me a history of the young man, and then how he presented on that day.
Q. Okay. Well, perhaps I'll go on it step by step and we'll analyze the opinion.
A. Okay.
Q. Do I understand that you don't have an opinion and you've not been asked to give an opinion concerning the responsibility of the Child and Adolescent Service Center for the sexual molestation by Gary Kovacik --
A. That's correct.
Q. -- of Tom Data?
A. Yes.
Q. You're not going to offer an opinion in that way in any manner?
A. No.
Q. You are familiar with Dr. Ann Burgess, are you not?

A. Yes, I am.

Q. Have you worked with her in the past?

A. Yes, I have.

Q. When have you worked with her and in what manner?

A. Oh, well, I met Dr. Burgess in 1979. I was a newly ordained priest and trying to learn more about the whole question of sexual abuse. I met her at a conference where she was the featured speaker.

And then second -- second, after that, secondarily to that, when I was in Boston with her, I worked with her on some -- a grant that she was working on.

And then we wrote a book together. She assisted me on a project that I was working on.

Q. All right. Are you familiar with her background?

A. Yes.

Q. Have you had matters actually published with her?

A. Yes.

Q. Where you've both been contributors in some way?

A. Yes.

Q. Are you familiar with her standing in the community concerning matters of patients with sexual abuse?

A. Yes.

Q. Do you respect her professional opinion?

MR. COMSTOCK: Objection. You better specify.

BY MR. YOUNG:

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Q. I'm not asking if you differ in this case in any way. We'll get to that.

A. Right.

Q. But do you respect her professional opinion?

A. Yes.

Q. All right. Do you believe that she is competent to express an opinion in this case by way of her background, education and so forth?

MR. COMSTOCK: I object to that on the grounds that you have to specify what opinion we're talking about. She may have opinions on a whole host of subjects, some of which -- well --

BY MR. YOUNG:

Q. He notes that for the record.

A. Okay.

Q. Do you understand the question?

A. Yes, I do.

Q. All right.

A. I think -- I certainly respect Dr. Burgess' opinion within her area of competence, absolutely.

Q. All right. Do you limit that in any manner? How do you describe her area of competence as it may not qualify her tc render an opinion in this case, if that's what you mean by this?

A. No, she's a Doctor of Nursing Science. She has a long history in terms of understanding sexual abuse and exploring

that. I have an opinion on that. I -- I'm a psychologist. She doesn't render a psychological opinion, you know. I don't -- So she's within her area of competence defined by her degree.

Q. All right.

A. I certainly respect that.

Q. And when you -- When you appear to limit it in that manner, she has a great deal of experience with patients who have been sexually abused --

A. Yes, she does.

Q. -- does she not?

A. Yes, she does.

Q. Okay. Now, I want to take you to your report --

A. Uh-huh.

Q. -- and get to the section that deals with your opinion. Do you have a copy of it before you?

A. Yes, I do.

Q. I've marked it for identification purposes as Janus Exhibit 1. Do I understand that your opinion in this case begins at Page 13 -- excuse me, Page 12, with "Summary and Recommendations" and the basis -- the previous eleven-and-a-half pages deal with the basis for that opinion?

A. Yes. That's correct.

Q. Now, is it your opinion that Tommy Data suffered some injury or damage as a result of the sexual abuse by Gary Kovacik?

A. Yes.
Q. What injury or damage did he suffer, in your opinion?
A. The two things that are -- became clear to me through the result of my examination is an immediate increase in depression, and depression which led to suicidal behavior that was present for him over a period of time.

Also, the data are clear that he has some difficulty in terms of his understanding his -- his attitudes about sexuality and about his own sexual competence. The data are clear to me that there's -- there's -- the findings from the data are consistent with those with kids who have had sexually abusive experiences, and those are two things that I did not see in his history prior; so I think those two issues were very clear.

There's also some damage, collateral damage, I think, in terms of his relationship to his -- to his brothers or their -- their reaction to the fact that he had been abused is providing some ongoing difficulty for this boy.

Q. Anything further?
A. From the -- From the data, those are the -- those are the clearest things that I could see that were directly related to the sexual abuse.
Q. Now, as a layperson looking at a psychological issue, perhaps I confuse things and perhaps you can clarify them for me.

A. Uh-huh.

Q. Did he develop any problem with relationships as a result of the sexual abuse committed by Gary Kovacik?

A. He had difficulty with relationships prior to that. I think the sexual abuse -- it's reasonable to believe that the sexual abuse exacerbated some of his already preexisting difficulties in forming and sustaining relationships.

Q. I assume that you have received and reviewed the report prepared by Dr. Burgess?

A. Yes.

Q. When you examined Tommy Data, did you find that he was suffering from posttraumatic stress disorder?

A. No, I did not,

Q. All right. You don't believe that he met the criteria for PTSD at the time of your examination?

A. Not at the time of my examination.

Q. Do you believe that he had suffered from PTSD as a result of this incident prior to your examination?

A. It -- I note that it was -- it was -- Symptoms consistent with posttraumatic stress disorder were mentioned in several of the hospital records, I think particularly from Mercy Hospital. And although they didn't -- I didn't see a -- I don't recall seeing a diagnosis of posttraumatic stress disorder. I do recall that there are certainly symptoms of posttraumatic stress disorder, but not the full diagnosis.

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Q. What elements of the diagnosis of PTSD do you believe that he was lacking at the time of your examination?
A. Let me get the --
Q. DSM?
A. -- the DSM and let's go through it.
(Witness leaves the room and returns.)
BY MR. YOUNG:
Q. You're referring to which DSM?
A. I'm referring to DSM --
Q. IV?
A. -- IV-TR, it's text revision.
Q. TR is not a designation I've seen before. Text revision?
A. Yes, this is the newest edition.
Q. The newest3
A. We can give you a Xerox off the page for you.
Q. Why don't you just list, then, for the record the criteria contained in DSM-IV-TR?
A. Okay. "The traumatic event is persistently re-" -- Well, pardon me. Let me go back to the beginning. "The person has been exposed to a traumatic event in which both the following were present:
"A. One, the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury or threat to the physical

integrity of self or others; two, the person's response involved intense fear, helplessness or horror. Note: In children, this may be expressed instead by disorganized or by agitated behavior.

"B. The traumatic event is persistently reexperiencec in one or more of the following ways: The recurrent and intrusive distressing recollections of the events including images, thoughts or perceptions. Note: In young children, repetitive play may occur in which themes or aspects of the trauma are expressed.

"Two, recurrent distressing dreams of the event. Note: In children, there may be frightening dreams without recognizable content.

"Three, acting or feeling as if the traumatic event were recurring, including a sense of reliving the experience, illusions, hallucinations and associative flashback episodes, including those that occur on awakening or when intoxicated. Note: In young children, trauma-specific reenactment may occur.

"Four, intense psychological stress to exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

"Five, physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

"C. Persistent avoidance of stimuli associated with

the trauma and numbing of general responsiveness, not present before the trauma, as indicated by three or more of the following: One, efforts to avoid thoughts, feelings or conversations associated with the trauma; efforts to avoid activities, places or people that arouse recollections of the trauma; three, inability to recall an important aspect of the trauma; four, markedly diminished interest or participation in significant activities; five, feeling of detachment or estrangement from others; six, restricted range of affect; seven, sense of a foreshortened future."

Under D, "Persistent symptoms of increased arousal not present before the trauma, as indicated by two or more of the following: One, difficulty falling or staying asleep; two, irritability or outbursts of anger; three, difficulty concentrating; four, hypervigilance; five, exaggerated, startled response.

"E, duration of the disturbance, symptoms and criteria B, C and D is more than one month.

"F, the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning." And that's the complete diagnostic list.

Q. TR in the -- in the DSM that you're referring to refers to the definitional text change as opposed to the criteria change, or do you know?

A. I don't know at this moment.

Q. I'm wondering how this text you have in front of you differs from DSM-IV? which was first published, if you know?

A. No, this is the -- this is the -- The DSM-IV was prior to this edition.

Q. Okay.

A. This is -- The text revision is after the DSM-IV.

Q. I'm struck by how much it's changed since DSM-III.

A. Yes.

Q. What elements did you find lacking at the time of your examination by Tommy Data of the criteria for a diagnosis of PTSD?

A. Okay. Recurrent distressing dreams of the event, acting or feeling as if the traumatic event were recurring.

I wasn't able to assess whether there was physiological reactivity on exposure to internal or external cues, that wasn't present.

Efforts to avoid activities, places or people that arouse recollections was not present in the degree that one usually sees.

Inability to recall an important aspect of the trauma. Markedly diminished interest participation in significant activities. Restricted range of affect. Foreshortened future.

In terms of persistent symptoms not present before the trauma, the -- he did not appear to have exaggerated startled

response or hypervigilance, difficulty concentrating and outbursts of anger were present before, confuses the situation. Did have difficulty falling or staying asleep.

Q. All right.

MR. COMSTOCK: I missed that, following --

THE WITNESS: He did have difficulty falling or staying asleep, irritability, outbursts of anger, where they weren't present before. They were confusing, they were present before. They were present during, probably -- It seems exacerbated, but it doesn't -- it wasn't present -- they were also present before.

BY MR. YOUNG:

Q. All right. Now, in your review of the materials in this case, did you find any evidence of diagnoses of PTSD for Tammy Data resulting from the sexual abuse between the time of the incident and the time of your examination?

A. In the records that I saw, I did not see that diagnosis.

Q. All right.

A. I saw certainly symptoms and they indicated -- It was a rule out -- and it was "RO," rule out, posttraumatic stress disorder -- rule out posttraumatic stress disorder; so I saw those.

Q. Okay.

A. I was looking for, in fact, from the -- from those

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records for a solid posttraumatic stress disorder diagnosis. I did not. I may have missed it, but I didn't see it in reviewing those records.

Q. At the time of your examination, you did find posttraumatic symptoms from which Tom Data was suffering --

A. Yes.

Q. -- as a result of this?

A. Yes.

Q. Did you not?

A. Absolutely, yes.

Q. Now, in terms of finding those symptoms, do I understand, then, that for a diagnosis of the condition from which he was suffering, it would fit into a different diagnosis based on the diagnostic criteria?

A, Yes.

Q. All right. Is the diagnosis into which you would place those posttraumatic symptoms, one of depression as a result of this incident versus posttraumatic stress disorder? Based on the hesitation, let me rephrase the question.

A. Right.

Q. Is there a diagnosis under which you would place the injury and the posttraumatic symptoms from which Tom Data is now suffering?

A. Right. I think the -- In my evaluation, his depressive symptoms were not -- were not outstanding. His --

The post -- I think the -- It's certainly significant to say, if you were to look at Axis 4 on his, he certainly suffers from having had a sexually abusive incident.

While his symptoms don't meet, in my opinion, the full criteria of posttraumatic stress disorder on the basis of my evaluation, certainly the symptoms that he does experience do cause this young man pain and distress and certainly have an effect on him, probably most clearly seen in Axis 4 and in Axis 5 in terms of his global functioning, and in terms of Axis 4 in terms of difficult life events the person has faced.

Do they neatly fit into a specific diagnosis? No. I think they stand alone, but they don't -- it doesn't meet the whole syndrome, posttraumatic stress disorder syndrome.

Q. Right.

A. But are the symptoms present and do they cause real pain, or were they related to the trauma? Yes.

Q. Do I understand that in the practice of psychology or psychiatry in treating a person with a mental disturbance --

A. Uh-huh.

Q. -- do you treat the symptoms regardless of the diagnostic criteria into which they fit?

A. Well, the diagnostic criteria in which they fit give you an orientation to the proper way to treat the symptoms. There are some symptoms that don't -- that cross over. Like fever, for example, you certainly would want to treat fever, but

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fever, as a result of an unfortunate cold as opposed to meningitis, you treat it differently but you certainly respond to the fever.

Q. Fair enough. But we treat the symptoms as opposed to --

A. Yes, right.

Q. -- the diagnostic criteria?

A. You certainly want to provide relief for the symptoms, absolutely.

Q. All right. I saw a reference in your Summary and Recommendations. Let me take you to Page 12 of your report. Paragraph 2, you list multiple difficulties in Tommy Data's life?

A. Uh-huh.

Q. If 1 take a look at Paragraph (e), beneath that -- or sentence (e) beneath that, "An early and continuous history of unsuccessfully treated attention deficit disorder"?

A. Uh-huh.

Q. What treatment are you referring to there?

A. It appears that he had a poor response to a number of pharmacological attempts to treat the attention deficit disorder, and the behavioral attempts within the school to compensate or to remediate were unsuccessful.

Q. Tommy Data was placed in the partial hospitalization program of the Child and Adolescent Service Center following a

diagnosis of severe behavioral handicap --

A. Uh-huh.

Q. -- correct?

A. Yes.

Q. Are you aware of that?

A. Yes.

Q. Do you have any opinion concerning the accuracy of that diagnosis?

A. Well, it's not a diagnosis under -- under the diagnostic manual; so I don't -- so, you know, it's -- there is no severe behavioral handicapped diagnosis --

Q. Contained in the DSM?

A. -- contained in the DSM.

Q. But it is the evaluation of the problem which he was suffering --

A. Yes.

Q. -- which placed him in the partial hospitalization program?

A. Right.

Q. And we've referred to it in this case?

A. Right.

Q. I understand it's not contained in the DSM?

A. Yes.

Q. Do you agree that he was behaviorally handicapped?

A. From -- from the data that I saw, it appears that he

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was suffering difficulties in terms of control of impulses consistent with attention deficit disorder and perhaps conduct disorder.

Q. Okay. That's what I'm looking for --

A. Right.

Q. -- what an SBH assessment means, in your opinion --

A. Right.

Q. -- versus the attention deficit disorder --

A. Right.

Q. -- and the complications arising from that?

A. Right.

Q. Would you agree that his conduct problems, at the time of his placement at the Shipley School probably arose from his attention deficit disorder and difficulties in dealing with it?

A. That and his difficulty in terms of academic functioning. I mean, this is a young man with, you know, really, at best, borderline intellectual functioning. He's going to have difficulty in school.

Even were there no mental hyperactivity, the combination of the two, I think, certainly made school a very difficult place and, in my opinion, that would be the likely origin of the behavioral difficulties.

Q. All right. Was -- And when I ask this question, I'm trying to determine if you have an opinion. Do you have an opinion concerning whether his placement in the partial

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hospitalization program was a proper placement for his condition at that point in time?

A. I don't have an opinion. I don't know the program and --

Q. All right. Somewhere in your report, I believe I recall you saying you were surprised that he hadn't responded more favorably to the treatment that he had received before the sexual abuse. Is that accurate?

A. I guess I was impressed with how pervasive his -- his disorders were in -- starting in kindergarten, and all the way through. There was no strong, sustained improvement observed.

Q. Did you also find that there was no consistent course of treatment from which he would benefit during that period of time?

A. The treatment did seem to be interrupted at various times. Again, I don't -- I wasn't -- I wasn't evaluating the treatment, per se. I was just looking at the notes that were present. I wasn't evaluating the treatment, per se, but I was impressed with the fact that he had many different school placements and that he had a number of different trials of medications, and that there was -- he didn't appear to be responding.

Q. Do you believe, as you sit here today, that that was as a result of a lack of continuity of treatment or properly being able to address his problems?

A. I think there were several things that were part of that. I there's an ongoing -- ongoing difficulties at home. I mean, his family history continued to be -- to have problems with it throughout time.

He had -- His -- The attention deficit disorder can be a very -- a very treatment-resistant illness in a small number of cases. It appeared to be so for him, and that there were difficulties in -- in providing him ongoing psychiatric care and ongoing -- and ongoing educational environment that was -- that would be predictable long enough for him to be able to make some gains.

Q. All right. The testimony in this case is that the Child and Adolescent Service Center had a partial hospitalization program which met with the guidelines for the Department of Mental Health for such a program.

A. Uh-huh.

Q. Are you familiar with that type of program?

A. Yes.

Q. Would you expect -- Would you have expected that type of program to be able to successfully deal with Tommy Data's problems in the fall of 1998?

A. I think it was certainly an appropriate placement, yes.

Q. All right. And I'm not talking about certainty, but would you have believed that in all probability or probably that

type of setting would have been able to successfully treat the condition that he had at that point in time?

A. Yes, I think one would look for -- one would look for some signs. Again, by this time, he had had a long history of difficulties. I wouldn't expect them to do it overnight, but would have hoped that, with sufficient time, over time he would have been able to be helped.

Q. In the treatment of the attention deficit disorder, resulting in what was termed severe behavioral handicap, how would we identify successful treatment? What would we expect in the treatment of that condition?

A. Would expect -- Well, let me just, in the abstract, not specifically to this young man, but would expect that the -- you would have sufficient pharmacological assist; so that he would be able to maintain attention and concentration and avoid the behavioral and emotional outbursts that are often associated with hyperactivity sufficiently so that he would be able to, in a remedial school program, be able to make some benefit.

Q. To achieve some academic success?

A. Within the confines --

Q. Of his ability?

A. -- of his ability.

Q. Which would then enable him to reduce the frustration and the difficulty of dealing with the other things in life?

A. Yes.

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Q. All right. As I understand your testimony, it's your opinion that you found that Tom Data had suffered an immediate increase in depression, which led to suicidal behavior. What did you find to be the status of the depression in Tomy Data at the time of your examination?

A. Well, he's receiving Wellbutrin at the time; so he's under medication at the moment. At the time of the -- my evaluation, he -- his depressive symptoms were not particularly impressive. His reported self-esteem was fine. His sleep was assisted by medication.

With that assist, his sleep was fine. He wasn't reporting long episodes of teariness, of gloom, wasn't looking -- wasn't reporting anadenia, he wasn't reporting vegetative symptoms of depression.

So in terms of active symptoms of depression at that time, they were not impressive. However, he was receiving Wellbutrin medication that may have successfully been treating those symptoms.

Q. Do you have any opinion as to whether he will suffer from depression in the future as a result of this incident?

A. He's at higher risk. I don't know whether it will occur or not, but he is at higher risk.

Q. You described that he has difficulty with problems of sexuality?

A. Yes.

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Q. What do you mean by that?
A. His responses to both the Rorschach and the TAT indicated that his understanding of -- of sexuality and of the role that sexuality plays in human relationships is certainly less integrated and less cohesive than what one would find in other 13-year-old boys.
So strong sexual interest that one would find in 13-year-old boys, but without a sense of -- of either competence of how to integrate sexual desires and behaviors within a relationship and without a sense, really, of as much hopefulness of having -- being married, having a family, as one would expect in 13-year-olds to have.
Q. Kim Cooper related to you a history of Tommy Data acting out sexually since the time of this incident --
A. Right.
Q. -- did she not?
A. Yes, she did.
Q. Did you believe or disbelieve her history?
A. I have no reason to disbelieve her. I didn't find that confirmed by Tom, and in the narrow confines of the event, had no opinion about whether it occurred or didn't occur. My -- my estimation of the damage present for this kid was independent of that.
Even if none of that were true -- Let's assume none of that were true. The data still suggests that this is -- that

his difficulty in terms of understanding and integrating sexuality is still present.

Q. And if her history is true, the symptoms that she related concerning Tomy Data would be consistent with symptoms often experienced by children who have been sexually abused; would they not?

A. Yes, they're certainly symptoms that are consistent with that.

Q. And they would be further symptoms of his difficulty with sexuality and relate with what we believe the norm should be with a 13-year-old?

A. That's correct.

Q. Do you have an opinion as to whether this child will continue to suffer from this condition or these symptoms in the future?

MR. COMSTOCK: Let me just object because I'm not sure the question is specific enough. What symptoms?

You can go ahead to the extent you can answer.

THE WITNESS: Okay. Let me see. First of all, restricting to the test data itself and not the information fron his mom, looking at just the indications of his ability to integrate and develop a cohesive sexual identity, **I** think, without treatment, he's going to have difficulty in the future, yes.

BY MR. YOUNG:

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Q. All right.
A. And if the other -- the other symptoms are, I don't know how to evaluate that at this point.
Q. Let me put it this way, then, in satisfaction of Mr. Comstock's objection.
A. Right.
Q. Is that your opinion concerning future problems that this child is likely to suffer in the future --
A. Yes.
Q. -- as a result of this incident?
A. Yes.
Q. All right. Now, you've qualified that in some manner, without treatment?
A. Yes.
Q. What treatment do you believe he requires to deal with that issue?
A. I think I articulated that.
Q. Okay. We'll get into that, and we'll go to the treatment section then.
A. All right.
Q. You do believe that he requires treatment as a result of symptoms of difficulty with sexuality --
A. Yes.
Q. -- resulting from the --
A. That's correct.

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Q. -- sexual abuse?
A. That's correct.
Q. Okay.
MR. COMSTOCK: Let me caution you. Wait until he's finished with his question --
THE WITNESS: Oh, I'm sorry.
MR. COMSTOCK: -- because this will read funny: so just wait.
THE WITNESS: Okay.
MR. COMSTOCK: You anticipate his question, but that's okay.
THE WITNESS: All right. I'm sorry.
BY MR. YOUNG:
Q. Your review of this matter indicated to you that Tommy Data had a history of difficulty with relationships, did he not:
A. Yes.
Q. That was before this incident occurred?
A. That's correct.
Q. And as I understand it, from your report, he has limited skills with which to deal with -- I'm talking about social skills, with which to deal with relationships; is that fair?
A. That's correct.
Q. Do you have an opinion concerning how that difficulty, the question of relationships and ability to relate to others,

has been damaged by the sexual abuse by Gary Kovacik?

A. Again, on the basis of my -- my review of this boy, I think that's most clearly seen in his relationship with his brothers, where that relationship has become directly damaged by this incident of sexual abuse, and where he now, even though the relationship was conflicted before, he now pretty actively avoids them.

Q. Did you also find that he has more difficulty, following this incident, relating to authority or to male adults?

A. He certainly has considerable difficulties. I wasn't able to distinguish whether that's an extension of his difficulties before -- or an exacerbation of the difficulties before, or whether it was brand new. I wasn't able to reliably distinguish that, but, I guess, that's what I have to say. He has considerable problems.

Q. Your review of the materials in this case indicated that this child had difficulty relating to authority and to men before the incident, correct?

A. Yes, yes.

Q. Your review of this indicated that he did, in fact, relate to Gary Kovacik and he found some reinforcement, some positive reinforcement --

A. Yes.

Q. -- from Gary Kovacik to which he responded, correct?

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A. Yes.
Q. You then found that as a result of the abuse and the betrayal by Gary Kovacik, that he suffered additional difficulties; did he not?
A. Exacerbation, I think I would add --
Q. All right.
A. -- is the word I would use.
Q. Okay. In terms of his difficulty with relationships, or the exacerbation, would you expect that to continue into the future?
MR. COMSTOCK: Again, Chuck, let me ask for a clarification. Are you asking him as respects his peer relationships?
MR. YOUNG: We've just talked about the characterization of the relationship problem --
MR. COMSTOCK: Yeah.
THE WITNESS: Uh-huh.
MR. YOUNG: -- and the exacerbation of a previous problem that this child had, and I'm addressing that exacerbation.
MR. COMSTOCK: Okay.
BY MR. YOUNG:
Q. Do you believe that will continue into the future?
A. Yes.
Q. All right. And requires treatment?

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A. Yes.
Q. Were Tom Data and his mother, Kim Cooper, cooperative in their examination by you?
A. Yes.
Q. Did you find that they appeared to be looking for help in terms of dealing with his problems?
A. Yes.
Q. Did you find that consistent with the way in which they've approached professionals in the past?
A. I don't -- I don't have an opinion on that.
Q. Okay.
A. I don't know how they approached them in the past. I know that I found them cooperative --
Q. All right.
A. -- in the evaluation.
Q. If I take you to Page 3 of your report --
A. Uh-huh.
Q. -- and I look at the description of Tom Data's relationship with his mother --
A. Uh-huh.
Q. -- you conclude that he's "deeply dependent upon her," but "also is trying to find a way to separate himself"?
A. Mmm, hmm; yes.
Q. Is that consistent with the normal 13-year-old?
A. He's more dependent on her than a normal 13-year-old

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is, and perhaps has more difficulty separating from her because he's not -- I think, my opinion, he's not -- This is his last anchor, and he's not sure -- He's had some separations in the past and he's not -- he needs to make sure -- It's hard for him to get too far away because he needs to check back and make sure that she's there.

Whereas, other 13-year-olds at this juncture are really more confident that the base is there and they're really looking to extend and to expand out now. They can build on that more solid base. Tom doesn't have that as -- in his own, I think, psychological makeup, doesn't have as solid a base; so he really has to stay pretty close to home.

Q. Did you find any other meaningful relationships that this child has with any adult other than his mother when you examined him?

A. That's -- that's the one close attachment relationship that he has to an adult. He has other adults that he looks on favorably, but I wouldn't say is attached to them --

Q. All right.

A. -- in any way.

Q. I look at your report and it contains references to symptoms which resulted after the sex abuse in this case, and I found characterization of symptoms in Dr. Burgess' report as post-trauma symptoms. Is that what we would use -- the term that we would use to refer to such symptoms?

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A. Depending on the symptoms, yes, sure.
Q. Okay. In other words --
A. Right.
Q. -- a symptom or a condition, acting out in some way --
A. Right.
Q. -- that results from an incident, would be called a post-trauma symptom?
A. Right, if it's related to that incident.
Q. Right. When I look at Page 5 of your report --
A. Yes.
Q. -- second paragraph --
A. Yes.
Q. -- the language appears "The hypothesis suggested by these data is that this is a remarkably isolated boy...."; and it goes on?
A. Uh-huh.
Q. Do I conclude from this paragraph that this is the current condition of this boy, part of which results from his previous problem, part of which results from the sexual abuse by Gary Kovacik?
A. Yes.
Q. In terms of the insult resulting from the sexual abuse by Gary Kovacik, did that make the previous underlying condition more difficult to treat?
A. Yes.

Q. Here was a child with limited social skills, limited academic ability, and difficulty relating to authority, who acts out as a result of the frustration of dealing with all of this. What difficulties would you expect in treatment received as a result of the trauma experienced from Gary Kovacik, if you have an opinion?

A. Okay.

MR. COMSTOCK: Let me just make an objection to the prefatory statement you made before your question.

THE WITNESS: I think the difficulties in treatment that are going to -- primarily are going to have to do with this young man's sense of himself and his difficulty in integrating normative sexual experiences into his now -- his now premature sexual experiences, and his ability to distinguish those, his ability to make sense of them, and to differentiate them from future normative sexual experiences that one would have.

It will also, I think, exacerbate his sense of his own competence, to be able to tell the good guys from the bad guys, you know, as simply put. I think that he's not as sure of that as perhaps he was before.

(Pause.)

BY MR. YOUNG:

Q. Your interview with Kim Cooper revealed that she had some issues and difficulties of her own, did it not?

A. Yes.

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Q. In terms of her attempts to deal with the sexual molestation of her son, are you critical of the way in which she has tried to deal with it in any manner?

A. It seems to me that she doesn't understand or doesn't -- didn't demonstrate an understanding of what the treatment involves, that -- of what's required for it. She has a great desire for him to be better.

I didn't get a sense that she really understands everything that's required to have the treatment occur and how to make it -- how to make it successful. And I think that may -- that may interfere with treatment because I don't think she -- She, I think, really looks at this as something that somebody should sit down and talk with Tomy about, which is -- which is not going to be successful for him, and, in fact, is going to be agitating for him.

And I think she's frustrated because she doesn't see that part getting better. And my guess is -- and this is just conjecture, is that she is likely to hop from place to place to place if it's not -- doesn't happen within the limited amount of time that she thinks it should take place in, as opposed to really seeing this as a long-haul issue.

Q. Would you agree that parental understanding of that nature is something that comes from professional assistance in terms of information and education?

A. Mmm, hmm; yes. And developing a rapport with the

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people who are providing the treatment.

Q. As a result of your review, have you formed any opinion as to whether the actions of Kim Cooper contributed in any way to the sexual abuse of Tommy Data?

A. No, that's the responsibility of the person who committed the abuse.

Q. Doctor, let me take you to your treatment recommendations and ask you to clarify a couple of things for me, if you would.

A. Uh-huh.

Q. Paragraph (a) on the treatment recommendations, Page 14 --

A. Uh-huh.

Q. -- you state that it's "...unlikely that traditional insight-oriented psychotherapy or cognitive behavioral therapy that has proved effective with victims of sexual abuse will be able to be effective with him." Why is that?

A. His limited intellectual ability, frankly. He, Tommy has -- he doesn't -- language does not really -- For most of us, therapy is really based on -- or really based on developing cognitive insight and on understanding, reunderstanding, textualizing experiences, emotional experiences through the use of language, using language to really moderate the impulses that -- you know, the emotional impulses that come from the lower limbic of the system, the lower lobe of the brain that

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helps analyze.

Tommy's experiences indicate that his verbal abilities are pretty limited in that regard. His use of language shows that he's -- he has difficulty with analogies, metaphors, abstractions of almost all kinds. And his -- So that using language to moderate his feelings or his emotions is -- is going to be more difficult for him than it would be if he had like a 100 IQ.

And given that both of those therapies are really primarily based on language, but one insight-oriented psychotherapy, essentially devoted to using language and cognitive behavioral therapy and understanding cognitions on evaluating the accuracy or the inaccuracy of cognitions and their behaviors that result from that, that those -- his intellectual difficulties cut to the heart of really what's the basis of both of those therapies.

Q. Would you classify his **IQ** as a low normal?

A. No.

Q. No, it's below that?

A. He's borderline.

Q. Borderline means what?

A. Well, his **IQ** is 76, and his verbal **IQ** is 71, intellectually deficient. What we used to call retarded is **69**. On any given day, depending on when you test him, he's going to be between that -- He's, for example, not going to graduate fro.

high school. He's not in a standard program. He's not going to go on to community college or colleges. He just doesn't have the intellectual ability to do that.

Q. When I look at the last sentence of that paragraph, you say that it's going to be necessary that -- or you say "This suggests that pharmacotherapy, environmental manipulation...." What do you mean by "environmental manipulation"?

A. Well, you're going to have to find an environment where he's going to be able to be successful. Rather than have him adapt to environments, he's going to have to find some environment -- you're going to have to really put him in an environment where he's going to be able to be successful.

So, for example, you would -- not for Tommy, but if you had a kid who's -- you know, has deficits in language, you're not going to put him in a classroom where people are going to lecture to him all day. You're going to be able to put him in a situation where he's going to have to use his hands and not sit still and pay attention. You're going to have to make some accommodation for that.

Q. What environment could this child be successful in? What are you recommending for him?

A. Well --

Q. Are we talking about --

A. -- which -- What time?

Q. Are we talking about a residential treatment facility?

Are we talking about a specialized facility? Are we talking about staying in the family?

A. I would, for -- Again, for the reasons I stated at the very end, I would be -- residential treatment may be required for him at some point. I would hope not. I mean, that may be the last option. It often is for these kids.

But given his current state, I would try to find environments within the home and within the local community, if that's available, where he might be able to be successful. But he's not going to be successful, for example, in the local elementary school --

Q. All right.

A. -- at the local junior high school. That's not going to work for him.

Q. When we talk about action-oriented supportive therapies, you're talking about some way in which he can be successful within that environment?

A. Within that environment, or just a number of different ways to provide therapy. Insight-oriented psychotherapy, where you're on the couch five days a week, is one kind. There are other therapies in terms of providing enhancing his social skill development, enhancing other things, but really focusing on development of specific skills, where he actually engages in doing something.

Having him sit down and think about something is not

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likely to be as helpful as, let's get this kid to do something, learn how to specifically do it, not let's sit down and talk about it and analyze how you feel about it. That's not going to work for him.

Q. The statement, "Once a therapeutic alliance has developed, specific sexual issues can be profitably addressed"; are we talking about through psychotherapy there?

A. Not necessarily. I think, as we understand traditional psychotherapy, I mean, the therapist is -- There are ways of doing psychotherapy or providing therapeutic assistance with people with lesser intellectual abilities, which is what he needs. You're not going to do, let's come in three times a week and do what we normally do. That's not going to be helpful for him.

Q. In terms of addressing specific sexual issues, I'm not familiar with what that would be?

A. Well, for him, I think it would be pretty simple. For him, it would be like how to talk to a girl or how to respond or how to communicate, that -- really very, very simple things that are really very complicated for him right now and are not really very doable for him at this point.

So a lot of coaching, a lot of mentoring. It's going to be more therapeutic for him than sitting down and talking about, "Let's go back and talk about what happened to you and how did you feel about it." That's likely to be very arousing

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and very disorganizing for him.

Whereas, the teaching of some basic skills, "Now, how can we do -- What do we do with this? How do you do this?" And "How do you hold hands and go on a date?" Once he begins to build up those more specific skills, he's going to be better able to remediate the damage that occurred to him.

Q. I am trying to expedite this, actually, although it might not seem like it.

A. That's fine.

Q. You've reviewed the report of Dr. Burgess?

A. I have.

Q. I'm not going to go through it paragraph by paragraph, but you would agree that her opinion concerning the effect or the impact of this sexual abuse on Tomy Data is similar to yours?

MR. COMSTOCK: I object to that.

MR. YOUNG: Of course.

MR. COMSTOCK: You can answer that, Doctor, however you wish.

THE WITNESS: I -- There are some places where we agree.

BY MR. YOUNG:

Q. All right.

A. We have some places of agreement.

Q. Now, we're going to look for the primary sources of

disagreement that you have with her conclusions. Does anything stick out in your mind as we have it here?

A. Let me look at the report.

Q. I'll give you the report.

A. Right.

(Handed.)

Q. And we can review it paragraph by paragraph, if you like.

A. Sure.

- - -

Thereupon, Janus Exhibit No. 3 was marked for purposes of identification.

- - -

THE WITNESS: You're asking me about the conclusions, primarily; is that correct? On Page 5, point two, her first paragraph, where she says, "He is suffering posttraumatic stress disorder and will never fully put this difficult experience behind him," I'm not sure I would agree with that.

BY MR. YOUNG:

Q. All right.

A. I'm not sure that "never" is the case. I don't find him suffering from the -- From the limitations of my evaluation, I would not say that he suffers from posttraumatic stress disorder at this point.

Q. Let me back up then.

A. And I wouldn't say that he will never fully put this experience behind him.

Q. Let me back up and eliminate the question, posttraumatic stress disorder and whether this condition meets each of the criteria --

A. Right.

Q. -- for that diagnosis.

A. Right.

Q. And let's talk about the post-trauma symptoms, because --

A. Right.

Q. -- I think we can agree that's --

A. Yes.

Q. -- what has to be treated, correct?

A. Right.

Q. In terms of the post-trauma symptoms that Tom Data has experienced as a result of this sexual abuse, do you believe that he will put that behind him?

A. I would -- I would say for every patient they have the opportunity to put that behind them. I mean, that's the hope and that can occur. Does it -- Can they put it behind them? Can it make it be like it never occurred? No, we can't make any event be like it never occurred. But can we make it be so that it doesn't effect his daily functions in a maladaptive way? I would hope, yes.

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Q. Let me ask it this way. Would you prefer that I use the term medical or psychological? Is it your opinion to a reasonable psychological --

A. Psychological.

Q. -- probability that this child will be able to put this experience behind him? And by that I mean eliminate the symptoms.

A. I want to say I don't know. I think it's -- I can certainly say within reasonable psychological certainty there's no reason, at this point, to think that he will never recover. I can't predict that he will recover, but I can certainly say there's no reason to think, at this point, that he will never recover.

Q. All right.

A. To continue answering your question --

(Witness reviewing documents.)

-- on Page 7, the bottom, the last paragraph, and I'm not sure I'm understanding Dr. Burgess correctly within this, but let me -- you're looking at a place where I might disagree. "Tommy is worried about many things, has a deep sense of feeling overwhelmed at times and is lacking in the ability to manage his own assertive and aggressive impulses."

I would -- She then goes on to say, "A subsequent event can be a positive or negative. He has managed to wall off the intensity of emotions associated with the sexual abuse

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through biopsychological operations that render him numb to emotional reactions."

And, again, I'm not sure I'm understanding her correctly, but I would suggest in reading that, that I would agree with the first sentence. I think that first sentence is -- My data suggests that that's just part of the way this kid thinks, and that that -- that's not subsequent to the abuse; that that was -- that would be there whether the abuse occurred or not.

And his understanding of a subsequent event can be positive or negative, I think that's, again, more of a reflection of his difficulty with social relations and difficulty with being able to predict activities and understand other people in the future. I think that's -- I'm not sure that that itself is directly related to the sexual abuse.

So if -- The way the paragraph reads -- I may be misreading her, and I don't want to do that. I would say that those things are really more cognitively based than they are based in terms of a primary action to the sexual abuse; so that's in terms of where I would disagree.

Q. You would agree that his cognitive limitations certainly affect the way in which he responds --

A. Absolutely.

Q. -- to the sexual abuse?

A. Absolutely, and complicates it, frankly.

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Q. Let me take you to the treatment plan that she has outlined on Page 8.

A. Uh-huh.

Q. She talks about a residential treatment facility and gives, for example, the Pines in Norfolk, Virginia. Are you familiar with the Pines?

A. No, I'm not.

Q. Do I understand that you believe that residential treatment may be necessary in the future, but you are hesitant to remove Tomy Data because of his close relationship with his mother, at this time, which you find important to his progress?

A. Yes. I guess I would also -- Again, I don't know if I misunderstand her, and also I don't know this facility. I wouldn't -- I wouldn't, as a result of my evaluation, place Tomy with sexually aggressive boys. I'm not sure that he's sexually aggressive.

Q. Right.

A. I don't know of any evidence for that. I don't even know of any evidence of him being particularly aggressive. Does he have difficulty with aggressive impulses? Sure, he does, but I don't think that's necessarily related to his sexuality. I think his sexual issues, I think, are distinct.

Q. You would agree that he needs counseling, supportive and trauma counseling?

A. Supportive psychotherapy first. It depends what

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"trauma counseling" means. I would, again, be hesitant to recommend a course of treatment for this child which is really very dependent on the use of language because of his limitations with that.

I'm not sure that that would be -- Do we want to address the trauma, I mean, treat the symptom? Yes. Would I do that the same way that I would treat other children who have had sexually abusive experiences? Would I treat this boy that way? No, because I don't think he has the capacity to respond to it.

Q. Is there any section of her multi-modal treatment plan that you strongly disagree with, other than the residential issue that we've described?

A. I guess modifications as opposed to straight disagreement. In terms of -- I would -- Group therapy, again, because it's essentially a verbal medium, I think is going to be disorganizing for this boy. Does he need work on getting along with peers? Yes.

Do I think -- Putting him in a general adolescent group therapy and say "let's work this out," I don't think that's going to happen. This boy is going to be severely disadvantaged when he's in a group with other kids who have much better language skills than he does.

Does he need help in relating to peers and interactions? Yes. Would I do individual group therapy -- group therapy for him? I don't think so. I would do more

structured group activities, not necessarily a conventional therapy.

By the same token, within family therapy, I think the -- one, again, has to be careful about how one does that; so that, again, you're not disorganizing this boy with the therapy that you're using. Does his mother have a better understanding and his brothers, in particular? Sure. I think that's very important, some strong do's and don'ts on ongoing conventional family therapy. Will that be useful for him? I don't know if it will be.

Tutoring, I think is -- that's going to be the chance for him to have best success. Developing of the -- Point 7, I think is fine.

Point ten, I think, is enormously important for him. The other thing I would add in terms of this, I think he should have a therapeutic relationship and is going to need to be long term, but more supportive -- more what we call supportive psychotherapy as opposed to what HMOs now call more direct, symptom-focused treatment because this boy is -- you're not going to -- If he has a difficulty, for example, a sexual difficulty, you're not going to resolve that in eight sessions, you know, and be done.

That's going to surface at different times and points in his life, and you're going to need -- he's going to need to have somebody with whom he has a long-term relationship, who can

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help him within that period of time. Does it mean that he comes and sees this guy five times a week? No, but he's going to need somebody help him master the developmental tasks and be around for him to confide in as he goes through developmental tasks.

Q. When you say "somebody," are you talking about a psychologist on an outside basis, on an as-needed basis?

A. Yes, I am.

Q. Doctor, thank you. I don't have anything further.

MR. COMSTOCK: Okay. Do you want to read this? I think --

THE WITNESS: Yes.

MR. COMSTOCK: -- probably you should.

THE WITNESS: Uh-huh.

MR. COMSTOCK: And we have, as you know, a trial date on the 18th.

- - -

(Signature not waived.)

- - -

(Thereupon, the deposition was concluded at 11:24 o'clock a.m. on Monday, June 4, 2001.)

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A F F I D A V I T

- - -

STATE OF _____,)
) SS:
COUNTY OF _____,)

Mark-David Janus, Ph.D., having been duly placed under oath, deposes and says that:

I have read the transcript of my deposition taken on Monday, June 4, 2001, and made all necessary changes and/or corrections as noted on the attached correction sheet, if any.

_____
Mark-David Janus, Ph.D.

Placed under oath before me and subscribed in my presence this _____ day of _____, 20____.

_____
Notary Public

My Commission Expires: _____

- - -

C E R T I F I C A T E

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State of Ohio,)
) SS:
County of Franklin,)

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I, Rose Marie Prater, Registered Professional Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of

MARIC-DAVID STAVOS, PH.D.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Rose Marie Prater,
Registered Professional
Reporter and Notary Public
in and for the State of
Ohio.

My Commission Expires:
September **16,** 2002.

*** CAUTION ***

This certification bears an original signature in nonreproducible ink. The foregoing certification of the transcript does not apply to any reproduction of the same not bearing the signature of the certifying court reporter. McGinnis & Associates, Inc. disclaims responsibility for any alterations which **may** have been made to the noncertified copies of this transcript

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