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1 CAUSE NO. 2007-54438  
 2 DAVID AND KATHLEEN PLUCHINSKY,) IN THE DISTRICT COURT OF  
 INDIVIDUALLY AND AS )  
 3 REPRESENTATIVES OF THE JOHN )  
 ALBERT PLUCHINSKY ESTATE, )  
 4 )  
 Plaintiffs, )  
 5 )  
 VS. ) HARRIS COUNTY, TEXAS  
 6 )  
 HOUSTON RACQUET CLUB, STEPHEN )  
 7 GRIFFIN, DAVID LAMKIN, )  
 GUILLERMO PALMER, AND )  
 8 LG Supv, )  
 )  
 9 Defendants. ) 281ST JUDICIAL DISTRICT

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ORAL AND VIDEOTAPED DEPOSITION OF  
 13 4 y/o B-CC #1  
 JUNE 13, 2008

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16 ORAL AND VIDEOTAPED DEPOSITION of 4 y/o B-CC #1, produced  
 17 as a witness at the instance of the Plaintiffs, and duly  
 18 sworn, was taken in the above-styled and numbered cause  
 19 on June 13, 2008, from 10:34 a.m. to 6:21 p.m., before  
 20 Lorri Lucas, CSR in and for the State of Texas, reported  
 21 by machine shorthand, at the offices of Locke, Lord,  
 22 Bissell & Liddell, 3400 JP Morgan Chase Tower, 600  
 23 Travis, Houston, Texas, pursuant to the Texas Rules of  
 24 Civil Procedure and the provisions stated on the record  
 25 or attached hereto.

□00002

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

Mr. Matthew G. Pletcher

4

Mr. Scott D. Marrs

Beirne, Maynard & Parsons, L.L.P.

5

1300 Post Oak Boulevard, 25th Floor

Houston, Texas 77056

6 Telephone (713) 623-0887  
7 Fax (713) 960-1527

8

9

FOR THE DEFENDANTS:

Mr. Norman E. Snyder, Jr.

10 Tucker, Taunton, Snyder & Slade  
10370 Richmond Avenue, Suite 1400  
11 Houston, Texas 77043  
Telephone (713) 961-5800  
12 Fax (713) 993-2308

13

14

FOR THE DEPONENT:

15 Mr. Robert J. Sussman  
Mr. James Leahy  
16 Locke, Lord, Bissell & Liddell, L.L.P.  
3400 JP Morgan Chase Tower  
17 600 Travis  
Houston, Texas 77002  
18 Telephone (713) 226-1200  
Fax (713) 223-3717

19

20

21 ALSO PRESENT:

LM

22 LD

Mr. Derek Martin, Videographer

23

24

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1 (Exhibits 4A, 4B, 4C, 52G, 14H, 43A,  
2 43A-2, 52-G, and 76 through 78  
3 marked)  
4 VIDEOGRAPHER: Today's date is Friday,  
5 June 13th, 2008. The time is 10:34 a.m. We're on the  
6 record.

7 MR. PLETCHER: Good morning.  
8 4 y/o B-CC #1,  
9 having been first duly sworn, testified as follows:

10 EXAMINATION

11 BY MR. PLETCHER:

12 Q Good morning.

13 A Morning.

14 Q Could you introduce yourself, please?

15 A 4 y/o B-CC #1.

16 Q 4 y/o B-CC #1, my name is Matt Pletcher. As you know,  
17 I represent the Pluchinskys. Have you ever given a  
18 deposition like this before?

19 A No.

20 Q You had an opportunity to talk to your lawyers  
21 about what this process is all about?

22 A Yes.

23 Q Okay. So it runs smoothly, you know, we have  
24 our court reporter sitting over here taking down all of  
25 my questions and all of your sworn answers, and it will

□00005

1 later be typed up into a little book called a deposition  
2 transcript. Okay?

3 A (Moving head up and down) Okay.

4 Q In order for her to be able to make it all work  
5 right so it reads correctly, we -- we can't talk over  
6 each other. So if -- if you will wait to give your  
7 answer after I finish my question, I will give you the  
8 same courtesy of waiting to ask my next question until

9 after you have finished your answer.

10 A Okay.

11 Q Is that okay?

12 A Yes.

13 Q And you have to give verbal responses rather  
14 than nods of the head or "uh-huh" or "huh-uh" because  
15 those are hard to -- to put down into words. Okay?

16 A Okay.

17 Q And one other agreement, if -- if we could get.  
18 And this is the important one. If, for some reason, you  
19 don't understand my question, you don't hear me, I don't  
20 make sense, I use words you -- you're not familiar with,  
21 will you ask me -- will you stop me and ask me to  
22 rephrase it so that you do understand it?

23 A Yes.

24 Q And if you answer a question without stopping  
25 me and saying, "Wait, Matt, I don't understand this," I

□00006

1 will assume you understood it if you answer without  
2 telling me to ask it again. Is that fair?

3 A Yes.

4 Q Okay. Now, 4 y/o B-CC #1, you were a camp counselor  
5 at the Houston Racquet Club last summer. Right?

6 A Yes.

7 Q And was that the first time that you had worked  
8 over there at the club?

9 A Yes.

10 Q I'm going to talk a little later in the  
11 deposition about when you got hired and what they did as  
12 far as orienting you and training you and stuff like  
13 that, but I figure that maybe what we ought to do first  
14 is -- is get some of the tougher stuff done. Okay?

15 A Okay.

16 Q Are you okay with that?

17 A Yes.

18 Q Okay. What I'd like to do, we have made copies  
19 of the diagram of the family pool at the Houston Racquet  
20 Club and this is an outline of it, and this, for your  
21 deposition, I've marked as Plaintiffs' Exhibit 14H.

22 Okay?

23 A Okay.

24 Q And you were, of course, one of the  
25 four-year-old camp -- camp counselors for the

□00007

1 four-year-old boys on July 18th. Correct?

2 A Yes.

3 Q And y'all were in the family pool.

4 A Yes.

5 Q Is that correct? What I'd like to do is I'm  
6 just going to show this to you and I want you to just  
7 look at it and just kind of reorient yourself to the  
8 pool. Okay?

9 A Okay.

10 Q And I'm going to have you make some marks on it  
11 and stuff in a minute. But since I've spent so much time  
12 with this thing, I might be able to refresh your  
13 recollection of things because it is kind of a  
14 one-dimensional diagram. This is the slide down here.  
15 Right?

16 A Yes.

17 Q And this is the fountain area?

18 A Yes.

19 Q And this is that sun deck? What did y'all call  
20 that? Sun deck?

21 A We didn't call it anything.

22 Q Is it a place that had some like sun -- lounge  
23 chairs?

24 A Yes.

25 Q Okay. And then this over here is the zero

□00008

1 entry shallow area. Right?

2 A Yes.

3 Q Okay. Is there anything on that diagram, just  
4 at first glance, that -- that is confusing to you or --  
5 or you might have questions about, about what it -- what  
6 it is?

7 MR. SUSSMAN: Can I see this?

8 MR. PLETCHER: Sure.

9 A No.

10 Q (BY MR. PLETCHER) Okay. You first realized  
11 that something was wrong with John Pluchinsky when the  
12 lifeguard came over? Is that correct?

13 A Yes.

14 Q And it's my understanding that the lifeguard,  
15 15 y/o LG #1 -- did you -- did you know her before that  
16 day?

17 A No.

18 Q Okay. Did you meet her after the event?

19 A Briefly.

20 Q Okay. Well, it's my understanding that your  
21 first knowledge of -- of something being wrong with --  
22 with John was when she walked over towards the area where

23 you were and -- and asked 4 y/o B-CC #3, "Is that boy okay?"

24 A Yeah.

25 Q Is that correct?

□00009

1 A Yes.

2 Q What I'd like to do is I'd like you to mark in  
3 green. Just draw a little -- you know what? That may be  
4 too big. Why don't we do it in this red ink. Could you  
5 draw in a circle where you were at the time that 15 y/o LG #1  
6 made the statement, "Is that boy okay?"

7 A (Complies)

8 Q Okay. Now, could you -- why don't -- do you --  
9 can you fit your initials in that? If not, you can draw  
10 a line out to the side.

11 A (Complies)

12 Q Now, have you initialed that "JL"?

13 A Yes.

14 Q Okay. And just tell us: What part of the pool  
15 was that?

16 A Was what?

17 Q Where you were standing.

18 A In the shallow area over here.

19 Q Okay. And about how deep was it where you were  
20 standing? Do you remember?

21 A Maybe like mid-thigh or like at my knees.

22 Q Okay. Mid-thigh or at your knees?

23 A Yes.

24 Q Okay. And you're a pretty tall girl.

25 A Yes.

□00010

1 Q So mid-thigh or knees is a couple of feet deep?

2 A Like --

3 Q Two-and-a-half?

4 A Maybe.

5 Q Maybe three?

6 A Not three.

7 Q Okay.

8 A Maybe two-and-a-half.

9 Q Think it was less than three feet.

10 A Yes.

11 Q Okay. Now, could you draw an arrow from that  
12 circle in the direction that were you facing when 15 y/o LG #1  
13 said, "Is that boy okay?"

14 A Yeah. (Complies)

15 Q Thank you. And let me just bring this onto the  
16 screen and we'll zoom in so that you can see it. What

17 you have done here is you've drawn a circle with your  
18 initials, JL, in it, and you've drawn an arrow pointed  
19 back and to the right. Correct?

20 A Yes.

21 Q And if this is the -- the west end of the pool,  
22 then you were looking -- and this is south, north,  
23 east -- yeah, you can go ahead and do that. You were  
24 kind of looking southwest?

25 A Yes.

□00011

1 Q Okay. Now I want to do one more thing.

2 Actually, I'm going to do a bunch of things.

3 A Okay.

4 Q Okay. Now, do you recall seeing 15 y/o LG #1,  
5 the lifeguard?

6 A When?

7 Q When she made the statement.

8 A Yes.

9 Q Could you, with this green pen, just put "EM"  
10 where -- where she was when you saw her?

11 A Well, she was walking.

12 Q Okay.

13 A Just so what part when she was walking?

14 Q Well, did you look at her when she made the  
15 statement?

16 A She was walking when she made the statement --

17 Q Okay. Do you --

18 A -- over there.

19 Q Is there a general area that she was in?

20 A She was --

21 Q If you want to just draw a line with some  
22 arrows on it.

23 A Okay. (Complies)

24 Q Okay. Perfect. Can I have that back?

25 A Yeah.

□00012

1 Q Okay. And what you did is you drew in here a  
2 line from this -- this is an umbrella here. Correct?

3 A Um-hmm.

4 Q And under that umbrella was a lifeguard chair?

5 A Yes.

6 Q Do you remember that?

7 A Yes.

8 Q And I -- was it somewhere over here?

9 A Yeah.

10 Q I'm just --

11 A Or yes.

12 Q Would you like to -- it's okay. I say "yeah"  
13 all the time, too. Don't worry about that. Would you  
14 just draw in the lifeguard chair?

15 A (Complies)

16 Q Okay. And what you did is you drew in a box  
17 under that umbrella, and that's where 15 y/o LG #1 came from.

18 A I don't know if she was the lifeguard sitting  
19 in the chair but --

20 Q Okay. She came from the direction of this  
21 chair.

22 A Yes.

23 Q Okay. So you never actually saw her leave that  
24 chair or -- did you see her in that chair?

25 A I can't remember.

□00013

1 Q Do you remember seeing her there in the chair  
2 at any time during the morning when the four-year-olds  
3 were in the -- the family pool?

4 A I know that there was a lifeguard in the chair  
5 but I don't know if it was her or not.

6 Q That's right. Because you didn't know her  
7 before this event.

8 A Yeah.

9 Q Okay. That makes sense. Now, you put the  
10 initials EM right here. Is that the general area she was  
11 in when she said, "Is that boy okay?"

12 A Yeah. Around there, maybe a little bit more  
13 that way.

14 Q When you looked at her, was she doing anything  
15 with her arms and hands?

16 A She was pointing to the boy.

17 Q With my purple pen, could you draw an arrow in  
18 the direction that 15 y/o LG #1 was pointing?

19 A (Complies)

20 Q Okay. Okay. What did you do when you heard  
21 her make that statement?

22 A I turned around and I looked at where she was  
23 pointing.

24 Q Okay. And did you see John?

25 A Yes.

□00014

1 Q Okay. Would you mind drawing in, on the  
2 diagram, where John was when you first looked back?

3 A Do I --

4 Q I'll tell you what. You know what? Before you

5 even draw, I need to ask you another question. When you  
6 saw John floating, do you recall what direction his head  
7 was pointing?

8 A Yes.

9 Q Okay. Would you mind drawing in a stick  
10 figure? And I think if you use my purple pen again, it  
11 might be clearer on the diagram.

12 A (Complies)

13 Q All right. Could I have that purple pen back?  
14 Do you mind if I make his -- this one little arm a little  
15 longer?

16 A Yeah, that's okay.

17 Q Okay. And -- and, 4 y/o B-CC #1, you have drawn in a  
18 stick figure with a circle as -- as the head. Correct?

19 A Yes.

20 Q And to your best recollection, that was the  
21 direction that John was -- was pointing or his head was  
22 in.

23 A Yeah. When I'm looking at it like that, his  
24 head might have been a little bit more pointed towards  
25 the lifeguard chair.

□00015

1 Q Towards that lifeguard chair (indicating)?

2 A Yes.

3 Q So maybe --

4 A He was a little more slanted.

5 Q Right. If we were going to put a pen down on  
6 it, maybe a little more like this (indicating)?

7 A Yes.

8 Q Okay. Just draw a little arrow -- arrow off of  
9 the circle in -- in general.

10 A (Complies)

11 Q Okay. All right. Now, so what you've done is  
12 you've drawn an arrow a little more pointed towards the  
13 lifeguard stand, and I'm just going to make that one  
14 point a little -- to -- to tell the jury that maybe he  
15 was a little more angled to the east or to the left.  
16 Right?

17 A Yes.

18 Q Counterclockwise.

19 A Yes.

20 Q Okay. Now, when you saw John, what part of his  
21 body did you see? Did you see his legs? Were they  
22 floating on the surface?

23 A Yes. But I think -- I didn't see them both. I  
24 saw -- I was able to see his body. He was laying like

25 with his arms and he was facedown.

□00016

1 Q Okay. So he was facedown. You've kind of  
2 motioned that his arms may have been extended outward a  
3 bit?

4 A They were like kind of forward and --

5 Q Forward? Okay. Almost -- could you -- could  
6 you just demonstrate that on the -- on the video?

7 A It was (complies).

8 Q Okay. And do you think his legs were above or  
9 below the surface --

10 A They were --

11 Q -- or do you know?

12 A They were above.

13 Q They were above. What -- did you see his  
14 heels?

15 A I can't remember.

16 Q Okay. Did you see his calves?

17 A I can't remember. I just saw his legs.

18 Q Okay. You did see them.

19 A Yes.

20 Q And -- and when I say "floating," I -- I mean  
21 really floating out of the water. Could it have been  
22 that his legs were below the surface a little but you  
23 were able to see through the water, or what's your best  
24 recollection?

25 MR. SNYDER: Objection, form.

□00017

1 A I remember him floating.

2 Q (BY MR. PLETCHER) Okay. The legs floating.

3 A Yes.

4 Q Okay. Good. Thank you. From the point  
5 that -- that you were standing to where you saw John, how  
6 far was that?

7 A I'm not very good with distances but I think it  
8 was like from me to maybe that chair over there. I don't  
9 know how far.

10 MR. PLETCHER: Okay. And do you mind if I  
11 get up, lawyers?

12 MR. SUSSMAN: No.

13 MR. MARRS: No. You have to stay seated.

14 MR. SNYDER: No. You've got to stay  
15 seated.

16 Q (BY MR. PLETCHER) This chair here?

17 A No. It was like in between all those chairs,  
18 in the circle of chairs.

19 Q Oh, here.  
20 A Yeah.  
21 MR. PLETCHER: Okay. Could you -- could  
22 you pan over here?  
23 A And he might have even been a little bit  
24 farther than that.  
25 Q Okay.

□00018  
1 MR. MARRS: Why don't do you it to where  
2 she's pointing.  
3 Q Where this plant is or where I am? Maybe  
4 further back?  
5 A If -- it would only be a little bit further if  
6 it was further.  
7 Q So maybe as far as this?  
8 A No. As close as you just were. Right there.  
9 Q About here.  
10 A Yeah.  
11 MR. MARRS: Do you want to step it off?  
12 MR. PLETCHER: Yeah. Do you want to pan  
13 back first?  
14 Q (BY MR. PLETCHER) I just stepped off about six  
15 steps.  
16 MR. MARRS: Six what? Don't say steps.  
17 Q (BY MR. PLETCHER) Hang on. Six steps, and my  
18 steps are about a yard, which would be about 18 feet,  
19 maybe further.  
20 A Yeah.  
21 Q Does that sound right?  
22 A I -- that's how far it looked. I don't know  
23 the distance.  
24 Q We might be able to do that scientifically in a  
25 minute. Let's see if we can't orient you to that

□00019  
1 distance based upon your experience as a lacrosse player.  
2 I'm going to step back here and I want you to picture  
3 yourself on the lacrosse field. Okay?  
4 A Okay.  
5 Q A lacrosse field has markings across the field.  
6 Right?  
7 A Yes.  
8 Q And what are those markings called?  
9 A Hatch marks.  
10 Q Okay. Hatch marks? And how far are the hatch  
11 marks in between each other?  
12 A I don't know.

13 Q What's the distance between hatch marks? Five  
14 feet?

15 A I don't --

16 Q Ten yards? I don't know.

17 A We never learned how far they -- I don't know  
18 how far.

19 MR. SUSSMAN: Do you want to see if I can  
20 scare up a tape measure?

21 MR. PLETCHER: Yeah. We might do that on  
22 a break. We can do that later.

23 Q (BY MR. PLETCHER) I thought that might orient  
24 you, but it's all right. Okay. And how far was John  
25 from the west edge of the pool? About the same distance?

□00020

1 A No.

2 MR. SNYDER: Objection, form.

3 Q (BY MR. PLETCHER) Or was he a little closer?

4 MR. SNYDER: Objection, form.

5 A He -- he was not as far from the pool, the  
6 edge.

7 Q (BY MR. PLETCHER) Okay.

8 A It didn't take far, like if you took big steps.

9 It only took 4 y/o B-CC #3 like three or four -- three steps,  
10 maybe, to get him to the edge.

11 Q Okay. So John was closer to the west edge --

12 A Yes.

13 Q -- than he was to you.

14 A Yes.

15 Q How far do you think it was from where he was  
16 to the -- to the west edge?

17 A I really don't -- if I was at the pool, I could  
18 point to you the exact spot where he was and where I was  
19 and where 4 y/o B-CC #3 was but I can't -- I don't know how --

20 Q Okay. That's fine. Something I noticed, where  
21 you have drawn a circle for you and put your initials in,  
22 it is off of the stone inlay work that was on that  
23 shallow end. Is that your recollection is that you were  
24 off of that stone work, on the -- the plaster bottom?

25 A I was either right at the edge or on it.

□00021

1 Q Okay. Do you think you were -- were you under  
2 the umbrella?

3 A I don't think so.

4 Q Okay. So you think you were outside of the  
5 umbrella.

6 A Oh, no. Is that circle the umbrella?

7 Q Yes.

8 A Then I was under it.

9 Q Okay. I want to show you what's been marked as  
10 Exhibit -- Plaintiffs' Exhibit 4A, and this is a copy of  
11 the written statement that you wrote at the Houston  
12 Racquet Club on the day of the event. Do you remember  
13 writing that?

14 A Yes.

15 Q And -- and in the statement, you start, "I was  
16 in the shallow end of the pool around the toys with 3  
17 little boys, one on my back."

18 A Yes.

19 Q Were you with three little boys at the time  
20 that 15 y/o LG #1 made the statement, "Is -- is that boy okay?"

21 A No. 4 y/o-C #7 had gotten out. He had  
22 just gotten out with his mom.

23 Q Okay.

24 A And I had two, and I can't remember the name of  
25 the other boy. And I had one on my back, 4 y/o-C #4.

□00022

1 Q 4 y/o-C #4 was on your back?

2 A Yes.

3 Q Okay. And there was one other boy that you  
4 were with but you just don't remember his name?

5 A I wasn't like directly by him. He was in the  
6 area and he was a four-year-old little boy and he was  
7 just playing with other kids and --

8 Q Okay. I'm going to have you mark in the other  
9 kids in a minute. Before -- before we do that, would you  
10 mind drawing in blue where 4 y/o B-CC #3 was?

11 A (Complies)

12 Q You have drawn a circle in blue and put the  
13 initials CZ at the position that 4 y/o B-CC #3 was in when you  
14 turned around and saw John floating, after 15 y/o LG #1 made her  
15 statement. Correct?

16 A Yes.

17 Q It appears that you've drawn him approximately  
18 the same distance from John as -- as you were.

19 A No. He was closer to --

20 Q He was closer?

21 A He was maybe a little farther from me to you.

22 Q Okay. Which is about how many feet? Seven  
23 feet?

24 MR. SNYDER: Objection, form.

25 Q (BY MR. PLETCHER) That sound right?

□00023

1 A Yeah. I don't -- I'm -- I'm really bad at  
2 distances.

3 Q It's -- it's further than you are tall. Right?

4 A Yeah.

5 Q And how tall are you?

6 A I'm like five-eight.

7 Q Okay. Could you draw a smaller circle --  
8 before you do, draw a smaller circle that better orients  
9 us to where 4 y/o B-CC #3 actually was, if he was closer to John  
10 than you were, and draw an arrow from the circle that's  
11 already there to the smaller one. Okay?

12 A (Complies)

13 Q Okay. And what you've done is you've drawn a  
14 smaller circle here with an arrow to indicate that --  
15 that 4 y/o B-CC #3 was closer to John than you.

16 A Yes.

17 Q Okay. Do you remember seeing other children,  
18 campers, around the area that 4 y/o B-CC #3 was in?

19 A They were over by the -- the lawn chairs and  
20 the pool and on the stairs and they were everywhere,  
21 really.

22 Q Okay. Right. Before I get to the children,  
23 you know what I need to do? Why don't we go ahead and  
24 get the counselors first. Okay? And I'd like you to  
25 draw the counselors in blue, but before you do, I want to

□00024

1 show you a couple things. I want to show you Plaintiffs'  
2 Exhibit Number 76. This is the statement of 4 y/o B-CC #4 ,  
3 who was one of the four-year-old boy counselors.

4 Correct? You -- you know 4 y/o B-CC #4?

5 MR. SNYDER: Objection, form.

6 A Yes.

7 Q (BY MR. PLETCHER) You knew her at the time?  
8 Is that correct?

9 A Yes.

10 Q Y'all went to Memorial High School together?  
11 You were classmates?

12 A Yes.

13 Q Were y'all the same age, same class?

14 A Yes.

15 Q Did she play lacrosse with you, too?

16 A For a few years but she quit.

17 Q Okay. Were y'all playing lacrosse that -- that  
18 2006-2007 year?

19 A I believe so, yes.

20 Q Okay. In 4 y/o B-CC #4 statement, she states, "I was

21 sitting on the rock ledge in the pool near the steps with  
22 4 y/o B-CC #2." Okay? Could you shade in the rock  
23 ledge in -- in this pink highlighter?  
24 A I think that's the rock ledge because it's made  
25 out of rocks.

□00025

1 Q Okay. Well, before you do that, then, do you  
2 recall 4 y/o B-CC #4 and 4 y/o B-CC #2 being at that rock ledge or in  
3 this area where that little bench is?

4 A When I looked up after I was out of the pool  
5 with John, I saw them climbing out over here.

6 Q Um-hmm.

7 A And the last time that I had seen 4 y/o B-CC #4 before  
8 it happened, she was over here.

9 Q Okay. All right. Why don't we, yeah, mark the  
10 last place that you saw 4 y/o B-CC #4 . The last place. That's  
11 the first place.

12 A Oh.

13 MR. SNYDER: Objection, form.

14 Q (BY MR. PLETCHER) Isn't it --

15 MR. PLETCHER: What's the problem?

16 MR. SNYDER: Last saw 4 y/o B-CC #4 when?

17 MR. MARRS: I can clear it up.

18 Q (BY MR. PLETCHER) Did you understand my  
19 question?

20 A When -- the last time I saw 4 y/o B-CC #4, period?

21 Q Yeah. Yeah. That's -- that's good. Let me --  
22 let me ask you a different question.

23 MR. PLETCHER: Thanks for the objection.

24 Q (BY MR. PLETCHER) When --

25 MR. SNYDER: I just want to keep it

□00026

1 straight.

2 Q (BY MR. PLETCHER) What I'd like you to do is  
3 to mark where you saw 4 y/o B-CC #4 closest in time to when 15 y/o LG #1  
4 made the statement, "Is that boy okay?"

5 A Do I do a circle and do --

6 Q Circle's fine. And can you initial her.

7 A (Complies)

8 Q Here. I'll give you a pen to do the initials.

9 A Okay.

10 Q Okay. And you've -- you've drawn in "DM."  
11 Now, when you saw 4 y/o B-CC #4 closest in time to when 15 y/o LG #1  
12 said, "Is that boy okay?" and you -- it was after you  
13 made your turn and looked over at John. Right?

14 A No. This was before.

15 Q Oh, this was before.

16 A Yes. I didn't see 4 y/o B-CC #4 until after -- I  
17 saw -- the last time I saw 4 y/o B-CC #4 after it happened was  
18 when she was getting out of the pool with boys and with  
19 4 y/o B-CC #2 .

20 Q Okay. So this area was actually before 15 y/o LG #1  
21 said, "Is that boy okay?" and you turned around.  
22 Correct?

23 A Yes.

24 Q Okay. Why don't we just write in there --  
25 MR. MARRS: How soon before?

□00027

1 MR. PLETCHER: Before?

2 MR. MARRS: How soon before?

3 Q (BY MR. PLETCHER) Yeah. How soon before do  
4 you think it was?

5 A Right before.

6 Q Minutes before?

7 A Minutes before. Because we were about to have  
8 to leave --

9 Q Um-hmm.

10 A -- and get out of the pool. And so I had  
11 looked and tried to find the counselors and I saw 4 y/o B-CC #4  
12 and looked at her and kind of pointed to my watch.  
13 And -- and then in a matter of -- and I -- I don't know  
14 exactly.

15 Q A short period of time.

16 A Yeah. 15 y/o LG #1 came around and --

17 Q 15 y/o LG #1 came around and said, "Is that boy okay?"

18 A Yeah.

19 Q Okay. Why don't you go ahead and mark by "DM."  
20 Just put a dash and put "before," right before.

21 A (Complies)

22 Q Now, will you draw a pink circle and put DM's  
23 initials where you saw her after 15 y/o LG #1 made the  
24 statement, "Is that boy okay?"

25 A The first place I saw her?

□00028

1 Q Yeah.

2 A (Complies)

3 Q Do you mind if I have this back?

4 A No.

5 Q Just so we have a record of it now, what you've  
6 drawn in on Plaintiffs' Exhibit 14H, you wrote "DM  
7 before" and a circle down here in the area between the  
8 steps and the sun deck?

9 A Around that area, yeah.

10 Q And then you wrote "DM after" and a pink circle  
11 over here, which was closest in time after 15 y/o LG #1  
12 said, "Is that boy okay?" Is that correct?

13 A When I saw 4 y/o B-CC #4 the next time, John was  
14 already out of the pool and we were already doing CPR.

15 Q Right.

16 A Yeah.

17 Q But this was when he was still in the pool.

18 Correct?

19 A No.

20 Q Right. Having looked at 4 y/o B-CC #4 's  
21 statement where she states that she was sitting on the  
22 rock ledge in the pool near the steps with 4 y/o B-CC #2  
23 do you recall seeing 4 y/o B-CC #2 over here by  
24 the steps?

25 A I didn't see 4 y/o B-CC #2 until after -- till the

□00029

1 next time that I saw 4 y/o B-CC #4 .

2 Q Okay. And that would be over in this area?

3 A Yes.

4 Q Go ahead and draw in 4 y/o B-CC #2 -- a circle  
5 for 4 y/o B-CC #2, put her initials and the word  
6 "after."

7 A And they were getting out of the pool.

8 Q Right. Just so I understand this, when -- when  
9 you are testifying that you saw 4 y/o B-CC #4 and 4 y/o B-CC #2  
10 after the event, was it after John had been taken  
11 out of the pool?

12 A Yes.

13 Q Okay. I've -- I've added a couple of things  
14 here and I want to make certain that you're okay with it.  
15 I've -- I've written "after John out" and "after John  
16 out" next to the DM pink circle and the SF circle over in  
17 this area.

18 A Yes.

19 Q Is that accurate?

20 A Yes.

21 Q And then I wrote the word "DM immediately  
22 before" for this circle, and that would be immediately  
23 before 15 y/o LG #1 made her statement.

24 A Not right --

25 Q "Is John okay?"

□00030

1 A Not like right before. It was maybe three or  
2 four minutes, maybe less. I...

3 Q Okay. Can I just put "less than three  
4 minutes"?

5 A Less than four probably would be more...

6 Q Okay. And were -- okay.

7 MR. SUSSMAN: How you doing, Hon?

8 THE WITNESS: Okay.

9 Q (BY MR. PLETCHER) I'm going to show you what's  
10 been marked as Plaintiffs' Exhibit 77, and this is the  
11 statement that 4 y/o B-CC #5, who was also a counselor for  
12 the four-year-old boys, wrote on July 18th. You know  
13 4 y/o B-CC #5; don't you?

14 A Yeah.

15 Q "As I was in the very shallow end of the pool  
16 playing with 4 y/o-C #6 and 4 y/o-C #1, I saw a female lifeguard  
17 with red hair rush towards another side of the pool and  
18 point at the floating kid -- at a floating kid." Do you  
19 remember -- well, could you draw in where -- where 4 y/o B-CC #5  
20 was?

21 A I -- I don't know where 4 y/o B-CC #5 was.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) You don't? You don't  
24 remember seeing 4 y/o B-CC #5?

25 A Not in a specific place. The last time that I

□00031

1 saw 4 y/o B-CC #5 after we got him out of the water was I turned  
2 around to see where the other boys were and he was up  
3 here.

4 Q Okay. And you have pointed up onto an area out  
5 of the pool, on the pool deck.

6 A Yes.

7 Q Well, do you -- 4 y/o B-CC #5, when he describes  
8 the shallow end -- is the shallow end to you -- whoops,  
9 can't see that. The shallow end to you from here, back,  
10 this area here?

11 A Yes.

12 MR. SNYDER: Objection, form.

13 Q (BY MR. PLETCHER) Yeah. And that would be the  
14 beach entry area or the zero depth area. Correct?

15 MR. SNYDER: Objection, form.

16 A Yes.

17 Q (BY MR. PLETCHER) Could you just draw an  
18 outline around the area that you consider to be the  
19 shallow end?

20 A (Complies)

21 Q And you have highlighted -- the lighting's a  
22 little bad. Do you mind if I make it a little darker?

23 You've highlighted the perimeter of the shallow end in  
24 this yellow highlighter; haven't you?

25 A Yes.

□00032

1 Q Okay. Do you -- did you know 4 y/o-C #1 and 4 y/o-C #6?

2 A Yes.

3 Q Do you remember seeing 4 y/o B-CC #5, 4 y/o-C #1, and 4 y/o-C #6  
4 in the shallow end that day?

5 A No. Well, not at the time of the accident.

6 I'd seen them in the pool, obviously, but --

7 Q Sure.

8 A -- not -- I can't remember seeing them.

9 Q Okay. We'll come back to that. There's one  
10 other statement I want to show you, 4 y/o B-CC #1, and it is  
11 4 y/o G-CC #1's statement. It's Plaintiffs' Exhibit 78.

12 Do you remember 4 y/o G-CC #1?

13 A I don't know who she is.

14 Q She was a counselor for the four-year-old girls  
15 and she wrote this on July 18th. She actually dated it.

16 "Our group, 4-year-old girls, were in the pool on the  
17 shallow end." Do you remember seeing four-year-old girls  
18 and counselors in the shallow end?

19 A Yes.

20 Q Could you -- and -- and you remember seeing  
21 them before 15 y/o LG #1 made her statement, "Is that boy  
22 okay?"

23 A Yes.

24 Q And did you see them when you were looking in  
25 15 y/o LG #1's direction, as you have drawn in here, this arrow?

□00033

1 A I can't see it.

2 Q Sorry. Remember, you were looking -- facing  
3 this way when she made her statement?

4 A Uh-huh.

5 Q Did you see them while you were facing in this  
6 general direction?

7 A Yes. I saw 15 y/o LG #1 running before she made any  
8 noise or said anything. And so I was looking at her  
9 running and I saw they were all over the shallow end.

10 Q Okay. And could you -- did you see more than  
11 one counselor?

12 A I don't remember seeing -- I know there were  
13 counselors there but I don't remember how many I saw --

14 Q Okay.

15 A -- in the area or what they looked like or  
16 anything. There were a lot of other people other than

17 just campers and counselors in the pool also.  
18 Q Right. Right. And what I'm -- I'm trying to  
19 determine is where people were at the time that 15 y/o LG #1  
20 made her statement or just prior to it. Okay?  
21 A Um-hmm.  
22 Q You understand that.  
23 A Yes.  
24 Q And I was asking you particularly when you were  
25 facing in her direction and she came running by and made

□00034

1 her statement. I want you to think back to where people  
2 were, be them counselors or campers. Okay? And you have  
3 told us, I think, that you did see some four-year-old  
4 girls with counselors.

5 A Yes.

6 Q But you don't know the specific number of  
7 counselors. Right?

8 A Right.

9 Q Why don't we do this. Because it was a number  
10 of people.

11 A There were -- the pool was very crowded that  
12 day.

13 Q Okay. I want you to --

14 MR. SNYDER: Objection to response.

15 Q (BY MR. PLETCHER) I want you to draw an orange  
16 circle in the area when you were looking in the Southwest  
17 direction and 15 y/o LG #1 made her statement. Draw a  
18 circle in the area where the pool was crowded.

19 MR. SUSSMAN: Where the pool was crowded?

20 MR. SNYDER: Objection, form.

21 Q (BY MR. PLETCHER) Where the pool was very  
22 crowded. I'm sorry.

23 MR. SNYDER: Objection, form.

24 A And only where I could see?

25 Q (BY MR. PLETCHER) Yeah. Where you could see

□00035

1 when you looked.

2 A (Complies)

3 Q So on Plaintiffs' Exhibit 14H, your drawing,  
4 you've drawn in, it appears to be, two circles? Correct?

5 A Yeah. I just -- I cut it short.

6 Q You needed to make it bigger?

7 A Yeah.

8 Q Okay. Could you complete the circle, then?

9 A (Complies)

10 Q Now, in this orange circle, when you were

11 facing the southwest direction and 15 y/o LG #1 made her  
12 statement, there were four-year-old girl campers.

13 A Yes.

14 Q Four-year-old boy campers.

15 A Yes.

16 Q And several camp counselors. Correct? All in  
17 this area.

18 A And moms.

19 Q And mothers?

20 A Yes.

21 Q Okay.

22 A But --

23 Q And -- and were there any people who were not  
24 mothers who were members or guests in that area or was it  
25 pretty much limited -- what's your recollection of that?

□00036

1 A There were people who weren't -- or weren't  
2 campers and moms laying out and like not in the actual  
3 pool.

4 Q Okay. Okay. Now, do you recall -- when you  
5 turned around to look at what 15 y/o LG #1 was pointing to,  
6 after she made the statement, "Is that boy okay," do you  
7 remember seeing people in this area?

8 A Yes. Yes.

9 Q Could you draw, with this green highlighter,  
10 the other area that -- that had people in it once you  
11 turned and looked at John?

12 A (Complies)

13 Q Okay. Do you mind if I connect the dots?

14 A No.

15 Q Okay. You've drawn a green circle, which  
16 represents the area that you were looking at when you  
17 turned to look towards what 15 y/o LG #1 was pointing to,  
18 and you say that there were other campers, counselors,  
19 members, guests?

20 A Yes.

21 MR. SNYDER: Objection, form.

22 Q (BY MR. PLETCHER) In this area.

23 A Yes.

24 Q Okay. In the green area.

25 A Yes.

□00037

1 Q Okay. Now, that morning, on July 18th,  
2 according to Plaintiffs' Exhibit Number 6, the -- this is  
3 the schedule for the four-year-old boys.

4 MR. PLETCHER: Could you focus?

5 Q (BY MR. PLETCHER) Four-year-old boys, Kids  
6 Camp News, Week Number 5, Space and Sports Week. That  
7 was the week that we were talking about. Right?

8 A Yes.

9 Q And swim time for the four-year-old boys was at  
10 10:45.

11 A Yes.

12 Q Is that your recollection?

13 A Yes.

14 Q And then at 11:45, Mad Science started. Right?

15 A Yes.

16 Q And then if we look at the schedule for the  
17 girls, their swim time started at 11:00.

18 A Yeah.

19 Q And then they were scheduled to be at the  
20 Moonwalk at noon. Correct?

21 A Yes.

22 Q In addition, according to the schedule for  
23 week 5 for the seven-year-old boys, their swim time was  
24 at 10:25 and they had lunch at 11:25.

25 A Yes.

□00038

1 Q Okay? Is that correct?

2 A Yes.

3 Q When 15 y/o LG #1 made her statement, "Is that  
4 boy okay?" and you were facing this direction, do you  
5 recall also seeing some of the seven-year-old boys and  
6 their counselors in this orange circle?

7 A I can't remember.

8 Q Do you remember seeing the seven-year-old boys  
9 in the green circle after you turned and looked in the  
10 direction that 15 y/o LG #1 was pointing?

11 MR. SNYDER: Objection, form.

12 A I -- I don't remember seeing anyone specific.  
13 I wasn't looking at the people.

14 Q (BY MR. PLETCHER) Okay. Do you remember this?  
15 This is Plaintiffs' Exhibit Number 74, which is 7 y/o B-CC #1  
16 statement. She was a counselor for the  
17 seven-year-old boys. "Our group had just been lined up  
18 at the edge of the pool." Do you remember seeing the  
19 seven-year-old boys lined up at the edge of pool with a  
20 couple of counselors?

21 A No.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Do not remember that?

24 A No.

25 Q And has anybody told you that that happened?

□00039

1 A No.

2 MR. SNYDER: Objection, form.

3 Q (BY MR. PLETCHER) You mentioned 4 y/o-C #7  
4 being one of the boys you were with?

5 A No. I was with him and then right before --  
6 like a little bit before it happened, his mother asked me  
7 if she could take him to the lap pool.

8 Q Right. Right. That's what I was going to ask  
9 you about.

10 A Yeah.

11 Q So before the event, before 15 y/o LG #1 came over  
12 here and made her statement, "Is the boy okay?" 4 y/o-C #7  
13 was one of the children that you were watching.

14 A Yes.

15 Q And his mother was with him.

16 A And his little sister.

17 Q And his little two-year-old sister. Do you  
18 remember her name?

19 A No.

20 Q Okay. And what you've told the jury is that  
21 before 15 y/o LG #1 made her statement, M #1 asked you  
22 if it was okay if she took 4 y/o-C #7 to the lap pool?

23 A Yes.

24 Q Yeah. How -- how many minutes before 15 y/o LG #1  
25 made her statement, "Is the boy okay?" did M #1

□00040

1 ask you that question?

2 A I don't know the exact time but they never made  
3 it to the lap pool because --

4 Q Okay. It was a short period of time.

5 A Yeah.

6 Q Okay.

7 A Because I told her that we were about to have  
8 to get out to leave and so -- and she said all he wanted  
9 to do was go off the diving board.

10 Q Okay. Was it five minutes, ten minutes?

11 A Not ten minutes.

12 MR. SNYDER: Objection, form.

13 Q (BY MR. PLETCHER) Less than ten minutes?

14 A It was probably around five or less.

15 Q Do you remember, either before or after 15 y/o LG #1  
16 made her statement, "Is that boy okay?" seeing any  
17 other mothers, members, or guests that you specifically  
18 knew and could -- and could give us their names?

19 A No. I don't think so.

20 Q Okay. During the deposition, if you remember a  
21 member, nonmember, guest, or other parent unrelated to  
22 the camp that you know by name, will you -- will you let  
23 me know?

24 A Yes.

25 Q I'll probably -- hopefully I'll ask you that

□00041

1 later to see if -- if you remember.

2 Let me hand you back 14H. When you turned  
3 around, 4 y/o B-CC #1, and you looked over in the direction that  
4 15 y/o LG #1 was pointing and you saw John floating and  
5 you saw 4 y/o B-CC #3 in the smaller circle, how many children  
6 or campers were in that area?

7 MR. SNYDER: Objection, form.

8 A I only remember seeing them two because I zoned  
9 in on that.

10 Q (BY MR. PLETCHER) Yes.

11 A I don't remember.

12 Q Okay. So what you're telling us is that when  
13 you turned and you looked at John and you -- you saw  
14 4 y/o B-CC #3, you zoned in on them, but you're not saying that  
15 there weren't other children or counselors in any of  
16 the -- this general area around both them. Correct?

17 MR. SNYDER: Objection, form.

18 A There was nobody in -- in the line of path  
19 from --

20 Q (BY MR. PLETCHER) Okay.

21 A -- me to him.

22 Q Okay. But you can't say if they weren't off to  
23 the edge because you focused in on them.

24 A Yes.

25 Q Okay. So there could have been people in this

□00042

1 area or this area. Correct?

2 A There was --

3 MR. SNYDER: Objection, form.

4 A There was no one in between --

5 Q (BY MR. PLETCHER) Nobody in between --

6 A -- John and the wall or John, like diagonal  
7 behind him around the wall.

8 Q Okay. So nobody here in this area. Right.

9 And what I have just pointed to is the area between John  
10 and the west end of the pool and then the area between  
11 John and 4 y/o B-CC #3.

12 A Yes.

13 Q And then the area south of John and the area  
14 north of John, you can't say one way or another --

15 A Yes.

16 MR. SNYDER: Objection, form.

17 MR. PLETCHER: I'm not finished with my  
18 question.

19 MR. SNYDER: Sorry.

20 Q (BY MR. PLETCHER) -- whether there are -- were  
21 campers, counselors, members, or guests. Correct?

22 MR. SNYDER: Objection, form.

23 A Yes.

24 Q (BY MR. PLETCHER) Is that what you're telling  
25 us?

□00043

1 A Yes.

2 Q Okay.

3 MR. SNYDER: Objection, form.

4 Q (BY MR. PLETCHER) This fountain area up here  
5 that is east of where John and 4 y/o B-CC #3 were, do you remember  
6 seeing counselors and campers on that fountain area  
7 before 15 y/o LG #1 came by -- ran over and made her  
8 statement, "Is that boy okay?"

9 A Yes.

10 Q When you turned and looked in the direction  
11 that 15 y/o LG #1 was pointing and saw John and 4 y/o B-CC #3,  
12 do you remember seeing counselors and campers in that  
13 same area in the background?

14 A Yes.

15 Q Okay. Would you -- why don't we mark it in  
16 blue. Draw a circle in the area where the campers and  
17 counselors were, both before and after 15 y/o LG #1 made  
18 her statement, "Is that boy okay?" in that area of the  
19 fountain.

20 A They were all playing a game up there, so they  
21 were just --

22 Q Just the entire fountain area?

23 A Yeah. They were all -- they were all playing  
24 up there.

25 Q Okay. Why don't we do it in pink. Just circle

□00044

1 the fountain, I guess.

2 MR. SUSSMAN: Matt?

3 MR. PLETCHER: Yes, sir.

4 MR. SUSSMAN: When you get to a point  
5 where you're comfortable, can we take a five-minute  
6 break?

7 MR. PLETCHER: Absolutely.

8 Q (BY MR. PLETCHER) You have just shaded in pink  
9 the -- the west-northwest perimeter of the fountain area.

10 Correct?

11 A Um-hmm. Yes.

12 Q And that fountain area -- actually, the  
13 fountain itself goes all the way back here.

14 A Yeah.

15 Q Correct?

16 A Yeah.

17 Q Should I shade that or -- or were they up  
18 towards this front part?

19 A They were covering the entire thing.

20 Q Okay. How many campers were playing on the  
21 fountain deck before 15 y/o LG #1 made her statement?

22 MR. SNYDER: Objection, form.

23 A The -- the seven-year-old boys were playing a  
24 game called jackpot with their counselors and so they  
25 were all up on that. And then there were a couple of the

□00045

1 four-year-old boys who were up there just goofing off,  
2 the more like wild and rambunctious ones were.

3 Q (BY MR. PLETCHER) Right. And this was  
4 immediately before 15 y/o LG #1 made her statement, "Is  
5 that boy okay?"

6 A I don't know. They -- they were up there the  
7 whole time --

8 Q Right.

9 A -- that I was aware.

10 Q Right. So they were there before she made the  
11 statement and they were there after she made the  
12 statement. Correct? When you turned, they were still up  
13 there. Correct?

14 A I don't know what campers or what people were  
15 up there after she made her statement. I wasn't looking  
16 at them.

17 Q Okay.

18 A I just know there were people up there because  
19 that's where everyone got -- who was in that area was  
20 getting out over there.

21 Q Okay. I thought you had told me just a moment  
22 ago that both before and after 15 y/o LG #1 made her statement,  
23 you remember seeing campers and counselors in that  
24 fountain area.

25 A Yes. But I don't know which campers --

□00046

1 Q Okay.

2 A -- and which counselors.

3 Q But you do know that the campers -- the  
4 seven-year-old campers and their counselors, along with  
5 a -- did you say a couple of four-year-old boys?

6 A It's hard to say when throughout the day.

7 Q Right.

8 A At some point before, there were four-year-old  
9 boys up there.

10 Q Right.

11 A But I don't know how soon or how close to when  
12 15 y/o LG #1 said --

13 Q Okay. Okay. I need to figure this out because  
14 you've made a couple of different statements there. You  
15 do recall the seven-year-old boys and their counselors  
16 playing a game on the fountain area.

17 A Yes.

18 Q Before this event.

19 A Yes.

20 Q Is that correct?

21 A Yes.

22 Q And you also remember seeing some four-year-old  
23 boys goofing off with them when they were playing that  
24 game. Correct?

25 MR. SNYDER: Objection, form.

□00047

1 Q (BY MR. PLETCHER) Is that correct?

2 A Yes.

3 Q And the game that they were playing was the  
4 jackpot game, which is a game that involved the --  
5 involved the throwing of a tennis ball?

6 A Yes.

7 Q Is that your recollection?

8 MR. SNYDER: Objection, form.

9 A Yes.

10 Q (BY MR. PLETCHER) Well, do you -- why don't  
11 you describe your recollection of -- of the game that was  
12 being played and how it's played.

13 A I don't know how to play it. I was -- just was  
14 seeing them play and there was counselors up there and  
15 they would be up on the fountain and someone would be in  
16 the water and I think that the person in the water would  
17 throw the ball or something and they would jump off and  
18 the first -- the person who caught it or got the ball got  
19 whatever the prize was. I -- that's what I think, how  
20 you play.

21 Q Okay. Okay. And you have a specific  
22 recollection that when this jackpot game was being played  
23 that there were some four-year-old boys, as you said,  
24 goofing off over there. Correct?

25 MR. SNYDER: Objection, form.

□00048

1 A The game was played from the time the  
2 seven-year-olds got in the pool.

3 Q (BY MR. PLETCHER) Until they got out?

4 A Until they basically got out.

5 Q Okay.

6 A And I can't remember them getting out.

7 Q Okay. But do you remember the seven-year-old  
8 boys and their counselors getting out on the back side of  
9 the fountain? I thought you said that a minute ago.

10 A I said that I didn't know who was getting out  
11 or --

12 Q Yes.

13 A -- what age group was getting out but I know  
14 that people who were on the fountain were getting out  
15 over there.

16 Q Over here on the back side of the fountain?

17 A All around.

18 Q Okay.

19 A Anywhere they could get out.

20 Q They were -- they were playing this game at the  
21 time of the incident; weren't they?

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Is that correct?

24 MR. SNYDER: Objection, form.

25 A I don't know because I wasn't looking over

□00049

1 there --

2 Q (BY MR. PLETCHER) Okay.

3 A -- when it happened.

4 Q Right. But the last time that you looked over  
5 there in that area, they were playing the game. They  
6 were still there.

7 MR. SNYDER: Objection, form.

8 Q (BY MR. PLETCHER) Correct?

9 A There was -- there were people in there and I  
10 would assume that they were the seven-year-olds but I  
11 don't know for sure if they were.

12 Q Okay.

13 MR. SUSSMAN: Is this a good time for a  
14 break?

15 MR. SNYDER: You get to break when you  
16 want to break.

17 MR. PLETCHER: Yeah. That's fine. If you  
18 want to take a break now, that's fine.

19 MR. SUSSMAN: Sure.

20 MR. PLETCHER: It's awful warm.

21 VIDEOGRAPHER: The time is 11:42 a.m.  
22 We're off the record.

23 (Recess from 11:42 to 11:52)

24 VIDEOGRAPHER: The time is 11:52 a.m.  
25 We're back on the record.

□00050

1 Q (BY MR. PLETCHER) 4 y/o B-CC #1, you ready to  
2 continue?

3 A Yes.

4 Q When we broke, we were talking about the  
5 seven-year-olds. What you have testified to is that from  
6 the moment that the seven-year-olds got into the pool  
7 until the moment that they got out of the pool, they and  
8 their counselors were playing the jack -- jackpot game on  
9 the fountain deck. Correct?

10 MR. SNYDER: Objection, form.

11 A Yes. But I don't remember seeing them get out  
12 of the pool.

13 Q (BY MR. PLETCHER) Okay. But at every time --  
14 every moment that you saw them, they were on the fountain  
15 deck playing the jackpot game. Correct?

16 MR. SNYDER: Objection, form.

17 A Yes.

18 Q (BY MR. PLETCHER) And, to your knowledge, they  
19 were still playing the jackpot game on the fountain deck  
20 when John's incident occurred.

21 MR. SNYDER: Objection, form.

22 Q (BY MR. PLETCHER) Is that correct?

23 A No. Because I have no -- I have no idea.

24 Q You have no idea one way or the other.

25 A Whether -- I wasn't looking at the fountain

□00051

1 when it happened. I was looking at John. And so when I  
2 turned around, I saw people up there but I wasn't looking  
3 at specifics.

4 Q Okay. And when you say you saw people up there  
5 on the fountain deck, you saw campers and counselors and  
6 those kinds of people. Correct?

7 A Yes.

8 Q Okay. Can -- can you describe again the

9 jackpot game? Because I'm a little confused as to how it  
10 is played. You had -- you had said that some people will  
11 stand on the fountain deck here and other people would be  
12 in the pool here and they would -- the -- would it be the  
13 person from the pool throwing the ball? Would they jump  
14 out and dive and catch it? Can you describe what the  
15 game was, the best you recall, having seen it?

16 MR. SNYDER: Objection, form.

17 A Well, the person who was the one -- the one  
18 person who was alone was in the area where they were  
19 playing, was in the area of where 4 y/o B-CC #3 and John were.  
20 And they weren't there when it happened but that was  
21 where they were generally playing. At least that's what  
22 I remember.

23 Q Okay. Now, you -- you said the one person who  
24 was in the water?

25 A They were --

□00052

1 Q Is that how the game is played? One person  
2 would be in the water throwing the ball?

3 A I don't know -- I don't know how to play but --

4 Q Sure.

5 A -- there was always one person who was like the  
6 main person, and I think how you play is they call out a  
7 prize or a number of points or something, and if they  
8 called "jackpot" -- or like when they throw it, whoever  
9 catches it, if it's jackpot, then I think that the person  
10 who caught it gets to be the one person. But --

11 Q Okay.

12 A -- I don't know when or how.

13 Q And so the one person, let's say, for example,  
14 you saw the one person in this general area where John  
15 and 4 y/o B-CC #3 were, drawn in right here? Correct?

16 MR. SNYDER: Objection, form.

17 Q (BY MR. PLETCHER) And that person -- is that  
18 correct?

19 MR. SNYDER: Objection, form.

20 A Well, they -- that was where they had been  
21 playing.

22 Q (BY MR. PLETCHER) Right.

23 A I don't know if they were still playing.

24 Q But at some point that day, you saw somebody in  
25 the water here with a tennis ball and the others would be

□00053

1 on the fountain deck here, and this person would throw  
2 the ball, and whoever caught the ball in the air, they'd

3 jump off the fountain and catch it. If they caught it,  
4 they'd win the prize.

5 MR. SNYDER: Objection, form.

6 A I think that's how they play. That's what they  
7 would do.

8 Q (BY MR. PLETCHER) You think that's how they  
9 would play the game?

10 A Yeah.

11 Q Okay. And -- and do you recall 4 y/o B-CC #3  
12 playing this game? Do you remember seeing 4 y/o B-CC #3 play it  
13 that day?

14 A I don't remember.

15 Q You don't see -- do you ever remember seeing  
16 4 y/o B-CC #3 with a tennis ball that day in the pool?

17 A I -- I can't remember specifically.

18 Q So, anyway, they were -- they were playing the  
19 jackpot tennis ball game from the fountain area shortly  
20 before 15 y/o LG #1 got off her stand and said, "Is that boy  
21 okay?"

22 MR. SNYDER: Objection, form.

23 A Yes. I --

24 Q (BY MR. PLETCHER) Okay. That was "yes"?

25 A Yeah. I -- they were playing it and, again, I

□00054

1 wasn't looking over there, but the last time that I saw  
2 them, they were playing it.

3 Q Okay. And -- and one person who was throwing  
4 the ball was in this general area here that you've  
5 described.

6 A He --

7 Q Correct?

8 MR. SNYDER: Objection, form.

9 A They were closer to the -- my -- when I'm  
10 looking at it, they were closer to the left.

11 Q (BY MR. PLETCHER) Closer to --

12 A Over there. And a little bit closer to the  
13 actual -- like --

14 Q Could you just -- rather than me trying to  
15 guess, just put a pink X.

16 A (Complies) It was all in that area.

17 Q Okay. You've drawn in this pink X here, and  
18 I've -- I wrote out there to the side, with a line,  
19 "jackpot." And that X depicts the area that you recall  
20 seeing them playing the game.

21 A Yes.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Do you recall -- do you  
24 recall a large number of people playing this jackpot  
25 game?

□00055

1 MR. SNYDER: Objection, form.

2 A Yes.

3 Q (BY MR. PLETCHER) Okay. And we know that on  
4 July 18th, 2007 -- this is Plaintiffs' Exhibit 70, the  
5 third page -- there were eight seven-year-old boys who  
6 were -- were at camp that day. Had you ever seen this  
7 list here?

8 A No.

9 Q One, two, three, four, five, six, seven, eight.  
10 Do you have any idea how many seven-year-old-boy  
11 counselors were working that day?

12 A I don't know.

13 Q Do you know a boy named 7 y/o B-CC #2?

14 A Yes.

15 Q He was one of the seven-year-old-boy  
16 counselors. Correct?

17 A Yes.

18 Q And then did you know 7 y/o B-CC #3?

19 A (Moving head side to side)

20 Q Do you remember 7 y/o B-CC #3?

21 A No.

22 Q And did -- did you say you did or did not know  
23 7 y/o B-CC #1, who was also a seven-year-old-boy  
24 counselor?

25 A Yes. I knew her.

□00056

1 Q Okay. So you knew two of the three  
2 seven-year-old-boy counselors.

3 A (Moving head up and down)

4 Q Okay? Right?

5 A Um-hmm. Yes.

6 Q And so if there were eight seven-year-old boys  
7 and three seven-year-old-boy counselors, that's at least  
8 seven people playing this game. Correct?

9 A Yes.

10 Q I'm sorry. 11 people -- sorry. Can't add.  
11 There was at least 11 people playing the jackpot game.  
12 Correct?

13 MR. SNYDER: Objection, form.

14 A Yeah.

15 Q (BY MR. PLETCHER) And then how many  
16 four-year-old boys do you think were -- were over in this

17 general area while it was being played?

18 MR. SNYDER: Objection, form.

19 A There -- it's hard to say because we weren't  
20 sticking in one spot. There -- everyone was moving  
21 around and I -- I have no way of telling you how many, at  
22 a certain point, that they were playing it there, but  
23 there were boys going all around the pool and they were  
24 up there sometimes and sometimes they weren't.

25 Q (BY MR. PLETCHER) Okay. But there was

□00057

1 definitely four-year-old boys in the area when it was  
2 being played.

3 A Yes.

4 MR. SNYDER: Objection, form.

5 Q (BY MR. PLETCHER) You said something, 4 y/o B-CC #1,  
6 that -- that raised a question in my mind. You said that  
7 "We were going all around," or something to that effect.  
8 Can you describe to the jury? During this period of time  
9 that the jackpot game was being played, what were the  
10 four-year-old boy campers doing and what were the  
11 four-year-old boy camp counselors doing?

12 MR. SNYDER: Objection, form.

13 A The -- do you mean throughout the entire time  
14 they were playing?

15 Q (BY MR. PLETCHER) Shortly before 15 y/o LG #1  
16 made the statement, "Is this boy okay?"

17 A There was a handful of them over by the sun  
18 deck area.

19 Q Okay. And the sun deck area would be, on  
20 Exhibit 14H, over here.

21 A And then there was maybe one or two over by the  
22 slide area, like not in the slide area but by those  
23 stairs.

24 Q Over here?

25 A Yeah.

□00058

1 Q Okay.

2 A And they were with a boy named 4 y/o B-CC #6 who was  
3 a counselor.

4 Q That was 4 y/o B-CC #6?

5 A Yeah.

6 Q Who also went to Memorial?

7 A Yes.

8 Q Baseball player over there?

9 A I guess. I don't know.

10 Q Okay. So we have some four-year-old boys over

11 in this area by the sun deck and over here by the stairs  
12 that one would go up to go to the slide that was down on  
13 the east end of the pool. Correct?

14 A Yes.

15 Q Any other four-year-olds --

16 A There -- I --

17 Q -- in this general area shortly before 15 y/o LG #1  
18 said, "Is that boy okay?"

19 A They were mainly around the sun deck or the  
20 shallow end.

21 Q Okay.

22 A And sometimes they would walk around. There's  
23 a ledge by the fountain that they would walk.

24 Q Okay. The ledge by the fountain that you said  
25 that they would walk, is that this perimeter of that

□00059

1 inner circle around the fountain deck?

2 A I don't know if there's a ledge on the -- like  
3 on that side of it.

4 Q Yes.

5 A But I know that there's one like --

6 Q Right here (indicating)?

7 A And then around like of the first half of it.

8 Q In the -- oh, okay.

9 A Okay.

10 Q So from here to here (indicating)?

11 A Yeah. I know that there were boys there  
12 throughout the day.

13 Q Okay. So if we -- would you just cut the  
14 circle in half there?

15 A At some point, there might have been another  
16 one on the other side or --

17 Q Right. What you just testified to is that, at  
18 that time, there were four year boy -- four-year-old boys  
19 maybe halfway around the fountain edge and over in the  
20 sun deck area?

21 A Um-hmm.

22 Q Now, you see where I drew that other line?  
23 Were they all in this area?

24 A They were --

25 MR. SNYDER: Objection, form.

□00060

1 A They were scattered around.

2 Q (BY MR. PLETCHER) Okay. Is that area accurate  
3 that I just outlined in green?

4 A I would say so, yeah.

5 Q Okay. And actually, you really can't see that.  
6 Can you just do -- can you just draw in -- I wish I had  
7 another color. Draw in orange the area that you were  
8 just describing where the four-year-old boys were shortly  
9 before 15 y/o LG #1 made her statement, "Is this -- is  
10 that boy okay?"

11 A (Complies)

12 Q Thank you. And you've drawn in -- and I'm just  
13 going to make it a little darker so we can see it -- an  
14 orange line going around in this area. Would it include  
15 this, too?

16 A Yeah.

17 Q Okay.

18 A They mainly stayed to the edges. They  
19 weren't --

20 Q Right. And when you say they mainly stayed to  
21 the edge -- edges, you mean to the --

22 A Places where they could stand.

23 Q -- north side of the pool and places where they  
24 could stand.

25 A Yes.

□00061

1 Q Because you know that the pool is four feet  
2 deep in this area, four feet deep in that area,  
3 three-and-a-half feet deep in this area. Is it -- is  
4 that about right? Is that your recollection?

5 A I don't know.

6 Q It was over their head.

7 MR. SNYDER: Objection, form.

8 A I -- some of them, I would --

9 Q (BY MR. PLETCHER) Right.

10 A They had to stand on their tippy toes to --

11 Q Okay. Some could stand on their tippy toes but  
12 there were some that couldn't stand on their tippy toes  
13 and it was too deep.

14 A Yes.

15 MR. SNYDER: Objection, form.

16 Q (BY MR. PLETCHER) That included John  
17 Pluchinsky?

18 MR. SNYDER: Objection, form.

19 A What included John?

20 Q (BY MR. PLETCHER) You remember John. He was  
21 a -- how would you describe his height in comparison with  
22 the other four-year-old boys? Was he about the same, a  
23 little smaller, or a little bigger? Just if you were to  
24 think back now.

25 A I know that he was able to -- I remember him  
□00062

1 standing on his toes, and I remember all of them, like  
2 they would lift their heads back and the water would be  
3 like right here (indicating), and they could -- but they  
4 had to be on their toes. Like he couldn't stand on his  
5 flat feet.

6 Q Right. And -- yeah. And at what point in time  
7 are you talking about John standing on his toes, looking  
8 up, and in what area? In this orange area?

9 A No.

10 Q Is that what --

11 A Over in the other shallow side.

12 Q Over near which side?

13 A Right here.

14 Q Okay. All right. Let's draw a circle in pink  
15 in the area that you're just -- you've just described  
16 where the four-year-olds had to stand on their tippy toes  
17 and they could still barely get their mouths and noses  
18 above the water line.

19 A And he might have -- he might have been like in  
20 a place that was more shallow than the rest of the pool.  
21 Like he -- I don't remember -- I don't think I remember  
22 him doing it like in the middle of the pool.

23 Q Sure. So -- okay. Right. 4 y/o B-CC #1, you just  
24 drew a semicircle in pink there.

25 A Yes.

□00063

1 Q And that's the area that you were describing  
2 where the four-year-old boys, including John, would have  
3 to stand on their tip toes -- and I've written "tip  
4 toes" -- in order to get their mouth and nose above water  
5 enough to breathe. Is that right?

6 A I would believe so. I can't remember  
7 specifically but that -- somewhere in that area.

8 Q Right.

9 A Maybe a little farther out or --

10 Q And certainly in the area where John was found,  
11 that area was deeper than he could stand up and breathe.  
12 It was over his head.

13 MR. SNYDER: Objection, form.

14 A I don't know. He never was given the  
15 opportunity, when I was with him, to stand up on his  
16 toes.

17 Q (BY MR. PLETCHER) Okay. Well -- okay. Do you  
18 agree that the depth of the pool dropped off as you went

19 in this direction where I've just drawn an arrow from  
20 your pink semicircle out towards John? It did drop off?

21 A Yes.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Okay. It got deeper, is  
24 what I meant.

25 MR. SNYDER: Objection, form.

□00064

1 Q (BY MR. PLETCHER) It dropped off. It got  
2 deeper.

3 A Yeah.

4 Q Before 15 y/o LG #1 said, "Is that boy okay?"  
5 what do you remember about your last personal contact  
6 with John Pluchinsky? Where were you and when?

7 A I had -- I was on the shallow -- or the pool  
8 deck area or wherever the chairs had been. And there was  
9 a fort and I had taken him and 4 y/o-C #4 from the shallow  
10 end over there. And there was a bug in the pool and I  
11 like flicked it out and John got out and it was either --  
12 it was a locust and he either took the locust or he took  
13 a worm on the sidewalk and he moved it over to the grass  
14 and then he came and got back in. And there were other  
15 four-year-old boys over there. 4 y/o-C #2 had come over  
16 there. And there were other ones just moving around.  
17 Like I can't remember specifically who. And 4 y/o-C #4  
18 Vallone was more -- he didn't like to get his head wet  
19 and so I -- he wanted to go back over by the fountain.  
20 And I -- he asked me to take him back over and I looked  
21 at John and I said, "Do you want to come back over  
22 there?" And he said, "No. I want to stay." And so he  
23 was playing with other boys and I took 4 y/o-C #4 back over  
24 to the shallow end.

25 Q And approximately how much time between that

□00065

1 last personal contact with John was it before 15 y/o LG #1  
2 came over here and said, "Is that boy okay?"

3 A It couldn't have been long because it wasn't  
4 hardly any time after I got back to the shallow end that  
5 4 y/o-C #7's mom had asked me if she could take 4 y/o-C #7 over to  
6 the lap pool. And I can't remember if before she asked  
7 me or after she asked she when I looked at the -- like  
8 the counselors and said, "We only have like a little bit  
9 more," like had looked at them and pointed to my watch.

10 Q That's when you looked at 4 y/o B-CC #4 --

11 A Yeah.

12 Q -- and pointed to your watch that you described

13 earlier?  
14 A Yeah. So maybe seven minutes or less.  
15 Q Seven minutes?  
16 A I -- that's just a really rough guess.  
17 Q It's an estimate. I understand. Could have  
18 been more; could have been less.  
19 A Yeah.  
20 Q Okay. Okay. I have to back up. Did you say  
21 there was a fort?  
22 A Yes.  
23 Q In this area that you were with John?  
24 A They had made the fort --  
25 Q Okay.

□00066

1 A -- with the sun chairs.  
2 Q Okay. And -- and it was on the sun deck here?  
3 A Yes.  
4 Q Whoops. The sun deck here?  
5 A Yes.  
6 Q And you said that they made a fort with the  
7 chairs. Was it the lounge chairs?  
8 A Yes.  
9 Q And those are plastic lounge chairs?  
10 A Yes.  
11 Q And were there four lounge chairs or more  
12 lounge chairs in --  
13 A I -- think.  
14 Q -- in this sun deck area at that time?  
15 A I think there were only two, maybe three. I  
16 think there were only two.  
17 Q Two, maybe three, plastic lounge chairs.  
18 A Yes.  
19 Q The kind that you lay on and sun. Right?  
20 A Yeah. They weren't like the long ones. They  
21 were actual chairs.  
22 Q Okay. So they were regular plastic chairs.  
23 A They were -- they were either -- they weren't  
24 like the ones that go long where you can actually lay on  
25 them.

□00067

1 Q Yes.  
2 A They were either -- I can't remember if it was  
3 an actual like square chair or right-angle chair or if it  
4 was one where it was lower to the ground and it like was  
5 kind of slanted.  
6 Q Okay. So you're not sure if the chairs that

7 the four-year-old boys built this fort out of were -- was  
8 just a regular plastic chair or the kind of beach chairs  
9 that are lower to the ground that you can lean back and  
10 adjust the back of it? Is that what you're talking  
11 about?

12 A Yeah. But these you couldn't adjust.

13 Q Okay.

14 A It was like the kind with the white pipeline, I  
15 think, with the green like plastic type thing.

16 Q Okay. Did you say that -- who built the fort?

17 A I don't know who built the fort.

18 Q Okay. So you don't know who built the fort.  
19 Just remember seeing it.

20 A The -- when -- by the time I had gotten over  
21 there with John and 4 y/o-C #4, there were other boys over  
22 there that were playing in it and I guess -- I would  
23 assume that they had pushed them together and -- it  
24 wasn't even a fort. It was like a square little thing  
25 that they could climb in and...

□00068

1 Q Do you mind drawing a -- making a crude drawing  
2 of what the fort may have looked like?

3 A Yeah, I can.

4 Q You can use that blue pen if you'd like.

5 A (Complies) Are you wanting it from like  
6 looking at it? Or --

7 Q Yeah. Draw a picture. If you were walking  
8 north towards the sun deck and, you know, the water is,  
9 what, chest deep on you, maybe a little lower?

10 A Yeah.

11 Q And you're looking straight on it.

12 A Okay.

13 Q It'd be kind of eye level; wouldn't it?

14 A Yeah. It was a little bit lower, maybe.

15 Q Little lower than eye level on you, yes.

16 A (Drawing)

17 (Exhibit 79 marked)

18 Q (BY MR. PLETCHER) I've marked your drawing of  
19 the sun deck fort as Plaintiffs' Exhibit 79, and I'm just  
20 going to tighten up the lines a little bit so that we can  
21 kind of see it a little better. It appears what you've  
22 drawn is something to the effect of chairs pushed on  
23 the -- the front edge with their seat backs, which made  
24 kind of the top of the fort?

25 A Yes.

□00069

1 Q And this is walking directly towards it.

2 A And I think, now that I'm looking at it, that  
3 there was one behind it.

4 Q Right. So it would be -- if there was one  
5 behind it, there would be a back there and the seat would  
6 be square (drawing). Right?

7 A Yes.

8 Q I kind of messed up that seat, but can you look  
9 at that and tell me if you think --

10 A They were kind of slanted up --

11 Q Okay.

12 A -- because it -- it wasn't like a perfect  
13 square.

14 Q Of course.

15 A Like a --

16 Q Okay. And -- and what you've just done, if  
17 you'd do with your hands, what you -- what you just did  
18 with your hands is kind of make a rooftop?

19 A Yeah.

20 Q Where the seat backs were together. Could you  
21 do that with your hands in the camera just so we can see  
22 it?

23 A (Complies)

24 Q Okay. And then if you don't mind, do you mind  
25 if I use this as the other seat? There would have been

□00070

1 another seat -- if you were looking from this direction,  
2 another seat coming back this way.

3 A Yeah. That's right.

4 Q Okay.

5 MR. PLETCHER: Have I not had that on? I  
6 guess not.

7 Q (BY MR. PLETCHER) Okay. Now, on -- on 14H,  
8 mark, with a -- with a red X with this pen, the area on  
9 the sun deck where you last had personal contact with --  
10 with John Pluchinsky. Before 15 y/o LG #1 said, "Is that  
11 boy okay?"

12 A (Complies)

13 Q And you have drawn in and I -- I'm going to  
14 mark out here. I need you to -- to explain this a little  
15 further. Was this the spot where you last had personal  
16 contact with John where he was playing with the other  
17 boys under the fort?

18 A That's the last time I ever saw him, ever  
19 talked to him or did anything with him.

20 Q Okay. There's really two different things

21 because you could have seen him from afar, but what I'm  
22 asking is where you had personal contact with him, where  
23 you were with him, talking to him or not talking to him  
24 but -- but with him.

25 A Yes.

□00071

1 Q That is the area.

2 A Yes.

3 Q And you had -- and I'm going to put "personal  
4 contact with JP" for John Pluchinsky. And you said that  
5 this personal contact that you last had with John  
6 Pluchinsky was, I think you said, seven minutes before

7 15 y/o LG #1 --

8 A I --

9 Q -- made the statement, "Is that boy okay?"

10 MR. SNYDER: Objection, form.

11 A I don't know if it was -- or, I mean, I said

12 more or less.

13 Q (BY MR. PLETCHER) Yeah. More or less, but you  
14 said the -- you said seven minutes and -- and then you  
15 qualified it and said it may have been more, it may have  
16 been less.

17 A Yeah.

18 Q But this is the area that you're talking about.

19 A Yes.

20 Q That you last had personal contact with John  
21 Pluchinsky.

22 A Yes.

23 Q Now, between that point in time and when 15 y/o LG #1  
24 made her statement, "Is that boy okay?" can you describe  
25 to the jury again what you did?

□00072

1 A When?

2 Q From what -- from the point that you had last  
3 contact with John over here on the sun deck area where  
4 the fort was until 15 y/o LG #1 made her statement, "Is  
5 that boy okay?" Can you walk us through that again?

6 A I left and I had 4 y/o-C #4 and I was holding  
7 4 y/o-C #4 and I took him back over to the shallow area  
8 and --

9 Q Because he didn't want to get his hair wet.

10 A Yeah. He -- he was scared to go underneath the  
11 water. And so --

12 Q And you had asked John if he wanted to go back  
13 with you?

14 A Yes. I said, "Do you want to go back over

15 there?" And he said, "No, I want to stay here."

16 Q Okay.

17 A And then I walked back over there and then

18 4 y/o-C #7 and his mom were still in the water and his mom, at

19 some point in that interaction, said, "Can I take 4 y/o-C #7

20 back over there?" And I --

21 Q Okay. Could I stop you there?

22 A Yeah.

23 Q You said that you took him back over there and

24 then 4 y/o-C #7's mom asked the question. Where did you take

25 him back to?

□00073

1 A In this area.

2 Q Okay. Will you draw in a pink -- a pink circle

3 of the general area that you took 4 y/o-C #4 back to and

4 where you had the discussion with -- with M #1 ?

5 A (Complies)

6 Q Okay. And it was 4 y/o-C #4?

7 A Yes.

8 Q You've drawn in this pink circle right here,

9 and this circle is the general area that you took 4 y/o-C #4

10 back to in the shallow end.

11 A Yes.

12 Q And this is the general area that 4 y/o-C #7

13 and his mother and sister were in.

14 A Yes.

15 Q And M #1 came up to you and asked if

16 it was okay to take 4 y/o-C #7 to the lap pool.

17 A Yes.

18 Q Now, I need to back up. When you took -- when

19 you first got to the fort area where you left John

20 Pluchinsky, you had John and 4 y/o-C #4 with you. Did you

21 have any other campers with you at that time?

22 A 4 y/o-C #2 had been over -- 4 y/o-C #2 -- it's

23 either 4 y/o-C #2 or 4 y/o-C #2, was in the shallow end

24 right over in that area with us and he was really -- he

25 did not like to be in -- underneath and he was scared of

□00074

1 the water, and so he got out of the pool and walked

2 around eventually to the -- the fort area with us. And

3 so --

4 Q So did -- did all three of you walk around to

5 the --

6 A No. Only 4 y/o-C #2 did.

7 Q Only 4 y/o-C #2. So -- and you were in -- were you

8 in this same general area that you just drew in that you

9 went back to?

10 A We were in from where I said I was from like  
11 that circle, half circle area.

12 Q This?

13 A Yeah. All the way -- we were everywhere.

14 And --

15 Q All in this area.

16 A Yeah.

17 Q Okay. So -- so to summarize, what you've told  
18 us is that you, 4 y/o-C #4, and John went from this area here  
19 in the shallow end over to the sun deck area where the  
20 fort was. 4 y/o-C #2, who was also with you?

21 A Yes.

22 Q Got out of the water and walked around the edge  
23 of the pool up to the sun deck and came in the back side.

24 A He climbed -- if I remember correctly, he  
25 climbed in right like either at those stairs right there

□00075

1 and walked along the ledge.

2 Q Oh, okay.

3 A Or got in at the fort and -- if I remember  
4 correctly.

5 Q Okay. So he may have -- he may have -- 4 y/o-C #2  
6 Connor may have come on the west side of the pool, on  
7 down these stairs, walked this ledge, and got in here, or  
8 he just walked in on this north side of the sun deck.

9 A Yes.

10 Q Okay. Now, when you, John, and 4 y/o-C #4 got  
11 there, how many children were in the sun deck area where  
12 the fort was?

13 A I can't remember specifically but maybe two or  
14 three.

15 Q So two or three other four-year-old boys?

16 A Um-hmm. Yes.

17 Q Were in this area where the fort was set up on  
18 the sun deck.

19 A Yes.

20 Q Okay. Did the X that you drew in right here --  
21 do you think that that's the area where the fort was  
22 actually set up or -- or --

23 A Yeah.

24 Q Okay. I'm going to write in here "last  
25 personal contact with John Pluchinsky in fort," because

□00076

1 that X marks where the fort that you drew a picture of,  
2 Exhibit -- Plaintiffs' Exhibit 79, was set up. You said

3 there was -- there were two or three other boys,  
4 four-year-old boys, at the fort on the sun deck when you  
5 got there. Were there any counselors?

6 A There -- the sun deck is a lot closer to the  
7 fountain area than it looks on that picture.

8 Q Yes.

9 A And so there -- 4 y/o B-CC #4 , I remember her being in  
10 the area where she is on that -- not there. The other  
11 one.

12 Q Here.

13 A In that area moving around. And 4 y/o B-CC #2 , I  
14 believe, was on the other side, kind of on the fountain  
15 area, in the fountain area, is what I think.

16 Q Oh, okay. So --

17 A And then there were at least five or -- five  
18 other counselors and maybe in the area on the fountain,  
19 maybe four or something.

20 Q Okay. After you got back and -- and got 4 y/o-C #4  
21 back to the shallow end, what do you recall happening  
22 next?

23 A Sorry. I remember just playing with him over  
24 there and I remember seeing the four-year-old girls get  
25 in and I remember his mom talking to me and I -- or

□00077

1 4 y/o-C #7's mom. And I had 4 y/o-C #4 on my back. And I can't  
2 remember, I -- if 4 y/o-C #2 walked back over to the shallow  
3 end. And I remember looking at 4 y/o B-CC #4 and pointing to my  
4 watch and kind of just mentally looking around the pool  
5 at the other counselors and just kind of seeing where  
6 everyone was. And then I -- we were just playing in the  
7 shallow end.

8 MR. PLETCHER: Yeah, that's where I was  
9 going to go. Yeah.

10 Q (BY MR. PLETCHER) Before you took 4 y/o-C #4 back  
11 and you left John in the fort area on the sun deck, you  
12 have testified that 4 y/o B-CC #4 was one counselor in that  
13 area and 4 y/o B-CC #2 was close by in the -- in the  
14 fountain deck area. Correct?

15 A I think about that. I'm not a hundred percent  
16 about 4 y/o B-CC #2 but --

17 Q When you left John in that fort area, did you  
18 talk to any of the -- the other counselors to let them  
19 know that you were leaving him and -- at the fort and  
20 going back to the shallow end?

21 A No. Because I wasn't just leaving John. I  
22 was -- there were a couple of kids and they were -- it

23 wasn't -- they weren't alone.

24 Q Right.

25 A They were --

□00078

1 Q And when you say they weren't alone, there were

2 other counselors --

3 A In the area.

4 Q -- in the area with them.

5 A Yeah.

6 Q And those other counselors included 4 y/o B-CC #4

7 .

8 A Yes.

9 Q 4 y/o B-CC #2.

10 A I -- I believe 4 y/o B-CC #2 .

11 Q And who else?

12 A There was counselors on the fountain. There

13 were other kids in the pool. There was -- it's hard to

14 say because they weren't standing in one specific

15 position. They were playing and moving around.

16 Q Okay. But you do know for certain that 4 y/o B-CC #4

17 was there.

18 A Yes.

19 Q And you feel pretty comfortable that 4 y/o B-CC #2

20 was also in that area.

21 A Yes.

22 Q Now -- but what about other four-year-old

23 counselors? That's what I'm --

24 A They --

25 Q That's what I'm most interested to know. For

□00079

1 example, do you remember seeing 4 y/o B-CC #5?

2 A I don't -- I don't really remember seeing him.

3 They were -- they had all been four-year-old counselors

4 for the entire time.

5 Q Yes.

6 A Like all the weeks. And so --

7 Q This was your second day.

8 A This was my second day with the four-year-old

9 boys. And so they were -- all the kids -- there were a

10 couple of them that were just -- really liked 4 y/o B-CC #5 and

11 4 y/o B-CC #3, and so they were kind of like throwing the boy --

12 they would like play games and they would like throw

13 them. And so 4 y/o B-CC #5, I never -- I don't remember having

14 contact with him personally in the pool but he was just

15 kind of mingling around from place to place, and the same

16 goes for 4 y/o B-CC #3. And I remember --

17 Q Okay.  
18 A -- 4 y/o B-CC #6 specifically being over by the stair  
19 area.  
20 Q Right.  
21 A Over there with --  
22 Q I'm going to put his initials here.  
23 A For most, if not all of -- in that area.  
24 Q Okay.  
25 A With a boy named 4 y/o-CC #8.

□00080

1 Q That's 4 y/o B-CC #6?  
2 MR. SNYDER: Objection, response.  
3 Q (BY MR. PLETCHER) Is that correct?  
4 A I don't know his last name.  
5 Q But 4 y/o B-CC #6 that went -- you went to school  
6 with at Memorial High School?  
7 A Yes.  
8 Q Okay. So, 4 y/o B-CC #1, what you just told us is  
9 that you recall that 4 y/o B-CC #5 and 4 y/o B-CC #3 were in this  
10 general area with some of the other four-year-old boys?  
11 A Yeah. They were just -- they were -- they were  
12 mingling about in the entire pool.  
13 Q Okay. Do you have a specific recollection,  
14 when you left John at the fort area, of seeing 4 y/o B-CC #3  
15 -- because, you know, ultimately 4 y/o B-CC #3 was here  
16 (indicating). Do you remember seeing 4 y/o B-CC #3 in this  
17 general area when you left John there?  
18 A No.  
19 Q Okay. Do you remember seeing 4 y/o B-CC #5?  
20 A I can't specifically remember.  
21 Q Do you remember seeing Supv CC #1 ?  
22 A He was on the fountain for most of -- I think  
23 he was in charge -- he was either in charge of kind of  
24 like pool, he -- in the pool area or he was in charge of  
25 the six year -- six-year-old boys.

□00081

1 Q Okay. So Supv CC #1 was either in charge of  
2 the pool area or he was a six-year-old boy counselor?  
3 A He was a six-year-old --  
4 MR. SNYDER: Objection, form.  
5 A -- boy counselor with me the two weeks before,  
6 and I don't know if they moved him because I don't think  
7 that the six-year-old boys were in the pool at that time.  
8 So I would assume he was kind of in charge of the pool  
9 area.  
10 Q Okay. But you're not positive about that.

11 A I don't know what his job was.

12 Q Okay.

13 A He was just in the pool.

14 Q So you don't know what Supv CC #1 's job was  
15 that day?

16 A If he was -- if the six-year-old boys were not  
17 in the pool, then he was a pool supervisor.

18 Q Okay. What about Supv CC #2? Did you know  
19 Supv CC #2?

20 A Yes.

21 Q Do you recall seeing Supv CC #2 when you left  
22 John at the fort area on the sun deck?

23 A I don't remember him when I left him but he had  
24 been on the -- I think that he was kind of like a head  
25 counselor also. And his job was just, I think, to kind

□00082

1 of go from place to place and I think maybe his main  
2 focus was the pool.

3 Q Okay.

4 A But he -- the kids loved him, too, and so they  
5 would hang on him. And he wasn't in one specific place,  
6 just like Supv CC #1 . They would throw the kids in the water  
7 and --

8 Q Okay.

9 MR. SNYDER: Objection, response.

10 Q Okay. During this day, July 18, before John  
11 was found floating facedown, do you remember camp  
12 counselors, regardless of whether or not they were  
13 four-year-old-boy camp counselors or pool supervisors,  
14 throwing the four-year-old boys in the pool?

15 A Yeah.

16 Q And which camp counselors do you recall doing  
17 that on July 18th -- seeing doing that on July 18th?

18 A I don't know if it was on that exact day. I  
19 don't remember --

20 Q Okay.

21 A -- because the days are meshing together.

22 Q All right.

23 A But --

24 Q It's -- it's important. I want to focus on  
25 July 18th. Okay? Who do you recall out of the camp

□00083

1 counselors, regardless of whether they were just  
2 counselors or pool supervisors, who do you remember  
3 seeing throwing boys?

4 MR. SNYDER: Objection, form.

5 A John -- or not John. Supv CC #1 , Supv CC #2 , maybe  
6 4 y/o B-CC #5, and probably 4 y/o B-CC #3, too.

7 Q (BY MR. PLETCHER) Okay. So you specifically  
8 remember seeing Supv CC #1 and 4 y/o B-CC #3.

9 A No. I said probably.

10 MR. SNYDER: Objection, form.

11 Q (BY MR. PLETCHER) Okay.

12 A I said probably 4 y/o B-CC #3.

13 Q Okay.

14 A And I said definitely Supv CC #1 .

15 Q Supv CC #2 .

16 A I'm -- I'm -- I think Supv CC #2 . And I know that,  
17 at some point in time, they were throwing them and I'm  
18 almost a hundred percent sure that on the -- I'm like  
19 99.9 that, on that day, they had thrown at least one boy  
20 and they would get -- and it was -- most of them -- some  
21 of them didn't like it.

22 Q Yes.

23 A And so they -- they would ask them, "Do you  
24 want" -- because I know the six-year-old boys, when I was  
25 with them, loved it.

□00084

1 Q Yes.

2 A And there was one boy that I know loved it and  
3 his name was 4 y/o-CC #8 and they would throw him all the  
4 time and he would laugh and swim back. And some of them  
5 said, "No, I don't want to be thrown," and they would  
6 more kind of hang on the girls. And so I know that, at  
7 some point in time, boys were being thrown.

8 Q Right. Okay. So let me ask you this question  
9 again. On July 18th, 2007, you specifically recall Supv CC #1  
10 -- seeing Supv CC #1 throw four-year-old boys.  
11 Right?

12 A I believe so.

13 Q Yeah. And you thought that Supv CC #2  
14 probably threw boys but you're a little less certain  
15 about him.

16 A I knew that every boy counselor threw a kid --

17 Q Right.

18 A -- throughout the two days that we had them.

19 Q Sure.

20 A And I'm not a hundred percent sure or not the  
21 18th because I wasn't paying -- I didn't think I'd have  
22 to remember all of that.

23 Q Sure. Absolutely.

24 MR. SNYDER: Objection, response.

25 Q (BY MR. PLETCHER) Did you recall, at any time  
□00085

1 that you were at the pool on July 18th, either lifeguard,  
2 15 y/o LG #1 or 15 y/o LG #2, ever stopping the camp  
3 counselors from either playing the jackpot game on the  
4 fountain deck or stopping them from throwing the  
5 four-year-old boys?

6 MR. SNYDER: Objection, form.

7 A I can't remember specifically which lifeguard  
8 but I know -- I think that they were playing a game where  
9 sometimes they'd let them stand on their hands, and they  
10 said, "No, you can't do that," I think.

11 Q Okay. And that was on July 18th?

12 MR. SNYDER: Objection, form.

13 A I don't know if it was on that day but --

14 Q (BY MR. PLETCHER) Okay. Well, 4 y/o B-CC #1, I need  
15 you to focus on July 18th for a minute. Okay? Because  
16 you've already told us that camp counselors were playing  
17 the jackpot tennis ball game from the fountain deck. And  
18 I need to know whether or not you remember 15 y/o LG #1  
19 or 15 y/o LG #2, the two 15-year-old lifeguards, ever  
20 instructing the counselors to stop playing that game.

21 MR. SUSSMAN: Stop playing the jackpot  
22 game.

23 MR. PLETCHER: Yes.

24 MR. SNYDER: Objection, form.

25 A No.

□00086

1 Q (BY MR. PLETCHER) You don't remember that.

2 A (Moving head side to side)

3 Q And on July 18th, 2007, do you recall either  
4 15 y/o LG #1 or 15 y/o LG #2 telling the camp counselors  
5 not to throw the boys?

6 A I'm not for certain.

7 Q You don't have a recollection of that?

8 A If on that day --

9 Q Right.

10 A -- they had been told not to throw.

11 Q You're not certain whether, on that day, 15 y/o LG #1  
12 or 15 y/o LG #2 told the camp counselors to not  
13 throw the children.

14 MR. SNYDER: Objection, form.

15 A Yes.

16 Q (BY MR. PLETCHER) Okay.

17 A I said that I didn't know which lifeguard said  
18 no to something throughout those days.

19 Q All right. But you don't remember, at any time  
20 on July 18th, the lifeguards giving an instruction to  
21 stop.

22 A If they did, then --

23 MR. SNYDER: Objection, form.

24 A I don't know if they didn't. I don't remember.

25 Q (BY MR. PLETCHER) Right. Okay. That's what I

□00087

1 was trying to figure out.

2 MR. SUSSMAN: It's ten to 1:00.

3 MR. PLETCHER: Oh, let's do it. You  
4 should have told me.

5 MR. SUSSMAN: Let's have lunch.

6 MR. PLETCHER: That's fine.

7 VIDEOGRAPHER: The time is 12:48 p.m.

8 We're off the record.

9 (Lunch recess from 12:48 to 2:01)

10 (Exhibit 14H-1 marked)

11 VIDEOGRAPHER: The time is 2:01 p.m.

12 We're back on the record.

13 Q (BY MR. PLETCHER) 4 y/o B-CC #1, we've finished our  
14 lunch break. You ready to go?

15 A Yes.

16 Q Or get done? When we broke, we were talking  
17 about your last personal contact -- contact with John and  
18 you having left him over in the sun deck area where the  
19 chair fort was. Correct?

20 A Yes.

21 Q And what I did was I -- I've made Plaintiffs'  
22 Exhibit 14H-1, which -- it's the same diagram but I've  
23 just drawn in the fountain area, the orange area where  
24 you said that children and counselors were, and I drew in  
25 the red X and wrote "last personal contact with John,"

□00088

1 and "fort" in parentheses. I also drew in 4 y/o B-CC #4 .

2 And if you'll look at our original -- I'm trying to clean  
3 up our original exhibit -- it's this area here with the  
4 orange outline that we talked about. Do you recall that?

5 A Yes.

6 Q Okay. You had said that at the time that you  
7 brought John over to the fort, at the sun deck, that  
8 4 y/o B-CC #2 was somewhere over in the fountain deck  
9 area?

10 MR. SNYDER: Objection, form.

11 A I think she was.

12 Q (BY MR. PLETCHER) Is that your best

13 recollection?

14 A Yes.

15 Q But you couldn't pinpoint any exact location?

16 A No.

17 Q Okay. I'm just going to put the initials

18 there, not to designate where she was, but just to

19 designate the fact that she was somewhere near the

20 fountain. Okay?

21 A Okay.

22 Q And I want to hand you this exhibit so that you

23 can look at it and tell me if that's a good

24 representation of the X being where John and the fort

25 were. And you did have a recollection that 4 y/o B-CC #4

□00089

1 was where -- where it has been designated on that diagram

2 in the left corner, just off the sun deck. Correct?

3 A Yeah. She was in that area.

4 Q Could you draw in, with that red pen, where you

5 and 4 y/o-C #4 went to after you left John and went back to

6 the shallow end?

7 A Do you want the path or just --

8 Q Yeah, the path, and then we'll -- they'll -- if

9 you could mark an X.

10 A (Complies)

11 Q Okay. Thank you. And could I see the red pen?

12 Thank you. I'm just going to draw an arrow to indicate

13 that that was your return direction. Is that accurate?

14 A Yes.

15 Q And you went back to the shallow area. You put

16 a big X there. Is that because you're -- you believe you

17 were somewhere in this same general area?

18 A We went to that area -- that general area.

19 Q Well, you did -- did you come back over here in

20 the real shallow area or did you just go back to the

21 edge --

22 A We just --

23 Q -- by the umbrella?

24 A -- stayed by the edge.

25 Q Okay. Where you have the X.

□00090

1 A Yes.

2 Q Now, was -- it was just 4 y/o-C #4 who was with

3 you?

4 A Yes.

5 Q Did 4 y/o-C #2 stay at the fort?

6 A I believe that he got out and came back around.

7 Q Okay. So after you left John here, your last  
8 personal contact with him, you came back with 4 y/o-C #4, and  
9 your recollection is that 4 y/o-C #2 joined y'all?

10 A Yeah.

11 Q Okay. I'm going to put "AV" and "TC" for

12 4 y/o-C #4 and 4 y/o-C #2. What about

13 4 y/o-C #7?

14 A 4 y/o-C #7 was over there with his mom and sister.

15 Q Okay. So 4 y/o-C #7 didn't go with you, 4 y/o-C #4, and

16 John when you went to the fort to begin with. Is that

17 what you're telling us?

18 A Yes.

19 Q Okay. Could you draw in 4 y/o-C #7? And

20 M #1 ?

21 A Should I just draw the area that they were in?

22 Q And put their initials.

23 A (Complies)

24 Q You put "PB" and then "MB" for M #1 --

25 A Yeah.

□00091

1 Q -- M #1 ? And is that the area that they

2 were in when you returned?

3 A I believe so.

4 Q Okay. And were they in that general area when

5 you initially left to go to the fort with -- with 4 y/o-C #4

6 and John?

7 A They were all over the shallow end.

8 Q Okay. So your best recollection is that when

9 you returned with 4 y/o-C #4, 4 y/o-C #7 and his mother were in

10 this area, and then 4 y/o-C #2 walked around and joined

11 you and 4 y/o-C #4 here.

12 A Yeah.

13 Q Now, before you left John at the fort area, did

14 you specifically communicate with 4 y/o B-CC #4 or 4 y/o B-CC #2

15 or any other counselor that was in this area to

16 tell them that you were leaving him and going back to the

17 shallow end?

18 A No.

19 Q No communications at all with any counselor to

20 tell them that you were leaving John in that area?

21 MR. SNYDER: Objection, form.

22 Q (BY MR. PLETCHER) Verbal or nonverbal? You

23 didn't like point to him or --

24 A No. Because --

25 Q Okay. Because why?

□00092

1 MR. SNYDER: Objection, form.

2 A There were other -- it wasn't him by himself  
3 and he was around a lot of people.

4 Q (BY MR. PLETCHER) Right. And when you say  
5 "he," you mean John --

6 A Yeah.

7 Q -- was around other camp counselors --

8 A Yeah.

9 Q -- and other campers.

10 A Yes.

11 Q Okay. And so the Houston Racquet Club, neither  
12 David Lamkin, CD, or anybody else at the club  
13 ever instructed you or the other camp counselors that if  
14 you're going to leave a child in an area, on what  
15 procedure to use so that the other camp counselors knew  
16 that you were leaving the child in the area that they  
17 were supposed to be watching?

18 MR. SNYDER: Objection, form.

19 A No. Because people weren't assigned one or two  
20 children. Everyone was in charge of all of the kids.

21 Q (BY MR. PLETCHER) Right. The -- the rule that  
22 the Houston Racquet Club had, the only rule, was that  
23 when the children were in the pool, the camp counselors  
24 had to be in the pool and every counselor was responsible  
25 for watching every camper.

□00093

1 A Yes.

2 MR. SNYDER: Objection, form.

3 Q (BY MR. PLETCHER) Is -- is that your  
4 understanding of what the rule was?

5 A Yes.

6 MR. SNYDER: Objection, form.

7 Q (BY MR. PLETCHER) And at no time did the  
8 Houston Racquet Club ever instruct you, either verbally  
9 or in writing, that there were supposed to be specific  
10 assignments of children to specific counselors to watch.

11 MR. SNYDER: Objection, form.

12 Q (BY MR. PLETCHER) Correct?

13 A Yes.

14 Q That was correct?

15 A Yes.

16 Q Okay. When you -- you carried 4 y/o-C #4 back to  
17 the shallow end?

18 A Yes.

19 Q When you turned your back to the fort area  
20 and -- and started walking back, who was there watching

21 John when you left?

22 A Well, 4 y/o B-CC #4 and 4 y/o B-CC #2 were in the area and  
23 there were other children in the area.

24 Q Okay. Your assumption was that 4 y/o B-CC #4 and/or  
25 4 y/o B-CC #2 were watching the children? I'm sorry. Watching

□00094

1 John after you left?

2 A Yes. We --

3 MR. SUSSMAN: You can finish if you want  
4 to.

5 A Well --

6 Q (BY MR. PLETCHER) I guess -- I guess -- go  
7 ahead.

8 A Well, I wouldn't -- he was -- I would have left  
9 him with someone if there -- he was by himself. Like  
10 he -- there were -- he wasn't alone. There was --

11 Q Sure.

12 A -- everyone around him. There was a lot of  
13 people around him.

14 Q Right.

15 A A lot of campers and kids, and he wasn't  
16 unsupervised.

17 Q Right. But when you left the fort area and  
18 John, you don't know whether 4 y/o B-CC #4 was actually  
19 watching him?

20 MR. SNYDER: Objection, form.

21 A Not specifically John.

22 Q (BY MR. PLETCHER) Right. And you don't know  
23 if 4 y/o B-CC #2 was specifically watching John.

24 Correct?

25 MR. SNYDER: Objection, form.

□00095

1 A Yes.

2 Q (BY MR. PLETCHER) When you left, when you  
3 turned and -- and went back to the shallow area.

4 Correct?

5 A Yes.

6 Q And, again, the Houston Racquet Club never told  
7 you guys that if you were going to leave a child in an  
8 area where other counselors were with other campers, that  
9 there should be some sort of handoff procedure so that  
10 when you turn your back, you know that those counselors  
11 know that there's another child in their area that they  
12 should be watching.

13 MR. SNYDER: Objection, form.

14 A No. Be -- no.

15 Q (BY MR. PLETCHER) Okay. And after you got  
16 back to this shallow area with 4 y/o-C #4 but before 15 y/o LG #1  
17 came over -- and I will just write her in -- in this  
18 general area and said, "Is that boy okay?" during that  
19 period of time, did you ever see John again?

20 A No. I don't specifically remember seeing John  
21 individually.

22 Q Okay. So after you left the fort area with  
23 4 y/o-C #4, your recollection is that at no time did you see  
24 him before 15 y/o LG #1 said, "Is that boy okay?"

25 A Well, I turned to look at the counselors and

□00096

1 then I just like scanned the pool but I didn't -- I don't  
2 remember specifically seeing John individually. I saw  
3 kids and I saw --

4 Q Sure.

5 A -- the counselors but I didn't see John.

6 Q Right. But you don't have a specific  
7 recollection of seeing John at any other time after you  
8 turned and went back to the shallow area.

9 A Yes.

10 Q That's correct.

11 A Yes.

12 Q Okay. So the next time you saw him, he was  
13 facedown, floating.

14 A Yes.

15 Q Did you know that 4 y/o B-CC #2 has given a  
16 statement, indicating that she was playing with John  
17 about ten or 15 minutes before he was found floating  
18 facedown, and that he had -- she had actually piggybacked  
19 him over to the shallow area?

20 A No.

21 MR. SNYDER: Objection, form.

22 Q (BY MR. PLETCHER) Do you recall seeing 4 y/o B-CC #2  
23 piggyback John that day?

24 A No.

25 Q Okay. Since you did not know that 4 y/o B-CC #2 had

□00097

1 actually piggybacked him back to the shallow area, you  
2 can't recall any communication between 4 y/o B-CC #2 and  
3 yourself about John.

4 A There was no communication between us.

5 Q 4 y/o B-CC #1, did you know that 4 y/o B-CC #2 may  
6 have been the last person who saw John alive?

7 MR. SNYDER: Objection, form.

8 A No. I don't know that.

9 Q (BY MR. PLETCHER) Okay. So nobody has given  
10 you that information and you haven't seen any statements  
11 from 4 y/o B-CC #2 indicating that -- that she  
12 piggybacked him back to the shallow area.

13 A I haven't seen anyone's statement.

14 Q And -- and after this event, 4 y/o B-CC #2  
15 didn't tell you that.

16 A No.

17 Q Okay. And -- and have you had any  
18 communications with 4 y/o B-CC #2 about the event subsequent to  
19 July 18th?

20 A No. I don't believe so.

21 Q Okay. So if, indeed, 4 y/o B-CC #2  
22 piggybacked John from this fort area back to the shallow  
23 end and ten or 15 minutes went by, during that ten or 15  
24 minutes, you have no recollection of seeing John again.  
25 Correct?

□00098

1 MR. SNYDER: Objection, form.

2 A I -- that's correct.

3 Q (BY MR. PLETCHER) Okay.

4 A Because I don't see how that timing is  
5 possible.

6 Q Why?

7 A Because I -- I've given you all the times and  
8 I've given what happened and -- and that's the last time  
9 that I saw him, and it couldn't have been ten to 15  
10 minutes after I dropped him off at the fort and come  
11 back. It was -- I don't -- I don't believe that that --

12 Q You don't believe that it was ten or 15  
13 minutes, but as you told us earlier, you were trying to  
14 estimate the times and it could have been more, it could  
15 have been less.

16 MR. SNYDER: Objection, form.

17 A And I said it was around seven, maybe a little  
18 bit more --

19 Q (BY MR. PLETCHER) Okay.

20 A -- or maybe a little bit less.

21 Q Okay.

22 A But 15 minutes is too long.

23 Q Okay. Maybe ten.

24 A Yeah. Maybe that.

25 Q Okay. All right. That's fine. And so you

□00099

1 have -- where's my other diagram? On 14H-1, I've drawn  
2 in the stick figure representing John. I've tried to put

3 it in the general area that you put on our original  
4 exhibit. See where he's off of this little thing here?

5 A Yeah.

6 Q To the east?

7 A Yes.

8 Q You have no knowledge, 4 y/o B-CC #1, do you, of how  
9 John got from the fort area to where he was found  
10 floating facedown? Correct?

11 A Yes.

12 Q You said that when you left John at the fort  
13 area that there were not only camp counselors, but also  
14 other campers, other children?

15 A Yes.

16 Q And those other children would have included  
17 the four-year-old campers.

18 A Yes.

19 Q Were -- to your knowledge, were there both  
20 four-year-old boys and girl?

21 A There -- I don't believe there were girls.

22 Q Okay. You believe that they were all  
23 four-year-old boys.

24 A Yes. Because when I walked back over to the  
25 shallow end with 4 y/o-C #4, that's when -- if I remember

□00100

1 correctly, that's when the girls were getting in.

2 Q Okay.

3 A I think.

4 Q And why don't you draw in where the girls were  
5 getting in, the four-year-old girls and their camp  
6 counselors. And you can put -- you can just kind of draw  
7 in the area. Okay.

8 A (Complies)

9 Q And then if you'd just do an arrow out here and  
10 write "4-year-old girls."

11 A (Complies)

12 Q Great. Thank you. With their counselors.

13 A Yeah.

14 Q Right?

15 A Yes.

16 Q So I've written that on there. Is that okay?

17 A Yeah.

18 Q That hurts my eyes. There we go. Okay. Okay.

19 I just need to know every person that you recall on

20 July 18th, 2007, touching, playing, talking, or being

21 around John Pluchinsky when he was in the family pool.

22 Can you -- can -- can you remember any other people with

23 him other than yourself?

24 A 4 y/o B-CC #4 . I -- I don't remember specifics.

25 Q Okay.

□00101

1 A Just -- that's --

2 Q And when you say "4 y/o B-CC #4 ," are you referring to  
3 when he was over in the fort area?

4 A Yeah. When --

5 Q Okay. After you had left?

6 A No. She would --

7 Q And before?

8 A When I was there, she would come over there and  
9 we -- she and I kind of stayed on this half of the pool.

10 Q Okay.

11 A And so --

12 Q And when you say, "this half of the pool," you  
13 mean over here.

14 A Yeah.

15 Q That half. Okay. And what do you remember you  
16 and 4 y/o B-CC #4 talking about or doing while y'all were over  
17 in -- on that half of the pool, that side of the pool?

18 A I don't -- I don't remember. We were just  
19 playing with the boys, just holding them and carrying  
20 them and...

21 Q Okay. And what about -- what about you? Can  
22 you just describe to the jury your contact with John  
23 during the period of time from when y'all got in the  
24 family pool until 15 y/o LG #1 said, "Is that boy okay?"  
25 Can you describe to us what you did with him, what you

□00102

1 saw him do that day?

2 A When we got in, he -- we stayed over in that --  
3 the area that I had circled, like by the X where 4 y/o-C #4  
4 and I were and 4 y/o-C #2 were.

5 Q Right.

6 A And we got in the water and I kind of stayed in  
7 that area with those boys.

8 Q And that would be this area here (indicating)?

9 A Yeah.

10 Q That pink area?

11 A Yeah.

12 Q Okay.

13 A And then I -- we just played -- we just played  
14 games and --

15 Q Okay.

16 A -- they were talking and he had showed me a

17 fishy bathing suit --

18 Q Yes.

19 A -- that he was wearing. And he would play a  
20 game where he would -- like he would say, "Count how long  
21 I can go under the water."

22 Q Yes.

23 A And he'd go underneath and he'd stay there for  
24 like not long at all, and he'd pop back up and he'd ask  
25 me how long. And then 4 y/o-C #4 would try and do it but he

□00103

1 was really scared of going underneath and so he would  
2 only do it for like a second. And then John asked me to  
3 do it and I would go under and -- and then pop back up,  
4 and he did that a couple of times. And he would swim a  
5 little bit out into more -- like kind of where he was  
6 float -- where that picture of him is.

7 Q Yes.

8 A And then he would --

9 Q The stick figure (indicating).

10 A Yeah. And then he would come back and he was  
11 just mingling around, and then when 4 y/o-C #4 and John asked  
12 me to take them over to the fort area --

13 Q Um-hmm.

14 A -- I had John on this side and 4 y/o-C #4 on this  
15 side.

16 Q On each shoulder?

17 A On my hips and --

18 Q Okay.

19 A And -- and they were saying -- John said,  
20 "Let's play momma shark and baby shark." And they said  
21 that I was the mom shark and -- and I was supposed to  
22 protect them from the bad things that was going to get  
23 them.

24 Q Right.

25 A And so we did that over to the edge and then

□00104

1 they'd jump off the fort area and then pretend like  
2 something bad was coming in the water, and they were like  
3 "Hurry, get me up on the edge." And like I'd put them  
4 back on there. And -- and we just played sharks. And --  
5 and that was -- we just played.

6 Q Okay. So during that day, you remember two  
7 different -- playing games with John. Two of the games  
8 you specifically remember are the momma-baby shark?

9 A Momma and baby sharks.

10 Q Momma and baby shark game. And the game where

11 he would go underneath the water and try to hold his  
12 breath.

13 A (Moving head up and down)

14 Q And then he'd come up and ask you, "How long  
15 was I under? How long I was -- I was under."

16 A Yes.

17 Q What -- is -- what would you call that? The  
18 holding breath game?

19 A Yeah.

20 Q Okay. And -- and you -- I think you said he  
21 couldn't hold it for very long.

22 A Maybe ten seconds or --

23 Q Yeah. Okay. Where -- where do you remember  
24 y'all playing that game where you went under the -- the  
25 surface and held your breath?

□00105

1 A Right --

2 Q Can you mark it on --

3 A Right where that X is.

4 Q Right here (indicating)?

5 A Yeah. It was right on the edge of the stone  
6 and it was right at the -- we were right by the edge.

7 Q How deep was it there?

8 A I was sitting on my knees, and like it was --  
9 on my knees, it was like up to here on me. It wasn't --

10 Q Okay.

11 A It was right at the edge of -- like right where  
12 the --

13 Q Not chest high. Below chest high.

14 A Yeah. Right where the pool kind of came around  
15 and like went out.

16 Q I think it'd be better to describe it in terms  
17 of John. Do you know how deep it was on him? Was it his  
18 waist, his chest, his neck? What you do you remember?

19 A It wasn't his neck and it wasn't his chest. It  
20 might have been --

21 Q Between his chest and waist?

22 A Yeah.

23 Q Okay. Could you --

24 A Because like when he would go down on his knees  
25 and he'd just be on his knees and he was under the water.

□00106

1 Q Okay. Could you just, on that diagram, put a  
2 circle with "HB" in it?

3 A (Complies)

4 Q Sure. And then you described the momma and

5 baby shark game, which was -- which y'all played over  
6 near the fort because I think you said that -- that  
7 they'd jump in and you'd -- somebody would be acting like  
8 a shark and --

9 A Um-hmm.

10 Q -- and then you'd save them.

11 A They were the sharks.

12 Q They were the sharks and you'd save them.

13 A Yeah.

14 Q Okay. So if I just wrote in here "MBS" for

15 momma and baby shark game, over near the fort area.

16 Okay. Now, do you ever recall John playing that holding

17 your breath game in water that was deeper than his -- his

18 head?

19 A (Moving head side to side) No.

20 Q So he wouldn't have -- he wouldn't have been

21 playing that game over here where the water was four feet

22 deep.

23 MR. SNYDER: Objection, form.

24 A No. He -- I mean, he might have --

25 Q (BY MR. PLETCHER) Um-hmm.

□00107

1 A -- when I went wasn't -- if I wasn't there.

2 Q I'm just talking about what you know.

3 A What I know is no.

4 Q Okay. So he wouldn't have been in an area

5 deeper than -- than his height, which his height actually

6 was 42 inches, which is three-and-a-half feet.

7 MR. SNYDER: Objection, form.

8 Q (BY MR. PLETCHER) So the only time you ever

9 played that game with him, he was in that water that was

10 between his chest and his -- his waist --

11 A Yes.

12 Q -- deep.

13 MR. SNYDER: Objection, form.

14 Q (BY MR. PLETCHER) Now, can you -- can you tell

15 us what happened between the time that you and 4 y/o-C #4 --

16 A I can't see.

17 Q Oops. Sorry. Thanks. Yeah, please keep me

18 straight on this. When you and 4 y/o-C #4 and 4 y/o-C #2 got back

19 here and 4 y/o-C #7 and -- actually, let me pull this 14H-1

20 up. When y'all got back here, you, 4 y/o-C #4, 4 y/o-C #2,

21 and 4 y/o-C #7 and his mother were over here, can you just

22 walk me through what happened from that point in time

23 until 15 y/o LG #1 said, "Is that boy okay?" What do you

24 remember?

25 A I remember getting back over there, and I don't  
□00108

1 know how long after being over there M #1 asked  
2 if she could take 4 y/o-C #7 over to the lap pool, and I  
3 looked at my watch and I noticed that we only had maybe  
4 five or -- five minutes or maybe ten left at the pool.  
5 And I told her, I said, yeah, that was fine, but that we  
6 had to start getting out in about five or ten minutes,  
7 but that I would -- if he wasn't back, that I would come  
8 up -- over to the lap pool and get him.

9 Q Okay.

10 A And I had -- and then I was just -- I -- at  
11 that point, I looked at my watch and noticed what time it  
12 was and so I looked at the counselors and I remember  
13 seeing 4 y/o B-CC #4 and she's the only one that I specifically  
14 remember like making eye contact with. And I just kind  
15 of like -- like scanned the pool and I saw 4 y/o B-CC #6 over  
16 by those stairs. And I can't remember if I motioned to  
17 him at my watch but I saw him over there.

18 Q Over here?

19 A Yeah. And --

20 Q And then you -- you also mentioned 4 y/o B-CC #4 and  
21 she was still down in this area?

22 A Yes.

23 Q Okay.

24 A And --

25 Q Did you point to your watch?

□00109

1 A I think so. I looked at her and I kind of was  
2 like, you know -- I either did this or I did this  
3 (indicating).

4 Q Do you remember what time it was?

5 A I can't specifically remember.

6 Q Okay.

7 A But I know that we needed to be out in about  
8 five minutes, maybe less.

9 Q Okay. What you --

10 A I mean, maybe a little more.

11 Q Right. What you had said a minute ago was  
12 maybe five --

13 A Five to ten.

14 Q -- to ten minutes left before you had to leave  
15 to go to the next activity, which was Mad Science.

16 A Yes.

17 Q And we looked at the schedule for the camp  
18 and -- and we know that swim time was from 10:45 in the

19 morning -- this is Exhibit -- Plaintiffs' Exhibit 6.  
20 10:45 until 11:45. So I'm trying to see how -- how  
21 accurate your estimate of five to ten minutes was. Okay?  
22 Could it have been longer?  
23 A No, because I --  
24 MR. SNYDER: Objection, form.  
25 A I don't believe so because I specifically told

□00110

1 M #1 , "We're going to have" -- because the  
2 four-year-old -- they told the four-year-olds -- CD  
3 and David had said that they took longer to kind of  
4 corral.  
5 Q (BY MR. PLETCHER) Sure.  
6 A And so we were -- I think it was either going  
7 to be 20 or 25 minutes of time that we were going to be  
8 taking to help get them ready and -- because we had to do  
9 everything for them. We had to put their shoes on and --  
10 and get them dressed, whereas like the older boys, they  
11 could do that on their own.  
12 Q Okay.  
13 A And so I --  
14 Q Okay.  
15 A -- remember.  
16 Q Okay. So -- so y'all were going to leave  
17 earlier than 10:45 because y'all had to have a period of  
18 time to get ready for Mad Science, get your swimsuits  
19 off, get your clothes back on, your tennis shoes and  
20 everything that you might need for that activity.  
21 Correct?  
22 A Yeah.  
23 Q Okay. And how much time did you -- do you  
24 recall having allotted for that? 20 minutes?  
25 A 20 or 25.

□00111

1 Q 20 or 25 minutes. Okay.  
2 A Because I specifically remember after it  
3 happened and I was -- after he had already been taken  
4 away and stuff, I remember thinking we were supposed to  
5 be getting out in like five minutes, and I was -- that  
6 was hard because we were supposed to be out in such a  
7 short amount of time.  
8 Q Right. Was that the time that the EMS showed  
9 up at the scene?  
10 A What do you mean?  
11 Q Well, you said that -- something about when  
12 they took him away.

13 A Yeah. After the ambulance had taken him away.  
14 Q That that was close in time to when you were  
15 supposed to be getting out? Because the -- the ambulance  
16 records show that they -- they got there, I believe, at  
17 10:46.

18 A No. I'm -- I'm saying that --

19 MR. SNYDER: Objection, form.

20 MR. PLETCHER: 11:26. Sorry. Sorry about  
21 that. 11:26.

22 A I'm saying not when they took him away. When  
23 they took him away is when I had time to kind of process  
24 what was happening, and when I'd seen him, we were  
25 supposed to be getting out --

□00112

1 Q (BY MR. PLETCHER) I gotcha.

2 A -- very soon.

3 Q When you -- and when you say, "When I -- when I  
4 had seen him," you mean when you saw him floating  
5 facedown.

6 A Yes.

7 Q Okay. Okay. Now, let's talk about the hard  
8 part. You ready?

9 A (Moving head up and down)

10 Q Okay. We'll try to do it quick. I need to  
11 know what you remember seeing after you saw him floating.  
12 Okay? What happened next?

13 A I turned around and I saw him floating and I  
14 saw 4 y/o B-CC #3 walking over -- or not walking but like he was  
15 able to get there in like one to two big -- like  
16 one-and-a-half big steps and -- through the water. And  
17 he like grabbed his arm and he pulled him forward and he  
18 was like, "Yeah, he's just playing," because they had had  
19 incidents where kids had been playing like they -- or a  
20 girl, a little girl, had pretended like she had drowned  
21 and the life --

22 Q Yeah.

23 A Yeah. And the lifeguard had actually jumped  
24 in, I think, and CD had told us to make sure we tell  
25 our kids not to play like that.

□00113

1 Q Yeah. And that game, actually, it's -- it's  
2 described as a game called dead man's float where they're  
3 acting like they're -- they've drowned and they're  
4 floating on the top of the water.

5 A Um-hmm.

6 Q So what you're telling us is that prior to

7 July 18th, you think there may have been an incident  
8 involving a little girl?

9 A I know there was an incident.

10 Q Okay.

11 A I don't know if -- if it was -- I'm almost  
12 positive it was a little girl -- or a girl. And she had  
13 said that we need make sure that we tell our kids not --  
14 and don't let them play like that.

15 Q Okay.

16 A And --

17 Q When -- when did that happen? Did it happen in  
18 a prior week?

19 A I can't specifically remember.

20 Q Okay.

21 A But I --

22 Q You were there.

23 A When -- I didn't see her pretending to drown.

24 Q Oh, you weren't there that day. You just  
25 remember getting the instruction from CD?

□00114

1 A I had remembered that morning, in like our  
2 morning meeting, CD saying, "We had an incident  
3 earlier -- either earlier today or earlier in another  
4 week that a little girl was pretending -- or someone was  
5 pretending" --

6 Q Right.

7 A -- "to drown and a lifeguard had to jump in."

8 Q Okay. Now, I've got to stop you there. You  
9 said that was in your morning meeting?

10 A Yeah.

11 Q Was that on July 18th?

12 A I said I don't remember the day.

13 Q Okay. Do you think it was that same week,  
14 maybe on Tuesday, July 17th, or do you think it may have  
15 been a prior week? Because the records show that you  
16 worked the first and second week, you took the third and  
17 fourth week off, and then you came back in the fifth.

18 A Yeah.

19 Q So it's important for me to know when this  
20 meeting occurred.

21 A Well --

22 Q So if you could think about it, whether or not  
23 it was close in time to John's drowning or maybe more  
24 distant.

25 A We had morning meetings every morning.

□00115

1 Q I understand.

2 A And I cannot remember specifically when. I  
3 just --

4 Q Okay.

5 A -- know that that happened. I wanted to say  
6 that it happened the day before but --

7 Q Can't say for sure?

8 A -- I can't say for sure. I don't --

9 Q Or with really any probability --

10 A Yeah.

11 Q -- or reasonable -- okay. Well, tell me  
12 what -- you said that CD told you to tell the children  
13 that they were not to play that game?

14 A She told to us make sure that the children  
15 weren't playing games like that --

16 Q Okay.

17 A -- and that they didn't pretend to be hurt or  
18 drowning because the lifeguards were the bosses at the  
19 pool, and whatever the lifeguards said, we did. And --

20 Q Okay. What did that have to do with the  
21 lifeguards if you guys were the ones who were watching  
22 the children and you were to be telling them they're not  
23 to be playing the dead man float game? How did the  
24 lifeguards come into play?

25 A Because the lifeguards had said, "Don't play

□00116

1 those games," and so she was telling us that those games  
2 aren't appropriate and that they can't play that game.

3 Q Okay. Did you -- do you recall, in this  
4 morning meeting, other four-year-old camp counselors  
5 being there or can you say?

6 A Every counselor was supposed to be there.

7 Q All right. Was supposed to be if they were  
8 working.

9 A Yeah.

10 Q Did some people miss those meetings, though,  
11 sometimes?

12 A Sometimes they --

13 MR. SNYDER: Objection, form.

14 A -- they might be late but --

15 Q (BY MR. PLETCHER) Okay.

16 A -- they were supposed to be there.

17 Q Okay. Did CD ever tell you that -- how to  
18 handle it if you saw a child playing that game?

19 A No.

20 Q She didn't provide you with any instruction on

21 exactly what you were supposed to do other than, ahead of  
22 time, telling the kids, "Don't play that game"?

23 MR. SNYDER: Objection, form.

24 A Yes.

25 Q (BY MR. PLETCHER) Had you instructed any --

□00117

1 any of your campers that that game was not allowed?

2 A No. I don't believe so.

3 Q And you were not there, so you don't have  
4 personal knowledge of all the circumstances surrounding  
5 the girl or other camper that you described earlier who  
6 was playing the dead man float game that caused a  
7 lifeguard to go in. Right?

8 MR. SNYDER: Objection, form.

9 A I don't know anything about --

10 Q (BY MR. PLETCHER) Right.

11 A -- that other than what CD said.

12 Q Okay. But nobody at the Houston Racquet Club  
13 ever instructed you that that dead man float game was  
14 prohibited, in other words, would not be tolerated.

15 MR. SNYDER: Objection, form.

16 A Well, she told us after it happened that we  
17 needed to make sure that they understood not to play  
18 games like that.

19 Q (BY MR. PLETCHER) Yeah.

20 A And not to mess or pretend that they were in  
21 danger.

22 Q Okay. But she didn't provide any guidance on  
23 what to do if it did occur. Correct?

24 MR. SNYDER: Objection, form.

25 A Correct.

□00118

1 Q (BY MR. PLETCHER) And you know, as a camp  
2 counselor, having worked at the Houston Racquet Club,  
3 having watched children in the family pool, and knowing  
4 your responsibility in that respect, that a child, even  
5 an adult, playing that game could be very confusing.  
6 Right?

7 A Yes.

8 MR. SNYDER: Objection, form.

9 Q (BY MR. PLETCHER) And why is it confusing?

10 A Why is the game confusing?

11 Q Yes.

12 A Because the lifeguard doesn't know if they're  
13 pretending or if it's for real.

14 Q Right. And the -- the camp counselors don't

15 know that, either.

16 MR. SNYDER: Objection, form.

17 A Yeah. The last thing you think would happen

18 is --

19 Q (BY MR. PLETCHER) Right.

20 A -- it actually happening.

21 Q Sure. And it also might delay your response as

22 a camp counselor to getting to the child.

23 MR. SNYDER: Objection, form.

24 A It -- he certainly didn't go slow to get to

25 him.

□00119

1 Q (BY MR. PLETCHER) No. Let -- I wasn't talking

2 about John. I was just talking about the dead man float

3 game, and the -- and the fact is is that if children were

4 allowed to play that game at the Houston Racquet Club, it

5 would cause confusion in your -- in yourself because

6 you -- you don't know if they're playing or if it's real.

7 Right?

8 A Yes.

9 MR. SNYDER: Objection, form.

10 Q (BY MR. PLETCHER) And so if it's going on and

11 it's happening repeatedly, then it might delay you going

12 to get the child because you might think that the child

13 is just playing.

14 MR. SNYDER: Objection, form.

15 Q (BY MR. PLETCHER) Right?

16 A In a sense, yeah.

17 Q Okay.

18 A Yeah.

19 Q So you said 4 y/o B-CC #3 was one to one-and-a-half

20 steps --

21 A Large.

22 Q Large steps.

23 A Yeah.

24 Q He obviously lunged to him?

25 A He lunged, yeah.

□00120

1 MR. SNYDER: Objection, form.

2 Q (BY MR. PLETCHER) You saw him do that?

3 A Yeah.

4 Q Could you describe that for us?

5 A He -- he was like, "Yeah, he's fine." And he

6 was able to grab his arm --

7 Q Yes.

8 A -- and he pulled his arm forward and he picked

9 him up, and when he picked him up, he started screaming  
10 "Oh, shit, oh, shit," and his head like fell back. And  
11 when I saw his head fall back, I took 4 y/o-C #4 off my back  
12 and I set him on the side of the pool and I met him at  
13 the edge and I lifted John's first half of the body out  
14 and laid it on the side of the pool and 4 y/o B-CC #3 held his  
15 legs out of the water, and by that time, there was a  
16 bunch of people around.

17 Q Right. Around there? Now, you said that  
18 you -- you grabbed the rest of his body. Did you grab  
19 him behind the shoulder blades?

20 A I took like -- I like leapt over to the edge  
21 because I was already by the edge of the pool. And I  
22 leapt over to the edge and I hopped out and I was like on  
23 the side and I picked him like this and laid him down  
24 (indicating).

25 Q So you reached in to receive him and then you

□00121

1 pulled him up onto the pool deck?

2 A Well, 4 y/o B-CC #3 was carrying him like this out of  
3 the water (indicating) --

4 Q Okay.

5 A -- and I lifted up his upper half and took it  
6 from 4 y/o B-CC #3, and 4 y/o B-CC #3 held his lower body.

7 Q Okay. Could you draw a box where -- where  
8 y'all laid John on the pool side, pool deck?

9 A (Complies)

10 Q You have put an orange rectangle on the edge of  
11 the umbrella. I need -- I need you to look at this for  
12 sure. Okay? This umbrella. That circle right there is  
13 an umbrella?

14 A Um-hmm.

15 Q Was he on the edge of it or was he actually  
16 under it? Do you remember?

17 A I -- I don't remember the umbrella. I  
18 wasn't --

19 Q Okay.

20 A -- paying attention to an umbrella.

21 Q Sure. So -- so your recollection is that he  
22 was laid somewhere on this western end of the pool.

23 A He was laid right near where it like curved  
24 out.

25 Q Right. And you're talking about this curved

□00122

1 area right --

2 A Like -- yeah.

3 Q -- here. Right?

4 A Yeah.

5 Q Okay. I'm going to put "JP" and I'm going to  
6 put -- what happened next?

7 A I tilted his head back and I had his right  
8 wrist and I was feeling for a pulse, and people were  
9 coming and he had vomit in his nose and his eyes were  
10 open, and he had vomit in his mouth, and I started to  
11 scoop the vomit out so that we could start CPR. And  
12 Supv CC #1 was there and he was -- everyone was screaming to  
13 get a breathing mask thing. And I couldn't feel a pulse  
14 on his wrist --

15 Q Okay.

16 A -- and so I moved to his neck and I never -- I  
17 don't remember ever feeling one.

18 Q Okay. Let me stop you there. This orange  
19 rectangle is where the CPR was conducted?

20 A Yes.

21 Q I'm going to write "CPR" there. You said that  
22 Supv CC #1 -- or Supv CC #1 , that -- you meant Supv CC #1 ?

23 A Yes.

24 Q He started the CPR?

25 A Yes. After we cleared his airway.

□00123

1 Q Yes. After you clear his airway.

2 A Yes.

3 Q And you said that Supv CC #1 screamed something?  
4 What did he scream?

5 A He -- everyone was screaming and he was saying,  
6 "Get the -- the kit," because there was some breathing  
7 like face cover thing that he would breathe into. And by  
8 the time that that got there, his airway had already been  
9 cleared and everything, and it was a matter of seconds.

10 Q Okay. Who -- you said that "Go get the kit."  
11 What sort of kit?

12 A It was -- it was a red -- I think it was red --  
13 kit and it was like this big (indicating), and Supv CC #1 --

14 Q An emergency kit?

15 A Yeah.

16 Q Okay. And who do you remember bringing that  
17 emergency kit over?

18 A I never saw who brought it. They just dropped  
19 it --

20 Q But one showed up.

21 A Yeah.

22 Q And who opened it up? Supv CC #1 ?

23 A Supv CC #1 .  
24 Q And did he get the mask out of it?  
25 A I -- I think he was the one.

□00124

1 Q He -- did -- did Supv CC #1 use a mask when he  
2 started breaths?

3 A Yes.

4 Q Okay. Backing up a little bit, you said that  
5 you saw Supv CC #1 leap towards John and grab his arm.

6 A No.

7 Q I'm sorry. 4 y/o B-CC #3. I'm sorry. Let me ask that  
8 question again.

9 You said that you saw 4 y/o B-CC #3 take one to  
10 one-and-a-half, two large steps and grab John's arm and  
11 then he brought him to the edge --

12 A Yes.

13 Q -- of the pool, where you assisted. Do you  
14 remember seeing John's torso at that time? Could you  
15 describe what it looked like?

16 A I -- I saw his body.

17 Q Okay.

18 A I -- I don't remember specifically what it  
19 looked like.

20 Q Okay. I'm just wondering. Was it -- was the  
21 color unusual to you or is his -- was his color something  
22 that sticks out in your mind?

23 A His lips were blue and his eyes were really  
24 glazed over and his face was -- it was kind of like --  
25 not gray but it --

□00125

1 Q Ashen?

2 A Yeah. It didn't have any color.

3 Q Okay. So when you first saw John as 4 y/o B-CC #3  
4 is bringing him up, his eyes are open?

5 A Yes.

6 Q But you said glazed over?

7 A Yes.

8 Q And his lips are blue.

9 A (Moving head up and down)

10 Q Correct?

11 A Yes.

12 Q And his color of his face is a -- is an ashened  
13 color, not gray, but it's not the right color. Right?

14 A Yes.

15 MR. SNYDER: Objection, form.

16 Q (BY MR. PLETCHER) You had mentioned that you

17 tilted his head. Could you describe to me how you tilted  
18 it --

19 A I --

20 Q -- before you -- before you did your sweep of  
21 his mouth?

22 A I put my hands like this on his head and I just  
23 went like that (indicating) so that his neck was -- so it  
24 wasn't closed, so his airway was open.

25 Q Right. So you tilted his head back?

□00126

1 A Yes.

2 Q Could you turn sideways and just demonstrate it  
3 just so that we understand? It wasn't a side tilt it but  
4 was --

5 A It was --

6 Q If you could just turn your -- turn and look  
7 that way and then bend your head back?

8 A (Complies) Just like that (indicating).

9 Q Okay. Now, that was something that you had  
10 learned in your CPR AAD course that you took at the  
11 Houston Racquet Club. Right?

12 A Yes.

13 Q Because in CPR, you -- you want to do your  
14 ABC's.

15 A Yes.

16 Q You know what your ABC's are? Airway?

17 A Breathing, call for help.

18 Q And what?

19 A Call for help.

20 Q Call for help. And the -- the first thing is  
21 you want to make sure the airway --

22 A Is open and clear.

23 Q Is open and clear. And you do that by?

24 A Taking your two fingers and just getting --

25 Q But what do you do first?

□00127

1 A You tilt the head back.

2 Q Right. And then you do a sweep with your  
3 fingers?

4 A Yes.

5 Q And you did these things.

6 A Yes.

7 Q Did either you or Supv CC #1 put your ear to his  
8 mouth and nose to see if he was breathing?

9 A Supv CC #1 did.

10 Q Okay. And -- and what did Supv CC #1 say?

11 A He said he didn't feel anything.

12 Q Now, the next thing that happened was that  
13 Supv CC #1 got the mask. Is he -- did he do any compressions  
14 before he did breaths? What do you remember seeing?

15 A I remember him starting compressions and then  
16 breathing.

17 Q Okay. And when he did his compressions, do you  
18 recall more water and material coming out of his mouth  
19 and nose?

20 A I remember it coming out after he did like  
21 one -- not even one breath. He like barely breathed in  
22 and I remember him moving the mask and vomit and water  
23 and food pouring out of his nose and his mouth. And I  
24 rolled him into my knees, so that of being like on his  
25 back, he was like that. And then -- so that he

□00128

1 wouldn't -- it wouldn't go back down, so it would come  
2 out. And then we rolled him back over and then I cleared  
3 it again and they started --

4 Q Okay.

5 A -- over again.

6 Q Let me stop you there. When you say that Supv CC #1  
7 took the mask off after one breath and more vomit, then  
8 water was coming out of his mouth and nose, was that  
9 after he had pushed?

10 A Yes.

11 Q Okay. Do you recall him counting as he was  
12 pushing?

13 A I remember him like underneath his breath.  
14 Like I wasn't counting.

15 Q Right.

16 A But I -- he might have been in his head or  
17 quietly. He wasn't screaming it.

18 Q Does anything stand out in your mind as to  
19 John's abdomen or stomach as he's laying on the ground  
20 before CPR was started? Do you recall anything?

21 A No.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Okay. David Lamkin  
24 ultimately arrived on the scene; didn't he?

25 A Yes.

□00129

1 Q And he took over for Supv CC #1 .

2 A Well --

3 Q Right?

4 A -- there was another lifeguard.

5 Q I understand. I know LG Supv came on the  
6 scene before Mr. Lamkin? Right?

7 A Yes.

8 Q Okay. But ultimately Mr. Lamkin came in and  
9 stepped in for Supv CC #1 . Do you remember that happening?

10 A Yes.

11 Q He has testified that -- that John's stomach  
12 was bloated, or the medical term for it is distended. Do  
13 you have any recollection of seeing that?

14 MR. SNYDER: Objection, form.

15 A I wasn't looking at his stomach.

16 Q (BY MR. PLETCHER) Do you recall Supv CC #1 pushing  
17 on John's stomach as opposed to his chest --

18 MR. SNYDER: Objection --

19 Q (BY MR. PLETCHER) -- during the initial round  
20 of compressions?

21 MR. SNYDER: Objection, form.

22 A No. He wasn't pushing on his stomach.

23 Q (BY MR. PLETCHER) You don't recall that?

24 A No. He was pushing right --

25 MR. SNYDER: Objection, form.

□00130

1 A -- on the little triangle, sternum, where it's  
2 supposed to be.

3 Q (BY MR. PLETCHER) I want to show you the  
4 statement that Supv CC #1 -- oh, good -- that Supv CC #1  
5 filled out on July 18th. Here's his name up here,  
6 Supv CC #1 . This is Plaintiffs' Exhibit 5C. "When the  
7 lifeguard asked about the boy and 4 y/o B-CC #3 picked him up, I  
8 rushed over and laid his body on the ground. Right then,  
9 vomit came out of his mouth. I then began to push his  
10 stomach and more and more vomit came up. Once we got all  
11 that, we could -- once we got all that, we called LG Supv ,  
12 lifeguard, and he begun CPR."

13 MR. SUSSMAN: I think it said, "I began."

14 Is it "he"?

15 MR. PLETCHER: Well, it's cut off.

16 MR. SUSSMAN: Okay.

17 MR. PLETCHER: I think it's cut off.

18 Q (BY MR. PLETCHER) Anyway, this is Plaintiffs'  
19 Exhibit 5C. After having seen that statement that Supv CC #1  
20 wrote out on July 18th, 2007, about his CPR on  
21 John, do you think that it -- it's possible that he was  
22 pushing on his stomach?

23 MR. SNYDER: Objection, form.

24 A I don't remember him pushing his stomach.

25 Q (BY MR. PLETCHER) Okay. That's fine. Yeah.

□00131

1 Were you there looking at Supv CC #1 the entire time as he was  
2 doing CPR?

3 A No. I was looking at John.

4 Q Okay. Were you looking at his face?

5 A Yes.

6 Q Okay. And you were the person checking his  
7 pulse?

8 A My hand never left --

9 Q Okay.

10 A One of my hands never left his wrist unless I  
11 was moving him onto --

12 Q Right. So during the process, your vision  
13 was -- was focused on John's face?

14 A Yes.

15 Q And you were checking --

16 MR. SNYDER: Objection, form.

17 Q (BY MR. PLETCHER) -- his pulse both in his  
18 right wrist. Right?

19 A Yes.

20 Q And his neck.

21 A I only checked his neck once because they were  
22 all up by his neck and his face.

23 Q Okay.

24 A And the only person that I looked at was I

25 looked at 4 y/o B-CC #3 and I said, "4 y/o B-CC #3, this is John. It's one

□00132

1 of ours."

2 Q Were you there when David Lamkin came on the  
3 scene and took over for Supv CC #1 and then he pushed on his  
4 stomach?

5 MR. SNYDER: Objection, form.

6 A Yes. But he didn't push on his stomach.

7 Q (BY MR. PLETCHER) Okay. Well, if he has  
8 testified under oath that -- that he was hoping that John  
9 had a solid airway obstruction and he did a Heimlich  
10 maneuver, two of them initially, hoping to dislodge  
11 something, you wouldn't have a reason to disagree with  
12 that; would you?

13 MR. SNYDER: Objection, form.

14 A No. But --

15 Q (BY MR. PLETCHER) If you were focused on his  
16 face.

17 MR. SNYDER: Objection, form.

18 A I don't understand.

19 Q (BY MR. PLETCHER) Okay. Well, he --  
20 Mr. Lamkin has testified under oath that he was hoping  
21 that John had an airway obstruction, so what he did was a  
22 Heimlich procedure in the prone position by pushing on  
23 his stomach upward to try dislodge a solid object. And  
24 if he's -- if he has testified in that way, you're --  
25 you're not here to dispute what he says he did. Right?

□00133

1 MR. SNYDER: Objection, form.

2 A Right.

3 Q (BY MR. PLETCHER) Okay. That's fine.

4 A I remember his hand like this (indicating) and  
5 it was -- if this was his body, I remember him holding  
6 one hand and going like that (indicating).

7 Q Right. He did a one-hand maneuver.

8 A Yeah.

9 Q That would be David Lamkin that you're  
10 testifying about?

11 A Yes.

12 Q Okay. Where was 4 y/o B-CC #3? Was he in the  
13 water?

14 A (Moving head up and down) Holding his legs up.

15 Q Okay. How much of John's legs were in the  
16 water --

17 A Like from --

18 Q -- as you recall?

19 A From his knees.

20 Q Okay. So if we were going to -- I need a sheet  
21 of paper. So your recollection is that John --

22 MR. PLETCHER: Let me see the diagram.

23 Q (BY MR. PLETCHER) When he was on -- laying on  
24 the pool side, his legs, from the knee out, were over the  
25 edge of the pool coping.

□00134

1 A And 4 y/o B-CC #3 was holding him.

2 Q Right. So if we drew -- if we drew a picture  
3 of it, I want to -- I want you to just kind of look at  
4 that, what I've drawn. And if we were going to try to  
5 show the jury what it looked like, his -- his knees and  
6 everything down to his toes would be hanging into the  
7 water where 4 y/o B-CC #3-- put "CP." I should have put 4 y/o B-CC #3  
8 was holding them. Right?

9 A That's what I remember.

10 Q So during the CPR, the entire time, John's  
11 legs, from the knee down, were hanging over the coping of  
12 the pool that I've put on this curved line, and 4 y/o B-CC #3 was

13 holding his feet?

14 A (Moving head up and down)

15 Q What do you recall -- is that a "yes"?

16 MR. SUSSMAN: You have to say "yes."

17 A Yes. Yes.

18 Q (BY MR. PLETCHER) Okay. What do you recall

19 about 4 y/o B-CC #3 and how he held his feet? Do you remember

20 anything?

21 A I just remember him holding them like this.

22 Q Was he holding his legs up straight or was he

23 just holding his legs down in the water?

24 A He was holding them straight.

25 (Exhibit 80 marked)

□00135

1 Q (BY MR. PLETCHER) I'm going to mark this  
2 drawing as Plaintiffs' Exhibit 80 and I'm going to title  
3 it "JP - legs hanging into water knees down." Now, is  
4 that an accurate representation of what you remember?  
5 His legs were hanging into the water from -- from the  
6 knees down?

7 A Yeah.

8 Q Do you need -- do you want to take a break?

9 A I just need to use the restroom.

10 Q Okay. Let's -- let's do it. I could tell.

11 MR. SNYDER: Me, too.

12 VIDEOGRAPHER: The time is 3:06 p.m.

13 We're off the record.

14 (Recess from 3:06 to 3:14)

15 VIDEOGRAPHER: The time is 3:14 p.m.

16 We're back on the record.

17 Q (BY MR. PLETCHER) Are you ready to continue?

18 A Yes.

19 Q We're almost through the hard part. We just  
20 have a little more. You mentioned picking John up after  
21 more vomit and water came out of his mouth and nostrils.  
22 Can you describe to me how you did it?

23 A I was on my knees and I was on the right side  
24 of his body.

25 Q Okay. Towards his head or his feet?

□00136

1 A What do you mean?

2 Q Towards John's head or feet?

3 A I was in -- right at his torso.

4 Q Okay.

5 A I was right in between his legs and his head.

6 Q Okay. And if he's laying back on his back,

7 were you on his left side or right side?

8 A I was on his right side.

9 Q Okay. That's right. You were checking pulse  
10 on the right.

11 A Yeah.

12 Q Or -- and you were on your knees, and how did  
13 you do it again?

14 A I was -- I rolled him onto my knees.

15 Q Okay. A sideways roll.

16 A Yes.

17 Q Okay. Was his stomach --

18 A Against my knees.

19 Q Against your knees? But you only rolled him  
20 halfway. Right?

21 A I rolled him so that he was on my -- like my  
22 legs were like this (indicating), my like thigh.

23 Q Okay.

24 A And I rolled him so that his body was like that  
25 (indicating), and got stuff out and so that it didn't go

□00137

1 back down, because I thought he was vomiting --

2 Q Yes. Right.

3 A -- and I thought that he was coming --

4 Q Right. Right. I understand. When you rolled  
5 him up onto your thighs, did you roll his -- was his  
6 stomach on your thighs?

7 A His -- he never left the ground. Like a part  
8 of his body was always --

9 Q Okay.

10 A I never --

11 Q His side was on the ground.

12 A Yeah. I never like physically picked him up  
13 (indicating). I just like rolled him like that  
14 (indicating) so that the food wouldn't go back down  
15 his --

16 Q So if he's on his right side, his right side  
17 stayed on the ground the whole time.

18 A Yes.

19 Q And then you rolled him onto your thighs and  
20 then did another finger sweep?

21 A Yeah.

22 Q Okay. Did you do that more than once?

23 A Yes. Because almost after every -- anything  
24 that we did to him, stuff was coming out.

25 Q Right. Okay. And when you say, "stuff was

□00138

1 coming out," at no time did you see any hard objects.

2 A (Moving head side to side)

3 Q Correct?

4 A Yes.

5 Q It was all water, vomit, whatever food

6 particles he may have had --

7 A Yes.

8 Q -- from lunch earlier that day. Right?

9 A Yes.

10 Q Can you give me a -- an idea of how many times

11 you did that, rolled him over to your knees?

12 A It was --

13 Q Over -- over your thighs?

14 A Three to five.

15 Q Okay.

16 A But that's a guess. I know -- I know three.

17 Q Okay.

18 A Maybe -- maybe more.

19 Q Maybe more. Three for sure but maybe more,

20 maybe as many as five.

21 A Yes.

22 Q Okay. Now, this occurred after each cycle of

23 CPR?

24 A No. You couldn't even finish most of the -- I

25 mean, we might have been able to get through one -- like

□00139

1 a -- a few, but it was pretty much you'd do compressions

2 and then they'd breathe, and then after the first breath,

3 it would come out, because I -- I think what they said

4 would be happening was his lungs would be filling and his

5 airway would be filling and so that gave room for stuff

6 to come out. And so it was after breaths that food --

7 Q After breaths that it came out?

8 A That food came out.

9 Q You didn't see it come out during compressions?

10 A It might have.

11 Q Okay.

12 A But I don't know for sure.

13 Q And do you remember what the ratio of -- of

14 compressions to breaths was back in the summer of 2007?

15 A I don't know what they did. I wasn't counting.

16 Q Okay. But -- but do you remember, having gone

17 through the CPR course last summer? Do you remember what

18 it was?

19 A I know it was different for a child and an

20 adult, and that for a child, you use one hand.

21 Q Right.

22 A And that it was like two breaths for every --  
23 it was either 15 or 30 compressions.

24 Q Okay. Okay. And do you remember being taught  
25 if there was a different ratio if two people were doing

□00140

1 the CPR at once on a child?

2 A No. It stays the same.

3 Q It was the same? You'd do whatever the --  
4 whatever it was, 15 to two or 30 to two, that was the

5 same, regardless of whether or not it was just one person  
6 conducting both compressions and breath or two.

7 A Yes.

8 Q Okay. Is that what -- you took your course  
9 from David Lamkin?

10 A Yes.

11 Q Is that what David Lamkin taught y'all?

12 A Yeah. He -- there was no differentiation  
13 between one person doing it and two.

14 Q Right.

15 A It was the same all around.

16 Q Right. And when y'all did your -- your CPR  
17 certification over at the racquet club, did y'all do both  
18 a written and a skills test?

19 A I -- I know we did a skills test and I think we  
20 also did -- I -- I -- we did a written test, too.

21 Q Right. So your recollection is y'all did both.

22 A Yes.

23 Q When you did the skills test, did -- did  
24 Mr. Lamkin bring out a mannequin?

25 A Yeah. There were two mannequins.

□00141

1 Q Okay. During this CPR process, do you remember  
2 hearing other people scream?

3 A Yes.

4 Q During the entire process or was it just at the  
5 the beginning? What do you remember?

6 A At the beginning, I remember a woman screaming  
7 at us and screaming for 911.

8 Q Right.

9 A And like I -- I think I remember her screaming  
10 when other people were saying, "Has 911 been called? Has  
11 9" -- and I remember saying like "yes," and she was just  
12 screaming at us and --

13 Q Yes.

14 A -- she was like -- like, "Do you know what

15 you're doing? Go faster." And she was just -- just  
16 screaming at us.  
17 Q Right. Do you -- can you -- can you describe  
18 that lady to me?  
19 A I remember her wearing a baseball hat.  
20 Q Yes.  
21 A And I remember her in a bathing suit, I think.  
22 And I think that she had -- she had dark their.  
23 Q Okay. Had you ever met her?  
24 A No. I -- I don't know -- I can't picture her  
25 face but I know what she was wearing and what she looked

□00142

1 like.

2 Q Would we -- when we deposed 15 y/o LG #1  
3 earlier this week, she had mentioned a lady named SC,  
4 who is the swim team person at the club.

5 A It wasn't SC, the -- it wasn't the SC who  
6 was the camp director.

7 Q Right. I know it wasn't CD, but  
8 could it -- was it another CD or do you not even know  
9 her name?

10 A No. I don't even know her name.

11 Q Okay. Was -- did you feel like, when y'all  
12 were trying to perform CPR on -- on John there at the  
13 pool side, that SC was disrupting the process  
14 through -- through her screaming and -- and questioning  
15 and -- and doing the things that you have just described?

16 MR. SNYDER: Objection, form.

17 A No. Because we weren't focused on what she was  
18 saying. I -- we were --

19 Q (BY MR. PLETCHER) Okay.

20 A -- focused on John.

21 MR. PLETCHER: Okay. All right. Got  
22 that.

23 Q (BY MR. PLETCHER) Did you do anything else on  
24 John other than finger sweeps of his mouth as far as the  
25 resuscitation process goes and checking pulse?

□00143

1 A No. I tilted his head but --

2 Q Right.

3 A -- that was --

4 Q Oh, I forgot to ask you. After you -- you  
5 would clear his airway, his mouth, how would you lay him  
6 back on the ground?

7 A I put my arm on the -- behind his back and I  
8 had my hand on his head and I rolled him back

9 (indicating), and then I took my hand out from around  
10 him.

11 Q Do you recall -- each and every time that you  
12 did that and you -- you rolled him back and placed him  
13 back on the ground, do you recall tilting his head back  
14 or seeing Supv CC #1 tilt his head back?

15 A Yeah. We moved it. We moved it back.

16 Q Every time?

17 A Yes.

18 Q Do you recall Supv CC #1 ever telling you that when  
19 he was giving breaths through the face mask that he  
20 couldn't get air down?

21 A No.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Okay. Do you recall how  
24 soon LG Supv, the head lifeguard, came on the  
25 scene?

□00144

1 A I don't know time at this point.

2 Q Okay. Now, LG Supv was the next to  
3 arrive to help with the CPR. Correct?

4 A Yes.

5 Q And what did he take over?

6 A Breathing.

7 Q Breathing?

8 A Yes.

9 Q He is the one who had the mask.

10 A Supv CC #1 --

11 Q Do you --

12 A Supv CC #1 breathed --

13 Q Right.

14 A -- or did breaths until LG Supv got there.

15 Q Right. And LG Supv took over breaths for Supv CC #1 .

16 A Yes.

17 Q Do you recall LG Supv having a -- another mask  
18 with him when he -- when he arrived?

19 A I don't remember.

20 Q Okay. Do you recall hearing LG Supv make any  
21 statements or comments during his -- his breaths on John  
22 that -- that afternoon?

23 A No. But I remember seeing John's chest  
24 inflate, not -- I don't remember it -- if it was every  
25 time it inflated but I remember vividly seeing it

□00145

1 inflate.

2 Q Okay. At least on one occasion?

3 A More than one.

4 Q Okay.

5 A But I don't know how many times.

6 Q And you can't say that it was occurring each  
7 time. Correct?

8 A I wasn't looking at it the whole time.

9 Q When you say his chest was -- how -- describe  
10 what you saw.

11 A When he would breathe, I saw his rib cage and  
12 like this -- where the sternum is --

13 Q Uh-huh.

14 A -- I saw his chest go up and --

15 Q Expand.

16 A Expand and then go down, expand and then go  
17 down.

18 Q Did you ever see his abdominal, stomach area --

19 A Yes.

20 Q -- come up?

21 A Oh. I don't remember if I saw that come up.

22 MR. PLETCHER: Sorry. Give me that  
23 picture again. Exhibit -- what number is that?

24 MR. MARRS: 81.

25 MR. PLETCHER: 80?

□00146

1 MR. MARRS: This is 80; that's 81.

2 (Exhibit 81 marked)

3 Q (BY MR. PLETCHER) I've done another little  
4 drawing for 81 and I've put you on John's right side, and  
5 this was to represent where he was when CPR was being  
6 conducted.

7 A Um-hmm.

8 Q Would you mind drawing in where Supv CC #1  
9 and LG Supv were once LG Supv arrived?

10 A (Complies)

11 Q Thank you.

12 A You're welcome.

13 Q Looking at Plaintiffs' Exhibit 81, you -- you  
14 drew Supv CC #1 on John's left side and LG Supv  
15 also on the left side towards his -- his head. Did Supv CC #1  
16 move down once LG Supv arrived, or did he change positions  
17 at all?

18 A I wasn't paying attention to that.

19 Q Okay. Were there any other people around  
20 y'all, in the immediate area?

21 A Yes.

22 Q And I mean immediate area within reaching

23 distance.

24 A Yes.

25 Q How many?

□00147

1 A There was a lot of people around. There wasn't  
2 as many kids but --

3 Q Parents, mothers?

4 A -- there were parents and people watching.

5 Q And if you were going to -- to describe it, did  
6 you feel like there were people on top of you, looking  
7 over you?

8 A No.

9 Q Or were they back a little further?

10 A They were -- I did not feel that there was  
11 anyone too close to me or I felt like they were  
12 farther -- farther away from us.

13 Q Okay. So how far? Under the umbrella?

14 A I don't really remember --

15 MR. SNYDER: Objection, form.

16 A -- an umbrella.

17 Q (BY MR. PLETCHER) Okay. That's all right.  
18 That's okay.

19 A There were -- I couldn't reach out and touch  
20 someone.

21 Q Okay. Further than your reach.

22 A Yes.

23 Q Okay. How many?

24 A I wasn't paying attention to that. I would --  
25 the only person that I really remember is that woman.

□00148

1 And then --

2 Q The woman who was screaming.

3 A Yes.

4 Q Right. But there were several other people in  
5 the immediate area.

6 A When --

7 Q You were aware of that fact.

8 A Yes.

9 Q You were about to say "when."

10 A I didn't notice -- I -- exactly where people  
11 were until I looked up when the -- and saw the ambulance  
12 people come in. And there was no one in the pool except  
13 for 4 y/o B-CC #3, who had his legs.

14 Q Do you recall anybody vocalizing, either in  
15 normal tone, in a yell or a scream, to go get anything?

16 A Yes.

17 Q What was that?  
18 A Well, they were saying to get the first aid  
19 kit.  
20 Q Right. With the mask.  
21 A Yes.  
22 Q Other than that, anything else?  
23 A No.  
24 Q Do you recall where the first aid kit was  
25 located?

□00149

1 A I think that at one point, I turned around to  
2 see where they were and I think that it was in -- there's  
3 like a sign-in desk by like the gate to get into the pool  
4 and I -- I think that they went and it was right there.

5 Q Okay. So it would be near the guest sign-in  
6 book or registration sheet there at the -- at the gate  
7 that you have to go in to get to the pool.

8 A I think that that's where it was.

9 Q Okay. Now, do you recall ever seeing any other  
10 lifeguards in and around y'all when CPR was being  
11 conducted?

12 A I think 15 y/o LG #1 was a -- was standing there,  
13 maybe far -- farther back. I remember seeing Sr LG #1  
14 at some point but she never did anything, I  
15 don't think, in terms of doing something for him.

16 Q Yes. You know something that we forgot to talk  
17 about is when 15 y/o LG #1 came over and said, "Is that boy  
18 okay?" do you ever recall -- at any time from that point  
19 until John was on the pool deck where CPR was being  
20 conducted, do you ever remember hearing a whistle blast?

21 A No. I don't remember that. I couldn't really  
22 hear anything.

23 Q (BY MR. PLETCHER) Okay. I've marked your CPR  
24 certification as Plaintiffs' Exhibit 4C. Can you see  
25 that?

□00150

1 A Yes.

2 Q Now, this indicates that you received  
3 Heartsaver AED. It says, "This card certifies that the  
4 above individual has successfully completed the  
5 objectives and skills evaluations in accordance with the  
6 curriculum of the American Heart" -- "AHA," American  
7 Heart Association, "for Heartsaver AED program, and it's  
8 dated, issued in May of '07. Do you remember taking the  
9 course in May of 2007 at the racquet club?

10 A I can't remember the month that I took it but I

11 remember taking it.

12 Q Okay. And that, of course -- did you learn  
13 both CPR for adults, children, and infants?

14 A Yes.

15 Q And you also were certified in the use of an  
16 AED. Right?

17 A I -- I don't exactly know what an AED stands  
18 for.

19 Q Okay. An AED is an automatic external  
20 defibrillator.

21 A Where you put the patches on.

22 Q Yes.

23 A Yes.

24 Q Do you remember learning about the  
25 defibrillator, the machine that has the leads with the

□00151

1 patches that you put on the torso?

2 A Vaguely, yes.

3 Q Do you remember having to practice that?

4 A I can't remember.

5 Q Do you remember Mr. Lamkin showing you the --  
6 the defibrillator machine?

7 A I can't remember.

8 Q At no time did anybody, at the scene of John's  
9 drowning or where CPR was conducted, did they go or even  
10 ask anybody to go get an AED. Right?

11 MR. SNYDER: Objection, form.

12 A There wasn't one of those until the ambulance  
13 did it.

14 Q (BY MR. PLETCHER) Okay. My question, though,  
15 is: You don't recall anybody, before the EMS arrived,  
16 bringing a defibrillator to the CPR scene.

17 A No.

18 MR. SNYDER: Objection, form.

19 Q (BY MR. PLETCHER) And you don't recall anybody  
20 saying, "Go get the -- the AED" or "Go get the  
21 defibrillator." Right?

22 MR. SNYDER: Objection, form.

23 A Right.

24 Q (BY MR. PLETCHER) Now, did anybody at the  
25 Houston Racquet Club, whether it was Mr. Lamkin,

□00152

1 Ms. CD, Mr. Palmer, did any of those individuals  
2 ever tell you that the club had defibrillators?

3 A I don't know if they did or not.

4 Q Do you recall any of those individuals or

5 anybody else at the racquet club telling you where the  
6 defibrillators were located?

7 A No.

8 Q Do you have any idea how many defibrillators  
9 the racquet club had in the summer of 2007 when this  
10 incident occurred?

11 A No.

12 Q When the EMS arrived, what do you remember  
13 seeing? You -- you mentioned a defibrillator but --

14 A I --

15 Q -- tell -- tell the jury what you remember  
16 about them coming on the scene and what they did.

17 A I remember them walking through the gates --  
18 not walking. They were running. And I remember they had  
19 a stretcher and they laid it this way if John was right  
20 here (indicating). And they were asking us questions. I  
21 can't remember what. Everyone was just talking. And --

22 Q Right.

23 A I --

24 Q Do you -- do you recall them carrying anything?

25 A Yes. They had a bag, a -- like a satchel or

□00153

1 something.

2 Q Yes. Some sort of emergency equipment bag?

3 A Yeah.

4 Q Do you remember seeing the defibrillator?

5 A Yes.

6 Q What did it look like?

7 A I don't know. I was looking at John.

8 Q Okay.

9 A But I saw them put it on him. And I helped put  
10 him on the stretcher, and I believe that they dried him  
11 off --

12 Q Yes.

13 A -- because he was -- his legs were still a  
14 little wet. And they put him on the stretcher and they  
15 did the --

16 Q Patches?

17 A The patches. And then they did it and his body  
18 jerked. And I believe they did it one more time and then  
19 they rushed him off.

20 Q Do you recall anything specifically that the  
21 EMS may have said or asked?

22 A I know that we were asked how long he had been  
23 un-- under the water or how long he had been -- we had  
24 been doing the CPR, and I didn't answer because I didn't

25 know and I -- I don't know if someone else answered.

□00154

1 Q Okay. So you don't recall any response to  
2 those questions?

3 A I know there was a response.

4 Q Sure.

5 A But I don't know who said or what was said.

6 Q But you know, from having been there at the  
7 scene, that -- that you couldn't tell them how long he  
8 had been under the water. Right?

9 A Yeah. Right.

10 Q And given the situation, the circumstances of  
11 having conducted CPR, was this your first time?

12 A Yes.

13 Q Having participated in CPR for the first time,  
14 do you think you could have told them how long you  
15 were -- you had been conducting it?

16 A No.

17 Q Okay. Now, how many EMS personnel were there?

18 A I think two. There might have three. Because  
19 the police showed up about the same time.

20 Q Right. Okay. Did -- you said that they put  
21 the defibrillator leads, the little patches that go on  
22 the torso, on John? You saw them do that?

23 A Yes.

24 Q Did you see them turn the defibrillator on?

25 Did you ever see them actually turn it on and see any

□00155

1 colored lights or anything?

2 A No. I don't remember.

3 Q Okay. You -- you described John as having  
4 jerked and -- and then you said they may have done it  
5 twice. Okay?

6 A Yes.

7 Q I need to follow up on that because nobody has  
8 testified in this case, nor have I seen any medical  
9 records or evidence, indicating that they actually used  
10 the defibrillator as far as giving him a shock.

11 A I remember him moving. It might have -- it  
12 might have been maybe they moved the stretcher or  
13 something --

14 Q Okay.

15 A -- but I saw his body move.

16 Q Okay. Do you ever recall the EMS personnel  
17 saying, "Okay, everybody clear out of the way" or "Stay  
18 clear" or "All clear"? Do you remember them ever saying

19 that?

20 A I don't remember. I remember them saying,

21 "We've got it from here."

22 Q Right. Did they put the leads on his torso

23 before or after he got onto the -- to the stretcher?

24 A After he was on the stretcher.

25 Q So his feet were no longer in the water.

□00156

1 A Yes.

2 Q And they dried him off.

3 A I remember someone wiping him off.

4 Q Okay. So just so the record is clear, you

5 really don't know, with any degree of certainty, whether

6 they actually used the defibrillator to shock John.

7 A I remember him moving.

8 Q Right.

9 A And so I -- I've never seen that happen.

10 Q Right. It was your assumption because they had

11 put the leads on --

12 A Yes.

13 Q -- but it was -- it's possible that they may --

14 they may have just moved the stretcher that caused it to

15 look like he was jerking. Right?

16 A Right.

17 Q We can talk to the EMS people and look at their

18 records on that because I really think the records show

19 that they didn't actually shock him because he didn't

20 have a rhythm. And I guess at no time you -- did you

21 feel a pulse.

22 A No.

23 MR. SNYDER: Objection, form.

24 Q (BY MR. PLETCHER) And at no time did he ever

25 breathe.

□00157

1 A Not to my knowledge.

2 Q Right. Okay. What happened after the EMS took

3 John off? Do you remember?

4 A I remember someone bringing me a towel and I

5 remember just kind of breaking down and then I remember

6 sitting in a line with some of the counselors and -- and

7 David and -- on these chairs and then a police officer

8 coming down the line, asking us for contact information

9 and what our job was. And someone asked what his name

10 was and I said -- we said, "John." And I needed the

11 roster to see his last name because I didn't know it by

12 heart.

13 Q Okay. So let me stop you there. So the police  
14 officer stayed on the scene. He got together with --  
15 with you and Supv CC #1 and LG Supv ?  
16 A And Sr LG #1 .  
17 Q Sr LG #1 ?  
18 A And 15 y/o LG #1, and I think 4 y/o B-CC #4 was there.  
19 Q And he asked who the child was and you told the  
20 police officer that it was John?  
21 A Either I did or someone else.  
22 Q Somebody got the clipboard?  
23 A Yes. And I think three of us were looking at  
24 it --  
25 Q Right.

□00158

1 A -- and I pointed to his name.  
2 Q Right. And do you -- was that Officer  
3 Beverage?  
4 A I --  
5 Q You don't know?  
6 A He never said his name.  
7 Q Okay. And --  
8 A He was balding.  
9 Q Okay.  
10 A I don't know.  
11 Q Do you recall anybody bringing out John's  
12 registration form?  
13 A I remember them asking for it and I remember  
14 them sending someone back to the house to get his  
15 paperwork for the contact information.  
16 Q And do you remember anybody bringing that back?  
17 Did you see that occur? Do you have any knowledge about  
18 that at all?  
19 A I don't -- no. Because they sent me -- they  
20 sent me off to get 4 y/o B-CC #2 after they got my information.  
21 Q Okay. And why did you have to go get 4 y/o B-CC #2 ?  
22 A Because she was also a four-year-old counselor.  
23 Q Okay. So the police officer wanted to talk to  
24 all the four-year-old counselors and the lifeguards who  
25 were on duty, as well as the supervising lifeguards?

□00159

1 A Yes.  
2 Q And more senior lifeguards.  
3 A Yes. And I just remember that they had told us  
4 to ask the boys if anyone was friends with John or if  
5 they had been playing with him or like if they had ridden  
6 with him or if anyone was friends with him so that their

7 mom -- because I think they had trouble getting in touch  
8 with Ms. Pluchinsky.

9 Q Yeah. Who was -- you said they were asking the  
10 other little campers?

11 A No.

12 Q The counselors.

13 A The counselors and people.

14 Q Okay. Do you have any knowledge about who  
15 tried to call Mr. and Mrs. Pluchinsky?

16 A No.

17 Q And -- and do you have personal knowledge from  
18 having overheard somebody say that "We can't get ahold of  
19 them"? How do -- how do you have that knowledge? Is  
20 it --

21 A They had just said we needed to know a child.  
22 And I was sitting in a room with Alec, I think was his  
23 name, and then I think CD's daughter, and they were  
24 searching through all these paperworks and they were  
25 running up to the four-year-old boys and --

□00160

1 Q Yeah.

2 A -- I had said that none of the boys knew John  
3 prior to that day.

4 Q Okay. Now, Alec -- when you said Alec, are you  
5 talking about John's brother?

6 A I think that was his name.

7 Q Alec Pluchinsky? Yes.

8 A Yes.

9 Q What room were you in?

10 A We were in the room. It was me, Alec, and then  
11 he was playing with a ball. And then I think it was  
12 CD's daughter, who was kind of --

13 Q CC-B?

14 A Yeah. She was like in charge of the -- she  
15 stayed in the house and she wasn't like a counselor to  
16 kids.

17 Q Right.

18 A And she was looking through all the files and  
19 she had a walkie-talkie or a phone and I think she was  
20 talking to either David or CD or someone.

21 Q Trying to give them contact information on Mr.  
22 and Mrs. Pluchinsky?

23 A Yes.

24 Q Now, was that in the camp house that you --

25 A Yes.

□00161

1 Q -- went back to with -- where Alec was?

2 A Yes.

3 Q Who was in the room with you and Alec and  
4 CC-B?

5 A People were walking in and out but I was  
6 sitting on a chair. And it was -- the three of us were  
7 the only ones that actually stayed.

8 Q What do you remember Alec saying?

9 A I can't remember.

10 Q Okay. Do you remember how he was acting?

11 A He was playing with a soccer ball. He -- I  
12 don't think that he had any idea of what was going on. I  
13 don't --

14 Q At any time, do you recall being with Alec when  
15 people discussed John having drowned in the family pool?

16 A I don't recall that.

17 Q Okay. At any time when you were sitting with  
18 Alec, do you recall people discussing trying to get ahold  
19 of Mr. and Mrs. Pluchinsky?

20 A He was in there when she was looking at papers  
21 and stuff.

22 Q Okay. What do you remember next happening  
23 while you were in the camp house with Alec?

24 A I remember -- I think at that point, Supv CC #1 and  
25 4 y/o B-CC #3 and everyone came back from the pool and the three

□00162

1 of us went outside in the back of the camp house and we  
2 were sitting there just praying and talking and --

3 Q Yes.

4 A And then I remember us -- I was crying and I  
5 was asking, "How could this have happened? He was never  
6 alone. How" --

7 Q Right.

8 A And we were all just very confused. And at  
9 that point, I didn't think that he was dead because I had  
10 thought he was throwing up.

11 Q Right.

12 A And then David walked out there and he stood  
13 there and he didn't say anything and I said, "Oh, my  
14 god." And I knew that he had died because I knew that  
15 David would have said he's okay and --

16 Q Yes.

17 A -- said something.

18 Q Well, what happened next? Do you remember  
19 David asking y'all to --

20 A He --

21 Q -- write out these statements or --  
22 A Well, he talked to us for a little bit and we  
23 were all hugging each other and they had said that they  
24 wanted to us stay back there because they were doing  
25 carpool at that point and they didn't want the parents

□00163

1 and the kids to worry.

2 Q Yes.

3 A So we stayed back there. And then --

4 Q Could I -- could I stop you there? You've  
5 mentioned David talking to y'all. Do you remember him  
6 asking questions about what may have happened?

7 A No. He -- he just said that we did everything  
8 we could and he said that we couldn't have executed it  
9 more perfectly and --

10 Q Right.

11 A And he just said that it was out of our hands  
12 and that it -- we did all we could.

13 Q Okay. And what do you remember happening next?

14 A I remember -- I think he went back inside and  
15 then --

16 Q "He" being David?

17 A Yeah. And then he came -- he might have come  
18 back out and either he or CD got us, once most of the  
19 kids were gone and carpool was over, and they all sat all  
20 the counselors out on the bleachers out there. And me  
21 and 4 y/o B-CC #3 and Supv CC #1 mainly -- I think it was just the  
22 three of us at that point sat off in our own corner, and  
23 I was in shock and we were all in shock and I was shaking  
24 and rocking and --

25 Q Um-hmm.

□00164

1 A -- they said -- everyone was staring at us and  
2 that once CD started talking -- they had taken the  
3 kids that had been left that were -- parents were late  
4 back inside.

5 Q Yes.

6 A And they said that most of us might have heard  
7 that there was an accident at the pool.

8 Q Um-hmm.

9 A And they said that it was very tragic and that  
10 we had done everything we could and --

11 Q Now, when you say, "they said," is that  
12 CD --

13 A CD and --

14 Q Who's talking?

15 A CD and David were up at the front and I  
16 think Guillermo.

17 Q Palmer?

18 A I don't know his last name.

19 Q And what was Guillermo's position at the club?

20 A I don't -- I think he was in charge of  
21 swimming.

22 Q Okay.

23 A I don't know. And at that point, 4 y/o B-CC #2 and  
24 4 y/o B-CC #4 and 4 y/o B-CC #5, I think, walked over and we were all just  
25 sitting there. And then they passed out paper and pen to

□00165

1 all of us and I don't know if it was everyone or if it  
2 was just the people who were in the pool at the time.

3 Q Right. But you filled out some paperwork.

4 A I wrote on that printer paper.

5 Q You did your -- your --

6 A Statement.

7 Q -- handwritten statement that's Exhibit 4 --  
8 this Exhibit here, 4 y/o B-CC #1 -- oops, wrong way. You  
9 filled out this handwritten statement?

10 A Yes.

11 Q Okay. Now, did anybody give you any direction  
12 or instructions on what you were to write?

13 A They just told us to write what happened and  
14 where we were and our involvement.

15 Q And who was with you or around you when you  
16 were writing your statement?

17 A Supv CC #1 and 4 y/o B-CC #3 and, I think, 4 y/o B-CC #4 and 4 y/o B-CC #2 .

18 Q Did -- did you guys talk about what to write --

19 A No.

20 Q -- at all? Was there any discussion or  
21 comments amongst the counselors while they were filling  
22 out their statements?

23 A No.

24 Q So everything that you wrote on this -- I'll --  
25 let me hand this to you. It's Plaintiffs' Exhibit 4A.

□00166

1 This is your handwritten statement. That's your  
2 handwriting. Correct?

3 A Yes.

4 Q And is this the statement that you wrote that  
5 afternoon at the Houston Racquet Club after CD and  
6 David asked you guys to write a statement?

7 A Yes.

8 Q And is what you put in there accurate, based

9 upon what you remembered at the time having occurred?

10 A Yes.

11 Q Okay. And is that a true and correct copy  
12 of -- of your statement? Will you look at both pages?

13 A (Complies) Yes.

14 Q Yes?

15 A Yes.

16 Q And, 4 y/o B-CC #1, I know that you've given other  
17 statements --

18 A Yes.

19 Q -- to the police officers, to other people,  
20 subsequent to this day, July 18th --

21 A Yes.

22 Q -- 2007. Would you agree that given the timing  
23 of -- of the statement you wrote on Exhibit 4A, the fact  
24 that it was done just minutes or maybe an hour or two  
25 after the incident, that the statements you made were

□00167

1 based upon a memory that was the freshest, closest in  
2 time?

3 A Well --

4 MR. SNYDER: Objection, form.

5 A It was definitely the -- the closest.

6 Q (BY MR. PLETCHER) Yes.

7 A So I guess, yes, but also I hadn't had any time  
8 to think through anything.

9 Q Right.

10 A So that was just me writing the first thing  
11 that came to my mind.

12 Q Yes. Okay. Let's take another break. I want  
13 to go through my notes and see what else I need to ask  
14 you.

15 A Okay.

16 Q Okay? I do have more.

17 A Okay.

18 MR. PLETCHER: We're not that close but  
19 we're -- we're pretty close. I've got to go through and  
20 see what I really need. Okay?

21 VIDEOGRAPHER: The time is 3:55 p.m.  
22 We're off the record.

23 (Recess from 3:55 to 4:08)

24 VIDEOGRAPHER: The time is 4:08 p.m.

25 We're back on the record.

□00168

1 Q (BY MR. PLETCHER) Okay, 4 y/o B-CC #1. You ready to  
2 finish and get done?

3 A Yes.

4 Q Just before we started --

5 MR. PLETCHER: I can't remember.

6 MR. MARRS: No, I was thinking --

7 MR. PLETCHER: From here to here.

8 MR. MARRS: From here to here?

9 MR. PLETCHER: Yeah.

10 Q (BY MR. PLETCHER) Before the break, we -- we  
11 measured the distance between you and where we panned the  
12 camera back on the other side of the conference room  
13 table when you were trying to estimate the distance  
14 between you and where John was floating facedown in the  
15 pool.

16 A Yes.

17 Q Correct? And what was that distance that was  
18 measured?

19 A About 19 feet.

20 Q And would you mind confirming -- and I'm just  
21 going to put one of those little squiggly mark deals  
22 here. I've written on this document approximately 19  
23 feet, pointed from the arrow -- and pointed an arrow  
24 towards the line between you and John. Is that accurate?

25 A Yes.

□00169

1 MR. PLETCHER: Okay. So everybody can see  
2 what I just did, this distance from here and where 4 y/o B-CC #1  
3 estimated she was at the time she turned around. And  
4 that is Plaintiffs' Exhibit 14H-1.

5 Q (BY MR. PLETCHER) Now -- okay. Just to  
6 clarify for the record, that distance, that approximate  
7 19-foot distance, was the distance between where you were  
8 standing when you heard 15 y/o LG #1 say, "Is that boy  
9 okay?" and you turned around and where John Pluchinsky  
10 was floating facedown in the water. Correct?

11 A Yes.

12 Q Okay. Thank you. Yes.

13 Who hired you at the racquet club?

14 A David.

15 Q This was your first summer working at the  
16 racquet club?

17 A Yes.

18 Q When you say "David," that's David Lamkin?

19 A Yes.

20 Q Did you interview with David?

21 A Yes.

22 Q Let me have you identify that. That's

23 Plaintiffs' Exhibit 4C. What is that document?

24 A This is my application.

25 Q Okay. And is that your handwriting?

□00170

1 A Yes.

2 Q And is it true -- a true and accurate copy of  
3 your application?

4 A Yes.

5 Q Is your signature on the last page?

6 A Yes.

7 Q And is the information that's contained in that  
8 exhibit accurate, to your knowledge?

9 A Yes.

10 Q Thank you. Now, on Exhibit 4A, you signed this  
11 document on May 4th, 2007.

12 A Yes.

13 Q And you indicate that you could start on  
14 June 12th. Okay?

15 A (Moving head up and down)

16 Q Is that correct?

17 A Yes.

18 Q Now, the camp ran -- this is Plaintiffs'  
19 Exhibit 18, the Summer Camp Registration Form. You can  
20 see from this document that the summer camp week 1 was  
21 June 12th to the 15th; week 2 was the 19th, June 19th;  
22 week 3 was June 26th; week 4 was July 10th; week 5 was  
23 July 17th; and week 6 was July 24th. Is that your  
24 recollection of the schedule for the 2007 summer camp?

25 A Yes.

□00171

1 Q Okay. And so were you told, when you applied  
2 for the job, when the start date was, the June 12th date?

3 A We were given part of the application thing.

4 When you asked for the application, I think it came with  
5 papers that said the different weeks and the themes of  
6 the different weeks, I believe. And I circled the ones  
7 that I could do.

8 Q Okay.

9 A And then when I went, I told him the ones that  
10 I could do.

11 Q Okay. And we have all of the time records  
12 marked as Plaintiffs' Exhibit 72A through 72E, and  
13 without going through each and every one of it -- one of  
14 them, because these will probably be in evidence, anyway,  
15 is it your recollection that you worked during week 1,  
16 which was June 12th through the 15th; and week 2,

17 June 19th through the 22nd; and then took week 3 and  
18 week 4 off and then came back in week 5?

19 A Yes. I -- I think that there was one -- one  
20 day in the first two weeks that either I didn't -- wasn't  
21 able to go or I had to leave early for some reason.

22 Q Okay.

23 A So -- or I showed up late. And I had told  
24 CD beforehand.

25 Q Right. That you weren't going to be there for  
□00172

1 that one day. That was in either week 1 or week 2?

2 A Yeah.

3 Q Okay. And during week 1 and week 2, you were  
4 with the six-year-old campers. Correct?

5 A Yes.

6 Q And then, of course, we know that you moved to  
7 the four-year-old campers in week 5.

8 A Yes.

9 Q Did you know that was coming --

10 A No.

11 Q -- before you got there to work on -- on  
12 July 17th? Did you know that they were going to reassign  
13 you to the four-year-old campers?

14 A No. She -- there were about three or four of  
15 us that had come back to work, and by that time, they had  
16 filled my position in the six-year-old boys. And so me  
17 and like three other people didn't have a group and she  
18 said that they could always use an extra person in the  
19 four-year-olds and I volunteered and --

20 Q Okay. Well, did you know, from week to week,  
21 whether or not you were actually going to be working as a  
22 camp counselor?

23 A What do you mean?

24 Q At -- at the racquet club? In other words, did  
25 you know that you were going to work each day during

□00173

1 week 1, each day during week 2?

2 A Yes.

3 Q You did.

4 A Um-hmm.

5 Q Okay.

6 A You were assigned by the week.

7 Q And who made those assignments?

8 A I don't understand. We --

9 Q Who -- who assigned you to the -- like the  
10 six-year-old group?

11 A I don't know. I was given an envelope.

12 Q Okay. So somebody prepicked that for you.

13 A Yes.

14 Q And did they ask you what age group you  
15 preferred?

16 A I don't think so.

17 Q Okay. And do you know what the Houston Racquet  
18 Club based that decision on as far as which group you  
19 were going to be assigned to?

20 A No. I don't know.

21 Q Did they ask you any specific questions which  
22 you thought, "Oh, well, they're asking me this so that  
23 they can figure out which group to put me with"?

24 A No.

25 Q Okay. And did the Houston Racquet Club provide  
□00174

1 you with any special training, either by verbal  
2 instruction or written instruction, when you changed from  
3 a camp counselor of the six-year-olds to the  
4 four-year-olds?

5 A Yes. They said that with the four-year-olds,  
6 you needed to be more hands-on and you had to do more for  
7 them because they were younger.

8 Q So you had to assist them in their activities  
9 more.

10 A Yes.

11 Q Because of their age.

12 A Yes.

13 Q Do you -- were you given any specific  
14 instruction in regard to pool time with the  
15 four-year-olds?

16 A Just that we had to be in the water.

17 Q Right. Just the general rule that applied to  
18 all age groups. Correct?

19 A Yes.

20 Q So you received no special training with  
21 respect to the four-year-old group and the swim time in  
22 the family pool. Correct?

23 MR. SNYDER: Objection, form.

24 A Correct.

25 Q (BY MR. PLETCHER) Did you ever get any type of  
□00175

1 water safety training by the Houston Racquet Club, either  
2 through the camp or through the pool department?

3 A No.

4 Q So nobody at the Houston Racquet Club,

5 including David Lamkin, CD, or anybody else at  
6 the club, ever provided you with any specific instruction  
7 or training regarding the recognition of people in  
8 distress when they're in the pool, recognition of a  
9 drowning victim, the distinction between a distressed  
10 person and a drowning person?

11 MR. SNYDER: Objection, form.

12 A No. I don't believe so.

13 Q (BY MR. PLETCHER) And you have never had any  
14 lifeguard -- formal lifeguard training. Correct?

15 A Correct.

16 Q What, in your mind, do you think you need to  
17 look for to know if somebody is having trouble or needs  
18 help when they are in the water, be it a swimming pool,  
19 an ocean, a lake, or a river?

20 A Flailing arms and -- and someone trying to stay  
21 afloat.

22 Q How about any sort of verbal comments by the  
23 person?

24 A Well, obviously if they say they need help or  
25 if they're screaming.

□00176

1 Q Okay. What else do you think you would want to  
2 know when trying to identify somebody who's in trouble in  
3 the water?

4 A I don't know what you are --

5 Q Is there anything else that you might think  
6 would signal you, based upon your knowledge and education  
7 as -- as it is today, on what a person who is having  
8 trouble or who might be drowning would look like other  
9 than what you just told me?

10 A If -- if they were obviously floating and not  
11 moving --

12 Q Right.

13 A -- then that would cause some speculation and  
14 wondering if they were okay.

15 Q Right.

16 A And --

17 Q But what about the -- the process before they  
18 are floating?

19 A If they've been underneath the water for a long  
20 time.

21 Q Okay. You'd have to see that.

22 A Yes.

23 Q Okay. Anything else that comes to mind?

24 A No. I don't think so.

25 Q Okay. We know, from your CPR card, Exhibit --  
□00177

1 Plaintiffs' Exhibit 4C, that you were certified in May  
2 '07. We also know that your application was signed on  
3 the 4th day of May, '07. Do you remember doing your CPR  
4 course at the Houston Racquet Club during that first week  
5 in May? Does that sound right, having seen those  
6 documents being signed then?

7 A I -- I don't know. I know that I was hired  
8 before I completed it and that part of me remaining or  
9 being -- like keeping my position and being hired, I had  
10 to complete that before I could actually work there.

11 Q Right. That was a requirement of the job.

12 A Yes.

13 Q And Plaintiffs' Exhibit 71 is the sign-in  
14 sheet, which has been represented to us to be the names  
15 of the camp counselors who took the CPR course from  
16 Mr. Lamkin, and your name is on this exhibit as  
17 number 24. Do you remember having to pay like 25 bucks  
18 to do --

19 A I think -- I can't really remember.

20 Q Okay. Do you remember how long that CPR course  
21 was, how long it lasted?

22 A Not specifically but I think maybe two hours.

23 Q Okay.

24 A Around -- that's a rough guess.

25 Q So two hours of instruction and then y'all went

□00178

1 to a written exam and then a skills portion of the  
2 certification?

3 A Yes.

4 Q Okay. And did David have any assistance during  
5 that CPR instruction?

6 A Yes.

7 Q Who assisted him?

8 A I don't know their names.

9 Q Men or women?

10 A Women.

11 Q How did you find out about the camp counselor  
12 job position at the Houston Racquet Club before you  
13 applied?

14 A One of my friends had worked there last -- the  
15 year -- the summer before.

16 Q Who was that?

17 A CC-E.

18 Q Now, I haven't seen her name in the list of

19 counselors for '07. Did she work this past summer?

20 A Yes.

21 Q Were y'all assigned to different groups?

22 A Yes.

23 Q Who was in charge of the summer camp?

24 A I think CD and David, but I think that CD

25 was the main one.

□00179

1 Q So -- and that was CD?

2 A Yes.

3 Q Some people call her CD? It's

4 like a --

5 A I don't -- I never called her last name.

6 Q Okay. And CD was in charge of the daily

7 activities?

8 A I think so, yeah.

9 Q And where was her office?

10 A In the house.

11 Q The camp house?

12 A Yeah.

13 Q And what was David Lamkin's involvement?

14 A I don't know what his specific job was but he

15 would walk around and he and CD would kind of like

16 look and -- and they would go to the different places and

17 they'd see if we were doing things right and --

18 Q Sure.

19 A And there was another woman named SUPV.

20 Q SUPV, yes. An -- a lady with an English accent?

21 A No.

22 Q No?

23 A She didn't have an English accent. But --

24 Q An older lady, SUPV?

25 A Yeah.

□00180

1 Q Was she older?

2 A No. She was younger than CD.

3 Q Oh, okay.

4 A And she had short hair. And she was just also

5 an assistant and she walked around and --

6 Q SUPV?

7 A I don't remember.

8 Q Okay.

9 A She just called herself SUPV.

10 Q Now, based upon your recollection, do you think

11 that CD or David Lamkin had more involvement on a

12 day-to-day basis in overseeing the operations of the

13 summer camp?

14 MR. SNYDER: Objection, form.

15 A I would -- I would say CD.

16 Q (BY MR. PLETCHER) Um-hmm.

17 A But I considered them equals in terms of --  
18 who --

19 Q Authority?

20 A -- who I would go to.

21 Q Okay. If you had a problem?

22 A Yeah.

23 Q Okay. And did anybody ever tell you who was  
24 the director of the camp or assistant director? Did  
25 anybody tell you what their positions were?

□00181

1 A I believe that CD said she was the director  
2 of the camp.

3 Q Okay. And who did you consider to be your  
4 boss? One or both of them?

5 A Both of them.

6 Q Okay. Did you ever see David Lamkin  
7 participate in the daily meetings of the camp counselors?

8 A I think he was there. He -- I believe he was  
9 there.

10 Q Was he there regularly?

11 A I believe so.

12 Q Okay. And did you ever see David Lamkin ever  
13 counsel or -- or correct counselors as far as their job  
14 performance while they were doing their job?

15 A Yes. If they did something wrong, he would,  
16 after the -- like at the end of the day, he would say  
17 something and if he didn't already -- CD would always  
18 correct us.

19 Q Right. Now, CD testified that there was a  
20 summer camp orientation meeting that was held on  
21 June 10th, just two days before day 1 of week 1 of the  
22 summer camp 2007. Do you remember that orientation?

23 A Yes.

24 Q Do you recall who conducted it, who oversaw  
25 that orientation process?

□00182

1 A I think that it was -- I know it was CD and  
2 David was there also.

3 Q Do you have an estimate of how long that  
4 orientation was?

5 A It wouldn't be -- I -- I don't remember how  
6 long.

7 Q Okay. And what do you remember being oriented  
8 on?

9 A I remember them telling us about the  
10 clipboards, the schedule, the first aid kit, the  
11 different -- I believe we walked around the club and they  
12 showed us different places.

13 Q Yes.

14 A And I remember David kind of laughing and  
15 telling us not to worry because the worst that had ever  
16 happened was that a kid had gotten into a beehive, I  
17 think, and that -- and then another kid had to get three  
18 stitches or stitches.

19 Q And David Lamkin made this comment during the  
20 orientation?

21 A Yes.

22 Q What was your reaction, if any, to that?

23 A We just kind of laughed.

24 Q Okay. Did he say that when he was showing you  
25 the first aid kit?

□00183

1 A I don't know if it was at the same time and I  
2 don't even know if they showed us the first aid kit. But  
3 they said it was in a fanny pack and --

4 Q Right. Now, when he made the comment about  
5 the -- the worst thing that had ever occurred being a bee  
6 sting and -- and stitches, do you recall him saying that  
7 y'all didn't need worry about --

8 A That he --

9 Q -- injuries or accidents?

10 MR. SNYDER: Objection, form.

11 A He said that they weren't anticipating anything  
12 happening. They said that our job was just to play and  
13 to supervise, to be with the kids, and they said on the  
14 nature trail or something --

15 Q (BY MR. PLETCHER) Yes.

16 A -- they had to stay on path and that we needed  
17 just common sense, like don't let the kids run off.

18 Q Right.

19 A And --

20 Q Go down into the bayou back there behind the  
21 club?

22 A And that they had to be in a line.

23 Q Right. Watch for copperheads and --

24 A Yes.

25 Q -- cottonmouths?

□00184

1 A And bees and he just kept saying like common  
2 sense.

3 Q Common sense items.

4 A Yes.

5 Q Do you recall going through the Houston Racquet  
6 Club Camp Counselor Regulations, Rules, Requirements for  
7 Summer 2007?

8 A Yes.

9 Q This is Exhibit 42.

10 A Yes.

11 Q Which was a two-page form.

12 A Yes.

13 Q And then that was followed by a Signature  
14 Agreement Form. Correct?

15 A Yes.

16 Q Now, would you mind just flipping through this  
17 and just making certain that Exhibit 42 is the same  
18 agreement that they oriented you on? Is that the same  
19 agreement?

20 A Yeah.

21 Q Okay. Now, I want to show you what I've marked  
22 as Plaintiffs' Exhibit 43A, and this is the Agreement  
23 Form that you signed, I believe. Is this your signature  
24 here?

25 A Yes.

□00185

1 Q And it's dated June 10th, 2007, the same day as  
2 the orientation?

3 A Yes.

4 Q And it says that you have read the above  
5 information and agree to abide by the rules and  
6 regulations that have been outlined and understand there  
7 is a zero tolerance rule in effect and that "I will be  
8 released from working for the Houston Racquet Club Summer  
9 Camp 2007 if I cannot abide by these rules." What did  
10 that mean to you when you signed it?

11 A It meant that if you broke the rules, you're  
12 going to be fired.

13 Q On the spot?

14 A Yeah.

15 Q Do you recall ever seeing any camp counselors  
16 being fired on the spot?

17 A No. Not on the spot. But I recall them saying  
18 if they had incidences where someone was not asked to  
19 come back.

20 Q Do you recall somebody being terminated that

21 summer?

22 A Yes.

23 Q What for? Do you know?

24 A I -- one of them was I think they didn't get in  
25 the pool.

□00186

1 Q Was an incident in the pool?

2 A They weren't allowed -- they didn't get in the  
3 pool. They sat on the edge.

4 Q Oh. So they violated the rule on the first  
5 page that says, "All counselors must get in the water  
6 with the children during the designated swim time."

7 A Yes.

8 Q Do you ever recall, during your entire  
9 employment that summer 2007, seeing camp counselors out  
10 of the water when the summer campers were in the water?

11 A Not personally.

12 Q Had somebody told you that they had seen  
13 counselors being out of the water when the kids were in  
14 the water that summer?

15 MR. SNYDER: Objection, form.

16 A Yes. Because they got fired.

17 Q (BY MR. PLETCHER) Okay. Was it more than one  
18 person?

19 A I only know of one.

20 Q What was her name or his name?

21 A I think it was CC-D but I might be -- I  
22 might -- that might not be it.

23 Q Sure. CC-D what?

24 A CC-D.

25 Q When -- who took you on the tour of the

□00187

1 facility?

2 A I don't remember.

3 Q Did y'all tour the -- like the car pool  
4 dropoff?

5 A That was where we were.

6 Q Okay. Did y'all tour the camp house?

7 A We were in the camp house and I think we went  
8 upstairs and --

9 Q Looked at the club house?

10 A We were -- that's where the meeting and  
11 orientation was, was inside of the house.

12 Q Okay. In the camp house. And that's the old  
13 house that's on the back portion of the property. Right?

14 A Yeah.

15 Q And what parts of the facility do you remember  
16 being toured?

17 A I think -- I think we went upstairs into the --  
18 there were different rooms and I believe that we went up  
19 there.

20 Q Upstairs where?

21 A In the club house.

22 Q Okay.

23 A The camp house.

24 Q Did they show you where the dining area was and  
25 stuff like that?

□00188

1 A We were in that room.

2 Q Okay. Do you remember going out to the tennis  
3 courts, being shown areas where certain activities would  
4 be conducted?

5 A Yes.

6 Q Do you recall anybody taking you and your  
7 co-counselors out to the pool area?

8 A Yes.

9 Q Do you recall, when you were at the pool area,  
10 anybody instructing you where any sort of safety  
11 equipment was?

12 A No.

13 Q Nobody told -- nobody at the racquet club told  
14 you where the emergency phone was?

15 A No. I don't believe so.

16 Q Nobody told you where the pool hook was?

17 MR. SNYDER: Objection, form.

18 A If they did, then I don't remember.

19 Q (BY MR. PLETCHER) Did anybody tell you where  
20 the AEDs were located?

21 MR. SNYDER: Objection, form.

22 A Again, if they did, I don't remember.

23 Q (BY MR. PLETCHER) Did anybody at the Houston  
24 Racquet Club, be it David Lamkin, CD, or  
25 anybody else, tell you where the face mask and emergency

□00189

1 first aid kit were located?

2 MR. SNYDER: Objection, form.

3 A If they did, I don't remember.

4 Q (BY MR. PLETCHER) Do you recall anybody at the  
5 Houston Racquet Club, be it David Lamkin, CD,  
6 or anybody else, telling you where any of the safety  
7 equipment was --

8 A Not to --

9 Q -- during that tour?

10 MR. SNYDER: Objection, form.

11 A Not to my knowledge.

12 Q (BY MR. PLETCHER) How about any other time  
13 during your employment there?

14 A No. I don't remember.

15 Q During the orientation that was conducted on  
16 June 10th, 2007, do you recall any discussion about the  
17 pool rules?

18 A Yes. We went through all of the rules and they  
19 told us that there was a zero tolerance for not being in  
20 the pool while the children were in, that the only way we  
21 would be allowed to get out of the pool is if we were  
22 taking them somewhere.

23 Q Right. And that's the pool rule about being in  
24 the water when the kids were in the water that is  
25 contained in the camp counselor agreement. Right?

□00190

1 A Yes.

2 Q Now, what I was referring to is Plaintiffs'  
3 Exhibit 40, which is a document titled "Pool Rules."  
4 Sets forth the general pool rules, the slide rules, the  
5 diving board rules, general lifeguard rules. And this  
6 particular document was signed by Sr LG #1 back in  
7 May of 2006. Did anybody give you a copy of these Pool  
8 Rules at any time during your employment at the Houston  
9 Racquet Club?

10 A I don't believe so.

11 Q Okay. Was there any joint meetings between the  
12 camp counselors and the lifeguards at the Houston Racquet  
13 Club during your employment?

14 A No.

15 Q After the orientation was completed, were you  
16 told what your assignment was going to be?

17 A We were given an envelope that had the weeks  
18 that we had been hired and the age group.

19 Q So it was that -- after that orientation  
20 meeting that you were told that you had been hired.

21 A Yes.

22 Q Do you recall anybody who attended that  
23 orientation on June 10th, 2007, not being hired?

24 A I don't recall.

25 Q Did anybody at the Houston Racquet Club, either

□00191

1 David Lamkin or CD, ever provide you with the  
2 lifeguard schedules?

3 A No.  
4 Q Did you know, before July 18th, 2007, who  
5 LG Supv was?  
6 A No.  
7 Q Did you know what his position was at the club?  
8 A No.  
9 Q Did you know Sr LG #2?  
10 A He went to my school and I knew who he was but  
11 we didn't personally know each other.  
12 Q Did you know that he was a lifeguard at the  
13 racquet club?  
14 A Yes.  
15 Q How about Sr LG #3 and LP LG?  
16 A No. I don't know who they are.  
17 Q And did you know -- you already said you did  
18 not know 15 y/o LG #1.  
19 A Not --  
20 Q Correct?  
21 A Not before.  
22 Q Right. And you didn't know 15 y/o LG #2,  
23 either.  
24 A No.  
25 Q So the only person that you knew was a

□00192

1 lifeguard on July 18th before this incident was  
2 Sr LG #2  
3 A Yes.  
4 Q Do you know if anybody failed the CPR course  
5 that you attended?  
6 A I don't know.  
7 Q Do you recall anybody telling you they had to  
8 repeat it?  
9 A No.  
10 Q During the orientation meeting on June 10th,  
11 2007, do you have an idea of how much time was spent on  
12 paperwork as compared to how much time was spent on  
13 talking and discussing safety?  
14 A I don't know.  
15 Q Will you identify Exhibit 43A-2? These are the  
16 Employment Eligibility Verification and other documents  
17 that I believe contain your signature. Are -- is that  
18 your signature on page 1?  
19 A Yes.  
20 Q How about page 2?  
21 A Yes.  
22 Q Is that your signature?

23 A Yes.

24 Q And the last page, is there a signature on  
25 there?

□00193

1 A Yes.

2 Q And is that your signature?

3 A Yes.

4 Q And the personal information that you provided  
5 the country club on June 10th, 2007, the day you signed  
6 those documents, was true and accurate. Correct?

7 A Yes.

8 Q Is that document a true and correct copy of  
9 what you signed on June 10th?

10 A Yes.

11 Q 4 y/o B-CC #1, what do you remember about Tuesday,  
12 July 17th, 2007, your first day to work with the  
13 four-year-old campers?

14 A I remember that our schedule was -- I think it  
15 was -- it might have been different.

16 Q Yes.

17 A And I think that lunch was later in the day.  
18 There was one boy that was kind of hard to handle because  
19 he didn't want to leave his dad, and I remember John  
20 coming up to him and putting his arm on him and saying,  
21 "It's okay. You can be my friend."

22 Q You remember John Pluchinsky doing that?

23 A Yes.

24 Q Okay. Do you recall any other interaction with  
25 John or any other comments or statements made by John on

□00194

1 June 17th, 2007?

2 A I remember us talking about doodlebugs.

3 Q Yes.

4 A And I remember him inviting me over to his  
5 house to find doodlebugs.

6 Q Do you recall being in the pool during swim  
7 time on Tuesday, July 17th?

8 A Yes. I was in the pool.

9 Q Do you recall ever having watched John that  
10 day?

11 A I don't remember but -- I don't remember now  
12 but I know that there were only two boys that their  
13 parents brought floaties for.

14 Q Right. And John was not one of those.

15 A Yeah.

16 Q Okay. Did CD or David Lamkin ever

17 instruct you or your other camp counselor coworkers to  
18 ask the parents if their child needed a flotation device?

19 MR. SNYDER: Objection, form.

20 A Yes. They -- they did say that we needed to --  
21 if we happened to be the one who got the child -- a  
22 four-year-old or one of our children out of the car, we  
23 needed to listen for if they said something about if they  
24 could swim or not and if they provided -- if there was --  
25 on the first day, if they hadn't given us anything and if

□00195

1 there was some speculation on whether or not the child  
2 could, in fact, swim, then they said that we needed to  
3 pursue and ask the parents and -- and see if they wanted  
4 their child to have a flotation device because the  
5 children had to swim, and if they didn't swim, we had to  
6 take them to the house.

7 Q Okay. Do you have any explanation why neither  
8 Kathleen Pluchinsky or David Pluchinsky were ever asked  
9 about John's swimming ability and whether or not he  
10 needed a flotation device?

11 MR. SNYDER: Objection, form.

12 A I don't know.

13 Q (BY MR. PLETCHER) Okay.

14 A I just know he never came with one.

15 Q Right. And based upon your testimony just a  
16 second ago, I thought I heard you -- and correct me if  
17 I'm wrong. I thought I heard you say that if there was  
18 some sort of indication that their swimming ability was  
19 not good, that's when you would ask if they needed a  
20 flotation device.

21 A Yeah.

22 MR. SNYDER: Objection, form.

23 A That's just like logic.

24 Q (BY MR. PLETCHER) Right.

25 A If there was something, then we would have

□00196

1 reason to ask the parents but if --

2 Q But is --

3 A If the parents didn't come to us and tell us or  
4 write a note or anything, then we had no reason to think.

5 Q But -- but as CD testified under  
6 oath to me the other day, she said that she'd never  
7 instructed you or anybody -- any other camp counselor to  
8 ask that specific question to every parent. Is -- is  
9 that your understanding?

10 A Yes.

11 MR. SNYDER: Objection, form.

12 Q (BY MR. PLETCHER) Okay. So you were never  
13 instructed to ask the parent specifically, unless you  
14 felt like there was some indication that they lacked  
15 swimming ability --

16 A Yes.

17 Q -- to ever ask them if they needed a life vest  
18 or a flotation device. Correct?

19 A Yes.

20 MR. SNYDER: Objection, form.

21 Q (BY MR. PLETCHER) Did David Lamkin ever tell  
22 you that when the four-year-old children were in the  
23 swimming pool that you had to keep the kids within an  
24 arm's length or within a -- your grasp?

25 A No.

□00197

1 Q Did CD or anybody else at the  
2 racquet club ever tell you that that's what you needed to  
3 do?

4 A I don't believe so.

5 Q Did anyone, including David Lamkin, CD  
6 or anybody else at the racquet club, ever tell  
7 you that if a child was in three foot of water or deeper,  
8 then they had to be within an arm's length or within your  
9 grasp?

10 MR. SNYDER: Objection, form.

11 A I don't believe that they did. They -- if they  
12 did, I don't remember.

13 Q (BY MR. PLETCHER) Okay. You have no  
14 recollection, as you sit here today, ever receiving that  
15 instruction from David Lamkin, CD, or anybody  
16 else at the racquet club. Correct?

17 MR. SNYDER: Objection, form.

18 A Yes.

19 Q (BY MR. PLETCHER) Did David Lamkin ever tell  
20 you that the four-year-olds could not use the slide?

21 A No.

22 Q Did anybody else at the Houston Racquet Club  
23 ever tell you that the four-year-olds could not use the  
24 slide?

25 A No. We were just told if they were tall

□00198

1 enough, then they could. But if not -- some of the boys  
2 weren't tall enough.

3 Q Okay. And how tall did you have to be?

4 A I don't know. There -- I -- I think that there

5 was something by the slide.

6 Q A measuring stick or --

7 A I --

8 Q -- that you see sometimes at --

9 A I want to --

10 Q -- water parks?

11 A I want to say that there was.

12 Q But you're not certain about that.

13 A But I'm not certain.

14 Q So other than a height restriction, you were  
15 never told that there was an absolute prohibition of the  
16 four-year-old campers using the slide.

17 A To my knowledge, yes.

18 MR. SNYDER: Objection, form.

19 Q (BY MR. PLETCHER) David Lamkin never told you  
20 that; did he?

21 A If he did, then I don't remember it.

22 MR. SNYDER: Objection, form.

23 Q (BY MR. PLETCHER) Did you, 4 y/o B-CC #1, ever give  
24 any of the campers a tour of the pool?

25 A No.

□00199

1 Q Do you know if any of the other counselors did?

2 A What do you mean by "tour"?

3 Q Show them the pool area. Show them the slide,  
4 the -- the lifeguard chairs, where -- where the shallow  
5 area was, where the drop-offs were, where the deep end  
6 was.

7 A No.

8 Q You never did that and, to your knowledge, none  
9 of your co-counselors did that. Correct?

10 A No. That wasn't something we were required to  
11 do.

12 Q We've already talked about the general rule  
13 that if the campers were in the pool, the counselors had  
14 to be in the pool, and that this was a zero tolerance  
15 rule. Correct?

16 A Yes.

17 Q How did the counselors decide who they were  
18 going to watch when the summer campers, the  
19 four-year-olds, got in the pool?

20 A We didn't. The kids kind of chose.

21 Q The kids being the campers?

22 A Yeah.

23 Q So the -- so the four-year-old campers would go  
24 to whatever counselor they wanted to be around.

25 A Yes.

□00200

1 Q Do you recall there ever being an instance  
2 where more than three kids came to you?

3 A Yes.

4 Q What's the most -- maximum number you recall  
5 ever coming to you, "4 y/o B-CC #1, I want you, I want you"?

6 A I -- maybe I had -- I was around or with five,  
7 maybe.

8 Q Okay.

9 A Maybe six.

10 Q Five, maybe as many as six?

11 A Maybe.

12 Q Okay.

13 A I don't --

14 Q So, to your knowledge, it was not a counselor  
15 decision on who was going to be watching who. It was the  
16 summer campers who would decide which counselor they  
17 wanted to be with.

18 MR. SNYDER: Objection, form.

19 A Well, it's the counselors' job to watch all of  
20 the children.

21 Q (BY MR. PLETCHER) Right.

22 A And so we were watching all of the kids, and  
23 typically the kids, at that point, had found a counselor  
24 that they liked better or the most and they would go and  
25 be around that kid and -- counselor, and if they got

□00201

1 tired of that one, they would go to another one.

2 Q Okay. I guess my question would be this,  
3 4 y/o B-CC #1: At any time during your employment as a -- as a  
4 counselor at the Houston Racquet Club, while you were in  
5 the pool with the summer campers and particularly the  
6 four-year-olds, did you ever feel overwhelmed, like you  
7 had too many to watch?

8 MR. SNYDER: Objection, form.

9 A No. I never felt like we had too many.

10 Q (BY MR. PLETCHER) I'm not -- that's not -- I'm  
11 not talking about we. I'm talking about you. For  
12 example, when you had five, maybe six, did you ever feel  
13 overwhelmed and ask for help with other counselors?

14 A No.

15 MR. SNYDER: Objection, form.

16 Q (BY MR. PLETCHER) Or from other counselors?

17 A No.

18 Q Well, did the Houston Racquet Club, either

19 David Lamkin or CD, instruct you on the  
20 procedure or what to do if you had an instance where you  
21 had three or four of these four-year-olds clinging to  
22 you, climbing on top of you, and you felt overwhelmed,  
23 like you weren't in a position to watch all of the kids  
24 in the pool?

25 A No. But that's --

□00202

1 MR. SNYDER: Objection, form.

2 A -- common sense. You ask for help.

3 Q (BY MR. PLETCHER) Okay. And what you were  
4 telling us is that at no time do you recall ever needing  
5 to ask for help.

6 A Yes.

7 Q But you agree that neither CD nor  
8 David Lamkin or anybody else at the Houston Racquet Club  
9 specifically gave you instruction or guidance on what to  
10 do in that situation. Right?

11 A Right.

12 Q Now, what if you had six camp counselors 26  
13 four-year-old boys, everybody's watching everybody, and  
14 one of the counselors has to go to the restroom? Okay?  
15 Under that situation, did CD, David Lamkin, or  
16 anybody else at the Houston Racquet Club provide you  
17 specific instruction on what you were supposed to be  
18 doing or what to do as far as the kids that you were with  
19 and were you watching -- because, as you said, the kids  
20 would come to you.

21 MR. SNYDER: Objection, form.

22 Q (BY MR. PLETCHER) Did they ever give you any  
23 instruction on what to do?

24 MR. SNYDER: Objection, form.

25 A No. But they said you had to notify the other

□00203

1 counselors. The other counselors had to know -- we had  
2 to know where each other was.

3 Q (BY MR. PLETCHER) Right. Now, what if this --  
4 the summer camper had to go to the restroom? How was  
5 that handled? Certainly the counselor would have to take  
6 the child to the restroom. Right?

7 A Yes.

8 Q And what sort of instruction or guidance were  
9 you given by David Lamkin or CD on what to do  
10 in that instance?

11 A We -- I believe we had to tell the other  
12 counselor. And I think that we would ask the other kids,

13 "Do you have to go" --

14 Q Right.

15 A -- "to the restroom?" And if they did, then  
16 that counselor would take everyone who had to go to the  
17 bathroom to the bathroom. I think it was more based on  
18 the group of counselors. They would decide kind of what  
19 they wanted to -- to do with --

20 Q Okay. So you're telling us that the -- that  
21 the counselor -- counselors decided amongst themselves  
22 how they would handle that situation.

23 A Yeah. I don't think that we were -- I don't  
24 remember. We might have, and if we did, then I don't  
25 remember being given specific instructions.

□00204

1 Q Okay. And do you ever recall seeing any other  
2 camp counselor that you felt, from just visual  
3 observation, was having trouble or looked overwhelmed  
4 with his or her responsibility for watching the children  
5 in the family pool?

6 A No.

7 MR. SNYDER: Objection, form.

8 Q (BY MR. PLETCHER) We hadn't talked about the  
9 dunking game. Do you remember the dunking game?

10 MR. SNYDER: Objection, form.

11 A What? Is that the tossing?

12 Q (BY MR. PLETCHER) No. We talked about the  
13 tossing game or the launching game, but the dunking game.  
14 Do you recall --

15 A I don't know what that is.

16 MR. SNYDER: Objection, form.

17 Q (BY MR. PLETCHER) -- there ever being a game  
18 like that? That's okay.

19 On July 18th, 2007, we know that there  
20 were 26 four-year-old campers. Right?

21 A Yes.

22 Q And we know that there were eight  
23 seven-year-old campers. Right?

24 A Yes.

25 Q And we know that there were six camp counselors

□00205

1 assigned to the four-year-old boys and four camp  
2 counselors assigned to the three-year-old girls.  
3 Correct?

4 A The --

5 MR. SNYDER: Objection, form.

6 A There aren't three-year-old girls.

7 Q (BY MR. PLETCHER) I'm sorry. The  
8 four-year-old girls. There were four camp counselors  
9 assigned to the four-year-old girls. Correct?

10 MR. SNYDER: Objection, form.

11 Q (BY MR. PLETCHER) That's a total of ten  
12 counselors. Is that correct?

13 A If that -- if that's what it -- what it says.

14 Q Does that meet your recollection of how many  
15 counselors were out there?

16 MR. SNYDER: Objection, form.

17 A I can't -- I can't remember specifically  
18 without counting.

19 Q (BY MR. PLETCHER) Okay. That's all right. Do  
20 you recall who the pool supervisors or camp counselor  
21 supervisors were on July 18th?

22 A I think it was Supv CC #2 and Supv CC #1 .

23 Q Okay. I think you said that earlier.

24 A Yeah.

25 Q And we know, from your earlier testimony, that

□00206

1 there were mothers there?

2 A Yes.

3 Q Mothers who were not in -- part of the camp who  
4 had children.

5 A Yes.

6 Q In the pool.

7 A Yes.

8 Q How many do you estimate?

9 A I would have no way of knowing because there  
10 were also moms there that were --

11 Q Right.

12 A -- part of the camp.

13 Q And there were other members and guests  
14 unconnected with the -- the summer camp who were in the  
15 pool on July 18th.

16 A Yes.

17 Q When the four-year-olds were in the pool.

18 A Yes.

19 Q Correct?

20 A Yes.

21 Q If you were going to think back to that day,  
22 how many people do you believe were in the pool,  
23 including four-year-old campers, six-year-old campers,  
24 counselors for both those groups, the supervising  
25 counselors, members, and nonmembers who were not

□00207

1 connected with the -- with the camp in the pool?

2 A I -- I -- the pool was very crowded.

3 Q Yeah.

4 A And I know that --

5 Q 50?

6 A And there were more than --

7 MR. SNYDER: Objection, response.

8 A More than 50 and --

9 Q (BY MR. PLETCHER) More than 60?

10 A I just --

11 MR. SNYDER: Objection, form.

12 A I really -- I don't know.

13 Q (BY MR. PLETCHER) That's okay. But you felt  
14 like it was very crowded?

15 A It was --

16 MR. SNYDER: Objection, form.

17 A Because there was also a lot of people outside  
18 of the pool, walking around. It was -- it was crowd --  
19 I -- I remember it being very crowded.

20 Q (BY MR. PLETCHER) Okay. And specifically,  
21 would you describe the pool itself being very crowded  
22 with people?

23 A Yes.

24 Q How often do you remember seeing CD at the  
25 pool during swim time for the summer campers?

□00208

1 MR. SUSSMAN: During what period of time?

2 MR. PLETCHER: During her employment that  
3 summer.

4 A I wasn't ever paying attention to what was  
5 going on. I was paying attention to the -- what was  
6 happening in the pool, so --

7 Q (BY MR. PLETCHER) So you don't recall ever  
8 seeing --

9 A I remember seeing her but I don't remember. I  
10 wouldn't be able to say how often, or --

11 Q Okay.

12 A -- if I just happened to glance at her, I'd see  
13 her, but I wasn't paying attention to where she was or --

14 Q Same answer for David Lamkin?

15 A Yes.

16 Q Who were your adult supervisors while you were  
17 in the pool with the summer campers on July 18th, 2007?

18 MR. SNYDER: Objection, form.

19 A There -- I don't -- I don't think that there  
20 were any. It was just whenever CD and David would

21 come by the pool.

22 Q (BY MR. PLETCHER) Okay. And we know that the  
23 summer campers were grouped by age. Right?

24 A Yes.

25 Q And we know that the Houston Racquet Club did

□00209

1 not swim-test or test the swimming ability of any of the  
2 campers. Correct?

3 A No. That's not --

4 MR. SNYDER: Objection, form.

5 A That's not true.

6 Q (BY MR. PLETCHER) Well, to your knowledge,  
7 nobody ever swim-tested or tested the swimming ability of  
8 John Pluchinsky; did they?

9 MR. SNYDER: Objection, form.

10 A Not to my knowledge.

11 Q (BY MR. PLETCHER) Now, you said it wasn't true  
12 that they didn't do swim tests?

13 A They did do swim tests.

14 Q When did they do swim tests? In the first  
15 week?

16 A And -- and the second.

17 Q Okay.

18 A But --

19 Q Who did those swim tests?

20 A There is a girl named Sophia, I think, or  
21 Sophie or something --

22 Q Yes.

23 A -- and then David's daughter.

24 Q Do you remember David's daughter's name?

25 A She had blonde hair and she was -- I'm sure if

□00210

1 I heard it, I --

2 Q Okay. That's fine. You don't have any  
3 knowledge on either Sophie's or David's daughter's  
4 qualification to --

5 A I don't --

6 Q -- test these children. Right?

7 A No. I don't know.

8 Q And you don't know anything about the type of  
9 swim tests that they actually performed. Correct?

10 A Yeah. I was there when -- with the  
11 six-year-old boys, we had to be where -- had to be in the  
12 water again and they had to swim a lap. And we would  
13 kind of like tread water alongside some of them and they  
14 would -- some of them would have to stop and hold onto

15 the edge, and we would just be encouraging them and --  
16 and then one day they had -- they did a different  
17 thing --

18 Q Each day?

19 A -- every day and one day they had to hold their  
20 breath for 15 seconds or some amount of time underneath  
21 the water.

22 Q Okay.

23 A Another day they had to jump off of the swim  
24 block.

25 Q At the lap pool?

□00211

1 A Yeah. And swim a lap.

2 Q Okay.

3 A And then I think maybe one -- I think it was  
4 just the swim block that they had to jump off of.

5 Q Okay. Do you know why they didn't perform  
6 those types of tests during week 5 of the summer camp  
7 2007?

8 A They might have done it for another group, but  
9 for the four-year-old boys, we didn't have to do a test.

10 Q Right. There was no requirement at the Houston  
11 Racquet Club to test the four-year-old group --

12 MR. SNYDER: Objection --

13 Q -- during that -- during that week 5. Correct?

14 MR. SNYDER: Objection, form.

15 A Correct.

16 Q (BY MR. PLETCHER) And you have no knowledge as  
17 to why. Correct?

18 A No. We just -- I just know that when we got to  
19 the pool, Sophie and that -- his daughter were not there  
20 and --

21 Q Right.

22 A -- we were not told to do a swim test.

23 Q Well, did David Lamkin or anybody else at the  
24 Houston Racquet Club tell you that all of the  
25 four-year-olds should be treated as nonswimmers because

□00212

1 they were not swim-tested?

2 MR. SNYDER: Objection, form.

3 A No one said that.

4 Q (BY MR. PLETCHER) How would you treat a  
5 four-year-old who was a nonswimmer?

6 MR. SNYDER: Objection, form.

7 A If -- if they could not swim, then they were  
8 not put in the water. If they could not swim, they were

9 taken to the house if they weren't given floaties and if  
10 they didn't complete -- I know for the six-year-old boys,  
11 if they didn't complete the swim test, they had to --  
12 they couldn't swim.

13 Q Okay.

14 A They had to go --

15 Q And how would you know if a four-year-old could  
16 not swim?

17 A We -- if their parents never said that they --

18 Q Setting aside what the parents may have said or  
19 not said, how would you know?

20 A I wouldn't, unless they said that they were  
21 scared or --

22 Q Right.

23 A -- unless they said that they could --

24 Q And the Houston Racquet Club left it upon the  
25 camp counselors to make that determination of whether or

□00213

1 not they were swimmers or nonswimmers?

2 MR. SNYDER: Objection, form.

3 A Well, I had assumed that they could swim  
4 because since it was the fifth week, I had assumed  
5 that -- and I had come in and this was my first time, I  
6 assumed that they had taken the swim test during the  
7 first two weeks --

8 Q (BY MR. PLETCHER) Okay.

9 A -- and so that they had been able to swim. And  
10 all of them could doggie-paddle and swim. They were  
11 never given the opportunity to swim across the length of  
12 the pool.

13 Q All right. Well, what -- so -- so what was  
14 your understanding on July 17th, 2008, and July 18th,  
15 2008, the two days that you were camp counselor for the  
16 four years -- four-year-olds, about the swimming ability  
17 of the four-year-old campers?

18 A That they had already been tested and that they  
19 could swim.

20 Q Yeah. Does it surprise you to learn that they  
21 were not swim-tested?

22 MR. SNYDER: Objection, form.

23 A Yes.

24 Q (BY MR. PLETCHER) Does it surprise you that  
25 the Pluchinskys were not asked any questions about John's

□00214

1 swimming ability?

2 MR. SNYDER: Objection, form.

3 A No. Because if it was a concern of them -- of  
4 theirs, then I would have assumed that they would have  
5 mentioned it on the first day. And if -- I believe that  
6 the parents were aware of what the kids would be doing,  
7 in signing up, and if there was a question of whether or  
8 not they could swim, then I would have expected or -- a  
9 parent to have said that they couldn't swim or if they  
10 had trouble swimming.

11 MR. PLETCHER: I'll object to the  
12 responsiveness.

13 Q (BY MR. PLETCHER) Was there a -- a separate  
14 wading pool at the Houston Racquet Club last summer, in  
15 2007? A separate wading pool?

16 A No.

17 Q How would -- how -- how deep -- based upon your  
18 current knowledge and experience, how deep do you think  
19 it would be safe for a four-year-old to venture into a  
20 swimming pool if they didn't know how to swim?

21 MR. SNYDER: Objection, form.

22 A They would need to obviously be able to stand.

23 Q (BY MR. PLETCHER) Yes.

24 A And so if John was three-and-a-half feet, I  
25 would say three feet.

□00215

1 Q Okay. So above the chest?

2 MR. SNYDER: Objection, form.

3 A What -- what above the chest?

4 Q (BY MR. PLETCHER) Well, if he's  
5 three-and-a-half feet and you said three feet, would  
6 three feet be at his chest, above his chest? What was  
7 your -- what's your intention there?

8 MR. SNYDER: Objection, form.

9 A I would say that it would need to be right  
10 below his shoulders or --

11 Q (BY MR. PLETCHER) Okay. Armpits?

12 A Yeah.

13 Q What was your shift in terms of when you  
14 started and when you quit during the week of July 17th,  
15 2008?

16 A I would get there around 8:30 or 8:45 and I  
17 would leave around 1:15 or 1:20.

18 Q And did the club provide you or any of your  
19 other counselors with any breaks?

20 A No.

21 Q At any time when you were with the  
22 four-year-olds during July 17th or July 18th, do you ever

23 recall there being more than 13 four-year-old girls and  
24 13 four-year-old boys?

25 A I was only there for two days --

□00216

1 Q I know.

2 A -- so I don't -- I can't specifically remember.

3 There might have been -- the first day someone might have  
4 come and then the second day they might have been absent  
5 or...

6 Q Did you know who the lifeguard manager was on  
7 July 18th, 2007?

8 A No.

9 Q Or the aquatic director?

10 A I -- isn't that Guillermo? I think that he --  
11 isn't -- I think he's the head of the --

12 Q Okay.

13 A -- entire pool.

14 Q Do you know if the Houston Racquet Club had any  
15 policy or rule on the maximum number of people who could  
16 get in the family pool?

17 A No.

18 Q Do you know if the Houston Racquet Club had any  
19 requirement, rule, or policy on the number of lifeguards  
20 that would be required to be on duty at the pool based  
21 upon the number of people in the pool?

22 A No.

23 Q Do you ever recall there being more than two  
24 lifeguards at the family pool when you were watching  
25 summer campers, either six-year-olds or four-year-olds,

□00217

1 during your employment in 2007?

2 A Yes. There was one up on the slide.

3 Q And when was that? Do you recall? Was it in  
4 the first week, second week, or fifth week?

5 A I think it was -- I think it was whenever the  
6 slide was open, there was someone up there.

7 Q Okay. Do you have knowledge whether or not  
8 there was a lifeguard on that slide on July 18th?

9 A No. Because the boys that I was playing with  
10 never went over there. So I didn't --

11 Q So you -- you think that a lifeguard -- what  
12 are you talking about? The lifeguard chair over by the  
13 slide?

14 A No. I -- I --

15 Q On the --

16 A On the slide.

17 Q On the top of the slide where they go into the  
18 chute.  
19 A Yeah.  
20 Q Okay.  
21 A Because I went on it one time with the  
22 six-year-old boys and I remember there being someone up  
23 there.  
24 Q That you thought was a lifeguard?  
25 A Yeah.

□00218

1 Q Did you know them to be a lifeguard?  
2 A No. But they were wearing a red -- they had a  
3 whistle and --  
4 Q Right. Do you recall there being -- where is  
5 my chart? At any time before July 18th, 2004, do you  
6 recall there being a lifeguard chair under this umbrella  
7 over where y'all had John that day? Do you remember  
8 there being a lifeguard chair there before July 18th,  
9 2007?  
10 MR. SNYDER: Objection, form.  
11 A I can't remember.  
12 Q (BY MR. PLETCHER) Okay.  
13 A I'm -- there might have been.  
14 Q There was a lifeguard chair under this  
15 umbrella.  
16 A Yes.  
17 MR. SNYDER: Objection, form.  
18 Q (BY MR. PLETCHER) And it was a wooden chair.  
19 On July 18th, there was a lifeguard chair --  
20 MR. SNYDER: Where are you -- where are  
21 you pointing to, man? I'm sitting over here.  
22 Q (BY MR. PLETCHER) 4 y/o B-CC #1, do you see what I'm  
23 pointing to?  
24 MR. MARRS: You can't object just because  
25 you have poor eyesight.

□00219

1 MR. SNYDER: Yeah, I can.  
2 Q (BY MR. PLETCHER) Do you see where I'm  
3 pointing?  
4 A Yes.  
5 MR. PLETCHER: Okay. Under the umbrella.  
6 I'm sorry. I thought you had a monitor over there.  
7 MR. SNYDER: No.  
8 MR. PLETCHER: Well, turn that thing so he  
9 could see it.  
10 Q (BY MR. PLETCHER) There was a wooden chair

11 under this umbrella.?

12 A Yes.

13 Q Lifeguard chair. You never recall there being  
14 a wooden chair under this lifeguard umbrella.

15 A No.

16 Q Not before?

17 A There might have been but I don't remember.

18 Q How about after?

19 A After when?

20 Q July 18th, 2007.

21 A I never went back.

22 MR. PLETCHER: Yeah, we're -- I think  
23 we're done. Okay. I'm just going to flip through here  
24 real quick. I think we're done, 4 y/o B-CC #1. Where's the  
25 other diagram?

□00220

1 Q (BY MR. PLETCHER) This is Plaintiffs'  
2 Exhibit 14H. Down here in the deep end, there was a  
3 floating line here. Correct?

4 A Yes.

5 Q Towards the slide?

6 A Yes.

7 Q This is the east end of the pool. Okay?

8 A Yes.

9 Q Do you recall David Lamkin, CD, or  
10 anybody else at the Houston Racquet Club instructing you  
11 that the four-year-old campers could not venture past or  
12 east of this floating line?

13 MR. SNYDER: Objection, form.

14 A No. But they never said they weren't allowed  
15 to go on the slide, which would put them on that side.

16 Q (BY MR. PLETCHER) Did you ever see  
17 four-year-olds over there at the slide area?

18 A Yes.

19 Q They were there on July 18th, 2007. Right?

20 A Yeah. They were -- there was a -- like most of  
21 them were kind of scared but there was maybe one or two  
22 that -- I never took any four-year-olds over there but  
23 there were, I know, four-year-olds that went down the  
24 slide.

25 Q But -- but David Lamkin --

□00221

1 MR. SNYDER: Objection, response.

2 Q (BY MR. PLETCHER) -- never told you that  
3 there -- there was a rule that four-year-olds couldn't be  
4 on the slide. Right?

5 A If he did, then none of us heard him and we  
6 didn't.

7 Q Yeah. Did -- on July 18th, did you see  
8 four-year-olds in the water east of this float line in  
9 the slide area? Remember --

10 A After they came down the slide, they were in  
11 that area, but they weren't freely swimming.

12 Q They were swimming to the ladder.

13 A Yes.

14 Q Is that "yes"?

15 A Yes.

16 MR. PLETCHER: Where is the -- where are  
17 the documents?

18 THE WITNESS: There's one.

19 Q (BY MR. PLETCHER) Oh. 4 y/o B-CC #1, your attorney  
20 agreed to present you here today and also get you to  
21 comply with our document request. Do you remember him  
22 asking you about documents that we requested that you  
23 bring here today?

24 A Yes.

25 Q I had eight items. If you could just look at

□00222

1 the subpoena one more time. You remember seeing that.

2 Correct?

3 A Yes.

4 Q And for the record, this is Exhibit 52G. And  
5 you brought all of the responsive documents that you have  
6 in your possession to requests 1 through 8. Correct?

7 A Yes.

8 Q And those documents have been marked as  
9 Exhibit 4B, which I'll show to you here. If you could  
10 flip through those, are those the documents that you  
11 brought in response to our request?

12 A Yes.

13 Q And are -- is all the handwriting contained in  
14 those documents your handwriting?

15 A Yes.

16 Q And are those true and accurate copies of your  
17 handwritten documents and the other documents that --  
18 that you brought responsive to the request?

19 A Yes.

20 MR. SUSSMAN: Just for the record, I just  
21 want to make sure.

22 MR. PLETCHER: Yeah.

23 MR. SUSSMAN: I've shown you, off the  
24 record, the original documents. They are --

25 MR. PLETCHER: Yes.

□00223

1 MR. SUSSMAN: Some of these handwritten  
2 things are on cocktail napkins and the back of other  
3 papers and everything. I gave y'all a copy of the actual  
4 documents and then we've put these things in what we  
5 think are serial order to make them -- make the -- make  
6 the narrative work. But we put them in page 1, page 2,  
7 page 3, as best we could understand the chain of events,  
8 working with 4 y/o B-CC #1. So I think we've got them in -- in  
9 the right serial.

10 MR. PLETCHER: Okay.

11 MR. SUSSMAN: But at the same time, you  
12 have the copies of the cocktail napkins and everything  
13 else. So if they're not in --

14 MR. PLETCHER: Right.

15 MR. SUSSMAN: -- in the right order, y'all  
16 can figure that out, but I think they are.

17 And you also asked for the responsive  
18 documents that were in our possession that dealt with the  
19 incident that weren't privileged and the correspondence  
20 with the Texas Department of Family and Protective  
21 Services. I don't know if that rises to the level to be  
22 responsive to your subpoena, but we included it, anyway.

23 MR. PLETCHER: Okay.

24 MR. SUSSMAN: And the rest of the stuff is  
25 fairly self-explanatory.

□00224

1 Q (BY MR. PLETCHER) And, 4 y/o B-CC #1, to your  
2 knowledge, there's no more documents in your possession  
3 that would be responsive to these requests. Correct?

4 A There is no more.

5 MR. PLETCHER: Now, Mr. Sussman, you've  
6 said that you've tried to put these in serial order but  
7 they're not numbered?

8 MR. SUSSMAN: They're not numbered, no.  
9 We -- we -- the -- the way we tried to do it is one  
10 sentence end -- or one sentence rolls into the next.

11 MR. PLETCHER: That makes sense.

12 MR. SUSSMAN: That makes sense.

13 MR. PLETCHER: Okay. Well, we'll just --

14 MR. SUSSMAN: You have -- you have the  
15 copies of the original documents, so if it doesn't make  
16 sense to you, you can put them in whatever order you want  
17 to.

18 MR. PLETCHER: Okay. We'll just staple

19 these and -- now -- okay. I saw your letter in there but  
20 it was --

21 MR. SUSSMAN: I don't know.

22 MR. PLETCHER: -- to CPS.

23 MR. SUSSMAN: Yeah. But I -- we probably  
24 shouldn't have included my letter but I -- the two from  
25 the CPS were -- were to her.

□00225

1 MR. PLETCHER: Okay.

2 MR. SUSSMAN: Or the two -- she received  
3 that CPS letter.

4 MR. PLETCHER: Yes. Yes. I understand.

5 MR. SUSSMAN: For -- I don't know why they  
6 sent it to her, being a minor, but they did.

7 MR. PLETCHER: Okay. I believe that's all  
8 I have today. Anything else, Counselor?

9 MR. MARRS: No. I think 4 y/o B-CC #1 did an  
10 excellent, excellent job. I want to --

11 MR. PLETCHER: Thank you for your time.

12 MR. MARRS: Thanks for being here, 4 y/o B-CC #1.

13 THE WITNESS: Thank you.

14 MR. SNYDER: Take a short break.

15 MR. SUSSMAN: Do you want -- do you have  
16 questions?

17 MR. MARRS: So we're going to continue  
18 tomorrow. Right?

19 MR. SUSSMAN: No.

20 MR. SNYDER: No. We're not.

21 MR. SUSSMAN: Do you have questions?

22 MR. SNYDER: Yeah. Unless --

23 MR. MARRS: Because Norman has some  
24 questions and I -- I've got --

25 MR. SNYDER: Unless she's --

□00226

1 MR. SUSSMAN: No.

2 MR. SNYDER: Unless she's going to be at  
3 trial, I mean.

4 MR. SUSSMAN: No, no. Go. Go right  
5 ahead.

6 MR. SNYDER: Yeah. I do.

7 MR. SUSSMAN: Let's -- would you like to  
8 take a break, though, before?

9 THE WITNESS: Just a little one.

10 MR. SNYDER: I'm not going to be very  
11 long.

12 MR. SUSSMAN: She's -- all right. You do.

13 THE REPORTER: I've got to call my  
14 husband.

15 MR. MARRS: Don't ever believe a lawyer  
16 that says that.

17 VIDEOGRAPHER: The time is 5:24 p.m.  
18 We're off the record.

19 (Recess from 5:24 to 5:31)

20 VIDEOGRAPHER: Going back on the record.  
21 The time is 5:31 p.m.

22 EXAMINATION

23 BY MR. SNYDER:

24 Q 4 y/o B-CC #1, my name's Norm Snyder and I claim to be  
25 a lawyer. I represent the Houston Racquet Club and Steve

□00227

1 Griffin, the gentleman seated down there on my side of  
2 the table toward the end; David Lamkin; Guillermo Palmer;  
3 and LG Supv . Okay? I -- I tell you that so that  
4 you know who I am and the interests that I represent in  
5 the lawsuit. All right?

6 A Um-hmm.

7 Q I have some questions that I want to ask you in  
8 light of the questions that have been asked of you during  
9 the last five or six hours. I will try and be very brief  
10 because I know you've been here a long time today and  
11 you're probably very tired.

12 Let me start by asking you some follow-up  
13 questions about when you learned about the camp counselor  
14 position from 15 y/o LG #1 Lassetter. Do you remember when that  
15 was in terms of proximity to when the camp actually  
16 started?

17 A No, sir.

18 Q What did 15 y/o LG #1 tell you about the camp at the  
19 Houston Racquet Club, if anything?

20 A She said that it was a good job because you  
21 just played with kids and she said that you got paid  
22 really good.

23 Q Okay. Did you have an interest in playing with  
24 and interacting with young children?

25 A Yes.

□00228

1 Q How soon was it after you talked to 15 y/o LG #1  
2 Lassetter that you actually applied for the camp  
3 counselor position?

4 A I don't know. We had talked about working  
5 together at the club and we were both members and I -- I  
6 don't remember exactly when I actually got the

7 application.

8 Q Was it days later or weeks later? Does that  
9 prompt your memory at all?

10 A She had talked about it while she was working  
11 the summer before and so I knew about it and she had  
12 said, "You should work there next summer." And then we  
13 didn't talk about it for a while, and then as it got  
14 closer, we talked about working together. So I would say  
15 like weeks, maybe.

16 Q Okay. How did you actually obtain the  
17 application form that you completed?

18 A I went to the fitness center desk and I asked  
19 for an application.

20 Q And do you remember when it was before the camp  
21 started that you did that?

22 A It was -- no, I don't.

23 Q Did you fill out the application form while you  
24 were there that day when you picked it up, or did you  
25 take it home, fill it out, and then bring it back later?

□00229

1 A I -- I took it home and I filled it out at home  
2 and then I think I brought it back later. Because I  
3 think -- I don't exactly remember how I got an  
4 appointment to have an interview.

5 Q Okay. That's what I was going to ask you  
6 about. How was it that the appointment was set up or  
7 arranged with Mr. Lamkin?

8 A I want to say that when I asked for an  
9 application and when I actually brought my application  
10 back, I think that a woman asked me for my name and my  
11 phone number, I think.

12 Q And how soon after you completed the  
13 application form and returned it to the club was it that  
14 you actually had your interview?

15 A I can't remember.

16 Q Okay. Did -- did you have any discussion with  
17 your mom and dad about working at the club during the  
18 summer camp last year?

19 A What kind of discussion? I --

20 Q Did you tell them that you had an interest in  
21 working at the camp as a camp counselor?

22 A Yeah. They knew that I was applying and I had  
23 told them about my interview and I had said just that it  
24 was -- it wasn't like I had to -- I didn't have to like  
25 get dressed up for it. It wasn't like a -- a formal

□00230

1 interview. It was just an interview with David --

2 Q Sure.

3 A -- in his office.

4 Q Did your mom or dad have any comment about  
5 whether they thought it was a good thing or a bad thing  
6 when you told them that you were going to apply for the  
7 job as a camp counselor?

8 A They thought it was a good thing.

9 Q Your interview with Mr. Lamkin, was that at the  
10 club?

11 A Yes.

12 Q And I take it it was sometime before you  
13 actually started working. Correct?

14 A Yeah. And it was before the CPR class.

15 Q Tell us a little bit about what you recall  
16 about the interview process with Mr. Lamkin.

17 A It was in his office. It wasn't very long. He  
18 said -- I had filled out the basic things and then I  
19 think that he gave me a form there to fill out and it was  
20 one of the ones that they had. And he told me to write  
21 down anything and any activities that I did or that I  
22 could do because that would help them place me in the  
23 weeks because each week had a theme.

24 And then he asked me if I had taken CPR  
25 and I said that when I was like in fifth or sixth grade,

□00231

1 I was certified through the Red Cross with a baby-sitting  
2 thing and he said that it was probably -- it was expired,  
3 so I needed to do it again. And he told me the date of  
4 when the class and course would be, and I think it was  
5 multiple things. And he said I could either do it there  
6 at the club or I could do it through another  
7 organization. And I said I would just do it at the club.  
8 And he asked -- he just asked me to fill out that form  
9 and then --

10 Q Okay. Do you recall anything else about your  
11 interview with Mr. Lamkin other than what you've told us?

12 A I think after I filled it out and I gave it to  
13 him, he asked me questions about what I had written, and  
14 I just answered him.

15 Q Give me an example of a question that you  
16 recall that he asked you.

17 A I remember him -- I think that he asked me  
18 about Vacation Bible School because I had written, I  
19 believe, on there and he just asked -- I think he also  
20 asked me why I wanted to work there or how I heard about

21 it and I just -- it -- it was really short. It wasn't  
22 like a --

23 Q Okay. And how long do you think your interview  
24 may have lasted?

25 A Ten to 15 minutes.

□00232

1 Q Okay. You had previously worked at a Vacation  
2 Bible School?

3 A Yeah. That's -- it was -- that's a volunteer  
4 thing. It's -- it's not -- you're not hired or paid or  
5 anything.

6 Q Okay. It's still work; isn't it?

7 A Yeah.

8 Q All right. You just don't get paid for it.

9 A Yeah.

10 Q All right. And did you work with young kids  
11 during Vacation Bible School?

12 A Yeah.

13 Q Is that one of the first times that you had  
14 worked with young kids or had you had some experience  
15 prior to Vacation Bible School working with young  
16 children?

17 A Yeah. I'd been doing the Vacation Bible School  
18 volunteer since I was in fifth grade. And then I  
19 baby-sit.

20 Q Okay. Let me ask you about your CPR training.  
21 You received that at the Houston Racquet Club?

22 A Yes.

23 Q And that was some days before the camp actually  
24 started? Is that correct?

25 A Yes.

□00233

1 Q And you said, I believe, that it was a two-hour  
2 session?

3 A That was just a guess. I -- I'm not entire --  
4 I -- I would guess it was around two hours.

5 Q Okay. That's okay. And was the CPR training  
6 completed in one session or were -- or was there more  
7 than one session?

8 A It was one session.

9 Q And you said that Mr. Lamkin taught CPR?

10 A Yes.

11 Q And I think you mentioned that there were one  
12 one or more ladies that were also there during the CPR  
13 instruction?

14 A I think there were about two.

15 Q And do you remember them by name or who they  
16 were?

17 A I don't remember them by name but I had  
18 recognized them as working in the fitness center. They  
19 were Hispanic and I don't remember their names.

20 Q Did they also participate in your training?

21 A They didn't speak. They didn't give us actual  
22 instructions but they helped pass things out and they  
23 like helped to take our money and -- when we paid and --  
24 and then one of them administered the actual test. Like  
25 we had two mannequins and David was supervising when

□00234

1 people did one and then she was doing another one.

2 Q All right. Were there any other people that  
3 were taking the CPR class when you took it?

4 A Yeah. There was -- it was a lot of people.

5 Q Okay. Do you recall how many?

6 A No.

7 Q During the CPR class, did you receive handouts  
8 or written materials?

9 A I think so. I know we were given a -- a test  
10 but I don't remember if we were physically given any  
11 papers.

12 Q All right. You were given a written test to  
13 take after you finished the CPR training?

14 A I believe so, yeah.

15 Q All right. And you had to complete that test  
16 and pass it in order to get your CPR certification.

17 Correct?

18 A I believe so, yeah.

19 Q And in addition to the written test, was there  
20 also a skills test that was administered to you?

21 A Yes.

22 Q And under whose direction or supervision was  
23 the skill test administered?

24 A It was David and then another woman who did  
25 another. There were two going on at the same time.

□00235

1 Q Okay. And during the skills test, did you  
2 actually have to demonstrate knowledge and proficiency  
3 about performing CPR in order to get your certification?

4 A Yes.

5 Q Now, you also said that you went through a camp  
6 counselor orientation?

7 A Yes.

8 Q And, again, was that there at the club?

9 A Yeah.

10 Q And who gave the camp counselor orientation?

11 A CD and David.

12 Q And do you recall how many counselors attended  
13 that orientation?

14 A Everyone who was working was -- or who had been  
15 hired. It was a mandatory.

16 Q Okay. And you talked earlier about some of the  
17 things that were discussed during the camp counselor  
18 orientation, including using the clipboard. And while  
19 we're on the subject of the clipboard, describe for the  
20 jury what the clipboard was and what its function was in  
21 running the camp.

22 A The clipboard person was also in charge of the  
23 fanny pack, which had a basic first aid kit in it, and  
24 the clipboard had the roster and it had the schedule and  
25 any papers that were supposed to be handed out to the

□00236

1 parents at the end of the day, like fliers or anything.

2 And the clipboard was -- and the fanny pack were given to  
3 the person who was -- all the other counselors had to  
4 know where that person was at all times.

5 Q Okay.

6 A Because they had the first aid kit.

7 Q And was there a separate clipboard for each age  
8 and gender group that were participating in the camp?

9 A Yes.

10 Q And you mentioned something about you were --  
11 they also oriented you about the schedules. Now, were  
12 these the schedules for the different age and gender  
13 groups that were in the camp?

14 A What do you mean, schedule? Just --

15 Q Well, I wrote down something, schedules here.  
16 Now, was schedules -- the schedules for the age and  
17 gender groups, was that discussed during orientation, or  
18 do you remember?

19 A No. I think when I said schedules, I was  
20 meaning that was the schedules we were given, the weeks  
21 we were supposed to work.

22 Q I see. Okay. You talked about the first aid  
23 kit and they discussed that with you.

24 A Yes.

25 Q They walked you around the property?

□00237

1 A Yes.

2 Q And I assume, during the walkaround, they --

3 they walked around the various parts of the property  
4 where the activities for the different age and gender  
5 groups would be taking place during the camp?

6 A Yes.

7 Q And that included the pool area?

8 A Yes.

9 Q And while you were over at the pool area, did  
10 they talk with you kind of about the dos and don'ts for  
11 campers and counselors when you were using the family  
12 pool area?

13 A They just said like that the -- that we had to  
14 be in the water and that was the main thing. No  
15 counselor was allowed to sit on the edge or -- or be out  
16 of the water when the campers were in.

17 Q They discussed with you and gave you some  
18 written rules for the camp counselors. Correct?

19 A Yes.

20 Q Do you recall anything else that was discussed  
21 or mentioned during the camp counselor orientation?

22 A Just what I said about what David said in terms  
23 of the bee stings and the accident.

24 Q Okay.

25 A And that we had to encourage the kids to eat

□00238

1 their lunch and we were supposed to bring our own lunch  
2 and we couldn't offer the children any food and we  
3 couldn't take food from the children.

4 Q Now, during the camp, did the camp counselors  
5 have daily meetings before the campers arrived and the  
6 camp sessions actually began?

7 A Yes.

8 Q And how long were these daily -- daily  
9 meetings, typically?

10 A Ten minutes. They weren't long.

11 Q Where did you have those?

12 A In the main room.

13 Q And who led the daily meetings?

14 A CD.

15 Q And do you recall any of the things that might  
16 have been discussed during the daily meetings on July 17,  
17 which is the day before the accident, or the morning of  
18 the accident?

19 A I don't remember specifics of what was said. I  
20 know on July 17th, it was the start of the new week and  
21 so that was a longer meeting, and that's when I was  
22 actually assigned to the four-year-old boys.

23 Q Do you recall anything that might have been  
24 discussed during that daily meeting?

25 A Not specifically.

□00239

1 Q Directing your attention to the day before the  
2 accident, you were with the four-year-old-boy group that  
3 day. Correct?

4 A Yes.

5 Q And did the four-year-old-boy group, the day  
6 before the accident, did they use the family pool?

7 A Yes.

8 Q Do you recall John Pluchinsky from the day  
9 before the accident?

10 A Yes.

11 Q Did John get in the pool and use the pool the  
12 day before the accident?

13 A Yes.

14 Q Do you remember talking with him, interacting  
15 with him, or playing with him the day before the accident  
16 when he was in the pool?

17 A Yeah. I remember playing with him. I don't  
18 specifically remember what we did.

19 Q Okay. Do you remember what areas of the pool  
20 you may have been in or played in?

21 A It was the same as the day -- as the day of the  
22 accident.

23 Q Now, the day before, were there any mothers who  
24 had four-year-old boys that were part of that camper  
25 group?

□00240

1 A I'm sure there were. I don't remember. There  
2 were mothers every day.

3 Q The day before the accident, do you remember if  
4 any of the four-year-old campers had flotation devices?

5 A Yes.

6 Q Do you recall how many?

7 A Two.

8 Q Do you recall the names of those campers?

9 A If I saw the list. One of them -- one of  
10 his -- I think his last name started with a P. If I had  
11 the -- the list, I could -- one of them was 4 y/o-C #1.

12 MR. PLETCHER: 4 y/o-C #1?

13 THE WITNESS: Yeah. He was Indian.

14 Q (BY MR. SNYDER) Let's look at Plaintiffs'  
15 Exhibit 10.

16 A It was 4 y/o-CC #8 and 4 y/o-C #1.

17 Q And they were wearing and using flotation  
18 devices the day before John's accident?

19 A They were wearing them both days.

20 Q Okay. But John was not.

21 A Yes.

22 Q He was not. Correct?

23 A Yeah. He was not. Right?

24 Q All right. During the time that the  
25 four-year-old boy group was in the pool the day before

□00241

1 the accident, did you happen to notice John as he played  
2 or swam in the pool?

3 A Yeah.

4 Q Did he seem to have any apprehension about the  
5 water or being in the pool?

6 A Maybe a little, but he could swim and they  
7 all -- most of them were hesitant just -- like they  
8 would -- they could swim and they would swim to you and  
9 they would just hang onto you and -- and you would be  
10 talking to them. They were never really presented the  
11 opportunity to be swimming long distances by themselves.  
12 They stayed towards the edge or near you.

13 Q Right. But they did swim away from you and  
14 swim back to you?

15 A Yeah.

16 Q Did John seem to have any difficulty swimming  
17 those distances?

18 A No.

19 MR. MARRS: Objection, form.

20 A No.

21 Q (BY MR. SNYDER) Did it appear to you that he  
22 had any difficulty swimming those distances?

23 MR. MARRS: Same objection.

24 A No.

25 Q (BY MR. SNYDER) Did it appear to you that he

□00242

1 had any difficulty floating?

2 A No.

3 Q Did it appear to you that he had any difficulty  
4 just handling himself in the pool or in the water?

5 A No. But it was clear that he --

6 MR. MARRS: Objection.

7 MR. PLETCHER: Form.

8 A -- he didn't like to swim just freely. He --  
9 if he wasn't forced to swim to an edge by himself, he was  
10 hanging on you. He didn't -- none of them liked to just

11 swim.

12 Q (BY MR. SNYDER) Okay. Now, I want to -- I  
13 want to move forward to the day of the accident and I  
14 just kind of want to chronologically go through that  
15 morning up -- up until the accident. Do you recall  
16 getting to the club that morning?

17 A Yes.

18 Q What time do you recall getting to the club  
19 that morning?

20 A I remember I was running just a tiny bit late  
21 and I got there around 8:45 or 8:40.

22 Q Okay. Did you have the clipboard that morning?

23 A Yes.

24 Q How did you come to have the clipboard for the  
25 four-year-old-boy group that morning?

□00243

1 A It was hot and I didn't want to be walking back  
2 and forth and so I wanted to be back by the tennis courts  
3 and so I volunteered to take it. And I was sitting back  
4 on the courts and I was in charge of when they brought  
5 the four-year-olds back, and they screamed "Four-year-old  
6 boys," I'd raise my hand and they'd come over by me. And  
7 I was in charge of entertaining them until everyone was  
8 there.

9 Q Okay. So as the -- the four-year-old-boy  
10 campers would arrive, a counselor would bring them back  
11 to the area where you were?

12 A Yes.

13 Q And that's where they would congregate until  
14 the first activity of the day began?

15 A Yeah.

16 Q And would you check them in on the clipboard?

17 A Yes.

18 Q And I think you said that if the parents told  
19 the counselor with whom they dropped their boy or their  
20 child off, if there was any special instruction, the  
21 counselor would -- would typically tell you?

22 A Yeah. They -- they were required to, if they  
23 were given a note or something. I think that the notes  
24 were given to CD.

25 Q Okay.

□00244

1 A Or I -- no. The notes were brought from the  
2 kid to their camp counselor and then the camp counselors  
3 gave the -- of the groups gave the notes to CD.

4 Q And if there was some note or special

5 instruction that the parent had given when they dropped  
6 their boy or child off, would you note that on the --

7 A Yes.

8 Q -- on the board?

9 A Yes.

10 Q Do you recall getting any special instruction  
11 or note about John Pluchinsky?

12 A No.

13 Q No?

14 A No. (Moving head side to side)

15 Q After the -- the group was assembled, do you  
16 remember generally what the -- what the four-year-old-boy  
17 group did --

18 A Yes.

19 Q -- earlier that morning before you went over to  
20 the family pool?

21 A Yes.

22 Q What did you do?

23 A We lined them up and we counted them and we  
24 went over. It was like a -- a field area by the tennis  
25 courts and behind the house and there was a slide, I

□00245

1 think, and they had flying saucer type and Frisbees  
2 that -- and kickballs that we would play with, and we  
3 were just supposed to play there until it was time to go  
4 to the Moonwalk. And --

5 Q What was the mean walk?

6 A It was a Moon -- it was a Moonwalk. And --  
7 and --

8 Q I guess I'm old fogey. What -- I --

9 A It's an inflatable like, I guess, cage type  
10 thing but it's all rubbered and inflatable and soft  
11 and --

12 Q Okay.

13 A -- you just jump and bounce in it.

14 Q Okay.

15 A And some of the boys didn't want to go in  
16 and --

17 Q Was John one of those?

18 A Yeah. He didn't go in.

19 Q Okay. Do you know why he didn't want to go in?

20 A No. He -- he would play duck-duck-goose and  
21 some of the more rambunctious boys were trying to play  
22 wall ball. And there was water and we were instructed  
23 to, if anyone ever asked for water, we would give them  
24 the water but we had to be the ones to fill it up. And

25 so they were all drinking water and --

□00246

1 Q What's -- what is duck-duck-goose?

2 A You sit in a circle and someone is the duck and

3 you just -- and you hit the goose in the head and then

4 you have to chase the -- whoever tapped your head.

5 Q And then what -- what did your group do after

6 the Moonwalk portion of the camp session that morning?

7 A We had lunch.

8 Q Had lunch?

9 A (Moving head up and down)

10 Q Where'd you have lunch?

11 A In the main house, in the --

12 Q At the Howe house?

13 A At the what?

14 Q When you say, "the main house," is that the --

15 A The camp house.

16 Q The camp house?

17 A Yeah.

18 Q Have you ever heard of the Howe house?

19 A No.

20 Q Okay. Is this the -- the house where the

21 campers were dropped off and picked up each -- each

22 morning and each afternoon?

23 A Yeah. They had said that since it was hot, it

24 would be okay, if there was no one else in the room, if

25 the kids were quiet that we can eat in the main house

□00247

1 because it was so hot. And so we positioned the benches

2 into a circle or like so that the kids were kind of

3 barricaded in so they wouldn't run and go crazy because

4 CD would -- if they got too loud, she would get mad.

5 And so we just were trying to tell them to be quiet, and

6 we ate lunch. And we got done with lunch a little bit

7 early and we grabbed -- some kids brought goggles and so

8 we were in the main room where all their lunch boxes and

9 if they brought life jackets and everything were. And so

10 we got those and then we lined them up and we counted

11 them and we went to the pool.

12 Q All right. Do you remember which of the

13 four-year-old boys brought goggles that morning?

14 A No. I don't remember that.

15 Q And do you remember which of the four-year-old

16 boys had flotation devices with them that morning?

17 A Yeah.

18 Q Were they the same boys that had brought them

19 the previous day?

20 A Yes.

21 Q All right. Did the four-year-old boys, did --  
22 did they have a place where they could change into their  
23 swimming trunks or were they already wearing those?

24 A They were already wearing their swimsuits.

25 Q So they would actually come to the camp each

□00248

1 morning already wearing their swimming trunks?

2 A Yes.

3 Q So where would they take off their outer  
4 clothing?

5 A There was -- most of them just wore their  
6 swim -- swimsuits as their shorts and they would just  
7 wear a T-shirt. And we would go to the pool and there's  
8 an area with the fireplace and -- like the outdoor  
9 fireplace and there's like a -- an area that's not  
10 covered and we went there that day. And they had tables  
11 with umbrellas and we all undressed there and no one  
12 could go into the pool until everyone was done. And then  
13 when everyone was done, we all just walked in the pool.

14 Q Do you remember if John Pluchinsky had outer  
15 clothing on that day over his swimming trunks or if he  
16 was just wearing swimming trunks?

17 A He was wearing swimming trunks and a -- I think  
18 a red shirt.

19 Q Okay. Now, before the -- the four-year-old  
20 boys would go over to the swimming pool, did you line  
21 them up and do a head count and all of that?

22 A Yeah. We counted pretty much everywhere we  
23 went. If we moved anywhere, we counted.

24 Q Each session -- or each portion of the camp  
25 session, you had to count the boys or girls in your group

□00249

1 and account for them before you went --

2 A Left.

3 Q -- to the next area?

4 A Yeah.

5 Q And as the person with the clipboard, was  
6 that -- were you kind of in charge of taking care of  
7 the -- the head count for your group?

8 A No. Having the clipboard, you didn't have any  
9 more responsibility than anyone else. Just you --  
10 everyone had to know where you were in case something  
11 happened where they needed a first aid kit. And I had  
12 the -- the clipboard had the schedule. So it usually

13 happened that that person was more aware of time and more  
14 aware of getting everyone to where they needed to be.

15 Q Right. As the person with the clipboard, were  
16 you the one who was responsible for keeping your group on  
17 schedule in terms of being at the various locations where  
18 your group needed to be during the session that day?

19 A No. I wouldn't say that. Everyone had to have  
20 a watch and had to be aware of time, and part of the  
21 uniform was a watch. And not everyone followed that but  
22 everyone had to be aware of it. I just had the actual  
23 paper and I would tell the -- I would say, "Okay. We  
24 need to start rounding them up at like 10:15 or 10:45."

25 Q Okay. And when you got to the family pool that

□00250

1 morning, I think you testified earlier that you entered  
2 the family pool from what's called the -- the beach area  
3 or the zero depth area? Is that -- is that correct?

4 A Yeah.

5 Q Was John one of the boys that was with you when  
6 you first entered the pool that morning?

7 A Yes.

8 Q How many other four-year-old boys were with you  
9 and John that morning?

10 A I would say three or four.

11 Q And after entering the pool, did John more or  
12 less remain with you in that area until you went over to  
13 the opposite side of the pool where the -- where the fort  
14 and the sun deck were?

15 A Yeah. He was with me pretty much the whole  
16 time. And we didn't only stay in that shallow end. I  
17 mean, we -- we moved around. We didn't just stay in one  
18 place and --

19 Q Tell me -- tell me where you moved around in  
20 the pool before you went over to the sun deck where the  
21 fort was.

22 A I can't remember specifics but we moved just --  
23 we were in this area. We might have gone over -- we went  
24 over into this -- like the water shoots through this  
25 tunnel thing. And then I might have taken the boys that

□00251

1 I had over to the ledge with me or just --

2 Q Okay. Can -- so that the videographer can  
3 catch this on the camera, could you kind of hold that up  
4 toward the camera and point to where you're -- where  
5 you're indicating that you and John and some of the other  
6 boys were that morning before you went over to the sun

7 deck area?

8 A I'm -- I'm not saying that on that exact day  
9 for sure but we didn't -- I mean, we just -- we weren't  
10 stuck in one spot. We went over to that there at some  
11 point and --

12 Q Over to the fountains?

13 A Yeah. And we were -- if we were there, we were  
14 only there for a small amount of time. They were -- we  
15 stayed over in this area most of the time.

16 Q Okay. And, again, do you have any -- any  
17 concept of how long you were over in that area before you  
18 went with John and 4 y/o-C #4 over to the sun deck where the  
19 fort was?

20 A I know that it was -- we were over there for  
21 about -- maybe five to ten minutes we were all on the sun  
22 deck all together before I left. And so I would say we  
23 were maybe in the shallow end for like maybe 15 to 20  
24 minutes. I'm -- I'm really bad with estimating.

25 Q Okay. And I -- and I understand. I'm not very

□00252

1 good with time, either. But during the time that you  
2 were over in the shallow area with John before going over  
3 to the area where the sun deck and the fort was, you  
4 mentioned that he would sometimes show you how he could  
5 go beneath the water, hold his breath, and then pop back  
6 up to the surface.

7 A Yes.

8 Q Did I understand you to say that?

9 A Yes.

10 Q How long would he actually remain below the  
11 surface of the water before he came back up?

12 A Not very long, like maybe ten to 15 seconds, at  
13 the most. He -- it wasn't a long period.

14 Q Okay. Did he seem to like to do that?

15 A Yeah. He did that a lot.

16 Q Okay. And you also mentioned that he was  
17 swimming around. Can you kind of describe for us what he  
18 was doing when he was swimming around over in that area?

19 A They would -- they would just dog-paddle. They  
20 would kind of -- they wouldn't really necessarily use  
21 their arms. They would just kind of like put their heads  
22 down and kick and then stop and just stand up straight  
23 and then kind of tread for a second and then try that --  
24 and do the same thing again. And he would -- he wouldn't  
25 swim long distances. He would just go out for a second

□00253

1 and then turn around and come right back.

2 Q Okay. Did it appear to you that he had any  
3 difficulty doing that?

4 A No.

5 MR. MARRS: Objection, form.

6 Q (BY MR. SNYDER) Did you have any concerns  
7 about him doing that; in other words, swimming or  
8 dog-paddling away from you and then swimming or  
9 dog-paddling back to you?

10 MR. MARRS: Objection, form.

11 A No.

12 Q (BY MR. SNYDER) Did you have any concerns  
13 about that?

14 A No. But I just would naturally be nervous if  
15 they went too far or too far away.

16 Q Sure.

17 MR. SNYDER: And for the record, I'm going  
18 to object to more than one lawyer on this side of the  
19 table conducting the examination and making the  
20 objections.

21 MR. PLETCHER: Okay. Then I make all the  
22 objections he just made.

23 MR. SNYDER: Okay. And then I'm going to  
24 ask that in terms of any future objections, Mr. Pletcher,  
25 that you make those since you --

□00254

1 MR. PLETCHER: Yes, sir. Absolutely.

2 MR. SNYDER: -- conducted the direct  
3 examination.

4 MR. MARRS: I don't want to waste any more  
5 time. Miss 4 y/o B-CC #1's been here long enough, so --

6 MR. SNYDER: Well, not because of me.

7 MR. MARRS: So you make all the  
8 objections. I thought mine were pretty short, actually.

9 Q (BY MR. SNYDER) You mentioned M #1 .  
10 Did -- was she at the family pool the day prior to John's  
11 accident?

12 A I can't really -- I can't specifically  
13 remember.

14 Q She was there that morning, though?

15 A Yes.

16 Q Do you remember her son and remember his name?

17 A 4 y/o-C #7.

18 Q All right. Was M #1 ever in the pool  
19 with 4 y/o-C #7 or did she remain on the pool deck while he  
20 was in the pool with you or one of the other counselors?

21 A She remained in the pool. He was one of the  
22 more shy ones. He didn't really make as many of the  
23 friends but he did play with me and John and 4 y/o-C #4 and  
24 4 y/o- C #2 when we were over there. But he usually stuck with  
25 his mom and his little sister.

□00255

1 Q Okay. In addition to M #1 , do you  
2 remember any other mothers of the four-year-old boys in  
3 your group being there at the pool that morning?

4 A I didn't interact with any of them if they were  
5 there.

6 Q While you were over in the beach area that  
7 morning, do you remember M #1 or any of the  
8 other mothers that may have been around there saying  
9 anything to you or any of the other counselors about any  
10 counselor or any lifeguard or any supervisor acting  
11 inappropriately?

12 A No.

13 Q Or acting in a way that they thought was unsafe  
14 to any of the -- any of the campers?

15 A No.

16 MR. PLETCHER: Object, form.

17 Q (BY MR. SNYDER) Do you remember doing anything  
18 with John other than him kind of going below the surface,  
19 popping back up after a few seconds, and just kind of  
20 paddling and swimming around over in the -- over in the  
21 beach area?

22 MR. PLETCHER: Object, form.

23 A No. I --

24 Q (BY MR. SNYDER) Remember any other games that  
25 y'all might have played or --

□00256

1 A Yeah. We played the mom and baby shark game,  
2 walking over to the fort.

3 Q Over to the fort? The -- the sun deck area  
4 where they had built the fort with the plastic chairs,  
5 was -- was the fort actually in the water?

6 A Part of it was. Like they could be sitting and  
7 they would be in the water.

8 Q All right. How deep was that water?

9 A Like that deep.

10 Q The surface of the table to where you're  
11 holding your hand?

12 A Yeah. Maybe like that.

13 Q Maybe a foot?

14 A Yeah.

15 Q Okay. When you were over there with John and  
16 4 y/o-C #4 and 4 y/o-C #2 that morning, were they both in the water  
17 and out of the pool, playing over in that area, or were  
18 they primarily in the water?

19 A 4 y/o-C #2 got out of the water to walk over to the  
20 pool because he was more -- he could swim. He was just  
21 more hesitant. And 4 y/o-C #4 never got out. He got on the  
22 ledge. And John only got out to move above from the  
23 cement to the grass.

24 Q Okay. Again, I know you're hesitant about  
25 times, but you think you were maybe over there for about

□00257

1 five minutes or so?

2 MR. PLETCHER: Object to form.

3 A Ten -- maybe ten at the most.

4 Q (BY MR. SNYDER) Right. While you were over at  
5 the sun deck area where the fort was, do you recall ever  
6 going over toward the fountain area?

7 A Me personally?

8 Q Yes.

9 A No.

10 Q Okay. You stayed in that area there.

11 A Yeah.

12 Q And I think you said that 4 y/o B-CC #4 was  
13 there?

14 A 4 y/o B-CC #4 was not by the fountain. She was -- no.

15 Q No. But in the sun deck area where the fort  
16 was?

17 A Yeah. She was on the other side of the sun  
18 deck.

19 Q Okay.

20 A Like in between the stairs and the sun deck, in  
21 that area.

22 Q You said that 4 y/o B-CC #2 was somewhere  
23 between that area where the sun deck and the fort were  
24 and where the fountains were?

25 A Somewhere around there.

□00258

1 MR. PLETCHER: Object to form.

2 Q (BY MR. SNYDER) Do you recall any other  
3 counselors being in that immediate area of the pool where  
4 you were then?

5 A No. Well, maybe behind me, like more in the  
6 middle of the pool.

7 Q Middle of the pool and, again --

8 A Like --

9 Q -- if you hold up that drawing --

10 A -- right there.

11 Q Can you hold that up and show that to the  
12 camera?

13 A (Complies) Like right there.

14 Q Okay. And do you have a recollection of what  
15 counselors may have been in that area of the pool while  
16 you were over around the sun deck?

17 A When people were playing that jackpot game and  
18 so whoever was there. I think Supv CC #1 had been -- was  
19 playing it and he might have been -- people would -- were  
20 moving around.

21 Q John never did that. He never --

22 A He never played.

23 Q And he never went over --

24 MR. PLETCHER: Object to form.

25 Q (BY MR. SNYDER) Did he ever go over to the --

□00259

1 to the slide that --

2 A No.

3 Q -- morning? Did he ever get down there in  
4 the -- in the deep area of the pool, down there where the  
5 floating buoy was?

6 A I don't remember but I might have, at one point  
7 for a second, carried them over to -- this was no  
8 deeper -- I don't believe it was -- than this. It kind  
9 of started to drop off more towards -- near the road.

10 Q Okay.

11 MR. PLETCHER: Object to the  
12 responsiveness.

13 Q (BY MR. SNYDER) Do you think -- do you think  
14 you may have done that sometime that morning?

15 MR. PLETCHER: Object to form.

16 A I can't remember specifically. I just remember  
17 the -- the things that I've already said with the --  
18 where we were in the pool.

19 Q (BY MR. SNYDER) Now, when John was over in the  
20 area where the sun deck was, playing in that area where  
21 the fort had been built, did he -- at least as it  
22 appeared to you, did he exhibit any sign of distress or  
23 difficulty being in the water?

24 MR. PLETCHER: Object to form.

25 A No.

□00260

1 Q (BY MR. SNYDER) Or floating or swimming or  
2 anything like that?

3 MR. PLETCHER: Object to form.

4 A No.

5 Q (BY MR. SNYDER) Any -- anything that concerned  
6 you at all about his safety?

7 A No.

8 MR. PLETCHER: Object to form.

9 Q (BY MR. SNYDER) At some point, you said, I  
10 think it was -- was it 4 y/o-C #4 that said he wanted to go  
11 back to the beach area?

12 A Yes.

13 Q And -- and you asked John if he wanted to come  
14 with you?

15 A Yes.

16 Q And he said, no, he wanted to stay over there.

17 MR. PLETCHER: Object to form.

18 A Yes.

19 Q (BY MR. SNYDER) And was 4 y/o B-CC #4 there when you  
20 left with 4 y/o-C #4?

21 A She was in that area in between the stairs and  
22 the -- I think she had some boys around her that she was  
23 talking to over there sitting on the stairs or something.

24 Q How far would she have been away from John?

25 A Not far. Maybe from me to my dad.

□00261

1 Q So you walked back across the pool to the beach  
2 area. Correct?

3 A Yes.

4 Q Where you indicated earlier on the diagram.

5 Correct?

6 A Yes.

7 Q And that's where you remained until --

8 A The accident.

9 Q -- the lifeguard, 15 y/o LG #1, got off the lifeguard  
10 stand and began running over there.

11 A Yes.

12 Q Now, I take it that when you were over in the  
13 sun deck area where the fort was, M #1 and her  
14 son, 4 y/o-C #7, were they still over in the beach area?

15 A Yes.

16 MR. PLETCHER: Object to form.

17 Q (BY MR. SNYDER) Were some of the other moms  
18 there around the pool, as well?

19 A I don't know if they were four-year-old moms  
20 but there was pretty much moms everywhere.

21 Q Okay. While you were over in the area of  
22 the -- of the sun deck where John and 4 y/o-C #4 or 4 y/o-C #2 were

23 playing around the fort, did you ever hear any of the  
24 moms complain to you or any of the other counselors about  
25 a counselor, a supervisor, or a lifeguard acting

□00262

1 inappropriately?

2 A No.

3 Q Or acting in a way that they felt was unsafe  
4 for the campers?

5 MR. PLETCHER: Object to form.

6 A No.

7 Q (BY MR. SNYDER) You never -- did you ever hear  
8 or see anything that indicated to you that John was  
9 having any difficulty, any distress whatsoever that  
10 morning before he was found floating facedown?

11 A No.

12 MR. PLETCHER: Object to form.

13 A No.

14 Q (BY MR. SNYDER) That morning while you were at  
15 the family pool, did you overhear anyone complaining  
16 about the conduct of any of the counselors?

17 A No.

18 MR. PLETCHER: Object.

19 MR. MARRS: Form.

20 MR. PLETCHER: Form.

21 Q (BY MR. PLETCHER) That morning while you were  
22 at the family pool, did you ever hear anyone complaining  
23 about the conduct of the supervisors?

24 MR. PLETCHER: Object to form.

25 A No.

□00263

1 Q (BY MR. PLETCHER) And while you were at the  
2 pool that morning, did you ever overhear anyone  
3 complaining about the conduct of the lifeguards?

4 MR. PLETCHER: Object to form.

5 A No.

6 Q (BY MR. SNYDER) Did you overhear anyone  
7 complaining about any conduct or any activity that had  
8 been ongoing at the pool that morning before John was  
9 found floating facedown?

10 MR. PLETCHER: Form.

11 A No.

12 Q (BY MR. SNYDER) No?

13 A No.

14 Q Was -- when you first became aware that  
15 anything was wrong, 4 y/o B-CC #1, was -- was 4 y/o B-CC #3 the  
16 counselor that you think was probably nearest to John?

17 A Yes.  
18 Q When 15 y/o LG #1, the lifeguard, said, "Is  
19 that child or that boy okay?" was 4 y/o B-CC #3 facing away from  
20 or toward John?  
21 A Away from.  
22 Q So he -- so he turned around?  
23 A Yes. She said, "Counselor, counselor, is that  
24 boy okay?"  
25 Q And 4 y/o B-CC #3 immediately turned around?

□00264

1 A Yes.  
2 Q And did he take a step or did he just simply  
3 reach over --  
4 A He took like --  
5 Q -- and grab John?  
6 A He took like one -- one giant step and he might  
7 have taken another one and he just reached for it and he  
8 was like, "Yeah, he's just playing." And he pulled his  
9 arm just a little bit and then, when he was able to reach  
10 his body, he picked him up and his head fell back.  
11 Q And from that point, do you know how many steps  
12 4 y/o B-CC #3 had to take to get John to the side of the pool?  
13 A It was a matter of like -- he like was -- he  
14 was leaping and running and so it was a matter of three  
15 steps, maybe.  
16 Q Okay.  
17 A Three big, like maybe two. I -- again, I  
18 wasn't watching him bring him to the side. I was --  
19 Q I understand.  
20 A I was getting there myself.  
21 Q Right. There were more things that were  
22 concerning you than time and distances. Correct?  
23 A Yes.  
24 MR. SNYDER: All right, 4 y/o B-CC #1. I don't  
25 think I have any more questions for you at this time. I

□00265

1 want to thank you for being patient and enduring all of  
2 the questions that we have all asked you today.  
3 THE WITNESS: You're welcome.  
4 MR. PLETCHER: And I just want to do one  
5 thing. Can I see that tape measure?  
6 MR. SUSSMAN: Um-hmm.  
7 MR. PLETCHER: Let me be on this side.  
8 I'm going to hand it to LD if I don't fall over.  
9 EXAMINATION  
10 BY MR. PLETCHER:

11 Q 4 y/o B-CC #1, we just stretched a tape over towards  
12 your dad. About what distance is that?

13 A Like 14 feet.

14 Q And that was the approximate distance or  
15 estimate you gave for how far 4 y/o B-CC #4 was from John  
16 at the time that he was at the fort.

17 A Yeah. That's just a vague estimate.

18 Q Right. And the only certifications that you  
19 have ever received are CPR, the baby -- baby-sitter  
20 certification that you testified about earlier?

21 A Yes.

22 Q You've never taken any water safety courses?

23 A I don't think so, no.

24 Q You've never been certified as a water safety  
25 professional?

□00266

1 A No.

2 MR. PLETCHER: That's all I got. Thank  
3 you.

4 MR. SUSSMAN: We're done?

5 MR. SNYDER: We're done.

6 MR. PLETCHER: We're done.

7 VIDEOGRAPHER: The time is 6:21 p.m.

8 We're off the record.

9 (Proceedings concluded at 6:21 p.m.)

10

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□00267

1 CHANGES AND SIGNATURE

2 WITNESS: 4 y/o B-CC #1 DATE: JUNE 13, 2008

3 PAGE LINE CHANGE REASON

4

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24 I, 4 y/o B-CC #1, have read the foregoing deposition  
25 and hereby affix my signature that same is true and

00268

1 correct, except as noted herein.

2  
3

\_\_\_\_\_   
4 y/o B-CC #1

4  
5

6 THE STATE OF \_\_\_\_\_)  
7 COUNTY OF \_\_\_\_\_)

8 Before me, \_\_\_\_\_, on this day  
9 personally appeared 4 y/o B-CC #1, known to me (or proved  
10 to me under oath or through \_\_\_\_\_)(description of  
11 identity card or other document) to be the person whose  
12 name is subscribed to the foregoing instrument and  
13 acknowledged to me that they executed the same for the  
14 purposes and consideration therein expressed.

15 Given under my hand and seal of office this \_\_\_\_\_  
16 day of \_\_\_\_\_, \_\_\_\_\_.

17  
18  
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\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_

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21  
22

23  
24  
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□00269

1 CAUSE NO. 2007-54438  
 2 DAVID AND KATHLEEN PLUCHINSKY,) IN THE DISTRICT COURT OF  
 INDIVIDUALLY AND AS )  
 3 REPRESENTATIVES OF THE JOHN )  
 ALBERT PLUCHINSKY ESTATE, )  
 4 )  
 Plaintiffs, )  
 5 )  
 VS. ) HARRIS COUNTY, TEXAS  
 6 )  
 HOUSTON RACQUET CLUB, STEPHEN )  
 7 GRIFFIN, DAVID LAMKIN, )  
 GUILLERMO PALMER, AND )  
 8 LG Supv, )

9 Defendants. ) 281ST JUDICIAL DISTRICT  
 10 REPORTER'S CERTIFICATION  
 DEPOSITION OF 4 y/o B-CC #1  
 11 JUNE 13, 2008

12 I, Lorri Lucas, Certified Shorthand Reporter in and  
13 for the State of Texas, hereby certify to the following:

14 That the witness, 4 y/o B-CC #1, was duly sworn by  
15 the officer and that the transcript of the oral  
16 deposition is a true record of the testimony given by the  
17 witness;

18 That the deposition transcript was submitted on  
19 \_\_\_\_\_ to the witness or to the attorney for  
20 the witness for examination, signature and return to  
21 me by \_\_\_\_\_;

22 That the amount of time used by each party at the  
23 deposition is as follows:

24 Mr. Matthew G. Pletcher - 5 hours, 14 minutes

25 Mr. Norman E. Snyder, Jr. - 48 minutes

□00270

1 That pursuant to information given to the deposition  
2 officer at the time said testimony was taken, the  
3 following includes counsel for all parties of record:

4 Mr. Matthew G. Pletcher, Mr. Scott D. Marrs,  
Attorneys for Plaintiffs

5

Mr. Norman E. Snyder, Jr., Attorney for Defendants

6

7 I further certify that I am neither counsel for,  
8 related to, nor employed by any of the parties or  
9 attorneys in the action in which this proceeding was  
10 taken, and further that I am not financially or otherwise  
11 interested in the outcome of the action.

12 Further certification requirements pursuant to Rule  
13 203 of TRCP will be certified to after they have  
14 occurred --

15 Certified to by me this 30th day of June, 2008.

16  
17  
18  
19  
20

---

LORRI LUCAS, RMR, Texas CSR 5317  
Expiration Date: 12/31/09  
Firm Registration No. 510  
4545 Post Oak Place, Suite 350  
Houston, Texas 77027-3105  
(713) 626-2629

24  
25

□00271

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition/correction page was/was not  
3 returned to the deposition officer on

4 \_\_\_\_\_;

5 If returned, the attached Changes and Signature page  
6 contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered  
8 to Mr. Matthew G. Pletcher, Custodial Attorney;

9 That \$\_\_\_\_\_ is the deposition officer's charge  
10 to the Plaintiffs for preparing the original deposition  
11 transcript and any copies of exhibits;

12 That the deposition was delivered in accordance with  
13 Rule 203.3, and that a copy of this certificate was  
14 served on all parties shown herein on and filed with the  
15 Clerk.

16 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
17 2008.

18  
19  
20  
21

---

LORRI LUCAS, RMR, Texas CSR 5317  
Expiration Date: 12/31/09

22

23

Firm Registration No. 510  
4545 Post Oak Place, Suite 350  
Houston, Texas 77027-3105  
(713) 626-2629

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