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NO. 2007-54438

DAVID AND KATHLEEN ) IN THE DISTRICT COURT  
PLUCHINSKY, INDIVIDUALLY)  
AND AS REPRESENTATIVES )  
OF THE JOHN ALBERT )  
PLUCHINSKY ESTATE )  
Plaintiffs )

VS. ) HARRIS COUNTY, TEXAS

HOUSTON RACQUET CLUB, )  
STEPHEN GRIFFIN, DAVID )  
LAMKIN, GUILLERMO )  
PALMER, AND )  
LG Supv, )

Defendants ) 281st JUDICIAL DISTRICT

\*\*\*\*\*

VIDEOTAPED ORAL DEPOSITION OF  
GUILLERMO PALMER  
MARCH 3, 2008  
Volume 1

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF GUILLERMO PALMER

produced as a witness at the instance of the  
Plaintiffs, and duly sworn, was taken in the  
above-styled and numbered cause on MARCH 3, 2008,  
from 10:03 a.m. to 7:32 p.m., before Sherry Hale, CSR  
in and for the State of Texas, reported by machine  
shorthand, at the offices of Tucker, Taunton,  
Snyder & Slade, 10370 Richmond Avenue, Suite 1400,  
Houston, Texas, pursuant to the Texas Rules of Civil  
Procedure.

0002

A P P E A R A N C E S

FOR THE PLAINTIFFS:  
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3 Mr. Matthew G. Pletcher  
Beirne, Maynard & Parsons, L.L.P.  
4 1300 Post Oak Blvd., 25th Floor  
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6  
7 FOR THE DEFENDANTS:  
Mr. Norman E. Snyder, Jr.  
8 Tucker, Taunton, Snyder & Slade  
10370 Richmond Avenue, Suite 1400  
9 Houston, Texas 77042  
(713) 961-5800

10  
11 ALSO PRESENT:  
David Pluchinsky  
12 Kathleen Pluchinsky  
David Lamkin  
13 Stephen Griffin  
Ray Draper, Videographer

14  
15  
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0003

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0004

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2 VIDEOGRAPHER: On the record. Today's  
3 date is Monday, March 3rd, the year 2008. The time  
4 is 10:03 a.m.

5 THE REPORTER: Would you raise your  
6 right hand please so I can place you under oath?

7 THE WITNESS: (Witness complies.)

8 THE REPORTER: Do you solemnly swear  
9 that the testimony you are about to give in this  
10 cause shall be the truth, the whole truth, and  
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 GUILLERMO PALMER,  
14 having been first duly sworn, testified as follows:

15 EXAMINATION

16 BY MR. MARRS:

17 Q. Mr. Palmer, tell us what your full name is.

18 A. It's Guillermo Palmer.

19 Q. Have you gone by any other aliases or names?

20 A. No.

21 Q. You have to speak up.

22 A. Oh, sorry. No.

23 Q. What's your Texas Driver's License Number?

24 A. I don't know off the top of my head.

25 Q. Do you have it on you?

0005

1 A. It might be in my bag in the car.

2 Q. Why don't you get it during the next break  
3 so I can ask you that question. Okay?

4 A. Okay.  
5 Q. How old are you?  
6 A. 35.  
7 Q. And you are currently employed by the  
8 Houston Racquet Club?  
9 A. Yes.  
10 Q. Were you the aquatic director, the person  
11 that was head of the lifeguards at the Houston  
12 Racquet Club on July 18, 2007?  
13 A. Yes.  
14 Q. And you are a manager of the Houston Racquet  
15 Club in that capacity?  
16 A. Yes.  
17 Q. Do you understand that all your testimony  
18 given here today will be as corporate representative  
19 of Houston Racquet Club and individually?  
20 A. Yes.  
21 Q. And why don't you tell the jury your  
22 employment history since high school. First tell us  
23 where you went to high school.  
24 A. I went to Memorial High School.  
25 Q. In Houston?

0006

1 A. In Houston. After that I went to the  
2 University of Houston.  
3 Q. What did you graduate in?  
4 A. I'm sorry?  
5 Q. What was your degree?  
6 A. My degree was in psychology and political  
7 science and anthropology.  
8 Q. Did you receive a four-year degree?  
9 A. Four-year degree.  
10 Q. And got out when?  
11 A. In '96.  
12 Q. And what was your major?  
13 A. Psychology was my primary.  
14 Q. Okay. Did you work during that time?  
15 A. Yes.  
16 Q. And what jobs have you held since high  
17 school?  
18 A. I worked at the Racquet Club through  
19 college.  
20 Q. Beginning when?  
21 A. 1991.  
22 Q. As what?  
23 A. I was an assistant to the tennis pros.

24 Q. Was that the only position you held at the  
25 Houston Racquet Club during college?

0007

1 A. Yes.

2 Q. And when did you graduate from high school?

3 A. 1990.

4 Q. And so actually, you began at the Houston  
5 Racquet Club as a senior in high school?

6 A. I was a freshman in college.

7 Q. Okay. All right. So you were assistant to  
8 the tennis coach?

9 A. Yes.

10 Q. All right. In 1991 for the -- at the  
11 Houston Racquet Club until when?

12 A. Until -- I took some time off in '96 to  
13 finish up my degree. And taught there again  
14 part-time till fall of '97. Then after that I got a  
15 job at a place called Paragon Engineering.

16 Q. How do you spell that?

17 A. P-A-R-A-G-O-N. And I worked there for  
18 almost a year, about 11 months.

19 Q. As?

20 A. I was an expediter and a buyer for pipeline  
21 equipment.

22 Q. What was your title?

23 A. Procurement/expediter.

24 Q. Was that full-time?

25 A. Yes.

0008

1 Q. What were you expediting or procuring?

2 A. Piping and pipeline equipment, pipes,  
3 fittings, nuts and bolts.

4 Q. And from what month and year to what month  
5 and year, to your knowledge, approximately?

6 A. That was -- that would have been January  
7 1998 until the last day in October -- 30th, 1998.

8 Q. Was Paragon Engineering the only job that  
9 you have had aside from the Houston Racquet Club from  
10 the time you graduated from high school up through  
11 October '98?

12 A. Yes, sir.

13 Q. Okay. Go on.

14 A. I began at the Racquet Club again at the  
15 very beginning of 1999.

16 Q. What was your position?

17 A. I started as a tennis instructor there.

18 Q. Working for who?  
19 A. Jim Parker.  
20 Q. Okay.  
21 A. I did that for three years and then began  
22 working in the fitness center in 2002.  
23 Q. What month?  
24 A. April.  
25 Q. Doing what?

0009

1 A. I was a fitness trainer there.  
2 Q. Doing what?  
3 A. I would just help train people, exercise.  
4 Q. On weights, equipment?  
5 A. Sure.  
6 Q. Giving any training courses?  
7 A. Did I give any courses?  
8 Q. Yes.  
9 A. No. I mean --  
10 Q. Did you train people on anything other than  
11 the weights?  
12 A. At first primarily it was just on the  
13 weights. It was just, you know, lifting sessions.  
14 Q. And what else as trainer did you do?  
15 A. That was it.  
16 Q. Until when? From April 2002 till what?  
17 A. Until April 2006.  
18 Q. And during that time, during those four  
19 years, who did you report to as a fitness trainer?  
20 A. David Lamkin.  
21 Q. During the entire time?  
22 A. Yes.  
23 Q. Okay. Go on.  
24 A. And that's when I began working at the pool.  
25 Q. As what?

0010

1 A. As the aquatic director.  
2 Q. Until when?  
3 A. Till currently.  
4 Q. Are you currently still the aquatics  
5 director at the Houston Racquet Club?  
6 A. I suppose that's still my title, although  
7 all I do now really is pool maintenance.  
8 Q. And when did you begin to do pool  
9 maintenance versus the full realm of things you did  
10 as aquatics director?  
11 A. I began doing this, I would say -- you know,

12 I don't remember exactly the date, early -- maybe  
13 mid-January of this year.

14 Q. And did you continue to do all of your  
15 duties as an aquatics director at the Houston Racquet  
16 Club from April of 2006 all the way up until  
17 mid-January 2008?

18 A. Most of them.

19 Q. Except for what?

20 A. Anything dealing with the swim team.

21 Q. And your duties with the swim team ceased  
22 when?

23 A. Oh, I would probably say by summer 2007.

24 Q. Being what month 2007?

25 A. June.

0011

1 Q. Before June 2007?

2 A. I'm sorry?

3 Q. Well, why did your duties with the swim team  
4 cease?

5 A. Oh, I -- we got a coach that handled  
6 every -- everything. She did the coaching, the meets  
7 and the practices. Last year I did those, so once  
8 she came on, she really took care of the entire  
9 program.

10 Q. And what was her name?

11 A. SC #2.

12 Q. SC #2?

13 A. Yes.

14 Q. What's her official title?

15 A. Swim coach.

16 Q. Did she begin in approximately June of 2007  
17 as swim coach?

18 A. She began earlier in the year with  
19 practices.

20 Q. Okay. And what's your understanding of why  
21 someone else took the duties as swim team from you in  
22 approximately June 2007?

23 A. It was just -- I believe it was just better  
24 staffing. You know, she had -- this is what she  
25 does. This is her every-day job, to be a swim coach,

0012

1 so she had assistants that she already knew. And it  
2 was just a -- it was just a nicer operation to have  
3 her take care of that chunk of things.

4 Q. Aside from the swim team, however, you  
5 continued in your full duties as an aquatics director

6 together with all responsibilities and daily duties  
7 from April 2006 all the way through mid-January, 2008  
8 with the exception of the swim team responsibilities?

9 A. Yes, sir.

10 Q. When is the first time that you ever became  
11 certified in CPR?

12 A. I think -- you know, we took a course in  
13 school when I was young, but I don't know if they  
14 were just introducing us to CPR, but I would say when  
15 I became a tennis pro.

16 Q. Approximately what month and year did you  
17 first become certified in CPR?

18 A. In 2002 I -- no, I'm sorry. I began that in  
19 1999. Sometime in 1999. I can't be sure of what  
20 month.

21 Q. Did you actually become certified and  
22 receive a certification in CPR?

23 A. Yes, I received a card.

24 Q. From?

25 A. I don't know if it was American Heart

0013

1 Association or Red Cross at that time. I don't  
2 remember.

3 Q. And have you been continuously certified  
4 since 1999 in CPR or not?

5 A. No.

6 Q. How long do you believe that your  
7 certification that you obtained in '99 lasted?

8 A. That was -- it --

9 Q. Did you get certified after that particular  
10 card expired again?

11 A. I did. I don't remember because I don't  
12 remember which organization it was. Sometimes they  
13 are one year or two years. I don't remember which  
14 one that was. I became recertified again in 2002.

15 Q. Which certifying organization that certifies  
16 individuals to become proficient in CPR gives a  
17 certification that lasts a year?

18 A. That's the Red Cross.

19 Q. Which one lasts more than a year?

20 A. American Heart Association.

21 Q. And in 2002, you say you became certified in  
22 CPR again?

23 A. Yes, sir.

24 Q. From?

25 A. That was Red Cross.

0014

1 Q. Have you been continuously certified at  
2 least since 2002 in CPR from that point till today?

3 A. No.

4 Q. When did your 2002 CPR -- Red Cross  
5 certification expire?

6 A. That would have been by that same month when  
7 I took it. I now remember when that was, in 2003.

8 Q. Okay. And when did you become certified in  
9 CPR again after that?

10 A. Then I did it again in 2006.

11 Q. Do you know what month?

12 A. Maybe May -- May or June.

13 Q. And you think it was May or June why?

14 A. Because that year, I -- that's when I took  
15 my last course before the -- that summer began.

16 Q. Were you required to become certified in CPR  
17 prior to becoming aquatics director or not? You  
18 testified you became aquatics director in April.

19 A. I did. I was required, I was.

20 Q. You were?

21 A. Yes.

22 Q. Well, you said you believe you became  
23 certified in May or June of 2006, yet you testified  
24 that you became aquatics director before then in  
25 April 2006.

0015

1 A. Yes. Our pool didn't open till then, so  
2 when I began in April, there was nothing going on  
3 yet. That is just when I began.

4 Q. Which pool are you talking about?

5 A. Both pools.

6 Q. And why is that? Why were they closed?

7 A. Oh, we -- our pools didn't open till -- only  
8 weekends in May and so...

9 Q. Excuse me?

10 A. It wasn't time yet. It was -- it was still  
11 April when I got the job.

12 Q. Where did you take your 2006 CPR  
13 certification course?

14 A. At the Houston Racquet Club.

15 Q. From who?

16 A. From -- he was a lifeguard instructor, so I  
17 went through that whole process and that's -- part  
18 of it was the CPR.

19 Q. And who was that?

20 A. The instructor?  
21 Q. Yes.  
22 A. His name is LG Supv B .  
23 Q. And he was offering -- well, was this just  
24 you or was it someone else taking the course with  
25 LG Supv B ?

0016

1 A. It was a group of people.  
2 Q. And where did LG Supv B work?  
3 A. I believe the Dad's Club YMCA.  
4 Q. Which one is that?  
5 A. That's the one on I-10 and Voss or right  
6 over there.  
7 Q. Okay. And he came to the Houston Racquet  
8 Club and gave a CPR certification course?  
9 A. Yes.  
10 Q. Who else, to your knowledge, took that along  
11 with you?  
12 A. Supv CC #1 was in that course.  
13 CC-A was in that course. There was another  
14 girl in there. I don't remember her name.  
15 Q. And who else?  
16 A. I don't remember anyone else.  
17 Q. And was that a Red Cross or American Heart  
18 Association course?  
19 A. That was Red Cross.  
20 Q. And so that CPR certification you obtained  
21 in May or June 2006 would have expired a year later,  
22 correct?  
23 A. Yes.  
24 Q. Did it expire or did you renew it before it  
25 expired?

0017

1 A. It expired.  
2 Q. And after it expired in May or June 2007,  
3 when was the next time that you actually obtained the  
4 CPR certification?  
5 A. In September.  
6 Q. Of?  
7 A. 2007.  
8 Q. Is the aquatics director at the Houston  
9 Racquet Club required to maintain a current and valid  
10 CPR certification to maintain their position as  
11 aquatics director?  
12 A. I was never told that, but I feel like it  
13 was just a good idea.

14 Q. Certainly, it is important for an aquatics  
15 director at a club with swimming pools where children  
16 are swimming to have a current and valid CPR  
17 certification at all times, don't you think?

18 MR. SNYDER: Objection, form.

19 A. I think so.

20 Q. (BY MR. MARRS) And in September '07, where  
21 did you get your CPR certification?

22 A. Once again at the Racquet Club.

23 Q. Who taught it?

24 A. It was a nurse and another lady. I don't  
25 remember their names.

0018

1 Q. Was it a third-party course or was it  
2 someone that was employed by the Houston Racquet Club  
3 that gave the course?

4 A. It was a third party.

5 Q. And was it Red Cross?

6 A. This one was American Heart.

7 Q. You were not certified in CPR on July 18,  
8 2007, correct?

9 A. Correct.

10 Q. You did not have a valid and current AED  
11 certification on July 18, 2007, correct?

12 MR. SNYDER: Objection, form.

13 A. Correct.

14 Q. (BY MR. MARRS) You did not have a valid and  
15 current lifeguard certification as of July 18, 2007,  
16 did you?

17 A. I did.

18 Q. You did not have a certification in  
19 lifeguard management on July 18, 2007, did you?

20 A. I did not.

21 Q. And certainly, one of your responsibilities  
22 as a lifeguard -- were you lifeguard manager as  
23 aquatics director?

24 A. Yes.

25 Q. Including on June 18, two-thousand -- excuse

0019

1 me, including on July 18, 2007?

2 A. Yes.

3 Q. And certainly one of your responsibilities  
4 as aquatics director and lifeguard manager is to  
5 ensure and make sure that the lifeguards working at  
6 the Houston Racquet Club have current and valid CPR  
7 certifications at all times while they're a lifeguard

8 for Houston Racquet Club, correct?

9 A. That's not correct.

10 Q. Okay. What's incorrect about that?

11 A. The requirement as I began the job was that  
12 I only hire guards that are currently certified. And  
13 that's -- that was it.

14 Q. So what's incorrect about my statement?

15 A. I didn't -- I didn't keep up with everyone's  
16 certifications. They did that on their own. I just  
17 made sure that they were current at the time of hire.

18 Q. Did you ensure that all the lifeguards that  
19 were hired for summer camp 2007 had current and valid  
20 lifeguard, CPR and AED certifications at the time  
21 they were hired for 2007 summer camp?

22 A. Can you repeat the question?

23 Q. Did you ensure and make sure that the  
24 lifeguards hired for 2007 summer camp indeed had  
25 valid and current CPR certifications?

0020

1 A. Yes.

2 Q. Have you since learned that indeed some of  
3 the lifeguards that were working 2007 summer camp  
4 were actually hired for 2007 summer camp with expired  
5 CPR cards?

6 A. Yes.

7 Q. Well, how is it that you made sure and  
8 insured that they had valid and current CPR  
9 certifications when you now know that some of them  
10 did not at the time they were hired?

11 A. When I spoke to these guards, I would come  
12 in -- I did this during the months of anywhere from  
13 February to -- through March. At that point I would  
14 check their certifications. Everyone was good. I  
15 know that we went through a process of a rehiring  
16 because our employment status was going to be changed  
17 at the club. And as I understand it, by the time  
18 that happened some of the certifications had  
19 expired. But when I -- when I did the hiring, the  
20 initial hiring, everyone that I hired presented good,  
21 valid cards.

22 Q. So are you saying that you simply did not  
23 ensure at the time that they came on board, at the  
24 time they were hired for 2007 summer camp that they  
25 had valid CPR certifications?

0021

1 MR. SNYDER: Objection, form.

2 Q. (BY MR. MARRS) You may have looked at some  
3 time in the past, but when they were being hired for  
4 2007 summer camp, you did not check again?

5 MR. SNYDER: Objection, form.

6 A. I didn't check after I hired them in --  
7 close to April.

8 Q. (BY MR. MARRS) Do you think you should  
9 have --

10 MR. SNYDER: Objection, form.

11 Q. (BY MR. MARRS) -- as aquatics director and  
12 lifeguard manager?

13 MR. SNYDER: Objection, form.

14 A. I don't know, possibly.

15 Q. (BY MR. MARRS) Who did?

16 A. We had some new personnel working at the  
17 Racquet Club helping do the hiring and I knew that --  
18 or what I was told was that that rehiring process  
19 required valid certifications and I assumed they  
20 would have communicated that to the -- to the guards  
21 as they redid their hiring.

22 Q. But you now have learned that they did not  
23 do that, correct?

24 A. I'm sorry, that who did not do what?

25 Q. Who is the person that was brought in to

0022

1 assist with rehiring?

2 A. Her name was SUPV.

3 Q. What was her job position?

4 A. I don't know what her title was. She  
5 just -- she took care of all that type of  
6 personnel --

7 Q. Okay.

8 A. -- paperwork, what have you.

9 Q. So who told you that in the rehiring  
10 process, in other words, rehiring of lifeguards it  
11 was required that the lifeguards be recertified in  
12 CPR?

13 A. Well, she did because she would accept a lot  
14 of paperwork from them and she was just very thorough  
15 and whatnot.

16 Q. Okay.

17 A. She always required a lot of paperwork.

18 Q. Okay. But in terms of the requirement that  
19 lifeguards be currently and validly certified in AED  
20 and CPR at the time they're hired, before they start  
21 their duties as a lifeguard, certainly as you just

22 testified, you knew that that was a requirement  
23 before they were rehired, correct?

24 MR. SNYDER: Objection, form.

25 A. Sure.

0023

1 Q. (BY MR. MARRS) And certainly, to your  
2 knowledge, SUPV knew that that was a  
3 requirement, correct?

4 A. I would assume.

5 Q. Certainly, you would -- well, certainly you  
6 know that David Lamkin knew that? He was a CPR  
7 instructor, wasn't he?

8 A. Sure. I don't know. I would assume so.

9 Q. Now, regardless of when a lifeguard is  
10 hired, isn't it very important from a safety  
11 standpoint that your lifeguards every single day that  
12 they are on duty as a lifeguard are currently and  
13 validly certified in CPR and AED?

14 MR. SNYDER: Objection, form.

15 A. I think so.

16 Q. (BY MR. MARRS) If -- At the Houston Racquet  
17 Club if a lifeguard's certification in CPR and AED is  
18 no longer good and expires, they should not be there  
19 as a lifeguard until that is remedied; don't you  
20 agree?

21 MR. SNYDER: Objection, form.

22 Q. (BY MR. MARRS) I mean, isn't that a  
23 requirement of your club?

24 MR. SNYDER: Objection, form.

25 A. It is at the time of hire, which is --

0024

1 Q. (BY MR. MARRS) Is it okay with you as an  
2 aquatics director that you have lifeguards on the  
3 stand that don't have a valid and current CPR and AED  
4 certification?

5 MR. SNYDER: Objection, form.

6 A. It's not the ideal situation.

7 Q. (BY MR. MARRS) It's not -- It's not the  
8 safe situation, is it?

9 MR. SNYDER: Objection, form.

10 A. I wouldn't say that.

11 Q. (BY MR. MARRS) Isn't it safer to have your  
12 lifeguards, if they're going to be on the stand  
13 guarding children in the pool, that they have active  
14 and current CPR certifications?

15 MR. SNYDER: Objection, form.

16 A. Can you repeat that again? I'm sorry.  
17 Q. (BY MR. MARRS) I'm happy to.  
18 A. Thanks.  
19 Q. Isn't it the safe thing to do to make sure  
20 that your lifeguards on the stand guarding children  
21 in the pool have current and valid CPR and AED  
22 certifications? Isn't that the safe thing?  
23 MR. SNYDER: Objection, form.  
24 A. I think that would be a safe thing, yes.  
25 Q. (BY MR. MARRS) Aren't you aware of the fact  
0025

1 that that's the law in this state? Are you aware of  
2 that?

3 A. I was not.

4 Q. Are you aware of it now?

5 A. Now, I am.

6 Q. Are you aware that every day you have a  
7 lifeguard on that stand guarding children in the pool  
8 with expired CPR or AED certifications, that that is  
9 breaking the law? Were you aware of that before  
10 July 18, 2007?

11 A. I was not.

12 Q. Are you aware of it now?

13 A. Now, I am.

14 Q. Are you aware that Supv CC #1 was  
15 transferred into a lifeguard position when he did not  
16 have a current and valid CPR or AED certification?  
17 We went over that yesterday in -- excuse me. The  
18 days are running together.

19 MR. PLETCHER: Friday.

20 Q. (BY MR. MARRS) We went over that Friday in  
21 Mr. Lamkin's deposition, didn't we?

22 A. Yes.

23 Q. That is also against the rules, whether the  
24 lifeguard is transferred from somewhere else or hired  
25 brand new, he should have a valid and current CPR and  
0026

1 AED certification at the time he begins acting as a  
2 lifeguard. You agree?

3 MR. SNYDER: Objection, form.

4 A. I agree.

5 Q. (BY MR. MARRS) Were you aware at the time  
6 that Supv CC #1 became a lifeguard at the Houston  
7 Racquet Club that he did not have a valid CPR and AED  
8 certification?

9 A. In 2007?

10 Q. Yes, sir.  
11 A. No, sir.  
12 Q. When did you become aware of that?  
13 A. After July 18th.  
14 Q. LG Supv was one of your lifeguard  
15 supervisors, wasn't he?  
16 A. Yes.  
17 Q. Were you aware of the fact that while  
18 LG Supv was acting as a supervising lifeguard on  
19 July 18, 2007 he did not have a valid CPR or AED  
20 certification?  
21 A. I wasn't aware of it at the time; I was  
22 afterwards.  
23 Q. You weren't aware of that on July 18th, but  
24 since then you have become aware of that; is that  
25 correct?

0027

1 A. Yes, sir.  
2 Q. Are you aware of the fact that while not  
3 having a required valid and current certification in  
4 CPR or AED, that LG Supv actually performed CPR  
5 on the victim, John Pluchinsky?

6 A. I am aware of that.  
7 Q. Does this concern you as aquatics director  
8 and lifeguard manager?

9 MR. SNYDER: Objection, form.  
10 A. Knowing what I know now, yes, but -- but  
11 when I did find out, it really didn't concern me that  
12 much.

13 Q. (BY MR. MARRS) Sr LG #2, was he a  
14 lifeguard on July 18?

15 A. Yes.  
16 Q. Did he have a valid and current  
17 certification in CPR or AED?

18 A. I believe so. He presented good cards when  
19 I first hired him.

20 Q. I'm not talking about when you first hired  
21 him. I'm talking about on July 18, 2007 when he was  
22 acting as a lifeguard at the Houston Racquet Club,  
23 did he have a current and valid certification in CPR  
24 and AED?

25 A. I don't know.

0028

1 Q. How about LP LG, who was also a  
2 lifeguard on duty on July 18, 2007?

3 A. I believe hers was expired.

4 Q. LP LG while acting as a lifeguard  
5 on July 18, 2007 did not have a current and valid CPR  
6 certification, correct?

7 A. I don't think she did.

8 Q. Well, have you looked into that since  
9 July 18, 2007?

10 A. I have looked.

11 Q. What did you find?

12 A. I don't remember everyone that didn't. I  
13 believe she was one of the ones that did not.

14 Q. Do you remember how many lifeguards on duty  
15 on July 18, 2007 were not validly certified in CPR or  
16 AED?

17 A. No.

18 MR. PLETCHER: Let's go off the record  
19 for a second.

20 VIDEOGRAPHER: Off the record. The  
21 time is 10:40 a.m.

22 (Brief recess.)

23 VIDEOGRAPHER: Back on the record. The  
24 time is 10:48 a.m.

25 Q. (BY MR. MARRS) Now, regardless of what  
0029

1 SUPV may or may not have been doing, it  
2 was your responsibility as the aquatics director to  
3 ensure that every day your lifeguards were on the  
4 stand at the Houston Racquet Club that had valid and  
5 current certifications in AED and CPR, correct?

6 A. I learned that as time went on. That was  
7 never like in a job description or anything like  
8 that. I just -- now I know better.

9 Q. Well, did you know better -- did you know  
10 that you were supposed to do that before July 18,  
11 2007?

12 A. No, sir.

13 Q. I didn't hear you, I'm sorry?

14 A. I said no, I didn't.

15 Q. Well, whose responsibility would it have  
16 been to tell you that that was your responsibility as  
17 aquatics director?

18 MR. SNYDER: Objection, form.

19 A. I don't know.

20 Q. (BY MR. MARRS) Well, who was responsible  
21 for supervising you?

22 A. Mr. Lamkin and Mr. Griffin.

23 Q. Did either of them tell you at any time

24 prior to July 18, 2007 that it was part of your  
25 responsibility as aquatics director and lifeguard  
0030

1 manager to ensure that lifeguards when they are on  
2 duty at the Houston Racquet Club had to have valid  
3 and current certifications in AED and CPR?

4 A. I was told to make sure of that at the  
5 time -- whenever I hired them -- at the time of hire  
6 and...

7 Q. Were you told to do that on the day that  
8 they showed up to report for duty as lifeguards at  
9 the Racquet Club?

10 A. No.

11 Q. Were you told to do that on an ongoing basis  
12 while they were a lifeguard at the Houston Racquet  
13 Club to ensure that they had valid and current  
14 certifications in CPR and AED?

15 A. No.

16 Q. Let's look at Exhibit 13. Have you seen  
17 this Houston Racquet Club document before?

18 A. I can't even make out what it is, sir. I'm  
19 sorry.

20 Q. It says "name" and then it's got names of  
21 counselors and lifeguards. And it's got  
22 "certification," whether it's AED, CPR or  
23 otherwise. "Issuance date" and "expiration date" of  
24 those certifications. Have you seen that document  
25 before?

0031

1 A. I don't know if I've seen it before or not.

2 Q. Okay. Well, certainly you recall during the  
3 last few days of depositions in this case,  
4 depositions of Mr. Griffin and Mr. Lamkin, we  
5 discussed the expirations of CPR and AED cards of  
6 various individuals who are on duty July 18, 2007.  
7 Do you remember that?

8 A. I remember that.

9 Q. We know that LG Supv , a lifeguard  
10 supervisor, did not have a valid and current  
11 certification for AED or CPR on the date John died,  
12 correct?

13 A. I really can't read it, but I believe that  
14 is correct.

15 Q. Well, it says that his cards expired  
16 June 2nd, 2007.

17 A. Then correct.

18 Q. So that means he did not have valid  
19 certifications in CPR as of the day of John's death,  
20 correct?

21 A. Correct.

22 Q. And you don't see that he has any  
23 certification in AED on this list as of that date  
24 either, correct?

25 A. Correct.

0032

1 Q. We also know that LP LG , who was a  
2 lifeguard on duty on July 18, 2007 also did not have  
3 a valid and current CPR or AED certification on the  
4 day John died, correct?

5 A. Correct.

6 Q. And the answer is the same for  
7 Sr LG #1 , correct? Hers expired May 28th, 2006. So  
8 hers was also expired, correct?

9 A. Yes, but she -- I believe she had got  
10 recertified and lost her cards and maybe -- I believe  
11 she may have been in the process of trying to get new  
12 ones reissued or she was looking for them or  
13 something.

14 Q. Do you know?

15 A. I don't know which one of those it was. I  
16 seem to remember something like that was going on,  
17 where she had told me she had done it.

18 Q. Well, why does the document that was  
19 produced from the Houston Racquet Club show that her  
20 certifications were expired --

21 MR. SNYDER: Objection, form.

22 Q. (BY MR. MARRS) -- and not current, do you  
23 know?

24 MR. SNYDER: Objection, form.

25 A. I don't know.

0033

1 Q. (BY MR. MARRS) Were you asked by the CPS to  
2 provide the current and valid certifications in CPR  
3 and AED for your lifeguards on duty July 18th?

4 A. I believe we were, yes.

5 Q. Did you provide any such valid certification  
6 for Sr LG #1 ?

7 A. I don't remember.

8 Q. Have you seen any current or valid  
9 certification that was current and valid as of  
10 July 18th for Sr LG #1 for AED or CPR?

11 A. I don't remember.

12 Q. Did you look for any such certification  
13 prior to July 18, 2007?

14 A. I don't think I did.

15 Q. Supv CC #1 , you know that his CPR and AED  
16 certifications -- strike that.

17 Supv CC #1 , you know that his CPR  
18 certification was also expired as of the date of  
19 John's death, correct?

20 A. Yes.

21 Q. And he was not certified in AED either on  
22 that date, was he?

23 MR. SNYDER: Objection, form.

24 A. No. But I may need to clarify a little bit  
25 there. We -- I don't believe that AED certification  
0034

1 was part of our certification we did in 2006. I  
2 can't be sure, but I'm not sure that that was part of  
3 the CPR course at that time.

4 Q. (BY MR. MARRS) My question was:  
5 Supv CC #1 was not certified in CPR or AED as of the time  
6 John died, correct?

7 A. Correct.

8 Q. Sr LG #3 , the answer is the same for him  
9 as well, isn't it? He was a lifeguard on duty  
10 July 18, 2007 and his certification in CPR had also  
11 expired, hadn't it?

12 A. That's correct.

13 Q. And how about Sr LG #2 ? Here we have  
14 Sr LG #2 , CPR/AED, issuance no date. Was his  
15 certification in AED/CPR, if any, expired as of the  
16 day John died as well?

17 A. I didn't think it was. I can't be sure.

18 Q. Well, let's look on the second page of  
19 Exhibit 13 at his card.

20 A. Okay.

21 Q. And it says, "Sr LG #2 , CPR/AED, date  
22 completed" blank. As the individual responsible for  
23 insuring that lifeguards had valid CPR and AED  
24 certifications, how can you tell from this card  
25 whether or not your lifeguard that you hired,  
0035

1 Sr LG #2, did or did not?

2 A. I suppose I couldn't without the dates. I  
3 don't know how he got a hold of them without that.

4 Q. Well, that's something you should have been  
5 checking all along, correct?

6 A. I suppose.

7 Q. So, how can we tell -- how can the jury know  
8 if Sr LG #2 had a valid and current CPR/AED  
9 certification as of July 18, 2007 just looking at the  
10 documents produced to us by the Racquet Club?

11 A. Just looking at the document, we cannot.

12 Q. And we can't tell by asking you, the  
13 aquatics director or the very individual, the  
14 lifeguard manager who manages this individual,  
15 Sr LG #2, can't tell from asking you either, can we?

16 A. Correct.

17 Q. Now, are you aware of the fact that  
18 LG Supv, Sr LG #1, Sr LG #2, Sr LG #3,  
19 all lifeguards were hired on the same date, June 13,  
20 2007?

21 MR. SNYDER: Objection, form.

22 A. I was not aware of when they did that.

23 Q. (BY MR. MARRS) Does sound about right to  
24 you?

25 A. I suppose it does, yes.

0036

1 Q. And do you know now today, as we speak, that  
2 LG Supv, Sr LG #1, Sr LG #2 and  
3 Sr LG #3, all lifeguards were actually hired at a time  
4 when they did not have valid and current  
5 certifications in AED or CPR?

6 A. I know that now.

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) And the same answer with  
9 LP LG, correct?

10 MR. SNYDER: Objection, form.

11 A. Correct.

12 Q. (BY MR. MARRS) So we know at least five  
13 lifeguards that were on duty on July 18, 2007 were  
14 actually hired without current and valid CPR  
15 certifications or AED certifications, correct?

16 MR. SNYDER: Objection, form.

17 A. Correct.

18 Q. (BY MR. MARRS) So true or false, the  
19 Houston Racquet Club did not hire lifeguards unless  
20 their CPR certifications were valid and current?

21 MR. SNYDER: Objection, form.

22 A. Correct, true.

23 Q. (BY MR. MARRS) Well, didn't you just  
24 testify that you're aware now that that's not true?

25 A. During the second round of hiring process, I

0037

1 know that now.

2 Q. Okay. So true or false, the Houston Racquet  
3 Club hired lifeguards for 2007 summer camp with  
4 expired AED and CPR certifications?

5 MR. SNYDER: Objection, form.

6 A. After my initial hiring in the spring, yes.

7 Q. (BY MR. MARRS) Whether it was initial or  
8 not, as of the time Sr LG #2 , LP LG ,  
9 Sr LG #1 , Sr LG #3 , LG Supv were  
10 hired to work as lifeguards for 2007 summer camp,  
11 they had expired AED and CPR certifications, correct?

12 MR. SNYDER: Objection, form.

13 A. Correct.

14 Q. (BY MR. MARRS) Now, have you seen any  
15 written statements given to CPS by any lifeguards or  
16 counselors?

17 A. Yes.

18 Q. Were they typewritten or written out?

19 A. I believe they were written out.

20 Q. Have you seen any interviews that yourself  
21 or anybody that was employed by the Racquet Club gave  
22 to the CPS?

23 A. Yes.

24 Q. Were they written out or typed?

25 A. Well, they were written out while we were

0038

1 being interviewed. I'm not sure if that's what  
2 you're asking.

3 Q. Have you seen any typewritten statements  
4 that the CPS investigator took from you?

5 A. I've seen them.

6 Q. Okay. Have you seen any typewritten  
7 statements that was typed out by a CPS investigator  
8 from interviews with counselors and lifeguards on  
9 duty on July 18, 2007?

10 A. I've seen some, yes.

11 Q. Have you seen any typed out reports from the  
12 Memorial Villages Police Department regarding that  
13 incident?

14 A. I have not.

15 Q. Okay. Did you tell the CPS investigator  
16 that the Houston Racquet Club does not hire  
17 lifeguards unless they have current and valid CPR  
18 certifications?

19 A. Probably.

20 Q. And you have since learned that that's not  
21 accurate, correct?

22 A. Correct.

23 Q. And at what point in time did you pick up  
24 the phone and call the CPS and let them know that  
25 your previous statement was untrue?

0039

1 A. I never called them.

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) Did anybody at the Houston  
4 Racquet Club call or communicate with CPS to inform  
5 them that your previous statement was untrue, to your  
6 knowledge?

7 A. Not to my knowledge.

8 Q. And did you discuss the events of July 18  
9 with the Memorial Villages Police Department?

10 A. Yes.

11 Q. On how many occasions?

12 A. One that I can remember.

13 Q. Where?

14 A. It was at the -- at their office.

15 Q. At the police department?

16 A. Yes.

17 Q. And who was with you?

18 A. I was there with the -- with Mr. Wall and  
19 Ms. Momanee.

20 Q. And who else?

21 A. And that was it, and the two officers.

22 Q. Did you also tell the police officer that  
23 your lifeguards on duty at the Houston Racquet Club  
24 on July 18, 2007 had valid and current CPR  
25 certifications?

0040

1 A. I don't remember.

2 Q. You don't know one way or the other?

3 A. I don't.

4 Q. Where did you take your CPR certification  
5 course in 1999?

6 A. It was at the Racquet Club.

7 Q. From?

8 A. I don't remember. It was a lady. I don't  
9 remember who it was.

10 Q. Was that Red Cross or AHA?

11 A. I'm not sure what it was at that time.

12 Q. What about in 2002?

13 A. I believe that was Red Cross.

14 Q. And where and from whom did you receive that  
15 certification in 2002?

16 A. It was at the Racquet Club as well from  
17 lifeguard instructors.

18 Q. Do you recall who?

19 A. I don't.

20 Q. When did you first become a certified  
21 lifeguard?

22 A. At that time in 2002.

23 Q. In 2002?

24 A. Yes.

25 Q. And how long did that certification last?

0041

1 A. That lasted for three years.

2 Q. Okay. And then where did you -- when is the  
3 next time you got certified as a lifeguard after that  
4 expired in approximately 2005?

5 A. In 2006.

6 Q. From who?

7 A. That was LG Supv B .

8 Q. Okay. You've already told me about that,  
9 correct?

10 A. Yes.

11 Q. How many years of experience did you have as  
12 a lifeguard manager prior to being hired as aquatics  
13 manager April 2006 by the Houston Racquet Club?

14 A. I have none.

15 Q. How many years had you had as an aquatics  
16 director prior to becoming aquatics director in April  
17 2006 at the Houston Racquet Club?

18 A. I didn't work as an aquatic director before  
19 that.

20 Q. You had no prior experience as either  
21 aquatics director or lifeguard manager before being  
22 retained in those job titles by the Houston Racquet  
23 Club April 2006; is that correct?

24 A. That's correct.

25 Q. And who did hire you as aquatics director

0042

1 and lifeguard manager?

2 A. Mr. Lamkin and Mr. Griffin.

3 Q. And prior to April 2006 when you became  
4 aquatics director at Houston Racquet club, how many  
5 years had you been a CPR instructor?

6 A. I've never been a CPR instructor.

7 Q. Or an AED instructor?

8 A. I've never been that either.  
9 Q. And when were you first certified as a  
10 lifeguard instructor?  
11 A. I've never been certified as one.  
12 Q. You've never been certified as a lifeguard  
13 instructor?  
14 A. Correct.  
15 Q. Have you ever taken a lifeguard instructor  
16 course?  
17 A. No.  
18 Q. Ever taken a lifeguard management course?  
19 A. No.  
20 Q. Ever taken an AED or CPR instructor's  
21 course?  
22 A. No.  
23 Q. Are you currently looking at other job  
24 opportunities?  
25 A. Yes.  
0043  
1 Q. Have you already obtained another job?  
2 A. I think so.  
3 Q. As?  
4 A. I'm going to be a salesperson.  
5 Q. For who?  
6 A. For A-1 Striping.  
7 Q. Which is what kind of company?  
8 A. They do construction.  
9 Q. Construction?  
10 A. Yes.  
11 Q. Of what?  
12 A. Any structures that are not buildings. They  
13 do any kind of paving, borders, things of that  
14 nature.  
15 Q. What will your responsibilities be?  
16 A. I don't know yet.  
17 Q. And who will your supervisor be?  
18 A. Oh, I don't know.  
19 Q. Who will your manager be?  
20 A. I don't know that either.  
21 Q. How did you come about getting that job, you  
22 think?  
23 A. Well, I was approached by I believe -- I  
24 don't know if it's the owner or the president of the  
25 company and he asked me if I would consider doing  
0044  
1 that and I told him I would.

2 Q. And who was that?  
3 A. His name is HRCBM-F.  
4 Q. How do you spell that?  
5 A. HRCBM-F.  
6 Q. D-O-R?  
7 A. Yes.  
8 Q. Is he a member of the Houston Racquet Club?  
9 A. He is.  
10 Q. Is he an officer, board member, manager,  
11 staff or employee of the Houston Racquet Club or has  
12 he been, to your knowledge?  
13 MR. SNYDER: Objection, form.  
14 A. He's never been, to my knowledge.  
15 Q. (BY MR. MARRS) Did he know you from the  
16 Racquet Club?  
17 A. Yes.  
18 Q. And to your knowledge, did he offer you this  
19 job after hearing about the incident on July 18,  
20 2007?  
21 MR. SNYDER: Objection, form.  
22 A. Yes.  
23 Q. (BY MR. MARRS) And when do you believe  
24 you'll be starting over at A-1?  
25 A. Possibly in the next few weeks.  
0045  
1 Q. Have you been told that you, if you so  
2 choose, can still remain as a part-time employee of  
3 the Racquet Club?  
4 A. Yes.  
5 Q. By who?  
6 A. By Mr. Griffin.  
7 Q. When did he tell you that?  
8 A. I don't know. Maybe a few weeks ago.  
9 Q. In what capacity?  
10 A. As possibly a personal trainer.  
11 Q. Well, how about as a lifeguard or lifeguard  
12 manager on weekends or -- did you-all discuss that?  
13 A. I chose not to ask about that.  
14 Q. Why?  
15 A. Honestly, I just don't think I want to spend  
16 that much time at a full-time job and then doing a  
17 lot of weekend time.  
18 Q. Okay. Prior to April 2006 when you became  
19 the lifeguard manager and aquatics director at  
20 Houston Racquet Club, had you ever served as a  
21 lifeguard before?

22 A. When I first got certified in 2002, I did  
23 some lifeguarding. I was more of a back up in case  
24 one was needed.

25 Q. Where?

0046

1 A. At the Houston Racquet Club.

2 Q. And what do you mean, "in case one was  
3 needed"?

4 A. Well, back when I did that, we had only one  
5 pool. And as I remember, the -- staffing that pool  
6 was much lighter than it is now and so if one or two  
7 people couldn't come, they would just shut down the  
8 pool. So if something like that ever happened, I  
9 would be available to fill-in some of the schedules.

10 Q. Okay. And when did you first become a  
11 certified lifeguard?

12 A. In 2002.

13 Q. And that certification ended when?

14 A. 2005.

15 Q. And did you pick it back up again?

16 A. Not till 2006.

17 Q. Have you ever sat in a lifeguard chair  
18 serving as an active lifeguard at the Houston Racquet  
19 Club?

20 A. Yes.

21 Q. When?

22 A. When I was first certified, I did -- I don't  
23 remember when, and then I did in 2006 and again in  
24 2007.

25 Q. Prior to 2002 at the Houston Racquet Club,  
0047

1 had you ever been a lifeguard?

2 A. No.

3 Q. Had you ever received any training in CPR or  
4 AED from Mr. Lamkin?

5 A. No, I haven't.

6 Q. On July 18, 2007 did you know where all of  
7 the AEDs were located at the Houston Racquet Club?

8 A. Yes.

9 Q. Where were they located?

10 A. There was one at the camp house. There was  
11 one in the fitness center front desk and there was  
12 one at the -- I believe the receptionist desk of the  
13 main clubhouse.

14 Q. Are you sure?

15 A. I'm not 100 percent sure about that last

16 one.

17 Q. At the camp house, where was the AED stored  
18 as of July 18, 2007?

19 A. I'm not sure where they kept it in the camp  
20 house.

21 Q. Was it in a cabinet, on the wall, behind a  
22 counter, under a desk, where?

23 A. I don't know.

24 Q. Where was the AED stored in the fitness  
25 center as of July 18, 2007?

0048

1 A. It was on a counter behind a desk.

2 Q. What counter?

3 A. The reception area is -- it's just got a big  
4 counter when you first walk in and the people that  
5 work there sit right behind. And behind them is a --  
6 is a large just counter top and it was -- it was  
7 right there, the back one.

8 Q. And how about the one in the main building?

9 A. See, I believe that one was kept at the  
10 receptionist desk.

11 Q. Are you sure?

12 A. Not 100 percent sure. That's -- I believe  
13 that's where I've heard it's been -- it was.

14 Q. Okay. But on July 18, 2007 you weren't  
15 exactly sure where that one was kept, correct?

16 A. Correct.

17 Q. On July 18, 2007 if there was an emergency  
18 where an AED would be useful to perhaps save  
19 someone's life, you did not know where -- exactly  
20 where two of the three AEDs were stored, correct?

21 MR. SNYDER: Objection, form.

22 A. That would be correct.

23 Q. (BY MR. MARRS) The -- where was your  
24 office?

25 A. My office was in the fitness building,

0049

1 directly facing the pool, the lap pool.

2 Q. And that's the very building where you say  
3 the third AED device was, but you aren't exactly sure  
4 where it was stored, correct?

5 A. Incorrect.

6 Q. Okay. Correct me.

7 A. That one was behind the fitness center  
8 receptionist desk.

9 Q. Okay. Your office was in the fitness center

10 building?

11 A. Yes, sir.

12 Q. Okay. How many children were in the family  
13 pool at the time that John Pluchinsky was discovered  
14 floating facedown in the water on July 18, 2007?

15 A. I believe there were -- there were between  
16 30 and 40 children.

17 Q. How many counselors?

18 A. I'm not sure. I believe there was somewhere  
19 between maybe eight and ten.

20 Q. So then how many children plus campers were  
21 there in the pool at the time John Pluchinsky was  
22 discovered?

23 A. That I would say, maybe between -- a little  
24 bit over 30, a little bit over 40 then.

25 Q. But when you say there were 30 to  
0050

1 40 children in the pool, are you including the  
2 counselors or not?

3 MR. SNYDER: Objection, form.

4 A. No, I'm not including them.

5 Q. (BY MR. MARRS) Okay. So if there were 30  
6 or 40 children and eight or ten counselors that we  
7 know, there was anywhere from 38 to 50 individuals in  
8 the pool that would either be children or counselors,  
9 right?

10 A. Yes, possibly. I remember there was some  
11 kids up on the slide steps and so, I'm including  
12 those children that were up there as well.

13 Q. Okay. How many different camp groups were  
14 in the pool at the time John was discovered?

15 A. I believe there may have been three  
16 participating at that pool.

17 Q. A group of four-year-old boys, a group of  
18 four-year-old girls, and a seven-year-old group?

19 A. I think that's right.

20 Q. And the seven-year-old group was a boys'  
21 group?

22 A. I believe that's right.

23 Q. How many moms were in the pool at the time?

24 A. Oh, I don't know. I remember a few.

25 Q. What do you mean by "a few"? What does that  
0051

1 mean to you?

2 A. Between two to four.

3 Q. How many non-campers, in other words,

4 children in the pool that weren't campers were in the  
5 pool at the time John was found?

6 A. I don't know at the time John was found.

7 Q. When we -- When you told me before how many  
8 children are in the pool, are you talking about  
9 campers as part of that?

10 A. I'm talking overall.

11 Q. Okay.

12 A. Overall.

13 Q. Members and guests, children?

14 A. Yes.

15 Q. Okay. And how many kids were on the slide  
16 at the time John was found?

17 A. Again, I don't know at the time John was  
18 found.

19 Q. How about at the time John was in the pool?

20 MR. SNYDER: Objection, form.

21 A. I would say something close to eight.

22 Q. (BY MR. MARRS) And when you say eight kids  
23 on the slide, do you mean either on the steps or  
24 waiting on the top or sliding down, correct?

25 A. Yes, sir.

0052

1 Q. And who was manning and watching that slide  
2 at the time?

3 A. That was 15 y/o LG #2 .

4 Q. Is it your understanding that 10 to  
5 15 minutes prior to John being found that  
6 4 y/o B-CC #2 had piggybacked him over to the beach area?

7 MR. SNYDER: Objection, form.

8 A. You know, I can't be sure. I've heard  
9 something like that, but I --

10 Q. (BY MR. MARRS) Well, have you heard  
11 anything from Mr. Lamkin to that effect?

12 A. I think I have. I think that's right. I  
13 really can't be 100 percent sure.

14 Q. Were you aware of the fact that Mr. Lamkin  
15 specifically made a statement to that effect?

16 MR. SNYDER: Objection, form.

17 A. Now I am. I --

18 Q. (BY MR. MARRS) And are you aware that John  
19 Pluchinsky was found some 20 to 25 feet away from  
20 where 4 y/o B-CC #2 set him down?

21 A. I suppose. I really wasn't aware exactly of  
22 where those things happened.

23 Q. What's your understanding of how far from

24 where John Pluchinsky was set down by 4 y/o B-CC #2  
25 he was found some 10 or 15 minutes later floating  
0053

1 facedown?

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) How many feet?

4 A. I don't know where he was placed. I really  
5 don't know where he was placed. I know where he was  
6 found.

7 Q. Where was he found?

8 A. He was found near one of the -- near the  
9 side wall over there on the west side.

10 Q. Let me show you what's been marked as  
11 Exhibit Number 14B.

12 MR. MARRS: If we could, focus out for  
13 a second.

14 MR. PLETCHER: Hang on.

15 MR. MARRS: Well, why don't you take  
16 care of that glare there. There we go.

17 Q. (BY MR. MARRS) Okay. Can you see that  
18 okay, Mr. Palmer?

19 A. I can see it okay, yes.

20 Q. Okay. Now, tell me about where he was  
21 found. And I've got this "X" here.

22 A. Yeah.

23 Q. Don't be swayed by that one way or the  
24 other. About where was he found, to your knowledge?  
25 Around here, around here?

0054

1 A. Is it okay if I look at that right here?

2 Q. Let me give it to you and let you do it with  
3 the red pen.

4 A. It almost looks like a blueprint. Thank  
5 you. I appreciate it. It's hard to look at this  
6 with that "X" right here.

7 Q. Just ignore the "X".

8 A. Yeah, I'm sorry.

9 Q. And if you would, can you just kind of mark  
10 out the "X", the black "X" that was originally there.  
11 Just scribble through it so I can't see it anymore.

12 A. Okay.

13 Q. Yeah, there you go. Okay. And can you --  
14 Can you just put your initials next to the red "X"  
15 and put a circle around the red "X" as well?

16 A. Yes, sir.

17 Q. I appreciate it.

18 A. (Witness complies.)  
19 Q. And can you put a red square where it's your  
20 understanding that 4 y/o B-CC #2 set him down when  
21 she says that she set him down in the -- piggybacked  
22 him and set him down in the southwest corner at the  
23 edge of the shallow play area?

24 A. Sir, I really couldn't be sure. I mean, I  
25 could probably --

0055

1 Q. Have you talked to 4 y/o B-CC #2 ,  
2 4 y/o B-CC #1 , some of the counselors about what happened  
3 that day?

4 A. No. I've heard of them talk about it, but I  
5 never sat them down to ask them any questions.

6 Q. Okay. Well, what have you heard them talk  
7 about in terms of that?

8 A. To be honest, nothing in terms of that,  
9 just -- you know, conversation of being in shock  
10 afterwards.

11 Q. Okay. Have you heard 4 y/o B-CC #2 ever  
12 say anything about her -- where she sat John  
13 Pluchinsky down?

14 A. I haven't.

15 Q. Have you had any conversation whatsoever  
16 with 4 y/o B-CC #1 or heard 4 y/o B-CC #1 say  
17 anything about whether or not she saw John Pluchinsky  
18 in the 10 or 15 minutes before he was discovered?

19 A. I remember her saying she had been playing  
20 with him, but that's the extent.

21 Q. Okay.

22 A. I really don't remember or I -- you know, I  
23 don't know that I know anything else other than that.

24 Q. Well, do you know of any facts whatsoever  
25 indicating that anyone saw John Pluchinsky in the 10

0056

1 or 15 minutes before he was discovered?

2 MR. SNYDER: Objection, form.

3 A. Yes.

4 Q. (BY MR. MARRS) What facts?

5 A. Well, I did speak with 15 y/o LG #1 the very  
6 next day. And you know, I asked her if she had seen  
7 him and she said that she had.

8 Q. Had seen him when or did she say?

9 A. She didn't say. I knew there was a question  
10 about a certain five- or ten-minute period of time  
11 where nobody saw him, so that's what I asked her

12 about and she --

13 Q. Tell me everything she told you.

14 A. She said -- Well, I asked her, "You know,  
15 how is this possible", you know?

16 And she said, "Well, I saw him and he  
17 was playing." And that's when -- that's the only  
18 conversation I've had with anyone about that, but she  
19 said that she had seen him.

20 Q. How many minutes before finding him facedown  
21 in the water had she seen him?

22 A. Immediately prior.

23 Q. Immediately prior to what?

24 A. To her signaling him. She said that while  
25 scanning she -- now she didn't know John's name. As  
0057

1 a lifeguard, you know, she just didn't know people's  
2 names. I'm sorry. She remembered his shorts. She  
3 knew -- I forget what his shorts were, but he -- she  
4 said, "I remember the little boy with this type of  
5 shorts." She says in the course of her scanning she  
6 saw, I don't know, a couple of little boys playing  
7 somewhere here (indicating), she scanned away.

8 Q. When you say "somewhere here," you're  
9 pointing to where?

10 A. I'm pointing at this area (indicating). She  
11 says she saw them around somewhere in this part of  
12 the beach entry, you know (indicating).

13 Q. Okay. Circle the area that she told you  
14 that she saw him in.

15 A. Okay. Now, she did say around here  
16 (indicating). So I'm going to -- this is almost a  
17 guess, but I would say it would be somewhere, you  
18 know, near -- somewhere around here (indicating).

19 Q. Okay. Go ahead and make a circle around  
20 that.

21 A. I'll make a circle. I would --

22 Q. Then put a line going to that and then  
23 write, "conversation with 15 y/o LG #1 ."

24 A. Okay. Should I do it in red?

25 Q. That's fine.

0058

1 A. Okay. Would you like me to initial that as  
2 well?

3 Q. Uh-huh.

4 MR. SNYDER: Is that a "yes"?

5 Q. (BY MR. MARRS) So let's put that up.

6 Okay. And you had this conversation with 15 y/o LG #1 when  
7 exactly?

8 A. July 19th.

9 Q. And where were you?

10 A. When I was speaking with her?

11 Q. Yes.

12 A. I believe we were standing near the guard  
13 stand where she had been sitting the day before.

14 Q. So you were actually at the family pool  
15 discussing this with 15 y/o LG #1 ?

16 A. Yes, sir.

17 Q. Okay. And who else was present while you  
18 were discussing this with 15 y/o LG #1 ?

19 A. Nobody.

20 Q. And she told you she had immediately prior  
21 to him -- to her actually discovering him herself  
22 seen him over here somewhere in this area where  
23 there's a black circle on Exhibit 14B where you had  
24 written in red "conversation with 15 y/o LG #1 GP," correct?

25 A. Yes, sir.

0059

1 Q. Okay. And did you ask her, "What do you  
2 mean by immediately"?

3 A. Yes.

4 Q. And what did she say?

5 A. She said that she in the course of scanning  
6 the pool looked over and saw some little kids  
7 playing, some little boys playing. You know, she saw  
8 that and I don't know, you know, if it was the very  
9 next or something like that, but at a certain point  
10 she says, you know, one scan they were playing and  
11 then another scan one of them wasn't. And he was --  
12 he was facedown in the water.

13 Q. And what did she tell you she did then?

14 A. She says she noticed that he was doing that.

15 Q. Doing what?

16 A. Just facedown.

17 Q. Did he have goggles on?

18 A. I don't know.

19 Q. Okay.

20 A. With the activity going on, she said it  
21 looked like he could have been kind of swimming  
22 around a little bit, but -- so she did another scan  
23 and when she came back and saw that he was still  
24 doing the same thing, that's when she got off the  
25 stand and called to -- I believe it was 4 y/o B-CC #3 and

0060

1 that's when the whole thing began.

2 Q. So, she has not told you any specific amount  
3 of minutes between the time she told you she had seen  
4 him playing with the other little boy in the beach  
5 area and the time that he was found floating facedown  
6 in a different location of the pool; is that right?

7 A. That's right. No -- yeah, she didn't give  
8 me a specific amount of minutes.

9 Q. You don't know if that was five minutes, you  
10 don't know if that was ten minutes, you just don't  
11 know?

12 A. It wasn't that much because I asked her, you  
13 know.

14 Q. Okay.

15 A. They've asked us about -- and by "they", I  
16 mean the officers the day before, they were asking,  
17 you know, the counselors. And I said, you know,  
18 it's -- there's a time -- period of time here where  
19 nobody seems to have seen him. And she said, "No, I  
20 never not saw him." You know, I -- and I believe it  
21 was -- I believe it was because of his shorts that  
22 she kept recognizing who he was.

23 Q. And what specifically about his shorts do  
24 you recall her mentioning?

25 A. I don't remember at all. I don't know if it

0061

1 was the print or the color. I really don't remember.

2 Q. Have you read 15 y/o LG #1 's various  
3 statements that she's given in this matter?

4 A. I haven't.

5 Q. Who was supervising John Pluchinsky at the  
6 time he was playing with the other little boy  
7 according to 15 y/o LG #1 in the beach area as you've  
8 just testified?

9 A. I don't know.

10 Q. Well, who was the other little boy John was  
11 playing with supposedly according to 15 y/o LG #1  
12 during your conversation on July 19?

13 A. I don't know that either.

14 Q. Well, did you ask 15 y/o LG #1 on July 19th  
15 when she's telling you, "Oh, well, I saw him over  
16 there, the beach area, with some other boy," didn't  
17 you ask her, "Well, was there a counselor watching  
18 him?"

19 Did you ask her that?

20 A. I didn't ask her that.

21 Q. Did you ask her, well, was there an adult  
22 over there with him?

23 A. I don't think I asked that either.

24 Q. Did you ask her, Well, then who allowed this  
25 little boy who's sitting there playing in the beach  
0062

1 area to travel all the way from this area that I'm  
2 pointing to in 14B where he supposedly was playing  
3 all the way over to this area where you say he was  
4 found with the red "X" and your initials GP?

5 A. Yes.

6 Q. What did she say?

7 A. I don't know. I didn't ask --

8 Q. You didn't?

9 A. -- who was supervising him.

10 Q. Okay. How far is it from say the middle of  
11 this red -- excuse me, strike that.

12 How far is it from the middle of this  
13 black circled area where you say 15 y/o LG #1 told  
14 you he was playing with a boy before his death and  
15 this area, the red "X" where you say John Pluchinsky  
16 was found, how many feet?

17 A. Oh, wow, that would be an absolute guess on  
18 my part, but possibly --

19 Q. Could it be 20 to 25 feet away?

20 A. It's possible.

21 Q. And how many baby -- how many four-year-old  
22 feet away do you think that is?

23 A. How many baby feet?

24 Q. How many four-year-old feet? If it's  
25 25 feet away, let's say, it would take more steps for  
0063

1 a little four-year old to travel that distance than  
2 an adult, correct?

3 A. I see what you're saying, yes.

4 Q. Okay. Through your investigation or look at  
5 this or talking to counselors or lifeguards after  
6 July 18th about what happened to John Pluchinsky,  
7 what's your understanding of how in the world John  
8 Pluchinsky was allowed to go unsupervised traveling  
9 all the way from the beach area all the way the  
10 distance to where he was found floating in the water?

11 MR. SNYDER: Objection, form.

12 A. I really don't have a clear understanding of  
13 how that happened.

14 Q. (BY MR. MARRS) What's your understanding of  
15 who was watching John Pluchinsky as he traveled this  
16 distance?

17 A. I'm not sure who was watching him.

18 Q. What's your understanding of how many times  
19 15 y/o LG #1 saw John Pluchinsky as he traveled this  
20 distance from the beach area all the way to where he  
21 was found floating facedown, if at all?

22 A. My understanding is that she saw him -- I  
23 don't know if she saw him the entire time. I don't  
24 know if she saw him travel or how he -- I know --  
25 all I know is that she said she saw him playing and

0064

1 then he wasn't.

2 Q. And who did she yell to to say, "Hey, be  
3 sure to watch that kid", referring to John  
4 Pluchinsky?

5 MR. SNYDER: Objection, form.

6 A. I'm not sure that she yelled at anyone.

7 Q. (BY MR. MARRS) Did she ever get down off  
8 her stand and walk over to make sure that John  
9 Pluchinsky could make it to where he was traveling  
10 to, to your knowledge?

11 A. Not to my knowledge.

12 Q. Did you have any clue or understanding  
13 whatsoever of who this other child is that John  
14 Pluchinsky was supposedly playing with in the beach  
15 area?

16 A. No, sir, I don't.

17 Q. Have you seen any of the statements given by  
18 15 y/o LG #1 regarding this matter?

19 MR. SNYDER: Objection, form.

20 A. No, sir.

21 Q. (BY MR. MARRS) You never looked at them to  
22 see whether or not what she told you the day after  
23 the accident comports with what she told the CPS  
24 investigators or the police?

25 A. No, sir.

0065

1 Q. What specific counselor had their eyeballs  
2 on John Pluchinsky as he was playing in the beach  
3 area supposedly as 15 y/o LG #1 told you?

4 A. I don't know.

5 Q. What specific counselor was responsible for  
6 watching John Pluchinsky on the day he died?

7 A. I don't know that either.

8 Q. Who did the counselors decide among  
9 themselves would watch John and any other one or two  
10 boys of the four-year old group?

11 A. I don't know.

12 Q. Was the west end of the pool crowded  
13 immediately prior to John Pluchinsky's death?

14 A. I'm not sure.

15 Q. How many of the 2007 summer campers were in  
16 this half of the pool, east half where the slide is  
17 versus the west half where the beach area is?

18 A. I don't know that either exactly at that  
19 time. I know there were some by the slide and I knew  
20 the little ones were on that west side. That's all  
21 know.

22 Q. Well, do you know where most of the  
23 four-year-old campers, the two groups of four-year  
24 olds were immediately prior to John Pluchinsky  
25 drowning?

0066

1 A. No, sir, not immediately prior.

2 Q. How many lines do you have going across the  
3 pool, if any?

4 A. You mean like ropes or something like this?

5 Q. Yes.

6 A. We have one.

7 Q. Is this the location shown on Exhibit 14B?

8 A. No. Go straight north and south.

9 Q. Okay. So across here or across here  
10 (indicating)?

11 A. Maybe more around that second part.

12 Q. So, you think across here or is there -- why  
13 don't you draw it for me on Exhibit 14B?

14 A. Yeah, I'm sorry. It's hard to tell from  
15 this.

16 Q. You know more about it.

17 A. Yeah. Okay. You know what, that is -- that  
18 is the line.

19 Q. Okay.

20 A. And it's -- yeah, I'm sorry about that.

21 Yeah, that is the line going across here  
22 (indicating).

23 Q. All right. And it's attached by hooks?

24 A. Yes, sir.

25 Q. That are permanently installed at the pool?

0067

1 A. Yes.

2 Q. Okay. Now, the four-year olds were not  
3 limited to any particular part of the pool, were  
4 they?

5 A. I don't know. I don't know if they were  
6 asked not to take them anywhere. It's a little bit  
7 deeper on that side, so...

8 Q. On what side, the east side?

9 A. Yes, sir. So I would -- I wouldn't think  
10 that they would have been over there, but I don't  
11 know.

12 Q. Do you know whether or not the four-year  
13 olds were limited by the counselors to any particular  
14 part of the family pool?

15 A. I don't know that.

16 Q. Do you know whether or not the four-year  
17 olds were limited to any particular part of the  
18 family pool by any lifeguards?

19 MR. SNYDER: Objection, form.

20 A. Well, the lifeguards would limit anybody,  
21 any little kid. If they notice any kind of, you  
22 know, difficulties swimming or something or if there  
23 were -- you know, a lot of kids would come out with  
24 this little life vests, would kind of swim out to the  
25 little island where the fountains are.

0068

1 Q. (BY MR. MARRS) Here (indicating)?

2 A. Yes. And that's maybe 6 inches deep. And a  
3 lot of times they could sit there and splash around,  
4 and they would throw their jackets off and, "Look,  
5 Mommy, I can run" and all this. In cases like that,  
6 the guards would get them out of the water -- you  
7 know, would either whistle.

8 Q. But generally, was there any rule at the  
9 Houston Racquet Club that limited four-year olds to  
10 any particular portion of the pool?

11 A. No.

12 Q. And in looking over their statements, have  
13 you seen where 4 y/o B-CC #2 and 4 y/o B-CC #5  
14 communicated that they were sitting on the ledge, the  
15 rock ledge in the pool talking at some point in time?

16 A. I haven't really read any of the statements.

17 Q. If they had said that, what would -- what  
18 would that mean to you in terms of the family pool  
19 and where that rock ledge would be?

20 A. I think it's -- the rock ledge is where your  
21 pen was just a second ago, right. That's the rock

22 ledge.

23 Q. Is it here or is it --

24 A. It's there (indicating).

25 Q. Okay. Is where it says sun chairs, tanning

0069

1 deck, this area here?

2 A. Yes.

3 Q. Okay. That I'm circling in blue --

4 A. Okay.

5 Q. -- would be considered the rock ledge; is

6 that correct?

7 A. Yes. That's the same surface as where the

8 fountains are, so I suppose that that's where they

9 are talking.

10 Q. Okay. Well -- and if they said it was the

11 northwest corner, would you expect it would be here

12 (indicating)?

13 A. Oh, yes.

14 Q. Okay. Aside from what 15 y/o LG #1 may have

15 told you, do you have any facts indicating that any

16 counselor saw John Pluchinsky in the ten minutes

17 prior to him being discovered floating facedown?

18 A. I don't.

19 Q. How long was John Pluchinsky left

20 unsupervised before he was found floating facedown?

21 MR. SNYDER: Objection, form.

22 A. I don't know.

23 Q. (BY MR. MARRS) What were you doing when you

24 first learned there was something wrong at your club

25 July 18, 2007?

0070

1 A. I had just sat down for lunch.

2 Q. Where?

3 A. Inside the clubhouse.

4 Q. Did the ambulance get to the scene before

5 you did?

6 A. No.

7 Q. And where is the clubhouse where you were

8 having lunch?

9 A. If you're looking at the pool, if you

10 continue northwest where the rock ledge is, just draw

11 a straight line that way (indicating). Yes, that

12 would be it.

13 Q. How far?

14 A. The building is not very far away. I don't

15 know how far.

16 Q. And is that where one of the AEDs was  
17 stored?

18 A. I believe it was at the receptionist area of  
19 that building.

20 Q. How many steps from where you were having  
21 lunch?

22 MR. SNYDER: Objection, form.

23 A. I don't know. You would have to go through  
24 the restaurant and up some steps, so... I don't  
25 know. I --

0071

1 Q. (BY MR. MARRS) How long would it take you  
2 if you ran from where you were sitting there having  
3 lunch to go get an AED?

4 MR. SNYDER: Objection, form.

5 Q. (BY MR. MARRS) Approximately?

6 A. About 20 seconds.

7 Q. Okay.

8 A. I don't know.

9 Q. And how did you learn that there was  
10 something wrong at the club on July 18, 2007?

11 A. Our executive chef told me that he had heard  
12 that there was an ambulance on its way.

13 Q. Okay.

14 A. And I asked him, "For what? What's going  
15 on? For the pool?"

16 And he said, "Yes, the pool." And  
17 that's when he and I both took off and we came out to  
18 the pool.

19 Q. Okay.

20 A. As I came out the door, the EMS guys -- I  
21 think we just kind of got there at the same time.

22 Q. And when your chef told you there was  
23 something wrong at the pool and an ambulance had been  
24 called, did you run up real quick and get that AED  
25 device before you ran to the pool?

0072

1 A. I did not.

2 Q. Why not?

3 A. I don't know. You know, the only other time  
4 something like this had happened, somebody had hit  
5 their head on the playground and -- you know, so I  
6 didn't know what was going on, so I just got up and  
7 ran out.

8 Q. Okay. How many drills had you given at the  
9 Houston Racquet Club, emergency drills?

10 A. We'd done one prior with deep-water saves.

11 Q. When was that?

12 A. I don't know. It may have been at some  
13 point in possibly June. I would say June.

14 Q. Of?

15 A. 2007.

16 Q. What do you mean by "we"?

17 A. It was -- LG Supv and I did it.

18 Q. Who participated other than you and Steve?

19 A. Well, all the lifeguards on that day's  
20 shifts.

21 Q. Well, and what did that drill consist of?

22 A. Just recognizing somebody in distress and  
23 how to properly come off the stand, how to alert  
24 other guards around you and pulling them out.

25 Q. That did not include any issues, drills,

0073

1 reenactments of giving CPR, correct?

2 A. Correct.

3 Q. It did not include anything regarding AED,  
4 correct?

5 A. Correct.

6 Q. Prior to July 18, 2007, how many drills had  
7 you given with respect to CPR?

8 A. None.

9 Q. With respect to AED?

10 A. None.

11 Q. With respect to knowing where to go run and  
12 grab the AED and use it?

13 A. We covered that on an initial lecture before  
14 the season started.

15 Q. Well, you did -- on the initial lecture  
16 before the season started, you did not specifically  
17 show the lifeguards nor the counselors exactly where  
18 the AED devices were stored, did you?

19 A. No. I just told them where they were, but  
20 we didn't walk over or anything like that.

21 Q. You just told them verbally the building  
22 where they were, correct?

23 A. And the area.

24 Q. But you did not tell them where exactly they  
25 were stored, correct?

0074

1 A. Incorrect. The fitness center -- I knew  
2 exactly where the fitness center one was and that's  
3 the one I spoke about.

4 Q. Okay. You didn't tell them where the one  
5 was stored at the camp house or the clubhouse,  
6 correct?

7 A. Correct.

8 Q. And do you have documentation or any  
9 documents indicating the initial lecture that you  
10 gave prior to 2007 summer camp?

11 A. Yes. I had a small handwritten sheet that I  
12 kind of spoke off of.

13 Q. When did you do the handwriting?

14 A. Sometime before the meeting. I can't be  
15 sure.

16 Q. And where is that small handwritten sheet  
17 you're talking about?

18 A. I don't know where it is right now.

19 Q. Have you seen it recently?

20 A. No. I -- Mr. Griffin asked me to turn it in  
21 to him and that's the last time I ever saw it.

22 Q. Okay.

23 MR. SNYDER: It's 12:00. Why don't we  
24 take a lunch break.

25 MR. MARRS: Give me -- give me just a  
0075

1 second. Give me just one minute.

2 Q. (BY MR. MARRS) And was that -- Was that  
3 sheet dated?

4 MR. PLETCHER: Here it is.

5 A. I'm not sure if I dated it or not.

6 Q. (BY MR. MARRS) Okay. Let me show you  
7 what's been marked as Defendant's [sic] Exhibit  
8 Number 41, a document that says "Monday meeting with  
9 guards" and then it says "2006 rules." And ask you  
10 whether or not that would be the handwritten document  
11 you would have been referring to in 2007?

12 A. May I see it over here?

13 Q. Yes.

14 A. I'm sorry. I'm having trouble seeing that.

15 MR. PLETCHER: Sure.

16 THE WITNESS: I appreciate it.

17 MR. SNYDER: Take your time.

18 THE WITNESS: Okay.

19 A. Yes, sir. I believe this is the one I used.

20 Q. (BY MR. MARRS) Did you have a sign-in sheet  
21 indicating -- or any kind of sheet indicating who  
22 participated in that lecture?

23 A. Yes. I'm sorry.

24 Q. Okay.  
25 A. We did.

0076

1 Q. And where is the sign-in sheet indicating  
2 who participated in the lecture?

3 A. I don't know.

4 Q. Have you seen it recently?

5 A. No, sir.

6 Q. And what kind of sign-in sheet was it?

7 A. It was just a general sign-in sheet. We put  
8 their names. And I think I used it also to take down  
9 their swimsuit sizes, T-shirt sizes, just equipment  
10 that they would need, just a general sign-in sheet.

11 Q. And would it have been specifically for this  
12 initial lecture that you say is -- Exhibit Number 41  
13 relates to?

14 A. You mean?

15 Q. I mean, would the sign-in sheet be for those  
16 to sign up on the day that they were receiving this  
17 orientation?

18 A. Oh, sure. And I also used it for any guards  
19 that -- you know, this was at the very beginning of  
20 the season in May, so I use it for all the guards  
21 that were -- that were going to be able to start  
22 work.

23 Q. Okay. In May of 2007?

24 A. Yes, sir.

25 Q. Okay.

0077

1 MR. MARRS: And we do request to get  
2 that sign-in sheet, Mr. Snyder. It has not been  
3 produced to us. Put that on your list.

4 Q. (BY MR. MARRS) Can you see if you can  
5 locate that?

6 A. I can try. Because of the nature of that  
7 sign-in sheet, it went through a lot of traffic.  
8 Because I used it, you know, at the swim shop to go  
9 get their swim suits, so I'll try to locate it.

10 Q. Okay. Please give that to your lawyer.

11 A. Yes, sir.

12 MR. SNYDER: Let's break.

13 Q. (BY MR. MARRS) And the -- and that sign-in  
14 sheet you're talking about, would that be --

15 MR. SNYDER: Let's break. I said let's  
16 break. Okay?

17 MR. MARRS: Are you that hungry?

18 MR. SNYDER: Pardon?

19 MR. MARRS: Are you that hungry?

20 MR. SNYDER: Are you going to --

21 MR. MARRS: That's fine.

22 MR. SNYDER: -- like finish in 20 or

23 30 minutes?

24 VIDEOGRAPHER: Off the record. The

25 time is 12:02 p.m.

0078

1 (Lunch recess was taken.)

2 VIDEOGRAPHER: Back on the record. The

3 time is 12:59 p.m.

4 Q. (BY MR. MARRS) And with respect to the  
5 emergency drill, deep-water saves that you indicated  
6 you had in June of 2007 with LG Supv and others  
7 participating, do you have a sign-in sheet for that?

8 A. We didn't.

9 Q. Do you have any documentation regarding or  
10 relating to that drill?

11 A. I don't.

12 Q. Does anybody, to your knowledge?

13 A. Not to my knowledge, no.

14 Q. Were any of the lifeguards that were on duty  
15 June 18, 2007 [sic] at the family pool participants  
16 in your June 2007 emergency drill on deep-water  
17 saves?

18 A. I don't know. I don't remember.

19 Q. How could you find out?

20 MR. PLETCHER: You said June 18. It's  
21 July.

22 Q. (BY MR. MARRS) I meant July 18, 2007, but  
23 you understood what I meant, didn't you?

24 A. Yeah. I didn't even catch it as anything  
25 else.

0079

1 Q. Okay.

2 A. I don't -- I don't know. I don't -- we  
3 didn't keep -- we didn't do a sheet that day or  
4 anything. It's just something we just did with  
5 everyone that was there.

6 Q. Okay. And how long did that drill take for  
7 you to perform?

8 A. Maybe about an hour.

9 Q. Aside from that drill, June 2007 emergency  
10 drill and deep-water saves that you've already  
11 testified about, had you ever performed any other

12 types of emergency drills for your lifeguards prior  
13 to that?

14 A. No, sir.

15 Q. Or since then?

16 A. No, sir.

17 Q. And did you have any kind of orientation  
18 with respect to your duties and responsibilities when  
19 you became the aquatics director?

20 A. Yeah. I would say so, yes.

21 Q. You would say so?

22 A. Yes.

23 Q. Meaning what?

24 A. Well, Mr. Lamkin and I -- I mean, he talked  
25 to me about it, you know, extensively from the time,  
0080

1 you know, they asked me to do this to the time I  
2 started was maybe -- it was the month before, I  
3 believe. So during that whole time, you know, I just  
4 started getting acquainted with the -- some of the  
5 procedures that he'd done in the past.

6 Q. And is any of that documented?

7 A. I don't believe so.

8 Q. Who was the aquatics director before you  
9 were at the Houston Racquet Club?

10 A. It was a gentleman named AD #2.

11 Q. How do you spell that?

12 A. AD #2.

13 Q. How long had he been in that position prior  
14 to you, to your knowledge?

15 A. Oh, I don't remember, maybe -- maybe some  
16 months, but I'm not quite sure.

17 Q. Less than a year?

18 A. I'm not sure.

19 Q. Was he still the aquatics director as of the  
20 time you became aquatics director? In other words,  
21 when you came on board had he just recently stopped  
22 being aquatics director or was he still there in some  
23 capacity or what?

24 A. He wasn't there anymore when I started, but  
25 I don't remember when he stopped being there.

0081

1 Q. What's your understanding of why he stopped  
2 being there?

3 A. Oh, I don't know. I really think he just  
4 walked out one day.

5 Q. Do you know why?

6 A. I don't.  
7 Q. Do you know where he's employed now?  
8 A. I don't.  
9 Q. Why did you leave Paragon Engineering?  
10 A. Well, Halliburton, I believe, bought that  
11 company and so they got rid of all of the -- of a lot  
12 of people and I was just one of them. That's what I  
13 was told.  
14 Q. Were -- you were let go?  
15 A. Yes.  
16 Q. Were you fired? Was it a RIF? What was it;  
17 do you know?  
18 A. They just brought me in and said, "Look,  
19 because of what's been going on, we have to let some  
20 people go, you're one and..."  
21 Q. What documentation exists that sets forth  
22 all of the duties and responsibilities of aquatic  
23 director at the Houston Racquet Club?  
24 A. I don't know. None that I've read, sir.  
25 Q. None that you've seen?

0082

1 A. No.  
2 Q. Is that correct?  
3 A. Yes.  
4 Q. And have you yourself been given any  
5 performance drills to see how you perform in your  
6 duties and responsibilities as aquatics director?  
7 A. No.  
8 Q. At any time?  
9 A. No.  
10 Q. Let me show you what's been marked as  
11 Exhibit 14B -- if you could scope out on that --  
12 which you marked on earlier. And let me hand this to  
13 you real quick and --  
14 A. Yes.  
15 Q. -- why don't you mark for me in red pen  
16 where you understand the wading pool area of the  
17 family pool is.  
18 A. Well, just to make a -- you want me to  
19 circle it somehow and encapsulate?  
20 Q. Sure.  
21 A. Okay. (Witness complies.)  
22 Q. Okay. Let's look on the Exhibit 14B. The  
23 area that you have circled in red here is what you  
24 consider to be the wading pool area of the family  
25 pool?

0083

- 1 A. Yes.
- 2 Q. Okay. And what's your understanding based  
3 on?
- 4 A. Well, it's the calmest part of that little  
5 area right there.
- 6 Q. How deep is the area that you have circled  
7 in red?
- 8 A. It's from zero inches -- around that area is  
9 close to maybe a foot and a half, I believe, foot,  
10 foot and a half.
- 11 Q. Do you believe that the area you've circled  
12 in red is appropriate for four-year olds to play in?
- 13 A. I think so. It's not very deep.
- 14 Q. Do you think that the area that you have X'd  
15 here where I'm pointing right now on Exhibit 14B is  
16 an appropriate area for four-year olds to be in if  
17 they are not being supervised by anyone?
- 18 MR. SNYDER: Objection, form.
- 19 A. I would say depending on swim ability.
- 20 Q. (BY MR. MARRS) Okay. What was John  
21 Pluchinsky's swimming ability on July 18, 2007?
- 22 A. I don't know, sir.
- 23 Q. Do any of your lifeguards know?
- 24 MR. SNYDER: Objection, form.
- 25 A. I don't know.

0084

- 1 Q. (BY MR. MARRS) Had anybody performed a swim  
2 test on John Pluchinsky at any time?
- 3 A. I don't know that.
- 4 Q. Do you know of any facts indicating that  
5 that ever happened?
- 6 A. I don't.
- 7 Q. How deep is this area that you have X'd in  
8 red where John Pluchinsky was found?
- 9 A. That area is 3-and-a-half feet deep.
- 10 Q. 3.5, 3.6?
- 11 A. 3.5 -- yeah.
- 12 Q. Is it marked as 3.5-feet deep in that area?
- 13 A. Yes. It's marked as 3 feet, 6 inches.
- 14 Q. Okay. If you do not know the swimming  
15 ability of a four-year old, let's say a four-year-old  
16 boy, would you want that four-year-old boy in this  
17 area of the pool 3.6-inches [sic] deep without any  
18 supervision if you had no idea where his swimming  
19 ability was?

20 MR. SNYDER: Objection, form.  
21 A. I don't think I would.  
22 Q. (BY MR. MARRS) And frankly, even if you do  
23 know his swimming ability, you're not going to let  
24 him venture out there without being supervised at  
25 all, are you? Would you do that as aquatics  
0085  
1 director?  
2 MR. SNYDER: Objection, form.  
3 A. That depends.  
4 Q. (BY MR. MARRS) On what?  
5 A. On where the parents are.  
6 Q. Let's say the parents aren't there at all.  
7 A. Then I would not.  
8 Q. Would you allow any of your lifeguards to do  
9 that?  
10 A. No.  
11 Q. And if you were in the pool -- If you were  
12 at the pool, would you allow any counselor to do  
13 that? To let a four-year-old boy venture off into  
14 3.6 feet of water and not watch them, would you allow  
15 that to happen?  
16 A. I don't think I would.  
17 Q. Why not?  
18 A. It's just not a very safe situation if --  
19 Q. What could happen?  
20 A. Well, something like this could happen.  
21 Q. He could drown?  
22 A. He could drown.  
23 Q. How long does it take -- Based on your  
24 training as aquatics director and lifeguard manager,  
25 does it take for the typical person to, once they get  
0086  
1 in trouble in the water, to drown?  
2 MR. SNYDER: Objection, form.  
3 A. I don't know. I don't know.  
4 Q. (BY MR. MARRS) Do you have any idea how  
5 long it takes the typical child, once they begin to  
6 drown to lose consciousness?  
7 MR. SNYDER: Objection, form.  
8 A. I don't know that either.  
9 Q. (BY MR. MARRS) Do you have any idea how  
10 many minutes?  
11 MR. SNYDER: Objection, form.  
12 A. I don't.  
13 Q. (BY MR. MARRS) Or to lose consciousness?

14 MR. SNYDER: Objection, form.  
15 A. I don't know that.  
16 Q. (BY MR. MARRS) Or for their lips to turn  
17 blue?  
18 MR. SNYDER: Objection, form.  
19 Q. (BY MR. MARRS) Do you have some kind of  
20 idea how many minutes it takes for someone who goes  
21 under the water for their lips to turn blue from  
22 deprivation of oxygen?  
23 MR. SNYDER: Objection, form.  
24 A. From deprivation of oxygen, I don't know.  
25 Q. (BY MR. MARRS) How about from other causes?  
0087  
1 MR. SNYDER: Objection, form.  
2 A. It could happen quickly, for his  
3 temperature, for example.  
4 Q. (BY MR. MARRS) Well, how about in water  
5 that's about the temperature of the family pool?  
6 MR. SNYDER: Objection, form.  
7 Q. (BY MR. MARRS) On a summer day?  
8 A. It could still happen.  
9 MR. SNYDER: Objection, form.  
10 A. You can still get a little bit cooler than  
11 your body temperature, so you could get blue lips.  
12 Q. (BY MR. MARRS) How many minutes?  
13 MR. SNYDER: Objection, form.  
14 A. I don't know.  
15 Q. (BY MR. MARRS) How long would it take,  
16 based on your training and knowledge, for a child  
17 once they begin to swallow water to lose  
18 consciousness?  
19 MR. SNYDER: Objection, form.  
20 A. I don't know.  
21 Q. (BY MR. MARRS) Or for them to become --  
22 well, to lose a pulse?  
23 MR. SNYDER: Objection, form.  
24 Q. (BY MR. MARRS) Lose any pulse?  
25 A. I don't know that either.  
0088  
1 Q. Or to lose their circulation?  
2 MR. SNYDER: Objection, form.  
3 A. I don't know.  
4 Q. (BY MR. MARRS) Or to become so unresponsive  
5 that CPR cannot bring them back?  
6 MR. SNYDER: Objection, form.  
7 Q. (BY MR. MARRS) Do you know?

8 A. I don't know.

9 Q. Are you aware of the fact that vomiting is  
10 often associated with drowning?

11 A. I've heard that.

12 Q. Did you know that prior to July 18, 2007?

13 A. I've heard that before, yes.

14 Q. And if you pull a child out of the water  
15 because they are found floating facedown and they  
16 begin to vomit, what would that indicate to you?

17 MR. SNYDER: Objection, form.

18 A. They could have taken in some water.

19 Q. (BY MR. MARRS) Is it your understanding  
20 that they could do so even after they lose  
21 consciousness?

22 MR. SNYDER: Objection, form.

23 A. I'm not sure.

24 Q. (BY MR. MARRS) When did 15 y/o LG #1 come  
25 on duty as lifeguard on July 18, 2007, what time?  
0089

1 A. What time that morning?

2 Q. Correct.

3 A. She -- since it was a camp morning, between  
4 8:45 and 9:00 o'clock.

5 Q. And when did she assume her post at the  
6 lifeguard chair in the center of the pool between  
7 east and west ends at the family pool on July 18,  
8 2007?

9 A. 11:00 o'clock.

10 Q. When did 15 y/o LG #2 assume his duties on  
11 the lifeguard stand watching the slide on that day?

12 A. 11:00 o'clock.

13 Q. Were there any children in the family pool  
14 prior to 11:00 o'clock, to your knowledge?

15 A. Yeah, there were.

16 Q. And who were the lifeguards?

17 A. Oh, I think at that time -- I think at that  
18 time it was LP LG and Sr LG #3 .

19 Q. And what was 15 y/o LG #1 and 15 y/o LG #2  
20 doing prior to 11:00 o'clock, to your knowledge?

21 A. I think at that point they were -- they were  
22 off. I think they were just make -- just off stand  
23 on break.

24 Q. Thought they made what?

25 A. They were on break.  
0090

1 Q. And what were they doing after the time they

2 got there at 8:45 or 9:00 a.m. in the morning other  
3 than being on break?

4 A. Well, at that point they straighten up  
5 chairs and things like this, take in dirty towels,  
6 bring out clean towels, just get the pool ready for  
7 people to be there.

8 Q. Had they acted as lifeguards that day, that  
9 morning prior to 11:00, to your knowledge?

10 A. Yes.

11 Q. 15 y/o LG #1 and 15 y/o LG #2 ?

12 A. Yes.

13 Q. Where?

14 A. Just like I said, opening duties and, you  
15 know --

16 Q. On a lifeguard stand?

17 A. They probably did lifeguard by then already.

18 Q. What pool?

19 A. Oh, I'm not sure.

20 Q. How could we find out?

21 A. I don't know.

22 Q. Well, do you have lifeguard sign-in sheets  
23 for July 18, 2007?

24 A. I believe I did, yes.

25 Q. Where would they be found?

0091

1 A. I think I've turned that one in.

2 Q. Okay. Go ahead.

3 A. That was it. I've turned that in for that  
4 day.

5 Q. Okay.

6 A. Yes.

7 MR. MARRS: We request that that be  
8 produced to us, too. I don't think we received that,  
9 Norman.

10 Q. (BY MR. MARRS) And do you also have a  
11 sign-in sheet for people to sign-in when they come to  
12 the family pool?

13 A. Yes.

14 Q. And there should also be one of those for  
15 people that came to the family pool on July 18, 2007,  
16 correct?

17 A. There should be, yes.

18 Q. When is the last time you saw that?

19 A. I don't remember the last time I saw it.

20 MR. MARRS: We request that as well.  
21 We haven't --

22 MR. SNYDER: What's that?  
23 MR. MARRS: The general sign-in sheet  
24 for those entering the family pool.  
25 MR. PLETCHER: Member guest sign-in.

0092

1 MR. MARRS: Yes, we request that as  
2 well. That hasn't been produced and I haven't seen  
3 it.

4 Q. (BY MR. MARRS) Who keeps those sign-in  
5 sheets, lifeguard sign-in, general sign-in sheets?

6 A. During the day or after we're done with them  
7 or --

8 Q. After you're done.

9 A. After we're done? We turn those in to the  
10 fitness desk so they can make any charges for  
11 non-members.

12 Q. Okay.

13 A. Any guest fees.

14 Q. And what was the lifeguard rotation schedule  
15 on July 18th, 2007?

16 A. It was two guards at the -- at each of the  
17 pools. And then they would -- they would move from  
18 resort pool to lap pool. So if you began at the  
19 resort pool, for example, you would do 30 minutes  
20 there, then 30 minutes on the other pool and then you  
21 were off for 30 minutes.

22 Q. And typically, what would the lifeguards do  
23 while they were off?

24 A. They would handle any of the towels, you  
25 know, straighten up chairs again and just the things

0093

1 that keep the grounds looking decent.

2 Q. While they were off for that 30-minute  
3 break, you mean?

4 A. Yes.

5 Q. And then where would they be after that?

6 A. They would either go in the pavilion or any  
7 other covered area, just to get out of the sun for a  
8 while.

9 Q. Sure. But after that 30-minute break --

10 A. I see.

11 Q. -- where would they be rotated to?

12 A. They would start over again.

13 Q. Okay.

14 A. And the first place is always the lap pool.

15 Q. The first place is always the lap pool?

16 A. I'm sorry, the resort pool.  
17 Q. Okay.  
18 A. Yeah.  
19 Q. So you've got basically a three-place  
20 rotation: First is family pool 30 minutes, second is  
21 lap pool 30 minutes, third is on break 30 minutes,  
22 correct?  
23 A. Yes.  
24 Q. Then it starts all over again?  
25 A. Uh-huh.

0094

1 Q. And what kind of written documentation or  
2 writings do you do with respect to, okay, here's the  
3 rotation this morning, here's who's going at the  
4 first place first, here's who's assigned to the  
5 family pool, here's who's going to be at the lap  
6 pool? Where is that rotation or schedule?  
7 A. I didn't keep anything like that.  
8 Q. Okay. Does the Racquet Club keep anything  
9 like that?  
10 A. Not to my knowledge.  
11 Q. So how is it done, just verbally every  
12 morning?  
13 A. Uh-huh, yes.  
14 Q. By who?  
15 A. Usually the guards themselves or the head  
16 guard that day.  
17 Q. Okay. And so who makes the decisions as to  
18 what lifeguards are going to be at a certain pool at  
19 a given time during the day, the lifeguards  
20 themselves or who?  
21 A. Well, all lifeguards guarded -- they got on  
22 every stand, so they all guarded.  
23 Q. So my question is: Who makes the decision,  
24 I think you just said that either the lifeguards or  
25 the supervising lifeguard makes a decision as to what  
0095

1 the rotation is going to be that day; is that right?  
2 A. That's right.  
3 Q. Okay. Which is it? Is it the lifeguards  
4 themselves or is it the supervising lifeguard that  
5 would make that decision?  
6 A. Well, it depends. If, for example, the head  
7 lifeguard at that moment happens to be doing towels  
8 or something and people showed up, the guards would  
9 just go to the stands where -- you know, they would

10 go to that pool where the people were and that would  
11 begin the rotation.

12 Q. Okay. Is it -- Oh, I see what you mean. So  
13 if say, people started showing up at a pool, then the  
14 closest lifeguard to notice it might go over there  
15 and start manning the stand to make sure that the  
16 people were watched?

17 A. Sure.

18 Q. Okay. What about for summer camp, is it the  
19 same thing?

20 A. It's the same.

21 Q. Okay.

22 A. You know, we would just get them on the  
23 stand.

24 Q. How did it happen on July 18th in terms of  
25 15 y/o LG #1 and 15 y/o LG #2 happened to be the  
0096

1 guards that were at the family pool, same way or do  
2 you know how it came down that day?

3 A. The same way. It must have been -- that  
4 must have been the order in which the rotation came  
5 up.

6 Q. Okay. But who decided on that order of  
7 rotation, if anybody?

8 A. I don't remember that morning how it  
9 happened.

10 Q. Did you?

11 A. I didn't.

12 Q. Okay. Did LG Supv , to your knowledge?

13 A. I don't know.

14 Q. Okay. But around 11:00 o'clock you know  
15 that there were some three different groups in the  
16 pool at the same time. Is that a schedule that  
17 you're involved in in terms of summer camp and what  
18 groups are in the pool at the same time or not?

19 A. I'm not involved with any of that.

20 Q. Okay.

21 A. No.

22 Q. Were you even aware of what groups were  
23 going to be in the family pool at the same time on  
24 July 18th?

25 A. Not any specific times, but I know -- I  
0097

1 mean, they all come through, so yes.

2 Q. Okay. Were you specifically aware of how  
3 many four-year olds would be in the family pool at

4 around 11:00 o'clock on July 18th?  
5 A. Yes.  
6 Q. Okay. How many did you think were going to  
7 be in the pool?  
8 A. I thought it would be close to somewhere  
9 around 20, 20 something.  
10 Q. And you learned that when?  
11 A. Well, I just know that that's the limit that  
12 we set, so I was just assuming that.  
13 Q. And what's the limit for four-year olds that  
14 you set?  
15 A. I believe it's 13 per group.  
16 Q. And how many -- Do you have a limit as to  
17 how many groups can be in the pool at the same time?  
18 A. In general or just four-year olds?  
19 Q. Well, let's start with four-year olds.  
20 A. With four-year olds, no, not really. It's  
21 only the two groups, so...  
22 Q. Well, you had a -- more than just two  
23 four-year-old groups that same day, didn't you?  
24 MR. SNYDER: Objection, form.  
25 Q. (BY MR. MARRS) Or not, if you know.  
0098

1 A. No.  
2 Q. Okay.  
3 A. I don't think we had.  
4 Q. Well, how about just generally then, other  
5 than four-year olds. Like you have six-year-old  
6 groups, five-year-old groups, seven-year-old groups,  
7 I mean, is there any kind of rule in terms of how  
8 many groups you can have in the family pool at the  
9 same time?  
10 A. No.  
11 Q. Okay. Because you know that in previous  
12 weeks you had even a lot more children in the pool at  
13 the same time, campers than you did week five, don't  
14 you?  
15 A. Yes.  
16 Q. Okay. So on July 18, 2007, who made the  
17 decision that 15 y/o LG #1 and 15 y/o LG #2 would be  
18 lifeguarding that pool by themselves, if anyone?  
19 A. Just by themselves? I'm not sure if you're  
20 asking how they got into those stands or just in by  
21 themselves, I -- I mean --  
22 Q. Who made the decision they would even be the  
23 only two lifeguards at the family pool at about

24 11:00 o'clock? Who made that decision?

25 A. I don't think anyone made that decision.

0099

1 They were just the ones that were up on the rotation,  
2 you know.

3 Q. And who decided that they would be up on the  
4 rotation or did it just --

5 A. Well, they were there to work, so they were  
6 in their rotation once --

7 Q. Okay.

8 A. -- you know.

9 Q. Well, but it could have been other  
10 lifeguards that happened to be there at

11 11:00 o'clock, correct? That's what I'm trying to  
12 find out.

13 A. Oh, okay. Well, they would have been the  
14 next ones up to go. They probably would have been  
15 the ones that had been on the break already, so it  
16 would have been their turn.

17 Q. Okay. Is there any kind of analysis or  
18 determination before you have two lifeguards on the  
19 stand at the family pool with respect to, well, this  
20 one's got more experience than the other one, so that  
21 would be a good pairing for the pool at this  
22 particular time or no, these two are brand new, we  
23 don't want them together at the same time? Any kind  
24 of analysis like that?

25 A. There is.

0100

1 Q. Okay. Who made that kind of analysis with  
2 respect to who would be serving as lifeguard at the  
3 family pool on July 18, 2007 around 11:00 o'clock, if  
4 anyone?

5 A. That would have been -- well, that would  
6 have been myself and, you know, LG Supv ,  
7 Mr. Lamkin. That's what we do the first couple  
8 months of --

9 Q. Okay. Well, but you didn't even know that  
10 15 y/o LG #2 and 15 y/o LG #1 were the two  
11 lifeguards that were going to be serving at the  
12 family pool July 18th during the 11:00 o'clock hour  
13 when that many kids were in the pool, did you?

14 A. No.

15 Q. Would you -- if you did know that prior to  
16 them being on that stand that particular day with  
17 some -- up to 40 children in the pool, would you have

18 picked those particular two 15-year-old lifeguards to  
19 be watching all of those children at the same time in  
20 the pool?

21 MR. SNYDER: Objection, form.

22 A. I think so.

23 Q. (BY MR. MARRS) Why?

24 A. Well, they were both really good. They were  
25 both very attentive always. You know, 15 y/o LG #1 was a  
0101

1 really good guard and you know, 15 y/o LG #2 -- they are  
2 both very responsible guys and so I had good  
3 confidence in them.

4 Q. Were either of them part of the emergency  
5 drill you say you performed in June of 2007?

6 A. I don't remember.

7 Q. What you do know and what you did know prior  
8 to July 18, 2007 is that both of these lifeguards  
9 were only 15-years old, right?

10 A. Right.

11 Q. Both of these kids were new lifeguards; you  
12 knew that, right?

13 A. I knew that.

14 MR. MARRS: It's Exhibit 38.

15 Q. (BY MR. MARRS) Matter of fact, did you know  
16 that 15 y/o LG #1 had just been certified as a  
17 lifeguard the previous month in June of 2007?

18 A. I was aware of that, yes.

19 Q. And were you also aware that 15 y/o LG #2  
20 had just been certified as a lifeguard in April 2007,  
21 just a couple of months before July?

22 A. I knew that.

23 Q. And were you aware of the fact that neither  
24 15 y/o LG #1 nor 15 y/o LG #2 had been lifeguards  
25 previous to June and April 2007 respectively?  
0102

1 A. I was aware of that, yes.

2 Q. Let's look at Exhibit 38. Can you see that?  
3 Can you see that?

4 A. Oh, yes.

5 Q. Tell the jury what these kind of documents  
6 are. Do you recognize this document?

7 MR. MARRS: Zoom out so we can see the  
8 document as a whole.

9 A. Uh --

10 Q. (BY MR. MARRS) Just generally, are these  
11 time sheets?

12 A. I have no idea what that is.  
13 Q. Okay.  
14 A. Can I see it? I just can't see it.  
15 Q. Sure, of course.  
16 A. I apologize.  
17 Q. Let me show you Exhibit 38.  
18 A. Oh, these are the -- these are the sheets I  
19 record when people punch in and out --  
20 Q. Okay.  
21 A. -- of work.  
22 Q. Okay. Flip through the pages and look at  
23 them real quick before I ask you questions.  
24 A. Okay. Okay.  
25 Q. Okay. Let me have it back. Okay. So with  
0103

1 respect to 15 y/o LG #1 , you can tell from looking at  
2 her time sheet -- on the top it says March 1st to  
3 July 19. We know that she was first certified as a  
4 lifeguard June 16, 2007. So let's go see after she  
5 first became certified as a lifeguard to see how much  
6 experience she had between her first certification  
7 and the date of the incident, which was July 18, '07.  
8 Okay. So if we flip over, we see that the first time  
9 after she became certified that she worked as a  
10 lifeguard and punched in at the Houston Racquet Club  
11 was on June 20th, correct?

12 A. I can't see it, but...  
13 MR. MARRS: Can you pull it up?  
14 MR. PLETCHER: Sure. I'll --  
15 A. I'm sorry. I --  
16 MR. PLETCHER: That's all right.  
17 MR. MARRS: That's okay.  
18 MR. PLETCHER: That's why I'm operating  
19 it.

20 MR. MARRS: Down a little.  
21 Q. (BY MR. MARRS) Okay. Correct? June 20th?  
22 A. That's what it looks like, yes, sir.  
23 Q. And then again, June 21st and June 22nd,  
24 right?  
25 A. Yes.

0104  
1 Q. So for that week, she worked Wednesday,  
2 Thursday, Friday -- or let's just say June 20th,  
3 21st, 22nd, correct?  
4 A. Correct.  
5 Q. Okay. Those three days and then the next

6 days that she worked as shown on this sheet was  
7 July 11th, July 12th, July 13th, July 14th for that  
8 week and then July 16th and then July 17th. And then  
9 we have the day of the incident, July 18th, correct,  
10 sir?

11 A. That's what it looks like, yes.

12 Q. So according to the Houston Racquet Club's  
13 records, 15 y/o LG #1 had worked a total of three,  
14 four, five, six, seven, eight, nine days as a  
15 lifeguard prior to the day John died, correct?

16 A. Correct.

17 Q. And so this indicates that her sum total  
18 experience as a lifeguard before being placed on that  
19 stand on July 18th was nine days of experience,  
20 correct?

21 A. Correct.

22 Q. And if we add up the hours, three, five,  
23 three, six, five, five in minutes -- in additional  
24 minutes, four, five, five -- I've added those up. We  
25 could see here that the total number of hours for  
0105

1 those entire two months of June and July were 55.  
2 And when I take out that day on the 18th I get nine  
3 days, a total of 44 hours of lifeguard experience for  
4 15 y/o LG #1. Does that look about right?

5 A. It does.

6 Q. Now, we know that it rained quite a bit in  
7 June and July of 2007; do you remember that?

8 A. Yeah, I do.

9 Q. It rained a lot, didn't it?

10 A. Right.

11 Q. And when it rains a lot, typically what does  
12 that mean with respect to whether or not the  
13 lifeguard is actually lifeguarding on the stand?

14 A. Oh, it depends on what the weather is doing.

15 Q. Well --

16 A. Yeah.

17 Q. That's what I mean. If it's raining, do you  
18 get -- make people get out of the pool?

19 A. If we can't see the bottom of the pool  
20 clearly, we do.

21 Q. Okay. In June, July, during the same nine  
22 days that 15 y/o LG #1 worked as a lifeguard prior to  
23 July 18th, 2007, those 44 hours, do you know how many  
24 of those hours she actually was on the stand as a  
25 lifeguard?

0106

1 A. I don't.

2 Q. Considering it was raining quite hard during  
3 that time frame, do you think it was probably less  
4 than 44 straight hours on the lifeguard stand?

5 A. I don't know.

6 MR. MARRS: Let's look at 39.

7 MR. PLETCHER: Yeah.

8 Q. (BY MR. MARRS) Now, we do know that even if  
9 15 y/o LG #1 had been serving as a lifeguard during  
10 that entire nine-day time period, at least a third of  
11 those 44 hours would have been on break, that third  
12 rotation, correct?

13 A. Possibly, yes.

14 Q. I mean, that's how you have it.

15 A. Yes.

16 Q. So let's look at Exhibit 39 for  
17 15 y/o LG #2, the other 15-year-old lifeguard at the  
18 family pool and see how much experience 15 y/o LG #2 had  
19 from the time that he got certified on April 14,  
20 2007, to see how much experience he had between that  
21 day, April 14, when he got certified, and the day of  
22 the incident, July 18, '07. Okay. So --

23 MR. MARRS: Zoom out.

24 MR. PLETCHER: Okay.

25 Q. (BY MR. MARRS) Okay. He got certified on  
0107

1 April 14, but no days worked yet, nor the rest of  
2 April, nor any day in May, nor any day in June. And  
3 his first day was --

4 MR. MARRS: Can you zoom in?

5 MR. PLETCHER: Sure.

6 MR. MARRS: I can't see anything.

7 Q. (BY MR. MARRS) July 1st, 2007, four hours,  
8 51 minutes, correct, sir?

9 A. If that's what it says. Yeah.

10 Q. Okay.

11 A. I really can't see it from here. I'm sorry.

12 MR. MARRS: Okay. Can you zoom?

13 Q. (BY MR. MARRS) Okay. July 1st, 2007 from  
14 2:36 to 7:57 p.m., for four hours and 51 minutes, the  
15 first time shown for 15 y/o LG #2. This indicates  
16 he -- that was his first day as a lifeguard, correct,  
17 sir?

18 A. Incorrect.

19 Q. Huh?

20 A. That's incorrect.  
21 Q. Okay. Incorrect meaning?  
22 A. That was that new system that we had been  
23 talking about. When they were rehired in maybe June,  
24 but I had hired him from the beginning. So I don't  
25 think that that was his very first day of work. That

0108

1 was just the first day he was able to punch in on the  
2 new system.

3 Q. Okay. So with the records that we've been  
4 provided by the Racquet Club, what records exist that  
5 show when 15 y/o LG #2 first started working as a  
6 lifeguard at the Houston Racquet Club?

7 A. Well, we had some sign-in sheets and all  
8 those kind of things, so they would sign daily.

9 Q. For each day that he showed up for work as a  
10 lifeguard?

11 A. Yes.

12 Q. And where are those?

13 A. I don't know where those are.

14 MR. MARRS: We request that those be  
15 produced to us, too.

16 Q. (BY MR. MARRS) So, certainly you're not  
17 saying that you had 15 y/o LG #2 on the stand as a  
18 lifeguard prior to him being certified as a  
19 lifeguard, are you?

20 A. Correct. We -- he was not.

21 Q. Okay. So how many days did 15 y/o LG #2  
22 serve as a lifeguard since being certified on  
23 April 14, 2007 prior to July 18, 2007?

24 A. I don't know.

25 Q. Well, who can tell us?

0109

1 A. I don't know that either without the sheets.

2 Q. Was he more experienced than 15 y/o LG #1 at  
3 serving as a lifeguard?

4 A. Yes.

5 Q. Then why was 15 y/o LG #2 given the duty to  
6 watch the slide instead of scanning the whole pool?

7 MR. SNYDER: Objection, form.

8 A. Well, that's probably the way rotation  
9 worked itself out. A lot of people don't like  
10 watching the slide. There is a --

11 Q. (BY MR. MARRS) Why? Because it's  
12 monotonous?

13 A. Well, no. But that's where -- that's where

14 most of the, I guess, saves occur. Some people  
15 just -- they're uncomfortable going there.

16 Q. What do you mean, where most of the saves  
17 occur?

18 A. Because of the way the water lands off the  
19 slide in there, it just creates a bit of a -- like a  
20 swirl, a small current. And, you know, a lot of  
21 times when kids go down there, as soon as they land,  
22 they get pushed down a bit before they come up and  
23 they just -- some kids just get scared of that and  
24 start -- they just get scared and they have to go  
25 in -- they hand them the tube and pull them in, but

0110

1 they just don't know where to go. I think they get  
2 disoriented, and so...

3 Q. And if on July 18, 2007 at the time that  
4 John Pluchinsky was in the pool there were some seven  
5 or eight kids on the slide and 15 y/o LG #2 was at  
6 that end of the pool on his lifeguard stand with the  
7 primary responsibility of watching the slide, would  
8 you expect him to watch the kids as they were going  
9 up the ladder up the slide?

10 A. I would. With kids with camp, though, the  
11 counselors were usually doing that, so it was -- it  
12 was pretty well controlled up on the stairs.

13 Q. Who was doing that as a counselor?

14 A. I don't know.

15 Q. Do you know if anyone was as a counselor?

16 A. I don't know. Typically, somebody was.

17 Q. Okay. But you don't know on July 18th,  
18 correct?

19 A. Correct.

20 Q. And but nonetheless, even if a counselor is  
21 there and watching a kid go up and down the stairs,  
22 15 y/o LG #2 when -- his responsibility is to watch  
23 that slide, is he supposed to watch them when they  
24 get to the top before they start going down the  
25 slide?

0111

1 A. Yes.

2 Q. And is he supposed to stop them until he  
3 sees the other kid make it down the slide, go into  
4 the pool, into that what you said was like a  
5 whirlpool and come back to the top and get out of the  
6 way before he tells the next person they can go?

7 A. He doesn't watch them go. You can't really

8 see them going down the slide. It --  
9 Q. Uh-huh.  
10 A. It's like a half tube.  
11 Q. Right.  
12 A. So he watches them go down, then you take a  
13 scan and it takes some seconds for you -- it's not a  
14 very fast slide -- and then you do watch them all the  
15 way into the wall.  
16 Q. All the way into the what?  
17 A. Into the wall, make sure -- we have them hit  
18 the wall first, grab onto the ladder before we let  
19 the other person go.  
20 Q. Let's look at Exhibit 14B again.  
21 A. Thank you.  
22 Q. If you could tell me, looking at the diagram  
23 of the family pool, when the kid hits the water they  
24 are about where?  
25 A. It would be --  
0112  
1 Q. Put a little circle.  
2 A. They're right here.  
3 Q. Okay. And then they go -- Are they told  
4 where to go from there by the lifeguard manning the  
5 slide?  
6 A. Yeah, if --  
7 Q. Where?  
8 A. Most of them -- right here where the --  
9 where the ladder is. I'm not sure on this one.  
10 Q. So put an arrow from where they are  
11 dumped from the slide into the pool, where do they  
12 typically -- Where are they told to go from there  
13 where you say the lifeguard watches them until they  
14 get to that wall?  
15 A. Well, I can't tell where the ladder is, but  
16 it's somewhere -- somewhere in this wall right here  
17 (indicating). It's somewhere in there.  
18 Q. Can you label it "ladder"?  
19 A. Yes.  
20 Q. I appreciate it. Okay. And is it the  
21 lifeguard who is manning the lifeguard station near  
22 the slide, is it his responsibility to watch that  
23 child after they hit the water and come up, go all  
24 the way to the wall and make sure that they made it  
25 and that they are okay?

0113

1 A. Yes.

2 Q. Okay. Was 15 y/o LG #2 doing that on  
3 July 18, 2007, to your knowledge?

4 A. To my knowledge, he was.

5 Q. Based on what? He was, to your knowledge,  
6 based on what?

7 A. Based on my expectations of what they are  
8 supposed to be doing.

9 Q. Okay. And so, as we see here what you said  
10 is that the lifeguard who is manning the -- is it  
11 about here, the lifeguard chair?

12 A. Yeah. I would say so, yes.

13 Q. Okay. And he's supposed to be watching them  
14 as they go down the slide, watching them to make sure  
15 that when they get into the slide and then they come  
16 out and they start to make their way, he's supposed  
17 to watch them all the way until they hit that ladder,  
18 correct?

19 A. He doesn't watch them as they go down the  
20 slide. He doesn't see them slide. That's -- you  
21 have a few seconds there and that's where he  
22 watches. Move your pen towards -- keep going, keep  
23 following the edge of the pool. The edge of the  
24 pool -- not in the water, the other direction.

25 Q. Uh-huh.

0114

1 A. In the dry area where the deck would be on  
2 the pool on the other side.

3 Q. Over here?

4 A. Over there.

5 Q. Okay.

6 A. Okay. They would watch -- they would give a  
7 quick glance to those areas and around the fountains.

8 Q. Okay.

9 A. Just to make sure there's no running and  
10 that kind of thing.

11 Q. Okay.

12 A. And then go back to -- and by then, you  
13 know, you would have the child almost off the slide.

14 Q. Okay. So in other words, it is the  
15 responsibility of this lifeguard, who was  
16 15 y/o LG #2 on that day, to watch the kids. He'll know  
17 when they are entering the slide and then he'll have  
18 a chance to scan the dry area here to make sure no  
19 kids are running and by then the kid will come out  
20 the shoot and he's supposed to watch them go to the  
21 ladder and hit this wall, correct?

22 A. Yes, sir.  
23 Q. And then basically it starts all over  
24 again. And he'll say "go" and then he'll do the same  
25 thing, correct?

0115

1 A. Yes, sir.  
2 Q. Okay. On top of those duties, does that  
3 particular lifeguard manning this particular slide  
4 have additional duties on top of those duties while  
5 he's doing all those things or not?

6 A. No. That's it, just watching.

7 Q. That pretty much would take up all of his  
8 time, wouldn't it?

9 A. Sure.

10 Q. And attention, correct?

11 A. Yes.

12 Q. He is not responsible for -- also then, on  
13 top of all of that, while kids are on the slide, to  
14 then scan the rest of the pool, too, is he?

15 A. Well, on his scan, you know, it's -- you  
16 know, he -- I don't know. It's -- it just depends on  
17 how big his scan is. But a lot of times those  
18 guys -- those guards would catch a lot of activity  
19 going on, you know, beyond the fountain. So I mean,  
20 it was just a -- it was just a general scan of that  
21 area as the child came down, so...

22 Q. On the east end of the pool?

23 A. Yes, sir.

24 Q. Now, but you know his specific assigned  
25 duties because you're the lifeguard manager, correct?

0116

1 A. Correct.

2 Q. What are his specific assigned duties? This  
3 lifeguard sitting in this stand right here by the  
4 slide primarily responsible for watching the slide,  
5 what are his specific duties and responsibilities?

6 A. Specific duties are primarily watching the  
7 slide.

8 Q. Uh-huh.

9 A. And secondary, taking a scan, look to your  
10 left and then come back to the child and make sure  
11 everything is okay up to the ladder and release the  
12 next one.

13 Q. And when you say "look to your left," it's  
14 as you testified before, you mean this dry area to  
15 make sure kids aren't running between the slide and

16 the fountain?  
17 A. Including that, but not limited to that.  
18 Q. Okay. Well, let me hash mark at least that  
19 part --  
20 A. Yes.  
21 Q. -- where he's supposed to scan; is that  
22 correct?  
23 A. Yes.  
24 Q. Okay. And what else? Watch -- and then you  
25 said before, watch him make it from the shoot area to  
0117  
1 the ladder, correct?  
2 A. Yes, correct.  
3 Q. So he's watching this area to make sure this  
4 kid is making it, right?  
5 A. Uh-huh.  
6 Q. Okay. Have you heard the term  
7 "distraction"?  
8 A. I have.  
9 Q. Not to overlay (phonetic) lifeguards with  
10 distracting duties that distract them from their  
11 primary responsibility. Have you heard of that?  
12 A. Absolutely.  
13 Q. Okay. Was this lifeguard given any  
14 additional duties other than what I've hashed out on  
15 top of those duties?  
16 A. That was it.  
17 Q. Okay. He did not have any responsibilities  
18 to also scan the rest of the pool; is that correct or  
19 did he?  
20 A. He -- no.  
21 Q. Okay. Now, what you do know about drowning,  
22 passing out, losing consciousness, losing pulse, all  
23 those things, was learned from where?  
24 A. Just from the lifeguarding courses I've  
25 taken.  
0118  
1 Q. The pool only opened on weekends in May  
2 2007; is that correct?  
3 A. Yes.  
4 Q. When was it opened full-time?  
5 A. It began in June.  
6 Q. Was it have been -- been around Memorial  
7 Day?  
8 A. Yeah. I think so. I think that's right.  
9 Q. Around May 31st, 2007?

10 A. Yeah. I think we had a day of opening  
11 celebration that day, yes.

12 Q. Okay. So we know that before the month that  
13 John Pluchinsky died, July 2007, 15 y/o LG #1 had  
14 zero experience as a lifeguard, right?

15 MR. SNYDER: Objection, form.

16 A. She had limited, yes.

17 Q. (BY MR. MARRS) No, sir. Before July 2007,  
18 we already looked at this.

19 A. I'm sorry, yes.

20 Q. It's Exhibit 38 and her scheduling before --  
21 excuse me -- before June 2007, she had zero  
22 experience as a lifeguard, correct?

23 A. Before June, that's correct.

24 Q. And we know that from looking at  
25 15 y/o LG #2 's schedule, Plaintiff's Exhibit 39, that at  
0119

1 least on this document, okay, after he got certified  
2 April 14, 2007, at least according to this document,  
3 until we have documents that indicate otherwise, it  
4 at least appears from this document his first day was  
5 the same month as John Pluchinsky's death, July 1st,  
6 2007 for four hours, 51 minutes on that Sunday, day  
7 one. Day two, three, four, five, six, seven, eight,  
8 nine days, the ninth day being July 17th, '07, it at  
9 least appears that, according to this document, he  
10 also had nine days experience prior to July 18th, the  
11 day of the incident, at least according to this  
12 document, correct?

13 A. That's correct.

14 Q. And I added all these up and I got  
15 approximately the same number of hours as 15 y/o LG #1 had,  
16 about 44 hours of lifeguard experience over nine days  
17 prior to the day of the incident. Is that what that  
18 document would indicate to you?

19 A. Yes, it would.

20 Q. And when the document indicates that the  
21 lifeguard worked scheduled hours versus unscheduled  
22 hours, what does that mean?

23 A. I don't know. I don't know what that is.

24 Q. Or regular versus unscheduled, do you -- do  
25 you know?

0120

1 A. That's a type of entry that that document  
2 has. I don't -- I really don't know what that is.

3 Q. Were there times when a lifeguard would be

4 scheduled, but then another lifeguard would take  
5 their place?

6 A. That's happened before, yes.

7 Q. Did that happen on July 18, 2007, to your  
8 knowledge?

9 A. I'm not sure.

10 Q. What's your understanding of the individuals  
11 at the pool on July 18, 2007 that last saw John  
12 Pluchinsky alive?

13 MR. SNYDER: Objection, form.

14 A. As far as what, I'm sorry?

15 Q. (BY MR. MARRS) Well, who's the last  
16 counselor that interacted with John Pluchinsky, to  
17 your knowledge, before his death?

18 A. I don't know.

19 Q. Do -- Have you seen anything indicating that  
20 4 y/o B-CC #1 interacted with John Pluchinsky before  
21 his death?

22 A. Just from conversations in the few days  
23 following, I heard them talking about it.

24 Q. What did you hear?

25 A. That she had been playing with him.

0121

1 Q. Who's the last counselor that played with  
2 John Pluchinsky, at least according to what you've  
3 heard?

4 A. I couldn't determine from what I heard.  
5 They were talking amongst themselves, so I just -- I  
6 was just listening in, but not -- I don't know.

7 Q. Do you know -- Have you seen anything  
8 indicating that any counselor played or interacted  
9 with John Pluchinsky after 4 y/o B-CC #2 piggybacked  
10 him and put him down somewhere in the beach area?

11 MR. MARRS: Can I see this? Can you  
12 put that back up?

13 MR. PLETCHER: Uh-huh.

14 A. Well, I -- no. I mean, I haven't read any  
15 statements or anything like that, so I don't -- I  
16 really don't know.

17 Q. (BY MR. MARRS) Have you read any statements  
18 or anything indicating that 4 y/o B-CC #2 did  
19 piggyback him and put him down in the beach area  
20 somewhere?

21 A. I haven't.

22 Q. Have you talked to 15 y/o LG #2 about when  
23 he first saw John Pluchinsky on that day, July 18th?

24 A. I don't know if I spoke to him about it or  
25 not.

0122

1 Q. What's your understanding of whether or not  
2 15 y/o LG #2 recalled seeing John Pluchinsky at all  
3 that day prior to the incident?

4 A. I believe it was in here sometime last week  
5 that I first heard that he said something about  
6 seeing something.

7 Q. Well, have you ever heard that he saw  
8 something other than after 15 y/o LG #1 yelling to  
9 4 y/o B-CC #3 ?

10 A. Yeah. I don't remember if I heard anything  
11 from him about seeing anything.

12 Q. Have you talked to him?

13 A. I don't -- no.

14 Q. Well, he was one of your lifeguards, though?

15 A. He was.

16 Q. Did you talk to him about this incident?

17 A. We may have spoke about it in general, but  
18 I didn't question him or anything about what he saw.

19 Q. Okay. Do you know of any facts indicating  
20 that any counselor interacted or played with John  
21 Pluchinsky during the ten minutes prior to him being  
22 found discovered floating facedown in the water?

23 A. I don't know.

24 Q. You don't know of any such facts?

25 A. I don't.

0123

1 Q. Okay. Let me show you what's been marked as  
2 Exhibit Number 37. Can you tell the jury what this  
3 document is?

4 A. Yes. This is a schedule, one of our  
5 schedule sheets for the pool. This is for Wednesday,  
6 July 18th.

7 Q. Is that the date of the incident?

8 A. Yes, sir.

9 Q. And what's this show? Was it -- I mean, is  
10 that -- when was this document drafted?

11 A. Oh, this could have been done probably the  
12 Sunday before that week began.

13 Q. And who drafted it? Who put the schedule  
14 together?

15 A. I would do that with the head lifeguard, so  
16 I don't know who did that -- I don't know who did  
17 this week, that one week.

18 Q. Okay. Do you know whether or not you  
19 drafted this particular document?

20 A. I don't.

21 Q. Or do you know if you were involved at all  
22 in this schedule?

23 A. I was involved in the scheduling.

24 Q. Along with who?

25 A. With -- well, not remembering who wrote it,  
0124

1 it's usually -- I would usually sit there with the  
2 head lifeguards and say okay, let's put these  
3 together and...

4 Q. And who was the head lifeguard?

5 A. The day of the drafting I wouldn't know. It  
6 could have been LG Supv or Sr LG #1 .

7 Q. Would they have been working the previous  
8 Sunday before July 18th?

9 A. I don't know; they may have.

10 Q. Okay. Do you think you put this together  
11 with the supervising lifeguard on the Sunday before  
12 this Wednesday, July 18th, 2007 date?

13 A. I don't remember exactly.

14 Q. Well, it shows six different lifeguards on  
15 duty from 9:00 in the morning to 3:00 p.m.

16 A. Yes.

17 Q. None of which are 15 y/o LG #1 or  
18 15 y/o LG #2 . Why is that?

19 A. Well, they may have gotten calls from these  
20 people or something, the ones highlighted. Maybe  
21 they couldn't make it that day or something came up  
22 and so they -- they may have just filled in for them.

23 Q. Is that what you believe probably happened  
24 since other individuals are shown on this sheet other  
25 than 15 y/o LG #1 and 15 y/o LG #2 to work that

0125  
1 morning?

2 A. Yes, sir.

3 Q. Okay. So, do you recall when you or the  
4 supervising lifeguard might have learned that  
5 LG-E, LG-G and LG-H would not  
6 be working as lifeguards that morning of July 18th?

7 A. Yeah. We could have learned of it the day  
8 before or sometimes even that morning.

9 Q. Do you recall when you first learned of it  
10 on -- prior to July 18th or on July 18th?

11 A. I don't recall.

12 Q. Okay. Well, who would know?

13 A. I don't know.

14 Q. Is it likely LG Supv would know?

15 A. I don't know.

16 Q. Okay. Then who would have made the  
17 determination shortly before or on July 18th that the  
18 pairing of 15-year old 15 y/o LG #1 , a first-time  
19 lifeguard and 15 y/o LG #2 , another 15-year old  
20 first-time lifeguard would be appropriate for  
21 watching the family pool at 11:00 o'clock when three  
22 different 2007 summer camp groups were in the pool at  
23 the same time along with others?

24 MR. SNYDER: Objection, form.

25 A. We would not have started the day by

0126

1 assigning specific stands to anybody, so they could  
2 have just -- when the rotation began, they may have  
3 chosen to work together.

4 Q. (BY MR. MARRS) Okay. And do you believe  
5 that in all probability that's what happened on July  
6 18, 2007 when 15 y/o LG #2 and 15 y/o LG #1 happened  
7 to do -- be on duty at the family pool at the same  
8 time?

9 A. I believe so.

10 Q. Are they friends, to your knowledge?

11 A. I don't know if they were before.

12 Q. Okay.

13 A. I don't know.

14 Q. Do they go to the same school, to your  
15 knowledge?

16 A. I believe they did.

17 Q. On July 18, 2007 had you been at the family  
18 pool that morning at any time prior to the incident?

19 A. Yes.

20 Q. When?

21 A. After my morning trainings.

22 Q. About what time?

23 A. It would have been close to 9:00 o'clock.

24 Q. For how long?

25 A. Until probably close to 11:00, a little bit

0127

1 after.

2 Q. Are you saying you were at the family pool  
3 for two straight hours that morning?

4 A. I may have been in and out a few times, but  
5 in general, yes.

6 Q. Okay. Were you at the family pool on the  
7 morning of July 18, 2007 at approximately  
8 11:00 o'clock?

9 A. Yes.

10 Q. Then you would have personally seen three  
11 groups of kids in the family pool at approximately  
12 11:00 o'clock on July 18, 2007?

13 MR. SNYDER: Objection, form.

14 A. Yes.

15 Q. (BY MR. MARRS) And you would have seen  
16 15 y/o LG #1 and 15 y/o LG #2 as being the two  
17 lifeguards on duty at the family pool that morning?

18 A. Yes.

19 Q. And that's how you can testify that there  
20 were up to 40 children in the pool on July 18, 2007  
21 before the -- John Pluchinsky drowned, correct?

22 A. Correct.

23 MR. SNYDER: Objection, form.

24 Q. (BY MR. MARRS) Did you see John Pluchinsky?

25 A. I don't know.

0128

1 Q. When you arrived at the pool that day after  
2 you were told something was wrong at the pool and saw  
3 John Pluchinsky, did you recall at that time that you  
4 had previously seen him at the family pool?

5 A. No, sir.

6 Q. Okay. And when you were at the family pool  
7 around 11:00 o'clock on July 18, 2007, how many  
8 minutes had you been away from the family pool before  
9 you were told by the chef there was something wrong  
10 at the pool?

11 A. Oh, maybe a little bit over five minutes.

12 Q. And the reason why you left the family pool  
13 on the morning of July 18, 2007 at -- you say  
14 approximately what time?

15 A. At what time did I leave it?

16 Q. Yes, sir.

17 A. It was almost 11:10.

18 Q. Okay.

19 A. Maybe.

20 Q. And the reason why you left the family pool  
21 at about 11:10 is why?

22 A. I went to meet David for lunch.

23 Q. And what discussions did you have with  
24 LG Supv about letting the other -- the three  
25 lifeguards and LG Supv , those four lifeguards

0129

1 go to lunch at the same time?

2 A. Well, LG Supv and only two lifeguards  
3 left that day. There were four guards on stand and I  
4 had no discussions with him about it.

5 Q. That was LG Supv 's decision?

6 A. Yes.

7 Q. And you say that -- How many lifeguards went  
8 to lunch at the same time at approximately 11:10?

9 A. Three.

10 Q. Being LG Supv and who else?

11 A. I believe it was Sr LG #1 and  
12 Sr LG #2 .

13 Q. And you say two -- four lifeguards were on  
14 the stand. We know 15 y/o LG #2 and 15 y/o LG #1 were on the  
15 stand back at the family pool. Who were the other  
16 two?

17 A. LP LG and Sr LG #3 .

18 Q. And where was Mr. Sr LG #3 on duty as a  
19 lifeguard?

20 A. I believe he was at the lap pool.

21 Q. Have you read his statements?

22 A. I haven't.

23 Q. Would it surprise you to learn that he was  
24 at lunch, too -- or excuse me.

25 Would it surprise you if Ms. LP LG

0130

1 was the only lifeguard at the lap pool?

2 A. It wouldn't --

3 MR. SNYDER: Objection, form.

4 Q. (BY MR. MARRS) Lap pool --

5 A. It wouldn't --

6 MR. SNYDER: Objection, form.

7 A. I'm sorry.

8 MR. MARRS: Excuse me?

9 MR. SNYDER: Objection, form.

10 A. It wouldn't surprise me. There were only a  
11 few people in there. I just wasn't sure what time  
12 he --

13 Q. (BY MR. MARRS) Okay.

14 A. -- would have gotten off the stand.

15 Q. Would it surprise you to learn that  
16 Sr LG #3 was not on duty, that he was on break along  
17 with the other three lifeguards at the time of the  
18 incident?

19 A. He may have eaten with them, but I know he

20 didn't go up to get food.

21 Q. Do you have any reason to believe that  
22 Sr LG #3 was not on break at the time of the incident  
23 along with LG Supv , Sr LG #1 and  
24 Sr LG #2 or you just don't know?

25 MR. SNYDER: Objection, form.

0131

1 A. Well, I believe he ate lunch with them at  
2 the pavilion. I think he was eating at the same  
3 time, but he was around the pool area while they were  
4 gone getting food.

5 Q. (BY MR. MARRS) Okay. So --

6 A. I don't know when he went on break.

7 Q. So you believe, though, that he was actually  
8 eating lunch at the pavilion with LG Supv ,  
9 Sr LG #1 and Sr LG #2 at the time that John  
10 Pluchinsky drowned?

11 A. I think that's right.

12 Q. Okay. And again, just to clarify. Whose  
13 decision -- well, strike that.

14 To clarify, who make the decision that  
15 it was okay for LG Supv , Sr LG #1 ,  
16 Sr LG #2 and Sr LG #3 , four lifeguards to be on  
17 lunch at the pavilion at that particular time when  
18 John Pluchinsky drowned? Was that you?

19 A. I didn't make that decision specifically,  
20 so...

21 Q. And who did?

22 A. I don't know.

23 Q. Have you asked?

24 A. No.

25 Q. You say you didn't make that decision

0132

1 specifically. Do you mean you might have made that  
2 decision indirectly?

3 A. Well --

4 MR. SNYDER: Objection, form.

5 A. After I spoke with David and he decided he  
6 wasn't going to eat lunch that day, I came back and  
7 stood by the -- by the lap pool, by the resort pool,  
8 I'm sorry. I didn't go into the building until I saw  
9 the three guys come out. So as they came out and  
10 entered the pool area again, that's when I went into  
11 the building. So they went to get food while I stood  
12 there and then -- and then I did -- I went in.

13 Q. (BY MR. MARRS) And they went to -- when you

14 say "they," who are you talking about?

15 A. LG Supv , Sr LG #1 and

16 Sr LG #2 .

17 Q. And you were standing where when you saw  
18 them getting lunch, going to get lunch?

19 A. You see where the umbrella is by the wading  
20 area of the pool? Right there (indicating). If you  
21 go west, the fence is close to there and I was  
22 standing right at that gate.

23 Q. Okay. So you were standing at that gate?

24 A. Uh-huh.

25 Q. Right here, shown on Exhibit 14B about here,  
0133

1 correct?

2 A. Yes, sir.

3 Q. Okay. You're standing there at about what  
4 time?

5 A. Between 11:10 and 11:15.

6 Q. You see the children in pool, who the  
7 lifeguards are, you see the counselors in the pool at  
8 that time, correct?

9 A. I do.

10 Q. Okay. And then you see at least three  
11 lifeguards, LG Supv , Sr LG #1 and  
12 Sr LG #2 . And you see them what?

13 A. Coming out of the building back towards the  
14 pool area.

15 Q. Okay. So you see them coming which  
16 direction, this direction (indicating)?

17 A. Exactly.

18 Q. Okay. Back what -- were they over -- Were  
19 they down here in the walkway?

20 A. Yes, sir.

21 Q. Okay. So they weren't on this side of the  
22 fence. They were actually on this side of the fence,  
23 correct?

24 A. Yes.

25 Q. Okay. And you see them where? Are they way  
0134

1 back here in the building coming out, going down the  
2 walkway?

3 A. Yeah. They come out of the door, yes.

4 Q. Okay. And so when you see them coming out  
5 of the building, where do you go?

6 A. As they pass me, we pass each other. As  
7 they pass me, I started going in.

8 Q. Okay. So does that mean that you then left  
9 that gate area and went on this side of the fence?  
10 A. I was on that side of the fence already. I  
11 was --  
12 Q. Okay.  
13 A. I was waiting to see --  
14 Q. Okay.  
15 A. Yeah, I'm waiting.  
16 Q. And so as they were coming out, you went in  
17 to go get lunch; is that right?  
18 A. Yes, sir. Yes.  
19 Q. Okay. And so, did you talk to them along  
20 the way?  
21 A. Not really, just greeted them.  
22 Q. Okay.  
23 A. I said, "You guys ready? I'm going in."  
24 Q. All right. Good. And so you knew, of  
25 course -- I mean, they had lunch in their hands,  
0135  
1 right?  
2 A. Sure.  
3 Q. And you knew that they were probably going  
4 over to the -- to the pavilion to eat, right?  
5 A. Yes.  
6 Q. And where's the pavilion? You would keep  
7 walking past here?  
8 A. Yes, and then there's a gate.  
9 Q. Okay.  
10 A. A little bit further down and --  
11 Q. Okay.  
12 A. You'd hit the pavilion.  
13 Q. So you're standing or -- is this the gate?  
14 A. Yeah. I can't --  
15 Q. Is this the fence, I mean?  
16 A. I can't see it, but it would be right  
17 about -- right there.  
18 Q. Okay. Okay.  
19 A. Yeah.  
20 Q. Okay. So here's the gate, right?  
21 A. Yes, sir.  
22 Q. Okay. And you're standing over here?  
23 A. I am standing close to there, yeah, I --  
24 Q. Around here?  
25 A. Yeah. It's hard to say. Right about there,  
0136  
1 I would say.

2 Q. Okay. Can I put "GP standing" approx --  
3 what time?  
4 A. I would say between 11:10 and 11:15.  
5 Q. And so you went to go get food as three  
6 lifeguards were coming out and you knew that they  
7 would go down here and keep going to the pavilion to  
8 eat lunch, correct?

9 A. Correct.

10 MR. SNYDER: Let's take a break. We  
11 have been going about an hour and 15 minutes.

12 MR. MARRS: Are you sure?

13 THE WITNESS: Okay.

14 MR. SNYDER: Yeah, I'm sure.

15 VIDEOGRAPHER: Off the record --

16 Q. (BY MR. MARRS) Once --

17 MR. MARRS: Whoa, whoa. Stay on the  
18 record. Just one more question.

19 Q. (BY MR. MARRS) And did you see Sr LG #3  
20 at any time during that 10- or 15-minute time frame?

21 A. No, I didn't see him.

22 Q. Okay.

23 VIDEOGRAPHER: Off the record. The  
24 time is 2:16 p.m.

25 (Brief recess.)

0137

1 VIDEOGRAPHER: Back on the record. The  
2 time is 2:37 p.m.

3 Q. (BY MR. MARRS) And so let me just clarify:  
4 Around 11:10 or so when you left to go eat lunch,  
5 exactly where did you go?

6 A. From there?

7 Q. Yes, sir.

8 A. From there, I went to the main building.

9 Q. To have lunch?

10 A. Yes, sir.

11 Q. Okay. And you were in the main building  
12 having lunch at the time you were told by the chef  
13 that something was wrong?

14 A. Yes.

15 Q. And I believe you said it was about five  
16 minutes. You were in the main building about five  
17 minutes when it happened?

18 A. Yes.

19 Q. And could you just, if you would --

20 A. Okay.

21 Q. -- sign-off right below. Just put "correct"

22 and put your initials.

23 A. Just say the word "correct"?

24 Q. If it's correct.

25 A. Oh, okay.

0138

1 Q. Yes.

2 A. Okay. Yes.

3 Q. If there had -- if one of those three  
4 lifeguards instead of being on break at that very  
5 moment were here at this resort pool, that could have  
6 made a difference --

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) -- for John Pluchinsky,  
9 don't you think?

10 MR. SNYDER: Objection, form.

11 A. I really don't know.

12 Q. (BY MR. MARRS) Could it have, potentially?

13 MR. SNYDER: Objection, form.

14 Q. (BY MR. MARRS) Could one of those  
15 lifeguards have seen him venture over towards the  
16 3.6-foot-deep area, do you think?

17 MR. SNYDER: Objection, form.

18 Q. (BY MR. MARRS) And seen him perhaps  
19 struggle?

20 MR. SNYDER: Objection, form.

21 Q. (BY MR. MARRS) We don't know, do we?

22 A. We don't know.

23 Q. We don't know because all three of those  
24 lifeguards were at lunch at that time, right?

25 A. Correct.

0139

1 Q. If you had stayed at the pool instead of  
2 left for those five minutes, do you think that might  
3 have made a difference, being the most experienced  
4 lifeguard that the Racquet Club has?

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) Do you think that would have  
7 made a difference for John Pluchinsky potentially?

8 MR. SNYDER: Objection, form.

9 A. I don't know.

10 Q. (BY MR. MARRS) Could have?

11 MR. SNYDER: Objection, form.

12 A. I really don't know.

13 Q. (BY MR. MARRS) Well, every additional  
14 lifeguard at a pool full of children you would hope  
15 would make a difference in terms of safety, correct?

16 A. Correct.  
17 Q. Do you think it would have been safer have  
18 you -- had you stayed at the family pool during those  
19 five minutes for the children in the pool?

20 MR. SNYDER: Objection, form.

21 A. I really don't know.

22 Q. (BY MR. MARRS) Did you tell any of the  
23 three lifeguards coming out that you knew were not  
24 going to the family pool, but instead were going on  
25 their lunch break to the pavilion, "Hey, I'm leaving,  
0140

1 so I want one of you or two of you or three of you to  
2 stay here at the family pool while I'm gone"?

3 A. I didn't say that.

4 Q. Did anyone say that, to your knowledge?

5 A. Not to my knowledge.

6 Q. Now, as you're standing there at this gate  
7 right here (indicating) --

8 A. Yes.

9 Q. -- and you look at that family pool with  
10 those kids in that pool, did you know at that time  
11 that you had only two 15-year old first-time  
12 lifeguards watching that entire pool?

13 A. I did know.

14 Q. And you know that when you walked away it  
15 was only approximately five minutes or could it have  
16 been longer before you -- I mean, how long had you  
17 actually been -- had you gotten your food yet when  
18 the chef had --

19 A. I had -- I had just put my hands on it.

20 Q. Okay. So you had already gotten your food?

21 A. Uh-huh, yes.

22 Q. Was -- Did you have to stand in a line to  
23 get your food?

24 A. No.

25 Q. So walk me through it. You're standing here  
0141

1 at the gate, you see the three lifeguards leaving and  
2 then you went to get your lunch. You had to walk  
3 where to get your lunch from there, for those who  
4 aren't familiar with the club?

5 A. Okay. Into the main building, which is --  
6 yeah, very close to there (indicating).

7 Q. Okay. You had to go through the doors of  
8 the main building and go where?

9 A. To the kitchen upstairs.

10 Q. You had to go upstairs and then go to the  
11 kitchen and then do what?  
12 A. And you grab a plate and they have -- they  
13 have some trays with food in them, so I just, you  
14 know, a scoop of whatever.  
15 Q. Okay. Wait a minute. So you have to decide  
16 what particular food items you want to eat?  
17 A. In a way. There wasn't a whole lot of  
18 choice, so it's --  
19 Q. Okay.  
20 A. Yeah.  
21 Q. But someone didn't serve you. You had to go  
22 through and you served yourself. Is this like a  
23 buffet line or what?  
24 A. Yes.  
25 Q. Okay. So, you have to get your plate, you  
0142  
1 decide what you want, you put it on your plate and  
2 then what did you do?  
3 A. And then I went downstairs to where I  
4 normally ate.  
5 Q. Whoa, whoa. Okay. And then you take your  
6 plate?  
7 A. Yes.  
8 Q. And go back downstairs?  
9 A. Uh-huh.  
10 Q. And do what?  
11 A. And then I go into the -- the kind of the  
12 grille/bar area. They have -- there's the men's  
13 locker room. It's next to that.  
14 Q. Okay.  
15 A. And I would usually eat there.  
16 Q. Okay. And then you went into that area and  
17 then you sat down --  
18 A. Uh-huh.  
19 Q. -- in order to eat, correct?  
20 A. Uh-huh. Yes.  
21 Q. And you say you did all of that in five  
22 minutes?  
23 A. Yes, sir.  
24 Q. Okay. And so, then what happened?  
25 A. So I sat down and I almost immediately stood  
0143  
1 back up.  
2 Q. Because?  
3 A. A chef came down and asked me if I knew that

4 the ambulance had been called already.  
5 Q. Okay. And so -- and so you know for a fact  
6 and you can testify under oath that from the time you  
7 left that gate at the family pool and did all of  
8 those things you believe it was only five minutes?

9 A. I think it was close to five minutes.

10 Q. Well, I mean, you obviously didn't have a  
11 stopwatch. And you know that you had to go in the  
12 building, go upstairs, get your food, go downstairs,  
13 go to the locker room --

14 A. Uh-huh.

15 Q. -- to sit down to have lunch. Just how long  
16 could it have been at the furthest, at the max amount  
17 of time how much longer could it have been, you  
18 think, to do all those things?

19 A. I don't know, but I happened to look at the  
20 clock on the wall --

21 Q. Okay.

22 A. -- when the chef got me.

23 Q. Sure.

24 A. And it said 11:20.

25 Q. Well --

0144

1 A. So that's why I'm --

2 Q. Did you happen to look at the clock before  
3 you left the gate?

4 A. No. I just looked at the clock when I spoke  
5 with David Lamkin.

6 Q. Sure. So that's why I'm asking. I mean --

7 A. Yeah.

8 Q. If you didn't look at the clock before you  
9 left the gate, even seeing that it's 11:20, that  
10 still wouldn't tell you exactly how long you had been  
11 gone, right?

12 A. Right.

13 Q. Okay. So my question is: How long at the  
14 outside, what's the longest it could have been from  
15 the time you left that gate till the time the chef  
16 came up and told you there was a problem, on the  
17 outside?

18 A. On the outside?

19 Q. Yes.

20 A. How long was I standing outside?

21 Q. No.

22 A. Or -- I don't get the question, I'm sorry.

23 Q. On the outside of time, could it have been

24 as long as ten minutes from the time you left that  
25 gate until the time you went inside the building,  
0145

1 went upstairs, got your food, went downstairs and the  
2 chef coming up to you?

3 A. No.

4 Q. Okay. How long could it have been?

5 A. I guess at the most possibly even maybe  
6 seven minutes then.

7 Q. Okay. And after you learned what happened,  
8 did you believe that perhaps you should have stayed  
9 at the family pool instead of leaving or not?

10 MR. SNYDER: Objection, form.

11 A. I think I questioned whether I should have  
12 or not, but I really never thought that.

13 Q. (BY MR. MARRS) Why not?

14 A. Well, things were set up as they normally  
15 had been. Before I left, I remember thinking that  
16 everything looked reasonable, that the crowd was  
17 under control. You know, the counselors kept those  
18 kids -- it wasn't a wild crowd, like a party or  
19 something like that. Everything looked really well,  
20 under control and...

21 Q. Generally?

22 A. Generally under control?

23 Q. I mean, which particular counselor did you  
24 see watching John Pluchinsky before you left the  
25 gate?

0146

1 MR. SNYDER: Objection, form.

2 A. I don't know that I saw any particular  
3 counselor watching him.

4 Q. (BY MR. MARRS) Okay. That's what I mean by  
5 generally. At least with respect to John Pluchinsky,  
6 you can't say if anybody specifically was supervising  
7 or watching him, can you?

8 A. That's correct.

9 Q. So, you really don't know if things were  
10 under control as it related to John Pluchinsky,  
11 correct?

12 MR. SNYDER: Objection, form.

13 Q. (BY MR. MARRS) I mean, you just don't know,  
14 do you?

15 A. As it related to him specifically?

16 Q. Yes, sir.

17 A. No.

18 Q. As we sit here today, knowing what we know  
19 now, knowing what you know now, is there anything  
20 that you can think of that your two lifeguards,  
21 Mr. 15 y/o LG #2 and Ms. 15 y/o LG #1 , could have done better on  
22 that day, that morning before John Pluchinsky died?

23 MR. SNYDER: Objection, form.

24 A. I really don't know.

25 Q. (BY MR. MARRS) Do you have an opinion one  
0147

1 way or the other?

2 MR. SNYDER: Objection, form.

3 A. I felt it was reasonable at the time, so no.

4 Q. (BY MR. MARRS) You can't think of anything  
5 that 15 y/o LG #1 or 15 y/o LG #2 could have done  
6 better?

7 MR. SNYDER: Objection, form.

8 A. I really can't.

9 Q. (BY MR. MARRS) Can you think of anything  
10 that the counselors in the pool at the time John  
11 Pluchinsky drowned could have done better?

12 MR. SNYDER: Objection, form.

13 A. I don't know.

14 Q. (BY MR. MARRS) Did the counselors  
15 adequately supervise and watch John Pluchinsky, to  
16 your knowledge?

17 MR. SNYDER: Objection, form.

18 He's not designated to speak to  
19 counselors, Scott, so --

20 MR. MARRS: No. Well, let's go over  
21 that.

22 MR. SNYDER: So I'm going to instruct  
23 him not to answer that.

24 MR. MARRS: That's fine.

25 MR. SNYDER: I mean, you can ask him --  
0148

1 MR. MARRS: I know what I can ask him.

2 MR. SNYDER: I'll allow --

3 MR. MARRS: That's okay. Let me just  
4 ask --

5 MR. SNYDER: You can ask him generally  
6 based upon what he knows or what he's heard.

7 MR. MARRS: That's about what I was  
8 going to do.

9 MR. SNYDER: Okay.

10 Q. (BY MR. MARRS) So, I mean, the lifeguards  
11 that are under your responsibility have to often work

12 hand-in-hand with the very counselors during summer  
13 camp, correct?

14 MR. SNYDER: Objection, form.

15 Q. (BY MR. MARRS) I mean, who did 15 y/o LG #1  
16 first talk to when she saw John Pluchinsky floating  
17 in the pool? She talked to a counselor, didn't she?

18 A. Correct.

19 Q. I mean, the lifeguards and the counselors  
20 have to effectively communicate so that children in  
21 the pool are safe, right?

22 A. That's correct.

23 Q. So certainly, you've been around probably  
24 hundreds of times when there are children in the pool  
25 and you've seen what the counselors are doing, you've  
0149

1 seen what the lifeguards are doing, correct?

2 A. Correct.

3 Q. And based on your years of experience as  
4 aquatics director at the Racquet Club, as lifeguard  
5 manager at the Racquet Club, seeing how the  
6 counselors and lifeguards interact with each other,  
7 is there anything you can think of, at least based on  
8 your knowledge, that you think the counselors in the  
9 pool with John Pluchinsky could have done better?

10 MR. SNYDER: Objection, form.

11 A. I really don't know. Everything seemed  
12 reasonable while I was there.

13 Q. (BY MR. MARRS) And how about when you  
14 weren't there for those five to seven minutes?

15 MR. SNYDER: Objection, form.

16 Q. (BY MR. MARRS) You can't really say if  
17 things were in control or if things looked reasonable  
18 when you weren't even there, correct?

19 A. Correct.

20 Q. I mean, the primary and number one job for a  
21 lifeguard is to pay attention to the swimmers,  
22 correct?

23 A. Correct.

24 Q. And the number one job for counselors, as  
25 you know, is to pay attention to children in the  
0150

1 water, correct, if they're supervising children in  
2 the water at the time, right?

3 A. Correct.

4 Q. How many of the two lifeguards on duty with  
5 John Pluchinsky at the time he drowned have attention

6 deficit disorder?

7 MR. SNYDER: Objection, form.

8 A. I'm not aware of anything like that. I  
9 don't know.

10 Q. (BY MR. MARRS) How many of the lifeguards  
11 that were on duty July 18, 2007 have attention  
12 deficit disorder?

13 MR. SNYDER: Objection, form.

14 Q. (BY MR. MARRS) Do you know?

15 A. I don't know.

16 Q. How many of the counselors that were in the  
17 pool with John Pluchinsky on July 18, 2007 have  
18 attention deficit disorder?

19 MR. SNYDER: Objection, form.

20 Q. (BY MR. MARRS) Do you know of any?

21 A. Not that I've heard, no.

22 Q. Is that something you would like to know as  
23 to whether a lifeguard under your responsibility  
24 whose primary responsibility is to pay attention to  
25 children in the pool whether or not they have some

0151

1 kind of attention deficit disorder?

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) Do you think that would be  
4 important to know as lifeguard manager?

5 MR. SNYDER: Objection, form.

6 A. I don't know. It's never come up. It's  
7 never come up.

8 Q. (BY MR. MARRS) Whether or not it's come up,  
9 is that something that you as lifeguard manager would  
10 want to know, that someone who is supposed to be  
11 paying attention to children might have an attention  
12 deficit? Would you want to know that?

13 MR. SNYDER: Objection, form.

14 A. Possibly. I don't know enough about it to  
15 know how that would affect, I'm sorry.

16 Q. (BY MR. MARRS) Have you -- Have you ever  
17 asked any of your lifeguards whether they had  
18 attention deficit disorder?

19 A. No.

20 Q. Or any counselor?

21 A. No.

22 Q. Is it your opinion or not that 15 y/o LG #1  
23 15 y/o LG #2 -- excuse me, that 15 y/o LG #1 and  
24 15 y/o LG #2 did their jobs just fine on July 18, 2007?

25 MR. SNYDER: Objection, form.

0152

1 A. Yeah, I think they did a good job.  
2 Q. (BY MR. MARRS) How about the counselors --  
3 MR. SNYDER: Objection, form.  
4 Q. (BY MR. MARRS) -- in the pool with John  
5 that day?  
6 MR. SNYDER: Objection, form.  
7 He's not -- he's not designated as the  
8 rep for the counselors, so I instruct him not to  
9 answer.  
10 Q. (BY MR. MARRS) Any criticisms of the  
11 counselors?  
12 MR. SNYDER: Objection, form. Instruct  
13 him not to answer.  
14 Q. (BY MR. MARRS) Do you personally have any  
15 criticisms of the counselors that were in the pool  
16 that day just from what you saw as a fact witness  
17 right before you left and from what you've learned  
18 since? Do you have any criticisms of the counselors  
19 or the lifeguards that were on duty at that family  
20 pool at the time John Pluchinsky drowned?  
21 MR. SNYDER: Objection, form.  
22 A. I don't have any criticisms from what I  
23 saw. Everyone seemed to be doing a good job.  
24 Q. (BY MR. MARRS) How about from what you've  
25 read or the statements you've seen?

0153

1 A. I really haven't seen a whole lot of  
2 statements, so I don't -- I really don't know about  
3 those.  
4 Q. How about based on what you know, anything  
5 you know do you have any criticisms?  
6 MR. SNYDER: Objection, form.  
7 A. I don't think I do.  
8 Q. (BY MR. MARRS) Any criticisms of Mr. Lamkin  
9 or Mr. Griffin --  
10 MR. SNYDER: Objection, form.  
11 Q. (BY MR. MARRS) -- with respect to -- that  
12 relate directly or indirectly to the death of John  
13 Pluchinsky as we sit here today?  
14 MR. SNYDER: Objection, form.  
15 He's not designated to speak to those  
16 issues --  
17 Q. (BY MR. MARRS) As --  
18 MR. SNYDER: -- and I'll instruct him  
19 not to answer.

20 Q. (BY MR. MARRS) As an employee, as a fact  
21 witness, based on what you know factually, what  
22 you've seen at the Racquet Club, your interactions  
23 yourself with Mr. Lamkin and Mr. Griffin, do you have  
24 any criticisms of them as it relates to John  
25 Pluchinsky?

0154

1 MR. SNYDER: Objection, form.

2 A. No.

3 Q. (BY MR. MARRS) Do you feel like you had all  
4 the training and knowledge you needed to do your job  
5 on July 18, 2007 and to keep children safe in the  
6 pool?

7 A. I think so.

8 Q. So give me the -- kind of the reporting  
9 structure of lifeguards at the Houston Racquet Club  
10 as of July 18, 2007. The lifeguards all are  
11 supervised by who?

12 A. By --

13 Q. Or what position?

14 A. Oh, just by myself and Mr. Lamkin.

15 Q. Okay. And where does a lifeguard supervisor  
16 fit in?

17 A. Somewhere in between there. Yeah, somewhere  
18 in between there.

19 Q. Okay. And what's your understanding of who  
20 Mr. Lamkin and Palmer report to?

21 A. I'm sorry, who do we report to?

22 Q. Well --

23 A. I'm sorry, I just didn't hear you. I'm  
24 sorry.

25 Q. Yeah, that's fine. Who do you -- you

0155

1 reported directly to who?

2 A. David Lamkin.

3 Q. And what's your understanding of who he  
4 reported to?

5 A. Mr. Salazar and Mr. Griffin.

6 Q. And they report to who, to your knowledge?

7 A. I don't know. I think the board president  
8 or the board.

9 Q. Okay.

10 A. That group.

11 Q. Okay. What -- tell the jury, what are the  
12 responsibilities of the lifeguards at the Houston  
13 Racquet Club, at least as of July 18, 2007?

14 A. Well, just to keep the pool area safe, watch  
15 patrons, keep the area clean, answer questions.

16 Q. What sort of questions are they supposed to  
17 answer, the lifeguards?

18 A. Oh, just -- there's so many questions that  
19 come up around the pool area.

20 Q. Where is the bathroom, things like that?

21 A. Where is the bathroom? Why is the pool  
22 closed, things of that nature.

23 Q. Well, if they're on duty at the pool, what  
24 kind of questions should they be answering?

25 A. Just whatever comes up.

0156

1 Q. Okay. Keep the pool safe, watch patrons,  
2 answers questions, keep the area clean.

3 What specific duties and  
4 responsibilities does a lifeguard have while they are  
5 on duty at the pool with swimmers in the pool?

6 A. While on the stand?

7 Q. Yes, sir.

8 A. Watching their zone, make sure that the  
9 surrounding areas are safe. Just warn people of  
10 unsafe situations or behavior, that type of thing.

11 Q. Anything else?

12 A. That's about it while on stand.

13 Q. And so when they're watching their zone,  
14 what are they supposed to be doing?

15 A. Scanning the water surface and bottom,  
16 making sure the surrounding deck areas are safe.

17 Q. Okay. Anything else?

18 A. Making sure no unsafe behaviors are going on  
19 inside the water.

20 Q. Anything else?

21 A. That's about it.

22 Q. And who assigns the lifeguards their  
23 scanning zones when they are on the stand?

24 A. Well, each stand has a certain zone of  
25 coverage and that's what they are responsible for.

0157

1 Q. Okay. Well, we've already discussed with  
2 respect to Exhibit Number 14B --

3 MR. MARRS: If you could, zone in a  
4 little.

5 MR. PLETCHER: Sure.

6 Q. (BY MR. MARRS) -- the scanning zones for  
7 15 y/o LG #2 who's on the lifeguard stand next to

8 the slide, correct? Because I hash marked those out,  
9 right?

10 A. Correct.

11 Q. Now, 15 y/o LG #1 was on the stand where,  
12 near this umbrella here?

13 A. Yes, sir.

14 Q. About here? I'm sorry. About here or would  
15 it be -- if this is the umbrella right here and this  
16 is the surface of the pool --

17 A. Right.

18 Q. -- the edge of the pool, would she be about  
19 here?

20 A. Circle around just the way you did, a little  
21 bit more slowly.

22 Q. Right here?

23 A. No. Bring it towards the wading area a  
24 little bit more. Right -- see where that textured  
25 floor sort of seems to end?

0158

1 Q. Uh-huh, right here?

2 A. And it's -- right, right about there, yes.

3 Q. Right about there? Okay.

4 A. Right up on the edge of the pool.

5 Q. Okay. Got you. Right about there  
6 (indicating)?

7 A. Yes, sir.

8 Q. Okay. So what was 15 y/o LG #1 's -- and as  
9 a matter of fact, let me hand you Exhibit 14B so you  
10 can hash mark out -- or actually, just tell me first  
11 where was 15 y/o LG #1 's scanning zone.

12 A. Okay. From here? Okay.

13 Q. Okay. Why don't you -- why don't you --

14 A. With this highlight?

15 Q. If you don't mind.

16 A. I don't. From the stand, okay, she looked  
17 from the stand, I would say -- that?

18 Q. Uh-huh.

19 A. (Drawing.)

20 Q. Okay.

21 A. Okay.

22 Q. And can you also in -- well, okay. So  
23 looking at Exhibit 14B, you just highlighted this  
24 area of 15 y/o LG #1 's area of responsibility,  
25 correct?

0159

1 A. Correct.

2 Q. Okay. That would be her area of  
3 responsibility to scan the pool; is that correct?  
4 A. Correct.  
5 Q. Okay. And who would have the responsibility  
6 to scan the eastern side of the pool to the east of  
7 where you put this highlighted line, if anyone?  
8 A. That would be an overlapping zone between  
9 the chair under the umbrella and the slide guard.  
10 Q. Okay. So, meaning what?  
11 A. Meaning that would be a zone of overlap, so  
12 they would both probably be watching that same zone.  
13 Q. This zone here (indicating), this area of  
14 responsibility (indicating)?  
15 A. More -- see that, the highlighter line?  
16 Q. Uh-huh.  
17 A. That one right there.  
18 Q. Okay.  
19 A. Yeah.  
20 Q. Let me just draw a line here. Okay. So  
21 you're saying the -- that you are talking about this  
22 area here?  
23 A. Yeah. Probably a little bit further into  
24 the --  
25 Q. Well, why don't you -- why don't put it in  
0160  
1 red?  
2 A. Yeah. So it would probably be -- if 15 y/o LG #1  
3 is watching this area, primarily, you know --  
4 Q. So if 15 y/o LG #1 is watching the area that you've  
5 highlighted --  
6 A. Yes, that I've highlighted, then this line  
7 would be more like maybe this way. You know, they --  
8 this guard has a really good view of these guys.  
9 Q. So you're saying 15 y/o LG #2 would have a  
10 really good view of the fountain deck?  
11 A. Of the fountain deck as well as 15 y/o LG #1 , yes.  
12 Q. Uh-huh.  
13 A. So there would be a little bit of overlap  
14 here.  
15 Q. Okay. Why don't you put straight lines  
16 between like this in the overlap area?  
17 A. Okay.  
18 Q. Okay. I'm going to green highlight that; is  
19 that all right?  
20 A. That's fine.  
21 Q. So I believe what you've just done is you

22 drew this line around and you're saying that  
23 everything in green here is a shared area of  
24 responsibility between 15 y/o LG #1 and  
25 15 y/o LG #2 ; is that correct?

0161

1 A. Correct.

2 Q. Okay. Well, who -- are you saying that  
3 15 y/o LG #2 , in addition to the duties of the  
4 slide, making sure that they get out of the shoot  
5 from the pool all the way across the ladder, scanning  
6 over to the hard surface area of the pool deck to  
7 make sure no one is running, that he also has a  
8 responsibility to also scan all of this area on the  
9 east half of the pool?

10 A. You do that as you're watching the deck.  
11 It's just one scan.

12 Q. So he has to scan all the way across to this  
13 red line here?

14 A. Approximately, yeah, yes.

15 Q. Was 15 y/o LG #2 told that?

16 A. Oh, yeah.

17 Q. By who?

18 A. By me.

19 Q. When?

20 A. I don't know specifically when. But when  
21 they began, you know, we explained the different  
22 stands.

23 Q. Uh-huh.

24 A. And that's the explanation for that stand.

25 Q. Okay. Well, what you tell them is that your

0162

1 primary duty is to watch that slide and make sure the  
2 kids get from the shoot area where they shoot out and  
3 get -- or thrown into that deeper part of the pool  
4 and make it all the way to that ladder, don't you?

5 A. Yes.

6 Q. I mean, and this other scanning, is that  
7 their secondary responsibility?

8 A. Correct.

9 Q. And are you -- You just said that you talked  
10 to 15 y/o LG #2 about that. Are you the person who  
11 assigns those lifeguards their areas of  
12 responsibility?

13 A. Well, that's the area of responsibility for  
14 those stands. I --

15 Q. As determined by who?

16 A. As determined by me.

17 Q. Okay. Is there anyone else that makes that  
18 determination or are you the guy?

19 A. Well, when I first began this job some of  
20 the guys that were there helping beforehand had sort  
21 of set up something fairly similar and I consulted  
22 with them. And you know, they had a lot of  
23 expertise, so -- and they explained to me why we  
24 would do it this way. And it made sense to me, so I  
25 just maintained what I learned from them.

0163

1 Q. And when you say "them," who do you mean?  
2 Who are you talking about?

3 A. I'm sorry, AD #2 and LG Supv B .

4 Q. How do you spell AD #2?

5 A. AD #2 , AD #2.

6 Q. How long did he remain employed at the  
7 Houston Racquet Club after you became aquatics  
8 director in April of 2006?

9 A. He wasn't there by the time I got the job.

10 Q. That's what I thought you testified to.

11 A. Yes.

12 Q. So at what point in time did you talk to  
13 AD #2 about those issues?

14 A. That fall of 2005, early winter months of  
15 2006, he was still there. And that's when, you know,  
16 in anticipation of the coming year, some of those  
17 stands had been moved and he kind of explained to me  
18 why he did it and I agreed, understanding what he was  
19 saying, yeah.

20 Q. There are a -- during summer camp,  
21 especially with the four-year-old kids, don't they  
22 tend to congregate here around all these toys, the  
23 bucket area and the sprayers? Is that a favorite  
24 area of young children?

25 A. I would say so.

0164

1 Q. And with respect to where you, when you were  
2 standing here at this gate, saw most of the  
3 four-year olds congregating, where were they? Were  
4 they in this beach area?

5 A. Some were in the beach area.

6 Q. How many?

7 A. I don't know.

8 Q. Of the 26-some odd four-year olds how many  
9 do you think were in this general area of the beach

10 area?

11 A. I couldn't say. I really don't know.

12 Q. Okay. But you know that's where they tend  
13 to congregate?

14 A. There and in the -- that part we called the  
15 rock ledge earlier.

16 Q. And over here?

17 A. They like to sit there with their counselors  
18 sometimes.

19 Q. So you -- Do you think that most of the  
20 four-year olds were in this general area?

21 A. Yes, sir.

22 Q. At the time when you left at about 11:10 or  
23 so, the gate area; is that right?

24 A. Yes.

25 Q. Okay. Now if you're on the stand here --  
0165

1 you've been on that stand before yourself, haven't  
2 you?

3 A. I have.

4 Q. Okay. And with those -- with all of the  
5 hardware in here for the sprayers and the buckets and  
6 with all the general children in this area, can that  
7 create blind spots, not being able to see through all  
8 of that sometimes to this, to the edge?

9 A. May I see the sheet?

10 Q. Of course.

11 A. Yeah. Especially right here because  
12 that's -- there's a little bit of depth right there  
13 and kids like to play in these -- these are -- these  
14 are rings.

15 Q. Okay.

16 A. These are like -- and they throw water and  
17 it's like a little car wash. You go through them and  
18 they are spraying you. There's a little ledge right  
19 here and, you know, a lot of the kids like to stand  
20 here and dive around and do all that stuff, so  
21 that's --

22 Q. Okay. So what you just said is that the  
23 rings you're talking about are right here, correct?

24 A. Yes.

25 Q. And you were saying especially right here a  
0166

1 blind spot is created because it's a rock ledge area,  
2 there are rings here and generally children playing  
3 in this area; is that right?

4 A. Right.  
5 Q. Okay. And so that would create a blind spot  
6 from you being able to see through all that commotion  
7 over to this side, correct?  
8 A. No. That's a blind spot from where the  
9 umbrella is on the opposite side --  
10 Q. Uh-huh.  
11 A. -- that's usually where moms sit and  
12 watching the kids, you know, in that area.  
13 Q. Okay.  
14 A. And sometimes it's hard to see them when  
15 they are diving past the rings.  
16 Q. I got you. Well, and what about from the  
17 other vantage point, seeing this way?  
18 A. From there, it's not that bad.  
19 Q. Well, how bad is it when there are a lot of  
20 kids in the pool, they are playing through these  
21 rings, there are children standing, there are  
22 counselors standing in this area by the children or  
23 somewhere in the general vicinity, does that create  
24 blind spots?  
25 MR. SNYDER: Objection, form.  
0167  
1 Q. (BY MR. MARRS) Or not?  
2 A. Not really because see where I have -- where  
3 I kind of drew that kidney-shaped sort of --  
4 Q. Uh-huh.  
5 A. -- that red, now the red wading area.  
6 Q. Oh, right.  
7 A. Okay. That's all extremely shallow right  
8 there.  
9 Q. Okay.  
10 A. So it's very easy to see anything --  
11 Q. Sure.  
12 A. -- because it's --  
13 Q. How about over here?  
14 A. Yeah. Right there it's very clear.  
15 Q. And how about if you're over here in the  
16 stand where 15 y/o LG #1 was?  
17 A. Uh-huh.  
18 Q. Of course, if you've got -- obviously, if  
19 you've got counselors standing in front of children,  
20 that creates a blind spot, doesn't it?  
21 A. I suppose it could.  
22 Q. I mean, it's kind of hard to see through  
23 people's bodies?

24 A. Through people.

25 Q. Correct?

0168

1 A. Correct.

2 Q. How many counselors were standing in this  
3 general area when you left the gate?

4 A. I couldn't say a specific number. I --

5 Q. Well, how many generally, approximately?

6 A. Five to six.

7 Q. And would 15 y/o LG #1 's area of  
8 responsibility for zoning include the pool, the  
9 entire pool, all the way to the east end, all the way  
10 to the west end?

11 A. Not the entire pool. Not all the way out to  
12 the slide.

13 Q. Not this area that was solely  
14 15 y/o LG #2 's?

15 A. Exactly.

16 Q. So from here all the way to here, you're  
17 saying that was 15 y/o LG #2 's sole area of  
18 responsibility?

19 A. His primary -- I mean, she -- I mean, I  
20 don't know that she every once in a while didn't make  
21 a big scan and look over there, if she saw something  
22 or -- you know, if you see a kid running and you  
23 catch him out of your periphery, you immediately  
24 turn.

25 Q. No. I'm talking about areas of

0169

1 responsibility.

2 A. Of responsibility, mainly it would have been  
3 more from --

4 Q. Here --

5 A. -- from either there or the ropes and all  
6 the way in, yes.

7 Q. So from here west was her area of scanning  
8 responsibility and from approximately here east was  
9 15 y/o LG #2 's area of scanning responsibility?

10 A. Yes.

11 Q. Okay. And among those, you say some five or  
12 six counselors standing in this area, do you know who  
13 they were? Do you recall what counselors you saw?

14 A. No.

15 Q. You don't -- the -- this horrible event  
16 occurred five to seven minutes after you left this  
17 gate and you don't recall exactly what counselors

18 were standing nearest you before you left?  
19 A. That's correct.  
20 Q. Was 15 y/o LG #2 -- was 15 y/o LG #2 on the stand  
21 when you left?  
22 A. Yes.  
23 Q. Was 15 y/o LG #1 on her stand?  
24 A. Yes.  
25 Q. Did you know the counselors by name that

0170

1 were in the pool at the time that you were at this  
2 gate? Did you know who they were?  
3 A. Yeah. I knew some of them.  
4 Q. How many?  
5 A. I knew -- I think I knew four.  
6 Q. Four? Who?  
7 A. I knew Supv CC #1 . I knew Supv CC #2 .  
8 I knew who 4 y/o B-CC #3 was. And I knew who 4 y/o B-CC #5  
9 was.  
10 Q. Do you recall where 4 y/o B-CC #5 was at the  
11 time that you left the gate area?  
12 A. No, I don't.  
13 Q. Do you recall where 4 y/o B-CC #3 was?  
14 A. No, I don't.  
15 Q. Do you recall where Supv CC #2 or  
16 Supv CC #1 were?  
17 A. I only remember seeing Supv CC #1 walking around  
18 maybe where that rock ledge area is.  
19 Q. Here (indicating)?  
20 A. He was walking on the pool deck.  
21 Q. Okay. You mean outside here (indicating)?  
22 A. Yeah. He was --  
23 Q. Okay. Which way was he walking, this way  
24 going east or this way going west?  
25 A. I really don't remember.

0171

1 Q. Okay. Did you ever ask that more lifeguards  
2 than two be present at the family pool prior to  
3 July 18, 2007?  
4 A. I think so. I don't remember specifically.  
5 Q. Do you feel that having only a 15-year old  
6 lifeguard here and another 15-year old here, with  
7 everything you saw going on in the pool with the  
8 counselors and with all the children and all the  
9 four-year olds was a sufficient number of lifeguards  
10 for the situation you saw out there at approximately  
11 11:10 on July 18, 2007?

12 MR. SNYDER: Objection, form.  
13 A. I think so.  
14 Q. (BY MR. MARRS) Are you sure?  
15 MR. SNYDER: Objection, form.  
16 A. I think it was okay for them to be there.  
17 Q. (BY MR. MARRS) Do you think there should  
18 have been more?  
19 MR. SNYDER: Objection, form.  
20 A. I didn't think that. That crowd was well  
21 under control, no rowdiness.  
22 Q. (BY MR. MARRS) You said you didn't think  
23 that. Do you think that now as we sit here today,  
24 based on what you know?  
25 MR. SNYDER: Objection, form.

0172

1 A. I still don't think that, no.  
2 Q. (BY MR. MARRS) Would it have been safer for  
3 the children in the family pool at 11:10 before you  
4 left to have more than two lifeguards at that pool to  
5 watch the children?  
6 MR. SNYDER: Objection, form.  
7 A. I don't know.  
8 Q. (BY MR. MARRS) You don't have an opinion  
9 one way or the other?  
10 A. I don't.  
11 Q. Have you ever asked or requested that there  
12 be more lifeguards at the family pool and been told  
13 no?  
14 A. Have I been told no?  
15 Q. Yeah.  
16 A. About -- no, I've never been told no.  
17 Q. Have you ever requested that more lifeguards  
18 than two be present at that family pool during summer  
19 camp?  
20 A. I really don't remember. It's possible, but  
21 I don't remember.  
22 Q. Well, have you ever seen three lifeguards  
23 posted at the family pool during summer camp?  
24 A. I don't remember if I've seen that.  
25 Q. You yourself served as a third lifeguard at

0173

1 that very family pool the day after this incident,  
2 weren't you?  
3 A. In a way.  
4 Q. In what way?  
5 A. Well, I wasn't -- I didn't create any

6 rotation or any station or anything. I just -- I  
7 just sat in that area because a lot of the guards  
8 didn't -- they didn't like sitting where 15 y/o LG #1 was  
9 anymore. And I needed them to, so I decided I would  
10 sit over there. And I was just basically keeping eye  
11 contact with them and I guess reassuring them.

12 Q. Where were you sitting?

13 A. I was sitting right under that umbrella,  
14 that one (indicating).

15 Q. Right about there (indicating)?

16 A. Yes, sir.

17 Q. I'll just put "GP day after," okay?

18 A. Yes.

19 Q. How many occasions prior to July 18, 2007  
20 have you seen a lifeguard chair on the west end of  
21 the family pool?

22 A. None that I can remember.

23 Q. Had you ever sat in a lifeguard chair on the  
24 west end of the family pool prior to July 18, 2007?

25 A. I don't think so.

0174

1 Q. And aside from whether it was a second or a  
2 third lifeguard chair, had you ever seen a lifeguard  
3 chair in the west end of the pool prior to July 18,  
4 2007?

5 A. No.

6 Q. Have you seen any of the -- I may have asked  
7 you this, but to clarify -- statements given by  
8 lifeguards that were on duty on July 18, 2007?

9 A. I really -- I really haven't read any of the  
10 statements.

11 Q. Were you aware that one of the lifeguards  
12 indicated that his training as a lifeguard at the  
13 Racquet Club basically consisted of simple rules like  
14 no tennis balls in the pool, no fighting, no  
15 wrestling, no neck grabbing?

16 MR. SNYDER: Objection, form.

17 A. Was I aware of that he --

18 Q. (BY MR. MARRS) Yes.

19 A. -- would have said that?

20 Q. Yes.

21 A. Well, those were some of the rules.

22 Q. Okay. Now, aside from those types of rules,  
23 did you have any detailed training for your  
24 lifeguards in terms of them being lifeguards or did  
25 you rely upon the Red Cross and American Heart

0175

1 Association training that they would receive in  
2 getting certified as lifeguards?

3 MR. SNYDER: Objection, form.

4 A. Mainly, I relied on their Red Cross  
5 training. Once they were at the club, I would  
6 explain the more Racquet Club specific things.

7 Q. (BY MR. MARRS) Like what?

8 A. Like those -- like those rules you stated.

9 Q. Okay. Anything else in terms of actually  
10 performing as a lifeguard and training as a lifeguard  
11 that you would rely upon other than the Red Cross  
12 training that you would expect they would have before  
13 becoming a lifeguard and the simple rules that I just  
14 defined?

15 A. Well, I was out there quite often, so it was  
16 always -- I was always making sure, you know, that  
17 the scanning was happening and all those things were  
18 happening -- you know, nobody falling asleep or  
19 something.

20 Q. Right. I'm talking about actual on-hands  
21 training, anything else other than Red Cross training  
22 they should have had before becoming a lifeguard, the  
23 simple rules and what you would mention to them from  
24 time to time being around the pools?

25 A. No.

0176

1 Q. Any formal training program on how to be a  
2 lifeguard other than those things?

3 A. No.

4 Q. Have you seen the way that summer camps are  
5 run at any other club?

6 A. I haven't.

7 Q. Have you ever been to any other club that  
8 had a pool to see how they ran their summer camp?

9 A. No, I haven't.

10 Q. Have you ever asked Mr. Griffin or  
11 Mr. Lamkin or anyone to go to any other club, locally  
12 or otherwise, to see how they ran their summer camp?

13 A. I never asked them to do that.

14 Q. Or how they trained their lifeguards?

15 A. No.

16 Q. Or how they kept children safe in their  
17 pools?

18 A. I never asked them to do that.

19 Q. And had you ever done any of those things?

20 A. No.  
21 Q. Or how lifeguards did their jobs or how  
22 lifeguard managers did their jobs or how aquatics  
23 directors did their jobs at other facilities or  
24 clubs?

25 MR. SNYDER: Objection, form.

0177

1 A. Things like that I would discuss with some  
2 of the other aquatic managers around.

3 Q. (BY MR. MARRS) Like who?

4 A. Like Ashley Glass.

5 Q. And who is Ashley Glass?

6 A. He was aquatic director at Lakeside Country  
7 Club.

8 Q. What discussions did you have with any  
9 aquatic director, whether Ashley Glass or someone  
10 else about how to color-code children based on their  
11 swimming ability?

12 A. No conversations like that.

13 Q. Or about how to separate children by  
14 swimming ability so that they are safe in the pools?

15 A. I never had conversations like that.

16 Q. Or about the proper supervision of young  
17 children in the pool?

18 A. Meaning swimmers?

19 Q. Meaning you don't know if they are swimmers  
20 or not, you just know they are young kids, as young  
21 as four-year olds and they are in your pool?

22 A. I -- I'm not sure if I ever had  
23 conversations like that with any of those guys.

24 Q. Or about specifically training and teaching  
25 your lifeguards exactly where each AED on the

0178

1 premises is stored?

2 A. Did I have conversations like that with --  
3 no.

4 Q. Had you ever seen three or more lifeguards  
5 stationed at the family pool during anytime other  
6 than summer camp? You already testified you hadn't  
7 seen three or more at the family pool during summer  
8 camp. How about on other days that weren't summer  
9 camp?

10 A. Yes.

11 Q. When?

12 A. I don't know specific dates, but we would do  
13 that. I remember this one party we had, it was older

14 kids and they were getting pretty rowdy and we had  
15 three guards up.

16 Q. "Older" meaning what?

17 A. I think they were either 8th grade or early  
18 high school.

19 Q. And any other -- when was this?

20 A. Sometime during this past summer.

21 Q. Summer 2007?

22 A. Yes, sir.

23 Q. Any other time you can recall there being  
24 more than two lifeguards stationed at the family  
25 pool?

0179

1 A. I mean, it's happened on many occasions. I  
2 can't recall each one, but yeah.

3 Q. Well, how many -- let's say summer camp,  
4 even with counselors because you know that if a  
5 lifeguard is on that stand at the family pool, they  
6 are responsible for everyone in the pool, correct?

7 A. Sure.

8 Q. Whether they're a mom, dad, guest, member,  
9 camper, non-camper, counselor, another lifeguard, it  
10 doesn't matter, if they are in the pool they are  
11 responsible for them, correct?

12 A. Correct.

13 Q. Okay. So at what point, what number of  
14 people have to get in that pool for you to realize  
15 there needs to be more than two lifeguards at the  
16 pool?

17 MR. SNYDER: Objection, form.

18 A. Well, what we have followed has been the one  
19 to 25. So, if 50 people are inside the water or  
20 more -- if more than 50 begins to happen, then we add  
21 a third guard.

22 Q. (BY MR. MARRS) So if there are 50 people in  
23 the pool, you need three guards; is that correct?

24 A. Correct.

25 Q. And that's based on what, this ratio?

0180

1 A. That's what we were taught in the  
2 lifeguarding course.

3 Q. Well, if there -- if it's one to 25 and  
4 there are 50 in the pool, according to one to 25, you  
5 would only need two guards, wouldn't you?

6 A. Well, if it's over 50.

7 Q. Okay. So if it's over 50 -- is this the

8 bather load that Mr. Griffin was testifying about  
9 earlier?

10 MR. SNYDER: Objection, form.

11 A. I don't remember what part he was testifying  
12 about that --

13 Q. (BY MR. MARRS) Okay.

14 A. Any swimmers in are called a bather load,  
15 so...

16 Q. Okay. What is the bather load? Explain  
17 that to the jury.

18 A. The bather load is just the amount of people  
19 participating in the water at any time.

20 Q. Okay. Now, this bather load emanates from  
21 where? Where does it come from?

22 A. Just people around the pool.

23 Q. Yeah. But who establishes this bather load  
24 you use?

25 A. The ratio?

0181

1 Q. Yes.

2 A. I don't know the name of the -- I don't know  
3 what it would be called, the agency or the  
4 controlling -- but that's -- that's done I don't know  
5 if it's city to city or county to county. It's a  
6 little different everywhere.

7 Q. Okay. And you, as aquatics director and the  
8 lifeguard manager, makes that decision day-to-day  
9 depending on the number of bathers in the pools?

10 A. Me or the lifeguards.

11 Q. Okay. Well, whose specific responsibility  
12 is it to determine what the bather load is at any  
13 given point at the Houston Racquet Club?

14 A. Any of the lifeguards on duty can do it --

15 Q. Okay.

16 A. -- if they should feel like if -- I mean,  
17 they have a count and see it's too high or they're  
18 uncomfortable because of the type of crowd it is  
19 or -- they can -- they can determine and ask for a  
20 third guard at any time.

21 Q. Okay. And of course, we have talked  
22 about -- you said there might have been 40 children  
23 in the pool and how many moms?

24 A. I really don't know. Maybe a handful of  
25 moms.

0182

1 Q. Okay. Maybe five?

2 A. I don't know, possibly.  
3 Q. Okay. And how many counselors?  
4 A. I believe there were close to eight maybe.  
5 Q. And who else? How many -- there were  
6 actually -- who else was in the pool other than  
7 children, moms, counselors?  
8 MR. MARRS: Bless you.  
9 A. I don't know.  
10 MR. SNYDER: Bless you.  
11 MR. MARRS: That was a sneeze.  
12 Q. (BY MR. MARRS) Do you know if there was  
13 anybody else?  
14 MR. MARRS: Can you put this up for  
15 me?  
16 MR. PLETCHER: Uh-huh.  
17 Q. (BY MR. MARRS) Okay. So if there were  
18 40 children and if there were five moms and if there  
19 were eight counselors, then there would have been  
20 53 bathers, correct?  
21 A. Correct.  
22 Q. Okay. Which would mean you would need how  
23 many lifeguards?  
24 A. Three.  
25 Q. And this bather ratio, tell me again which

0183

1 specific code or law that is that governs this  
2 important bather load that is a very important part  
3 of your responsibilities.  
4 A. This is just what I was taught in the  
5 lifeguarding course as a recommended ratio. And I  
6 don't know --  
7 Q. Recommended by who?  
8 A. Well, it was in the Red Cross course, so I  
9 don't know who makes that recommendation, what agency  
10 or something like that, I don't know.  
11 Q. Had you -- and this is, of course, is the  
12 bather load that Mr. Griffin was talking about during  
13 his testimony?  
14 MR. SNYDER: Objection, form.  
15 A. Really -- I don't remember what part he was  
16 talking about. I know he used the term "bather  
17 load," but...  
18 Q. (BY MR. MARRS) He used it a number of  
19 times, didn't he?  
20 A. I think so.  
21 Q. Okay.

22 A. Yes.  
23 Q. Okay. Now, is Mr. Griffin at all  
24 responsible for going out to the pool on a day-to-day  
25 basis, a weekly basis, a monthly basis to determine  
0184

1 what the bather load is?

2 A. No, not at all.

3 Q. Has he ever done that, to your knowledge?

4 A. I don't know.

5 Q. Not to your knowledge?

6 A. Not to my knowledge.

7 Q. I mean, have you ever had a discussion with  
8 Mr. Griffin about, you know, the bather load is a  
9 little high, the ratio is "X" and we need this many  
10 lifeguards? Have you ever had such a conversation  
11 with Mr. Griffin?

12 A. No.

13 Q. Not once?

14 A. No.

15 Q. Now, did any of the lifeguards at the family  
16 pool on July 18th tell you that we need more  
17 coverage, we need another lifeguard?

18 A. No.

19 Q. Did you teach 15 y/o LG #2 or 15 y/o LG #1  
20 that there was this bather load and what it was?

21 A. Well, they went to the same training  
22 course. I personally never talked to them about this  
23 is the proper ratio.

24 Q. Okay. Had they or LG Supv ever been  
25 told that by anyone at the Houston Racquet Club  
0185

1 before, to your knowledge?

2 A. Yes.

3 Q. The specific bather ratio?

4 A. Yes.

5 Q. Who?

6 A. LG Supv .

7 Q. Okay. What about 15 y/o LG #1 or  
8 15 y/o LG #2 ?

9 A. Not to my knowledge.

10 Q. And who specifically did the head count as  
11 to the actual number of people in the family pool the  
12 morning of July 18, 2007 while John Pluchinsky was in  
13 the pool, if anyone?

14 A. Well, while I was at the gate, I remember  
15 counting, not including the people up on the slide,

16 and I came up with a little bit less than 30. And I  
17 don't remember exactly, maybe 30 to 30-something  
18 people.

19 Q. And how about including the people on the  
20 slide?

21 A. I really don't know how many people were up  
22 on the stairs.

23 Q. Well, I think you said before there were  
24 eight. I think you said eight.

25 A. Eight or something like that.

0186

1 Q. Okay.

2 A. But yeah.

3 Q. All right. So eight on the slide. And you  
4 said you remember approximately 38 in the pool?

5 A. Not 38. Maybe almost 30 -- around.

6 Q. Around 30?

7 A. Yes.

8 Q. Could have been more, you don't know?

9 A. A few more, a few less. I don't know.

10 Q. Okay. So again, even with that, if you have  
11 approximately 30 children in the pool, eight on the  
12 slide and there might have been a couple more as you  
13 say -- one way or the other, there was a couple more,  
14 it could have been as many as 40, that's  
15 approximately about the same amount that you've  
16 already testified to, correct?

17 A. Correct.

18 Q. And in the five minutes that you were gone,  
19 those eight on the slide might be in the pool,  
20 correct?

21 A. It's possible. I don't know.

22 Q. Would you expect that they would still be  
23 there on the slide standing, not going down the slide  
24 for five whole minutes?

25 A. No.

0187

1 Q. You would expect they would be in the pool  
2 in five minutes, wouldn't you?

3 A. Well, in and out probably, if they were  
4 using the slide.

5 Q. But you don't know beyond that point?

6 A. Correct.

7 Q. And I'll mark this as Exhibit 14C.

8 Okay. Now, what Texas Administrative  
9 Code or CPS codes apply to ratios of individuals that

10 should have been in the pool with children as young  
11 as four on July 18, 2007, to your knowledge?

12 MR. SNYDER: Objection, form.

13 A. I'm sorry, if you could, give me the first  
14 part of that question.

15 Q. (BY MR. MARRS) I'll be happy to.

16 As of July 18, 2007 what was your  
17 knowledge with respect to what the Texas  
18 Administrative Code, CPS codes or other laws governed  
19 how many people need to be in the pool watching  
20 children? What ratio?

21 A. I've only seen one ratio sent to us by the  
22 CPS.

23 Q. But you had not seen that prior to July 18,  
24 2007, correct?

25 A. Correct.

0188

1 Q. Okay. So other than the bather load that  
2 you've already testified about, which -- are you  
3 saying that came from Red Cross materials?

4 A. It was told to us by the instructor. I  
5 don't know if it's written in any of his materials or  
6 not. I --

7 Q. Okay.

8 A. Yeah.

9 Q. Aside from that, are you aware -- were you  
10 aware before July 18, 2007 of any other ratios that  
11 apply, depending on the number of bathers or children  
12 regardless of age that might be in the pool?

13 A. No, not before that.

14 Q. Okay. And before July 18, 2007 were you  
15 aware of any ratios that apply to your family pool at  
16 all other than this bather load ratio you're talking  
17 about?

18 A. No.

19 Q. And since July 18, 2007, what particular  
20 ratios have you become aware of that did apply to the  
21 family pool on July 18, 2007?

22 A. The one I learned from CPS, I just -- a  
23 piece of paper that we received at the club, I don't  
24 know if they sent it or what.

25 Q. Okay. And so, according to the CPS, the

0189

1 ratio that applied to the family pool as of July 18,  
2 2007 is what?

3 A. One to 35.

4 Q. One to 35?  
5 A. Yes.  
6 Q. Anything else that would affect that ratio  
7 up or down, to your knowledge?  
8 A. I don't know if I understand what you're  
9 asking me.  
10 Q. Well, is there anything that would change  
11 the ratio one to 35 up or down, to your knowledge?  
12 A. I don't -- I don't know how they arrive at  
13 those things. I don't know.  
14 Q. Okay. Well, is it your understanding that  
15 that's a bather load, one lifeguard for 35 people in  
16 the pool regardless of age?  
17 A. Correct.  
18 Q. Okay. And regardless of ability?  
19 A. I don't remember exactly. I just remember  
20 seeing the ratio, so I'm not sure.  
21 Q. Okay. And is that one to 35 ratio  
22 regardless of age or ability what you've been  
23 following since July 18, 2007?  
24 A. No.  
25 Q. What have you been following?  
0190  
1 A. The Red Cross one to 25.  
2 Q. Why?  
3 A. I just -- I just like it better.  
4 Q. Why?  
5 A. Because I think the little bit lower numbers  
6 of bathers is -- I think it's just a little bit  
7 easier to watch.  
8 Q. And this one to 25 bather load that you say  
9 was in place at the Houston Racquet Club before and  
10 after July 18, 2007, is that 25 bathers regardless of  
11 age or ability?  
12 A. The way it's explained is one to 25 that you  
13 can comfortably watch, so I think if ability was an  
14 issue and you -- the guard would be uncomfortable  
15 then, I think that may change it. I don't know.  
16 Q. Well, who would make that determination as  
17 to whether the -- say a 15-year-old guard felt  
18 comfortable or uncomfortable depending on however  
19 many people were in the pool? That would be  
20 subjective for each one of those guards, wouldn't it?  
21 A. Right.  
22 Q. Do you have any hard and fast rule or do you  
23 just tell your guards, it's a one to 25 ratio?

24 A. Well, they learn it's a one to 25 ratio.

25 And I would tell them, if you -- to use their

0191

1 instinct. If you feel uncomfortable, then just get

2 help. It's -- you know, it's no problem to put

3 somebody up.

4 Q. And so you would leave that up to the

5 individual guard to determine, correct?

6 A. Yeah, for the most part.

7 Q. And if 15 y/o LG #1 or 15 y/o LG #2 were on

8 the stand -- strike that.

9 When 15 y/o LG #1 and 15 y/o LG #2

10 were on the stand on July 18, 2007 after you had

11 already left and after the other four lifeguards were

12 gone, including LG Supv , the supervising

13 lifeguard, if either of them felt like I'm

14 uncomfortable, there's way too much going on here, I

15 need help, how would they get additional lifeguard

16 help?

17 MR. SNYDER: Objection, form.

18 A. Well, since the other four guards were up in

19 the pavilion, which is very close proximity, they

20 would have done a double whistle blast, which calls,

21 which means get the attention of another guard and

22 that would have taken care of it.

23 Q. (BY MR. MARRS) Have you ever seen a

24 situation at your pools where a lifeguard should have

25 asked for additional help but didn't?

0192

1 MR. SNYDER: Objection, form.

2 A. I remember one this past summer.

3 Q. (BY MR. MARRS) Certainly you know that when

4 it comes to young teenagers, 15 years, 16-years old,

5 that sometimes they don't ask for the help that they

6 need. Haven't you learned that as being a supervisor

7 of young teenage lifeguards?

8 MR. SNYDER: Objection, form.

9 A. I don't know. The one I was referring to

10 was a 21-year-old guard, so...

11 Q. (BY MR. MARRS) And that's my point. Even

12 as old as 21, a lifeguard might not ask for the help

13 that they need. Sometimes lifeguards, especially

14 young ones, may not even recognize when they may need

15 additional help, right?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) Do you not know that as a

18 lifeguard manager and aquatics director?

19 MR. SNYDER: Objection, form.

20 A. I do and I disagree with that.

21 Q. (BY MR. MARRS) Okay. If you as the  
22 aquatics director and lifeguard manager on July 18,  
23 2007, which you were, knew that only two 15-year-old  
24 lifeguards were left at the pool guarding 53 bathers,  
25 certainly you would have made sure there were more  
0193

1 than two lifeguards at the family pool, wouldn't you?

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) But you didn't, did you?

4 MR. SNYDER: Objection, form.

5 A. While I was out there, the numbers were not  
6 that big.

7 Q. (BY MR. MARRS) Did you any time while you  
8 were standing there at that gate think to yourself,  
9 you know, I don't know, two 15-year-olds lifeguarding  
10 this pool with that many people in it, I better get  
11 more help? Did you think about maybe asking one of  
12 the other lifeguards to hang and lifeguard as a third  
13 lifeguard?

14 MR. SNYDER: Objection, form.

15 A. No. I felt confidence in the guards the  
16 whole time.

17 Q. (BY MR. MARRS) But did that cross your mind  
18 before you left that you might get a third lifeguard?

19 MR. SNYDER: Objection, form.

20 A. Well, that's why I was there surveying it  
21 and I didn't feel like there needed -- there needed  
22 to be a third lifeguard, but...

23 Q. (BY MR. MARRS) And why did you go up to the  
24 family pool and stand there and survey the situation  
25 to begin with?

0194

1 A. Because I knew the other guys were getting  
2 food, so I just wanted to wait for them to get back  
3 so I could go.

4 Q. Get back where?

5 A. Back to the pool area.

6 Q. Well, the only thing that was going on at  
7 the Houston Racquet Club aquatics-wise and  
8 lifeguard-wise was at the family pool, right?

9 A. I think there was a little bit going on in  
10 the other pool, but mostly.

11 Q. There was zero people in the lap pool at

12 11:00 o'clock at the Houston Racquet Club, wasn't  
13 there?

14 MR. SNYDER: Objection, form.

15 A. I'm not sure about that.

16 Q. (BY MR. MARRS) You had one lifeguard,  
17 LP LG , at the lap pool and no one at the lap  
18 pool until M #1 took her child,  
19 4 y/o-C #7 , and went over to the lap pool; isn't that  
20 true?

21 A. For some reason I thought there was a swim  
22 lesson going on, so...

23 Q. Okay.

24 A. There may have been a few more people.

25 Q. Okay. Well, most of the activity was going  
0195

1 on at the family pool, right?

2 A. Yes.

3 Q. Okay. And you say you wanted to go to the  
4 family pool because you knew that a number of  
5 lifeguards were getting their food, right?

6 A. Correct.

7 Q. And you wanted to wait until those  
8 lifeguards -- and I assume you mean the four that  
9 were on break or at least the three that you knew  
10 were off getting food, LG Supv, Sr LG #1  
11 and Sr LG #2 , you wanted to wait until they got  
12 back for you to leave the family pool, right?

13 A. Right.

14 Q. But they did not come back to the family  
15 pool, instead you knew they were, lunch in hand and  
16 going to the pavilion, correct?

17 A. Correct.

18 Q. Okay. So, you weren't really waiting for  
19 them to get back to the family pool or were you?

20 A. I was waiting for them to get back to the  
21 pool area.

22 Q. Okay. Because why?

23 A. Because that's where you can hear whistle  
24 blasts, you can hear anything that may be going on,  
25 you can see.

0196

1 Q. Okay. And so you waited at the family pool  
2 until you saw them coming back, right?

3 A. Right.

4 Q. And the reason why you did that was because  
5 of the number of children that you saw in the

6 family --

7 MR. SNYDER: Objection, form.

8 A. Well, I always walk by -- anytime I went  
9 anywhere near the pool, I would do that. I would  
10 just stop, make sure everything looks okay.

11 Q. (BY MR. MARRS) Okay. And --

12 A. Just at all times.

13 Q. But this time you waited until you saw the  
14 three lifeguards coming lunch in hand before you left  
15 the family pool, right?

16 A. Right.

17 Q. Why did you not feel comfortable leaving the  
18 family pool until you saw them walking back?

19 A. I just think it's a good idea to have  
20 those -- you know, have that head guard there or  
21 whatever in case somebody needs anything.

22 Q. And would it have been an even better idea  
23 for one of them to have taken your place at the  
24 family pool?

25 MR. SNYDER: Objection, form.

0197

1 A. I mean, I don't know.

2 Q. (BY MR. MARRS) Would that have been safer  
3 than having them away from the family pool?

4 MR. SNYDER: Objection, form.

5 A. I don't know. I was outside the gate. I  
6 was really just surveying it, so I don't know.

7 Q. (BY MR. MARRS) I mean, the more guards you  
8 have at a pool full of children, the safer it is;  
9 wouldn't you agree?

10 MR. SNYDER: Objection, form.

11 A. Typically.

12 Q. (BY MR. MARRS) So, you said earlier that  
13 you follow a -- bather loads set forth by the Red  
14 Cross. Do you consider the Red Cross to be an  
15 organization whose rules pretty much govern  
16 lifeguarding?

17 A. I think they are one of them.

18 Q. Well, do you follow the Red Cross  
19 lifeguarding rules yourself?

20 A. I think so, yes.

21 Q. Are they a leader in areas of lifeguarding,  
22 lifeguard training and lifeguard management, to your  
23 knowledge?

24 A. At least lifeguard training, yes.

25 Q. At least lifeguard certification as well?

0198

- 1 A. Yes.
- 2 Q. Do you sometimes rely upon their manuals in  
3 your job as aquatics manager and lifeguard manager?
- 4 A. From time to time I have.
- 5 Q. Now, did you have the 2001 American Red  
6 Cross manual, the lifeguard training manual prior to  
7 July 18, 2007?
- 8 A. I don't know. That would have been the  
9 first manual I ever received. I don't know if I  
10 still have that.
- 11 Q. Okay. Have you ever had that manual at the  
12 Houston Racquet Club?
- 13 A. Yes.
- 14 Q. Have you ever -- Well, you said you don't  
15 recall whether you still had it or not. Do you have  
16 that 2001 lifeguard training manual?
- 17 A. I don't know. I don't think I do. I had it  
18 while I was taking the course.
- 19 Q. Okay. And that would have been the 2002  
20 course?
- 21 A. Yes.
- 22 Q. And what happened to it after that?
- 23 A. Oh, I don't know. I usually kept it at my  
24 desk.
- 25 Q. At the Houston Racquet Club?

0199

- 1 A. Yes.
- 2 Q. And have you had any American Red Cross  
3 manuals other than the 2001 American Red Cross  
4 lifeguard training manual?
- 5 A. Yeah. I got the one --
- 6 Q. Before July 18, 2007?
- 7 A. If -- well, when I was recertified in 2006.
- 8 Q. Okay. And which one did you get then?
- 9 A. I don't know, just the one they handed us.  
10 I don't know if it's different or the same from the  
11 other one.
- 12 Q. Is it a lifeguard training manual?
- 13 A. Yes.
- 14 Q. And where would that be?
- 15 A. I think I have it at the Racquet Club.
- 16 Q. Where do you keep it?
- 17 A. Usually either in my office or in  
18 Mr. Lamkin's office.
- 19 Q. Does the lifeguard training manual from the

20 Red Cross set forth the minimum requirements for  
21 becoming a lifeguard?

22 A. I don't think so. I don't -- I can't  
23 remember.

24 Q. Does it set forth the required  
25 certifications or training that lifeguards are  
0200

1 supposed to have or do you know?

2 A. I don't -- I don't know.

3 Q. Does it set forth how to correctly do CPR?

4 A. You know, I believe so, but I don't remember  
5 if it does.

6 Q. Does it set forth how to correctly use an  
7 AED or when you should use an AED, to your knowledge?

8 A. Yes, it talks about it. I don't -- I don't  
9 know specifically, you know, the wording of it,  
10 but...

11 Q. Does the American Red Cross offer any kind  
12 of certification in lifeguard management?

13 A. I don't know.

14 Q. Have you ever heard of a certification in  
15 lifeguard management?

16 A. I haven't.

17 Q. Tell the jury what patron surveillance is.

18 A. Watching the people around your pool.

19 Q. What are like the proper techniques of  
20 patron surveillance that you can think of?

21 A. Well, scanning the pool, using your  
22 peripheral vision more than your straightforward  
23 vision. Listening, watching for behaviors.

24 Q. Anything else come to mind?

25 A. No, not immediately.

0201

1 Q. Well, what -- what's the most important duty  
2 that a lifeguard has?

3 A. I would say patron surveillance.

4 Q. Is it the responsibility of the lifeguard  
5 manager to train and ensure that your lifeguards know  
6 how to properly and adequately survey the patrons or  
7 is that something that you rely on the Red Cross to  
8 train those people before they come to you?

9 A. That's something I rely on the Red Cross.

10 Q. Do you give any such training in patron  
11 surveillance to your lifeguards yourself?

12 A. No.

13 Q. And what factors or conditions can affect

14 proper surveillance of patrons in your pool?  
15 A. Weather. There could be lifeguard fatigue.  
16 If you have a lot of horseplay and that type of crazy  
17 behavior, that also affects.  
18 Q. Because that distracts a lifeguard?  
19 A. It's hard to maintain clear surface and then  
20 bottom of the pool viewing. For example, if you have  
21 someone doing like, you know, those chicken fights or  
22 something like that, you can't really see what's  
23 going on under the water.  
24 Q. Okay. Any other factors you can think of  
25 that affect patron surveillance?

0202

1 A. Not right off, no.  
2 MR. MARRS: Do you want to take five?  
3 MR. SNYDER: Yeah.  
4 VIDEOGRAPHER: Off the record. The  
5 time is 4:00 p.m.  
6 (Brief recess.)  
7 VIDEOGRAPHER: Back on the record. The  
8 time is 4:19 p.m.  
9 Q. (BY MR. MARRS) And with respect to the one  
10 to 25 bather ratio that the Houston Racquet Club  
11 followed before and after the incident, does it  
12 matter where the bathers are in the pool?  
13 A. We treat it as an overall ratio --  
14 Q. Okay.  
15 A. -- this whole time.  
16 Q. Regardless of what area of the pool the  
17 bathers were in, correct?  
18 A. Correct.  
19 Q. Okay. And looking at --  
20 MR. MARRS: Can you zoom out? Well,  
21 that's fine.  
22 Q. (BY MR. MARRS) -- Exhibit 14B, when you  
23 were at the gate -- well, strike that.  
24 This float line here, what is that for?  
25 A. Well, the -- I think it's because the depth

0203

1 change right there, it goes to 5 feet.  
2 Q. Okay.  
3 A. And --  
4 Q. So this would be the deepest area of the  
5 pool right here, correct?  
6 A. Yes, sir.  
7 Q. And that's why it's so important to make

8 sure that the kids that come off the slide actually  
9 make it over to the wall, correct?

10 A. Well, that and the current created by the  
11 slide.

12 Q. Okay.

13 A. Yes.

14 Q. Created by the bather hitting the water,  
15 correct or the water coming off the slide?

16 A. Yes.

17 Q. Is there continuous water going down the  
18 slide?

19 A. Yes.

20 Q. Okay. And so generally, during summer camp  
21 do the lifeguards try to make sure, especially since  
22 kids are flying off the slide, that the campers are  
23 not in this area on this side of the float line?

24 A. Yes.

25 Q. Okay. So most of the summer campers, other  
0204

1 than those that were on the slide and coming into the  
2 water and going over, were actually to the west of  
3 this float line at the time that you were standing at  
4 this gate before you left at about 11:10; is that  
5 right?

6 A. That's right.

7 Q. Okay. And what if the lifeguard on this  
8 stand has over 25 bathers in their sole zone of  
9 responsibility, should there be more than one  
10 lifeguard at that zone?

11 A. At that point it would really depend a lot  
12 on the -- on the conduct of the crowd -- conduct of  
13 the crowd. In regards to summer camp because of the  
14 presence of the counselors there --

15 Q. Uh-huh.

16 A. -- that makes it a very manageable group to  
17 watch.

18 Q. Now, most of these counselors are teenagers,  
19 right?

20 A. I believe so, yes.

21 Q. And most of the children in this area of the  
22 pool, I think you already testified to, were  
23 four-years old at that particular time, right?

24 A. That's correct.

25 Q. Okay. So based on the fact that up to  
0205

1 26 four-year olds were in this area of the pool,

2 26-plus counselors, would you think there would be  
3 more than one lifeguard required at this particular  
4 area where this sole zone of responsibility, there's  
5 some perhaps 26 four-year olds, not just teenagers,  
6 plus teenage counselors?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) Would that be a good idea?

9 MR. SNYDER: Objection, form.

10 A. I didn't think so because of the presence of  
11 the counselors.

12 Q. (BY MR. MARRS) Do you think it would be a  
13 better idea to have more than one lifeguard watching  
14 over 25 children of the age four-years old and  
15 counselors that might be blocking the view of the one  
16 lifeguard sitting here with the sole responsibility  
17 of watching this end of the pool?

18 MR. SNYDER: Objection, form.

19 A. I didn't think so. 15 y/o LG #1 said she was very  
20 comfortable and it was a manageable group.

21 Q. (BY MR. MARRS) Do you think that would be a  
22 safer course of conduct --

23 MR. SNYDER: Objection, form.

24 Q. (BY MR. MARRS) -- however?

25 A. I don't know. I couldn't say.

0206

1 Q. And when did 15 y/o LG #1 tell you that she felt  
2 comfortable watching that many four-year olds on that  
3 morning with that number of counselors in the pool  
4 all at the same time on her end of the pool?

5 A. On July 19th.

6 Q. Who's a better judge of that, a 15-year old  
7 first-time lifeguard or a lifeguard manager, who's  
8 the aquatics director?

9 MR. SNYDER: Objection, form.

10 Q. (BY MR. MARRS) You or her?

11 A. As far as her comfort level, I think she  
12 would be. She was on the stand.

13 Q. And you solely entrust that decision to a  
14 15-year old first-time lifeguard, that had no more  
15 than nine days experience; is that correct?

16 MR. SNYDER: Objection, form.

17 A. If I had seen a conduct of the crowd that  
18 would have warranted it, I would have -- I would have  
19 for sure stepped in.

20 Q. (BY MR. MARRS) But getting back to the  
21 question I just asked you, you left that

22 determination as to whether or not 15 y/o LG #1  
23 needed additional back up, additional help to  
24 15 y/o LG #1, correct?

25 A. On that occasion?

0207

1 Q. Yes, sir.

2 A. Yes.

3 Q. And on that occasion you knew she was a  
4 15-year old first-time lifeguard, correct?

5 A. Correct.

6 Q. And what about the other -- the moms that  
7 were there on that day, did you have any discussions  
8 with any of the moms that were present at the pool  
9 prior to you leaving the pool at approximately 11:10?

10 A. I don't remember who I spoke with before I  
11 left.

12 Q. Do you remember, regardless of who it was,  
13 speaking with any mother at the family pool on the  
14 morning of July 18 before you left?

15 A. At any time before I left?

16 Q. At any time that morning with that  
17 four-year-old group, John Pluchinsky's group in the  
18 pool. Do you recall speaking to any mother at the  
19 pool, at the family pool before you left at  
20 approximately 11:10?

21 A. I really don't remember speaking with any  
22 mom, no.

23 Q. Did you speak to 15 y/o LG #2 after the  
24 incident regarding what happened?

25 A. You know, I don't remember speaking with  
0208

1 him. I don't know.

2 Q. Did you speak with LG Supv about what  
3 happened?

4 A. Yes.

5 Q. Tell me the substance of your conversation  
6 with him.

7 A. It was several hours later. It was that  
8 afternoon. I think we were just shell-shocked. I  
9 don't really remember what we talked about. I think  
10 we were just trying to figure out just what  
11 happened. You know we were just in shock.

12 Q. And what did he tell you happened?

13 A. I really don't remember. He just kept  
14 running through his mind doing the CPR. He was  
15 pretty shaken a little bit. I don't know.

16 Q. Did he say anything about an AED device?

17 A. I don't remember if he did or not.

18 Q. Did anyone mention anything about an AED  
19 device on July 18, 2007?

20 A. No, not that I can remember.

21 Q. What other discussions have you had with  
22 anyone that was present at the family pool about what  
23 happened?

24 A. With anyone?

25 Q. Correct.

0209

1 A. Immediately following, you know, the next  
2 day or whenever it was that CPS came out, I discussed  
3 it then what I knew with the guards that were there,  
4 Supv CC #1 , LG Supv, 15 y/o LG #1 .

5 Q. What did you discuss with Supv CC #1 ?

6 A. His -- mostly his feelings, how he felt.

7 He --

8 Q. Anything specifically about facts regarding  
9 what happened that day or what he saw that day?

10 A. He couldn't talk about anything really  
11 except he just -- I don't really remember what he was  
12 talking about. He could only focus on John.

13 Q. Anyone other than LG Supv , 15 y/o LG #1 , and Supv CC #1 ?

14 A. I think during the interview process that we  
15 went through in the next week or however long it was,  
16 like I said, I heard some of the counselors talking  
17 about it. I was sitting with them, but they were  
18 just sort of talking amongst themselves.

19 Q. And anything you heard them say aside from  
20 what you've already testified about?

21 MR. SNYDER: Objection, form.

22 A. Nothing really jumps out at me. I can't  
23 think of anything really.

24 Q. (BY MR. MARRS) How about -- okay. How  
25 about 4 y/o B-CC #1 , have you heard anything that

0210

1 4 y/o B-CC #1 had said -- has said about the  
2 incident?

3 A. No. The one thing she could always remember  
4 was trying to scoop out his mouth so that he could  
5 breathe and she cried a lot.

6 Q. Anything else you recall her saying?

7 A. Not really. She was -- she was really stuck  
8 on that moment, on --

9 Q. How about prior to that moment, when he was

10 in the beach area, do you recall her saying anything  
11 about that?

12 A. I think I may have heard her say that she  
13 had played with him at some point, but I don't  
14 remember anything else really.

15 Q. You mentioned before that you did a drill on  
16 deep-water rescue. How can you spot a -- is there a  
17 difference between a passive and an active drowning  
18 victim?

19 A. Yes.

20 Q. What's the difference?

21 A. Well, arm and leg movement is the main --  
22 the main difference.

23 Q. Explain that. What's a -- what's it look  
24 like when you see a passive drowning victim in the  
25 pool?

0211

1 A. There's no locomotion. Legs and arms are  
2 still and -- that's it.

3 Q. How about the position of their body in the  
4 pool usually?

5 A. It could be at the bottom; they could be  
6 floating on their stomach; they could be floating on  
7 their back.

8 Q. Okay. But typically, a drowning victim will  
9 first go through an active stage, correct?

10 A. Not always.

11 Q. Okay. What's -- tell me that a -- based on  
12 your experience an active drowning victim looks like?

13 A. Well, only from being in the course what  
14 we've learned is that there's usually leg and arm  
15 movement, and -- but no real locomotion, so they are  
16 not going anywhere. I've only witnessed that myself  
17 maybe twice.

18 Q. Where?

19 A. At the pool in the Racquet Club.

20 Q. Which pool?

21 A. The family pool.

22 Q. The family pool that we're talking about?

23 A. Yes, sir.

24 Q. Okay. How old were the two active drowning  
25 victims?

0212

1 A. Well, there was a six-year-old boy who was  
2 swimming, and I believe the other one was a little  
3 girl who was swimming.

4 Q. About how old?  
5 A. I couldn't tell, little.  
6 Q. Younger than six?  
7 A. I couldn't tell. She was just little. She  
8 looked like -- she looked well coordinated, but just  
9 a little girl. I -- it could have been six.  
10 Q. Okay.  
11 A. Yeah.  
12 Q. And what were their names?  
13 A. I don't know.  
14 Q. And you've seen it twice at the Houston  
15 Racquet Club in the family pool. What -- Do active  
16 drowning victims usually struggle?  
17 A. Yeah. Because there's -- I mean, there's  
18 arm and leg motion, so you --  
19 Q. Okay. Do they usually call for help?  
20 A. I wouldn't know. The ones I witnessed  
21 really didn't.  
22 Q. Do you know if typically an active drowning  
23 victim calls for help?  
24 A. I don't know that.  
25 Q. Do you know one way or the other?  
0213  
1 A. I don't.  
2 Q. Do they typically move their arms, an active  
3 drowning victim?  
4 A. Yes.  
5 Q. How?  
6 A. Erratically, almost like they are flapping  
7 around. They are trying to push themselves up.  
8 Q. Usually is an active drowning victim  
9 kicking?  
10 A. It's possible. That's one of the  
11 indicators.  
12 Q. Okay. Now, typically a drowning victim will  
13 first be an active drowning victim and then go into  
14 passive drowning victim mode; is that correct  
15 typically?  
16 A. That's a possible scenario. I can't say  
17 typically.  
18 Q. Well, I don't -- I don't mean possible  
19 scenarios. I mean, you're the lifeguard manager,  
20 you're the aquatics director, you know exactly the  
21 difference between an active and a passive drowning  
22 victim because you're expected to know those things  
23 when you're out there guarding children in your pool,

24 right?

25 A. Correct.

0214

1 Q. I mean, that's called identification. You  
2 have to be able to recognize a drowning victim when  
3 you see one, right?

4 A. Correct.

5 Q. Because you have to be able to distinguish  
6 between a drowning victim and someone that is just  
7 playing around in the pool, right?

8 A. That's correct.

9 Q. That's one of the primary responsibilities  
10 of being a lifeguard, right?

11 A. Yes.

12 Q. Okay. So certainly, you know whether or not  
13 a drowning victim typically will go from an active  
14 stage, as you've described it, into a passive stage,  
15 right? Do you know whether or not that's true?

16 MR. SNYDER: Objection, form.

17 A. Sometimes that's true.

18 Q. (BY MR. MARRS) What percentage of the time?

19 A. I wouldn't know.

20 Q. Most of the time or not?

21 A. I don't --

22 MR. SNYDER: Objection, form.

23 A. I don't know. A master swimmer at the  
24 Houstonian -- at the Houston Country Club died in the  
25 pool as a result of swimming laps, had a heart attack

0215

1 in the pool, went directly to a passive state and  
2 died. They never went through an active drowning  
3 stage, so I can't say.

4 Q. (BY MR. MARRS) Well, that was a situation  
5 where the victim had a heart attack while swimming?

6 A. Correct.

7 Q. That was not where the victim became  
8 fatigued and just couldn't hold themselves up  
9 anymore, struggling as part of the active stage and  
10 then became so fatigued that they went into the  
11 passive stage, right? That's not a typical drowning  
12 scenario, is it?

13 MR. SNYDER: Objection, form.

14 Q. (BY MR. MARRS) Or do you know?

15 A. I don't know.

16 Q. Are you of the understanding that most  
17 drownings occur because people first have heart

18 attacks and then drown?

19 MR. SNYDER: Objection, form.

20 A. No. But there's different reasons why  
21 people could go into the certain stages. They don't  
22 necessarily follow a certain order.

23 Q. (BY MR. MARRS) Okay. And when you say  
24 certain stages, how many stages are there?

25 A. Well, the ones we were discussing, passive  
0216

1 and active.

2 Q. Okay. And so in the passive drowning stage,  
3 is the victim usually breathing or do you know?

4 A. I would have to say no, if they are  
5 submerged.

6 Q. Okay. Have you ever discussed with your  
7 lifeguards at the Houston Racquet Club the  
8 differences between passive and active drowning  
9 victims?

10 A. Yes.

11 Q. Okay. Certainly, you know as an experienced  
12 swimmer, an aquatics director and lifeguard manager  
13 that a child that is facedown in the water that is  
14 motionless very well could be in the passive drowning  
15 mode, correct?

16 A. Yes.

17 Q. If they are in that state where they are  
18 facedown in the water and immobile, not even moving,  
19 would you think that a child is just playing around  
20 or would you be concerned that they might actually be  
21 drowning?

22 MR. SNYDER: Objection, form.

23 A. A little bit of both. They might be  
24 playing, but I would be concerned.

25 Q. (BY MR. MARRS) They might be playing, but  
0217

1 they might be drowning too, right?

2 A. Correct.

3 Q. Okay. And certainly, in that situation you  
4 would advise your lifeguards and even counselors if  
5 they saw that to take immediate -- immediate action,  
6 not a split second later, but immediately, correct?

7 MR. SNYDER: Objection, form.

8 A. You know, in our manual it says if you see  
9 something like that, you know, don't let something  
10 like that go on for something like 30 seconds. So  
11 a -- so, I don't know.

12 Q. (BY MR. MARRS) Which manual is that?

13 A. I believe I've read that in the lifeguard  
14 manual. I can't be sure.

15 Q. And so you think the lifeguard manual says,  
16 don't let a young child float facedown in the water  
17 motionless -- strike that.

18 You think the lifeguard manual says,  
19 it's okay to let that go on for 30 seconds?

20 MR. SNYDER: Objection, form.

21 A. I'm not sure if it says -- I don't think it  
22 says it's okay. I just -- I believe it says don't  
23 let it go on for --

24 Q. (BY MR. MARRS) Okay.

25 A. -- for more than --

0218

1 Q. Well, more than what?

2 A. The 30 seconds.

3 Q. Okay. Well, back to my question, though.  
4 Would you advise your lifeguard to let that go on for  
5 30 seconds or would you advise them to not wait a  
6 second and to get over there and check on the child?

7 MR. SNYDER: Objection, form.

8 A. Well, what I've always said is, you know, as  
9 soon as you always recognize that as something that  
10 doesn't look right, act.

11 Q. (BY MR. MARRS) And aside from that, do you  
12 give them any directions with respect to kids  
13 floating facedown in the water motionless? Have you  
14 ever done that, to your knowledge?

15 A. Well, those were my directions. I mean,  
16 other than that --

17 Q. Well, I know you said that you directed the  
18 lifeguards if you see something that doesn't look  
19 right, do something immediately. My question is:  
20 Have you ever had any discussions with any of your  
21 lifeguards about kids floating facedown in the pool  
22 motionless?

23 A. Yes.

24 Q. Okay. What have you instructed them to do,  
25 or what discussions did you have?

0219

1 A. It was along the lines of some of the rules  
2 that we like to keep. And we just didn't like to --  
3 you know, it all started with some of the high school  
4 kids who thought it was funny to, "Hey, lifeguard,  
5 look," you know, and go into that little dead man's

6 float thing. And I didn't like that because -- you  
7 know, none of the guards liked it. It's just  
8 unsettling.

9       So along those lines, I said, "Guys, if  
10 you see anything like this, let's just -- let's just  
11 discourage any -- you know, let's just not let that  
12 happen."

13     Q. Okay. Other than telling them to discourage  
14 it -- and I think you heard the testimony yesterday  
15 or Friday of Mr. Lamkin about dead man float and  
16 whether or not there was any specific rule against  
17 it.

18     A. Uh-huh.

19     Q. So I'll ask you: Is there any specific rule  
20 at the Houston Racquet Club with respect to the  
21 family pool and whether or not children can play dead  
22 man float?

23     A. At either pool, if we saw it, we would  
24 discourage it.

25     Q. Okay. But other than discouraging it -- and  
0220

1 that's my question. Was there any rule prohibiting  
2 kids floating facedown in the pool motionless?

3     A. Nothing written. It's something that we  
4 would -- that we would do, we would enforce.

5     Q. So your testimony is that there was a rule  
6 at the Racquet Club that prohibited children facing  
7 float down -- facedown in the water motionless?

8     A. We didn't let them do that.

9     Q. Okay. So that was a rule, you didn't allow  
10 them to do, correct?

11     A. Yes.

12     Q. Okay. Then why is it that when 15 y/o LG #1  
13 saw this child floating facedown in the water  
14 motionless she did not immediately enforce that rule?

15       MR. SNYDER: Objection, form.

16     A. Well, I think she did.

17     Q. (BY MR. MARRS) You know for a fact because  
18 you talked to 15 y/o LG #1 , you've seen her  
19 statement, that she did not. You know for a fact  
20 that she says that once she saw him the first time  
21 doing that, that she turned away and began to  
22 continuing scanning the pool until she looked back  
23 the second time, right?

24     A. I never read her statement.

25     Q. Is that your understanding of what she did?

0221

1 A. That is my understanding.

2 Q. Then why is it the first time, the split  
3 second she saw this four-year-old child floating  
4 facedown in the water motionless she didn't enforce  
5 the rule?

6 MR. SNYDER: Objection, form.

7 A. With all due respect, she did enforce the  
8 rule. On a reaction like that, you -- you know, one  
9 of things we talk about in the course is make sure  
10 that your area is safe before you do something like  
11 this. I suppose that's what she did when she took a  
12 second scan of however many seconds it was, but I  
13 think she reacted promptly.

14 Q. (BY MR. MARRS) She did not enforce the rule  
15 immediately the first time she saw him facedown in  
16 the water, did she? It took another scan and another  
17 look before she walked over to 4 y/o B-CC #3 and said  
18 something to him, correct?

19 MR. SNYDER: Objection, form.

20 A. She did take another scan and then that's  
21 when she reacted. I think she reacted reasonably.

22 Q. (BY MR. MARRS) So we know for a fact that  
23 when she saw him the first time, that split second,  
24 she didn't enforce the rule, she looked away,  
25 correct?

0222

1 A. She looked away.

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) Correct?

4 A. Correct.

5 Q. Now, if that was a known rule at the Houston  
6 Racquet Club family pool, then certainly the  
7 counselors should have known that rule, right?

8 MR. SNYDER: Objection, form.

9 A. I don't know about that.

10 Q. (BY MR. MARRS) Did any counselor know that  
11 there was this strict prohibition, this rule at the  
12 Houston Racquet Club family pool that you could not  
13 float facedown motionless?

14 MR. SNYDER: Objection, form.

15 A. I really don't know.

16 Q. (BY MR. MARRS) Well, but you do know from  
17 looking at the statements, it lists three -- at least  
18 three people in the pool who saw John Pluchinsky  
19 floating facedown motionless, all thought at first he

20 was just playing around; isn't that true?

21 MR. SNYDER: Objection, form.

22 A. I don't know. I haven't read any of the  
23 statements. I'm sorry.

24 Q. (BY MR. MARRS) How long had John Pluchinsky  
25 been floating facedown in the pool before 15 y/o LG #1

0223

1 15 y/o LG #1 saw him the first time; do you know?

2 A. I don't know. I just know what she told me  
3 on the following day.

4 Q. Did you tell any of the members that there  
5 was this rule against children floating facedown in  
6 the pool motionless?

7 A. I don't know. I don't know that I  
8 communicated it to all the members as such.

9 Q. Well, have you communicated that to any  
10 member as such, that you recall?

11 A. Yes, I have.

12 Q. Who?

13 A. I don't know.

14 Q. A kid?

15 A. It was a kid I kicked out for doing it, yes.

16 Q. Well, how about parents, have you told any  
17 parents that, to your knowledge?

18 A. In that case the parents weren't there. He  
19 was an older teenager, so...

20 Q. Do you recall ever telling a parent that  
21 there was such a rule?

22 A. I don't remember that.

23 Q. Have you ever told a counselor that that was  
24 a rule?

25 A. I don't remember one way or another.

0224

1 Q. Have you ever seen such a rule in writing at  
2 the Houston Racquet Club during the entire time  
3 you've been employed there?

4 A. I really don't know.

5 Q. Have you ever seen such a rule in writing?

6 A. I don't remember seeing anything. I don't  
7 know.

8 Q. Have you ever put such a rule in writing  
9 during the entire time you've been aquatics director  
10 or lifeguard manager?

11 MR. SNYDER: Objection, form.

12 A. I haven't.

13 Q. (BY MR. MARRS) So this oral rule that

14 you're talking about, would that be a prohibition  
15 against children floating facedown at all or just  
16 floating facedown motionless?

17 A. The rule was to discourage some of the  
18 teenage kids from just doing it as a joke.

19 Q. Oh, okay.

20 A. So --

21 Q. Oh, okay. And go ahead, I'm sorry.

22 A. So any ways --

23 Q. To discourage teenagers from doing it as a  
24 joke. If you see kids you think are just looking at  
25 the bottom of the pool, then that's okay; if you see

0225

1 kids that are floating, looking down like at the  
2 bottom of the pool or something, is that okay?

3 A. It depends on how they are doing it.

4 Q. Okay.

5 A. You know, if you have a little kid with  
6 goggles and little flippers and he's -- and you  
7 can -- I mean, you can --

8 Q. Then that's okay?

9 A. Well, you can pretty easily tell what they  
10 are doing.

11 Q. Okay. So --

12 A. Somebody motionless, then...

13 Q. Okay. But is this a -- if there are little  
14 kids that are -- even without goggles or fins and  
15 they are floating, looking down at the bottom of  
16 pool, is that okay? Would you eject a kid for that?

17 MR. SNYDER: Objection, form.

18 A. Again, it depends if -- it just depends.

19 Q. (BY MR. MARRS) Okay. So I take it that you  
20 did not have a specific rule that prohibited kids,  
21 young kids from floating facedown in the pool,  
22 looking at the bottom of the pool?

23 A. We prohibited them from playing dead man's  
24 float, as a -- as a game as such.

25 Q. Okay. I -- that's what I thought you meant

0226

1 when you were talking about the teenagers doing it as  
2 a game. Other than like teenagers doing it as a game  
3 like dead man's float, like as a joke or as a game,  
4 was there any other prohibition against it?

5 A. No. At that point it was just a matter of  
6 if it's happening and we're not allowing it, then you  
7 know, be watchful of it and, you know, if you're

8 uncomfortable with it, react.

9 Q. Okay. And that's something that you would  
10 leave to the individual lifeguards to make a  
11 determination of, right?

12 A. Yes.

13 Q. Okay. You didn't have any specific rule  
14 against young kids during summer camp floating  
15 facedown looking at the bottom of the pool or  
16 something else in the pool, as a rule?

17 A. As a rule, it depends on the judgment of the  
18 guard at that point.

19 Q. Okay. So, you're saying there's no specific  
20 rule, but if the lifeguard felt uncomfortable with  
21 whatever they were doing, then of course the  
22 lifeguard had authority to stop it, correct?

23 A. Yes.

24 Q. Okay. Now, with respect to the -- you said  
25 you kicked out one teenager because they were playing  
0227

1 dead man's float. Were there others? Have you  
2 kicked out more than one?

3 A. I think he was with a group of friends and  
4 after I kicked him out, I think they all -- they all  
5 stopped. They all were sort of starting to do it.

6 Q. How many kids or teenagers have been kicked  
7 out of the Houston Racquet pools, to your knowledge,  
8 for playing dead man's float?

9 A. I don't know how many have been kicked out  
10 by other guards. I know that I've kicked out one.

11 Q. Other than those that you've already  
12 testified about, have you heard of any other kids or  
13 teenagers being kicked out of the Houston Racquet  
14 Club pools or even reprimanded for playing dead man's  
15 float?

16 A. Yes.

17 Q. Okay. Tell me about that. I mean, is it a  
18 common occurrence that happens?

19 A. It's not that common. I don't remember who  
20 the guard was at the time, but they came and told me  
21 later that -- you know, in case some mom comes in mad  
22 or something, I kicked their kids out because they  
23 were doing this. And so...

24 Q. And dead man's float or floating on the  
25 water facedown in the water motionless is  
0228

1 something -- strike that.

2 Teenagers or kids floating facedown in  
3 the water motionless is -- raises a red flag why?

4 A. Because it's very similar to, you know, what  
5 we're taught a passive drowning might look like.

6 Q. And because when they are doing it your  
7 lifeguards can't tell whether it's dead man's float  
8 as a game or if it's really someone drowning,  
9 correct?

10 A. Yes.

11 Q. And had the counselors, to your knowledge,  
12 ever been educated about dead man's float or whether  
13 it should be prohibited or telling the difference  
14 between someone floating and someone actually  
15 drowning, to your knowledge?

16 A. I don't know.

17 Q. So, do you know of any other clubs that  
18 specifically prohibit anyone, whether a child or  
19 teenager or adult, from floating facedown in the pool  
20 motionless?

21 A. I don't know about other practices, no.

22 Q. Have you heard of any other clubs that will  
23 eject the swimmer immediately if they do that?

24 A. I haven't.

25 Q. Have you talked to other aquatics directors  
0229

1 or lifeguard managers about that kind of practice?

2 A. No.

3 Q. What are the RID factors? R-I-D?

4 A. The RID factors?

5 Q. Uh-huh. You heard of them?

6 A. Yes, I sure have.

7 Q. Okay. Had you heard of them prior to  
8 July 18, 2007?

9 A. Sure.

10 Q. Okay. What are they?

11 A. I can't recall right off the top of my head  
12 right now, but those are the factors that would  
13 distract the lifeguard from their duties. I can't  
14 rattle them off right now.

15 Q. Okay. Well, can you rattle any of them off?

16 A. I know that D for RID is distraction. The  
17 other two may come to me. I just -- I can't do it  
18 right now.

19 Q. Are the RID factors, are they factors that  
20 cause drowning or not?

21 A. I don't know if they would cause a

22 drowning. They may just impair lifeguards' abilities  
23 up on the stand.

24 Q. Can you tell me anything else about what the  
25 RID factors are other than what you've already told  
0230

1 me?

2 A. That's it, unless -- although it may be  
3 recognition, intrusion and distraction, but I'm  
4 not -- I can't be sure.

5 Q. Is the failure of a lifeguard to recognize  
6 the instinctive drowning response one of the factors  
7 of people drowning?

8 MR. SNYDER: Objection, form.

9 A. I think it could be.

10 Q. (BY MR. MARRS) Okay. Then what is the  
11 instinctive drowning response?

12 A. I don't know if I can describe it  
13 immediately.

14 Q. Well, okay. Take your time.

15 A. It's been awhile. It may have to do with  
16 inability to breathe. I can't be sure.

17 Q. Anything else that's part of the instinctive  
18 drowning response that you can tell us?

19 A. No, not right now.

20 Q. And is it important to ensure that your  
21 lifeguard stations are in the optimum area?

22 A. I think so.

23 Q. To ensure proper and adequate patron  
24 surveillance, is it important to ensure that you  
25 locate your lifeguard chairs in the appropriate spot  
0231

1 at the pool?

2 A. Yes.

3 Q. And how do you go about doing that? How do  
4 you determine the optimum coverage area for your  
5 lifeguard stations? What factors do you consider?

6 A. Well, some of the factors that we considered  
7 were first, safe entry into the water should an  
8 emergency arise, minimizing blind spots, and the  
9 ability of guard to get to somebody.

10 Q. Anything else that you can think of as you  
11 sit here today?

12 A. I think those are the main things we thought  
13 of, yes.

14 Q. And when you say "we," what are your -- who  
15 else are you referring to?

16 A. That was back with Mr. AD #2 , Mr. LG Supv B  
17 and later Mr. Lamkin and myself would -- we would  
18 look at the configuration that had been set up and  
19 see if we still agreed with it.

20 Q. Does the family pool have more blind spots  
21 than the rectangular-shaped lap pool?

22 A. Yeah. I think it could. Yes.

23 Q. Well, you say you think it could. Does it  
24 or doesn't it?

25 A. Depending on the -- where you put the stand,  
0232

1 it could, yes.

2 Q. Does the configuration of the family pool  
3 create more blind spots than the rectangular lap  
4 pool?

5 A. Yes.

6 Q. Does the -- Do the rings and the buckets and  
7 the sprayers in the beach area create more blind  
8 spots than the lap pool has?

9 A. You mean as opposed to having absolutely no  
10 water features?

11 Q. Sure. Water features create blind spots,  
12 don't they?

13 MR. SNYDER: Objection, form.

14 A. It's possible. Can I see the sheet of  
15 paper?

16 Q. (BY MR. MARRS) Do you want to see  
17 Exhibit 14B?

18 A. Thank you.

19 Q. Sure.

20 A. When the pool was handed over to us,  
21 remember how we said that stand had been placed here  
22 originally on this area and then later it was moved  
23 over here (indicating).

24 Q. So you're saying that a lifeguard chair was  
25 originally placed by the sun deck that I have labeled

0233  
1 as "rock ledge"?

2 A. Yes, sir. It was around -- yeah, around  
3 here somewhere (indicating). Well, that provided a  
4 huge blind spot right here (indicating).

5 Q. At the fountain area?

6 A. Yes. On the other side of it.

7 Q. On the east side of the fountain deck?

8 A. Yes.

9 Q. Okay.

10 A. Also, the chair was so high that entry into  
11 this very shallow area here or with patrons lying  
12 here (indicating) or standing around would have been  
13 unsafe for both the guard and the patrons. So that's  
14 an example of a true blind spot where this would have  
15 actually been a very -- just a blind.

16 Q. Where the fountain deck would have created a  
17 blind spot?

18 A. Right. That's just an example of a blind  
19 spot.

20 Q. Okay. Well, who else was involved in  
21 deciding where and how many lifeguard chairs there  
22 will be at the family pool other than yourself and  
23 Mr. Lamkin?

24 A. Mr. AD #2 .

25 Q. Did you, as the aquatics director and  
0234

1 lifeguard manager, make that ultimate determination,  
2 though?

3 A. I agree with it at the time that those  
4 changes were made. They seemed to be sensible and so  
5 yeah, I agreed with it.

6 Q. Getting back to what I asked you, though:  
7 Is it your ultimate responsibility to ensure that the  
8 lifeguard chairs are where they should be at the  
9 family pool?

10 A. It's one of my responsibilities, yes.

11 Q. Okay. Has anybody else had that  
12 responsibility above you or is that ultimately your  
13 responsibility?

14 A. Well, I suppose if David or Mr. Griffin has  
15 some concerns, they would have voiced them, but I  
16 think it's my responsibility. We work together on  
17 that.

18 Q. And where is Mr. AD #2 today?

19 A. I don't know where he is.

20 Q. Where is Mr. LG Supv B today?

21 A. Mr. LG Supv B, he still lives in Houston, but I  
22 don't know where he's working.

23 Q. Why did Mr. LG Supv B leave the Racquet Club,  
24 to your knowledge?

25 A. He got a new job.

0235

1 Q. Where?

2 A. I don't know. I think he worked for a  
3 bank. I wasn't sure.

4 Q. Do you know who -- what bank?  
5 A. I don't, sir.  
6 Q. And how about Mr. AD #2 , where did he go  
7 work?  
8 A. I think AD #2 went on to work at the Briar  
9 Club.  
10 Q. Have you talked to him since he left to go  
11 to the Briar Club?  
12 A. I haven't.  
13 Q. Tell me again why he left, Mr. AD #2 .  
14 A. I'm not sure why he left. I --  
15 Q. What have you heard?  
16 A. I haven't. He reported directly to  
17 Mr. Lamkin and I really don't know why he left.  
18 Q. Mr. AD #2 was the prior aquatics director  
19 before you?  
20 A. Yes.  
21 Q. What other aquatics directors have been at  
22 the Houston Racquet Club, to your knowledge?  
23 A. Oh, I really don't know who specifically  
24 held those titles. I don't know if Mr. Lamkin was  
25 one or if somebody else was. There was a lady that  
0236  
1 worked with us; her name was AD #1. And I  
2 know that when I started in the fitness center she  
3 was over the swim team and some of the things, so --  
4 but I don't know if she was the aquatics director or  
5 not.  
6 Q. What's her last name?  
7 A. AD #1, AD #1. But I don't know if  
8 she ever really held that title or if she was simply  
9 swim coach.  
10 Q. Well, who would know the name and address of  
11 every aquatics manager that the Houston Racquet Club  
12 has had during the past, you know, decade? Who would  
13 know that?  
14 MR. SNYDER: Objection, form.  
15 Q. (BY MR. MARRS) Is that something  
16 Mr. Griffin should know?  
17 A. I don't know who would know that.  
18 Q. Okay. Who would?  
19 A. Mr. Lamkin may be able to tell you who's  
20 done it since he's been there.  
21 Q. Okay. Does the -- Are there any Texas  
22 Administrative Code requirements that you're aware of  
23 regarding whether or not you need adequate lifeguards

24 to provide continuous surveillance in the pools?

25 A. I think there are. I don't know specifics.

0237

1 Q. Are you required to have an adequate number  
2 of lifeguards to generally observe the pool users or  
3 is it that you have to have enough to closely observe  
4 the pool users?

5 A. Per Texas Administrative Code, you mean?

6 Q. Any laws or codes that you're aware of? I  
7 mean, you mentioned peripheral vision versus direct  
8 vision and scanning previously. That's why I'm  
9 asking you.

10 A. Yeah.

11 Q. Do you have to have a sufficient number of  
12 lifeguards to generally observe the users in the pool  
13 or do you have to have sufficient number of  
14 lifeguards to closely observe the users in the pool?

15 MR. SNYDER: Objection, form.

16 A. You know, I really don't know.

17 Q. (BY MR. MARRS) Was there -- At the family  
18 pool, let's say on July 18, 2007, was there total  
19 coverage or zone coverage?

20 A. Well, there was zone coverage.

21 Q. And what's the difference between zone  
22 coverage and total coverage?

23 A. The overlap of those zones would result in  
24 total coverage.

25 Q. What's the difference between zone coverage

0238

1 and total coverage?

2 A. For example, one lifeguard watching their  
3 primary zone will be zone coverage; total coverage  
4 would be the concert of the -- whatever number of  
5 guards watching their areas.

6 Q. Can you ever have total coverage with just  
7 one lifeguard?

8 A. Yes.

9 Q. Did anyone discuss with 15 y/o LG #2 or  
10 15 y/o LG #1 at any time what the particular zones of  
11 coverage or areas of responsibility would be  
12 depending on which lifeguard chair you were in at the  
13 family pool, to your knowledge?

14 A. To my knowledge, yes.

15 Q. Who?

16 A. Me.

17 Q. When?

18 A. As we reviewed the different chairs and  
19 stations that they'd be in.

20 Q. When?

21 A. We would do that before they would start.

22 Q. And this -- excuse me -- Exhibit 14B where  
23 we discussed 15 y/o LG #2 's area of responsibility  
24 for zoning and 15 y/o LG #1 's area of responsibility  
25 for scanning, that's based on what chair they happen  
0239

1 to be sitting in, correct?

2 A. That's correct.

3 Q. Okay. And does that -- do those areas --  
4 those areas of responsibilities depend on which  
5 particular chair you're -- happen to be sitting in,  
6 whether you're in this one, the one in the --  
7 generally in the middle of the pool between the east  
8 and west ends, or the lifeguard chair by the slide,  
9 correct?

10 A. That's correct.

11 Q. And would it change depending on whether  
12 it's LG Supv sitting in the chair or if it's  
13 15 y/o LG #1 sitting in the chair or not?

14 A. It would not.

15 Q. Okay. They would remain the same, correct?

16 A. That's correct.

17 Q. In your determination of where the lifeguard  
18 chairs should be at the family pool, aside from  
19 discussions with Mr. AD #2 and Mr. Lamkin, did you  
20 consult with any American Red Cross manuals?

21 A. Just our training manual.

22 Q. What training manual?

23 A. The one that you get when you get certified,  
24 your certification manual.

25 Q. Okay. Are you -- Are you testifying under  
0240

1 oath that you specifically went back and looked at  
2 the Red Cross training manual in your determination  
3 of where the lifeguard chairs should be at the family  
4 pool?

5 A. No. I did it to understand kind of the zone  
6 thing. As we were discussing it with Mr. AD #2, he  
7 was talking about zones and that's when I looked in  
8 the manual just to see, you know, what -- how they  
9 would overlap and all that just so, you know, we  
10 could really understand each other.

11 Q. Did you consult any of the Texas

12 Administrative Code regulations or rules in making a  
13 determination as to where the lifeguard chairs should  
14 be?

15 A. I wasn't aware of any of those type of  
16 codes.

17 Q. Okay. Prior to July 11 -- July 18, 2007 you  
18 never consulted any of the Texas Administrative  
19 Codes, correct?

20 A. Correct.

21 Q. You have since learned that you should have  
22 been consulting the Texas Administrative Code as it  
23 relates to lifeguarding and pools at your club,  
24 correct?

25 MR. SNYDER: Objection, form.

0241

1 A. I always think it's good to be more  
2 informed, so...

3 Q. (BY MR. MARRS) Well, aside from just being  
4 informed, haven't you learned that some of those  
5 codes actually govern lifeguarding, which you're  
6 supposed to be the manager of at Houston Racquet  
7 Club?

8 MR. SNYDER: Objection, form.

9 A. Yes, sir.

10 Q. (BY MR. MARRS) Okay. So is it now your  
11 understanding that you should have been aware of the  
12 Texas Administrative Code regulations as they affect  
13 lifeguarding and pool safety at your club?

14 MR. SNYDER: Objection, form.

15 A. Yes.

16 Q. (BY MR. MARRS) Have you since, since  
17 July 18, 2007 consulted the Texas Administrative  
18 Code?

19 A. Well, by the time --

20 MR. SNYDER: Objection, form.

21 A. By the time I became aware of them, we were  
22 having a tough time keeping the pools even open,  
23 so we --

24 Q. (BY MR. MARRS) Okay.

25 A. Yeah.

0242

1 Q. So there was really no reason for you to  
2 consult them?

3 A. Not until the current pool company took  
4 over.

5 Q. Okay. So, since July 18, 2007 have you

6 consulted the Texas Administrative Code provisions?

7 A. I've -- yeah. I've -- yeah, I've read them.

8 Q. Did you read specific provisions that were  
9 forwarded to you by someone else?

10 A. Yes.

11 Q. Did you ever actually go to the code  
12 yourself to read the provisions?

13 A. Well, I never knew it existed before, so --

14 Q. Right.

15 A. -- once I was made aware of it, yeah. I  
16 mean, it was --

17 Q. I -- my question is: Aside from -- I mean,  
18 David Lamkin wrote you a memo where he said, "Please  
19 confirm that we're in compliance with these codes  
20 from the Texas Administrative Code", right? Do you  
21 recall that?

22 A. I don't recall who sent that to me. I --

23 Q. Okay.

24 A. But yeah, I got something like that.

25 Q. Okay. Aside from what was written in that

0243

1 memo, have you ever gone elsewhere to educate  
2 yourself about what the Texas Administrative Code  
3 requires or does not require?

4 MR. SNYDER: Objection, form.

5 A. I'm not sure. I've read -- I've read all  
6 those provisions and --

7 Q. (BY MR. MARRS) That were in the memo?

8 A. That were in the memo. And I'm not sure if  
9 there were any more or -- I don't think there were  
10 any less, but I don't know if there were any more.

11 Q. Okay.

12 A. Yeah.

13 Q. So have you ever gone to the code itself, a  
14 book where the code existed or a printout of the code  
15 to look at the code?

16 A. I have. I don't know if I've looked at the  
17 entire thing, though.

18 Q. Okay. And where did you go to do that?

19 A. You know, Mr. Griffin actually had a copy in  
20 his office.

21 Q. Okay. And when did you look at that?

22 A. I don't remember the first time I saw it.

23 Q. What portions have you reviewed?

24 A. The parts dealing with signage, training,  
25 mainly those areas.

0244

1 Q. But all of your knowledge about even the  
2 existence of the Texas Administrative Code and its  
3 provisions governing lifeguarding and pool safety,  
4 you didn't even know about prior to John's death,  
5 correct?

6 A. That's correct.

7 Q. And obviously, since you weren't aware of  
8 them prior to John's death, you did not educate any  
9 of your lifeguards about them prior to John's death,  
10 correct?

11 A. That's correct.

12 Q. And did Mr. Lamkin or Mr. Griffin ever  
13 educate you about -- I take it, Mr. Lamkin and  
14 Mr. Griffin did not educate you about the existence  
15 of the Texas Administrative Code provisions prior to  
16 John's death because you weren't aware of them prior  
17 to John's death, correct?

18 A. That's correct.

19 Q. Is it also your responsibility as lifeguard  
20 manager to make sure that your lifeguards are  
21 properly prepared to respond to an emergency or not?

22 A. By "prepared" you mean?

23 Q. Prepared to respond to an emergency that may  
24 happen in the pool.

25 A. I think so.

0245

1 Q. And in order to do that, you have to, of  
2 course, properly orient them with respect to  
3 policies, procedures and rules that govern safety in  
4 pools, right?

5 A. Right.

6 Q. Do you have a policies and procedure manual  
7 that governs safety at your pools or lifeguarding or  
8 lifeguard management at the Houston Racquet Club?

9 A. No, I do not.

10 Q. Have you ever seen such a manual at the  
11 Houston Racquet Club?

12 A. I haven't.

13 Q. Or that pertains to counselors, a policies  
14 and procedures manual at the Houston Racquet Club?

15 A. I haven't.

16 Q. Aside from what you may have already  
17 testified about, was there any other type of  
18 orientation or training program for lifeguards that  
19 you haven't already testified about?

20 A. No, sir.  
21 Q. And did you have any kind of mentoring  
22 system for lifeguards where older or more experienced  
23 lifeguards would actually mentor with younger or less  
24 experienced lifeguards, some kind of mentoring  
25 program?

0246

1 A. No, not really.  
2 Q. Now, what is preseason and in-service  
3 training for lifeguards?  
4 A. Preseason and in-service training?  
5 Q. Uh-huh.  
6 A. I believe that is -- it's just training,  
7 maybe some type of refresher course or something that  
8 you would do before the pool opens. And then  
9 possibly regularly scheduled training sessions --

10 Q. Okay.

11 A. -- throughout the season.

12 Q. Well -- I'm sorry, go ahead. I didn't mean  
13 to --

14 A. Throughout the season.

15 Q. All right. You were saying possibly. Do  
16 you know the difference between preseason lifeguard  
17 training and in-service lifeguard training?

18 A. Well, that was my answer. I don't know if  
19 there's anymore to it, but...

20 Q. Is there any requirement that you are aware  
21 of that lifeguards receive preseason or in-service  
22 training?

23 A. That I'm aware of now, yes.

24 Q. That you're aware of prior to July 18, 2007?

25 A. No.

0247

1 Q. Prior to July 18, 2007, did you have  
2 preseason and in-service training for lifeguards?

3 A. Other than our, you know, maybe weekly  
4 meetings and the deep-water saves and things we did,  
5 no.

6 Q. Okay. Other than -- well, you testified  
7 about one June 2007 deep-water-save drill that you  
8 had. Had you had any others in 2007?

9 A. No.

10 Q. Or 2006?

11 A. In 2006, yes.

12 Q. But for those two lifeguards that were  
13 manning the family pool at the time of the incident,

14 you can't testify that either one of them were even  
15 participating in your 2007 drill on deep-water saves,  
16 right?

17 A. Right.

18 Q. And you know for a fact they weren't in your  
19 2006.

20 A. That's correct.

21 Q. So, tell the jury what in-service training  
22 is.

23 A. That is -- it's almost like a -- not  
24 necessarily continuing education, but reviews of  
25 skills.

0248

1 Q. Okay. Now, other than this 2007  
2 deep-water-save drill, what other type of in-service  
3 training did you have for your lifeguards in 2007, if  
4 any?

5 A. None.

6 Q. And is it your responsibility as a lifeguard  
7 manager and aquatics director to make sure your  
8 lifeguards are ready to respond to a real emergency  
9 by having an emergency action plan?

10 A. Yes.

11 Q. In writing?

12 A. In writing. And we used the one in our Red  
13 Cross training books.

14 Q. Did you have one prior to July 18, 2007?

15 A. Yes.

16 Q. A specific emergency action plan?

17 A. We --

18 Q. At the Houston Racquet Club?

19 A. No. We followed the one in the book.

20 Q. In the American Red Cross lifeguard training  
21 book?

22 A. Yes.

23 Q. Did you have any drills on it? Because  
24 you've already testified that the only drill you had  
25 was the deep-water drill you testified to about in

0249

1 June of 2007.

2 A. That's correct. We didn't do drills on the  
3 plan.

4 Q. You did not do any emergency-action plan  
5 drills, correct?

6 A. Correct.

7 Q. I think you testified you had a 2001 Red

8 Cross lifeguard training manual. Is that the one  
9 that you used for -- that you're saying you referred  
10 to for the emergency action plan?

11 A. No. I referred to the one I got in 2006. I  
12 really don't know where the other one is.

13 Q. Okay. Do you know what year Red Cross  
14 manual that would be?

15 A. I don't. I took the course in 2006.

16 Q. Okay. So tell us how you use that manual  
17 with respect to emergency action plan. Other than  
18 reading it yourself, did you convey any of that  
19 information with respect to a specific action plan  
20 for the Racquet Club to any of your lifeguards in  
21 2007?

22 A. We would meet at least once a week in groups  
23 and we would discuss stuff like that. And that's  
24 something I went over maybe a few times in the  
25 summer. But yeah, it wasn't just me reading it by  
0250

1 myself. It was -- we talked about it.

2 Q. Okay. But again, you did not have a  
3 specific emergency action plan in place at the  
4 Houston Racquet Club prior to July 18, 2007, correct?

5 A. Not other than the one in our books.

6 Q. Where is that book?

7 A. Well, I usually keep it in my office or  
8 Mr. Lamkin's office, so...

9 Q. Where is it today?

10 A. I don't know, one of those two places.

11 Q. Okay. Could you please provide that to your  
12 counsel? And we do request -- I think we've already  
13 requested, but -- and not received that manual.

14 MR. MARRS: Norman, I'm making a formal  
15 request for it. We're reiterating it.

16 Q. (BY MR. MARRS) Okay. Back to the -- you  
17 say you didn't have an emergency action plan at the  
18 Houston Racquet Club prior to July 18, 2007 other  
19 than what was written in this lifeguard training  
20 manual that you believe you or Mr. Lamkin has, right?

21 A. Yes.

22 Q. You did not have any kind of emergency  
23 action plan posted at the Houston Racquet Club at any  
24 time during 2007, correct?

25 A. That's correct.

0251

1 Q. Did you have any kind of emergency action

2 plan that you had typed up or copied and given to  
3 your lifeguards?

4 A. No, I did not.

5 Q. Did you have any practice sessions where you  
6 would practice the emergency action plans at the  
7 Houston Racquet Club at any time prior to July 18,  
8 2007?

9 A. I can't be sure if Mr. AD #2 did or not at  
10 some point.

11 Q. Did you at any time as aquatics director?

12 A. No, sir.

13 Q. Did you have any kind of regularly scheduled  
14 performance audits of your lifeguards' performance?

15 A. No, not specific, you know, scheduled  
16 audits. I was out on deck most of the day almost  
17 every day, and I feel like my whole workday was like  
18 an audit, but yeah, nothing scheduled like that.

19 Q. Okay. Did you have any unannounced  
20 performance audits or unannounced on-site evaluations  
21 to assess your lifeguards' patron surveillance and  
22 rescue skills?

23 A. No, sir.

24 Q. Did you hire any outside groups or third  
25 parties prior to July 18, 2007 to conduct in-service  
0252

1 training, orientation, performance audits or any of  
2 those type things?

3 A. No, sir.

4 Q. Now, let's look at that. Let me ask you if  
5 this -- Is this the lifeguard training manual that  
6 you testified about that you and Mr. Lamkin have or  
7 is it a different cover?

8 A. That's the one we have.

9 Q. Okay. Is that the one that you say you  
10 utilized for purposes of reading that might have  
11 something in it about emergency action plans?

12 A. Yes, sir.

13 Q. Okay.

14 MR. SNYDER: Do you see the book? Are  
15 you sure it's the same one?

16 THE WITNESS: The cover looks really  
17 familiar. I think that's the one.

18 MR. SNYDER: Okay.

19 MR. PLETCHER: Have him double-check.

20 Q. (BY MR. MARRS) And with respect to  
21 Mr. Lamkin's testimony on Friday about AEDs and the

22 three that were available, do you disagree with any  
23 of his testimony about the AEDs that were present at  
24 the Houston Racquet Club on July 18, 2007?

25 MR. SNYDER: Objection, form.

0253

1 Q. (BY MR. MARRS) Do you disagree with his  
2 testimony at all?

3 MR. SNYDER: Objection, form.

4 A. I can't remember everything specifically,  
5 but I don't think I do.

6 Q. (BY MR. MARRS) Well, you were aware that  
7 there were three AED devices at the Houston Racquet  
8 Club and you were aware of that prior to July 18,  
9 2007, correct?

10 A. Correct.

11 Q. And either on your way out to the pool or  
12 after you got to the scene at the family pool, you  
13 did not get an AED device or ask anyone to get an AED  
14 device. Did you even think about it?

15 A. I really don't remember if I thought about  
16 it or not.

17 Q. Okay. But you did not ask anyone else to  
18 get -- to grab an AED device, correct?

19 A. When I got out there, you know, the EMS had  
20 arrived already. We walked on deck practically at  
21 the same time.

22 Q. Okay.

23 A. You know, they had their equipment there, so  
24 I just didn't --

25 Q. All right.

0254

1 A. I didn't think of anything else except them.

2 Q. On your way to the scene, you did not ask  
3 anyone to grab the AED device, correct?

4 A. Correct.

5 MR. SNYDER: Let's take a short break.  
6 We've been going about an hour.

7 MR. MARRS: Good idea.

8 VIDEOGRAPHER: Off the record. The  
9 time is 5:38 p.m.

10 (Brief recess.)

11 VIDEOGRAPHER: Back on the record. The  
12 time is 5:54 p.m.

13 Q. (BY MR. MARRS) Now, you told me your  
14 understanding of the difference between a passive  
15 drowning victim and an active drowning victim.

16 What's the difference between a distressed swimmer  
17 and an active drowning victim? Is there any  
18 difference?

19 A. I believe the distressed swimmer still has  
20 some locomotion where he's moving forward towards  
21 something, and an active drowning victim simply -- I  
22 want to say bobs, but he may -- he's not really going  
23 anywhere.

24 Q. And how about a -- in terms of whether or  
25 not they call out for help?

0255

1 A. What's the question? I'm sorry.

2 Q. Would both a distressed swimmer and an  
3 active drowning victim call out for help or is there  
4 some difference?

5 A. I believe an active drowning victim may not  
6 always be able to call for help.

7 Q. And how about arm and leg movement between  
8 the two?

9 A. I think it's more erratic than the passive  
10 drowning -- I mean, active drowning.

11 Q. How about arm movement?

12 A. Again, more erratic, more for pulling  
13 yourself -- your face out of the water instead of  
14 trying to -- trying to move forward or...

15 Q. Is it your understanding that prior to  
16 reaching the passive drowning phase that a swimmer  
17 will first be a distressed swimmer, generally, not in  
18 every case?

19 A. Right. I think that's right. I can't be  
20 100 percent sure.

21 Q. So as between distressed swimmer, active  
22 drowning victim and passive drowning victim, are  
23 those three stages that a swimmer generally goes  
24 through before actually drowning, to your knowledge?

25 MR. SNYDER: Objection, form.

0256

1 Q. (BY MR. MARRS) As a general rule?

2 MR. SNYDER: Objection, form.

3 A. I think that could be one of the sequences.  
4 I don't -- I'm not sure if it's a general rule or  
5 not, no. I don't know.

6 Q. (BY MR. MARRS) Well, what do you tell your  
7 lifeguards when it comes to how they can tell what  
8 phase a swimmer might be in?

9 A. Well, if they are swimming and there's

10 little or no locomotion, then that's a time when you  
11 need to really start paying attention and deciding  
12 what to do. I --

13 Q. And that means they are what?

14 A. Maybe distressed or active.

15 Q. And if that continues for some length of  
16 time, then they might become what?

17 A. They might become passive at that time.

18 Q. Do you know how long it generally takes for  
19 a victim to go from distressed swimmer, to active  
20 drowning, to passive drowning?

21 A. I don't.

22 MR. SNYDER: Objection, form.

23 Q. (BY MR. MARRS) Do most children, drowning  
24 victims, call out for help?

25 MR. SNYDER: Objection, form.

0257

1 A. I don't know.

2 Q. (BY MR. MARRS) Do you know one way or the  
3 other?

4 MR. SNYDER: Objection, form.

5 A. I don't.

6 Q. (BY MR. MARRS) Did the counselors and the  
7 lifeguards ever have a meeting together with respect  
8 to rules and regulations, to your knowledge?

9 A. Not to my knowledge.

10 Q. If you are not going to test the swimming  
11 ability of young children entering into your family  
12 pool, should you, as a lifeguard, treat them as  
13 non-swimmer?

14 MR. SNYDER: Objection, form.

15 A. I think that would be reasonable.

16 Q. (BY MR. MARRS) That would be the prudent  
17 and safe thing to do, wouldn't it?

18 A. I would say so, yes.

19 Q. Did the Houston Racquet Club check the  
20 criminal backgrounds of any of its lifeguards prior  
21 to hiring them, to your knowledge, prior to July 18,  
22 2007?

23 A. Not to my knowledge.

24 Q. Or the counselors, to your knowledge?

25 A. I don't know anything about -- I don't think

0258

1 so. I don't know.

2 Q. Or the managers, to your knowledge?

3 MR. SNYDER: Objection, form. He's not

4 been designated on that subject.

5 MR. MARRS: Well, I'm asking him as a  
6 fact witness whether he knows whether or not the  
7 Houston Racquet Club checked the criminal background  
8 of any of its managers prior to hiring them.

9 A. I don't know.

10 Q. (BY MR. MARRS) Do you know if that's been  
11 done with respect to lifeguards, counselors or  
12 managers since July 18, 2007?

13 A. I don't know that either.

14 Q. Okay. Were there any special designated  
15 areas for the family pool designated for  
16 non-swimmers?

17 A. Well, yes. Usually that part I sort of  
18 circled as a wading area.

19 Q. This kidney-shaped area on Exhibit 14B that  
20 you designated as the wading area?

21 A. Yes. We would not let older kids in that  
22 area generally because of that. That's usually where  
23 the little, little kids would be.

24 Q. Okay.

25 A. Usually sitting there with their moms or  
0259

1 something.

2 Q. Non-swimmers, in other words?

3 A. I would say non-swimmers. Usually moms with  
4 their babies and things would sit in that area.

5 Q. Now, if a child is a non-swimmer, then how  
6 far in the water should you allow them to go in terms  
7 of up to their ankles, knees, belly button, chest,  
8 mouth, what, if they are a non-swimmer? What's --

9 MR. SNYDER: Objection, form.

10 A. You know, I really don't know. I -- I've  
11 seen them do all of those when they have been in the  
12 in water, so I don't know.

13 Q. (BY MR. MARRS) Do you have any rule at the  
14 Racquet Club on that?

15 A. No.

16 Q. Do you know what -- whether or not there are  
17 any standards or rules governing lifeguarding with  
18 respect to that?

19 A. I'm not sure.

20 Q. Have you had any training of lifeguards with  
21 respect to any such rule or standard?

22 A. No, sir.

23 Q. Do you have any other requirements for

24 lifeguards at the Houston Racquet Club other than the  
25 requirement that they have a current and valid  
0260

1 lifeguard training certificate?

2 A. No. I think that's it.

3 Q. Are you the person solely responsible for  
4 hiring lifeguards at the Racquet Club?

5 A. Not solely.

6 Q. Okay.

7 A. Mr. Lamkin and I would share that.

8 Q. Okay. Now, do you give preference first to  
9 member's children?

10 A. No.

11 Q. How about employee's children?

12 A. No, we haven't.

13 Q. Is 15 y/o LG #1 's parents members of the  
14 Houston Racquet Club?

15 A. Yes, they are.

16 Q. Are 15 y/o LG #2 's?

17 A. No.

18 Q. Are 15 y/o LG #2 's --

19 MR. MARRS: Excuse you.

20 MR. SNYDER: Thank you.

21 MR. PLETCHER: Bless you.

22 MR. SNYDER: That was a sneeze.

23 Q. (BY MR. MARRS) -- parents or any relatives  
24 of his employees of the Houston Racquet Club at any  
25 time, to your knowledge?

0261

1 A. Of 15 y/o LG #2 ?

2 Q. Yes, sir.

3 A. No. I don't believe so.

4 Q. Supv CC #1 ?

5 A. Yes. His father works at the club.

6 Q. Sr LG #1 ?

7 A. They are non-members.

8 Q. 4 y/o B-CC #2 ?

9 A. She's not a lifeguard. I don't know what  
10 her relationship to the club is.

11 Q. You don't know whether 4 y/o B-CC #2 's  
12 parents are members of the Racquet Club?

13 A. I don't.

14 Q. What about 4 y/o B-CC #3 ?

15 A. They are members of the Racquet Club.

16 Q. 4 y/o B-CC #3 's mom was on the board, correct?

17 A. Correct.

18 Q. 4 y/o B-CC #1 ?  
19 A. Her parents are members.  
20 Q. How about 4 y/o B-CC #5 ?  
21 A. I'm not sure about 4 y/o B-CC #5 .  
22 Q. 4 y/o B-CC #6 ?  
23 A. I'm not sure about them either.  
24 Q. 4 y/o B-CC #5 ?  
25 A. They are members.

0262

1 Q. LG Supv ?  
2 A. Non-members.  
3 Q. Sr LG #2 ?  
4 A. Non-member.  
5 Q. Sr LG #3 ?  
6 A. Non-member.  
7 Q. LP LG ?  
8 A. Non-member.  
9 Q. In 2007 did you turn away any lifeguard  
10 candidates, to your knowledge?  
11 A. Yes, I did.  
12 Q. Who?  
13 A. I don't remember their names, but early on a  
14 few came that were -- they had expired  
15 certifications, so I just said that -- you know, get  
16 recertified and you can come work; otherwise, no.  
17 And I don't remember how many or who they were, but  
18 there were a few in the beginning.  
19 Q. And why was it important that they have  
20 valid certifications prior to serving as a lifeguard  
21 at your pools?  
22 A. Well, that was the requirement that I was  
23 told to follow, so --  
24 Q. Yeah. But aside from that --  
25 A. -- I did.

0263

1 Q. Because you're aquatics director and  
2 lifeguard manager, why to you is it important that  
3 your lifeguards be certified in CPR and/or AED? Why  
4 is that important?  
5 A. Because I would like to have certified  
6 guards.  
7 Q. Because they need to be currently and  
8 properly trained in CPR and AED?  
9 A. Yes. And it was also a requirement told to  
10 me. That was the first thing I followed, you know.  
11 Q. What raises, if any, have you received since

12 July 18, 2007?

13 A. None.

14 Q. Or bonuses?

15 A. None.

16 Q. And why is that, to your knowledge? Has the  
17 time come yet for you to be up for a raise or bonus?

18 A. Oh, I don't -- I don't know.

19 Q. Well, does that generally happen at the end  
20 of the year?

21 A. I really don't know when it happens. I  
22 don't know. My checks change from month to month  
23 because every once in awhile if I do some personal  
24 trainings -- and so I really don't know.

25 Q. Okay. So you receive a percentage of the  
0264

1 personal training that you do at the Racquet Club?

2 A. Yes, I do.

3 Q. And do you receive a percentage of any other  
4 revenues from the Houston Racquet Club?

5 A. During the summer, I get a 5 percent from  
6 any swim lessons.

7 Q. What else, if any?

8 A. That's it.

9 Q. Anything relating to just fitness generally,  
10 summer camp or any programs in terms of a percentage?

11 A. No, sir.

12 Q. Do you get any percentage of anything other  
13 than swim lessons and personal training?

14 A. No, sir.

15 Q. And how long did you talk to 15 y/o LG #1  
16 after the July 18, 2007 incident? You said you had a  
17 discussion with her.

18 A. I had that discussion with her on the 19th.

19 Q. How many minutes?

20 A. I really don't remember. I do remember  
21 being sensitive to not making it too long because it  
22 was -- I don't know how easy it would be for her to  
23 talk about this.

24 Q. Well, so how long did you talk to her?

25 A. But I --

0265

1 Q. Was it for a minute or how long?

2 A. Maybe a little bit longer than one minute,  
3 but I --

4 Q. Okay.

5 A. I really couldn't tell you. It wasn't a

6 half-hour conversation --  
7 Q. Okay.  
8 A. -- you know.  
9 Q. Well, was it like a five-minute conversation  
10 or what?  
11 A. I couldn't tell you. I don't know.  
12 Q. Was it in passing or did you specifically  
13 stop her to talk to her about it or what?  
14 A. I specifically stopped her to speak with  
15 her.  
16 Q. Okay.  
17 A. I just don't know how long it was.  
18 Q. Less than ten minutes, you think? I mean,  
19 from what you told me the discussion encompassed --  
20 A. I don't know. Maybe five to ten minutes.  
21 Q. Okay. And have you since discussed with her  
22 the incidents on July 18th?  
23 A. I have.  
24 Q. Okay. When?  
25 A. I don't remember the date. She came up to  
0266  
1 me one day after reading a -- an article in the  
2 newspaper that upset her, so we talked about it  
3 again.  
4 Q. Okay. And for how long?  
5 A. I don't know. That also may have been  
6 around a -- you know, a ten-minute conversation  
7 maybe.  
8 Q. In that particular second conversation, did  
9 you discuss with her any details about what she saw,  
10 what people did around the pool on July 18th?  
11 A. I did.  
12 Q. Okay. Tell me about that discussion.  
13 A. Well, she was a little bit upset. So I just  
14 asked her, "Well, you know, are you upset because of  
15 what the article says is upsetting to you or because  
16 you feel like that's not what happened? You know,  
17 what's wrong?"  
18 She just said, "It's because of what it  
19 says." So I -- so then we started sort of talking  
20 about it.  
21 And I said, "Well, do you -- you know,  
22 are you okay with everything that happened that  
23 day?" And then -- and again, she told me the same  
24 things basically that she had told me during our  
25 first conversation where, you know, how she was

0267

1 looking at the water and moving and what -- you know,  
2 what she did. And that was about it, I would say. I  
3 really don't remember a whole lot of detail.

4 Q. Do you recall anything else that was  
5 discussed between you and 15 y/o LG #1 this second time?

6 A. That's about it, I think.

7 Q. And on that first conversation you had with  
8 her on the 19th, was the pool closed?

9 A. I don't remember. I think we did -- the  
10 pool may have been closed for a few days. I really  
11 don't remember.

12 Q. Okay. And well, was she serving as a  
13 lifeguard on the 19th?

14 A. I believe so, but I don't know if I just --  
15 I don't remember if we just had the guards come in  
16 regardless or if we really did open. I cannot  
17 remember.

18 Q. Well, do you recall seeing her on the  
19 lifeguard stand on the 19th?

20 A. I don't. I just remember talking to her.

21 Q. Okay. If she was on the clock and being  
22 paid as a lifeguard, would you -- would that mean  
23 that she did serve as a lifeguard on the 19th or not?

24 MR. SNYDER: Objection, form.

25 A. Again, I don't remember if we were open or

0268

1 closed and we had just had the lifeguards come in any  
2 ways. I really don't remember if we were opened or  
3 closed those next few days.

4 Q. (BY MR. MARRS) And aside from those two  
5 conversations, have you discussed the events of  
6 July 18 with 15 y/o LG #1 ?

7 A. No.

8 Q. Did you do any kind of evaluation after the  
9 incident to determine whether or not 15 y/o LG #1  
10 could have done something better?

11 A. I mean, well, of course -- you know, I --  
12 you know, obviously I would have never wanted  
13 something like this to happen.

14 Q. But did you evaluate her actions?

15 A. I did.

16 Q. Okay.

17 A. Which is why I spoke with her the next day  
18 and -- yeah, I did.

19 Q. And did you put anything in writing about

20 that?

21 A. I don't think I did.

22 Q. Well, have you seen anything since that you  
23 made in writing about that?

24 A. I don't think I put anything in writing.

25 Q. What were LG Supv 's responsibilities

0269

1 as supervising lifeguard on July 18, 2007?

2 A. As a supervising lifeguard, they would help  
3 me make sure that the grounds were kept clean, that  
4 any interactions with members, they would take care  
5 of it instead of having the member walk up to a guard  
6 while on the stand and talking with them and asking  
7 them questions, making sure the rotations were  
8 prompt. And generally they would just roam, just  
9 walk around, almost like in a figure 8 from one pool  
10 to the other, you know, just -- they were just  
11 generally around.

12 Q. Anything else?

13 A. That's about it -- lifeguard, if necessary.

14 Q. Likewise, the lifeguard supervisors didn't  
15 provide training to the lifeguards, did they?

16 A. Are you asking about me or --

17 Q. No. I'm asking about lifeguard supervisors  
18 like LG Supv .

19 A. Well, he helped with the deep-water drill  
20 that we did.

21 Q. In June 2007?

22 A. Yes, sir.

23 Q. Anything else in terms of training?

24 A. No.

25 Q. And what would the applicable compression

0270

1 ratio be for the two individuals performing CPR on  
2 John that day?

3 A. Well, it would have been two-man CPR,  
4 15 compressions to two breaths.

5 Q. Do you know if that happened?

6 A. Well, when I got out there, David was  
7 already doing it and I don't remember -- I really  
8 don't remember what his counts were. I think he was  
9 counting out loud, so I --

10 Q. Okay. Well, you were here during his  
11 testimony when he testified that the compression  
12 ratio they used was 30 to 2, correct?

13 A. I don't remember that. He may have.

14 Q. And so after the chef told you that an  
15 ambulance had been called and you asked him, "What?  
16 What do you mean?"

17 A. And he said there was an emergency at  
18 the pool and you left and you ran out there, tell me  
19 what you saw.

20 A. Well, the first thing I saw, it was the  
21 ambulance guys coming in. We sort of walked in at  
22 the same time. And then the first person I saw was  
23 Mr. Griffin.

24 Q. Where was he?

25 A. He was standing -- oh, geez, he was under  
0271

1 the umbrella. It feels like he was really close to  
2 the edge of the pool with his back to the pool and  
3 looking down. And as I saw him, I just looked to see  
4 what he was looking at and everything was happening  
5 like in -- like in frames, you know -- I saw some of  
6 the ambulance guys. I saw Mr. Griffin looking down.  
7 I looked down at what he was looking at and then I  
8 saw David and LG Supv working. And then I remember  
9 seeing the counselors and some of the guards sort of  
10 controlling the crowd over by one of the gates by the  
11 pavilion and -- you know, so a crowd wouldn't form  
12 right here. And then I just remember sort of the  
13 interviews with the police. And everything else is  
14 kind of blurry in my mind.

15 Q. Do you remember seeing the drowning victim?

16 A. Yes, I do.

17 Q. And what color was he?

18 A. He was -- he was like a light -- like a  
19 pink, you know.

20 Q. What about his lips?

21 A. I didn't see -- I really didn't get to see  
22 him until the medics picked him up and LG Supv was  
23 able to pull the oxygen mask. But they were, I don't  
24 know, maybe like a light blue, I would say. I don't  
25 really remember.

0272

1 Q. And did you notice what compress -- you said  
2 Mr. Lamkin was voicing the counts on the compression,  
3 right?

4 A. I believe so. I heard his voice. I --

5 Q. Okay. Well, do you recall anything about  
6 the compression like okay, well, that -- they are  
7 doing this right or they are not doing this right or

8 anything about the CPR?

9 A. No. I remember it was working in good  
10 unison. I only remember one thing Mr. Lamkin said  
11 and that's it.

12 Q. Which was what?

13 A. He said, "Come on, Buddy, you can do it."

14 Q. And then the -- after the paramedics had  
15 left, were you interviewed?

16 A. I don't remember. I think I was.

17 Q. By the police?

18 A. Yes.

19 Q. Were you interviewed by Mr. Lamkin?

20 A. I think we talked about -- I think we talked  
21 about the events and --

22 Q. Did you give a written statement?

23 A. I'm sorry?

24 Q. Did you give a written statement?

25 A. I don't think I did that day, no.

0273

1 Q. Now, did you have any meeting with your  
2 lifeguarding staff as a whole about the events of  
3 July 18, 2007?

4 A. I did.

5 Q. Excuse me?

6 A. I did.

7 Q. You did?

8 A. Sorry, yes.

9 Q. Okay. And what was the content of that  
10 meeting?

11 A. The content was -- it was what happened, it  
12 was the accident. We had a few guards that were out  
13 of town and weren't aware of what had happened. So I  
14 briefly talked about what happened and I knew we  
15 would be under a microscope, you know, the scrutiny.  
16 So, I -- we just talked about how they just needed to  
17 be the best guards they could possibly be. Be  
18 courteous to the members because they would -- a lot  
19 of them would have been upset. You know, I -- you  
20 know, don't -- it was all everyone could talk about  
21 at that time. And a lot of the guards were being  
22 cornered, you know, to answer questions that they  
23 just really didn't know how to answer.

24 And it was upsetting for them and  
25 upsetting for the members because they felt like, you

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1 know, I'm not getting any answers. I want to know

2 what happened and this person isn't talking to me.  
3 And so I just -- I just told them, you know, if  
4 anything comes up, just send them over to me or  
5 Mr. Griffin or Mr. Lamkin.  
6 THE WITNESS: Can we have about two  
7 minutes?  
8 MR. SNYDER: Sure.  
9 THE WITNESS: Can I just get some  
10 water?  
11 MR. MARRS: Sure.  
12 THE WITNESS: Okay.  
13 VIDEOGRAPHER: Off the record. The  
14 time is 6:24 p.m.  
15 (Brief recess.)  
16 VIDEOGRAPHER: Back on the record. The  
17 time is 6:39 p.m.  
18 Q. (BY MR. MARRS) You told me about your  
19 meeting with the lifeguards after July 18, about  
20 informing them what happened, things of that nature.  
21 Was there any training or retraining of lifeguards  
22 after July 18, 2007, to your knowledge?  
23 A. No, there wasn't.  
24 Q. Now, the CM #1 e-mail marked as  
25 Exhibit Number 22, have you seen that recently, the  
0275  
1 one dated July 18, 2007?  
2 A. Only when it was read here last week is the  
3 first time I had really gotten to hear about it.  
4 Q. Okay. Well, when we did read it last week,  
5 we learned that CM #1 was telling Mr. Griffin  
6 that she had complained to both Guillermo Palmer and  
7 David Lamkin about problems with the lifeguards. Do  
8 you recall such a conversation with Ms. CM #1 ?  
9 A. Yes, I do.  
10 Q. And what was the content of that discussion?  
11 A. Mrs. CM #1 felt that one of the guards was  
12 not watching the slide area because she kept looking  
13 away periodically and --  
14 Q. And which guard was that?  
15 A. You want the name?  
16 Q. Yes.  
17 A. That was Ms. LG-J.  
18 Q. Okay.  
19 A. So she came over and told Mr. Lamkin and me  
20 about it.  
21 Q. Okay. And what else?

22 A. Well, once she told us what she -- what she  
23 felt, we looked at her -- you know, we checked the  
24 guard out to see what she was doing and sure enough,  
25 she kept looking away. And while Ms. CM #1 was  
0276

1 standing there, we said we would talk to the guard  
2 and so we spoke with the guard.

3 Q. Okay. And is there anything in that guard's  
4 personnel file with respect to that incident?

5 A. No, there isn't.

6 Q. And was there a zero tolerance rule with  
7 respect to lifeguards not watching children in the  
8 pools?

9 A. I usually -- what I would do with the  
10 lifeguards is -- it was like a three strikes and  
11 you're out type thing.

12 MR. PLETCHER: So the answer is no?

13 Q. (BY MR. MARRS) So your response is no?

14 A. I guess zero tolerance as far as -- I mean,  
15 we spoke with her immediately, but, you know, we  
16 didn't fire her.

17 Q. Well, what's zero tolerance mean to you?  
18 When you tell someone we have a zero tolerance rule  
19 about that kind of conduct, what's that mean to you?

20 A. That it will not be tolerated.

21 Q. And then if it happens again, what would  
22 happen? Zero tolerance rule means you have zero  
23 tolerance for it, not 1 percent, not 2 percent, but  
24 zero?

25 A. It's a zero tolerance, I suppose.

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1 Q. Okay. What's that mean if you see someone  
2 doing something where a zero tolerance rule is in  
3 effect? What's that mean to you? What would happen  
4 to that person?

5 A. Probably taken off the schedule or fired.

6 Q. And in Ms. CM #1 's e-mail where she says  
7 that, the girl was "staring into space, not paying  
8 attention to kids" and David, -- she's referring to  
9 Lamkin -- asked him I wonder what she looked -- asked  
10 Ms. CM #1 , "I wonder what she's looking at." And  
11 David said, "No Mrs. CM #1 , it's okay. Because if  
12 something were to happen, Guillermo would lose his  
13 job, and I might, and so would the lifeguards and who  
14 knows what would happen to the club." And then she  
15 goes on to say, "That night, I was with several

16 members around the pool and we noticed that STILL  
17 Guillermo and David did NOTHING!!!!" Correct?

18 A. I really can't see it. If that's what it  
19 says, yeah. I can't see it from here, I'm sorry.

20 Q. Read it for yourself. Exhibit Number 22.

21 A. Yes. Where were you reading? I'm sorry.  
22 On the very top?

23 Q. Yes.

24 A. I see it. I see it. I'm sorry. Okay.

25 MR. SNYDER: First paragraph?

0278

1 A. Okay. I've read it.

2 Q. (BY MR. MARRS) Did I read it correctly?

3 A. You did.

4 Q. Okay. So what she's saying is she  
5 complained once about lifeguards not watching. And  
6 even after she complained, it still was happening and  
7 that still you and Mr. Lamkin did nothing, correct?

8 A. That's what she says, yes.

9 Q. Okay. Now, back to zero tolerance. Does  
10 zero tolerance mean to you that if you do this  
11 conduct, you're going to be fired?

12 A. Taken off the schedule probably or fired.

13 Q. Zero tolerance to you may mean we just take  
14 you off the schedule for a while? Is that what it  
15 implies to you when you hear zero tolerance?

16 A. Well, that's what I would do with the  
17 lifeguards, you know. I don't know if I ever said  
18 zero tolerance to them. I don't know.

19 Q. Okay.

20 A. I don't know if I've used that.

21 Q. If there was a lifeguard that was habitually  
22 not watching children in the pool, would you just  
23 take them off the schedule or would you relieve them  
24 of their duties permanently?

25 A. I would take them off the schedule, tell

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1 them why and you know, probably wouldn't last much  
2 longer.

3 Q. Why? Do you think it's unsafe for  
4 lifeguards who are supposed to be watching children  
5 not watching children in the pool?

6 MR. SNYDER: Objection, form.

7 A. I think it's unsafe, and I think it's just a  
8 bad example to set.

9 Q. (BY MR. MARRS) The -- okay.

10 And you know that Ms. CM #1 also  
11 complained about a lifeguard named LG-A in the past,  
12 correct?

13 A. Yes.

14 Q. LG-A?

15 A. Yes, sir.

16 Q. Did she complain to you about LG-A?

17 A. I don't remember if she ever complained to  
18 me about him, but I heard that she had complained.

19 Q. What's your understanding of why  
20 LG-A was fired from the Houston Racquet Club?

21 A. While LG-A was a very good guard on the  
22 stand, off the stand he just liked to play around  
23 more than do his duties. And so we spoke to him  
24 three times about it and since that was our rule, you  
25 know, after the third time we let him go.

0280

1 Q. Well, let's look at Exhibit 20.

2 A. Okay.

3 Q. Now, you remember we were talking about the  
4 HRCBM-B e-mail in previous days of testimony in  
5 this case, correct?

6 A. Yes, sir.

7 Q. Okay. Now, do you deny that what HRCBM-B  
8 says happened --

9 MR. SNYDER: Objection, form.

10 Q. (BY MR. MARRS) -- in June 2007 in this  
11 e-mail that's Exhibit 20 occurred?

12 A. As I remember, correct me if I'm wrong, does  
13 he say that LG-A ran around, went off the high dive  
14 and pushed a little girl out of the way so he could  
15 get out of the pool, something to that effect?

16 Q. He says that his favorite lifeguard was  
17 horsing around, flirting, laughing, popping the towel  
18 and that you were there watching it all happen and  
19 that you did nothing about it.

20 A. Well --

21 Q. And so my question is: Do you deny that  
22 that occurred and that HRCBM-B witnessed that in  
23 June of 2007?

24 A. Well, I remember Mr. HRCBM-B being there that  
25 day. He was over by the entrance gate, so I don't

0281

1 know exactly what he saw. What happened, I was -- I  
2 was out there, I was talking to one of the lifeguards  
3 in the lap pool. As I remember, it was -- it was

4 getting close to closing time, so I was speaking with  
5 her and the head lifeguard at the time about what we  
6 were going to start doing to start closing up and  
7 getting things ready, when LG-A ran around and popped  
8 a lifeguard in the back of the leg and jumped in the  
9 pool and then jumped out the other side of the pool  
10 and all that stuff. That did happen. That did  
11 happen.

12 Q. In your presence?

13 A. In my presence.

14 Q. Okay. And is it true that you were doing  
15 nothing to prevent them from doing that?

16 A. Well, it happened pretty quickly. I didn't  
17 just start yelling or anything. I spoke with them  
18 afterwards, but that's what happened.

19 Q. Okay. So, you don't deny what Mr. HRCBM-B  
20 says in his e-mail of June 11, 2007; is that correct?

21 MR. SNYDER: Objection, form.

22 A. No. That's correct, that LG-A conduct was  
23 not good at that time.

24 Q. (BY MR. MARRS) And you don't deny what he  
25 says about your conduct either, do you?

0282

1 MR. SNYDER: Objection, form.

2 Q. (BY MR. MARRS) Or do you?

3 A. Well, he doesn't know what I was doing. He  
4 was nowhere near me. I was giving some instructions  
5 at the time and -- while talking to a few of the  
6 guards. So you know, I never saw LG-A do what he did  
7 till he was halfway done with his stunt, you know.  
8 But Mr. HRCBM-B was nowhere near me listening to what I  
9 was saying or anything.

10 Q. But at the time this was happening, you did  
11 not prevent it from happening nor did you reprimand  
12 the lifeguards at the time that their conduct was  
13 occurring that is mentioned in the June 11, 2007  
14 e-mail, right?

15 A. Not at the time that --

16 MR. SNYDER: Objection, form.

17 A. Not at the time it was occurring. They were  
18 reprimanded afterwards.

19 Q. (BY MR. MARRS) Did Mr. HRCBM-B say anything  
20 to you on that day?

21 A. He did not. He just said, "Hello."

22 Q. And so what kind of reprimand did you give  
23 LG-A?

24 A. I told him that, you know, that wasn't  
25 acceptable and -- you know, I don't remember if he  
0283

1 was on duty or not that day. He may have been a  
2 guest. He did that from time to time.

3 Q. Well, did you look into whether or not he  
4 was on duty on that day as the supervising  
5 lifeguard --

6 A. I did. I just don't remember --

7 Q. -- or managing lifeguard?

8 A. -- whether he was or not. I did; I just  
9 don't remember.

10 MR. MARRS: You've got to admit, we've  
11 been doing pretty good about not talking over each  
12 other.

13 A. I apologize for that.

14 Q. (BY MR. MARRS) Okay. So of course, you  
15 gave LG-A a reprimand, correct?

16 A. Yes.

17 Q. And that would be located in his personnel  
18 file, correct?

19 A. I'm not sure if I documented that or not.  
20 I spoke with him. I'm almost sure I didn't write  
21 anything down.

22 Q. Is there any kind of rule at the Racquet  
23 Club when a lifeguard does something like what's  
24 exhibited in Exhibit 20, that you have to put it in  
25 writing, put it in his file so that the next person  
0284

1 at the Racquet Club can -- or anyone, any manager at  
2 the Racquet Club can look at their file and see so  
3 that there would be some institutional knowledge at  
4 the Racquet Club of "Okay. Here are things that this  
5 person needs to work on, or here are things that this  
6 person has done"? Is there any kind of rule like  
7 that at the Racquet Club that it has to be in writing  
8 and in their personnel file?

9 MR. SNYDER: Objection, form.

10 A. I don't know.

11 Q. (BY MR. MARRS) Not to your knowledge?

12 A. Not to my knowledge.

13 Q. And you mentioned Mr. LG-A pushing a  
14 girl out of the way. What happened on that? Are  
15 you --

16 A. I believe that's what he sent in the  
17 e-mail. I never saw him do that, as he exited the

18 pool, so I can't talk -- I can't speak to that. I  
19 don't know.  
20 Q. Okay. And with respect to the female guard  
21 that's mentioned in this e-mail, since you were there  
22 that day and you observed the situation and you even  
23 talked to Mr. LG-A afterwards, who was that  
24 other female lifeguard working that's referred to in  
25 the e-mail, Exhibit 20?

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1 A. Yeah, I don't remember who she was.  
2 Q. Do you remember who any of the other  
3 lifeguards were that were there with LG-A?  
4 A. I just remember the head lifeguard and LG-A.  
5 Q. Okay. And who was that?  
6 A. LG-I.  
7 Q. What's his last name?  
8 A. I can't remember. He's -- I can't remember  
9 his last name.  
10 Q. He's what?  
11 A. He's Swiss and he's got a different last  
12 name. I can't recall it right now.  
13 Q. And is he still at the Racquet Club?  
14 A. No, he's not.  
15 Q. When did he stop serving as a lifeguard or  
16 supervising lifeguard at the Racquet Club?  
17 A. He stopped -- I believe he stopped towards  
18 the end of June. He went to Europe on vacation all  
19 the -- I believe he was gone all of July or most of  
20 July. And then when he came back he started school,  
21 so I am not sure he really worked.  
22 Q. Was he fired?  
23 A. No-no. He just left because of school.  
24 Q. And let me show you Exhibit Number 21. This  
25 is an e-mail from Steven Griffin to you and cc'ing

0286

1 Mr. Lamkin and Ms. Healy that we already discussed  
2 with Mr. Griffin. Now, do you deny that any of the  
3 things that occurred as related by Mr. Griffin on  
4 Exhibit Number 21 occurred, or do you agree that  
5 those things did occur?  
6 MR. SNYDER: Objection, form.  
7 A. Will you refresh me on the things, please?  
8 Q. (BY MR. MARRS) Well, let me give you the  
9 actual e-mail from --  
10 A. Okay.  
11 Q. -- Mr. Griffin to you, Exhibit 21.

12 A. Thank you. Yeah. I don't deny that some of  
13 these things were going on.

14 Q. Well, which ones do you deny were going on?  
15 You just said "some".

16 A. Well, I'll go point by point here.

17 Q. Okay.

18 A. "I believe what we have discussed and agreed  
19 upon is: 3 around the pools, 2 of them in the high  
20 guard chairs; 1 on the gate; 1 in the Game Room; 1 or  
21 2 doing other tasks, such as towels, pool cleaning,  
22 etc." This was sent to me -- well, it says here  
23 Thursday. I actually read this the following  
24 Saturday. I didn't -- you know, I hadn't checked my  
25 e-mail. I got it the following Saturday. I met with  
0287

1 Mr. Griffin that following Sunday morning to talk  
2 about this because I was concerned. Obviously, this  
3 happened on a day that I just -- I wasn't there. And  
4 the reason why we were keeping just a few guards  
5 around the pool is this is during that month -- it  
6 was so rainy, the club was practically empty for a  
7 month.

8 And so yeah, while it was raining and  
9 everything, there may have been a couple of guards  
10 just standing out under the big umbrellas and the  
11 rest would just stay in the covered parts which --  
12 right in front of my office there. As far as those  
13 broken umbrellas that we were talking about, those  
14 were a couple of umbrellas that I pulled off some of  
15 the stands because they were broken. And some of the  
16 members couldn't -- they wouldn't crank open.

17 Q. Okay. But my question is --

18 A. So --

19 Q. -- what do you deny that Mr. Griffin is  
20 saying occurred?

21 A. I'm not denying that this occurred. I'm  
22 just saying that --

23 Q. Okay. You're just explaining why they  
24 occurred?

25 A. Right. It wasn't because of guard -- it  
0288

1 wasn't because the practices were loose or the  
2 guards, you know, didn't know which way to go. It  
3 was just that there really was nothing to do.

4 Q. Okay. So basically aside from why the  
5 things Mr. Griffin observed might have happened, you

6 don't deny that what Mr. Griffin relays occurred in  
7 this Exhibit 21, July 5th e-mail occurred?

8 A. That's correct.

9 Q. I mean, the -- when Mr. Griffin asked the  
10 lifeguards who is in charge, do you think they didn't  
11 know because it might be raining? Do you think that  
12 that, whether it rains or not should make a  
13 difference on whether the lifeguard knows who's in  
14 charge or not?

15 MR. SNYDER: Objection, form.

16 A. To be honest with you, I'm not sure that a  
17 lot of the guards knew who Mr. Griffin was.

18 Q. (BY MR. MARRS) So --

19 MR. SNYDER: Objection, form.

20 A. So I don't -- I don't know if they were  
21 being defensive because they thought it was just some  
22 guy asking them questions or -- I really can't answer  
23 that. I don't know.

24 Q. (BY MR. MARRS) Why do you think that some  
25 of the guards might not know who Mr. Griffin is?

0289

1 MR. SNYDER: Objection, form.

2 A. Well, Mr. Griffin didn't make his way out  
3 there all the time and some of the guards didn't work  
4 every shift. Some of them could only work certain  
5 shifts and so it's possible that some of them may not  
6 have seen him.

7 Q. (BY MR. MARRS) Do you often see  
8 Mr. Griffin, the general manager who has other duties  
9 and responsibilities, out at the family pool?

10 A. Well, he walks all over the property, so  
11 from time to time I would see him. But like I said,  
12 not all of them may have known who he was.

13 Q. Have you ever seen Mr. Griffin walk up to a  
14 lifeguard at the family pool?

15 A. I've seen him do that, yes.

16 Q. And do what?

17 A. I don't know. Sometimes talk to them or ask  
18 them how it's going or, you know.

19 Q. And Mr. Griffin is complaining to you about  
20 lifeguards being clustered together doing nothing at  
21 all, correct?

22 A. Correct.

23 Q. As a matter of fact, we saw Mr. HRCBM-B was  
24 complaining that lifeguards were horsing around and  
25 doing nothing, correct, even while there were 20 or

0290

1 30 kids in the pool, right?

2 A. That's what it says. I --

3 Q. Okay. And he's complaining about lifeguards  
4 horsing around while children are in the pool,  
5 basically, correct?

6 A. Yes.

7 MR. SNYDER: Can you see that?

8 A. I can't really see it. I'm just --

9 Q. (BY MR. MARRS) Okay. Well --

10 A. -- taking --

11 Q. He's saying, "My favorite lifeguard was  
12 horsing around." He's talking about children  
13 watching. He's talking about two other guys are  
14 flirting and talking with a deep-end female  
15 lifeguard. Lifeguards talking and laughing.  
16 Guillermo was still talking and doing nothing. 20 to  
17 30 kids and parents in the pool. I mean -- right?  
18 He's talking about lifeguards horsing around and not  
19 watching kids in the pool, right?

20 A. Yes, he is.

21 Q. And we also know that Ms. CM #1 says that  
22 counselors were playing and not watching the kids and  
23 that she observed this on the very day of the  
24 incident, right?

25 A. Yes, sir.

0291

1 Q. And she's talking about a lifeguard by the  
2 slide who didn't even notice a kid going under the  
3 water by the slide area, right?

4 A. Right.

5 Q. And about counselors who were flirting,  
6 drinking lemonade on the stands -- I'm sorry.  
7 Lifeguards flirting, drinking lemonades on the  
8 stands, picking their toes, checking out their split  
9 ends, talking with friends and just not paying  
10 attention, right, sir?

11 A. That's what it says.

12 Q. Okay. Did you meet with Ms. CM #1 with  
13 respect to her complaints about the lifeguards?

14 A. Yeah. She only complained once to me and  
15 that was on that instance with Mr. Lamkin, so yes, we  
16 did meet with her.

17 Q. Did you and Mr. Lamkin meet about her  
18 complaints afterwards?

19 A. We did.

20 Q. When?  
21 A. That same day, that same instant it  
22 happened.  
23 Q. Okay. And that would have been what --  
24 when, what day?  
25 A. Whatever day it happened that she told us  
0292  
1 about the guard looking off.  
2 Q. Okay.  
3 A. And --  
4 Q. And was that approximately a month prior to  
5 July 18, 2007?  
6 A. I can't be sure when that was.  
7 Q. When she says approximately five weeks ago,  
8 in other words, five weeks before the July 18, 2007  
9 incident, would that be about correct?  
10 A. Oh, then yes. If she writes that, yes.  
11 Q. And with respect to Mr. Griffin's e-mail on  
12 July 5th, do you recall where I showed the  
13 LG Supv scheduling, showing that LG Supv was  
14 actually working on July 5th?  
15 A. Right.  
16 Q. Was LG Supv the supervising lifeguard  
17 on July 5th?  
18 A. I would assume. I don't know if there were  
19 any of the other head guards that were there as head  
20 guards.  
21 Q. Based on what you know now, you would think  
22 it would be Steven Griffin -- LG Supv ?  
23 A. No. I don't know who all was there that  
24 day.  
25 Q. You just know that he was one of the  
0293  
1 lifeguards?  
2 A. Yes. That's what I've heard since.  
3 Q. Are you a certified swimming instructor?  
4 A. No, I am not.  
5 Q. Have you ever been?  
6 A. I haven't.  
7 Q. And what do you use as a calendar with  
8 respect to your duties, responsibilities, scheduling,  
9 etcetera at the Houston Racquet Club?  
10 A. I used to keep a desk calendar to write down  
11 my personal trainings.  
12 Q. And did you use that in 2007 as well?  
13 A. In 2007 I actually tried to use a -- like a

14 Daytimer type thing to keep track of those trainings.

15 Q. Well, what about with respect to  
16 lifeguarding and managing lifeguards and schedules  
17 and all that?

18 A. I had to do all the schedules separately.

19 Q. Okay. On what?

20 A. We did that -- Well, we did them on the  
21 computer like the ones that you have.

22 Q. Okay. Do you do that yourself?

23 A. I used to do it myself and then later with  
24 the help of some of the head lifeguards.

25 Q. And what computer would you use?

0294

1 A. Just the one that was in the -- in my  
2 office, in the aquatics office.

3 Q. Is it still there?

4 A. It's not there anymore.

5 Q. What kind of computer was it?

6 A. I have no idea.

7 Q. Hewlett Packard, IBM, Apple?

8 A. It was a -- it was a black desktop. That's  
9 all I -- I don't know what brand.

10 Q. Okay. And you had that up until when, in  
11 your office?

12 A. I think maybe up to a few weeks ago.

13 Q. And who owned that computer?

14 A. That was club property.

15 Q. Okay. And where is it now?

16 A. I don't know. I believe it's being used in  
17 another department.

18 Q. Why did it leave your office?

19 A. I don't know.

20 Q. Who took it?

21 A. I don't know that either.

22 Q. Well, you just show up one day and your  
23 computer is gone?

24 A. Correct.

25 Q. Well, didn't you ask about it?

0295

1 A. I did.

2 Q. And who did you ask?

3 A. I asked -- I think I asked David Lamkin  
4 first.

5 Q. Okay.

6 A. And --

7 Q. What did he say?

8 A. He said he didn't know either.  
9 Q. Okay. Then what did you or Mr. Lamkin do,  
10 to your knowledge, to find out?  
11 A. I don't remember if we made phone calls or  
12 we went to find our IT guy or if we found out the  
13 next day. It --  
14 Q. Okay.  
15 A. Something like that, yeah.  
16 Q. And what did you find out?  
17 A. He had -- He had taken it to use in another  
18 department.  
19 Q. Who is "he"?  
20 A. Our IT guy, Larry.  
21 Q. Uh-huh.  
22 A. Cook. Larry Cook.  
23 Q. Okay. Now, would that be the same computer  
24 that you would send and receive e-mails on regarding  
25 your -- regarding the Racquet Club?  
0296  
1 A. For a while it was. Not all summer.  
2 Q. Well, for example, the exhibit we're looking  
3 at, it was sent to you at a Yahoo address, correct?  
4 A. Yes.  
5 Q. Okay. Now, you could access that account on  
6 your personal computer and your work computer?  
7 A. Yes, sir.  
8 Q. Okay. And where did you access that?  
9 A. This one, actually on my wife's computer.  
10 Q. Okay.  
11 A. Yes.  
12 Q. All right. So the computer at work, you  
13 show up one day and it's gone. And did you talk to  
14 Larry yourself?  
15 A. I don't remember if I did or if Mr. Lamkin  
16 and Mr. Griffin talked to him about it. I'm not  
17 sure.  
18 Q. Okay. So where is it today? Who's using it  
19 where?  
20 A. I'm not sure what department. It may be  
21 somewhere in the food and beverage sections.  
22 Q. Do you know who's using your old computer?  
23 A. I don't.  
24 Q. Have you seen it since it left your office?  
25 A. I saw -- I think I did.  
0297  
1 Q. Where?

2 A. They showed me where it was in the kitchen,  
3 so I'm assuming it was mine.  
4 Q. Who showed you?  
5 A. One of the -- one of the cooks.  
6 Q. Okay. Who?  
7 A. I don't know his name. He's new.  
8 Q. His last name is not Cook, though?  
9 A. I don't think so.  
10 Q. Okay. And have you received a replacement  
11 computer?  
12 A. No.  
13 Q. Do you have an e-mail account at the Racquet  
14 Club?  
15 A. If I do, I've never used it.  
16 Q. You never have?  
17 A. Nuh-uh.  
18 Q. Now, would you create documents regarding  
19 what you just testified about, lifeguarding  
20 schedules, etcetera on that computer that was removed  
21 from your office?  
22 A. I would.  
23 Q. When is the last time you saw the computer  
24 in your office?  
25 A. I don't know. I would say maybe a few weeks  
0298  
1 ago.  
2 Q. And what e-mail accounts have you had in the  
3 last year aside from the : **Privilege** ?  
4 A. I had another one that I've had for maybe 10  
5 or 11 years.  
6 Q. What is that?  
7 A. On Yahoo. It's called  
8 **Privilege**  
9 Q. And what is **Priv**?  
10 A. That's just a name I came up with, with my  
11 initials. I thought it sounded kind of neat.  
12 Q. Have you ever used Outlook as a calendar  
13 database?  
14 A. I haven't.  
15 Q. Have you used any calendar programs or  
16 calendars on your computer at the Racquet Club?  
17 A. No, sir.  
18 Q. And the 2007, you said you had a 2007  
19 desktop calendar?  
20 A. I had -- I got a little book for calendar.  
21 Q. What kind of book?

22 A. I think it may have been a Daytimer. I'm  
23 not sure.

24 Q. Okay. And where is it?

25 A. I don't know. It's got -- it's somewhere in  
0299

1 my house, I'm sure.

2 Q. Can you give that to your lawyer?

3 MR. MARRS: And we do request that if  
4 we haven't already.

5 A. I think so.

6 MR. PLETCHER: We have.

7 Q. (BY MR. MARRS) And what other e-mail  
8 accounts other than the two we've discussed have you  
9 had in the past year?

10 A. Those are it.

11 Q. Well, have you -- Do you use your wife's  
12 e-mail account?

13 A. No, I don't.

14 Q. Do you have any -- What computers do you  
15 have at home in the last year?

16 A. My wife has a -- has a laptop, a Dell  
17 laptop.

18 Q. Any others in the last year?

19 A. No.

20 Q. Any desktops at your house in the last year?

21 A. No, sir.

22 Q. Do you still have the Dell laptop?

23 A. Yes.

24 Q. The -- are all the e-mails that you received  
25 or sent -- well, aside from your Yahoo e-mail

0300

1 accounts you've already testified about, did you send  
2 any e-mails to other Racquet Club employees using any  
3 other e-mail account?

4 A. No, I didn't.

5 Q. Like just getting on the Houston Racquet  
6 Club system and sending e-mails, would that be  
7 through your Yahoo account?

8 A. Right. Yeah, I never used any Racquet Club  
9 systems.

10 Q. Okay. Now, have you given any of your  
11 computers away during the last year to a friend?

12 A. No, I haven't.

13 Q. Has anybody, to your knowledge?

14 A. No.

15 Q. Have you sent any text messages with respect

16 to the events of July 18, 2007?  
17 A. From my cell phone?  
18 Q. From anywhere.  
19 A. I sent one to a friend of mine.  
20 Q. When?  
21 A. Oh, I don't -- I don't remember. Maybe a  
22 few months ago.  
23 Q. Saying what?  
24 A. Well, he had -- he had sent me one wondering  
25 why I hadn't called him in a long time. I told him  
0301  
1 that I was sorry, I had been preoccupied because a  
2 drowning had occurred at the Racquet Club.  
3 Q. And who was your friend?  
4 A. His name is Steve, Steve Cumings.  
5 Q. How do you spell that?  
6 A. C-U-M-I-N-G-S.  
7 Q. One M?  
8 A. Yes.  
9 Q. And where do you know him from?  
10 A. We met just playing tennis.  
11 Q. Where does he work?  
12 A. He works at HP.  
13 Q. Hewlett Packard?  
14 A. Yes, sir.  
15 Q. In Houston?  
16 A. Yes.  
17 Q. Have you ever been arrested?  
18 A. No, sir.  
19 Q. Never?  
20 A. Never.  
21 Q. And so, let me just clarify. I think I  
22 already asked you, but did you have any e-mail  
23 account at the Houston Racquet Club, any e-mail  
24 address at the Houston Racquet Club?  
25 A. On the Racquet Club system, I did not -- or  
0302  
1 if I did I never used it. I don't know.  
2 Q. And did you ever communicate or write down  
3 any rule regarding dead man's float, to your  
4 knowledge?  
5 A. I don't think I ever wrote anything down,  
6 no.  
7 Q. That's not in any pool rules, to your  
8 knowledge, correct?  
9 A. Not that I've written.

10 Q. Or that anybody has written, to your  
11 knowledge?  
12 A. I don't know. I don't know if maybe in the  
13 past there may have been. I really don't know.  
14 Q. That you've ever seen?  
15 A. Not that I can remember.  
16 Q. Have you done any training, received any  
17 training on the rules or regulations regarding youth  
18 camps before?  
19 A. No, sir.  
20 Q. Then I take it you haven't given any  
21 training with respect to youth camps before, correct?  
22 A. Correct.  
23 Q. Lets look real quick at Plaintiff's  
24 Exhibit 35.  
25 MR. SNYDER: How are we doing on time,  
0303  
1 Ray?  
2 VIDEOGRAPHER: Six hours and  
3 55 minutes.  
4 MR. MARRS: Can you zero out on that?  
5 We're doing good.  
6 MR. SNYDER: I'll give you 10 more  
7 minutes.  
8 MR. MARRS: Okay. Is he available to  
9 pick up tomorrow?  
10 MR. SNYDER: No.  
11 MR. MARRS: When is he available?  
12 MR. SNYDER: Don't know.  
13 MR. MARRS: I think -- I think I have  
14 about 20 minutes or less.  
15 MR. SNYDER: You've got -- You've got  
16 10.  
17 MR. MARRS: Huh?  
18 MR. SNYDER: You've got 10.  
19 MR. MARRS: Okay.  
20 MR. PLETCHER: You've got 10 minutes on  
21 the computer.  
22 MR. MARRS: That's okay. We know how  
23 to get more time.  
24 Q. (BY MR. MARRS) Okay. Now, Mr. Griffin says  
25 in this memo to you about the Texas Administrative  
0304  
1 Code that he sent you September 7, 2007 that's marked  
2 as Exhibit Number 35, "Please confirm that these  
3 practices are being followed to the letter." Did you

4 confirm that to Mr. Griffin or not?

5 A. May I see -- may I see that, please?

6 Q. Sure. Exhibit 35.

7 A. Yes. Thank you. Yeah, we started -- we

8 started putting a lot of these in place. The

9 in-service trainings were difficult to do at the time

10 because we had lost a lot of guards by that time.

11 And so that's when we first hired a couple of older

12 guards, the one we spoke about that was a -- also

13 studying to be a fireman.

14 Q. Okay. But did you confirm to Mr. Griffin

15 that all of these regulations set forth in Exhibit 35

16 were being followed to the letter or could you not do

17 that?

18 A. Well, because of that, I could not do that.

19 Q. Okay. Other than that regulation, were you

20 in compliance with all of those regulations, to your

21 knowledge?

22 A. To my knowledge, there were maybe some signs

23 that we have to have made and some first aid

24 equipment needed to be revised and that type of

25 thing, but I think we had most everything.

0305

1 Q. Did you confirm what had been complied with

2 to Mr. Griffin?

3 A. Yes, I did.

4 Q. Did you do so in writing?

5 A. No.

6 Q. And how many times have you been reprimanded

7 at the Houston Racquet Club, if at all?

8 A. I've been reprimanded maybe -- oh, David can

9 be a tough manager, so it feels like -- but I would

10 say probably twice.

11 Q. Okay. And tell me about the first time.

12 What were you reprimanded for?

13 A. About Mr. HRCBM-B's e-mail.

14 Q. Okay. Tell me about the second time. What

15 were you reprimanded for?

16 A. Mr. Griffin's e-mail.

17 Q. Any other times that you've been reprimanded

18 by the Houston Racquet Club?

19 A. Not that I can think of.

20 Q. Are either of those reprimands in your

21 employee file, to your knowledge?

22 A. I'm not sure.

23 Q. Let me show you Exhibit 40. Do you

24 recognize what's called the "Pool Rules" on  
25 Exhibit 40?

0306

1 A. It looks familiar, but I can't really read  
2 it very well.

3 MR. MARRS: Blow it up a little for  
4 him, if you would.

5 MR. PLETCHER: Sure.

6 Q. (BY MR. MARRS) It talks about no glasses  
7 permitted, pool not allowed -- oh, food is not -- is  
8 only allowed in the pavilion area. No pushing or  
9 horseplay and various other slide rules, diving board  
10 rules, general lifeguard rules.

11 A. Yeah. I recognize this.

12 Q. Okay. Did you require, as lifeguard  
13 manager, all of your lifeguards to sign off on this  
14 form?

15 A. Yes.

16 Q. And where would those signed-off-on pool  
17 rules be?

18 A. Well, we kept those in a folder. Those were  
19 from 2006.

20 Q. Do you know why this would be the only  
21 signed form that we have been provided?

22 A. Well, no. I was only asked to provide an  
23 example of something some months ago and --

24 Q. Okay.

25 A. -- that's the first one I pulled out.

0307

1 Q. Could you please look for those?

2 MR. MARRS: And we do request, as we  
3 have before, signed forms that the lifeguards have  
4 signed.

5 MR. PLETCHER: That they signed in  
6 and --

7 Q. (BY MR. MARRS) Were all the lifeguards  
8 required in 2007 to sign-off on the pool rules?

9 A. No, no. I worked off of that sheet a little  
10 bit, but not -- I didn't do it like that.

11 Q. Did you require all the lifeguards in 2006  
12 to sign-off on the pool rules?

13 A. Yes.

14 Q. Okay. And so you should have those at the  
15 Racquet Club?

16 A. I think -- I think I have most of them, yes,  
17 sir.

18 Q. Okay. Can you provide those to your  
19 counsel?  
20 A. All the ones I have available I will.  
21 Q. And did the pool rules change since this one  
22 that's shown on Exhibit 40?  
23 A. Yes.  
24 Q. To present?  
25 A. They do.

0308

1 Q. In what way?  
2 A. May I see the sheet?  
3 Q. Sure.  
4 A. Thank you.  
5 Q. Exhibit 40.  
6 A. The glass and food rules changed.  
7 Q. What else?  
8 A. The -- yeah, the beverage, glass, all that  
9 stuff sort of changed because we had --  
10 Q. Anything else?  
11 A. -- strong requests for a -- and then -- and  
12 then on the slide rules, we allowed parents to go  
13 down with their children, if they -- if they wanted  
14 to do that, and we hadn't allowed that in the past.  
15 Q. Anything else?  
16 A. Yes. Towards the bottom it says, "Upon  
17 completion of these tasks you may go and sit in the  
18 pool storage room and relax until it is your time to  
19 relieve someone else." I changed that to you could  
20 relax in the pavilion, so you could still be aware of  
21 any whistle blasts or anything that may be happening  
22 outside.  
23 Q. When did that change?  
24 A. For 2007.  
25 Q. Before July 18, 2007?

0309

1 A. Yes, sir.  
2 Q. Okay. And prior to that time, they had to  
3 have lunch where, at the pool?  
4 A. In 2006, you mean?  
5 Q. Yes.  
6 A. In 2006, they would either eat in the  
7 aquatic's office or in the pavilion.  
8 Q. Okay. And that changed in 2007 so that they  
9 could eat --  
10 A. Only in the pavilion.  
11 Q. Okay.

12 A. Not inside.  
13 Q. Okay. And where are those typed pool rules,  
14 the 2007 ones?  
15 A. They don't exist. I worked off of that  
16 sheet and just added.  
17 Q. Verbally?  
18 A. Verbally.  
19 Q. Okay. You never put those in writing?  
20 A. No.  
21 Q. Okay. Now, you talked earlier about your  
22 orientation meeting. Is this what's Exhibit 41 the  
23 things you talked about in your orientation meeting?  
24 A. Yes.  
25 Q. Okay. Why does it say 2006 rules instead of  
0310  
1 2007 rules if you used it in 2007?  
2 A. Because I worked off of those 2006 rules.  
3 So, I had -- I made myself a little note saying  
4 discuss the rules with the ones we just discussed  
5 with their modifications and then those other things.  
6 Q. Okay. And are there any other writings or  
7 documentation of meetings you had with lifeguards  
8 other than Exhibit 41?  
9 A. I don't think there are.  
10 Q. And it says, "Do not be late or miss work  
11 without finding a substitute. This is the worst  
12 offense to others - safety is compromised," correct?  
13 A. Correct.  
14 Q. So if you don't have adequate lifeguards at  
15 the pool, obviously safety can be compromised, right?  
16 A. Yes, sir.  
17 Q. And 15 y/o LG #1 on July 18, 2007, did she  
18 go to the 911 phone by the pool and call 911, to your  
19 knowledge?  
20 A. 15 y/o LG #1 ?  
21 Q. Yes.  
22 A. I'm not sure that 15 y/o LG #1 was one of the ones  
23 that called 911.  
24 Q. Did you know why she didn't go to the 911  
25 phone and call immediately?  
0311  
1 A. I don't.  
2 Q. Do the lifeguards get paid for attending the  
3 lifeguard orientation?  
4 A. Do they get paid?  
5 Q. Uh-huh.

6 A. I don't think we pay them, no.  
7 Q. And is there a separate baby pool and wading  
8 pool or not?  
9 A. No, there isn't.  
10 Q. Would you agree that there are more  
11 surveillance challenges in the current family pool  
12 than there was in the preexisting pool because of all  
13 of the different shapes and curves and other water  
14 attractions in the family pool?  
15 A. I would say so.  
16 Q. Did you ever ask 15 y/o LG #1 or  
17 15 y/o LG #2 if they got AEDs on July 18, 2007?  
18 A. I didn't ask them that.  
19 Q. Do you know how much time you've spent  
20 observing 15 y/o LG #1 and 15 y/o LG #2 prior to  
21 July 18, 2007 while they were on the stand?  
22 A. No.  
23 Q. When --  
24 MR. SNYDER: We're done, guys.  
25 Q. (BY MR. MARRS) When --  
0312  
1 MR. MARRS: Excuse me?  
2 MR. SNYDER: Done.  
3 MR. MARRS: Are you shutting down the  
4 deposition?  
5 MR. SNYDER: Yes, I am.  
6 MR. MARRS: Can I depose him tomorrow?  
7 MR. SNYDER: No, no. You've had over  
8 seven hours, Scott.  
9 MR. MARRS: Well, but he's being  
10 presented as corporate representative, which I get  
11 seven hours -- six hours and as individual, which I  
12 get another six hours. But I'm -- I was willing to  
13 do it in less time.  
14 MR. SNYDER: You get -- You get six  
15 hours for the individual deposition, but you don't  
16 get another --  
17 MR. MARRS: Sure, I do.  
18 MR. SNYDER: -- six to take the  
19 corporate --  
20 MR. MARRS: Indeed I do.  
21 MR. SNYDER: -- deposition and  
22 particularly not when he's only designated on two of  
23 the 33 subjects --  
24 MR. MARRS: It doesn't matter.  
25 MR. SNYDER: -- on which you asked to

0313

1 depose the corporate rep.

2 MR. MARRS: The law, the rules, the  
3 courts have said that I get a full six hours as  
4 corporate rep, regardless of how many designations  
5 and a full six hours if they are also presented  
6 personally. I was trying to shortcut that and  
7 frankly didn't have much more, but...

8 MR. SNYDER: Well, I've asked you and  
9 I've tried not to hold you to any estimate you've  
10 given me, but every time you've said 10, it's -- or  
11 whatever --

12 MR. MARRS: Sure.

13 MR. SNYDER: -- it's been longer than  
14 that. So I mean --

15 MR. MARRS: But as the videographer  
16 said --

17 MR. SNYDER: -- how much --

18 MR. MARRS: -- I'm still well within my  
19 six plus six hours.

20 MR. SNYDER: I don't agree with what  
21 you're saying, but how much -- how much time do you  
22 have left?

23 MR. MARRS: I probably have maybe less  
24 than an hour.

25 MR. SNYDER: We're done. We're done.

0314

1 VIDEOGRAPHER: Off the record. The  
2 time is 7:32 p.m.

3 (Deposition recessed at 7:32 p.m.)

4 (Signature required.)

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0315

1 CHANGES AND SIGNATURE

2

WITNESS NAME: GUILLERMO PALMER

3 DATE OF DEPOSITION: MARCH 3, 2008

4

PAGE/LINE	CHANGE FROM/CHANGE TO	REASON
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0316

1

I, GUILLERMO PALMER, have read the foregoing  
deposition and hereby affix my signature that same is  
true and correct, except as noted above.

3

4

\_\_\_\_\_  
GUILLERMO PALMER

5

6

THE STATE OF TEXAS )

7

COUNTY OF HARRIS )

8

9

Before me, \_\_\_\_\_, on this day

10 personally appeared \_\_\_\_\_, known to me (or  
proved to me on the oath of \_\_\_\_\_ or

11 through \_\_\_\_\_) to be the person whose  
name is subscribed to the foregoing instrument and

12 executed the same for the purposes and consideration  
therein expressed.

13

14

15 Given under my hand and seal of office this

\_\_\_\_\_ day of \_\_\_\_\_, 2008.

16

17

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\_\_\_\_\_  
Notary Public in and for  
The State of Texas

22

23

24

25

0317

1

NO. 2007-54438

2

DAVID AND KATHLEEN ) IN THE DISTRICT COURT  
PLUCHINSKY, INDIVIDUALLY)

3

AND AS REPRESENTATIVES )  
OF THE JOHN ALBERT )

4

PLUCHINSKY ESTATE )  
Plaintiffs )

5

)  
VS. ) HARRIS COUNTY, TEXAS

6

)  
HOUSTON RACQUET CLUB, )

7

STEPHEN GRIFFIN, DAVID )  
LAMKIN, GUILLERMO )

8

PALMER, AND )  
LG Supv, )

9

)  
Defendants ) 281st JUDICIAL DISTRICT

10

REPORTER'S CERTIFICATION

11 TO THE VIDEO DEPOSITION OF GUILLERMO PALMER  
12 MARCH 3, 2008

13 I, Sherry Hale, Certified Shorthand Reporter in and  
14 for the State of Texas, hereby certify to the  
15 following:

16 That the witness, GUILLERMO PALMER, was duly sworn by  
17 the officer and that the transcript of the oral  
18 deposition is a true record of the testimony given by  
19 the witness;

20 That the deposition transcript was submitted on  
21 \_\_\_\_\_, 2008, to the witness or to the attorney  
22 for the witness for examination, signature, and  
23 return to Sherry Hale Reporting & Associates, by  
24 \_\_\_\_\_, 2008.

25 That the amount of time used by each party at the  
26 deposition is as follows:

27 Mr. Scott D. Marrs - 7 Hours: 13 Minutes

28 That pursuant to information given to the deposition  
29 officer at the time said testimony was taken, the  
30 following includes all parties of record:

31  
32  
33  
34  
35  
0318

36 FOR THE PLAINTIFFS:

37 Mr. Scott D. Marrs  
38 Mr. Matthew G. Pletcher  
39 Beirne, Maynard & Parsons, L.L.P.  
40 1300 Post Oak Blvd., 25th Floor  
41 Houston, Texas 77056  
42 (713) 623-0887  
43 (713) 960-1527 Fax Number

44  
45  
46 FOR THE DEFENDANTS:

47 Mr. Norman E. Snyder, Jr.  
48 Tucker, Taunton, Snyder & Slade  
49 10370 Richmond Avenue, Suite 1400  
50 Houston, Texas 77042  
51 (713) 961-5800

52  
53 I further certify that I am neither counsel for,  
54 related to, nor employed by any of the parties in the  
55 action in which this proceeding was taken, and  
56 further that I am not financially or otherwise

12 interested in the outcome of the action.  
13 Further certification requirements pursuant to Rule  
14 203 of TRCP will be certified to after they have  
15 occurred.  
16 Subscribed and sworn to by me on this 25th day of  
17 March, 2008.

18  
19  
20

21 \_\_\_\_\_  
22 Sherry Hale  
23 Texas CSR No. 6215  
24 Expiration Date: 12/31/2008  
25 Firm Registration No. 510  
0319 4545 Post Oak Place, Suite 350  
Houston, Texas 77027  
(713) 626-2629

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not \_\_\_\_\_ returned  
3 to the deposition officer on \_\_\_\_\_;

4 If returned, the attached Corrections and Signature  
5 page contains any changes and the reasons therefor;  
6 If returned, the original deposition was delivered to  
7 Mr. Scott D. Marrs, Custodial Attorney;

8 That \$ \_\_\_\_\_ is the deposition officer's charges to  
9 the Plaintiffs for preparing the original deposition  
10 transcript and any copies of exhibits;

11 That the deposition was delivered in accordance with  
12 Rule 203.3, and that a copy of this certificate was  
13 served on all parties shown herein and filed with the  
14 Clerk.

15 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
16 2008.

17  
18  
19

18

19

---

Sherry Hale  
Texas CSR No. 6215  
Expiration Date: 12/31/2008  
Firm Registration No. 510  
4545 Post Oak Place, Suite 350  
Houston, Texas 77027  
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