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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Who did you plan on calling?

MS. SEIFER-SMITH: Dr. Fritz. I have a courtesy copy of the CV, memo, and the report. Then the three documents I gave you earlier.

THE COURT: Thank you for that.

So we're back on the record for Mr. Mosley. Mr. Mosley is on his way out. Let's have him at the podium, please? All right.

Mr. Mosley, this morning you were sitting in a different courtroom able to watch the proceedings on TV.

Were you able to hear that okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. I just want to make sure you understand you have the opportunity, if you want to, to sit here with your lawyers again. I'm offering you another table so you will have a little more room. You seemed pretty comfortable with just you and the one lawyer or one mitigation expert at the table. You will have that same space here, if you want to stay in the courtroom with us.

Do you want to stay here with us today?

THE DEFENDANT: Yes, ma'am.

THE COURT: You want to stay?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. We'll pull the table over and
3 you can stay with us. If at any point you change
4 your mind, let me know. All right. Thank you.

5 Deputy, can you pull the table over for him and
6 then he can have a seat there?

7 THE BAILIFF: Yes, ma'am.

8 THE COURT: All right. Mr. Mosley, just follow
9 their directions and have a seat as directed and
10 we'll get started.

11 You all wanted to discuss or have testify next
12 Dr. Fritz?

13 MS. SEIFER-SMITH: Correct.

14 THE COURT: Okay.

15 MS. SEIFER-SMITH: I'm not sure if she's
16 outside.

17 THE COURT: I originally had on our aspirational
18 schedule Dr. Hall to testify this afternoon.

19 Do you think you will be able to do both?

20 MS. SEIFER-SMITH: I don't know. That might be
21 a little too optimistic.

22 THE COURT: Okay. So just keep in mind, you
23 know, I want to try to finish Friday. If we can't,
24 we can't.

25 What did you want to say?

1 MS. RUSSELL: Dr. Hall is here and he's ready to
2 testify. He said he doesn't have a hard stop, so we
3 could go late or I could also just at least get him
4 through the qualifications as an expert and then
5 bring him back. I don't expect his substantive
6 testimony to take longer than an hour, an hour and a
7 half.

8 THE COURT: Okay. So just keep in mind that
9 I -- we just moved Constantine (phonetic), so I
10 assume you would be available on the 22nd, which is
11 Tuesday. You don't have to answer today. Just
12 something to think about, right? And at some point
13 in the next couple of days, I want to hear from Joell
14 Johnson.

15 Ms. Sullivan, can you reach out to him and see
16 if he can come in tomorrow?

17 MS. SULLIVAN: Yes.

18 THE COURT: At any point we'll accommodate his
19 schedule. I just want to get some testimony from him
20 about what, if any, medications are being taken,
21 prescribed, not taken, and so on and so forth.

22 Can you do that?

23 MS. SULLIVAN: Yes, I can. I will say I was
24 given by Defense before lunch some updated jail
25 records regarding his medication administration. In

1 my brief review of them, it appears that he stopped
2 for a few days and that he did take his meds on 7/7
3 and yesterday, 7/8.

4 THE COURT: Okay. I just think it would be
5 better practice to get Mr. Johnson in --

6 MS. SULLIVAN: I agree.

7 THE COURT: -- to give us some testimony related
8 to that.

9 MS. SULLIVAN: But at least we do have that
10 information.

11 THE COURT: All right. Sounds good.

12 MS. SULLIVAN: How do you spell his first name?

13 THE COURT: Joell? I think it's just J-O-E-L-L,
14 right? Joell?

15 MS. SEIFER-SMITH: Joel, with a flare.

16 MS. SULLIVAN: It's Joell Johnson.

17 MS. SEIFER-SMITH: Yes.

18 MS. SULLIVAN: Okay.

19 MS. SEIFER-SMITH: I know we haven't spoken
20 about it, though, but Dr. Torrealday who was a
21 court-appointed expert whose report we don't have,
22 who has communicated not at all with myself,
23 Ms. Russell, Ms. Sullivan or Ms. Ellis, and I
24 assuming also not with the Court because I imagine
25 you would have told us.

1 THE COURT: No. I mean, realistically, I never
2 talk to them anyway. We have an administrator
3 that --

4 MS. SEIFER-SMITH: Right. I'm assuming that you
5 hadn't received any word?

6 THE COURT: Zero. I have nothing.

7 MS. SEIFER-SMITH: So last we understood, she
8 was on sabbatical for the entire month of July. I
9 imagine that is still true, but we didn't have any
10 information from her before she left about completion
11 of her work on this case. So there are --

12 THE COURT: Would you like our -- I don't
13 remember where I left off with court admin on that
14 issue.

15 Do you want my court administrative folks to
16 reach out to her office?

17 MS. SEIFER-SMITH: I don't know what good that
18 will do.

19 THE COURT: Yeah, I don't either.

20 MS. SEIFER-SMITH: I don't know that that's what
21 I'm asking at this point. I just wanted to remind
22 the Court that there are still other things that
23 remain outstanding past this week, in any event.

24 THE COURT: Okay.

25 MS. RUSSELL: Your Honor, just in full

1 transparency, I was able to communicate with Renee
2 Mosley who needs, like, two weeks of notice in order
3 to get back in here. She was here yesterday, but
4 because of everything that happened, she couldn't
5 testify. So maybe at the end of the day today if we
6 could pick that date?

7 THE COURT: We'll discuss scheduling later in
8 the day.

9 MS. RUSSELL: Okay.

10 THE COURT: I try to be -- we're starting late.
11 I want to be respectful of the doctors who are, you
12 know, we've blocked them off for time and I want to
13 make sure they can get that done today.

14 So if you all are ready, I'm ready for
15 Dr. Fritz.

16 MS. SEIFER-SMITH: Okay.

17 THE COURT: Let's have Dr. Fritz in, please.

18
19 THE BAILIFF: Step this way, stand right here.
20 Face the clerk, raise your right hand to be sworn.

21 (Witness was duly sworn on oath.)

22 THE BAILIFF: Come have a seat up here. Adjust
23 the mic. Speak in a loud and clear voice for the
24 Court.

25 DIRECT EXAMINATION

1 BY MS. SEIFER-SMITH:

2 Q. Can you please introduce yourself to everybody,
3 please?

4 A. Yes. Hi, I'm Dr. Amy Fritz, and I am a
5 speech-language pathologist.

6 Q. Okay. Dr. Fritz, can you just tell us if you
7 recognize this? This has been premarked as Defense
8 Exhibit 12.

9 A. Yes. This is a copy of my resume or CV.

10 MS. SEIFER-SMITH: Permission to move this into
11 evidence?

12 THE COURT: Any objection to Exhibit 12?

13 MS. SULLIVAN: No, Your Honor.

14 THE COURT: It will be admitted.

15 (Defense Exhibit 12 was admitted into evidence.)

16 BY MS. SEIFER-SMITH:

17 Q. So, Dr. Fritz, can you just tell us a bit about
18 your professional and educational experience, please?

19 A. Yes. Of course.

20 So I'm a speech-language pathologist. I did my
21 undergraduate in English and reading education. My
22 master's in speech pathology. Then my doctorate in
23 special education.

24 I have been working as a speech-language
25 pathologist since 1999. I started in the public schools,

1 and then I worked in the university setting before working
2 as an autism disorder specialist for the Center for Autism
3 and Related Disabilities here in Florida. Then I opened
4 my own private practice in 2020.

5 Q. Okay. Just going back a little bit to your
6 educational background.

7 A. Uh-huh.

8 Q. You have a doctorate. What type of doctorate is
9 it?

10 A. So I have an EdD. So my doctorate is in special
11 education, then my cognitive area of focus is in speech
12 pathology.

13 Q. And what was your, like, dissertation project
14 on?

15 A. So my dissertation was on the topic of response
16 to intervention, which is a model for service delivery in
17 the public schools.

18 Q. Could you tell us a little bit more about that,
19 please?

20 A. Sure. So response to intervention is basically
21 a model for education in which service delivery can occur
22 mostly in the general education environment. So it's a
23 tiered approach in which all students at Tier 1 are
24 supposed to be receiving robust and individualized
25 instruction.

1 Tier 2, then, is more intensified instruction
2 for individuals who have been identified as having some
3 learning needs. Generally, in math or reading.

4 Then Tier 3 instruction generally is more
5 intensified oftentimes out of the general education
6 environment, but the students themselves is still
7 identified as a general education student until
8 multifactor evaluation occurs for special education
9 placement, which oftentimes happened in Tier 3.

10 Q. Are these tiers or the services offered in these
11 tiers affected by any particular federal legislation that
12 you are familiar with?

13 A. Yes. So this all became especially relevant
14 with the passage of IDEA legislation in 2004 with a
15 national push for early identification, early service
16 delivery, and with the intention that more services could
17 be provided in the least restrictive environment, and that
18 less individuals would, therefore, be identified as being
19 in need of special education.

20 Q. Okay. So is there, then, an emphasis or a focus
21 on attempting to keep the child in general education for,
22 I guess, either as long as possible? Maybe you can
23 explain that a bit better than I can.

24 A. Yes. So part of our mandate, as special
25 educators, is to always be mindful of the importance of

1 least restrictive environment. So whenever possible,
2 individuals are educated in the general education
3 environment, and RTI or response to intervention
4 definitely allowed more people to stay as general
5 education students to decrease the overall numbers of
6 individuals who are identified special needs.

7 Q. Is there a funding, I guess, piece that comes
8 along with that?

9 A. Yes. In fact, it was first introduced with IDEA
10 legislation, and then in 2016 became very formalized
11 because states were kind of interpreting the legislation
12 differently. But basically, the funding incentive is to
13 ensure that proportionate numbers of individuals who are
14 people of color are identified as having special needs and
15 not disproportionate numbers.

16 So prior to 2004, we had a lot of students of
17 color being in special education. So the specific legal,
18 you know, physical change was that for schools that were
19 found to exhibit significant disproportionality, there was
20 a penalty of sorts which indicated that 15 percent of
21 their special education funds had to be allocated to early
22 intervention.

23 In general, it's a lot more expensive to have
24 kids in special education than it is in general education,
25 and also early intervening services prove most effective.

1 So, you know, the push was kind of twofold.

2 Q. And you've worked in the public schools for
3 quite some time; is that right?

4 A. That's correct.

5 Q. Was that here in Florida, or was that somewhere
6 else?

7 A. No. I worked in the public schools in Ohio. I
8 did a little bit of contract work in Indiana.

9 Q. Okay. And did you ever experience any kind of,
10 like, the push-pull that you described a couple moments
11 ago? And if you could explain, if you did, what that
12 push-pull was?

13 A. Right. Absolutely.

14 So my background has been, from the beginning of
15 my career, I've always specialized in kids with multiple
16 disabilities and especially individuals with autism. So I
17 was on a diagnostic team at the time that I was working in
18 the Ohio schools. And we were told by administrators that
19 we really needed to be careful whenever we were evaluating
20 an individual who is a person of color because the
21 district was getting slammed for significant
22 disproportionality, and so that we had to be -- we had to
23 be very cautious about putting individuals of color into
24 special education services or giving them a higher amount
25 of service.

1 Q. Do you know if your experience was something
2 that was occurring elsewhere outside of your particular
3 district?

4 A. Yes. Absolutely. It was definitely. And I
5 think that, you know, the 2016 legislation was really put
6 in place to try to formalize it so that there could be
7 less focus on, you know, this idea of significant
8 disproportionality, and more focused on early intervention
9 for all children.

10 I know that that was a period of time that maybe
11 we, as educators, kind of overshot it trying to keep kids
12 in general education and provide almost all service
13 delivery through inclusive service delivery, which means
14 in the general education environment.

15 Q. Okay. So if I'm understanding correctly,
16 between about 2004 and 2016, the emphasis would have been
17 in keeping the child in general ed rather than in special
18 education?

19 A. Yes. And that -- I mean, to be honest, it is
20 still a push to keep people in special -- in general
21 education as much as we can. The introduction of the RTI
22 model simply gave us an ability to provide some
23 specialized supports in the general education environment.

24 Q. Okay. And would that, you know, like retention
25 of the student in general ed rather than special ed

1 occurred even if that child might have truly benefited
2 from a placement in special ed?

3 A. Yes. I mean, I saw it happen. It certainly
4 wasn't the intention of, you know, the mandates or of the
5 law, but we saw it happen.

6 Q. Okay. I got a bit far afield, but I want to
7 come back to your credentials.

8 A. Sure.

9 Q. Are you a member of any professional
10 associations?

11 A. Yes. So I am -- I have my Certification of
12 Clinical Competence, and I am a member of the American
13 Speech-Language and Hearing Association. And in the past,
14 I've always held state memberships as well for our local
15 affiliations. I don't currently.

16 Q. Okay. How long have you been working in a
17 forensic capacity?

18 A. Since 2022.

19 Q. And over the past several years, how many cases
20 have you worked on?

21 A. So in that time, I've had a handful of capital
22 cases that I've been involved in in one way or the other,
23 and I've also -- I've been on the witness stand four
24 times, and I've had a dozen or so justice-involved clients
25 because I also get the pleasure of doing intervention with

1 some individuals either pre- or post-conviction.

2 Q. And I don't know that we're all terribly
3 familiar with speech and language pathology. So could you
4 give us, like, a broad stroke introduction to that and
5 what your work is specifically?

6 A. Yes. So my field is one that I'm very proud of
7 because it's diverse and comprehensive and it has several
8 areas that fall under the work of a speech-language
9 pathologist. So we work with individuals across the life
10 span, from birth until death.

11 And we work in areas that include fluency, which
12 would be if somebody has difficulty with, like, a stutter.
13 We work with individuals who have expressive or receptive
14 language issues. Expressive language is a person's
15 ability to express themselves verbally. Receptive is how
16 well they understand what's being spoken to them.

17 We work with individuals who have auditory
18 rehabilitation needs or hearing loss. We work with
19 individuals who have experienced neurogenic impairment
20 such as a stroke. We have clients who have voice
21 disorders.

22 And there are individuals in my field who work
23 with alternative augmentative communication, and then
24 social pragmatic communication. So that also encompasses
25 some social cognition.

1 Q. Could you tell us what social pragmatic
2 communication is?

3 A. Sure. So it helps to start by explaining that
4 we talk about the form, content, and use of language in my
5 field. So form is you might think of as grammar or
6 semantics. Content would be vocabulary. I said semantics
7 for the first one, but I should have said grammar or
8 syntax. Content, then, is vocabulary or semantics. And
9 then use is social pragmatic.

10 So it's the way that we use our language
11 functionally with regards to conversational rules and
12 routines, nonverbal communication, and also the giving and
13 receiving of information.

14 Q. How would speech-language pathology be applied
15 in a forensic setting?

16 A. So I think that the implications for my field
17 and the forensic world are broad because I think one way
18 that I know SLPs could be of support to legal teams is
19 when we evaluate clients on the front end of their work
20 with their legal counsel, and ensure that they're
21 understanding that they're able to participate in their
22 own defense through proficient use of spoken language.

23 We do evaluations to determine an individual's
24 social communication and overall language skills. And
25 then also can inform the Courts with regards to best

1 practice for ongoing communication among all stakeholders.

2 Q. Okay. There's a lot of language that's used in
3 a courtroom; would that be fair?

4 A. 100 percent. Yes.

5 Q. Is it language that is, I guess, commonly used
6 outside of, like, this particular environment?

7 A. Right. So legalese is not common outside of the
8 environments of the courtroom, and certainly legal jargon
9 is specific to this world and not well understood or used
10 in other settings.

11 Q. Okay. I'm going to kind of jump to some of,
12 like, your other credentials and other kind of, like,
13 exposure.

14 Have you been exposed to people with
15 intellectual disability in your line of work?

16 A. Sure. So especially early in my career, I
17 always tell new grads or young SLPs to go into the public
18 schools to start with because you get to see a little bit
19 of everything. As a diagnostic specialist, I work
20 specifically within multifactor evaluation teams and did a
21 lot of work with individuals with multiple disabilities,
22 including those with intellectual disabilities.

23 I also have always had private clients and
24 worked with several individuals one-on-one or in small
25 groups who have intellectual disabilities throughout my

1 career.

2 Q. How about your exposure to people with autism
3 spectrum disorder?

4 A. So that's very much my world. I always say most
5 of my favorite people are neurodivergent. I've worked
6 with individuals on the spectrum since 1999. So I was
7 placed in the first all autism all the time classroom in
8 the state of Ohio. The only reason they put me in there
9 is because I was the rookie right out of grad school and
10 no one else was comfortable with it, so they just assigned
11 me there. It was trial by fire and I loved it.

12 So from that time on, I began specializing with
13 individuals on the spectrum first being the liaison for
14 the Ohio Scholarship Program for my district, and then
15 also continuing to teach classes at Ball State on atypical
16 populations before coming to UCF where I worked for the
17 Center for Autism and related disabilities for five years.

18 Now, as a private practitioner, the majority of
19 my clients are on the autism spectrum. Not all of them,
20 but most.

21 Q. In terms of, like, your engagement with people
22 who have autism spectrum disorder, ASD, what do you see as
23 characteristics of that particular population?

24 A. Sure.

25 Q. I know that's very broad.

1 A. Yes. So I will break it down a little bit.
2 Whenever we say that you've met one person with autism,
3 you've met one person with autism because there are
4 definitely differences among every individual on the
5 spectrum. But to receive the clinical diagnosis of
6 autism, somebody has to present with deficits on two sides
7 of the same coin.

8 So the first is that they have to have three
9 deficits in the area of social communication reciprocity,
10 so that's my world. That's a lot about the social
11 pragmatics with nonverbal communication, emotional
12 reciprocity between interpersonal relationships, then
13 social cognition.

14 Then the second half of the coin are the
15 presence of unusual patterns or repetitive patterns of
16 interest. In order to get the clinical diagnosis of
17 autism, you have to have all of the social communication
18 challenges, and two of the four challenges kind of on the
19 other side of the coin. So those are things like sensory
20 differences, challenges with inflexible or rigid thinking,
21 a tendency to want sameness, and then high intensity
22 interest.

23 Q. Are you capable of making diagnoses? Like a
24 diagnosis of intellectual disability or a diagnosis of
25 autism spectrum disorder?

1 A. No. So as a speech-language pathologist, I
2 can't diagnose any of those conditions. The conditions I
3 can diagnose are speech and language conditions. Then I
4 can also and oftentimes serve not myself, but as a field,
5 we're oftentimes the first people that notice patterns of
6 behavior that would lead to a referral for an intellectual
7 disability diagnosis or an autism diagnosis.

8 And the reason for that is so often
9 communication is the first sort of symptom that people
10 notice.

11 Q. Has your work, in particular, been relied on by
12 other experts who are capable of making those diagnostics?

13 A. Yes. For sure. One example that comes to mind
14 is I was brought in early on a case, another capital case,
15 and I recognized the patterns the particular client was
16 demonstrating was definitely that I thought he was
17 autistic, and while I can't make the diagnosis, I
18 certainly know it when I see it, because it's my world.
19 So I let the legal team know that he had a formal
20 diagnosis and they found that he was autistic.

21 Q. When the formal diagnosis was made in that case,
22 did that expert, that doctor, rely on the work that you
23 had done as a speech and language pathologist; if you
24 know?

25 A. Yeah. I know that they asked to see my report,

1 I think that where the work of an SLP is really helpful
2 for psychologists is that we dive much deeper in that
3 language functioning, than they do in their assessments.
4 And you will remember that half of the diagnosis is
5 dependent upon that social language difficulty. So I hope
6 it informed their judgment.

7 Q. And just generally in your work, have you seen
8 comorbidities between either ID or ASD and mental health
9 issues?

10 A. Absolutely. So individuals on the spectrum, in
11 particular, have many -- oftentimes have a high incidence
12 of comorbidity. Mental health issues are one. Attention
13 deficit. Certainly, we see some individuals on the
14 spectrum who have Level 3 ASD that have intellectual
15 impairments. We see certainly speech and language
16 deficits. So it's not uncommon to have someone diagnosed
17 with autism spectrum disorder and also mixed receptive
18 expressive language delay.

19 If an individual has a diagnosis of autism, then
20 the social communication deficits are presumed. So
21 there's not a separate diagnosis necessarily needed, but
22 oftentimes we will create a -- we use a diagnostic code
23 even for that to highlight the profound nature of social
24 communication challenges within the individual.

25 Q. Just real quick. You mentioned levels. Can you

1 just tell us about what these levels are and what they
2 apply to?

3 A. Yes. So I think it was about -- actually, I
4 would have to look, but I think it was about 9 or 10 years
5 ago the DSM-5 was reformulated. It used to be that you
6 heard lots of different terms that were used for
7 describing autism. So you've heard of words like
8 Aspergers Syndrome or PDD-NOS, or you would hear
9 high-functioning autism.

10 And what happened when the reconfiguration of
11 the DSM was that they decided that autism spectrum
12 disorder would be the umbrella terminology, and we would
13 have three levels. And they're defined as Level 1 is,
14 needs some support. Level 2 is needs more significant
15 support. And Level 3 is needs very significant support.
16 Very broad and very open for interpretation for sure.

17 I will tell you that those of us who work within
18 the field generally think of Level 1 as being individuals
19 who do not have cognitive involvement who are verbal, and
20 while they may have social pragmatic difficulties, they
21 are able to become fully contributing members of society
22 and do so independently.

23 Level 2, we generally think of as being people
24 who have more involvement with other types of needs. So
25 whether those are cognitive disabilities or adaptive

1 behavior challenges or more impaired receptive expressive
2 language.

3 Then Level 3 are the individuals that you might
4 think of that are limited in verbal abilities or
5 nonverbal, toileting issues, self-feeding issues may also
6 be a part of it.

7 Q. How did you get involved in this case?

8 A. Well, I received a phone call from your
9 colleague who was looking for some support in evaluating
10 Mr. Mosley for his language capabilities.

11 Q. Okay. When you're asked that, like, assessment
12 of language capabilities, like, what comes to mind in
13 terms of what you're going to do? What does that convey
14 to you?

15 A. Sure. So I'm always going to look at receptive
16 and expressive language. So his ability to understand
17 what's being said to him, and then express himself
18 verbally. I'm also going to always look at that
19 functional use of language pragmatics. And then also
20 going to screen for other parts of communication -- or
21 other aspects of learning that can affect communication.

22 So I almost always do some sort of cognitive
23 quick test or another receptive vocabulary assessment so I
24 can rule out any additional intellectual disabilities.
25 Then I'm also going to look at the areas that we, as SLPs,

1 are paying attention to, like verbal fluency, speech
2 patterns, and so forth.

3 Q. Okay. So it sounds like your work would be,
4 like, retrospective looking historically of what's
5 available?

6 A. So the first thing I always do is start with a
7 records review. I think it's critical to know where
8 someone came from to know why their communication is what
9 it is now. You know, have they had language learning
10 difficulties throughout their lives? Has there been any
11 type of neurologic injury or an incident that would play
12 into their current diagnosis?

13 So I can't do an evaluation without knowing more
14 about that individual's past. I don't think it is
15 responsible.

16 Q. Okay. Is that the first thing that you would do
17 before even speaking with that individual?

18 A. Yes. For sure.

19 Q. Is it important to know kind of like a baseline
20 of their expressive and receptive language capabilities
21 before actually meeting with them and testing them?

22 A. If possible. That information is not always
23 available, but I definitely am always either getting --
24 looking through educational records. I look through, you
25 know, I try to either directly speak to caregivers or, you

1 know, spouses depending on the age of the individual.
2 Sometimes reading other reports about the individual is
3 necessary. If there's information about evaluations that
4 have been given in the past, that's even better.

5 Q. Okay. Were records produced to you in this
6 case?

7 A. Yes.

8 Q. Did you review those records prior to seeing
9 Mr. Mosley?

10 A. That's correct, I did.

11 Q. Okay. And did you produce anything yourself?
12 Like, did you write anything yourself in connection with
13 your work on the case?

14 A. So because of the nature of the timeframe that I
15 was working under, I first provided your team with a memo
16 of the findings directly following my assessment, and then
17 I wrote a formalized Speech and Language Evaluation
18 Report.

19 Q. I think the memorandum is in as Exhibit 8.

20 MS. SEIFER-SMITH: May I approach?

21 THE COURT: Yes.

22 BY MS. SEIFER-SMITH:

23 Q. Is this the memorandum that you produced?

24 A. That's correct, it is.

25 Q. Yes. That is 8.

1 THE COURT: Exhibit 8?

2 MS. SEIFER-SMITH: Yes, Exhibit 8 is the
3 memorandum.

4 BY MS. SEIFER-SMITH:

5 Q. Do you recognize this document?

6 A. That would be the formal speech-language
7 Evaluation that I wrote.

8 MS. SEIFER-SMITH: Okay. This is Defense
9 Exhibit 13.

10 THE COURT: The Speech-Language Evaluation is 13
11 and the memo is 8.

12 MS. SEIFER-SMITH: Yes.

13 THE COURT: Okay.

14 MS. SEIFER-SMITH: I would like to move 13 into
15 evidence.

16 THE COURT: Any objection?

17 MS. SULLIVAN: No, Your Honor.

18 THE COURT: Did you move 8 in already?

19 MS. SEIFER-SMITH: 8 was already in, correct.

20 (Defense Exhibit 13 was admitted into evidence.)

21 BY MS. SEIFER-SMITH:

22 Q. Okay. So in your evaluation, you detail the
23 records that you received and reviewed in advance in
24 speaking with Mr. Mosley; is that right?

25 A. That's correct.

1 Q. Okay. And the educational records you kind of
2 broke down individually what you reviewed; is that also
3 right?

4 A. Yes.

5 Q. I think you note in your report that Mr. Mosley
6 was first identified as impaired at the young age of 6.

7 A. Uh-huh.

8 Q. Did you see that in the records?

9 A. That was my understanding from having read the
10 educational reports.

11 Q. Okay. What types of impairments, with respect
12 to speech and language impairments, did you see reflected
13 in the records that you reviewed?

14 A. He was diagnosed with mixed expressive receptive
15 language impairment, and he also was diagnosed later with
16 some specific learning disabilities.

17 Q. Okay. And would you say that those impairments
18 or those observations of impairments were consistent
19 throughout the educational records that you reviewed?

20 A. Absolutely. So from the time of his early
21 assessments through to the reports, even the weekly notes
22 that I reviewed from his period of hospitalization, some
23 of those patterns of communication are very much the same
24 throughout.

25 Q. We'll get into your testing, but were the

1 results of your testing consistent with what you observed
2 in the educational records?

3 A. Yes. Definitely.

4 Q. And I know that you're familiar with these types
5 of records from your work in the public school system.

6 A. Uh-huh.

7 Q. But were things like IEPs or Individualized
8 Educational Plans that you saw?

9 A. That's correct.

10 Q. And I think there were two speech-language
11 evaluations that were conducted?

12 A. That's correct.

13 Q. I believe one was 2011?

14 A. Uh-huh.

15 Q. The other was 2013?

16 A. That sounds right.

17 Q. Okay. I can perhaps help here.

18 MS. SEIFER-SMITH: Permission to approach?

19 THE COURT: Yes.

20 BY MS. SEIFER-SMITH:

21 Q. Okay. Do these look familiar?

22 A. Yes.

23 Q. Okay. So there are two speech and language
24 evaluations conducted by folks in the schools with Mr.
25 Mosley; is that right?

1 A. That's correct.

2 MS. SEIFER-SMITH: So what I have here -- this
3 is also Exhibit 4, Tab 6, but it is marked as Defense
4 14 and Defense 15.

5 THE COURT: I have two of them that you gave me.
6 One is from Melrose Elementary and the other is
7 Lakewood Elementary. So which one is labeled which
8 exhibit?

9 MS. SEIFER-SMITH: Sure. 14 is Melrose, and the
10 speech pathologist is Amy King.

11 THE COURT: Yes.

12 MS. SEIFER-SMITH: 15 is from Lakewood. Speech
13 pathologist is Jessica Daw.

14 THE COURT: Any objection to those?

15 MS. SULLIVAN: No, Your Honor.

16 THE COURT: They will be admitted.

17 MS. SEIFER-SMITH: Okay. Thank you.

18 (Defense Exhibits 14 and 15 were admitted into
19 evidence.)

20 BY MS. SEIFER-SMITH:

21 Q. Did these speech-language pathologists -- well,
22 are you familiar with the type of work that these women
23 did with Mr. Mosley?

24 A. Yes. So they gave Comprehensive Language
25 Assessment that are widely used in our field. I believe

1 that there was a typo on the -- let's see. I'm looking at
2 Exhibit 14 on the second page. It indicates that
3 Mr. Mosely was given the CELF-4, the Clinical Evaluation
4 of Language Fundamentals. However, the information that's
5 included here is the results from the Test of Language
6 Development.

7 So I think probably that line just didn't get
8 pulled from the template, but the two instruments
9 correlate well to be able to provide an examiner with
10 information regarding a person's receptive language,
11 expressive language, and then a spoken language kind of an
12 overall finding.

13 And in this particular case, the overall finding
14 indicated that, you know, Mr. Mosley when he was 9 years
15 of age, demonstrated very poor spoken language skills.

16 Q. And Mr. Mosley repeated the third grade, I
17 believe, in 2011 for the timing of that particular
18 evaluation. This was the first time he attempted third
19 grade?

20 A. Uh-huh.

21 Q. Is that right?

22 A. Yes. It's my understanding that Mr. Mosley was
23 in third grade twice. The second time then being promoted
24 through a good cause promotion.

25 Just to familiarize the Court with that, that's

1 the idea that if an individual has an Individualized
2 Education Plan and they have already had a retention, they
3 can be promoted even if they don't meet baseline
4 proficiency.

5 Q. So if Mr. Mosley received a good cause promotion
6 at the end of his second third grade performance, it would
7 have meant that he would have otherwise failed third grade
8 again?

9 A. That's correct.

10 Q. And how did Mr. Mosley perform on the TOLD on
11 this occasion in 2011?

12 A. So across the board in every area, his skills
13 are below average. Most composite skills are in the poor
14 to very poor range.

15 Q. Is the TOLD testing, like, reading and writing,
16 or is it a visual test?

17 A. No. All of the assessments for my field are
18 looking specifically at verbal or spoken language. So
19 certainly, we can guide and inform information about
20 written language based on someone's understanding of
21 verbal language and their use of verbal language, but
22 we're looking specifically at verbal communication.

23 Q. Okay. And you said that on this occasion
24 Mr. Mosley performed poorly at age 9; is that right?

25 A. That's correct. And they also gave the oral and

1 written language scales, I'm assuming just to kind of
2 replicate that score, and it also shows very poor
3 performance, and very weak overall language.

4 Q. Were there any recommendations that were made by
5 the speech pathologist at that time?

6 A. I don't see any within this report. I'm not
7 sure if there were any additional recommendations that
8 would have been made as a part of the team meeting.
9 Typically, in public schools, you provide opportunity for
10 the diagnosticians to do the reports, and, you know,
11 evaluate the student. Then you come back in an
12 interdisciplinary team to make recommendations.

13 Q. Where there any particular concerns that Ms.
14 King had with respect to -- or any areas of concerns that
15 Ms. King had with respect to Thomas' performance?

16 A. Well, she indicated that he was receiving some
17 Tier 3 interventions indicating that he was already, at
18 that point, receiving intensified instruction. I would
19 have to look through to see, but I know that she mentioned
20 that the intervention team had seen some academic
21 concerns, and that they wanted to be able to further
22 understand the nature of his language needs.

23 Q. Okay. Now, I'm going to turn to the next
24 speech-language Evaluation, which is Defense 15.

25 A. Uh-huh.

1 Q. By Jessica Daw.

2 A. Okay.

3 Q. This one was done about two years later; is that
4 about right?

5 A. Yes.

6 Q. Was this same test administered to Mr. Mosley,
7 the TOLD?

8 A. Yes.

9 Q. Is that normal to have the same or similar test
10 administered?

11 A. Yes. Oftentimes, as long as you wait one
12 calendar year between administration, it's considered
13 ethical to give the same assessment. Oftentimes, it comes
14 down to what the district has available for accessing.

15 Also, the Test of Language Development is one in
16 particular that while it's a norm reference test, it's a
17 little bit easier, if you will, then some of the other
18 assessments for clients to show a level of proficiency.
19 So sometimes it's one that a lot of clinicians prefer to
20 give for that reason.

21 Q. Easier in the sense that, like, a client might
22 feel more comfortable doing it?

23 A. Yes. It's more -- there's a lot of pictures
24 involved. The areas that are assessed have a lot of focus
25 on sort of basic concepts. It just seems, you know, from

1 an observational standpoint, that clients generally are
2 able to show what they know on the TOLD.

3 Q. How did Thomas do in 2013?

4 A. Again, his overall scores indicate profoundly
5 impaired spoken language. And I believe this is the
6 report where the interpretation of spoken language
7 includes the fact that -- this is a quote from page 5
8 under spoken language index -- students who do not do well
9 on this index have not mastered the art of spoken
10 communication.

11 So difficulty with extracting meaning from the
12 speech of others, then also challenges with expressing
13 themselves verbally.

14 Q. Okay. So did Thomas progress or get better in
15 the two years between 2011 and 2013?

16 A. There's no meaningful change. So you have a
17 spoken language of 68, indicative of a profound deficit
18 when he was 9. And then 65 when he was 11. They're
19 within the margin of error. So, to me, those are very
20 similar scores not indicating any growth other than what
21 we would expect through maturation.

22 If he would have stayed consistent in his level
23 of proficiency and made some gains accordingly, then we
24 could have potentially see that score go up quite a bit,
25 but that wasn't the case for Mr. Mosley.

1 Q. Okay. Are there any kind of built in or
2 embedded measures of effort or malingering in the TOLD?

3 A. Yes. So as a part of our education and
4 training, we're specifically taught to look at patterns
5 for error in response. So we don't use a malingering
6 assessment of any sort, but we are able to discern whether
7 a client is understanding the items through receiving or
8 getting basal test scores. We look for patterns of error
9 that are expected. There are built-in foils in some of
10 our assessment so that, if somebody is really -- in my
11 world, it's more likely that they're fatiguing than
12 malingering, but either way, if they're not performing
13 their best, we want to know that because that would
14 invalidate our findings.

15 THE COURT: Fatiguing; is that what the word is?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Just making sure I understood.

18 THE WITNESS: Yeah. So a lot of times these
19 assessment are long and they have a lot of subtests,
20 so that's something I'm always looking out for is
21 making sure that my client is still interested in
22 giving her best effort or his best effort.

23 BY MS. SEIFER-SMITH:

24 Q. And if you notice any kind of fatiguing -- you
25 didn't see anything in these particular evaluations to

1 indicate that either of the SLPs noticed fatiguing, lack
2 of effort, or any problems with those -- I think you said,
3 like, points or error or error margins?

4 A. Yes. I didn't see anything like that.
5 Typically, there would be a statement about that if -- and
6 truthfully, it's to make sure that you are indicating to
7 anyone who reads the assessment that it may not be a valid
8 finding, but we don't see that here. So the evaluators
9 must have felt that Mr. Mosley was giving his best effort.

10 Q. Okay. Let me just retrieve these. Thank you.

11 Now, you had mentioned earlier you also reviewed
12 what you note in your report as Wellpath Recovery
13 Solutions documents.

14 A. Yes.

15 Q. I think those were described as, like, weekly
16 program notes; is that correct?

17 A. Uh-huh.

18 Q. And these were things that you reviewed prior to
19 seeing Mr. Mosley; is that right?

20 A. Yes. I believe I saw those before I saw Mr.
21 Mosley.

22 Q. Okay. Those were in the prior exhibit. I think
23 it's Exhibit 5, the South Florida Evaluation and Treatment
24 records, but I also pulled out the program one
25 specifically, which is Defense 16.

1 MS. SEIFER-SMITH: Can I just approach the
2 witness?

3 THE COURT: Uh-huh.

4 BY MS. SEIFER-SMITH:

5 Q. Are these the records that you reviewed from
6 Wellpath?

7 A. Yes.

8 Q. Okay. And did these records assist you in
9 knowing how, I guess, like, Mr. Mosley was observed to
10 have been performing in a hospital setting, I guess, at
11 some point during the past year, because it was December
12 to March?

13 A. Yes, I think that is fair.

14 Q. Okay.

15 THE COURT: Is that disclaimer on the first
16 page?

17 MS. SEIFER-SMITH: Yes.

18 THE COURT: So that's Exhibit 16?

19 MS. SEIFER-SMITH: Yes. I think it's about 33
20 pages. If I can move that in as an exhibit, please?

21 THE COURT: Any objection to 16?

22 MS. SULLIVAN: No, Your Honor.

23 THE COURT: It will be admitted as such.

24 Are these already part of --

25 MS. SEIFER-SMITH: They are a part of --

1 THE COURT: -- 4, right? I think. Is that
2 right?

3 MS. SEIFER-SMITH: I think that's 5. It's the
4 South Florida Evaluation and Treatment records.

5 THE COURT: All right. Yes. I've already seen
6 this. Yes. Thank you.

7 MS. SEIFER-SMITH: It's just pulled out because
8 it's separate and apart. It is like a specific.

9 THE COURT: That's fine.

10 (Defense Exhibit 16 was admitted.)

11 BY MS. SEIFER-SMITH:

12 Q. Dr. Fritz, any particular takeaways with respect
13 to, like, your work and what you have already observed in,
14 like, the educational records with respect to what you're
15 seeing in these program progress notes?

16 A. Are you referring to my opinions prior to my own
17 evaluation or when I was doing just record review or my
18 informed opinion having evaluated the client?

19 Q. Today having evaluated him.

20 A. I just wanted to make sure --

21 Q. Yeah.

22 A. No. I would say that there were some surprises
23 to me in terms of when I evaluated Mr. Mosley. I found
24 his vocabulary to be very functional and basic level. So
25 the surprises came in learning that there was some

1 impression that he could, for example, define what a plea
2 bargain is. I think that would be very difficult for him
3 to do over time.

4 Mr. Mosley has some ability to repeat what he
5 has heard directly. So some individuals can sort of
6 parrot what they have heard, and I suspect that that may
7 have been the case here because my understanding of Mr.
8 Mosley's overall vocabulary would be at a lower level than
9 would be shown by that type of mastery.

10 Otherwise, other than that, I would say there
11 was a lot of areas that he didn't meet or wasn't able to
12 show proficiency, and there was kind of this underlying
13 impression that sometimes he wasn't trying his best to
14 participate. That he would attend class, but he wasn't,
15 you know, fully participatory in them.

16 Q. So throughout there are check boxes for lack of
17 participation, lack of effort, poor effort, poor
18 attention, things like that?

19 A. Right. And it's not overly surprising because
20 individuals who have the level of language impairment that
21 I found Mr. Mosley to have oftentimes will shut down in a
22 learning setting simply because of the fact that they're
23 not able to keep up with the nuisances of spoken language
24 certainly when it includes things like legalese.

25 Q. On two occasions, December 13th and December

1 26th, 2024, he indicated that he couldn't read. One time
2 he says, I can participate verbally, but I can't read. On
3 another occasion he says, I can't read, ma'am.

4 A. Uh-huh.

5 Q. Based on, like, your testing and your
6 conversation with him, can you provide us with some
7 insight, maybe, as to those particular notes within the
8 program notes?

9 A. Sure. Well, I think my opinion here comes more
10 from the review of records and recognizing as well as the
11 pattern of reading difficulties that we see with
12 individuals who demonstrate some of the same challenges
13 I'm seeing in Mr. Mosley.

14 So to begin with, throughout his academic years,
15 his learning difficulties are a bit, and he was receiving
16 specialized instruction. Mr. Mosley can read, but reading
17 has multiple aspects. And so while Mr. Mosley has good
18 ability to sound out words and recognize familiar words
19 and text, it's more difficult for him to comprehend what
20 he's read, then also to recall it.

21 Q. Okay. So that doesn't make his statement like,
22 I can't read, or I can verbally participate, but not on
23 paper, it doesn't make those statements false necessarily
24 given that?

25 A. Not necessarily. It may have also indicated a

1 lack of desire to read out loud because sometimes
2 individuals who have the types of communication challenges
3 that Mr. Mosley presents with are lacking confidence in
4 that.

5 Q. Okay. I'll take that.

6 Can you talk to us about the evaluation that you
7 did of Mr. Mosley?

8 A. Sure. So I started with the record review, as I
9 had mentioned, and then, obviously, included some
10 observational assessment. Then I provided direct
11 evaluation through the use of four instruments.

12 Q. How long did you spend with him?

13 A. Mr. Mosley directly I was with for 440 minutes.
14 I'm not a math person, so you would have to do the hours
15 in minutes, but it was 440 minutes.

16 Q. So that's more than seven hours?

17 A. Yes. I'll take your word for that because I
18 can't do math.

19 Q. Okay. Is there a reason that you broke down
20 your evaluation into two days rather than just one day of
21 seven hours?

22 A. Yes. Absolutely. It's because of that tendency
23 for clients to fatigue.

24 Q. Okay.

25 A. So I wanted to make sure I was getting his best

1 efforts.

2 Q. Was there any type of effort testing that you
3 did during your time with Mr. Mosley?

4 A. Not a specific malingering assessment.

5 Q. Okay.

6 A. But I intentionally start with the evaluation
7 that requires the least behavioral response because it
8 allows my clients to be successful with just a point.

9 Q. Okay. Can you tell us what the order of your
10 testing was? Because I think it's different than the
11 order within your evaluation.

12 A. Sure. So the first assessment that I gave was
13 the PPVT, which is the Peabody Picture Vocabulary Test. I
14 then gave the Cognitive Linguistic Quick Test. Then I
15 apologize because on page 1 where I've listed assessment
16 tools, I don't mention the fact that I also gave him
17 the -- hold on -- Social Responsiveness Scale II Edition.
18 That would have been next. And then the CELF-4 was broken
19 down. I believe I started it a little bit on the first
20 day. I mostly gave it -- or CELF-5, rather. Mostly gave
21 it on the second day.

22 THE COURT: For Madam Court Reporter, CELF is
23 C-E-L-F, Clinical Evaluation of Language
24 Fundamentals.

25 THE WITNESS: Thank you.

1 Then the last evaluation was just an interview
2 assessment called the Pragmatic Profile of Everyday
3 Communication in Adults.

4 BY MS. SEIFER-SMITH:

5 Q. Okay. I know you mentioned that you didn't do
6 any specific test of effort.

7 A. That's correct.

8 Q. But were you able to assess his effort
9 throughout the 440 minutes that you sat with him?

10 A. Yes. He was doing his best until he decided he
11 did not want to do it anymore. So he was -- he was giving
12 me really good effort, then he kind of hit a wall about
13 three-fourths of the way through the interview on the
14 second day, but he expressed to me that he was done.

15 Q. How were you able to tell that he was putting
16 forth his best effort up until that point?

17 A. Sure. So a few things I look for. I look for
18 if I can get basal scores. So that shows me that you
19 understand the directions and that you are trying to
20 perform. He also had very predictable patterns of error.

21 So, for example, on the PPVT, there are -- the
22 way that the manual describes it is you have to receive
23 six zeros before you discontinue testing. So if I have a
24 client who is malingering or a client who is fatigued,
25 they will oftentimes just start either intentionally

1 giving a wrong answer or refusing to answer and say, I
2 don't know, and then they'll get six wrong in a row and
3 we'll discontinue.

4 However, what happened with Mr. Mosley is he
5 would answer a few correctly, then he would miss one.
6 Then he would answer a few more correctly, then he would
7 miss one. That's a pattern that's very typical and shows
8 that they're trying their best.

9 The other thing that Mr. Mosley did that I
10 appreciated, because I'm a clinician first, is that when
11 he got a wrong answer. So the way the PPVT works is there
12 are four pictures and they are given a word out loud and
13 they have to just point to what word they heard.

14 So if he gave a wrong answer, I would use it as
15 a bit of a teaching moment and help him see why a
16 different response was correct. Mr. Mosley acted
17 interested in that. You know, at times he shows a little
18 embarrassment if he had gotten it wrong. So I believe he
19 was giving me his best efforts.

20 Q. Tell us a little bit about the PPVT. Is it
21 widely used in your field? What is it used for?

22 A. Yes. Absolutely.

23 Q. What could we extrapolate out of it. Things
24 like that.

25 A. Sure. So it is a test that's been around a long

1 time in my field. So it's in its fifth edition. There
2 used to be in the public schools a mandate that we had to
3 show a discrepancy between IQ and language performance
4 before we could say that someone had specific language
5 impairment, which now you mostly hear it called "mixed
6 receptive expressive," but the same thing, okay. Where
7 the only area of challenge is language, you'd have to show
8 that discrepancy.

9 And because, as speech-language pathologists, we
10 can't give an overall IQ assessment, and also you'll
11 remember oftentimes we're the first professionals to see
12 them. So we would give the PPVT as the first measure to
13 get a decent idea of what IQ is or intellectual quotient,
14 it correlates especially well with verbal IQ. And even
15 though it's a measure of receptive vocabulary only, that's
16 usually what we could extrapolate from it.

17 Q. Okay. What was the overall score for Mr.
18 Mosley?

19 A. Mr. Mosley had --

20 Q. I think for those of us following along --

21 A. Yes. He had an overall score of 59, so that's a
22 standardized score with an average being 100, and an
23 average range being anywhere between 85 to 115 --
24 actually, no. 90 to 110 being a standard deviation of 10.
25 So he's 4 standard deviations below normal.

1 Q. Okay. Is this -- does this test have to be
2 given to people of a particular age?

3 A. No. This test can be evaluated -- I'm trying to
4 think if you can start -- I think the youngest might be 5,
5 but I'm not 100 percent sure, but you can tell through, I
6 think, age 99.

7 Q. Okay. So testing him at 23 years old, not a
8 problem?

9 A. No.

10 Q. Okay. And is the test normed or referenced
11 against peers?

12 A. Yes.

13 Q. And in terms of your administration, can you
14 tell us how that works? Like, do you just start at the
15 beginning? Do you start in the middle? Do you make an
16 assessment of where you start? Give me how that works.

17 A. Sure. So whenever you're administering the
18 assessment, there are beginning points that are
19 recommended by age group. If, as a clinician, you have
20 knowledge that your client may not be successful at that
21 beginning point, you can go back and start earlier. The
22 reason why we do that is you want your client to be able
23 to show basal level of understanding, and you also want to
24 set them up for success so that they're starting at a
25 level of performance that they can achieve.

1 Q. Where did you start Thomas?

2 A. So I actually started him at the level of
3 somebody who is 8 years of age. However, he ended up
4 showing proficiency at 11 years of age. So my scoring
5 started at the age of 11.

6 Q. Okay. Ultimately, though, there was an age
7 equivalent based on his entire testing on the PPVT?

8 A. That's correct.

9 Q. Okay. And can you tell us how you got to that
10 point? Like, did he go through just a couple of
11 questions? Was there a lot of questions?

12 A. No. He did right about 100 trials where he was
13 presented with four images and had to point to the one
14 that was named.

15 Q. So it sounds like he was engaging with you on
16 this test for quite some time?

17 A. Yes.

18 Q. This was a standard score of 59, you said?

19 A. That's correct.

20 Q. Okay.

21 A. And I apologize, I earlier said that's 4
22 standard deviations. I believe it is 3.

23 Q. Is there a percentile given with respect to that
24 particular score?

25 A. .3.

1 Q. Okay. So what does that mean in terms of, like,
2 how he's performing for his age group?

3 A. That almost everyone would perform better than
4 him.

5 Q. 99.7 percent of the people?

6 A. That's correct.

7 Q. And, I guess, describe -- if the description is
8 that this is well below expected?

9 A. That's correct.

10 Q. Okay.

11 A. So that the age equivalency is that of a child
12 who is 8 years, 2 months.

13 Q. Okay. When we're looking at your report, at
14 Table 1, there are a number of things. I just want to
15 make sure we're clear on what they mean.

16 So the NCE, what does that mean?

17 A. I don't know.

18 Q. I think --

19 A. That's not a score I use.

20 Q. Okay. Is it something to do with statistics?

21 A. Probably.

22 Q. Okay. But it doesn't affect, like, your
23 ultimate opinion?

24 A. Correct.

25 Q. And the GSV, that's, what, the Growth Scale

1 Value?

2 A. Yes. That's really only used if you're
3 comparing scores over time if the same assessment is
4 given. That's not one that clinically we give a lot of
5 weight to.

6 Q. And I don't think you saw the PPVT having been
7 given to Thomas in his history; is that correct?

8 A. No, I didn't.

9 Q. And so, ultimately, like Thomas' age equivalent
10 for the PPVT was what?

11 A. Was that 8 years, 2 months.

12 Q. Okay. Now, he was born in 2002, so he was 23
13 years old when he was tested?

14 A. That's correct.

15 Q. So does this mean that Mr. Mosley's understood
16 vocabulary is 15 years behind his actual age?

17 A. Yes, that's a fair assessment.

18 Q. Okay. I think you already talked to us about
19 the embedded measures of effort with this particular test,
20 right?

21 A. That's correct.

22 Q. Okay.

23 A. Also, the nature of the assessment is such that
24 they want a client to continue on as long as they can.
25 That's why you have to get six wrong in a row. So

1 oftentimes there will be four or five, you know, difficult
2 words. Then they'll put in one that's quite a bit easier
3 so that you have to keep going in the administration of
4 the test to really see where a client ceilings out.

5 Again, Mr. Mosley's error pattern looks very predictable.

6 Q. So no evidence from this test about malingering?

7 A. Definitely not.

8 Q. No evidence in any of the testing that you did
9 of malingering or lack of effort?

10 A. No. The only incidents of lack of effort was at
11 the very end of the second day when he just fatigued.

12 Q. At minute 440?

13 A. Something like that, yes.

14 Q. The next test I think you mentioned was the
15 Cognitive Linguistic Quick Test, the CLQT?

16 A. That's correct.

17 Q. Is the CLQT actually quick?

18 A. No. Not at all. It's kind of a misnomer, but
19 what it does allow to occur is for an individual who is
20 not a psychologist to get a sense of how much attention,
21 memory, executive functioning will impact an individual's
22 language proficiency, and also to look at whether there
23 have been any derived injuries or impairments that have
24 led to presentation of aphasia, which is language loss.

25 Q. And one of the subtests in this CLQT is the

1 Clock Drawing Test; is that right?

2 A. Yes.

3 Q. And it sounds like that was so notable that you
4 demonstrated that in your report in terms of Thomas'
5 performance?

6 A. You're right. It is a subtest that is very
7 widely used among professionals, but also it's present in
8 several assessments. And I think the reason for that is
9 it gives us information on a wide array of areas of
10 learning. So when somebody has difficulty on the Clock
11 Drawing Test, we're looking at whether they have
12 understanding of visuospatial skills. We're attending to
13 their ability to consequence numbers appropriately.

14 There's a certain amount of executive
15 functioning that's involved in it because you have to plan
16 and organize everything that you are putting into your
17 drawing and yet it's a familiar item. So individuals
18 without cognitive improvement usually have no difficulty
19 on this test.

20 Long-term memory is somewhat evaluated through
21 it, as well as the motor programming skills to be able to
22 effectively draw the clock. And then probably the most
23 interesting piece in Mr. Mosley's case -- or one of the
24 interesting pieces here, was the fact that it requires
25 some level of auditory processing of verbal directions,

1 and you could see those directions are listed there in the
2 report.

3 Q. Just before we get there, can you just, I guess,
4 expand a little bit more on how long-term memory or
5 auditory processing is tested with this particular
6 subtest?

7 A. Sure. Long-term memory is because of the fact
8 that most of the time there's not an analogue clock in the
9 room. They have one here. But if I'm giving this
10 particular in particular, I'm making sure there's not one
11 in the client's visual sight so that they are recalling
12 what a clock looks like, a clock face looks like from
13 their memory. And then auditory processing is necessary
14 because they have to hear my directions said out loud and
15 then be able to set the clock to a specific time.

16 Q. Okay. So how is this particular test
17 administered? Was he given pen and paper?

18 A. Yes. So Mr. Mosley was given the response
19 booklet, and then his drawing that you see in the report
20 is taken specifically from here.

21 Q. Okay. So you hand over like a pen to him and
22 he --

23 A. Correct.

24 Q. What were the instructions that you verbally
25 gave to him?

1 A. Draw a clock. Put in all numbers. Set the
2 hands to 10 minutes after 11. Be careful. Be neat.

3 Q. That's it?

4 A. That's correct.

5 Q. And that rendered Figure 1 in your report?

6 A. That's correct.

7 Q. What's notable about the drawing that Thomas
8 made?

9 A. There's a few things here. The hands on the
10 clock do not originate in the center, and that's
11 indicating some difficulty with visuospatial skills, as
12 does the fact that the numbers are not evenly spaced. So
13 we like to see 12, 3, 6, and 9 in proper positions and
14 then the other numbers to be relatively evenly spaced.

15 Also, his clock hands have arrows going on both
16 sides. It may be hard for you to see on your copy, but
17 rather than having an originating point in the center and
18 the arrow pointing to the number only, his are bilateral
19 arrows. Also, I should say, bidirectional arrows. Then,
20 you know, maybe most telling the time on the clock is
21 incorrect.

22 It's relevant to note as well that in the
23 instructional book, the directions are here as well. So
24 there's an auditory processing component when you're
25 listening to the directions said out loud, but auditory

1 memory is not necessary because if you're reading at the
2 level, you can refer back to the directions.

3 Q. Did Thomas know that the instructions were also
4 right in front of him?

5 A. Yes. I pointed to them and I read them out loud
6 from his copy.

7 Q. How long did it take him to make this drawing?

8 A. I'm not sure. I'm guessing maybe about 2 to 3
9 minutes. He's afforded, I believe, 3 minutes, and he
10 didn't take the whole time.

11 Q. Was there anything -- any other subtests or
12 anything else in that CLQT that's notable or remarkable
13 with respect to Thomas?

14 A. Well, his overall composite severity rating is a
15 2.6 on a 4.0 scale.

16 Q. What does that mean?

17 A. It shows overall cognitive impairment.
18 Generally, when I'm giving the CLQT, I'm kind of looking
19 to just rule out major concerns in any of these areas so I
20 could be focused on language alone, but across the board
21 his skills show up as impaired in the areas of attention,
22 memory, executive functioning, obviously, language,
23 visuospatial skills, and then now also on The Clock
24 Drawing, which indicates at least moderate level of
25 cognitive impairment.

1 Q. And what does that tell you, like, moving
2 forward either in terms of the testing or how to engage in
3 the interview?

4 A. Sure. So with Mr. Mosley, this was helpful to
5 kind of validate what I already suspected from review of
6 the records, as well as my interaction with Mr. Mosley.
7 Almost immediately when I started talking to him, I
8 significantly reduced my rate of speech. I also broke
9 down my vocabulary into smaller chunks. I used more
10 simple vocabulary at, say, a phrase level, and I did that
11 intuitively because I wanted to make sure he had every
12 opportunity to understand the directions and the other
13 information I was sharing with him.

14 Q. Were there other accommodations that you made
15 for Mr. Mosley that you wouldn't necessarily make for
16 somebody who did not appear to you to be cognitively
17 impaired?

18 A. Yes.

19 THE COURT: Say that question again, please?

20 MS. SEIFER-SMITH: Sure.

21 BY MS. SEIFER-SMITH:

22 Q. Were there other accommodations that you made
23 for Mr. Mosley that you would not necessarily have made
24 for somebody who did not appear to be cognitively
25 impaired?

1 THE COURT: Thank you.

2 THE WITNESS: I would say the biggest ones are
3 reducing vocabulary complexity, putting most
4 important words near the end of my utterance. I
5 spoke in a very reduced rate of speech. Not unlike
6 what I just demonstrated. I tried to use typical
7 phrasing, but also quickly define any words that I
8 would use that may have been beyond his level of
9 understanding.

10 So, for example, if I were talking about social
11 pragmatics, I might say, you know, your use of
12 pragmatics, you know, social communication, so that I
13 could quickly define a word that may not be in his
14 repertoire for him, and I did that consistently.

15 Also used some chunking of verbal directions to
16 make sure he understood. I had him repeat the
17 directions to me at times doing some checks for
18 understanding, checks for clarification. Even in the
19 asking him to sign informed consent at the beginning
20 of the evaluation, I wanted to make sure that he
21 understood what he was signing and it took several
22 moments for him or several minutes, actually, for him
23 to be able to exhibit understanding of what I would
24 be doing with him.

25 I'm not certain that he ever truly understand

1 the why, but he did, you know, repeat back to me that
2 he understood we were going to be looking at some
3 pictures and I was going to be starting off by asking
4 him to point and that most of the instruments we
5 would be doing through talking.

6 BY MS. SEIFER-SMITH:

7 Q. Did Mr. Mosley ever exhibit confusion or a lack
8 of understanding?

9 A. There are certainly examples throughout the
10 assessment of times of when I would ask him a question and
11 his answer would be tangentially related to what I've
12 said, which is pretty common when someone is trying to
13 listen and hear what you're saying and answer, but not
14 quite clear about the nature of the question itself.

15 If you give me a moment, I can give you an
16 example.

17 Q. Sure.

18 A. During the interview assessment, I asked
19 Mr. Mosley, Do you avoid people who want to be emotionally
20 close to you? He replied, I'm true to my religion. I
21 don't have sex on dates. So he understood that I was
22 speaking about some sort of closeness, but didn't
23 understand that it was about refraining from emotional
24 reciprocity with somebody.

25 Q. Okay. The next test that you did, was that the

1 CELF, the Clinical Evaluation of Language Fundamentals?

2 A. That's correct. No. I'm sorry. The next one
3 would have been the SRS-2.

4 Q. Okay. So let's talk about the SRS-2. Can you
5 tell us what this test is and why you administered it?

6 A. So the SRS-2 correlates really well with the
7 ADOS, which is the gold standard for autism assessment. I
8 use it maybe more than any other instrument in my private
9 practice because it's really good for helping me know the
10 types of goals I want to work on with a client.

11 It allows us to evaluate a client's social
12 awareness, their social thinking or social cognitive
13 skills. Their ability to use communication socially, as
14 well as their motivation to communicate with others. And
15 then there's also questions relating to those repetitive
16 or unusual patterns of behavior interests. So that's
17 another piece that allows us to really seek compatibility
18 with the DSM-5.

19 Q. And SRS-2 was given both to Thomas Mosley, as
20 well as his mother, Renee Dixon; is that right?

21 A. That's correct.

22 Q. Okay. Why was that done, both his self-report,
23 as well as a collateral report?

24 A. Sure. That's very common to seek that
25 collateral score so that we can see how, first of all,

1 accurate the individual is as a reporter, and also how his
2 awareness of self either mirrors or is variable from that
3 of those who know him well.

4 Q. And was Mr. Mosley's assessment of his social
5 interactions the same as his mother's observed --

6 A. In some ways, yes. So both Mr. Mosley and his
7 parents were able to -- so to clarify, the parent report
8 was sent to Mr. Mosley's parents via e-mail. I received
9 it back and I scored it, and then I did a follow-up phone
10 interview with them. And in the phone interview, I was
11 specifically interested in 13 areas of the assessment
12 where there was some discrepancy between the two, but in
13 general, both Mr. Mosley and his parents agreed that he
14 had difficulties in social awareness, social cognition,
15 social communication, social motivation.

16 And then the biggest difference was that Mr.
17 Mosley rated himself as more typical when it comes to that
18 restrictive interest and repetitive patterns of behavior.

19 Q. But his mother noted that he did actually engage
20 in restricted -- restrictive interests and repetitive
21 behavior; is that right?

22 A. That's correct. So as you are looking at the
23 graphs that are Tables 3 and 4, these are T-score values,
24 so they're different than standardized scores. With a
25 T-score you have a cutoff score of what's considered

1 normal or typical. For Mr. Mosley's age, that was 59.
2 And the higher the score, the more indicative of
3 impairment it is.

4 So Mr. Mosley's self-score, his overall score of
5 64, put him into mildly impaired. Where his parents'
6 score of 81 is indicative of severe impairment, but you
7 can see that across the board, even in his self-report,
8 Mr. Mosley showed that he recognized his own difficulties
9 in especially social cognition, motivation, and
10 communication.

11 Q. Were there any examples of these?

12 A. Sure. So for social communication, Mr. Mosley
13 indicated that he usually doesn't speak until he's spoken
14 to. He's not comfortable joining a group verbally,
15 verbally participating in a group setting. Mr. Mosley
16 indicated that he has difficulty keeping up with the flow
17 of conversational language, and, you know, knowing how to
18 respond to people in a way that's appropriate.

19 I think the social awareness piece was
20 interesting as well because that shows that he doesn't --
21 he didn't always have a good understanding of his own
22 social skills and how they varied from others.

23 Q. And what did Mom provide as examples?

24 A. Sure. So she really gave some strong examples,
25 especially with regards to the patterns of restrictive

1 interests and repetitive behavior. For example, she used
2 to ask her son to not park in the driveway when he got
3 home from work because she wanted to be able to get into
4 the garage and she would get home from work after him, but
5 repeatedly he would back into the driveway, block her
6 access to the garage, and sit there for a long time
7 smoking cigarettes. She said it was very much a
8 repetitive pattern that he engaged in.

9 She also talked about some of his sensory
10 differences. He had a fascination for the sound of
11 trains. Some difficulties with personal hygiene were
12 noted. She also just spoke about -- and what I thought
13 was especially interesting was his lack of understanding
14 of causal relationships.

15 Q. Can you explain that?

16 A. In her particular example, she was talking about
17 the time that Mr. Mosley was arrested for trespassing in
18 his youth and that he didn't seem to understand the
19 importance of keeping his ankle bracelet charged, and
20 didn't understand, like, when the police came to the house
21 late at night why that was bothersome to his parents.

22 That was very similar to the patterns that I
23 had -- I had noticed earlier in his assessment because,
24 remember, I learned this after my time with Mr. Mosley.
25 While I was evaluating Mr. Mosley and during the

1 administration of the CELF, there's a portion where short
2 paragraphs are read aloud, they're about four to six
3 sentences in length, and then questions are asked about
4 those paragraphs. Some of the questions ask you to use
5 some inferencing skills to show causal relationships.

6 One, for example -- and I'm not going to take
7 the time to look through the report, so I'll just
8 paraphrase, but there was one portion where it was a
9 paragraph about a school fundraising effort. And I asked
10 Mr. Mosley what will occur if the students don't come up
11 with any good fundraising ideas and he said, They won't do
12 fundraising. He wasn't being sarcastic, but he couldn't
13 go the next step in his inferential reasoning to
14 understand that then they wouldn't get to go on the field
15 trip they were supposed to be fundraising for.

16 Q. Got it.

17 What is the SRS? What is that test, like,
18 correlate to?

19 A. That correlates specifically to the measures of
20 the ADOS. So social communication and reciprocity, as
21 well as those patterns of restricted interests and
22 behavior.

23 Q. So would that be considerations for an ASD
24 diagnosis?

25 A. Absolutely, yes. So as a speech-language

1 pathologist, as I said earlier, I can't make a diagnosis
2 of autism spectrum disorder. So when I suspect it for an
3 individual, this is what I'm giving first. I'm not in the
4 business of referring clients for further evaluation
5 unless I have a good indication that they're going to
6 qualify, and the reason for that is simply financial.

7 So when I have a client that comes to me and I
8 suspect they have ASD, I can give them this assessment
9 much more efficiently and less expensively, then they can
10 get a formalized evaluation. So I'll do this as kind of a
11 screening measure before I would send them to a
12 psychologist or neuropsych to get full workup.

13 Q. But a psychologist or a neuropsych, they can
14 rely on this type of test --

15 A. Yes.

16 Q. -- in terms of their final diagnosis?

17 A. Absolutely. And a lot of educational
18 psychologist and neuropsychs will also administer the
19 SRS-2.

20 Q. Okay. Was the next test that you administered
21 the CELF?

22 A. That's correct.

23 THE COURT: Let's take a break. We've been
24 going about an hour and a half. Ten minutes.

25 (Break taken.)

1 THE COURT: Mr. Mosley is back. So whenever
2 you're ready.

3 MS. SEIFER-SMITH: Okay.

4 BY MS. SEIFER-SMITH:

5 Q. I think we were about to start talking about the
6 CELF-5. Can you introduce us to this particular test?

7 A. Sure. This is the clinical standard form, I
8 feel. Again, it's a very tried and true assessment. The
9 version that I gave to Mr. Mosley is specifically designed
10 to provide standardized scores for individuals ages 9 to
11 21. However -- and I was assessing Mr. Mosley when he was
12 23 years, 2 months. But the technical manual allows me to
13 derive age equivalences for all but one subtest and it
14 still makes it, by far, the best instrument for me to give
15 to determine the nature of someone's expressive and
16 receptive language needs.

17 Unfortunately, as a field, we don't have great
18 instruments for adults after their 22nd birthday unless
19 they've had a neurologic incident.

20 Q. So does the test manual permit out-of-age
21 testing if there's a suspicion that the person you're
22 testing has developmental difficulties or delays?

23 A. It doesn't even qualify it that far. So you can
24 use it out of age for anyone, but you can only present or
25 you can only report age equivalencies and then derived

1 factors from there does not yield standards scores.

2 Q. Okay. Can you tell us what this test is used
3 for? Like, how does it assist you with respect to -- or
4 with respect to all of us, how does it assist us in
5 understanding somebody's speech and language impairments
6 or --

7 A. Sure. It breaks down the individual's
8 communication difficulties and/or strengths into composite
9 areas. So it yields a core language score if it's given
10 in a standardized manner. So an overall indication of
11 their language abilities.

12 Unfortunately, they can't be derived when you're
13 using age equivalencies. What it allows for with a -- we
14 might call it a nonstandard assessment is to give us a
15 good sense of receptive language abilities and expressive
16 language abilities, as well as pragmatics or social
17 communication.

18 I also can't derive context scores for language
19 memory or language content. More basic on the subtest
20 scores that would be used to yield those composites.

21 Q. Okay. So this one test or rather all of the
22 subtests that make up the CELF assist in determining
23 somebody's expressive or spoken communication receptive
24 or, like, listening, comprehension --

25 A. Yes.

1 Q. -- and/or pragmatics?

2 A. That's correct.

3 Q. Okay.

4 A. Yes, those three areas.

5 Q. And there were how many subtests?

6 A. 9.

7 Q. Okay. And all of those subtests were
8 administered?

9 A. That's correct.

10 Q. Are there any kind of embedded measures for test
11 of effort, motivation, malingering?

12 A. Again, I have to determine if they meet basal
13 level of mastery. So if a client was not trying, I
14 couldn't complete the subtest. They have to have a
15 certain number of items correct and then I'm just using
16 visual inspection of typical patterns of error, and the
17 patterns of error that I saw for Mr. Mosely, again, are
18 typical of what I might expect for a person of his age.

19 Q. So indicating what?

20 A. Indicating that he was giving his best effort.

21 Q. I think you mentioned that you gave this
22 particular test over the course of the two days that you
23 saw him.

24 Is that acceptable?

25 A. Yes. So because this test, in particular, is

1 very time-consuming to administer, it's oftentimes broken
2 up over testing periods sometimes as often -- or as many
3 as three or four testing periods. That would be for
4 younger children. I felt comfortable evaluating him over
5 the course of the two days.

6 Q. So tell us about the particular subtests, what
7 they are, what they're testing for, and the result. I
8 guess we can start at the top and, for those following
9 along, I think it's Table 2, in terms of the test scores
10 and then the descriptions where they start.

11 A. Sure. So word classes, basically, evaluates an
12 individual's understanding of descriptive language. Being
13 able to find relationships between words, and it's
14 presented orally, and Mr. Mosley was able to receive an
15 age equivalency score of 8 years, 10 months on this
16 subtest.

17 Do you just want me to keep going through all of
18 them?

19 Q. Well, I just have a quick question about that.

20 A. Yeah.

21 Q. So in terms of the relationship between the
22 words, this is, like, general knowledge, right? Not
23 specific to the courtroom?

24 A. That's correct.

25 Q. Okay.

1 A. So these, for example, Mr. Mosley was able to
2 identify the two words of these four that go together, and
3 the four words are north, Celsius, globe, west, and he
4 recognized that north and west went together. However,
5 after showing me he understood the test, he was presented
6 with an item where four words are said, sniff, eyes, see,
7 hand, and he was not able to identify that eyes and see go
8 together. Instead, he said eyes and hand.

9 So that was sort of the nature of his patterns
10 of errors. He would get one right, and then he would miss
11 a couple. He also did, though, more than once ask me to
12 repeat, and this particular subtest allows that. That's
13 another indication of his effort level, because he was
14 asking me to clarify the four words I said to make sure he
15 was giving his best effort.

16 Q. And you said that his age equivalency on this
17 particular test was 8 years, 10 months?

18 A. That's correct.

19 Q. Okay. That sounds like that's far below his
20 actual age?

21 A. That's correct.

22 Q. Okay.

23 A. Indicating a profound deficit.

24 Q. And what is the word classes in terms of, like,
25 expressive, receptive, or pragmatic communications? Is

1 that subtest testing one or all three?

2 A. Right. So word classes figures into receptive
3 language. It's also used to look at overall language
4 proficiency, if I would have been able to get a formal
5 score there.

6 Q. Anything else about the word classes testing
7 that you think is important for us to know?

8 A. No, I don't think so.

9 Q. Okay. And he completed that subtest, correct?

10 A. That's correct.

11 Q. Okay. How about following directions?

12 A. The following directions subtest is administered
13 by showing the client a set of symbols that vary by shape
14 and size, as well as being either black or white. So you
15 have features that can be multiple concepts that are
16 presented at one time, and Mr. Mosley was able to
17 correctly follow directions when the number of concepts
18 was very limited, but as soon as the directions became
19 more involved, he started showing errors.

20 Q. Can you give us an example of the types of
21 questions that are asked on this test?

22 A. Yes. So, for example, he received credit for
23 being able to follow the direction, point to the fourth
24 black circle and the first white circle, and he did so
25 correctly. However, when the concepts became more

1 complicated, and especially when they involved things like
2 temporal understanding or spatial understanding, that was
3 more difficult for him.

4 So, for example, point to the two circle that
5 are to the right of the square, then point to the last
6 square and he wasn't able to do that. There were several
7 like that. Point to the circle and a square before you
8 point to the X and a triangle. So contact words are
9 challenging because those reference change.

10 So, if you will, I would call this above the
11 microphone. I'm gesturing to my hand above the
12 microphone. Whereas, this is above my head. Concept
13 words whether they're spatial, qualitative, temporal, they
14 change based on the reference, so they tend to be more
15 difficult than concrete vocabulary.

16 Q. Would that also affect his ability to express
17 concepts, or is that not what this is necessarily testing
18 for?

19 A. This doesn't assess that.

20 Q. Okay. For this particular test, are all of the
21 test instructions single sentences, so not extensively
22 long?

23 A. Yes. They're all single sentences; although,
24 some of them are complex sentences.

25 Q. Okay. How did Mr. Mosley perform on this test?

So breakdowns in syntax. Breakdowns in

1 understanding of those concept words and, therefore, he
2 got zero credit for that sentence. He did receive partial
3 credit when he would have just one type of error either
4 semantic, you know, vocabulary error or more pragmatic in
5 nature where it wouldn't necessarily match the picture.

6 Q. So is Mr. Mosley capable of formulating complex
7 sentences?

8 A. Not complex sentences that are grammatically
9 correct. He does have -- and I shouldn't say never
10 because he did receive full credit for producing the
11 sentence, He -- if he put his umbrella up, then he won't
12 get wet.

13 So even though it's missing the more theme for
14 verb agreement on the word "puts," I gave him full credit
15 for that because he's using the words and clause
16 appropriately and that's what it's really testing, the
17 words "if" and "then." So he has some ability to use
18 clauses, but it's pretty limited.

19 Q. The sentence about the umbrella, was that the
20 most complex sentence that Mr. Mosley put together?

21 A. He has one other that would be similar to that
22 which was: She has two kids and he told her to stop
23 because they are working construction.

24 So that, again, has an embedded clause, so I
25 would say that was probably the most complex.

1 Q. Okay. What was the age equivalency at the end
2 of this particular test, the formulated sentences?

3 A. 10 years, 1 month.

4 Q. And the next Recalling Sentences, I think he did
5 about the best on this one?

6 A. Yes. So on this subtest he scored at a level
7 indicative of a child who is 12 years, 7 months. So it's
8 a relative strength for him. Basically, this is kind of a
9 parroting task where a sentence is read aloud to him
10 verbally and he has to repeat it verbatim. If there is
11 any change in morphological structure at all, so even a
12 grammatical marker missing, that's counted as an error,
13 but a client can receive partial credit even if they make
14 as many as three errors in their repetition.

15 So Mr. Mosley had some sentences that he
16 repeated back exactly as I said them. For example: The
17 boy bought a book for his friend who likes short stories,
18 and he said that back to me verbatim without error. But
19 then most of the points he received for this were on items
20 where he would make at least one error, a couple examples
21 of he made two errors.

22 Q. So I think you mentioned that Mr. Mosley was
23 capable of parroting?

24 A. That's correct. That's repeating back what
25 you've heard. You might also hear it called "echolalia,"

1 in world of autism spectrum disorder. That's when you're
2 repeating back something that you've heard either
3 immediately or it can be delayed in nature.

4 Q. So this is also testing, like, pretty short-term
5 memory?

6 A. That's correct.

7 Q. But not a test of, like, long-term memory?

8 A. No. And, in fact, as a field, we don't like the
9 subtest because it's supposed to test an individual's
10 ability to use grammatical forms because the idea behind
11 it is, if they have the correct grammatical form, they
12 will use it.

13 So, for example, if I said before the students
14 were dismissed for lunch, then it goes on. If they have
15 the future tense of word "dismissed," the idea is that
16 they will use it. What actually happens a lot of times is
17 it tests verbal memory. So in that particular one,
18 Mr. Mosley said: Before the students went to lunch.

19 So he shows that he has relatively good verbal
20 memory being at 12 years, 7 months, but still impaired
21 compared to age appropriate.

22 Q. I meant to ask this earlier: In terms of the
23 age equivalencies since it's normed to 21 and 11 months,
24 is that the highest that somebody could get if they're
25 performing well on this test?

1 A. Yes. So, then, when I'm reporting that, I just
2 say over 21 years, 11 months.

3 Q. And 12 years, 7 months was the highest age
4 equivalency that Mr. Mosley did?

5 A. Which is still a profound delay.

6 Q. The next test is Understanding Spoken
7 Paragraphs. This seems like it probably correlates the
8 most to, like, being in a courtroom setting?

9 A. I feel like that's a good assessment, yes.

10 Q. Okay. Can you tell me about this particular
11 test? What it's testing for? How it's given?

12 A. Sure. So this test is basically listening
13 for -- or evaluating an individual's ability to sustain
14 attention while they're listing to spoken paragraphs,
15 being able to make sure that they have a good
16 understanding of, you know, the text itself, oral
17 narratives in general.

18 Then they're answering questions that are either
19 direct recall or requires some basic inferencing. So some
20 predicting skills, being able to interpret beyond what is
21 actually said out loud to them.

22 Q. This was the fundraising for a field trip
23 example that you gave earlier?

24 A. Yes, that was one of the paragraphs.

25 Now, the unfortunate aspect of this particular

1 test when it comes to Mr. Mosley is we can't get an age
2 equivalency, and the reason for that is the sample
3 paragraphs had been standardized by different age groups,
4 so they don't include age equivalencies for anyone that
5 I'm evaluating. It's not a function of his performance.

6 But with regards to his performance, he
7 appropriately answered only 5 of the 20 questions that
8 were asked of him relating to these stories.

9 Q. What does that score tell you?

10 A. It's indicative of a profound ability to answer
11 direct recall and inferential questions related to
12 verbally presented information.

13 Q. Again, this is, like, in terms of the test, it's
14 not like time passes in between you giving him the
15 information and asking for a response. It's a give and a
16 take kind of right away?

17 A. I read the paragraph out loud. It's about four
18 to six sentences in length. So maybe takes 30 to 45
19 seconds to read it, and then ask him questions afterwards.
20 The questions are, I think, let's see, generally about
21 five or six questions per paragraph, yes.

22 Q. Okay. Word Definitions, I think, is the next.
23 Well, I guess, before we get on to that, anything else
24 with the understanding spoken paragraphs, which appears to
25 be his potentially worst performance on any of the

1 subtests?

2 Anything else about that that you think is
3 important for us to know?

4 A. There was just one example of a time that Mr.
5 Mosley lost attention during the subtest, and that was the
6 only time he answered, I don't know, and admitted to me
7 that he had lost attention during that particular
8 paragraph.

9 I would say that paragraph has a little more
10 advanced vocabulary in it. It's talking about a scandal
11 among journalists, so I think that may have been harder
12 for him to conceptualize what the story was about. But he
13 otherwise gave answers that while wrong, did show he was
14 attempting to answer questions about what I had said out
15 loud.

16 Q. Okay. So attempts to answer, but not answering
17 correctly; is that fair?

18 A. That's correct. So, for example, before a
19 hurricane becomes strong enough to be called a "tropical
20 storm," how is it described? Well, in the paragraph we
21 learn that it may be described as a tropical depression or
22 it might be called a "low pressure zone." He said
23 hurricane.

24 Q. Okay.

25 THE COURT: What's the question again?

1 THE WITNESS: Yeah. So before a hurricane
2 becomes strong enough to be called a tropical storm,
3 how is it described? He answered with hurricane.

4 So that particular question involves conceptual
5 reasoning because you hear the word "before," in
6 there, and I think that's probably why it was
7 difficult for him.

8 THE COURT: You're also calling it a hurricane
9 which could be confusing because it's not if it's not
10 strong enough, right?

11 THE WITNESS: So that's --

12 THE COURT: That's why I asked you to repeat the
13 question.

14 THE WITNESS: Yeah. You would have to tune in
15 to the word "before," because it says specifically:
16 Before a hurricane becomes strong enough to be called
17 a "tropical storm."

18 THE COURT: Okay.

19 THE WITNESS: Yeah.

20 So it's, you know, as opposed to after it's
21 become a tropical storm and then some, it becomes a
22 hurricane.

23 THE COURT: Okay. Well, I failed that one.

24 THE WITNESS: Let me give you another example.

25 Let me see if I can find one. Here is a simple

1 one: There were students that were named in the
2 course of this story called "Posters for the Dance."
3 There was only two students who were named, and he
4 could name one of them.

5 Another question was -- from that same story,
6 the question was: Why does Billy need his dad's
7 help? The answer is that he needed his help to put
8 up some posters because he would run out of time.
9 But he answered: He went to his friend's house to
10 play ball.

11 So he reiterated a part of the story, but it
12 doesn't match the question that was asked.

13 BY MS. SEIFER-SMITH:

14 Q. What does this mean for the context of
15 participating in a trial?

16 A. His answers are what I would call tangentially
17 related, which means he's trying to give me an answer that
18 relates to the question I'm asking, but he -- his ability
19 to directly answer questions is very limited at least when
20 they're dependent upon some basic recall of information.

21 Q. And this is immediate recall, right?

22 A. That's correct.

23 Q. This is not hours later, not even minutes later?

24 A. That's correct.

25 Q. Okay. I think you said that the -- there was

1 some zoning out during a story where perhaps vocabulary or
2 the context was unusual for Mr. Mosley.

3 A. Uh-huh. Yes.

4 Q. Okay.

5 A. And I did five paragraphs with him and that was
6 the only one that he admitted he had lost attention
7 during.

8 Q. The other paragraphs, the other stories, would
9 those have been much more recognizable to him, in terms of
10 their context?

11 A. Definitely the one about a job search, because I
12 know Mr. Mosley had a job before his incarceration.
13 Another one was being hurricanes and being in Florida.
14 That's more general knowledge based. There's one about
15 the fundraiser. I don't know that he would have any
16 experience with that, but he only got one question right
17 on that one.

18 Then the other one was just to make sure that
19 he -- oh. Another one was about the school dance, and he,
20 again, got one question right.

21 Q. All right. But none of these are particularly
22 complex topics?

23 A. No.

24 Q. Okay. And he scored very poorly?

25 A. Correct.

1 Q. Okay. The next test was Word Definitions?

2 A. Yes.

3 Q. Okay.

4 A. So on the word definition subtest, he is
5 presented with a word, and he has to give me enough
6 information to show that he understands what the word is.
7 So sometimes that can be, you know, something very simple.

8 Like I'll say the word, I'll use it in a
9 sentence and he has to give me a single word that's a
10 synonym. For example, the word is "simple." My brother
11 said it was simple to do. He said "easy" so he received
12 credit for that.

13 Other times, you have to give more than one
14 characteristic about the item that you're describing or
15 defining, and sometimes Mr. Mosley could give one piece of
16 information about it, but not a second. So then he would
17 not receive credit.

18 Q. Okay. What does this tell you about his
19 vocabulary?

20 A. In general, he had a lot of difficulty with any
21 vocabulary -- defining any words that were in any other
22 category other than experiential or community knowledge.
23 So anything relating to academics, like science, social
24 studies, language, literature, arts, those kinds of words
25 he was not able to describe.

1 Experiential or community knowledge might be
2 words like "giraffe" or he got credit for the word
3 "guitar."

4 Q. So Mr. Mosley, if he's never been exposed to a
5 word, he has, it sounds like, a profound difficulty in
6 figuring out what that word might mean?

7 A. Yes. That's correct.

8 Q. And his age equivalency on this particular test?

9 A. Was in the 12 years, 4 months.

10 Q. Okay. How did he do on the next one, Sentence
11 Assembly?

12 A. So she scored at the level of an individual who
13 is 8 years, 5 months. This particular subtest is
14 basically looking at someone's knowledge of how words go
15 together to make sentences. And they see the words and
16 they have to put them together to make two concrete
17 sentences that are grammatically correct.

18 Mr. Mosley was able to do that for the items
19 where there were either less words or sort of simpler
20 parts of speech, but then the more difficult phrases, he
21 was not able to use correctly.

22 So, for example, he could create basic
23 sentences. Like, when asked -- he was shown the words, it
24 is cold, and, you'll need to wear a coat. And he
25 correctly produced two sentences using those two blocks of

1 words. So, It is cold. You will need to wear a coat.
2 I'm sorry. If it is cold, you will need to wear a coat.
3 Then the next one is, You will need to wear a coat if it
4 is cold. So he could do that with the two segments, but
5 then as the number of word segments was increased, and the
6 number of words within those segments was decreased, he
7 was unable to put them together in grammatically correct
8 ways.

9 So that has a lot to do with complex phrasing,
10 use of prepositional phrases, infinitive phrases, ordinant
11 clauses, and so forth.

12 Q. Practically, what is that supposed to mean in
13 terms of his communication?

14 A. You've got to speak to Mr. Mosley in short,
15 simple sentences for him to be able to understand what is
16 happening with regards to what information you are
17 presenting verbally.

18 Q. Okay. What is semantic relationships?

19 A. Word knowledge and how words go together. How
20 words are related to another one.

21 So Mr. Mosley scored at the age equivalency of
22 7 years, 10 months on this subtest. He was able to show
23 some understanding of the directions. And for this
24 particular subtest, the way it works is I would show him
25 four words written out. I would read those four words to

1 him. Then I would offer the prompt and ask him to
2 identify the two words that correctly complete the prompt.

3 So the first one was: An hour is longer than
4 a -- and his choices are minute, day, second, morning.
5 Then I repeat, An hour is longer than a, and he was able
6 to answer, minute and second.

7 But then, as the concepts become more difficult,
8 Mr. Mosley's ability to answer correctly lessened.

9 So, for example, the chart lists the countries
10 in alphabetical order. Norway comes, and the choices are
11 between South Africa and Taiwan, after Turkey, before
12 South Africa and after Italy. And he was able to get one
13 of the two right, but not both of them. He should have
14 said, Before South Africa and after Italy, but instead he
15 said, After Turkey, after Italy.

16 Now, if you're all thinking right now, Well,
17 gosh, I don't know that I could follow along with that?
18 Remember, Mr. Mosley has the four answers in front of him,
19 and I've read them out loud to him before I offered the
20 stem of the question.

21 Q. Okay. So does that indicate anything to you in
22 terms of his ability to read or his processing?

23 A. No, not really, because I take that out of the
24 equation by reading it to him. I don't want him to be
25 penalized for reading difficulties. So I read it to him,

1 read the stem, and then let him provide an answer either
2 verbally or nonverbally.

3 Q. The answers are just there in case he wants to
4 read them?

5 A. Correct.

6 Q. So what does this particular test tell you in
7 terms of either expressive, receptive, or pragmatic
8 communication?

9 A. So semantic relationships figure into receptive
10 language predominantly, but they also are used to
11 understand someone's overall language knowledge. And his
12 score of 7 years 10 months indicates profound deficits
13 spoken language.

14 Q. Okay. How about the last pragmatics profile?

15 A. Before we go there, I just want to say one other
16 item is the semantic relationships subtest really hits
17 those conceptual terms I was talking about before:
18 Spatial, temporal, sequential concepts, comparative
19 concepts. So it's really understanding how words go
20 together to make meaning.

21 With regards to the pragmatic profile, then,
22 Mr. Mosley scored at a level of less than three years of
23 age. And I know that when I say that, it maybe sounds
24 absurd because we know that Mr. Mosley has more language
25 than a three-year-old.

1 Q. Uh-huh.

2 A. However, the assessment is looking at the amount
3 of language or with the frequency with which Mr. Mosley is
4 using language appropriately. So it's broken down into
5 categories of nonverbal communication skills, as well as
6 the asking for, giving and responding to information, and
7 then conversational skills and routines.

8 Q. What is this result indicative to you of for the
9 pragmatics profile?

10 A. Definitely a profound social communication
11 deficit, and I see scores like this for individuals who
12 are on the autism spectrum.

13 Q. How is this -- or kind of, like, what is this
14 test? How is it administered?

15 A. So it's based on clinical judgment, so it's a
16 four-point Likert scale. I am continually throughout the
17 test administration pulling out my pragmatics profile and
18 marking things. It basically looks at the individual's
19 culturally appropriate use of language in various
20 settings.

21 So for the purposes of conversation, for the
22 purposes of giving and receiving of information, and then
23 that nonverbal communication. Like, facial expressions,
24 gestures, body language. I'm able to give him scores
25 depending on his frequency of use.

1 So my clinical judgment here is based on what I
2 saw here, what I read in the report, and also what I
3 learned from his parents. So the pragmatic profile I
4 never completely finished during the assessment because it
5 does require clinical judgment.

6 Q. Okay. Any kind of overarching conclusions with
7 respect to the CELF, like, taking all of the nine subtests
8 into account?

9 A. He has very profoundly impaired expressive,
10 receptive and social communication skills.

11 Q. Okay. You, I guess, kind of write some more
12 about that in the analysis and results section. Is that
13 just with respect to the CELF-5, or is that just kind of
14 overall with respect to all of the testing that you did?

15 A. Let me just check. I think I'm extrapolating
16 beyond the CELF here, and the reason I can say that is
17 because I referenced the fact that it appears to me, in
18 the educational records, that his school-based services
19 for speech-language pathology were discontinued, I think,
20 during his freshman year.

21 And, generally, that happens when goals are not
22 being met. So when you hit a therapeutic plateau and you
23 could show evidence of trying a variety of interventions,
24 it's appropriate to discontinue services, and I did notice
25 that, at least in the last IEP that I had access to, there

1 was no speech-language pathologist in the educational
2 team.

3 Q. I think that was from maybe 2019?

4 A. I'm not sure. I would have to look.

5 Q. Okay. That's fine. In terms of how Mr. Mosley
6 performed on that CELF-5 with you, is that consistent with
7 what you saw in the educational records that you reviewed
8 before seeing him?

9 A. Yes. Definitely.

10 I think it was important to note that, you know,
11 there were times that Mr. Mosley would say to me, I don't
12 know, and I gave him a lot of verbal encouragement to try
13 to answer, and a lot of times Mr. Mosley got his answers
14 correct, or sometimes he got them correct when he was
15 given that additional encouragement, but he definitely has
16 developed a coping strategy of just saying, I don't know.
17 I think he has pretty extreme confidence issues when it
18 comes to social communication use and that was pretty
19 evident.

20 Also, he has very poor narrative skills, and
21 that's really indicative of overall challenges in spoken
22 language.

23 Q. Tell me about that, that poor narrative skills.

24 A. Sure. So I asked Mr. Mosley, at one point, to
25 tell me about the best day of his life. I cued him

1 directly to tell me a story about the best day of your
2 life. Try to include a beginning, a middle, and an end.
3 Mr. Mosley said, When I bought my first car.

4 So then I said, Oh, I bet that was a great day.
5 Can you tell me the story about getting that car? He
6 said, I was working hard for it, but it wasn't the best
7 day of my life. That is when I get out of here.

8 Q. So what does that tell you in terms of his
9 ability to narrate a story?

10 A. The idea of initiating a story by telling it in
11 a clear way that allows the picture that he's
12 conceptualized in his head to then be -- to be translated
13 through verbal language to the other person is just not
14 there.

15 Q. So would that impairment affect his ability to
16 disclose facts to his lawyers?

17 A. Yes. For sure.

18 Q. Would that deficiency or that impairment affect
19 his ability to testify evidence relevantly if he takes the
20 witness stand?

21 A. Yes, for sure.

22 Q. Does it appear, from his testing with you, that
23 Mr. Mosley has progressed from the testing or the
24 interventions that were done when he was much younger in
25 school?

1 A. No. And, in fact, I was really surprised when I
2 reviewed the educational records to learn that he had
3 never received an assessment of his intelligence because
4 generally when we see this pattern of persuasive lack of
5 communicative growth when receiving services, a lightbulb
6 would go off in her head that we're dealing not just with
7 specific language impairment, but, rather, intellectual
8 disability.

9 Q. Throughout the educational records, did you see
10 that kind of notation about a lack of progress or, you
11 know, like, not -- it's not getting better?

12 A. Yes, and also a lack of effort was consistently,
13 you know, notes. I want to provide Mr. Mosley with some
14 grace on that because when school is very difficult to
15 comprehend, individuals with profound communication
16 deficits oftentimes kind of check out.

17 So we'll see that they look like they're, you
18 know, not trying at all, and that seems to be the case
19 here.

20 Q. Do his communication deficits appear to you to
21 be from intellectual disability and/or autism spectrum
22 disorder?

23 A. Yes. I suspect he would qualify under both
24 categories.

25 Q. Okay. I don't think we've talked about the

1 Pragmatic Profile of Everyday Communication in Adults,
2 which is more of a conversant assessment; is that right?

3 A. That's correct.

4 Q. Okay.

5 A. And I mostly do it so I could have some more,
6 you know, sort of defined conversation in order to
7 complete my pragmatics profile, and sometimes something
8 interesting will come up. So it really helps to validate
9 other findings.

10 When I was interviewing Mr. Mosley, it
11 definitely showed consistency in terms of areas of
12 challenge for him. We talked about the fact that he has
13 trouble with basic communication functions. You know, he
14 feels confident in knowing how to request help, but he
15 said he's very reluctant to do so.

16 Q. Did he explain why?

17 A. Yes. Mr. Mosley told me, I think, three times
18 that he doesn't like to ask for help because then he feels
19 like he owes somebody something. So that was definitely a
20 pattern of discomfort with seeking support that he
21 identified for me.

22 Q. Sorry. Can I just interject really quickly?

23 A. Uh-huh.

24 Q. Was this contextualized for him? Like, in, I
25 guess, the school setting, teachers are there to help

1 students with --

2 A. Absolutely.

3 Q. -- education. In the legal setting, his
4 attorneys are here to help with his case.

5 A. I even said they're getting paid to help you,
6 and he still said, you know, that -- but I don't want to
7 feel like I owe anybody anything. So we talked about
8 teachers and it's their job to help you. They're
9 literally getting paid to help you. They go into this
10 field because they want to help you, and I couldn't
11 convince him otherwise.

12 Q. So does this seem to be -- from what you've seen
13 in the records and what he articulated to you
14 specifically, does this seem to you as a potential reason
15 why he's failed to ask for support to ask for help?

16 A. It's one of the reasons. A lot of individuals
17 that I work with have difficulty seeking support, and so
18 it's either because they don't know they need it.
19 Sometimes their lack of understanding is so great, that
20 they don't even know what they don't know.

21 Also, it's this unwillingness to bother someone.
22 An embarrassment sometimes factors in. Like, I should
23 know this and I don't. So I'm embarrassed to ask. I
24 don't want to look like I'm inept. Those tend to be the
25 biggest reasons.

1 Q. Is this going to impact his ability to disclose
2 facts to his attorneys?

3 A. It could for sure.

4 Q. Okay. I think in talking earlier about the
5 interview portion, the PPEC, this is, I think, at the
6 point where Mr. Mosley said, I've got to go, and kind of
7 tapped out of the interview, did that invalidate your
8 assessment under this?

9 A. No. Because of the fact that it's not normed
10 reference. There's no standardized component to this
11 particular assessment I was -- if he had to bail out on
12 any of them, I was glad he bailed out on this one because
13 when he stopped, he was done, and I feel like I had enough
14 information to form my decisions.

15 Q. Okay. I think you said that it was, like, hour
16 seven or something, the time period that you spent with
17 him?

18 A. That's correct.

19 Q. Did it seem like it was fatigue?

20 A. I think fatigue. I think that he was -- you
21 know, I think Mr. Mosley expressed to me more than one
22 time he didn't understand why we were doing this. I tried
23 to explain to him why I was there and how I could help,
24 but it maybe felt like a bit of a waste of his time at
25 some point.

1 Q. Did Ms. Russell also join you for introductions
2 on the first day?

3 A. She was there to help explain to Mr. Mosley who
4 I was and why I was there. She introduced me to her
5 client. And like I said, I almost immediately started
6 talking in a very slow rate of speech, which happens
7 organically when you've been doing this for 26 years, I
8 guess.

9 Q. So still throughout the interview, he repeated
10 to you that he did not understand?

11 A. That's correct. I think he said it two or three
12 times.

13 Q. Any diagnosis or conclusion that you are able to
14 arrive at, based on the work that you've done?

15 A. Sure. So I diagnosed Mr. Mosley with profound
16 and mixed receptive expressive language disorder, and that
17 would be secondary to a probable diagnosis of intellectual
18 disability. Of course, I can't make that second part, but
19 I needed to note that it's probable that it's secondary
20 to, as opposed to a standalone diagnosis.

21 Also, I diagnosed him with profound social
22 pragmatic communication disorder. Again, I had to add the
23 caveat that I believe he has autism spectrum disorder, and
24 his eligibility category would change to be pragmatic
25 communication secondary to organic disorder.

1 Q. Why is that, that it would change?

2 A. Because of the fact that ASD encompasses social
3 pragmatic disorder, so if you have autism spectrum
4 disorder, that's the predominant diagnosis.

5 Q. Okay. I know that you have kind of a list of
6 recommendations for Mr. Mosley, including, you know, like
7 what you've described to us of chunking verbal
8 information, using clear and concise vocabulary,
9 simplification of things as much as possible.

10 Are those recommendations really, I guess, kind
11 of like functionally appropriate to a courtroom setting?

12 A. They absolutely could be appropriate to a
13 courtroom setting, I believe. However, it would be
14 difficult and also, I also noted here that Mr. Mosley's
15 participation in the legal proceedings are not likely to
16 be meaningfully impacted even if he was given this list of
17 accommodations because of the pervasive nature of his
18 needs.

19 Q. Does Thomas have the ability to, like, I guess,
20 build on his language acumen or restore language?

21 A. The changes that could be made, at this point,
22 would be very limited. You could see some growth in
23 vocabulary, perhaps. Conceptual knowledge really is
24 formulated much younger in age. I don't think we would
25 see meaningful changes in understanding of connected

1 discourse at all.

2 Q. Did he tell you anything about his experiences
3 in the courtroom?

4 A. He told me something along the lines of, you
5 know, I asked him if he understood, and he said, No, they
6 just be talking about stuff. And I think that was similar
7 to his experience with school because when I asked him
8 about school, he admitted that it was very difficult and
9 he said, Man, I hated school. That was the one time I saw
10 a difference in Mr. Mosley's affect. He showed that that
11 memory made him sad.

12 Q. In terms of, like, some of the kind of
13 competency concepts, is he capable of, like, parroting or
14 reiterating some basic concepts?

15 A. Yes, I think he could reiterate basic
16 vocabulary.

17 Q. What about his ability to, like, you know,
18 rationally understand what that vocabulary means and use
19 that constructively?

20 A. I think that would be very limited.

21 Q. Is there any kind of explanation if that kind of
22 ability to repeat some basic tenets would wax and wane,
23 i.e., like, if he gave a correct answer regarding a plea
24 bargain one day, but then on another day said, I don't
25 know?

1 A. Sure. So, you know, certainly verbal memory can
2 be a factor. It depends on, you know, if he had just
3 recently been presented with the definition, and he might
4 have a better ability to give it than if there had been a
5 significant time lapse.

6 It also is the case that when someone has what I
7 believe to be intellectual disabilities, that learning
8 isn't -- you know, once you get it, you always have it.
9 Rather, it can ebb and flow. That's the reason why we
10 don't have someone answer, you know, show proficiency in
11 how to do a given math problem by one problem. Give him a
12 hundred math problems to show that they have that fluency
13 and understanding of the skill. We see that to be true in
14 vocabulary as well. You need to see it across context.

15 Q. And how is Mr. Mosley's prognosis with respect
16 to his speech and language impairments?

17 A. Mr. Mosley's prognosis is poor.

18 Q. Why do you say that?

19 A. He has every prognostic factor working against
20 him that I can think of. He has a persuasive lack of
21 response to treatment. He has profound receptive
22 expressive pragmatic communication difficulties.

23 I think he has organic intellectual dysfunction,
24 as well as neurological difference. He has significant
25 learning challenges. He's incarcerated. He -- so that's

1 lacking communicative support.

2 I don't know that I have, in my career, put
3 someone's prognosis as poor before. If so, I don't
4 remember. I don't recall a time doing so. Almost always
5 I can come up with at least one positive prognostic
6 indicator, and I sort of feel like it is my job to do so
7 because, you know, I want to believe that we can continue
8 to make progress in our communication effectiveness, but I
9 couldn't think of any for Mr. Mosley.

10 Q. Is that from, like, all of the work that you've
11 done and everything that you've seen in the case?

12 A. That's correct. And I suspect that that's the
13 reason services were discontinued when he was still in
14 secondary school.

15 MS. SEIFER-SMITH: If I could just have a
16 moment?

17 THE COURT: Yes.

18 BY MS. SEIFER-SMITH:

19 Q. So just briefly. So the 440 minutes that you
20 spent with Mr. Mosley was a lot of assessments, both
21 through interview and actual testing materials, and it
22 sounds like that, in conjunction with your review of the
23 records, your conversation with Ms. Mosley informed, like,
24 your writing of the report, your testimony today. You
25 know that we're here for a competency hearing, correct?

1 A. That's correct.

2 Q. So how would you say, like, all of the testing,
3 your assessment of all of the records that were available,
4 like, how do you think that that affects, like, Mr.
5 Mosley's ability to, like, truly understand the
6 adversarial nature of the proceedings against him?

7 MS. SULLIVAN: I would object to that question
8 to this witness based on her qualifications.

9 BY MS. SEIFER-SMITH:

10 Q. And the context of speech or language
11 impairments. Because, I mean, this is -- if Your Honor
12 wants me to go further?

13 THE COURT: I do. I'm listening.

14 BY MS. SEIFER-SMITH:

15 Q. In the context of speech and language
16 impairments, because it's required of Mr. Mosley to
17 articulate the adversarial nature of the proceedings.
18 I.e. to identify the players in the court, to identify,
19 you know, what his charges are, what the potential
20 penalties are, how you get from, you know, pleading not
21 guilty to being sentenced to death. Like, how would all
22 of those impairments that you've noted impact his ability
23 to truly understand the adversarial nature of the
24 proceedings?

25 THE COURT: I will allow her to answer the

1 question.

2 THE WITNESS: Thank you. I would say that would
3 be very difficult for him, and I think the biggest
4 reason for that is because I suspect Mr. Mosley
5 demonstrates autism spectrum disorder, and one of the
6 paramounds of that difficulty and/or just the
7 difficulty of social pragmatic communication
8 dysfunction is something called "theory of mind
9 deficits," which is understanding the perspective of
10 others and recognizing how our own words and
11 behaviors, facial expressions, and so forth influence
12 another person's perspective.

13 BY MS. SEIFER-SMITH:

14 Q. So I also would have the same question with
15 respect to Mr. Mosley's ability to manifest appropriate
16 courtroom demeanor, given the impairments and the deficits
17 that you've noted?

18 A. So I think Mr. Mosley can sit there quietly and
19 respectfully, and that part I believe he can do really
20 well. I think he would have difficulty at times,
21 potentially fatiguing, acting out if there is a sensory
22 stimuli that was bothersome to him, but in general, you
23 know, the ability to sit there as a passive participant, I
24 think he can do it. I'm much more concerned about his
25 active participation.

1 Q. Do people who have ASD sometimes exhibit odd
2 behaviors even if it's not necessarily verbal? And is
3 that something that can be maybe missed or misconstrued?

4 A. Absolutely. Yes. So those, you know, the odd
5 behaviors of shutting down or, you know, certain patterns
6 of motor movement, lack of eye contact, things that may be
7 misconstrued as disinterest or noncompliance.

8 In fact, one important part of my job is to help
9 parents understand the difference between noncompliance
10 and something else. It may be that they just don't
11 understand. It may be that they don't know how to phrase
12 a response.

13 So in my world, ruling out other reasons for
14 noncompliance is very important.

15 Q. Okay. I have the same question about taking the
16 totality of everything and his impairments, how would it
17 affect his ability to disclose pertinent facts to his
18 attorneys?

19 A. Mr. Mosley's ability to provide information
20 verbally is profoundly impaired. So the cognitive
21 judgment to know if it's a pertinent fact is impaired.
22 His ability to provide information in a meaningful
23 narrative structure is profoundly impaired. His spoken
24 language deficits are paramount to his ability to function
25 in any aspect of court proceedings.

1 Q. Would that, then, also be true of his ability to
2 testify relevantly?

3 A. Absolutely.

4 MS. SEIFER-SMITH: I have nothing else.

5 THE COURT: All right. Thank you.

6 Do you need a break, or can you take some more
7 questions?

8 THE WITNESS: I'm okay. Thank you.

9 THE COURT: All right. Ms. Sullivan, whenever
10 you are ready.

11 MS. RUSSELL: I have just a quick scheduling
12 question. Your Honor, could I send Dr. Hall home, or
13 do you want to try --

14 THE COURT: That's probably a good idea.

15 MS. RUSSELL: I think that he will be available
16 Friday morning. If we started at 9:00, maybe we can
17 get him in before Dr. Tenaglia..

18 THE COURT: Let's talk about that tomorrow
19 morning.

20 MS. RUSSELL: I'll send him home.

21 CROSS-EXAMINATION

22 BY MS. SULLIVAN:

23 Q. Hi, Dr. Fritz.

24 A. Hi.

25 Q. I don't have a lot of questions, so that's good

1 news. I just want to clarify some things with you.

2 A. Sure.

3 Q. You did not administer the ADOS-2, right?

4 A. That's correct.

5 Q. Are you qualified to administer that?

6 A. No. In theory, speech-language pathologists can
7 become qualified to administer the ADOS. However, we
8 can't report findings, so, no.

9 Q. Okay. Because I think there was some confusion
10 with an earlier witness today that you may have
11 administered that, but I just want to clarify, you did
12 not?

13 A. No, I did not.

14 Q. Okay. It said in your report you didn't review
15 any cognitive assessments or assessments in general done
16 by other doctors on the defendant?

17 A. Prior to writing my report.

18 Q. Okay.

19 A. I did receive from his counsel two days ago,
20 maybe information relating to prior competency reports
21 that had been written, and I briefly skimmed those
22 yesterday or this morning.

23 Q. Do you recall what doctor's reports those were?

24 A. I think I read -- I'm going to murder her name,
25 I'm sure. Tenaglia

1 Q. Dr. Tenaglia?

2 A. Thank you. I read her report briefly. I don't
3 know if I read any others.

4 Q. Okay. You stated that on day two of your
5 assessment with the defendant that he abruptly
6 discontinued the testing.

7 How did he express to you that he was done?
8 What happened?

9 A. Yes. Let me see if I can find that, because I
10 was confused at first because it did kind of come out of
11 nowhere. So I started repeating the question that I was
12 asking -- sorry, I don't have it with me. It was on my
13 laptop.

14 There was a question that I asked, and it was
15 about shifting conversational topic. And he said, like,
16 something along the lines of -- I'm paraphrasing, but
17 something like, I don't do -- or I'm done. I'm done now,
18 or something like that. I don't do that now, or I'm not
19 going to do that now, or something.

20 So I said, Oh, you don't change the topic? Then
21 he just sat there for a minute. Then he goes, I'm done
22 with this. I was like, Oh. Then I requested
23 clarification again and said something along the lines of,
24 Oh. So are you finished with me now? And he said, Yes.
25 And I said, Can I ask why? Can we just get through a

1 little bit more? I tried to do a little bit of back and
2 forth, and he's like, No, I'm good. So that was basically
3 what it was.

4 Q. You would agree that some individuals, from kids
5 to adults, have speech delay or an impairment, and that
6 does not mean they are intellectually disabled or
7 autistic?

8 A. Oh, absolutely. Yes.

9 Q. There are many different reasons why children or
10 adults have speech impairments, right?

11 A. Yes, for sure.

12 Q. Some people with language barriers have
13 high-functioning intelligence, right?

14 A. Yes. So if an individual has specific language
15 impairment, there's no indication that there's any
16 cognitive involvement.

17 Q. Sometimes they don't have the ability to express
18 or communicate what they want to say, but it's registering
19 in their brains, they just don't know how to express it,
20 right?

21 A. That's right for individuals who have specific
22 language impairment, and that's specific why when I made
23 that diagnosis of mixed receptive expressive that I said
24 secondary to suspected intellectual disability because it
25 would be inappropriate for me to assume that -- or to not

1 state the fact that I did see other indicators of
2 cognitive involvement.

3 Q. But just to be clear: Your qualifications are
4 based on the speech impairments that you're seeing, not on
5 any further diagnosis related to intellectual disability?

6 A. You're right. I cannot make a diagnosis of
7 intellectual disability.

8 Q. Okay. I think you said you did look at records
9 in this case, and that's your preference, but even if you
10 don't have access to records, if you're just unable to get
11 them, they don't exist anymore, it's been too long, you
12 can still do an assessment of an individual and come to a
13 conclusion without records, right?

14 A. Yes, you can. You would want to note that for
15 sure, and you would make -- and, in my opinion, due
16 diligence would be to, then, try to at least get
17 collateral reports from other people that know that person
18 well.

19 Q. Okay. But sitting down like you did with the
20 defendant one on one for hours talking, that is --

21 A. Yes.

22 Q. -- a good practice of being able to do your
23 assessments and then come to a conclusion, right?

24 A. No, I would not call it a good practice. I
25 would say it would be okay, but it's not best or good

1 practice.

2 Q. And that wasn't the right -- it's the end of the
3 day --

4 A. I know.

5 Q. -- wrong phrasing. That is a good way for you
6 to be able to access someone is when they are right in
7 front of you, and you are evaluating them?

8 A. Yes. It's a meaningful piece of information to
9 see how they respond to direct assessment, for sure.

10 Q. Do you take into consideration with your testing
11 the fact that someone is incarcerated?

12 A. To some degree, yes. It specifically matters
13 for pragmatic communication, I would say that's probably
14 the biggest piece. You know, you're very limited in the
15 number of conversation partners that you have, or, you
16 know, maybe trust issues could be there. So that piece is
17 for sure a factor.

18 Q. The testing is the same whether someone is
19 coming to you at age 8 to your office? It's the same
20 questions, it's the same test as to what the defendant
21 received, right?

22 A. Yes. Age 9 would have been the same, uh-huh.

23 Q. But do you, yourself, when you're doing your
24 analysis and making your conclusions, take into
25 consideration the fact that the person you're actually

1 assessing is incarcerated and could potentially receive a
2 very high penalty, does that factor into any of your
3 assessment that you did with Mr. Mosley?

4 A. You mean to be able to determine the --

5 Q. His efforts.

6 A. Oh, his effort? No. I think what I'm looking
7 for with effort is if he's showing me he understands, and
8 whether he's continuing to take the test.

9 Q. Okay.

10 A. You know, when I have seen -- not seen that in
11 the past when they've been incarcerated or otherwise, it's
12 a waste of time and energy for everything because they
13 can't give me basal scores, so they can't show the
14 proficiency of being able to take the test.

15 Q. So to a certain extent, you have to take his
16 word for it that he's putting in the effort on these
17 tests?

18 A. Well, I'm trying to think of how I would answer
19 that because I'm not sure -- he showed -- he gave me his
20 word. He's shown me with his effort that he was putting
21 in effort. So he never said to me, I'm trying my hardest;
22 do you know what I mean? Instead, I looked at those
23 patterns of error that I mentioned, the fact that he would
24 request clarification, ask for repetition of testing
25 items, the fact that he was receptive to me doing some

1 teaching of vocabulary.

2 You know, like I said, until that -- the
3 breaking point for him where he must -- he fatigued or
4 decided he didn't want to do it anymore, I didn't see any
5 breakdown in effort.

6 THE COURT: So you don't think there's any
7 possibility that his potential penalties played a
8 role in his testing at all?

9 THE WITNESS: From my assessment --

10 THE COURT: You just told me at 23 years old, he
11 had the worst prognosis you've ever seen in your 20
12 years of testing any age of child?

13 THE WITNESS: Uh-huh.

14 THE COURT: And he's the worst you've ever seen?
15 You don't think his potential death penalty played a
16 role in his questioning? I'm not saying it did --

17 THE WITNESS: Right.

18 THE COURT: -- but that's not even a possibility
19 in your mind that that could be something in the back
20 of his mind?

21 THE WITNESS: I don't think he has the ability
22 to process at that level. So, I mean, I would say,
23 no, and I would also say none of the prognostic
24 indicators have anything to do with his effort level.

25 Prognostic indicators are based on, you know,

1 educational lack of gains, and you know, his
2 incarcerated status doesn't help his prognosis, but,
3 you know, I don't think that Mr. Mosley understands.
4 In fact, I know he doesn't understand, and I had to
5 break things down even within the directions to help
6 him understand a given test.

7 So I just -- no, I don't.

8 THE COURT: Okay.

9 BY MS. SULLIVAN:

10 Q. You put in your report that Mr. Mosley had good
11 attendance at school.

12 Did you read all the school records?

13 A. So I believe that he went to school. I believe
14 he eloped from the classroom, so not being in the
15 classroom was an issue for sure.

16 Q. Did you read the school records?

17 A. Yes.

18 Q. Did you see how many absences he had in a given
19 year?

20 A. Yes. And maybe "good" was a little bit of a
21 strong statement, but I think his attendance wasn't -- I
22 didn't think it was poor for being physically on campus.
23 He certainly seemed to have been caught, you know, in the
24 bathroom or wandering the halls or otherwise not going to
25 class, but, you know, I don't know that he was truant

1 because of it.

2 Q. He, I think, averaged in high school, if we're
3 just talking about ninth grade, I think he was there maybe
4 68 percent of the time.

5 A. Right.

6 Q. He had, like, 38 days out of 128 days that he
7 was absent --

8 A. That's a different story, and I apologize for
9 that, because I was thinking of his formative years. I
10 think by the time he got to high school, he had completely
11 given up. So I don't think he had any intention of
12 functioning as a student by that point. But I guess I was
13 referring more specifically to his elementary and middle
14 school years.

15 Q. Did you review any visits that Mr. Mosley has
16 had with his family while incarcerated?

17 A. I did not.

18 Q. So you haven't observed what his speech and
19 communication ability is when he's speaking to family
20 members?

21 A. No, ma'am.

22 Q. So you're basing your conclusions and opinion
23 from about seven hours of interacting with Mr. Mosley?

24 A. Along with the records review and my follow-up
25 interview with his family, yes.

1 MS. SULLIVAN: Okay. I don't have any other
2 questions.

3 THE WITNESS: Thanks.

4 THE COURT: Any redirect?

5 MS. SEIFER-SMITH: No.

6 THE COURT: Thank you. I know it's been a long
7 day. I appreciate it. Safe travels home.

8 THE WITNESS: Thank you.

9 THE COURT: So we let Dr. Hall go for the day.
10 It is almost 20 minutes to 5:00. Who is on deck for
11 tomorrow?

12 MS. SULLIVAN: Dr. Railey will be here at 9:00
13 a.m.

14 THE COURT: We need to deal with those motions
15 first. He knows that, right?

16 MS. SULLIVAN: Yes.

17 THE COURT: Did you have someone else you wanted
18 to come tomorrow?

19 MS. RUSSELL: We do have some collateral
20 witnesses. I think Jessica Daw, the speech-language
21 teacher from Lakewood Elementary. She's coming at
22 3:00.

23 THE COURT: Is she on Zoom or --

24 MS. RUSSELL: No, she's coming in person.

25 THE COURT: Okay. All right. I'm just trying

1 to get a game plan for tomorrow. Then in the
2 morning, we need to talk about rescheduling Dr. Hall.
3 Let's talk about that in the morning.

4 MS. RUSSELL: I'm just worried we may lose the
5 opportunity if I don't. This was his week when he
6 was supposed to be in some civil trial, and now all
7 of a sudden, he is available. If we lose him this
8 week, it -- you will be so unhappy with where --

9 THE COURT: I understand. Here is the thing, we
10 have to get through Tenaglia on Friday, right? That
11 was her scheduled day. I'm trying -- I mean, none of
12 us can have any control over the fact that we had a
13 power outage this morning that caused an enormous
14 delay. The TVs weren't working. The morning
15 calendar took longer. What should have started at
16 9:00 didn't start until 11:00.

17 Folks, I need it to be quiet in here.

18 THE BAILIFF: Put your phones away.

19 THE COURT: I'm not going to have any --

20 UNIDENTIFIED PERSON: I'm sitting right here --

21 THE COURT: She can wait outside.

22 THE BAILIFF: She can wait outside.

23 THE COURT: Outside, please.

24 THE BAILIFF: Go outside.

25 THE COURT: Outside.

1 Okay. This is why we're going to talk about it
2 tomorrow. I need to take a break.

3 MS. RUSSELL: Understood.

4 THE COURT: We're done for the day, and I think
5 Mr. Mosley is probably done for the day. We're done
6 for the day. I will see everybody at 9:00.

7 All right. Mr. Mosley, we're going to bring you
8 over in the morning. You can let me know what you
9 want to do. You can join us, or you can sit next
10 door again, okay? That option will be yours.

11 (Proceedings concluded for 07/09/25.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, CHARLENE M. EANNEL, RPR, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties hereto, nor am I a relative or employee of such attorney or counsel, nor do I have any interest in the outcome or events of this action.

DATED this 7th day of September, 2025.

Charlene M. Eannel, RPR

CHARLENE M. EANNEL, RPR