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A P P E A R A N C E S

FOR THE PETITIONER, LAURISTON CROCKETT: (Via Zoom)

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ALSO PRESENT:

MR. LAURISTON CROCKETT

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I N D E X

		Page
Appearances.....		2

		Page
DONNA R. MILBURN, Ph.D.,		
DIRECT EXAMINATION BY MS. HAYES.....		4

EXHIBITS

No.	Description	Page
1	CHILD CUSTODY EVALUATION.....	58
2	EXPERT OPINION REPORT.....	44
4	SECTION 107.109, ELEMENTS OF A CHILD CUSTODY EVALUATION	42
5	CURRICULUM VITAE.....	6

CHANGES AND SIGNATURE	156
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REPORTER'S CERTIFICATION	158
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1 P R O C E E D I N G S

2 THE REPORTER: We are on the record,
3 March 22, 2022 at 9:38 a.m. I am Charo Dunlap, Texas
4 CSR #6733, located in Fort Worth, Texas. The witness,
5 Donna Milburn, Ph.D., has been verified by state
6 identification prior to going on record and is located in
7 West Tawakoni, Texas.

8 Will counsel state appearances, agreements
9 and then I will swear in the witness.

10 MS. HAYES: Go ahead, Tom.

11 MR. MCELYEA: Tom McElyea for Mr. Crockett,
12 Petitioner, in the case.

13 MS. HAYES: My name is Kris Hayes. I
14 represent Nikki Ngo. And I assume we'll just take them
15 under the Rules. Are you okay with that, Tom?

16 MR. MCELYEA: I'm good, Kris.

17 (Witness was sworn.)

18 THE REPORTER: You may proceed.

19 MS. HAYES: Thank you.

20 DONNA R. MILBURN, Ph.D.,
21 called as a witness on behalf of the Respondent, after
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. HAYES:

25 Q. Dr. Milburn, could you please state your full

1 name for the Court?

2 A. Donna R. Milburn.

3 Q. And just a few housekeeping matters. First
4 thing I want to talk to you about is saying yes or no and
5 not uh-huh and huh-uh. Are you familiar with that?

6 A. Yes, ma'am.

7 Q. Okay. And if I catch myself doing it or if I
8 catch you doing it, we'll try to work through it
9 together, okay?

10 A. Appreciate that.

11 Q. And sometimes, as you know, attorneys talk over
12 each other. I'm going to try real hard to not to talk
13 over you, and I would just ask that you try and do the
14 same for me when I'm asking questions, okay?

15 A. Yes.

16 Q. As far as objections, you may hear objections
17 from time to time but unless you're specifically
18 instructed to not answer, you are to answer the question
19 that you're being asked, okay?

20 A. Okay.

21 Q. And if for some reason you don't understand my
22 question and you need me to clarify, please just ask me
23 to do so and I'll try to take another stab at it and see
24 if we can clear it up, okay?

25 A. (No audible response.)

1 Q. Is that a yes?

2 A. That's a yes.

3 Q. Okay. And lastly, if you need a break at any
4 time, just let me know. I'm happy to accommodate
5 whatever break that you may need.

6 And -- now can I have your agreement today that
7 you are going to answer all questions truthfully to the
8 best of your ability?

9 A. Yes.

10 (Exhibit 5 was marked.)

11 Q. (By Ms. Hayes) Okay. Now I am going to show
12 you what I have marked as Deposition Exhibit No. 5. Do
13 you recognize this?

14 A. Yes.

15 Q. What do you recognize this to be?

16 A. That is my curriculum vitae.

17 Q. And did you submit this in the scope of your
18 employment with the Petitioner Mr. Lauriston Crockett?

19 A. Yes.

20 Q. Is this a current copy -- and I'll scroll all
21 the way down so you can see it. Is this a current copy
22 of your CV?

23 A. Yes, it is.

24 Q. Now are you currently a licensed psychologist
25 in the state of Texas?

1 A. Yes, ma'am.

2 Q. And could you tell the Court, what is your
3 license number?

4 A. It is -- I think it is 4936. I don't know that
5 off the top of my head, but it should be at the bottom of
6 an opinion report. May I check?

7 Q. Sure.

8 A. The license is 2-4936.

9 Q. And how long have you been licensed in the
10 state of Texas?

11 A. Since I believe 1994.

12 Q. And is your license currently in good standing
13 in the state of Texas?

14 A. Yes, it is.

15 Q. Has there ever been a time that you recall that
16 your license has not been in good standing in the state
17 of Texas?

18 A. Never. It has always been in good standing.

19 Q. Have you -- are you licensed in any states
20 other than the state of Texas?

21 A. No.

22 Q. Have you ever had any complaints made against
23 you -- against your license in the state of Texas?

24 A. Yes.

25 Q. When was -- how many complaints have been made

1 against your license in the state of Texas?

2 A. I believe I have had four.

3 Q. Let's talk about the first one. When was the
4 first complaint you had made against your license?

5 A. Oh, I don't recall.

6 Q. Okay.

7 A. I have been practicing for a long time, for
8 over 30 years, and the first three complaints would have
9 probably been back before I changed my office policies
10 and procedures. So we're probably looking at the late
11 1990s, early 2000s. And the last complaint would have
12 been -- the fourth complaint would have been -- I want to
13 say maybe five years ago.

14 Q. Let's talk about the last complaint five years
15 ago. What was the basis of that complaint?

16 A. The -- this was out of Judge Lopez's courtroom.
17 The father was unhappy with the recommendations -- it was
18 a child custody evaluation. That's what all four
19 complaints have been involving.

20 And the father was unhappy with the -- not only
21 the custody evaluation but that was an unusual case that
22 it was ongoing for six years. So the Court had ordered
23 me to do quarterly updates in that case for a total of
24 about six years. And then he filed a complaint.

25 Q. Because he disagreed with your recommendation?

1 A. He disagreed with my recommendation and he
2 disagreed with the Court ordering me to do those -- those
3 follow-ups. Or continuing to do updated custody
4 evaluations.

5 Q. Did you receive any reprimand or disciplinary
6 actions as a result of that complaint?

7 A. No, ma'am.

8 Q. Have you received any reprimand or disciplinary
9 action as a result of any of those complaints?

10 A. Never.

11 Q. Now you indicated that you -- those complaints
12 came out of the -- conducting a child custody evaluation;
13 is that correct?

14 A. That's correct.

15 Q. And how many child custody evaluations have you
16 conducted?

17 A. The current number should be close to 460 and I
18 have one case still pending in a Dallas court. So
19 that'll make it 461 by the end of the month.

20 Q. And do you intend to continue doing child
21 custody evaluations in the future?

22 A. That is such a hard one. I'm semi-retired and
23 so I thought I was going to be able to completely stop
24 doing this kind of work about four years ago. And I have
25 just had difficulty getting it to end. Because when the

1 judges appoint me to do these evaluations, I have a
2 tendency to say, all right, this Court really needs it
3 done. There are not a lot of us who do them, so I have
4 accepted them. But my hope is this next one I finish
5 will be the last one. Knock on wood.

6 Q. Okay. And you have indicated that you are
7 semi-retired. Are you retired from all aspects of
8 private practice or just conducting -- or hoping to stop
9 conducting child custody evaluations?

10 A. From all aspects of practice. I have got about
11 ten patients who have kept with me through the COVID
12 process. And I just can't get them to transfer to other
13 doctors because they have known me for so long.

14 And I have a couple of cases in Hunt County
15 where they just don't have the expertise out here to
16 handle the type of diagnoses these individuals have and
17 so I have gone ahead and taken them on at a real low
18 community service rate.

19 Q. I see.

20 Have you written or published any papers or
21 articles on how to conduct a child custody evaluation?

22 A. Yes.

23 Q. When was the last time that you published an
24 article or research paper on conducting a child custody
25 evaluation; do you recall?

1 A. I think the last article was -- that was
2 published -- I didn't publish it, but oh, it was several
3 years ago. It was in the American College of Forensic
4 Examiners Publication and it was on the need for mental
5 health professionals to have more protection from board
6 complaints and those kinds of things when they do these
7 evaluations.

8 Q. Okay. I understand where that would be an
9 interesting area for you to pursue.

10 And as far as clinical positions, what clinical
11 positions have you held?

12 A. Once I graduated from UT Southwestern Medical
13 School, I went into -- I finished up extra practicum
14 experience and extra internships at the University of
15 Texas at Arlington. And I did work for psychological
16 resources of Dallas, which is a court-based practice and
17 for psychological services of Plano. And then ended up
18 in my own practice following those --

19 Q. And when did you --

20 A. -- private practice since then.

21 Q. I'm sorry to speak over you.

22 When did you go into private practice?

23 A. In -- I believe it was 1994.

24 Q. And when did you kind of start tapering off
25 your patient list for lack of a better word?

1 A. In -- I would say 2017.

2 Q. Okay. And what current professional
3 associations or affiliations do you have?

4 A. I'm in the American Psychological Association
5 and in the -- the American College of Forensic Examiners,
6 I don't know that they are operating under that name
7 anymore. They moved to American Board of Psychological
8 Specialties, and so I was a member of that. And to be
9 honest with you, in the last year I have not looked to
10 see what those organizations are doing.

11 Q. Okay. And again, that goes back to your hope
12 that you can soon retire?

13 A. Yes.

14 Q. Okay. And as far as -- we talked a little bit
15 about clinical positions and your published papers. Has
16 there been any articles that you published in the last
17 five years regarding child custody evaluations?

18 A. No, ma'am.

19 Q. Have you had any articles published in the last
20 five years on any topic?

21 A. No.

22 Q. Is it fair to say that in 2017 you really
23 started kind of tapering off a lot of involvement hoping
24 to retire?

25 A. Yes.

1 Q. Okay. And have you testified as an expert in
2 the past?

3 A. Yes.

4 Q. And I understand it's difficult, but can you
5 approximate for me how many times you have testified?

6 A. I would say with depositions, maybe close to
7 200.

8 Q. You have given your deposition 200 times?

9 A. Or testified in trial.

10 Q. Okay. And would you say that you're split
11 equally on testifying on behalf of a mother versus father
12 or do you find that you are heavily weighted one way or
13 the other in your testimony?

14 A. Almost all of my cases are court-appointed
15 custody evaluations. So I'm testifying not on behalf of
16 mother or father but instead on behalf -- for the Court
17 on what's in the best interest of the child. I think
18 that it's been pretty even in terms of how many cases I
19 have ended up recommending kind of primary to the mother
20 and primary to the father. It's been pretty even.

21 Q. Okay. And how many -- when was the last time
22 you were court appointed to conduct a child custody
23 evaluation?

24 A. In December -- I believe it was signed by Judge
25 Turner in December of last year, 2021.

1 Q. Okay. So that was my next question. Was that
2 in Dallas County?

3 A. Yes.

4 Q. And is that the one remaining case you have
5 indicated you have open?

6 A. Yes. Although I should clarify, I do have
7 cases open for trial. I have, for example, a trial in
8 August on a custody case out of one of the Dallas courts.
9 So while I'd like to retire, these things last forever it
10 seems.

11 Q. I'm sure COVID did not help that.

12 A. No, but it changed it -- changed my travel
13 schedule a lot.

14 Q. Have you -- when you have indicated that you
15 have been appointed by the Court to conduct a child
16 custody evaluation, have you ever been appointed by the
17 Court to serve as a therapist for a party?

18 A. Yes.

19 Q. When was the last time that occurred?

20 A. That had to have been at least four years ago.

21 Q. Okay. And when you were appointed by the Court
22 as a therapist, was that for an adult or for a child?

23 A. For a child.

24 Q. And was what that for a child over the age of
25 13 or under the age of 13?

1 A. Under the age of 13.

2 Q. How old was that child?

3 A. I believe she was eight at the time.

4 Q. Okay. And what were the presenting problems
5 with that child that the Court ordered you to serve as a
6 therapist role?

7 A. That child had a mother who lived in Dallas
8 County and a father who lived in -- was stationed in the
9 service in California. And the child refused to see the
10 father and refused to have any kind of visitation or
11 contact with him. And there was a -- an allegation of
12 sexual contact between an older stepbrother and that
13 child when she was, I believe, around six -- around six.

14 The child also had an extreme -- what we would
15 call a psychosomatic reaction to the events involving
16 what was going on in the family, had been hospitalized in
17 the Children's Medical Center, had had a partial
18 paralysis that was psychologically induced from the
19 stress. And so I was ordered to treat the child, liaison
20 with the psychiatrist at Children's Medical Center and
21 try and get the child kind of back on her feet and
22 functional.

23 Q. How frequently since 1994 have you treated a
24 child under the age of 13 in a therapist role?

25 A. I have always had children that I have treated.

1 So my -- my practice -- my training involved working with
2 children and families, really, as young as one year. I
3 worked at Scottish Rite Hospital with families and very
4 young children and working in school districts and doing
5 testing for school districts. So I have had children in
6 my practice -- private practice typically starting at age
7 two, all the way up through -- I have had geriatric
8 patients. So it's been a pretty well-rounded practice
9 over the years.

10 Q. Have you ever served -- well, have you ever
11 treated a child in therapy in your private practice that
12 presented with issues related to alienation?

13 A. Yes.

14 Q. And can you recall the last patient you treated
15 that presented with issues that you deem associated with
16 alienation?

17 A. Well, I -- I'm going to suspect the best guess
18 I can give is going to be is I haven't seen someone being
19 treated for alienation since 2017.

20 Q. Okay.

21 A. Like I said in 2017, I really was trying to
22 decrease my patient load and move toward this retirement.

23 Q. Have you ever been either court appointed or
24 conducted a psychological evaluation of a child in the
25 state of Texas?

1 A. Yes.

2 Q. Approximately how many times?

3 A. Oh, that's a tough one over a 30-year practice.

4 Part of my work initially and my training was at the
5 Dallas juvenile detention center. So I spent a year and
6 a half -- by the last year, I was appointed to do
7 evaluations twice a week on children in the juvenile
8 system.

9 And then the Dallas court has appointed me to
10 do evaluations and the Collin County court, Denton
11 County, Tarrant County. I get appointed to do those
12 evaluations more -- more than probably most people.

13 Q. Okay. And when was the last time you conducted
14 a child -- psychological evaluation on a child? Was it
15 back in 2017, approximately?

16 A. It would be approximately back then.

17 Q. And have you also assisted in clinical
18 interviews of children throughout your 30-year history?

19 A. Yes.

20 Q. Fair to say, again, that 2017 was probably the
21 last time that you conducted a clinical interview of a
22 child?

23 A. No.

24 Q. When was the last time you conducted a clinical
25 interview of a child?

1 A. I would say probably last September, October.

2 Q. Was that related to conducting a child custody
3 evaluation ordered by the Court?

4 A. Yes. And I'm sorry, I need to change that a
5 little bit. I also have conducted a clinical interview
6 of a child in February related to the problems they were
7 having.

8 Q. And is that February of 2022?

9 A. Yes.

10 Q. Now -- in this case you were hired by
11 Mr. Crockett; is that right?

12 A. That's correct.

13 Q. And what was the scope of what you were
14 requested to do for Mr. Crockett?

15 A. I was hired by Mr. Crockett, through his
16 attorney, to review Jennifer Frenkle's social study
17 report and to review materials in the case and to provide
18 an expert opinion regarding the social study she
19 conducted and to look and see if there were going to be
20 allegations regarding parental alienation or other
21 child-related issues and to testify as a possible
22 rebuttal expert on those issues.

23 Q. Have you been retained to provide that expert
24 testimony in this case?

25 A. Yes, I have.

1 Q. Did you know Mr. Crockett prior to being hired
2 in this role?

3 A. No, I did not.

4 Q. And had you worked with his counsel prior to
5 being hired in this role?

6 A. Yes, I had.

7 Q. Which of his attorneys had you worked with
8 previously?

9 A. Mary McKnight.

10 Q. What -- when you were hired in the capacity to
11 review child custody evaluations for compliance purposes,
12 what is the first thing that you do when -- once you've
13 been retained?

14 A. The first thing I do, once I have been retained
15 is, I make sure that both the attorney and his or her
16 client, in this case it would have been Ms. McKnight and
17 the father, Lauriston Crockett, understand what my role
18 is, what I'm willing to have my role be.

19 So I don't do a lot of expert testimony where
20 one side or the other side hires me. I have only done
21 that maybe six times in the -- my work because that's
22 just not what I like to do. I much prefer the Court
23 appointed child custody evaluator role or treatment
24 provider role.

25 So first I make sure that they understand the

1 limits of what I'm willing to do. That I'll review
2 material based on what it is they have asked me to do.
3 And that they also understand that while I'll give an
4 expert opinion, so you'll get it in writing. It's not
5 going to be something that you know -- I'm not one of
6 those doctors who goes on the stand and pontificates on
7 the stand. People will know what my opinions are.
8 Everyone will see them in writing, and I will not step
9 outside of my role.

10 For example, I make it very clear in my
11 write-up, I am not meeting with this child. I do not
12 know the mother. I'm not meeting with this mother. I
13 will not be offering any opinions regarding possessions
14 or access of this specific child because that's outside
15 the scope of what I'm being hired to do and outside the
16 scope ethically of what we're allowed to do.

17 So I make sure that my role is very clear.
18 Then I meet with the parent in person and I get a history
19 and I also have them fill out all of my office policies
20 and procedures so that they also are aware in writing of
21 how my office works, what the fees are, that kind of
22 thing.

23 Q. Have you been paid in this case as an expert?

24 A. Yes, ma'am.

25 Q. And how much have you been paid to date by

1 Mr. Crockett for your expert opinion?

2 A. To date, I have been paid -- excuse me -- a
3 total of \$5,825.

4 Q. And does that amount include the time spent to
5 review the child custody evaluation and generate a
6 report?

7 A. That includes all of my work on this case up to
8 this deposition and he currently has a \$500 credit in
9 his -- that will go toward this deposition and he's
10 charged by the hour for my time.

11 Q. What is your hourly rate?

12 A. \$225.

13 Q. Is that the rate you normally charge on cases?

14 A. Yes.

15 Q. You indicated -- and correct me if I'm wrong,
16 did I hear you say this is probably the sixth time that
17 you have testified as a rebuttal witness for child
18 custody evaluation?

19 A. That's correct.

20 Q. Were you given any unique information about
21 this case that enticed you to accept their scope of work
22 being requested from you?

23 A. Well, I don't know about unique, but -- but I
24 think that one of the reasons that I took this case is
25 because Ms. McKnight called me and said that she really

1 needed some help. She needed another expert to look at
2 Jennifer Frendle's report. I think she was -- my
3 impression was that she was very surprised at the report
4 and there was some significant missing elements to it and
5 she needed some -- she wanted someone, such as myself who
6 had been doing these for 30 years, to look at this and
7 give an opinion on it.

8 Q. Did she tell you when she contacted you that
9 she believed there were numerous missing elements?

10 A. Yes.

11 Q. Did she discuss the facts of the case as she
12 perceived them with you at the time she contacted you?

13 A. She discussed --

14 MR. MCELYEA: Excuse me.

15 MS. HAYES: God bless you.

16 MR. MCELYEA: Thank you.

17 THE WITNESS: I don't know that -- I don't
18 know that she discussed the facts of the case, but I do
19 know that she discussed what she felt like Ms. Frendle
20 had not done.

21 Q. (By Ms. Hayes) And what did she --

22 A. And missed.

23 Q. I'm sorry. What did she tell you Ms. Frendle
24 had not done or missed?

25 A. A good example is that Ms. Frendle didn't see

1 the child in the homes of the parents. So she went and
2 did a home visit during the time the child was at school
3 and never actually got to see the child in the home
4 environments.

5 And that she told me that Ms. Frenkle had met
6 with the parents a pretty limited amount of time and had
7 not ever seen the mother individually. So even though --
8 and I found -- I'm looking at the report.

9 Even though Ms. Frenkle said it was an
10 individual interview with the mother, the boyfriend at
11 the time, who then later became the stepfather, was
12 physically present in the room. And when she did the
13 child observation with the mother the stepfather was also
14 present in the room, which is not what the Texas Family
15 Code requires. And it -- it's a problem.

16 Q. And are these things -- I understand you're
17 telling me things from your report, but are these things
18 Ms. McKnight is telling you?

19 A. Ms. McKnight told me that those had happened
20 and she was concerned about those.

21 Q. Okay. And was it her that said these things
22 are a problem and noncompliant with the Texas Family Code
23 or is that a statement you're making to the Court today?

24 A. That is a statement I'm making to the Court
25 today.

1 Q. Okay. At the time that Ms. McKnight contacted
2 you for purposes of reviewing this child custody
3 evaluation, did she indicate whether she was in agreement
4 with the outcome or the recommendations of -- of
5 Ms. Frendle?

6 A. Trying to remember if she specifically said,
7 but I would assume she was not happy with the
8 recommendations made by Ms. Frendle.

9 Q. Okay. And in that conversation, the two things
10 you specifically remember was the fact that there was no
11 visiting of the child in the home environment and the
12 stepfather being present during the interview. Are those
13 the two things you recall her telling you?

14 A. Yeah, I recall her mentioning those.

15 Q. Anything else that you can recall her
16 mentioning on that phone call regarding problems that she
17 had with the child custody evaluation?

18 A. No, not that I recall.

19 Q. Okay. And how long after that phone call with
20 Ms. McKnight did you move forward with review of the
21 child custody evaluation?

22 A. May I look at my file?

23 Q. Sure. Of course.

24 A. Okay. 'Cause I can give you dates on that.

25 All right. Are you ready?

1 Q. Yes, ma'am.

2 A. Okay. So I was hired on December 10th, 2019,
3 and there was a charge for a half hour of work on that,
4 for taking the call and being sent the information.

5 And then I reviewed material on -- in December,
6 12/11/2019, 12/12/2019. I met with the father and
7 conducted his interview on 12/12/2019. He provided a
8 retainer at that time.

9 12/19/2019 I received more materials and
10 reviewed it. And then the information review continued
11 through December of that year with report writing
12 beginning 12/28 and continuing through -- to January.
13 And I believe the first expert opinion was issued
14 January 7, 2020.

15 Q. Do you -- when you are reviewing a child
16 custody evaluation for rebuttal purposes, do you only ask
17 to be given the same materials that were given to the
18 original evaluator?

19 A. No, ma'am. Not -- not at all.

20 Q. Why not?

21 A. And so if you would like me to clarify.

22 When I'm doing an -- what I was hired in this
23 case to do, as a rebuttal expert, was to look at what
24 Ms. Frenkle did and to provide an opinion regarding kind
25 of the process of what she did. I am not redoing her

1 evaluation. So -- it's a little bit of a different
2 thing.

3 I don't ask for them to provide me with
4 everything that she looked at. They provide me with the
5 information that they provide. I look at her report and
6 what all she looked at. I look at the things in this
7 particular case that the father claimed that she refused
8 to look at. He provided those to me and I looked at
9 those. And so this is really a rebuttal in that respect.
10 I don't redo somebody else's child custody evaluation.

11 Q. When you're reviewing somebody else's child
12 custody evaluation, are you not looking to determine
13 whether that evaluator followed evidence-based practice
14 methods to ensure they were utilized properly when making
15 recommendations to the Court?

16 A. Yes, I do.

17 Q. And how could you review to ensure compliance
18 with 107 if you're not reviewing the evidence that the
19 original evaluator reviewed?

20 A. Okay. So let me give you an example.

21 Q. Okay.

22 A. When the original evaluator does an evaluation
23 and does not conduct an individual observation between
24 the parent and the child, that -- I don't need to have
25 her records of her notes of that. Her report stands for

1 itself when she says stepfather is present in the room.

2 And that raises a concern.

3 When the report that's issued says that the
4 evaluator didn't talk to one of the parents' therapist,
5 didn't receive records from one of the parents'
6 therapists, didn't talk to one of the parents'
7 psychiatrists, didn't receive medical records for one of
8 the parents' psychiatrist, didn't review school records.
9 If those things are missing in a report, then that raises
10 concern about the -- the content of the report, if the
11 evaluator actually looked at everything that they need to
12 look at.

13 If in an evaluator's report there is a bias in
14 terms of the wording in the report. If the evaluator has
15 written -- like I believe happened in this case --
16 several pages against one parent and concerns against one
17 parent and then minimized concerns or ignored similar
18 concerns against the other parent. The -- what they have
19 written in the report is of concern.

20 So I guess, I just want to make it clear, I
21 don't ask for the attorneys to give me, for example,
22 mother's specific information, whatever mother has
23 provided because I'm not looking at what Mother says
24 versus what Dad says to offer a different opinion
25 regarding the custody evaluation itself. I'm looking at

1 what the expert did, and if the expert did everything
2 that they're really supposed to do under the Texas Family
3 Code, so they can make the recommendations that are in
4 the best interest of the children.

5 And in this case, there's the additional
6 concern that there was parental alienation going on.
7 Ms. Frendle was concerned that there was parental
8 alienation by the father going on against the mother, and
9 she talked about that in there regarding the CPS
10 complaint about the bite on the back and the uncle being
11 in the bathtub with the child.

12 But his concern was that was parental
13 alienation going on by the mother destroying his
14 relationship with the child. And so he, through his
15 attorney, offered and presented information for me to
16 look at regarding assessing whether or not that could be
17 going on.

18 Q. I'm sorry, what was the last part. Whether or
19 not that could be?

20 A. Whether that could be going on, whether --
21 their concern that the mother was engaged in parental
22 alienation of the child towards the father.

23 Q. You would agree with me that when conducting a
24 child custody evaluation, the evaluator has very broad
25 discretion so that as they comply with the Texas Family

1 Code; right?

2 A. I have a different opinion on that. I would
3 disagree with that.

4 Q. Okay. Tell me why you disagree.

5 A. The legislators and mental -- legal
6 professionals and mental health professionals have, in my
7 opinion, worked very hard over the last decade to really
8 get the Texas Family Code and our professional board
9 rules for all the licensed mental health professionals
10 kind of in alignment and much more strict about what
11 we're allowed to do and what we're not allowed to do.

12 And those very strict rules provide a guideline
13 that doesn't really allow us to maneuver outside of that
14 very much. If we don't do as if -- when I'm doing a
15 child custody evaluation as an expert, when I or other
16 experts don't do what the Family Code tells us to do,
17 then we are required by law to put in our report exactly
18 why we deviated from what we were supposed to do.

19 And we are also supposed to put in there an
20 opinion as an expert about whether or not that would have
21 ramification on the recommendations we're making.

22 So for example, the Texas Family Code says that
23 you must do an observation of the child with a parent.
24 That's it. It's in there. You're supposed to conduct
25 that evaluation. And your evaluation interviews are

1 supposed to be consistent between both parents. So if
2 you do an evaluation with a parent and a father and you
3 see them together, and then you do an evaluation and you
4 see a parent and a mother, but you don't see them alone,
5 you have the stepfather present, you fundamentally have a
6 different type of evaluation going on there.

7 Now an evaluator can do that --

8 Q. Let me stop you right there. Tell me why you
9 think that is significant. Why is it significant
10 because -- that the stepfather was present at one
11 interview but yet father, who doesn't have a significant
12 other, was alone in his interview. Why is that
13 significant?

14 A. Because in this case, the complaints and
15 concerns that brought it to the Court in the first place
16 was that the mother had bit the child on the back and had
17 left bite marks on the back. And that the mother were --
18 oh, that the uncle had been in the bathtub with the child
19 and that were concerns about the mother and the child's
20 relationship and how they interacted.

21 So for Ms. Frendle to look and see whether or
22 not the mother and the child had a healthy interaction
23 and to ascertain whether or not the child at that time
24 might have been nervous about the mother, might have been
25 fearful of her, might have been coached by her, all the

1 kind of things you would be looking for going on between
2 the mother and that child. You're not able to assess as
3 a mental health professional when you have another adult
4 in the room. The child might appear happy and very
5 comfortable playing games because Stepdad is there and
6 loves him and is happy with him, but might have looked
7 very different if it was just Mom.

8 And so I'm not saying how the child was or is,
9 but what I am saying is Ms. Frendle, I believe, had a
10 duty to conduct both -- the evaluation the same for both
11 parents.

12 And if she decided not to -- she decided she
13 was going to deviate from the Texas Family Code, then she
14 had a duty to write that in her report and explain what
15 the possible limitations in her report and
16 recommendations were based on the fact that she decided
17 to do something different with each household.

18 Q. Can you cite to the Court the exact section of
19 the Texas Family Code that states it is improper for the
20 stepfather to be present during the interview?

21 A. There is no section that says it is improper
22 for someone to be present; however -- in those exact
23 terms. However in the Texas Family Code, it says that
24 "individual interviews will be conducted with each party
25 to the suit."

1 Ms. Frenkle in her first evaluation -- I
2 understand she's doing an update, but in the original
3 social study, did not conduct an individual interview
4 with the mother. There was no individual interview with
5 the mother in her report.

6 Q. And you were citing to Section 107.109?

7 A. Yes. On Section 107.109, subsection C: "The
8 basic elements of a child custody evaluation under this
9 subchapter consist of (1), a personal interview of each
10 party to the suit."

11 Q. And you would agree with me that nowhere in
12 that subsection does it indicate that needs to be solely
13 that individual; right? It just states personal
14 interview; right?

15 A. I would state -- I would tell you after doing
16 this all these years, it's supposed to be an individual
17 interview.

18 MS. HAYES: Objection; nonresponsive.

19 Q. (By Ms. Hayes) You would agree with me that it
20 says a personal interview and it makes no mention of
21 whether anyone else can be present; right?

22 A. I agree with you that that's what the wording
23 is here.

24 Q. And what you're telling this Court is that you
25 just don't believe that's the best practice; is that

1 right?

2 A. No, I'm actually saying more than just don't
3 believe it's the best practice. The child custody
4 evaluations of the Dallas court and the Collin County
5 courts have been ordering for me in the last four years,
6 have actually involved a very clear stipulation in the
7 language even, where they say an individual interview of
8 the father, individual interview of the mother,
9 individual interview of the child without the parent
10 present.

11 So they're listing all those details now in the
12 court orders that I receive making it very clear when
13 they come to my office to conduct my evaluation the same
14 way I always have which is consistent with this Code.

15 Q. And when did the Collin County courts begin
16 stating -- kind of stating those things specifically in
17 your orders?

18 A. I think it's been -- since -- I'm trying to see
19 if I -- I think 2015 is when it started being very
20 specifically written. I think that -- if I remember the
21 date correctly, 2016 is when the law -- the new laws for
22 the Texas Family Code went into effect and -- but by
23 2015, they were actually writing those in my orders.

24 Q. I see. And have you had an opportunity to
25 review the court order for the child custody evaluation

1 in this case as it pertains to this subject child?

2 A. I don't think so. Not that I recall.

3 Q. Now you have indicated in your report that you
4 believe the presence of the stepfather made those
5 interviews unbalanced. Can you explain that word usage
6 to me, "unbalanced."

7 A. Yes.

8 Q. So when an expert is evaluating the parents or
9 the parties of a case, one of the things we're doing is
10 we're looking to assess what information we get from one
11 parent compared to the information we get from the other
12 parent. And in this case we're going to assume parents.
13 Sometimes it's grandparents, sometimes it's other foster
14 parents, but in this case because it is the mom and dad,
15 I'm going to talk about in terms of Mom and Dad.

16 So when you're making a comparison between what
17 Dad tells you is going on in the home and with the child,
18 what Mom tells you is going home -- on in the home and
19 with the child, what Dad tells you is a history of the
20 relationship with the other parent, what Mom tells you is
21 a history of the relationship with the other parent.

22 Very often as the expert we're trying to figure
23 out between this person and this person's version where
24 is the most credibility, and where are we likely looking
25 at the most relevant information relating to the child

1 and in the best interest of the child.

2 When you have another person in the room,
3 boyfriend at the time, later now a parent, a stepparent,
4 what you have is the situation where you have got the
5 influence of another adult in the room. So that other
6 adult may be coaching, using signals, doing involuntary
7 movements. There's a change, potentially, in what Mom is
8 sharing with the evaluator because she's got a co-person
9 there who is assisting her with that.

10 And just to be clear for the Court, you're not
11 indicating that that occurred in this case just merely
12 that you would have done it differently; right?

13 A. Correct.

14 Q. Okay. And had the boyfriend at the time been a
15 stepfather, would your opinion be any different?

16 A. No, it would not.

17 Q. Do you believe it's important to see the child
18 with every member of the household when conducting these
19 interviews?

20 A. Yes.

21 Q. How would you have done it differently in this
22 case?

23 A. Well, in this case I would have conducted
24 balanced interviews. I would have had the interview with
25 the father, individually, and the interview with the

1 mother, individually. I would have conducted a separate
2 interview with the stepfather, individually. I would --
3 I would have had multiple interviews with these
4 individuals. I typically see people about six hours, at
5 least three different appointments.

6 In addition to that, I would have conducted a
7 home visit in each home where the child was present. So
8 I would have gone to the mother's home where the mother,
9 stepfather and child were present. Had the child give me
10 a tour of the room. And I get an opportunity to see
11 exactly what that home environment is like. And I get to
12 see the child in that home environment and with all the
13 members of the family. So in this case it would have
14 been with Mom and Stepdad.

15 I would have gone to the father's home and I
16 would have watched the child with that father. When a
17 child is under a supervision order, what I typically do
18 is I have the attorneys agree and sometimes they run it
19 through the Court, with agreement from the judge, that I
20 essentially act as the role of the supervisor. So I
21 don't allow the child or the father to be together
22 without my presence, but I get an opportunity to see the
23 child in the home, have the child give me a tour of the
24 home, and then I get to watch the child and the parent
25 interact. I would have watched the child and the father

1 interact in the home.

2 Q. And so I -- and that testimony you jumped from
3 not just seeing the child alone -- excuse me -- not just
4 the interview process, but also seeing the child in the
5 home environment; right?

6 A. That's correct.

7 Q. Okay. And I'm going back to just the issue
8 with the stepfather. Would you ever have conducted a
9 interview with the child with just the mother and then
10 the mother and the stepfather not in a home environment?

11 A. I will do that in my office when I'm working in
12 Plano. I will do that, but I always will have an
13 individual interview or an individual interview with each
14 parent, with each stepparent, with each child, and then
15 when I -- if I conduct an interview where the child and
16 the parent is present, and I do it in the office rather
17 than in the home visit, then I often will have the
18 stepparent as a part of that at some point.

19 There would be -- in this situation where you
20 balance it between the two. So that I have the same
21 number of hours with each party, who are parties to the
22 case, and if I do -- have an additional stepparent or
23 stepfamily that I have to do, then I balance it and I do
24 the same amount of time in the other home.

25 Q. And the model standard for child custody

1 evaluations request -- or recommend that evaluators
2 endeavor to employ procedures that will create a sense of
3 balance; right?

4 A. Yes.

5 Q. But you would agree with me that if you held
6 two interviews for the child with their parent and then
7 their parent and stepparent and on the other side, only
8 an interview with the child and that parent, that that
9 would no longer be balanced?

10 A. Correct.

11 Q. So had Ms. Frenkle given the child two
12 interviews, one with the mother alone and one with the
13 mother and stepfather, and yet only one interview with
14 the child with the father, that would also be unbalanced;
15 correct?

16 A. It would be unbalanced and that's why she
17 should conduct an additional one with the father and the
18 child to balance it.

19 Q. So you would recommend that she have two
20 interviews with the father and the child to make up for
21 the two interviews on the other side?

22 A. To balance it, yes.

23 Q. Okay.

24 Now jumping to the child in the home
25 environment, is it your testimony that Ms. Frenkle did

1 not see the child with either parent in their -- in this
2 home environment?

3 A. That is what her report said.

4 Q. And did you conduct any child custody
5 evaluations during COVID?

6 A. Yes.

7 Q. And did you conduct home evaluations during
8 COVID?

9 A. Yes, I did.

10 Q. Are you aware that Dallas County did not?

11 A. I'm not aware of what Dallas County Court
12 Family Services did during COVID. I am aware that her
13 report came out before COVID was a problem --

14 MS. HAYES: Objection; nonresponsive.

15 MR. MCELYEA: You can finish answering,
16 Dr. Milburn.

17 THE WITNESS: I believe that COVID had not
18 come into play until early 2020, and Ms. Frendle's
19 evaluation was completed in August of 2019.

20 MS. HAYES: Objection; nonresponsive.

21 Q. (By Ms. Hayes) My question is were you aware
22 that Dallas Family Court Services did not conduct home
23 evaluations during COVID?

24 A. I'm not aware of what Dallas Family Court
25 Services did or did not do during COVID.

1 Q. Is it your opinion that if Dallas County Family
2 Court services did not conduct home evaluations during
3 COVID, that the evaluations that were conducted are not
4 in compliance with the Texas Family Code?

5 A. I believe what you're asking me for is a legal
6 opinion and so as a mental health professional, I don't
7 really think I can answer that.

8 The emergency order under Governor Abbott had
9 very strict recommendations, and I believe Dallas County
10 Judge Clay Jenkins was the one who issued how everything
11 would be conducted.

12 But since I'm not an attorney and I'm not aware
13 of that, I think that's a legal conclusion that I can't
14 make.

15 Q. Well, I'm asking you specifically whether or
16 not you believe it would comply with Section 107 of the
17 Texas Family Code. Do you agree with me that a
18 evaluation of the home environment of the child is
19 essential to being compliant with Section 107?

20 A. Well, if you're asking for personal opinion, I
21 personally believe that a home visit is very important to
22 do in any kind of custody evaluation and I am not aware
23 in Dallas County, but I'm aware in Denton County, in a
24 few cases up there, that those evaluation reports
25 actually ended up being delayed because the

1 court-appointed experts in Denton County waited until
2 they could conduct the actual physical home visits rather
3 than just exclude them and not conduct them.

4 I'm also aware that some of my colleagues who
5 were working in Collin County did some virtual home
6 visits for adoption studies. So they did those with I
7 guess phone, Zoom, moving a computer around or on the
8 phone, Zoom, moving a phone around the home, but that's
9 as close to an answer that I can give you.

10 MS. HAYES: Objection; nonresponsive.

11 Q. (By Ms. Hayes) So, Dr. Milburn, let's try it a
12 different way.

13 A. Okay.

14 Q. Can you tell me where in Section 107 of the
15 Texas Family Code it requires that an evaluator conduct
16 an evaluation of the home of both parents?

17 A. Okay. So again, let me go back to my notes.

18 Q. Sure.

19 A. Well, I didn't write anything about the home
20 visit in my report, so I'd have to pull up the Texas
21 Family Code and I apologize, I don't have it in front of
22 me.

23 Q. That's okay. Let me pull it up for you.

24 (Exhibit 4 was marked.)

25 Q. (By Ms. Hayes) Okay. I am showing you what I

1 have marked as Deposition Exhibit No. 4 and can you see
2 that? Let me see if I can make it bigger.

3 Section 107.109, Elements of a Child Custody Evaluation.

4 Can you see it on my screen?

5 A. Yes, I can see it.

6 Q. And if I scroll down -- well, maybe I scrolled
7 too far -- to subsection D, right here: "The Court may
8 order additional elements of a child custody evaluation
9 under the subchapter including the following."

10 Do you see that?

11 A. Yes.

12 Q. And you're referring to this section right
13 here: No. 3, "Evaluation of the residence of each party
14 seeking conservatorship of a child who is the subject" to
15 or possession of this suit; is that right?

16 A. Yes.

17 Q. Is that the section that you were referring to
18 when you were suggesting that the child should be seen in
19 the home environment?

20 A. Yes.

21 Q. Does it specifically state in this section that
22 this child should be present at the time of the
23 evaluation of the residence occurs?

24 A. No, it does not.

25 Q. And you would also agree with me that

1 subsection D is may order "additional elements of a child
2 custody evaluation under this subchapter"; right.

3 A. Yes.

4 Q. And you're not aware, as you indicated earlier,
5 whether or not the court order in this case ordered that,
6 are you?

7 A. No, I am not.

8 Q. Okay. And just to be clear, are you aware of
9 whether or not Ms. Frenkle visited the home of either
10 parent during the course of her evaluation?

11 A. Yes, I am.

12 Q. And how are you aware?

13 A. In her report, I believe she has that listed.

14 Q. Okay.

15 A. Went to -- she went to the mother's apartment
16 and she went to the father's home.

17 Q. But it's your opinion that the best practice
18 would have been to see the child in the environment of
19 each home; is that correct?

20 A. That's correct.

21 (Exhibit 2 was marked.)

22 Q. (By Ms. Hayes) Okay. Now I'm going to show
23 you what I have marked as Deposition Exhibit No. 2. Do
24 you recognize this? It may take a minute to pop up.

25 A. Yes.

1 Q. Okay. And do you recognize this to be the
2 expert opinion report you have written in this case?

3 A. Yes.

4 Q. And do you recognize that that's approximately
5 22 pages?

6 A. Yes.

7 Q. Okay. And the report is dated January 7th. I
8 believe earlier in your testimony you indicated that was
9 the date you issued your opinion; is that right?

10 A. That's correct.

11 Q. And if we kind of turn to the end here -- and
12 forgive me I'm going to cheat and go straight to the
13 end -- you stated on Page 17 of your report that you see
14 "bias, confirmation bias." Can you see that?

15 A. Yes.

16 Q. Can you -- and your first subsection is
17 "Ms. Frenkle failed to investigate or confirm the past
18 and current history of the mother."

19 A. Yes.

20 Q. Can you explain to the Court why you think this
21 information 1 through 4 is relevant -- well, strike
22 that -- shows bias to the mother?

23 A. When -- when you read Ms. Frenkle's report and
24 what she put together, she has a lot of extensive
25 information against the father and she has limited her

1 report regarding the mother in such a way that these are
2 questions that arose for me when I read it wondering why
3 these weren't looked at, could these possibly be an
4 issue.

5 She talks about the mother -- anyway, so those
6 are the lists. That's the list of things that were
7 concerning to me in comparison to what she reported on
8 the father.

9 Q. And just to be clear, you're asking when did
10 the mother move to the United States from Vietnam; right?

11 A. Well, there was a question that arose for me
12 about this. So we have got a mother who has a different
13 culture and so there is a question about how long was she
14 here in the United States.

15 And the reason this is so important in this
16 particular case is we have a situation where the -- what
17 kind of triggered all of this to start was the child
18 returned to the father's home with some bites on him that
19 he says the mother did. CPS report says mother confirmed
20 to the CPS investigator that, yes, she bites him
21 sometimes in play.

22 So the question that raised for me that
23 Ms. Frenkle didn't address or mention in her report was
24 this mom -- when did she move here from Vietnam? When
25 you have got a different cultural influence, you're going

1 to have -- you're supposed to ethically understand that
2 maybe the parent is doing behaviors that might be
3 different than what you see in a normal American-born.

4 And so I wondered is this maybe something that
5 culturally Mom's family does? That it's not -- it really
6 is in play? I did do some research on Vietnamese
7 background to see if I saw that in any kind of parenting
8 practice. I didn't, but it is something as an evaluator
9 you want to wonder or question about.

10 You have got the allegation of the uncle being
11 in the bathtub with the child and was definitely in the
12 bathroom doing the bath according to the CPS report. So
13 the question on that becomes the child was 4 or 5 years
14 old. Again, is this something kind of cultural or not.
15 I couldn't get a clear history of this mother from the
16 report the way that Ms. Frenkle did it.

17 But Ms. Frenkle did go ahead and say that the
18 father was racist and claimed that the father had racism
19 in terms of how he viewed the mother and the mother's
20 ability to parent.

21 When she calls him out as being a racist in her
22 opinion and doesn't address this question or this topic
23 about the Vietnamese background, how long she was here
24 and if, in fact, mother's language -- English is a second
25 language or not.

1 Q. And explain to the Court how that in any way
2 affects the recommendations made by Ms. Frenkle?

3 A. Well, it doesn't affect the recommendation of
4 where -- what she thinks is in the best interest of the
5 child, but it affects the recognition of the overall
6 report and how it was conducted.

7 I don't know if Ms. Frenkle considered the
8 ethnic background of this mother or not. She may have.
9 She may not. It's not in her report.

10 And -- and in some ways, you know, I wondered
11 if -- did she interview the mother with the boyfriend
12 present -- now stepfather because the mother was having
13 some trouble with English? I don't know why Ms. Frenkle
14 did what she did. And so when I'm doing an expert
15 opinion on something like this, those are concerns for
16 me.

17 Q. But the word you used, Dr. Milburn, was "bias."
18 You have indicated that you believe Ms. Frenkle was
19 biased, apparent bias. And what I'm trying to understand
20 is why does Mom's ethnic background -- or the fact that
21 Ms. Frenkle has -- either did consider it or didn't
22 consider it lead to a bias finding?

23 A. Because Ms. Frenkle writes a report where she
24 is calling the father a racist regarding how she
25 perceives his views of the mother being from Vietnam or

1 having a Vietnamese background, and she's using race as
2 part of her concern about the father and recommending
3 sole custody to the mother and recommended that the
4 father be under perpetual supervision whenever he see the
5 child. The issue of race has to be looked at. The issue
6 of ethnicity has to be looked at.

7 And to only be one-sided, going after the
8 father for this and using that as some of your
9 conclusions and to not to look at anything on the other
10 side is a bias.

11 Q. Well, wouldn't -- not to be obtuse, but
12 wouldn't the fact that the mother being Vietnamese be
13 apparent at the time that she met the mother?

14 A. Well, I don't know. I don't know how the
15 mother appears. She may appear Chinese. She may appear
16 Cambodian. I don't know.

17 Q. But that's exactly my point, Dr. Milburn. You
18 stated that Ms. Frenkle showed a bias when perhaps you
19 just aren't aware of the facts; correct?

20 A. I think the bias that I'm referring to is not
21 related to a bias related to the ethnicity; it's a bias
22 in related to how Ms. Frenkle evaluated the two parents
23 and being very harsh against the father related to
24 ethnicity and racial issue and not --

25 Q. Were you aware -- I'm sorry, I interrupted you.

1 Go ahead.

2 A. -- and not providing or looking at the other
3 side and providing the information related to the other
4 side.

5 So I couldn't -- I couldn't tell reading her
6 report what the actual background was for mother and
7 that's a concern.

8 Q. Did you become aware during your review of the
9 child custody evaluation that it was the child who made
10 statements about father's racial comments?

11 A. I don't recall that.

12 Q. Okay. That's okay.

13 You indicated whether or not the mother was a
14 stripper in her past was somehow relevant to the child
15 custody evaluation; is that right?

16 A. That it was something that should be looked at,
17 yes.

18 Q. So it's your opinion that if a mother was --
19 was a dancer ten years prior to ever having children that
20 that's somehow relevant to the best interest of the child
21 today? Is that your testimony?

22 A. My testimony is that when a court evaluator is
23 conducting an evaluation, they need to look at all
24 aspects of both parents. Meaning they need to look at
25 what jobs the parents have held, look at the educational

1 backgrounds of the parents, look at the income levels of
2 the parents, look at everything related to the parents.

3 The issue and the concern about this situation
4 that Ms. Frenkle did in her study is not whether or not
5 the mother worked in the sex industry. It's that
6 Ms. Frenkle didn't appear to address or look at the
7 possibility that the mother may have worked in the sex
8 industry.

9 And based on the information that I have, I
10 can't tell you if she did or not. I don't know. So if
11 she's working in the sex industry now, let's say right
12 now with this child again, I don't know. And I don't
13 know if it would have an impact on her ability to parent
14 or not. There are plenty of parents who work -- are
15 strippers, who are exotic dancers and are very good
16 parents, and they have child -- custody of their
17 children. They have child custody evaluations that come
18 out and say this is the best place for the child to be.

19 So the problem is not about what the mother may
20 or may not be doing or have done, the concern for me when
21 I'm evaluating Ms. Frenkle's report is did Ms. Frenkle
22 look at this? Did she consider these things as an
23 expert. If she considered them as an expert and she said
24 I'm not worried about that, this is still a great mom,
25 she really has the best relationship and this is best for

1 the child. Okay. But when I looked at her report, I
2 didn't get the impression that she considered or she
3 looked into those things.

4 Q. When you say "those things," these are things
5 that the father told you about; right?

6 A. These are the things that the father told me
7 about. That is correct.

8 Q. Why would you meet with the father on December
9 the 12th of 2019 and have a meeting with him prior to
10 reviewing the child custody evaluation in this case?

11 A. I needed to conduct an interview with him to
12 get his background and the background on the family, the
13 child and you know, essentially it's his version of
14 what's occurred.

15 Q. And you would agree with me that that gives you
16 an unbalanced perspective in reviewing the child custody
17 evaluation if you've only heard one side of the facts
18 from the parties; right?

19 A. It gives me an unbalanced perspective if I'm
20 conducting an actual child custody evaluation or I am
21 offering a different opinion about what should happen
22 with this child, which I'm not. I haven't seen the
23 child.

24 But when I look at a forensic expert's
25 evaluation and I come in and I provide this expert

1 opinion, there's an automatic bias in that expert
2 opinion.

3 Q. Sure. But wouldn't it have been more objective
4 for you as an expert witness in this case to not have met
5 with the parties and to strictly review the report itself
6 and make your determination and base your opinions on
7 that?

8 A. There have been -- as I have said, I have done
9 this about six times, and one of the times I have not --
10 well, I take that back. Three times it was for the Texas
11 board. So I didn't evaluate anyone. I just looked at
12 the whole evaluation and all the materials. And I was a
13 witness for the board against the expert who had been
14 unethical in their evaluation process.

15 In two other cases -- I think that's about
16 right. I do it so rarely, I actually do have a pretty
17 good memory of them. In two other cases I didn't meet
18 with anyone -- or one other case, I didn't meet with
19 anyone and that was out of Collin County with another
20 attorney.

21 But in this case I felt like two things needed
22 to happen. I needed to meet with the father and as a
23 clinical psychologist make sure that I'm dealing with
24 somebody who is being kind of up front. He also, for my
25 standards, needed to sign my office policies and

1 procedures and understand what my role was going to be.

2 And this is also a case where he was saying
3 there's all this other stuff that Ms. Frenkle didn't look
4 at. And wanted to provide that to me, which is his right
5 to do if he's going to hire me to look at this case.

6 MS. HAYES: Objection; nonresponsive.

7 Q. (By Ms. Hayes) My question, Dr. Milburn, is
8 wouldn't it have been a better practice to review the
9 child custody evaluation alone and give your expert
10 opinion about whether it's in compliance with the Texas
11 Family Code rather than meet with Mr. Crockett and get
12 his version of why he believes it is insufficient?

13 A. I don't believe so in this case, no.

14 Q. So in the six times that you have taken this
15 course of action, only one other time have you met with
16 the party prior to review of the report?

17 A. That's correct.

18 Q. And in the other case that you met with the
19 party prior to, did you receive information from that
20 parent about what they perceive the problems to be with
21 the child custody evaluation also?

22 A. In that case, I received it through their
23 attorney, yes.

24 Q. Did you request to meet with Mr. Crockett
25 personally rather than his counsel?

1 A. Yes.

2 Q. Why did you do that?

3 A. I wanted to get an assessment of the person
4 that I would be working with.

5 Q. And you would agree with me that an evaluator
6 uses their intuition and makes certain determinations
7 when they meet with the parties as well when conducting a
8 child custody evaluation; correct?

9 A. That's correct.

10 Q. And in this instance, you've only had the
11 benefit of doing that with Mr. Crockett, not Ms. Ngo;
12 isn't that correct?

13 A. Yes.

14 Q. So when you're giving your opinions in this
15 case, you must concede the fact that your views are
16 slanted in his favor because you're the only one he knows
17 in the case; right?

18 A. Absolutely. Absolutely. And that's why the
19 judge weighs an expert opinion based on that.

20 So in my experience the judges, the courts are
21 very good about being able to discern what a role of an
22 expert is and that's also why it's very clear at the
23 beginning of the report what my role is so the judge is
24 aware and gives the proper weight to any opinion that I
25 give.

1 MS. HAYES: I'll object as nonresponsive
2 after "absolutely."

3 Q. (By Ms. Hayes) In reviewing your report, you
4 indicated that Ms. Frenkle failed to receive information
5 from various mental health professionals; is that
6 correct?

7 A. Yes.

8 Q. And you've reviewed in her report that she had
9 requested that information but that it had not been
10 received; correct?

11 A. Yes.

12 Q. And she listed that in her report in compliance
13 with the Texas Family Code; correct?

14 A. Yes.

15 Q. And she also listed the limitations and how
16 that may or may not be able to affect her conclusions in
17 the case had she received them; correct?

18 A. I don't recall her paragraph on that.

19 Q. Okay. And you would agree with me -- and I
20 don't mean to -- I call it the "catchall" child custody
21 evaluation with evaluators basically say "had I received
22 this information it may warrant a change in my
23 recommendation." Something along those lines.

24 Do you use something like that in your practice
25 as well?

1 A. I do. Typically in my reports, if I can't --
2 if I don't get -- here's a really good example.

3 Q. Okay.

4 A. I'll use that when, for example, I have asked
5 for medical professionals to get me the parents medical
6 history, their general practitioner, since we are now
7 supposed to be looking at all their medical history, and
8 I will go ahead and finish a report if a general
9 practitioner, you know, doesn't send that evaluation as
10 long -- or those medical records as long as I'm not being
11 asked to assess whether or not somebody is, for example,
12 misusing prescription drugs like Xanax or has some major
13 mental health problem.

14 And I'll put in the report that catchall kind
15 of phrase, if it changes something, then I'll come back
16 and I'll let the Court and the attorneys know if I get
17 these records and something is in it that changes.

18 What I do not do is issue a child custody
19 evaluation where I have not gotten the records or gotten
20 some kind of information from the mental health
21 practitioners who are working with the parents or the --
22 the child. I have to have those because when we're
23 talking about the best interest of the child I need to
24 know, in my opinion, how those parents are actually
25 functioning. And if there's anything in those mental

1 health records I need to see it. So I typically will not
2 issue a report without having received those records
3 first.

4 Q. And what happens in that instance where the
5 mental health professional is requested numerous times to
6 provide those records and fails to do so?

7 A. You mean, in my office?

8 Q. Correct. How would you handle that?

9 A. Well, I typically send them a letter that
10 starts a little bit like Christie Bradshaw Schmidt's
11 initial letters to all of us, where her initial letter
12 says you have 14 days to get this to me or it's a board
13 complaint because you violated your board rules.

14 I'll give them about a month and then I craft
15 an email that looks a lot like Ms. Schmidt's initial
16 letter, and I send that to them and generally that
17 results in me getting a copy of those records.

18 And if I have a case like this one where I'm
19 concerned -- if I was Ms. Frenkle and I'm concerned about
20 allegations of agoraphobia, narcissistic personality
21 disorder, and those kinds of -- an anxiety disorder and
22 those kinds of mental health issues, I believe she should
23 have waited to get those records from father's treatment
24 provider before issuing a report.

25 (Exhibit 1 was marked.)

1 Q. (By Ms. Hayes) And I'm going to show you what
2 I have marked as Exhibit 1, which is the child custody
3 evaluation. And this is the section we're referring to
4 is the items that she utilized, received and didn't
5 receive in her child custody evaluation. And this
6 section right here -- I'm trying to make it bigger. Let
7 me see.

8 "The following information has been requested
9 but has not been received: employment verification,
10 dental information for the son, mental health information
11 from Dr. Chandler for Lauriston, III and Lauriston, IV."

12 Is this the portion that you're referring to
13 right here?

14 A. Yes.

15 Q. And did you know Dr. Chandler was a treating
16 physician for Mr. Crockett prior to that?

17 A. My understanding is he was a treating physician
18 for both Mr. Crockett and for the child.

19 Q. Were you aware that he was removed by the Court
20 for improper treatment?

21 A. No. I'm not aware of anything the Court has
22 done regarding him.

23 Q. And had you become aware that the Court ordered
24 that he not be able to see the child, would you still
25 find those information necessary?

1 A. Yes.

2 Q. And why is that?

3 A. Because he was also treating the father. So
4 those records might contain important information
5 regarding the father's functioning.

6 Q. And just to be clear, you were told by the
7 father that Dr. Chandler was his mental health provider?

8 A. Well, I'm trying to recall. I believe the
9 father's mental health provider -- he saw Dr. Chandler
10 and he saw Dr. Art Arauzo.

11 So I'd have to go back deep in my notes to see
12 if that's -- if the father specifically said
13 Dr. Chandler. But I believe he told me that he was
14 treated by Dr. Chandler, that he and the son were treated
15 by Dr. Chandler and that he was treated by Dr. Arauzo.

16 Q. Did he tell you who Dr. Chandler was?

17 A. I don't recall.

18 Q. Okay. And you indicated here the mental health
19 information from Dr. Rochelle Ritzi for the subject
20 child, the father, and the mother?

21 A. Yes.

22 Q. And this is the section you indicated that you
23 would not have completed your report had you not received
24 that; right?

25 A. If I had not received the written records, the

1 therapy records, that is correct. I would not have
2 completed my report.

3 Q. Do you know whether or not Rochelle Ritzi was
4 the health provider at that time?

5 A. I believe she was.

6 Q. All right. And is that something that was
7 represented to you by the father?

8 A. I believe -- I may have reviewed Dr. Ritzi's
9 deposition. My understanding, and forgive me that I
10 can't specifically say if the father -- I know the father
11 told me that. I know he did. I know it's in deposition
12 form.

13 I understand, if I recall correctly, there were
14 various hearings regarding -- requesting the Court review
15 Dr. Ritzi. The Court -- my understanding, from the best
16 of my recollection, did not remove Dr. Ritzi. And she
17 continued to provide treatment to the child.

18 Dr. Ritzi had a lot of contact with mother on
19 emails and with father. And because of Dr. Ritzi's role
20 in this case, I believe that Ms. Frenkle should have
21 reviewed her records.

22 Q. Okay. And if it was determined that Dr. Ritzi
23 was not the child's therapist at the time of this child
24 custody evaluation, would that have made any difference
25 about whether or not you thought those records were

1 essential?

2 A. Well, if Dr. Ritzi was not providing treatment
3 to the child at the time of the custody evaluation, the
4 social study for Ms. Frendle, then I wonder why would she
5 have been requesting records from Dr. Ritzi if she wasn't
6 involved.

7 Q. Well, let me give you a hypothetical. What if
8 Dr. Ritzi had seen the child for some small period of
9 time and then was removed from treatment of the child.
10 Would you still need to see her records prior to
11 completing the evaluation?

12 A. Yes, ma'am, I would.

13 Q. And I'm showing you back on Deposition Exhibit
14 No. 1, we have this little catchall right here: "When
15 the information is received, it may be forwarded to the
16 Court and attorneys of record. If the information
17 warrants a change in the conclusions or recommendations
18 an addendum to this report will be filed."

19 Do you see that?

20 A. Yes.

21 Q. And you see that would be her stated limitation
22 as regarding these items?

23 A. I see that as a nice cover -- CYA kind of
24 sentence -- two sentences. But in reality, she doesn't
25 talk about what the difference -- what different

1 conclusions will be made from that.

2 So for example, when it says employment wasn't
3 verified for either one of the parents. Well, if you
4 turned around and you looked and you found that one
5 parent didn't have a job or the other parent was lying
6 about what kind of job they were doing, and let's say
7 they're dealing drugs or selling heroin on the street,
8 that's a significant piece of information that would
9 definitely change the recommendations.

10 So when Ms. Frenkle has those -- some of those
11 very important pieces of information that she hasn't
12 looked at or received yet and goes ahead and issues a
13 report, particularly one with recommendation of sole
14 custody, I don't think those two little CYA lines cover
15 what you need to be doing here. That's significant
16 information that's missing that she didn't look at, in my
17 opinion.

18 Q. But if you review the facts of the case,
19 Dr. Milburn, you would see that the father is
20 self-employed and that the mother is unemployed. Do you
21 still think it is essential that you verify the
22 unemployment and self-employment of those two parties and
23 how it somehow would affect the best interest of the
24 child?

25 A. Yes, ma'am. I do. But it's not just one of

1 those things; it's all of those things.

2 Q. You're stating the five limitations that she
3 stated? Is that a yes?

4 A. Yes.

5 Q. And your opinion is that this catchall that she
6 put down here, these CYA sentences, as you called them,
7 are not sufficient to state the various outcomes that
8 could occur had this information been received?

9 A. Yes.

10 Q. And give the Court an example of what could be
11 an alternative recommendation had she received the mental
12 health records of Dr. Rochelle Ritzi.

13 A. If Dr. Ritzi's mental health records had shown
14 that Lauriston, in her notes, had first come in talking
15 about -- let's say father's allegations and the report to
16 CPS is accurate, what the CPS investigator wrote. Let's
17 say Dr. Ritzi's notes have Lauriston or Logan, as he's
18 now called, say "I want to be called Lauriston. I don't
19 want to be called Logan."

20 If her notes say, "Mom bit me on the back and I
21 didn't think she was playing, it hurt me. If the notes
22 said, "My uncle was in the bath with me." If the notes
23 said, "I want to go back to Dad's house."

24 If the notes said something about the child
25 saying, "I don't want Dad to change anything in my room.

1 I want it to be exactly the same so when I get back it's
2 exactly the same," which apparently is in some kind of
3 communication between -- between the father and the child
4 at some point. That was in the depositions.

5 The point is did Dr. Ritzi's notes, at the
6 beginning of treatment, have that kind of record or
7 information in them. And then you come to Dr. -- to
8 Jennifer Frenkle's social study and now the child is not
9 -- maybe not so happy about going back with Dad, not sure
10 he really wants to be there.

11 If Ritzi's notes at the beginning show a
12 positive relationship with the child, but by the time you
13 get to the August 2019 report for Ms. Frenkle and it's
14 not as positive, then you have to ask what's going on
15 between the time he started the treatment with Ms. Ritzi
16 [sic] and the current point where the child is with the
17 father.

18 Those are important questions. And if the
19 child had told Ms. Ritzi those and it's in written notes
20 that he told Ms. Ritzi, for example, that Mom bit him,
21 that supports what the CPS records show, what Dad had
22 said, and the pictures of the bite marks on the back of a
23 child's body.

24 For Ms. Frenkle, for example, to say, well, I
25 can't see the face to the child, so I don't know if

1 that's Logan or not in those pictures she's provided and
2 just kind of out of hand in her report dismiss those
3 pictures. Well, if the therapist's records from back
4 then say he talked about that with the therapist and it's
5 in writing, that then confirms not only what Dad has told
6 her, not only the pictures that she saw, but also what
7 the child told the CPS investigator.

8 Q. Dr. Milburn, you must understand this is based
9 on the premise that what Mr. Crockett has told you is
10 true; right?

11 A. No. The CPS investigation is the CPS
12 investigator's notes. That's not what Mr. Crockett has
13 said.

14 Q. Mr. Crockett has indicated to you that
15 Ms. Frenkle refused to accept the pictures because they
16 didn't show the child's face; right?

17 MR. MCELYEA: Objection; form.

18 You may answer, Dr. Milburn.

19 THE WITNESS: I don't recall if
20 Mr. Crockett was the one who said that to me or
21 Ms. Frenkle has that written in her report that she can't
22 see the face of the child, so she doesn't know that
23 that's actually the child. I don't recall -- it's been a
24 while since I have looked at that, so I don't recall if
25 the father told me that or if that's actually in

1 Ms. Frenkle's report.

2 But what I do know is answering your
3 question -- the notes of Dr. Ritzi are extremely
4 important, in my opinion, to have been looked through in
5 an evaluation like this.

6 Q. (By Ms. Hayes) If Dr. -- excuse me, if
7 Ms. Frenkle reviews all of Dr. Ritzi's notes and therapy
8 notes prior to her addendum, that would alleviate your
9 concerns regarding that section of the Texas Family Code;
10 correct?

11 A. Yes, it would.

12 Q. And if Dr. Chandler, who has been removed from
13 this court, still refuses to provide his notes, do you
14 think that would somehow still be relevant in this case
15 for treatment the child had five, six years ago at this
16 point?

17 A. Yes, I do.

18 Q. And tell the Court why.

19 A. Dr. Chandler saw both the father and the child.
20 Without looking at the notes or the records, there's no
21 way to know whether those were always joint sessions, how
22 many times he saw the father alone, how many times he saw
23 the child alone.

24 But we have a case here where Ms. Frenkle
25 turned around and made actual mental health diagnoses and

1 diagnosed the father with a personality disorder and
2 diagnosed the father with another mental illness without
3 looking at the actual records of a treatment -- mental
4 health treatment provider. Those records, I think, are
5 extremely important and need to be reviewed.

6 Q. You indicate --

7 A. Dr. Chandler needs to be interviewed.

8 Q. And you indicated that she diagnosed him. You
9 would agree with me there's no psychometric testing in
10 this case; isn't that right?

11 A. The only psychometric testing in this case was
12 by Dr. Jeff Siegel in the first custody evaluation that I
13 believe was conducted or finalized in 2013 and by
14 Dr. Davidson, here more recently, where he did a very
15 extensive evaluation and he did psychological testing.

16 MS. HAYES: Objection; nonresponsive.

17 Q. (By Ms. Hayes) As it pertains to the child
18 custody evaluation that you reviewed in 2019, you would
19 agree with me that Ms. Frendle did not conduct any
20 psychometric testing?

21 A. No, I don't believe Ms. Frendle conducted
22 psychometric testing. I don't believe that's within her
23 scope of expertise.

24 Q. Yeah, I agree with you.

25 And you're indicating to the Court that you

1 believe she diagnosed the father with a specific
2 condition; is that right?

3 A. When I read her report, if I recall correctly,
4 it looked like she had diagnosed him with a narcissistic
5 personality disorder.

6 Q. Do you recall whether or not Ms. Frenkle cited
7 in her report to potential signs and behaviors that are
8 consistent with narcissistic personality disorder or
9 whether it was a true medical diagnosis?

10 A. I think she may have cited that he had the
11 characteristics of narcissistic personality disorder.
12 And as a mental health professional, if she had concerns
13 that he had a personality disorder or any other mental
14 illness, I believe the Texas Family Code suggests that
15 she refer him out for testing.

16 Q. And that's if the court order required that it
17 occur; correct?

18 A. Well, I think that's also at the discretion of
19 the mental health professional. Because, for example, I
20 have had a couple of cases -- the case, in fact, that's
21 going to trial in August in the Dallas court is one where
22 Dallas Family Services did the social study, but they
23 needed to have psychological testing of both parties and
24 so they referred the parents out to me through the
25 attorneys or through the Court.

1 I did the psychological testing and got that
2 testing back to Dallas Family Services. So that's been
3 my experience with how that works.

4 Q. Okay. And I'm showing you Deposition Exhibit
5 No. 4 of the Texas Family Code 107.110. Do you see that?

6 A. Yes.

7 Q. Says: "A child custody evaluator may conduct
8 testing as part, if ordered by the Court or determined
9 necessary by the evaluator"; is that correct?

10 A. Correct.

11 Q. And the evaluator is licensed to conduct such
12 testing?

13 A. Correct.

14 Q. And you would agree with me that there's
15 nothing -- there's no requirements set forth in the Texas
16 Family Code to refer somebody for testing if it is not
17 within their purview?

18 A. Well, the issue is actually that if the social
19 study expert like Ms. Frenkle has a concern that a parent
20 has a mental health illness or mental health diagnosis
21 like a narcissistic personality disorder, then that
22 concern, being in a report and using that as part of her
23 basis to make a recommendation of sole custody to the
24 mother and supervised visitation only with the father, by
25 using a mental health personality characteristics as a

1 basis for her recommendations, I believe she's ethically
2 required to have him evaluated again.

3 MS. HAYES: Objection; nonresponsive.

4 Q. (By Ms. Hayes) Section 107 of the Texas Family
5 Code does not require that a child custody evaluator
6 conduct psychometric testing or refer it out; isn't that
7 true?

8 A. Yes. That would be an ethical problem with
9 Ms. Frenkle, not the Texas Family Code.

10 MS. HAYES: Objection; nonresponsive after
11 yes.

12 Q. (By Ms. Hayes) You've indicated in your report
13 that you believe Dr. Frenkle offered opinions without
14 completing the basic elements of an evaluation under 107.
15 Can you specifically define for the Court which sections
16 of the Code you believe she failed to complete -- or
17 which elements she failed to meet?

18 A. Yes.

19 Q. And if you need to take a break, Ms. Milburn
20 [sic], I know we've been at it for about an hour and a
21 half, so you let me know anytime.

22 A. Thank you. I'm okay.

23 Q. Okay.

24 A. I have got my water here.

25 Q. Okay.

1 A. All right. So in the Texas Family Code, Family
2 Code 107.108, the general provisions, it says that a
3 child custody evaluator should "follow evidence-based
4 practice methods and make use of the current best
5 evidence in making assessments and recommendations."

6 So I give you a list of several different
7 things and -- are you wanting me to go through this?

8 Q. Just -- it was kind of a blanketed statement in
9 your report and so I was trying to get some understanding
10 about specifically what subsections of 107 do you believe
11 that she failed to meet.

12 A. Okay. I apologize if it seemed kind of
13 blanket.

14 So one of the concerns as we go through here is
15 she didn't do balanced interviews with the parties. The
16 Texas Family Code says do balanced interviews with each
17 party. She did not do that. She did an individual
18 interview with the father; she did a joint interview with
19 mother and boyfriend. She did an interview observation
20 with the child and the father; she did a joint
21 observation with the child and the mother with the
22 boyfriend, now stepfather, present.

23 She took information from the mother that she
24 used and she listed it in her report, such a list of
25 characteristics as narcissistic personality disorder and

1 actually put that in her report. And that is not is
2 definitely not best evidence.

3 Best evidence that you would follow when you
4 are talking about any mental health diagnosis would be
5 looking at Dr. Chandler's report, who is a mental health
6 professional who worked with the father and the child,
7 looking at Dr. Arauzo's information since he is providing
8 treatment as a psychiatrist to the father.

9 Looking at the report and the information, I
10 believe father's in individual therapy with -- I believe
11 that therapist's name is McFarland and talking to that
12 mental health professional, looking at those records of
13 the father's treatment. And she didn't look at any of
14 those records based on the father's treatment, but she
15 looked at records based on only the mother's treatment.

16 She got the mother's mental health information
17 and then she turned around and she drew conclusions and
18 made the statements in the report regarding the father's
19 narcissistics personality disorder characteristics. That
20 is not best evidence.

21 Best evidence would be going directly to the
22 mental health professionals who have worked directly with
23 the father, not using some sheet mother has printed off,
24 and/or going directly to Dr. Jeff Siegel who did provide
25 psychological testing of the father back in 2013.

1 And if I may add, a personality disorder is
2 actually a long-standing personality disorder. To
3 receive any diagnosis of that or to even have
4 characteristics of that being indicated as her role as a
5 mental health professional, Ms. Frenkle knows that a
6 personality disorder begins in adolescence and very early
7 adulthood and follows an individual throughout their
8 life.

9 That is one of the reasons why you always look
10 to see where a person went to high school, what their
11 adolescence was like, what their background -- because a
12 lot of those personality disorders information --
13 diagnoses require those behaviors to be present and
14 impacting a person's life prior to the age of 18.

15 That's a failure to use best evidence. Again
16 she should have gotten the mental health records from
17 Dr. Ritzi.

18 She conducted unbalanced information getting
19 collateral information on people in this case. She took
20 three positive statements and collateral sources for Dad.
21 She took three for Mom and three for Stepdad.

22 Mom and Stepdad were aligned. This is a case,
23 particularly in any kind of family law case, where you
24 have got a mother and father who disagree about what's in
25 the best interest of the children. Essentially she only

1 took three statements, collaterals, for the father and
2 she ended up taking six positive for the mother's side.

3 And if you count the stepfather as an
4 additional source in support of the mother it's actually
5 seven collaterals positive for the father -- for the
6 mother's side. That is unbalanced evaluation between
7 these two parties.

8 She accepted materials and reviewed materials
9 that the mother gave her and she denied reviewing and
10 accepting materials that the father brought for her.

11 Then we have the information about the car
12 accident that occurred in -- I believe it was 2013. In
13 this car accident, the mother makes allegations now to
14 Ms. Frenkle that the father attempted to murder her, that
15 this was an attempted murder situation.

16 That's a relevant piece of information that is
17 something that the mother is alleging. And to look at
18 that and to place that in her report, but to refute --
19 refuse to review the police reports back at that time, to
20 review the mother's statements back at that time, to
21 review the mother's statements made to Dr. Siegel at that
22 time of the event, and the wording in the report, she's
23 not using best evidence-based methods on looking at this.

24 Instead she's using more he said, she said,
25 what the mother has said to her as somehow being factual

1 and discounting what the father has said to her, in my
2 opinion in terms of reading of how she wrote that up in
3 her report with all of the bias wording.

4 Q. Dr. Milburn, you are giving me all of your
5 supporting information for each one of these. I'm asking
6 you to just outline them for me. So right now we're
7 talking about the 2013 accident. We'll come back and hit
8 every one of these. Just give me your outline form.

9 A. Well, the outline form would be she also didn't
10 verify each statement of fact that she supposed to look
11 at according to the Texas Family Code under
12 Section 107.113.

13 She also did not provide the extent to which
14 all the information that she did not look at limits her
15 reliability, validity of her opinion and conclusions that
16 she drew under Section 107.113.

17 Under 107.109, she offered an opinion of
18 conservatorship of the child in this case without all the
19 basic elements of the child custody evaluation being
20 completed, in my opinion.

21 She did not have an individual interview with
22 the mother. She didn't have balanced interviews between
23 the parties.

24 I don't believe, if I recall correctly, she
25 looked at relevant school records.

1 She did not do a criminal history check related
2 to each individual who is living under the -- in the home
3 of the child. There's no criminal history check on the
4 stepfather. And the criminal history that he reported
5 didn't make any sense in her report.

6 If I recall correctly, she said that the
7 stepfather had an arrest and a conviction for something
8 as a minor, transporting illegal substances when he
9 was 20. She was supposed to conduct a criminal
10 background check on that and 20 is not a minor.

11 So I couldn't figure out from her report what
12 she'd actually done with that, but you're required to
13 have a criminal background check on everyone living
14 underneath the roof where the child is.

15 And she's also supposed to obtain information
16 from any collateral source that may have relevant
17 information. There are several people that have relevant
18 information, including Dr. Chandler, Dr. Arauzo, that she
19 did not receive any information from according to her
20 written report.

21 She did not request psychometric testing but
22 gave statements in her report regarding the father having
23 a narcissistic personality disorder, which is a mental
24 health diagnosis. Family Code 107.1101, Effect of
25 Potentially Undiagnosed Serious Mental Illness, sections

1 (a), (b), and (c) states that Mrs. Frendle should have
2 made a referral for the mental evaluation of the father
3 rather than making a diagnosis based on only one
4 individual interview and information from other sources
5 which may or may not have been accurate.

6 She failed to identify problems with the
7 mother's credibility, where the mother showed a change of
8 information and changes to her story from 2013 to 2019.

9 And there was a concern for me in the CPS
10 records that she should have reviewed. She is required
11 by the Texas Family Code to review all of the CPS records
12 that are available.

13 And the ones I read and reviewed, it showed the
14 mother's statements regarding the issue that occurred in
15 the bathroom with the uncle to be different than the
16 uncle's statement to the CPS investigator in 2017, which
17 is a part of the reason why this case ended up being
18 filed to begin with, that and the bites on the back.

19 And she concluded that the father was making
20 false allegations regarding the child even though the CPS
21 investigator has in the written records that the mother
22 admitted to biting the child on the back.

23 I believe she failed to use the best standards
24 of research on which to base the conclusions -- the
25 recommendations that she's made.

1 She also failed to give each parent the
2 opportunity to respond to the other parent's allegations
3 properly.

4 When I do an evaluation and I get a list of
5 allegations from a parent against the other parent or the
6 party, that other party has a right to come in and to
7 talk to me or to do an interview by phone, Zoom, or
8 whatever or in written form to answer all the allegations
9 that the other party is making. She did not do that in
10 the report that I read.

11 Does that cover it?

12 MS. HAYES: Objection; nonresponsive.

13 Q. (By Ms. Hayes) So I am sorry, Dr. Milburn, I
14 just needed a list. And we have a lot of information now
15 that we're going to have to double back on.

16 So -- excuse me.

17 We have talked extensively about your opinions
18 regarding what you deem to be an unbalanced interview of
19 the child -- unbalanced interviews of the parties in this
20 case; correct?

21 A. Correct.

22 Q. And we talked about how you believe that she
23 failed to obtain the mental health records of
24 Dr. Chandler and Dr. Ritzi and how that's significant to
25 you; correct?

1 A. Yes. And Dr. Arauzo. If he, in fact, was
2 present during that time providing treatment for the
3 father, which I believe he was.

4 Q. Are you aware of whether or not the records
5 were actually received by Dr. -- by Ms. Frenkle regarding
6 Dr. Arauzo?

7 A. I am not. They may have been.

8 Q. Okay. And let's just clear that up. I am
9 showing you child custody evaluation, Deposition
10 Exhibit 1. It indicates that the mental health
11 information from Dr. Sawyer and Dr. Arauzo for the mother
12 were both received by Ms. Frenkle.

13 Does that resolve that concern?

14 A. I believe Dr. Arauzo was the father's
15 treatment --

16 Q. And so Dr. Arauzo also -- Mr. Crockett
17 presented a letter from Dr. Arauzo regarding his
18 agoraphobia, as well, during the course of the
19 evaluation.

20 Do you see that here?

21 A. I do see that.

22 Q. Okay. And additionally with the school
23 information, report cards from the elementary school for
24 the child Logan. Do you see that?

25 A. Yes.

1 Q. Okay. And so you've been -- excuse me.

2 You have indicated that you believe that
3 Ms. Frenkle had an obligation to further interview school
4 providers other than just reviewing the records; is that
5 your testimony?

6 A. Yes.

7 Q. Which providers do you believe she should have
8 interviewed?

9 A. I think she should have talked to his primary
10 school teacher. One of the big questions in this case
11 had to deal with the name that the child was using. So
12 the child was in school, if I understand correctly, and
13 was going by the name of Lauriston. His birth
14 certificate says Lauriston. The teachers were calling
15 him Lauriston and according to Ms. Frenkle's written
16 report, I believe the child told her he preferred to be
17 called Lauriston.

18 The mother, I believe, according to the report,
19 told her the child has been called Logan, that the father
20 agreed that he could be called Logan because she wasn't
21 really happy about the idea of them having the same name
22 on the birth certificate and that she went ahead and let
23 it happen but only because he agreed to call the child
24 Logan.

25 And then you had a household, if I understood

1 correctly, when Ms. Frenkle did her evaluation where in
2 one house he's called Lauriston and in another house he's
3 called Logan. I think it would have been a good idea to
4 talk to the school teacher to see if, in fact, that what
5 the child has said in school and if, in fact, the child
6 was being called Logan or being called Lauriston.

7 And then there were allegations made to
8 Ms. Frenkle about the father's behavior in school that
9 she put in her report, that the father had said certain
10 things to the child in the lunchroom when he had gone to
11 lunch. And those were things that the mother had
12 reported to her. And she put them in her report, which
13 means she had to have given them some relevance or some
14 weight that she reported that.

15 And she concluded that the father was doing
16 parental alienation based on how the father was being
17 reportedly around the child and what he was saying and
18 doing. I think she should have, for best evidence,
19 spoken to a collateral source at the actual school, which
20 would have been to one of his teachers, or his principal
21 or his counselor, somebody who could have verified what
22 mother said or discounted what mother said.

23 MS. HAYES: Objection; nonresponsive after
24 "the teacher."

25 Q. (By Ms. Hayes) And you indicated that you were

1 concerned about the fact that letters of recommendation
2 were received, three by the stepfather, three by the
3 mother and three by the father; is that correct?

4 A. Yes.

5 Q. And you perceive that to be an unbalanced
6 review of information in favor of the mother; is that
7 correct?

8 A. Yes.

9 Q. And can you tell the Court how you believe
10 having an unbalanced gathering of information could
11 somehow upset or change the recommendation regarding the
12 best interest of the child?

13 A. Sure. As a child custody evaluator, if I get
14 twice the number of things for one parent that says, oh,
15 they're really great and wonderful than I get for the
16 other parent, then I automatically have tipped the scale
17 of the information that I am putting into my brain and
18 under my evaluation process, automatically tipped the
19 scale in favor of the parent that has more positive
20 information coming in. It's a bias.

21 Q. And just to be clear, that's the same bias
22 you're exercising today having only spoken to
23 Mr. Crockett?

24 MR. MCELYEA: Objection; form.

25 THE WITNESS: Yes.

1 Q. (By Ms. Hayes) And you said yes; is that
2 right, Dr. Milburn?

3 A. Yes.

4 Q. Okay.

5 A. Well, it's not the same bias, but it is a bias.

6 Q. Okay. I understand.

7 And basically what you're telling this Court is
8 because they got more information from one party than the
9 other that you feel that could have affected the outcome
10 of the recommendations?

11 A. Yes. And she elicited more information in
12 favor of the mother than the father. So there's also a
13 difference between parents who just bring in stuff --
14 sometimes I'll have parents who bring me a whole host of
15 stuff. So I may have ten letters of reference on one
16 side and not any on the other side. But I'm not seeking
17 out an unbalanced amount of information.

18 So if I actually am seeking it out as a child
19 custody evaluator and I'm seeking out and receiving twice
20 as many positives for one parent over the other parent, I
21 am biassing the information coming into my brain and my
22 evaluation process in favor of the person I'm getting
23 more information from.

24 MS. HAYES: Objection; nonresponsive after
25 "yes."

1 Q. (By Ms. Hayes) And we have talked also about
2 your opinions regarding Ms. Frenkle referencing the
3 criteria for narcissistic personality disorder; is that
4 right?

5 A. Yes.

6 Q. Okay. And you have indicated that you believe
7 the wording used indicates a diagnosis; is that correct?

8 A. When I read her report, it appeared to me she
9 was diagnosing him.

10 Q. Okay. And one of the other things you
11 mentioned in your list was fill -- failure to obtain
12 information regarding the 2013 car accident; is that
13 right?

14 A. That's correct.

15 Q. Isn't it true that Ms. Frenkle indicated she's
16 not making any recommendations or considerations of that
17 event?

18 A. Well, while she may be saying that at one point
19 in her -- in her report, the totality of reading her
20 reports indicates that that may be otherwise.

21 MS. HAYES: Objection; nonresponsive.

22 Q. (By Ms. Hayes) Isn't it true, Dr. Milburn,
23 that Ms. Frenkle made it very clear in her report that
24 she is not considering that information from either side?

25 MR. MCELYEA: Objection; form.

1 THE WITNESS: To the best of my
2 recollection, I believe she had a paragraph toward the
3 end of her report where she -- where she made that
4 statement.

5 Q. (By Ms. Hayes) Okay. And are you aware that
6 the Court has specifically excluded that topic from the
7 trial in this case?

8 A. I'm not aware of what the Court has done
9 related to that topic.

10 Q. Okay. And if the Court has precluded the
11 parties from discussing that, wouldn't you think it is
12 appropriate for the Court -- the evaluator to also not
13 reference that in her report?

14 A. Well, the problem is she did reference it in
15 her report and she called it an "incident" rather than an
16 "accident."

17 MS. HAYES: Objection; nonresponsive.

18 Q. (By Ms. Hayes) If the Court specifically has
19 excluded that topic from being referenced in trial, in
20 this case, wouldn't you agree with me that the evaluator
21 should not consider that event, incident, accident, or
22 otherwise when making a recommendation in this case?

23 A. Well, I absolutely believe if the Court has
24 ordered that, that Ms. Frenkle should not be using that
25 as a basis for anything that she recommends or puts in

1 her report. However, I do believe she has done that in
2 her first social study which is what I reviewed.

3 MS. HAYES: Objection; nonresponsive, any
4 statement prior to "however."

5 Q. (By Ms. Hayes) You indicated that there were
6 concerns regarding the CPS records in this case; is that
7 correct?

8 A. Yes.

9 Q. Did you review the CPS records?

10 A. Yes.

11 Q. And you are aware that father has made seven
12 CPS referrals in this case that were all ruled out;
13 right?

14 A. I don't recall the number.

15 Q. Would it be concerning for you as an expert
16 conducting a child custody evaluation if one parent had
17 repeatedly contacted CPS and those allegations were ruled
18 out?

19 MR. MCELYEA: Objection; form.

20 THE WITNESS: It is always something that I
21 look at when I'm doing a custody evaluation, who's
22 contacted CPS, how many CPS reports have been made, what
23 the conclusion from the CPS investigator has been made --
24 has occurred. So I do look at that.

25 Q. (By Ms. Hayes) And when you look at those

1 things, how do you weight that? Does that go to
2 credibility? Is that a best interest determination? How
3 do you use that information?

4 A. I want to say all of the above. I actually --
5 every case is unique. Every case is an individual. So I
6 look at the allegations, I look to see whether or not
7 there is some credibility to them, is there something
8 that is reasonable for them to have done, even if they
9 had been, you know, maybe determined by the investigator
10 to not be relevant.

11 I look at the number that has been done over a
12 period of time, and I look if it's being done during the
13 process of a divorce, high conflict dispute regarding the
14 child, or if it's before or you know, that kind of when
15 it's done has significance as well.

16 Q. And you're not suggesting that Dr. Frenkle
17 also -- excuse me, that Ms. Frenkle also did not consider
18 those same things; correct?

19 A. No, I think she considered those.

20 Q. Okay. And you indicated that you believe
21 Ms. Frenkle -- and I wrote this down quickly --
22 overlooked negative information about the mother. Did I
23 say that right?

24 A. That she overlooked possible negative
25 information about the mother.

1 Q. Okay. And can you tell me, was the possible
2 information that she -- the negative information that she
3 should have considered given to you by Mr. Crockett?

4 A. I don't know if it was given to me by
5 Mr. Crockett or by Ms. McKnight or who provided it to me.

6 Q. But your --

7 A. But there was information that was overlooked
8 in my opinion.

9 Q. Okay. But your opinion is that somebody had
10 given information to Ms. Frenkle and it's not referenced
11 in the report; is that right?

12 A. That's -- I do understand that the father said
13 he tried to give her information that she would not take.

14 Q. And again, that's based on the premises that
15 the father is telling you the truth when you're making
16 that statement to the Court; right?

17 A. Yes. And the father then provided me with that
18 information so I had a chance to look at it, and it was
19 not listed in Ms. Frenkle's report. So it didn't appear
20 that she looked at it.

21 Q. But again have you -- if you haven't reviewed
22 everything that Ms. Frenkle received and you're not
23 certain of what all she had in her possession, it's fair
24 to say you don't know if this information was ever given
25 to Ms. Frenkle; isn't that true?

1 MR. MCELYEA: Objection; form.

2 THE WITNESS: I believe Ms. Frendle
3 provided a full list of everything she did look at in the
4 report and so if she didn't put it on the list, then I --
5 I would take that as an indication that she did not
6 review it.

7 Q. (By Ms. Hayes) And can you tell the Court what
8 negative information Mr. Crockett purports to have given
9 to Ms. Frendle that was not regarded or considered?

10 A. That's a difficult thing to do off the top of
11 my head. I can give, maybe, a couple of examples.

12 Q. Okay.

13 A. I believe that -- again, the police report
14 regarding the incident in 2013 was not in the list that
15 Ms. Frendle reviewed.

16 I believe that the best answer would be for me
17 to sit and go through the list that she reviewed and the
18 list of things that I reviewed to see what doesn't match
19 up. That's the best way to do that.

20 Q. Okay.

21 A. I want to be as accurate as possible when I'm
22 answering questions.

23 Q. And I appreciate that.

24 Are you even aware whether a police report
25 exists for the 2013 accident?

1 A. Yes, there definitely is a police report.

2 Q. And who told you there was a police report?

3 A. I believe the father gave me the police report.

4 Q. So you personally reviewed the police report
5 from the 2013 accident?

6 A. Again, I'd have to look through my record but I
7 think I did. The police came -- the police were called
8 to the scene, there were police, ambulances, emergency
9 people on site. The -- so I know there's a police
10 report.

11 She was transported to the hospital, I believe
12 she was pretty seriously injured. I think she had to
13 have surgery. I think she may have had a crushed pelvis.
14 It was a pretty significant event. And I believe -- I'd
15 have to look, my records are so thick, but I believe I
16 saw that police report.

17 Q. Okay. And you referenced a police report
18 regarding somebody bathing with the child in your report.
19 Do you remember that?

20 A. Yes, I think I did see that police report. No,
21 that was a CPS report. I don't recall a police report.
22 I think there was -- it was a CPS investigator that the
23 child said that the uncle -- what I saw in the report
24 that I'm recalling is the difference between what the
25 mother said and what the uncle said. I think the

1 mother -- uncle lives in another state. It's either
2 Colorado or California.

3 Mom said she was in the kitchen, door was open
4 to the bathroom and he was in the bath -- he wasn't in
5 the bathroom. Uncle said he was in the bathroom helping
6 bathe the child to get ready and the door was closed.
7 Now again, neither of those indicate that there was any
8 kind of inappropriate sexual event that happened in that
9 bathroom.

10 Father is the one who claimed that the child
11 said uncle was actually in the bath with him. CPS
12 investigator interviewed -- got two different stories,
13 where really sounds like kind of concluded, didn't hear
14 anything that there was some kind of sexual gratification
15 going on.

16 And personally I found myself wondering, okay,
17 the kid was about 4 or 5, and so again, this is where
18 ethnicity and culture comes in. That might be kind of an
19 okay thing in Mom and Uncle's culture. That's kind of at
20 that -- that gray area I think in terms of age, whether
21 or not an adult gets in a bath with a child or if an
22 adult is in the bath and you are going to bathe the kid
23 real quick and get them out. Some people culturally will
24 do that and some people -- I mean --

25 MS. HAYES: Objection; nonresponsive.

1 THE WITNESS: I'm sorry.

2 Q. (By Ms. Hayes) And so I -- let me -- let me
3 ask you this question: When you're conducting a child
4 custody evaluation and there are numerous CPS reports and
5 all of those allegations have ruled -- been ruled out, do
6 you take it upon yourself as the evaluator to go
7 reevaluate the circumstances of those investigations to
8 determine if the outcome was proper?

9 A. I do not reevaluate the circumstances to
10 determine if the outcome is proper, but what I do do and
11 I believe I'm required to do when I'm doing a custody
12 evaluation, is to see whether or not those allegations
13 are being done maliciously with no support for them, or
14 if they're being done with a perception on the parent's
15 part who's making the allegation that these have actually
16 occurred.

17 Because that's the difference between whether
18 or not we're looking at somebody who is doing straight
19 parental alienation versus somebody who believes the
20 child may be injured or may be having trouble and they're
21 basically making a call for help or they're making a
22 report.

23 And so I'm not reinvestigating what CPS has
24 done, but I'm looking at the motivation behind what the
25 parents are doing.

1 So if I get a parent who's making -- let's say
2 false allegations of sexual molestation, and there's no
3 support for those allegations being made, they're
4 basically fabricated, that looks very much -- often like
5 parental alienation and that's a real problem of leaving
6 a child in that home where you have false allegations
7 being made.

8 But if the parent is making allegations where
9 there are some outside corroboration, there's information
10 there that supports what they're telling CPS, then -- and
11 if the child is making the statements as well, then what
12 happens is that doesn't look like parental alienation.

13 So even if the CPS investigator dismisses the
14 complaints, if there's still credibility in terms of
15 making the complaint, then I don't have a parent who is
16 just attacking the other parent maliciously. I may have
17 one that's confused and thinks something is abusive when
18 it's not according to CPS. But it is my role as a child
19 evaluator to look into all of that.

20 That's part of why we look at CPS records to
21 begin with. And the determination between whether or not
22 something is true abuse, parental alienation,
23 estrangement. We have to look at those to determine
24 which one of those three things is going on when you have
25 got a problem between a parent-child relationship.

1 Q. You would agree with me that the quantity of
2 CPS complaints is highly relevant when doing that
3 evaluation?

4 A. It can be.

5 Q. Especially if the high quantity has been ruled
6 out and statements have been made by CPS where they have
7 concerns about one parent using them for alienating
8 purposes; correct?

9 MR. MCELYEA: Objection; form.

10 Q. (By Ms. Hayes) Go ahead, Dr. Milburn.

11 A. It can be. And it depends on whether or not
12 the seven complaints for example are all different
13 complaints or are all -- one or two complaints that have
14 resulted in seven different reports because that
15 sometimes happens too.

16 Q. Understood.

17 MR. MCELYEA: Hey, Kris, are we at a good
18 point to take a quick break?

19 MS. HAYES: Sure. We don't -- can we go
20 off the record for a second, Charo?

21 MR. MCELYEA: Sure.

22 (A recess was taken.)

23 Q. (By Ms. Hayes) Thank you.

24 Okay. So, Dr. Milburn, when we left off we were
25 talking about overlooked negative information about the

1 mother. Do you recall that?

2 A. Yes.

3 Q. Okay. And you had indicated that the father
4 had represented to you that she had -- he had attempted
5 to give information to Ms. Frenkle that she did not
6 receive or did not accept; is that correct?

7 A. Yes.

8 Q. Okay. And upon your review of the report, you
9 did not -- you were not aware of whether or not
10 Ms. Frenkle actually reviewed that information or not; is
11 that correct?

12 A. Only based on what was listed in her report.

13 Q. Okay. And can you tell me specifically, I
14 think this is kind of our last question, what did the
15 father indicate he had given to Ms. Frenkle that she
16 would not accept and review?

17 A. I don't specifically recall.

18 Q. Okay. Can you give me some idea of the topics
19 that he indicated that he had told Ms. Frenkle about that
20 she disregarded?

21 A. I think one of the topics was about the
22 incident that -- the accident that happened in 2013 with
23 the car.

24 I think one of the topics had to do with his
25 work and the child starting a podcast and whether or not

1 the child was enjoying, doing well at that. And I know
2 that was something that I definitely reviewed. I looked
3 at the child's podcast. I looked at how the child was
4 doing on there and whether there was any anxiety or not.

5 And off the top of my head, that's the best
6 that I can think of.

7 Q. Okay. I'm going to skip for a second because
8 let me just ask you what materials has the father
9 provided to you to review in this case?

10 A. He has -- there's a list in there for you to be
11 able to see so you know what I looked at. On Page 3 of
12 the report, dated January 7th, 2020, of expert opinion
13 report, it gives the material that I reviewed and --

14 Q. I see that.

15 A. And then it lets you know when I talked to the
16 dad and he signed the policies and procedures and all for
17 the Court.

18 And then in the updated opinion that was
19 requested, it also gives a list of material reviewed.

20 Q. And when did you generate an updated report?

21 A. October 27th of 2021.

22 Q. And why did you generate an updated report on
23 October 27th of 2021?

24 A. The father's current attorneys stated that they
25 were going to call me as an expert and needed to

1 designate me as an expert regarding parental alienation.

2 Q. Okay.

3 A. And they asked me to look at the material and
4 to give an opinion.

5 Q. So just so I'm clear, you're now under the
6 impression that you are designated as both a rebuttal
7 witness for the child custody evaluation and as an expert
8 on parental alienation?

9 A. I believe that's what Ms. McKnight designated
10 me for -- well, let me back up.

11 I haven't read any court documents, so I don't
12 know if they designated me properly with the Court or
13 not. I know that when Ms. McKnight hired me to look at
14 this case, she hired me to look at Ms. Frendle's report,
15 to offer an expert opinion on it, and to be available as
16 a witness regarding parental alienation and child abuse
17 and child custody evaluations and ethical guidelines in
18 the limitation of roles for professionals involved in
19 family law litigation.

20 Q. And --

21 A. The area that Ms. McKnight hired me in, the
22 question of parental alienation, is one that the father's
23 current attorneys contacted me and clarified that they
24 were going to designate me as an expert to testify to
25 that.

1 Q. Okay.

2 A. And to render opinions regarding the nature of
3 the relationship difficulties between the father and the
4 minor child as of 2021.

5 Q. All right. What professional training have you
6 had in the area of parental alienation?

7 A. In my training, beginning all the way back in
8 time, in UT Southwestern Medical School, I had extensive
9 training in parent-child relationships, parental
10 alienation, child mental health diagnoses. I conducted
11 my first child custody evaluation while I was an
12 internship student at Scottish Rite Hospital under the
13 assistant director of the department of the university --
14 in the field of psychology.

15 And it's been continued in my training
16 including the workshops that I attended back in 19 --
17 1998 in California with the College of Forensic Examiners
18 and part of our training involved looking at parental
19 alienation and parent-child relationships. And those --
20 that type of training has continued on.

21 My most recent high conflict divorce training
22 was in Louisiana, in Shreveport, Louisiana. I believe
23 that was about five years ago where the updated laws,
24 parental alienation, dealing with high conflict divorce
25 litigants and health issues related to that were covered.

1 Q. And what continuing education courses have you
2 taken in the last five years that pertain to parental
3 alienation?

4 A. In the last five years -- actually in the last
5 year, we're required to keep 20 hours of continuing
6 education every year, so up to date on that continuing
7 education.

8 The most recent classes that I have had aside
9 from the required ethics -- ethnicity involved
10 parent-child relationships, custody evaluation, there was
11 a -- and all the custody evaluations include parental
12 alienation, in looking at abuse versus alienation. And
13 then the -- the biggest one that I enjoyed quite a bit
14 had to do with domestic violence.

15 Q. And when --

16 A. Domestic violence in child custody litigation.

17 Q. And again my question was in the last five
18 years, what have you attended? What specific courses
19 have you attended in the last five years that relate to
20 parental alienation?

21 A. I'll have to pull out my file and I can give
22 you the exact courses if you'd like me to send those to
23 you. Let me do that -- I don't have those with me. I
24 have to go to my other office.

25 Q. And just to be clear for the Court's purposes,

1 your continuing educations courses are not listed on your
2 CV; is that correct?

3 A. That's correct.

4 Q. Okay. And -- but is it your testimony that you
5 have attended courses dealing with parental alienation in
6 the last five years?

7 A. Yes.

8 Q. And is it your testimony that you attend those
9 continuing education courses annually in the last five
10 years?

11 A. Yes.

12 Q. As far as research projects, have you published
13 any articles on parental alienation?

14 A. No.

15 Q. Have you had any clinical positions that deal
16 specifically with identifying parental alienation?

17 A. All of my forensic court work, yes.

18 Q. And when you mean "forensic court work," you
19 mean private practice work in conducting child custody
20 evaluations?

21 A. Yes.

22 Q. Have you ever held a position with -- strike
23 that.

24 Have you ever testified before in terms of
25 identifying parental alienation?

1 A. Yes.

2 Q. How many times?

3 A. Probably more than 50.

4 Q. And --

5 A. With that -- with that being the specific focus
6 of the testimony.

7 Q. And understanding my question, have you been
8 retained as an expert to specifically to identify and
9 discuss the signs of parental alienation and not in the
10 course of conducting a child custody evaluation?

11 A. No.

12 Q. So you have never actually testified as an
13 expert on just the topic of parental alienation having
14 not been also involved in the child custody evaluation
15 being conducted?

16 A. That is correct.

17 Q. Okay. Is that part of the reason that you met
18 with Mr. Crockett prior to commencing your work in this
19 case? Well, strike that. Let me ask it in a different
20 way.

21 Did you know at the time that you met
22 Mr. Crockett in December of 2019 that you would be
23 identified as an expert in parental alienation?

24 A. Yes.

25 Q. Okay. So is that why you met with him in 2019

1 to develop his side of the case so that you could state
2 an expert opinion on parental alienation?

3 A. I met with him in order to understand the
4 background and specifics of the case and the things he
5 was concerned about and the things he was alleging. And
6 also to make sure that he understood what my role was and
7 that we didn't have any miscommunication or
8 misunderstanding about what it was that I would be
9 willing to do versus not willing to do.

10 Q. Can you tell me what you told Mr. Crockett you
11 would not be willing to do?

12 A. Yes. What I told him -- I told him I would not
13 be willing to make any specific recommendations regarding
14 the child and access or possession for him or for the
15 mother.

16 I explained to him I have not evaluated the
17 mother and that even if I see indications that there is
18 parental alienation on mother's side, if I also see
19 indications that there's parental alienation on his side,
20 that also would be something that I would testify to.

21 And that without meeting with the mother and
22 without meeting with the child, I cannot make and will
23 not make any definitive statements regarding this mother
24 or regarding the child. That's not my role.

25 So that even if you have -- I explained to him

1 even if you have a case where here you've got some pretty
2 clear indications that it looks like, for example,
3 parental alienation. I can explain to the Court what
4 parental alienation is and I can explain to the Court
5 what I'm seeing that looks like it's occurring, but I am
6 not testifying as an expert saying it is occurring in
7 this case. I haven't seen -- I am not seeing Mom, I'm
8 not seeing child and it's not that kind of evaluation.
9 So I wanted make sure he understood.

10 Q. And forgive me, I need to make sure I
11 understand. So are you telling the Court that you intend
12 to discuss what parental alienation looks like and how it
13 could present in a given relationship but not
14 specifically as it applies to this child, this father,
15 and this mother?

16 A. Well, I think -- again, as an attorney, you
17 know I'll be answering the questions that I'm asked. So
18 an attorney, his attorney or you could ask, okay, look at
19 this statement right here by the mother. Is that the
20 kind of statement -- statement that a mother who may be
21 prone to parental alienation might make. And my answer
22 then would be yes. Let's say the example is "yes." Yes,
23 that's a statement that you might see that's consistent
24 with somebody who is engaged in parental alienation.

25 But if the attorney asks me the question, so

1 are you saying this mother is engaged in parental
2 alienation? My answer to that specific question is "I
3 can't say that." Even if -- like Mom has a deposition --
4 some deposition answers that are consistent with someone
5 who could be a parental alienator. I haven't evaluated
6 her, and I will not testify that she is a parental
7 alienator.

8 I can tell the Court what parental alienation
9 is. I can tell the Court what I think is consistent with
10 parental alienation. I can testify to my concerns about
11 the father and the child's relationship and where it is
12 now. He's given me phone recordings to listen to and I
13 understand the child doesn't even want to talk to him on
14 the phone at this point.

15 So attorneys can ask me hypotheticals, they can
16 ask me specifics, but in a case -- in any case like this,
17 I haven't evaluated the mother, I haven't evaluated or
18 seen the child, and I don't have all the information or
19 all the documentation in this case.

20 I can tell you from what I -- what I'm asked
21 and what I have seen, but I'm not -- I will not come in
22 as somebody who's going to specifically say this is
23 happening to this child for sure.

24 Q. Okay. Why would you accept the position to
25 testify as an expert regarding parental alienation in

1 this case when you have never done it in the past?

2 A. I have testified about parental alienation as
3 an expert in the past many times. I accepted that role
4 in this case because when the attorney contacted me, when
5 Ms. McKnight contacted me and wanted me to look at this
6 and had concerns about that, I agreed to accept that role
7 to look at that part of the picture and whether or not
8 that might be occurring in this case.

9 Q. Did you tell Ms. McKnight during that
10 conversation that you had not been published or worked in
11 this capacity as an expert previously having not been in
12 the course of a child custody evaluation?

13 A. Ms. McKnight has worked with me and known me
14 for 30 years. She was one of the first people who had me
15 on a child custody case that I was court appointed. So
16 she knows my curriculum vitae, she knows my background,
17 and she knows my expertise very well.

18 MS. HAYES: Objection; nonresponsive.

19 Q. (By Ms. Hayes) Did you tell Ms. McKnight that
20 you had not testified as an expert on parental alienation
21 in the past when you were not within the course of
22 conducting a child custody evaluation?

23 A. No, I don't believe that was a conversation we
24 had.

25 Q. Okay. Kind of jumping back. When we left off

1 with your list, we were talking about the negative
2 information that you received. Your next one that you
3 had mentioned was essentially her limitations you thought
4 were insufficient; is that correct? Ms. -- I'm sorry,
5 Ms. Frendle's limitations were insufficient; is that
6 correct?

7 A. Are you referencing her two-sentence statement
8 about the information she didn't review or waiting to
9 get?

10 Q. That's correct.

11 A. Okay.

12 Q. And I believe you testified earlier that you
13 thought that kind of catchall CYA language was just
14 insufficient; is that correct?

15 A. I think it's insufficient in this case, yes.

16 Q. Would you agree with me that you've reviewed
17 child custody evaluators in the past that oftentimes use
18 those kind of catchall phrases?

19 A. I don't recall seeing a child custody
20 evaluation that used that kind of a catchall phrase that
21 had -- was connected with not getting mental health
22 records from one of the parties or the child. I don't
23 recall seeing that in any of the cases I've reviewed.

24 Q. In all of the time -- well, the six occasions
25 that you've been retained as a rebuttal witness for child

1 custody evaluations, have any other been through Dallas
2 Family Court Services?

3 A. No.

4 Q. Do you know anything about Dallas Family Court
5 Services and how they advise their evaluators to list
6 their limitations?

7 A. No.

8 Q. And if you could just give me a concise
9 phrasing, how do you believe that the limitations should
10 have been stated as it specifically pertains to the
11 mental health records of the child?

12 A. Specifically for the mental health records of
13 the child, I think that Ms. Frenkle could have stated due
14 to not receiving the records of Dr. Chandler, who is
15 providing treatment for the child for a period of time,
16 if those records contain information that suggest that
17 the child was previously reporting problems in the
18 mother's home such as behaviors such as biting him,
19 sleeping in the same bed with him, those kind of
20 behaviors, if Dr. Chandler's records regarding the child
21 indicated that he was very happy and doing very well with
22 the father and in the father's home, the 50 percent of
23 the time that he was there, and that there were concerns
24 with some of the things going on when he had time in the
25 mother's home, then the limitations statement should list

1 that out and say that might result in a different
2 recommendation from this social study expert.

3 Q. Do you believe whether or not those incidents
4 occurred, despite CPS's ruling them out, is an essential
5 element of further investigation that Ms. Frenkle was
6 required to pursue?

7 A. Yes. Actually, I do. Or at least make it a
8 very clear limitation statement that makes it clear that
9 if those records of Dr. Chandler is reporting something
10 very different than what the mother and Dr. Ritzi may be
11 recording or testifying to, that there definitely could
12 be an issue about the child being coached or not.

13 Q. Do you know whether or not those records were
14 reviewed by CPS prior to ruling out the incidents?

15 A. Oh, that I don't know. That would be unusual.
16 I have never seen CPS investigators get a copy of mental
17 health records. They speak to us. You know, I get
18 interviewed all the time when a child's undergoing a --
19 when CPS is investigating a situation.

20 And if I make the report, they've got my
21 written report that I put into the Austin, you know,
22 window when I make my reports as a mental health
23 professional. But no CPS investigator has ever asked for
24 any of my records.

25 Q. If it's determined that CPS communicated with

1 the child's mental health providers or past providers
2 prior to ruling out the allegations, would that alleviate
3 your concerns as to this issue?

4 MR. MCELYEA: Objection; form.

5 THE WITNESS: No, it would not.

6 Q. (By Ms. Hayes) So you believe it's incumbent
7 upon a child custody evaluator to essentially disregard
8 the investigation that CPS conducted and do their own to
9 ensure that it was handled correctly?

10 A. No.

11 Q. Do you not -- let me ask you this: As a child
12 custody evaluator, do you trust the outcome and
13 resolution by CPS?

14 A. Yes.

15 Q. Do you make a determination about whether it
16 was accurate or not based on your review of the facts?

17 A. No.

18 Q. Do you take it for what it says, that an
19 allegation has been ruled out?

20 A. Yes.

21 Q. So if the complete record -- well, strike that.

22 If a complete investigation occurred and that
23 included talking to the mental health providers of a
24 child prior to ruling out an allegation, tell the Court
25 why do you believe it would be relevant and you would

1 have -- be incumbent upon you to go beyond that
2 investigation result.

3 A. Because a social study or a child custody
4 evaluation is not a CPS investigation. A CPS
5 investigation is looking at alleged abuse or neglect and
6 trying to determine if that occurred in that instance or
7 series of instances that's been reported.

8 A CPS investigator is not looking at the
9 functioning of the child, the welfare of parent-child
10 relationships and not making recommendations in the best
11 interest of the child similar to what a social study or a
12 child custody expert is doing.

13 When you conduct a child custody evaluation,
14 the mental health records from a mental health provider
15 who has worked directly with the child, you're not just
16 looking to see about specific CPS reports, you're looking
17 at the whole picture of the child.

18 How is the child functioning? Does the child
19 have anxiety? What is the nature of the relationship
20 with the child and in this case, it would be the father
21 who was present with him, maybe at all of those
22 appointments, maybe at some of those appointments. I
23 don't know because nobody's -- she didn't look at the
24 records. I didn't get the records.

25 But those records are incredibly important.

1 And that's beyond the CPS investigation of a specific
2 report that's been made in a case.

3 Q. Just so --

4 A. So this --

5 Q. I'm sorry. Go ahead.

6 A. So Dr. Chandler's records are related to the
7 overall health, welfare and the picture of how the child
8 is functioning, in addition to the father since the
9 father was also seen by him.

10 They're very relevant when you're conducting a
11 full custody evaluation, in my opinion.

12 Q. Just to be clear are you telling the Court that
13 the father has not provided you with the records of
14 Dr. Ritzi to review prior to your testimony in this case?

15 A. I don't recall looking at Dr. Ritzi's treatment
16 records. However, I may have. If I looked at them,
17 they're in my list.

18 Q. Well, assuming, Dr. Milburn, that I haven't
19 been provided this October report that you speak of and
20 the only one I can rely on is your July 7th report, I am
21 asking you whether or not you reviewed voluminous
22 counseling records of the child.

23 A. Let me look.

24 Q. Okay.

25 A. Because I can answer that pretty quick for you.

1 And would you like me to just read real quick.
2 Because I can go through the list at least and read off
3 some of these.

4 Q. I'd appreciate that. Thank you.

5 A. You bet.

6 So B & E Center letter dated March 30th, 2021,
7 Hannah House forms filled out by Mr. Cunningham in
8 February of 2020.

9 He wrote -- Dad wrote me a letter. I reviewed
10 that.

11 I've got the FLP Family Center letter dated
12 August 17th, 2021.

13 I have FLP records for supervised visitation.

14 The polygraphic examination of the father
15 conducted on 12/11/19 and the polygraphic examination of
16 the father conducted on January 8th, 2020.

17 The forensic mental health assessment of the
18 father by Dr. James Davidson completed 8/2020.

19 The deposition of Robert Cunningham dated
20 February 21st.

21 Transcript of the testimony of Nikki dated
22 December 17th, 2019.

23 I have got -- one, two, three, four
24 certificates of completion of things by Dad like
25 parenting in the middle, parallel parenting course,

1 parent education and family stabilization and rules for
2 high conflict divorce custody battles.

3 I have reviewed the stepfather doing a video
4 recording in October 2020 at the supervised visitation
5 facility with the child present.

6 Audio recordings of the father and child
7 interacting on the phone.

8 The amicus email from 9/23/2020.

9 A video recording of Logan at FLP 9/26/2020
10 made by the stepfather.

11 Video recording of Logan at Hannah's House by
12 stepfather on 6/6 visit.

13 Thirteen phone calls between the father and the
14 child.

15 Again you know I saw the custody evaluation
16 report by Jennifer Frendle back from August 8th, 2019.

17 The Dallas Police Department child abuse unit
18 forensic interview notes from July 27, 2017.

19 The CPS records.

20 The WFAA news report regarding the father's day
21 out with child and podcast.

22 The podcast of the child with Ed "Too Tall"
23 Jones.

24 Jennifer Frendle's deposition on December 4th,
25 2019.

1 And I got to the Hannah House -- Hannah House
2 notes for supervised visitation.

3 Q. Okay.

4 A. So that's everything that I saw.

5 Q. Okay. So the answer would be, no, you did not
6 receive the records for the child's counseling sessions?

7 A. No, I did not.

8 Q. Do you think it would be important to review
9 those prior to making any expert recommendations
10 regarding alienation?

11 A. I'm not going to make any expert
12 recommendations regarding alienation. I will be
13 offering, if I'm asked, an expert opinion regarding what
14 parental alienation is and whether or not there appears
15 to be some things consistent with this family that I have
16 been so shown that it could fall into that category.

17 Q. Do you think that the child's counselor would
18 be suited to make a recommendation similar to that about
19 whether or not she believes parental alienation is
20 occurring in the child's life?

21 A. I -- I don't know the child's counselor. Is
22 this Dr. Ritzi?

23 Q. Correct.

24 A. Okay. Dr. Ritzi has been involved in the case
25 for a long time and I don't know her curriculum vitae.

1 If she has worked with parental alienation, and I suspect
2 she probably has, then I would suspect that she would be
3 able to offer the similar kind of opinion with a -- with
4 a difference being that she has worked directly with the
5 child. So she'll have -- she would have what would be
6 considered more knowledge about the child with the direct
7 contact with the child.

8 Q. Sure. And she's better suited to make that
9 recommendation considering she's now met with all the
10 parties; right?

11 MR. MCELYEA: Objection; form.

12 THE WITNESS: Yeah, well -- and I'm not
13 sure. When you say "recommendation" I always have this
14 hesitation because she should not make a recommendation
15 regarding possession and access to the child. That's
16 limited by law to the child custody evaluator. So that's
17 really Ms. Frendle's role.

18 She can talk in more general, similar to
19 myself, about recommendations that are often made in
20 cases where there is or is not parental alienation. But
21 she would need to be careful and I try to be very careful
22 to not make recommendations in a specific case regarding
23 s specific child even if we're treating them, if our role
24 is not child custody evaluator.

25 Q. (By Ms. Hayes) Understood. And I'm not asking

1 that she make recommendations regarding possession,
2 access, or conservatorship. I'm saying she can advise
3 the Court on whether or not, having met the child and the
4 parties, parental alienation is occurring by either
5 party?

6 A. Yes, she could certainly do that.

7 Q. Okay. And she would be suited to that given
8 that she has so much information; is that correct?

9 MR. MCELYEA: Objection; form.

10 THE WITNESS: Again, not knowing her
11 background, I would say I would assume she would be.

12 Q. (By Ms. Hayes) Okay. And if it's determined
13 that she had only had two introductory sessions with the
14 child prior to the conclusion of the child custody
15 evaluation, would you still think that her records would
16 be essential?

17 A. Yes.

18 Q. Okay. Now moving on, you stated that
19 Ms. Frenkle failed to assess the cultural issues
20 impacting the child. You had mentioned earlier that you
21 believe the mother's cultural background is relevant.
22 Can you tell me why you think it is pertinent that she
23 assess the cultural issues impacting the child?

24 A. Yes. When she makes a conclusion that the
25 father is racist against a certain ethnicity, Vietnamese,

1 then you've got a child who is 50 percent of that
2 ethnicity. And so assessing -- having some kind of
3 assessment of that, mentioning that in the report,
4 talking about it as a possible issue, I think it's
5 important.

6 Q. And do you recall who indicated that
7 Mr. Crockett was a racist?

8 A. Well, my understanding is it was the mother.
9 And -- and in response to that, I got a list of different
10 ethnic races that father has dated and been with to
11 indicate -- that he gave me to indicate he is not. And
12 that it's an area that a social study expert should be
13 assessing.

14 MS. HAYES: Objection; nonresponsive after
15 "my understanding is the mother."

16 Q. (By Ms. Hayes) Do you know whether or not the
17 child -- and forgive me. I can't remember if I asked
18 you.

19 Do you know if the child made any statement
20 regarding father's racial comments to him?

21 A. I don't recall.

22 Q. Okay. Would it be concerning for you if a
23 child was reporting that the father had made racial
24 statements to the child?

25 A. It depends on what the father said. It could

1 be concerning, it might not be concerning.

2 Q. Can you think of a situation where any parent
3 would make racial statements to the child where that
4 would not be concerning as a child custody evaluator?

5 A. Well, I don't know what racial statements were
6 supposedly made. And yeah, I imagine -- let's say
7 they're having a Vietnamese soup, you know a pho soup or
8 something and Dad says your mom cooks this great, you
9 know, your grandma taught her. Y'all are part of
10 Vietnam. It's a great meal and it's wonderful. That
11 would certainly be a statement that involves talking
12 about race and not be a negative racial statement.

13 Q. And obviously, Dr. Milburn, I'm focusing on the
14 negative racial statements that have been made to this
15 child. Would it be concerning for you if any parent made
16 negative racial statements to a child about any race?

17 A. Well, it would be. I just don't know what
18 those statements were alleged to be in this case.

19 MS. HAYES: Objection; nonresponsive after
20 "it would be."

21 Q. (By Ms. Hayes) You understand there is an
22 amicus attorney in this case; correct?

23 A. Yes.

24 Q. And has anything been provided to you -- well,
25 strike that.

1 Do you believe it's improper for the amicus
2 attorney to involve themselves in any part of the child
3 custody evaluation process?

4 A. No, I -- I wouldn't say that's improper.

5 Q. Do you consult with the amicus attorney when
6 you're conducting a child custody evaluation and there is
7 an amicus involved?

8 A. Yes.

9 Q. What type of things do you ask the amicus
10 attorney when you're conducting a child custody
11 evaluation and there's an amicus involved?

12 A. If the amicus has been involved prior to me
13 being appointed as a child custody evaluator, then the
14 amicus is treated by myself and by my office similar to
15 each attorney with the -- each of the attorneys that
16 represent the parties with the exception that the amicus
17 is -- I do do an interview with the amicus to see if
18 there's any information that I'm missing that they want
19 their office to provide to me, and I ask questions if
20 there's any insight that they have that they think I
21 might need to know.

22 You know, an amicus attorney, in my experience,
23 all these years, typically does a very good job meeting
24 with the kids, going to the homes, you know, checking
25 out, talking with school teachers. Sometimes the amicus

1 has done an amazing amount of work. And so I do like to
2 hear from that person who is outside of the emotional
3 context of the high conflict custody fight because that
4 insight as a professional is helpful.

5 Q. If an amicus attorney gives you information in
6 the case during the course of your investigation, are you
7 obligated to verify all facts given to you by the amicus
8 as well?

9 A. Well, under the Texas Family Code, it says that
10 I must verify all information given to me by an amicus --
11 or given to me by "anybody" that I'm considering relevant
12 or important.

13 So yes, I believe if an amicus attorney gave me
14 information that was going to be a part of or important
15 on my recommendations for the best interest of the child,
16 I believe I'd have an obligation to verify, if I can
17 possibly verify, the information that I'd been given.

18 Q. Do you note the information that comes from an
19 amicus in your child custody evaluation report?

20 A. Yes.

21 Q. And do you specifically state this is the
22 information that you received from the amicus attorney?

23 A. Yes, I would. I can't recall a case where an
24 amicus sent me anything directly. So I have never had
25 that happen before. But I do know similar to a

1 collateral interview, when I interview an amicus, there's
2 always a small paragraph just like the parent facilitator
3 or parent coordinator if they're cut in there, the
4 Court-appointed therapist. Whoever it is I'm
5 interviewing, they have -- the amicus has a paragraph
6 where I document what it is that they have said to me.

7 Q. Do you recall where in the child custody
8 evaluation of Dr. Frenkle it mentions Dad being a racist?

9 A. No. Not off the top of my head.

10 Q. Okay. I'm just -- let me ask you this: How
11 long ago did you last review the child custody
12 evaluation?

13 A. That would have been 2019.

14 Q. Okay. Now one of the other things that you
15 mentioned were concerning to you and I'm using this kind
16 of blanket statement again because that's what I see is
17 "offered opinions without completing each basic element
18 of the evaluation."

19 Do you remember stating that?

20 A. Yes.

21 Q. And I -- when I asked you that question
22 earlier, you gave me this entire list that we have been
23 discussing.

24 So does "offered opinions without completing
25 each basic element of the evaluation," is that something

1 other than the list you've given me?

2 A. No.

3 Q. Okay. So you did not cite in your report to
4 specific sections of 107 that you thought were
5 insufficient; is that right?

6 A. I think I cited each specific section.

7 Q. Okay.

8 A. I think I -- I think as you go through the
9 report, it'll see -- you'll see where I cite the section,
10 the subsection, the number, and then I'll give paragraph
11 form regarding the things that I think were lacking or of
12 concern.

13 Q. Okay. And -- a few of these are duplicates so
14 I don't, I don't want to -- you indicated that you
15 thought that Ms. Frenkle wrote more negative things about
16 father than mother; is that correct?

17 A. Yes.

18 Q. And you thought that showed an inherit bias; is
19 that correct?

20 A. The difference between the two links of writing
21 appears to show a bias.

22 Q. And that's just because she had more negative
23 things to say about Dad than she did about Mom?

24 A. Or it could be because she had a bias in favor
25 of Mom so she failed to report negative information that

1 she knew about Mom and made sure to cover everything she
2 thought negative about Dad.

3 Q. Sure. But it could also be, Dr. Milburn, that
4 there's just a lot of bad stuff to say about Dad and not
5 so much about Mom; right?

6 MR. MCELYEA: Objection; form.

7 Q. (By Ms. Hayes) Isn't that right?

8 A. It could be.

9 MR. MCELYEA: Objection; form.

10 Q. (By Ms. Hayes) I couldn't hear you,
11 Dr. Milburn.

12 A. It could be.

13 Q. Okay. And so have you ever had somebody
14 critique your child custody evaluation?

15 A. Many times.

16 Q. And did you have -- you've had experts that
17 have been rebuttal witnesses to your child custody
18 evaluations?

19 A. Yes, I have.

20 Q. And you would agree with me that there's always
21 a difference of opinion about what could or could not
22 have happened differently amongst experts; correct?

23 A. That's correct.

24 Q. Lastly, I want to talk about the Lauriston
25 versus Logan issue. On the list of items that you gave

1 me, you indicated that the -- you felt that Ms. Frenkle
2 dismissed the Lauriston versus Logan issue; is that
3 right?

4 A. I don't know about the term "dismissed." I
5 don't feel like she gave it much consideration. It is in
6 her report. She did write that Lauriston told her he
7 want to be called Lauriston; however, what was missing
8 was an acknowledgment that the child was in both
9 households 50/50 and in the father's household was called
10 Lauriston and the school officials and the people working
11 with him, interacting with him were calling him Lauriston
12 at the time, while in the mother's home she was calling
13 him Logan.

14 Q. Are you aware that the Court ordered that the
15 parents would call them different names in different
16 households?

17 A. No, I'm not aware of the court order.

18 Q. Okay. If it -- you learned that the Court had
19 ordered that each parent could call the child whatever
20 name they wanted while they had possession of the child,
21 would that alleviate that concern for you?

22 A. It wouldn't alleviate the concern that I have
23 about a child being called by two different names.

24 Q. Okay. And you would agree with me, as an
25 evaluator, if the Court had put an order in place, that

1 you as the evaluator do not have the right to overcome
2 what the Court has ordered; right?

3 A. That's true, yes.

4 Q. And are you aware now that the child likes to
5 be called Logan?

6 MR. MCELYEA: Objection; form.

7 THE WITNESS: I'm not aware now of what the
8 child likes to be called. I haven't spoken to the child,
9 and I don't have information on that.

10 Q. (By Ms. Hayes) Okay. And again, you haven't
11 received the counseling notes from Dr. Ritzi regarding
12 these subjects; is that correct?

13 A. No.

14 Q. Have you ever been threatened as a child
15 custody evaluator during the course of your
16 investigation?

17 A. Oh, yes.

18 Q. And were you threatened by a party or an
19 attorney or other individuals?

20 A. Oh, party. I can't imagine an attorney doing
21 that.

22 Q. You would be surprised.

23 I -- how many times has that occurred?

24 A. One huge one stands out where the father wrote
25 a death threat and he didn't sign it. He typed it out,

1 put it under my door in a Collin County case, and I
2 believe Judge Ulnar was the judge on the case at the
3 time. And the father basically threatened that if I
4 showed up in court and testified on whatever day it was,
5 I would not see next day.

6 So it was a case where I withdrew -- sent
7 notice to everybody and withdrew. He was charged -- took
8 'em forever to get the fingerprint analysis back. He was
9 charged with a third-degree felony and they had his
10 trial, I believe in Judge Roach's court, and he was given
11 a deferred adjudication of seven years where if he came
12 anywhere on the -- within a mile of my office building in
13 Plano or I believe anyone in the city of West Tawakoni
14 that he would be sent to prison and serve the entire
15 duration of the seven years. That's my best
16 recollection. It was a pretty scary time.

17 MR. MCELYEA: He should have gone to prison
18 in the first damn place.

19 Q. (By Ms. Hayes) At any rate what -- how many
20 times has that occurred?

21 A. That one occurred. I had someone throw
22 construction materials through my window in the Plano
23 office. I had someone attempt to set fire in the upper
24 part of the Plano office over where my records were held,
25 that we were pretty sure were trying to destroy some

1 custody records, hence they are held in a secure location
2 now.

3 I think that's pretty much it. I have had one
4 for sure that we identified who and then two other scary
5 kind of behaviors.

6 Q. And on the two that you had scary behaviors,
7 did you continue and fulfill your duty to perform the
8 child custody evaluation?

9 A. In those two, yes, because I couldn't identify
10 who it was -- who was responsible for that. In the one
11 where he threatened my life, no.

12 Q. Sure. Understood.

13 Have you had a parent threaten you during the
14 course of your child custody evaluation that if you don't
15 act -- or conduct it in certain way that they'll report
16 you for your -- against your license?

17 A. Yes.

18 Q. How many occasions has that occurred?

19 A. Generally -- I want to say maybe just a couple
20 because most parents are bright enough to know not to do
21 that when they start the evaluation. It's usually not
22 until we get toward the end of many months and they're
23 starting to suspect or think it's not going their way and
24 then they'll make those kinds of threats or those kinds
25 of statements.

1 Q. How on the --

2 A. But years ago --

3 Q. I'm sorry.

4 A. Sorry.

5 Q. On the two occasions that you just referenced
6 where you can recall that occurred, did that affect the
7 recommendations that you gave in the case?

8 A. Both of those cases were at the end, and I
9 don't believe they affected the recommendations that I
10 made. One involved a father who had thrown a Molotov
11 cocktail. The FBI then arrested him shortly after that
12 appointment. And I think he went to the federal pen so
13 the recommendation didn't change on that one. He had
14 blown up a vehicle, blown up a house or something there
15 in Collin County.

16 And then the other was a child sexual assault
17 case where as I came to the end and he was making those
18 kinds of statements to me, that was at the time that the
19 criminal courts then took him into custody and I believe
20 he -- the child was under ten. So I think he got 20 to
21 life. So those -- those were those two cases that I
22 recall.

23 Q. And you indicated that --

24 A. You really have to be pretty unstable --

25 Q. You would agree with me that it's bad behavior

1 for a parent to threaten the child custody evaluation
2 [sic] during the evaluation process; is that true?

3 A. Yes.

4 Q. And have you -- you indicated you reviewed
5 Jennifer Frendle's deposition in this case; correct?

6 A. I do recall looking at it.

7 Q. Okay. And you saw that -- she also stated or
8 testified that Mr. Crockett has threatened her during the
9 child custody evaluation process?

10 MR. MCELYEA: Objection; form.

11 THE WITNESS: I don't recall reading that.

12 Q. (By Ms. Hayes) But you would agree with me
13 that if Ms. Frendle testified to such threats during her
14 deposition that that could lead to some negative
15 inferences regarding Dad's credibility; right?

16 MR. MCELYEA: Objection; form.

17 MS. HAYES: What's your objection?

18 MR. MCELYEA: Assumes facts not in evidence
19 and it's argumentative.

20 Q. (By Ms. Hayes) You can answer, Dr. Milburn.

21 A. I'm not sure -- inferences by who? You mean
22 inferences by Ms. Frendle about Dad?

23 Q. Yes, ma'am.

24 A. Yes. If -- if Ms. Frendle felt that the dad
25 was threatening to file a board complaint against her or

1 sue her or something and made those statements to her, I
2 could see where that, you know, could potentially cause
3 Ms. Frenkle to have a negative impression of the dad. I
4 think it would actually be human to form that kind of
5 feeling or impression.

6 Q. Now you've indicated that there have been some
7 materials that Mr. Crockett has given you over the
8 last -- I'm going to say nine months after your July --
9 excuse me, your January 7th report; right?

10 A. Yes.

11 Q. And you're aware that those same materials were
12 not provided to Jennifer Frenkle; correct?

13 A. I don't know what's been provided to her or
14 not.

15 Q. Well, for example, the recordings that you
16 referenced earlier that you were given by Mr. Crockett,
17 those were recordings that occurred between him and the
18 child; is that right?

19 A. Yes.

20 Q. And those were recordings that occurred after
21 the child custody evaluation had occurred?

22 A. Well, yes, the first one. But my understanding
23 from the father is Ms. Frenkle is conducting a current
24 one. So I would hope he provided her with that
25 information in this current one.

1 Q. But --

2 A. I'm so sorry. The video is cutting out a
3 little bit.

4 Q. That's okay. I'll take a minute if you need to
5 catch up.

6 A. Okay. You just go -- your video goes kind of
7 bland for a little bit and you freeze. So I've heard
8 your questions so far, but you may have to repeat
9 yourself at times.

10 Q. I have bad news --

11 A. My connection is not always that good out here.

12 Q. Okay. Can you hear me now, Dr. Milburn?

13 A. Yes.

14 Q. Okay. And if I need to slow down, just yell at
15 me to slow down or if I need to repeat, just let me know,
16 okay?

17 A. Okay.

18 Q. And I guess my point being is that at least in
19 the child custody evaluation that you reviewed previously
20 you -- the recordings that you reviewed did not exist;
21 right?

22 A. Yes.

23 Q. The FLP records and the Hannah's House records
24 and these additional records that you have received,
25 those are associated with visits that occurred after the

1 child custody evaluation was completed in 2019; correct?

2 A. Yes.

3 Q. Okay. And your hope, at least what it sounds
4 like, is that these are things that have now been given
5 to Dr. Frendle so when she does an addendum, they can be
6 included; is that right?

7 A. Yes.

8 Q. Okay. And now that I understand that you are
9 being designated as an expert in the area of parental
10 alienation, can you -- have you formed the basis -- well,
11 strike that.

12 Have you formed an opinion regarding parental
13 alienation in this case?

14 A. Yes.

15 Q. And do you believe parental alienation is
16 occurring?

17 A. I believe that some of mother's behaviors are
18 consistent with what we see with parents who are
19 alienating. And that the outcome of the current
20 relationship between the father and child, where the
21 child is refusing to see the father, doesn't want to
22 speak to the father, in the audio recordings doesn't want
23 to have anything to do with the father, won't tell the
24 father he loves him, those types of behaviors in the
25 child could be an indication that the child has been

1 alienated from the father.

2 Q. Do you see father's behaviors that are
3 consistent with parental alienation?

4 A. I think that there was potential parental
5 alienation at -- in the first evaluation process up until
6 he was supervised. I haven't seen anything since the
7 supervision or in the recordings of their interactions
8 that seemed like parental alienation to me.

9 He does have a tendency in his phone calls to
10 bring up the past. The -- he will talk about when --
11 I'll call him Logan because that's how he goes by now, I
12 understand, out of respect for him, that he'll talk about
13 like when Logan was a baby or having Logan's hair saved
14 or do you remember when you met -- I think one of it was
15 a Dallas Cowboys cheerleader, I think probably in a
16 podcast.

17 So Dad is bringing up things from the past to
18 the child in I think an effort to try and connect with
19 the child to remind the child of past memories. I don't
20 see a reaction from the child that's been necessarily
21 positive to that.

22 And I don't know if the father and child are in
23 therapy together to do some reunification therapy. I
24 think Dad told me it was ordered at some point but that
25 it hasn't started or hasn't occurred yet.

1 And so again those communications with the
2 father and the child I don't know if those are
3 problematic. I think the reunification therapist needs
4 to look it at those and be working, find out from the
5 child if they're problematic. And I don't think those
6 problem communications, if they are, are parental
7 alienation. I think Dad's just trying to remind the
8 child that, "Hey, I was here from the beginning and I
9 still love you."

10 Q. Have you reviewed any of the supervision notes
11 from any of the facilities regarding the visits between
12 the father and the child since supervised visits were
13 implemented?

14 A. I did.

15 Q. And did you -- have you reviewed all of them or
16 just some of them?

17 A. I think I reviewed all from Hannah's House and
18 I think those were all pretty good. I don't think there
19 was any conflict or issue there.

20 Q. Do you recall instances in your review of those
21 notes where the father had to be corrected by the
22 supervisors for making alienating statements?

23 A. I don't recall those.

24 Q. Okay. Would you have made note of those had
25 you seen those?

1 A. I -- I didn't detail what I saw. I'd have to
2 go back and look at my records. I would have made note
3 of those if I had -- if I had seen them, if they had
4 struck me. The conversations in his phone calls struck
5 me, you know, what he was talking about as being a
6 possible area of problem for him. I didn't see things in
7 the supervised visitation notes that struck me as being
8 significantly problematic.

9 Q. Do you believe it's healthy for a parent to
10 talk to the child about the litigation?

11 A. No.

12 Q. Would that have been something you would have
13 noted had you seen that in the supervised records?

14 A. I don't know that I would have noted it in a
15 way because that's not really -- when I looked at it, I
16 was looking to see if there were any huge problems, if
17 they were doing the supervised visits, which they were
18 and I didn't note it or recall it as being very
19 significant.

20 My experience with Hannah's House and with FLP
21 is that the professionals in both places are pretty
22 awesome. They step in really fast, they do a great job
23 protecting the kids. And it's -- they both have been
24 places that I really trust.

25 Is Hannah's House open still?

1 Q. No.

2 A. Yeah, see we lost that. That's so sad.

3 Q. And do you have any experience with B & E
4 facility?

5 A. I don't.

6 Q. Have you ever heard of The B & E Center?

7 A. Well, I got a -- there's an updated letter from
8 them and I don't know much about them. There was some
9 center that was providing supervision in another case, it
10 was another Dallas case and it was out toward Arlington.
11 And they seemed to be pretty good too. I just didn't
12 have as much experience with them over the years as
13 Hannah's House and FLP.

14 Q. Sure. And you're aware that FLP has disengaged
15 this family from services?

16 A. I am aware of that, and I am aware of why
17 father believes that that happened.

18 Q. Okay. And did you review the letter from FLP
19 to see the actual reason that they have disengaged the
20 family?

21 A. I don't believe so. I don't -- I can look,
22 though, real quick.

23 Q. What did father tell you was the reason that
24 FLP disengaged services with the family?

25 A. If I recall correctly, I believe he said that

1 the stepfather was recording the exchanges and recording
2 when they would arrive, that that violates the policy of
3 the supervising center. And I did see the two recordings
4 where the stepfather was -- had the child to go to the
5 visit where the child told the supervisor he didn't want
6 to go.

7 And in one of those I saw the stepfather
8 coaching the child, he didn't seem to have remembered
9 what he was going to say, and I saw the stepfather kind
10 of coaching him about what to say to the supervisor to
11 not go.

12 Q. So just to --

13 A. And the child --

14 Q. I'm sorry. Go ahead.

15 A. If a child won't go, it doesn't want to go into
16 the center, the supervising center is not going to force
17 them to do that.

18 Q. Just to be clear, your testimony is the father
19 has delivered recordings that he purports were recorded
20 by the stepfather; is that right?

21 A. I believe that's right.

22 Q. Okay. I'm just making sure I heard you right.

23 And do you know how many times a child has to
24 refuse to see their parent at FLP before FLP will
25 disengage services?

1 A. No, I do not.

2 Q. Do you know how many times the child in this
3 case refused to see the father prior to services being
4 disengaged?

5 A. I do not recall a specific number.

6 Q. Are you aware that the father in this case has
7 not visited the child at The B & E Center ever?

8 A. No, I'm not aware of anything with The B & E
9 Center.

10 Q. Would it concern you if there is a court order
11 allowing Dad to have access to the child at The B & E
12 Center and he does not accept that access?

13 MR. MCELYEA: Objection; form.

14 THE WITNESS: Any time a parent does not
15 accept access to a child is a concern to me.

16 Q. (By Ms. Hayes) And is whether a parent is
17 willing to utilize their possession something that you
18 consider when making a recommendation on parental
19 alienation?

20 A. Yes.

21 Q. But yet as an expert in this case, you haven't
22 been given any information regarding Mr. Crockett's
23 access to the child in the last year as it pertains to B
24 & E Center; is that correct?

25 A. The only thing that I received was a B & E

1 Center letter dated March 30th, 2021.

2 Q. And that was for what purpose?

3 A. I don't recall that letter.

4 Q. Okay. That's fair enough.

5 Have you -- you've testified previously that
6 you have become aware that the child no longer even wants
7 to speak to the father; is that correct?

8 A. That's what the child has said on the phone
9 recordings that I heard.

10 Q. Okay. And these are recordings that the father
11 made between the father and the child; is that right?

12 A. Yes.

13 Q. Are these audio recordings or are these video
14 recordings?

15 A. They're audio recordings with a transcript
16 also. So it -- as I went through them, he'll have an
17 audio recording and he'll have a transcript of the
18 communication.

19 Q. Okay. And have you matched up the transcript
20 to the audio recordings to ensure that they are identical
21 in nature?

22 A. I reviewed a handful of them and they appear to
23 be identical.

24 Q. And what was the purpose, if you know, that you
25 were given those recordings?

1 A. I think Dad was wanting to provide me with
2 information to support his claim that his relationship
3 with his son is deteriorating outside of his doing
4 anything that would cause that deterioration.

5 So for example, if the child -- the child was
6 talking to him, very engaged, sharing information and in
7 one phone call in October of 2021, the child tells him,
8 "I love you," Dad says, "I love you back," it's a very
9 positive kind of communication between the two of them,
10 and then by January 18th of 2022, the child says he
11 doesn't love him and he doesn't want to see him. And
12 says he doesn't know why. And that kind of continued.

13 Q. Did you and Mr. Crockett have any
14 communications about how often he physically sees the
15 child?

16 A. I believe he had supervision and when -- and my
17 understanding was that there was -- there has been --
18 there was some contact going on. COVID closed things
19 down and the supervision closed down. I believe the
20 amicus worked to arrange some time, but it sounds like
21 it's been very disjointed. Not -- not at a regular kind
22 of scheduled contact.

23 Q. When was --

24 A. I don't know if the child is having any contact
25 with him at this point.

1 Q. When was the last time you had a conversation
2 with the father in this case, Mr. Crockett?

3 A. On October 21st of 2021.

4 Q. And do you recall if he indicated to you at
5 that time whether or not he was visiting his child?

6 A. I recall him telling me that they were supposed
7 to go to therapy, parental reconciliation, and that he
8 was having phone conversations and he obviously is
9 because I have a copy of some of those recordings. And I
10 don't -- but I don't recall off the top of my head what
11 his contact was at that point.

12 Q. Okay. Has Mr. Crockett made any
13 representations to you or shared any opinions with you
14 about the amicus attorney in this case?

15 A. Not that I recall.

16 Q. You indicated that the amicus attorney had made
17 efforts to ensure contact between the father and the
18 child. Who gave you that information?

19 A. It had to have been the father.

20 Q. Okay. If you have seen statements by the
21 mother that you think are concerning regarding parental
22 alienation, and if you've reviewed behaviors of the
23 father that you think are concerning regarding parental
24 alienation, is it your plan to come into court and
25 testify that you've seen this on both sides?

1 A. Well, I think it's my plan to come into court
2 and to come and testify, answer the questions y'all ask
3 me.

4 Q. Right. And if I ask you that question, that's
5 what you're going to tell the Court, you have seen it
6 both directions; right?

7 A. I'm going to tell the Court that I have seen
8 instances on Mom's side and in Mom's deposition testimony
9 that are suggestive of parental alienation. And that the
10 child's decreasing contact with the father and
11 unwillingness to want to talk to the father based on the
12 child's statement to the father raises concerns that
13 parental alienation is going on by the mother.

14 And that Ms. Frenkle, I saw in her report, had
15 some concerns about father's possible parental alienation
16 and that that could have been occurring prior to the
17 point that this all got brought back into court.

18 MS. HAYES: Objection; nonresponsive.

19 Q. (By Ms. Hayes) Just a yes or no. If I ask you
20 the question regarding whether or not you've seen
21 concerning behaviors on both sides, is your answer going
22 to be, to the Court, yes?

23 A. Yes. I have seen concerning behaviors on both
24 sides.

25 Q. Okay. And when you have a situation like that

1 where you have concerning behaviors on both sides, how
2 does that affect the recommendations when you are
3 performing a child custody evaluation?

4 A. It depends on what the concerning behaviors
5 are.

6 Q. In this instance, if the father has refused to
7 visit the child for a year at The B & E Center, would it
8 be important for you to know that, so that you can make a
9 fair representation to the Court about the reasons the
10 child no longer wants to speak to the father?

11 MR. MCELYEA: Objection; form.

12 Q. (By Ms. Hayes) That's a terrible question.
13 I'm trying to see if I can clean it up.

14 A. But I think I can answer you.

15 Q. Okay.

16 A. Yes. And typically the way I get that
17 information is when there's a trial, I prefer them in
18 person than on Zoom, I usually am able to sit there
19 through the course of the testimony. So I'm able to hear
20 that testimony as I'm sitting in the courtroom, which
21 allows me when I'm on the witness stand as the expert to
22 be able to answer questions more directly about that.

23 So that the attorney doesn't necessarily have
24 to ask a hypothetical question. They can ask me a
25 question such as you heard so-and-so testify to this,

1 based on the knowledge of this, do you have any concerns
2 as an expert? And then I will tell you my concerns.

3 Q. You understand that Mr. Crockett in this case
4 is the Petitioner; right?

5 A. Was that the original case? Is it still the
6 same as the very original one all the way back in 2017?

7 Q. Yes, ma'am, he's still the petitioner. Do you
8 understand that?

9 A. Okay. Well, I wasn't aware. It's been several
10 years. So okay.

11 Q. And so he gets to go first and he gets to put
12 on his witnesses first. Do you understand that?

13 A. Yes.

14 Q. And so the only thing you're going to get to
15 hear before you testify is what he wants y'all to hear,
16 through his witnesses; do you understand that?

17 A. Yeah, unless you turn around and say we want
18 her ordered to stay here, Judge, to hear these other
19 witnesses and then you recall me to ask me -- to have me
20 answer questions based on what those witnesses have
21 testified to.

22 Q. Understood. And I guess my question is: Would
23 it be helpful for you to have all the information
24 reviewed prior to coming in and giving testimony about
25 whether or not alienation is occurring in this case?

1 A. It's always helpful to review all the
2 information before coming in and testifying. But my
3 experience really has been that attorneys such as
4 yourself, y'all are very good at what y'all do. And so
5 either I'm there in the courtroom and I listen to the
6 testimony, or I'm given information when I'm on the
7 witness stand where I'm able to respond to that.

8 Q. Okay. And I'm jumping around here because I'm
9 trying to clean up some loose ends, Dr. Milburn, so
10 forgive me.

11 Have you had a situation when you're conducting
12 a child custody evaluation and the parent has -- one
13 parent has brought in -- or both for that matter, any
14 parent has brought in voluminous information, bankers
15 boxes of information for you to review?

16 A. They always do.

17 Q. And have you had situations where one parent
18 brings in voluminous information and the other parent
19 doesn't?

20 A. Yes, I have had those cases.

21 Q. And in those specific cases, do you still
22 review the volumes of information that one parent
23 provided you?

24 A. Yes, I do.

25 Q. And do you consider that to be unbalanced given

1 that the other parent only provided you some information?

2 A. No.

3 Q. Why --

4 A. Because I also take all of that and I go back
5 to the first parent and tell them what I have and offer
6 them the opportunity to answer for every allegation and
7 every piece of information in all of those banker boxes
8 if it's relevant.

9 Q. Does it make a difference to you who is paying
10 the bill when you are conducting a child custody
11 evaluation?

12 A. No.

13 Q. So if you were a private court-ordered
14 evaluator and each parent is ordered to pay 50 percent,
15 do you think that is fair that each parent pay 50 percent
16 when one parent is providing you 15 hours of work and the
17 other parent is providing you 5 hours of work?

18 A. I think that it's the question of fairness
19 can't really be asked by me. I think the judge usually
20 orders 50 percent if both parents can pay. Sometimes the
21 Court orders a hundred percent for one parent to pay
22 because they may be extremely wealthy. I have had a lot
23 of cases like that in Dallas where one parent pays for
24 the whole thing.

25 I'm aware of -- my fee structure is not what

1 other experts are and so I am sometimes shortchanged if I
2 turned around and figured out how many hours of work I
3 put on something and the actual pay. I feel like I'm
4 working for less than what you get paid at McDonald's
5 when they bring me in four banker boxes.

6 But I still look through all the material, even
7 if I'm getting paid like a McDonald's cashier because
8 we're making recommendations in the best interest of
9 children and these children are important. And the court
10 expert has a lot of weight with the judge, so I look at
11 it all. Even if I'm sometimes sad that it's taking me an
12 extraordinary amount of time.

13 Q. And is it your plan after the addendum comes
14 out to review the addendum of Dr. Frendle and update your
15 report for the Court?

16 A. That was not my plan. No one has asked me to
17 do that.

18 Q. Okay.

19 MR. MCELYEA: If we do that, Ms. Hayes,
20 we'll be glad to give it to you promptly.

21 Q. (By Ms. Hayes) How long does it generally take
22 you -- and I know that's such a sad word, generally. But
23 historically, what is the average amount of time it takes
24 you to complete a child custody evaluation just a
25 standard child custody evaluation?

1 A. Four months.

2 Q. And do you know how long it took Ms. Frendle to
3 conduct hers in this case?

4 A. I don't recall.

5 Q. Does the time that it takes you to complete a
6 child custody evaluation vary based on the number of
7 cases you're carrying at the time?

8 A. Yes.

9 Q. Meaning back in 2016 when you were -- I'm sure
10 overwhelmed with child custody evaluations, were you
11 still averaging about four months?

12 A. That was a little closer to six months. And I
13 had Dr. Monica Schocken working for me as a forensic
14 staff member. So -- and I had an office manager who was
15 working for me. So the cases worked much more quickly
16 because I had staff I was paying, whereas now it's only
17 me.

18 Q. I understand. And do you know whether or not
19 Ms. Frendle has any staff to assist her?

20 A. I don't know.

21 Q. Okay. As far as the financial status of the
22 parties, do you look -- when you're conducting a child
23 custody evaluation, do you look at the financial status
24 of the parents?

25 A. Yes.

1 Q. Do you -- if both parents are, you know, middle
2 class to upper middle class, does that affect your child
3 custody evaluation recommendations at all?

4 A. No. It's not normally about what the
5 socioeconomic standards are between the households. If I
6 have a family sometimes though that has a very wealthy
7 parent on one hand and a parent who is kind of struggling
8 to just meet the child's needs, clothing and stuff, I
9 will sometimes include a recommendation in the evaluation
10 that the very wealthy parent pay for all extracurricular
11 activities, pay for private school.

12 You know I don't typically -- I won't give a
13 number typically regarding child support, but I will
14 generally make some kind of recommendation where a very
15 wealthy parent covers those needs for the child so the
16 child can have the kind of experiences and opportunities
17 when in the mother's or father's home, vice versa.

18 Q. Do you have any information about the financial
19 status of either of the parties in this case?

20 A. I don't have any information about the
21 financial status. But I did look up to make sure they
22 were both employed. And I checked out the employment
23 information of Dad, which was not that hard to do. And
24 he's been around for a long time. And the employment
25 information of Stepdad, which also was not hard to do.

1 He had the -- you know, pet grooming taking care of place
2 for a long time, boarding. Or at least reasonably long.
3 Longer than just a few months. So I was able to confirm
4 that both of them were employed and had opportunity to
5 financially support the child.

6 Q. Have you -- you indicated earlier to me today
7 that you had one child custody evaluation that extended
8 over many, many years and you were ordered to give
9 quarterly reports.

10 A. Yes.

11 Q. Do you recall that testimony?

12 A. Yes.

13 Q. Do you think it was helpful to the Court to
14 have updated information given the longevity of the case?

15 A. Yes.

16 Q. Are you aware that this case has been pending
17 for almost five years?

18 A. I wasn't aware it was five years. I haven't
19 really thought about that, but that's a long time, in my
20 opinion.

21 Q. And wouldn't you agree that given the fact that
22 the child custody evaluation was last completed in 2019,
23 it's probably appropriate that the Court receive newer
24 information?

25 A. Absolutely.

1 Q. And I believe you testified that you are under
2 the impression that Ms. Frendle is updating or doing an
3 addendum to her report to update with more fresh
4 information; is that right?

5 A. Yes.

6 Q. Give me just one second.

7 Did you do any psychometric testing of father
8 yourself?

9 A. No.

10 Q. Have you reviewed the records of any
11 psychometric testing of father?

12 A. I reviewed Dr. Siegel's report that included
13 his report of that and I reviewed Dr. Davidson's report
14 and the --

15 Q. And --

16 A. -- test that he gave.

17 Q. I'm sorry. Do you know who Dr. Davidson is?

18 A. Yes.

19 Q. Had you worked with him before?

20 A. I have never worked with him before. I have
21 been asked by two different attorneys' offices to review
22 his child custody cases that he did for them and to give
23 them an independent review of how I thought he did.

24 Q. Okay. And do you know whether or not
25 Dr. Davidson is qualified to perform psychometric testing

1 in this case?

2 A. I believe he is. I have seen his CV. I have
3 seen his CV and I have looked at his background and I
4 have had the chance to review two other child custody
5 evaluations he did, and then in the process of that just
6 for the record, I let both attorneys' offices know I
7 thought he did a stellar job.

8 MS. HAYES: Objection; nonresponsive.

9 THE WITNESS: Did not find any problem.
10 Okay.

11 MS. HAYES: Objection; nonresponsive after
12 "I did."

13 Q. (By Ms. Hayes) And do you know anything about
14 a McFarland in this case?

15 A. I believe that's the name of the father's
16 therapist.

17 Q. And do you know anything about his
18 qualifications?

19 A. I do not.

20 Q. And do you know whether there's been any
21 psychometric testing performed on father in the last two
22 years?

23 A. I don't know when Dr. Davidson did his work. I
24 thought it was more recently than two years. Let me see.

25 Well, whenever Dr. Davidson's report came out.

1 Q. Okay.

2 Are you familiar with the signs and the -- what
3 to look for in someone with a narcissistic personality
4 disorder?

5 A. Yes.

6 Q. Have you ever noted signs or -- I don't want to
7 use the word "signs" but clues that this person might
8 have narcissistic personality disorder without having
9 tested them for it?

10 A. No.

11 Q. Never -- never met a person that you thought
12 was a true narcissist but -- without having tested them?

13 A. Well -- well, I have met people who have had
14 narcissistic tendencies without testing them. But I
15 never put that in a court report or in a written
16 statement without having -- either them being prior
17 diagnosed by someone so I have got it in some mental
18 health records that they have that diagnosis or I have
19 got current testing or I conduct current testing that
20 supports that.

21 Q. Okay. Is there any degree of bias in your
22 professional opinion that is acceptable bias when
23 performing a child custody evaluation?

24 A. I think -- the short answer is no. Now every
25 custody evaluator is human and what that means is that

1 sometimes people's personal experiences or backgrounds
2 can cause them to have a bias that they're not conscious
3 about. When that happens, it is important for the Court
4 to know that there's a potential bias there so the -- the
5 judge or the jury can take that into consideration.

6 And I think it is really important when we do
7 these kind of evaluations that we try not to have a bias.

8 Q. I mean, obviously that would be ideal under the
9 model standards of child custody evaluation also, but
10 just to clarify, your testimony is that if there's any
11 degree of bias that's apparent in a child custody
12 evaluation you believe that is a negative thing?

13 A. Yes, I do. I believe that is a negative thing.

14 Q. And do you believe it rendered the child
15 custody evaluation unreliable?

16 A. If -- if there are many components to it, not
17 just one, then, yes, I think it can render it unreliable.

18 Q. And how many is "many"?

19 A. Well, I think in Ms. Frendle's case with her
20 first evaluation, there's enough concerns there that my
21 recommendation was that the Court not use her
22 recommendation for custody in this case. Now she's been
23 given an opportunity to update her report. I don't know
24 if she's seen my opinion or not. If she has, it may give
25 her kind of some help in terms of answering some of the

1 questions in this update that I felt like were lacking in
2 her first evaluation.

3 You know my hope is that the next one is a
4 little more complete.

5 Q. Understood. Okay.

6 Dr. Milburn, I really appreciate your time
7 today.

8 MS. HAYES: And I'll pass the witness at
9 this time.

10 MR. MCELYEA: I'll reserve my questions,
11 everybody.

12 (Proceedings adjourned at 1:45 p.m.)

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I, DONNA R. MILBURN, Ph.D., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

DONNA R. MILBURN, Ph.D.

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared DONNA R. MILBURN, Ph.D., known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

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CAUSE NO. DF-13-06713

IN THE INTEREST OF X IN THE DISTRICT COURT

X

X

L.L.C. X 256TH JUDICIAL DISTRICT

X

X

MINOR CHILD X DALLAS COUNTY, TEXAS

REPORTER'S CERTIFICATION

REMOTE ORAL DEPOSITION OF DONNA R. MILBURN, Ph.D.

March 22, 2022

I, Charo L. Dunlap, Certified Shorthand Reporter, in and for the state of Texas, hereby certify to the following:

That the witness, DONNA R. MILBURN, Ph.D., located in West Tawakoni, Texas, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness.

That the deposition transcript was submitted on _____, 20__, to the witness or to the attorney for examination, signature, and returned to me by _____, 20__.

That the amount of time used by each party at the deposition is as follows:

MR. THOMAS MCELYEA: 0 Hours 00 Minutes

1 MS. KRIS HAYES: 3 Hours 34 Minutes

2 That pursuant to information given to the
3 deposition officer at the time said testimony was taken,
4 the following includes counsel for all parties of record:

5 MR. THOMAS MCELYEA; Attorney for Petitioner

6 MS. KRIS HAYES; Attorney for Respondent

7 I further certify that I am neither counsel
8 for, related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or otherwise
11 interested in the outcome of the action.

12 Further certification requirements pursuant to
13 Rule 203 of TRCP will be certified to after they have
14 occurred.

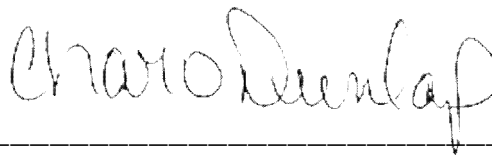
15 Certified by me this 6th day of April, 2022

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CHARO L. DUNLAP, CSR No. 6733

Expiration Date: 03/31/2022

Wendy Ward Roberts & Associates

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Firm Registration No. 216

1205 Main Street

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Garland, Texas 75040

Office: 866-487-3376

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FURTHER CERTIFICATION BY COURT REPORTING FIRM
UNDER RULE 203 TRCP

The original deposition was ____ was not ____
returned to the deposition officer on _____;

If returned, the attached Changes and Signature
page contains any changes and the reasons therefor;

If returned, the original deposition was
delivered to Ms. Kris Hayes, Custodial Attorney;

That \$_____ is the deposition officer's
charges to the Respondent, for preparing the original
deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance
with Rule 203.3, and that a copy of this certificate was
served on all parties shown herein on and filed with the
Clerk.

Certified by me this _____ day of
_____, 20__.

Wendy Ward Roberts & Associates
Firm Registration No. 216
1205 Main Street
Garland, Texas 75040
Office: 866-487-3376
www.texasreporters.net