

STATE OF NEW YORK  
FAMILY COURT : COUNTY OF NIAGARA

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PETER MARK DIARBAKERLY,  
Petitioner,

-against-

Docket Nos. V-03057-18  
V-03058-18  
V-03388-17  
V-03802-17

KATIE LYNN RIFORD,  
Respondent.

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KATIE LYNN RIFORD,  
Petitioner,

-against-

Docket Nos. V-00103-18  
V-00592-18

PETER MARK DIARBAKERLY,  
Respondent.

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Niagara County Courthouse  
175 Hawley Street  
Lockport, New York 14094  
November 26, 2018

**B e f o r e :**

**HONORABLE ERIN P. DELABIO,**  
Family Court Judge

**A p p e a r a n c e s :**

**RANDY S. MARGULIS, ESQ.,**  
Appearing for Peter Mark Diarbakerly

**ANTHONY J. CERVI, ESQ.,**  
Appearing for Katie Lynn Riford

**JASON J. CAFARELLA, ESQ.,**  
Appearing as Attorney for Child

**P r e s e n t :**

**PETER MARK DIARBAKERLY,**  
Petitioner/Respondent

**KATIE LYNN RIFORD,**  
Petitioner/Respondent

**ASHLEY KLEINSCHMIDT, NYACR, NYRCR,**  
Official Court Reporter

Ashley Kleinschmidt, NYACR, NYRCR  
Official Court Reporter

E X A M I N A T I O N S

WITNESS

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**4**

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E X H I B I T S

<u>PETITIONER'S</u> <u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MARKED</u> <u>FOR ID</u>	<u>RCV'D</u> <u>IN EVD</u>
1	JEANNE KRATT'S NOTES	14	**
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<u>RESPONDENT'S</u> <u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MARKED</u> <u>FOR ID</u>	<u>RCV'D</u> <u>IN EVD</u>
A	SUPERVISED VISIT NOTES TO DATE: FOR 6/30/18 AND 7/1/18	62	**

<u>AFC'S</u> <u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MARKED</u> <u>FOR ID</u>	<u>RCV'D</u> <u>IN EVD</u>
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*(Proceedings commenced at 2:08 p.m.)*

**THE COURT:** This is the matter of Peter Diarbakerly and Katie Riford. Both parties have competing petitions against each other for custody and visitation with respect to Olivia and Mason. In the courtroom I have Randy Margulis, attorney for Mr. Diarbakerly. I have Anthony Cervi, who is the attorney for Ms. Riford. I have Jason Cafarella, who is the Attorney for Child. I have both petitioner and respondent. This is our second day of hearing. We concluded the last day with Ms. Kratt on the stand, and she's still up there, correct?

**MR. CERVI:** Yes, Your Honor.

**MR. MARGULIS:** Correct.

**THE COURT:** Want me to bring her back up?

**MR. MARGULIS:** Sure.

**THE COURT:** Ms. Kratt, you're still under oath from the other day.

**JEANNE KRATT,** called herein as a witness, having been previously duly sworn, testified as follows:

**THE WITNESS:** Thank you, Judge.

**THE COURT:** Was Mr. -- you're still on direct?

**MR. MARGULIS:** Direct.

**THE COURT:** Okay.

**CONTINUED DIRECT EXAMINATION BY MR. MARGULIS:**

Q Ms. Kratt, good afternoon.

1 A Good afternoon.

2 Q I think when we left off last time, I had asked you if  
3 there were ever any occasions when other family members of  
4 either of the parties was present at exchanges of the  
5 children. I think you had started to describe that her  
6 brother was present on one occasion in September, correct?

7 MR. CERVI: I would object to asked and asked  
8 and answered. I know we have to try and figure out where we  
9 were at, but this was already gone over. There was testimony  
10 with regards to who was present and whether she wanted other  
11 people present. All of that was testified to at our last  
12 appearance.

13 THE COURT: Okay. Where I left off with my  
14 personal notes was that -- witness was stating father never  
15 was -- never sped in the car. Never pulled over by police.  
16 Mason was acting normal as infant. Father appropriate with  
17 Mason. Fed him food. That was the last thing I was at, in  
18 terms of my last notes.

19 It was just about -- yeah. It was a couple  
20 things prior to -- okay. So that was about a few things prior  
21 to, that there was an exchange, her brother was at the  
22 exchange, window was down. Brother laughed out loud, and then  
23 you got into testimony with dad's appropriateness with the  
24 child, and feeding the child properly, so --

25 MR. MARGULIS: So --

1                   **THE COURT:** -- I guess the objection is to  
2 backtracking.

3                   **MR. MARGULIS:** The objection is to asked and  
4 answered, but I don't even think I asked -- the only question  
5 I asked so far is, do you recall that. That was just my  
6 question.

7                   **THE COURT:** Okay.

8                   **MR. MARGULIS:** Where I thought we left off, at  
9 least according to my notes, the question, literally, was, do  
10 you recall that, as far as where we left off. I wasn't asking  
11 her a question already answered.

12                   **THE COURT:** I'm going to overrule it based on  
13 the fact that that testimony was very short and close in  
14 relation to what -- I -- I think he's still within the same  
15 timeframe.

16                   All right. Go ahead.

17 **BY MR. MARGULIS:**

18           Q     Do you recall that?

19           A     Yes, I do.

20           Q     Had there been any occasions during your supervision  
21 in this matter when -- other than Katie's brother, when any  
22 other family member -- besides her mother, of course -- might  
23 have been present?

24           A     No.

25           Q     And what about Mr. Diarbakerly, Peter? Were there

1 ever any occasions when any family members of his were present  
2 during periods of access?

3 A Yes.

4 Q And who would that be?

5 A There would be his mother, and his sister Nicole was  
6 present on one weekend.

7 Q And do you recall on how many occasions his mother was  
8 present?

9 A Every -- every visit.

10 Q Each one?

11 A Yes.

12 Q And other than Nicole, have you ever met any of  
13 Peter's other sisters, or was it just Nicole?

14 A Just Nicole at the visits.

15 Q And how would you characterize or describe -- let's  
16 start with Nicole, Peter's sister. Do you recall which  
17 occasion it was that she was present for?

18 A It was the weekend we went to the playground at the  
19 park on Maple Road.

20 Q Maple West? Do you recall which one?

21 A I'm not sure. It was right next door to Millard  
22 Fillmore Suburban.

23 Q Maple East.

24 A Okay.

25 Q And how would you characterize Nicole's demeanor

1 during that period of access?

2 A Very loving and caring. She was excited to see  
3 Olivia. The two of them interacted very well together. In  
4 observing them, it looked like they had just picked up from a  
5 relationship that they had just had the day before.

6 Q Based on your observations, did you notice Nicole do  
7 anything that caused you concern?

8 A No.

9 Q How about with Peter's mother? Having been present  
10 during each of the access periods with Peter, was there ever  
11 an occasion that his mother -- do you know her name?

12 A Regina.

13 Q Regina. Were there ever any occasions when you  
14 observed Regina do anything that caused you concern?

15 A No.

16 Q And how would you characterize Regina's demeanor  
17 during the periods of access?

18 A Very loving and caring, interactive, happy to be  
19 around Olivia.

20 Q And how would you characterize Olivia's demeanor when  
21 she was around Regina?

22 A She was better at the end of the visit than at the  
23 very beginning of the visit. She just -- it took a couple  
24 hours to warm up to anyone that was at the visits.

25 Q And once she warmed up, how would you characterize her



1 demeanor?

2 A She's playful.

3 Q And by the way, this is in reference to Regina. The  
4 question has to do with the grandmother.

5 A Um-hmm.

6 Q How would you characterize -- once she warmed up, how  
7 would you characterize Olivia's demeanor toward the  
8 grandmother?

9 A You could tell, definitely, that there was more  
10 interaction.

11 Q And had you ever observed Regina do anything that  
12 caused you to fear for Olivia's well being?

13 A No, never.

14 Q And what about the baby? What about Mason? With  
15 regard to Peter's family -- Regina, or his sister Nicole --  
16 did you have occasion to observe his demeanor with extended  
17 members of Peter's family?

18 A Yes.

19 Q And how would you characterize the baby's demeanor?

20 A He would respond to Nicole, to Regina, and to Peter,  
21 either he was happy when they were feeding him, giving him  
22 something to drink. If he was crying and if he was being held  
23 or pushed in the stroller, you could tell that he enjoyed  
24 himself.

25 Q You testified last time that one of the earlier access

1 periods got off to a late start, I think you said about an  
2 hour, because Katie wanted to know where you were going. Did  
3 that occur only on that occasion, or did it occur more than  
4 just that one time that you described?

5 **MR. CERVI:** Objection. That's been asked and  
6 answered.

7 **THE COURT:** Overruled. I'm going to let her  
8 answer.

9 **THE WITNESS:** The delay in time only occurred  
10 once, but she always wanted to know where we were going.

11 **BY MR. MARGULIS:**

12 Q And to whom would she inquire about where you were  
13 going? Would she ask you? Would she ask Peter?

14 A She never asked Peter in front of me. She didn't  
15 speak with him. She only asked me, and at the time, I  
16 wouldn't know.

17 Q And how did she respond if you told her you didn't  
18 know?

19 A She was very angry.

20 **MR. CERVI:** Objection, Your Honor. I mean, is  
21 there a particular time? I mean, every -- I'm sure it's not  
22 every visit. Is it one visit? What was the date of that  
23 visit? I -- I mean, I think there needs to be a little bit of  
24 a foundation here of what we're talking about.

25 **THE COURT:** Sustained. Be a little more

1 specific, Mr. Margulis.

2 **MR. MARGULIS:** Sure.

3 **BY MR. MARGULIS:**

4 Q So on any occasions that she inquired about where you  
5 were going and you told her you didn't know, did she always  
6 give you the same response, or would her response be different  
7 on different occasions?

8 A I could tell she wasn't happy. She -- she expressed  
9 her unhappiness about that, and I told her, out of courtesy, I  
10 would let her know, because I knew she had to be somewhat  
11 close to pick up Mason for breastfeeding and a nap.

12 Q Did she tell you why -- did she ever -- on any of  
13 those occasions did she ever tell you why she wanted to know  
14 where you were going?

15 A She did not.

16 Q On any of those occasions did Katie tell you of any  
17 restrictions, like, places you were not allowed to go or  
18 activities you were not allowed to do or anything like that?

19 A She said she just wanted to know where her children  
20 are.

21 Q And were there any occasions when you did know where  
22 you would be going at the time that she asked you?

23 A No.

24 Q How would it come about once the exchange was  
25 completed, and now it's you and Peter and the kids, and I

1 guess his mom, how did it get decided where you would all go  
2 or where Peter would go with the kids?

3 A Oh, once we had everybody together, Peter took into  
4 consideration the weather.

5 **MR. CERVI:** I'm going to object.

6 **THE WITNESS:** He always involved --

7 **MR. CERVI:** She's speculating as to what the  
8 petitioner took into account. How is she -- is she a mind  
9 reader?

10 **MR. MARGULIS:** Your Honor, I'm taking the  
11 witness through each and every -- I can ask, Judge -- I can  
12 ask what did he say on this day? What did he ask? Did he say  
13 anything about the weather this day? Did he say anything  
14 about the heat? If you want me to do that, Judge, we can stay  
15 here until next Tuesday.

16 **THE COURT:** I -- look, I -- Mr. Cervi, I'm going  
17 to overrule it, because --

18 **MR. CERVI:** Judge, she's speculating as to  
19 what's in the mind of Mr. Diarbakerly. It's ridiculous.

20 And Judge, I'm not trying to prolong this trial,  
21 which is going to last the next several months. At the end of  
22 the day, it's -- it's inappropriate for her to speculate what  
23 he was thinking at the time. Well, he was --

24 **MR. MARGULIS:** She didn't say what he was  
25 thinking. She said he took into consideration.

1                   **MR. CERVI:** How does she know that?

2                   **MR. MARGULIS:** How about I ask her how she knows  
3 whether he took into consideration the weather? I can do  
4 that.

5                   **THE COURT:** You can do that.

6                   **MR. MARGULIS:** Okay.

7                   **THE COURT:** Okay.

8                   **MR. MARGULIS:** How about I withdraw the  
9 question. I'll ask it a thousand different ways, then, to do  
10 it properly. How is that?

11                   **THE COURT:** Okay.

12 **BY MR. MARGULIS:**

13           Q     I believe my question was, how was it decided what  
14 activities Peter would engage in with the children. Let's  
15 start there. I don't think you answered it. How would it  
16 be -- how would it become decided what activity or activities  
17 Peter would do with the kids? Let's start with the first  
18 visit that you supervised, and I think you said that was on  
19 Saturday, June 30th. Let's start with that one. Do you  
20 remember that visit?

21           A     I would have to refer to the notes, exactly where we  
22 were.

23           Q     Do you have your notes with you today?

24           A     They're in my briefcase, in the back of the room.

25           Q     Would looking at your notes refresh your recollection

1 as to the events of June 30th's visitation?

2 A Yes.

3 **MR. MARGULIS:** Could I ask that either I be able  
4 to hand them to her or she come out to get them?

5 **THE COURT:** Absolutely. You can hand them to  
6 her, to make it easier.

7 **MR. MARGULIS:** Where is your stuff?

8 **THE COURT:** Oh, unless you're not comfortable  
9 with that. Would you like to get them yourself?

10 **THE WITNESS:** That's fine.

11 **THE COURT:** Okay.

12 **MR. MARGULIS:** I would like that marked.

13 *(Whereupon, Petitioner's 1, Jeanne Kratt's notes,*  
14 *were then marked for identification.)*

15 **MR. MARGULIS:** I'm going to mark them for  
16 identification. I'm offering Mr. Cervi and Mr. Cafarella,  
17 if -- if they want to just stipulate them into evidence.

18 **BY MR. MARGULIS:**

19 Q Ms. Kratt, I'm going to show you what's been marked  
20 for identification as Petitioner's Exhibit 1, which I think  
21 has been referred to as Jeanne Kratt's notes. I want to ask  
22 you to take a look at that. Are those, in fact, your notes?

23 A Yes, they are.

24 Q And if you would just look at them to yourself,  
25 without reading them out loud, and let me know when you're

1 done. We're talking about the first period of access on June  
2 30th, 2018.

3 A Okay.

4 Q Does looking at Petitioner's Exhibit 1 refresh your  
5 recollection as to the events of June 30th, 2018?

6 A Yes.

7 Q Do you recall, specifically, what activity Peter and  
8 the children and you engaged in during that period of access?

9 A Saturday we were at the marina, or the ships downtown,  
10 and Sunday we were at the zoo.

11 Q Do you recall what the weather was on Saturday, June  
12 30th?

13 A It was hot and sunny.

14 Q Hot and sunny; is that what you said?

15 A Hot and sunny.

16 Q And did you have any discussions with Peter -- strike  
17 that.

18 So the marina downtown you went to on Saturday,  
19 is that an indoor activity or outdoor activity?

20 A We were on the ships. There's a building down there.  
21 We did both.

22 Q There -- and do you recall what the weather was that  
23 day? Did you say hot and sunny that day?

24 A Yes.

25 Q Okay. Do you recall whether Peter made any statements

1 to you about the weather on Saturday, June 30th, 2018?

2 A He was concerned that it was hot and --

3 Q I understand that -- if you're saying he's concerned,  
4 it's an objectionable response. The question I'm asking is,  
5 did he say anything to you about the weather?

6 A Yes.

7 Q Okay. What did he say?

8 A He was just concerned that it was so hot. He  
9 chose -- he did choose the marina on Saturday, because it was  
10 breezier, and that was the hotter of the two days.

11 Q And did you observe whether or not Peter applied  
12 sunscreen to either of the kids on Saturday, June 30th?

13 A Peter always applied sunscreen to the kids, no matter  
14 what activity we were -- if we were outside, he applied  
15 sunscreen.

16 Q Is it your testimony that on each of the periods you  
17 supervised, each and every one, you observed Peter applying  
18 sunscreen?

19 A As my supervised visits carried into the fall there  
20 was no need for sunscreen, because we weren't necessarily  
21 outside, but any time we were outside, Peter did apply  
22 sunscreen.

23 Q And on Sunday, July 1st, the day you went to the zoo,  
24 do you recall the weather?

25 A It was hot. It was sunny. It was humid, and it was



1 breezy.

2 Q On those two days -- so we're talking about the first  
3 weekend. You said it was hot. Did -- did you observe whether  
4 or not the kids drank any water during the visit?

5 A They did, on both days.

6 Q And did you happen to see where they got the water?

7 A From their father. He always traveled with a cooler  
8 in the back of his car that was -- that had ice, cold  
9 beverages, food.

10 Q When you say always, do you literally mean each visit  
11 that you were present for, Peter had a cooler in the car?

12 A Yes. Every time. It was a white cooler, a white,  
13 Yeti cooler.

14 Q And you saw him get the water from there that he gave  
15 the kids?

16 A He did. Katie would also provide water for -- at  
17 least one bottle of water for the kids.

18 Q And let's just start with that first weekend for now,  
19 June 30th, Saturday, and July 1st, Sunday. Did you have  
20 occasion to see if the kids drank any water?

21 A Yes.

22 Q Did you have any occasion to observe Peter telling  
23 them or encouraging them to drink water?

24 A Yes.

25 Q On both of those days or just one of those days?

1 A Both of those days.

2 Q And getting back to the sunscreen, which you said each  
3 day during the summer was applied, who applied the sunscreen  
4 to the kids? If you said it, forgive me, because I don't  
5 recall. Who did -- did Peter put it on or did the kids put it  
6 on?

7 A Olivia would help her father, and put it on herself.  
8 Peter would get areas that she couldn't reach, and Peter  
9 applied Mason's sunscreen.

10 Q On any of the periods that you supervised, was there  
11 ever an occasion that you observed anyone pushing Olivia? I  
12 don't mean pushing the stroller, I mean shoving Olivia.

13 A No.

14 Q Or Mason?

15 A No.

16 Q With regard to the periods of access that you  
17 supervised, was there ever an occasion, a day, a Saturday or  
18 Sunday, where you didn't observe Peter providing water to both  
19 children?

20 A No.

21 Q So getting back to the question I was really seeking  
22 to ask, can you tell the Court, how did it come about that it  
23 was decided what activities would -- they would participate in  
24 once the exchange had taken place?

25 A Peter would ask Olivia what she felt like doing for

1 the day, what activity she would like to participate in. He  
2 made her part of the conversation and part of the decision.

3 Q And was that constant? Did you have occasion to  
4 observe this on every period of access?

5 A Yes. He always asked her what she wanted to do. He  
6 always asked her if she was hungry, when she ate last, always  
7 engaged her in conversation, and participating in where she  
8 would like to go.

9 Q And were you able -- I'm not asking you to repeat her  
10 statements, but were you able to hear her responses?

11 A Oh, yes. Yes.

12 Q Okay. And based on your observations and having been  
13 present during each of the visits, would Peter acquiesce?  
14 Would he do what Olivia suggested she wanted to do?

15 A They would come to a compromise.

16 Q Were there ever any activities that she suggested she  
17 preferred that Peter chose not to do?

18 A No.

19 Q At the exchanges when Peter received the children, did  
20 Katie ever tell you whether she already put sunscreen on the  
21 kids?

22 A She may have one time.

23 Q At the exchanges, you said the other day that Peter  
24 always arrived first?

25 A Yes.

1 Q And then Katie would pull in, and you would take the  
2 kids either out of the car if you were returning them, or you  
3 would walk to the car -- to Katie's car to retrieve the  
4 children. Did you have occasion to observe Katie's vehicle?

5 A Yes.

6 Q Did she drive the same car each time, or were there  
7 different vehicles?

8 A It was always the same car.

9 Q And were you able to observe the condition and  
10 appearance of the car?

11 A Yes.

12 Q What observations, if any, did you make about the  
13 vehicle?

14 A I could tell that it was a car that carried children,  
15 because there was children's supplies in the car, and I also  
16 noticed that her tires needed to be replaced.

17 Q What do you mean by that? How would you describe the  
18 tires?

19 A The tires were bald.

20 **MR. CERVI:** Objection, Your Honor. She -- is  
21 she an expert auto mechanic, trained in the field of  
22 inspecting tires? I'd ask that that be stricken, Your Honor.

23 **THE COURT:** Overruled. I think anybody that's a  
24 layperson can tell whether or not tires are bald or not.

25 **MR. CERVI:** She testified that the tires need to

1 be changed.

2 **THE COURT:** It's what she observed, Mr. Cervi.  
3 Overruled.

4 **BY MR. MARGULIS:**

5 Q When you say you observed the tires being bald, how  
6 many bald tires did you observe?

7 A Four.

8 Q Did -- were there any occasions -- during these  
9 periods of visitation that you supervised, were there any  
10 occasions that either party -- meaning Katie or Peter -- said  
11 anything negative about you, to you? To your face?

12 A Yes.

13 **MR. CERVI:** Objection, Your Honor. That's been  
14 asked and answered.

15 **MR. MARGULIS:** Well, I believe --

16 **THE COURT:** Asked and answered where and when?

17 **MR. CERVI:** Last time we were here, Your Honor.

18 **MR. MARGULIS:** I asked -- last time -- last time  
19 I asked about disparaging comments about the other.

20 **THE COURT:** Overruled. She can answer.

21 **BY MR. MARGULIS:**

22 Q Did Peter ever make any negative comments to you on  
23 any of these occasions?

24 A No.

25 Q Did Katie?

1 A Yes.

2 Q And on how many such occasions?

3 A At least three.

4 Q And were the children present or not present during  
5 those three occasions?

6 A They were present.

7 Q All three times?

8 A Yes.

9 Q And do you recall what she said to you on these three  
10 occasions?

11 A She accused me of lying. She said, are you going to  
12 lie in front of my children like you do all the time?

13 Q What else?

14 A She would accuse me of lying to her about Peter  
15 changing a diaper or not changing a diaper, call me a liar  
16 because the children were dehydrated or not given proper food  
17 or water.

18 Q Anything else that you can recall?

19 A Not at this time.

20 Q Have you ever said anything negative to Peter about  
21 Katie in the presence of the children?

22 A Not that I recall.

23 Q Have you ever said anything to Katie that's negative  
24 about Peter in the presence of the children?

25 A Not that I recall.

1 Q Did you ever take any pictures of Peter or the  
2 children during your supervision services?

3 A Yes.

4 **MR. MARGULIS:** These are all the ones I e-mailed  
5 you. *(Handing.)*

6 Your Honor, I have a couple of folders that each  
7 contain photographs. My intention -- I'm going to show them  
8 to Counsel, which I've already provided them to them, but my  
9 intention is, I'm going to request that they be received in  
10 evidence, and they're manila folders. That's the way they've  
11 been separated. I would be asking they be marked in their  
12 folders for ease for the Court, unless somebody has a  
13 preference, otherwise.

14 I'm first asking Counsel, jointly speaking, if  
15 they have any objections to the first set of photos being  
16 received in evidence.

17 **THE COURT:** Do you want to -- I mean, if you  
18 want to do this quickly and easily, you can go off the record  
19 quick.

20 **MR. MARGULIS:** Sure.

21 **THE COURT:** They can review each folder.

22 **MR. MARGULIS:** Yeah.

23 **THE COURT:** Number -- and on the folder, put how  
24 many pictures are in there --

25 **MR. MARGULIS:** Okay.

1                   **THE COURT:** -- so that doesn't get confused.

2                   **MR. MARGULIS:** Sure.

3                   **THE COURT:** And do you want to enter them all  
4 into evidence as one?

5                   **MR. MARGULIS:** Sure.

6                   **THE COURT:** If they -- you can say how many  
7 folders and how many pictures in each folder. Is it all her  
8 visit -- so each folder can identify each visit, and then just  
9 put them all in?

10                  **MR. MARGULIS:** Sure.

11                  **THE COURT:** If that doesn't work for everyone,  
12 we'll do it one by one.

13                  **MR. CAFARELLA:** I have no objection.

14                  **THE COURT:** Okay. Off the record.

15                               *(Discussion held off the record.)*

16                  **MR. CERVI:** Ms. Kratt took all these photos?

17                  **MR. MARGULIS:** Yeah.

18                  **MR. CERVI:** I mean, on the first two, I have no  
19 objection. I -- I -- I assume it will be the same for all of  
20 them, but I'd like to review them first, please.

21                  **THE COURT:** That's what I'm saying. Do you want  
22 to go off the record. Review them all. Let's identify each  
23 folder as each visit.

24                  **MR. MARGULIS:** Um-hmm.

25                  **THE COURT:** You can number how many pictures are



1 in each one, so they don't get confused. Identify the folder  
2 as, like, A, B, C, D, E, and F, and on the back of the  
3 pictures, A, B, C.

4 **MR. MARGULIS:** Okay.

5 **THE COURT:** So if they're mixed up, they can be  
6 put back in the original folder.

7 **MR. MARGULIS:** Right.

8 **THE COURT:** Off the record.

9 *(Discussion held off the record.)*

10 *(Whereupon, Petitioner's 2-5, folders containing*  
11 *photographs, were then marked for identification.)*

12 *(Whereupon, Petitioner's 2-5, were then received in*  
13 *evidence.)*

14 **BY MR. MARGULIS:**

15 Q Ms. Kratt, I'm going to show you -- in the folders, I  
16 guess -- I'm going to show you a folder containing photographs  
17 marked as Petitioner's Exhibit 2 in evidence, and I'd like you  
18 to look at the photos, please.

19 A Yes.

20 Q Ms. Kratt, do you recognize these photos?

21 A Yes, I do.

22 Q Who took these pictures?

23 A I did.

24 Q And were these taken during the eight various weekends  
25 of visitation that you've supervised?

1 A Yes, they were.

2 Q And I'm just going to briefly show each one of them to  
3 you, one by one, and ask you to just describe what's depicted  
4 in the photo, please.

5 A Okay. In this picture, Peter is in the front seat of  
6 a boat, down at the HarborCenter, in the front seat with  
7 Olivia. His -- I think it's his mom in the back, the paddle  
8 boat.

9 Q And the next one?

10 A HarborCenter, again. Olivia first went out in her own  
11 boat. She got tired and got in the boat with Peter and  
12 Regina.

13 Q And in both of those pictures does it depict whether  
14 Olivia is wearing a life jacket?

15 A Yes. She has a safety vest on. Yes.

16 Q A safety vest. And next one?

17 A This picture was taken at the Outer Harbor. Peter is  
18 holding onto Olivia. They're just looking into the water.

19 This picture was at the Gow School, where Peter  
20 went to school. He's assisting Olivia in making sure she  
21 doesn't fall going up to the top platform of the swing set,  
22 playground.

23 This picture is Peter assisting Olivia to walk  
24 across this small obstacle course on the same playground, at  
25 the Gow School.

1 Q And during your supervision when you went to the  
2 playground, did -- did you have occasion to observe Olivia and  
3 Peter on the swing set?

4 A Yes.

5 Q And did Olivia swing on the swing set?

6 A She needed swinging -- she didn't know how to pump her  
7 legs. She just was unable to swing herself, so she asked for  
8 help, and Peter encouraged her that she's old enough; she  
9 should know how to swing, and she said she did not.

10 Q Did she end up swinging?

11 A Not without assistance. Her grandmother pushed her on  
12 the swing so she could get momentum to go back and forth, but  
13 when she slowed down, she always asked for help to get back  
14 going again.

15 Q But she did swing?

16 A She did, yes.

17 Q With assistance?

18 A With assistance.

19 Q Next one?

20 A This is also at the Gow School. Olivia is having fun  
21 in the water with her dad. They're just walking down to the  
22 creek.

23 **MR. CERVI:** I'm going to object to the  
24 characterization of the testimony. The photo speaks for  
25 itself. I mean, she said she was having fun. Again, it makes

1 her speculate as to what's going on in the child's mind. The  
2 photo speaks for itself.

3 **THE COURT:** I'm going to overrule, Mr. Cervi. I  
4 think she's observing what she feels as though she's watching,  
5 which is, they're having fun. She can make those  
6 observations.

7 **MR. CERVI:** All right.

8 **THE COURT:** I'm going to overrule.

9 **MR. CERVI:** Please note my exception.

10 **THE COURT:** Thank you.

11 **BY MR. MARGULIS:**

12 Q Next one?

13 A I believe this one was at the Botanical Gardens. We  
14 pulled over to a take -- we did a loop around the park, and  
15 Peter was applying sunscreen to Olivia's skin.

16 Q Next one?

17 A This was at the Lebanese Festival on Main Street.  
18 Olivia was drinking water after she got done eating.

19 Q Next one?

20 A This was at Cazenovia Park. Peter is assisting Olivia  
21 on the monkey bars, so she can get across from one side to the  
22 other.

23 **MR. CERVI:** Judge, can I just ask if -- just for  
24 clarity purposes, for the record, can you at least  
25 identify -- I'm assuming we're still on 2. Can they -- can

1 you just say, you know, in Exhibit 2 in evidence, you know,  
2 what is this photo? Just so we know what these pictures -- if  
3 it's 2, 3, 4, or 5?

4 **MR. MARGULIS:** I did it at the beginning. You  
5 want it for every photo?

6 **MR. CERVI:** Yeah.

7 **THE COURT:** You're in Petitioner's Exhibit 2,  
8 correct?

9 **MR. MARGULIS:** Yeah, still.

10 **THE COURT:** We're still in Petitioner's Exhibit  
11 2. He's asking her about Petitioner's Exhibit 2.

12 **MR. CERVI:** Fair enough.

13 **THE COURT:** When we go to the next -- he's just  
14 asking when you go to --

15 **MR. MARGULIS:** I think he wants every picture.

16 **MR. CERVI:** It --

17 **THE COURT:** If you're in --

18 **MR. CERVI:** As long as --

19 **THE COURT:** I --

20 **MR. CERVI:** As long as you're still in 2, that's  
21 fine. Just so you delineate when you switch to 3.

22 **MR. MARGULIS:** I'll do that.

23 **MR. CERVI:** That's all I'm asking.

24 **MR. MARGULIS:** I will do it.

25 **BY MR. MARGULIS:**

1 Q And the last photo in Exhibit 2?

2 A This is Peter holding Olivia's hand. We're leaving  
3 Walden Galleria to go out to the car, to leave for a  
4 destination.

5 THE COURT: That's all specific to one weekend,  
6 correct, Petitioner's Exhibit 2? Or no?

7 MR. MARGULIS: Not necessarily.

8 THE COURT: Okay.

9 MR. MARGULIS: They're not -- she identified the  
10 activity --

11 THE COURT: The activities --

12 MR. MARGULIS: -- depicted in the photo, but I  
13 don't believe they all took place on the same day.

14 THE COURT: Okay. That's fine. I just --

15 MR. MARGULIS: Pardon?

16 THE COURT: That's okay. I was making the  
17 assumption the pictures were going to go by weekend.

18 MR. MARGULIS: They're not.

19 THE COURT: Okay. That's fine. That's  
20 Petitioner's Exhibit 2. How many pictures are in Petitioner's  
21 Exhibit 2?

22 MR. MARGULIS: 10.

23 THE COURT: Okay.

24 BY MR. MARGULIS:

25 Q Showing you what has been marked as Petitioner's

1 Exhibit 3 in evidence, which is a folder containing 24  
2 photographs, and again, same -- I'd like you to look at each  
3 of them, and just tell me if -- who took the pictures?

4 A I took all these photographs.

5 Q I'm going to show you each one, individually, and ask  
6 that you please identify what's depicted in the photos.  
7 They're not in any particular order.

8 A Okay. This is a scavenger hunt at the Buffalo  
9 Botanical Gardens.

10 Q And can you identify who is in the picture?

11 A Yes. This is Peter, Regina, and Olivia.

12 Q Next one?

13 A This is also at the Botanical Gardens with Olivia.

14 Q Next one?

15 A This is at the Lebanese Festival on Main Street.  
16 Nicole is in this picture with Olivia, and then part of  
17 Regina.

18 Q Next one?

19 A This picture is at the Botanical Gardens in the  
20 children's area, with Olivia and Peter.

21 Q Next one?

22 A This one is also at the Botanical Gardens with Olivia,  
23 Regina, and Peter.

24 Q And the prior one I just showed you, can you just  
25 describe the activity that they're doing in that picture?

1           A     They're playing in a sandbox inside the children's  
2 play area at the Botanical Gardens.

3           Q     Next one?

4           A     This is Cazenovia Park, with Olivia on the swing set  
5 with her father.

6           Q     Next one?

7           A     Also Cazenovia Park. Olivia is speaking into the  
8 underground microphone, and her father is on the other end,  
9 but I did not -- I just took a picture of Olivia. She's  
10 engaging in a conversation with her father through that  
11 microphone.

12          Q     Did you personally participate in speaking into one of  
13 these?

14          A     Never.

15          Q     Okay. Next one?

16          A     Cazenovia Park. Olivia is being assisted by Peter to  
17 go down the pole from the upper platform.

18          Q     Next?

19          A     This is at the Gow School, with Peter and Olivia  
20 playing in the creek. I think they were looking for crayfish.

21          Q     Did they find any, if you know?

22          A     Not that I recall.

23          Q     Next one?

24          A     This was an amusement ride that was at the Clarence  
25 pumpkin farm, in Clarence Center, an amusement ride where



1 Regina, Peter, and Olivia are on --

2 Q A what ride?

3 A An amusement ride, the tea cup, or something like the  
4 tea cup.

5 Q Next one?

6 A This is Olivia facing a pumpkin in the back of Peter's  
7 vehicle that she got at the pumpkin farm in Clarence.

8 Q Did you observe Olivia pick this pumpkin herself?

9 A She was very particular. It took her a very long time  
10 to pick the perfect pumpkin.

11 Q Was this the only pumpkin, or were there more pumpkins  
12 that she picked?

13 A I know there was another one for Mason. She picked  
14 out one for Mason.

15 Q And at the end of the access period, what, if  
16 anything, did you observe Olivia do with the pumpkin?

17 A I believe she took it home.

18 Q So she kept it?

19 A Yeah.

20 Q Next one?

21 A I believe this one was at Panera's on Walden, just  
22 after lunch. It was Peter and Olivia. Olivia was taking a  
23 picture of herself and Peter with Peter's phone.

24 Q Had they eaten lunch there? Is that what you said?

25 A Yes.

1 Q Did Olivia eat?

2 A Yes, she did.

3 Q On any occasion that you've been with Peter and Olivia  
4 at a restaurant, let's say for lunch or breakfast, who does  
5 the ordering for Olivia?

6 A Olivia ordered herself, and if she needed assistance,  
7 she would look towards her dad for assistance in ordering.

8 Q Were there ever any occasions you observed Peter  
9 providing assistant to Olivia in ordering her food?

10 A Yes, because she wanted food.

11 Q Okay. Next one?

12 A This picture was taken at Wegmans. It was sushi that  
13 Olivia was eating.

14 Q Is there a restaurant in Wegmans?

15 A It's just their takeout, where they provide tables for  
16 people to sit at.

17 Q What exactly is Olivia doing in that picture?

18 A She's getting instructions from her father on how to  
19 use the chopsticks, using the chopsticks to eat her sushi  
20 with.

21 Q Next?

22 A This picture was also taken at -- it was taken at Main  
23 Street, at the park where the waterfall is.

24 Q Glen Park?

25 A Yes. Right on Main Street in Williamsville. They're

1 looking at the water.

2 Q Next?

3 A This is down at Canalside. Regina is in the picture.  
4 Olivia is attempting to hula hoop. All three of them  
5 participated in that activity. I did not.

6 Q Was Peter able to hula hoop?

7 A Not that I recall.

8 Q Next one?

9 A This is back at Glen Park. They're searching for  
10 crayfish in the creek.

11 Q Next one?

12 A Olivia at a blowup slide at the Lebanese Festival.

13 Q Next?

14 A I think this was Olivia's favorite place, Tifft Farm.  
15 She was blowing bubbles.

16 **MR. CERVI:** I would just object to the  
17 characterization of Olivia's favorite place.

18 **THE COURT:** Sustained. Unless she said it was  
19 her favorite place.

20 **BY MR. MARGULIS:**

21 Q How do you know it was Olivia's favorite place?

22 A She asked to go back there multiple times.

23 Q This one?

24 A That's Tifft, yes.

25 Q Okay. Next one?

1           A     This is down at HarborCenter -- Outer Harbor -- not  
2 amusement park, but playground.

3           Q     Next?

4           A     Outer Harbor, the sand play area. It has Peter,  
5 Olivia, and Regina in the sand.

6           Q     And the next one?

7           A     Peter and Olivia playing in the sand together.

8           Q     Same place?

9           A     Same place, HarborCenter.

10          Q     Next?

11          A     This was the paint-your-own-pottery business in  
12 Clarence, with Peter. Mason was there.

13          Q     Next one?

14          A     This was a boat ride that Peter, Olivia, and I took on  
15 the bike trolley down at Canalside, over to the opposite side,  
16 where they take people that want to go on a bike tour or just  
17 walk around. It goes on Fuhrmann Boulevard.

18          Q     You're referring to a boat?

19          A     It was on a boat, a bicycle ferry.

20          Q     This was on a boat?

21          A     Yes.

22          Q     You said trolley.

23          A     My apologies. It was a ferry.

24          Q     And the last one?

25          A     This was at the Botanical Gardens. Olivia drew a

1 heart, and she wrote at the top of it, me and my brother, and  
2 there's either a cat or a dog in the photograph with -- inside  
3 the heart where she drew pictures of her and her brother.

4 Q That was taken where?

5 A I believe Botanical Gardens. May I see it, please? I  
6 believe this was at the Lebanese Festival.

7 Q Showing you what has been marked in evidence as  
8 Petitioner's Exhibit 4, which consists of four photographs,  
9 I'd like to show you the four, and first ask if you could tell  
10 me who took those.

11 A I did.

12 Q Showing you them one by one, can you tell me what's  
13 depicted in the photos?

14 A This was at Whole Foods. Peter is feeding Mason some  
15 squeezable yogurt and puffs.

16 Q Next one?

17 A This one was also at Whole Foods. Mason is feeding  
18 Peter some yogurt on a spoon.

19 Q Next one?

20 A This one is also at Whole Foods. Mason is feeding  
21 himself yogurt, and Peter is observing him while Mason sits on  
22 his lap.

23 Q And the last one?

24 A This is Peter changing Mason's diaper.

25 Q Do you know where that took place?

1           A     I don't right now. This is the only weekend that  
2 Peter had a different vehicle. It was on that weekend. His  
3 interior is black, and that's tan.

4           Q     And on this occasion, were you present during the  
5 entire diaper changing activity?

6           A     I was, but I didn't peek.

7           Q     And based on your observations, was Peter able to  
8 successfully change the diaper?

9           A     Yes.

10          Q     And based on your observations, was the new diaper put  
11 on properly?

12          A     Yes. From my vantage point, yes.

13          Q     Last one is Petitioner's Exhibit 5, in evidence, which  
14 contains 10 photographs. I'd like to ask you to look at them  
15 all, first, and then tell me who took them.

16          A     I took all of those.

17          Q     And showing you the first one, would you tell me what  
18 that -- what's depicted in that photo?

19          A     This is at Whole Foods. Peter is assisting Mason on  
20 walking.

21          Q     Is Mason able to walk? Generally, does he walk as a  
22 baby?

23          A     I believe he's just beginning to walk.

24          Q     Next one?

25          A     This was also at Whole Foods. Peter let go of Mason,

1 and Mason walked to Peter without the two of them touching.  
2 He took two or three steps towards his father.

3 Q Next one?

4 A Also at Whole Foods. Mason is sitting on Peter's lap  
5 during the feeding.

6 Q Next?

7 A This one was in East Aurora, at the library. Mason  
8 was turning pages of a book.

9 Q Next one?

10 A This one was at the pottery business in Clarence.  
11 Olivia was painting a mug. Peter was engaged with Mason,  
12 feeding him puffs.

13 Q Next one?

14 A This was also at the pottery business. Mason is  
15 grabbing puffs out of Peter's hand to eat.

16 Q Next?

17 A Also at the pottery business. Peter is watching what  
18 Olivia is doing across the table, painting, and this is Mason  
19 also looking in the same direction, and Mason had a toy in his  
20 lap.

21 Q Next one?

22 A This was at the Outer Harbor, at the  
23 submarine -- where the submarines are, downtown.

24 Q Next one?

25 A This is the splash pad at Cazenovia Park. Olivia is

1 holding Mason, watching the sprinklers.

2 Q Can you tell me what a splash pad is, because I don't  
3 know?

4 A It is where water comes out. It appears to be out of  
5 the ground. It's not a pool. I think it's safer. There's no  
6 lifeguard there. The water comes up sporadically out of  
7 random holes. The kids run around and scream, because they  
8 try to get to the water. The water forms an arch, and they  
9 run through the arch.

10 Q How deep is the water that's depicted in that picture?

11 A There is no -- it's just a concrete pad, although  
12 water goes to the center and recycles and shoots back up  
13 again. It's almost like a water fountain without a pool of  
14 water.

15 Q I see. And the last one?

16 A This is also at the splash pad at Cazenovia Park.  
17 Peter is supporting Mason and just encouraging him to walk,  
18 and it looks like Olivia wants to play with him.

19 **MR. MARGULIS:** No other questions for this  
20 witness, Judge.

21 **THE COURT:** Can we take a 10-minute break, give  
22 a chance to go to the bathroom and stuff?

23 **MR. MARGULIS:** Okay.

24 **THE COURT:** I'm going to ask everybody to exit  
25 the courtroom. You guys can leave your stuff there.



1                   (Whereupon, a recess was taken at 3:23 p.m. and  
2                   proceedings recommenced at 3:43 p.m.)

3                   **THE COURT:** Back on the record. Just before we  
4 get started, we're going to go until 4:30 today. We just  
5 picked a few more hearing dates. The following hearing dates  
6 are going to be December 6 at 1:30; January 18th at 1:30;  
7 February 8th at 1:30; and February 15th at 1:30.

8                   Okay. I believe you just concluded with  
9 Ms. Kratt, correct, Mr. Margulis?

10                  **MR. MARGULIS:** Correct.

11                  **THE COURT:** Mr. Cervi, it's your time.

12                  **MR. CERVI:** Thanks, Your Honor.

13 **CROSS-EXAMINATION BY MR. CERVI:**

14                  Q All right. Good afternoon, Ms. Kratt. How are you?

15                  A Fine, Mr. Cervi. Thank you.

16                  Q Ms. Kratt, let's start with supervised visitation.  
17 You've testified you have no formal training as it pertains to  
18 how to provide for a supervised visit, correct?

19                  A Correct.

20                  Q Okay. And you -- have you ever read any journals or  
21 any treatises or anything where they gave you guidance as to  
22 how to conduct supervised visits?

23                  A Yes.

24                  Q Are there accepted practices as it pertains to  
25 supervised visitation?

1 A You'd have to --

2 Q Okay.

3 A -- be more specific.

4 Q Are there accepted guidelines that are set forth in  
5 any treatises or otherwise?

6 A It's to keep the children safe, know where the proper  
7 authorities are, have a cell phone with you or some way to  
8 contact emergency officials, and write and take note on the  
9 visit, be able to document what occurs.

10 Q Okay. All right. So let's go to documenting  
11 visitation. With regards to supervised visits, you're  
12 supposed to observe the party being supervised; is that  
13 accurate?

14 A Yes.

15 Q And you're also supposed to observe his interaction  
16 with the child or children, correct?

17 A Yes.

18 Q Okay. And with that, the notes that you take should  
19 reflect the observations of the party and the child, correct?

20 A Yes.

21 Q Now, with that, I assume that you should note any  
22 problems with the visitation as it pertains to the supervised  
23 party and the child or children, right?

24 A Yes.

25 Q You should note the interaction between the supervised

1 party and the child or children, correct?

2 A If there was any, yes.

3 Q So you should also note if there was a positive  
4 interaction between the children and the supervised party,  
5 right?

6 A Yes.

7 Q All right. Essentially, your notes from the visit  
8 would entail positive and negative observations of the  
9 supervised party during their access period; is that accurate?

10 A To a degree.

11 Q The whole purpose of you supervising the visitation is  
12 to observe the supervised party, though, correct?

13 A Yes.

14 Q You're not there to observe anyone else, are you?

15 A No.

16 Q So your role as supervisor is very simple; observe the  
17 supervised party and his interaction with the children,  
18 correct?

19 A Yes.

20 Q Provide for the safety of those children, correct?

21 A Correct.

22 Q All right. Yet, in your notes -- if you want to take  
23 a look at your notes -- your notes reflect almost entirely  
24 your observations of Ms. Riford, don't they?

25 A Not to my knowledge.

1 Q Well, let's take a look at them, shall we?

2 A Sure.

3 Q Do you have your notes handy?

4 **MR. MARGULIS:** I'm going to object, Your Honor.  
5 The notes aren't in evidence. We --

6 **MR. CERVI:** Well --

7 **MR. MARGULIS:** Excuse me. We can't start  
8 chopping away at her notes, if they're not in evidence.  
9 They're just her notes.

10 **THE COURT:** They are just used for refreshing  
11 her recollection.

12 **MR. MARGULIS:** In fact, I offered Counsel,  
13 twice, this afternoon, an opportunity, if he chose to do so,  
14 to stipulate them into evidence for ease in allowing her to  
15 refresh her recollection, and there was no response, so they  
16 were not moved into evidence. So as far as I'm concerned,  
17 they're off limits, unless they're for refreshing a  
18 recollection, which you don't really need to usually do on  
19 cross-examination. I say her notes are off limits.

20 **MR. CERVI:** I would disagree, Judge. If need  
21 be, I'll extrapolate.

22 **THE COURT:** Well, at this point, I agree with  
23 Mr. Cervi. They're not into evidence and --

24 **MR. MARGULIS:** You mean Mr. Margulis?

25 **THE COURT:** I'm sorry, Mr. Margulis. Did I say

1 Mr. Cervi?

2 **MR. MARGULIS:** Sorry.

3 **THE COURT:** Sorry. They were used to refresh  
4 her recollection for one part of her testimony, so they're not  
5 into evidence; therefore, I don't know how you're going to use  
6 them to cross-examine her.

7 **MR. CERVI:** Judge, I think I certainly can. If  
8 there's any inconsistencies within her testimony, I can  
9 impeach the witness with her notes. There's no question.

10 **MR. MARGULIS:** It's not a prior sworn statement.  
11 She wasn't under oath when she made them, and they're not in  
12 evidence, so they represent nothing more than, possibly, a  
13 contemporaneous expression of her state of mind at each visit.  
14 I maintain my same objection. They're off limits.

15 **MR. CERVI:** Judge, with regards to impeachment,  
16 I'd ask Counsel to refresh his recollection, none of which,  
17 what he recited, is related to an impeachment.

18 In any event, Your Honor, I certainly can  
19 impeach her with a prior statement she made. It does not need  
20 to be a certified or statement that is under oath. That is  
21 not a requirement. A prior statement that was made by this  
22 witness that is inconsistent with her current testimony is  
23 sufficient, and I believe her notes would reflect that.

24 **THE COURT:** Her notes aren't into evidence for  
25 me to review. I'm not reviewing them. Say we resolve this

1 matter today. They're not into evidence. I wouldn't be  
2 reviewing them to write a decision. They're not in evidence  
3 right now. How do you impeach her with them if they're not in  
4 evidence?

5 **MR. MARGULIS:** She hasn't said anything to  
6 impeach yet.

7 **MR. CERVI:** Judge, with regard to -- she just  
8 testified, Judge, that the -- the notes that she made -- I  
9 asked her, I said, is it true that most of these notes refer  
10 to observations of the respondent, Ms. Riford, and not  
11 the -- the supervised party. And she said no, that's not  
12 accurate, so I think at this point, Judge, I certainly can use  
13 her notes against her.

14 **MR. MARGULIS:** But her notes, Judge, have zero  
15 weight. They're not in evidence. The Court is not relying on  
16 her notes to make any dispositive ruling in this case.

17 **THE COURT:** I don't disagree.

18 Mr. Cafarella, do you have any input on this?

19 **MR. CAFARELLA:** I guess Mr. Cervi elaborating on  
20 what he was intending to impeach with regards to Ms. Kratt  
21 disagreeing that the majority of her notes had to do with  
22 Ms. Riford, I don't believe that's impeachable, Judge. She's  
23 stating that she doesn't believe the majority of her notes  
24 were revolving around Ms. Riford. It's not impeaching an  
25 incorrect statement or lie or some other fraudulent statement

1 in front of the Court, so I don't believe that's an  
2 impeachable statement.

3 **THE COURT:** Mr. Cervi, I have to agree. At this  
4 point --

5 **MR. CERVI:** All right.

6 **THE COURT:** -- I'm going to sustain the  
7 objection.

8 **MR. CERVI:** Judge, I can go over the notes  
9 individually, then. I can go over and ask her about them  
10 individually.

11 **MR. MARGULIS:** Now --

12 **BY MR. CERVI:**

13 Q Let me back up for one second. Ms. Kratt, how much  
14 were you paid to do -- in total, to do the supervised visits  
15 for Mr. Diarbakerly?

16 A I don't know how much, in total, but it was \$75 an  
17 hour.

18 Q All right. And you did six hours per visit, and it  
19 would have been a Saturday and Sunday, correct?

20 A Correct.

21 Q I think you testified there were how many visits?

22 A I thought there was 16.

23 Q 16. \$75 an hour, times six hours each day, right? So  
24 the -- let me get out my calculator. How much were you paid  
25 per day? Do you recall that?

1           A     I got one -- I received a money order for \$900 on  
2 Saturday, and that covered Saturday and Sunday.

3           Q     All right. So \$900 for each weekend. You said you  
4 did 16 weekends?

5           A     No, eight.

6           Q     Eight weekends. All right. So eight weekends,  
7 times -- so you were paid about \$7,200 to do these  
8 visitations, correct?

9           A     Yes.

10          Q     So over \$7,000 that you were paid, were you paid that  
11 by Mr. Diarbakerly?

12          A     Yes.

13          Q     Did he give you cash?

14          A     No.

15          Q     No? All right. And the testimony that you're  
16 providing here on behalf of Mr. Diarbakerly, how much did you  
17 charge him for that?

18          A     I have not -- I haven't submitted a bill.

19          Q     All right. Well, how much are you charging per hour  
20 to testify here?

21          A     This -- the same rate, \$75.

22          Q     So \$75 an hour, so -- and how many hours were you here  
23 last appearance?

24          A     Approximately, four.

25          Q     About four. So that's, what, \$300 your bill will be



1 for the last appearance? Is that a yes?

2 A Maybe. Yes.

3 Q Roughly?

4 A Yes.

5 Q Did you also meet with his attorney, Mr. Margulis, to  
6 prepare for your testimony here today?

7 A I did.

8 Q Okay. How long did you meet with Mr. Margulis to  
9 prepare your testimony?

10 **MR. MARGULIS:** I'm going to object to the  
11 relevance.

12 **MR. CERVI:** Oh, there's no objection to that,  
13 Judge.

14 **THE COURT:** Overruled. I'm going to let it  
15 happen.

16 **MR. MARGULIS:** Sure. I didn't think it was that  
17 funny, by the way.

18 **THE WITNESS:** About an hour.

19 **BY MR. CERVI:**

20 Q I'm sorry, you prepared an hour?

21 A Yes.

22 Q And during that hour, Mr. Margulis prepared you on how  
23 to testify here today?

24 **MR. MARGULIS:** Objection. That's part of trial  
25 preparation. That's attorney-client privilege --

1                   **MR. CERVI:** She's not your client.

2                   **MR. MARGULIS:** -- attorney work product. My  
3 trial preparation, whatever I've done in preparation for a  
4 trial, if it includes preparing a witness, you can't ask the  
5 witness what I told them in preparation for their trial  
6 testimony.

7                   **THE COURT:** Sustained, Mr. Cervi.

8 **BY MR. CERVI:**

9           Q       So you met with Mr. Margulis for about an hour before  
10 the first trial date; is that right?

11           A       Yes.

12           Q       And he helped you prepare for trial, correct?

13           A       No.

14           Q       I'm sorry?

15           A       No.

16           Q       He went --

17           A       I've testified at many trials.

18           Q       All right. So he -- during that one hour, you  
19 discussed what your testimony would be here today, correct?

20                   **MR. MARGULIS:** I'm going to object. Same  
21 objection.

22                   **MR. CERVI:** I'm not --

23                   **MR. MARGULIS:** The same -- can I please talk?

24                   **MR. CERVI:** The --

25                   **MR. MARGULIS:** The substance of any --

1                   **MR. CERVI:** Calm down.

2                   **MR. MARGULIS:** -- conversations I had with my  
3 own witness is off limits.

4                   **MR. CERVI:** Judge, I'm not asking the substance  
5 of the conversation. I'm just asking if they discussed what  
6 would be testified to here today.

7                   **MR. MARGULIS:** That's asking for the substance  
8 of the conversation that I had with the witness.

9                   **THE COURT:** Hold on. Hold on. Sustained to  
10 what it is that they specifically talked about.

11                   If you're just asking, did he prepare, that's a  
12 yes-or-no answer. She doesn't have to elaborate on that.

13                   **MR. CERVI:** Correct, Your Honor.

14                   Did they discuss what would be testified to here  
15 today? That's all.

16                   **THE WITNESS:** Yes.

17 **BY MR. CERVI:**

18           Q     So before this trial date, then, did you also meet  
19 with Mr. Margulis to prepare for your testimony today?

20           A     No.

21           Q     No?

22           A     No.

23           Q     All right.

24           A     I arrived late today.

25           Q     You arrived late today. All right. So you prepared

1 with him about one hour for both trial dates?

2 **MR. MARGULIS:** Asked and answered.

3 **THE COURT:** Sustained.

4 **BY MR. CERVI:**

5 Q Okay. Was there any other times that you met with  
6 Mr. Margulis to prepare for your testimony -- either today or  
7 last trial appearance?

8 A No.

9 Q Okay. With today, you're being paid \$75 per hour.  
10 How many hours do you have here today?

11 A So far I would say three and a half.

12 Q Three and a half hours. All right. So total, you  
13 have about four hours from the last trial date, three and a  
14 half hours to this -- at this point for your trial today, in  
15 addition to an hour outside that; is that right?

16 A Yes.

17 Q Okay. So fair to say you'll probably have, at least,  
18 nine hours that you'll be paid for for testifying here, in  
19 total?

20 A Perhaps. Math is not my forte.

21 Q All right. It's -- it's a pretty good rough estimate  
22 at this point, correct?

23 **MR. MARGULIS:** Asked and answered. She said she  
24 doesn't know.

25 **MR. CERVI:** I --

1                   **THE COURT:** Sustained.

2                   **MR. CERVI:** I would just object to his tone. I  
3 think he's a little angry.

4                   I'll withdraw that, Judge.

5                   Now -- so you're going to make about \$700 for  
6 testifying on behalf of Mr. Diarbakerly here, correct?

7                   **MR. MARGULIS:** Asked and answered.

8                   **THE COURT:** Sustained. Mr. Cervi, I get it.

9                   **MR. MARGULIS:** Can we please move on?

10                  **THE COURT:** Okay. I know what's going on here.

11                  **MR. MARGULIS:** She's getting paid. She's  
12 getting paid to be here.

13                  **THE COURT:** Okay. Let's move on.

14                  **MR. CERVI:** All right. Yes, Your Honor.

15 **BY MR. CERVI:**

16                  Q     Now, getting back to the supervised visitation, you  
17 made notes as it pertains to the visits that occurred,  
18 correct?

19                  A     Yes. My notes are very vague, and I can't recall a  
20 time in the last ten years that I've used them in this  
21 particular situation. My notes are just --

22                  Q     Ms. Kratt, it was a yes-or-no answer. Did you bring  
23 your notes here today?

24                  A     I did.

25                  Q     Okay. Very good. And your notes outline some of the

1 issues or some things that came up with regards to the  
2 visitation with Mr. Diarbakerly that you were paid for,  
3 correct?

4 A Yes.

5 Q All right. And with regards to the notes that you  
6 made, there's -- let's see here. Let's just look at June 30th  
7 and July 1st, 2018. Do you recall the things that you noted  
8 that Miss Riford will complain about?

9 A I would have to look at my notes to refresh my memory.

10 **MR. MARGULIS:** I'm going to renew my  
11 objection --

12 **MR. CERVI:** All right.

13 **MR. MARGULIS:** -- Judge. The substance of the  
14 notes, the document that are the notes themselves, are not in  
15 evidence. They're not on trial. They're not relevant. They  
16 have zero weight. When we finish this trial some day and we  
17 submit our summations to Your Honor, we're not going to be  
18 talking about her notes, so I don't think they're relevant --

19 **MR. CERVI:** Judge, I --

20 **MR. MARGULIS:** -- and -- and it's  
21 cross-examination.

22 **MR. CERVI:** That's correct, Your Honor. I --  
23 Your Honor, may I please. Mr. Margulis went through, I  
24 believe, about, in excess, of three to almost four hours with  
25 this witness, going over the notes with her. How it is that I

1 would be precluded from going over these same notes with her,  
2 Judge, is beyond me. And I don't know exactly what, in law,  
3 his objection is. She has testified she doesn't recall what  
4 she noted about the complaints about my client. Okay? So  
5 I -- I've asked her, is there -- I can ask her, is there  
6 something that would refresh your recollection. I'm sure it  
7 will be her notes. He went -- and ad nauseam -- over each and  
8 every point about what was wrong with my client during these  
9 visits. I think I deserve a little bit of leeway as to what,  
10 exactly, is in these notes, and/or to discuss with her what  
11 happened during these visits, all of which I presume is  
12 contained within these notes.

13 **MR. MARGULIS:** May I, briefly?

14 **THE COURT:** Yes.

15 **MR. MARGULIS:** I used the notes one time to  
16 refresh her recollection. I looked at her notes previously,  
17 because my opposing attorney -- opposing Counsel wouldn't let  
18 me ask questions that were kind of lumped together in time,  
19 when it had to do with the weather on a variety of the  
20 occasions.

21 More importantly, though, Mr. Cervi is  
22 attempting -- is improperly attempting an impeachment of the  
23 witness. If he's using it for -- to refresh the recollection  
24 of the witness, or to contradict a statement, the  
25 impeachment -- the purpose of impeaching a witness with a

1 document is to, quote, unquote, catch them in a lie. They say  
2 something on the witness stand, the light was green, but  
3 there's a statement that they gave previously that says the  
4 light was red. Mr. Cervi is not asking this witness today,  
5 what her observations were during the visits of his client.  
6 He's not asking for testimonial evidence that he would then be  
7 seeking to impeach.

8 **MR. CERVI:** Judge, can I --

9 **MR. MARGULIS:** Excuse me.

10 **MR. CERVI:** I --

11 **MR. MARGULIS:** Excuse me.

12 **MR. CERVI:** I'm not trying to impeach the  
13 witness.

14 **MR. MARGULIS:** You're interrupting.

15 **MR. CERVI:** I'm not trying to impeach.

16 **MR. MARGULIS:** You're interrupting.

17 **THE COURT:** Wait a minute.

18 **MR. MARGULIS:** It's an improper impeachment.

19 **MR. CERVI:** It's a recollection.

20 **MR. MARGULIS:** He's asking questions about what  
21 she put in her notes, and then he's trying to impeach that.  
22 He's not asking her questions in a trial. Here, we're here  
23 for trial. This is your opportunity to ask a witness  
24 questions, and if she says something other than what was in a  
25 prior statement -- I don't think notes are a statement, but if



1 they were, then you could impeach with the statement. His  
2 questioning is completely off base.

3 **THE COURT:** I --

4 **MR. CERVI:** Judge, I -- it's to refresh her  
5 recollection. I just want to help him for one second. I  
6 moved on to refreshing her recollection.

7 Your Honor --

8 **MR. MARGULIS:** She --

9 **MR. CERVI:** -- I can't imagine that this Court  
10 is going to say I can't refresh her recollection with the same  
11 document he used to refresh her recollection.

12 His objection is, I can't impeach the witness  
13 with it. Fine. I'm refreshing her recollection. She said  
14 she doesn't know. She can't recall. This is the proper  
15 procedure to do so, Judge.

16 **MR. MARGULIS:** But the stuff she doesn't recall  
17 is the notes. He's not asking her questions today. He's  
18 asking her about what's in the notes.

19 **THE COURT:** Mr. Cervi, you're supposed to stick  
20 to cross-examination of what's been testified to by Ms. Kratt.

21 **MR. CERVI:** This was testified to, Judge.  
22 I -- oh, my Lord. Do we need to print the transcript?

23 **THE COURT:** For the -- for the one time that she  
24 was refreshed her recollection? Are you sticking to the notes  
25 of the time she was refreshed?

1                   **MR. CERVI:** Judge, I can cross her --

2                   **THE COURT:** You're taking all of her notes from  
3 all of her observations, and they weren't even used here in  
4 her direct testimony.

5                   **MR. CERVI:** Judge, these notes pertain to the  
6 supervised visits, which she testified to for the last two  
7 days, Your Honor. She testified about what's in the notes for  
8 the last two days. I'm asking her about specific events that  
9 she's already testified to. She said she doesn't know. I'm  
10 asking to refresh her recollection, Your Honor.

11                   **THE COURT:** All right. Why don't you refresh  
12 her recollection by stating to her what's in her notes on a  
13 particular day, and ask her about it? Why do we have to ask  
14 her to refresh her recollection with the notes? They're not  
15 in evidence.

16                   **MR. CERVI:** That's how you refresh recollection,  
17 with notes.

18                   **THE COURT:** You denied his request to put them  
19 into evidence.

20                   **MR. CERVI:** I don't think they would be proper  
21 to put in evidence, Your Honor, because they contain multiple  
22 statements in hearsay.

23                   **THE COURT:** Okay. But now you're going to  
24 cross-examine her on things she stated, that I won't even --

25                   **MR. CERVI:** That she observed, Judge, yes.

1                   **THE COURT:** That she observed, but did she  
2 testify to? I'm not going to be reviewing those notes to  
3 write a decision.

4                   **MR. CERVI:** Judge, she testified to them.

5                   **THE COURT:** You can't get two bites at the  
6 apple, Mr. Cervi. You can't say these shouldn't be entered  
7 into evidence, because there's multiple statements in there  
8 that you think are inappropriate.

9                   **MR. CERVI:** I'm not looking to put them in  
10 evidence, Judge. I'm looking to refresh her recollection.  
11 That's what I'm seeking to do. I'm not asking that they go in  
12 evidence. Just like he tried to refresh her recollection  
13 before, I'm going through the proper procedures to refresh her  
14 recollection, Your Honor.

15                   **THE COURT:** But this is a cross-examining  
16 witness. This is not your direct witness to refresh the  
17 recollection.

18                   **MR. MARGULIS:** Called impeachment.

19                   **MR. CERVI:** It doesn't matter, Judge. It  
20 doesn't matter. Oh, my gosh. Your Honor, please. She said  
21 she doesn't recall.

22                   **THE COURT:** Mr. Cafarella, where are you at with  
23 this? I want to hear from you.

24                   **MR. CAFARELLA:** Judge, I -- I'm trying to find  
25 where Mr. Cervi's pointing out in the notes, where he's trying

1 to refresh the witness's recollection, because if it -- if  
2 it's what I think it is, it's outside the scope of direct.

3 **THE COURT:** Right.

4 **MR. CAFARELLA:** It was never addressed by --

5 **THE COURT:** If you're refreshing her  
6 recollection in a particular thing she testified to,  
7 Mr. Cervi, that is one thing.

8 **MR. CERVI:** Judge, she testified to many of the  
9 things on here. If need be, Judge, I will call her, then, as  
10 a witness myself, and call her after this. After I get done  
11 with her cross, Judge, I'll re-call her as a witness on  
12 direct, if it pleases the Court.

13 **THE COURT:** As long as you pay her. I mean, you  
14 want to talk about paying her as a witness, now you want to  
15 call her as a witness?

16 **MR. MARGULIS:** She's not on his witness list.

17 **THE COURT:** I'm going to give you a very short  
18 leash on this. I don't know what you're going to refresh her  
19 recollection on. I'm going to give you a short leash on this.  
20 These are not in evidence. I'm not reviewing them. I'm not  
21 looking at them. I'm not reading through them. These are  
22 pages and pages and pages of notes of observations that you  
23 don't want me to see; however, you want to use them and -- get  
24 two bites at the apple here, and use them to cross-examine her  
25 on.

1                   **MR. CERVI:** Judge, I -- with all due respect, to  
2 refresh her recollection. The notes don't go into evidence.

3                   **THE COURT:** All right.

4                   **MR. CERVI:** They don't.

5                   **THE COURT:** Mr. Margulis, trust me on this.

6 I'm going to give you a short leash on this. Go  
7 ahead, Mr. Cervi.

8                   **MR. MARGULIS:** And I hate to ask to read back  
9 the question, but --

10                   **THE COURT:** Read back the question.

11                   **MR. MARGULIS:** -- could someone tell me what the  
12 question was that the witness said she doesn't remember an  
13 answer to?

14                   **THE COURT:** Go ahead. You can read back for the  
15 last few minutes.

16                   *(Whereupon, the above-requested testimony was read*  
17 *back by the reporter.)*

18                   **MR. MARGULIS:** The question was about the notes.  
19 Do you recall what was in the notes.

20                   **MR. CERVI:** Let me rephrase the question.

21                   **THE COURT:** Right.

22                   **MR. CERVI:** Ms. Kratt, do you recall making  
23 observations as things that my client would complain about  
24 during your supervision?

25                   **MR. MARGULIS:** Again, objection.

1                   **THE WITNESS:** No.

2                   **MR. MARGULIS:** It's irrelevant. He's asking her  
3 if she made notes. This is cross-examination. It's limited  
4 to the scope of my direct.

5                   **THE COURT:** I'm overruling it, because you  
6 specifically had direct testimony upon -- if you remember --  
7 if you recall, on the June 30th and July 1st incident -- or  
8 access, because you thought you were going to have to go  
9 through each and every day's note, and I'm -- I told you; it's  
10 a short --

11                   **MR. MARGULIS:** Okay.

12                   **THE COURT:** -- leash on this. I'll let him go  
13 with just June 30th and July 1st.

14                   **MR. MARGULIS:** Sure.

15                   **THE COURT:** That's as far as we'll go with that.

16                   **MR. MARGULIS:** Okay, Judge.

17 **BY MR. CERVI:**

18           Q     Is there something that would help refresh your  
19 recollection as to the things that you thought that Katie will  
20 complain about?

21           A     Not in my notes, no.

22                   **MR. CERVI:** Let me show you -- I'm going to have  
23 this marked.

24                               *(Whereupon, Respondent's A, supervised visit notes*  
25                               *to date: For 6/30/18 and 7/1/18, were then marked for*

1           *identification.)*

2                   **MR. MARGULIS:** I'm not sure why you're showing  
3 them to me. I object to them going into evidence.

4                   **MR. CERVI:** They're for identification. Is this  
5 your first day being a lawyer?

6                   **MR. MARGULIS:** You know what? I resent that  
7 comment.

8                   **MR. CERVI:** You shouldn't.

9                   **THE COURT:** You guys should not speak to each  
10 other. That's disrespectful, Mr. Cervi.

11                   **MR. CERVI:** You're right, Your Honor. I  
12 apologize. I'm trying to move this along.

13                   **THE COURT:** He is objecting as much as you  
14 objected when he did direct of his witness.

15                   **MR. MARGULIS:** May I?

16                   **THE COURT:** Respect the Court. Respect each  
17 other. I understand that you're going to -- you disagree with  
18 this going into evidence.

19                   **MR. MARGULIS:** I have a different objection.

20                   **THE COURT:** Okay.

21                   **MR. MARGULIS:** He just asked Ms. Kratt, she said  
22 she didn't remember what she put in her notes about something,  
23 about what or how --

24                   **THE COURT:** Something about Ms. Riford.

25                   **MR. MARGULIS:** Yeah. And he said, would it be

1 in your notes, and she said no. Now, he's marked her notes,  
2 and he's going to try to refresh her recollection by showing  
3 her her notes.

4 **THE COURT:** I know.

5 **MR. CERVI:** Actually --

6 **MR. MARGULIS:** But she said no --

7 **MR. CERVI:** -- at this point --

8 **MR. MARGULIS:** She said, no, my notes will not  
9 refresh my recollection, so you can't offer as an exhibit for  
10 identification, the notes, unless the witness has said, yeah,  
11 my notes would refresh my recollection as to that question,  
12 but she said no, they will not.

13 **MR. CERVI:** He's absolutely right, Your Honor.  
14 At this point, I will move to impeach her. She has stated  
15 that she did not make any notes about what my client  
16 complained about. At this point, I have Respondent's A.

17 **THE COURT:** She said her notes wouldn't refresh  
18 her recollection.

19 **MR. CERVI:** Well, let me --

20 **THE COURT:** She didn't say, I didn't write that  
21 in my notes.

22 **MR. CERVI:** Can you read back her answer,  
23 please?

24 *(Whereupon, the above-requested testimony was read*  
25 *back by the reporter.)*



1 **BY MR. CERVI:**

2 Q Let me follow up with that. In your notes, Ms. Kratt,  
3 did you make a detailed written observation as to the things  
4 that my client, Katie, will complain about?

5 A In an e-mail to Jason I did, because Dana Herrington  
6 didn't call me back, and I was reaching out to Katie's  
7 original attorney, because Katie was trying to drive the bus  
8 for the whole supervised visit, and I --

9 Q The answer is yes or no. So you did?

10 A But there's a problem with -- they're my --

11 Q Ms. Kratt --

12 A -- notes. It's an --

13 Q -- you --

14 A -- e-mail --

15 Q Ms. Kratt, you answered the question.

16 A -- to Mr. Cafarella.

17 **THE COURT:** Let her answer, Mr. Cervi. She's  
18 trying to explain to you whatever you're asking, which is  
19 unbeknownst to me. If you want me to understand what she's  
20 answering, let her answer the question.

21 **MR. CERVI:** She did, Judge.

22 So you have a written summation as to the things  
23 that my client will complain about; is that right?

24 **MR. MARGULIS:** Object to the form of the  
25 question. I don't understand what the question is asking.

1           **THE COURT:** I'm going to overrule it. I'm going  
2 to let her answer. He's asking her if there's anything in her  
3 notes --

4           **MR. MARGULIS:** Anticipatorily.

5           **THE COURT:** Anticipatorily.

6           **MR. MARGULIS:** Okay.

7           **THE COURT:** Okay. If you can answer, Ms. Kratt.  
8 Can you answer that?

9           **THE WITNESS:** I have to say no. Those are not  
10 my notes. Those are questions for the Attorney for Child,  
11 because Dana Herrington was not calling me back, and at that  
12 time, that was Katie's attorney. I was looking for direction,  
13 so I was writing those two pages. If you look at those two  
14 pages, those are not bullet points. Those are -- they're  
15 numbered. I was up at 4:00 in the morning. I was so upset  
16 about what happened at the first visit, that I wrote that.

17 **BY MR. CERVI:**

18           Q     So you answered the question. So there is -- in  
19 writing, you put sequential numbers as to the things that my  
20 client would complain about, correct?

21           A     Looking for direction from Mr. Cafarella, yes.

22           Q     You put something in writing as to what my client  
23 would complain about; is that right? Yes?

24           A     Yes.

25           **MR. MARGULIS:** I have to renew my objection now,

1 my underlying objection, and I think Mr. Cafarella supported  
2 it. This is beyond the scope of anything I discussed  
3 with -- I -- that the witness discussed on direct.

4 **THE COURT:** I know, but we're -- we're -- you  
5 guys are treading on the fact that -- you've used her notes.  
6 You both have copies of her notes. I'm going to --

7 **MR. MARGULIS:** Let's just produce the e-mail.  
8 He's wondering about a statement where the witness said she  
9 was worried about what Katie said or did. If there's a  
10 document out there, produce the document, and we'll determine  
11 if Your Honor is going to allow it in, if it's even relevant.

12 **THE COURT:** Correct. I'm going to -- I'm still  
13 overruling your objection. I gave him some latitude, but  
14 Mr. Cervi, you're coming short with the latitude on these  
15 notes. What she testified to is, what's in those notes are  
16 things she was going to ask Ms. Riford's other attorney on the  
17 case at the time.

18 **MR. CERVI:** Fair enough, Your Honor.

19 **THE COURT:** Okay.

20 **MR. CERVI:** Now, in this e-mail, you noted 15  
21 issues you had with my client, as it pertains to June 30th and  
22 July 1st supervised visits; is that right?

23 **MR. MARGULIS:** Objection. Counsel is making a  
24 reference to a document not in evidence.

25 **THE COURT:** Sustained. It's not in evidence,

1 Mr. Cervi.

2 **MR. CERVI:** I asked her a question.

3 **THE COURT:** You asked her a question about a  
4 document that wasn't identified to anything in this Court yet.

5 **MR. CERVI:** It's Respondent's A for  
6 identification, Judge.

7 **THE COURT:** Is this an e-mail that you're  
8 offering to her for identification, or is this her notes? I'm  
9 confused.

10 **MR. CERVI:** Judge, it's titled on it, supervised  
11 visit notes to date for 6/30/18 and 7/1/18.

12 **THE COURT:** Is it in an e-mail?

13 **MR. CERVI:** I don't know what it's in. It  
14 doesn't look like an e-mail to me. It says supervised visit  
15 notes to date June 30th, '18 and 7/1/18. That's what it says,  
16 Judge.

17 I think it's very relevant to these proceedings,  
18 and I -- I -- in any event, I'd like to ask her about this, as  
19 it's already been asked on direct examination ad nauseam  
20 about --

21 Judge, she's a supervised -- she's here to  
22 testify about the supervised visit, but you're saying I can't  
23 question her observations from the supervised visits.

24 **THE COURT:** No, I didn't say that. You can  
25 question her and cross-examine her on everything she has

1 testified to, but you're trying to use a document that I can't  
2 get identified here as what it is.

3 **MR. CERVI:** Judge, all I want to do is ask her,  
4 did you -- did you make --

5 You made several complaints about my client from  
6 the June 30th and July 1st visit, correct?

7 **MR. MARGULIS:** Objection. Again, he's talking  
8 about conversations --

9 **MR. CERVI:** Oh, my God.

10 **MR. MARGULIS:** -- that she had with the Attorney  
11 for Child and/or the attorney for Ms. Riford before Mr. Cervi.

12 **MR. CERVI:** Hang on a second. Could we get a  
13 legal basis?

14 **THE COURT:** Wait a minute.

15 **MR. CERVI:** How about a legal basis?

16 **THE COURT:** He is just asking a question right  
17 now. I know he's referring to something in his hands, but he  
18 didn't ask her about that. She testified to the June 30th and  
19 July 1st access.

20 **MR. MARGULIS:** I asked her about that access,  
21 yeah.

22 **THE COURT:** Right.

23 **MR. MARGULIS:** I asked her about the weather.

24 **THE COURT:** Correct.

25 **MR. MARGULIS:** Sunscreen. It was sunny. What

1 did you do. That's what I asked her.

2 **THE COURT:** Right.

3 **MR. MARGULIS:** He's trying to go after her  
4 notes. For 20 minutes now, he's trying to go after her notes,  
5 instead of going after her testimony.

6 **THE COURT:** I --

7 **MR. CERVI:** Judge --

8 **THE COURT:** I agree, Mr. Cervi. Can you just  
9 cross-examine her on what she testified to with respect to  
10 those two access period days?

11 **MR. CERVI:** Judge, with regards to this, again,  
12 these are her observations from the visits. Okay? This is  
13 the whole crux of her testimony. I -- I can't believe that  
14 I'm not going to be allowed to --

15 **THE COURT:** Okay. You know what?

16 **MR. CERVI:** -- cross-examine her on that.

17 **THE COURT:** We're going to adjourn, and both of  
18 you can brief me on why you should be able to cross-examine  
19 her with these notes that are not into evidence. These are  
20 not notes in evidence.

21 **MR. CERVI:** Judge, I'm asking her about  
22 her -- he asked her about all kinds of observations during the  
23 visits, all kinds --

24 **THE COURT:** Right.

25 **MR. CERVI:** -- including negative stuff about my

1 client, correct? That -- I believe I heard all that.

2 **THE COURT:** So --

3 **MR. CERVI:** So I'm asking her about the same  
4 thing, about some negative things that she observed about my  
5 client.

6 **THE COURT:** All right. So stop referring to  
7 things not in evidence. Just ask her about her testimony on  
8 direct, Mr. Cervi.

9 Go ahead, Mr. Cafarella.

10 **MR. CAFARELLA:** I think --

11 **THE COURT:** This is, like, a never-dying  
12 objection for 10 minutes now.

13 **MR. CAFARELLA:** I know it is.

14 **THE COURT:** Go ahead.

15 **MR. CERVI:** Judge --

16 **MR. CAFARELLA:** There's no foundation  
17 established. Mr. Cervi doesn't understand what the document  
18 is in front of him that he placed as Defendant's A [sic.] for  
19 identification. He's never asked the witness to identify it,  
20 yet. From that point, the Court doesn't know what document  
21 he's talking about, whether it's an e-mail, whether those are  
22 her notes, whether that was a conversation that she intended  
23 to have to get guidance on the access. We don't know,  
24 because -- I surmise he's intending to impeach her on a  
25 statement she made in there, but without giving her that

1 information --

2 **MR. CERVI:** Judge, I can't even get the question  
3 out. I haven't asked her -- I asked her a question as to her  
4 observations and whether she made notes on those observations.  
5 I can't get an answer to that, without all these objections,  
6 Your Honor. This is all I'm -- I haven't tried to do anything  
7 with this document. Okay? This is Respondent's A for  
8 identification. At this point, I would like some latitude to  
9 ask a question without interruption. I think that's common  
10 courtesy and decorum in these proceedings, Judge. He hasn't  
11 even stated a legal basis. He just starts talking about this,  
12 that, and the other thing. There's no legal basis --

13 **THE COURT:** The legal basis --

14 **MR. CERVI:** -- on the objection.

15 **THE COURT:** -- is that you're referring to a  
16 document that we don't know what you're referring to. Also,  
17 it's a document not into evidence. If it is a document that  
18 you feel as though Mr. Margulis used to refresh her  
19 recollection, which as far as I'm understanding, it's not --

20 Let's just move on. Just ask the question.  
21 You're supposed to --

22 **MR. CERVI:** Your Honor, I will come back to  
23 this. I will come back to this at the next Court appearance  
24 on the -- on this, and I will be asking, also, for the Court  
25 transcripts. I believe -- how long will it take to have the



1 Court transcript for the next -- if you could, a couple days?

2 **THE REPORTER:** Yes.

3 **MR. CERVI:** I would like the transcript. I'll  
4 leave you my card, and we'll get the transcript.

5 **THE COURT:** Okay.

6 **MR. CERVI:** In any event, I reserve my right to  
7 come back to that specific issue.

8 **BY MR. CERVI:**

9 Q As you stated, you have no formal training as a  
10 supervisor, correct, Ms. Kratt?

11 A I have taken courses online. There is no -- you can't  
12 go to school to be a supervised -- a supervisor for visits.  
13 There's nothing out there.

14 Q Understood, so you don't have any formal training,  
15 correct?

16 A I have taken classes, yes.

17 Q You've taken classes as it pertains to supervised  
18 visitation; is that right?

19 A Yes.

20 Q Okay. Where did you take the classes?

21 A I took some through Annie Monaco. She's at the center  
22 for trauma, and I took some online.

23 Q Okay. And have you also taken classes as it pertains  
24 to domestic violence issues?

25 A Yes.

1 Q All right. And what type of training have you taken  
2 as it relates to domestic violence? Does it relate to parent  
3 interactions, where one is a victim of domestic violence?

4 A Not specifically for supervised visits.

5 Q All right. Tell me what it is that you took that  
6 would be similar to what I just asked you.

7 A I've done many trainings at the child and family  
8 services.

9 Q Okay.

10 A I've done some through Family Court. I've done -- I  
11 was on the committee for LGBT domestic violence --

12 Q Okay.

13 A -- downtown.

14 Q And with regards to domestic violence training, you  
15 learned that where there is domestic violence in  
16 relationships, there's certain ways that activities should be  
17 governed; is that right?

18 **MR. CAFARELLA:** Judge, I'm going to object to  
19 the line of questioning on domestic violence. It's outside  
20 the scope of direct. The witness is a social worker who is a  
21 supervised -- supervisor. She has not testified on direct  
22 that she is an expert or has needed training to do -- with  
23 regards to domestic violence.

24 **THE COURT:** Sustained. Mr. Cervi, move on.

25 **MR. CERVI:** All right.

1 With regards to domestic violence, if there is  
2 domestic violence in a -- or a history of domestic violence in  
3 a relationship, is there -- should the parties be together?

4 **MR. CAFARELLA:** Judge, I'm going to renew my  
5 objection.

6 **THE COURT:** Sustained, Mr. Cervi. There's been  
7 no testimony with respect to domestic violence in this  
8 proceeding.

9 **MR. CERVI:** Did Ms. Riford ever discuss with you  
10 that she had issues with Mr. Diarbakerly prior to these  
11 supervised visits?

12 **MR. MARGULIS:** Objection to the form of the  
13 question. He didn't say domestic violence in his question.  
14 I'm assuming that's what he's getting at, but maybe I'm  
15 assuming wrong. The question was, did she ever discuss any  
16 issues about Peter.

17 **MR. CERVI:** It's a fair question. Did she have  
18 any issues --

19 **THE COURT:** I'm going to overrule it. It's a  
20 fair question --

21 **MR. MARGULIS:** Okay.

22 **THE COURT:** -- because in the beginning of her  
23 testimony she testified to meeting the parties to be prepared  
24 for the supervised visit.

25 **MR. MARGULIS:** That's fine.

1                   **THE WITNESS:** Yes. Katie made me aware.

2                   **MR. CERVI:** Okay. What did she say to you as it  
3 relates to her prior history with Mr. Diarbakerly and domestic  
4 violence?

5                   **MR. MARGULIS:** Objection. Beyond the scope of  
6 the direct. Now he's asking about domestic violence.

7                   **MR. CERVI:** Judge, her testimony -- I can tell  
8 you exactly what this is relevant to. In her direct testimony  
9 she testified that she thought it was odd that my client would  
10 park around the corner and wouldn't be -- you know, park next  
11 to the car and would be in different areas where she had to go  
12 and see. It's directly related to domestic violence, Judge.

13                   **THE COURT:** How are you going to prove that with  
14 this witness?

15                   **MR. CERVI:** I'm just going to ask her as it  
16 relates to that. She says, basically, it was weird that my  
17 client wouldn't park next to him and would park in different  
18 areas.

19                   **THE COURT:** Overruled. Again, I -- I'll give  
20 you a short leash on this, Mr. Cervi.

21                   **MR. CERVI:** Thank you, Your Honor.

22                   **THE WITNESS:** I'm sorry, could you repeat your  
23 question?

24 **BY MR. CERVI:**

25                   Q     So before the access began, Ms. Riford discussed with

1 you certain prior history of domestic violence with  
2 Mr. Diarbakerly, correct?

3 A Yes.

4 Q All right. And she told you that there had been prior  
5 issues relating to physical abuse that was used upon her,  
6 correct?

7 A She wasn't specific like that, no.

8 Q She described to you that Mr. Diarbakerly had been  
9 physical with her in the course of their relationship,  
10 correct?

11 A Not that I recall. She mentioned domestic violence.  
12 Working in the Courts for 20 years, I'm well aware of what  
13 domestic violence is, so --

14 Q Did she discuss that Mr. Diarbakerly had ever been  
15 physical with her during the course of their relationship?

16 A Not specifically, no.

17 Q Did she ever tell you that he put his hands on her?

18 A Not that I recall.

19 Q Not that you recall. Do you recall -- let me ask you  
20 this: She discussed issues with you as it pertained to  
21 domestic violence history. What did she discuss with you?

22 A Domestic violence, it covers many -- she wasn't  
23 specific. She wasn't specific. I know that domestic violence  
24 could be emotional, financial, and physical.

25 **MR. CERVI:** Judge, I'm asking -- could you

1 please direct the witness to answer my question?

2 **THE COURT:** She answered it, Mr. Cervi. She  
3 said she wasn't specific.

4 **MR. CERVI:** So --

5 **THE COURT:** She said she told her about it and  
6 she was not specific. Move on.

7 **BY MR. CERVI:**

8 Q All right. Did she discuss with you time during the  
9 relationship that he had been verbally abusive towards her?

10 A Not that I recall.

11 Q Not that you recall. So in any event, you were aware  
12 of a domestic violence history that was relayed to you by  
13 Ms. Riford, correct?

14 **MR. MARGULIS:** Objection as to the  
15 characterization of a domestic violence history. I think the  
16 witness would be aware of allegations of a domestic violence  
17 history, but he's inventing facts that are not in evidence.

18 **THE COURT:** Sustained.

19 **MR. CERVI:** Fair enough.

20 **BY MR. CERVI:**

21 Q You are aware that Ms. Riford made allegations of  
22 domestic violence that was perpetrated against her by  
23 Mr. Diarbakerly during their relationship, correct?

24 A Yes.

25 Q All right. With that, it wouldn't be unusual then for

1 her to want to park around the corner, or out of sight of  
2 Mr. Diarbakerly, correct?

3 A Yes.

4 Q Okay. So for Miss Riford to not want to be around  
5 Mr. -- strike that. I'll withdraw that.

6 Now, with regards to the allegations of domestic  
7 violence, what is the protocol with supervised visits, if any,  
8 that relates to any separation of the parties?

9 **MR. MARGULIS:** Again, Judge, I think I'm going  
10 to object on the basis of no proof as to domestic violence,  
11 other than allegations of domestic violence. And this  
12 question, I think --

13 **THE COURT:** Sustained, Mr. Cervi.

14 **MR. CERVI:** Judge, I asked allegations of  
15 domestic violence, if there's certain protocols. I think it's  
16 a fair question, Judge. I'll -- I'll rephrase it.

17 **THE COURT:** It --

18 **MR. CERVI:** I believe I just said this, but --

19 **THE COURT:** All right.

20 **BY MR. CERVI:**

21 Q Ms. Kratt, where there are allegations of domestic  
22 violence, are there protocols in regards to supervised visits  
23 for keeping the parties separate from each other?

24 A Only if there's an Order of Protection that's in place  
25 and current.

1 Q Okay. Are there any other protocols that you're aware  
2 of through your training for people where there are  
3 allegations of domestic violence?

4 A When I meet with everyone individually, I would -- I  
5 would absolutely have taken Katie's feelings into  
6 consideration. If she told me she was going to park 20 spaces  
7 to the left and two spaces forward, I absolutely would have  
8 known that, but she never had that conversation with me. She  
9 never wanted to talk with me about concerns that she had.

10 Q Now, you're here voluntarily today, correct?

11 A Yes.

12 Q You weren't subpoenaed?

13 A No.

14 Q Okay. But you were promised -- strike that.

15 Were you paid a trial retainer up front?

16 A No.

17 Q Okay. Now, you stated in your direct testimony that  
18 you're a mandated reporter for CPS; is that accurate?

19 A Yes.

20 Q All right. So if you observe anything occur during  
21 the access that -- you would have to -- that could be harmful  
22 to the child, you would have to contact CPS, correct?

23 A Correct.

24 Q All right. Are you aware that after the access, the  
25 child Mason was taken to the hospital for a diaper rash, and



1 the hospital referred to CPS, made a call to CPS as a mandated  
2 reporter? Are you aware of that?

3 A No, I'm not.

4 Q Were you contacted by CPS as -- in regards to any open  
5 CPS investigations against Mr. Diarbakerly?

6 A No, I was not.

7 Q You were not? Were you also aware that there was a  
8 second CPS investigation against Mr. Diarbakerly?

9 A No.

10 Q And you're saying you haven't been contacted by anyone  
11 regarding either?

12 A No.

13 Q Now, on June 30th and July 1st, that was an access  
14 period you observed of Mr. Diarbakerly and the children,  
15 correct?

16 A Yes.

17 Q And I think you testified that during that access  
18 period, it was hot and sunny, right?

19 A Yes.

20 Q Do you recall what the temperatures were that day?

21 A I do not.

22 Q If I told you it was in the 90s, would that sound  
23 right to you?

24 A If that's what you told me, I would -- I guess I would  
25 consider that.

1 Q Okay. Now, in regards to the child Olivia, does she  
2 have any health concerns?

3 A She has asthma.

4 Q Okay. And that was relayed to you by my client before  
5 access, correct?

6 A Correct.

7 Q And with regards to her asthma, my client also  
8 provided you with a doctor's note regarding restrictions of  
9 her activities, right?

10 A Yes.

11 Q All right. And that was before the June 30th visit,  
12 correct?

13 A I believe it was on the -- on that day.

14 Q Okay.

15 A She gave me two pieces of paper, one for each child.

16 Q All right. And the essence of it was that the -- the  
17 child should not be exposed to heat for lengthy periods of  
18 time; is that accurate?

19 **MR. CAFARELLA:** Judge, I'm going to object to  
20 what the letter said. It's an out-of-court statement by a  
21 doctor. It's hearsay.

22 **THE COURT:** Sustained. And we have to wrap this  
23 up, Mr. Cervi. I'm close to 25 to 4:00, and I have to hear a  
24 family offense still.

25 **MR. CERVI:** All right.

1                   **THE COURT:** Two more minutes.

2                   **MR. CERVI:** Thank you, Your Honor. I'm sorry,  
3 what was the response?

4                   **THE COURT:** Sustained to the objection, which is  
5 referring to an out-of-court statement to a doctor.

6                   **MR. CERVI:** Okay. All right.

7 **BY MR. CERVI:**

8           Q     Now, with regards to Olivia, nonetheless, you are  
9 aware that there was restrictions related to her asthma,  
10 right?

11           A     Not to her asthma.

12           Q     Well, there was restrictions as to her activities that  
13 related to her asthma, correct?

14           A     Yes.

15           Q     Okay. And despite that, the children -- both children  
16 were -- did outdoor activities on June 30th and July 1st,  
17 correct?

18           A     We were at the zoo --

19           Q     Okay.

20           A     -- so --

21           Q     And before you were at the zoo, you were on Hertel  
22 Avenue, correct?

23           A     Hertel and Parkside, yes.

24           Q     Hertel and Parkside. And then you walked to the zoo  
25 with the two children and Mr. Diarbakerly?

1 A Yes.

2 Q All right. So -- and that was on July 1st that you  
3 had Olivia walk to the zoo from there?

4 A Yes. First thing in the morning.

5 Q And how far was that, of a walk?

6 A Three blocks.

7 Q Let me ask you this -- a better question -- how long  
8 did it take you to get to the zoo from the corner of Parkside  
9 and Hertel?

10 A Maybe 15 minutes.

11 Q Okay. During that visit, how long -- strike that.  
12 How long was that visit on July 1st?

13 A We were probably at the zoo with both kids for a  
14 couple hours.

15 Q Okay. And did the visit then continue with Olivia at  
16 the zoo after Mason was picked up?

17 A Yes.

18 Q Okay. And how long was Olivia then at the zoo that  
19 day?

20 A Probably for another two and a half hours.

21 Q So about four and a half hours, total, she was at the  
22 zoo?

23 A Yes.

24 Q Okay. And the child then -- strike that.

25 The child Mason was at the zoo, you said, for

1 about two hours that day?

2 A Approximately.

3 Q Okay. And during the timeframe Mason was there, did  
4 you make any observations about his medical condition or  
5 physical condition?

6 A No. He cried. He was fussy. We were in -- most of  
7 the time, for the time Mason was there, we were in the gift  
8 shop, where it was cool.

9 Q So your testimony is that Mason was in the gift shop  
10 most of the time that you had him?

11 A We were in the gift shop. We left the gift shop. We  
12 went to a misting tent. We went back into the gift shop.

13 Q Okay. So this was while you were at the zoo with the  
14 child, correct?

15 A Yes.

16 Q All right. The children like animals?

17 A Yes.

18 Q So the child was brought to the animals, right?

19 A I'm sure. I don't remember exactly which animals.

20 Q Isn't the purpose of going to the zoo to see the  
21 animals, Ms. Kratt?

22 A It is, yeah.

23 Q All right. So then you would agree that the child  
24 Mason was outside observing the animals, right?

25 A He was outside for a very short time, but he was at

1 the zoo, after we walked there from breakfast.

2 Q Okay. Ms. Kratt, are you being paid any money outside  
3 for your testimony and for your preparation and for the  
4 visits? That's all you're being paid, correct?

5 A Yes.

6 Q Okay. Now --

7 **THE COURT:** Mr. Cervi, I'm sorry. I have to  
8 break you. We have to be out of this courthouse before 5:00,  
9 and I have to still see a family offense petition that's been  
10 filed.

11 **MR. CERVI:** Fair enough.

12 **THE COURT:** I apologize for making you stop, but  
13 we're going to have to pick up on December 6th. Okay?

14 **MR. CERVI:** Thanks, Your Honor.

15 **MR. CAFARELLA:** Thank you, Judge.

16 *(Proceedings concluded at 4:37 p.m.)*

17

18 I hereby certify that the foregoing is a true and accurate  
19 transcription of the proceeding.

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ASHLEY KLEINSCHMIDT, NYACR, NYRCR  
OFFICIAL COURT REPORTER