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

9

10 \*\*\*\*\*

11 ORAL VIDEOTAPED DEPOSITION

12 15 y/o LG #1

13 June 11, 2008

14 \*\*\*\*\*

15 ORAL VIDEOTAPED DEPOSITION OF 15 y/o LG #1,  
16 produced as a witness at the instance of the Plaintiffs  
17 and duly sworn, was taken in the above-styled and  
18 numbered cause on June 11, 2008, from 9:39 a.m. to  
19 4:48 p.m. before Roxanne K. Smith, Certified Shorthand  
20 Reporter in and for the State of Texas, reported by  
21 computerized stenotype machine at the offices of Beirne,  
22 Maynard & Parsons, L.L.P., 1300 Post Oak Blvd., 25th  
23 Floor, Houston, pursuant to the Texas Rules of Civil  
24 Procedure and the provisions stated on the record or  
25 attached hereto.

□00002

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

2

FOR THE PLAINTIFFS:

3

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4 State Bar No. 16070500

-and-

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20

21 Also Present:

22 Mr. Derek Martin, Videographer

Mr. David Pluchinsky

23 Mrs. Kathleen Pluchinsky

Mr. Stephen Griffin

24

25

□00003

1 INDEX

2 PAGE

3 Appearances..... 2

4 15 y/o LG #1

5 Examination by Mr. Pletcher..... 4

6 Reporter's Certificate..... 235

7

8

9

10 EXHIBIT INDEX

11 NO. DESCRIPTION PAGE

12 14F Pool Diagram 9

13 14G Handwritten Diagram 142

14 52F Notice of Deposition 4

15 37A List of Unscheduled Lifeguards on 7/18/07 203

16 74 Statement of 7 y/o B-CC #1 193

18

19

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□00004

1 (Exhibit 52F marked)

2 THE VIDEOGRAPHER: Today's date is

3 Wednesday, June the 11th, 2008. The time is 9:39 a.m.

4 We're on the record.

5 15 y/o LG #1,

6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. PLETCHER:

9 Q. Good morning, 15 y/o LG #1. My name is Matt Pletcher.

10 A. Good morning.

11 Q. Thank you for coming today. Have you ever had  
12 your deposition taken?

13 A. No, sir.

14 Q. Okay. We're here to ask you questions about  
15 what you know about the incident that occurred on  
16 July 18th, 2007. You understand that?

17 A. Yes, sir.

18 Q. If I could get a couple of agreements with you  
19 at the front of this, it will make it go a lot smoother.

20 Okay?

21 A. (Witness nodding head)

22 Q. First of all, you need to give verbal  
23 responses --

24 A. Okay.

25 Q. -- so our court reporter --

□00005

1 A. I'm sorry.

2 Q. That's okay -- so our court reporter -- this is  
3 the first time you've done it. And I know you -- I know  
4 you may be a little nervous today. And today we will  
5 talk about stuff that you haven't thought about and  
6 things that are uncomfortable. And I want you to know  
7 that at any time you just feel like you need to go out  
8 for some air, you want to take a break, you want to talk  
9 to Murray your lawyer, you just let me know. Okay?

10 A. (Witness nodding head)

11 Q. This is your deposition. Okay? And you have a  
12 right to take breaks when you want to. Okay?  
13 A. (Witness nodding head)  
14 Q. You've got to answer verbally.  
15 A. I'm sorry. Okay.  
16 Q. The other thing that I need from you is if for  
17 some reason you don't understand one of my questions or  
18 you don't hear me or what I say just doesn't make any  
19 sense, will you stop me and tell me to ask it again --  
20 rephrase the question so that you do understand it  
21 before you answer?  
22 A. Yes, sir.  
23 Q. And if you don't answer -- if you don't ask me  
24 to rephrase it and you give an answer, I will assume  
25 that you understood it and you heard it. Is that fair?

□00006

1 A. Yes, sir.  
2 Q. Okay. And we need to wait for each other  
3 because the court reporter can't get us both talking at  
4 the same time. So, if you will wait until I finish my  
5 question before you answer, I'll give you the same  
6 courtesy in waiting until you finish your answer before  
7 I ask the next question.  
8 A. All right.  
9 Q. Is that okay?  
10 A. Uh-huh.  
11 Q. Good. Like I said, we're here to determine  
12 what you know personally from seeing things yourself --  
13 A. Okay.  
14 Q. -- or hearing things yourself. Okay?  
15 A. Okay.  
16 Q. And also we're here to determine whether or not  
17 other people have told you stuff or you've overheard  
18 things about John's drowning. Okay?  
19 A. All right.  
20 Q. Now, 15 y/o LG #1, you were one of two 15-year-old  
21 lifeguards who were working the family pool at the  
22 Houston Racquet Club on July 18th, 2007, right?  
23 A. Yes, sir.  
24 Q. That was your first lifeguarding job, right?  
25 A. Yes.

□00007

1 Q. I believe your certification cards show that  
2 you were certified sometime in June of '07?  
3 A. Yes, sir.  
4 Q. And did you do that over at the Dad's Club over

5 on I-10?

6 A. Yes.

7 Q. Okay. And how long was that course?

8 A. Two weekends.

9 Q. Two weekends?

10 A. Uh-huh.

11 Q. So, was it four days?

12 A. I think it was three. I don't remember.

13 Q. Okay. We have a little gizmo over here that  
14 kind of helps us show documents --

15 A. All right.

16 Q. -- to witnesses. This is a copy of the  
17 American Red Cross Lifeguarding Manual that was  
18 published in 2007. Is that the same manual that you  
19 used in that course?

20 A. The cover is the same.

21 Q. Right.

22 A. So, I assume it is.

23 Q. Okay. Good. And that was an American Red  
24 Cross certification that was done through the Greater  
25 Houston Chapter of the American Red Cross, right?

□00008

1 A. I know it was Red Cross.

2 Q. Sure. I'll tell you what: Let's just -- if we  
3 look at your lifeguard training -- that light is not  
4 good above us, is it? Okay. This is your certification  
5 card. And it indicates that you received your  
6 certification in lifeguard training with FA. Is that  
7 first aid?

8 A. Uh-huh.

9 Q. Conducted by the Greater Houston Area American  
10 Red Cross. And that certification was good for three  
11 years.

12 A. Yes.

13 Q. Did you take that course with anybody else who  
14 you worked with at the Racquet Club as a lifeguard?

15 A. No.

16 Q. Okay. Now, on July 18th, 2007 when you were  
17 working as a lifeguard there, there was a kid named  
18 LG Supv --

19 A. Yes, sir.

20 Q. -- who was acting as the head guard or the  
21 lifeguard supervisor that day. Do you remember?

22 A. Yes.

23 Q. Do you remember LG Supv?

24 A. Yes, sir.

25 Q. We've deposed LG Supv, and he's given us a lot  
□00009

1 of information. But you knew on that day that while you  
2 were on the stand, wherever your rotation was, either at  
3 the family pool, at the lap pool or even when you were  
4 on break, that he was the person who was directly  
5 supervising you and the way you did your job; is that  
6 right? He was there to help and assist you?

7 MR. SNYDER: Objection, form.

8 A. Yes.

9 Q. (By Mr. Pletcher) Is that true?

10 A. He was our supervisor.

11 Q. Sure. And there was another gentleman  
12 Guillermo Palmer who was the lifeguard manager or the  
13 aquatics director. Do you remember Mr. Palmer?

14 A. Yes, sir.

15 Q. I want to ask you just right off the bat about  
16 the day. Okay?

17 A. Okay.

18 Q. And what I'd like to do is I'd like you to tell  
19 the story with kind of a -- by filling out a diagram of  
20 the pool, where we can put various people and things.  
21 Would that be okay?

22 A. Uh-huh. Yes, sir.

23 (Exhibit 14F marked)

24 Q. (By Mr. Pletcher) Okay. And I'm going to show  
25 you what I've marked as 14F. Okay? And that is a

□00010

1 pool -- a diagram of the family pool --

2 A. Okay.

3 Q. -- that was out at the Racquet Club. Okay?

4 And I had LG Supv fill out one of these, and Guillermo  
5 Palmer filled out one of these diagrams. So did  
6 Mr. Lamkin and I believe Mr. Griffin did, too. So,  
7 you're not the first one. Okay?

8 A. (Witness nodding head)

9 Q. So, you started your rotation at the family  
10 pool at about 11:00 o'clock, right --

11 A. Yes, sir.

12 Q. -- that day? And we know that on that day  
13 there were two lifeguard stands. You were on one of  
14 them, correct?

15 A. Yes, sir.

16 Q. And 4 y/o B-CC #6 was on the other one,  
17 correct?

18 A. Yes, sir.

19 Q. Now, what I'd like you to do, if you don't  
20 mind, could you just put a box where your chair was?  
21 A. Can I turn the paper?  
22 Q. Absolutely. You do whatever -- whatever you  
23 need to do there.  
24 A. (Witness drawing)  
25 Q. And would you mind drawing a line out from that

□00011

1 box and put your initials so that we know that that is  
2 the chair that you were on?  
3 A. (Witness drawing)  
4 Q. Okay. And then could you draw in the chair  
5 where 4 y/o B-CC #6 was stationed?  
6 A. (Witness drawing)  
7 Q. And if you could put his initials "BB" out to  
8 the side, that would be helpful.  
9 A. (Witness drawing)  
10 Q. And could you just equate me with this diagram  
11 and tell me -- tell me about your chair. Okay? Can you  
12 just explain to the jury where your chair was? What was  
13 around it?  
14 A. It was in the middle of the pool, and it  
15 basically -- it was under a big umbrella.  
16 Q. Okay.  
17 A. And it looked out into the shallow end --  
18 Q. Okay.  
19 A. -- of the pool.  
20 Q. Okay. And you described a big umbrella. And  
21 you'll see on this diagram there's a circle.  
22 A. Uh-huh.  
23 Q. And that depicts the umbrella; is that correct?  
24 A. Yes, sir.  
25 Q. Okay. And then 4 y/o B-CC #6's chair was over

□00012

1 by the slide?  
2 A. Yes, sir.  
3 Q. And we have pictures of the slide that the jury  
4 will be able to see. But that's where he was stationed  
5 during that rotation, correct?  
6 A. Yes.  
7 Q. Now, the rotations that were in effect at the  
8 Racquet Club that summer were 30-minute rotations,  
9 correct?  
10 A. Yes, sir.  
11 Q. You started rotating on the family pool for 30  
12 minutes, correct?

13 A. Yes.  
14 Q. Then you'd go to the lap pool, correct?  
15 A. Yes.  
16 Q. And then you would be on break for 30 minutes.  
17 A. Yes.  
18 Q. So, 30, 30, 30.  
19 A. (Witness nodding head)  
20 Q. Okay. We're going to put the diagram up on the  
21 screen here. Now, do you recall -- why don't you just  
22 walk me through that morning, July 18th, before you got  
23 on your chair at the family pool at 11:00. When did you  
24 arrive that day, do you remember?  
25 A. I got there at 9:00.

□00013

1 Q. Okay.  
2 A. Around 9:00. But I don't -- I don't remember  
3 exactly what I did before that.  
4 Q. Sure.  
5 A. Because I worked all summer. I don't remember.  
6 Q. Okay. So, on July 18th your memory's a little  
7 foggy about what happened up until the point in time  
8 that you got to the family pool.  
9 A. That I got on the stand. Like, I know we,  
10 like, cleaned and washed the pool but nothing specific.  
11 Q. Okay. Typically what would the lifeguards do  
12 first thing upon arriving at the Racquet Club on a  
13 regular day?  
14 A. Sign in.  
15 Q. Okay. Was there a sign-in sheet in the  
16 lifeguard office?  
17 A. There's a -- I don't know what it's called.  
18 You, like, put your Social Security number in it.  
19 Q. Right.  
20 A. And then you put your thumb on it, and it signs  
21 you in.  
22 Q. Okay. And was that sign-in machine -- it  
23 sounds like some sort of machine that you type in your  
24 Social Security number --  
25 A. Uh-huh.

□00014

1 Q. -- and put your thumb print on it.  
2 A. Yes.  
3 Q. Was that there the entire summer that you  
4 worked there or the entire time you worked there?  
5 A. It was there the whole time I was lifeguarding.  
6 Q. Okay. Okay. Well, do you recall what your



7 rotation was before you got to the family pool at  
8 o'clock?

9 A. No, sir.

10 Q. If the usual rotation was family pool 30  
11 minutes, lap pool 30 minutes and then break 30 minutes,  
12 you would start that rotation all over again once you  
13 got through those three things, right?

14 A. Yes.

15 Q. And if you got to the family pool at 11:00,  
16 then is it safe to assume that you had just had your  
17 30-minute break?

18 A. Yes.

19 Q. Okay. Do you happen --

20 A. But I don't remember.

21 Q. Sure.

22 A. I don't know -- I don't remember.

23 Q. Right.

24 A. I don't know what happened.

25 Q. I'm -- really, I'm just trying to get your best

□00015

1 estimate on that. And today, you know, there will be a  
2 lot of things, 15 y/o LG #1, that you'll just have to estimate.  
3 Because it's hard to remember certain things, you know,  
4 a year later. Okay?

5 A. (Witness nodding head)

6 Q. You've got to answer verbally.

7 A. Yes. Sorry.

8 Q. Okay. So, you know, given the usual rotation,  
9 it would be fair to say that you probably just got  
10 through with your break.

11 A. Yes, sir.

12 Q. Also, LG Supv testified that -- and so  
13 did Guillermo Palmer for that matter -- that the  
14 lifeguards decided the rotations amongst themselves;  
15 isn't that correct?

16 A. Yes, sir.

17 Q. And on July 18th, 2007 did you and 15 y/o LG #2  
18 decide that you would rotate together that day?

19 A. We didn't go up to each other and be, like, why  
20 don't we rotate together.

21 Q. Yes.

22 A. But they just -- when they need two people on  
23 the stand, I guess they just volunteer.

24 Q. Okay. Okay. So, first thing in the morning  
25 lifeguards get together. At that point y'all decide

□00016

1 amongst yourselves what the rotations will be, who's  
2 going to work with who for the entire day? Is that how  
3 it worked?

4 A. No.

5 Q. Okay. How did it work?

6 A. When people first got on the stand, there's  
7 four stands, two at the lap pool and two at the resort  
8 pool. And just four people would go get on a stand. We  
9 didn't decide who we wanted to work with.

10 Q. Okay. Right.

11 A. So, I wasn't collaborating with 15 y/o LG #2 to work  
12 with him.

13 Q. Sure. Sure. No. That's fine. So, basically  
14 what you're telling me is that when the guards -- did  
15 y'all arrive -- I mean, the shift was from 9:00 to 3:00,  
16 right?

17 A. 9:30 to 3:00.

18 Q. 9:30 to 3:00? Lifeguards typically showed up  
19 at 9:00?

20 A. Uh-huh. Yes, sir.

21 Q. And then would there be a discussion amongst  
22 the lifeguards as to who was going to go where? Or  
23 did -- was it just you punched your Social Security  
24 number in, put your fingerprint on and then you ran out  
25 to a stand? I'm trying to get an idea --

□00017

1 A. No.

2 Q. -- of how it worked.

3 A. Well, we got -- we get there and usually the --  
4 because I don't know what time camp started. But no one  
5 was there right at 9:00.

6 Q. Uh-huh.

7 A. So, we'd pick up towels and turn on the slide  
8 and get the pool ready.

9 Q. Sure.

10 A. And then when it was time to get up, which I  
11 think it was at 9:30 --

12 Q. Yes, ma'am.

13 A. -- like the supervisor would say, "Okay. I  
14 need four people to get on the stand." And so, then  
15 we'd go get on the stand.

16 Q. And would you -- would there be any discussion  
17 or would y'all just run to whatever stand you wanted to  
18 go to?

19 A. I mean, if you wanted a certain stand, you  
20 could say, "I want this stand."

21 Q. Sure.  
22 A. And then go take it.  
23 Q. Okay. Okay. And do you have any recollection  
24 on July 18th of making a comment like that to LG Supv  
25 saying, you know, I'd like to work on the family  
□00018  
1 pool first and I'm going to go to the stand by the slide  
2 or the --  
3 A. No.  
4 Q. You don't remember that at all?  
5 A. No.  
6 Q. If you didn't have any discussion that day and  
7 you didn't comment -- make any comment to LG Supv,  
8 who did you talk with?  
9 A. What do you mean?  
10 Q. About what stand you were going to start on?  
11 A. I don't remember talking to anyone. I don't --  
12 Q. Okay. Do you -- you don't have a memory at all  
13 about that?  
14 A. No.  
15 Q. Okay. Do you -- do you know how 4 y/o B-CC #6  
16 ended up in the same rotation with you?  
17 A. No.  
18 Q. Okay. And am I correct in assuming that you  
19 and 15 y/o LG #2 rotated that entire day together up until  
20 11:00? And when I say "rotate," you both worked family  
21 pool, both worked lap pool and both worked -- or were on  
22 break together?  
23 A. I don't remember.  
24 Q. Okay. Well, we're going to look at your time  
25 records and stuff a little later in the deposition. But  
□00019  
1 you had worked at the Racquet Club a few days before  
2 this incident --  
3 A. Yes.  
4 Q. -- as a lifeguard, right?  
5 A. Yes, sir.  
6 Q. Do you remember on any of these prior days that  
7 you worked there whether when you rotated on a  
8 particular shift, whether you worked with the same  
9 lifeguard at the same pool the entire day?  
10 A. Usually -- usually you rotate with the same  
11 person if you had all four stands up. But, like, if --  
12 sometimes it would get messed up if not all four stands  
13 were being used.  
14 Q. Uh-huh.

15 A. Like, if there was only one person in the lap  
16 pool, we'd only put one guard --

17 Q. Right.

18 A. -- until more people came. So, that would mess  
19 up the whole rotation.

20 Q. Right. But it would just mess up the rotation  
21 for the lap pool because there would be one rather than  
22 two guards, right?

23 A. I guess. But then you wouldn't be with the  
24 same person the whole day.

25 Q. Okay. Okay. Did that ever -- did that

□00020

1 situation, the messing up of the rotation, ever cause  
2 any confusion among the guards on who was going to be  
3 where and when?

4 A. No.

5 Q. Okay. Did it cause any problems or bickering  
6 between the guards of who was going to be where and  
7 when?

8 A. No.

9 Q. Okay. Do you ever remember having to speak  
10 with Guillermo Palmer, the lifeguard manager, about the  
11 rotations?

12 A. No.

13 Q. And, of course, Guillermo Palmer never talked  
14 to you or your fellow guards about the rotations,  
15 either.

16 A. About them being -- about not being with the  
17 same person all day?

18 Q. Or --

19 A. No one -- no, not that I remember.

20 Q. Were you finished? Okay. And I'm just talking  
21 any -- do you remember any discussions or any  
22 instruction or comment by Guillermo Palmer or anybody  
23 else at the Houston Racquet Club for that matter about  
24 lifeguard rotations?

25 A. I don't --

□00021

1 MR. SNYDER: Objection, form.

2 A. I don't understand what you're saying.

3 Q. (By Mr. Pletcher) Sure.

4 A. Do you want -- you mean like everyone -- that  
5 you're with the same person all day?

6 Q. No. Any kind of instruction or comment or  
7 discussion by Guillermo Palmer about the lifeguard  
8 rotations. Do you ever remember --

9 A. I don't know.

10 MR. SNYDER: Objection, form.

11 Q. (By Mr. Pletcher) Ma'am?

12 A. I don't know.

13 Q. You don't have a recollection of that?

14 A. No, sir.

15 Q. Okay. Do you recall on July 18th, 2008 [sic]  
16 sitting as a guard at the family pool at any time before  
17 the 11:00 o'clock rotation?

18 A. I don't remember what I did -- I don't remember  
19 what I did that morning.

20 Q. Okay.

21 A. Like, I know -- I know we had rotations. I  
22 just don't remember exactly what I did.

23 Q. Okay. Given the usual rotation, there's  
24 probably a pretty good chance that you did rotate on the  
25 family pool that day because of the timing if you

□00022

1 started at 9:30.

2 A. It's possible.

3 Q. Right. Well, it's kind of probable, isn't it?  
4 Because the shifts were 30 minutes and there's three  
5 shifts: family pool, lap pool and a break. So, that's  
6 an hour and a half?

7 A. Yes, sir.

8 Q. And if you started at 9:30, that would get you  
9 to 11:00, right?

10 A. Yes.

11 Q. Okay. Now, let's go back to the diagram; and  
12 I'll just show you here. Can you see that okay?

13 A. Yes, sir.

14 MR. PLETCHER: Could you zoom in on the  
15 slide, please?

16 Q. (By Mr. Pletcher) Okay. This right here  
17 (indicating) is the slide that we've discussed, correct?

18 A. Yes, sir.

19 Q. And 15 y/o LG #2 was here (indicating). Now, there  
20 was a floating line that went across this area, correct?

21 A. Yes, sir.

22 Q. I'm going to mark that yellow to demark the  
23 floating line that separated the -- what did it  
24 separate?

25 A. It marked where the pool got deeper so that --

□00023

1 and it also marked where kids weren't supposed to go  
2 where the slide was. Unless they were on the slide,

3 they were supposed to stay out of that area.

4 Q. Right.

5 A. And it was to keep them out.

6 Q. Okay. So, if children were using the slide,

7 they were to stay in this area. And if other children

8 who were not using the slide, they were supposed to stay

9 on this side (indicating), right?

10 A. Yes, sir.

11 Q. Okay. Now, what I'd like you to do: You

12 remember on July 18th when you were in the chair at the

13 family pool and 15 y/o LG #2 was down here (indicating).

14 15 y/o LG #2, his job as the lifeguard was to watch the kids as

15 they went up the landing -- the stairs to the landing of

16 the slide --

17 A. Uh-huh.

18 Q. -- and went down the slide and then came over

19 to the ladder, correct?

20 A. Yes, sir.

21 Q. So, his area of responsibility -- you know what

22 an area of responsibility is?

23 A. (Witness nodding head)

24 Q. -- was all on this side of that road

25 (indicating). Okay? Is that correct?

□00024

1 A. Yes, sir.

2 Q. Okay. Now, do you -- the directions -- you

3 know what? I'm just going to --

4 MR. MARRS: Do you want to have her mark

5 where his area of responsibility was?

6 MR. PLETCHER: Yeah, I will.

7 Q. (By Mr. Pletcher) But this down here is the

8 west end of the pool; is that correct? This is the

9 south? This is the north? This is the east

10 (indicating)?

11 A. I don't know.

12 Q. Okay. That's fine. Why don't you mark in

13 orange 4 y/o B-CC #6's area of responsibility, and you

14 can just put lines across.

15 A. (Witness drawing)

16 Q. Okay. Now, you have marked -- let's put this

17 on the -- you have marked on Exhibit 14F 15 y/o LG #2 area of

18 responsibility included not only everything on the east

19 side of the floating line but also there was some areas

20 on the other west side of the floating line; is that

21 correct?

22 A. Yes.

23 Q. Now, why don't you mark your area of  
24 responsibility in pink.

25 A. (Witness drawing)

□00025

1 Q. And now, you have marked your area of  
2 responsibility in pink, correct?

3 A. Yes, sir.

4 Q. And as we can see here, there's some  
5 overlapping area of the orange for 15 y/o LG #2 and the pink  
6 for you; is that correct?

7 A. Yes, sir.

8 Q. Now, what is it -- what is the basis for your  
9 understanding that 15 y/o LG #2's area of responsibility  
10 extended to the west side of that floating line?

11 A. Because it was in his area. It was by the  
12 slide.

13 Q. Okay. I thought that 15 y/o LG #2's primary  
14 responsibility when he sat on the slide --

15 A. Yes.

16 Q. -- was to watch the slide. Is that right?

17 A. That is correct.

18 Q. Okay. And do you really know if 15 y/o LG #2 would  
19 agree with what you have marked as his area of  
20 responsibility?

21 MR. SNYDER: Objection, form.

22 A. I don't know 15 y/o LG #2.

23 Q. (By Mr. Pletcher) Had you ever worked with him  
24 before?

25 A. No.

□00026

1 Q. Okay. So, if you didn't know 15 y/o LG #2 and you  
2 hadn't talked to him before, you don't know what he  
3 would say about his area of responsibility, correct?

4 MR. SNYDER: Objection, form.

5 A. Correct.

6 Q. (By Mr. Pletcher) And Guillermo Palmer, the  
7 lifeguard manager, he did not provide you with a written  
8 diagram like you have just made showing what the areas  
9 of responsibilities were for these two stands, did he?

10 MR. SNYDER: Objection, form.

11 A. No, sir.

12 Q. (By Mr. Pletcher) Okay. Is your drawing or  
13 shading in in orange the area of responsibility for the  
14 slide based upon what you consider to be your area of  
15 responsibility when you sat in the chair next to the  
16 slide?

17 A. That's what we learned in lifeguarding class.

18 Q. Explain that to me.

19 A. When I took the class, we learned that the  
20 areas overlap. That's why they're pink and orange.

21 Q. Okay. Do you have any idea what the distance  
22 is between the slide drop area to the outer point of the  
23 orange shaded area of responsibility that you've drawn  
24 in?

25 A. I have no idea.

□00027

1 Q. Any estimate at all?

2 A. No, sir.

3 Q. You had sat at that chair at the slide prior to  
4 July 18th, correct?

5 A. Yes, sir.

6 Q. And being in that chair, your primary  
7 responsibility is to make certain that the children who  
8 are coming out of the slide shoot come -- they go down  
9 beneath the surface of the water, first of all, right?

10 So, you've got to watch them go in.

11 A. Yes, sir.

12 Q. And then you have to see them come up, correct?

13 A. Yes, sir.

14 Q. And then you have to make certain that they get  
15 safely from wherever they come up to this ladder.

16 A. There's another ladder, too.

17 Q. Where is the other ladder?

18 A. On the other side.

19 Q. Were the children allowed to -- and is this the  
20 other ladder here (indicating)?

21 A. Yes, sir.

22 Q. I'm going to put a circle around both the  
23 ladders. Is it your understanding, that the children  
24 using the slide could use either ladder?

25 A. Yes, sir.

□00028

1 Q. There was no rule at the Racquet Club  
2 prohibiting the children from using either one of them,  
3 correct?

4 A. Yes, sir.

5 Q. Would you explain to the jury your  
6 understanding of what an area of responsibility is in  
7 lifeguarding?

8 A. It's the area of the pool that you watch.

9 Q. And when you say it's the area that you watch,  
10 as a lifeguard, the terminology that the American Red



11 Cross uses is that that's your area for patron  
12 surveillance, right?

13 A. Yes, sir.

14 Q. And that's your area for scanning, correct?

15 A. Yes, sir.

16 Q. And patron surveillance is what? What does  
17 that mean to you?

18 A. Watching the people.

19 Q. Watching the people in your area of  
20 responsibility?

21 A. Yes, sir.

22 Q. And effective scanning is a visual technique  
23 whereby you scan your area of responsibility both on the  
24 surface of the water and below the water all the way to  
25 the bottom, right?

□00029

1 A. Yes, sir.

2 Q. To make certain that nobody needs any help,  
3 right?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. (Witness nodding head)

7 Q. Okay. Did you say "yes"?

8 A. Yes, sir.

9 Q. And so, you testified a minute ago that your  
10 basis for drawing in this orange shaded area of  
11 responsibility for the slide stand was based upon what  
12 you learned at your American Red Cross lifeguarding  
13 course, right?

14 A. Yes, sir.

15 Q. Well --

16 A. If you sit on the stand, that's the area for  
17 the slide.

18 Q. Okay. I understand what you're saying. But  
19 I'm trying to really determine whether there was any  
20 other basis for this understanding other than what you  
21 learned at the American red Cross.

22 A. I don't understand.

23 Q. Well, did anybody at the Houston Racquet Club,  
24 Guillermo Palmer or anybody else, ever tell you that the  
25 area of responsibility for the slide chair included all

□00030

1 of this that you've drawn in in orange?

2 A. No one ever drew a picture. We didn't have  
3 pictures.

4 Q. You just said that nobody drew a picture for

5 you at the Racquet Club. Guillermo Palmer never drew a  
6 diagram like this, right?

7 A. No, sir.

8 Q. But I think you said somebody told you?

9 A. I did not say that.

10 Q. Okay. All right. You -- nobody, Guillermo  
11 Palmer nor anybody else at the Houston Racquet Club,  
12 ever gave you any instruction or told you anything about  
13 your area of responsibility for the lifeguard chair at  
14 the slide, right? That's what you're telling us?

15 MR. SNYDER: Objection, form.

16 A. No, that's not what I'm saying.

17 MR. PLETCHER: What did you say, Norman?

18 MR. SNYDER: Objection, form.

19 Q. (By Mr. Pletcher) What are you telling us  
20 then?

21 A. I said nobody drew a picture.

22 Q. I understand.

23 A. They told us to watch the areas. They told me  
24 that the -- when you're on the slide, you watch the  
25 slide area. When you're on the other chair, you watch

□00031

1 the other area.

2 Q. Who told you that? You said "they." Who told  
3 you that?

4 A. The people that work at the Racquet Club.

5 Q. What people? I need to know.

6 A. I don't know specifically. I know Guillermo  
7 was one of them. Probably some of the other lifeguards  
8 who were there my first day.

9 Q. You said you didn't know who specifically told  
10 you. But then you said Guillermo did?

11 A. I know -- it was more than one person.

12 Q. And what were you told specifically?

13 A. I do not remember.

14 Q. Okay. Well, do you remember generally what you  
15 were told about what you were supposed to be doing as  
16 far as patron surveillance in your area of  
17 responsibility at the slide chair?

18 A. Yes, sir.

19 Q. What?

20 A. The main responsibility was to watch the kids  
21 when they came out of the slide and make sure they made  
22 it to the wall. We were also in charge of watching the  
23 area around the slide in case other kids swim in.

24 Q. Okay. And when you said the other area around

25 the slide, did you mean to say the other area around the  
□00032

1 floating line to make certain that kids don't swim into  
2 that slide area?

3 A. Yes, sir.

4 Q. Okay. Now, was there a rule or were you given  
5 any instruction at the Houston Racquet Club on the  
6 number of children who could use the slide at one time?

7 A. One person could go down at a time.

8 Q. Okay. One person at a time through the shoot.

9 A. Unless it was a really small child and their  
10 parent, then two.

11 Q. Okay. So, the rule was one person down the  
12 slide shoot unless it was a very small child and a  
13 parent could ride the slide down with them.

14 A. Yes, sir.

15 Q. Okay. Was there a specific rule or instruction  
16 given to you at the Houston Racquet Club as to the  
17 number of children who could be waiting to use the  
18 slide? Was there any number of kids who could be  
19 standing on the steps or the landing up here or waiting  
20 in line here?

21 A. No, sir.

22 Q. And do you have a specific recollection sitting  
23 here today manning that slide chair on prior occasions  
24 prior to July 18th?

25 A. I don't remember.

□00033

1 Q. Okay. Would you agree that if there were kids  
2 lined up to use that slide and you were the person  
3 sitting in the slide chair, that your main  
4 responsibility as you have described for watching the  
5 kids to make certain they got safely from the shoot exit  
6 all the way to the ladder on either side, that that  
7 would pretty much take up most of your time?

8 A. Yes, sir.

9 Q. Okay. In other words, it would be difficult  
10 for you to effectively scan other areas if you had kids  
11 waiting in line and you had to watch one after another  
12 after another come out of the shoot and swim safely to  
13 the side; is that correct?

14 MR. SNYDER: Objection, form.

15 A. I don't understand your question.

16 Q. (By Mr. Pletcher) If you had a number of  
17 children lined up here -- and of course, did you give  
18 them a signal from your chair that it was safe -- it was

19 okay for them to go down the shoot?

20 A. You give them a thumbs-up when it's their turn  
21 to go.

22 Q. Right. So, if you had -- let's say you had  
23 seven or eight children lined up. You gave one child  
24 the signal of okay to go in and you have to watch that  
25 child come out of the shoot and swim safely to this

□00034

1 ladder or that ladder (indicating). Then would you --  
2 also wasn't the rule that you had to watch them get to  
3 this stairway or not? Were you required to watch them  
4 exit the ladder and walk back over to the slide or not?

5 A. They don't have to get back on the slide.

6 Q. Okay. But if they did, are you required as the  
7 lifeguard in the slide chair to watch them get safely  
8 over to here (indicating)?

9 A. No, sir.

10 Q. So, your patron surveillance at the Houston  
11 Racquet Club was limited solely to the pool? Is that  
12 what you're telling us?

13 A. No, sir.

14 MR. SNYDER: Objection, form.

15 Q. (By Mr. Pletcher) Because you learned in your  
16 American Red Cross lifeguard training that patron  
17 surveillance included not only the water but the  
18 surrounding deck areas, correct?

19 A. Yes, sir.

20 Q. So, if you're properly surveilling your area  
21 of responsibility, you would have to also make certain  
22 that they were safe in the other areas of the deck,  
23 right?

24 A. Yes, sir.

25 Q. So, if you were watching this one child come

□00035

1 down and you see that he gets to the slide -- to the  
2 ladder safely, would you wait for him or her to get out  
3 of the water before you gave the okay signal to the next  
4 person? Or would you give it to that person when they  
5 reached the ladder?

6 A. I don't remember.

7 Q. Okay. Well, one or the other you obviously  
8 did, right?

9 A. What?

10 Q. Once you determined that they were safely in  
11 this area by the ladder, you'd give the next A-okay  
12 signal, right?

13 A. I don't remember if I watched them get out of  
14 the pool every time or not.

15 Q. Okay. But you'd certainly watch them every  
16 time to make certain they got to the ladder safely.

17 A. Yes, sir.

18 Q. And once they got to the ladder safely, would  
19 you give the A-okay sign to the next person?

20 A. I don't remember.

21 Q. Does that make sense, though? If you're  
22 sitting in the chair and you've got kids lined up, once  
23 you saw the person reach this ladder safely, that it  
24 would be time for you to go ahead and give the okay sign  
25 to the next person?

□00036

1 A. Yes. It makes sense.

2 MR. SNYDER: Objection, form.

3 Q. (By Mr. Pletcher) Okay.

4 A. I don't remember if I watched them get out of  
5 the pool every time or not.

6 Q. Okay. But you did watch them get to the ladder  
7 safely?

8 A. Yes, sir.

9 Q. And then you would give the okay sign, right?  
10 Would that make sense?

11 A. I don't -- yes, it would make sense. I've --

12 Q. Okay.

13 A. -- said this three times. I don't remember if  
14 I watched them get out of the pool or not.

15 Q. Did you say you did this three times?

16 A. I've stated the sentence three times. I don't  
17 remember if I watched them get out of the pool or not  
18 before the thumbs-up sign.

19 Q. Were you ever provided any written instruction  
20 or verbal instruction on what the rule for patron  
21 surveillance was in regard to this procedure of watching  
22 children come out of that slide safely?

23 MR. SNYDER: Objection, form.

24 A. Yes, sir.

25 Q. (By Mr. Pletcher) Who -- were they written or

□00037

1 verbal?

2 A. Verbal.

3 Q. And who were those instructions given to you  
4 by?

5 A. I don't remember.

6 Q. If you were manning this slide chair and you

7 had children lined up like that and you were doing as  
8 you have described, watching them come out of the shoot  
9 safely, watching them get to the ladder safely and  
10 giving them the okay sign to come down next, you'd have  
11 to keep your eye back to the shoot area, would you not?

12 MR. SNYDER: Objection, form.

13 A. Can you rephrase the question, please?

14 Q. (By Mr. Pletcher) Sure. If you had a number  
15 of children using the slide, bottom line is doesn't  
16 leave much time for you to be scanning effectively this  
17 entire area of responsibility. Is that fair?

18 MR. SNYDER: Objection, form.

19 Q. (By Mr. Pletcher) It doesn't leave you much  
20 time?

21 MR. SNYDER: Objection, form.

22 A. No, sir. If -- you can still scan the whole  
23 area because only one kid goes down the slide at a time.

24 Q. (By Mr. Pletcher) Right.

25 A. So, one person goes down the slide and swims to

□00038

1 the wall. And then the next person goes down the slide.

2 And you scan the area and then watch them swim to the  
3 wall and you repeat.

4 Q. So, you do your scanning while the child was in  
5 the shoot?

6 A. Essentially.

7 Q. Okay. Did you use any other procedure in that  
8 regard?

9 A. I don't remember.

10 Q. Okay. Well, you said "essentially." And  
11 essentially to me is not positive. It's essentially.  
12 Do you mean basically?

13 MR. SNYDER: Objection, form.

14 A. I don't understand the way you're phrasing this  
15 question.

16 Q. (By Mr. Pletcher) Okay. Okay. Let me  
17 rephrase it.

18 You just testified that essentially what  
19 you would do if you were sitting in the slide chair is  
20 that you would -- after you made certain that the child  
21 was safely from the shoot to the ladder, that you would  
22 scan the area of responsibility all the way out here  
23 (indicating) while the next child was going down the  
24 shoot. Is that what you said?

25 A. Yes. But you -- you're continuously scanning

□00039

1 the whole area. And it's not a big area. You just look  
2 out there, and you can see the whole area.

3 Q. Okay. And you said that you are continuously  
4 scanning the area?

5 A. Yes.

6 Q. That would be -- it would be difficult to  
7 continuously scan the entire area if you were watching a  
8 child come out of that shoot and swim to this ladder,  
9 correct?

10 MR. SNYDER: Objection.

11 Q. (By Mr. Pletcher) Because you have to watch  
12 them the entire time to make certain that they're safe,  
13 correct?

14 MR. SNYDER: Objection, form.

15 A. What? I don't understand.

16 Q. (By Mr. Pletcher) What do you not understand?

17 A. How you're twisting my words.

18 Q. I'm not trying to twist your words. Okay? You  
19 just testified, 15 y/o LG #1, that you continuously scanned the  
20 entire area.

21 A. I do.

22 Q. Okay. And my follow-up question to you -- and  
23 it's just a question that I need your answer on -- is:  
24 Can you really continuously scan the entire area at the  
25 same time that you're supposed to be watching the child

□00040

1 swim safely from the shoot to the ladder?

2 A. Yes, sir.

3 Q. Okay.

4 MR. FOGLER: This might be a good time to  
5 take a short break.

6 MR. PLETCHER: Okay.

7 THE VIDEOGRAPHER: The time is 10:28 a.m.  
8 Off the -- yes or no?

9 MR. PLETCHER: That's fine.

10 THE VIDEOGRAPHER: The time is 10:28 a.m.  
11 We're off the record.

12 (Recess from 10:28 to 10:43)

13 THE VIDEOGRAPHER: The time is 10:43 a.m.  
14 We're back on the record.

15 Q. (By Mr. Pletcher) Are you ready to continue,  
16 15 y/o LG #1?

17 A. Yes, sir.

18 Q. What did you do to prepare for your deposition?  
19 Did you look at any documents?

20 A. No, sir.

21 Q. Did anybody show you any diagrams?  
22 A. No, sir.  
23 Q. Did you attend any meetings or have any  
24 discussions with people other than your lawyer?  
25 A. No, sir.

□00041

1 Q. Never met with lawyers representing the Racquet  
2 Club?  
3 A. No, sir.  
4 Q. Never met with any of the old managers over at  
5 the Racquet Club?  
6 A. No, sir.  
7 Q. Did you look at your lifeguard manual?  
8 A. No, sir.  
9 Q. Didn't look at a thing?  
10 A. No, sir.  
11 Q. And nobody provided you, like, copies of the  
12 deposition transcripts?  
13 A. What is that?  
14 Q. Of the depositions that have been taken?  
15 Depositions like you're giving today?  
16 A. No. No, sir.  
17 Q. Okay. So, you don't know what the testimony's  
18 been from the other witnesses?  
19 A. No, sir.  
20 Q. Now, back to our discussion about the area of  
21 responsibility for patron surveillance for the slide  
22 chair. Can we go back to that?  
23 A. Yes, you may.  
24 Q. 15 y/o LG #1, I need you to tell me in your own  
25 words -- okay? -- what you would do in terms of patron

□00042

1 surveillance when you were sitting in the chair that  
2 4 y/o B-CC #6 was sitting in on July 18th when there  
3 were a number of kids using the slide and kids were  
4 waiting in line.  
5 A. You signal for a child to go down the slide  
6 with a thumbs-up and then they go down to the slide and  
7 you watch them swim to the ladder. But you still are  
8 responsible for watching the whole area of the slide.  
9 So, you watch both.  
10 Q. Okay. You said that you're responsible for  
11 watching the whole area of the slide. What does that  
12 include?  
13 A. The orange.  
14 Q. All of the orange area.



15 A. Yes, sir.

16 Q. Okay. Would you personally when you are  
17 sitting in that chair, would you watch the children in  
18 the deck areas around the slide and the stairs to the  
19 slide?

20 A. I don't know.

21 Q. These areas here, here, here, here, here, here  
22 and here (indicating)?

23 MR. FOGLER: Most of that was off the  
24 screen, Matt.

25 MR. PLETCHER: Sorry.

□00043

1 MR. FOGLER: You might want to do that one  
2 more time.

3 Q. (By Mr. Pletcher) I'm talking about the deck  
4 area. This is the deck area here (indicating).

5 A. Not as intently as you watch the pool. But if  
6 you see someone running, you ask them to stop or  
7 something like that.

8 Q. Okay. Now, you told me in your own words that  
9 you would watch the children to make certain that they  
10 made it safely from the shoot to the ladder.

11 A. Yes, sir.

12 Q. And that you -- but you continually scanned the  
13 entire area, right?

14 A. Yes, sir.

15 Q. Now, you have the area going all the way out to  
16 the fountain there, don't you?

17 A. Yes.

18 Q. Now, if you were watching a child swim safely  
19 from here to here, it would be impossible for you to  
20 watch a child over here (indicating), correct --

21 MR. SNYDER: Objection, form.

22 Q. (By Mr. Pletcher) -- at the same time?

23 MR. SNYDER: Objection, form.

24 A. I think -- from that picture, it looks like a  
25 large area. If you're sitting on the stand, you can

□00044

1 simultaneously see the whole thing.

2 Q. (By Mr. Pletcher) You can see the entire area  
3 that you've shaded?

4 A. Because of the way that the stand is, you can  
5 see the whole thing, unless you're, like, staring out at  
6 one kid.

7 Q. What do you mean unless you're staring out at  
8 one kid?

9 A. Unless you're only paying attention to one  
10 child, then you're able to see the whole area.

11 Q. 15 y/o LG #1, if you were paying attention to one  
12 child swimming who came out of the shoot and swam under  
13 the water -- that's typically what they do, right?

14 A. No. They swim above water.

15 MR. SNYDER: Objection, form.

16 Q. (By Mr. Pletcher) Okay. Some of the them swim  
17 under the water?

18 A. Some of them do.

19 Q. Okay. And if you're watching somebody swim  
20 under the water to this area, you'd have to watch them  
21 under the surface of the water from this chair  
22 (indicating), would you not?

23 A. Yes, sir.

24 Q. And it would be impossible for you to see over  
25 here, wouldn't it?

□00045

1 MR. SNYDER: Objection, form.

2 Q. (By Mr. Pletcher) Would it not? If you were  
3 watching that child swim under water, it would be  
4 impossible for you to also, even in your peripheral  
5 vision, to watch children as far as out as here  
6 (indicating) --

7 MR. SNYDER: Objection, form.

8 Q. (By Mr. Pletcher) -- correct? Is that  
9 correct?

10 A. I don't understand how to answer this question  
11 because it's not a yes or no question.

12 Q. Well, tell me what you don't understand about  
13 my question, ma'am.

14 A. You're proposing that you watch one kid swim  
15 and you never watch any of the other kids, which is  
16 untrue. You watch all of them. You can see that whole  
17 area just from sitting on the stand. So, you can see  
18 all the kids even as you're watching one kid swim from  
19 the slide to the ladder.

20 Q. Even if they're swimming under water --

21 A. Yes.

22 Q. -- you can look down -- you're four and a half  
23 feet off the ground on that chair, are you not?

24 A. I don't know how high the chair is.

25 Q. How many steps are on that chair, do you

□00046

1 recall?

2 A. I don't know.

3 Q. You do climb up on it --

4 A. Yes, sir.

5 Q. -- do you not?

6 A. Yes, sir.

7 Q. And you're elevated off the ground.

8 A. Yes, sir.

9 Q. Can you just stand up and show me about how  
10 high that stand is?

11 A. I don't know how high the stand is.

12 Q. Well, your best recollection.

13 A. It's been a year since I've been there.

14 Q. So, you have no recollection at all of how tall  
15 that stand is. You can't tell me if it --

16 A. I mean --

17 Q. Hang on one second. You cannot tell me if it  
18 is chest high, head high or any other size.

19 A. It's high enough that you need stairs to get on  
20 it.

21 Q. Okay. And there's more than one step on the --

22 A. Yes, sir.

23 Q. -- chair -- on that chair. And if you're  
24 elevated and you're looking down at a child who's  
25 swimming -- let's say he went all the way to the bottom

□00047

1 and swam the bottom of the pool all the way to the  
2 ladder.

3 A. Yes, sir.

4 Q. You're saying that you can watch that child and  
5 still scan this area of responsibility and have  
6 effective patron surveillance of every child in the  
7 area?

8 A. If you're a good lifeguard.

9 MR. SNYDER: Objection, form.

10 Q. (By Mr. Pletcher) And what makes a good  
11 lifeguard? You used that term. What do you mean by a  
12 good lifeguard?

13 A. Well, I mean, if you're not trained to be a  
14 lifeguard, you're not going to watch the whole area.  
15 But if you're trained to be a lifeguard, you'll know how  
16 to do it.

17 Q. Now, tell me what happens in a scenario where  
18 you're watching the child come out of the shoot and he's  
19 swimming on the surface over to the ladder and you see  
20 another child over here (indicating --

21 A. Yes, sir.

22 Q. -- on this side of the floating line --

23 A. Uh-huh.

24 Q. -- swim over the top of that floating line into

25 this area (indicating). How would you be able to

□00048

1 effectively scan and conduct patron surveillance on all

2 of the children in this area of responsibility if that

3 occurred?

4 A. The same way you're doing before.

5 Q. How?

6 MR. SNYDER: Objection, form.

7 A. I've already described how you would watch the

8 area. It wouldn't change if there's -- it's the same

9 scenario.

10 Q. (By Mr. Pletcher) So, you can't think of any

11 scenario under which you if you were sitting in the

12 slide chair would be prevented from effectively scanning

13 this entire area of responsibility that you've shaded in

14 orange. Is that what you're telling me?

15 A. I don't know.

16 MR. SNYDER: Objection, form.

17 Q. (By Mr. Pletcher) Ma'am?

18 A. I don't know.

19 Q. So, you can't --

20 A. I don't understand how to answer this question.

21 Q. Well, let me see if I can rephrase it so that

22 you do.

23 Can you think of any situation, any event

24 that would prevent you from effectively scanning this

25 entire area of responsibility you've shaded in orange?

□00049

1 MR. SNYDER: Objection, form.

2 Q. (By Mr. Pletcher) Can you think of anything?

3 A. I don't think so.

4 Q. Okay. Now, you have this area of

5 responsibility for the slide chair going all the way to

6 the fountain. Who at the Houston Racquet Club ever told

7 you that that was the extent of this area of

8 responsibility for this slide chair?

9 A. The people at the Racquet Club told me when

10 you're on the slide chair, you watch the area of the

11 slide.

12 Q. Right. And the area of the slide would include

13 what?

14 A. The area where the slide is. That circle right

15 there (indicating).

16 Q. This here (indicating)?

17 A. But it's not -- the yellow line is not a wall.

18 It's just a --

19 Q. It's just a floating line.

20 A. It's just a buoy floating in the water.

21 Q. Right.

22 A. So, you can see over it. And you can see the  
23 area around the slide.

24 Q. Okay. I understand that. But did anybody ever  
25 tell you that your area of responsibility for the slide

□00050

1 chair extended to the fountain?

2 A. No one drew a picture for me.

3 Q. That wasn't my question. Did anybody ever tell  
4 you at the Houston Racquet Club, anybody from the  
5 Houston Racquet Club, that your area of responsibility  
6 extended to the fountain?

7 MR. SNYDER: Objection, form.

8 A. Not in -- I don't understand.

9 Q. (By Mr. Pletcher) Let me restate it. Did  
10 anybody at the Houston Racquet Club ever tell you that  
11 your area of responsibility for the slide chair extended  
12 to the fountain area?

13 A. No one ever said, "Your area of responsibility  
14 for the slide chair extended to the fountain."

15 Q. Okay. So, your drawing right -- this line here  
16 and this line here (indicating) that extend to the  
17 fountain area was drawn that way just because you, what,  
18 felt like that that's what you learned at the American  
19 Red Cross lifeguarding course that you attended?

20 MR. SNYDER: Objection, form.

21 A. No, sir. That is the area for the slide. I  
22 don't --

23 Q. (By Mr. Pletcher) Let me ask a different  
24 question. That was kind of a dumb question.  
25 If nobody at the Houston Racquet Club ever

□00051

1 told you verbally that your area of responsibility  
2 extended out to these two lines right here (indicating),  
3 why did you draw them on this diagram this way?

4 MR. SNYDER: Objection, form.

5 A. Nobody at the Racquet Club drew a picture of  
6 the pool and said, "This is where your area is."

7 Q. (By Mr. Pletcher) Right.

8 A. They told me, "When you're on the slide chair,  
9 that you watch where the slide is." That's the area  
10 where the slide is.

11 Q. Well, the slide is here (indicating).  
12 A. Yes, sir.  
13 Q. And the fountain is on the totally opposite  
14 side of the slide, is it not?  
15 A. What do you -- I don't understand.  
16 Q. Well, here's the slide, and here's the fountain  
17 (indicating). They're on opposite sides, are they not?  
18 A. I guess.  
19 Q. Did you say "I guess"?  
20 A. Yes.  
21 Q. Okay. Who at the Houston Racquet Club  
22 specifically -- I need to know it because the jurors are  
23 going to want to know it. Who specifically told you  
24 that your area of responsibility at that slide chair  
25 included the slide area?

□00052

1 A. I don't remember.  
2 MR. SNYDER: Objection, form.  
3 Q. (By Mr. Pletcher) Was it Guillermo Palmer?  
4 A. I don't remember.  
5 Q. Was it LG Supv?  
6 A. I don't remember.  
7 Q. You can't give me a name?  
8 MR. SNYDER: Objection, form.  
9 A. No.  
10 Q. (By Mr. Pletcher) Okay. Do you recall when  
11 this was told to you?  
12 A. My first day of work.  
13 Q. And what was your first day of work?  
14 A. I don't know the exact date.  
15 Q. Was it in June or July?  
16 A. July.  
17 Q. Okay. July 2nd maybe?  
18 A. I don't know the exact date.  
19 Q. Okay. We'll look at the time records in a  
20 second.  
21 What do you recall about your first day of  
22 work? You said that somebody told you about this area  
23 of responsibility for the slide chair. Tell me what  
24 else you remember being told that day.  
25 A. They just told me all the rules of watching the

□00053

1 pool.  
2 Q. Who is "they"?  
3 A. I don't have a specific name. I don't know.  
4 Q. Was it a man or female?

5 A. I don't know. I just --

6 Q. Do you want to take a break?

7 A. (Witness nodding head)

8 Q. Okay.

9 THE VIDEOGRAPHER: The time is 10:57 a.m.

10 We're off the record.

11 (Recess from 10:57 to 11:02)

12 THE VIDEOGRAPHER: The time is 11:02 a.m.

13 We're back on the record.

14 Q. (By Mr. Pletcher) Are you ready to continue,

15 15 y/o LG #1?

16 A. Yes, sir.

17 Q. When we broke, we were talking about the area  
18 of responsibility around the slide area?

19 A. Yes, sir.

20 Q. And you testified that somebody told you that  
21 that area of responsibility included the slide area --

22 was the slide area.

23 A. Yes, sir.

24 Q. You don't recall who that person was that told  
25 you that, correct?

□00054

1 A. No, sir.

2 Q. Do you recall if that person told you what they  
3 meant by the slide area and what that slide area  
4 included?

5 A. I don't remember.

6 Q. So, you don't remember?

7 A. I don't remember exactly what words were used.

8 Q. Do you recall generally if the person who told  
9 you that your area included the slide area, if they  
10 described what that slide area was generally?

11 A. I don't remember.

12 Q. You do not remember?

13 A. I don't remember exactly what happened. There  
14 was -- it was a year ago; and there was, like, ten  
15 people there who all gave me advice on what to do. And  
16 I don't remember exactly what each person said to me.

17 Q. Okay. And this was on your first day of work.

18 A. Yes, sir.

19 Q. Do you recall any of the names of the ten  
20 people? Are you sure it was ten people?

21 A. No. I said about ten people.

22 Q. Do you recall the names of any of those people?

23 A. No.

24 Q. Were they lifeguards?

25 A. Yes, sir.

□00055

1 Q. Were they managers?

2 A. Lifeguards.

3 Q. All of them were lifeguards who were working at  
4 the pool.

5 A. Yes. And I -- I know Guillermo was there and  
6 David.

7 Q. Ma'am?

8 A. Guillermo and David were there, but I don't  
9 remember what they told me.

10 Q. Okay. And when was this meeting?

11 A. A year ago. I don't remember. My first day of  
12 work.

13 Q. Was it the first day that you clocked in to  
14 work as a lifeguard at the -- at the Club?

15 A. Yes, sir.

16 Q. Where was the meeting?

17 A. I don't remember.

18 Q. It was at the Racquet Club, right?

19 A. Yes, sir.

20 Q. Was it inside or outside?

21 A. It wasn't -- I don't know. We didn't have a  
22 meeting, per se.

23 Q. All right. What do you mean then?

24 A. Not --

25 Q. I'm confused.

□00056

1 A. There wasn't a time when all the lifeguards  
2 working on that day all sat down with me in a little  
3 circle and told me what happened. Like, they just told  
4 me what to do.

5 Q. Okay. And the people who were telling you what  
6 to do were the lifeguards, correct?

7 A. Yes, sir.

8 Q. You have no specific recollection sitting here  
9 today of Guillermo Palmer or David Lamkin giving you any  
10 instruction or telling you what to do, do you?

11 A. I do not remember what they specifically told  
12 me.

13 Q. Do you recall them telling you stuff?

14 A. Yes.

15 Q. You said that y'all talked about -- or you were  
16 told what the pool rules were?

17 A. Yes, sir.

18 Q. Do you remember what the pool rules were? What



19 rules were there?

20 A. There's a lot of rules.

21 Q. Okay. I understand that. But do you remember  
22 any of them specifically?

23 A. I remember some rules. I don't remember  
24 specifically what they told me.

25 Q. Well, tell me the rules that you remember.

□00057

1 A. I know you can't run. There's only one person  
2 on the slide, one person on the diving board, no  
3 horseplay, things like that. I don't remember all the  
4 specific rules that they told me.

5 Q. Okay. Do you remember receiving a written list  
6 of pool rules?

7 A. No, sir.

8 Q. Let me show you what has been marked as  
9 Plaintiffs' Exhibit No. 40 which is a document titled  
10 "Pool Rules." Now, this one is dated May 18th, 2006 and  
11 is signed by Sr LG #1. Do you ever remember  
12 receiving a copy of a document titled "Pool Rules" --

13 A. No, sir.

14 Q. -- while you were at the Houston Racquet Club?

15 A. No, sir.

16 Q. Do you remember ever seeing a document titled  
17 "Pool Rules?"

18 A. I don't remember.

19 Q. Okay. I'll just go through these just real  
20 briefly with you. The top is titled "General rules. No  
21 glass in the pool area. Food is only allowed in the  
22 pavilion area. No running. No pushing or horseplay.  
23 No beverage or foods are allowed in the water." Now,  
24 you've described some of those rules before --

25 A. Yes.

□00058

1 Q. -- we looked at this document, correct?

2 A. Yes, sir.

3 Q. I want to ask you a follow-up question about  
4 horseplay because you mentioned horseplay. Tell me what  
5 you remember being told about horseplay.

6 A. I don't remember.

7 Q. Were you told that horseplay -- the horseplay  
8 rule applied to anybody who was in the pool or the pool  
9 area regardless of whether or not they were employees of  
10 the Houston Racquet Club?

11 A. I don't remember.

12 Q. Do you recall being told that there would be no

13 horseplay amongst the lifeguards?

14 A. I don't know.

15 Q. Do you remember being told that there was to be  
16 no horseplay amongst the camp counselors?

17 A. The rules I was --

18 MR. SNYDER: Objection, form.

19 A. The rules I was told weren't specific to  
20 certain people. They were just the rules for the pool.

21 Q. (By Mr. Pletcher) And you don't remember who  
22 told you what the pool rules were?

23 A. No, sir.

24 Q. And do you know -- or do you have a  
25 recollection of anybody who gave you these instructions

□00059

1 or pool rules, if they described what they meant by  
2 horseplay?

3 A. I don't remember.

4 Q. Can you think of any specific examples of  
5 horseplay that you knew was prohibited by the Houston  
6 Racquet Club at their pools and the pool areas?

7 MR. SNYDER: Objection, form.

8 A. A specific example?

9 Q. (By Mr. Pletcher) Yes.

10 A. Like, you can't push each other under water or  
11 like --

12 Q. Okay.

13 A. -- sit on each other's shoulders and push each  
14 other off.

15 Q. Okay.

16 A. You can't do dangerous things like that.

17 Q. Was there a rule -- were you ever instructed by  
18 the Houston Racquet Club that there was a rule that  
19 prohibited dunking games where people dunk other people  
20 while they're in the water?

21 A. Yes.

22 Q. And what were you instructed by the Houston  
23 Racquet Club to do if that occurred?

24 A. You ask them to stop.

25 Q. Okay. And what if they don't stop? Were you

□00060

1 authorized to get them out of the pool?

2 A. If they don't listen to you, you ask them to  
3 leave the pool.

4 Q. And were you instructed to do anything if they  
5 failed to follow that instruction?

6 A. I don't remember. Usually the kids would

7 listen.

8 Q. Was there a rule in the family pool that  
9 prohibited the use of tennis balls --

10 A. Yes, sir.

11 Q. -- while in the family pool? Were you told  
12 that on July 2nd or this first day that you've described  
13 during this meeting where you say people were telling  
14 you what the rules were?

15 A. I don't remember exactly. I knew that was a  
16 rule, but I don't remember if they told me on that day.

17 Q. Do you know what the jackpot game is? Have you  
18 ever heard that?

19 A. Where you throw a football and try and catch it  
20 for points?

21 Q. Okay. Was the jackpot game with respect to  
22 footballs prohibited at the Houston Racquet Club?

23 A. I don't know. I've never heard of anyone  
24 playing that in the pool.

25 Q. Okay. How about the jackpot game involving

□00061

1 tennis balls? Was that prohibited while in the family  
2 pool or any other pool at the Racquet Club?

3 A. Tennis balls?

4 MR. SNYDER: Objection, form.

5 Q. (By Mr. Pletcher) Yes.

6 A. Tennis balls are not allowed in the pool.

7 Q. So, anybody who might have been playing a game  
8 with a tennis ball that was called the jackpot game,  
9 that would be in violation of the Club rule, right?

10 A. I don't --

11 Q. Because you're not supposed to have balls in  
12 the family pool.

13 A. Yes, sir.

14 Q. Okay.

15 A. A tennis ball would be out of the rules. I  
16 don't know what this game is.

17 Q. Okay. What about -- you said kids were  
18 prohibited from pushing kids under the water?

19 A. Yes, sir.

20 Q. Were kids prohibited from launching or pushing  
21 kids from out of the water into the water?

22 A. Like, pushing them in the pool?

23 Q. Yes.

24 A. I don't know.

25 Q. Okay. Do you recall at any time while you

□00062

1 worked at the family pool or the Houston Racquet Club --  
2 any other pool at the Club ever seeing camp counselors,  
3 lifeguards, other members or guests launching or  
4 throwing little children anywhere in or around the pool  
5 area?

6 A. Yes, sir.

7 MR. SNYDER: Objection, form.

8 Q. (By Mr. Pletcher) When do you recall seeing  
9 that?

10 A. Well, sometimes the camp counselors would --  
11 not push them in the water but, like, play with them in  
12 the water.

13 Q. Right.

14 A. And sometimes dads would throw their kids in.

15 Q. Okay. Do you recall seeing camp counselors  
16 pick up young children, campers and launching them off  
17 their shoulders or launching them from their hands?

18 A. Not from their shoulders.

19 Q. From their hands? From their -- where they --  
20 the little child stands on their hands and they push up  
21 and they launch them up into the air?

22 A. Oh, no.

23 Q. No? Well, what did you mean when you said that  
24 you had seen --

25 A. Like they'd hold them. They wouldn't push

□00063

1 them.

2 Q. Okay. How would they hold them?

3 A. I don't remember specifically. I just know it  
4 wasn't --

5 Q. Hold them up like this (indicating) and let  
6 them jump off their hands?

7 A. No, sir.

8 Q. How would they launch them?

9 MR. SNYDER: Objection, form.

10 A. They wouldn't launch them.

11 Q. (By Mr. Pletcher) How would they throw them?

12 A. They would --

13 MR. SNYDER: Objection, form.

14 A. Like you -- I don't know specifically. I

15 didn't pay attention to how they were throwing them. I  
16 just -- I remember seeing sometimes they would pick them  
17 up and toss them in.

18 Q. (By Mr. Pletcher) Okay. So, you recall camp  
19 counselors while you were employed as a lifeguard  
20 picking up campers, summer campers and throwing them

21 into the pool?

22 A. But they were already in the pool.

23 Q. Okay.

24 A. They picked them up from in the pool and throw  
25 them back.

□00064

1 Q. Right. Do you recall ever seeing camp

2 counselors throw campers into the pool from the fountain  
3 area?

4 A. What's the fountain area?

5 Q. You don't remember the fountain area at the  
6 family pool?

7 A. Is that where the green thing is?

8 Q. This is the fountain area (indicating).

9 There's some fountains that come up from the bottom.

10 A. Okay.

11 Q. Yes?

12 A. Yes.

13 Q. You remember seeing that, don't you?

14 A. Yes, sir.

15 Q. Okay. You remember camp counselors throwing  
16 children from this area (indicating) into the deeper  
17 part of the pool, right?

18 A. Yes, sir.

19 Q. How often did you see that happening?

20 A. I don't remember.

21 Q. More than once?

22 A. I guess.

23 Q. Did you say "I guess"?

24 A. Yes, sir.

25 Q. Okay.

□00065

1 MR. SNYDER: Objection, form.

2 Q. (By Mr. Pletcher) And do you recall seeing  
3 that on July 18th?

4 A. Yes, sir.

5 Q. So, you saw this occurring before you noticed  
6 John Pluchinsky floating face down in the pool, correct?

7 A. Yes, sir.

8 Q. Do you remember specifically which counselors  
9 were involved with that?

10 A. I don't know any of the counselors.

11 Q. You don't know any of the counselors?

12 A. Well, I've met them after; but I didn't know  
13 any of them before.

14 Q. So, as of July 18th and prior to that date, you

15 did not know the names nor had you ever met any of the  
16 camp counselors who were working at the Houston Racquet  
17 Club, correct?

18 A. I knew who some of them were. I wasn't friends  
19 with any of them.

20 Q. Okay.

21 A. The people that were in the pool, I don't -- I  
22 didn't know any of them. They were just camp  
23 counselors, and I knew they were camp counselors.

24 Q. Okay. Well, I need to know -- first of all,  
25 you said you knew some of them. Did you just know them

□00066

1 because y'all went to the same school?

2 A. I don't -- I didn't personally know them.

3 Q. Okay. Did you know any of their names?

4 A. One of the counselors, his name was Supv CC #1. He  
5 was a lifeguard supervisor.

6 Q. Okay.

7 A. And I had met him before. I'd never worked  
8 with him, but I had met him.

9 Q. Okay. Anybody other than Supv CC #1 that you  
10 knew as a camp counselor at the Houston Racquet Club on  
11 or before July 18th, 2007?

12 A. I don't think so. I knew some of the other  
13 counselors for the older kids. I'd seen them at school,  
14 but I'd never met them.

15 Q. Okay.

16 A. I didn't know any of the ones that were at the  
17 pool.

18 Q. Did you know their names, the ones that you had  
19 seen in school?

20 A. Yes. But they weren't -- they weren't there on  
21 July 18th.

22 Q. Okay. So, if we went down the list of the  
23 counselors who were there on July 18th, the only one  
24 that you would know or knew on July 18th or before  
25 July 18th would be Supv CC #1?

□00067

1 A. I think so.

2 Q. Okay. Well, let's go down the list. Did you  
3 know Supv CC #2?

4 A. No.

5 Q. Did you know 4 y/o B-CC #1?

6 A. No.

7 Q. Did you know 4 y/o B-CC #5?

8 A. No.

9 Q. Did you know 4 y/o B-CC #6?  
10 A. No.  
11 Q. Did you know 4 y/o B-CC #4?  
12 A. I don't think so.  
13 Q. You don't have a specific recollection of him?  
14 A. Huh-uh.  
15 Q. Okay. Is that "no"?  
16 A. No.  
17 Q. 4 y/o B-CC #2, did you know her?  
18 A. No.  
19 Q. 4 y/o B-CC #3?  
20 A. She went to my school, but I don't know her.  
21 Q. And you didn't know her nor her name on  
22 July 18th --  
23 A. No.  
24 Q. -- 2007 or before. Is that what you're telling  
25 me?

□00068

1 A. I mean, I've heard her name at school, but I  
2 didn't know who she was. She was, like, three years  
3 older than me.  
4 Q. Okay. 4 y/o B-CC #3, did you know him?  
5 A. I know his family, but I never met him.  
6 Q. Okay. You had not met him prior to July 18th.  
7 A. No. But I know his brothers. I know of his  
8 family.  
9 Q. Did you know 4 y/o G-CC #1?  
10 A. No.  
11 Q. Her mother was a secretary to Mr. Griffin.  
12 A. I don't know who that is.  
13 Q. 4 y/o G-CC #2?  
14 A. I don't know who that is.  
15 Q. 4 y/o G-CC #3?  
16 A. No.  
17 Q. 4 y/o G-CC #4?  
18 A. No.  
19 Q. 7 y/o B-CC #2?  
20 A. No.  
21 Q. Did you know a girl named 7 y/o B-CC #1?  
22 A. No.  
23 Q. 7 y/o B-CC #1? Or a boy named 7 y/o B-CC #3, last  
24 name?  
25 A. No.

□00069

1 Q. Okay. So, really the only one that you knew in  
2 terms of having met was Supv CC #1.

3 A. Yes, sir.

4 Q. Okay. Now, back to the camp counselors who  
5 were throwing kids from the fountain area on July 18th  
6 before John was discovered floating face down. Were  
7 there more than one camp counselors doing this? Was  
8 there more than one camp counselor doing this at the  
9 fountain area?

10 A. I don't remember.

11 Q. How many children did you see being thrown into  
12 the pool? More than one?

13 A. Not more than one at a time.

14 Q. Okay. But I mean, while they were doing it,  
15 did you see more than one kid being thrown into the  
16 pool?

17 A. Yes.

18 Q. More than five?

19 A. I don't remember. I asked them to stop when I  
20 saw them doing it.

21 Q. Ma'am?

22 A. I asked them to stop when I saw them doing it.

23 Q. Okay.

24 A. I don't know how many they threw in.

25 MR. FOGLER: Is this line of question

□00070

1 specific to July 18th?

2 MR. PLETCHER: Yes. Yes, sir. Yes.

3 Q. (By Mr. Pletcher) So, on July 18th at least  
4 one camp counselor, maybe more, were throwing children  
5 from the fountain area into the pool, correct?

6 A. Yes, sir.

7 Q. And you instructed that camp counselor and  
8 whoever else may have been doing it to stop it.

9 A. Yes, sir.

10 Q. Because you knew that that was an unsafe  
11 thing --

12 A. Yes.

13 Q. -- correct? Do you remember having to give  
14 that instruction more than once that day?

15 A. I don't remember.

16 Q. You don't remember?

17 A. No.

18 Q. You may have, correct?

19 A. I don't think so.

20 MR. SNYDER: Objection, form.

21 A. But I don't remember. I don't think so, but I  
22 don't remember.



23 Q. (By Mr. Pletcher) Okay. When you instructed  
24 the camp counselors to stop this activity, did they?

25 A. Yes, sir.

□00071

1 Q. Immediately?

2 A. Yes, sir.

3 Q. Not one more child thrown?

4 A. When I asked them to stop, they listened to me.

5 Q. Okay. And you don't know if that camp

6 counselor or counselors were girls or boys?

7 A. I don't remember.

8 Q. You don't have a specific recollection of that?

9 A. (Witness shaking head)

10 Q. Okay. Do you remember that day on July 18th  
11 some of the camp counselors stacking up plastic chairs  
12 on that fountain area and making some sort of a fort?

13 A. I don't remember that.

14 Q. Do you ever recall seeing plastic chairs in  
15 that fountain area or on the sun deck area here  
16 (indicating)? Do you ever remember counselors stacking  
17 up plastic chairs for the children to use as some sort  
18 of fort?

19 A. I don't remember ever seeing that.

20 Q. So, the answer is no?

21 A. No.

22 Q. Okay. When you saw this occur, you were  
23 sitting right here (indicating), right?

24 A. Yes, sir.

25 MR. FOGLER: "This" being what?

□00072

1 Q. (By Mr. Pletcher) This -- when you saw this,  
2 the camp counselors throwing the children into the pool,  
3 you were sitting right here (indicating), correct?

4 A. Yes, sir.

5 Q. Now, did you have to get off your stand in  
6 order to alert them to stop; or did you just yell across  
7 the pool?

8 A. I yelled across the pool.

9 Q. Did you use a whistle blast?

10 A. I don't think so. I don't remember.

11 Q. Do you recall when this occurred there being  
12 camp counselors and children in this area (indicating)?

13 A. There were people in the entire pool.

14 Q. Okay. At any time subsequent to this event  
15 where the camp counselors were throwing the children  
16 into the pool, did you report that conduct of the camp

17 counselors to either Guillermo Palmer or David Lamkin?

18 A. Can you please define the word "subsequent?"

19 Q. After John's drowning -- or I'm sorry. After  
20 the event of the camp counselors throwing the children  
21 into the pool. Do you ever remember reporting that  
22 activity, that horseplay, to David Lamkin, Guillermo  
23 Palmer or anybody else?

24 A. No, sir.

25 Q. Were you ever given any sort of instruction, be

□00073

1 it verbal or written, that if you observed camp  
2 counselors in horseplay, that you were to report them to  
3 anybody?

4 A. No, sir.

5 Q. Do you know on July 18th, 2007 who was in  
6 charge of the summer camp?

7 A. I have no idea.

8 Q. Do you recall sitting here today who either the  
9 camp director was or the assistant camp director was on  
10 that day?

11 A. I don't know anything about the camp.

12 Q. And LG Supv testified that there were  
13 never any joint meetings between the camp counselors and  
14 the lifeguards.

15 A. That's correct.

16 Q. At no time did you ever attend any meeting  
17 where both groups, campers, camp counselors and  
18 lifeguards were present, correct?

19 A. Correct.

20 Q. Let me show you what's been marked as Exhibit  
21 No. 42 -- Plaintiffs' Exhibit No. 42. This is a  
22 document titled --

23 MR. PLETCHER: Can you zoom in on the top,  
24 please?

25 Q. (By Mr. Pletcher) Houston Racquet Club Camp

□00074

1 Counselor Rules, Regulations and Requirements Summer  
2 2007. Have you ever seen this document?

3 A. No, sir.

4 Q. And this document starts by saying, "You were  
5 chosen to be a Houston Racquet Club camp counselor. By  
6 accepting this position, you are required to abide by  
7 the following." And it sets forth several rules.

8 Okay?

9 A. Yes, sir.

10 Q. "All counselors must get in the water with the

11 children during their designated swim time." Nobody  
12 provided you with a copy of this specific written rule  
13 regarding camp counselors being in the water with the  
14 campers during swim time?

15 A. No, sir.

16 Q. But did you know that rule?

17 A. No, sir.

18 Q. So, on July 18th, 2007 and prior to that day,  
19 nobody at the Houston Racquet Club, Guillermo Palmer,  
20 David Lamkin or anybody else ever told you as a  
21 lifeguard that the camp counselors had to be in the  
22 water if the children were in the water during swim time  
23 during the summer camp, correct?

24 A. Correct.

25 Q. When you -- when you were sitting on the stand

□00075

1 on July 18th, 2007, do you recall seeing camp counselors  
2 out of the pool when there were campers in the pool?

3 A. I don't remember. All the counselors I saw  
4 were with their kids in the water.

5 Q. You said you didn't remember. And then you  
6 said all of the counselors were in the water with their  
7 kids when they're in the pool.

8 A. I don't remember if there were counselors out  
9 of the pool because all the ones I saw were in the  
10 water.

11 Q. Okay. So, the answer to my question would be,  
12 no, I never saw a camp counselor out of the water when  
13 campers were in the water; is that correct?

14 A. Yes.

15 Q. Okay. And then let me flip back. If you look  
16 here, the absolute no-no's are as follows. Absolutely  
17 no horseplay will be tolerated with children or other  
18 counselors. Nobody provided you with that rule for the  
19 camp counselors either in this written form or verbally,  
20 correct?

21 MR. SNYDER: Objection, form.

22 A. No, sir.

23 Q. (By Mr. Pletcher) Is that correct?

24 A. No one told me that rule?

25 Q. Yes.

□00076

1 A. Correct.

2 Q. Okay. And did anybody at the Houston Racquet  
3 Club ever tell you that there was a zero tolerance rule  
4 in effect and that if you cannot -- you being a camp

5 counselor -- cannot abide by the above rules and  
6 requirements, you will be released from working for the  
7 Houston Racquet Club summer camp 2007? Did anybody ever  
8 tell you that that was the rule that the Houston Racquet  
9 Club had in effect on July 18th, 2007?

10 MR. SNYDER: Objection, form.

11 A. No, sir.

12 Q. (By Mr. Pletcher) Nobody did, correct?

13 A. No, sir.

14 Q. Before you discovered John Pluchinsky floating  
15 face down on July 18th, 2007 in the family pool, do you  
16 recall having to give other instructions to camp  
17 counselors to stop doing some activity that they were  
18 doing?

19 A. I don't remember.

20 Q. I want to back up and go back to when you  
21 decided to get on this chair right here (indicating).  
22 And can you describe to the jury what the chair looked  
23 like?

24 A. It was wooden, and it was higher than a normal  
25 chair.

□00077

1 Q. Yes. Was it --

2 A. You didn't need stairs to get on it, though.  
3 It was just a chair.

4 Q. Right. So, it was just a few feet off the  
5 ground.

6 A. Yes, sir.

7 Q. And was it kind of like a wooden chair that had  
8 arms on it, maybe a director chair type chair that was  
9 elevated off the ground?

10 A. I don't know what that means. What's a  
11 director chair?

12 Q. Well, you've seen in the movies -- movies being  
13 shot where the directors have this real kind of a tall  
14 chair and it's got arms on it?

15 A. This one was all wood.

16 Q. Okay. A teak chair. Was it teak?

17 A. Is that a type of wood?

18 Q. Yes, ma'am.

19 A. I don't know.

20 Q. Okay. So, it was a wooden chair elevated off  
21 the ground. Can you give me any sort of estimate of how  
22 high off the ground it was?

23 A. If you were -- if you were standing next to it,  
24 you'd be the same height as whoever was sitting.

25 Q. Okay. So, when you say you would be the same  
□00078

1 height as where you would be sitting, would the seat be  
2 at eye level on you or --

3 A. The seat? The person sitting in it, you could  
4 look at them eye to eye.

5 Q. Okay. So, the person -- the lifeguard sitting  
6 in the chair, if you walked up to the chair, you'd be  
7 staring at them into the eyes.

8 A. Yes.

9 Q. Okay. How did you decide to go to that chair  
10 that day --

11 A. I don't remember.

12 Q. -- at 11:00 o'clock?

13 A. I don't remember.

14 Q. Did you and 4 y/o B-CC #6 have any discussion  
15 of who would be sitting where?

16 A. No, not that I recall.

17 Q. Okay. Now, you, as we discussed earlier,  
18 shaded in your area of responsibility that was  
19 everything west of the orange lines. And there were  
20 some overlap, correct?

21 A. Yes, sir.

22 Q. And I'm going to have to ask you the same  
23 question that I did earlier about the orange lines. Did  
24 anybody at the Houston Racquet Club ever tell you  
25 specifically what your area of responsibility was when

□00079

1 you were on duty at this chair under this umbrella on  
2 the south side of the pool?

3 A. Not specifically.

4 Q. Did anybody tell you generally?

5 A. I don't remember.

6 Q. So, you don't remember anybody at the Houston  
7 Racquet Club ever telling you what your area of  
8 responsibility was when you were on duty from this chair  
9 under this umbrella, correct?

10 A. I know they told me you watch the pool.

11 Q. Okay. Obviously.

12 A. And the area of responsibility is the pool.

13 Q. Right. But you know as a lifeguard being  
14 certified by the American Red Cross that a lifeguard  
15 must have an area of responsibility commensurate with  
16 their ability to effectively scan and conduct patron  
17 surveillance, don't you?

18 A. What does that mean?

19 Q. You don't know what any of those things mean?  
20 MR. FOGLER: I think it was --  
21 MR. SNYDER: Objection, form.  
22 MR. FOGLER: -- "commensurate."  
23 Q. (By Mr. Pletcher) Commensurate? Commensurate  
24 just means within your ability, within your ability to  
25 effectively scan and conduct patron surveillance.  
□00080

1 A. Yes.  
2 Q. Okay. And you would disagree, would you not,  
3 that it would be impossible for you to have an area of  
4 responsibility that included the entire family pool,  
5 right?  
6 A. Yes, sir.  
7 Q. That's one of the reasons there was a guard  
8 down here at the slide.  
9 A. Yes, sir.  
10 Q. And did anybody ever describe verbally to you  
11 what your area of responsibility was if you were sitting  
12 in this chair?  
13 A. I don't remember.  
14 Q. Is that not that I remember or I just have no  
15 clue one way or the other?  
16 MR. SNYDER: Objection, form.  
17 A. I don't -- I don't remember specifically what  
18 they told me when they gave me instructions on my first  
19 day of work.  
20 Q. (By Mr. Pletcher) Okay. You have no specific  
21 recollection sitting here today of Guillermo Palmer,  
22 David Lamkin or any of the lifeguards at the Houston  
23 Racquet Club describing to you what your area of  
24 responsibility would have been from the lifeguard chair  
25 on the south side of the pool under this umbrella,

□00081  
1 correct?  
2 MR. SNYDER: Objection, form.  
3 A. They told me everything of what to do as a  
4 lifeguard. I don't remember specifically what they told  
5 me.  
6 Q. (By Mr. Pletcher) Okay. Well, when you --  
7 see, the way this works, she's going to type this up  
8 into a little booklet. And all of my questions and all  
9 of your sworn answers that you're giving under oath as  
10 if you were in a court of law will be typed up into a  
11 little booklet. Okay?  
12 A. Okay.

13 Q. And when we try this lawsuit in September of  
14 this year and you are testifying in front of the judge  
15 and the jury under the same oath that you took today, if  
16 you say something different on the stand than you do  
17 here today, I'm going to pull out the book and point it  
18 out to you. Okay?

19 A. Okay.

20 Q. So, when you say they told me everything about  
21 my lifeguarding, that doesn't give me enough information  
22 as to specifically what they told you about your area of  
23 responsibility and your scanning obligations from this  
24 chair.

25 A. I'm sorry that I don't remember it, but I'm not

□00082

1 going to make things up.

2 Q. I don't want you to make anything up, 15 y/o LG #1. I  
3 really don't. Really, what we're trying --

4 A. Well, I'm telling the truth. I don't remember.

5 Q. So, you don't remember -- hang on one second.

6 You don't remember any specific instruction being given  
7 to you by any person about your specific area of  
8 responsibility for patron surveillance and scanning from  
9 that chair, correct?

10 MR. SNYDER: Objection, form.

11 A. I remember them telling me on my first day of  
12 work everything of what to do at the pool.

13 Q. (By Mr. Pletcher) Yeah.

14 A. I do not remember specifically what they told  
15 me.

16 Q. Okay. And what I'm trying to determine is if  
17 you have any recollection specifically of what they told  
18 you about your area of responsibility from this chair  
19 under the umbrella. Okay?

20 A. Yes.

21 Q. Now, earlier you told me that they told you if  
22 you were sitting at the slide chair, your area of  
23 responsibility was the slide area.

24 A. Yes.

25 Q. And I'm wondering: Did anybody ever tell you

□00083

1 what your area of responsibility was from this chair  
2 under the umbrella?

3 A. I don't remember.

4 Q. Okay. If you don't remember that, how were you  
5 able to shade your area of responsibility in pink?

6 A. Because I know that's the area of

7 responsibility. I just don't remember them specifically  
8 telling me -- I don't remember what they told me on that  
9 day.

10 Q. Okay. So --

11 A. It's --

12 Q. So --

13 MR. FOGLER: You can explain.

14 Q. (By Mr. Pletcher) Yeah. If you want to -- go  
15 ahead and explain.

16 A. Why would you not watch the entire pool? As a  
17 lifeguard even -- I know they told me what area to  
18 watch. I don't remember what they said. But --

19 MR. FOGLER: Go ahead.

20 A. But if -- even if they didn't tell me,  
21 hypothetically if they told me nothing, I'm not going  
22 to, like, neglect an area of the pool.

23 Q. (By Mr. Pletcher) Okay. Okay. And just so I  
24 understand you, what you're telling the jury is that  
25 when you were sitting in this chair, there was not a

□00084

1 single area in this pool that you neglected and that you  
2 wouldn't scan, correct?

3 A. Correct.

4 Q. So, when you were sitting in this chair on  
5 July 18th, 2008 [sic] when John Pluchinsky was in the  
6 water -- 2007 -- I misspoke -- let me restart. Let me  
7 redo that one.

8 When you were sitting in the chair under  
9 the umbrella on July 18th, 2007 when John Pluchinsky was  
10 in the water, your area for scanning was the entire  
11 pool. So, you would scan from this edge (indicating)  
12 all the way to the slide and back --

13 A. No.

14 Q. -- is that correct?

15 MR. SNYDER: Objection, form.

16 A. No, sir. It was the pink area that I marked  
17 for you. I scanned the pink area.

18 Q. (By Mr. Pletcher) Okay. Well, so by "entire  
19 pool," you meant just the pink area?

20 A. No. I meant that I wasn't going to neglect an  
21 area of the pool.

22 Q. Yeah. Well, what do you mean by that, 15 y/o LG #1?  
23 I'm trying to understand. Because I took that to mean  
24 that you were scanning the whole pool. What do you mean  
25 by, "I wasn't going to neglect any area of the pool, the

□00085



1 entire pool"?

2 A. I was the only lifeguard besides 15 y/o LG #2. 15 y/o LG #2  
3 can't see very far this side of the pool (indicating).

4 Q. Sure.

5 A. So, I would watch that whole area of the pool.  
6 I wouldn't leave it out.

7 Q. Okay. So, what do you mean by, "I wouldn't  
8 neglect any area of the pool"?

9 A. That if there's an area where there's not  
10 another guard there, I'll watch it. I'm not going to  
11 just pretend that it's someone else's responsibility  
12 because it's my responsibility.

13 Q. Okay. So, we know that 4 y/o B-CC #6 was at  
14 the slide.

15 A. Yes, sir.

16 Q. Okay. So, would you ever scan over here  
17 (indicating) knowing that he was there? Let me get a  
18 pen so you can see what I'm pointing to. Would you ever  
19 scan over here (indicating)?

20 A. Yes, sir.

21 Q. Would you ever scan here (indicating)?

22 MR. FOGLER: Your --

23 A. I can't see.

24 MR. FOGLER: -- hand is obscuring what  
25 you're pointing to.

□00086

1 MR. PLETCHER: Thank you.

2 Q. (By Mr. Pletcher) (Indicating)

3 A. Possibly. Not as often as the rest of the  
4 pool.

5 Q. Okay. Would you scan over here (indicating)  
6 possibly?

7 A. Possibly. I don't think you can see back --

8 Q. Okay. Here (indicating) --

9 A. -- behind there.

10 Q. -- you probably can't see?

11 A. Yeah.

12 Q. But you can see here (indicating)?

13 A. Yes.

14 Q. So, it's very possible that on July 18th, 2007  
15 that your area of scanning included areas beyond the  
16 pink lines that you've drawn.

17 A. Possibly.

18 MR. SNYDER: Objection, form.

19 MR. MARRS: What was her response?

20 MR. PLETCHER: "Possibly."

21 MR. FOGLER: She said "possibly."  
22 Q. (By Mr. Pletcher) Do you recall ever scanning  
23 the area east of that floating line?  
24 A. I don't remember.  
25 Q. Okay. I have a red pen here that I'd like you

□00087

1 to draw in every blind spot -- do you know what a blind  
2 spot is?  
3 A. Yes.  
4 Q. Draw in every blind spot in the pool, please.  
5 MR. SNYDER: Objection, form.  
6 MR. FOGLER: From the vantage point --  
7 MR. PLETCHER: From the vantage point of  
8 her chair under the umbrella. Thank you.  
9 A. I don't know where the blind spots would be. I  
10 don't know where blind spots would be --  
11 Q. (By Mr. Pletcher) Okay.  
12 A. -- without being able to see the pool.  
13 Q. So, you have no specific recollection of any  
14 blind spots?  
15 A. No.  
16 Q. There were blind spots, were there not?  
17 A. I don't --  
18 MR. SNYDER: Objection, form.  
19 A. -- know.  
20 Q. (By Mr. Pletcher) You don't remember any blind  
21 spots?  
22 A. I don't remember any specific blind spots.  
23 Q. Let me see if I can refresh your recollection.  
24 Down here in the -- to your left --  
25 A. Yes, sir.

□00088

1 Q. -- sitting in this chair to your left, this is  
2 a zero entry.  
3 A. Yes.  
4 Q. Goes from dry land, gradually slopes down,  
5 correct?  
6 A. (Witness nodding head)  
7 Q. Is that correct?  
8 A. Yes, sir.  
9 Q. Okay. And in this area, there were some water  
10 features, raining buckets right here (indicating)?  
11 A. Yes, sir.  
12 Q. Some rings that water sprayed out of?  
13 A. Yes, sir.  
14 Q. And some small little fountain areas --

15 fountains, correct?

16 A. Yes, sir.

17 Q. Now, sitting from that -- in that chair under  
18 the umbrella, were any of those water features -- sorry.

19 Did any of those water features create a  
20 blind spot for you?

21 A. No.

22 Q. Was there a blind spot to your right looking  
23 down over by the steps?

24 A. I don't think so.

25 Q. Okay.

□00089

1 A. If you're scanning the pool, you would be able  
2 to see everything, just not all at once.

3 Q. You see over here where the fountain area makes  
4 a hard turn and there's a corner in the pool there?

5 A. Yes, sir.

6 Q. You see that?

7 A. Yes, sir.

8 Q. Was that a blind spot sitting in this chair?

9 A. You can see it. You can still see it from that  
10 chair, but there's a better view from the other chair.  
11 But you can see it. It's not blind.

12 Q. Can you see to the bottom from that chair?

13 A. I don't remember.

14 Q. Okay. Now, let's put people in the pool.

15 A. All right.

16 Q. Okay. You agree that you were trained at the  
17 American Red Cross over at the Dad's Club that people  
18 can create blind spots, right?

19 A. Yes, sir.

20 Q. So, you can have parents, counselors or even  
21 kids --

22 A. Yes, sir.

23 Q. -- blocking your view of your surveillance area  
24 that you're supposed to be scanning, right?

25 A. Right.

□00090

1 Q. So, we know that on July 18th, 2007, that as  
2 you've described earlier when the campers were in the  
3 water --

4 A. Yes.

5 Q. -- their counselors were supposed to be in the  
6 water with them.

7 A. Yes, sir.

8 Q. I messed that one up.

9 We know from your earlier testimony that  
10 when the campers were in the water, you remember seeing  
11 the counselors in the water --

12 A. Yes, sir.

13 Q. -- right? And the camp -- campers who were in  
14 the water on July 18th included 4-year-olds, right?

15 A. Yes.

16 Q. That was John Pluchinsky's group.

17 A. Yes. I didn't know that when I got on the  
18 stand that they were 4.

19 Q. We'll talk about that in a minute.

20 But you knew after the fact that the camp  
21 group that was in the family pool when John Pluchinsky  
22 drowned was or included the 4-year-old campers, girls  
23 and boys, right?

24 A. The boys were there. I -- I don't know how old  
25 the girls were. I don't know how old the girls were.

□00091

1 Q. Okay. All right. But there were girls and boy  
2 campers in there.

3 A. Yes.

4 Q. And their campers were with them.

5 A. The counselors, yes.

6 Q. Counselors. Thank you. See, you're catching  
7 on.

8 What -- what would you do if a person was  
9 creating a blind spot to your surveillance scanning  
10 area?

11 A. Ask --

12 MR. SNYDER: Objection, form.

13 A. Ask them to move.

14 Q. (By Mr. Pletcher) Do you remember on  
15 July 18th, 2007 ever asking anybody in the family pool  
16 when the 4-year-old campers were in the pool to move?

17 A. No, sir.

18 Q. You said that you didn't know that the campers  
19 in the pool when John Pluchinsky drowned were  
20 4-years-old --

21 A. Yes, sir.

22 Q. -- at the time that he drowned, right? You  
23 learned that later?

24 A. Yes, sir.

25 Q. Who informed you that they were 4-year-old?

□00092

1 A. I don't know.

2 Q. How did -- you don't remember how you learned

3 of that?

4 A. I don't -- I just remember there were people  
5 everywhere, and someone said the kids were 4.

6 Q. Did you know on or before July 18th, 2007 the  
7 age range of the campers who were enrolled in the  
8 Racquet Club summer camp?

9 A. I think they were 4 to 12-year-olds.

10 Q. Okay. Let me show you -- let me show you  
11 what's been marked as Plaintiffs' Exhibit No. 6. And  
12 this is the camp schedule. Okay?

13 A. Okay.

14 Q. This is one page for week number five. This  
15 was the fifth week of the summer camp.

16 A. Okay.

17 Q. Do you remember that? Does that sound right?

18 A. I don't know.

19 Q. Okay. Well, it was.

20 A. Okay.

21 Q. And this is the schedule, and it shows Tuesday  
22 which was July 17th --

23 A. Okay.

24 Q. -- and Wednesday which was July 18th. Okay?

25 A. (Witness nodding head)

□00093

1 Q. And it shows their schedules. If we look at  
2 Wednesday the 18th, the kids arrive at 9:00. Did you  
3 know that the arrival time was 9:00 o'clock before this  
4 event?

5 A. I don't remember.

6 Q. Okay. And then they did an activity with  
7 flying saucers at 9:15. 9:50 they went to the moon  
8 walk. 10:15 they hydrated and energized. It was  
9 lunchtime. And then at 10:45, show your counselors how  
10 you can swim. Okay?

11 A. Okay.

12 Q. Were you ever provided with any of these summer  
13 camp schedules prior to July 18th, 2008?

14 A. No, sir.

15 MR. SNYDER: Objection, form.

16 Q. (By Mr. Pletcher) So, when you made the  
17 decision on your own to take the rotation at the family  
18 pool on July 18th, 2008 [sic], you had no idea that  
19 there were going to be 4-year-old summer campers in the  
20 pool, correct?

21 A. Correct.

22 Q. Did you know that there were going to be summer

23 campers --

24 A. Yes, sir.

25 Q. -- in the pool?

□00094

1 A. Yes, sir.

2 Q. Okay. Now, how many days had you acted as a  
3 lifeguard prior to July 18th, 2007?

4 A. I don't remember.

5 Q. Can you give me an estimate?

6 A. About a week.

7 Q. Okay. And how many days a week was the Houston  
8 Racquet Club open during the summer of 2007? Seven or  
9 six?

10 A. The Club or the pool?

11 Q. Ma'am?

12 A. The Club or the pool?

13 Q. The pool.

14 A. Seven.

15 Q. Seven days a week the pool was open?

16 A. (Witness nodding head)

17 Q. So, if you worked about a week, then you had  
18 about seven days' experience in a lifeguard chair before  
19 you got on the stand on July 18th.

20 MR. SNYDER: Objection, form.

21 A. Probably about four or five.

22 Q. (By Mr. Pletcher) Right. Because you didn't  
23 work every day, did you?

24 A. No.

25 Q. Okay. And you had never been a lifeguard at

□00095

1 any other facility prior to this, correct?

2 A. No, sir.

3 Q. But did you work as a swim instructor?

4 A. Yes, sir.

5 Q. When did you do that?

6 A. In June and the year before.

7 Q. In June of 2007?

8 A. I started -- I started in 2006 --

9 Q. Yes.

10 A. -- the year before in April.

11 Q. Okay.

12 A. And that was April to June. And then I did it  
13 again 2007 the same months.

14 Q. Okay. So, in 2006 you were a swim instructor  
15 at the Houston Racquet Club --

16 A. Yes, sir.

17 Q. -- from April until June.

18 A. It was not a swim instructor. It was a swim  
19 team coach.

20 Q. Okay. A swim team coach. Okay. And you had  
21 those same months in 2007 as a swim team coach.

22 A. Yes, sir.

23 Q. Tell the jury what a swim team coach does.

24 A. Well, they have a swim team and basically we  
25 help them work on their strokes so that they can be

□00096

1 faster at swim team.

2 Q. Okay. So, the swim team at the Houston Racquet  
3 Club was a swim team who competed amongst themselves and  
4 other clubs? Like, did y'all ever have swim meets with  
5 Lakeside, for example?

6 A. Yes, sir. We had meets against other teams.

7 Q. Okay. Teams at other clubs.

8 A. Yes, sir.

9 Q. Did you work with children under the age of 5?

10 A. I think -- I don't know.

11 Q. What age range do you recall having worked with  
12 as a swim team coach at the Houston Racquet Club?

13 A. I usually worked with 7 to 10-year-olds, but  
14 there were younger kids there that other coaches worked  
15 with.

16 Q. Okay.

17 A. But we worked with all the ages.

18 Q. Sure. And you worked with all the ages.

19 A. Yeah.

20 Q. So, you worked with children under 7.

21 A. Yes.

22 Q. What's the youngest age you believe that you  
23 worked with children as a swim coach at the Racquet  
24 Club?

25 A. I don't -- I'm not positive. I think around 4.

□00097

1 Q. Okay. And you know from that experience that  
2 the swimming ability of a 4 or 5-year-old is a lot  
3 different than the swimming ability of a 7 or  
4 8-year-old.

5 A. Yes.

6 Q. Okay. Based upon that experience, the two  
7 summers that you did swim coaching at the Houston  
8 Racquet Club and your training at the Dad's Club when  
9 you obtained your lifeguard certification, you knew that  
10 when you were a lifeguard on July 18th, 2007, you would

11 have to pay more attention to the younger summer  
12 campers, did you not?

13 A. Yes.

14 Q. And you knew that the most attention would have  
15 to be given to the youngest campers, which was the  
16 4-year-old group, correct, based upon that experience?

17 A. We pay attention to all the kids in the pool.

18 Q. I understand. But you would agree that you had  
19 to pay more attention to the youngest campers, the  
20 4-year-old group, correct?

21 A. I don't know how to answer this question.

22 Q. Well, you can answer it yes or no.

23 A. But --

24 MR. SNYDER: Objection, form.

25 A. -- you're not supposed to single out certain

□00098

1 kids because all of them were supposed to know how to  
2 swim. And we scanned the whole pool to make sure that  
3 we watched all the kids.

4 Q. (By Mr. Pletcher) Really? Who told you that  
5 all the campers were supposed to know how to swim?

6 A. We just -- because the camper -- if they were  
7 in camp, they knew how to swim. Because I thought -- I  
8 don't remember -- I don't know if this was right. I  
9 thought that they had to take a swim test.

10 Q. Well, 15 y/o LG #1, I'll let you know that the  
11 testimony in this case and the evidence that the jury's  
12 going to hear will be that none of the summer campers  
13 had swim tests that determined whether or not those  
14 children were pool safe or knew how to swim. Okay?

15 A. Okay. I did not know that.

16 MR. SNYDER: Objection, form.

17 Q. (By Mr. Pletcher) Okay. And --

18 A. But --

19 Q. Hang on one second. You didn't know that  
20 because Guillermo Palmer, David Lamkin, CD  
21 or nobody -- or anybody else at the Houston Racquet Club  
22 ever took the time to tell the guards and you that we  
23 don't swim test these children?

24 MR. SNYDER: Objection, form.

25 A. Yes, sir.

□00099

1 Q. (By Mr. Pletcher) And David Lamkin testified  
2 that since the Club did not test the swimming ability of  
3 any of the summer campers, that they were to be treated  
4 as non-swimmers. Did you know that?



5 A. No, sir.

6 MR. SNYDER: Objection, form.

7 Q. (By Mr. Pletcher) Nobody at the Houston  
8 Racquet Club ever took the time to tell you or any of  
9 the other lifeguards that all of the summer campers,  
10 regardless of their age, were to be treated as  
11 non-swimmers, did they?

12 A. I --

13 MR. SNYDER: Objection, form.

14 A. I don't know what they told the other  
15 lifeguards.

16 Q. (By Mr. Pletcher) Well, they never told you  
17 that, did they?

18 A. No, sir.

19 Q. And nobody at the Houston Racquet Club from the  
20 general manager Steve Griffin down to the assistant camp  
21 director CD and everybody in between,  
22 Guillermo Palmer and David Lamkin, none of them told  
23 you, 15 y/o LG #1, that all of the 4-year-old campers  
24 who were in the swimming pool on July 18th when John  
25 Pluchinsky drowned were to be treated as non-swimmers,

□00100

1 did they?

2 MR. SNYDER: Objection, form.

3 A. Nobody told me.

4 Q. (By Mr. Pletcher) Do you wish they had?

5 MR. SNYDER: Objection, form.

6 A. I don't think that's a fair question because I  
7 didn't just assume they knew how to swim and not watch  
8 them. I still watched them closely and carefully.

9 Q. (By Mr. Pletcher) Sure.

10 A. I knew they were little. I watched them  
11 carefully.

12 Q. Okay. How would you as a certified lifeguard  
13 by the Greater Houston Area Chapter of the American Red  
14 Cross treat a non-swimmer --

15 MR. SNYDER: Objection, form.

16 Q. (By Mr. Pletcher) -- when you're sitting in a  
17 lifeguard chair at a pool?

18 MR. SNYDER: Objection, form.

19 Q. (By Mr. Pletcher) How would you treat a  
20 non-swimmer?

21 MR. SNYDER: Objection, form.

22 A. I don't know how to answer this question.

23 Q. (By Mr. Pletcher) Okay. Well, let me see if I  
24 can help. Do you think that it's safe for a non-swimmer

25 to go into water -- to venture out into water that's

□00101

1 deeper than waist deep?

2 MR. SNYDER: Objection, form.

3 A. A non-swimmer is the responsibility of their  
4 parent according to the Red Cross.

5 Q. (By Mr. Pletcher) That didn't respond to my  
6 question.

7 A. I don't know how to answer your question.

8 Q. Well, you're --

9 A. I -- unless a kid comes up to me and says, "I  
10 don't know how to swim," I don't know that he doesn't  
11 know how to swim. I'll watch him. I'll watch any  
12 kid -- it's the same -- to make sure. If something  
13 happens, I'll go and help them. I don't know which kids  
14 can swim and which kids can't.

15 MR. PLETCHER: I have to object to your  
16 responsiveness because you didn't answer my question.

17 Q. (By Mr. Pletcher) Based upon your training and  
18 experience as a certified lifeguard, how do you treat a  
19 non-swimmer compared to a swimmer?

20 MR. SNYDER: Objection, form.

21 A. I don't know how to answer your question.

22 Q. (By Mr. Pletcher) Is there any difference in  
23 how you would treat them if you were sitting in the  
24 stand? Would there be any limitations that you would  
25 give by either verbally or through your whistle when you

□00102

1 had people in the pool that you knew didn't know how to  
2 swim and people that you knew did know how to swim?

3 A. I don't know.

4 Q. Is there any difference?

5 MR. SNYDER: Objection, form.

6 A. I don't know how to differentiate between who  
7 knows how to swim and who doesn't --

8 Q. (By Mr. Pletcher) Okay.

9 A. -- unless they're struggling with swimming.  
10 Then you can obviously tell they can't.

11 Q. Okay. That really isn't my question, 15 y/o LG #1.  
12 If somebody told you that a particular person in the  
13 family pool was to be treated as a non-swimmer --

14 A. Uh-huh.

15 Q. -- would you allow that person to go into water  
16 deeper than their waist?

17 MR. SNYDER: Objection, form.

18 A. Are you saying if I knew that there was someone

19 who couldn't swim?

20 Q. (By Mr. Pletcher) Yes, ma'am.

21 MR. SNYDER: Objection, form

22 A. If you know that a child is a non-swimmer, they  
23 have to be with their parent or with a babysitter or  
24 with some -- they have to be with an adult.

25 MR. PLETCHER: Okay. I'm going to object

□00103

1 to the responsiveness.

2 Q. (By Mr. Pletcher) Are you telling me that you  
3 as a lifeguard sitting in a lifeguard chair at the  
4 family pool at the Houston Racquet Club would not place  
5 any limitations or treat a non-swimmer any differently  
6 than a swimmer? Is that what you're telling me?

7 MR. SNYDER: Objection, form.

8 A. I don't understand your question. How would I  
9 know if the kid can swim or not?

10 Q. (By Mr. Pletcher) If Guillermo Palmer told  
11 you.

12 A. If he said, "That kid can't swim"?

13 Q. Yes.

14 A. Then I would ask him not to go in the deep end  
15 because I know he wouldn't be able to. I would stay in  
16 water that's...

17 Q. And the deep end is how deep?

18 A. I mean, like stay in water that is lower than  
19 his head.

20 Q. Okay. What if they're 4-years-old? How would  
21 you treat that person --

22 MR. SNYDER: Objection, form.

23 Q. (By Mr. Pletcher) -- if you knew they were a  
24 non-swimmer?

25 MR. SNYDER: Objection, form.

□00104

1 Q. (By Mr. Pletcher) Would you still allow them  
2 to go into neck deep water?

3 MR. SNYDER: Objection, form.

4 A. I don't know how to answer your question.

5 Q. (By Mr. Pletcher) Okay.

6 MR. FOGLER: We've been going about an  
7 hour. Maybe this is another good time for a break.

8 MR. PLETCHER: Absolutely. That would be  
9 fine. Thanks.

10 THE VIDEOGRAPHER: The time is 12:05 p.m.  
11 We're off the record.

12 (Recess from 12:05 to 12:15)

13 THE VIDEOGRAPHER: The time is 12:15 p.m.

14 We're back on the record.

15 Q. (By Mr. Pletcher) 15 y/o LG #1, when we broke, we  
16 were talking about the treatment of swimmers versus  
17 non-swimmers --

18 A. Yes, sir.

19 Q. -- do you remember? And I guess really the  
20 question I need to ask is: Did anybody at the Houston  
21 Racquet Club ever tell you or instruct you on how to  
22 treat non-swimmers versus swimmers?

23 A. No, sir.

24 Q. Did anybody at the Houston Racquet Club ever  
25 provide you any instruction, verbal, written, on how

□00105

1 deep you should allow a non-swimmer to venture into that  
2 pool?

3 MR. SNYDER: Objection, form.

4 A. No, sir.

5 Q. (By Mr. Pletcher) No? Did anybody at the  
6 Houston Racquet Club ever instruct you either verbally  
7 or in writing of what a safe depth of water would be for  
8 somebody who should be treated as a non-swimmer?

9 MR. SNYDER: Objection, form.

10 A. No, because there's no way to determine that.

11 Q. (By Mr. Pletcher) What did you say?

12 A. There's no way to determine that. It's all  
13 relative.

14 Q. So, you don't -- I don't understand that  
15 answer. What's it relative to? If they don't know how  
16 to swim --

17 A. If there's a 2-year-old that doesn't know how  
18 to swim --

19 Q. Yes.

20 A. -- 3 feet of water would be a very unsafe  
21 depth. But if someone your size or my size didn't know  
22 how to swim, we could stand in 3 feet of water and it  
23 would be okay.

24 Q. What if they were 42 inches tall, three and a  
25 half feet deep? It would be unsafe to be in three and a

□00106

1 half feet of water, wouldn't it?

2 MR. SNYDER: Objection, form.

3 A. I don't know.

4 Q. (By Mr. Pletcher) That would be over your  
5 head.

6 A. What is 42 feet -- 42 inches?

7 Q. Forty-two inches is three and a half feet.  
8 A. Okay.  
9 Q. Okay? You would never want a non-swimmer to go  
10 into water deeper than their head, right?  
11 A. Right.  
12 MR. SNYDER: Objection, form.  
13 Q. (By Mr. Pletcher) Okay. Now, did the -- did  
14 the Racquet Club ever give you any sort of instruction  
15 or tell you that a non-swimmer should not be allowed in  
16 water of any depth?  
17 A. No, sir.  
18 MR. SNYDER: Objection, form.  
19 Q. (By Mr. Pletcher) Did the Houston Racquet Club  
20 ever instruct you or tell you that a non-swimmer should  
21 always have somebody within arm's reach of them?  
22 A. No, sir.  
23 MR. SNYDER: Objection, form.  
24 Q. (By Mr. Pletcher) Did anybody at the Houston  
25 Racquet Club ever tell you or instruct you that a

□00107

1 non-swimmer should always have somebody in grabbing  
2 distance?  
3 A. No, sir.  
4 MR. SNYDER: Objection, form.  
5 Q. (By Mr. Pletcher) Did the Houston Racquet Club  
6 ever instruct you or tell you that non-swimmers had to  
7 have some sort of floatation device either on them or  
8 with them when they were in the family pool?  
9 MR. SNYDER: Objection, form.  
10 A. I don't know.  
11 Q. (By Mr. Pletcher) You don't recall?  
12 A. I do not recall.  
13 Q. When you trained at the American Red Cross to  
14 obtain your certification, do you remember studying or  
15 being instructed on shallow water drownings?  
16 A. Yes.  
17 Q. Did anybody at the Houston Racquet Club ever  
18 provide you any specific instruction or training on that  
19 subject, shallow water drownings?  
20 A. At the Racquet Club?  
21 Q. Yes.  
22 A. No, sir.  
23 Q. Did anybody at the Houston Racquet Club provide  
24 you any training or instruction on any type of  
25 lifeguarding procedures?

□00108

1 A. I don't remember.

2 Q. Okay. LG Supv who was the head  
3 lifeguard --

4 A. Yes, sir.

5 Q. -- testified that the Houston Racquet Club did  
6 not have any formal in-service training program.

7 A. We didn't have in-services.

8 Q. Right. Guillermo Palmer nor anybody else at  
9 the Houston Racquet Club performed any type of  
10 in-services, correct?

11 A. No, sir.

12 Q. And -- is that correct?

13 A. Yes, sir.

14 Q. Nobody at the Houston Racquet Club, including  
15 Guillermo Palmer, ever conducted any type of emergency  
16 response drills, correct?

17 MR. SNYDER: Objection, form.

18 A. Correct.

19 Q. (By Mr. Pletcher) Nobody at the Houston  
20 Racquet Club, including Guillermo Palmer, ever provided  
21 you with any sort of emergency action plan, whether  
22 verbal or written, did they?

23 MR. SNYDER: Objection, form.

24 A. No, sir.

25 Q. (By Mr. Pletcher) Nobody at the Houston

□00109

1 Racquet Club, including Guillermo Palmer or David Lamkin  
2 for that matter, ever provided any sort of performance  
3 evaluation or audits of the lifeguards in regard to  
4 their lifeguarding activities at the Racquet Club in  
5 2007, did they?

6 MR. SNYDER: Objection, form.

7 A. What is au -- what does that mean? Audit, what  
8 does that mean?

9 Q. (By Mr. Pletcher) Audit?

10 A. Yes.

11 Q. Where they watch you and evaluate your  
12 performance while you're on a stand. To your knowledge,  
13 that never happened, correct?

14 A. Correct.

15 MR. SNYDER: Objection, form.

16 Q. (By Mr. Pletcher) The lifeguarding manual that  
17 you received over at the Dad's Club when you received  
18 your certification, you read it, didn't you?

19 A. Every word?

20 Q. Did you read every word?

21 A. No, sir.  
22 Q. Okay. How much of it did you read?  
23 A. I don't know.  
24 Q. You obviously read enough in order to pass the  
25 written portion of the examination.

□00110

1 A. Yes, sir.  
2 Q. Was there also a non-written portion or a  
3 testing portion of the -- non-written testing portion of  
4 the certification?  
5 A. I don't think so.  
6 Q. So, it was just a written test?  
7 A. You still -- you had to be able to do all the  
8 saves in the water.  
9 Q. Right. And you had to actually perform the  
10 saves in front of the instructor, correct?  
11 A. Yes, sir.  
12 Q. Do you remember your instructor ever telling  
13 you or do you remember ever reading in this manual that  
14 just because you've successfully completed the course  
15 materials and passed the written and skills test on a  
16 given day, that that doesn't mean that you have learned  
17 everything that there is to know about lifeguarding? Do  
18 you remember being told that?  
19 A. No.  
20 Q. Or reading that?  
21 A. No.  
22 Q. Do you remember being instructed or do you  
23 remember reading in this manual that it's important that  
24 lifeguards maintain their professionalism by retaining  
25 their knowledge and skills at an appropriate level,

□00111

1 particularly seasonal lifeguards who only work during  
2 summertime? Do you remember that?  
3 A. Yes.  
4 Q. And do you remember your instructor telling you  
5 that the way that you keep your knowledge and skill at  
6 an appropriate level is through in-service training,  
7 emergency response drill, proper orientation? You  
8 remember that sort of a discussion?  
9 A. I don't remember everything the lifeguard  
10 instructor said specifically.  
11 Q. Do you remember talking about in-service  
12 training? Certainly they talked about that, right?  
13 A. He said that some pools have it.  
14 Q. Huh?

15 A. He said that some pools do that.  
16 Q. And he said that that's one way that you can  
17 maintain your knowledge and skills.  
18 A. I don't know.  
19 Q. You don't remember that?  
20 A. I don't know if he said that.  
21 Q. Okay. And do you ever recall the Houston  
22 Racquet Club ever providing you any written materials  
23 that set forth the policies and procedures of the  
24 lifeguarding team at the Houston Racquet Club?  
25 A. No.

□00112

1 Q. I mean, y'all were a lifeguard team, were you  
2 not, you and the other lifeguards who worked the summer  
3 of 2007?  
4 A. What does that mean?  
5 Q. Well, when you have more than one lifeguard --  
6 A. Uh-huh.  
7 Q. -- you have to work as a team.  
8 A. Yes, sir.  
9 Q. Like you and 15 y/o LG #2 were on July 18th at the  
10 family pool, right?  
11 A. Yes, sir.  
12 Q. And we know that on July 18th, 2007, that there  
13 were a total of seven lifeguards working that day --  
14 A. Yes, sir.  
15 Q. -- right?  
16 A. I think so.  
17 Q. You remember that. And the seven of you worked  
18 as a team.  
19 A. Yes, sir.  
20 Q. And you would agree, wouldn't you, that in  
21 order for a team to be effective and perform at an  
22 appropriate level, that you need to practice your  
23 skills, right?  
24 A. I guess.  
25 Q. Huh?

□00113

1 A. I guess.  
2 Q. Did you say "I guess"?  
3 A. I don't know how to answer your question.  
4 Q. Okay. That's all right. Did Guillermo Palmer  
5 or anybody at the Racquet Club ever suggest to you that  
6 you didn't need to practice your skills as a lifeguard?  
7 A. No.  
8 Q. Did Guillermo Palmer or anybody else at the



9 Houston Racquet Club ever conduct any practice drills?

10 A. No, sir.

11 MR. SNYDER: Objection, form.

12 Q. (By Mr. Pletcher) Okay. Did anybody at the  
13 Houston Racquet Club ever instruct you or tell you that  
14 the 4-year-old summer campers were limited to any  
15 particular area of the family pool?

16 A. No, sir.

17 Q. Nobody at the Houston Racquet Club ever told  
18 you or instructed you that any part of the pool was off  
19 limits to the 4-year-old campers, did they?

20 A. No, sir.

21 Q. Did they?

22 A. No, sir.

23 Q. And on July 18th, 2007 when you were sitting on  
24 the chair under the umbrella, do you remember seeing  
25 4-year-old campers on the slide area?

□00114

1 MR. SNYDER: Objection, form.

2 A. I -- I know there were kids on the slide. I  
3 don't remember.

4 Q. (By Mr. Pletcher) Do you remember when -- you  
5 got off your stand, correct, after you discovered --

6 A. Yes.

7 Q. -- John floating. You remember that there was  
8 a camp counselor over in the slide area who blew his  
9 whistle? Do you remember that?

10 MR. SNYDER: Objection, form.

11 A. No.

12 Q. (By Mr. Pletcher) You don't remember hearing a  
13 whistle blast from the slide area of the pool?

14 A. I blew my whistle.

15 Q. I understand. That wasn't my question. You  
16 don't recall hearing another whistle blast?

17 A. Not before mine.

18 Q. How about after?

19 A. Possibly.

20 Q. Okay. Did anybody at the Houston Racquet Club  
21 ever tell you or instruct you that the camp counselors  
22 had no specific campers assigned to them to watch while  
23 they were in the pool?

24 A. Can you say that again?

25 Q. Sure. Did anybody at the Houston Racquet Club

□00115

1 tell you that there were no assignments of campers to  
2 counselors while they were in the summer -- in the

3 family pool?

4 MR. SNYDER: Objection, form.

5 A. I don't think so, but there -- there were.

6 There were -- the counselors were assigned to a group.

7 Q. (By Mr. Pletcher) Right. The counselors were

8 assigned to a particular age group.

9 A. Yes.

10 Q. But the counselors were not assigned to watch

11 any particular specific child, right?

12 A. Like, one counselor was in charge of three

13 kids?

14 Q. Right.

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

16 Q. And no -- did anybody --

17 A. No one told me anything --

18 Q. Nobody told you anything about the fact that

19 there were no specific assignments of children to

20 specific counselors, correct?

21 A. Correct.

22 MR. SNYDER: Objection, form.

23 Q. (By Mr. Pletcher) So, you did not know on

24 July 18th, 2007 that no particular counselor was

25 assigned to watch John Pluchinsky while he was in the

□00116

1 family pool --

2 MR. SNYDER: Objection, form.

3 Q. (By Mr. Pletcher) -- did you?

4 A. There were six counselors for his age group.

5 Q. I understand.

6 A. But to my knowledge, there wasn't one counselor

7 in charge of him.

8 Q. Right. But you didn't know that one way or the

9 other on --

10 A. No.

11 Q. -- July 18th, did you?

12 A. No. All I knew was there was a group of kids,

13 and then they had their counselors that watched them.

14 Q. Right. And your understanding was that there

15 were six counselors for the 4-year-old boys --

16 A. Yes.

17 Q. -- correct? And those six counselors included

18 4 y/o B-CC #1, which you learned after the fact?

19 A. I don't know which ones were.

20 Q. Even to this day?

21 A. There was some that were from another group.

22 Q. Okay. Let me just --

23 A. I don't know which counselor were which.

24 Q. Let me just ask it this way. The evidence in

25 this case is that the following counselors were watching

□00117

1 the 4-year-old boys. And I need to know whether or not

2 you knew on July 18th that that specific person was

3 watching the 4-year-old boys. Okay?

4 A. Okay.

5 Q. 4 y/o B-CC #1?

6 A. I don't know.

7 Q. 4 y/o B-CC #5?

8 A. I don't know.

9 Q. 4 y/o B-CC #6?

10 A. I don't know.

11 Q. 4 y/o B-CC #4?

12 A. I don't know.

13 Q. 4 y/o B-CC #2?

14 A. I don't know.

15 Q. 4 y/o B-CC #3?

16 A. I don't know.

17 Q. So, nobody at the Houston Racquet Club ever

18 told you who the specific camp counselors were who were

19 assigned the 4-year-old boys.

20 A. Correct.

21 Q. Did you know on July 18th, 2007 who the camp

22 counselor supervisor were?

23 MR. SNYDER: Objection, form.

24 A. No, sir.

25 Q. (By Mr. Pletcher) Do you know if on July 18th,

□00118

1 2007 there actually were camp counselor supervisors?

2 A. I don't know.

3 MR. SNYDER: Objection, form.

4 Q. (By Mr. Pletcher) Do you know if the summer

5 camp had particular counselors who were to act as pool

6 supervisors over the entire camp?

7 MR. SNYDER: Objection, form.

8 A. I don't know.

9 Q. (By Mr. Pletcher) So, nobody from the Houston

10 Racquet Club ever told you that there was any pool

11 supervisor or camp counselor supervisor while the summer

12 campers were in the family pool --

13 A. Correct.

14 MR. SNYDER: Objection, form.

15 Q. (By Mr. Pletcher) -- correct? Now, who did

16 you think Supv CC #1 was -- what did you think Supv CC #1

17 was doing when he was at the family pool on  
18 July 18th? Did you think that he was watching some of  
19 the kids?

20 A. I just saw a bunch of counselors in the pool.

21 I didn't realize he was specifically one of them until  
22 later that day.

23 Q. Okay.

24 A. But I mean, I saw the counselors playing with  
25 all the kids.

□00119

1 Q. Yes. You saw them in the water with the kids.

2 A. Exactly.

3 Q. But nobody at the Houston Racquet Club took the  
4 time to tell you that none of the counselors were  
5 required to watch any specific camper, did they?

6 MR. SNYDER: Objection, form.

7 A. No, they didn't.

8 Q. (By Mr. Pletcher) Okay. Now, were you when  
9 you were sitting on your chair at the family pool on  
10 July 18th relying upon the camp counselors to watch the  
11 kids?

12 A. No.

13 MR. SNYDER: Objection, form.

14 A. Like instead of my job?

15 Q. (By Mr. Pletcher) Yes.

16 A. No, sir.

17 Q. Were you relying upon them to provide some sort  
18 of secondary safety net for their safety while they were  
19 in the pool?

20 MR. SNYDER: Objection, form.

21 A. I wasn't relying on them to be the lifeguard,  
22 if that's what you're asking.

23 Q. (By Mr. Pletcher) No. That's not what I'm

24 asking. I'm wondering if you were relying upon the camp  
25 counselors to any degree as far as the campers' safety

□00120

1 while they were in that pool.

2 A. I don't --

3 MR. SNYDER: Objection, form.

4 A. I don't know how to answer that. I wasn't...

5 Q. (By Mr. Pletcher) Were you --

6 A. I wasn't paying less attention because they  
7 were there.

8 Q. No, no. And I don't mean to imply that at all.

9 I'm just wondering: When you were sitting on that  
10 chair, okay, did you think that these camp counselors

11 were watching every single one of these children?  
12 MR. SNYDER: Objection, form.  
13 A. I don't know.  
14 Q. (By Mr. Pletcher) Okay. You were 15-years-old  
15 on July 18th, right?  
16 A. Yes, sir.  
17 Q. 2007?  
18 A. Yes, sir.  
19 Q. And you're 16 today, right?  
20 A. Yes, sir.  
21 Q. Do you think based upon your training as a  
22 lifeguard, experience as a swim team coach, training as  
23 a certified CPR and AED specialist or professional, that  
24 it would be a good idea or a bad idea to have specific  
25 assignments of campers to specific counselors?  
□00121  
1 MR. SNYDER: Objection, form.  
2 MR. FOGLER: I'm not sure how you expect  
3 her to answer those kinds of question. She's here as a  
4 fact witness to respond --  
5 MR. PLETCHER: I'm just asking her as a  
6 lay witness.  
7 MR. SNYDER: Objection, form.  
8 A. I don't know what to say to that.  
9 Q. (By Mr. Pletcher) Yeah. It's okay. You can't  
10 answer that?  
11 A. (Witness shaking head)  
12 Q. Okay. On July 18th, 2007, do you know if there  
13 was any sort of adult supervisor at the family pool to  
14 supervise the camp counselors?  
15 MR. SNYDER: Objection, form.  
16 A. I don't know.  
17 Q. (By Mr. Pletcher) Do you know if on that day  
18 there was an adult supervisor for the campers themselves  
19 while they were in the family pool?  
20 A. I don't know.  
21 MR. SNYDER: Objection, form.  
22 Q. (By Mr. Pletcher) Okay. And as we'll discuss  
23 a little more after lunch, you and 4 y/o B-CC #6 were  
24 left at the family pool at 11:00 o'clock on your own to  
25 lifeguard the entire pool, right?  
□00122  
1 A. Yes, sir.  
2 Q. We know that the head lifeguard or the  
3 lifeguard supervisor, LG Supv, and three other  
4 more experienced lifeguards took a lunch break, right?

5 A. Yes, sir.

6 Q. Okay. And when you were there, to your  
7 knowledge, was Guillermo Palmer around?

8 A. I don't know where he was at the time.

9 Q. So, based upon your recollection of the events,  
10 there was no adult supervisor for you and 15 y/o LG #2 while  
11 you were at the family pool on July 18th, correct?

12 MR. SNYDER: Objection, form.

13 A. I don't know.

14 Q. (By Mr. Pletcher) Not to your knowledge?

15 A. (Witness nodding head)

16 MR. SNYDER: Objection, form.

17 Q. (By Mr. Pletcher) Is that correct?

18 A. That's correct.

19 MR. PLETCHER: I think we'll break for  
20 lunch here.

21 THE VIDEOGRAPHER: The time is 12:41 p.m.

22 We're off the record.

23 (Lunch Recess from 12:41 to 1:35)

24 THE VIDEOGRAPHER: The time is 1:35 p.m.

25 We're back on the record.

□00123

1 Q. (By Mr. Pletcher) 15 y/o LG #1, you're ready to  
2 continue?

3 A. Yes.

4 Q. Okay. I want to talk about July 18th. Now,  
5 before -- before that day, you had never interacted nor  
6 had you met John Pluchinsky, correct?

7 A. No, sir.

8 Q. Why don't you tell me what you remember first.

9 A. You mean --

10 Q. About -- about seeing John floating.

11 A. Well, I, like, scanned the pool back and forth  
12 like the whole time. And all the kids were playing.

13 And a lot of kids do that where they'll, like, put on  
14 their goggles and swim along, like, on top of the water  
15 and watch the bottom of the pool. And, like, at first  
16 glance it looked like he was just playing. And then I  
17 looked back, like, two seconds later; and he hadn't  
18 moved. So, I got up and ran over there.

19 Q. Okay. And you were seated at the lifeguard  
20 chair under the umbrella, right?

21 A. Yes.

22 Q. You said that you were scanning back and forth?

23 A. Uh-huh.

24 Q. Tell me typically how you conducted your scans

25 of the family pool and your area of responsibility from  
□00124

1 that chair.

2 A. You scan from side to side and just watch all  
3 the people in the water.

4 Q. Okay. And when you scan it, do you actually  
5 move your head?

6 A. (Witness nodding head)

7 Q. Can you kind of show me what you do?

8 A. (Indicating)

9 Q. Okay. And when you were scanning, were you  
10 scanning both the surface and below the water --

11 A. Yes, sir.

12 Q. -- as you were taught to do?

13 A. (Witness nodding head)

14 Q. And I'm sure doing a scan in that way where you  
15 are looking not only on the surface but below the water,  
16 that it's not simply a turn of your head back and forth  
17 that you do real quickly.

18 A. Yeah. Yeah.

19 Q. So, can you give the jury an idea of how long  
20 it would take you to scan your entire area of  
21 responsibility that you have drawn in in pink on 14F?

22 A. I don't know. To scan the entire thing?

23 Q. Yes, ma'am.

24 A. Would probably be around seven seconds.

25 Q. Okay. And --

□00125

1 A. But if I see -- if I see something that  
2 looks --

3 Q. Unusual.

4 A. -- odd, I'll look back on it just to make sure  
5 it's okay.

6 Q. Right. And when you say if you see something  
7 odd, what you do as a lifeguard is that you -- when you  
8 are scanning, you are looking at the behavior of the  
9 people who are in the pool?

10 A. Yes, sir.

11 Q. And you're looking for signals to see if  
12 somebody needs help --

13 A. Yes, sir.

14 Q. -- right? And what behavior or signals do you  
15 look for to make that decision on whether somebody needs  
16 some help?

17 A. Well, a lot of times -- like, I guess if  
18 someone's having trouble swimming, they'll be struggling

19 to keep their head up.  
20 Q. Yes.  
21 A. And that will be a signal.  
22 Q. Okay. Do you look at arm movement?  
23 A. Uh-huh.  
24 Q. What other things -- what other body movements  
25 would you look for?  
□00126  
1 A. I don't know. Just body language that appears  
2 that they need help.  
3 Q. Okay. So, back to your normal scan. I think  
4 you said seven seconds? But, you know, that's an  
5 estimate.  
6 A. Yeah.  
7 Q. It could have been longer than seven seconds.  
8 Is there a range of time that --  
9 A. I don't know.  
10 Q. Seven, ten, fifteen or even less? I don't  
11 know.  
12 A. I don't know specifically how long it takes to  
13 scan the pool. I don't count.  
14 Q. Right. So, if you have told other people who  
15 have questioned you about John's drowning that it took  
16 eight to ten seconds, is that a reasonable estimate or  
17 is that just a guess?  
18 A. To scan the pool?  
19 MR. SNYDER: Objection, form.  
20 Q. (By Mr. Pletcher) Yes. Yes, ma'am.  
21 A. It's a guess.  
22 Q. (By Mr. Pletcher) Okay.  
23 A. It's an estimate. I don't know how long.  
24 Q. Okay. How many times had you sat in that chair  
25 under the umbrella at the family pool prior to  
□00127  
1 July 18th?  
2 A. I have no idea.  
3 Q. Had you sat there?  
4 A. Yes, sir.  
5 Q. More than once?  
6 A. Yes, sir.  
7 Q. More than twice?  
8 A. Yes, sir.  
9 Q. More than three times?  
10 A. Probably. I don't know exactly.  
11 Q. So, once we get to three, it's a probably but I  
12 don't know?



13 A. It's probably more than three. I'd worked  
14 about four or five days before that.

15 Q. Right. Okay. So, that would have been four or  
16 five rotations which would have included the family  
17 pool.

18 A. Yes.

19 Q. But you had testified earlier that you had sat  
20 at the slide stand?

21 A. Before.

22 Q. So, that might cut one off --

23 A. Yeah.

24 Q. -- one occasion of sitting at the umbrella

25 stand. Do you recall how many times you may have sat at

□00128

1 the slide stand?

2 A. Before July 18th?

3 Q. Yes, ma'am.

4 A. I don't know.

5 Q. More than once?

6 A. Yeah.

7 Q. Okay.

8 A. It was probably about even between the two.

9 Q. Okay. So, more than once, more than twice.

10 Get to three times probably but not certain.

11 A. (Witness nodding head)

12 Q. Is that about right?

13 A. Yes, sir.

14 Q. Okay. So, what you've told the jury initially

15 when I asked you how long it would take you to do a

16 normal scan using the technique that you learned through

17 the American Red Cross training program to properly

18 scan, it takes seven seconds. But that's an estimate.

19 A. That's what I would guess for this pool.

20 Q. Right. And you recall having told other people

21 that it may have taken longer than seven seconds. But

22 that's all an estimate, right?

23 A. I don't remember telling you that.

24 Q. Okay. Not me. Other people. Giving

25 statements to other people that --

□00129

1 A. I don't know specifically. I just --

2 Q. But it wouldn't --

3 A. All I can do is guess.

4 Q. -- surprise you if you told people, yeah, maybe

5 it took eight to ten seconds?

6 A. Yeah.

7 MR. SNYDER: Objection, form.  
8 Q. (By Mr. Pletcher) Okay. It wouldn't surprise  
9 you, correct?  
10 MR. SNYDER: Objection, form.  
11 A. Eight to ten seconds?  
12 Q. (By Mr. Pletcher) Yeah.  
13 A. That would be a good estimate, I guess.  
14 Q. Okay.  
15 A. I don't know.  
16 Q. Okay. And when you tell the jury, "I don't  
17 know," what you're really saying, aren't you, 15 y/o LG #1,  
18 that, I can't be absolutely certain that it was eight to  
19 ten seconds but it's a good estimate?  
20 A. Correct.  
21 MR. SNYDER: Objection, form.  
22 Q. (By Mr. Pletcher) We talked about the one  
23 event of the camp counselor or counselors throwing  
24 children off the fountain area prior to your seeing John  
25 floating?

□00130

1 A. Yes, sir.  
2 Q. Do you recall any other specific event that  
3 stands out in your mind as something that was unusual  
4 before you first saw John floating?  
5 A. No, sir.  
6 Q. Now -- so, you said that you had never met John  
7 or interacted with him before this date.  
8 A. Not that I know of.  
9 Q. Right. Did you see him before you saw him  
10 floating?  
11 A. I didn't know, oh, that kid is John.  
12 Q. Okay.  
13 A. But I saw all the kids in the pool.  
14 Q. Sure. Okay. So, you can't say with any degree  
15 of certainty that you actually saw John --  
16 A. Correct.  
17 Q. -- right, before you saw him floating face  
18 down?  
19 A. (Witness nodding head)  
20 Q. Okay. Is that correct?  
21 A. Yes.  
22 Q. Okay.  
23 A. I know that I saw kids in the pool.  
24 Q. Sure.  
25 A. And I know he was one of them, but I don't

□00131

1 know --

2 Q. Yeah. Well, you know that you saw kids in the  
3 pool --

4 A. Yes.

5 Q. -- before this. And you know that John was in  
6 the pool before this.

7 A. Correct.

8 Q. But you can't say with any degree of certainty  
9 whether you specifically saw John because there were a  
10 lot of kids in the pool.

11 A. Yes. And I don't know John.

12 Q. Sure. And you don't know him -- didn't know  
13 him.

14 A. Didn't know him.

15 Q. -- prior to this. Right. And so, just to be  
16 clear on this, at no time before you saw John Pluchinsky  
17 floating face down in the family pool did you  
18 specifically see him in the family pool.

19 A. Correct.

20 MR. SNYDER: Objection, form.

21 Q. (By Mr. Pletcher) You said that there were --  
22 why don't you mark on this Exhibit 14F your best  
23 estimate of where you saw John floating face down.

24 A. Can I draw, like, a circle?

25 Q. Sure.

□00132

1 A. I know it was --

2 Q. I'll tell you what: Can you use the fat --

3 A. This one (indicating)?

4 Q. Yes.

5 A. I know it was this area (indicating). (witness  
6 drawing) I can't pinpoint exactly where. It was  
7 somewhere in this area.

8 Q. And would you put the initials "JP" within that  
9 circle?

10 A. (Witness drawing)

11 Q. Now, let me put this on the screen.

12 MR. PLETCHER: Thank you, sir.

13 Q. (By Mr. Pletcher) You have drawn this circle  
14 and put the initials "JP," although it's caddywomp on  
15 this. And you were sitting here and --

16 A. Yes.

17 Q. -- your best estimate is that he was somewhere  
18 within this circle.

19 A. Uh-huh.

20 Q. Is that correct?

21 A. Yes, sir.  
22 Q. And --  
23 A. It was almost under the umbrella but not quite.  
24 Q. Right. And if this is the west end of the  
25 pool -- okay?

□00133

1 A. Okay.  
2 Q. -- it's towards the west end -- towards the  
3 other umbrella, right?  
4 A. Right.  
5 Q. Okay. And you have no specific recollection of  
6 the specific distance John was floating from, say, this  
7 edge, the western edge, correct?  
8 A. Correct.  
9 Q. Okay. Yeah. Do you have any -- I know I just  
10 asked you. You can't specifically say what the distance  
11 was. But do you have an estimate or an approximate  
12 distance he may have been floating face down from that  
13 edge?  
14 A. I'm not good with judging distance. It's -- it  
15 wasn't, like, 10 feet or anything; but --  
16 Q. Okay. Less --  
17 A. -- it wasn't --  
18 Q. -- than 10 feet?  
19 A. But it wasn't, like, 2 inches close.  
20 Q. Sure.  
21 A. It was --  
22 Q. Somewhere less than 10 feet.  
23 A. Yeah.  
24 Q. Okay. That's fair enough. Can we -- right.  
25 Why don't we -- why don't you put in this circle --

□00134

1 A. Okay.  
2 Q. -- the less than 10 feet. Just write less than  
3 10 feet. And if you want to use the less than sign,  
4 that would probably be...  
5 A. I don't know what that is.  
6 Q. It's the one that points to the left.  
7 A. Points that way (indicating)?  
8 Q. Yes, ma'am. Let's see if I was right.  
9 MR. FOGLER: She put greater than.  
10 Q. (By Mr. Pletcher) You put greater than.  
11 A. I'm sorry.  
12 Q. If you pointed it to the right.  
13 MR. FOGLER: If she puts a line through  
14 it, it will be not greater than 10 feet.

15 MR. PLETCHER: Yeah.  
16 A. Just draw a line through it?  
17 Q. (By Mr. Pletcher) Well, then it would all be  
18 messy. Why don't you just scratch that out and then do  
19 the sign like that right there --  
20 A. Okay.  
21 Q. -- above it.  
22 A. (Witness drawing) Okay.  
23 MR. PLETCHER: Becoming a trigonometry  
24 exam.  
25 MR. FOGLER: You said there would be no

□00135

1 testing.  
2 MR. PLETCHER: There really is no testing,  
3 although my co-counsel over here might dispute that.  
4 Q. (By Mr. Pletcher) And just so we're clear on  
5 this, you can't say any particular specific amount of  
6 feet, like, 6 feet, 8 feet. But your best estimate  
7 would be up to 10 feet away.  
8 A. Yes.  
9 Q. Okay. My counsel wants me to have you say "up  
10 to 10 feet."  
11 A. Should I cross out this --  
12 Q. Sure.  
13 A. (Witness drawing) All right.  
14 Q. Okay. You did not immediately respond to John  
15 when you first saw him floating face down, right,  
16 because you thought he was playing?  
17 A. Uh-huh.  
18 Q. Is that "yes"?  
19 A. Yes.  
20 Q. And what did you do next after you first saw  
21 him floating face down?  
22 A. Well, kids do that a lot because -- like, I see  
23 it every day. And so, I looked away; but then I looked  
24 back about two seconds later just to make sure. Because  
25 when kids do that, it makes me uneasy. So, I looked

□00136

1 back; and he hadn't moved at all. So, I got up and I  
2 ran over there.  
3 Q. Okay. You said you looked away. Did you do  
4 another scan?  
5 A. I didn't do a full scan. I wouldn't have had  
6 time.  
7 Q. Why wouldn't you have had time?  
8 A. Like, well, I could have done a full scan; but

9 I didn't.

10 Q. Okay. What's your best recollection of what  
11 you did?

12 A. I don't know. I just know that I didn't, like,  
13 stare at him for the next ten seconds. I just kept  
14 going and then looked back --

15 Q. Right.

16 A. -- like, two seconds later.

17 Q. If you are sitting in the chair and you're  
18 looking at the pool from the chair, do you scan from  
19 right to left or left to right typically?

20 A. I have no idea.

21 Q. Okay. You didn't have a specific method one  
22 way or the other?

23 A. Because you go back and forth. So --

24 Q. Right.

25 A. -- I guess it would be both.

□00137

1 Q. Do you recall where you were in your scan when  
2 you first saw him floating?

3 A. I was looking at that portion of the pool.

4 Q. Right. But were you coming right to left or  
5 had you already scanned -- well -- or had you scanned  
6 this area and come around this way (indicating) --

7 A. I don't --

8 Q. -- left to right?

9 A. I don't remember.

10 Q. Okay. But your best recollection is that you  
11 saw him and you continued your scan.

12 A. But not all the way.

13 Q. But not all the way and you came back and you  
14 saw him floating -- still floating.

15 A. Yes.

16 Q. And then what did you do?

17 A. I got out of the chair, and I ran over to where  
18 he was.

19 Q. Okay.

20 A. And I blew the whistle, if that's relevant.

21 Q. Okay. So, you got off your stand. Did you --  
22 you said you ran?

23 A. Yeah, because it would take too long to swim.

24 Q. Okay. So, did you run around the pool to here;  
25 or did you cut across the --

□00138

1 A. I cut across.

2 Q. -- the shallow end?

3 A. I cut a cross where there was no water.  
4 Q. Okay. Okay. In this rock or stone area?  
5 A. Yeah.  
6 Q. Why don't you draw the path that you took --  
7 your best recollection of the path that you took from  
8 the stand.  
9 A. With this marker?  
10 Q. Sure.  
11 A. Well, I don't remember exactly. I know I got  
12 off and cut across this. (Witness drawing)  
13 Q. Okay. You said that you blew your whistle.  
14 A. Yes.  
15 Q. When did you blow your whistle?  
16 A. As I was running.  
17 Q. Okay. Was it early in the run or late in the  
18 run or do you remember?  
19 A. I don't remember.  
20 Q. Okay. Did you -- you didn't jump in --  
21 A. No.  
22 Q. -- the water.  
23 A. Because it would have taken too long to swim.  
24 It would have been faster to run.  
25 Q. You think it's faster to run from here than to

□00139

1 swim across here (indicating)?  
2 A. Yes.  
3 Q. Okay. That's the reason you did not jump in?  
4 A. Yes.  
5 Q. Okay. Do you have an estimate of how far it  
6 was between you and where John was floating?  
7 A. I have no idea. I don't know how far it would  
8 be. I don't have any concept of feet and inches.  
9 Q. Okay. Not even a guess?  
10 A. I don't know.  
11 Q. Okay. But certainly we know that the distance  
12 between this point where you were sitting and where John  
13 was somewhere in this circle is shorter than the  
14 distance you ran, right?  
15 A. I don't know if the distance -- like, I don't  
16 know if the actual distance, if you put it in numbers,  
17 it would be shorter. But the time it took would be  
18 shorter.  
19 Q. Well, I understand what you're saying. But my  
20 question was: You agree that this is a scaled diagram  
21 and each inch --  
22 A. Uh-huh.

23 Q. -- equates to a certain distance, which I will  
24 represent to you that it is of such a scaled diagram,  
25 that this distance from Point A where you were on the

□00140

1 stand to Point B inside the circle is shorter than the  
2 distance that you ran around this pool?

3 A. I don't know. I don't have a...

4 Q. What do you remember doing next after you blew  
5 your whistle? Because I assume the sequence of things  
6 was you got off the stand. You ran. You blew your  
7 whistle. Then what did you do?

8 A. Well, like, when I got there?

9 Q. Yes.

10 A. He was in the water, and there was a counselor  
11 right next to him but with his back turned. And it made  
12 more sense for me not to jump in than just to get the  
13 counselor because he was right there and could respond  
14 quicker. So, I yelled "counselor" because I don't know  
15 his name. I was, like, "Counselor, is that kid okay?"  
16 And the counselor turns around and goes, "yeah," and  
17 pats him on the back and then picks him up and realizes  
18 that he wasn't okay.

19 Q. Okay. That counselor you've learned was 4 y/o B-CC #3  
20 is that correct?

21 A. Yes.

22 Q. Okay. Now, can you -- I need a different color  
23 pen. See what this will do. Yeah. Can you just put  
24 4 y/o B-CC #3 -- "CZ" for 4 y/o B-CC #3 wherever he was approximately?  
25 And I know you say he was a --

□00141

1 A. Well, he was --

2 Q. -- close distance to him.

3 A. He was right next to John.

4 Q. Okay.

5 A. But I don't have a pinpoint for that. So,  
6 should I just put "CZ" right there (indicating).

7 Q. Yeah. Just put "CZ" in the circle.

8 A. (Witness drawing)

9 Q. And what you've testified to is that 4 y/o B-CC #3 had  
10 his back to John?

11 A. Like -- not like -- like, if John was facing  
12 that way, 4 y/o B-CC #3 was facing that way (indicating).

13 Q. Uh-huh.

14 A. So, he wasn't like -- they weren't like back to  
15 back.

16 Q. Right.



17 A. But he wasn't looking at him.  
18 Q. Okay. He was not facing John.  
19 A. No.  
20 Q. He was looking in the other direction --  
21 A. Yes.  
22 Q. -- with a portion of his back to him.  
23 A. Yes, sir.  
24 Q. Okay. Now, I want you to think about where  
25 John was. Okay?

□00142

1 A. Okay.  
2 Q. And his orientation to things. Can you tell me  
3 which direction his head was facing? Which way was his  
4 head pointing?  
5 (Exhibit 14G marked)  
6 Q. (By Mr. Pletcher) What I've done is made a  
7 crude drawing. Okay? And I've drawn the west end of  
8 the pool. I'll just show the jury on the screen. This  
9 is Plaintiffs' Exhibit 14G. This is the west end of the  
10 pool. Your stand is over here under this umbrella.  
11 A. Okay.  
12 Q. I'll make this an umbrella. This is the  
13 shallow area --  
14 A. Okay.  
15 Q. -- the zero entry. And this is the circle that  
16 you've drawn here with the initials "JP" in it.  
17 A. Okay.  
18 Q. And I'll just put the initials outside of the  
19 circle this time. Now, could you draw a stick figure  
20 with the head pointing in whatever direction that it was  
21 pointing into?  
22 A. (Witness drawing)  
23 Q. So, if you were here and you're scanning this  
24 area (indicating), his head is pointed towards your  
25 chair, correct, in the orientation that you've drawn?

□00143

1 A. Correct.  
2 Q. Now, I'm going to put the initials "CZ" for  
3 4 y/o B-CC #3.  
4 A. All right.  
5 Q. Could you orient us as to -- yeah, to where he  
6 was looking, where his face was looking by just drawing  
7 an arrow?  
8 A. Yes, sir.  
9 Q. Thank you.  
10 A. (Witness drawing)

11 Q. Okay. And so, my counsel has just drawn in --  
12 co-counsel has drawn in an arrow which basically matches  
13 the direction which 4 y/o B-CC #3 was facing.  
14 A. Okay.  
15 Q. Looking that way (indicating)?  
16 A. Yeah.  
17 Q. Basically.  
18 A. Yeah.  
19 Q. Okay. Was 4 y/o B-CC #3 with some other children, do  
20 you recall?  
21 A. I don't remember. I think he might have been  
22 yelling to another kid or something. He wasn't -- there  
23 wasn't one standing next to him.  
24 Q. Okay. Do you have any idea what he may have  
25 been looking at?

□00144

1 A. I wasn't paying attention to that.  
2 Q. I want to go back to Exhibit 14F which is the  
3 pool diagram.  
4 A. All right.  
5 Q. Now, this area right here (indicating) was a  
6 sun deck area with some lounge chairs; is that correct?  
7 A. Yes, sir.  
8 Q. And this area (indicating) is like, you know,  
9 shin deep. It's a shallow area, is it not?  
10 A. It's very shallow.  
11 Q. And it drops off to three and a half feet,  
12 4 feet -- three and a half to 4 feet around that  
13 perimeter. Is that your recollection?  
14 A. I think so.  
15 MR. SNYDER: Objection, form.  
16 Q. (By Mr. Pletcher) You think so?  
17 A. I don't know how deep it is, but it does drop  
18 off.  
19 Q. Okay. Well, you do remember that the pool on  
20 the east side of this float line up here was 5 feet  
21 deep?  
22 A. Yes, sir.  
23 Q. That's as deep as the pool was --  
24 A. Yes.  
25 Q. -- correct? And everything west of that float

□00145

1 line was something less than 5 feet deep.  
2 A. Yes, sir.  
3 Q. But you do know that in this area -- in this --  
4 actually, if you look on this diagram, it shows you that

5 it's 4 feet deep there (indicating).

6 A. Okay.

7 Q. Okay. And it also shows you a depth -- I have  
8 to look with my old eyes here -- a depth of 3 foot 6  
9 inches deep here (indicating) --

10 A. Okay.

11 Q. -- right off the steps. Do you see that?

12 A. Uh-huh.

13 Q. Does that fit your recollection of kind of the  
14 depths?

15 A. Yes.

16 Q. So, I'm going to just draw in here so we can  
17 read it 4 feet, 3 feet 6 inches. This shows 3 feet deep  
18 over in this area and 4 feet deep over here  
19 (indicating). Okay. Now, this area right here  
20 (indicating) is the fountain area?

21 A. Yes, sir.

22 Q. That, too, is a shallow area, is it not?

23 A. Yes, sir.

24 Q. And off of that fountain is 4 feet on that side  
25 and 4 feet on that side (indicating), right?

□00146

1 A. There's a ledge, I think; but I'm not positive.

2 Q. Yeah, a small little ledge right here  
3 (indicating)?

4 A. Yes, sir.

5 Q. All the way around the perimeter?

6 A. I think so.

7 Q. Right. But off of that ledge, it's, like,  
8 4 feet deep, isn't it?

9 A. Approximately.

10 Q. Okay. And there's a set of steps here  
11 (indicating), right?

12 A. Right.

13 Q. With a hand-hold rail here that goes down on  
14 the steps?

15 A. Yes, sir.

16 Q. Okay. And then there's also a set of steps  
17 over where you were sitting also with the same handrail.

18 A. Yes, sir.

19 Q. And it's 3 feet deep right off of those steps.  
20 Does that sound right?

21 A. Yeah.

22 Q. And then I'm going to put 5 feet over here  
23 (indicating). Now, do you remember if there were other  
24 children around the area that you've circled of where

25 4 y/o B-CC #3 and John Pluchinsky were?

□00147

1 A. I don't remember.

2 Q. Tell me your best recollection of how many  
3 children, campers, were in the pool that day when this  
4 happened.

5 A. I don't know because I'm not good at  
6 estimating. Probably around 30, 35.

7 Q. Okay. Maybe more?

8 A. Possibly.

9 MR. SNYDER: Objection, form.

10 A. I don't know.

11 Q. (By Mr. Pletcher) Okay. We can look at the  
12 records of -- that the Club has produced that shows the  
13 number of summer campers. You have already testified  
14 that there were some children on the slide area --

15 A. Yes, sir.

16 Q. -- at the time that you -- that you saw John  
17 floating, right?

18 A. Yes, sir.

19 Q. Do you agree that most of the kids were in your  
20 area west of that float line as compared to the number  
21 of children that were on the slide?

22 A. I'm not sure. I'm not sure because I wasn't  
23 counting how many kids were on the slide.

24 Q. Okay. My co-counsel has drawn in a stick  
25 figure in the Exhibit 14F diagram with the head facing

□00148

1 this way (indicating).

2 A. All right.

3 Q. And then he's trying to orient us here. Is  
4 that accurate?

5 A. I think so.

6 Q. A good estimate of his head location as you  
7 compare the two?

8 A. I think so.

9 Q. Okay. And also the direction in which 4 y/o B-CC #3  
10 was looking? You see the arrow that he's --

11 A. I think so.

12 Q. Okay. But you do agree, even though you can't  
13 estimate the number of children who were in your area of  
14 responsibility, that there, indeed, were several other  
15 campers in your area of responsibility?

16 A. Yes, sir.

17 Q. Since these were the youngest of the campers,  
18 the 4-year-olds, did you find -- well, let me ask you

19 this: Had you ever guarded the family pool prior to  
20 this when the 4-year-old campers were in it?

21 A. I've guarded with campers in it. I don't know  
22 how old they were.

23 Q. Right. Do you think you may have?

24 A. I have no idea.

25 Q. Just given their size compared to the 5 and

□00149

1 6-year-olds?

2 A. I have no idea.

3 Q. Okay.

4 A. All those kids are kind of the same size.

5 Q. Okay. Well, did you find that the smaller  
6 campers, the shorter ones, congregated in any particular  
7 area of your area of responsibility? Maybe in the area  
8 where the water was shallower?

9 A. I don't know. There were kids all over the  
10 entire pool.

11 Q. Okay. So, are you telling the jury that on  
12 July 18th at the time that you spotted John floating,  
13 that there were children all over the family pool?

14 A. Yes, sir.

15 Q. Do you recall seeing other camp counselors in  
16 your area of responsibility at the time that you saw  
17 John floating?

18 A. In the pink area?

19 Q. Yes, ma'am.

20 A. Yes, sir.

21 Q. Do you have an estimate of how many camp  
22 counselors?

23 A. I don't know.

24 Q. Okay. Do you recall seeing either camp  
25 counselors or campers or both in the shallow area --

□00150

1 A. Yes, sir.

2 Q. -- the wading area. And that would include the  
3 area between the circle and your stand, correct?

4 A. Yes, sir.

5 Q. Okay. Do you recall seeing any people in the  
6 very, very, very shallow area that you ran by? Do you  
7 remember running by people as you came across the pool?

8 A. I don't remember. I know there were kids in  
9 that -- in the shallower area.

10 Q. Yes.

11 A. But I don't know how far out.

12 Q. Okay. Now, if there were kids in the shallower

13 area and the rule was that the camp counselors were  
14 required to be in the water when the kids were in the  
15 water, that would mean that the -- there were some  
16 counselors in that shallow area, too, right, which you  
17 confirmed?

18 A. Yes.

19 Q. Do you recall seeing any other campers or  
20 non-campers, children anywhere in this general area  
21 between you and the circle that you've drawn with John  
22 and 4 y/o B-CC #3 inside?

23 A. There were kids all over the pool, so.

24 Q. Okay. Can you remember -- can you remember if  
25 anybody was over on this step area (indicating)?

□00151

1 A. I don't remember.

2 Q. Okay. How many people do you think were  
3 between you and where John was floating in this area  
4 here (indicating)?

5 A. I don't know. I don't know.

6 Q. More than ten?

7 A. I don't know how many people.

8 Q. Okay. Can you not estimate at all?

9 A. (Witness shaking head)

10 Q. No?

11 A. I don't have any sense of numbers.

12 Q. Okay. Well, bodies, people.

13 A. There were definitely people there.

14 Q. Right.

15 A. I don't know how many.

16 Q. Right. So, there were -- we can draw a circle  
17 here between your stand and where John was floating, and  
18 there were definitely people in that area.

19 A. Yes.

20 Q. Both counselors and campers, correct?

21 A. I think so.

22 Q. That's your best recollection.

23 A. Yes.

24 Q. Okay. Could there have been as many as ten?

25 A. I don't know.

□00152

1 Q. Could there have been as many as 20?

2 A. I don't think so, but I don't know.

3 Q. Why would you say "I don't think so" if you  
4 don't know?

5 A. I don't want to say yes because I don't know.

6 Q. Okay.

7 A. But --

8 Q. But you don't want to say no because you don't  
9 know either, right?

10 A. I don't think there was as many as 20, but I  
11 really have no idea.

12 Q. There could have been.

13 MR. SNYDER: Objection, form.

14 A. (Witness nodding head)

15 Q. (By Mr. Pletcher) Is that true?

16 MR. SNYDER: Objection, form.

17 A. I guess it's possible.

18 Q. (By Mr. Pletcher) Sure.

19 A. I don't --

20 Q. Sure. Do you -- you didn't know the names of  
21 any of the other camp counselors before this event,  
22 except for Supv CC #1. I'm sorry. The only counselor that  
23 you knew before the event was Supv CC #1.

24 A. Yes.

25 Q. Do you remember seeing Supv CC #1 at any point in  
□00153

1 time between when you saw John floating and when you  
2 reached this area of the pool?

3 A. I had only met Supv CC #1 once; so, I knew his name.  
4 But I just saw a bunch of counselors. I didn't  
5 recognize any of them specifically.

6 Q. How many counselors?

7 A. I don't know.

8 Q. If the evidence in this case indicates that  
9 there were 10 camp counselors for the 4-year-olds along  
10 with 2 camp counselor supervisors, that would be 12.

11 A. All right.

12 Q. Is it possible based upon your recollection  
13 that those 12 people were in your area of  
14 responsibility?

15 MR. SNYDER: Objection, form.

16 A. Not all 12 of them.

17 Q. (By Mr. Pletcher) Okay.

18 A. Because some people were on the slide.

19 Q. Okay. Some number less than 12, right?

20 A. Yes.

21 Q. Okay. Do you remember seeing a counselor over  
22 in the slide area?

23 A. Yes.

24 Q. Can you describe that person?

25 A. I just know --

□00154

1 Q. Boy or girl?  
2 A. -- it was a counselor. I don't know. Just  
3 they're taller than the kids. So, I know it's a  
4 counselor.  
5 Q. Right. But you don't remember if it was a boy  
6 or girl?  
7 A. Huh-uh.  
8 Q. No?  
9 A. No. I don't know.  
10 Q. Okay. You have to answer verbally.  
11 A. I'm sorry. I don't know.  
12 Q. Okay. Okay. So -- right. Is there a way for  
13 you identify by marking on this drawing -- and you can  
14 just put a yellow circle where certain counselors or  
15 campers were regardless of whether or not you knew their  
16 names or knew them.  
17 A. I don't know where any specific people were. I  
18 just know there were people throughout the whole pool.  
19 Q. Uh-huh.  
20 A. And they're constantly moving.  
21 Q. Right. And we know that there were people  
22 within the yellow circle that I've drawn in there --  
23 A. Yes.  
24 Q. -- in between your chair and where John was  
25 found floating, right?

□00155

1 A. Yes, sir.  
2 Q. Tell me what happened next after you blew your  
3 whistle and asked 4 y/o B-CC #3 if John was okay.  
4 A. 4 y/o B-CC #3 I think kind of automatically goes, "Yeah,  
5 this kid's fine," and patted him on the back. And then  
6 4 y/o B-CC #3 turned around and picked him up and realized he  
7 wasn't okay. So, he put him on the side of the pool.  
8 Q. Okay. And you saw him pick him up.  
9 A. Yes.  
10 Q. And were John's lips blue or purple? Do you  
11 recall that?  
12 A. I don't remember.  
13 Q. You don't remember ever telling anybody that  
14 his lips were blue?  
15 MR. SNYDER: Objection, form.  
16 A. I don't --  
17 Q. (By Mr. Pletcher) Do you remember giving --  
18 writing out a statement at the Club later that day? Do  
19 you remember doing that?  
20 A. I do remember doing that.



21 Q. And that would have been just --

22 A. I remembered a lot more in interviews last  
23 summer. It's been so long. I don't remember every  
24 detail.

25 Q. I understand. But certainly you would remember

□00156

1 more close in time to the event than later because --

2 A. Yes.

3 Q. -- of just the lapse of time, right?

4 A. Yes.

5 Q. And if we look at your statement, which is

6 Exhibit 3 -- Plaintiffs' Exhibit 3 --

7 A. Yes.

8 Q. -- this is your signature down here

9 (indicating).

10 A. Yes.

11 Q. Okay. And if we flip here --

12 MR. FOGLER: You're going to have to blow  
13 that up a little bit bigger.

14 Q. (By Mr. Pletcher) And it's dated July 18th,  
15 2007?

16 A. Yes.

17 Q. You state here that, "At around 11:15 I noticed  
18 the victim face down in the pool. At first glance he  
19 seemed to be playing. But when I looked back a few  
20 seconds later, he still hadn't moved. I ran" -- I think  
21 there's an "I" in there. "I ran over to where he was  
22 because a camp counselor was about 2 feet away and I  
23 yelled at him to check the victim because he was closer.  
24 The counselor turned the kid over and pulled him out of  
25 the pool. Supv CC #1 came over immediately and began CPR. I

□00157

1 went and got the other guards on duty and had them go  
2 call 911."

3 A. That's correct.

4 Q. "Supv CC #1 and LG Supv continued CPR until David  
5 came and helped. EMS arrived and took the victim away  
6 on the ambulance."

7 A. Yes.

8 Q. Now, do you believe that that statement is  
9 accurate?

10 A. Yes.

11 Q. Do you ever recall giving statements where you  
12 told other people that when 4 y/o B-CC #3 turned him over, his  
13 lips were blue?

14 A. I don't remember --

15 MR. SNYDER: Objection, form.  
16 A. -- what I said in other interviews. I don't  
17 remember if his lips were blue or not.  
18 Q. (By Mr. Pletcher) Okay. And sitting here  
19 today, you don't remember seeing his lips?  
20 A. I'm sure I saw them, but I don't remember what  
21 they looked like.  
22 Q. Okay. You can't tell me what color they were?  
23 A. No.  
24 MR. PLETCHER: That's fine. Why don't we  
25 take a quick break.

□00158

1 THE VIDEOGRAPHER: The time is 2:24 p.m.  
2 We're off the record.  
3 (Recess from 2:24 to 2:34)  
4 THE VIDEOGRAPHER: The time is 2:34 p.m.  
5 We're back on the record.  
6 Q. (By Mr. Pletcher) 15 y/o LG #1, are you ready to  
7 continue?  
8 A. Yes.  
9 Q. You had told us a minute ago that when you gave  
10 the statements that you did about the incident, that you  
11 remembered more things. And because they were closer in  
12 time, they were probably a better, accurate statement  
13 basically.  
14 A. Just more detailed.  
15 Q. Right. And you have told other people that it  
16 was eight seconds from the point that you first saw him  
17 floating face down until you did your scan and came back  
18 to him, didn't you?  
19 MR. SNYDER: Objection, form.  
20 A. It was less than eight seconds.  
21 Q. (By Mr. Pletcher) So, if you told -- yeah, and  
22 that really wasn't my question. Did you tell others  
23 that it was eight seconds between the time you saw him  
24 floating face down until you completed your scan and  
25 came back to him and saw him still face down?

□00159

1 MR. SNYDER: Objection, form.  
2 A. I don't remember.  
3 Q. (By Mr. Pletcher) Okay. Could that be a  
4 possibility and given your earlier statement a  
5 reasonable estimate?  
6 A. Possibly.  
7 MR. SNYDER: Objection, form.  
8 Q. (By Mr. Pletcher) It actually could have been

9 a longer period of time, correct?

10 MR. SNYDER: Objection, form.

11 A. I don't know.

12 Q. (By Mr. Pletcher) So, you really don't know if  
13 it was 7, 8, 9, 10, 11, 12 seconds between the time that  
14 you saw him floating face down until you completed your  
15 scan and came back to him and he was still face down,  
16 correct?

17 MR. SNYDER: Objection, form.

18 A. It was less than eight seconds.

19 Q. (By Mr. Pletcher) So, if you told somebody it  
20 was eight seconds -- that period of time was eight  
21 seconds in a statement, are you now saying that you were  
22 not being accurate in that statement?

23 A. I'm saying that --

24 MR. SNYDER: Objection, form.

25 A. -- I don't know. There's no stop watch.

□00160

1 Q. (By Mr. Pletcher) Right.

2 A. Right -- if it was right after it happened,  
3 time just completely slowed down. I had no concept of  
4 time.

5 Q. Sure.

6 A. It was probably just a guess. When I stopped  
7 and thought about it and counted out how long --

8 Q. Right.

9 A. -- I realized how long I...

10 Q. And you did think about it and counted out --

11 A. Yes.

12 Q. -- when you were giving the time period that it  
13 took for you to see him floating face down, complete  
14 your scan and come back and see him?

15 A. I didn't --

16 MR. SNYDER: Objection, form.

17 A. -- scan the whole pool.

18 Q. (By Mr. Pletcher) But you did at least enough  
19 scanning to take up to eight seconds to get back to him,  
20 right?

21 MR. SNYDER: Objection, form.

22 A. I don't know.

23 Q. (By Mr. Pletcher) If you did give a statement  
24 and told others that it was eight seconds, which was  
25 closer in time to the event occurring, you would have

□00161

1 been telling them the truth, wouldn't you?

2 MR. SNYDER: Objection, form.

3 Q. (By Mr. Pletcher) Is that correct?  
4 A. I'm not lying.  
5 Q. No. I'm saying you certainly gave a truthful  
6 statement when you were telling others how much time  
7 lapsed between seeing him floating face down --  
8 A. I would have guessed --  
9 Q. -- and scanning and coming back and seeing him  
10 the second time.  
11 A. I would.  
12 Q. You were trying to be accurate, were you not?  
13 MR. SNYDER: Objection, form.  
14 A. Yes, but it's all an estimate.  
15 Q. (By Mr. Pletcher) Okay.  
16 MR. FOGLER: If you have a statement that  
17 you'd like to show her, I'm sure she --  
18 MR. PLETCHER: That's okay.  
19 MR. FOGLER: -- would be delighted to read  
20 it for you.  
21 Q. (By Mr. Pletcher) Now, earlier you were giving  
22 an estimate of how long it would take you to do an  
23 entire scan?  
24 A. Yes.  
25 Q. You remember that testimony?

□00162

1 A. Yes, sir.  
2 Q. The estimate that you gave us was the time that  
3 it takes you to scan from one side of the pool to the  
4 other, correct?  
5 A. Yes.  
6 Q. And then that's just in one direction, correct?  
7 A. Yes, sir.  
8 Q. Okay. Now, we know that you didn't jump in  
9 when you first saw him floating face down. Did the  
10 Racquet Club not instruct you to jump in the pool as a  
11 lifeguard when something was out of the ordinary?  
12 MR. SNYDER: Objection, form.  
13 A. Can you repeat that?  
14 Q. (By Mr. Pletcher) Yeah. Let me start over.  
15 At no time did you jump in the pool.  
16 A. No, sir.  
17 Q. Not the first time you saw him floating face  
18 down nor the second --  
19 A. Correct.  
20 Q. -- correct? Nobody at the Houston Racquet Club  
21 ever instructed you, not Guillermo Palmer, not David  
22 Lamkin or anybody else instructed you that if you had an

23 emergency in the pool, you need to jump in --  
24 MR. SNYDER: Objection, form.  
25 Q. (By Mr. Pletcher) -- did they? Because you  
□00163  
1 didn't do that.  
2 MR. SNYDER: Objection, form.  
3 A. I guess. The question doesn't make complete  
4 sense to me.  
5 Q. (By Mr. Pletcher) Okay. We know that you  
6 didn't jump in. You ran around, and you blasted your  
7 whistle. So --  
8 A. Yes, sir.  
9 Q. -- you knew there was an emergency.  
10 A. Yes, sir.  
11 Q. And my question is very simple. Nobody at the  
12 Racquet Club, not Guillermo Palmer, David Lamkin or  
13 anybody else ever instructed you that you were to go  
14 into the pool when there was an emergency in the pool?  
15 MR. SNYDER: Objection, form.  
16 A. No one ever told me you always have to jump in  
17 the pool.  
18 Q. (By Mr. Pletcher) Right. And that's my --  
19 that was my question. Now, you said that you thought  
20 when you first saw him floating face down that he was  
21 playing.  
22 A. Yes.  
23 Q. And nobody at the Houston Racquet Club ever  
24 told you that if you saw somebody floating face down,  
25 you were to immediately jump in the pool, did they?  
□00164  
1 A. No, sir.  
2 MR. SNYDER: Objection, form.  
3 Q. (By Mr. Pletcher) Okay. Now, when you  
4 first -- did you say no, they didn't?  
5 A. No, sir.  
6 Q. What did you say?  
7 A. I said, "No, sir."  
8 Q. They did not give you that instruction, did  
9 they?  
10 MR. SNYDER: Objection, form.  
11 A. No.  
12 Q. (By Mr. Pletcher) Am I correct in stating  
13 that?  
14 A. Yes.  
15 Q. Okay. Good.  
16 MR. SNYDER: Objection, form.

17 Q. (By Mr. Pletcher) When you first saw John --  
18 MR. FOGLER: Let me explain.  
19 MR. MARRS: We're just trying to  
20 understand if you're saying yes or no.  
21 MR. PLETCHER: It's one of those lawyer  
22 things. Sorry. I'm not trying --  
23 MR. FOGLER: It wasn't your answer. It  
24 was his question.  
25 THE WITNESS: Okay.

□00165

1 MR. MARRS: It was a lawyer problem.  
2 MR. PLETCHER: Yeah. Thanks, Murray.  
3 Q. (By Mr. Pletcher) The first time you saw him  
4 floating face down, he was not moving at all.  
5 A. He was floating in the water.  
6 Q. Yeah. He was motionless. He wasn't kicking.  
7 A. He wasn't, like, splashing around.  
8 Q. Right. And he wasn't wearing goggles, either.  
9 Did you see a strap on his head?  
10 A. I couldn't tell.  
11 Q. Was he moving his feet at all?  
12 A. I didn't -- I don't know.  
13 Q. Did you continue to watch him when you saw him  
14 floating face down or did you immediately go on with  
15 your scan?  
16 A. I went on with my scan. He -- nothing appeared  
17 wrong the first time. But when I looked back and  
18 noticed he didn't move, I realized something was wrong.  
19 Because what he was doing kids do every single --  
20 Q. Right.  
21 A. -- day all the time.  
22 Q. Yeah.  
23 A. So, it doesn't register.  
24 Q. And what kids do every day all the time and  
25 they did every day all the time at the Racquet Club was

□00166

1 play this game that is called dead man's float where  
2 they float down and act as if they're dead.  
3 A. I've --  
4 MR. SNYDER: Objection, form.  
5 A. I've never heard of that.  
6 Q. (By Mr. Pletcher) You've never heard of that?  
7 A. No.  
8 Q. Did anybody at the Houston Racquet Club ever  
9 instruct you that playing a game floating face down in  
10 the water was prohibited, regardless of what you call

11 it?

12 MR. SNYDER: Objection, form.

13 A. I've never even heard of a game like that.

14 Q. (By Mr. Pletcher) Okay. All right. Let me  
15 restate it. Did anybody at the Houston Racquet Club  
16 ever instruct you that the Club prohibited people from  
17 floating face down motionless in the pool?

18 A. Are you asking -- it's not allowed to look at  
19 the bottom of the pool -- to float on top of the water.

20 Q. No. My question is this, 15 y/o LG #1: John was  
21 floating face down motionless, right?

22 A. Right.

23 Q. Did anybody at the Houston Racquet Club ever  
24 instruct you that you couldn't play around like you  
25 thought he was playing, that that would be prohibited?

□00167

1 A. No one ever told me there was a rule like that.

2 Q. Okay. Because when you saw him floating face  
3 down, you thought he was playing. But when you came  
4 back, you realized, no, he was not, right?

5 A. Correct.

6 Q. So, the Houston Racquet Club, neither Guillermo  
7 Palmer or David Lamkin or anybody else at the Club, gave  
8 you any guidance or instruction on what to do if you saw  
9 kids doing that in the pool, right?

10 MR. SNYDER: Objection, form.

11 A. I don't understand the question. There's no --  
12 I didn't know there was a rule that kids weren't allowed  
13 to float in the water. Is that a rule?

14 Q. (By Mr. Pletcher) You were never told that was  
15 a rule, were you?

16 A. No.

17 MR. SNYDER: Objection, form.

18 Q. (By Mr. Pletcher) Okay. That's what I'm  
19 trying to determine. And the Houston Racquet Club  
20 actually allowed that to happen in their pool because  
21 you saw it going on all the time. That's what you told  
22 us, right?

23 A. Kids --

24 MR. SNYDER: Objection, form.

25 A. Kids do that a lot.

□00168

1 Q. (By Mr. Pletcher) Right. And the Houston  
2 Racquet Club had no rule against it.

3 A. Not that I know of.

4 MR. SNYDER: Objection, form.

5 Q. (By Mr. Pletcher) Right.

6 MR. FOGLER: I think that's been  
7 established now, Matt.

8 Q. (By Mr. Pletcher) Now, when you took your  
9 certification course in CPR at the Dad's Club, you took  
10 that with your lifeguard certification, right?

11 A. They were together?

12 Q. Yes, they were together.

13 A. Yes, sir.

14 Q. Lifeguarding with first aid. And then you also  
15 got a certification in -- might as well find this  
16 exhibit -- in CPR and AED for the professional rescuer.

17 A. Yes, sir.

18 Q. This is a copy of your certification card. And  
19 you took that at the same time that you took this course  
20 (indicating).

21 A. Yes, sir.

22 Q. And when you took that course and studied the  
23 materials for that course, you learned that in  
24 emergencies when people are pulseless and not breathing,  
25 that seconds count --

□00169

1 A. Yes.

2 Q. -- right? And how long or how quick CPR is  
3 initiated is very important, correct?

4 A. Yes, sir.

5 Q. How quick the EMS arrives on the scene is  
6 important, correct?

7 A. Yes, sir.

8 Q. And how quick you get to the victim before even  
9 CPR is started is very important, right?

10 A. Yes, sir.

11 Q. When John was placed on the pool deck off to  
12 the side, I think you said that -- did 4 y/o B-CC #3 place him up  
13 there?

14 A. Yes, sir.

15 Q. You did not start CPR, correct?

16 A. No.

17 Q. Is that correct?

18 A. That is correct.

19 Q. Okay. Who started the CPR?

20 A. Supv CC #1.

21 Q. Supv CC #1?

22 A. Yes, sir.

23 Q. And do you recall seeing him give the CPR?

24 A. Yes, sir.



25 Q. Give me an idea of what you actually did after

□00170

1 4 y/o B-CC #3 put him up on the pool deck and Supv CC #1 started his  
2 CPR. What did you do next?

3 A. Well, I watched 4 y/o B-CC #3 put him on the deck. And  
4 I guess Supv CC #1 must have been watching us, I don't know,  
5 because he was -- he was immediately over there and  
6 started CPR. And so, I ran and all the other lifeguards  
7 were eating on the pavilion. So, I ran up to them and  
8 called out for them to come help. And then I said, "We  
9 need to call 9-1-1." And -- I said, "We need to call  
10 9-1-1." And Sr LG #1 said, "I'll go call." And so, she  
11 went and called. And so, LG Supv went -- or I don't  
12 remember who. Someone went and got the first aid kit  
13 and the breathing mask --

14 Q. Yes.

15 A. -- and brought it over back to where we were.

16 Q. Okay.

17 A. And LG Supv started doing CPR. And then David  
18 came; and he did CPR, too.

19 Q. Okay. To summarize what you just told me,  
20 after 4 y/o B-CC #3 put John on the poolside, Supv CC #1 started CPR.

21 A. Uh-huh.

22 Q. You ran to get the lifeguards --

23 A. Yes, sir.

24 Q. -- who were at the pavilion.

25 A. Yes, sir.

□00171

1 Q. And those were the lifeguards who were on --  
2 who were on lunch break, LG Supv, the head  
3 lifeguard, Sr LG #3, Sr LG #2 and Sr LG #1,  
4 right?

5 A. Yes, sir.

6 Q. Did you run all the way up to the pavilion?

7 A. No. I just run up the steps. And I was --

8 Q. Right.

9 A. -- calling for them. So, they came running.

10 Q. And when you ran up to the steps, what were  
11 they doing up there?

12 A. Well, they were eating lunch. But once I got  
13 up there, they had already -- because I was yelling for  
14 them to come, they had already gotten out of the chairs  
15 and were running.

16 Q. Now, they didn't respond to the whistle blast  
17 that you performed at the poolside because you had to  
18 run and get them, correct?

19 MR. SNYDER: Objection, form.  
20 A. I don't know what they were thinking. I'm sure  
21 they heard the whistle because that's why they were  
22 already out of their seat. But I don't know what they  
23 were thinking.  
24 Q. (By Mr. Pletcher) Okay. But when you got up  
25 there, they were still sitting at the table at the  
□00172  
1 pavilion?  
2 A. No.  
3 MR. SNYDER: Objection, form.  
4 Q. (By Mr. Pletcher) They had gotten out of their  
5 chairs?  
6 A. They were running towards me.  
7 Q. Weren't you yelling at them when you ran up the  
8 stairs to the pavilion to call 9-1-1?  
9 MR. SNYDER: Objection, form.  
10 A. Yes, I just said that.  
11 Q. (By Mr. Pletcher) Okay. Do you know whether  
12 there was an emergency phone at the poolside?  
13 A. Yes, there was.  
14 Q. If we look at Exhibit 14F, the emergency phone  
15 was hanging over here by this gate, wasn't it?  
16 A. I don't know.  
17 Q. You don't know exactly where the emergency  
18 phone was?  
19 A. I know it was by the pool.  
20 Q. Right.  
21 A. And it was right behind that umbrella.  
22 Q. Right behind which umbrella?  
23 A. The one with the circle around it. That one  
24 (indicating).  
25 Q. This one (indicating)?  
□00173  
1 A. Yeah.  
2 Q. On the fence?  
3 A. I guess. I didn't call 9-1-1.  
4 Q. Was it --  
5 A. I didn't use the phone.  
6 Q. Okay. Did anybody at the Houston Racquet Club  
7 ever show you where the emergency poolside phone was?  
8 A. What do you mean?  
9 Q. Did anybody at the Houston Racquet Club ever  
10 show you where the poolside emergency phone was?  
11 A. Sr LG #1 told me where it was.  
12 Q. Did she show it to you?

13 A. I don't remember.  
14 Q. Okay. And what do you remember Sr LG #1 telling  
15 you about that phone?  
16 A. I don't know. I just remember --  
17 Q. Okay.  
18 A. -- her pointing out that there was a phone  
19 there, but I didn't -- I guess it didn't register that  
20 it was an emergency phone.  
21 Q. During this event, you didn't think about that  
22 emergency phone or using it yourself, did you?  
23 A. I don't know.  
24 Q. Well, you ran up to get them to call 9-1-1,  
25 right?

□00174

1 A. Yes.  
2 Q. Okay. And --  
3 A. I didn't say you have to call 9-1-1. I said,  
4 "We need to call 9-1-1."  
5 Q. Yeah. Call 9-1-1. Why didn't you do it  
6 yourself?  
7 MR. SNYDER: Objection, form.  
8 A. I don't know.  
9 MR. PLETCHER: Okay. Let's take a break.  
10 THE VIDEOGRAPHER: The time is 2:54 p.m.  
11 We're off the record.  
12 (Recess from 2:54 to 3:00)  
13 THE VIDEOGRAPHER: The time is 3:00 p.m.  
14 We're back on the record.  
15 Q. (By Mr. Pletcher) 15 y/o LG #1, are you ready to  
16 continue?  
17 A. Yes, sir.  
18 Q. When you ran to the pavilion to get the other  
19 lifeguards, was anybody with you?  
20 A. Running with me?  
21 Q. Yes.  
22 A. No, sir.  
23 Q. You were by yourself?  
24 A. Yes.  
25 Q. Now, on July 18th, did you know specifically

□00175

1 where the poolside emergency phone was?  
2 A. I guess. I -- if someone asked me where the  
3 emergency phone was, I would say, "It's over there."  
4 Q. But you can't tell me sitting here today  
5 exactly where it was?  
6 A. It was -- I know it was behind the umbrella.

7 Q. And when you say "behind the umbrella," what  
8 does that mean?

9 A. There was a giant umbrella on the sidewalk by  
10 the pool, and it was behind it.

11 Q. An umbrella on the sidewalk back here  
12 (indicating)?

13 A. You see that big circle, not the --

14 Q. This (indicating)?

15 A. That was an umbrella.

16 Q. Okay. That was an umbrella. Just like the  
17 umbrella that you sat under --

18 A. Uh-huh.

19 Q. -- correct? Is that "yes"?

20 A. Yes.

21 Q. And you think it was behind -- and when you say  
22 "behind," do you mean this way, that way (indicating)?

23 A. That way (indicating).

24 Q. This way (indicating)?

25 A. No. The other way.

□00176

1 Q. This way (indicating).

2 A. Yeah.

3 Q. So, I'm going to draw an arrow.

4 A. But more angled. Like towards the fence.

5 Q. Like this way (indicating)?

6 A. Yeah, in that vicinity.

7 Q. Okay. I'll scratch that out. Do you think it  
8 was back here (indicating) somewhere?

9 A. Yeah. It was in that vicinity.

10 Q. Back here (indicating) somewhere?

11 A. I don't know without being able to see the  
12 pool.

13 Q. Okay. Was it on the fence or the gate?

14 A. I don't know.

15 Q. Did Guillermo Palmer or David Lamkin ever give  
16 you a tour of the pool facility?

17 A. No, sir.

18 Q. So, neither one of them ever showed you where  
19 the emergency phone was, did they --

20 A. No.

21 Q. -- if they didn't give you a tour; is that  
22 correct?

23 A. They didn't -- no, they did not give me a tour.

24 Q. And they didn't give you a tour and show you  
25 where the emergency phone was, correct?

□00177

1 MR. SNYDER: Objection, form.  
2 A. Correct.  
3 Q. (By Mr. Pletcher) Okay. And do you know a  
4 lady named CD?  
5 A. Does she teach swim lessons?  
6 Q. I don't know.  
7 A. There's a lady that teaches swim lessons named  
8 SC.  
9 Q. Okay. SC?  
10 A. I have no idea.  
11 Q. Do you remember seeing SC the swim lesson  
12 teacher at the poolside that day?  
13 A. Yes.  
14 Q. How would you describe her reaction to the  
15 event?  
16 A. She panicked.  
17 Q. Right. Was she frantic?  
18 A. Yes.  
19 Q. LG Supv wrote a statement after the event  
20 on July 18th where he said several people ran up  
21 frantically to him. Do you think based upon your  
22 recollection of her being panicked and frantic, that she  
23 would be included in that?  
24 A. Probably.  
25 MR. SNYDER: Objection, form.

□00178

1 Q. (By Mr. Pletcher) Do you recall other people  
2 at the poolside panicking or acting frantic?  
3 A. I remember there was one mom who was really --  
4 she didn't know what to do. She was just panicking.  
5 Q. Right. Do you remember that mom saying, "Call  
6 9-1-1"?  
7 A. I don't remember what that mom was doing.  
8 Q. Okay. You don't recall what she may have said?  
9 A. No. I just remember she was panicking.  
10 Q. What about other Racquet Club employees,  
11 lifeguards, camp counselors or managers? Do you recall  
12 any other Racquet Club people acting panicked or  
13 frantic --  
14 MR. SNYDER: Objection, form.  
15 Q. (By Mr. Pletcher) -- other than SC?  
16 A. I don't remember. Not --  
17 Q. So, no?  
18 A. -- to my recollection.  
19 Q. Okay. Do you remember 4 y/o B-CC #3 saying  
20 anything?

21 A. When?  
 22 Q. Before he started his CPR?  
 23 A. I don't believe 4 y/o B-CC #3 gave CPR.  
 24 Q. Okay. Before he put John on the poolside?  
 25 A. Yes.  
 □00179  
 1 Q. What do you remember him saying?  
 2 A. When he picked the kid up?  
 3 Q. Ma'am?  
 4 A. When he picked John up?  
 5 Q. Yes.  
 6 A. He was just really surprised, I guess.  
 7 Q. Okay. Do you remember him saying anything?  
 8 A. Yes.  
 9 Q. What did he say?  
 10 A. I don't -- I don't want to say it.  
 11 MR. FOGLER: You can just use the initial,  
 12 and I think people will understand what you mean.  
 13 Q. (By Mr. Pletcher) Did he cuss?  
 14 A. Yes. He asked what the -- and then he put John  
 15 on the side of the pool.  
 16 Q. Was it the "F" word?  
 17 A. Yes, sir.  
 18 Q. Okay. Do you remember Supv CC #1 saying  
 19 anything?  
 20 A. I don't remember.  
 21 Q. Do you remember LG Supv saying anything?  
 22 A. I don't remember.  
 23 Q. Do you remember David Lamkin saying anything?  
 24 A. No.  
 25 Q. Do you remember anybody saying, "Should we  
 □00180  
 1 start CPR?"  
 2 A. No.  
 3 Q. "Should we call 9-1-1?"  
 4 A. Should we?  
 5 MR. SNYDER: Objection, form.  
 6 Q. (By Mr. Pletcher) Yeah.  
 7 A. No. No, sir. Supv CC #1 immediately started CPR.  
 8 Q. Ma'am?  
 9 A. Supv CC #1 immediately started CPR.  
 10 Q. But you don't remember anybody saying, "Should  
 11 we do CPR?"  
 12 A. No, sir.  
 13 MR. SNYDER: Objection, form.  
 14 Q. (By Mr. Pletcher) Okay. That's fine. What --

15 do you recall the ratio of compressions to breath that  
16 were -- that was in effect last summer under the --

17 A. That they did?

18 Q. -- under the American Red Cross guidelines for  
19 CPR?

20 A. I think it was three to one. I don't know.

21 Q. Three compressions to one breath?

22 A. I think so.

23 Q. Okay.

24 A. I'm not sure what they did. What they did was  
25 correct.

□00181

1 Q. You're not sure what they did was correct?

2 A. No. I know what they did was correct, but I'm  
3 not sure if three to one is correct.

4 Q. Okay. Well, what did they do?

5 A. I don't know.

6 Q. Okay. Why do you think it was correct if you  
7 don't know what they did?

8 A. Well, I knew at the time that it was correct.

9 Q. Okay.

10 A. I don't remember now.

11 Q. Do you recall learning through your CPR course  
12 that there's a different ratio of compressions to breath  
13 when there is more than one responder or rescuer  
14 involved?

15 MR. SNYDER: Objection, form.

16 Q. (By Mr. Pletcher) For example, if you have a  
17 two rescuer CPR, there's a different ratio of  
18 compressions to breaths. Do you remember that?

19 MR. SNYDER: Objection, form.

20 A. I don't know what it is.

21 Q. (By Mr. Pletcher) Well, that wasn't my  
22 question. Do you recall there being a different ratio  
23 of compressions to breath if there was more than one  
24 person conducting the CPR?

25 MR. SNYDER: Objection, form.

□00182

1 A. I don't know.

2 Q. (By Mr. Pletcher) Okay. When you were  
3 standing there observing the CPR, do you recall anybody  
4 asking the question, "What's the ratio? Do y'all know  
5 the compressions to breaths?"

6 MR. SNYDER: Objection, form.

7 A. LG Supv and Supv CC #1 knew it. SC was just  
8 freaking out because she didn't know CPR, or I don't

9 think she knew CPR because she didn't know what was  
10 happening. But the people that were doing CPR knew what  
11 they were doing.

12 MR. PLETCHER: Object to the  
13 responsiveness.

14 Q. (By Mr. Pletcher) Really I was asking you if  
15 anybody during the process, if you overheard them say,  
16 "What's the ratio of breaths to compressions?"

17 MR. SNYDER: Objection, form.

18 A. No, not those words.

19 Q. (By Mr. Pletcher) Anything similar to that?

20 A. Not like that.

21 Q. Like what then?

22 A. Like the --

23 MR. SNYDER: Objection, form.

24 A. The lady that teaches swim lessons, SC, she  
25 was just freaking out. And she was yelling at them

□00183

1 like, "Do you know the right ones? Is this right?" And  
2 they knew it was right. So, that's what they were  
3 doing; and she was just having a panic attack.

4 Q. (By Mr. Pletcher) Right. And that was the  
5 SC who teaches swim lessons?

6 A. Yes, sir.

7 Q. Do you recall either Supv CC #1, LG Supv  
8 or Mr. Lamkin turning to her and telling her to, "Be  
9 quiet," or, "We know what we're doing here"? What was  
10 the reaction, if any?

11 A. I don't remember.

12 Q. Okay.

13 A. I think they probably ignored her.

14 Q. Now, I need to ask you some specific questions  
15 about what you actually saw as far as the CPR is  
16 concerned. Okay?

17 A. All right.

18 Q. Were you there when Supv CC #1 started it?

19 A. I saw him start it, but then I ran to go get  
20 the other lifeguards.

21 Q. And you remember from your CPR course that you  
22 want to be sure and check your ABC's, right?

23 A. Yes.

24 Q. "A" is for airway. "B" is for breathing. And  
25 "C" is for circulation, right?

□00184

1 A. Yes.

2 Q. Do you recall seeing Supv CC #1 put his ear down to



3 John's mouth?

4 A. I didn't watch specifically what he was doing.

5 Q. Did you see Supv CC #1 or anybody else tilt his head  
6 before they started breaths?

7 A. I didn't watch specifically what they were  
8 doing. I just know they were doing CPR. And as soon  
9 as -- as soon as I saw him start it, I ran and got the  
10 other lifeguards.

11 Q. Okay. So, you didn't see --

12 A. So, I probably wasn't even there.

13 Q. Okay. So, you didn't actually see them give  
14 breaths or compressions?

15 A. I saw that after they had already started, but  
16 I wasn't watching intently. I just --

17 Q. Okay.

18 A. -- saw them doing it.

19 Q. Do you recall whether John's head was tilted  
20 when they were giving breaths? Do you know what a tilt  
21 is --

22 A. Yes.

23 Q. -- from your CPR course? Do you remember  
24 seeing his head tilted?

25 A. I don't remember what it looked like.

□00185

1 Q. Do you recall their positions of their hands  
2 when they were doing compressions?

3 A. I don't remember.

4 Q. Do you remember seeing any water or other  
5 material coming out of his mouth or nose?

6 A. He threw up a lot.

7 Q. When he -- how many times did you see him throw  
8 up, more than one?

9 A. I don't know.

10 Q. There has been testimony in this case and there  
11 are statements from several different people indicating  
12 that abdominal thrusts or compressions to the stomach  
13 area were done on John, and it was after each one of  
14 them that he had water and material coming out of his  
15 mouth and nose. Did you see that happen?

16 MR. SNYDER: Objection, form.

17 A. I just remember there being throw-up on him and  
18 on the ground next to him.

19 Q. (By Mr. Pletcher) Okay. So, you didn't see it  
20 come up?

21 A. No.

22 Q. Okay. Was anybody else around Supv CC #1 and LG Supv

23 when they were doing the CPR? What other people  
24 were around them?

25 A. I don't remember exactly.

□00186

1 Q. Okay.

2 A. The other lifeguards, Sr LG #1 and LP LG and  
3 15 y/o LG #2 and me and the camp counselors, I guess. I don't  
4 know their names.

5 Q. Okay. And I'm really talking about in the  
6 immediate area. For example, do you remember seeing  
7 4 y/o B-CC #3 standing in the water on the poolside while  
8 they were conducting CPR on John?

9 A. I don't -- I don't know what 4 y/o B-CC #3 did after.

10 Q. Do you remember seeing a dark-headed freckled  
11 girl assisting them?

12 A. I don't know.

13 Q. Okay. If you don't, that's fine.

14 A. I know that some of the counselors were with  
15 the kids, and they were -- they weren't directly there,  
16 but they were still in the pool.

17 Q. Okay. Now, they were still in the pool? Is  
18 that what you said?

19 A. No. I meant, like, there's a fence that goes  
20 around the pool.

21 Q. Yes.

22 A. They were on the sidewalk by the pool. I just  
23 refer to everything as the pool.

24 Q. In the fenced area on the sidewalk.

25 A. They were in the fenced area. They weren't in

□00187

1 the water.

2 Q. Okay. The counselors had rounded up the  
3 campers --

4 A. Yes.

5 Q. -- and lined them all up --

6 A. Yes.

7 Q. -- on the edge. And then did you see them walk  
8 out of the area?

9 A. I don't know where they went.

10 Q. You just remember seeing them there at one  
11 point in time?

12 A. Yes.

13 Q. Okay. The evidence in this case is that at no  
14 time did John breathe or have a pulse. Were you aware  
15 of that when this was all happening?

16 A. I don't know.

17 MR. SNYDER: Objection, form.

18 Q. (By Mr. Pletcher) You don't know if you were  
19 or not?

20 A. I don't -- I didn't know what -- I just knew  
21 they were doing CPR, and then the ambulance came. I  
22 didn't know what their findings were.

23 Q. Well, how long were you standing there  
24 observing the CPR before you went to go get the other  
25 lifeguards?

□00188

1 A. As soon as I saw him start doing CPR, I ran to  
2 get the other lifeguards.

3 Q. So, just a matter of seconds.

4 A. Yeah, a split second.

5 Q. I want to talk to you about the whistle blows  
6 that you did.

7 A. Yes.

8 Q. You did that blast not from your stand but when  
9 you ran -- when you were running over here  
10 (indicating) --

11 A. Yes.

12 Q. -- right? How many blasts did you do?

13 A. I don't remember.

14 Q. What type of a blast did you do?

15 A. A loud one.

16 Q. Was it one long loud one?

17 A. I think so. I don't remember exactly.

18 Q. Did anybody at the Houston Racquet Club, be it  
19 Guillermo Palmer, David Lamkin, CD, Steve  
20 Griffin or anybody else ever provide you with  
21 instruction on what the whistle blast procedure was at  
22 the Racquet Club?

23 A. No, sir.

24 Q. So, you didn't know when you were sitting in  
25 your chair on July 18th, 2007 what the procedure was,

□00189

1 whether it was one long blast, two short blasts, three  
2 blasts or ten blasts, what the procedure was to alert  
3 people of an emergency.

4 A. Yes.

5 Q. Is that what you're telling us?

6 MR. SNYDER: Objection, form.

7 A. Yes.

8 Q. (By Mr. Pletcher) Is that "yes"?

9 A. Yes.

10 MR. SNYDER: Objection, form

11 Q. (By Mr. Pletcher) And of course we know that  
12 after you did your whistle blast, you had to run up to  
13 the pavilion to get the senior lifeguards, right?

14 MR. SNYDER: Objection, form.

15 A. I -- when I got up there, they were already  
16 running towards me. So, I ran up there to get them, but  
17 I don't -- they probably would have already come down  
18 even if I hadn't. I don't know what would have  
19 happened.

20 Q. (By Mr. Pletcher) Well, I understand. But it  
21 took some time for you to get from the west end of the  
22 pool over to the pavilion area which was several hundred  
23 feet, right?

24 MR. SNYDER: Objection, form.

25 A. Correct.

□00190

1 Q. (By Mr. Pletcher) Okay. So, when you got up  
2 there and you saw them, that they were coming, they were  
3 still under that covered pavilion area that has the roof  
4 over it, right?

5 MR. SNYDER: Objection, form.

6 A. I don't remember.

7 Q. (By Mr. Pletcher) But you do remember walking  
8 up the steps to the pavilion?

9 A. I know I went up the steps.

10 Q. So, they weren't that far down --

11 A. Well --

12 Q. -- right?

13 A. -- I don't -- they weren't down the steps.

14 Q. Right. Okay. Good. At the Dad's Club when  
15 you were certified in CPR, you were also certified in  
16 the use of an AED, which is an automatic external  
17 defibrillator, right?

18 A. Yes, sir.

19 Q. And in order to pass that certification, you  
20 had to learn how to use the defibrillator and you had to  
21 exhibit your skills on it, correct?

22 A. I don't remember using one.

23 Q. Okay.

24 A. But there was a part of our test about them.

25 Q. Sure. Do you know on July 18th, 2007 how many

□00191

1 AEDs, if any, the Houston Racquet Club had?

2 A. I don't know.

3 Q. So, when you were sitting on the stand at the  
4 family pool on that day, you didn't know one way or the

5 other whether the Racquet Club even had an AED, correct?

6 A. There was one in the lifeguard office. I don't  
7 know if there was any in the other parts of the Club.

8 Q. Did you know that on that day, or is that  
9 something that you learned subsequent to the event,  
10 after the event?

11 A. I didn't know where it was.

12 Q. Right. So, on July 18th when you were sitting  
13 on the stand, you did not know where the AED was. Did  
14 you know that there was one?

15 A. Yes.

16 Q. You did? Who told you that there was an AED?

17 A. I don't remember. I just knew we had one.

18 Q. But you didn't know where it was, and at no  
19 time during this emergency did you go get it.

20 A. No. I --

21 MR. SNYDER: Objection, form.

22 A. I didn't know where it was.

23 Q. (By Mr. Pletcher) Right. You didn't know  
24 where it was. Did you think about getting it?

25 A. I don't remember.

□00192

1 Q. You didn't ask anybody to go get it?

2 A. No.

3 Q. And you didn't overhear anybody at the scene of  
4 the emergency say, "Go get the AED."

5 A. I don't remember --

6 MR. SNYDER: Objection, form.

7 A. -- if anyone said that.

8 Q. (By Mr. Pletcher) You don't have a  
9 recollection of that occurring?

10 A. No.

11 MR. SNYDER: Objection, form.

12 Q. (By Mr. Pletcher) But you knew from your  
13 training in AED that what the American Red Cross taught  
14 in your certification was that an AED even in a  
15 situation where you're giving CPR to a child should be  
16 used as soon as it arrives on the scene, correct?

17 MR. SNYDER: Objection, form.

18 A. Correct.

19 Q. (By Mr. Pletcher) Yes?

20 A. Yes.

21 Q. Okay. And to clarify on the record, at no time  
22 did anybody at the Houston Racquet Club, including  
23 Guillermo Palmer, David Lamkin or anybody else at the  
24 Club, told you, number one, how many AEDs the Club had

25 or where they were located, correct?

□00193

1 MR. SNYDER: Objection, form.

2 A. Correct.

3 Q. (By Mr. Pletcher) I couldn't hear you because  
4 your hands --

5 A. Correct.

6 (Exhibit 74 marked)

7 Q. (By Mr. Pletcher) I want to show you what I've  
8 marked as Exhibit -- Plaintiffs' Exhibit 74. And this  
9 is the written statement that 7 y/o B-CC #1 provided  
10 to the Club on July 18th. 7 y/o B-CC #1 was a camp  
11 counselor for the 7-year-old boys.

12 A. All right.

13 Q. And she states in her statement that, "Our  
14 group had just been lined up at the edge of the pool,  
15 and we were walking to go to lunch." Do you recall when  
16 you were sitting on the stand at any time before or  
17 after you noticed John floating face down seeing the  
18 7-year-olds and some counselors or any campers,  
19 regardless of whether or not you knew their age, line up  
20 on the side of the pool?

21 A. They were -- I remember there being kids  
22 everywhere. I don't know what they were doing. I don't  
23 know how old they were.

24 Q. Okay. But you don't have a specific  
25 recollection of seeing a group of campers being lined up

□00194

1 on the edge of the pool as 7 y/o B-CC #1 states here?

2 A. Which -- which part?

3 Q. That's -- any part. That's what I'm trying to  
4 determine. Do you remember seeing kids lining up on the  
5 poolside either before or after you noticed John  
6 floating?

7 MR. SNYDER: Objection, form.

8 A. No.

9 Q. (By Mr. Pletcher) Do you know who all called  
10 9-1-1?

11 A. Sr LG #1.

12 Q. Anybody else?

13 A. I think one of the other lifeguards tried to,  
14 but I don't know if he did -- if he got through.

15 Q. Do you recall seeing anybody, a camp counselor  
16 or anybody else, running around trying to get somebody's  
17 cell phone or find a cell phone to call 9-1-1?

18 A. I don't know if that happened.

19 Q. Were you ever instructed or told by anybody at  
20 the Houston Racquet Club what the maximum number of  
21 people could be in the family pool?

22 A. No, sir.

23 MR. SNYDER: Objection, form.

24 Q. (By Mr. Pletcher) Did the Houston Racquet Club  
25 ever instruct you or tell you if there was any ratio of

□00195

1 lifeguards to people in the pool?

2 A. No, sir.

3 MR. SNYDER: Objection, form.

4 Q. (By Mr. Pletcher) So, neither Guillermo Palmer  
5 or David Lamkin or anybody else at the Houston Racquet  
6 Club ever told you that if you're at the family pool or  
7 the lap pool and you have "X" number of people in the  
8 pool, in the water, you need "X" number of guards.

9 MR. SNYDER: Objection, form.

10 A. No.

11 Q. (By Mr. Pletcher) And nothing about any sort  
12 of bather load, right?

13 A. What?

14 MR. SNYDER: Objection, form.

15 A. What is that?

16 Q. (By Mr. Pletcher) A bather load is -- do you  
17 know what it is?

18 A. No.

19 Q. Okay. Never heard that terminology?

20 A. Never.

21 Q. And never heard anybody talk about bather load  
22 ratios?

23 A. No, sir.

24 MR. SNYDER: Objection, form.

25 Q. (By Mr. Pletcher) Do you even know what a

□00196

1 bather load ratio is?

2 MR. SNYDER: Objection, form.

3 A. I don't know what a bather load is.

4 Q. (By Mr. Pletcher) And you don't know what a  
5 bather load ratio is either, correct?

6 MR. SNYDER: Objection, form.

7 A. No, sir.

8 Q. (By Mr. Pletcher) You do not?

9 A. No, I do not.

10 Q. Do you recall whether or not the Houston  
11 Racquet Club had any procedure in place for its  
12 lifeguards to alert the lifeguard staff or the lifeguard

13 team that you needed more lifeguards at any particular  
14 pool?

15 A. Like a specific procedure?

16 Q. Yeah.

17 A. I don't know if -- I don't know.

18 Q. You don't know if there was any specific  
19 procedure in place at the Racquet Club during the summer  
20 of 2007 and on July 18th of that year that you could do  
21 if you felt like you needed more lifeguards at the  
22 family pool?

23 MR. SNYDER: Objection, form.

24 A. I don't know if there was a specific thing we  
25 were supposed to do. But if we needed another

□00197

1 lifeguard, we could call someone else to come over.

2 Q. (By Mr. Pletcher) How would you do that?

3 A. Yell at them or blow the whistle to them.

4 Q. Say, "Sr LG #1, I need help over here."

5 A. Exactly.

6 Q. What if Sr LG #1 and LG Supv and Sr LG #3  
7 and Sr LG #2 are gone or not around, are not  
8 within yelling distance? Then what would you do?

9 A. I don't know.

10 MR. SNYDER: Objection, form.

11 Q. (By Mr. Pletcher) Okay. So, nobody at the  
12 Houston Racquet Club ever specifically told you, listen,  
13 15 y/o LG #1, if you ever feel uncomfortable or you feel like  
14 you need another guard at the family pool, this is what  
15 you need to do?

16 MR. SNYDER: Objection, form.

17 A. No one sat me down specifically to say that.

18 Q. (By Mr. Pletcher) Right.

19 A. But I knew that if I needed another guard, I  
20 could call someone over.

21 Q. Right. You could ask for it. Sure. Okay.

22 Well, 15 y/o LG #1, tell the jury under what conditions you  
23 would feel like you might need another guard to help you  
24 out at the family pool.

25 A. If there is just a ridiculous amount of people

□00198

1 in it.

2 Q. Okay. And what do you mean by "ridiculous  
3 amount of people in it"?

4 A. If there was way too many people for one guard  
5 to watch.

6 Q. And what would that number be for you?



7 A. I don't know. Just if it looked like there was  
8 way too many people, I would call another guard.

9 Q. Is that 30 people?

10 A. I don't -- I don't have a concept of numbers.  
11 I don't know what it would look like.

12 Q. Okay. Well, wait. You as a lifeguard, okay,  
13 when you're sitting on the chair of any pool, the family  
14 pool at the Houston Racquet Club or any other place,  
15 your number one obligation is to keep track of the  
16 people who are in the pool through your patron  
17 surveillance --

18 A. Yes.

19 Q. -- right? And certainly there is some number  
20 out there that you would feel the necessity to get  
21 additional help, right?

22 A. Yes.

23 Q. But you just --

24 A. I can't.

25 Q. -- tell me what that number is?

□00199

1 A. I can't give you a number. But if I felt like  
2 there was too many people in the pool and I was  
3 uncomfortable by myself, I would call someone else over.

4 Q. Okay. How many 4-year-olds' lives do you think  
5 you could save or safely guard at one time?

6 A. Can they swim?

7 Q. No.

8 MR. SNYDER: Objection, form.

9 A. If none of them can swim -- if even one can't  
10 swim, they shouldn't be in the pool.

11 Q. (By Mr. Pletcher) Okay. I want you to assume  
12 that you're on the lifeguard stand and you have  
13 4-year-olds who are to be treated as non-swimmers, as if  
14 they cannot swim. How many kids of that type do you  
15 think you could safely guard?

16 MR. SNYDER: Objection, form.

17 A. I don't feel like this is a fair question.

18 MR. FOGLER: Yeah. I don't think it's a  
19 fair question either, Matt.

20 Q. (By Mr. Pletcher) If you don't know, you don't  
21 know.

22 A. No. If there's six people drowning at once in  
23 one big pool, are you asking me how fast I can save them  
24 all?

25 MR. FOGLER: I don't think that was his

□00200

1 question, but --

2 A. Non-swimmers is the responsibility of their  
3 parents. So, their parents should be in the water; and  
4 I would still be guarding them.

5 Q. (By Mr. Pletcher) Well, at a summer camp such  
6 as the 2007 Houston Racquet Club summer camp, the  
7 parents aren't there with the kids. They're left in the  
8 custody and care of the Club, aren't they?

9 MR. SNYDER: Objection, form.

10 A. Yes.

11 Q. (By Mr. Pletcher) Okay. That's what I  
12 thought. So, if you have a situation where you have  
13 4-year-old children in a pool with no parents and you  
14 don't know if they know how to swim --

15 A. You just told me that they're non-swimmers.

16 Q. Did I? Let me restate that question.

17 MR. FOGLER: Rather than asking  
18 hypotheticals, why don't you ask her what she knows  
19 about what happened. Okay? Just a suggestion. Because  
20 she's not appearing here as an expert witness.

21 MR. PLETCHER: Well, Murray, you know, I  
22 understand that; but she's the lifeguard who was on the  
23 stand at the time. Okay? So, I need to know what her  
24 comfort level is and what she felt like she could safely  
25 do. So, that's the purpose of the question.

□00201

1 MR. FOGLER: Don't pay any attention to  
2 the fact that they're conferring. If you have an answer  
3 you want to give, you can answer it even if they're  
4 talking to each other.

5 A. If what you're asking is was I uncomfortable on  
6 the stand, I wasn't.

7 Q. (By Mr. Pletcher) No. My question is --  
8 because, Murray, you need to know this. Guillermo  
9 Palmer, the lifeguard manager, testified that it was up  
10 to each lifeguard to determine their own comfort level  
11 regarding the pool and whether or not they needed  
12 additional help. Okay?

13 MR. SNYDER: Object to sidebar.

14 A. She just answered your question.

15 Q. (By Mr. Pletcher) No, you haven't answered my  
16 question. My question is real simple. If you have  
17 4-year-olds in a family pool and you don't know if they  
18 know how to swim or not and you do know that the parents  
19 aren't around, what number of children do you think you  
20 could safely guard by yourself without asking for

21 another guard to come over and help?  
22 MR. SNYDER: Objection, form.  
23 A. I don't -- I don't even know how to begin to  
24 answer that question.  
25 Q. (By Mr. Pletcher) Could it be 20?

□00202

1 A. I don't --  
2 MR. SNYDER: Objection, form.  
3 A. I don't know. When would there --  
4 MR. FOGLER: You've answered the question.  
5 Q. (By Mr. Pletcher) That's fine. Do you recall  
6 Guillermo Palmer or anybody else at the Racquet Club  
7 ever telling you and/or your fellow guards that it would  
8 be safer to have a supervising lifeguard at the family  
9 pool when the summer campers, in particular the  
10 4-year-olds, were in the pool?  
11 A. Are you asking if it would be better to have an  
12 extra guard?  
13 MR. SNYDER: Objection, form.  
14 Q. (By Mr. Pletcher) No. I'm asking you if  
15 Guillermo Palmer ever told you and/or your fellow guards  
16 that it would be safer to have a supervising lifeguard  
17 on-site at the family pool when the 4-year-old campers  
18 were in there.  
19 MR. SNYDER: Objection, form.  
20 A. Not -- no.  
21 Q. (By Mr. Pletcher) Okay. I want to show you  
22 Exhibit 42 again, and I know this is the first time  
23 you've ever seen this document. But I want to flip to  
24 Page --  
25 MR. PLETCHER: Break time.

□00203

1 THE VIDEOGRAPHER: Do you want to go off  
2 the record?  
3 MR. PLETCHER: Yeah.  
4 THE VIDEOGRAPHER: The time is 3:40 p.m.  
5 We're off the record.  
6 (Recess from 3:40 to 4:04)  
7 (Exhibit 37A marked)  
8 THE VIDEOGRAPHER: The time is 4:04 p.m.  
9 We're back on the record.  
10 Q. (By Mr. Pletcher) 15 y/o LG #1, are you ready to  
11 continue?  
12 A. Yes.  
13 Q. Ready to get this thing over, aren't you?  
14 A. Yes.

15 Q. You were a substitute lifeguard on July 18th,  
16 right? You weren't scheduled to work that day?  
17 A. Probably. I don't remember.  
18 Q. Well, here's the schedule for July 18th,  
19 Wednesday. And if you look here, it shows LG Supv  
20 as the supervisor.  
21 A. Yes.  
22 Q. And he was there that day. LG-E was  
23 scheduled. He was not there.  
24 A. No.  
25 Q. LG-G was scheduled. She was not

□00204

1 there. Sr LG #2 --  
2 A. He was there.  
3 Q. -- he was there. LG-H was not.  
4 Sr LG #3, LP LG were.  
5 A. Yes.  
6 Q. Now, we know -- and I just made an exhibit.  
7 And I've titled it unscheduled lifeguards who worked on  
8 7/18. That would include you, 4 y/o B-CC #6 and  
9 Sr LG #1.  
10 A. Yes, sir.  
11 Q. And I've marked this as Exhibit thirty --  
12 Plaintiffs' 37A.  
13 Why -- how did you come to work that day?  
14 I mean, did somebody call you? Did you call up there?  
15 How did that all work?  
16 A. I don't remember specifically that day. But I  
17 had just gotten back from camp about a week earlier.  
18 And I went up there to see when I was working; and he  
19 was, like, "Well, I didn't know when you were getting  
20 back. So, I haven't put you on the schedule." But I  
21 was listed as a sub. And so, people who needed people  
22 to take their shifts started calling me. And so, I just  
23 agreed to take over people's shifts who didn't want them  
24 or couldn't take them.  
25 Q. Okay. What --

□00205

1 A. So --  
2 Q. What -- where were you at camp, and when did  
3 you get back?  
4 A. I don't remember -- I think I got back on the  
5 8th. I don't remember exactly. But I was at summer  
6 camp in Arkansas.  
7 Q. Okay. Okay. So, you had worked some during  
8 the period of time between July 8th and July 18th.

9 A. Yes.

10 Q. Okay. And what was the procedure in place at  
11 the Racquet Club for notifying the Club that you had a  
12 conflict, that you couldn't come in to work as a  
13 lifeguard as scheduled?

14 A. Well, if it was before they made the schedule  
15 for that week, you'd have -- you'd tell them ahead of  
16 time. They just wouldn't put you on on certain days or  
17 certain times. And if you were on the schedule and had  
18 a day you couldn't work, you'd have to find someone else  
19 to work for you. And we had, like, those sheets that  
20 you just had.

21 Q. Yes.

22 A. And they were up on the wall in the office.

23 Q. Right.

24 A. And you'd cross your name out and then write in  
25 who was working for you.

□00206

1 Q. Okay. Was there any requirement at the Racquet  
2 Club for you to find somebody who had the same amount of  
3 experience that you had to replace you if for some  
4 reason you had to be out?

5 A. What do you mean by "experience"?

6 Q. Well, for example, if one of the lifeguard  
7 supervisors, the more senior lifeguards had a conflict,  
8 did the Club have a policy that, hey, if you're a  
9 lifeguard supervisor, you better find another supervisor  
10 to replace you?

11 A. Yes, sir.

12 Q. Okay. And the same thing: Did the Club have a  
13 policy where if a younger guard was going to work as a  
14 sub, he or she had to sub in for a younger guard, a less  
15 experienced guard? Or could you sub in for any guard?

16 A. There was two levels. There was supervisors  
17 and then lifeguards.

18 Q. Right.

19 A. And there was three supervisors, I think,  
20 LG-F, Sr LG #1 and LG Supv.

21 Q. Right.

22 A. And so, if one of them was scheduled to be a  
23 supervisor, they had to find another supervisor.

24 Q. Okay. But if you were just a lifeguard, you  
25 could get any lifeguard regardless of the experience

□00207

1 level, correct?

2 A. Correct.

3 Q. And do you know who you were subbing for on  
4 July 18th?

5 A. I don't remember.

6 Q. Do you recall working on July 17th?

7 A. I think I might have, but I'm not sure. I  
8 don't remember.

9 Q. Did the Racquet Club provide you with any  
10 training or instruction on how to recognize children in  
11 distress?

12 A. The Club itself?

13 Q. Yes.

14 A. No, sir.

15 Q. Did the Houston Racquet Club provide you any  
16 training or instruction on how to recognize a drowning  
17 person?

18 A. No, sir.

19 Q. Did the Houston Racquet Club provide you any  
20 training or instruction on how to recognize a distressed  
21 swimmer?

22 A. No, sir.

23 Q. When you took your lifeguard course, do you  
24 remember learning about the drowning process and how to  
25 recognize the drowning process?

□00208

1 A. Yes, sir.

2 Q. Do you know what the instinctive drowning  
3 response is?

4 A. To fight to keep your head above water if  
5 you're going under. I don't know all the terminology.

6 Q. Okay. Do you know -- so, instinctive drowning  
7 response that you recall is that you try to keep your  
8 head above water to breathe.

9 A. I think so.

10 Q. Okay. And is there any particular uniqueness  
11 about the body position, either the arms or the legs or  
12 the torso, in regard to the instinctive drowning  
13 response?

14 A. I don't know. I don't know what I'm supposed  
15 to answer.

16 Q. No. That's okay. I'm just wondering if you  
17 remember learning about it and whether or not --

18 A. I do remember learning about it.

19 Q. Okay. And do you know sitting here today the  
20 body mechanics of the position of the body in the water  
21 that is typically seen in a drowning person, what they  
22 do with their arms, what they do with their legs? Do

23 you know those things sitting here today?

24 A. I would be able to recognize if someone was  
25 drowning, but I can't list words.

□00209

1 Q. Okay. Well, how would you recognize that  
2 somebody was drowning then? What's it look like?

3 A. I don't -- I don't know how to put it into  
4 words. Like, there's different kinds. Like, if they're  
5 fighting to stay above the water, like most kids would  
6 be, they're kind of moving their arms to keep themselves  
7 up --

8 Q. Yes.

9 A. -- and trying to keep their heads above water.

10 Q. Yes. Is there a difference between the  
11 behavior of a non-swimmer who is drowning and a swimmer  
12 who is drowning? Do you know?

13 A. Yes, I think there is.

14 Q. Is there a distinction?

15 A. I think so.

16 Q. Do you recall what that distinction is?

17 A. I know that it's not controlled if they're a  
18 non-swimmer. They're just kind of panicked because they  
19 don't know what to do.

20 Q. Do all drowning victims, whether or not they're  
21 swimmers or non-swimmers, struggle?

22 A. No.

23 Q. No?

24 A. I don't...

25 Q. Is there a distinction between swimmers and

□00210

1 non-swimmers who are drowning as far as whether they are  
2 distressed?

3 A. I don't know.

4 Q. Do you know if there's a difference between a  
5 non-swimmer and a swimmer who is drowning as far as  
6 their ability to signal either by hand motion or through  
7 words for help?

8 A. I don't know.

9 Q. Okay. Do you know the difference between  
10 active and passive drowning?

11 A. Yes.

12 Q. And could you describe that to me?

13 A. I know that active drowning is when they're  
14 moving more frantically, and passive drowning is more  
15 still.

16 Q. And you learned in your CPR course and through

17 reading the manual that all drownings have both an  
18 active phase and a passive phase?

19 A. I don't know.

20 Q. Okay. When did you stop working at the Club?

21 A. October, I think.

22 Q. October --

23 A. As a lifeguard?

24 Q. As in any position.

25 A. I still work there.

□00211

1 Q. You're working there today?

2 A. As a swim team coach. But I'm no longer  
3 lifeguarding.

4 Q. And is it still during that same April to June  
5 period --

6 A. Yes, sir.

7 Q. -- for swim team coach?

8 A. Yes, sir.

9 Q. When did you stop being a lifeguard?

10 A. It was either September or October.

11 Q. Of 2007?

12 A. Yes, sir.

13 Q. Okay. Was it after the Club hired the  
14 lifeguard management company to come in and supply  
15 guards?

16 A. No. It was before.

17 Q. And did you -- you voluntarily just stopped  
18 working?

19 A. I just -- I had too much school work.

20 Q. Right.

21 A. Didn't have time.

22 Q. Okay. No other real reason for quitting your  
23 lifeguarding there?

24 A. I just -- I had to keep up with my grades.

25 Q. Have you lifeguarded since October of 2007

□00212

1 anywhere?

2 A. Yes, sir.

3 Q. Where have you lifeguarded?

4 A. Lakeside.

5 Q. Lakeside Country Club?

6 A. Yes, sir.

7 Q. Under LP LG Glass?

8 A. Yes, sir.

9 Q. Did you find at Lakeside Country Club that  
10 their procedures and management were different than the



11 procedures and management at the Houston Racquet Club as  
12 far as lifeguarding procedures and the day-to-day duties  
13 and responsibilities of a lifeguard?

14 MR. SNYDER: Objection, form.

15 A. Yes.

16 Q. (By Mr. Pletcher) And could you describe how  
17 lifeguarding was different at Lakeside Country Club  
18 based on your experience at the Houston Racquet Club?

19 MR. SNYDER: Objection, form.

20 A. May I ask why this is relevant?

21 Q. (By Mr. Pletcher) Huh?

22 A. May I ask why?

23 Q. No. I have to ask the questions.

24 A. But you didn't know I worked at Lakeside.

25 Q. You just told me.

□00213

1 MR. FOGLER: That's okay. We'll get  
2 through it faster if you just go ahead and answer the  
3 question the best you can.

4 Q. (By Mr. Pletcher) How is it different?

5 A. They have a different rotation than at the  
6 Racquet Club.

7 Q. Okay. And what sort of rotation do they have?

8 A. Well, whoever -- I don't know if LP LG does it  
9 or someone else makes it. They make a schedule that has  
10 30-minute increments and then different places you're  
11 supposed to be. And every 30 minutes you check where  
12 you're supposed to be.

13 Q. They have a resort pool similar to the Racquet  
14 Club's, do they not?

15 A. Yes, sir.

16 Q. Do they have a roaming guard that roams on foot  
17 in the zero depth shallow area of that pool?

18 A. There's a roving guard during the busiest  
19 times.

20 Q. Right.

21 A. Not all the time.

22 Q. And the busiest times would include times where  
23 special activities like a summer camp or a party were  
24 taking place at that pool?

25 MR. SNYDER: Objection, form.

□00214

1 A. I don't know.

2 Q. (By Mr. Pletcher) At any time while you were  
3 at the Racquet Club, do you recall there being a third  
4 lifeguard chair at the family pool?

5 A. Before July 18th?

6 MR. SNYDER: Objection, form.

7 Q. (By Mr. Pletcher) Yeah, before July 18.

8 MR. SNYDER: Objection, form.

9 A. I don't remember.

10 Q. (By Mr. Pletcher) Okay. You don't remember  
11 one way or the other?

12 A. I don't want to tell you wrong because I don't  
13 remember.

14 Q. We know -- right. And my co-counsel made a  
15 good point. And that is, do you ever recall there being  
16 a lifeguard chair under the umbrella on the west side of  
17 the pool here regardless of whether or not it was a  
18 third chair --

19 MR. SNYDER: Objection, form.

20 Q. (By Mr. Pletcher) -- before July 18th?

21 A. I don't remember. I know -- because I didn't  
22 start working until July. So, I don't know what they  
23 did in June.

24 Q. How about after July 18th? They put a  
25 lifeguard chair under this umbrella, correct?

□00215

1 MR. SNYDER: Objection, form.

2 A. They -- if you needed an extra guard, that's  
3 where the extra guard sat.

4 Q. (By Mr. Pletcher) So, did the Houston Racquet  
5 Club set up a lifeguard chair under the umbrella on the  
6 west side of the pool after July 18th, 2007?

7 MR. SNYDER: Objection, form.

8 A. Kind of.

9 Q. (By Mr. Pletcher) How many times did you see  
10 it there?

11 A. It was more of a roaming guard. You could --  
12 you could sit there or you could sit on the other side  
13 if you needed a third guard.

14 Q. How many times have you seen people stationed  
15 in that chair on the west side?

16 MR. SNYDER: Objection, form.

17 A. I don't know. After July 18th?

18 Q. (By Mr. Pletcher) Yeah. Well, it was never  
19 there before July 18th.

20 A. Yeah. I don't know.

21 Q. You don't know? Okay. And you're saying that  
22 you could choose between this chair and that chair?

23 A. No. There was always one at that chair.

24 Q. I understand.

25 A. And then they put another chair right there if  
□00216  
1 needed.  
2 Q. So --  
3 A. But you didn't have to sit in the chair. You  
4 could stand on the side.  
5 Q. Over here (indicating)?  
6 A. It was like a roaming guard.  
7 Q. Over here (indicating)?  
8 A. No. The other side.  
9 Q. Over here (indicating)?  
10 A. Yeah.  
11 Q. Okay. So, after July 18th, you remember  
12 working at the Houston Racquet Club where they had three  
13 lifeguards at the family pool?  
14 A. If they needed them, yes.  
15 Q. Okay. And was that need based upon -- what?  
16 A. Just --  
17 MR. SNYDER: Objection, form.  
18 A. Some days there would be a lot of kids there  
19 during the middle of the day, and they just put an extra  
20 guard there if the guard -- other guard wanted an extra  
21 guard.  
22 Q. (By Mr. Pletcher) And what you're saying is  
23 that the third guard, if needed, could either sit here  
24 or roam over on this side (indicating) of the pool,  
25 right?

□00217  
1 A. Yes.  
2 Q. And was that a procedure that Guillermo Palmer  
3 put into place?  
4 A. Yes, sir.  
5 Q. And you said that that third guard was used if  
6 there were, like, a lot of kids in the pool?  
7 A. Yes.  
8 Q. What is a lot of kids?  
9 A. I don't know. Just -- during July, there would  
10 be a bunch of kids at the pool.  
11 Q. Uh-huh.  
12 A. And if there was -- just seemed like an  
13 overwhelming amount of kids, they would have an extra  
14 guard.  
15 Q. Okay. So, even after July 18th, 2007,  
16 Guillermo Palmer instructed you guys that you could use  
17 a third guard. But he didn't give you any guidance as  
18 far as under what circumstances you could have a third

19 guard?

20 A. Yes, he --

21 MR. SNYDER: Objection, form.

22 A. I don't understand your question.

23 Q. (By Mr. Pletcher) Okay. Well, was it based  
24 upon the number of kids who were in the pool?

25 A. We didn't count specific kids. Just if it

□00218

1 seemed like there was a bunch of kids, a third guard  
2 would go and sit there.

3 Q. And who made the decision when it occurred?

4 Would it be the lifeguards making the decision or would  
5 it be Guillermo Palmer, the lifeguard manager?

6 A. If Guillermo was at the pool and noticed it, he  
7 would tell us. Usually the supervisor would ask someone  
8 if we needed an extra guard.

9 Q. And this procedure was not in place at any time  
10 before July 18th, correct?

11 A. I don't know.

12 Q. Not to your knowledge anyway?

13 A. Yes.

14 Q. And after July 18th, did Guillermo Palmer,  
15 David Lamkin or anybody else at the Houston Racquet Club  
16 provide the lifeguard team, which includes the lifeguard  
17 supervisors and all the other regular lifeguards, any  
18 additional training?

19 A. I don't know.

20 Q. Well, do you remember having any additional  
21 training?

22 A. I didn't ask for additional training.

23 Q. Did you receive any additional training at the  
24 Houston Racquet Club after July 18th before you stopped  
25 working in October of 2007?

□00219

1 A. No, sir.

2 Q. Did Guillermo Palmer or anybody else at the  
3 Racquet Club establish an emergency action plan after  
4 July 18th --

5 A. I don't --

6 Q. -- 2007 until you quit in October of 2007?

7 A. I don't know.

8 MR. SNYDER: Objection, form.

9 Q. (By Mr. Pletcher) Well, do you recall seeing a  
10 written emergency action plan?

11 A. I don't --

12 MR. SNYDER: Objection, form.

13 A. I don't remember.

14 Q. (By Mr. Pletcher) Well, did Guillermo Palmer  
15 show you where the AEDs were?

16 A. I don't know.

17 Q. Did anybody --

18 A. I don't remember where anything is. I haven't  
19 been there in a year.

20 Q. Okay. Well, I'm just trying to figure out how  
21 things changed after John drowned. And so, what I'm  
22 trying to figure out is: Did Guillermo Palmer or  
23 anybody else at the Club take the time to tell you the  
24 things that you hadn't been told before he drowned, like  
25 where the AEDs were, where the emergency phone was?

□00220

1 MR. SNYDER: Objection, form.

2 A. I know where the emergency phone is.

3 Q. (By Mr. Pletcher) Well, the AED? He didn't  
4 tell you that --

5 MR. SNYDER: Objection, form.

6 Q. (By Mr. Pletcher) -- still, did he?

7 A. I think it's --

8 MR. SNYDER: Objection, form.

9 A. -- in the -- I don't know. I know they changed  
10 a bunch of the policies. They made it a lot stricter,  
11 the rules.

12 Q. (By Mr. Pletcher) That's what I need to know.

13 A. You're asking if they told me where the AED  
14 was, and I don't remember where it is.

15 Q. Tell me the policies that changed that were  
16 much stricter that you just testified about.

17 A. I don't remember exactly. I just -- we had to  
18 be a lot stricter with the rules. Like, we couldn't be  
19 lenient at all with any of the rules. Like, if kids  
20 didn't listen the first time, they had to get out of the  
21 pool.

22 Q. If kids were playing dead man float or the  
23 dunking game or the launching game or they were launched  
24 from counselor or other people's hands, they were  
25 immediately taken out of the pool.

□00221

1 MR. SNYDER: Objection, form.

2 A. If they didn't stop when we asked them to.

3 Q. (By Mr. Pletcher) Did you -- during any time  
4 that you were a lifeguard at the Houston Racquet Club,  
5 did you ever you, yourself, 15 y/o LG #1, kick somebody  
6 out of the pool?

7 A. Yes, I did.  
8 Q. Who?  
9 A. A little kid named Will.  
10 Q. What for?  
11 A. It actually wasn't for not following the rules.  
12 It was mistreatment of lifeguards.  
13 Q. Was it before or after John's drowning?  
14 A. It was after.  
15 Q. And he was just being rude and not a good  
16 little kid, huh, mistreating the guards?  
17 A. He was just being really inappropriate. So, I  
18 asked him to leave.  
19 Q. Are you a lifeguard either permanent or  
20 part-time at Lakeside today?  
21 A. Today?  
22 Q. Yes. Right now. I mean --  
23 A. Yes, sir.  
24 Q. -- are you employed over there?  
25 A. Yes, sir.

□00222

1 Q. Are you ready?  
2 A. (Witness nodding head)  
3 Q. Do you want to take a short break?  
4 A. (Witness shaking head)  
5 Q. On July 18th, 2007, we know that there were  
6 camp counselors and summer campers in the pool. Do you  
7 specifically recall any other people who were not  
8 connected with the camp either as a counselor or a  
9 camper being in the water, be it a member or a guest,  
10 anything that sticks out in your mind?  
11 A. I don't know specifically, but there were other  
12 members there. There were kids swimming that weren't  
13 associated with camp.  
14 Q. Do you think that there were other guests, too?  
15 A. I don't know.  
16 Q. Okay. And do you recall any specific names of  
17 the members?  
18 A. I don't know any of the members.  
19 Q. Do you know a little girl named YM #1?  
20 A. I do know YM #1.  
21 Q. Do you remember seeing YM #1 in the pool that  
22 day?  
23 A. She could have been there. I don't know.  
24 Q. If she told her mother that she was there that  
25 day in the pool, you wouldn't have any reason to dispute

□00223

1 that, would you?

2 MR. SNYDER: Objection, form.

3 A. I don't -- I know there was kids who weren't at  
4 camp.

5 Q. (By Mr. Pletcher) Right.

6 A. YM #1 could have been there. I don't know.

7 Q. Any approximate number of non-camp kids that  
8 you can provide us?

9 A. Not very many.

10 Q. Under a dozen?

11 A. Probably.

12 Q. You think it was a dozen?

13 A. I --

14 MR. SNYDER: Objection, form.

15 A. I don't know exactly, but I would guess less  
16 than a dozen.

17 Q. (By Mr. Pletcher) Okay. Less than ten?

18 MR. SNYDER: Objection, form.

19 A. Probably.

20 Q. (By Mr. Pletcher) Guillermo Palmer testified  
21 that he spoke with you, LG Supv and Supv CC #1  
22 after John's drowning at the Racquet Club on July 18th.  
23 Do you remember speaking with him?

24 A. I talked to him every day that whole summer.

25 Q. I'm talking specifically on the day that John

□00224

1 drowned. Do you remember having a meeting with  
2 Guillermo talking to him or him coming over and chatting  
3 with you?

4 A. I don't know what you're referring to, but I  
5 remember talking to him at least three times that day.

6 Q. Tell me what you remember talking to him about  
7 and when you talked to him.

8 A. I don't remember specifically.

9 Q. Was it before or after the event?

10 A. Both.

11 Q. Okay. Do you know if you talked to him more  
12 than once before the event?

13 A. I don't remember.

14 Q. Okay. And you don't remember the subject  
15 matter?

16 A. No.

17 Q. No?

18 A. No.

19 Q. Well, what sort of questions were you asked by  
20 anybody at the Houston Racquet Club after John's

21 drowning about the event?

22 A. That day?

23 Q. That day or any day subsequent to that.

24 A. That day people kept asking, "Why is the pool  
25 closed?"

□00225

1 Q. Yes.

2 A. And then I don't remember after that. I don't  
3 know if people asked me specifically, but people would  
4 always ask what happened.

5 Q. Okay, 15 y/o LG #1. Did anybody at the Houston  
6 Racquet Club come to you on July 18th after John drowned  
7 to ask you what had happened?

8 A. At the pool?

9 Q. Why he drowned, what had happened.

10 A. People -- we closed the pool for the rest of  
11 the day, and people --

12 Q. You're misunderstanding.

13 MR. FOGLER: She's about to answer.

14 Q. (By Mr. Pletcher) Okay.

15 A. We closed the pool for the rest of the day, and  
16 people -- but we were all still there. And people kept  
17 coming up asking what happened, what happened.

18 Q. Right.

19 A. And we just said we had an incident. The  
20 pool's closed. We wouldn't answer those questions.

21 Q. What about Guillermo Palmer or David Lamkin?  
22 Were any of the managers who were in charge there at the  
23 Houston Racquet Club, did they question you about the  
24 events of the day?

25 A. What do you mean?

□00226

1 Q. Well, did they ask you about the events of the  
2 day, particularly when you were on the stand at the  
3 family pool?

4 A. Yeah. Guillermo and David asked us what we  
5 saw. We all told our side of the story, what we did.

6 Q. Was that in writing or verbally?

7 A. Probably both. There's -- we all wrote down  
8 what we did.

9 Q. Right.

10 A. I think you have the paper.

11 Q. Your written statement.

12 A. (Witness nodding head)

13 Q. Okay. Do you remember also talking to him  
14 verbally?



15 A. I don't remember. I probably did.

16 Q. Do you believe that your written statement that  
17 you wrote out that day contains everything that you saw  
18 and observed?

19 MR. SNYDER: Objection, form.

20 A. I don't know.

21 Q. (By Mr. Pletcher) Or at least the important  
22 things?

23 A. Yes.

24 MR. SNYDER: Objection, form.

25 Q. (By Mr. Pletcher) Okay. The documents that  
□00227

1 you brought to the deposition included your  
2 certification cards, correct?

3 A. Yes, sir.

4 Q. You didn't bring any other documents?

5 A. My drivers' license?

6 Q. Drivers' license.

7 MR. FOGLER: If your question is whether  
8 she had anything responsive to the items in the  
9 subpoena, the answer's no, other than the  
10 certifications. You can go down the list if you want.  
11 But I covered those with her and asked her about it, and  
12 she doesn't have anything.

13 MR. PLETCHER: Okay. Let's just -- I've  
14 marked it as 52F.

15 Q. (By Mr. Pletcher) And do you remember going  
16 through this subpoena for documents with Mr. Fogler?

17 A. Yes, sir.

18 Q. Number one, two, three, four, five, six, seven  
19 and eight?

20 A. Yes, sir.

21 Q. And the only responsive documents that you had  
22 were your certification cards --

23 A. Yes.

24 Q. -- and your drivers' license? You don't have  
25 any written documents from the Houston Racquet Club

□00228

1 related to your employment either as a lifeguard, as a  
2 swim team coach?

3 A. We had to fill out forms to be an employee, but  
4 I don't have any of them.

5 Q. Right. What's in your possession, what you  
6 have at home.

7 A. I don't have any.

8 Q. And do you still have your training manual --

9 lifeguard training manual?

10 A. That book (indicating)?

11 Q. Yeah.

12 A. Uh-huh.

13 Q. I think I asked you to bring that, but that's  
14 okay. I brought mine.

15 A. Where does it say to bring it?

16 Q. All training, instructional or orientational  
17 materials and documents related to your position as a  
18 lifeguard?

19 A. I didn't know about that.

20 Q. Huh?

21 A. I'm sorry.

22 Q. That's okay. No. That's all right. You don't  
23 have any other materials other than the manual,  
24 though --

25 A. No.

□00229

1 Q. -- that would be responsive? Did you keep a  
2 diary?

3 A. I don't keep a diary.

4 Q. Never have?

5 A. (Witness shaking head) I tried to once when I  
6 was little, but it didn't catch on.

7 Q. Did anybody send you any e-mails or text  
8 messages related to John's drowning?

9 A. Like what?

10 Q. Like anything. Any sort of e-mail or text  
11 message that you received after John's drowning about  
12 it, about what happened that day, about John, about his  
13 parents, about the Club, about any employees of the  
14 Club?

15 A. No one sent me text messages or anything about  
16 it.

17 Q. How about e-mails?

18 A. I don't e-mail.

19 Q. You don't recall any?

20 A. I don't use e-mail.

21 Q. Okay. Did you use your -- do you send text  
22 messages with your cell phone?

23 A. Yes, sir.

24 Q. Did you use your cell phone to text message  
25 people while you were on duty as a lifeguard at any

□00230

1 time?

2 A. No.

3 Q. Was there a rule prohibiting that?

4 A. While you were on the stand?

5 Q. No, just while you were working.

6 A. If you're on your lunch break, you can use your  
7 phone like in the office, but...

8 Q. Okay. Did you -- I asked you if you received  
9 any. Did you send any text messages?

10 A. On July 18th?

11 Q. Or any date after July 18th regarding the  
12 event.

13 A. Not that I remember. I didn't -- it wasn't  
14 really something I wanted to talk about.

15 Q. Or after -- at any time after July 18th?

16 A. I don't think so.

17 Q. No e-mails after July 18th regarding the event?

18 A. I don't e-mail people.

19 MR. MARRS: Let's take a real quick break  
20 here to see if we're done.

21 MR. PLETCHER: Before we do that, let me  
22 just go ahead --

23 MR. MARRS: Okay.

24 Q. (By Mr. Pletcher) 15 y/o LG #1, is there anything  
25 that you believe that the Houston Racquet Club,

□00231

1 Guillermo Palmer, David Lamkin or anybody else at the  
2 Racquet Club could have done prior to July 18th, 2007  
3 that would have made a difference in the outcome for  
4 John?

5 MR. SNYDER: Objection, form.

6 A. I don't know what you're looking for there.

7 Q. (By Mr. Pletcher) Well, is there anything --  
8 does anything stick out in your mind that you think  
9 maybe the Club should have told you, should have done  
10 that may have made a difference?

11 MR. SNYDER: Objection, form.

12 A. No.

13 Q. (By Mr. Pletcher) Do you wish that they had  
14 told you where the AEDs were?

15 MR. SNYDER: Objection, form.

16 A. I don't -- I don't think it would have changed  
17 anything.

18 Q. (By Mr. Pletcher) Well, do you wish that the  
19 Club had a written emergency action plan --

20 MR. SNYDER: Objection, form.

21 Q. (By Mr. Pletcher) -- that set forth the roles  
22 and responsibility of persons at the Club during an

23 emergency?

24 A. I don't --

25 MR. SNYDER: Objection, form.

□00232

1 A. I don't know how to answer this.

2 Q. (By Mr. Pletcher) Well, do you wish that the  
3 Racquet Club had had in-service training and emergency  
4 response drills so that y'all could practice your skills  
5 in responding to emergencies?

6 MR. SNYDER: Objection, form.

7 A. I --

8 MR. FOGLER: It's late in the day. And  
9 just so you know, I've got to take a call at 5:00  
10 o'clock. So, we've got about 20 minutes to finish this  
11 up. And all of these subjects have been discussed. And  
12 now you're asking her to give opinion testimony, which I  
13 don't think is appropriate. She's not very comfortable  
14 giving it anyway.

15 MR. PLETCHER: I hear you. Let me just  
16 ask her one other question. Let's just break for one  
17 minute, and I'm almost done. I just need to talk to  
18 them.

19 THE VIDEOGRAPHER: The time is 4:41 p.m.  
20 We're off the record.

21 (Recess from 4:41 to 4:46)

22 (Exhibit 75 marked)

23 THE VIDEOGRAPHER: The time is 4:46 p.m.  
24 We're back on the record.

25 Q. (By Mr. Pletcher) 15 y/o LG #1, how long does it take

□00233

1 for a person to drown?

2 A. I don't know.

3 MR. SNYDER: Objection, form.

4 Q. (By Mr. Pletcher) Well, we talked about the  
5 drowning process. And we know that there's an active  
6 phase and then a passive phase, right?

7 A. Sure.

8 Q. Is that correct?

9 A. I guess. I don't -- I don't know.

10 Q. Well, we know that John was in the passive  
11 phase.

12 A. Yes.

13 Q. He was floating face down motionless.

14 A. Yes.

15 Q. Okay. And we know that drowning victims go  
16 through both the active and passive phase.

17 A. But they don't always have an active phase.

18 Q. They don't?

19 A. No. If someone has a heart attack and drowns,  
20 they're not going to be struggling. They're just going  
21 to -- I don't know how to phrase it.

22 Q. So, you really don't know how long it takes for  
23 somebody to drown, period; is that right?

24 A. No.

25 MR. SNYDER: Objection, form.

□00234

1 Q. (By Mr. Pletcher) Is that correct?

2 A. Yes.

3 Q. And when you saw John floating face down, that  
4 was the first time you saw anything out of the  
5 ordinary --

6 A. Yes.

7 Q. -- that day? With respect to any of the people  
8 who were in the pool?

9 A. Yes, sir.

10 Q. And Exhibit No. 75 is, what, a copy of your  
11 drivers' license?

12 A. Yes, sir.

13 MR. PLETCHER: Thank you for coming over  
14 here today. That's all I have.

15 THE WITNESS: Okay.

16 MR. PLETCHER: Thank you.

17 MR. SNYDER: In light of the hour in  
18 deference to what 15 y/o LG #1 has done today, I'm going to  
19 reserve my questions.

20 MR. PLETCHER: Oh. 52F is the depo notice  
21 for the record. Good.

22 THE VIDEOGRAPHER: The time is 4:48 p.m.  
23 We're off the record.

24 (Deposition concluded at 4:48 p.m.)

25 (Signature Waived)

□00235

1 CAUSE NO. 2007-54438

2 DAVID AND KATHLEEN PLUCHINSKY,) IN THE DISTRICT COURT OF  
INDIVIDUALLY AND AS )

3 REPRESENTATIVES OF THE JOHN )  
ALBERT PLUCHINSKY ESTATE, )

4 PLAINTIFFS, )

5 VS. ) HARRIS COUNTY, T E X A S  
)

6 HOUSTON RACQUET CLUB, STEPHEN )

GRIFFIN, DAVID LAMKIN, )  
7 GUILLERMO PALMER, AND )  
LG Supv, )  
8 DEFENDANTS. ) 281ST JUDICIAL DISTRICT  
9

10 REPORTER'S CERTIFICATE  
11 ORAL VIDEOTAPED DEPOSITION OF 15 y/o LG #1  
12 June 11, 2008  
13

14 I, Roxanne K. Smith, Certified Shorthand Reporter in  
15 and for the State of Texas, hereby certify to the  
16 following:

17 That the witness, 15 y/o LG #1, was duly sworn and  
18 that the transcript of the deposition is a true record  
19 of the testimony given by the witness;

20 That examination and signature of the witness to the  
21 deposition transcript was waived by the witness with the  
22 agreement of the parties at the time of the deposition;

23 That the original deposition was delivered to  
24 Mr. Matthew Pletcher, Custodial Attorney.

25 \$\_\_\_\_\_ is the deposition officer's charges to the

□00236

1 Plaintiffs for preparing the original deposition and any  
2 copies of exhibits;

3 That pursuant to information given to the deposition  
4 officer at the time said testimony was taken, the  
5 following includes all parties of record and the amount  
6 of time used by each party at the time of the  
7 deposition:

8 Mr. Matthew Pletcher (5 hours)

Mr. Norman Snyder (No Time Used)

9 Mr. Murray Fogler (No Time Used)

10

11 That a copy of this certificate was served on all  
12 parties shown herein on \_\_\_\_\_ and filed  
13 with the Clerk pursuant to Rule 203.3.

14 I further certify that I am neither counsel for,  
15 related to, nor employed by any of the parties in the  
16 action in which this proceeding was taken, and further  
17 that I am not financially or otherwise interested in the  
18 outcome of this action.

19 Certified to by me on this \_\_\_\_\_ day of

20 \_\_\_\_\_, \_\_\_\_\_.

21

22

\_\_\_\_\_  
ROXANNE K. SMITH, CSR

23 No. 6290 - Expiration 12-31-08  
Firm Registration No. 510  
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Houston, Texas 77027  
25 (713) 626-2629

□