

0001

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 ORAL VIDEOTAPED DEPOSITION

11 4 y/o B-CC #3

12 June 17, 2008

13 *****

14

15 ORAL VIDEOTAPED DEPOSITION OF 4 y/o B-CC #3

16 produced as a witness at the instance

17 of the Plaintiffs and duly sworn, was taken in the

18 above-styled and numbered cause on June 17, 2008, from

19 1:03 p.m. to 6:58 p.m. before Roxanne K. Smith,

20 Certified Shorthand Reporter in and for the State of

21 Texas, reported by computerized stenotype machine at the

22 offices of Beirne, Maynard & Parsons, L.L.P., 1300 Post

23 Oak Blvd., 25th Floor, Houston, pursuant to the Texas

24 Rules of Civil Procedure and the provisions stated on

25 the record or attached hereto.

0002

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

2

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Mr. David Pluchinsky
Mrs. Kathleen Pluchinsky
Mr. Stephen Griffin

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0004

1 (Exhibits 14I, 52H, 82, 82A, 82A-1 marked
2 before deposition)

3 THE VIDEOGRAPHER: Today's date is
4 Tuesday, June 17th, 2008. The time is 1:03 p.m. We're
5 on the record.

6 4 y/o B-CC #3,
7 having been first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. PLETCHER:

10 Q. Could you introduce yourself to the ladies and
11 gentlemen of the jury, please?

12 A. I'm 4 y/o B-CC #3. I go by "4 y/o B-CC #3,"
13 and --

14 Q. All right, 4 y/o B-CC #3. Do you mind if I call you
15 "4 y/o B-CC #3" today?

16 A. That's fine.

17 Q. My name's Matt Pletcher; and I represent
18 Kathleen and David Pluchinsky, the parents of John
19 Pluchinsky who drowned at the Houston Racquet Club
20 family pool on July 18th, 2007. You understand that,
21 don't you?

22 A. Yes, sir.

23 Q. Have you ever had your deposition taken before,
24 4 y/o B-CC #3?

25 A. No, sir.

0005

1 Q. Did you have an opportunity to talk to your
2 lawyer about what a deposition is?

3 A. Yes, sir.

4 Q. So, you understand that the court reporter is
5 going to type up all my questions and all your answers
6 and put it in a little booklet.

7 A. Yes, sir.

8 Q. I'll get a copy. Your lawyer will get a copy.
9 And at the time of trial, if you happen to change your
10 story or say something different than you did here

11 today, I'll pull out that deposition transcript and
12 point it out to you. Okay?

13 A. All right.

14 Q. Can I get a couple of agreements with you to
15 try to make this thing go smoothly? The first agreement
16 is I need verbal answers from you. Nods of the head,
17 shrugs of the shoulder, "huh-uh," "uh-huh," those don't
18 work. Okay?

19 A. All right.

20 Q. She has to have a verbal response. The second
21 thing is if you will wait until I finish my question
22 before you give your answer, I'll give you the same
23 courtesy and not ask my next question until you have
24 fully answered the one that I've got on the table.
25 Okay?

0006

1 A. All right.

2 Q. The most important agreement I want to get with
3 you, Mr. 4 y/o B-CC #3, is that if at any time in this deposition
4 you don't understand one of my questions, you either
5 don't hear me, my question doesn't make sense to you for
6 whatever reason, if you don't understand it, will you
7 stop me and say, Mr. Pletcher, I don't understand your
8 question. Will you rephrase it so that I do?

9 A. Sure thing.

10 Q. Okay. And if you don't ask me to rephrase it
11 or tell me that you didn't understand it and you answer
12 it, I will assume that you understood it. Okay?

13 A. All right.

14 Q. Is that fair?

15 A. Seems fair to me.

16 Q. Okay. Great. Now, 4 y/o B-CC #3, you were a camp
17 counselor on July 18th, 2007 over at the Houston Racquet
18 Club the day John drowned, correct?

19 A. Correct.

20 Q. And you were 18 at the time?

21 A. Yes, I was.

22 Q. Birth date September 10th, 1988?

23 A. Yes.

24 Q. Now, you were a camp counselor for the
25 4-year-old boy group --

0007

1 A. Yes.

2 Q. -- is that correct? You had just graduated
3 from Memorial High School?

4 A. Yeah.

5 Q. Were you on the Lacrosse team over there?
6 A. I was.
7 Q. How many years did you play there?
8 A. I played two years.
9 Q. And are you at the University of Alabama now?
10 A. I am.
11 Q. Did you just finish your freshman year?
12 A. I did.
13 Q. Have you declared a major yet?
14 A. No, I have not. I'm in general business right
15 now. I haven't -- I haven't narrowed it down.
16 Q. Do you know LG Supv A?
17 A. I do.
18 Q. Y'all went to school over there at Memorial
19 High School, right?
20 A. Yeah. He's a theta chi.
21 Q. He's a theta chi?
22 A. Yeah.
23 Q. Are you in a fraternity there?
24 A. Yes.
25 Q. What fraternity are you in?
0008
1 A. Sigma Nu.
2 Q. Sigma what?
3 A. Sigma Nu.
4 Q. Any other extracurricular activities other than
5 that fraternity there at the University of Alabama?
6 A. No.
7 Q. Any idea what you might want to study or become
8 once you get out of college?
9 A. Not really.
10 Q. Now, LG-E, he was a lifeguard over
11 at the Racquet Club in the summer of 2007, wasn't he?
12 A. Oh, yeah, he was.
13 Q. Had y'all worked together before, you and
14 LG-E?
15 A. No.
16 Q. That was the first summer?
17 A. Yes.
18 Q. Did you know any of the other lifeguards who
19 were on duty on July 18th, 2007?
20 A. I did, yes.
21 Q. Who all did you know --
22 A. I knew --
23 Q. -- who was actually working on that day?
24 A. I knew Sr LG #1, and I knew

25 15 y/o LG #1.

0009

1 Q. Okay.

2 A. That's who I remember working.

3 Q. I'm going to show you what we have previously
4 marked as Plaintiffs' Exhibit No. 37, and this is the
5 lifeguard schedule for July 18th. And I'll zoom in on
6 this. If I hit the right button, I'll be lucky.

7 It shows that LG Supv was the
8 supervising head lifeguard. Sr LG #2 was on duty
9 that day, Sr LG #3 and LP LG. Did you know
10 any of those four?

11 A. I knew LG Supv.

12 Q. You knew LG Supv?

13 A. Yes.

14 Q. How did you know LG Supv?

15 A. He was a friend of my friend's brother.

16 Q. So, he was a friend of your older brother?

17 A. He's a friend of my friend's older brother.

18 Q. Okay. And 15 y/o LG #2 was also working that
19 day?

20 A. (Witness nodding head)

21 Q. Did you know 15 y/o LG #2?

22 A. I did not.

23 Q. Let me see if I can't find the other list here.

24 Did you say you knew Sr LG #1?

25 A. Yeah, I did.

0010

1 Q. Tell me how you knew Sr LG #1.

2 A. Well, I knew her from school. I didn't really
3 know her that closely, but I knew who she was.

4 Q. Okay. She also went to Memorial High School,
5 correct?

6 A. Yes, she did.

7 Q. She was a cheerleader over there?

8 A. Well, not at the time.

9 Q. She had previously been a cheerleader over
10 there?

11 A. I guess she was on JV at the time.

12 Q. So, she was a cheerleader at the time?

13 A. Yes.

14 Q. Did she get kicked off of the cheerleading team
15 over there at Memorial, to your knowledge?

16 A. I think she may have.

17 Q. Do you have any idea what the circumstances --

18 A. I don't know.

19 Q. -- surrounding that were?
20 A. I don't know.
21 Q. You've got to wait until I finish my question
22 before you answer. Okay?
23 A. Sorry.
24 Q. So, you have no idea what the circumstances
25 were with Sr LG #1 losing her cheerleader position at
0011
1 Memorial High School?
2 A. I do not really remember enough.
3 Q. How did you know 15 y/o LG #1?
4 A. She was in my brother's grade. Our families
5 knew each other, I think. They used to live down the
6 street from us.
7 Q. So, you have a younger brother who's 15 y/o LG #1's
8 age?
9 A. I think -- I think they might be in the same
10 grade, but she's older --
11 Q. Okay.
12 A. -- than I am, like a year or something.
13 Q. He just finished his sophomore year over at
14 Memorial.
15 A. Yes.
16 Q. Okay. And what's your brother's name?
17 A. YM #2
18 Q. YM #2?
19 A. Yes, sir.
20 Q. Now, you said 15 y/o LG #1 used to live over by you.
21 Is that over on Green Oaks?
22 A. She lived -- I live on Green Oaks, which is off
23 of Blalock. And I'm pretty sure they lived, like, on
24 the actual street of Blalock.
25 Q. Right. Just down the street from you.
0012
1 A. Yes.
2 Q. And you still live at 11609 Green Oaks?
3 A. Yes.
4 Q. At least when you're home from Alabama?
5 A. Yeah.
6 Q. Okay. And you've lived there your entire life?
7 A. Actually, we used to live in Atlanta, Georgia.
8 Q. Right. When you were a little kid?
9 A. When I was very small.
10 Q. But you went to Memorial Drive Elementary,
11 Spring Branch Middle School and then Memorial High
12 School, right?

13 A. I did.
14 Q. So, basically all your school age life you've
15 lived in Houston, Texas, correct?
16 A. Yes, sir.
17 Q. Now, your family was -- or your family were
18 members at the Houston Racquet Club back in the summer
19 of 2007, correct?
20 A. Yes, sir.
21 Q. How long have y'all been members there, to the
22 best of your knowledge?
23 A. Let's see. I remember going there as a little
24 kid, so, probably at least eight years.
25 Q. Okay. Did you go to summer camp there
0013

1 yourself?
2 A. I went to tennis camp there.
3 Q. Okay. But you never participated in the summer
4 camp that the Houston Racquet Club offered which was
5 similar to the summer camp that John Pluchinsky was in
6 last summer, correct?
7 A. No. I was never in that one.
8 Q. Now, your mother was on the board of directors
9 for the Houston Racquet Club last year. Is she still a
10 board member?
11 A. I think she is, yes.
12 Q. Do you know what her position is?
13 A. I could not tell you.
14 Q. When you attended the tennis camp, how old were
15 you?
16 A. I don't remember exactly. Probably anywhere
17 from eight to ten.
18 Q. Okay. Do you have any recollection of who was
19 in charge at the tennis camp back then?
20 A. I remember a guy named Thomas, but I don't know
21 his last name.
22 Q. Okay. Anybody else you remember from that camp
23 other than Thomas?
24 A. Maybe Cliff. I don't know his last name.
25 Q. Were there any incidents, accidents or injuries
0014

1 while you attended the tennis camp back when you were
2 between the ages of eight and ten --
3 A. No.
4 Q. -- that you recall?
5 A. Not that I remember.
6 Q. Okay. Okay. Back to 2007. That was your --

7 was that your third summer as a camp counselor at the
8 Racquet Club?

9 A. I think so. I can't quite remember, but -- I
10 can't remember if that was my second or third.

11 Q. Okay. So, you had been a camp counselor at
12 least in 2006.

13 A. Yes.

14 Q. And quite possibly in 2005?

15 A. Yes.

16 Q. When you worked in 2006 -- you remember doing
17 that, right?

18 A. Yes.

19 Q. -- do you remember what age group you were a
20 counselor for?

21 A. I don't remember specifically. I know I was in
22 several different ones. I think -- I know I worked with
23 6-year-olds at least one week.

24 Q. Okay. How about for 4-year-olds? Did you work
25 for the 4-year-olds? That was the group that John was
0015

1 in in 2007, right?

2 A. I don't remember working with them, but I
3 guess -- I don't remember if I did or if I didn't.

4 Q. Okay. So, the only age group that you recall
5 working with in 2006 is the 6-year-olds.

6 A. Yes, sir.

7 Q. And in 2005 do you recall what age group you
8 worked with?

9 A. I don't.

10 Q. Is that because you don't specifically remember
11 being a camp counselor in '05?

12 A. Yeah, pretty much.

13 Q. That would have been, what, your sophomore year
14 of high school '05? You graduated in '07, right?

15 A. Yeah. That would have been after my sophomore
16 year.

17 Q. Okay. In 2007, were you required to fill out a
18 new application for that summer --

19 A. Yes, I was.

20 Q. -- camp position? Got to wait. Okay? I'm
21 going to remind you. Don't take offense with it.

22 A. All right.

23 Q. It's just hard on Roxanne.

24 So, you had to fill out a new application
25 in 2007 for that position, correct?
0016

1 A. Yes, I did.
2 Q. And prior to the deposition, I handed you some
3 documents that the defendants, in particular the Houston
4 Racquet Club produced to us. And I would ask you to
5 identify what has been marked as Plaintiffs' Exhibit 82.
6 What's that first document?
7 A. This is my -- I guess this is my application?
8 Q. Well, look at the top right -- the top right
9 portion?
10 A. Employment eligibility verification.
11 Q. Okay. And what's the next page?
12 A. This is my application.
13 Q. Okay. And then what's the next page?
14 A. This is the record of my pay.
15 Q. Okay. Some payroll information?
16 A. (Witness nodding head)
17 Q. Okay. Thank you. And then the fourth page --
18 I didn't realize there were four -- this is also some
19 payroll information; is that correct?
20 A. Yeah, that's what it looks like.
21 Q. Okay. Now, I want to back up to Page 2 of
22 Plaintiffs' Exhibit 82. This is your application for
23 employment, correct? Now, this application was really a
24 two-page application, wasn't it? Do you remember that?
25 A. I believe so.
0017
1 Q. And all that's been produced to us is Page 1.
2 Let me just review the information that you provided to
3 the Club. Do you recall when you applied for the job?
4 A. I believe it was maybe towards the last weeks
5 of school.
6 Q. So, in May of 2007?
7 A. Yes.
8 Q. If I have some -- for example, I deposed 4 y/o B-CC #1
9 4 y/o B-CC #1 the other day and her application was signed in
10 May of 2007. Does that sound about the same time that
11 you would have signed yours?
12 A. Yes. Mine would have been around the same
13 time.
14 Q. And looking here, you indicate that the desired
15 position was camp counselor, that you could start in
16 June. I'm going to zoom on this a little so you can see
17 it.
18 A. Yes.
19 Q. "Ever applied to this company before," you
20 checked "yes." "Where," and you said, "same position."

21 "When," and you put "last year."

22 A. Yes.

23 Q. And then you indicated that you went to Spring
24 Branch Middle School. You didn't put Memorial --

25 A. I guess.

0018

1 Q. Memorial High School would have gone there.

2 And then University of Alabama as your college, correct?

3 A. Yes.

4 Q. Now, having looked at this application, does
5 that refresh your recollection at all as to whether or
6 not you may have worked in 2005?

7 A. No.

8 Q. Okay. When you applied for this position in
9 May of 2007, were you required to interview again with
10 anybody at the Houston Racquet Club?

11 A. I believe I was. Yeah, I believe so.

12 Q. Who did you interview with?

13 A. I think it was David Lamkin.

14 Q. Do you have a specific recollection of that
15 event, or is this something that you just have a -- kind
16 of a non-specific recollection of?

17 A. I'm pretty sure I remember it because it was --
18 I remember the interview being in the new workout
19 center, which wouldn't have been there the year before.

20 Q. And when you refer to the new workout center,
21 that would be the new fitness center, correct?

22 A. The fitness center.

23 Q. Is that correct?

24 A. Yes.

25 Q. And would you have interviewed with him in May

0019

1 of 2007 or sometime in June?

2 A. I don't remember for sure.

3 Q. Okay. Was anybody with Mr. Lamkin when he
4 interviewed you?

5 A. I believe it was just him.

6 Q. Did Mr. Lamkin -- well, let me ask you a
7 different question.

8 What do you recall Mr. Lamkin asking you
9 during that interview?

10 A. I don't really remember.

11 Q. So, you have no specific recollection of
12 anything you and Mr. Lamkin would have discussed during
13 that interview in 2007?

14 A. Nothing specific, no.

15 Q. Were -- do you recall Mr. Lamkin telling you
16 that there were any prerequisites or requirements for
17 the position of camp counselor?

18 A. Not that I recall.

19 Q. Well, do you know, regardless of whether or not
20 he told you, whether there were any prerequisite
21 requirements for becoming a camp counselor?

22 A. I know that you had to be -- I'm pretty sure
23 you had to be CPR certified.

24 Q. Okay. And let me show you what I've marked as
25 Plaintiffs' Exhibit 82A, which is a copy of your CPR
0020

1 card that the Racquet Club produced to us. And I'll
2 just zoom in on this real quick. AED essentials, date
3 completed 6/16/07 and then CPR adult child and infant,
4 also completed on 6/16/07. Both of those certifications
5 were good for one year. Is that your recollection?

6 A. Yes.

7 Q. Then today two of the documents that you've
8 produced ahead of your deposition and gave me were
9 copies of those cards that we just looked at. And I've
10 marked these as Plaintiffs' Exhibit 82A-1. The first
11 one is another copy of your CPR card. You included the
12 back side. And Page 2 is a copy of your AED essential
13 certification card along with the back page -- back side
14 of that card, correct?

15 A. Yes.

16 Q. And are these true and correct copies of your
17 CPR cards?

18 A. Yes, they are.

19 Q. And these certifications indicate that you took
20 the course through the Greater Houston Chapter of the
21 American Red Cross, correct?

22 A. Yes.

23 Q. Did you take that over at the Dad's Club off of
24 the Katy Freeway?

25 A. I took them at the YMCA on Post Oak, I believe.
0021

1 Q. So, you went to the Post Oak Y for those
2 certifications?

3 A. Yes.

4 Q. I'm going to talk to you about that a little
5 more in a minute.

6 Who was in charge at the summer camp for
7 the summer of 2007?

8 A. It would have been David Lamkin.

9 Q. Who was in charge of this summer camp in 2006?

10 A. David Lamkin.

11 Q. Do you know if there was any particular
12 individual at the Houston Racquet Club that had the
13 title "camp director"?

14 A. I guess it would have been David.

15 Q. Okay. Do you know if anybody had the title
16 "assistant camp director"?

17 A. I don't know.

18 Q. Okay. Who was in charge of the day-to-day
19 activities for the summer camp in 2007? Would that have
20 been Mr. Lamkin?

21 A. I guess I'm not -- like, who was in charge
22 of -- I'm not quite sure.

23 Q. Who was your boss in 2007?

24 A. My boss, David.

25 Q. Okay. Was he the person who was in charge of
0022

1 the day-to-day activities that were involved in that
2 summer camp?

3 A. I'm pretty sure he's the one who made them all.

4 Q. Huh?

5 A. I'm pretty sure he was the one who wrote all
6 the activities up.

7 Q. And was he the one who supervised all of the
8 camp counselors who worked during the summer camp
9 activities in 2007?

10 A. Yeah, I'm pretty sure.

11 Q. So, your best recollection is that David Lamkin
12 was in charge of the day-to-day activities for the
13 summer camp in 2007, correct?

14 A. Yeah. And also -- well, CD was
15 also -- like, from day-to-day she would talk to us about
16 our activities. And I guess --

17 Q. So, there was another person at the Houston
18 Racquet Club in 2007 who also assisted with the summer
19 camp?

20 A. Yes.

21 Q. And that person's name was CD?

22 A. Yeah.

23 Q. And could you describe to the jury what
24 CD role was as far as -- as far as day-to-day
25 interaction in the summer camp?

0023

1 A. She would help set up a lot of the activities
2 and plan them. She would -- in the mornings she would

3 talk to us about what needed to happen that day, if we
4 needed to change anything that we were doing. And like
5 I said, she would just address anything that needed to
6 be addressed.

7 Q. Okay. So, do you know if CD ever
8 had the title of assistant camp director, to your
9 knowledge?

10 A. I don't know.

11 Q. Okay. Your best recollection of things is that
12 CD did assist with the day-to-day activities
13 of the summer camp in terms of setting up and planning
14 the daily activities for the campers, correct?

15 A. I think so, yes.

16 Q. Did CD also assist with the
17 scheduling of certain camp counselors for certain age
18 groups or was that David Lamkin's job?

19 A. I don't know.

20 Q. Also, you said that CD assisted in
21 the mornings with plans for the day and would instruct
22 you and your co-counselors of any changes that needed to
23 be made.

24 A. Yes.

25 Q. And when you say any changes that needed to be
0024

1 made, are those changes with respect to counselor
2 activities, camper activities or both?

3 A. Probably both.

4 Q. Was there anybody else at the Houston Racquet
5 Club other than David Lamkin and CD who was,
6 in your mind, responsible for overseeing the summer camp
7 in 2007?

8 A. I guess Guillermo helped out sometimes.

9 Q. Guillermo Palmer?

10 A. I think that's his last name, yeah.

11 Q. Well, what's your recollection of Mr. Palmer's
12 activities with respect to the summer camp?

13 A. I know he helped out more around the pool.

14 Q. Okay. In what respect did Mr. Palmer help out
15 around the pool?

16 A. I think what I remember is at the end of the
17 day when we would have our talks at the end of the day,
18 he would talk to us about, you know, anything that we
19 needed to look at around the pool or anything like that.

20 Q. Okay. So, what you're telling us is that at
21 the end of each day, there was some sort of meeting
22 between the counselors, Mr. Palmer. Would CD

23 be at those meetings?

24 A. David, CD and Guillermo would be there.

25 Q. Okay. And your recollection is that from time
0025

1 to time, Mr. Palmer would point out things that needed
2 to be done or not done with respect to the pool; is that
3 correct?

4 A. Yes.

5 Q. Can you give me an example of things you recall
6 Mr. Palmer pointing out as something that needed to be
7 done or not done around the pool area?

8 A. I don't really remember anything specific. I
9 just know that from time to time, he did tell us certain
10 things about the pool area.

11 Q. And certain things about the pool area,
12 anything off the top of your head stick out?

13 A. Not anything specific. Not anything specific.

14 Q. Okay. And of course what we've been discussing
15 is the involvement of both CD and Guillermo
16 Palmer with respect to the summer camp in 2007, last
17 year.

18 A. Yes.

19 Q. Do you recall CD being at the
20 Houston Racquet Club in 2006?

21 A. Yes.

22 Q. Did you also work under her in 2006?

23 A. Yeah, I did.

24 Q. So, in 2006, David Lamkin was in charge of the
25 summer camp. CD assisted with the camp,
0026

1 both of whom you worked under?

2 A. Yeah, I believe so.

3 Q. What you described in terms of 2007 were that
4 y'all would meet in the mornings and you would meet in
5 the afternoon at the end of the day?

6 A. Yes.

7 Q. So, you'd kind of have a morning meeting and an
8 end-of-the-day kind of debriefing meeting?

9 A. Yeah.

10 Q. When Mr. Palmer brought up certain things about
11 the pool, do you recall him giving advice on safety
12 issues?

13 A. Yeah.

14 Q. Like what?

15 A. I know -- well, it was always stressed that we
16 were always in the pool at the same time with our kids.

17 I mean, he would always remind us, not that, you know,
18 it was ever really an issue. But I mean, he was just
19 always reminding us that -- that was the biggest issue.

20 Q. Mr. Palmer would do that reminding, or would
21 that be --

22 A. Both.

23 Q. -- Mr. Lamkin?

24 A. I mean, both.

25 Q. It's important, 4 y/o B-CC #3, for us to know if you
0027

1 have a specific recollection of certain people telling
2 you certain things. Okay? So, if that's your
3 recollection, that's fine. But if it's an assumption
4 that you're making, I need to know that, too. Okay?

5 A. Yeah.

6 Q. Do you understand me?

7 A. Yes.

8 Q. So, do you specifically remember Guillermo
9 Palmer reiterating the need to always be in the pool
10 when the children were in the pool?

11 A. Not specifically.

12 Q. Okay.

13 A. That was just an example. You asked for an
14 example.

15 Q. And when I said "children in the pool," you
16 understood me to mean the day campers?

17 A. Yes.

18 Q. Okay. And as you sit here today, again, you
19 really can't remember any of the things that Mr. Palmer
20 may have said or recommended to the camp counselors in
21 terms of these end-of-the-day debriefing meetings,
22 correct?

23 A. I remember there was an issue about towels
24 being left around --

25 Q. Okay.

0028

1 A. -- all over the place.

2 Q. So, you have a specific recollection of at
3 least one thing Mr. Palmer counseled you and your
4 co-counselors on; and that related to cleaning up around
5 the pool with respect to towels, dirty towels, garbage
6 and messes that were left there at the end of the day.

7 A. Yes, well, towels.

8 Q. Back to 2007 for a minute. You said that you
9 do recall having been interviewed again by Mr. Lamkin,
10 correct?

11 A. Uh-huh.

12 Q. Do you recall at any time having any
13 pre-employment meetings or interviews with CD
14 or anybody else at the Houston Racquet Club?

15 A. Not that I remember.

16 Q. Since you had been a summer camper in the year
17 2006, were you required to go through the orientation
18 again in 2007?

19 A. I was not there in 2007.

20 Q. So, the answer is, no, I was not required to go
21 through the orientation?

22 A. Not that I remember.

23 Q. Okay. So, let me rephrase that question.

24 A. Yeah. I thought that you said I was a camper.

25 Q. Back when you were a camp counselor in 2007
0029

1 having already gone through the interview process with
2 Mr. Lamkin, you have no recollection of being required
3 to go through the orientation again in 2007; is that
4 correct?

5 A. Correct, because the orientation that they
6 would -- that they were having was more for the
7 counselors just to -- like, how to go through the
8 day-to-day activities, not necessarily so much the
9 safety and all that. It was more how -- show the
10 counselors the actual routine of the day.

11 Q. Okay. So, Mr. 4 y/o B-CC #3, you do not recall -- let me
12 strike that.

13 Mr. 4 y/o B-CC #3, you were not required to go
14 through the orientation for the camp counselors for
15 summer camp 2007, correct?

16 A. Correct.

17 Q. Were you required or did you attend the
18 orientation in 2006?

19 A. Yes, I did.

20 Q. Who headed up that orientation from the Racquet
21 Club? Who conducted it?

22 A. David.

23 Q. Do you have a specific recollection of anybody
24 else from the Racquet Club assisting David with that
25 orientation?

0030

1 A. I think his wife may have been there.

2 Q. That would be DS?

3 A. Yes.

4 Q. Okay. Anybody else you recall being involved

5 in conducting that 2006 summer camp orientation?

6 A. Not that I remember.

7 Q. And from your earlier testimony, I take it that
8 that orientation process included an orientation of the
9 day-to-day activities of the summer camp, right?

10 A. Yes.

11 Q. It also included orientation of the routine
12 that the camp counselors would have to follow in regard
13 to the day-to-day activities, right?

14 A. Yes.

15 Q. And you said that the orientation was not an
16 orientation of any safety procedures or activities with
17 respect to the summer camp, correct?

18 A. There wasn't as much -- I mean, we went over
19 it. But the main focus of it was to show just the
20 routine.

21 Q. So, the emphasis of the 2006 orientation
22 meeting that you attended was the day-to-day activities
23 and not safety, correct?

24 A. Well, there was safety.

25 Q. I understand. But the emphasis, that means
0031

1 what the majority of the orientation involved was
2 instruction on the day-to-day activities as opposed to
3 instruction on safety-related issues; is that correct?

4 A. Correct.

5 Q. And I assume that your orientation in 2006, a
6 lot of the time that you spent was filling out paperwork
7 that the Houston Racquet Club required from all of its
8 camp counselors, right?

9 A. I think so.

10 MR. REESE: Objection, form.

11 Q. (By Mr. Pletcher) Similar to the paperwork
12 that you identified in Exhibit 82, your employment
13 eligibility payroll information, et cetera, right?

14 A. Yes.

15 Q. How much time in 2006 do you think that
16 orientation meeting involved the subject of safety? Any
17 clue?

18 A. I'd say we spent at least 20 to 30 minutes
19 going over the safety guidelines.

20 Q. Okay. And how long do you think that the
21 orientation in 2006 lasted?

22 A. I think about an hour or two. I don't remember
23 exactly, but I'm pretty sure.

24 Q. One or two hours?

25 A. Yes.

0032

1 Q. And of course that orientation meeting in 2006
2 was exclusively for camp counselors, right?

3 A. Yes.

4 Q. In other words lifeguards didn't attend that
5 orientation. It was a camp counselor orientation,
6 right?

7 A. That's correct.

8 Q. Let me show you what has been marked as
9 Plaintiffs' Exhibit 42 which is a document I believe
10 that you may be familiar with. Could you flip through
11 Exhibit No. 42 and see if you recognize it?

12 A. Yes, I remember this.

13 Q. And go ahead and look at Exhibit No. 43 while
14 you're at it.

15 A. Yeah, I remember that, too.

16 Q. Okay. Thank you, sir. For the record
17 Exhibit -- Plaintiffs' Exhibit 42 is the Houston
18 Racquet Club Camp Counselor Rules, Regulations and
19 Requirements for Summer 2007. It is a two-page
20 document, correct?

21 A. Yes.

22 Q. And Plaintiffs' Exhibit No. 43 is the agreement
23 signature page, correct?

24 A. Correct.

25 Q. We requested that the Houston Racquet Club

0033

1 produce all of the executed camp counselor agreements
2 for 2007 in this litigation, and we did not receive a
3 signed agreement for you. Do you recall signing one?

4 A. I mean, I don't remember exactly.

5 Q. Okay. So, you have no specific recollection
6 sitting here today whether or not you were required to
7 sign a camp counselor agreement for the summer camp at
8 the Houston Racquet Club in 2007, correct?

9 A. Correct.

10 Q. Do you recall whether or not you were required
11 to sign a similar type agreement in 2006?

12 A. Yes.

13 Q. Do you happen to have a copy of that agreement
14 at home, the 2006 agreement?

15 A. I don't know.

16 Q. You don't know?

17 A. I mean, I don't know. I would say probably
18 not.

19 Q. Right. I'm going to have you look at that
20 camp counselor agreement on a break in a little more
21 detail because I want to ask you some questions about
22 whether it's the same agreement that you signed in '06.
23 Okay?

24 A. Okay.

25 Q. But before I do that -- before I do that, I
0034

1 want to go back to the orientation that you attended in
2 '06. Okay? Because you didn't attend one in '07,
3 right?

4 A. Right.

5 Q. Back to the '06 orientation. Were you required
6 to take any sort of test, written test or skills test as
7 part of that orientation in 2006?

8 A. Not that I remember, no.

9 Q. And you said that you spent possibly 20 to 30
10 minutes talking about safety-related issues?

11 A. Correct.

12 Q. And that the meeting lasted anywhere from an
13 hour or two?

14 A. Yes.

15 Q. Could it have lasted longer?

16 A. It may have, yeah.

17 Q. Other than filling out paperwork, talking about
18 the activities of the summer camp and your roles and
19 responsibilities as a camp counselor, do you recall
20 anything else you guys did in 2006 in that orientation
21 process?

22 A. I remember like walking around through the
23 actual facilities that we were going to be using.

24 Q. So, y'all took a tour of the Racquet Club
25 facilities.

0035

1 A. Yes.

2 Q. And what do you recall about the tour?

3 A. I remember we went through the -- I guess it
4 was the old club house and went through there, kind of
5 showed us all the areas that we'd be using, where to put
6 the kids' lunches. I remember them showing us the car
7 pool area and then how to take the kids from the cars,
8 put their lunches up in the house and then out to the
9 tennis court and sit them out on the tennis courts until
10 all the kids had arrived. I think I remember -- I mean,
11 I remember them showing us the pool area. That's all I
12 really remember.

13 Q. Okay. When you say you took a tour of the old
14 club house, that's the club house, right, where the
15 dining area is, what you were referring to?

16 A. It's the -- I guess they call it the house.

17 Q. Okay. The old camp house?

18 A. Yeah, I guess. I don't know what it is
19 exactly.

20 Q. It's an old house, right?

21 A. Right.

22 Q. It's back towards the back portion of the
23 property, right?

24 A. Correct.

25 Q. Some other witnesses have referred to that

0036

1 building as the old camp house.

2 A. Yeah. I mean, I don't know. I just use
3 whatever.

4 Q. You remember looking at the car pool drop-off
5 where the summer campers would be dropped off by their
6 parents each morning, right?

7 A. Yes.

8 Q. And then you said that -- you were instructed
9 on where to put their lunches and where to go after you
10 got them from the cars.

11 A. Correct.

12 Q. And y'all typically go down to the tennis
13 courts to wait until all the summer campers got in
14 there, right?

15 A. Yes.

16 Q. You also said that you think you remember
17 looking at the pool area. Do you have a specific
18 recollection of that in 2006? Of course we're talking
19 about the orientation meeting in '06.

20 A. Yeah. I mean, I don't specifically remember.

21 Q. So, no specific recollection of touring the
22 pool area in '06, right?

23 A. Right.

24 Q. Do you remember getting a tour of the fitness
25 center in 2006?

0037

1 A. I don't really -- no, I don't remember.

2 Q. And of course for the jury's sake in 2006, the
3 resort pool, the same pool that John Pluchinsky drowned
4 in, was up and running in '06, right?

5 A. I don't remember, really. I can't remember if
6 it was or -- I remember there was construction going on,

7 I think.

8 Q. Right. But you don't have a specific
9 recollection sitting here today whether or not in the
10 summer of 2006 when you worked as a camp counselor at
11 the Houston Racquet Club whether or not the resort pool
12 that John drowned in was up and running and operating
13 back in that summer?

14 A. I don't remember specifically if it was up or
15 not.

16 Q. I forgot to tell you, because I can go on and
17 on and on. And I should have told you at the beginning
18 of the deposition. If you want to take a break at any
19 time for any reason, talk to your lawyer, get a breath
20 of air, go to the restroom, whatever, you just stop me
21 and say, Mr. Pletcher, can I go to the restroom.

22 A. All right.

23 Q. And I don't even care if I'm mid-sentence.

24 Okay?

25 A. All right. Thanks.

0038

1 Q. All right. So, you have no recollection of the
2 resort pool being operable in 2006, right?

3 A. Right.

4 Q. Back to your orientation meeting in 2006, are
5 the safety guidelines and rules that you referred to
6 earlier when you said that they were reviewed during the
7 orientation for 20 or so minutes, did that include these
8 rules, regulations and requirements that are included in
9 the camp counselor agreement?

10 A. Yes.

11 Q. You specifically remember David Lamkin and/or
12 CD reviewing those rules, regulations and
13 requirements with y'all in the summer of 2006
14 orientation?

15 A. Yes, I remember that.

16 Q. And do you recall reviewing any other
17 safety-related information similar to that camp
18 counselor agreement, or is that what took the 20 or so
19 minutes?

20 A. I think that was it.

21 Q. Okay. Now, when you toured the facility, do
22 you remember who conducted that tour in 2006?

23 A. I don't remember specifically who it was.

24 Q. Do you recall anybody at the Houston Racquet
25 Club, be it David Lamkin, CD, DS

0039

1 or anybody else, point out the location of
2 the life-saving equipment that existed and was in place
3 in the summer of 2006?
4 A. I don't remember specifically.
5 Q. So, you don't have a specific recollection of
6 anybody at the Houston Racquet Club in 2006 showing you
7 where the emergency first aid kit was, right?
8 A. Right. I don't remember. They may have, but I
9 don't --
10 Q. Okay. You have no specific recollection,
11 though, of them showing you the location of the
12 emergency first aid kit, the emergency phone, the AEDs,
13 the face masks that are used during CPR, the oxygen
14 bottle or any of the pool safety equipment, do you?
15 A. No, I don't remember.
16 Q. Do you recall in the summer of 2007, last
17 summer when John drowned, how many AEDs the Houston
18 Racquet Club had on location?
19 A. I know we had at least one. I don't know how
20 many there were.
21 Q. And what is an AED?
22 A. It's the defibrillator, I guess is how you say
23 it.
24 Q. Right.
25 A. It's got the shock pedals. Well, the ones we
0040
1 had didn't have pedals. It had --
2 Q. Pads.
3 A. Yeah, sticky things.
4 Q. It's the automatic external defibrillator?
5 A. Yeah.
6 Q. You studied that in your 2006 AED essentials
7 course that you took over at the Post Oak Y, correct?
8 A. Correct.
9 Q. That's what this AED essentials refers to is
10 study and training on the use of automatic external
11 defibrillator, right?
12 A. Yes.
13 Q. And sitting here today, your recollection is
14 that the Houston Racquet Club had at least one AED. But
15 you have no recollection of them having more than one,
16 right?
17 A. I don't know how many they had. I just know we
18 had them.
19 Q. You know they had one. Did you know where it
20 was located in 2007?

21 A. I don't remember if I knew where it was at the
22 time.

23 Q. So, before John Pluchinsky drowned, you did not
24 know the location of the AED, correct?

25 MR. REESE: Objection, form.

0041

1 Q. (By Mr. Pletcher) Let me rephrase that
2 question since he objected.

3 You have no recollection sitting here
4 today whether or not you knew last summer on July 18th,
5 2007 or before where that one AED was located, correct?

6 A. I don't remember if I knew where it was at the
7 time.

8 Q. Right. Do you have a recollection sitting here
9 today where the emergency phone was located at the
10 resort pool on July 18th, 2007?

11 A. I'd seen it around before, but I don't remember
12 where it is right now.

13 Q. Okay. Where do you think it was?

14 A. I think it may have been on the lifeguard stand
15 or somewhere around there. I know I've seen it before.

16 Q. So, sitting here today, your best recollection
17 is that the emergency phone in the pool area was on the
18 lifeguard stand?

19 A. Maybe. Like I said, I remember seeing it; but
20 I don't remember exactly where.

21 Q. Okay. So, you remember seeing an emergency
22 phone at the resort family pool in 2007; but you can't
23 give us a specific location, correct?

24 A. Correct.

25 Q. And of course you have no recollection of

0042

1 anybody at the Houston Racquet Club ever specifically
2 pointing out the location of that emergency phone at the
3 family pool in 2007, right?

4 A. Right.

5 Q. Is that correct?

6 A. Correct.

7 Q. Now, after the orientation meeting that was
8 held in 2006, was everybody hired, all the camp
9 counselors who attended that orientation?

10 A. I don't think everyone who attended was hired.

11 Q. Who do you know was not?

12 A. I don't remember specifically, but I think I
13 remember hearing people who went that weren't hired.
14 But I'm -- I'm not sure about that.

15 Q. How were you notified of your hiring in 2006?

16 Do you have a recollection of that?

17 A. I think I got a phone call.

18 Q. And when you got that phone call, what do you
19 remember being told?

20 A. That I was -- you know, I need to come attend
21 that orientation meeting.

22 Q. Okay.

23 A. And that I think I needed to do an interview
24 also as well, maybe.

25 Q. Okay. Well, that doesn't make much sense.

0043

1 A. Wait.

2 Q. You think you'd be interviewed first. Now, I
3 may be mistaken given some of the things I've heard in
4 this case. But --

5 MR. REESE: Objection, form.

6 Q. (By Mr. Pletcher) -- do you have a
7 recollection of actually being interviewed before you
8 were hired?

9 A. Yeah. I think --

10 MR. REESE: Same objection.

11 A. Yeah, I think it was before.

12 Q. (By Mr. Pletcher) Okay.

13 THE WITNESS: Is it all right if we take a
14 break?

15 MR. PLETCHER: Sure.

16 THE VIDEOGRAPHER: The time is 1:55 p.m.

17 We're off the record.

18 (Recess from 1:55 to 2:04)

19 THE VIDEOGRAPHER: The time is 2:04 p.m.

20 We're back on the record.

21 Q. (By Mr. Pletcher) Mr. 4 y/o B-CC #3, are you ready to
22 continue?

23 A. Yes.

24 Q. Let me before you clarify anything continue
25 where I was.

0044

1 A. Okay.

2 Q. We were talking about whether or not you
3 interviewed before you were told that you were hired in
4 2006, correct? You remember that line of questioning?

5 A. (Witness nodding head)

6 Q. You have to answer verbally.

7 A. Yes.

8 Q. And you remember receiving a call --

9 A. I think what it --

10 Q. -- saying that you were hired and you need to
11 come to the orientation.

12 A. Yes.

13 Q. Is that your recollection of things?

14 A. Yes.

15 Q. After you were called and told that you were
16 hired and after you attended the orientation in 2006,
17 did you know when you would be working, what weeks you'd
18 be working, what actual days you would be working or did
19 that change from week-to-week or day-to-day?

20 A. Well, they -- I mean, they assigned you weeks
21 at the beginning of the camp -- I mean, the camp term.

22 Q. So, you knew exactly which weeks you would be
23 working in 2006?

24 A. Yes.

25 Q. And there wasn't a situation where you didn't

0045

1 know from week-to-week whether or not you'd be working.

2 Think back to 2006. Not '07, '06.

3 A. All right. Yeah, I knew which weeks I'd be
4 working.

5 Q. Okay. Good. Now, you had said earlier that
6 you weren't sure whether or not the resort pool or
7 family pool was open in 2006. Now, the evidence in this
8 case is that it was open. Okay?

9 A. (Witness nodding head)

10 Q. Or at least I believe that's the evidence. Is
11 that what you needed to clarify about?

12 A. Well, what I was going to clarify was that at
13 the time about the phone --

14 Q. The emergency phone?

15 A. Yeah -- I know that I knew where it was then,
16 but I don't remember where it is now.

17 Q. Yeah. I heard you.

18 A. Okay.

19 Q. I think I heard you say that. But back to '06
20 in the resort family pool. If that pool wasn't open in
21 2006, where did the summer campers in 2006 swim?

22 A. Well, I guess then it must have been open. And
23 I guess that means that I guess I did work 2005 then
24 because I remember working a year where we were in the
25 other pool.

0046

1 Q. And the other pool would be the old pool.

2 A. Yes.

3 Q. The old rectangular pool.
4 A. Yes.
5 Q. Okay. Okay. So, quite possibly you worked
6 three summers.
7 A. Yes.
8 Q. And this would have been -- 2007 would have
9 been your third summer.
10 A. Yes.
11 Q. How did you first get your job as a camp
12 counselor there?
13 A. Well, my mom told me about how they were having
14 a camp there.
15 Q. Yes.
16 A. And so, I decided to apply.
17 Q. So, your mother suggested that you try to get a
18 summer job at the Houston Racquet Club?
19 A. Yeah.
20 Q. Okay. And did anybody at the Houston Racquet
21 Club ever tell you you can't work here because your mom
22 is on the board of directors?
23 A. No.
24 Q. So, to your knowledge, the Racquet Club didn't
25 have any sort of nepotism rule. You know what nepotism
0047
1 is, don't you?
2 A. No, I don't.
3 Q. Nepotism is a rule that a lot of employers have
4 that means that if you work for the company, one of your
5 family members cannot also work there.
6 MR. REESE: Objection, form.
7 Q. (By Mr. Pletcher) To your knowledge, they
8 didn't have that sort of rule?
9 A. Not to my knowledge.
10 Q. Now, backing up based upon that refreshed
11 recollection of working in '05, do you remember being
12 interviewed in '05?
13 A. I don't remember.
14 Q. Do you remember going through an orientation
15 process in '05?
16 A. I don't remember.
17 Q. But when you told us in detail about the
18 interview and the orientation process in 2006, you're
19 sure that happened in '06, right?
20 A. Yes.
21 Q. Okay. I just wanted to make certain that we
22 had our years right there.

23 A. Yeah. Because it occurred on the tennis
24 courts -- not the tennis courts -- the basketball courts
25 where the pool used to be.

0048

1 Q. So, the orientation meeting --

2 A. That I remember.

3 Q. -- in 2006 occurred on the new tennis -- on the
4 new basketball court which is located where the old pool
5 used to be --

6 A. (Witness nodding head)

7 Q. -- is that correct?

8 A. Yes.

9 Q. Okay. In the summer of 2007, do you recall
10 there being six camp counselors for the 4-year-old boys?

11 A. Yes, I do.

12 Q. And there were six camp counselors for the
13 4-year-old boys during week five which included
14 July 18th, the day that John drowned, correct?

15 A. Yes.

16 Q. On that day, do you recall the following people
17 being those camp counselors for the 4-year-old boys:
18 4 y/o B-CC #1, 4 y/o B-CC #5, 4 y/o B-CC #6, 4 y.o B-CC #4,
19 4 y/o B-CC #2 and yourself?

20 A. Yes, I do.

21 Q. Do you recall whether or not on July 18th, 2007
22 there were any camp counselor supervisors or pool
23 supervisors at the family pool at the time that John
24 Pluchinsky drowned?

25 A. There was Supv CC #2 and Supv CC #1 were

0049

1 also in the pool.

2 Q. And they were the pool --

3 A. They were.

4 Q. -- supervisors or camp counselor supervisors?

5 A. That I remember, yeah.

6 Q. Can you think of any other position that
7 they -- or title they may have held?

8 A. I believe they were, like, athletic
9 supervisors. Like, they set up -- like, we had, like,
10 soccer and stuff. They would set that up.

11 Q. Okay. But you knew they had some sort of
12 supervisory role, correct?

13 A. Somewhat, yes. Yes.

14 Q. Somewhat? More so than yourself.

15 A. Yes.

16 Q. And do you have a recollection that Supv CC #1

17 and Supv CC #2 had a supervisory role while the
18 4-year-old campers were in the swimming pool with you
19 and the other five camp counselors?

20 A. What I remember is that they didn't have a
21 group at their station at the time. So, therefore, they
22 went to the pool to help look out and have extra people
23 in the pool.

24 Q. Okay. So, nobody told you nor did you have any
25 personal knowledge that Supv CC #1 or Supv CC #2
0050

1 were acting as camp counselor supervisors or pool
2 supervisors at the time John Pluchinsky drowned?

3 A. Not that I remember.

4 Q. So, having no recollection of anybody at the
5 Houston Racquet Club, be it David Lamkin, CD
6 or anybody else, telling you that Supv CC #1 or Supv CC #2
7 were pool supervisors or camp counselor
8 supervisors, you didn't have any knowledge that they had
9 some sort of authority over you --

10 MR. REESE: Objection, form.

11 Q. (By Mr. Pletcher) -- and could give you
12 instructions on what to do or not to do while you were
13 in the family pool; is that correct?

14 A. Well, that wasn't their role.

15 Q. That was not their role?

16 A. Was not to oversee me in the pool.

17 Q. And their role, to your knowledge, was not to
18 oversee or supervise any of the other camp counselors
19 for the 4-year-old group on July 18th, 2007, correct?

20 A. When we were at their station, it was their --
21 that was their duty.

22 Q. "When we were at their station." And that was
23 their athletic station --

24 A. Correct.

25 Q. -- right?

0051

1 A. Correct.

2 Q. And what do you mean by "athletic station"?

3 A. Like, they had soccer, Frisbee, whatever the
4 activity was for that day.

5 Q. Okay. But it certainly wasn't a pool activity,
6 correct?

7 A. Correct.

8 Q. And to your knowledge, the only reason that
9 Supv CC #1 or Supv CC #2 were in the family pool on
10 July 18th when John drowned was to be there as two sets

11 of eyes --

12 A. Correct.

13 Q. -- right?

14 A. Correct.

15 Q. On July 18th, 2007 when John drowned, there
16 were also other camp counselors in the family pool at
17 the time, right?

18 A. I know there was another group there prior, but
19 I don't think they were in the pool at the time that it
20 happened.

21 Q. What group do you think that was?

22 A. I don't remember which age group it was. I
23 remember one of the counselors that was in that group.

24 Q. What was that counselor's name?

25 A. 7 y/o B-CC #1.

0052

1 Q. 7 y/o B-CC #1?

2 A. Yes.

3 MR. PLETCHER: 7 y/o B-CC #1 for the record.

4 Q. (By Mr. Pletcher) Okay. I'll tell you what:

5 I will show you 7 y/o B-CC #1's statement to see if this
6 will refresh your recollection of whether or not her
7 group was in the pool at the time that John drowned.

8 Let me show you what's been marked as Plaintiffs'
9 Exhibit 74. Let me back this out a little bit so we can
10 all see it. Focus it. Can you see that, sir?

11 A. Uh-huh.

12 Q. It says 7 y/o B-CC #1 up at the top. She was
13 a camp counselor for the 7-year-old boys. That was her
14 statement that she wrote on July 18th, 2007. Do you
15 remember filling out a statement that day?

16 A. Yes, I do.

17 Q. Okay. We'll look at that in a minute.

18 In here 7 y/o B-CC #1 says -- 7 y/o B-CC #? Is
19 that how you pronounce it?

20 A. 7 y/o B-CC #.

21 Q. 7 y/o B-CC #-- says, "Our group had just been lined
22 up at the edge of the pool and we were to go to
23 lunch." Okay? I'll just go ahead and continue to read
24 it. "At the" -- "we were walking to lunch at the
25 pavilion," which is how far from the pool?

0053

1 A. Twenty, 30 feet, not that far.

2 Q. So, in the area, correct?

3 A. Yes.

4 Q. "When a woman came running over very disturbed.

5 I then saw the group of people crowding around the boy
6 and realized what was happening." Okay. Based upon
7 this statement of 7 y/o B-CC #1, does that refresh
8 your recollection that prior to the time that John
9 Pluchinsky was found floating face down in the family
10 pool, that the 7-year-old boys were, indeed, in the
11 pool?

12 A. Yes.

13 MR. REESE: Objection, form.

14 Q. (By Mr. Pletcher) Okay. Did you know any of
15 the other 7-year-old boy camp counselors that were
16 working on July 18th?

17 A. I don't remember who else was a counselor in
18 that group.

19 Q. Okay. Let me see if I can refresh your
20 recollection. 7 y/o B-CC #2 was a camp counselor for the
21 7-year-old boys. Do you remember 7 y/o B-CC #2?

22 A. Yes, I know 7 y/o B-CC #2.

23 Q. And 7 y/o B-CC #3 was a camp counselor for
24 the 7-year-old boys. You remember 7 y/o B-CC #3?

25 A. Yes, I remember him.

0054

1 Q. Okay. Do you remember -- let me strike that.

2 The evidence in this case is that there
3 were also 4-year-old camp girls -- campers who were
4 girls in the resort pool when John drowned. Did you
5 know any of the 4-year-old camper counselors?

6 A. I don't remember who they were.

7 Q. Okay. Let me see if I can refresh your
8 recollection. 4 y/o G-CC #1, did you know 4 y/o G-CC #1?

9 A. No.

10 Q. 4 y/o G-CC #2?

11 A. No.

12 Q. 4 y/o G-CC #3?

13 A. No.

14 Q. 4 y/o G-CC #4?

15 A. I know 4 y/o G-CC #4.

16 Q. Okay. Now, prior to July 18th, how many of
17 these camp counselors did you know --

18 A. Prior --

19 Q. -- outside of the Racquet Club?

20 A. I knew 7 y/o B-CC #2. I knew 7 y/o B-CC #1. I knew 4 y/o G-CC #4
21 outside because I'd met her there.

22 Q. And when you say "7 y/o B-CC #1," that's 7 y/o B-CC #1 ?

23 A. 7 y/o B-CC #1.

24 Q. So, 7 y/o B-CC #2, 7 y/o B-CC #1. You knew 4 y/o G-CC #4?

25 A. Yes. And are you also asking me about the
0055

1 people in my own group?

2 Q. Yes.

3 A. Okay. I knew 4 y/o B-CC #4. I knew 4 y/o B-CC #2, and I knew
4 4 y/o B-CC #5.

5 Q. So, before July 18th, outside of the Houston
6 Racquet Club, you knew 4 y/o B-CC #2, 4 /B-CC #4, 4 y/o B-CC #5
7 correct?

8 A. Yes.

9 Q. You also knew 4 y/o G-CC #4, 7 y/o B-CC #2 and
10 7 y/o B-CC #1.

11 A. Yes.

12 Q. And did you know all of these people from
13 having worked with -- I'm sorry -- having gone to school
14 with them?

15 A. All of them except for 4 y/o G-CC #4. I knew her
16 cause I'm good friends with her cousin, and I also met
17 her at the camp.

18 Q. Also met her --

19 A. I met her at the camp.

20 Q. Okay. During your employment in 2007, do you
21 recall any social relationships outside of the Racquet
22 Club between the camp counselors?

23 A. You mean did we know each other?

24 Q. Yeah. I guess you just told me that you did.

25 A. Yes.

0056

1 Q. How about boyfriend/girlfriend? Do you know if
2 any of the camp counselors dated back in 2007?

3 A. Not that I remember, no.

4 Q. Okay. What about counselors and lifeguards?
5 Do you know if any of the counselors and lifeguards were
6 dating or boyfriend/girlfriend back in the summer of
7 2007?

8 A. I don't think so.

9 Q. Do you have a recollection that there are any
10 outside relationships such as those in the years 2006 or
11 2005?

12 A. The only thing I can remember was Supv CC #1 and
13 maybe CC-C, is the only one I remember.

14 Q. Supv CC #1 and CC-C?

15 A. CC-C.

16 Q. CC-C. Were they dating in '07, or was that
17 prior to '07?

18 A. I don't know if they were like -- I know they

19 were together, but I don't really know what the whole
20 deal was.

21 Q. Okay. I want you to think back to the summer
22 of 2007. And actually let me go ahead and establish
23 another fact. The Houston Racquet Club has produced the
24 time schedules for the camp counselors last summer, and
25 I have marked them as Plaintiffs' Exhibit 72A through
0057

1 Plaintiffs' Exhibit 72E. According to these records,
2 your name -- and you can see it shows week one, and it
3 lists all the camp counselors who worked during that
4 week. And it also shows the dates of the camp. The
5 first week was June 12th through the 15th. That shows
6 in and out times. Okay? Do you remember having to sign
7 in on a sheet?

8 A. Yes, in the mornings and in the afternoons.

9 Q. Okay. Based upon these records, your name
10 first appears in week two. Is that your recollection of
11 when you first started working?

12 A. That's correct. I was not in town the first
13 week.

14 Q. And that is on Plaintiffs' Exhibit 72B, is
15 where your name first shows up. And then your name also
16 shows up during week three on Plaintiffs' Exhibit 72C,
17 week four on Plaintiffs' Exhibit 72D -- actually, your
18 name's down on the bottom -- and week five on
19 Plaintiffs' Exhibit 72E. Are those the weeks that you
20 recall working during the summer of 2007?

21 A. Yes.

22 Q. And based upon your earlier testimony, you knew
23 at least at the time of your orientation that you -- you
24 knew what the weekly schedule was for yourself, correct?

25 A. Yes.

0058

1 Q. Do you have any idea who -- a recollection of
2 who gave you your schedule -- weekly assignment schedule
3 for 2007?

4 A. For 2007 I remember I called David after --
5 whenever I got back in town, and I -- you know, I told
6 him that I -- and I had my application. And he said I
7 would be working that week. And I think I remember I
8 didn't have an exact schedule that year, but I -- for
9 2007 I asked him, you know, on the Friday of that week,
10 I was, like, "Do you want me to come back for the next
11 week?"

12 Q. Right.

13 A. And he said, "I'll call you on Sunday if I need
14 you for this week."

15 Q. Okay. Let me see if I understand what you've
16 just told us. Your recollection is that you must have
17 been on vacation during week one?

18 A. Yes.

19 Q. And when you got back, you called David and
20 told him you were back in town; is that correct?

21 A. Yeah.

22 Q. And he told you you could come in and work week
23 two, which was the week of June 18th. The camp was
24 Tuesday, Wednesday, Thursday, Friday. So, it would have
25 been -- June 19th would have been your first day.

0059

1 A. Yes.

2 Q. Does that sound right?

3 A. Yes, that sounds right.

4 Q. And then that Friday, June 22nd, Mr. Lamkin
5 would have told you whether or not you were going to
6 work the next week?

7 A. Yeah.

8 Q. Which would have been the week of June 26?

9 A. Yes.

10 Q. And then at the end of that week, he would have
11 told you if you're going to work during the week of
12 July 10th, which was the fourth week?

13 A. That was --

14 Q. That's your recollection of the routine?

15 A. That was solely for me, though. That was
16 because I wasn't at the orientation, and he didn't have
17 a formal sheet to give me to -- for my weeks.

18 Q. Yes.

19 A. So, that was -- that was my situation. That's
20 not how it worked for everyone else. And that's not how
21 it worked the year before for me.

22 Q. Okay. So, '07 was peculiar to yourself.

23 A. Yes.

24 Q. Or unique to yourself, right?

25 A. Correct.

0060

1 Q. And it was different than '06 in what way? In
2 '06 you knew all the weeks you were going to work?

3 A. Yeah, we got -- I think I remember we got an,
4 like, envelope saying, you know, you've been hired and
5 had our name printed on there and said what weeks we
6 were going to be working. But because I wasn't at

7 orientation, I don't think I got one.

8 Q. Okay. And did David Lamkin tell you why he
9 didn't have a schedule for you set up for the entire
10 summer? I mean, weren't you curious as to, wait a
11 second?

12 A. Not really. I mean, I guess I didn't really
13 ask.

14 Q. Okay. So, you have no recollection of having
15 any discussions with why Mr. Lamkin didn't have the full
16 summer schedule for you, correct?

17 A. I don't remember.

18 Q. Do you know who specifically did the schedules
19 for summer camp 2007?

20 A. No, I don't.

21 Q. So, you don't know if it was Mr. Lamkin,
22 CD or anybody else, right?

23 A. Right.

24 Q. Do you recall in 2007 what criteria, if any,
25 the Houston Racquet Club used to assign certain camp
0061

1 counselors to certain age groups?

2 A. No, I don't know the criteria.

3 Q. And you have no idea if there was any criteria
4 used in 2006 or 2005?

5 A. I don't know what the criteria was, no. I
6 mean, I know you had to be CPR certified.

7 Q. No. No, no, no. You don't know in 2005 or
8 2006 whether the Houston Racquet Club had a criteria for
9 assigning camp counselors to a certain age group?

10 A. No. I don't know what the criteria was.

11 Q. At any time in 2007 did the Houston Racquet
12 Club provide you or any of your co-counselors, to your
13 knowledge, with any special training or instruction with
14 respect to your duties and responsibilities for
15 overseeing the 4-year-old campers?

16 A. Nothing -- we didn't have, like, specific
17 training. And I know that we were always told, you
18 know, with the 4-year-olds, you have to be closer to
19 them in the pool, more watchful in the pool because they
20 were younger.

21 Q. Okay. But -- okay. So, you specifically
22 remember receiving instruction or being told that when
23 the 4-year-olds were in the pool, you had to pay
24 particular attention to them when they are in the water
25 because of their age?
0062

1 A. I think so, yeah. Yes.

2 Q. But at no time did the Houston Racquet Club,
3 David Lamkin, CD or anybody else at the
4 Racquet Club provide you or any of your co-counselors
5 any special training or instruction on how to work with
6 the 4-year-old campers, right?

7 MR. REESE: Objection, form.

8 A. Nothing specific.

9 Q. (By Mr. Pletcher) Didn't receive any sort of
10 special training in water safety?

11 A. Not that I remember.

12 Q. Didn't receive any special training related to
13 pools, right?

14 A. Not that I remember.

15 Q. The Houston Racquet Club, neither David Lamkin,
16 CD, DS or anybody else at the
17 Racquet Club ever provided you with any specific
18 instruction about what to look for to determine whether
19 or not a 4-year-old camper or any other age group for
20 that matter was in trouble in the pool?

21 MR. REESE: Objection, form.

22 A. Not that I remember.

23 Q. (By Mr. Pletcher) In other words, the Houston
24 Racquet Club didn't provide you or your co-counsel with
25 any specific training or instruction --

0063

1 MR. LAVINE: Co-counselors.

2 Q. (By Mr. Pletcher) I'm sorry. Let me restate
3 that.

4 Neither Mr. Lamkin nor CD or
5 anybody else at the Racquet Club ever specifically
6 instructed you or any of your co-counselors on what to
7 look for with respect to what a 4-year-old may look like
8 if they are drowning in the family pool?

9 A. No.

10 Q. The Houston Racquet Club, neither David Lamkin
11 or CD or anybody else, ever gave you any
12 special instruction or information on the difference
13 between a person who was in distress versus a person who
14 was actually drowning in a swimming pool, did they?

15 MR. REESE: Objection, form.

16 A. No. I mean, it seems like common sense to me.

17 Q. (By Mr. Pletcher) Okay. We'll talk a little
18 bit more about that in a minute.

19 Did anybody at the Houston Racquet Club
20 train you and your co-counselors on what the instinctive

21 drowning response is?

22 MR. REESE: Objection, form.

23 Q. (By Mr. Pletcher) Have you ever heard that?

24 A. No.

25 Q. Did the Houston Racquet Club, David Lamkin,
0064

1 CD even Guillermo Palmer who you know from
2 being in charge of the pool, did any of them ever tell
3 you what to look for to determine whether or not a
4 4-year-old needed help when he or she was in the
5 swimming pool?

6 MR. REESE: Objection, form. Objection,
7 form.

8 A. No.

9 Q. (By Mr. Pletcher) Nothing at all, correct?

10 A. Not that I remember. Nothing specific.

11 Q. And of course you are not a lifeguard, never
12 have been, correct?

13 A. Correct.

14 Q. You've received no lifeguard training or
15 instruction, correct?

16 A. Not lifeguard training but CPR training.

17 Q. Okay. All right. My question was specifically
18 related to lifeguard training. You have never received
19 any sort of lifeguard instruction or training, correct?

20 A. Correct.

21 Q. You've never been certified as a lifeguard.

22 A. Correct.

23 Q. You have never been certified as a swim
24 instructor, have you?

25 A. No.

0065

1 Q. Have you taken any water safety courses in your
2 life?

3 A. May have at -- well, not that I remember.

4 Q. Okay. So, you have no specific recollection of
5 ever taking any formal water safety training courses in
6 your lifetime, correct?

7 A. Correct.

8 Q. Was that "yes"?

9 A. Yes.

10 Q. Okay. And you've never taken any training
11 courses or instruction from the American Red Cross or
12 any other formal organization with respect to swim
13 testing children, correct?

14 A. Correct.

15 Q. And you've never taken any courses or received
16 any training from the American Red Cross or any other
17 organization on the criteria to determine whether an
18 individual, be them 4-year-olds or older, are pool safe?

19 A. Correct.

20 Q. Back to your assignment and schedule. Back in
21 2007 were you allowed to request a specific age group?

22 A. I'm sure you could, but I never really heard of
23 anyone doing it.

24 Q. So, you have no specific recollection of ever
25 requesting an age group yourself, right?

0066

1 A. No.

2 Q. Is that correct?

3 A. Correct.

4 Q. And you have no specific recollection of
5 whether or not the Houston Racquet Club actually allowed
6 camp counselors to choose a certain age group, correct?

7 A. Correct.

8 Q. But you said that you thought you probably
9 could. And my follow-up would be: Do you know of any
10 camp counselor who specifically requested a certain age
11 group?

12 A. I don't. I mean, you could request one. But
13 I'm not saying that it would be granted or anything like
14 that.

15 Q. Okay. Perfect. Now, back to your work in
16 2007. Did you in week two -- were you assigned to the
17 4-year-old boy group?

18 A. Yes.

19 Q. How about week three?

20 A. I don't remember exactly which week, but I know
21 I was assigned to them at least one other week.

22 Q. Okay. Do you specifically remember being
23 assigned to the 4-year-old group of boys in week two?

24 A. I don't remember which group.

25 Q. Okay. So, all you remember today is that

0067

1 during the fifth week -- which was Space & Science week,
2 right?

3 A. Yeah.

4 Q. Is that your recollection?

5 A. Yeah.

6 Q. -- that during that week, the week that started
7 July 17th, you were specifically assigned to the
8 4-year-old boy group.

9 A. Yes.

10 MR. REESE: Objection, form.

11 MR. PLETCHER: I don't know why he
12 objected, but let me ask the question again.

13 MR. REESE: Because you're
14 mischaracterizing evidence.

15 Q. (By Mr. Pletcher) What --

16 MR. PLETCHER: I didn't ask you for
17 anything, Wade.

18 MR. REESE: Well, you side-barred. So,
19 you deserved one back.

20 Q. (By Mr. Pletcher) Do you have a specific
21 recollection of what age group you were assigned to in
22 week five?

23 A. I was assigned to the 4-year-old boys.

24 Q. Other than week five, do you have a
25 recollection of being assigned to the 4-year-old group

0068

1 in any prior weeks that you worked in summer of 2007?

2 A. Yes, but not specifically which week.

3 Q. Okay. What other age groups did you work with
4 during the other two weeks prior to week five?

5 A. I think the 7-year-old boys at least one week,
6 and I'm not sure which is the other one.

7 Q. Okay. Just so the record is clear, week five
8 you were specifically assigned to 4-year-old boys,
9 correct?

10 A. Correct.

11 Q. You have a recollection of having one other
12 week prior to week five which would have been week four,
13 week three or week two where you worked with the
14 4-year-old boys, right?

15 A. Yes.

16 Q. You also have a recollection of being assigned
17 and actually working with the 7-year-old boys during one
18 of the prior weeks prior to week five, right?

19 A. Yes.

20 Q. But you don't have a specific recollection of
21 what other group -- age group you were assigned to in
22 that other week prior to week five.

23 A. Correct.

24 Q. Did you understand my line of questioning?

25 A. Yeah.

0069

1 Q. Okay. Good. So, it just would have been one
2 week prior to week five that you worked with the

3 4-year-old boys, correct?

4 MR. REESE: Objection, form.

5 A. I don't remember. It may have been one -- it
6 may have been -- I may have worked with them two weeks
7 prior, but I don't remember --

8 Q. (By Mr. Pletcher) Yeah.

9 A. -- what the other group was.

10 Q. Okay. But what you specifically recall is that
11 there was just one week. There may have been others,
12 but you only specifically recall working with the
13 4-year-old boys one week prior to week five.

14 A. Correct. I only remember that one other week.

15 Q. Now, when did your shift start during the
16 summer of 2007 during weeks two through week five?

17 A. What time of day?

18 Q. Yes.

19 A. I don't remember exactly. I think it was
20 around maybe 8:30 in the morning.

21 Q. Okay. And when would your day end?

22 A. Around 1:00 to 1:30, just depending on what
23 time car pool -- because some days car pool took longer
24 than others.

25 Q. And did you have any breaks during the day?

0070

1 A. No. We had lunch, but that wasn't really a
2 break.

3 Q. Okay. Did you eat lunch when your campers ate
4 lunch?

5 A. Yes.

6 Q. So, no breaks during the day as a camp
7 counselor at the Houston Racquet Club in the summer of
8 2007, right?

9 A. Correct.

10 Q. Backing up a bit, comparing 2007 with your
11 prior experience having been a camp counselor in 2006
12 and 2005, were there any changes in the procedures that
13 you followed as a camp counselor in 2007 as compared to
14 those two prior years?

15 A. Well -- and I'm sure there were between 2005
16 and 2006 seeing as we had a different pool.

17 Q. Okay. Do you have a specific recollection of
18 any of the procedures being changed --

19 A. Not --

20 Q. -- for reasons other than the pool being
21 changed from the old pool to the new pool?

22 A. I don't remember.

23 Q. Well, let's talk about the changes that you
24 recall in the procedures as relates to the old pool and
25 the new resort family pool. Okay? Do you have a
0071

1 specific recollection of things being changed?

2 A. I don't remember any specific rules that were
3 changed.

4 Q. In 2005 you said that you worked as a camp
5 counselor at the old pool, right?

6 A. (Witness nodding head)

7 Q. Is that correct?

8 A. Correct.

9 Q. Let me show you what I've marked Plaintiffs'
10 Exhibit 83.

11 (Exhibit 83 marked)

12 Q. (By Mr. Pletcher) And I'm just going to put
13 this on the screen. Okay? And I've drawn a big
14 rectangle. Is that kind of what the old pool kind of
15 looked like?

16 A. No.

17 Q. What did it look like?

18 A. It was actually -- it went -- it was like a
19 rectangle and then it over and then it went down.

20 Q. Why don't you fix my drawing.

21 A. (Witness drawing) Like that.

22 Q. So, I'm going to "X" that. You have drawn
23 in -- this is -- what do you want to call the old pool?
24 The old pool?

25 A. I guess. That's fine.

0072

1 Q. This would be '05, right?

2 A. I believe so.

3 Q. Okay. And you have drawn a rectangle that goes
4 off to one end. Draw the steps in there and where the
5 diving boards were. There were some diving boards
6 there, right?

7 A. Correct.

8 Q. High dive and two spring boards?

9 A. No. There was only -- the high dive got taken
10 down after a while.

11 Q. Do me a favor if you can, 4 y/o B-CC #3. Would you put
12 in the depths of the pool as best you can recall?

13 A. (Witness drawing) I mean, I don't remember the
14 exact depth of these areas, but I know this is more
15 shallow than this, and it was more shallow over here
16 (indicating).

17 Q. Okay. Why don't you put "shallow" and "more
18 shallow" where you've just pointed.

19 A. (Witness drawing)

20 Q. And the deep end was pretty deep, wasn't it?

21 A. Yeah. I'm not sure exactly what the depth was.
22 I put 10 feet on here, though.

23 Q. Right.

24 A. (Witness drawing)

25 Q. Thank you very much.

0073

1 A. You're welcome.

2 Q. Let's just review this real quickly. And this
3 is Plaintiffs' Exhibit 83. Now, I'm going to zoom in on
4 this. And you have drawn in what has been titled "old
5 pool 2005." Down here (indicating) these two things are
6 diving boards?

7 A. Correct.

8 Q. Both spring boards as you recall?

9 A. I mean, it's kind of going off of my childhood
10 memory.

11 Q. Sure. Right.

12 A. But the one on the right was less -- I don't
13 know if it has much springs or whatever.

14 Q. Yeah. And this was the deep end down here.
15 And you drew a line right here. Was there a floating
16 line going across there (indicating)?

17 A. Yeah. I think there was actually.

18 Q. Okay. I'm going to just draw in some floats
19 and put floating line. And also there was -- you've
20 written in here "less shallow" on this side (indicating)
21 of the floating line, right?

22 A. Uh-huh.

23 Q. And you put shallow here (indicating).

24 A. Yeah.

25 Q. And then "even more shallow" down here by the

0074

1 steps (indicating).

2 A. Yeah.

3 Q. Now was there a floating line here
4 (indicating)?

5 A. No.

6 Q. Was there a floating line here (indicating)?

7 A. I think there was.

8 Q. I think there was, too. And then, 4 y/o B-CC #3, wasn't
9 there a separate wading pool or baby pool?

10 A. Yeah.

11 Q. Could you draw that in on Plaintiffs' Exhibit
12 83? And why don't we put it in a different color.
13 A. (Witness drawing)
14 Q. And will you write in "wading pool?" Or what
15 was it a wading pool or baby pool?
16 A. I mean, I don't know the difference. We called
17 it the baby pool.
18 Q. Okay. Write in "baby pool."
19 A. (Witness drawing). I think that's what it
20 looked like.
21 Q. Okay. And you have drawn it in over here off
22 the left bottom portion of the resort. Do you mind if
23 I -- I should have used the same color ink. It was a
24 round pool, right?
25 A. I think so.

0075

1 Q. And you've put here "baby pool"?
2 A. Sure thing. Yeah.
3 Q. Now, was it actually located over on this end
4 of the pool?
5 A. Uh-huh.
6 Q. Do you recall the distance?
7 A. I don't know.
8 Q. If you were going to guess?
9 A. I mean, if I absolutely had to guess, I would
10 say, like, 30 yards maybe.
11 Q. Right. I mean, it was some distance. It
12 wasn't, like, 10 feet away, right?
13 A. Not -- no, I don't think so.
14 Q. Right. It was at least 25 feet away, 30 feet
15 away.
16 A. Probably, yeah.
17 Q. Okay. Now, what started this was your
18 testimony that the changes in procedures from '05 to '07
19 that you recalled was that there were different
20 procedures related to the different pools, right?
21 A. Yes.
22 MR. REESE: Objection, form.
23 Q. (By Mr. Pletcher) Is that correct?
24 A. I mean, I don't remember exactly; but I'm sure
25 there were.

0076

1 Q. Okay. That's right. You did say, "I'm sure
2 there were changes to the procedures related to the two
3 different types of pools," right?
4 A. Correct.

5 Q. Now, do you have a recollection when you were a
6 camp counselor in 2005 what the procedure was or how
7 y'all dealt with the younger campers when it was swim
8 time with this other pool?
9 A. I don't remember.
10 Q. Do you recall in '05 that there were 4-year-old
11 campers?
12 A. I mean, I think so, yeah. Like I said, I don't
13 really remember much of that year.
14 Q. Thinking back to 2005, your first year as a
15 camp counselor, do you remember if there was a rule that
16 the youngest campers, the 4-year-olds, had to stay in
17 the baby pool as opposed to go into the big pool over
18 here (indicating)?
19 A. I don't remember there ever being -- our
20 campers in the baby pool.
21 Q. Okay. So, your recollection sitting here today
22 is that even in 2005, the 4-year-old campers were
23 allowed to go into the big pool.
24 A. Yeah -- I mean, yeah.
25 Q. Do you have a recollection of there being a
0077
1 rule that the 4-year-olds had to -- were limited to a
2 certain area of the pool that was in place in 2005?
3 A. I don't really remember. I can guess, but
4 that's --
5 Q. What would your guess be?
6 A. I mean, I'm pretty sure that they may have been
7 in this area (indicating); but I can't remember for
8 sure.
9 Q. Okay. Will you highlight the area that you
10 just referred to as "this area" in pink, please?
11 A. (Witness drawing)
12 Q. To summarize what you just testified to, is
13 that you don't have a specific recollection. But if you
14 were going to guess, you would think that in 2005, the
15 rule was that the 4-year-old campers were probably
16 limited to this area that you've shaded in pink, right?
17 MR. REESE: Objection, form.
18 A. I mean, I think that's what I remember.
19 Q. (By Mr. Pletcher) Is that an accurate
20 representation of what you've just testified to?
21 A. I mean, I --
22 MR. REESE: Objection, form.
23 Q. (By Mr. Pletcher) An accurate summary of what
24 you just told me?

25 A. Sure.

0078

1 Q. Okay. Do you have a specific recollection
2 sitting here today of any changes in the operations,
3 procedures or rules for the summer camp that was
4 conducted at the Houston Racquet Club during the years
5 '05, '06 as compared to 2007?

6 A. I don't remember any specific changes.

7 Q. And I think you've already told us that your
8 best recollection is that the Houston Racquet Club camp
9 counselor rules, regulations and requirements for summer
10 2007 were the same as they were for '06, right?

11 MR. REESE: Objection, form.

12 A. I mean, I don't remember exactly. They looked
13 similar.

14 Q. (By Mr. Pletcher) Right. And did y'all have
15 similar set of rules, regulations and requirements for
16 2005?

17 A. I don't remember.

18 Q. I want to show you -- I want to show you again
19 Plaintiffs' Exhibit No. 42 which is the rules,
20 regulations and requirements for summer camp 2007. And
21 I want to ask you about this one bullet point. This
22 bullet point that's highlighted, "All counselors must
23 get in the water with the children during their
24 designated swim time." Did I read that correctly?

25 A. Yes.

0079

1 Q. Now, you referred to that earlier, that that
2 was always something that was stressed at the Houston
3 Racquet Club.

4 A. Yes.

5 Q. The rule that if the summer campers were in the
6 water, the camp counselors had to be in the water,
7 right?

8 A. Right.

9 Q. That's something that David Lamkin stressed.
10 That's something that CD stressed. That's
11 something that DS stressed, right?

12 A. Right.

13 Q. And was it your -- I'm sorry. Was it your
14 understanding based upon what you were told by the
15 Houston Racquet Club, be it David Lamkin, CD,
16 DS or what's contained in
17 Exhibit 42 that what that meant was that when the summer
18 campers were in the water, all of the camp counselors

19 had to be in the water with them and all of the camp
20 counselors were responsible for watching all of the
21 campers?

22 MR. REESE: Objection, form.

23 A. Well, if you -- if the kid had to go to the
24 bathroom, one counselor would go with the kid to go to
25 the bathroom. But when -- you know, if all the
0080

1 counselors are in the pool at a said time, then at that
2 point in time, all the counselors are responsible for
3 all the kids in the pool.

4 Q. (By Mr. Pletcher) Okay. So, with the
5 exception of a situation where one of the summer campers
6 had to go to the restroom and a counselor had to go with
7 that child to the restroom, what this rule meant was
8 that all of the camp counselors were responsible for
9 watching all of the summer campers when they were in the
10 pool, right?

11 MR. REESE: Objection, form.

12 Q. (By Mr. Pletcher) Is that what you've told us?

13 A. Right.

14 Q. So, it was basically everybody watching
15 everyone --

16 MR. REESE: Objection, form.

17 Q. (By Mr. Pletcher) -- right?

18 A. Well, I mean, you would watch the kids who were
19 closest to you.

20 Q. Okay.

21 A. But at the same time, you make sure that you
22 are watching all the kids.

23 Q. Okay. Did this rule change from '05 to '06 to
24 '07, or was that always the rule when you were a camp
25 counselor during those years?

0081

1 A. I don't remember it being there -- I mean, I'm
2 sure it was there. I don't remember if it was.

3 Q. So, what you've just told us is that you don't
4 have a specific recollection of whether or not that was
5 the rule. But that's your best recollection, that is
6 that rule, that's always been the rule?

7 A. Yeah.

8 Q. Can you think of any other rule that was in
9 effect at the Houston Racquet Club with respect to who
10 the camp counselors were supposed to be watching when
11 the summer campers were in the pool?

12 A. Just the campers.

13 Q. Okay. So, you can't think of any other rule;
14 is that correct?

15 A. I can't think of any other rules that were in
16 place, if that's what you're asking me, in '05.

17 Q. Or in '06, right?

18 A. Right. I mean, I guess I'm not really quite
19 sure what you're asking.

20 Q. Well, the rule as you knew it in 2007, was that
21 if the summer campers were in the water, the camp
22 counselors had to be in the water with them.

23 A. Right.

24 Q. Is that what the rule was?

25 A. Right.

0082

1 Q. That's what Exhibit 42 says, right?

2 A. Correct.

3 Q. We've already looked at that. And to your
4 knowledge, that rule was in effect in '06.

5 A. Yes.

6 Q. And was that rule, to the best your
7 recollection, in effect in '05?

8 A. Yes.

9 Q. And what you testified to a moment ago is that
10 what that meant was that all of the camp counselors were
11 responsible for watching all of the summer campers when
12 they were in the water, except for a circumstance where
13 maybe a camper had to go to the restroom --

14 MR. REESE: Objection, form.

15 Q. (By Mr. Pletcher) -- correct?

16 A. Correct. I said that when, you know, you watch
17 the kids in your area.

18 Q. Right. Well --

19 A. You can't possibly watch all the kids in the
20 pool.

21 Q. That's impossible, isn't it?

22 A. Yeah.

23 Q. Is that impossible based on your experience at
24 the Houston Racquet Club for you as a camp counselor to
25 watch every child who was in the pool?

0083

1 A. Right. That's why --

2 MR. REESE: Objection, form.

3 A. -- we split it up. And so, whenever kids --

4 you know, we had the six different counselors spread out
5 across the pool watching the different groups of the
6 kids so that we had them all covered.

7 Q. (By Mr. Pletcher) But what you said a moment
8 ago was that, we'd watch the kids closest to us, but at
9 the same time we'd watch them all, right?
10 A. We'd make sure that they were all covered, not
11 that -- I'm not saying that we're watching these kids
12 and watching all the other ones at the same time.
13 Q. That would be impossible --
14 MR. REESE: Objection, form.
15 Q. (By Mr. Pletcher) -- right?
16 MR. REESE: Leading.
17 A. Well, that's -- sure.
18 Q. (By Mr. Pletcher) Would that be impossible?
19 A. I don't think it would be impossible, but it
20 would be difficult.
21 Q. It would be very difficult.
22 MR. REESE: Objection, form, leading.
23 Q. (By Mr. Pletcher) Was this --
24 MR. LAVINE: Let's take a break.
25 THE VIDEOGRAPHER: The time is 2:59 p.m.

0084

1 We're off the record.
2 (Recess from 2:59 to 3:08)
3 THE VIDEOGRAPHER: The time is 3:08 p.m.
4 We're back on the record.
5 Q. (By Mr. Pletcher) Are you ready to continue,
6 Mr. 4 y/o B-CC #3 ?
7 A. Yes.
8 Q. You understand you're under the same oath that
9 you took at the beginning of this deposition?
10 A. Yes.
11 Q. Okay. When we broke, we were talking about the
12 rule that was in effect in 2007 with respect to all the
13 camp counselors watching all of the summer campers.
14 MR. LAVINE: Objection. That was not the
15 question. That was not what the rule was. Please do
16 not misstate and do not try and confuse the witness.
17 Ask him a question.
18 MR. PLETCHER: Please make no speaking
19 objections. You can object to the form of the question
20 under the Rules.
21 MR. REESE: Objection, form.
22 Q. (By Mr. Pletcher) Okay. When we broke, I
23 believe that we were talking about the rule that was in
24 effect in 2007 with respect to all of the camp
25 counselors being responsible for watching all of the

0085

1 summer campers. Now, was that the rule or was that not
2 the rule?

3 A. That wasn't the rule.

4 MR. REESE: Objection.

5 A. The rule was that we were all supposed to be in
6 the pool with the kids.

7 Q. (By Mr. Pletcher) Okay. So, the rule that was
8 in effect in 2007 that you knew about was that if all
9 the summer campers -- I'm sorry. If the summer campers
10 were in the water, all of the camp counselors had to be
11 in the water.

12 A. That was the rule.

13 Q. Do you recall David Lamkin, CD,
14 DS or anybody else at the Houston Racquet
15 Club ever explaining to you what that rule meant?

16 A. No.

17 Q. Do you ever recall asking David Lamkin, CD,
18 DS or anybody else at the
19 Houston Racquet Club what it meant as far as the rule
20 that the camp counselors had to be in the water when the
21 campers were in the water?

22 A. No.

23 Q. So, nobody at the Houston Racquet Club ever
24 explained what this rule meant; and you never asked any
25 questions, right?

0086

1 MR. REESE: Objection, leading.

2 A. I mean, they said the rule. They never, I
3 mean, explained it. They said, you know, "If your kids
4 are in the pool, you need to be in the pool."

5 Q. (By Mr. Pletcher) And they didn't explain what
6 they meant by that?

7 A. I mean -- no.

8 Q. Okay. Well, wasn't there a requirement at the
9 Houston Racquet Club in the summer of 2007 that when the
10 summer campers were in the pool, the camp counselors for
11 those summer campers had to watch them?

12 A. Yes.

13 MR. REESE: Objection, form.

14 A. You had to watch the kids in the pool when you
15 were with them.

16 Q. (By Mr. Pletcher) Right. In 2007 there was a
17 requirement at the Houston Racquet Club that the camp
18 counselors had to watch the children while they were in
19 the pool, right?

20 A. Yeah.

21 Q. And do you recall that requirement being that
22 all of the camp counselors were required to watch all of
23 the summer campers in the pool?

24 MR. REESE: Objection, form.

25 A. No.

0087

1 Q. (By Mr. Pletcher) What was the requirement
2 then?

3 A. I mean, you watched the kids in your group.

4 Q. Okay. So, the rule that you knew to be in
5 effect was that the camp counselors were only
6 responsible for watching the campers in your group,
7 right?

8 A. I mean, yeah. Yeah.

9 Q. Is that what the rule was?

10 A. It was a rule, yeah.

11 Q. And that rule was given to you by Mr. Lamkin?

12 A. Yes.

13 Q. CD?

14 A. Yes.

15 Q. DS?

16 A. I don't remember really seeing her during '07.

17 Q. Okay. So, at least Mr. Lamkin and

18 CD--

19 A. Yes.

20 Q. -- told you that's what the rule was.

21 A. Yes.

22 Q. And on July 18th, 2007, you were a camp
23 counselor along with five other people that we referred
24 to earlier for the 4-year-old group.

25 A. Yes.

0088

1 Q. So, 4 y/o B-CC #1, 4 y/o B-CC #5, 4 y/o B-CC #6,
2 4 y/o B-CC #4, 4 y/o B-CC #2 and yourself were required
3 to watch all of the 4-year-old campers when they were in
4 the family pool on July 18th, 2007 --

5 A. Yes.

6 Q. -- is that correct?

7 A. Correct.

8 Q. So, this rule -- well, strike that.

9 Was this rule in writing or was this a
10 verbal instruction?

11 A. Well, I never saw it in writing, but I mean --

12 Q. It was certainly told to you verbally.

13 A. Well, I mean, it's implied that if you are
14 responsible for the kids in your group, that you have to

15 watch your kids.

16 MR. PLETCHER: I'll object to the
17 responsiveness of that answer.

18 Q. (By Mr. Pletcher) I think you just told me
19 that David Lamkin and CD had told you that
20 that rule existed in the summer of 2007, that you as a
21 camp counselor along with your other co-counselors for
22 the 4-year-old group, were required to watch all of the
23 4-year-olds, correct?

24 MR. REESE: Objection, form.

25 A. I'm really confused right now you've asked so
0089

1 many different questions.

2 Q. (By Mr. Pletcher) Okay. What do you remember
3 David Lamkin and CD telling you with respect
4 to what campers you were supposed to watch when they
5 were in the family pool during 2007.

6 A. Watch the kids in our group.

7 Q. Which meant you and the five other counselors
8 for the 4-year-old group had to watch all of the
9 4-year-olds, correct?

10 MR. REESE: Objection, form.

11 Q. (By Mr. Pletcher) Is that what you've told us?

12 A. Watch the 4-year-old boys in our group.

13 Q. Right. 4-year-old boys. Great. There was not
14 a requirement in effect, to your knowledge, that you or
15 any of the other camp counselors for the 4-year-old boys
16 were required to watch any of the other campers in the
17 pool?

18 A. Not that I remember.

19 Q. Okay. Back to the written rule that's in the
20 camp counselor rules, regulations and requirements about
21 all counselors must get in the water when the campers
22 are in the water. Do you ever recall David Lamkin
23 telling you that sitting on the rock ledge when your
24 kids -- your 4-year-old kids were in the pool did not
25 meet this requirement?

0090

1 A. Yes.

2 MR. REESE: Objection, form.

3 A. You can't be on the ledge. You have to be
4 actually in the pool. You can't be on the ledge.

5 Q. (By Mr. Pletcher) So, sitting on the rock
6 ledge did not comply with this rule, correct?

7 A. Correct.

8 Q. Did David Lamkin or CD ever tell

9 you that sitting on the edge of the pool with your feet
10 hanging into the water did not meet this rule?

11 A. I believe I remember that, yes.

12 Q. Do you remember David Lamkin and/or CD
13 ever telling you that sitting on the sun deck
14 talking with another counselor did not meet this rule?

15 A. The sun deck being the area outside of the
16 pool, right?

17 Q. No. The sun deck being the area where the
18 chairs were set up.

19 A. Yeah. Like not in the pool. Like right along
20 the side of the pool?

21 Q. Yes. Just so we're on the same page --

22 A. Yeah. Clarify.

23 Q. -- the sun deck that I'm referring to -- this
24 is a diagram of the family pool. The sun deck that I'm
25 referring to -- let's see here. This is the west end of

0091

1 the pool (indicating). Okay?

2 A. Yeah.

3 Q. This is the sun deck that I'm referring to
4 where the chairs were set up (indicating).

5 A. I mean, yeah, you can't -- you can't be on
6 there. The kids could be right there but only if the
7 counselor was standing in the water right next to that.

8 Q. Right. So, a counselor sitting or standing on
9 the sun deck would not comply with the rule that the
10 camp counselors had to be in the pool when the summer
11 campers were in the pool, correct?

12 A. Correct, unless, you know, it was interacting
13 with a kid.

14 Q. Now, what was your --

15 A. If you were interacting with a kid, you know,
16 getting one out of the pool or, you know, whatever, then
17 you could be up there, I mean.

18 Q. Okay. But if you weren't interacting with a
19 child, being on that sun deck did not comply with the
20 rule of being in the water when the campers were in the
21 water, correct?

22 A. Correct.

23 Q. You had to physically be in the water.

24 A. Yes.

25 Q. Do you recall David Lamkin, CD or

0092

1 anybody else at the Houston Racquet Club ever telling
2 you that you had to keep the 4-year-old boys within an

3 arm's length or within your grasp when they were in the
4 family pool?

5 A. I remember that, yes.

6 Q. Do you recall David Lamkin or CD or
7 anybody else telling you that if a 4-year-old boy was in
8 water deeper than 3 feet -- or I'm sorry. Do you recall
9 David Lamkin ever telling you that if a 4-year-old boy
10 was in 3 feet of water or deeper, you had to be within
11 an arm's length or within the grasp?

12 A. Yes, I remember that.

13 Q. Do you recall David Lamkin, CD or
14 anybody else at the Houston Racquet Club telling you
15 that certain areas of the family pool in 2007 were off
16 limits to the 4-year-old boys?

17 A. I know that you couldn't be by, like, where the
18 water was coming out of the slide with a kid.

19 Q. And are you referring to the shoot where the
20 kids came out of the slide --

21 A. Yeah.

22 Q. -- into the deep end of the pool?

23 A. Yeah.

24 Q. Okay. That was one area that you thought was
25 off limits to 4-year-old boys, correct?

0093

1 A. Yeah, to any kid.

2 Q. Any child.

3 A. Yeah.

4 Q. Any other areas of the family pool that you
5 were told was off limits for the 4-year-old boys?

6 A. No.

7 Q. Did David Lamkin ever tell you that the
8 4-year-old boys couldn't use the slide?

9 A. I don't think so. I think we were allowed to
10 use it as long as there was a counselor with them on the
11 slide.

12 Q. Okay. So, you have no specific recollection of
13 David Lamkin ever telling you that the 4-year -- that
14 the slide was off limits for the 4-year-old boys,
15 correct?

16 A. Correct. I don't remember that.

17 Q. And do you recall David Lamkin ever telling you
18 that the 4-year-old boys could not go east of the float
19 line towards the slide in that deep area, the 5-foot
20 area?

21 A. That's the area I was referring to. Like -- I
22 mean, you -- they really weren't supposed to go out

23 there, like, you know -- I mean, really the focus of the
24 rule was you weren't supposed to be where the kids were
25 coming down the slide. So, as a kid was coming down the
0094

1 slide, you wouldn't get hit by another kid coming down
2 it if you were out there with the kid.

3 Q. Right.

4 A. But you could go a little bit past it with -- I
5 mean -- whatever. You could go a little bit out there
6 but just as long as you weren't, like, right in the
7 area.

8 Q. Okay. Let me show you Plaintiffs' Exhibit 14I.
9 This is the diagram that you looked at before we started
10 this deposition. You recognize the slide here
11 (indicating).

12 A. Uh-huh.

13 Q. And you recognize this as being the float line
14 that was up, correct?

15 A. (Witness nodding head)

16 Q. You have --

17 A. Correct. Yes.

18 Q. Okay. And just for your knowledge, this is --
19 east is up here at the top. West is down on the bottom.
20 South is over to the right, and north is over to the
21 left. Okay? Now, you just told us that the area at the
22 bottom of the shoot, this area right here (indicating),
23 was off limits.

24 A. Like, you weren't supposed to go across that
25 line. But, like, if, you know, there was something out
0095

1 there that -- you know, like a ball or something that
2 they were playing with, you could go out there and get
3 it and bring it back to them. But the kids themselves
4 weren't supposed to go out there.

5 Q. Okay. So, you knew that the 4-year-old boys
6 couldn't cross this floating line, couldn't go east of
7 this floating line --

8 A. Uh-huh.

9 Q. -- is that correct?

10 A. Yeah.

11 Q. Who told you that?

12 A. I'm pretty sure David did.

13 Q. When?

14 A. I don't remember.

15 Q. Okay. Did anybody other than David Lamkin tell
16 you that east of the float line was off limits for the

17 4-year-old boys?

18 A. I don't remember.

19 Q. And who told you that this area right here --

20 I'll tell you what: Why don't you just circle on

21 Plaintiffs' Exhibit 14H -- 14I the area that was off

22 limits at the shoot -- at the bottom of the shoot.

23 MR. LAVINE: Why don't you use a different

24 pen. That will bleed through.

25 MR. PLETCHER: That's okay. I want it --

0096

1 I want it in red.

2 A. You're definitely not supposed to, like, right

3 here (indicating) because that's where kids were coming

4 out.

5 Q. (By Mr. Pletcher) Okay. Will you write in

6 "off limits," please?

7 A. (Witness drawing)

8 Q. Thank you. So, you've drawn in a red arcing

9 line here and written "off limits" there. You were of

10 the understanding that the 4-year-old boys, although

11 they could use the slide, if they weren't actually using

12 it, they couldn't go into that area, nor anybody else

13 for that matter, right?

14 MR. REESE: Objection, form.

15 A. What I understood was that 4-year-old boys were

16 not supposed to go past that yellow line at all. But

17 if, say, a counselor was getting a ball or something,

18 they could go in that area.

19 Q. (By Mr. Pletcher) Right.

20 A. So --

21 Q. But with respect to this off-limits area,

22 that's what my question was about.

23 A. No one -- no one should be in that area.

24 Because if a kid's coming down the slide, you're going

25 to get hit by the kid.

0097

1 Q. Yeah. So, nobody should be in that off-limits

2 area circled in red unless you were using the slide

3 yourself --

4 A. Right.

5 Q. -- right? And who told you about that rule?

6 A. David.

7 Q. David Lamkin?

8 A. Right.

9 Q. When?

10 A. I don't remember.

11 Q. Where?
12 A. At the Racquet Club.
13 Q. Okay. At the orientation?
14 A. Either there or sometime after. I don't
15 remember exactly when I heard it. So, I can't be sure
16 where.
17 Q. Okay. Well, do you remember when David Lamkin
18 told you that the 4-year-olds had to be within your
19 arm's length or grasp when they were in the pool?
20 A. I don't remember when or where.
21 Q. But you're saying David told you that?
22 A. Yeah.
23 Q. Huh?
24 A. Either David or CD, one of the two.
25 Q. So, it's either David Lamkin or CD

0098

1 told you about the arm length rule or in the grasp rule?
2 A. Right.
3 Q. But you can't tell us exactly when or even give
4 us a general idea of when this was -- this instruction
5 was given to you or where you may have been at the
6 Racquet Club, right?
7 A. I mean, it would have either been at
8 orientation or at one of those meetings that I talked
9 about earlier.
10 Q. Okay. I have deposed other camp counselors in
11 this case, specifically 4 y/o B-CC #1 last Friday; and
12 she was unaware of any of these rules. Okay? And what
13 I need to know from you is: Do you recall any other
14 camp counselors being with you when you received this
15 instruction about the rule of the areas that were off
16 limits and the arm's length in the grasp rule?

17 MR. REESE: Objection, form, leading.
18 A. I mean -- wait. Do I remember being with any
19 other counselors?

20 Q. (By Mr. Pletcher) Yes.

21 A. I mean, like I said, I don't remember
22 specifically when and where it was.

23 Q. Right. So, you have -- so, you don't remember
24 who may have been with you?

25 A. No. I mean, it would have been the other

0099

1 counselors, right? Because it would have been at an
2 orientation or at the debriefing meeting.

3 Q. But, 4 y/o B-CC #3, you really don't have a recollection
4 of whether or not these instructions were given to you

5 at an orientation, right?
6 MR. REESE: Objection, form.
7 A. I mean, I don't -- right.
8 Q. (By Mr. Pletcher) You don't.
9 A. No.
10 Q. And you don't know when these instructions were
11 given to you, do you?
12 A. No. But I mean, I remember hearing them.
13 Q. Okay. You remember hearing this from either
14 CD or David Lamkin --
15 A. Right.
16 Q. -- right? And you have no specific
17 recollection of who may have been with you, if anybody,
18 when the instruction was given, right?
19 A. Right.
20 Q. Well, what other rules were there that related
21 to the 4-year-old boys when they were in the family
22 pool?
23 A. Specifically 4-year-old boys?
24 Q. Yeah.
25 A. I mean, I don't remember any other specific
0100
1 rules except for some of the 4-year-old boys needed,
2 like, floats. I mean, if you had a float, they had to
3 wear the float. That's the only other rule -- specific
4 rule.
5 Q. So, what was the rule?
6 A. If their parents came and said, "My son needs a
7 floaty," you had to make sure they had their floaty in
8 the pool.
9 Q. Okay. Who gave you that rule? Who instructed
10 you on that rule?
11 A. I mean, it would have been -- I mean, it would
12 have been a spoken rule, so, I mean, either David or
13 CD.
14 Q. Well, if CD has testified that the
15 camp counselors were not required to question the
16 parents about any limitations or special needs that the
17 child may have, does that meet with your recollection of
18 things?
19 MR. REESE: Objection, form, leading.
20 A. That we weren't required to?
21 Q. (By Mr. Pletcher) Yeah. What she testified to
22 was that all you were required to do was if the parent
23 gave you a note, to give her the note.
24 MR. REESE: Objection, form, leading.

25 MR. PLETCHER: Was he not finished? I'm
0101

1 sorry.

2 MR. LAVINE: No. I'm instructing him not
3 to answer that question. If you want to ask him a
4 question --

5 MR. PLETCHER: On what grounds?

6 MR. LAVINE: -- ask him a question. Form.
7 As to what somebody else said -- I don't want you giving
8 him information about what some other witnesses said.

9 MR. PLETCHER: Well, whatever. You're
10 going to instruct him not to answer my last question?

11 MR. LAVINE: In that form, yes.

12 Q. (By Mr. Pletcher) So, the rule that we were
13 talking about was that if the parent informed you guys
14 that the child needed floaties, you had to make certain
15 that that child had his or her floaties on.

16 A. Yes.

17 Q. Were you required to get a note from the parent
18 in relationship to that special request?

19 A. If we were notified of it by some form, then we
20 were required to follow the rule.

21 Q. Okay. What -- okay. What if you received a
22 note from a parent about a special need? What were you
23 supposed to do?

24 A. Mark it down on the clipboard and be aware of
25 it at all times. Follow -- if it was a rule that they

0102

1 wanted us to do, then follow it. Not necessarily a rule
2 but, you know, like if they wanted their kids to wear
3 life vests, we made sure they wear the life vests.

4 Q. Now, you said life vest.

5 A. Not life vest. Floaty. Whatever you call it.

6 Q. Well, there's a lot of -- there's a big
7 difference between floaties and a life vest. Do you
8 agree with that?

9 MR. REESE: Objection, form.

10 Q. (By Mr. Pletcher) Do you --

11 A. The thing that 4-year-olds wear when they go
12 swimming, I don't know what you call it, we had one kid
13 in our group that wore one.

14 Q. Tell me who the kid was in the 4-year-old group
15 who wore a floatation device.

16 A. His name was -- I don't know. He was an Indian
17 kid.

18 Q. 4 y/o-C #1?

19 A. Yes.

20 Q. Okay. What sort of a device was it?

21 A. I guess it went over his shoulders like a vest,
22 and then it had -- I think it had a float around his
23 waist.

24 Q. And was he -- do you recall 4 y/o-C #1 being at the
25 summer camp on July 17th, the day before John drowned?
0103

1 A. I don't know if he was there or not.

2 Q. Did you personally receive the request by 4 y/o-C #1
3 parent that he was to have his floatation
4 device on when he was in the pool?

5 A. I don't know. I don't remember if I did.

6 Q. Do you know who did?

7 A. No.

8 Q. Okay. Were there any other 4-year-old boys who
9 used the family pool on July 18th or July 17th that you
10 recall having been required to have a floatation device
11 while in the water?

12 A. I don't remember.

13 Q. So, 4 y/o-C #1 is the only one that you recall?

14 A. Yes.

15 Q. Now, let me show you what's been marked as
16 Plaintiffs' Exhibit No. 70, which is the list of
17 4-year-old boys for the week of -- the fifth week of the
18 summer camp. Now, you had mentioned that if a parent
19 requested that a child use a floatation device, that it
20 was supposed to be noted on the clipboard, right?

21 A. Yes.

22 Q. This is the list that was on the clipboard,
23 correct?

24 A. Correct.

25 MR. REESE: Objection, form.
0104

1 Q. (By Mr. Pletcher) There's a special note
2 calendar -- I'm sorry. There's a special notes column
3 on the right side of this chart, correct?

4 A. (Witness nodding head)

5 Q. You remember that, don't you?

6 A. (Witness nodding head) Yes.

7 Q. And this is where the note's supposed to be
8 made, correct?

9 A. Correct.

10 MR. REESE: Objection, form.

11 Q. (By Mr. Pletcher) And do you see on
12 Plaintiffs' Exhibit 70, that first page for the

13 4-year-old boys week five, any notation that 4 y/o-C
14 or any other 4-year-old child was supposed to
15 have a floatation device while in the family pool?

16 MR. REESE: Objection, form.

17 A. I don't see it, no.

18 Q. (By Mr. Pletcher) So, based upon your
19 testimony, whoever received the instruction, if indeed
20 an instruction was given by 4 y/o-C #1 parents,
21 failed to meet the procedure that was in place as you
22 have testified to on July 18th for making a note for
23 this special need, right?

24 MR. REESE: Objection, form, leading.

25 A. Correct. We were -- I mean, we didn't write --

0105

1 I don't see it on there. So, we didn't mark it down.

2 Q. (By Mr. Pletcher) Okay. To your knowledge,
3 did the Houston Racquet Club have any life vests that
4 children could use if they were in the summer camp 2007?

5 A. Not to my knowledge.

6 Q. You had mentioned earlier when we were talking
7 about the rule related to who was supposed to be
8 watching who that you would watch whoever was close to
9 you. Do you remember that testimony?

10 A. Yeah.

11 Q. You said, We watched the kids closest to you,
12 but at the same time we watch all of the kids in our
13 group. Is that what the procedure was?

14 A. Yeah.

15 Q. Okay. And did CD, David Lamkin or
16 anybody else at the Houston Racquet Club ever provide
17 you with any specific instruction on how to divide up
18 these 4-year-old campers as far as who you were going to
19 be watching?

20 A. No.

21 Q. Just so I'm certain of what y'all were doing
22 out there in the summer of 2007, is it your belief that
23 all of the camp counselors for the 4-year-old groups
24 knew that they were responsible for watching those
25 campers who were closest to them as well as everybody

0106

1 else in the group?

2 MR. REESE: Objection, form.

3 A. I mean, I think we knew that we were -- yeah.

4 Like you said, we were supposed to watch the kids
5 closest to us. And, I mean, we were responsible for the
6 kids in our group.

7 Q. (By Mr. Pletcher) Okay. Now, when -- let's
8 take, for example, July 18th, 2007. Y'all had lunch
9 just prior to going in the family pool, correct?

10 A. Yes.

11 Q. And what did y'all do after eating lunch?

12 A. Well, we cleaned -- they ate their lunch. And
13 they cleaned up their lunch, put up their lunch boxes.
14 They -- you know how 4-year-olds are, they ran around
15 for a little bit. So, we had to round them all up. We
16 had to get them in line and then we walk to the pool.
17 They take off their clothes and we made sure, like,
18 4 y/o-C #1 had his floaty on and we got in the pool.

19 Q. Okay. Did they already have their swimsuits
20 on?

21 A. Yeah. Most kids, like, wore their swimsuits as
22 shorts.

23 Q. Okay. Now, once y'all got to the pool, what
24 did the 4-year-olds do?

25 A. Got in the pool or like before they, like, put
0107

1 down all their stuff and took their clothes off?

2 Q. Yeah. I mean, did they -- did they do what I
3 think 4-year-olds do and scatter once they got to the
4 pool and run into the beach area of the pool?

5 MR. REESE: Objection, form.

6 Q. (By Mr. Pletcher) Or did y'all before they get
7 in the pool decide amongst you, the camp counselors, who
8 was going to be watching who when they got in the pool?

9 A. We didn't decide who was going to be watching
10 who.

11 Q. Right.

12 A. But I remember usually, like -- I'm not saying
13 this was a routine or anything. But usually I was the
14 first one in the pool and I walked out and we were just
15 all walking out there.

16 Q. Right.

17 A. And we would all walk out at the same time.
18 There wasn't any --

19 Q. So, if I understand you, the camp counselors
20 would walk into the pool along with the 4-year-old boys.

21 A. Uh-huh.

22 Q. Is that "yes"?

23 A. Yes.

24 Q. And that's what happened on July 18th, to the
25 best of your knowledge.

0108

1 A. To the best of my memory, yes.
2 Q. And there was no discussion that you recall
3 amongst the camp counselors either before you got into
4 the family pool that day or after you got in there of,
5 okay, specifically who was going to be watching who,
6 correct?
7 A. I don't remember any conversation like that.
8 Q. But it was your understanding that what your
9 responsibility was was to watch specifically those
10 4-year-old camper boys who were closest to you.
11 MR. REESE: Objection, asked and answered.
12 Q. (By Mr. Pletcher) True?
13 A. Yeah, true.
14 Q. Did the Houston Racquet Club, David Lamkin,
15 CD or anybody else at the Club, ever provide
16 you with any instruction on what to do if a camp
17 counselor had to go to the restroom?
18 A. I'm pretty sure we weren't allowed to go to the
19 bathroom while we were in the pool.
20 Q. You're pretty sure. What does that mean?
21 A. I don't think we were allowed to.
22 Q. Okay. Well, what if you just couldn't hold it
23 anymore?
24 A. I mean, I don't know.
25 Q. Okay. So, to your knowledge, David Lamkin,
0109
1 CD nor anybody else at the Racquet Club ever
2 provided you or your co-counselors for the 4-year-old
3 boys specific instruction on what you were to do if you
4 had to absolutely get out of that pool to use the
5 restroom, right?
6 A. Right.
7 Q. Well, what if a camper had to go to the
8 restroom? Were you provided any specific instruction by
9 David Lamkin, CD or anybody else at the
10 Houston Racquet Club of what you were supposed to do
11 when a camper had to go to the restroom? Surely the
12 campers were allowed to go, right?
13 A. Right.
14 Q. Were you given any instruction on what the camp
15 counselors were supposed to do when that occurred?
16 A. I don't specifically remember exactly what we
17 were supposed to do, but --
18 Q. I'm asking about specific instruction by David
19 Lamkin or CD. Do you remember receiving any
20 instruction from them on the procedure that you were

21 supposed to follow if one of the campers had to go to
22 the restroom?

23 A. I don't remember.

24 Q. Well, tell me what you would do if that
25 occurred back in the summer of 2007 and one of your
0110

1 campers had to go to the restroom. What would you do?

2 A. I mean, usually we would take the kid and tell
3 the other counselors, "Hey, I'm taking this kid to the
4 bathroom." And, you know, if there were any kids that
5 were in your area and you were leaving them, you'd say,
6 "Here, can you watch these kids," or something like
7 that.

8 Q. You remember specifically doing that yourself?

9 A. I remember taking kids to the bathroom.

10 Q. Okay. And when you did, each and every time
11 did you inform another counselor that you were going to
12 the bathroom with camper boy number two. And, oh, by
13 the way I was also watching camper number three and
14 four. Will you watch them while I'm there?

15 A. I remember -- I don't remember each and every
16 time.

17 Q. Right.

18 A. But I remember saying, you know, one point or
19 another, here, I'm going to the bathroom and here are
20 these kids, but not necessarily each and every time. I
21 don't remember each and every time.

22 Q. Okay. Do you recall an instance where you took
23 a summer camper to the restroom and you didn't
24 communicate with your other camp counselors of that
25 fact?

0111

1 A. No.

2 Q. Not once?

3 A. I don't remember any.

4 Q. Is it possible?

5 MR. REESE: Objection, form.

6 Q. (By Mr. Pletcher) Anything's possible, right?

7 MR. REESE: Objection, form, leading.

8 Q. (By Mr. Pletcher) Is that possible?

9 MR. REESE: Objection, form.

10 A. Sure. It's possible.

11 Q. (By Mr. Pletcher) Did it ever happen?

12 A. Like I said, I don't remember.

13 Q. As you described a few minute ago, 4-year-old
14 boys can at times be rather rambunctious, right?

15 A. Right.
16 Q. And do you recall ever being in the resort
17 pool, the family pool, with the 4-year-old boys where
18 several of them were clinging or climbing on you?
19 A. Yes.
20 Q. Do you ever recall an instance when that was
21 occurring having to ask one of your other counselors to
22 assist you?

23 A. No.

24 Q. Do you ever recall when that occurred ever
25 feeling overwhelmed with your responsibility of having
0112

1 to watch the 4-year-old boys at a time when two or three
2 were clinging or climbing on your back?

3 MR. REESE: Objection, form.

4 A. Not really, no.

5 Q. (By Mr. Pletcher) You said "not really." What
6 do you mean --

7 A. No.

8 Q. -- "not really"?

9 A. I mean, no.

10 Q. Do you ever recall seeing any of your
11 co-counselors looking to you to be overwhelmed with
12 respect to their responsibility to watch the 4-year-old
13 boys?

14 A. No.

15 Q. Do you ever recall any of the other 4-year-old
16 boy camp counselors voicing to you their concern over
17 their ability to safely watch the 4-year-old boys?

18 A. No.

19 Q. Do you ever recall any of the camp counselors
20 voicing their concern to you specifically that they were
21 not able to watch all of the 4-year-old boys in the
22 group?

23 MR. REESE: Objection, form.

24 A. To watch all of them at the same time?

25 Q. (By Mr. Pletcher) Yes.

0113

1 A. I never heard anyone say that.

2 Q. Do you recall ever voicing that concern
3 yourself to one of your other co-counselors?

4 A. No.

5 Q. Did you ever take any of the summer campers in
6 2007 on a tour of the family pool?

7 A. On a tour?

8 Q. Yes.

9 A. No.

10 Q. And by "tour," I mean, do you ever remember
11 taking any of the summer campers in 2007 to the family
12 pool and pointing out, okay, this is the shallow end;
13 this is where the drop-off is; this is the deep end;
14 this is the slide; this area is off limits; this area is
15 off limits? Do you ever remember doing that with any of
16 the summer campers in 2007?

17 A. No.

18 Q. Do you remember doing either one of those
19 things that we've just talked about in '06 or '05?

20 A. No.

21 Q. Do you ever recall seeing other camp counselors
22 doing those types of tours with campers in '05, '06 or
23 '07?

24 A. No.

25 Q. The meetings that we discussed earlier, the

0114

1 morning meetings and the debriefing at the end of the
2 day, do you recall seeing David Lamkin at each of those
3 meetings every day?

4 A. I don't remember seeing him at every single
5 one, no.

6 Q. Do you recall ever seeing David Lamkin
7 supervising camp counselors and disciplining them?

8 A. Yes.

9 Q. Did you ever see that happen at the family
10 pool?

11 A. Not at the pool.

12 Q. I want to show you, again, Exhibit No. 42. Do
13 you recall this rule being in effect in 2007, "Cooperate
14 with lifeguards. Safety at the pool is their
15 responsibility and yours. They have the ultimate say at
16 the pool"?

17 A. Yes.

18 Q. Do you remember reading that rule?

19 A. Yes.

20 Q. Was that rule in effect in '06 and '05, to the
21 best of your knowledge?

22 A. I don't really remember, but yeah.

23 Q. Did David Lamkin, CD or anybody
24 else at the Houston Racquet Club ever explain to you
25 what was meant by the phrase "they have the ultimate say

0115

1 at the pool"?

2 A. No.

3 Q. Well, who had the ultimate -- when the
4 4-year-old boys were in the family pool, who was
5 responsible for watching them?
6 A. The counselors of the 4-year-old group and the
7 lifeguards since they're watching the kids in the pool.
8 Q. Well, what does this mean to you: "Cooperate
9 with the lifeguards. Safety at the pool is their
10 responsibility and yours. They have the ultimate say at
11 the pool"? What does that mean to you having worked
12 three summers at the Houston Racquet Club?
13 A. I don't really know. I guess it means, you
14 know, if something happens or, you know -- if you're
15 doing something, they have the right to overrule you on
16 it.
17 Q. They have the ultimate authority?
18 A. Yeah.
19 Q. At the pool?
20 A. At the pool.
21 Q. That means that lifeguards are to you
22 authorized by the Houston Racquet Club to tell a camp
23 counselor or anybody else in the pool for that matter
24 what to do.
25 A. Yes.
0116
1 Q. Or how to do it.
2 MR. REESE: Objection, leading.
3 A. They have the ability to say, you know, don't
4 do what you're doing.
5 Q. (By Mr. Pletcher) And that would apply to
6 anybody who was in the pool, right, be it a camp
7 counselor, camper, member or guest?
8 A. Right.
9 Q. Do you recall ever attending an orientation at
10 the Houston Racquet Club during any of the years that
11 you worked there where both lifeguards and camp
12 counselors were in attendance?
13 A. No.
14 Q. Do you ever recall any joint orientation
15 between the lifeguards and the camp counselors?
16 A. No.
17 Q. Do you recall ever attending any meetings with
18 Guillermo Palmer -- specific meetings with Guillermo
19 Palmer?
20 A. No. But like I said, he was there sometimes
21 after but not specifically just with Guillermo.
22 Q. Right. So, no specific meetings just with

23 Guillermo Palmer, right?

24 A. Right.

25 Q. Did the Houston Racquet Club provide the camp
0117

1 counselors with the lifeguard schedules or rotations?

2 MR. REESE: Objection, form.

3 A. No.

4 Q. (By Mr. Pletcher) So, you did not know what
5 the lifeguard schedule or rotation was for July 18th --

6 A. No.

7 Q. -- 2007, correct?

8 A. Correct.

9 Q. So, before you and your five co-counselors took
10 the 4-year-old boys to the family pool on July 18th, you
11 had no idea the number of lifeguards who were going to
12 be stationed at the family pool or who they were going
13 to be specifically; is that correct?

14 A. Correct.

15 Q. Did the Houston Racquet Club ever provide you
16 with the pool rules, the written pool rules?

17 A. No.

18 Q. Have you ever seen Plaintiffs' Exhibit No. 40
19 which is a document titled "Pool Rules" that sets forth
20 general pool rules, slide rules, diving board rules,
21 general lifeguard rules? Do you ever remember seeing
22 this document or a similar document?

23 A. No.

24 Q. This one is signed by Sr LG #1 in May of
25 2006. Do you see that?

0118

1 A. Yes.

2 Q. So, you've never seen that document or any
3 similar document, correct?

4 A. I don't remember seeing it.

5 Q. Do you recall who the head or supervising
6 lifeguard was on July 18th?

7 A. It was LG Supv.

8 Q. Did you know that before John Pluchinsky's
9 drowning?

10 A. Yes, I did actually.

11 Q. What was your understanding of LG Supv'
12 role or responsibility as head guard on July 18th?

13 A. I didn't know what his duty was. I just knew
14 that he was in charge.

15 Q. So, you knew he was the head guard. But you
16 didn't know what that meant, right?

17 A. Right.
18 Q. Do you know who the lifeguard manager was on
19 July 18th?
20 A. I thought it was Guillermo.
21 Q. Are you sure?
22 A. That's what I always thought.
23 Q. Okay. But are you sure that he was the
24 lifeguard manager on July 18th?
25 A. Not a hundred percent.

0119

1 Q. Okay. Do you have any idea what the Houston
2 Racquet Club's criteria was, if any, for the number of
3 lifeguards that needed to be at the family pool at any
4 given time?
5 A. No.
6 Q. Do you have any idea what the Houston Racquet
7 Club's criteria was for locating lifeguard stands or
8 chairs?
9 A. No.
10 Q. Do you have any idea whether the Houston
11 Racquet Club had any policy or procedure or rule in
12 effect on July 18th or at any other date for the maximum
13 number of people who could be in the family pool?
14 A. I think there was a sign somewhere, but I -- I
15 don't know.
16 Q. So, you have no specific recollection of the
17 Houston Racquet Club having a specific rule on the
18 maximum number of people who could be in the family
19 pool, correct?
20 A. I don't know.
21 Q. That's correct?
22 A. Correct.
23 Q. And you have no idea whether the Houston
24 Racquet Club had any policy, procedure or rule in effect
25 on July 18th, 2007 or any other date with respect to the

0120

1 number of lifeguards that were needed given a specific
2 number of people in the pool --
3 MR. REESE: Objection, form.
4 Q. (By Mr. Pletcher) -- right?
5 A. Correct.
6 Q. Going back to Exhibit No. 42 -- Plaintiffs'
7 Exhibit 42. Down at the bottom of this form -- I need
8 to back out a little bit here. Were you aware that
9 according to the camp counselor rules, regulations and
10 requirement that there was a zero tolerance rule in

11 effect? If you cannot abide by the above rules and
12 requirements, you will be released from working from the
13 Houston Racquet Club?

14 A. Yes.

15 Q. You knew that rule was in effect on July 18th,
16 2007?

17 A. Yes.

18 Q. And to you, that meant that if you violated any
19 of these written rules that are contained in Plaintiffs'
20 Exhibit No. 42, that you could be terminated or released
21 from working on the spot?

22 A. I don't necessarily think that's what it means.

23 Q. You don't? What does it mean to you? What
24 does zero tolerance mean to you?

25 A. If you cannot abide, which means -- it can also
0121

1 be read if you cannot -- you know, if you cannot -- it's
2 not just necessarily if you break a rule one time,
3 they're going to let you go. That's not necessarily
4 what it means. If you cannot abide by the rules on a
5 continuous basis, you're going to be released.

6 Q. So, your interpretation of the responsibility
7 that you had as a camp counselor was it is okay for you
8 to violate these rules --

9 A. No.

10 Q. -- one time. But if you did it repeatedly, you
11 might lose your job?

12 A. You would, as a matter of fact.

13 Q. You would. But it was okay to violate them.

14 MR. REESE: Objection, form.

15 A. No.

16 MR. REESE: Leading.

17 A. It's not okay to violate them.

18 Q. (By Mr. Pletcher) Right. Because there was a
19 zero tolerance rule. In fact, the agreement form that
20 had to be signed by each camp counselor says that, "I
21 have read the above information and agree to abide by
22 the rules and regulations that have been outlined. I
23 understand there's a zero tolerance rule in effect and
24 that I will be released from working for the Houston
25 Racquet Club summer camp 2007 if I cannot abide by these
0122

1 rules."

2 A. Okay. I guess that's what it means. Yes.

3 Q. So, if you violate the rule, the Club had the
4 right and they told you you were going to be released

5 from working, correct?

6 A. Correct.

7 MR. REESE: Objection, form, leading.

8 Q. (By Mr. Pletcher) Now, do you remember -- I

9 may have asked you this earlier, but I apologize if I

10 did.

11 Do you remember signing one of these

12 agreements in 2007?

13 A. I don't remember if I did.

14 Q. Do you recall at any time while you were a camp

15 counselor in 2007 any of the camp counselors who worked

16 with you being released from working or terminated by

17 the Houston Racquet Club for violating the rules,

18 regulations and requirements outlined in Exhibit 42?

19 A. I believe I remember hearing about someone

20 being fired, but I cannot remember specifically who it

21 was.

22 Q. So, you think maybe one camp counselor may have

23 been terminated for violating the rules, regulations and

24 requirements of the camp counselors in 2007?

25 A. Yeah.

0123

1 MR. REESE: Objection, form, leading.

2 Q. (By Mr. Pletcher) But you don't know who or

3 when.

4 A. No.

5 MR. PLETCHER: Okay. Why don't we take a

6 short break. I think we're going to go to that day, and

7 I need to break before I go there.

8 THE WITNESS: All right.

9 THE VIDEOGRAPHER: The time is 4:03 p.m.,

10 and we're off the record.

11 (Recess from 4:03 to 4:17)

12 THE VIDEOGRAPHER: The time is 4:17 p.m.

13 We're back on the record.

14 Q. (By Mr. Pletcher) 4 y/o B-CC #3, are you ready to

15 continue?

16 A. I am.

17 Q. Back in the summer of 2007, were you given any

18 instruction or guidance by the Houston Racquet Club,

19 either David Lamkin, CD or anybody else,

20 about what you were supposed to do as far as getting

21 into the pool? Was there any particular area of the

22 pool that you were required to be in?

23 A. No.

24 Q. Or any area of the pool that you were required

25 to watch?

0124

1 A. No.

2 Q. Well, did the camp counselors just go to
3 whatever area they wanted to? How did that work?

4 A. I mean, basically went where the kids were.

5 Q. Okay. So, looking at Plaintiffs' Exhibit 14I,
6 if we look at the family pool, the top being the slide
7 area -- I'm going to slide this down. I'll back this up
8 a little. Can you see that okay?

9 A. Yeah.

10 Q. This area here (indicating) was the fountain
11 deck area?

12 A. Uh-huh.

13 Q. This was the sun deck area (indicating), right?

14 A. Right.

15 Q. There's some steps down here (indicating) on
16 the west end of the pool --

17 A. Uh-huh.

18 Q. -- correct?

19 A. Correct.

20 Q. You remember there being an umbrella right here
21 (indicating)?

22 A. Yes.

23 Q. And then another umbrella right here
24 (indicating)?

25 A. Uh-huh. Yes.

0125

1 Q. If, let's say for example, the 4-year-old
2 campers came into the beach area as a group and
3 three-fourths of them went over to the fountain area,
4 what counselors would go over to the fountain area with
5 them?

6 A. The majority of the counselors. Then it would
7 leave less counselors with the other kids if you try to
8 split it up evenly.

9 Q. Try to split it up even. Was there some sort
10 of ratio that y'all --

11 A. There wasn't any specific ratio.

12 Q. Okay. So, it wasn't a situation where the camp
13 counselors were required to spread out and disperse in
14 various areas of the pool, right?

15 A. Right.

16 Q. You just went where the campers went.

17 A. Right.

18 Q. Are you employed with the Racquet Club today?

19 A. No.
 20 Q. Are you going to work for them this summer?
 21 A. No.
 22 Q. Why not?
 23 A. I don't know. I just -- personally, it's hard
 24 for me to go around the Racquet Club still. I'm still
 25 pretty shaken up about it.
 0126
 1 Q. Okay.
 2 A. So...
 3 Q. Did you work at the Houston Racquet Club at any
 4 time after John's drowning?
 5 A. No.
 6 Q. Okay. Let me show you Plaintiffs' Exhibit No.
 7 70 again before we get to the diagram. And the third
 8 page of Exhibit 70 is a list of the 7-year-old boys for
 9 week five. You said that you knew 7 y/o B-CC #1?
 10 A. Yes.
 11 Q. Did you know any of the 4-year-old campers --
 12 I'm sorry -- 7-year-old campers that were in her group,
 13 7 y/o C #2 , 7 y/o C #3 , 7 y/o C #4 ,
 14 7 y/o C #5--
 15 A. I knew 7 y/o C #5 .
 16 Q. Okay. 7 y/o C #6 , 7 y/o C #7 , 7 y/o C #8 ,
 17 7 y/o C #9, 7 y/o C #10 --
 18 A. I know 7 y/o C #10 .
 19 Q. -- Land -- how do you spell --
 20 A. I don't know the name, but I know who 7 y/o C #10
 21 was.
 22 Q. 7 y/o C #10, something like that? 7 y/o C #11 ,
 23 7 y/o C #1 --
 24 A. 7 y/o C #11. I know 7 y/o C #11.
 25 Q. And 7 y/o C #12 . So, you knew --
 0127
 1 A. And possibly 7 y/o C #6, if that's the 7 y/o C #6 I'm
 2 thinking of, one of those two 7 y/o C's.
 3 Q. Either this 7 y/o C. I'll just shade 7 y/o C #6. So,
 4 you knew one of the 7 y/o C #6, and you knew 7 y/o C #5 ,
 5 7 y/o C #10 and 7 y/o C #11.
 6 A. And 7 y/o C, yeah #11.
 7 Q. So, you knew four of the eight 7-year-old
 8 campers who were at the pool on July 18th, right?
 9 A. Right. Possibly more. I mean --
 10 Q. Okay. Had you ever been assigned to the
 11 7-year-old boys --
 12 A. Yes.

13 Q. -- during 2007?

14 A. Yes.

15 Q. Okay.

16 A. But I think there was possibly more than one
17 group even, sometimes. I don't know if that week but I
18 know that --

19 Q. Right. There may have been more than one
20 7-year-old boy group?

21 A. Yeah. I don't know if it was that week, but I
22 know that at one point --

23 Q. So, we know that on Wednesday, July 18th, there
24 were one, two, three, four, five, six, seven, eight,
25 7-year-old campers.

0128

1 A. Okay.

2 Q. Okay?

3 A. Because there's -- I mean, there's some other
4 7-year-old boys I can think of that aren't on that list.

5 Q. Sure. Let me hand you Exhibit 14I. I want to
6 go to July 18th, 2007 now. Okay?

7 A. (Witness nodding head)

8 Q. Is that all right?

9 A. That's fine.

10 Q. When did you first know that there was
11 something wrong with John Pluchinsky in the family pool
12 that day?

13 A. When I picked him up.

14 Q. Okay. What prompted you to pick him up?

15 A. Well, the way he was act -- the way he was
16 floating.

17 Q. I deposed 15 y/o LG #1 the other day. And she
18 said that she saw him floating face down, got off her
19 stand, walked over and on her way over, she asked you,
20 "Is that boy okay?" Do you remember that?

21 A. Yes.

22 Q. Was that the first time that you knew something
23 may be wrong with him?

24 A. Well, how it happened was, I turned around and
25 saw him. And my first thought was, well, you know, I

0129

1 hope he's all right. But I'm going to check.

2 Q. Right.

3 A. And I take a step or two. I look up. I see
4 her coming over. She says, "Is he okay?" And I said,
5 "Well, I think so, but I'm going to check," because
6 sometimes they play around or whatnot.

7 Q. So, you actually turned around and saw John
8 Pluchinsky floating face down in the water before 15 y/o LG #1
9 said a thing.

10 A. Before, yeah.

11 Q. Before she said, "Is that boy okay?"

12 A. Yeah. I mean --

13 Q. And before -- do you know if she was even off
14 her stand when you looked around?

15 A. Yeah. She was off. She was walking around.

16 Q. Okay. So, your testimony is that you turned
17 around and you saw John floating face down, right?

18 A. Uh-huh.

19 Q. Is that "yes"?

20 A. Yes.

21 Q. At the time that you did that, 15 y/o LG #1 was
22 already off her stand, correct?

23 A. Correct.

24 Q. But it was before she asked you, "Is that boy
25 okay?"

0130

1 A. Correct. But this was split seconds.

2 Q. Okay. Anything -- was there anything that
3 prompted you to turn around and look?

4 A. No.

5 Q. Okay. You just happened to turn around.

6 A. Yeah. I was turning around. I was, yeah,
7 turning around.

8 Q. Okay. What were you doing at the time or the
9 moment just before you turned around?

10 A. There -- like, I was about -- there was some
11 kids that were playing on this area (indicating), in
12 the -- on the fountain area -- or, no, not that area.
13 This area (indicating).

14 MR. REESE: 4 y/o B-CC #3, you can't point because
15 it won't show up.

16 MR. PLETCHER: That's okay. I'll get him
17 to diagram it.

18 MR. REESE: If you can just kind of talk
19 about the area.

20 A. Okay. I was over in the fountain area and
21 there had been a game of I guess they call it jackpot
22 and turned around because that had basically ended. And
23 I turn around because I was just going to kind of walk
24 around the pool and make sure all the kids were all
25 right. And I happened to see him, like, right when I

0131

1 turned around.
2 Q. (By Mr. Pletcher) And a split second after you
3 turned around, 15 y/o LG #1 said to you, "Is that boy
4 okay?"
5 A. Yeah.
6 Q. Could you with that pink highlighter mark where
7 you were when you turned around?
8 A. (Witness drawing) I was, like, somewhere in
9 this area right here (indicating).
10 Q. Okay. And would you with this red pen put your
11 initials -- draw a line out of the center of that circle
12 and put your initials by it?
13 A. (Witness drawing)
14 Q. And now with this red pen draw a circle of
15 where John Pluchinsky was floating face down.
16 A. (Witness drawing)
17 Q. Okay. And would you also with the red pen put
18 "JP"?
19 A. (Witness drawing)
20 Q. Now, with this orange highlighter, will you put
21 an arrow in the direction that you were facing before
22 you turned around?
23 A. (Witness drawing)
24 Q. Okay. Now, with this green highlighter, put a
25 circle where 15 y/o LG #1 was when you turned around and
0132
1 saw John floating face down.
2 A. She's walking as I turn around, so.
3 Q. Okay. You can draw a line with an arrow if you
4 want to.
5 A. She's coming like right here when I saw her.
6 (Witness drawing)
7 Q. Okay. And will you just put her initials by
8 that? Why don't you do it in red.
9 A. All right.
10 Q. You can just put it under that line "EM."
11 A. (Witness drawing)
12 Q. And what did you do after you saw him floating
13 face down?
14 A. I immediately started walking towards him to
15 pick him up.
16 Q. Did you walk or swim?
17 A. I mean, it's kind of deep. So, you can't --
18 it's a half walk half swim. I can't really describe it.
19 Q. Okay. Well, give me your best description of
20 how you got to John. If you have to use your arms --

21 A. I got there as quickly as I could without
22 swimming.

23 Q. Okay. So, you kind of --

24 A. I kind of like --

25 Q. -- underwater ran?

0133

1 A. Yeah. I guess, yeah.

2 Q. Maybe used your hands on top of the water?

3 A. Yeah. Yeah.

4 Q. Okay. And about how many steps were you from

5 him? And I know that it all happened in an instance and

6 you were probably taking as big as steps as you can.

7 But tell me in your own words about how many steps it

8 was and how quick you got there.

9 A. Well, I mean, I could give you feet. I don't

10 know if steps --

11 Q. Feet would be great.

12 A. Probably like, you know, 5 to 10 feet from him.

13 Q. Five to 10 feet from John?

14 A. Yeah.

15 Q. Okay. How close were you standing to the

16 fountain deck?

17 A. I don't remember exactly. Like, see how

18 there's this thing right here (indicating)?

19 Q. That little ledge.

20 A. There's a ledge. I was probably 2 or 3 maybe

21 even 4 feet from the ledge.

22 Q. Okay. So, you were 2, 3, maybe 4 feet from the

23 ledge that surrounded the circumference of the fountain

24 deck, right?

25 A. Yes.

0134

1 Q. Based upon that recollection, do you think it

2 was closer to 10 feet and maybe more than 10 feet in

3 distance from where you were from John Pluchinsky when

4 you turned around?

5 A. Well, I mean --

6 MR. REESE: Objection, form.

7 A. -- I can see it right now.

8 Q. (By Mr. Pletcher) Yes.

9 A. And it's probably not more than 10 feet.

10 Q. Okay. Well, if you were 2, 3, maybe 4 feet

11 from the -- from the fountain deck, the little ledge

12 there, just from your drawing, it appears that you drew

13 John almost three or over three times further in

14 distance from you than that ledge.

15 A. Yeah. I mean, this is an approximation. I
16 don't remember exactly.

17 Q. Okay. Well, I understand. I'm not trying to
18 get an exact distance.

19 A. Yeah.

20 Q. But I'm trying to get a good estimate of
21 whether or not it was 10 feet or more than 10 feet.

22 A. Well, I don't know. I think it was more than
23 10 feet.

24 Q. Okay.

25 A. I can tell you that honestly.

0135

1 Q. But you're positive that you were very close to
2 that ledge on the fountain deck, correct?

3 MR. REESE: Objection, form.

4 A. I was close. I wouldn't say very close.

5 Q. (By Mr. Pletcher) Well, 2, 3, 4 feet is within
6 your arm's reach, isn't it?

7 MR. REESE: Objection, form.

8 A. I guess. I don't know. I guess.

9 Q. (By Mr. Pletcher) Okay. I'm just wondering if
10 John was closer to you this way (indicating) or do you
11 think that that distance is the correct distance? If
12 you think that's an accurate representation of the
13 distance as compared to your distance to the pool -- the
14 fountain deck, that's fine.

15 A. I may have -- you know, I may have been a
16 little further this way (indicating). I can't say for
17 sure.

18 Q. Okay.

19 A. But what I'm saying: I know the distance --
20 when I looked at him, I can see that distance for sure.

21 Q. Okay. Okay. And I'm going to review this what
22 you've just drawn so that the jury can see what you've
23 drawn. And this is Plaintiffs' Exhibit 14I. You have
24 drawn in John Pluchinsky here (indicating) and --

25 A. 4 y/o B-CC #3 there.

0136

1 Q. 4 y/o B-CC #3, that's you --

2 A. Yes.

3 Q. -- 4 y/o B-CC #3, here, right?

4 A. Yes.

5 Q. And you believe that this distance between
6 where you were and where John was was 10 feet or less.

7 A. Probably around 10 feet, you know.

8 Q. So, I'll just -- you know, the little

9 approximation symbol?
10 A. Yes.
11 Q. Approximately 10 feet.
12 A. And like I said, you know, my position and John
13 Pluchinsky's position may have varied a little bit
14 towards the side for each of us. Not to the right or
15 left but towards the side.
16 Q. So, it may have been this way or this way
17 (indicating)?
18 A. Yeah. Because what I'm saying is: I'm pretty
19 sure of the distance that I was to him, but I'm not --
20 Q. Sure --
21 A. -- completely sure --
22 Q. -- you were closer or further from this
23 (indicating)?
24 A. Yes.
25 Q. Or whether he was closer or further from this

0137

1 (indicating)?
2 A. Correct.
3 Q. Okay. And, again, this end of the pool down
4 here (indicating) on the bottom is the west end. Okay?
5 A. All right.
6 Q. How far do you think John was from the edge of
7 the west end?
8 A. See, that's -- I don't really remember.
9 Because by the time I picked him up, I wasn't really
10 thinking about --
11 Q. Right.
12 A. -- distance, so.
13 Q. So, you can't give a reasonable estimate of the
14 distance John was from this west end?
15 A. I mean, I've stood and looked at the position
16 before. But it's just hard to remember it. It's
17 probably 5 or 6 feet.
18 Q. Okay. Certainly closer than you were from him.
19 A. Yes.
20 Q. Okay. So, if I put in here a little --
21 approximately 5 to 6 feet --
22 A. Yes.
23 Q. -- that would be a reasonable estimate based
24 upon your recollection.
25 A. Yes.

0138

1 Q. Okay. You were not within an arm's length or
2 within the grasp to John Pluchinsky when you turned

3 around.

4 A. No, I was not.

5 MR. REESE: Objection, leading.

6 Q. (By Mr. Pletcher) Now, do you recall which
7 direction John's head was pointed once you reached him?

8 A. Yes.

9 Q. I'm sorry. I'm trying to get a sheet of paper
10 here.

11 Before I have you draw in John's -- the
12 direction of his head, will you put in a little box
13 where each of the lifeguard stands were on July 18th?
14 And you can put...

15 A. (Witness drawing)

16 Q. Is that where 15 y/o LG #2 was?

17 A. Yeah. That's where 15 y/o LG #2 was.

18 Q. Do you want to put "BB" in there or out to the
19 side?

20 A. (Witness drawing)

21 Q. Okay. And where was 15 y/o LG #1?

22 A. 15 y/o LG #1 was, like, right here (witness drawing).
23 (Exhibit 84 marked)

24 Q. (By Mr. Pletcher) Let me show you what I've
25 marked as Exhibit 84. This is another diagram that I've
0139

1 sketched out. And I've tried to draw the area in which
2 John was. Okay? And I put the 5 to 6 feet
3 approximately and an arrow right under the area where
4 you have marked on Exhibit 14I his location when you
5 turned around. I've also put 15 y/o LG #1's stand here.

6 Could you now draw a stick figure in this
7 purple ink showing the direction John's head was
8 pointing when you reached him after turning around and
9 seeing he was in trouble?

10 A. (Witness drawing)

11 Q. Are those his feet?

12 A. Yeah. His legs and feet were facing that way
13 (indicating).

14 Q. And these are his arms? I'm just making him a
15 little more exaggerated so we can see it. Is that what
16 you intended to draw?

17 A. Yeah.

18 Q. Okay. So, this is Plaintiffs' Exhibit 84 where
19 we have 15 y/o LG #1's stand under this umbrella. And
20 then this is your stick figure of John Pluchinsky. And
21 is this circle right here (indicating) his head?

22 A. Yes.

23 Q. And you have his head pointing almost directly
24 towards the slides.

25 A. Well, that's not exactly -- it was pointed more
0140

1 towards -- his head was almost pointed right at me.

2 Q. Almost right at what?

3 A. Right where I was standing.

4 Q. So, when you got to him, his head was in front
5 of you?

6 A. Yes.

7 Q. Okay. And so, let me see this drawing. Okay.

8 Actually, I think you may have it pretty darn close.

9 I'll draw in the circle for you.

10 A. Okay.

11 Q. (Drawing) And I'm going to go ahead and draw
12 in the fountain deck. Now, see if that's an accurate
13 representation.

14 A. Yeah.

15 Q. That's what you intended to show?

16 A. Yeah, that's pretty close.

17 Q. Okay. Let's go on the video looking at

18 Plaintiffs' Exhibit 84.

19 Your recollection is that when you turned
20 around and you got to John, his head was pointed almost
21 directly to the spot that you turned around from.

22 A. Yes.

23 Q. And this is his head right here (indicating).

24 A. Yes.

25 Q. Okay. You remember writing a statement on

0141

1 July 18th, 2007 before you left the Racquet Club that
2 day?

3 A. Yes, I do.

4 Q. Let me show you what's been marked as
5 Plaintiffs' Exhibit 3A. And this, I'll represent to
6 you, is a copy of your statement that the Racquet Club
7 produced in this litigation. I want you to just look at
8 it briefly yourself and tell me if that's a true and
9 accurate copy of the statement that you wrote on
10 July 18th, 2007.

11 A. (Witness peruses document)

12 Q. Is that a copy of your statement?

13 A. Yes, it is.

14 Q. Is it a true and accurate copy, to the best of
15 your knowledge?

16 A. Yes, it is.

17 Q. And when you wrote that statement, you were
18 trying to be accurate in your recollection of the events
19 that day, correct?

20 A. Correct.

21 Q. In the first paragraph or the first sentence,
22 you say, "I was at the pool talking/playing to/with a
23 group of kids nearby. I turned around and saw a kid
24 floating."

25 A. Yes.

0142

1 Q. Did I read that correctly?

2 A. Yes, you did.

3 Q. Now, you said that you -- earlier that you
4 turned around before 15 y/o LG #1 asked you if that boy
5 was okay, correct?

6 A. Yes.

7 Q. But it was almost simultaneously.

8 A. Yeah, almost simultaneous.

9 Q. Do you recall how many kids you were talking or
10 playing with before you turned around?

11 A. Probably three or four.

12 Q. Okay. And of course from Exhibit 14I, your
13 drawing of yourself and the direction that you were
14 looking, your back was to John Pluchinsky --

15 A. Yes.

16 Q. -- correct? Do you recall the three or four
17 boys that you were with at the time?

18 A. No, I don't.

19 Q. And when you said in your statement that you
20 were talking and playing to and with a group of kids
21 nearby, did you mean nearby John?

22 A. Nearby me.

23 Q. Nearby you.

24 A. (Witness nodding head)

25 Q. Okay. And you have no recollection of who

0143

1 those boys were?

2 A. No. I mean, I can guess. But, I mean...

3 Q. Given your drawing, Exhibit 14I, and your
4 placement of yourself and you looking towards the
5 fountain deck, were those three or four 4-year-old boys
6 in this general area (indicating)?

7 A. Yeah. They were right by me.

8 Q. Okay. Will you draw in this orange pen kind of
9 the circumference that the three or four boys were in?

10 A. (Witness drawing)

11 Q. And I'm going to go ahead and put -- not with
12 the intent of saying this is exactly where the three or
13 four boys were. I was going to put three or four little
14 dots. But I'll tell you what: I'll just put three or
15 four boys, 4-year-old boys. What I've written in there
16 is 3-4, 4 y/old for 4-year-old boys.

17 A. All right.

18 Q. Is that correct?

19 A. Yeah. It looks right to me.

20 Q. Now, before you turned around and saw John
21 floating face down, you remember there being other camp
22 counselors in the area, correct?

23 A. Correct.

24 Q. Who do you remember being in the area?

25 A. I know Supv CC #2 and Supv CC #1 were there, and I think
0144

1 I remember where 4 y/o B-CC #2 was and --

2 Q. 4 y/o B-CC #4? Did you know where 4 y/o B-CC #4 was?

3 A. I knew 4 y/o B-CC #4 was in the area, but I can't
4 remember now where she was.

5 Q. Okay. So, you remember off the top of your
6 head where Supv CC #2 and -- and Supv CC #1 were as
7 well as 4 y/o B-CC #2, correct?

8 A. Well, I can't -- all right. I know someone was
9 over by what you were calling the sun deck.

10 Q. Yes.

11 A. But I can't remember if it was 4 y/o B-CC #2 or 4 y/o B-CC #4.

12 Q. Okay. Were Supv CC #1 and Supv CC #2 in
13 the fountain deck area?

14 A. Yes, they were.

15 Q. Will you draw circles and put their initials of
16 where you remember them being?

17 A. I just put like a general area?

18 Q. Yeah, sure. And if you want to do two circles
19 or one, it doesn't matter. Just put their initials in
20 it.

21 A. (Witness drawing)

22 Q. Thank you. Now, we have a statement from 4 y/o B-CC #4
23 which is marked as Plaintiffs' Exhibit 76. 4 y/o B-CC #4
24 who was also a 4-year-old boy counselor, as you
25 told us earlier, said in her statement, "I was sitting
0145

1 on the rock ledge in the pool near the steps with 4 y/o B-CC #2
2 She said, 'Oh, my gosh. Is he okay?' I turn
3 and see a lifeguard at the edge of the pool and 4 y/o B-CC #3
4 swimming towards a little boy, grab him." Okay? Have

5 you ever seen her statement before now?
6 A. I have not.
7 Q. Do you recall this area (indicating) between
8 the steps and the sun deck as being the rock ledge?
9 A. No.
10 Q. See this?
11 A. Well, I don't know what the rock ledge is. I
12 don't know what that is.
13 Q. Okay.
14 A. If -- I mean, if that's what they're referring
15 to, I don't know.
16 Q. Okay. Never heard of the area called the rock
17 ledge?
18 A. No.
19 Q. Okay. But these are definitely steps.
20 A. They're steps, yes.
21 Q. And there's no other steps on this side of the
22 pool, correct?
23 A. Correct. But I think where I remember them
24 being is right there on the sun deck.
25 Q. Right here (indicating)?
0146
1 A. Yeah, right in that area.
2 Q. Okay.
3 A. Not on it but standing in the pool by it.
4 Q. Why don't you go ahead and put a circle in blue
5 and the initials for 4 y/o B-CC #4 and 4 y/o B-CC #2 on
6 that diagram. Best placement that you can give based
7 upon your current recollection.
8 A. (Witness drawing)
9 Q. Okay. You've got 4 y/o B-CC #4 and 4 y/o B-CC #2
10 right off the sun deck, right?
11 A. Right.
12 Q. And this is the sun deck right here
13 (indicating)?
14 A. Correct.
15 Q. Do you remember there being some chairs stacked
16 up in some sort of a fort fashion on this sun deck that
17 day?
18 A. I think I remember something like that. I know
19 the kids had, you know, put them back to back before and
20 said, "Oh, look. I'm making a fort."
21 Q. Okay. I'm going to write in here chair fort
22 and a sun deck. Now, you have put them in this general
23 area. But you've -- you've given statements to the
24 Memorial Village Police Department, the Family &

25 Protective Services, right?

0147

1 A. Right.

2 Q. And you've done diagrams for both of them?

3 A. Yeah.

4 Q. Now, if you place them, 4 y/o B-CC #4 and 4 y/o B-CC #2
5 in this area (indicating) --

6 A. Yes.

7 Q. -- here (indicating), could that be possible?

8 Or do you really feel certain that they were right here
9 (indicating)?

10 MR. REESE: Objection, form.

11 A. I remember seeing someone right there
12 (indicating).

13 Q. (By Mr. Pletcher) Okay.

14 A. Now, I don't know if they were both there.

15 But, you know, inferring from the fact that 4 y/o B-CC #4 said
16 she turned and 4 y/o B-CC #2 was right next to her, that would
17 only place them right next to each other.

18 Q. Okay. Is it possible that you actually may
19 have misdrawn in where you were?

20 MR. REESE: Objection, form.

21 A. No.

22 Q. (By Mr. Pletcher) You're positive?

23 A. Yes.

24 MR. REESE: Objection, form.

25 Q. (By Mr. Pletcher) So, if you made a statement

0148

1 or made a diagram where you showed yourself over here by
2 the sun deck in the fort area, that would be wrong and
3 this would be correct. Is that what you're telling us?

4 A. Correct. That's where I was.

5 Q. Okay. So, you remember somebody being here for
6 sure in front of the sun deck where the fort was.

7 A. Correct.

8 Q. And it may have been both 4 y/o B-CC #2 and
9 4 y/o B-CC #4.

10 A. I think so. It's been a while.

11 Q. Okay. Well, this is really important.

12 A. I'm trying my best.

13 Q. Okay. All right. Do you remember where 4 y/o B-CC #1
14 was?

15 A. I don't remember where she was. I've heard
16 rumors where she was, but I don't remember personally.

17 Q. Tell me -- tell me where you have heard she was
18 located.

19 A. In the shallow area by the fountains and all
20 that.

21 Q. The shallow area or the shallow end would be
22 this area here (indicating)?

23 A. Yeah.

24 Q. Okay. If she has drawn herself in over here
25 (indicating), do you have any reason to dispute that she
0149

1 may have been in this area right here (indicating) in
2 the shallow end?

3 MR. REESE: Objection, form.

4 A. I don't have any reason to dispute it.

5 Q. (By Mr. Pletcher) Okay. But you have no
6 personal knowledge because you don't remember seeing her
7 when you turned around?

8 A. Right. I don't remember.

9 Q. Okay. What other counselors do you recall
10 seeing either before or immediately after you turned
11 around?

12 A. I just remember seeing John. I remember seeing
13 15 y/o LG #1, and that's about what I remember. And then I put
14 him on the deck, and then people came running up.

15 Q. Okay. Do you remember seeing 7 y/o B-CC #1?

16 A. No.

17 Q. Okay. Do you remember seeing 7 y/o B-CC #1 before
18 you turned around?

19 A. Before but way before.

20 Q. When you say "way before," what do you mean?

21 A. Like, they had already gotten out of the pool
22 like probably -- I don't know -- I'd like to think five
23 to ten minutes before it happened.

24 Q. But you're uncertain of that?

25 A. I'm uncertain. But I know they'd been out of
0150

1 the pool for a little while because the pool was pretty
2 clear. There weren't -- there weren't a lot of people
3 in it.

4 Q. And what you're telling us is that 7 y/o B-CC #1
5 and the other 7-year-old boy counselors as well as the
6 7-year-old boys got out of the pool before you turned
7 around, maybe as long as five minutes?

8 A. Maybe as long as five minutes, yeah.

9 Q. Before you turned around?

10 A. Yes.

11 Q. Okay. Do you recall --

12 MR. REESE: Can we take just a quick

13 minute? I need to make a phone call --
 14 MR. PLETCHER: Sure.
 15 MR. REESE: -- before --
 16 MR. PLETCHER: Absolutely.
 17 MR. REESE: -- any more time gets past me.
 18 MR. PLETCHER: Sure.
 19 THE VIDEOGRAPHER: The time is 4:57 p.m.
 20 We're off the record.
 21 (Recess from 4:57 to 5:03)
 22 THE VIDEOGRAPHER: The time is 5:03 p.m.
 23 We're back on the record.
 24 Q. (By Mr. Pletcher) Are you ready to continue,
 25 4 y/o B-CC #3?
 0151
 1 A. Yes.
 2 Q. Do you recall yourself being in this area
 3 (indicating) --
 4 A. No.
 5 Q. -- at any time prior to going over to the
 6 fountain area?
 7 A. Not that I recall.
 8 Q. Okay. If I have drawings that you have made
 9 showing you over here by the sun deck and the fort area,
 10 do you have any reason to dispute that at one time you
 11 thought you were there?
 12 MR. REESE: Objection, form.
 13 A. If I had more recent ones where my memory was
 14 more fresh, possibly.
 15 Q. (By Mr. Pletcher) Okay. Okay. Good. And
 16 likewise, do you recall seeing 4 y/o B-CC #4 and 4 y/o B-CC #2 over
 17 here (indicating)?
 18 A. I still don't remember seeing them.
 19 Q. And if there are statements and diagrams
 20 showing that you place them over in this area here
 21 (indicating), if they were made closer in time to the
 22 event, you don't have any reason to dispute their
 23 location here, right?
 24 MR. REESE: Objection, form.
 25 A. If I -- if I said that earlier when my memory
 0152
 1 was more fresh, then that's probably what I would go
 2 with.
 3 Q. (By Mr. Pletcher) Okay. And what I did is I
 4 just wrote in there your initials, question mark, 4 y/o B-CC #4,
 5 4 y/o B-CC #2.
 6 A. But I mean, I know that's not where I was right

7 there where you put the question mark.
8 Q. I meant inside that circle at some time.
9 MR. REESE: Objection, form.
10 A. At some time --
11 Q. (By Mr. Pletcher) Right.
12 A. -- yeah. But that could be --
13 Q. But you're certain that you were right here
14 (indicating).
15 A. Pretty darn sure.
16 Q. What if I have drawings that you made before
17 this deposition that were closer in time where you
18 placed yourself right here? Is it possible you could
19 have been right there (indicating)?
20 MR. REESE: I object. If you want him to
21 just look at forms, show him --
22 A. Yeah, do you -- I mean --
23 Q. (By Mr. Pletcher) I'm just asking the
24 question.
25 MR. REESE: Well, then --

0153

1 MR. PLETCHER: Hey, quit talking.
2 MR. REESE: Hey, Matt, shut up.
3 MR. PLETCHER: You have to quit talking.
4 You can say, "Objection, form."
5 MR. REESE: I can make my objection to
6 form. And don't yell at me because it ain't going to
7 work. You're not that much of a bad ass.
8 MR. PLETCHER: Hey, listen to me. Object
9 to form. Follow the rules.
10 MR. REESE: If you want to ask him a
11 proper question about, hey, I've got something where you
12 did something before, show it to him. It's unfair to
13 the witness to do that.
14 MR. PLETCHER: Don't drag this thing out.
15 MR. REESE: I ain't trying to drag it out.
16 And don't be saying or thinking that you're going to
17 yell at me and somehow change the fact that you're
18 trying --
19 MR. PLETCHER: I apologize for --
20 MR. REESE: -- to mislead the witness.
21 MR. PLETCHER: -- raising my voice. I
22 apologize for raising my voice. But if you'd like me
23 to, I'll look at the Rule book that you know that says
24 all you're supposed to utter in a deposition is "object
25 to form." And at any other time, you can only explain

0154

1 your objection if I ask you what your objection is.
2 MR. REESE: I'm making an objection, and
3 I'm making a reasonable inquiry to you to quit trying to
4 mislead this witness with documents you're not willing
5 to show him.
6 Q. (By Mr. Pletcher) 4 y/o B-CC #3, if I have a diagram
7 that you drew prior in time to today's deposition and
8 closer in time to the event, is it -- showing that you
9 marked yourself over here by the sun deck in this circle
10 right here (indicating), is that possibly a spot that
11 you could have been --
12 A. If I said that --
13 Q. -- at the time that you turned around?
14 MR. REESE: Objection, form.
15 A. If I said that. But as of right now, that's
16 where I remember myself being.
17 Q. (By Mr. Pletcher) Okay.
18 A. And until I see something that would say that I
19 was over there, I still don't -- I wouldn't -- I
20 wouldn't believe it.
21 Q. And if I have a drawing that shows 4 y/o B-CC #1
22 over in this area (indicating) --
23 A. If I said that at a prior time, then yes.
24 MR. REESE: Objection, form.
25 Q. (By Mr. Pletcher) Based upon your recollection
0155
1 today of these two camp counselors being here
2 (indicating), do you recall there being campers with
3 them?
4 A. Yes.
5 Q. Do you recall the number of campers that were
6 with them?
7 A. No.
8 Q. Do you have a reasonable estimate based upon
9 your experience of having been in the pool during the
10 4-year-old boys' swim time on July 18th?
11 A. Two to -- two to three.
12 Q. Two to three?
13 A. Two to three.
14 Q. Apiece or total?
15 A. Total.
16 Q. Okay. Okay. I've written in two to three
17 4-year-old boys. Do you recall how many campers were
18 with 4 y/o B-CC #1?
19 A. No, I don't.
20 Q. I'll show you her statement that she wrote on

21 July 18th.

22 MR. LAVINE: Objection. Why are you
23 showing him a statement? I don't want you to --

24 MR. PLETCHER: Okay. Well --

25 MR. LAVINE: I don't want you to even look

0156

1 at the statement. If you're going to try and tell him
2 what some other witnesses said, he doesn't need his
3 memory refreshed. He said he does not know.

4 Q. (By Mr. Pletcher) Okay. Well, I'll just say,
5 4 y/o B-CC #1 has written a statement that, "I was in
6 the shallow end of the pool around the boys with three
7 little boys." Do you have any reason to dispute that
8 she was with three little boys at the time?

9 A. I don't remember how many were there.

10 Q. That wasn't my question, sir. Do you have any
11 reason to dispute that she was with three little boys at
12 the time?

13 A. I have no reason to dispute, no.

14 Q. We can rely upon 4 y/o B-CC #1's testimony on that,
15 can't we?

16 MR. REESE: Objection, form.

17 Q. (By Mr. Pletcher) That's what you'd want us to
18 do.

19 MR. LAVINE: Objection. Don't answer that
20 question.

21 Q. (By Mr. Pletcher) Are you going to follow his
22 instruction?

23 MR. LAVINE: Yes.

24 A. Yes.

25 Q. (By Mr. Pletcher) Okay. Good.

0157

1 MR. PLETCHER: Calm down.

2 Q. (By Mr. Pletcher) Do you recall sitting here
3 today whether there were any campers or counselors, be
4 them 4-year-old boy campers or counselors or 4-year-old
5 girl campers or counselors, in this area (indicating)?

6 A. I think 4 y/o B-CC #5 may have been in that area.

7 Q. Okay. Anybody else?

8 A. I don't remember anyone else.

9 Q. Do you want to draw an 4 y/o B-CC #5 in the area
10 where you think he may have been?

11 A. (Witness drawing) I think that's where I
12 remember seeing him.

13 Q. You've drawn him in over by 15 y/o LG #1's
14 lifeguard stand --

15 A. Correct.
16 Q. -- in the shallow end.
17 A. Correct.
18 Q. Do you recall him being with 4-year-old boy
19 campers at the time?
20 A. I don't remember.
21 Q. Is that a safe assumption based upon your
22 understanding of how y'all operated when you were in the
23 pool with the 4-year-old campers?
24 A. It's a safe assumption that he was with kids,
25 yes.
0158
1 Q. Okay. Just don't know the number.
2 A. Don't know the number.
3 Q. Do you recall seeing any of the 4-year-old girl
4 campers or camp counselors on July 18th just prior to or
5 after you turned around and saw John floating face down?
6 A. Yeah.
7 Q. Can you draw in and use that orange highlighter
8 the general area that they were in?
9 A. (Witness drawing)
10 Q. And, 4 y/o B-CC #3, do you recall whether or not there
11 were any 4-year-olds, be them girls or boys, and their
12 counselors at the slide area?
13 A. I think -- I think 4 y/o B-CC #6 may have been
14 somewhere around here (indicating). I don't know where,
15 though. He could have been anywhere from here
16 (indicating) to over by the slide. I know he was in
17 that area, but I don't know.
18 Q. Okay. And just so the jury can see what you
19 just did, you said that 4 y/o B-CC #6 could have been in
20 this area (indicating)?
21 A. No. At the bottom -- at the starting of those
22 steps.
23 Q. Oh, here (indicating)?
24 A. Yes.
25 Q. Either from here -- this area here
0159
1 (indicating)?
2 A. Yes, or even -- yeah, even -- I know he was
3 just on that half of the pool.
4 Q. Okay.
5 A. That's all I know.
6 Q. This half (indicating).
7 A. No. The half from the bottom of the steps
8 aligning with the end of the rock ledge, yeah.

9 Q. So, this half here (indicating). Can I draw a
10 line in there?
11 A. Yes.
12 Q. Is that what you meant, this half (indicating)?
13 A. Yeah. He was somewhere on that half of the
14 pool.
15 Q. I'm going to put 4 y/o B-CC #6 -- "MB" for 4 y/o B-CC #6.
16 And I'll just draw an arrow both ways. Is that
17 fair?
18 A. Yeah, that's fair.
19 Q. Okay. And he was, of course, with 4-year-old
20 boys because he was a 4-year-old boy camp counselor.
21 A. Correct.
22 Q. But you don't know the number?
23 A. I don't know the number.
24 Q. Is it possible that 4 y/o B-CC #6 may have even
25 been on the slide?

0160

1 MR. REESE: Objection, form.
2 Q. (By Mr. Pletcher) Or do you know?
3 A. I don't know.
4 Q. When I mentioned the slide area, you thought of
5 4 y/o B-CC #6. Why?
6 A. I just remember seeing him over there at some
7 point that day.
8 Q. Okay. Good. So, you don't know if this was
9 before or after you turned around, correct?
10 A. It was sometime around when it occurred.
11 Q. Okay. Good. Great. When we started talking
12 about the event, you had testified that y'all were
13 playing the jackpot game and it had just ended --
14 A. Correct.
15 Q. -- just moments before you turned around.
16 A. I don't remember how long -- how much time had
17 passed.
18 Q. Okay. What's your best estimate? And I don't
19 need minutes. I need an adjective.
20 A. Well, what I'm basing my estimate off of is
21 that 7-year-old boys were also participating in the
22 game.
23 Q. Okay.
24 A. So, it would have ended at some time around
25 when they got out.

0161

1 Q. Okay. And I think you testified earlier that
2 it was about five minutes before you turned around that

3 the 7-year-old boys got out of the pool.

4 A. Correct.

5 Q. Now, the jackpot game that you have testified
6 is that game played with a tennis ball?

7 A. Yes, it is, or some sort of ball. I don't
8 remember exactly. It may have been a tennis ball.

9 Q. Some sort of round ball.

10 A. Yes.

11 Q. Okay. Can you describe to the jury what the
12 game is and how it's played?

13 A. Well, one kid stands, you know, a certain
14 distance away from the pool deck and has the ball,
15 throws the ball up. And there's -- you know, the kids
16 are all standing -- they were all standing on the
17 fountain.

18 Q. The kids were on the fountain deck?

19 A. Yes.

20 Q. Okay.

21 A. And whoever caught it got a certain amount of
22 money.

23 Q. Right.

24 A. And so, say, you know, you catch the ball. You
25 get \$200. Well, the goal is to get a thousand dollars,
0162

1 so --

2 Q. Right.

3 A. -- you throw it up again. And whoever is the
4 first person to catch enough money to get to a thousand,
5 that person get to be the person who throws the ball
6 next.

7 Q. Okay. And the person who throws the ball is in
8 the pool.

9 A. Yes.

10 Q. Okay. And is it true that this jackpot ball
11 game that you've described was being played by the
12 7-year-old campers and their counselors and the
13 4-year-old boys and their counselors?

14 A. Some of the 4-year-old boys and 7-year-olds.
15 I'm not sure if it was all of the 7-year-olds.

16 Q. Okay. So, your best recollection is that some
17 of the 7-year-old boys and their camp counselors and
18 some of the 4-year-old boys and their camp counselors.

19 A. Correct.

20 Q. And we know from your earlier testimony and
21 your drawing here that you had three or four 4-year-old
22 boys with you --

23 A. Correct.

24 Q. -- or in your area that you were watching. And

25 we know that Supv CC #2 and Supv CC #1 were here on
0163

1 the fountain deck.

2 A. Correct.

3 Q. As well as at least one 7-year-old boy

4 counselor because some of the 7-year-old boys were

5 playing, too.

6 A. Yeah. I think 7 y/o B-CC #1 was.

7 Q. Okay. So, you think 7 y/o B-CC #1?

8 A. 7 y/o B-CC #1 was right there.

9 Q. I have a hard time remembering that.

10 A. Yeah.

11 Q. Can I put "KK in" that circle?

12 A. That's fine. Yeah, she was up there at some
13 point.

14 Q. Okay. And of course you were playing the game,

15 too, with them.

16 A. Yes.

17 Q. Now, was it the camp counselors who would throw

18 the ball or would it be the campers themselves?

19 A. It was both.

20 Q. Both. So, you'd have both 7-year-old boys and

21 4-year-old boys who would get in the pool in this area

22 and throw the ball up. And the other campers and

23 counselors would jump off and try to catch the ball

24 before it hit the water?

25 A. Not necessarily jump off before it hit the
0164

1 water. I mean, they're trying to throw it onto the deck

2 so that the kids didn't have to jump off. And if it

3 hits the water, then no one gets the points.

4 Q. Right. But if, for example, you're over in

5 this area here (indicating) and you're the one throwing

6 the ball --

7 A. Uh-huh.

8 Q. -- and you throw the ball short, there were

9 times when they would actually jump off of the fountain

10 deck --

11 A. Oh, yeah.

12 Q. -- to catch the ball.

13 A. Sometimes, yeah.

14 Q. Right. But sometimes you might throw it all

15 the way up on the deck where they would have to scramble

16 for it in this real shallow area.

17 A. Yeah.

18 Q. Right.

19 MR. REESE: Objection, form.

20 Q. (By Mr. Pletcher) But the object of the game
21 was to catch the ball before it hit the water, right?

22 A. Yes. But also there's a rule called, like,
23 scramble, which is the word you used, where if the ball
24 hits the water, you can get it -- the first person to
25 get it gets it.

0165

1 Q. Okay. So, it didn't matter if the ball
2 actually hit water.

3 A. If they said that. If they said "scramble."

4 Q. So -- okay. So, if the ball hit the water, the
5 campers or the counselors would have to say "scramble."
6 And if they said "scramble," then they were entitled to
7 grab the ball while it was in the water and that would
8 count as getting the jackpot.

9 A. Well, you would say "200 scramble" when you
10 threw it.

11 Q. So, it was up to whoever was throwing the ball.

12 A. Yes.

13 Q. Okay. How long do you estimate that y'all were
14 playing this game before the 7-year-old boys got out of
15 the pool?

16 A. Ten, 15 minutes.

17 Q. Okay. And do you recall who won the game that
18 day --

19 A. Well --

20 Q. -- if there was a winner.

21 A. -- not just -- not just one person wins. It's
22 like when you win, you get to be --

23 Q. Oh, yeah, that's right. You get in the pool.

24 Okay. How many winners do you think there were that
25 day?

0166

1 A. Four or five.

2 Q. At no time while you, Supv CC #1, Supv CC #2,
3 7 y/o B-CC #1 were playing this game with the
4 7-year-old boys and the 4-year-old boys did either of
5 the lifeguards instruct you to stop the game, correct?

6 A. Not that I remember.

7 Q. Well, to your recollection, the game ended when
8 the 7-year-old boys got out of the pool, right?

9 A. Yes.

10 Q. So, you have no specific recollection of either

11 15 y/o LG #1 or 15 y/o LG #2 telling you to stop
12 playing that game, correct?
13 A. Correct.
14 Q. Do you remember the last time on July 18th that
15 you were the person who was in the pool throwing this
16 ball --
17 A. No.
18 Q. -- during this game?
19 A. I do not.
20 Q. Do you recall having thrown the ball yourself
21 that day from the pool?
22 A. Not for a hundred percent.
23 Q. Pretty sure you did, though. More likely than
24 not that you did?
25 A. I think I may have.

0167

1 Q. You think you may have. Do you think it's more
2 probable that you did or you didn't?
3 A. I think it's more probable that I did.
4 Q. Okay. And do you recall the 7-year-old campers
5 getting out of the pool back here on this back side of
6 the fountain area, or do you recall one way or the
7 other?
8 A. I do not remember how they got out of the pool.
9 Q. Now, this wasn't the first time that y'all had
10 played the jackpot game in the family pool that summer
11 in July -- the summer of 2007, correct?
12 A. I don't -- we didn't really play it that much.
13 So, it's somewhat probable that it may have been the
14 first time; but I don't know.
15 MR. PLETCHER: Okay. I'm just going to
16 have to object to the responsiveness.
17 Q. (By Mr. Pletcher) Because my question was: To
18 your knowledge, this was not the first time that y'all
19 had played the jackpot game in the family pool during
20 the summer of 2007.
21 A. I don't really remember.
22 Q. Okay. Do you recall on July 18th, 2007 when
23 the 4-year-old boys were in the family pool, camp
24 counselors throwing campers off of this fountain deck
25 into the pool?
0168
1 A. I know it had happened before, but I don't
2 remember if it was that day.
3 Q. Okay. May have happened that day; may not
4 have.

5 MR. REESE: Objection, form.
6 A. May or may not have.
7 Q. (By Mr. Pletcher) Now, is that -- is that
8 another game that y'all played with the summer campers
9 where you threw them off the fountain deck?
10 A. I wouldn't call it a game; but I mean, it
11 happens sometimes.
12 Q. It was an activity.
13 A. It was an activity, but we were told to stop.
14 Q. Okay. Who were you told to stop by?
15 A. One of the supervisors. I don't remember which
16 one.
17 Q. When you say "supervisor," what do you mean?
18 A. Guillermo -- I mean, not Guillermo. David or
19 CD.
20 Q. So, either David Lamkin or CD told
21 y'all to not play this game where children were thrown
22 into the pool.
23 A. To not throw kids.
24 Q. Okay. Not throw kids, period.
25 A. Yeah.
0169
1 Q. Was that the instruction?
2 A. Yes.
3 Q. Did CD and David Lamkin explain why
4 they didn't want you throwing children in the family
5 pool?
6 A. Yes.
7 Q. Why?
8 A. Because they could land on top of another kid
9 and knock them unconscious.
10 Q. To your knowledge, were David Lamkin and CD
11 aware that y'all were playing the jackpot game
12 with a ball in the family pool at any time during 2007?
13 A. I don't know if they were, but I don't think
14 they were.
15 MR. PLETCHER: Okay. I'm going to have to
16 object.
17 A. If I had to guess -- if I had to guess, I would
18 say no.
19 Q. (By Mr. Pletcher) You, 4 y/o B-CC #3 --
20 MR. PLETCHER: I'll object to the
21 responsiveness.
22 Q. (By Mr. Pletcher) You, 4 y/o B-CC #3, have no current
23 recollection whether CD or David Lamkin had
24 knowledge that y'all were playing the jackpot game in

25 the family pool during the summer of 2007, correct?

0170

1 A. Correct. I don't think so.

2 Q. What other games or activity would you and your
3 counselors perform with the summer campers, the
4 4-year-olds in particular, in the family pool?

5 A. We would, you know, carry them on the back --
6 on our backs --

7 Q. Yes.

8 A. -- around the pool. Sometimes they had little,
9 like -- sometimes there would be, like, noodles. You
10 know what those are?

11 Q. Yes.

12 A. Or other floaties. And they would -- you know,
13 we'd kind of pull them around the pool on those. And a
14 lot of the younger kids would play around in the
15 buckets --

16 Q. Right.

17 A. -- as you can see on the diagram and the little
18 spraying rings. You can also see that on there.

19 Q. Okay. And what you've described, these are the
20 spraying rings here (indicating), right?

21 A. Yes.

22 Q. And the buckets hang from this apparatus here
23 (indicating) --

24 A. Yes.

25 Q. -- right? Do you recall if any of these water

0171

1 features were on on July 18th?

2 A. I don't.

3 Q. Do you know if they were turned off that day?

4 A. I don't remember.

5 Q. Okay. Any other games that you recall playing
6 with the 4-year-old campers or any of the other campers
7 in the family pool during the summer of 2007?

8 A. The only other thing I remember would be the
9 chair thing where they would put the chairs back to back
10 and just sit between them.

11 Q. Right. And that would be the chair fort --

12 A. Yeah.

13 Q. -- over on the sun deck.

14 A. Correct.

15 Q. And they'd use the chairs that were on the sun
16 deck, those plastic chairs, to form that so-called fort?

17 A. Correct.

18 Q. Now, the noodles that you said that you would

19 pull the 4-year-old campers around the pool on, were
20 those noodles that the Houston Racquet Club provided or
21 were they noodles that the campers brought with them?

22 A. What they were -- we didn't provide floats to
23 them. They were usually just floats that kids would
24 come and bring up -- not campers but --

25 Q. Okay. Guests or members --

0172

1 A. Yeah.

2 Q. -- who were not involved with the camp.

3 A. Or would leave a ring in the pool.

4 Q. Okay. So, they might have been in the lost and
5 found.

6 A. Yeah.

7 Q. Okay. The lost and found there in the
8 lifeguard office, right?

9 A. But we didn't -- well, no. Like, what I'm
10 saying is they would be right in the pool. I mean, they
11 would be in the pool --

12 Q. Okay.

13 A. -- when we got there. We didn't, like, go and
14 get them --

15 Q. Sure.

16 A. -- out of anywhere.

17 Q. Okay. Do you recall a game called the dunking
18 game?

19 A. The dunking game?

20 Q. Yeah.

21 A. No.

22 Q. How about Marco Polo? Did y'all play Marco
23 Polo?

24 A. No, not with 4-year-olds.

25 Q. Okay. Did you play it with the 7-year-olds?

0173

1 A. I mean, not that I remember either.

2 Q. No?

3 A. No.

4 Q. Okay. Do you recall if you or any of your
5 other counselors on July 18th carried any of the
6 4-year-old boys on your backs around the pool?

7 A. I can't recall.

8 Q. Do you recall if any -- if you or any of the
9 other counselors working with the 4-year-old boys that
10 day pulled them around on noodles?

11 A. I can't recall if it was that day.

12 Q. Okay. Do you recall either of the lifeguards

13 who were on duty at the family pool when these two other
14 games were played where you carried them on the back --
15 carried them on your back or pulled them around the
16 noodles ever telling you to stop?

17 A. No.

18 Q. So, based upon your earlier testimony that
19 David Lamkin and CD instructed the camp
20 counselors that they were not to throw any of the -- any
21 of the campers, including the 4-year-old boys, while
22 they were in the pool, that should not have been
23 occurring on July 18th, 2007, correct?

24 MR. REESE: Objection, form, leading.

25 A. It should not have happened.

0174

1 Q. (By Mr. Pletcher) And if it did happen; that
2 is, camp counselors throwing 4-year-old boys or any
3 other age boys or girls in the family pool, then that
4 would be violating their specific instruction.

5 MR. REESE: Objection, form, leading.

6 A. Correct.

7 Q. (By Mr. Pletcher) Okay.

8 A. But what I did say earlier is that I wasn't
9 sure if it happened on the 18th.

10 Q. I understand. I understand. I know you don't
11 have personal knowledge of that. But if it did occur,
12 then that would be a violation of specific instructions
13 from the people who were in charge --

14 A. Correct.

15 Q. -- David Lamkin, CD, correct?

16 A. Yes.

17 Q. At any time during the jackpot game on
18 July 18th, 2007 or any other day you recall that game
19 being played, do you recall anybody ever getting hurt or
20 injured?

21 A. Not that I recall.

22 Q. Do you recall on July 18th or any day prior to
23 that day any of the campers swallowing water or
24 struggling --

25 A. No.

0175

1 Q. -- while they were playing the jackpot game?

2 A. No.

3 Q. So, no incidents that you're aware of during
4 this jackpot game at any time in the family pool,
5 correct?

6 A. Correct.

7 Q. Do you recall on July 17th playing the jackpot
8 game? That would be Tuesday before Wednesday, July 18th
9 when John drowned.

10 A. No, I don't recall.

11 Q. Do you recall on July 17th, that Tuesday before
12 John drowned, y'all -- y'all meaning the camp
13 counselors -- throwing any of the campers?

14 A. I don't recall.

15 Q. Whatever age, 4, 5, 6-year-old, 7-year-old,
16 8-year-old, you don't remember that happening?

17 A. I don't remember it.

18 Q. Okay. To your knowledge during your employment
19 in 2007, were any camp counselors terminated while
20 playing any of these games?

21 A. Not to my knowledge.

22 Q. Or after playing any of these games?

23 A. Not to my knowledge.

24 Q. Okay. When David Lamkin and CD
25 told you and your other counselors that children were
0176

1 not -- campers were not to be thrown in the family pool,
2 do you remember where that discussion occurred?

3 A. It would have been after camp outside.

4 Q. In one of the debriefing meetings?

5 A. Yes.

6 Q. And were those debriefing meetings conducted on
7 the basketball court that you described earlier?

8 A. No.

9 Q. Where were they conducted?

10 A. In the middle of the car pool, there was a
11 grassy area with benches which is where the kids would
12 sit during car pool --

13 Q. Right.

14 A. -- him and all the kids were gone. It would
15 just be counselors.

16 Q. And you have a specific recollection of
17 receiving this instruction while your other
18 co-counselors were present as a group.

19 A. Which instruction?

20 Q. The instruction that y'all were not supposed to
21 throw the campers in the pool.

22 A. Yes, I remember.

23 Q. Okay. Did you tell me about when that
24 occurred, when that instruction was given to you guys?

25 A. I can't tell you exactly. I know I had heard
0177

1 it before.
2 Q. Was it during week five?
3 A. Well, seeing as we'd only had one debriefing so
4 far that week, I would say probably not.
5 Q. Okay. Why does the number of debriefings come
6 into the formula?
7 A. Well, because we'd only had one. You had one a
8 day.
9 Q. Right.
10 A. So, there was --
11 Q. You think you would have remembered it if it
12 happened on Tuesday the 17th?
13 A. Yeah.
14 Q. So, you think it occurred in either week four
15 or week three, some period in there?
16 A. Yeah.
17 Q. On July 18th, 2007 before you turned around and
18 first noticed John floating face down, do you recall
19 seeing other people in the pool who were not connected
20 with the summer camp?
21 A. Yeah.
22 Q. Did you know any of them? Do you recall
23 knowing any of them sitting here today?
24 A. No, I don't know them.
25 Q. Other members, guests?
0178
1 A. I don't know who they were.
2 Q. Do you remember seeing mothers with children
3 who were not involved with camp?
4 A. There was a mom kind of on the chairs near that
5 umbrella in the area that I drew John.
6 Q. There was some mothers in this area down on the
7 west end of the pool?
8 A. Yeah. Like, if you go -- see how there's a
9 straight line? If you go down --
10 Q. Here (indicating)?
11 A. -- there's chairs, like, in that area. Yeah,
12 somewhere around that curve, there's chairs set up. And
13 I think there was a mom there.
14 Q. With children?
15 A. Not there (indicating). There's plants there.
16 On the concrete.
17 Q. Here (indicating).
18 A. No. To the right. Yeah, like in that area
19 (indicating), there's chairs along there.
20 Q. Did that mother have her children with her?

21 A. I don't remember.
22 Q. So, you recall there being chairs set up here
23 (indicating)?
24 A. Yeah, along that curve of concrete.
25 Q. Pretty crude chair I just drew. Do you recall
0179
1 children -- other children unconnected with the camp
2 being in the pool?
3 A. Yes.
4 Q. About what age group?
5 A. There was a girl. And she's probably anywhere
6 from, like, 6 to 8, somewhere around that age. I don't
7 know.
8 Q. But at least one girl. Any other kids who were
9 not connected with the camp that you recall?
10 A. I think there's maybe another kid, but I don't
11 remember what age.
12 Q. A boy?
13 A. Yeah, I think there was a boy.
14 Q. So, one boy and one girl unconnected with the
15 camp, right?
16 A. Yes.
17 Q. Any others that come to mind?
18 A. No.
19 Q. Not that you recall?
20 A. Not that I recall.
21 Q. But this other boy and girl, that's in addition
22 to the mother who was over in the -- sitting in the
23 chairs over here (indicating) --
24 A. Yes.
25 Q. -- on the concrete area? Okay.

0180

1 THE WITNESS: Can I go to the bathroom
2 real quick?
3 MR. PLETCHER: Sure. Absolutely.
4 THE VIDEOGRAPHER: The time is 5:38 p.m.
5 We're off the record.
6 (Recess from 5:38 to 5:43)
7 THE VIDEOGRAPHER: The time is 5:43 p.m.
8 We're back the record.
9 Q. (By Mr. Pletcher) 4 y/o B-CC #3, you testified that
10 there were three or four 4-year-old boys with you --
11 A. Yes.
12 Q. -- at the time that you turned around. Were
13 they within your arm's length?
14 A. Yes.

15 Q. Okay. When y'all were playing the jackpot
16 game, do you think that somebody standing -- you know
17 where the gate is over on the west end of the pool?

18 A. Yeah.

19 Q. Do you think somebody standing outside that
20 gate could see the ball being thrown?

21 MR. REESE: Objection, form.

22 A. Yeah.

23 Q. (By Mr. Pletcher) Okay. Have you stood on
24 this side of the gate before?

25 A. Yes.

0181

1 Q. Do you think from that vantage point, you would
2 be able to see tennis balls being thrown during the
3 jackpot game from standing outside of the fence?

4 A. I think I would, yeah.

5 Q. Okay. When you turned around -- well, let me
6 back up.

7 When you were playing the jackpot game, do
8 you have any idea who was watching John Pluchinsky?

9 A. No.

10 Q. When you turned around and you saw him floating
11 face down, did you see anybody within an arm's length of
12 him?

13 A. No.

14 Q. Did you see anybody within the grasp of him?

15 A. No.

16 Q. Do you recall seeing any camp counselors in
17 the 5- to 6-foot circumference around where he was
18 floating?

19 A. I don't know how far 4 y/o B-CC #1 was, but I don't
20 think she was. If she's where you put her, then maybe.

21 But --

22 Q. Okay. Maybe 4 y/o B-CC #1? Okay. Other than 4 y/o B-CC #1,
23 assuming she was here (indicating), nobody else was even
24 close to 5 or 6 feet to him, correct?

25 A. Correct.

0182

1 MR. REESE: Objection, form.

2 Q. (By Mr. Pletcher) And do you know of anybody
3 standing, swimming or walking in the area where John was
4 floating?

5 A. No.

6 Q. On July 18th, 2007 do you recall ever
7 personally interacting with John Pluchinsky?

8 A. Yes.

9 Q. You knew him.
10 A. I didn't know him that well because it was only
11 the second day, but I remember seeing him.
12 Q. Okay. Where do you recall seeing him?
13 A. The last time I remember seeing him was in the
14 moon walk.
15 Q. The moon walk?
16 A. From previous that day.
17 Q. If we look at the schedule, Exhibit 6,
18 Plaintiffs' Exhibit 6, the moon walk was at 9:50 on that
19 day --
20 A. Yes.
21 Q. -- right? You remember seeing him there?
22 A. Yes.
23 Q. At no time did you interact with him while he
24 was in the family pool that day, correct?
25 A. Not to my recollection.
0183
1 Q. And you don't recall even seeing him that day
2 in the family pool July 18th except when you turned
3 around and saw somebody floating face down?
4 A. I don't remember seeing him in the pool before
5 that.
6 Q. When you were with him at the moon walk earlier
7 that day, did you interact with him there or was some
8 other camp counselor in charge of him?
9 A. I was in the moon walk while they were jumping
10 around. I remember seeing him jump by.
11 Q. Had you -- had you met him?
12 A. I think so.
13 Q. You think so?
14 A. Yeah, I think so. I don't remember a lot about
15 him.
16 Q. Right. When you turned around and you saw him
17 floating face down, did you know that it was a summer
18 camper?
19 A. Yes.
20 Q. How?
21 A. I mean, I could just tell he was a 4-year-old
22 boy.
23 Q. Well, how do you know it was not a 4-year-old
24 boy who was a non-camper who was like the other boy --
25 A. He looked like --
0184
1 Q. -- that you saw?
2 A. He looked similar to one of the kids in my

3 group.

4 Q. Okay. And was it -- what was it about him that
5 made him look similar to somebody -- one of the
6 4-year-olds in your group?

7 A. I mean, he just looked similar. I mean, I kind
8 of recognized the shape of his body or whatever.

9 Q. Okay. Just something that kind of stuck out?

10 A. Yeah.

11 Q. It wasn't the color of his hair, wasn't the
12 color of his shorts, wasn't any of that?

13 A. It may have been one of those. I just don't
14 really remember.

15 Q. Right. So, you don't remember if there was
16 anything --

17 MR. PLETCHER: And I'll object to the
18 responsiveness of the last answer.

19 Q. (By Mr. Pletcher) You don't have a specific
20 recollection of noticing the color hair, the color
21 shorts that stuck out in your mind that, oh, yes, that's
22 a 4-year-old boy camper?

23 A. I don't remember what it was --

24 Q. Right.

25 A. -- that made me think it was a 4-year-old boy.

0185

1 Q. Had you ever had any conversations with him,
2 John Pluchinsky, prior to finding him floating face down
3 in the family pool?

4 A. Not that I remember.

5 Q. Okay. And you had never talked to either his
6 father, David, or his mother, Kathleen, correct?

7 A. Not that I remember.

8 Q. When you turned around and moved towards John
9 Pluchinsky, tell me what happened and what you did next.

10 A. When I turned around?

11 Q. Yes.

12 A. I saw him. And the first thought was --
13 through my mind was, okay, well, I hope this kid's all
14 right, you know. And I -- but, you know, I started
15 moving towards him. And when I picked him up, his face
16 was blank and his eyes were rolled back. And my
17 immediate reaction was he's not okay, and I yelled for
18 help.

19 Q. Yes.

20 A. Took him to the side of the pool and we began
21 CPR.

22 Q. Okay. And when you say you moved him to the

23 side of the pool, you took him over here (indicating)
24 under this umbrella, correct?

25 A. Correct.

0186

1 Q. Go ahead and draw in where John was placed on
2 the pool deck after he was carried over there by you.

3 A. I mean, it's pretty much in alignment with this
4 area you drew.

5 Q. Sure. Nobody helped you carry him. You
6 carried him yourself?

7 A. Carried him by myself.

8 Q. Okay. We're going to have to draw a box in
9 here. He was put on the -- or placed on the pool deck
10 here (indicating), right? I've drawn in a square here.

11 A. Yeah. That's about right.

12 Q. And I'm going to put "JP." Okay. Now, after
13 15 y/o LG #1 asked you the question, "Is that boy okay,"
14 did you respond to her?

15 A. I said, "Yeah, I think he is but I'm going to
16 check."

17 Q. Okay. In your statement which is marked
18 Exhibit 3A, I said, "I placed him" -- I'm sorry. "I
19 responded, 'I think he's all right. He's probably just
20 playing around.'" You put that in quotes.

21 A. Yeah.

22 Q. "I then proceeded to flip him over. His face
23 was blank, his eyes rolled back and his lips were purple
24 but not quite blue." Do you remember writing that in
25 your statement?

0187

1 A. Yes, I do.

2 Q. And I just read from here down to here
3 (indicating). Now, why did you think he was just
4 playing around?

5 A. Well, there had been kids before who had been,
6 "Oh, look at me. I'm drowning," and --

7 Q. Right.

8 A. -- had done that kind of thing. And I mean, no
9 one -- when you see that, you don't want to believe that
10 it's real. So, that was my first reaction.

11 Q. Right.

12 A. But it didn't change the way I responded.

13 Q. Sure. It didn't affect your response at all.

14 A. (Witness nodding head)

15 Q. But one of the reasons that you responded the
16 way you did was that you knew that some kids at various

17 times at the Houston Racquet Club would play like they
18 were dead on top of the water?

19 A. I think kids anywhere do, but yeah.

20 Q. Right. Well, okay.

21 A. Yeah.

22 Q. Playing dead man's float.

23 A. Sure.

24 Q. That's -- you've heard of that before, haven't
25 you?

0188

1 A. Sure.

2 Q. Where a child floats face down and acts as if
3 they have drowned or dead, right?

4 A. Yes.

5 Q. And there was no rule at the Houston Racquet
6 Club prohibiting that sort of conduct, playing the dead
7 man float game, correct?

8 A. Correct.

9 Q. And you had not received any instructions from
10 David Lamkin, CD or anybody else at the
11 Racquet Club on what to do if you found a summer camper
12 or anybody else playing that game in the family pool,
13 correct?

14 A. Correct.

15 Q. How much do you think you had seen children,
16 campers, or anybody else for that matter play dead man
17 float in 2007?

18 A. I'd probably seen it once or twice before.

19 Q. In the three years that you were a camp
20 counselor?

21 A. Well, you just said 2007.

22 Q. Okay. How about in '05, '06?

23 A. I don't know.

24 Q. You did see it in those years?

25 A. I don't remember.

0189

1 Q. Okay. When you turned John over, his lips were
2 purple. Is that your recollection?

3 A. They were purplish blue, yeah.

4 Q. Okay. Do you recall 4 y/o B-CC #1 helping you
5 get John out of the pool?

6 A. I don't -- I mean, when I got to the edge, she
7 had noticed by that time and she may have helped me. I
8 remember putting him on the deck; but she was right
9 there when I did it, so.

10 Q. Okay. Do you recall at any time before you

11 found John Pluchinsky floating face down in this area
12 seeing John Pluchinsky with any other counselor?
13 A. I don't.
14 Q. And you don't even recall seeing him anywhere
15 in the family pool that day before you turned around and
16 saw him floating face down, correct?
17 A. Correct. Like I said, the last time I saw him
18 was in the moon walk.
19 Q. Have you ever had a discussion with 4 y/o B-CC #2
20 about what she knew, saw or heard that day?
21 A. May have, but I don't remember.
22 Q. You may have had a discussion, but you have no
23 recollection of what --
24 A. I don't --
25 Q. -- may have been said?

0190

1 A. Correct.
2 Q. Did the Houston Racquet Club have any procedure
3 in place or give you as a camp counselor any instruction
4 on what to do if for some reason you had to leave your
5 area in which you were watching campers who were close
6 by you?
7 A. No.
8 Q. So, there was no procedure or instruction by
9 David Lamkin or CD on how to pass off or
10 communicate to the camp counselors that you were leaving
11 the area and you were leaving a summer camper who needed
12 to be watched -- who needed to be watched, correct?
13 A. Not that I remember.
14 Q. Okay. Now, once John got up on the poolside,
15 once y'all laid him up there, do you recall who started
16 the CPR?
17 A. Well, I know -- I believe it was Supv CC #1.
18 Yeah.
19 Q. Okay. Did you do any type of CPR on John?
20 A. The only thing -- I think I helped because we
21 couldn't start CPR because his airway was blocked. And
22 I helped to push down on his stomach because there was a
23 lot of vomit and stuff in there.
24 Q. So, your best recollection is that your only
25 role in the CPR of John was to help push down on his

0191

1 stomach because you thought that his airway was blocked?
2 A. Correct.
3 Q. And who did you help push down on the stomach
4 with? Supv CC #1?

5 A. Supv CC #1.
6 Q. How many times did you -- why don't you just
7 describe to me what y'all did.
8 A. I mean, to my -- to the best of my memory, I
9 brought him over there, sat him down. I started to do
10 it. And then Supv CC #1 said his airway's blocked. So, he
11 said, "I'm not getting anything." So, we pushed down on
12 his stomach and rolled him over on his side. And all
13 the vomit came out. And then someone -- I forget who --
14 cleared -- you know, cleared it out of his mouth. And
15 then they -- we flipped him back up on his back, and
16 they continued CPR.
17 Q. Well, when did y'all push on his stomach?
18 A. Like, I believe it was the initial thing we
19 did.
20 Q. Before y'all rolled him over on his side?
21 A. Yes, or maybe -- I don't remember exactly.
22 Q. Okay. Well, you have just testified that Supv CC #1
23 said that his airway was blocked?
24 A. I believe so. I believe that's what I
25 remember.
0192
1 Q. Okay. Do you recall seeing Supv CC #1 push on his
2 stomach before you did?
3 A. I don't remember.
4 Q. Did y'all both push on his stomach at the same
5 time?
6 A. I don't really remember. I think. I mean...
7 Q. You think y'all may have pushed on his stomach
8 at the same time?
9 A. I think -- I mean, I don't -- I don't really
10 remember.
11 Q. Okay. Well, you were certified in CPR on
12 July 18th, 2007.
13 A. Yes.
14 Q. You had a card. It was current, correct?
15 A. Yes.
16 Q. And you recall from your training of CPR that
17 you should do what as the initial step?
18 A. You check the pulse.
19 Q. Check pulse?
20 A. I believe so.
21 Q. Who checks John's pulse first?
22 A. I don't remember.
23 Q. What do you do next?
24 A. Well, you -- I don't know. It's been a year.

25 I would have already had to get it renewed by now
0193

1 anyways. But I believe you turn him -- you don't turn
2 him; but you see if he's breathing, I believe.

3 Q. Okay. So, you check his pulse. Then you check
4 to see if he's breathing. Then what do you think you
5 do? What's the next step?

6 A. I mean, I think you -- I don't -- it's -- I
7 mean, I don't remember. My certification's probably
8 already up by now anyways. So, I don't remember.

9 Q. Okay. So, that's the best you can recall
10 sitting here today?

11 A. I know -- I mean, I know at some point you
12 check the airway.

13 Q. You what? You check the airway?

14 A. Yes. And if the airway's blocked, you turn him
15 over on his side and clear the airway. And then you
16 turn him back over and you do the -- you do the breaths
17 and you do the compressions and you -- it's a certain
18 amount. I can't remember.

19 Q. Yeah. You don't know the ratio of compressions
20 to breaths sitting here today?

21 A. On a child, I know it's less than an adult.
22 And with a child you only use two fingers on the chest.

23 Q. Okay. For your compressions.

24 A. For your compressions.

25 Q. Okay.

0194

1 A. And you do the -- you do one cycle. Then you
2 check the pulse. You check the breathing again. And
3 then you go again.

4 Q. Okay. That's for a child?

5 A. That's for a child.

6 Q. So, your best recollection sitting here today
7 is that the ratio of breaths to compressions for a child
8 is less than an adult, right?

9 A. Correct.

10 Q. You would do one cycle, check the pulse and
11 breathing and then do the next cycle.

12 A. Yes.

13 Q. Do you recall seeing Supv CC #1 do anything with
14 John before he told you that his airway -- he thought
15 his airway was blocked?

16 A. I don't remember.

17 Q. Do you -- when you hear that somebody's airway
18 is blocked, what does that mean to you?

19 A. It means you can't get the breaths through to
20 his lungs.

21 Q. Okay. So, your -- your understanding of what
22 you believe Supv CC #1 said as far as John's airway being
23 blocked meant he couldn't get breaths down him?

24 A. Probably, yeah.

25 Q. And you don't recall what Supv CC #1 did
0195

1 before he attempted to give breaths to John, right?

2 A. Right.

3 Q. You don't know if he gave him any chest
4 compressions, right?

5 A. Right. I don't remember.

6 Q. You don't remember seeing him put his ear down
7 to his mouth and nose to see if he was breathing?

8 A. I don't remember what he did.

9 Q. You don't remember if he tilted his head one
10 way or another.

11 A. I don't remember.

12 Q. And once -- after you helped push on John's
13 stomach, did you get back in the water?

14 A. I was in the water the whole time.

15 Q. So, you were giving abdominal thrusts or
16 pushing on his stomach from the water?

17 A. I guess, yeah, but not abdominal thrusts. I
18 didn't do anything like that. We -- like, when I say we
19 pushed down on his stomach, I mean, it was literally
20 like -- there was so -- it was so bloated --

21 Q. Okay.

22 A. -- that we didn't even have to push hard, like
23 it just --

24 Q. Right. And how bloated was it? Can you -- can
25 you put your hand -- if John's back is on the table top
0196

1 here, can you give us an estimate of how bloated it was?

2 MR. PLETCHER: Can you get that?

3 THE VIDEOGRAPHER: Well, I can't get the
4 table top because of the TV, so.

5 MR. PLETCHER: Okay. Well, let me do it
6 this way.

7 Q. (By Mr. Pletcher) If John is laying on this
8 pad --

9 MR. PLETCHER: Can you get that?

10 THE VIDEOGRAPHER: Yes, sir.

11 Q. (By Mr. Pletcher) -- can you give me an idea
12 of how bloated his stomach was?

13 A. I mean, like, his normal stomach -- I mean, he
14 was about that bloated (indicating). He was --
15 Q. Your bottom hand would be normal and the top
16 hand is about where his stomach was.
17 A. Where the top of his stomach was, yeah.
18 Q. And when you and Supv CC #1 pushed on his stomach,
19 vomit immediately came out --
20 A. Yes.
21 Q. -- correct?
22 A. Yes.
23 Q. And it was at that point that y'all rolled him
24 on his side.
25 A. Rolled him on his side.

0197

1 Q. And somebody cleared his airway or his mouth
2 with a finger -- what do they call it when you --
3 sweep -- a finger sweep?
4 A. Sweep, yes.
5 Q. Okay. Do you recall who was around at that
6 point? Do you have a recollection?
7 A. At that point, it was Supv CC #1, me and 4 y/o B-CC #1
8
9 Q. Okay. Was 4 y/o B-CC #1 doing the finger
10 sweeps?
11 A. She may have.
12 Q. Yeah. Okay.
13 A. Yeah. Actually, it was her.
14 Q. 4 y/o B-CC #1 has testified that John when he
15 was placed on the pool deck, that his legs were hanging
16 off into the water and that you were holding his feet.
17 A. Yes.
18 Q. Do you remember doing that?
19 A. Yes. That's why I was in the water.
20 Q. I'm just going to put "TCZ holding feet." Now,
21 can you describe to the jury what you were doing as far
22 as holding his feet?
23 A. Well, when I got to the deck -- when I got him
24 to the deck, so many people had already seen and were
25 rushing over that we really didn't have time to get him

0198

1 outcome completely, like, away from the pool. And they
2 just started CPR right there. So, I mean, his legs --
3 like, his knees and down to his feet were still hanging
4 over the pool. So, I was holding his legs.
5 Q. Okay. Let me show you what we've drew in
6 4 y/o B-CC #1's deposition Plaintiffs' Exhibit 80. I've

7 drawn a stick figure here with the legs bending at the
8 knee right in the coping, the pool wall coping. And I
9 put "CZ" for you.

10 A. Uh-huh.

11 Q. Is that your recollection?

12 A. Yes.

13 Q. Now, were you holding John's legs? I'm
14 sorry -- holding John's feet in a manner which made his
15 legs straight --

16 A. They were just --

17 Q. -- extended out?

18 A. Yeah. They were straight. I mean, I was just
19 holding him.

20 Q. As if you were acting as a solid surface for
21 his legs?

22 A. Correct.

23 Q. At any time during the process of CPR, do you
24 recall ever letting go of his legs?

25 A. No.

0199

1 Q. Dropping his legs into the water?

2 A. No.

3 Q. Or moving the legs any direction beyond
4 parallel --

5 A. No.

6 Q. -- to the pool deck?

7 A. I didn't.

8 Q. And you know what I mean when I say "parallel
9 to the pool deck"?

10 A. Yes.

11 Q. Okay. Now, do you recall LG Supv coming
12 on the scene?

13 A. Yes. He came --

14 Q. Next?

15 A. He came next.

16 Q. And he assisted Supv CC #1 with the CPR.

17 A. Yeah.

18 Q. Do you recall him doing breaths or
19 compressions?

20 A. Yeah, I do.

21 Q. What was he doing?

22 A. I mean -- I mean, he was doing the breaths and
23 the compressions.

24 Q. Well, what was Supv CC #1 doing?

25 A. Supv CC #1 stopped.

0200

1 Q. So, it's your recollection that when LG Supv
2 came to the scene, that he took over for Supv CC #1.

3 A. I think so, yeah. That's what I remember.

4 Q. Okay. Just so you understand what the
5 testimony is --

6 MR. LAVINE: Counsel, please don't tell
7 him what the testimony was. Ask him a question. We've
8 already been here five hours. If you want to find out
9 what happened before we -- come on. I know we're
10 getting late and tired. Don't repeat somebody else's
11 testimony to him. Ask him what happened. If you need
12 to refresh his recollection, please do it.

13 MR. PLETCHER: He can assume evidence. I
14 won't argue with you, though. That's okay.

15 Q. (By Mr. Pletcher) You don't ever remember
16 Supv CC #1 and LG Supv doing two-man CPR on John
17 Pluchinsky that day?

18 A. Now that you say that, maybe I do, possibly.

19 Q. Possible that happened, right?

20 A. Possible, yeah.

21 Q. Do you recall after you and Supv CC #1 did push on
22 John's stomach with your hands, anybody else pushing on
23 his stomach during the process?

24 A. Not that I remember.

25 Q. Before the EMS arrived?

0201

1 A. I don't remember, no.

2 Q. At any time, to your knowledge, did John
3 Pluchinsky have a pulse?

4 A. No.

5 Q. At any time, to your knowledge, did John
6 Pluchinsky breathe?

7 A. No.

8 Q. At any time do you recall him being conscious?

9 A. No.

10 Q. And that would include the time period from
11 when you picked him up in the pool until the EMS
12 arrived, correct?

13 A. No. Yeah. I don't remember.

14 Q. I'm going to show you Exhibit No. 81 which is a
15 diagram of the CPR process after LG Supv arrived.
16 You would have been in the water here (indicating) --

17 A. Uh-huh.

18 Q. -- holding his feet.

19 A. Yes.

20 Q. Do you recall 4 y/o B-CC #1 being on John's

21 right, LG Supv being at the head on the left and
22 Supv CC #1 being at his --

23 A. That's exactly.

24 Q. -- torso?

25 A. Yeah.

0202

1 Q. Do you remember David Lamkin coming on the
2 scene?

3 A. Yes.

4 Q. Do you remember him taking over for anybody?

5 A. He took over for LG Supv.

6 Q. LG Supv?

7 A. Yes.

8 Q. Could he have taken over for Supv CC #1?

9 A. Maybe.

10 Q. Do you recall Mr. Lamkin pushing on John's
11 stomach?

12 A. Maybe.

13 Q. At any time during the CPR process, do you
14 recall any solid object coming out of John's mouth or
15 nose?

16 A. I mean, there was vomit.

17 Q. Okay. Vomit is not --

18 A. Well, there was solid -- I mean, some food
19 objects in the --

20 Q. There was -- there was food material in his
21 vomit.

22 A. In his vomit that was somewhat solid.

23 Q. But do you recall seeing, like, a solid jaw
24 breaker?

25 A. No.

0203

1 Q. And by "solid object," I mean a solid object
2 come out of his mouth or nose.

3 A. I mean, I think I remember seeing a piece of
4 meat.

5 Q. Now, this is important.

6 A. I mean, I remember seeing chunks of food.

7 Q. Okay. Do you have any idea what he ate for
8 lunch?

9 A. I don't.

10 Q. Okay. When you say "piece of meat" --

11 A. I mean, I don't know how big; but I remember --

12 Q. It wasn't a piece of steak.

13 A. No. It wasn't like a big piece of steak.

14 Q. If he had a sandwich for lunch, could it have

15 been chewed up lunch meat?

16 MR. REESE: Objection, form.

17 Q. (By Mr. Pletcher) Is that what you mean?

18 A. I guess -- I don't know. I just remember
19 seeing a chunk of something, and it may have been meat,
20 may have been something that looked like meat.

21 Q. Did you ever tell anybody about seeing this
22 chunk of something?

23 A. No. Because, I mean, everyone else saw it,
24 too.

25 Q. And you don't know sitting here today whether
0204

1 or not it was a chunk of meat or just some food
2 particle, right?

3 A. Right. Yeah.

4 Q. Is that correct?

5 A. Correct.

6 Q. Well, do you recall at any time during this CPR
7 process anybody sitting John up?

8 A. I don't remember.

9 Q. Do you recall anybody moving John from his
10 back?

11 A. I don't remember.

12 Q. Do you recall when you may have seen this piece
13 of whatever you think it was?

14 A. I mean, right after they would have pushed on
15 his stomach, I remember seeing stuff come out. And it
16 was kind of chunky, the vomit was.

17 Q. Okay. Well, you said right after they pushed
18 on his stomach. Who is "they"?

19 A. Like I said, I don't remember who exactly. It
20 was either Supv CC #1 or David.

21 Q. Okay. But at no time after this did anybody do
22 anything for John that regained his breathing, correct?

23 A. Correct.

24 Q. If you were going to describe the scene to the
25 jury that you recall seeing around the CPR process in
0205

1 terms of the number of people and comments or things
2 being said, how would you describe it?

3 A. I mean, it was -- most people were kept away.
4 It was just me, David, LG Supv, Supv CC #1 and --

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

6 A. -- 4 y/o B-CC #1. And I would say it was pretty -- we
7 had it pretty under control. Everyone was fairly calm
8 given the circumstances.

9 Q. So, you don't think that there was a number of
10 people --

11 A. I mean, there were people --

12 Q. -- on-looking?

13 A. There were on-lookers, yes.

14 Q. Okay. And on-lookers, you would say, would
15 have not been in the immediate area --

16 A. No.

17 Q. -- but maybe around the outer limits of the
18 area?

19 A. But there weren't -- I don't -- well, from my
20 vantage point, what I'm looking at is the people right
21 in front of me and John. And --

22 Q. Right.

23 A. -- the only people I remember seeing in the
24 immediate area were on the other side of the fence.

25 Q. Okay. Other side of the fence. That is way
0206

1 back here (indicating) --

2 A. Yes.

3 Q. -- at the bottom of Exhibit 14I. Well, do you
4 recall anybody screaming during this CPR process?

5 A. No one screaming, really, no.

6 Q. Do you recall anybody shouting?

7 A. Shouting, no.

8 Q. Do you remember anybody saying, "Call 9-1-1"
9 or, "Has 9-1-1 been called?"

10 A. Yeah. Yeah, I remember that.

11 Q. While CPR was being conducted?

12 A. I mean, I think -- I don't remember exactly
13 when. I just remember either myself or someone saying
14 "call 9-1-1" or make sure that 9-1-1 has been called.

15 Q. Do you recall anybody making any comments about
16 the CPR process, be it number of compressions that ought
17 to be done, number of breaths or how y'all were doing
18 these things?

19 A. There was a lady who was a -- I guess she was
20 the infant, like, swim coach.

21 Q. Yeah. The swim team coach?

22 A. She said something, but I think she was just
23 being erratic because --

24 Q. Right.

25 A. -- David, I remember thinking he did -- was
0207

1 doing what he was supposed to do.

2 Q. And when you say she was being erratic, was she

3 panicked?
4 A. She was kind of panicked. I think --
5 Q. Yes.
6 A. -- she just said it more out of panic.
7 Q. Right.
8 A. Because I think she kind of got moved away from
9 the scene after that.
10 Q. Was that lady SC?
11 A. No.
12 Q. Her name's SC?
13 A. Well, I don't know what her name is.
14 Q. Okay.
15 A. Is her name SC? She's the swim coach.
16 Q. Okay.
17 A. I've seen her there for years.
18 Q. Okay. What color hair does she have?
19 A. I think she has brown hair.
20 Q. Okay.
21 A. It's not CD.
22 Q. No. But SC I think is her name.
23 A. Okay.
24 Q. Does that ring a bell?
25 A. Maybe. I don't --
0208
1 Q. Not really?
2 A. No.
3 Q. So, when the EMS arrived, were you still on the
4 scene?
5 A. Yeah, I was.
6 Q. How many EMS personnel arrived?
7 A. I think two.
8 Q. Were they carrying anything?
9 A. They brought a backboard, and I think -- I
10 don't remember what else.
11 Q. Were they carrying a defibrillator?
12 A. They may have -- they may have been, but I
13 don't -- I'm pretty sure they did not use it right
14 there.
15 Q. You have no specific recollection of EMS using
16 the defibrillator there on the scene?
17 A. I'm pretty sure they didn't use it on the
18 scene.
19 Q. You don't recall the EMS putting the leads on
20 John's chest?
21 A. Maybe. Maybe I do.
22 Q. Yeah. And do you recall what the first

23 question was the EMS asked?

24 A. I don't.

25 Q. Or what they may have said while they were on
0209

1 the scene?

2 A. I don't remember what they said.

3 Q. Well, what do you recall the EMS doing
4 specifically?

5 A. Well, when they showed up, I remember they had
6 the backboard; and they put him on the backboard. And I
7 don't really remember much.

8 Q. Do you remember helping 4 y/o B-CC #1 put John
9 on the backboard?

10 A. Yeah. I remember putting -- helping them put
11 him on the backboard.

12 Q. And as far as the defibrillator goes, you say
13 it may have been used; but you certainly can't give us
14 any detailed testimony and say, I looked at it; yeah, it
15 was on; the lights were on; they were this color light
16 or that color light?

17 A. No, I don't --

18 MR. REESE: Objection, form.

19 A. I don't remember that.

20 Q. (By Mr. Pletcher) Any estimate of the total
21 number of people that were in the family pool prior to
22 you turning around and seeing John floating face down?

23 A. Twenty to 25.

24 Q. Total or is that --

25 A. Twenty, 20 something, around there.

0210

1 Q. There were 26 4-year-old campers, Bud. Do you
2 remember that?

3 MR. REESE: Objection, form.

4 A. I'd say 20 to 25 in there weren't more than --
5 there weren't more than three kids who weren't in the
6 camp in there. So, 20 to 25 would be a good estimate on
7 my part and maybe around 30 -- 30 at the most.

8 Q. (By Mr. Pletcher) Thirty total people
9 including campers, counselors?

10 A. Yeah.

11 Q. Okay. Well, if there were 13 4-year-old boys
12 and 13 4-year-old girls, that gets us to 26.

13 A. Twenty-six.

14 Q. If there were six 4-year-old camp counselors
15 for the 4-year-old boy group, that gets us to 32.

16 A. Yeah.

17 Q. If there were eight 7-year-old boys, that gets
18 us to 40.

19 A. Well, you didn't specify exactly -- you said
20 prior. That could be --

21 Q. Well, within the five minutes before you --

22 A. Well, they were out of the pool, right?

23 Q. Right. You had said earlier that they got out
24 of the pool five minutes before you turned around. So,
25 in the five-minute period and earlier, we know that

0211

1 there are eight 7-year-old boys and there are four camp
2 counselors. So, we're up at --

3 A. Probably around -- if you'd like me to readjust
4 my estimate, probably around 35.

5 Q. Okay. Well, I'm already up to 44.

6 A. Forty-four?

7 Q. Yes.

8 A. Including -- are we including the 8-year-old
9 kids or not?

10 Q. Yeah.

11 A. Okay. Well, then, in that case, yeah, 44.

12 Q. But let's don't forget the 4-year-old girl
13 counselors. There were four of those.

14 MR. LAVINE: All right, Counsel. Please
15 stop arguing with him.

16 MR. PLETCHER: I'm not arguing with him.
17 Make your objection. I'm not arguing.

18 MR. LAVINE: I object to the form of your
19 question, and I object to you arguing with him.

20 A. So, okay.

21 MR. LAVINE: Ask him a question. Don't
22 answer it. Wait for a question.

23 Q. (By Mr. Pletcher) If we're at 44, we've got 26
24 4-year-old campers. We've got six 4-year-old boy camp
25 counselors. That's 32. We've got four 4-year-old girl

0212

1 counselors. Okay? That's 36. We got eight 7-year-old
2 boys. That's 44. And we've got the three 4-year-old --
3 7-year-old boy counselors. Okay? So, that gets us to
4 47, right?

5 A. All right.

6 Q. And we know that you saw at least one girl
7 unconnected with the camp and one boy unconnected with
8 the camp. So, we're at 49.

9 A. Well, if you had said --

10 MR. REESE: Objection, form.

11 A. If you had said when -- you didn't specify what
12 point. Right when I turned around and saw John, my
13 estimate would stay around 25, 30 people. But if you're
14 saying at that time, then, yeah, my estimate would have
15 been around 50.

16 Q. (By Mr. Pletcher) Okay. Around 50. Okay.
17 And that would be five minutes before you turned around
18 and prior, correct?

19 A. Yes.

20 Q. And we know that Supv CC #1 and
21 Supv CC #2 --

22 A. Were in the pool.

23 Q. -- were in the pool, too. So, that gets us to
24 52.

25 A. Yeah.

0213

1 Q. Okay. And do you think there may have been
2 other members and guests in the pool, too?

3 MR. REESE: Objection, form.

4 A. I don't remember seeing anyone else in the
5 pool.

6 Q. (By Mr. Pletcher) How would you describe that
7 number of people in the pool?

8 MR. REESE: Objection, form.

9 Q. (By Mr. Pletcher) Not crowded, crowded, very
10 crowded or overloaded?

11 A. I'd say it's --

12 MR. REESE: Objection, form.

13 A. -- somewhere in the middle, not real -- I mean,
14 somewhat. Somewhat.

15 Q. (By Mr. Pletcher) Somewhat crowded. Okay.
16 Who were the adult supervisors while the 4-year-old boy
17 campers were in the pool?

18 A. The adult supervisors?

19 Q. Yes.

20 A. Well, most -- Supv something -- I don't know her
21 last name -- was there.

22 Q. Was where?

23 A. At the pool. She was the pool supervisor.

24 Q. Describe her to me.

25 A. She had black, short hair. She's probably in

0214

1 her 30s or something like that.

2 Q. Okay. And what was her position?

3 A. She was the pool, I guess, supervisor for the
4 camp.

5 Q. And you remember seeing her on July 18th, 2007
6 being there at the pool the entire time?

7 A. No.

8 Q. When do you remember seeing her there, or do
9 you?

10 A. I don't think she was there that day.

11 Q. Okay. If Supv was not there that day, who was
12 the adult supervisor at the family pool when John
13 drowned?

14 A. I don't remember.

15 MR. REESE: Objection, form.

16 Q. (By Mr. Pletcher) Can you -- do you know of
17 any other adult supervisors who may have been there?

18 A. No.

19 Q. Did all the 4-year-old camper boys in your
20 group know how to swim?

21 A. They're required to take a swim test at the
22 beginning of the week. So, I'm assuming yeah.

23 Q. The beginning of what week?

24 A. The beginning of the camp week.

25 Q. Do you know if all the 4-year-old boy campers
0215

1 for week five attended week one?

2 A. Week one?

3 Q. Yeah.

4 A. No. Obviously not all of them did.

5 Q. Was that when the --

6 A. Usually at the beginning of each week, if I
7 remember correctly.

8 Q. Really?

9 A. I think. Maybe not.

10 Q. So, it's your understanding that all of the
11 campers, all the 4-year-old boy campers had been swim
12 tested?

13 MR. REESE: Objection, form.

14 A. I believe so.

15 Q. (By Mr. Pletcher) And you believe that they
16 were all pool safe?

17 A. Except for the ones who had the floaties.

18 Q. And there was just that one 4 y/o-C #1,
19 right?

20 A. Yes.

21 Q. Who did the swim test?

22 A. CC-A and CC-C.

23 Q. CC-A and CC-C?

24 A. CC-C.

25 Q. I don't know how to spell that. Do you?

0216

1 A. CC-C.

2 Q. And you think they did these swim tests at the
3 beginning of each week?

4 A. I don't remember if it was each week, but I'm
5 pretty sure it was at least more than once.

6 Q. Okay. If the evidence in this case is that the
7 swim tests were only conducted in week one and week two,
8 would you have any reason to dispute that evidence?

9 A. I honestly can't remember.

10 Q. So, you can't think of a reason to dispute it,
11 right, if you can't remember?

12 A. Yeah.

13 Q. Is that true?

14 A. Yes.

15 Q. Now, did David Lamkin ever tell you that the
16 4-year-olds should be treated as non-swimmers?

17 A. No.

18 Q. Was there any rule at the Houston Racquet Club
19 as to how non-swimmers should be treated?

20 A. No.

21 Q. Did you have any instruction from David Lamkin,
22 CD or anybody else at the Houston Racquet
23 Club on how to treat non-swimmers?

24 A. No.

25 Q. How deep do you think is safe for a 4-year-old

0217

1 boy who doesn't know how to swim?

2 MR. REESE: Objection, form.

3 A. Who doesn't know how to swim?

4 Q. (By Mr. Pletcher) Yes.

5 A. A foot.

6 Q. One foot? So, if you knew that a child, a
7 4-year-old child, was a non-swimmer or somebody told you
8 they should be treated as a non-swimmer, if you were the
9 person who was watching that child, you would not let
10 that child go deeper than one foot. Is that what you're
11 saying?

12 MR. REESE: Objection, form.

13 A. Sure.

14 Q. (By Mr. Pletcher) Is that "yes"?

15 A. Yes.

16 Q. Do you recall at any time when you were at the
17 poolside after this emergency occurred; that is, you
18 turned around and you saw him floating face down until

19 the EMS took John off, do you recall ever hearing a
20 whistle blast?

21 A. I don't recall.

22 Q. Do you have any idea what the whistle blast
23 procedure was at the Houston Racquet Club for
24 emergencies at the pool?

25 A. No.

0218

1 Q. So, you don't know if a lifeguard should blow
2 the whistle once, twice, three times for an emergency?

3 A. No.

4 Q. Okay. Do you have any medical conditions
5 requiring regular treatment?

6 A. No.

7 Q. None whatsoever?

8 A. No.

9 Q. Did you have any medical conditions on
10 July 18th, 2007 that required medical treatment?

11 A. No.

12 Q. Never been diagnosed with a heart condition,
13 asthma, ADHD, ADD?

14 A. I had, I believe, maybe ADD.

15 Q. When were you diagnosed with that?

16 A. When I was young. I don't know exactly what
17 age.

18 Q. Were you treated with medication?

19 A. Yeah.

20 Q. More than one?

21 A. Yeah.

22 Q. Do you recall what they were?

23 A. I used to take Ritalin and Adderall.

24 Q. And were you taking Ritalin or Adderall or any
25 other medication for ADD on July 18th, 2007?

0219

1 A. No.

2 Q. When did you stop taking medication for your
3 ADD?

4 A. Like, my junior year in high school.

5 Q. So, about a year before this event?

6 A. Yeah.

7 Q. Did Dr. Danziger treat you for that?

8 A. I believe it was Dr. Tarnow.

9 Q. Okay. Do you wear prescription glasses,
10 contacts?

11 A. I don't.

12 Q. Had you had any sort of laser surgery, Lasix or

13 anything for your eyes?

14 A. No.

15 Q. So, you had never been prescribed prescriptive
16 eye wear --

17 A. I have --

18 Q. -- of any type?

19 A. I have been prescribed, but I just didn't wear
20 them because it didn't make enough of a difference to
21 me.

22 Q. Okay. When did you -- did you get glasses?

23 A. I did get glasses.

24 Q. When?

25 A. I guess it would have been freshman year in

0220

1 high school.

2 Q. And you just wore them for a little bit?

3 A. Well, I wore them a little bit and then just
4 decided they weren't helping me enough to go through the
5 hassle of putting them on every day.

6 Q. And you don't have to wear them now?

7 A. No.

8 Q. And you are -- you have a drivers' license --

9 A. I have --

10 Q. -- and have no restrictions on your drivers'
11 license for eye wear?

12 A. No.

13 Q. Okay. You remember we talked at the beginning
14 of the deposition about Sr LG #1 --

15 A. Yes.

16 Q. -- being a cheerleader? Was 4 y/o B-CC #2 a
17 cheerleader at Memorial, too?

18 A. Yes, she was.

19 Q. Was she thrown off the squad, too?

20 MR. REESE: Objection, form.

21 Q. (By Mr. Pletcher) Or was she the one who got
22 thrown off and not Sr LG #1?

23 MR. REESE: Objection, form.

24 A. Sr LG #1 was thrown off of the JV.

25 Q. (By Mr. Pletcher) Okay.

0221

1 A. Now, there were some cheerleaders kicked off of
2 the varsity, but I can't remember if 4 y/o B-CC #2 was one.

3 Q. Okay. After this event at the Houston Racquet
4 Club, do you remember David Lamkin and CD
5 getting all the counselors together and you wrote
6 statements?

7 A. Yes.
8 Q. When you wrote your statement there, you were
9 at the bleachers, right?
10 A. Uh-huh.
11 Q. Is that "yes"?
12 A. Yes.
13 Q. Do you recall having any discussions with any
14 of the other counselors about what had happened?
15 A. I don't think I really talked to anyone.
16 Q. Okay. Since this event, either in school,
17 socializing with your friends outside of school, have
18 you had any specific discussions about the event?
19 A. Not -- I mean, I've talked to my parents about
20 it. I've talked to a couple --
21 Q. Right. Other than --
22 A. -- of close --
23 Q. -- your parents, yeah.
24 A. I've talked to a couple close friends about it.
25 Q. Has anybody told you what the testimony of
0222
1 4 y/o B-CC #1 was?
2 A. No.
3 Q. Have you had any discussions with anybody other
4 than your lawyer about what the testimony in this case
5 has been by any witness?
6 A. No.
7 Q. Have you reviewed any of the deposition
8 transcripts?
9 A. (Witness shaking head)
10 Q. Have you -- is that "no"?
11 A. No.
12 Q. Have you reviewed any documents at all in
13 preparation for your deposition?
14 A. I've looked at my own testimony, but --
15 Q. You mean your own statement?
16 A. My own statement that was shown to me by -- I
17 guess I did some other -- I forget what it was for. But
18 they showed me it.
19 Q. Was that during the CPS --
20 A. Yeah.
21 Q. -- appeal hearing?
22 A. I think that's what it was.
23 Q. Okay. This is the deposition --
24 MR. PLETCHER: Do you want to just handle
25 this, Jim? 52H is our deposition notice, and there was
0223

1 a subpoena for documents, items --
2 MR. LAVINE: I will represent to you and
3 the Court that he has reviewed items -- I have read to
4 him items one through eight; and he has produced the
5 only items that he has, which is Exhibit 82A-1 which
6 contains his CPR certificate front and back and his AED
7 essentials certificate front and back. He has no other
8 documents that are responsive to the subpoena.

9 Q. (By Mr. Pletcher) Okay. When you reviewed the
10 statement in preparation for your testimony at the
11 Family Protective Services hearing that you referred to
12 a moment ago, did that refresh your recollection --

13 A. It was --

14 Q. -- as the statement that we've looked at today?

15 A. It was exactly as I remembered it.

16 Q. Is it different than this statement?

17 A. It's the same one.

18 Q. Okay. This is the statement that you reviewed.

19 A. Yeah. Yeah, that's the one.

20 Q. Okay. You didn't look at any other
21 statements?

22 A. Huh-uh.

23 Q. Is that "no"?

24 A. No, I did not.

25 MR. PLETCHER: I'll pass the witness.

0224

1 EXAMINATION

2 BY MR. REESE:

3 Q. 4 y/o B-CC #3, my name is Wade Reese. I represent HRC,
4 the Houston Racquet Club, and some individual
5 defendants. I'm going to try to be very quick.

6 A. All right.

7 Q. I know you've had a long day.

8 In respect to today, did Ms. Pluchinsky
9 approach you and talk to you?

10 A. She didn't necessarily approach me. I
11 approached her and just said I was sorry for everything
12 that's happened.

13 Q. And what did she tell you?

14 A. She said, "I know. It's all right. I don't
15 think it's y'all's fault." "I don't blame y'all."
16 That's what she said.

17 Q. She said, "I don't blame y'all"?

18 MR. PLETCHER: Object to form.

19 Q. (By Mr. Reese) She said to you, "I don't blame
20 y'all"?

21 MR. PLETCHER: I object to form.

22 A. She said, "I don't blame y'all."

23 Q. (By Mr. Reese) On July 18th, 2007, did you see
24 any of the counselors throwing any of the campers in the
25 pool area?

0225

1 A. I mean, I don't remember if it was that day or
2 any other day.

3 Q. Do you remember -- I think you said earlier --
4 did you think that David and/or CD knew that jackpot
5 had been played that day?

6 MR. PLETCHER: Objection.

7 A. I don't think they did.

8 Q. (By Mr. Reese) Do you remember if y'all had
9 ever played jackpot before that day?

10 A. Sure. But I don't think it was in the pool.

11 We played it, like, out on the tennis courts.

12 Q. Do you think this was the first time that you
13 played jackpot at the pool?

14 MR. PLETCHER: Object to form.

15 A. Probably not, no. I don't think it was the
16 first time. It may -- I mean, I don't know for sure.

17 Q. (By Mr. Reese) Do you remember playing jackpot
18 on any other day at the pool in 2007?

19 A. Not specifically.

20 Q. Now, in respect to playing the game, when the
21 kids were up on the fountain, if they did jump in the
22 water, how far would they get away from the fountain?

23 A. No more than a foot or two.

24 Q. Do you remember how many 7-year-olds were
25 playing?

0226

1 A. I don't think it was their whole group.

2 Q. Do you remember how many 4-year-olds was
3 playing?

4 A. Four or five.

5 Q. As I understand your testimony during these
6 five and a half plus hours, you remember seeing the
7 4-year-old girls and their counselors over in kind of
8 the beach area?

9 A. The 4-year-old girls, they were on the steps
10 and over -- like, past the lifeguard umbrella.

11 Q. Were there any of the 4-year-old girls that
12 would be considered outside of the water area, the water
13 features or what's kind of called the beach entry? Or
14 were they all kind of congregated over there?

15 A. I think they were --

16 MR. PLETCHER: Object to form.

17 A. -- kind of all in that area.

18 Q. (By Mr. Reese) Do you remember seeing any of
19 the 4-year-old girls or any of their counselors anywhere
20 other than the area that you marked on Exhibit 14I?

21 A. No, I don't remember seeing any.

22 Q. And so, within five minutes to perhaps longer,
23 the 7-year-olds had already gotten out of the pool?

24 MR. PLETCHER: Object to form.

25 A. Wait. What? Sorry.

0227

1 Q. (By Mr. Reese) Did you testify earlier that
2 you thought that it was at least five minutes since the
3 7-year-old boys had gotten out of --

4 A. Yes.

5 Q. -- the pool?

6 A. Yes.

7 Q. Could it have been longer?

8 A. It could --

9 MR. PLETCHER: Object the form.

10 A. -- have been.

11 Q. (By Mr. Reese) So, at the time that you turned
12 around to look and you saw John, all of the 4-year-old
13 girls 12 or 13 of them, their counselors, they were all
14 over in the beach area, the water features, right?

15 MR. PLETCHER: Object to form.

16 A. The 4-year-old girls were on the steps right
17 there that I drew. That's where I remember seeing them.

18 Q. (By Mr. Reese) I apologize. Is it to the
19 right of where the beach front is?

20 A. Yeah.

21 Q. Okay. I apologize. Were they just coming into
22 the pool?

23 A. I think so, yeah. I don't think they had been
24 in the pool very long.

25 MR. PLETCHER: Object to form.

0228

1 Q. (By Mr. Reese) Is it your memory that the
2 4-year-old girls and their counselors at the time that
3 you turned and saw John were just entering the pool
4 using the steps?

5 MR. PLETCHER: Object to form.

6 A. That might be right, yeah.

7 Q. (By Mr. Reese) Tell us a little bit about what
8 would happen in these morning meetings where David and

9 CD would talk to you folks.

10 A. They would talk about what events were going to
11 happen that day, what special things. Like, for that
12 day we had the moon walk. They'd tell us, you know,
13 about the moon walk and tell us about anything that they
14 thought needed to be addressed.

15 Q. Was safety ever an issue at these meetings?

16 A. It most usually -- yeah, it was.

17 Q. What about the meeting after every day of camp
18 session? What kind of things were talked about?

19 A. Safety issues a lot and, like, any other --
20 like I said, any issues they thought needed to be
21 addressed. Or if anyone was doing a good job, they
22 would, you know, commend the people.

23 Q. In your opinion, did David Lamkin care about
24 safety of the camp?

25 A. Yeah.

0229

1 MR. PLETCHER: Object to form.

2 A. Yeah.

3 Q. (By Mr. Reese) In your opinion, did David
4 Lamkin try to make safety an important issue for the
5 camp?

6 MR. PLETCHER: Object to form.

7 A. Yes.

8 Q. (By Mr. Reese) Do you have an opinion as to
9 whether or not David Lamkin thought safety was
10 important?

11 A. I think --

12 MR. PLETCHER: Object to form.

13 A. I think he thought it was very important. I
14 mean, how are you going to run a camp without safety?

15 Q. (By Mr. Reese) Did you have an -- do you have
16 an opinion --

17 MR. PLETCHER: Responsiveness.

18 Q. (By Mr. Reese) -- as to whether it was --
19 safety was important to CD or not?

20 MR. PLETCHER: Object to form.

21 A. I think she thought it was important as well.

22 Q. (By Mr. Reese) What did you think about the
23 counselors that you worked with? Did you think that
24 they were responsible?

25 A. Yeah.

0230

1 Q. Did you think that they were good young men and
2 women?

3 A. Yeah.
4 Q. Did you think that they took their job
5 seriously?
6 MR. PLETCHER: Object to the form.
7 A. Yes.
8 Q. (By Mr. Reese) Did they take their job
9 seriously?
10 A. Yeah.
11 MR. PLETCHER: Object to form.
12 A. They did.
13 Q. (By Mr. Reese) Did you take your job
14 seriously?
15 A. Yes, I did.
16 Q. Did you see -- well, let me start off with you.
17 On that day while in the pool, were you ignoring the
18 4-year-old boys?
19 A. No.
20 MR. PLETCHER: Object to form.
21 Q. (By Mr. Reese) Were you spending time talking
22 with other counselors and otherwise not attending to
23 your 4-year-olds?
24 MR. PLETCHER: Object to form.
25 A. No.
0231
1 Q. (By Mr. Reese) Did you see anybody else, any
2 of the counselors, not attending to their 4-year-old
3 boys?
4 A. No.
5 MR. PLETCHER: Object to form.
6 A. Not that I remember.
7 Q. (By Mr. Reese) Did you receive a certification
8 in CPR the first week of camp?
9 A. I don't remember exactly when it was, but I --
10 I mean, I did receive one.
11 Q. You do remember that there was at least a
12 couple of member moms around the pool that day?
13 A. Yes.
14 Q. Did any of them, to your knowledge, make
15 complaints about any of the activities or the way that
16 the counselors were taking care of their 4-year-old
17 boys?
18 A. No.
19 MR. PLETCHER: Object to form.
20 Q. (By Mr. Reese) On any day prior to that when
21 you were at the pool, did you ever overhear any of the
22 member moms complaining to any counselors and

23 lifeguards, to David Lamkin, to CD, anyone
24 about any of the activities or the way that y'all were
25 supervising the 4-year-old boys?

0232

1 MR. PLETCHER: Object to form.

2 A. I never heard about it.

3 Q. (By Mr. Reese) Now, as I recall your
4 testimony, you were a camp counselor in 2005, 2006 and
5 2007, right?

6 A. Yeah.

7 Q. Did you get into the pool with the kids every
8 day in the camp season in 2005?

9 A. Yeah.

10 Q. Did you get into camp -- or into the swimming
11 pool every day during the camp season of 2006?

12 A. Yeah.

13 Q. Was there anything going on this day any
14 different than the way that you and your other
15 counselors would interact with your -- with your Club
16 members?

17 MR. PLETCHER: Object to form.

18 A. It was the same -- same as any other day.

19 Q. (By Mr. Reese) Did you notice anything about
20 15 y/o LG #1 in the way that she was doing her job that you
21 wouldn't have considered to have been appropriate?

22 MR. PLETCHER: Object to form.

23 A. No.

24 Q. (By Mr. Reese) Now, Supv CC #1 and Supv CC #2 were
25 actually up out of the water and standing on the

0233

1 fountains when you turned around?

2 A. Yeah. That's where they were.

3 Q. What were they doing?

4 A. Well, they had -- like I said, we -- they were
5 participating in the game, also. And they -- I mean,
6 they were still there just from after the game. I don't
7 know what they were planning on doing next, but --

8 Q. So, as far as you know -- well, did you know of
9 anything that would have kept them from simply scanning
10 the pool from where they were on that fountain?

11 MR. PLETCHER: Object to form.

12 A. Not that I know of.

13 Q. (By Mr. Reese) At the time that you turned
14 around, was Supv CC #1 and Supv CC #2 both up on the fountain?

15 A. I believe so --

16 MR. PLETCHER: Object to form.

17 A. -- yes.

18 Q. (By Mr. Reese) Was there any activity going on
19 that would have drawn their attention away from looking
20 at the kids in the pool?

21 MR. PLETCHER: Object to form.

22 A. No.

23 Q. (By Mr. Reese) If you had a problem with the
24 way that one of your campers were swimming or not
25 swimming very well, what would you have done?

0234

1 MR. PLETCHER: Object to form.

2 A. Probably would have taken them over to the side
3 of the pool for the day and stayed with them there and
4 then talked to CD or David about it.

5 Q. (By Mr. Reese) Did that happen with any of the
6 campers as far as you know during the week five of camp
7 in 2007?

8 MR. PLETCHER: Object to form.

9 A. Not that I remember.

10 Q. (By Mr. Reese) 4 y/o B-CC #3, do you believe you were
11 acting responsible -- responsibly as a counselor while
12 in the pool on July 18th, 2007?

13 A. I do.

14 MR. PLETCHER: Object to form.

15 Q. (By Mr. Reese) Do you think that your other
16 counselors were acting responsibly --

17 MR. PLETCHER: Object to form.

18 Q. (By Mr. Reese) -- on that same day?

19 A. Yeah.

20 Q. Do you have an opinion as to whether or not you
21 were acting responsibly while in the pool on July 18th,
22 2007?

23 MR. PLETCHER: Object to form.

24 A. I mean, I think we were doing our jobs. We
25 were doing what we were supposed to be do -- supposed to

0235

1 be doing.

2 Q. (By Mr. Reese) Do you have an opinion as to
3 whether your other co-counselors were acting responsibly
4 while in the pool on July 18th, 2007?

5 MR. PLETCHER: object to form.

6 A. I think they were doing their jobs, too. I
7 mean...

8 Q. (By Mr. Reese) Now in your case, if one of the
9 lifeguards told you to quit doing something, would you
10 have quit doing it?

11 A. Yeah.
12 Q. Has Mr. or Mrs. Pluchinsky approached you or
13 you approached them at any other time than during this
14 deposition?
15 A. No.
16 Q. So, the first time that you've spoken with
17 Ms. Pluchinsky since the date of this event was today
18 when she said she didn't think that y'all were at
19 fault?
20 MR. PLETCHER: Object to form.
21 A. Correct.
22 MR. REESE: Thank you, sir. I appreciate
23 your time, 4 y/o B-CC #3.
24 MR. PLETCHER: 4 y/o B-CC #3, I just have a couple
25 of follow-up questions.
0236

1 FURTHER EXAMINATION
2 BY MR. PLETCHER:
3 Q. Did you talk to Wade Reese today about this
4 case?
5 A. Talked -- not about the case. I talked to him.
6 Q. What did you talk to him about?
7 A. Well, he asked me where my mom went to school.
8 Q. Right.
9 A. And he asked me -- well, asked me where I went
10 to high school because he said he went to Stratford and
11 we were trying to figure out who we knew.
12 Q. Did you tell him about the conversation between
13 you and Mrs. Pluchinsky?
14 A. Yes.
15 Q. Isn't it true that what Ms. Pluchinsky told you
16 after you had told her that you were sorry was that she
17 didn't blame you or your counselors?
18 A. That's what she said, yeah.
19 Q. And that she felt like it was the Houston
20 Racquet Club who let you down --
21 A. She didn't --
22 Q. -- and your co-counselors?
23 A. -- say that.
24 Q. She didn't say that last part?
25 A. No, she didn't.
0237

1 Q. Did she talk about anybody other than yourself?
2 A. No. That's all she said.
3 Q. So, all she said was she didn't blame you.
4 A. Yes.

5 Q. Okay. She didn't say "y'all."
6 A. No. I mean, she said she didn't -- "I don't
7 blame you guys," I believe was her words.
8 Q. Well, that's different than what you just told
9 me. I thought you said that she said she didn't blame
10 you.
11 A. What I said earlier was "y'all" or "you guys."
12 I can't remember exactly which word. I believe that's
13 what she said.
14 Q. So, you don't have a specific recollection of
15 exactly which word she used, do you?
16 A. She used "you guys" or "y'all."
17 Q. "You guys" or "you."
18 A. Or "y'all."
19 Q. Are you sure?
20 MR. REESE: Objection, form.
21 A. Yes, I am sure.
22 Q. (By Mr. Pletcher) Have you ever met with Wade
23 Reese or Norman Snyder or anybody else from his law
24 firm --
25 A. No.
0238
1 Q. -- about this case?
2 A. No.
3 Q. Now, Mr. Reese asked you about the meeting
4 after camp, the debriefing meetings that we had talked
5 about earlier.
6 A. Uh-huh.
7 Q. Did y'all have a debriefing or meeting after
8 John Pluchinsky drowned?
9 A. Yes.
10 Q. You did?
11 A. Yeah.
12 Q. And what -- who conducted that meeting?
13 A. David and CD and Guillermo were all there, I
14 believe.
15 Q. David.
16 A. David.
17 Q. CD.
18 A. And Guillermo.
19 Q. And Guillermo Palmer. When was that held?
20 A. Like, after John was taken away and --
21 Q. On July 18th.
22 A. On July 18th.
23 Q. What did David Lamkin say, if anything?
24 A. Gosh. It's tough. I really don't remember.

25 Q. Well, do you recall what CD said?

0239

1 A. No.

2 Q. Do you recall what Guillermo Palmer said?

3 A. No.

4 Q. Do you recall generally what the message was?

5 A. I just remember it being real -- everyone was
6 real shocked, and everybody was real quiet. And, you
7 know, David said just recapped what had happened. I
8 remember him saying everyone knows what happened today.
9 And at that point, no one knew what happened to him.
10 And at that point he told everyone what happened.

11 Q. What did he tell you happened?

12 A. He just said he didn't make it.

13 Q. Okay. He told you the outcome.

14 A. Yes.

15 Q. But he didn't tell you any details about what
16 led to the outcome or why it happened --

17 A. No.

18 Q. -- is that correct?

19 A. Correct.

20 Q. And Mr. Reese asked you -- when Mr. Reese asked
21 you these opinion questions, okay, about responsibility,
22 whether you felt like you were responsible, et cetera,
23 you can't tell the ladies and gentlemen of this jury who
24 was watching John Pluchinsky during the 15 or 20 minutes
25 before you turned around and saw him floating face down,

0240

1 can you?

2 MR. REESE: Objection, form, leading.

3 A. No, I can't.

4 Q. (By Mr. Pletcher) You can't tell the jury who
5 was watching John Pluchinsky at any time while he was in
6 the family pool on July 18th, can you?

7 A. No.

8 MR. REESE: Objection, leading.

9 Q. (By Mr. Pletcher) You cannot tell the jury who
10 was responsible for watching John Pluchinsky on
11 July 18th, can you?

12 MR. REESE: Objection, leading.

13 A. I can.

14 Q. (By Mr. Pletcher) Yeah. You-all were, weren't
15 you?

16 A. The other kids in my group.

17 Q. All of the camp counselors.

18 A. Yeah.

19 Q. And of course we know that you were not
20 watching John Pluchinsky.

21 A. Correct.

22 MR. REESE: Objection, leading.

23 Q. (By Mr. Pletcher) At any time while he was in
24 the family pool, correct?

25 A. Well, I mean, I don't remember, is what I said.

0241

1 Q. Right. You have no specific recollection --

2 A. Correct.

3 Q. -- of watching him in the sense of you were the
4 person watching him while he was in the pool?

5 A. Right. I don't specifically remember watching
6 him.

7 Q. And during this deposition when you've referred
8 to David --

9 A. Yes.

10 Q. -- did you intend that David to be David
11 Lamkin?

12 A. Yes.

13 MR. PLETCHER: Okay. That's all I have.

14 I thank you for your time today.

15 THE WITNESS: Thank you.

16 MR. REESE: Thanks, 4 y/o B-CC #3.

17 THE VIDEOGRAPHER: The time is 6:57 p.m.

18 We're off the record.

19 MR. PLETCHER: 4 y/o B-CC #3 you're entitled to
20 read and sign your deposition transcript. Okay?

21 THE WITNESS: All right.

22 MR. PLETCHER: Your lawyer has waived that
23 right.

24 THE WITNESS: Okay.

25 MR. PLETCHER: Okay? Now, it's your

0242

1 right. You're the witness. He's not the witness.

2 Okay? I am going to put on --

3 MR. LAVINE: Counsel, that's enough.

4 MR. PLETCHER: I'm going to put on the
5 record that I --

6 MR. LAVINE: Do not advise my client.

7 MR. PLETCHER: I'm not advising. I want
8 to put on the record that I don't agree to the waiver.

9 You have a right to make corrections, make changes.

10 MR. LAVINE: 4 y/o B-CC #3, step back.

11 MR. PLETCHER: And I just want you --

12 MR. LAVINE: I'll advise my client as to

13 what the rules are.
14 MR. PLETCHER: That's okay. I just want
15 him to understand.
16 MR. LAVINE: I appreciate that. Thank
17 you-all.
18 THE WITNESS: I'll follow the advice of my
19 lawyer.
20 MR. LAVINE: You bet.
21 MR. PLETCHER: Great. Thank you.
22 (Deposition concluded at 6:58 p.m.)
23

24 * * * * *

25
0243

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 REPORTER'S CERTIFICATE
10 ORAL VIDEOTAPED DEPOSITION
OF
11 4 y/o B-CC #3
12 June 17, 2008

13 I, Roxanne K. Smith, Certified Shorthand Reporter in
14 and for the State of Texas, hereby certify to the
15 following:

16 That the witness, 4 y/o B-CC #3,
17 was duly sworn and that the transcript of the deposition
18 is a true record of the testimony given by the witness;

19 That examination and signature of the witness to the
20 deposition transcript was waived by the witness without
21 the agreement of the parties at the time of the
22 deposition;

23 That the original deposition was delivered to
24 Mr. Matthew Pletcher, Custodial Attorney.

25 \$_____ is the deposition officer's charges to the

0244

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 (4 hours 59 minutes)

Mr. Wade Reese (11 minutes)

9 Mr. Jim Lavine (No Time Used)

10 That a copy of this certificate was served on all
11 parties shown herein on _____ and filed
12 with the Clerk pursuant to Rule 203.3.

13 I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties in the
15 action in which this proceeding was taken, and further
16 that I am not financially or otherwise interested in the
17 outcome of this action.

18 Certified to by me on this 24th day of June, 2008.

19

20

21

22

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