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NO. 2007-54438

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DAVID AND KATHLEEN) IN THE DISTRICT COURT

4 PLUCHINSKY, INDIVIDUALLY)

AND AS REPRESENTATIVES)

5 OF THE JOHN ALBERT)

PLUCHINSKY ESTATE)

6 Plaintiffs)

)

7 VS.) HARRIS COUNTY, TEXAS

)

8 HOUSTON RACQUET CLUB,)

STEPHEN GRIFFIN, DAVID)

9 LAMKIN, GUILLERMO)

PALMER, AND)

10 LG Supv,)

)

11 Defendants) 281st JUDICIAL DISTRICT

12

13 VIDEOTAPED ORAL DEPOSITION OF

4 y/o B-CC #4

14 JULY 28, 2008

Volume 1

15 *****

16

ORAL AND VIDEOTAPED DEPOSITION OF 4 y/o B-CC #4,

17 produced as a witness at the instance of the

Plaintiffs, and duly sworn, was taken in the

18 above-styled and numbered cause on JULY 28, 2008,

from 1:58 p.m. to 6:07 p.m., before Sherry Hale, CSR

19 in and for the State of Texas, reported by machine

shorthand, at the offices of Johnson, Spalding,

20 Doyle, West & Trent, LLP, 919 Milam, Suite 1700,

Houston, Texas, pursuant to the Texas Rules of Civil

21 Procedure.

22

23

24

25

0002

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

2 FOR THE PLAINTIFFS:

Mr. Matthew G. Pletcher
Beirne, Maynard & Parsons, L.L.P.
1300 Post Oak Blvd., 25th Floor
Houston, Texas 77056
(713) 623-0887
(713) 960-1527 Fax Number

FOR THE DEFENDANTS:

Mr. Steve Howard
Tucker, Taunton, Snyder & Slade
10370 Richmond Avenue, Suite 1400
Houston, Texas 77042
(713) 961-5800

REPRESENTING 4 y/o B-CC #4

Mr. Frank A. Doyle
Johnson, Spalding, Doyle, West & Trent, LLP
919 Milam, Suite 1700
Houston, Texas 77002

ALSO PRESENT:

David Pluchinsky
Ted Erck
Derek Martin, Videographer

Privilege HRC Designation as Confidential

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VIDEOGRAPHER: Today's date is Monday July 28th, 2008. The time is 1:58 p.m. We are on the record.

THE REPORTER: Would you raise your right hand please so I can place you under oath?

THE WITNESS: (Witness complies.)

THE REPORTER: Do you solemnly swear that the testimony you are about to give in this cause shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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

EXAMINATION

BY MR. PLETCHER:

Q. Good afternoon. Could you introduce

18 yourself, please.

19 A. I'm 4 y/o B-CC #4.

20 Q. 4 y/o B-CC #4, my name is Matt Pletcher. You were a
21 camp counselor at the Houston Racquet Club last
22 summer on July 18th, 2007, correct?

23 A. Yes.

24 Q. That was the day that my client's son, John
25 Pluchinsky, drowned while he was in the care and
0005

1 custody of the Club, correct?

2 A. Yes.

3 Q. Have you ever given a deposition before?

4 A. No.

5 Q. You had an opportunity to talk to Mr. Doyle
6 about what we're doing here today, right?

7 A. Yes.

8 Q. If we could get a couple of agreements
9 before we start, it might make things work a little
10 smoother. Okay?

11 A. Okay.

12 Q. First of all, you've got to continue to give
13 verbal answers to my questions because our Court
14 Reporter, Sherry, that you met earlier is typing down
15 my questions and your answers. Okay?

16 A. Okay.

17 Q. And so she needs verbal answers, not shrugs
18 of the shoulder or nods of the heads.

19 A. Right.

20 Q. Because we can't really get those down.
21 Okay?

22 A. Okay.

23 Q. And the other thing is, if for any reason
24 you don't understand one of my questions during the
25 deposition or you don't hear me, will you stop me and
0006

1 say, "Matt, I don't understand your question. Could
2 you rephrase it" or "I didn't hear you"?

3 A. Yes.

4 Q. And if you don't ask me to rephrase it or
5 repeat it so that you do understand it or hear it, I
6 will assume that you did. Okay?

7 A. Okay.

8 Q. Is that fair?

9 A. Yes.

10 Q. Also, I want you to know that this is your
11 deposition. Okay? It's not mine -- I just ripped my

12 microphone off. It's not mine, okay? And at any
13 time during the deposition for whatever reason if you
14 want to take a break, you just let me know. Okay?

15 A. Okay.

16 Q. If you want to talk to Frank or you want to
17 just go gather yourself, that's fine, because today
18 we're going to talk about some things that are
19 difficult to talk about. Okay. So I understand it;
20 the jury will understand it and Frank will
21 understand. Okay?

22 A. Okay.

23 Q. Again, you were a camp counselor on
24 July 18th, 2007, right?

25 A. Yes.

0007

1 Q. And you were in the family pool when John
2 was discovered, correct?

3 A. Yes.

4 Q. What do you remember about -- well, I guess
5 let me ask it differently.

6 When did you realize that something was
7 wrong?

8 A. At what time did I realize or just --

9 Q. What made you realize that something was
10 wrong in the family pool?

11 A. I heard people yelling.

12 Q. Okay. And what do you remember hearing?

13 A. I just remember 4 y/o B-CC #3 going towards
14 John. And I don't remember exactly what I heard,
15 though.

16 Q. Well, do you remember somebody saying, "Is
17 that boy okay?" Or "Is he okay?" Do you remember
18 something like that being said by somebody?

19 A. No. I don't remember. I didn't hear her
20 say that or anyone. I just heard of her saying that.

21 Q. Okay. So somebody had told you that the
22 lifeguard had --

23 A. Yes.

24 Q. -- made the statement?

25 A. 15 y/o LG #1 had, yes.

0008

1 Q. Okay. One other thing I forgot. We can't
2 talk at the same time. Sometimes I talk a little
3 slow. Frank will tell you that. You've got to let
4 me finish my question before you give your answer.
5 Okay? Because she can't get us both down at the same

6 time.

7 A. Okay.

8 Q. That way she won't get mad at us. All
9 right?

10 So anyway, backing up: You said that
11 somebody had told you that the lifeguard had made the
12 statement, "Is that boy okay?" Or "Is he okay?"

13 A. Yes.

14 Q. You don't recall ever hearing her make that
15 statement?

16 A. I don't recall it.

17 Q. Okay. Well, do you remember seeing John
18 floating facedown in the family pool?

19 A. I remember seeing 4 y/o B-CC #3 pick him up.

20 Q. Okay. What were you doing at the time that
21 you realized something was wrong and 4 y/o B-CC #3 was picking
22 him up?

23 A. I was standing in the pool with a few other
24 boys. They were playing on a ledge.

25 Q. Okay. Could you -- Could you just point on

0009

1 Diagram 14, Plaintiff's Exhibit 14? Okay?

2 A. Yes. I was standing right here
3 (indicating).

4 Q. Okay. And just point to where 4 y/o B-CC #3 was --

5 A. 4 y/o B-CC #3 was --

6 Q. -- when you saw him pick him up.

7 A. I don't know the exact location.

8 Q. Sure.

9 A. But I know the area.

10 Q. Yeah. Approximately?

11 A. He was around right here (indicating).

12 Q. Okay. And you say that you saw 4 y/o B-CC #3 pick
13 him up?

14 A. Yes.

15 Q. Did you see 4 y/o B-CC #3 swim over to John?

16 A. I don't --

17 Q. Do you remember seeing that?

18 A. I don't remember.

19 Q. Well, what do you remember seeing before
20 4 y/o B-CC #3 picked him up?

21 A. I was facing the, I guess, north with 4 y/o B-CC #2
22 facing the boys on the ledge, so I just remember
23 seeing the boys playing here.

24 Q. Okay. All right. And so, you must have
25 turned around?

0010

- 1 A. Yes.
2 Q. And when you turned around, did you see 4 y/o B-CC #3
3 at John?
4 A. Yes.
5 Q. And what do you remember 4 y/o B-CC #3 doing?
6 A. Just removing him from the pool.
7 Q. Was John floating facedown in the pool?
8 A. I don't remember.
9 Q. What do you remember about how 4 y/o B-CC #3 removed
10 him from the pool?
11 A. I don't remember exactly how
12 (PLAINTIFF'S Exhibit Number 14k marked.)
13 Q. (BY MR. PLETCHER) Okay. I'll tell you what
14 we're going to do, if you don't mind. What I would
15 like you to do, on Plaintiff's Exhibit 14K, will you
16 put your initials in the approximate location where
17 you were standing at the time that you realized
18 something was wrong?
19 A. Okay.
20 Q. Now, will you draw an arrow in the direction
21 that you were facing at the time that you realized
22 something was wrong?
23 A. Okay.
24 Q. Now, you mentioned 4 y/o B-CC #2?
25 A. Yes.

0011

- 1 Q. Is that 4 y/o B-CC #2?
2 A. Yes.
3 Q. Was 4 y/o B-CC #2 standing with you?
4 A. Yes.
5 Q. Can you put 4 y/o B-CC #2's initials --
6 A. Yes.
7 Q. -- in the approximate area she was standing
8 when you realized something was wrong?
9 A. (Witness complies.)
10 Q. And do you recall what 4 y/o B-CC #2 was doing,
11 what direction she was facing at the time?
12 A. She was also facing this way is what I
13 recall.
14 Q. Okay. Now, will you mind -- rather than
15 putting initials, I'd like you to draw a circle, a
16 small circle where 4 y/o B-CC #3 was when you turned
17 around.
18 A. Well, I don't remember exactly where he
19 was. I just remember the area, so should I put

20 just -- or should I put him in just the approximate
21 area?

22 Q. I'll tell you what: Before we do that --

23 A. Yes.

24 Q. We'll come back to that.

25 A. Okay.

0012

1 Q. What were you and 4 y/o B-CC #2 doing at
2 the time?

3 A. We were playing with the boys on this
4 ledge. They were playing a game of fort kind of with
5 the chairs.

6 Q. All right. And you say that they were
7 playing a game of fort. Had they actually built a
8 fort out of some plastic chairs there?

9 A. They just pushed them together.

10 Q. Right.

11 A. Okay.

12 Q. I deposed 4 y/o B-CC #1. Do you know
13 4 y/o B-CC #1?

14 A. Uh-huh.

15 Q. Is that "yes"?

16 A. Yes.

17 Q. Okay. 4 y/o B-CC #1 told us about that and I'll
18 show you kind of a drawing here in a second that she
19 made.

20 A. Okay.

21 Q. How many boys do you recall being there?

22 A. With me?

23 Q. Yeah. In the fort area, playing fort?

24 A. I don't remember exactly.

25 Q. Okay. Just approximately what do you

0013

1 remember?

2 A. Anywhere from three to six.

3 Q. Okay. And were they all in the fort?

4 MR. DOYLE: Excuse me. Are we talking
5 about when she heard this?

6 MR. PLETCHER: Yes.

7 MR. DOYLE: Okay. I just want to make
8 sure we're talking the same time.

9 A. In the fort or in the -- on this ledge?

10 Q. (BY MR. PLETCHER) Well --

11 A. Because the fort they had made was really
12 small.

13 Q. Okay.

14 A. So no one was actually in it. They were
15 just around it.
16 Q. Okay. And when you say "this ledge" --
17 A. Yes.
18 Q. I know in your original statement that --
19 it's marked as Plaintiff's Exhibit 46 -- I'm sorry,
20 76, you indicated in the statement -- that was made
21 on the day of John's drowning, right?
22 A. Yes.
23 Q. You said, "I was sitting on the rock ledge
24 in the pool near the steps with 4 y/o B-CC #2."
25 A. Yes.

0014

1 Q. Is that the ledge that you're talking about?
2 A. Yes.
3 Q. The rock ledge?
4 A. Uh-huh.
5 Q. And some of the witnesses have referred to
6 it as the sun deck. Is that also what you would call
7 it?
8 A. Yes.
9 Q. The sun deck or rock ledge?
10 A. Yes.
11 Q. Okay. While I'm at it, why don't you take a
12 look at your statement that is marked as Plaintiff's
13 Exhibit 76. And first of all, I would ask you: Is
14 that your handwriting?
15 A. Yes, it is.
16 Q. And to the best of your knowledge, is that a
17 true and correct copy of your handwritten statement?
18 A. Yes, it is.
19 Q. And you made that statement or wrote that
20 statement at the Houston Racquet Club on the
21 afternoon of July 18th, 2007 after John had been
22 taken away in the ambulance?
23 A. Yes.
24 Q. Is that correct?
25 A. Yes.

0015

1 Q. Do you remember doing that over at the
2 bleachers, back behind the Howe House or the camp --
3 A. Yes.
4 Q. -- house?
5 A. Yes.
6 Q. Okay. And when was the last time you looked
7 at that statement?

8 A. A few days ago.

9 Q. Okay. And were you accurate in the things
10 that you describe in that statement to the best of
11 your ability at the time that you wrote it?

12 A. Yes.

13 Q. Okay. Could I have it back, please?

14 A. (Witness complies.)

15 Q. Thank you.

16 I'm putting on the screen now the
17 diagram, Plaintiff's Exhibit 14K in which you just a
18 few minutes ago put your initials and 4 y/o B-CC #4's
19 initials?

20 A. Uh-huh.

21 MR. DOYLE: Objection, form.

22 A. 4 y/o B-CC #2.

23 Q. (BY MR. PLETCHER) I'm sorry. 4 y/o B-CC #2
24 initials?

25 A. Yes.

0016

1 Q. And your initials, correct?

2 A. Yes.

3 Q. Okay. Now, you put your initials in the
4 actual water, but you-all were actually sitting on
5 this rock ledge?

6 A. I don't remember exactly.

7 Q. Okay. In your statement you indicate
8 that, "I was sitting on the rock ledge in the pool
9 near the steps with 4 y/o B-CC #2." So on the day
10 that John drowned, you indicated in the statement
11 that you-all were actually sitting there, correct?

12 A. Yes.

13 Q. Does that refresh your recollection now,
14 having read your statement of what you wrote on that
15 day as to whether or not you and 4 y/o B-CC #2 were actually
16 sitting on the rock ledge at the time?

17 A. I still don't remember vividly, really.

18 Q. Okay. But at the -- to the best of your
19 knowledge on July 18th you were actually sitting on
20 the rock ledge, correct?

21 A. Yes.

22 Q. And you testified a moment ago that to the
23 best of your recollection you and 4 y/o B-CC #2 were with
24 three to six campers, correct?

25 A. Yes.

0017

1 Q. Now, they were four-year-old boys, correct?

2 A. Yes.

3 Q. Were you -- You were one of the six

4 counselors who was responsible for watching the

5 four-year-old boy group; is that correct?

6 A. Yes.

7 Q. And that group of counselors included

8 yourself, 4 y/o B-CC #2, which we've talked about,

9 4 y/o B-CC #4, correct?

10 A. Yes.

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

12 A. Yes.

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

14 A. Yes.

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

16 A. Yes.

17 Q. Did you know all of those folks before

18 July 18th, 2007, you knew who they were?

19 A. I knew of all of them, yes.

20 Q. All right. Now, you actually went to

21 Memorial High School?

22 A. Yes.

23 Q. With 4 y/o B-CC #2, 4 y/o B-CC #1,

24 4 y/o B-CC #6, correct?

25 A. Yes.

0018

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

2 A. I -- All of them, yes.

3 Q. Did 4 y/o B-CC #4 go to Memorial? I thought he

4 went to Jersey Village.

5 A. I guess -- I thought he had gone to -- well,

6 I knew him because one of my really good friends

7 worked with him, and so I just assumed he went to

8 Memorial. It's a pretty big school.

9 Q. Okay. Yeah, it is. I went there many years

10 ago.

11 To the best of your knowledge, how long

12 had you been at the family pool with the

13 four-year-old boys before you realized something was

14 wrong?

15 A. I don't remember exactly how long.

16 Q. Approximately, do you -- can you give us an

17 idea?

18 A. Anywhere from 20 to 40 minutes, I would say.

19 Q. Okay. And during that 20 to 40 minutes,

20 were you with 4 y/o B-CC #2 the entire time?

21 A. No. Just when he was found.

22 Q. Okay. How long had you and 4 y/o B-CC #2
23 been over near the sun deck or rock ledge, as you
24 have termed it, before you realized something was
25 wrong?

0019

1 A. I don't remember the exact time, but it was
2 a few minutes, that we had been there for a little
3 bit.

4 Q. Okay. For a while?

5 A. Yes.

6 Q. And had you been watching that same group of
7 three to six boys the entire time that they had been
8 in the family pool?

9 A. No. 4 y/o B-CC #2 had watched a few of them and I
10 had been watching a few of them.

11 Q. At the moment that you realized something
12 was wrong, who do you remember specifically
13 watching? Which one of the four-year-old boys?

14 A. I don't remember specifically which one.

15 Q. Do you know the names or do you recall the
16 names of any of the three to six four-year-old boys
17 who were in that fort area or the rock ledge near the
18 fort?

19 A. I remember two of their first names for
20 sure.

21 Q. Okay.

22 A. But...

23 Q. Can you give us those names?

24 A. 4 y/o-C #2 and 4 y/o-C #5.

25 Q. Okay. Let me show you what has been marked

0020

1 as Plaintiff's Exhibit 70. Okay. You've seen that
2 document before, have you not?

3 A. Yes.

4 Q. In fact, you gave me a copy of that as you
5 came in here, right?

6 A. Yes.

7 Q. And that's a list of the four-year-old boys
8 from July 18th, 2007?

9 A. Yes.

10 Q. Now, go down that list from top to bottom.
11 The 4 y/o-C #2 that you refer to is the second kid -- boy
12 listed, 4 y/o-C #2 is that correct?

13 A. He's the third boy listed.

14 Q. Third boy. I'm sorry.

15 A. Yes.

16 Q. And then you said 4 y/o-C #5. Is 4 y/o-C #5 on
17 there?

18 A. Yes. He's the 15th boy.

19 Q. And what's his name?

20 A. I don't know how to pronounce it, but it's
21 W-E-I-L.

22 Q. Okay. 4 y/o-C #5, maybe?

23 A. Yes.

24 Q. Okay. And 4 y/o-C #2 is the third boy,
25 correct?

0021

1 A. Yes.

2 Q. Can you look at that list one more time for
3 me? And I want you to think back to July 18, 2007,
4 okay? And see if that list doesn't refresh your
5 recollection as to who the other --

6 A. I really --

7 Q. -- boys may have been that were with you and
8 4 y/o B-CC #2.

9 A. I don't remember for sure. I just -- all
10 the names are familiar, but none of -- I don't
11 remember exactly which ones were with us.

12 Q. Okay. Now, as far as 4 y/o-C #2 and 4 y/o-C #5 are
13 concerned, why did their names stick out in your
14 mind?

15 A. The two of them I was with probably the most
16 in the pool that day from what I remember.

17 Q. Okay. What do you remember doing with 4 y/o-C #2
18 and 4 y/o-C #5 that day since they were the two that you
19 remember being with the most?

20 A. I remember one of them went down the slide
21 that day, but other than that, I don't remember much.

22 Q. When the one of them went down the slide
23 that day --

24 A. Yes.

25 Q. -- did you go over to the slide with them --

0022

1 with him?

2 A. I didn't go actually to the slide. I went
3 to this area to wait for them when they came down it
4 (indicating).

5 Q. Okay. And what did you just point to, what
6 area?

7 A. Right around here (indicating). I stood
8 right along here to wait for them (indicating).

9 Q. Okay. I'm highlighting in yellow the

10 floating line. Do you remember the floating line
11 there?

12 A. Yes.

13 Q. Okay. Now, just draw a circle in orange.

14 A. Around where?

15 Q. Around the area where you were waiting for
16 them -- for him to come down the slide?

17 A. Okay. This is the ladder, right?

18 Q. Uh-huh.

19 A. Okay. Then it was right next to the
20 ladder. So right around here, I would say.

21 Q. Okay. And I'll put this on the screen so
22 that the jury can see it. What you have done is you
23 have drawn in a circle right here?

24 A. Yes.

25 Q. Which is an area that you were standing in
0023

1 the water?

2 A. Yes.

3 Q. Is that correct?

4 And just to save time, I'm going to put
5 your initials in that circle. Okay?

6 A. Okay.

7 Q. Now, did both of them go down the slide?

8 A. No.

9 Q. Or just one of them?

10 A. Just one.

11 Q. Were you with any other four-year-old boy at
12 the time over at the slide area?

13 A. When I was at the slide, I was just waiting
14 for one boy. I didn't have anymore with me.

15 Q. Did you -- and it was either 4 y/o-C #2or 4 y/o-C #5,
16 correct?

17 A. Yes.

18 Q. Okay. And did 4 y/o-C #2or 4 y/o-C #5 go down the
19 slide more than once?

20 A. I don't recall.

21 Q. Okay. Do you recall being at the -- over by
22 the slide more than once on July 18, 2007?

23 A. I was -- if they went down more than once, I
24 was there waiting, but I wasn't there for more than
25 that time waiting for them.

0024

1 Q. Okay.

2 A. It was only that one time.

3 Q. And do you remember there being a lifeguard

4 over by the slide?
5 A. Yes.
6 Q. Could you draw a box where the lifeguard
7 stand was over by the slide area?
8 A. Okay. Right around here.
9 Q. Okay. And then there was another lifeguard
10 stand, too, also on that side of the pool, the south
11 side of the pool, correct?
12 A. Yes.
13 Q. Where 15 y/o LG #1 was seated --
14 A. Yes.
15 Q. -- sitting? And it was under this umbrella,
16 correct?
17 A. Right. It was right around here
18 (indicating).
19 Q. Okay. Go ahead and draw a square there.
20 A. (Witness complies.)
21 Q. You knew 15 y/o LG #1 at the time?
22 A. No, I did not.
23 Q. Did you meet her after the event?
24 A. Yes.
25 Q. Okay. And you know for certain that she was
0025

1 manning that chair at the time that John drowned,
2 correct?
3 A. Yes.
4 Q. Could you put her initials in that box,
5 please?
6 A. Sure.
7 Q. Now, you drew this other lifeguard stand
8 kind of --
9 A. Yeah.
10 Q. -- west of there. It was actually in this
11 area, wasn't it?
12 A. It was like right around here, I think, yes
13 (indicating).
14 Q. Okay. Why don't you redraw that one and put
15 an "X" over the other stand.
16 A. Okay.
17 Q. Now, do you remember who the lifeguard was
18 there at the slide?
19 A. Yes. 15 y/o LG #2.
20 Q. Did you know 15 y/o LG #2 from Memorial?
21 A. Yes.
22 Q. Okay. Could you put his initials in that
23 box?

24 A. Sure.
25 Q. Okay. Do you remember filling out a diagram
0026
1 of the pool and marking locations of various people
2 with the Memorial Village Police Department?
3 A. I don't remember, but I'm not sure --
4 Q. Let me show you this to you. I've marked
5 that as Plaintiff's Exhibit 87.
6 (PLAINTIFF'S Exhibit Number 87 marked.)
7 Q. (BY MR. PLETCHER) Do you remember that
8 diagram? Is that -- Is that your signature at the
9 top?
10 A. Yes.
11 Q. Okay. That is your signature. Is there a
12 date on there?
13 A. Yes. 8-15-07.
14 Q. And is that date made in your handwriting?
15 A. Yes.
16 Q. Okay. So, you filled that diagram out,
17 correct?
18 A. Yes.
19 Q. And did you do that over at the police
20 station?
21 A. Yes.
22 Q. Okay. And the initials that are -- or the
23 letters that are drawn in on this diagram, are those
24 letters in your handwriting?
25 A. Yes.
0027
1 Q. And let me show you this, which I believe is
2 a key to who the letters stand for.
3 A. Yes.
4 Q. Now, the M is 4 y/o B-CC #2?
5 A. Right.
6 Q. Is that correct?
7 A. Yes.
8 Q. And the D is you, 4 y/o B-CC #4?
9 A. Yes.
10 Q. Is that correct?
11 A. Yes.
12 Q. And the B is 4 y/o B-CC #3 or 4 y/o B-CC #3,
13 correct?
14 A. Yes.
15 Q. Is that fair?
16 A. Yes.
17 Q. And the O is John Pluchinsky?

18 A. Right.
 19 Q. Is that correct?
 20 A. Yes.
 21 Q. And the I, which is over in the shallow end
 22 is 4 y/o B-CC #1?
 23 A. Yes.
 24 Q. Is that correct?
 25 A. Yes.
 0028
 1 Q. And the A over here is 15 y/o LG #1?
 2 A. Yes.
 3 Q. Now, I think -- oh, I missed one. And the
 4 L --
 5 A. Supv CC #2.
 6 Q. -- is Supv CC #2?
 7 A. Yes.
 8 Q. Okay. If you don't mind, I'm going to put
 9 this diagram on the screen --
 10 A. Okay.
 11 Q. -- so that everybody can see it. And this
 12 is Plaintiff's Exhibit 87. And I'm going to try to
 13 zoom in on it without messing it up. Now, this area
 14 right here that has the L on it --
 15 A. Yes.
 16 Q. -- that's the fountain deck; is that
 17 correct?
 18 A. Yes.
 19 Q. And the L is Supv CC #2, right?
 20 A. Yes.
 21 Q. The D is 4 y/o B-CC #4, you?
 22 A. Yes.
 23 Q. I'll put "4 y/o B-CC #4 M."
 24 A. Okay.
 25 Q. The M is 4 y/o B-CC #2 F. The B is 4 y/o B-CC #3, and
 0029
 1 the O is John P. The I is 4 y/o B-CC #1; is that
 2 correct?
 3 A. Yes.
 4 Q. And the A is 15 y/o LG #1.
 5 Now, when you drew this diagram back on
 6 August 15th, 2007, you were trying to be as accurate
 7 as you could, correct?
 8 A. Yes.
 9 Q. And sitting here today, some over 12 months
 10 later, do you have a recollection specifically of any
 11 other counselors being in this area at all?

12 A. I don't remember.

13 Q. Okay. Do you remember 4 y/o B-CC #6 being
14 in the area where you were at the time you realized
15 something was wrong?

16 A. I don't remember.

17 Q. Do you remember seeing any other counselors,
18 camp counselors, other than the camp counselors who
19 were counselors for the four-year-old boy group?

20 A. I can't remember.

21 Q. Well, who else do you remember being in the
22 pool at the time that you realized something was
23 wrong?

24 A. I don't recall who was in the pool. I know
25 at least who was around the area, but I don't
0030

1 remember if they were actually in it or where they
2 were.

3 Q. Okay.

4 A. So...

5 Q. Well, what do you remember?

6 A. I just remember people from the other
7 groups. I don't even remember those specific names
8 or anything.

9 Q. Okay.

10 A. I know that 4 y/o B-CC #6 and 4 y/o B-CC #4 were both
11 around the area. I just don't know where they were
12 because within a few minutes I talked to them after
13 John had gotten out and we had all gotten out, so...

14 Q. Okay. So what you've just told me is that
15 to the best of your knowledge there were other groups
16 around. And when you say "other groups," what you
17 mean is there were other campers, four-year-old girl
18 campers, right?

19 A. Yes.

20 Q. You also remember the seven-year-old boy --

21 A. Yes.

22 Q. -- campers being there. And of course,
23 there were camp counselors who were in charge or
24 responsible for watching those other groups, right?

25 A. Yes.

0031

1 Q. What you don't know is whether or not they
2 were specifically in the pool at the time that you
3 realized that something was wrong, correct?

4 A. Correct. Yes.

5 Q. Is that correct?

6 A. Yes.
7 Q. But you would agree from your experience
8 having worked at the Racquet Club that summer and
9 even the summer before, that if the campers, the
10 summer campers, whatever age they were, if they were
11 in the water --

12 A. Yes.

13 Q. -- the counselors were to be in the water
14 with them?

15 A. Yes.

16 Q. Let me hand Plaintiff's Exhibit 87 back to
17 you.

18 A. Okay.

19 Q. And let's look at Plaintiff's Exhibit 14K.

20 A. Okay.

21 Q. On 14K you actually kind of flip-flopped
22 your and 4 y/o B-CC #2's positions, right?

23 A. Yes.

24 Q. Should I put an arrow?

25 A. Yeah.

0032

1 Q. Okay. You would agree that 87 --

2 A. Is more accurate.

3 Q. Plaintiff's Exhibit 87 is accurate in the
4 sense of --

5 A. Yeah.

6 Q. -- where you were actually standing?

7 A. Yeah.

8 Q. Now, on Plaintiff's 14K, would you mind
9 drawing in 4 y/o B-CC #3?

10 A. Sure.

11 Q. You can do it in this red pen.

12 A. Okay.

13 MR. HOWARD: Again, Matt, this is when
14 she first knew something was wrong?

15 MR. PLETCHER: Yep.

16 Q. (BY MR. PLETCHER) Okay. And you put "CZ"
17 on Plaintiff's Exhibit 14K for 4 y/o B-CC #3?

18 A. Yes.

19 Q. And can you draw in John Pluchinsky?

20 A. Yes.

21 Q. And if you want to, why don't you just
22 draw -- actually, before you do that...

23 Do you have a recollection of John's
24 orientation in the water at the time that you turned
25 around and saw him floating facedown?

0033

- 1 A. No.
- 2 Q. In other words, do you know which direction
- 3 his head was pointing?
- 4 A. No.
- 5 Q. Okay. Or you don't know which direction his
- 6 legs were pointing or his arms, right?
- 7 A. No, I don't.
- 8 Q. Okay. Go ahead and just draw in John
- 9 Pluchinsky's initials, just JP.
- 10 A. Right is -- right before when he was found
- 11 or right as he was found probably?
- 12 Q. Well, using Plaintiff's Exhibit 87 --
- 13 A. Just right here. Okay.
- 14 Q. Okay. And could you go ahead and draw in
- 15 Supv CC #2?
- 16 A. Yes.
- 17 Q. And also put 4 y/o B-CC #1's initials.
- 18 A. Okay.
- 19 Q. Now, at the time that you drew Plaintiff's
- 20 Exhibit 87 for the police, was that the location of
- 21 where the people were at the time that you realized
- 22 something was wrong?
- 23 A. Yes.
- 24 Q. Okay. Since you were -- since you were
- 25 facing north, you had to actually turn around to see

0034

- 1 those other people, correct?
- 2 A. Yes.
- 3 Q. Could you go ahead and draw an arrow on
- 4 Plaintiff's Exhibit 87 for the direction that you
- 5 were facing at the time?
- 6 A. Yes.
- 7 Q. And when you turned around, you remember
- 8 that 4 y/o B-CC #3 was some distance -- I know you
- 9 probably don't recall the amount of feet, but some
- 10 distance from John?
- 11 A. Yes.
- 12 Q. And he actually -- I think I've read
- 13 statements from you where you have indicated that you
- 14 actually saw him swim over to John to get him?
- 15 A. Yes.
- 16 Q. Do you remember telling the police that?
- 17 A. Yes.
- 18 Q. Okay. And you actually remember seeing him
- 19 swim to John?

20 A. Yes. It was -- yes.
21 Q. And when he got to John, you remember him
22 turning John over and seeing John?

23 A. Yes.

24 Q. And can you describe to the jury what John
25 looked like?

0035

1 A. All I remember is just him not having much
2 color in his face, but otherwise, I don't remember.

3 Q. Okay. Let's see what you wrote in your
4 statement, Plaintiff's Exhibit 76. Okay?

5 A. Yes.

6 Q. Again, this statement was written just later
7 that afternoon on July 18th after John had drowned,
8 correct?

9 A. Yes.

10 Q. And in here I'll just go ahead and read
11 it, "I was sitting on the rock ledge in the pool near
12 steps with 4 y/o B-CC #2. She said, 'Oh, my gosh.
13 Is he okay?'" When you indicate "She said," are you
14 talking about 4 y/o B-CC #2?

15 A. Yes.

16 Q. "I turned and see a lifeguard at the edge of
17 the pool and 4 y/o B-CC #3 swimming towards a little boy,
18 grab him and turn him right side up. He was on his
19 stomach." Is that correct? Did I read that
20 correctly?

21 A. Yes.

22 Q. "They" -- "they boy" -- "the boy was blue
23 and 4 y/o B-CC #3 put him on the side of the pool." Now, when
24 you wrote -- and I think you intended to put "the."

25 A. "The," yes.

0036

1 Q. When you wrote, "The boy was blue," on
2 July 18th when you made this or wrote this statement,
3 do you recall if it was his face, his lips, his arms?
4 What was blue?

5 A. I remember his lips being blue.

6 Q. And that's what you saw from the rock ledge
7 or the sun deck, correct, when you turned and looked?

8 A. Yes.

9 Q. Okay. I'm going to get back to this part of
10 the statement where you described Supv CC #1 pushing on
11 his stomach. Could you do me a favor and on both --
12 Plaintiff's Exhibit 87 and Plaintiff's Exhibit 14K,
13 put an X on the spot where 4 y/o B-CC #3 took John out and

14 placed him on the pool deck?

15 A. Should I put an X on the pool deck or --

16 Q. Yes.

17 A. -- in the water?

18 Q. On the pool deck.

19 A. Okay. So it was right here.

20 Q. Okay.

21 A. Well, there's no chair. It says "chair,"

22 but it's -- there really is no chair there.

23 Q. Right.

24 A. But it was right there.

25 Q. Okay. And just -- we'll put this on the

0037

1 screen in a second, but here where you put the "X",
2 there was an umbrella over here. Do you remember the
3 umbrella?

4 A. Yes.

5 Q. Was he up underneath the umbrella or just at
6 the edge of the -- or do you remember?

7 A. I don't remember.

8 Q. Okay. And this is where 4 y/o B-CC #3 placed him
9 up on the pool deck where CPR was conducted, right?

10 A. Yes.

11 Q. Would you mind just putting the letters CPR
12 next to those two Xs that you put on 87 and 14K?

13 A. Yes.

14 Q. I've put Plaintiff's Exhibit 87 back on the
15 screen and this is the X that you have drawn in with
16 CPR out to the side of it where John was placed at
17 the time he was taken out of the pool by 4 y/o B-CC #3,
18 correct?

19 A. Yes.

20 Q. You remember seeing 4 y/o B-CC #3 place him on
21 the pool deck, correct? Correct?

22 A. Yes.

23 Q. You've also done that same thing on 14K,
24 correct?

25 A. Yes.

0038

1 Q. Right here. Is that correct?

2 A. Yes.

3 Q. On Plaintiff's 14K, could you draw in blue
4 ink, just circle the area where the fort was where
5 the other four-year-old campers were that you and
6 4 y/o B-CC #2 were watching at the time?

7 A. Okay.

8 Q. How many chairs do you think that the
9 four-year olds had stacked together for this fort?
10 A. I don't remember, but I know there were at
11 least two.
12 Q. At least two chairs?
13 A. Yes. Maybe three. Anywhere from two to
14 three.
15 Q. Two to three? How about more than three?
16 A. I don't -- I don't remember. I don't think
17 there were.
18 Q. And again -- and I apologize if I'm being
19 repetitious. But do you remember anybody else with
20 you and 4 y/o B-CC #2 at the time that you realized
21 something was wrong?
22 A. No. I don't remember.
23 Q. Now, on Plaintiff's 14K where you put the
24 initials WS for Supv CC #2 --
25 A. Yes.

0039

1 Q. Do you remember Supv CC #2 being with any
2 campers at the time?
3 A. I don't remember.
4 Q. Okay. Now, what about 4 y/o B-CC #1? Do
5 you remember 4 y/o B-CC #1 being with any campers?
6 A. I don't remember.
7 Q. The area where you put 4 y/o B-CC #1's
8 initials, that's the shallow end of the pool,
9 correct?
10 A. Yes.
11 Q. And that's kind of a zero entry where you
12 can just walk in from a dry deck to just a little bit
13 of water and it gets deeper, deeper, deeper, right?
14 A. Yes.
15 Q. And in that shallow end there were several
16 water features, some raining buckets, some showering
17 loops?
18 A. Yes.
19 Q. Some fountains?
20 A. Yes.
21 Q. Right?
22 A. Yes.
23 Q. Do you remember any of those water features
24 being on, operating on July 18th, 2007?
25 A. Yes. I know for sure that the spraying

0040

1 loops were.

2 Q. Okay.
3 A. But I don't remember which ones, which other
4 ones were.
5 Q. Okay. Could you highlight the spray loops
6 in this pink pen, please?
7 A. Yes. In here.
8 Q. Okay. I'll put that on the screen. The
9 spray loops that you just highlighted in pink are
10 those four bars right here?
11 A. Yes.
12 Q. And these are four big loops that you can
13 actually walk under?
14 A. Yes.
15 Q. And do you remember them being on at the
16 time John was discovered floating facedown in the
17 water?
18 A. I don't know.
19 Q. You don't have a recollection one way or the
20 other?
21 A. No. I don't recall.
22 Q. Okay. But you do specifically remember them
23 being on that day?
24 A. Yes.
25 Q. Do you remember there being other campers
0041
1 and counselors in the shallow end at the time that
2 you turned around and saw John floating facedown?
3 A. Yes.
4 Q. Can you give us an idea of the number of
5 campers and counselors who were in that shallow end
6 at the time you turned around?
7 A. I don't remember.
8 Q. Was it more than six?
9 A. Yes.
10 Q. Okay. Was it more than a dozen, 12?
11 A. I don't remember.
12 Q. Definitely more than six, though?
13 A. Yes.
14 Q. No doubt in your mind?
15 A. Yes.
16 Q. And do you have a recollection if they were
17 girls or boy campers?
18 A. I don't remember.
19 Q. Do you have a recollection if they were the
20 four-year-old campers?
21 A. I don't remember.

22 Q. Tell the jury what you did, 4 y/o B-CC #4, when you
23 heard 4 y/o B-CC #2 say is that -- "Oh, my gosh, is
24 he okay?" What did you do?

25 A. I turned to look at who she was talking
0042

1 about.

2 Q. And what do you remember seeing?

3 A. I just remember seeing 4 y/o B-CC #3 take him out of
4 the pool, and CPR getting started, but right after
5 that we got out of the pool.

6 Q. Okay. And you remember him being facedown
7 because he was laying on his stomach, floating in the
8 pool, right?

9 A. Yes.

10 Q. And what did you do yourself from that point
11 forward?

12 A. I gathered all of the boys that were in the
13 pool and made sure that they were all there and did a
14 head count of them all.

15 Q. Okay. When you say you gathered all the
16 boys who were in the pool, are you talking about the
17 boys who you were watching there --

18 A. Yes.

19 Q. -- by the fort?

20 A. I gathered the ones by the fort. And by
21 that time 4 y/o B-CC #4 had come up to me and 4 y/o B-CC #6 and the
22 two of them also got their boys that they were with.
23 So we had the majority of them and any of them --
24 then we did the head count, so we made sure we had
25 all of them.

0043

1 Q. Okay. Now, you say you remember 4 y/o B-CC #5. And
2 so the jury understands who you're talking about,
3 that's 4 y/o B-CC #4?

4 A. Yes. 4 y/o B-CC #4.

5 Q. And you said 4 y/o B-CC #6, that's 4 y/o B-CC #6?

6 A. Yes.

7 Q. And I know from 4 y/o B-CC #4's statement that
8 he indicated that he was with 4 y/o C #1 and
9 4 y/o-C #6. Do you -- Did you know those two
10 boys?

11 MR. HOWARD: Object to form.

12 A. I don't remember exactly.

13 Q. (BY MR. PLETCHER) But my question was: Do
14 you -- did you know those two boys, I guess, is my
15 question?

16 A. I had met them, yes.
17 Q. Okay. Do you remember 4 y/o B-CC #4 when he
18 came over to you after you had gotten your boys from
19 the fort area, out of the pool and 4 y/o B-CC #4 came up to
20 you, do you remember 4 y/o-C #1 and 4 y/o-C #6 being with him?
21 A. I don't remember exactly who was with him.
22 Q. Do you recall how many boys were with
23 4 y/o B-CC #6?
24 A. I don't recall exactly how many.
25 Q. Now, you said that you did a head count?

0044

1 A. Uh-huh.
2 Q. Correct?
3 A. Yes.
4 Q. Now, you-all were required to keep a
5 clipboard with you with the name of all the campers
6 who were with your group, right?
7 A. Yes.
8 Q. And that is the same list that you looked at
9 earlier, the Plaintiff's Exhibit 70, which is the
10 list of the four-year-old boys for week 5, right?
11 A. Yes.
12 Q. And also, there were the four-year-old girls
13 for week 5, correct?
14 A. Yes. But I didn't have that list with me.
15 Q. Okay. So you just would have had the Page 1
16 of the Plaintiff's Exhibit 70?
17 A. Yes.
18 Q. Now, did you actually have that on a
19 clipboard?
20 A. Yes.
21 Q. Did you have the clipboard yourself or did
22 somebody give it to you?
23 A. Well, we couldn't take it in the pool,
24 obviously.
25 Q. Sure.

0045

1 A. So we had left it on a table right near the
2 pool where all the boys' clothing was.
3 Q. Okay.
4 A. So I didn't have it with me, but I did a
5 count to make sure we had the matching number.
6 Q. Sure.
7 A. So...
8 Q. Okay. Now, you just said that we left it on
9 a table by the pool. Who is "we"?

10 A. Just the group. I don't remember who was
11 holding it exactly that day --
12 Q. So, you --
13 A. -- and who left it there.
14 Q. Okay. So you don't -- you don't have a
15 recollection of who was responsible for the clipboard
16 that day?
17 A. No.
18 Q. But you do have a recollection of somebody
19 getting that clipboard and you-all did a head count
20 at this point in time that we're talking about,
21 right?
22 A. Yes.
23 Q. Were you the person who got the clipboard?
24 A. At that time, yes. I got -- I went --
25 walked and got it at that time, yeah.

0046

1 Q. And tell the jury what you did with the
2 clipboard from that point forward and how you handled
3 yourself.
4 A. We did a name call. We called out every
5 boy's name -- or we knew most of the boys, so we just
6 looked at faces and --
7 Q. Okay.
8 A. -- kind of matched to make sure we had them.
9 Q. And did you realize that John Pluchinsky was
10 not there?
11 A. Yes.
12 Q. Did you know John Pluchinsky --
13 A. I --
14 Q. -- prior to this?
15 A. I -- yes. I had met him before.
16 Q. When do you remember meeting him first? Was
17 it that day or the day before?
18 A. I don't remember exactly when I met him
19 or -- I don't really remember in detail when I met
20 any of the boys. I just know I met all of them.
21 Q. You knew who he was when you were doing the
22 head count?
23 A. Yes.
24 Q. And when you got to his name and you -- were
25 you calling out their names verbally?

0047

1 A. Partially and kind of just looking at faces
2 and...
3 Q. Do you remember calling out John

4 Pluchinsky's name?
5 A. Yeah. Well, first we said "John". We like
6 looked and then looked for his face and then couldn't
7 find his face, so then we would call the boy's name.
8 Q. And you realized that he was missing?
9 A. Yes.
10 Q. And you remember having met John prior to
11 this --
12 A. Yes.
13 Q. -- head count, right?
14 A. Yes.
15 Q. But you don't remember exactly when or
16 where?
17 A. No.
18 Q. Okay. Had you ever been responsible at any
19 time during week 5 of the summer camp of actually
20 watching John Pluchinsky?
21 A. Well, I was responsible for watching all of
22 them as a whole. I was never --
23 Q. That's right.
24 A. -- just assigned to --
25 Q. And that's what the Club instructed the camp
0048
1 counselors like yourself, that if the kids were in
2 the pool, the rule was, you had to be in the pool
3 with them, all the counselors had to be in the pool
4 with them?
5 A. Yes.
6 Q. And all of the counselors were responsible
7 for watching all of the kids in their group?
8 A. Yes.
9 Q. And your group, of course, was the
10 four-year-old boys?
11 A. Yes.
12 Q. And you and your fellow -- the five other
13 four-year-old-boy counselors were all responsible for
14 watching all the four-year-old boys, right?
15 A. Yes.
16 Q. Tell the jury how that really worked,
17 though, 4 y/o B-CC #4. How did that work? How did you know
18 who to watch when the four-year-olds were in the
19 pool?
20 MR. HOWARD: Object to form.
21 A. I don't really understand what you're
22 asking.
23 Q. (BY MR. PLETCHER) Well, on July 18th, 2007

24 there were 13 four-year-old boys, right?

25 A. Yes.

0049

1 Q. And you would agree with me, wouldn't you,
2 that it would be impossible for you, 4 y/o B-CC #4, to
3 watch all 13 at the same time?

4 MR. HOWARD: Object to form.

5 Q. (BY MR. PLETCHER) Is that right?

6 MR. HOWARD: Same.

7 A. I don't really -- I mean, I don't know
8 really how -- what you're asking exactly.

9 Q. (BY MR. PLETCHER) Well, these are
10 four-year-old boys, right?

11 A. Yes.

12 Q. And they are in a swimming pool?

13 A. Yes.

14 Q. And what do four-year-old boys typically do
15 when they are in the pool?

16 A. Swim -- well, they would swim to us and we
17 would just watch whoever wanted to be with us.

18 Q. Right. So they would swim, they would run,
19 they'd jump, they'd scream?

20 A. And --

21 MR. HOWARD: Object to form.

22 Q. (BY MR. PLETCHER) Right? They do stuff
23 like four-year olds do at a pool, right?

24 A. Well --

25 MR. HOWARD: Same objection.

0050

1 A. They never ran or really jumped that much.

2 Q. (BY MR. PLETCHER) Okay. All right. Did
3 they --

4 A. So, I mean, they were in the pool with me,
5 but they never really got out or ran around or --

6 Q. Sure.

7 A. They weren't too wild.

8 Q. I'm just talking about when they are in the
9 pool. They'll be -- They will be four-year-olds,
10 they'll jump around, they will splash. Did they
11 splash?

12 A. I mean, I can't remember exactly, but I'm
13 sure they did.

14 Q. Sure. Of course. I mean, they are
15 four-year-olds.

16 A. Right.

17 Q. And when you put 13 four-year olds in a pool

18 at one time, it's impossible to watch them all. You
19 would just watch the ones that came over to you,
20 right?

21 A. Yeah.

22 MR. HOWARD: Object to form.

23 Q. (BY MR. PLETCHER) That's what you've told
24 us?

25 A. Yes.

0051

1 Q. Okay. And if you have three four-year-old
2 boys who come over to you, 4 y/o B-CC #4, and you're, for
3 example, playing with them and watching them at the
4 fort that was built on the -- on the sun deck, it
5 would be impossible for you -- if you're looking at
6 the Plaintiff's Exhibit 14K, if you're over here,
7 (indicating), it would be impossible for you to watch
8 the four-year-old boys who were back behind you, you
9 know, back over here where 4 y/o B-CC #1 is, right?

10 A. Right. But I knew 4 y/o B-CC #1 was there, so...

11 Q. You did? Did the Houston Racquet Club ever
12 provide you and your co-camp counselors any
13 instruction or procedure on what to do in terms of
14 passing off the responsibility of watching one child
15 when he or -- when he left you?

16 A. No.

17 Q. For example, what I'm talking about is,
18 let's say 4 y/o-C #2, who you were with there at the
19 fountain deck at the fort. Let's say 4 y/o-C #2
20 said, "Ms. 4 y/o B-CC #4, I want to go back to 4 y/o B-CC #1
21 in the shallow end." Okay?

22 A. Uh-huh.

23 Q. Under those circumstances, the Houston
24 Racquet Club didn't tell you guys what to do as far
25 as making certain that 4 y/o-C #2 was safe when he

0052

1 left your sight and care and went back to the shallow
2 end, right?

3 MR. HOWARD: Object to form.

4 A. Well, they didn't really tell us, but I
5 would know to go with them. I mean, all of us knew
6 that we should watch over them at every minute.
7 There was never a time -- the Racquet Club always
8 made sure that we were watching them. And so we knew
9 we weren't supposed to just let them go. We had to
10 watch them and make sure somebody was watching them.

11 Q. (BY MR. PLETCHER) So if, in my example,

12 4 y/o-C #2 decided to leave the fort area --
13 A. I would go.
14 Q. -- and go to the shallow end, you would
15 actually escort him over there?
16 A. Yes. Well, 4 y/o-C #2 couldn't swim, so I would
17 have to.
18 Q. Well, what would happen with the other four
19 or five four-year-old boys that you're supposed to be
20 watching at the fort area --
21 MR. HOWARD: Object to form.
22 A. -- when you turned your back and went to the
23 shallow end with 4 y/o-C #2?
24 MR. HOWARD: Same objection.
25 A. 4 y/o B-CC #2 was with them, so I knew she
0053
1 was watching them, too.
2 Q. (BY MR. PLETCHER) How did you know that?
3 MR. HOWARD: Object to form.
4 A. We were both watching them.
5 Q. (BY MR. PLETCHER) Okay. I guess the bottom
6 line question to you, 4 y/o B-CC #4, is: How did you assure
7 or -- yeah. How did you assure that all 13-year-old
8 [sic] boys were being watched at all times when they
9 were in the family pool?
10 MR. HOWARD: Object to form.
11 A. I don't know.
12 Q. (BY MR. PLETCHER) What do you remember your
13 bosses at the Houston Racquet Club telling you to do
14 to make certain that all of the 13 four-year-old boys
15 were being watched at all times when they were in
16 that water?
17 MR. HOWARD: Object to form.
18 A. I can't remember.
19 Q. (BY MR. PLETCHER) Is it fair to say that
20 the only thing that you do remember the Houston
21 Racquet Club telling you is that all of the camp
22 counselors for the four-year-old-boy group were
23 supposed to be watching all 13 four-year-old boys
24 while they were in the water?
25 MR. HOWARD: Object to form.
0054
1 A. That's all I remember them telling me, but I
2 know that they talked to me a lot about it, so...
3 Q. (BY MR. PLETCHER) Who is they?
4 A. Just CD and David both would tell us
5 things.

6 Q. Like what, specifically in regard to
7 watching the four-year-old boys who were in the pool?
8 A. I don't remember. I just know we had
9 meetings in the mornings that we would talk about it.
10 Q. Okay. You don't remember anything
11 specifically?
12 A. No, I don't.
13 Q. In the example that I gave you when you said
14 that you would escort 4 y/o-C #2 over to the shallow
15 end, you would walk him over to the shallow end here
16 and you knew 4 y/o B-CC #2 would be watching the other ones
17 that you left behind. What if 4 y/o B-CC #2 had one of her
18 four-year-old boys who needed to use the rest room?
19 Then what would happen?
20 A. At the same --
21 MR. HOWARD: Object to form.
22 Q. (BY MR. PLETCHER) At the same time.
23 A. -- time as -- okay. I would either tell
24 4 y/o-C #2 he'd have to wait or I would have made all the
25 boys come. I mean, I would -- we would never leave
0055
1 them by themselves.
2 Q. (BY MR. PLETCHER) If you left one of the
3 four-year-old boys by themselves, that would not be a
4 safe thing.
5 MR. HOWARD: Object to form.
6 Q. (BY MR. PLETCHER) Right?
7 A. Right.
8 Q. Right?
9 A. Right.
10 Q. And it would not be within the rules or
11 instructions that the Houston Racquet Club gave you
12 guys as far as watching the four-year-old boys when
13 they were in the pool?
14 A. Right.
15 Q. Is that correct?
16 A. Yes.
17 Q. Before you realized that something was
18 wrong, and before you turned around and looked at
19 John Pluchinsky floating facedown, do you remember
20 there being a bunch of kids over here on the fountain
21 deck?
22 A. I'm sure -- I can't remember exactly.
23 Q. Do you remember telling the policeman that
24 4 y/o B-CC #3 had been playing the jackpot game with a
25 tennis ball?

0056

1 MR. HOWARD: Object to form.

2 Q. (BY MR. PLETCHER) Do you remember telling
3 them that?

4 A. I don't remember.

5 Q. Okay. Well, you remember, do you not, that
6 that day before John was discovered floating
7 facedown, that the camp counselors were playing
8 jackpot, the jackpot tennis ball game in the family
9 pool. You remember that, don't you?

10 MR. HOWARD: Object to form.

11 A. I don't remember. I really can't remember
12 any of the games we played. I mean, I know they
13 played games. I don't know what they were, really.
14 I don't remember.

15 Q. (BY MR. PLETCHER) Do you remember being
16 interviewed by the police officer and being asked
17 some questions?

18 A. I remember going -- yes, I do.

19 Q. Okay. And you -- Do you remember telling
20 the police officer on August 15th, 2007 that in
21 answer to the question did you -- did you see who was
22 standing near where John Pluchinsky was found, that
23 you wrote "4 y/o B-CC #3" or said, "4 y/o B-CC #3 playing with tennis
24 ball, jackpot"?

25 MR. HOWARD: Object to form.

0057

1 A. I don't remember doing that. But I mean, if
2 it's there, I'm sure I did.

3 Q. (BY MR. PLETCHER) Okay. Tell the jury what
4 the jackpot game is.

5 A. Just throwing a ball up and the boys catch
6 it and you yell like an amount of money or something
7 that they win if they catch it.

8 Q. Had you played that game before July 18th,
9 2007?

10 A. Well, not at the Racquet Club, but I played
11 with my friends and stuff, we played.

12 Q. Okay. Do you recall before July 18th, 2007
13 during this summer camp at the Houston Racquet Club
14 campers and counselors playing the jackpot game in
15 the family pool, right?

16 A. Yeah. I remember them always playing with
17 one tennis ball.

18 Q. Right.

19 A. But I mean, I don't remember if it was

20 jackpot, but if I said that, I'm sure it was. I just
21 don't remember.

22 Q. If you -- yeah. If you did tell other
23 people that, 4 y/o B-CC #3 along with other counselors
24 were playing jackpot with the tennis ball in the
25 family pool on July 18th, that would be accurate?

0058

1 MR. HOWARD: Object to form.

2 Q. (BY MR. PLETCHER) You have no reason to
3 dispute that, right?

4 MR. HOWARD: Same objection.

5 A. Right. Yes.

6 Q. (BY MR. PLETCHER) Yes? Okay.

7 MR. HOWARD: Same objection.

8 Q. (BY MR. PLETCHER) You do not, right?

9 MR. HOWARD: Same objection.

10 A. I don't -- I mean, yeah, I don't.

11 Q. (BY MR. PLETCHER) Okay. What other games
12 did you, 4 y/o B-CC #4, play with the four-year-old campers
13 that summer in the -- in the family pool?

14 A. I don't really remember playing games with
15 them. We would just swim around and stuff. They
16 liked riding on my back every once in awhile or --
17 but I don't remember specific games.

18 Q. Okay. Do you remember any of the
19 four-year-old boys riding on your back on July 17th,
20 2007?

21 A. I don't remember.

22 MR. PLETCHER: Why don't we take a
23 break?

24 THE WITNESS: Okay.

25 VIDEOGRAPHER: The time is 3:01 p.m.

0059

1 We are off the record.

2 (Brief recess.)

3 VIDEOGRAPHER: The time is 3:18 p.m.

4 We are back on the record.

5 Q. (BY MR. PLETCHER) Are you ready to
6 continue?

7 A. Yes.

8 Q. Okay. When we broke I had asked you a
9 question and misspoke myself. I had asked you if on
10 July 17th you remember piggybacking any of the
11 four-year-old boys and you said --

12 A. That I didn't remember.

13 Q. -- that you didn't remember?

14 A. Uh-huh.
15 Q. But you understood that I was talking about
16 July 18th, 2007?

17 A. Yes.

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

19 A. No.

20 Q. Another time in the deposition I misspoke,
21 too, and I asked you the question: How did you
22 assure that all of the 13-year-old boys were
23 being watched while they were in the family pool
24 at all times. Did you understand me to mean
25 13 four-year-old boys?

0060

1 A. Yes.

2 Q. And I think -- what was your answer?

3 MR. HOWARD: Object to form.

4 A. I don't remember.

5 Q. (BY MR. PLETCHER) You didn't know, right?

6 MR. HOWARD: Object to form.

7 A. I don't remember what my answer was.

8 Q. (BY MR. PLETCHER) Okay. You would give the
9 same answer now, though, wouldn't you?

10 A. I don't even remember what you just asked.
11 If you could repeat the question I could.

12 Q. Sure. How did you assure on July 18th of
13 2007 that all of the 13 four-year-old boys were being
14 watched at all times while they were in the family
15 pool?

16 MR. HOWARD: Object to form.

17 A. I don't really understand the question, so I
18 mean, I don't know.

19 Q. (BY MR. PLETCHER) Okay. You said a couple
20 of things there. You said that I don't understand
21 your question and then you said, I don't know.
22 4 y/o B-CC #4, the only instruction that the Racquet Club
23 gave you guys was that you were to watch everybody
24 when they were in the pool, right?

25 A. Yes.

0061

1 Q. And you have explained to us under oath that
2 what really was happening was that you would watch
3 whatever kids came up to you and were with you,
4 right?

5 A. Yes.

6 Q. And I think you explained to me that it
7 would be impossible for you to be watching the

8 children over on the sun deck where the fort was
9 built and at the same time watch four-year olds who
10 were out on the shallow end, right?

11 A. Right. But I knew that they were being
12 watched.

13 Q. Right. Because you felt certain that other
14 counselors would be watching whatever kids were in
15 their area, right?

16 A. Yes.

17 Q. And we kind of talked about the pass-off
18 procedure and the fact that the Club never instructed
19 you what to do if there was a situation where one of
20 the four-year-old boys was leaving you?

21 A. Yes.

22 Q. So, it was really -- Under those
23 circumstances that you have described to us, it
24 really was impossible for you guys to be able to
25 ensure that all of the kids were being watched at all
0062

1 of the time when they were in the family pool, right?

2 MR. HOWARD: Object to form.

3 A. I don't know.

4 Q. (BY MR. PLETCHER) Well, how -- based upon
5 your -- you had worked as a counselor before this?

6 A. The summer before.

7 Q. In 2006?

8 A. Yes. And I had worked a few weeks before
9 that, too.

10 Q. Okay. Before John drowned?

11 A. Yes.

12 Q. In 2007?

13 A. Yes.

14 Q. Based upon that experience --

15 A. Uh-huh.

16 Q. -- how do you believe that the Houston
17 Racquet Club ensured that all of the four-year-old
18 boys, when they were in the family pool, would be
19 watched at all the time?

20 MR. HOWARD: Objection, form.

21 MR. DOYLE: Objection, form.

22 A. Can you rephrase that?

23 Q. (BY MR. PLETCHER) Well, it's -- based upon
24 your experience having been a camp counselor in 2006,
25 having worked for a couple of weeks prior to John's

0063

1 drowning, how do you think the Houston Racquet Club

2 ensured that all of the four-year-old boys were
3 watched at all the time when they were in the pool?

4 MR. HOWARD: Same objection.

5 A. I don't know.

6 Q. (BY MR. PLETCHER) Okay. Other than the one
7 instruction that you remember receiving from the
8 Houston Racquet Club on watching all the children
9 when they were in the pool, do you recall any other
10 special instructions that you were given about what
11 you were supposed to be doing?

12 A. I don't remember.

13 Q. You had told us earlier that at the time
14 that you turned around and looked and saw John
15 floating facedown, that there were at least six
16 four-year-old boys in the shallow end, right?

17 MR. HOWARD: Object to form.

18 A. No. I said there were at least six people
19 in that area. I didn't say four-year-old boys.

20 Q. (BY MR. PLETCHER) Will you draw the area, a
21 circle around the area that you remember seeing at
22 least six other people?

23 A. It was just this whole shallow (indicating).

24 Q. So the entire shallow end?

25 A. Yeah. Just as a whole.

0064

1 Q. Well, do you remember 4 y/o-C #7? Do
2 you remember 4 y/o-C #7, a four-year-old boy camper that
3 summer?

4 A. I remember the name, but I can't really
5 remember anything else.

6 Q. Okay. Well, do you remember 4 y/o-C #7 on
7 July 18th, 2007 being in the shallow end when you
8 turned and looked, right?

9 MR. HOWARD: Object to form.

10 A. I can't remember.

11 Q. (BY MR. PLETCHER) Okay. Do you remember
12 4 y/o-C #7 at all being in the family pool on
13 July 18th, 2007?

14 A. I can't remember. I mean, I'm sure he was,
15 but I don't remember exactly where or who with or
16 anything.

17 Q. Do you remember seeing 4 y/o-C #7's
18 mother being at the family pool that day?

19 A. I know a mom was there, yes.

20 Q. Well, did you know that mom to be 4 y/o-C #7's
21 mother?

22 A. I mean, I can't remember exactly, but I'm
23 sure if it was, then it was.

24 Q. Then she was there?

25 A. Yes. I know there was a mom there.

0065

1 Q. And when you say, I know that there was a
2 mom there, what you're saying --

3 A. It was --

4 Q. -- is you know that there was a mother with
5 a four-year-old camper in the shallow end, right?

6 A. Yes.

7 Q. Could you draw an orange circle in the area
8 where you remember seeing that mother with her
9 four-year-old camper boy?

10 A. I don't really remember exactly where they
11 were. I just know they were in this area, just the
12 shallow end, so...

13 Q. What makes you remember that today? What
14 about that situation makes you recall it today? What
15 do you remember?

16 A. Well, when I had gotten all of the boys out
17 of the pool and when I walked back, walked -- well, I
18 walked actually around this way (indicating), to come
19 back over and check the head count, I had to talk to
20 her about where her son was because I had to make
21 sure we had him in the head count, too.

22 Q. Okay.

23 A. So I just remember her being -- standing
24 around here. So I'm assuming she was in this area.

25 Q. Okay. What I want you to do first with that

0066

1 blue pen is draw a box where you did the head count
2 initially.

3 A. The very first head count I --

4 Q. Yes, the very first head count.

5 A. -- I didn't have the -- that board with me.

6 Q. The clipboard?

7 A. Right. And that was right outside of here
8 so it was right around here (indicating).

9 Q. Right. Would you put "initial head count"
10 in that box?

11 A. (Witness complies.)

12 Q. And then ultimately you got the clipboard,
13 right?

14 A. Yes.

15 Q. And did you have the clipboard when you were

16 over here or --
17 A. No.
18 Q. -- did you have to walk all the way around
19 to get it?
20 A. -- we -- all the boys, we all walked around
21 over here (indicating).
22 Q. Okay. Since we can't see that on the
23 screen, would you mind just drawing a line from
24 the --
25 A. Just around the whole area?

0067

1 Q. -- on the path, yeah, that you remember.
2 A. (Witness complies.) Even -- there's a deck,
3 there's a deck right around here (indicating).
4 Q. Right.
5 A. And we went up over there.
6 Q. And you got the clipboard there?
7 A. Yes. The clipboard was on a table by the
8 deck.
9 Q. Would you write "clipboard" --
10 A. Just right --
11 Q. -- down by that arrow?
12 A. Okay.
13 Q. Now, draw in where you talked to the mother
14 when you had to go check to see where her child was.
15 A. With the blue pen draw it in?
16 Q. Why don't we do it with a different color
17 pen. Good idea.
18 A. Okay.
19 Q. Do it with this pink highlighter.
20 A. Okay. It was kind -- it was just a general
21 area. It was --
22 Q. Yeah. Just draw a little circle.
23 A. -- right around here (indicating).
24 Q. Okay. Now, with a blue pen, write in there,
25 "checked with mother."

0068

1 A. (Witness complies.)
2 Q. Just to clarify on the record --
3 MR. PLETCHER: Why isn't that focusing
4 or is it just my eyes?
5 VIDEOGRAPHER: I think the further it
6 is out, the less focus.
7 MR. PLETCHER: Okay. Let me zoom in.
8 VIDEOGRAPHER: It will be clearer the
9 closer you go in.

10 Q. (BY MR. PLETCHER) Okay. You drew your box
11 with "initial head count" over here on the north side
12 of the pool, just on the other side of the sun deck,
13 right?

14 A. Yes.

15 Q. And then the path that you took with your
16 four-year-old boys that you had is down here
17 around -- and I'll pan out here, around the slide --
18 you came back over here to this side and got the
19 clipboard over here, right?

20 A. On the deck, yes.

21 Q. There's a deck over there. Was there a
22 sign-in desk there? Is that where the clipboard was?

23 A. It wasn't at the sign-in desk. It was --
24 there are -- there's a deck with a bunch of round
25 tables and it was on one of the round tables.

0069

1 Q. Is that up in the pavilion?

2 A. Yes. In the pavilion area.

3 Q. Okay. So you walked up to the pavilion to
4 get the clipboard?

5 A. Yes.

6 Q. And then you came back. And then you came
7 back and you checked with a mother here --

8 A. Yes.

9 Q. -- in this general area here?

10 A. Yes.

11 Q. Okay. Now, 4 y/o B-CC #4, I need to follow-up on
12 your earlier testimony about what you were doing when
13 you realized something was wrong. You said that you
14 and 4 y/o B-CC #2 were over here on the sun deck
15 with three to six campers, who were playing around
16 this fort area, right?

17 A. Yes.

18 Q. And you were -- I think you remember 4 y/o-C #2
19 being there?

20 A. Yes.

21 Q. And also 4 y/o-C #5?

22 A. Yes.

23 Q. Do you remember 4 y/o B-CC #1 being over
24 there prior to that time with 4 y/o-C #3 and
25 4 y/o-C #4?

0070

1 A. I don't remember.

2 Q. And John Pluchinsky?

3 A. I don't remember.

4 Q. At any point in time do you remember John
5 Pluchinsky being over on this sun deck where the fort
6 was built?

7 A. I don't think so, no.

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

9 A. No.

10 Q. Okay. How long have you known
11 4 y/o B-CC #2?

12 A. I had just -- I had known of her before, but
13 I actually met her and talked to her just that week,
14 but...

15 Q. Week 5?

16 A. Yes, during Week 5.

17 Q. Was when you and 4 y/o B-CC #2 had first
18 met?

19 A. Yes.

20 Q. Were you both at Memorial High School
21 together?

22 A. She's a year older than I am.

23 Q. Okay. And she was a cheerleader, right?

24 A. Yes.

25 Q. Were you a cheerleader?

0071

1 A. No.

2 Q. I thought you-all were members of the
3 Castillion Group, you and 4 y/o B-CC #2?

4 A. I don't know -- I don't know what that is.

5 Q. You don't?

6 A. No.

7 Q. Okay. Do you recall ever being in any sort
8 of school-related group with 4 y/o B-CC #2?

9 A. I can't remember, no.

10 Q. What sort of extra curricular activities
11 were you involved in at Memorial High School in 2007?

12 A. So, do you mean in 2007 as in the year right
13 before the summer had happened?

14 Q. Sure. 2006/2007.

15 A. Right. I was -- I did lacrosse with
16 4 y/o B-CC #1.

17 Q. Okay.

18 A. And then I also was in spirit groups.

19 Q. Okay.

20 A. Which would have been junior aids that
21 year. And other than that...

22 Q. And you were a Junior at Memorial High
23 School, right?

24 A. Yes.

25 Q. Were you and 4 y/o B-CC #1 on the varsity
0072

1 lacrosse team together?

2 A. She was on varsity. I was on JV.

3 Q. And did you play lacrosse your senior year?

4 A. No. I quit.

5 Q. And you don't ever remember being in any
6 sort of extracurricular group with 4 y/o B-CC #2?

7 A. Not that I can remember.

8 Q. Do you know where she ended up going to
9 college?

10 A. I can't remember.

11 Q. Did you like her?

12 A. Uh-huh, yes.

13 Q. Were you-all friends? Would you consider
14 yourself friends?

15 A. Acquaintances. We talked only at the
16 Racquet Club, never really other than that.

17 Q. Okay. And you-all got along well?

18 A. Yes.

19 Q. Never had any incidents together?

20 A. No. No problems.

21 Q. Okay. Good. 4 y/o B-CC #2 told the
22 policeman at Memorial Village Police Department --

23 A. Uh-huh.

24 Q. -- that she had been playing with John
25 earlier before he was discovered floating facedown.
0073

1 She was the last one to have contact with him before
2 he was discovered in the pool. And she indicated
3 that he had -- was happy, laughing, jumping off her
4 legs. Do you remember 4 y/o B-CC #2 playing with
5 John at the fort area?

6 A. I don't --

7 MR. HOWARD: Object to form.

8 A. I don't remember.

9 Q. (BY MR. PLETCHER) Okay. And she also told
10 the policeman that she had given him a piggyback ride
11 from the fort area, the fountain deck, back to the
12 shallow end and she dropped John off near where
13 4 y/o B-CC #1 was. Okay?

14 A. Okay.

15 MR. HOWARD: Object to form.

16 Q. (BY MR. PLETCHER) Do you remember seeing
17 that?

18 A. No --

19 MR. HOWARD: Objection, form.

20 A. I don't remember. I -- when I was at the --
21 that deck area, I never even -- I never saw John. I
22 don't remember John being there.

23 Q. (BY MR. PLETCHER) Okay.

24 A. So...

25 Q. Did 4 y/o B-CC #2 ever tell you that she
0074

1 had piggybacked John from the fort area over to the
2 shallow end and dropped him off next to
3 4 y/o B-CC #1?

4 A. No. She never told me that.

5 Q. Do you remember ever having any discussions
6 with 4 y/o B-CC #2 following John's drowning about
7 what happened?

8 A. No. We didn't really talk about it after
9 that because the camp was cancelled. So, we never
10 really saw each other after that.

11 Q. Okay. And you have no recollection at all
12 of 4 y/o B-CC #1 being over in this area where the
13 fort was built on the sun deck, right?

14 A. I can't remember her being there, no.

15 Q. You're not saying that she wasn't?

16 A. No. I mean, she may have been, but I don't
17 remember that at all.

18 Q. Okay. Well, let me ask you this: If
19 4 y/o B-CC #1 has testified that she was over at the
20 sun deck where the fort was built with 4 y/o-C #2,
21 John Pluchinsky and 4 y/o-C #4 and that she left
22 John Pluchinsky there at the sun deck where the fort
23 was built, you have no recollection of 4 y/o B-CC #1 telling
24 you that she was leaving --

25 MR. HOWARD: Objection, form.

0075

1 A. No.

2 Q. (BY MR. PLETCHER) -- John there?

3 A. I never -- I never talked to her when I was
4 at that -- at the sun deck that day.

5 Q. And do -- you don't have a recollection of
6 4 y/o B-CC #1 ever telling 4 y/o B-CC #2 that she
7 was leaving John Pluchinsky at the sun deck where the
8 fort was built, correct?

9 MR. HOWARD: Objection, form.

10 A. She may have, but I didn't hear it. I
11 didn't -- I don't know.

12 Q. (BY MR. PLETCHER) Okay. And you, of
13 course, never that day, July 18th, 2007, ever had any
14 personal contact with John while he was in the pool?

15 A. In the pool, no.

16 Q. Yes.

17 A. I didn't. Not that I can remember.

18 Q. How about out of the pool?

19 A. Before. What, like --

20 Q. Before you-all even got to --

21 A. Before we were even in the pool area.

22 Q. Okay. Tell us about that. What do you
23 remember?

24 A. I remember him, when he walked up to us --
25 'cause counselors stay at the tennis court area and
0076

1 counselors stay in the front by the car pool when
2 they get there. And they escort them back to the
3 tennis courts and then the boys sit with you in your
4 groups and I remember him walking up and checking in
5 his name. And so, I remember that. But I mean,
6 otherwise I don't really remember anything specific.

7 Q. So, you just remember initially that morning
8 when people are checked off?

9 A. Right. 4 y/o B-CC #1 and I were in the back.

10 Q. Okay. 4 y/o B-CC #4, if you were going to take a
11 four-year-old boy from this fort area --

12 A. Uh-huh.

13 Q. -- over to the shallow end --

14 A. Uh-huh.

15 Q. -- and drop that four-year-old boy off at
16 the shallow end and go back to where you were, what
17 would you do --

18 MR. HOWARD: Object to form.

19 Q. (BY MR. PLETCHER) -- to make certain that
20 that four-year-old boy didn't go unwatched?

21 MR. HOWARD: Object to form.

22 A. I would take him to wherever a counselor was
23 and I would leave him with the counselor.

24 Q. (BY MR. PLETCHER) Okay. Would you talk to
25 that counselor and tell that counselor that you were
0077

1 leaving the four-year-old boy with him or her?

2 A. I don't know. I guess it depends on the
3 situation.

4 Q. Okay. So there might be a situation where
5 you would feel comfortable just leaving the

6 four-year-old boy over in the shallow end without
7 talking to the counselor to say, "Listen, I'm leaving
8 Johnny with you"?

9 A. There would -- yes, that wouldn't be -- if I
10 knew the counselor was watching all of them and I saw
11 him playing with a boy or somebody that she had prior
12 been talking to, then I wouldn't feel the need to
13 have to be like, "I'm leaving."

14 Q. Okay. I'm a little confused. If you were
15 going to drop a four-year-old boy off in the shallow
16 end --

17 A. Uh-huh.

18 Q. -- would you do it without telling another
19 counselor?

20 MR. HOWARD: Object to form.

21 A. If he was playing with a boy that was
22 already playing with a counselor and it was obvious
23 that she or he, whichever the counselor is, was
24 playing with a boy, then I wouldn't feel the need
25 to. But if the counselor didn't see him, I would

0078

1 say, "I'm leaving this little boy here."

2 Q. (BY MR. PLETCHER) So you would be
3 comfortable if you saw with your own eyes that the
4 counselor actually saw you drop the four-year-old boy
5 off near him or her, right?

6 MR. DOYLE: Objection, form.

7 MR. HOWARD: Objection, form.

8 Q. (BY MR. PLETCHER) As long as they saw him?

9 A. No. I --

10 MR. DOYLE: Objection, form.

11 A. -- I said if they started playing with him.
12 I would make sure that there was contact with him and
13 they were talking to him or...

14 Q. (BY MR. PLETCHER) Okay. So, you would want
15 to make certain that the counselor was actually
16 talking to the four-year-old boy?

17 A. Yes. And saw him.

18 Q. And was aware?

19 A. And was aware that he was there.

20 Q. But under no circumstances would you ever
21 just drop a four-year-old boy off in the shallow end
22 if, for example, the counselor had his or her back
23 turned toward you?

24 A. No. I would have said --

25 Q. That would be unsafe?

0079

1 A. Yeah. I -- well, I would say, yes, that he
2 needs to be watched.

3 Q. Right. If that counselor had his or her
4 back to you, you would make certain that he or she
5 was aware that you were doing what you were doing?

6 A. Yes.

7 Q. And you'd say, "Listen, I'm dropping Johnny
8 off here"?

9 A. Yes.

10 Q. And if that didn't happen, if you didn't do
11 that, that would be unsafe, wouldn't it?

12 MR. HOWARD: Object to form.

13 A. Yes.

14 Q. (BY MR. PLETCHER) Okay. Do you recall
15 Supv CC #1 being anywhere in this area at the
16 moment that you discovered something was wrong?

17 A. I remember -- so you're saying right when I
18 turned and saw?

19 Q. Yes.

20 A. Yes. I remember him being right by the --

21 Q. Here. Go ahead and draw in Supv CC #1's
22 initials.

23 A. Okay. I just -- I remember him being
24 right -- when 4 y/o B-CC #3 brought John up, I remember Supv CC #1
25 taking him. So I remember Supv CC #1 being right around

0080

1 here, but that was right when --

2 Q. 4 y/o B-CC #3 got him up to the pool deck?

3 A. 4 y/o B-CC #3 got him up. So when I turned and saw
4 initially 4 y/o B-CC #3 going towards him --

5 Q. Yes.

6 A. -- I didn't see Supv CC #1. I didn't know where
7 Supv CC #1 was.

8 Q. Okay. You just saw Supv CC #1 once 4 y/o B-CC #3 got to
9 the side of the pool and placed John on the pool
10 deck, right?

11 A. Yes.

12 Q. Okay. Let's see where you drew that in.

13 A. Okay.

14 Q. And just so we're clear here, you wrote JT
15 here for Supv CC #1?

16 A. Yes.

17 Q. And at the time that you turned around and
18 looked, you don't remember seeing Supv CC #1 ?

19 A. No.

20 Q. But it was once 4 y/o B-CC #3 got to John and put
21 him up on the pool deck --

22 A. Right.

23 Q. -- that you actually saw Supv CC #1 --

24 A. Yes.

25 Q. -- over here?

0081

1 Okay. Well, do you remember

2 Supv CC #1 and Supv CC #2 playing with some of
3 the summer campers at any point in time before you
4 realized something was wrong?

5 A. I remember Supv CC #2 , but I don't remember what
6 he was doing. And I don't really remember seeing
7 Supv CC #1 . I don't -- I didn't really pay attention to
8 anyone around me except for the boys, really.

9 Q. Your concentration was over here with these
10 kids?

11 A. Right.

12 Q. And I think you testified earlier that you
13 don't remember there being kids and counselors over
14 here, but you're not saying that they weren't?

15 A. Right, yes.

16 Q. Right. When you did your head count, the
17 initial head count on the -- on the north side of the
18 pool --

19 A. Yes.

20 Q. -- over here --

21 A. Yes.

22 Q. -- do you remember one of the mothers
23 suggesting that you-all do a head count?

24 A. I remember -- that's -- okay. When I first
25 did the very first one, she hadn't suggested it yet.

0082

1 Q. Okay.

2 A. But I do remember her suggesting it. That
3 was the same time I came back to check with her --

4 Q. Over here?

5 A. -- for her son. She said, "Are you doing a
6 head count?"

7 And I said, "Yes."

8 Q. Right. Okay. And so that would have been
9 the mother who was with her own boy, who was also --

10 A. Yes.

11 Q. -- a camper?

12 A. Yes.

13 Q. And you don't specifically recall that

14 person being Mrs. M #1, do you?
15 A. I didn't know her name, so, no.
16 Q. Okay. When you turned and looked, do you
17 remember 4 y/o B-CC #3 being with anybody?
18 A. I don't remember.
19 Q. And you don't have a recollection of there
20 being anybody in this area around 4 y/o B-CC #3 or
21 John Pluchinsky, do you?
22 A. I can't remember.
23 Q. Where else do you remember seeing 4 y/o B-CC #3
24 within let's say the five or 10 minutes before you
25 realized something was wrong?

0083

1 A. I only remember seeing him right at that
2 instant because again, I was really just paying
3 attention to the boys. I wasn't really looking
4 around that much.
5 Q. Was 4 y/o B-CC #3 over here at the sun deck with
6 you-all?
7 A. I don't -- I mean, I don't remember him
8 being there with us, no.
9 Q. Was 4 y/o B-CC #3 over at the fountain area, fountain
10 deck?
11 A. I can't remember.
12 Q. Did you ever have any personal contact or
13 ever talk with John's parents at any time?
14 A. No.
15 Q. Not before or after John's drowning?
16 A. No, never.
17 Q. When you turned and looked and saw John
18 floating facedown, do you recall seeing anybody
19 facing John Pluchinsky?
20 A. I can't remember. I know 4 y/o B-CC #3 was going
21 towards him, so I'm sure he was facing him right as I
22 turned, so...
23 Q. Right. Because he was already swimming
24 towards him?
25 A. Right.

0084

1 Q. Okay. Well, do you know who was watching
2 John Pluchinsky during the 10 minutes before he was
3 discovered floating facedown?
4 A. I have no idea who was.
5 Q. Has anybody, any counselor who was assigned
6 to the four-year-old boy group ever told you that he
7 or she was watching John Pluchinsky during that

8 10 minutes before he was found floating facedown?
9 A. None of them ever told me during the
10 10 minutes. 4 y/o B-CC #2 and 4 y/o B-CC #1 both said they had
11 been with him at a point in the pool --
12 Q. Earlier, yes.
13 A. -- but I didn't know. But none of them said
14 when in the pool, so...
15 Q. So other than the statements that 4 y/o B-CC #2 and
16 4 y/o B-CC #1 made to you about being with him earlier, no
17 other counselor has told you, "Listen, I was watching
18 him during the 10 minutes before he was found
19 floating facedown," right?
20 A. No, no other counselor has.
21 Q. Now, when do you remember 4 y/o B-CC #2
22 telling you that she had been with John earlier?
23 When did she have that conversation with you?
24 A. As we were walking from the pool back to the
25 house after the incident.
0085
1 Q. What do you remember 4 y/o B-CC #2 telling you?
2 A. Really, I don't remember anything
3 specifically except her mentioning that she had been
4 with him at a point during that -- the pool time.
5 Q. Do you remember her telling you that he was
6 fine?
7 A. Yes. She had said he seemed like totally
8 fine.
9 Q. Right.
10 A. So that's --
11 Q. She was -- How would you describe 4 y/o B-CC #2's
12 reaction to all this while you're walking back to her
13 to the camp house?
14 A. I guess shocked and kind of sad -- like sad
15 about it all, too.
16 Q. Okay. What else do you remember about that
17 conversation with 4 y/o B-CC #2 when you're walking back to
18 the camp house?
19 A. I really can't remember it very vividly,
20 so...
21 Q. Okay. And you had said we were walking back
22 to the house and you meant the camp house?
23 A. Right. The camp house.
24 Q. That's the Howe House?
25 A. The Howe House.
0086
1 Q. That old house --

2 A. Yeah.
 3 Q. -- that the camp --
 4 A. Yeah.
 5 Q. -- was run out of?
 6 A. Yes.
 7 Q. Okay. I want you to think back to when
 8 you're walking with 4 y/o B-CC #2 for a minute. Okay?
 9 A. Uh-huh.
 10 Q. Think back to that point in time last
 11 summer. You remember her telling you that she had
 12 been with him earlier and that he was fine, right?
 13 A. Yes.
 14 Q. Do you remember her telling you that she had
 15 dropped him off at any point in the pool with any
 16 other counselor?
 17 A. I don't remember at all.
 18 Q. Do you remember her telling you anything
 19 else?
 20 A. No. I can't remember her really -- what the
 21 conversation was otherwise.
 22 Q. You had also mentioned that 4 y/o B-CC #1
 23 had told you that she had been with John sometime
 24 earlier that day, right?
 25 A. She didn't directly tell me. It was --
 0087
 1 After everything happened that we stayed for a little
 2 bit longer and police came and talked to us.
 3 Q. Yes.
 4 A. And it was -- I guess what she told the
 5 police I heard -- overheard her say it because we
 6 were all sitting together.
 7 Q. Okay. Was that Officer Beverage?
 8 A. Yes. It was him.
 9 Q. So when Officer Beverage was interviewing
 10 you and your co-counselors, you-all were altogether?
 11 A. Yes.
 12 Q. And did he talk to each of you separately?
 13 A. Yes. I don't remember if all of the
 14 co-counselors were there because I know some of them
 15 were watching the kids.
 16 Q. Right.
 17 A. So I don't really remember exactly who was
 18 there, but I for sure know 4 y/o B-CC #1 and 4 y/o B-CC #3 were.
 19 Q. Okay.
 20 A. And then 15 y/o LG #1. But other than that,
 21 I don't remember who else --

22 Q. Right.
23 A. -- was there for sure.
24 Q. And it's your testimony that you overheard
25 4 y/o B-CC #1 telling her story to the policeman?
0088
1 A. Yes.
2 Q. To Officer Beverage?
3 A. Right. Because we were all sitting
4 together.
5 Q. And tell me specifically what you remember
6 her telling the police officer.
7 A. I really don't remember much except for I
8 remember her just mentioning that she had been with
9 John at a point during the day. Nobody ever said
10 when or where. I just heard them say they were with
11 him at some point.
12 Q. Okay. I want to read this to you. And this
13 is from the interview that Officer Beverage had with
14 you on July 18th, 2007 there at the Club. And I want
15 to see if you agree with what he's written. "I next
16 interviewed 4 y/o B-CC #4, a counselor for the
17 four-year-old male campers. She stated she was
18 standing with five boys and another counselor,
19 4 y/o B-CC #2, in the northwest corner of the pool
20 with her back towards where the victim was located.
21 15 y/o LG #1 yelled and 4 y/o B-CC #2 said, 'Is he okay? Is he
22 joking?' Then 4 y/o B-CC #3 went and turned him over
23 and he was blue. When they got the victim out of the
24 pool and set him down on the deck, he vomited. 4 y/o B-CC #4
25 then got the boys she was with out of the pool on the
0089
1 northwest corner and stayed with them." Is that an
2 accurate summary of what you told the police officer,
3 Officer Beverage on July 18th, 2007?
4 A. Yes.
5 Q. Do you remember overhearing 4 y/o B-CC #2
6 telling Police Officer Beverage what had happened?
7 A. I don't remember. I don't really remember
8 listening -- I mean, I remember listening to a lot of
9 them.
10 Q. Right.
11 A. But I don't remember what was said during
12 most of them and --
13 Q. Okay.
14 A. -- I don't really remember 4 y/o B-CC #2's at all.
15 Q. You do remember a little bit of 4 y/o B-CC #1 to

16 the extent that you remember 4 y/o B-CC #1 telling Officer
17 Beverage that she had been with him earlier that day,
18 right?

19 A. Yes.

20 Q. Anything else about your interview or the
21 interviews of your co-counselors or 15 y/o LG #1 or
22 the lifeguards that you specifically remember sitting
23 here today?

24 A. No.

25 Q. Tell us what you did next after you took the
0090

1 second head count when you got the clipboard? What
2 did you do next, 4 y/o B-CC #4?

3 A. We got the boys' shirts and tennis shoes on,
4 and I really don't remember vividly what else we did
5 after that.

6 Q. Where did you-all do that?

7 A. On the -- I guess in the pavilion area.

8 Q. At the pavilion?

9 A. Yes.

10 Q. And did you-all then walk the four-year-old
11 campers back to the camp house?

12 A. I didn't walk the campers back. I don't
13 really think so. I think I was just with the police.

14 Q. Okay. So, you stayed back, right?

15 A. Yes.

16 Q. Okay. I need to go back to your statement
17 real quick that you wrote out in your own writing,
18 Plaintiff's Exhibit 76 on July 18th there at the
19 Racquet Club. I'll try to zoom-in on this so you can
20 read it, too. Okay? And I'm going to start
21 here. "The boy was blue and 4 y/o B-CC #3 put him on the side
22 of the pool."

23 A. Yes.

24 Q. And then you state, "Supv CC #1 pushed on his
25 stomach and throw up came out. He then started CPR
0091

1 and put the boy on his side."

2 A. Yes.

3 Q. Okay? Did I read that correctly?

4 A. Yes.

5 Q. And --

6 MR. PLETCHER: My microphone just came
7 off.

8 Q. (BY MR. PLETCHER) And did that occur over
9 here by the X?

10 A. Yes.
11 Q. And where were you standing when you saw
12 4 y/o B-CC #3 push on -- was it --
13 A. It was Supv CC #1 .
14 Q. -- Supv CC #1 push on his stomach?
15 A. I don't remember. I know it was -- I at
16 least was in the deck area, either standing in the
17 pool or least on the actual ledge.
18 Q. Okay. So you were still over here?
19 A. Yes.
20 Q. Okay. So you had kind of watched from a
21 distance?
22 A. Right.
23 Q. And you saw 4 y/o B-CC #3 put John up on the pool
24 deck, correct?
25 A. Yes.

0092

1 Q. And then Supv CC #1 came over and you
2 specifically remembered Supv CC #1 pushing on John's
3 stomach, right?

4 A. Yes.

5 Q. Do you recall anything else about the CPR
6 process?

7 A. I can't remember.

8 Q. Other than seeing Supv CC #1 push on
9 John's stomach and then him rolling him on his
10 side -- John on his side, do you have a recollection
11 of anything else that was done for John on the pool
12 side?

13 A. I can't remember because right after that I
14 started gathering up all the boys with the rest of
15 the counselors.

16 Q. Right. And you gathered them up over here?

17 A. Yes.

18 Q. And then you walked them around the slide
19 and back up to the pavilion, right?

20 A. Yes.

21 Q. Were you involved at all in the emergency
22 response for John's emergency?

23 A. Do you mean in the CPR or any --

24 Q. Yeah. Anything involving emergency
25 response, CPR, calling 9-1-1, go getting emergency

0093

1 equipment to use during CPR? Were you involved with
2 that at all?

3 A. No, not at all.

4 Q. Describe to the jury what you remember
5 hearing when this was happening.
6 A. I really don't remember hearing anything
7 because again, I was -- I was really with the boys
8 the whole time, so I was trying to make sure that
9 they were all staying together and none of them were
10 getting scared or watching or anything.
11 Q. So, you don't remember anybody saying or
12 screaming, "Call 9-1-1, call 9-1-1"?
13 A. No. I remember --
14 Q. Okay.
15 A. -- seeing who did call 9-1-1 though, but...
16 Q. Who did call 9-1-1?
17 A. Sr LG #1.
18 Q. Where did she do that?
19 A. There is an emergency phone right there by
20 the pool and she called right there.
21 Q. Is that the emergency phone that's hanging
22 on the fence?
23 A. Yes.
24 Q. Okay. Do you know of anybody else who
25 called 9-1-1?

0094

1 A. I don't know.
2 Q. Okay. Was -- Do you remember seeing Sr LG #1
3 at that emergency phone at the pool side
4 calling 9-1-1 before or after Supv CC #1 pushed on
5 John's stomach?
6 A. After. It was kind of a glance in a circle,
7 so I saw the -- them doing CPR and then I kept
8 turning and then I saw Sr LG #1.
9 Q. Right. Now, that was before you left this
10 area, right?
11 A. Yes.
12 Q. You were over here (indicating).
13 A. Right.
14 Q. Was it -- had you already gotten out of the
15 pool?
16 A. I don't remember.
17 Q. Okay. Do you know what an AED is?
18 A. No. I don't think so.
19 Q. Have you ever heard of an automatic
20 external --
21 A. Defibrillator.
22 Q. -- defibrillator?
23 A. Yes.

24 Q. That's what an AED --
25 A. That's what I thought it was, but I wasn't
0095
1 sure.
2 Q. Do you remember anybody saying, "Go get the
3 AED"?
4 A. No. I don't remember that at all.
5 Q. Do you ever remember anybody carrying an AED
6 over to John?
7 A. No. I didn't really see anything after
8 that.
9 Q. Okay. You were certified in CPR for the
10 professional rescuer, correct?
11 A. Yes.
12 Q. Let me show you what I have marked as --
13 MR. PLETCHER: What exhibit am I on?
14 Q. (BY MR. PLETCHER) -- Plaintiff's
15 Exhibit 87.
16 THE REPORTER: There's already an 87.
17 THE WITNESS: Yeah. There's an 87.
18 MR. PLETCHER: Oh, you're right. 88.
19 We'll mark it 88.
20 (PLAINTIFF'S Exhibit Number 88 marked.)
21 Q. (BY MR. PLETCHER) Are those a copy of your
22 certification cards?
23 A. Yes.
24 Q. And one is in CPR for the professional
25 rescuer, correct?
0096
1 A. Yes.
2 Q. And you were certified on what date?
3 A. It was completed on the 9th of July in 2006.
4 Q. 2006. So that would have been the summer
5 before John's drowning, correct?
6 A. Yes.
7 Q. Okay. And how about the -- you were also
8 certified as a lifeguard, right?
9 A. Yes.
10 Q. What's that other certification?
11 A. Lifeguard training with first aid, also.
12 Q. And did you do that at the same time that
13 you were certified in CPR for the professional
14 rescuer?
15 A. Yes.
16 Q. Where did you take that? Over at the Dad's
17 Club on I-10?

18 A. No. I went through a program with my camp,
19 my summer camp. And that's where we did it for like
20 a week and a half about.

21 Q. Okay. Did you ever work as a lifeguard at
22 the Houston Racquet Club?

23 A. No.

24 Q. Did you ever work as a lifeguard anywhere?

25 A. Yes. At my camp.

0097

1 Q. And what camp was that?

2 A. Camp Olympia.

3 Q. And where is that located?

4 A. In Trinity, Texas.

5 Q. And is that a -- you were acting as a
6 lifeguard at a -- at a lake?

7 A. Part of the time, yes.

8 Q. Okay. Was there also a swimming pool there,
9 too?

10 A. Yes.

11 Q. So you did both lifeguarding at a swimming
12 pool and at open water at a lake front?

13 A. Yes.

14 Q. Was your CPR certification valid on
15 July 18th, 2007?

16 A. I have another card also, and it was one
17 from the summer -- the same summer, but it lasted for
18 two years instead of one. And that was from the
19 YMCA.

20 Q. Okay. And I'll show you what we've marked
21 as Plaintiff's Exhibit 13.

22 A. Okay.

23 Q. And I'm going to zoom in so you can read
24 it. I just want to see -- I think this is probably
25 what you're talking about. Here's your name, 4 y/o B-CC #4

0098

1 4 y/o B-CC #4?

2 A. Yes.

3 Q. It says AHA, Heartsaver AED?

4 A. Yes.

5 Q. And it looks like the issuance date was
6 5-20-06?

7 A. Yes.

8 Q. And it expired 5 -- it says 1-08, but
9 probably 5-20-08?

10 A. 20-08.

11 Q. Because it's a two-year certification

12 because it's American Heart Association?

13 A. Yes.

14 Q. Did you take this certification at the
15 Houston Racquet Club?

16 A. No. I took that at the YMCA.

17 Q. Okay. That's right. You just told me
18 that. Say, "I just told you that." Okay.

19 Well, you know from your training, both
20 as a lifeguard and as a person certified in CPR for
21 the professional rescuer, that if a facility has a
22 defibrillator, that that defibrillator should be
23 brought to the scene of the emergency as soon as
24 possible, correct?

25 A. Yes.

0099

1 MR. HOWARD: Object to form.

2 Q. (BY MR. PLETCHER) That that defibrillator
3 should be used as soon as possible?

4 A. Yes.

5 MR. HOWARD: Object to form.

6 Q. (BY MR. PLETCHER) Correct?

7 A. I knew that.

8 Q. Tell the jury what you know about using a
9 defibrillator.

10 MR. HOWARD: Object to form.

11 Q. (BY MR. PLETCHER) How it's used and whether
12 or not you actually shock a victim.

13 A. I --

14 MR. HOWARD: Object to form.

15 A. I know that you aren't supposed to put it by
16 water, so you have to move them away from water. And
17 I know you have to take off all the clothing and put
18 it on the bare skin. And I know where you place it
19 and how to turn it on and everything.

20 Q. (BY MR. PLETCHER) So when you say I know
21 where to place it, you mean place the patches on --

22 A. Place the patches.

23 Q. -- on the torso --

24 A. Yes.

25 Q. -- of the victim?

0100

1 A. Yes.

2 Q. And then you turn it on. And then what does
3 the AED do?

4 A. It sends a shock to the heart, I think.

5 Q. Yeah. But before you push the shock

6 button --

7 A. It tells you to stand clear of it and make

8 sure no one is touching and...

9 Q. Does the little green light come on and say,

10 "Stand clear"?

11 A. Yeah. It verbally -- it says it out loud

12 and everything, too.

13 Q. And then you -- is there a button you push?

14 A. It -- I think -- from what I remember, you

15 press one button and it tells you to make sure

16 everyone is clear and --

17 Q. Okay.

18 A. -- that's it.

19 Q. And you didn't see any of that occurring at

20 the scene of John's emergency on July 18th, 2007, did

21 you?

22 MR. HOWARD: Object to form.

23 A. It may have occurred, but I didn't see it,

24 so I don't really know.

25 Q. (BY MR. PLETCHER) That didn't answer my

0101

1 question.

2 A. Well --

3 Q. You didn't --

4 A. I didn't see it, right.

5 Q. Right.

6 A. So I couldn't say --

7 Q. You didn't see anybody go get the AED, put

8 the pads on John's torso, turn it on or shock him?

9 MR. HOWARD: Object to form.

10 Q. (BY MR. PLETCHER) Right?

11 A. Right.

12 MR. HOWARD: Object to form.

13 A. Because I wasn't around him.

14 Q. (BY MR. PLETCHER) Right. You didn't see

15 anybody while you were still at the family pool give

16 compressions or breaths to John, correct?

17 A. Right. Because I wasn't watching.

18 Q. Okay. Well, you had left?

19 A. Right.

20 Q. You took your --

21 A. Well --

22 Q. -- campers back to the camp house, right?

23 A. Right. I had just seen a glance of it all

24 and then I left.

25 Q. Do you remember a crowd of people around

0102

1 John at any time while you were at the pool?

2 A. I don't really remember anything because I
3 was --

4 Q. So that's no?

5 A. Right. For the majority of the time I
6 just -- what I remember is being in the Pavilion area
7 with the boys. And I came back over to the police
8 once everything was finished and John had left and
9 everyone had left.

10 Q. Okay.

11 A. So...

12 Q. Okay. You were not there when the EMS came
13 on the scene or arrived at the Racquet Club, correct?

14 A. I was at the pavilion area.

15 Q. Did you observe anything or overhear
16 anything that the EMS did or said?

17 A. No.

18 Q. Do you know if the Houston Racquet Club had
19 an AED on July 18th, 2007?

20 A. I don't know.

21 Q. So nobody had told you that the Houston
22 Racquet Club had a defibrillator and if so, where it
23 may be located, correct?

24 A. No one had talked to me about a
25 defibrillator, no.

0103

1 Q. So to your knowledge, the Houston Racquet
2 Club didn't have one?

3 MR. HOWARD: Object to form.

4 A. I had never talked to anyone about it, so...

5 Q. (BY MR. PLETCHER) You were unaware?

6 A. I was unaware, yeah, of what was --

7 MR. HOWARD: Object to form.

8 A. -- they had.

9 MR. PLETCHER: Okay. I've got to take
10 a break on that one.

11 VIDEOGRAPHER: The time is 4:11 p.m.
12 We are off the record.

13 (Brief recess.)

14 VIDEOGRAPHER: The time is 4:39 p.m.
15 We are back on the record.

16 Q. (BY MR. PLETCHER) Ms. 4 y/o B-CC #4, when you were
17 over here with 4 y/o B-CC #2 before John was
18 discovered floating facedown, do you remember how
19 long you and 4 y/o B-CC #2 had been together?

20 A. No, not exactly.

21 Q. Well, just, I mean -- we know that swim time
22 for the four-year-old boys started at 10:45. This is
23 Plaintiff's Exhibit 6. 10:45 in the morning. And
24 John was found floating facedown at about 11:15?

25 MR. HOWARD: Object to form.

0104

1 Q. (BY MR. PLETCHER) During that 30-minute
2 period of time do you think you were with 4 y/o B-CC #2 most
3 of that time?

4 A. No. I --

5 MR. HOWARD: Object to form.

6 A. -- I think I was with her probably not even
7 five minutes. I mean --

8 Q. (BY MR. PLETCHER) You're kidding?

9 A. We had just been standing right there
10 probably for five minutes. Because I had been with
11 the boys going down the slide before and just with
12 the boys by myself.

13 Q. Right.

14 MR. HOWARD: Object to the side-bar.

15 Q. (BY MR. PLETCHER) Well, when do you find --
16 when did you -- when did you and 4 y/o B-CC #2 get together
17 then over here?

18 A. We both just kind of walked over there
19 because the boys would want to play in the fort
20 because they had done that the day before, too. And
21 they thought it was fun. So I guess all the boys we
22 were with all wanted to do that and we just happened
23 to both go over there.

24 Q. Okay. And you think it was five minutes
25 before John was discovered floating facedown or could

0105

1 it have been longer?

2 A. I mean, it could have been a little bit
3 longer, but definitely not more than 10 minutes.

4 Q. Okay. So your best recollection is you and
5 4 y/o B-CC #2 were over here maybe 10 minutes before at
6 most?

7 A. At most 10 minutes, yes.

8 Q. Okay. Now, if 4 y/o B-CC #1 has testified
9 that she was over here at the sun deck with
10 4 y/o-C #2, 4 y/o-C #4 and John Pluchinsky and
11 she went back to the shallow end with 4 y/o-C #4, and
12 she's also testified that 4 y/o-C #2 got out and
13 walked around and joined her and 4 y/o-C #4 in the

14 shallow end, do you recall 4 y/o-C #2 leaving you?

15 A. I --

16 MR. HOWARD: Object to form.

17 A. I don't recall any of that, no.

18 Q. (BY MR. PLETCHER) So you were unaware that

19 4 y/o-C #2 had left the fort area and walked around to the

20 shallow end --

21 MR. HOWARD: Object to form.

22 Q. (BY MR. PLETCHER) -- just prior to John

23 being found floating facedown?

24 MR. HOWARD: Object to form.

25 A. I thought he was with us the whole time. I

0106

1 didn't think he had left. I mean, maybe he had, but

2 from what I remember he was with us, so...

3 Q. (BY MR. PLETCHER) Well, if he had, you were

4 unaware of it?

5 A. Right.

6 MR. HOWARD: Object to form.

7 A. So, he was -- from what I remember, he was

8 with me -- with us.

9 Q. (BY MR. PLETCHER) So, you think that

10 4 y/o-C #2 was with you at the time that 4 y/o B-CC #2

11 said, "Is he okay?"

12 A. Yes.

13 Q. But if in fact 4 y/o-C #2 had walked around

14 from the fort area down to the shallow end and joined

15 4 y/o B-CC #1 who was with 4 y/o-C #4, you were

16 unaware of that?

17 MR. HOWARD: Object to form.

18 Q. (BY MR. PLETCHER) Correct?

19 A. Right.

20 Q. Okay. On July 18th, 2007 during the swim

21 time for the four-year-old boys, when you were at the

22 family pool, who was your adult supervisor?

23 A. I don't remember her name, but I just

24 remember what she looked like.

25 Q. What did she look like?

0107

1 A. She had dark hair. And I remember for some

2 reason that day she was dressed kind of nicer than

3 most of the camp days. I guess she had somewhere to

4 go right after camp. But I really don't remember

5 anything else.

6 Q. Was she in a dress?

7 A. A -- like a -- like a suit type thing, but I

8 think it was with a skirt, so...
9 Q. Okay. And was it short dark hair?
10 A. I think so.
11 Q. Is that a lady who people called SUPV?
12 A. Yes, yes.
13 Q. SUPV?
14 A. I don't know her last name, but it was SUPV.
15 Q. Okay. So she was your adult supervisor,
16 right?
17 A. Yes.
18 Q. But she wasn't at the family pool while
19 you-all were down there with the four-year-old boys,
20 was she?
21 A. I don't know. I mean, she had been every
22 other day, so I am not sure if she was that day also.
23 Q. Okay. You have no recollection of 4 y/o B-CC #1 being
24 there that day when you-all were in the pool with the
25 four-year-old boys, correct?
0108
1 A. I don't remember if she was there, right.
2 Q. Okay. Supv CC #1 and Supv CC #2, do you
3 know why they were at the family pool on July 18th,
4 2007 when John drowned?
5 A. I don't remember what their positions were
6 that week. I know they worked as counselors and I
7 don't know if that's what they still were, but I
8 mean, I know they were working for the camp, so...
9 Q. Okay. Somehow they were connected with the
10 camp?
11 A. Yes.
12 Q. You know that they were counselors?
13 A. Yes.
14 Q. Correct?
15 A. At some point, yes.
16 Q. But you don't know what group of kids they
17 were responsible for watching at the family pool?
18 A. No, I don't.
19 Q. Correct?
20 A. No.
21 Q. And you don't have any knowledge about what
22 their role and responsibility was while they were at
23 the family pool, correct?
24 A. No. I don't know.
25 Q. Okay. Let me show you what we've marked as
0109

1 Plaintiff's Exhibit 42. This is the Houston Racquet

2 Club camp counselor rules, regulations and
3 requirements for the summer 2007. You've seen this
4 document before, correct?
5 A. Yes. Yes, I have.
6 Q. In fact, I think you brought one with you
7 today, right?
8 A. Yes, I did.
9 Q. It's a two-page document, right?
10 A. Yes.
11 Q. Do you remember that?
12 A. Yes.
13 Q. And then Exhibit 43 is a Houston Racquet
14 Club camp counselor agreement form. "I have read the
15 above information and agree to abide by the rules and
16 regulations that have been outlined. I understand
17 that there is a zero tolerance rule in effect and
18 that I will be released from working from the Houston
19 Racquet Club Summer Camp 2007 if I cannot abide by
20 these rules."
21 A. Yes.
22 Q. Do you remember this agreement?
23 A. Yes.
24 Q. Do you remember when you worked as a camp
25 counselor in 2006, the Houston Racquet Club having
0110
1 similar rules, regulations and requirements for camp
2 counselors?
3 A. Yes.
4 Q. Were you required to sign-off on an
5 agreement in 2006?
6 A. Yes.
7 Q. And do you remember signing a camp counselor
8 agreement form similar to Plaintiff's Exhibit 43 in
9 2007?
10 A. Yes.
11 Q. Do you happen to have a copy of that?
12 A. No. I don't have that. I would guess the
13 Racquet Club would have it.
14 Q. They hadn't produced it, but...
15 MR. HOWARD: Object to the side-bar.
16 Q. (BY MR. PLETCHER) Do you remember -- Let me
17 just let you look through Exhibit 42 real quick. If
18 you could, skim through it. And while you're
19 skimming through it, the question I'm going to ask
20 you is: Do you remember if there were any other
21 rules that were different in 2006 as compared to the

22 2007 rules?

23 A. These are all the same, I think, as the year
24 before. I don't really remember exactly --

25 Q. Sure.

0111

1 A. -- what the ones the year before were.

2 Q. Just look at that second page, if you don't
3 mind. Skim through it.

4 A. (Witness complies.)

5 Q. Having looked through Plaintiff's Exhibit
6 Number 42, the 2007 rules, regulations and
7 requirements for summer camp counselors, do you have
8 a recollection of there being any other rules in
9 effect in 2006 that were any different?

10 A. I don't remember.

11 Q. Do you have a recollection of there being
12 any changes in the rules, regulations or requirements
13 for being a camp counselor at the Racquet Club from
14 2006 to 2007?

15 A. I don't know of any.

16 Q. Okay. And do you recall whether there were
17 any changes in your day-to-day activities as a camp
18 counselor when you compare 2006 to 2007?

19 A. Well, could you kind of rephrase that?

20 Q. Sure. Having worked there as a camp
21 counselor in 2006 --

22 A. Uh-huh.

23 Q. -- and 2007, was there anything different in
24 how you did your job in 2007?

25 A. No.

0112

1 Q. As compared to '06?

2 A. No. It was all the same.

3 Q. Who was in charge of the summer camp in
4 2007?

5 A. From what I knew, it was David and CD.

6 Q. Would that be David Lamkin?

7 A. Yes.

8 Q. And CD-- what is CD's last name?

9 A. I don't know her last name.

10 Q. CD?

11 A. Yes. I thought it started with a P. I just
12 didn't remember.

13 Q. Okay. So what was CD's
14 position; do you know?

15 A. CD would always be at the clubhouse to

16 watch over everyone. And we have daily meetings
17 before and after camp and she would always kind of
18 talk at them and make sure everything was going along
19 the right way.

20 Q. Sure. And those morning and afternoon
21 meetings, do you recall -- what do you recall about
22 those? What would she typically talk about?

23 A. If there had been any problems the day
24 before, she would address them and make sure to watch
25 for them and just kind of remind us of certain little

0113

1 things we had to do.

2 Q. Sure. And give me an example of a problem
3 from the day before that she might bring up.

4 A. Something just little like counselors
5 sitting while kids are playing and sitting and
6 watching instead of playing with them and watching.

7 Q. So not engaging with the children --

8 A. Right.

9 Q. -- in the activities?

10 A. Yes.

11 Q. Taking breaks while the kids are doing
12 whatever they want to do?

13 A. Well, yes.

14 Q. Whatever activity they are involved in?

15 A. Yes. They would just sit and watch instead
16 of play and watch or something like that --

17 Q. Do --

18 A. -- or having jewelry on or something.

19 Q. Yeah. In 2007, in these morning and
20 afternoon meetings, do you ever recall CD
21 ever talking to you and your fellow counselors about
22 safety issues, things related to safety?

23 A. Me specifically or just people -- just
24 everyone in general?

25 Q. Either you specifically or everybody.

0114

1 A. Just making sure -- she would reiterate
2 rules that were in there, even if there weren't
3 problems. So she just was -- you know, would say,
4 "Make sure you don't walk through parking lots" and
5 "Make sure the kids are getting enough water," so
6 stuff like that.

7 Q. Okay. And when you say she would reiterate
8 the rules that were in there, you're talking about --

9 A. The rules.

10 Q. -- Exhibit 42?
11 A. Yes, those same rules.
12 Q. The rules, regulations and requirements for
13 summer camp 2007, right?
14 A. Yes.
15 Q. Well, did CD ever provide you
16 with any specific instruction on what you were
17 supposed to do when the four-year-old campers were in
18 the family pool?
19 A. No.
20 Q. Okay. Did CD-- Did David Lamkin?
21 A. No.
22 Q. Did David Lamkin ever attend any of these
23 morning or afternoon meetings?
24 A. Every once in awhile he would attend morning
25 and he attended most afternoon meetings.

0115

1 Q. Okay. Do you ever recall him providing you
2 with any special instructions related to
3 four-year-old campers being in the family pool?
4 A. No.
5 Q. So David Lamkin never told you that the
6 four-year-old boys were limited to any specific area
7 of the family pool, correct?
8 A. No, he didn't.
9 Q. He did not?
10 A. No, he didn't.
11 Q. Okay. And David Lamkin never instructed you
12 nor did CD that you had to be within a
13 certain distance of the four-year-old boys when they
14 were in the family pool?
15 A. I don't remember.
16 Q. You don't remember David Lamkin or
17 CD ever telling you that the
18 four-year-old campers had to be within your grasp or
19 within an arm's length, correct?
20 A. I can't remember if they did or didn't tell
21 me.
22 Q. Okay. You have no recollection of it?
23 A. No. I can't recall.
24 Q. Okay. Well, since we know that you took a
25 four-year-old boy to the slide on July 18th, 2007,

0116

1 certainly at no time did David Lamkin ever tell you
2 that the slide was prohibited to the four-year-old
3 boys?

4 A. No.
 5 Q. Right?
 6 A. No one ever told me that they couldn't go on
 7 it.
 8 Q. David Lamkin never told you that, correct?
 9 A. Right. No one did.
 10 Q. When you were at the four -- at the slide
 11 with your four-year-old boy on July 18th, 2007, you
 12 were swimming at the ladder or you were in the pool
 13 at the ladder. You drew that orange circle on the
 14 diagram --
 15 A. Yeah.
 16 Q. -- 14K?
 17 A. Yes.
 18 Q. And how far in distance is that ladder or
 19 that area where you were waiting from the bottom of
 20 the slide?
 21 A. I don't know the exact amount. I mean --
 22 Q. Just give me an estimate.
 23 A. I mean, it's not too far.
 24 Q. Longer than this table?
 25 A. No, not longer than this table.
 0117
 1 Q. Okay. 10 feet?
 2 A. I'm really not very good at --
 3 Q. How tall are you?
 4 A. I'm 5' 6".
 5 Q. Okay. Further than you are tall?
 6 A. Yes, probably.
 7 Q. At least that far, right?
 8 A. Right.
 9 Q. Okay. Maybe double?
 10 MR. HOWARD: Object to form.
 11 A. Possibly, but I'm not sure.
 12 Q. (BY MR. PLETCHER) Okay. That's fine. Do
 13 you remember the rule that was in effect in 2007 that
 14 no horseplay would be tolerated?
 15 A. Yes.
 16 Q. That was a rule that was in effect -- in
 17 effect both in 2007 and 2006, right?
 18 A. Yes.
 19 Q. And did CD or David Lamkin ever
 20 tell you what horseplay was, what was considered to
 21 be horseplay?
 22 A. No. But I'm sure everyone just assumed they
 23 pretty much knew what horseplay was.

24 Q. Okay. Well, what did you think horseplay
25 meant?

0118

1 A. Just doing things that could end up hurting
2 anyone.

3 Q. Like what?

4 A. Like faking a little punch or anything like
5 that.

6 Q. Throwing children into the pool?

7 A. Well --

8 MR. HOWARD: Object to form.

9 A. -- throwing them from out of the pool into
10 the pool?

11 Q. (BY MR. PLETCHER) Yes. Sure.

12 A. So like standing outside of the pool and
13 throwing them in?

14 Q. Sure.

15 A. Right. That would be horseplay.

16 Q. Okay. How about tossing them from your
17 shoulders while you were in the pool? That's
18 potentially dangerous, right?

19 MR. HOWARD: Object to form.

20 A. Yes.

21 Q. (BY MR. PLETCHER) Okay. Would you consider
22 that to be horseplay?

23 MR. HOWARD: Object to form.

24 A. I don't know.

25 Q. (BY MR. PLETCHER) Kind of -- Kind of on the
0119

1 edge, maybe on the fence?

2 A. If it was near the edge, I would, yes. If I
3 was in the middle of the pool, not so much.

4 Q. Okay. Well, what other things would you
5 consider to be dangerous horseplay?

6 MR. HOWARD: Object to form.

7 A. I don't know. I mean, it would have to
8 really be happening for me to know like if it was or
9 wasn't.

10 Q. (BY MR. PLETCHER) Well, what --

11 A. I can't really say.

12 Q. Okay. Well, was it your understanding that
13 what the Club meant when it said no horseplay will be
14 tolerated was that they meant no horseplay between
15 the counselors themselves or the counselors and the
16 campers?

17 A. Or the counselors also with each other

18 because --

19 Q. Right.

20 A. Right.

21 Q. That's what I meant.

22 A. I mean -- I mean, not the counselors, I'm
23 sorry, the campers with each other, too.

24 Q. Right.

25 A. Because sometimes the boys would just get
0120

1 mad at each other --

2 Q. Play rough?

3 A. -- and -- yeah. So just really anyone with
4 anybody.

5 Q. Right. So, counselors couldn't horseplay
6 with other counselors and campers couldn't horseplay
7 with other campers, right?

8 A. Right.

9 Q. That would be, you know -- for example,
10 campers might try to dunk each other. Dunking would
11 be prohibited, right?

12 A. Right.

13 Q. Prohibited in horseplay, right?

14 A. Yes.

15 Q. And a camper pushing another camper into the
16 pool would be prohibited horseplay, right?

17 A. Yes.

18 Q. And how about a camper holding another
19 camper underwater?

20 A. Yes.

21 Q. What about counselors playing a launching
22 game with the campers where they would physically
23 throw a four-year-old boy into the pool? Would you
24 consider that to be prohibited horseplay?

25 MR. HOWARD: Object to form.

0121

1 A. Can -- Do you mean from outside of the pool
2 or being in the pool throwing them in the pool?

3 Q. (BY MR. PLETCHER) How about standing on the
4 fountain deck and tossing a four-year-old boy into
5 the family pool?

6 A. I mean, the boys ask the counselors to do
7 that.

8 Q. Okay.

9 A. And would do it to each -- I mean, that
10 never really seemed like anything that would hurt
11 anyone.

12 Q. Okay.
13 A. Because it wasn't throwing. It was just
14 kind of the boys playing along --
15 Q. Okay. And, 4 y/o B-CC #4, when you say the boys
16 asked to -- for that to be done, so some of the
17 campers would say "Throw me"?
18 A. Right.
19 Q. Right. And they would be thrown into the
20 family pool from the fountain deck. You saw that,
21 right?
22 A. Yes.
23 Q. Okay. And weren't there some campers who
24 didn't like that?
25 A. Yes.

0122

1 Q. Didn't like to be thrown?
2 A. Yes, but they would never get thrown then.
3 The only time any counselor would do it is if a boy
4 would ask.
5 Q. Right. Now, do you think that even if a
6 camper asks to be thrown, that that's potentially
7 dangerous if there are other campers in the area that
8 the child was being thrown at?

9 MR. HOWARD: Object to form.

10 A. The counselors, though, would always make
11 sure no one was around.

12 Q. (BY MR. PLETCHER) But that wasn't my
13 question. My question is: If there were other
14 campers in the area where the four-year-old child was
15 being thrown, that is potentially unsafe, right?

16 MR. HOWARD: Object to form.

17 A. Yes.

18 Q. (BY MR. PLETCHER) Okay. Are you aware of
19 anybody being terminated as a camp counselor at the
20 Houston Racquet Club for engaging in horseplay during
21 the two years that you worked as a camp counselor?

22 A. No. I don't know of anyone.

23 Q. Okay. Did you go through an orientation of
24 the summer camp and being a camp counselor in 2006?

25 A. Yes.

0123

1 Q. And was that run by CD?

2 A. Yes.

3 Q. And David Lamkin?

4 A. Yes.

5 Q. Anybody else attend that that you recall in

6 2006?
7 A. Counselor, older people?
8 Q. Yeah. People in charge --
9 A. Right.
10 Q. -- at the orientation?
11 A. Not that I can remember, really.
12 Q. Okay. Were you required to go through
13 orientation in 2007?
14 A. Yes. But I couldn't go to that.
15 Q. You missed it?
16 A. Yes. But I had worked the summer before --
17 Q. Right.
18 A. -- so I had already gone through it.
19 Q. Did you clear that with anybody at the
20 Racquet Club? In other words, did you clear that
21 with David Lamkin or CD that you -- it
22 was okay that you missed the orientation in 2007?
23 A. I called them before I was going and --
24 actually, I think I went up to the Club and I talked
25 to someone about that, yes.

0124
1 Q. Who do you remember talking to?
2 A. I don't remember who it was. It was
3 definitely CD or David. I know it was one of the
4 two.
5 Q. Okay. And what do you remember that person
6 telling you, either David or CD?
7 A. That as long -- it would be okay since I had
8 done it the year before and I had my CPR and as long
9 as I read over the rules and signed the paper. And
10 they kind of took me through anything I would need to
11 know and so...
12 Q. What do you mean, they took you through?
13 A. They just like read over the rules with me.
14 Q. Right then and there on the phone?
15 A. No. I had -- I had come up to the Club.
16 Q. Later?
17 A. Right.
18 Q. Afterwards?
19 A. I came up to the Club and they --
20 Q. And you signed the agreement?
21 A. Yes.
22 Q. This is in 2007, right?
23 A. Yes. This is the summer of 2007.
24 Q. Now, did the Houston Racquet Club ever give
25 you a copy of their Club rules, the official Club

0125

1 rules?

2 A. No.

3 Q. Were you ever instructed by anybody at the
4 Houston Racquet Club that a violation of the Club
5 rules would be considered impermissible horseplay?

6 A. I don't really know what you're asking.

7 Q. Well, for example, if the -- if the Club had
8 a rule that you can't toss four-year-old boys into
9 the family pool, if that is in the official Club
10 rules, would you consider that to be impermissible
11 horseplay?

12 MR. HOWARD: Object to form.

13 A. Can you kind of rephrase? I mean, are you
14 saying -- are you asking if I knew that or if I would
15 think that?

16 Q. (BY MR. PLETCHER) I'm asking you if you
17 think that. If you assume that there is a Club rule,
18 okay, it's written in the Houston Racquet Club club
19 rules that says throwing four-year-old boys in the
20 family pool will not be tolerated and that's in the
21 written rules of the Club, would you consider that to
22 be impermissible horseplay?

23 MR. HOWARD: Object to form.

24 A. Yes.

25 Q. (BY MR. PLETCHER) Okay. Did anybody at the

0126

1 Houston Racquet Club ever tell you that tennis balls
2 were prohibited at the family pool?

3 A. No.

4 Q. In your two years as being a camp counselor
5 do you ever recall either the campers who were
6 involved in the summer camps or the counselors ever
7 fighting over the tennis ball?

8 A. I don't remember that at all, if they would
9 have done that

10 (PLAINTIFF'S Exhibit Number 86 marked.)

11 Q. (BY MR. PLETCHER) Okay. I want to show you
12 what I've marked as Plaintiff's Exhibit 86, which are
13 the documents that the Houston Racquet Club has
14 produced that refer to you. And I would ask you if
15 that is your signature on the first page?

16 A. Yes.

17 Q. And then if you'll flip to the second page.
18 You remember filling out an application for
19 employment for 2007?

20 A. Yes, I do.
21 Q. And is that your handwriting on that page?
22 A. Yes, it is.
23 Q. Now, that application is a two-page form,
24 right?
25 A. I don't know. I guess, yes.
0127
1 Q. I only have one page of it, so I think you
2 were -- there's a second page where you sign-off. Do
3 you remember signing off on it?
4 A. Yes.
5 Q. Okay. And then if you go to the next page,
6 is that your signature on there?
7 A. Yes.
8 Q. Are you still living at **Privilege HRC Designation as Confidential**
9 A. **Privilege**
10 Q. **Priv** ?
11 A. Yes.
12 Q. With your parents?
13 A. Yes.
14 Q. And are you currently employed this summer?
15 A. No, I'm not.
16 Q. Did you have a job this summer?
17 A. Yes.
18 Q. Where did you work?
19 A. At my camp, Camp Olympia.
20 Q. Okay. Other than your work as a camp
21 counselor in 2006 and 2007, have you ever worked at
22 the Racquet Club at any other time?
23 A. No.
24 Q. Did you have to go through a formal
25 interview in 2007 or was it simply a telephone call
0128
1 to the Club to see if you could work that summer?
2 A. I --
3 MR. DOYLE: Object to form.
4 A. I came up to the club and talked to David in
5 his office and had a meeting with him about it all.
6 Q. (BY MR. PLETCHER) Was anybody else at that
7 meeting?
8 A. I don't remember.
9 Q. What do you remember about the meeting at
10 all, if anything?
11 A. I really don't remember much about it. I
12 just remember there was a scheduled time for me to
13 come up.

14 Q. Well, you certainly asked him for another
15 job?

16 A. Yes.

17 Q. And he obviously said okay, right?

18 A. Yes.

19 Q. Did he tell you when you could start work?

20 A. We were supposed to tell him when we could
21 work and then at the meeting, the counselor training
22 session they gave you a envelope with the weeks you
23 worked.

24 Q. That envelope had a schedule of when you
25 were to work?

0129

1 A. Excuse me?

2 Q. An envelope that contained a schedule for
3 which weeks you were going to work?

4 A. Yes.

5 Q. Did you keep that? Do you still have that?

6 A. No, I don't.

7 Q. I just want to flip through this with you.
8 And these are copies of the sign-in sheets for the
9 summer camp --

10 A. Okay.

11 Q. -- 2007 and they are marked Plaintiff's
12 Exhibit 72A. And Week 1, which began on June 12th --

13 A. Yes.

14 Q. -- your name does not appear on that list?

15 A. Yes. I didn't work that week.

16 Q. Ma'am, I didn't --

17 A. I didn't work that week.

18 Q. And Week 2, your name didn't appear on that
19 list either, that's 72B?

20 A. Right.

21 Q. And Week 3, your name did not appear on that
22 one either?

23 A. Right.

24 Q. So you showed up or started -- no, actually
25 you did work?

0130

1 A. I think -- I had only worked one day that
2 week because they had assigned me the wrong weeks and
3 so when I came that day, they said I could just work
4 this one day, I think.

5 Q. Okay. And what you're referring to is that
6 during Week 3, which would be June 26, June 27,
7 June 28 and June 29?

8 A. Right.
9 Q. You had been --
10 A. I -- sorry.
11 Q. You had initially been told you were going
12 to work that week, correct?
13 A. I had -- yes, when I came to the first
14 meeting.
15 Q. Right. It was in your envelope that had the
16 schedule that said you're going to work these
17 particular weeks, right?
18 A. No. When I had first come with -- the
19 meeting when he was interviewing me --
20 Q. Yes, ma'am.
21 A. -- those are the weeks he said -- I had told
22 him I could work and he said, "Okay."
23 Q. Okay.
24 A. Then when I came this week --
25 Q. Week 3?
0131
1 A. Right. To Week 3, I -- that's when I got my
2 envelope --
3 Q. Okay.
4 A. -- because I had missed that second
5 meeting. And they had written the wrong ones. So
6 they said I could work part of this week, but not all
7 of it.
8 Q. Right. And you remember working on
9 June 28th?
10 A. Yes.
11 Q. Okay. Your name shows on June 28th?
12 A. Yes.
13 Q. Do you know what group you were assigned to?
14 A. Not -- I know I was with the four-year-old
15 boys at another point during the summer, so...
16 Q. Maybe on that one day?
17 A. It may have been that day.
18 Q. Okay. And then Plaintiff's Exhibit 72D is
19 Week 4. You worked that entire week, correct?
20 A. Yes, I did.
21 Q. Or did you?
22 A. I did. I don't know why I wasn't signed in.
23 Q. Okay. That's probably on some other sheets.
24 And during Week 4 did you work with the four-year-old
25 boys?

0132
1 A. Yes. The whole -- I had worked this whole

2 week for sure. I don't know why that's written
3 there, but --
4 Q. Well, what is written there?
5 A. It says in the notes "Not needed," but I had
6 worked the whole week.
7 Q. So, you remember --
8 A. I worked one full week for sure before. It
9 may have been Week 3 or 4. And then one of those two
10 weeks, Weeks 3 and 4, I worked only one or two of the
11 days.
12 Q. Because they said you were not needed?
13 A. Right. So it could have been Week 4 that I
14 wasn't needed or Week 3, but if it was one of those
15 two, I worked the other of those two.
16 Q. Okay. I think I understand you.
17 A. Right.
18 Q. Your best recollection is that prior to
19 Week 5, you worked one week for maybe one day?
20 A. Right.
21 Q. And then the other week you worked the
22 entire week?
23 A. Right, yes.
24 Q. And if we look at these records, at least
25 according to 72D, it's specifically written that you
0133
1 only worked on July 10th and you were not needed the
2 rest of the week.
3 A. Yes.
4 Q. Okay.
5 A. So I may have worked all of Week 3 then.
6 Q. Right.
7 A. Maybe it's written somewhere.
8 Q. And then, of course, we know that you worked
9 during Week 5 --
10 A. Right.
11 Q. -- on July 17th and then July 18th, right?
12 A. Yes.
13 Q. And then the camp was shutdown after
14 July 18th and John's drowning, right?
15 A. Yes.
16 Q. Okay. Well, when you showed up to work
17 during Week 5, who told you what you were going to be
18 doing?
19 A. During Week 5, CD did.
20 Q. Okay.
21 A. I had worked with the four-year-old boys

22 before, so she said I could work with them again.
23 Q. Did you not know that until July -- Tuesday,
24 July 17th when you showed up for work that you would
25 be assigned to the four-year-old boys?

0134

1 A. Well, she had told me the week before that I
2 could come back and work with them.

3 Q. Okay. Having worked there -- well, never
4 mind.

5 MR. PLETCHER: Let me just go off the
6 record for a minute.

7 VIDEOGRAPHER: The time is 5:17 p.m.
8 We are off the record.

9 (Brief recess.)

10 VIDEOGRAPHER: The time is 5:26 p.m.
11 We are back on the record.

12 Q. (BY MR. PLETCHER) 4 y/o B-CC #4, are you ready to
13 continue?

14 A. Yes.

15 Q. Did you testify earlier that you knew that
16 4 y/o-C #2 didn't know how to swim?

17 A. Yes.

18 Q. How did you know that?

19 A. He -- I had been with him a week before
20 that, too, so I had been with him a lot the week
21 before.

22 Q. And when you say you had been with him the
23 week before, that would have been either Week 4 --

24 A. 3 or 4, whichever --

25 Q. -- or 3?

0135

1 A. Whichever one I was there for the full week,
2 I was with him.

3 Q. Okay. Well, when he was in the family pool
4 and you were watching him, he was with you in the
5 family pool and you were watching him, how did you
6 ensure his safety?

7 A. He usually liked to play on steps, so that I
8 would usually be with him like around the steps area
9 so that he could be somewhere shallow enough to where
10 he could walk around.

11 Q. Okay. Did he not know how to swim at all?

12 A. He knew kind of a little bit, but really not
13 enough to where he could swim across somewhere.

14 Q. Did the Racquet Club require him to wear a
15 life jacket?

16 A. No.
17 Q. Did he have any sort of flotation device on
18 or with him at the times that you were watching him?
19 A. No. He didn't wear anything.
20 Q. Okay.
21 A. Or --
22 Q. Now --
23 A. He would wear sometimes a vest, but only
24 when his mom would remember to bring it.
25 Q. Are you sure that was 4 y/o-C #2?

0136

1 A. I'm pretty sure. At least one of them had a
2 vest.
3 Q. Right.
4 A. And I thought 4 y/o-C #2 was one of them.
5 Q. Well, I think there's been some testimony in
6 this case that it was --
7 A. 4 y/o-C #2 may have not had it the fifth week, but
8 he may have had it the fourth week or --
9 Q. He certainly didn't have it on July 18th,
10 2007, right?
11 A. No. He didn't -- I know he didn't that day.
12 Q. Right.
13 A. So...
14 Q. Are you sure you're not getting confused
15 with 4 y/o C #1, who was the one with the
16 flotation vest? Is that possible?
17 A. Possibly.
18 Q. You might be mistaken in your belief?
19 MR. HOWARD: Objection, form.
20 Q. (BY MR. PLETCHER) As far as 4 y/o-C #2,
21 right?
22 MR. HOWARD: Objection, form.
23 A. I don't know -- yes.
24 Q. (BY MR. PLETCHER) Okay.
25 A. I know -- I remember 4 y/o C #1 having one for

0137

1 sure.
2 Q. Right.
3 A. So...
4 Q. Okay. Good.
5 Well, did the Houston Racquet Club swim
6 test the campers?
7 A. I don't know because I wasn't there the
8 first or second week, so...
9 Q. Well, they never swim tested them while you

10 were there, right?

11 A. Right. When I was there they didn't.

12 Q. Okay. And did David Lamkin, CD
13 or anybody else at the Houston Racquet Club ever tell
14 you or did you hear them ever tell anybody else that
15 the four-year-old boys were to be treated as not --
16 as non-swimmers?

17 A. No. No one ever told me that.

18 (PLAINTIFF'S Exhibit Number 52J marked.)

19 MR. PLETCHER: I marked the depo
20 notice as Plaintiff's Exhibit 52J along with our
21 Rule 11 agreement. You-all produced all the
22 documents responsive to the subpoena duces tecum,
23 right, Frank?

24 MR. DOYLE: That's correct.

25 THE WITNESS: Yes.

0138

1 (PLAINTIFF'S Exhibit Number 52J-1 marked.)

2 Q. (BY MR. PLETCHER) Okay. And I marked as
3 Plaintiff's Exhibit 52J-1 all of the documents that
4 you brought with you; is that correct? Could you
5 look at that, 4 y/o B-CC #4, and see if those are all the
6 documents that you brought responsive to our
7 subpoena?

8 MR. DOYLE: In addition to --

9 THE WITNESS: Right. This and the
10 cards.

11 Q. (BY MR. PLETCHER) Okay. When you say this,
12 52J-1 and Plaintiff's Exhibit 88?

13 A. Yes.

14 Q. Those are all the documents that you have
15 responsive to our request for production --

16 A. Yes.

17 Q. -- or subpoena duces tecum?

18 MR. PLETCHER: Okay. I'll pass the
19 witness.

20 (The time is 5:30 p.m.)

21 EXAMINATION

22 BY MR. HOWARD:

23 Q. 4 y/o B-CC #4, my name is Steve Howard and you and I
24 have never met or spoken before right now, have we?

25 A. No, we haven't met.

0139

1 Q. And you understand that I represent the
2 Racquet Club and some individuals that are with the
3 Racquet Club?

4 A. Yes.
5 Q. Okay. So I want to make sure you understand
6 who I represent. And I do have some questions for
7 you. I'll try not to be repetitious. Okay?
8 A. Okay.
9 Q. I may ask some that have already been
10 asked.
11 A. Okay.
12 Q. But I'm going to try not to do so.
13 A. Okay.
14 Q. Now, you mentioned that this past summer you
15 had worked at Camp Olympia; is that right?
16 A. Yes.
17 Q. And that's located in Trinity, Texas?
18 A. Yes.
19 Q. And what did you do there?
20 A. I was their photographer for two weeks.
21 Q. All right. And you worked all summer?
22 A. No. Just those two -- for two weeks.
23 Q. Okay. Did you work there the summer before?
24 A. Not worked, but I attended.
25 Q. Is that where you got your lifeguard and
0140
1 your CPR certification?
2 A. In 2006, yes.
3 Q. All right. And, of course, we're taking
4 your deposition now in what is soon to be August in
5 two more days, I think, in July, but you've graduated
6 from high school?
7 A. Yes.
8 Q. And what year did you graduate?
9 A. 2008.
10 Q. And you're planning to go to college?
11 A. Yes.
12 Q. Where are you going to attend college?
13 A. Texas A&M.
14 Q. All right. And I believe 4 y/o B-CC #1 also
15 graduated. You know her, don't you?
16 A. Yes.
17 Q. Okay. Where is she going to attend college?
18 A. University of Georgia.
19 Q. All right. Were you accepted to any other
20 colleges?
21 A. Yes.
22 Q. What other?
23 A. I applied also to Louisiana State University

24 and University of Texas and I got into both.

25 Q. Okay. Were you in the top 10 percent at
0141

1 Memorial High School?

2 A. No, I wasn't.

3 Q. In selecting Texas A & M, that's in Texas,
4 of course, not too far away, right?

5 A. Yes.

6 Q. If you're called upon to come testify in
7 this trial, will you be available to do so as far as
8 you know?

9 A. As far as I know, yes.

10 Q. Okay. I want to ask some questions of you
11 about the year before the accident, that summer, you
12 also worked at the Racquet Club, didn't you?

13 A. Yes.

14 Q. That would be the summer of 2006?

15 A. Yes.

16 Q. And were you also a camp counselor then?

17 A. Yes.

18 Q. That summer, did you -- before you started
19 work, did you attend a counselor orientation course?

20 A. Yes, I did.

21 Q. Did you also have an interview process to
22 get the job?

23 A. Yes.

24 Q. How did you find out about the job at the
25 Racquet Club? Did somebody tell you? Did you have a
0142

1 friend?

2 A. I'm a member there, so I'm there -- up there
3 a lot and I just saw a sign-up sheet area and people
4 had talked about they had done it the summer before,
5 people that were older, and so just little things.

6 Q. All right. Did you interview for the job?

7 A. Yes.

8 Q. Who did you interview with?

9 A. David.

10 Q. David Lamkin?

11 A. Yes.

12 Q. Did you work the entire summer camp?

13 A. I -- the -- in 2006?

14 Q. Yes.

15 A. I only worked for two weeks.

16 Q. Okay. And during that two-week session that
17 you worked, do you remember what age group you were

18 working with?

19 A. I know for at least one of the weeks I
20 worked with nine-year-old girls.

21 Q. All right.

22 A. And I don't remember what other age group.

23 Q. Did you have -- one -- was one of the
24 activities going to the swimming pool and having pool
25 time?

0143

1 A. Yes.

2 Q. So before the summer of 2007 you were
3 already familiar with the supervising that would be
4 needed in the swimming pool area during the Houston
5 Racquet Club camp?

6 A. Yes.

7 MR. PLETCHER: Object to form.

8 Q. (BY MR. HOWARD) And you, I think, testified
9 earlier that you had -- were not able to go to the
10 orientation for 2007?

11 A. Yes.

12 Q. Okay. But you said you -- did you go up to
13 the Racquet Club for that, to get the job, I mean?

14 A. Yes, I did.

15 Q. Okay. And who did you meet with?

16 A. Either David or CD. I don't remember
17 which one.

18 Q. All right. And before the camp session that
19 is the subject of the unfortunate accident, before
20 that camp session that week, had you worked for
21 approximately two weeks before?

22 MR. PLETCHER: Object to the form.

23 A. I had worked for at least one full week and
24 part of another week.

25 Q. (BY MR. HOWARD) Okay. Now, at the time of
0144

1 the incident, the drowning, were you certified in
2 CPR?

3 A. Yes.

4 Q. Was that one of the requirements for the job
5 as a counselor?

6 A. Yes.

7 Q. Were you required to be a certified
8 lifeguard to be a counselor?

9 A. No.

10 Q. Were you at the time of the accident a
11 certified lifeguard?

12 A. Yes.
13 Q. In order to become a certified lifeguard,
14 did you have to -- you had to take a course?
15 A. Yes.
16 Q. And how long did that course last?
17 A. It was over a span of about a week and a
18 half.
19 Q. At the end of that course, did you have to
20 take a written test?
21 A. Yes.
22 Q. And did you pass the test?
23 A. Yes.
24 Q. Did you also have a skills part or test that
25 you also had to pass?
0145
1 A. Yes.
2 Q. And did you pass the skills part?
3 A. Yes.
4 Q. And your lifeguard certification, if I
5 recall correctly from the card that I was provided
6 with this morning, it looks like it indicates that
7 you were certified on July 9, 2006 and then it was
8 good for three years; is that right?
9 A. Yes.
10 Q. I want to talk to you a little bit about the
11 day of the accident. I think you had mentioned that
12 this was actually the second day in which John had
13 attended camp that -- in which you were one of the
14 counselors; is that right?
15 A. Yes.
16 Q. All right. In the day prior to the
17 incident, had you become familiar with who John was?
18 A. Yes. I had met all of the boys in my group.
19 Q. All right. Had you ever worked the car pool
20 drop-off area?
21 A. I don't remember. I had for sure other
22 weeks, but I don't remember if I had the day before.
23 Q. In working the car pool drop-off area, was
24 one of your job duties to try to be available for
25 information if the parents wanted to provide you with
0146
1 any information --
2 MR. PLETCHER: Object to form.
3 Q. (BY MR. HOWARD) -- about their child?
4 A. Yes.
5 Q. Okay. And did that ever happen on the times

6 when you were working the car pool?

7 A. Sometimes mom would -- moms would just say
8 little things, so, but...

9 Q. What types of things would they say?

10 A. Just to remember if -- someone's goggles or
11 a baseball glove; but otherwise, that's -- I mean,
12 that's all that was ever said to me usually --

13 Q. All right.

14 A. -- on the times I worked there.

15 Q. In your training to be a counselor, were you
16 told to be available to receive any kind of comments
17 or special instructions from the parents?

18 MR. PLETCHER: Object to the form.

19 A. Yes.

20 Q. (BY MR. HOWARD) And who told you that?

21 A. Both CD and David.

22 Q. Now, you mentioned that 4 y/o-C #2 and a
23 young man named, I believe, 4 y/o C #1 also attended
24 the camp at the time of the incident; is that right?

25 MR. PLETCHER: Object to the form.

0147

1 A. Yes.

2 Q. (BY MR. HOWARD) And if I understood your
3 testimony correctly, at one time or another both of
4 those children had brought life vests --

5 MR. PLETCHER: Object to form.

6 Q. (BY MR. HOWARD) -- with them; is that
7 right?

8 A. I know that 4 y/o C #1 had for sure and I'm
9 pretty sure 4 y/o-C #2 had at some point.

10 Q. Okay. Now, during the day before the
11 accident in question, had you had any opportunities
12 to observe John's swimming ability?

13 MR. PLETCHER: Object to form.

14 A. I hadn't ever really been with John in the
15 pool, so I didn't really know of his ability or
16 anything about John.

17 Q. (BY MR. HOWARD) All right. And what about
18 on the day of the incident, do you recall having
19 any -- or do you have any memory of John in the pool
20 swimming?

21 MR. PLETCHER: Object to form.

22 A. No. I wasn't with him ever.

23 Q. (BY MR. HOWARD) In the pool dog paddling?

24 MR. PLETCHER: Object to form.

25 A. I wasn't with him ever.

0148

1 Q. (BY MR. HOWARD) In the pool holding his
2 breath in front of other counselors?

3 MR. PLETCHER: Object to form.

4 A. I wasn't with him.

5 Q. (BY MR. HOWARD) Now, at the time of the --
6 of the accident I think you indicated you were over
7 in the -- what's been called a sun deck area; is that
8 right?

9 MR. PLETCHER: Object to form.

10 A. Yes.

11 Q. (BY MR. HOWARD) And in the -- I believe
12 your first indication of a problem you indicated
13 earlier was you heard from 4 y/o B-CC #2 her exclamation; is
14 that right?

15 A. Yes.

16 Q. All right. And then you drew on the
17 diagram, Exhibit 14 -- is it A or H?

18 MR. PLETCHER: K.

19 THE COURT REPORTER: K.

20 Q. (BY MR. HOWARD) 14K.

21 MR. PLETCHER: It's not there.

22 Q. (BY MR. HOWARD) Where it was -- where you
23 were located; is that right?

24 A. Yes.

25 Q. Okay. And counsel asked you to indicate

0149

1 which direction you were facing when you heard that
2 exclamation or knew that something was wrong. Do you
3 recall that?

4 A. Yes.

5 Q. Okay. And you indicated that you were
6 facing toward the edge of the pool, correct?

7 A. Yes.

8 Q. Which would have been away from where John
9 was located, right?

10 A. Yes.

11 Q. Okay. But you -- at that time that's where
12 you were located, correct?

13 MR. PLETCHER: Object to form.

14 A. Yes.

15 Q. (BY MR. HOWARD) Now, at other times were
16 you facing towards the center of the pool, towards
17 other areas of the pool?

18 MR. PLETCHER: Object to form.

19 A. Yes.

20 Q. (BY MR. HOWARD) Okay. Where were you
21 facing at other times besides this one instant, this
22 one point in time where you've drawn on Exhibit 14K
23 where you were facing?

24 A. Well, I was -- when I was with the boy at
25 the slide, I was facing the slide. And I had watched
0150

1 from the slide to the ledge, so I was facing, I
2 guess, west at points and both east -- I really faced
3 all over.

4 Q. All right. And with you and 4 y/o B-CC #2 in this
5 area where you were at that time, approximately how
6 many four-year-old boys were there?

7 A. Between three and six.

8 Q. All right. And you indicated earlier in
9 your testimony that after hearing this exclamation
10 from 4 y/o B-CC #2 that there was something wrong, that you
11 turned and saw a lifeguard at the edge of the pool;
12 is that right?

13 A. Yes.

14 Q. And I think you said that you saw 4 y/o B-CC #3
15 going towards John; is that right?

16 MR. PLETCHER: Object to form.

17 A. Yes.

18 Q. (BY MR. HOWARD) All right. And at the time
19 that you first turned around and saw 4 y/o B-CC #3 and
20 John, about how far apart were they?

21 A. Not too far, but not really, really close.

22 Q. All right.

23 A. I don't know an exact amount.

24 Q. I think 4 y/o B-CC #1 testified that they
25 were about three steps apart when she heard the
0151

1 exclamation from the lifeguard that there was a
2 problem. Would you disagree with that?

3 MR. PLETCHER: Object to form.

4 A. I really don't know how -- I mean, it
5 matters how big three steps are. I don't know how
6 big she would say that was.

7 Q. (BY MR. HOWARD) Okay. But not really far?

8 MR. PLETCHER: Object to form.

9 A. Not that far, no.

10 Q. (BY MR. HOWARD) Okay. And you played no
11 part in the CPR or revival efforts on John, did you?

12 A. No, I didn't.

13 Q. That was handled by others?

14 A. Yes, it was.
15 Q. All right. And you were asked a lot of
16 questions about who was where and -- you know, where
17 the counselors were located, where the campers were
18 located and so on. And a question about, well, who
19 was watching John at the time. Do you recall that?

20 A. Yes.

21 Q. And you said you didn't know; is that right?

22 A. Right.

23 Q. Okay. Were there lifeguards in the chairs
24 at the time of the incident?

25 MR. PLETCHER: Object to form.

0152

1 A. Do you mean when I turned and saw him or --

2 Q. (BY MR. HOWARD) Yes, at the time of the
3 incident.

4 MR. PLETCHER: Object to form.

5 A. I know that there was for sure one in
6 that -- in the chair towards the deep end, but I know
7 15 y/o LG #1 had been walking around kind of.

8 Q. (BY MR. HOWARD) All right. And just prior
9 to you noticing anything wrong, was -- had 15 y/o LG #1
10 been in the lifeguard chair?

11 MR. PLETCHER: Object to form.

12 A. I don't remember.

13 Q. (BY MR. HOWARD) And just prior to the
14 incident or just prior to you finding out that there
15 was something wrong, was there also a lifeguard -- I
16 think you said his name was 15 y/o LG #2, was he
17 also on duty at the pool?

18 A. Yes.

19 Q. Okay. So at the time of this -- of this
20 drowning incident and at the time that you were
21 alerted to an issue, there were two lifeguards on
22 duty at the pool, correct?

23 MR. PLETCHER: Object to form.

24 A. Yes.

25 Q. (BY MR. HOWARD) All right. And how many

0153

1 counselors were there in the pool at the time of the
2 incident?

3 A. I'm not sure of the amount.

4 Q. All right. How many with the four-year-old
5 boys?

6 A. Six.

7 Q. All right. And you've told us where you

8 were located and you've told us where 4 y/o B-CC #3 was
9 located, 4 y/o B-CC #1, 4 y/o B-CC #2, Supv CC #2,
10 right?

11 A. Yes.

12 Q. They were all in the pool, weren't they?

13 A. Yes.

14 Q. Okay. All righty. During the time that you
15 were working at the pool on the day of this incident,
16 do you recall any parent stating to you or anyone
17 else, to your knowledge, that the lifeguards weren't
18 doing their job?

19 MR. PLETCHER: Object to form.

20 A. No.

21 Q. (BY MR. HOWARD) Do you recall any parent
22 stating to you that the counselors were not paying
23 attention or were not doing their jobs?

24 MR. PLETCHER: Object to form.

25 A. No.

0154

1 MR. HOWARD: What's the objection,
2 Matt?

3 MR. PLETCHER: You're leading her down
4 the road to nowhere and...

5 MR. HOWARD: Leading her?

6 MR. PLETCHER: And your question was
7 such that --

8 MR. HOWARD: So is your leading --
9 leading objection?

10 MR. PLETCHER: Let me talk. Your
11 question didn't make any sense in the terms that you
12 used.

13 MR. HOWARD: All right.

14 Q. (BY MR. HOWARD) You can answer the
15 question.

16 MR. PLETCHER: She did.

17 MR. HOWARD: She did? Okay.

18 Q. (BY MR. HOWARD) I'll reask it again. At
19 the time of the day of this incident when you were
20 working the swimming pool, do you recall or did any
21 parent make a statement to you that the counselors
22 weren't doing their jobs properly?

23 MR. PLETCHER: Object to form.

24 A. No.

25 Q. (BY MR. HOWARD) Did you overhear any parent

0155

1 complaining at that time on the day of the incident

2 while you were working the pool about the performance
3 of the lifeguards?

4 MR. PLETCHER: Object to form.

5 A. No.

6 Q. (BY MR. HOWARD) About the performance of
7 the counselors?

8 MR. PLETCHER: Object to form.

9 A. No.

10 Q. (BY MR. HOWARD) At any time during the day
11 of this incident while you were at the pool with the
12 four-year-olds, do you recall ever seeing any of the
13 counselors not doing their jobs?

14 MR. PLETCHER: Object to form.

15 A. No.

16 Q. (BY MR. HOWARD) On the day of this incident
17 when you were working the pool with the
18 four-year-olds, do you recall ever seeing or
19 observing any of the counselors clustering together
20 and not doing their job?

21 MR. PLETCHER: Object to form.

22 A. No.

23 Q. (BY MR. HOWARD) On the day of the incident
24 while you were working the pool with the
25 four-year-olds, do you recall any of the counselors

0156

1 flirting and not paying attention to the children?

2 MR. PLETCHER: Object to form.

3 A. No.

4 Q. (BY MR. HOWARD) 4 y/o B-CC #4, what do you think
5 about the counselors that you worked with? Do you
6 think that they are responsible?

7 MR. PLETCHER: Object to form.

8 A. Yes.

9 Q. (BY MR. HOWARD) Did you think that they
10 were good young men and women?

11 A. Yes.

12 MR. PLETCHER: Object to form.

13 Q. (BY MR. HOWARD) Did you think that they
14 took their job seriously?

15 MR. PLETCHER: Object to form.

16 A. Yes.

17 Q. (BY MR. HOWARD) 4 y/o B-CC #4, did you take your
18 job as a counselor seriously?

19 A. Yes.

20 MR. PLETCHER: Object to -- no
21 objection.

22 Q. (BY MR. HOWARD) On the date of this
23 incident, this unfortunate drowning, were you
24 ignoring the four-year-old boys?

25 A. No.

0157

1 MR. PLETCHER: Objection, form.

2 Q. (BY MR. HOWARD) Were you spending time
3 talking with other counselors?

4 A. No.

5 Q. And otherwise not attending to the
6 four-year olds?

7 MR. PLETCHER: Object to form.

8 A. No, I wasn't.

9 Q. (BY MR. HOWARD) Did you see anybody else,
10 any of the counselors not attending to their
11 four-year-old boys?

12 MR. PLETCHER: Objection, form.

13 A. No. I saw them all with their boys only.

14 Q. (BY MR. HOWARD) Let's talk about the day
15 before the accident. On the day before the accident,
16 did you ever overhear any of the member moms
17 complaining to any counselors and any lifeguards to
18 David Lamkin, to CD, anyone about any of
19 the activities or the way that you-all were
20 supervising the four-year-old boys?

21 MR. PLETCHER: Object to form.

22 A. No.

23 Q. (BY MR. HOWARD) And you were asked some
24 questions about did David Lamkin and CD
25 ever give you any specific instructions about the

0158

1 swimming pool and the four-year olds being in the
2 pool. Do you recall that --

3 A. Yes, I recall.

4 Q. -- question?

5 Okay. Were you given instructions by
6 the Club, by CD and David to be in the pool with
7 the four-year olds at all times?

8 A. Yes.

9 MR. PLETCHER: Object to form.

10 Q. (BY MR. HOWARD) Were you given instructions
11 by the Houston Racquet Club, CD and David
12 Lamkin, to observe the children in the pool at all
13 times?

14 MR. PLETCHER: Object to form.

15 A. Yes.

16 Q. (BY MR. HOWARD) Now, you've -- you
17 mentioned that CD, you would see her come
18 by the pool?

19 MR. PLETCHER: Object to form.

20 A. Not very often, but...

21 Q. (BY MR. HOWARD) You mentioned something
22 that she was wearing a --

23 A. That was some --

24 Q. Oh, that was CD?

25 A. CD, yes.

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1 Q. Okay. All right. But in your -- you
2 interviewed with David Lamkin twice, didn't you?

3 A. Yes.

4 Q. All right. In your opinion, did David
5 Lamkin try to make safety an important issue for the
6 camp?

7 MR. PLETCHER: Object to form.

8 A. Yes.

9 Q. (BY MR. HOWARD) Do you have an opinion as
10 to whether David Lamkin thought safety was important?

11 MR. PLETCHER: Object to form.

12 A. I -- He always was telling us important
13 rules, so I think safety was important to him.

14 Q. (BY MR. HOWARD) Would David Lamkin attend
15 any of the meetings that you-all had as counselors?
16 I think you said there was one in the morning and one
17 in the afternoon?

18 A. He attended the afternoon sessions most of
19 the time and not really the morning ones as much.

20 Q. All right. You mentioned that they would
21 discuss with you problems that had occurred; is that
22 right?

23 A. Yes.

24 MR. PLETCHER: Object to form.

25 Q. (BY MR. HOWARD) Did they seem to be

0160

1 concerned about trying to correct any of the problems
2 that may develop during the camp?

3 MR. PLETCHER: Object to form.

4 A. Yes.

5 Q. (BY MR. HOWARD) Was that one of the
6 purposes of the meeting?

7 MR. PLETCHER: Object to form.

8 A. Yes. That was the main purpose is to talk
9 about any problems they had had.

10 Q. (BY MR. HOWARD) At the -- On the day of the
11 incident during the pool time with the four-year
12 olds, do you recall any unsafe horseplay taking place
13 of any kind?

14 MR. PLETCHER: Object to form.

15 A. I can't remember.

16 Q. (BY MR. HOWARD) You don't remember any such
17 horseplay?

18 A. No.

19 MR. PLETCHER: Form.

20 Q. (BY MR. HOWARD) You were asked some
21 questions about how in the world could you watch all
22 six -- or 13 of these four-year-old boys at the same
23 time; do you recall that?

24 A. Yes.

25 Q. You didn't have to do that, did you?

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1 MR. PLETCHER: Object to form.

2 A. What do you mean?

3 Q. (BY MR. HOWARD) Well, when you were in the
4 pool with these boys over here where you were at the
5 time of the accident, you were watching those kids as
6 best you could, right?

7 MR. PLETCHER: Object to form.

8 A. Yes.

9 Q. (BY MR. HOWARD) All right. That doesn't
10 mean that no one was watching the other kids, does
11 it?

12 MR. PLETCHER: Object to form.

13 A. No, it doesn't.

14 Q. (BY MR. HOWARD) And your instructions were
15 to watch the kids at all times, correct, as a group?

16 A. Yes.

17 Q. Okay. And did you do that?

18 MR. PLETCHER: Objection.

19 A. Yes.

20 Q. (BY MR. HOWARD) Did the group do that?

21 MR. PLETCHER: Object to form.

22 A. Yes.

23 Q. (BY MR. HOWARD) And were you able to -- And
24 you could talk to the other counselors, couldn't you?

25 A. Yes.

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1 Q. And you did do that, didn't you?

2 A. Every once in awhile -- yes.

3 Q. All right. And you were able to see when

4 other counselors would take children, for example, to
5 another part of the shallow area where they wanted to
6 go. You were able to see that, weren't you?

7 MR. PLETCHER: Object to form.

8 A. Yes.

9 Q. (BY MR. HOWARD) I mean, you didn't have a
10 blindfold on out there, did you?

11 MR. PLETCHER: Object to form.

12 A. No.

13 Q. (BY MR. HOWARD) Okay. In working at the
14 pool as a counselor, did you feel like that system
15 worked for you?

16 MR. PLETCHER: Object to form.

17 A. Yes.

18 Q. (BY MR. HOWARD) Did you believe that the --
19 that your fellow counselors believed that that system
20 worked for them as well?

21 MR. PLETCHER: Object to form.

22 A. Yes.

23 Q. (BY MR. HOWARD) All right. And you don't
24 know what happened to John, do you?

25 A. No.

0163

1 Q. You don't know how he drowned, do you?

2 A. No.

3 Q. And no one has told you how John drowned,
4 have they?

5 MR. PLETCHER: Object to form.

6 A. No.

7 Q. (BY MR. HOWARD) Has anyone told you how
8 John drowned?

9 A. No.

10 MR. HOWARD: All right. 4 y/o B-CC #4, I think
11 those are going to be all the questions I have for
12 you right now. Thank you for your time and your
13 courtesy.

14 THE WITNESS: Thank you.

15 MR. HOWARD: I'll pass the witness.

16 (The time is 6:01 p.m.)

17 EXAMINATION

18 BY MR. PLETCHER:

19 Q. 4 y/o B-CC #4, I just have a few follow-up
20 questions. Okay?

21 A. Okay.

22 Q. I'll just go right into them. You were
23 asked about some system that was in place at the

24 Houston Racquet Club by this lawyer over here. Do
25 you remember that line of questioning just a second
0164

1 ago?

2 MR. HOWARD: Object to form.

3 A. About -- What about? About...

4 Q. (BY MR. PLETCHER) Whether or not you
5 thought the system worked?

6 A. Yes.

7 Q. Okay. Well, certainly you're not telling us
8 that a system that's in place at a country club, like
9 the Houston Racquet Club that results in a child
10 drowning is a system that works, are you?

11 MR. HOWARD: Object to form.

12 A. It was fine before. I don't -- I mean...

13 Q. (BY MR. PLETCHER) Well, I'm just following
14 up on his question. He said: Do you think the
15 system worked? And my follow-up is: You're not
16 saying that a system that ends up with a four-year
17 old floating facedown unconscious and having drowned
18 is a system that is one that works?

19 MR. HOWARD: Object to form.

20 Q. (BY MR. PLETCHER) Are you?

21 A. I think it was working fine before that. I
22 mean...

23 Q. Before that, sure. But if it resulted, and
24 the jury believes that the system that was in place
25 at the Houston Racquet Club resulted in John's
0165

1 drowning, certainly you wouldn't say that that is a
2 system that worked, right?

3 MR. HOWARD: Object to form.

4 A. I don't know.

5 Q. (BY MR. PLETCHER) Okay. Well, your job as
6 a camp counselor, your responsibility as a camp
7 counselor when those four-year-old boys were in the
8 swimming pool was to watch them, right?

9 A. Yes.

10 Q. The instruction that you told us about
11 earlier was that the Racquet Club told you guys that
12 when they were in the pool, you were all responsible
13 for watching all of the four-year-old boys in your
14 group, right?

15 A. Yes.

16 Q. Well, do you know who was watching John when
17 he drowned?

18 MR. HOWARD: Object to form.
19 A. No.
20 Q. (BY MR. PLETCHER) You're certainly not
21 telling us that somebody watched John drown, are you?
22 MR. HOWARD: Object to form.
23 A. No. But it was to my knowledge that
24 somebody was watching him, so...
25 Q. (BY MR. PLETCHER) But you don't know who
0166
1 that person is, do you?
2 A. No.
3 Q. Was 4 y/o B-CC #6 watching him?
4 A. I don't know.
5 Q. Was 4 y/o B-CC #2 watching him? No, she
6 was watching --
7 A. No. She was with me.
8 Q. Okay. Were you watching him?
9 A. No.
10 Q. Was 4 y/o B-CC #1 watching him?
11 A. I don't know.
12 Q. Was 4 y/o B-CC #4 watching him?
13 A. I don't know.
14 Q. Do you know what 4 y/o B-CC #6 was doing in
15 the 10 minutes before John was found floating
16 facedown?
17 A. I don't know.
18 Q. Do you know what 4 y/o B-CC #4 was doing in the
19 10 minutes before John was found floating facedown?
20 A. I don't know.
21 Q. Do you know what 4 y/o B-CC #1 was doing in
22 the 10 minutes before John was found floating
23 facedown?
24 A. I don't know. I know that they were all
25 with the boys, though, because I had seen all of
0167
1 them --
2 Q. Right.
3 A. -- from afar.
4 Q. But you don't know if any of them were with
5 John, right?
6 A. Right.
7 Q. You don't know if any of them were watching
8 John, correct?
9 MR. HOWARD: Object to form.
10 Q. (BY MR. PLETCHER) Correct?
11 A. Correct. I don't know who was.

12 Q. And do you know what 4 y/o B-CC #3 was doing in
13 the 10 minutes before John was found floating
14 facedown?

15 MR. HOWARD: Object to form.

16 A. I don't know exactly, no.

17 Q. (BY MR. PLETCHER) And if the counselors
18 were acting responsible and doing their job on
19 July 18th, 2007, you would agree that somebody should
20 have been watching John Pluchinsky at all times?

21 MR. HOWARD: Object to form.

22 Q. (BY MR. PLETCHER) Right?

23 A. Yes.

24 Q. And if, in fact, John Pluchinsky went
25 unwatched in that family pool, then that

0168

1 responsibility and that job was not being performed
2 properly, right?

3 MR. HOWARD: Object to form.

4 Q. (BY MR. PLETCHER) Right?

5 MR. HOWARD: Same objection.

6 A. Can you kind of repeat that?

7 MR. PLETCHER: Do you mind reading that
8 back?

9 THE REPORTER: Sure.

10 "And if, in fact, John Pluchinsky went
11 unwatched in that family pool, then that
12 responsibility and that job was not being performed
13 properly, right?"

14 A. Yes.

15 Q. (BY MR. PLETCHER) Okay. When you walked to
16 the slide with the one four-year-old boy and you were
17 walking back to the -- to the sun deck area, you
18 didn't see John Pluchinsky, did you?

19 A. No.

20 Q. Do you know anything about 4 y/o B-CC #2
21 being kicked off the cheerleading squad at Memorial?

22 MR. HOWARD: Object to form.

23 A. No.

24 MR. PLETCHER: Okay. That's all I
25 have. Thank you.

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1 MR. HOWARD: Nothing further.

2 VIDEOGRAPHER: The time is 6:07 p.m.

3 We are off the record.

4 (Deposition concluded at 6:07 p.m.)

5 (Signature required.)

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1 CHANGES AND SIGNATURE
2 WITNESS NAME: 4 y/o B-CC #4
DATE OF DEPOSITION: JULY 28, 2008

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5	PAGE/LINE	CHANGE FROM/CHANGE TO	REASON
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I, 4 y/o B-CC #4, have read the foregoing deposition
and hereby affix my signature that same is true and
correct, except as noted above.

3

4

4 y/o B-CC #4

5

6

THE STATE OF TEXAS)

7

COUNTY OF HARRIS)

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9

Before me, _____, on this day
personally appeared _____, known to me (or
proved to me on the oath of _____ or
through _____) to be the person whose
name is subscribed to the foregoing instrument and
executed the same for the purposes and consideration
therein expressed.

13

14

Given under my hand and seal of office this
_____ day of _____, 2008.

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21

Notary Public in and for
The State of Texas

22

23

24

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NO. 2007-54438

2

DAVID AND KATHLEEN) IN THE DISTRICT COURT
PLUCHINSKY, INDIVIDUALLY)

3

AND AS REPRESENTATIVES)

4

OF THE JOHN ALBERT)

PLUCHINSKY ESTATE)

Plaintiffs)

5)
VS.) HARRIS COUNTY, TEXAS
6)
HOUSTON RACQUET CLUB,)
7 STEPHEN GRIFFIN, DAVID)
LAMKIN, GUILLERMO)
8 PALMER, AND)
LG Supv,)
9)
Defendants) 281st JUDICIAL DISTRICT

10
11 REPORTER'S CERTIFICATION
TO THE ORAL DEPOSITION OF 4 y/o B-CC #4
JULY 28, 2008

12
13 I, Sherry Hale, Certified Shorthand Reporter in and
for the State of Texas, hereby certify to the
following:

14
15 That the witness, 4 y/o B-CC #4, was duly sworn by the
officer and that the transcript of the oral
deposition is a true record of the testimony given by
16 the witness;

17 That the deposition transcript was submitted on
_____, 2008, to the witness or to the attorney
18 for the witness for examination, signature, and
return to Sherry Hale Reporting & Associates, by
19 _____, 2008.

20 That the amount of time used by each party at the
deposition is as follows:

21 Mr. Pletcher - 2 Hours: 37 Minutes
 Mr. Howard - 31 Minutes

22
23 That pursuant to information given to the deposition
officer at the time said testimony was taken, the
24 following includes all parties of record:

25
0173
1 FOR THE PLAINTIFFS:
 Mr. Matthew G. Pletcher
2 Beirne, Maynard & Parsons, L.L.P.
 1300 Post Oak Blvd., 25th Floor
3 Houston, Texas 77056
 (713) 623-0887
4 (713) 960-1527 Fax Number
5 FOR THE DEFENDANTS:

Mr. Steve Howard

6 Tucker, Taunton, Snyder & Slade
10370 Richmond Avenue, Suite 1400
7 Houston, Texas 77042
(713) 961-5800

8 REPRESENTING 4 y/o B-CC #4:

9 Mr. Frank A. Doyle
Johnson, Spalding, Doyle, West & Trent, LLP
10 919 Milam, Suite 1700
Houston, Texas 77002

11 I further certify that I am neither counsel for,
12 related to, nor employed by any of the parties in the
action in which this proceeding was taken, and
13 further that I am not financially or otherwise
interested in the outcome of the action.

14 Further certification requirements pursuant to Rule
15 203 of TRCP will be certified to after they have
occurred.

16
17 Subscribed and sworn to by me on this _____ day of
18 August, 2008.

19
20
21 _____
Sherry Hale
22 Texas CSR No. 6215
Expiration Date: 12/31/2008
23 Firm Registration No. 510
4545 Post Oak Place, Suite 350
24 Houston, Texas 77027
(713) 626-2629

25
0174 1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not _____ returned
to the deposition officer on _____;

3 If returned, the attached Corrections and Signature
4 page contains any changes and the reasons therefor;
5 If returned, the original deposition was delivered to
Mr. Matthew G. Pletcher, Custodial Attorney;

6

That \$ _____ is the deposition officer's charges to
the Plaintiff for preparing the original deposition
transcript and any copies of exhibits;

That the deposition was delivered in accordance with
Rule 203.3, and that a copy of this certificate was
served on all parties shown herein and filed with the
Clerk.

Certified to by me this _____ day of _____,
2008.

Sherry Hale
Texas CSR No. 6215
Expiration Date: 12/31/2008
Firm Registration No. 510
4545 Post Oak Place, Suite 350
Houston, Texas 77027
(713) 626-2629