

0001

1 CAUSE NO. 2007-54438  
2 DAVID AND KATHLEEN PLUCHINSKY,) IN THE DISTRICT COURT OF  
INDIVIDUALLY AND AS )  
3 REPRESENTATIVES OF THE JOHN )  
ALBERT PLUCHINSKY ESTATE, )  
4 PLAINTIFFS, )  
5 VS. ) HARRIS COUNTY, T E X A S  
6 HOUSTON RACQUET CLUB, STEPHEN )  
GRIFFIN, DAVID LAMKIN, )  
7 GUILLERMO PALMER, AND )  
LG Supv, )  
8 DEFENDANTS. ) 281ST JUDICIAL DISTRICT  
9 \*\*\*\*\*

10 ORAL VIDEOTAPED DEPOSITION  
11 LG Supv  
12 March 17, 2008  
13 \*\*\*\*\*

14  
15 ORAL VIDEOTAPED DEPOSITION OF LG Supv ,  
16 produced as a witness at the instance of the Plaintiffs  
17 and duly sworn, was taken in the above-styled and  
18 numbered cause on March 17, 2008, from 10:19 a.m. to  
19 5:46 p.m. before Roxanne K. Smith, Certified Shorthand  
20 Reporter in and for the State of Texas, reported by  
21 computerized stenotype machine at the offices of Tucker,  
22 Taunton, Snyder & Slade, P.C., 10370 Richmond Avenue,  
23 Suite 1400, Houston, Texas, pursuant to the Texas Rules  
24 of Civil Procedure and the provisions stated on the  
25 record or attached hereto.

0002

1 A P P E A R A N C E S  
2  
3 FOR THE PLAINTIFFS:  
4 Mr. Matthew G. Pletcher  
State Bar No. 16070500  
5 -and-  
Mr. Scott D. Marrs  
6 Beirne, Maynard & Parsons, L.L.P.  
1300 Post Oak Blvd., 25th Floor  
7 Houston, Texas 77056  
Telephone: (713) 623-0887  
8 Facsimile: (713) 960-1527  
E-Mail: mpletcher@bmpllp.com

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
0003  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

FOR THE DEFENDANTS:

Mr. Wade Reese  
Tucker, Taunton, Snyder & Slade, P.C.  
10370 Richmond Avenue, Suite 1400  
Houston, Texas 77042  
Telephone: (713) 961-5800  
Facsimile: (713) 993-2308  
E-Mail: wreese@ttsslawfirm.com

Also Present:

Mr. Derek Martin, Videographer  
Mr. Stephen Griffin  
Mr. David Lamkin  
Mr. Guillermo Palmer

\* \* \* \* \*

INDEX	PAGE
Appearances.....	2
LG Supv	
Examination by Mr. Pletcher.....	4
Changes and Signature.....	221
Reporter's Certificate.....	224

\* \* \* \* \*

21

22

23

24

25

0004

1 THE VIDEOGRAPHER: Today's date is March  
2 the 17th, 2008. The time is 10:19. We're on the  
3 record.

4 LG Supv,  
5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. PLETCHER:

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

10 A. My name is LG Supv .

11 Q. Mr. LG Supv , my name's Matt Pletcher. And I  
12 along with my partner, Scott Marrs sitting here, have  
13 the privilege to represent David and Kathleen Pluchinsky  
14 related to their son John Pluchinsky's drowning at the  
15 Racquet Club back in the summer of 2007. Do you  
16 understand that?

17 A. Yes, sir.

18 Q. Now, you were the head lifeguard at the Racquet  
19 Club on July 18th, the day John drowned; is that  
20 correct?

21 A. Yes, sir, the supervisor.

22 Q. And you reported directly to Guillermo Palmer  
23 who was the lifeguard manager; is that true?

24 A. Yes.

25 Q. And, of course, Guillermo's sitting over here

0005

1 to your left, right?

2 A. Yes, sir.

3 Q. Did you have an opportunity to talk with  
4 Guillermo in preparation for your deposition today?

5 A. We were in the office, but we didn't say  
6 anything about the case.

7 Q. Okay.

8 THE VIDEOGRAPHER: Excuse me,  
9 Mr. Pletcher.

10 MR. PLETCHER: Yes.

11 THE VIDEOGRAPHER: Can we go off the  
12 record real quick?

13 MR. PLETCHER: Yes.

14 THE VIDEOGRAPHER: The time is 10:20.

15 We're off the record.

16 (Off the record from 10:20 to 10:22)

17 THE VIDEOGRAPHER: Going on the record.

18 The time is 10:22.

19 Q. (By Mr. Pletcher) Could you introduce yourself  
20 to the ladies and gentlemen of the jury, please, sir?

21 A. My name is LG Supv .

22 Q. Mr. LG Supv , you were the head lifeguard of the  
23 Racquet Club and reported directly to Guillermo Palmer,  
24 who's sitting to your left, on July 18th, 2007; is that  
25 correct?

0006

1 A. Yes, sir, the supervisor.

2 Q. Okay. And you're a student at USC; is that  
3 correct?

4 A. Yes, sir.

5 Q. You're on spring break this week?

6 A. Yes, sir.

7 Q. I know this is a rotten way to spend your  
8 spring break. But I'll tell you: I'm going to try to  
9 get through this deposition as quick as I can. Okay?

10 A. Thank you. I'd appreciate it.

11 Q. All I really need from you today is for you to  
12 tell me if for some reason, whatever it may be, you  
13 don't understand one of my questions, will you ask me to  
14 restate it or rephrase is so that you do before you  
15 answer?

16 A. Yes, sir.

17 Q. Okay. Also, this deposition, as you might  
18 imagine involving the drowning death of a 4-year-old  
19 kid, will bring up some pretty strong emotions. And I  
20 want you to know that you can take a break at any time.  
21 All you have to do is say, "Matt, I need a break."

22 A. Thank you.

23 Q. And you can go out, talk to your lawyer or take  
24 a break or whatever. Okay? Is that all right?

25 A. Yes, sir.

0007

1 Q. And our court reporter over here is taking down  
2 my questions, your answers. We need to wait until each  
3 other have -- you need to wait until I finish my  
4 question before you answer. And I won't ask my next one  
5 until you're completed with your answer. Okay?

6 A. Sounds good.

7 Q. Are you a freshman at USC?

8 A. I'm a senior.

9 Q. A senior. What major are you?

10 A. Finance.

11 Q. Okay. And are you in a fraternity there at  
12 USC?

13 A. Yes, sir. I'm a Phi Kappa Psi.

14 Q. Did you pledge as a freshman?

15 A. I actually pledged spring semester of my  
16 sophomore year.

17 Q. Okay. How has that fraternity been for you?

18 A. It's been great. I have been involved with  
19 social for the past two years, and we've been doing lots  
20 of philanthropies. We've had the most successful  
21 philanthropies in the history of USC and the history of  
22 Phi Psi.

23 Q. Great. Are you living in the fraternity house?

24 A. No, sir. I live in an apartment.

25 Q. Okay. Where do you live? What's the address?

0008

1 A. It's **Privilege**, Apartment No. .

2 Q. Have you lived there for the last couple of  
3 years?

4 A. No, sir. Just this last year.

5 Q. Okay. Where did you live last year?

6 A. In the fall I lived on

7 Q. Okay.

8 A. I think the address is **Privilege**

9 Q. Who do you live with right now?

10 A. I live with **Privilege** and **Privilege HRC Designation as Confidential**

11 Q. Did you know them before you moved to Southern  
12 Cal?

13 A. No, sir.

14 Q. Are they from California?

15 A. Both of them are, yes, sir.

16 Q. Do your parents still live at **Priv**?

17 A. Yes, sir.

18 Q. Are you staying with them on spring break this  
19 week?

20 A. Yes, sir.

21 Q. Now, you were born on October 16th, 1985. So,  
22 you were 21 the day John drowned, correct?

23 A. Yes, sir.

24 Q. I forgot to ask you: Why did you leave your  
25 families and friends here in Texas to go all the way out

0009

1 to California for school?

2 A. I've always been somebody in love with the

3 weather. And my -- the best school that I got into or  
4 the best school I applied to was the University of  
5 Southern California. I just fell in love with the  
6 campus. I fell in love with the people. It was  
7 definitely a debate. I made it into the UT Business  
8 School, and it was very hard to leave. But as my dad  
9 put it, "Texas will always be there for you to come back  
10 to." So, I decided to explore.

11 Q. Absolutely. What do you do socially out in  
12 Los Angeles now --

13 A. I --

14 Q. -- outside of school?

15 A. I'm active in surfing. I also am active in  
16 soccer. I don't tend to do much of the bar scene.

17 Q. Are you on the surf team there at USC?

18 A. No, sir. Just recreational.

19 Q. What's your favorite surf spot?

20 A. I'd say at this point probably Huntington  
21 State. It stays between there and Newport.

22 Q. Do you ever go to Camp Pendleton and surf  
23 Tressels?

24 A. No. I've always wanted to, though. I'm  
25 actually going to be down there in a few days.

0010

1 Q. Are you headed back to Southern California  
2 after your deposition?

3 A. Yes, sir.

4 Q. Do you have any brothers or sisters?

5 A. One sister.

6 Q. How old is she?

7 A. She is 24.

8 Q. Did she lifeguard over at the Racquet Club?

9 A. No, sir.

10 Q. When did you first start lifeguarding?

11 A. Two summers ago.

12 Q. In 2006?

13 A. Yes, sir.

14 Q. And did you guard at the Racquet Club?

15 A. Yes, sir.

16 Q. So, the certification card that we have for you  
17 that shows that you were certified in June of 2006 was  
18 the certification that you did to work that summer,  
19 correct?

20 A. Yes, sir.

21 Q. And who did you interview with when you first  
22 applied for the lifeguard job there?

23 A. Guillermo.

24 Q. Guillermo Palmer?

25 A. Yes, sir.

0011

1 Q. Tell me about that interview. Was it informal,  
2 formal? What do you remember about it?

3 A. Well, I made one trip to the Racquet Club to  
4 talk to them initially and see if they were still hiring  
5 lifeguards. They told me they were, to get my  
6 certification and then we would talk. So, I got my  
7 certification, came back; and it was an informal  
8 process.

9 Q. Now, were you at Memorial High School at the  
10 time?

11 A. No. I was at USC.

12 Q. Okay. Yeah, I guess so.

13 Did you go to Memorial?

14 A. Yes, sir.

15 Q. What year did you graduate?

16 A. '04.

17 Q. Did you graduate with honors?

18 A. Yes, sir. I was cum laude.

19 Q. Do you know any of my relatives?

20 A. Pletcher. The name is familiar.

21 Q. Okay. I had a few nieces and nephews that went  
22 to school over there. I thought you might know them.

23 A. I think I do.

24 Q. That's all right. Back to the interview that  
25 Guillermo conducted of you, were you by yourself, just

0012

1 he and you?

2 A. Yes, sir.

3 Q. Did you explain to him that you had no  
4 lifeguard experience prior to interviewing him -- with  
5 him?

6 A. I don't remember.

7 Q. You didn't, did you? That was your first job,  
8 correct?

9 A. It was my first job.

10 Q. Was Guillermo the aquatics director at that  
11 time, or was there somebody else in that position?

12 A. I'm not sure.

13 Q. Did you ever work under a Mr. AD #2  
14 [phonetical] or Mr. LG Supv B ? Were either of them there  
15 when you worked there as a lifeguard?

16 A. What's Mr. LG Supv B 's first name?

17 Q. That's a good question. Vaguely remember a  
18 LG Supv B ?

19 A. I know people by their first name.

20 Q. Had you known Guillermo Palmer before you first  
21 interviewed or sought a lifeguard job at the Racquet  
22 Club?

23 A. No, sir.

24 Q. Did you know that he went to Memorial High  
25 School?

0013

1 A. Not previously.

2 Q. How many other high school students worked as  
3 lifeguards that first summer in 2006 when you first  
4 worked?

5 A. Let's see. The summer of 2006, it was split  
6 about 50/50, I would say, between college students and  
7 high school students.

8 Q. Okay. How did that compare to the summer of  
9 2007?

10 A. Summer 2000 [sic] there were more high school  
11 students working.

12 Q. Now, during that summer of 2006, your first  
13 year of -- or summer of lifeguarding, were there ever  
14 any incidents or accidents that you either witnessed or  
15 were involved in during that summer?

16 A. I was never involved in any. There was one  
17 time when a kid fell from the diving board.

18 Q. Okay. I think I've seen the report on that.

19 A. Yes. We got him into a chair. I did hold his  
20 head stable, and that is my involvement in the incident.

21 Q. So, you responded to his accident?

22 A. I was not directly responding. Once he was in  
23 the chair, I held his head stable seeing as he -- there  
24 was a potential for a spinal injury.

25 Q. Was he sitting up in the chair?

0014

1 A. Yes, sir.

2 Q. Okay. Who put him in the chair, do you  
3 remember?

4 A. I do not.

5 Q. Okay. Back to 2006, what was your position,  
6 just lifeguard? You were not supervisor or the head  
7 lifeguard in 2006, correct?

8 A. I was in the beginning just a lifeguard. After  
9 about a month, I was promoted to assistant head guard.  
10 There's a slightly different system.



11 Q. Okay. So, when did you start that summer? In  
12 June?

13 A. I believe so.

14 Q. June of 2006. And your position when you  
15 started was just regular lifeguard, correct?

16 A. Yes, sir.

17 Q. And then about July of '06, you became the  
18 assistant to the head guard?

19 A. Yes, sir.

20 Q. And who was the head guard?

21 A. There were three. There was LG Supv B , LG-K and  
22 John.

23 Q. Okay. Do you recall LG Supv B 's last name?

24 A. That was the Mr. LG Supv B in question.

25 Q. Okay.

0015

1 A. I don't know if his last name was LG Supv B or  
2 not.

3 Q. Okay. How about LG-K ?

4 A. LG-K -- I'm sorry.

5 Q. And it was a LG-A ?

6 A. No, sir.

7 Q. Who was the John?

8 A. John -- sorry. That was a long time ago.

9 Q. In 2007, were there more than one head guard or  
10 supervising guard on duty that summer?

11 A. Yes, sir. There were five of us.

12 Q. Okay. Could you name them?

13 A. LG-F, Sr LG #1 , Supv CC #1 .

14 Q. You, of course.

15 A. Yes, sir.

16 Q. And that leaves one more. Do you remember the  
17 fifth?

18 A. I remember him. I'm just --

19 Q. It will come to you --

20 A. -- blanking on his name.

21 Q. It will come to you in a minute.

22 A. Would you like me to just tell you when I  
23 remember?

24 Q. Sure. That would be great. If not, I'll ask  
25 you later, because my partner's going to remind me.

0016

1 When did you stop working in 2006? Would you have  
2 stopped in August?

3 A. Yes, sir.

4 Q. Right before school started back up?

5 A. Yeah. I stopped about a week before school.

6 Q. Okay. And when did school start?

7 A. About the 14th, I believe.

8 Q. Of August?

9 A. Yes, sir.

10 Q. So, you stopped working as a guard at the  
11 Racquet Club about the first week of August 2006,  
12 correct?

13 A. Yes, sir.

14 Q. And then, of course, you went to school and  
15 worked -- or were in school the remainder of 2006 and  
16 the first part of 2007. And then you went back to the  
17 Racquet Club in June of 2007, correct?

18 A. Yes, sir.

19 Q. Did you call Guillermo Palmer up from  
20 California and say, "Hey, can I guard again this  
21 summer?" How did that come up?

22 A. I was actually abroad in Australia, and I did  
23 contact him from Australia and left a voice mail saying  
24 that I would be back and was hoping to guard again.

25 Q. So, you went to school abroad in Australia?

0017

1 A. Yes, sir.

2 Q. What did you study there?

3 A. Religion. That's my minor.

4 Q. I bet that was fun.

5 A. It was amazing.

6 Q. Where were you?

7 A. Brisbane.

8 Q. Any problems or incidents while you were over  
9 in Australia?

10 A. No, sir.

11 Q. Have you had any trouble in school at USC? And  
12 when I say "trouble," have you either had problems with  
13 your grades or problem -- problems with your conduct?

14 A. No, sir.

15 Q. You have never been arrested or convicted of a  
16 crime, correct?

17 A. No, sir.

18 Q. Never been pulled over in California by CHIPS?

19 A. No, sir.

20 Q. You're lucky. And did Mr. Palmer return your  
21 call from Australia?

22 A. No.

23 Q. How did you find out that you were rehired?

24 A. My mom talked to them.

25 Q. I want to show you what's marked as 21-D --  
0018

1 Plaintiff's Exhibit 21-D. And this is a copy of the  
2 personnel records that the Racquet Club have produced  
3 for you. Do you see your name up here, LG Supv ?

4 A. Yes, sir.

5 Q. It's got your date of birth, 10/16/85; and it's  
6 got the employment date of 6/13/07.

7 A. Yes, sir.

8 Q. Does that sound about the right date when you  
9 first started back in the summer of '07?

10 A. Yes, sir, sounds about right.

11 Q. In addition, I've marked as 21-C a copy of the  
12 time records. And it's just a dated form that shows the  
13 days and you -- I guess y'all started clocking in and  
14 out that summer. Do you remember doing that?

15 A. Yes, sir, the fingerprint --

16 Q. If you'll flip to the third page, I believe,  
17 second page. The first clock-in date is on June 20th,  
18 and it appears that you clocked in at 3:53 and clocked  
19 out at 7:58; and you worked a total of four hours and  
20 five minutes. Does that sound like the first day you  
21 would have guarded --

22 A. No, sir.

23 Q. -- in the summer of '07?

24 A. No. We started the fingerprint system a few  
25 weeks -- or a week or two after I started guarding.

0019

1 Q. Okay. What does that mean? What's the  
2 fingerprint system?

3 A. That's just our system of checking in and out.  
4 You just put in a certain numeric code and then it took  
5 your fingerprint and that clocked you in and out.

6 Q. And when did you say that started? A week or  
7 so after?

8 A. Yes, sir.

9 Q. Okay. So, you did start guarding on the  
10 13th --

11 A. Approximately.

12 Q. -- of June as Exhibit 21-D shows, correct?

13 A. Yes, sir.

14 Q. At any time during 2006 or 2007, were you ever  
15 counseled or reprimanded by either Mr. Palmer,  
16 Mr. Lamkin, Mr. Griffin or anybody else at the Racquet  
17 Club?

18 A. Could you clarify?

19 Q. Sure. Did you ever have a situation where  
20 Guillermo Palmer, Mr. Lamkin or Mr. Griffin ever said,  
21 hey, listen, LG Supv , you're not doing this right; and  
22 they counseled you on either your conduct, your work  
23 performance or things of that nature?

24 A. No, sir.

25 Q. Were you -- you know what being reprimanded  
0020

1 means?

2 A. Yes.

3 Q. Okay. You've never been reprimanded by anybody  
4 at the Racquet Club?

5 A. There were disgruntled parents that would  
6 complain.

7 Q. Okay. Other than the disgruntled parents,  
8 which we'll talk about in a second, did any of your  
9 supervisors or people you worked under ever counsel you  
10 or reprimand you?

11 A. No, sir.

12 Q. Can you generally describe the disgruntled  
13 parents and what you meant by that?

14 A. There were a few parents that would complain  
15 about guard performance. Never about my performance --

16 Q. Okay.

17 A. -- specifically.

18 Q. And that's what I was talking about, is your  
19 performance.

20 A. I'm sorry. Nothing about my performance.

21 Q. Okay. Now, let's talk about reprimands or  
22 counseling of other lifeguards in either 2006 or 2007.  
23 Do you recall there ever being one of your teammates --  
24 y'all were a team, weren't you, the lifeguards? Did you  
25 consider yourself a team?

0021

1 A. We were fellow employees.

2 Q. But y'all were on a lifeguard team, right?

3 We'll talk about that in a second.

4 Do you recall any of your co-workers, your  
5 co-lifeguards ever --

6 A. Yes.

7 Q. -- being reprimanded --

8 A. Yes.

9 Q. -- in '06 or '07?

10 A. In '07.

11 Q. Who in '07 was reprimanded, to your knowledge?

12 A. LG-A .

13 Q. Who else?  
14 A. I'm trying to remember his name. There was  
15 LG-J. I'm sorry to say, but the one Black  
16 lifeguard that we had.  
17 Q. LG-B?  
18 A. LG-B. Thank you.  
19 Q. Do you remember LG-J's last name? LG-J ?  
20 LG-J ?  
21 A. Yes, sir.  
22 Q. What do you recall about those reprimands?  
23 Let's talk about LG-A first. What was he  
24 reprimanded for, to your knowledge?  
25 A. For the most part, being loud. And when he was  
0022

1 off duty, he would play around the pool.  
2 Q. Clowning around?  
3 A. Yes, sir.  
4 Q. We've seen some documents in this case where  
5 actually people had witnessed him clowning around while  
6 he was on duty. Are you aware of that?  
7 A. Yes, sir. There was...  
8 Q. At least one incident, to your knowledge,  
9 correct?  
10 A. Yes, sir.  
11 Q. Any other situations with LG-A that  
12 stick out in your mind where he was reprimanded or  
13 counseled?  
14 A. Those are the main ones.  
15 Q. How about LG-J ? Do you know what  
16 she was reprimanded or counseled about?  
17 A. Hers was actually mostly a mistake.  
18 Q. What was that related to?  
19 A. She was on the slide in this pool. So, she  
20 would have been right here (indicating).  
21 Q. Right.  
22 A. And there was a decent number of kids in the  
23 this side of the pool (indicating).  
24 Q. The deep end?  
25 A. No. In the shallow end.

0023  
1 Q. And you're talking about the family pool,  
2 correct?  
3 A. Yes, sir, the recreation pool.  
4 Q. Right.  
5 A. And I -- she was not clear about her duties to  
6 just watch the slide.

7 Q. She was down here on the -- in this area  
8 (indicating), correct?  
9 A. Yes, sir.  
10 Q. That's where the slide is?  
11 A. Yes, sir.  
12 Q. And actually, that's the deepest area of the  
13 pool. You see the floating line there?  
14 A. Yeah. So, she was dividing her time between  
15 scanning the -- the family side of the pool and watching  
16 the slide.  
17 Q. Okay.  
18 A. It was misconstrued as her not watching the  
19 slide.  
20 Q. So, there was some sort of misunderstanding of  
21 whether or not LG-J was appropriately  
22 scanning her area of responsibility.  
23 A. Yes, sir.  
24 Q. And was the misunderstanding on LG-J 's  
25 part or was it on her supervisor's part?  
0024

1 MR. REESE: Objection, form.  
2 Q. (By Mr. Pletcher) Or do you know?  
3 MR. REESE: I just have to do that for the  
4 record.  
5 THE WITNESS: Oh, that's okay.  
6 Q. (By Mr. Pletcher) You get to answer every  
7 question unless he tells you not to. Okay?  
8 A. Okay. That sounds good.  
9 It was on her part. I told her to watch  
10 her side of the pool.  
11 Q. Okay.  
12 A. It was an honest mistake.  
13 Q. So, you were supervising Ms. LG-J ; is that  
14 correct?  
15 A. Yes, sir.  
16 Q. And you had instructed her that her area of  
17 responsibility was the slide and the slide only,  
18 correct?  
19 A. Yes, sir.  
20 Q. But ultimately you discovered that she was not  
21 only looking at the slide but she was trying to scan the  
22 other areas of the family pool, correct?  
23 A. Once I talked to her, the problem was resolved.  
24 Q. I understand. But before you talked to her,  
25 that's what she was doing. She was both scanning the  
0025

1 slide area and the rest of the family pool.  
2 A. Yes, sir.  
3 Q. Of course, you felt like that was not the  
4 safest way to look over the slide area or scan the slide  
5 area, right?  
6 A. That's true.  
7 Q. Because you knew from your experience in 2006  
8 and you knew from whatever instruction, if any, you  
9 received from Mr. Palmer, that if a lifeguard is sitting  
10 there in the chair next to the slide, that his number  
11 one or her number one responsibility is to make certain  
12 that the kids get down the slide safely and get to the  
13 ladder over on this side right there (indicating) and  
14 out of the pool safely, correct?  
15 A. By experience, yes.  
16 Q. And it would be unsafe for a lifeguard to try  
17 to be scanning other areas of the pool when they are on  
18 this chair which was down in this area (indicating),  
19 correct?  
20 MR. REESE: Objection, form.  
21 A. It actually depends. I personally, if I was on  
22 the slide, which I did lifeguard for three -- two-thirds  
23 of the time that I was working, even in 2007, I would --  
24 I had the timing down so that I could signal the kid  
25 down. While he's on the slide, I could check over -- I  
0026  
1 could check back while I could see him in the middle  
2 part. I could check over to the other side again and  
3 then see him exit.  
4 Q. Okay. But that's kind of tricky, isn't it? I  
5 mean, if you're not experienced and you haven't spent a  
6 lot of time on that slide chair, the lifeguard chair  
7 next to the slide, it would be difficult for such a  
8 person to scan all areas of the pool. Agreed?  
9 A. No, sir.  
10 Q. Okay.  
11 A. I think after a few hours, you're --  
12 Q. I'm a little confused, though, Mr. LG Supv. I  
13 don't understand why you would counsel LG-J  
14 for scanning more than just the slide area if you  
15 don't -- if you didn't think that it would be unsafe for  
16 her to be scanning other areas. Can you explain?  
17 A. I was -- at the basic level for appearance. If  
18 it appears that she's only looking at the slide area,  
19 then the parents aren't going to complain.  
20 Q. Okay. I think I understand what you're saying.

21 So, appearance-wise you as a supervising guard in 2007  
22 wanted to give the appearance to the parents and the  
23 other guests who may be at the pool that your lifeguards  
24 are covering not just the slide area but the entire  
25 pool. Is that what you're telling me?

0027

1 A. Could you repeat the question?

2 Q. Sure. You said -- I thought that you told me  
3 that for appearance sake so that the parents wouldn't  
4 complain, you wanted the lifeguard who was in the chair  
5 at the slide to be looking just at the slide or the  
6 slide and the other area of the family pool?

7 A. At their discretion.

8 Q. Okay. At their discretion what?

9 A. To be able to handle looking at the slide and  
10 to make sure that the kids were safe.

11 Q. Yes.

12 A. And if they felt like they could glance over,  
13 that was their discretion.

14 Q. Okay. And explain to me the appearance  
15 situation. What were you -- what sort of an appearance  
16 were you trying to convey to the parents?

17 A. I'm not exactly clear what the question is.  
18 Sorry.

19 Q. Let me back up.

20 A. Yes, sir.

21 Q. Let me kind of start over. Explain to the jury  
22 what you counseled LG-J on back in the  
23 summer of 2007 as relates to the responsibilities she  
24 had while on the guard chair next to the slide.

25 A. Okay. I think I should back up as well. There

0028

1 was a mother who complained to both me, Guillermo and  
2 David that there was a girl not watching the slide.

3 Q. Okay. And who was that parent?

4 A. I believe her name was Nancy. She had short  
5 brown hair.

6 Q. Okay. And when was this approximately?

7 A. I can gauge things before or after the  
8 incident, if that's all right with you.

9 Q. Sure. It was before John's drowning?

10 A. Before.

11 Q. And was she complaining specifically about  
12 LG-J?

13 A. Yes, sir.

14 Q. Okay. And she complained to not only you but



15 also Mr. Palmer?

16 A. Yes, sir.

17 Q. And who else?

18 A. Mr. Lamkin.

19 Q. And were you given the responsibility of

20 counseling LG-J about that complaint? Did you talk

21 to her about the complaint?

22 A. They told me to go talk to her.

23 Q. Who is "they"?

24 A. David and Guillermo.

25 Q. And what did you tell her?

0029

1 A. I told her that her responsibility was the

2 slide and that she needed to watch the slide.

3 Q. And if -- if there is a lifeguard sitting at

4 the lifeguard chair next to the slide, his sole area of

5 responsibility for scanning is the slide area, correct?

6 A. Yes, sir.

7 Q. Okay. And that area would include?

8 A. Up to the ropes.

9 Q. That area would include everything from this

10 line which is the floating rope (indicating) east

11 towards the slide, correct?

12 A. Yes, sir, as indicated by your arrow.

13 Q. Okay. And when you told me about the need for

14 counseling and explaining this situation to

15 LG-J and the need to do it because you were concerned

16 about the appearance of things, were you trying to

17 explain to me that there was confusion on her part, your

18 part or Mr. Palmer's part or Mr. Lamkin's part about who

19 should be watching what over at the slide area?

20 MR. REESE: Objection, form.

21 A. It was just confusion on her part --

22 Q. (By Mr. Pletcher) Okay.

23 A. -- to -- on which part to scan.

24 Q. Okay. Do you think you got it straightened out

25 with LG-J ?

0030

1 A. Yes, sir.

2 Q. She understood that as a lifeguard sitting at

3 the chair next to the slide, the sole area of

4 responsibility for scanning and watching kids go up and

5 down the slide was from that floating line east towards

6 the slide, correct?

7 A. Yes, sir.

8 Q. Any other incidents or problems with

9 LG-J ?

10 A. No, sir.

11 Q. Now, what about -- you've mentioned

12 LG-B? Is that his name?

13 A. Yes, sir. I believe that was his last name.

14 Q. Do you recall what LG-B was reprimanded or  
15 counseled about in 2007?

16 A. Mainly LG-B on his breaks would leave the  
17 pool area.

18 Q. Where would he go?

19 A. Usually to the basketball court.

20 Q. And did you counsel him that summer in 2007  
21 about that?

22 A. No, sir. I referred to my -- to Guillermo  
23 about it.

24 Q. So, you reported LG-B to Guillermo  
25 Palmer because you were concerned that he would leave  
0031

1 the pool area on his breaks, correct?

2 A. Yes, sir.

3 Q. And do you know if Mr. Palmer counseled or  
4 reprimanded Mr. LG-B about that?

5 A. I do not know.

6 Q. Since you were the head lifeguard in 2007 -- or  
7 one of the head lifeguards in 2007, what did you  
8 understand that a lifeguard was supposed to be doing  
9 while on break?

10 A. In an accessible area or around the pool or  
11 potentially getting towels for the pool.

12 Q. And why -- why is it important for the guards  
13 to be accessible even when they're on break?

14 A. One of the main reasons is so they get back up  
15 on the stand on time.

16 Q. So that there's no lapse in coverage of guards  
17 for the pool.

18 A. There would never be a lapse in coverage.

19 Q. Well, there might be if somebody's out playing  
20 basketball and can't be found, correct?

21 A. The other guard would stay on until he came up.

22 Q. Okay. I want to back up to your employment  
23 documents. Just need to ask you another question.

24 In June of 2007, it looks like your pay  
25 rate was **Priv** an hour?

0032

1 A. Yes, sir.

2 Q. And this is Exhibit 21-D. Did you receive a

3 raise during the summer of 2007?

4 A. Not during the summer of 2007.

5 Q. You had received a raise before you started,  
6 though, compared to what you were making in 2006.

7 A. Yes, sir.

8 Q. Okay. And these documents also indicate that  
9 your last date of employment -- this is the termination  
10 report that's a part of 21-D. And it indicates that  
11 you -- there was a mutual agreement for the separation  
12 and that you were terminating your employment because of  
13 school. And it is dated August 24th, 2007.

14 A. Yes, sir.

15 Q. Do you remember if you worked that day or what  
16 the last day is that you did work in August of '07?

17 A. I do not believe that was my last day.

18 Q. What was your last day, approximately?

19 A. Approximately --

20 Q. That first week in August again?

21 A. No, sir. We started school later. So,  
22 probably between the 14th and the 18th.

23 Q. Do you plan to work at the Racquet Club this  
24 summer?

25 A. No, sir.

0033

1 Q. What do you plan on doing?

2 A. Finding a job.

3 Q. Are you going to be a guard again?

4 A. No, sir.

5 Q. Why not?

6 A. A degree from USC doesn't go very far with the  
7 lifeguarding.

8 Q. Any idea what you might do?

9 A. I've been working for an environmental  
10 start-up, and I hope to continue my work with them.

11 Q. What's an environmental start-up?

12 A. Pollution prevention.

13 Q. A company that specializes in preventing  
14 pollution?

15 A. Yes, sir.

16 Q. During your employment history at the Racquet  
17 Club in 2006-2007, did you hold any other positions  
18 other than entry level lifeguard and lifeguard  
19 supervisor or head lifeguard?

20 A. Well, there was assistant head guard.

21 Q. Oh, yes. That's right. Other than those three  
22 positions, any other positions while being employed by

23 the Racquet Club?

24 A. No, sir.

25 Q. And to the best of your knowledge, your direct  
0034

1 supervisor during that entire two-year period was

2 Guillermo Palmer, correct?

3 A. In the summer of 2006 my direct supervisor was  
4 SUPV #3 and then Guillermo.

5 Q. SUPV #3 who?

6 A. SUPV #3 .

7 Q. Who is SUPV #3 ?

8 A. He was supervisor.

9 Q. Was he the pool manager or the lifeguard  
10 manager?

11 A. I'm not sure. It was a different definition  
12 from the supervisor that I was.

13 Q. Right. He wasn't just a lifeguard  
14 supervisor --

15 A. No, sir.

16 Q. -- correct? He supervised the pool and the  
17 lifeguards --

18 A. Yes, sir.

19 Q. -- right?

20 A. Yes, sir.

21 Q. Do you know anything about Mr. SUPV #3 's  
22 background, how long he had been at the Racquet Club,  
23 what positions he may have held?

24 A. I don't know much about him. I just -- he had  
25 been there for a few years.

0035

1 Q. Is it your understanding that Mr. Palmer took  
2 over SUPV #3 's -- Mr. SUPV #3 's position?

3 A. I'm not sure.

4 Q. Well, from your knowledge of having worked  
5 under Mr. SUPV #3 and then having worked under  
6 Mr. Palmer, was there any difference in how Mr. Palmer  
7 did his job as compared to Mr. SUPV #3 or did they  
8 basically do the same things?

9 A. Basically the same things.

10 Q. Do you know why Mr. SUPV #3 left that position  
11 or changed positions?

12 A. I do not know.

13 Q. Do you know if he was terminated or fired?

14 A. No, sir.

15 Q. Do you know if he worked at the Racquet Club  
16 after Mr. Palmer took over his duties?

17 A. He was not working there last summer.  
18 Q. So, the summer of 2007 was the first time you  
19 ever worked as a lifeguard supervisor or head lifeguard,  
20 correct?  
21 A. Yes, sir.  
22 Q. Did Mr. Palmer ever sit down with you and  
23 explain to you what it meant to be a lifeguard  
24 supervisor or a head lifeguard at the Houston Racquet  
25 Club?

0036

1 A. Yes, sir.  
2 Q. And explain to you what his expectations were  
3 of you in that position?  
4 A. Yes, sir.  
5 Q. When did he do that?  
6 A. When I first got there.  
7 Q. When? June of 2007?  
8 A. Yes, sir.  
9 Q. And what do you recall him telling you about  
10 your duties and responsibilities as head lifeguard?  
11 A. My responsibilities were to make sure that the  
12 lifeguards got up on time, they did the correct shifts,  
13 that the pool area was maintained, there are always  
14 towels, the lifeguards were washing the pools.  
15 Q. Can I stop you there?  
16 A. Yes, sir.  
17 Q. You said that you need to make certain that  
18 they got up on time. Does that -- did you mean got up  
19 on their stands in time?  
20 A. Yes, sir.  
21 Q. And that they met their schedules --  
22 A. Yes, sir.  
23 Q. -- correct? What other responsibilities or  
24 duties other than what you just told me? Anything else?  
25 A. Those were the main responsibilities.

0037

1 Q. You said that Mr. Palmer did that when you  
2 first got there in 2007. Did you have an actual  
3 meeting? And if so, were there any people in that --  
4 any other people in the meeting?  
5 A. When I got there, we would walk around the  
6 pool; and he would tell me everything I need to do.  
7 Q. Was it just you and he?  
8 A. Yes, sir.  
9 Q. So, that was your first day in 2007 he did  
10 this?

11 A. Yes, sir.

12 Q. Have you -- were you ever provided any written  
13 description or document that outlined what the  
14 expectations were of Mr. Palmer and the Racquet Club of  
15 your duties and responsibilities as head lifeguard?

16 A. No, sir.

17 Q. Never saw anything written that would provide  
18 us a document that showed what you were supposed to be  
19 doing?

20 A. No, sir.

21 Q. You said earlier that there were four other  
22 lifeguard supervisors or head lifeguards during the  
23 summer of 2007. Was there ever a joint meeting between  
24 all five of you and Mr. Palmer or Mr. Lamkin?

25 A. No, sir. I would remember -- if I could see  
0038

1 that list, I would remember the other head guard or the  
2 other supervisors.

3 Q. Those are the girls.

4 A. That wouldn't work then.

5 MR. REESE: Let's take a quick break.

6 MR. PLETCHER: Sure.

7 THE VIDEOGRAPHER: The time is 11:09.

8 We're off the record.

9 (Recess from 11:09 to 11:19)

10 Q. (By Mr. Pletcher) When we broke, we were  
11 talking about your duties and responsibilities as head  
12 lifeguard.

13 A. Yes, sir.

14 Q. You would agree that it's important for you to  
15 know what your day-to-day duties and responsibilities  
16 are as head lifeguard, correct?

17 A. Yes, sir.

18 Q. And you explained that you were responsible for  
19 making certain that people understood what their areas  
20 of responsibilities were or actually -- no. You said  
21 that you made certain that they were in their chair,  
22 their lifeguard chairs timely, right?

23 A. Yes, sir.

24 Q. You made certain that they met their schedules.  
25 That means showing up for the day, right?

0039

1 A. Yes, sir.

2 Q. Were you also responsible for making certain  
3 that they were doing proper and effective scanning in  
4 their areas of responsibilities?

5 A. Yes, sir. I watched them to make sure their  
6 heads were moving. That's about the extent you can  
7 check scanning.

8 Q. Sure. But as the supervising head lifeguard,  
9 that's one of the things that you would watch for during  
10 the day, right?

11 A. Yes, sir.

12 Q. Any other duties and responsibilities as a head  
13 lifeguard that you hadn't told us about?

14 A. Those are the ones that I can think of.

15 Q. Keeping the area clean, you talked about that,  
16 of things arranged properly, correct?

17 A. Yes, sir.

18 Q. Mr. Palmer testified that the number one  
19 responsibility of a lifeguard when they're sitting in  
20 the chair is to watch over the people who are in the  
21 pool to make certain that they are safe and that they  
22 are not about to get into an emergency situation. You  
23 agree with that?

24 A. I would agree with that.

25 Q. You agree that as a lifeguard, whether or not  
0040

1 you were an entry level lifeguard or head lifeguard or  
2 assistant head lifeguard, that if you're sitting in the  
3 chair or you're watching or supervising somebody who's  
4 sitting in the chair, the number one responsibility is  
5 to watch the people in the pool very carefully so that  
6 they are safe, correct?

7 A. Yes, sir.

8 Q. Can you generally describe the other duties and  
9 responsibilities of the lifeguard on a day-to-day basis?

10 A. In the chair?

11 Q. Yes.

12 A. Their major responsibility is to keep people  
13 safe.

14 Q. Right.

15 A. That means blowing the whistle, telling them to  
16 stop horseplay, to walk, various things. You -- other  
17 than that, you watch the people in the pool just like  
18 was stated earlier.

19 Q. And so that the jury understands what that  
20 means, from your training through your lifeguard  
21 certification, what the American Red Cross teaches or  
22 recommends as far as watching people in the pool are  
23 things like patron surveillance, areas of  
24 responsibility, effective scanning, watching other areas

25 around the pool. Agreed?

0041

1 A. Yes, sir.

2 Q. At the Houston Racquet Club, the one thing that  
3 was -- that was unique in the summertime was that they  
4 had summer camp. And they would have children who would  
5 have swim time at the family pool, correct?

6 MR. REESE: Object to the form.

7 A. I don't know if it's unique to the Racquet  
8 Club.

9 Q. (By Mr. Pletcher) Well -- and I guess what I  
10 meant, something that might affect a lifeguard's patron  
11 surveillance, their proper and effective scanning is  
12 something like a summer camp when there are more  
13 children in the pool than normal, right?

14 A. Effective scanning is effective scanning.

15 Q. Sure. Okay. Patron surveillance is patron  
16 surveillance no matter how many people are in the pool?

17 A. Yes, sir.

18 Q. Well, does the number of people in the pool  
19 affect your ability to effectively scan? In other  
20 words, can't numbers increase blind spots, people  
21 blocking other people? Numbers can create blind spots,  
22 can't they?

23 A. Could you clarify?

24 Q. Sure. If you have a pool and there are only  
25 ten kids in the pool, that's a lot easier to effectively

0042

1 scan and effectively surveil the pool area than is it --  
2 than if you have 53, right?

3 A. It's my understanding of scanning is going from  
4 one side to the other checking on all people.

5 Q. Right. And if you're supposed to be checking  
6 on all people, if the number of people increases, that  
7 makes it a more difficult task. Agreed?

8 A. According to how you're putting it, yes.

9 Q. Okay. Did the Houston Racquet Club in the  
10 summer of 2007 or even in 2006 when you worked there  
11 have any specific instructions to the lifeguards on  
12 obligations that y'all had as far as the summer campers  
13 are concerned?

14 A. I'm sorry. Could you clarify that?

15 Q. Sure. Did the lifeguards at the Houston  
16 Racquet Club ever have any obligations to the summer  
17 campers?

18 A. How do you define "obligations"?



19 Q. Well, were you ever responsible to watch over  
20 them?

21 A. Yes, sir. You watch the people in the pool.

22 Q. Regardless of whether or not they are a summer  
23 camper or a member or guest swimming in the pool, that  
24 doesn't change your obligation to watch over them,  
25 correct?

0043

1 A. No, sir.

2 Q. Was there any particular instruction that you  
3 were given of how you were supposed to handle the camp  
4 counselors who were in the pool with the campers?

5 A. I received no specific instruction.

6 Q. Okay. You, as we discussed earlier, first  
7 became certified as a lifeguard in June of 2006. If we  
8 could look at Exhibit 13 --

9 MR. PLETCHER: Flip to the page that has  
10 his certifications.

11 Q. (By Mr. Pletcher) This is part of Exhibit 13.  
12 That's your driver's license picture of you --

13 A. Yes, sir.

14 Q. -- correct? And the top card is your lifeguard  
15 certification that was effective June 2nd, 2006. And it  
16 was effective for three years, correct?

17 A. Yes, sir.

18 Q. And you took that course over at Spring Branch  
19 Natatorium.

20 A. Yes, sir.

21 Q. Had you ever taken a lifeguarding course prior  
22 to that date?

23 A. No, sir.

24 Q. And you haven't taken one since, correct?

25 A. No, sir.

0044

1 Q. Is that correct?

2 A. Excuse me?

3 Q. You have not taken another certification  
4 course.

5 A. For lifeguarding?

6 Q. Yes.

7 A. Yes.

8 Q. You have not.

9 A. I have not.

10 Q. Okay. I thought it was clear the first time,  
11 but my partner didn't.

12 How long of a course was that?

13 A. It was two weeks.  
14 Q. Two weeks? And did you -- were you required to  
15 take a written exam?

16 A. Yes, sir.

17 Q. And, of course, you were given a lifeguard  
18 training manual to read and study during that course,  
19 correct?

20 A. Yes, sir.

21 Q. Was it this manual here, the one with the lady  
22 on the -- with the fancy sunglasses? Do you remember  
23 that manual?

24 A. I believe so.

25 Q. Okay. Have you ever studied any other manuals?

0045

1 A. No, sir.

2 Q. Have you ever seen the 2007 manual?

3 A. No, sir.

4 Q. Did the Racquet Club have a copy of this 2007  
5 manual when you worked there in the summer of 2007?

6 A. They had a copy of the other one.

7 Q. And the other one, for the jury's purpose, is  
8 the one that was copyrighted in 2001.

9 Now, you read this, didn't you --

10 A. Yes.

11 Q. -- in your course? Cover to cover?

12 A. Yes, sir. Well, there was ocean rescue that I  
13 did not read.

14 Q. Y'all weren't required to do open water ocean  
15 rescue work, correct?

16 A. No, sir.

17 Q. That's a separate certification through the  
18 American Red Cross, correct?

19 A. I don't know.

20 Q. Do you remember who taught the course over at  
21 the Spring Branch Natatorium?

22 A. The organization was Sweetwater.

23 Q. Do you remember the instructor's name?

24 A. No, sir.

25 Q. Now, you were also certified in CPR at the same

0046

1 time during the same course, correct?

2 A. Yes, sir.

3 Q. Effective June 2nd, 2006.

4 A. Yes, sir.

5 Q. And that certification was valid for one year,  
6 correct?

7 A. Yes, sir.  
8 Q. So, in the summer of 2007, you were not  
9 certified in CPR. It had expired, correct?  
10 A. At the beginning of the summer, I was.  
11 Q. At the beginning of the summer. But you didn't  
12 start until the middle part of June, correct? We  
13 already looked at those documents, correct?  
14 A. Yes, sir.  
15 Q. Okay. So, you were rehired with an expired CPR  
16 card, right?  
17 A. Yes, sir.  
18 Q. Did anybody, Mr. Palmer, when you talked to him  
19 about coming back to work in 2007, did he ask you  
20 whether or not your certifications were still current --  
21 A. Yes.  
22 Q. -- do you remember?  
23 A. At one point they did ask me.  
24 Q. Who?  
25 A. About --  
0047  
1 Q. Who asked you?  
2 A. I believe it was Guillermo.  
3 Q. Did he ask to see your cards?  
4 A. I presented the cards again.  
5 Q. They had the cards. They gave them to us.  
6 A. Yeah.  
7 Q. Okay. All right. Did anybody at the Racquet  
8 Club ever tell you that you had to have a current  
9 certification in both CPR and lifeguarding in order to  
10 work at their country club?  
11 A. They told me I did need to redo them.  
12 Q. Well, that really wasn't my question. My  
13 question was: Did anybody ever tell you, Mr. LG Supv , if  
14 you want to work here as a lifeguard, you have to have  
15 current certifications in both lifeguarding and CPR?  
16 A. No, sir.  
17 Q. You had said that Guillermo Palmer did ask you  
18 about your certifications.  
19 A. Yes, sir.  
20 Q. What did he tell you -- or what did he ask you,  
21 and when did he ask you these things?  
22 A. I'm not exactly sure. I just remember the  
23 event.  
24 Q. What do you remember about it?  
25 A. I believe him saying, "I saw your card's  
0048

1 expired," and I need to get it redone.  
2 Q. When did he say that? Was that at the  
3 beginning of the summer? Was it before John's drowning  
4 or after John's drowning?  
5 A. It was before.  
6 Q. Did he tell you this right when you were  
7 rehired when you first showed up?  
8 A. No, sir.  
9 Q. Within the first couple of weeks?  
10 A. I believe so.  
11 Q. And what did you -- what did you tell  
12 Guillermo, or how did you respond to his comment that  
13 you needed to get it redone?  
14 A. I was trying to. I at that point was working a  
15 lot and was trying to find some time.  
16 Q. Well, did you ask him for assistance in getting  
17 your CPR recertified?  
18 A. No, sir.  
19 Q. Did you understand that Mr. Lamkin gave CPR  
20 instruction there at the Racquet Club, and he was a  
21 certified CPR instructor?  
22 A. Yes, sir.  
23 Q. Did you ever ask Mr. Lamkin for assistance in  
24 that regard?  
25 A. I can't remember.  
0049  
1 Q. And given the fact that we know that your  
2 certification is still expired and was expired after  
3 John's drowning --  
4 A. Yes, sir.  
5 Q. -- it's safe to assume that Guillermo Palmer  
6 never followed up with you in regard to getting that  
7 recertification performed, correct?  
8 A. He did not follow up.  
9 Q. Right. Had you ever been certified in CPR at  
10 any time prior to June 2nd, 2006?  
11 A. No, sir.  
12 Q. And, of course, the certification that you held  
13 was through the American Red Cross, correct?  
14 A. Yes, sir.  
15 Q. So, you followed their instruction, guidelines  
16 for CPR, correct?  
17 A. Yes, sir.  
18 Q. Do you remember in your CPR course studying the  
19 differences in conducting CPR on an adult as compared to  
20 a child?

21 A. Yes, sir.

22 Q. Did they actually have questions on your  
23 certification exam distinguishing between the two?

24 A. I can't remember.

25 Q. Sir, you agree it's important for lifeguards to  
0050

1 be prepared to respond to emergencies?

2 A. Yes, sir.

3 Q. That's your number one job, right?

4 A. Our number one job's ensuring safety for the  
5 patrons.

6 Q. And responding and preventing emergencies,  
7 correct?

8 A. Yes, sir.

9 Q. That's what you were taught. That's what you  
10 studied in these lifeguard manuals, right?

11 A. Yes, sir.

12 Q. Mr. Palmer testified that he didn't do any  
13 formal training of the lifeguards at the Racquet Club  
14 and that he relied upon the American Red Cross' training  
15 in the certification courses. Okay?

16 A. Okay.

17 Q. Do you remember in your coursework through the  
18 American Red Cross being -- or reading or being told  
19 that your certification is really just the first step in  
20 becoming a lifeguard? Do you remember discussing that  
21 or reading that?

22 A. Could you clarify?

23 Q. Sure. You agree that having a lifeguard  
24 certification is just the first step. It doesn't mean  
25 that you know everything that there is to know about

0051

1 lifeguarding, correct? You agree with that, don't you?

2 A. It's whatever the Red Cross feels.

3 Q. Well, do you agree with that? Just because you  
4 have a certification doesn't mean that you know  
5 everything that there is to know about lifeguarding,  
6 true?

7 A. Yes, sir.

8 Q. And it's important and you were taught that it  
9 was important to maintain the knowledge and skill that  
10 you have as a lifeguard particularly if you're just a  
11 seasonal guard like you and the other guards at the  
12 Racquet Club who just worked during the summers, right?

13 A. Yes, sir.

14 Q. And you maintain that knowledge and skill

15 through refresher courses, through drills, emergency  
16 drills, through in-service training, correct?

17 MR. REESE: Objection, form.

18 Q. (By Mr. Pletcher) You remember reading stuff  
19 like that and being told that in your certification  
20 course, correct?

21 A. Yes, sir.

22 Q. And Mr. Palmer testified that he didn't do any  
23 formal training. He didn't conduct any preseason  
24 courses. He didn't do any refresher courses. He didn't  
25 conduct any emergency drills. Is that true?

0052

1 A. Mr. Palmer?

2 Q. Yes. While you were there, did he ever do any  
3 of those things?

4 A. In the summer of 2006 we did have one.

5 Q. Okay. But you didn't have any in 2007.

6 A. No, sir, not that Mr. Palmer ran.

7 Q. Is the -- you said we did have one in the  
8 summer of 2006. Was that an emergency response drill on  
9 deep water saves?

10 A. We did deep water saves.

11 Q. Is that what you were talking about?

12 A. We did multiple.

13 Q. Multiple what?

14 A. Saves.

15 Q. That was the one drill in 2006?

16 A. Yes, sir.

17 Q. Okay. Other than that one drill, is it true  
18 that Mr. Palmer didn't do any formal training of the  
19 lifeguards at the Racquet Club?

20 A. Yes, sir.

21 Q. Of course, all of the lifeguards who just  
22 started as a new guard at the Racquet Club in 2007  
23 wouldn't have received any of the training in that drill  
24 that you did in 2006, correct?

25 A. Well, actually Supv CC #1 and I one day decided to  
0053

1 run our own; and so, we did some deep water saves with  
2 the lifeguards that were on duty that day.

3 Q. When was that?

4 A. That was approximately two weeks before the  
5 incident.

6 Q. You said that you and Supv CC #1 decided on your own  
7 to do a drill?

8 A. Yes, sir.

9 Q. And you did it with the lifeguards who were on  
10 duty that day?

11 A. Yes, sir.

12 Q. Do you remember who the guards were?

13 A. I can only remember a couple. Not all of them.

14 Q. Okay. Do you remember when you did it?

15 A. When?

16 Q. Yes. John drowned on July 18th, 2007.

17 A. I don't know a date.

18 Q. Okay. You said about two weeks before.

19 A. Approximately.

20 Q. Was it in July or in late June?

21 A. I have no idea.

22 Q. And since you testified that you and Supv CC #1  
23 decided to do this on your own, that nobody else knew  
24 about it, right?

25 A. Yes, sir, except for us and the lifeguards.

0054

1 Q. Right. In other words, Mr. Palmer wasn't  
2 involved in that drill, correct?

3 A. We told him about it later.

4 Q. After the fact? After John's drowning, right?

5 A. No, sir. Before. The day of.

6 Q. The day of his drowning, you told Mr. --

7 A. No. The day of the in-service.

8 Q. Okay. So, let me see if I understand this.

9 You and Supv CC #1 decided on your own that you were going to  
10 do a drill.

11 A. Yes, sir.

12 Q. Mr. Palmer was not aware of it when you were  
13 conducting it. And he was not aware that you had  
14 decided to do it on your own, correct? You told him  
15 later that day after you had done it.

16 A. I'm not sure.

17 Q. Now, neither you or Supv CC #1 are certified as  
18 lifeguard instructors, correct?

19 A. Yes, sir. We're not certified.

20 Q. Neither one of you have either read the  
21 lifeguard instructor manual or gone through the  
22 lifeguard instructor course, correct?

23 A. No, sir.

24 Q. That is correct?

25 A. Yes, that is correct.

0055

1 Q. And you told Mr. Palmer about this later that  
2 day?

3 A. I do not know the time frame when we told him.  
 4 Q. But you did tell him.  
 5 A. Yes, sir.  
 6 Q. And what did he say to you?  
 7 A. He said, "Good job."  
 8 Q. Did he commend you in any way?  
 9 A. I can't remember.  
 10 Q. He didn't give you a raise --  
 11 A. No, sir.  
 12 Q. -- right? Did he put a note in your personnel  
 13 file about it?  
 14 A. I don't know.  
 15 Q. Do you -- did you or Supv CC #1 document this drill?  
 16 In other words, did you write down the fact that you did  
 17 it, who may have attended it or what you drilled on?  
 18 A. No, sir.  
 19 Q. Explain to me what the -- what the drill was  
 20 again.  
 21 A. We did deep water saves.  
 22 Q. So, it was similar to the drill that was done  
 23 in 2006.  
 24 A. Yes, sir.  
 25 Q. What is a deep water save?  
 0056  
 1 A. If somebody is passive drowned and has gone  
 2 underwater in the deep end of a pool, basically you get  
 3 into a position with your lifeguard float in place. You  
 4 do a straight dive, except feet first, bring your hands  
 5 up. You wrap your hand around their waist. With your  
 6 other hand, you reach up and grab your buoy or the rope  
 7 tying you to your buoy. You come down. While he's  
 8 right here, you grab it with your hand, come up leading  
 9 through the rope, bring it down again. And then you'll  
 10 be able to feel the top. That's usually when you're  
 11 about at the surface. Making sure that his head's back,  
 12 you bring the buoy through yourself and the other  
 13 person, lay back. So, then your arm is through his arm.  
 14 You're able to move your arm out, and you lean back with  
 15 the person.  
 16 Q. Okay. And you don't -- do you recall  
 17 anybody -- any other guard other than Supv CC #1 who may have  
 18 participated in this drill?  
 19 A. LG-H.  
 20 Q. LG-H?  
 21 A. Yes, sir.  
 22 Q. LG-H ? Anybody else? Would you like



23 to look at this list?

24 A. She's the only one I remember specifically.

25 Q. And where did you perform it? In the family

0057

1 pool?

2 A. In the lap pool.

3 Q. When you said that you let the guards who were

4 on duty participate in this drill, would it have been

5 the two guards on duty there at the lap pool?

6 A. The two guards on break.

7 Q. Okay. So, it was you, Supv CC #1 and two other

8 guards, one being LG-H.

9 A. Yes, sir.

10 Q. Just four of you, right?

11 A. As they would go on break, then we would drill

12 them.

13 Q. Did you drill all the guards?

14 A. We didn't get to all the guards that day.

15 Q. How many did you get to?

16 A. I don't remember.

17 Q. And this is the only place that you conducted

18 this drill, in the lap pool, correct?

19 A. Yes, sir.

20 Q. So, y'all didn't do any drills on shallow water

21 saves --

22 A. No, sir.

23 Q. -- correct?

24 A. Well, to some extent the shallow end saves are

25 the latter half of the deep end save.

0058

1 Q. I don't understand that. Explain that.

2 A. You come up on somebody passively drowning in

3 the shallow end. You come up behind them with the buoy,

4 and you prop them back.

5 Q. Right.

6 A. So, the only difference between the end of the

7 deep water save and shallow save is that you're walking

8 instead of having to tread the water.

9 Q. I understand. But you didn't conduct any

10 drills that day specifically on shallow water saves,

11 correct?

12 A. No, sir.

13 Q. That's correct?

14 A. Yes, sir.

15 Q. Can you explain to the jury based upon your

16 training and experience as a lifeguard how a lifeguard

17 should conduct a shallow water save in the family pool?

18 A. What type of shallow water save?

19 Q. A passive drowning victim who's floating face  
20 down in 3.6 feet of water.

21 A. You approach them, buoy on your chest. You  
22 come up, and you put your arms underneath their armpits.  
23 And you prop them back onto the buoy. Then you can get  
24 them to the side and get them out of the water. That's  
25 also dependent on if there's any suspicion of a spinal  
0059

1 injury.

2 Q. Right. And then what should you do -- if you  
3 don't suspect a spinal injury, what should you do?  
4 What's the next step?

5 A. You get them on ground, and you begin CPR. You  
6 make sure that the area's safe, and you begin your  
7 initial CPR.

8 Q. And how do you ensure that the area is safe?

9 A. Making sure that there's nothing dangerous  
10 around there, however you may define "dangerous."

11 Q. Give me an example of what you would consider  
12 dangerous that you might want to make certain is safe  
13 before you conduct your CPR.

14 A. There's glass around the pool.

15 Q. Okay. Anything else?

16 A. That's another one of those things at your  
17 discretion if there's something you feel dangerous.

18 Q. Any other guards that you know may have  
19 participated in this drill?

20 A. In the deep water rescue?

21 Q. The one that you and Supv CC #1 conducted that we've  
22 been talking about.

23 A. I'm sorry. I can't remember.

24 Q. Do you think it was more than two other guards  
25 or less?

0060

1 A. I believe more.

2 Q. How many more?

3 A. It was three or four.

4 Q. Okay.

5 A. As well as Supv CC #1 and I.

6 Q. Okay. I'm just kind of curious, Mr. LG Supv .  
7 Why did you and Supv CC #1 decide to do this, decide on your  
8 own to have an emergency drill like this?

9 A. We felt like we should be up-to-date, and we  
10 just took it on ourselves to do a refresher.

11 Q. Because nobody else at the Racquet Club had set  
12 anything up, correct? There wasn't anything scheduled,  
13 right?

14 A. There was not anything scheduled.

15 Q. You thought it would be a good thing, right?

16 A. Define "good."

17 Q. Something that's helpful or beneficial or might  
18 advance your lifeguarding skills in an emergency,  
19 correct?

20 A. Refresh our lifeguarding skills.

21 Q. Correct?

22 A. Yes, sir.

23 Q. Okay. And remember earlier when I talked to  
24 you about lifeguard teams?

25 A. Yes, sir.

0061

1 Q. Well, you and Supv CC #1 and the two lifeguards who  
2 you first drilled, that would be a team, wouldn't it?

3 MR. REESE: Objection, form.

4 A. Go ahead and define "team" again.

5 Q. (By Mr. Pletcher) Well, it's -- my definition

6 of a lifeguard team would be LG Supv ,

7 Supv CC #1 , LG-H and the fourth lifeguard. I

8 mean, you were working as a team in this drill, right?

9 A. We were fellow employees.

10 Q. Sure. And you worked together in this drill.

11 A. Yes, sir.

12 Q. And you remember from your American Red Cross

13 training as a lifeguard that in order for lifeguards who

14 are working together to be prepared for a real

15 emergency, it's a good idea to practice these things,

16 right? Is that correct?

17 A. Unless you feel that you're prepared.

18 Q. Sure. But nobody, particularly seasonal guards

19 like you guys, know everything. And you would agree

20 that refreshing your skills and knowledge through drills

21 like this is beneficial and will better your knowledge

22 and keep you maintained at a level of excellence, right?

23 A. Yes, sir. But we're also talking about -- a

24 lot of the lifeguards come fresh off of their lifeguard

25 training.

0062

1 Q. Sure. But when you're responding to an  
2 emergency, more than one person responds, right?

3 A. Yes, sir.

4 Q. We know that from July 18th, 2007, correct?

5 A. Yes, sir.

6 Q. There were several guards who responded, right?

7 A. Yes, sir.

8 Q. And wouldn't you agree that in order to better

9 prepare yourself for the real thing, it's a good thing

10 for you to practice these things?

11 A. Yes, sir. I feel we established that.

12 Q. Mr. Palmer testified that he had no formal

13 in-service training program set up at the Racquet Club

14 so that you and your fellow lifeguards could maintain

15 their knowledge and skills; is that true?

16 A. I'm sorry. Could you repeat the question?

17 Q. Sure. Mr. Palmer testified that he had no

18 formal in-service training program set up at the Racquet

19 Club so that you and your fellow lifeguards could

20 maintain their knowledge and skills; is that correct?

21 MR. REESE: Objection, form.

22 A. I don't know what he testified.

23 Q. (By Mr. Pletcher) Well, did he or did he not

24 have it?

25 A. No, he did not.

0063

1 Q. He didn't have a formal in-service program,

2 correct?

3 A. Correct.

4 Q. At no time during your employment in 2006 or

5 2007 did Guillermo Palmer, David Lamkin or anybody else

6 at the Racquet Club conduct any emergency drills in

7 child CPR?

8 A. No, sir.

9 Q. And, of course, there were no in-service

10 training or courses on child CPR at the Racquet Club

11 during that period, correct?

12 A. No, sir.

13 Q. Mr. Palmer testified that he did not provide

14 any specific instruction to any of the lifeguards at the

15 Racquet Club on the use of AED devices; is that true?

16 A. That's correct.

17 Q. You know what an AED device is, do you not?

18 A. A defibrillator, yes, sir.

19 Q. And you studied in your American Red Cross

20 training the use and benefits of an AED defibrillator

21 device, correct?

22 A. Actually. The defibrillator was an extra

23 course.

24 Q. I understand. But do you recall reading in

25 your manual the section on defibrillation?

0064

1 A. Could you zoom out a little?

2 MR. PLETCHER: Could you zoom out?

3 Q. (By Mr. Pletcher) You see here it's Chapter  
4 11, AED Automated External Defibrillation. That's in  
5 the 2001 manual that you said that you read --

6 A. Yes, sir.

7 Q. -- correct? You were familiar with what an AED  
8 was, correct?

9 A. Yes, sir.

10 Q. You knew what the American Red Cross was  
11 recommending about a defibrillator, correct?

12 A. I don't know.

13 Q. Okay. Well, let me ask you this: In 2007, do  
14 you know how many AED devices the Houston Racquet Club  
15 had on premise?

16 A. I know of two.

17 Q. Okay. Where were those two located?

18 A. There was one behind the fitness desk and one  
19 in the dining room area.

20 Q. In the main clubhouse?

21 A. Yes, sir.

22 Q. And did you know about the location of these  
23 two AED devices before John's drowning?

24 A. Yes, sir.

25 Q. And you know from your lifeguard training that

0065

1 it's not only important to know where they're located  
2 but also how and when to use them, right? That's  
3 important, isn't it?

4 A. Basic lifeguard training says to perform the  
5 rescue and perform CPR.

6 Q. Okay. So, do you not believe that it is  
7 important to know how to use and when to use an AED  
8 device?

9 MR. REESE: Objection, form.

10 A. I don't know when -- the survival rate or  
11 statistics is when it comes to drowning and the use of  
12 AEDs.

13 Q. (By Mr. Pletcher) Right. But you do know  
14 through your lifeguard training course that the American  
15 Red Cross recommends that an AED device be used as soon  
16 was as one becomes available during the CPR, correct?

17 MR. REESE: Objection, form.

18 A. I don't know.

19 Q. (By Mr. Pletcher) You did not know that?

20 A. No. I don't know.

21 Q. You don't know that, and you didn't know that  
22 in 2007?

23 A. No. I do not know if that's how the Red Cross  
24 states it.

25 Q. Well, did you know how to use an AED device on  
0066

1 July 18th, 2007?

2 A. To my understanding, it walks you through it.

3 Q. Okay. That's your understanding. But my  
4 question was: Did you know how to use one on July 18th?

5 A. Would you clarify?

6 Q. Yeah. If somebody had asked you to run and get  
7 the AED device when John Pluchinsky was laying on the  
8 side of the pool, would you have known how to use it  
9 once you got it to him?

10 A. Unless it told me how, no.

11 Q. Nobody including Mr. Palmer, Mr. Lamkin or  
12 anybody else at the Racquet Club ever provided you any  
13 instruction on the use of an AED device, correct?

14 A. No, sir.

15 Q. That is correct?

16 A. We're talking about before the fact, right?

17 Q. Before the fact, yes.

18 A. No, sir.

19 Q. And they didn't provide any training or  
20 instruction to any other lifeguard at the Houston  
21 Racquet Club prior to John's drowning on the use and  
22 benefit of an AED device, correct?

23 MR. REESE: Objection, form.

24 A. I do not know.

25 Q. (By Mr. Pletcher) Well, you didn't ever in  
0067

1 your employment in either 2006 or 2007 -- let me start  
2 over.

3 You during your employment in 2006 and  
4 2007 never participated in any sort of meeting, any sort  
5 of drill, any sort of in-service program at the Houston  
6 Racquet Club on the use and benefits of an AED device,  
7 correct?

8 A. I did not.

9 Q. And they didn't provide you or any of the other  
10 lifeguards any written materials on the use and benefit  
11 of an AED device, correct?

12 MR. REESE: Objection, form.

13 A. I don't know about the other lifeguards.  
14 Q. (By Mr. Pletcher) Well, did you receive any  
15 written materials?  
16 A. No, sir.  
17 Q. You said that -- or you made a comment that  
18 they didn't do it before John's drowning. Did they do  
19 it after?  
20 A. I took a CPR course, and we were instructed in  
21 AEDs briefly.  
22 Q. I thought I asked you earlier if you had taken  
23 any other CPR courses.  
24 A. You asked me if I'd taken any before that date.  
25 Q. You took one after his drowning?

0068

1 A. Yes, sir.  
2 Q. Where did you take it?  
3 A. I took it with David at the Racquet Club.  
4 Q. Do you have that certification card in your  
5 wallet?  
6 A. I do not.  
7 Q. Do you have it at home?  
8 A. Yes, sir.  
9 Q. Could you provide a copy of that to your  
10 lawyers, please?  
11 A. Yes, sir.  
12 MR. PLETCHER: And we'd request that y'all  
13 produce a copy of that certification that was done after  
14 John's drowning. Okay?  
15 MR. REESE: Would you mind just sending a  
16 letter?  
17 MR. PLETCHER: I've written so many damn  
18 letters and --  
19 MR. REESE: I will try to remember --  
20 MR. PLETCHER: -- sent so many e-mails.  
21 MR. REESE: I will try to make a note to  
22 do that.  
23 MR. PLETCHER: I'm going to start a list.  
24 Q. (By Mr. Pletcher) When did you take the course  
25 from Mr. Lamkin?

0069

1 A. I do not remember. It will have it on the CPR  
2 card, though.  
3 Q. Would it have been in August of '07; or was it  
4 in July, a week or two after his drowning?  
5 A. I don't know.  
6 Q. And do you remember through that certification

7 the recommendation that an AED be used as soon as one  
8 arrives if you were giving CPR to an adult or child?

9 Let me restate that because my partner corrected me.

10 A. Okay.

11 Q. Through your course with Mr. Lamkin in CPR that  
12 you went through after John's drowning, you were taught  
13 that an AED device should be used as soon as one is  
14 available on a person who needs CPR, correct?

15 MR. REESE: Objection, form.

16 A. We were taught it was a life-saving device.

17 Q. (By Mr. Pletcher) And did Mr. Lamkin teach you  
18 that you should use an AED device as soon as it becomes  
19 available?

20 MR. REESE: Objection, form.

21 A. I do not know in that wording.

22 Q. (By Mr. Pletcher) Was that certification that  
23 you went in -- you went through after John's drowning  
24 American Red Cross or American Heart Association?

25 A. American Heart Association.

0070

1 Q. From your lifeguard training over at the Spring  
2 Branch Natatorium, do you remember discussing and  
3 reading materials on emergency action plans?

4 A. Yes, sir. I remember some of it.

5 Q. What is an emergency action plan?

6 A. Basically the means by which you get the person  
7 out of the water and also clear everybody else out and  
8 then your response.

9 Q. What else do you remember in light of an  
10 emergency action plan?

11 A. Those are the basics.

12 Q. Would you agree that an emergency action plan  
13 outlines the roles and responsibilities of those  
14 individuals who respond to an emergency situation so  
15 that everybody knows what he or she is supposed to do?

16 A. Yes, sir.

17 Q. It also will outline the location of needed  
18 emergency equipment, too, correct?

19 A. Yes, sir.

20 Q. Mr. Palmer testified that the Racquet Club  
21 didn't have a written emergency action plan specifically  
22 designed for their club that actually outlined the roles  
23 and responsibilities of the lifeguard team members who  
24 responded to emergency situations.

25 MR. REESE: Objection, form.

0071



1 Q. (By Mr. Pletcher) Do you recall ever seeing  
2 one?

3 A. No, sir.

4 Q. And of course Mr. Palmer never conducted any  
5 emergency response drills or in-service training  
6 programs on emergency action plans, correct?

7 A. No, sir.

8 Q. He did not?

9 A. He did not.

10 Q. Do you know if the Houston Racquet Club in  
11 either '06 or '07 had a mannequin that you and your  
12 fellow lifeguards could use to practice CPR?

13 A. I do not know.

14 Q. You never saw one.

15 A. No, sir.

16 Q. Mr. Palmer nor anybody else at the Houston  
17 Racquet Club ever conducted any drills, in-service  
18 programs or any other type of instruction on patron  
19 surveillance, effective scanning, victim recognition,  
20 correct?

21 A. I'm sorry. Could you repeat?

22 Q. Sure. Mr. Palmer nor anybody else at the  
23 Racquet Club conducted any emergency drills or  
24 in-service programs specifically on patron surveillance,  
25 effective scanning or victim recognition, correct?

0072

1 A. No in-service programs.

2 Q. And no drills. Not to your recollection  
3 anyway.

4 A. No, sir.

5 Q. Mr. Palmer testified that the only drill that  
6 he was ever in charge of was this deep water save drill  
7 that was done in '06 that we talked about. I need to  
8 know whether or not there are any others that you recall  
9 participating in either with him or anybody else at the  
10 Racquet Club.

11 A. Not to my recollection.

12 Q. At any time during your employment in '06 or  
13 '07 did anybody perform any type of performance  
14 evaluations of your performance that you're aware of?

15 A. Only verbal.

16 Q. And when you say "only verbal," do you mean  
17 that from time to time people -- either Mr. Palmer or  
18 somebody like Mr. Palmer would come up to you and say,  
19 hey, listen, you need to be doing this or be doing that.  
20 Is that what you mean?

21 A. There were sometimes when I would get there  
22 that Guillermo and I would talk if there was anything  
23 that needed to be done.

24 Q. Differently.

25 A. Yes, sir.

0073

1 Q. How often did that happen?

2 A. As needed.

3 Q. Can you give me an idea of how often that may  
4 have occurred?

5 A. Probably every two to three weeks.

6 Q. And was it just an informal meeting or --

7 A. Yes, sir.

8 Q. Okay. And it was -- was it one-on-one between  
9 you and Mr. Palmer?

10 A. Yes, sir.

11 Q. Are you aware that he ever did this -- would  
12 you describe that as kind of an informal evaluation of  
13 your performance?

14 A. No.

15 Q. What would you describe it as?

16 A. As pool -- as pool upkeep.

17 Q. And "pool upkeep" means what? Cleaning the  
18 pool? Keeping the chairs straightened?

19 A. If there's any problems seen at the pool that  
20 need to be fixed.

21 Q. And when you say problems that need to be  
22 fixed, are you talking just about the pool itself or are  
23 you talking about the people who are supposed to be  
24 lifeguarding the pool?

25 A. Both.

0074

1 Q. Do you recall any specific comments by  
2 Mr. Palmer about lifeguarding performance that needed to  
3 be changed one way or the other?

4 A. He did tell me we needed to make sure that the  
5 lifeguards were scanning properly.

6 Q. What do you recall him telling you about that?  
7 What was the problem? People weren't doing their job  
8 right? They weren't scanning effectively?

9 A. I would say there was an instance or two where  
10 later on in the day people -- if there were less people  
11 in the pool, they would not scan as effectively.

12 Q. Okay. Anything else that you might remember  
13 Mr. Palmer telling you about the problems with scanning?

14 A. No, sir.

15 Q. But you would agree that at no time did  
16 Mr. Palmer or anybody else at the Houston Racquet Club  
17 do any formal performance evaluations where they sat  
18 down with you and actually -- either before or after and  
19 actually documented these are the areas that you have  
20 weaknesses in and these are the ways that you need to  
21 improve. That never happened, right?

22 A. Me personally?

23 Q. Yeah, you personally.

24 A. No.

25 Q. And to your knowledge, not for any of the other  
0075

1 lifeguards there, correct?

2 A. I don't know.

3 Q. Have you ever seen a written policies and  
4 procedure manual at the Houston Racquet Club for the  
5 lifeguards?

6 A. Define "policies and procedures."

7 Q. Policies and procedures manual would be a  
8 manual that sets forth what the Houston Racquet Club  
9 expected of their lifeguards as far as their day-to-day  
10 task and their lifeguarding skills.

11 A. Did I ever see one?

12 Q. Yes.

13 A. No.

14 Q. Do you think that a written policies and  
15 procedure manuals for the lifeguards would be beneficial  
16 to you and your fellow guards?

17 A. No, sir.

18 Q. Do you think it would be helpful in any way?

19 MR. REESE: Objection, form.

20 A. No, sir.

21 Q. (By Mr. Pletcher) Why don't you think that a  
22 policies and procedure manual that would set forth the  
23 duties and responsibilities of the lifeguard team or the  
24 lifeguards who worked at the Racquet Club would not be  
25 helpful or beneficial?

0076

1 MR. REESE: Objection, form.

2 A. Because you learn it on-the-job.

3 Q. (By Mr. Pletcher) And based upon that answer,  
4 I take it that that was basically how the Houston  
5 Racquet Club ran their lifeguarding program. It was all  
6 on-the-job training, wasn't it?

7 MR. REESE: Objection, form.

8 A. I'm sorry. Could you define "on-the-job

9 training"?

10 Q. (By Mr. Pletcher) Well, you said just a minute  
11 ago that the policies and procedure manual would not be  
12 helpful or benefit because you learn lifeguarding on the  
13 job.

14 A. Yes, sir.

15 Q. That's at least how it was done at the Houston  
16 Racquet Club, correct?

17 A. Yes, sir.

18 Q. Because you didn't have a written policies and  
19 procedure manual, correct?

20 A. Correct, sir.

21 Q. You didn't have any emergency response drills  
22 or in-service program training, correct?

23 MR. REESE: Objection, form.

24 A. Correct, sir.

25 Q. (By Mr. Pletcher) You didn't have any

0077

1 preseasoned training courses or even orientation courses  
2 to refresh the lifeguards who were returning or to  
3 orient the new lifeguards to the procedures and policies  
4 there at the Houston Racquet Club, right?

5 A. No, sir. We -- if a new lifeguard came, one of  
6 the veteran lifeguards would take them and show them  
7 around and introduce them to the new rules.

8 Q. So, that was the orientation procedure? A  
9 veteran guard would take a new guard around the facility  
10 and orient them to how things were operated?

11 A. Yes, sir.

12 Q. But back to my question: There was no formal  
13 orientation course that was conducted by Mr. Lamkin or  
14 Mr. Palmer --

15 A. No, sir.

16 Q. -- right?

17 A. Correct, sir.

18 Q. And there was no in-service training program.  
19 There were no emergency response drills. There was no  
20 written policies and procedure manuals, correct?

21 MR. REESE: Objection, form.

22 A. We've established that.

23 Q. (By Mr. Pletcher) So, basically everything at  
24 the Houston Racquet Club about lifeguarding and your  
25 duties and responsibilities as lifeguards was learned on

0078

1 the job --

2 MR. REESE: Objection, form.

3 Q. (By Mr. Pletcher) -- or through this informal  
4 orientation that the veteran guards would provide to new  
5 guards, right?  
6 MR. REESE: Objection, form.  
7 A. And excluding your Red Cross training?  
8 Q. (By Mr. Pletcher) Mr. LG Supv , do you agree  
9 that if the Houston Racquet Club or Mr. Palmer or  
10 Mr. Lamkin had required you and your fellow guards to do  
11 emergency drills, to participate in in-service training  
12 on these things that we've been talking about, child  
13 CPR, AED practice uses, areas of responsibility,  
14 effective scanning, patron surveillance, that y'all  
15 might have been better prepared to respond to a real  
16 emergency?  
17 MR. REESE: Objection, form.  
18 A. All I know is that my response would not have  
19 changed.  
20 THE WITNESS: Is it okay if I take a break  
21 for a second?  
22 MR. PLETCHER: Absolutely.  
23 THE VIDEOGRAPHER: Off the record at  
24 12:23.  
25 (Lunch Recess from 12:23 to 1:27)  
0079  
1 THE VIDEOGRAPHER: The time is 1:27.  
2 We're back on the record.  
3 Q. (By Mr. Pletcher) You're ready to continue,  
4 Mr. LG Supv ?  
5 A. Yes, sir.  
6 Q. Let me show you -- this is Exhibit 14-D which  
7 is a copy of the pool diagram that I highlighted earlier  
8 based upon your testimony the area of responsibility for  
9 the lifeguard chair next to the slide.  
10 A. Yes, sir.  
11 Q. What I'd like to do with that red pen is have  
12 you mark where the lifeguard chairs were on July 18th,  
13 2007 approximately.  
14 A. Okay. (Witness drawing)  
15 Q. Could you put a square around those Xs that you  
16 just did so that we can see them?  
17 A. (Witness complies)  
18 Q. Now, could you also just put your initials next  
19 to those squares, SD?  
20 A. (Witness complies)  
21 Q. Now, did I accurately highlight the area of  
22 responsibility for the chair by the slide?

23 A. Yes, sir.

24 Q. Okay. Could you put your initials just in the  
25 highlighting maybe in that area?

0080

1 A. (Witness complies)

2 Q. Now, let me put this on the screen if I can.

3 Can you see that okay?

4 A. Yes, sir.

5 Q. And what you've just done is you've drawn in a  
6 lifeguard chair next to the slide area. This is the  
7 slide and also down here by this umbrella (indicating),  
8 correct?

9 A. Yes, sir.

10 Q. And you put your initials for the area of  
11 responsibility that's highlighted in green.

12 A. Yes, sir.

13 Q. Now, in yellow highlight -- green, yellow,  
14 chartreuse.

15 For this lifeguard chair on the south side  
16 of the pool, is the area of responsibility for this  
17 chair everything else, these areas here (indicating)?

18 A. Yes, sir.

19 Q. Everything west of the floating line?

20 A. Yes, sir.

21 Q. That would include all of this area  
22 (indicating); is that correct?

23 A. You've got to also include the fountain.

24 Q. And the fountain area, too?

25 A. Yes, sir. I forgot.

0081

1 Q. Okay. And I'm just going to put an orange  
2 circle around this chair and a yellow circle around that  
3 chair. Now, is that a fair representation of the areas  
4 of responsibilities for the two chairs --

5 A. Yes, sir.

6 Q. -- as they existed on July 18th when John  
7 drowned?

8 A. Yes, sir.

9 Q. And at any time, to your knowledge, did  
10 Guillermo Palmer ever sit down with you and/or the other  
11 lifeguards and map out the areas of responsibility like  
12 I just did for the two chairs? Do you recall him ever  
13 doing that?

14 A. Not specifically sitting down.

15 Q. Okay. On July 18th could you mark where  
16 15 y/o LG #1 was? Which chair was she on? You can put -- you

17 can draw an arrow to that chair and write "15 y/o LG #1."

18 A. (Witness complies)

19 Q. And then 15 y/o LG #2 was in the other chair?

20 A. Yes, sir.

21 Q. Okay. Now, are you familiar with the  
22 directions -- do you have a sense of direction as far as  
23 this map goes? In other words, this is the west end;  
24 this is the east end; this is the south and that's the  
25 north (indicating)?

0082

1 A. Sounds good. Correct.

2 Q. And you -- go ahead and put south and west and  
3 east there.

4 A. (Witness complies)

5 Q. You just put in a compass symbol right here  
6 (indicating) with the directions.

7 Did you ever -- did you ever work at or  
8 visit the Houston Racquet Club pool area prior to the  
9 new resort pool being built?

10 A. No, sir.

11 Q. You had never swam there before with any of  
12 your friends?

13 A. No, sir.

14 Q. On July 18th, 2007, you and three other guards  
15 were at lunch when the whistle was blown at the family  
16 pool, correct?

17 A. Yes, sir.

18 Q. Mr. Palmer testified that you made the decision  
19 to go to lunch and that he wasn't involved in that  
20 decision that day; is that correct?

21 A. It was my understanding that the lunchtime was  
22 11:00 o'clock.

23 Q. What was that understanding based upon? Was  
24 that when you typically went to lunch?

25 A. Yes, sir. That's when lunch was served.

0083

1 Q. And was that just your lunchtime?

2 A. That was when lunch --

3 Q. The clubs --

4 A. -- was available to the entire club.

5 Q. Okay. The club started serving lunch at  
6 11:00 a.m.

7 A. Yes, sir.

8 Q. And on July 18th, we know that you went to  
9 lunch at 11:00 o'clock, correct?

10 A. We would go to lunch and bring the lunch back

11 to the pool area.

12 Q. And you'd be up in the patio or pavilion area?

13 A. Yes, sir.

14 Q. Okay. That's where you were at the time that  
15 the whistle was blown, correct?

16 A. Yes, sir.

17 Q. Who made the schedule for you to be at lunch  
18 that day? In other words, how did you end up having  
19 your lunchtime right at 11:00 when you went? Were you  
20 scheduled for lunch then, or did you just decide to go?

21 A. We did not have a lunch schedule. Just whoever  
22 was on break would go and get lunch for everybody. And  
23 then when you became on break, you would eat your lunch.

24 Q. So, your break must have started at 11:00 that  
25 day, correct?

0084

1 A. My break you could say was -- the specific  
2 lifeguards would have a specified time to be on break or  
3 not.

4 Q. Okay. And on July 18th, your specified time  
5 was at 11:00, correct?

6 A. No, sir.

7 Q. What time was your lunch scheduled that day?

8 A. I did not have a specific lunch schedule.

9 Q. Okay. Well, Mr. Palmer had told us the other  
10 day when we took his deposition that it was your  
11 decision to go to lunch that day. Is that true? You  
12 made that decision yourself. You were on break. You  
13 decided to get your lunch; is that correct?

14 A. By going to lunch, that means going and  
15 bringing it back.

16 Q. Right. Did you go and get your lunch --

17 A. Yes, sir.

18 Q. -- and bring it back?

19 A. Yes, sir.

20 Q. And were you -- you made that decision to do  
21 that very thing that day. You decided, I'm going to go  
22 get my lunch and go to the pavilion area and eat it  
23 because I'm on break, correct?

24 A. Could you rephrase that?

25 Q. Sure. I'm just trying to figure out: Why did

0085

1 you go to lunch when you did?

2 A. I would usually go then because there was food  
3 available.

4 Q. Okay.



5 A. If you wait until 11:30, there would no longer  
6 be food available.  
7 Q. Okay.  
8 A. And I would help the lifeguards that were on  
9 breaks to bring all the food back for everybody --  
10 Q. Okay.  
11 A. -- as well as myself.  
12 Q. Alrighty. And so, you typically took your  
13 lunch break at 11:00 o'clock.  
14 A. Yes, sir.  
15 Q. Because that's when the food first became  
16 available at the cafeteria.  
17 A. That's when the food was available.  
18 Q. Okay. Okay. And we know that Sr LG #1 ,  
19 Sr LG #3 and Sr LG #2 were with you at the  
20 pavilion area eating lunch when the whistle blasted.  
21 A. Yes, sir.  
22 Q. And were you involved in the decision for the  
23 other three, Sr LG #1 , Sr LG #3 and Sr LG #2 to be on lunch  
24 break, too?  
25 A. It was the way that the lifeguards had their  
0086  
1 break or not.  
2 Q. Okay. I need to get a general understanding of  
3 how things worked.  
4 A. Okay.  
5 Q. There are really two time periods that are  
6 important for lifeguards and when they're on the stand.  
7 The first thing that's important is who's scheduled for  
8 the day, correct? A certain number of lifeguards will  
9 be scheduled to work on a given day, correct?  
10 A. Yes, sir.  
11 Q. And then there are rotations.  
12 A. Yes, sir.  
13 Q. And rotations are these guards will be at the  
14 lap pool. These guards will be at the resort or family  
15 pool and these guards will be on breaks -- on break,  
16 correct?  
17 A. Yes, sir.  
18 Q. So, we have the schedule; and we have the  
19 rotation. Am I --  
20 A. Yes, sir.  
21 Q. Am I accurate in what I'm saying?  
22 A. Basically.  
23 Q. Okay. And Mr. Palmer testified that you and he  
24 made the schedules of who was going to be working on a

25 given -- working on a given day.

0087

1 A. Yes, sir. Some of the other supervisors would  
2 participate as well.

3 Q. Who else was involved with that? Was  
4 Mr. Lamkin involved with scheduling --

5 A. No, sir.

6 Q. -- of lifeguards? What other supervisors?

7 A. Just depended on who was there, the supervisor  
8 that was on duty the day that the schedule is made.

9 Sr LG #1 --

10 Q. Okay.

11 A. -- would help a lot.

12 Q. Okay. Well, this is Exhibit 37; and it is the  
13 schedule for lifeguards on July 18th, the day that John  
14 drowned. It says Wednesday. It says you were the  
15 supervisor, and it lists the lifeguards that were on the  
16 9:00 to 3:00 shift and the lifeguards that were on the  
17 3:00 to 8:00 shift. And Sr LG #1 was the supervisor for  
18 that shift, correct?

19 A. Yes, sir.

20 Q. Now, Mr. Palmer said that these schedules were  
21 typically made the week before or the month before.  
22 What's your recollection of how -- what was the timing  
23 of when the schedules were put together?

24 A. I believe they're made on the Friday to start  
25 the next week.

0088

1 Q. So, the schedules were made on Friday. And  
2 they were typically put together by Mr. Palmer and you.  
3 And then what other -- whatever other supervisor might  
4 be on duty.

5 A. There were weeks that I would not make the  
6 schedule. I would not be present on a Friday.

7 Q. Okay. Do you recall whether or not you  
8 participated in preparing this schedule, Exhibit 37, for  
9 July 18th?

10 A. I do not know.

11 Q. Do you recall at any time whether or not  
12 Mr. Lamkin was involved in the scheduling of lifeguards  
13 for any particular week?

14 A. I do not know.

15 Q. Okay. So, this particular schedule for  
16 Wednesday, July 18th, would have been made the previous  
17 Friday --

18 A. Yes, sir.

19 Q. -- correct? Let's look at who all was  
20 scheduled for the day. For the 9:00 to 3:00 shift, did  
21 you typically always work that morning shift? I see  
22 that you're the supervisor on this day. Was that your  
23 regular day or did it vary?

24 A. It varied from week to week.

25 Q. And LG-E, LG-G,  
0089

1 Sr LG #2 , LG-H , Sr LG #3 and LP LG  
2 were scheduled for that morning, correct?

3 A. Yes, sir.

4 Q. And we know that Nathan, LG-G and LG-H did  
5 not work that morning.

6 A. Yes, sir.

7 Q. Now, Mr. Palmer testified that the lifeguards  
8 were instructed to call in if for some reason they  
9 couldn't make it for a particular day so that somebody  
10 could provide coverage for their -- in their absence --

11 A. Yes, sir.

12 Q. -- is that true?

13 A. Yes, sir.

14 Q. Who typically made the decision of who the  
15 replacements were going to be? Was that something that  
16 you would decide as the head supervising lifeguard or is  
17 it something that Guillermo would decide or is it  
18 something that you would both decide?

19 A. Generally if we found out the morning of, we  
20 would call the lifeguards if they hadn't worked many  
21 shifts that week and see who's available to work.

22 Q. Okay. And what I'm trying to determine is:  
23 Did Guillermo Palmer leave it up to you and the other  
24 supervising guards to determine the coverage, who was  
25 going to replace somebody in their absence? Was that

0090

1 something that the head guards would do and then report  
2 it back to him? How did it work?

3 A. I'm sorry. Could you rephrase that real quick?

4 Q. Sure. Let's say that on July 18th, you got a  
5 call that Sr LG #2 -- that LG-E was going to be  
6 unavailable. You received the call. Would you then get  
7 on the phone and make the decision of who was going to  
8 replace LG-E that day?

9 A. Yes, sir.

10 Q. Okay. And once you found a replacement, would  
11 you have to document the replacement? Or what was the  
12 procedure? What would you do? Would you tell

13 Mr. Palmer? How would you handle it?

14 A. What we would do is we would cross out their  
15 name on the schedule and then write in whoever --

16 Q. Okay.

17 A. -- was working.

18 Q. And that's typically something that the  
19 supervising head lifeguard would do, be it you or the  
20 other four that worked in that position in the summer of  
21 2007, correct?

22 A. Yes, sir.

23 Q. And do you recall doing that for July 18th?

24 A. I do not remember it.

25 Q. And I guess you don't know who did it.

0091

1 A. No, sir.

2 Q. And we know from testimony and documents in  
3 this case that two of the replacement guards were  
4 15 y/o LG #2 and 15 y/o LG #1 .

5 A. Yes, sir.

6 Q. And the third one was who? Do we know who the  
7 third one was?

8 A. Sr LG #1 .

9 Q. Sr LG #1 . Okay. Do we know why 15 y/o LG #2  
10 and 15 y/o LG #1 worked that morning?

11 A. Would you rephrase that?

12 Q. Sure. When you're deciding who's going to be  
13 the replacement, is it just -- is that decision based  
14 solely upon availability who is available?

15 A. Yes.

16 Q. So, in other words, you don't determine if  
17 there are more senior guards available and try to get  
18 them first. You just start calling around, and you  
19 determine who's --

20 A. I would like to correct myself. We would -- if  
21 there was a girl missing, we would first call girls. If  
22 there was a guy missing, we would first call guys.

23 Q. Okay.

24 A. But it was availability of those.

25 Q. Okay. And so, your assumption would be that

0092

1 15 y/o LG #1 and 15 y/o LG #2 were two people who were  
2 available for July 18th to cover the morning shift,  
3 right?

4 A. Yes, sir.

5 Q. And once that decision was made and you mark  
6 out the schedule and write in the replacements on the

7 morning schedule like you described, what would you do  
8 with the schedule? Is it posted somewhere? Is it given  
9 to Mr. Palmer, given to Mr. Lamkin? How is that  
10 handled?

11 A. At the end of the week there is a notebook that  
12 we put it in.

13 Q. Where is that notebook kept?

14 A. In the lifeguard office.

15 Q. And do you just add to that notebook each week?

16 A. Yes, sir.

17 Q. Do you have any recollection of who may have  
18 worked on the morning shift on the day before John  
19 drowned on July 17th?

20 A. No, sir.

21 Q. Do you recall if you worked that day?

22 A. I don't remember.

23 Q. Now let's talk about rotations for a second.

24 Mr. Palmer testified that the lifeguards decided on  
25 their own who was going to be at a particular stand, who  
0093

1 was going to be paired with who and who -- or how the  
2 rotations were going to start; is that true?

3 A. Yes, sir.

4 Q. And we know that on July 18th, that  
5 15 y/o LG #1 and 15 y/o LG #2 were on the shift for the  
6 family pool at approximately 11:00 o'clock, correct?

7 A. Yes, sir.

8 Q. That they just got to their stands at 11:00.

9 A. Yes, sir.

10 Q. Were you involved in that decision at all for  
11 them to be at the family pool at 11:00 o'clock or that  
12 rotation?

13 A. No, sir.

14 Q. Do you have any idea who was involved in that  
15 decision, who made it?

16 A. The lifeguards.

17 Q. And when you say "the lifeguards," what you  
18 mean is that 15 y/o LG #2 and 15 y/o LG #1 made that decision,  
19 correct?

20 A. Yes, sir.

21 Q. Yes?

22 A. Yes, sir.

23 Q. And Mr. Palmer testified that the rotations  
24 were two guards at the family pool, two guards at the  
25 lap pool and two guards on break. And the rotations  
0094

1 were 30 minutes apiece. Is that your understanding of  
2 the rotations?

3 A. That was the main rotation.

4 Q. Right. When you say the "main rotation," what  
5 do you mean? What was the alternate rotation?

6 A. If there was nobody at the lap pool, then  
7 sometimes we would place one guard at the lap pool; and  
8 I would give the other guard a little extra break. But  
9 they would still be on call to go to that pool if  
10 anybody showed up.

11 Q. Okay.

12 A. So, they're required to be around the pools.

13 Q. So, on July 18th, we know that when John  
14 drowned, there was one guard at the lap pool LP LG --

15 A. Yes, sir.

16 Q. -- LP LG, correct?

17 A. Yes, sir.

18 Q. And two guards at the family pool, 15 y/o LG #1  
19 and 15 y/o LG #2 .

20 A. Yes, sir.

21 Q. And that you were the supervisor that morning,  
22 correct?

23 A. Yes, sir.

24 Q. And so, you must have made a decision sometime  
25 prior to 11:00 to let the second guard at the lap pool

0095

1 go on break; is that correct?

2 A. It was at approximately 11:00.

3 Q. Okay. And what -- who was the other guard at  
4 the lap pool that day? Was it either Sr LG #2 ,  
5 Sr LG #3 or Sr LG #1 ?

6 A. I'm not sure.

7 Q. Are you sure that it was at about 11:00 that  
8 you let that person, whoever that third person was --  
9 fourth person was go on break?

10 A. Yes, sir.

11 Q. If you recall that person's name in a minute,  
12 will you let me know?

13 A. I will.

14 Q. And while I'm thinking about it, on one of the  
15 breaks you told me that the fifth supervising or head  
16 guard was a guy named LG-I?

17 A. Yes, sir.

18 Q. You don't recall his last name?

19 A. I believe it was LG-I, LG-I.

20 Q. So, the main rotation that we described a

21 minute ago, two guards at the lap pool, two guards at  
22 the family pool, two guards on break, was that ever  
23 documented? In other words, were y'all required to keep  
24 written documentation of what a particular rotation was  
25 on a given day?

0096

1 A. No, sir.

2 Q. And Mr. Palmer testified that if you were a  
3 guard who first started the rotation at the family pool,  
4 you would work 30 minutes there, then go to the lap pool  
5 for 30 minutes and then be on break for 30 minutes. And  
6 then it would start all over; is that accurate?

7 A. Yes, sir.

8 Q. And did the rotation start at the family pool  
9 or did it start at the lap pool or do you recall?

10 A. Family pool.

11 Q. Okay. So, family pool, lap pool, break. And  
12 Mr. Palmer testified that when a guard was on break, he  
13 or she was required to pick up towels, clean the area,  
14 arrange chairs. Do you recall of any other duties that  
15 you would typically do when you were on break as a  
16 lifeguard at the Racquet Club?

17 A. Maybe give the lifeguards on the stand water if  
18 they needed it.

19 Q. So, you would also might get water for the  
20 guards on the stands. Anything else?

21 A. That covers it.

22 Q. And what else would you do on break?

23 A. On break?

24 Q. Relax?

25 A. Yes, sir.

0097

1 Q. Typically where would you do your relaxing?

2 A. Either in the lifeguard office or in one of the  
3 places around the pool.

4 Q. Like at the patio area?

5 A. Yes, sir. That was one of the places.

6 Q. Or the deck area?

7 A. The deck in any of the lounge chairs.

8 Q. And let me show you what I've marked as 14-C.  
9 And what I've done is I've just outlined the rotation,  
10 the main rotation that you've just described. Two on  
11 the resort pool, two on the lap pool and two on break?

12 A. Yes, sir.

13 Q. And on break, the requirements were to pick up  
14 towels, arrange chairs, clean up area. I did arrange

15 chairs twice. We're going to make this Exhibit 14-E.

16 And then you could take time off in the lifeguard  
17 office, the patio deck or lounge chair areas, correct?

18 A. Yes, sir.

19 Q. Were you always required to do these items  
20 while you were on break?

21 A. As needed.

22 Q. And would you agree that during the summer camp  
23 time typically these tasks were needed because of just  
24 the sheer volume of kids who were in the pool area at  
25 the time?

0098

1 A. As needed.

2 Q. You don't think that during camp time, that  
3 need increased as compared to noncamp time?

4 A. Well, as I was walking around the pool, I would  
5 do some of those tasks. They were done by the time that  
6 the lifeguard needed them and was on break.

7 Q. And I'm glad you said that because the rotation  
8 also included a seventh lifeguard which would be the  
9 head lifeguard, the head guard, correct?

10 A. Yes, sir.

11 Q. Typically describe to the jury what the head  
12 guard was there to do. I mean, you were there to  
13 supervise the other guards to make certain they were on  
14 their stands right?

15 A. Yes, sir.

16 Q. You were also there to make certain that the  
17 guards were appropriately scanning the pool, correct?

18 A. Yes, sir.

19 Q. You were there to respond to any disgruntled  
20 parents or any complaints that might be raised during  
21 the shift, correct? You were certainly available to  
22 receive the --

23 A. Yes, sir.

24 Q. -- complaints. And you would deal with it like  
25 you did with 15 y/o LG #1 -- Ms. LG-J that you talked about

0099

1 earlier, correct?

2 A. Yes, sir.

3 Q. And typically the head guards at the Houston  
4 Racquet Club in the summer of 2007 were the most senior  
5 guards, correct? They had the most experience, you,  
6 Sr LG #1 ?

7 A. Sr LG #1 , Supv CC #1 and I did have the most  
8 experience out of the guards at the Racquet Club.



9 Q. Okay. How about the other two head guards?

10 A. No.

11 Q. LG-I and I forget the fifth one. What  
12 experience level did they have, the other two?

13 A. Their first year of work at the Racquet Club  
14 was that year.

15 Q. 4 y/o G-CC #1 and LG-I --

16 A. Yes, sir.

17 Q. -- they were new guards.

18 A. To the Racquet Club.

19 Q. And they were head guards?

20 A. Supervisors, yes.

21 Q. Okay. Do you know if they had any experience  
22 at any other clubs, to your knowledge?

23 A. Do not know.

24 Q. Do you have a recollection of how the rotation  
25 was determined on July 18th, 2007 or being involved in,  
0100

1 okay, LP LG and Sr LG #3 are going to start at the lap  
2 pool? Do you have any recollection of how that rotation  
3 came to be?

4 A. As we said earlier, it was determined by the  
5 lifeguards.

6 Q. I understand. But I'm trying to see -- I mean,  
7 typically tell me what you would do. Would y'all all  
8 huddle up first thing in the morning and decide, okay,  
9 me and so and so are going to be at the resort pool; me  
10 and so and so are going to be at the lap pool; me and so  
11 and so would be on break? How did it work?

12 A. Typically it would be setting up, making sure  
13 that the equipment and everything was in the right  
14 places. If the pool was dirty, we would be cleaning it.  
15 And in between 9:00 and 9:15 when the first patrons  
16 would show up, I would say people need to get up on  
17 stand. And they would determine by themselves -- by  
18 themselves who went up where.

19 Q. Okay. Well, did you find the situation one  
20 where typically the more senior guards would work the  
21 same rotation and the more younger guards would end up  
22 being on the same rotation?

23 A. Sorry. Could you --

24 Q. Yeah.

25 A. -- repeat that?

0101

1 Q. When this rotation was being determined by the  
2 guards amongst themselves, was it a situation where the

3 kids the same age or near the same age would want to be  
4 on the same rotation? In other words, the more senior  
5 ones would want to be on a rotation with the more senior  
6 guard, somebody their same age.

7 A. Sorry. One more -- one more time.

8 Q. All right. You've already explained a couple  
9 of times that the -- that the guards determined the  
10 rotation amongst themselves, correct?

11 A. Yes, sir.

12 Q. And did you find over your years at the Racquet  
13 Club that typically what would happen is that people who  
14 were about the same age would team up together and be on  
15 the same rotation?

16 A. Some people were familiar with each other.

17 Q. Right. And people who were familiar with each  
18 other were typically about the same age. Agreed? Is  
19 that about right?

20 A. At times.

21 Q. Now, did the more senior guards typically start  
22 the rotation on a particular day so that they would be  
23 off for lunch about the time that lunch was served at  
24 11:00?

25 A. I know different people have their own theories  
0102

1 on when they would get up on stand or not.

2 Q. Yes.

3 A. Me personally, if I was a lifeguard, I would  
4 actually go up with the less experienced guards --

5 Q. Okay.

6 A. -- other people that were the youngest.

7 Q. Well, that really wasn't my question. My  
8 question related to -- to how the rotations would be  
9 scheduled and whether or not the senior guards would  
10 schedule it so that they would be timed to get off at  
11 lunch at about 11:00.

12 A. I don't know the individuals' strategies --

13 Q. Okay.

14 A. -- for when they get up on stand.

15 Q. That's fine. Well, were 15 y/o LG #1 and 15 y/o LG #2 on the  
16 stand during the initial lunchtime when food was first  
17 being started to be served because they were the new  
18 younger guards?

19 A. I don't think that that was the determining  
20 factor.

21 Q. Do you know why they were on the stand when  
22 they were other than that was just when their rotation

23 got them?

24 A. That was what their rotation determined.

25 Q. Did Mr. Palmer or Mr. Lamkin ever tell you that  
0103

1 this procedure or the process for determining rotation  
2 amongst the guards themselves was not a good idea?

3 A. No, sir.

4 Q. Did they ever provide you with any alternative  
5 method or procedure for determining rotations?

6 A. No, sir.

7 Q. They never suggested that it be done a  
8 different way, correct?

9 A. No, sir.

10 Q. And nor did Guillermo Palmer or Mr. Lamkin ever  
11 provide you with any specific instructions on how to  
12 determine the rotation on a particular day.

13 A. I'm sorry. Could you repeat that?

14 Q. Guillermo Palmer and David Lamkin never  
15 provided any type of instruction on how to do the  
16 rotations any differently.

17 A. No, sir.

18 Q. Okay. That's correct?

19 A. That's correct.

20 Q. Okay. Were there ever any disputes amongst the  
21 guards on who was going to start the rotation at a  
22 particular pool or who was going to be paired with who?

23 A. Not to my knowledge.

24 Q. Okay. And I may have already asked you this.

25 But is there any documentation of the rotation --  
0104

1 A. No, sir.

2 Q. -- for any given day?

3 A. No, sir.

4 Q. So, we wouldn't be able to say -- ask the Club  
5 to give us the documentation for the rotation on  
6 July 18th?

7 A. No, sir.

8 Q. Because it doesn't exist, to your knowledge,  
9 correct?

10 A. No, sir.

11 Q. How many rotations are there on a typical  
12 shift, let's say the 9:00 to 3:00 shift?

13 A. Doing the math for six hours, hour and a half  
14 shift, there's four complete rotations.

15 Q. I guess that's just easy math, isn't it? Okay.

16 So, on July 18th at approximately 11:00

17 o'clock when you went to get lunch and Sr LG #2 ,  
18 Sr LG #3 , Sr LG #1 joined you for lunch, 15 y/o LG #1  
19 and 15 y/o LG #2 were in the chairs at the resort pool or the  
20 family pool, correct?

21 A. Yes, sir.

22 Q. Do you have any idea what the rotation was at  
23 the resort pool before 15 y/o LG #1 and 15 y/o LG #2 took the chairs?

24 A. I do not know. Sorry.

25 Q. But we do know that at 11:00 o'clock while

0105

1 15 y/o LG #1 and 15 y/o LG #2 were at the resort pool, that  
2 LP LG was at the lap pool.

3 A. Yes, sir.

4 Q. Did you know before you went to lunch what the  
5 schedule was for the day for the summer campers?

6 A. Could you rephrase that?

7 Q. Sure. Before you went to lunch at  
8 approximately 11:00 o'clock on July 18th, did you know  
9 what the schedule was for the summer campers as far as  
10 being at the resort pool?

11 A. Not a specific schedule.

12 Q. When you went to get your lunch, did you pass  
13 by Mr. Palmer? Did you see Mr. Palmer? Do you recall  
14 that?

15 A. I don't remember.

16 Q. Well, you certainly don't remember telling him  
17 that you were going to lunch.

18 A. No.

19 Q. So, you don't remember seeing him or telling  
20 him you were going to lunch. Do you recall him ever  
21 telling you that it probably wasn't a good idea to go to  
22 lunch at 11:00 o'clock because the youngest of all the  
23 summer campers were about to get in the pool?

24 A. No.

25 Q. You don't recall that.

0106

1 A. No, sir.

2 Q. Who, if anybody, approved the other three  
3 senior guards going to lunch at approximately 11:00?

4 A. There were not other -- three other senior  
5 guards -- or by "senior guards," do you mean --

6 Q. Sr LG #1 , Sr LG #2 and Sr LG #3 .

7 A. Are we defining them as senior guards?

8 Q. They were the more experienced guards, correct?

9 A. That was Sr LG #2 's first summer.

10 Q. How old was Sr LG #2 ?

11 A. He was in college.

12 Q. Okay. How about Sr LG #3 ? How old was he?

13 A. He was in high school.

14 Q. Was he a senior?

15 A. I don't know.

16 Q. And we know Sr LG #1 was an older guard,  
17 correct?

18 A. She was a more experienced guard.

19 Q. Yes.

20 A. Yes.

21 Q. How old -- how old was she?

22 A. She was in high school.

23 Q. Did anybody specifically tell them that it was  
24 okay, those three, to go to lunch when they did or do  
25 you know?

0107

1 A. No.

2 Q. No, you don't know or no, nobody approved?

3 A. I would say it was a given to them that on  
4 break you can go to lunch.

5 Q. Did Mr. Palmer or Mr. Lamkin ever tell you that  
6 it might be safer to have more than two lifeguards at  
7 the family pool at 11:00 o'clock during summer camp  
8 week?

9 A. No, sir.

10 Q. Did Mr. Palmer or Mr. Lamkin ever suggest to  
11 you or any of the other guards that it might be a better  
12 idea to have more experienced lifeguards at the resort  
13 pool when the youngest of the summer campers had their  
14 swim time?

15 A. No, sir.

16 Q. Did Mr. Palmer or Mr. Lamkin ever suggest to  
17 you or any of the other guards that you needed to have  
18 more than two guards at the family pool or at the resort  
19 pool when the youngest of the summer campers had their  
20 swim time?

21 A. No, sir.

22 Q. Mr. Palmer testified that he was actually  
23 standing outside the gate of the resort pool  
24 approximately five minutes before John was discovered  
25 floating face down in the family pool. Do you recall at

0108

1 any time before you went on lunch seeing him there?

2 A. I can't remember.

3 Q. Do you recall Mr. Palmer or Mr. Lamkin telling  
4 you that it would be better to have a supervising

5 lifeguard at the pool at that point in time when the  
6 youngest campers had their swim time?

7 A. No.

8 Q. Did Mr. Palmer ask you to stay on your rotation  
9 so that you could be supervising these two 15-year-old  
10 lifeguards while they were on the resort pool stands at  
11 11:00?

12 A. No, sir.

13 Q. Mr. Palmer testified that he believed that  
14 15 y/o LG #1 and 15 y/o LG #2 were on a stand prior to  
15 getting to the resort pool, but he didn't know where.  
16 Do you?

17 A. I'm sorry. What timing?

18 Q. No. What stands that 15 y/o LG #1 and 15 y/o LG #2 were on  
19 before they did their rotation to the family pool.

20 A. I don't know.

21 Q. Are you aware of any adult lifeguards who were  
22 at the resort pool when 15 y/o LG #1 and 15 y/o LG #2  
23 were on the stands at 11:00?

24 A. Could you rephrase?

25 Q. Sure. First of all, we know that 15 y/o LG #1 and  
0109

1 15 y/o LG #2 were both 15-years-old, correct?

2 A. I'm not sure, but --

3 Q. Does that sound right?

4 A. Yes, sir.

5 Q. Okay. And we also know that they were the two  
6 least experienced guards that were working in the summer  
7 of 2007, correct?

8 MR. REESE: Objection, form.

9 Q. (By Mr. Pletcher) Based upon your  
10 understanding of things.

11 A. Would you rephrase that?

12 Q. Sure. Did you know that 15 y/o LG #2 and  
13 15 y/o LG #1 did not have any prior experience  
14 lifeguarding before they started in the summer of 2007?

15 A. Yes, sir.

16 Q. Okay. And you knew that this was their first  
17 lifeguarding job, correct?

18 A. Yes, sir.

19 Q. And so, you knew that they were the two guards  
20 at the club with the least amount of experience.

21 MR. REESE: Objection, form.

22 A. Could you rephrase that?

23 Q. (By Mr. Pletcher) Yes. Did you know that  
24 15 y/o LG #1 and 15 y/o LG #2 had the least amount of

25 experience of all the guards who worked on July 18th,  
0110

1 2007?

2 MR. REESE: Objection, form.

3 A. Could you rephrase it one more time?

4 Q. (By Mr. Pletcher) Uh-huh. Do you agree that  
5 15 y/o LG #1 and 15 y/o LG #2 had the least amount of  
6 lifeguarding experience on -- compared to the other  
7 guards who were working on July 18th?

8 MR. REESE: Objection, form.

9 A. No.

10 Q. (By Mr. Pletcher) No? Who had less experience  
11 than those two?

12 A. By defining "experience" --

13 Q. Working as a lifeguard at any pool.

14 A. LP LG was the same.

15 Q. So, at 11:00 o'clock when you went to lunch,  
16 there were three guards with the least amount of  
17 experience on rotation, correct?

18 MR. REESE: Objection, form.

19 Q. (By Mr. Pletcher) Let me rephrase it.

20 A. Thanks.

21 Q. You just told me that LP LG had the  
22 least amount of experience.

23 A. No.

24 Q. The same amount of experience as 15 y/o LG #1 and  
25 15 y/o LG #2 .

0111

1 A. If you're just defining experience as the time  
2 we spent at a pool lifeguarding, yes.

3 Q. Okay. So, the three lifeguards who were on  
4 duty at 11:00 o'clock on July 18th had the least amount  
5 of experience of actual lifeguarding at pools than any  
6 of the other guards that were working that day, correct?

7 MR. REESE: Objection, form.

8 A. Yes, sir.

9 Q. (By Mr. Pletcher) Okay. Did Mr. Palmer or  
10 Mr. Lamkin ever suggest to you as the head supervising  
11 lifeguard on July 18th, that it might be a good idea to  
12 have a more experienced lifeguard, one with more actual  
13 time lifeguarding than these three?

14 A. No, sir.

15 Q. There has been testimony in this case that  
16 there may have been more than 51 people in the family  
17 pool when John drowned. Did Mr. Palmer or Mr. Lamkin or  
18 anybody else tell you that with that number of people in

19 the pool, there needed to be more than two lifeguards at  
20 the family pool?

21 A. Are we going according to those assumptions?

22 Q. Yes.

23 A. There were 51 people in the pool.

24 Q. (Nodding head)

25 A. Would you restate it?

0112

1 Q. Did Mr. Palmer, Mr. Lamkin or anybody else at  
2 the Racquet Club ever tell you that there needed to be  
3 three lifeguards at the family pool if there were more  
4 than 50 people in the pool? Do you remember anybody  
5 telling you that?

6 A. I do not remember.

7 Q. Mr. Palmer testified that the number of  
8 lifeguards needed at the family pool was determined by  
9 the number of people or bathers in the pool, the bather  
10 load. Do you remember Mr. Palmer ever discussing the  
11 ratio of guards to bathers?

12 A. Not a specific ratio.

13 Q. Not a specific ratio?

14 A. Yes, sir.

15 Q. He never discussed that, did he?

16 A. Not specific ratio.

17 Q. You'd never -- you were never told by  
18 Mr. Palmer or Mr. Lamkin or anybody else at the Racquet  
19 Club that you needed at least one lifeguard for every 25  
20 bathers.

21 A. No, sir.

22 Q. What ratio did you use then?

23 A. If I felt while I was on duty that there was  
24 enough to warrant a second lifeguard, then either I  
25 would step up or I would ask one of the other lifeguards

0113

1 that was on their break to step into the pool.

2 Q. But you didn't use a specific number.

3 A. No, sir.

4 Q. In other words, you didn't count the number of  
5 heads in the pool to determine whether or not you needed  
6 another lifeguard, correct?

7 A. No, sir.

8 Q. You did not do that.

9 A. No.

10 Q. Were you using any particular number when you  
11 made the determination of whether or not you needed to  
12 add a guard to the resort pool?



13 A. No number.

14 Q. What did you base your determination of the  
15 need for another guard, then? What did you base it on?

16 A. If I considered that I would be uncomfortable  
17 in the lifeguard chair, then I would go -- I would place  
18 another lifeguard.

19 Q. But what was your comfort level based upon:  
20 How active the bathers were; how many kids were in the  
21 pool; how rowdy they were? What factors did you use to  
22 make that determination?

23 A. It was a combination of everything, you could  
24 say. It was just seeing what the pool was like.

25 Q. Okay. Well, I want to talk numbers with you

0114

1 for a minute based upon what you've just told me. Do  
2 you think based upon your experience as a lifeguard and  
3 your experience at the Racquet Club, that one lifeguard  
4 was sufficient for 25 people in the pool?

5 A. Yes, sir.

6 Q. Do you think one lifeguard was sufficient for  
7 35 swimmers in the pool?

8 A. It would raise caution to me.

9 Q. What about 30? Would that raise caution, too?

10 A. In certain situations, yes.

11 Q. What about 25? Would that raise caution?

12 MR. REESE: Objection, form.

13 A. Could you rephrase that?

14 Q. (By Mr. Pletcher) Would 25 bathers raise  
15 caution in your mind --

16 MR. REESE: Objection, form.

17 Q. (By Mr. Pletcher) -- that you might need more  
18 than one guard?

19 MR. REESE: Objection, form. Matt, are  
20 you asking him to assume a situation of camp -- summer  
21 camp?

22 MR. PLETCHER: No. I'm just --

23 MR. REESE: That's just what I want to  
24 clarify.

25 MR. PLETCHER: Just number of people in

0115

1 the pool.

2 MR. REESE: 25 people in the pool. Not  
3 summer camp --

4 MR. PLETCHER: Right.

5 MR. REESE: -- counselors, all that, just  
6 people in a pool.

7 Q. (By Mr. Pletcher) 25 people in the pool.  
8 Would that raise caution?  
9 A. Say in a specific situation there could  
10 possibly.  
11 Q. Okay. Now, tell the jury what the specific  
12 situation is that would raise caution in your mind.  
13 A. If there were kids that were rowdy.  
14 Q. Okay.  
15 A. If there were kids that could not swim well.  
16 Q. Okay.  
17 A. If there's no adult supervision.  
18 Q. Okay. Anything else?  
19 A. Those are the main reasons.  
20 Q. Okay. What about a bunch of young kids?  
21 Wouldn't age be a factor in your mind?  
22 A. Depending on their swimming capabilities.  
23 Q. Certainly you'd be more cautious if there were  
24 26 4-year-olds in the pool as compared to 20  
25 8-year-olds.

0116

1 MR. REESE: Objection, form.  
2 A. Could you rephrase?  
3 Q. (By Mr. Pletcher) Sure. Would you be more  
4 cautious, as you've described to us, if you had 26  
5 4-year-olds in a pool as compared to 20, let's say,  
6 8-year-olds?  
7 A. I couldn't tell you with the information given.  
8 There's -- it's what it looks like.  
9 Q. Sure. But certainly whether or not they were  
10 swimmers or nonswimmers would be a factor that you would  
11 want to consider.  
12 A. Yes, sir.  
13 Q. So, their swimming ability would be important  
14 for you to know.  
15 A. Yes, sir.  
16 Q. Okay. Now, did every lifeguard have the right  
17 to ask for more help --  
18 A. Yes, sir.  
19 Q. -- to get another guard on duty?  
20 A. They needed to double whistle if they needed  
21 anything.  
22 Q. Was that the procedure?  
23 A. Yes, sir.  
24 Q. How many times did you ever hear a double  
25 whistle during the week of July 17th, 2007?

0117

1 A. I don't know.  
2 Q. Did you hear a double whistle on July 18th,  
3 2007, the day John drowned?  
4 A. No, sir.  
5 Q. And would every lifeguard have their own  
6 individual comfort level then when they're trying to  
7 decide whether or not they need to blow that whistle  
8 twice?  
9 A. I'm sorry. Could you rephrase?  
10 MR. REESE: Objection, form.  
11 Q. (By Mr. Pletcher) Did every lifeguard  
12 determine their own comfort level?  
13 MR. REESE: Objection, form.  
14 A. Could you rephrase it again?  
15 Q. (By Mr. Pletcher) Sure. What you've described  
16 to us over the last few minutes is that you, yourself,  
17 as a lifeguard at the Houston Racquet Club had a certain  
18 comfort level of how many guards were needed based upon  
19 the number of people in the pool, correct?  
20 A. Yes, sir.  
21 Q. And you also told us that each lifeguard had  
22 the right to ask to get another lifeguard on duty if  
23 they thought they needed one, correct?  
24 A. Yes, sir.  
25 Q. And so, each lifeguard determined their own  
0118  
1 comfort level of when they thought there was sufficient  
2 lifeguards on duty.  
3 MR. REESE: Objection, form.  
4 Q. (By Mr. Pletcher) Or when they needed another  
5 guard to be added, correct?  
6 A. There was some discretion left to the  
7 lifeguards and some to the people around such as me.  
8 Q. Okay. So, what you're describing is that each  
9 lifeguard had some discretion to add another lifeguard  
10 on duty at a particular pool, correct?  
11 A. If they were uncomfortable.  
12 Q. Right. And when you say if they were  
13 uncomfortable, that means to me that each lifeguard  
14 determined their own comfort level, correct? That's  
15 what you're telling me.  
16 A. Yes, sir.  
17 Q. Okay. And I also take it from your testimony  
18 that the supervising or head lifeguards also had some  
19 additional discretion over and above the nonsupervising  
20 lifeguard to determine whether another lifeguard was

21 needed.

22 A. Yes, sir.

23 Q. Okay. Do you recall at any time during the  
24 summer of 2007 making that decision yourself where you  
25 added a lifeguard to the family pool?

0119

1 A. Yes, sir.

2 Q. Could you describe what the pool was like and  
3 what made you make that determination?

4 A. There's a large number of the people in the  
5 pool. I -- almost every time I would basically  
6 determine which pool had more people in it even and go  
7 and sit by that pool. So, there were certain times  
8 during peak hours that there would be a larger number of  
9 people where I would sit by a specific pool.

10 Q. Okay. The bottom line to it, though, is that  
11 you never really based it on a specific ratio of  
12 lifeguards to people -- to the number of people in the  
13 pool.

14 A. No, sir.

15 Q. You did not do that?

16 A. I did not base it on a specific ratio.

17 Q. Can you give me a description of one time where  
18 you added the -- another guard? What was it like? Were  
19 there 75 people in the pool? Were there a bunch of  
20 teenagers being rowdy? I mean, give me an example. Can  
21 you recall a specific example?

22 A. I remember one time that there was a party, and  
23 there were a bunch of Middle Eastern parents who didn't  
24 understand a lot of English.

25 Q. Yes.

0120

1 A. And I sat in the pool with them to make sure  
2 that things were kept under control and that everything  
3 was safe.

4 Q. This was a birthday party?

5 A. Yes, sir.

6 Q. With young kids?

7 A. Yes, sir.

8 Q. Did you know the swimming ability of the kids  
9 that were in the pool? Did you know if any or all of  
10 them could swim?

11 A. Just a visual assessment.

12 Q. All right. And it wasn't a specifically large  
13 number of people. It was the fact that it was a  
14 situation where there was kind of a communication

15 problem because of a language barrier that made you feel  
16 uncomfortable.

17 A. Yes, sir.

18 Q. Okay. Now, did Mr. Palmer or Mr. Lamkin ever  
19 discuss to you what the State regulations -- the laws in  
20 either Harris County or Texas or the American Red Cross  
21 required as far as the number of lifeguards to the  
22 number of people in the pool?

23 A. Sometime in late July, yes.

24 Q. Okay. That was never done before John's death  
25 on July 18th, 2007, correct?

0121

1 A. No, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 MR. REESE: Can we take a break?

5 MR. PLETCHER: Yeah.

6 THE VIDEOGRAPHER: The time is 2:36.  
7 We're off the record.

8 (Recess from 2:26 to 2:53)

9 THE VIDEOGRAPHER: The time is 2:53.  
10 We're back on the record.

11 Q. (By Mr. Pletcher) Are you ready to continue,  
12 Mr. LG Supv ?

13 A. Yes, sir.

14 Q. Who, to your knowledge, was in charge of the  
15 summer camp during the summer of 2007?

16 A. Mr. Lamkin.

17 Q. He was the one who headed it up?

18 A. Yes, sir.

19 Q. Was there anybody else in charge or in a  
20 supervisory role in the summer camp, to your knowledge?

21 A. Yes, sir.

22 Q. Who?

23 A. There were a few, but the only one I remember  
24 the name of was CD .

25 Q. CD ?

0122

1 A. Yes, sir.

2 Q. How old a person is CD ?

3 A. She worked in administration.

4 Q. How old was she approximately? Was she an  
5 older lady?

6 A. Mid age.

7 Q. Middle age? Okay. Was it -- you don't know  
8 anything other than CD ?

9 A. No. Short hair, another short brunette.  
10 Q. And another short --  
11 A. Oh, I'm sorry. Reference back to earlier  
12 before. Just a short-haired brunette.  
13 Q. Okay. Short-haired brunette. Okay. And  
14 was -- do you know what her last name was?  
15 A. I'm sorry.  
16 Q. Okay. Is it a lady named CD  
17 [phonetical]?  
18 A. No. That's --  
19 Q. That doesn't ring a bell?  
20 A. No. I know --  
21 Q. Is she -- is she Puerto Rican maybe?  
22 A. No, sir.  
23 Q. No?  
24 A. There was another lady who helped head the camp  
25 that could have been Puerto Rican.  
0123  
1 Q. Okay. But CD was -- it wasn't her daughter  
2 CC-B, was it? No. CC-B was younger. Did you know a  
3 CC-B who was involved with the summer camp?  
4 A. No, sir.  
5 Q. Okay. So, you know that Lamkin headed it up.  
6 And there was also another supervisor person that you  
7 referred to as CD who worked in the administration  
8 office who also had some supervisory role with the camp.  
9 A. Yes, sir.  
10 Q. Anybody else that you can think of who may have  
11 been in charge of the summer camp?  
12 A. There are a few others, but I don't know their  
13 names.  
14 Q. Mr. Palmer testified that there were never any  
15 joint meetings between the lifeguards and the camp  
16 counselors. You don't -- you don't recall ever  
17 attending any joint meetings where both groups were  
18 together, correct?  
19 A. I never attended any joint meetings.  
20 Q. Do you recall if Mr. Palmer or Mr. Lamkin or  
21 anybody else at the Racquet Club ever provided you with  
22 any type of written instructions or verbal instructions  
23 for that matter on how to best coordinate the lifeguards  
24 with the summer camp?  
25 A. No, sir.  
0124  
1 Q. Or how to best coordinate the lifeguards with  
2 the camp counselors?

3 A. No, sir.  
4 Q. And I think you already testified that you were  
5 not involved with any of the scheduling of the summer  
6 camp or the swim times, correct?  
7 A. Would you rephrase that?  
8 Q. You were not involved with any of the  
9 scheduling for the summer camp swim times.  
10 A. No, sir.  
11 Q. And you were not -- as a matter of fact, you  
12 didn't even know what the swim times were or the  
13 schedule for swim time was on July 18th. You already  
14 told us that, correct?  
15 A. I said there was no schedule given to me.  
16 Q. And you also said that you did not know what  
17 the swim times were for that day, correct?  
18 A. I would say I had a very general understanding  
19 of when large groups versus small groups would be at the  
20 pool.  
21 Q. Okay. And your general understanding was not  
22 an exact or specific time?  
23 A. No, sir.  
24 Q. Okay. Was your general understanding that the  
25 summer campers would show up before lunch or after  
0125 lunch?  
2 A. The camp?  
3 Q. (Nodding head)  
4 A. Yes. They would show up before lunch.  
5 Q. Can you give me any more detail on what your  
6 general understanding was?  
7 A. There was the highest traffic at approximately  
8 anywhere from 9:30 to about 10:45.  
9 Q. Okay.  
10 A. And it would tend to taper off after 10:45.  
11 Q. And you couldn't tell me if the higher traffic  
12 time was the time that the 7-year-olds, 8-year-olds,  
13 4-year-olds or 5-year-olds were there?  
14 A. No, sir.  
15 Q. Okay. But you thought that just before 11:00,  
16 it would taper off?  
17 A. Yes, sir.  
18 Q. Were you ever provided with a list of the  
19 summer campers who participated in the camp at any time  
20 that summer?  
21 A. No, sir.  
22 Q. Okay. And you obviously weren't provided a

23 list of the campers who did the camp during the week of  
24 July 17th.

25 A. No, sir.

0126

1 Q. Okay. I want to show you what has been marked  
2 as Exhibit 40 which is a document titled "Pool Rules."

3 Can you see that?

4 A. Not clearly.

5 Q. Do you see the title?

6 A. I see "Pool Rules."

7 Q. Okay. You see Sr LG #1 's name down  
8 there at the bottom?

9 A. Yes, sir.

10 Q. Let me just show you this exhibit and have you  
11 look at it real quick. Tell me if you've ever seen that  
12 document or a document similar to it. You may not have  
13 seen the one that Sr LG #1 signed. But have you ever seen  
14 a similar type document?

15 A. (Witness peruses document)

16 Q. You're familiar with that document?

17 A. I'm not familiar with this specific document.

18 Q. Okay. In 2006 were you required to sign a Pool  
19 Rules document like this?

20 A. I remember a Pool Rules document. I don't  
21 remember signing one.

22 Q. Okay. Do you remember anybody providing you  
23 with a copy of the pool rules in 2006?

24 A. Could you rephrase that?

25 Q. Yeah. Did anybody give you a copy of the pool  
0127

1 rules that you said you were familiar with in 2006?

2 A. No, sir.

3 Q. And you weren't required to sign a Pool Rules  
4 form in 2007 either?

5 A. No, sir.

6 Q. You didn't sign one in '06?

7 A. I don't remember.

8 Q. You don't remember signing one.

9 A. No.

10 Q. Okay. Could have? Is that what you're telling  
11 me? Or you just don't -- you don't specifically  
12 remember doing it?

13 A. I don't specifically remember signing a  
14 document.

15 Q. Do you think you may have?

16 A. I don't remember.



17 Q. Okay.  
18 THE VIDEOGRAPHER: Mr. Pletcher?  
19 MR. PLETCHER: Yes.  
20 THE VIDEOGRAPHER: Did you lose your mic?  
21 MR. PLETCHER: I did. I hate when that  
22 happens.  
23 THE WITNESS: Start over?  
24 MR. REESE: You are a glutton for  
25 punishment.

0128

1 Q. (By Mr. Pletcher) Well, were there any pool  
2 rules -- specific pool rules that you followed in 2007?  
3 A. Followed the rules that I learned in 2006.  
4 Q. Okay. And since we don't have a signed Pool  
5 Rules form for you and you can't tell us if Exhibit No.  
6 40 is the same form that you may have seen, can you  
7 generally describe what the rules were in '06?  
8 A. Could you rephrase that?  
9 Q. Yeah. What were the pool rules in 2006  
10 generally?  
11 A. Okay. Basics were no running, no horseplay,  
12 one person on the slide at a time, one person on the  
13 diving board at a time, no hang on the ropes in the lap  
14 pool, no tennis balls. There are more specific rules  
15 when it came to slide and diving board.  
16 Q. Right. Were all of these things written rules  
17 or were some of them verbal rules?  
18 A. Some were verbal.  
19 Q. Okay. Like the no tennis balls rule, that was  
20 a verbal rule, right?  
21 A. I actually believe that was written down.  
22 Q. Okay. No hanging on the rope, was that a  
23 written rule or a verbal rule?  
24 A. Would you rephrase?  
25 Q. Yeah. You said that there was a rule against

0129

1 hanging on the -- on the rope which I assume is the  
2 float rope that you're --  
3 A. Oh, I'm sorry.  
4 Q. -- that you were referring to.  
5 A. The lane ropes for the lap pool.  
6 Q. Okay. The lane ropes. Okay. Was that written  
7 or verbal?  
8 A. That was verbal.  
9 Q. Were all of the lifeguards given copies of this  
10 Pool Rules form, to your knowledge?

11 A. I don't know.

12 Q. Okay. Because you can't even tell us if you  
13 saw one in 2007, correct?

14 A. I don't believe I saw one in 2007.

15 Q. Right. Have you seen any other printed Pool  
16 Rule forms other than what's marked as Plaintiff's  
17 Exhibit 40?

18 A. I believe so.

19 Q. When?

20 A. In 2006.

21 Q. Do you think it could have been this that you  
22 saw, or do you think it was something different?

23 A. I don't know.

24 Q. Okay. Mr. LG Supv , you know from your lifeguard  
25 training course that you took with the American Red  
0130

1 Cross out at the Spring Branch Natatorium that  
2 regardless of whether or not there were camp counselors  
3 or parents in the pool with their children or summer  
4 campers, that this did not relieve your duty as a  
5 lifeguard on the stand to be responsible for patron  
6 surveillance and effective scanning, correct?

7 A. Correct.

8 Q. And you were in charge of not only the summer  
9 campers, the members and the guests who were using the  
10 pool, but also the counselors, correct?

11 A. No, sir.

12 Q. No? You weren't -- you weren't responsible for  
13 making certain that the camp counselors were safe while  
14 they were using the pool while they were there?

15 A. Yes, sir.

16 Q. Okay. That's what I thought. Did anybody ever  
17 orient you as either just a lifeguard, an assistant  
18 lifeguard or a head lifeguard on what the rules and  
19 regulations were that the camp counselors were to  
20 follow?

21 A. No, sir.

22 Q. You had never been provided with a written copy  
23 of the Houston Racquet Club Summer Camp Counselor Rules,  
24 Regulations and Requirements, were you?

25 A. No, sir.

0131

1 Q. Let me show you what we've marked as Exhibit  
2 No. 42. This document is titled "Houston Racquet Club  
3 Camp Counselor Rules, Regulations and Requirements  
4 Summer of 2007. Congratulations." You've never seen

5 this document, have you?  
6 A. No, sir.  
7 Q. It's a two-page document. You haven't seen  
8 either one of these pages, have you?  
9 A. No, sir.  
10 Q. Let me show you a couple things that are in  
11 here. Okay. On the second page of Exhibit No. 42 --  
12 and I'm going to zoom in on this so you can read it from  
13 your seat.

14 Do you see where it says, "Cooperate with  
15 lifeguards. Safety at the pool is their responsibility  
16 and yours. They have the ultimate say at the pool,"  
17 "they" the lifeguards? Do you see that?

18 A. Yes, sir.

19 Q. That was the procedure or the policy at the  
20 Houston Racquet Club, as it should have been, that the  
21 lifeguards at the family pool had the ultimate authority  
22 over not only the members and the guests and the kids  
23 who were using the pool but also the camp counselors,  
24 correct?

25 A. Yes, sir.

0132

1 Q. And here -- there's a paragraph that starts,  
2 "The absolute no-nos are as follows." And number two  
3 says, "Absolutely no horseplay will be tolerated with  
4 the children or other counselors." Did I read that  
5 correctly?

6 A. Yes, sir.

7 Q. Had you ever seen any of the camp counselors  
8 engaging in horseplay in 2007?

9 A. Yes, sir.

10 Q. Did you ever see any of the camp counselors  
11 engaging in horseplay on July 18th, 2007?

12 A. I don't know.

13 Q. Okay. Well, in 2007 when you did see the  
14 horseplay, what did you do?

15 A. Most of the times I would make sure that they  
16 weren't doing anything that was too dangerous. There  
17 were instances that I communicated my displeasure with  
18 it to some of the more senior people in the camp.

19 Q. And when you say "senior people," you mean the  
20 senior camp counselors?

21 A. No. The supervisors.

22 Q. Okay. Mr. Lamkin?

23 A. Not Mr. Lamkin.

24 Q. CD ?

25 A. CD .

0133

1 Q. Would you tell CD about it?

2 A. I believe so. And there was one other. I

3 don't know her name, though.

4 Q. Okay. Can you describe that other person that

5 you would report horseplay to amongst the camp

6 counselors?

7 A. She was Hispanic, younger.

8 Q. Okay.

9 A. But most likely out of college, so, mid-20s --

10 mid to late 20s.

11 Q. Thank you. But you don't remember her name?

12 A. No.

13 Q. You said that you don't know if you saw camp

14 counselors engaging in horseplay on July 18th. Is that

15 possible --

16 MR. REESE: Objection, form.

17 Q. (By Mr. Pletcher) -- that you did?

18 A. Yes.

19 Q. And did you ever tell Mr. Palmer about

20 horseplay amongst the camp counselors at any time in

21 2007?

22 A. We had discussed it. I do not know if it was

23 in 2006 or 2007.

24 Q. Okay. I'm going to ask you about the

25 discussion. But before I do, can you generally describe

0134

1 the type of activities the camp counselors might engage

2 in that you would consider to be horseplay?

3 A. They tended to stand on the fountain and the

4 kids would come up and they would toss them off.

5 Q. Okay. So, they would congregate in the

6 fountain area, which -- was this the fountain area on

7 Exhibit 14-D right here (indicating)?

8 A. Yes, sir.

9 Q. So, the camp counselors would congregate here.

10 And they would launch the little kids off into the pool?

11 A. Yes, sir.

12 Q. What other types of horseplay would you see in

13 2007 amongst the camp counselors?

14 A. Some of the kids would try and dunk the

15 counselors.

16 Q. So, they would play dunking games?

17 A. They would just come up and hang on the

18 counselors.

19 Q. Right.

20 A. And counselors were big enough to not get  
21 dunked.

22 Q. Okay. Can you think of any other type of  
23 activity that you would consider to be horseplay that  
24 you saw in 2007?

25 A. Could you restate that?

0135

1 Q. Sure. What other things did you see in 2007  
2 that you thought was horseplay other than the dunking or  
3 the kids climbing on the camp counselors and this  
4 congregation in the fountain area where the counselors  
5 would launch the kids out into the pool?

6 A. There were a few times where -- when the kids  
7 would try and dunk the counselors, they would toss them.

8 Q. Anything else?

9 A. That's it.

10 Q. Now, tell me about the discussion that you had  
11 with Mr. Palmer about this horseplay activity amongst  
12 the camp counselor. You don't remember if it was in  
13 '06 or '07, correct?

14 A. Candidly?

15 Q. Yes.

16 A. I said, "The counselors throwing the kids off  
17 pisses me off."

18 Q. Yes. And did that upset you because you knew  
19 that, number one, it was an activity that might lead to  
20 an accident, somebody being injured or even worse,  
21 drowning?

22 MR. REESE: Objection, form.

23 A. Could you restate that?

24 Q. (By Mr. Pletcher) Sure. Was it upsetting to  
25 you because you thought that the activity of them

0136

1 launching the kids from the fountain area may result in  
2 an injury or death?

3 MR. REESE: Objection, form.

4 A. One more time. Sorry.

5 Q. (By Mr. Pletcher) Why did it upset you,  
6 LG Supv ?

7 A. It upset me because as we defined horseplay,  
8 it's a dangerous activity.

9 Q. Okay.

10 A. And I preferred to be proactive in following  
11 the rules to prevent anything.

12 Q. Okay. That's why you reported it to Guillermo.

13 A. Yes, sir.

14 Q. Did you tell Mr. Lamkin about it?

15 A. No, sir.

16 Q. Did you tell anybody else about it? And "it"  
17 being this launching game and the dunking game.

18 A. No, sir.

19 Q. Did you ever talk to the camp counselors  
20 themselves? Let me rephrase. Let me ask you a  
21 different question.

22 When you had the discussion with  
23 Mr. Palmer and you told him about this dangerous  
24 activity, what did he say?

25 A. I don't remember.

0137

1 Q. Did he give you any possible remedies to the  
2 situation? How did he -- did he tell you how to respond  
3 when you saw it?

4 A. I don't remember.

5 Q. Okay. Did he give you any instruction to your  
6 knowledge on how to handle this situation?

7 A. I know at one point there was instruction to  
8 stop them, which I did.

9 Q. Right. You even did that before you told him  
10 about it, right? You did that on your own.

11 A. No, sir. I talked to him about it.

12 Q. And when you said, I talked to them about it,  
13 didn't you tell the counselors who were involved in this  
14 dangerous activity to stop it?

15 MR. REESE: Objection, form.

16 A. Yes.

17 Q. (By Mr. Pletcher) Okay. I want to show you  
18 Exhibit 43 which is the Houston Racquet Club Camp  
19 Counselor Agreement Form. This is attached to the  
20 Rules, Regulations and Requirements. It's something for  
21 the camp counselors to sign off on. And it says here,  
22 "I understand that there is a zero tolerance rule in  
23 effect and that I will be released from working for the  
24 Houston Racquet Club Summer Camp 2007 if I cannot abide  
25 by these rules." Okay?

0138

1 A. Okay.

2 Q. Did I read that right?

3 A. Yes, sir.

4 Q. First question is: Based upon your simple  
5 reading of the rules and regulations that we just went  
6 over, do you believe that if this was truly a zero

7 tolerance rule for horseplay, that somebody should have  
8 been terminated?

9 MR. REESE: Objection, form.

10 A. Could you restate that?

11 Q. (By Mr. Pletcher) Sure. Remember a few  
12 minutes ago we looked at the absolute no-nos?

13 A. Yes, sir.

14 Q. And it included horseplay, right?

15 A. (Witness nodding head)

16 Q. Correct?

17 A. Yes, sir.

18 Q. And you now know that this is -- the form says  
19 it's a zero tolerance rule, correct?

20 A. Yes, sir.

21 Q. Did Mr. Palmer or Mr. Lamkin or CD or anybody  
22 involved in the summer camp ever explain to you that,  
23 oh, if they're engaged in horseplay, it's zero  
24 tolerance; they ought to be terminated?

25 A. No, sir.

0139

1 Q. The pool rules that were in effect in 2006 and  
2 2007 that you described earlier, were those rules zero  
3 tolerance, to your knowledge?

4 A. No, sir.

5 Q. Did Mr. Palmer ever tell you that his personal  
6 rule was three strikes and you're out? Do you remember  
7 him telling you guys that -- you guys being the  
8 lifeguards?

9 A. No, sir. My personal policy was I would give  
10 them one warning, and then they would be kicked out.

11 Q. They'd be kicked out of the pool. And you're  
12 talking about the camp counselors now.

13 A. I'm talking about kids.

14 Q. Children. Right. But what I was talking about  
15 is Mr. Palmer's personal policy as far as the lifeguards  
16 are concerned. He testified that it was his rule that  
17 if you got three strikes, you were out. Did he ever  
18 tell you that if you messed up three times under his  
19 watch, that you were going to be gone? Did he ever tell  
20 you anything like that?

21 A. In terms of having -- of kicking out after  
22 repeated violations, yes.

23 Q. But he didn't tell you three strikes. He just  
24 said, if you have repeated violations, you're going to  
25 be out of here.

0140

1 A. Yes, sir.

2 Q. Okay. Did Mr. Palmer or Mr. Lamkin ever tell

3 you or the other lifeguards what the camp counselors'

4 responsibility was for supervising the summer campers,

5 the little kids --

6 A. No, sir.

7 Q. -- while they -- while they were in the pool?

8 A. No, sir.

9 Q. Did anybody at the Racquet Club explain to you

10 or the other guards what their role was, the camp

11 counselors' role when the summer campers -- these

12 children were in the pool?

13 A. To me, no.

14 Q. Did you know that on July 18th, 2007, the day

15 that John Pluchinsky drowned, that there were no

16 assignments of specific summer camper kids to specific

17 camp counselors?

18 A. No, sir.

19 Q. Did anybody tell you that there was a policy

20 that if a summer camper -- let me rephrase it.

21 Did anybody ever tell you that the camp

22 counselors were to keep the summer camper kids within an

23 arm's length of them?

24 A. No, sir.

25 Q. Did anybody ever tell you that the camp

0141

1 counselors, having no specific assigned summer campers,

2 were responsible for watching everyone?

3 A. I'm sorry. Could you repeat that?

4 Q. Did anybody tell you -- either Mr. Lamkin,

5 Mr. Palmer or anybody else at the Racquet Club, tell you

6 that the camp counselors were required to keep their

7 summer campers, the little kids, within an arm's length

8 of them when they were in the pool?

9 A. No, sir.

10 Q. Were you under the impression that the camp

11 counselors had specific assigned kids to them when they

12 were in the pool?

13 A. No, sir.

14 Q. You didn't have that feeling?

15 A. In terms of groups?

16 Q. Yeah. Let's say -- who did you know who was a

17 camp counselor that summer?

18 A. I only knew Supv CC #1 .

19 Q. Okay. Let's say Supv CC #1 was in the pool

20 with three kids. When he got to the pool, he jumped in



21 and he's got three kids with him. Were you under the  
22 impression that those three kids were his kids while  
23 they were in the pool and that he was to be watching  
24 them at all times?

25 A. No. I thought that it was a group. So, this  
0142

1 specific group of counselors was assigned to this group  
2 of -- this age group of children.

3 Q. Okay. Okay. So, if the 8-year-olds were in  
4 the pool with their camp counselors, it was your  
5 understanding that all the counselors were responsible  
6 for watching all of the 8-year-olds.

7 A. Yes, sir.

8 Q. Now, do you agree that as a trained lifeguard  
9 having spent two summers on the stand at the Houston  
10 Racquet Club, that there is a difference between the  
11 swimming ability of an 8-year-old as compared to a  
12 4-year-old, just in general?

13 A. In general?

14 Q. Yeah.

15 A. An 8-year-old is probably better.

16 Q. Absolutely. And do you agree that as far as  
17 the 4-year-olds are concerned, that it would be a pretty  
18 good idea to give specific assignments, specifically  
19 assign "X" number of 4-year-olds to "X" camp counselor?

20 MR. REESE: Objection, form.

21 A. Would you rephrase that real quick?

22 Q. (By Mr. Pletcher) Sure. I'm just asking you  
23 if you believe based upon your experience lifeguarding  
24 that it would be safer for there to be specific  
25 assignments of 4-year-olds to specific camp counselors.

0143

1 MR. REESE: Same objection.

2 THE WITNESS: What's that one? Sorry.

3 MR. REESE: It just means he's asking the  
4 question a little bit different way, and I just said  
5 "same objection."

6 THE WITNESS: Oh, okay.

7 A. I don't know.

8 Q. (By Mr. Pletcher) You don't? Do you agree  
9 that if there are no assignments as far as the  
10 4-year-old groups are concerned, that there is risk that  
11 one of the 4-year-olds may wander off outside of the  
12 watchful eye of a camp counselor and that that might  
13 create a problem?

14 A. Sorry. Would you rephrase that?

15 MR. PLETCHER: Can you read it back?  
16 (The requested portion of the record was  
17 read)  
18 A. I just need clarification on the first part.  
19 Q. (By Mr. Pletcher) Huh?  
20 A. I need clarification.  
21 Q. If there are no assignments of specific  
22 4-year-olds to a specific camp counselor, doesn't that  
23 create a risk that one of the 4-year-olds may wander  
24 outside of the watchful eye of the camp counselor who's  
25 supposed to be watching them?

0144

1 A. I don't know what their system...  
2 Q. Okay. I want to now turn to July 18th, 2007.  
3 Okay?  
4 A. Yes, sir.  
5 Q. And I'll show you what's been marked as  
6 Exhibit -- Plaintiff's Exhibit 5-B which is your  
7 supervisor's investigation of accident form that you  
8 filled out. Is that your name?  
9 A. Yes, sir.  
10 Q. Is that your handwriting?  
11 A. Yes, sir.  
12 Q. Telephone number?  
13 A. That last number's cut off.  
14 Q. Right. 806 --  
15 A. Zero.  
16 Q. Zero. And date and time of accident 1/18 -- or  
17 7/18/07, 11:10 a.m.  
18 A. Yes, sir.  
19 Q. Did you fill that in, "Description of accident,  
20 drowning at pool. Did you see the accident? No."  
21 A. No.  
22 Q. And then down here at the bottom it says, "See  
23 over."  
24 A. Yes, sir.  
25 Q. And then I believe the next page is your

0145

1 handwritten statement; is that correct?  
2 A. Yes, sir.  
3 Q. Do you remember when you filled this out?  
4 A. I believe that was same day.  
5 Q. Do you recall where you were when you filled it  
6 out?  
7 A. I was in the lifeguard office.  
8 Q. And were you by yourself or were you with other

9 people?

10 A. I don't remember.

11 Q. Do you recall who asked you to fill this out?

12 A. No. I remember being advised it would be a  
13 good idea.

14 Q. And did Mr. Palmer tell you that or Mr. Lamkin?

15 A. I don't know.

16 Q. And you don't recall who, if anybody, may have  
17 been in the lifeguard office with you when you filled  
18 this out, correct?

19 A. No, sir.

20 Q. You don't have such memory?

21 A. Correct.

22 Q. Down here at the bottom of your statement, you  
23 put a little time line. Says "8:30 a.m. arrived at  
24 pool."

25 A. Yes, sir.

0146

1 Q. "9:30 a.m. opened pools to camp kids, four on  
2 stand. 10:30 a.m. switched three on stand, two resort,  
3 one lap pool. 11-11:05 a.m. went with three guards to  
4 get lunch. 11:10, time of accident."

5 A. Yes, sir.

6 Q. Did I read that correctly?

7 A. You did.

8 Q. Let's -- I want you to kind of walk me through  
9 your day up until the time you went to lunch. Okay?

10 A. Okay.

11 Q. What do you remember doing at the club when you  
12 first arrived that day, if anything?

13 A. I can walk you through a typical day. Is  
14 that -- I'm not going to have specific memories from --

15 Q. Okay. So, you don't have a specific  
16 recollection of what you did that morning when you  
17 arrived.

18 A. I know my morning tradition.

19 Q. And what was your practice?

20 A. I would arrive at about 8:30. I was usually  
21 the first lifeguard to get there. And I would start off  
22 by opening up the back gate, making sure that all the  
23 pumps are fine, they're at the right pressure,  
24 chlorine's good.

25 Q. Sure.

0147

1 A. I would take out lifeguard chairs from the  
2 back. By about that time, other lifeguards were showing

3 up.

4 Q. Okay.

5 A. So, we'd get the lifeguard chairs out. You  
6 would be taking the buoys out of the lifeguard office as  
7 well as the first aid kit. Then we would -- let's see.  
8 We have backboards out. I would usually check to see if  
9 the pools were dirty.

10 Q. Right. If they were, you would clean them or  
11 have somebody clean them?

12 A. Yeah. We would get out all the equipment.

13 Q. And then the other lifeguards in the meantime  
14 would be arriving.

15 A. They would arrive by 9:00 o'clock.

16 Q. Ultimately, y'all would work out your  
17 rotations.

18 A. Yes, sir.

19 Q. Who was going to be where, who was going to be  
20 paired with whom, correct?

21 A. Yes, sir.

22 Q. And then -- and then you would typically open  
23 the pool up around 9:30.

24 A. Between 9:15 and 9:30.

25 Q. Okay. And on this day, the pools were opened  
0148

1 at 9:30. There were two lifeguards at the resort pool  
2 or the family pool and two at the lap pool --

3 A. Yes, sir.

4 Q. -- correct? Now, you've mentioned that you got  
5 the lifeguard chairs out. How many chairs did you  
6 typically store at night?

7 A. There were two chairs. You can -- there were  
8 actual chairs. There's also two stands that would stay.  
9 There's one next to the slide and one next to the diving  
10 board. Those stayed stationary. We would move the  
11 lifeguard chairs located under the two umbrellas to the  
12 gated area at night.

13 Q. Okay. I'm looking for my pool diagram I had  
14 you write on.

15 MR. PLETCHER: How did that disappear,  
16 guys?

17 (Discussion off the record for less than  
18 one minute)

19 MR. PLETCHER: Let's take a break so I can  
20 find this.

21 THE VIDEOGRAPHER: The time is 3:39.  
22 We're off the record.

23 (Off the record from 3:39 to 3:42)  
24 THE VIDEOGRAPHER: The time is 3:42.  
25 We're back on the record.  
0149  
1 MR. REESE: Get your mic on.  
2 Q. (By Mr. Pletcher) LG Supv , you had described  
3 getting two tall stands out of the storage area each  
4 morning?  
5 A. They were wooden chairs approximately this high  
6 (indicating).  
7 Q. Okay. Like, 4 feet?  
8 A. 4-foot high. Sorry.  
9 Q. And they had wheels on them where you could  
10 roll them?  
11 A. No, sir.  
12 Q. Okay. Now, those are two movable chairs?  
13 A. You can pick them up.  
14 Q. Right. And are they -- where did you say they  
15 were stationed?  
16 A. That was where 15 y/o LG #1 would be stationed, is one  
17 of them. And then there's another one on the lap pool.  
18 Q. Okay. And then, of course, this is a permanent  
19 chair or a chair that stays there permanently?  
20 A. Yes.  
21 Q. And it's a taller chair, correct?  
22 A. Yes, sir.  
23 Q. And it has wheels on it.  
24 A. There are wheels on the back of it.  
25 Q. So, there's one large stand here and also one  
0150  
1 large stand at the lap pool, which is over here  
2 (indicating). Down here (indicating).  
3 A. Yes, sir.  
4 Q. Down that way.  
5 A. Wait. No. I'm sorry. It's that way  
6 (indicating).  
7 Q. That way, yes. Okay. To the south. That's  
8 right.  
9 A. Yes, sir.  
10 Q. The lap pool is this way (indicating). Now,  
11 the chairs that you'd get out each day went under these  
12 umbrellas, correct?  
13 A. Yes, sir.  
14 Q. In 2007, do you recall whether that chair was  
15 ever put under this umbrella?  
16 A. It was never put under that umbrella.

17 Q. You never put it under that umbrella?  
18 A. That wooden chair is never put under that  
19 umbrella.  
20 Q. Neither before or after John's drowning?  
21 A. No, sir.  
22 Q. Did anybody either before or after John's  
23 drowning use a different chair under this umbrella --  
24 A. Yes, sir.  
25 Q. -- and sit there as a lifeguard?

0151  
1 A. Yes, sir.  
2 Q. Okay. And was that done both before and after  
3 his drowning?  
4 A. Before, we had never seen a specific use for a  
5 chair positioned right there.  
6 Q. That wasn't my question. Before John's  
7 drowning, did anybody sit under this umbrella -- any  
8 lifeguards sit under this umbrella in a different chair?  
9 A. No, sir.  
10 Q. Not to your knowledge?  
11 A. No, sir.  
12 Q. And what sort of chair would be used under this  
13 umbrella?  
14 A. We had a white chair that had a guard sign on  
15 the -- right here (indicating) that we would sit in.  
16 Q. And from what you're telling me, that was only  
17 used after John's drowning, correct?  
18 A. Yes, sir.  
19 Q. If you don't mind, go ahead and write in red  
20 ink approximately where that chair was stationed after  
21 John's drowning. And if you don't mind, go ahead and  
22 give it a little --  
23 A. Square.  
24 Q. -- square and an "X" and then --  
25 A. Initials?

0152

1 Q. -- initial. And then out to the side put  
2 "white movable chair," I guess, "movable LG chair."  
3 A. (Witness complies)  
4 Q. Was that chair purchased after John's drowning?  
5 A. No, sir.  
6 Q. So, you had that chair available prior to his  
7 drowning.  
8 A. Yes, sir.  
9 Q. Was that chair that had -- what did it have? A  
10 lifeguard sign on the back of it?

11 A. It just said "guard" in blue.  
12 Q. "Guard" in blue?  
13 A. Yes, sir.  
14 Q. Did that white chair with "guard" in blue, was  
15 it ever used any other place around the pool prior to  
16 John's drowning?  
17 A. No, sir.  
18 Q. So, do you know who purchased that white chair  
19 that we're talking about?  
20 A. No, sir.  
21 Q. Do you know when it was purchased?  
22 A. No, sir.  
23 Q. But you do know that it was stored in the  
24 storage area with the two movable chairs, correct, prior  
25 to John's drowning?

0153

1 A. It was in the guard office.  
2 Q. Okay. How about the 24-foot movable chairs?  
3 Where were they kept?  
4 A. They were kept -- you would go straight east  
5 on -- there's a --  
6 Q. (Indicating)  
7 A. Yes, sir.  
8 Q. A storage area up here (indicating)?  
9 A. You can see the stairs.  
10 Q. Here (indicating)?  
11 A. They would be kept right at the top of the  
12 stairs right there.  
13 Q. Is it like in this area (indicating)?  
14 A. Up --  
15 Q. Or here (indicating)?  
16 A. Sorry. South or down.  
17 Q. There (indicating).  
18 A. Yeah, in there.  
19 Q. Like here (indicating)there's a storage room?  
20 A. No. There's just a flat -- behind a locked  
21 gate.  
22 Q. Okay. Is it fenced in?  
23 A. Yes, sir.  
24 Q. And I'm just going to write "storage." Now,  
25 you said that the white guard chair that was in the --

0154

1 A. Lifeguard office.  
2 Q. -- lifeguard office was never used at the  
3 family pool prior to John's drowning --  
4 A. Correct.

5 Q. -- correct? But it was set up here after his  
6 drowning.  
7 A. Yes, sir.  
8 Q. And do you know who set it up?  
9 A. It became part of the morning routine.  
10 Q. Who instructed you to put the chair there?  
11 A. I don't know.  
12 Q. Do you know who originally set it there?  
13 A. No, sir.  
14 Q. Do you know why?  
15 A. It was meant as another spot if there were too  
16 many people in the pool.  
17 Q. And isn't it true that after John's drowning,  
18 that y'all were required to have three lifeguards at the  
19 family pool?  
20 A. No, sir.  
21 Q. No? Is it true that after John's drowning,  
22 that this lifeguard chair was always used in this  
23 position?  
24 A. No, sir. I would -- I would do a roaming guard  
25 if I decided that we needed that position filled.  
0155  
1 Q. More coverage?  
2 A. I would actually be in the pool.  
3 Q. Okay.  
4 A. Or I would walk around.  
5 Q. So, after John's drowning, we had this chair  
6 there (indicating).  
7 A. Yes, sir.  
8 Q. Was 15 y/o LG #1 's chair still there?  
9 A. Yes, sir.  
10 Q. And then this chair was there.  
11 A. Yes, sir.  
12 Q. Well, that's three chairs. Was there always a  
13 lifeguard in all three of them after his drowning?  
14 A. No, sir.  
15 Q. Did you ever store this chair?  
16 A. It would be out during the day.  
17 Q. So, yes, you'd store it and you'd bring it back  
18 out each day.  
19 A. Yes, sir.  
20 Q. And how did you determine whether to have a  
21 lifeguard sit in this chair or this chair (indicating)?  
22 A. The lifeguards in their regular rotation would  
23 always sit at the previous established chair -- two  
24 chairs.



25 Q. Okay. And this is after John's drowning.

0156

1 A. Yes, sir.

2 Q. Okay. So, why have this chair there?

3 A. If there -- like we said earlier, if we felt  
4 that there were enough people in the guard -- or in the  
5 pool to necessitate a third guard, we would put a guard  
6 there.

7 Q. Okay. And who would --

8 A. But they had the option to roam.

9 Q. Who had the authority to make that decision?

10 A. I did, the -- any supervisors, the guards if  
11 they felt uncomfortable.

12 Q. And, again, based upon your earlier testimony,  
13 this was based upon your comfort level and whether or  
14 not there was a necessity for a third guard.

15 A. Yes, sir.

16 Q. And it wasn't based upon a specific number of  
17 people in the pool, correct?

18 A. Yes, sir.

19 Q. Okay. And you're sure that nobody sat under  
20 this umbrella at any time prior to John's death. Is it  
21 possible?

22 A. Yes, sir. I --

23 Q. You just don't have a specific recollection  
24 sitting here today.

25 A. I know there was one time where -- if the moms  
0157

1 would rearrange the chairs, there was one time that a  
2 chair was there just by chance. And I did sit in that,  
3 if that counts.

4 Q. Okay. So, you, yourself, sat under that  
5 umbrella from time to time prior to his death.

6 A. Yes, sir.

7 Q. Okay. Why would the mothers or parents  
8 rearrange chairs?

9 A. It was usually to get under the shade.

10 Q. But you said that the mothers would rearrange  
11 or put the chairs there.

12 A. The people around the pool would rearrange the  
13 chairs however they wanted.

14 Q. Okay. But it wasn't this white guard chair  
15 that had "guard" written in blue on it.

16 A. No, sir.

17 Q. It was a different chair.

18 A. That was put there after the incident.

19 Q. Okay. Now, during the summer of 2007, was that  
20 white chair with blue lettering with "guard" on the back  
21 of it, was it in the office that entire summer?

22 A. I don't know.

23 Q. Do you remember it being there before his  
24 death, John's death?

25 A. I don't know.

0158

1 Q. Okay. So, you told us about what you did that  
2 morning, what your routine was anyway.

3 A. Yes, sir.

4 Q. And we talked about you opening the pools at  
5 9:30. And then at 10:30 you switched rotation to have  
6 two guards at the resort pool and one at the lap pool,  
7 correct?

8 A. Yes, sir.

9 Q. Was it a situation where there weren't many  
10 swimmers in the lap pool?

11 A. There were no swimmers in the lap pool.

12 Q. There were zero? That was at 10:30?

13 A. Yes, sir, to the best of my recollection.

14 Q. And do you recall who other than LP LG was  
15 stationed there prior to 10:30?

16 A. No, sir.

17 Q. And then at 11:00 you went with the three  
18 guards to get lunch. Can you tell me what you remember  
19 about what you were doing just prior to leaving for  
20 lunch? And just walk me through that point in time  
21 until you got your lunch and made it to the pavilion.

22 A. I would say approaching 11:00, I would make  
23 sure that the next two guards were about to get up on  
24 stand. I would instruct them how they're rotation was  
25 at that point since it was different than our regular

0159

1 rotation. And then the people that were off duty went  
2 up to lunch with me.

3 Q. Okay. Do you specifically remember talking to  
4 15 y/o LG #1 and 15 y/o LG #2 before you went to lunch or was -- were  
5 you just describing your general practice?

6 A. That's general practice.

7 Q. You have no specific recollection of talking to  
8 15 y/o LG #2 and 15 y/o LG #1 before you went to lunch.

9 A. No, sir.

10 Q. But you would have been at the resort pool  
11 before you went to lunch, correct?

12 A. I would have been there at some point.

13 Q. And you don't have a recollection of Mr. Palmer  
14 being there, correct?

15 A. I don't remember.

16 Q. You don't have a recollection of any of the  
17 guards -- specific guards who may or may not have been  
18 there, correct?

19 A. Could you repeat that?

20 Q. Sure. You don't have a specific recollection  
21 of what guards were at the resort pool before you left  
22 for lunch.

23 A. At 11:00 a.m., 15 y/o LG #2 and 15 y/o LG #1 were there.

24 Q. Okay. Do you have a specific recollection of  
25 seeing them?

0160

1 A. Yes, sir.

2 Q. Okay. And you don't know who was -- who were  
3 in the chairs before 15 y/o LG #1 and 15 y/o LG #2 at the resort pool?

4 A. No, sir.

5 Q. Could it have been any of the three individuals  
6 who took lunch with you at 11:00?

7 A. According to our rotation, it would have been  
8 LP LG and somebody else.

9 Q. Because LP LG went to the lap pool, correct?

10 A. Yes, sir.

11 Q. Now, looking at this map of the resort pool,  
12 the clubhouse is back over here (indicating)?

13 A. Yes, sir.

14 Q. Okay. And the pavilion area, is it up here  
15 (indicating)?

16 A. No, sir. Other corner.

17 Q. Down here (indicating)?

18 A. Yes, sir.

19 Q. Okay. So, the pavilion -- is this the pavilion  
20 area where this umbrella is?

21 A. No. It would be further south.

22 Q. Further that way (indicating).

23 A. Yes, sir.

24 Q. Okay.

25 A. You cut off at about the stairs.

0161

1 Q. Right. So, you walk over to the club. You got  
2 to walk upstairs into the dining area?

3 A. Yes, sir.

4 Q. And you got your lunch. Who was with you? Do  
5 you remember anybody being with you?

6 A. The three other guards.

7 Q. Okay. So, all three -- all four of you walk up  
8 the stairs to the kitchen or the dining area, get your  
9 lunch. And then you come back down and go to the  
10 pavilion area with your lunch, correct?

11 A. Yes, sir.

12 Q. And would you have walked by the resort pool on  
13 your way to the pavilion? You had to, right?

14 A. Yes, sir.

15 Q. Okay. And is this the fence area here  
16 (indicating)? Do you see the little fence? Is there a  
17 fence around this pool?

18 A. Could I see it?

19 Q. Sure.

20 A. There is a fence.

21 Q. Right. Down at the bottom there?

22 A. That would be the approximate position of the  
23 fence.

24 Q. Okay. And you would have walked by the resort  
25 pool, but you would have been outside the fence?

0162

1 A. Yes, sir.

2 Q. You don't remember seeing Mr. Palmer there,  
3 correct?

4 A. No.

5 Q. And what did you do once you got to the  
6 pavilion?

7 A. We sat down and began to eat.

8 Q. Okay. And tell me what happened next.

9 A. We were at one of the tables eating. I heard  
10 three whistles that caught my attention. And less than  
11 a second later, I heard a mom scream. So, we all ran  
12 down the stairs. As I hit the bottom of the stairs, I  
13 could kind of see a commotion in the distance. I wasn't  
14 exactly sure what was going on. But one of the moms or  
15 somebody, I'm not sure, who yelled "Call 9-1-1" --

16 Q. Okay.

17 A. -- "a kid drowned." So, I ran back up the  
18 stairs and through to call from the office line to make  
19 sure that one of the lines got through.

20 Q. The lifeguard office?

21 A. Yes, sir.

22 Q. Okay. That was upstairs?

23 A. Not necessarily upstairs. Up a few stairs.

24 Q. Okay. Is it on the same level as the pavilion?

25 A. Yes, sir.

0163

1 Q. Okay. And is it close to the pavilion?  
 2 A. Yes, sir.  
 3 Q. Are they adjoining, right next to each other?  
 4 A. It's -- if you exited the building, it's  
 5 20 yards down.  
 6 Q. Okay.  
 7 A. So, one of the other lifeguards was running  
 8 that way with me. And when he reached the office, I  
 9 realized that there was a higher level breathing mask in  
 10 the cupboard in the lifeguard office. So, I ran in. I  
 11 grabbed that and ran back downstairs.  
 12 Q. Okay. And did you -- you called 9-1-1 while  
 13 you were up there?  
 14 A. The other guard was in the process of calling  
 15 the 9-1-1.  
 16 Q. But did you ever call 9-1-1?  
 17 A. Me, personally?  
 18 Q. Yes.  
 19 A. No.  
 20 Q. Did you call Memorial Village Police  
 21 Department?  
 22 A. No, sir.  
 23 Q. Okay. Who was the other person who called  
 24 9-1-1?  
 25 A. Sr LG #2 was in the lifeguard office with  
 0164  
 1 me. And I heard him on the phone with 9-1-1.  
 2 Q. Okay. So, you grabbed another mask while you  
 3 were there.  
 4 A. Yes, sir.  
 5 Q. Why did you grab the other mask again?  
 6 A. I knew there was a higher level mask than the  
 7 one in the first aid kit.  
 8 Q. And what do you mean by a higher level mask?  
 9 A. You have certain levels of protection in your  
 10 mask. I'm not sure what level the first one -- or the  
 11 one in the first aid kit was.  
 12 Q. Yes.  
 13 A. But this one was the one that we had trained  
 14 with in our CPR course -- or at least my CPR course with  
 15 the Red Cross.  
 16 Q. Right.  
 17 A. And I was comfortable with it.  
 18 Q. Right.  
 19 A. So, I grabbed it.  
 20 Q. Where is the first aid kit kept?

21 A. It was kept behind -- or at the front desk  
22 where people walked in to the sign-up. You can see it  
23 on there. I can mark it if you want.

24 Q. Yeah, that would be great if you'd just put  
25 "first aid kit."

0165

1 A. (Witness complies) It's a little bit off than  
2 that.

3 Q. That's fine. You can just approximate it. So,  
4 you've marked on the southwest corner -- that's where  
5 the sign-in --

6 A. Desk.

7 Q. -- station was --

8 A. Yes, sir.

9 Q. -- for people to sign in when they came to the  
10 pool?

11 A. That's the main gate.

12 Q. And that's where the first aid kit was kept.

13 A. Yes, sir.

14 Q. It had a different CPR breathing mask --

15 A. Yes, sir.

16 Q. -- than the one that was up in the lifeguard  
17 office?

18 A. Yes, sir.

19 Q. And you had told us earlier that there was a  
20 AED in the lifeguard office?

21 A. No, sir.

22 Q. Oh, it was in the fitness center.

23 A. Yes, sir.

24 Q. Okay. And you said that it was stored where?

25 A. I believe it was behind the fitness desk.

0166

1 Q. Mr. Lamkin, of course, was on the scene after  
2 you arrived, correct?

3 A. Yes, sir.

4 Q. In other words, you got to John. Supv CC #1  
5 was in the process of giving CPR. You took over the  
6 breathing.

7 A. Yes, sir.

8 Q. You had this other mask in your hand, correct?

9 A. Yes, sir.

10 Q. And then Mr. Lamkin arrived.

11 A. Yes, sir.

12 Q. He testified, Mr. Lamkin, that no one grabbed  
13 the AED device. And I guess all I really need to know  
14 from you is that on July 18th, 2007, you knew from your

15 lifeguard training and experience the importance of that  
16 life-saving device, did you not?

17 A. Could you rephrase that?

18 Q. Sure. Mr. Lamkin testified that he didn't get  
19 the AED and nobody else got the AED device.

20 A. Yes, sir.

21 Q. Did you know on that day the importance of an  
22 AED device?

23 A. No, sir. I don't know the importance of it.

24 Q. You didn't on that day, correct?

25 A. No, sir.

0167

1 Q. No, you did not? Sorry.

2 A. I -- I'm sorry. Would you repeat that real  
3 quick?

4 Q. Sure. You did not know the importance of an  
5 AED on July 18th, 2007?

6 A. I know it's considered a life-saving device.

7 Q. And did you know that on July 18th?

8 A. Yes, sir.

9 Q. Of course after July 18th, you went through a  
10 CPR training course with Mr. Lamkin and you got further  
11 training on the AED specifically?

12 A. Yes, sir.

13 Q. When you went through that training with him,  
14 was there information about that device that you didn't  
15 already know about?

16 A. I learned that it took you through the steps.

17 Q. And I believe that you testified that you knew  
18 of two AEDs at the Racquet Club?

19 A. Yes, sir.

20 Q. And you knew specifically where the one was in  
21 the fitness center, and you also knew that one was in  
22 the clubhouse. But did you know exactly where it was in  
23 the clubhouse?

24 A. No, sir.

25 Q. Did you know that there was a third AED device

0168

1 on the premises?

2 A. No, sir.

3 Q. You know, I don't think -- I just came across  
4 some -- did you ever see during your two years of being  
5 a lifeguard at the Houston Racquet Club a written  
6 emergency action plan at the Racquet Club?

7 A. No, sir.

8 MR. REESE: You asked it.

9 MR. PLETCHER: Okay.  
10 Q. (By Mr. Pletcher) Sir, you agree that the last  
11 thing that a lifeguard who is responding to an emergency  
12 wants to be is frantic or panicked?  
13 A. Yes, sir.  
14 Q. Because if you're frantic or panicked, that  
15 might affect your ability to respond in an appropriate  
16 manner to the emergency, correct?  
17 A. Depends on the person.  
18 Q. Well, if the person is panicked or frantic,  
19 they probably are not going to be able to respond  
20 effectively, correct?  
21 MR. REESE: Objection, calls -- form.  
22 A. Would you rephrase that?  
23 Q. (By Mr. Pletcher) Sure. Let's just use you as  
24 an example.  
25 A. Okay.  
0169  
1 Q. Let's say that somebody is on the slide and for  
2 whatever reason they hit their head going down the slide  
3 and they're bleeding.  
4 A. Yes, sir.  
5 Q. If you were the person responding to the  
6 emergency and you became panicked or frantic, do you  
7 think that you would be in a position to effectively  
8 respond to that emergency situation?  
9 A. I know I wouldn't be.  
10 Q. Yeah. But if -- I want you to assume that you  
11 were panicked or frantic. That's the last thing that  
12 you would want to be, correct?  
13 A. Assuming I was panicked and frantic, I would  
14 not as effectively be able to --  
15 Q. -- respond.  
16 A. Yes, sir.  
17 Q. Okay. I think what I would like you to do is  
18 just read into the record your statement -- okay? --  
19 just from the top down to the time line.  
20 A. The entire thing?  
21 Q. Yes.  
22 A. "I was supervisor for the shift. I was eating  
23 lunch in the pavilion and some people ran up asking  
24 frantically for help. We ran down to the pool  
25 immediately and I then went to the office to call 9-1-1.  
0170  
1 One of the other guards reached the office to call for  
2 me. So, I grabbed a CPR mask and ran back down. I



3 handed the mask to Supv CC #1 and checked the kid's pulse.  
4 There was no pulse or breathing. After about a minute,  
5 Supv CC #1 asked me to take over breathing with CPR. David  
6 arrived after another minute and did compressions while  
7 I did the breaths. He threw up after every second  
8 cycle. We put him on his side, cleared his mouth each  
9 time. The paramedics arrived and we let them take it  
10 from there."

11 Q. Thank you. Can I have that back?

12 A. Yes, sir.

13 Q. You just read your statement, which is  
14 Plaintiff's Exhibit 5-B. You stated that there was no  
15 pulse or breathing.

16 A. Yes, sir.

17 Q. That's the first thing that you checked when  
18 you got to John, correct?

19 A. As I arrived. And I automatically grabbed his  
20 arm.

21 Q. You felt no pulse.

22 A. There was nothing. I leaned over his face to  
23 try and hear or feel anything, and there was nothing.

24 Q. So, you put your ear to his mouth, correct?

25 A. Yes, sir.

0171

1 Q. As you were trained to do by the Red Cross --

2 A. Yes, sir.

3 Q. -- or in your Red Cross course. Was Supv CC #1  
4 actually doing compressions and breathing when you  
5 arrived?

6 A. I do not know. I --

7 Q. You don't have a recollection?

8 A. No, sir.

9 Q. But the first thing that you do remember is  
10 that you handed him the breathing mask that you got up  
11 in the lifeguard office, correct?

12 A. Yes, sir.

13 Q. Did he put it on his mouth?

14 A. No.

15 Q. Okay. Did you ever check John's pulse or  
16 breathing after this initial arrival?

17 A. No, sir.

18 Q. Okay. To your knowledge, was there ever a  
19 pulse or breathing?

20 A. No, sir.

21 Q. There was not?

22 A. You can tell that there wasn't.

23 Q. And you state that David arrived after another  
 24 minute. Let me back up.  
 25 "After about a minute, Supv CC #1 asked me to  
 0172  
 1 take over breathing with CPR," what you did. You put  
 2 the mask on John's mouth, correct?  
 3 A. Yes, sir.  
 4 Q. "And then David arrived after another minute  
 5 and did compressions while I did breaths." Now, you  
 6 state that he threw up after every second cycle. What  
 7 was the cycle that you and Mr. Lamkin were using?  
 8 A. Two and 30.  
 9 Q. Two breaths to every 30 compressions?  
 10 A. Yes, sir.  
 11 Q. And so, after two of those cycles, he threw up?  
 12 A. I do not know if it was every two cycles but  
 13 approximately on average.  
 14 Q. Did John throw up more than once while you were  
 15 present?  
 16 A. Yes, sir. And every time we put him in rescue  
 17 position and made sure his mouth was clear and he wasn't  
 18 aspirating.  
 19 Q. Right. I want to show you what's been marked  
 20 as Plaintiff's Exhibit 5-C which is Supv CC #1 's  
 21 statement. Have you ever seen this?  
 22 A. No, sir.  
 23 Q. I just want to ask you a couple of questions  
 24 about it. He states, "When the lifeguard asked about  
 25 the boy and 4 y/o B-CC #3 picked him up, I rushed over and laid  
 0173  
 1 his body on the ground. Right then vomit came out of  
 2 his mouth. I then began to push his stomach and more  
 3 and more vomit came up." Do you recall ever seeing  
 4 Supv CC #1 do this?  
 5 A. I was not present for that.  
 6 Q. Mr. Lamkin testified that he was hoping that  
 7 John had an airway obstruction. And so, the first thing  
 8 that he did when he got there was do an abdominal thrust  
 9 or some sort of Heimlich procedure. Do you remember him  
 10 doing that?  
 11 A. I don't remember. It was so fast.  
 12 Q. Right. Had you ever provided CPR to anybody  
 13 prior to this?  
 14 A. No, sir.  
 15 Q. Had you ever watched anybody provide CPR to an  
 16 actual person in an emergency?

17 A. No, sir.  
18 Q. Do you recall ever looking into John's airway?  
19 Did you ever physically look into his mouth?  
20 A. His jaw was pretty hard shut. It was difficult  
21 to even get a pinkie in there.  
22 Q. Right.  
23 A. I did sweep to make sure there was nothing in  
24 there. And before I began CPR, I did do two rescue  
25 breaths to make sure I was getting at least some air  
0174  
1 into his lungs.  
2 Q. Okay. And do you recall his chest rising?  
3 A. Yes, sir.  
4 Q. Do you recall whether or not his stomach was  
5 distended or full looking?  
6 A. Yes, sir.  
7 Q. You do remember that?  
8 A. It was.  
9 Q. Okay. And Mr. Lamkin testified about that  
10 himself, and he generally described it. Was it  
11 extremely distended, or how would you best describe how  
12 it looked?  
13 A. I don't know what he looked like before.  
14 Q. When you were there. I want to know what you  
15 saw.  
16 A. He was laying there, and his stomach was raised  
17 farther than his chest.  
18 Q. So, it was higher than his chest?  
19 A. Yes, sir.  
20 Q. Okay. Do you recall the compressions that  
21 David gave him? Do you remember where he had his hands?  
22 A. He had them right here (indicating).  
23 Q. Right at the sternum?  
24 A. Yes, sir.  
25 Q. Okay. And the sternum is where your ribcages  
0175  
1 come up, what we call -- what we used to call the solar  
2 plexus?  
3 A. I don't know. But, yeah, the sternum.  
4 Q. Okay.  
5 A. And one handed.  
6 Q. He did it one handed rather than two?  
7 A. Yes, sir.  
8 Q. Did he -- did John throw up more than twice, to  
9 your knowledge, or can you tell me that?  
10 A. I don't know.

11 Q. Do you recall Mr. Lamkin ever voicing his  
12 concern that John may have an airway obstruction?  
13 A. No, sir. I was oblivious almost to anything  
14 people were saying besides David.  
15 Q. Do you recall anybody when you were there at  
16 the scene with John ever saying, where's the AED, or, go  
17 get the AED? Do you have a recollection of that at all?  
18 A. No, sir.  
19 Q. And Mr. Lamkin testified that John when he  
20 arrived was under this umbrella?  
21 A. Yes, sir.  
22 Q. Is that what you recall, too?  
23 A. Yes, sir.  
24 Q. And that Supv CC #1 was there and 4 y/o B-CC #1  
25 was there. Do you know 4 y/o B-CC #1 ?  
0176  
1 A. No, sir.  
2 Q. Okay. Was there a brunette teenager with Supv CC #1  
3 when you arrived?  
4 A. I don't know. I just remember Supv CC #1 .  
5 Q. Do you remember anybody being in the water?  
6 A. No, sir.  
7 Q. Who all do you recall being around the scene as  
8 you arrived?  
9 A. I remember Supv CC #1 with the child and that's it.  
10 I remember halfway through Sr LG #1 saying that the  
11 paramedics would be there in three minutes.  
12 Q. Okay.  
13 A. And she was on the phone next to the pool.  
14 Q. Okay. So, Sr LG #1 made another call to the  
15 paramedics while you were on the scene?  
16 A. Yes, sir.  
17 Q. And she reported to you that they -- you said  
18 that about halfway through that she reported to you that  
19 it would be another three minutes?  
20 A. Probably before halfway through.  
21 Q. Before halfway through?  
22 A. I'm not -- I don't know.  
23 Q. Right. That's okay.  
24 A. Time context is going to be extremely  
25 difficult.  
0177  
1 Q. I understand. Once you arrived and you handed  
2 Supv CC #1 the mask, do you have any idea of how long it was  
3 before the paramedics arrived?  
4 A. No clue.

5 Q. Do you recall John's skin color?  
6 A. When we got there --  
7 Q. When you got there.  
8 A. -- it was completely blue.  
9 Q. Okay.  
10 A. By the time we were done, there was some pink  
11 in his lips.  
12 Q. Okay.  
13 A. By the time the paramedics took him away.  
14 Q. Right. Had he -- had he recovered any color in  
15 his cheeks or on his torso or do you even recall?  
16 A. I remember concentrating on his lips.  
17 Q. Right. Okay. You thought that the lips did  
18 change.  
19 A. Yes, sir.  
20 Q. They started to pink up?  
21 A. They did.  
22 MR. PLETCHER: Why don't we stop for a  
23 minute and take a short break so I can go to the men's  
24 room.  
25 THE VIDEOGRAPHER: 4:23. We're off the  
0178  
1 record.  
2 (Recess from 4:23 to 4:35)  
3 THE VIDEOGRAPHER: Time is 4:35. We are  
4 back on the record.  
5 Q. (By Mr. Pletcher) Mr. LG Supv, did anybody help  
6 you write this statement or did you do it on your own?  
7 A. I did it on my own.  
8 Q. When you were at the scene, do you recall  
9 anybody making -- do you recall any specific comments or  
10 statements made by anyone who was around the CPR process  
11 about John's condition or about getting this or, you  
12 know, calling somebody else for help? Do you recall any  
13 specific statements being made?  
14 A. No, sir. My only concern was John.  
15 Q. Right. The paramedics did arrive. What do you  
16 recall them doing?  
17 A. They told us to put him on the backboard that  
18 they provided. Once he was on the backboard, they  
19 placed one stamp here and one stamp here (indicating).  
20 And then they put him on the cart and said, "Let's take  
21 him away." And they walked away.  
22 Q. Okay. When you said they put one stamp here  
23 and one stamp there (indicating), are those -- are you  
24 talking about them putting AED pads on him?

25 A. Yeah. But for some reason, they didn't use  
0179

1 them.

2 Q. Right. But they hooked up the defibrillator  
3 while you were there. The paramedics, they put the pads  
4 on.

5 A. They put the pads. They didn't hook it up to  
6 anything.

7 Q. Right. Okay. Did they have -- did you see  
8 them carrying the little AED box?

9 A. I did not see them carrying it.

10 Q. Mr. Lamkin testified that he recalled seeing  
11 the paramedics with the AED. You're not saying that  
12 didn't happen, are you? You just don't have a  
13 recollection?

14 A. I do not know if that happened or not.

15 Q. Okay. But, again, at no time while you were on  
16 the scene, did you ever detect a pulse or any  
17 breathing --

18 A. No, sir.

19 Q. -- correct?

20 A. Correct. I did not.

21 Q. Mr. Palmer testified that he talked to you  
22 later that afternoon. Do you remember meeting with him  
23 that day?

24 A. I know we talked. I don't know the specific  
25 conversation.

0180

1 Q. Right. But you did talk to him later that day,  
2 correct?

3 A. Yes, sir.

4 Q. But you have no specific recollection of what  
5 was said or who may have been with you at the time that  
6 y'all had your discussion?

7 A. No, sir.

8 Q. Mr. Palmer also testified that he met with the  
9 entire lifeguard staff a few days later. Do you  
10 remember that meeting --

11 A. Yes, sir.

12 Q. -- where he discussed the fact that, you know,  
13 everybody was going to be under a microscope; the  
14 members might have a lot of questions and be upset?

15 A. Yes, sir.

16 Q. You remember that meeting?

17 A. Yes, sir.

18 Q. Do you recall when it occurred?

19 A. I do not.  
20 Q. Do you know where it was?  
21 A. It was in the pavilion.  
22 Q. And who all was there? The entire lifeguard  
23 staff?  
24 A. The vast majority.  
25 Q. And was anybody there other than Mr. Palmer?  
0181  
1 A. Can you rephrase?  
2 Q. Yeah. Who else was there in a supervisory  
3 capacity other than Mr. Palmer?  
4 A. I only remember -- I don't know.  
5 Q. Okay. Do you remember --  
6 A. I remember Mr. Palmer.  
7 Q. Do you remember what Mr. Palmer told you guys?  
8 A. Basically going over the event and, like you  
9 said before, about how we were going to be under a  
10 microscope and...  
11 Q. Okay. And when you said basically going over  
12 the event, what do you mean? How did he go over it?  
13 A. Discussing the events of July 18th.  
14 Q. Right. And what do you remember -- was it just  
15 Guillermo talking or were all the guards talking about  
16 the events of that day?  
17 A. I believe it was just Guillermo.  
18 Q. Do you remember Guillermo making any  
19 suggestions on how to better respond to a situation like  
20 this?  
21 A. He said we did great.  
22 Q. Okay. Do you remember what he said about the  
23 events other than y'all did great?  
24 A. Not specifically.  
25 Q. So, you can't specifically tell me what  
0182  
1 Mr. Palmer said other than y'all did a great job; you  
2 know, you're going to be under a microscope. Did he  
3 say, be careful with what you said? I mean, what do you  
4 remember, if anything? I just need to know what you  
5 remember.  
6 A. Those are the main things that I remember from  
7 that meeting.  
8 Q. Okay. Any other not so main things,  
9 specifically?  
10 A. No.  
11 Q. Okay. Mr. Palmer also testified that he had a  
12 separate meeting with you, Supv CC #1 and 15 y/o LG #1 . Do you

13 remember that?

14 A. Throughout the course of the next two weeks, we  
15 all talked about the event.

16 Q. I understand that. And I'm going to ask you  
17 about that in a second. But I want to know if you  
18 specifically recall a meeting where just you, Supv CC #1 and  
19 15 y/o LG #1 were with Mr. Palmer.

20 A. Could you refresh my memory on the date?

21 Q. I have no idea. He didn't remember when it  
22 happened either. If you don't recall, that's -- you  
23 know, you don't recall.

24 A. I don't recall.

25 Q. But I just need to know. Because if we try

0183

1 this case and you get on the stand and you say, oh,  
2 yeah, we had this meeting with Mr. Palmer and Supv CC #1 was  
3 there and 15 y/o LG #1 was there and this was said, you know, I  
4 need to know that.

5 A. Yeah. I -- I don't remember a specific meeting  
6 between the three of us.

7 Q. Okay. Great. Now, you were interviewed by the  
8 Village Police Department.

9 A. Yes, sir.

10 Q. Did you give them a statement?

11 A. Initially within half an hour of the incident  
12 we had a police interview.

13 Q. Right.

14 A. I gave them a statement.

15 Q. Okay.

16 A. About, I would say, a month later I was  
17 contacted again by the police department.

18 Q. Okay.

19 A. And they asked me to come.

20 Q. Down to the station?

21 A. Come to the station. And they asked me a  
22 simple form of questions.

23 Q. Right. And did you talk to anybody else or  
24 give a statement to anybody else?

25 A. Child Protective Services.

0184

1 Q. During any of those statements that you gave  
2 either the two to the police department or to the CPS,  
3 was anybody with you?

4 A. The initial police one we were lined up.

5 Q. There at the club that day.

6 A. And there were people around me.



7 Q. Right. Right.  
8 A. There's no influence on my statement.  
9 Q. Sure. I mean, you were -- you were honest with  
10 the police department, with CPS. You gave them truthful  
11 information?  
12 A. Yes, sir.  
13 Q. Okay. Was -- did anybody go down to the  
14 station with you when you went back to the police  
15 department the second time?  
16 A. No, sir. I went by myself.  
17 Q. And how about the CPS? Were you accompanied by  
18 anybody when you gave that statement?  
19 A. Both meetings I was by myself. They called me  
20 to the office.  
21 Q. Okay. Now I need to kind of ask you a line of  
22 questions about the conversations that you and the other  
23 lifeguards and maybe counselors had over the next  
24 several days or weeks about the incident. Okay?  
25 A. I'll do my best.

0185

1 Q. Do you recall -- or who do you recall talking  
2 to about what happened?  
3 A. I know I talked to 15 y/o LG #1 and 15 y/o LG #2 . I talked  
4 to Supv CC #1 .  
5 Q. Okay.  
6 A. I talked to Sr LG #1 . There were other people  
7 that asked me about the incident. But that's not what  
8 you're concerned with, right?  
9 Q. Right. Because you didn't have any firsthand  
10 knowledge because you weren't there. You were at lunch,  
11 right?  
12 A. Yes, sir.  
13 Q. So, the people -- well, Sr LG #1 wasn't there  
14 either, correct?  
15 A. No, sir.  
16 Q. She was at lunch.  
17 A. Yes, sir.  
18 Q. So, the three people who were on the scene when  
19 John drowned that you subsequently had conversations  
20 were -- with were 15 y/o LG #1 , 15 y/o LG #2 and Supv CC #1 ?  
21 A. Yes, sir.  
22 Q. Anybody else that you remember --  
23 A. No, sir.  
24 Q. -- who may have been there? Did you ever talk  
25 to 4 y/o B-CC #2 ?

0186

1 A. I don't know who that is.  
 2 Q. 4 y/o B-CC #4 ?  
 3 A. Don't know him.  
 4 Q. 4 y/o B-CC #3 ?  
 5 A. Don't know.  
 6 Q. Supv CC #2 ?  
 7 A. Don't know.  
 8 Q. 4 y/o B-CC #1 ?  
 9 A. Don't know him.  
 10 Q. 4 y/o B-CC #5 ?  
 11 A. Don't know. I don't know them.  
 12 Q. Okay. How about 4 y/o G-CC #1 or  
 13 4 y/o G-CC #3?  
 14 A. Don't know either.  
 15 Q. Or 4 y/o G-CC #4 or 4 y/o G-CC #2?  
 16 A. Don't know any of them.  
 17 Q. All right.  
 18 A. I've heard the name 4 y/o B-CC #3 before, but that's the  
 19 extent of it.  
 20 Q. Right. Well, could either 15 y/o LG #1 , 15 y/o LG #2 or  
 21 Supv CC #1 tell you any specifics about what had happened?  
 22 A. All 15 y/o LG #1 told me was that she was on the  
 23 stand. She saw a kid who was floating on his stomach.  
 24 She thought he might be doing a dead man's float. So,  
 25 she continued to scan the rest of the pool. And when  
 0187  
 1 she came back and saw that he was not upright, she  
 2 called out to the counselor next to the child and asked  
 3 if he was all right.  
 4 Q. Okay.  
 5 A. The counselor looked around, saw that he was  
 6 not and pulled him out. 15 y/o LG #2 told me that he didn't  
 7 see anything until there was already commotion, and then  
 8 he made the three whistles.  
 9 Q. Okay. How about Supv CC #1 ? What did he tell you?  
 10 A. Supv CC #1 all I remember him saying is about  
 11 getting the kid out of the water and starting CPR.  
 12 Q. So, Supv CC #1 told you he helped get John out of  
 13 the water and he started the CPR?  
 14 A. Yes, sir.  
 15 Q. Did he tell you anything else that may have  
 16 happened that morning?  
 17 A. That's it.  
 18 Q. And what did Sr LG #1 tell you?  
 19 A. Sr LG #1 just told me what was going on around  
 20 the pool.

21 Q. What did she tell you about that?  
22 A. She said -- I believe she said SC was  
23 frantic, an observer or just a person around the pool.  
24 Q. After it happened?  
25 A. Yeah.

0188

1 Q. Okay.  
2 A. And that she ran down and started calling  
3 the -- calling 9-1-1 from the phone next to the pool.  
4 Q. Sr LG #1 called 9-1-1?  
5 A. Yes.  
6 Q. Now, you said that SC was an observer -- you  
7 said a frantic observer. That's what Sr LG #1 told you?  
8 She was frantic?  
9 A. Yes, sir.  
10 Q. And did she describe what she was doing? Was  
11 she screaming? Did she look -- I mean, how was she  
12 acting?  
13 A. I don't know.  
14 Q. She just said she was frantic?  
15 A. Yes, sir.  
16 Q. Do you recall her -- her, Sr LG #1, telling you  
17 any other specifics about SC's action while  
18 observing?  
19 A. Not specifically from Sr LG #1.  
20 Q. Did you know who SC was?  
21 A. Yeah. She taught swim lessons to the kids at  
22 the pool.  
23 Q. Did you ask Sr LG #1 why SC was frantic?  
24 A. To say the least, SC was dramatic. So, it  
25 didn't --

0189

1 Q. Surprise you?  
2 A. Exactly.  
3 Q. Right. Okay. Let me back up just a little.  
4 Your conversation with 15 y/o LG #1, was that within a few  
5 days? Was it the next day, do you remember?  
6 A. I don't -- I'm sorry.  
7 Q. Do you recall anything else that 15 y/o LG #1 told you  
8 other than what you just explained to us?  
9 A. That's all I remember.  
10 Q. Okay. Do you recall 15 y/o LG #1 ever telling you  
11 that she had seen John prior to seeing him floating face  
12 down the first time?  
13 A. I never asked.  
14 Q. But -- okay. That really wasn't my question.

15 Did she ever tell you --  
 16 A. No. She never said anything about that.  
 17 Q. I've got to finish.  
 18 A. Sorry about that.  
 19 Q. Did 15 y/o LG #1 ever tell you that she had  
 20 seen John Pluchinsky alive before she first saw him  
 21 floating face down?  
 22 A. That was not part of our conversation.  
 23 Q. Okay. She didn't tell you that.  
 24 A. No.  
 25 Q. Okay. And you've told me everything you  
 0190  
 1 remember her telling you about the event.  
 2 A. Yes, sir.  
 3 Q. You said Supv CC #1 told you he didn't see anything.  
 4 But once he realized what was going on, that he was the  
 5 one --  
 6 MR. REESE: Do you mean Supv CC #1 or 15 y/o LG #2 ?  
 7 MR. PLETCHER: 15 y/o LG #2 .  
 8 Q. (By Mr. Pletcher) 15 y/o LG #2 didn't see anything --  
 9 MR. PLETCHER: Thank you.  
 10 Q. (By Mr. Pletcher) 15 y/o LG #2 didn't see anything,  
 11 but he was the one who did the whistle blast, correct?  
 12 A. Yes, sir.  
 13 Q. 15 y/o LG #2 was at the slide.  
 14 A. Yes, sir.  
 15 Q. So, his attention would have been on the kids  
 16 going up and down the slide, correct?  
 17 A. Until his attention was diverted by --  
 18 Q. Right.  
 19 A. -- the commotion.  
 20 Q. Yeah. And the commotion would have been 15 y/o LG #1  
 21 getting off the stand and telling the camp counselor or  
 22 asking the camp counselor if John was okay.  
 23 A. Yes, sir.  
 24 Q. And then somebody yelled, "Call 9-1-1"?  
 25 A. Yes, sir.  
 0191  
 1 Q. Who?  
 2 A. It was a mother.  
 3 Q. Okay. Now, 15 y/o LG #2 would have been down here  
 4 (indicating) scanning and surveilling his area of  
 5 responsibility that we drew in in yellow, correct?  
 6 A. Yes, sir.  
 7 Q. And I widened that arrow since the last time we  
 8 talked.

9 A. Okay.  
10 Q. Do you mind if I put a little deal like that --  
11 A. Go for it.  
12 Q. -- so we can see it? All right.  
13 Now, I want to ask you about the whistle  
14 blast for a minute.  
15 A. Yes, sir.  
16 Q. What was the procedure on whistle blasts? Were  
17 you ever instructed about whistle blasts?  
18 A. Yes, sir.  
19 Q. What were you instructed and who instructed  
20 you?  
21 A. The previous summer.  
22 Q. 2006.  
23 A. Yes, sir. One whistle was a warning. Two was  
24 the attention of a head guard or supervisor. And three  
25 was an emergency.

0192

1 Q. Did you receive any instruction on whistle  
2 blasts in 2007?  
3 A. I communicated to most of the guards.  
4 Q. What the procedure was?  
5 A. The meanings of the different whistle blasts.  
6 Q. And they did not change from '06 to '07 as far  
7 as you were concerned. At least your instructions were  
8 the same.  
9 A. And that's also the Red Cross instructions.  
10 Q. Okay. So, the instructions were the same in  
11 '06 and '07.  
12 A. Yes, sir.  
13 Q. And the instruction that you gave to the guards  
14 in '07 that you just described were the instructions  
15 that you learned through your American Red Cross  
16 lifeguard training as opposed to some instruction that  
17 you received at the Racquet Club, correct?  
18 A. It was enforced at the Racquet Club.  
19 Q. The same procedure?  
20 A. Yes, sir.  
21 Q. You're not aware of any other procedure on  
22 whistle blasts that were in effect either in '06 or '07,  
23 correct?  
24 A. No, sir.  
25 Q. Is that correct?

0193

1 A. Yes, sir. That was correct.  
2 Q. Did anybody that you spoke to, be it a

3 lifeguard or a parent or a member, that you talked about  
4 this event after it occurred ever tell you that he or  
5 she saw John alive before he was found or discovered  
6 floating face down?  
7 A. No. No parents have ever told me that.  
8 Q. How about lifeguards?  
9 A. No.  
10 Q. You never talked to any of the counselors,  
11 correct?  
12 A. Except Supv CC #1 .  
13 Q. Except for Supv CC #1 . Supv CC #1 never told you that he  
14 ever saw him alive that day?  
15 A. I don't know.  
16 Q. You don't recall him telling you that he had  
17 seen him earlier that morning in the pool alive?  
18 A. That's not a question I asked anybody. So, it  
19 wasn't a part of our conversation.  
20 Q. He never told you that.  
21 A. He never told me that.  
22 Q. Okay. Good. Has anybody ever told you  
23 subsequent to the event who was supposed to be watching  
24 or supervising John?  
25 A. No, sir.

0194

1 Q. Has anybody ever told you after the event who  
2 may have been playing with John prior to him being  
3 discovered floating face down in the pool?  
4 A. No, sir.  
5 Q. Now, did you go to the hospital --  
6 A. No, sir.  
7 Q. -- that day? You said that when you had your  
8 conversation with 15 y/o LG #1 , that she told you when she  
9 first saw him floating face down, that she thought he  
10 may have been playing dead man's float.  
11 A. Yes, sir.  
12 Q. What is dead man's float?  
13 A. Some of the kids would hold their breaths and  
14 see if they could float stomach down in the water.  
15 Q. How often had you seen that prior to John's  
16 death?  
17 A. Maybe once a week.  
18 Q. Had you ever seen older kids playing that game  
19 or was it always the young kids?  
20 A. How are we defining "young"?  
21 Q. Huh?  
22 A. Is that --

23 Q. Sure. Summer camp age. Were they always  
24 summer camp age kids or were they older kids that you  
25 personally saw playing the game?

0195

1 A. Summer camp age.

2 Q. Okay. Had you ever seen this occur prior to  
3 the summer of 2007?

4 A. Yes, sir.

5 Q. So, it was going on in '06, too.

6 A. Yes, sir.

7 Q. And was there any rule at the Racquet Club  
8 prohibiting this game?

9 A. I don't know the specific rule, but I would --  
10 if the kid was distracting me from my duties of scanning  
11 the pool, I would say something.

12 Q. Okay. So, to your recollection, there wasn't a  
13 specific rule. But you personally if you were on the  
14 stand or around the pool and you saw a summer camper  
15 playing the dead man's float game, you would instruct  
16 the child not to do it.

17 A. Yes, sir.

18 Q. Would you do it every time?

19 A. No, sir. If the pool was empty or he was not  
20 distracting me from my scanning, then I would not.

21 Q. Was there ever any discussion between the  
22 lifeguards or through Mr. Palmer or Mr. Lamkin about the  
23 dead man float game? I mean, did y'all ever have any  
24 meetings to talk about it? Were there any conversations  
25 about it being a problem or occurring? Do you remember?

0196

1 A. I did not have any meetings to --

2 Q. And no discussions either?

3 A. No, sir.

4 Q. There certainly wasn't a policy against it,  
5 correct?

6 A. I don't know.

7 Q. Okay. Not to your knowledge anyway.

8 A. Not to my knowledge.

9 Q. And your best estimate was that this happened,  
10 like, once a week?

11 A. Yes, sir.

12 Q. It was a common problem -- occurrence. It was  
13 a common occurrence.

14 A. You could define a common occurrence as once a  
15 week.

16 Q. Yeah. Okay. But you would agree that this

17 game, the dead man float game, could very well be  
18 confusing to a lifeguard on the stand who's scanning the  
19 pool?

20 A. Would you rephrase that?

21 Q. Sure. If somebody is playing this game, it  
22 might affect a lifeguard's ability to quickly respond to  
23 somebody who was face down floating in the water because  
24 you don't know if it's real or you don't know -- or a  
25 game. Agreed?

0197

1 A. Yes, sir.

2 Q. Okay. Did anybody, other lifeguards, parents,  
3 anybody, ever report to you that people were -- or kids  
4 were playing this dead man float game at any time in  
5 '06 or '07?

6 A. I'm sorry. Restate it.

7 Q. Yeah. Okay. In 2007 you were a supervisor,  
8 head guard.

9 A. Yes, sir.

10 Q. And in that capacity, I'm sure you got reports.  
11 Well, you've told us about reports that you had gotten  
12 from parents, from other guards, et cetera. Did  
13 anybody, be it a guard or a parent, member, nonmember,  
14 ever approach you about a child playing this game in the  
15 pool?

16 A. No, sir.

17 Q. So, no other guards reported that they had this  
18 same occurrence while they were on the stand?

19 A. They had no complaints to that extent.

20 Q. Okay. I'm going to flip around here.

21 Mr. Palmer testified that he was not aware  
22 of any limitations on where a 4-year-old could be in the  
23 resort pool. Have you heard of any such limitations?

24 A. No, sir.

25 Q. So, as far as your recollection goes, the

0198

1 4-year-olds were allowed to be in any part of this pool,  
2 correct?

3 A. Are you talking about day camp or --

4 Q. Day camp, nonday camp, any 4-year-old. Was  
5 there any limitation on what areas of the pool that they  
6 could be in?

7 A. No, sir.

8 Q. Okay. And Mr. Palmer, of course, never told  
9 you of any policy of where the 4-year-olds should be,  
10 correct?



11 A. We were told that the area directly to the left  
12 of the lifeguard stand that 15 y/o LG #1 was at.

13 Q. This area right here (indicating)?

14 A. Was meant to be for people under the age of  
15 six.

16 Q. Okay. I think I've actually seen a rule on  
17 that. It's in the Racquet Club club rules that the  
18 shallow area was for kids under six. Is that what  
19 you're talking about?

20 A. I'm talking about a rule that I enforced.

21 Q. Okay. You're not sure if that's in the  
22 official club rules?

23 A. No, sir, I'm not.

24 Q. Okay. Who told you that, by the way?

25 A. Guillermo.

0199

1 Q. When did he tell you that?

2 A. I do not know.

3 Q. Was it after John's drowning or before?

4 A. It was before, if not summer of 2006.

5 Q. Okay. So, just so I understand you, could you  
6 circle in green the area that you believe was limited to  
7 kids six years and under?

8 A. (Witness complies)

9 Q. Thank you. And you have just outlined this  
10 area down here (indicating).

11 A. Yes, sir.

12 Q. And what do you call this area?

13 A. I -- I don't have any specific name for it.

14 Q. Is it the shallow end?

15 A. Yes.

16 Q. Is it the wading area?

17 A. It's shallow.

18 Q. Okay. This is a zero depth entry, right?

19 A. Yes, sir.

20 Q. And these little things right in here  
21 (indicating), these are water features, right?

22 A. Yes, sir.

23 Q. Did you at any time when you were acting as a  
24 lifeguard at the resort pool have any problems with  
25 these water features being a distraction or creating

0200

1 what you know as a blind spot in lifeguarding terms?

2 A. There was one blind spot. But you just had to  
3 change your angle, and you could see beyond the blind  
4 spot.

5 Q. Was that blind spot down in the wading area or  
6 the shallow end?  
7 A. Yes, sir.  
8 Q. Could you circle in red the blind spot?  
9 A. (Witness complies)  
10 Q. What made it a blind spot?  
11 A. This feature right here (indicating), the  
12 rings.  
13 Q. Let me --  
14 A. It is visible if you move your head position.  
15 Q. And the rings are -- these are the raining  
16 buckets, aren't they?  
17 A. Yes, sir.  
18 Q. Okay. And there are rings just to the east of  
19 the raining buckets?  
20 A. Yes, sir.  
21 Q. And how would you compensate for that blind  
22 spot if you were sitting where 15 y/o LG #1 was sitting?  
23 A. Just moving forward and backward in your chair.  
24 Q. Was this well-known, that this was a blind spot  
25 or is this something that you just knew yourself?  
0201  
1 A. I don't know.  
2 Q. Do you know if 15 y/o LG #1 or any of the other  
3 lifeguards were told about this blind spot or instructed  
4 how to compensate for it?  
5 A. I don't know.  
6 Q. And to your knowledge, were there any other  
7 blind spots in this pool?  
8 A. There's a slight one.  
9 Q. There's a slide one? Okay. Why don't you go  
10 ahead and mark that.  
11 A. (Witness complies) Right next to the  
12 lifeguard, there's a tiny bit of a ledge on the  
13 staircase.  
14 Q. Okay. You have now marked an area on the south  
15 side of the pool near the staircase just east of where  
16 the lifeguard's chair is that 15 y/o LG #1 was sitting on.  
17 A. Yes, sir.  
18 Q. Is that a blind spot because it was deeper  
19 there?  
20 A. The way that the stairs went down.  
21 Q. Yes.  
22 A. And the angle that the lifeguard was at --  
23 Q. Right.  
24 A. -- there was just a tiny bit of a blind spot --

25 Q. Okay.

0202

1 A. -- right below the ledge where the stairs were.

2 Q. Okay. Now, how would you compensate for that  
3 blind spot?

4 A. You could just lean to your right.

5 Q. Okay. Now, this blind spot right here  
6 (indicating) if a lifeguard were sitting in a chair that  
7 was put under the umbrella after John's drowning --

8 A. Yes, sir.

9 Q. -- that wouldn't be a blind spot there, would  
10 it?

11 A. No, sir.

12 Q. Has anybody told you in any of the  
13 conversations that you've had with people after John's  
14 drowning where he was found?

15 A. No, sir.

16 Q. Okay. Do you -- did anybody ever tell you  
17 where he was last seen alive?

18 A. No, sir.

19 Q. So, you have no knowledge, either personal or  
20 second-hand, on those two issues?

21 A. No, sir.

22 Q. That's correct?

23 A. That is correct.

24 Q. Was there any area in the family resort pool  
25 that was specifically designated for nonswimmers, people

0203

1 who did not know how to swim, be them adults or  
2 children, to your knowledge?

3 A. No, sir.

4 Q. Mr. Palmer testified that there was no rule at  
5 the Houston Racquet Club regarding how deep of water a  
6 nonswimmer should be allowed to venture into in the  
7 resort pool. You as a prudent lifeguard having gone  
8 through the training that you've gone through, how  
9 deep -- how deep do you believe would be safe for a  
10 nonswimmer to venture into?

11 MR. REESE: Objection, form.

12 A. Would you repeat that?

13 Q. (By Mr. Pletcher) Sure. Mr. Palmer testified  
14 that there was no rule at the Racquet Club on how deep  
15 somebody could go if they were a nonswimmer. Based upon  
16 your training and being a prudent lifeguard, how deep do  
17 you think would be safe for a nonswimmer?

18 MR. REESE: Same objection.

19 Q. (By Mr. Pletcher) Waist deep, chest deep,  
20 somewhere in the middle?

21 A. Where their feet can touch. Where their feet  
22 can touch and keep them above water.

23 Q. Okay. Would you want their mouth above water  
24 or chin above water?

25 A. Yes, sir.

0204

1 Q. Would you want any part of their torso above  
2 water?

3 A. As long as they're able to walk, in my personal  
4 opinion.

5 Q. Okay. So, it would be okay for a nonswimmer to  
6 get into water that was chin deep as long as they could  
7 still touch?

8 A. If they're able to effectively walk.

9 Q. Okay. Do you remember if there was any sort of  
10 policy or procedure in effect at the Racquet Club in  
11 '06 or '07 about children and life jackets?

12 A. No, sir.

13 Q. Do you recall if there was any procedure to  
14 follow if a child took their life jacket off?

15 A. No, sir.

16 Q. So, neither Guillermo Palmer or David Lamkin  
17 ever told you of such policy, correct?

18 A. Correct.

19 Q. Okay. So, based upon what you've drawn in on  
20 this diagram, 14-D of the family pool, the only  
21 obstructed areas or blind spots that 15 y/o LG #1 would have  
22 had in her area of responsibility that you've shaded in  
23 orange would be the two red circled areas.

24 A. Yes, sir.

25 Q. No other obstructions?

0205

1 A. No, sir.

2 Q. Except, of course, if you had multiple  
3 individuals in the pool, they might be blocking each  
4 other or blocking her view of each person, correct?

5 MR. REESE: Objection, form.

6 A. Would you restate that?

7 Q. (By Mr. Pletcher) Sure. If you put 30 people  
8 in this area right here (indicating), there might be a  
9 situation where a camp counselor or even another child  
10 might be blocking 15 y/o LG #1 's view of somebody who would be  
11 directly behind them.

12 MR. REESE: Objection, form.

13 A. Assuming there are 30 people in that area --

14 Q. (By Mr. Pletcher) Yes.

15 A. -- then there is a possibility of someone  
16 blocking --

17 Q. Sure.

18 A. -- another person.

19 Q. There's a possibility even if there are two  
20 people in the area.

21 MR. REESE: Objection, form.

22 Q. (By Mr. Pletcher) Because if you had a  
23 17-year-old camp counselor who was standing directly  
24 between 15 y/o LG #1 and a 4-year-old behind that 17-year-old,  
25 that might obstruct her view to the child, correct?

0206

1 MR. REESE: Object to the form.

2 A. According to your assumptions, yes.

3 Q. (By Mr. Pletcher) Good. The Racquet Club  
4 produced a copy of an e-mail that the club manager  
5 Mr. Griffin prepared to Guillermo Palmer dated July 5th  
6 related to some problems associated with the lifeguards  
7 and whether they were doing their tasks or duties.

8 My question to you is: Do you recall ever  
9 being counseled or reprimanded about an event that  
10 occurred on July 5th, 2007 related to the lifeguard  
11 staff?

12 A. Could you restate that?

13 Q. Sure. Mr. Griffin wrote Mr. Palmer an e-mail  
14 dated July 5th where he stated that the lifeguards are  
15 clustered together doing nothing. No one knew who was  
16 in charge. And he was telling Mr. Palmer that that was  
17 unacceptable. Okay?

18 A. Okay.

19 Q. And he emphasized that teenagers -- that's what  
20 most of the guards were -- needed to have clearly  
21 defined expectation and guidance and that most teenagers  
22 don't perform well except under close supervision.  
23 Okay?

24 A. Okay.

25 Q. Do you recall ever being counseled in July --

0207

1 early July about an event like that?

2 A. Yes, sir.

3 Q. Who talked to you?

4 A. Guillermo.

5 Q. When?

6 A. I don't know the date.

7 Q. Now, July 5th as is seen in Exhibit 21-B was a  
8 day that you were on duty. It's been circled. Let me  
9 zoom in on that so you can see it. It says July 5th,  
10 you clocked in at 9:33 a.m. and you clocked out at 8:00  
11 o'clock p.m. Okay?

12 A. Yes, sir.

13 Q. Assuming that's correct and you were on -- were  
14 you on duty on July 5th --

15 A. Yes, sir.

16 Q. -- to your knowledge? Okay. And you would  
17 have been acting as the supervising -- or one of the  
18 supervising head lifeguards on that day, correct?

19 A. I do not know. There's a very good chance I  
20 was just a lifeguard.

21 Q. Wait a second. I thought that you were hired  
22 as a supervising head lifeguard on July 5th or  
23 June 18th.

24 A. My -- because there were five supervisors, we  
25 rotated supervisors on a daily basis and not a shift  
0208

1 basis. And there's five supervisors. There's a total  
2 of 14 shifts in the day -- or in a week. Any individual  
3 lifeguard only got about three supervisor shifts.

4 Q. Okay. Were you paid extra money to be on that  
5 supervisory role?

6 A. We were paid the same amount whether we were a  
7 lifeguard or a supervisor.

8 Q. Okay. And how would I confirm whether or not  
9 you were acting as the lifeguard supervisor or head  
10 guard on July 5th?

11 A. The schedule.

12 Q. Okay. Much like the schedule that we looked at  
13 earlier for July 18th? Is that what you're talking  
14 about?

15 A. Yes, sir.

16 Q. The one that showed your name at the top as  
17 supervisor?

18 A. Yes, sir.

19 MR. PLETCHER: Okay. I guess we better  
20 request again that y'all produce the schedules.

21 Q. (By Mr. Pletcher) Were y'all required to check  
22 in each day?

23 A. Just by the fingerprint system.

24 Q. Okay. How about prior to the fingerprint  
25 system?

0209

1 A. We would write in when we got there and when we  
2 left.

3 MR. PLETCHER: Will you do your best to  
4 get me the schedule for July 5th, Reese?

5 MR. REESE: (Nodding head)

6 MR. PLETCHER: Along with the others  
7 during that month. But July 5th is important.

8 MR. REESE: Matt, I didn't say I won't get  
9 it to you.

10 MR. PLETCHER: He nodded his head in  
11 acknowledgment, Ms. Court Reporter.

12 Q. (By Mr. Pletcher) Okay. Well, what did  
13 Mr. Palmer tell you when he counseled you on this event?

14 A. I -- he said that because we've had a slow  
15 season with a lot of rain, that to keep up the  
16 perception, we either need to -- if we know that the  
17 rain is going to persist for the entire day in the pool,  
18 we close. We need to send home guards gradually  
19 throughout the course of the day. Or if it was a short  
20 rain, that we needed to send them up into the employee  
21 cafeteria and only have the maximum of two guards around  
22 the pool making sure that nobody got in.

23 Q. Okay. Why did you bring up the rain? I don't  
24 understand why the rain was an issue.

25 A. It was a particularly rainy summer at the  
0210  
1 beginning.

2 Q. I understand.

3 A. And when it rains, the lifeguards sit.

4 Q. Okay.

5 A. So, that created the perception of us not doing  
6 anything.

7 Q. Not doing your jobs.

8 A. Yes, sir, even though there was no job to be  
9 done with the pool closed.

10 Q. Okay. Well, do you specifically recall the  
11 event that occurred on July 5th?

12 A. No, sir.

13 Q. I thought you said that Mr. Palmer sat you down  
14 and counseled you about this.

15 A. I remember that there was a -- him advising me  
16 to start doing this with the lifeguards. I don't  
17 remember a specific event that caused the actual e-mail  
18 to be written in the first place.

19 Q. Okay. Well, why don't we just -- let me just  
20 show you this. This is Exhibit 25 -- 21. It's the

21 e-mail dated July 5th. It's from Mr. Stephen Griffin,  
22 who's the club manager, right?

23 A. Yes, sir.

24 Q. To Mr. Palmer. It's cc'd to David Lamkin. And  
25 he says here, "Guillermo, I'm confused and a little

0211

1 frustrated by the guards' staffing procedures this  
2 summer. It seems that they are always -- there are  
3 always plenty of guards around. But at any given time  
4 four to five are clustered together doing nothing at  
5 all. I think your normal staffing load is six, plus one  
6 supervisor in your absence." What he says is, "What I  
7 found just now, and this is fairly typical, there was  
8 one at each pool, neither of them on the high guard  
9 chairs, no one at the gate, no one in the game room,  
10 four or maybe five in your office. When I asked who was  
11 in charge, they could not answer."

12 Nowhere in this e-mail does Mr. Griffin,  
13 the club manager, mention anything about rain or a  
14 situation where the guards shouldn't be doing their  
15 lifeguard procedures or duties. So, I'm just kind of  
16 confused why Mr. Palmer would tell you, hey, we got to  
17 clean up the perception here because people don't think  
18 we're doing our job. Can you explain that?

19 A. If I don't know the situation in question, then  
20 I don't know.

21 Q. Okay.

22 A. I can't explain it to you.

23 Q. Okay. So, you don't have a specific  
24 recollection of this event?

25 A. No, sir.

0212

1 Q. But you would agree that in order to have a  
2 safe pool, people need to be doing their jobs as  
3 lifeguards, correct?

4 A. Yes, sir.

5 Q. And it's extremely important for somebody to  
6 know who's in charge, right?

7 A. Yes, sir.

8 Q. Just a couple of general questions. Do you  
9 know if any of the lifeguards or counselors who worked  
10 during the summer of 2007 had social relationships  
11 outside of the club?

12 A. There's one that I knew of.

13 Q. Okay. Who was that?

14 A. 4 y/o G-CC #1 and Sr LG #3.



15 Q. They dated?  
16 A. Yes, sir.  
17 Q. How long had they dated?  
18 A. It began during the summer.  
19 Q. Was there any policy at the Racquet Club  
20 prohibiting this?  
21 A. I don't know.  
22 Q. Do you know if Sr LG #3 and 4 y/o G-CC #1 asked to work  
23 together?  
24 A. I don't know.  
25 Q. Okay. It wasn't a situation where they were

0213

1 consistently asking that they be put on the same  
2 rotation?  
3 A. Actually, to the best of my knowledge, it was  
4 the opposite.  
5 Q. Okay. Were there any type of cliques between  
6 the guards?  
7 A. There were people that knew each other through  
8 high school.  
9 Q. Okay.  
10 A. Or knew each other.  
11 Q. Who were kind of teamed up as friends from high  
12 school that summer of '07?  
13 A. Can I see a list of all the lifeguards?  
14 Q. I'll let you look at the girls and see if that  
15 refreshes your recollection. While you do, I'm going to  
16 go through my notes because I'm almost done.  
17 Are you looking through there?  
18 A. Yeah. I know.  
19 Q. Who?  
20 A. Okay. LG-H and LG-L. Then  
21 there was --  
22 Q. LG-H and LG-L?  
23 A. Yes, sir.  
24 Q. They dated?  
25 A. No. They were friends.

0214

1 Q. They were friends. Oh, okay. Yeah, that's  
2 right. Friends. Nobody else dated.  
3 A. No, sir.  
4 Q. Okay. Who else were friends from high school?  
5 A. There was PE-H, LG-J.  
6 Q. Okay.  
7 A. Alexis and 15 y/o LG #2 were brother and sister. And  
8 LG-D and Sr LG #3 were friends from the

9 summer before.

10 Q. Okay.

11 A. And Sr LG #1 and 4 y/o G-CC #1 were friends.

12 Q. And to the best of your knowledge, the

13 situation wasn't one where these friends would

14 consistently ask each other to rotate together, right?

15 A. I'm sure there were times.

16 Q. But it wasn't a problem as far as you're

17 concerned?

18 A. No, sir.

19 Q. Okay. Let me show you what's been marked as

20 Exhibit 52-3 -- I'm sorry -- 52-E which is the notice

21 for your deposition. Have you ever seen that?

22 A. Actually, no. My dad received it.

23 Q. Okay. Had you looked at it?

24 A. No, sir.

25 Q. Okay. In there we asked you to bring documents

0215

1 with you. If you could flip to the third page, I

2 believe, did you review any documents in preparation for

3 your deposition today?

4 A. There was a preparing for the witness chair

5 document. That's about it.

6 Q. Okay. You didn't bring that with you?

7 A. No, sir.

8 MR. REESE: It was just a blank diagram,

9 Matt.

10 MR. PLETCHER: A blank --

11 MR. REESE: The pool. It didn't have any

12 writing on it. It didn't have any X's. Just what

13 you've got there, is a blank.

14 MR. PLETCHER: Okay. This diagram

15 (indicating)?

16 MR. REESE: Yeah. Yeah.

17 Q. (By Mr. Pletcher) Were you provided a copy of

18 this?

19 A. Yes, sir.

20 Q. Okay. Did you ever fill it out?

21 A. Yes, sir. I put a couple of marks on it.

22 Q. Did you do that in preparation of your depo?

23 A. Yes, sir.

24 Q. Did you bring it?

25 A. No, sir.

0216

1 Q. Okay.

2 MR. REESE: He marked where the two chairs

3 were.  
4 A. That's it.  
5 Q. (By Mr. Pletcher) Oh, really?  
6 A. Yeah. That's just where the two chairs were.  
7 Q. So --  
8 MR. REESE: The two -- not the one where  
9 the third under the umbrella.  
10 MR. PLETCHER: Right.  
11 MR. REESE: But just where the two would  
12 have been.  
13 Q. (By Mr. Pletcher) So, if you had brought this  
14 to us today, you would have marked a chair here  
15 (indicating)?  
16 A. Yes, sir.  
17 Q. And you would have marked a chair there  
18 (indicating)?  
19 A. Yes, sir.  
20 Q. Which is almost identical to 14-D.  
21 A. It's identical.  
22 Q. Okay. Good. And you mentioned some other  
23 document about preparing for a depo?  
24 MR. REESE: That was it. That's all he  
25 looked at.  
0217  
1 MR. PLETCHER: Huh?  
2 MR. REESE: That was what he was meaning,  
3 I think.  
4 THE WITNESS: That article y'all gave me.  
5 MR. PLETCHER: That's okay. Preparing for  
6 a deposition.  
7 THE WITNESS: Yeah. Exactly.  
8 MR. PLETCHER: You and your deposition.  
9 MR. REESE: That's probably it.  
10 Q. (By Mr. Pletcher) Okay.  
11 A. There are no documents here applicable to...  
12 Q. You don't have any other documents responsive  
13 to that?  
14 A. No, sir.  
15 Q. Okay. Other than what your lawyers promised  
16 that they'll produce to us --  
17 A. Yes, sir. My first aid card.  
18 Q. -- multiple times.  
19 MR. PLETCHER: Okay. All I need to do is  
20 go through these exhibits real quick. I think we are  
21 done. Let's go off the record.  
22 THE VIDEOGRAPHER: The time is 5:36.

23 We're off the record.

24 (Recess from 5:36 to 5:43)

25 THE VIDEOGRAPHER: The time is 5:43.

0218

1 We're back on the record.

2 Q. (By Mr. Pletcher) I have marked as Plaintiff's  
3 Exhibit 37-B a copy of the lifeguard guys and the  
4 lifeguard girls which you just looked at during our  
5 break, correct?

6 A. Yes, sir.

7 Q. Now, I have highlighted in yellow the names of  
8 all the guards who were on duty on July 18th --

9 A. Yes, sir.

10 Q. -- or were working on July 18th. Yourself,  
11 Sr LG #2 , 15 y/o LG #2 , Sr LG #3 ,  
12 Sr LG #1 , LP LG and 15 y/o LG #1 ?

13 A. Yes, sir. They were on duty with me.

14 Q. Now, did you tell me who was at the lap pool?

15 A. LP LG .

16 Q. Before you changed from two guards to one  
17 because when you changed to one, it was LP LG --

18 A. Yes, sir.

19 Q. -- right? And who was with her that you let go  
20 on break?

21 A. I do not remember.

22 Q. Okay. Now, based upon Exhibit 37-B, can you  
23 tell me whether or not there were any other lifeguards  
24 who were dating or had social relationships outside of  
25 the club?

0219

1 A. LG-C and LG-D dated for a  
2 little.

3 Q. Okay.

4 A. And LG-B and Sr LG #2 were friends.

5 Q. Anybody else who were either friends or dating?

6 A. No, sir.

7 Q. Okay. Mr. LG Supv , I think that's all I have  
8 today. All I want to know is: During this deposition  
9 if you had problems with my questions, you asked me to  
10 rephrase it or repeat it, didn't you?

11 A. Yes, sir.

12 Q. And have I been professional with you?

13 A. Yes, sir.

14 Q. Courteous?

15 A. Yes, sir.

16 MR. PLETCHER: I wish you the best of luck

17 at USC --  
18 THE WITNESS: Thank you.  
19 MR. PLETCHER: -- in obtaining your degree  
20 and getting into the profession of your choice. Thank  
21 you very much.  
22 THE WITNESS: Thank you.  
23 MR. REESE: We will reserve until the time  
24 of trial.  
25 THE VIDEOGRAPHER: The time is 5:46.

0220

1 We're off the record.  
2 (Deposition concluded at 5:46 p.m.)  
3

4 \* \* \* \* \*

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

0221

1 CHANGES AND SIGNATURE  
2 WITNESS NAME: LG Supv DATE: MARCH 17, 2008  
3 PAGE LINE CHANGE REASON

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_

0222

1 I, LG Supv , have read the foregoing deposition  
2 and hereby affix my signature that same is true and  
3 correct, except as noted above.

4  
5  
6 \_\_\_\_\_  
7 LG Supv

8 THE STATE OF \_\_\_\_\_)  
9 COUNTY OF \_\_\_\_\_)

10  
11 Before me, \_\_\_\_\_, on this day  
12 personally appeared LG Supv , known to me or proved  
13 to me on the oath of \_\_\_\_\_ or through  
14 \_\_\_\_\_ (description of identity card  
15 or other document) to be the person whose name is  
16 subscribed to the foregoing instrument and acknowledged  
17 to me that he/she executed the same for the purpose and  
18 consideration therein expressed.

19 Given under my hand and seal of office on this \_\_\_\_\_  
20 day of \_\_\_\_\_, 2008.

21  
22  
23 \_\_\_\_\_  
24 NOTARY PUBLIC IN AND FOR  
25 THE STATE OF \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

0223

1 CAUSE NO. 2007-54438  
2 DAVID AND KATHLEEN PLUCHINSKY,) IN THE DISTRICT COURT OF  
3 INDIVIDUALLY AND AS \_\_\_\_\_ )  
4 REPRESENTATIVES OF THE JOHN \_\_\_\_\_ )

ALBERT PLUCHINSKY ESTATE, )

4 PLAINTIFFS, )

)

5 VS. ) HARRIS COUNTY, T E X A S

)

6 HOUSTON RACQUET CLUB, STEPHEN )

GRIFFIN, DAVID LAMKIN, )

7 GUILLERMO PALMER, AND )

LG Supv , )

8 DEFENDANTS. ) 281ST JUDICIAL DISTRICT

9

10 REPORTER'S CERTIFICATE

11 ORAL VIDEOTAPED DEPOSITION OF LG Supv

12 March 17, 2008

13

14 I, Roxanne K. Smith, Certified Shorthand Reporter in

15 and for the State of Texas, hereby certify to the

16 following:

17 That the witness, LG Supv , was duly sworn and

18 that the transcript of the deposition is a true record

19 of the testimony given by the witness;

20 That the deposition transcript was duly submitted on

21 \_\_\_\_\_ to the witness or to the attorney for

22 the witness for examination, signature, and return to me

23 by \_\_\_\_\_.

24 That pursuant to information given to the deposition

25 officer at the time said testimony was taken, the

0224

1 following includes all parties of record and the amount

2 of time used by each party at the time of the

3 deposition:

4 Mr. Matthew G. Pletcher (5 hours 31 minutes)

Mr. Wade Reese (No Time Used)

5

6 That a copy of this certificate was served on all

7 parties shown herein on \_\_\_\_\_ and filed

8 with the Clerk.

9 I further certify that I am neither counsel for,

10 related to, nor employed by any of the parties in the

11 action in which this proceeding was taken, and further

12 that I am not financially or otherwise interested in the

13 outcome of this action.

14 Further certification requirements pursuant to

15 Rule 203 of the Texas Code of Civil Procedure will be

16 complied with after they have occurred.

17 Certified to by me on this 25 day of March, 2008.

18  
19  
20  
21  
22  
23  
24  
25  
0225  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
ROXANNE K. SMITH, CSR  
No. 6290 - Expiration 12-31-08  
Firm Registration No. 510  
4545 Post Oak Place, Suite 350  
Houston, Texas 77027  
(713) 626-2629

FURTHER CERTIFICATION UNDER TRCP RULE 203

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_.  
If returned, the attached Changes and Signature page(s) contain(s) any changes and the reasons therefor.  
If returned, the original deposition was delivered to Mr. Matthew G. Pletcher, Custodial Attorney.  
\$\_\_\_\_\_ is the deposition officer's charges to the Plaintiffs for preparing the original deposition and any copies of exhibits;  
The deposition was delivered in accordance with Rule 203.3, and a copy of this certificate, served on all parties shown herein, was filed with the Clerk.  
Certified to by me on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
ROXANNE K. SMITH, CSR  
No. 6290 - Expiration 12-31-08  
Firm Registration No. 510  
4545 Post Oak Place, Suite 350  
Houston, Texas 77027  
(713) 626-2629