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these reports came from paternal aunt in a call dated 2009, in a call to the hotline.

A. Maybe I wasn't clear there. Let me explain to you what I mean. Is that when I looked at everything, you know, and that was just like a summary of my opinion, when I looked at everything, the letter from the grandmother that was just up a minute ago that you highlighted, is that the grandmother, the DFS notes following that letter, there are some DFS notes that they -- that say that the allegations from the grandmother are concerning, right? I mean, that's actually what -- and I think what was testified to by Laura Miles, but it's certainly in the DFS notes that there were concerns about the potential allegations. I mean that's actually their notes. That was not actually a direct report, but that was concerning to me, seen in the context of the DFS notes about that letter.

Q. Okay. So again, I mean your report says there are two reports that are -- that allege direct disclosures from the child to the individual making the report and then you

1 say the first of these reports was contained in
2 a 22-page letter to DFS from the paternal
3 grandmother dated December 1st, 2009. Okay.
4 That's what it says, right?

5 A. That is correct, that is what it
6 says.

7 Q. So this is one of the -- we'll put
8 it back up. 632, please.

9 A. Then that means there are three.

10 Q. There are three now?

11 A. There are two from the maternal
12 aunt and even though I maybe don't make it
13 completely clear in my summary report, but the
14 concern with the grandmother is that DFS
15 themselves flagged that as being concerning.

16 Q. Okay.

17 A. And then with the added note that
18 there was insufficient information and it
19 didn't, I believe the letter does not name a
20 perpetrator.

21 Q. Okay. So now we've gone from two
22 to three 'is that right?

23 A. Well, two direct reports.

24 Q. Okay. All right. Well, let's

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look at the first one then. Turn back to 632.
And again, this is, this a a report written by
Lenore Matusiewicz, correct, right?

A. Uh-huh.

Q. Okay. She's the paternal
grandmother, right?

A. Yes.

Q. Abuse dating back to 2004,
correct?

A. Uh-huh.

Q. Talks about not enough details
only states that they would play the lollipop
game, right?

A. Correct.

Q. Letter happens to be 22 pages
long, correct?

A. Yes.

Q. Okay. You didn't review that
letter, right? I didn't see it in your
information.

A. No, then I didn't. If it's not in
that information packet, then I didn't.

Q. Okay. Now, let's -- again, it
just says they would play the lollipop game,

1 right?

2 A. Right.

3 Q. And that's not really much
4 different than what we saw in the November 20th
5 report to DFS by the grandfather, correct?

6 A. That's correct.

7 Q. The detail is the same, right, as
8 the summary indicates?

9 A. Yes.

10 Q. With respect to the lollipop game?

11 A. Except the DFS then go on to say
12 that there was some concerning information.

13 Q. Sure. Let's keep going. Keep
14 going to the report. Okay. That's what you're
15 talking about here on the disposition note from
16 the supervisor?

17 A. Uh-huh.

18 Q. And it says caller discussed very
19 old information, things occurring back in 2004,
20 correct?

21 A. Back in 2004, yes.

22 Q. Right. And then can we keep
23 going? Okay. Turns out, though, there was
24 another letter sent in on -- that related to

1 Lenore's first letter, correct?

2 A. From the grandmother, yes.

3 Q. This is a second letter that comes
4 in to DFS and in the summary indicates that
5 though her letters seem rambling and not making
6 any sense, this is attributed to her falling and
7 hitting her head while incarcerated. She has
8 been seen at Christiana Hospital due to
9 headaches, dizziness, ringing in the ears and
10 hearing loss. The doctors rendered her with a
11 diagnosis of post traumatic stress disorder. I
12 read that correctly, right?

13 A. Yes.

14 Q. Okay. So on this day, on December
15 1st, 2009, in the second report that comes into
16 the Division of Family Services, they get not
17 one but two letters from Lenore Matusiewicz,
18 correct?

19 A. Yes.

20 Q. Okay. And the first letter
21 happens to be 22 pages long, right?

22 A. Yes.

23 Q. And it only talks about a lick the
24 lollipop game, according to the summary,

correct?

1 A. Yes.

2 Q. And the seconds letter they get
3 from Lenore Matusiewicz talks about her one, I
4 think being incarcerated, correct?

5 A. Yes.

6 Q. And two, while she's incarcerated
7 she falls, hits her head and now she's at the
8 hospital for headaches, dizziness and ringing in
9 her ears, correct?

10 A. Well, she was seen at Christiana
11 Hospital, yes.

12 Q. Okay. Right?

13 A. Yes.

14 Q. Okay. So the 9,500 calls the DFS
15 is getting or letters they are getting in the
16 course of the year, this is the one, this is the
17 one that they are supposed to stop what they are
18 doing and go investigate based on your opinion,
19 where the caller or the letter writer has put
20 not one but two letters she talks about falling
21 and hitting her head and are letters, according
22 to the DFS worker, that seem like rambling and
23 not making any sense?
24

1 MR. EDELIN: Your Honor, I object.
2 I'm not clear if the Government is say it's okay
3 if Laura slipped through the cracks or not.
4 Just because they get 9,500 calls.

5 THE COURT: I'll overrule the
6 objection and let the witness explain, but I see
7 Mr. Bostic.

8 MR. BOSTIC: Your Honor, I do have
9 an objection because I think that's the
10 misstatement of the witness's testimony. She's
11 referred to the two complaints by the Aunt Amy
12 Matusiewicz and this reference was made as to
13 Lenore Matusiewicz, the letter that Mr. Pelly
14 said he did not follow through on because of the
15 medical condition, so if we can get some clarity
16 for the witness.

17 THE COURT: I think Mr. McCall is
18 feeling wronged. Let's go about it a different
19 way.

20 MR. McCALL: I'm not sure what the
21 objection is. We made it clear before we
22 started, I thought, with the doctor that this
23 was clearly in her report as one of the reports
24 flagged and now I'm asking her about it.

1 THE COURT: All right. Doctor
2 Blair--

3 MR. McCALL: Would you like me to
4 restate my question, Your Honor?

5 THE COURT: I'm going to exercise
6 a little judicial discretion here. Doctor
7 Blair, in a courtroom setting things get fired
8 back and forth and a lot of things are sort of
9 all coming together right now. Let me turn it
10 over to you for a moment and see if you can
11 respond to Mr. McCall's last question.

12 THE WITNESS: Well, if I remember
13 question correctly and I'm sure you'll let me
14 know, if I don't, I think you're asking me that
15 with these two letters that came in from the
16 paternal grandmother, whether I am saying that
17 DFS should have initiated an investigation. I
18 think that's what you were asking me, correct?

19 BY MR. McCALL:

20 Q. Yes, ma'am.

21 A. And I think my testimony would be
22 that because of the DHS, their own express or
23 DFS, their own express concerns about some of
24 the allegations made by the grandmother in her

1 letter, I personally think that would have
 2 sparked or it would have been prudent to
 3 investigate, but my main concern is that DFS
 4 themselves noted in their notes that they were
 5 concerned about some of the statements in her 22
 6 page letter, right?

7 Q. Yeah. It would be fair, though,
 8 right, for the intake operator, then, who gets
 9 the second letter, to maybe be concerned that
 10 the same person that had made the initial report
 11 that didn't have any detail associated to the
 12 lick the lollipop game, has now produced a
 13 rambling letter and according to them it doesn't
 14 make any sense, that would be something to take
 15 into consideration?

16 MR. IBRAHIM: I'm going to object.
 17 This is just going to be argumentative going
 18 through each and every one of these reports.
 19 This witness was an expert and is an expert on
 20 why this witness has testified that out of the
 21 10 billion reports they get, they should have,
 22 based upon their own policies, investigated
 23 this. To continue to question the witness as to
 24 why the --

1 this objectio
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1 THE COURT: I'm going to overrule
2 this objection, because while agree that some of
3 the early questions were argumentative,
4 especially when we started talking about
5 statistics, which was Mr. Edelin's objection, I
6 do not believe this is argumentative, I think
7 it's just asking whether the intake worker who
8 has been the focus of the opinion could fairly
9 take into account this additional information.
10 Is that the question?

11 MR. McCALL: Indeed it is, Your
12 Honor.

13 THE COURT: And that question I
14 think would be appropriate that Doctor Blair
15 could answer.

16 THE WITNESS: Do you want to
17 rephrase the question just to make sure I answer
18 it correctly and directly?

19 BY MR. McCALL:

20 Q. It's actually pretty simple. The
21 intake operator and even the intake operator's
22 supervisor can consider the fact that they are
23 getting a second letter from the person that's
24 rambling and not making any sense when

1 determining what to do with this particular
2 call, right?

3 A. Right. So I will concede that
4 maybe given this particular instance of these
5 two rapid fire letters, one of which was 22
6 pages and rambling, a second in which the writer
7 of the letter states that she had suffered a
8 head injury and that she's now diagnosed with
9 PTSD, I can concede that the person taking the
10 call and also the supervisor, Ms. Gardner, that
11 they may decide to screen that one out.

12 Q. Okay. So you're changing your
13 opinion?

14 A. I still think it should have been
15 investigated, given DFS's concerns that they
16 stated that they -- that there was concerning in
17 the first letter. That is concerning to me. I
18 mean, you know, we know from in Pennsylvania the
19 Sandusky case, we know with the --

20 MR. McCALL: Judge, that's not
21 responsive. That's nonresponsive to my question
22 talking about the Sandusky case.

23 THE COURT: I think without
24 reference to any notorious cases you can address

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what from a professional standpoint would be your concern about a situation like this.

THE WITNESS: I think an experienced caseworker at DFS or any child protective services agency, who has concerns, not whether they know one way or the other, but who has concerns about the possibility of the abuse of a child, it would be prudent to investigate it.

BY MR. McCALL:

Q. I would agree with that too.

A. Thank you.

Q. Okay. Let's look at the call that's the second report you've flagged from the aunt, okay. And I think that's going to be on 634, Exhibit 634, please. So this is, these are -- I think you've mentioned there's a letter and a call. That's what you are saying now with respect to this?

A. Yes.

Q. And these come in similar to the last one, almost in rapid succession to each other, we can agree to that?

A. Yes, they were close together.

1 Q. All right. Now, if you can go to
2 the summary page, which is I think -- keep
3 going, please. One more, okay. Now, this is
4 the call from the paternal aunt, right?

5 A. Yes.

6 Q. All right. And this is -- this is
7 eight days after the second call, 18 days after
8 the first call?

9 A. I haven't done the math, but I'm
10 sure you are correct. I can agree with you.

11 Q. We go November 20th, denied.
12 December 1st, denied. December 7 and 11.

13 MR. IBRAHIM: It wasn't denied.
14 It was screened out, which I do think is a
15 difference based on this witness's testimony.
16 DFS following their guidelines, screened out.

17 THE COURT: Will you adopt
18 screened out?

19 MR. McCALL: I will adopt screened
20 out, Judge.

21 THE COURT: Has been adopted,
22 members of the jury, and with that adoption --
23 BY MR. McCALL:

24 Q. Now, in this particular call it

1 says that the caller states in 2006, correct?

2 A. That's what it says.

3 Q. And this is different, if you just
4 think back to the November 20th, call, because
5 that said 2004, correct?

6 A. It did.

7 Q. All right. And this is a call
8 which talks about the child who I think we know
9 to be Laura Matusiewicz began saying G spot, but
10 it also adds more detail, doesn't it, talks
11 about how the child learned this from her
12 mother, this word, that is, correct?

13 A. That's correct.

14 Q. That the caller talks about
15 another incident where the child had gotten
16 upset when another child was being changed,
17 correct?

18 A. Yes.

19 Q. It talks about a secret between
20 the child and the mother, correct?

21 A. Yes.

22 Q. And it talks about how the secret
23 relates to making mommy happy and feeling good,
24 correct?

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A. Yes.

Q. So there's a lot more detail in this third call as compared to the previous two calls, correct?

A. Yes.

Q. So if we just go back to like the November 20th, call, right, that gets screened out because it's -- in part because it's secondhand information, it's the grandfather reporting, correct?

A. Yes.

Q. And it gets screened out because the disclosure is not from the child, right?

A. And very vague.

Q. And vague, right. So now in the third call, right, the third call, all these problems that we saw in the last two don't exist, right?

A. Correct.

Q. In other words, now the disclosure is directly from the child, right, according to the caller?

A. According to the caller, yes.

Q. Now, the disclosure from the child

1 has more detail than just a lick the lollipop
2 game, correct?

3 A. Correct.

4 Q. Talks about a secret between the
5 child and the mother, right?

6 A. Yes.

7 Q. It talks about how the secret
8 relates to making the mother feel happy,
9 correct?

10 A. Correct.

11 Q. It's almost as if this call and
12 the information that's provided is an
13 improvement over the prior two calls?

14 MR. IBRAHIM: Objection. This is
15 oral argument. This is the same theory that the
16 Government has been advancing.

17 THE COURT: I think that the
18 proper question would be, would -- I'll sustain
19 that objection. I won't rephrase it. I'll
20 leave that to Mr. McCall.

21 BY MR. McCALL:

22 Q. Now, at the conclusion of this
23 call, if we can go to the disposition notes, now
24 given the -- excuse me, given the different type

1 of information that was provided in this call.
2 we see a different act taken by the Division of
3 Family Services, correct?

4 A. I do.

5 Q. Right. Putting aside whether you
6 agree with it or not for the moment, right,
7 okay, they take a different step, do they not?

8 A. They do.

9 Q. Right. And now they are going and
10 they are contacting the New Castle County Police
11 Department, Jeff Shriner, correct?

12 A. Yes.

13 Q. And they are talking about the CAC
14 interview, correct?

15 A. Yes.

16 Q. Right. And they are talking about
17 the CAC interview as it relates to Laura

Matusiewicz, right?

A. Yes.

Q. And that's the interview that you
and I talked about at the very beginning of this
examination?

A. March 17th, 2009.

24 Q. The one that you thought was a

Remember
no specific
allegations
of sexual
abuse
addressed
by CAC in
2009 -
only parental
kidnapping

1 credible narrative about traumatic events by the
2 daughter, right?

3 A. Yes.

4 Q. That while the focus was
5 kidnapping, there was still discussion about the
6 mother; is that right?

7 A. Yes.

8 MR. McCALL: Can I have one
9 moment, Your Honor?

10 THE COURT: You may.

11 MR. McCALL: Doctor Blair, thank
12 you. Your Honor, thank you, I have no more
13 questions.

14 THE COURT: All right. Mr.
15 Bostic.

16 MR. BOSTIC: I think Mr. Ibrahim
17 has some questions, Your Honor. I'm trying to
18 follow the protocol. He goes first and I'll go
19 after him.

20 MR. IBRAHIM: I'm number one.

21 BY MR. IBRAHIM:

22 Q. Hello, doctor. How are you?

23 A. I'm fine. Thank you. Just a
24 quick question in terms of these reports made to

1 DFS or DFS type agencies, it's fair to say that
2 the procedures, the rules that they follow are
3 pretty much uniform throughout the country.

4 A. There may be slight differences,
5 but they are pretty uniform.

6 Q. Is it correct to say that when
7 someone picks up the phone and calls, they could
8 also not even give up their name, they can call
9 anonymously?

10 A. Absolutely.

11 Q. And is it also fair to say when a
12 call gets screened out they don't call back and
13 say, by the way, we screened out your call?

14 A. No, they don't.

15 MR. IBRAHIM: Thank you very much.

16 MR. BOSTIC: If I may, Your Honor.

17 THE COURT: You may.

18 BY MR. BOSTIC:

19 Q. You had a lot of questions from
20 the Government about historical reports and
21 vague reports. The question is, does the fact
22 that there are historical reports of child
23 sexual abuse that are vague, does the fact that
24 they exist in Facts, the computer based

1 information, does that -- do those reports --
2 should those reports cause the children's
3 services to reject legitimately filed reports
4 that clearly indicate allegations of child
5 sexual abuse?

6 A. No. And in fact, the rules and
7 regulations that I reviewed clearly state that,
8 that even if they think a reporter has *
9 questionable motives or they are questioning the
10 veracity of the report that is made, that they
11 are under an obligation to investigate it if
12 it's a clear report, a firsthand report with
13 alleged disclosures from the child.

14 Q. Oh, let's do this for the purpose
15 of the jury. Let's take all the other reports
16 at this point and put them in this basket over
17 here as vague and not warranted, not warranting
18 an investigation. Let's deal specifically with
19 the two reports from Amy Matusiewicz -- I'm
20 sorry, Amy Gonzalez in this case. The two that
21 clearly indicate required DHS to make a referral *
22 for some CAC investigation with respect to
23 sexual abuse allegations.

24 A. Well, CAC, the CAC's do not do the *

1 investigation, they do the interview. The
2 investigation is done either by the police
3 department or sometimes by child protective
4 * services. The CAC purely does the interview,
5 nothing else.

6 Q. Okay. They respond to a request
7 for the interview?

8 A. Right.

9 Q. But let's talk about those two
10 reports, the telephone call and the written
11 letter and I think you said before that they
12 clearly indicate allegations of child sexual
13 abuse that warranted an investigation under the
14 protocols of Delaware's --

15 A. Well, based on the information
16 that the reporter provided, I mean, it doesn't
17 necessarily mean that sexual abuse occurs, but
18 * it certainly, the information that the reporter
19 is giving suggests the possibility that this
20 child was being sexually abused. Whether she
21 was or not, I don't have an opinion, I don't
22 know.

23 Q. Now, Mr. Merrick, would you pull
24 up for me, please, Defense Exhibit 346 that was

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earlier entered in this case. It's -- I believe
it's the -- the statute in this case. Title 16,
section 900, I believe, or 902. Do you have
that? And would you go to page, I think it's
page 7 and I'm going to ask you to pull up for
me a document we discussed earlier today,
Defense Exhibit 351, the policy manual and I
think it's page 4 of that referenced A8 and put
them side by side. And I'm going to ask you to
go to paragraph 3 in the, the code and pull out
the first three sentences up to provision.
Actually the division may investigate, the first
three sentences. I mean the first three lines,
okay. Blow that up. Put it to, over in front
of the document to which it pertains. I'm going
to ask you to pull out section A8, the very
first, I think the top three lines.

Would you agree with me that both
the statute in this case and the policy manual
that is relevant to these types of
investigations form the basis of your opinion
that with respect to the allegations and the
complaint filed by Amy Matusiewicz, the
telephone call to the hotline and the letter

*

1 would require Delaware Children's Services, DHS
2 to conduct the investigation that you indicated
3 they did not?

4 A. I believe they do.

5 Q. Now, Mr. McCall asked you about
6 your language in the letter -- I'm sorry, your
7 summary opinion in which you were talking about
8 the 2009 forensic interview conducted at the CAC
9 * in March of 2009. You would agree with me that
10 that interview was pegged directly to the
11 kidnapping events?

12 A. Yes.

13 Q. Right. And you would agree with
14 me --

15 MR. McCALL: Objection. Leading.

16 MR. BOSTIC: Okay. I'll rephrase
17 it.

18 THE COURT: I don't think the
19 facts are in dispute, Mr. McCall, so go ahead
20 Mr. Bostic.

21 BY MR. BOSTIC:

22 Q. And you would agree with me that
23 * that interview was not designed for the purpose
24 of investigating any allegations of child sexual

abuse?

1
2 A. Right, because there were none at
3 that point. *

4 Q. And in fact you would agree with
5 me that had the CAC gotten a request for
6 allegations of child sexual abuse at that point
7 in time -- well, let me ask it this way. Under
8 the standards, the general standards that you
9 talk about, would it have been appropriate,
10 given the traumatic experience that the child
11 suffered with respect to the kidnapping and
12 being returned to her mother, to conduct child
13 sexual abuse investigation at that time had it
14 been requested?

15 A. Kind of a hypothetical question,
16 but given the age of the child, given her
17 experiences immediately prior to that interview
18 on March 17th, 2009, most CAC's, and Delaware is
19 one of these, where their forensic interviewers
20 are trained in extended interviewing, which
21 means if you have a child who is particularly
22 traumatized or a child who -- well, for a whole
23 host of reasons, but let's just stick with a
24 traumatized child, it's the interviewer's *

1 prerogative to bring the child back for what
2 known as an extended interview. So for example,
3 hypothetically, if there had been allegations of
4 sexual abuse at that time, given the experiences
5 of this young child, it probably would have been
6 prudent to not, you know, to do an extended
7 interview.

8 Q. Okay. And the traumatic
9 experience that you're talking about,
10 ~~*~~ experiences, are they experiences regarding the
11 kidnapping and reunification with the mother?

12 MR. McCALL: Objection. I thought
13 we were talking about a hypothetical.

14 THE COURT: Overruled.

15 BY MR. BOSTIC:

16 Q. You may answer.

17 A. Can you rephrase the question?

18 MR. BOSTIC: I think I'll have it
19 read back.

20 (Stenographer read back the
21 pending question.)

22 ~~*~~ THE WITNESS: Yes.

23 BY MR. BOSTIC:

24 Q. Okay. Now, the 2013 interview of

1 the child, now this child has been living with
2 the mother since 2009; is that correct? *

3 A. Yes. When she came back, yes.

4 Q. And the mother had then died or
5 was killed prior to the interview in 2013?

6 A. Yes.

7 Q. Right. First, was that
8 interview -- strike that. Let me ask it this
9 way. Would you expect that given the turn of
10 the events, that the child would likely at that
11 point in time disclose any allegations of child *
12 sexual abuse as related to the mother?

13 THE COURT: One moment, Mr.
14 Bostic.

15 MR. EDELIN: Your Honor, I just
16 don't know how much longer we're going. There's
17 been a request for a comfort break.

18 THE COURT: I was getting a little
19 concerned about we've been an hour and 40, where
20 are we, Mr. Bostic?

21 MR. BOSTIC: I believe that's my
22 last -- I have one more question after Doctor
23 Blair answers that question. And it will be a
24 very short question.

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MR. McCALL: Can we -- I think I have an objection to the question.

THE COURT: Let's take a quick break. Members of the jury, we'll be back. We will finish up with this witness. Please continue to concentrate. Go relax for a few minutes. We'll come back and finish up.

THE COURT: If we may.

(Sidebar discussion.)

MR. BOSTIC: Can I preempt all this? It was wonderful, the huddle. I'm going to withdraw the question.

THE COURT: All right. Are you then done?

MR. BOSTIC: I believe so, yes.

MR. IBRAHIM: The Government is done, so we can excuse the jury from --

MR. McCALL: I'm actually, are you guys done? I'm done. I'm not asking any more questions.

THE COURT: We're done. So I am going to bring the jury back, though, to say a few things.

MR. McCALL: Can we huddle real

1 quick? I think I'm done, Judge, I just want to
2 make sure we're on the same page.

3 THE COURT: All right. Members of
4 the jury --

5 MR. BOSTIC: The good news is due
6 to the time of the day, Your Honor, I withdraw
7 my last question and we have no more questions
8 for Doctor Blair.

9 THE COURT: Anything from the
10 Government?

11 MR. McCALL: No, Your Honor.

12 THE COURT: Anything further from
13 the defense counsel?

14 MR. IBRAHIM: No, Your Honor.

15 MR. EDELIN: No, Your Honor.

16 THE COURT: Members of the jury,
17 we're out of witnesses for the day and so you
18 will indeed get the early departure you were
19 foretold. Before I send you on your way, I am
20 going to make a few statements to you. I'll
21 keep it short. We're well along in the trial.
22 We're not quite there. I've talked to counsel
23 during the break and we anticipate the evidence
24 presented to you to end Monday or perhaps

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Tuesday, all right? I'm going to ask us to
convene at 10 o'clock in the morning on Monday
rather than at 9 o'clock. And frankly, it's
because I'm traveling and traveling that morning
to get here. So if you'll give me that
indulgence, I would appreciate it. I'm going to
revisit the instructions that I've given you
about, you know, not talking about the case.
Over the holiday weekend, Cousin Ernie is over.
You don't even like Cousin Ernie, do you? But
he's going to start talking to you, hey, I hear
you're on that big case. And you know, after
two beers, Cousin Ernie is going to come back
and ask you again. And once again, it's so
important that you not talk to anybody about the
case, right, and we maintain the integrity of
the process. And I know from time to time I
make humerus remarks, but that's just to lighten
the tension in the courtroom. I know you know
this is a very serious matter for everybody
concerned and I know you know when we need to be
serious we are serious. And I am going to be
serious for a minute just before you leave in
this respect. When a judge has a commission

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1 signed by the president after confirmation of
2 the senate, in addition to the date of the
3 signature there is on the commission signed by
4 the president a reference back to the date of
5 independence. So as of Saturday, every new
6 federal judge will have the date of their
7 commission and it will say, and the 239th of the
8 year of independence. All right. And that is
9 to remind the judges they are part of a
10 tradition that dates back to the founding of
11 this country. And so, as you think about the
12 4th of July, which is that date of independence,
13 think how you are participating right in that
14 same process of justice for which people
15 sacrificed and indeed died back in the 1700's.
16 And it's an amazing institution we have. You
17 are blazing an amazing role in that institution
18 and in our system of justice, all right? So
19 have a toast to yourselves this 4th of July,
20 because truly you are living out the principles
21 of our American democracy. And so let's rise in
22 honor of this jury. We'll see you 10 a.m.
23 Monday.

24 (Jury exits.)

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THE COURT: All right. Counsel, please be seated. Government, you ready?

MR. McCALL: Sorry, Your Honor.

THE COURT: We were talking about the issue of what, if anything, the jury would be told about the polygraphs that have been admitted into evidence that were taken in Texas, assuming that there's no experts who testify, all right. And so I don't know whether counsel is prepared to address that now or you want to have some exchange among yourselves over the weekend about that and then communicate with me. I will go with your preference. I have begun to give some thought to that problem. When I say problem, that issue of proof in evidence and instruction, but I have not yet formulated a proposal to give to you. If I do, I will forward it to you. As I would ask you to forward to me, and as I've said, I will be forwarding the current draft of jury instructions and the current draft of the verdict sheet, again, without any prejudice to any counsel to ask for additional instructions on additional points and to react to the changes

Case 1:13-cr-000
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1 the Court has made in the submissions to the
2 parties. And I think I said this in sidebar,
3 because focusing in particular on the proximate
4 cause language and focusing particularly on the
5 verdict sheets, all right? So just canvassing
6 counsel, do you want to spend time now or do you
7 want to give it some thought?

8 MR. IBRAHIM: Judge, I would
9 request that we have the opportunity to speak to
10 one another, because I don't know that -- I
11 don't know that there is actually an issue that
12 group therapy actually necessarily is going to
13 bring out. If we talk to each other, we might
14 figure out that there's a way to approach this.

15 THE COURT: All right. Is that
16 acceptable to the Government?

17 MR. McCALL: Judge, we will --
18 that's fine. I do think that we should have
19 that conversation today, though, so that we
20 don't waste time, if we can't reach an agreement
21 on the contours of this.

22 THE COURT: Could I offer you a
23 conference room? Seriously.

24 MR. McCALL: We can stay here.

1 THE COURT: Yeah, I mean in terms
2 of the exchange, if you feel like you need it to
3 be off stage, we'll make that available.

4 MR. IBRAHIM: Thank you.

5 THE COURT: Anything else that
6 requires my attention? I understand, Mr.
7 Ibrahim, that all of the various motions to
8 quash are at the moment moot?

9 MR. IBRAHIM: They are.

10 THE COURT: Right.

11 MR. IBRAHIM: Yes. And I've
12 notified Mr. Louis and he has notified the
13 judges.

14 THE COURT: Subpoenees?

15 MR. IBRAHIM: Yes.

16 MR. McCALL: Judge, if we could
17 meet and confer in your conference room that
18 would be helpful, I think.

19 THE COURT: Good. All right.
20 With that, if there's nothing else that requires
21 my attention, we'll stand adjourned.

22 MR. McANDREW: Just one last point
23 in terms of your closing -- is Your Honor's
24 practice to instruct before or after closing

This is in regards to sending all of the Judges subpoenas to testify that were on this alleged "hit list"

arguments?

1 THE COURT: I have done it both
2 ways. I think in this case my inclination is
3 going to be instruct after closing unless you
4 persuade me to the contrary.

5 MR. McANDREW: Thank you.

6 MR. EDELIN: No objection. That's
7 fine with me.

8 MR. BOSTIC: No objection, Your
9 Honor.

10 THE COURT: Then we will stand
11 adjourned and I'll make sure we set up counsel.

12 (End at 3:16 p.m.)
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This was a video legally obtained by PI Phillips of the O'Rourke Agency during custody + divorce proceedings in 2006.

MATUSIEWICZ a letter that informed DAVID THOMAS MATUSIEWICZ the **polygraph results** had been mailed to twenty people.

36. On or about January 23, 2011, AMY GONZALEZ sent an email to a person unknown to the Grand Jury seeking assistance in uploading to "www.youtube.com" a surreptitiously recorded surveillance video of Christine Belford and Jane Doe 1, 2 and 3, and the results of the January 2011 **polygraph examination** of AMY GONZALEZ during which examination AMY GONZALEZ claimed that Christine Belford abused Jane Doe 1.

48. In or around August 2011, the same month that DAVID THOMAS MATUSIEWICZ's parental rights were terminated by the Family Court of the State of Delaware, LENORE MATUSIEWICZ mailed a letter to Jane Doe 1's school that contained the **polygraph results** for LENORE MATUSIEWICZ and AMY GONZALEZ, during which examinations LENORE MATUSIEWICZ and AMY GONZALEZ claimed that Christine Belford abused Jane Doe 1.

(Emphasis added)

3. As overt acts, the issue of polygraph reliability, science and administration are both material and relevant as the polygraph of Amy Gonzalez and Lenore Matusiewicz are offered as proof of the elements for the crimes of indictment.

4. In the course of the government's case in chief, the government has admitted into evidence the Polygraph Report of the 2011 administered by Gilberto Capuchina.

5. It is apparent from both the Indictment and the trial that the government seeks to discredit the legitimacy of the 2011 polygraph exam.

6. In accordance with Federal Rule 16, the defense identified both Kendall Shull [EXHIBIT C] and Robert Drdak as experts relating to the polygraph report of 2011. A decision

was made to not use Shull or Drdak, and allow the polygraph result, which Amy Gonzalez passed, to proceed on it's own merit. Given the trial strategy of the government, on June 30th 2015, Mr. Drdak administered a polygraph exam that related back to the 2011 polygraph, with Mr. Shull conducting quality control. Both Mr. Drdak and Mr. Shull are highly qualified, former Special Agents with the Federal Bureau of Investigation, both of whom served as polygraph examiners with the Bureau.

7. The purpose of the 6/30/2015 polygraph is to rebut the theory advanced by the government at trial that the 2011 polygraph result is unreliable.

8. The Drdak polygraph report was disclosed to the government, and all parties, on the very same day, mere hours after the exam was concluded. The data/tracings will be produced to the government on July 3rd 2015.

9. Given the government theory regarding the 2011 polygraph, the manner and results of the Drdak 06/30/2015 polygraph, and the questions addressed in both polygraph exams, counsel submits that the results are probative of actual innocence of Amy Gonzalez.

WHEREFORE, Defendant, Amy Gonzalez, respectfully requests that this Honorable Court grant the Motion in Limine.

Respectfully submitted,

Dated: July 2nd 2015

/s/ Jeremy H. Gonzalez Ibrahim
JEREMY H. GONZALEZ IBRAHIM, ESQUIRE

A5063

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Motion in Limine** has been served via

email upon:

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Ed McAndrews, AUSA
Shawn Weede, AUSA
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Edson A. Bostic, Esquire
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Kenneth C. Edelin, Jr., Esq.
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Philadelphia, PA 19102

/s/Jeremy H. Gonzalez Ibrahim
JEREMY H. GONZALEZ IBRAHIM, ESQUIRE

Date: June 2nd 2015

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

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U.S. Department of Justice

United States Attorney's Office
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July 3, 2015

FILED UNDER SEAL

SEALED

The Honorable Gerald A. McHugh
United States District Court
844 King Street
Wilmington, DE 19801

Re: United States v. David Matusiewicz, et al.
Criminal Action No. 13-83-GAM

Dear Judge McHugh:

Please accept this letter as the government's opposition to the Motions in Limine of defendants Amy Gonzalez and Lenore Matusiewicz to admit the results of their polygraph examinations administered on June 30, 2015. These materials should be excluded for at least three reasons: (1) the defendants' statements in the polygraph examinations are inadmissible hearsay; (2) if introduced at trial, the testimony in question would improperly invade the jury's role as the arbiter of a witness's truthfulness; and (3) the materials were created and produced in the fourth week of trial, in clear violation of the discovery deadlines governing this case. Thus, the defendants' motions should be denied.

Background

On or about January 8, 2011, defendants Lenore Matusiewicz and Amy Gonzalez purported to undergo polygraph examinations. Gilberto Capuchina, a polygraph examiner in Texas, prepared reports from these examinations. (Government's Trial Exh. 150). Although the reports contain summaries of the interviews Mr. Capuchina conducted with the examinees, each defendant was only "tested" on the following questions:

Lenore Matusiewicz:

R5 Are you lying that Laura said she did not like playing the lollipop game as you checked her vaginal rash? NO.

R7 Are you lying that Laura said she did not like playing the lollipop game as you checked her vaginal rash that day? NO.

R10 Are you lying that Laura was wearing multiple layers of clothing? NO.

(*Id.* at 3)

Amy Gonzalez:

R5 Are you lying that Laura was moaning in the bathtub saying that was her G-Spot? NO.

R7 Are you lying that Laura was moaning in the bathtub saying that was her G-Spot at her house? NO.

R10. Are you lying that Laura was wearing multiple layers of clothing before she visited her mother? NO.

(*Id.* at 5).

Subsequently, the reports of these examinations were sent by the defendants electronically and via U.S. Mail to various individuals in an effort to substantiate their claims that Christine Belford had sexually molested her daughter Laura. This activity forms the basis of several overt acts in the defendants' stalking campaign, as charged in the Indictment.

Pursuant to the discovery deadline in place in this case, on February 19, 2015, the government provided notice of potential expert testimony with regard to these polygraph examinations. In particular, the government provided a summary of the potential testimony of Joseph Bradley, III – the Unit Chief of the FBI Polygraph Unit – who would opine at trial that, based on a number of different factors associated with the underlying data and questions asked, the results from the 2011 polygraph examinations for both defendants were inconclusive. (Government's Feb. 19, 2015, Rule 16 Letter, attached hereto as Exh. 4).

The Court-imposed Rule 16 deadline for defendant's expert report was March 16, 2015. Counsel for defendant Lenore Matusiewicz provided no notice of any expert testimony related to the polygraph examinations; Counsel for defendant Gonzalez, however, initially provided the names of Kendall Shull and Robert DrDak as potential polygraph experts. (Gonzalez's Mar. 16, 2015, Rule 16 Letter, attached hereto as Exh. 1). Counsel, however, did not comply with the provisions of Rule 16, which require him to provide a summary of "the witness's

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opinions, the bases and reasons for those opinions, and the witness's qualifications." Fed. R. Crim. P. 16(b)(1)(C). Accordingly, the government responded via letter on March 18, 2015, notifying the defendant as such and asking him to remedy the situation or court intervention would be sought. (Government's Mar. 18, 2015, Deficiency Letter attached hereto as Exh. 2). In several emails thereafter, counsel initially agreed to provide a summary, but then in a letter dated March 27, 2015, stated the following: "I have decided not to use Kendall Shull or Robert DrDak as experts at this juncture." (Gonzalez's Mar. 27, 2015, Response attached hereto as Exh. 3, at p.3) (emphasis added).

On June 30, 2015 – three weeks into trial – counsel for defendants Amy Gonzalez and Lenore Matusiewicz had their clients submit to polygraph examinations, the results of which were provided to the government on June 30, 2015, and July 1, 2015, respectively.¹ The government was not informed of these examinations until after their conclusion, and thus had no opportunity to observe or participate. Moreover, for defendant Gonzalez, the examiners who administered and oversaw her examination were the same individuals that her counsel retracted as potential expert witnesses more than two months prior. The relevant questions asked of each defendant are reported to be as follows:

Amy Gonzalez

- A. On Jan 8, 2011, were you being truthful when you said you heard Laura moaning while bathing?
- B. On Jan 8, 2011, were you being truthful when you said that you heard Laura say "that's the G-Spot"?
- C. On Jan 8, 2011, were you being truthful when you said that Laura told you her mother told her about the G-Spot?

Lenore Matusiewicz

- R5: When you say that in 2006 you believed your granddaughter Laura was being sexually abused, are you lying? No.
- R7: When you say that you believed your granddaughter Laura was being sexually abused when you told Peggy Mitchell, are you lying? No.
- R10: When you say that when Laura told you about the lollipop game you thought it was sexual in nature, are you lying? No.

¹ The score sheet and tracings associated with these exams were not provided to the government at that time. Counsel for defendant Gonzalez indicated that he could supply these materials today; however, the government's polygraph expert is out of the office until Monday. Counsel for Ms. Matusiewicz has not yet made these materials available.

Argument

The defendants seek to introduce, at the last minute, evidence pertaining to their 2015 polygraph examinations as probative of “innocence.” Courts have repeatedly excluded polygraph evidence offered for this purpose and in this manner. *See generally* 4 J. Weinstein & M. Berger, Weinstein’s Federal Evidence § 702.06[1][b] pp. 701-113 to 117 (J. McLaughlin ed., Matthew Bender 2d ed. 2011) (classifying polygraph evidence under Rule 702 and discussing its general inadmissibility). A recent example is *United States v. Kubini*, No. 11-14, 2015 WL 418220 (W.D. Pa. Feb. 2, 2015). After observing that there was not a single reported case within the Third Circuit admitting such evidence in a criminal trial, the court in *Kubini* excluded the defendant’s proffered polygraph evidence for a variety of reasons. *Id.* at *6-18. At least two are squarely on point here.²

First, the evidence in question is inadmissible hearsay. *Id.* at *8-10. The defendants seek to offer their out-of-court statements at trial for the truth of the matter asserted, as well as have witnesses bolster these out-of-court statements through putative expert testimony. This is “classic hearsay” that meets none of the exceptions set forth in the Federal Rules of Evidence.³ *See* Fed. R. Evid. 801(c); *Kubini*, 2015 WL 418220 at *8-10.

Second, the defendants’ proffered evidence would invade the jurors’ role as the sole judges of credibility in this case. *Id.* at *17. The “jury is the lie detector” and thus “[b]y its very nature, polygraph evidence may diminish the jury’s role in making credibility determinations.” *Id.* (quoting *United States v. Scheffer*, 523 U.S. 303, 313 (1998)). Thus, the “probative value of the [polygraph evidence] is substantially undermined by the fact that the jurors are the arbiters of the truthfulness of the witnesses in the case and can perform their sworn duties without the assistance of the proffered expert opinion, as they have done in every other case that this Court has presided

² Notably, in addition to those discussed below, many of the other reasons set forth in *Kubini* are relevant to this case, including: (1) the examinations lack probative value because they were administered years after the conduct in question and after the defendants were aware they were being investigated (*id.* at *13); (2) the polygraph examination was procured by the defense without notice to the government or an opportunity to participate (*id.* at *13-14); (3) the admission of this evidence would prejudice David Matusiewicz in the eyes of the jury, as he has not submitted to a polygraph examination (*id.* at *15); (4) the evidence would likely mislead and confuse the jury since the questions asked differ from those at issue in the 2011 exams (*id.* at *14); and (5) this testimony would be likely create a mini-trial on the examinations themselves (*id.* at *15-16).

³ The result does not change if the defendants testify. Notably, the polygraph examinations at issue here were based on out-of-court statements made *after* the defendants were indicted. Thus, they were created after the defendants had a motive to be untruthful and cannot be introduced as prior consistent statements pursuant to Rule 801(d)(1)(B). *See Kubini*, 2015 WL 418220 at *9-10; Fed. R. Evid. 801(d)(1)(B) advisory committee note to 2014 Amendments (indicating that the recent amendment to Rule 801 retains the requirement that “a consistent statement offered to rebut a charge of recent fabrication of improper influence or motive must have been made *before* the alleged fabrication or improper inference or motive arose.”) (emphasis added).

over to date." *Kubini*, 2015 WL 418220 at *17. Accordingly, the defendants' polygraph evidence should be excluded pursuant to Rule 403.

Lastly, the evidence here should be excluded for an additional reason not discussed in *Kubini* - namely, it was produced in violation of the Court's Rule 16 deadline. Federal Rule of Criminal Procedure 16 provides that the defendant must, prior to trial, provide the government with "a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial." Fed. R. Crim. P. 16(b)(1)(C). Pursuant to the Court's scheduling order, the deadline for each defendant to provide this information was March 17, 2015. Rather than abide by this order, the defendants waited until the third week of trial to obtain and provide a summary of their proffered expert testimony. This greatly prejudices the government in a number of respects and the defendants provide no reasonable excuse for their conduct.⁴ Accordingly, the defendants' polygraph evidence should also be excluded pursuant to Rule 16(d)(2)(C).

For all of the above reasons, the defendants' Motions in Limine should be denied.

Respectfully submitted,

DAVID C. WEISS
Attorney for the United States
Acting Under Authority Conferred
by 28 U.S.C § 515

BY: /s/ Shawn A. Weede
Jamie M. McCall
Edward J. McAndrew
Shawn Weede
Assistant United States Attorneys

cc: All Defense Counsel (via email and hand delivery).

⁴ For example, the government was not permitted to observe and participate in the polygraph examinations in question; nor was it permitted to perform its own polygraph examination of the defendants. *See, e.g., Weinstein, supra* § 702.06[1][b] at p. 701-114 (indicating that in order to introduce polygraph evidence at trial in the Eleventh Circuit, the offering party "must provide adequate notice to the opposition that the evidence will be offered" and "the opposition party must have an opportunity to administer its own polygraph examination.").

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March 16th 2015

via email only

Jamie M. McCall
Assistant United States Attorney
U.S. Attorney's Office
1007 Orange Street
Suite 700
Wilmington, DE 19801

RE: U.S.A. vs. Amy Gonzalez 13-083-GAM

Dear Mr. McCall:

Winter greetings.

Enclosed please find Amy Gonzalez' disclosures pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) disclosure on experts only. At this juncture, no reports have been produced by any defense expert. Also, the experts are anticipated to be presented, if at all, as rebuttal expert witnesses. I have also enclosed the resume of each expert as available. Hence, the complete nature of their testimony depends upon the in-court testimony of a government expert and/or the evidence presented by in the prosecution case-in-chief. In the event that a report is produced, I will of course provide you with a copy. Previously at the bail hearing, I provided you with the report prepared by J. Wright Leonard. Please let me know if you need another copy. I am still seeking an expert in child abuse for possible use at trial. However, I have been unable up to this point to engage an expert. I will advise you should I find an such an expert.

<u>NAME</u>	<u>EXPERTISE</u>
James Cadden	Computer Forensics
Kendall Shull	Polygraph
Robert DrDak	Polygraph
J. Wright Leonard	Handwriting

Sincerely,

/s/ J. Gonzalez Ibrahim
Jeremy H. Gonzalez Ibrahim

cc: (via email only)
Edson A. Bostic, Esquire
Dina Chavar, Esquire
Kenneth C. Edelin, Jr., Esq.

A5071

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March 18, 2015

VIA EMAIL

Jeremy H.G. Ibrahim, Esq.
P.O. Box 1025
Chadds Ford, PA 19317

Re: United States v. David Matusiewicz, Lenore Matusiewicz, and Amy Gonzalez
Criminal Action No. 13-83-GMS

Dear Mr. Gonzalez Ibrahim,

This letter concerns the status of your expert witness disclosures, the deadline for which was yesterday, March 17, 2015.

Pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C), you are required to provide the government with a written summary of any expert testimony that you intend to offer, which must include "the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." Fed. R. Crim. P. 16(b)(1)(C). As the Advisory Committee Note expressly states, Rule 16(b)(1)(C) is "intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." Fed. R. Crim. P. 16 Adv. Comm. Note. A failure to comply with Rule 16 may result in the exclusion of the proffered evidence. See Fed. R. Crim. P. 16(d).

In a letter dated March 16, 2015, you provided the names and C.V.'s of four putative experts. Despite the plain language of Rule 16, however, you did not provide a summary of their testimony. Thus, your disclosure is deficient.

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March 27th 2015

via email only
Shawn Weede
Assistant United States Attorney
U.S. Attorney's Office
1007 Orange Street
Suite 700
Wilmington, DE 19801

RE: U.S.A. vs. Amy Gonzalez 13-083-GAM

Dear Mr. Weede:

Spring greetings.

Enclosed please find Amy Gonzalez' supplemental disclosures pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) disclosure on experts only.

James Cadden, a computer forensics expert may testify in rebuttal to the computer forensic experts that the prosecution has disclosed. In summary, Mr. Cadden may testify as follows:

Jae C. Hangge is listed as a trainee, as such any actions taken would have been under the direct supervision of a senior examiner. Trainees would not normally be permitted to conduct field or lab operations in such a case unless directly supervised. Hangge's actions, as listed in the letter, concern only "forensic Imaging". This is the process of creating an industry standard and court accepted digital copy of a suspect hard drive. This process is mostly an automated one and would require extreme negligence on the part of the examiner to spoil the evidence. There are three primary concerns when imaging a suspect drive which is to be used as evidence. 1.) Altering data on original suspect drive, 2.) Capturing full complete and accurate representation of the original suspects hard drive 3.) Validating the captured image through hashing, usually MD5 or SHA. Industry standards and court accepted processes for forensic imaging of evidence data involve the use of physical write blocking hardware. Write blocking hardware is a device which physically prevents the examiner and any process which he may engage in, such as making a copy of the hard drive, from altering the data on the suspect hard drive. This is done so that a challenge to any evidence found on the hard drive can be validated through a secondary examination, which should produce the same exact results. The result of the copying is a 'forensic bit-stream image'. This is a special type of an image/copy in that it differs from many commercial image/copy formats by capturing ALL data on the hard drive regardless

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of its status. Whereas most commercial image/copy tools will only capture active or non-deleted data. Once the image is captured, it will usually be duplicated for archiving purposes and then the image will be examined by a forensic examiner. This forensic bit-stream image is unique in that it can be examined with forensic tools (software) which will examine it's contents, but disallow any changes to the image itself. Again, this happens so that a challenge could be answered with a second or third party exam, which would produce the same results, as the image has not been altered. It's worth noting that the entire process has been designed to disallow personal intervention into the imaging process so as to remove the element of human error. Hangge can be expected to testify as to the date, time, location, items of evidence offered to him (computer systems), the process used to created the image(s), the validation process and results and the images safe storage afterward. The process of imaging would include details such as 1.) the write protection tools used, hardware or software write blockers, 2.) the imaging tools used, 3.) any problems encountered in the process and corrective actions taken, 4.) and the outcome of the imaging process, such as the validation of hard drive images and their safe storage. As mentioned previously, with the standards and protocols known to be in place at the FBI CART Units, it would require extreme carelessness or negligence on the part of the forensic imager to soil the evidence or to capture incorrect evidence. This is why such tasks are often relegated to trainees, apprentices or even interns. Gregory Hermanson does not appear to address Amy Gonzalez' hard drive and even if he did, he would fall into the same category as Hangge. With the exception that he is a forensic examiner and not a trainee. Linda Grody is listed as a Senior Forensic Examiner and as the person who conducted the digital forensic examination of the Gateway Desktop Computer belonging to Amy Gonzalez. The letter does not say if she was the sole person responsible for the examination, only that she is the one who will be testifying to "her examination" process and results. This can sometimes be important as it is not uncommon for criminal investigators to be involved in the process of the forensic examination and sometimes even sitting in front of the forensic examination computer at the time of the examination. It's also not uncommon to have a second examiner aid the primary examiner and assist with the many tasks involved in searching a specific set of data or images. A Forensic Examiner has many tasks in their job description and these may vary according to case needs and overall laboratory protocols. Among these are: 1.) Validating the Imaging process a second time. 2.) Speaking with Criminal Investigator about the case needs. 3) Introducing the evidence images to forensic examination software. 4.) Choosing Settings within the software appropriate for the specific case. 5.) Applying search terms and conditions to the case evidence. 6.) Selecting search results which may be valuable to the investigation. 7.) Highlighting or bookmarking search results for review by criminal investigator who may then make changes or modifications to existing search terms and conditions based on these results. 8.) Exporting the relevant search result data to a report form. In this examination report, which was produced with FTK Forensic software, we see an HTML file that acts as a navigation for the report results. The HTML file itself contains very little information about the computer being examined or the case that brought the computer to the attention and custody of the FBI. The HTML file contains a left window navigation list and a right window which displays the contents of each of the items in the left

window navigation list. On this computer system, files were bookmarked in four locations: Unallocated space, User Profile "mommy_amy," User Profile "juanito," and User Profile "tatiana." The FBI runs their computer forensic labs the same way they run their latent fingerprint and DNA labs. A very generic hands off approach to the subject matter by the examiners. Meaning, the forensic examiner will process the evidence, add search terms or criteria to the evidence as dictated by the case agent and produce the results of the search back to the case agent who will then determine what the evidence means.

I expect that I may be using Viola Vaughan Eden as an expert in forensic child abuse. I have attached her curriculum vitae for your review. Please note that I have not yet received CJA funding for her services. If I am authorized to engage Ms. Vaughan-Eden, I will provide her with the discovery I receive regarding the interviews of Jane Doe 1, 2, and 3. The purpose of her engagement is to assess the forensic effectiveness of the interviews of Jane 1, 2, and 3 in regards to whether the process was up to standard to determine suspected child abuse.

I have decided not to use Kendall Shull or Robert DrDak as experts at this juncture. Note, I do not have funding for Robert DrDak.

Once I receive additional CJA funding for J. Wright Leonard, my handwriting expert, she may review additional materials, including any exhibits that the prosecution may present at trial and/or has had examined by the prosecution expert. Any report produced will of course be supplied to counsel.

In the event that in the course of ongoing discovery review additional experts are needed, I will advise all counsel in a timely manner. Of course, I do recognize that all counsel reserve the right to object to these experts. Naturally, I would not be opposing any rebuttal experts. Should such circumstances arise, I will contact all counsel to discuss.

Sincerely,

/s/ J. Gonzalez Ibrahim
Jeremy H. Gonzalez Ibrahim

Enclosure.

cc: (via email only)
Edson A. Bostic, Esquire
Dina Chavar, Esquire
Kenneth C. Edelin, Jr., Esq.



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February 18, 2015

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Re: United States v. David Matusiewicz, Lenore Matusiewicz, and Amy Gonzalez, Criminal Action No. 13-83-GMS

Dear Counsel:

I write this letter to provide you the government's notice of expert testimony pursuant to Rule 16(a)(1)(G) in the above captioned matter. Since this disclosure contains sensitive information, including information related to medical treatment for child victims and Christine Belford, it is governed in accordance with the Protective Order.

BEHAVIORAL SCIENCE EXPERT

A. **Behavioral Science Expert – Stalking Behavior**

Gregory B. Saathoff

The government hereby notifies you that it intends to call Dr. Gregory B. Saathoff to testify about the behavioral characteristics of individuals and groups that engage in stalking behavior. Dr. Saathoff's testimony will include an educational summary of the behavioral characteristics of those who, individually and collectively, engage in predatory violence and the manipulation of attendant individuals and circumstances to achieve such, as well as the behavioral science discussing the steps in the "pathway to violence," as it is described in behavioral science literature. Those steps include: (1) grievance; (2) ideation; (3) research and

The govt chose not to call Dr. Saathoff because he could not opine that Dave, nor I had behavioral characteristics of individuals that engage in stalking or violence.

planning; (4) preparation; (5) breach; and (6) attack. Dr. Saathoff will thus testify about a body of behavioral science that is widely used in threat and danger assessment relating to individuals who have engaged or may engage in stalking and violence.

Dr. Saathoff's CV and Case Listing are attached. (See Ex. A-1, Bates Nos. 00003561-00003589; Ex. A-2, Bates Nos. 0000-3590-00003591). Dr. Saathoff is currently an Associate Professor of Research at the University of Virginia's Department of Public Health Sciences and Department of Emergency Medicine. He also serves as the Executive Director of the Critical Incident Analysis Group, at the University of Virginia; the psychiatrist who regularly consults with the Federal Bureau of Investigation's Critical Incident Response Group (since 1996); and as a Psychiatric Consultant to the Virginia Department of Corrections and the United States Bureau of Prisons (2014). His professional associations, board memberships, advisory positions, commission appointments and elections, teaching assignments and presentations are detailed in his CV.

COMPUTER FORENSIC EXPERTS

B. Computer Forensic Examiners Who Imagined Seized Computer Hard Drives

Jae C. Hangge

The government hereby notifies you that, if necessary, it intends to call Jae C. Hangge, Forensic Examiner Trainee and Information Technology Specialist, of the Federal Bureau of Investigation's Computer Analysis Response Team. Mr. Hangge's CV is attached. (See Ex. B-1, Bates Nos. 00003592-00003594). Mr. Hangge will testify about his forensic imaging, or copying, of the hard drives found in the following computers seized in this case:

1. HP Pavilion Laptop (S/N 5CD2013NHC) seized from Honda CR-V;
2. Gateway Desktop (S/N XBG8531006057) seized from Gonzalez residence;
3. Toshiba Laptop (S/N X4342019K) seized from Matusiewicz residence;
4. Dell Laptop (S/N 4ZTZ2XKI) obtained from Belford residence);
5. Toshiba Laptop (S/N 97165788Q) seized from Bender residence; and
6. e-Machine Desktop (S/N XGM7B30000348) seized from Bender residence.

Gregory T. Hermanson

The government hereby notifies you that, if necessary, it intends to call Gregory T. Hermanson, Computer Forensic Examiner, of the Federal Bureau of Investigation's Computer Analysis Response Team. Mr. Hermanson's CV is attached. (See Ex. B-2, Bates Nos. 00003595-00003699). If necessary, Mr. Hermanson will testify about his forensic imaging, or

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copying, of the hard drive found in the following computer seized in this case:

1. Apple Mac Book Pro Laptop (S/N C2QD21ETDC79) seized from Mitchell Residence.

Summary of Testimony for Jae C. Hangee and Gregory T. Hermanson

Jae C. Hangee and Gregory T. Hermanson's testimony would be limited to their work in creating forensic images of the hard drives from the devices referenced above. Those images were then used by Linda Grody to conduct the forensic examinations of the devices (see below). Mr. Hangee and Hermanson's testimony will involve their technical and specialized knowledge regarding the imaging of the computers listed above pursuant to Rule 702 of the Federal Rules of Evidence. Both witnesses will describe the processes they employed in creating the forensic images of the devices above, including the methods and/or software used in the imaging process.

C. Computer Forensic Examiners Who Analyzed Seized Computers

Linda Grody

The government hereby notifies you that it intends to call Linda Grody, Supervisory Information Technology Specialist and Senior Forensic Examiner, of the Federal Bureau of Investigation's Computer Analysis Response Team. Mrs. Grody is expected to testify about her forensic examination and extraction of data from the following computers seized in this case:

1. Apple Mac Book Pro Laptop (S/N C2QD21ETDC79) seized from Mitchell residence;
2. HP Pavilion Laptop (S/N 5CD2013NHC) seized from Honda CR-V;
3. Gateway Desktop (S/N XBG8531006057) seized from Gonzalez-residence;
4. Gateway Laptop (S/N XBG8531006057) seized from Gonzalez residence (imaging and examination);
5. Toshiba Laptop (S/N X4342019K) seized from Matusiewicz residence;
6. Dell Laptop (S/N 4ZTZ2XKI) obtained from Belford residence);
7. Toshiba Laptop (S/N 97165788Q) seized from Bender residence; and
8. e-Machine Desktop (S/N XGM7B30000348) seized from Bender residence.

Mrs. Grody's CV is enclosed. (See Ex. C-1, Bates Nos. 00003600-00003604). In general, Mrs. Grody is a Digital Forensic Technology Program Supervisor assigned to the FBI's Operational Technology Division, Digital Evidence Section, Computer Analysis Response

Team, Forensic Analysis Unit. She conducts forensic examinations and analyses of cell phones, computers and other digital equipment seized in criminal cases; supervises other forensic examiners who do so; oversees specialized technical forensic projects and serves as a forensic liaison to foreign governments. All of Mrs. Grody's reports have previously been provided to defense counsel.

Brian A. Coleman

The government hereby notifies you that it intends to call Brian A. Coleman, who was, at the pertinent time, an Information Technology Specialist and Forensic Examiner, of the Federal Bureau of Investigation's Computer Analysis Response Team. Mr. Coleman is expected to testify about his forensic examination and extraction of data from the following computer seized in this case:

1. Apple Mac Book Pro Laptop (S/N W87074R9WOG) seized from Matusiewicz Residence.

Mr. Coleman's CV is enclosed. (See Ex. C-2, Bates Nos. 00003605-00003607). In general, at the time that he forensically examined the computer referenced above, Mr. Coleman was a certified forensic examiner assigned to the FBI's Computer Analysis Response Team in the Baltimore Field Office. He conducted forensic examinations and analyses of cell phones, computers and other digital equipment seized in criminal cases.

Summary of Testimony for Linda Grody and Brian Coleman

Mrs. Grody and Mr. Coleman's testimony will involve their technical and specialized knowledge regarding the examination and extraction of data from the computers listed above pursuant to Rule 702 of the Federal Rules of Evidence.

Both witnesses will describe the processes and purposes of their examinations, the methods and/or software used in the examinations, and the results of the examinations. Already provided to the defense on separate disks are reports and related files and data recovered from the devices referenced above. These software-generated reports of the examination of each computer bookmark all relevant evidence extracted from each device. That relevant data was identified and extracted based on the use of keywords that are identified in each report. As referenced in the reports, Mrs. Grody and Mr. Coleman's testimony will include, but may not be limited to, identifying the following types of data that are referenced in the reports and are relevant to the criminal conduct: (1) communications (primarily emails); (2) documents; (3) graphic files (photographs, videos, maps, etc.); and (4) Internet searching, browsing and usage history. This data relates to the charged criminal conduct, as well as the identity of the computer user(s). An additional written Report of Examination completed by Mr. Coleman also is enclosed (See Ex. C-3, Bates Nos. 00003608-00003623).

Based on the summary above, Mrs. Grody and Mr. Coleman will be more in the nature of "fact" witnesses explaining how they examined and extracted certain data from the computers

noted above. The Government is nonetheless prepared to qualify them as experts under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). However, the Government emphasizes that Mrs. Grody and Mr. Coleman will be offered for her technical and specialized knowledge in the area of the forensic examination and extraction of data from computers.¹

D. Computer Forensic Examiner Who Analyzed Seized Blackberry

Detective Nancy Skubik

The government hereby notifies you that it intends to call Delaware State Police Detective Nancy Skubik to testify about her extraction of data from the Blackberry device obtained from Cynthia Bender. Detective Skubik's CV is enclosed. (See Ex. D-1, Bates Nos. 00003624-00003625). In general, Detective Skubik is assigned to DSP's High Tech Crimes Unit, where she conducts forensic examinations and analyses of cell phones, computers and other digital equipment seized in criminal cases.

Detective Skubik's testimony will involve her technical and specialized knowledge regarding the examination and extraction of data from mobile devices – in this instance a Blackberry device obtained from Cynthia Bender – pursuant to Rule 702 of the Federal Rules of Evidence. Detective Skubik will describe the process and purpose of her examination, the methods and/or software used in the examinations, and the results of the examination. The results of Detective Skubik's examination are detailed in the computer-generated, Cellebrite Extraction Reports, which has been previously produced to you (See Bates Nos. A-13539 to A-14178; A-14179 to A-14761).

Based on the summary above and as with Mrs. Grody and Mr. Coleman, Detective Skubik will be more in the nature of "fact" witnesses explaining how she extracted certain data from Cynthia Bender's Blackberry device. The Government is prepared to present the evidence

¹ Courts are split on whether a computer forensic examiner must be qualified as an expert. See *United States v. Scott-Emuakpor*, 2000 WL 288443, *11-*12 (W.D. Mich. Jan. 25, 2000) ("... there is no reason why either witness may not testify about what they did in examining the computer equipment and the results of their examinations. *The question before the Court at this time is not whether these witnesses have the expertise, for example, to develop sophisticated software programs.* The question is whether they have the skill to find out what is on a hard drive or a zip drive. Apparently, they have this skill because they determined what was on the drives."); *United States v. Berry*, 318 Fed. Appx. 569, 570 (9th Cir. 2009) (a forensic examiner who "simply testified to what he found on the hard drive of [the defendant's] computer, without expressing an opinion that required specialized knowledge or offering insight beyond common understanding" was a fact witness, not an expert). *But see, e.g., United States v. Kavalchuk*, 2011 WL 5080314 (D.N.H. 2011) ("witnesses who testify about information they found on computers, based on certain investigations, searches, or analyses, are giving expert opinions within the scope of Rule 702").

pursuant to the dictates of the Supreme Court in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). However, the Government emphasizes that Detective Skubik will be offered for her technical and specialized knowledge in the area of the forensic extraction of data from a mobile device.

E. Evidence Technician Who Recovered Data from Damaged Hard Drive

Jason Abramowitz

The government hereby notifies you that, if necessary, it intends to call Jason Abramowitz, Electronics Engineer, of the Federal Bureau of Investigation's Computer Analysis Response Team. Mr. Abramowitz's CV is attached. (See Ex. E-1, Bates Nos. 00003677-00003678). If necessary, Mr. Abramowitz will testify about his recovery of data from the damaged hard drive located in the following computer seized in this case:

1. Gateway Laptop (S/N XBG8531006057) seized from Gonzalez residence.

Mr. Abramowitz's testimony will involve his technical and specialized knowledge regarding the recovery of data from damaged hard drives using commercially available data recovery tools. Mr. Abramowitz will explain that the original hard disk had sectors (area of data) that were unreadable, and that he used data recovery tools to skip the unreadable sectors from the original evidence and write only the readable sectors to a wiped hard disk. The copied hard disk contained 99.94 % of valid data from the original evidence hard disk. Mr. Abramowitz then provided the copied hard drive to Linda Grody for processing and examination.

DNA - FINGERPRINT - HANDWRITING EXPERTS

F. DNA Testimony from FBI and State of Delaware

Alan Giusti

The government intends to call Federal Bureau of Investigation ("FBI") Analyst Alan M. Giusti from the DNA Casework Unit to testify about the report he prepared on November 20, 2014, which has already been produced to all defense counsel. (See Bates Nos. 0003552-0003555). As the report indicates, each of the items that were tested by the FBI came from the Honda CRV, which was located by law enforcement at a parking garage near the New Castle County Courthouse. The results for each item tested are set forth in Mr. Giusti's report. In order to properly explain the findings in this report, the government also anticipates that Mr. Giusti's testimony will include testimony regarding why meaningful DNA profiles cannot always be obtained from various objects, and the limitations inherent in testing for DNA. Mr. Giusti's CV is attached to this notice. (See Ex. F-1, Bates Nos. 00003626-00003634).

Kevin MacMillan

The government intends to call Senior Forensic DNA Analyst Kevin MacMillan from the State of Delaware's Department of Health & Social Services to testify about the report he prepared on April 28, 2014, which has already been produced to all defense counsel. (See Bates Nos. 00003458-00003509). As the report indicates, the items tested in this instance were the firearms recovered in this case from the Honda Civic in Maryland. The results for each item tested are set forth in Mr. MacMillan's report. In order to properly explain the findings in this report, the government also anticipates that Mr. MacMillan's testimony will include testimony regarding why meaningful DNA profiles cannot always be obtained from various objects, and the limitations inherent in testing for DNA. Mr. MacMillan's CV will be provided upon receipt.

G. Fingerprint Testimony

Kelisha Kelly

The government intends to call FBI Analyst Kelisha Kelly from the Latent Print Operations Unit to testify about the reports she prepared on December 11, 2014, and February 12, 2015. The government anticipates that Ms. Kelly will explain the findings in both reports, including whether or not she was able to detect latent fingerprints of value from the items that she was requested to test. In order to properly explain the findings in this report, the government also anticipates that Ms. Kelly's testimony will include testimony that due to a variety of factors, the recovery of friction ridge prints on items of evidence is not always successful. This testimony will include an explanation regarding how human beings leave behind latent fingerprints, and the process by which fingerprint examiners detect such fingerprints. Ms. Kelly's CV and reports are attached to this notice. (See Ex. G-1, Bates Nos. 00003635-00003637; Ex G-2, Bates Nos. 0003556-0003560; Ex. G-3, Bates Nos. 00003638-00003645).²

² The FBI disclosed the findings in Ms. Kelly's February 12, 2015, report to the government during the first week in February. According to the FBI, Ms. Kelly discovered at least two latent palm prints of value in the red notebook. However, the government does not have palm prints from any of the defendants, because palm prints, which are considered "major case prints," are not recorded during the normal fingerprinting process. On February 5, 2015, the government requested (via trial subpoena) that each of the defendants provide their "major case prints," (including palm prints) to the government on February 10, 2015. While all of the defendants initially objected, Defendants Lenore Matusiewicz and Amy Gonzalez have subsequently agreed to provide these palm prints on February 19, 2015. Counsel for Defendant David Matusiewicz, however, has informed the government that their client is not available until the first week in March. Accordingly, and particularly in light of the fact that there is no legitimate Fourth Amendment or Fifth Amendment prohibition against taking fingerprints (see *United States v.*

Letter to Defen
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Page 8

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H. Handwriting Analysis

Daniel Anderson

The government intends to call FBI Analyst Dan Anderson from the Questioned Documents Unit to testify about the report he prepared on January 27, 2015. Mr. Anderson will describe the four step process utilized when conducting a handwriting comparison, and the specific results he observed for the items he analyzed in this case. Mr. Anderson's CV will be provided upon receipt; however, his report is attached to this notice. (See Ex. H-1, Bates Nos. 00003646-00003649).

MEDICAL EXPERTS

I. Medical Testimony Regarding the Death of Christine Belford

Luis Cardenas, D.O.

The government intends to call the emergency room doctor, Luis Cardenas, D.O., Ph.D, who treated Christine Belford on February 11, 2013, following the shooting in the New Castle County Courthouse. The government anticipates that Dr. Cardenas will testify about the condition of Christine Belford when she arrived at Christiana Hospital's emergency room, as well as the process by which her death was officially declared. The medical records regarding this treatment were previously produced to defense counsel, and can be found at Bates Nos. A-0026624-A-0026629 (EMT records), and Bates Nos. A-0026630-A-0026658 (Emergency Room records). Dr. Cardenas' CV will be provided upon receipt.

Victor Weedn, M.D.

The government also intends to call Victor W. Weedn, M.D., to establish that while Christine Belford died from multiple gunshot wounds, she lived for a length of time after she was shot, a fact that is relevant to the charged conduct. According to Dr. Weedn, there was no immediate devastating injury to the head; rather there was evidence of life after the shooting, including (but not limited to): (1) the paramedics notation of warm, pink skin; (2) cardiac electrical activity, which was documented approximately 26 minutes after the paramedics were dispatched; and (3) spontaneous movement by Christine Belford for approximately one minute

Dionisio, 410 U.S. 1, 8 (1973); *Davis v. Mississippi*, 394 U.S. 721, 727 (1969); *United States v. Hubbell*, 530 U.S. 27, 35 (2000)), the government does not believe any delay created by Defendant David Matusiewicz is attributable to the government pursuant to Rule 16(a)(1)(g).

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after she was shot. This testimony is relevant to show that after Christine Belford was shot by Thomas Matusiewicz she continued to be in reasonable fear of death and serious bodily injury. Dr. Weedn's CV will be provided upon receipt; however, his report is attached to this notice. (See Ex. I-1, Bates Nos. 00003650-00003654).

J. Testimony Regarding the Medical Treatment of Jane Doe 1

Jason Hann-Deschaine, M.D.

The government intends to call Jason Hann-Deschaine, M.D., to testify regarding his observations and medical treatment for Jane Doe 1. Dr. Hann-Deschaine served as the primary-care pediatrician for Jane Does 1, 2, and 3, between 2006 and 2012. The substance of Dr. Hann-Deschaine's anticipated testimony is set forth in the FBI 302 report, which was prepared on April 18, 2014, and was previously produced to defense counsel. (See Bates Nos. FD-005476-FD-005482). The government expects that Dr. Hann-Deschaine will testify not only about factual observations made by him as it relates to Defendants, Christine Belford, and Jane Does 1, 2, and 3 (including that he observed no signs of child or sexual abuse during the course of his treatment), but also to the medical evaluations he specifically performed on Jane Doe 1. For example, Dr. Hann-Deschaine will testify that he did not observe any trauma to Jane Doe 1's hymen, despite an allegation to the contrary by Defendants. Dr. Hann-Deschaine's CV is attached. (See Ex. J-1, Bates Nos. 00003655-00003658). The government has previously provided all of the medical records for Jane Does 1, 2, and 3, which forms the basis of Dr. Hann-Deschaine's testimony. (See Bates Nos. A-0026049-A-0026418).

Monica Bocanegra, Ph.D.

The government intends to call Monica Bocanegra, Ph.D., to testify regarding her observations and clinical treatment of Jane Doe 1, specifically as it relates to allegations of sexual abuse against Jane Doe 1 by her biological mother - Christine Belford. Since 2009, Dr. Bocanegra has treated Jane Doe 1 in approximately twenty clinical sessions, during which time she assessed Jane Doe for (among other things) potential sexual and physical abuse caused by her mother. Based on these clinical sessions, Dr. Bocanegra determined that Jane Doe 1 was not sexually or physically abused by Christine Belford. The substance of Dr. Bocanegra's anticipated testimony can be found in the FBI 302 reports dated April 16, 2013 (FD-005084-FD-005086), and April 22, 2014 (FD-005445-FD-005451); her sworn testimony during the Termination of Parental Rights hearing (00002660-00002706; 00002495-00002576); Dr. Bocanegra's response to the Division of Professional Regulation (00003352-3354); and the Trauma-Focused Psychological assessments that she performed (00002721-00002737). The government has previously provided each of these items in discovery to defense counsel. Dr. Bocanegra's CV is attached to this notice. (See Ex. J-2, Bates Nos. 00003659-00003667).

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K. Testimony Regarding the Mental Health Treatment of Christine Belford

Marc Richman, Ph.D.

The government intends to call Marc Richman, Ph.D., to testify regarding his clinical treatment of Christine Belford. Dr. Richman was Ms. Belford's treating clinical psychologist periodically between 2000 and 2012, during which time he never observed any clinical issues which would lead him to believe Christine Belford was abusive (in any way) towards her children. Nor did he diagnose Christine Belford with multiple personality disorder or bipolar disorder, despite claims by Defendants to the contrary. Dr. Richman will also describe the level of fear and anxiety Ms. Belford experienced due to the Defendants' alleged charged conduct. While the government believes that Dr. Richman's testimony is primarily factual in nature, we are - out of an abundance of caution - noticing him as an expert witness. Dr. Richman's CV is attached (see Ex. K-1, Bates Nos. 00003668-00003672), and the substance of Dr. Richman's anticipated testimony can be found in his FBI 302 report (FD-005485-FD-005490), dated April 7, 2014, along with the corresponding medical records for Christine Belford (A-0025938-A-0026048). Both of these items have already been provided to defense counsel.

Oliver Yost, M.D.

The government intends to call Oliver Yost, M.D., to testify regarding his treatment of Christine Belford. Dr. Yost was Ms. Belford's treating psychiatrist from 2010 through 2011. While the government believes that Dr. Yost's testimony is primarily factual in nature, we are - out of an abundance of caution - noticing him as an expert witness. Dr. Yost's CV is attached (see Ex. K-2, Bates Nos. 00003673-00003675), and the substance of Dr. Yost's anticipated testimony can be found in his FBI 302 report (FD-005452-FD-005456), dated April 10, 2014, along with the corresponding medical records for Christine Belford (A-0025882-A-0025896). As the records demonstrate, Dr. Yost never diagnosed Christine Belford with multiple personality disorder or bipolar disorder, nor did he believe - based on his treatment - that Christine Belford posed a threat to her children. Dr. Yost will also describe the level of fear and anxiety Ms. Belford experienced due to the Defendants' alleged charged conduct. Both of these items have already been provided to defense counsel.

Samuel Romirowsky, Ph.D.

The government also intends to call Samuel Romirowksy, Ph.D., to testify regarding his evaluations of Christine Belford, David Matusiewicz, and Jane Doe 1, during the 2006-2007 child custody dispute hearing, and the Termination of Parental Rights Hearing. While the government does not intend to elicit any testimony regarding his diagnosis of Defendant David

Matusiewicz, Dr. Romirowsky will testify that Defendant David Matusiewicz never claimed to him that Christine Belford was sexually abusing the children, and that based on his evaluations of Christine Belford, which included (1) conducting home visits with Ms. Belford and her children; (2) administering a series of psycho-diagnostic tests to Ms. Belford, including (among others) the child abuse potential inventory test; (3) reviewing Ms. Belford's mental health history; and (4) his general observations, there was never any basis to conclude that Ms. Belford was sexually abusing Jane Doe 1. Dr. Romirowsky will also describe the level of fear and anxiety Ms. Belford experienced due to the Defendants' alleged charged conduct. Nor did he diagnose Christine Belford with multiple personality disorder or bipolar disorder. While the government believes that Dr. Romirowsky's testimony is primarily factual in nature, it is nevertheless noticing him as an expert witness. The substance of Dr. Romirowsky's testimony can be found in (1) the FBI 302 report, dated April 9, 2014 (*see* Bates Nos. FD-005460); and (2) his testimony at the Termination of Parental Rights hearing (*see* Bates Nos. 00002738-00002947; 00002019-00002174). Dr. Romirowsky's CV is attached to this notice. (*See* Ex. K-3, Bates No. 00003676).

POLYGRAPH EXPERT

L. Expert Testimony Regarding Polygraph Tests

Joseph Bradley, III

At trial the government will offer expert testimony that the polygraph testing performed by Gilberto Capuchina with regard to Defendants Lenore Matusiewicz and Amy Gonzalez in January 2011 was faulty in several respects.³ In this regard, the government intends to call FBI Special Agent G. Joseph Bradley, III.

Special Agent Bradley is the Unit Chief of the FBI Polygraph Unit in Washington, D.C., where he manages FBI polygraph programs nationwide. In this capacity, he oversees the performance and training of over 100 polygraph examiners. Special Agent Bradley has personally administered thousands of polygraph examinations. He received his initial polygraph training and certification through the Department of Defense Polygraph Institute ("DodPI") in 1994, and has been certified to administer polygraph examinations by DodPI – or its successor, the National Center for Credibility Assessment – for every successive year.

³ Mr. Capuchina's working papers and reports were provided to defense counsel at Bates Nos. A-0025897 to A-0025937. The actual tracings of the polygraph examination are being held in FBI custody; we will make them available for your review upon request.

Special Agent Bradley will provide some background with regard to the creation and administration of a polygraph examination. A polygraph records physiological data – including blood pressure and pulse, breathing patterns, and skin conductance (i.e., a Galvanic skin response, or “GSR”) – in response to a series of questions the examiner asks of the subject. The examiner then reviews the data to determine if there is Deception Indicated (“DI”), No Deception Indicated (“NDI”) or if the test is Inconclusive (“INC”).

Prior to the polygraph, the examiner engages the subject in a pre-test interview. The purpose of the interview is to delve into the subject’s background to assess her suitability to take the exam – including any physical or mental issues that would affect the test – as well as to fashion questions to be used in the examination itself. After the pre-test interview, the examiner performs an acquaintance test (also referred to as a stimulation or “stim” test) in which the subject is asked to deliberately tell a lie; this enables the examiner to demonstrate the validity of the exam to the subject, and to see an example of her physiological response to telling a lie.

The examiner then proceeds with the actual polygraph test, wherein a series of questions are asked of the subject developed from the information disclosed in the pre-test interview. These questions are divided into three categories: irrelevant questions; control (or diagnostic) questions; and relevant questions. The subject’s answers to the relevant questions are the focus of the examination. The irrelevant questions should not elicit a significant physiological response from the subject. The control questions, however, are designed to provoke such a response. The ultimate focus of the polygraph examination is to measure the subject’s physiological responses to the relevant questions compared to the responses for the control questions.

In order to yield consistent physiological responses, relevant questions should be clear and precise. A question that is imprecise, compound, poorly worded or otherwise confusing is capable of multiple interpretations, and thus likely to yield inconclusive results in a polygraph examination. Here, Special Agent Bradley will testify that the questions that Mr. Capuchina used in the polygraph examinations of defendants Lenore Matusiewicz and Amy Gonzalez were faulty in several respects.

First, his questions were confusing. For example, in all of the questions used by Mr. Capuchina, he asked the defendants the pre-cursor “are you lying” before asking a relevant question. This not only makes the question confusing and cumbersome, but it creates a sort of double negative as seen in relevant question “R5” used with defendant Lenore Matusiewicz: “Are you lying that Laura said she did not like playing with the lollipop game as you checked her vaginal rash.” (Bates No. A-0025925).

Second, many of the questions used by Mr. Capuchina lack specificity and context. For example, at relevant question "R10" he asked defendant Lenore Matusiewicz: "Are you lying that Laura was wearing multiple layers of clothing?" (Bates No. A-0025925). At any given point, any individual could be wearing "multiple layers of clothing" - particularly in the winter.

Moreover, based on the tracings from the polygraph examination of defendants Matusiewicz and Gonzalez, Special Agent Bradley will also testify that he would score both tests as inconclusive on the Zone Comparison Test numerical evaluation test. Summary charts of his scoring based on the tracings are below (Mr. Capuchina's charts may be found at Bates Nos. A-0025928 and A-0025936):

Amy Gonzalez

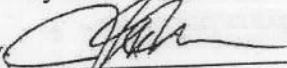
Chart 1	R5	R7	R10
Pneumo	0	0	0
GSR	-	+	+
Cardio	+	0	0
Chart 2	R5	R7	R10
Pneumo	0	0	0 (Artifact)
GSR	-	-	0 (Artifact)
Cardio	+	+	0 (Artifact)
Chart 3	R5	R7	R10
Pneumo	0	+	-
GSR	+	+	-
Cardio	0	-	0
TOTALS	+1	+2	-1
OVERALL	+2		

Lenore Matusiewicz

	R5	R7	R10
Chart 1			
Pneumo	+	-	0
GSR	-	-	-
Cardio	-/0	0	0
Chart 2			
Pneumo	R5	R7	R10
GSR	0	0/+	0
Cardio	0	+	-
Chart 3			
Pneumo	R5	R7	R10
GSR	0	0	+
Cardio	0	0	0
TOTALS	0/-1	0/-1	-2
OVERALL	-3		

Very truly yours,

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 Acting Under Authority Conferred
 by 28 U.S.C § 515

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enclosures

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