

1 her?

2 THE COURT: Yes.

3 (Ms. Schaefer exited the courtroom
4 to find the witness.)

5 MS. SCHAEFER: Your Honor, the
6 State (sic) is going to call Gary
7 Lachapelle in lieu of Ms. Riter.

8 GARY LACHAPELLE,
9 called as a witness by the Defendant,
10 being first duly sworn by the Court, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SCHAEFER:

14 Q. Good morning.

15 A. Good morning.

16 Q. Would you please state your name
17 and spell both your first and last names
18 for the court reporter.

19 A. Gary Lachapelle, G-a-r-y, L-a-c-h-
20 a-p-e-l-l-e.

21 Q. And where do you currently reside?

22 A. In New London.

23 Q. What do you do for a living?

24 A. Right now I'm a real estate agent,
25 but I'm also a substance abuse counselor

1 and will be going back to North Carolina
2 in January to Camp Lejeune.

3 Q. What is your education?

4 A. I have an associate's degree, a
5 bachelor's degree, and a master's degree.

6 Q. What is your AA in?

7 A. Chemical Dependency, and my
8 bachelor's and master's in Psychology.

9 Q. And are you a licensed therapist?

10 A. I have a certificate for chemical
11 dependency and that's--so I'm licensed as
12 a chemical dependency counselor, yes.

13 Q. But you are a licensed therapist as
14 a result of your degrees in psychology?

15 A. I have not applied for that, no.

16 Q. And what would that entail?

17 A. Money.

18 Q. Would you have received the same
19 training as someone who was a licensed
20 therapist?

21 A. I believe so, yes.

22 Q. Are you currently--you said that
23 you're currently working also as a
24 chemical dependency counselor as well as a
25 real estate agent?

1 A. Yes. But I'm on a hiatus for about
2 a month and a half. I left North Carolina
3 to come back here to take care of some
4 stuff, and I'm heading back there in the
5 middle of January.

6 Q. So you just moved back to Iowa
7 temporarily?

8 A. Yes. Well, I own a home here. I
9 mean, I'm not selling it. So I kind of
10 live in both places.

11 Q. Where in North Carolina?

12 A. Camp Lejeune.

13 Q. And what is Camp Lejeune?

14 A. Camp Lejeune is a big Marine and
15 Navy base, and I work with marines and
16 naval personnel who have alcohol and drug
17 issues.

18 Q. That begs the question, do you have
19 military experience?

20 A. I do. I'm retired out of the Army.

21 Q. How long did you serve?

22 A. I served twenty years, and I
23 retired with an E-7. I was a senior drill
24 sergeant when I retired.

25 Q. And is your work at the Navy (sic)

1 base at Camp Lejeune, is that as a
2 military personnel or as an independent
3 contractor?

4 A. It started out as an independent
5 contractor, and now I have just signed
6 paperwork to become a GS-9, Step 5, which
7 is a government job.

8 Q. So a civilian employee for the
9 military?

10 A. Yes.

11 Q. Is your work with the Marines
12 exclusive to just chemical dependency
13 work, or does it have a broader spectrum?

14 A. Well, I think it has a broader
15 spectrum. I mean, obviously I'm
16 counseling them on their substance abuse
17 issue, but I'm also counseling them--you
18 know, some of them have PTSD, so it's just
19 more--

20 Q. Is it fair to say sometimes those
21 mental health issues and the substance
22 abuse issues kind of mesh?

23 A. Yes, ma'am.

24 Q. At one point in time, did you work
25 for Midwest Academy?

1 A. I did.

2 Q. When did you work for Midwest
3 Academy?

4 A. I started part time in December of
5 2004.

6 Q. 2004?

7 A. Yes.

8 Q. And what was your position?

9 A. I was a substance abuse counselor.
10 I would come in two days a week and have
11 what we called chemical dependency groups,
12 group counseling.

13 Q. And counseling?

14 A. Well, group counseling. All I did
15 was group counseling at that time.

16 Q. Was group counseling something that
17 was fairly common at MWA?

18 A. I did it. I mean, I guess I'm not
19 sure. Maybe I don't understand the
20 question.

21 Q. Well, it wasn't--

22 A. I did it weekly, or twice a week.

23 Q. And those would have been the two
24 days that you were working?

25 A. Yea, ma'am.

1 Q. And did you also do individual
2 counseling?

3 A. Not when I first started. I was
4 only working part time, because I worked
5 at another--I worked at a mental health
6 center in Illinois also full time.

7 Q. At some point did your position
8 evolve?

9 A. It did. I got hired on full time
10 and so I quit my job in Illinois and came
11 over to Midwest Academy full time.

12 Q. What were you doing in Illinois?

13 A. Substance abuse counseling.

14 Q. Do you remember when that was?

15 A. From 2001 until 2006.

16 Q. And is that when you became full
17 time with MWA?

18 A. In 2006, yes, ma'am.

19 Q. When you went from part time to
20 full time, did your duties expand?

21 A. They did. I started seeing kids
22 who had substance abuse issues. I started
23 seeing them individually, plus still doing
24 the group counseling.

25 Q. You went right into my next

1 question. And were you there five days a
2 week?

3 A. I was.

4 Q. How did a student come to be on
5 your caseload?

6 A. As a--

7 Q. As a counselor.

8 A. As a counselor, it was those that
9 came into Midwest Academy who had
10 substance abuse issues. What my thought
11 was when I first started full time was
12 that I didn't really want to see any of
13 the kids unless they were at Level 3,
14 because once they hit Level 3, they were
15 more apt to be in a better place and a
16 better mindset. So once they hit Level 3,
17 if they had a substance abuse issue, then
18 I would see them.

19 Q. So what I'm interpreting what
20 you're saying is that at Level 1 and Level
21 2, it may have been better to let them
22 concentrate on the program, and then by
23 Level 3 they were in a position to address
24 some of those deeper issues?

25 A. Yes, ma'am.

1 Q. Were you the only chemical
2 dependency counselor?

3 A. I was for a very long time. And
4 then we had an individual--and I'm not
5 even sure. I think it may have been 2014
6 maybe. She went through SCC at the
7 community college in Burlington, and I--
8 she needed 1,000 hours, so I assisted her
9 and she worked with me for 1,000 hours.

10 Q. But for a good number of years, you
11 would have been the only chemical
12 dependency counselor?

13 A. Yes, ma'am.

14 Q. And you were the one that made the
15 decision that those issues would not be
16 addressed until the student achieved Level
17 3?

18 A. That was what I brought up, and
19 then that was what was approved, yes,
20 ma'am.

21 Q. When you say you brought it up, who
22 did you bring it up to?

23 A. When I originally got hired on full
24 time, Mr. Ben hired me. And that was one
25 of the things that I said to him, because

1 he had asked me my thoughts. And
2 obviously, I hadn't worked there full
3 time, but I had worked there part time and
4 had talked to, you know, a lot of the kids
5 that were in the group. And based on
6 things that I had heard, that it took a
7 while for them to really understand why
8 their parents sent them there and stuff
9 like that, I felt that maybe--and I hate
10 to use the word waste--but I thought it
11 may have been more of a waste doing them
12 at Level 1 and doing them at Level 2 until
13 they hit Level 3, because at Level 3 they
14 were more focused.

15 Q. And that was something that he
16 thought was acceptable and then changed
17 policy?

18 A. Well, I don't know if it was ever a
19 policy. That was just--he asked me my
20 thoughts, and I said this is how I would
21 perceive them for me to do individual
22 counseling, and so that's basically how it
23 was. So I don't know if there was ever a
24 written policy. Maybe I came up with that
25 policy. I don't know.

1 Q. But he didn't oppose that when you
2 suggested it?

3 A. No, ma'am, no.

4 Q. And then you obviously had someone
5 join your staff in 2014, you said?

6 A. I believe it was 2014.

7 Q. Would that have been Callie
8 Peterson?

9 A. Yes, ma'am.

10 Q. At some point did your position
11 continue to expand?

12 A. Yes, ma'am. I was asked if I would
13 take a very small caseload as a family
14 rep, and I said I would as long as it
15 didn't go more than about seven or eight
16 kids.

17 Q. And my understanding is that a
18 family rep is kind of a liaison for the
19 student, both with the program and their
20 parents?

21 A. Correct.

22 Q. How many kids did you have?

23 A. Anywhere from five to seven. I
24 think at my highest I may have had eight.

25 Q. And was that significantly less

1 than the normal family rep caseloads?

2 A. Yes, ma'am.

3 Q. During your period at Midwest
4 Academy, did you become familiar with
5 what's known as the OSS rooms?

6 A. Yes, ma'am.

7 Q. What were they?

8 A. They were Out-of-School Suspension.
9 They were used as timeout rooms. They
10 were--kids were put in there when they
11 were attacking other kids or attacking
12 other staff. They were--kids got put in
13 there because they were disrupting school.

14 Q. Did they ever go in there just for
15 continually violating minor infractions?

16 A. They wouldn't go in there for
17 violating minor infractions. They would
18 go in there-- I guess an example would be
19 if an individual would have 20 or 25
20 infractions within a couple hour period,
21 that's disrupting the rest of the kids, so
22 they would go in there. And that was up
23 to the shift leader. He was in charge.

24 Q. So as a family rep and/or a
25 counselor, you probably didn't have a

1 tremendous amount of control over who was
2 in OSS?

3 A. I didn't have control-- Are you
4 asking me how they got put in there?

5 Q. And I realize I just asked a really
6 bad question. You wouldn't have had a lot
7 of input as far as when a student was
8 placed in OSS?

9 A. No, ma'am. I would be notified
10 when they got placed OSS.

11 Q. And that would be by the shift
12 leader?

13 A. Yes, ma'am.

14 Q. Did you have any say-so in how long
15 a student would stay in OSS?

16 A. I would say I did if they were my
17 students.

18 Q. What kind of input would you have?

19 A. Well, I would try--A, I would try
20 to find out exactly what they did and what
21 they didn't do; and, then more so than not
22 I would go in and talk to the student, and
23 as their family rep, most of the time
24 which was not necessarily policy, but I
25 would--specifically one student I'm

1 talking about--I would try to pull him out
2 at the end of the day. And then more so
3 than not, when I would get home I'd get a
4 call from the shift leader saying he went
5 back in there.

6 Q. So when you left each night, it was
7 your goal that your students would no
8 longer be in OSS that day?

9 A. My goal was for my students never
10 to be in OSS, yes, ma'am.

11 Q. Did most students go to OSS?

12 A. No, ma'am.

13 Q. Is it a fair statement that it was
14 a relatively small percentage who went
15 there and went there often?

16 A. I would say that would be a fair
17 statement.

18 Q. When you had students in OSS, you
19 said that you would try to get them out by
20 the end of the day. How many times would
21 you go into OSS if you had a student that
22 had been placed there?

23 A. Well, it didn't matter if I had a
24 student or not. I went into OSS at least
25 three times a day. I went in every

1 morning when I got there. That was the
2 first thing I did. Before I even went to
3 my office, I would go to OSS. And I would
4 say good morning to anybody that was in
5 there, and I would chat with each one of
6 them for a few minutes.

7 Then normally after lunch, 1 or 2
8 o'clock in the afternoon, I would go in
9 there, and then I would go in there just
10 before I went home. And I would tell
11 anybody who was still in there that if
12 they were still there tomorrow morning, I
13 would see them in the morning.

14 Q. And you did that three times a day?

15 A. Sometimes more. Because I would go
16 in there--I mean, if there was a student
17 struggling, I would go in there and I
18 would sit on the floor with them and I
19 would sit and talk to them for an hour or
20 so.

21 Q. Did you go to both sides?

22 A. I did. But most of the time the
23 girls' side really wasn't open most of the
24 time. I mean, they were open sometimes
25 and I would go over there. But I would

1 say 75 percent of the times, I was on the
2 boys' side because that seemed to be open
3 more often than not.

4 Q. And when you say the girls' side
5 wasn't open, what does that mean?

6 A. That means there was nobody in OSS.

7 Q. As a family rep, did you have just
8 boys, or did you have an integrated
9 caseload?

10 A. I had just boys.

11 Q. And obviously as a chemical
12 dependency counselor it was more
13 integrated?

14 A. Yes, ma'am.

15 Q. Did you ever have occasion where
16 you became concerned about the safety of
17 any of the boys that you were visiting in
18 OSS?

19 A. I didn't in the sense where--I
20 mean, there were kids that were in there
21 and sometimes the doors were closed
22 because they were trying to attack people
23 and they were trying to do things that
24 they shouldn't have been doing. But I
25 think with who I am and where I came from,

1 I would--95 percent of the time, I would
2 be able to open that door and go in and
3 sit down with those kids and shut the door
4 behind me and talk to them. So I never
5 was afraid for my safety, if that's what
6 you're asking.

7 Q. Well, did you ever become concerned
8 about their safety?

9 A. There were times that we were
10 concerned about their safety. I mean,
11 there would be times that there would be
12 kids who were acting up and they would rip
13 their shirt off and they would--one kid in
14 particular would rip his shirt off and put
15 it around his neck, but he wouldn't put it
16 tight enough to really do anything. He
17 was doing it just for--I think he was
18 doing it just for show.

19 Q. But other than kids who would be
20 self-harming, you never had concerns about
21 their physical well-being?

22 A. No.

23 Q. Had you had concerns, what would
24 you have done?

25 A. I would have pulled the kid out of

1 OSS.

2 Q. And do you feel that you would have
3 had the authority to do that?

4 A. Yes, ma'am.

5 Q. Did you receive--or are you a
6 mandatory--when you were there, were you a
7 mandatory child abuse reporter?

8 A. Yes, ma'am.

9 Q. And did you receive that training
10 as part of your certification as a
11 chemical dependency counselor?

12 A. I received that training at the
13 mental health center I worked at in
14 Illinois. It was a class that the whole
15 place had.

16 Q. So you understood the requirements
17 for making a call to DHS if you felt a
18 child was in harm's way?

19 A. Yes, ma'am. And I did call DHS a
20 couple different times while I was there,
21 not because of--I mean after kids said
22 something to me about what happened at
23 home. So I was mandated to call DHS for
24 them to do what they needed to do.

25 Q. Did you ever feel the need to call

1 DHS on any of the staff at Midwest
2 Academy?

3 A. No.

4 Q. If you had, would you have made
5 that call?

6 A. Absolutely.

7 Q. Would it be fair to say that the
8 OSS rooms were not a pleasant place to be?

9 A. That would be a fair statement.

10 Q. They were pretty stark?

11 A. Yes, ma'am.

12 Q. Painted bright white with
13 fluorescent lights and fairly small?

14 A. (The witness nodded in the
15 affirmative.)

16 Q. Is that a yes?

17 A. Yes. I was trying to remember if
18 it had fluorescent lights. I don't
19 remember.

20 Q. What was your understanding of the
21 purpose of the OSS rooms?

22 A. The OSS rooms, my understanding is,
23 what it was was to really protect the
24 student. I mean, the student as a whole--
25 again, kids didn't go into OSS just

1 because we wanted to put kids in OSS.
2 Kids went into OSS because a couple
3 different things. They were disrupting
4 the family, meaning the kids were in
5 school and you'd have a kid disrupting the
6 whole classroom, and they would be doing
7 it more than, you know, one or two times.

8 You would have a student go to OSS
9 because they were attacking another
10 student. You would have a student go to
11 OSS because they were attacking staff,
12 hitting staff, breaking a staff's nose.

13 Q. And so the purpose was to, A,
14 protect students and staff?

15 A. It was to protect students and
16 staff and protect the individual that--you
17 know, to calm him or her down. If I was
18 on site and somebody went to OSS, it
19 didn't matter if it was my student or not,
20 I would always get a call, or I would
21 always hear it on the radio that somebody
22 went to OSS, and I would always go down
23 there.

24 Q. Would it be fair to say that there
25 was a good amount of contact between staff

1 and the students in OSS?

2 A. I would think so. And not only
3 staff, there were also upper levels that
4 were there, or Level 3s and above, that
5 had the opportunity to talk to the kids
6 too.

7 Q. And when it came to talk to either
8 you or staff or the upper level students,
9 was that a decision that the student in
10 OSS would make?

11 A. More so than not, yes. But if I
12 went in there and they hadn't asked to see
13 me yet, I would still ask if they wanted
14 to see me. Sometimes they would say yes,
15 sometimes they would say no. If they said
16 no, I told them that I would come back
17 when they were ready to talk to me. And
18 sometimes they would call, and I would go
19 back and talk to them. Like I said, I
20 would sit on the floor, and we'd sit on
21 the floor for an hour or so and we would
22 just chat.

23 Q. Was it common for a student to
24 spend the bulk of their time in OSS?

25 A. No, ma'am.

1 Q. What was most common?

2 A. Most common, I think, it was maybe
3 two or three times in OSS. I mean, there
4 were a couple of kids that were in OSS a
5 lot. But I think, you know, the majority,
6 I would say 99 percent of them, it was
7 maybe two or three times. I don't know if
8 that's statistically right, but that's
9 what I recollect.

10 Q. So again, it was a small percentage
11 who spent the bulk of their time there?

12 A. Yes, ma'am.

13 Q. And was the reason--at least in
14 your opinion, was the reason why because
15 it was such a stark kind of unfriendly
16 place?

17 A. I believe that's correct.

18 Q. Once the students were in OSS, what
19 were they required to do?

20 A. They were to sit and follow
21 directions. They were supposed to be in
22 there for twenty-four hours. If they
23 followed directions, they would get out
24 the next day.

25 Q. Did students always stay in there

1 for the full twenty-four hours?

2 A. I would say most of them did, and
3 it was just twenty-four hours. One of my
4 students I would pull out before that,
5 which I probably shouldn't have, but I
6 did. And there was some that--there was
7 some I would say that probably went over a
8 little, more than twenty-four hours.
9 There were probably a couple that went
10 over, you know, forty-eight hours.

11 Q. And why would a student stay in
12 there for forty-eight hours?

13 A. Because they weren't following the
14 directions. There were screaming. They
15 were--every time we'd open up the door,
16 they would try to run out. They would try
17 to hit the staff that's in there. They
18 would try to hit the student staff that
19 was in there. So they would go in there,
20 and there were some kids that say, well,
21 I'm just going to go in there, and we'll
22 just stay here and we'll see how long I
23 can stay in here.

24 So sometimes I felt that it was
25 more of a game for some of those kids,

1 because they weren't-- They were doing the
2 same type of stuff that they were doing at
3 home, and there was no repercussion at
4 home. So our repercussions--one of them
5 was in OSS, and I think their thought was
6 if we holler loud enough, mom and dad used
7 to say, forget it, and we probably would
8 too, but we didn't.

9 Q. So they were testing how far they
10 could go?

11 A. Yes, ma'am.

12 Q. That wasn't true of all students,
13 was it?

14 A. No, ma'am.

15 Q. And you've alluded a couple of
16 times to a couple of students that maybe
17 spent more time there than you would have
18 liked?

19 A. Yes, ma'am.

20 Q. Who were those students?

21 A. One of them was Dxxx [REDACTED] who
22 was on my caseload, the other one was a
23 Bxxxxxx [REDACTED] Dxxx--and I can speak more so
24 on Dxxx, because Bxxxxxx was not my
25 student. I would chat with him every now

1 and then when I would go in there because
2 he wouldn't want to talk to me. He would
3 only want to talk to Mr. Mike Davis, or
4 every now and then he would talk to Miss
5 Jane. But if he was in there and I went
6 in there, he would say, I don't want to
7 talk to you. So I would say my good
8 mornings, my good afternoons, my good
9 evenings, but that was about the extent of
10 that with him.

11 But with Dxxx, I think Dxxx and I
12 had a very good relationship. I think
13 Dxxx and I, his mother and I, we used to
14 chat quite a bit. And I felt that we had
15 a good relationship there too. My concern
16 with Dxxx was that he came to our school
17 because he basically got kicked out of
18 school. But that's what he was doing, and
19 that's why he got put in OSS most of the
20 time because he didn't want to do school,
21 and he would disrupt everything.

22 And so I actually had paper school
23 printed off and brought that into OSS for
24 him on different occasions. And on one
25 occasion, I said you have to do this unit,

1 or I'm not going to let you out. And he
2 tried me for about four or five hours.
3 And he said, you can't do that, you won't
4 do that. And I said, but I can, and I
5 will call your mother. But then he ended
6 up doing it, so I took him out.

7 But he was just one of those that--
8 I mean to be honest, he was very immature.
9 And I feel like he was the class clown.
10 He would do anything that anybody told him
11 to do.

12 Q. And is it fair to say he struggled
13 a lot with the program?

14 A. That's a true statement, yes.

15 Q. And again, your knowledge of
16 Bxxxxxxx [REDACTED], albeit limited, was that kind
17 of your perception of him as well?

18 A. Yes. I would say that's true.

19 Q. And he would have been Mike Davis's
20 student?

21 A. At the end, yes. He had a couple
22 of different family reps, and then Mike
23 Davis took him over, yes.

24 Q. Did you ever have concerns that
25 Dxxx probably needed to be placed

1 somewhere other than Midwest Academy?

2 A. Not Dxxx, no.

3 Q. What about Bxxxxxx?

4 A. We did have a discussion about
5 Bxxxxxx at a meeting that we held once a
6 week with the clinical staff. So it would
7 have been me, Miss Jane, and Mike Davis.
8 And then towards the end, it would have
9 been Miss Callie also. But I don't
10 believe--she wasn't in that one. And we
11 had a discussion about a couple of
12 different kids that day. But really the
13 one that stood out was Bxxxxxx [REDACTED] because
14 myself and I believe Jane said, well,
15 maybe we should find someplace else for
16 him.

17 Mike Davis, if I recollect it and I
18 recall, he basically said, well, I want to
19 give it a couple--I want to look at it a
20 little bit more, so nothing went further
21 on that.

22 Q. So you and Jane recommended maybe
23 looking for something different?

24 A. Yes.

25 Q. But Mike wanted to keep trying?

1 A. Yes. That's what I recall. And I
2 think basically it's because he was
3 working with him, and him being his family
4 rep, but also being a clinician, I think
5 he was--I think he may have thought maybe
6 he was getting through to him. I mean, I
7 can't think for him, but I would think
8 maybe that's why.

9 Q. Would Ben Trane have been there for
10 that meeting?

11 A. No, ma'am.

12 Q. How much contact did you have with
13 Ben Trane?

14 A. On a daily basis? On a weekly
15 basis?

16 Q. On average per week?

17 A. An hour.

18 Q. And what did that generally consist
19 of?

20 A. We had a meeting once a week with
21 all the family reps. I mean, I would see
22 him in the hallway, and every now and then
23 I would see him downstairs and we would
24 chat for a minute or two.

25 Q. Was he actively involved with the

1 clinical staff?

2 A. I don't think he was. I mean, in
3 the sense where-- Maybe that didn't come
4 out right. I don't think he was in the
5 sense--because I think Mike Davis--maybe
6 Mike Davis went and talked to him after we
7 had our meetings and stuff like that. But
8 I don't believe Ben would ever come in and
9 say, well, you've got to do it this way;
10 you've got to do it this way; you've got
11 to do it this way. No.

12 Q. Is it fair to say that you felt
13 free to counsel the students on your
14 caseload as you saw fit?

15 A. Absolutely.

16 Q. And he never issued you any
17 directives on, you need to do this with
18 this kid?

19 A. Not to me.

20 Q. What was your understanding of Ben
21 Trane's role in the program?

22 A. He was the owner.

23 Q. As far as his duties, obviously you
24 mentioned he was a family rep. Other than
25 that, what other duties did you know him

1 to have?

2 A. He did seminars for the parents at
3 one point. I don't know how long it was,
4 maybe for six months, maybe, seven months.
5 And then actually I took it over and did
6 the seminars for both the parents and the
7 students. And I did it for a couple of
8 years, and then someone else took it over
9 because that was just too much for me to
10 do, plus everything else.

11 Q. And he was not considered part of
12 the clinical staff?

13 A. Not as far as I know.

14 Q. And you indicated earlier that when
15 the clinical staff met, it was you, Mike
16 Davis, and Jane Riter, and possibly Callie
17 when she was there?

18 A. Right. And then toward the end,
19 Miss Layani would come in also.

20 Q. And what was her purpose in being
21 there?

22 A. Well, I think because she had--I
23 believe she had a bachelor's or master's
24 degree in psychology that she had--I think
25 she had a couple of kids on her caseload

1 also, and so she asked if she could come
2 in and be part of the team. Now, she
3 wasn't there every week. There was some
4 weeks that she wasn't there.

5 Q. But Ben wasn't regularly at those
6 meetings?

7 A. I don't recall Ben being at any of
8 those meetings when I was there.

9 Q. Now, you left Midwest Academy for a
10 period of time, didn't you?

11 A. I did. May of 2015 my mother
12 passed away, and so I actually went to
13 Alabama to take care of some stuff. I was
14 on a leave of absence for a little bit,
15 and then I stayed in contact with Ben and
16 told Ben that I wasn't coming back,
17 because I just had too much stuff going
18 on. And that actually gave me an
19 opportunity to do my real estate full time
20 instead of part time. So that's what I
21 did.

22 And then I came back about ten to
23 twelve days before it closed down. Mr.
24 Mike Davis had called me and asked me if I
25 would come back. And I actually told Mike

1 that I would come back on one condition,
2 and the condition was if I only had to
3 work twenty hours a week.

4 Q. Was it your understanding that they
5 were getting ready to open up a new more
6 treatment-based facility?

7 A. Yes. I had heard that. And I
8 don't know when it was going to open, but
9 yes.

10 Q. That's not anything you would have
11 been involved with?

12 A. No. I'm not sure how to explain
13 it. Because we had it open at there one
14 time in the past. I actually had about
15 ten students down there. I had ten
16 students and about five staff. And it
17 was--we only focused on substance abuse.
18 And that was years ago, and we only did it
19 maybe for ten months, and then we closed
20 that building down.

21 So I think for what you're asking,
22 I had no knowledge other than what I heard
23 that they were going to open that up again
24 for something different maybe.

25 Q. Was it your understanding when Mike

1 Davis asked for you to return, that you
2 would be working at that facility rather
3 than the school, or did he not mentioned
4 that?

5 A. He didn't say that. He actually
6 asked me if I would come back, and I told
7 him, you know, no more than twenty hours a
8 week. And he says, well, we really need a
9 family rep. And, again, I said, I don't
10 want to be a family rep because I'm only
11 going to work twenty hours a week. And he
12 says, well, we can give you like five
13 kids. And so I came back and, like I
14 said, I was there ten or twelve days and
15 then it was shut down.

16 Q. Did you ever have any specific
17 conversations regarding Dxxx [REDACTED] or
18 Bxxxxxx [REDACTED] with the Defendant?

19 A. Can you repeat that again?

20 Q. You described Bxxxxxx [REDACTED] and Dxxx
21 [REDACTED] as the two students that you
22 distinctly remember as struggling in OSS?

23 A. Right.

24 Q. Did you ever have conversations
25 with Mr. Trane about those two particular

1 students?

2 A. I never had a discussion with him
3 about Bxxxxxx [REDACTED] I think maybe in
4 passing I would talk to him about Dxxx
5 [REDACTED] and letting him know what I was
6 doing with him. But nothing--I never had
7 any discussion with Ben about what he
8 could do or what we should do. I would
9 just, you know, in passing if I saw him, I
10 would tell him what I was doing with my
11 kids. In passing, if I saw other reps, I
12 would tell them the same thing, this is
13 what I'm doing; this hasn't worked, you
14 know. So no, I never had a discussion
15 with Ben about what we should and what we
16 shouldn't do with Dxxx or Bxxxxxx.

17 Q. It was merely providing updates to
18 him kind of how you and Dxxx were getting
19 along?

20 A. Yeah, I would say that's a fair
21 statement.

22 Q. And how Dxxx might be progressing
23 or not progressing?

24 A. Yes.

25 Q. But nothing at length?

1 A. No.

2 Q. We've heard a lot of testimony
3 regarding the food in OSS. Was the food
4 served in OSS different than what was
5 served to the other students?

6 A. I think at breakfast time, there
7 was like a peanut butter and jelly
8 sandwich and an apple or an orange. But
9 there were many mornings that I would go
10 in with Dxxx, and I would bring him
11 oatmeal. But as far as lunch, my
12 recollection is lunch was the same for
13 people in OSS that it was for anybody
14 else, even staff. I mean, we ate lunch in
15 there. We would get that. Now, they
16 would not--if they were in OSS, I mean,
17 obviously there was some restrictions,
18 i.e., they wouldn't have the condiments.
19 So for instance, if they had a salad they
20 wouldn't have any salad dressing on it if
21 they had a salad or something like that.

22 Q. Did some kids choose not to eat
23 when they were in OSS?

24 A. I suppose.

25 Q. If you don't know, that's fine.

1 A. Yeah, I don't know.

2 Q. Were there occasions sometimes
3 where students would throw their food
4 around?

5 A. Yes.

6 Q. And would this be one of those
7 things that might keep them in OSS longer
8 than the twenty-four hours?

9 A. Yes.

10 Q. Did you ever know Dxxx [REDACTED] to do
11 that?

12 A. I don't recall Dxxx [REDACTED] ever
13 doing that. Now, I will say that I was
14 not in there every single time he had
15 food, but that was never brought up to me,
16 and he never responded that to me. He
17 never said that to me.

18 Q. And you indicated that sometimes
19 you would bring him food outside of what
20 he would normally get in OSS. What was
21 the purpose of doing that?

22 A. To get him out of OSS. To show
23 him, you know, you'd be eating oatmeal
24 this morning if you were out of OSS.

25 Q. Was oatmeal a common breakfast

1 food?

2 A. I think it was twice a week maybe.

3 Q. So you were essentially trying to
4 bribe him out of OSS?

5 A. Yes. That's a true statement. I
6 think I became very close with Dxxx
7 [REDACTED]. Dxxx [REDACTED] is a great kid. He's
8 a great kid today. Him and I are still in
9 contact. So I mean, he's a good kid. He
10 just didn't get it, because he didn't want
11 to get it. I talked to him some months
12 ago, and I mean he's had timeouts at
13 school.

14 Q. Were the kids that struggled the
15 most--and I'm referring to your phrase
16 that "just didn't get it, because he
17 didn't want to." Was that your experience
18 with those handful of kids that would
19 struggle the most?

20 A. With the exception of Bxxxxxx [REDACTED]
21 because I really did not really--I didn't
22 invest a lot of time in Bxxxxxx [REDACTED]
23 because the other clinicians did. So I
24 really couldn't sit here and tell you what
25 his issues were.

1 But some of the kids that were in
2 there, including Axxxxx, they used to--I
3 always felt that they played the get out
4 of jail card. It worked with Mom and Dad.
5 If I scream for fifteen minutes, at
6 fourteen minutes and thirty seconds, Mom
7 and Dad are going say, go do what you want
8 to do.

9 We didn't do that, and it just took
10 a long time for him to understand that. I
11 mean, I would get him out. We would take
12 him to gym. When he came--when he got
13 brought to Midwest Academy, he was a big
14 boy. He was a young boy, but he was a big
15 boy. And my personal opinion, I don't
16 believe he ever did gym until he came to
17 Midwest Academy. And that was another
18 reason why a lot of times he would go to
19 OSS, because it would be gym time, and he
20 didn't want to do gym.

21 So he would throw temper tantrums,
22 literally temper tantrums, which would
23 stop everything for ten, fifteen minutes,
24 trying to calm him down or to go get the
25 shift leader to get him out of there. So

1 kids who were wanting to do gym, that was
2 fifteen minutes that they couldn't do gym
3 because of Dxxx.

4 Q. And that was pretty common for him?

5 A. That was pretty common. And then
6 he linked up with an upper level who was
7 also on my caseload. And this upper level
8 started working with him, and so when he
9 was out and would go to gym, he then
10 started doing gym. And in my opinion,
11 started--I don't even know the word I want
12 to use--but started looking good again.
13 He wasn't fat and overweight. He started
14 to--I mean, yes, he was losing some weight
15 but it was that he was doing something.

16 Q. And he lost a significant amount of
17 weight, didn't he?

18 A. I think he probably lost about 30
19 pounds.

20 Q. At any time did you feel that that
21 weight loss was unhealthy?

22 A. No. Because I think he was about
23 40 or 50 pounds overweight, in my opinion.

24 Q. So he was a huskier kid?

25 A. Yes, ma'am.

1 Q. There was nothing about his weight
2 loss that concerned you enough that you
3 needed to tell someone higher up in the
4 academy or to make a phone call to DHS?

5 A. No. Because again, when I first
6 met him, he was extremely--in my opinion,
7 was extremely overweight. And when he
8 left the academy, he looked like he should
9 have been the size for that age. I mean,
10 I can't sit here and tell you what he
11 weighed because I didn't personally weigh
12 him, but he did lose some weight.

13 Q. But he still appeared healthy to
14 you?

15 A. He did still appear healthy to me.
16 And another thing that I would do, which
17 again, I probably shouldn't have done, but
18 one of the things that his mother used to
19 do at home was when he would do something
20 that she asked him to do and wouldn't
21 fight with her, she would reward him
22 candy.

23 So his mom brought me probably
24 three or four full bags worth of different
25 types of his favorite candy. And so there

1 were days that he did something really
2 well, and I would bring him up to the
3 office with another student, and I would
4 give him a piece of candy and then we
5 would give the other kid a piece of candy
6 too. I'd let him pick the candy he
7 wanted. It was all his favorite candy
8 that his mother would bring to me.

9 Q. During the times that you spent in
10 OSS, and it sounds like you spent a lot of
11 time with Dxxx [REDACTED] did you ever feel
12 like his time in OSS was doing him
13 psychological harm?

14 A. No.

15 Q. Why not?

16 A. Because again, I think most of the
17 times that he was in there he was in there
18 to avoid things, you know. And
19 unfortunately, when you had a group of
20 kids--for instance, him trying to avoid
21 school, I couldn't just leave him in
22 school, or they couldn't just leave him in
23 school because that's going to disrupt
24 everybody else. So we would bring him to
25 OSS. And like I said, I had them print

1 off paper homework--or paper school for
2 him and bring them in there. He would go
3 in there as if it was that he got to do
4 what he wanted. So I don't feel there
5 were any psychological issues with him
6 because he was never--he never really was
7 alone in there.

8 Q. There was always you who spent a
9 great deal of time with him?

10 A. But there were also kids, and there
11 were also staff, the staff member that was
12 in there. But I know that--because what I
13 didn't say earlier was the student while
14 in OSS can ask the staff who is in OSS if
15 they can talk to the kid staff. And if
16 they're doing what they're supposed to be
17 doing, they can talk to the kid staff. If
18 they're not doing what they're supposed to
19 be doing, 9 out of 10 times the staff
20 would say, you know, just sit there for
21 about ten, fifteen minutes calm, and you
22 can talk to the staff or you can talk to
23 the kid.

24 MS. SCHAEFER: I don't think I have
25 any other questions. Ms. Timmins may.

1 THE COURT: Ladies and gentlemen,
2 we are at mid-morning recess. We'll take
3 ten minutes. Please return at that time.
4 Please remember the admonitions.

5 (A recess was taken at 10:40 a.m.)

6 (In open court, outside the
7 presence of the jury, in the presence of
8 the Court, the Defendant, and counsel at
9 10:58 a.m.)

10 THE COURT: I believe all counsel
11 are present and the Defendant. The court
12 attendant may bring in the jury at this
13 time.

14 (In open court, in the presence of
15 the jury, the Court, the Defendant, and
16 counsel at 10:58 a.m.)

17 THE COURT: Please be seated
18 everyone. The jury has now been seated.

19 Ms. Timmins, you may cross-examine
20 the witness.

21 (Continued on the next page.)
22
23
24
25

1 CROSS-EXAMINATION

2 BY MS. TIMMINS:

3 Q. Let's go back through your
4 education a little bit. What is your
5 degree in?6 A. Chemical Dependency is my
7 associate's, and then my bachelor's and
8 master's is in Psychology.9 Q. And where did you get your
10 associate's degree?11 A. Southeastern Community College in
12 Burlington.13 Q. And then where did you get your
14 bachelor's degree?15 A. California Coastal. It's in Santa
16 Ana, California.

17 Q. That's on online?

18 A. It's both an online and on campus.

19 Q. Layani Trane testified yesterday
20 that she received her degree from there,
21 too. Were you taking classes at the same
22 time?23 A. No. I believe I may have been
24 taking it before her.

25 Q. And you say California Coastal,

1 that was your bachelor's and your
2 master's?

3 A. Correct.

4 Q. So when you started at Midwest
5 Academy part time in 2004, did you just
6 have your two-year degree?

7 A. Correct.

8 Q. So once you started Midwest
9 Academy, you started this online course
10 with California Coastal; correct?

11 A. Correct.

12 Q. Did Ben or Layani give you the
13 information for that school?

14 A. No. I believe I gave it to them.

15 Q. And so online you received a degree
16 for a bachelor's in what?

17 A. Psychology.

18 Q. And your master's in what?

19 A. Psychology.

20 Q. Did you do any practicums?

21 A. I did practicum with Mike Davis.

22 Q. What does that mean?

23 A. Which means I did so many hours
24 with him, as far as he was my supervisor.

25 Q. Did you do an internship or other

1 practicum hours with anyone outside of
2 Midwest Academy?

3 A. For my--

4 Q. For your degree?

5 A. For my associate's degree I did.

6 Q. I'm talking about--

7 A. But my other degree, no. And I
8 didn't have to.

9 Q. If you want to be licensed as a
10 therapist, you do have to put in a certain
11 amount of hours underneath another
12 licensed--

13 A. That's correct. But I didn't get
14 it to be licensed as an independent
15 licensee.

16 Q. Correct. But what I'm saying is to
17 be a licensed therapist, you have to put
18 in so many hours--

19 A. You have to do a practicum, yes,
20 ma'am.

21 Q. --underneath another licensed
22 therapist?

23 A. Correct.

24 Q. And you chose not to do that. You
25 chose not to be licensed; correct?

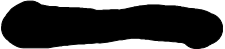
1 A. Correct.

2 Q. And you said you were a mandatory
3 child abuse reporter when you started
4 working there, but Midwest Academy didn't
5 provide any training for child abuse
6 reporting; correct, that you're aware?

7 A. Not that I'm aware of. They didn't
8 do it for me, no, but I had already had
9 it.

10 Q. And you left the academy from May
11 2015 to January of 2016; correct?

12 A. Yes.

13 Q. You didn't know Kxxxxxxx  ?

14 A. No, I did not.

15 Q. When you started working there full
16 time as a therapist to give therapy to
17 students, again, you weren't licensed to
18 do that; correct?

19 A. I was giving counseling as a
20 substance abuse counselor and, yes, I was
21 licensed for that.

22 Q. For the substance abuse?

23 A. And that's what I was giving.

24 Q. But you met with students on other
25 issues; correct?

1 A. I met with students on substance
2 abuse issues and other issues if those
3 came up, that's correct. But I'm also a
4 qualified mental health provider, which
5 means I can actually give counseling as
6 long as my supervisor signs off on it.

7 Q. And Mike Davis signed off on
8 everything that you did?

9 A. Mike Davis signed off on it.

10 Q. And in fact, we've met prior
11 because we had a deposition; correct?

12 A. Yes, ma'am.

13 Q. And during that deposition, we
14 discussed your position there, and you had
15 stated that basically you were middle
16 management?

17 A. That's fair to say.

18 Q. You answered to Mike Davis. Mike
19 Davis answered to Ben Trane; correct?

20 A. That's correct.

21 Q. And Ben Trane was the final say on
22 everything?

23 A. I would assume so. He was the
24 owner. But I can't say that for a fact.
25 I don't know.

1 Q. Well, you stated during your
2 deposition that he was the top of the
3 pyramid?

4 A. He was. He was the owner.

5 Q. You also testified earlier that you
6 had had a conversation with him about the
7 Level 3s, how you thought maybe it would
8 be better if kids waited until Level 3 to
9 get drug counseling; is that right?

10 A. Correct.

11 Q. And you had suggested that that
12 would be a good idea to do that?

13 A. That's correct.

14 Q. And the Defendant approved that
15 suggestion and that happened; correct?

16 A. Correct.

17 Q. So when you were counseling
18 students-- Well, how many kids did you
19 counsel?

20 A. On a daily basis, I mean I would
21 counsel kids who were struggling that got
22 pulled out and I got called down to talk
23 to them at the round table, or I would
24 talk to kids in OSS. So to me every time
25 I talked to a student, I was basically

1 counseling them.

2 Q. Because when you're talking to
3 students, especially in the situation that
4 you were in in this therapeutic boarding
5 school, when you're talking to students
6 about personal issues, emotional issues,
7 those kinds of things, you felt every time
8 you were doing that you were counseling?

9 A. Sure.

10 Q. How many were on your caseload?
11 Not as a family rep, as a counselor? I
12 mean, what kids would say, Mr. Gary is my
13 counselor? How many kids would say that?

14 A. I think I had 16.

15 Q. And as a family rep, how many did
16 you have?

17 A. Anywhere between 5 and 8.

18 Q. Because you had asked for half a
19 load; right?

20 A. Correct.

21 Q. Would these approximately 16 kids
22 that you were assigned to be counselor
23 for, how often would you meet on a regular
24 basis for counseling sessions?

25 A. Weekly.

1 Q. And the students always had another
2 person with them; correct?

3 A. With me they did.

4 Q. And in fact, I think you said that
5 staff tried their hardest to make sure
6 that you weren't alone with a student?

7 A. Correct.

8 Q. Do you think that in that situation
9 that sometimes it may have been hard for
10 students to talk about personal things,
11 having another student in the room?

12 A. I would say that's a fair
13 statement. However, when that occurred,
14 then we would talk sometimes at the round
15 table, which was right outside of the
16 classroom. And there was a staff member
17 that sat inside the classroom but couldn't
18 necessarily hear us but could see us. And
19 at that point, I would do just that one
20 student.

21 Q. And having a second person in the
22 room for counseling sessions is not so
23 much normal in the profession, is it?

24 A. No. I didn't do that in Carthage,
25 where I worked in Carthage.

1 Q. And actually, it really wouldn't be
2 considered good practice in your
3 profession, would it?

4 A. It depends on what you're
5 counseling them on because as far as--
6 Most of my 16, the majority or the main
7 issue was substance abuse. Then there was
8 some minor issues that may have been some
9 other stuff. If it was--if we were
10 talking about substance abuse, to me, just
11 like two people would be just almost like
12 a group of people. To me I don't think
13 that that's an issue.

14 Q. What if it was sex abuse?

15 A. I wouldn't talk about that in front
16 of-- If they brought that up, I would have
17 stopped it. And that wasn't brought up to
18 me. I would have stopped that and, like I
19 said, I would have either done it at the
20 round table, or actually I would have
21 brought in another therapist.

22 Q. You came from a military
23 background?

24 A. Correct.

25 Q. And the school was strict, would

1 you agree?

2 A. There was rules to follow, yes.

3 Q. There was a lot of rules that the
4 kids had to memorize and remember?

5 A. Yes.

6 Q. When you were a family rep, did you
7 have any females on your caseload?

8 A. I did not.

9 Q. Usually--there was sometimes an
10 exception, but usually the male family
11 reps had just male students?

12 A. Correct.

13 Q. Dxxx [REDACTED] was on your caseload?

14 A. Correct.

15 Q. You would agree he had a pretty
16 tough time there?

17 A. I would agree with that.

18 Q. He was one of the youngest kids
19 there?

20 A. I think so.

21 Q. And you've said before that
22 sometimes in a twenty-minute time period,
23 Dxxx would get 50 consequences?

24 A. Correct.

25 Q. So in twenty minutes, he would be

1 written up 50 times for doing something
2 wrong?

3 A. Correct.

4 Q. And a lot of times that's how he
5 ended up in OSS; correct?

6 A. Correct.

7 Q. The boys tended to be in OSS more
8 than the girls; correct?

9 A. Correct. We had more boys than
10 girls.

11 Q. You said you would check in every
12 day at OSS?

13 A. Correct.

14 Q. And Dxxx was there a lot?

15 A. He was there a fair share, yes.

16 Q. When you would go to OSS--and I'm
17 not talking about just Dxxx but all kids--
18 when you would go to OSS, sometimes kids
19 would be out of control?

20 A. Yes.

21 Q. Sometimes kids would be sitting
22 quietly?

23 A. Yes.

24 Q. Sometimes kids maybe were just
25 standing up and walking around the room?

1 A. Yes.

2 Q. So it varied as to what was going
3 on, what the child was doing, depending on
4 when you went in; correct?

5 A. Correct. However, we had radios
6 and if there was a student that was being
7 belligerent in there, that would be put
8 across on the radio. So more so than not,
9 if somebody was being belligerent and I
10 was not in there, I heard about it over
11 the radio, and then a lot of times I went
12 down there.

13 Q. And you stated earlier that
14 sometimes when kids would tie things
15 around their neck, you felt it was a game?

16 A. I said for Dxxx.

17 Q. So when Dxxx would tie things
18 around his neck, you felt it was a game?

19 A. Correct. Because when I would go
20 in--because he would allow me to go in and
21 take it off. And I could put my whole
22 fist, you know, four or five fingers
23 inside the knot, so there was nothing
24 constricting him.

25 Q. The way that you talked earlier,

1 you seemed to--I got the impression that
2 you felt that Dxxx was in OSS the majority
3 of the time because he chose to.

4 A. And I agree with that statement,
5 yes.

6 Q. Because had Dxxx just followed the
7 rules, then he wouldn't have been in OSS;
8 correct?

9 A. That's correct. But my concern
10 here is that when you say rules and stuff
11 that they have to memorize and everything
12 else like that, they were more so common
13 rules of everyday rules. You know, I
14 mean, yeah there was some that were not,
15 but most of them were, you know, when
16 you're in school you don't talk; when
17 you're, you know--when you're walking in
18 line from Point A to Point B, you don't
19 talk, you don't do this. And he
20 constantly did those things. And he did
21 those things to get a rise out of the
22 other boys.

23 Q. It was purposeful action on his
24 part?

25 A. More so than not, yes, ma'am.

1 Q. Willful intent on his part?

2 A. I believe so.

3 Q. Now, you also said that kids did
4 have to stay in there a minimum of twenty-
5 four hours; correct?

6 A. Correct.

7 Q. You would bend the rules once in a
8 while and try to get Dxxx out earlier?

9 A. More than once in a while, but yes.

10 Q. But then you also said by the time
11 you got home, you had a call that Dxxx was
12 back in OSS?

13 A. Correct.

14 Q. It was somewhat of a revolving door
15 for him?

16 A. Yes.

17 Q. Now, when you were talking about
18 the twenty-four hour minimum, you said
19 that, yeah, some kids would stay longer;
20 correct?

21 A. Correct.

22 Q. You were aware that some kids would
23 stay in for days?

24 A. Define days.

25 Q. Two days?

1 A. Correct.

2 Q. Four days?

3 A. There may have been an occasion of
4 four days, but we as a therapy group, if
5 they were in there more than forty-eight
6 hours, we would discuss that.

7 Q. I understand that you would discuss
8 that.

9 A. And more so than not, we would take
10 them out.

11 Q. Have you sat down and looked
12 through the OSS records?

13 A. No.

14 Q. There were kids that would spend--
15 were you aware of kids that would spend up
16 to a month in there?

17 A. Not while I was there.

18 Q. Now, if they stayed in longer than
19 twenty-four hours, that's because they
20 weren't following structure; correct?

21 A. Correct.

22 Q. And again, that goes back to, you
23 know, if they do what they're told then
24 they can get out; correct?

25 A. Correct.

1 Q. You talked about that if they
2 stayed in there longer, it was for
3 screaming, hitting, out of control, those
4 types of things?

5 A. Yes.

6 Q. Now, you're not saying that a child
7 was in the OSS room for two days straight
8 screaming and hitting and out of control,
9 are you?

10 A. Yes. There were a couple occasions
11 that, yeah, I would say that that is a
12 factual statement.

13 Q. Just nonstop?

14 A. Nonstop.

15 Q. Did you ever at some point say,
16 wow, this is a problem?

17 A. We did and we chatted. There were
18 times that we would go in and, again, more
19 so than not, myself, Mike Davis, or Miss
20 Jane Riter, we could go in and we could
21 sit down and talk to them and they would
22 stop while we were there. And then when
23 we'd leave it would, you know, start up
24 again. So if you're asking me if I just
25 let them do that for forty-eight hours,

1 no, I didn't.

2 Q. You'd check on them?

3 A. Correct. I mean, if they're doing
4 that--I guess, if they're doing that, my
5 thought would be, they were disruptive,
6 you know-- A lot of those that were doing
7 that, it wasn't only that they were
8 disruptive, they were violent. And so to
9 put a violent individual who was hitting
10 people or hitting staff back to where they
11 were doing everything, to me that doesn't
12 justify it.

13 Q. Right. So they need to stay in
14 there longer?

15 A. Correct.

16 Q. And you said the purpose of OSS is
17 to protect staff and calm down the
18 student; right?

19 A. Correct.

20 Q. So let's say a student who went
21 into OSS because they got too many
22 consequences and went to OSS, didn't throw
23 much of a fit, were in there for a few
24 minutes, were completely calm, no
25 problems. They still had to stay for

1 twenty-four hours?

2 A. Not always. There were sometimes
3 that they would go in as a timeout.

4 Q. But if it wasn't a timeout?

5 A. If it wasn't a timeout-- Correct.
6 But the shift leader who would put them in
7 there, it was based on what type of
8 consequences they got. So you know, if
9 the consequences was disrupting the family
10 or yelling or, you know, doing stuff like
11 that it wasn't a consequence that, you
12 know, they got out of their seat. It
13 wasn't a minor consequence. Because there
14 were three different types of consequences
15 there. You know, you had a Cat 1, a Cat 2
16 and a Cat 3. And more so the ones that
17 got a whole bunch of Cat 1s, and I'm
18 talking--and a lot of what Dxxx got were
19 Cat 1s and Cat 2s, and he got some Cat 3s.
20 But he could get 50 Cat 1s; we'd put him
21 in there for a timeout. There were days
22 that he would go in for a timeout, but
23 then there were other kids in there who
24 would egg him on, and that timeout would
25 turn into a regular OSS.

1 Q. And that happened too, that kids
2 would go in there, like you said, maybe
3 just for a timeout because they stepped
4 out of line, they were talking in class,
5 they were breaking smaller rules, and then
6 they'd go into OSS and the behavior would
7 just escalate. That happened with Dxxx a
8 lot, didn't it?

9 A. It did. Not a lot. It did. But
10 it wasn't that he went in there and said,
11 oh, my God, I'm in OSS, let me do this.
12 It would be the other kids egging Dxxx on;
13 Dxxx do this, Dxxx do this, Dxxx do this.
14 And Dxxx would say, okay, I will do that.
15 And that's what happened.

16 Q. And Dxxx made his choices and then
17 he stayed in longer?

18 A. Dxxx made his choices and he would
19 stay in until I got him out or he came out
20 the next day more so than not.

21 Q. Now, if the purpose of OSS is to
22 protect the staff and to calm down the
23 student, once the student is calm, then
24 why the twenty-four hour minimum of
25 structure?

1 A. Well, it's just another rule that
2 was in place. And again, it's like your
3 child is at home, and he breaks the rule,
4 and then he's good for five minutes, and
5 then you forget about him breaking the
6 rules.

7 So I think we're looking more at
8 the little pieces like, okay, so they went
9 into OSS--and I'm just going to say it--
10 Midwest Academy was not Club Med. It was
11 not Disneyland. Okay? That was more so
12 than not a last resort for most of these
13 parents. And most of these parents told
14 me that. It was their last resort. And
15 then you talk to the parents when they
16 come in. We had an individual who talked
17 to all the parents. And they said, they
18 asked those different questions, why were
19 they coming; what did they do; what didn't
20 they do? And it was, they didn't follow
21 directions; they didn't do anything that
22 we asked them to do. Can you try to help
23 them out?

24 So then we would ask, well, when
25 you did this, what happened? They would

1 continue until I put my hands up in the
2 air and say, forget it. And then they
3 would go on and do what they were doing.
4 That's not what we did.

5 And OSS which was the final point,
6 in my perception--when they went to OSS
7 even for--when you say minor infractions,
8 that minor infractions--somebody is not
9 going to go into OSS for getting one or
10 two Cat 1s. They're going to get 25 or 30
11 Cat 1s. And 25 or 30 Cat 1s is disrupting
12 on the people, even if it's just a Cat 1.

13 So the bottom line is, I hear what
14 you're saying, and I understand what
15 you're saying, but again, if I put
16 somebody in OSS because they're disrupting
17 the family, then I take him out ten
18 minutes later because they're all calm,
19 cool, and collected, in my eyes that
20 didn't prove anything to them because they
21 can say, well, I can go back in there and
22 I can come out when I don't want to be.
23 If I don't want to do gym, I can go do
24 that and then I can calm myself down in
25 ten minutes, and they'll let me back out.

1 Or when gym is over, I'm good to go.


2 And so they found, and our policy
3 was, if you go in that was your final--
4 that was the final straw, that was the
5 last of the basic consequences. You have
6 to follow through with what you did. You
7 did it; you have to pay the consequence.

8 Q. And the consequence is sitting in
9 that room in structure for twenty-four
10 hours?

11 A. Yes.

12 Q. So it sounds like the purpose is
13 not just to calm them down, but it's also
14 to teach them a lesson?

15 A. That's a fair statement but-- Yes.
16 For them to gain an understanding of what
17 they can and what they can't do. And
18 that's society.

19 Q. You talked to  a lot?

20 A. Yes.

21 Q. She was always concerned about
22 Dxxx?

23 A. Yes.

24 Q. Did you tell her that things were
25 working, like this is going well, or we're

1 working on this, or let's just stick with
2 the program? I mean, what types of things
3 were you telling her?

4 A. Well, I would tell her why he went
5 to OSS. I would tell her what--you know,
6 the reasons why, and what I'm trying to do
7 with him; what's working; what's not
8 working. As a matter of fact, I even
9 invited Ms. [REDACTED] her husband, and
10 Dxxx's two siblings to the facility so
11 they could talk to Dxxx and explain to
12 Dxxx his consequences that he did at home
13 were the same consequences that he was
14 doing here. When is he going to want to
15 do something different?

16 And they actually did come. And we
17 spent a couple, two, three hours, all of
18 us. So I was honest with her. I mean,
19 when he was in OSS, I told her why he was
20 in OSS. When she asked what we were
21 doing, I explained to her everything I was
22 trying to do with him. I never said to
23 anybody that I was a miracle worker. I
24 did the best that I could. And I believe
25 that I did a very good job with him

1 because, you know, he is--he's still
2 struggling now. He's doing a little bit
3 better, but he's still struggling. I
4 mean, he still goes to timeout.

5 Q. Did you talk to [REDACTED] about
6 special meals?

7 A. [REDACTED] and I talked about
8 special meals, and she basically told me
9 that that wasn't something she wanted to
10 do. So I never authorized anybody to feed
11 him special meals.

12 Q. But you asked her?

13 A. I did.

14 Q. And when you asked her, you wanted
15 to know what food did Dxxx hate?

16 A. Correct.

17 Q. And the reason was, is because with
18 special meals you would feed kids the
19 foods that they hated; correct?

20 A. That's correct.

21 Q. And again, that was a consequence.
22 That was to teach them these life lessons
23 of, if you do as you're told then--

24 A. No. It was to get them out of OSS.

25 Q. To give them food that they hated?

1 A. If you don't like something-- And I
2 guess I'll say like, again, if it were me,
3 would I want to be OSS? No. I would sit
4 there and do what I had to do to get out
5 of OSS. So again, you're focusing in on
6 special meals that never occurred with
7 Dxxx.

8 Q. I understand that. But you asked
9 about them?

10 A. I did.

11 Q. And had Wendy approved it, you
12 obviously would have been fine giving food
13 that he hated?

14 A. Not necessarily, because that would
15 have been something that I would have been
16 able to say, Dxxx, this could happen if
17 you continue to choose what you're
18 choosing in OSS. So I can't sit here and
19 say that I would have given it to him. I
20 don't know.

21 Q. But if Dxxx had continued to choose
22 to do what he was doing in OSS, and you
23 had already threatened him with feeding
24 him--and I think it was tuna that he
25 hated; is that right?

1 A. I don't even remember. I have no
2 reason believe that that's not a true
3 statement.

4 Q. But had you already threatened him
5 with that, that Dxxx, if you don't do what
6 you're supposed to do, you're going to get
7 this meal, you would have had to follow
8 through with that; correct?

9 Q. I should have followed through with
10 that. I can't sit here and say I would
11 have followed through with it. Yes,
12 that's correct.

13 Q. And some kids did get special
14 meals in OSS; correct?

15 A. I can't answer that because I was
16 not in there when they did. They may
17 have. I guess I don't know.

18 Q. Now, you worked at-- Oh, wait a
19 minute. I wanted to ask one more thing on
20 that. You had told--when we talked in
21 your deposition, you had never brought up
22 this story about Dxxx and the gym and how
23 you think he lost weight because he was
24 exercising more in the gym. So is that
25 why you--

1 A. I did not bring it up because you
2 didn't ask me.

3 Q. Well, we talked about his weight
4 loss.

5 A. You asked me if he lost some
6 weight, and I said yes.

7 Q. And today you're saying you feel
8 it's because he started exercising more in
9 the gym?

10 A. I do.

11 Q. Now, you're aware that Dxxx spent
12 approximately 50 percent of his time in
13 OSS?

14 A. Okay.

15 Q. Do you have any reason to dispute
16 that?

17 A. No.

18 Q. So if it's 50 percent of his time
19 in OSS, he's only in the gym 50 percent of
20 the time; correct?

21 A. Not necessarily, because it depends
22 on when he went in there. Because a lot
23 of times he would--a lot of times he would
24 go in either in the afternoon or he would
25 go in sometimes in the morning. So that

1 may be a true statement. I don't know.

2 Q. And you had said that a lot of
3 times when you went home from work you'd
4 get a call that Dxxx went into OSS at
5 night; correct?

6 A. Correct.

7 Q. All right. And if he went in at
8 night, he's not going to be out in the
9 morning to go to gym?

10 A. Sometimes he would be because
11 sometimes they'd put him in OSS because he
12 was disrupting other kids trying to sleep,
13 so they would make him go in there and
14 sleep. But I would still get a call.

15 Q. So it wasn't technically an OSS
16 time where the door is shut and he has to
17 sit in structure. Sometimes they'd just
18 put him in there so he could sleep?

19 A. Correct. In OSS the door is not
20 shut unless you're being disruptive.

21 Q. Unless you're not being in
22 structure?

23 A. Unless you're being disruptive.
24 Because there could be kids that were not
25 in structure, as you call it, but the door

1 was open. They were not pitching a fit.
2 They were not trying to attack the kids
3 outside of the door. They were not trying
4 to throw stuff. They were not trying to
5 grab stuff, so the door would be open.

6 The only time the doors would be
7 shut would be for the safety of the kids
8 that were in there or the staff, so the
9 kid is not going out, of if they're overly
10 screaming and stuff like that, we would
11 shut the door. But his door wasn't shut
12 all the time.

13 Q. Right. Not all the time?

14 A. Right.

15 MS. TIMMINS: May I approach.

16 THE COURT: You may.

17 Q. (By Ms. Timmins) And you weren't in
18 OSS 24-7; correct?

19 A. That's correct.

20 Q. You said that you didn't think Dxxx
21 ever did gym before he came to Midwest
22 Academy; correct?

23 A. I don't think he did. I mean, I
24 know he played some sports, but I don't
25 think he--I don't think he did it

1 regularly, no.

2 Q. Okay. And you--

3 A. And if he-- Go ahead.

4 Q. And you used the word "fat" for
5 Dxxx?

6 A. Right.

7 Q. I'm showing you State's Exhibit 1.
8 That's Dxxx; right?

9 A. Correct.

10 Q. And we've heard testimony that this
11 was Dxxx shortly before he came to the
12 academy and that he did play sports,
13 football and baseball and things like
14 that. Did you know that?

15 A. I did know that. But I also know
16 he wasn't doing gym at school.

17 Q. And did you know-- You said that,
18 in your opinion, he needed to lose weight?

19 A. As I do also.

20 Q. You're not a doctor?

21 A. Nope.

22 Q. So you really can't say whether
23 it's healthy for a 12-year-old growing boy
24 to lose 10 to 20 pounds in a short period
25 of time?

1 A. That's correct. I said in my
2 opinion. I didn't say-- That's correct.
3 I'm not a doctor.

4 Q. And in regards to Bxxxxxx-- Well,
5 let me finish up with Dxxx. Before Dxxx
6 left in March of 2015, he was pulled out
7 by the Department of Human Services. Do
8 you remember that?

9 A. That he was pulled out by them?

10 Q. Yes.

11 A. Subtly I think I do, yes.

12 Q. You were his family rep and
13 counselor at the time?

14 A. I was his family rep, but he was in
15 a different family, and so actually Mike
16 Davis and Mr. Don was actually doing his
17 family rep stuff. I never relinquished
18 him in that sense. He was still on my
19 caseload, but there was a specific family,
20 and so those two were actually in charge.

21 Q. So by that time, Dxxx had been
22 placed in the Pride Family; correct?

23 A. Correct.

24 Q. And the Pride Family was a group of
25 boys who were struggling at the school?

1 A. They were a group of boys who were
2 struggling, so we put them in that family
3 so they had the opportunity to gain extra
4 points each day and/or to take away some
5 of the consequences at the end of the
6 night if they were doing what they were
7 supposed to be doing, correct.

8 Q. And there were some sexual acts
9 that occurred within that group?

10 A. That's what you told me. See that
11 I'm--I'm not truly familiar with that
12 because I wasn't dealing with them at that
13 time. So all I know is what was told to
14 me.

15 Q. You were Dxxx's counselor at the
16 time; correct? Not his family rep, but
17 were you still his counselor?

18 A. No. Mike Davis was.

19 Q. So you had totally stepped away
20 from Dxxx?

21 A. Other than he was still considered
22 on my caseload, but Mike Davis and Mr.
23 Don--Mr. Don was more so of the assistant.
24 Mike Davis ran that family. So basically
25 when the kids went into those families,

1 the family reps had to agree, as did the
2 parents, the parents had to agree for them
3 to go in there. But then the family reps
4 who had those kids had to agree to allow
5 them to start doing--making the phone
6 calls to the parents.

7 Q. So when did you stop being Dxxx's
8 counselor and family rep?

9 A. Well, as I told you in the
10 deposition, I don't think I ever stopped.

11 Q. When did you stop having contact
12 with Dxxx? And I understand that you
13 probably saw him at school. But I'm
14 saying, when did you stop having weekly
15 counseling sessions with him? When did
16 you stop making the calls home, those
17 types of things?

18 A. Making the calls home, I believe it
19 was in March. Talking to Dxxx, I don't
20 think I ever stopped talking to Dxxx.

21 Q. Did you talk to Dxxx about the
22 issues that happened in the Pride Family?

23 A. No. He never brought that up to me
24 so, no, I did not.

25 Q. Did anyone counsel with Dxxx about

1 that?

2 A. I believe Mike Davis did.

3 Q. But you don't know?

4 A. I don't know.

5 Q. All right. Now, you didn't counsel
6 Bxxxxxx [REDACTED] correct?

7 A. Correct.

8 Q. And you recommended in a meeting
9 with you and Mike Davis and Jane Riter,
10 you recommended to Mike Davis that Bxxxxxx
11 shouldn't be there?

12 A. That was my recommendation, yes.

13 Q. Now, you don't know one way or the
14 other if Mike Davis took that to the
15 Defendant?

16 A. I don't.

17 Q. You also said--I mean you were in
18 OSS all the time so you saw Bxxxxxx [REDACTED] a
19 lot there, too; correct?

20 A. I saw him in OSS. But as I said
21 earlier, there were a lot of times when I
22 would go into OSS and, again, I would talk
23 to everybody that was in there if they
24 wanted to talk to me. A lot of times he
25 didn't want to talk to me, but he would

1 sometimes ask me if I would go get Mike
2 Davis or he would just say, I don't want
3 to talk. So I didn't talk with him.

4 Q. And you said that you never saw
5 anyone at the academy that lost too much
6 weight or didn't seem healthy from being
7 in the OSS rooms; is that right?

8 A. Yes. I don't believe so.

9 Q. You didn't notice that at all with
10 Bxxxxxxx [REDACTED]?

11 A. I didn't really have--I didn't have
12 a run-in with him. I didn't really deal
13 with him so, no, I did not.

14 MS. TIMMINS: May I approach, Your
15 Honor.

16 THE COURT: You may.

17 Q. (By Ms. Timmins) I'm going to show
18 you what has been marked as State's
19 Exhibit 5. Is that Bxxxxxxx?

20 A. Yes.

21 Q. Okay. And we've heard testimony
22 that Exhibit 5 is right before Bxxxxxxx
23 came to Midwest Academy.

24 A. Okay.

25 Q. And then I'm going to show you


1 Exhibit 8. Is that Bxxxxxxx?

2 A. That is.

3 Q. Does he look healthy in that
4 picture?

5 A. He does to me.

6 Q. Were you aware that Bxxxxxxx was put
7 in the hospital just a day after he left
8 Midwest Academy for malnutrition?

9 A. I was not. Again, I didn't work
10 with Bxxxxxxx , so I would have not
11 necessarily even seen that first picture.

12 Q. Did you ever conduct body image
13 therapy?

14 A. No.

15 Q. Did you ever hand out sexual
16 surveys to kids?

17 A. No.

18 Q. Were you aware of that?

19 A. No.

20 MS. TIMMINS: That's all I have.
21 Thank you.

22 THE COURT: Ms. Schaefer.

23 MS. SCHAEFER: I don't have
24 anything further, Your Honor.

25 THE COURT: Sir, you may step down.