

1977

1 the door, and I may tell them that there's a real possibility
2 that we're going to start trial next week in another case. All
3 right?

4 MS. CREPPS: If we decide to -- that we'd like to put on
5 some rebuttal, then I would what I would propose is that we tell
6 you what it is that we have in mind and get kind of a
7 preruling.....

8 THE COURT: Absolutely.

9 MS. CREPPS:on whether you think it's appropriate.

10 THE COURT: Absolutely. Give me a preview as soon as you
11 can so we can decide whether you need to set up those witnesses.

12 MS. CREPPS: Okay.

13 THE COURT: Okay? Okay. Let's take a quick break, and
14 we'll be back.

15 (Court recessed at 9:28 a.m.; on record at 9:38 a.m.)

16 MR. CLARKSON: No, Your Honor.

17 THE COURT: Maybe we should do it.

18 (Oath administered)

19 MS. COLLETT: I do.

20 THE CLERK: Please be seated.

21 TERESA COLLETT

22 called as a witness on behalf of the defendant, testified as
23 follows on:

24 DIRECT EXAMINATION

25 THE CLERK: For the record, would you state your name,

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1 spelling your last name?

2 A Teresa Collett.

3 THE CLERK: Is that with an H in Teresa?

4 A No, T-e-r-e-s-a.

5 THE CLERK: Thank you.

6 THE COURT: Counsel.

7 MR. CLARKSON: Thank you, Your Honor.

8 BY MR. CLARKSON:

9 Q Professor Collett, can you let us know how it is that
10 you've come to be here testifying today?

11 A Originally I was contacted by the district attorney's
12 office regarding my participation in the subadvisory
13 committee of the Texas Supreme Court on the implementation
14 of the parental notification act of Texas. Specifically,
15 they were hoping for assistance in locating a judge who
16 might testify on the implementation of our act. At that
17 time I talked specifically with Judge Specia, who was on
18 our committee, and Judge Specia and I talked about the
19 various Texas canons of judicial ethics. Judge Specia was
20 very uncomfortable with the.....

21 MS. CREPPS: Your Honor, I'm going to.....

22 Aidea that he might.....

23 MS. CREPPS:object to this as hearsay. I don't see
24 that it's relevant, and it does appear to be hearsay.

25 THE COURT: Mr. Clarkson, is it admitted for the truth of

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1 the matter asserted, or just for how you came into contact?

2 MR. CLARKSON: It's simply to show.....

3 THE COURT: Not admitted for the truth of the matter
4 asserted.

5 MR. CLARKSON: That's exactly right.

6 THE COURT: Admitted for nonhearsay purpose for
7 background. You may continue, Professor.

8 A Judge Specia was uncomfortable with the idea of
9 testifying, in light of the fact that he was hearing
10 bypass matters, and declined to consider appearing as a
11 witness. We discussed whether there would be any Texas
12 judge that would be willing to do so, and at that point I
13 called and we decided that perhaps it would be best if we
14 no longer talked with Texas judges, and I was invited to
15 appear as a witness.

16 Q All right. What specifically have you been asked to do
17 for the State of Alaska in this case?

18 A I've been asked to testify about my role in the initial
19 formulation of the Texas parental notification law, in my
20 role in advising the house sponsor of the bill in its
21 passage, as well as the senate sponsor of the bill, in the
22 implementation of the law, both as a member of the Texas
23 Supreme Court subadvisory committee, as well as
24 representation of the legislative sponsors before the
25 Texas Supreme Court in one of the Jane Doe cases before

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1 the Texas Supreme Court. I've also been asked to testify
2 in my role -- about the knowledge I received in my role in
3 overseeing the implementation of the act since its
4 implementation, and also my studies as a scholar on the
5 implementation of parental involvement laws throughout the
6 country, and the advising that I'd done for other
7 legislatures throughout the country.

8 Q And have you been asked to do anything in terms of a
9 comparative law analysis?

10 A Yes, I've been asked to talk a little bit about some of
11 the differences of the Texas parental notification law
12 compared to other laws that have been enacted throughout
13 the country, as well as other comparison law analysis that
14 I've done in other areas.

15 Q And you also will be responding to some of the testimony
16 either offered or to be offered by Judge Martin and
17 Ms. Sabino?

18 A Yes.

19 Q And have you, in fact, formed opinions regarding the
20 issues you've asked [sic] to address in this case?

21 A Yes, I have.

22 Q Now, we'll talk about your opinions in a second, but right
23 now can you just let the Court know what work you've done
24 to prepare yourself to offer opinions in this case?

25 A I've reviewed the materials that we prepared in

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1 formulating the Texas parental notification act. I've
2 reviewed some of the committee work papers in implementing
3 the act. I've reviewed various documents that have been
4 presented both in the Florida litigation related to their
5 parental involvement law. I've reviewed documents related
6 to the Alaska parental involvement law -- or parental
7 consent law. I've reviewed various reported scholarship
8 related to teenage pregnancy and teenage abortion, the
9 reason teenagers are reluctant to involve parents, the
10 efficacy of bypass -- judicial bypass proceedings. I've
11 reviewed law articles that address the constitutionality,
12 as well as the effectiveness of this. I've reviewed a
13 number of court cases related to that.

14 Q Now, is your work with respect to parental involvement
15 laws limited to the Alaska case?

16 A No, it's not. As a matter of fact, I have testified
17 before the Vermont legislature, particularly before the --
18 the house of representatives. The senate refused to hold
19 hearings on the bill that passed the house this last
20 session. I've also testified before the New Jersey
21 legislature when they were considering a constitutional
22 amendment to overturn the Farmer opinion in that
23 jurisdiction. I've also testified before the United
24 States Congress House -- House of Representatives at the
25 invitation of the chairman of the subcommittee on the

1 constitution concerning the child custody protection act,
2 which relates to the interstate transportation of minors
3 to avoid parental involvement laws.

4 Q Professor Collett, can you tell the Court what education
5 background you have that qualifies you to give opinions in
6 this case?

7 A I'm a graduate of the University of Oklahoma with both my
8 bac-- baccalaureate degree and a law degree, and I began
9 my study in this area actually in part because of the
10 outgrowth of my practice background, which began initially
11 in elder law. My practice was in dealing with families in
12 estate planning and probate, and dealing with families
13 that were trying to respond to handicapped children and
14 the needs of elderly people. When I was in practice I was
15 active in revising the Oklahoma guardianship law to make
16 access to guardianship proceedings more accessible to
17 families that had limited means. That legislative effort
18 led to, I -- I think, my ongoing interest in legislative
19 reform in this area.

20 As a scholar, then, I became more intensely
21 interested in these areas, which led to my initial
22 writing, which was in guardianship, both for adults and
23 for -- for young people, and then when Oklahoma began to
24 look at a parental consent law, that was the first time I
25 testified in front of the Oklahoma legislature on a

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1 parental involvement law. When we moved to Texas and when
2 the parental notification act was first introduced I
3 became most heavily involved, and from their my
4 scholarship began to develop in this area.

5 Q All right. You've touched on some of this, but to the
6 extent that you haven't, what work experience do you have
7 that qualifies you to give your opinions in this case?

8 A Primarily my area of the -- the work experience I have is
9 in the area of the scholar, someone who has studied the
10 case law in this area, as well as the various scholarship
11 and the medical treatises, the -- the most recent abortion
12 textbook, the chapters dealing with performance of
13 abortion on minors, as well as the various medical journal
14 articles that deal with the repercussions of abortion.

15 Q Okay. Let's back up a little bit. I've been referring to
16 you as Professor Collett. Can you -- where are you
17 currently employed?

18 A I'm a tenured full professor at South Texas College of
19 Law.

20 Q And how long have you been there?

21 A Thirteen years.

22 Q And what subjects do you teach and have you taught over
23 the course of the years?

24 A I teach legal limits of medical decision making. It is a
25 seminar course that its topic varies from time to time.

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1 Particularly the focus is on the balance between autonomy
2 and beneficence. I also teach professional
3 responsibility. I teach property. I teach constitutional
4 law. I've taught courses on first amendment law and
5 religion. I tea-- I have taught in the past wills and
6 trust. I have taught as a visiting professor at the
7 University of Texas, the University of Houston, the
8 University of Oklahoma, Notre Dame. I believe that's --
9 that's it.

10 Q All right. You mentioned teaching legal limits of medical
11 decision making. How does the -- if at all -- does the
12 subject matter of those courses relate to the subject
13 matter of this case?

14 A The focus of that class every semester has been on the
15 interaction between the role of health care professionals
16 and the role of law interacting on those decisions that
17 families and individuals have to make on health care.
18 It's a difficult nexus, and one that the law's continuing
19 to struggle with.

20 Q Specifically, other than legal limits of medical decision
21 making, what other subjects have you taught that relate in
22 your mind to the subject matter of this case?

23 A Constitutional law.

24 Q All right. Specifically -- well, let me ask you this.
25 Texas have -- has a parental involvement law?

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1 A Yes, we do.

2 Q And what is the Texas law?

3 A We require parental notification of one parent, or the
4 notification of a legal guardian or conservator if one's
5 been appointed.

6 Q And when did the Texas law go into effect?

7 A It became effective January 1st of 2000.

8 Q And what involvement did you have with the passage of that
9 Texas law?

10 A I advised the house sponsor during its passage.

11 Q What did your advice entail -- I mean, your work in terms
12 of advising, what did that entail?

13 A The bill as it was initially introduced had some -- we had
14 some concerns about the language. There was language like
15 irrebutable presumptions that we thought were the result
16 of drafting by nonlawyers, and so when I visited with the
17 house sponsor and showed her a United States Supreme Court
18 case that defined that term, she recognized that if there
19 was an irrebutable presumption that that presumption could
20 not be gone behind, and so we were able to clean up some
21 of the language.

22 There were negotiations because the chairman of the
23 state affairs committee, who was the committee that the
24 bill had been assigned to, felt very strongly about
25 confidentiality of the girls. Akron v. Ohio, the United

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1 States Supreme Court opinion that most directly addresses
2 the confidentiality requirements of these sorts of
3 statutes requires anonymity, but -- but not necessarily
4 confidentiality in the strictest sense of the word.
5 Chairman Wolens was most concerned that the
6 confidentiality be absolutely comprehensive. We wanted to
7 make sure that that confidentiality didn't preclude the
8 girl having access to her own court file if she wanted
9 subsequently to have access to it to prove misconduct on
10 the part of her own attorney or misconduct on the part of
11 an adult male sexual partner, and so there were those
12 sorts of negotiation that had to go on in the legislative
13 process, and so I worked with Representative Delisi in
14 crafting language and -- and reviewing language that was
15 suggested by Chairman Wolens. Chairman Wolens is a very
16 able criminal defense lawyer out of the Dallas-Ft. Worth
17 area.

18 Q How did it come about that you became an advisor to the
19 Texas legislature in this respect?

20 A Representative Delisi invited me to work with her on the
21 language, and I was happy to do so. I happened to be on
22 sabbatical that semester, and so was available to take her
23 calls at 10:30 at night when she got out of committee
24 meetings and have language available for her at 8:00
25 o'clock the next morning.

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1 Q Do you know why you were selected as an advisor?

2 A I think in part because as a law professor she had some
3 confidence that I had the sort of breadth of knowledge
4 that she needed, and as a law professor I had the time
5 available, too.

6 Q What other work experience do you have specifically
7 related to parental involvement laws, not just in Texas,
8 but beyond Texas or in Texas also?

9 A As I mentioned, I -- I now have also worked with the
10 sponsor of the Vermont bill in the Vermont house in this
11 last legislative session. She was successful in getting
12 it passed through the Vermont house, but it did not get
13 any hearings in the senate, and presented testimony in the
14 New Jersey legislature when they were trying to obtain a
15 constitutional amendment to reverse the former opinion.
16 I -- I testified before the Oklahoma legislature many,
17 many years ago when they were first hearing that matter.
18 It did not -- it did not get out of the -- the house,
19 however, at that time, either.

20 Q All right. How did you become an advisor to the sponsor
21 of the Vermont bill?

22 A Actually, I was contacted by Mary Beerworth of Vermont
23 Right to Life at that point.

24 Q All right. You mentioned that you are a member of the
25 Texas Supreme Court special subcommittee on parental

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1 notification rules?

2 A Yes, I am.

3 Q Did I get that right?

4 A Yes.

5 Q Okay. Can you tell the Court what that subcommittee is?

6 A The Texas Supreme Court as a prac-- as a matter of
7 practice in drafting court rules appoints various
8 committees of lawyers and law professors to draft rules.
9 When the Texas parental notification act was passed they
10 appointed subcommittee of their rules advisory committee
11 to specifically draft rules for implementation, and the
12 Texas Supreme Court appointed me to that subcommittee.

13 Q And who are the members of the subcommittee?

14 A It's comprised of various practicing lawyers, judges. I'm
15 the only law professor on the committee. It was heavily
16 populated during its initial term by judges. The chairman
17 is Judge McClure, Judge Ann McClure. She's an
18 intermediate judge. There were also court clerks, a large
19 number of court clerks, because there were concerns about
20 appropriate filing practices, record maintenance, record
21 retention, that sort of thing, so they wanted a lot of
22 practical experience on that committee.

23 Q And you've served on that committee since its inception?

24 A Yes, I have.

25 Q And that's been about two, 2-1/2 years.....

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1 A Yes.

2 Qthree years.

3 A It was recently reconstituted and Justice McClure
4 reappointed me.

5 Q All right. As a com-- subcommittee member what
6 involvement have you had with the implementation and the
7 operation of the parental involvement law, specifically
8 the bypass procedures?

9 A We were responsible to draft the initial set of forms
10 and -- well, we were responsible to make recommendations
11 and to draft the initial proposed set of forms for review
12 by the rules committee, which then made the final
13 recommendations to the Texas Supreme Court. The initial
14 workload was -- was really quite -- quite heavy because,
15 as you will see, if you were to look at the -- the set of
16 forms and the rules, it's really a fairly comprehensive
17 set of forms that have been developed by the -- by the
18 committee. We've anticipated pretty much just about every
19 occasion that's come up, and those were forwarded to the
20 rules committee and the Texas Supreme Court adopted the
21 vast majority of recommendations by the subadvisory
22 committee.

23 Q And you mentioned the subcommittee was just reconstituted.
24 Its work is continuing?

25 A Yes.

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1 Q What's the nature of the continuing work of the committee?

2 A To the extent that there are recommendations that come up,
3 or to the extent that there are concerns that have been
4 raised, one of the -- the committee members of the -- the
5 reconstituted committee now is the president of Jane's Due
6 Process. It was a -- a -- a group initially funded and
7 established by the Texas American Civil Liberties Union of
8 volunteer lawyers that assist girls to file bypass
9 petitions, and she's a very able lawyer, and she had
10 raised some concerns that -- that Justice McClure wanted
11 and the Texas Supreme Court wanted to -- to be addressed,
12 and so these were brought to the committee in order to
13 have the opportunity for the committee to review and to
14 make any rule change recommendations that there might be.

15 Q What are the sorts of concerns that were raised as a
16 subcommittee member that you have been involved in
17 addressing?

18 A Things like how long records should be retained. Things
19 like handling amicus briefs at the Texas Supreme Court
20 level. There are no publication of our intermediate court
21 of appeals opinions and judicial bypass hearings in Texas,
22 but our Texas Supreme Court does publish the Texas Supreme
23 Court opinions in our bypass hearings, in order to give
24 guidance to the lower courts in the appropriate way of
25 dealing with these bypass hearings. Amicus briefs can be

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1 filed and now will be published on the Internet and made
2 available to all individuals for that. That was a
3 decision made by the subadvisory and adopted by the Texas
4 Supreme Court, and that was something that -- debated and
5 discussed in the subadvisory.

6 Q Thank you. As a subcommittee member what opportunity have
7 you had to learn of the operation of the bypass provisions
8 and the other provisions of the law in Texas?

9 A That is, in fact, the form where to the extent that there
10 are problems they are brought to the committee so that
11 those problems can be addressed by any necessary rule
12 modifications.

13 Q Because it is the function of the subcommittee to address
14 any problems that might arise.

15 A That's correct.

16 Q Okay. What opportunity as a subcommittee member have you
17 had to interact with judges who oversee and preside over
18 bypass proceedings to determine their views of how the law
19 is functioning, how the bypass is functioning?

20 A As I said, as -- as it was originally constituted there
21 were a significant number of judges that -- that sat on
22 the original committee, Judge Specia, Judge -- there
23 remain just-- Justice McClure, an intermediate appellate
24 judge -- there remain a large number of judges on the
25 reconstituted committee, and those judges continue to

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1 bring their experience to that committee.

2 MR. CLARKSON: I hate to interrupt you. I just
3 realized -- I gave Ms. Crepps a copy of this -- Teresa Collett
4 prepared some notes for herself that she took to the stand with
5 her. I gave Ms. Crepps a copy; I forgot to give you a copy.
6 Can I do that now?

7 THE COURT: Thank you, Mr. Clarkson.

8 Q Professor Collett, can you -- as a law professor can you
9 tell us if you conducted any research regarding issues
10 related to parental involvement laws, and specifically as
11 related to abortion?

12 A Yes, I have.

13 Q And can you tell us what you've done in that respect?

14 A Well, I have looked both at the Texas law to see how it is
15 similar to the requirements of the United States Supreme
16 Court opinions in this matter. Obviously, that was one of
17 the first requirements that we had to do in formulating
18 our law as we were going through the legislative process.
19 Those issues were things that were of deep concern to the
20 house of representatives as we were going through the
21 legislative process. In addition to that Chairman Wolens
22 was deeply concerned with how we would compare to laws
23 throughout the country, and so there was some discussion
24 about whether a particular -- in particular whether we
25 should have alternative decision makers available. In

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1 Texas only a parent or a guardian or a conservator can be
2 notified, or a girl must obtain a judicial bypass, and so
3 there was some discussion whether we should adopt some
4 alternative model, as some other states have done, and so
5 I had -- I had looked at those alternatives at that point
6 in time.

7 I've also done some research related to what the
8 burden of proof is in order to obtain a bypass. I've
9 looked at the issue of how -- how long the bypass
10 proceedings should last. We have a two-business-day rule.
11 Judges in Texas have only two business days in which to
12 rule. That was something that was deeply contested in
13 Texas because that is a very brief span of time in which a
14 judge -- to enter a ruling. Now, a girl, of course, can
15 seek an expansion of time, but the judge himself cannot.

16 I've also looked at the requirement of what a judge
17 should inquire into, and that was the basis of my law
18 review article, "Seeking Solomon's Wisdom," because once
19 we passed the law one of the concerns we heard over and
20 over again from judges is what exactly in this bypass
21 hearing am I supposed to do. I mean, what is it that's
22 supposed to happen in this hearing. And so in looking at
23 the -- the medical texts regarding abortion and looking at
24 the medical literature, what is it that a fully informed
25 woman would want to know, and, fortunately, there are

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1 things like the National Abortion Federation's Guide to
2 Good Care that says here's what a woman seeking an
3 abortion would look for, and so that provides some
4 guidance to a judge who's -- who's trying to find out if a
5 young woman has actually asked the right questions. So
6 those are the sorts of things that I've researched.

7 Q All right. How -- over what period of time has your work
8 in researching those issues spanned?

9 A I guess this is my fourth or fifth of year of research in
10 this area.

11 Q All right. And you mentioned some of the writing you've
12 done on the subject of parental involvement laws. Can you
13 tell us in terms of what writing you've done, make sure
14 you've given us a full description of that, and elaborate
15 on what the writing has been?

16 A Well, "Seeking Solomon's Wisdom" was really in response to
17 the fact that there is in the literature a real sense from
18 the judges, a sense of disorientation with these types of
19 hearings. They are sui generis. They are unlike any
20 other type of hearing. They are nonadversarial, there is
21 only one side presented, and so there is a sense of not
22 really knowing what it is that -- that is to happen, and
23 so "Seeking Solomon's Wisdom" was an attempt to try to set
24 out what it is that is to be accomplished at this hearing
25 when you're trying to meet the constitutional standard of

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1 determining whether a girl is mature and well informed or
2 whether the bypass should be granted because it's in her
3 best interest. The second law review article that I've
4 written in this area is "Protecting Our Daughters." It's
5 for the Vermont Law Review. It was written on the basis
6 of the -- the hearings that were occurring in Vermont
7 before the Vermont house of representatives.

8 Both of those documents -- both of those law review
9 articles are -- are rich with legislative materials,
10 because one of the problems that -- that you have in this
11 area is there's an awful lot of -- of material that you
12 get in these legislative hearings that -- that are not --
13 that's not accessible in the usual database. You have
14 testimony from witnesses, you have documents prepared --
15 like we had in Texas a study by Family Planning
16 Association on how many minors were informing their
17 parents prior to the parental involvement law, that's not
18 published anywhere else, but was submitted to the house --
19 the house of representatives state affairs committee, that
20 but for the fact that that -- I was at that hearing and
21 used it for the law review article, would not appear
22 anywhere else in the legal literature. And so it's very
23 helpful to have that sort of material available.

24 Q Thank you. Have you conducted research specifically
25 regarding the Texas parental involvement law and

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1 specifically regarding the benefits or detriments realized
2 or not realized through the actual operation of that law?

3 A Yes, I have, because, frankly, the parental involvement
4 law is something that I feel strongly is to the benefit of
5 young girls, but when you sit through these hearings
6 you -- you -- you do get a sense of pause. Ms. Crepps at
7 the end of my deposition asked me what do you think about
8 bypass hearings, and I said I don't know, because there is
9 that case out there where it really is a bad situation,
10 and so I really do not want these hearings to be a
11 roadblock to the girl that shouldn't go home and tell mom
12 and dad, but I also don't want them to be the fast track
13 to avoid the mom or dad who's going to be a big help and
14 really needs to know and be there for her.

15 Q So what is the research you've done regarding the benefits
16 and detriments of the Texas law after its enforcement?

17 A What we've seen is that 95 percent of the girls.....

18 MS. CREPPS: Your Honor, I'm going to object because.....

19 MR. CLARKSON: Yeah, I was.....

20 MS. CREPPS:I have an objection to her providing
21 this testimony at all, and if we're going to get into the
22 substance of it, then I think we should qualify her as -- for
23 whatever she's going to testify about and let me have a voir
24 dire.

25 THE COURT: Okay.

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1 MR. CLARKSON: Perhaps I can clarify.

2 Q I didn't intend to ask for the substance of your research.
3 I was asking you to describe the research you've done,
4 without telling me what the result was. That's what I
5 intended to ask.

6 MR. CLARKSON: Is that.....

7 THE COURT: Go right ahead. I think we're still at the
8 qualification stage.

9 MR. CLARKSON: We are.

10 THE COURT: Counsel, I think we already have this
11 understanding that, you know, we can move ahead with the
12 qualifications so the professor can testify by way of opinion
13 and we can examine as to each opinion whether there's a proper
14 foundation. Let's move ahead.

15 MR. CLARKSON: I guess I was.....

16 THE COURT: All right.

17 MR. CLARKSON:anticipating what Ms. Crepps was
18 talking about in terms of objections. I was trying to cover the
19 ground, but.....

20 THE COURT: Okay. Go right ahead.

21 Q Okay. The.....

22 A Could you reask the question?

23 Qresearch you've done -- what research have you done
24 regarding the benefits and detriments of the Texas
25 parental involvement law since its inception? Without

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1 describing the result, just what have you done?

2 A We have looked to see how many bypasses have occurred. We
3 have looked to see whether there have been an increase or
4 decrease in the number of pregnancies of teenagers under
5 the age of 18. We have looked to see whether there have
6 been an increase or decrease in the number of abortions of
7 teenagers under the age of 18. We have looked for any
8 evidence of abuse, whether it's physical or sexual,
9 triggered by.

10 Q When you say "we".....

11 A Both in committee the question has been asked, in the
12 bypass committee, as well as I have done Westlaw, news
13 searches, Google searches, have assigned research
14 assistants to look for this information.

15 Q That sounds like two things have been going on. The
16 subcommittee itself in its review of the operation of the
17 bypass has conducted its own research, which you've been
18 involved in regarding these issues?

19 A Has.....

20 Q Correct?

21 Aat least asked the question. Now, how extensively --
22 to my knowledge the court has not assigned a task force to
23 do that, no.

24 Q But as a law professor you have taken on the job of
25 researching these issues.....

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1 A Yes.

2 Qyourself, correct?

3 A Correct.

4 Q All right. And in your work as a law professor have you
5 had occasion to do comparative law analyses?

6 A Yes.

7 Q And tell the Court under what circumstances you do that,
8 and what do you do.

9 A Well, as a member of the American Law Institute it is
10 common for us to do comparative law research on various
11 states. The American Law Institute is, of course, a group
12 of practicing lawyers, judges and professors who come up
13 with the Restatement of Law or principles governing
14 various bodies of law. I'm an elected member of that.
15 They res-- the Restatement that I am most familiar with
16 is, of course, the Restatement of Law Governing Lawyers,
17 because I'm past chair of the American Law -- the
18 Association of American Law School's Section on
19 Professional Responsibility. I'm also familiar with the
20 American Law Institute's "Principles of Family
21 Dissolution."

22 Q Ms. Collett, can you look at Exhibit 2039A for me? And
23 specifically I want you to look at your CV and tell me if
24 that's an accurate, up-to-date version of your CV.

25 A I don't.....

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1 Q It should -- oh, I'm sorry, it's in the purple sort of
2 colored binders back here. Exhibit 2039. If you kind of
3 look at the numbers you can figure out which volume, I
4 think, it's in.

5 THE COURT: It's probably volume 1.

6 Q Volume 1. Does that look like an accurate, current
7 version of your CV?

8 A Yes.

9 MR. CLARKSON: Your Honor, I would offer the CV portion of
10 Exhibit 2039A into evidence at this time.

11 THE COURT: Admitted without objection.

12 (Defendant's Exhibit 2039A
13 admitted)

14 MR. CLARKSON: Your Honor, at this time I offer Professor
15 Collett as an expert regarding Texas judicial bypass
16 proceedings, regarding the benefits and detriments realized in
17 Texas under the operation of its parental involvement law,
18 regarding the benefits and detriments realized in other
19 jurisdictions under there operation of parental involvement
20 laws, and in terms of a comparative analysis of the Alaska law
21 to laws of other states for purposes of analyzing the benefits
22 or restrictions placed on girls in accessing abortion without
23 parental involvement.

24 THE COURT: Ms. Crepps, would you like to voir dire?

25 MS. CREPPS: Yes, Your Honor, I would. I also have a

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1 couple of other issues I'd like to raise with the Court at this
2 point.

3 THE COURT: Okay, why don't you voir dire first, or would
4 you like to raise those issues first? I don't know how we want
5 to take it, but.....

6 MS. CREPPS: I'm not sure exactly if it makes.....

7 THE COURT: Why don't you.....

8 MS. CREPPS:any sense.

9 THE COURT:voir dire, and then we'll deal with.....

10 MS. CREPPS: All right.

11 VOIR DIRE BY MS. CREPPS:

12 Q Good morning, Professor Collett. You drafted an expert
13 report in this case; is that correct?

14 A Yes, I did.

15 Q And you were deposed in this case; is that correct?

16 A Yes, I was.

17 Q And do you recall at your deposition me asking if you
18 intended to offer any opinions in addition to those that
19 you expressed in your expert report?

20 A Yes, I did.

21 Q And your answer to that was no; is that correct?

22 A Yes, I believe it was.

23 Q All right. Now, in your expert report do you make any
24 mention of your role in the initial formulation of the
25 parental notification law in Texas?

2002

1 A May I look at my report?

2 Q Yes, and if you want you can look at Exhibit 2039. That's
3 our official exhibit in this case of your report.

4 A Other than the reference to the legislative hearings, I do
5 not.

6 Q All right. Is there anything in the report that states
7 that you'll be offering an opinion on the advice that you
8 gave to the house sponsors on the pa-- on its passage?

9 A There is not.

10 Q Is there anything in that report offering opinion as to
11 the advice that you've provided to other legislators?

12 A There is not.

13 Q Is there anything in that report that purports to be a
14 comparative law analysis of the Alaska law and other state
15 laws?

16 A There is not.

17 Q All right. Now, Doctor, you are not a sociologist; is
18 that correct?

19 A I am not.

20 Q And you have no formal education in sociology.

21 A I do not.

22 Q You're not a demographer?

23 A I am not.

24 Q And you are not a statistician -- you don't consider
25 yourself to be an expert in the field of statistics.

2003

1 A I do not.

2 Q You do not have any medical training?

3 A I do not.

4 Q You're not a psychologist?

5 A I am not.

6 Q You have never participated in a judicial bypass hearing;

7 is that correct?

8 A I have not.

9 Q Or observed one?

10 A I have not.

11 Q Now, your -- can you give me the official title of the

12 committee, because I had it as the subadvisory committee

13 on rules, and I'm not sure that's exactly what -- how you

14 referred to it earlier.

15 A It is the subadvisory committee on rules on parental not--

16 not-- on the Texas parental notification act, I believe,

17 although the letter I got from the Chief Justice Phillips

18 differed from the name that showed up on the website, and

19 so it's been referred to in the order differently, so.....

20 Q So we can refer to it as the subadvisory committee and

21 know what we're talking about?

22 A Yes, we can.

23 Q All right, thank you. Now, it's correct, is it not, that

24 after the initial drafting of the rules shortly before the

25 law went into effect that the committee now is meeting

2004

1 more on an ad hoc basis?

2 A That's correct.

3 Q And when you were working actively on the committee before
4 the law went into effect, you were not the primary drafter
5 of the rules; is that correct?

6 A Bob Pemberton was.

7 Q Okay, and who's Mr. Pemberton?

8 A He was the rules attorney for the court at that point.

9 Q All right. Now, your testimony as to the benefits and
10 detriment of the Texas parental notification law is going
11 to be based primarily on your collection and analysis of
12 statistics regarding births and abortions before and after
13 the implementation of the law in Texas; is that correct?

14 A And the absence of any reports of other detrimental
15 effects.

16 Q Okay. And these were statistics that you either obtained
17 off of a website or through informal communication with
18 the Texas Department of Health?

19 A That's correct.

20 Q All right. And you did the mathematical computations that
21 you intend to present today; is that correct?

22 A That's correct.

23 Q Did you set up any -- did you account in making these
24 statistics for any confounding variables?

25 A No, I did not.

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1 Q Did you determine whether your results were statistically
2 significant?

3 A No, I did not.

4 Q Have you ever undertaken similar research to that which
5 you intend to present today on the benefits and detriments
6 of Texas parental notification in terms of looking at
7 statistics? Let me try that again.

8 A Please.

9 Q Have you done any research similar to what you have done
10 for Texas in any other area? Getting statistics on
11 abortion and pregnancy and running the numbers.

12 A I have looked at Idaho's reports on judicial bypass.
13 That's reported in the Vermont Law Review that you have a
14 copy of. I've looked at Alabama's judicial bypass
15 numbers.

16 Q And -- I'm sorry, were you finished? I don't mean to cut
17 you off.

18 A And the Minnesota and Massachusetts numbers as well.

19 Q Okay. The Idaho numbers that you're referring to, you
20 obtained those -- that information through e-mails with
21 somebody in the state government in Idaho; is that right?

22 A The department of health.

23 Q Okay. And that was through e-mails?

24 A That's correct.

25 Q And what those numbers showed you was how many minors were

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1 required to get parental consent prior to an abortion and
2 how many of those opted to get a judicial bypass; is that
3 correct?

4 A That's correct.

5 Q And for.....

6 A And Alabama.

7 QAlabama I believe you read a newspaper article
8 discussing the issue and their -- then followed up to
9 confirm the numbers that were reported in the newspaper
10 article; is that correct?

11 A The department of health confirmed that judicial bypass is
12 rarely used in Alabama, also, that 93 percent of the girls
13 obtain parental involvement.

14 Q All right. And you've never been previously qualified as
15 an expert in litigation regarding abortion; is that right?

16 A That's correct.

17 MR. CLARKSON: All right, Your Honor, I'm not exactly sure
18 how to proceed. You may suspect I have many objections to the
19 substance of Professor Collett's testimony, but let me start
20 with, if I might.....

21 THE COURT: Okay.

22 MR. CLARKSON:the description of her testimony that
23 was given at the very beginning of her voir dire of -- regarding
24 her role in the initial formulation of the law in Texas advising
25 house sponsors and senators on the passage and its

2007

1 implementation, advising -- let's see -- representing the
2 legislative sponsors before the supreme court, advising other
3 legislators in a comparative law analysis, I don't believe any
4 of that was disclosed in Doctor -- I mean, sorry, Professor
5 Collett's expert report or fairly in her deposition, and so I
6 would object to her testimony on those issues at all. I would
7 also argue that they are not relevant and that they're hearsay,
8 and particularly the advice that she gave to the Texas
9 legislature seems to me to be nothing more than a backdoor
10 attempt for her to testify about what she believes supreme court
11 jurisprudence is on parental consent and involvement for minors.
12 So I have that as an initial objection. Do you want me to
13 continue or do you want.....

14 THE COURT: Keep going.

15 MS. CREPPS: All right. I would also object to,
16 basically, her entire testimony, because I -- again, as we've
17 made clear, I don't believe that as a law professor her
18 testimony about the substance of the law in Alaska or the
19 substance of the law in Texas or the substance of the law in the
20 Supreme Court or in any other state is proper grounds for expert
21 testimony, and I also believe that she is not qualified to offer
22 testimony as to the medical risks associated with abortion,
23 which I believe Mr. Clarkson has brought out on her voir dire
24 that she intends to discuss. I think we've had lots of
25 testimony about that from physicians, but I don't think there's

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1 an adequate foundation laid for Professor Collett to discuss
2 that.

3 I also believe that her information that she would like to
4 offer opinions on as to the benefits and detriments of the Texas
5 judicial bypass is outside the scope of any expertise that she's
6 qualified to provide, because it does involve obtaining
7 statistics from the Texas Department of Health, doing
8 mathematical computations, and offering opinions as to what
9 those statistics show, and, again, I don't think there's any
10 foundation for her to offer that testimony. There's several
11 areas that I think that she is offering opinions on based on
12 unreliable authority, and I'll reserve those as we go along,
13 but -- let me just see if I have anything else on my initial
14 list. But that's the scope of my objections at this point, Your
15 Honor.

16 THE COURT: Okay.

17 MS. CREPPS: And I would also point out that Professor
18 Collett has produced a new exhibit that contains additional
19 statistics which I just received this morning, and may not have
20 even been available up until a few days ago, from the Texas
21 Department of Health with their 2001 statistics, but it was just
22 handed to me and I haven't had a chance to review it, and I do
23 intend to cross-examine her on the statistics that she's talking
24 about if she's allowed to testify on that, so I would want a few
25 minutes to have a look at that.....

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1 THE COURT: Okay.

2 MS. CREPPS:before her testimony.

3 THE COURT: Mr. Clarkson.

4 MR. CLARKSON: Okay. I'll try to keep it in order as best
5 I can. In terms of her advice to the Texas legislature, kind of
6 going through the process before the law, as the law was formed,
7 when the law was passed, afterwards with a special subcommittee,
8 those are her qualifications to give her opinions.

9 THE COURT: So we're not going to ask any opinions further
10 than what we have heard so far?

11 MR. CLARKSON: Well, I guess.....

12 THE COURT: I've qualified her so far, so -- I'm going to
13 qualify her, so are we going to go into it any further regarding
14 any further opinions?

15 MR. CLARKSON: Beyond the areas that I've asked?
16 Well.....

17 THE COURT: Yeah.

18 MR. CLARKSON: I guess I want to make sure I understand
19 your question. I mean, she's -- my understanding is -- that is
20 what I intend to do.

21 THE COURT: All right.

22 MR. CLARKSON: She's going to talk about opinions about
23 the experience of how efficiently the Texas bypass proceedings
24 have operated, those sorts of things. Her qualifications to do
25 that come from her experience in formulating the law, helping to

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1 oversee the operation of the law, drafting of the rules. I
2 mean, what Ms. Crepps is objecting to as not being set forth in
3 her report are her qualifications to give the opinions I intend
4 to ask her. And so that's why I'm a little confused about the
5 objection, because I'm not going to ask her opinions about what
6 do you think happened in the legislative process. I mean,
7 that's just her experience that got her to giving us opinions
8 about how the law functions and operates.

9 THE COURT: Mr. Clarkson, maybe I can simplify this.

10 MR. CLARKSON: Certainly.

11 THE COURT: If I qualify Professor Collett as an
12 expert.....

13 MR. CLARKSON: Yes, sir.

14 THE COURT:do we need to delve into it any further?

15 MR. CLARKSON: No.

16 THE COURT: Okay.

17 MR. CLARKSON: We don't.

18 THE COURT: All right. Let -- let's move on to what is
19 really at stake, is what are the opinions you intend Professor
20 Collett to testify about, so we'll know.....

21 MR. CLARKSON: All right.

22 THE COURT:and then I can issue some rulings.

23 MR. CLARKSON: All right. We don't intend to ask her
24 about the medical risk of abortion. That's not an issue.....

25 THE COURT: Okay.

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1 MR. CLARKSON: we intend to ask her about. With
2 respect to -- I mean, relating her experiences with the
3 operation of the Texas bypass proceedings, how -- such issues as
4 how readily accessible the system has been to young girls filing
5 their petitions in Texas, how expeditious the proceedings have
6 been, how confidential the proceedings have been, what has been
7 the tenor of the proceedings, have they been traumatic and so,
8 you know, upsetting to these young girls they can't maneuver
9 through the process, what has been the experience of the Texas
10 procedure regarding the provision of counsel, and then in that,
11 once we analyze her experiences with Texas and her opinions
12 about those sorts of things, there will be a comparison to the
13 Alaska provisions and how they compare, not interpreting the
14 provision of the Ala-- of Alaska law, but simply comparing them
15 to how -- to the Texas law with her opinions about how the Texas
16 law is operated. We're not going to be asking her to give you
17 any opinions about what the Alaska law means. She's not going
18 to be opining about the meaning of the law.

19 THE COURT: Okay.

20 MR. CLARKSON: That is not our intent. In terms of her
21 research on the benefits and detriments realized or not on the
22 Texas law, Professor Collett has done specific research in areas
23 related to pregnancy rates, abortion rates in Texas after the
24 enactment of the law. She's done research in that area and
25 she's going to tell you what she's found. That's our intention.

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1 She's done research in this area and she's reviewed studies and
2 articles that she's relied on reasonably as an expert in her
3 field regarding what the findings in that area have been outside
4 of Texas. She's reviewed some material about Alaska in that
5 respect. She is going to talk about her research and studies
6 related to -- in terms of benefits of the law, sexual
7 exploitation of young girls, and how that is revealed through
8 the bypass proceedings.

9 THE COURT: Let me just clarify, and perhaps you can help
10 me here, Mr. Clarkson. When you talk about benefits and
11 detriments are you specifically looking at the benefits and
12 detriments of a judicial bypass mechanism, or is the opinion
13 going to frame -- be framed in a more general broader scope
14 regarding parental consent, what are the benefit and detriments?

15 MR. CLARKSON: It.....

16 THE COURT: What -- what's the scope?

17 MR. CLARKSON: It goes to both the parental involvement
18 law itself and the bypass.....

19 THE COURT: Okay.

20 MR. CLARKSON:proceeding itself. Benefits.....

21 THE COURT: All right.

22 MR. CLARKSON:and detriments of both, because she
23 has conducted specific research on both of those issues, she has
24 written on both of those issues. In terms of the last
25 area -- so those are the two areas, comparative -- benefits,

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1 detriments, parental involvement laws, bypass proceedings,
2 Texas, outside of Texas. There's lots of areas to explore in
3 that respect. And then last is this comparative analysis, and
4 specifically the intention was to ask her whether she's reviewed
5 the Alaska law and does she have an opinion based on that review
6 how the Alaska law compares in terms of the burdens, the
7 obstacles it places in front of a girl attempting to access
8 abortion without parental involvement, so that the Court -- the
9 intention would be to give the Court assistance in determining
10 where Alaska's law fits in the scale of creating restrictions on
11 the right of an abortion compared to the laws of other states,
12 focusing on the idea of less restrictive means.

13 THE COURT: All right. Ms. Crepps, it looks like
14 we're -- knocked a couple of things off the table, so let's
15 focus in. I seem to think that there are now three basic
16 categories. Of those, what do you think?

17 MS. CREPPS: Well, Your Honor, if Professor Collett
18 intends to provide factual evidence on how readily accessible,
19 how expeditious, how confidential and how upsetting judicial
20 bypass procedures in Texas are, then I think we have an
21 additional disclosure problem, and I think we may -- we still
22 have a disclosure problem on the comparative analysis, that it
23 wasn't disclosed she would be offering opinion on that. In
24 addition to our objection, that is simply her interpretation of
25 state laws, which I think is appropriate for briefing, but not

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1 appropriate for expert testimony. So I also think that as to
2 her research on Texas and her other opinions regarding benefits
3 and detriments, such as sexual exploitation and other, I would
4 continue my objection that she's not qualified to offer opinions
5 in those areas. The reason for the study or what she terms the
6 study, the Texas statistics, I don't believe that she's
7 qualified to interpret those numbers, and as to the other
8 studies, I don't think that she's qualified as an expert to read
9 and analyze those articles, many of which we've already heard
10 about from other witnesses, such as Dr. Henshaw and
11 Dr. Uhlenberg. So I continue to have all of those objections,
12 and I don't think Mr. Clarkson -- no, I think he addressed my
13 other objections.

14 THE COURT: Okay. Mr. Clarkson, just -- I understand your
15 arguments with respect to all these issues except the last one,
16 which is actually more of a procedural objection, which is
17 comparative law analysis. Has that been disclosed, and where is
18 it? We've gone through this previously, so you know the drill.

19 MR. CLARKSON: Sure.

20 THE COURT: Point me to the expert report or deposition.

21 MR. CLARKSON: Well, I think if you just -- you look at
22 the expert report, what she's done in her expert report, if you
23 look at the entirety of it, she's analyzed the Texas law, the
24 Texas experience, the Alaska law, and there's been, you know,
25 obvious comparisons.....

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1 THE COURT: Well, I can.....

2 MR. CLARKSON:in that respect.

3 THE COURT: I'm comfortable with Texas and Alaska, but
4 apparently now the opinion is further than just Texas and
5 Alaska, a comparative law analysis of all jurisdictions. Is
6 that part of the opinion that's going to be elicited?

7 MR. CLARKSON: Yes.

8 THE COURT: And tell me where it was disclosed.

9 MR. CLARKSON: Well, what was disclosed in her report,
10 that she has written extensively on these subjects regarding
11 Vermont, regarding the other jurisdictions.....

12 THE COURT: I would like a.....

13 MR. CLARKSON:she's written about.

14 THE COURT:paragraph cite or a deposition cite.

15 MR. CLARKSON: Well, Your Honor, if you right to page 13
16 and 14 of the report, I mean, that's the first place I'd point
17 you to, what's listed there is the article that she's written on
18 parental involvement laws.

19 THE COURT: Okay.

20 MR. CLARKSON: The article that she's discussed
21 extensively and she'll discuss more is "Seeking Solomon's
22 Wisdom: Judicial Bypass and Parental Involvement in Minors'
23 Abortion Decisions." That's the Baylor Law Review article.

24 THE COURT: Okay, so basically you're saying that
25 basically the scope of this opinion is contained in the data and

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1 information relied upon.

2 MR. CLARKSON: Well, the articles that she's written.....

3 THE COURT: She's.....

4 MR. CLARKSON:relate to.....

5 THE COURT:she's written. Okay.

6 MR. CLARKSON:analysis and evaluation of parental
7 involvement laws. She's written on this extensively. Those
8 writings were disclosed to the other side. It doesn't take a
9 whole lot of forethought to figure out that she's obviously
10 analyzing and comparing parental involvement laws, so.....

11 THE COURT: Okay. I understand your argument.

12 MR. CLARKSON: The -- and specifically throughout the
13 report Texas and Alaska are compared. I guess that's.....

14 THE COURT: I'm comfortable with Texas and Alaska, but,
15 you know, I think there are other jurisdictions at stake here,
16 and I want to know exactly, you know, what we're going to --
17 comparing and whether it was disclosed, because it seems to be a
18 slightly expanded scope of what we're talking about, so -- what
19 about the depositions? Anything of this nature that was
20 elicited during depositions, because I think we've used the
21 depositions as our guide in other cases.

22 MS. CREPPS: Your Honor, do you want me to approach with a
23 copy?

24 MR. CLARKSON: Your Honor, I guess the other thing I
25 wanted to point out was we specifically addressed this issue

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1 because the supreme court in its opinion, specifically Justice
2 Matthews and Carpeneti, indicated this was the type of
3 information that they would be looking for in terms of the
4 effects of the laws, the effects they've had in other states,
5 those sorts of things. That's why this issue is being
6 addressed.

7 THE COURT: It's a great argument, but I don't think the
8 supreme court was conducting discovery in this case, so.....

9 MR. CLARKSON: You know, I guess my point would be the
10 purpose of the disclosure is to give reasonable disclosure. If
11 she's been given -- the other side has been given law review
12 articles that this professor has written on these subjects, to
13 discern that that is a topic she will discuss because she's
14 written on it extensively is a fair thing to expect.

15 THE COURT: Okay. All right.

16 MS. CREPPS: Your Honor, may I approach with a copy of the
17 deposition, please? If.....

18 THE COURT: Well, I just ask you, I mean, was this -- you
19 know, was this disclosed to you, was this an opinion that you
20 think was being elicited either in the expert report or the
21 deposition, and can you fairly meet it at this time?

22 MS. CREPPS: I don't believe that a comparative law
23 analysis outside of Texas and Alaska was disclosed. I don't
24 think the citation to law review articles and the date relied
25 on.....

2018

1 THE COURT: Okay.

2 MS. CREPPS:is fair disclosure, and I asked
3 Professor Collett in her deposition do you intend to offer any
4 opinions at trial that are not discussed in your expert report,
5 and she said no, and I don't believe that listing your own law
6 review articles in your data relied on is fairly to say you --
7 you have discussed that in your expert report.

8 THE COURT: All right, I'll tell you what. I'm going to
9 take our morning break right now. We'll come back in 15
10 minutes. Mr. Clarkson.

11 MR. CLARKSON: Actually.....

12 THE COURT: I thought you might be referring to the
13 deposition, so why don't you go through it and mark,
14 essentially.....

15 MR. CLARKSON: Well, I'm going to point you to the last
16 page of the deposition, page 102.

17 THE COURT: I'm always at a disadvantage because I do not
18 have the depositions. Do you have a copy that can be published?

19 MR. CLARKSON: Yes, sir. You're welcome to my copy. It's
20 not stapled.

21 THE COURT: I want the original deposition.

22 MS. CREPPS: All right. We have it under the table, Your
23 Honor.

24 THE COURT: Okay. Okay, page 102. Line?

25 MR. CLARKSON: Going to line 12.

2019

1 THE COURT: Okay.

2 MR. CLARKSON: Okay, question is -- I'm sorry, are you
3 there?

4 THE COURT: I am there. Line 12.

5 MR. CLARKSON: Okay. Question: Okay. Can you tell me
6 what field you are being offered as an expert in, or can you
7 tell me whether Mr. Clarkson -- when Mr. Clarkson finishes your
8 voir dire and says I now offer Professor Collett as an expert
9 in, how -- how's he going to fill in the blank? Answer: On the
10 judicial bypass procedure that's been adopted in Texas and its
11 use in other states. Period. That sounds like fair disclosure
12 to me.

13 THE COURT: All right. Take under advisement. I'll be
14 back after a 15-minute break. Stand in recess.

15 (Off record at 10:36 a.m.; on record at 10:54 a.m.)

16 THE COURT: We're back on record. Having considered the
17 issue, this is going to be the ruling of the court regarding the
18 testimony of Professor Collett. I find that she is qualified as
19 an expert in the area of law and in the area of judicial bypass
20 in the state of Texas, and, therefore, with respect to those
21 opinions there is clearly no impediment to her expressing
22 opinions. I further find that with respect to the issues of
23 benefits and detriment, clearly, again, as to the issue of
24 judicial bypass she's qualified. I further find that with
25 respect to parental consent she has been involved in many laws,

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1 and I'm going to allow her also to talk about her understanding
2 of the benefits and consent in terms of opinions. Ms. Crepps,
3 you probably have an objection with respect to the basis of
4 those opinions, and I'm certainly going to allow you cross-
5 examination with respect to those items.

6 The one that I'm having trouble with is the comparative
7 analysis of laws. I've read the expert report, I've heard what
8 the doc-- what professor had to say. I've also looked at this
9 deposition. Other than for one line, doesn't seem like this is
10 an issue that was disclosed or covered as an opinion or area of
11 the opinion. So this is -- these are certain options that I
12 would like to explore with counsel. One, okay, we can do it in
13 the brief. As we all know we're going to file pretrial briefs.
14 If you want to talk about just the laws, what states have what
15 laws and how the continuum spreads, I'll allow you to do it by
16 briefing. That's fine. I think we've discussed that
17 previously. In fact, one of my motions in limine, the order
18 essentially said that. One.

19 Second, because it's not been disclosed right now, I find
20 that essentially plaintiffs would be at a disadvantage. I don't
21 think they're prepared to cross-examine all the different laws
22 that may be out there, and so it would not be an appropriate
23 area of testimony unless I can remove some of the prejudice.
24 Second option: you pay for a deposition this afternoon,
25 Mr. Clarkson, and then we'll get the professor back after we

2021

1 have had the deposition, after Ms. Crepps has had an opportunity
2 to look at the whole area, figure out what all the other laws
3 say, and then we'll continue with her testimony in that area.

4 MR. CLARKSON: So I understand what option we're talking
5 about, me personally or the State of Alaska?

6 THE COURT: State of Alaska.

7 (Laughter)

8 THE COURT: I don't know, you have to talk to Mr. Davis.
9 I don't know. The State.....

10 MR. CLARKSON: Wanted to understand what I'm.....

11 THE COURT:of Alaska. I mean the.....

12 MR. CLARKSON:what we're talking about.

13 THE COURT:defendant, not you personally. Okay.
14 We'll do the deposition. We'll arrange it, and then we can have
15 the professor coming back to testify. So those are the two
16 options that I'd like the parties to examine.

17 MR. CLARKSON: I think we'll just address the comparison
18 of the laws in the briefs, and we'll deal with her analysis with
19 Texas and Alaska, and then we'll go from there.

20 THE COURT: Texas and Alaska, those are fine. All right.
21 So you'll -- you have agreed that you will do it in the briefs.
22 Is that right, Mr. Clarkson?

23 MR. CLARKSON: Yes, sir.

24 THE COURT: Okay. Ms. Crepps, any.....

25 MS. CREPPS: Thank you, Your Honor.

2022

1 THE COURT:objection to that?

2 MS. CREPPS: No.

3 THE COURT: All right. Sorry to take so long, Professor,
4 but, you know, we've done this before, as you can tell.

5 MR. CLARKSON: Okay.

6 THE COURT: You may continue.

7 MR. CLARKSON: Thank you, Your Honor.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. CLARKSON:

10 Q Professor, can you describe more specifically for us the
11 Texas parental involvement law?

12 A Yes.

13 Q Our law requires that 48 hours prior to the performance of
14 an abortion on a minor under -- which is defined as any
15 girl under the age of 18, that the abortion -- that the
16 physician inform a parent or a legal guardian or a
17 managing conservator of the intention to perform the
18 abortion. In the absence of informing a parent or a legal
19 guardian or a managing conservator, the minor may petition
20 a court anywhere in the state, we have no venue provision,
21 may petition a -- a court for a judicial bypass of such
22 notification, and that can be granted -- must be granted
23 on the basis that she is mature and well informed, or, in
24 the alternative, that notification may lead to physical,
25 emotional or sexual abuse, or, in the alternative, that it

2023

1 is in her best interest that parental notification not be
2 granted -- parental notification not be given and that the
3 abortion proceed. There is also an emergency bypass. If
4 the abortion provider determines that the abortion is
5 necessary in order to avoid the impairment of a
6 substantial bodily function or to avoid death. There is
7 also a provision for a penalty if the abortion provider,
8 in fact, goes forward without giving the requisite notice.

9 Q Thank you. What does the young girl -- well, let me ask
10 you this. What are the provisions of the Texas law with
11 respect to a young girl filing her petition for a bypass?

12 A In Texas it has to be a verified petition. As I
13 mentioned, it can be filed anywhere throughout the state.
14 There are no -- no venue requirements. That was of some
15 concern, but the decision was made that we didn't want
16 to -- to limit access to -- to the girls, so they can --
17 they can file anywhere in the state. It can actually also
18 be filed on their behalf, so that someone else can sign
19 the petition on their behalf for them, and once that is
20 filed the hearing must be held expeditiously and judgment
21 must be rendered within two business days from the filing
22 of that petition. Failure to render judgment within two
23 business days, by 5:00 p.m. close of business -- 5:00 p.m.
24 the second business day, an order of default is given.
25 The minor is entitled to go forward with the abortion.

2024

1 Q All right. So you said the young girl can file a petition
2 throughout the state of Texas?

3 A That's correct.

4 Q All right. Have you had an opportunity to learn how
5 readily or easily young girls have been able to access the
6 court system to file their petitions through your work
7 with the subcommittee?

8 A There has been -- there was some initial concern that
9 because Texas, like Alaska, is a very large state that has
10 large expansions of rural country, that there would be
11 access problems, but that is not something that we're
12 hearing. The -- we have the forms on the Internet, the
13 Texas Supreme Court website itself has a link to them.
14 Abortion providers have them readily available. The
15 courthouses have them readily available. And so access to
16 the -- the forms and access to -- to filing them has not
17 proven to be a problem, apparently.

18 Q All right. Is there any kind of a certification or
19 notarization requirement for the petition itself?

20 A They're required to be verified, and there is a
21 certification form. There was some conversation about
22 that because of the -- the confidentiality requirement,
23 but, of course, it's important that the -- that the judge
24 know the identity of the girl, if for no other reason than
25 recusal purposes. If -- if the petition shows that

1 the -- that the girl is your brother's daughter, you might
2 need to recuse yourself, and so there was some initial
3 conversation about whether there should even be that, and
4 the committee and the supreme court properly requires that
5 the girl's name be on the first page. That is removed,
6 actually, and stored separately, in order to ensure the
7 confidentiality of the girl, and so that has protected the
8 confidentiality of the girl, and, as I said, the girl
9 herself need not even sign the petition, which is one of
10 the reasons -- one of the very first questions that I
11 suggest in my law review article that a judge ask in a
12 bypass hearing is to confirm -- you know, state your name
13 for me, how old are you, how do you know you're pregnant,
14 that sort of thing, go through the petition with each of
15 the questions that we require under the statute, so that
16 the girl essentially orally verifies each of the -- the
17 required statements.

18 Q All right. In your interaction with judges on the
19 subcommittee you served on have you heard of complaints or
20 learned of complaints related to young girls just having
21 difficulty figuring out how to access the court system?
22 And I'm focusing now just on the filing of their petitions
23 itself.

24 MS. CREPPS: Your Honor, I'm going to object again. I
25 don't believe that this line of questioning about specific facts

1 related to filing, petition's confidentiality, I believe
2 Mr. Clarkson also mentioned the emotional response of the minors
3 to the bypass petition, I don't think these were disclosed as
4 something on which Professor Collett was going to be offering
5 testimony.

6 THE COURT: Well, looks like another round, Mr. Clarkson.

7 MR. CLARKSON: Your Honor, her expert report is replete
8 with her discussions of the experiences of the Texas bypass
9 proceedings. She testified at her deposition about her service
10 on the special subcommittee. She specifically told Ms. Crepps
11 she would be talking about the operation of bypass proceedings
12 in Texas and Outside. If Ms. Crepps didn't ask more questions,
13 that's not my job.

14 THE COURT: All right, with respect to this issue, whether
15 there's disclosure, I find that there has been. Objection
16 overruled.

17 MR. CLARKSON: Thank you, Your Honor.

18 Q Now, how do Alaska's law's provisions compare to those of
19 Texas regarding just the filing of the petition itself?

20 A The Alaska law appears to allow filing, also, anywhere in
21 the state. There appears to be open venue, which is
22 comparable to Texas. There also appears to be a
23 verification notarization requirement, but, again, that
24 has not formed an impediment in Texas, apparently, and so
25 they -- they seem to be very similar to that effect.

1 Q All right. Now, you mentioned earlier as you were
2 describing the Texas law the persons whom the young girl
3 would have to -- or assuming that she has -- she can't get
4 a bypass around parental notification, that people would
5 have to be notified. How does that compare with the
6 Alaska law in terms of the individuals that would have to
7 consent?

8 A In Alaska the -- the law includes the additional category
9 of a custodian, and it's unclear to me exactly what that
10 legal status is under Alaska law, whether a custodian
11 could actually be someone who simply has temporary custody
12 of the minor, for example, an adult sibling that has
13 custody of the minor while parents are out of town on a
14 business trip. It's a broader category under Alaska law
15 than is permitted under Texas law.

16 Q What are the provisions of the Texas law with respect to
17 the provision of legal counsel to young girls pursuing
18 bypass proceedings?

19 A Texas law provides that every minor who seeks a bypass
20 will be appointed counsel. It's mandatory, as it is under
21 Alaska law.

22 Q Is there other counsel representation provided as well?

23 A Under Texas law not only must every minor be appointed an
24 attorney, she must also be appointed a guardian ad litem.
25 The roles are very different. The guardian ad litem is to

1 make an independent assessment as to what the best
2 interest of the minor is, and to advise the court as to
3 that assessment, whereas the role of the attorney is to
4 seek the objective of the minor as the minor determines
5 that objective to be. There has been some discussion --
6 Justice Priscilla Owen in one of her opinions in one of
7 the Jane Doe cases has addressed the question of whether
8 it is appropriate for a court to appoint the same person
9 to serve both as guardian ad litem and attorney ad litem
10 for a minor, because of the very short time period,
11 because if a conflict arises replacement of either of
12 those functions might delay the proceedings, and that --
13 and that could be a -- a difficult problem. The theory
14 behind the appointment of two people was to facilitate the
15 court's assessment of the best interest of the minor if
16 the court determined that the minor was not sufficiently
17 mature and well informed to meet the first prong of the
18 test.

19 Q All right. Have you had an opportunity through your
20 service on the special subcommittee in Texas to learn how
21 readily young girls pursuing bypasses have been able to
22 retain counsel or guardians ad litem?

23 A That has not been a problem. The State of Texas has
24 provided counsel and provided funding for counsel, and
25 then Jane's Due Process has also provided -- have been a

1 source of the provision of counsel.

2 Q And, again, what is Jane's Due Process?

3 A It was an organization initially started by the Texas
4 Civil Liber-- Liberties Union. It is now a freestanding
5 organization. I think it's a 501(c)(3) organization, tax-
6 exempt organization, that trains lawyers to serve both in
7 the capacity as guardian ad litem and attorney ad litem.

8 Q Okay, let's kind of take those two avenues by which a
9 young girl in Texas who's pursuing a bypass might get
10 legal counsel, first through the court system. How does a
11 young girl who wants to file a petition actually get in
12 touch with her lawyer, her guardian ad litem; how does
13 that happen?

14 A Most common method is the abortion provider, because
15 that's the most typical contact point. The young girl
16 discovers she's pregnant or believes that she's pregnant,
17 goes to an abortion provider or some health care facility
18 to confirm the pregnancy, and it's at that point that she
19 begins to -- to consider the option of obtaining an
20 abortion and the option of parental notification is -- is
21 brought up. Then, as it is described by the Texas Family
22 Planning Council and abortion providers, they tell her
23 that if she feels that she can't notify a parent, judicial
24 bypass is explained to her, and they will often put her in
25 contact with an attorney. Sometimes Jane's Due

1 Process -- Jane's Due Process has a website. They also
2 have a publicity campaign; they are in contact with school
3 counselors; they are in contact with various community
4 organizations. They're very aggressive in promoting their
5 services.

6 Q Do you know what role, if any, Planned Parenthood in Texas
7 has played in connecting young girls with attorneys?

8 A The statements they've made in the press is that they
9 have, in fact, facilitated the appointment of lawyers and
10 have trained lawyers to facilitate the bypass proceedings.

11 Q And in your service on the subcommittee regarding bypass
12 proceedings has that, in fact, been confirmed to be true?

13 A Yes, they have a representative on the subcommittee as
14 well.

15 Q Have you through your services on the subcommittee learned
16 how well young girls have managed to maneuver themselves
17 through the bypass proceeding from start to finish with
18 the assistance of legal counsel?

19 A It was interesting, in the initial legislative hearings
20 the -- the budget assessment was that 50 percent of all
21 bypass petitions would be denied, and there was,
22 therefore, a budget projection that we would have to fund
23 appeals in 50 percent of all cases, and that has not
24 proven to be true. In the intervening two years that the
25 law has been -- well, now, I guess, all of 2000, all of

1 2001 and all of 2002 -- in the intervening three years
2 that the law has been in effect we have had 11 cases make
3 their way to the Texas Supreme Court. Those are the only
4 cases I can state affirmatively because those are the only
5 published opinions that we know of, but even if we assume
6 that that represents only one-third of all appellate
7 cases, that's a very small number, so it appears that a
8 substantial number of the bypasses are being granted.
9 Jane's Due Process reports a success rate approaching 95
10 percent of all bypass hearings that they represent minors
11 in.

12 Q Okay, you mentioned 11 appeals to the Texas Supreme Court.
13 Are those only the appeals that have been pursued to
14 completion, or are those all the appeals that have been
15 filed. Do some.....

16 A Those are -- those are the -- the appeals that have
17 reported cases.

18 Q All right. Let's try to put the numbers in order of
19 magnitude and put them in contact. Do you know how many
20 petitions have been filed in Texas?

21 A No, that information is not available.

22 Q All right. We know that the grand total of denials
23 is.....

24 A That information.....

25 Q at the trial court level is 11.....

1 A No.

2 Qcorrect?

3 A That information is not available either. It is one of
4 the provisions of the Texas statute, and -- and if you
5 have a copy of it I can read you the exact provision, but
6 part of the negotiations between the legislatures --
7 legislators, again, was a rather comprehensive
8 confidentiality provision that includes all manner of
9 records regarding trial, including the number of petitions
10 filed, et cetera. After the law was first passed there
11 were a large number of newspaper editorials even
12 suggesting that it was a violation of the Texas open
13 courts law.

14 Q What we don't know is how many young girls have walked
15 away from a denial without appealing.

16 A That is correct.

17 Q All right. But we do know 11 appeals have been filed.

18 A We know that 11 cases have been resolved by the Texas
19 Supreme Court by.....

20 Q That's.....

21 Apublished opinion.

22 Q That's more accurate. And of those 11 published opinions
23 what have been the result?

24 A In four of those cases, I believe, the Texas Supreme Court
25 has granted the girls the bypass.

1 Q All right. How do young girls in Texas pay for the
2 assistance of legal counsel and/or a guardian?

3 A It's paid from the state coffers. There are no fees that
4 girls pay in -- at all in.....

5 Q Is that true.....

6 Arelationship to these.

7 Q Is that true regardless of how they come in contact with
8 their attorney, Jane's Due Process or the court system
9 itself?

10 A Jane's Due Process attorneys also are eligible for payment
11 from the state fees, although I believe that some of the
12 Jane's Due Process attorneys do it pro bono.

13 Q All right. How does the Alaska judicial bypass system
14 compare in terms of provision of legal counsel?

15 A It is mandatory under the statute.

16 Q How does Alaska's bypass system compare in terms of the
17 provision of a guardian ad litem?

18 A There doesn't appear to be any statutory requirement of
19 that, although state law does provide discretionary power
20 to the Court to appoint a guardian ad litem should a judge
21 believe such appointment would be appropriate, I believe.

22 Q Are you speaking of the probate rules?

23 A I believe Alaska court rule 11 allows a judge under
24 appropriate circumstances to appoint a guardian ad litem,
25 and the specific instance I'm thinking of is if a judge

1 became concerned that a girl was under duress or under
2 unusual circumstances, perhaps.

3 Q All right. Let's talk about the expeditiousness of the
4 proceedings themselves in Texas. What are the provisions
5 of the Texas law regarding how expeditiously the bypass is
6 to be conducted?

7 A Again, under the Texas statute the bypass -- once a minor
8 files a petition, the court must hold a hearing and
9 conclude that hearing within two business days from the
10 filing of the petition. The interme-- if she files an
11 appeal, if that matter -- if the petition is denied, she
12 is entitled to appeal. If the bypass is granted, there
13 can be no appeal from that. Even if the guardian ad litem
14 disagrees with the granting of the bypass, there.....

15 Q All right.

16 A can be no appeal from that.....

17 Q There's.....

18 A granting.

19 Q These are one-party proceedings.....

20 A They are.....

21 Q one-sided.....

22 A one-party proceedings, so even though there's a
23 guardian ad litem to determine the best interest of the
24 minor, even if the guardian ad litem disagrees, there can
25 be no appeal from the granting of a bypass.

1 Q All right.

2 A So if the bypass is denied, the minor has a right of
3 appeal.

4 Q Well, before we go there let's back up. How quickly are
5 trial courts' decisions to be rendered in the bypass
6 proceedings in Texas?

7 A Second business day by 5:00 p.m.

8 Q I mean, once the hearing -- that's when the hearing is to
9 be conducted.

10 A Has to be hear-- the -- the order must be issued at the
11 end of the hearing.

12 Q At the end of the hearing, all right.

13 A Failure to do so gives the girl the right to a default
14 judgment.

15 Q And there's a two-day cutoff where the bypass is granted
16 after two days if no hearing has been held or no order has
17 been issued?

18 A That's correct.

19 Q All right. And have you had an opportunity to learn how
20 expeditiously in practice, through your work on the
21 subcommittee bypass, hearings are scheduled in Texas after
22 the filing of a petition?

23 A There have been no complaints regarding that, and, in
24 fact, we have a specific form for the issuance of default,
25 the certification of the transcript of the court docket to

1 show that the minor is entitled to go forward without
2 notification.

3 Q So how -- in your opinion how smoothly have these
4 proceedings progressed in terms of just the
5 expeditiousness of scheduling them, conducting them in
6 Texas?

7 A Some of the rural judges initially had difficulty with the
8 requirements, but that was resolved fairly quickly, and
9 now we're not hearing any complaints.

10 Q What were the difficulties that they experienced?

11 A We have some areas that are multicounty judicial
12 districts, and the clerks simply were unaware of the need
13 to immediately notify a judge that a hearing had to be
14 scheduled, and so it required fairly intensive clerk
15 education.

16 Q All right, and the resolution of that problem was clerk
17 education?

18 A Yes.

19 Q All right. Since that clerk education has taken place
20 have there been further examples of those sorts of
21 complaints?

22 A Not to the -- not to -- not that's been brought to the
23 committee.

24 Q Has there been any experience of undue delay in the bypass
25 proceedings such that young girls have been prejudiced in

1 their ability to obtain abortions of which you're aware
2 of?

3 A No.

4 Q Have you had an opportunity through serving on the
5 subcommittee to learn what the length of the hearings are
6 in practice once they're scheduled, conducted, what's the
7 length of the hearing itself?

8 A No.

9 Q All right. Have you had an opportunity to learn through
10 your interaction with judges on the subcommittee as to
11 what the tenor of the hearings are and how the young girls
12 are treated in the courtroom?

13 A There has been, in fact, praise on the part of the judges
14 in Bexar County, particularly, for the way they have
15 handled the hearings by the representative of Jane's Due
16 Process, that the hearings have been conducted in a way
17 that were sensitive to the girls' needs and recognized
18 that this was a stressful time in the young girls' lives.

19 Q All right. Now, in terms of access to the hearing itself,
20 participating in the hearing itself, how does the Alaska
21 law compare to the Texas law in terms of making the
22 hearing itself and participating in it accessible to the
23 young girl?

24 A Your statute allows for a minor to participate
25 telephonically, which is something that Texas does not

1 allow. A minor must physically be present during the
2 hearing in order for the judge to assess her demeanor, so
3 I assume that that's in part because of the large
4 geographic expanses of this state, and that, it seems to
5 me, would make it more accessible for minors in this
6 state.

7 Q All right. Now, how unique is that telephonic access
8 provision in Alaska compared to parental involvement laws
9 otherwise?

10 A I'm unaware of it.....

11 MS. CREPPS: Your Honor.....

12 Aanywhere.

13 MS. CREPPS:I thought we had excluded that
14 testimony?

15 MR. CLARKSON: I apologize, yes.

16 Q Let's do it this way. Let's talk about -- focusing on
17 Alaska and the telephonic access and concerns that we've
18 heard expressed about young girls who might be overly
19 timid or intimidated from the -- participating in a
20 courtroom setting, do you have an opinion as to how that
21 telephonic access might help alleviate that problem for a
22 young girl of that age or.....

23 A Well, certainly, telephonic access allows a minor to
24 participate from a setting that would be more familiar to
25 her. The setting could either be her attorney's office if

1 she has become familiar with -- with her attorney, from
2 the home of a friend, from the home of a relative who is
3 supporting her decision. It could be from some setting
4 that she is -- feels comfortable and safe. So it could
5 facilitate it in that way. It also could address some of
6 the concerns that are often expressed in the public debate
7 about confidentiality, in that in small communities there
8 are at least anecdotal stories told about minors seeking
9 bypasses and running into relatives or running into
10 schoolmates or running into -- and so it -- it certainly
11 eliminates any possibility of that.

12 Q Are you aware of many situations in Texas in their
13 experience in conducting bypass proceedings where there
14 have been complaints about judges conducting themselves
15 inappropriately in the proceedings, where young girls have
16 felt intimidated by the conduct of a judge?

17 A Yes. There have been two news reports. Jane's Due
18 Process has complained that there have been two judges
19 that have acted inappropriately. To my knowledge,
20 however, they -- they did not bring judicial misconduct
21 complaints, and they have not gone forward with anything
22 other than to -- to make those allegations.

23 Q Are those issues that you have reviewed and discussed on
24 the subcommittee?

25 A They -- they are, and it was simply the allegation that

1 these were a couple of men who were hostile to the concept
2 of abortion and acted inappropriately, and their response
3 was to simply avoid being placed on their docket in the
4 future for determination of judicial bypass petitions.

5 Q All right, so judges in Texas who have strong feelings
6 about the issue of abortion or parental involvement in
7 abortion, the resolution of avoiding those sorts of
8 problems has been to simply avoid assigning bypass
9 proceedings to them?

10 A Well, in committee the -- the -- the woman who was
11 saying -- was retelling the tale said that -- that their
12 response was simply to di-- dismiss the petition and to
13 refile. In some counties that's not permissible by
14 country rule, and so rather than -- than discuss that I
15 think some of the judges were uncomfortable because they
16 were concerned that it might be something that was not
17 permissible by country rule, and so -- but it was only two
18 incidents, and from there we went on to talk about the
19 other counties that -- and it was only two judges, and the
20 proper resolution, of course, is to file judicial
21 misconduct complaints.

22 Q And which never occurred in Texas.

23 A That's correct.

24 Q Now, other than those two complaints have there any other
25 recurrences of that sort of a problem in Texas?

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1 A Not to my knowledge.

2 Q How does the Alaska bypass system compare with the Texas
3 system in terms of the expeditiousness of the proceedings?

4 A The stat--.....

5 Q Short of an appeal at this point in time.

6 A The statute by its terms gives the -- the trial court five
7 days to rule, but by court rule you have 48 hours, which
8 is actually shorter than our two business days, to set the
9 hearing. It also allows the -- the -- the court to
10 participate -- or to have the -- the telephonic, so I
11 think it's certainly as expeditious as -- as ours, and
12 meets the Akron v. Ohio standard easily.

13 Q All right. Let's talk about appeals at this point. We
14 talked a little bit about it before, but let's go into
15 more detail. What are the provisions of the Texas law
16 regarding a young girl's appeal of a bypass order if she's
17 denied her bypass?

18 A We have an intermediate court of appeals, and then the
19 Texas Supreme Court. If they appeal to the intermediate
20 court of appeals the intermediate court must respond. The
21 court initially took the position that it has to be within
22 the same limited time period, and so it's a very short
23 turnaround, and -- second business day.

24 Q Second business day from?

25 A The filing of the appeal.

1 Q All right.

2 A And part of the problem, of course, is getting a
3 transcript. We allow, therefore, the filing simply of
4 the -- the audiotape to allow the court to -- to hear
5 that. That also has allowed for the modification of --
6 there are no published opinions from the intermediate
7 court of appeals, in part to maintain the confidentiality
8 of the girls, and in compliance with the -- the Texas
9 statute. If the girl appeals to the Texas Supreme Court,
10 the statute does not address the appeal period to the
11 Texas Supreme Court, and so there's a more extended period
12 of time, but the Texas Supreme Court has responded to
13 those appeals in a very timely fashion as well,
14 notwithstanding that there are often dissents or
15 concurrences, multiple opinions in those cases, and so
16 it's very rare for those opinions to issue in -- in a very
17 lengthy period of time at all.

18 Q Meaning it's a short period of time?

19 A Very short period of time. The court's very conscious of
20 the fact that -- that -- that they've got to respond.

21 A And the 11 cases that have gone all the way to publication
22 of an opinion in the Texas Supreme Court, what's been the
23 time frame of the appeal from start to finish?

24 Q There's no way to know exactly, although sitting on the
25 subadvisory committee one of the things we talked about

1 was whether it met the Akron v. Ohio 40 days test, and
2 they were confident that they did. In fact, they sent one
3 of the cases back for remand without opinion, which is an
4 extraordinary thing for the Texas Supreme Court to do,
5 because they felt that it needed to go back for remand in
6 order to get back to the evidentiary, and waited to write
7 the opinion just so they could get the evidentiary in --
8 within that 40 days.

9 Q All right. Have you had occasion to learn what have been
10 the reasons claimed by young girls in the filing of their
11 bypass petitions from your interaction with judges on the
12 subcommittee as to why they claim they want a bypass
13 parental notification in Texas?

14 A Yes. The vast majority of petitions are from minors that
15 are age 17, actually, and they assert that they are mature
16 and well informed. This is consistent with Jane's Due
17 Process's first annual report, also, that confirms that
18 the majority of the phone calls and girls that they assist
19 claim that they are mature and well informed, and,
20 therefore, should not be required to notify a parent.

21 Q Have you in your research and your work reviewed studies
22 regarding the reasons given by young girls for avoiding
23 parental involvement in abortion decisions?

24 A Yes, and the majority of these studies.....

25 MS. CREPPS: Your Honor, I'm going to pose an objection.

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1 I believe this is outside the scope of this witness's expertise.
2 These are studies that we have required the qualifications of
3 Dr. Henshaw and Dr. Uhlenberg to address, and so I don't think
4 there's an.....

5 THE COURT: Okay, objection.....

6 MS. CREPPS:adequate foundation.

7 THE COURT:as to foundation, basically.

8 MR. CLARKSON: Right, and the -- certainly.

9 THE COURT: Why don't you go ahead.

10 Q In the course of your research, Professor Collett, have
11 you had occasion in the course of your research and study
12 to review studies regarding the reasons given for young
13 girls for why they avoid parental involvement in their
14 abortions decisions; have you had the occasion to do that?

15 A Yes, I have.

16 Q And have you done that in the course of drafting your
17 articles for publication?

18 A Yes, I have.

19 Q And in the course of your work on the subcommittee?

20 A Yes, I have.

21 Q And these are studies you have reviewed which are in
22 publication, and you have re-- you rely on them in terms
23 of performing your work on the subcommittee?

24 A Yes.

25 Q Are these the types of articles that people on the

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1 subcommittee would typically rely upon in forming their
2 opinions about how to implement the Texas bypass
3 proceedings?

4 A Yes.

5 Q And in conducting your research as a law professor and
6 writing articles on these subjects, are these the types of
7 articles and studies that you have rea-- that you would
8 reasonably rely upon in your field to draw conclusions?

9 A Yes, they are.

10 MR. CLARKSON: I think that's an adequate foundation.

11 THE COURT: Any further objection, Ms. Crepps?

12 MS. CREPPS: Yes, Your Honor, I do have a continuing
13 objection. May I voir dire?

14 THE COURT: You may voir dire.

15 MS. CREPPS: Thank you.

16 VOIR DIRE BY MS. CREPPS:

17 Q Professor Collett, without discussing the substance of the
18 articles, can you please give me either -- the names of
19 the authors of the articles that you have been directed to
20 review by members -- by anybody on the subcommittee for
21 purposes of your work?

22 A Certainly. No one has directed me to review any
23 particular articles.

24 Q Okay. Do you know -- do you have personal knowledge as to
25 whether anybody else on the subcommittee has felt it

1 necessary to review any of the articles that you wished to
2 offer an opinion on?

3 A Judge Specia and Justice McClure have reviewed articles on
4 occasion.

5 Q All right, and they have also been called upon to review
6 bypass appeals; is that correct?

7 A Yes.

8 Q All right.

9 A No, I'm sorry. Judge Specia is a trial court judge.

10 Q Okay, so Judge Specia would -- is Judge Specia in a
11 position to actually hear petitions?

12 A Yes.

13 Q All right. And your primary purpose for looking at these
14 articles -- well, let me ask you this. Did you review
15 these articles originally for purposes of drafting your
16 law review article?

17 A No.

18 Q When did you first review these articles?

19 A For purposes of drafting the legislation.

20 Q All right, the legislation in Texas?

21 A Yes.

22 Q All right. And have you made an analysis on the
23 methodology used in these articles?

24 A I have compared them with other articles.

25 Q And based on what in your education or training have

1 Q All right.

2 Arestate it, please.

3 Q Have you reviewed studies regarding the reasons given by
4 young girls for wanting to avoid parental involvement in
5 their abortion decisions?

6 A Yes.

7 Q And what studies have you reviewed and what have they
8 shown?

9 A May I refer to my expert witness report?

10 Q You may, yes.

11 A Thank you. In paragraph 8 I refer to one of the studies,
12 Griffin, Carlson and Mackin indicate the most common
13 reason is to avoid parental disappointment. There are
14 additional studies that are referred to in the Baylor Law
15 Review article.

16 Q And what are those?

17 A Let me find that footnote for you. I'm sorry.

18 Q That's all right. Let's do this. Maybe we can come back
19 to that in a second.

20 A Okay.

21 Q What have been the -- how does Alaska's bypass system in
22 terms of the appellate process compare with the process in
23 Texas?

24 A You have only one appellate -- level of appellate review,
25 which will make it more expeditious, and you also require

1 immediate review, so it will be faster and it will
2 also -- you also have the default provision, so I think
3 it's -- it's in some ways superior to ours. It will
4 be -- it will be a faster review.

5 Q All right. And, again, in Texas in terms of the appellate
6 process and your interaction with judges, justices on the
7 subcommittee, have you discerned that there have been
8 significant problems in terms of delay with the appellate
9 process in Texas?

10 A No.

11 Q What are the -- let's talk about confidentiality now.
12 What are the provisions of the Texas law with respect to
13 confidentiality of the bypass proceedings?

14 A They are to be absolutely confidential. In fact, there
15 was great concern about -- because Texas judges are
16 elected -- that the number of petitions could not be
17 disclosed, the number of petitions granted, the number of
18 petitions denied, even the intermediate opinion -- court
19 opinions can't be reported, so the confidentiality is
20 extremely strict in the state of Texas.

21 Q And have you had an opportunity to learn what has been the
22 actual experience in conducting the bypass proceedings and
23 protecting a young girl's confidentiality?

24 A To my knowledge there has been no breach of
25 confidentiality in the state of Texas.

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1 Q All right. And are you aware of any situations in which a
2 Texas girl -- perhaps you've answered this -- in the
3 course of pursuing a bypass has lost her confidentiality,
4 meaning that her parents have learned of her pregnancy and
5 her desire for an abortion?

6 A Not due to her pursuit of the bypass.

7 Q I want you to assume that Judge Martin has testi-- do you
8 know -- are you aware who Judge Martin is?

9 A Yes, I am.

10 Q All right. That he has testified in this case, and that
11 Ms. Sabino -- are you familiar with Ms. Sabino?

12 A Yes, I do. I met her in Texas.

13 Q That she will testify regarding situations in which it is
14 claimed that in Minnesota and Massachusetts courts girls
15 have run into family members in or near the courthouse
16 when pursuing a petition. Has Texas had any such
17 experiences?

18 A Not to my knowledge.

19 Q How does Alaska's bypass system compare with that of Texas
20 in terms of providing for confidentiality?

21 A Again, the fact that the girl can testify telephonically
22 makes it something that's almost invulnerable from a
23 confidentiality perspective, and you have the anonymity
24 requirement that's statutorily required. So it seems to
25 me that it is strong confidentiality protection.

1 Q All right. And you mentioned earlier that in your view
2 the telephonic participation provision actually makes
3 confidentiality even that much more secure, perhaps, for a
4 young girl who might fear running into somebody at the
5 courthouse?

6 A If the minor chooses to participate in that way.

7 Q Are there any limits that you're aware of in the Alaska
8 law with respect to under what circumstances a girl can
9 choose telephonic participation?

10 A There -- there are none in the statute.

11 Q Have you had an opportunity to study and research
12 pregnancy and abortion rates in Texas since the
13 effectiveness of the parental involvement law on
14 January 1, 2000?

15 A Yes, I have.

16 Q What research have you done and what have you found?

17 A I've looked at the Texas Department of Health's reports on
18 the occurrence of teenage pregnancies and abortions since
19 the implementation of the law.

20 MS. CREPPS: Your Honor, I'm not sure if this is a proper
21 moment to jump up with my objection.....

22 THE COURT: Go right ahead.

23 MS. CREPPS:about this, but I don't believe that
24 Professor Collett is qualified to offer opinions based on her
25 review of the statistics from the Texas Department of Health,

1 and I think I laid some foundation for this objection earlier.

2 THE COURT: You did.

3 MS. CREPPS: I'd like to add one additional.....

4 THE COURT: Okay.

5 MS. CREPPS:point that I didn't make earlier, which
6 is when I asked Professor Collett in her deposition whether she
7 intended to offer an opinion as to whether there was a
8 connection between enforcement of the parental notice statute
9 and pregnancies -- the number of pregnancies in Texas in the
10 year 2000, she said she was not intending to offer that opinion
11 as to whether there's a connection, and I think if she can't
12 offer an opinion on that, then she can't properly offer an
13 opinion on the impact of the statute on abortion.

14 THE COURT: Okay, so basically.....

15 MR. CLARKSON: I'm not asking her to opine whether she
16 believes the law was the cause of these. I'm asking her to tell
17 me what research she's done to determine what's happened to the
18 rate since the effectiveness of the law. I mean, those are two
19 different questions. Has she done study and research to
20 determine what has happened.....

21 THE COURT: Okay.

22 MR. CLARKSON:in terms of the pregnancy rates and
23 abortion rates.

24 THE COURT: Well, if I can focus in on her objection,
25 then, this is an expert. You're offering an expert. Are you

1 offering an opinion upon which this information is the basis of
2 an opinion? You see what I'm saying?

3 MR. CLARKSON: Yeah.

4 THE COURT: Usually an expert comes up here and says I
5 have an opinion, this is the opinion, and I decide whether it's
6 an appropriate opinion, and then you can go into the basis of
7 the opinion. Basis of the opinion are all these statistics.

8 MR. CLARKSON: The opinion would be.....

9 THE COURT: Okay.

10 MR. CLARKSON:yeah, her opinion would be based on
11 her experience with parental involvement laws that they serve to
12 benefit minors and society as a whole, and one of the indices of
13 this benefit is lower pregnancy rates, lower abortion rates,
14 which has been, in fact, experienced in Texas.

15 THE COURT: Okay. So the opinion is that there is a
16 causal link? I'm trying to figure this out, Mr. Clarkson. Help
17 me here. If there is no causal link, then is it an association
18 as we have been talking about?

19 MR. CLARKSON: Yeah. Yes, her opinion would be.....

20 THE COURT: Okay.

21 MR. CLARKSON:that there is a causal link and/or an
22 association, yes.

23 THE COURT: A causal link or an association. Ms. Crepps,
24 looks like we're going onto the causal link association
25 analysis. I've allowed all kinds of association testimony to

1 come in. Why is this any different?

2 MS. CREPPS: Well, for two reasons, Your Honor. First of
3 all, I asked Professor Collett in her deposition.....

4 THE COURT: Uh-huh.

5 MS. CREPPS:and I'm referring now to paragraph 11 of
6 her.....

7 THE COURT: Sure.

8 MS. CREPPS:expert report: Are you offering your
9 opinion on whether there is a connection between enforcement of
10 the Texas parental notification requirement and the number of
11 pregnancies in Texas in 2000? I am not. I think it is some
12 evidence of a causal link, but not sufficient evidence.

13 THE COURT: Okay.

14 MS. CREPPS: So I don't think that we're on fair notice
15 that she's intending to offer an opinion on this, because she's
16 saying that she's not, but I also think that she's not qualified
17 by virtue of her training or anything else to offer an opinion
18 either -- even as to whether there's an association established,
19 because she can't take into account confounding variables.
20 She's not giving rates -- all of those things that we have
21 established through other experts who have offered opinions in
22 these areas.

23 MR. CLARKSON: That sounds like subject for cross-
24 examination.

25 THE COURT: I'm going to overrule the objection. I'm going

1 to allow it to proceed. I think there is sufficient notice that
2 there's a difference between whether there's a causal link or an
3 association. But I think that there's another issue that I put
4 on the back burner and haven't addressed yet, and maybe this
5 would be a good time since we're talking of all these things is,
6 Ms. Crepps, it looks -- it appears to me that you were presented
7 with additional information and statistics regarding -- is it
8 the Texas Department of Health and Social Services? Now, have
9 you had an opportunity to review it?

10 MS. CREPPS: Your Honor, I looked over.....

11 THE COURT: Okay.

12 MS. CREPPS:I looked it over on the break, and I
13 understand what it -- how it reads. I'm just not sure how it
14 works as far as her testimony goes, so I -- I've.....

15 THE COURT: You're going to wait and see.....

16 MS. CREPPS:caught up so far.

17 THE COURT:what Mr. Clarkson does with it, and then
18 if you need to make an application at our next break, tell me
19 how much time you're going to need to review it. Okay?

20 MS. CREPPS: Thank you.

21 THE COURT: All right. Objection overruled. You may
22 proceed, Mr. Clarkson.

23 MR. CLARKSON: Thank you, Your Honor.

24 /

25 /

DIRECT EXAMINATION CONTINUED

1
2 BY MR. CLARKSON:

3 Q We were talking about your research regarding pregnancy
4 and abortion rates in Texas after January 1 of 2000.

5 A Yes.

6 Q Can you tell us what you've done and what you found?

7 A One of the questions we had was what would be the effect
8 of the parental notification law, if any, on Texas
9 pregnancy and abortion rates, and whether there would be
10 any effect, and so we looked to see what the Texas
11 Department of Health showed, and as the expert witness
12 report tells you, there are a couple of -- of ways to --
13 to measure that. One of the -- the things that we learned
14 is that there was a five-percent drop in '99 -- from '99
15 to 2000 in Texas minors' pregnancies, from 26,117 to
16 24,665 pregnancies. Mothers age 10 to 17 accounted for
17 5.7 percent of births in 2000, compared to 6.1 percent in
18 1990. During that same year induced abortions performed
19 on minors declined approximately 20 percent, from 4,798 in
20 1999 to 3,830 in 2000. This decline is substantially
21 higher than an overall decline. We saw a decline in
22 abortion in Texas throughout, which was a 5.4 decline in
23 abortion on all Texas residents during 2000. I was
24 interested to see if we saw that same sort of dramatic
25 decline in this past year. Those were only recently

1 posted to the Texas Department of Health website. And
2 the -- the easier tables to look at are the table 14B, and
3 those are perhaps the documents that you hold in your
4 hand.

5 Q Yeah, I -- perhaps at this point I could ask you to take a
6 look at what's been marked as Defendant's 2273, and I have
7 a copy for the Court.

8 THE COURT: Is this the new one?

9 MR. CLARKSON: This is the new one.

10 THE COURT: All right.

11 Q Can you tell the Court what that is?

12 A These are the recently-posted statistics on 2001
13 pregnancy/abortion statistics for the state of Texas.

14 Q When you say new, what does that mean?

15 A Well, compilation of all pregnancies, whether they were
16 brought to term, whether they resulted in induced abortion
17 by county, fetal deaths, et cetera.

18 Q When did this information first become available to you
19 for review?

20 A The -- this is printed from the website, and the -- at the
21 bottom of the page gives you when they were posted on --
22 for example -- oh, I beg your pardon. One of the tables
23 was available December 16th, so.....

24 Q All right. And how does this information relate to the
25 research and study you've done on pregnancy and abortion

1 rates in Texas?

2 A Well, to the extent that there is a substantial decline in
3 abortions and pregnancy, I wanted to see if it was a
4 continuing trend and -- or whether it was a one-year
5 decline, and -- and what we see is in 2001 we see a
6 continuing decline in pregnancy and a continuing decline
7 in -- in the -- the number of abortions, but the decline
8 in the number of abortions is not nearly as -- as dramatic
9 among teenagers. On table 14B, which is.....

10 Q What page.....

11 Athe.....

12 Qare we on? What page are.....

13 A Table -- let's see. If you turn to -- let's see. It
14 would be the one that says pages 1 of 8, about six pages
15 in.

16 Q All right. It says preliminary Texas Department.....

17 A Yes.

18 Qof Health? Okay.

19 A This is women's ages 13 through 17, Texas 2001. This
20 document doesn't include -- this was last updated on
21 December 17th of '02. It shows us that total pregnancy
22 among women in Texas ages 13 to 17 were 23,416. That's a
23 total decrease from 2000 of 1249, a five-percent decline
24 in pregnancy over 2000. Still, a nice decline. And
25 abortions continue to decline 3,555, a total decrease of

1 two thou-- of 247 or a decrease in abortion of six
2 percent. Not that big decline we saw in the year 2000.

3 Q All right. And do you know what evidence there is that
4 Texas girls are crossing state lines to obtain abortions
5 outside of Texas to avoid parental notification in Texas?

6 A There doesn't appear to be any evidence to support that
7 suggestion. They wouldn't be crossing over into
8 Louisiana. Louisiana has a parental consent law. New
9 Mexico has a parental involvement law, but it's been
10 enjoined by the attorney general, but they keep statistics
11 on out-of-state residents and there's no evidence that
12 they saw any substantial bump. Oklahoma has a liability
13 law related to performance of abortion on minors, but it's
14 enjoined by the federal courts right now, but, again,
15 there doesn't appear to be any increase. So there doesn't
16 appear to be any evidence of neighboring states seeing any
17 increase.

18 Q All right. Now, girls crossing state lines to avoid
19 parental involvement laws, is that an issue that you have
20 researched and looked at in the course of your work on the
21 subcommittee? And you mentioned, also, your work
22 testifying before the U. S. House.

23 A It -- it's an issue that I looked at in relationship to
24 the U. S. child custody protection act when I was invited
25 to testify before the U. S. House of Representatives.

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1 Q And what studies have you reviewed on that subject, and
2 what have they shown?

3 A They're mixed. The Altman (ph) Palmer article is probably
4 the most comprehensive article, and it finds that it's not
5 an issue largely, but, of course, I think it's dependent
6 on where the state is located and the nature of the
7 surrounding states and the nature of the -- the laws of
8 the surrounding states. Alaska it's unlikely to be an
9 issue.

10 Q Thank you. And what association do you make between all
11 the studies you've done, the statistics you've just talked
12 about in terms of Texas, and the parental notification law
13 in Texas?

14 A I'm sorry, could you restate the question?

15 Q Yeah, I'm wondering, do you make an association between
16 the studies you've done, the research that has shown -- in
17 terms of pregnancy rates, abortion rates, and the
18 enactment of a parental notification law in Texas in
19 January of 2000?

20 A It appears that where parental involvement laws have been
21 passed and.....

22 MS. CREPPS: Your Honor.....

23 Aenforced.....

24 MS. CREPPS:I'm going to object to anything beyond
25 testimony outside of Texas.

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1 THE COURT: Let's say the answer is limited to Texas,
2 how's that? Or Alaska. But since.....

3 Q Let's just.....

4 THE COURT: (indiscernible).....

5 Qfocus on Texas for now.

6 A In Texas we see a quantitative difference in the decline
7 in pregnancies and abortions after the enactment of
8 parental notification, and the exciting thing is
9 pregnancies, as well as abortions. It seems to have a
10 deterrent effect on pregnancies as well.

11 Q Now, have you had an opportunity to study and research
12 voluntary parental involvement of young girls in their
13 abortion decisions?

14 A Yes.

15 Q And what have you found in that regard?

16 A During our hearing when we were passing the -- the act the
17 Texas Family Planning Association presented a voluntary
18 study of various Planned Parenthood organizations that
19 showed 69 percent of minors in Texas involved a parent
20 prior to obtaining an abortion.

21 Q All right. What do studies show regarding the reasons
22 most young girls choose not to involve their parents in
23 their abortion decision?

24 A The majority of girls are afraid of disappointing their
25 parents.

1 Q What did, specifically, information reveal regarding
2 voluntary parental involvement in Texas prior to the
3 enforcement of the parental involvement law there?

4 A Again, while it varied from city to city, it -- it showed
5 that approximately 69 percent, which is higher than most
6 of the published studies, but 69 percent after passage of
7 parental notification. If the study from the payment of
8 legal counsel and guardian ad litem reflects the number
9 of bypasses, then we had a 95 percent parental involvement
10 rate, so we increased our parental involvement
11 significantly by the passing of our parental notification
12 law.

13 Q Do you have an opinion as to whether or not that is a
14 benefit to young girls pursuing an abortion decision in
15 Texas?

16 A Absolutely. It certainly ensures that you have an adult
17 that can assist them if there are any postoperative
18 problems.

19 MS. CREPPS: Your Honor, I'm going to object to the
20 witness getting into whether adults can assist and what rate. I
21 think this has been excluded testimony.

22 THE COURT: Mr. Clarkson, would you like to move on?

23 MR. CLARKSON: I can move on.

24 THE COURT: All right.

25 Q Do you know of any cases in Texas, Professor Collett,

1 where a young girl's abortion decision has been
2 substantially or significantly delayed because of the
3 parental involvement law, or the bypass, in particular?

4 A Not that I'm aware of.

5 Q Based upon your research and study of this issue, and
6 based upon your experience with the Texas bypass process,
7 do you have an opinion regarding whether mandatory
8 parental involvement laws are important?

9 A Yes. As a matter of fact, they are. Appearing to be
10 increasingly important in helping parents recognize the
11 effect of adult men's involvement with their minor
12 daughters.

13 Q All right. Let's move to another issue at this point and
14 talk about have you had the opportunity to review and
15 study the ages of the males who impregnate young girls,
16 typically?

17 A There was a study in California by Mike Males that showed
18 that two-thirds of all adolescent pregnancies were by men
19 that were post-high school age, 20 or older. There's the
20 study of journal -- the Journal of Adolescent Health that
21 indicates that two-thirds of all Alaska pregnancies under
22 the age of 16 are the result of statutory rape, and in
23 Texas we are concerned that, in fact, we have a similar
24 problem, and that was one of the motivating factors of
25 passing this particular law.....

1 Q Okay, let's.....

2 Aas a matter of fact.

3 Q Let's focus on Texas in that respect. What experience do
4 you have with respect to this issue with Texas minors and
5 older males?

6 A One of the -- one of the -- one of the motivating pieces
7 of testimony was the testimony of Deedee Alonzo (ph) who
8 was.....

9 MS. CREPPS: Your Honor, I'm going to object to her
10 testifying about motivating testimony for passage of the Texas
11 parental notification law. I believe that was excluded in your
12 court -- in the Court's earlier ruling.

13 THE COURT: Mr. Clarkson.

14 MR. CLARKSON: Your Honor, this goes to her opinion about
15 the benefits and detriments of the -- whether -- parental
16 involvement laws, and this is support for the opinion. I mean,
17 it's the basis for the opinion.

18 THE COURT: I'm going to ask you to rephrase the question,
19 okay? Not in terms of why the law was passed, motivating
20 factors, that's not -- but if there's a basis of an opinion,
21 frame it that way. We'll hear it.

22 MR. CLARKSON: All right.

23 THE COURT: Upon what does she rely upon her opinion --
24 for her opinion.

25 MR. CLARKSON: All right.

1 Q Professor Collett, in terms of your opinion -- let me ask
2 it this way. In your experience with parental involvement
3 laws in Texas have you had an opportunity to form an
4 opinion as to whether or not those laws provide benefit to
5 young girls in protecting them from being exploited by
6 older males?

7 A Yes.

8 Q And what is your opinion and what is the basis for it?

9 A My opinion is that they do, indeed. For example, the
10 Texas statute specifically charges the judge and all
11 involved in our parental notification hearings who learn
12 of sexual abuse of a minor to report that sexual abuse,
13 and that particular provision was a direct product of the
14 legislative hearings where testimony was brought forward
15 concerning sexual assaults that had been suffered by
16 minors where adult men had, in order to continue to engage
17 in sexual relations.....

18 MS. CREPPS: Your Honor, I'm going to pose an objection to
19 this opinion because I don't believe that hearsay testimony,
20 anecdotal testimony at legislative hearings is reliable
21 authority.

22 MR. CLARKSON: I think as an expert she's specifically
23 allowed by rule 702/703 to rely on hearsay and.....

24 THE COURT: The objection is hearsay?

25 MS. CREPPS: Well, the objection -- it's obviously

1 hearsay. The objection is.....

2 THE COURT: Okay.

3 MS. CREPPS:whether it's a reliable authority, which
4 is required in order for the expert to offer an opinion, and I
5 don't believe that anecdotal testimony at legislative hearing
6 constitutes reliable authority.

7 MR. CLARKSON: I think if that's the case we might be
8 moving to strike Judge Martin and Ms. Sabino, but, you know, we
9 have to have a consistent rule here, and I think, frankly, it's
10 consistent with the evidence rules that the expert can rely on
11 hearsay. What she's trying to do is confuse hearsay with a
12 learned treatise, and.....

13 THE COURT: No, I think it's a separate objection, okay?
14 Let's go through the analysis and see whether we are on the same
15 page. Let's go to 702/703, because I think with respect to the
16 hearsay objection, hearsay is overruled. I mean, we have
17 somebody here who's an expert who relies in her opinion. That's
18 fine, because I think the rule's pretty clear an expert can rely
19 on hearsay in formulating his or her opinion. I think I've been
20 consistent so far. I don't want to go into learned treatise
21 because I think that's a separate issue that we have dealt with.
22 I think the objection, Mr. Clarkson, is under -- let's see.

23 All right. I think it's a 703 objection. The facts or
24 data in a particular case upon which an expert bases an opinion
25 or inference may be those perceived by or made known to the

1 expert at or before the hearing. Facts or data need not be
2 admissible in evidence, but must be of the type reasonably
3 relied upon by experts in the particular field in forming
4 opinions or inferences upon the subject. I think that's a 703
5 objection, and it is sustained, unless you can lay a further
6 foundation that this, quote, unquote, legislative testimony is
7 indeed the type of evidence and data that an expert in her field
8 would rely upon in formulating an opinion. Please go ahead.

9 Q Ms. Collett, in your service on the subcommittee -- let's
10 focus on that in particular -- in reviewing the operation
11 and the effectiveness of the bypass proceedings in Texas,
12 is the information that you've related with respect to
13 testimony about -- and experience about sexual
14 exploitation of young girls by older males the sort of
15 information that you as a subcommittee member and other
16 members of the subcommittee have relied upon in conducting
17 your work and forming your opinions about how to structure
18 and implement the bypass proceeding?

19 A We certainly discussed how the judges were to report the
20 information they received if they came to the conclusion
21 that a minor was the subject of a sexual assault.

22 Q All right.

23 A And what the legislative intent was in relationship to the
24 confidentiality provision.

25 Q All right, and the way that the subcommittee receives

1 information about sexual exploitation of minors and how
2 those topics might come up at a bypass proceeding is
3 through how; how do you get that information? Do you get
4 it from people relating to you experiences?

5 A Yes.

6 Q And is that the sort of information that you as a
7 subcommittee member reasonably rely upon when people come
8 forward in a public forum to the subcommittee and relate
9 this sort of information to you?

10 A Yes.

11 Q Is it the sort of information that other members of the
12 subcommittee rely upon reasonably to your understanding?

13 A Yes.

14 Q In your law -- work as a law professor in forming
15 conclusions and writing articles about these sorts of
16 issues is the sort of testimony provided in a public forum
17 in front of a legislature or in a public forum to the
18 subcommittee about sexual exploitation by young girls by
19 older males, is that the sort of information relied upon
20 in your field in forming conclusions in writing on these
21 subjects?

22 A Yes.

23 THE COURT: Any further objection, Ms. Crepps?

24 MS. CREPPS: Well, I do not believe that this is reliable
25 authority, and I'd like to ask one voir dire question.

1 THE COURT: Go right ahead.

2 VOIR DIRE BY MS. CREPPS:

3 Q Professor Collett, has the subcommittee -- the subadvisory
4 committee ever, in fact, discussed the particular
5 legislative testimony that you were about to address in
6 your testimony here?

7 A No.

8 MS. CREPPS: All right, Your Honor, I continue my
9 objection, and I'd like to point out that my continuing
10 objection to this witness includes the fact that her research
11 for purposes of being a law professor and writing law review
12 articles is not -- it is our position -- is not a basis for her
13 to have expertise at all, and so I would continue my objection
14 on those two grounds.

15 THE COURT: You have your objection. I find that there's
16 been a sufficient foundation.

17 MR. CLARKSON: Thank you, Your Honor. May I proceed?

18 THE COURT: Yes, you may.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. CLARKSON:

21 Q Professor Collett, do you recall the question I asked you?

22 A No, I'm sorry.

23 Q All right. What I was asking you was for your experience
24 with parental involvement laws have you learned informed
25 regarding the sexual exploitation of minors by older

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1 males, and I'm focusing on your Texas experience at this
2 point in time.

3 A Yes.

4 Q And tell us what you've learned in that respect and how
5 you learned it.

6 A We learned that there was a concern both in the committee,
7 because as judges examine the -- the girls and ask about
8 the age of the partner about whether they're -- they're
9 being coerced into having an abortion, judges were
10 concerned about the reporting duty. There was discussion
11 about how judges were to handle that. There's a concern
12 about we -- we've also -- I've also learned about it
13 through press reports. As mentioned in my expert witness
14 report the -- the Planned Parenthood.....

15 MS. CREPPS: Your Honor, I'm going to pose now a different
16 703 objection, which is the reliance on -- this witness on press
17 reports outside of Texas to form a basis of her opinion, first
18 of all, that she relies on newspaper articles at all, and
19 secondly, that she would be relying on newspaper articles for
20 states outside of Texas to form the basis of her opinion.

21 THE COURT: Well, let's clarify. Are these newspaper
22 articles in or outside Texas, Professor?

23 A Arizona Republic, sir.

24 THE COURT: Sustained.

25 Q With respect to the Arizona case, have you, in fact,

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1 reviewed court documents from that case?

2 A In fact, I've seen the court order that was issued in
3 December in that case finding Planned Parenthood liable.

4 THE COURT: Your Honor, I'm going to then now make a
5 different objection, which is I understood that she was limited
6 to testifying about Texas, and I don't -- I'm not sure if your
7 previous ruling was as to the fact that it was a newspaper
8 article or that it was outside of Texas, but if it was that it
9 was outside of Texas, then I would renew my objection.

10 MR. CLARKSON: I guess I had understood the limitation to
11 Texas was comparing to Alaska. If we're talking about parental
12 involvement laws and benefits and detriments, her study and her
13 research outside of the -- Texas is fair game. I understood
14 that.

15 THE COURT: I thought that was disclosed. Was that
16 disclosed? And were you talking about parental involvement
17 laws.....

18 MR. CLARKSON: It's in her expert report.

19 THE COURT: Yeah.

20 MS. CREPPS: Yes.

21 THE COURT: I think that was in her.....

22 MS. CREPPS: Discussion of.....

23 THE COURT:expert report. I read it. Right.

24 MS. CREPPS:sexual assault reporting, Your
25 Honor.....

1 MR. CLARKSON: In fact, I think the.....

2 MS. CREPPS:that was disclosed.

3 MR. CLARKSON:Arizona cases.....

4 MS. CREPPS: Not the.....

5 MR. CLARKSON: I'm sorry.

6 MS. CREPPS:documents that she's about to testify

7 to, though. Those were not disclosed to us.

8 THE COURT: Okay.

9 MS. CREPPS: The only thing that was disclosed to us was
10 the newspaper article.

11 THE COURT: All right.

12 MR. CLARKSON: The newspaper articles about the Arizona
13 case. The court order then came out within the last month or
14 so. I mean, it couldn't be put in the report because it came
15 out months after the report was prepared. That's why the
16 article that she's saying was disclosed is about the very case
17 in which the order came out.

18 THE COURT: Okay. With respect to the -- I think this is
19 consistent. I've essentially mostly held that newspaper
20 articles, unless you can show me is a particularly reliable
21 newspaper article, most of the time these articles I exclude,
22 all right, as a basis of an opinion. I don't think that's
23 proper foundation for an expert opinion. However, if there's
24 something else that you'd like to offer with respect to Arizona,
25 I'll allow you to lay a foundation. There's a court case?

1 MR. CLARKSON: Yes.

2 THE COURT: All right, and was that referred to in the
3 newspaper articles, so.....

4 MR. CLARKSON: Yes.

5 THE COURT:that's there's a question of notice.

6 MR. CLARKSON: Yes.

7 THE COURT: Ms. Crepps, have you had notice of the Arizona
8 case, so to speak?

9 MS. CREPPS: Yes, Your Honor, but not that Professor
10 Collett was relying on any documents other than what she listed
11 in her expert report and produced at her deposition, which did
12 not include anything but the newspaper.....

13 THE COURT: When was.....

14 MS. CREPPS:article.

15 THE COURT:the deposition?

16 MS. CREPPS: It was in August.

17 THE COURT: When was the court opinion or court order?

18 A December.

19 THE COURT: December. Okay. Do you have a copy of it?

20 MR. CLARKSON: Do we have a copy of it? We did.

21 A Not with us.

22 THE COURT: Well, because if you did I was going to take a
23 break and was going to ask you to show it Ms. Crepps, let her
24 take a look and see if there's something in there that she can
25 respond to.

1 A It's two pages. It's one paragraph.

2 THE COURT: Well, but then if you don't have it then I'm
3 going to say, well.....

4 MR. CLARKSON: It's on my desk. I can certainly have it
5 here within five minutes.

6 THE COURT: Move on to something else.

7 MR. CLARKSON: We'll come back to it; I'll make sure we
8 have it.

9 THE COURT: All right.

10 Q In the course of your work on the subcommittee in Texas
11 have you had an occasion to learn what has been the
12 attitude of abortion providers in Texas regarding the
13 reporting of sexual abuse of minors seeking abortions?

14 A There has been resistance expressed on the part of the
15 Planned Parenthood representative because of concern that
16 minors will not seek medical care if they are aware that
17 reporting will be required, and this is consistent with
18 the quote contained in the article in Family Planning
19 Perspectives by Donovan that is cited in my expert witness
20 report by Peggy Romberg, the head of the Texas Family
21 Planning Association, which also relates to the concern
22 that we have about sexual abuse of minors by adult men.

23 Q Now, what studies have you seen regarding Alaska in this
24 regard, reporting of sexual abuse.....

25 A The Journal.....

1 Qof minors and the sexual exploitation of minors by
2 young -- by older men? Excuse me.

3 A Well, there's both the Dataline article that's referenced
4 in the expert witness report, and the authors of that
5 report also did the -- an article that appears to be if
6 not simultaneous, at least very close in time, in the
7 Journal of Adolescent Health that, as I mentioned earlier,
8 states that two-thirds of all births to Alaska teenagers
9 under the age of 16 are the result of statutory rape.

10 Q Can you take a look at Plaintiffs' Exhibit 283? It's in
11 the black binders.

12 THE COURT: Volume 7.

13 A Thank you.

14 THE COURT: 283.

15 A Yes, that's the article.

16 Q Do you have it in front of you?

17 A I do.

18 Q Have you reviewed that article in the course of forming
19 your opinions in this case?

20 A I -- I -- I have.

21 Q Is this something you've relied upon in forming your
22 opinions in this case?

23 A Yes, it is.

24 Q Can you tell the Court what this article is and how it
25 relates to your opinions and supports them, if you will?

1 A This is the article that I was mentioning that seems to be
2 a companion piece to the Dataline article that I rely upon
3 in my expert witness opi-- opinion that expands upon their
4 discussion of Alaska pregnancy rates among teenage
5 mothers, and it -- it brings out two troubling facts.
6 Number one, it brings out the fact that Alaska is one of
7 the highest states for domestic violence, and -- and that
8 is of some concern, and it also brings out the fact
9 that -- the statutory rape statistic about two-thirds of
10 the -- the births to teen -- to teenage girls under the
11 age of 16 would have been under -- would have been to
12 girls -- would have been the result of statutory rape, if
13 you are talking about births where the age of the father
14 were known.

15 Q All right. Professor Collett, can you turn with me to
16 page -- I think it's 367 of that article.

17 A Uh-huh.

18 Q And it's in the section entitled discussion.

19 A Uh-huh.

20 Q On the second -- the right-hand column, the third
21 full.....

22 A I'm sorry, page.....

23 MS. CREPPS: Oh, 387.

24 THE COURT: 387.

25 A Yes.

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1 Q Okay, 387. I apologize. It's very small print. Page 387
2 of the article, the section entitled discussion.

3 A Right.

4 Q Right-hand column, third full paragraph down on the page?

5 A Yes.

6 Q Can you read that paragraph into the record for us,
7 please?

8 A Two-thirds of all births to unwed teenagers under 16 years
9 of age in which the father's age was documented resulted
10 from second degree statutory rape. Current Alaska law
11 requires the involvement of law enforcement agencies in
12 cases of statutory rape and of youth protective service
13 agencies in cases involving sexual exploitation of persons
14 under 18 years of age.

15 Q Thank you. Is there anything else about this article that
16 supports your opinions in this case that we haven't
17 already discussed?

18 A No.

19 Q All right. What are the provisions of the Texas law
20 regarding identification of sexual abuse of minors?

21 A That judges have an obligation if it is discovered in the
22 process of a bypass hearing to report it or to ensure that
23 it is reported.

24 Q And what opportunity have you had, Professor Collett, to
25 learn through your service on the subcommittee regarding

1 bypass proceedings, what has been the practice of Texas
2 judges in identifying sexual abuse of minors when they
3 have been seeking bypass for abortion?

4 A It's my understanding from the statement of the judges on
5 the committee that, in fact, they take this responsibility
6 seriously and that they have inquired of the minors as to
7 the age of their sexual partners, and that they have
8 instructed counsel in appropriate cases to make the
9 necessary reports.

10 Q And has reporting, in fact, occurred, reporting of sexual
11 abuse of minors actually occurred through judges and
12 attorneys in the context of the bypass proceedings in
13 Texas?

14 A I have no way of confirming that.

15 Q Professor Collett, do you have any opinion based upon your
16 experience, research and study regarding whether
17 participation in judicial bypass proceedings benefits
18 young girls who are contemplating the decision of
19 abortion?

20 A Yes, I do.

21 Q And what is that opinion?

22 A I believe that, in fact, a bypass proceeding can benefit a
23 minor in that allows her the opportunity to have an adult
24 who is not involved in the process of, if you will,
25 encouraging her to obtain an abortion, in evaluating her

1 decision. If she's not going to have the benefit of a
2 parent in guiding her through the decision-making process
3 the judge can at least have the opportunity to help her
4 evaluate her three options, the option of carrying the
5 pregnancy to term and keeping the child, the option of
6 carrying the pregnancy to term and giving the child up for
7 adoption, or the option of terminating the pregnancy, and
8 ensuring that she's thought through these options
9 carefully and maturely, or in the event that she's not
10 sufficiently mature and well informed, can ensure that not
11 involving a parent is in her best interest and that
12 terminating the pregnancy is in her best interest. The
13 other thing that's important to recognize is that for the
14 minor that's not sufficiently mature and well informed and
15 is the victim of sexual or physical or emotional abuse,
16 the idea of simply giving this minor an abortion and
17 sending her back into a home where physical or sexual
18 abuse is going on is not the right answer. It's very
19 similar to situations that -- that are tragically
20 occurring, where the girl is given the abortion and sent
21 back into the house to be abused again.

22 MS. CREPPS: Your Honor, I'm going to object because I
23 think any opinions that she has on that particular topic are
24 probably based on newspaper articles and.....

25 THE COURT: I'm going to sustain it. Lay a foundation for

1 that part of the opinion.

2 Q Let's do this. Now, I want to ask you to assume that
3 Judge Martin has testified in this case that in his view
4 bypass proceedings have no purpose or value. Do you have
5 a response to that?

6 A I think bypass hearings where a judge does not take the
7 time to explore with the minor the basis for her decision
8 and evaluate the various the options she has can have no
9 value or meaning, but where a judge, in fact, informs
10 himself of the options that the girl has before her and
11 carefully explores with the girl the reasons that she
12 chooses one option among the three options that she has,
13 and explores with her the reason that she's choosing not
14 to involve the parent, can be a very helpful process if
15 she is sufficiently mature in confirming that choice, and
16 if, in fact, she's not sufficiently mature, can protect
17 her against the harm that she can suffer by impulsively
18 choosing something that's wrong for her.

19 Q I want you to assume that Judge Martin has testified to
20 the effect that the largest percentage of girls who
21 pursued bypass in Minnesota complain of dysfunctional
22 family situations. Do you have a response to that?

23 A In Texas, again, the primary basis for the application is
24 that the minor is sufficiently mature and well informed.

25 Q I want you to assume that Judge Martin has testified in

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1 this case to the effect that when he conducts bypass
2 proceedings he does not ask the girl who will perform her
3 abortion or what doctor she will see. Do you have a
4 response to that?

5 A National Abortion Federation says the.....

6 MS. CREPPS: Your Honor, I'm.....

7 A most important.....

8 MS. CREPPS:going to object -- excuse me.....

9 THE COURT: Okay.

10 MS. CREPPS:I'm sorry, Professor Collett. I'm going
11 to object on relevance, and I also am going to object to this
12 witness getting into what the National Abortion Federation
13 suggests, because I don't think A, she's qualified to talk about
14 that, and B, that there's a connection between what the National
15 Abortion Federation believes and this witness's opinions about
16 what judges should be asking in judicial bypass hearings.

17 THE COURT: Counsel, I'm going to sustain the objection.
18 Basically, Judge Martin from Minnesota testified according to
19 the procedures in Minnesota. It may be different than what's
20 happening down in Texas. I've already said the comparative law
21 you can do it in the briefing, all right? So, you know, I'm
22 going to sustain the objection. If you want to talk about how
23 judges deal with it in Texas.....

24 MR. CLARKSON: Well.....

25 THE COURT:or what judges do in a judicial bypass in

1 Texas, I think this witness is well qualified and I've -- you
2 know, I think we've heard a lot from her, but if you want to
3 talk about Minnesota, that's a different state, I'm going to
4 sustain that sort of comparison at this time.

5 MR. CLARKSON: Well, it wasn't my intention to necessarily
6 compare Minnesota. It was my intention to evaluate Judge
7 Martin's qualifications to give his opinions. It goes to how he
8 is qualified to talk about what happens in a bypass proceeding
9 if he doesn't conduct them appropriately.

10 THE COURT: And I have sustained the objection because
11 I've said that the procedures in Minnesota, the laws in
12 Minnesota and what they do in Minnesota is different than what
13 you do in Texas, and so that sort of comparison is comparison of
14 apples and oranges, and so why don't we focus on what this
15 expert can testify about, unless you can lay a foundation
16 regarding what you believe is appropriate in Minnesota, but I
17 think we -- that's a little out of scope, so why don't we focus
18 on Texas, counsel.

19 MR. CLARKSON: All right.

20 Q Have you had an opportunity, Professor Collett, to study
21 regarding the frequency with which bypass proceedings are
22 used by girls in states with parental involvement laws?

23 A Yes, I have.

24 Q And what is the study you've conducted and what did you
25 find in your study?

1 A It's difficult to determine that because many states do
2 not keep records on the number of bypasses. As I
3 mentioned, in the state of Texas, for example, in its
4 initial determination about the confidentiality provision
5 felt that that might even violate the confidentiality
6 provision of our statute. However, Idaho is an example of
7 a state that.....

8 MS. CREPPS: Your Honor, I'm sorry to keep popping up like
9 this, but my understanding of the Court's ruling is that this
10 witness's testimony is limited to Texas. I will also pose a 703
11 reliable authority objection if she's going to testify about
12 information that she got via e-mail from the state of Idaho.

13 THE COURT: All right, let's figure out what is the
14 opinion we are trying to elicit here, Mr. Clarkson.

15 MR. CLARKSON: Your Honor, the opinion is that based upon
16 her research she has found that the bypass proceedings are, in
17 fact, infrequently used by young girls.

18 THE COURT: Okay, and what.....

19 MR. CLARKSON: She's conducted.....

20 THE COURT:is the basis of the opinion? Actual.....

21 MR. CLARKSON: The basis.....

22 THE COURT:statistics?

23 MR. CLARKSON: She's conducted her own research contacting
24 government agencies in various states, and simply analyzed the
25 information in forming her opinions.

1 THE COURT: Okay. And we're talking about specific states
2 here.

3 MR. CLARKSON: We are talking about specific states, yes.

4 THE COURT: Not nationwide, in certain specific states.
5 What are they, Arizona, Idaho and.....

6 MR. CLARKSON: Alabama.

7 THE COURT:I don't.....

8 MR. CLARKSON: Alabama. I think it's Alabama.

9 THE COURT: And those have been disclosed in an expert
10 report, if I remember correctly.

11 MR. CLARKSON: They were disclosed at her -- these very
12 documents were disclosed at her deposition.

13 THE COURT: Okay, so I'm going to overrule the objection.
14 I'm going to allow the testimony with respect to those three
15 states.

16 MR. CLARKSON: Thank you.

17 THE COURT: Okay.

18 Q Professor Collett, can you look at what's been marked for
19 us as Defendant's Exhibits 2274, 2275 and 2276? They were
20 not marked previously, but they were disclosed months ago
21 at the deposition. They should be the loose documents in
22 front of you on the table there, Professor Collett. 2274,
23 2275 and 2276. If you'd -- have you found them?

24 A I have them.

25 Q Okay. Can you tell the Court what those are and how they

1 relate to the study you conducted regarding the frequency
2 of bypass proceedings?

3 A Yes. One of the difficulties in determining the frequency
4 of the use of bypass is a number of states simply do not
5 keep a record of the number of bypass petitions filed on a
6 statewide basis, and so anytime you find any mention of
7 the number of bypasses anywhere I immediately contacted
8 the department of health and see if I can get official
9 statistics. The first document, 2274, was based on a news
10 account that I sent to the Alabama Department of Health
11 based on a newspaper article where a reporter had
12 indicated that they had records showing that there were
13 1,015 girls that obtained abortions and there were not
14 very many bypasses. Ms. Chapman works for the department
15 of health for the state of Alabama, and she confirmed that
16 in fact in 1999 there were 1,015 minors obtaining
17 abortions in that state with written permission of their
18 parents, and only 12 with judicial bypasses. She was
19 unable to indicate how many were Alabama residents and how
20 many were not.

21 The second document, 2274, was a document that was in
22 response to sort of an ongoing correspondence that
23 Ms. Wick (ph), an employee of the Idaho Department of
24 Health -- and I am going on.

25 Q I want to correct you. Are you referring to 2275.....

1 A I beg.....

2 Qat this point?

3 Qyour pardon, yes, 2275, regarding their law on
4 reporting. She provided me statistics for September 2000
5 through August 2001. As she notes, these were tentative
6 at that time. Under their law they had a written informed
7 consent requirement of a parent and a minor. Fifty-five
8 Idaho residents with three out-of-state residents had the
9 written informed consent of the minor, and then one
10 emancipated, two written informed consent of the minor for
11 herself pursuant to court order, and one unknown. She was
12 unable to discern why that unknown was there. And you
13 have some earlier statistics on the second page of that
14 from a previous correspondence that we had had earlier.

15 And then the third document is a document that was in
16 response to an open records request. As I mentioned, in
17 Texas our confidentiality provision has been construed so
18 strictly that our department of health was initially
19 unwilling to provide information without a formal request,
20 and so these are the payment statistics that I used to
21 calculate the number of bypass proceedings we had during
22 the first year of operation of our parental notification
23 statute.

24 Q And what, if any, conclusions do you draw from your study?

25 A That the use of judicial bypass varies fairly dramatically

1 across the country. While there are published reports
2 that the use of judicial bypass was very common in the
3 states of Massachusetts and Minnesota at the beginning
4 period when those laws were implemented, in Alabama, in
5 Idaho and in Texas it's fairly uncommon.

6 Q All right. Let's back up for just one second and talk
7 about the subject of sexual exploitation of minors and the
8 reporting of sexual exploitation of minors, particularly
9 by abortion providers, and I'd like to show you what's
10 been marked as Defendant's Exhibit 2277 and ask you if you
11 recognize that document.

12 THE COURT: All right, this is the document we were
13 talking about earlier?

14 MR. CLARKSON: Yes, Your Honor.

15 THE COURT: All right. Ms. Crepps, have you received a
16 copy of this?

17 MS. CREPPS: I'm not sure what it is.

18 THE COURT: Remember we were talking about the court
19 order, you haven't seen a copy of it, and Mr. Clarkson just sent
20 somebody.....

21 MS. CREPPS: Oh, the Arizona.....

22 THE COURT:to his office to get one. The Arizona
23 order.....

24 MS. CREPPS: No, I.....

25 THE COURT:have you.....

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1 MS. CREPPS:I don't have a copy, Your Honor.

2 THE COURT: Well, counsel, you got to show her a copy. Is
3 this sort of -- are you getting to -- close to the end of your
4 examination at this point?

5 MR. CLARKSON: Yes, Your Honor.

6 THE COURT: Okay. Why don't you show Ms. Crepps, and,
7 Ms. Crepps, would you like to take a break to take a look at
8 this and the other statistical data that was disclosed? And now
9 I want to decide whether to take a break now or at the
10 conclusion.

11 MS. CREPPS: Your Honor, it may make more sense in terms
12 of the efficient use of the court time for Mr. Clarkson to
13 finish, and then I can.....

14 THE COURT: Sounds good.....

15 MS. CREPPS:organize.....

16 THE COURT:but I wanted to make sure you took a look
17 at it to see.....

18 MS. CREPPS: Can I get my own copy of this to look at over
19 the break?

20 THE COURT: I'm sure you can. You can even have my copy
21 at the break.

22 MS. CREPPS: All right. Thank you. Then.....

23 THE COURT: Okay.

24 MR. CLARKSON: I'll do whatever you want me to do. You
25 want me to continue?

1 THE COURT: Let -- I'm trying to finish your examination,
2 and then we can take a break.

3 MR. CLARKSON: I'm very close.

4 THE COURT: And I'm trying to time it so that, you know,
5 if there is a need to review documents we use it -- use the time
6 efficiently.

7 Q Professor Collett, can you identify for the Court what
8 that document is, Exhibit 2277?

9 A Yes, this document is the court case that was referenced
10 in the newspaper article that I mention in my expert
11 witness report regarding a minor who received an abortion
12 in Arizona where Planned Parenthood failed to.....

13 MS. CREPPS: Your Honor, I'm.....

14 Acomply with the state.....

15 MS. CREPPS:going to object at this point to further
16 use of this exhibit because none of the testimony she's giving
17 now is contained in that document, and so unless it comes from
18 something other than the newspaper article, I don't think that
19 there's an adequate foundation.

20 THE COURT: Sustained.

21 Q Professor Collett, have you reviewed other documents
22 regarding this particular lawsuit?

23 A I have seen the news report that announced this judgment.
24 It was in the Arizona Sun. I have seen at least clips of
25 the initial petition related to this lawsuit as well.

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1 Q So have you looked at pleadings in the case -- portions of
2 the pleadings in the case?

3 A Yes, I have.

4 Q Is that the sort of information that as a member of the
5 subcommittee in Texas dealing with bypass proceedings that
6 you would rely upon in forming your opinions about the
7 benefit of bypasses and how they should be conducted in
8 Texas?

9 A Yes.

10 Q All right. The information -- well, learning about
11 litigation in a public forum like a courtroom that relates
12 to the reporting of sexual abuse of a minor who's trying
13 to bypass her parents in an abortion, is that something
14 that the committee would look to in terms of determining
15 how they would attempt to structure and modify the bypass
16 proceedings in Texas?

17 A I'm sorry, could you restate the question?

18 Q I'm trying to find out if litigation in other courts is
19 the sort of thing that as a subcommittee member you would
20 look to in forming an opinion.....

21 A Yes.

22 Qabout how to structure a bypass proceeding in Texas.

23 A Yes.

24 Q Particularly with respect to the reporting of sexual abuse
25 of a minor.

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1 A Yes.

2 Q And in particular you mentioned this lawsuit relates to
3 claims that an abortion provider failed to report sexual
4 exploitation of a minor?

5 A Yes, it is.

6 Q And.....

7 MS. CREPPS: Your Honor, I'm going to renew my
8 foundational objection.

9 THE COURT: Well, yeah, Mr. Clarkson, there is still a
10 problem. Okay, one, I've already said that, really, newspaper
11 articles, not sufficient basis under 703 for an opinion.
12 Sustain that objection. You say you have court documents. I've
13 seen one document. Do you have any other documents you wish the
14 expert to rely on? Because if this is it, I've read through it,
15 it doesn't say very much. It's a minute order. If you have a
16 complaint, then maybe we're getting somewhere. If not,
17 insufficient foundation at this point.

18 MR. CLARKSON: All right. We don't have a complaint here,
19 no.

20 THE COURT: Okay, move on.

21 Q What, if any, efforts have there been in Texas regarding
22 young girls obtaining illegal or self-induced abortions
23 after the Texas law went into effect?

24 A There have been none that have been -- that I am aware of.

25 Q Have you reviewed -- well, let me ask you this. What, if

1 any, reports have there been of sexual abuse -- abuse,
2 sexual abuse or neglect of young girls due to parental
3 notification regarding abortion since the Texas law went
4 into effect? And I've tried to expand that to include the
5 whole gamut, abuse, physical abuse, sexual abuse, neglect.

6 A None that I'm aware of.

7 Q You mentioned earlier that there is a member of Planned
8 Parenthood that serves on the subcommittee with you?

9 A Yes.

10 Q And in the course of your service on the subcommittee have
11 you had discussions and interaction with this Planned
12 Parenthood member regarding the reporting of sexual abuse
13 of minors?

14 A Yes.

15 Q And what has been the attitude of that Planned Parenthood
16 member on the subcommittee regarding that subject?

17 MS. CREPPS: Your Honor, I'm going to pose a relevance
18 objection here, and also lack of foundation. I'm not sure who
19 this person is, what the context of the discussions were. I
20 don't think that this is the kind of reliable authority that
21 someone can base an opinion on without further foundation.

22 MR. CLARKSON: I can.....

23 THE COURT: Why don't you lay further foundation.

24 Q Who is the Planned Parenthood member that has served on
25 the subcommittee in Texas with you?

1 A Peggy Romberg was on the committee initially, and she is
2 not with Planned Parenthood. She's with Texas Family
3 Planning Association.

4 Q All right.

5 A And the Texas Planned Parenthood member's name escapes me
6 at the moment. I apologize, I cannot remember her name.

7 Q All right. Ms. Romberg, have you had discussions with her
8 on this subject?

9 A Yes, I have.

10 Q And what is the organization she serves with?

11 A Texas Family Planning Association. She represents a
12 number of abortion providers.

13 Q All right. When you say they repre-- she represents a
14 number of abortion providers, what does that mean?

15 A They're a group of family planning associations, clinics.

16 Q All right. And what has been the response of Ms. Romberg
17 on the committee with respect to the issue of attempting
18 to identify and report sexual abuse of minors through the
19 bypass proceedings?

20 A I think not as much Peggy as it was a member of the
21 department of human services that was concerned, again,
22 that requiring reporting, which is the Texas law, will
23 discourage girls from seeking medical care.

24 MR. CLARKSON: All right. Thank you, Professor Collett.

25 THE COURT: Okay, I think it's time for us to take our

1 second break. I just need to get an estimate. Usual 15
2 minutes, or are you going to require a little more time,
3 Ms. Crepps, because you were just given some documents earlier
4 on?

5 MS. CREPPS: I think -- if I could have 20 minutes, Your
6 Honor, I think that would be fine.

7 THE COURT: All right, let's have 20 minutes and we'll
8 come back. Give me a sense, are we going to be able to complete
9 the cross-examination of this witness by 1:30?

10 MS. CREPPS: I doubt it.

11 THE COURT: You doubt it. Okay.

12 MS. CREPPS: I think it's probably going to be an hour.
13 That's my guess -- best guess.

14 THE COURT: All right, we'll try and do the best we can.
15 As you can see, I start at 2:15 again, so I don't have a lot of
16 slack today again. Okay, let's take 20 minutes. We'll be back.

17 (Off record at 12:37 p.m.; on record at 1:03 p.m.)

18 THE COURT: Cross-examination, Ms. Crepps.

19 MS. CREPPS: Thank you.

20 TERESA COLLETT

21 testified as follows on:

22 CROSS-EXAMINATION

23 BY MS. CREPPS:

24 Q Good afternoon, Ms. -- Professor Collett. I'd like to
25 have you turn to -- do you have your expert report handy?

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1 A I do, thank you.

2 Q All right. Would you turn to page 3, paragraph 4, please?

3 A Yes.

4 Q And in this article you discuss minors being impregnated
5 by adult men; is that correct?

6 A That's correct.

7 Q And one of the articles that you rely on in this paragraph
8 is the American Academy of Pediatrics article that's cited
9 here in the paragraph; is that right?

10 A That's correct.

11 Q And you cite this article for the proposition, and --
12 quote: National studies reveal that almost two-thirds of
13 adolescent mothers have partners older than 20 years of
14 age. Am I reading that correctly?

15 A Yes, you are.

16 Q Would you go into the purple binders, please, and find
17 Exhibit 2255?

18 A I have it.

19 Q All right. Is this the article that you were referring
20 to?

21 A Yes, it is.

22 Q All right. Can you go to the second page of that exhibit
23 under.....

24 A Yes.

25 Qoverview?

1 A Yes.

2 Q Now, in this article, based on this overview and the
3 article generally, when they're discussing adolescents
4 they're including 18- and 19-year-olds; is that correct?

5 A Yes, they are.

6 Q And it's true, is it not, that when the article refers to
7 adolescent mothers that includes, then, adolescents up
8 through the age of 19?

9 A Yes, that's correct.

10 Q Okay. And the article also points out in the first
11 sentence of the overview that most of the pregnancies
12 occurring in adolescents in this country are amongst 18-
13 and 19-year-olds; is that right?

14 A That is correct.

15 Q All right. So from this article there's no way to draw
16 firm conclusions about the fraction of adolescent mothers
17 under the age of 17 who have partners over the age of 20;
18 isn't that correct?

19 A That is correct.

20 Q And I believe on your direct examination you referred to a
21 study done by Males in California.

22 A That's the next referenced study in that paragraph.

23 Q Okay. And in that study the author doesn't look at -- the
24 author's looking at childbearing, but he's not looking at
25 abortions among adolescents; isn't that correct?

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1 A That's correct.

2 Q Now, would you also pull out Exhibit 2169, please?

3 A I have it.

4 Q Oh, here it is. All right. And this is another article
5 that you have relied on in forming your opinions on the
6 benefits of parental involvement laws as far as sexual
7 abuse of minors; is that correct?

8 A That's correct.

9 Q Now, this study used a sample of 535 minors in Washington
10 state between the ages of 13 and 21 who had been pregnant;
11 is that right? That was the sample that they were looking
12 at.

13 A That's correct.

14 Q And what the authors here did is they surveyed the minors
15 on different characteristics; is that true?

16 A They had been pregnant and had been sexually abused prior
17 to bec-- prior to being 18. That's correct.

18 Q Okay. Now, I'd like to have you take a look at table 1,
19 which is on the second page of that article.

20 A I have it.

21 Q Okay. Do you see down towards the bottom of that table it
22 talks about outcome of first pregnancy?

23 A Yes.

24 Q And it's correct, is it not, that in this group 62.8
25 percent of the minors had a live birth and 9.2 percent of

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1 them had an abortion.

2 A That's correct.

3 Q You've also testified about Exhibit 2242, which is the
4 Alaska Health Dataline; do you recall that?

5 A That's correct.

6 Q Now, it's true, is it not, that this article was first
7 brought to your attention by Vincent Rue?

8 A Yes, that's correct.

9 Q And it does not address abortion; is that correct?

10 A No, it's concerning live births.

11 Q Okay. And I think the companion article to that was 283,
12 which is the Gessner article; is that right?

13 A I'm not certain of the number, but it is the Gessner
14 article.

15 Q Okay, "Experience of Violence Among Teenage Mothers in
16 Alaska"? Why don't you go ahead and pull that one out.
17 It's in the black binder number.....

18 UNIDENTIFIED SPEAKER: 7.

19 Q 7.

20 A Will I need to compare them; shall I keep this open?

21 Q It might be helpful. I don't know that you will, but the
22 binders are so clunky it might make things smoother.

23 A I'm sorry, could you give me the number?

24 Q Oh, I'm sorry, yes, that was Plaintiffs' Exhibit 283, so
25 that's in binder 7, the black binders. And can you read

1 out loud the conclusions of the Gessner article that are
2 found on the first page in the left-hand column, please?

3 A Teenage mothers are more likely to experience violence
4 during and after their pregnancy than older women, and for
5 women of all ages the risk increases after pregnancy.
6 Nearly half the births to the youngest teenagers result
7 from second degree statutory rape.

8 Q Thank you. Now, do either of these articles, either the
9 Dataline or the Gessner article, provide any information
10 about how many prosecutions resulted from these live
11 births in Alaska that would have been the result of second
12 degree -- what they call statutory rape?

13 A No, they do not.

14 Q Thank you. Professor Collett, do you know how many
15 abortion providers there are in the state of Texas?

16 A I do not.

17 Q Do you know what the breakdown would be between abortions
18 that are provided in clinics versus abortions that are
19 provided in physicians' offices that also provide
20 gynecological or obstetric service?

21 A I believe the most recent statistic was 86 percent in
22 clinics, and hospital -- I was looking at that just the
23 other day -- it was in the 80s range, and then there was
24 hospitals, which is a very small -- it's a single-digit
25 number, and then the physicians offices. It's available

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1 from the Department of Health on the -- the tables.

2 Q Okay. Now, you testified on direct, and I believe in your
3 expert report at paragraph 6 as well, that abortion
4 providers are reluctant to report information indicating a
5 minor's been the victim of statutory rape; is that
6 correct?

7 A It certainly appears to from the public statements.

8 Q And one of the articles that you cite in your report to
9 support that opinion is an article by Patricia Donovan; is
10 that.....

11 A Yes.

12 Qcorrect? Would you pull out Exhibit 231, please?

13 A I have it.

14 Q All right. And this is the article that you cited in your
15 report?

16 A Yes.

17 Q All right. Now, this is not actually a study itself, is
18 it?

19 A No, this is an article that gave rise to a concern in
20 Texas because this is the article where there's a quote
21 from Peggy Romberg from Texas about the concern between
22 discouraging minors from seeking assistance and protecting
23 minors by making law enforcement officials can
24 investigate.

25 Q Okay. Now, in addition to the quote from Peggy Romberg,

2101

1 though, this article isn't lis-- isn't limited to the
2 members of the Texas Family Planning Association, is it?

3 A No, it's not.

4 Q And, in fact, one of the purposes for this article was a
5 suggestion that title X clinics be required to comply with
6 state mandatory reporting laws; is that right?

7 A That's an ongoing debate throughout the country.

8 Q Right. And title X clinics can't provide abortions; isn't
9 that correct?

10 A That's correct.

11 Q Now, going to the second page of this article under
12 troubling questions, in the eighth paragraph down this
13 article indicates that there are concerns raised about
14 statutory rape reporting requirements by adolescent
15 service providers; isn't that correct?

16 A Yes.

17 Q And then it goes on to talk about reproductive health care
18 providers, for example, fear that pregnant and sexually
19 active teenagers will not seek prenatal care,
20 contraceptive services or STD screening, and that they
21 will be unwilling to discuss personal problems if they
22 think the provider will report their partner to the
23 authority. Then it goes on to state: These concerns are
24 by no means limited to family planning providers, however.
25 Do you see all of those quotes?

2102

1 A I do.

2 Q So in this article the author was talking about a broader
3 range of service providers than abortion providers; is
4 that correct?

5 A That's correct.

6 Q Professor Collett, can you turn to page 5, paragraph 7, of
7 your expert report?

8 A I have it.

9 Q All right. Now, this paragraph provides part of the basis
10 of your opinion that -- as to how many minors inform their
11 parents; is that right?

12 A That's correct.

13 Q And one of the studies that you cite in support of your
14 opinion as to the percentage of minors who inform their
15 parents of their abortion decision is the Griffin-Carlson
16 article; is that correct?

17 A That's correct.

18 Q Okay. That's Exhibit 2043, if you would like to pull that
19 out.

20 A I have it.

21 Q All right. Now -- and this is the article you were
22 referring to?

23 A That's correct.

24 Q Okay. This study looked at 439 young women ages 12 to 21;
25 is that right?

2103

1 A That's correct.

2 Q So it included adolescents or young women who wouldn't be
3 affected by parental involvement laws generally because
4 most of those laws only go to 18; is that your
5 understanding of what this article is looking at?

6 A That's correct.

7 Q Well, at least -- I guess I should qualify that -- in this
8 state, and I'm not sure what state this was. Oh, in the
9 Atlanta area. So at least in the Atlanta area it appears
10 that minors -- that women over the age of 18 would not
11 have to comply with the parental involvement statute.

12 A In Georgia.

13 Q In Georgia, yes.

14 A Correct.

15 Q Okay. And this study doesn't provide any breakdown by age
16 so that you can see how many minors within a given age
17 group inform their parents about the abortion; is that
18 right?

19 A No, their focus was more on what motivated a girl to tell
20 or not tell.

21 Q Okay. Can you go to page 6 of the article, please?

22 A Yes.

23 Q Under the results.....

24 A I'm sorry, what -- you have hand-numbered 6 or the.....

25 THE COURT: No, I think it's the numerical, the typed.

2104

1 A Okay.

2 Q Oh, yeah.....

3 A Okay.

4 Qthe one I'm looking at is -- is numerical on the
5 left-hand.....

6 A Yes, I have it.

7 Qcorner. Okay.

8 A All right.

9 Q Under results, in the second paragraph, the art-- the
10 authors do conclude, and I'm quoting down from the last
11 sentence: Those who confided in their parents tended to
12 be younger, paren, mean age of 17, than those who did not,
13 paren, mean age of 18.

14 A Correct.

15 Q Okay. Now, I think you also cite this article in support
16 of -- I think you testified about this on direct -- in
17 support of your statement that the most common reason
18 minors do not involve a parent in their decisions to
19 obtain abortions is a desire to avoid parental
20 disappointment. Is that correct?

21 A Correct.

22 Q And that's in paragraph 8 of your expert report, I
23 believe? If you want to just make sure I quoted that
24 correctly.

25 A Correct.

1 Q Can you go to page 8 of Griffin-Carlson? Let me just back
2 up for a moment. You also said that you had some study
3 cited for this proposition in your Baylor Law Review; is
4 that right?

5 A Yes.

6 Q Can you pull that out? That's Exhibit 2041. It should be
7 pretty close to where you are now.

8 A Okay. Actually, there is no 2041 in this notebook.

9 Q 2041.

10 A There is.....

11 THE COURT: It's in volume 1, so if you go to.....

12 Q Oh, I'm sorry.

13 A But -- but I have.....

14 Q Oh, you have it? Okay.

15 A If.....

16 Q That's fine.

17 Athat doesn't trouble you.

18 Q No, that.....

19 A Okay.

20 Qdoesn't bother me. And can you go to footnote 92 in
21 that article?

22 A Okay.

23 Q And there do you cite again the Griffin-Carlson -- the
24 same Griffin-Carlson article that we are looking at?

25 A Yes.

2106

1 Q Okay. And for essentially the same proposition; is that
2 right?

3 A No.

4 Q I'm sorry, I'm looking at footnote 92.....

5 A Right.

6 Qat the bottom of the footnote.

7 A Yes, I'm sorry. I was reading the -- the textual
8 statement, and the textual statement is different than
9 the -- the lead statement into that.

10 Q Okay.

11 A Yes.

12 Q All right, now, going back to Exhibit 2043.....

13 A Yes.

14 QI'd like you to read out loud the first paragraph
15 under discussion, if you would, and read the entire
16 paragraph, please.

17 A Approximately half the adolescents in this study chose not
18 to include their parents in their pregnancy resolution.
19 These results confirm the finding of Martin, 1973, Rosen,
20 1980, and Donovan, 1983. In the present study when asked
21 why they did not discuss their abortion decision with
22 parents the clients gave four basic responses: fear of
23 rejection, fear of disappointing parents, wanting to spare
24 parents the problem, wanting to handle the problem by
25 themselves. When asked why they chose to confide in

1 parents they most often said they needed money, they
2 needed emotional support, it was the parents' right to
3 know.

4 Q Thank you. Isn't it correct, Professor Collett, that this
5 article does not state that the desire to avoid parental
6 disappointment is the most common reason, but it is one of
7 the four most common reasons given by minors?

8 A That would be a fair statement.

9 Q Now, you testified that pregnancies among minors dropped
10 approximately five percent from 1999 to 2000 in Texas; is
11 that right?

12 A That's correct.

13 Q And the parental notification law went into effect --
14 became effective January 1st of 2000?

15 A That's correct.

16 Q And the five percent that you testified about, that's just
17 looking at the number of pregnancies in 1999 compared to
18 the number of pregnancies in 2000.

19 A That's correct.

20 Q So it's not the rate, it's just the difference in
21 percentages.

22 A Yes.

23 Q Wouldn't you agree that looking at the rate is a more
24 accurate way of assessing changes in behavior?

25 A Could you rephrase the question?

2108

1 Q Well, let me give you an example, and then if you want me
2 to reask the question I will. For example, it's true, is
3 it not, that the number of pregnancies overall can be
4 influenced by whether women are moving in or out of the
5 state and the age of the women that are moving in and out
6 of the state, and that if you looked at the rate of
7 pregnancy, that would tell you more about the impact of a
8 change on the behavior of women than if you just looked at
9 the numbers, which might reflect either an influx or an
10 outflux of women of childbearing age?

11 A Certainly both would be relevant.

12 Q The -- looking simply at the numbers, though, wouldn't
13 control for the confounding variable of inward or outward
14 migration of minors of childbearing age; is that right?

15 A True.

16 Q Now, overall you report that minors made up a smaller
17 percentage of the overall births in 2000 than in 1999; is
18 that correct?

19 A The Texas Department of Health reported that in their
20 narrative.

21 Q Okay, and that difference was .4 percent from the year
22 before?

23 A I -- I believe that's correct.

24 Q Okay. Can you go to Exhibit 224, please?

25 A I have that.

2109

1 Q You're ahead of me. All right, now, these are printouts
2 from the same website that you looked at to get your
3 information; is that right?

4 A Correct.

5 Q Okay. And if you look at the first page of each of these
6 different reports -- and I don't think we numbered them
7 sequentially all the way through, Your Honor. I think
8 what we have is four sets, one for each year. I apologize
9 for that. But looking at the first page of each year you
10 can see from 1997 through 2000 what percentage of the
11 total pregnancies were minors; is that right? If you look
12 at the first line.....

13 A Yes.

14 Qunder Texas, and it'll have a total, and then it has
15 a percent; is that right?

16 A Correct.

17 Q Okay. Now, looking across these four years what we see is
18 a decrease of 6.7 percent in 1997 to 6.4 percent in 1998.
19 Are you able.....

20 A No, I'm not.....

21 Qto follow me?

22 Afollowing you.

23 Q Okay.

24 A I'm sorry.

25 Q Do you see -- which one is the first one in your batch?

2110

1 Is it 2000 or is it 1997?

2 A 1997.

3 Q Okay. Do you see on the first page of that in the line
4 that says Texas?

5 A I do.

6 Q Okay. We see a percentage of 6.7 percent.

7 A I do.

8 Q Okay. Can you go, then, to the document that would start
9 again as page 107? So it should be seven pages back.

10 A There's only seven pages.

11 Q You only have.....

12 A So.....

13 Qseven pages?

14 A Yes.

15 Q Okay. Well, that exhibit's incomplete, then.

16 THE COURT: Can I take a look at your.....

17 A Please.

18 THE COURT: All right. Okay. There's a problem. You
19 only have 1997 in her binder.

20 MS. CREPPS: Okay.

21 THE COURT: Do you have any copies? Mine has a complete
22 set, so.....

23 MS. CREPPS: I think I can hand her my set.

24 THE COURT: Why don't you hand her your set and --

25 actually, why don't we take a moment here and tell me where you

2111

1 are with respect to your cross-examination. Please be seated,
2 Professor.

3 A Thank you.

4 THE COURT: It's 1:30 at this time. Anyway we can do it
5 in the next half hour?

6 MS. CREPPS: Your Honor, I'm about halfway through.

7 THE COURT: All right. Let's plow on, then.

8 MS. CREPPS: All right. May I approach, then?

9 THE COURT: Okay, please approach.

10 A Thank you.

11 Q All right, Professor Collett, in what I just handed you
12 each year is separately paperclipped.

13 A Yes, I see that.

14 Q Okay. So going across the years and looking at those
15 percentages that I had you look at for 1997.....

16 A Yes, I see that.

17 Q Okay. So for 1997 the percentage was 6.7. For 1998 it
18 was 6.4; is that correct?

19 A That's correct.

20 Q For 1999 it was 6.1, and for 2000 it was 5.7; is that
21 right?

22 A That's correct, percentage of total births. That's
23 correct.

24 Q Okay. Now, it's true, is it not, that births in 2000
25 would include a significant number of minors who made

2112

1 their decision whether or not to have an abortion in 1999?

2 A No.

3 Q Well, if you find out you're pregnant in -- well, that --
4 who were facing the decision of whether to have an
5 abortion or carry it to term in 1999.

6 A Yes.

7 Q Okay. Sorry, I misspoke there. And so women who made
8 their decision about whether or not to have an abortion,
9 some of those decisions would have made -- made in 1999,
10 and the subsequent birth would have appeared in the
11 statistics in 2000; is that right?

12 A Some of the pregnancies, yes, were initiated in 1999.

13 Q Okay. Now, Professor, you're not offering an opinion as
14 to whether a causal connection has been established
15 between enforcement of the parental notification law and
16 the birth -- number of births and number of abortions in
17 Texas; is that right?

18 A I don't believe that we can establish a direct causal
19 connection between the two.

20 Q And one of the reasons for that is that based on the
21 information you have there's no way for you to take into
22 account potential confounding variables.

23 A That's correct.

24 Q And can you -- when I use that term can you tell me what
25 it means?

2113

1 A Alternative factors that would have caused the decline in
2 adolescent birthrates.

3 Q Or abortion rates.

4 A Or abor-- well, we're only looking at birthrates,
5 according to the exhibits that you have before me at the
6 moment.

7 Q Okay. And some of the confounding variables that you
8 might want to look at -- and now I'm broadening a little
9 bit to both pregnancies and abortions -- would be changes
10 in the pregnancy rates nationally; is that correct?

11 A Increased effectiveness of the abstinence program in Tex--
12 in Texas. Increased effectiveness of or increased use of
13 birth control by adolescents.

14 Q And that would include increased use of emergency
15 contraception, for example?

16 A If, in fact, that were the case.

17 Q Okay. Now, you've offered an opinion that as a result of
18 enforcement of the act -- well, that there -- there's an
19 associated drop in the overall number of abortions to
20 Texas minors following enforcement of the act, correct?

21 A There is.

22 Q Okay. Do you see that as a benefit of the law?

23 A Yes.

24 Q In what way?

25 A Both the 1990 -- 1999 abortion medical textbook by Mau--

1 Maureen Paul, as well as the 1996 abortion textbook --
2 medical textbook, indicate that youth is one of the
3 factors that is an indicia of psychological -- of an
4 increased risk of psychological unease with the
5 possibility of an abortion.

6 Q And do you think the appropriate response to that risk if
7 it were established would be that fewer minors should be
8 able to obtain abortions?

9 A I think it is valuable if we can reduce the number of
10 pregnancies throughout adolescence, and, therefore, I
11 think it is a cause to celebrate the reduction in
12 pregnancies in Texas, and that fewer abortions occurred
13 also is a cause of celebration as well.

14 Q Let me just see if I'm hearing two things or one thing.
15 So the benefit that you're describing, do you see that
16 coming from -- as a result of reduced number of adolescent
17 pregnancies in Texas, which, therefore, has resulted in a
18 reduced number of adolescent abortion in Texas, or do you
19 see those as two separate events, both of which are
20 benefits?

21 A I think both are benefits. Two separate events, both
22 benefits.

23 Q Now, in looking at the decrease in the number of minors
24 obtaining abortions did you take into account that fewer
25 minors may have traveled into Texas for an abortion in

2115

1 1999 -- comparing 2000 to 1999?

2 A That is one of the -- the confounding factors, although it
3 seems unlikely, since New Mexico doesn't have an effective
4 parental involvement law, that we were getting much
5 traffic from New Mexico, and Oklahoma had no legally
6 effective parental involvement law, that we were getting
7 any cross-boundary traffic there.

8 Q But sometimes some minors may have found it geographically
9 convenient to travel into Texas; isn't that true?

10 A That is possible.

11 Q And that's another one of those confounding variables.

12 A It is.

13 Q Could you pull out Exhibit 229, please, and I hope you
14 have the whole thing this time.

15 A Yes. Shall I return these to you?

16 THE COURT: Tell you what, why don't you keep them here
17 right now and we'll straighten it (indiscernible).

18 MS. CREPPS: Thank you.

19 THE COURT: I don't think it's in this volume, but.....

20 A Thank you. I'm sorry, 222?

21 THE COURT: 229.

22 Q 229.

23 A 229.

24 Q And with this exhibit, even though it has some other years
25 in it, I'm only interested in 1999 and 2000. And limited

1 to these two years, this may be pretty close to the other
2 exhibit that you were looking at; is that correct?

3 A May I also note that Texas does require the reporting of
4 nonresident abortions, and so that confounding factor
5 should be noted, although not all reports are complete to
6 the department of health.

7 Q Right, and, in fact, this exhibit reflects the number of
8 out-of-state residents who traveled to Texas to obtain
9 abortions, does it not?

10 A It does.

11 Q And what's the number of out-of-state women who traveled
12 to Texas for abortions in 1999? Do you see that up in the
13 first part of that exhibit?

14 A I do, 3,110.

15 Q And what is the number of out-of-state or out-of-country
16 residents who traveled to Texas for abortions in 2000?

17 A Two thou-- 2,807.

18 Q Okay, thank you. Now, can you please go to Exhibit 227?

19 A I have it.

20 Q Okay. And this should also consist of four separate years
21 of reports.

22 A Which it does.

23 Q Okay. So far, so good. And can you identify what these
24 tables reflect?

25 A This is table 34 from the Texas Department of Health which

2117

1 indicates abortion by age. It's a little different than
2 table 14 because it conflates the age of 15 through 19, so
3 you can't get a good reading on minors, which is why you
4 really need to go to table 14B.

5 Q Okay. Well, let's look at these for a minute. Now, the
6 first line on the top of each page gives the total for
7 Texas; is that correct?

8 A Yes.

9 Q And then the information following that is all a breakdown
10 by county.

11 A That's correct.

12 Q Okay. Now, the number of minors if you look across these
13 different years -- and I realize it's kind of clunky with
14 a lot of documents, but the number of minors under 15 who
15 obtained abortions increased in 1997, 1998 and 1999; is
16 that correct?

17 A That's correct.

18 Q Now, can you account for the fact that nationwide abortion
19 rates were declining, but among this group in Texas they
20 were increasing?

21 A I cannot.

22 Q All right. And now also looking at abortions among minors
23 ages 15 to 19 -- or I should say, more accurately,
24 adolescents 15 to 19, and comparing 1997 and 1998 -- are
25 you with me?

2118

1 A I am.

2 Q Okay. That shows a decrease in the number of minors in
3 that age group obtaining abortions between 1997 than there
4 was a decrease in 1998; is that right?

5 A That's correct. But, again, that includes 18- and 19-
6 year-olds.

7 Q Correct.

8 A You have to go to 14.

9 Q Can you account for that decrease in that year amongst
10 that age group?

11 A We're -- we see a national trend that way in that year,
12 also.

13 Q But we didn't see a trend among the under 15s -- the trend
14 for under 15s.....

15 A Right.

16 Qthe numbers -- excuse me -- the numbers for under 15s
17 was going up, but the numbers for 15 to 19s went down that
18 year.

19 Q Right. And, in fact, then it went back up the next year;
20 isn't that correct?

21 A Correct.

22 Q Now, you've referred to a study by the Texas Family
23 Planning Association regarding how many of their minor
24 patients notify their parents; is that correct?

25 A Yes, I have.

2119

1 Q A more accurate description of that would probably be a
2 voluntary informal survey; isn't that right?

3 A That was the phrase -- I believe that it was used in the
4 legislative hearing, but it was a survey that they did of
5 their patients, as I understand it.

6 Q And, in fact, in your law review article you retur-- refer
7 to it as a voluntary survey; isn't that right?

8 A Perhaps.

9 Q And isn't it true that that survey contacted about 10
10 abortion providers who were members of the Texas Family
11 Planning Association at that time?

12 A Yes.

13 Q And not all of them responded; is that right?

14 A I assume so. I don't know if -- if Peggy eliminated some
15 of them before she turned in the results or not.

16 Q Okay. And there are no official statistics regarding the
17 number of judicial bypasses that have been filed by
18 minors; is that right?

19 A That's correct.

20 Q And I think you were talking about the fact that in some
21 cases guardian ad litem and attorney ad litem are the
22 same person in one case; is that right?

23 A That's correct.

24 Q And some of those attorneys are hooked up with their
25 minors through Jane's Due Process?

2120

1 A That's correct.

2 Q And some of those attorneys don't actually submit for
3 their fees, they do it pro bono. I.....

4 A That's true.

5 Qbelieve you testified about that. And it's true, is
6 it not, that Jane's Due Process is engaged in ongoing work
7 to make the bypass more accessible for minors; isn't that
8 right?

9 A That's correct. The other project they have that I.....

10 Q I'm sorry, Professor Collett, there's no.....

11 A I beg your pardon.

12 Qquestion pending. Now, it's your opinion that there
13 is no evidence that minors are traveling outside of Texas
14 to obtain abortions; is that right?

15 A That's correct.

16 Q And one of the sources that you looked at for that
17 information was you contacted the state employees in
18 Arkansas and visited their website to see what information
19 they had about Texas residents traveling to Arkansas for
20 abortions.

21 A That's correct.

22 Q And you got information for 1999 and 2000; is that right?

23 A Not 2000. I don't believe I was able to obtain that at
24 that point, was I?

25 Q Let me take a look.

2121

1 A I don't think they had the final statistics, did they?

2 Q Yes, actually.....

3 A They did.

4 Qif you'd go to.....

5 A I beg your pardon. They did.

6 Q Okay. Paragraph 16 of your.....

7 A You're right.

8 Qreport.....

9 A The did.

10 Q Okay. And the information that you were able to obtain is

11 that in 1999 37 Texas residents went to Arkansas for

12 abortions, and in 2000 47 residents went to Arkansas for

13 abortions; is that right?

14 A That's correct.

15 Q So -- well, don't hold me to the math. That's an increase

16 of about 20 percent; is that right?

17 A It's 10 res--.....

18 Q Ten over 47.....

19 A Right.

20 Qwhatever that works out to? We'll just leave it at

21 that.

22 A Right.

23 Q And it's true that Oklahoma is not enforcing parental

24 involvement at this point, right?

25 A That's correct.

2122

1 Q But you don't have any actual information about Texas --
2 minor Texas residents traveling to Oklahoma for abortions;
3 isn't that right?

4 A That's correct.

5 Q And the same is true of New Mexico.

6 A That's correct.

7 Q Now, I believe you stated on direct that minors wouldn't
8 travel to Louisiana for abortions; is that right?

9 A For purposes of avoiding a parental notification law.

10 Q Right, and that's because Louisiana has a parental consent
11 law, also.

12 A Correct.

13 Q But it's true, is it not, that Louisiana doesn't report on
14 nonresidents who get abortions there.

15 A Correct.

16 Q Now, isn't it possible that some Texas minors might go to
17 Shreveport in Louisiana, for example, because it would be
18 their closest provider?

19 A Yes.

20 Q And isn't it also true that some minors may go to
21 Shreveport because they think they can get through the
22 judicial bypass more quickly there?

23 A It would be possible.

24 Q I'd like to have you pull out Exhibit 2040. And it's the
25 Altman-Palm article if you.....

2123

1 A Yes.

2 Qcan find it.

3 A I have it.

4 Q Okay. And you testified that this study supports your
5 opinion that minors aren't traveling out of Texas to
6 obtain abortions; is that correct?

7 A That generally there's not travel interstate; that's
8 correct.

9 Q Okay. Now, this study look at 15-to-17-year-olds; is that
10 right?

11 A That's correct.

12 Q And it's actually looking at two separate effects, which
13 is the impact of parental involvement laws, and also
14 increase in the rates of AIDS or HIV within the state
15 among minors; is that right?

16 A That's -- that's the general thesis; that's correct.

17 Q Okay. In this study there's no control group for
18 comparison, is there?

19 A No, there's not.

20 Q So, for example, there's no group of 18-to-19-year-olds
21 that you could look at and see what their patterns of
22 travel out of state were, for example, to obtain
23 abortions?

24 A No.

25 Q Now, would you go to page 848 of this article? In your

1 testimony regarding the number of minors who notify a
2 parent of abortion, correct me if I'm wrong, do you rely
3 at all on the study by Henshaw and Kost?

4 A Certainly I have cited to it in some of my work, I
5 believe.

6 Q Okay. Are you familiar enough with Henshaw and Kost to
7 know whether this statement -- and I'm reading from the
8 second to the last sentence on page 848 -- whether this is
9 a correct statement of the data provided by Henshaw and
10 Kost in their study: Among the minors who inform their
11 parents of the pregnancy or whose parents found out by
12 other means, 26 percent were forced to have an abortion.
13 Are you familiar enough with Henshaw and Kost to know
14 whether or not that's an accurate statement?

15 A I don't believe that's an accurate representation.

16 Q Okay. Does that undermine your confidence in this article
17 at all, that they're misciting Henshaw and Kost?

18 A That -- that would be of concern, yes.

19 Q Well, let's just go ahead and pull Henshaw and Kost down,
20 and have a look. It's Exhibit 123. And if you would go
21 to -- and this is the Henshaw and Kost article.....

22 A Correct.

23 Qthat we've been referring to.

24 A Correct.

25 Q Could you go to table 7 on page 204? And in the Altman-

1 Palm article they state that -- citing Henshaw and Kost --
2 that among minors who inform their parents of the
3 pregnancy or whose parents find out by other means, 26
4 percent were forced to have an abortion. Isn't it correct
5 that, in fact, Henshaw and Kost report that 11 percent
6 were forced by their parents to have an abortion?

7 A That's certainly what this table reflects.

8 Q All right. Are you familiar with the Cartoof and Klerman
9 study in which the authors concluded that there was a
10 dramatic drop in the number of minors living in
11 Massachusetts who obtained abortions in Massachusetts
12 after that state began enforcement of its parental consent
13 law?

14 A Yes, that's one of the older articles.

15 Q Right. And what they reported was that there was a
16 dramatic increase in the number of minors who obtained
17 abortions out of state; isn't that correct?

18 A Yes.

19 Q And you're fam-- are you familiar with Dr. Henshaw's study
20 in Mississippi in which he concluded that the ratio of
21 minors traveling to other states for an abortion increased
22 by 32 percent after the parental consent law went into
23 effect there?

24 A Is that the same article he talks about mandatory delay?

25 Q I believe it's a separate article.

2126

1 A I'm.....

2 Q We can have a look at it if you want.

3 A Please.

4 Q It's Exhibit 118.

5 A Okay. No, this is the same article.

6 Q Oh, okay. I'm sorry.

7 A Yeah.

8 Q Okay. And are you familiar with this article?

9 A I am.

10 Q And, Dr. Henshaw concludes that the ratio of minors
11 traveling to other states for an abortion increased
12 by -- compared to adults -- was increased by 32 percent
13 after parental consent went into effect; is that correct?

14 A Could you direct me to that portion of the article?

15 Q I'm actually looking at the abstract.

16 A I don't believe that was, in fact, his conclusion.

17 Q Let me have you look at what I'm looking at and see if we
18 agree. I'm looking in the abstract, and I'm looking in
19 the middle of the first sentence, which is very long --
20 or, no, the second sentence, and I'll read you what I'm
21 looking at and see if you agree. I'll read the entire
22 sentence. In a comparison of Mississippi residents who
23 had abortions during the five months before and the six
24 months after the law went into effect, the ratio of minors
25 to adults who sought abortions in the state declined by 13

1 percent, a decrease offset by a 32-percent increase in the
2 ratio of minors to adults who obtained abortions out of
3 state.

4 A Yes, that's what the abstract says, but I don't recall
5 that being what the text of the article says.

6 Q So you're aware of the study, but you don't necessarily
7 agree with the conclusion stated in the abstract?

8 A Right. On page 121, the next page, the second full
9 paragraph in the middle. Among Mississippi residents
10 having an abortion in the state the ratio of minors to
11 older women decreased by 13 percent from 0.127 to 0.111
12 after the law went into effect. However, this decline was
13 largely offset by a 32-percent increase in the ratio of
14 minors to older women among Mississippi residents
15 traveling to other states for abortion services. That's
16 where they pulled the abstract.

17 Q Uh-huh.

18 A Overall, among resident -- Mississippi -- I'm sorry.
19 Overall, among Mississippi residents who had an abortion
20 either in Mississippi or in another state, the ratio of
21 minors to adults having an abortion under the new
22 restrictions decreased by three percent, which does not
23 approach statistical significance. If the seasonality of
24 minors' abortions differs from that of adults, as
25 indicated above, the decrease is two percent greater or

1 five percent. On the other hand, if, as is likely, an
2 increased number of minors obtain an abortion in
3 Louisiana, the decrease is less than five percent.

4 Q Okay. So according to Dr. Henshaw there was evidence that
5 some Mississippi minors were traveling out of state to
6 obtain abortions after the parental consent law went into
7 effect; isn't that true?

8 A But he questions its statistical significance.

9 Q Right. And what is statistical significance?

10 A Whether or not you have a large enough sampling to know
11 whether or not it's important.

12 Q And have you ever calculated statistical significance?

13 A Long ago and far away.

14 Q All right.

15 THE COURT: Ms. Crepps, it's almost 2:00 o'clock. Are we
16 there or -- just give me a sense.

17 MS. CREPPS: I'm just looking to see which -- I'm very
18 close.

19 THE COURT: All right, give me an estimate how long. And
20 I'll check with.....

21 MS. CREPPS: Five minutes?

22 THE COURT: Okay, I'll check with Mr. Clarkson. Are you
23 going to have a lot of redirect?

24 MR. CLARKSON: I'm going to keep it really brief, but I
25 would like an opportunity. Very brief.

1 THE COURT: Definitely give you an opportunity, but I'm
2 getting a sense -- as you know.....

3 MR. CLARKSON: Very brief.....

4 THE COURT:I'm trying to finish off this witness
5 today so we can start -- the doctor can probably make travel
6 plan -- I'm sorry, Professor can make travel plans.....

7 A Thank you.

8 THE COURT:but go ahead.

9 MR. CLARKSON: I can do it briefly.

10 THE COURT: Okay.

11 MS. CREPPS: Thank you.

12 Q Are you familiar with the Pierson study in which the
13 authors found that following parental involvement --
14 implementation of parental involvement in Missouri, there
15 was a steady increase in the number and percentage of
16 Missouri teens obtaining abortions out of state?

17 A Yes, I am.

18 Q Now, going back to the Altman-Palm article for a moment,
19 could you go to page 858, please?

20 A I'm sorry, would you give me exhibit number again?

21 Q Altman-Palm is 2040.

22 A Thank you. The page number again, please?

23 Q 858.

24 A Okay.

25 Q And I'm looking at the first full paragraph on that page.

2130

1 A I have it.

2 Q And the second to last sentence is one that you have --
3 you've quoted or relied on, and it states: In other
4 words, crossing state borders to avoid parental
5 involvement laws does not appear to be a common
6 phenomenon; is that correct?

7 A Correct.

8 Q And then the authors go on to state: Perhaps this
9 reflects the recent downward trend in abortion services
10 for out-of-state residents from 44 percent in 1972 to
11 eight percent in 1992. And they've had some citations
12 there; is that right?

13 A That's correct.

14 Q So the authors are suggesting here that there might be a
15 confounding variable in the trend, the downward trend of
16 women traveling overall out of state to get abortions,
17 that may have some influence on this; isn't that correct?

18 A If what we're seeking is the factor of women traveling out
19 of state, it can't be a confounding variable.

20 Q Well, what do you think the authors mean here?

21 A That the downward trend is perhaps abortion providers
22 being unwilling to provide services to out-of-state
23 residents. For example, the Alaska law by its terms is
24 limited to in-state resi-- or domiciliaries.

25 Q Well, isn't it true, Professor Collett, that that

1 provision has been declared unconstitutional by the Alaska
2 attorney general, and would clearly be unconstitutional
3 under Doe v. Bolton?

4 MR. CLARKSON: Your Honor, I'm going to object. I mean,
5 this is totally beyond the scope of direct and this is.....

6 THE COURT: I'm going to sustain the objection. I think
7 we're staying away from the legal questions on direct.

8 MS. CREPPS: I'm sorry, Your Honor, but she gave a legal
9 opinion as to why she thinks the situation would be different in
10 Alaska based on an incorrect interpretation of Alaska law.

11 MR. CLARKSON: Well, Your Honor, this is specifically the
12 area they objected to, having her testify about Alaska law.

13 THE COURT: I'll tell you what, why don't I strike the
14 last answer and then we won't have a problem. How does that
15 sound, Mr. Clarkson?

16 MR. CLARKSON: Okay.

17 THE COURT: Stricken.

18 Q Are you aware that defendant's witness Dr. Uhlenberg did
19 not rely on the Altman-Palm study at all for his -- in
20 support of his testimony about the impact of parental
21 involvement on out-of-state travel?

22 A No, I'm not.

23 Q Now, you've testified that you're not aware of any reports
24 of minors obtaining illegal abortions or attempting to
25 self-abort following enforcement of the Texas parental

1 notification law; is that correct?

2 A That's correct.

3 Q Now, if that occurred, that wouldn't necessarily be public
4 knowledge, would it?

5 A That's correct.

6 Q For example, if a minor obtained an illegal abortion and
7 had no complications, that would never get out into the
8 public realm. Is that correct?

9 A That's correct.

10 Q I'm sorry. Or if she attempted to self-abort, had
11 complications and sought treatment from a private
12 gynecologist or obstetrician, that wouldn't necessarily
13 ever be reported, either, would it?

14 A That's -- well, depending upon the reporting statute of
15 our state related to complications; that's correct.

16 Q All right. Now, in terms of problems with -- well, strike
17 that. I'll move on. You testified about some information
18 obtained in Exhibits 274 and 275, which probably are still
19 loose up there because they were new exhibits today. Do
20 you have those?

21 A Are they the e-mails?

22 Q I'm sorry, 2274 and 2275.

23 A Yes, I did.

24 Q This is the Idaho and Alabama information.

25 A That's correct.

1 Q Okay. And this information tells you about how many
2 minors in those states, at least how many -- those states
3 reported to you how many minors got bypasses; is that
4 right?

5 A That's correct.

6 Q It doesn't tell you anything about the number of minors
7 who may have traveled out of state to obtain an abortion;
8 is that right?

9 A That's correct.

10 Q So in Idaho, for example, two out of 54 minors who were
11 required to get abortions got bypasses; is that right?
12 In.....

13 A That's correct.

14 Q2000. So that's about three or four percent? Maybe
15 I should stay away from math.

16 A That's correct.

17 Q Okay. But it isn't -- isn't it also true that some of the
18 states surrounding Idaho, Oregon, Washington, Nevada and
19 Montana, those don't require parental involvement; isn't
20 that correct?

21 A Or their laws are unenforceable; that's correct.

22 MS. CREPPS: All right, thank you. I don't have any other
23 questions.

24 THE COURT: Mr. Clarkson, redirect.

25 /

1

TERESA COLLETT

2 testified as follows on:

3

REDIRECT EXAMINATION

4 BY MR. CLARKSON:

5

Q Professor Collett, if parental involvement in minor
6 abortion decision making is increased in Texas to 95
7 percent, as you've testified, and the abortion rates goes
8 down for minors, do you have an opinion as to what that
9 reflects about the decisions of Texas minors about their
10 abortion decisions and how they're making their decisions?

11

A I do.

12

Q What is your opinion?

13

A We believe that -- or I believe that it indicates that
14 some minors were choosing abortion under the influence of
15 others, not freely, and when a parent gets involved
16 sometimes they choose to continue pregnancy.

17

Q And if a girl is making a decision about abortion with
18 parental assistance and it's a family decision, how do you
19 view that in terms of a benefit or detriment to the girl?

20

A I think a girl who knows that she has resources available
21 to her is going to make a better decision, regardless of
22 what decision she ultimately makes.

23

Q So you think a family decision between a parent and a
24 daughter is a better decision than an isolated decision by
25 a frightened, lonely young girl?

1 A In the vast majority of cases, yes.

2 Q Do you have an opinion regarding whether Texas's parental
3 notification law as compared to Alaska's parental consent
4 law, which of the two has more benefit to young girls in
5 terms of dealing with their abortion decisions?

6 MS. CREPPS: Your Honor, I think this is outside the scope
7 of cross.

8 THE COURT: I think it's a little outside the scope of
9 cross. I don't think we touched upon that, so.....

10 MR. CLARKSON: All right. With that I'll simply say I
11 have no further questions.

12 THE COURT: Okay, thank you. Any reason why this witness
13 should not be excused? Hearing none.....

14 MR. CLARKSON: No, Your Honor.

15 THE COURT:thank you, Professor.

16 A Thank you, Your Honor.

17 THE COURT: Traveling back today?

18 A Tomorrow morning, Your Honor.

19 THE COURT: Oh, okay.

20 A So.....

21 THE COURT: All right. You're excused, and we will now
22 recess -- stand in recess. Okay?

23 (Witness excused)

24 THE COURT: Tomorrow morning, counsel, 8:30 a.m., then.
25 Okay. Kept the class waiting. Sorry about that.

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1 (Court recessed at 2:06 p.m.)

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