

EXHIBIT D

(Dykas Deposition Transcript)

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

3 THOMAS D'ANGELO,
4 Plaintiff,

5 -vs- No. 2010-000944-NO
Hon. Matthew S. Switalski

6 PAUL PARENT, CLINTON TOWNSHIP,
a municipal entity, NICHOLAS DYKAS,
7 JASON FIGURSKI and KEITH WATSON,
in their official and individual capacities,
8 jointly and severally,
9 Defendants.

_____ /

10
11 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
12 SOUTHERN DIVISION

13 THOMAS D'ANGELO,
14 Plaintiff,

15 -vs- Case No. 10-12195
Hon. Lawrence P. Zatkoff
16 CLINTON, TOWNSHIP OF, et al, Hon. Mona K. Majzoub
17 Defendants.

_____ /

18 The Deposition of OFFICER NICHOLAS DYKAS,
19
20 taken in the above-entitled cause before Denise Moorfoot,
21 (CSR-2275), Court Reporter and Notary Public for the County
22 of Oakland, State of Michigan, at 10 South Main Street, Suite
23 400, Mount Clemens, Michigan, on Thursday, January 6, 2011,
commencing at or about the hour of 12:10 p.m.

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APPEARANCES:

MR. THOMAS E. KUHN
Amos E. Williams, P.C.
615 Griswold, Suite 1115
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff.

MR. PETER W. PEACOCK
Plunkett Cooney
10 South Main Street, Suite 400
Mount Clemens, Michigan 48043
Appearing on behalf of Defendants Clinton Township,
Dykas, Figurski, and Watson.

ALSO PRESENT: MR. THOMAS D'ANGELO

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T A B L E O F C O N T E N T S

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1 Mount Clemens, Michigan
2 Thursday, January 6, 2011
3 12:10 p.m.

4 - - -
5 N I C H O L A S D Y K A S

6 was thereupon called as a witness herein and, after
7 having been first duly sworn to tell the truth, was
8 examined and testified as follows:

9 - - -

10 MR. KUHN: Hi. My name is Tom Kuhn. This
11 deposition is taken pursuant to Notice and may be used for
12 any purposes allowable under Federal and Michigan Court
13 Rules. And just for the record, it's being taken in both
14 the federal case and the state case pursuant to agreement.

15 MR. PEACOCK: So stipulated.

16 MR. KUHN: Pursuant to agreement of counsel.

17 BY MR. KUHN:

18 Q Sir, if there are any questions that are unclear to you or
19 you don't understand what I'm trying to ask, please have
20 me restate the question. Okay?

21 A Okay.

22 Q Typically, because you're a police officer, we don't ask
23 for home addresses on the record, but we'd like an
24 agreement or stipulation that if we need you as a witness
25 at trial, that we'll be able to get you through Mr.

1 Peacock or the attorney for Clinton Township. Is that
2 okay with you?

3 A That's fine.

4 Q Great. What's your date of birth, sir?

5 A March 8th of 1980.

6 Q Can you give me just a brief chronology of your formal
7 education starting with high school, where you have
8 attended, degrees, programs, dates, that sort of thing?

9 A I graduated high school from Dakota High School where I
10 obtained my high school diploma, followed by attending
11 Macomb Community College Center Campus where I obtained an
12 associate's degree in criminal justice.

13 Q Okay. And when did you graduate from Dakota?

14 A 1998.

15 Q And MCCC?

16 A December of 2000.

17 Q Any other formal education after high school?

18 A No.

19 MR. PEACOCK: You mean after Macomb Community
20 College?

21 BY MR. KUHN:

22 Q Yeah. Are there any others?

23 A No.

24 Q And can you give me a brief chronology of your law
25 enforcement career, where you have been hired, dates,

1 promotions, that sort of thing?

2 A I have been currently working at the Clinton Township
3 Police Department since August of 2002 to present.

4 Q And what has been your assignment at Clinton Township?

5 A The patrol division.

6 Q Have you had any other special assignments?

7 A No.

8 Q Now, this involves an incident that happened on April
9 12th, 2008. In that general time frame, do you recall
10 what shifts you were working?

11 A I was working the afternoon shift.

12 Q Okay. And generally what were your hours of work for the
13 afternoon shift?

14 A 4:00 p.m. to midnight.

15 Q And would there be any document, like a shift lineup that
16 was done in that time frame, if you know?

17 A There were.

18 Q Okay. And would there be any record of your actually
19 being on duty that day, any other written record?

20 A I believe at that time we were doing a manual patrol log.
21 It's now computerized, but, yes, there would be a record.

22 Q And what kind of information would be in your manual
23 patrol log?

24 A The start of my shift, the area I was assigned to work,
25 what partner I was working with, and a list of the radio

1 runs and/or area checks that we conducted throughout the
2 day.

3 Q What kind of detail would be in there about your radio
4 runs or activities during the day?

5 A Time of dispatch, location, and a disposition, whether an
6 arrest was made and the incident number of the report.

7 Q And you indicate that at that time you believe you were
8 doing these manually, but the department has subsequently
9 gone to a computerized form of that?

10 A That's correct.

11 Q Any other record that you're aware of that you would have
12 generated in the course of your activities on April 12th,
13 2008?

14 A Other than our tapes from dispatch.

15 Q Okay. And what kind of tapes would you have from
16 dispatch?

17 A They keep a record of all the radio communications.

18 Q And within the patrol car itself, in that time frame of
19 April of 2008, did the patrol car have a computer?

20 A It did.

21 Q And would you be able to record any of your activities,
22 any of your speaking in the course of your activities that
23 day?

24 A On the computer?

25 Q On the computer or otherwise.

1 A Other than I have stated with dispatch. On the computer,
2 no.

3 Q So you weren't outfitted with a microphone or anything in
4 the course of your activities that day?

5 A No.

6 Q Was there any video on the vehicle?

7 A I believe at that time there was.

8 Q And how would video be activated?

9 A Video is activated during a pursuit situation and/or for
10 transporting a female from a certain location to our
11 lock-up area.

12 Q And in this case, in the course of your interaction on
13 this issue with Mr. D'Angelo, do you know if your video
14 was ever activated?

15 A Not to my knowledge.

16 Q Were you in a single patrol car or a two-man car at that
17 time?

18 A I had a partner that day.

19 Q And who was your partner that day?

20 A Officer Figurski.

21 Q And were you driving or was Officer Figurski?

22 A Officer Figurski was driving.

23 Q So this patrol log, is that something that you would
24 typically be generating as you went through the day?

25 A Correct.

1 Q Have you had a chance to review any records prior to the
2 deposition?

3 A I was able to review my report.

4 Q Okay. And let me just ask you if you can identify your
5 report?

6 A My report is indicated by the general incident report
7 located at the very top.

8 Q Okay.

9 A My signature is at the bottom.

10 Q All right. And there's another document that we were
11 handed today. Is that part of your report?

12 A That was added to my report. It's indicated as a
13 supplemental report which was concluded -- or excuse me --
14 which was done by the detective assigned to the case.

15 MR. KUHN: I see. All right. Can we mark this
16 as Exhibit 1 and 2, and we'll have him identify it?

17 (WHEREUPON, Deposition Exhibits 1 & 2
18 were marked for identification.)

19 BY MR. KUHN:

20 Q Okay, sir. Can I have you then, just for the record,
21 officially identify Exhibit 1 for us?

22 A Exhibit 1 is my original report.

23 Q Okay. And can you identify Exhibit 2 for us, please?

24 A Exhibit 2 is a supplemental report which I did not
25 complete, but based on the signature, it was done by

1 Detective Barbera.

2 Q And Detective Barbera, do you know how his name is
3 spelled?

4 A Not offhand, no.

5 Q Okay. Barbera is listed here?

6 A Correct.

7 Q Do you know what his first name is or her?

8 A Jeffrey.

9 Q Jeffrey? Okay.

10 Do you recall your first involvement with this
11 particular incident over at the library? How were you
12 notified of that?

13 A We were notified by dispatch over the radio.

14 Q Do you recall what you were told by dispatch over the
15 radio?

16 A Not exactly, but the generalization of it was that we were
17 being sent there for a complaint of a patron up there.

18 Q Okay. Do you recall, was there any other more specific
19 detail at that point?

20 A Not that I recall.

21 Q And your log would indicate when you arrived at the
22 library?

23 A My log would indicate what time we were dispatched to the
24 location, not when we arrived on scene.

25 Q Okay. And do you have any recollection of when you

1 arrived at the library?

2 A It was the first run of the day, so it was relatively
3 early.

4 Q Okay. So first run, shortly after four, is that what
5 you're saying?

6 A Correct.

7 Q Do you know where you were when you got the dispatch?

8 A In relation to?

9 Q Yeah. I mean, were you still at the station when you got
10 the dispatch?

11 A I don't recall.

12 Q When you got to the library, did you have contact with --
13 With whom did you have contact first?

14 A I met with the library employee first.

15 Q Okay. And do you recall who that was?

16 A She was identified as Debra Bodner.

17 Q And where did you meet Debra Bodner that day?

18 A Near her desk.

19 Q Can you just describe for us approximately, or as best you
20 can, where her desk was located?

21 A It's outside the computer lab.

22 Q Okay.

23 A In relation to feet or distance, I couldn't tell you.

24 Q But it's the desk outside the computer lab?

25 A Correct.

1 Q And what did Debra Bodner tell you?

2 A Debra stated that another patron who was inside the
3 computer lab had come to her complaining about another
4 individual who was also in the computer lab.

5 Q Did she tell you anything more at that time?

6 A She stated that the other patron, who was later identified
7 as Paul Parent, he advised her that there was a gentleman
8 masturbating in the computer lab area, and he wanted to
9 bring it to her attention.

10 Q Okey-doke. Any other details of what Debra Bodner told
11 you at that time?

12 A She stated that she got up from her desk. She never
13 entered the computer lab, but she walked over to the
14 computer lab which is surrounded by windows. She said
15 that when she was looking at the gentleman in question, he
16 had his hand in his pants, and he was moving back and
17 forth, and it appeared to her that he was masturbating.

18 Q Okay. Anything else that Debra Bodner told you during
19 this initial contact with you?

20 A I had asked her if she could visibly see his penis
21 exposed. She said that she did not. I had asked her at
22 that time if there was anything else that she had done at
23 that time of the complaint. She told me that based on the
24 library policy, they are to send a computer message to the
25 computer of the problem patron advising them that a

1 complaint was made, and they have to pretty much cease and
2 desist all activity that they're doing, and she said that
3 she did send the message.

4 Q Anything else that Debra Bodner told you during that first
5 initial contact with you?

6 A Not that I recall at this time.

7 Q Okay. So was Officer Figurski with you as you were
8 talking with Debra Bodner?

9 A No. Officer Figurski was inside the computer lab with Mr.
10 D'Angelo.

11 Q Okay. Were there any other officers there at that time
12 other than you and Officer Figurski?

13 A Officer Watson showed up shortly thereafter.

14 Q Just so I get the chronology right, was this after you had
15 talked to Debra Bodner or before you had talked to her or
16 while you were talking to her?

17 A What?

18 Q That Officer Watson came.

19 A I believe it was shortly thereafter. I had just started
20 speaking with her when he arrived.

21 Q Were you able to visually observe what Officer Figurski
22 was doing while you were talking with Debra Bodner?

23 A No.

24 Q At any point in time, were you able to see what Officer
25 Figurski was doing with regard to Mr. D'Angelo inside the

1 computer room?

2 A While speaking with Debra Bodner?

3 Q No. At any time.

4 A Later on, after speaking with Mr. Parent.

5 Q Okay. So just so that we get this right, what happened
6 next after you had your conversation with Debra Bodner?

7 A After I spoke with Debra Bodner, she identified Paul
8 Parent, who was standing near her desk, as the gentleman
9 who made the formal complaint to her. I walked over to
10 Mr. Parent and had asked him what had happened.

11 Q Okay. And what did Mr. Parent tell you?

12 A Mr. Parent stated that he was in the computer lab for
13 approximately an hour, and 45 minutes during that time
14 frame he was sitting next to Mr. D'Angelo where he
15 observed he had unzipped his pants and taken his penis out
16 and was watching hard-core websites -- hard-core porn
17 websites on his computer, and he was pumping his fist
18 while his penis was in his hand.

19 Q Did Paul Parent tell you anything else at that time?

20 A At that time, no.

21 Q Okay. And so, again, who was present as you talked with
22 Mr. Parent?

23 A Just myself.

24 Q Okay. What did you do next after talking with Mr. Parent?

25 A I walked in -- or I should say I walked over to the

1 computer lab and advised Officer Figurski and Officer
2 Watson that Mr. D'Angelo be placed under arrest.

3 Q And where was Officer Figurski and Officer Watson at the
4 time you went over to the computer lab?

5 A Officer Watson was in the computer lab with Officer
6 Figurski.

7 Q And where were they with regard to Mr. D'Angelo? Were
8 they in his immediate presence or nearby or --

9 A As I walked into the computer lab, I believe they were
10 standing right behind Mr. D'Angelo.

11 Q Was Mr. D'Angelo still sitting, or was he standing?

12 A I don't recall.

13 Q Okay. And do you recall any of your discussion with -- or
14 the discussion with Officers Watson and Figurski at that
15 point?

16 A Not that I recall.

17 Q So what happened next?

18 A Officer Figurski had taken Mr. D'Angelo to the patrol
19 vehicle.

20 Q Okay. Well, let me just -- I'm sorry if I'm trying to cut
21 this into little, small bits, but you're in the computer
22 lab, right?

23 A I'm outside the computer lab.

24 Q You're outside. They're inside?

25 A Correct.

1 Q And so are you saying that Officer Figurski then took Mr.
2 D'Angelo out of the computer lab, down to the patrol
3 vehicle?

4 A Correct. After he was handcuffed, after I advised him
5 that he could place him under arrest for the indecent
6 exposure.

7 Q So Officer Figurski handcuffed him?

8 A I believe he did. I'm not 100 percent sure.

9 Q And were you able to see the handcuffing? Do you recall?

10 A Not that I recall.

11 Q Was there any discussion in your presence with Mr.
12 D'Angelo while he was there in the library?

13 A Not with me, no.

14 Q Did you have any further discussion with Officer Figurski
15 while still in the library?

16 A Other than advising him that he was under arrest, no.

17 Q Any further discussion with Officer Watson while you were
18 in the library?

19 A Yes.

20 Q Okay. And can you tell us what discussion you had with
21 Officer Watson while you were in the library? I'm sorry.

22 A We took a look at Mr. D'Angelo's computer that he was on
23 and tried to obtain an Internet site history to see what
24 sites he may have been perusing during his time in the
25 computer lab.

1 Q And you and Officer Watson were there. Was there anyone
2 else there from the library as you were doing this?

3 A There were other patrons in the computer lab, but as far
4 as employees, no, I don't recall.

5 Q And how did you go about taking a look at the computer?

6 A When I looked at the computer, given the Internet site
7 that he had up, whether it was Windows Explorer or
8 Mozilla, whatever the case may be, I was able to tab down
9 on the Internet history which usually keeps a record of
10 past sites that you have viewed and/or gone to.

11 Q Okay. And what did you learn from that?

12 A When I clicked on the Internet history, it showed no sites
13 were viewed other than the website that he had up
14 currently when we walked in, when Officer Figurski and
15 Officer Watson entered the computer lab.

16 Q And do you recall what site that was?

17 A I don't recall what site it was, but I did indicate that
18 it wasn't a pornographic website.

19 Q Do you recall any details about the website that you saw
20 on the computer screen?

21 A No, I don't.

22 Q Any further discussion with Officer Watson while you were
23 in the library that you recall?

24 A Not that I recall.

25 Q Did you have any further discussion with any library

1 personnel while you were there other than what you have
2 already related to me?

3 A After I examined the computer, I spoke with Debra Bodner
4 again and asked if they had an in-house computer
5 technician.

6 Q Okay. And what did she have to say?

7 A Debra stated that she did, and his name I don't recall
8 offhand. It was indicated in my report. He wasn't
9 working at the time but gave me a contact number for him.

10 Q Okay. In your report, it indicates a person by the name
11 of Andy Nordin, N-O-R-D-I-N. Does that refresh your
12 memory at all?

13 A It does. That's correct.

14 Q Any further discussion that you recall with Debra Bodner?

15 A I advised Debra that no one else was to use the computer
16 that Mr. D'Angelo had occupied until the library
17 technician could take a closer look at it to see if he
18 might be able to retrieve any past Internet sites that
19 were viewed. She stated she would relay that information
20 to him and that he would not be back at work until Monday,
21 which would have been the 14th.

22 Q Any other discussion that you recall with Debra Bodner
23 while in the library?

24 A I gave her an incident number for the complaint that was
25 made and that there would be a report on file along with

1 Mr. Parent, and then I went down to the patrol vehicle
2 where Officer Figurski was standing by with Mr. D'Angelo.

3 Q Did you have any further -- or any other discussion with
4 Mr. Parent while at the library that you recall?

5 A Other than advising him that the report was on file and
6 giving him the incident report number, no.

7 MR. PEACOCK: Tom, just for the record, I've
8 been provided two additional pages that we just received
9 today from the Clinton Township PD. It's a Prisoner
10 Property Slip and a Clinton Township Police Department
11 Lock-Up Screening Report, and I'll give that to you now.

12 MR. KUHN: All right.

13 MR. PEACOCK: I just got them, too.

14 BY MR. KUHN:

15 Q So what happened next after you went out of the library?

16 A Officer Figurski advised dispatch that we were 1095, which
17 is a 10 code for an arrested subject being transported to
18 the station.

19 Q All right. And would that sort of thing be on the log?

20 A The log indicates that an arrest was made, so it wouldn't
21 indicate the time of the initial dispatch. They would
22 have that on tape.

23 Q Okay. And when you went out to the vehicle, was Mr.
24 D'Angelo already in the vehicle?

25 A He was.

1 Q Did you see any part of the movement of Mr. D'Angelo from
2 the library to the patrol car?

3 A No, I did not.

4 Q After Officer Figurski notified dispatch, what happened
5 next?

6 A We went from the library directly to the Clinton Township
7 Police Department.

8 Q Can you give us a rough estimate of how long that
9 typically takes?

10 A Depending on traffic at that time of day, anywhere between
11 five to ten minutes.

12 Q Do you recall any discussion or anything Mr. D'Angelo said
13 in the course of that five- to ten-minute trip to the
14 station?

15 A No.

16 Q Do you recall any other discussion that took place between
17 you and Officer Figurski or whomever in the course of that
18 trip?

19 A Nothing that I can recall.

20 Q Once you got to the station, what happened next?

21 A We pulled into the secure lock-up facility where the car
22 goes in. The garage door was shut, and once all our
23 weapons were taken off our person and locked up, we took
24 Mr. D'Angelo into the booking area.

25 Q Okay. And so both you and Officer Figurski took Mr.

1 D'Angelo into the booking area?

2 A Correct.

3 Q And what happened there?

4 A From there, I'm not 100 percent sure. I don't believe I
5 was present during the booking procedure. I believe I
6 went to retrieve Mr. D'Angelo's LEIN work after running
7 him through dispatch and began my report. Our report
8 writing area is not in the booking facility.

9 Q So while you were in the station with contact, you know,
10 in the immediate contact with Mr. D'Angelo, was there any
11 further discussion that you recall with him?

12 A With Mr. D'Angelo?

13 Q Yes.

14 A Nothing I recall.

15 Q Now, let me put it this way. In April of 2008, was the
16 booking area -- did it have any video?

17 A It did.

18 Q Did it have audio?

19 A I believe it does but not 100 percent sure.

20 Q Did you have any further contact with Mr. D'Angelo at any
21 point?

22 A After the booking area?

23 Q Yes. After you went to make your report.

24 A No.

25 MR. KUHN: Just for my information, well, let's

1 mark this as Exhibit 3 and 4.

2 (WHEREUPON, Deposition Exhibits 3 & 4
3 were marked for identification.)

4 BY MR. KUHN:

5 Q Now, sir, your attorney has just handed us a couple of
6 documents here, and I'd like to ask you if you can
7 identify what Exhibit 3 is?

8 A Exhibit 3 is a Prisoner Property Slip. It's a slip that
9 we do when we lock up the prisoner's property. It's
10 inventoried, and the prisoner has to sign for it if he
11 agrees what's on the property slip.

12 Q I see. And is any of that handwriting on Exhibit 3 yours?

13 A No.

14 Q And do you recall being present for any of the property
15 issues?

16 A No.

17 Q I'm going to show you another document that's been listed
18 as Exhibit 4 and ask you if you could identify that?

19 A This is a Lock-Up Screening form that we have. Basically,
20 we fill out our visual observations on the top portion
21 which is listed "Visual Observations," 1 through 10, and
22 the "Questionnaire" are medical questions that we ask the
23 prisoner which they have to answer which is 1 through 16.
24 Once the sheet is completed, the prisoner takes a look at
25 the form, and then they sign it if it's to their liking.

1 Q And is any of that handwriting yours to your knowledge?

2 A No.

3 Q And do you have any idea who would have written the
4 information on these two sheets, Exhibits 3 and 4?

5 A On the property sheet, no.

6 Q Okay.

7 A Based on the signature of the officer who asked these
8 questions on the medical sheet, that is Officer Figurski's
9 signature and his badge number.

10 Q Thank you. Now, when a prisoner is booked, are there any
11 other records generated typically besides the property
12 slip, prisoner property slip and lock-up screening
13 documents?

14 A A booking sheet is completed.

15 Q Can you just give us a generic description of what a
16 booking sheet is?

17 A It lists personal information as far as an address, social
18 security number, driver's license number, height, weight,
19 hair color, eye color, and then towards the bottom it
20 lists what the gentleman is being charged with.

21 Q And typically, when a person is booked on a charge, do
22 they do fingerprints or photograph?

23 A Correct.

24 Q Any other records that are typically generated in the
25 course of booking someone being charged?

1 A We have an arrest book which would list the date that they
2 were brought in, their full name, what they're charged
3 with, what their bond is, if any, depending on the charge,
4 where they were held, whether it was the county jail
5 and/or our facility, and if a vehicle was towed or not.

6 Q And typically who generates the information on the arrest
7 book?

8 A The booking officer and/or the arresting officers.

9 Q Did you have any further discussion with Officer Figurski
10 about this case?

11 A Not that I recall.

12 Q Any other discussion other than what we have already
13 testified to with Officer Watson concerning this case?

14 A Not that I recall.

15 Q Any discussion with anyone at the library other than what
16 you have already testified?

17 A Not that I recall.

18 Q Now, the information that you have put in your report
19 which is Exhibit 1 is true; is that correct?

20 A Correct.

21 Q Did you ever have any contact with Andy Nordin or anybody
22 who is a computer tech in the library?

23 A No.

24 Q A few general background questions. Have you ever been a
25 defendant in another lawsuit --

1 A Yes.

2 Q -- that relates to your job responsibilities at Clinton
3 Township.

4 A Yes.

5 Q Can you give us an estimate of how many times that's
6 happened?

7 A Twice.

8 Q One of them apparently was a shooting situation?

9 A That's correct.

10 Q What was the other one?

11 A It was an accident that I had -- accident report that I
12 had taken, and one of the drivers was suing the other
13 driver.

14 Q And they named you as a party to that lawsuit?

15 A I was just named as a witness.

16 Q Okay.

17 A Not a defendant.

18 Q And did you do a deposition in either of those two cases?

19 A Yes, I did.

20 Q In both of them?

21 A Yes.

22 Q Have you done any other depositions other than those two
23 related to your job responsibilities at Clinton Township?

24 A No.

25 Q Does Clinton Township have a citizen complaint process?

1 A Yes, they do.

2 Q Have you ever been the subject of any citizen complaint to
3 your knowledge?

4 A Yes.

5 Q Can you give me an estimate of how many times?

6 A In the course of my duty, not many. Maybe two.

7 Q And do you know how those complaints were resolved?

8 A On both of mine, I was found that there was no complaint
9 warranted.

10 Q And while you have been an officer at Clinton Township,
11 have you ever been disciplined?

12 A No.

13 MR. KUHN: Just a second.

14 (Discussion off the record.)

15 BY MR. KUHN:

16 Q Just so that I'm clear, you have never had, other than
17 talking with your attorneys, never had any other
18 discussions with anyone concerning this case?

19 A No.

20 MR. KUHN: I don't have any further questions.

21 Thank you.

22 (Deposition concluded at 12:45 p.m.)

23 - - -

24

25

