

January 9, 2013

DAVID BEHAN- 1

Court File No. 81654/12

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N :

YASMIN NAHKUDA

Plaintiff,

- and -

STORY BOOK FARM PRIMATE SANCTUARY and SHERRI DELANEY

Defendants.

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This is the Examination for Discovery of DAVID BEHAN, a  
Third Party herein, taken at the offices of Network  
North Court Reporting, 25 Sheppard Avenue West, Suite  
1210, North York, Ontario, on Wednesday, January 9,  
2013.  
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A P P E A R A N C E S :

Theodore P. Charney	for the Plaintiff
Kevin D. Toyne	for the Defendants
Kirsten Franz	for the Third Parties
Yasmin Nakhuda	Observing
Samar Katoch	Observing

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1 David Behan; SWORN

2 EXAMINATION BY MR. TOYNE:

3 --upon commencing at 1:08 p.m.

4 1 Q. Good afternoon, sir. Could you please  
5 state your full name for the record?

6 A. David Behan, B-e-h-a-n.

7 2 Q. And you're here pursuant to a summons to  
8 witness that was served on you this past Saturday in a  
9 legal proceeding between Yasmin Nakhuda, Story Book Farm  
10 Primate Sanctuary and Sherri Delaney. Is that correct?

11 A. That's correct.

12 3 Q. I understand you are an employee of  
13 Toronto Animal Services?

14 A. That's correct.

15 MR. CHARNEY: Has he been sworn?

16 BY MR. TOYNE:

17 4 Q. Yes. He has been sworn or have you been  
18 affirmed? I can't remember

19 A. I was sworn.

20 5 Q. So, sir, before I ask you some questions  
21 about the specific events that are at issue in this  
22 proceeding that relate to you I'm going to spend a  
23 couple of minutes just stepping back and asking some  
24 questions about your background, your training, things  
25 like that.

1 A. Okay.

2 6 Q. Can you tell me a little bit about  
3 yourself? Things like your education, where you might  
4 have worked before you joined Toronto Animal Services?

5 A. Done many jobs in the private sector and  
6 before I joined Animal Services.

7 7 Q. When did you join Toronto Animal Services?

8 A. Back, I believe, in 1987.

9 8 Q. Can you give me a sense as to what your  
10 educational background is and some examples of where you  
11 worked before you joined TAS?

12 A. Yes. I have Grade 12, basically. What  
13 was the question? The second part? Where did I work  
14 before?

15 9 Q. Where were you working before you joined  
16 TAS?

17 A. Many jobs. I worked for the breweries. I  
18 worked for high steel. I worked a whole array of jobs.  
19 Different jobs.

20 10 Q. Before joining TAS had you had a municipal  
21 or bylaw enforcement role before that?

22 A. No.

23 11 Q. You joined TAS in 1987?

24 A. Uh-huh.

25 12 Q. Was there any coursework or training you

1 were required to take before you joined TAS?

2 A. Actually, I was taking it while I was  
3 employed with TAS.

4 13 Q. And sorry for being dense. You joined TAS  
5 and you started some sort of coursework or training?

6 A. Yes.

7 14 Q. Can you tell me what that entailed?

8 A. I went to the police college for a  
9 municipal bylaw enforcement course.

10 15 Q. Was there any other training you received?

11 A. Yes. Microbiology course type of disease  
12 infection control through Saint Lawrence College in  
13 Kingston.

14 16 Q. How long was was municipal bylaw course at  
15 police college back in '87?

16 A. Seven days.

17 17 Q. Seven days?

18 A. Yeah.

19 18 Q. Can you tell me a little bit about the  
20 things that you were taught or learned when you took  
21 that course?

22 A. Rules of evidence, body language, reading  
23 body language, court procedures and investigation.

24 19 Q. Did you learn, for example, the difference  
25 between a municipal bylaw, a provincial statute, a

1 federal statute, anything like that?

2 A. Yes. I was there on a municipal bylaw  
3 course so yes I did. I actually understood the court  
4 proceedings. What was a magistrate, what was a judge,  
5 what was a Your Honour, what was Your Worship, how the  
6 court proceedings went and how you dealt with each  
7 individual in those courtrooms.

8 20 Q. Okay. So that was a seven-day course.  
9 Have you received any other similar types of training  
10 since you've been with Toronto Animal Services over the  
11 past 25 years? Sorry. My math skills are quite poor.

12 A. That's okay. With the city 25 years.  
13 Basically a continuation of animal handling, different  
14 things that we deal with. Venomous snakes, guard dog  
15 attack dog type of courses. How to handle that type of  
16 thing. Some of the courses were put on by the zoo. The  
17 venomous snake that type of thing.

18 21 Q. You said something a moment ago that I'd  
19 like to go back to. You said, "with the city for  
20 20-something years"?

21 A. 28 years.

22 22 Q. 28 years. So you were with the city in a  
23 different capacity before joining TAS?

24 A. Yes. For a few years, yes.

25 23 Q. Can you tell me about that?

1           A. Yeah. I was everything from an equipment  
2 operator to a construction worker to --

3           24           Q. Okay but you weren't in a bylaw  
4 enforcement capacity?

5           A. No. I was not.

6           25           Q. Any of the training that you've received  
7 since you joined TAS other than going to the police  
8 college, has any of it related to municipal bylaw  
9 enforcement?

10           A. Most of it is related to municipal bylaw  
11 enforcement.

12           26           Q. So tell me what your specific job title or  
13 description is?

14           A. I'm an Animal Control Officer One.

15           27           Q. Animal Control Officer One?

16           A. Yes.

17           28           Q. What does the one mean?

18           A. The one means basically that you're  
19 classified as a senior officer.

20           29           Q. How many many other Animal Control Officer  
21 Ones are there with TAS?

22           A. In the field?

23           30           Q. Sure.

24           A. I would say --

25           MS. FRANZ: Do you know for sure, Dave? If



1 you don't we can just --

2 THE DEPONENT: Not exactly for sure of the  
3 numbers.

4 BY MR. TOYNE:

5 31 Q. I'm not sure anything turns on it. Can  
6 you tell me what your job duties are?

7 A. Basically to distribute work to other  
8 Animal Control Officers Levels Two.

9 32 Q. Is there anything else?

10 A. Yes. Assist Animal Control Officer twos  
11 by way of our experience.

12 33 Q. Right.

13 A. And work hand-in-hand with supervisors.

14 34 Q. So part of your job then, if I'm  
15 understanding this correctly, is administrative or  
16 supervisory? Is that a fair description?

17 A. Yes. There is a mix.

18 35 Q. So it's fair to say that some of what you  
19 do is more management supervision and some of what you  
20 do is actual work going out into the field?

21 A. Depending on our staffing levels.

22 Exactly.

23 36 Q. Are you assigned to a particular, I think  
24 the phrase is, animal care centre? Is that the right  
25 phrase?

1 A. Yes. I am.

2 37 Q. And that's the one that's somewhere on  
3 Sheppard?

4 A. Yes. It is.

5 38 Q. And that's the one on 1300?

6 A. That's correct. Sheppard Avenue West

7 39 Q. How many other Animal Control Officers  
8 work at that location?

9 A. Depending on what time of the day it is.

10 40 Q. So it varies?

11 A. It varies.

12 41 Q. If I use the phrase "prohibited animal" do  
13 you know what I'm talking about?

14 A. Yes.

15 42 Q. Can you tell me what prohibited animal  
16 means in your experience?

17 A. Animals that are not allowed to be in the  
18 City of Toronto as per its bylaw, section 349.

19 43 Q. And you're familiar with some of the types  
20 of animals that would be considered prohibited animals  
21 under the bylaw?

22 A. Yes.

23 44 Q. You'd agree with me that a non-human  
24 primate like a monkey would be a prohibited animal?

25 A. Yes.

1 45 Q. Now, leave aside any interactions you may  
2 have had with the monkey named Darwin. We'll get to that  
3 in a couple of minutes. Have you had any other  
4 experiences with prohibited animals while you've been at  
5 Toronto Animal Services?

6 A. Yes. I have.

7 46 Q. Is it a frequent or rare occurrence?

8 A. It's a rare occurrence. I could qualify  
9 it as that.

10 47 Q. How often, in your experience, does a  
11 prohibited animal come up? A prohibited animal issue so  
12 to speak?

13 A. It would only come up if it was directly  
14 in my section I was dealing with that day. I mean, I  
15 might hear about it from other areas in the city. How  
16 often?

17 48 Q. Yes.

18 A. I can't exactly say exactly how often it  
19 would be but as we stated before it's not an everyday  
20 occurrence.

21 49 Q. Do you have any sense how many prohibited  
22 animals TAS deals with on a yearly basis?

23 A. No. I don't have those numbers in front  
24 of me, no.

25 50 Q. Does TAS have any specific policies or

1 procedures for dealing with prohibited animals that  
2 you're aware of?

3 A. Yes. To a certain degree, yes.

4 51 Q. Are they formal and written or are they  
5 informal and arise, you know, out of officers'  
6 experiences?

7 A. Officers' experiences. Yeah.

8 52 Q. Can you tell me what those practices would  
9 be?

10 A. Well, where a prohibited animal is picked  
11 up, a lot of the time it's because people cannot care  
12 for that animal. Like for, say, I mean they should not  
13 be in a city environment.

14 53 Q. So are you saying it's the type of  
15 situation either where somebody calls in and says, "I  
16 can't care for my pet tiger anymore" or somebody  
17 complains about a pet tiger or --

18 A. Usually complaint driven.

19 54 Q. Are there any informal practices or  
20 procedures that relate to picking up a prohibited animal  
21 that may be on the loose that you're aware of?

22 A. Yes. We would pick the animal up because  
23 it falls under the category of prohibited animal and  
24 impound the animal.

25 55 Q. Once a prohibited animal is in the

1 possession of Toronto Animal Services would it be  
2 treated any differently than a dog or a cat that might  
3 be in Toronto Animal Services custody or possession?

4 A. Yes. It is treated a little differently,  
5 yeah. Depending on what the species is of the dog. Not  
6 the cat so much but the dog.

7 56 Q. How are prohibited animals treated  
8 differently once they're at TAS as opposed to say,  
9 domestic animals like dogs and cats?

10 ~~A. They would be put in a protective custody~~  
11 type of environment.

12 57 Q. What do you mean by "protective custody"?

13 ~~A. They are protected by the City of Toronto~~  
14 Animal Services.

15 58 Q. So do you mean they are behind locked  
16 doors? Are they put in cages? That sort of thing? Is  
17 that what you mean?

18 ~~A. Yes.~~

19 59 Q. In your experience, and you may not know  
20 this, I don't know. So either in your experience or  
21 knowledge do you know what happens to prohibited animals  
22 once the Toronto Animal Services has them in their  
23 possession? Again, just in general terms.

24 A. My experience is that we sometimes try to  
25 get them out to a -- depending on what the species is we

1 will try to get them out to an expert who can house them  
2 properly and care for them properly.

3 60 Q. Are there any other informal practices or  
4 procedures with respect to prohibited animals that we  
5 haven't talked about yet?

6 A. Not that I can think of. No.

7 61 Q. Okay. Now, I understand you were working  
8 on Sunday, December 9th, 2012. Is that correct?

9 A. Yes.

10 62 Q. I take it you work in shifts?

11 A. Yes.

12 63 Q. What time did your shift start that day?

13 A. 6:30 a.m.

14 64 Q. And what time did it end?

15 A. 6:30 p.m. 12 hours.

16 65 Q. Do you guys typically do half-day shifts?

17 A. No. It's a full, 12-hour shift. 6:30 a.m.  
18 to 6:30 p.m.

19 66 Q. So you typically do 12-hour shifts?

20 A. Yes.

21 67 Q. I understand at some point that day you  
22 responded to a call of some sort at an Ikea store in  
23 North York. Is that correct?

24 A. I was contacted by an officer regarding a  
25 call at that particular location.

1 68 Q. So you didn't receive a call from somebody  
2 at Ikea?

3 A. No. I did not. No.

4 69 Q. Do you know how Toronto Animal Services  
5 found out that there was an animal issue at that Ikea?

6 A. Yes. I believe a person at Ikea security  
7 called our dispatch services and our dispatch service,  
8 which it goes through 311, comes back to our dispatch  
9 and then a call is dispatched out to the officer that is  
10 covering that area.

11 70 Q. So somehow dispatch got in touch with you?

12 A. No. The officer that was dispatched to  
13 the call, specifically.

14 71 Q. Who was that?

15 A. Officer Fiorillo.

16 MR. CHARNEY: Can you spell that for the  
17 record, please?

18 THE DEPONENT: F-i-o-r-i-l-l-o.

19 BY MR. TOYNE:

20 72 Q. All right. So Mr. Fiorillo is dispatched  
21 to Ikea?

22 A. Yes.

23 73 Q. Were you involved in sending him there?  
24 Making the decision who would go to Ikea?

25 A. No.

1 74 Q. Did you go to Ikea as well?

2 A. No. I did not.

3 75 Q. Did any other Toronto Animal Services  
4 Officers go to Ikea that day? Sorry. In response to  
5 that call. Do you know?

6 A. Yes. I believe a technician attended as  
7 well. Animal Health Technician.

8 76 Q. An Animal Health Technician. Just very  
9 briefly and generally what is does an Animal Health  
10 Technician do?

11 A. An Animal Health Technician is somebody  
12 who has gone to school to care for animals in general.  
13 It's a licence.

14 77 Q. What's the purpose behind sending someone  
15 like Officer Fiorillo and an Animal Health Technician?

16 A. Officer Fiorillo is not an Animal Health  
17 Technician and the health technician is.

18 78 Q. Right. But why would you need somebody  
19 with those skills to go out to a complaint about a  
20 monkey at an Ikea store?

21 A. Well, it's somebody who has had experience  
22 with monkeys or possibly just somebody who would know  
23 how to treat an animal like that.

24 79 Q. Is it standard practice for an Animal  
25 Control Officer like Mr. Fiorillo and an Animal Health



1 Technician to respond to a call like that?

2 A. They don't come up that often.

3 80 Q. So you weren't involved in what happened  
4 at the Ikea parking lot, correct?

5 A. No, sir. No.

6 81 Q. How did you first become aware that a  
7 monkey had been picked up at the Ikea?

8 A. I was called by Officer Fiorillo.

9 82 Q. Tell me about that?

10 A. He called me first and said he was  
11 responding to this call and after he picked up the  
12 monkey, he called me later and said that he had the  
13 monkey at the shelter and I attended the shelter at that  
14 time.

15 83 Q. Do you recall roughly what times those two  
16 calls took place?

17 A. One might have been 2:30 or three o'clock  
18 or something and one might have been four o'clock. I  
19 don't have total recollection.

20 84 Q. So midafternoon, though?

21 A. Yes.

22 85 Q. Now you said you attended the shelter. I  
23 take it you weren't actually at 1300 Sheppard when  
24 Officer Fiorillo showed up with Darwin?

25 A. No.

1 86 Q. Where were you?

2 A. I was on another call.

3 87 Q. Why would Officer Fiorillo have called  
4 you?

5 A. Basically to clear the situation with me.  
6 To make me aware of the situation that he had a primate  
7 animal.

8 88 Q. Would that be common for someone who  
9 responds to a prohibited animal call to let somebody, a  
10 more senior officer like yourself, know that they had  
11 done so?

12 A. Yes. When there is not a supervisor on  
13 shift, yes.

14 89 Q. Tell me about what happened after you  
15 arrived at 1300 Sheppard?

16 A. Staff there indicated to me that the owner  
17 was on their way to pick up the monkey.

18 90 Q. Okay?

19 A. And then I was taken to the area where  
20 they had the monkey caged and observed the monkey in the  
21 cage. Basically that was it.

22 91 Q. Did you have a chance to speak to Officer  
23 Fiorillo before Ms. Nakhuda showed up?

24 A. Yeah. Kind of, yes.

25 92 Q. What did you talk about? Do you recall?

1 A. Just basically how the call went.

2 93 Q. Do you recall anything specifically about  
3 what he told you?

4 A. Not specifically, no.

5 94 Q. A moment ago I used Ms. Nakhuda's name and  
6 she's present here today. When you say the owner of the  
7 monkey was coming to pick it up, that's who you're  
8 referring to, correct?

9 A. I believe but I was not involved in that  
10 phone call. It was received at our shelter.

11 95 Q. Of course but you subsequently interacted  
12 with Ms. Nakhuda, correct?

13 A. Yes. I did, yes.

14 96 Q. And there were other people involved  
15 during your interactions with Ms. Nakhuda. Is that  
16 correct?

17 A. Yes.

18 97 Q. That was Officer Fiorillo and Ms.  
19 Nakhuda's husband. Is that correct?

20 A. Yes.

21 98 Q. And he is also present here today?

22 A. Yes. He is.

23 99 Q. Do you recall approximately what time you  
24 dealt with them?

25 A. 4:30 approximately. Between four and

1 five, I think, somewhere.

2 100 Q. Can you tell me about your interactions  
3 with Ms. Nakhuda? Like, where did you first meet her?  
4 Where did you talk to her? What did you talk about? Can  
5 you just walk me through that?

6 A. Yeah. A little bit. Sure. Ms. Nakhuda  
7 showed at the Toronto Animal Shelter at 1300 Sheppard  
8 Avenue West and wanted to -- and seemed to me to be  
9 upset and wanted to get her monkey back. And at that  
10 time I didn't think the front counter was the  
11 appropriate place to be speaking about Ms. Nakhuda's  
12 animal, her private animal, so I asked if she minded  
13 coming with me to the lunchroom where we could speak,  
14 you know, more candidly.

15 101 Q. I take it that she and her husband  
16 accompanied you and Officer Fiorillo to the lunchroom?

17 A. That's correct.

18 102 Q. Can you tell me what happened once the  
19 four of you were in the lunchroom?

20 A. Yeah. Basically I spoke to Ms. Nakhuda  
21 regarding the monkey Darwin, explained to her it was a  
22 prohibited animal under our bylaw with the City of  
23 Toronto and in the meantime I was in touch with my  
24 supervisor to find out, you know, what direction, how we  
25 were going to go with this situation, basically, right?

1 I got a hold of the supervisor who was on call.

2 103 Q. When you say supervisor, there's a name I  
3 recall somewhere in the materials, Kim-something. Is  
4 that the supervisor's name or am I mistaken? Kim  
5 Smithers.

6 A. Kim Smithers is my immediate supervisor.  
7 She was given a heads up but she was not working that  
8 day. I was dealing with the supervisor that was working  
9 that day.

10 104 Q. Who was that?

11 ~~A. Carl Bandow.~~

12 105 Q. Carl?

13 A. Bandow.

14 106 Q. Do you know how to spell Carl's last name?

15 A. B-a-n-d-o-w. Just as it sounds.

16 107 Q. So is it fair to say that while you're  
17 interacting with Ms. Nakhuda and her husband ~~you got up~~  
18 to make a phone call to Mr. Bandow?

19 ~~A. Yes.~~

20 108 Q. Was it just one phone call?

21 A. No. There was a couple of phone calls  
22 there. Yeah.

23 109 Q. Can you walk me through what you discussed  
24 with Ms. Nakhuda and perhaps her husband up until the  
25 first time you called Mr. Bandow? Just so we can do

1 this, sort of, chronologically.

2 A. Yeah. Basically, I spoke with Mr. Bandow,  
3 my supervisor Carl, and Carl asked me if there was any  
4 chance that "you could ask Ms. Nakhuda to sign the  
5 animal over to us for -- to Toronto Animal Services."

6 110 Q. Now, the phone call that you made to Carl,  
7 that phone call was made after you had already started  
8 speaking to Ms. Nakhuda. Is that correct or was it  
9 before you started talking to her?

10 A. No. We had been in contact with Carl prior  
11 to that and then Carl had called me back while I was  
12 starting to speak with Ms. Nakhuda and that is how that  
13 went.

14 111 Q. The phone call that you just told us about  
15 where Carl suggested asking her to sign the animal over,  
16 that took place before you started speaking to Ms.  
17 Nakhuda. Is that correct?

18 A. No. Around the same time.

19 112 Q. Okay. So about the same time?

20 A. Yeah. I had to get up from speaking with  
21 Ms. Nakhuda and speak to Carl, actually, so we had  
22 started a conversation.

23 113 Q. What do you recall Ms. Nakhuda telling you  
24 at the start of your discussion?

25 A. I don't recall the exact words but she was

1 very compassionate about her monkey, about Darwin as she  
2 talked about. She explained to me that this animal was  
3 like her baby.

4 114 Q. Right. And I realize you don't necessarily  
5 recall exact words. Do you recall anything else in  
6 general terms that she may have said to you at that  
7 point?

8 A. Yeah. I was concerned about the health  
9 and well-being of the monkey at the time because of what  
10 Ms. Nakhuda was saying to me. How close of a bond that  
11 they had formed.

12 115 Q. So why would that give rise to concerns on  
13 your part?

14 A. The health of the animal, stress and stuff  
15 like that. You know, separation that type of thing.

16 116 Q. Then at some point during the discussion  
17 you spoke to Carl and he was the one who suggested  
18 asking Ms. Nakhuda to sign the monkey over to Toronto  
19 Animal Services?

20 A. That's correct.

21 117 Q. I take it then that you asked Ms. Nakhuda  
22 that question once you got off the phone with Carl?

23 A. Yes.

24 118 Q. What was Ms. Nakhuda's response?

25 A. Both her and her husband -- I'm sorry. I

1 don't remember your name right now, sir, were trying to  
2 negotiate some sort of arrangement with me at that time.

3 119 Q. Can you tell me about that?

4 A. So that they could hold onto the animal at  
5 home until we could find a sanctuary for it. Around that  
6 time. Yeah.

7 120 Q. So --

8 MR. KATOCH: You sworn an oath.

9 MS. NAKHUDA: Samar, please.

10 THE DEPONENT: That's right.

11 MR. CHARNEY: Sorry about that.

12 THE DEPONENT: That's okay. That's fine.

13 BY MR. TOYNE:

14 121 Q. So just before that I think you were  
15 saying there was some sort of a discussion you were  
16 having with Ms. Nakhuda and her husband about -- and I  
17 didn't quite catch -- a temporary arrangement where they  
18 would keep Darwin until someone could get him to a  
19 sanctuary? Is that what you were saying?

20 A. ~~Something along that lines. And I'm not~~  
21 ~~sure exactly if that took place prior to signing it over~~  
22 ~~or after. I'm not sure exactly.~~

23 122 Q. But at some point, and I'm sorry to cut  
24 you off, but at some point during the discussions with  
25 Ms. Nakhuda and her husband there was a discussion about



1 this arrangement where they would keep him for a short  
2 period of time and then he would go to a sanctuary. That  
3 is your evidence?

4 A. Yes.

5 123 Q. That arrangement was raised by Ms. Nakhuda  
6 or her husband. Is that correct?

7 A. I believe it was her husband. Ms. Nakhuda  
8 was very upset that day.

9 124 Q. Okay. What other discussions did you have  
10 with Ms. Nakhuda or her husband before the form was  
11 signed? Do you recall?

12 A. No. I -- no.

13 125 Q. At some point I take it you had a copy of  
14 the surrender form in front of you and you filled it  
15 out. Is that fair to say?

16 A. Yes.

17 126 Q. This is a document, I'm going to hand it  
18 over. It's a document that I believe is Exhibit B to  
19 Ms. Nakhuda's affidavit and it's one of the documents  
20 that Ms. Franz e-mailed over to us in response to the  
21 summonses. We'll mark it as an exhibit in a second but  
22 just take a look at it and I've got a couple of  
23 questions for you about it.

24 A. Uh-huh. Yeah.

25 127 Q. You're familiar with this document?

1 A. Yes. I am.

2 128 Q. And is that your handwriting on the  
3 document?

4 A. Yes. It is.

5 129 Q. Can you tell me what this document is?

6 A. It's an impound document which allows  
7 Animal Services with signature, with proper signature --  
8 there's several applications for this particular  
9 document from adoption to redemption to pick up of the  
10 animal with prices and structures involved.

11 130 Q. I don't think we need to get into the  
12 other type of uses but this type of form would be used  
13 if somebody who has an animal is surrendering it to  
14 Animal Services?

15 A. That's correct.

16 131 Q. So all of the writing on this document, I  
17 take it, other than the signature is your handwriting?

18 A. Yes. It is.

19 132 Q. The signature on the bottom, whose  
20 signature is that?

21 A. Ms. Nakhuda's.

22 133 Q. And you saw her sign that document?

23 A. Yes. I did.

24 134 Q. And before she signed it, did you have any  
25 discussions with her about it?

1           A. ~~Basically I told her that she was owning a~~  
2 ~~prohibited animal and I wasn't sure what the~~  
3 ~~ramifications of that were outside the City of Toronto.~~  
4 ~~That was it.~~

5           135        Q. Did you give her an opportunity to review  
6 the document before she signed it?

7           A. It was in front of her for quite some  
8 time. Well, I don't know. ~~Maybe at least ten, 15, 20~~  
9 ~~minutes. She was quite upset so I just gave her time,~~  
10 ~~gave her time to speak with her husband and everything~~  
11 ~~and, kind of, at that time I didn't want to stand over~~  
12 ~~top of her and wait for her to sign a document.~~

13           136        Q. So for about, a period of time somewhere  
14 between ten and 20 minutes, Ms. Nakhuda had this  
15 document in front of her. That's your evidence?

16           A. Yes.

17           137        Q. Did you observe Ms. Nakhuda reading the  
18 document?

19           A. Going over it briefly, yeah.

20           138        Q. Did you observe Ms. Nakhuda speak to her  
21 husband about the contents of the document?

22           A. Yeah. I stepped away and allowed them to  
23 have some time to talk about it. Yeah.

24           139        Q. Did you know if Ms. Nakhuda made any  
25 telephone calls to talk to anyone else with respect to

1 this document?

2 A. There was one phone call made. I wasn't  
3 privileged to it but she stepped out of the room and  
4 made a phone call.

5 140 Q. From the time you handed Ms. Nakhuda this  
6 document to the time she signed it, did she say anything  
7 to you about signing the document?

8 A. No.

9 141 Q. As the question came out of my mouth I  
10 realized I wasn't really too sure what I was asking. So  
11 you give Ms. Nakhuda the document. Does she ask you any  
12 questions about what the document means?

13 A. No because I had totally explained to her  
14 what that meant.

15 142 Q. You had already explained to her what the  
16 document meant?

17 A. Yes. Absolutely. That she would be  
18 signing this paper and signing her animal over to  
19 Toronto Animal Services.

20 143 Q. So you had explained to her what you  
21 believe the legal significance of the document was?

22 A. Absolutely. Yes.

23 144 Q. Did she have any questions for you after  
24 you gave her that explanation?

25 A. Like I said, I'm not sure whether that's

1 where they were trying to -- Ms. Nakhuda was trying to  
2 be able to hang on to the animal through until it went  
3 to a sanctuary or something along them lines. That was  
4 my recollection of that discussion.

5 145 Q. So what I was wondering is, you know, for  
6 example, "Wait. I don't understand what the document  
7 means." You know, words to that affect.

8 A. No. No.

9 146 Q. Did her husband say anything to that  
10 effect to your recollection?

11 A. No.

12 147 Q. Based on your interactions with Ms.  
13 Nakhuda, do you believe that she understood what this  
14 document meant when she signed it?

15 A. Yes. I do.

16 148 Q. What took place after the document was  
17 signed?

18 A. Our staff, our technical staff, that takes  
19 care of the animals at the shelter asked Ms. Nakhuda, if  
20 she could come to the back of that shelter and please  
21 remove the diaper from the animal because the animal had  
22 a diaper on. And she agreed to do that and she did that  
23 and at that time she did it.

24 149 Q. Did you accompany her back to do that?

25 A. Yes. I did.

1 150 Q. Were there any other discussions between  
2 you and Ms. Nakhuda while that was going on?

3 A. Yes. I asked her, I said, "I appreciate  
4 you're very emotional today and I understand what's  
5 happening here today, Ms. Nakhuda. I don't want any  
6 incidences taking place in the shelter because I'm going  
7 to have staff back there and I know people are  
8 emotional." And you know and I was concerned but she  
9 agreed and that was okay.

10 151 Q. When you say "incidences" what  
11 specifically are you talking about?

12 A. People trying to take their animals from  
13 us, and like, you know, I explained to her I don't think  
14 she was that type of person or anything but that I just  
15 had to qualify that we would, if she was acting up and  
16 that, we would have had to call police.

17 152 Q. So I take it that you and Ms. Nakhuda and  
18 her husband and Mr. Fiorillo went back to where Darwin  
19 was?

20 A. And some other technicians that take care  
21 of the animals.

22 153 Q. And there was some interaction between Ms.  
23 Nakhuda and her husband and Darwin?

24 A. Yes.

25 154 Q. Do you recall, roughly, how long that

1 took?

2 A. It could have been at least -- no. Not  
3 exactly. 20 minutes, maybe. Half an hour.

4 155 Q. So 20 minutes, maybe half an hour she's in  
5 the back somewhere in the shelter interacting with  
6 Darwin?

7 A. Yes.

8 156 Q. During that 20-30 minute period of time,  
9 do you have any recollection of anything that she may  
10 have said to you or any of the other employees of  
11 Toronto Animal Services?

12 A. They were concerned about what Darwin ate.

13 157 Q. Who?

14 A. Our staff. And they tried to get a sense  
15 of what would make Darwin comfortable while he was in  
16 our presence, right?

17 158 Q. So does he like bananas? Questions like  
18 that?

19 A. Yeah. What does he normally eat? That  
20 type of thing so as to not throw him off his diet I  
21 would assume.

22 159 Q. Do you recall if any questions were asked  
23 about veterinary care provided to Darwin?

24 A. I asked Ms. Nakhuda is she could produce  
25 shots or anything like that that she had received from a

1           veterinarian and for the monkey, like, that stated the  
2           monkey had had vaccines.

3           160           Q.   And what was her response to that  
4           question?

5           A.   Don't remember exactly but she could not  
6           produce them.

7           161           Q.   Were there any other requests for  
8           information or documentation that you made? Like, for  
9           example, did you ask her for any other paperwork with  
10          respect to Darwin?

11          A.   No.

12          162           Q.   Do you recall anything else about what  
13          happened during that 20 or 30 minute period while Ms.  
14          Nakhuda and her husband were interacting with Darwin?

15          A.   No. Just that Darwin seemed to be a  
16          little upset.

17          163           Q.   And what happened after they finished  
18          dealing with Darwin?

19          A.   They left our shelter. We housed the  
20          animal and they left our shelter.

21          164           Q.   My apologies. I forgot to mark that as an  
22          exhibit. Why don't we mark this as Exhibit A to Mr.  
23          Behan's examination?

24                    Now, I take it at some point during your  
25                    interactions with Ms. Nakhuda, you provided her with a



1 copy of a document that I'm about to show you now. Is  
2 that correct? Sorry for making you put your glasses back  
3 on.

4 EXHIBIT A: Surrender/Impound Form

5 A. No. That's fine. Yes. I did.

6 165 Q. Can you tell me what the document is I  
7 just handed to you?

8 A. It's the part one offence notice.

9 166 Q. What's that?

10 A. It's a ticket. Basically a ticket for a  
11 municipal infraction taking place within the City of  
12 Toronto.

13 167 Q. And is that your handwriting on the  
14 document?

15 A. Yes. It is.

16 168 Q. And there's a signature about 25 percent  
17 of the way up from the bottom of the ticket. Is that  
18 your signature? So right above the fine amounts.

19 A. Yeah. That is my signature there. Yeah. I  
20 thought that's what you were talking about. There's  
21 only one signature on this document.

22 169 Q. Yes. So that is your signature?

23 A. Yes.

24 170 Q. So if we can mark that as Exhibit B to Mr.  
25 Behan's examination.

1                   You gave Ms. Nakhuda a copy of that ticket?

2                   EXHIBIT B: Municipal Infraction Ticket

3                   A. Absolutely. Yeah.

4       171           Q. And did you explain to her what the ticket  
5                   was for?

6                   A. Yes.

7       172           Q. And did she have any questions for you  
8                   about why she was getting a ticket?

9                   A. No.

10      173           Q. Is that because, based on your  
11                   interactions with her, she already knew that it was  
12                   contrary to the bylaw to possess a monkey within city  
13                   limits?

14                   A. I'm not sure.

15      174           Q. At any point when you had discussions with  
16                   her, did she indicate that she knew that it was contrary  
17                   to the bylaw to possess Darwin?

18                   A. That didn't come up I don't think. I'm  
19                   not sure, though. Not sure.

20      175           Q. Do you know if that fine has been paid?

21                   A. No. I'm not aware.

22      176           Q. I should have asked this earlier. There's  
23                   an address in the middle of it. 15 Provost Drive.  
24                   That's the address for the Ikea store, correct?

25                   A. Yes.

1 177 Q. This ticket was issued to Ms. Nakhuda  
2 because on your information and belief she had  
3 contravened the applicable section of -- what is it?  
4 Bylaw 349?

5 A. Yeah. That's correct.

6 178 Q. Now, the next document I'm showing you, I  
7 understand is the back of your copy of the ticket. Is  
8 that correct?

9 A. Yeah. Just a quick notation.

10 179 Q. The handwriting on this document, which  
11 we'll mark as an exhibit momentarily, that's your  
12 handwriting?

13 A. Yes.

14 180 Q. And those are the notes you took following  
15 your interactions with Ms. Nakhuda or during?

16 A. Yes. No. Following. After the ticket was  
17 issued.

18 181 Q. By the time you made these notes Ms.  
19 Nakhuda has already left the facility?

20 A. That's correct.

21 182 Q. If you can just give those notes a quick  
22 read and I'm assuming that you did that before you came  
23 here today but just refresh your memory?

24 A. Yeah. Okay.

25 183 Q. Are there any corrections you would want

1 to make to those notes or are those notes accurate?

2 A. Well, to a degree. Toronto Animal picked  
3 up the animal I guess is about the only corrections and  
4 it was impounded by Toronto Animal Services. That would  
5 be about it.

6 184 Q. We'll mark this as the next exhibit. I'll  
7 hand over another document for you to take a look at.  
8 Can you tell me what this document is?

9 EXHIBIT C: Handwritten notes by David Behan  
10 on back of ticket

11 A. Yeah. It's called a certified controlled  
12 list.

13 185 Q. What's that?

14 A. It's a list that was generated by the  
15 courts to file and keep track of summonses that are  
16 issued. Part one tickets.

17 186 Q. Is this a document that you prepared?

18 A. Yes. It is.

19 187 Q. What's done with this document?

20 A. This document is basically handed in with  
21 the information part of the ticket for the City of  
22 Toronto to the courts for them to file it.

23 188 Q. So it's really just part of the  
24 administrative paperwork related to the ticket?

25 A. Yes. It is.

1 189 Q. So we'll mark that as Exhibit D. Now I  
2 understand at some point after Ms. Nakhuda left Toronto  
3 Animal Services Darwin was transported to a place called  
4 Story Book Farm Primate Sanctuary. Are you aware of  
5 that?

6 EXHIBIT D: Certified Control List

7 A. I was aware that it was transported to a  
8 sanctuary only. I was on days off.

9 190 Q. Do you have any knowledge, information or  
10 belief about how contact was made with the sanctuary or  
11 any discussions that may have happened between Animal  
12 Services and the sanctuary about Darwin?

13 A. No. I don't.

14 191 Q. You personally weren't involved in any of  
15 that?

16 A. Absolutely not. No.

17 192 Q. Do you know who was?

18 A. No. I don't.

19 MR. TOYNE: Is there some way, Counsel, that  
20 that's information that might be obtained?

21 MS. FRANZ: About who was involved in making  
22 contact with the sanctuary?

23 MR. TOYNE: Yes.

24 MS. FRANZ: I can answer that question for  
25 you.

1           --undertaking

2           MR. TOYNE: I guess whoever that person was if  
3 you could also ask them whether it was Toronto Animal  
4 Services that made the contact or whether it was the  
5 sanctuary that made the contact?

6           There is reference in Ms. Nakhuda's affidavit  
7 to the sanctuary applying for Darwin and in Ms.  
8 Delaney's affidavit she swears that Toronto Animal  
9 Services contacted her. So just to find out what Toronto  
10 Animal Services, what their perspective is on that  
11 question?

12           MS. FRANZ: I will.

13           --undertaking

14           BY MR. TOYNE:

15       193           Q. Thank you. Other than seeing Ms. Nakhuda  
16 here today, since December 9, 2012 have you had any  
17 other interactions with Ms. Nakhuda or her husband?

18           A. No. I have not.

19       194           Q. Are you aware of Ms. Nakhuda or her  
20 husband making contact with anyone else at Toronto  
21 Animal Services since that time?

22           A. No.

23       195           Q. I'm going to hand a copy of a motion  
24 record over to you that contains an affidavit that Ms.  
25 Nakhuda has sworn in this proceeding and I'm going to

1 ask you some questions, just take you through the  
2 paragraphs and ask you if you agree or disagree with  
3 things Ms. Nakhuda has said. Have you had a chance to  
4 review Ms. Nakhuda's affidavit before coming here today?

5 A. No. I have not.

6 196 Q. This may go a little slower than the first  
7 part so I apologize for that.

8 So the first paragraph I want to ask you  
9 questions about is paragraph eight. If you can just  
10 give that a quick read? Just so it's clear on the  
11 record the witness is taking a look at page three of Ms.  
12 Nakhuda's affidavit sworn December 13, 2012.

13 A. Yes. What about it?

14 197 Q. You'll see in the second sentence there,  
15 there is a reference to a receptionist and some other  
16 woman that Ms. Nakuda was unaware of. Do you know who  
17 that person was?

18 A. Not sure. That could have been several of  
19 our animal health technicians that were on staff that  
20 day.

21 198 Q. Flip over to paragraph nine. Give that a  
22 read.

23 A. Okay.

24 199 Q. The reference to the number of questions  
25 that you asked her about Darwin, do you recall what

1 questions you asked her? Is there anything else other  
2 than what we already talked about today?

3 A. No. No.

4 200 Q. Do you recall asking her to explain where  
5 she got Darwin and how he got loose at Ikea?

6 A. Yeah. I think I was directed to ask. The  
7 supervisor wanted to ask where she got Darwin. You're  
8 right. Yep.

9 201 Q. Do you recall what her answer was?

10 A. Yeah. She didn't know. Okay -- she  
11 didn't know. Every time she tried to call the individual  
12 the phone was changed or something was about the phone  
13 number and that was all and it was from Montreal.

14 202 Q. The next sentence. Ms. Nakhuda's evidence  
15 is that you asked her if she had papers for Darwin and  
16 she advised that she had none?

17 A. The vaccines which we spoke about.

18 203 Q. Okay. Then the final sentence in  
19 paragraph nine.

20 A. Yes.

21 204 Q. Ms. Nakhuda's evidence is that you told  
22 her she was not allowed to own Darwin because of the  
23 bylaw?

24 A. Was not allowed to -- yeah. Not sure.  
25 Not allowed to have Darwin I guess would be more an



1 accurate statement in the City of Toronto.

2 205 Q. And is that what you said to her?

3 A. It's possible. Yeah. While I was giving  
4 her a ticket. Yes.

5 206 Q. Do you recall whether you said, "You're  
6 not allowed to have Darwin" or "You're not allowed to  
7 possess Darwin" or "You're not allowed to own Darwin"?  
8 Do you remember which --

9 A. No. No. I don't remember the exact  
10 words.

11 207 Q. Paragraph ten. Sorry. There's a couple of  
12 --

13 A. It's no problem. Go ahead.

14 208 Q. Ms. Nakhuda swears that she asked to see  
15 Darwin and you said no?

16 A. Not at this time, I believe. Not at this  
17 time.

18 209 Q. Why did you say that?

19 A. I didn't want to get Ms. Nakhuda upset  
20 with the separation of her animal.

21 210 Q. In the next sentence Ms. Nakhuda swears  
22 that you told her the police were involved?

23 A. No. I did not.

24 211 Q. So you deny telling her the police were  
25 involved?

1 A. ~~Yeah. They weren't involved.~~

2 212 Q. And you deny telling her that?

3 A. ~~Yes.~~

4 213 Q. Did you say that she would not be able to  
5 see Darwin at all?

6 A. Absolutely not. I think the statement  
7 which I made to her exactly about that was the City of  
8 Toronto was very transparent about this and "If there is  
9 a possibility that we can let you go and visit Darwin at  
10 the sanctuary we will but we don't even know where the  
11 monkey's going at this time." That's exactly -- you  
12 jogged my memory.

13 214 Q. The next paragraph, paragraph 11. It's a  
14 little bit longer than paragraph ten.

15 A. Okay.

16 215 Q. So the end of the second line and into the  
17 third line Ms. Nakhuda's evidence is that you said that  
18 you were prepared to drop the criminal charges but that  
19 she needed to sign a transfer of responsibility to  
20 Animal Services. Did you say that to her?

21 A. ~~No. I did not. No.~~

22 216 Q. Did you mention criminal charges at any  
23 point during your discussion with Ms. Nakhuda?

24 A. ~~I just -- basically I -- no.~~

25 217 Q. Did you tell her that she had to sign the

1 form that's been marked as Exhibit A?

2 A. No.

3 218 Q. What would have happened or maybe a better  
4 way to put it is: What would you have done if she hadn't  
5 signed the form?

6 MS. FRANZ: Hang on a second. I don't think  
7 he's going to answer a hypothetical question. She  
8 signed the form so I don't think that's a fair question.

9 --refusal

10 BY MR. TOYNE:

11 219 Q. Okay. Just so it's clear because I got  
12 distracted when I saw your counsel start to move, you  
13 did say you didn't tell her she had to sign the form?

14 ~~A. No.~~

15 220 Q. So it was at her option?

16 ~~A. Absolutely.~~

17 221 Q. The last sentence of paragraph 11. Ms.  
18 Nakhuda swears that you told her that until all the  
19 testing was done the animal could not be seen but if she  
20 signed the transfer of responsibility to Animal Services  
21 she would be allowed to see Darwin one more time. Did  
22 you say that to her?

23 A. Where would -- no because I wouldn't know  
24 where we would do any testing on the monkey. I didn't  
25 even know where we were going to house the monkey.

1       222           Q. Okay. So paragraph 12, I think we already  
2 covered that. You had said that you saw Ms. Nakhuda on  
3 the telephone but you don't know who she called and you  
4 don't know what was said?

5                   A. No. No.

6       223           Q. And she didn't tell you what was said  
7 during that phone call?

8                   A. No. No.

9       224           Q. Was that a phone call that was made on a  
10 Toronto Animal Services phone?

11                   A. No. A private phone.

12       225           Q. So a cell phone or Blackberry?

13                   A. Whatever.

14       226           Q. So paragraph 13. You can read that.

15                   A. Yeah.

16       227           Q. We've gone over this to some extent but I  
17 just want to close the loop.

18                   A. Sure.

19       228           Q. The second sentence. Ms. Nakhuda sets out  
20 what she says was her interpretation of what Exhibit A  
21 meant and earlier I had asked you if you thought she  
22 understood what your explanation of the consequence of  
23 the form was. Based on your interactions with Ms.  
24 Nakhuda do you believe that she interpreted the form in  
25 the manner that's set out in paragraph 13 of her

1 affidavit?

2 A. I believe she did. Yes.

3 229 Q. What do you mean by that?

4 A. Well, ask the question again.

5 230 Q. Sorry. In paragraph 13 Ms. Nakhuda is  
6 saying she she thought that she was giving the animal to  
7 Toronto Animal Services for testing and that she would  
8 eventually get the animal back. That's what she thought  
9 the form meant. Do you believe that that's the case?

10 A. No. I do not. I apologize for that.

11 231 Q. That's quite okay. It happens to all of  
12 us.

13 MS. FRANZ: Sorry. Can you switch it off or  
14 silence it?

15 THE DEPONENT: Yes.

16 MS. FRANZ: You did?

17 THE DEPONENT: Okay.

18 BY MR. TOYNE:

19 232 Q. All right. Paragraph 14 of Ms. Nakhuda's  
20 affidavit. In the third sentence she says that you told  
21 her that if she signed the transfer she could see  
22 Darwin. Did you say that to her?

23 ~~A. No. No.~~

24 233 Q. There is reference in the next sentence to  
25 you suggesting she call Kim Smithers?

1 A. On Monday morning. Yes.

2 234 Q. Why would you tell her that she could or  
3 should call Ms. Smithers?

4 A. Ms. Smithers is my direct boss who handles  
5 basically anything to do with bylaws and mobile  
6 enforcement or mobile response.

7 235 Q. So why would Ms. Nakhuda be calling? Why  
8 would you tell her to do that?

9 A. Because Ms. Smithers would directly help  
10 Ms. Nakhuda if she possibly could. Give her  
11 information, that type of thing.

12 236 Q. Do you know if Ms. Nakhuda got in touch  
13 with Ms. Smithers?

14 A. No. I don't know.

15 237 Q. Is Ms. Smithers still employed by TAS?

16 MS. FRANZ: Yes.

17 THE DEPONENT: Yes.

18 MR. TOYNE: Would you be able to ask Ms.  
19 Smithers if Ms. Nakhuda got in touch with her and if so  
20 what transpired after the fact?

21 MS. FRANZ: Yes.

22 --undertaking

23 BY MR. TOYNE:

24 238 Q. So the second last sentence of paragraph  
25 14, Ms. Nakhuda swears that you suggested that she sign

1 the transfer of responsibility form, that you pushed it  
2 towards her and then you stood up to leave. Do you  
3 recall that taking place?

4 A. There was a period of time, this is what I  
5 recall, there was a period of time that the document was  
6 put there on the table and that was the document she had  
7 to sign if she was signing it over to the City of  
8 Toronto and I explained to her if her and her husband,  
9 if they needed time and basically then I went out. I  
10 don't know if I spoke to Carl again or not. I'm not  
11 sure.

12 239 Q. So just to jump back very briefly, I'd  
13 asked you a question about what would have happened if  
14 Ms. Nakhuda didn't sign the form and your counsel  
15 objected to that so I'll see if I can get part of the  
16 way there with a slightly different question. Did you  
17 tell Ms. Nakhuda what would have happened if she didn't  
18 sign the form? Was there a discussion about that?

19 A. I believe at that time she knew she wasn't  
20 going to get the monkey back that day, that's for sure.  
21 That's all I can attest to.

22 240 Q. Paragraph 16. Give that whole paragraph a  
23 read. I've got a few questions about it and then I think  
24 I'm almost done.

25 A. Okay.

1           241           Q. So in the middle of the paragraph Ms.  
2 Nakhuda swears that you knew that Darwin had never been  
3 in distress and had never been abused. Do you have any  
4 such knowledge? Do you have any idea?

5           A. No. I don't. First time we met. First  
6 time I met the monkey that day.

7           242           Q. A couple of lines down, Ms. Nakhuda swears  
8 that you threatened her so she would sign over ownership  
9 of Darwin. Did you threaten Ms. Nakhuda at any time  
10 during your interactions with her?

11           A. No. I did not.

12           243           Q. The next sentence, Ms. Nakhuda swears that  
13 you basically tricked her into signing over ownership  
14 through threats and duress. Do you agree or disagree  
15 with that statement?

16           A. I disagree.

17           244           Q. Now paragraph 17, there is some  
18 information taken off of Toronto Animal Services'  
19 website. In paragraph 18 Ms. Nakhuda opines that the  
20 surrender was contrary to what's on the website and then  
21 she says, the last two sentences, that it was not a  
22 voluntary surrender and it was forced on her by you.  
23 Based on your interactions with Ms. Nakhuda do you  
24 believe it was a voluntary surrender?

25           A. Yes. It was.



1           245           Q. And I take it you disagree with her  
2           statement that it was forced on her by you?

3           A. Yes. I do.

4           246           Q. In your experience, the other things that  
5           are being referred to at paragraph 18, the appointments,  
6           the fees, paperwork, things like that, are those things  
7           that are, in your experience, necessary for a surrender  
8           of an animal to Toronto Animal Services?

9           A. It's not something I do. It's something  
10          that's a sheltering component.

11          247           Q. Paragraph 22. If you can just go a page  
12          or two over?

13          A. Right.

14          248           Q. I take it that based on what you said  
15          earlier that Ms. Nakhuda is referring to you in that  
16          paragraph? Would you agree with that statement?

17          A. Paragraph 22?

18          249           Q. Yes.

19          A. Yeah. That's correct.

20          250           Q. So she is referring to you in that  
21          paragraph?

22          A. I believe so. Yeah.

23          251           Q. That's an accurate reflection of what you  
24          said?

25          A. Yes.

1 MR. CHARNEY: What paragraph is that?

2 BY MR. TOYNE:

3 252 Q. Paragraph 22. And again, just so it's  
4 clear, the reference to supervisor, that's to Ms.  
5 Smithers, correct?

6 A. Yes.

7 253 Q. I'm going to show you a document and based  
8 on what you said earlier you weren't involved in  
9 preparing the document but I'm just going to ask if  
10 you're able to tell me what the document, in general  
11 terms, is. Are you familiar with that document?

12 A. Yes. I am.

13 254 Q. So the document that I just passed over is  
14 Exhibit A of the affidavit of Sherri Delaney. Can you  
15 tell me based on your understanding and your experience  
16 what that document is used for?

17 A. Basically this is a receipt for the  
18 transfer or adoption of an animal.

19 255 Q. And is it fair to say that if Toronto  
20 Animal Services adopts an animal out or transfers an  
21 animal to another organization or facility a document  
22 like that would be prepared?

23 A. Yes. There should be a paper trail.

24 256 Q. If you can just bear with me for one  
25 second. I think I've asked all my questions. I suspect

1 I've stolen some but not all of Mr. Charney's thunder.  
2 No. I think subject to anything that comes up during Mr.  
3 Charney's examination I don't have any further questions  
4 for you. Thank you very much for coming.

5 MR. CHARNEY: Do you want to take five  
6 minutes?

7 --break at 2:12 p.m.

8 --upon resuming at 2:24

9 EXAMINATION BY MR. CHARNEY:

10 257 Q. Good afternoon, Mr. Behan. My name is Ted  
11 Charney. I'm here on behalf of Yasmin Nakhuda and I just  
12 wanted to continue by asking you some additional  
13 questions to the ones my friend has asked you today.

14 A. Yes, sir.

15 258 Q. Can we proceed on that basis, please?

16 A. Yes.

17 259 Q. You mentioned earlier that Animal Services  
18 does have certain policies and procedures with respect  
19 to prohibited animals in terms of recovering them. Is  
20 that right?

21 A. In terms of?

22 260 Q. In terms of seizing them.

23 A. Yes.

24 261 Q. I think what you said was the policy is to  
25 pick them up and impound them because they're

1 prohibited?

2  
3 262 Q. And that's been the policy since you've  
4 been with them for the last 25 years?

5 A. Yes, sir.

6 263 Q. And it's as straightforward as that. If  
7 there is a call about a prohibited animal and you send  
8 someone out to capture or pick that animal up the policy  
9 is to impound them, period?

10 A. Yes.

11 264 Q. Under no circumstances will they be  
12 returned to the owner?

13 A. Not aware. After we drop them off at the  
14 shelter it's the administrative powers that be after  
15 that.

16 265 Q. So in terms of whatever policy or  
17 procedure that Animal Services has you don't know what  
18 their procedure is in terms of the circumstances where  
19 they would actually return a prohibited animal to the  
20 owner?

21 A. Depending on what species. Pit Bulls or  
22 different species.

23 266 Q. Okay but do you know anything about what  
24 the policies and procedures are for Animal Services in  
25 those circumstances? Do they have any?

1 A. For a monkey I don't know.

2 267 Q. So if you want to get that specific, for a  
3 monkey, can we agree that Animal Services doesn't have  
4 any policies or procedures if --

5 MS. FRANZ: No. Don't answer that. I'm  
6 sorry, Counsel. I cut you off. I beg your pardon. I  
7 thought you were finished your question.

8 BY MR. CHARNEY:

9 268 Q. Can we agree they don't have any policies  
10 or procedures?

11 A. No. I'm not sure. I don't have them in  
12 front of me today.

13 269 Q. So your evidence is you don't know if they  
14 have any? Either you know or you don't know or you can  
15 tell me what they are. It's one of those three things.

16 A. They are listed in our bylaws.

17 270 Q. What bylaws are you referring to?

18 A. Bylaw 349.

19 271 Q. Well I happen to have that bylaw here.  
20 Could you take a look at it and show me where in the  
21 bylaw there's a policy or procedure in connection with  
22 whether or not Animal Services will return a prohibited  
23 monkey to its owner?

24 MS. FRANZ: No. He's not going to do that,  
25 Counsel. You can return the bylaw back to Mr. Charney. I

1 think those are legal arguments.

2 --refusal

3 MR. CHARNEY: The witness says they're in the  
4 bylaw.

5 MS. FRANZ: Yes and I think the witness always  
6 said it's up to the powers that be to make that  
7 determination.

8 BY MR. CHARNEY:

9 272 Q. I see. I think you said earlier today that  
10 you do receive training on how to enforce this  
11 particular bylaw?

12 A. That particular bylaw?

13 273 Q. Yes. It's part of your training?

14 A. Yeah. In general enforcement. Bylaw 349.

15 274 Q. Right. You are a bylaw enforcement  
16 officer?

17 A. That's correct.

18 275 Q. And generally, this is the particular  
19 bylaw you enforce?

20 A. That's correct.

21 276 Q. So you're familiar with that bylaw, aren't  
22 you?

23 A. Yes. I am.

24 277 Q. Are you aware of anything in that bylaw  
25 that speaks about whether or not you'll return monkeys

1 to the owner when they have been seized?

2 A. I'm not aware of it.

3 278 Q. There's nothing in there is there?

4 A. Not that I'm aware.

5 279 Q. Just before we move on are there any other  
6 policies or procedures that you're aware at Animal  
7 Services in terms of whether or not a seized prohibited  
8 animal such as a monkey will be returned or not returned  
9 to an owner?

10 A. Can you say that question again?

11 280 Q. Any other policies or procedures that  
12 guide you in terms of deciding whether or not to return  
13 a monkey to its owner?

14 A. ~~Once the animal is in the shelter and is~~  
15 ~~impounded it's the City of Toronto's property at that~~  
16 ~~time.~~

17 281 Q. Period?

18 A. Period. That I'm aware of and the  
19 administrative powers that be take care of that from the  
20 shelter point of view.

21 282 Q. From your perspective when Darwin was  
22 seized and brought to Animal Services, he was the  
23 property of the City of Toronto?

24 A. Interim.

25 283 Q. Pardon?

1           A. Interim.

2           284           Q. Interim meaning interim in terms of? What  
3 is the interim? What does interim mean?

4           A. Whatever the administrative powers decide  
5 after when this is all brought to the attention of our  
6 supervisors and our managers and directors.

7           285           Q. So to get to the rub it's up to the  
8 administrative services to make a decision on what is  
9 going to happen to the monkey?

10          A. Right.

11          286           Q. You don't make that decision?

12          A. Immediately, no. I do not.

13          287           Q. People higher up in the chain do?

14          A. Usually. Yes.

15          288           Q. And in your experience is it as simple as  
16 this: That if a prohibited animal is seized and  
17 impounded Animal Services will not return it to the  
18 owner?

19          A. I'm not sure of every case so it's hard to  
20 comment.

21          289           Q. But in this case when you spoke to your  
22 supervisor that's what the message was: We're not  
23 returning this animal to Ms. Nakhuda?

24          A. No. It was more about, we talked about  
25 what do we do with this situation not about whether we



1 were going to return it or weren't and then that's when  
2 the discussion came up about having -- seeing if we  
3 could get the animal signed over.

4 290 Q. I think you agreed with my friend when he  
5 put a statement to you in this affidavit and I'm just  
6 going to read it to you again, "that you had never had a  
7 situation like this before"?

8 A. That's correct.

9 291 Q. By that you meant that you never had  
10 Animal Services seize a monkey and then have an owner  
11 show up and want it back?

12 A. Never had Animal Services pick up a monkey  
13 period.

14 292 Q. Much less have the owner come over there  
15 and say, "I want it back"?

16 A. That's correct.

17 293 Q. Ms. Nakhuda made it clear from the moment  
18 she got there that she wanted the monkey back?

19 A. ~~That's correct.~~

20 294 Q. And someone in your office had to decide  
21 whether they would give it back to her or not?

22 A. ~~That's correct.~~

23 295 Q. Who made that decision?

24 A. ~~Supervisor, I guess, at the time.~~

25 296 Q. So you spoke to him?

1 A. Yeah.

2 297 Q. And he gave you your marching orders?

3 A. More or less.

4 298 Q. Which is: You're not giving the monkey  
5 back.

6 A. "See if you can get the monkey signed  
7 over." That was Mr. Bandow's words to me.

8 299 Q. Did he explain to you why he wanted you to  
9 try and get the monkey signed over as opposed to just  
10 giving it back to her?

11 A. No. He didn't. No.

12 300 Q. To your knowledge did Animal Services have  
13 some bylaw, statute or regulation which would authorize  
14 you to withhold that monkey from the owner when she  
15 arrived and wanted to claim it back?

16 A. Only that we have protective custody  
17 provisions in the bylaw, City of Toronto itself.

18 301 Q. The same bylaw I showed you before?

19 A. Yeah.

20 302 Q. And when you say, "protective custody  
21 provisions" what do you mean?

22 A. We hold an animal in a protective custody  
23 till we decide what we're going to do with it or what  
24 the parties, the administrative parties decide what  
25 they're going to do with it.

1 303 Q. Can you show me where that is in the  
2 bylaw, please?

3 A. I'm not sure exactly. Check under  
4 definitions and we have to refer to this bylaw quite  
5 often.

6 304 Q. Well, you're the ones who refer to it very  
7 often. If you can show me anywhere in here where  
8 there's a protective custody provision I'd appreciate  
9 it. I've read it couple of times and I haven't seen it  
10 so far.

11 MS. FRANZ: Off the record in order to read  
12 the bylaw.

13 ((Off Record Discussion))

14 THE DEPONENT: Okay. On the impound document  
15 for the City of Toronto there is protective custody  
16 provisions.

17 BY MR. CHARNEY:

18 305 Q. Where is that? That's Exhibit A?

19 A. Protective care. Protective care, excuse  
20 me.

21 306 Q. Okay. Before we go off the record what  
22 are the circumstances where you would initiate a  
23 protective care situation?

24 A. Police, sheriff, prohibited species.

25 307 Q. When you're doing a protective care who

1 are you protecting the animal from?

2 A. Never thought about that. Public, I  
3 guess. Public safety is what it's all about.

4 308 Q. Isn't a protective care situation where  
5 there has been cruelty to the animal?

6 A. No.

7 309 Q. So then I see the box here. Can you show  
8 me where in the bylaw you're authorized to keep the  
9 monkey?

10 A. You asked me about protective care.

11 310 Q. No. I asked you about the bylaw and you  
12 said there were sections under the bylaw which  
13 authorized Animal Services to keep the animal.

14 A. Under protective care.

15 311 Q. Okay. Fine.

16 A. And you asked me to go through the bylaw  
17 to define what protective care was.

18 312 Q. You're absolutely right, sir.

19 A. I just have to understand your question.

20 313 Q. I appreciate that.

21 ((Off Record Discussion))

22 BY MR. CHARNEY:

23 314 Q. Please repeat what you just said?

24 A. Okay. Section 349-9 of the municipal code  
25 for the City of Toronto, "Where an animal is sheltered

1 at a city animal centre for protective care a per diem  
2 sheltering fee shall be paid to the director in advance  
3 of redeeming the animal by the owner in the amount  
4 specified under chapter 441 fees and charges."

5 315 Q. Is that the only section in the bylaw that  
6 you're aware of that authorizes Animal Services to keep  
7 the animal?

8 A. I can continue reading if -- that's one  
9 that just jumped out of at me. After a quick read  
10 that's the only article that I can find in the bylaw  
11 right now.

12 316 Q. Hold on to it for a second.

13 A. Sure.

14 MS. FRANZ: Sorry. Are we off the record?

15 BY MR. CHARNEY:

16 317 Q. No. We're on the record. I noticed that  
17 in the same bylaw there are some sections that talk  
18 about impoundment. Is impoundment different than  
19 protective care?

20 A. Yes.

21 318 Q. For example you'd agree with me under the  
22 bylaw you have the authority to impound a cat or a dog  
23 under certain circumstances?

24 A. That's correct.

25 319 Q. But we're not talking about those sections

1 today. That's not what we're talking about today?

2 A. No.

3 320 Q. If anything we're talking about protective  
4 care?

5 A. ~~That's correct.~~

6 321 Q. So then if you go to page 349-4, the pages  
7 are numbered at the bottom, there is a definition of  
8 protective care at the top of the page?

9 A. Okay. Sorry. Missed it.

10 322 Q. "The ~~temporary~~, temporary keeping of an  
11 animal to a maximum of five days as a result of an  
12 eviction, incarceration, medical or fire emergency or  
13 any other situation that the executive director deems  
14 appropriate."

15 A. ~~Right.~~

16 323 Q. Would you agree with me that the situation  
17 with Darwin was supposed to be a ~~temporary keeping~~ of  
18 him?

19 A. I'm not sure. ~~I leave that up to the~~  
20 administrative powers. Again, I have to say our job, I  
21 mean, our job was done and that was my concern.

22 324 Q. Well, when you met with Ms. Nakhuda, at  
23 any time did you tell her that Animal Services was  
24 holding the animal under protective care?

25 A. Did I use those words exactly?

1 325 Q. Yes.

2 A. I don't recollect that now.

3 326 Q. At any time did you tell her that you  
4 could keep the animal for a maximum of five days?

5 A. No. I did not. No.

6 327 Q. I see. In your conversation with the  
7 supervisor when he told you to try and get the surrender  
8 form signed did the provision that we're just discussing  
9 ever come up? This idea about protective care with your  
10 supervisor ever come up?

11 A. Not at that time.

12 328 Q. Did the two of you even discuss how Animal  
13 Services would be able to hold on to this monkey?

14 A. No. Not really at that time.

15 329 Q. No?

16 A. No. It was kind of a phone call type of  
17 thing. Yeah.

18 330 Q. But you were relying on directions from  
19 your supervisor on what to do?

20 A. Yes. I was.

21 331 Q. And the dilemma was whether to give her  
22 back the monkey or not, wasn't it?

23 A. Basically, yeah.

24 332 Q. And the way to avoid giving her the monkey  
25 back would be if she signed the surrender, right?

1 A. I guess, yes. That's one way.

2 333 Q. That's why your supervisor wanted you to  
3 get her to sign the surrender?

4 A. I suppose it's possible that could be.

5 Yes.

6 334 Q. Thank you. Now, having cleared that up are  
7 you familiar with the Ontario Society Against the  
8 Protection of Animals Act? The OSPCA?

9 A. Basically not to practice, no.

10 335 Q. You don't ever enforce the provisions of  
11 that statute?

12 A. No.

13 336 Q. And you're not an inspector or an agent  
14 within the meaning of that statute?

15 A. No, sir.

16 337 Q. To your knowledge does the OSPCA operate  
17 in Toronto?

18 A. Yes. They do.

19 338 Q. To your knowledge do their officers have  
20 the power to impound an animal?

21 MS. FRANZ: Don't answer that. I don't think  
22 that's the right question for this witness.

23 --refusal

24 BY MR. CHARNEY:

25 339 Q. In your experience do you ever work



1 together with OSPCA officers?

2 A. Yes.

3 340 Q. For example if you take possession of an  
4 animal where there's evidence of cruelty you'll call the  
5 OSPCA officers?

6 A. Yes. I will call them. Yes.

7 341 Q. Then the animal will be transferred to  
8 them?

9 A. No. Actually I can't -- actually when we  
10 put the call into the SPCA it becomes their  
11 investigation and we are out of it unless they need our  
12 notes at a future time.

13 342 Q. For example, if you receive a call to come  
14 and capture an animal and you send an Animal Services  
15 person over to capture it and the officer sees it's been  
16 abused --

17 A. Right.

18 343 Q. Happens occasionally I imagine?

19 A. Yes.

20 344 Q. The Animal Services Officer will take it  
21 back to your shelter and then call the SPCA?

22 A. Depending on circumstances.

23 345 Q. But that would be one circumstance?

24 A. Well, there's a few contributing factors  
25 there like right to enter, all those type of things. Is

1 it on private property? Was it running loose?

2 346 Q. Let's say it's running loose like Darwin.

3 A. It's running loose?

4 347 Q. If you want to use the word loose. Me and  
5 my friend don't agree with that but that's okay. Say  
6 it's an animal that's running loose and Animal Services  
7 gets a call. They come over to pick up it, capture it.  
8 They see it's been abused. The protocol is to call the  
9 SPCA?

10 A. Yes.

11 348 Q. And then that animal will go back to the  
12 shelter and then will be transferred to the SPCA?

13 A. I don't know exactly depending on what  
14 documents the SPCA has to have that animal. It becomes  
15 an area that the supervisor again has got to give  
16 authority to do.

17 349 Q. Had any experience in your 25 years where  
18 the SPCA takes possession from Animal Services of an  
19 abused animal?

20 MS. FRANZ: Just a second. Sorry, Counsel.  
21 I'm just not sure what this has to do with this current  
22 situation?

23 MR. CHARNEY: It has to do with the fact that  
24 the SPCA has specific provisions under their act where  
25 they take possession of an animal and keep it or impound

1 it or put it into protective care in certain  
2 circumstances which require a veterinary opinion and a  
3 judge's order.

4 MS. FRANZ: So what does that have to do with  
5 this situation?

6 MR. CHARNEY: The suggestion is that if there  
7 is an animal that's going to be impounded for some  
8 period of time in these circumstances the normal  
9 procedure is SPCA will become involved and it will be  
10 impounded by their officers.

11 MS. FRANZ: I think that's a legal argument  
12 that you can make. I don't think that's a question for  
13 him.

14 MR. CHARNEY: I'm asking in his experience --

15 MS. FRANZ: I don't think that's a question  
16 for him. That's not this situation so I think I'll stop  
17 that line of questions.

18 --refusal

19 BY MR. CHARNEY:

20 350 Q. Can we agree there was no evidence of  
21 abuse when Darwin was picked up?

22 A. ~~Darwin seemed to be find when I observed~~  
23 ~~Darwin at the shelter, from my limited knowledge of~~  
24 ~~monkeys to be honest with you, sir.~~

25 351 Q. Okay but as an Animal Control Officer

1 you're trained on how to observe evidence of abuse in  
2 animals. That's part of your job?

3 A. Yes. It is.

4 352 Q. And if an Animal Control Officer sees  
5 abuse, you're going to make notes about that aren't you?

6 A. Yes.

7 353 Q. And you're going to potentially take  
8 photographs?

9 A. Yes.

10 354 Q. And there's going to be reports generated?

11 A. Yes.

12 355 Q. And it requires a certain protocol in  
13 terms of what you do with that animal?

14 A. Uh-huh.

15 356 Q. And if the owner comes to pick it up when  
16 you know the animal's been abused what is the protocol  
17 there?

18 A. It's up to the administrative powers.  
19 Again, I have to say they deal with -- our director has  
20 got to make the call.

21 MS. FRANZ: I think you're going about it in  
22 the same way, Counsel, to the questions already objected  
23 to.

24 BY MR. CHARNEY:

25 357 Q. That's fine. Now, in terms of the events

1 at the Ikea, it's dawned on us today that you weren't  
2 the officer that went to Ikea?

3 A. No. That is correct.

4 358 Q. When we read the notes for some reason we  
5 thought that you were. I think it's because of the way  
6 the notes started that said, "I went to Ikea".

7 A. Yeah. That's correct. It should have been  
8 TAS.

9 359 Q. It's been cleared up and the other officer  
10 is here today?

11 A. Yeah.

12 360 Q. All right. You've told us you received a  
13 call from Officer Fiorillo?

14 A. That's correct.

15 361 Q. And generally speaking, every time an  
16 Animal Services Officer is required to go to a scene to  
17 pick up an animal that's loose, do they call you?

18 A. No.

19 362 Q. So why did he call you in this situation?

20 A. Only under unusual circumstances will the  
21 officers contact the most experienced officer.

22 363 Q. And that's because he was picking up a  
23 monkey?

24 A. Yes.

25 364 Q. And during that first conversation you had

1 with him did he ask you for advice on how to proceed?

2 A. No. He explained to me what he was going  
3 to do and it seemed fine and in order with me.

4 365 Q. Had he arrived at the scene yet when he  
5 called you?

6 A. No.

7 366 Q. So what did he explain to you that he was  
8 going to do?

9 A. "I'm taking a technician with me and  
10 security called me from Ikea and it was unusual."

11 367 Q. Did he tell you anything about the  
12 description of the monkey when he spoke with you the  
13 first time?

14 A. He hadn't been there yet. This was just  
15 early on in the call. A lot of the time I don't even  
16 like to get involved in the call until the officer is on  
17 scene and then they can give me -- but at this time I  
18 appreciated the officer giving me a heads up.

19 368 Q. Can you explain in a little more detail  
20 what the purpose was of him bringing the Animal Health  
21 Technician with him?

22 A. More knowledge. More medical knowledge.

23 369 Q. Where were you when you got the call?

24 A. I was doing another bylaw call down on  
25 Weston Road, I think, somewhere.

1 370 Q. How did you communicate?

2 A. By phone. By Blackberry.

3 371 Q. Blackberry?

4 A. Yeah.

5 372 Q. Do you have some kind of a radio  
6 dispatcher in your vehicle as well or is it all  
7 Blackberry?

8 A. It's all Blackberry.

9 373 Q. And were you aware of the bylaw  
10 prohibiting monkeys in Toronto when you received that  
11 call?

12 A. Yes. Somewhat.

13 374 Q. And did the two of you discuss this bylaw  
14 when he called you?

15 A. No. No.

16 375 Q. Did you speak to anyone else about that  
17 call before you spoke to the officer again? Like, after  
18 he called you, did you call anyone else or e-mail anyone  
19 else?

20 A. I'm not sure exactly if I spoke to our --  
21 we call them dispatchers. I just said, "Do it quick"  
22 because I don't carry the bylaw right in the truck with  
23 me. If I carried every policy I wouldn't be able to get  
24 in the truck.

25 376 Q. Right.

1           A. And I said, "Excuse me but the reference  
2 referred to me that, you know, they're not allowed to be  
3 in the city that I'm aware of and it's prohibited."

4           377           Q. So you wanted to check that out?

5           A. Yes. So I did that.

6           378           Q. Is it true that one of policies of Animal  
7 Services is to reunite pets with their owners?

8           A. I believe, yes. I believe that's in our  
9 mission statement but I'm not sure.

10          379           Q. And the average Animal Control Services  
11 Officer, if he picks up a dog or cat and it looks like  
12 it has an owner, for example, if it has a collar or it  
13 has a coat and it has some shoes, will the Animal  
14 Control Officer at the scene try to see if the owner is  
15 around before he takes it away?

16          A. Depending on his call volume that day.

17          380           Q. He'll make some efforts if it looks like  
18 the animal is owned by someone and had just gotten  
19 loose?

20          A. Yes.

21          381           Q. So if he's in front of a store, for  
22 example, and the animal is right there in front of the  
23 store he might just go into the store and ask if anybody  
24 owns it?

25          A. Depending on the store and depending on



1 his call volume. He can't spend a lot of time on the  
2 calls.

3 382 Q. Do you know if this officer made any  
4 efforts at the scene to find the owner of this monkey?

5 A. I wasn't there. I don't know.

6 383 Q. He hasn't told you about any efforts that  
7 he made?

8 A. No.

9 384 Q. And when is the next time you spoke to  
10 him? Was it at the scene when he was still at Ikea or  
11 was it on his way back or when he got to the animal  
12 shelter?

13 A. After he had gotten to the animal shelter.

14 385 Q. So he didn't call you again before he  
15 got --

16 A. Yeah. He called me again to tell me that  
17 like -- I hadn't gone to -- he called me again and  
18 basically explained to me that he had a monkey.

19 386 Q. Was he already back at the shelter when he  
20 called you or was he at the scene?

21 A. I think he was on his way back.

22 387 Q. He was on his way back?

23 A. I believe so. Yeah.

24 388 Q. So he didn't call you at the scene?

25 A. No.

1 389 Q. And the notes talk about a break. I think  
2 that's one of the words in the note. Did you see that?

3 A. A break?

4 390 Q. Yes. If you take a look at the note, it's  
5 been marked as Exhibit C.

6 A. Yep.

7 391 Q. Maybe you can read your writing for me. I  
8 think it says -- if you could just read the first couple  
9 of lines and we'll make sure we have it in the record.  
10 I tried to have someone in my office tell me what the  
11 word was.

12 A. Oh. Rhesus?

13 392 Q. Let me read it to you for a second.  
14 "Received a call to pick up a monkey at Ikea store at 15  
15 Provost Drive. Leslie and Sheppard. I arrived and met  
16 security."

17 A. Should be TAS but whatever.

18 393 Q. "They had a monkey cornered in the upper  
19 level of the parking lot. I picked up the monkey which  
20 was a Rhesus Macaque" and then the next word, is that  
21 break? What is that word?

22 A. I returned.

23 394 Q. No. The word before that?

24 A. Breed. Breed.

25 395 Q. Breed? Thank you.

1           A. So you would know that's the Rhesus  
2 Macaque breed.

3           396       Q. And I take it that part of that note was  
4 based on information you received from Officer Fiorillo?

5           A. Yes. I believe so.

6           397       Q. The part up to when he arrives --

7           A. No. I think it's information we obtained  
8 through checking the type of monkey that it was at the  
9 shelter.

10          398       Q. Okay but everything up to the part where  
11 Ms. Yasmin came to claim the monkey would be based on  
12 information you received from the officer?

13          A. Yes.

14          399       Q. That's all I'm asking.

15          A. Yeah. Absolutely. Yeah.

16          400       Q. Do you know if Officer Fiorillo made any  
17 of his own notes?

18          A. Not aware. Not sure.

19          401       Q. Have you had an opportunity to discuss  
20 this case with him?

21          A. No. Not really. It is what it is. I  
22 mean that's what we thought. That's all.

23          402       Q. As far as you know he didn't make any  
24 notes?

25          A. I don't know. We don't actually make a

1 habit of going around showing everybody our notes.

2 That's all.

3 403 Q. I appreciate that, sir, but we've had the  
4 occasional case where two officers have actually  
5 discussed their notes between them and so I'm just  
6 wondering if maybe that happened in this case?

7 A. No. No, sir.

8 404 Q. And the notes we've marked as Exhibit C,  
9 does that constitute all of the notes that you made with  
10 respect to this matter?

11 A. Yes. Yes, sir.

12 405 Q. Did you call anyone or commute with anyone  
13 with Animal Services before you went to the shelter to  
14 meet Fiorillo?

15 A. No. No except I explained to you I spoke  
16 to dispatch.

17 406 Q. And you've told me everything about that  
18 conversation now?

19 A. Uh-huh.

20 407 Q. All right. Why did you go back to Animal  
21 Services to meet with Officer Fiorillo?

22 A. Because number one I wanted to see the  
23 species. I had never seen one before. I wanted to  
24 observe the animal basically and --

25 408 Q. Okay. Was it also because you were the

1 senior Animal Services Officer on duty that day and you  
2 had to deal with a monkey situation?

3 A. Yes. Of course. It's all part and parcel  
4 of it. I don't think about it in chronological order  
5 that way but it's just a natural reflex that if a gator  
6 was picked up I would do the same thing.

7 409 Q. When you first saw Darwin, just going  
8 back, I think you said that when you arrived you went  
9 back to take a look at the monkey?

10 A. Yes. I did.

11 410 Q. And when you first saw him what did he  
12 look like? Describe for me what he looked like, what he  
13 was wearing.

14 A. He looked like a monkey in a cage with a  
15 fur coat on.

16 411 Q. I deserved that. Thank you.

17 A. No. No.

18 412 Q. And he was wearing a fur coat and a  
19 diaper?

20 A. I didn't see the diaper until a little bit  
21 later because he was in a cage.

22 413 Q. He didn't look like he was in any  
23 particular distress, did he?

24 A. I don't know how to read that type of body  
25 -- he wasn't running around the cage frantically or

1 nothing. No.

2 414 Q. Didn't look like he had been abused?

3 A. No. I couldn't say so. No.

4 415 Q. Now, would you agree with me judging from  
5 the fact he had a coat and diaper somebody owned him?

6 A. Yes.

7 416 Q. By the time you arrived at Animal Services  
8 did you know that Ms. Nakhuda was on her way to claim  
9 him?

10 A. When I arrived, I was told by the staff  
11 that.

12 417 Q. So they knew she was on her way?

13 A. Yes.

14 418 Q. And it was crystal clear she was coming to  
15 claim him?

16 A. Yes.

17 419 Q. Did you have a chance to consider how  
18 Animal Services would respond to Ms. Nakhuda before she  
19 arrived? Did you think about how you would respond or  
20 speak to anybody about how you should respond to the  
21 owner who was on her way to claim her monkey?

22 A. Would be dealing with an animal owner that  
23 would be emotional. I realized that from my past  
24 experience and that the situation would be a little bit,  
25 you know, would be uncomfortable. I don't know the

1 exact word to say but it would be upsetting. I knew the  
2 owner would be upset.

3 420 Q. Well, generally speaking, when owners come  
4 to Animal Services to claim their animals they're not  
5 upset. They're thrilled because their animal has been  
6 recovered and they get it back.

7 A. Not if they have a five hundred dollar vet  
8 bill after it's gotten hit by a car.

9 421 Q. Well, maybe, but generally speaking, you  
10 don't anticipate them being anxious and upset you  
11 anticipate them being quite happy. They get their pet  
12 back?

13 A. Yes.

14 422 Q. But in this case you anticipated her being  
15 anxious and upset and that's because Animal Services had  
16 already concluded they weren't going to give it back to  
17 her --

18 A. No.

19 423 Q. -- even before she arrived.

20 A. It was a prohibited species.

21 424 Q. Yes. So we agree that you knew you  
22 weren't giving it back to her before she arrived?

23 A. That day we didn't have any --


24 425 Q. You agree with that? You knew you weren't  
25 giving it back to her before she arrived?

1           A. I don't know that. Again, it not in my  
2 power to say that.

3           426       Q. Why did you anticipate her being upset  
4 before she arrived?

5           A. Because I knew myself we could not give it  
6 back to her that day. That was --

7           427       Q. And when you say you couldn't give it back  
8 to her that day, in your mind did you think you could  
9 give it back to her at all?

10          A. I was leaving it up to the powers that be.   
11 I mean, I have experience to do that, to allow that.  
12 That's why I contacted my supervisor.

13          428       Q. I understand. I take it Animal Services  
14 didn't take any photographs of Darwin to your knowledge?

15          A. Normally all animals that are impounded  
16 they do take -- I mean, provided we don't have a great  
17 volume that we can't get to them because of we're being  
18 overwhelmed like summer months and stuff with a lot of  
19 cats.

20          429       Q. You're not aware of any photos but the  
21 practice is to take them?

22          A. Yeah. That's all.

23          MR. CHARNEY: Ms. Franz, could you undertake  
24 to make inquiries, best efforts to produce any  
25 photographs that were taken there, please?



1 MS. FRANZ: Yes. I'll do that.

2 --undertaking

3 BY MR. CHARNEY:

4 430 Q. To your knowledge was there any videos  
5 taken of Darwin while he was there?

6 A. No. Not to my knowledge.

7 431 Q. Okay.

8 MS. FRANZ: Sorry, Counsel. I just want to be  
9 clear. Photographs taken by TAS?

10 MR. CHARNEY: Anyone at Animal Services.

11 MS. FRANZ: At Animal Services because I'm not  
12 sure if there were other media there taking photographs  
13 that we don't have control of.

14 MR. CHARNEY: We've got lots of those.

15 MS. FRANZ: Fair enough.

16 MR. CHARNEY: Could you include any videos  
17 with the photographs, please?

18 MS. FRANZ: Yes.

19 --undertaking

20 BY MR. CHARNEY:

21 432 Q. And to your knowledge was any of the  
22 conversations you had with Ms. Nakhuda or her husband  
23 recorded either by video or audio techniques?

24 A. Not that I'm aware of. No. Not by me.

25 433 Q. I'd like to turn to the conversations that

1 you had with Ms. Nakhuda and her husband. I think you  
2 said earlier today that --

3 A. Would you like this bylaw back, sir?

4 434 Q. Thank you very much. I think I've seen it  
5 enough but sure I'll take it. I take it what you were  
6 saying earlier was you went out into reception to meet  
7 with her initially?

8 A. Yes.

9 435 Q. And were you accompanied by Mr. Fiorillo  
10 at that point?

11 A. Don't remember.

12 436 Q. I think what you said earlier today was  
13 ~~she seemed to be upset and wanted to get her monkey~~  
14 ~~back, correct?~~

15 ~~A. Yes.~~

16 437 Q. And you didn't think it was appropriate to  
17 discuss this at the front counter so you wanted to take  
18 her into the lunchroom?

19 A. Yes. Somewhere private.

20 438 Q. And I take it that's because you thought  
21 she was going to upset about the conversation?

22 A. Two fold. That as well as respect for the  
23 individual that we should be able to talk about the  
24 situation without having the public standing around  
25 listening to her business, our business.

1 439 Q. What's the usual protocol in a normal  
2 situation where someone comes to up pick up their dog,  
3 for example, which has just been apprehended and taken  
4 to Animal Services and they come to pick it up? Do you  
5 come out and talk to them?

6 A. Myself?

7 440 Q. Yes.

8 A. No.

9 441 Q. So what happens? Someone at the front  
10 desk says, "We'll bring him out" and here he is and off  
11 you go normally?

12 A. Bring the dog? Yeah. First of all show me  
13 some identification of the person or individual to make  
14 sure that that person is the owner of the animal. They  
15 ask them to identify the animal by picture or in the  
16 cage. That's done and then once the City of Toronto is  
17 satisfied that that is their animal then the animal is  
18 released to them. Dog or cat.

19 442 Q. Who was the designated employee that does  
20 all that? Is it the receptionist or does someone come  
21 out and meet with them?

22 A. There is no one that specifically does the  
23 work.

24 443 Q. Does it all happen at reception or do they  
25 get accompanied into some room to do all that?

1           A. No. Not necessarily. Some of it happens  
2 at reception. Some of it happens in the kennels.

3           444       Q. In accounts?

4           A. In the kennels.

5           445       Q. In the kennels? So the owner will go back  
6 to the kennel to get their pet?

7           A. Possibly or look in a binder.

8           446       Q. Generally when someone calls Animal  
9 Services for their cat or their dog to see if the animal  
10 is there and they find out it's there and they come over  
11 to get it, generally speaking, they don't sign a  
12 surrender form, do they?

13          A. No. No.

14          447       Q. Because they're there to pick it up?

15          A. That's right.

16          448       Q. So it would be extremely unusual for  
17 someone in that circumstance to sign a surrender form,  
18 wouldn't it?

19          A. It would be out of the ordinary depending  
20 on what the circumstances were, too. Everyday? No but  
21 certain circumstances. "The animal has gotten out on me  
22 a few times, too many times. Try to find a home for  
23 it." That type of thing.

24          449       Q. But generally speaking pet owners who come  
25 to surrender a pet are there for the purpose of giving

1 the pet over to Animal Services?

2 A. That's correct.

3 450 Q. They're not coming to pick it up?

4 A. That's correct.

5 451 Q. And that's a pretty serious decision for a  
6 pet owner to make, the decision to abandon a pet to  
7 Animal Services?

8 A. Yes. It is.

9 452 Q. And in some circumstances it can result in  
10 euthanasia?

11 A. Yes. It can.

12 453 Q. Did you tell Yasmin that she couldn't have  
13 her monkey back while she was still in reception or did  
14 that come up for the first time in the lunchroom?

15 A. I believe in the lunchroom.

16 454 Q. During your discussions with Yasmin and  
17 her husband in the lunchroom, is it fair to say the  
18 majority of the conversation came from you as opposed to  
19 Mr. Fiorillo?

20 A. That's fair.

21 455 Q. For the most part he wasn't really  
22 participating in the conversation?

23 A. No.

24 456 Q. But he was present for most of the  
25 conversation?

1 A. I think some of it. Yeah.

2 457 Q. Why was he there?

3 A. Why?

4 458 Q. Why did you have him in the room with  
5 Yasmin?

6 A. He came into the room probably to explain  
7 maybe what the situation was. How the animal was picked  
8 up, I believe.

9 459 Q. Did you want him in the room as a witness  
10 to the conversation?

11 A. No. Not necessarily.

12 460 Q. Did he take any notes during the meeting?

13 A. Not that I seen.

14 461 Q. And you didn't take any notes during the  
15 meeting?

16 A. No. No.

17 462 Q. Now, I just have a few comments from the  
18 clients to pass on to you to see if you recall them  
19 being made?

20 A. Sure.

21 463 Q. I understand that near the beginning of  
22 the meeting in the lunchroom, Samar, who is Yasmin's  
23 husband, wanted to know if they could have the monkey  
24 back. Is that correct?

25 A. I believe so.

1 464 Q. Is it fair to say that you said words  
2 along these lines that you could not return the animal  
3 back to them. You had to speak to your supervisor as  
4 "We've never had to deal with this type of situation  
5 before"?

6 A. Yeah. It sounds like a pretty good --  
7 what took place to the best of my recollection.

8 465 Q. And I understand it was around that time  
9 that you left the room? I gather to speak with your  
10 supervisor?

11 A. Yes.

12 466 Q. And at some point either before you left  
13 the room or when you returned did you say something  
14 along the lines of "We are not in the business of  
15 separating pets from their owners"?

16 A. I don't know if I put it exactly that way.  
17 It's possible.

18 467 Q. But you would agree with --

19 A. I felt uncomfortable. I don't like  
20 separating pets from their owners.

21 468 Q. At some point Yasmin was crying?

22 A. Through most of the conversation, sir.

23 469 Q. How long do you think in total Yasmin and  
24 her husband were in that lunchroom?

25 A. I have no idea.

1 470 Q. At least 30 minutes?

2 A. It seemed like that.

3 471 Q. And it wasn't until near the end that she  
4 signed that form?

5 A. Yes.

6 472 Q. Before you went to call your supervisor,  
7 Yasmin asked if she could see the monkey?

8 A. Yes. I believe so.

9 473 Q. And at that point you weren't prepared to  
10 let her see it?

11 A. No.

12 474 Q. When you came back after speaking with  
13 your supervisor, did you tell her what would happen to  
14 her monkey?

15 A. I gave a possibility.

16 475 Q. What was the possibility?

17 A. It would be taken to -- what Animal  
18 Services could do is take it to a sanctuary possibly.

19 476 Q. Did you leave the meeting to speak to your  
20 supervisor leaving the clients, Yasmin and her husband,  
21 with the impression that you were trying to find out  
22 whether you could give the monkey back to her? Was that  
23 the purpose of leaving to make the call?

24 A. No. No.

25 477 Q. So you didn't give them that impression?



1 A. Not that I'm aware.

2 478 Q. By that point you'd already told them that  
3 they're not getting the monkey back?

4 A. I don't know if that was my exact words  
5 but yes. We had discussed that.

6 479 Q. So then why did you go need to speak to  
7 your supervisor if you had already told them they're not  
8 getting the monkey back?

9 A. Get clarification.

10 480 Q. On what?

11 A. On what? To make sure we had the power  
12 and authority to do that and how the supervisor wanted  
13 me to handle the situation.

14 481 Q. I take it in your conversation with the  
15 supervisor about whether you had the power or authority  
16 his answer was, "Try to get them to sign the surrender  
17 form"?

18 A. Yeah.

19 482 Q. So that's what you tried to do?

20 A. Uh-huh.

21 483 Q. So how did you go about trying to get them  
22 to sign the surrender form?

23 A. Actually go back one second. I mean,  
24 you've kind of, to be honest with you, put words in my  
25 mouth there a little bit because I didn't actually ask

1 him if we had powers to do that. I actually asked him,  
2 "How do you want me to handle it?"

3 And he said, "Well, maybe give them this"  
4 like, different procedures that we take, we do in our  
5 law, like in our municipal law.

6 484 Q. None of the suggestions involved giving  
7 back the monkey?

8 A. No. They did not.

9 485 Q. Or suggesting to them that they could have  
10 the monkey back in a few days?

11 A. No. No.

12 486 Q. Now, as you've said a couple of times now,  
13 you were instructed to try and get them to sign the  
14 surrender form. So moving on, how did you go about  
15 trying to get them to sign the surrender form?

16 A. I asked them. We ask questions of people  
17 like that all the time.

18 487 Q. Okay. But sir, they're there to claim the  
19 monkey. They're not there to give it up as we've agreed  
20 so surely you just saying, "Will you please sign this  
21 surrender form" is not going to get them to sign the  
22 form. You must have said something to --

23 A. Yeah. It's a prohibited animal and it's  
24 not supposed to be in the City of Toronto.

25 488 Q. And that you're not going to give it back

1 to them?

2 A. Basically, yeah. Not at this time.

3 489 Q. So let me understand this. If Animal  
4 Services isn't going to give the monkey back to them,  
5 though, and feels that they have the right to do that  
6 because this is a prohibited animal, why do you need  
7 them to sign the surrender form?

8 A. You'll have to ask Carl Bandow. He's the  
9 one who asked me the question to do that. He instructed  
10 me to do that.

11 490 Q. When you asked Yasmin to sign the  
12 surrender form what was her immediate reaction?

13 A. She was upset. She was still in tears.

14 491 Q. She didn't want to sign the form?

15 A. No.

16 492 Q. And you asked her again?

17 A. Yeah. I believe so.

18 493 Q. And she wanted to speak to her husband  
19 about it?

20 A. They started to speak and I asked them if  
21 they'd like me to step out of the room and I did and  
22 they spoke.

23 494 Q. And she also made a phone call?

24 A. Yeah.

25 495 Q. Presumably about whether she should sign

1 the surrender form?

2 A. I don't know what the phone call was. I  
3 didn't have privilege to that.

4 496 Q. Did you say words along the lines that  
5 "Things could get a lot worse if you don't sign the  
6 form"?

7 A. I don't know what the repercussions are of  
8 this, having a monkey in the city or in the country or  
9 in the province. I don't know.

10 497 Q. Of course not but did you say words to her  
11 along the lines that "Things can get a lot worse if you  
12 don't sign the form"?

13 A. No. I can't -- no.

14 498 Q. You did not say that?

15 A. No.

16 499 Q. Did she ask you what would happen if she  
17 signed the form?

18 A. Yes. I believe so.

19 500 Q. And you responded that you'd find a zoo or  
20 an animal sanctuary?

21 A. Yes. Toronto Animal Services would. It  
22 wouldn't be me.

23 501 Q. All right. And did you suggest to her  
24 that hopefully it would be nearby?

25 A. No. They asked if it could be nearby.

1 502 Q. That's because they wanted to see him?

2 A. I guess so. Yeah.

3 503 Q. Did you ask her questions about how the  
4 monkey got lost?

5 A. No.

6 504 Q. Did you recall Samar making a comment that  
7 it was probably not every day that Animal Services  
8 picked up a monkey?

9 A. Who? Who said?

10 505 Q. Yasmin's husband, Samar?

11 A. I think so. I think -- yeah.

12 506 Q. Do you recall Mr. Fiorillo responding,  
13 "Yeah. That's right. It's not every day we pick up a  
14 monkey"?

15 A. It's possible he did.

16 507 Q. Do you remember Yasmin's husband asking if  
17 it was difficult to catch Darwin?

18 A. No. I don't remember getting into that  
19 detail about it.

20 508 Q. Well, at some point you were out of the  
21 room for a period of time?

22 A. Yeah.

23 509 Q. Okay. Now, you mentioned that Yasmin was  
24 emotionally upset and crying during parts or all of the  
25 meeting. As I understand it you were quite understanding

1 of her situation. You felt some sympathy for her  
2 situation?

3 A. Absolutely.

4 510 Q. Because she was going to be separated from  
5 her pet?

6 A. Absolutely.

7 511 Q. And it was clear to you that she had very  
8 significant affection for Darwin?

9 A. Yes. It was.

10 512 Q. Did you say anything along the lines of,  
11 to her, that, "Sorry but things are getting out of  
12 control as monkeys may carry diseases and the police are  
13 involved"?

14 A. No. The police weren't involved that I  
15 knew of.

16 513 Q. There was no reason to involve them?

17 A. No.

18 514 Q. So why do you think she signed the form  
19 based on what she said to you and what you said to her?

20 MS. FRANZ: Don't answer that question.

21 --refusal

22 BY MR. CHARNEY:

23 515 Q. Did you say to her that there was a health  
24 concern?

25 A. I think that was brought up when I asked



1 her if she had any papers or anything for the monkey.

2 516 Q. Okay but in the context of asking her to  
3 sign the surrender did you suggest to her there was a  
4 health concern?

5 A. No. Not that I'm aware.

6 517 Q. Did you suggest to her that Animal  
7 Services was going to have to carry out testing to  
8 ensure that it did not carry diseases?

9 A. We don't have the money to do that, sir.

10 No.

11 518 Q. So you didn't say that to her?

12 A. No.

13 519 Q. So when your supervisor said to try and  
14 get her to sign the surrender form you've mentioned to  
15 me that you reiterated to her that monkeys are  
16 prohibited under the Toronto bylaw. What else did you  
17 suggest to her would be a good reason to sign the form?

18 A. I can't think of anything else. It might  
19 be bigger than this. I don't know what provincial  
20 legislation there is or not and I don't so I was trying  
21 to be honest about that.

22 520 Q. That's fine. So you would have suggested  
23 to her that there might be repercussions with provincial  
24 legislation?

25 A. Yeah but not with City of Toronto.

1 521 Q. And the only provincial legislation you  
2 would be thinking about would be the OSPCA Act?

3 A. No. That's not exactly in particular the  
4 act. I didn't --

5 522 Q. Didn't know?

6 A. No. I didn't know.

7 523 Q. Did you know she was a lawyer when you  
8 were speaking to her in that meeting?

9 A. No.

10 524 Q. Did she ask to see Darwin a number of  
11 times during the meeting?

12 A. I can recall her asking to see Darwin.  
13 How many times I don't know but she was upset so --

14 525 Q. Did you offer to let her see Darwin at any  
15 point before she signed the surrender form?

16 A. No. No.

17 526 Q. Why is that?

18 A. Because she was very emotional and  
19 separating -- if you take an animal back and reunite  
20 them with their owner again it's going to be that much  
21 more difficult to separate them if you do that. The  
22 animal was already separated so therefore leave well  
23 enough alone. Do not stress the animal out and do not  
24 stress out the owner anymore or the caregiver.

25 527 Q. Did you witness the moment when Darwin and



1 Yasmin were reunited that day?

2 A. ~~Yes. I believe so. Yeah.~~

3 528 Q. ~~How did Darwin react to seeing Yasmin?~~

4 A. ~~Very excited. Yeah.~~

5 529 Q. Did she assist Animal Services in caring  
6 for Darwin that day?

7 A. ~~She assisted Animal Services in taking his~~  
8 ~~diaper off and actually washing him, I think. Yeah.~~

9 530 Q. I take it she was pretty emotional about  
10 all that, too?

11 A. ~~Yes, sir.~~

12 531 Q. Did ~~she appear to be a woman who wanted to~~  
13 ~~surrender her monkey?~~

14 A. ~~No.~~

15 532 Q. Just before I move on, did you have any  
16 conversations with the same supervisor other than when  
17 you stepped out to speak with him on the phone that same  
18 day? Did you have any other conversations with him?

19 A. I think one of our other staff were on the  
20 phone with him.

21 533 Q. About what?

22 A. About the same thing because they knew  
23 that there was someone coming to claim the monkey before  
24 I had gotten there, I think. That's all.

25 534 Q. After your initial call with him where he

1 asked you to see if you could get the surrender form  
2 signed did you call him --

3 A. We might have spoken twice if that's the  
4 case. Yeah. We might have spoken.

5 535 Q. Would it have been before or after she  
6 signed the surrender form? The second call?

7 A. The second call I think after. Maybe.  
8 I'm not sure. I don't exactly have the recollection of  
9 that.

10 536 Q. You can't assist me with anything that was  
11 said in the second call compared to the first one?

12 A. I don't -- no. I think the second call  
13 was to report back to him possibly about what took  
14 place.

15 537 Q. Since that day have you had any other  
16 conversations with this same supervisor about Darwin?

17 A. No.

18 538 Q. Has he ever indicated to you why he wanted  
19 to get the surrender form signed?

20 A. No.

21 539 Q. And do you have any information or belief  
22 as to why he wanted you to get the surrender form  
23 signed?

24 A. No.

25 540 Q. No opinion whatsoever on the matter?

1 A. No. I don't know.

2 541 Q. Well, can I suggest it to you? He didn't  
3 have the authority to keep Darwin so he needed her to  
4 sign the surrender form otherwise he would have to give  
5 it back. Do you agree with that?

6 MS. FRANZ: Don't answer that question.

7 --refusal

8 BY MR. CHARNEY:

9 542 Q. Do you know if there was any testing done  
10 of Darwin while he was at Animal Services?

11 A. After my involvement that day I had no  
12 other involvement with Darwin whatsoever.

13 MR. CHARNEY: Ms. Franz, could you undertake to  
14 make best efforts to determine if any testing was done  
15 and if so to let us know what the results were, please?

16 MS. FRANZ: By TAS?

17 MR. CHARNEY: What does that mean?

18 MS. FRANZ: If there was testing done by TAS?

19 MR. CHARNEY: Yes. I keep calling them Animal  
20 Services. Sorry.

21 MS. FRANZ: Oh, no. It's the same thing.

22 --undertaking

23 BY MR. CHARNEY:

24 543 Q. And this idea that Yasmin was trying to  
25 negotiate an arrangement so she could keep the monkey at

1 home, I take it that was after she signed the surrender  
2 forms so she could at least keep him for a temporary  
3 period until he went to a sanctuary?

4 A. I don't remember the minutes there. There  
5 was minutes. I'm not sure.

6 544 Q. Have you now told me everything important  
7 that happened during that meeting with Yasmin?

8 A. Yes. To the best of my recollection, yes.

9 MR. CHARNEY: Thank you. Those are my  
10 questions.

11 THE DEPONENT: Thank you, sir.

12 --whereupon the proceedings adjourned at 3:18  
13 p.m.

January 9, 2013

DAVID BEHAN - 101

1 I HEREBY CERTIFY THE FOREGOING

2 to be a true and accurate  
3 transcription of my shorthand notes  
4 to the best of my skill and ability.

5  
6  
7  
8  
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15 original signature of the Court Reporter  
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