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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PLANNED PARENTHOOD)
FEDERATION OF AMERICA,)
INC., et al.,)

Plaintiff,)

v.)

Case No. 3:16-CV-00236 (WHO)

THE CENTER FOR MEDICAL)
PROGRESS, et al.,)

Defendants.)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF

TRAM NGUYEN

BURLINGAME, CALIFORNIA

THURSDAY, MARCH 21, 2019

Reported by:
MICHAEL P. HENSLEY
RDR, CSR No. 14114
No. 19-76474

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1 THE WITNESS: I don't recall.

2 BY MR. JONNA:

11:54

3 Q. And have you seen anything that you've done to
4 make it known that you expected the conversation to be
5 confidential?

6 MS. STERK: Objection. Vague.

7 Counsel, are you talking about just in what she
8 watched right now?

9 MR. JONNA: Yeah.

11:54

10 THE WITNESS: No.

11 BY MR. JONNA:

12 Q. Okay. I'm going to go on to 7:08:27. By the
13 way, have you seen this video before today?

14 A. Yes.

11:54

15 Q. When did you see it?

16 A. When they were initially put out, and we watched
17 the videos that contained our team on there.

18 Q. Okay. This is Frame 42677.

19 (Video was played.)

11:55

20 MR. JONNA: I stopped it at 43098. The question
21 in the clip related to -- from David Daleiden related to
22 specimen quality. And then you responded and said,
23 "There are times where it's a little too intact."

24 What did you mean when you said "a little too

11:55

25 intact"?

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1 A. That all of the limbs were completely attached
2 to the torso versus the limbs being held on by a piece
3 of tissue, piece of bone.

4 Q. So when you are referring to limb -- all the
11:55 5 limbs being attached to the torso, are you talking about
6 a complete fetus?

7 MS. STERK: Objection. Vague.

8 THE WITNESS: It could be a fetus that has all
9 of the limbs attached to it and the calvarium attached
11:55 10 to it. But it would never be an intact as in how
11 somebody else would define it.

12 Can you define "intact" for me.

13 BY MR. JONNA:

14 Q. I'm not answering questions today.

11:56 15 A. I'm sorry. I was just seeking clarification.

16 Q. Okay. Well, you're the one who used the word
17 "intact," so I'm actually interested in your definition.
18 So how do you define "intact"?

19 MS. STERK: Objection. Vague.

11:56 20 THE WITNESS: Again, it's when all the limbs are
21 completely attached to the torso versus being held or
22 detached from the torso.

23 BY MR. JONNA:

24 Q. Okay. And you said there are some times when
11:56 25 the calvarium would be attached and some times where it

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1 when you said "a little too intact." I understand what
2 you mean now by "intact." But what do you mean by "too
3 intact"? Why would it be too intact?

4 MS. STERK: Objection. Asked and answered.

12:08 5 THE WITNESS: Because, again, they were -- it
6 would be completely attached to the torso versus being,
7 you know, connected by a piece of skin, a piece of
8 muscle, part of the bone.

9 BY MR. JONNA:

12:08 10 Q. So that -- that's more intact; right? But why
11 is it too intact?

12 MS. STERK: Objection. Asked and answered.

13 THE WITNESS: I -- I don't understand what
14 you're trying to ask.

12:08 15 BY MR. JONNA:

16 Q. I'm just trying to understand what you meant.
17 So was the -- in the situation that you described, was
18 the calvarium also attached?

19 MS. STERK: Objection. Vague.

12:08 20 THE WITNESS: I don't remember.

21 BY MR. JONNA:

22 Q. Do you remember seeing any specimens where the
23 calvarium was also attached?

24 MS. STERK: Objection. Vague.

12:08 25 THE WITNESS: I've seen the calvarium attached

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1 to the torso but no limbs attached, or a part of torso
2 was missing.

3 BY MR. JONNA:

4 Q. Okay. Is there anything that occurred during
12:09 5 this conversation that you recall that gave you the
6 impression that BioMax was interested in anything other
7 than fetal tissue?

8 MS. STERK: Objection. Vague.

9 THE WITNESS: Not that I recall.

12:09 10 BY MR. JONNA:

11 Q. Okay. Let's take a look at exhibit --

12 MS. STERK: Counsel, we've been going, I think,
13 over an hour now. I don't know if this is a good time
14 for lunch.

12:09 15 MR. JONNA: Would you guys like to take a break
16 now?

17 MS. STERK: Do you want to eat now?

18 THE WITNESS: Yeah, I think so.

19 MR. JONNA: Okay. Let's go off the record.

12:09 20 THE VIDEOGRAPHER: We are going off the record
21 at approximately 12:10 P.M.

22 (A break was taken.)

23 THE VIDEOGRAPHER: We are back on the record at
24 approximately 1:02 P.M.

13:02 25 MS. STERK: And before you start, can we just,

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1 for the record, introduce everybody else who is now in
2 the room.

3 MR. JONNA: Sure. On our side, we have
4 Dr. Forrest Smith, one of our experts.

13:03 5 MS. KLEINE: And I'm Angela Kleine here for NAF.

6 MR. JONNA: Okay. Very good.

7 MS. STERK: And I don't know if we had said
8 before that Mr. Daleiden was here. I don't know if that
9 is on the record or not.

13:03 10 MR. JONNA: Well, Mr. Daleiden's here too.

11 MS. STERK: Okay.

12 BY MR. JONNA:

13 Q. Good afternoon, Ms. Nguyen.

14 A. Hello.

13:03 15 Q. You understand you're still under oath; right?

16 A. Yes.

17 Q. Okay. I want to ask you about a couple more
18 things on this video. But before I do, I just want to
19 circle back on something we talked about earlier.

13:03 20 During the prior clip, you -- you had the phrase

21 "a little too intact," and I asked you for your

22 definition of "intact." And you said that it's when the

23 limbs are still attached to the torso. And I just want

24 to get an understanding of what you mean when you say

13:03 25 "the torso."

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1 When -- what is the condition of the torso in
2 that situation?

3 MS. STERK: Objection. Vague.

13:04

4 THE WITNESS: Well, the D & E procedure, the
5 fetal parts come out in multiple parts. And so with
6 it -- with the torso, it's just I don't know how to
7 describe the torso any --

8 BY MR. JONNA:

9 Q. It's just one intact part?

13:04

10 MS. STERK: Objection. Vague.

11 THE WITNESS: It would be the chest and the
12 abdomen is the torso. That's how I would describe it.

13 BY MR. JONNA:

14 Q. Okay. So a -- So a complete torso.

13:04

15 MS. STERK: Objection. Vague.

16 THE WITNESS: Sometimes the torso would come out
17 complete or, like, part of the abdomen missing or part
18 of the ribcage missing. But it does -- but the torso
19 does come out.

13:04

20 BY MR. JONNA:

21 Q. Okay. So sometimes it comes out complete.
22 Sometimes it comes out with portions missing.

23 MS. STERK: Objection. Mischaracterizes the
24 testimony.

25

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1 protective order.

2 BY MR. JONNA:

3 Q. Are you going to answer?

13:37

4 MS. STERK: I instruct you not to answer, based
5 on Judge Ryu's protective order.

6 THE WITNESS: I won't answer that question.

7 MR. JONNA: Okay.

8 BY MR. JONNA:

13:37

9 Q. So you said that you can never intend to
10 complete the procedure intact, but it does happen is
11 what you said on the video; right?

12 MS. STERK: Objection. Mischaracterizes the
13 video.

14 THE WITNESS: Yes.

13:37

15 BY MR. JONNA:

16 Q. So it happens, and it's okay if it happens as
17 long as you don't intend for it to happen. Is that your
18 understanding?

13:37

19 MS. STERK: Objection. Calls for legal
20 conclusion. Misrepresents the video. Misrepresents the
21 testimony.

22 THE WITNESS: Can you repeat that question?

23 BY MR. JONNA:

13:37

24 Q. So there are intact procedures that occur, and
25 your understanding is that it's okay as long as the

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1 doctor signs that that wasn't the doctor intent.

2 MS. STERK: Objection.

3 BY MR. JONNA:

4 Q. True?

13:37 5 MS. STERK: Objection. Vague. Mischaracterizes
6 the video. Mischaracterizes testimony.

7 THE WITNESS: It is true.

8 MS. STERK: Compound. Sorry.

9 THE WITNESS: But it's more of a -- you can't
13:37 10 intend on making one pass and having a fetus. You -- a
11 typical D & E requires multiple passes and with the
12 fetus coming out in multiple parts. So for this is
13 whenever you have it come out where you've made one
14 pass, two passes, and the limbs come out attached to the
13:38 15 torso, to me, that's intact.

16 BY MR. JONNA:

17 Q. But you comply with the law by just signing
18 something that says you didn't intend for that to
19 happen; is that true?

13:38 20 MS. STERK: Objection.

21 Again, this is within the scope of Judge Ryu's
22 protective order. I'm going to instruct the witness not
23 to answer.

24 BY MR. JONNA:

13:38 25 Q. Are you going to answer?

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1 record doesn't mean that it wouldn't be part of the
2 protective order. I'm just taking a look to make sure
3 that's in there.

14:18 4 MR. JONNA: That's okay. We can wait till it
5 comes up on the video, if you want.

6 MS. STERK: I think you're right. It may not be
7 in there. So you can -- you can ask the question again
8 or if --

9 BY MR. JONNA:

14:18 10 Q. Your affiliate does not use digoxin; correct?

11 A. Corrects.

12 Q. And that's been the case since you've been
13 there?

14 A. Correct.

14:18 15 Q. Okay. And do you know why that is?

16 MS. STERK: Objection. Vague. Calls for
17 speculation.

18 THE WITNESS: No, I don't.

19 BY MR. JONNA:

14:19 20 Q. Because you're a research -- you guys do a lot
21 research, and digoxin wouldn't be good for research; is
22 that true?

23 MS. STERK: Objection. Argumentative. Calls
24 for speculation.

14:19 25 THE WITNESS: I don't know.