

COMMONWEALTH OF MASSACHUSETTS  
Worcester, ss. Superior Court Department  
of the Trial Court

\* \* \* \* \*  
COMMONWEALTH OF MASSACHUSETTS \*  
v. \* Criminal Action  
KELLY HOOSE \* No. 03-0546(1-4)  
\* \* \* \* \*

MOTION TO EXCLUDE TESTIMONY  
OF CHRISTINE BARRON, MD  
BEFORE: FECTEAU, J.

A P P E A R A N C E S:

ON BEHALF OF THE COMMONWEALTH:  
Worcester County District Attorney's Office  
340 Main Street  
Worcester, Massachusetts 01608  
By: Maura McCarthy, Assistant District Attorney

ON BEHALF OF THE DEFENDANT:  
JAMES J. KAEDING, Esq.  
17 Hamilton Street  
Southbridge, Massachusetts 01550

Worcester Superior Court  
March 10, 2005

Susan A. Garvin  
Official Court Reporter

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
CHRISTINE BARRON, MD (By Ms. McCarthy)	4		37	
(By Mr. Kaeding)		19		41

1 (Court in Session.)  
2 (Defendant present with counsel.)

3 THE CLERK: The next matter is Commonwealth  
4 versus Kelly Hoose. That's 03-0546. Would the parties  
5 please introduce yourselves for the record.

6 MS. McCARTHY: Good morning, your Honor.  
7 Maura McCarthy for the Commonwealth.

8 MR. KAEDING: James Kaeding representing  
9 Mr. Hoose.

10 THE COURT: Do we have anything other than a  
11 motion to exclude the testimony of Dr. Barron?

12 MR. KAEDING: Not today.

13 THE COURT: That's what we are dealing with  
14 today?

15 MS. McCARTHY: Absolutely. Yes.

16 THE COURT: Is there anything you want to say  
17 by way of opening or introduction?

18 MR. KAEDING: I don't, your Honor.

19 MS. McCARTHY: Your Honor, the only thing I  
20 believe is at issue is whether or not Dr. Barron is  
21 qualified to testify as an expert on the Tanner scale;  
22 and I expect Dr. Barron is here to take some testimony.

23 THE COURT: Then you may call her.

24 MS. McCARTHY: Dr. Barron, please.

1 CHRISTINE BARRON, MD, Sworn

2 MS. McCARTHY: May I proceed, your Honor?

3 THE COURT: Any time you're ready.

4 THE WITNESS: Good morning.

5

6 DIRECT EXAMINATION

7 BY MS. McCARTHY:

8 Q Good morning. Would you identify yourself  
9 for the record?

10 A Yes. I am Dr. Christine Barron.

11 Q And what is your occupation, Dr. Barron?

12 A I'm a board certified pediatrician who  
13 specializes in child abuse and neglect.

14 Q And Dr. Barron, could you tell the Court  
15 about your education?

16 A Certainly. I received a BS in biochemistry  
17 from the State University of New York, Binghamton, in  
18 1990. I then obtained my medical doctorate from the  
19 State University of New York, Health Science Center, in  
20 Brooklyn, New York, in 1995. I then completed a  
21 three-year pediatric residency at Brown University,  
22 Hasbro Children's Hospital. I then completed a  
23 two-year fellowship specializing in child abuse and  
24 neglect from 1998 to 2000. I was then recruited for my

1 fellowship in 2000 to create a child protection program  
2 at UMass Memorial Children's Medical Center, and in  
3 February of 2004 I was recruited back to Hasbro  
4 Children's Hospital to be the clinical director for  
5 their child protection program.

6 Q What do you do as a clinical director for  
7 their child protection program, specifically?

8 A I complete evaluations for children who are  
9 suspected victims of child maltreatment, including  
10 sexual abuse, physical abuse, and neglect. I teach  
11 residents, medical students, and four fellows in the  
12 field of forensic pediatrics in the evaluation for  
13 child abuse and neglect.

14 Q Have you been awarded any postgraduate  
15 honors?

16 A Yes.

17 Q And what are they?

18 A I received several teaching awards through my  
19 residency, including teaching awards from the residents  
20 and medical students. I received the Haffenreffer  
21 Award. And since being out of fellowship, I have  
22 received the CASA and Ann McCarron Award, and the  
23 Liberty Bell Award from the Worcester County Bar  
24 Association.

1 Q And do you hold any professional licenses  
2 and/or board certifications?

3 A Yes, I do.

4 Q And what are those?

5 A I have a board certification in pediatrics  
6 from the American Board of Pediatrics. I hold a  
7 license to practice medicine in both Massachusetts and  
8 Rhode Island.

9 Q Do you currently have an academic  
10 appointment?

11 A Yes, I do.

12 Q And where is that?

13 A I'm an assistant professor of pediatrics at  
14 Brown University.

15 Q And have you written any publications on  
16 child abuse, or participated in publications concerning  
17 child abuse?

18 A Yes, I have.

19 Q And how many have you participated in?

20 A I have written chapters on both sexual abuse  
21 and physical abuse that were just recently published.  
22 I have written review articles in Developmental &  
23 Pediatrics concerning child abuse and neglect. I have  
24 published on Munchausen Syndrome by Proxy, and

1 currently have pending two other chapters, one in  
2 Emergency Medicine textbook, and one in Nelson's  
3 Textbook of Pediatrics.

4 Q And have you been invited and have you spoken  
5 on the issue of child abuse in your tenure as a medical  
6 physician?

7 A Yes, I have.

8 Q And how often have you done that?

9 A Quite often. I actually locally provide  
10 lectures and education, but have been invited to  
11 numerous national conferences to provide lectures and  
12 workshops.

13 Q Have you testified concerning child abuse  
14 prior to this event in court?

15 A Yes, I have.

16 Q And where have you testified?

17 A I have testified in Rhode Island,  
18 Massachusetts, and New York.

19 Q And what courts specifically, Dr. Barron,  
20 have you testified in?

21 A In juvenile and family court, as well as  
22 superior court.

23 Q And how many times would you estimate that  
24 you have testified?

1 A Approximately 45 times.

2 Q Dr. Barron, were you asked to review some  
3 documents relating to the case of Commonwealth versus  
4 Kelly Hoose?

5 A Yes, I was.

6 Q And who were you asked to review documents  
7 by?

8 A I cannot recall the name of the individual.

9 Q Was it a police officer named Christopher  
10 Donais?

11 A It was a police officer named Christopher  
12 Donais, yes.

13 Q Did you meet with Officer Donais on a date in  
14 March 2003?

15 A Yes, I did.

16 Q And did he provide to you some images that  
17 had been secured via a search warrant of Mr. Hoose's  
18 computer?

19 A Yes.

20 Q And do you recall where you were when you  
21 looked at those images?

22 A I was in my office at UMass Memorial  
23 Children's Medical Center.

24 Q Do you recall how many images Officer Donais



1 had provided to you?

2 A There were over a hundred images.

3 Q And when you looked at those -- were you  
4 asked to look at those images?

5 A Yes.

6 Q What did you see when you looked at those  
7 images?

8 A I reviewed the images, looking at the general  
9 appearance, as well as applying Tanner staging, and  
10 identified conservatively 36 images of those hundred  
11 depicted children under the age of consent.

12 THE COURT: Under the age of?

13 THE WITNESS: Consent. Under the age of 17  
14 or 18.

15 Q What would you deem the age of consent in  
16 your mind when you were looking at those pictures?

17 A Seventeen.

18 Q So the pictures that you looked at and  
19 selected, were they under -- what age did you select?

20 A I specifically was conservative to identify  
21 Tanner staging 1 and 2; and as I stated in my brief  
22 report to you, identified that, for instance, breast  
23 development of stage 2 would depict children of 9.96  
24 years of age, plus or minus a standard deviation of

1 1.82 years, so therefore approximately under the age of  
2 12.

3 Q Dr. Barron, you mentioned the Tanner staging,  
4 what is that?

5 A Tanner staging is a scale to describe the  
6 pattern of sexual development. It's the physiologic  
7 age of children, and we use it to monitor sexual  
8 development in children.

9 Q When did you first learn about Tanner  
10 staging?

11 A In medical school.

12 Q And what year of medical school,  
13 specifically?

14 A I would have learned Tanner staging in the  
15 second year.

16 Q And has that theory or technique been tested?

17 A Yes.

18 Q And how has it been tested?

19 A The Tanner staging itself, obviously, is  
20 applied by all practicing clinicians who see children  
21 and whenever we do examinations on children. I  
22 personally have examined several thousands of children,  
23 and each of those children I would assess for Tanner  
24 staging of breast development, as well as pubic hair

1 development and genital changes that occur in a  
2 consistent and predictable pattern. The Tanner staging  
3 itself has recently, in the last 16 years, been used in  
4 two very large studies.

5 Q And how -- when you say a large study, how  
6 many children participated in that study that you  
7 referred to, or the two studies that you referred to?

8 A The two studies combined are approximately of  
9 60,000 children. The initial study was between 1988  
10 and 1994, which was the third National Health and  
11 Nutrition Examination Survey, known as the NHANES III,  
12 conducted by the National Center for Health Statistics,  
13 which examined approximately 40,000 individuals from  
14 two months of age to adulthood; and then in 1992 to '93  
15 the pediatric research in the office setting known as  
16 the PROS study, which was conducted by the American  
17 Academy of Pediatrics, where they examined over 17,000  
18 children between the ages of three and 12.

19 Q Regarding those two studies that you cite,  
20 were any conclusions drawn from those studies?

21 A Yes.

22 Q What were they, regarding the Tanner method?

23 A Using the Tanner method, since it describes a  
24 predictable and consistent manner, what they were able

1 to do was to see what the physiologic ageing of  
2 children was and compare that to chronological age.  
3 And what they were able to conclude from the data is  
4 that for breast development, Tanner stage 2, you have  
5 children who are 9.96 years of age, plus or minus 1.82  
6 years, and when you look at overall data, what that  
7 shows is that 99.9 percent of girls who have Tanner  
8 staging 2 occurs before age 17 1/2, and the same is  
9 true for Tanner staging 3. Basically what that means  
10 is that children who are Tanner stage 1, 2, or 3, that  
11 they are statistically less than 17 years of age to  
12 99.9 percent certainty.

13 MS. MCCARTHY: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q Dr. Barron, I am showing you a series of  
16 photos that are identified via the indictments  
17 referring to Mr. Hoose, and I ask you if you can take a  
18 look at those pictures that are associated with those  
19 indictments and tell us whether or not you recognize  
20 those pictures?

21 A Yes.

22 Q And Dr. Barron, are there any substantial  
23 changes that you would note to those pictures from the  
24 time that you reviewed those with Officer Christopher

1 Donais?

2 A Only that the originals that I saw were in  
3 color.

4 Q When you apply the Tanner stages to pictures,  
5 is it good -- for lack of a better word -- for you to  
6 have color photos? Do they assist you in some way?

7 A They are obviously more detailed than copies;  
8 and so, yes, colored photos are better.

9 Q And how do you recognize those photos? What  
10 do you recognize those photos to be?

11 A Those were the photos shown to me in my  
12 office.

13 Q Now, were there additional photos that are  
14 not part of those, or were those the photos that you  
15 selected as being children based on the Tanner scale?

16 A Those were the children I selected out of the  
17 over a hundred photos.

18 Q And could you describe to the Court what  
19 criteria or protocol that you used to apply the Tanner  
20 scale to those specific pictures?

21 A Yes. Initially, obviously, in identifying  
22 any child under the age of 17, looking at the general  
23 appearance of the child in the image, as well as then  
24 to apply Tanner staging for breast development, as well

1 as Tanner staging for pubic hair development, and  
2 identifying if I can clearly distinguish any other  
3 physiologic changes that would occur as children mature  
4 sexually. So that includes such things as body fat  
5 distribution, pelvic width enlargement, which shows  
6 indentation, or waist, at a young girl's age, usually  
7 starting at age 9; but also looking at the genitalia  
8 itself, that in addition to Tanner staging, the  
9 genitals actually undergo changes. So, for instance,  
10 in a young girl as she develops into an adolescent and  
11 then an adult, the labia majora and the labia minora,  
12 which are the outer and inner lips of the genitalia,  
13 will grow in size and will also develop rugae, which is  
14 basically wrinkling of the skin.

15 Q And the photos that you have just reviewed  
16 and are attached to the indictments, did you make  
17 specific notations or notes about each photo that you  
18 had observed?

19 A Yes.

20 Q And do you have those notations with you here  
21 today?

22 A I made notations with the officer.

23 Q And when you made those notations, what  
24 specifically -- what were you doing with the officer?

1           A     I was being very conservative in identifying  
2 photos in which the image was clear enough to identify  
3 through the general appearance of the person, as well  
4 as being able to then apply the Tanner staging, and any  
5 photos that I could not do that with I would exclude,  
6 that did not have a clear image, or did not have  
7 children who would depict Tanner staging 1 or 2.

8           Q     And when you looked at these photos, did you  
9 generate a report after you had taken a look at these  
10 photos with Officer Donais?

11          A     Yes, I did.

12          Q     And do you have that report with you here  
13 today?

14          A     Yes.

15          Q     And specifically what were your  
16 determinations upon your reviewing these photos that  
17 you selected and are the subject of the indictment of  
18 Mr. Kelly Hoose?

19          A     That the images that I selected depict  
20 children who are under the age of consent.

21          Q     And when you say "age of consent," just to be  
22 specific, what age are you referring to?

23          A     Seventeen years of age.

24          Q     Are you familiar with any known or potential

1 rate of error when the Tanner scale is applied?

2 A Yes. There is standard deviation, as I  
3 stated in my report, such as the fact that children  
4 with Tanner stage 2 breast development are 9.96 years  
5 plus or minus 1.82 years.

6 Q And when you indicated that you were  
7 conservative with the photos that you selected and  
8 determined as being children, based on using the Tanner  
9 scale, what was the outside range of the age of the  
10 child?

11 A As to breast development was stage 2, again,  
12 9.96 years, plus or minus 1.82 years, so under the age  
13 of 12. And this means that basically images that I  
14 have identified are children whose ages are 11.78 years  
15 by breast development and -- no greater than 11.78  
16 years by breast development, and no greater than 12.18  
17 years by pubic hair development.

18 Q So it is your opinion that there are children  
19 regarding the subject of these indictments that are  
20 less than the age of 13 years of age?

21 A Correct. And the numbers that we have, but  
22 overall the data itself that is clearly applicable, is  
23 that children who have this type of development are  
24 99.9 percent less than 17 years of age.



1           Q     Has the Tanner method been, in your  
2           experience, generally accepted within the scientific  
3           community?

4           A     Yes.

5           Q     And are you aware whether or not your peers  
6           use the Tanner method in their occupation as forensic  
7           pediatricians?

8           A     Yes.

9           Q     And just to be clear, what is the working  
10          definition of a forensic pediatrician?

11          A     Forensic pediatricians are pediatricians who  
12          specialize in evaluations for any type of child  
13          maltreatment.

14                MS. MCCARTHY: May I just have one moment,  
15          your Honor?

16                THE COURT: Sure.

17          Q     And just so that I was -- in case I was not  
18          clear, when you looked at the specific images, did you  
19          follow a protocol of applying the Tanner method to  
20          specifically these images that you have chosen?

21          A     Yes.

22          Q     And what was the protocol, the exact sequence  
23          of events that you did in order to apply and look at  
24          the Tanner method?

1           A     It's to look at the overall image initially,  
2     then to Tanner stage breast development and pubic hair  
3     development, and then also, if depicted in the picture,  
4     to look for other secondary changes in body habitus and  
5     changes in genitalia, as I described before. And the  
6     application of the Tanner scale is not to identify the  
7     actual chronological age of the child, but the  
8     physiologic age.

9                     And that Tanner staging scale has been  
10    utilized in these two very large studies, and again,  
11    which shows that applying the physiologic changes that  
12    we see by Tanner staging to chronological age, we can  
13    say statistically that those children who are Tanner  
14    stage 2 and 3 are 99.9 percent less than 17 years of  
15    age.

16           Q     Have you applied the Tanner stage in other  
17    cases involving court indictments of suspected child  
18    pornography or abuse?

19           A     Yes.

20           Q     In how many cases have you done that,  
21    Dr. Barron?

22           A     As a fellow I reviewed five cases with my  
23    supervisor. I have completed -- this is my fourth case  
24    that I have reviewed on my own for court purposes.

1 Clearly, all of the children that I examine, I apply  
2 and determine Tanner staging of all of those children  
3 that I personally examine, as well as the fact that I  
4 have several images that are sent to me from other  
5 physicians, even other forensic pediatricians,  
6 particularly for questions of physical abuse or sexual  
7 abuse, at which time from those images I also would  
8 determine Tanner staging.

9 MS. MCCARTHY: I have no further questions.

10 THE COURT: Mr. Kaeding?

11 MR. KAEDING: Thank you, Judge.

12  
13 CROSS-EXAMINATION

14 BY MR. KAEDING:

15 Q Doctor, you are currently the clinical  
16 director of the Child Protection Program at Hasbro  
17 Children's Hospital in Rhode Island?

18 A That's correct.

19 Q And you testified that in your work as a  
20 clinical director you evaluate child victims of sexual  
21 abuse and physical abuse; is that correct?

22 A I evaluate suspected victims of child abuse.

23 Q And by "evaluation," that means meeting with  
24 them personally, correct?

1           A     In those particular evaluations I will  
2 evaluate children directly. But as I stated, I also am  
3 asked by several other physicians to review their  
4 cases.

5           Q     And those physicians that are asking you to  
6 review their cases have met the children in person,  
7 correct?

8           A     Yes.

9           Q     In your experience, your professional  
10 experience both at the University of Massachusetts  
11 Medical Center, and since then in Providence, it has  
12 involved clinical experience and clinical supervision,  
13 correct?

14          A     Yes. In addition to, again, reviewing other  
15 cases.

16          Q     And again, by clinical, that would mean  
17 either meeting with alleged victims in person, or  
18 reviewing cases of other doctors who have met the  
19 alleged victims in person, correct?

20          A     That's correct. Except for the nine cases of  
21 specifically requesting to review images for the  
22 question of child pornography.

23          Q     In reviewing your resume, you have never  
24 presented any scholarly papers or presentations on the

1 use of the Tanner scale, correct?

2 A Correct.

3 Q You have not had anything published regarding  
4 the use of the Tanner scale, correct?

5 A Correct.

6 Q You testified that you use the Tanner scale  
7 in your clinical practice, correct?

8 A Yes, I do.

9 Q And again, when you are using it, you are  
10 using it with the person right in front of you,  
11 correct?

12 A Again, the same response I had before, yes;  
13 in addition to reviewing cases from other physicians  
14 and the nine cases I have described.

15 Q Now, you testified that the purpose of the  
16 Tanner scale is to describe a pattern of sexual  
17 development and to identify physiological age?

18 A Correct.

19 Q The purpose of the Tanner scale is not to  
20 determine chronological age, correct?

21 A Correct. Nobody would apply the Tanner  
22 staging, for instance, to identify an image of a person  
23 who is 14 versus 15.

24 Q And the Tanner scale is named for a

1 Dr. Tanner, correct?

2 A That's correct. He's a British physician.

3 Q And, in fact, the Tanner scale, or Tanner  
4 staging, was developed by Dr. Tanner and a  
5 Dr. Rosenbloom?

6 A Actually the Tanner staging was developed by  
7 Tanner and Marshall.

8 Q And are you familiar with Dr. Rosenbloom?

9 A I am very well.

10 Q And is he considered an authority in the use  
11 of the Tanner scale?

12 A I wouldn't describe him as having authority.  
13 I am well aware of the letter to the editor of  
14 Pediatrics that he applied during the year of 1998.

15 Q And that letter was actually signed by  
16 Dr. Rosenbloom and Dr. Tanner; is that correct?

17 A That's correct.

18 Q And that was published in what periodical or  
19 journal?

20 A Pediatrics.

21 Q And is that a journal publication that is  
22 used in the field of pediatrics?

23 A Yes, it is.

24 Q Considered a scholarly journal?

1           A     It is a peer reviewed journal, yes.

2           Q     The letter written by Drs. Tanner and  
3     Rosenbloom was regarding the use of the Tanner scale  
4     and application of the Tanner scale to photographs,  
5     correct?

6           A     Correct.

7           Q     And specifically photographs allegedly  
8     involving child pornography, correct?

9           A     Yes.

10          Q     And Drs. Tanner and Rosenbloom in that letter  
11     said that the use -- the application of the Tanner  
12     scale or Tanner staging to determine the age of the  
13     children in photographs is an inappropriate use of the  
14     Tanner scale, correct?

15          A     No. The actual wording says that it would be  
16     inappropriate to estimate chronologic age in those  
17     circumstances.

18          Q     And, in fact, the letter said that it is not  
19     designed for estimating chronologic age, correct?

20          A     Correct.

21          Q     And therefore not properly used for this  
22     purpose?

23          A     That was the first of several letters; and  
24     that's correct.

1 Q And this letter actually indicated that one  
2 of these doctors, Rosenbloom or Tanner, had been  
3 involved as an expert in several US cases involving  
4 possession of child pornography, correct?

5 A It said "one of us" has been involved as an  
6 expert, yes.

7 Q Do you have this letter before you?

8 A Yes, I do.

9 MR. KEADING: Could I ask the doctor to read  
10 the letter?

11 THE COURT: Any objection?

12 MS. MCCARTHY: None.

13 THE COURT: You may.

14 A "Misuse of Tanner puberty staging to estimate  
15 chronologic age. To the editor: One of us has been  
16 involved as an expert in several US federal cases of  
17 possession of alleged child pornography in which seized  
18 materials, parenthesis, videos, photographs, computer  
19 downloads, end parenthesis, were used as evidence  
20 against individuals identified in quote, sting, end  
21 quote operations, wherein government agents take over  
22 pornographic businesses. In these cases, the staging  
23 of sexual maturation, parenthesis, Tanner stage, end  
24 parenthesis, has been used not to stage maturation, but



1 to estimate probable chronologic age. This is a wholly  
2 illegitimate use of Tanner staging. No equation exists  
3 estimating age from stage, and even if they did, the  
4 degree of unreliability in the staging, the dependent  
5 variable would introduce large error into the estimate  
6 of age.

7 Furthermore, the unreliability of  
8 this stage rating is increased to an unknown degree by  
9 improperly performed staging that is not clinical  
10 examination, but through non-standardized and thus  
11 unsuitable photographs. Therefore, we wish to caution  
12 pediatricians and other physicians to refrain from  
13 providing quote expert, end quote, testimony, as to  
14 chronological age based on Tanner staging which was  
15 designed for estimating development or physiologic age  
16 for medical, educational, and sports purposes, in other  
17 words, identifying early and late maturers. The method  
18 is appropriate for this provided chronological age is  
19 known. It is not designed for estimating chronological  
20 age, and therefore not properly used for this purpose."  
21 Signed by Dr. Rosenbloom and Dr. Tanner.

22 Q And earlier you mentioned there were a series  
23 of letters, responses to this, correct?

24 A Absolutely.

1 Q And some of those responses were critical of  
2 Dr. Rosenbloom and Dr. Tanner's position in this,  
3 correct?

4 A Yes, and actually resulted in a final reply  
5 from Dr. Rosenbloom.

6 Q And do you have that final reply before you?

7 A I have the quote from that.

8 Q And would you read that quote?

9 A Yes. First I'd like to say that the other  
10 responders basically identified that the Tanner staging  
11 used for child pornography is, in fact, not to identify  
12 chronological age; again, as I stated, it's to identify  
13 physiologic age.

14 And in the final reply from Rosenbloom,  
15 he did identify that although chronological age cannot  
16 be accurately estimated from Tanner stages, he echoed  
17 the thoughts of earlier respondents by saying, quote,  
18 "An experienced physician maintains the ability to  
19 estimate age based on, quote, facial appearances, body  
20 shape, muscular development, and sexual maturation,"  
21 end quote.

22 Q In this response, Dr. Rosenbloom also said  
23 that "Invocation of Tanner staging with its population  
24 specificity, wide age range for timing maturational

1 features, unreliability of staging from visual  
2 materials, and dependence on clues that can be altered,  
3 parenthesis, shaving, may weaken rather than strengthen  
4 the straightforward authority of the experienced  
5 pediatrician," correct?

6 A Correct.

7 Q Now, you testified about your experience and  
8 the general validity of the use of the Tanner staging  
9 or Tanner scale, correct?

10 A Correct.

11 Q I want to focus your attention on the  
12 particular application of that, and that is not the  
13 application of Tanner scale to photographs, to visual  
14 images. Okay? The studies that you refer to, the two  
15 large studies, total 60,000 children, correct?

16 A Yes.

17 Q And that was a peer reviewed study about the  
18 validity of the Tanner staging process, correct?

19 A Correct.

20 Q Those studies were studies of actual children  
21 examined in person, correct?

22 A That's correct.

23 Q Those studies are not studies or examining  
24 for measuring the validity of the Tanner staging to

1 visual images or photographs, correct?

2 A Correct.

3 Q You are not aware of any research, any peer  
4 review, any publication as to the validity of the  
5 Tanner staging process as applied to visual images or  
6 photographs, correct?

7 A I am well aware of a publication that has  
8 been submitted and is pending publication from the  
9 US Justice Department that does, in fact, identify that  
10 the application in this manner is appropriate and  
11 applicable.

12 Q Well, talking about peer reviewed scholarly  
13 journals; published in scholarly journals?

14 A Can you ask that again? I'm sorry.

15 Q There have been no studies, research done,  
16 published studies validating the use of the Tanner  
17 scale in photographs, visual images, correct?

18 A Correct.

19 Q And, in fact, in your use of the Tanner  
20 staging process, Tanner analysis, you are looking at  
21 particularly two things, the breast development and the  
22 development of pubic hair, correct?

23 A Those are looked at, again, as a result of  
24 looking at the entire image, looking for other changes

1 that we see, and obviously I see in clinical practice,  
2 as well as to images that are sent to me to request  
3 review of the cases. And so it's really looking at the  
4 entire image, as well as then applying Tanner staging  
5 for breast development and pubic hair development, but  
6 being very well aware of other changes that occur as  
7 children develop into adolescence and adulthood.

8 Q Isn't it true that the problem with  
9 photographs is that you don't know if what you are  
10 seeing is what is actually there in that person,  
11 correct?

12 A I don't understand your question.

13 Q In other words, you don't know if pubic hair  
14 has been shaved, correct?

15 A Correct. Pubic hair can clearly be shaved;  
16 however, the enlargement of labia minora and majora and  
17 appearance of rugae can not be changed.

18 Q In the photographs, the cases that you have  
19 seen, whether it's cases that have been sent to you,  
20 referred to you by other doctors, have you examined  
21 photographs?

22 A Yes.

23 Q And are they close-up photographs of the  
24 genitals?

1           A     Some, yes, and some, no; it depends on the  
2     reason for the photograph.

3           Q     Certainly you would need to, in order to  
4     examine or to come to a conclusion about the staging as  
5     it applies to genitalia, you would need a relatively  
6     close, accurate photograph, correct?

7           A     No, you don't need a close photograph.  
8     Tanner staging, particularly for pubic hair  
9     development, is very easily applied even if you don't  
10    have a close-up of the genitalia, as long as the  
11    genitalia is in view, can be easily applied.

12          Q     So the application of the Tanner scale to  
13    photographs has not been tested, correct?

14          A     Correct.

15          Q     It has not been subject to peer review and  
16    publication, correct?

17          A     Correct.

18          Q     The rate of error that you discussed before,  
19    as far as a standard deviation of plus or minus 1.82  
20    years, plus or minus 1.67 years, that applies to  
21    in-person examination of the child, correct?

22          A     That's correct.

23          Q     So there's been no study, no research about  
24    the deviation or rate of error as it's applied to

1           photographs, correct?

2           A     Not directly.

3           Q     I'm sorry?

4           A     Correct.

5           Q     And certainly as reflected in the letters to  
6           the Journal of Pediatrics, there's great dispute about  
7           whether it's appropriate to apply Tanner staging to  
8           photographs to determine chronological age, correct?

9           A     Again, specific to chronological age, which  
10          is not what Tanner staging as applied to the situation  
11          is doing.

12          Q     Right. However, when you look at whether  
13          it's an actual person or a photograph, you identify, in  
14          these photographs, in particular, you come up with,  
15          "This person appears to be stage 2, or stage 3,"  
16          correct?

17          A     Tanner staging 1 and 2, yes.

18          Q     And that is just a reference to what appears  
19          to be physiologic age or development, correct?

20          A     Actually, it is applicable to physiologic  
21          age, because the Tanner staging itself, which has never  
22          been in dispute, actually provides very predictable and  
23          constant changes that we as physicians, and certainly  
24          as myself, see clinically, as well as, as I have said,

1 I have reviewed several photos from other physicians,  
2 and when I reviewed those photos, obviously, Tanner  
3 stage to which the clinician who has seen that patient  
4 and I have agreed upon the Tanner staging, because it's  
5 a very predictable scale.

6 Q In those cases though, the physician who has  
7 referred the child to you knows the age of the child?

8 A Correct; and I do not.

9 Q You are not identifying what the age is based  
10 on the Tanner scale?

11 A Correct. I am able to correctly Tanner stage  
12 from images sent to me.

13 Q As you said, the purpose of the Tanner scale  
14 is to describe the physiologic age of the child?

15 A Correct.

16 Q And it's the research that you refer to that  
17 correlates the physiologic age to certain chronological  
18 ages, correct?

19 A That's correct.

20 Q And that research is based on physical,  
21 in-person examination of those children, correct?

22 A Correct.

23 Q So there's no research that correlates what  
24 appears to be the physiologic stage from a photograph



1 to the actual chronologic age?

2 A Not in the research, but again in my clinical  
3 practice I have done that.

4 Q You testified that the police officer,  
5 detective, he sent these photographs to you, correct?

6 A No, he came to my office.

7 Q And you reviewed them in your office?

8 A Yes, I did.

9 Q And you identified approximately 37 as being  
10 below the legal age, correct?

11 A Correct.

12 Q You said that you made specific notations on  
13 each photo, correct, referring to each photograph?

14 A Correct.

15 Q Where are those notations?

16 A Those notations were on labels that were  
17 placed on the images. Most of them are labeled after  
18 discussion with the officer regarding why that  
19 particular photo of the over a hundred photos would  
20 meet criteria to identify a child under the age of  
21 consent.

22 Q Where are those labels now, if you know?

23 A I do not know.

24 Q You don't have them?

1 A No, I don't.

2 Q The report that you generated, is that the  
3 two-paragraph report?

4 A Yes.

5 Q You testified that you have reviewed several  
6 cases of alleged child pornography photographs and  
7 applied the Tanner scale, correct?

8 A Correct.

9 Q I believe you said there were five cases with  
10 a supervisor -- or with supervision, correct?

11 A Yes, with Dr. Carole Jenny, who is my mentor.

12 Q And four other cases on your own, correct?

13 A Correct.

14 Q You said that these were cases relating to  
15 court proceedings, correct?

16 A Correct.

17 Q You have never testified in court about the  
18 application of the Tanner scale to these photographs,  
19 correct?

20 A Correct.

21 Q So you have never been qualified as an expert  
22 in the application of the Tanner scale to photographs,  
23 correct?

24 A Correct.

1 MS. McCARTHY: Objection, your Honor.  
2 Specifically for in-court testimony, I would say,  
3 because there's no information that she hasn't been  
4 qualified as an expert prior to this.

5 THE COURT: Well, I think the point of the  
6 question was, has the witness ever testified in court  
7 and been permitted to give opinions about the Tanner  
8 staging to photographs. I think that is the particular  
9 point of the question.

10 MS. McCARTHY: Okay.

11 THE COURT: And your answer is no?

12 THE WITNESS: No.

13 MR. KEADING: Just one moment.

14 Q Certainly you've testified that you have  
15 testified and been qualified as an expert in court  
16 proceedings in Rhode Island and Massachusetts and New  
17 York, correct?

18 A Correct.

19 Q But in those cases you were offering an  
20 opinion about sexual abuse or neglect or physical abuse  
21 of an actual child that you examined, correct?

22 A No, I have provided expert testimony on kids  
23 that I have examined, as well as cases that I have been  
24 requested to review.

1 Q But again, those would be children who have  
2 been seen personally by either yourself or someone who  
3 has referred the matter to you?

4 A In some of the cases I would be referred  
5 cases from prosecutors or defense attorneys to which I  
6 have no direct contact with any individual who actually  
7 physically examined the child.

8 Q And you are dealing with testimony about the  
9 effects or the evidence of actual physical or sexual  
10 abuse on a particular child, correct?

11 A Physical abuse, sexual abuse, neglect.

12 THE COURT: Again, I think to clarify the  
13 point of the question, these are all questions that  
14 involve a known subject, a known victim?

15 THE WITNESS: Yes.

16 THE COURT: A known child?

17 THE WITNESS: Yes.

18 THE COURT: As opposed to a case like this,  
19 that you do not know, and appears does not know the  
20 subject of the photographs?

21 THE WITNESS: Correct. For testimony.

22 THE COURT: Correct.

23 THE WITNESS: I have reviewed cases, again,  
24 for the question of child pornography where the

1 individual in the image was not known.

2 THE COURT: Right.

3 MR. KAEDING: I have no other questions.

4 MS. MCCARTHY: I just have a few, if I may.

5

6

REDIRECT EXAMINATION

7

BY MS. MCCARTHY:

8

Q Would you consider a sample of 60,000

9

children for determining their physiological age by

10

using the Tanner method -- how would you characterize

11

that sampling?

12

A That is a very large sample of study that

13

identifies that, first of all, it is very easy to apply

14

the Tanner staging; and secondly, in the data that we

15

see from both studies, that the physiologic age

16

identifies very clearly that children who have not

17

reached maturity based on their Tanner staging are

18

99.9 percent less than the age of 17.

19

Q And that's not chronological age, but

20

physiological age, maturation age?

21

A Basically they compared the physiologic age,

22

the maturation age, to the known chronological age to

23

identify -- the statistical analysis identifies that a

24

child who is above 17, it's 99.9 percent unlikely that

1 they hadn't reached the Tanner staging that's  
2 appropriate.

3 So if you look at the physiologic age in  
4 those studies for 60,000 children, their physiologic  
5 age based on Tanner staging was then applied to  
6 chronologic age to identify that based on Tanner  
7 stagings, physiologic age was able to identify that  
8 99.9 percent of children who were only Tanner stage 1,  
9 2, and 3 are less than 17 years of age chronologically.

10 Q And when you looked at the photographs that  
11 Officer Donais brought to you and then selected 37 of  
12 those photographs, did you --

13 THE COURT: It was 36.

14 MS. MCCARTHY: 36, I apologize.

15 THE COURT: What is the number?

16 THE WITNESS: I believe it's 36.

17 Q Sorry. When you selected those 36  
18 photographs, were there groupings of the same -- what  
19 you would believe to be the same girl involved in that?

20 A Yes.

21 Q And when you have several pictures of the  
22 same child, does that assist you when you are applying  
23 the Tanner method?

24 A Well, clearly, as I stated before, applying

1 the Tanner staging to photographs entails us to be able  
2 to see the body of the child, and obviously having more  
3 photos, you know, increases the vision that I have of  
4 the entire child's body, so, yes.

5 Q When you observed those 36 photographs, did  
6 you note whether or not there were any changes in  
7 appearance of the labia majora, labia minora, or the  
8 presence of rugae in any of those photographs?

9 A Yes.

10 Q And what did you note?

11 A I noted that in the child I identified less  
12 than 17 years of age, the labia majora -- the outer  
13 lips -- and labia minora were small in appearance, did  
14 not have any enlargement that we would see with sexual  
15 maturation, and no rugae.

16 Q Dr. Barron, when you first began testifying  
17 in court, or -- I should strike that.

18 When you first began applying the Tanner  
19 method that you said you learned in the second year of  
20 medical school, had the issues of child pornography, or  
21 visual images generated off of a computer, was that  
22 part of your studies or your education at that time?  
23 Was that prevalent in your education and your learning  
24 at that time?

1           A     When I first learned the Tanner staging, it  
2 was obviously to understand the difference between the  
3 stages, and then starting in third year medical school,  
4 actually applying them to clinical situations. But  
5 throughout my pediatric residency, and certainly in my  
6 fellowship in child abuse and neglect, there has always  
7 been an application of looking at an image and applying  
8 the Tanner staging.

9           Q     And just as part of the protocol of the  
10 Tanner staging, is there a requirement in that protocol  
11 that the children be live and in front of you, or is  
12 there a distinction between live children and a visual  
13 image or a computer image?

14          A     No. The Tanner staging itself was devised to  
15 identify physiologic age, which we have clarified here,  
16 that the Tanner staging itself was not intended to  
17 identify chronologic age; however, the two large  
18 studies in which they were able to clearly connect  
19 physiologic age to chronologic age with a significant  
20 statistic identifies that Tanner staging, and  
21 identifying from that the physiologic age, we can  
22 identify that children who are in specific  
23 physiological ages correspond to children who in  
24 chronological age are less than 17.



1           Q     Dr. Barron, when you have testified in prior  
2 court proceedings, despite the fact that you weren't  
3 testifying directly as to the Tanner method, did you  
4 utilize that method when you were examining the  
5 children that you testified about in court?

6           A     Yes, I Tanner stage every child I see.

7           MS. MCCARTHY: I have no further questions.

8           THE COURT: Okay.

9           MR. KAEDING: Just briefly.

10  
11                                   REXCROSS-EXAMINATION

12           BY MR. KAEDING:

13           Q     The studies that you referred to that showed  
14 the Tanner application of Tanner staging is  
15 99.9 percent accurate as far as stage 1 and 2 --

16           A     1, 2, and 3.

17           Q     That is based on studies of actual children  
18 that are examined in person, correct?

19           A     Correct.

20           MR. KAEDING: Thank you.

21           THE COURT: If I can interject a couple of  
22 questions? I think if I understand your testimony, all  
23 of the 36 images that you have selected show females  
24 who are exhibiting Tanner stages no higher than 2?

1 THE WITNESS: Correct.

2 THE COURT: And a Tanner stage 2, based upon  
3 the research, would provide, given the margin of error,  
4 a chronological age of no higher than 13 plus?

5 THE WITNESS: Correct.

6 THE COURT: So all of the images that form  
7 the basis of this case, in your opinion, show females  
8 with an age no older than 13?

9 THE WITNESS: That's correct. I was  
10 specifically very conservative in reviewing those  
11 images, although the data from the large study still  
12 show that up to Tanner stage 3, it's still a  
13 99.9 percent chance that the child is less than 17. I  
14 was very specifically conservative in looking at these  
15 images in choosing Tanner stage 1 and 2, particularly  
16 to identify that those would be clearly even  
17 younger-aged children.

18 THE COURT: Are you familiar in your research  
19 or in your understanding of the literature in your  
20 profession, even though you might not have testified in  
21 another case concerning applying the Tanner staging to  
22 visual ages, are you familiar with the fact that  
23 anybody else has?

24 THE WITNESS: Absolutely, yes. And the

1 letters that I refer to in response to the original  
2 letter to Pediatrics clearly stated that the Tanner  
3 staging is, in fact, used for cases of child  
4 pornography.

5 THE COURT: You mentioned your mentor,  
6 Dr. Carole --

7 THE WITNESS: Jenny, J-E-N-N-Y.

8 THE COURT: You were reviewing cases under  
9 her supervision?

10 THE WITNESS: Yes.

11 THE COURT: Has she testified in court?

12 THE WITNESS: Yes, she has.

13 THE COURT: Has she testified in court  
14 applying the Tanner staging to visual images in child  
15 pornography cases?

16 THE WITNESS: Yes, she has.

17 THE COURT: In what courts has she been  
18 permitted to testify as an expert?

19 THE WITNESS: I would have to review her CV,  
20 but I do know that she has been identified as an  
21 international expert and has testified in several  
22 states throughout the United States. She actually is  
23 the person who was commissioned by the US Department of  
24 Justice to write a chapter on evaluation for child

1 pornography, in which that chapter that is due to be  
2 published identifies the same statistics that I have  
3 spoken to you about today.

4 THE COURT: So that the study that you were  
5 mentioning, even though it hasn't been published yet or  
6 approved for publication, it is pending?

7 THE WITNESS: Yes.

8 THE COURT: Pending peer review?

9 THE WITNESS: Pending peer review and  
10 publication by the US Department of Justice.

11 THE COURT: What publication was it submitted  
12 to?

13 THE WITNESS: It is a publication that they  
14 were -- let me just get the information for you. They  
15 specifically requested from Dr. Jenny, Paul Graf,  
16 Special Agent, US Naval Criminal Investigative Service,  
17 David Watson, Special Agent, US Naval Criminal  
18 Investigative Service, and illustrations by  
19 Dr. Stephen Boos, directly from the US Department of  
20 Justice. I don't have any other information.

21 THE COURT: So is this then, Dr. Jenny, is  
22 she participating in another study such as the two that  
23 you have already referred to?

24 THE WITNESS: No, the publication that is

1 pending identifies these two large studies that have  
2 already been published in peer review journals and held  
3 that it can, in fact, be applied to images as well as  
4 direct examination.

5 THE COURT: So they are not utilizing any  
6 further research subjects, they are using the studies  
7 that have already taken place?

8 THE WITNESS: Correct.

9 THE COURT: In those studies were photographs  
10 part of the study?

11 THE WITNESS: No, they were not.

12 THE COURT: Besides Dr. Jenny, are you  
13 familiar with any other forensic pediatricians who have  
14 been permitted to testify applying the Tanner staging  
15 to photographs?

16 THE WITNESS: Yes.

17 THE COURT: Or visual images?

18 THE WITNESS: Yes.

19 THE COURT: Can you name a few?

20 THE WITNESS: Dr. Kutz, Dr. Sirotnik,  
21 Dr. Boos are folks that I have personal knowledge have  
22 testified.

23 THE COURT: Are you aware of any appellate  
24 decisions in cases which has discussed specifically the

1 admissibility of this evidence?

2 THE WITNESS: I'm not aware.

3 THE COURT: Do you make it a practice to read  
4 court decisions that might have a bearing on your area  
5 of specialty?

6 THE WITNESS: I obviously keep up in my own  
7 literature in my field, but not necessarily read all  
8 the law literature.

9 THE COURT: I can understand that.

10 Any other questions by counsel?

11 MS. MCCARTHY: No, your Honor.

12 MR. KAEDING: No, your Honor.

13 THE COURT: Thank you, Doctor.

14 THE WITNESS: Thank you, your Honor.

15 (Witness excused.)

16  
17 MS. MCCARTHY: Your Honor, I have submitted  
18 copies of the pictures that Dr. Barron had reviewed,  
19 along with her conclusions or opinion on the Tanner  
20 scale, as well as her CV, and that would be the  
21 conclusion of the Commonwealth's presentation.

22 THE COURT: Okay.

23 Mr. Kaeding?

24 MR. KAEDING: Judge, I have a memorandum in

1 support of our motion that I would submit, but --

2 THE COURT: Are you introducing any other  
3 evidence?

4 MR. KAEDING: No evidence.

5 THE COURT: Do you wish to be heard?

6 MR. KAEDING: Just briefly, your Honor.

7 I think that I have no doubt that Dr. Barron  
8 would qualify as an expert as far as a forensic  
9 pediatrician dealing with child abuse and neglect or  
10 sexual abuse, but really the focus here is the  
11 application of the Tanner scale, Tanner staging, to  
12 photographs, or printed from a computer that she  
13 examined in her office. Although the Tanner scale  
14 itself may be a valid means of determining --

15 THE COURT: It doesn't sound like you are  
16 challenging the reliability of the Tanner scale by  
17 itself?

18 MR. KAEDING: Right.

19 THE COURT: It's only when it's applied to  
20 visual images that you are having a problem?

21 MR. KAEDING: Exactly. It's the application  
22 of that methodology to the facts of this case, and I  
23 think in either Lanigan, Daubert/Lanigan, the Court's  
24 job is to be the gatekeeper, applying and studying how

1 the application of a particular theory or methodology,  
2 how that's applied to the facts of the case before the  
3 court.

4 In this case the doctor testified there's  
5 been no testing, no research as to the validity of  
6 Tanner to photographs. There's been no peer review, no  
7 publication. There's no data regarding rate of error  
8 in this application, and it's certainly not an area  
9 that would meet the standard of general acceptance in  
10 the community as it's applied to the facts of this  
11 case.

12 THE COURT: Commonwealth?

13 MS. MCCARTHY: Your Honor, the subject matter  
14 that Dr. Barron has testified to is one that is derived  
15 from scientific method that will assist the jury, that  
16 the scientific method has been sampled by 60,000  
17 children, and those children, the study has concluded  
18 that 99.9 percent of those children, when applied to  
19 the physiologic maturation stage of the children, is  
20 99.9 percent correct. Dr. Barron testified that that  
21 is a large sampling of children, and that there's no  
22 set requirement that the children be actually there  
23 when applying the Tanner method and protocol.

24 Your Honor, as the gatekeeper, you have wide



1 latitude as to whether or not to allow an expert to  
2 testify in her field. I would suggest, your Honor,  
3 based upon her education and her experience with the  
4 Tanner scale in over thousands of children, both in  
5 physically seeing the children, but also with her  
6 having reviews of children sent by other physicians  
7 where she does not know the chronological age and has  
8 applied the Tanner scale and method successfully, your  
9 Honor, that I suggest that it has been applied.

10 Your Honor, I would suggest, too, that this,  
11 science, for lack of a better word, of having child  
12 pornographic images coming off a computer is a  
13 relatively new one where the actual photographs would  
14 be used, unidentified children would be the subject of  
15 photography and sent over the Internet and into  
16 someone's computer, your Honor, that it is a relatively  
17 new generation of crimes, and things a medical  
18 physician to be looking at, and based upon using the  
19 protocol of the Tanner method with the several images  
20 that she noted, and applying that Tanner method  
21 consistently, she aptly applied it.

22 And the fact that there are no actual studies  
23 out there at present -- there has been one submitted  
24 for publication -- I believe only demonstrates that

1       it's a relatively new science, that they didn't rely,  
2       as your Honor had pointed out, that they didn't apply  
3       new standards, they used the 60,000 that were used in  
4       the two major studies and applied the results of those  
5       studies to come to a conclusion that is waiting for  
6       peer review and publication, to come to the conclusion  
7       that this data is good and can be applied successfully  
8       to images as it can be to children that have been  
9       examined physically by the physician.

10               And just practically speaking, in courtrooms  
11       all over the Commonwealth of Massachusetts, doctors are  
12       asked to review medical records, images of children  
13       that they have never met before, and are qualified and  
14       are able to use their training, their expertise, to  
15       testify as an expert in those fields. I suggest, your  
16       Honor, that the theory and techniques have been subject  
17       to peer review and publication and is going to that  
18       next level of being subjected to, specifically on this  
19       level using the same data that they have been relying  
20       on since the 1970s, the Tanner and Marshall theory, so  
21       that it does satisfy that element of Daubert/Lanigan to  
22       qualify Dr. Barron as an expert.

23               And that Dr. Barron did mention the known or  
24       potential rate of errors that they have concluded with

1 the Tanner scale, and indeed based on her application  
2 of it, the Tanner scale over the years, she erred on  
3 the side of caution when coming to this particular  
4 case, only selecting children that were Tanner stage 1  
5 and 2.

6 So I suggest, your Honor, that that prong has  
7 also been satisfied. And I suggest to your Honor that  
8 the theory and methodology of the Tanner staging has  
9 been generally accepted within the scientific  
10 community, and that Dr. Barron's knowledge and  
11 application of the Tanner method is one that she has  
12 applied subjectively and objectively during her years  
13 as a clinician, and it is one that she has -- that she  
14 employs on a daily basis and uses that to discover the  
15 pattern of physiological age.

16 For those reasons, your Honor, it's the  
17 Commonwealth's position that the testimony -- that  
18 Dr. Barron should be qualified as an expert, that her  
19 testimony would be reliable and relevant and of  
20 assistance to the jury, and it does merit -- have  
21 scientific validity, and I ask you to deny the  
22 defendant's motion.

23 THE COURT: Mr. Kaeding, you said that you  
24 filed a brief?

1 MR. KAEDING: I have one here. I haven't  
2 filed it yet.

3 THE COURT: You haven't filed it yet. I was  
4 going to ask you about it, because I have your motion  
5 and affidavit. I will take that and I will review it.

6 I appreciate your presentations this morning.  
7 I have one observation to make, though, and that is  
8 that I am assuming that the public file does not  
9 contain these images yet?

10 MS. MCCARTHY: It does not.

11 THE COURT: Then I think that the attachments  
12 that you have provided where images are attached to  
13 photocopies of indictments should not be available in  
14 the public file, so I think that it would be  
15 appropriate given their content to impound them.

16 So with respect to your opposition,  
17 Dr. Barron's curriculum vitae, those aspects, those  
18 particular papers can be, I think, available for public  
19 inspection, but I think that the indictments that have  
20 the images themselves attached to them should not be,  
21 so I will impound that portion only. The remaining  
22 portions can remain unimpounded.

23 MS. MCCARTHY: Thank you very much.

24 THE COURT: Thank you. I will take the

1 matter under advisement. Do you have a trial date in  
2 this case?

3 MR. KAEDING: No. Your Honor, I know you  
4 asked at the beginning if there's anything else here,  
5 and I forgot, there are. You may remember that --

6 THE COURT: There was an out-of-state  
7 request?

8 MR. KAEDING: Right. And that request hasn't  
9 been honored yet. There were some problems with  
10 some -- an error that I made, and errors made down  
11 there in Maryland.

12 THE COURT: You have to start all over again.

13 MR. KAEDING: I'm afraid so. I was  
14 cautiously optimistic that these people would  
15 cooperate, but they will not. So what I would need is  
16 the order that I had prepared for the Court. It  
17 actually had a date of return of February 18<sup>th</sup>. I  
18 would be asking if I can prepare a new order with a  
19 later date, give enough time out there --

20 THE COURT: Now, these records that you may  
21 get or may not get -- assuming they say what you hope  
22 them to say, in terms of their admissibility, so  
23 anything that I do --

24 MR. KAEDING: I understand.

1 THE COURT: -- is not going to foreshadow  
2 what a trial judge might do with this information, if  
3 you try to put it in.

4 Anything else? Trial date?

5 MR. KAEDING: Actually, request for bail, I  
6 would ask to be heard as to that.

7 THE COURT: Is he held now?

8 MR. KAEDING: No, he's out.

9 THE COURT: Okay. Is there an issue of bail,  
10 Miss McCarthy?

11 MS. MCCARTHY: I don't believe that there's  
12 been a change in circumstances, your Honor, so I would  
13 suggest that there is no need for an issue of bail.

14 THE COURT: You want to reduce bail?

15 MR. KAEDING: I would like to reduce bail.

16 THE COURT: What's the current bail now?

17 MR. KAEDING: It's \$2,000.

18 THE COURT: I will hear what you have to say.

19 MR. KAEDING: Obviously Mr. Hoose has posted  
20 the bail. He's been out for quite a while, and he has  
21 appeared every date, every court appearance. He has  
22 been working, but recently he has been mostly  
23 unemployed, his family rent has increased, and their  
24 change of circumstances has created a deterioration in

1 their personal financial situation. They would be  
2 requesting a reduction of bail to 1,000 from 2,000.

3 THE COURT: Miss McCarthy?

4 MS. MCCARTHY: Your Honor, I would ask that  
5 the bail stay the same. The purpose of the bail is to  
6 assure his appearance at the court dates. I suggest  
7 that the fact that \$2,000 has been posted has assured  
8 that he has been present at the court dates. Due to  
9 his lack of employment, I don't know if that would be a  
10 reason for him not to show up at the next court date,  
11 and I would ask that it remain the same for those  
12 reasons.

13 THE COURT: I am going to deny your request  
14 without prejudice. You can raise it again. It also  
15 makes a good argument why this case should be put on  
16 for early trial, but I am not going to assign a trial  
17 date. I think you should go next door. They are  
18 keeping a central calendar, so I will refer you back to  
19 the First Session for setting of trial date. I will  
20 try to get a decision on this motion as promptly as I  
21 can.

22 MS. MCCARTHY: Thank you very much.

23 (Hearing concluded.)  
24

## C E R T I F I C A T I O N

1  
2  
3 I, SUSAN A. GARVIN,  
4 OFFICIAL COURT REPORTER, HEREBY CERTIFY  
5 THAT THE FOREGOING TRANSCRIPT OF THE  
6 EVIDENCE IN THE CASE OF COMMONWEALTH  
7 VERSUS KELLY HOOSE, TAKEN  
8 BEFORE FECTEAU, J. AT THE  
9 WORCESTER SUPERIOR COURT, WORCESTER,  
10 MASSACHUSETTS, ON MARCH 10, 2005,  
11 IS A TRUE AND ACCURATE COPY OF MY  
12 STENOGRAPHIC NOTES REDUCED TO TYPEWRITTEN  
13 FORM BY MEANS OF COMPUTER-AIDED  
14 TRANSCRIPTION TO THE BEST OF MY SKILL,  
15 KNOWLEDGE AND ABILITY.  
16  
17  
18



19  
20 SUSAN A. GARVIN  
21 OFFICIAL COURT REPORTER  
22  
23  
24