

MONTANA 4TH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

[REDACTED] MELLEM and [REDACTED]
MELLEM,

Plaintiffs,

-vs-

[REDACTED] HOME
INSPECTIONS, INC.; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED], n/k/a
[REDACTED],

Defendants.

Cause No. DV-14-257
Dept No. 3
Hon. John W. Larson

Taken at 225 Adams Street
Missoula, Montana
Wednesday, October 28, 2014 - 9:01 a.m.

VIDEOTAPE DEPOSITION

OF

[REDACTED] [REDACTED]

Reported by Melody Jeffries Peters, RDR, CRR,
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A P P E A R A N C E S

1 C.J. Johnson, Esq., and Helia Jazayeri, Esq.,
2 Kalkstein, Johnson & Dye, P.C., 225 Adams Street,
3 Missoula, Montana 59802,
4 appearing on behalf of the Plaintiffs.

5 Kimberly S. More, Esq., Crowley Fleck PLLP, 1667
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7 Kalispell, Montana 59903-0759,
8 appearing on behalf of the Defendants.

9 ALSO APPEARING: [REDACTED] Mellem
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S T I P U L A T I O N S

1 It was stipulated by and between counsel
2 for the parties that the deposition be taken by
3 Melody Jeffries Peters, RDR, CRR, Freelance Court
4 Reporter and Notary Public for the State of
5 Montana, residing in Missoula, Montana.
6
7

8 It was further stipulated and agreed by
9 and between counsel for the parties that the
10 deposition be taken in accordance with the Montana
11 Rules of Civil Procedure.
12
13

14 It was further stipulated and agreed by
15 and between counsel for the parties that all
16 objections except as to form would be reserved
17 until time of trial, and that said objections
18 would have the same force and effect as if
19 interposed at the time of taking the deposition.
20

21 It was further stipulated and agreed by
22 and between counsel for the parties and the
23 witness that the reading and signing of the
24 deposition would be expressly reserved.
25

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1 WEDNESDAY, OCTOBER 29, 2014

2 MS. JAZAYERI: Okay. We are recording.

3 MR. JOHNSON: All right. This is the
4 time and place set for the deposition of
5 [REDACTED] [REDACTED] in the matter styled Mellem versus [REDACTED]
6 and [REDACTED] Home Inspections.
7

8 If you could swear the witness, please.
9 Thereupon,
10 [REDACTED] [REDACTED],

11 a witness of lawful age, having been first duly
12 sworn to tell the truth, the whole truth and
13 nothing but the truth, testified upon his oath as
14 follows:

E X A M I N A T I O N

15 BY MR. JOHNSON:

16 **Q. Good morning.**

17 **A. Morning.**

18 **Q. Would you state your full name for the**
19 **record, please.**

20 **A. [REDACTED] [REDACTED].**

21 **Q. All right, Mr. [REDACTED]. Have you ever had**
22 **your deposition taken before?**

23 **A. Not in this particular case. I did as a**
24 **witness for an insurance claim.**

25 **Q. Okay. Have you been deposed just one**

<p style="text-align: right;">Page 6</p> <p>1 time?</p> <p>2 A. Yes.</p> <p>3 Q. About when was that? I think I saw on</p> <p>4 your discovery that maybe it was five or six years</p> <p>5 ago?</p> <p>6 A. About five or six years ago, yes.</p> <p>7 Q. What was the subject matter of your</p> <p>8 testimony in that case?</p> <p>9 A. In that particular case it was just a</p> <p>10 follow-up to an inspection that had been [REDACTED]d</p> <p>11 by an inspector. The property -- not through the</p> <p>12 inspection, but through the findings beyond</p> <p>13 that -- displayed that the house was uninsurable</p> <p>14 and was on some national insurance do-not-insure</p> <p>15 list because the basement had flooded. The</p> <p>16 inspector noted that. It had had several claims</p> <p>17 filed against it as well.</p> <p>18 And the purpose of my inspection was to</p> <p>19 determine whether or not I felt the inspector had</p> <p>20 duly reported what he had reported in his</p> <p>21 inspection.</p> <p>22 And so basically I followed up by noting</p> <p>23 that there had been pooling water alongside the</p> <p>24 foundation, there was pooling water along the</p> <p>25 foundation when I did -- at the time they did the</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Not previously. I know some of the</p> <p>2 attorneys in that building.</p> <p>3 Q. Have you worked with any of those</p> <p>4 attorneys on any litigated cases or claims?</p> <p>5 A. No, no.</p> <p>6 Q. All right. So as we're sitting here --</p> <p>7 A. To back up, that was where the</p> <p>8 deposition was held was at Milodragovich.</p> <p>9 Q. All right. So as we're sitting here</p> <p>10 today, you're calling it a deposition. I want to</p> <p>11 make sure I understand.</p> <p>12 Have you ever before been questioned</p> <p>13 under oath the way I'm questioning you now?</p> <p>14 A. No, no.</p> <p>15 Q. So this is -- to the best of your</p> <p>16 memory, this is your first deposition.</p> <p>17 A. Yes. They called it a deposition.</p> <p>18 Whether -- There was not a court recorder present</p> <p>19 at the time. It was just the secretary from the</p> <p>20 firm was there.</p> <p>21 Q. All right. So I'll give you a couple of</p> <p>22 suggestions that I think will make the process</p> <p>23 move along a little more efficiently and smoothly</p> <p>24 today.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 7</p> <p>1 deposition [sic], and also that they had a sump</p> <p>2 pump in the basement that had water in it at the</p> <p>3 time that I did the inspection.</p> <p>4 Q. Okay. So I want to break that down just</p> <p>5 a little bit.</p> <p>6 Were there attorneys involved in that</p> <p>7 case?</p> <p>8 A. I don't believe so. I believe it was</p> <p>9 just the insurance adjusters. They're through</p> <p>10 State Farm, and I believe it was only just</p> <p>11 insurance people. That's all I ever talked to was</p> <p>12 the insurance representatives.</p> <p>13 Q. So did you actually give a deposition in</p> <p>14 that case similar to what you're giving today or</p> <p>15 did you --</p> <p>16 A. Similar, similar, but there weren't any</p> <p>17 attorneys there. It was just a mediator and</p> <p>18 insurer was at that particular --</p> <p>19 Q. Okay. Was there a claim against a home</p> <p>20 inspector in that case?</p> <p>21 A. No, no.</p> <p>22 Q. Okay.</p> <p>23 A. The claim was against the buyer.</p> <p>24 Q. Have you worked with the Milodragovich</p> <p>25 firm previously?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. The first thing, Mr. [REDACTED], that I'd ask</p> <p>2 for you to do is to speak clearly.</p> <p>3 A. Yes.</p> <p>4 Q. And articulate your answers.</p> <p>5 A. Okay.</p> <p>6 Q. And by that I mean saying "yes" and "no"</p> <p>7 as opposed to "huh-uh" or "uh-huh" or shaking or</p> <p>8 nodding your head because our wonderful court</p> <p>9 reporter is taking down our conversation word for</p> <p>10 word. And it's very important that we understand</p> <p>11 exactly what you said and what you meant to say on</p> <p>12 this record rather than getting back a paper</p> <p>13 record where we have a hard time understanding</p> <p>14 what it is that you meant.</p> <p>15 A. Okay.</p> <p>16 Q. Is that fair?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And I warn you now, it</p> <p>19 happens to everybody, everybody shakes and nods</p> <p>20 their heads. Everybody says uh-huh and huh-uh.</p> <p>21 I'll remind you. It happens to everybody. Please</p> <p>22 don't be offended, okay?</p> <p>23 A. Okay.</p> <p>24 Q. All right. For the same reasons, if you</p> <p>25 would please wait for me to finish my question</p>

<p style="text-align: right;">Page 10</p> <p>1 before you give me your answer, and I will do my 2 very best to wait for you to finish your answer 3 before I give you my next question for the same 4 reason: If we're talking over one another, we're 5 not going to get a clean record, and it's very 6 important that we do that today. 7 A. Okay. 8 Q. Again, we will talk over one another, 9 and if we're doing it and we're not yelled at 10 first by our wonderful reporter, I'll remind us 11 again. It happens to everybody, okay? 12 A. Okay. 13 Q. All right. If I ask you a question that 14 you don't understand or that you believe requires 15 clarification, would you please let me know that? 16 A. Yes. 17 Q. And if you do, I'll certainly do my best 18 to reph[REDACTED] it. If you answer my question, is it 19 fair for all of us to assume that you understood 20 it and that you're answering it truthfully and to 21 the best of your ability? 22 A. Yes. 23 Q. All right. This is a question I ask 24 everybody; I'm not singling you out. Have you 25 taken any medication today that would impair your</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Yes. 2 Q. All right. And when you say the 3 documents provided to you, I'm not interested in 4 knowing any of the communications that you had 5 between you and Kim, but what documents, other 6 than those two inspection reports, have you been 7 provided by counsel that you reviewed in 8 preparation for your deposition? 9 A. Well, I reviewed court documents that 10 were filed: the complaints and findings and -- 11 Q. The answer? 12 A. And the answers and all the reports that 13 were filed through the -- through the court system 14 and reviewed the -- well, all the papers that were 15 in the two CDs, the 1100 pages of documents that 16 were in there, the other -- after the first 17 discovery and the second set of documents that 18 were also reported to me. 19 Q. Okay. So it sounds like you've reviewed 20 your original inspection report, the reinspection 21 report, the complaint, the answer, the pleadings 22 in this case and then also your own discovery 23 responses? 24 A. Yes. 25 Q. And then all of the attachments that</p>
<p style="text-align: right;">Page 11</p> <p>1 ability to understand my questions or answer them 2 truthfully? 3 A. No. 4 Q. Now the flip side of that question. Is 5 there any medication that you need in order to 6 understand my questions and answer them truthfully 7 but that you have failed to take today? 8 A. No. 9 Q. All right. Now, Mr. [REDACTED], it's not 10 going to be an endurance test. If at any time 11 you'd like to take a break, just say, C.J., I'd 12 like to take a break, and so long as a question 13 isn't pending, the answer will always be yes. All 14 right? 15 A. Okay. 16 Q. Okay. Mr. [REDACTED], what did you do in 17 preparation for your deposition today? 18 A. In preparation for the deposition today 19 I reviewed the inspection, the documents that were 20 provided to me, the -- Kim's records and the 21 information that was received from your office. 22 Q. Okay. So I want to break that down. 23 You reviewed your own home inspection. 24 A. Right. 25 Q. Did you review your reinspection report?</p>	<p style="text-align: right;">Page 13</p> <p>1 have been produced -- 2 A. Yes. 3 Q. -- to your discovery responses. 4 A. Yes. 5 Q. All right. And so when we're talking 6 about your discovery responses, I'm assuming that 7 means you've read not only your original responses 8 but all of your supplemental responses as well. 9 A. Yes. 10 Q. Okay. And have you reviewed, in 11 addition to those materials, anything else 12 provided to you by counsel in preparation for your 13 deposition today? 14 A. I think the only other document I 15 received was an information sheet on what happens 16 at depositions. 17 Q. All right. Don't ramble. 18 A. Yes. 19 Q. Okay. That kind of good stuff. 20 A. Et cetera, et cetera. 21 Q. Yeah, exactly. 22 Did you review Mr. Bernhardt's report in 23 preparation for your deposition today? 24 A. Yes. His initial report. I never saw 25 the final-final report, but I did review the</p>

<p style="text-align: right;">Page 14</p> <p>1 initial report that he's had.</p> <p>2 Q. And you reviewed that for preparation --</p> <p>3 in preparation for your deposition today?</p> <p>4 A. Yes.</p> <p>5 Q. What about the materials that the</p> <p>6 Mellems have produced in this case? Have you</p> <p>7 reviewed those materials as well?</p> <p>8 A. Yes.</p> <p>9 Q. For example, have you reviewed all of</p> <p>10 their discovery responses?</p> <p>11 A. Yes.</p> <p>12 Q. And so not only their first discovery</p> <p>13 responses, but also their first supplemental</p> <p>14 responses and second supplemental responses?</p> <p>15 A. Yes.</p> <p>16 Q. And have you reviewed all of their</p> <p>17 attachments as well?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And have you reviewed all</p> <p>20 the photographs in the case that have been viewed</p> <p>21 by the Mellems?</p> <p>22 A. Yes.</p> <p>23 MS. MORE: I will say except for the</p> <p>24 most two recent that you sent.</p> <p>25 MR. JOHNSON: Fair enough.</p>	<p style="text-align: right;">Page 16</p> <p>1 reviewed my home inspection report and the ASHI</p> <p>2 standards, and pretty much that's the main items</p> <p>3 that I was focused on.</p> <p>4 Q. Okay. So when we just covered all the</p> <p>5 stuff you have reviewed over the life of this</p> <p>6 case, the course of this case, it sounds like, for</p> <p>7 example, you have reviewed the Mellems' discovery</p> <p>8 responses once they've been received by your</p> <p>9 attorney and she would forward them to you.</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. And I did read through the discoveries</p> <p>13 again. I will have to amend that.</p> <p>14 Q. Okay. In preparation for your</p> <p>15 deposition.</p> <p>16 A. Yes, yes.</p> <p>17 Q. And when you're saying review the</p> <p>18 discovery, you mean the responses themselves or</p> <p>19 also with all the attachments?</p> <p>20 A. Not all the attachments, just the</p> <p>21 responses and the discoveries.</p> <p>22 Q. Okay. So all of your answers and</p> <p>23 supplemental answers to discovery and all of the</p> <p>24 Mellems' answers and supplemental answers to</p> <p>25 discovery?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. (BY MR. JOHNSON) I forwarded a couple</p> <p>2 days ago a pair of photographs regarding a recent</p> <p>3 water intrusion that they had last week. It</p> <p>4 doesn't sound like you've seen those.</p> <p>5 A. No.</p> <p>6 Q. All right. And when you say "no,"</p> <p>7 you're agreeing with me; is that right?</p> <p>8 A. I agree. I did not receive that.</p> <p>9 Q. All right. So basically, with the</p> <p>10 exception of those two photographs, everything</p> <p>11 that has either been filed with the Court or</p> <p>12 exchanged between the parties in this case, you</p> <p>13 have reviewed.</p> <p>14 A. Everything that has been provided to me,</p> <p>15 yes.</p> <p>16 Q. And did you review it all in preparation</p> <p>17 for your deposition today or have you reviewed it</p> <p>18 as a process along the way?</p> <p>19 A. Process along the way.</p> <p>20 Q. Okay. So when you sat down to prepare</p> <p>21 for your deposition today, other than</p> <p>22 Mr. Bernhardt's report which we just discussed,</p> <p>23 what specific documents did you review in</p> <p>24 preparation for this deposition today?</p> <p>25 A. Specifically for the deposition I've</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So -- And this is the way</p> <p>3 depositions go. In preparation for your</p> <p>4 deposition, you reviewed Mr. Bernhardt's report,</p> <p>5 your own home inspection report, the ASHI</p> <p>6 standards, and the parties' discovery and</p> <p>7 supplemental discovery responses.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Does that exhaust what you've</p> <p>10 reviewed in preparation for your deposition today?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Thank you. I'm assuming --</p> <p>13 Did you review the 2014 ASHI standards?</p> <p>14 A. No.</p> <p>15 Q. Which standards did you review?</p> <p>16 A. The 2006.</p> <p>17 Q. Why'd you review the 2006 standards?</p> <p>18 A. The 2006 standards were the ones that</p> <p>19 were in place when I did the home inspection.</p> <p>20 Q. Okay. And so the 2006 ASHI standards</p> <p>21 would be the ones that apply to your inspection?</p> <p>22 A. Correct, correct.</p> <p>23 Q. And the 2014, they're irrelevant, they</p> <p>24 don't matter --</p> <p>25 A. They're irrelevant, yes.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. You're doing fine, but I'll give you 2 your first reminder -- 3 A. Okay. 4 Q. -- we can't talk over one another. 5 So regarding the 2014 ASHI standards, 6 they are irrelevant to this case. They have no 7 bearing on your inspection because they didn't 8 exist at the time of your inspection. 9 A. Correct. 10 Q. All right. Steve Jacoby, he's your 11 expert in this case; is that right? 12 A. Yes. 13 Q. Were you involved at all in framing his 14 report? 15 A. No. 16 Q. Did you review any drafts of the report? 17 A. No. 18 Q. All right. I'm assuming you did review 19 the final report. 20 A. Yes. 21 Q. Do you agree with the report? 22 A. Yes. 23 Q. Do you recall, as you read through it -- 24 Did you review it carefully? 25 A. Fairly carefully, yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. -- diary? 2 A. No. 3 Q. Journal entries, anything like that? 4 A. No. 5 Q. All right. How do you calendar 6 typically and how do you schedule your 7 inspections? 8 A. Well, the inspections are scheduled when 9 I receive a request to do a home inspection. I 10 just schedule them when I can get into my calendar 11 and then just follow the calendar. 12 Q. All right. Is it an electronic calendar 13 or a personal calendar? 14 A. It's just a personal calendar. It's a 15 daily calendar that I have. 16 Q. All right. And have you maintained your 17 daily calendar from August of 2013? 18 A. Yes. 19 Q. And that's a business record, I'm 20 assuming, that you keep. 21 A. Yes, yes. 22 Q. Have you looked at your calendar and 23 your appointments around the time of the 24 inspection you did for the [REDACTED] property? 25 A. Not specifically, no.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. You were thoughtful and thorough in how 2 you read through it? 3 A. Yes. 4 Q. Was there anything in that report that 5 you can recall having disagreed with? 6 A. Not specifically, no. 7 Q. Okay. When was the last time you 8 reviewed that report? 9 A. About a week ago. 10 Q. About a week ago? Okay. 11 Was that part of your preparation for 12 the deposition? 13 A. I didn't reread it for the part of the 14 deposition. That was background. 15 Q. Understood. So your reports are -- 16 obviously they're generated and they're a snapshot 17 of your inspection, and that's something that 18 you're relying upon to refresh your memory. 19 Beyond your reports in this case, is 20 there anything else you've put together that you 21 maintain that would refresh your memory regarding 22 the events surrounding this inspection? 23 And by that I mean a personal calendar 24 with notes, business calendar -- 25 A. No.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Do you recall how many appointments for 2 home inspections you had on the day of your 3 [REDACTED] inspection? 4 A. Yes. I had two inspections that day. 5 Q. Okay. That includes -- That's two 6 including [REDACTED]? 7 A. No. Yes, including [REDACTED]. I had one 8 in the afternoon. 9 Q. Okay. How many inspections do you 10 typically schedule in a day? 11 A. Most of the time two. One to two. 12 Q. What's the most you feel comfortable 13 scheduling? 14 A. I have done three if they were small 15 properties, if they were condos or apartments. 16 Q. All right. If you would, I think the 17 calendar probably falls within the scope of our 18 discovery requests. You can't get the calendar to 19 me directly, but would you please get your 20 calendar from August of 2013 and provide it to 21 counsel and then she can review it and then 22 provide it to me? 23 A. Yes. 24 Q. All right. Thank you. 25 Mr. [REDACTED], just some background questions</p>

Page 22

1 for you. What's your age?

2 A. [REDACTED]

Page 23

1 A. Yes.

2 Q. So other than your attorneys -- and I'm
3 not interested in understanding your
4 communications with your attorneys, Mr. Bernhardt
5 at this point, or your insurance adjuster at this
6 point. Other than those three groups of people,
7 with whom have you communicated regarding this
8 case?

9 A. With regards to specifically on the
10 case, nobody. In some of the -- I guess it was in
11 regards to the reporting and stuff like that, we'd
12 talk about reporting at our ASHI chapter meetings
13 and so -- but I did not communicate with any
14 individuals or anything like that. We talk in
15 generalities of what is our report doing, what
16 is our -- what have we experienced with
17 inspections.

18 Basically it's a small group. We know
19 each other's business fairly well, and we do
20 discuss issues that we have with home inspection.
21 It's kind of a -- kind of a brotherhood-type
22 community we share.

23 But specifically I did not discuss this
24 property. I mean, as far as the specifics of
25 [REDACTED], 80- -- whatever the address was,

Page 24

1 [REDACTED], that's -- that's not it.

2 **Q. Okay. Have you discussed the Mellems'**
3 **claim against you or the fact of the Mellems'**
4 **claim against you with any individuals other than**
5 **the folks we discussed previously?**

6 A. No.

7 Q. Okay. So other than your attorneys,
8 Mr. Bernhardt and your insurance adjuster, you've
9 not communicated with anyone regarding the
10 Mellems' claim.

11 A. Correct.

12 **Q. All right. How about not just oral**
13 **communications, what about written communications?**

14 A. No, no.

15 **Q. You've not -- you've not written**
16 **anybody -- Have you written anybody complaining**
17 **about the Mellems' claim or the claim that was**
18 **brought against you in this particular case?**

19 A. No.

20 Q. All right. So again, placing aside
21 attorneys, your insurance adjuster, Mr. Bernhardt,
22 what you're telling me is that you have discussed
23 some issues generally related to this case at your
24 ASHI meetings, just generally.

25 A. Generally.

Page 25

1 **Q. But you've had no specific**
2 **communications with anyone else either orally or**
3 **in writing regarding the Mellems' claim, anything**
4 **to do with the Mellems' claim at all; is that**
5 **correct?**

6 A. Correct.

7 **Q. Give me a thumbnail sketch of your**
8 **background, if you would, please.**

9



Bar Index	Approximate Length (%)
1	95
2	25
3	90
4	40
5	95
6	95
7	45
8	92
9	98
10	80
11	20
12	95
13	55
14	25
15	85
16	92
17	80

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Category	Value (approximate percentage)
1	45
2	95
3	10
4	95
5	20
6	75
7	98
8	90
9	85
10	88
11	55
12	82
13	93
14	95
15	92
16	78
17	82
18	15
19	80
20	95
21	82
22	92
23	95
24	80

Category	Value (approximate percentage)
1	70
2	45
3	75
4	95
5	15
6	85
7	78
8	80
9	88
10	82
11	60
12	25
13	78
14	88
15	92
16	62
17	70
18	40
19	85
20	95
21	55
22	75
23	68
24	88
25	82

<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>

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1 about, and I wanted to make sure I was doing
2 things right so I enrolled in those classes to get
3 the expertise that I needed to do the remodels
4 correctly.

5 **Q. You didn't want your home to become your
6 biggest problem, right?**

7 A. That's right. It already was at that --
8 At that point it was, that particular house.

9 **Q. Why?**

10 A. Well, we built [sic] a house that was
11 built by one of the builders who had many, many
12 cases brought against them for poor construction.
13 And so when I did the remodel, I had many things
14 that I needed to fix to make them right --

15 **Q. All right.**

16 A. -- to make the house salable and make it
17 so that I felt confident that when somebody else
18 purchased the house that they weren't inheriting
19 the same problems that I inherited with the
20 builder.

21 **Q. So before we get too far ahead of
22 ourselves, why don't we do this: Approximately
23 how many homes have you owned in your lifetime?**

24 A. Four.

25 **Q. Four. And the one we're discussing now,**

Page 35

1 **where was that on the space-time continuum?**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

8 **Q. And did you get a home inspection?**

9 A. No. There were no home inspectors in
10 town at that time.

11 **Q. Okay. And so you bought the house in
12 '79. Was it new when you bought it?**

13 A. Yes.

14 **Q. All right. And who built it? Was it
15 Quality Construction?**

16 [REDACTED]
17 **Q. Which one?**
18 [REDACTED]

19 **Q. So late '70s. That's the time when
20 people were putting in rebar for the inspection
21 only and pulling it out of the concrete and all
22 that sort of stuff?**

23 A. And covering walls with no insulation
24 and no insulation in the attic. Many issues.

25 **Q. So you get into the house and then you**

Page 36

1 **start discovering problems with the house.**

2 A. Yes.

3 **Q. So give me an idea of the problems you
4 were experiencing in that house in '79.**

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

[REDACTED] 7

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 **Q. All right. So it sounds like you were
8 actually dealing with a lot of issues that you
9 wish you had a home inspector for before you
10 bought the house, but there weren't any home
11 inspectors.**

12 A. Knowing what I do now, yes.

13 **Q. Yes.**

14 A. Yes.

15 **Q. But what you're saying is there were no
16 home inspectors around at the time.**

17 A. There was no home inspectors at that
18 time.

19 **Q. And at the time you didn't have any home
20 inspection training.**

21 A. No. I was a first-time home buyer just
22 out of college.

23 **Q. Knowing what you know now, if a
24 professional -- if an expert home inspector had
25 walked through that property applying, for**

<p style="text-align: right;">Page 38</p> <p>1 example, the 2006 ASHI standards, they would be 2 calling out a whole bunch of problems, I'm 3 assuming. 4 A. Yes. 5 Q. And you didn't have any home inspection 6 experience at the time. 7 A. Right. 8 Q. And you were a first-time home buyer, 9 right? 10 A. Right. 11 Q. Without extensive construction 12 experience. 13 A. Right. 14 Q. And so when you walked through the 15 house -- I'm assuming you walked through it before 16 you bought it, right? 17 A. Yes. 18 Q. Yeah. When you're looking at it and 19 you're visualizing it, I'm guessing none of the 20 things that you just mentioned to me would have 21 caused concern in you because you didn't know what 22 you should be looking for -- 23 A. Yeah. It was a new house. 24 Q. Yeah. 25 A. It was a new house.</p>	<p style="text-align: right;">Page 40</p> <p>1 excited to have a house. 2 Q. Right. 3 A. And so, you know, it's new. It was a 4 good price, and we saw some potential for 5 expansion with the basement. 6 Q. Was it an unfinished basement? 7 A. Yes. 8 Q. How unfinished was it? I mean, were 9 there studs in or was it just cement, just 10 concrete? 11 A. There were studs. There was -- there 12 was a -- Just a center beam was there was all. 13 Q. All right. So over the course -- It 14 sounds like you had some really significant water 15 issues with that house. 16 A. Yes. 17 Q. And you had water in your basement. 18 A. Yes. 19 Q. Did you have water in your basement ten 20 times, twenty times, thirty times, too many times 21 to remember? 22 A. We were there ten years, and we probably 23 had water in there at least 15 times. 24 Q. At least 15 times? Did you ever finish 25 your basement?</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Well, even if it weren't a new house, 2 though, you know, if you're looking at a 3 problem -- It sounds like there were a number of 4 problems with this new home, right? 5 A. Right. 6 Q. And so whether the home is old or new, a 7 problem is a problem, right? 8 A. Right. 9 Q. So when you're walking through this 10 house and getting ready to make your offer, 11 getting ready to buy it, you're probably walking 12 past and underneath and over all kinds of 13 problems. You had no idea that they were there 14 because you weren't a home inspector at the time, 15 right? 16 A. Right. 17 Q. Do you think that was your fault or 18 responsibility for having not identified those 19 problems back when you bought your first home? 20 A. Well, in this case, with it being a new 21 house, I think we made the assumptions -- and, you 22 know, there was no finished -- the yard was not 23 finished. Nothing was finished on it. In fact, 24 the street wasn't even in when we purchased it. 25 We would have, you know -- You know, we were</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes. 2 Q. Did you have water come into your 3 basement after you finished it? 4 A. No. 5 Q. And you indicated that you had done -- 6 you had dug a trench and tried to redirect the 7 water? 8 A. I put in a tile system. 9 Q. A tile system. 10 A. Perforated tile system under the ground. 11 Q. All right. And did that keep the water 12 out? 13 A. Not totally. To finish -- to totally 14 finish what we needed to do, we had to cut the 15 concrete in the basement floor and put a sump in. 16 Q. It sounds like you actually had to do a 17 lot of work to fix that problem. 18 A. We put probably \$20,000 into it. 19 Q. Back in the late '70s or -- 20 A. Back in the late '70s, yes. 21 Q. So I imagine that was a very stressful 22 experience for you. 23 A. It was, yes. 24 Q. Largest purchase of your life up to that 25 point, I'm guessing.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. Yes.</p> <p>2 Q. As water went into your basement this</p> <p>3 first house you bought, you kept on having these</p> <p>4 water events, did you notice that it started to</p> <p>5 stain the wood down in the basement or started to</p> <p>6 leave marks or --</p> <p>7 A. Not really. We were on top of it all</p> <p>8 the time, so it never really had a chance to</p> <p>9 settle. You know, it just -- If it came in, we</p> <p>10 got rid of it as soon as it came in, and then we</p> <p>11 knew when it was going to come in and so we would</p> <p>12 take care of it after that.</p> <p>13 Q. All right.</p> <p>14 A. Basically had a vacuum-type system that</p> <p>15 we could initiate immediately.</p> <p>16 Q. So you really do know what it's like to</p> <p>17 buy a house with a basement thinking there are no</p> <p>18 problems with the basement and then finding out</p> <p>19 after the fact that there are a lot of problems</p> <p>20 with the basement.</p> <p>21 A. Every house we've had has had some water</p> <p>22 issue in it.</p> <p>23 Q. Well, how long did you own the house</p> <p>24 that you had on [REDACTED]</p> <p>25 A. Ten years.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. So you sold it in [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 A. No. I had a contractor build it.</p> <p>7 Q. And good contractor?</p> <p>8 A. You know, we didn't really know him from</p> <p>9 Adam, but he was the listing Realtor for the</p> <p>10 property and also was a builder. And so he -- we</p> <p>11 looked at some of the houses that he built and</p> <p>12 decided that he did a pretty good job with it,</p> <p>13 so -- so we entrusted him to build it for us.</p> <p>14 Q. All right. How did he do?</p> <p>15 A. He did a good job.</p> <p>16 Q. Yeah?</p> <p>17 A. Except for some plumbing issues, which</p> <p>18 caused the water problem that we had, so --</p> <p>19 Q. All right. So -- All right. So what</p> <p>20 was the name of that fellow?</p> <p>21 A. [REDACTED]</p> <p>22 Q. It was a builder named [REDACTED].</p> <p>23 A. Yeah.</p> <p>24 Q. All right. Is he still around, or do</p> <p>25 you know, or --</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. When did you sell that?</p> <p>2 [REDACTED]</p> <p>3 Q. And assuming -- When you sold it in [REDACTED]</p> <p>4 did you sell it on your own or through a Realtor?</p> <p>5 A. We sold that one through a Realtor, I</p> <p>6 believe.</p> <p>7 Q. I imagine you disclosed the water</p> <p>8 history.</p> <p>9 A. Yes.</p> <p>10 Q. Why did you do that?</p> <p>11 A. It was part of the disclosures.</p> <p>12 Q. It's something you want to do --</p> <p>13 A. Yes.</p> <p>14 Q. Yeah. And even though -- Let me ask you</p> <p>15 this: You said that you never had a problem with</p> <p>16 the water after you finished the basement, with</p> <p>17 water coming in.</p> <p>18 A. Right.</p> <p>19 Q. But even though you were selling the</p> <p>20 house with a finished basement and you had not had</p> <p>21 water problems in the basement after you finished</p> <p>22 it, you still disclosed the water history.</p> <p>23 A. Yes.</p> <p>24 Q. And you would expect that somebody would</p> <p>25 do that, right?</p>	<p style="text-align: right;">Page 45</p> <p>1 A. He is retired. I saw him a couple years</p> <p>2 ago.</p> <p>3 Q. All right. Incidentally, I'm sure you</p> <p>4 know this, he would not be allowed to do that</p> <p>5 today, to be the listing agent on the property --</p> <p>6 A. I understand that, yes.</p> <p>7 Q. Yeah. I'm guessing, did he represent</p> <p>8 you as well? Was he a dual agent on the property?</p> <p>9 A. No, no.</p> <p>10 Q. All right. Good. So [REDACTED] built this</p> <p>11 house for you, and you didn't have -- So it sounds</p> <p>12 like on [REDACTED] what you had is you had an</p> <p>13 outside-in water problem.</p> <p>14 A. Yes.</p> <p>15 Q. You had water from the outside coming --</p> <p>16 A. Coming inside.</p> <p>17 Q. -- inside the house.</p> <p>18 A. Right.</p> <p>19 Q. And at the new place in [REDACTED], you</p> <p>20 had water --</p> <p>21 A. Inside.</p> <p>22 Q. -- from the inside flowing inside.</p> <p>23 A. Yes.</p> <p>24 Q. What was the plumbing problem?</p> <p>25 A. The plumbing contractor forgot to glue</p>

<p style="text-align: right;">Page 46</p> <p>1 the joints when he put -- assembled the drain 2 lines. And so the very first time we did our 3 laundry, we heard a -- this big whoosh and it kept 4 going. And went down and found out that the pipes 5 were just all disconnected down in the basement. 6 Q. And they were all -- They had just blown 7 apart? 8 A. Yeah, they had just blown apart, so -- 9 So that was a fairly small issue at that time, 10 although we were also -- Even though the listing 11 didn't show it and it wasn't too evident to us, 12 that the house was actually on the 8 Mile 13 floodplain, and about two years after we lived 14 there, we -- I was out -- I had a little plow and 15 I was out plowing across the back side of our 16 property to divert water that was coming from 8 17 Mile. We didn't get any water at that time, but 18 it definitely came flooding across our property 19 and was within, you know, maybe a hundred feet of 20 the house, so -- 21 Q. All right. And I imagine also you 22 probably -- since you got to control the 23 construction on some level, you probably had a 24 drain tile system -- 25 A. No.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Uh-huh. 2 A. And so you would know -- you could see 3 that on a lot of lines, but not all of them do. 4 Some just use a clear and you can't tell. 5 In new construction, you know, I look 6 for the color. If I was doing the home inspection 7 on a newer home, I would look for color to make 8 sure that the lines were glued. Haven't had that 9 problem. 10 Q. Do you always see the color on new 11 construction? 12 A. Not always. Um. I'm sorry, I said um. 13 Q. Oh, you're fine. 14 A. Because you don't know because some of 15 them don't use the purple-colored one; they use 16 just a clear one. 17 Q. It's not an issue in this case. 18 A. No. 19 Q. But do you -- When you're looking at 20 construction -- or when you're looking at new 21 construction and you don't see the purple primer, 22 do you note that in your report and say you want 23 to verify it's been glued? 24 A. I will look closer if I would do that 25 just to make sure that the lines were glued --</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. -- installed? 2 A. No. It was a crawl space. 3 Q. A crawl space, gotcha. All right. And 4 did your crawl space ever flood while you owned 5 that property in [REDACTED]? 6 A. No. 7 Q. All right. 8 A. Not with the exception of the laundry 9 flooding. 10 Q. Okay. So did the laundry flood the 11 crawl space? 12 A. Yeah. 13 Q. All right. And so he didn't -- The 14 plumber didn't glue the drain lines. 15 A. Right. 16 Q. All right. Were they using PVC pipe at 17 that time? 18 A. Yes. 19 Q. All right. Can you tell when you're 20 inspecting a property whether the lines have been 21 glued or not? 22 A. Not always. Some of the plumbers use a 23 purple coating. 24 Q. Like primer first? 25 A. Like purple primer.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. 2 A. -- if they're visible, where they're 3 visible. Usually it's crawl space, you know, 4 because that's where they're typically having to 5 be supported by something other than the truss -- 6 the -- the joists. 7 Q. Okay. All right. So did you have your 8 home inspected in -- I imagine -- Did you finish 9 it, what, in ' [REDACTED] or ' [REDACTED]? 10 A. It was ' [REDACTED], yes. 11 Q. ' [REDACTED]? Did you have it inspected before 12 you moved in? 13 A. Not by a home inspector. It would have 14 been inspected by [REDACTED] [REDACTED]. 15 Q. [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 Q. Yeah. So maybe another situation where, 20 even though home inspectors really weren't around 21 all much at the time, maybe a home inspector could 22 have caught that problem for you, if a home 23 inspector had been available to you? 24 A. I would doubt that because the line 25 didn't really rupture until there was actually</p>

<p style="text-align: right;">Page 50</p> <p>1 pressure put against it.</p> <p>2 Q. So it may be a latent issue.</p> <p>3 A. Right.</p> <p>4 Q. Something you couldn't readily see.</p> <p>5 A. Right.</p> <p>6 Q. Okay. So you've got -- These first two</p> <p>7 houses, you've got the house on [REDACTED] that has a</p> <p>8 water problem with the water outside the house</p> <p>9 coming into the house.</p> <p>10 A. Right.</p> <p>11 Q. And the second house you've got -- you</p> <p>12 had a plumbing problem where you got an internal</p> <p>13 plumbing problem where water that's already inside</p> <p>14 the house dumps into the house.</p> <p>15 A. Right.</p> <p>16 Q. Okay. Is there any connection between</p> <p>17 those two problems one and the other? For</p> <p>18 example, if you have water -- if you have an</p> <p>19 outside-in water problem, for example, like you</p> <p>20 had at [REDACTED], does that tell you about the</p> <p>21 condition of the plumbing in the house?</p> <p>22 A. No.</p> <p>23 Q. They're two separate issues, right?</p> <p>24 A. Yes.</p> <p>25 Q. And when you had the plumbing issue with</p>	<p style="text-align: right;">Page 52</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 Q. And did you build in [REDACTED], buy new</p> <p>10 construction?</p> <p>11 A. We bought a new -- a house that was</p> <p>12 being built by a contractor, plumbing contractor.</p> <p>13 Q. I'm sorry. By who?</p> <p>14 A. He was a plumbing contractor.</p> <p>15 Q. Bought a new home being built by a</p> <p>16 plumbing contractor.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And was that a well-built home?</p> <p>19 A. Compared to the other two houses, yes.</p> <p>20 [REDACTED] All right. I forgot to ask, the</p> <p>21 [REDACTED] home, when you say compared to the other</p> <p>22 two houses, did you have problems with the</p> <p>23 Florence home other than that plumbing issue?</p> <p>24 A. No, no.</p> <p>25 Q. Okay. So with the [REDACTED] home, do you</p>
<p style="text-align: right;">Page 51</p> <p>1 the Florence home, did that tell you anything</p> <p>2 about whether or not you might also have an</p> <p>3 outside-in water problem?</p> <p>4 A. No, it never indicated that.</p> <p>5 Q. Okay. So when you have a pipe leak, for</p> <p>6 example, in a basement, what that tells you is you</p> <p>7 had a pipe leak, right?</p> <p>8 A. Yes.</p> <p>9 Q. But if you know that there's a pipe leak</p> <p>10 and don't know anything else about the basement,</p> <p>11 you're not going to know one way or the other</p> <p>12 whether there's an outside-in water problem unless</p> <p>13 you're actually looking closer and looking for</p> <p>14 signs of that. Is that fair?</p> <p>15 A. Yes.</p> <p>16 Q. So in [REDACTED], was that the only -- was</p> <p>17 that the only problem you had in [REDACTED]?</p> <p>18 A. Yes.</p> <p>19 Q. And how long did you live in the house</p> <p>20 at [REDACTED]?</p> <p>21 A. About five years.</p> <p>22 Q [REDACTED]</p> <p>23 a [REDACTED]</p> <p>24 A. [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 53</p> <p>1 remember who that contractor was?</p> <p>2 A. I can't remember what his name is. No.</p> <p>3 Q. All right. How long did you live in</p> <p>4 that house?</p> <p>5 A. We lived there approximately five years.</p> <p>6 Q. So [REDACTED] until '[REDACTED]'. Then [REDACTED]</p> <p>7 till approximately '[REDACTED]'.</p> <p>8 A. '[REDACTED]'.</p> <p>9 Q. And then [REDACTED] to approximately '[REDACTED]'.</p> <p>10 A. '[REDACTED]'.</p> <p>11 Q. Okay. And so any issues with water that</p> <p>12 you experienced at the [REDACTED] property?</p> <p>13 A. Yes. A very interesting one. Our house</p> <p>14 there -- we had a lightning strike next to our</p> <p>15 house. It split our foundation, which caused a</p> <p>16 leak in the basement.</p> <p>17 Q. You had a lightning strike that split</p> <p>18 your foundation wall.</p> <p>19 A. Yes.</p> <p>20 Q. Did it cause an immediate leak?</p> <p>21 A. Yes.</p> <p>22 Q. What immediate leak -- Where was the</p> <p>23 water -- that immediate -- Strike that.</p> <p>24 A. From the downpour that ensued from the</p> <p>25 thunderstorm that was --</p>

<p style="text-align: right;">Page 58</p> <p>1 through it, that's not something that you would 2 know or notice, really. 3 A. That's right. That's right. 4 Q. But -- Because you had no home 5 inspection training, right? 6 A. Right. 7 Q. Okay. But then when you got that 8 advanced training, then you were able -- then you 9 would have been able to call it out. 10 A. Right. 11 Q. But I guess that's why people get home 12 inspectors, right? 13 A. That's right. 14 Q. Because home inspectors are supposed to 15 be the experts. 16 A. Right. 17 Q. So other than the stairs, what other 18 problems did you have with that [REDACTED] [REDACTED] [REDACTED] 19 property that you wish you had home inspection 20 training for before you bought? 21 A. Well, nothing specifically. We did have 22 a water issue. We left the sprinkler on when we 23 went on vacation and came back to a swimming pool 24 in our crawl space. 25 Q. Was it an automatic sprinkler that --</p>	<p style="text-align: right;">Page 60</p> <p>1 on that one. And they turned the water off after 2 about two, two or three days; they couldn't 3 remember. 4 Q. I see. 5 A. But there was still two or three inches 6 in the crawl space, because there was a plastic 7 covering. 8 Q. You had a vapor barrier? 9 A. I had a vapor barrier in it, so there 10 was still water on top of the vapor barrier. 11 Q. Understood. Other than that one event 12 with the sprinkler, did you have any other water 13 problems -- 14 A. No. 15 Q. -- during your ownership of [REDACTED] [REDACTED]? 16 A. No. 17 Q. Okay. And I don't -- Maybe I asked this 18 and I got you away from it, but we talked about 19 the stairs, that you wished you had home 20 inspection training for the stair issue before you 21 bought. 22 Were there any other problems in that 23 home where you discovered issues after the fact 24 that you couldn't identify because you didn't have 25 the home inspection training but that you would</p>
<p style="text-align: right;">Page 59</p> <p>1 A. No. No, we just left it on and left. 2 Q. Understood. 3 A. And the neighbor saw it and said they're 4 not -- they're gone. We don't think they should 5 have a sprinkler on, so they turned it off. But 6 by that time it was flooded. 7 Q. How long had it run for; do you think? 8 A. Two days. 9 Q. And then did they call you and you came 10 back from vacation or -- 11 A. No. 12 Q. That's probably good. At least you got 13 a decent vacation out of it. I mean, probably 14 wasn't anything you really could do anyway. 15 A. Right. 16 Q. And you had a crawl space up on Scott 17 Allen? 18 A. Yes. 19 Q. And was there standing water in it when 20 you came back? 21 A. Yes. 22 Q. Is that a real clay area, or why would 23 the water still be standing in your crawl space? 24 How long were you gone on vacation? 25 A. We were gone about five days, I believe,</p>	<p style="text-align: right;">Page 61</p> <p>1 have been able to identify now? 2 A. Not specifically, no. 3 Q. So [REDACTED] [REDACTED], you bought it in ' [REDACTED]. 4 A. Yes. 5 Q. And then how long do you own [REDACTED] 6 [REDACTED]? 7 A. We were there [REDACTED] years as well. 8 Q. All right. And where do you go in [REDACTED]? 9 I'm sorry -- 10 A. No, I'm sorry. I'm sorry. We were 11 there ten years because we moved in 2000- -- 12 Q. [REDACTED] 13 A. '[REDACTED] 14 [REDACTED] 15 [REDACTED] 16 Q. [REDACTED]. 17 A. [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 Q. And was that new construction? 22 A. No. 23 Q. How old was the property you bought at 24 [REDACTED] 25 A. It would have been about five years,</p>

<p style="text-align: right;">Page 62</p> <p>1 five to six years.</p> <p>2 Q. How many owners prior to you?</p> <p>3 A. Just one.</p> <p>4 Q. Just one?</p> <p>5 A. Yes.</p> <p>6 Q. Were there any disclosures on that</p> <p>7 property when you bought it?</p> <p>8 A. They had disclosed that they had some</p> <p>9 water issues and that they had installed a drain</p> <p>10 tile system around the south half of the property.</p> <p>11 Q. And in response to that disclosure, what</p> <p>12 did you do? Did you get a home inspection?</p> <p>13 A. Yes.</p> <p>14 Q. And do you remember who your home</p> <p>15 inspector was?</p> <p>16 A. [REDACTED]</p> <p>17 Q. Now, why did you get a home inspection</p> <p>18 for this particular purchase?</p> <p>19 A. Well, it was a case where I just wanted</p> <p>20 another set of eyes. I had some concerns about</p> <p>21 [REDACTED] area because I had inspected a</p> <p>22 couple houses out there that had water issues, and</p> <p>23 I just wanted another set of eyes to look to see</p> <p>24 if he saw anything that maybe I might have missed.</p> <p>25 Q. So had you actually inspected this house</p>	<p style="text-align: right;">Page 64</p> <p>1 evidence of a water issue that might be of</p> <p>2 concern, you've got a finished basement. What</p> <p>3 kind of things are you looking for?</p> <p>4 A. You would look for, in a finished</p> <p>5 basement, if there's any disfigured Sheetrock.</p> <p>6 Q. What do you mean by "disfigured"?</p> <p>7 A. Well, if the texture's kind of weird or</p> <p>8 doesn't match the rest of the wall or might be a</p> <p>9 bubbling in the paint. That would show that maybe</p> <p>10 the Sheetrock had expanded or had been wet at one</p> <p>11 point and expanded.</p> <p>12 Q. What about like, for example, you know,</p> <p>13 sometimes when there is a -- when there's a water</p> <p>14 event in a house and the drywall wicks up water</p> <p>15 maybe a foot and a half or two feet up, people</p> <p>16 will cut the drywall out and then let it dry and</p> <p>17 then put more drywall in and patch it. Do you</p> <p>18 know what I'm talking about?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Is that something you also look for when</p> <p>21 you're inspecting?</p> <p>22 For example, if you see that, is that</p> <p>23 something that tells you, hey, maybe there's a</p> <p>24 reason why they did that?</p> <p>25 A. If I would see that, yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 on your own before you had put in an offer?</p> <p>2 A. I did a fairly -- a good visual</p> <p>3 inspection of it.</p> <p>4 Q. Did it have a finished basement?</p> <p>5 A. Yes.</p> <p>6 Q. All right. When you did your visual of</p> <p>7 the basement, did it have evidence of water damage</p> <p>8 or staining?</p> <p>9 A. No.</p> <p>10 Q. And what was the disclosure that was</p> <p>11 made to you?</p> <p>12 Was it that -- Do these folks have a</p> <p>13 finished basement and then get water and have to</p> <p>14 rip it all out? What kind of --</p> <p>15 A. I believe they had the water issue</p> <p>16 before they finished it. They did some work after</p> <p>17 it was -- the house was built.</p> <p>18 Q. All right. So when you're looking at,</p> <p>19 for example, a finished basement, you know, I'm</p> <p>20 guessing when you were there, for example, you're</p> <p>21 not seeing standing water in the basement when</p> <p>22 you're there.</p> <p>23 A. Right.</p> <p>24 Q. All right. So if you want to check a</p> <p>25 basement that's finished, for example, for</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Because it could be evidence that</p> <p>2 they've needed to remove the Sheetrock before, and</p> <p>3 one of the reasons why you remove Sheetrock like</p> <p>4 that is a prior water event.</p> <p>5 A. Right.</p> <p>6 Q. All right. So you talked about</p> <p>7 disfigured Sheetrock. What else? What other</p> <p>8 things would you be looking for in a finished</p> <p>9 basement?</p> <p>10 A. Well, that would be about all you could</p> <p>11 see.</p> <p>12 Q. What about -- For example, maybe this</p> <p>13 falls within your definition of disfigured</p> <p>14 Sheetrock, but just water staining?</p> <p>15 A. You might see that, but that probably</p> <p>16 would be accompanied by some sort of disfiguration</p> <p>17 in the Sheetrock.</p> <p>18 Q. Okay. And then when you're walking</p> <p>19 around, I'm guessing like when you're at [REDACTED]</p> <p>20 [REDACTED] you're walking through a finished basement,</p> <p>21 you're going to look at the ceiling. Like I'm</p> <p>22 looking at the ceiling now.</p> <p>23 And sometimes if there's, for example,</p> <p>24 water staining of the ceiling tiles, that would</p> <p>25 tell you that there's been a prior water event.</p>

<p style="text-align: right;">Page 66</p> <p>1 A. Right.</p> <p>2 Q. So maybe you're more likely to see water</p> <p>3 staining in ceiling tiles than you would on</p> <p>4 drywall, but in either event, what you're looking</p> <p>5 for is evidence that water has been here before.</p> <p>6 A. Correct.</p> <p>7 Q. And it doesn't require that water</p> <p>8 actually be there when you look at it, right?</p> <p>9 A. I'm not sure what you're asking here.</p> <p>10 Q. Well, when you're talking about</p> <p>11 disfigured Sheetrock, the Sheetrock doesn't need</p> <p>12 to be wet at the time you look at it to tell you</p> <p>13 that there may be a water problem, right?</p> <p>14 A. Right. But if it's dry, it wouldn't</p> <p>15 necessarily report that -- a water issue either.</p> <p>16 Q. If you've got disfigured Sheetrock</p> <p>17 that's dry, what does that tell you, potentially?</p> <p>18 What are the possibilities?</p> <p>19 A. Well, it had been wet probably at some</p> <p>20 point.</p> <p>21 Q. And if it's been wet at some point, then</p> <p>22 you don't know at what particular point, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And if you don't know a particular</p> <p>25 point, then you don't know whether it's something</p>	<p style="text-align: right;">Page 68</p> <p>1 inspector?</p> <p>2 A. Right.</p> <p>3 Q. If you see signs of water in the</p> <p>4 basement, even if you don't see the actual water</p> <p>5 itself, but you're seeing evidence of prior water</p> <p>6 intrusion or a prior water problem, then you're</p> <p>7 going to put it in your report.</p> <p>8 A. On some level, yes.</p> <p>9 Q. When you say "on some level," give me</p> <p>10 the broad range of -- When you say "some level,"</p> <p>11 what does that mean?</p> <p>12 A. Well, understandably I don't know the</p> <p>13 history of the property, and so I can only report</p> <p>14 on what I see at the time.</p> <p>15 And so I don't know if there is</p> <p>16 something that would be a recurrent or if there</p> <p>17 was something that had been individual, even if my</p> <p>18 prior history with houses, I don't -- couldn't</p> <p>19 say if -- You know, I couldn't look at my house</p> <p>20 and say, well, this was a historical or this</p> <p>21 was -- this happened every year, like it did at</p> <p>22 Skyview, or if, in fact, it was just a plumbing</p> <p>23 leak like it was in Florence, or if it was a --</p> <p>24 caused by the crack in the foundation like it was</p> <p>25 in Lolo.</p>
<p style="text-align: right;">Page 67</p> <p>1 that happened recently or in the distant past,</p> <p>2 true?</p> <p>3 A. Right.</p> <p>4 Q. And you don't know if it's happened</p> <p>5 recently or the distant past, then you don't know</p> <p>6 whether it's happened both recently and in the</p> <p>7 distant past, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. All you can do is look at that snapshot</p> <p>10 or that piece of disfigured Sheetrock and say, I</p> <p>11 don't know exactly what the problem is here, but</p> <p>12 it looks to me like there's been water. Right?</p> <p>13 A. Right.</p> <p>14 Q. And so what you do as a home inspector</p> <p>15 is, it's not your job then to diagnose the problem</p> <p>16 and figure out cause and scope and frequency,</p> <p>17 right?</p> <p>18 A. That's right.</p> <p>19 Q. It's your job to say, hey, in the</p> <p>20 basement you've got disfigured Sheetrock. It's</p> <p>21 potentially evidence of a prior water intrusion,</p> <p>22 and I suggest you consider it, maybe follow up</p> <p>23 with a contractor.</p> <p>24 A. Right.</p> <p>25 Q. That's what you do, right, as a home</p>	<p style="text-align: right;">Page 69</p> <p>1 So the -- I can't tell the history of it</p> <p>2 because I don't know if it was from a single event</p> <p>3 or multiple event.</p> <p>4 Q. Right. So it's not your job to</p> <p>5 determine whether it's a single event --</p> <p>6 A. Right.</p> <p>7 Q. -- or a multiple event, right?</p> <p>8 A. That's correct.</p> <p>9 Q. It's your job to look for the evidence</p> <p>10 of prior water intrusion or a prior water problem,</p> <p>11 and if you see any evidence, you report on it.</p> <p>12 A. To the best of my ability, yes.</p> <p>13 Q. Right. And then it falls to, you know,</p> <p>14 based on -- Strike that, please.</p> <p>15 For example, you see -- We talked about</p> <p>16 that disfigured Sheetrock. So your report might</p> <p>17 say here's a picture of disfigured Sheetrock.</p> <p>18 It's consistent with a prior water event, prior</p> <p>19 water intrusion or water problem. I suggest that</p> <p>20 you follow up with a licensed contractor, or</p> <p>21 something along those lines.</p> <p>22 A. A recommendation to follow up on it,</p> <p>23 yes.</p> <p>24 Q. Okay. So even though you don't know</p> <p>25 what the exact problem is, you're looking at that</p>

<p style="text-align: right;">Page 70</p> <p>1 piece of evidence, a dry piece of disfigured 2 Sheetrock, and saying there's been water here 3 before. I can't tell you a whole lot more about 4 it, but you want to follow up and take a closer 5 look. 6 A. Yes. 7 MR. JOHNSON: We've been going for about 8 an hour. 9 MS. MORE: About an hour. 10 MR. JOHNSON: Yeah, that would be great. 11 Why don't we -- All right. It's -- it's about 12 10:04. Why don't we take ten minutes? 13 MS. MORE: Okay. 14 MR. JOHNSON: Okay. Great. Thank you. 15 (Whereupon, the proceedings were in 16 recess at 10:05 a.m. and subsequently reconvened 17 at 10:19 a.m., and the following proceedings were 18 entered of record:) 19 MR. JOHNSON: All right. Great. It's 20 about 10:20. We're back on. 21 Q. (BY MR. JOHNSON) Mr. [REDACTED], so we've 22 been talking about -- before we took the break, 23 about the property that you purchased on The Ranch 24 Club. 25 A. Yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 had a concrete deck in the back and that it was 2 pretty much major cracks and settling. And then 3 there was some concrete settling in the front with 4 the driveway and sidewalks. 5 Q. Did he identify anything for you during 6 his inspection that you had not identified during 7 your own? 8 A. Not specifically, no. 9 Q. All right. And the concrete cracking, 10 I'm assuming that is from settlement or 11 differential settlement of soils? 12 A. Yes. 13 Q. And that's because there is a clay 14 problem out there in [REDACTED] 15 A. Yes. 16 Q. And many of the builders that were 17 building out there didn't get engineered 18 foundations or engineered building plans and just 19 sunk concrete piers or foundations right on top of 20 clay, right? 21 A. Yes. 22 Q. Is that what happened with your 23 property? 24 A. Just on the exterior. The interior 25 seems to be okay. There's a little bit of</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. And you inspected it yourself, or gave 2 it a good visual once-over. 3 A. Yes. 4 Q. And then you asked a colleague of yours, 5 [REDACTED] -- 6 A. Yes. 7 Q. -- to inspect it as well. 8 A. Yes. 9 Q. And is [REDACTED] - What is his 10 business name as an inspector? 11 A. [REDACTED] ons. 12 Q. [REDACTED]? And is he still in business? 13 A. Yes. 14 Q. All right. Is he an ASHI member as 15 well? 16 A. Yes. 17 Q. A friend of yours? 18 A. Sort of. Not real close. I mean, just 19 business-wise. 20 Q. He's a professional acquaintance? 21 A. A professional acquaintance, yes. 22 Q. And what did Mr. [REDACTED] inspection 23 report tell you? 24 A. About what I knew. There was concrete 25 settling. There was an issue in the back where it</p>	<p style="text-align: right;">Page 73</p> <p>1 settling in the basement slab, which has caused a 2 little tiny crack in one of the walls, but not -- 3 not significant. There's nothing major -- no 4 major cracks that I can see in the walls or the 5 foundations or things like that. 6 Q. What about the exterior cracking and 7 settlement that you were talking about? Tell me a 8 little bit more about that. 9 A. Well, in speaking to the homeowner after 10 I had the inspection from Will, he hired -- The 11 back deck was put on after the fact. It was not 12 put on there by [REDACTED] or -- I believe is the one 13 who built my house. And they gave him a really 14 good cheap bid to put the concrete deck in, but 15 they didn't prep the soil at all, and it just went 16 c-c-r-r-k-k-k. 17 Q. All right. 18 A. And so I had to put a new deck over top 19 of it. 20 Q. All right. So you bought the house 21 knowing that it had that problem. 22 A. Yes. 23 Q. All right. And you said there was some 24 significant settlement in the concrete driveway as 25 well?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Yes. It continues to this day. It was 2 approximately an inch or so, inch-and-a-half drop 3 between where it met -- where the driveway met the 4 slab and the -- and the garage. 5 Q. All right. And what does that tell you 6 about what's happening there? When you look at 7 that as a home inspector, what does that tell you? 8 A. Well, that the clay is causing 9 settlement in most of the flat work. 10 Q. So that is a symptom of settlement, 11 right? 12 A. Yes. 13 Q. You don't actually watch it pop or crack 14 right in front of you; that's something that 15 happens over time. 16 A. Yes. 17 Q. So when you're inspecting a property 18 that has, for example, clay issues or structural 19 settlement, differential settlement, you aren't -- 20 you can't identify an active settlement process; 21 you can only identify the symptoms associated with 22 settlement, right? 23 A. Yes. 24 Q. And so, for example, when you're 25 inspecting a home that has cracks that you suspect</p>	<p style="text-align: right;">Page 76</p> <p>1 driveway. If you are inspecting someone's 2 property and you identify cracking like that, your 3 report isn't going to say here's what's causing 4 it, and here's what the problem really is and 5 here's how you fix it. 6 Your report's going to say here's a 7 crack; it's cause for concern; it's consistent 8 with settlement; you need to follow up. 9 A. Right. 10 Q. Your job as a home inspector is to 11 identify evidence of problems, not to diagnose and 12 prognosticate and provide specific details, right? 13 A. That's correct. 14 Q. You are sort of a -- If you were a 15 doctor, you'd be like a generalist. You'd be like 16 the family doc, the first line of defense, and 17 then there are specialists behind you, right? 18 A. Right. 19 Q. Have you ever had water problems at [REDACTED] 20 [REDACTED] home that you bought? 21 A. Internal. I had a water pipe freeze. 22 It wasn't properly insulated between the wall and 23 the water pipe and it froze. And it was in my 24 hose bib, and when I turned the hose on, I got 25 water in the basement. A little bit, not a lot.</p>
<p style="text-align: right;">Page 75</p> <p>1 or settlement cracks, you don't know how long it's 2 been there, right? 3 A. Right. 4 Q. Or for how long it's been happening. 5 A. Right. 6 Q. You don't know whether it has just 7 started, right? 8 A. Right. 9 Q. Or if it's already run its life course 10 and it's stopped settling. 11 A. Right. 12 Q. So as far as scope, frequency, whether 13 it's going to get better, whether it's going to 14 get worse, it's not your job to figure that out, 15 is it? 16 A. That's right. 17 Q. But it is your job to identify the crack 18 or the evidence of settlement as a symptom of 19 settlement, correct? 20 A. As observed at the time of the 21 inspection, yes. 22 Q. Absolutely. And so, for example, we 23 talked about the disfigured drywall. We're 24 talking about, for example, evidence of structural 25 compromise like the large cracking in your</p>	<p style="text-align: right;">Page 77</p> <p>1 I heard it and caught it quick. 2 Q. Okay. So how much water did you have in 3 your basement? 4 A. Maybe a couple gallons. 5 Q. Did it ruin the Sheetrock or anything 6 like that? 7 A. It did a little in the ceiling, but not 8 much. I caught it before it got too wet. 9 Q. Did you repair it yourself or did you 10 call somebody else to handle it? 11 A. I repaired it myself. I cut a hole in 12 the little cavity there so that after the plumber 13 fixed it, that we would have heat available to go 14 into that particular joist bay and I put a grate 15 on it. 16 Q. I understand. Okay. So you sort of -- 17 You weren't able to actually insulate it, but you 18 opened it to the airflow from the inside. 19 A. Yes. 20 Q. All right. Any problems since? 21 A. No. 22 Q. And so that was -- That's the internal 23 plumbing leak again? 24 A. Right. 25 Q. Although I guess maybe it's a hybrid,</p>

<p style="text-align: right;">Page 78</p> <p>1 right? It's the outside cold causing the inside 2 water problem. 3 A. Right. 4 Q. It sounds to me like the only thing that 5 has not happened to you is like a tidal wave or 6 the ground opening up and swallowing -- 7 A. Almost. 8 Q. -- your house in a gigantic lake. 9 Okay. So -- And is that the house 10 you're still living in now out at [REDACTED] [REDACTED] [REDACTED]? 11 A. Yes. 12 Q. Have we now exhausted your memory of the 13 homes that you've owned or purchased in your 14 lifetime? 15 A. Yes. 16 Q. Do you own -- Have you ever purchased or 17 attempted to purchase commercial property? 18 A. No. 19 Q. Do you own rental properties or anything 20 like that? 21 A. No. 22 Q. All right. So that was the long way 23 back to where we started. 24 2005, you know [REDACTED] [REDACTED]. 25 A. Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 to have education, because education, as I learned 2 from doing the HACCP program, there was education 3 required for the HACCP program and in learning the 4 details of what needed to be done, how to report, 5 et cetera, et cetera. 6 And so I investigated via ASHI what some 7 of the requirements were for an ASHI home 8 inspector based on the fact that there really is 9 no requirements in Montana for what a home 10 inspector is. 11 And I didn't want to just throw out my 12 shingle saying I'm a home inspector without having 13 some sort of educational background in doing so. 14 And at that point, ASHI had several 15 places that they recommended. One was the 16 Inspection Training Associates, which was a group 17 of people from California that had set up schools 18 across the country to train people to become home 19 inspectors. 20 And so I contacted them, and they had 21 classes in Denver, Colorado, which is the closest 22 one to us. And my daughter also lived in Denver, 23 so it was a good chance for me to go to school and 24 also have some time with my daughter while she was 25 living down there, and I was attending school.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. How did you meet Mr. [REDACTED] 2 originally? 3 A. [REDACTED]. 4 Q. Okay. And you knew he was a home 5 inspector. 6 A. Yes. 7 Q. ASHI home inspector? 8 A. Yes. 9 Q. And was he looking to retire? 10 A. Yes. 11 Q. And tell me how you -- Tell me how this 12 opportunity came about for you. 13 A. Well, what had happened is when I saw 14 that the [REDACTED] was going to close, I had 15 investigated several fields regarding inspection 16 backgrounds since I knew inspection from my 17 position with the [REDACTED] and had been interested 18 in doing home inspections and so I talked to [REDACTED] 19 about it. 20 And he says, well, it's very 21 coincidental that you would ask me because I'm 22 about ready to retire. And, he said, I would sell 23 you my business if I work with you for a while and 24 then retire out of it. 25 And so in doing so, I wanted to be able</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Okay. So how long was the training 2 program in Denver through Inspection Training 3 Associates? 4 A. Through Inspection Training Associates, 5 the education that they had set up was you 6 received a number of books in regarding to -- to 7 inspection. Basically there was about six or 8 seven books regarding the different components of 9 home inspection. And you had a number of videos 10 that you were required to -- to view and to study 11 and -- which was approximately -- It took about 12 two months to get through all of that. 13 And then you went to Denver and had a 14 14-day, ten-hour-a-day sessions on home 15 inspection. 16 Q. Okay. 17 A. Where you were required to -- you took 18 exams for each of the components that were 19 described and then you also -- then there was also 20 a lab there where they were able to show you the 21 particular ways to inspect different components. 22 Q. So I want to break it down real quick. 23 It sounds as though -- First of all, Inspection 24 Training Associates, are they affiliated with 25 ASHI?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. No, no. They were just an</p> <p>2 ASHI-related -- They were just a contact that they</p> <p>3 had, which -- And they were the closest one to me.</p> <p>4 And they were also the most highly recommended</p> <p>5 because two of the instructors sat on the national</p> <p>6 code board.</p> <p>7 Q. The national code board?</p> <p>8 A. The IRC code board.</p> <p>9 Q. Okay. The International Residential</p> <p>10 Code board?</p> <p>11 A. The International Residential Code</p> <p>12 board, right.</p> <p>13 Q. All right. So Inspection Training</p> <p>14 Associates is not an ASHI training center, but is</p> <p>15 it an ASHI-approved training --</p> <p>16 A. Yes. And it has changed hands. It's</p> <p>17 actually now run by Kaplan.</p> <p>18 Q. All right.</p> <p>19 A. You're probably familiar with Kaplan.</p> <p>20 They do a lot of legal training.</p> <p>21 Q. Uh-huh.</p> <p>22 A. So they've taken over since -- since</p> <p>23 that time that I originally took that.</p> <p>24 Q. So it sounds like what you did is you --</p> <p>25 in essence, you signed up for this coursework and</p>	<p style="text-align: right;">Page 84</p> <p>1 period.</p> <p>2 Q. Okay. Do you ever consult those books</p> <p>3 when you have questions about things?</p> <p>4 A. Yes.</p> <p>5 Q. All right. Would you do me a favor,</p> <p>6 please. We asked in discovery for the training</p> <p>7 materials that you have received over the years,</p> <p>8 and I believe your response was that you didn't</p> <p>9 keep them. It just sounds like maybe there was a</p> <p>10 miscommunication there.</p> <p>11 If you could provide the books to Kim so</p> <p>12 that we can make copies. And then we won't do</p> <p>13 anything with them; we'll give them right back to</p> <p>14 you, that would be greatly appreciated.</p> <p>15 A. Okay. They're about this thick</p> <p>16 (indicating) all of them, so --</p> <p>17 Q. Okay. That's fine.</p> <p>18 A. If I can find them all.</p> <p>19 Q. If we can -- We would be able to get</p> <p>20 them turned around rather quickly. Could you do</p> <p>21 that for me?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Thank you. So it sounds as</p> <p>24 though you consider those books that you've got --</p> <p>25 that you just described from your training as</p>
<p style="text-align: right;">Page 83</p> <p>1 then they sent you six or seven books --</p> <p>2 A. And a number of videos.</p> <p>3 Q. And a number of videos.</p> <p>4 A. Yes.</p> <p>5 Q. So basically it was home study for a</p> <p>6 couple of months.</p> <p>7 A. Yes.</p> <p>8 Q. And then after your home study, you went</p> <p>9 and participated in a two-week training course in</p> <p>10 Denver.</p> <p>11 A. Correct.</p> <p>12 Q. Did you keep those books?</p> <p>13 A. Yes.</p> <p>14 Q. Do you still have the books?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. How about the videos?</p> <p>17 A. I don't know if I have the videos. Some</p> <p>18 of them are now outdated because they are -- they</p> <p>19 were related to the standards as they were at the</p> <p>20 time, and, of course, through the years there's</p> <p>21 been two -- two new code cycles come through, and</p> <p>22 they usually base their teachings on the</p> <p>23 particular standards at the time of when they were</p> <p>24 doing it, and that was in 2005. And there's been</p> <p>25 a 2006 and a 2009 and a 2012 since that time</p>	<p style="text-align: right;">Page 85</p> <p>1 being authoritative sources of information. When</p> <p>2 you have questions, you go there for answers.</p> <p>3 A. They're a good resource to follow, yeah.</p> <p>4 Yes.</p> <p>5 Q. All right. Do you consider them to be</p> <p>6 authoritative?</p> <p>7 A. Well, they're -- in the training</p> <p>8 themselves, they didn't specifically follow those</p> <p>9 as a textbook. They're more of a resource than</p> <p>10 anything. So they give you the particular basics.</p> <p>11 It's like an introductory this is what, you know,</p> <p>12 we kind of look for.</p> <p>13 The roofing book, for example, just goes</p> <p>14 through the individual types of roofs that are</p> <p>15 there that you will encounter, whether it's</p> <p>16 shingle, metal, and just sort of gives you kind of</p> <p>17 standard guidelines.</p> <p>18 With the home inspection, the thing</p> <p>19 that's important to understand is that though</p> <p>20 these books are there, if you go to a particular</p> <p>21 jurisdiction of like the county -- or the city or</p> <p>22 county home inspectors themselves when they're</p> <p>23 inspecting a property, necessarily the codes that</p> <p>24 are -- or the standards that are written, or even</p> <p>25 the code at times, if there are any deviations</p>

<p style="text-align: right;">Page 86</p> <p>1 that the builder puts in there, they may get those 2 approved that would be up and above what the 3 actual standards state. 4 And then also the issues with different 5 components happens to be in the manufacturer's 6 installation instructions, and those trump all 7 standards that are in there. 8 So the books are basically just a 9 guideline as to this is what you might expect out 10 in the field. It might not be exactly what you're 11 going to see because of the reasons I stated a 12 little earlier. 13 Q. All right. Do those books contain 14 information regarding exterior lot grading and 15 exterior water issues? 16 A. Not that I'm aware of. 17 Q. Do those books contain information 18 regarding the inspection of foundations? 19 A. I don't believe so. 20 Q. The inspection of interior structural 21 components, like subfloors and joists? 22 A. In sort of relative concerns. You know, 23 it doesn't say -- You know, it doesn't describe as 24 thoroughly as the code -- as the IRC code would, 25 for example, what to expect, what's acceptable and</p>	<p style="text-align: right;">Page 88</p> <p>1 unsafe or can compromise the structural integrity? 2 What sorts of things are you looking for 3 when you want to know that? 4 A. Mostly it's looking for things that 5 would be excessive. It could be excessive cuts or 6 whatever. 7 Q. A bunch of small holes really close to 8 together, gigantic holes allowing, you know, 9 large -- 10 A. Right. 11 Q. -- vent pipes to run through, things 12 like that? 13 A. Right. 14 Q. When you have exposed joists, you know, 15 for example, in a basement, that's something you 16 do look for, isn't it? 17 A. Yes. 18 Q. And when you have exposed joists in the 19 basement, that's something you're going to look 20 for every time. You're going to look for overcut 21 or overnotched joists, right? 22 A. Yes. 23 Q. And cut were missing structural 24 components. 25 A. Yes. If I -- if I notice them, yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 what's not acceptable. It just gives a basic -- 2 They just give basic tips on it. 3 Q. What to look for, how to inspect. 4 A. What to look for. 5 Q. Yeah. Problems you might encounter. 6 A. Problems you might encounter. 7 Q. When you're talking about the IRC, the 8 International Residential Code, are you familiar 9 with the IRC? 10 A. Yes. 11 Q. How are you familiar with it? 12 A. I, actually, in 2006 took the IRC code 13 class and -- for general information purposes. 14 Home inspection is not a code inspection, but it 15 gives me an idea more of what goes on in the 16 building practices, what to look for in mostly new 17 construction because it only relates to new 18 construction. 19 And so I actually -- I was certified in 20 structure and electrical for a code cycle and code 21 cycle. 22 Q. Just take, for example, joists, what is 23 your understanding about, you know, cuts and 24 notches in joists, floor joists, by, for example, 25 plumbers or electricians that can make the joists</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. When you say if you notice them, I take 2 that to mean when they're capable of being seen. 3 A. Right. 4 Q. Because you conduct a visible 5 inspection. 6 A. Right. 7 Q. You're dealing with what is accessible. 8 A. Accessible. 9 Q. Which means you can get to it, right? 10 A. Right. 11 Q. And what is readily visible. 12 A. Right. 13 Q. Which means you can see it with your own 14 two eyes. 15 A. Right. 16 Q. And if something is readily accessible 17 and also visible and there's something that's 18 significantly wrong with it, you are going to 19 identify it in your report; is that fair? 20 A. That's fair if I can -- if I see it, 21 yes. 22 Q. If you can see it and you can get to it, 23 it's going to be in your report. 24 A. If I can see it, yes. 25 Q. All right. I want you to assume with my</p>

<p style="text-align: right;">Page 90</p> <p>1 question you can see it because I'm telling you</p> <p>2 with my question that you can.</p> <p>3 A. Right.</p> <p>4 Q. If you can see something and you can get</p> <p>5 to it and there's something wrong with it, it will</p> <p>6 be in your report.</p> <p>7 A. Right.</p> <p>8 Q. And it's reasonable for your clients to</p> <p>9 believe that if you can see it and get to it and</p> <p>10 there's something wrong with it that it will be in</p> <p>11 your report.</p> <p>12 A. Right.</p> <p>13 Q. All right. So Inspection Training</p> <p>14 Associates, and we've talked about the books. It</p> <p>15 sounds like the videos maybe are just out of date.</p> <p>16 A. Right.</p> <p>17 Q. And it doesn't sound like you've even</p> <p>18 got the videos anyway.</p> <p>19 A. I didn't keep the videos.</p> <p>20 Q. What about, do you keep continuing</p> <p>21 education materials?</p> <p>22 Actually, let me ask you a better</p> <p>23 question. Do you have to do continuing education</p> <p>24 as a home inspector?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 sound like you've got this big cavernous,</p> <p>2 extravagant library, but do you have a book shelf?</p> <p>3 You said you've got the books, so I'm</p> <p>4 guessing if you've got the books on the shelf,</p> <p>5 then you've got perhaps the continuing education</p> <p>6 materials that you thought were helpful or</p> <p>7 relevant. Those would be on the shelf with the</p> <p>8 books?</p> <p>9 A. Yes. If I kept them, yes.</p> <p>10 Q. Okay. And as we're sitting here now and</p> <p>11 you're saying "if I kept them," you have kept</p> <p>12 some, didn't you?</p> <p>13 A. I have kept some of them, yes.</p> <p>14 Q. Okay.</p> <p>15 A. And some of them -- like the code one is</p> <p>16 just the IRC book. They said turn to page 200.</p> <p>17 Okay, this is page 200. And, you know, so it's</p> <p>18 just a manual. If you'd like a copy of that, I</p> <p>19 can give you the whole IRC from 2006.</p> <p>20 Q. Fortunately, I can get it on the</p> <p>21 Internet. I have the link. Yeah.</p> <p>22 A. Okay.</p> <p>23 Q. It's some dry reading.</p> <p>24 Do you have a list of the continuing</p> <p>25 education that you've done?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay. What are your continuing</p> <p>2 education requirements as a home inspector?</p> <p>3 A. They're -- for ASHI it's 20 units a</p> <p>4 year.</p> <p>5 Q. And is a unit an hour?</p> <p>6 A. It can be. It depends on how they rate</p> <p>7 the classes and where you get them. Some of them</p> <p>8 are hour for hour, some of them are not.</p> <p>9 Q. And I'm guessing that your continuing</p> <p>10 education is a little bit like legal continuing</p> <p>11 education: Sometimes they give you printed</p> <p>12 materials that are helpful, and sometimes they</p> <p>13 give you printed materials and you're like, I</p> <p>14 wished they'd save the paper.</p> <p>15 A. Right.</p> <p>16 Q. Do you ever keep any of the printed</p> <p>17 materials that you get from your continuing</p> <p>18 education?</p> <p>19 A. Sometimes for reference, yes.</p> <p>20 Q. Do you maintain them at your office, the</p> <p>21 ones that you've kept?</p> <p>22 A. They're probably -- Yes. If I kept</p> <p>23 them, yes.</p> <p>24 Q. All right. Do you have like a library</p> <p>25 in your office? I mean, I don't want to make it</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Not specifically because we're only</p> <p>2 required to keep them by hours, and in some cases,</p> <p>3 like with this ITA, that particular group had a</p> <p>4 yearly meeting in Las Vegas that -- where you</p> <p>5 went, and if you attended all the day's functions,</p> <p>6 then at the end you got just a thing that said you</p> <p>7 received 20 continuing eds as long as you signed</p> <p>8 off on the papers that they had stating that, yes,</p> <p>9 you had met -- you met those.</p> <p>10 Q. What I'm trying to do is figure out --</p> <p>11 because we asked you for your training materials</p> <p>12 in discovery as well, and the discovery responses</p> <p>13 indicate that you don't maintain the training</p> <p>14 materials. And this is the kind of thing that</p> <p>15 happens all the time. So it sounds like maybe</p> <p>16 there was a misunderstanding or a</p> <p>17 miscommunication.</p> <p>18 I don't want you to have to produce</p> <p>19 everything that you've got, but would you do me a</p> <p>20 favor so that we can avoid that: Would you</p> <p>21 provide a list, if you would, please, of the</p> <p>22 training materials that you have by just the name</p> <p>23 of the training material that you kept to Kim and</p> <p>24 she can provide it to me?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. And if there are questions we have about 2 any particular title, then we can follow up and 3 ask for a copy -- 4 A. Okay. 5 Q. -- is that all right? 6 And, additionally, the books that we 7 were talking about earlier that you received when 8 you were initially training as a home inspector, I 9 imagine that they are compartmentalized by topic. 10 A. Yes. 11 Q. Would you also provide the list of the 12 books by topic to Kim and that might narrow it 13 down too, because I don't know that I need to see, 14 you know, the book on electrical inspection, for 15 example. 16 But, you know, obviously a big issue in 17 this case is the basement, and so issues like 18 that, that would probably be something we'd like 19 to see. Is that fair? 20 A. Yeah. 21 Q. And that might cut down on some of your 22 anxiety about turning over all your books anyway. 23 What interested you about becoming a 24 home inspector? 25 Did you approach Mr. Zimmerman about</p>	<p style="text-align: right;">Page 96</p> <p>1 Associates work? 2 A. After. 3 Q. All right. So you went to -- You got 4 the books, you got the videos. You went to Denver 5 for two weeks of classes, and then you came back 6 and you worked with Mr. Zimmerman for about four 7 months? 8 A. Yes. 9 Q. And was that sort of like an 10 apprenticeship? 11 A. What we did was he would either come to 12 the inspection with me that I was doing or -- and 13 then we would compare notes on what he was looking 14 for and what I was looking for and whether or not 15 we were in agreement with whether he felt that I 16 was meeting the need that was -- for that 17 particular house, and then he would review my 18 reports. And that's how we kind of did the 19 training. 20 Then at some point he said, well, I've 21 seen enough of your reports; I've seen enough of 22 how you're doing the inspections, and we felt that 23 I was capable of doing what, you know, he was 24 doing -- 25 Q. Okay.</p>
<p style="text-align: right;">Page 95</p> <p>1 becoming one or did he approach you about it? 2 A. I approached him. 3 Q. And what interested you about it? 4 A. I think it was the inspection part of 5 it. There weren't a lot of meat processing plants 6 in Montana of the quality -- of the capacity that 7 we had. There was only two of us, us and Daily's, 8 that had requirements for the education that I had 9 in that particular arena, and I didn't 10 particularly want to move out of Missoula, but I 11 still enjoyed inspection. And inspection -- home 12 inspection business -- I had seen information on 13 it before and had pursued information on it 14 before, and it seemed to, you know, have something 15 that was interesting to me. 16 Q. Had you pursued information on it before 17 you even found out that Four B's was having 18 financial issues? 19 A. Yes. 20 Q. And had you ever signed up for training 21 as a home inspector before? 22 A. No. 23 Q. All right. So did you start working 24 with Mr. Zimmerman for those four months before or 25 after you [REDACTED] your Inspection Training</p>	<p style="text-align: right;">Page 97</p> <p>1 A. -- as well, so -- 2 Q. At about four months, he bowed out and 3 you took over the business full-time? 4 A. Yes. 5 Q. All right. And there are different 6 steps or grades or ranks of inspectors involved 7 with ASHI, right? 8 A. With ASHI there are, yes. 9 Q. So there's ASHI associate, there's -- 10 What is it? ASHI associate, associate with logo 11 and then certified inspector? 12 A. Yes. 13 Q. Okay. And so when you ended the four 14 months, what were you? 15 A. At that point I was still -- I was 16 between -- The ASHI -- the first level was till 17 you had [REDACTED] 50 home inspections. And then 18 to become -- well, it wasn't called certified 19 inspector at that time; it had another 20 designation. You were just an ASHI-approved 21 inspector. 22 At that time you had to have 200-plus 23 inspections and then those -- you had to send in a 24 sampling of your inspection reports to ASHI for 25 approval. And then once you demonstrated that you</p>

<p style="text-align: right;">Page 98</p> <p>1 had met those requirements, then you would become 2 the full ASHI inspector at that point. 3 Q. All right. 4 A. And they just changed the terminology in 5 the last couple of years so you could become what 6 they called a certified inspector, the ASHI 7 certified inspector. 8 Q. So are you an ASHI certified home 9 inspector? 10 A. Yes. 11 Q. Are you still inspecting? 12 A. No. 13 Q. Okay. When did you stop inspecting? 14 A. June. 15 Q. Why did you stop inspecting? 16 A. Well, it was kind of a combination of 17 things. I was about ready to turn 60 years old, 18 and with the home inspection -- my home inspection 19 business I was not covered by any insurance -- 20 home health insurance policies. And when you get 21 to be our age, you need -- We were being covered 22 by my wife's policy, which was costing over a 23 grand a month just for me to be on the rider on 24 it, and so -- and then I had fallen off the ladder 25 a couple of times and don't heal as quickly as I</p>	<p style="text-align: right;">Page 100</p> <p>1 space is fine, and I don't have eyes in it at all, 2 so -- 3 So I just couldn't, you know, ethically 4 continue on and say, well, I'm just looking at it 5 with binoculars because that's -- because I just 6 wanted to sit here in my car and look at the roof 7 with binoculars and say everything's fine, when I 8 can get up on there and I can touch it and I can 9 feel it and I can look at it. 10 Q. You feel as though your clients deserve 11 an attention-to-detail visual inspection. 12 A. Yes. 13 Q. And that involves being able to 14 visualize something as close to the source, as 15 close to that thing, as possible. 16 A. As best as I can, yes. 17 Q. And so in order for you to provide a 18 competent, ASHI-, standard-of-practice, compliant 19 inspection, you need to be able to closely 20 visualize the roof. 21 A. I think so, yes. 22 Q. And closely visualize the foundation 23 components. 24 A. As best I can, yes. 25 Q. Which includes looking at the walls --</p>
<p style="text-align: right;">Page 99</p> <p>1 did when I was younger. And so my wife and I 2 decided to -- that it was probably time for me to 3 retire from having to climb on roofs and having to 4 climb in crawl spaces and be subject to some of 5 the hazards of what home inspection was. 6 And I've been to -- in regards to that 7 at some of the inspection training sessions that I 8 went to, I was listening to some of these older 9 inspectors, and they're saying, Oh, we don't go in 10 the crawl space. We don't go on the roof. We 11 just give our look from there. And I just 12 couldn't do that. 13 Q. Why not? 14 A. Well, I can't tell somebody if their 15 roof is bad if I don't get on it. And I can't 16 tell somebody if there's problems in the crawl 17 spaces if I -- if I can't even squeeze through the 18 hatch to get down in there to look at it and, you 19 know, at least get some look on what the 20 properties are. 21 Q. You have to be able to look at it in 22 order to inspect it. 23 A. For me to -- for me to do that, I have 24 to be able to at least get to an area. And I just 25 can't say, well, gee, that looked -- the crawl</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes. 2 Q. -- for example. 3 It's reasonable, if you're the guy 4 conducting the inspection, for your clients to 5 believe that that's the level of care they're 6 going to get from you. 7 A. That's what I would expect, yes. 8 Q. And, you know, obviously lawsuits -- And 9 many times they're all about differences of 10 opinion. I'm assuming that your retirement has 11 nothing to do with any lawsuits or claims that 12 have been brought against you; is that fair? 13 A. Correct. Right. 14 Q. Okay. So you are currently an ASHI 15 certified inspector, but you're not currently 16 doing inspections. 17 A. Right. 18 Q. When's the last time you did a home 19 inspection? 20 A. About the 15th of June. 21 Q. And were you an ASHI certified inspector 22 at the time you conducted the inspection for [REDACTED] 23 and [REDACTED] Mellem in August of 2013? 24 A. Yes. 25 Q. And were you an expert home inspector,</p>

<p style="text-align: right;">Page 102</p> <p>1 in your opinion, at that time?</p> <p>2 A. I felt I was a very good inspector.</p> <p>3 Q. Would you describe yourself as "expert"?</p> <p>4 A. I believe I was the best inspector I</p> <p>5 could be.</p> <p>6 Q. But does that mean you were providing</p> <p>7 expert inspection services?</p> <p>8 A. I was providing them to meet the</p> <p>9 standards that I had set for myself, which is the</p> <p>10 ASHI standards and my -- my own standards.</p> <p>11 Q. Your business is called [REDACTED] Home</p> <p>12 Inspections?</p> <p>13 A. Yes.</p> <p>14 Q. And was that the name of the business</p> <p>15 when you bought the business?</p> <p>16 A. No.</p> <p>17 Q. What was the name of the business when</p> <p>18 you bought it?</p> <p>19 A. I don't even know what his name -- the</p> <p>20 name of his business was. I think he just called</p> <p>21 it Zimmerman Home Inspections.</p> <p>22 Q. All right. And so you changed the name</p> <p>23 to [REDACTED] Home Inspections.</p> <p>24 A. Yes.</p> <p>25 Q. And that name -- within the name there</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. And so it is reasonable to believe that</p> <p>2 your client's going to get a [REDACTED] home</p> <p>3 inspection, true?</p> <p>4 MS. MORE: Objection. Asked and</p> <p>5 answered.</p> <p>6 You can go ahead.</p> <p>7 A. What was the question again?</p> <p>8 Q. (BY MR. JOHNSON) It's reasonable to</p> <p>9 believe since you've named your business [REDACTED]</p> <p>10 Home Inspections that -- you know, subject to ASHI</p> <p>11 standards and all that stuff, that your client's</p> <p>12 going to get a [REDACTED] home inspection from you.</p> <p>13 A. Yes.</p> <p>14 Q. And the name of your inspection report</p> <p>15 in this case is Professional Property Inspection,</p> <p>16 right?</p> <p>17 A. Right.</p> <p>18 Q. Is that the name you put on all your</p> <p>19 inspection reports?</p> <p>20 A. Yes.</p> <p>21 Q. Why do you entitle it Professional</p> <p>22 Property Inspection?</p> <p>23 A. I guess that was the boilerplate of</p> <p>24 the -- and I agreed with what -- the softwares</p> <p>25 that I used.</p>
<p style="text-align: right;">Page 103</p> <p>1 is a representation made to your clients, correct?</p> <p>2 A. Correct.</p> <p>3 Q. That they're going to receive a [REDACTED]</p> <p>4 home inspection.</p> <p>5 A. Right.</p> <p>6 Q. And it's reasonable to believe that --</p> <p>7 reasonable for your clients to believe that you're</p> <p>8 going to provide a [REDACTED] home inspection to</p> <p>9 them.</p> <p>10 A. As defined by my contract and my</p> <p>11 standards that I followed, yes.</p> <p>12 Q. Of course. But including what the</p> <p>13 contract says, including what the standards say,</p> <p>14 reasonable for your clients to believe that when</p> <p>15 they get an inspection from [REDACTED] Home</p> <p>16 Inspections, that they're going to get a [REDACTED]</p> <p>17 home inspection.</p> <p>18 A. To the best of my ability, yes.</p> <p>19 Q. Because the name of your business isn't</p> <p>20 [REDACTED] Home Inspection to the Best of Your</p> <p>21 Ability, right?</p> <p>22 A. Right.</p> <p>23 Q. The name of your business is [REDACTED]</p> <p>24 Home Inspections.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. So Professional Property Inspection is</p> <p>2 the title that your software program gives the</p> <p>3 report?</p> <p>4 A. Right.</p> <p>5 Q. Do you disagree with that title?</p> <p>6 A. No.</p> <p>7 Q. Do you agree that when you're rendering</p> <p>8 a report, you're rendering a professional property</p> <p>9 inspection?</p> <p>10 A. Yes.</p> <p>11 Q. And there's a representation as well</p> <p>12 within that name too, right?</p> <p>13 A. Yes.</p> <p>14 Q. That when your client receives a report</p> <p>15 entitled Professional Property Inspection, it's</p> <p>16 reasonable for them to believe that they are</p> <p>17 receiving a professional property inspection.</p> <p>18 A. Yes.</p> <p>19 Q. Subject to the 2006 ASHI standards of</p> <p>20 practice, did you conduct a [REDACTED] home</p> <p>21 inspection in this case?</p> <p>22 A. Yes.</p> <p>23 Q. Subject to the 2006 ASHI standards of</p> <p>24 practice, did you render a property inspection</p> <p>25 report in this case?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. Yes.</p> <p>2 Q. Do you feel as though you made any</p> <p>3 mistakes during your inspection of the [REDACTED]</p> <p>4 property?</p> <p>5 A. I didn't at the time feel that I did,</p> <p>6 yes.</p> <p>7 Q. Do you now believe that you made</p> <p>8 mistakes during your inspection?</p> <p>9 A. None specifically. Maybe within -- in</p> <p>10 reference to that one doorway header probably, but</p> <p>11 other than that, I don't believe I did.</p> <p>12 Q. We'll talk about it in a little more</p> <p>13 specificity, but when you say that one doorway</p> <p>14 header, what do you -- what do you mean?</p> <p>15 A. Well, the basement doorway header that</p> <p>16 was missing the stud under it.</p> <p>17 Q. Oh. The king/jack stud?</p> <p>18 A. Yes.</p> <p>19 Q. Is that the only thing that you believe</p> <p>20 that you missed during this property inspection?</p> <p>21 A. Yes.</p> <p>22 Q. When you -- when you say that you -- I</p> <p>23 think you said that you possibly -- probably -- I</p> <p>24 can't remember -- missed the king/jack stud and</p> <p>25 that that would have been a mistake on your part.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. Talking about -- I want to focus</p> <p>2 you on, at least for this question, the August</p> <p>3 2013 home inspection that you did.</p> <p>4 A. Right.</p> <p>5 Q. Did you make any mistakes during that</p> <p>6 inspection?</p> <p>7 A. None that I know of.</p> <p>8 Q. Looking back on it, knowing what you</p> <p>9 know now, did you make any mistakes during that</p> <p>10 inspection?</p> <p>11 A. I guess it would have been that stud,</p> <p>12 you know.</p> <p>13 Q. Do you believe the stud was missing at</p> <p>14 the time of your inspection in August of 2013?</p> <p>15 A. I don't know fully. One of the photos</p> <p>16 in the inspection is inconclusive as to whether</p> <p>17 the stud was there or not. So if I look at that,</p> <p>18 I can't be sure whether it was there. It was back</p> <p>19 in the background of one of the photos, and I</p> <p>20 can't be sure that it was there or wasn't there at</p> <p>21 the time.</p> <p>22 Q. Do you think that the property was</p> <p>23 modified?</p> <p>24 I mean, you're aware of what the --</p> <p>25 We'll talk about some of the allegations in the</p>
<p style="text-align: right;">Page 107</p> <p>1 Do you admit that that was a mistake on</p> <p>2 your part?</p> <p>3 I mean, can you affirmatively say during</p> <p>4 my inspection I should have identified that there</p> <p>5 was a missing king/jack stud in that basement</p> <p>6 doorway; it should have been in my report and it</p> <p>7 wasn't?</p> <p>8 A. Well, I didn't have a photo, but not</p> <p>9 being in it at the time and I didn't recall saying</p> <p>10 seeing that it was gone at the time. So based on</p> <p>11 that, if it was gone at the time of the reinspect,</p> <p>12 which it apparently was gone at the time of the</p> <p>13 reinspect, I would have missed it had I -- had</p> <p>14 I -- that -- you know, that would have been one</p> <p>15 thing that I would have missed, would have been</p> <p>16 that jack stud.</p> <p>17 Q. Okay. So there are two inspections</p> <p>18 here, right?</p> <p>19 There's the home inspection you did in</p> <p>20 August of 2013, right?</p> <p>21 A. Right.</p> <p>22 Q. And then you reinspected --</p> <p>23 A. I reinspected, yes.</p> <p>24 Q. -- in early October of 2013.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 case -- we're going to talk about all of them --</p> <p>2 but you told me earlier you've reviewed all the</p> <p>3 discovery responses and all the materials, right?</p> <p>4 A. Right.</p> <p>5 Q. Is there anything the Mellems are</p> <p>6 claiming as far as -- You've got, for example, the</p> <p>7 staining marks outside on the -- to the right of</p> <p>8 the front door as you exit the house, the water</p> <p>9 staining. You've got that missing header</p> <p>10 allegation or the missing king/jack stud, things</p> <p>11 of that nature.</p> <p>12 Were those things, in your mind, present</p> <p>13 at the time of your August 2013 inspection, or has</p> <p>14 the property been altered, in your mind?</p> <p>15 A. Well, I don't know about the inside.</p> <p>16 I'm sure the staining was probably there.</p> <p>17 Staining is a cosmetic issue which is not reported</p> <p>18 on.</p> <p>19 Q. Let's focus in on the basement, though.</p> <p>20 Do you believe that any area of the basement was</p> <p>21 modified in any way after your August 23rd</p> <p>22 inspection -- sorry, after your August 2013</p> <p>23 inspection?</p> <p>24 That's a bad question so let me give a</p> <p>25 more specific one.</p>

<p style="text-align: right;">Page 110</p> <p>1 A. Yes. Please do.</p> <p>2 Q. Do you believe that the king/jack stud</p> <p>3 was there on August 6 of 2013 and then removed?</p> <p>4 A. I can't be sure. It was gone when I did</p> <p>5 the reinspection. That's all I know. I -- Like I</p> <p>6 say, my photo is not conclusive on the day of the</p> <p>7 inspection.</p> <p>8 Q. Did you take a picture of that king/jack</p> <p>9 stud being missing on your reinspection?</p> <p>10 A. No.</p> <p>11 Q. How do you know it was missing on the</p> <p>12 reinspection?</p> <p>13 A. I only know it was gone from -- at the</p> <p>14 time that Mr. Bernhardt did his inspection.</p> <p>15 Q. Okay. So I want to make sure that we're</p> <p>16 talking about the same stuff here. So there's</p> <p>17 your original inspection in August of 2013, right?</p> <p>18 A. Uh-huh.</p> <p>19 Q. "Yes"?</p> <p>20 A. Yes.</p> <p>21 Q. All right.</p> <p>22 A. Sorry.</p> <p>23 Q. No, we're good. You're fine.</p> <p>24 Then you've got your follow-up</p> <p>25 inspection, which I believe is October 1st or</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Well, it shows the area, but I can't</p> <p>2 tell with detail whether or not the king stud --</p> <p>3 jack stud was there or not. But it's --</p> <p>4 Q. So your photo of the area with the</p> <p>5 king/jack stud is inconclusive as to whether the</p> <p>6 king/jack stud was actually there.</p> <p>7 A. Correct.</p> <p>8 Q. Because of a number of things, including</p> <p>9 angle, distance, things of that nature.</p> <p>10 A. Right. Because I took a picture of that</p> <p>11 whole section of that wall, and it was in the back</p> <p>12 end of that, and then there -- the light was</p> <p>13 glaring on it so the light wasn't exactly perfect</p> <p>14 for it, so --</p> <p>15 Q. You just didn't take a direct photograph</p> <p>16 of that area, that king/jack stud.</p> <p>17 A. Not directly. Not directly that doorway</p> <p>18 header.</p> <p>19 Q. Not in August 2013 and not in October of</p> <p>20 2013.</p> <p>21 A. Right.</p> <p>22 Q. All right. So I think we can move on.</p> <p>23 I'll sum up, is it your testimony that you don't</p> <p>24 know one way or the other whether the king/jack</p> <p>25 stud was missing at the time of your inspection or</p>
<p style="text-align: right;">Page 111</p> <p>1 October 3rd of 2013, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then Mr. Bernhardt came after</p> <p>4 that and also inspected the property.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So I'm talking about your</p> <p>7 inspections of the property: August 2013, October</p> <p>8 2013. Looking at your photographs, there's no</p> <p>9 direct photograph of the king/jack stud either</p> <p>10 being in place or not being in place during the</p> <p>11 August 2013 inspection, true?</p> <p>12 A. True.</p> <p>13 Q. And the same goes for your reinspection</p> <p>14 photographs from early October 2013, right?</p> <p>15 A. Right.</p> <p>16 Q. Okay.</p> <p>17 A. Well, excuse me. On the inspection</p> <p>18 there was -- That header was in the background.</p> <p>19 It's not real visible. And so I don't -- so I</p> <p>20 can't say whether that jack stud was in there or</p> <p>21 not from the photo, but there is a photo of it in</p> <p>22 the background.</p> <p>23 Q. So you say there's a photo of it, but</p> <p>24 the photo is -- the photo was so indirect that you</p> <p>25 can't tell one way or the other what it shows.</p>	<p style="text-align: right;">Page 113</p> <p>1 reinspect?</p> <p>2 A. That's correct.</p> <p>3 Q. All right. But it doesn't sound to me</p> <p>4 as though you have any evidence that it was</p> <p>5 subsequently removed after your inspections,</p> <p>6 right?</p> <p>7 A. Right. I don't know if it was moved</p> <p>8 after or prior.</p> <p>9 Q. Do you have any reason to believe it was</p> <p>10 moved after the fact? I mean, if I represent to</p> <p>11 you that it wasn't, what do you have --</p> <p>12 A. I don't have anything, no.</p> <p>13 Q. Okay. All right. So if the king/jack</p> <p>14 stud was, in fact, missing on August 6 of 2013,</p> <p>15 you agree with me, it was a mistake for you to</p> <p>16 miss it.</p> <p>17 A. That particular item, yes.</p> <p>18 Q. All right. But other than that, knowing</p> <p>19 what you know now, you don't think that you made</p> <p>20 any mistakes during your inspection.</p> <p>21 A. Right.</p> <p>22 Q. How many inspections -- home inspections</p> <p>23 do you believe you have done in your career as a</p> <p>24 professional home inspector? Just ballpark.</p> <p>25 A. A couple thousand.</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. 2,000, 3,000, somewhere in that range?</p> <p>2 A. I averaged about 250 a year, and I was</p> <p>3 in business for seven years, seven and a half</p> <p>4 years. About seven years. 2000 -- Or eight.</p> <p>5 Q. Nine.</p> <p>6 A. Nine years, yeah. Nine years, yeah,</p> <p>7 so --</p> <p>8 Q. Okay. So basically somewhere between</p> <p>9 2,000 and 2500.</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. So excluding the Snow Bowl</p> <p>12 inspection, can you think back to a time during</p> <p>13 those other 2200 inspections or whatever, however</p> <p>14 many inspections you've done, where you made a</p> <p>15 mistake during the inspection and failed to</p> <p>16 identify a defect that should have been in your</p> <p>17 report but was not?</p> <p>18 A. Not that I'm remembering, no, no.</p> <p>19 Q. So to the best of your knowledge, out of</p> <p>20 the 2,000 to 2500 professional home inspections</p> <p>21 you've done in your career, the first mistake that</p> <p>22 you are aware of having ever made during a home</p> <p>23 inspection is that king/jack stud for [REDACTED] and</p> <p>24 [REDACTED] Mellem if the king/jack stud was, in fact,</p> <p>25 missing when you inspected.</p>	<p style="text-align: right;">Page 116</p> <p>1 organizations that you belong to -- this is the</p> <p>2 way depositions go, we jump around; mostly because</p> <p>3 I forget stuff -- but what civic organizations do</p> <p>4 you belong to?</p> <p>5 I don't want you to tell me where you go</p> <p>6 to church or any of that stuff, but, you know,</p> <p>7 Rotary, Lions, any of that stuff.</p> <p>8 A. Nothing outside of church right now.</p> <p>9 Q. Okay. And were you ever in the</p> <p>10 military?</p> <p>11 A. No.</p> <p>12 Q. Ever in law enforcement?</p> <p>13 A. No.</p> <p>14 Q. Ever an EMT or a member of a fire</p> <p>15 department?</p> <p>16 A. No.</p> <p>17 Q. Have you ever been a member of a</p> <p>18 volunteer fire department?</p> <p>19 A. No.</p> <p>20 Q. Have you ever been associated with a</p> <p>21 volunteer fire department of any kind?</p> <p>22 A. No.</p> <p>23 Q. All right. So ASHI is your only</p> <p>24 professional certification.</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes. Of those items that I had</p> <p>2 inspected, yes.</p> <p>3 Q. Okay. So if the king/jack stud was</p> <p>4 missing in August of 2013, that's the first</p> <p>5 mistake you think you ever made as a home</p> <p>6 inspector when it comes to identifying defects and</p> <p>7 reporting them accurately?</p> <p>8 A. That I knowingly know of.</p> <p>9 Q. Yeah. And I'm not limiting my request</p> <p>10 to defects you've been sued over or you've had</p> <p>11 insurance claims for. I just mean any defects</p> <p>12 that you were aware of having missed during an</p> <p>13 inspection.</p> <p>14 And it sounds like over 2,000 to 2500</p> <p>15 inspections, the king/jack stud that we've just</p> <p>16 discussed would be the first that you are aware</p> <p>17 of.</p> <p>18 A. That I've been made aware of, yes.</p> <p>19 Q. You were the -- I'm sorry. We talked</p> <p>20 about ASHI certification.</p> <p>21 Any other professional certifications</p> <p>22 that you have?</p> <p>23 A. No.</p> <p>24 Q. All right. And I meant to ask you this</p> <p>25 at the beginning of the deposition, but civic</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. All right. And you were the Missoula</p> <p>2 County Association of Realtors Home Inspector of</p> <p>3 the Year.</p> <p>4 A. Yes.</p> <p>5 Q. For 2012, 2013 and 2014.</p> <p>6 A. Yes.</p> <p>7 Q. What's the criteria for that award?</p> <p>8 A. That's -- I'm not exactly sure how you</p> <p>9 get that, but basically you're -- they have their</p> <p>10 yearly award ceremonies, their yearly meeting, and</p> <p>11 they have several different awards that go out.</p> <p>12 You are nominated by someone in the real estate</p> <p>13 profession, primarily Realtors, and then it's a</p> <p>14 vote, a vote on the floor.</p> <p>15 Q. So you understand, of course, that most</p> <p>16 of the time when you're doing an inspection,</p> <p>17 you're doing it on behalf of a buyer.</p> <p>18 A. Correct.</p> <p>19 Q. And that typically there is a</p> <p>20 contingency placed on the buy-sell that if the</p> <p>21 buyer receives a home inspection report that's</p> <p>22 unsatisfactory, they can terminate the</p> <p>23 transaction.</p> <p>24 A. Correct.</p> <p>25 Q. All right. Over the last -- Well, we've</p>

<p style="text-align: right;">Page 118</p> <p>1 got 2012, 2013, 2014. So over the last three 2 years of your career, how many transactions are 3 you aware of having been terminated based on your 4 home inspections? 5 A. Depending on the years, sometimes it's 6 been as high as 50 to 60 percent fail-sales. 7 Q. There have been years where you were -- 8 half to 60 percent of your home inspections 9 resulted in a fail-sale? 10 A. Yes. 11 Q. What about 2012, 2013, 2014? 12 A. Probably pushing the 40 percent range, 13 40 to 50. There was 20 -- It was either 2012 or 14 2013, the majority -- probably 50 percent of the 15 inspections I did were on repo houses. And during 16 those time periods, there were months where I was 17 up pushing 70 percent because, like I said, 50 18 percent of what I was doing was repo houses back I 19 believe it was 2012 and the first part of 2013, 20 when there were so many repo houses on the market. 21 So those were -- 22 Q. A lot of houses that were neglected? 23 A. A lot of houses that were neglected 24 poorly, and so the rate was high. And if not -- 25 If it didn't turn out to be fail-sale, there was</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Not always, but sometimes. 2 Q. So when we're talking about the 3 statistics that you're giving me, that's a guess 4 or an estimate? 5 A. It's an estimate because a lot of them I 6 don't hear, but the Realtor would tell me and a 7 lot of times -- if it was, or the clients. Like 8 the client himself would probably contact me to do 9 another home inspection. 10 Q. Do you keep records of fail-sales 11 being -- 12 A. No, no. 13 Q. Okay. All right. We're one minute away 14 from taking another break, but just real quickly, 15 [REDACTED] Home Inspections, you are basically 16 the -- we'll won't call it the founder because you 17 bought the business, but when you bought it, you 18 founded [REDACTED] Home Inspections, right? 19 A. That's correct. 20 Q. And I'm guessing you're the founder and 21 you're the president. 22 A. Yes. 23 Q. Sole stakeholder? 24 A. No. My wife is 50/50 in it. 25 Q. 50/50. All right. Does she go to any</p>
<p style="text-align: right;">Page 119</p> <p>1 probably significant, depending on the bank that 2 owned the papers on it, there may have been 3 significant renegotiations for roofs, anything 4 that was major structural issues -- mechanical, 5 furnaces, stuff like that -- that were just 6 totally shot that were neglected when the person's 7 house was sold. 8 Q. Understood. Were you working with -- 9 Were you under contract with the bank or anything 10 like that, or was it just that you were doing a 11 lot of -- 12 A. No. It was just that I did a lot of 13 homes that way, and a lot of inspectors didn't 14 like them because most of them are a nightmare to 15 do and -- But I had a pretty good system for 16 reporting on them, like I said. But like I said, 17 the fail-sale was big on it. 18 Q. Do you get contacted by Realtors when 19 there's a fail-sale associated with one of your 20 home inspections? 21 I mean, how do you know when there's a 22 fail-sale as a result of your inspection? 23 A. Usually I get another inspection from 24 the client. 25 Q. Not always, but sometimes?</p>	<p style="text-align: right;">Page 121</p> <p>1 inspections with you or do any work with you? 2 A. She -- Not consistently. She's gone to 3 a few inspections over the years that we've done. 4 Q. All right. 5 A. Just as a side bar, she has also had -- 6 has read through the materials too in regards to 7 the case, so she is a person that is -- you know, 8 knows about the case. 9 Q. Thank you. Thank you. As far as the 10 inspection that was conducted in this case, you, 11 [REDACTED], conducted the inspection. 12 A. Yes. 13 Q. And you conducted it by yourself? 14 A. Yes. 15 Q. All right. 16 MR. JOHNSON: Let's take five minutes 17 and then we'll come back on. It's about 11:15. 18 (Whereupon, the proceedings were in 19 recess at 11:15 a.m. and subsequently reconvened 20 at 11:26 a.m., and the following proceedings were 21 had and entered of record:) 22 MR. JOHNSON: We're back on. 23 Q. (BY MR. JOHNSON) We're back, Mr. [REDACTED], 24 it's about 11:26. 25 So a broad, very general question: If</p>

<p style="text-align: right;">Page 122</p> <p>1 I'm a buyer and I ask you why should I get a home 2 inspection, what does a home inspection get me? 3 A. Gets you a visual look of the property 4 at the time -- at the time that you required -- 5 requested me to do the inspection. And, you know, 6 basically to cover the components of -- as defined 7 by my report and any efficiencies that I might 8 note in that particular component at that time 9 period. 10 Q. All right. Have you ever recommended to 11 someone that they not get a home inspection? 12 A. No. 13 Q. Why wouldn't you do that? 14 A. The reason -- basically the reason that 15 I believe a home inspection is important is that 16 it gives you kind of a third-party, not-involved 17 person looking at a property, and you may or may 18 not find issues that would be, you know, important 19 for you to know to make that final decision to 20 say, yes, I want to buy the house or, no, I don't 21 want to buy the house. 22 Q. It is an independent third-party 23 inspection. 24 A. Right. It's an independent third-party, 25 right.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. And, you know, subject to what the ASHI 2 standards say you're going to inspect and not 3 inspect, what the home inspector does is provide 4 the buyer with everything they need to know about 5 the property they've selected so they can buy it 6 knowing that they've made a wise purchase. 7 Would you agree with that? 8 A. Yes. From the inspectors -- from the 9 home inspection perspective, yes. 10 Q. Yeah. And that's what I'm asking you. 11 A. Right, right. 12 Q. Subject to the ASHI standards of 13 practice, what the home inspector should be 14 providing through his report is everything the 15 buyer needs to know to understand the property 16 that they've selected, and they can buy it knowing 17 that they've made a wise purchase, true? 18 A. Well, I would qualify. I wouldn't say 19 everything they need to know because there are 20 either aspects of the home purchase that the home 21 buyer needs to take into account as well. 22 Q. Sure. Everything you need to know about 23 the condition of the property subject to the ASHI 24 standards. 25 A. Right.</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. By someone who has no stake in the 2 transaction at all. 3 A. That's right, right. 4 Q. And it takes emotion out of it, right? 5 A. Right. 6 Q. You are, as an inspector, supposed to 7 supply a neutral, dispassionate evaluation of the 8 property at the time of the inspection. 9 A. Right. 10 Q. And is that what you did in this case? 11 A. Right. That's the intent of the home 12 inspection. 13 Q. And, you know, what ASHI says, The ASHI 14 standards of practice and Code of Ethics were 15 established to help buyers and sellers make real 16 estate transaction decisions based on accurate, 17 objective information. 18 Do you agree with that statement? 19 A. Yes. 20 Q. So we can agree a home inspection is 21 designed to provide accurate, objective 22 information to buyers so that they can make 23 informed decisions regarding the real estate 24 transactions. 25 A. Right.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. And it is so that the buyer can obtain 2 objective and accurate information so that they 3 can evaluate whether or not they're making a wise 4 choice. 5 A. Right. 6 Q. And your clients are obtaining home 7 inspections to protect themselves, right? 8 A. Partially, yes, yes. 9 Q. What do you mean "partially"? 10 A. Well, it's -- In some home inspections 11 that I have done, the home inspection is designed 12 to give the client information on what -- beyond 13 what they think the property needs from their 14 inspection of it, or their looking at it, versus 15 what might be some other issues that maybe they 16 haven't seen. 17 For example, I've done a lot of -- I've 18 done a number of inspections for construction 19 people just for them to get a second set of eyes, 20 just an independent set of eyes to say, yeah, 21 maybe this should be looked at a little more 22 closely when I'm buying this property. 23 Q. How about a young family with two kids 24 and the parents don't pound nails and have never 25 done that?</p>

<p style="text-align: right;">Page 126</p> <p>1 You would agree that those folks 2 typically are looking for a home inspection in 3 order to protect themselves? 4 A. Yes, as best they can. 5 Q. And that's to keep themselves safe and 6 protected financially? 7 A. Yes. 8 Q. Because, I mean, you don't want to buy a 9 home that's going to be a money pit if you can 10 help it, right? 11 A. Right. 12 Q. And one way you can help it is to get a 13 home inspection before you buy. 14 A. Right. 15 Q. And make your buy-sell agreement 16 contingent upon the results of the home 17 inspection. 18 A. Right, but that wouldn't be the only 19 qualifier for the -- for the determination. 20 Q. What do you mean? 21 A. Well, the home inspection should be part 22 of the process, not the by -- the end-all for what 23 your decision for purchasing the property is. 24 Q. Sure. And I'm not suggesting that the 25 home inspection is the end-all be all, but what</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Right. 2 Q. And so buying a house and then finding 3 out you've got a 30 or 50 or a hundred-thousand- 4 dollar problem, that's something that most 5 intelligent, reasonable people would like to 6 avoid, right? 7 A. Right. 8 Q. And a visual inspection, according to 9 the ASHI standards, that's designed to help them 10 avoid that, if there are defects that are visible 11 at the time of your inspection. 12 A. Right. 13 Q. And it's not just to protect the family 14 financially. It's also a health and safety issue 15 too, isn't it? 16 A. It can be, yes. 17 Q. Because, like you said, you fell down 18 your stairs because they were improperly 19 constructed. 20 A. Right. 21 Q. And that's an example of when stairs are 22 that far out of rise and run and consistency, 23 that's the kind of thing a home inspector -- a 24 good home inspector will identify, right? 25 A. Right.</p>
<p style="text-align: right;">Page 127</p> <p>1 I'm saying is that the way the buyer protects 2 themselves against a property condition that might 3 be obvious to a home inspector and not obvious to 4 them is to get a home inspection. 5 A. Right. 6 Q. And what they want to do is, as best 7 they can, based on your visual inspection, find 8 out whether or not there are problems at this 9 property that they don't know currently exist. 10 A. Right. 11 Q. Because they can be very, very 12 expensive. 13 A. Can be, yes. 14 Q. Like you found out with your first 15 house. 16 A. Right. 17 Q. And oftentimes, as you know, people who 18 buy houses, particularly with young kids, or first 19 house or second house, that's their biggest 20 investment, right? 21 A. Right. 22 Q. And they put all their money into that 23 house, either getting into it, down payment. A 24 lot of people stretch in order to get into a 25 house, right?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. And there are all kinds of ways, you 2 know, a kid or a baby or even an adult can get 3 hurt at a property because of defects, right? 4 A. Right. 5 Q. Rotting wood, you can fall off a porch, 6 right? 7 A. Right. 8 Q. Bad electrical, you can be electrocuted, 9 right? 10 A. Right. 11 Q. Mold, the existence of mold, water 12 issues, that can be a health issue, right? 13 A. Right. Outside the scope of a home 14 inspection, though. 15 Q. My question is, though, that's a 16 potential health hazard. 17 A. It is a potential health, right. 18 Q. And, you know, water, for example, 19 flowing against an electrical panel or electrical 20 problem, that can kill somebody, right? 21 A. Yes. 22 Q. And so a home inspection is actually 23 pretty serious business, isn't it? 24 A. It's a very helpful tool for a buyer. 25 Q. Well, do you take it seriously when</p>

<p style="text-align: right;">Page 130</p> <p>1 you're inspecting a home?</p> <p>2 A. Yes.</p> <p>3 Q. And do you expect when your buyers</p> <p>4 engage you or when your clients engage you that</p> <p>5 they believe you're taking it seriously?</p> <p>6 A. Yes.</p> <p>7 Q. And that their home purchase is serious</p> <p>8 business to them?</p> <p>9 A. Yes.</p> <p>10 Q. And it's important for them to protect</p> <p>11 their financial best interests?</p> <p>12 A. Yes.</p> <p>13 Q. Their financial health?</p> <p>14 A. Yes.</p> <p>15 Q. The health of their children?</p> <p>16 A. Yes.</p> <p>17 Q. The health of themselves?</p> <p>18 A. Yes.</p> <p>19 Q. And the safety of their family?</p> <p>20 A. Yes.</p> <p>21 Q. So you do take it seriously.</p> <p>22 A. I do, yes.</p> <p>23 Q. And you're the person who -- I mean,</p> <p>24 you've got 2,000 to 2500 home inspections in your</p> <p>25 career, right?</p>	<p style="text-align: right;">Page 132</p> <p>1 and know, but you're not social friends.</p> <p>2 A. Right.</p> <p>3 Q. You consider him, obviously, to be a</p> <p>4 home inspection expert.</p> <p>5 A. Yes.</p> <p>6 Q. And I asked you before whether you're a</p> <p>7 home inspection expert. You agree that Mr. Jacoby</p> <p>8 is a home inspection expert?</p> <p>9 A. I would classify him as that, yes. He's</p> <p>10 had a lot more experience than I had.</p> <p>11 Q. I mean, he's your home inspection expert</p> <p>12 in this case.</p> <p>13 A. Yes, yes.</p> <p>14 Q. And so when it comes to what a home</p> <p>15 inspection is or what a home inspector is supposed</p> <p>16 to do, you would defer to Mr. Jacoby as to what</p> <p>17 those things are.</p> <p>18 A. Yes.</p> <p>19 Q. You would defer to his statements.</p> <p>20 A. Yes.</p> <p>21 Q. Has Mr. Jacoby ever, in your</p> <p>22 conversations, said anything to you regarding the</p> <p>23 scope of your duties or what a home inspection's</p> <p>24 designed to do, anything to do with home</p> <p>25 inspections that you recall having disagreed with?</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Right.</p> <p>2 Q. Particularly by the time you inspected</p> <p>3 [REDACTED] and [REDACTED] Mellem's house.</p> <p>4 A. Right.</p> <p>5 Q. So it's reasonable for them to believe</p> <p>6 that you are going to inspect using your</p> <p>7 expertise, your education, training and</p> <p>8 experience, right?</p> <p>9 A. Right.</p> <p>10 Q. And that you will provide an expert home</p> <p>11 inspection for their review.</p> <p>12 A. Right.</p> <p>13 Q. Okay. So your expert in this case is</p> <p>14 Steve Jacoby; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. How long have you known Steve?</p> <p>17 A. Well, since 2005.</p> <p>18 Q. And how did you meet Mr. Jacoby?</p> <p>19 A. Through the ASHI chapter meetings.</p> <p>20 Q. Do you know him well?</p> <p>21 A. Just professionally. Not personally.</p> <p>22 Q. Professional acquaintance?</p> <p>23 A. Yes.</p> <p>24 Q. So I was going to ask you if you</p> <p>25 considered him a friend, but he's someone you like</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Not specifically, no. I mean, we talked</p> <p>2 about -- in our chapter meetings we would talk</p> <p>3 about, well, what are the standards doing since</p> <p>4 they just changed them; we've looked at that.</p> <p>5 We've looked at -- Steve is very</p> <p>6 involved and has been involved in the path in</p> <p>7 trying to get state legislation passed for home</p> <p>8 inspection, for the home inspection industry. And</p> <p>9 so in that context, we have talked through the --</p> <p>10 in the chapter about what standards are best out</p> <p>11 there, so that as a profession we can obtain</p> <p>12 licensing for home inspectors.</p> <p>13 And so we discuss those issues that were</p> <p>14 most pertinent and basically agree that of the</p> <p>15 standards out there, that the ASHI standards are</p> <p>16 the ones that would seem the most judicious for us</p> <p>17 to try to get implemented through the state.</p> <p>18 Q. What is his current position with ASHI,</p> <p>19 by the way?</p> <p>20 A. He's just a member right now.</p> <p>21 Q. Is he a past president or vice president</p> <p>22 or anything?</p> <p>23 A. No. He is kind of the founder of</p> <p>24 Montana-based --</p> <p>25 Q. Association of Montana State Inspectors?</p>

<p style="text-align: right;">Page 134</p> <p>1 A. Yeah, there you go, MAREI. So he has 2 that. That's kind of been his baby of trying to 3 coordinate all the different groups. He's also a 4 NACHI -- I believe we have a NACHI membership as 5 well. And so he's kind of been working as a 6 go-between to help establish standards for the 7 state. 8 Q. All right. So back to my original 9 question, though, just so I understand your 10 answer, when it comes to Mr. Jacoby's report in 11 this case, I think you indicated that you don't 12 have any criticisms of it. You agree with all of 13 it. 14 A. Yes. 15 Q. And you carefully reviewed that report. 16 A. Yes. 17 Q. All right. And as far as any statements 18 you can think of that Mr. Jacoby has ever made in 19 your presence about duties, purpose of home 20 inspection, anything like that, you can't remember 21 ever actually being in disagreement with the man. 22 A. Right. 23 Q. And a good home inspector, you agree, 24 fair, impartial, right? 25 A. Right.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Yes. 2 MR. JOHNSON: We finally have an 3 exhibit. Why don't we mark it as -- 1 is fine. 4 Great. 5 EXHIBITS: 6 (Deposition Exhibit Number 1 marked for 7 identification.) 8 Q. (BY MR. JOHNSON) All right, Mr. [REDACTED], 9 handing you what we've marked as Exhibit 1. 10 MR. JOHNSON: Kim, I've got copies of 11 most stuff; not everything, but most stuff for 12 you. 13 Q. (BY MR. JOHNSON) So these are -- This 14 document's entitled Defendants' [REDACTED] Home 15 Inspection, Inc's, and [REDACTED] [REDACTED]'s Supplemental 16 Answers to Plaintiff [REDACTED] Mellem's First 17 Combined Discovery Requests, right? 18 A. Right. 19 Q. Okay. And I'm assuming -- and I don't 20 want to get into, again, attorney-client 21 communications -- the way this stuff usually works 22 is the attorney puts together -- Well, no, forget 23 it. 24 Let's do this: Have you -- You've 25 reviewed this before, haven't you?</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Thorough and thoughtful? 2 A. Right. 3 Q. And Mr. Jacoby is? 4 A. Right. 5 Q. And so are you, right? 6 A. Right. 7 Q. When was the first time you communicated 8 with Mr. Jacoby regarding this case that you can 9 recall? Anything to do with this case on any 10 level. 11 A. Well, not with any specificity until we 12 asked him to be the expert witness. 13 Q. What about -- I mean, did you have any 14 general contact with him? 15 A. Only in respect to blogs that were put 16 out. 17 Q. What do you mean? 18 A. Well, in response to blogs that were on 19 your website about home inspection, particularly 20 this case, in general, general form. 21 Q. One of those emails, I think -- Did you 22 communicate with him by email or by phone? 23 A. Just by email. 24 Q. And did you review those emails in 25 preparation for your deposition today?</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Yes. 2 Q. All right. And there are some 3 attachments to this -- to these discovery 4 responses. Do you see those? 5 A. Yes. 6 Q. And specifically there are two documents 7 it says CMI 732 and CMI 733. Do you see that? 8 A. Yes. 9 Q. And I believe it's probably a typo. I 10 believe it should be [REDACTED], right? 11 MS. MORE: Uh-huh. 12 Q. (BY MR. JOHNSON) Okay. But 732, that 13 is from [REDACTED] to a 14 whole list of people. Do you see that? 15 A. Yes. 16 Q. And are you c[REDACTED]nc@ 17 msn.com? 18 A. Yes. 19 Q. And if you look at 733, again, that is 20 from you, right? 21 A. Right. 22 Q. To Frank Lesh, right? 23 A. Right. 24 Q. With the subject line Home Inspector 25 Targeting?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. Yes.</p> <p>2 Q. Who is Frank Lesh?</p> <p>3 A. He was at that time the president of the</p> <p>4 ASHI national.</p> <p>5 Q. ASHI national, okay. Had you met the</p> <p>6 man personally previously?</p> <p>7 A. No, no.</p> <p>8 Q. So looking at 732, your email reads,</p> <p>9 Greetings all, This is not a good report. In the</p> <p>10 last two months I've been targeted as a home</p> <p>11 inspector by a particular lawyer in Missoula whose</p> <p>12 specialty is malpractice and E&O claims.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'd be that guy, right?</p> <p>16 A. You'd be that guy.</p> <p>17 Q. All right. The first case was bogus.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Which would be the first case?</p> <p>21 A. I'm not referring to any case</p> <p>22 specifically. I didn't mention any names. I'm</p> <p>23 just referring to incidents.</p> <p>24 Q. The first case is this case, the</p> <p>25 Mellems' case, correct?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Do you think it's a bogus case now?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. Well, you presented your -- your part,</p> <p>5 but at that time I didn't have all the</p> <p>6 information.</p> <p>7 Q. When you say I presented my part, what</p> <p>8 do you mean?</p> <p>9 A. Well, it's related to the information</p> <p>10 that was on your website at that time.</p> <p>11 Q. But how would that make [REDACTED] Mellems'</p> <p>12 case bogus?</p> <p>13 A. At the time that I wrote this, I had</p> <p>14 still not received any actual claims on anything.</p> <p>15 There were -- there were nonspecific allegations</p> <p>16 made that were not made to me.</p> <p>17 The first time that I received</p> <p>18 information of any specificity to the case was</p> <p>19 well after this time period, and so that's why I</p> <p>20 refer to this as that because I had no reason to</p> <p>21 believe that the allegations that were presented</p> <p>22 to me were anything but not clear. I mean, if --</p> <p>23 Q. So --</p> <p>24 A. -- if it's presented out -- I still had</p> <p>25 no claim at this point, so to me it was a bogus</p>
<p style="text-align: right;">Page 139</p> <p>1 A. It could be.</p> <p>2 Q. It is. And what I want to do is I want</p> <p>3 to understand why you can't agree with that.</p> <p>4 A. Well, okay, I'll agree with that then.</p> <p>5 Q. Okay. So you refer to the first case</p> <p>6 here on 732, this email you sent on -- I see you</p> <p>7 sent it on Wednesday, November 20th, 2013?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. At 2:47 --</p> <p>10 A. Yes.</p> <p>11 Q. -- in the afternoon. The first case --</p> <p>12 and you and I can now agree -- the first case,</p> <p>13 that's the Mellems; that's this case, right?</p> <p>14 A. Right.</p> <p>15 Q. The first case was bogus.</p> <p>16 Do you see that?</p> <p>17 A. I see that, yeah.</p> <p>18 Q. And you wrote that.</p> <p>19 A. Yes.</p> <p>20 Q. And you chose that word.</p> <p>21 A. Yes.</p> <p>22 Q. Bogus.</p> <p>23 A. Yes.</p> <p>24 Q. You thought it was a bogus case then.</p> <p>25 A. At that time, yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 claim because all of a sudden on your -- on your</p> <p>2 blog site, you're saying, well, this is this and</p> <p>3 you're making all these allegations to me,</p> <p>4 which -- or not to me, but out on the website, and</p> <p>5 it was obviously a picture of the Mellems' house</p> <p>6 that you posted on the blog site.</p> <p>7 It is obvious to me that I had no claim</p> <p>8 at that point that there was any structural</p> <p>9 issues. We had no claim until the second or third</p> <p>10 discoveries, when you presented the actual issues</p> <p>11 that were present.</p> <p>12 So to me, a claim is bogus if there's no</p> <p>13 standing for what I was being asked to recall.</p> <p>14 When I went to the -- to do the</p> <p>15 reinspect, what was the -- what was I called to</p> <p>16 reinspect? The condition of the house</p> <p>17 demonstrates there was no specificity on why I was</p> <p>18 even there. It's just a broad statement that the</p> <p>19 condition of the house represents what -- what our</p> <p>20 claims are.</p> <p>21 So does that -- It does not seem to me</p> <p>22 like that's a very, you know. So I -- So when</p> <p>23 I -- when I did this -- and the reason why this</p> <p>24 knew -- this even went out was because as a group,</p> <p>25 anytime that there are issues related to the home</p>

<p style="text-align: right;">Page 142</p> <p>1 inspection business, whether it be something in 2 regards to a contract or something in regards to 3 the standards or something like that, we -- that's 4 what we talk about when we talk about things, the 5 issues at our meetings. 6 They're only based on, you know, what we 7 know at the time. And at this point, you know, it 8 was a bogus claim because, you know, yeah, we're 9 calling you out, but we aren't calling you out for 10 anything. We're calling you out for things that 11 are not identified. 12 Q. Okay. So your explanation as to why on 13 November the 20th, 2013, you're calling [REDACTED] and 14 [REDACTED]'s claim a bogus claim is because you had no 15 information -- 16 A. No information. 17 Q. -- regarding what their claims actually 18 were. 19 A. That's correct. 20 Q. And that's -- I mean, that's what your 21 testimony is after having going through the entire 22 paper record in this case, right? 23 A. Not necessarily, but at that point, at 24 the point I had -- The information that I had at 25 that point was there's a claim, but we don't know</p>	<p style="text-align: right;">Page 144</p> <p>1 the -- one of our past presidents of the ASHI 2 group. 3 Q. Okay. 4 A. He's an inspector out of Dillon. 5 Q. And who is Steve at 6 pristineinspections.com? 7 A. That is Steve Jacoby. 8 Q. Your expert in this case. 9 A. Yes. 10 Q. So this would have been the first time 11 you ever contacted Mr. Jacoby regarding this claim 12 even in a general way. 13 A. That was not in regards to a claim. It 14 was in regards to the information in the blog 15 site. 16 Q. At the time you were describing the 17 claim as bogus, right? 18 A. Yes. 19 Q. Okay. 20 MR. JOHNSON: Mark this as 2, please. 21 EXHIBITS: 22 (Deposition Exhibit Number 2 marked for 23 identification.) 24 Q. (BY MR. JOHNSON) Now, when we're 25 talking about -- Oh, I'm Sorry. I'll put this in</p>
<p style="text-align: right;">Page 143</p> <p>1 what the claim is. And the claim didn't surface 2 until -- when was it -- February, March of this 3 year, four months later. 4 Q. What I'm asking you, though, is you're 5 testifying today that the reason why on 6 November 20th of 2013, the reason why you referred 7 to it as bogus is because you had no information. 8 A. That's right. 9 Q. And that's a true statement by you, 10 under oath today: On November 20th of 2013, you 11 didn't have any information that had been 12 presented to you regarding the Mellems' claims or 13 what their allegations were. 14 A. That's right. 15 Q. And because there was an absolute 16 absence of any evidence of allegation against you, 17 you assumed that it was bogus. 18 A. Right. 19 Q. And that's why you sent this email to 20 one, two, three, four, five, six, seven, eight, 21 nine, ten other individuals, right? 22 A. Right, plus Frank on the next one. 23 Q. Right. Okay. And who is 24 [REDACTED]? 25 A. That is Jamie -- He's the present --</p>	<p style="text-align: right;">Page 145</p> <p>1 front of you. 2 MS. MORE: Yeah. 3 Q. (BY MR. JOHNSON) Marked as Exhibit 2, 4 this is a series of documents that were produced 5 by you Bates-stamped [REDACTED] 686 through [REDACTED] 701. 6 Would you agree that that's what I just 7 handed you, just that the Bates are correct? 8 MS. MORE: That -- 9 Q. (BY MR. JOHNSON) That these documents 10 are Bates [REDACTED] 686 through [REDACTED] 701? 11 A. Yes. 12 Q. Just so we're all on the same page for 13 the record. Okay. 14 So if you look at [REDACTED] 686, this is an 15 email from you to claims dated September 16th of 16 2013. Do you see that? 17 A. Yes. 18 Q. Okay. And as we are flipping through 19 [REDACTED] 687, you've got additional emails here dated 20 September 16th, September 16th. You keep 21 flipping. Now it's -- Obviously they're emails 22 here in the chain that are from even earlier. 23 For example, if you look at [REDACTED] 688, you 24 can see an email exchange between you and me from 25 September 14th, right?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. Right.</p> <p>2 Q. Okay. Now, your inspection, original</p> <p>3 inspection, was on August 6th, right?</p> <p>4 A. Right.</p> <p>5 Q. And your reinspect was either, I think,</p> <p>6 October 1 or October 3rd.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Of 2013?</p> <p>9 A. Yes.</p> <p>10 Q. All right. And then Mr. Bernhardt came</p> <p>11 out and inspected in later October 2013, right?</p> <p>12 A. Right.</p> <p>13 Q. So if you look at 693 -- Are you there?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Is that a "yes"?</p> <p>16 A. Yes, yes.</p> <p>17 Q. At the bottom there's an email to you</p> <p>18 from Devin Wallace at AIG, right?</p> <p>19 A. Yes.</p> <p>20 Q. And what's the date on that email?</p> <p>21 A. On the bottom of 693, October 22nd.</p> <p>22 Q. Okay. So this is an October 22nd, 2013,</p> <p>23 email to you from Devin Wallace at AIG, right?</p> <p>24 A. Yes.</p> <p>25 Q. At 3:06 in the afternoon military time.</p>	<p style="text-align: right;">Page 148</p> <p>1 directly above his email to you --</p> <p>2 A. Yes.</p> <p>3 Q. -- on [REDACTED] 693. Do you see that?</p> <p>4 A. What was the time? Oh, yeah, time/date</p> <p>5 on Thursday, October 24th?</p> <p>6 Q. Yes. And you respond on October 24th of</p> <p>7 2013, Devin, I received the information and I'm</p> <p>8 working on reviewing it. I will send a reply back</p> <p>9 to you later today or tomorrow. [REDACTED] [REDACTED].</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And then you do respond</p> <p>13 later that day, it looks like at 9:21 military</p> <p>14 time on Thursday, October 24th, of 2013.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And you write, Devin, attached are my</p> <p>18 thoughts on the adjuster's report.</p> <p>19 Now, I'm assuming you mean</p> <p>20 Tom Bernhardt's report, right?</p> <p>21 A. Yes.</p> <p>22 Q. My thoughts are that this was not a very</p> <p>23 professionally done report. He didn't appear to</p> <p>24 enter any of his thoughts in the report, but</p> <p>25 rather parroted information from Mr. Johnson, even</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Yes.</p> <p>2 Q. And it says, Mr. [REDACTED], attached is the</p> <p>3 report generated by Frontier Adjusters of the</p> <p>4 subject property in claim number 550-131456,</p> <p>5 Mellem against -- it sees Friia and then,</p> <p>6 parenthetical, [REDACTED].</p> <p>7 Do you see that?</p> <p>8 A. Uh-huh. Yes, I do.</p> <p>9 Q. Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. And then the next sentence says, Please</p> <p>12 review the allegations and photos and contact me</p> <p>13 to discuss when you've [REDACTED]d your review.</p> <p>14 I've discussed the claim with Mr. Bernhardt and</p> <p>15 would like to get your impression before</p> <p>16 confirming with Mr. Johnson that they can begin</p> <p>17 work on the home.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And did I read it correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And then you respond to Mr. Wallace, it</p> <p>23 looks like, two days later, Thursday,</p> <p>24 October 24th, 2013, at 11:15 in the morning.</p> <p>25 Do you see that? It's the email</p>	<p style="text-align: right;">Page 149</p> <p>1 to the point of using Mr. Johnson's pictures in</p> <p>2 the report, question mark.</p> <p>3 Did I read it correctly so far?</p> <p>4 A. Yes.</p> <p>5 Q. He obviously didn't do any research to</p> <p>6 prove or disprove those statements made by</p> <p>7 Mr. Johnson, so I have made my comments on the</p> <p>8 report in this attachment. Please call or email</p> <p>9 me if you have other questions. [REDACTED] [REDACTED].</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. I'm not going to ask you about the</p> <p>13 content of Mr. Bernhardt's report, but you</p> <p>14 obviously -- you disagreed with it, right?</p> <p>15 A. Yes.</p> <p>16 Q. And did he attach photographs to his</p> <p>17 report?</p> <p>18 A. He did, yes.</p> <p>19 Q. And some were probably taken by him, and</p> <p>20 at least one of them was a photo that I had handed</p> <p>21 to him?</p> <p>22 A. Yes.</p> <p>23 Q. So you've read Mr. Bernhardt's report.</p> <p>24 You've reviewed the photographs he took, and you</p> <p>25 also reviewed the photograph that I had given to</p>

<p style="text-align: right;">Page 150</p> <p>1 him on -- as of October 24th of 2013, right?</p> <p>2 A. Yes.</p> <p>3 Q. And then if you turn to 699, [REDACTED] 699 --</p> <p>4 A. Yes.</p> <p>5 Q. -- this is, you can see, an email from</p> <p>6 Devin Wallace to me dated October 30th, 2013.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it's at 2:16 p.m., right?</p> <p>10 A. Yes.</p> <p>11 Q. Who is copied on that email?</p> <p>12 A. I was.</p> <p>13 Q. Do you remember getting this email?</p> <p>14 A. Yes.</p> <p>15 Q. And you received it on October 30th of</p> <p>16 2013?</p> <p>17 A. Yes.</p> <p>18 Q. Mr. Wallace writes to me that -- First</p> <p>19 of all, he hopes all is well, so that's good.</p> <p>20 I'm following up with you on claim</p> <p>21 number 550-13146, Mellem versus Friia,</p> <p>22 parenthetical [REDACTED]. I've reviewed the available</p> <p>23 information and discussed the claim with</p> <p>24 Mr. Bernhardt of Frontier Adjusters.</p> <p>25 Did I read that correctly so far?</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes.</p> <p>2 Q. That is two weeks before you sent the</p> <p>3 "this claim is bogus" email on November 20th of</p> <p>4 2013. That's true, isn't it?</p> <p>5 A. That's true.</p> <p>6 Q. And by the time you sent your email on</p> <p>7 November 20th of 2013, you had reviewed</p> <p>8 Mr. Bernhardt's report, true?</p> <p>9 A. Yes.</p> <p>10 Q. You'd seen the photographs he'd attached</p> <p>11 to that report.</p> <p>12 A. Yes.</p> <p>13 Q. You've seen the photograph that I</p> <p>14 provided to him.</p> <p>15 A. Yes.</p> <p>16 Q. You discussed the claim with your claims</p> <p>17 adjuster?</p> <p>18 A. I didn't talk to him. I just read his</p> <p>19 report.</p> <p>20 Q. But you had discussed the claim with</p> <p>21 Mr. Wallace.</p> <p>22 A. Yes.</p> <p>23 Q. And you had received this report from</p> <p>24 Mr. Wallace indicating that you should have</p> <p>25 identified the headers cut and removed from the</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Yes.</p> <p>2 Q. Mr. Bernhardt is currently putting</p> <p>3 together a summary of potential liability to go</p> <p>4 along with the photos you took during the visit to</p> <p>5 the property.</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. And then it says, After reviewing all</p> <p>9 the provided information, including Mr. [REDACTED]'s</p> <p>10 report, Mr. Bernhardt's report, and the supporting</p> <p>11 documents you have provided, I have determined</p> <p>12 that Mr. [REDACTED] is only liable for the damages</p> <p>13 associated with the headers cut and removed from</p> <p>14 the basement doorway and the framing cut out for</p> <p>15 plumbing.</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. I have determined that these two areas</p> <p>19 should have been noted further in Mr. [REDACTED]'s</p> <p>20 report and as such we will contribute to the costs</p> <p>21 incurred in repairing these two areas of concern.</p> <p>22 Did I read that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. And you received this email on</p> <p>25 October 30th of 2013?</p>	<p style="text-align: right;">Page 153</p> <p>1 basement doorway and the framing cut out for</p> <p>2 plumbing, right?</p> <p>3 A. Yes.</p> <p>4 Q. So you had all this information when you</p> <p>5 wrote your email on November 20th, correct?</p> <p>6 A. Correct.</p> <p>7 Q. So it's not, in fact, true, to say that</p> <p>8 you had no information regarding these claims when</p> <p>9 you called the claim bogus, true?</p> <p>10 A. It wasn't the entire claim.</p> <p>11 Q. What you testified to under oath</p> <p>12 today -- You take your oath very seriously?</p> <p>13 A. Yes.</p> <p>14 Q. You testified under oath that the reason</p> <p>15 why you called it bogus on November 20th, 2013,</p> <p>16 was because you had absolutely no information</p> <p>17 regarding the claim and therefore assumed it was</p> <p>18 baseless and bogus, right?</p> <p>19 A. Yes.</p> <p>20 Q. You just testified to that under oath.</p> <p>21 A. Right. Yes.</p> <p>22 Q. But we know and you know that when you</p> <p>23 wrote the email in November of 2013 telling your</p> <p>24 expert in this case and ten other people --</p> <p>25 describing the claim as bogus, that you'd seen</p>

<p style="text-align: right;">Page 154</p> <p>1 Mr. Bernhardt's report, his photographs, a 2 photograph provided by me, and you had been copied 3 on an email from your insurance adjuster 4 indicating they were accepting liability on header 5 and plumbing issues, right? 6 A. Right. 7 Q. Then why did you call the claim bogus? 8 A. I didn't call the claim bogus. I called 9 the claim -- I called the information in the blog 10 site bogus. 11 Q. Let's go back to what we had marked as 12 Exhibit 1. It's right there in front of you, 13 please. Are you there, 732? 14 A. Yes. 15 Q. Second line, the first case -- and you 16 and I have agreed, "the first case," that's this 17 case, that's [REDACTED]'s case and [REDACTED]'s case, the 18 Mellems', [REDACTED], right? 19 A. Okay. Yes. 20 Q. "Yes"? 21 A. Yes. 22 Q. The first case was bogus. 23 All right. You're not talking about the 24 website. You're talking about the case, this 25 particular claim, this particular case.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Correct. 2 Q. And now you're agreeing under oath that 3 you did have that information, true? 4 A. Right. The header information, yes. 5 Q. So you had the header information. If 6 you had the header information, what makes this 7 case bogus? 8 A. Well, the information was in [REDACTED]. 9 Q. So if something's in [REDACTED], does that 10 make it bogus? 11 A. If things continually get added on to 12 it, I would agree -- I would believe that. 13 Q. So if you're looking at something and 14 you believe you've got in [REDACTED] information, 15 that makes it bogus, in your mind? 16 A. Yes. 17 Q. Okay. So if your inspection in this 18 case was in [REDACTED], does that make your 19 inspection bogus? 20 A. Not necessarily entirely, no. 21 Q. What do you mean "not necessarily 22 entirely"? 23 I mean, we talked earlier that if the 24 king/jack stud was missing at the time of your 25 inspection, then that's your fault. It might be</p>
<p style="text-align: right;">Page 155</p> <p>1 Why -- when we've just covered the 2 information that you did have, why are you calling 3 it bogus on November 20th of 2013? 4 A. I still didn't have all the information. 5 I had the information about the header at that 6 point, but I didn't have the information of the 7 entire claim. 8 Q. Well, ten minutes ago you testified 9 under oath that you had zero information, no 10 information. Now you're saying you had the 11 information about the header. 12 So which one is it? What information 13 did you have when you called the claim bogus? 14 A. I had the header information. I'll 15 agree to that. 16 Q. So -- Well, you agree to it now that I 17 put the emails in front of you, right? 18 A. Right. 19 Q. I mean, you testified earlier you had no 20 information and that's why you called it bogus, 21 right? 22 A. Right. 23 Q. And then I put the information in front 24 of that you actually had received prior to writing 25 this email, right?</p>	<p style="text-align: right;">Page 157</p> <p>1 the first mistake you made in 2500 homes 2 inspections, but that would be on you, right? 3 A. Right, but that doesn't mean the whole 4 house is -- was inspected incorrectly. 5 Q. Right, but it would make your inspection 6 in [REDACTED], wouldn't it? 7 A. On that particular case it would, yes. 8 Q. Yes. So on that particular case, would 9 that make that portion of your home inspection 10 bogus? 11 A. Not the whole portion. 12 Q. Would it make it partially bogus? 13 A. The part that related to the header 14 would be, yes. 15 Q. Okay. So your inspection report as it 16 relates to the header and the missing king/jack 17 stud, we can agree that that was bogus? 18 A. Right. However, there was more 19 information in that basement section that 20 indicated that the whole basement had been 21 stripped, and there was numerous conditions that 22 needed to be repaired in it. 23 So it doesn't -- Just because I may have 24 missed that jack stud doesn't mean that the rest 25 of the statement in there -- in calling that</p>

<p style="text-align: right;">Page 158</p> <p>1 basement structural part defective was in [REDACTED].</p> <p>2 Q. We're definitely going to get to that.</p> <p>3 Do you still think that the case that</p> <p>4 [REDACTED] and [REDACTED] have brought is bogus?</p> <p>5 A. I have to reserve the right to decide</p> <p>6 that yet.</p> <p>7 Q. You need to answer the question now. Is</p> <p>8 the case -- Is this case that you're giving</p> <p>9 testimony on today, is it bogus?</p> <p>10 A. I think that many of the expectations or</p> <p>11 the claims that have come down in the last</p> <p>12 discoveries are beyond the scope of what the home</p> <p>13 inspection was intended to do, and so I don't</p> <p>14 believe that a lot of that is warranted.</p> <p>15 Q. What is warranted? Other than the</p> <p>16 king/jack stud, what do you think is warranted as</p> <p>17 an allegation in this case?</p> <p>18 A. In regards to the inspection, I don't</p> <p>19 think anything else was warranted.</p> <p>20 Q. Okay. So putting aside the king/jack</p> <p>21 stud, your position is that you did nothing wrong,</p> <p>22 right?</p> <p>23 A. Right.</p> <p>24 Q. And that this case is baseless.</p> <p>25 A. I think that the expectations go beyond</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. So what portion of the claim now -- and</p> <p>2 just identify it for me, if you would -- what</p> <p>3 parts of their claim would you call bogus now?</p> <p>4 How about the inspection of the</p> <p>5 foundation walls and the allegation that there was</p> <p>6 evidence of prior water intrusion?</p> <p>7 We'll take a look at the photographs,</p> <p>8 but I know you've seen them. You took a bunch of</p> <p>9 them. Is that bogus?</p> <p>10 A. I made notation in the report that there</p> <p>11 had been observable and via the claim from the</p> <p>12 homeowner that there had actually, in fact, been</p> <p>13 some water intrusion in there.</p> <p>14 Q. That there had been water intrusion from</p> <p>15 what?</p> <p>16 A. From her it was plumbing issue.</p> <p>17 Q. Now, you and I talked about the</p> <p>18 difference between outside-in water and inside-in</p> <p>19 water, right?</p> <p>20 A. Right.</p> <p>21 Q. So we're going to talk about</p> <p>22 Wendy [REDACTED]'s narrative because we've got it and</p> <p>23 we'll go through it. You've read it before,</p> <p>24 right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 159</p> <p>1 the normal home inspection and the ASHI standards.</p> <p>2 Q. I mean, you called the case bogus to a</p> <p>3 bunch of people over email, so I just want your</p> <p>4 straight opinion now when you're under oath. All</p> <p>5 right?</p> <p>6 First question, other than king/jack</p> <p>7 stud, is this case baseless, in your mind?</p> <p>8 A. I think it exceeded the expectations of</p> <p>9 the ASHI inspection standards, so in that case, I</p> <p>10 don't know that I would call it bogus, but I think</p> <p>11 that it goes beyond the intent of a home</p> <p>12 inspection.</p> <p>13 Q. So your answer is, other than the</p> <p>14 king/jack stud, there is no basis -- there is no</p> <p>15 basis for this case?</p> <p>16 A. I believe that I performed an inspection</p> <p>17 based on my contract, based on the ASHI standards.</p> <p>18 Q. And I understand your position. But</p> <p>19 what you're saying is that based on the ASHI</p> <p>20 standards and your performance as a home</p> <p>21 inspector, putting aside the king/jack stud, it's</p> <p>22 not even a contest, there's no room for doubt:</p> <p>23 The rest of [REDACTED] and [REDACTED] Mellem's allegations,</p> <p>24 they're just wrong. Right?</p> <p>25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. If there's a plumbing leak in the</p> <p>2 basement, if you know that, that doesn't tell you</p> <p>3 anything about whether there's an outside-in water</p> <p>4 problem, right?</p> <p>5 A. That's correct. Right.</p> <p>6 Q. So do you still believe that this case</p> <p>7 is bogus? I mean, you wrote on November 20th,</p> <p>8 2013, that the case is bogus.</p> <p>9 Do you still believe that?</p> <p>10 A. I believe that there are portions that</p> <p>11 are unwarranted. Maybe not bogus as you would try</p> <p>12 to do that, but I would -- I believe that there</p> <p>13 are issues that are up and above the home</p> <p>14 inspector.</p> <p>15 Q. Okay. So let's just toggle down real</p> <p>16 quick to the bottom of 732. It's Exhibit 1. It's</p> <p>17 your November 20th email, 2013.</p> <p>18 A. Okay.</p> <p>19 Q. All right. So the second half of the</p> <p>20 email, you mentioned the blog. You say, I feel we</p> <p>21 have to take a stand. You go on.</p> <p>22 Then the second-to-last sentence and the</p> <p>23 last sentence -- No. All the recipients here, are</p> <p>24 they all home inspectors?</p> <p>25 A. Yes.</p>

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1 **Q. Okay. And you say here, Also take lots**
 2 **of pictures and report to the best of your ability**
 3 **what you can and can't see. That is your**
 4 **protection against this type of attack.**

5 **Did I read that correctly?**

6 A. Yes.

7 **Q. So when you say, "Also take lots of**
 8 **pictures and report to the best of your ability**
 9 **what you can and can't see," you're not**
 10 **discovering a new standard there, right?**

11 A. No.

12 **Q. I mean, that's your job.**

13 A. Right.

14 **Q. It is your job to take lots of pictures**
 15 **and record, to the best of your ability, what you**
 16 **can and can't see.**

17 A. It's -- The first portion is a question
 18 of taking photos.

19 **Q. I'm sorry.**

20 A. I'd say the first portion is an opinion
 21 based on a phone call I had had with Brian Trotier
 22 about taking pictures, just making sure that you
 23 take pictures of what you can and can't see. That
 24 was just a call -- phone call from Brian Trotier.

25 **Q. Okay.**

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1 A. That's not, though, the stand of most of
 2 these inspectors. Most of the inspectors here --
 3 I shouldn't say "most." There are a lot of them
 4 that don't take any pictures, and there are some.
 5 But my insurer had -- states that they want lots
 6 of pictures just to make sure that you document
 7 that you're taking pictures of what's visible and
 8 what's not visible, that you're taking pictures of
 9 what you see as a reference for you to make sure
 10 that you're writing down what you see and an idea
 11 of what it is that you do see. And also take
 12 pictures of other areas of the house so you can
 13 see what maybe you can't see.

14 **Q. So when he gave you that advice -- which**
 15 **I'm assuming was, you know, around the time that**
 16 **you wrote this email, right?**

17 A. There or before, yes.

18 **Q. After you inspected for [REDACTED] and [REDACTED],**
 19 **though.**

20 A. It was his opinion from one of the
 21 classes that he had been giving at of the
 22 meetings.

23 **Q. But he communicated that opinion to**
 24 **you --**

25 A. Yes, right.

1 **Q. -- after you conducted this home**
 2 **inspection.**

3 A. Right.

4 **Q. Okay. So are you passing along the**
 5 **advice "also take lots of pictures and record to**
 6 **the best of your ability what you can and can't**
 7 **see" because that advice is news to you, it is new**
 8 **advice to you?**

9 A. No. It was just a reminder, a reminder
 10 statement.

11 **Q. Because you're supposed to identify what**
 12 **you've inspected, right?**

13 A. Right.

14 **Q. And you're supposed to identify what**
 15 **portions of systems and components you didn't**
 16 **inspect, right?**

17 A. If they're not available for inspection
 18 at the time, yes.

19 **Q. Right. That's Standard 2.2 C 4 of the**
 20 **ASHI standards of practice, right?**

21 A. Yeah, but in '13 it tells what -- you
 22 know, in '13 it tells to -- that you -- of what --
 23 It gives more of an idea of what it is you may or
 24 may not be required to report on.

25 **Q. Right. But 2.2 C 4 says if a system or**

1 **component designated for inspection by these**
 2 **standards is not available for inspection, you**
 3 **can't get to it --**

4 A. Or it's not operating.

5 **Q. -- you can't inspect it.**

6 A. Exactly.

7 **Q. Right. Then you have to identify those**
 8 **portions of those systems and components in your**
 9 **report. True?**

10 A. Right, right.

11 **Q. So --**

12 A. Unless -- and as it says in '13 --
 13 they're concealed or blocked by furnishings,
 14 et cetera, and are not readily accessible.

15 **Q. Well, wouldn't you agree with me that if**
 16 **you decide you're not going to inspect, for**
 17 **example, a portion of a foundation wall because**
 18 **there's some boxes up against it, that you put in**
 19 **your report that, hey, there are boxes up against**
 20 **the foundation wall at the time of inspection and**
 21 **therefore I couldn't inspect it?**

22 A. Well, the standards don't require that
 23 you do a hundred percent inspection.

24 **Q. Where does your report say that you**
 25 **don't do a hundred percent inspection?**

<p style="text-align: right;">Page 166</p> <p>1 A. The ASHI standards say that</p> <p>2 representative samples of areas or components are</p> <p>3 to be taken. We don't do a hundred percent</p> <p>4 electric outlets, don't do a hundred percent of</p> <p>5 the lights. You don't do a hundred percent of the</p> <p>6 interior walls. You only are required to do</p> <p>7 random samples.</p> <p>8 Q. So what you're saying is under the ASHI</p> <p>9 standards, you actually aren't required to</p> <p>10 visualize the four foundation walls?</p> <p>11 A. Right. Because if they're concealed or</p> <p>12 inaccessible, that's not -- that's not a</p> <p>13 requirement to do that.</p> <p>14 Q. Right.</p> <p>15 A. And it's not -- it's not a requirement</p> <p>16 to say, well, because 80 percent was visible and</p> <p>17 20 percent wasn't visible, that you write that --</p> <p>18 that you don't have a hundred percent</p> <p>19 accessibility to the component.</p> <p>20 Q. Exhibit 3, please.</p> <p>21 EXHIBITS:</p> <p>22 (Deposition Exhibit Number 3 marked for</p> <p>23 identification.)</p> <p>24 Q. (BY MR. JOHNSON) All right. Mr. [REDACTED],</p> <p>25 I handed you Exhibit 3. These are the 2006 ASHI</p>	<p style="text-align: right;">Page 168</p> <p>1 standards, right?</p> <p>2 A. Yes.</p> <p>3 Q. And that says, The inspector shall:</p> <p>4 inspect by probing a representative number of</p> <p>5 structural components where deterioration is</p> <p>6 suspected or where clear indications of possible</p> <p>7 deterioration exist. Probing is not required when</p> <p>8 probing would damage any finished surface or where</p> <p>9 no deterioration is visible or presumed to exist.</p> <p>10 A. Right.</p> <p>11 Q. No, no. Flip back, please.</p> <p>12 A. Okay.</p> <p>13 Q. Are you relying on that standard for</p> <p>14 having not -- for saying that you don't need to</p> <p>15 inspect all four foundation walls?</p> <p>16 A. No. If you go to electrical, for</p> <p>17 example, page 4, Electrical 7.1.8, a</p> <p>18 representative number of installed electrical</p> <p>19 fixtures.</p> <p>20 So that doesn't mean that every</p> <p>21 individual item has to be a hundred percent</p> <p>22 inspected in order for you to make that claim that</p> <p>23 you've inspected a hundred percent of the</p> <p>24 property.</p> <p>25 Q. For --</p>
<p style="text-align: right;">Page 167</p> <p>1 Standards of Practice; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Now, do these -- I mean, is</p> <p>4 this the floor or the ceiling? Are these the</p> <p>5 minimum requirements or the maximum requirements</p> <p>6 for home inspectors?</p> <p>7 A. Minimum.</p> <p>8 Q. Minimum, okay. Tell me what</p> <p>9 particular -- what particular provision you are</p> <p>10 looking at or talking about when you're saying you</p> <p>11 don't need to look at all four basement walls.</p> <p>12 A. Well, throughout the report here, for</p> <p>13 example, in structural components.</p> <p>14 Q. Where are you at?</p> <p>15 A. On 3. -- 3.2, representative number of</p> <p>16 structural components, go to --</p> <p>17 Q. Hold on one second.</p> <p>18 A. That's in regard to probing of issues.</p> <p>19 You go to --</p> <p>20 Q. So let's -- Hold on one second.</p> <p>21 Mr. [REDACTED] --</p> <p>22 A. Okay.</p> <p>23 Q. -- where were you just at?</p> <p>24 A. I was just at 3. -- 3.1.2.</p> <p>25 Q. Okay. And so that's on page 3 of these</p>	<p style="text-align: right;">Page 169</p> <p>1 A. It's a representative samples.</p> <p>2 Q. For installed lighting fixtures,</p> <p>3 switches and receptacles, right?</p> <p>4 A. Right.</p> <p>5 Q. The foundation walls that we're talking</p> <p>6 about, they are foundation walls, correct?</p> <p>7 A. Right.</p> <p>8 Q. They are not installed lighting</p> <p>9 fixtures, switches and receptacles, true?</p> <p>10 A. What's that? I'm sorry.</p> <p>11 Q. We're not talking about installed</p> <p>12 lighting fixtures, switches and receptacles,</p> <p>13 right?</p> <p>14 We're talking about the four foundation</p> <p>15 walls. North, south, east and west, right?</p> <p>16 A. Right.</p> <p>17 Q. Okay. So what other standards do you</p> <p>18 have?</p> <p>19 A. The standards that -- in page 6, 13.1</p> <p>20 B 1.</p> <p>21 Q. 13.1 B 1. Okay. What does that say?</p> <p>22 A. Inspections performed in accordance with</p> <p>23 these standards are not technically exhaustive,</p> <p>24 and, two, are not required to identify concealed</p> <p>25 conditions, latent defects or consequential</p>

<p style="text-align: right;">Page 170</p> <p>1 damages.</p> <p>2 And 13.2 A 1, Conditions of systems or</p> <p>3 components that are not readily accessible.</p> <p>4 Q. So what happens when there is a</p> <p>5 condition or system that's called out for</p> <p>6 inspection by the ASHI standards of practice, but</p> <p>7 that you can't get to, you can't inspect it? What</p> <p>8 are you supposed to do?</p> <p>9 A. Well, if I can't inspect it entire or --</p> <p>10 Q. Well, let's talk about entire.</p> <p>11 A. I report on what I can see. If I can</p> <p>12 see three walls, that's what -- I report it. If</p> <p>13 the other is concealed, they're blocked for some</p> <p>14 reason, the ASHI standard says I'm not required</p> <p>15 to -- to do that.</p> <p>16 Q. But your report doesn't indicate that</p> <p>17 you didn't look at that other wall.</p> <p>18 A. Right. Because if I -- if I looked at</p> <p>19 three -- three walls, then -- and the other one's</p> <p>20 concealed, I report on what I can see, not -- with</p> <p>21 the understanding that I can't see behind the</p> <p>22 third wall -- fourth wall.</p> <p>23 Q. What about -- We're not -- Let's take</p> <p>24 this out of the realm of a finished basement, all</p> <p>25 right? Let's talk about an unfinished basement</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. And if they've got the impression that</p> <p>2 you're moving stuff around, then that would, of</p> <p>3 course, lead them to believe perhaps, that, well,</p> <p>4 there's that sofa over there or that thing leaning</p> <p>5 against the wall, he must have looked behind that</p> <p>6 too, right?</p> <p>7 A. Right.</p> <p>8 Q. And that's why you don't move stuff</p> <p>9 during your inspections.</p> <p>10 A. Right.</p> <p>11 Q. You don't do it as a practice; you</p> <p>12 didn't do it in this case.</p> <p>13 A. Right.</p> <p>14 Q. Because if you do that, you're sending</p> <p>15 the wrong message to your client.</p> <p>16 A. Well, yes, and preventing liability of</p> <p>17 someone saying that you damaged their furniture,</p> <p>18 damaged their floor structures or damaged some</p> <p>19 other issue that -- because I moved product -- or</p> <p>20 moved furniture or possessions.</p> <p>21 Q. If you can't see it with your own two</p> <p>22 eyes without moving anything, you're not going to</p> <p>23 move it, right?</p> <p>24 A. Right.</p> <p>25 Q. So if something's behind something, you</p>
<p style="text-align: right;">Page 171</p> <p>1 like the one we've got in this case where you've</p> <p>2 got cement foundation walls and you've got some</p> <p>3 furniture around.</p> <p>4 A. Right.</p> <p>5 Q. And there was some lightweight sheet</p> <p>6 insulation kind of propped up against the wall.</p> <p>7 A. Right.</p> <p>8 Q. It wasn't affixed to the wall, right?</p> <p>9 A. Right.</p> <p>10 Q. It was loose.</p> <p>11 A. But it was behind furniture, and I don't</p> <p>12 move furniture, and I'm not required to move</p> <p>13 furniture, nor would I move it.</p> <p>14 Q. You're not required to move anything,</p> <p>15 are you?</p> <p>16 A. Right.</p> <p>17 Q. And you don't move anything.</p> <p>18 A. Right.</p> <p>19 Q. Frankly, if you move something during</p> <p>20 inspection and the client gets the report and sees</p> <p>21 that you're moving stuff around so that you can</p> <p>22 get a better view, that could actually leave</p> <p>23 someone with the impression that, hey, this guy</p> <p>24 moves stuff around, right?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 173</p> <p>1 know what's behind that thing, you know, a portion</p> <p>2 of -- a portion of the foundation wall, whatever,</p> <p>3 even if it's kind of a small or lightweight thing,</p> <p>4 you're not going to move it because that's not</p> <p>5 what you do, right?</p> <p>6 A. Right. In the case where, yeah, there's</p> <p>7 furniture in front of it, yes.</p> <p>8 Q. Yeah. So what do the standards, though,</p> <p>9 require you to do when you are unable to inspect</p> <p>10 systems or components because you can't access</p> <p>11 them because of, for example, a couch or that</p> <p>12 sheet insulation that's not affixed to the wall</p> <p>13 but happens to be there.</p> <p>14 A. Uh-huh.</p> <p>15 Q. You don't move furniture or all that</p> <p>16 stuff, so if you are only inspecting a portion of</p> <p>17 that system or component, being the foundation</p> <p>18 wall, what do the ASHI standards require that you</p> <p>19 do from a reporting perspective?</p> <p>20 I mean, from your perspective, do they</p> <p>21 require that you do anything?</p> <p>22 A. Well, they -- In cases where you</p> <p>23 absolutely cannot see the component at all or do</p> <p>24 the component at all, you make a notation that,</p> <p>25 no, I was unable to view the wall at all. I mean,</p>

<p style="text-align: right;">Page 174</p> <p>1 because -- and you cannot see the -- 2 For example, structures -- the 3 structural portion of the walls that are in here 4 where there's Sheetrock in front of it, you cannot 5 make an assumption of what's behind there, so 6 basically then you would be -- if you disclaim 7 that you're going to not do anything in that, why 8 would you have a home inspection? 9 If there's 80 percent of what I see in 10 this room is concealed, structurally or -- then 11 there would be no reason to have a home inspection 12 at all. So you report on what you see. What I 13 see in here is Sheetrock. The physical portions 14 of what I see is maybe it's acceptable or it's 15 sufficient. 16 Q. For example, the example I gave you 17 earlier about the bed in the basement that's, you 18 know, lightweight bed or whatever that's up 19 against the foundation wall, maybe a couple inches 20 from the foundation wall, okay, you're not going 21 to move the bed, right? 22 A. Right. 23 Q. And you're not going to inspect behind 24 the bed. 25 A. Right.</p>	<p style="text-align: right;">Page 176</p> <p>1 or did not access the fourth wall. 2 That's what this standard requires, 3 right? 4 A. I don't know if that's the intent of 5 that or not. I believe that it does not require 6 you to do those parts that are concealed. And it 7 doesn't say that if something's concealed that you 8 have to report on it. It says that you -- So if I 9 inspect three quarters of that wall and -- because 10 it is accessible to me, that the other 25 percent 11 has to be disclaimed. 12 Because if I carry that out to the other 13 ones, if I report that I only do a representative 14 sample of windows and -- but didn't inspect a 15 hundred percent of the windows, then am I supposed 16 to report that I didn't inspect the other 25 17 percent of the windows by operating them or 18 whatever the condition was? 19 Or, again, in the case of the 20 electrical, if I only do 50 percent of the 21 electrical outlets, can I claim that I actually 22 did the electrical system? It's represent- -- 23 it's a representative sample of what I can see. 24 Q. Well, we talked earlier, you directed me 25 to a portion of the electrical standard of</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. Do you flash a flashlight back there or 2 anything like that? 3 A. You look at whatever you can see, yeah. 4 Q. So will you flash a flashlight back 5 there? 6 A. If I can't see, yes. 7 Q. All right. So if you look at page 3 of 8 the ASHI standards, 2.2 C 4, are you familiar with 9 this standard? 10 A. Yes. 11 Q. And it reads, Inspectors shall inspect 12 readily accessible, visually observable installed 13 systems and components listed in these standards 14 of practice, and inspectors shall report for 15 systems and components designated for inspection 16 in these standards of practice that were present 17 at the time of the home inspection but were not 18 inspected and the reasons they were not inspected. 19 Did I read that correctly? 20 A. Right. 21 Q. So if you've got a basement where you 22 can make out three walls, but not the fourth 23 because there's some furniture over there, this 24 standard requires that you report on the three 25 walls you can see, but note that you were unable</p>	<p style="text-align: right;">Page 177</p> <p>1 practice where you can use the representative 2 sampling for electrical outlets, right? 3 A. Right. 4 Q. Okay. But I want you to focus, and I'm 5 focusing for purposes of this point of our 6 conversation, on the foundation walls: bare 7 cement wall, unfinished foundation walls, okay? 8 A. Okay. 9 Q. So if you look on the same page as 10 2.2 C 4, it's page 3, you see structural 11 components. Do you see that? 12 A. Right. 13 Q. That's Standard 3. 14 A. Right. 15 Q. And it says, The inspector shall 16 inspect. 17 Now, "shall," that's mandatory, right? 18 A. Right. 19 Q. There's no wiggle room there. 20 A. Right. 21 Q. It means that's what you're going to do. 22 A. Right. 23 Q. The inspector shall inspect structural 24 components including the foundation and framing. 25 Right?</p>

<p style="text-align: right;">Page 178</p> <p>1 A. Right.</p> <p>2 Q. There's nothing in the structural</p> <p>3 components section that talks about a</p> <p>4 representative sampling, true?</p> <p>5 A. Right.</p> <p>6 Q. Okay. So the inspector shall inspect</p> <p>7 structural components including the foundation and</p> <p>8 framing.</p> <p>9 Then you go down to 3.1 B, and that's</p> <p>10 where it says the inspector shall describe the</p> <p>11 foundation, the wall structure. Do you see that?</p> <p>12 A. Right.</p> <p>13 Q. Okay. And that again is done in terms</p> <p>14 of "shall."</p> <p>15 A. Right.</p> <p>16 Q. You're required to do that.</p> <p>17 A. Right.</p> <p>18 Q. And again, there's no representative</p> <p>19 sampling limitation in this section of the</p> <p>20 standard of practice either, is there?</p> <p>21 A. Well, there's not a standard there</p> <p>22 except the standards also say readily accessible.</p> <p>23 So if they're --</p> <p>24 Q. Let's focus here on what we're talking</p> <p>25 about on Standard 3 first and then we'll talk</p>	<p style="text-align: right;">Page 180</p> <p>1 accessible.</p> <p>2 Q. So if you're looking at this room and</p> <p>3 conducting an inspection, we can all see that you</p> <p>4 can't see the foundation walls in this room,</p> <p>5 right?</p> <p>6 A. Right.</p> <p>7 Q. Okay. So you'll put in your report, I</p> <p>8 can't see what's behind the walls.</p> <p>9 A. That's right, that's right.</p> <p>10 Q. But if you can see the foundation walls,</p> <p>11 then you won't describe what you could and</p> <p>12 couldn't see. You'll just describe what you can</p> <p>13 see.</p> <p>14 A. That's right.</p> <p>15 Q. So your report doesn't communicate what</p> <p>16 specifically is left out of your report.</p> <p>17 A. Right. It doesn't say that -- it</p> <p>18 doesn't say that I couldn't see one-third of the</p> <p>19 wall or whatever. It's what I could see is what I</p> <p>20 report on.</p> <p>21 Q. Okay. So if the basement in this case</p> <p>22 had been finished, you would have walked in, like</p> <p>23 you did like we were talking about with your home</p> <p>24 at The Ranch Club. You walk into a finished</p> <p>25 basement. It's all drywalled up. Your report</p>
<p style="text-align: right;">Page 179</p> <p>1 about what you just said.</p> <p>2 There's no representative sampling</p> <p>3 limitation on SoP 3, right?</p> <p>4 A. Not --</p> <p>5 Q. Not in the words that the standards of</p> <p>6 practice use.</p> <p>7 A. Not in the words that they have here,</p> <p>8 but in the exclusionary section they do.</p> <p>9 Q. Yeah. I don't think that you and I have</p> <p>10 disagreement -- No one's alleging that you need to</p> <p>11 see through walls or inspect things that you can't</p> <p>12 get to.</p> <p>13 But what I'm wondering is why we're</p> <p>14 having trouble with Standard 2, because you'll</p> <p>15 agree with me that the systems and components --</p> <p>16 when we're talking about systems or components</p> <p>17 with the ASHI standards of practice, that includes</p> <p>18 the foundation and walls, right?</p> <p>19 A. Right. And if I have situations at home</p> <p>20 where I absolutely cannot see the foundation, I</p> <p>21 write that there's no -- there is no visible</p> <p>22 portion of the foundation available.</p> <p>23 Q. So --</p> <p>24 A. But in this case, I had representative</p> <p>25 areas that showed the foundation as being open and</p>	<p style="text-align: right;">Page 181</p> <p>1 will say, hey, it's got drywall. I can't see</p> <p>2 through drywall.</p> <p>3 A. Right.</p> <p>4 Q. But if you walk into the Mellems'</p> <p>5 basement in this case, which is unfinished, and</p> <p>6 has some furniture and stuff against the wall and</p> <p>7 things of that nature, your report will say what</p> <p>8 you saw, right?</p> <p>9 A. Right.</p> <p>10 Q. But it will not communication to your</p> <p>11 client what you couldn't see and what portions</p> <p>12 specifically were not inspected.</p> <p>13 A. Unless they looked at the pictures.</p> <p>14 Q. We're going to talk about that. But the</p> <p>15 answer to my question is yes, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, structural components, when</p> <p>18 we're talking about -- I mean, it says structural</p> <p>19 components including the foundation, right? So a</p> <p>20 component is the foundation, right?</p> <p>21 A. Right.</p> <p>22 Q. Okay. So a component, the foundation,</p> <p>23 is designated for inspection in the ASHI standards</p> <p>24 of practice.</p> <p>25 A. Yes.</p>

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1 **Q. And the foundation walls, they were**
2 **present at the time of your inspection.**

3 A. Yes.

4 **Q. And you were not able to inspect all of**
5 **the foundation walls at the time of your**
6 **inspection because parts of them were either**
7 **blocked or obscured by furniture or things leaning**
8 **against the wall.**

9 A. Yes.

10 **Q. But you didn't note that in your report.**

11 A. Right. I only took pictures of it.

12 **Q. Is there any explanation in your report**
13 **at all about what you didn't inspect and why, in**
14 **that foundation -- along the foundation wall at**
15 **[REDACTED]?**

16 A. Not in -- not in -- except for the parts
17 that says concealed or inaccessible. But I didn't
18 explain exactly what wasn't concealed or what
19 wasn't accessible, no.

20 **Q. And so then to the extent that your**
21 **report isn't specific, then you give the**
22 **photographs to your client.**

23 A. Yes.

24 MR. JOHNSON: Can we go for five more
25 minutes and then take a lunch?

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1 MS. MORE: Sure.

2 A. Sure.

3 **Q. (BY MR. JOHNSON) Would that be okay?**
4 **Do you need to take a break?**

5 A. No.

6 **Q. Okay. So you took about a hundred**
7 **twenty-one photographs in this case.**

8 A. Approximately, yeah. Whatever.

9 **Q. I don't remember if I counted them, but**
10 **it was pretty close.**

11 **What gets photographed? Why do you take**
12 **the photographs you take? I'm assuming that after**
13 **2500 inspections, you've got a custom and habit**
14 **of, you know, how you walk around a property, what**
15 **you want to look at first, what is going to get**
16 **photographed.**

17 **I mean, I know that you don't go in and**
18 **say, okay, I'm going to take a photograph of this**
19 **and this and this before you ever even see the**
20 **property because every property is different,**
21 **right?**

22 A. Right.

23 **Q. Okay. So when we look at the hundred**
24 **twenty-one photographs that you took, why were**
25 **those things important enough to take photographs**

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1 **of at the time of your inspection?**

2 A. Well, I take photos for two reasons.

3 One is just to give a general view of a particular
4 area, and then I take photos of what are
5 representative deficiencies that I might have.

6 If it's a condition where there's more
7 than one deficiency, I might take more than one
8 picture of it or I may take one picture of it
9 depending on and -- and explain it. May say there
10 are a number of issues here, but this is a
11 representative of what one of them looks like.

12 And that's basically what -- you know,
13 how my photos are. They're just a representative
14 sample of what I'm looking at.

15 **Q. You're not going to identify -- you're**
16 **not going to visualize with your own two eyes an**
17 **area that you're looking at that causes you**
18 **concern and not take a photo of it; is that fair?**

19 A. Right, right.

20 **Q. I mean, your photographs -- And there**
21 **are a lot of photographs of things that aren't**
22 **defective because you're obviously**
23 **cataloging where --**

24 A. Right. Cataloging what's there, what's
25 a basic for -- more than anything, for clients so

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1 that they have a baseline of what -- what was
2 there at the time.

3 **Q. Okay. So when your clients get your**
4 **photographs, there basically are two categories of**
5 **photographs: There are photographs of the things**
6 **you looked at that just are there to create a**
7 **record of where you went and why you went, where**
8 **you went.**

9 A. Right.

10 **Q. And then there are the photographs of**
11 **defective items.**

12 A. Correct.

13 **Q. Things that are cause for concern for**
14 **you and that the homeowner might want to address.**

15 A. Right.

16 **Q. But the homeowner can rest assured that**
17 **when they get the photographs that you've provided**
18 **that there aren't going to be any defects in this**
19 **home that haven't been photographed by you, at**
20 **least to the extent they're visible, right?**

21 A. No, because I don't do every defect. I
22 don't take a picture of every defect. I just
23 explained that. If there's multiple defects, I
24 may mark them in the report as being defective,
25 but there's some things that pictures don't show.

<p style="text-align: right;">Page 186</p> <p>1 Q. Sure. But if, for example, you find a 2 doorway that's just missing an entire header, 3 you're going to take a photo of that, right? 4 A. Right. 5 Q. And if you find a missing king/jack stud 6 with your own two eyes, you see it, you're going 7 to take a picture of that straight on, right? 8 A. Right. 9 Q. And if you walk into a bathroom, for 10 example, with exposed framing up above where you 11 can see all the joists, and you see joists that 12 are overcut, overnotched and that cause you 13 concern, you're going to take a photo of that, 14 right? 15 A. Yes, I would; yeah. 16 Q. And so if you don't have, for example, a 17 photograph of a missing header in your report, 18 your client -- they shouldn't have to worry about 19 whether or not there's really a missing header in 20 that home that you just didn't take a photo of, 21 right? 22 A. Right. That's generally my practice, 23 yes. 24 Q. Yeah. I mean, you're not going to look 25 at a defect that would be cause for concern and</p>	<p style="text-align: right;">Page 188</p> <p>1 photographs from [REDACTED], [REDACTED] Home 2 Inspections, the [REDACTED] photographic record from 3 [REDACTED] Home Inspections that comes along with 4 the Professional Property Inspection report, they 5 look at the photographs, and those are the things 6 that [REDACTED] [REDACTED] has either photographed because he 7 wants to show you what he was looking at just 8 generally or photographed because he identified a 9 defect or cause for concern? 10 A. That's generally my mode, yeah. 11 Q. It's reasonable for your clients to 12 believe that that's what you've done, right? 13 A. Right. And the report would -- The 14 report shows that because the photographs are 15 linked to the defect area in the report. So that 16 shows -- would show that. 17 Q. When you finish your report -- After 18 lunch we'll get to the specifics of this 19 inspection, but when you finish your -- when 20 you're going through the house and doing your 21 inspection, I imagine that you're recording -- Is 22 it electronic? 23 A. Yes. 24 Q. Okay. You've got -- what is it -- Palm, 25 whatever it is, software?</p>
<p style="text-align: right;">Page 187</p> <p>1 not take a picture of it. 2 A. Right. 3 Q. And the same deal with the king/jack 4 stud and the overnotched joists and overcut 5 joists. When your clients get your professional 6 property inspection report, they should be able to 7 rest assured that the photographs that you've 8 provided to them are accurately capturing the 9 defects that you visualized at the time -- the 10 significant defects that you visualized at the 11 time of your inspection. 12 A. Should, yes. 13 Q. They should because that's what you're 14 required to do. 15 A. No, you're not required to photograph. 16 Q. That's a good point. You're required to 17 call them out, though. 18 A. You're required to call them out, not 19 required to photograph. 20 Q. Right. But if you provide photographs, 21 then you better be photographing the defects, 22 wouldn't you agree? 23 A. I try to. I'd like to -- Most -- A lot 24 of the inspectors don't, but I try to do that. 25 Q. Right. So again when they get your</p>	<p style="text-align: right;">Page 189</p> <p>1 A. Palm-Tech software, yes. 2 Q. And you purchased that software? 3 A. Yes. 4 Q. And then you follow it along. 5 A. Right. 6 Q. Do you go -- Do you just follow the 7 different categories; is that -- 8 A. No. 9 Q. You've got your own rhyme and reason how 10 you want to do things. 11 A. Yes. 12 Q. So you're taking photographs as you go. 13 When you're done with the inspection, you don't 14 have a [REDACTED] report, do you? 15 A. Pretty much. 16 Q. You do? 17 A. Pretty much. 18 Q. Okay. So, for example, when you left 19 [REDACTED], what else would you have done to 20 [REDACTED] the report? 21 A. I just review it, makes sure everything 22 looks like it was when I went through it. Usually 23 review the photos as I go through them, and we'll 24 put arrows or whatever that -- into that 25 particular item, if it needs to have an arrow or</p>

<p style="text-align: right;">Page 190</p> <p>1 whatever, to show that -- what I'm looking at. 2 If there's something in -- a small area 3 in a photo, whatever, I'll try to make an 4 identification of that by either putting an arrow 5 to it or something like that. And I review those. 6 Q. Okay. So you conduct your visual 7 assessment of the property, right? 8 A. (Witness nods head.) 9 Q. You walk around the property. 10 A. Right. 11 Q. You go through all the different 12 categories. You conduct your visual assessment. 13 A. Right. 14 Q. You take your photographs. 15 A. The photographs as I'm going along and 16 come back and go back and forth, so, right. 17 Q. And then when you are done with your 18 inspection -- So you've already looked at it once 19 with your own two eyes. 20 A. Right. 21 Q. Decided what you're going to photograph, 22 what you're going to record in the report, right? 23 A. Well, I photograph as I'm going along, 24 because if I'm looking at a defect, then that 25 photo gets attached to that particular defect as</p>	<p style="text-align: right;">Page 192</p> <p>1 then I'll revisit that particular component. 2 But mostly it's just to make sure that 3 the photos are matching with what I saw. 4 Q. Okay. 5 A. So that it's not confusing to the client 6 to go, well, what's this for? 7 Q. Okay. So you're making sure basically 8 the photos track the report. 9 A. Right. 10 Q. But you're also reviewing the photos for 11 purposes of accuracy? 12 A. Right. 13 Q. And so it's sort of a second shot. It's 14 a much more abbreviated visual inspection. 15 A. Right. 16 Q. But you're actually getting to visualize 17 your photographs and see the stuff a second time. 18 A. Right. 19 Q. And that should be a safeguard, right? 20 A. Right. 21 Q. And you're very careful and thoughtful 22 in how you review those photographs? 23 A. Right, right. 24 Q. So it sort of gives you an actual 25 inspection and then also almost a virtual</p>
<p style="text-align: right;">Page 191</p> <p>1 I'm going through that particular area. 2 Q. Okay. But you're conducting your visual 3 assessment and photographing as you go along. 4 A. Right. 5 Q. Okay. And you're filling out your 6 report as you go along. 7 A. Right. 8 Q. And then when you're done with your 9 inspection, you sort of -- and you leave, you sort 10 of take a step back -- 11 A. Right. 12 Q. -- and you're going to look at all those 13 photographs a second time. 14 A. Right. 15 Q. And the photographs are there, I'm 16 guessing, you know, to make sure -- I mean, do you 17 ever look at a photograph and see a defect that 18 you thought didn't exist? 19 Have you ever, like, gone back through 20 your photographic record and been like, oh, my 21 gosh, I didn't realize that that was there. 22 That's a problem. I'm glad I took a photo of it? 23 A. Not too often. Once in a while I do 24 that or I'll see something from a different angle 25 that the camera may have caught or whatever, and</p>	<p style="text-align: right;">Page 193</p> <p>1 inspection after the fact? 2 A. Right. If I take a lot of pictures. 3 Q. And you took a hundred twenty in this 4 case. 5 A. Yeah. 6 Q. And so of the hundred twenty -- And I'm 7 guessing you've given us all the photographs you 8 took. 9 A. Yes. 10 Q. There aren't any other photographs out 11 there? 12 A. No. 13 Q. So after you finished this inspection, 14 when would you have looked at these photographs 15 before finalizing this report? 16 A. That evening. 17 Q. That evening. 18 A. When I get back, yeah. 19 Q. Okay. So this inspection started around 20 9:00, 9:15 in the morning. 21 A. Uh-huh. 22 Q. And so you finish the inspection, you 23 leave, you go do the other inspection, and then 24 you go home that night and you break out the 25 photographs again and your draft report.</p>

<p style="text-align: right;">Page 194</p> <p>1 A. Right.</p> <p>2 Q. And you're squaring up -- I mean, you're</p> <p>3 reading the draft report and your comments, right?</p> <p>4 A. Right, right.</p> <p>5 Q. And you're doing that because you want</p> <p>6 to make sure it's accurate and it squares with</p> <p>7 your memory.</p> <p>8 A. Right.</p> <p>9 Q. And then you also got out the inspection</p> <p>10 photographs as well.</p> <p>11 A. Right.</p> <p>12 Q. And so you're actually looking at each</p> <p>13 one of those inspection photographs again.</p> <p>14 A. Right.</p> <p>15 Q. And you're looking at it to, A, make</p> <p>16 sure that they square up with the report and it's</p> <p>17 not confusing for the client, right?</p> <p>18 A. Right.</p> <p>19 Q. B, that they're clear and accurate</p> <p>20 because if they're bad photographs, they're not</p> <p>21 going to be helpful, right?</p> <p>22 A. Right, but I do not delete them. So if</p> <p>23 there's a real bad one, you know, once in a while</p> <p>24 you get a real bad one, there's nothing in it; you</p> <p>25 don't delete it. You give it to them so that they</p>	<p style="text-align: right;">Page 196</p> <p>1 before and I'll go back for a roof if I need to,</p> <p>2 considering it's usually one of the biggest</p> <p>3 expenses that -- that happen.</p> <p>4 Q. What sorts of things make you go back to</p> <p>5 look at a roof?</p> <p>6 A. Sometimes it's visibility, especially</p> <p>7 wintertime. The roof might be frosty in the</p> <p>8 morning so I don't walk the whole roof, and then</p> <p>9 it warms up in the afternoon and I'm going, well,</p> <p>10 I can go back now and relook at it because it's</p> <p>11 probably burned off.</p> <p>12 Q. Okay.</p> <p>13 A. Or -- That's usually the case. Or if</p> <p>14 it's raining, I might -- I might not fully walk</p> <p>15 the whole roof because I don't want to fall off,</p> <p>16 and then if it quits raining that day, I will go</p> <p>17 back so that I can get a good idea of what the</p> <p>18 roof looks like.</p> <p>19 Q. What about interior spaces that aren't</p> <p>20 properly -- or aren't well lit? What do you do in</p> <p>21 those situations?</p> <p>22 A. I have a flashlight.</p> <p>23 Q. And you use it?</p> <p>24 A. Yes.</p> <p>25 Q. And then we're going to talk about your</p>
<p style="text-align: right;">Page 195</p> <p>1 don't get the appearance that, oh, you're holding</p> <p>2 out on me because you dropped off a photo out of</p> <p>3 the show.</p> <p>4 Q. Sure. And then you're also reviewing it</p> <p>5 because that's what you need to do to be thorough</p> <p>6 and [REDACTED].</p> <p>7 A. Right.</p> <p>8 Q. And you want to make sure that you've</p> <p>9 accurately photographed the property and that it</p> <p>10 accurately represents what you remember.</p> <p>11 A. Right.</p> <p>12 Q. And then if there's a disparity between</p> <p>13 what you remember having seen and what the</p> <p>14 photographs show, do you ever go back to a</p> <p>15 property and rephotograph again?</p> <p>16 A. We don't rephotograph. I have gone back</p> <p>17 to look at some areas that maybe I wasn't clear on</p> <p>18 or that maybe the photograph didn't -- wasn't</p> <p>19 there. But usually it's something that if I go</p> <p>20 back -- which I've gone back a couple times --</p> <p>21 it's usually roof related.</p> <p>22 Q. I'm sorry. Roof related?</p> <p>23 A. Yeah. Yes. Because it might not -- I</p> <p>24 might have captured something or had a thought or</p> <p>25 seen something that I didn't see when I was there</p>	<p style="text-align: right;">Page 197</p> <p>1 photos after lunch -- and we will take lunch in a</p> <p>2 minute, I promise -- but there are a couple of</p> <p>3 photos where you're obviously shining a</p> <p>4 flashlight.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Is that what you do when you're using a</p> <p>7 flashlight to assist you inspect? You take the</p> <p>8 picture so that you are recording that you're</p> <p>9 using a flashlight as well?</p> <p>10 A. Well, if I'm using a flashlight, it's an</p> <p>11 attempt to try to maybe highlight or to maybe get</p> <p>12 a little better lighting on it. The camera I use</p> <p>13 is attached to my tablet, it's part of the tablet,</p> <p>14 and so the tablet doesn't flash all the time when</p> <p>15 it should. There's a couple pictures that are a</p> <p>16 little dark that you saw in there, and it was</p> <p>17 because the flash didn't go off on it.</p> <p>18 And so if it's an area where there's</p> <p>19 totally not enough light, then I would -- I'm</p> <p>20 using my flashlight, have the flashlight in my</p> <p>21 hand the whole time I'm doing an inspection, so</p> <p>22 basically if it's an area that I need to see more</p> <p>23 clearly, then I try to take the photo with the</p> <p>24 flashlight. Sometimes it works and sometimes it</p> <p>25 doesn't.</p>

<p style="text-align: right;">Page 198</p> <p>1 Q. Okay. And so -- but you can tell 2 on-site whether or not your flash has worked or 3 not. 4 A. Yeah. Because it will -- If I don't get 5 a very good picture, I'll either try to take the 6 picture over again or if it's not a picture that's 7 really needed, then I'll just try to take a 8 picture from a different angle or something so 9 that I can get a picture of what I'm looking at. 10 Q. Okay. And, of course, if you have a 11 light switch available to you, you're going to 12 turn the light on. 13 A. If I need it, yes. Sometimes the lights 14 are a little bit -- I've seen a couple of pictures 15 where I took them with the camera, it glares, 16 makes a glare on the photo, so sometimes I'll have 17 the light on and then I'll turn the light off to 18 take the picture because the camera just doesn't 19 always pick up what -- with the glare on it, so -- 20 Q. Right. But overhead lighting, for 21 example, if you're not -- when you're talking 22 about a glare, you're talking about taking 23 pictures where you're actually -- 24 A. Of a ceiling with the light in it and it 25 will glare out half the photo.</p>	<p style="text-align: right;">Page 200</p> <p>1 at 1:55 p.m., and the following proceedings were 2 entered of record:) 3 MR. JOHNSON: All right. So 1:55 and 4 we're back on the record. 5 Q. (BY MR. JOHNSON) Mr. [REDACTED], welcome back 6 from lunch. 7 A. Thank you. 8 Q. Very quickly, if you take a look at 9 Exhibit 1 for me again, please, and the email you 10 see at 732, so we've got -- if you could, 11 [REDACTED], that's who it was to, 12 and there are a bunch of cc's. 13 Do you see that? 14 A. Yes. 15 Q. I'm sorry. Tell me again who [REDACTED] 16 [REDACTED] 17 A. He was president at the time of the -- 18 when it started. 19 Q. What is his name? 20 A. [REDACTED]ie -- I can't 21 remember [REDACTED] last name. I have a problem with 22 names. But I can get that information to you. 23 Q. Oh, okay. Is he from [REDACTED]? 24 A. Yes. 25 Q. How about [REDACTED]?</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Exactly. 2 A. Yeah. 3 Q. But it won't glare out a photo if you've 4 got overhead lighting on and you're taking 5 pictures of something at eye level, right? 6 A. Yeah. But it may not be as clear. It 7 just depends on the day with the camera and how 8 much -- if there's outside lighting coming in from 9 the windows from the sun it will interfere 10 sometimes with the way that the camera adjusts its 11 aperture and setting, because it's all automatic, 12 so -- 13 Q. All right. 14 MR. JOHNSON: You know, why don't we go 15 ahead. It is 12:50. Why don't we take lunch for 16 an hour. 1:50. Does that work? 17 MS. MORE: That's fine. 18 Q. (BY MR. JOHNSON) Come back in an hour? 19 Yeah? 20 A. Sure. 21 Q. Okay. Great. 22 MS. JAZAYERI: Should I pause? 23 MR. JOHNSON: Yes, please. 24 (Whereupon, the proceedings were in 25 recess at 12:51 p.m. and subsequently reconvened</p>	<p style="text-align: right;">Page 201</p> <p>1 Who's that? 2 A. He is an inspector out of [REDACTED]. 3 Q. What is his name? 4 A. [REDACTED] -- or [REDACTED] -- What's [REDACTED] last 5 name? Oh, I'll remember that too. 6 Q. And [REDACTED]? 7 A. That's [REDACTED] 8 Q. That's [REDACTED]n. 9 [REDACTED], that's [REDACTED]? 10 A. No, [REDACTED] is 11 John Thompson. 12 Q. [REDACTED] [REDACTED], 13 that's [REDACTED] 14 A. Yes. 15 Q. Do you know [REDACTED]II? 16 A. Well, I've known him for ages. Since I 17 started with the ASHI group. 18 Q. [REDACTED]. 19 A. That's Steve Jacoby. 20 Q. Okay. We covered that. 21 A. In fact, the taskmaster is 22 Steve Jenicek. 23 Q. [REDACTED] Great. 24 [REDACTED]? 25 A. That is [REDACTED]honic].</p>

<p style="text-align: right;">Page 202</p> <p>1 Q. [REDACTED] 2 A. Was. Still is. He still has that 3 email. 4 Q. [REDACTED]? 5 A. That's [REDACTED] 6 Q. [REDACTED]? 7 A. [REDACTED] -- What's that? 8 Q. How do you spell it? 9 A. [REDACTED] 10 Q. Okay. 11 A. It's [REDACTED] 12 Q. [REDACTED]. 13 A. That is [REDACTED] [REDACTED] [REDACTED]. 14 Q. Do you know [REDACTED] last name? 15 A. [REDACTED] 16 Q. [REDACTED]. 17 A. Yes. 18 Q. And [REDACTED]? 19 A. Is [REDACTED] [REDACTED] [REDACTED] is the last 20 name. 21 Q. If I send subpoenas to these guys asking 22 for them to produce any emails that they would 23 have sent to you in response, am I going to get 24 emails back from them? 25 A. I would expect, if they still have them.</p>	<p style="text-align: right;">Page 204</p> <p>1 (Discussion held off the record.) 2 MR. JOHNSON: Okay. We're back on. 3 MS. JAZAYERI: Yep. 4 Q. (BY MR. JOHNSON) Okay. Mr. [REDACTED], we've 5 been discussing earlier the fact that -- I think 6 you brought it up -- that there's really no 7 regulation -- state-level regulation of the home 8 inspection industry in Montana. 9 A. As far as licensure, right. 10 Q. Okay. No licensure, no testing 11 requirements. 12 A. Right. 13 Q. No insurance requirements. 14 A. Right. 15 Q. No certification requirements. 16 A. Right. 17 Q. There's no -- You know, for example, the 18 Realtors have the Board of Realty, right? 19 A. Right. 20 Q. And the Board of Realty handles, you 21 know, continuing education requirements -- 22 A. Right. 23 Q. -- disciplinary standards and things of 24 that nature. 25 A. Right.</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. Did any of these people respond to you? 2 Did they respond to this email of November 20 of 3 2013? 4 A. No. The only response that I knew was 5 [REDACTED], sent an email on to -- 6 actually to Frank Lesh, I believe is who it was. 7 Q. Did [REDACTED] 8 [REDACTED] 9 A. I don't believe so. I don't find any 10 record of that. [REDACTED] last name is [REDACTED]. 11 Q. Did any of the recipients of this email 12 reply to you regarding this email? 13 A. No. 14 Q. You never got a single reply. 15 A. No. 16 Q. -- from any of the people that you sent 17 it to? 18 A. No, I didn't. With the exception of 19 seeing that [REDACTED] posted something into the -- at 20 ASHI. Other than that, I didn't hear back from 21 any of them. 22 Q. All right. 23 MS. MORE: Can we go off record for just 24 a second? 25 MR. JOHNSON: Yeah.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. And in Montana there's no equivalent 2 body. 3 A. Right. 4 Q. So if someone wants to, I guess for lack 5 of a better term, turn in a home inspector for 6 having done something unethical or whatever, 7 there's literally no one working for the state of 8 Montana that is in charge of working with home 9 inspectors. 10 A. That's right. We tried like five 11 legislative sessions in a row to try and get it 12 through and we haven't had any luck. 13 Q. The goal is, from what I understand you 14 saying is, that the goal is to basically make the 15 ASHI standards the state-level regulatory standard 16 for Montana. 17 A. Or something very similar. Either the 18 ASHI. NACHI's almost the same as ASHI now. 19 When -- Several years ago they weren't, but now 20 they're both fairly close and similar. The 21 problem we've had is that in the eastern part of 22 the state, most of the inspectors are also 23 contractors, and because they're in both the NACHI 24 and the ASHI standards, they require a separation 25 between a contractor and a -- your work as a home</p>

<p style="text-align: right;">Page 206</p> <p>1 inspector because they feel it's a conflict of 2 interest to be inspecting somebody's house and at 3 the same time handing them a -- 4 Q. Bid. 5 A. -- bid for what their issues are. 6 And because the ASHI members on the 7 western part are only about -- are half or less 8 than half of what the number of inspectors are, we 9 can't get a consensus with the whole state to get 10 that done, so -- 11 Q. All right. So you mentioned the 12 contractors, and I think we touched on most of 13 this earlier, but at the time you became a home 14 inspector, the only construction experience you 15 had had was some remodel work on your own 16 properties? 17 A. And some work with -- I helped -- When 18 Valley Christian built their school, I helped in 19 building that. 20 Q. And what did you do on that project? 21 A. I did some framing. I did some 22 sheetrocking. I was one of two guys to install 23 the floor in the gymnasium. I helped on the roof. 24 I helped build the trusses at Clawson. We built 25 all the trusses at Clawson. Helped do all that</p>	<p style="text-align: right;">Page 208</p> <p>1 Practices Act. 2 A. Right. 3 Q. Are you familiar with them? 4 A. Yes, yes. 5 Q. What are the requirements of the Home 6 Inspection Trade Practices Act? 7 A. Well, it defines a home inspector as 8 someone who takes a fee for doing a home 9 inspection. It states that the home inspectors 10 provide a written report of -- I believe it says 11 immediate major repairs in any component, and it 12 lists out the components that are out there. 13 Q. To the best of your knowledge, that is 14 what the Home Inspection Trade Practices Act 15 requires? 16 A. Right. 17 Q. And it's important for you to be -- 18 obviously to be knowledgeable -- 19 A. Right. 20 Q. -- regarding the law in this area 21 because it's important for you not only to comply 22 with the ASHI standards of practice, but also to 23 comply with what Montana law requires. 24 A. Right. Montana law is more than met by 25 the ASHI standards.</p>
<p style="text-align: right;">Page 207</p> <p>1 work. 2 Q. About what year was that that you were 3 doing that? 4 A. That was probably about '98, somewhere 5 in that ballpark. '97, '98 when that building was 6 built. 7 Q. But you've never been like a licensed 8 contractor, for example? 9 A. No. 10 Q. And you've never built a home? 11 A. No. 12 Q. Or built a structure? 13 A. No. 14 Q. Or been paid by anybody to fix a 15 problem? 16 A. No. 17 Q. The way a contractor would be. 18 A. Right. No. 19 Q. So, sorry, we got sidetracked there a 20 little bit. 21 We were talking about the regulatory 22 standards. There is -- there is a law in Montana 23 regarding home inspections. 24 A. Correct. 25 Q. And that is the Home Inspection Trade</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. And what you just stated to me, though, 2 regarding the Home Inspection Trade Practices Act, 3 that's your understanding of what the Act actually 4 says. 5 A. Right. 6 Q. Okay. One of the requirements of the 7 Home Inspection Trade Practices Act is that the 8 report clearly identify and describe not only what 9 was inspected, but also major visible defects. 10 A. Right. 11 Q. Are you aware of that? 12 A. Right. 13 Q. Okay. And so clearly -- I don't know; 14 maybe you and I can agree on what "clearly" means. 15 In a clear manner, in a way that is easy to see, 16 hear or understand. 17 It's a dictionary definition, but would 18 you agree with that? 19 A. I would agree, yeah. 20 Q. And it clearly means basically 21 eliminating doubt or question. If something is 22 presented to you clearly, then it allows you to 23 understand it beyond a doubt without question; is 24 that fair? 25 A. You would make that assumption, yes.</p>

<p style="text-align: right;">Page 210</p> <p>1 Q. Oh. And that would be your -- If I 2 asked you to -- 3 A. Yes. 4 Q. -- you know, what does "clearly" mean, 5 you would agree with me that that's what it means. 6 A. Right. 7 Q. It clearly doesn't mean generally or 8 vaguely or in a nondescript way, correct? 9 A. Right, right. 10 Q. And you believe that you complied with 11 the requirements of the Home Inspection Trade 12 Practices Act in conducting your inspection and 13 generating your report in this case? 14 A. It looks like it. 15 Q. "Yes"? 16 A. Yes. 17 Q. And you believe that your report clearly 18 reported and identified what you inspected and 19 what you did not inspect. 20 A. Yes, I do. 21 Q. So when we dropped off, when we left off 22 before lunch, we were talking about your custom 23 and habit in taking photographs. 24 Do you remember that? 25 A. Yes.</p>	<p style="text-align: right;">Page 212</p> <p>1 know, you can see the couch, you can see the 2 window. They're obviously taken from -- away from 3 the north and east foundation walls, right? 4 A. Right. 5 Q. So how do we know from that photo what 6 you then walked up very closely to and looked at? 7 A. You just have my report. If I noticed a 8 defect in it, I would have looked at it more 9 closely and then I would have also taken a photo 10 of it more closely. But the standard of practice 11 is that -- that I have is that I will look at a 12 wall and go from end to end on it wherever I can 13 get as good a view -- as much as I can, and then I 14 will stand back and take a picture of it. And 15 then if there's an a defect in there, then there 16 is a photo of that. 17 Q. Okay. So if you're taking a picture 18 from far back, that does then signify that you've 19 actually looked at it up close, but now you're 20 taking a picture of a general area that you looked 21 at closely. 22 A. Right. 23 Q. All right. I understand. 24 MR. JOHNSON: We might as well mark this 25 as 4, please.</p>
<p style="text-align: right;">Page 211</p> <p>1 Q. If you walk up to a particular wall, you 2 know, get as close as you can to the wall when 3 you're looking at a wall, and you're visualizing 4 it, looking for defects, do you then take a 5 picture of that wall from where you're standing? 6 A. Not necessarily, no. I want -- I 7 usually will take a picture of the whole wall. 8 Q. So what you'll do is a lot of your 9 pictures -- Well, you tell me if this is correct: 10 A number of your pictures that show a general area 11 from, you know, 10, 15, 20 feet back, that 12 pictures signifies that you may have then walked 13 up close to those components and taken a look. 14 A. Yes. 15 Q. Okay. So -- and I imagine there are 16 some components in systems that you look at very 17 closely and some that you're more comfortable 18 looking at from a distance. 19 A. Yes. 20 Q. So how can we tell from your 21 photographic record what you looked at closely and 22 what you didn't look at closely? 23 For example, we've got, you know, the 24 photographs of the basement in this case where 25 you're -- obviously the photographs are taken, you</p>	<p style="text-align: right;">Page 213</p> <p>1 EXHIBITS: 2 (Deposition Exhibit Number 4 marked for 3 identification.) 4 Q. (BY MR. JOHNSON) Mr. [REDACTED], I'm handing 5 you what we've marked as 4. 6 MR. JOHNSON: Kim, I'm sorry, this is 7 one of the ones that you have to share. 8 MS. MORE: You didn't make me a fancy 9 binder? 10 MR. JOHNSON: I didn't make you a fancy 11 binder. 12 Q. (BY MR. JOHNSON) If you look, for 13 example, Mr. [REDACTED] -- Take a look at photograph 44. 14 And we really will walk through these when we're 15 talking about your inspection. 16 But just so I understand what you just 17 testified to, photograph 44, this is a picture 18 that you took in the basement area of [REDACTED] 19 during your inspection on August 6, 2013. Is 20 that -- is that right? 21 A. Correct. 22 Q. And to the best of your ability, it 23 looks like a true and accurate copy of your photo. 24 A. Yes. 25 Q. So what are we -- what are we to know</p>

<p style="text-align: right;">Page 214</p> <p>1 from this photograph?</p> <p>2 It's a picture of a very large segment</p> <p>3 of wall, right.</p> <p>4 A. Right.</p> <p>5 Q. And there's some furniture, and it looks</p> <p>6 like maybe some -- maybe some stereophonic</p> <p>7 equipment there on the left next to some guitar</p> <p>8 cases.</p> <p>9 Do you see that?</p> <p>10 A. Right.</p> <p>11 Q. So what does this photograph tell us</p> <p>12 about what you did in this area of the basement?</p> <p>13 A. Well, it tells me that that was a wall</p> <p>14 that was fully visible for me to look at.</p> <p>15 Q. That was that?</p> <p>16 A. That was visible for me to look at.</p> <p>17 Q. That was fully visible for you to look</p> <p>18 at?</p> <p>19 A. Could look at. It was readily</p> <p>20 accessible, that I could look at it.</p> <p>21 Q. Okay.</p> <p>22 A. I would have gone closer and walked</p> <p>23 around the wall to -- after -- or before or after</p> <p>24 I took this photograph. Probably tested the</p> <p>25 windows in there as well, and if there were any</p>	<p style="text-align: right;">Page 216</p> <p>1 two guitar cases, right?</p> <p>2 A. Right.</p> <p>3 Q. This is the kind of thing you don't</p> <p>4 move, right?</p> <p>5 A. Right. I don't move personal</p> <p>6 possessions, right.</p> <p>7 Q. Well, you don't move anything, do you?</p> <p>8 A. Well, I don't move personal possessions</p> <p>9 or furniture or anything that would be -- that I</p> <p>10 might potentially damage moving it.</p> <p>11 Q. I think what you testified to earlier</p> <p>12 was that you don't move anything in order to gain</p> <p>13 access to other things.</p> <p>14 A. Well, I don't move personal property. I</p> <p>15 don't move furniture, and I don't dismantle</p> <p>16 anything to -- unless it's defined for me to do,</p> <p>17 like the front panels of electric panels or</p> <p>18 service panels for boilers, stuff like that.</p> <p>19 Q. So what's the qualification you're</p> <p>20 making, though?</p> <p>21 When I say, you don't move anything --</p> <p>22 I'm not talking about doors. You know, you open a</p> <p>23 door to a little crawl space or something like</p> <p>24 that.</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 215</p> <p>1 other issues that were -- you know, looking again</p> <p>2 at the ceiling -- or the rafters, floor joists.</p> <p>3 Looking to see if that main support beam was</p> <p>4 properly supported underneath and stuff like that.</p> <p>5 Q. Okay. Okay. So when we look at this</p> <p>6 photograph, you know, what you've got here is</p> <p>7 you've got the foam insulation and framing for the</p> <p>8 top half of the wall.</p> <p>9 Do you see that?</p> <p>10 A. Right.</p> <p>11 Q. And then the cement foundation wall for</p> <p>12 the bottom half.</p> <p>13 A. Right.</p> <p>14 Q. So when we look at this photograph, is</p> <p>15 it fair to say that it means that either before or</p> <p>16 after you took the photograph, you then walked --</p> <p>17 A. That I would have walked around it, yes.</p> <p>18 Q. Okay. That you then walked right up to</p> <p>19 the foundation wall.</p> <p>20 A. Right.</p> <p>21 Q. And that you would have very closely and</p> <p>22 carefully visualized the cement portions of these</p> <p>23 walls?</p> <p>24 A. Correct.</p> <p>25 Q. And so, for example, you can see these</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. That's technically moving something.</p> <p>2 A. Right.</p> <p>3 Q. But you and I aren't talking about that.</p> <p>4 A. Right. That's readily accessible.</p> <p>5 Q. Okay. What I'm talking about is moving</p> <p>6 an item that is in front of something in order to</p> <p>7 inspect it.</p> <p>8 So whether it's personal property or</p> <p>9 furniture or something leaning against a wall or</p> <p>10 whatever that's blocking your view, my</p> <p>11 understanding is you don't move that thing.</p> <p>12 A. Right.</p> <p>13 Q. And that's your practice.</p> <p>14 A. Right.</p> <p>15 Q. That's what you do.</p> <p>16 A. Right.</p> <p>17 Q. That's what you did -- that's what you</p> <p>18 did in this case.</p> <p>19 A. Right.</p> <p>20 Q. Okay. So if you look at the guitar</p> <p>21 cases, you would not have moved the guitar cases,</p> <p>22 but you would have --</p> <p>23 A. Looked around it.</p> <p>24 Q. Gotta wait for me to finish my question.</p> <p>25 A. I'm sorry.</p>

<p style="text-align: right;">Page 218</p> <p>1 Q. No, you're fine. You're actually doing 2 much better than most people. Don't worry about 3 it. 4 The guitar cases, you wouldn't have 5 moved them, but you would have been right up on 6 top of them and looking all the way around them, 7 right? 8 A. Right. 9 Q. Same thing with the stereophonic 10 equipment. Whatever this black and metal thing is 11 here next to the guitars, you wouldn't have moved 12 it, but you would have very carefully looked at 13 all the foundation wall that you could see around 14 it. 15 A. Right. 16 Q. Right? 17 A. Right. 18 Q. And if there was space behind it, would 19 you then take your flashlight and shine it down? 20 A. Yes. 21 Q. That's what you do? 22 A. Yes. 23 Q. Okay. Now take a look, if you would, at 24 35. So 35 is -- it's, in essence, a picture of 25 the basement kind of facing in the same direction,</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. And then going through to the corner, 2 you can see there's that space between where that 3 little bench ends and then the corner. 4 A. Uh-huh. 5 Q. "Yes"? 6 A. Yes. 7 Q. Okay. That's open, right? 8 A. Yes. 9 Q. So you would have -- you would have seen 10 all of that. 11 A. Yes. 12 Q. All right. And then from that corner, 13 now we're on to a new wall, right? 14 A. Yes. 15 Q. As we're toggling right. 16 A. Right. 17 Q. In this photograph anyway. 18 A. Right. 19 Q. And so it looks like you've got -- I 20 don't know -- I can't really -- three or four feet 21 maybe between that corner and where the legs of 22 this kind of spindly-looking table are, right? 23 A. Right. 24 Q. So that entire wall, that's open, right? 25 A. Right.</p>
<p style="text-align: right;">Page 219</p> <p>1 maybe -- but you're pivoting a little bit to your 2 right. 3 A. Right. 4 Q. Where you took the prior photo we just 5 discussed. 6 A. Right. 7 Q. And so in this case, for example, you 8 know, it looks like there's a table here 9 underneath the window, right? 10 A. Right. 11 Q. But the table -- you know, there are 12 chairs there behind it or whatever, but you would 13 have been able to get behind the table and take a 14 look at the wall. 15 A. Right, right. 16 Q. And then there's this little bench here. 17 Do you see that, next to the table? 18 A. Right. 19 Q. And it plugs in? Maybe there's a little 20 TV or something there? You wouldn't have moved 21 the bench, but you would have been certain to look 22 as closely as you possibly could to visualize 23 every piece of the foundation wall that was 24 visible there. 25 A. Right.</p>	<p style="text-align: right;">Page 221</p> <p>1 Q. And so you would have been right up on 2 top of that wall looking at it very closely and 3 visualizing what you were looking at. 4 A. Right. 5 Q. All right. And then you get to the 6 table itself that we just discussed. You're not 7 going to move that table, right? 8 A. Right. 9 Q. But you can pretty much see all the way 10 through it or most of the way around it, right? 11 A. Right. 12 Q. And so that's what -- that's what you 13 would have done. 14 A. Right. 15 Q. And it looks like there's maybe a couple 16 little items on top of that table. Do you see 17 that? 18 A. Yeah. Might be that black object there. 19 I'm not sure about the -- 20 Q. Yeah. Or that white thing there. 21 A. That white thing. I'm not sure. 22 Q. Yeah. If those are objects on the table 23 and they're not actually affixed to the wall, 24 meaning that they're not actually part of the 25 wall, you'd flash your flashlight behind that,</p>

<p style="text-align: right;">Page 222</p> <p>1 right?</p> <p>2 A. Right.</p> <p>3 Q. Okay. And then you can see that the</p> <p>4 wall is open again heading right, after the table?</p> <p>5 A. Right.</p> <p>6 Q. And so that's open and easily</p> <p>7 accessible. You would have visualized that entire</p> <p>8 portion of the wall.</p> <p>9 A. Right.</p> <p>10 Q. And so that's what this photograph</p> <p>11 represents.</p> <p>12 A. Correct.</p> <p>13 Q. You take this photograph because you're</p> <p>14 not just snapping the photograph because, hey, I</p> <p>15 need photographs. You're snapping this photograph</p> <p>16 to show what you have inspected.</p> <p>17 A. Right.</p> <p>18 Q. You visualize and you inspected this</p> <p>19 entire area that we've just discussed in</p> <p>20 photograph 35.</p> <p>21 A. Did or will, yes.</p> <p>22 Q. Say again.</p> <p>23 A. Did or will, because I may have taken it</p> <p>24 after I did that.</p> <p>25 Q. And if you -- Well, that's a good point.</p>	<p style="text-align: right;">Page 224</p> <p>1 on that level and do that level and then go to the</p> <p>2 next level, but go from room to room all the way</p> <p>3 around in kind of a sequential pattern just to --</p> <p>4 just to keep the flow going around.</p> <p>5 And then do the same on the next level.</p> <p>6 And then usually wind up with the attic,</p> <p>7 typically.</p> <p>8 Q. Okay. All right. What are the tools</p> <p>9 that you bring with you to every inspection? And</p> <p>10 we got flashlight.</p> <p>11 A. We got flashlight, and screwdrivers to</p> <p>12 take off panel covers off from the electrical</p> <p>13 panels and the furnace or water heater -- or water</p> <p>14 heater or the boiler, depending on what the case</p> <p>15 is. That's typically the only panels that are</p> <p>16 removed.</p> <p>17 And then I carry a ladder, flashlights,</p> <p>18 my camera and an outlet tester.</p> <p>19 Q. All right. The camera you had mentioned</p> <p>20 earlier, how long have you used that particular</p> <p>21 camera?</p> <p>22 A. That one I used for about two years. It</p> <p>23 was about the length of that tablet for that being</p> <p>24 dropped and beaten up and scratched and stuff like</p> <p>25 that. It lasted about two years.</p>
<p style="text-align: right;">Page 223</p> <p>1 If you identify any defects in that foundation</p> <p>2 wall on photo 35, then you're going to take a</p> <p>3 photo of those --</p> <p>4 A. Right.</p> <p>5 Q. -- right?</p> <p>6 All right. So inspection August 6,</p> <p>7 2013. It looks like it was a clear day?</p> <p>8 A. Yes.</p> <p>9 Q. All right. No weather conditions</p> <p>10 interfering with your inspection of the property?</p> <p>11 A. No.</p> <p>12 Q. All right. And tell me briefly -- we</p> <p>13 talked about it earlier, you've got a standard of</p> <p>14 practice or a custom and habit of how you inspect</p> <p>15 a property.</p> <p>16 A. Yes.</p> <p>17 Q. Obviously every property is different,</p> <p>18 but what's your preferred sequence of inspection?</p> <p>19 Do you go outside in?</p> <p>20 A. I do outside in. I typically start at</p> <p>21 the front and just move around the front and then</p> <p>22 I'll usually do the roof. And then I will go</p> <p>23 typically to the garage. And then from the</p> <p>24 garage, then go in and then either -- Depending on</p> <p>25 where the mechanical is located, I'll either start</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. What kind of camera was it? Was it just</p> <p>2 a little small --</p> <p>3 A. It was a Motorola Xoom. Well, I use the</p> <p>4 tablet or the camera on the tablet because then it</p> <p>5 just automatically would feed right into the</p> <p>6 program with the application that it was in.</p> <p>7 Q. So tell me what you mean, you'd use the</p> <p>8 camera on the tablet.</p> <p>9 A. Well, the tablet has a camera function.</p> <p>10 Q. Okay. So like, for example, if I've got</p> <p>11 an iPad that has a camera function, sort of that</p> <p>12 similar --</p> <p>13 A. It's very similar.</p> <p>14 Q. And does the camera -- The camera faces</p> <p>15 away from you so that you can look at the</p> <p>16 screen --</p> <p>17 A. Yes.</p> <p>18 Q. -- of what you're taking the photo of.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And is that the type of camera</p> <p>21 that you used for this inspection?</p> <p>22 A. Yes.</p> <p>23 Q. In my mind I was envisioning you walking</p> <p>24 around with a camera corded into a tablet.</p> <p>25 A. Oh, no.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. But it's the tablet.</p> <p>2 A. Yes.</p> <p>3 Q. So tell me again, what was the tablet?</p> <p>4 A. It's a Motorola Xoom, and I believe the</p> <p>5 pixel function was about 5.</p> <p>6 Q. 5.0?</p> <p>7 A. Something like that. Or 5.1 or</p> <p>8 something.</p> <p>9 Q. Okay. And I'm guessing you use that</p> <p>10 camera, that variety of camera, regardless of the</p> <p>11 type of home or how expensive or whatever.</p> <p>12 A. Yes.</p> <p>13 Q. That's just your equipment.</p> <p>14 A. That was my equipment, yes.</p> <p>15 Q. All right. And you said the flash</p> <p>16 sometimes didn't work?</p> <p>17 A. Well, depending on whether it read</p> <p>18 whether it needed the flash or not.</p> <p>19 Like obviously this picture may have</p> <p>20 needed some front flashing, but it didn't do front</p> <p>21 flashing, but because of the sunlight coming in</p> <p>22 through the windows, it caused it to darken the</p> <p>23 picture just a little bit, as some of the other</p> <p>24 pictures are a little dark. But that would be</p> <p>25 when I was shooting towards a window.</p>	<p style="text-align: right;">Page 228</p> <p>1 camera, and take the other end and put it into</p> <p>2 your tablet and then download the photos?</p> <p>3 A. Well, the tablet -- That was my old</p> <p>4 operation. When I got the -- when I got the</p> <p>5 Palm-Tech software, the purpose of the program is</p> <p>6 to get the home inspector more hands-free so that</p> <p>7 you don't have to have a camera here and then</p> <p>8 trying to carry a flashlight and camera and look</p> <p>9 at the same thing all at one time, and then report</p> <p>10 and integrate the photographs into the report.</p> <p>11 The new Palm-Tech software was used</p> <p>12 because I'm working in the basement. I see this</p> <p>13 wall. If I have a defect in it, I take the</p> <p>14 picture. It jumps right into the --</p> <p>15 Q. Basement portion of the report?</p> <p>16 A. Right into the basement portion of the</p> <p>17 report. And then I can go back and draw my arrows</p> <p>18 with the -- when I get home.</p> <p>19 Q. Right on screen?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. So then why didn't you get a</p> <p>22 device, you know, either a tablet or whatever it</p> <p>23 was, that would still allow you to be more</p> <p>24 hands-free, but that had a more reliable flash?</p> <p>25 Did you ever consider doing that?</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. So does it have a front flash on it?</p> <p>2 A. That particular camera did, but if there</p> <p>3 is outside light, it wouldn't flash. It was very</p> <p>4 little. Had to be very dark before it would</p> <p>5 flash.</p> <p>6 Q. Okay.</p> <p>7 A. And that's why I would either use the</p> <p>8 sunlight and try to not shoot into it so that I</p> <p>9 didn't get the glare of, like, the window here,</p> <p>10 where it's just all glare, or I would use my</p> <p>11 flashlight to light the areas that I needed to --</p> <p>12 to see being exposed.</p> <p>13 Q. Why not just get a camera with a</p> <p>14 reliable flash?</p> <p>15 A. Well, for the most part, it did what I</p> <p>16 needed it to do. I didn't need it to be</p> <p>17 professional photographs. And also I didn't want</p> <p>18 to have to carry the extra material, and I'd have</p> <p>19 to manually go in and feed the photos into the</p> <p>20 report.</p> <p>21 Q. So you didn't want to -- Basically you</p> <p>22 didn't want the kind of situation that I thought</p> <p>23 you were dealing with when we were talking before.</p> <p>24 You didn't want to take the pictures with one</p> <p>25 camera and then take a plug, put it into that</p>	<p style="text-align: right;">Page 229</p> <p>1 A. I did. At the time that I did, that's</p> <p>2 the only -- the only piece of equipment that was</p> <p>3 available for Palm-Tech was the Motorola Xoom.</p> <p>4 They wrote it for the Motorola.</p> <p>5 Subsequent to that, about a year and a</p> <p>6 half ago, they finally got it so that it was iPad</p> <p>7 compatible. But the first -- the first program,</p> <p>8 the beta program of it, was Motorola Xoom only.</p> <p>9 Q. So tell me the name of your software</p> <p>10 again.</p> <p>11 A. It's Palm-Tech.</p> <p>12 Q. Palm-Tech? Why did you have to use</p> <p>13 Palm-Tech?</p> <p>14 A. I didn't have to, but it was one of the</p> <p>15 best ones that I could find out there. I had been</p> <p>16 using a product where I did, in fact -- I used a</p> <p>17 handheld plus a camera, and the company basically</p> <p>18 didn't keep up with their updates. And so I was</p> <p>19 the only one still left using the program, and</p> <p>20 when I had -- I had an issue with it, and I wound</p> <p>21 up having to handwrite the reports.</p> <p>22 Q. All right.</p> <p>23 A. And so technology switched and so I</p> <p>24 switched to Palm-Tech.</p> <p>25 Q. Now, Palm-Tech is very competitively</p>

<p style="text-align: right;">Page 230</p> <p>1 priced as well relative to other software 2 packages. That's true, isn't it? 3 A. Right, they are. They're not the 4 cheapest, but they're not the most expensive 5 either. 6 Q. They are not the cheapest, but they are 7 definitely -- they are closer to being the 8 cheapest than they are to being the most 9 expensive. 10 A. Right. 11 Q. You would agree with that, wouldn't you? 12 A. Right. 13 Q. So we talked about the tools of the 14 trade, what you bring with you. And then let's 15 do -- 16 A. I will add, if I could, I will add one 17 other piece of equipment that I took with me -- 18 Q. Please. 19 A. -- is a carbon monoxide detector. 20 EXHIBITS: 21 (Deposition Exhibit Number 5 marked for 22 identification.) 23 Q. (BY MR. JOHNSON) I'll show you what 24 we've marked as Exhibit 5. Is this a copy of your 25 home inspection report for [REDACTED] and [REDACTED] Mellem</p>	<p style="text-align: right;">Page 232</p> <p>1 like? 2 A. Yes. 3 Q. Okay. 4 A. The signature can be DocuSign so it 5 doesn't -- didn't download into the program. 6 Q. Understood. So 605, page 1, that's 7 just -- it says Professional Property Inspection 8 up top. Identifies -- You got a picture of the 9 front of the house, the address, prepared for 10 [REDACTED] Mellem, prepared by [REDACTED] Home Inspections, 11 Inc., right? 12 A. Yes. 13 Q. Okay. Turn the page, there's a table of 14 contents, true? 15 A. Yes. 16 Q. And then you go to 607 and up top 17 there's definitions. Do you see that? 18 A. Yes. 19 Q. All right. And you've got four 20 definitions set out here, right? 21 A. Right. 22 Q. You've got A for acceptable, true? 23 A. Yes. 24 Q. NI means not inspected. 25 A. Yes.</p>
<p style="text-align: right;">Page 231</p> <p>1 regarding the [REDACTED] Road property? 2 A. Yes. 3 Q. Now, you can see it starts at -- on the 4 front it's Bates [REDACTED] 605. Do you see that? 5 A. Yes. 6 Q. And the very last page is [REDACTED] 631? 7 A. Yes. 8 Q. All right. And so obviously you 9 produced this version or this copy of the home 10 inspection report. 11 The only question I had, there isn't -- 12 If you go to 611 -- 13 A. Yes. 14 Q. -- there's the room for signature and 15 inspection date, and these are -- these are blank, 16 and I'm assuming that's just the way it printed 17 and that's the only difference between -- 18 A. Yes. 19 Q. You gotta wait for me. 20 A. I'm sorry. 21 Q. You're fine. Is the fact that there's 22 no signature and inspection date on this report -- 23 that's the only difference between what you 24 produced to us and what I've handed you as 25 Exhibit 5 and what the original report looked</p>	<p style="text-align: right;">Page 233</p> <p>1 Q. D means defects noted. 2 A. Yes. 3 Q. And S means safety hazard. 4 A. Yes. 5 Q. All right. How many times -- Well, 6 strike that. We'll go through the definitions 7 first. 8 So the definition of acceptable, when 9 you grade something as an A, meaning acceptable, 10 that means that it was functional with no obvious 11 signs of defect, meaning that we did not observe 12 conditions that would lead us to believe problems 13 existed with this component or system. The item, 14 though, may, however, show signs of wear and tear. 15 Did I read that correctly? 16 A. Yes. 17 Q. All right. The next definition, NI, not 18 inspected. Do you see that? 19 A. Yes. 20 Q. And if you grade something as NI, not 21 inspected, that means, Item was unable to be 22 inspected for safety reasons or due to lack of 23 power, inaccessible or disconnected at time of 24 inspection. 25 Did I read that correctly?</p>

<p style="text-align: right;">Page 234</p> <p>1 A. Yes.</p> <p>2 Q. Do you know how many times you graded</p> <p>3 things NI in this report, not inspected?</p> <p>4 A. I don't believe I have that in there.</p> <p>5 Q. You don't believe that you graded --</p> <p>6 A. No.</p> <p>7 Q. -- anything as NI?</p> <p>8 A. Right.</p> <p>9 Q. Do you know that for certain or do you</p> <p>10 need to look through the report?</p> <p>11 A. I'm pretty sure that I didn't.</p> <p>12 Q. Okay. So for every item that you</p> <p>13 inspected, you never once graded anything as NI,</p> <p>14 not inspected, true?</p> <p>15 A. I believe so.</p> <p>16 Q. So according to the report, there was</p> <p>17 nothing graded that would tell the Mellemes that</p> <p>18 there was an item that was unable to be inspected</p> <p>19 for safety reasons or due to lack of power,</p> <p>20 inaccessible or disconnected at the time of</p> <p>21 inspection, true?</p> <p>22 A. True.</p> <p>23 Q. I'm sorry?</p> <p>24 A. Yes.</p> <p>25 Q. Thank you. So -- Actually on the same</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. All right. So you've got, Others</p> <p>2 present, seller and buyers' agent, right?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have an independent memory of</p> <p>5 this particular inspection, Mr. [REDACTED], or are you</p> <p>6 relying upon your report and photographs to</p> <p>7 refresh your memory?</p> <p>8 A. Some of both. The seller was present</p> <p>9 when I was there, and she left. And the buyers'</p> <p>10 agent came at the end.</p> <p>11 Q. All right. Do you remember the</p> <p>12 inspection itself?</p> <p>13 A. Parts of it. There's parts of it that</p> <p>14 kind of stood out, but mostly, no, it just</p> <p>15 refreshes my memory going through the photographs.</p> <p>16 Q. Okay. So without looking at the</p> <p>17 photographs or the report, what would stand out in</p> <p>18 your mind?</p> <p>19 What was significant enough about this</p> <p>20 inspection that stayed with you?</p> <p>21 A. I guess I remember the house. I</p> <p>22 remember the trees around it. You know, nothing</p> <p>23 specific that -- it wasn't anything that -- you</p> <p>24 know, sometimes there's something that was</p> <p>25 glaringly wrong with the property that you're</p>
<p style="text-align: right;">Page 235</p> <p>1 page, I'm sorry, 607, if you look at the bottom</p> <p>2 here you note conditions. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And you've estimated the age of the</p> <p>5 property at 31 to 35 years.</p> <p>6 A. Yes.</p> <p>7 Q. How do you do that when you're</p> <p>8 estimating property age? What do you use?</p> <p>9 A. It -- If I don't have the information</p> <p>10 from the Realtor or whatever, I usually look for</p> <p>11 signs of the oldest stamped construction material</p> <p>12 that I can find in there, whatever.</p> <p>13 Q. All right.</p> <p>14 A. And/or in some cases there will be an</p> <p>15 inspection tag on something still left, so --</p> <p>16 Q. All right. I'm assuming you don't have</p> <p>17 a memory of what it was you looked at specifically</p> <p>18 in determining age?</p> <p>19 A. No. It would have been one of those</p> <p>20 guesses.</p> <p>21 Q. You would not have -- you wouldn't have</p> <p>22 guessed at the age. That would have been an</p> <p>23 informed decision by you regarding age based on</p> <p>24 what you found inside the house.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 237</p> <p>1 going, oh, my goodness, or whatever, and they'll</p> <p>2 stick to your mind. But nothing --</p> <p>3 And just -- I guess to me the thing that</p> <p>4 probably stuck out, and even as I'm reminded, was</p> <p>5 just the fact that when -- when I walked in the</p> <p>6 door and you see the basement's unfinished and you</p> <p>7 know the house was 30 years or more old and it</p> <p>8 would have been finished, you're going what's</p> <p>9 wrong here? I remember some of the conversation</p> <p>10 that I had with the seller.</p> <p>11 Q. All right. Who do you remember having a</p> <p>12 discussion with? Was it Wendy [REDACTED], [REDACTED] [REDACTED]?</p> <p>13 A. It was Wendy.</p> <p>14 Q. Wendy.</p> <p>15 A. Yes.</p> <p>16 Q. Did you know Wendy before?</p> <p>17 A. No.</p> <p>18 MR. JOHNSON: Can we mark this as 6</p> <p>19 please.</p> <p>20 EXHIBITS:</p> <p>21 (Deposition Exhibit Number 6 marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. JOHNSON) Mr. [REDACTED], I'll hand</p> <p>24 you what we marked as Exhibit 6. Have you seen</p> <p>25 this document before?</p>

<p style="text-align: right;">Page 238</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What is this document?</p> <p>3 A. It was a brief recall from Wendy of what</p> <p>4 the conversation was that I had with her.</p> <p>5 Q. And you've read this document before?</p> <p>6 A. Yes.</p> <p>7 Q. Is there -- Sorry. I'll stop moving my</p> <p>8 papers around before I say anything really</p> <p>9 riveting.</p> <p>10 Anything about this statement that we've</p> <p>11 marked as Exhibit 6 that you disagree with?</p> <p>12 A. (Witness reviews document.) No, that</p> <p>13 looks like it.</p> <p>14 Q. So just going through it very briefly,</p> <p>15 the third point down, We had a brief but friendly</p> <p>16 conversation in the stairwell.</p> <p>17 Is that what you recall?</p> <p>18 A. Yes.</p> <p>19 Q. Just immediately right inside the house?</p> <p>20 A. Yes.</p> <p>21 Q. And then she talks about some of your</p> <p>22 conversations about The Ranch Club. Do you</p> <p>23 remember that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. "Yes"?</p>	<p style="text-align: right;">Page 240</p> <p>1 like that?</p> <p>2 A. No, no. Just that they -- She said in</p> <p>3 the next statement that they had to totally strip</p> <p>4 everything out. The basement had been fully</p> <p>5 finished before that and that they had to strip</p> <p>6 everything.</p> <p>7 Q. All right. So the statement here, I</p> <p>8 think it was mentioned then that the owners before</p> <p>9 us had a garbage disposal problem that cracked a</p> <p>10 pipe in the basement bathroom, do you remember her</p> <p>11 indicating that it had cracked a pipe in the</p> <p>12 basement bathroom?</p> <p>13 A. No. Just that there had been a big</p> <p>14 break because of the situation.</p> <p>15 Q. Okay. So you don't remember her telling</p> <p>16 you that it was -- that the plumbing problem had</p> <p>17 been localized or what cracked or broke had been</p> <p>18 in the bathroom?</p> <p>19 A. Not specifically, no.</p> <p>20 Q. All right. So what you knew was, from</p> <p>21 your discussion with her, they had had a big water</p> <p>22 problem because of a broken pipe.</p> <p>23 A. Yes.</p> <p>24 Q. All right. And then her next statement</p> <p>25 here, I remember telling him that we bought the</p>
<p style="text-align: right;">Page 239</p> <p>1 A. Yes, I do. Yes.</p> <p>2 Q. And then Ms. [REDACTED] has the statement</p> <p>3 here, I think it was mentioned then that the</p> <p>4 owners before us had a garbage disposal problem</p> <p>5 that cracked a pipe in the basement bathroom.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And is that correct?</p> <p>9 A. Yes. Although I'm not sure that -- She</p> <p>10 said there was a problem with the plumbing under</p> <p>11 the sink in the kitchen, whether it was the</p> <p>12 garbage disposal or what, but they relayed that --</p> <p>13 or she relayed that was the product -- or the</p> <p>14 problem for what had been this massive water</p> <p>15 intrusion into the thing came from the sink, under</p> <p>16 the kitchen sink.</p> <p>17 Q. So a massive water intrusion into the</p> <p>18 basement from under the kitchen sink?</p> <p>19 A. Yes.</p> <p>20 Q. And you believed at the time it had been</p> <p>21 a massive water intrusion, based on what she told</p> <p>22 you?</p> <p>23 A. Based on what she told me, yes.</p> <p>24 Q. Did she describe for you the amount of</p> <p>25 water that had been in the basement or anything</p>	<p style="text-align: right;">Page 241</p> <p>1 house with a fully finished basement and then we</p> <p>2 had to [REDACTED]ly unfinish and remediate it</p> <p>3 because before we moved in, mold was found in the</p> <p>4 attic when the radon was mitigated, which led to</p> <p>5 the mold that was found in the basement and then</p> <p>6 the basement being deemed unlivable shortly after</p> <p>7 we moved in.</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Does that square with your memory of the</p> <p>11 conversation?</p> <p>12 A. Pretty much. I think that she -- I</p> <p>13 don't know that she gave me that the mold was</p> <p>14 found in the attic first or mold was found in the</p> <p>15 basement first, but that there was mold found and</p> <p>16 that they wound up tearing the basement apart and</p> <p>17 having remediation done to the attic.</p> <p>18 Q. Okay. Now, Ms. [REDACTED], she then left</p> <p>19 after the conversation?</p> <p>20 A. Yes.</p> <p>21 Q. And to the best of your knowledge, the</p> <p>22 [REDACTED]s didn't insist on being there for the</p> <p>23 inspection, right?</p> <p>24 A. Right, right.</p> <p>25 Q. And it sounds to me as though the</p>

<p style="text-align: right;">Page 242</p> <p>1 buyers' Realtor showed up at the end of the 2 inspection. 3 A. Yes. 4 Q. But you were the only person at [REDACTED] 5 [REDACTED] when you conducted your inspection. 6 A. Yes. 7 Q. And so, you know, barring locked doors 8 or things of that nature, you were free to go 9 anywhere you wanted in the house. 10 A. Right. 11 Q. And conduct whatever inspection you 12 deemed necessary in order to do a competent 13 ASHI-compliant home inspection. 14 A. Yes. 15 Q. There were no limitations placed on you 16 by any other people regarding what you could or 17 could not look at. 18 A. No, there were not. 19 Q. (Indicating he didn't hear.) 20 A. No, there were not. 21 Q. So you are agreeing with me. 22 A. Right. 23 Q. Thank you. 24 Back to Exhibit 2, if you would, please 25 and you see this is a -- The first page of</p>	<p style="text-align: right;">Page 244</p> <p>1 walls and ceilings, stripped the flooring 2 materials, but didn't have the money to refinish 3 the basement. 4 A. Yes. 5 Q. And that's what she told you as well. 6 A. Yes. 7 Q. And so when you were -- when you arrived 8 to inspect the basement, it had been stripped of 9 the Sheetrock and the floor coverings, right? 10 A. Right. Well, there were some -- I have 11 to amend that. There were some carpet remnants 12 and stuff left on the floor in the main room. 13 Q. All right. Fair enough. 14 A. Under furniture, so -- 15 Q. But as far as the permanently affixed 16 carpeting, tacked down, glued down on a pad, that 17 was gone. 18 A. Yes. 19 Q. And the Sheetrock was gone as well. 20 A. Yes. 21 Q. And that process that she described to 22 you remediating the water problem and then, you 23 know, getting rid of the Sheetrock and all that 24 stuff, that actually had occurred before you 25 arrived.</p>
<p style="text-align: right;">Page 243</p> <p>1 Exhibit 2 is Bates [REDACTED] 686? 2 A. Yes. 3 Q. Okay. And this is the email that you 4 sent to claims on Monday, September 16th, 2013 at 5 1:03 p.m. 6 A. Yes. 7 Q. All right. If you look at number 4, do 8 you see that? 9 A. Yes. 10 Q. You indicate, As of right now, I don't 11 know what the details of the claim are, so I 12 cannot comment at the time on what the issues 13 were. I am going to guess that they are going to 14 try to file on a moisture in the basement issue. 15 Have I read it correctly so far? 16 A. Yes. 17 Q. All right. The current owner had 18 stripped all the walls in the basement after they 19 purchased the property several years ago as the 20 previous owner had a plumbing leak in the 21 basement. 22 And that's what Wendy [REDACTED] told you. 23 A. Yes. 24 Q. All right. The current owner disclosed 25 to me that they stripped the Sheetrock on all the</p>	<p style="text-align: right;">Page 245</p> <p>1 A. Yes. 2 Q. And so there wasn't like an active 3 construction process going on at the time of your 4 inspection, true? 5 A. No, there was not active. 6 Q. You agree with me that there was no 7 active construction process at the time of your 8 inspection? 9 A. Yes. 10 Q. And it wasn't in a state of -- You know, 11 there weren't people actually building things or 12 tearing things down at the time of your 13 inspection, true? 14 A. True. They had been working on the 15 bathroom, though. I think I wrote that in there 16 one of the places. Or I mean the laundry room, 17 I'm sorry. The laundry room. 18 Q. Okay. 19 A. They were working on that. 20 Q. Okay. They actually put some Sheetrock 21 back up in the laundry room. 22 A. Yes. 23 Q. All right. So excluding the laundry 24 room, the rest of the basement, I know there was 25 some insulation --</p>

<p style="text-align: right;">Page 246</p> <p>1 A. And the bathroom -- or bedroom too, what 2 they called the bedroom in the corner. 3 Q. All right. 4 A. Everything else was right. 5 Q. So you've got the laundry room, or the 6 mud room area, if you will. 7 A. Right. 8 Q. Has some Sheetrock in it. 9 A. Right. 10 Q. And then there's a bedroom in the 11 basement that had finished walls and carpet. 12 A. Yes. 13 Q. And then there's also some batt 14 insulation against one of the walls? 15 A. Yes. Back against the bedroom wall. 16 Q. Okay. Other than that, the walls have 17 been stripped down. 18 A. Yes. 19 Q. All right. And, you know, you're not 20 seeing the workmen there or people with tools or 21 anything like that, right? 22 A. Right. 23 Q. And there's nothing during the course of 24 your inspection that leads you to believe that the 25 remediation is ongoing. It's already been</p>	<p style="text-align: right;">Page 248</p> <p>1 conversation would have been -- 2 A. That was in my email to -- when I sent 3 the report in. 4 Q. Okay. Do you remember, incidentally, 5 [REDACTED] trying to set up a time to speak with you by 6 phone? 7 A. I did, and I did not remember receiving 8 a call back. I sent my contact information, and I 9 was in the office that whole night and don't 10 remember receiving a call at all. 11 Q. If you had received a call, it would 12 certainly be standard of practice, standard of 13 care to return the call? 14 A. Yes, yes. 15 Q. Had you emailed back and forth to set 16 the call up? 17 A. She had emailed me asking when I would 18 be around, and I did. And then she emailed me to 19 get my number that I could be best reached at. 20 Q. And then she just never called? 21 A. I didn't receive a call that -- 22 Q. Okay. And so then you have, I noted 23 this in my report and told the client that the 24 refinishing of the basement was going to be a very 25 big job. Right?</p>
<p style="text-align: right;">Page 247</p> <p>1 [REDACTED]d, true? 2 A. Right. Up -- up to the point that she 3 said that they didn't have the money to go any 4 further. 5 Q. Right. Yeah. They actually couldn't 6 afford to do anything more than -- 7 A. Right. 8 Q. -- had actually happened already. 9 A. Exactly, yes. 10 Q. Okay. So back to Exhibit 1 -- I'm 11 sorry, 2, my fault, right where we were, so we 12 just covered the sentence, The current owner 13 disclosed to me that they stripped the Sheetrock 14 on all the walls and ceilings, stripped the 15 flooring materials, but didn't have the money to 16 refinish the basement. Right? 17 A. Right. 18 Q. And then your next statement here is, I 19 noted this in my report and told the client that 20 the refinishing of the basement was going to be a 21 very big job. 22 Do you see that? 23 A. Yes. 24 Q. Okay. Is that something -- When you say 25 you told the client, what communication or</p>	<p style="text-align: right;">Page 249</p> <p>1 A. Yes. 2 Q. Why was refinishing the basement going 3 to be a very big job? 4 A. Well, just because of the state that it 5 was in. I mean, all the walls were gone, all the 6 flooring was gone, the fireplace was in sad shape, 7 the bathroom was pretty much gutted and gone, and 8 the work that had been done in the laundry room 9 was very amateurish, and they just kind of 10 scrapped Sheetrock together. 11 Q. Amateurish work in the laundry? 12 A. Yes. And I had a couple of pictures of 13 that with just kind of pieces stuck here and there 14 on the one area. 15 Q. So very poor craftsmanship? 16 A. Poor craftsmanship. That would probably 17 better describe it than amateurish. Poor 18 craftsmanship. 19 Q. A bad job? 20 A. Yes. 21 Q. Okay. So what you just described to me 22 is -- 23 A. And then the wall had been removed 24 alongside the stairway going up to the first 25 landing there, and so there was -- there was a lot</p>

<p style="text-align: right;">Page 250</p> <p>1 of work that needed to be done.</p> <p>2 Q. It's a large basement space.</p> <p>3 A. It's a large basement, yes.</p> <p>4 Q. That is mostly unfinished.</p> <p>5 A. Yes.</p> <p>6 Q. And so anytime you intend to finish a</p> <p>7 large unfinished basement space, that's going to</p> <p>8 be a big job, isn't it?</p> <p>9 A. Yes.</p> <p>10 Q. So other than the fact that this was a</p> <p>11 large basement space that wasn't finished, what</p> <p>12 would make it a challenging thing to finish?</p> <p>13 I mean, I know it's big job.</p> <p>14 A. Just a big job. Just because of the</p> <p>15 state that it was in. In fact, everything had</p> <p>16 been all torn up, torn apart.</p> <p>17 Q. Well, when you say everything's been</p> <p>18 torn apart, it basically returned the basement</p> <p>19 area to just an unfinished state, right?</p> <p>20 A. Yes.</p> <p>21 Q. And so it would be very similar to</p> <p>22 taking a basement area that had never been</p> <p>23 finished and then finishing it.</p> <p>24 A. Right.</p> <p>25 Q. All right. And that's what you mean by</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. So what we've got is a thirty-year-old</p> <p>2 home with an unfinished basement, right?</p> <p>3 A. Right.</p> <p>4 Q. And that equals big job, right?</p> <p>5 A. Right.</p> <p>6 Q. Okay. But that's -- When we're talking</p> <p>7 about why you described it as being potentially a</p> <p>8 big job, we've now exhausted the reasons</p> <p>9 underlying your statement, right?</p> <p>10 A. Right.</p> <p>11 Q. You mentioned electrical and that there</p> <p>12 were some electrical upgrades that needed to be</p> <p>13 made.</p> <p>14 A. Yes.</p> <p>15 Q. But when you say I told her it was going</p> <p>16 to be a big job, that doesn't communicate anything</p> <p>17 other than it's going to be a big job, right?</p> <p>18 A. Correct.</p> <p>19 Q. You're not communicating specific</p> <p>20 defects, right?</p> <p>21 A. Right.</p> <p>22 Q. You're not saying, oh, I found this</p> <p>23 defect that's going to make it a big job.</p> <p>24 A. Right.</p> <p>25 Q. You're saying because it's an unfinished</p>
<p style="text-align: right;">Page 251</p> <p>1 it would be a big job.</p> <p>2 A. Right.</p> <p>3 Q. All right.</p> <p>4 A. And I guess the impetus behind that is</p> <p>5 the fact that you walk in on the landing and you</p> <p>6 look straight ahead and what do you see? A big</p> <p>7 unfinished basement right in front of you. So</p> <p>8 that was, you know, just kind of my thoughts on</p> <p>9 that, is that, you know, not -- not many people,</p> <p>10 whether they're new homeowners or old homeowners</p> <p>11 are going to want to walk in and see the</p> <p>12 unfinished basement right in front of their face.</p> <p>13 Q. Sure. But the reason why you were</p> <p>14 saying it was a big job wasn't because of a</p> <p>15 particular defect or series of defects you found</p> <p>16 in the basement, right?</p> <p>17 A. Well, it was just the general condition</p> <p>18 of the property at that time, in the basement, of</p> <p>19 its state.</p> <p>20 Q. Right.</p> <p>21 A. And then also incorporating the fact</p> <p>22 that there needed to be quite a bit of electrical</p> <p>23 work done as well, which I noted in the electrical</p> <p>24 section. We were going to need to have some</p> <p>25 electrical work done as well, so --</p>	<p style="text-align: right;">Page 253</p> <p>1 basement, it's going to be a big job.</p> <p>2 A. Right. And the fact that it's a large</p> <p>3 area.</p> <p>4 Q. And it's not even that the basement was</p> <p>5 in a state of disrepair. It's just that the</p> <p>6 basement was in a state of being unfinished,</p> <p>7 right?</p> <p>8 A. Right, exactly.</p> <p>9 Q. So you knew that there had been a</p> <p>10 plumbing leak, but you didn't know exactly what</p> <p>11 kind of leak.</p> <p>12 A. Right.</p> <p>13 Q. And you didn't know exactly where.</p> <p>14 A. Right.</p> <p>15 Q. And you didn't know what kind of line.</p> <p>16 A. Right.</p> <p>17 Q. So it could have been a water line, it</p> <p>18 could have been a wastewater line, could have been</p> <p>19 a garbage disposal, whatever.</p> <p>20 A. Right.</p> <p>21 Q. Any of those would be possibilities.</p> <p>22 A. Correct.</p> <p>23 Q. Now, you take information -- You know,</p> <p>24 I'm sure there are probably times when you've seen</p> <p>25 the seller's disclosure statement before you</p>

<p style="text-align: right;">Page 254</p> <p>1 inspect a home. 2 A. Sometimes, yes. 3 Q. Sometimes. And sometimes you run into 4 an owner, like you did with Wendy [REDACTED], and Wendy 5 will provide, you know, a thumbnail sketch, some 6 background for the property. 7 A. Right. 8 Q. You don't use that information, though, 9 to then limit your inspection of the property, do 10 you? 11 A. No. Sorry. It's just -- If I get 12 information like that, I just report it on to the 13 client to know, you know, maybe there is something 14 here that hasn't been disclosed. Disclosure in 15 Montana -- or in Missoula is not the best. 16 Q. So when you receive information from 17 Wendy [REDACTED] in this case, We had a plumbing 18 problem and we went ahead and took out the floor 19 coverings and the Sheetrock in the basement -- 20 right? 21 A. Right. 22 Q. Okay. -- you're not using that 23 information to limit your inspection in any way. 24 A. No. 25 Q. If anything, it might cause you to look</p>	<p style="text-align: right;">Page 256</p> <p>1 you know, you've got basically two types of water 2 in a basement, right? 3 You've got the water that comes from 4 outside the house to inside the house, right? 5 A. Right. 6 Q. And then you've got the water that is in 7 the basement because of an inside water source, 8 right? 9 A. Right. 10 Q. And we can talk about condensation and 11 stuff like that, but basically when we're talking 12 about big-time water problems, the water from the 13 basement is going to come from outside or it's 14 going to come from the inside, typically in the 15 form of a plumbing leak, right? 16 A. Right. 17 Q. And just because a basement has had a 18 plumbing leak, that has nothing to do with whether 19 the basement has also experienced outside-in water 20 over time. 21 A. That's correct. Yeah, that would be 22 right. 23 Q. True? 24 A. True, yeah. 25 Q. And so when you find out that a basement</p>
<p style="text-align: right;">Page 255</p> <p>1 more closely when you're down in the basement. 2 A. Yes. 3 Q. All right. But as far as, you know, 4 receiving information regarding a plumbing leak, I 5 guess to put it in the most general of terms, that 6 doesn't give you a pass on then completing an 7 ASHI-compliant and home-Inspection-Trade-Practices- 8 Act-compliant inspection of the home. 9 A. No, it doesn't. 10 Q. Okay. And just because you found out 11 that there is a plumbing leak down there, that 12 doesn't mean that you get a pass on the basement. 13 A. That's right. 14 Q. You still need to be thorough, 15 thoughtful and careful, true? 16 A. Right. 17 Q. And you still need to conduct your 18 inspection in compliance with the ASHI standards 19 of practice? 20 A. Yes. 21 Q. And you still need to conduct your 22 inspection in compliance with the Home Inspection 23 Trade Practices Act. 24 A. Yes. 25 Q. And we talked about this earlier, but,</p>	<p style="text-align: right;">Page 257</p> <p>1 has had a plumbing leak, that still means that you 2 need to be thoughtfully inspecting the basement 3 for evidence of prior water intrusions from the 4 outside to the extent they're visible during your 5 inspection. 6 A. If they're visible during inspection, 7 yes. 8 Q. And the only way you know if they're 9 visible is if you look. 10 A. Yes. 11 Q. And, you know, for example, if you were 12 to -- if you were to go ahead and say, oh, okay, 13 if they've had a plumbing leak, I really don't 14 need to take a good look at the foundation walls, 15 for example, there are a whole bunch of things 16 that foundation walls can tell you, right? 17 A. Right. 18 Q. You can see large cracks in foundation 19 walls. That can be caused by outside water. 20 A. Cracks? 21 Q. Yeah. 22 A. Possible, I suppose. 23 Q. Possibly. It's within the constellation 24 of possibilities, right? 25 A. Uh-huh.</p>

<p style="text-align: right;">Page 258</p> <p>1 Q. "Yes"?</p> <p>2 A. Yes.</p> <p>3 Q. You could have degradation of concrete</p> <p>4 from water?</p> <p>5 A. Yes.</p> <p>6 Q. You could have staining from water?</p> <p>7 A. Yes.</p> <p>8 Q. Efflorescence from water?</p> <p>9 A. Yes.</p> <p>10 Q. What is efflorescence?</p> <p>11 A. Efflorescence is the salt that is</p> <p>12 deposited on inside basement walls when there is</p> <p>13 some moisture movement from the concrete out, and</p> <p>14 it can happen during the drying process or if</p> <p>15 there's an excess moisture issue.</p> <p>16 But it typically is just a white powdery</p> <p>17 substance. It has no structural degradation of</p> <p>18 the concrete. It's just water moving through</p> <p>19 pulls out these excess salts that are inside the</p> <p>20 lime, in the lime of the concrete.</p> <p>21 Q. You know, ordinarily it's not a sign of</p> <p>22 structural compromise, but it can be, can't it?</p> <p>23 A. I suppose if it was highly excessive.</p> <p>24 Most of the times that I've seen it and talked to</p> <p>25 concrete people, they say it's not a structural</p>	<p style="text-align: right;">Page 260</p> <p>1 moisture penetration, although it does not tell a</p> <p>2 great deal about the area of problem, right?</p> <p>3 A. Right.</p> <p>4 Q. Okay. And so what you're looking at is,</p> <p>5 when you see efflorescence on a foundation wall,</p> <p>6 that tells you there's been moisture penetration</p> <p>7 of the foundation wall, right?</p> <p>8 A. At some level. It could have been</p> <p>9 drying of concrete. It could have been the</p> <p>10 concrete got wet when it was still sitting there</p> <p>11 and they didn't have the lid on it, before they --</p> <p>12 before they finished it.</p> <p>13 Q. It could be any number of things.</p> <p>14 A. It could be any number of reasons.</p> <p>15 Q. Right. It would also include the</p> <p>16 possibility that water has been -- outside water</p> <p>17 has been up against and through that foundation</p> <p>18 wall many times --</p> <p>19 A. Right.</p> <p>20 Q. -- over the course of many years.</p> <p>21 A. Right.</p> <p>22 Q. That's within the possibilities as well?</p> <p>23 A. It is.</p> <p>24 Q. And when you see efflorescence, you</p> <p>25 don't know whether that efflorescence was caused</p>
<p style="text-align: right;">Page 259</p> <p>1 issue at all.</p> <p>2 Q. So the presence of efflorescence</p> <p>3 indicates moisture penetration of the foundation</p> <p>4 walls.</p> <p>5 A. Yes.</p> <p>6 Q. And that would be moisture penetration</p> <p>7 from the outside.</p> <p>8 A. It could be outside. It could be</p> <p>9 inside.</p> <p>10 Q. Have you ever seen efflorescence caused</p> <p>11 by an inside water problem?</p> <p>12 A. Yes.</p> <p>13 Q. When?</p> <p>14 A. I had a concrete block foundation that</p> <p>15 had efflorescence that was caused by the drying</p> <p>16 process of the concrete. And I've seen --</p> <p>17 Typically efflorescence is in most basements at</p> <p>18 some time.</p> <p>19 Q. It is?</p> <p>20 A. Yes. It's very common. I have it in my</p> <p>21 basement, eight years old. I have seen it in new</p> <p>22 construction up in Expressway houses that are one</p> <p>23 year old and without having any other moisture</p> <p>24 issues.</p> <p>25 Q. The presence of efflorescence indicates</p>	<p style="text-align: right;">Page 261</p> <p>1 by drying, true?</p> <p>2 A. Right.</p> <p>3 Q. Or whether it's caused by inside or</p> <p>4 outside water.</p> <p>5 A. Right.</p> <p>6 Q. Whether it's caused by a one-time event.</p> <p>7 A. Right.</p> <p>8 Q. Caused by a two-time event?</p> <p>9 A. Right.</p> <p>10 Q. Or if it's been caused by 30 different</p> <p>11 moisture penetrations over the course of a</p> <p>12 35-year-old foundation wall, right?</p> <p>13 A. Right.</p> <p>14 Q. You can only see the evidence what you</p> <p>15 see, which is the salt staining, the</p> <p>16 efflorescence, right?</p> <p>17 A. Right.</p> <p>18 Q. And so it's certainly potentially a</p> <p>19 symptom of a very significant problem, right?</p> <p>20 A. It could be.</p> <p>21 Q. It could be.</p> <p>22 A. Could be.</p> <p>23 Q. And what we discussed earlier when we</p> <p>24 were talking about what your role is, your job is</p> <p>25 not to come down with some sort of technical or</p>

<p style="text-align: right;">Page 262</p> <p>1 scientific cause or to identify the scope of a 2 problem, right? 3 A. Right. 4 Q. Your job is to identify items that are 5 potentially cause for concern that could be 6 evidence of significant defects or problems, 7 right? 8 A. Right. 9 Q. And then to report them to the buyers so 10 they can make an informed decision. 11 A. Right. 12 Q. So in the case of efflorescence, you 13 don't know whether it's a one-time event or 14 whether these buyers are looking at a house that's 15 had water through the walls 40 times, right? 16 A. Right. 17 Q. So what you do in that situation -- and 18 you tell me if you disagree -- standard of care in 19 that situation is to identify that you have found 20 efflorescence, indicate that it is evidence -- 21 potential evidence of moisture penetration and 22 call it out to the buyer. 23 A. I suppose that would be true. I 24 don't -- The home inspector is not going to report 25 efflorescence in every basement.</p>	<p style="text-align: right;">Page 264</p> <p>1 If there's efflorescence on the 2 foundation walls that indicate a potentially 3 significant moisture problem, wouldn't you agree 4 with me that it's something that those buyers 5 should be informed about? 6 A. Yes. 7 Q. And if you see efflorescence as the home 8 inspector, then the responsibility to inform them 9 about it falls to you, true? 10 A. Yes. 11 Q. Did you see efflorescence on these 12 foundation walls when you were conducting your 13 inspection? 14 A. Not that I could really identify as 15 being what it was. 16 Q. What do you mean? 17 A. Well, efflorescence is -- Typically when 18 you see efflorescence, it's more than just a 19 staining. It's a powdery substance that's on the 20 wall that comes off when you wipe it off with your 21 fingers or with a brush or whatever, and I didn't 22 notice any of that. 23 If there was a white staining on there, 24 it would have been hard to differentiate between 25 what was there and what was the white glue, or</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. We talked about the fact that 2 efflorescence can be a symptom of a very 3 significant problem, right? 4 A. It can be. 5 Q. Yes. And do you expect laypeople to 6 understand what efflorescence is? 7 A. No. 8 Q. You understand what efflorescence is. 9 A. Mostly, but not fully because I don't 10 understand why it happens in some places and some 11 places it doesn't. 12 Q. But you do understand that it is a sign, 13 potentially, of a very serious problem. 14 A. I wouldn't say that it's a sign of a 15 serious problem always. 16 Q. I didn't ask you if it was always. What 17 I'm asking you is if it's potentially a sign of a 18 very serious problem. 19 A. It potentially could be. 20 Q. Sure. It's within the constellation of 21 possibilities, right? 22 A. Right. 23 Q. It's the kind of thing that a young 24 family with two kids buying a house should know; 25 wouldn't you agree?</p>	<p style="text-align: right;">Page 265</p> <p>1 whatever the other white substance all over the 2 wall was, in that particular house. 3 Q. Let's go back to really quickly a few of 4 those photos we looked at previously. Let's start 5 at 35, which is where you're at now. 6 So when you talk about the white glue or 7 the white substance -- 8 A. Yes. 9 Q. -- in photograph 35, are you talking 10 about these -- 11 A. The white patches all over the walls. 12 Q. Okay. The small circular white patches? 13 A. That are approximately anywhere from 14 three inches to eight inches. 15 Q. Anywhere from the size of a teacup 16 saucer to a small dinner plate. 17 A. Right, right. 18 Q. That's what you're talking about? 19 A. Right. And in some places they were 20 pretty smeared. 21 Q. Pretty smeared, okay. 22 A. So to differentiate between that and 23 what may have been efflorescence wasn't something 24 that I noticed as being excessive. 25 Q. So do you remember looking at these</p>

<p style="text-align: right;">Page 266</p> <p>1 foundation walls during this inspection and 2 wondering, is that efflorescence that I'm seeing? 3 A. Not when it was consistently in globs 4 all the way around the interiors of the walls. 5 Q. What about the portions of the walls 6 that didn't have the white circles on them? 7 A. I don't remember seeing anything that 8 would have given me the indication that it would 9 have been efflorescence or excessive 10 efflorescence. 11 Q. Well, we talked about the fact that 12 efflorescence can mean you've got a small problem, 13 no problem or a very significant problem, right? 14 A. Right. 15 Q. So when you say significant 16 efflorescence or a lot of efflorescence, I mean, 17 what's the threshold? 18 When does it become evidence of a 19 serious issue or evidence of a less serious issue? 20 A. Well, where I see examples of excessive 21 efflorescence has been in houses that have had wet 22 basements, and we're talking efflorescence that's 23 anywhere up to a half-inch thick. 24 And in places where the concrete is just 25 dry, it could be just a small powder on the</p>	<p style="text-align: right;">Page 268</p> <p>1 efflorescence. 2 Q. Never in your career? 3 A. Well, no. I'm sorry. I'm sorry. I did 4 the one, the block one, because that was -- 5 Definitely the sprinklers were causing the 6 moisture situation in the blocks, and it was more 7 than efflorescence; it was rusting and everything 8 else on the inside of the wall. And that was 9 probably the most significant case that I had with 10 efflorescence. 11 Q. All the photos that you've seen taken of 12 the foundation walls in this case -- your 13 inspection photos, your reinspection photos, the 14 photos that we've supplied -- is there 15 efflorescence on these foundation walls at the 16 [REDACTED] property? 17 A. Do you have the reinspect photos 18 available? 19 MR. JOHNSON: Let me mark this as 7. 20 EXHIBITS: 21 (Deposition Exhibit Number 7 marked for 22 identification.) 23 Q. (BY MR. JOHNSON) Mr. [REDACTED], I'll hand 24 you what we've marked as Exhibit 7. This is a 25 [REDACTED] copy of your reinspection photos that we</p>
<p style="text-align: right;">Page 267</p> <p>1 outside of the wall, which happened during the 2 drying process. And so -- And anything in 3 between. 4 I mean, I've had houses that -- in the 5 University area that had hundred-year-old 6 foundations that were plaster and rock, and it 7 looks like some ghost had gone in the whole 8 basement, and obviously it's because the rocks had 9 leaked water and didn't have -- it wasn't a good 10 seal on the concrete. 11 So anywhere between just a small part of 12 the substance all the way up to, you know, massive 13 formation, you know, basically stalactites. I've 14 had stalactites in some houses with stuff. And 15 those are areas that, do I report it because the 16 efflorescence is there? No, because the 17 efflorescence showed me that I'm looking at it, 18 and there's pocking of the concrete and everything 19 else that's going on with it that would have led 20 to being a much more significant moisture issue 21 than having a wall that has just got powder on it. 22 So that's kind of what my standard is on that. 23 Q. I'm sorry. What is your standard on it 24 when reporting efflorescence? Do you report it? 25 A. I never called out a basement because of</p>	<p style="text-align: right;">Page 269</p> <p>1 took in early October of 2013. 2 A. (Witness reviews document.) 3 The only one that I might find 4 potentially having it would be photo 36. 5 Q. (BY MR. JOHNSON) That's the one I'm 6 looking at. Where do you see it? 7 A. Well, it could be that half-moon shape 8 line across the -- between the -- right through 9 this section here (indicating). 10 Q. So that could be efflorescence on the 11 left concrete panel as we're looking at the 12 photos? 13 A. Yes. 14 Q. Reinspect photos 36? 15 A. Yes. 16 Q. What about the right panel? You can see 17 that it's discolored and it's got a white 18 substance particularly on the top half of that 19 concrete panel. Do you see that? 20 A. Yes. 21 Q. That could be efflorescence, couldn't 22 it? 23 A. It's not typical of efflorescence, 24 but -- Maybe, but -- 25 Q. Why is it not typical?</p>

<p style="text-align: right;">Page 270</p> <p>1 A. Because typically efflorescence is going 2 to be in -- it's going to be along a joint or it's 3 going to be along a crack or it's going to be 4 along a specific -- It typically isn't a full 5 pattern. It's usually a line pattern that comes 6 from -- Because if there's a weakness or something 7 in the concrete, that it might be -- or there 8 might be something behind it that is causing water 9 to come through in a particular way, but not -- 10 it's almost always, you know, in line.</p> <p>11 Q. Hit me with that one more time so I 12 understand what you're saying.</p> <p>13 A. Well, typically efflorescence, if you 14 find -- if you find efflorescence, it's typically 15 going to be along the bottom joint here 16 (indicating), the mud, where the concrete meets 17 the floor.</p> <p>18 Q. Okay.</p> <p>19 A. Because that's typically where water 20 might come through. Or it would be in at a cold 21 pour joint and -- Do you know what a cold pour 22 joint is? Where the concrete is poured at two 23 separate times during the day when they're doing 24 the foundation where there might be a crack or a 25 line where water might come through consistently.</p>	<p style="text-align: right;">Page 272</p> <p>1 A. Right.</p> <p>2 Q. So you think this -- sort of this 3 semicircle here on the left concrete panel, you 4 think that that potentially is efflorescence?</p> <p>5 A. Potentially.</p> <p>6 Q. Now, what line or cold joint or any sort 7 of line of demarcation are you seeing there that 8 would allow the efflorescence to follow the rules 9 that you just laid out for us?</p> <p>10 A. Well, the closest I can see is the gray 11 portion right below it versus the darker gray 12 portion above it.</p> <p>13 And that time that's a speculation 14 because if I look over here on the left, this big 15 chunk of glue over here on the left -- or whatever 16 that was that they put on there -- they've just 17 taken a trowel. Who's to say that the guy that 18 was putting it on didn't just wipe his trowel off 19 when he was done with that corner?</p> <p>20 Q. Who is to say, right?</p> <p>21 A. Yeah, that's right.</p> <p>22 Q. Now, if you look on the -- By the way, 23 that last part you just testified to, that's a 24 guess, right?</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 271</p> <p>1 Almost never do you see it as a big, well, white. 2 I've never seen it as a big chunk, like a whole 3 wall is covered with efflorescence. It's always 4 localized to different areas in the foundation.</p> <p>5 Q. Okay. And that's -- Your experience is 6 efflorescence follows a set of rules, and those 7 are the rules that you just set out?</p> <p>8 A. Yes.</p> <p>9 Q. That's what you're --</p> <p>10 A. And then this area here is above grade, 11 and I've never seen efflorescence on above-grade 12 foundations.</p> <p>13 Q. Do you think that's above grade?</p> <p>14 A. I think so.</p> <p>15 Q. Do you think it's always been above 16 grade?</p> <p>17 A. I can't say whether it's been above 18 grade, but it's -- The standard practice is that 19 you have 6 to 8 inches below your boards for vapor 20 separation in the foundation in a wood wall.</p> <p>21 Q. What about the fact that the foundation 22 walls are upwards of 35 years old?</p> <p>23 Obviously you've got a snapshot here, 24 but you have no idea what's happened over the 25 course of the preceding 35 years.</p>	<p style="text-align: right;">Page 273</p> <p>1 Q. You have no idea what that is.</p> <p>2 A. No, no.</p> <p>3 Q. And you don't really know whether that's 4 efflorescence or not.</p> <p>5 A. I don't, no.</p> <p>6 Q. In fact, if it is efflorescence, it's 7 not -- it doesn't look like it's following any of 8 the rules that you just laid out for us, right?</p> <p>9 A. Right, right.</p> <p>10 Q. So it must not be efflorescence, right?</p> <p>11 A. I can't say because I don't -- we don't 12 run a test for efflorescence on what it is. It 13 could be any compound on there.</p> <p>14 Q. But if it's not following the rules you 15 just laid out for us, how could it be 16 efflorescence?</p> <p>17 A. I have no idea how that could be. 18 Because I guess I would say why were you asking if 19 it's efflorescence if it doesn't follow the rules?</p> <p>20 Q. It sounds like you're pretty confident 21 in the rules then.</p> <p>22 A. From what I see, yeah. I would expect 23 that there could be efflorescence on here. If 24 there's a significant efflorescence problem, it 25 would be at this joint down on the floor, at the</p>

<p style="text-align: right;">Page 274</p> <p>1 floor-to-wall joint.</p> <p>2 Q. And that's what you know.</p> <p>3 A. Yes.</p> <p>4 Q. And that's a fact.</p> <p>5 A. That's from my history, that's what --</p> <p>6 that's what I see in efflorescence.</p> <p>7 Q. You've got a comprehensive solid</p> <p>8 understanding of what efflorescence is and what it</p> <p>9 looks like when it's presenting itself?</p> <p>10 A. From my standpoint, from my</p> <p>11 understanding from what I see in inspections that</p> <p>12 I've done.</p> <p>13 Q. What about, on this right panel here,</p> <p>14 you can see that -- Can you see the two pieces of</p> <p>15 foundation metal on either side of the outlet</p> <p>16 there?</p> <p>17 A. Yes.</p> <p>18 Q. What are these called?</p> <p>19 I mean, I call them foundation metal,</p> <p>20 but are they snap ties or --</p> <p>21 A. Snap ties, yes.</p> <p>22 Q. What's the purpose of snap ties?</p> <p>23 A. That holds forms together in concrete</p> <p>24 when they're pouring the foundation.</p> <p>25 Q. Do they run through the entire</p>	<p style="text-align: right;">Page 276</p> <p>1 your experience. Is it because they're exposed to</p> <p>2 water?</p> <p>3 A. Just humidity, humidity in the air,</p> <p>4 because they are colder than the concrete and they</p> <p>5 will pull humidity when it's cold in the winter.</p> <p>6 Q. Do they also rust when they're exposed</p> <p>7 to water from the outside?</p> <p>8 A. I suppose they potentially could be.</p> <p>9 Q. They would rust if water from the</p> <p>10 outside is coming through following the snap ties</p> <p>11 and then running down the foundation wall.</p> <p>12 A. Yes.</p> <p>13 Q. And what we're seeing here with these</p> <p>14 two snap ties, you can see that the two snap ties</p> <p>15 are very rusty, right?</p> <p>16 A. Yes.</p> <p>17 Q. And that they are running their rust, or</p> <p>18 weeping rust, if you will, over time down the</p> <p>19 foundation wall towards the floor.</p> <p>20 A. Yes.</p> <p>21 Q. And so that is consistent, I think you</p> <p>22 said, with moisture, with humidity.</p> <p>23 A. Yes.</p> <p>24 Q. And it's also consistent with water</p> <p>25 penetration from the outside.</p>
<p style="text-align: right;">Page 275</p> <p>1 foundation wall?</p> <p>2 A. Typically, yes, because they're holding</p> <p>3 the boards together.</p> <p>4 Q. They're holding both sides of the board</p> <p>5 together when they're pouring the concrete?</p> <p>6 A. Yes.</p> <p>7 Q. So then they take the boards away and</p> <p>8 leave the snap ties in place.</p> <p>9 A. Yes.</p> <p>10 Q. So you've got metal running basically</p> <p>11 from the inside to the outside.</p> <p>12 A. Yes.</p> <p>13 Q. And that's typically not a problem. You</p> <p>14 don't typically see water running through snap</p> <p>15 ties, do you?</p> <p>16 A. No.</p> <p>17 Q. Now, in this case, these two snap ties</p> <p>18 on the right on reinspect photos 36 -- Do you see</p> <p>19 those?</p> <p>20 A. Yes.</p> <p>21 Q. -- those, are, in fact, rusting, aren't</p> <p>22 they?</p> <p>23 A. Yes, which is not uncommon for snap</p> <p>24 ties. They rust.</p> <p>25 Q. And -- Well, tell me why they rust, in</p>	<p style="text-align: right;">Page 277</p> <p>1 A. Yes. Could be, yes.</p> <p>2 Q. It could be.</p> <p>3 A. Yes.</p> <p>4 Q. It is also consistent with water</p> <p>5 penetration from the outside; is that true?</p> <p>6 A. Yes. Yes.</p> <p>7 Q. So what's the answer in this case?</p> <p>8 Which one is it? Is this foundation metal that</p> <p>9 we're looking at -- is it rusty because of a</p> <p>10 humidity problem, or is it rusty because of</p> <p>11 penetration of water into the house from the</p> <p>12 outside?</p> <p>13 A. I can't tell you that.</p> <p>14 Q. Why not?</p> <p>15 A. Because I only saw it that day. I don't</p> <p>16 know what the history of that house is. I don't</p> <p>17 know if that --they have high humidity level in</p> <p>18 that area all the time and you've got moisture</p> <p>19 coming on a wall that was on there prior, that it</p> <p>20 wasn't properly vapor sealed or what. All I see</p> <p>21 is that -- what I see right there.</p> <p>22 Q. Did you see this wall -- this right side</p> <p>23 panel with the electrical outlet on it on</p> <p>24 reinspect photos number 36, did you see this panel</p> <p>25 on the day of your inspection?</p>

<p style="text-align: right;">Page 278</p> <p>1 A. Yes.</p> <p>2 Q. Did you look at it?</p> <p>3 A. Yes.</p> <p>4 Q. Did you visualize it?</p> <p>5 A. Yes.</p> <p>6 Q. Did you see this rusty foundation metal?</p> <p>7 A. Yes.</p> <p>8 Q. And then when you saw the rusty</p> <p>9 foundation metal, you also would have seen the</p> <p>10 trail of rust weeping downward towards the floor?</p> <p>11 A. Yes.</p> <p>12 Q. You didn't take a picture of it, right?</p> <p>13 A. No, no.</p> <p>14 Q. So we've talked about so far there are</p> <p>15 two possibilities, right: This metal is rusting</p> <p>16 because, A, this basement has a humidity problem,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Or, B, there has been water outside the</p> <p>20 foundation that's penetrating the foundation walls</p> <p>21 over time, coming through the snap ties, rusting</p> <p>22 them and then weeping down the walls.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Are there any other possibilities</p> <p>25 that you can think of as to why these two pieces</p>	<p style="text-align: right;">Page 280</p> <p>1 A. It could be, I suppose, yes.</p> <p>2 Q. It could be. Do you suppose or do you</p> <p>3 know? I don't want you to guess.</p> <p>4 A. I don't know. I am only -- know that</p> <p>5 when I was there, it was dry. When I'm there,</p> <p>6 it's dry. I'm taking a snapshot. I am taking a</p> <p>7 picture of this 40-year-old house on August 6th of</p> <p>8 19- -- or 2013. I don't know what happened before</p> <p>9 that and I don't know what happened after -- after</p> <p>10 that.</p> <p>11 Q. And we talked about that earlier. We</p> <p>12 talked about that -- the drywall. What was the</p> <p>13 ph[REDACTED] you used? Not the disintegrating drywall,</p> <p>14 but what kind --</p> <p>15 A. Deformed.</p> <p>16 Q. The deformity in the drywall.</p> <p>17 A. Yes.</p> <p>18 Q. If you see the deformity and it could be</p> <p>19 from water, you're going to report that even if</p> <p>20 you don't see it wet at the time?</p> <p>21 A. Yes.</p> <p>22 Q. Because that's evidence of a prior water</p> <p>23 problem.</p> <p>24 A. Right.</p> <p>25 Q. It doesn't mean there is a water</p>
<p style="text-align: right;">Page 279</p> <p>1 of foundation metal would rust and weep down the</p> <p>2 wall like this?</p> <p>3 A. No.</p> <p>4 Q. So there are only two possibilities,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. And in your mind, you were aware that</p> <p>8 both of those were possibilities when you saw this</p> <p>9 rusty foundation metal on August 6 of 2013.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. It can only mean one of two</p> <p>12 things, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And so one of them is sort of an</p> <p>15 innocuous -- sort of an innocuous explanation, the</p> <p>16 humidity. Not that big of a deal when it happens,</p> <p>17 right?</p> <p>18 A. Right.</p> <p>19 Q. And the other explanation is potentially</p> <p>20 very bad, isn't it?</p> <p>21 A. Could be.</p> <p>22 Q. It could be. It could actually be a</p> <p>23 sign -- it could be evidence of a long-term,</p> <p>24 severe outside-in water problem through these</p> <p>25 foundation walls. That's true, isn't it?</p>	<p style="text-align: right;">Page 281</p> <p>1 problem, it doesn't tell you how bad the water</p> <p>2 problem is, but it's a water problem.</p> <p>3 A. Yes.</p> <p>4 Q. And it should be reported by you.</p> <p>5 A. Yes.</p> <p>6 Q. All right. And so the fact that you</p> <p>7 didn't see water streaming down these walls on</p> <p>8 August the 6th, 2013 -- By the way, it was dry</p> <p>9 outside, right?</p> <p>10 A. Yes.</p> <p>11 Q. The fact that you didn't see water</p> <p>12 coming through these walls on August 6, 2013, that</p> <p>13 doesn't mean that this house hasn't had a</p> <p>14 long-term water problem, right?</p> <p>15 A. Doesn't mean that, no.</p> <p>16 Q. And so the fact that they were dry on</p> <p>17 August 6, 2013, that just tells you that they're</p> <p>18 dry when you're looking at them, right?</p> <p>19 A. Right.</p> <p>20 Q. But we just talked about the fact that</p> <p>21 there are two possibilities: humidity and water</p> <p>22 penetration, right?</p> <p>23 A. Right.</p> <p>24 Q. And when you looked at this on August 6</p> <p>25 of 2013, you didn't know what that answer was.</p>

<p style="text-align: right;">Page 282</p> <p>1 A. Right.</p> <p>2 Q. You understood that those were the two</p> <p>3 possibilities, though.</p> <p>4 A. Right.</p> <p>5 Q. Did you take a picture of these rusty</p> <p>6 snap ties?</p> <p>7 A. No.</p> <p>8 Q. Did you mention them in your report?</p> <p>9 A. No.</p> <p>10 MR. JOHNSON: Have we really been going</p> <p>11 for more than an hour?</p> <p>12 MS. MORE: Uh-huh.</p> <p>13 MR. JOHNSON: All right. Let's take a</p> <p>14 break. Thank you. It's 3:25.</p> <p>15 (Whereupon, the proceedings were in</p> <p>16 recess at 3:26 p.m. and subsequently reconvened at</p> <p>17 3:34 p.m., and the following proceedings were</p> <p>18 entered of record:)</p> <p>19 MR. JOHNSON: All right. We're back on.</p> <p>20 It's 3:35.</p> <p>21 Q. (BY MR. JOHNSON) Mr. [REDACTED], this</p> <p>22 reinspect photos number 36 that we were talking</p> <p>23 about --</p> <p>24 A. Yes.</p> <p>25 Q. -- we talked about the two possibilities</p>	<p style="text-align: right;">Page 284</p> <p>1 A. If it appeared like it was significant.</p> <p>2 I didn't -- I didn't see other issues in there</p> <p>3 that would've led me to believe that we were</p> <p>4 getting significant water through the inside --</p> <p>5 outside-in water.</p> <p>6 Q. What would lead you to believe that</p> <p>7 there was evidence of insignificant water coming</p> <p>8 from the outside?</p> <p>9 A. Well, I don't see any water staining at</p> <p>10 the bottom. I don't see water staining on the wet</p> <p>11 portions of the floor that I can see. Everything</p> <p>12 is fairly clean. That would give me an idea that,</p> <p>13 yeah, I had seen that it had more intrusion than</p> <p>14 what I -- what I saw.</p> <p>15 Q. But if one of the two possibilities is</p> <p>16 water coming through the foundation wall, why not</p> <p>17 put it in your report?</p> <p>18 A. I didn't believe that it was a -- that I</p> <p>19 had an ongoing water issue. As I said, rusty snap</p> <p>20 ties are not significant to me to respond as being</p> <p>21 a water issue.</p> <p>22 Q. How about rusty snap ties and</p> <p>23 efflorescence in the same area?</p> <p>24 A. I did not see enough evidence to show --</p> <p>25 at the time of the inspection that there was an</p>
<p style="text-align: right;">Page 283</p> <p>1 about what this rusty metal could mean.</p> <p>2 A. Yes.</p> <p>3 Q. One of them being an outside-in water</p> <p>4 problem, right?</p> <p>5 A. Right.</p> <p>6 Q. So knowing that that's one of the two</p> <p>7 possibilities and it being your job to identify</p> <p>8 potential problems, not to actually diagnose, why</p> <p>9 isn't this issue identified in your inspection</p> <p>10 report?</p> <p>11 A. It's never been my practice to write up</p> <p>12 rusty snap ties because that's so consistent, and</p> <p>13 typically they don't have any -- it doesn't have</p> <p>14 any meaning except that they're iron and they are</p> <p>15 exposed to air, and they will get humid and they</p> <p>16 will rust. So it doesn't -- It's not a standard</p> <p>17 of mine to include rusty snap ties.</p> <p>18 Q. Right, but we talked about the fact that</p> <p>19 one of the two possibilities is that these snap</p> <p>20 ties are rusting because water's coming through</p> <p>21 the foundation wall, right?</p> <p>22 A. Right.</p> <p>23 Q. Now, evidence of water coming through</p> <p>24 the foundation wall, that's something that should</p> <p>25 be in your report, right?</p>	<p style="text-align: right;">Page 285</p> <p>1 issue with outside-in water.</p> <p>2 Q. What's the threshold? You say not</p> <p>3 enough evidence. How much is enough evidence?</p> <p>4 A. Significant staining.</p> <p>5 Q. Significant staining --</p> <p>6 A. Water staining. I don't see significant</p> <p>7 water staining on the walls. I am not -- I don't</p> <p>8 have -- To me, there's not enough evidence to have</p> <p>9 stated that that was that.</p> <p>10 Q. Well, but again, it's not your job to</p> <p>11 come to a definitive conclusion. It's your job to</p> <p>12 identify risk for the buyer, correct?</p> <p>13 A. Right.</p> <p>14 Q. And so you got a general idea as to what</p> <p>15 the potential problems are, right? And then you</p> <p>16 report on them.</p> <p>17 A. Right.</p> <p>18 Q. It's not for you to decide whether</p> <p>19 something is significant enough evidence of a</p> <p>20 water intrusion. If you have evidence of</p> <p>21 potential water intrusion, that's something a</p> <p>22 buyer is going to want to know, right?</p> <p>23 A. Yes, but then it's not my responsibility</p> <p>24 to try to decide whatever -- what are all the</p> <p>25 environmental issues on the outside that could</p>

<p style="text-align: right;">Page 286</p> <p>1 possibly affect a property or what are all the 2 potential issues on the inside that could cause 3 potential moisture issues. 4 So I'm not going to write down that you 5 have to monitor all your plumbing, because your 6 plumbing at some point is going to leak. That's 7 inherent in homeownership. 8 I'm not -- wouldn't want to be 9 responsible for telling someone that, no, you have 10 to paint because you have to paint to protect your 11 stuff. That's inherent in homeownership. 12 So it's not the responsibility of the 13 home inspector to speculate on whatever condition 14 might have -- whatever the house might come into. 15 There's all sorts of acts of nature that can 16 happen to a property. 17 Look at my house that had the lightning 18 strike. Got water intrusion because of that. I 19 can't say that -- if I would have had a home 20 inspector there, I couldn't have held him 21 responsible for the fact that the lightning was 22 going to strike next to my house. 23 Q. Okay. So -- 24 A. So if we look at the other parts of the 25 report that say this house is in a forest, this</p>	<p style="text-align: right;">Page 288</p> <p>1 A. No, not at the time. 2 MR. JOHNSON: Mark this as 8. 3 EXHIBITS: 4 (Deposition Exhibit Number 8 marked for 5 identification.) 6 Q. (BY MR. JOHNSON) Mr. [REDACTED], I'll hand 7 you what we've just marked as exhibit 8. If you 8 want to open up reinspect photos back to 36, 9 you'll see that this is actually a photograph 10 taken -- I don't know -- maybe a foot away from 11 the foundation wall on that right panel that we've 12 been discussing on reinspect photos 36. 13 Do you see that? 14 A. Yes. 15 Q. And you can tell from looking at the 16 photo I just handed you, Exhibit 8, and looking at 17 reinspect photos 36, that is what I -- that is 18 what Exhibit 8 depicts, right? 19 A. Yes. 20 Q. Okay. So what we're looking at on 21 Exhibit 8 is basically an area on the right side 22 of that concrete panel on reinspect photos 36, 23 right? 24 A. Yes. 25 Q. It would be the right-side rusted snap</p>
<p style="text-align: right;">Page 287</p> <p>1 forest is going to burn. There are -- you know, 2 there's plenty of evidence to show that there's 3 supposed to be a defensible space around this 4 house. This house doesn't have a defensible 5 space. Is that -- 6 So those areas that I can see, you know, 7 identified, I write down that -- that are the ones 8 that I visualize as being consistent with area -- 9 with homes that I see in that particular 10 condition. And I didn't deem this rusty snap ties 11 to be enough evidence to say that there's -- 12 there's a huge moisture issue with the house. 13 All I can say is that those rust ties 14 have snapped -- have rusted. 15 Q. And you don't know why? 16 A. And I don't know why. 17 Q. There are just two possibilities, 18 though. 19 A. No, there's one: moisture. 20 Q. Thank you. And there are two 21 possibilities regarding how they became rusty from 22 moisture. 23 A. At least two that we have. 24 Q. Can you think of any others besides the 25 two we've discussed?</p>	<p style="text-align: right;">Page 289</p> <p>1 tie. 2 A. Right. 3 Q. All right. And so you can see, 4 obviously, the snap tie is rusted, right? 5 A. Yes. 6 Q. And you can see that there's stain 7 running down the wall. Do you see that? 8 A. Yes. 9 Q. Okay. What is that white stuff to the 10 left of the rusted snap tie? 11 A. I have no idea. 12 Q. What does it look like? 13 A. I can't speculate. It could be 14 concrete. It could be that the mud layer of 15 the -- head cream layer of the concrete is worn 16 off. It could be that someone has applied 17 something on the wall and it wasn't continuous. 18 Q. Like what? 19 A. Well, back in one of these other 20 pictures here, you'll see that there's a real 21 glossy sheen on the concrete, which is not 22 consistent with a normal concrete wall. So 23 something's been sprayed on that wall for some 24 reason, which I don't know. 25 Q. Is the white stuff that we're seeing</p>

<p style="text-align: right;">Page 290</p> <p>1 here -- is that a glossy sheen?</p> <p>2 A. No.</p> <p>3 Q. So then let's go back to what you think</p> <p>4 that white stuff is.</p> <p>5 A. Without testing, I wouldn't know, and I</p> <p>6 don't do testing on it.</p> <p>7 Q. But you looked at it.</p> <p>8 A. Yeah.</p> <p>9 Q. So looking at it, what are the</p> <p>10 possibilities here?</p> <p>11 A. It looks to me like it's a scuffing off</p> <p>12 of the cream layer of the concrete.</p> <p>13 Q. What's the cream layer of the concrete?</p> <p>14 A. When concrete's poured, the moisture</p> <p>15 from some of the limestone comes out to make a</p> <p>16 smooth surface on concrete.</p> <p>17 Q. And you think 35 years after the fact,</p> <p>18 you're seeing that there?</p> <p>19 A. Yeah. Look off to the right, you've got</p> <p>20 the same situation, and now it looks like it's</p> <p>21 been scuffed off there. It doesn't look like</p> <p>22 that's --</p> <p>23 Q. It could also be efflorescence.</p> <p>24 A. It could be. Without sampling it, I</p> <p>25 wouldn't know.</p>	<p style="text-align: right;">Page 292</p> <p>1 grounds. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Number 6, you have grading. You've</p> <p>4 rated it as acceptable. Right?</p> <p>5 A. Yes.</p> <p>6 Q. It says minor slope?</p> <p>7 A. Yes.</p> <p>8 Q. What does minor slope mean?</p> <p>9 I mean, I realize it means minor slope,</p> <p>10 but what are you talking about?</p> <p>11 A. It means the lot -- that there's minor</p> <p>12 slope from the house that's really not -- I</p> <p>13 don't -- Since I don't do a level testing on it,</p> <p>14 it's -- Minor would be that there's just a small</p> <p>15 amount of grade from one area to the other.</p> <p>16 Q. So if you're looking at the house from</p> <p>17 the front --</p> <p>18 A. Yes.</p> <p>19 Q. -- you're saying there's a minor slope</p> <p>20 running left to right.</p> <p>21 A. Yes. Right at the front. If you look</p> <p>22 at the picture of the cover, you see that from</p> <p>23 here to here, there's no foundation showing here</p> <p>24 and there's about 8 inches showing there.</p> <p>25 So it appears to me that there's a minor</p>
<p style="text-align: right;">Page 291</p> <p>1 Q. So you look at this photo and you see</p> <p>2 the rusted snap tie, right?</p> <p>3 A. Yes.</p> <p>4 Q. The rust staining down the wall?</p> <p>5 A. Yes.</p> <p>6 Q. You see a white discoloration on the</p> <p>7 cement wall.</p> <p>8 A. Yes.</p> <p>9 Q. That could be efflorescence.</p> <p>10 A. Or it could be just a pocking of the</p> <p>11 surface.</p> <p>12 Q. Right. You don't know what the answer</p> <p>13 is.</p> <p>14 A. I don't know what the answer to that is,</p> <p>15 no.</p> <p>16 Q. But you've got rust and efflorescence.</p> <p>17 That's a sign that you've got potentially a water</p> <p>18 problem through the wall, right?</p> <p>19 A. If it was efflorescence. I don't -- It</p> <p>20 looks more like it's pocking than efflorescence.</p> <p>21 It doesn't look like a powder.</p> <p>22 Q. Let's look at your home inspection</p> <p>23 report, if we could.</p> <p>24 A. Okay.</p> <p>25 Q. Go to 612. So you've got lots and</p>	<p style="text-align: right;">Page 293</p> <p>1 slope on the property, and that's how I would look</p> <p>2 at it from back from the back.</p> <p>3 Q. And so to the left of that photo you're</p> <p>4 looking at there, there's actually a hill to the</p> <p>5 left of the house as you're looking at it.</p> <p>6 A. There's a mountain across the road.</p> <p>7 It's in the base -- it's on the base of the plane</p> <p>8 of the creek there.</p> <p>9 Q. Okay. But there's -- The grade</p> <p>10 actually --</p> <p>11 A. The grade actually slopes, yes.</p> <p>12 Q. Okay. So there is a hill area -- I'll</p> <p>13 call it a minor hill -- that goes downward left to</p> <p>14 right as you're looking at the front of the house</p> <p>15 towards Grant Creek.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So go to 617, if you would, which</p> <p>18 is structure.</p> <p>19 Are you there?</p> <p>20 A. Yes.</p> <p>21 Q. All right. "Structure" is a general</p> <p>22 term. It seems like it covers an awful lot. When</p> <p>23 we're talking about structure, you've got the</p> <p>24 foundation, beams, bearing walls, joists and truss</p> <p>25 here. Piers and posts, you've got floor and slab,</p>

<p style="text-align: right;">Page 294</p> <p>1 stairs and handrails, and subfloor. 2 A. Yes. 3 Q. That's all part of the structure? 4 A. Yes. 5 Q. All right. And with the exception of a 6 missing handrail, you've rated everything as 7 acceptable. Is that right? 8 A. Yes. 9 Q. So you've got the foundation, which I'm 10 guessing would include the foundation walls. It's 11 concrete that's acceptable. 12 A. Yes. 13 Q. Beams, conventional wood, acceptable. 14 A. Yes. 15 Q. Bearing walls, wood frame, acceptable. 16 A. Yes. 17 Q. And then joists and trusses, acceptable. 18 A. Yes. 19 Q. What's the difference between a joist 20 and a truss? 21 A. The joists are typically the floor 22 joists and/or in some cases the floor joists are 23 made out of trusses rather than just a solid 24 joist. 25 Some of the new construction is joist</p>	<p style="text-align: right;">Page 296</p> <p>1 identification.) 2 Q. (BY MR. JOHNSON) I'll hand you what 3 we've marked as Exhibit 9. Do you recognize that? 4 A. I have read through this. 5 Q. This is a report from Eclipse 6 Engineering. 7 A. Yes. 8 Q. And it's what's called a limited 9 structural assessment; is that right? 10 A. Yes. 11 Q. It's dated October 18th of 2013. 12 A. Yes. 13 Q. Now, when you read through it, is there 14 anything in this report that you disagree with? 15 A. (Witness reviews document.) 16 No, I don't think there's anything I can 17 disagree with because he's an engineer and that's 18 what his field is. 19 The comment I have to make is, is that 20 the house was not built to 2009 IBC requirements. 21 The house was built in 1971. So I don't know what 22 the requirements were for that, nor would I be 23 responsible for knowing what the requirements were 24 when the house was built. 25 The only semi issue I have is that in</p>
<p style="text-align: right;">Page 295</p> <p>1 construction -- or truss construction rather than 2 joist construction. 3 Q. Okay. So if something is truss 4 construction -- 5 A. Then I would notify -- I note that it 6 was a truss construction. 7 Q. All right. And this is joist 8 construction in the basement? 9 A. Yes. 10 Q. All right. What about headers above 11 doorways? Where do they fall in the category here 12 for structure? 13 A. What -- In the bearing walls. 14 Q. Bearing walls? 15 A. Yes. 16 Q. So number 4? 17 A. Yes. 18 Q. So number 4, acceptable. Bearing walls, 19 wood frame, you've got it as acceptable. 20 A. Yes. 21 Q. So you identified no defects. 22 A. Yes. 23 Q. All right. 24 EXHIBITS: 25 (Deposition Exhibit Number 9 marked for</p>	<p style="text-align: right;">Page 297</p> <p>1 this larger doorway pictured in Figure 1, page 2 3 -- 3 Q. Right. 4 A. -- the doorway was actually moved. 5 There's actually a header on that doorway that 6 goes up to the joists that's adjacent to that 7 doorway. 8 Q. Where are you pointing exactly? 9 A. On -- Right here (indicating). This 10 doorway, that was moved in. Where the laundry 11 room area -- laundry room/mud area, this -- 12 there's actually a header on that doorway, which 13 is 12 inches in from that, whatever the distance 14 is from where that one was -- originally was -- 15 the doorway was. 16 Q. Okay. So you think there's a header on 17 that side? 18 A. Yes. 19 Q. Okay. Do you have a picture of that? 20 Do you remember taking a picture of that? 21 A. There is a picture that was taken, I 22 believe, by [REDACTED]s that I have that shows that 23 there was a header put on. 24 Q. The Zollow [sic] photos? 25 A. Yes. The Zillow photos.</p>

<p style="text-align: right;">Page 298</p> <p>1 Q. We'll get to those. So -- 2 A. Whether it meets compliance or not to 3 whatever the 2008 is, I have no idea, but there is 4 a header above the doorway that was built across 5 there. 6 Q. Did you notice at the time of your 7 inspection that there was no header inside the 8 doorway here? 9 A. I did, but I saw the new doorway and 10 assumed -- and saw that it was header across 11 there. 12 Q. Oh, okay. So at the time of your 13 inspection in August of 2013, you actually squared 14 up and looked at this doorway -- 15 A. Well, I saw the doorway, yes. 16 Q. And you said to yourself -- 17 A. But I didn't -- I didn't -- 18 Q. You gotta let me finish. 19 A. Okay. I'm sorry. 20 Q. You looked at the doorway and saw 21 there's no header on the inside, but thought, 22 okay, there's a header on the other side so we're 23 good? 24 A. Yes. 25 Q. "Yes"?</p>	<p style="text-align: right;">Page 300</p> <p>1 A. It shouldn't be, no. 2 Q. It's unacceptable, right? 3 A. Yes, yes. 4 Q. It's below the standard of care? 5 A. Below my standard, yes. 6 Q. It's below -- 7 A. My standard. 8 Q. -- any reasonable standard of care? 9 Right? 10 A. Right. 11 Q. It's a violation of the ASHI standards. 12 A. Yes. 13 Q. It's a violation of the Home Inspection 14 Trades Practices Act. 15 A. It is. 16 Q. Yes? 17 A. Yes. 18 Q. So on Figure 3, large holes through 19 joists, do you see that? 20 A. Yes. 21 Q. Regardless of the year in which the home 22 was built, this joist has been compromised 23 significantly with these large holes cut through 24 it. Would you agree with that? 25 A. Yes.</p>
<p style="text-align: right;">Page 299</p> <p>1 A. Yes. 2 Q. All right. And so as you're standing 3 there looking at this doorway, to its immediate 4 left, what is that? 5 A. That's the one with the missing king 6 stud. 7 Q. The missing king/jack stud? 8 A. Yes. 9 Q. And so if you turn the page, that's 10 Figure 2, header above doorway to furnace room? 11 A. Yes, yes. 12 Q. Okay. Now, there's supposed to be 13 something here in this space, right? 14 A. Yes. There should have been a 2-by-, in 15 this case, -4 from the floor up to the right side 16 of the header at the top there under the double 17 truss -- or the double lid there and then also one 18 up to the bottom of the header. So two 2-by-4s on 19 there. 20 Q. And so how do you think it's possible 21 that you were standing there looking at the 22 doorway to the right and didn't see the missing 23 king/jack stud immediately to the left? 24 A. That, I don't know. 25 Q. I mean, is that acceptable?</p>	<p style="text-align: right;">Page 301</p> <p>1 Q. It has lost its ability to bear the 2 loads it's designed to bear, right? 3 A. Yes. 4 Q. It is something that is -- It is unsafe, 5 isn't it? 6 A. I can't make that determination. 7 Q. It can be unsafe. 8 A. I -- Without an engineer's report, I 9 couldn't be -- I couldn't be a hundred percent 10 sure. 11 Q. Well, it's within the possibilities, 12 right, that it's unsafe, a joist with holes cut 13 through it like this, Figure 3? 14 A. As far as, I don't know what's on this 15 other side. 16 Q. I'm sorry? 17 A. I don't know what's on -- from where 18 this wall is to where the next support is for this 19 joist. 20 Q. Are joists supposed to have holes cut 21 through them of this size? 22 A. No. 23 Q. If you can -- 24 A. Not according to current building 25 standards, but I don't know what it was in 2007.</p>

<p style="text-align: right;">Page 302</p> <p>1 Q. How about the ASHI standards? If you 2 visualize this during your inspection, you're 3 supposed to put it in your report, aren't you? 4 A. It could probably be deemed definitive 5 per the ASHI report. 6 Q. It is a defect for purposes of ASHI 7 reporting, isn't it? 8 A. I suppose it is, yes. 9 Q. It is a defect, that is correct, isn't 10 it? 11 MS. MORE: Objection. Asked and 12 answered. 13 MR. JOHNSON: So long as he will stop 14 qualifying his answer with "I suppose" or "I 15 guess." 16 Q. (BY MR. JOHNSON) I want to know 17 affirmatively one way or the other, Mr. [REDACTED], is 18 this a defect that an ASHI home inspector should 19 identify and put in his report? Figure 3. 20 A. It's not a code inspection. 21 Q. I'm not asking you if it's a code 22 inspection. 23 A. Yes, you are. 24 Q. I'm asking you if a hole this size 25 through a joist should be identified by an ASHI</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. And you didn't have it at the time of 2 your inspection? 3 A. No. 4 Q. And you don't know what that information 5 actually is? 6 A. No. 7 Q. And that's not in your report, is it? 8 A. That's not part of a home inspection. 9 Q. What isn't? 10 A. Permitting or acceptance or approval of 11 past construction practices. 12 Q. Is the joist that you see in Figure 3 13 with the gigantic hole in it -- does that look 14 acceptable to you? 15 A. Not -- not in relation to current 16 building standards, no. 17 Q. How about under the 2006 ASHI standards 18 of practice? Is this a defect that should be 19 noted by an ASHI inspector in his or her report? 20 A. I don't know. 21 Q. You don't know the answer to that? 22 A. No, I don't know the answer to that. 23 Q. All right. How about Figure 4? This 24 figure is entitled Closely Spaced Holes Through 25 Bottom Side of Joists.</p>
<p style="text-align: right;">Page 303</p> <p>1 inspector and placed in his report. 2 A. I do not know whether or not the local 3 home authority approved this installation. 4 Q. Why would that be relevant -- Excuse me. 5 Why would that be relevant to your home inspection 6 report? 7 A. It's relevant in the fact that the local 8 home jurisdiction trumps whatever. Trumps -- 9 trumps the -- trumps ASHI's inspection and trumps 10 the IRC. If there's -- And I don't have that 11 information. 12 MR. JOHNSON: Could you read that answer 13 back to me, please. 14 (Whereupon, the court reporter read back 15 the following: 16 "ANSWER: It's relevant in the 17 fact that the local home jurisdiction trumps 18 whatever. Trumps -- trumps the -- trumps ASHI's 19 inspection and trumps the IRC. If there's -- and 20 I don't have that information.") 21 Q. (BY MR. JOHNSON) So would that be 22 information that you would need to have at the 23 time of your inspection to know whether it's 24 something you should report? 25 A. Yes.</p>	<p style="text-align: right;">Page 305</p> <p>1 Do you agree that this is a photograph 2 of closely spaced holes through bottom side of 3 joists? 4 A. Yes. 5 Q. Is this something that an ASHI 6 inspector, under the 2006 standards of practice, 7 should identify in a home inspection report? 8 A. No, because I don't know what the 9 limitations were for spacing on holes of this size 10 in a joist in 1971, when the house was built. 11 Q. But why are you -- why are you 12 concerning yourself with the year of construction 13 when you should be trying -- 14 A. Because -- because there's a new code 15 every three years. An ASHI home inspector is not 16 required to know, nor are we to report on, code 17 conditions at any time. So I have no idea what 18 the code was in 1971. Would it meet the 2009? 19 I'm not sure. 20 But it's -- So I don't -- With electric 21 lines, there's an electric standard that say X 22 number of wires can go through a hole. The 23 electrician probably cut extra holes because he 24 was pulling a lot of lines. He didn't use them. 25 Should they put -- Are the size of the</p>

<p style="text-align: right;">Page 306</p> <p>1 holes unacceptable? I don't know if they are for 2 that time period. I don't know if they are for 3 this time period. 4 Q. Okay. 5 A. I'm not required to because I'm not a 6 code compliance officer. 7 Q. You understand that the allegation here 8 isn't that you were supposed to call out a code 9 violation. The allegation is that, to look at 10 this joist, it's been compromised structurally 11 because there's so many holes in it. 12 Do you -- do you think that this joist 13 has been overcut? 14 A. I'm not an engineer. 15 Q. Right. 16 A. I'm not an engineer, and I don't -- I'm 17 not into speculating on engineer's reports. 18 Q. Okay. So if you're not an engineer and 19 you believe that it would take -- What you're 20 saying is it would take an engineer to know 21 whether or not this is a defect or whether it's 22 safe or not? 23 A. Yes. 24 Q. Because as you look at this photo, you 25 think, you know what, that might be a problem. I</p>	<p style="text-align: right;">Page 308</p> <p>1 Q. So this is something when you look at 2 it, you don't know whether there's a problem with 3 it or not? 4 A. No. 5 Q. All right. So if you don't know whether 6 there's a problem with it and an engineer would 7 need to tell the buyer whether there is a problem 8 with it, why don't you call it out in your report 9 and say, this might be a problem, but you should 10 talk to an engineer? 11 A. I -- It's -- it's not an engineer 12 report. 13 Q. It's a home inspection report. 14 A. It's a home inspection, yes. 15 Q. The home inspector identifies problems 16 for follow-up, right? 17 A. But problems are determined by an 18 engineer, not the home inspector. 19 Q. So what is your job, then, when it comes 20 to identifying problems? 21 If you're not qualified to identify 22 whether there are problems in joists, why is there 23 a section in your home inspection report entitled 24 Joists, Trusses, and why do you have it marked 25 acceptable?</p>
<p style="text-align: right;">Page 307</p> <p>1 really can't tell. 2 A. I really don't know. 3 Q. You really don't know one way or the 4 other. 5 A. No. 6 Q. Because the joist has obviously had a 7 number of cuts through it, right? 8 A. Yes. It has holes in it. 9 Q. And the more holes, or cuts, through a 10 joist, it reduces the load-bearing capacity of the 11 joist. 12 A. I'm not sure in that type wood if -- I'm 13 not sure in that -- whether that is or not there. 14 Q. Do you know whether or not when you cut 15 holes in joists and the holes are close 16 together -- do you know whether or not that 17 impacts the strength of the joist or its 18 load-bearing capacity, as a home inspector? 19 A. No. 20 Q. You don't know the answer to that 21 question? 22 A. I'm not required -- No, I don't know the 23 answer to that question. 24 Q. And you're not required to know? 25 A. No.</p>	<p style="text-align: right;">Page 309</p> <p>1 A. Because I don't -- didn't notice a 2 defect in that. 3 Q. Well, you didn't notice -- Did you 4 notice all the holes cut in this joist? 5 A. Yes. 6 Q. During your inspection, you saw what we 7 have here in figure photograph 4 to the [REDACTED] 8 structural assessment. You saw this particular 9 joist, you visualized it during your inspection? 10 A. I didn't write it up, did I? 11 Q. Did you see it? 12 A. I can't say for sure that I did. 13 Q. You didn't photograph it, right? 14 A. I didn't photograph it, no. 15 Q. And you don't have an independent memory 16 of having seen it. 17 A. No. 18 Q. And if I understand your testimony, it's 19 that if you had seen it, you couldn't have known 20 whether it was a problem or not because you're not 21 an engineer. 22 A. Right. 23 Q. So if you had seen it, you would have 24 recommended that the buyer get an engineer 25 consult, right?</p>

<p style="text-align: right;">Page 310</p> <p>1 A. Yes.</p> <p>2 Q. I'm sorry?</p> <p>3 A. Yes.</p> <p>4 Q. Yes. And that is -- that would be in</p> <p>5 compliance with the ASHI standards.</p> <p>6 A. Yes.</p> <p>7 Q. How about Figure 5? This photograph</p> <p>8 entitled Severely Notched Joists, do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So now we're not dealing just with</p> <p>11 holes. Now we're dealing with large rectangular</p> <p>12 cuts through the joists. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Did you see these when you conducted</p> <p>15 your inspection?</p> <p>16 A. I don't believe I did.</p> <p>17 Q. Now, you can see this is open framing,</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. So this is in the bathroom, so if you're</p> <p>21 in the bathroom and you look up at the ceiling,</p> <p>22 that is what you see.</p> <p>23 You agree with that, wouldn't you?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So if you had walked into the</p>	<p style="text-align: right;">Page 312</p> <p>1 A. It's got a big hole in it.</p> <p>2 Q. Yeah. A large plumbing pipe running</p> <p>3 through it?</p> <p>4 A. Yes.</p> <p>5 Q. Now, is that a vent pipe or what kind of</p> <p>6 pipe is that?</p> <p>7 A. It appears to be a drainpipe.</p> <p>8 Q. Drainpipe, okay. So whoever the plumber</p> <p>9 was that put this in, rather than doing the right</p> <p>10 thing, they went ahead and cut a big hole through</p> <p>11 this joist, and that's the wrong way to do it,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And we were going back and forth about</p> <p>15 whether the holes make a difference. A cut of</p> <p>16 this size in a joist like this, that does make a</p> <p>17 difference, right?</p> <p>18 A. Yes.</p> <p>19 Q. And you don't need to be an engineer to</p> <p>20 know it, do you?</p> <p>21 A. Right.</p> <p>22 Q. You as an ASHI home inspector can look</p> <p>23 at this photograph and think, wow, the first joist</p> <p>24 here has a gigantic rectangle cut in it. That's</p> <p>25 not acceptable. And the second joist, that's just</p>
<p style="text-align: right;">Page 311</p> <p>1 bathroom during your inspection -- And you did,</p> <p>2 didn't you?</p> <p>3 A. Yes.</p> <p>4 Q. The downstairs bathroom in the basement,</p> <p>5 you walked into that area.</p> <p>6 A. Yes.</p> <p>7 Q. But you didn't look up?</p> <p>8 A. I didn't see that, that particular</p> <p>9 joist, no.</p> <p>10 Q. If you had looked up and seen this</p> <p>11 joist, you would have remembered it, wouldn't you?</p> <p>12 A. Yes.</p> <p>13 Q. Because this is a bad-looking joist,</p> <p>14 isn't it?</p> <p>15 A. Yes.</p> <p>16 Q. And what's bad-looking about it?</p> <p>17 A. Well, that one is cut through.</p> <p>18 Q. Which one is cut through?</p> <p>19 A. The one right here (indicating).</p> <p>20 Q. The one that's actually further back?</p> <p>21 A. Yes.</p> <p>22 Q. That joist's just gone, right?</p> <p>23 A. Yes.</p> <p>24 Q. And then what about the joist that you</p> <p>25 see closer?</p>	<p style="text-align: right;">Page 313</p> <p>1 cut clear through.</p> <p>2 A. Yes.</p> <p>3 Q. Neither one is acceptable.</p> <p>4 A. Right.</p> <p>5 Q. Both should have been called out and</p> <p>6 contained in your report, right?</p> <p>7 A. Right.</p> <p>8 Q. Why didn't you look up at the ceiling</p> <p>9 when you walked into the bathroom?</p> <p>10 A. I don't know.</p> <p>11 Q. You should have, right?</p> <p>12 A. Yes.</p> <p>13 Q. I mean, if you're conducting an</p> <p>14 ASHI-compliant and a competent home inspection and</p> <p>15 you have a ceiling that is [REDACTED]ly open for</p> <p>16 your observation, all you have to do is look up,</p> <p>17 right?</p> <p>18 A. Right.</p> <p>19 Q. And this is the kind of stuff that's in</p> <p>20 the ceiling, correct?</p> <p>21 A. Right.</p> <p>22 Q. You've got -- I mean, and it's not just</p> <p>23 the joist. It's the plumbing as well. Right?</p> <p>24 A. Right.</p> <p>25 Q. Are you acknowledging that it was a</p>

<p style="text-align: right;">Page 314</p> <p>1 mistake for you to miss what we're seeing here on 2 Figure 5? 3 A. Yes. 4 Q. So in addition to the king/jack stud, 5 what we've got here on Figure 5, that was a 6 mistake, it was unacceptable, and it should have 7 been in your report. 8 A. Yes. 9 Q. [REDACTED] and [REDACTED] Mellem should have been 10 told about it before they bought. 11 A. Yes. 12 Q. This is -- Why -- Let me ask you this: 13 It can compromise, structurally, the home, right? 14 A. Somewhat, yes. 15 Q. Well, the bathtub is right above it. 16 Did you know that? 17 A. Right. 18 Q. And so this doesn't just tell you what's 19 going on with this particular joist. This could 20 cause someone concerns regarding craftsmanship 21 issues generally in the house and how well 22 constructed it is, right? 23 A. It's hard to say that plumbing -- 24 Plumbers are notorious for cutting, notching, 25 overnotching joists.</p>	<p style="text-align: right;">Page 316</p> <p>1 I don't know what the cost is to fix it. I don't 2 do costs, but it's not uncommon to have plumbers 3 cut through joists like that and have to have 4 joist repairs done in homes. 5 Q. Is there any portion of your home 6 inspection where you do call out code? 7 A. No. 8 Q. Not at all? 9 A. No. 10 Q. Why did you call out code regarding the 11 egress windows? 12 A. I didn't call out. I put it as -- I 13 didn't -- I say for current building standards. I 14 don't say code. 15 Q. I'm sorry, what's the difference between 16 current building standards and code? 17 A. Building standards are those practices 18 used by builders, not necessarily to code. 19 Q. That's the distinction you're drawing in 20 your report? 21 A. And the -- Yes. 22 Q. So standards -- current building 23 standards -- 24 A. That you put in windows that meet egress 25 in bedrooms.</p>
<p style="text-align: right;">Page 315</p> <p>1 So if they're a nonplumbing joist -- if 2 there's no plumbing in that area, it's not too 3 likely they would have notched anything else like 4 that. It's pretty much a plumber issue. 5 Q. But it's a structural concern. 6 A. Yes. 7 Q. And it's something that a buyer would 8 rather not deal with. Right? 9 A. It could be. It's a fairly easy fix. 10 Q. Well, you're a guy, though, you 11 testified earlier that there have been years where 12 upwards of 70 percent of your inspections 13 terminated transactions. You've seen a lot of 14 people walk away from transactions for less than 15 that. 16 A. Not for that. 17 Q. You've never seen someone walk away for 18 a structural problem? 19 A. Not like that. Not where it's in that 20 scope. 21 Q. So it's something that should have been 22 reported in your report, right? 23 A. Yes. 24 Q. But it's not that big of a deal? 25 A. Well, it's -- it's a concern, yes. And</p>	<p style="text-align: right;">Page 317</p> <p>1 Q. Okay. So -- 2 A. Code doesn't care because they don't 3 care if that's called a bedroom or not. But if 4 the client is calling it a bedroom, you want to 5 have egress windows. 6 Q. You don't think that -- Wait. Are you 7 saying that there's no code requirement that a 8 bedroom in a basement have an egress window? 9 A. No, there is a code requirement, but if 10 you build this room as -- without an egress, you 11 just can't call it a bedroom. 12 Q. Right. It's a bonus room. 13 A. Yeah, it's a bonus room. So if you 14 want -- if you want to have these be bedrooms and 15 not an office or a whatever, or a bonus room, then 16 there's a requirement for egress. 17 But they don't have to be bedrooms. 18 They don't have to be bedrooms. Just because you 19 say it's a bedroom, that doesn't mean it's a 20 bedroom. You may use it for a bedroom, but it's 21 not a bedroom legally by the -- unless you have 22 egress in it. Do you see what I mean? The house 23 doesn't have to be built with bedrooms. 24 Q. Well, a house does need to be built with 25 bedrooms.</p>

<p style="text-align: right;">Page 318</p> <p>1 A. With one bedroom.</p> <p>2 Q. Yes.</p> <p>3 A. One bedroom.</p> <p>4 Q. So what's the difference between code</p> <p>5 and standard when we're taking about these egress</p> <p>6 windows?</p> <p>7 A. Well, standards are that a builder would</p> <p>8 use is, am I building it to be a one-bedroom house</p> <p>9 or am I building it to be a four-bedroom house?</p> <p>10 Q. But the standards -- You don't know what</p> <p>11 the standards are for a 1971 construction, do you?</p> <p>12 A. I don't know. No, I don't.</p> <p>13 Q. Then why are you calling this out for</p> <p>14 current building standards?</p> <p>15 A. Because as a home inspector, we're asked</p> <p>16 to report safety issues to the client. Bedroom</p> <p>17 windows are a safety issue if you are a client</p> <p>18 looking for a house.</p> <p>19 In fact, I think [REDACTED] mentioned very</p> <p>20 specifically, Do the windows meet the current</p> <p>21 standards?</p> <p>22 Q. Yes.</p> <p>23 A. Understanding that.</p> <p>24 Q. She was very concerned about that.</p> <p>25 A. She was very concerned about that. In</p>	<p style="text-align: right;">Page 320</p> <p>1 How many -- When was the -- Last year, a</p> <p>2 year ago, didn't we have a child that was killed?</p> <p>3 No windows. No egress window in that house. The</p> <p>4 fireman couldn't get in. He's laying in there</p> <p>5 dead. So I -- So that's why I report whether</p> <p>6 windows meet current standards.</p> <p>7 Q. Don't get me wrong --</p> <p>8 A. No, I know. Do I report that railings</p> <p>9 are needed? Railings may not have been needed,</p> <p>10 but I report that railings, as safety, should be</p> <p>11 included in the report.</p> <p>12 Do I report in the electrical section</p> <p>13 that we don't have proper or enough smoke</p> <p>14 detectors? Yes, because those are safety things</p> <p>15 that I, as my business standard, I want to make</p> <p>16 sure that my clients are kept abreast on what are</p> <p>17 in the house that are safety and fire situations.</p> <p>18 Do I report to them that I put -- that</p> <p>19 the house is in a play area that's not defensible</p> <p>20 because of a fire because it's in a forest</p> <p>21 and it -- I don't put that report in the house</p> <p>22 that's in town. But in a house that's located in</p> <p>23 a forest, I report those things.</p> <p>24 Those are things that are up and above</p> <p>25 what the ASHI standards are because I value the</p>
<p style="text-align: right;">Page 319</p> <p>1 the listing, the listing says, well, it's a</p> <p>2 four-bedroom house, but the windows might not meet</p> <p>3 the standards, okay? So that's --</p> <p>4 Q. Go ahead.</p> <p>5 A. So it's -- I always put in whether or</p> <p>6 not windows meet -- in bedrooms meet the egress</p> <p>7 standards.</p> <p>8 Q. The current building standards.</p> <p>9 A. Current buyer safety standards for</p> <p>10 windows.</p> <p>11 Q. So when your client reads this report</p> <p>12 and says, oh, okay, he's telling me what the</p> <p>13 current building standards are for egress and</p> <p>14 ingress, where in the report does it say, but I'm</p> <p>15 not going to apply that same level of evaluation</p> <p>16 to everything else? 1971, I have no idea whether</p> <p>17 that's good or not, so I'm not going to report on</p> <p>18 it.</p> <p>19 Does your report differentiate between</p> <p>20 older code, newer code, what you evaluate from a</p> <p>21 current building planning perspective versus what</p> <p>22 happens in the '70s?</p> <p>23 A. No, on safety-related items, I always</p> <p>24 include for my clients whether or not windows are</p> <p>25 safe for ingress/egress, especially for families.</p>	<p style="text-align: right;">Page 321</p> <p>1 lives of my clients, and so I put them in there.</p> <p>2 Those would be concerns to a lot of people.</p> <p>3 They're almost always put back in on the</p> <p>4 inspection notice, and so they're always in my</p> <p>5 report.</p> <p>6 Q. Okay.</p> <p>7 A. The installation of GFI -- GFCI outlets,</p> <p>8 are there any in the house, are there not any in</p> <p>9 the house. So those five areas are areas that are</p> <p>10 always in my reports, if they're there or not.</p> <p>11 And no matter what age the house. Is it</p> <p>12 a hundred-year-old house? It doesn't have GFCIs.</p> <p>13 It's going to be in the report that we need GFCIs.</p> <p>14 We need egress windows. We need -- or we would</p> <p>15 like -- I say we need -- but that's the</p> <p>16 recommendation on every house that I do. So</p> <p>17 that's why those are there.</p> <p>18 Q. So you go current for some things.</p> <p>19 A. Safety. Safety is always.</p> <p>20 Q. Correct. But where does your report say</p> <p>21 it's limited to safety? Because someone like [REDACTED]</p> <p>22 looks at your report and you're talking about</p> <p>23 current building standards, and then I ask you</p> <p>24 about the joist with the gigantic hole in it, and</p> <p>25 you're telling me I don't know whether it's safe</p>

<p style="text-align: right;">Page 322</p> <p>1 or not because I can't tell you what the building 2 standards were in 1971. 3 A. Right. 4 Q. Where is that distinction drawn in your 5 report so your clients understand the scope of 6 your inspection that way? Is it? 7 A. Is it what? 8 Q. Is that called out? Is that explained 9 in your report? 10 A. No, but the minimums are explained in 11 the report. I can go over and above if I want to 12 tell a client that the house -- if there's safety 13 issues with the house or not. 14 EXHIBITS: 15 (Deposition Exhibit Number 10 marked for 16 identification.) 17 Q. (BY MR. JOHNSON) Showing you, Mr. [REDACTED], 18 what we marked as 10. 19 MR. JOHNSON: Kim, unfortunately -- I 20 know. 21 Q. (BY MR. JOHNSON) So, Number 10, these 22 are pictures of the joists through the bathroom 23 area as you're looking up. 24 Do you recognize this area of the home 25 from your inspection or reinspection?</p>	<p style="text-align: right;">Page 324</p> <p>1 joist we just discussed. You can see another 2 joist there with one, two, three holes in it. 3 Do you see that? 4 A. Yes. 5 Q. And do you know whether those three 6 holes are something that should be called out in 7 your report? 8 A. No, I don't. 9 Q. How about to the right of those three 10 holes? You can see that notch with that large PVC 11 pipe running through it. 12 A. Yes. 13 Q. Is that something that should have been 14 in your report? 15 A. Yes. I've already acknowledged that. 16 Q. No, this is actually a different cut. 17 We're just walking through a couple of things. 18 So would you agree with me that that 19 notch for that large PVC pipe should have been in 20 your report? 21 A. It's right here. We've already talked 22 about that. 23 Q. You know, just to cover our bases, this 24 is a different photograph. The notch in the upper 25 right-hand of Structure 2, that cut for the PVC</p>
<p style="text-align: right;">Page 323</p> <p>1 A. (Witness reviews document.) Okay. 2 Q. Do you recognize these to be photos of a 3 bathroom area in the basement? 4 A. They're duplicates, almost, of what he 5 has in his report here. 6 Q. But they are photographs of some of the 7 same areas. 8 A. Yes. 9 Q. Yeah, okay. We'll go through them 10 really quickly. Structure 1, they're Bates 11 Structure 1 through 12. Do you see that? 12 A. Yes. 13 Q. Okay. So the photo that we've got 14 Structure 1, you can see there's a joist here with 15 one, two, three, three, four holes cut in it over 16 approximately 12 inches. 17 Do you know whether or not this is 18 something that should have been included in your 19 report? 20 A. No, I don't. 21 Q. You don't know whether this is a 22 significant issue or not? 23 A. No, I don't. 24 Q. Structure 2, it's the same area but a 25 little further back, so we've got the original</p>	<p style="text-align: right;">Page 325</p> <p>1 pipe, that should have been included in your 2 report, right? 3 A. Yes. 4 Q. So Structure 3, do you see that? 5 A. Yes. 6 Q. So now we actually see four holes in 7 this joist as you're going across. Does that 8 change your opinion about whether or not the holes 9 would cause you to put it in the report? 10 A. The large notch would. The other ones, 11 I would not call out. 12 Q. You would not call out or you don't know 13 whether they should be called out? 14 A. No, I -- The second, I don't know 15 whether they should have been called out. 16 Q. Okay. You've had -- Strike that. Keep 17 going. 18 Structure 4, it looks like in addition 19 to the cut here kind of middle right, there's also 20 another cut to its left involving a circular pipe. 21 Do you see that? 22 A. Which one are you on? 23 Q. Structure 4. 24 A. Where are you looking? 25 Q. (Indicating.)</p>

<p style="text-align: right;">Page 326</p> <p>1 A. Okay.</p> <p>2 Q. So you've got the rectangular cut sort</p> <p>3 of center right, but center left you've got a</p> <p>4 large circle cut. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Now, that large circle cut, that's a</p> <p>7 different kind of cut than the smaller circle cuts</p> <p>8 that we were talking about before, right?</p> <p>9 A. This is bigger, yes.</p> <p>10 Q. So a bigger one of that size, should</p> <p>11 that have been called out in your report?</p> <p>12 A. The notch would have. Not necessarily</p> <p>13 the circle cut.</p> <p>14 Q. Now, Structure 5, we've talked a little</p> <p>15 bit about this, but this actually shows how these</p> <p>16 cuts are -- These are large cuts that actually are</p> <p>17 extending down the joists, right?</p> <p>18 One joist, two joists, three joists,</p> <p>19 they're running these large PVC pipes through</p> <p>20 them?</p> <p>21 A. Three joists, yes.</p> <p>22 Q. Three joists that you can see in this</p> <p>23 photo.</p> <p>24 A. Yes.</p> <p>25 Q. And that just goes to show that each one</p>	<p style="text-align: right;">Page 328</p> <p>1 should we go another ten minutes or so and then</p> <p>2 take one?</p> <p>3 A. Keep going.</p> <p>4 Q. As far as the joist that you didn't see,</p> <p>5 we just talked about the photographs.</p> <p>6 A. Yes.</p> <p>7 Q. You clearly didn't look at all the</p> <p>8 joists, right?</p> <p>9 A. In that section, right.</p> <p>10 Q. Right, okay. So you left them partially</p> <p>11 uninspected.</p> <p>12 A. Yes.</p> <p>13 Q. And so that should be an NI in your</p> <p>14 report, right?</p> <p>15 A. Yes.</p> <p>16 Q. If you only partially inspect something</p> <p>17 and you can't inspect the entire thing, then you</p> <p>18 put an NI with an explanation in your report.</p> <p>19 That's what you did, right?</p> <p>20 A. Right.</p> <p>21 Q. Okay. The attic, if you go to 618,</p> <p>22 [REDACTED] 618.</p> <p>23 A. Yes.</p> <p>24 Q. And you can open up these photographs,</p> <p>25 Mr. [REDACTED], to 115 and 116, please.</p>
<p style="text-align: right;">Page 327</p> <p>1 of these joists has something significantly wrong</p> <p>2 with it that should have been in your report.</p> <p>3 A. Yes.</p> <p>4 Q. Structure 6, this is a photograph very</p> <p>5 similar to the one we talked about before.</p> <p>6 A. Yes.</p> <p>7 Q. So we can skip it. But how about</p> <p>8 Structure 7? This is actually a close-up.</p> <p>9 A. Close-up.</p> <p>10 Q. Of the joist that was cut through,</p> <p>11 right?</p> <p>12 A. Yes, yes.</p> <p>13 Q. And this was something that should have</p> <p>14 been in your report, right?</p> <p>15 A. Yes.</p> <p>16 Q. And Structure 8 gives you a better idea</p> <p>17 as to the extent of the cut. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. You have no recollection at all</p> <p>20 of having --</p> <p>21 A. I have not seen that section, no.</p> <p>22 Q. Of having seen any of this during the</p> <p>23 inspection.</p> <p>24 A. No.</p> <p>25 Q. Do you guys need to take a break or</p>	<p style="text-align: right;">Page 329</p> <p>1 So these two photographs, August 2013,</p> <p>2 115 and 116, these are the two photographs that</p> <p>3 you took in the attic.</p> <p>4 A. Yes.</p> <p>5 Q. And the only two. You didn't take any</p> <p>6 other ones.</p> <p>7 A. No.</p> <p>8 Q. When you say "no," you're agreeing with</p> <p>9 me, right?</p> <p>10 A. Yes.</p> <p>11 Q. All right. And the note in the attic</p> <p>12 here, the method of inspection, viewed from the</p> <p>13 attic access?</p> <p>14 A. Yes.</p> <p>15 Q. So that means basically you pop open a</p> <p>16 lid and you go into the attic.</p> <p>17 A. Yeah, into that, and as far as right</p> <p>18 where the hatch is, yes.</p> <p>19 Q. So were you actually physically entirely</p> <p>20 in the attic or are you partially in the attic</p> <p>21 with your feet on a ladder?</p> <p>22 A. My feet on a ladder, yeah.</p> <p>23 Q. Okay. So you don't actually physically</p> <p>24 enter the attic space yourself.</p> <p>25 A. Not in most houses. In -- Just because,</p>

<p style="text-align: right;">Page 330</p> <p>1 for one, I don't like to disturb the insulation by 2 climbing through the attic. I don't know whether 3 I'm going to step through, and being the only one 4 when -- especially when I'm the only person at the 5 inspection. Some of these attics in the 6 summertime get to be a hundred forty degrees 7 inside.</p> <p>8 Q. Uh-huh.</p> <p>9 A. And so I don't want to pass out in 10 somebody's attic and be laying there dead.</p> <p>11 Q. Right.</p> <p>12 A. So I set the ladder high enough so that 13 I can see from the top of the ladder as much as I 14 can with my flashlight.</p> <p>15 Q. And if you can't visualize the entire 16 attic space with your flashlight, you note that in 17 your report.</p> <p>18 A. Yes. Yes.</p> <p>19 Q. Is there anywhere in your report where 20 you note that you couldn't visualize the entire 21 attic space?</p> <p>22 A. Not in this one, no. I felt that I 23 could see the majority of the attic from where I 24 was at.</p> <p>25 If there was a dormer or something in</p>	<p style="text-align: right;">Page 332</p> <p>1 Q. And Ms. [REDACTED], Wendy [REDACTED], told you 2 that they had done some mold work in the attic.</p> <p>3 A. Yes.</p> <p>4 Q. All right. The trusses and sheathing 5 appear to have been sand blasted and painted with 6 a mold inhibitor paint. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. We're looking at 115 and 116, these two 9 photos. Can you identify for me where you're 10 seeing evidence of sandblasting?</p> <p>11 A. Well, I can't say that it was 12 sandblasting. It's one of the techniques used -- 13 one of three techniques used by the mold 14 mitigators is some type of sandblasting, whether 15 it's sandblasting, whether it's dry-ice blasting 16 or whether -- There's another type of material 17 that they also use to do, but it appeared that 18 these beams had been -- they were smooth and the 19 surfaces of the plywood was basically fairly 20 clean, not -- There wasn't a lot of mucked-up 21 stuff on it. And so it appeared that they had 22 done some sort of physical removal of the mold, 23 which is typical, and I wrote sandblasting down. 24 I don't know that it was -- I can't tell you that 25 it was sandblasting for sure.</p>
<p style="text-align: right;">Page 331</p> <p>1 there, I would have had to climb in, but I felt 2 that I had good access to seeing everything I 3 needed to see with it.</p> <p>4 Q. Okay. So you felt like you could see 5 the entire attic space.</p> <p>6 A. Yes, yes.</p> <p>7 Q. And if you felt as though you couldn't 8 see the entire attic space, you would have 9 reported on what you saw and noted, there are 10 areas that I couldn't see.</p> <p>11 A. Yes.</p> <p>12 Q. Because that's what you do --</p> <p>13 A. That's what my standard is, yes.</p> <p>14 Q. When you're looking at a component or a 15 system --</p> <p>16 A. Yes.</p> <p>17 Q. -- and you can only see part of it, you 18 report on what you can see and then say what you 19 couldn't see.</p> <p>20 A. Yes.</p> <p>21 Q. So you've got, Roof framing, 2-by-6 22 truss. The attic appears to have mitigation from 23 moisture issues.</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 333</p> <p>1 Obviously looking at the report from 2 Montana -- MES, they hand-sanded it. But in the 3 typical companies, Five Valleys or whatever that I 4 see from around the area, they typically do some 5 sort of a blasting technique to remove mold 6 residue from the attic so they can get it cleaned 7 up and they vacuum filter it out.</p> <p>8 Q. So the sandblasting, though, that you 9 reference here -- appears to have been 10 sandblasted -- what evidence did you have that it 11 had been sandblasted?</p> <p>12 A. Well, the smoothness and the fact that 13 there was no -- When you look at the joists and 14 stuff, there appears to be no residual mold on -- 15 There are companies that just use a spray 16 treatment, but it leaves the mold still on the -- 17 on the surfaces, so there had been some sort of 18 physical -- physical removal of the mold, that I 19 could tell.</p> <p>20 Q. Okay. So you were visually 21 inspecting --</p> <p>22 A. Yes.</p> <p>23 Q. -- for obvious signs of mold.</p> <p>24 A. Yes.</p> <p>25 Q. So if you saw, you know, a black blotch</p>

<p style="text-align: right;">Page 334</p> <p>1 of mold on something, it's just sitting there, 2 you're looking at it, you can visualize it, you 3 would call it out. 4 A. I would call out. If it appeared that I 5 saw something that was mold-like stuff, I would 6 have called it out, that I could see. And I 7 didn't see anything on this -- on this 8 particular -- from this particular angle on it, 9 so -- 10 Q. So as a rule of thumb, I mean, 11 basically, mold, you kind of know it when you see 12 it. It can be black stuff. It's not supposed 13 to -- Black stuff, different-colored stuff that's 14 in a place where it really shouldn't be. Looks 15 bizarre. Right? 16 A. Right. Fungal, some sort of fungal. 17 Q. Like, for example, in the basement, 18 those white blotches that we were talking about, 19 if one of those during your inspection had been 20 black or mostly black, that would be something 21 that would cause you concern, wouldn't it? 22 A. It could, it could. Like I say, in 23 looking at the attic here, I'm not -- I'm seeing 24 evidence that something had been done with the 25 joists, so that's why I made that.</p>	<p style="text-align: right;">Page 336</p> <p>1 investigation. 2 A. Well, if something has been mitigated, I 3 just look for signs. And if there's signs, I 4 don't -- because it's been mitigated, I don't 5 recommend re- -- a follow-up with a molding -- 6 mold person if things look like they are done 7 recently and done -- Because she had said it had 8 been done within a year, or two years, whatever it 9 was, and most mold mitigators will guarantee their 10 work for five or seven years. 11 Q. Right. 12 A. So I had no reason to believe that it 13 was not performed adequately. 14 Q. All right. You didn't know who had done 15 the mitigation. 16 A. No, no. 17 Q. Okay. And we talked earlier about 18 you're not relying upon sellers' disclosure 19 information or your conversation with the sellers. 20 A. I'm not, no. 21 Q. So you go into this attic and you know 22 there's been some sort of mold issue, right? 23 A. Yes. 24 Q. And so you're conducting a visual 25 inspection. Right?</p>
<p style="text-align: right;">Page 335</p> <p>1 And I don't know how to make -- make a 2 report on the effectiveness of a mold mitigator 3 because I'm not a mold -- mold inspector, and I 4 make the assumption that if somebody's treated 5 something recently, that they -- they're licensed 6 to do it. 7 Q. So they must have done it right? 8 A. So I don't trust them all. 9 Q. I'm sorry? 10 A. I say I don't trust them all, so I look 11 to see if I can see anything that is out of what I 12 would call the normal with the mitigation system 13 or mediation-type treatment. 14 Q. All right. So you're visualizing for 15 mold knowing that a mold mediation had been done. 16 A. Yes. 17 Q. And so that in particular, if you can't 18 visualize that entire attic space, then you're 19 definitely going to recommend follow-up, because 20 if you know there's been mold up there and you 21 can't see the whole thing, then you're going to 22 recommend follow-up to a buyer, right? 23 A. Well, yes, I would recommend historical 24 follow-up on it, yes. 25 Q. You would recommend additional</p>	<p style="text-align: right;">Page 337</p> <p>1 A. Right. 2 Q. And you're looking for, among other 3 things, signs of mold or residual mold or moisture 4 issues? 5 A. Yes. 6 Q. Okay. And if you're looking at this 7 area, for example, on 115 and you're seeing 8 nothing out of the ordinary but there's an area of 9 the attic that you just can't see, you're going to 10 recommend -- Well, strike that. 11 If you're looking at 115 and it looks 12 fine to you, but you know there's a part of the 13 attic that you just can't see and you just can't 14 get to, again, you're going to note that in your 15 report, right? 16 A. If I couldn't really see it very well, 17 yes. 18 Q. Right. Because otherwise your report 19 would read, you know, appears to have mitigation 20 for moisture issues; there are areas I could not 21 visualize; you might want to conduct some 22 follow-up investigation, or something along those 23 lines. 24 A. Uh-huh. 25 Q. "Yes"?</p>

<p style="text-align: right;">Page 338</p> <p>1 A. Yes.</p> <p>2 Q. Because you have affirmative statements</p> <p>3 here, right, that the trusses and sheathing appear</p> <p>4 to have been sandblasted. You're making a</p> <p>5 notation -- affirmative notation regarding</p> <p>6 evidence of things that have been done.</p> <p>7 A. Yes.</p> <p>8 Q. That are consistent with a mold</p> <p>9 remediation.</p> <p>10 A. Yes.</p> <p>11 Q. And with a competent mold remediation.</p> <p>12 A. I don't know if you can say that, but it</p> <p>13 was done by -- that had been mitigated.</p> <p>14 Q. Caused you no concern based on what you</p> <p>15 saw.</p> <p>16 A. Yes, yes.</p> <p>17 Q. And that's what you're communicating</p> <p>18 here.</p> <p>19 A. That's what I'm saying there, yes.</p> <p>20 Q. Mold inhibitor paint. What is mold</p> <p>21 inhibitor paint?</p> <p>22 A. In my definition, it's a type of paint</p> <p>23 material that many of the mitigators use. Mostly</p> <p>24 they're using -- Well, some of them use the</p> <p>25 off-the-shelf ones that you can buy at the</p>	<p style="text-align: right;">Page 340</p> <p>1 A. Yes.</p> <p>2 Q. And you personally aren't seeing</p> <p>3 anything out of the ordinary with the mold</p> <p>4 remediation techniques or anything that are</p> <p>5 causing you concern.</p> <p>6 A. Right.</p> <p>7 Q. And you're communicating that to your</p> <p>8 client as well.</p> <p>9 A. Right.</p> <p>10 Q. Break. Sorry. Let's take ten minutes.</p> <p>11 MR. JOHNSON: It's 4:45 [sic].</p> <p>12 (Whereupon, the proceedings were in</p> <p>13 recess at 4:43 p.m. and subsequently reconvened at</p> <p>14 4:55 p.m., and the following proceedings were</p> <p>15 entered of record:)</p> <p>16 MR. JOHNSON: All right. We're back on.</p> <p>17 It's approximately 4:55.</p> <p>18 Q. (BY MR. JOHNSON) Mr. [REDACTED], let's go to</p> <p>19 the basement portion of your inspection report,</p> <p>20 which is right beneath attic on [REDACTED] 618.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And that's page 13 of 26 of your?</p> <p>24 August 6, 2013, home inspection report.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 339</p> <p>1 hardware stores.</p> <p>2 Some of them use some pretty high-tech</p> <p>3 materials that are guaranteed for years to</p> <p>4 protect.</p> <p>5 The white one is typical of the</p> <p>6 off-the-shelf Home Depot mold-inhibitor-type</p> <p>7 paint.</p> <p>8 Q. Okay. So when you look at the paint</p> <p>9 here that you see on 115 or 116, how does that --</p> <p>10 how do you know it's mold inhibitor paint?</p> <p>11 A. I'm making the assumption that is it.</p> <p>12 Q. You're guessing that is?</p> <p>13 A. Because if they said they had a</p> <p>14 professional mitigator, that's what I'm looking</p> <p>15 at.</p> <p>16 Q. So I think you and I can agree, you felt</p> <p>17 like you were able to visualize the entire attic</p> <p>18 space from the crawl space opening.</p> <p>19 A. Yes.</p> <p>20 Q. And that's what you're communicating to</p> <p>21 your client here in this section of the home</p> <p>22 inspection report.</p> <p>23 A. Yes.</p> <p>24 Q. And you're reporting on evidence of mold</p> <p>25 remediation, right?</p>	<p style="text-align: right;">Page 341</p> <p>1 Q. All right. The photos of the basement,</p> <p>2 at least your first swipe at the basement, are 33</p> <p>3 to 44.</p> <p>4 And that's not really true. It's more</p> <p>5 32 to 34 -- 32 to 44. All right.</p> <p>6 So 32 is just a -- I mean, this is a</p> <p>7 picture of what?</p> <p>8 A. A picture of what the floor joist</p> <p>9 structure looks like and then also a picture of an</p> <p>10 electric fixture missing the covers --</p> <p>11 Q. Okay.</p> <p>12 A. -- because it's gonna be used as a</p> <p>13 junction box.</p> <p>14 Q. So this area of the basement -- this is</p> <p>15 the main area where the fireplace is and all that</p> <p>16 kind of good stuff, right?</p> <p>17 A. Yes. It's -- I believe this location is</p> <p>18 about where that office area -- sort of office --</p> <p>19 right by the bedroom there.</p> <p>20 Q. Oh, okay.</p> <p>21 A. After you come through the mud room.</p> <p>22 Q. All right.</p> <p>23 A. I believe that's right where that is, in</p> <p>24 that area.</p> <p>25 Q. And so 33?</p>

<p style="text-align: right;">Page 342</p> <p>1 A. 33 is more of the rest of the -- the 2 eastern half of the basement. 3 Q. This is the main room, I guess you'd 4 call it. 5 A. Right. And the purpose of this photo 6 was just to show the beam structure with the three 7 nailed-together 2-by-10s, or whatever they are, 8 and the column structure with the steel column 9 structure and then a little bit more of floor 10 joist structure. 11 Q. So you can see the lights, the cans -- 12 A. Uh-huh. 13 Q. -- in the lower right-hand corner of 14 this photograph. 15 A. Uh-huh. 16 Q. "Yes"? 17 A. Yes. 18 Q. And did you ever turn those lights on 19 during your inspection? 20 A. For a brief time just to make sure they 21 worked. I felt that there was plenty enough 22 light. The sun was shining in through the three, 23 four or five windows in that main room that I 24 didn't need them on full time, but I do -- I did 25 check them to make sure that they worked.</p>	<p style="text-align: right;">Page 344</p> <p>1 my camera is taking okay pictures in that light, 2 so, you know, it's visible to me. 3 Q. When you say your camera is taking okay 4 pictures, take, for example -- 5 A. They're dark, but, again you have -- 6 Q. You gotta stop cutting me off. 7 A. I'm sorry. 8 Q. No, you're doing fine. I know it's late 9 in the day. You're doing fine. 10 But we talked earlier that your 11 camera -- or your tablet -- actually, I don't know 12 if it's got a malfunctioning flash, but it's got a 13 flash that's somewhat unreliable, right? 14 A. Well, if we're looking at -- Which 15 picture are you looking at? Picture 34, for 16 example -- 17 Q. Yeah? 18 A. -- the reason the flash didn't go off is 19 because the high light of the sunlight coming in, 20 and so it doesn't think it needs a flash. But, in 21 fact, because of the sun coming through the 22 window, it makes the picture darker because the 23 camera thinks, well, it's really okay. 24 But really it probably didn't get enough 25 light itself because of the filtering of the -- it</p>
<p style="text-align: right;">Page 343</p> <p>1 Q. So you knew where the light switch was? 2 A. Yes. 3 Q. And you operated them? 4 A. Yes. 5 Q. You turned on all cans in that area, the 6 east end of the basement? 7 A. Yes. 8 Q. And you found them to be operating 9 properly? 10 A. Yes. 11 Q. Was there any reason why those cans 12 would have interfered with your inspection, had 13 they been illuminated, of the foundation walls? 14 A. No, no. 15 Q. Is there any reason why they would not 16 have actually made it easier for you to visualize 17 the foundation walls? 18 A. I thought I had enough natural 19 illumination to see what I need to see. 20 Q. There's a difference between enough 21 natural illumination and that illumination plus 22 overhead lighting, right? 23 A. In some cases there is, yes. I don't 24 believe that there's a standard for how much 25 illumination I need to see, but if I -- Obviously</p>	<p style="text-align: right;">Page 345</p> <p>1 didn't filter out the sunlight coming through the 2 window. 3 Q. Okay. So you can see the photos as you 4 take them, right? 5 A. Yes. 6 Q. All right. So if you see -- and what we 7 have here is 34, you would have seen at the time 8 you took 34 that it was -- it was a dark 9 photograph. 10 A. Yes. 11 Q. And you would have known that it was 12 dark probably because of this natural light? 13 A. Yes. 14 Q. So you can also just toggle to your left 15 here a little bit, get out of the direct path of 16 the light and take another photograph, right? 17 A. Yes, which you have over on the next 18 page here. 19 Q. Well -- 20 A. Photo 35. 21 Q. The next picture is 35. 22 A. Yes. It's toggled around. It's toggled 23 around here. 24 Q. But this isn't a picture of the couch 25 and the north wall at a different angle.</p>

<p style="text-align: right;">Page 346</p> <p>1 A. No, no.</p> <p>2 Q. This is a picture of --</p> <p>3 A. Yeah, a different area.</p> <p>4 Q. -- a different area of the same room.</p> <p>5 (Whereupon, the court reporter reminded</p> <p>6 the parties to speak one at a time.)</p> <p>7 Q. (BY MR. JOHNSON) This is actually a</p> <p>8 picture of a different area of the same room.</p> <p>9 A. Yes.</p> <p>10 Q. All right. So what can you tell from</p> <p>11 photograph 34?</p> <p>12 What probative value does it have from a</p> <p>13 home inspection perspective?</p> <p>14 A. Well, what it shows is that there is</p> <p>15 some sort of insulation on the wall behind the</p> <p>16 couch there and that's basically it, and that the</p> <p>17 ceiling was -- as described, the Sheetrock was</p> <p>18 removed from the ceiling and the studs there are</p> <p>19 visible on the half wall above the concrete. It</p> <p>20 just shows that that's the state of the basement</p> <p>21 walls at the time of the inspection.</p> <p>22 Q. Now, the insulation that you're seeing</p> <p>23 on the north foundation wall here --</p> <p>24 A. Yes.</p> <p>25 Q. -- it's a very lightweight insulation.</p>	<p style="text-align: right;">Page 348</p> <p>1 A. Yes.</p> <p>2 Q. Okay. 36, this is the opposite end.</p> <p>3 This is the west end of the basement area, and</p> <p>4 this is that exposed fiberglass insulation that</p> <p>5 you were talking about in the report.</p> <p>6 A. Yes.</p> <p>7 Q. And 37 is a picture of the</p> <p>8 manufacturer's warning.</p> <p>9 A. Yes.</p> <p>10 Q. 38, this is that mud room/laundry area</p> <p>11 where they've done some sheetrocking.</p> <p>12 A. Yes.</p> <p>13 Q. And now we're back into the larger</p> <p>14 basement area, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Now, 39, that's what we -- that's</p> <p>17 the photo you and I are discussing now, and it's</p> <p>18 the photo of the larger basement area, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what we're seeing here in 39</p> <p>21 is there's a couch to the left.</p> <p>22 A. Yes.</p> <p>23 Q. And a wood chest next to it.</p> <p>24 A. Yes.</p> <p>25 Q. And then you've got the stairs coming</p>
<p style="text-align: right;">Page 347</p> <p>1 A. Yes.</p> <p>2 Q. It's like a panel insulation, and you</p> <p>3 can pick it up with one hand and move around.</p> <p>4 A. Yes.</p> <p>5 Q. But you wouldn't disturb it --</p> <p>6 A. No, because I would have had to have</p> <p>7 moved the couch to do it properly.</p> <p>8 Q. You would have had to move the</p> <p>9 insulation, right?</p> <p>10 A. And remove the insulation, right.</p> <p>11 Q. I mean, even if the couch wasn't there,</p> <p>12 would you have moved the insulation?</p> <p>13 A. It's not a requirement to move</p> <p>14 insulation.</p> <p>15 Q. So you wouldn't have done it.</p> <p>16 A. No, I probably -- No, I wouldn't have</p> <p>17 done it.</p> <p>18 Q. So 35, this is a picture that we</p> <p>19 actually discussed at length --</p> <p>20 A. Right. Yes.</p> <p>21 Q. You gotta wait.</p> <p>22 A. I'm sorry.</p> <p>23 Q. You're doing fine.</p> <p>24 35 is a picture that we discussed at</p> <p>25 length earlier, right?</p>	<p style="text-align: right;">Page 349</p> <p>1 down.</p> <p>2 A. Yes.</p> <p>3 Q. And the handrail that's supposed to be</p> <p>4 there but isn't, that would be on the right side</p> <p>5 of the stairs as you're descending the stairs.</p> <p>6 A. Yes.</p> <p>7 Q. So basically the side of the stairs</p> <p>8 that's closest to you.</p> <p>9 A. The open; the open side, yes.</p> <p>10 Q. Okay. And obviously you've got an</p> <p>11 overhead light on in this room.</p> <p>12 A. Yes. Well, I'm not sure that I did at</p> <p>13 that time.</p> <p>14 Q. Why don't you take a quick look at 41.</p> <p>15 Can you see --</p> <p>16 A. Oh, yes, yes. Yes, it was on.</p> <p>17 Q. So you can see an overhead light in that</p> <p>18 area of the basement.</p> <p>19 A. Yes.</p> <p>20 Q. You would turn that on.</p> <p>21 A. Yes. That one was on, yes.</p> <p>22 Q. And you've got it on even though there</p> <p>23 is -- there's a large window in that area of the</p> <p>24 basement as well with natural light.</p> <p>25 A. There is a window there, yes.</p>

<p style="text-align: right;">Page 350</p> <p>1 Q. Do you remember why you kept the light 2 on while you were taking pictures in that end of 3 the basement and didn't turn the lights on for 4 purposes of your pictures on the east end? 5 A. I don't know. 6 Q. So back to 39, if you will, we've got 7 the stairwell here that we were just discussing 8 and then you can see through the framing into the 9 east end; is that right? 10 A. Yes. 11 Q. All right. And in the east end you can 12 see here there's this fireplace. 13 A. Yes. 14 Q. Do you see that? 15 A. Yes. 16 Q. And there's a heavy metal grate in front 17 of it, right? 18 A. There's a metal grate in front of it, 19 yes. 20 Q. And then there's a piece of insulation 21 behind it? 22 A. Yes. 23 Q. Like a thick yellow piece of insulation? 24 A. Yes. There's another picture back 25 further in here.</p>	<p style="text-align: right;">Page 352</p> <p>1 Q. All right. So the firebox, in order to 2 get that view, you had to move the metal grate. 3 A. Yes. 4 Q. And you had to move the insulation. 5 A. Yes. 6 Q. You testified earlier you never move 7 anything to get to anything. 8 A. I have to in a fireplace. I'm required 9 to look at the fireplace, and in every fireplace 10 that I do, there's a fire grate in front of it and 11 it has to be moved. 12 Q. Where in the standards does it require 13 that you look at the fireplace? 14 A. Section 12, Fireplaces and Solid Fuel 15 Burning Devices, page 5. 16 Q. So where does it say that you must 17 inspect the fireplace? 18 A. 12.1 A, Inspect system components of the 19 fireplace. The inspector shall inspect system 20 components, fireplace area and fireplace solid 21 fuel burning devices. 22 Q. That's the same language, though, for 23 like the foundation walls, right? 24 A. Yes. 25 Q. The inspector shall inspect structural</p>
<p style="text-align: right;">Page 351</p> <p>1 Photo 53. 2 Q. Photo 53, all right. So on 39 we've got 3 the metal grate and the fiberglass insulation. 4 They're concealing the fireplace. 5 A. Yes. 6 Q. And then in 53, first of all, it looks 7 like you actually do have the overhead light on at 8 this point, right? 9 A. I believe I might have at that point, 10 yes -- 11 Q. Because -- 12 A. -- to get a better view of the firebox. 13 Q. And you can see the shadows from the 14 wires here with the TV? 15 A. Yes. 16 Q. The shadows are actually being cast as 17 if there's overhead lighting? 18 A. Yes. 19 Q. Okay. So you and I can agree for 20 purposes of this one photograph, you had the 21 overhead lights on. 22 A. Yes. 23 Q. Why would you have turned them on for 24 this photograph? 25 A. To get a better view of the firebox.</p>	<p style="text-align: right;">Page 353</p> <p>1 components including the foundation and framing, 2 Standard 3. Right? 3 A. Right. 4 Q. So you're relying on the "shall" 5 language in 12. You're saying that justifies 6 having to move the grate? 7 A. The grate is -- the grate is not a 8 couch. 9 Q. So what's the standard, then, for moving 10 something? If it's not a couch? 11 A. If there are readily accessible panels, 12 then I can open it up. If there's a fire grate, 13 if there's a sliding fire grate in the fireplace, 14 I will open that up so that I can see what's 15 inside the firebox. 16 Q. Well, what about the fact that it was 17 also covered with insulation? 18 A. The insulation was -- I could see behind 19 the insulation without moving it. And when I saw 20 that there was some damage to the fireplace, 21 that's why I pulled that piece of insulation back. 22 Q. Okay. So the insulation -- 23 A. The purpose -- so the purpose -- The 24 insulation was -- The grate was here, the piece of 25 insulation was right behind it just leaning up</p>

<p style="text-align: right;">Page 354</p> <p>1 against the wall, and I just flipped back the 2 insulation to look at that and I saw that this 3 here -- the top of this fireplace was damaged. So 4 I pulled the insulation off, but to take a 5 picture, I also had to pull that -- the grate off 6 from it. 7 Q. Okay. So the yellow insulation that was 8 in front of the fireplace, it wasn't affixed to 9 anything. 10 A. No. It was just flopped against the 11 opening -- 12 Q. Just leaning against the fireplace? 13 A. -- just leaning against the opening. 14 Yes. 15 Q. You gotta stop. 16 Leaning against the fireplace. 17 A. Yes. 18 Q. So since it was just leaning against the 19 fireplace, you looked behind it, poked behind it? 20 A. Yes. 21 Q. And you could see that it wasn't affixed 22 to anything. 23 A. That's correct. 24 Q. And because it wasn't affixed to 25 anything, you thought, okay, I'll go ahead and</p>	<p style="text-align: right;">Page 356</p> <p>1 another table or something alongside of it at the 2 time. It covered up two-thirds of that pieces -- 3 two-thirds of the pieces that were there and there 4 was a table in front of the other one. 5 Q. Was the couch pressing up against the 6 insulation? Was that the issue? 7 A. Yes. 8 Q. Flush against it? 9 A. Yes. 10 Q. Pinned it to the wall? 11 A. Yes. 12 Q. Okay. So if it hadn't been pinning the 13 insulation to the wall, then you might have taken 14 a closer look and taken a crack at looking behind 15 it? 16 A. Yes. If it would have been leaning up a 17 ways so that I could -- 18 Q. Now, you look at 91 -- or I guess 90 and 19 91. It looks like you went back into the 20 basement. 21 A. Yes. 22 Q. Do you remember why you did that? 23 A. I just wanted a couple of the pictures 24 that gave me a better -- one gave me a better 25 picture of the wall as the sun had moved a little</p>
<p style="text-align: right;">Page 355</p> <p>1 move it? 2 A. Well, I saw the damage at the top of the 3 fireplace and that's why I removed it. 4 Q. Because -- 5 A. Because I slid -- All I do is slide it 6 out. 7 Q. So you moved it a little bit, saw the 8 damage and then moved it all the way. 9 A. Yes. 10 Q. Could you have done that with any of the 11 sheet insulation that was propped against the 12 north-facing wall, the foundation wall? 13 A. I don't know because I didn't pull on 14 it, and I could see that the fireplace -- the 15 stuff in front of the fireplace was just leaning 16 against it. 17 Q. So the insulation leaning against the 18 north-facing wall, that's something that maybe you 19 could have done the same thing with, but you 20 didn't try and do it? 21 A. Right, because I didn't want to move the 22 couch. I wasn't going to move the couch. 23 Q. The couch doesn't run the entire length 24 of wall, does it? 25 A. Well, there was another piece of --</p>	<p style="text-align: right;">Page 357</p> <p>1 bit in that time period. So I may have looked 2 back at this other picture of the basement and 3 seen that I didn't have a very good picture of the 4 couch against the wall and took that picture 5 again. That actually came out a little better. 6 Q. All right. And so you can actually -- 7 Yeah, this picture did come out better, didn't it? 8 A. Yeah. 9 Q. So you can see from this picture -- 10 "this picture" being 91 -- that the sheet 11 insulation doesn't run the entire length of the 12 north foundation wall. 13 A. Right. 14 Q. You can see that it terminates here to 15 the left of the couch and then you can see the 16 foundation wall again? 17 A. Right. 18 Q. And then it looks as though 92, that's a 19 slightly better photo of the photo -- or slightly 20 better version of the angle that you had taken at 21 35 -- 22 A. Yes. 23 Q. -- that we discussed earlier. 24 A. Yes. 25 Q. Okay. So you've got -- Your rating for</p>

<p style="text-align: right;">Page 358</p> <p>1 basement, first of all, you've got full basement, 2 ceiling, drywall and exposed framing. 3 Do you see that? 4 A. Yes. 5 Q. And so you've rated both of those as 6 acceptable. 7 A. Yes. 8 Q. Now, exposed framing, that would include 9 the area in the bathroom as well, wouldn't it? 10 A. Yes. 11 Q. All right. So this is inaccurate what 12 you've got here in your report. 13 A. Yes. 14 Q. The framing in the bathroom area, the 15 big cuts in the joists, that would render it a 16 defect as opposed to acceptable. 17 A. Yes. 18 Q. Okay. And then the drywall, that must 19 be the drywall in the mud room area. 20 A. Yes. 21 Q. Now, you called it amateurish, right? 22 A. Yes. 23 Q. But it's still acceptable? 24 A. Well, it hadn't been taped or textured, 25 so it's -- I don't know what the finished product</p>	<p style="text-align: right;">Page 360</p> <p>1 damaged room and floor coverings. 2 With my one hiccup, did I read that 3 correctly? 4 A. Yes. 5 Q. So when you're talking about the walls 6 and rating them as defective, what specific things 7 are causing you to rank them as a D, defects? 8 A. Defects were with insulation, that is a 9 defect, safety defect again. And then just a note 10 that the walls have been stripped of drywall and 11 insulation, that there hadn't been -- again, that 12 there hadn't been any moisture as reported by the 13 owner and that was all removed. 14 Q. Okay. So we've got the insulation, 15 which is a safety issue. 16 A. Yes. 17 Q. All right. You're not marking S for 18 safety, but that's what you meant. 19 A. Yes. 20 Q. And then the fact that the walls have 21 been stripped of drywall and insulation, that 22 doesn't make the walls defective, does it? 23 A. Not necessarily, no. Just a comment, 24 sidebar comment. 25 Q. Right. And that's what you're</p>
<p style="text-align: right;">Page 359</p> <p>1 is going to look like. 2 Q. All right. And then you toggle down to 3 walls in the basement. Do you see that? 4 A. Yes. 5 Q. And you do have these marked with a D 6 for defective, right? 7 A. Yes. 8 Q. And your comment is, Walls: exposed 9 framing, drywall, exposed Kraft back insulation, 10 concrete. Is that correct? 11 A. Yes. 12 Q. There is exposed Kraft back insulation 13 on the garage walls. The manufacturer label 14 states that the facing will burn if exposed and 15 should be covered with gypsum board or other 16 approved fire-resistant material. Recommend 17 covering the insulation with gypsum board for fire 18 safety. 19 Have I read it correctly so far? 20 A. Yes. 21 Q. Most of the walls in the basement have 22 been stripped of drywall and insulation. The 23 owner stated that there had been a moisture issue 24 with the previous owner so they removed the 25 damaged dry- -- I'm sorry. So they removed the</p>	<p style="text-align: right;">Page 361</p> <p>1 communicating here. 2 A. Yes. 3 Q. You're not communicating that you 4 observed a defect on the walls. You are 5 communicating that the walls have been stripped 6 down. 7 A. Yes. 8 Q. It doesn't make them defective. You're 9 just making a factual statement. 10 A. Yes. 11 Q. Okay. And so we've got walls continued. 12 Do you see that? 13 A. Yes. 14 Q. And this is where you've got some 15 additional photographs? 16 A. Yes. 17 Q. Okay. The dark one all the way to the 18 right, that looks to me like it's the close-up of 19 the insulation. 20 A. It's the close-up of the insulation 21 statement. 22 Q. And so floor drain acceptable, 23 insulation acceptable. 24 By the way, did you inspect the 25 insulation on the north foundation wall at all?</p>

<p style="text-align: right;">Page 362</p> <p>1 A. The Styro or the --</p> <p>2 Q. The sheet insulation that was against</p> <p>3 the north foundation wall that you didn't look</p> <p>4 behind, that you're saying was pinned by the</p> <p>5 couch, did you take a look at that insulation and</p> <p>6 inspect it?</p> <p>7 A. Just cursory look at it, see if there</p> <p>8 was any breaks in the foil or --</p> <p>9 Q. Did you notice? -- What kind of</p> <p>10 insulation was it?</p> <p>11 A. It was a foil-faced foam.</p> <p>12 Q. A foil what?</p> <p>13 A. A foil-faced foam.</p> <p>14 Q. A foil-faced foam?</p> <p>15 A. Yes.</p> <p>16 Q. Is that the same as fiberglass?</p> <p>17 A. No. The fiberglass is the Kraft wrap.</p> <p>18 Q. Is it -- Sorry. Is it the same as spray</p> <p>19 foam?</p> <p>20 A. No.</p> <p>21 Q. So when you're reporting on the walls</p> <p>22 acceptable, the insulation, fiberglass and spray</p> <p>23 foam, you don't note that you -- you don't even</p> <p>24 note the foil-faced foam, right?</p> <p>25 A. I didn't, no.</p>	<p style="text-align: right;">Page 364</p> <p>1 acceptable, right?</p> <p>2 A. Yes.</p> <p>3 Q. And so you've got water lines: copper.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Drain pipes: PVC?</p> <p>7 A. Yes.</p> <p>8 Q. Vent pipes: PVC?</p> <p>9 A. Yes.</p> <p>10 Q. So the cuts that we were seeing in the</p> <p>11 joists earlier, were those PVC pipes?</p> <p>12 A. Yes.</p> <p>13 Q. And were they drain pipes and vent</p> <p>14 pipes?</p> <p>15 A. Yes. Combos.</p> <p>16 Q. All right. How were you able to inspect</p> <p>17 the plumbing -- adequately inspect the plumbing if</p> <p>18 you weren't visualizing the plumbing in the</p> <p>19 basement ceiling?</p> <p>20 A. Well, I looked at it from the back side</p> <p>21 of the bathroom wall and looked at it from the</p> <p>22 mechanical room area.</p> <p>23 Q. Okay. So from a different area?</p> <p>24 A. Yes.</p> <p>25 Q. You saw that it was made of PVC.</p>
<p style="text-align: right;">Page 363</p> <p>1 Q. To understand whether foil-faced foam is</p> <p>2 acceptable or not, would it be helpful to know</p> <p>3 whether it's glued or whether it's loose, how it's</p> <p>4 placed against the wall, things like that?</p> <p>5 A. I don't know if they had installed it</p> <p>6 correctly or not. It was just there. To me, it</p> <p>7 wouldn't -- it would have been a situation of</p> <p>8 there's -- they must have been trying to cover --</p> <p>9 at least make some sort of attempt to keep in heat</p> <p>10 in the basement. But when you only have three</p> <p>11 pieces of it on one wall and the rest of the walls</p> <p>12 are all bare on the lower level, except -- well,</p> <p>13 except from behind, there's a sheet behind the</p> <p>14 couch and the office as well, that office area, is</p> <p>15 just a matter of, yeah, it's not finished.</p> <p>16 Q. All right. So you turn the page and</p> <p>17 you've got fireplace. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And you rated that with a D,</p> <p>20 there's a defect. After you moved that problem</p> <p>21 insulation, that yellow insulation that was</p> <p>22 propped up, you took the photograph and noted the</p> <p>23 defect.</p> <p>24 A. Yes.</p> <p>25 Q. And then plumbing, you've got it all</p>	<p style="text-align: right;">Page 365</p> <p>1 A. Yes.</p> <p>2 Q. Bathroom, page 16 to 26. Master bath,</p> <p>3 main floor bath, basement half-bath bathroom.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. You have ceiling, drywall and exposed</p> <p>7 frame.</p> <p>8 A. Yes.</p> <p>9 Q. And the drywall is in reference to the</p> <p>10 finished spaces upstairs.</p> <p>11 A. Yes.</p> <p>12 Q. And the exposed framing is in reference</p> <p>13 to the basement bathroom.</p> <p>14 A. Yes.</p> <p>15 Q. And you have this marked as acceptable.</p> <p>16 A. Yes.</p> <p>17 Q. Is that accurate?</p> <p>18 A. In regards to what we talked about</p> <p>19 earlier, no.</p> <p>20 Q. Okay. So what you have here, number one</p> <p>21 under bathroom should actually not have been</p> <p>22 marked acceptable.</p> <p>23 A. Yes.</p> <p>24 Q. It should have been marked defective.</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 366</p> <p>1 Q. Okay. And then -- Okay. 2 If you just toggle back to exterior 3 surfacing components, which is 8 of 26 in your 4 report and it's Bates [REDACTED] 613 -- 5 A. Yes. 6 Q. -- you've got main house exterior 7 surface: wood siding, rock facing, T111 plywood 8 siding. Do you see that? 9 A. Yes. 10 Q. All right. Now, you'd mentioned earlier 11 that the staining -- the water staining along the 12 siding is a cosmetic issue? 13 A. Yes. 14 EXHIBITS: 15 (Deposition Exhibit Number 11 marked for 16 identification.) 17 Q. (BY MR. JOHNSON) I'll show you what 18 we'll mark as Exhibit 11, Mr. [REDACTED]. These are two 19 photographs. Maybe I should have put them in 20 reverse order, but the second photograph shows -- 21 Well, tell me what the second photograph shows. 22 A. It shows the siding on the east side of 23 the main entrance with a stain running down the 24 side of the house. 25 Q. And the stain goes from narrow to wider,</p>	<p style="text-align: right;">Page 368</p> <p>1 Q. And then gutters, that's number 8. 2 A. Yes. 3 Q. And you've got rated acceptable, right? 4 A. Yes. 5 Q. But this -- what we just talked about, 6 this photograph of the siding and the stain coming 7 out of the gutter, that's a defect, right? A 8 defect in the gutter? 9 A. Yes. I believe it would be, yes. 10 Q. So your report is inaccurate on that 11 issue. It should have noted the defect, correct? 12 A. A defect in that one gutter, yes. 13 Q. And you talked earlier about the fact 14 that this is a cosmetic issue. 15 A. The staining? 16 Q. Yes. 17 A. Yes. 18 Q. All right. But the staining also 19 signifies that there's water that's escaping the 20 gutter, right? 21 A. Right. 22 Q. And running down the side of the house. 23 A. Right. 24 Q. And as it runs down the side of the 25 house, where does it get deposited?</p>
<p style="text-align: right;">Page 367</p> <p>1 it sort of triangulates or widens as it flows 2 towards the ground? 3 A. Yes. 4 Q. And that tells you that the leak is 5 starting up top and flowing down. 6 A. Yes. 7 Q. And the leak is starting where, that you 8 can tell? The water staining, where does it 9 start? 10 A. Somewhere around the gutter. 11 Q. And what does that tell you about the 12 gutter? 13 A. Well, it may not be sealed properly 14 against the wall. 15 Q. It would tell you that the gutter, at 16 least at that location, is likely not functioning 17 as it should. 18 A. Yes. 19 Q. So that's a defect in the gutters. 20 A. Yes. 21 Q. If you look at page 9 of 26, also Bates 22 [REDACTED] 614 -- 23 A. Okay. 24 Q. -- this is the roof section, right? 25 A. Yes.</p>	<p style="text-align: right;">Page 369</p> <p>1 A. Just alongside the house. 2 Q. Adjacent to the foundation wall. 3 A. Yes. 4 Q. So the purpose of the gutter is to 5 collect water off the roof and redirect it so that 6 it doesn't get deposited near or immediately 7 adjacent to foundation walls, right? 8 A. Yes. 9 Q. And in this case what you have is a 10 gutter that is leaking and depositing water 11 directly against the north foundation wall of this 12 house. 13 A. Right. 14 Q. One of the problems I have is -- when 15 I'm a lawyer is that I can't seem to leave my 16 work, to the point where I'll leave work and I'll 17 see somebody driving recklessly, and I'll think, 18 oh, that's negligence, or I'll walk somewhere and 19 I see something on the sidewalk and I think 20 someone's going to trip on that, and it's going to 21 a homeowner's insurance claim. 22 I'm guessing, as a home inspector, it's 23 sort of a risk of being involved in that trade. 24 When you've got that sort of training, you 25 probably can't help yourself: when you see</p>

<p style="text-align: right;">Page 370</p> <p>1 something, you're kind of inspecting just because 2 that's what you normally do, right? 3 A. Yes, yes. 4 EXHIBITS: 5 (Deposition Exhibit Number 12 marked for 6 identification.) 7 Q. (BY MR. JOHNSON) I'll hand you -- what 8 we've marked as 12. Do you recognize 12? 9 A. Is this the reinspection? 10 Q. I believe it is your reinspection 11 report. It's Bates [REDACTED] 659 and it says prepared 12 for [REDACTED] claim, Missoula, Montana. 13 Do you see that? 14 A. Yes. 15 Q. Okay. Did you generate this? 16 A. Yes. 17 Q. And what we've got here are a series of 18 photographs that you took during your 19 inspection -- your reinspection. 20 A. Yes. 21 Q. So take a look at page 5 of 24, [REDACTED] 664, 22 photo number 9. 23 A. Okay. 24 Q. And you're noting here, you say, There 25 was another extension added to this gutter since</p>	<p style="text-align: right;">Page 372</p> <p>1 issues that are now occurring in your home. 2 A. That's correct. 3 Q. All right. So if you take a look at 4 number 15, photo number 15, please, your 5 reinspection report, can you see how there's -- I 6 guess there a light staining or discoloration of 7 the siding here at the bottom towards the deck? 8 A. Yes. 9 Q. What do you typically see that resulting 10 from? 11 A. Snow. 12 Q. Snow? 13 A. Yes. 14 Q. And when you say "snow," you mean 15 like snow -- 16 A. Unshoveled snow against the -- against 17 the foundation -- or against cedar siding. 18 Q. Can it also result from gutters being 19 improperly hung and water coming down off the roof 20 and just splash staining the side? 21 A. I would be more inclined to think this 22 is snow because it's a straight line. 23 As a side comment, I see that a lot up 24 in the Seeley area where they get this much 25 (indicating) snow on the side and you see a</p>
<p style="text-align: right;">Page 371</p> <p>1 my last trip up there. 2 Do you see that? 3 A. Yes. 4 Q. Now, you're pointing that out and that's 5 correct. You're not critical of that gutter 6 extension, though, are you? 7 A. No, no. 8 Q. In fact, that gutter extension is a good 9 idea. 10 A. Yes, yes. 11 Q. And same deal with photo number 10. 12 A. Yes. 13 Q. There was another extension added to 14 this gutter since my last trip up there? 15 A. Yes. 16 Q. That's a good idea too. 17 A. Yes. 18 Q. That sort of -- That mitigates against 19 the possibility of water being -- 20 A. Yes. 21 Q. Even if you have a small gutter 22 extension, you want to get it as far away as you 23 can -- 24 A. Yes. 25 Q. -- particularly when you've had water</p>	<p style="text-align: right;">Page 373</p> <p>1 four-foot line along the side of the house. 2 Q. Can you take a look -- And maybe you'd 3 get a better view -- I'm going to ask you about 4 photo 16, but I think the better picture to look 5 at is the reinspect photos that I gave you 6 earlier, which is Exhibit 7. 7 Number 16, do you see that? 8 A. Yes. 9 Q. Okay. So this is a photograph that 10 shows some of that discoloration we were just 11 talking about. 12 A. Yes. 13 Q. Okay. And then if you look at -- you 14 can see -- What have we got here? We've got like 15 the model glass window here and then there's 16 another window to its left and then you've got the 17 door? 18 A. Yes. 19 Q. Okay. And if you keep tracking left, 20 you can see where the gutter terminates along the 21 side of the house here? Do you see that? 22 A. Yes. 23 Q. Okay. And do you see the water stain 24 coming down from the window there? 25 A. Yes. A small stain, yes.</p>

<p style="text-align: right;">Page 374</p> <p>1 Q. It's what? 2 A. A small stain coming down there, yes. 3 Q. It's a visible water stain. 4 A. Yes. 5 Q. What does that tell you about the 6 gutter? 7 A. I can't be sure because that roofline -- 8 that rake edge comes along the side of there too, 9 so I don't know if there's water coming off the 10 end of that gutter or coming off that rake edge. 11 Q. Either way, the roof system is not 12 capturing the water there. 13 A. Yes. 14 Q. And it's running down the side. 15 A. And it's running down the side of that. 16 Q. Okay. Is that a defect in the roof or 17 the gutter? 18 A. Not on a rake edge, no. The rake edge 19 being the edge that is the angled-edge side of the 20 house. 21 Q. Number 19. 22 A. Which -- 23 Q. -- in your reinspection report. You 24 indicate in your narrative here, In this picture 25 the claim is that water is running along the wall</p>	<p style="text-align: right;">Page 376</p> <p>1 A. Not a lot of builders around here use 2 them, but there's certain builders that do. 3 Q. When they put in those strips, in your 4 experience, my understanding is they just 5 typically -- they stick them into the concrete 6 when they pour it. 7 A. Yes. 8 Q. And so they're just there. 9 A. Yes. 10 Q. Now, that is a weak point in the 11 concrete relative to the other areas in the wall. 12 A. I would think so, yes. 13 Q. So if you're going to have a weak point 14 where you might have either microcracking or that 15 might be more susceptible on the water end, those 16 wood strips might be a good place to start 17 looking? 18 A. They would probably be the most suspect, 19 yes. 20 Q. All right. 21 A. That'd be the weakest link in that 22 foundation. 23 Q. And wood typically, if it's exposed to 24 water over time, will stain. 25 A. Yes.</p>
<p style="text-align: right;">Page 375</p> <p>1 to the center of the house and leaking in. No 2 cracks in the foundation wall that I could see. 3 Did I read that correctly? 4 A. Yes. 5 Q. Must there be a crack in the foundation 6 wall in order for water to pass through it? 7 A. It's the most likely candidate. That 8 would be the first thing that I would look for. 9 If I had water coming in that was active, I would 10 look at the cracks. Otherwise, it can come up 11 between the floor and the wall joint, which would 12 be the next one. 13 Q. You understand concrete's a porous 14 material. 15 A. Yes. 16 Q. And so it can absorb water over time and 17 the water pass through. 18 A. Yes. 19 Q. One thing I forgot to ask you about, 20 there are wood strips in the concrete foundation 21 wall in the basement. 22 A. Nailer strips, yes. 23 Q. Have you seen those before? 24 A. Yes. 25 Q. Are they common?</p>	<p style="text-align: right;">Page 377</p> <p>1 Q. Did you look for wood -- Did you look 2 for water staining on those wood strips? 3 A. I saw a little bit. Not a lot. Didn't 4 seem to find any rock deterioration, but there was 5 a little staining in some of them. 6 Q. You noticed staining on them at the time 7 of your August inspection? 8 A. Yes. On the lower tiny section of it. 9 Q. On more than one strip? 10 A. Yes. 11 Q. On basically all the strips, just low 12 end? 13 A. Of the strips that I saw, yes, yes. 14 Q. Which is a sign of prior -- of a prior 15 water event. 16 A. Yes. 17 Q. Prior exposure to water. 18 A. Correct. 19 Q. And could you tell from your inspection 20 in August of 2013 whether the staining at the 21 bottom of the wood strips resulted from a plumbing 22 leak or outside-in water? 23 A. Not specifically, but I assumed that 24 because there had been a water issue on the floor 25 that the -- Since it's all -- it was just a short</p>

<p style="text-align: right;">Page 378</p> <p>1 distance up, it appeared that it was from standing 2 water on it. 3 Q. All right. We talked earlier, though, 4 that you don't allow the information provided to 5 you by the seller to limit your inspection. 6 A. Right, right. 7 Q. So you've gotta -- You're aware that 8 there is a prior pipe leak. 9 A. Yes. 10 Q. But other than that, that's irrelevant 11 for purposes of your inspection. 12 A. That's right. 13 Q. So when you saw the wood and the wood 14 staining in August of 2013, basically you've got 15 two possibilities again: that staining is either 16 the result of an inside water leak or water coming 17 from outside the house. 18 A. Right. 19 Q. Okay. And you don't know -- and you 20 didn't know the answer then as to what actually 21 caused the wood staining. 22 A. Right. 23 Q. Did you take any pictures of the wood 24 staining? 25 A. It was evident in a couple of the</p>	<p style="text-align: right;">Page 380</p> <p>1 A. No. 2 Q. When you -- when you walked through for 3 your reinspection, you were -- I was there, right? 4 A. Yes. 5 Q. Okay. And I pointed out a couple of 6 things to you, but you were also allowed to -- no 7 one tried to restrict your movements in the 8 property. You were free to go where you wanted to 9 go. 10 A. Right. 11 Q. Okay. And so I mentioned to you 12 earlier, you know, you know, when you're a 13 carpenter, you see nails everywhere. When you're 14 a home inspector, you know, you're always looking. 15 And so you're free to go anywhere you want on the 16 reinspection and you were in the basement, right? 17 A. Yes. 18 Q. And it looks to me like if you look at 19 number 39, photo 39, you were in the basement 20 bathroom area. 21 A. Yes. 22 Q. It doesn't look to me that you found any 23 of the problems with the joists on the 24 reinspection either. 25 A. No.</p>
<p style="text-align: right;">Page 379</p> <p>1 pictures in the report. 2 Q. Of the wood staining? 3 A. Yes. 4 Q. Oh. Can you show me, please. 5 A. I'm not sure how clear it was on the 6 one. There is a photo I just saw in here that had 7 a close-up picture -- it was a basement picture -- 8 of where the table is in the basement. It was a 9 fairly dark picture, though, from the printing. 10 Q. Oh, are you thinking of 44, 43 or 44? 11 A. No. 12 Q. Is it 40? That's a very dark photo. 13 A. Yes, it's a very dark photo. It's 40. 14 Q. Okay. And this might have come out a 15 little bit darker in the reprinting. 16 A. Yes, yes. 17 Q. But you think -- you think when you look 18 at this on the computer, for example, you think 19 that there's evidence of water staining on these? 20 A. I believe so, yes. 21 Q. Okay. Did you call it out -- Strike 22 that. 23 You didn't call out wood staining in 24 your -- or water-stained wood in your report, 25 though.</p>	<p style="text-align: right;">Page 381</p> <p>1 Q. I'll just tell you, we didn't discover 2 the problems with the joists until after your 3 reinspection, so -- 4 A. Right. 5 Q. So when you reinspected in October, that 6 was the second opportunity for you to actually 7 visualize there was exposed joists, right? 8 A. Yes. 9 Q. And you missed them a second time. 10 A. I was not informed of what I was 11 supposed to do, so I'm just guessing, guessing in 12 the wind what I was supposed to be there to 13 reinspect. 14 Q. But you didn't look up in the bathroom. 15 A. No. 16 Q. Do you think that [REDACTED] and [REDACTED] Mellem 17 have done anything wrong? Are you critical of 18 them for any reason? 19 A. In regards to the inspection, you mean? 20 Q. Anything to do with this case at all. 21 A. Kind of a general statement. You're 22 asking me whether I would have advised them to buy 23 the house or not. I mean, the thing that I think 24 was missed was the examination of the previous 25 documents and the correspondence with the previous</p>

<p style="text-align: right;">Page 382</p> <p>1 attorney in regards to the claims that the [REDACTED]s 2 had filed and the results of that, the results of 3 the mold testing at that time and the lack of -- 4 not follow-up by them, but follow-up by the [REDACTED]s 5 to retest as was suggested, but the appearance of 6 not looking at all the documents that they had 7 access to that I didn't have access to in the 8 decision process for the house, that would be the 9 major concern that I would have with the case.</p> <p>10 Q. What specific documents are you talking 11 about?</p> <p>12 A. The -- Step back. What did the 13 disclosure say on it? I have to look at what the 14 disclosure said, what the disclosure statements 15 were. Did they adequately address the mold issue? 16 The mold issue was -- was presented to them as 17 were, at some point, the documentation for the 18 litigation against the prior owner from the 19 [REDACTED]s, and the apparent lack of actual settlement 20 of that case because the settlement mediation 21 hadn't been taken care of from the original owner 22 to the [REDACTED]s case. And there was not -- 23 insurance or whatever it was didn't follow up on 24 that particular situation to effectively address 25 the mold, mold/water issue at that point.</p>	<p style="text-align: right;">Page 384</p> <p>1 suit would have been brought to their attention, 2 the litigation suit against the Bellamahs, then I 3 would think that there would have been a different 4 outcome.</p> <p>5 And so I don't know exactly what they 6 had according to the emails that I saw, the 7 Realtor claims that they had all the information. 8 Whether they did or not, I don't know. I assume 9 that they would have had that information.</p> <p>10 Q. It's an assumption on your part. 11 A. That's an assumption, but I mean 12 that's -- that's -- And it has nothing to do with 13 what my inspection is, but that's what I feel 14 would have been the steps, that there should have 15 been more due diligence on that aspect of the 16 purchase.</p> <p>17 Q. You're not critical of them for getting 18 a home inspection, though? 19 A. No.</p> <p>20 Q. And you're not critical of them for 21 having chosen to go with you. 22 A. No, I'm not.</p> <p>23 Q. And it was right for them to rely on 24 your home inspection report. 25 A. For part of their decision. I wouldn't</p>
<p style="text-align: right;">Page 383</p> <p>1 The failure of the [REDACTED]s to follow the 2 advice of the mold man, and I think that would 3 have been, you know -- if I would have seen that 4 as a home inspector, then there would have been a 5 different outcome to the advice of what I would 6 have said in here.</p> <p>7 If I had known that the mold guy said, 8 no, it needed to be retested, I would have said, 9 yeah, I would follow what he has to say. He's the 10 professional. Why wasn't it tested after it was 11 done? Why wasn't the basement tested before?</p> <p>12 You know, if you had the history of it 13 and you checked on the buy-sell that you were 14 going to have mold tested, why wasn't mold tested 15 for at that point, prior to the end of the time to 16 make the decision to yes buy or no buy?</p> <p>17 Q. So do you think that [REDACTED] and [REDACTED] had 18 that big thick stack of material from the [REDACTED]s 19 lawsuit against the Bellamahs [phonetic] prior to 20 buying this house?</p> <p>21 A. I know they had a lot of information. I 22 don't know whether they had all of it or not. But 23 I believe that if they would have at least had 24 some of the information that they were on the 25 mediation, on the -- if that would have -- if that</p>	<p style="text-align: right;">Page 385</p> <p>1 have used it for all the decision, knowing -- 2 because I -- knowing what I know now.</p> <p>3 Seeing all the documentation that I have 4 now that has been presented to me now, it would 5 have been a different outcome.</p> <p>6 Q. Right. But do you know whether they 7 would have bought the home if you had called out 8 the joist problem, for example? 9 A. I believe they would have.</p> <p>10 Q. What makes you say? 11 A. Because I called out the windows and 12 they didn't do anything about the windows, which 13 was a drastic concern for them.</p> <p>14 Q. And you were aware that [REDACTED] was very 15 concerned about the windows. 16 A. From the Realtor, yes, yes, and I was -- 17 and that was an issue.</p> <p>18 Q. And they almost walked away because of 19 the windows. 20 A. Yes.</p> <p>21 Q. And you're aware of that. They almost 22 walked away because of the windows? 23 A. I didn't know that, but I knew that that 24 was a --</p> <p>25 Q. Very important to them.</p>

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<p>1 A. Very important to them, yes.</p> <p>2 Q. Right. Now, on top of the windows, heap</p> <p>3 on \$7500 or \$10,000 worth of structural issues and</p> <p>4 plumbing reroutes. Now, that's something to</p> <p>5 really consider, right?</p> <p>6 A. Yes.</p> <p>7 Q. That could really impact someone's</p> <p>8 decision to buy or sell.</p> <p>9 A. Right.</p> <p>10 Q. And that's stuff that you missed.</p> <p>11 A. Right.</p> <p>12 Q. As far as, you know, any criticism you</p> <p>13 have of the Mellemes, [REDACTED] and [REDACTED], your</p> <p>14 explanation about the [REDACTED]s and the follow-up and</p> <p>15 the litigation, does that exhaust your criticism?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you ever talked to the</p> <p>18 [REDACTED]s other than the first time you saw Wendy?</p> <p>19 A. No, no, no.</p> <p>20 Q. Let's go off for two minutes. I'll</p> <p>21 check my notes.</p> <p>22 (Whereupon, the proceedings were in</p> <p>23 recess at 5:48 p.m. and subsequently reconvened at</p> <p>24 5:54, and the following proceedings were had and</p> <p>25 entered of record:)</p>	<p>1 CERTIFICATE OF WITNESS</p> <p>2</p> <p>3 PAGE LINE</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 I hereby certify that this is a true and</p> <p>11 correct copy of my testimony, together with any</p> <p>12 changes I have made on this and any subsequent</p> <p>13 pages attached hereto.</p> <p>14 Dated on this the _____ day of</p> <p>15 _____, 2014.</p> <p>16</p> <p>17 _____, Deponent.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 MR. JOHNSON: All right. We're back on.</p> <p>2 5:54.</p> <p>3 Q. (BY MR. JOHNSON) And, Mr. [REDACTED], those</p> <p>4 are all the questions I have and thank you very</p> <p>5 much for your time.</p> <p>6 A. Okay. Thank you.</p> <p>7 MS. MORE: We'll read and sign.</p> <p>8 MR. JOHNSON: Thank you.</p> <p>9 (Deposition concluded at 5:54 p.m.</p> <p>10 Witness excused; signature reserved.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	