

1 Your Honor.

2 THE COURT: Further, Ms. Paton-Walsh?

3 MS. PATON-WALSH: No, Your Honor, we have no  
4 redirect.

5 THE COURT: Thank you for coming today.

6 THE WITNESS: Thank you.

7 THE COURT: Take a break till 9:30.

8 THE CLERK: Please rise. Court is in recess.

9 (Recess taken.)

10 THE COURT: Superior Court resumes its  
11 session, except for you, Ms. Collett.

12 We are all back, present, with Mr. Clarkson  
13 at the podium and Teresa Collett on the stand.

14 If you would raise your right hand, please.

15 (Witness sworn.)

16 THE CLERK: Thank you. Please be seated.

17 For the record, if you would state your full  
18 name, spelling your first and last.

19 THE WITNESS: Teresa Collett, T-E-R-E-S-A,  
20 C-O-L-L-E-T-T. No E on the end.

21 THE COURT: Your questions, Mr. Clarkson.

22 -o0o-

23 TERESA COLLETT, J.D.,

24 called as a witness on behalf of the

25 Intervenors, testified as follows on:

1 DIRECT EXAMINATION

2 BY MR. CLARKSON:

3 Q Professor Collett, could you tell us, just as  
4 an introduction, how it is you came to be here and  
5 what it is you've been asked to do.

6 A I believe I was originally contacted by you  
7 when the challenge was brought to the current law.  
8 And you asked if I might be available to testify as an  
9 expert again. And I said, depending on the schedule,  
10 I would certainly be happy to do so.

11 Q And you said again.

12 A I testified in a prior case in Alaska related  
13 to the Parental Consent Law.

14 Q Okay. And you were recognized as an expert  
15 in that case?

16 A That's correct.

17 Q And what is it you were asked to do in that  
18 case?

19 A I've been asked to testify based about the  
20 operation of judicial bypass in parental involvement  
21 laws, based on my experience in Texas, in both helping  
22 various legislators, the sponsor of the parental  
23 notification law in that case, craft what we believed  
24 to be at that time a constitutionally sound judicial  
25 bypass, as well as my experience sitting on the Texas

1 Supreme Court's Rules Committee, Subadvisory  
2 Committee, on rules for the Parental Notification Law  
3 Notification Act.

4 Also, I've been asked to testify based on my  
5 scholarly research, looking at the operation of  
6 parental involvement laws throughout the country.

7 Q All right. Have you in fact formed opinions  
8 to share with the Court?

9 A I have.

10 Q All right. Now, let's talk about what  
11 educational and work background you have that  
12 qualifies you to give your opinions.

13 A I am a licensed lawyer in the state of Texas  
14 and Oklahoma, as well as numerous federal court of  
15 appeals, the Federal District Court of the Southern  
16 District of Texas, as well as the United States  
17 Supreme Court.

18 In that capacity, I have defended Oklahoma's  
19 Parental Notification Law successfully in the Tenth  
20 Circuit. I have also advised numerous legislators  
21 around the country in the crafting of those laws,  
22 including legislators in the states of Vermont and  
23 Connecticut. I was asked to testify in New Jersey  
24 when they sought to override the Farmer case.

25 I've also testified in front of Congress

1 numerous times in the various attempts to provide a  
2 national parental involvement law regarding girls who  
3 go across state lines.

4 I am a tenured full professor at the  
5 University of St. Thomas, where I teach a course  
6 called Human Sexuality and the Constitution, where we  
7 look at abortion laws, as well as laws regulating  
8 sexual conduct and other aspects.

9 I also have taught constitutional -- the  
10 introductory constitutional law in the past, and I've  
11 published at least three articles dealing with  
12 parental involvement laws.

13 Q You taught previously in Texas?

14 A I did.

15 Q And what did you teach and where?

16 A I taught at South Texas College of Law. It's  
17 a free-standing law school in Houston, Texas. I  
18 taught there approximately 12 years, and among my  
19 course load was constitutional law. I also taught a  
20 seminar on medical decision making. And it was in  
21 that capacity that I obtained my Texas law license and  
22 worked with various members of the Texas legislature.

23 Q All right. Now, you mentioned Texas has a  
24 parental involvement law?

25 A That is correct.

1 Q And what is the law and when was it passed?

2 A The Texas Parental Notification Law was  
3 passed in 1999. That was the law that I worked with  
4 Representative Diane Delisi, who was the sponsor of  
5 the law, in making sure that it met all of the federal  
6 constitutional standards, as well as state  
7 constitutional standards.

8 That law, however, was replaced by a parental  
9 consent law after I left the state of Texas.

10 Q Okay. And so you mentioned -- I won't try to  
11 get the name right, but the subcommittee, the Texas  
12 Supreme Court subcommittee you served on. What was  
13 the function of the committee and what was your role?

14 A Crafting the judicial procedures for a bypass  
15 involves a lot of different questions. How do we  
16 maintain confidentiality or anonymity from the moment  
17 the girl files her petition to the time that a final  
18 judgment is rendered.

19 And so those sorts of details are not  
20 commonly contained in a statute. The Texas Supreme  
21 Court therefore needed to create a committee that  
22 could advise the court on what sort of processes we  
23 need to put in place in the court clerk's offices, in  
24 the district courts, the rules for appeal, et cetera.

25 So they appointed a subadvisory committee to

1 their rules committee to deal only with the parental  
2 notification standards. Bob Pemberton, who was an  
3 employee of the court, did the initial drafting of  
4 that. The committee was composed of representatives  
5 from the bar, a number of district court judges. I  
6 believe Justice Cornyn, who is now Senator Cornyn from  
7 the state of Texas, sat on the committee for a brief  
8 period of time. Justice Hecht. So it was comprised  
9 of lawyers and judges, and there were a number of  
10 court clerks also on the committee.

11 Q All right. What was the period of time you  
12 served on the committee?

13 A From its inception, I believe it was 1999, it  
14 may have been early 2000, almost immediately after the  
15 bill was passed, until my departure from Texas in  
16 mid-2003.

17 Q So what did the -- in summary, what did the  
18 subcommittee do with respect to the development and  
19 implementation of the parental involvement law and/or  
20 the bypass process?

21 A We took the statutory requirements concerning  
22 anonymity, concerning time, concerning burden of  
23 proof, and crafted a set of forms that the court made  
24 available on its Web site, so that lawyers who were  
25 assisting young girls or the girls themselves could

1 access those forms.

2 We also crafted a set of procedures for the  
3 court clerks. One of the problems that we discovered  
4 sitting on the committee, was that particularly in  
5 rural courts, the clerks weren't always as cognizant  
6 of the need to expedite those documents and  
7 hand-deliver them to the judge almost as soon as they  
8 were filed. The judges had to enter a ruling within  
9 two business days after the filing of the petition.  
10 So we worked with those rules.

11 Our initial task was to create the forms and  
12 to create the court rules. And then after that, we  
13 were called together; I was reappointed when we had  
14 had some experience with it and needed to make a few  
15 modifications.

16 Q All right. What sorts of -- can you list off  
17 for us the sorts of concerns that the subcommittee  
18 addressed that they thought might transpire with  
19 respect to the parental involvement law and/or the  
20 bypass?

21 A Certainly.

22 The United States Supreme Court has required  
23 anonymity for these proceedings, to ensure that the  
24 girl's identity cannot be revealed.

25 So one of the questions is, how do you file a

1 petition in a district court when you don't identify  
2 who the petitioner is, and issue an order that a  
3 medical provider could actually rely on and know that  
4 the girl who's providing that order to them is the  
5 girl who was -- who appeared before the judge and made  
6 the explanation.

7           So what we devised was a cover sheet, a  
8 verification sheet, that provided the girl's name, her  
9 address, her contact information, et cetera. That  
10 cover sheet then was given a case number, but removed,  
11 physically removed in the clerk's office and filed in  
12 a separate place from the petition itself. So the  
13 petition and the documents in the court file, if you  
14 will, only bore the court number, the case number.  
15 There was no name, address, or contact information.  
16 It had to be cross-referenced with this verification  
17 page. That was one of the things we talked about.

18           When you have cases that are being filed  
19 anonymously, the other thing we worried about is the  
20 application of res judicata. If a young girl applied  
21 to a court in Harris County, which is Houston, and the  
22 judge denied the order, how did we ensure that that  
23 denial went through the process of appeal, rather than  
24 simply going to another court in a neighboring county  
25 and simply filing a second time, without the judges

1 knowing. So we were concerned about how do you  
2 effectuate that.

3 How do you effectuate the -- what sort of  
4 procedures do we have to have in place to make sure  
5 that the judge's docket allows it to be heard within  
6 two business days. That's a very short time frame.

7 Q So, expediency.

8 A So expediency was a huge concern. And the  
9 judges, under the Texas statute, which is almost all  
10 of the rules we put in place are identical under the  
11 Texas consent statute, the judge has to issue the  
12 order at the end of the hearing. And so one of the  
13 things we did is we crafted some, if you will, model  
14 form orders for the court, so that they could simply  
15 check the boxes, so that we'd have a written order.

16 Q Okay. All right. And we'll get back to that  
17 in more detail at other time. I just wanted to sort  
18 of have you list off the concerns that you had a  
19 chance to address.

20 As a subcommittee member, did you have a  
21 chance to sort of learn about the actual operation of  
22 the bypass law once it went into effect?

23 A Absolutely. The court clerk representatives  
24 routinely advised the committee of what their  
25 experience was. The committee also had a

1 representative of a group called Jane's Due Process.  
2 It's an organization that was established in Texas by  
3 the Texas American Civil Liberties Union for the  
4 primary purpose of assisting minors to go through  
5 these bypass proceedings.

6 One of -- I believe one of the founders was  
7 on the committee. So she would bring reports to the  
8 committee as to --

9 Q Who was that?

10 A There was both -- Susan Steeg with was with  
11 the department of health. And I apologize. I can't  
12 remember Jane's Due Process's --

13 Q Rita Lucido?

14 A I don't believe -- I recognize that name  
15 simply because I've read her expert report. I don't  
16 believe it was Rita.

17 Q That's all right. It's not critical.

18 Did you have an opportunity to interact with  
19 judges who actually presided over bypass proceedings,  
20 as a subcommittee member?

21 A Absolutely. Both appellate judges and trial  
22 court judges.

23 Q All right. And have you conducted research  
24 with respect to Alaska in particular, in terms of  
25 its -- the issue of abortion, adolescents' bypass

1 proceedings, those sorts of things? Have you done  
2 research in that respect?

3 A Yes. Both in preparation for my prior  
4 testimony and this testimony.

5 Q All right. Have you done research regarding  
6 the benefits and detriments of parental involvement  
7 laws in Texas and elsewhere?

8 A I have.

9 Q And as a law professor, have you done -- have  
10 you written on the subject of parental involvement  
11 laws?

12 A I have. My most extensive article was  
13 attached as an exhibit to my report. It's Seeking  
14 Solomon's Wisdom. It was actually an outgrowth of my  
15 experience where judges were asking, how do we do  
16 this. It's sui generis, as Justice Enoch of the Texas  
17 Supreme Court said.

18 So that involved looking at appellant  
19 opinions from across the country, what factors had  
20 other courts identified in the published opinions,  
21 what sort of things did abortion providers say were  
22 important.

23 Q Could you look at Exhibit 2043 for me? It  
24 should be right in front of you. And just confirm for  
25 me that's a current copy of your CV.

1           A       Yes.

2                   MR. CLARKSON: All right. Your Honor, I  
3 would offer Exhibit 2043.

4                   (Exhibit 2043 offered.)

5                   THE COURT: 2043 is admitted.

6                   (Exhibit 2043 admitted.)

7                   MR. CLARKSON: At this time I would offer  
8 Professor Collett as an expert in the Texas judicial  
9 bypass and proceedings thereunder, the benefits and  
10 detriments realized under the Texas parental  
11 involvement law, and the benefits and detriments of  
12 parental involvement laws in general.

13                   MS. CREPPS: Your Honor, I just want to note  
14 for the record that we previously moved to strike  
15 Professor Collett for the grounds set forth in that  
16 motion, which was denied. I just want to make it  
17 clear that we haven't waived those objections moving  
18 forward.

19                   THE COURT: Very well.

20                   So ordered. I'll admit her as an expert in  
21 judicial bypass benefits and detriments of parental  
22 notice laws both in Texas and elsewhere.

23                   MR. CLARKSON: Thank you, Your Honor.

24 BY MR. CLARKSON:

25           Q       All right. Professor Collett, let's focus

1 first on the frequency of abortions performed on  
2 minors in Alaska.

3 Have you done research with respect to that  
4 topic?

5 A I've reviewed the statistics that are  
6 provided by the Alaska Department of Health and Human  
7 Services.

8 Q And what have you found?

9 A From the ten-year period of 2001 to 2010,  
10 there was a range of 110 abortions performed on  
11 minors, to 131 abortions performed on minors.

12 Q And what's been the trend?

13 A It's varied, but it has typically followed  
14 the national trend. We actually see a small decline,  
15 decrease.

16 Q Okay. And what have you -- has your research  
17 told you anything about the ages of the girls who seek  
18 abortion and those who don't, within that adolescent  
19 age range of 17 and under?

20 A The majority of girls seeking abortions in  
21 Alaska, as elsewhere, are ages 16 and 17. Although  
22 there are young girls in Alaska who seek abortions  
23 that are 15 and under, which is the way the statistics  
24 are typically broken out.

25 THE COURT: You say the majority are what

1 age?

2 THE WITNESS: 16 and 17, Your Honor.

3 BY MR. CLARKSON:

4 Q And so what opinions, if any, have you formed  
5 in that respect, that relate to your thoughts about  
6 the Parental Notice Law in Alaska?

7 A According to a study that was published by  
8 the Alaska Department of Health and Human Services  
9 epidemiology department, a girl who is 15 and under is  
10 twice as likely to seek to end the pregnancy in  
11 abortion, as the young girls who are 16 and 17. In  
12 addition to that --

13 THE COURT: Would you say that again?

14 THE WITNESS: Certainly.

15 If the girl is 15 or under, Your Honor, there  
16 is a 50 percent chance, approximately, that she will  
17 end her pregnancy through abortion. If she's 16 or  
18 17, that chance decreases to approximately 25 percent.  
19 That's consistent with the national statistics,  
20 generally, also.

21 In addition to that, that particular study  
22 then was expanded on in an article by -- the lead a  
23 author's last name was Glessner, and it was published  
24 as a publication of the department, where they said  
25 that pregnant minors were significantly more likely to

1 experience violence during pregnancy than they were --  
2 than women who were adults during their pregnancy. So  
3 there seems to be both a connection with pregnancy and  
4 violence.

5 The other thing that the Alaska Department of  
6 Health study indicated was that a number of the young  
7 girls who were 15 and under would have been the  
8 subject of statutory rape. That's --

9 BY MR. CLARKSON:

10 Q No. Go ahead. That's exactly where I was  
11 going. You're ahead of me here, so let me just focus  
12 you in that respect.

13 Have you done research with respect to the  
14 incidence of sexual assault on adolescent girls who  
15 are pregnant?

16 A There is a significant body of research, both  
17 nationally and this particular Alaska study, that  
18 indicates the younger the girl, the more likely she is  
19 to have experienced sexual assault, the younger the  
20 pregnant girl is, the more likely.

21 Q Well, start nationally first, and then we'll  
22 move to Alaska.

23 A Mark Males published a summary of the  
24 research in Lancet, as well as a study done -- may I  
25 refer to my expert report?

1 Q Certainly.

2 A Okay. Thank you. Just because the studies  
3 are identified there for you.

4 In that particular study, Mike Males  
5 indicated that 66 percent of the births would have --  
6 of young girls, would have been the result of  
7 statutory rape.

8 In that instance, it was a study of several  
9 thousand records related to adolescent pregnancy out  
10 of California. The exact quote is: 71 percent, or  
11 over 33,000, were fathered by adult high school men  
12 whose mean age were 22.6 years. They were, on  
13 average, five years older than the mother.

14 Under Alaska statutory rape law, that  
15 would -- you have a three-year Romeo and Juliet  
16 exception, so that still would constitute rape.  
17 That's consistent with the study that was done in the  
18 Alaska Department of Health, where they determined  
19 that 58.6 percent of the total births to girls who  
20 were under the age of 16 would have met the criteria  
21 for statutory rape under your law.

22 Q And does that Alaska study have a name?

23 A It does. It is the Glessner study.

24 Q It's called "Live Teen Birth"?

25 A "Live Teen Birth" is not the expanded study.

1 That's the -- it's the "Experience of Violence Among  
2 Teenage Mothers in Alaska."

3 Q All right. Thank you very much.

4 I interrupted you. Were you done explaining  
5 what you --

6 A I am.

7 Q Okay. Have you looked at other studies in  
8 that respect on this issue also?

9 A Boyer and Fine had a similar disturbing  
10 study: Again, the younger the teen mother is, the  
11 more likely they will have experienced some sort of  
12 sexual assault. That was also reinforced by a study  
13 by Gefferson (phonetic), I believe is how you  
14 pronounce the last name. All of these are -- those  
15 two studies were -- appeared in peer-reviewed  
16 journals.

17 Q All right. Have you reviewed any anything by  
18 the American Pediatrics --

19 A The American Pediatrics Association has an  
20 adolescence committee, and in, I believe it was 1993,  
21 they also identified sexual assault as a primary  
22 indicator of teen -- the younger teen pregnancies.  
23 They relied on -- they both -- I believe they cited  
24 the Boyer and Fine study.

25 Q Okay. And a study by D.J. Taylor, have you

1 reviewed that study?

2 A I have, indeed. And that study also finds,  
3 again, these numbers tend to run about two-thirds of  
4 the younger adolescents.

5 Q Okay. Now, you, sort of, already moved and  
6 told us about the Alaska studies and how they relate  
7 to the national studies. But I heard you say that  
8 sort of, the big picture is, younger girls, adolescent  
9 girls, are more likely to have experienced violence,  
10 and then you've talked about sexual assault.

11 I just want to have you talk to me about what  
12 that means, in terms of when you say violence, what  
13 are you talking about? What do the studies reflect?  
14 Are we talking about parental violence? Are we  
15 talking about violence from some other context? What  
16 are we talking about?

17 A No. The Taylor study was also, like the  
18 Males study, based on over 20,000 girls in California.  
19 The medical -- the records maintained by the state for  
20 Medicaid-eligible teens. And in that instance, it was  
21 sexual assault. It was what would constitute  
22 statutory rape.

23 The figure in Alaska also was based on the  
24 initial figure that I was giving, that is minors who  
25 are pregnant at age 15 and younger are more likely to

1 be the victim of statutory rape.

2 Separate from that is the violence that they  
3 experience during pregnancy, and that can be from a  
4 partner, a family member. The report was based on  
5 PRAMS, which is the Pregnancy Risk Assessment  
6 Monitoring System that is a joint project between the  
7 Centers for Disease Control and individual states.

8 And so those were the statistics that the  
9 Alaska Department of Health were relying on, their  
10 Alaska report of PRAMS.

11 Q Okay. Let's change subjects.

12 A Okay.

13 Q Let's talk about adolescent girls voluntarily  
14 involving their parents in their abortion decisions.  
15 Have you done research on that subject?

16 A I have. We were particularly interested in  
17 that in Texas. And as part of the legislative process  
18 in passing the Parental Notification Act, the Texas  
19 Planning Family Council prepared a report of young  
20 girls who were seeking abortion in clinics that were  
21 part of their network in 1998.

22 Their report revealed that approximately  
23 69 percent of the girls who had appeared and requested  
24 an abortion at their clinics were seeking, had  
25 informed one of their parents.

1           When you look at the national -- when you  
2 look at other studies, there's a study out of Michigan  
3 that indicates it's a 53 percent parental  
4 notification. There's a study out of the  
5 St. Paul-Minneapolis area, there's another study. But  
6 the national study is Henshaw and Kost.

7           The Henshaw and Kost study has a number of  
8 problems with it. Number one, the information they  
9 obtained only from the girls seeking abortion. There  
10 was no check of that information by interviewing the  
11 parents or receiving comparable information of the  
12 parents that came.

13           What it discovered -- and again, it was part  
14 of my written report in this case. But what they  
15 discovered was that we had approximately, I believe  
16 the number was 53 percent of voluntary notification,  
17 but additional number of parents were informed by some  
18 other person or learned some other way.

19           After a parent learned of it, 87 percent of  
20 the parents supported the minors's decision to obtain  
21 an abortion, according to them.

22           The three reasons that the researchers  
23 identified that the girls gave for their reluctance to  
24 tell their parents -- and, frankly, it's primarily  
25 their mom that they tell, not their dad. Dads are far

1 more rare to be told. The primary reason they didn't  
2 want to tell their moms was because they were afraid  
3 it would upset them, the second reason was that they  
4 would be angry, and the third reason was that they  
5 would -- that they didn't want their parents to know  
6 they were having sex.

7           They asked -- the researchers asked about the  
8 consequences after the parents discovered it, and it  
9 was interesting, because they lumped together four  
10 adverse consequences to reach a 10 percent figure.  
11 But the largest of the adverse consequences that the  
12 girls identified was that it caused additional stress  
13 to their parents. The sort of violence and being  
14 thrown out of the home were exceptionally rare.

15           Q     You mentioned anger. Worrying about my  
16 parent -- my mom. I guess principally mom being  
17 angry. Did the study associate that with abuse, or  
18 was that different?

19           A     That was distinguished from violence. There  
20 was a category that the girl was beaten, the girl was  
21 thrown from -- you know, told to leave her home.  
22 Again, those were exceptionally rare.

23                     But the angry, there was a significant number  
24 of parents that were angry. But I assume that was  
25 separated out. The authors are a little unclear when

1 you actually read the study carefully.

2 Q Okay. I'm interested in having you look more  
3 closely at the Henshaw-Kost study. Do you have a copy  
4 there you can look at?

5 A I do.

6 MS. CREPPS: It's in evidence.

7 MR. CLARKSON: It's an exhibit?

8 MS. CREPPS: What? It's Demonstrative  
9 Exhibit 1040.

10 MR. CLARKSON: Okay.

11 BY MR. CLARKSON:

12 Q Would you take a look at that. I want you to  
13 focus on Table 2 first.

14 MS. CREPPS: I'm sorry. What page?

15 MR. CLARKSON: Table No. 2.

16 BY MR. CLARKSON:

17 Q Are you there?

18 A I am.

19 Q Okay. Can you explain the significance of  
20 that table and what the authors found in that portion  
21 of their -- what they were saying in that portion of  
22 their study?

23 A Well, part of the question that the authors  
24 were concerned with was the motivation of girls in  
25 avoiding telling their parents or in choosing to tell

1 their parents. And so one of the factors would be the  
2 emotional closeness of the parent to the child, or the  
3 child's perception of that closeness, as well as the  
4 sort of topics of conversation that the parent-child  
5 had already engaged in.

6 And so Table 2 is a report on how the minors  
7 themselves reported their closeness, in that  
8 particular factor, when you look at all minors'  
9 closeness, in this particular survey, to their mother.  
10 Well over 80 percent, 86 percent of the minors  
11 indicated that they were very close or somewhat close  
12 to their mom, only 2 percent indicated that they had  
13 little or no contact with their mother.

14 Talked to parents about feelings, problems,  
15 and fears, again, you see that 68 percent of the girls  
16 indicated that they talked to their mom freely or  
17 somewhat freely.

18 Talked to parents about sexual issues. Not a  
19 surprising result. That number drops down to  
20 50 percent.

21 Parents knew before pregnancy the daughter  
22 had had sex: 48 percent of the girls were confident  
23 that they did, 16 percent were not sure, and  
24 31 percent said no.

25 Parents' attitude about the daughters having

1 sex: 34 percent disapproved, 25 percent left it up to  
2 the daughter. And then the parents' attitude if he or  
3 she knew that the daughter was having sex, again:  
4 Disapproved, left it up to the daughter, unknown, or  
5 encouraged them to use birth control.

6 Q Okay. I was just trying to locate --

7 A Those statistics were drawn from the mother's  
8 side rather than the father's.

9 THE COURT: All right. Thank you.

10 BY MR. CLARKSON:

11 Q All right. I'm sorry. I just gave the judge  
12 a copy of the study so he could follow along.

13 Let's go to Table 3. Can you tell us about  
14 Table 3 and what it reflects?

15 A This was the question about how many of the  
16 parents knew about the daughter's decision to obtain  
17 an abortion, and how the parents came to that  
18 knowledge.

19 So you see the breakdown by age. Parents --  
20 the younger the minor, the more likely they are to  
21 have told a parent, and in particular to have told  
22 their mother. The older they are, the more unlikely  
23 they are to have told their mother.

24 There's also a significant number of  
25 circumstances in which the parent was told by someone

1 else or found out in some manner that the minor wasn't  
2 sure how.

3 Q All right. Table 5. Tell us about Table 5.

4 A Table 5 was -- were the results where the  
5 researchers asked minors why did you tell your folks,  
6 or why did you not tell your folks. And so that was  
7 what I referred to in my opening comments about this  
8 particular study.

9 If you look at Table 5, minors who told their  
10 parents, the primary reason given for both telling  
11 mothers or fathers is that it just would not have felt  
12 right to tell their parent, or the parent needed to  
13 help them decide what to do, thought the parent would  
14 be sympathetic.

15 In cases where the minor chose not to tell  
16 the parent, again, the number one reason, 73 percent  
17 of all minors who chose not to tell their mother, did  
18 not want to hurt or disappoint the parent. The next  
19 one is thought the parent would be angry or didn't  
20 want the parent to know I was having sex, as I  
21 mentioned earlier.

22 Q Okay. And the last table I want you to look  
23 at is Table 8.

24 A Yes.

25 Q Can you explain that table to us and what it

1 reflects?

2 A This is where the researchers asked the  
3 minors to identify who helped them decide what to do,  
4 who accompanied them, who -- what role did they take  
5 in the decision-making process of the minor.

6 And so if you look at the table, you see that  
7 the most common individuals to be involved in the  
8 decision are the mother and the boyfriend, as well as  
9 other people that are indicated to be friends.

10 And this is where we see that, again, it's  
11 the mother or the boyfriend or a friend who are most  
12 likely to actually accompany the minor to the abortion  
13 clinic. But of that, it's only 41 percent of the  
14 minors indicate that they were accompanied by their  
15 mother, whereas 37 percent would be accompanied by the  
16 boyfriend.

17 Q Now, we've heard other witnesses in this case  
18 talk about this study and this issue, and they've said  
19 if the girl doesn't involve a parent, she will involve  
20 another trusted adult.

21 What does this study reflect, in terms of who  
22 they define as being an adult that the girl might  
23 consult or involve?

24 A Well, certainly they include adult  
25 boyfriends -- that would be part of the trusted

1 adults, by their own definition -- friend, and uncle,  
2 they talk about stepparent, sister, or brother.

3 And so one of the concerns, of course -- if  
4 you look at page 2 of 5, aside from parents, the  
5 individual most likely to have been involved was the  
6 minor's boyfriend. 78 percent of our sample said they  
7 participated in making, in getting the decision.

8 So one of the concerns is whether or not that  
9 involvement actually had the best interests of the  
10 minor at heart.

11 Q And based on that study, a young girl was how  
12 much more likely to involve an adult boyfriend than  
13 her father, do you know?

14 A It's here in front of me, but I had not --

15 Q If you don't know, that's okay.

16 A -- been asked that question before, or  
17 thought about it.

18 Q Let's change subjects, then. Let's talk  
19 about birth and abortion rates.

20 THE COURT: Are you moving off this study?

21 MR. CLARKSON: I am, yes.

22 THE COURT: Let me just ask you about this  
23 study. I haven't read it. Is it a -- do you believe  
24 it's an intellectually honest study?

25 THE WITNESS: I think they accurately report

1 what they found. I think they structured it in a way  
2 to answer the particular questions they had, but I  
3 think there were questions that should have been  
4 asked, if not for any other reason than verification.

5 It's only in states that do not have parental  
6 involvement laws. It's only from the girl's  
7 perspective. So the ambiguity of: Thought my mother  
8 would get mad, and the self-report that my mother did  
9 get mad, I think we could have gotten a lot of clarity  
10 if they had at least tried to involve the parents.

11 And it only involves girls who chose  
12 abortion. It tells us nothing about the involvement  
13 of parents in the decision of those girls who  
14 ultimately opt not to choose abortion, but choose to  
15 continue, and either spontaneously abort or who carry  
16 the child to term.

17 THE COURT: All right. With those caveats  
18 and footnotes --

19 THE WITNESS: I do think it's an honest  
20 report.

21 THE COURT: It's an honest (indiscernible).

22 THE WITNESS: Yes.

23 BY MR. CLARKSON:

24 Q Okay. Now changing subjects. Let's talk  
25 about birth and abortion rates.

1           Have you done research with respect to what  
2 effect parental involvement laws have on those in  
3 either Texas or elsewhere?

4           A     One of the interesting effects that I don't  
5 think even the author of the Texas Parental  
6 Notification Act anticipated to be quite as dramatic  
7 as it was, is the year after the Texas Parental  
8 Notification Act went into effect, we saw an overall  
9 decline in teen pregnancies. That could have been  
10 part of a national trend, it could have -- there are a  
11 lot of variables that could have contributed to that.  
12 But what we were really surprised to find was a  
13 20 percent decline in teen abortion rates.

14           So we saw a decline in teen live births, we  
15 saw a decline in teen abortions, which suggest to us  
16 that we saw a decline in teen pregnancies. These were  
17 reported. I had done some initial calculations, as  
18 part of my committee work, because we were wanting to  
19 know, were we actually creating undue burdens or  
20 barriers in some way. But it was also supported by a  
21 study done by Theodore Joyce that appeared in the New  
22 England Journal of Medicine, which is a peer-reviewed  
23 study.

24           Q     Tell us about the Joyce study.

25           A     In this case, they particularly looked at the

1 change in Texas abortions and births in 1998 and 1999,  
2 and then they looked at those rates in 2000 and 2007.  
3 And they isolated the statistics for 15-, 16- and  
4 17-year-olds.

5 And what they found is that the impact was  
6 the largest, it appears, on the 16-year-olds. There  
7 was an 11 percent decline in 15-year-old -- abortions  
8 among 15-year-olds, a 20 percent decline for  
9 16-year-olds.

10 MS. CREPPS: Excuse me. Can we just have you  
11 identify by title the study that you're referring to?

12 THE WITNESS: Absolutely.

13 "Changes in Abortions and Births and the  
14 Texas Parental Notification Law," Theodore Joyce,  
15 Robert Kaestner, and Silvie Coleman.

16 MS. CREPPS: Thank you.

17 THE WITNESS: Okay.

18 The 16-year-olds -- at 16 percent among  
19 17-year-olds.

20 They then go on to talk about the birth rates  
21 rising 4 percent relative to those of teens 18, to  
22 8.24 years. So they were concerned, were we simply  
23 causing them to delay the abortion until they turn 18.  
24 And there was a small increase, but it didn't match up  
25 with the dramatic decrease that we saw in the abortion

1 rates.

2 BY MR. CLARKSON:

3 Q All right. Now, is this something you  
4 considered not only yourself, but as part of the  
5 subcommittee in Texas?

6 A Yes.

7 Q And what did the subcommittee find, in terms  
8 of its findings, that you haven't described already?

9 A Well, the subcommittee didn't operate in the  
10 form of formal findings.

11 Q I didn't mean formal. I mean in terms of  
12 just what did you all, sort of, research and  
13 determine, that you haven't already discussed, as part  
14 of your work on the subcommittee in this area?

15 A Well, one of the concerns, because of course  
16 Texas has large rural expanses like Alaska, was the  
17 effect of recusal on the judicial process in this  
18 instance, and would it unduly delay access. That was  
19 actually a very heated conversation in the committee.

20 Q Recusal by a judge, do you mean?

21 A Recusal by a judge. Because there were  
22 concerns that judges would be unwilling to carry their  
23 burden of hearing these cases, because judges are  
24 elected in Texas.

25 And so we had some judges arguing that nobody

1 ought to be allowed to be recused for any purpose,  
2 because they didn't want to have a disproportionate  
3 burden of these. But then of course if the judge is  
4 the uncle of the minor, it might be that that judge  
5 ought not hear that case. And so we came to the  
6 position that we would leave it to the general recusal  
7 rules, the discretion of the judge.

8           And while we had a couple of early reports  
9 about judges acting inappropriately -- and literally,  
10 I think it was two -- in the courtroom --

11           Q     What does that mean, acting inappropriately?

12           A     Lecturing the girl about the morality of  
13 being pregnant or asking questions in a particularly  
14 aggressive way. Those were brought to the attention  
15 of the committee by a lawyer, and the question was  
16 asked: Well, has there been a judicial misconduct  
17 claim filed? Have you filed? And none of that  
18 happened, and we didn't hear any recurrences of that  
19 either.

20           Q     Well, let's segue into the next subject,  
21 which is sort of the Texas experience where judicial  
22 bypass. We've heard some other witnesses talk about  
23 that. I want to get your experience and perspective  
24 as a member of the subcommittee that structured it.

25                   What problems with the bypass proceedings did

1 the committee anticipate, going into the process?

2 A Again, we were very concerned about  
3 maintaining anonymity of the girls. And yet, we were  
4 also concerned about observing due process rights and  
5 judicial guidance. So, for example, we have a very  
6 odd practice of the Texas Court of Appeals not  
7 publishing their opinions in this case, so we have  
8 secret law out there. And --

9 Q And when you say "in this case," you mean  
10 bypass proceedings?

11 A In the bypass proceedings.

12 So there was a conversation about: Did the  
13 statutory obligation of maintaining anonymity and the  
14 confidentiality of the proceedings preclude  
15 publication of the Texas Supreme Court opinions.

16 And as a committee, we tried to act with  
17 moderation, and the judgment was made that the court  
18 of appeals' decisions would not be published, but the  
19 Texas Supreme Court had to be able to give guidance to  
20 lower courts and the lawyers that practiced in front  
21 of them. And so the Texas Supreme Court opinions are  
22 published. Although, of the 15 that have been  
23 published, a substantial number of them are simply  
24 one-line affirmance.

25 Q Okay. So anonymity, we talked about

1 expediency before. Was that a continuing --

2 A We did. We talked about the difficulties of  
3 judges hearing and issuing orders within two business  
4 days of the filing of the petition.

5 Also, the statute did not have a time period  
6 for the Texas Supreme Court to issue judgment, and so  
7 we talked about whether we needed to, by rule, impose  
8 a requirement. And the decision ultimately was made  
9 that -- to rely upon the court's own concern about  
10 maintaining the confidentiality of the bypass.

11 Q So what are the steps that the subcommittee  
12 took to protect the right of the minor to anonymity  
13 and expediency?

14 A We gave some directions about how transfers  
15 of cases were to be conducted in district courts where  
16 you had multiple judges, how they were to be assigned.

17 We also directed the clerks to hand-deliver  
18 any petition to the judge's chambers, so we didn't  
19 have a delay of it sitting in, you know, a clerk's  
20 basket for a period of time.

21 The judges are required to issue their order  
22 at the conclusion of the hearing, not even technically  
23 allowed to say, you know, let me think about this  
24 overnight and get back to you. Failure to do so is a  
25 constructive bypass under the Texas law.

1 Q Okay. Did access to the courts ever become  
2 an issue of the subcommittee's attention?

3 A There was a lot of discussion about that,  
4 but -- and part of the problem in dealing with these  
5 proceedings is they truly are sui generis. You simply  
6 cannot get information easily about how they're  
7 working. So one of the concerns was access in rural  
8 courts.

9 There was a news report, based on a Freedom  
10 of Information Act, in 2002, that indicated Baxter  
11 County, which is where San Antonio is located, was  
12 actually issuing a disproportionate number of  
13 bypasses, when you look at the number of abortions  
14 that occurred in that county. So there appeared to be  
15 inordinate amount of bypasses in that particular  
16 county.

17 But what we do see pretty clearly, from the  
18 limited information that was made available either  
19 through Public Information Acts or the clerks would  
20 disclose during the conversations, is that they were  
21 done primarily in metropolitan counties, Dallas  
22 County, Harris County, Baxter County, the big cities  
23 where the abortion providers were.

24 Q Okay. Now, some people think Texas is a big  
25 state.

1           A       Fair enough.

2           Q       But did you all, as a subcommittee,  
3       considering the issue of how a girl who maybe lives in  
4       rural Texas might get access to a court, or those  
5       sorts of things? Did that become an issue?

6           A       We did. And the judgment was made, unlike  
7       the Alaska law, telephonic appearance on the part of  
8       the minor is permissible, but there has to be an  
9       affirmative decision by the judge as to adequacy of  
10      the ability, because so much of this turns on the  
11      girl's demeanor, turns on her ability to articulate  
12      her reasons; that the committee and the rules that  
13      were promulgated under it show a preference that the  
14      girl physically appear in court so that the judge can  
15      actually see her demeanor, know that she's not being  
16      assisted in her answers off camera, those sort of  
17      problems.

18          Q       What's been the Texas experience in terms  
19      of -- you talked about this a little bit, and I want  
20      to go into it a little more -- the courts in which the  
21      bypasses tend to be filed, and did the subcommittee  
22      make any findings in that respect, and did you draw  
23      any conclusions based on that?

24          A       Again, there are no formal findings of the  
25      subcommittee. It just is adjustments in the rules.

1 Q It's a word I'm using informally. I'm sorry.

2 A Okay.

3 But it was -- it was clear that the vast  
4 majority of these were occurring in the major  
5 metropolitan areas, not in rural.

6 Q And were there any conclusions drawn as to  
7 what that meant?

8 A I think it certainly made a -- under Texas  
9 law, you have to appoint an attorney guardian  
10 ad litem, as well as a guardian ad litem. And I think  
11 it reinforced our decision that the better practice is  
12 to have two, although it's not forbidden; you can  
13 combine the two roles under the Texas rules. But one  
14 of the justices warned against doing it too, because  
15 if there's a conflict of interest, it could delay  
16 resolution in resolving that conflict.

17 Q Did you all find a relationship between the  
18 location where the bypasses were being filed and  
19 adjudicated and where the abortion providers were  
20 located?

21 A That sort of -- the records are not  
22 sufficient for us to draw any of those conclusions,  
23 other than the majority of abortions are in  
24 metropolitan areas, and the bypasses are in  
25 metropolitan areas.

1 Q Okay. Let's talk about evidentiary standards  
2 that are applied in bypasses across the country.

3 Have you done research in that respect?

4 A I have. In fact, I'm working on a new Law  
5 Review article on setting up an effective bypass, and  
6 have studied -- did a nationwide study, to the extent  
7 information was available.

8 Q And what have you found?

9 A Oddly, the majority of statutes in this area  
10 do not articulate a standard, evidentiary standard.  
11 There is a slight majority that use clear and  
12 convincing, when one is articulated, either judicially  
13 or within the statute itself. And certainly the  
14 opinions, Nebraska comes to mind immediately, where  
15 the court adopted it by judicial opinion rather than  
16 it being a part of the statute itself, talking about  
17 the deprivation of the parental right to direct the  
18 medical care of their child.

19 Q Let's talk about that. Are there -- in your  
20 research, have you found any other type of proceeding  
21 in the United States involving a parent's right to  
22 direct the upbringing of their child, where that can  
23 be severed, to whatever degree, without a clear and  
24 convincing standard being applied?

25 MS. CREPPS: Your Honor, at the risk of

1 ending up on the bone pile, I'm going to pose a  
2 relevance objection here. I don't think that  
3 Professor Collett's survey of the law in the United  
4 States is relevant, and I don't think it's appropriate  
5 for expert testimony.

6 THE COURT: She's testifying about the  
7 standard of proof for bypasses nationally, and she's  
8 being asked to compare that with other areas.

9 Actually, Mr. Clarkson, I slice people out of  
10 the medical-decision-making decision on a weekly basis  
11 in divorce litigation.

12 MR. CLARKSON: Okay.

13 THE COURT: You don't have legal custody,  
14 good-bye. You go sit in the hall. Somebody else is  
15 going to make this decision.

16 I think you're over looking that, and you're  
17 really looking for more formal decisions, where people  
18 are deprived of parental rights in a Child in Need of  
19 Aid context or analogous circumstances.

20 Have you surveyed that?

21 THE WITNESS: I also teach bioethics, Your  
22 Honor. And so we look at the Mature Minor Doctrine,  
23 and the circumstances in which minors are allowed to  
24 unilaterally make decisions, in a cancer context and  
25 other sorts of treatments.

1           We've also looked at the contraception  
2 statutes in a majority of the states.

3           THE COURT: You're being asked a more  
4 abstract question, though.

5           THE WITNESS: I'm sorry.

6           THE COURT: You're being asked, have you  
7 surveyed when courts apply clear and convincing  
8 evidence standards in other important decisional  
9 contexts regarding adolescents or parents in general.

10          THE WITNESS: No, Your Honor.

11          THE COURT: Okay.

12 BY MR. CLARKSON:

13          Q       We'll move on.

14                 Let's talk about the -- have you done  
15 research regarding the frequency of bypass proceedings  
16 and their actual utilization under parental  
17 involvement laws across the country?

18          A       To the extent it's possible, yes, I have.

19          Q       Well, tell us what research you've done and  
20 what you found.

21          A       Well, part of the problem, not only in Texas  
22 but in a majority of states, is that reporting on  
23 these proceedings is fiercely resisted. And so it's  
24 difficult to get any accurate statistics on how often  
25 the bypass is used, what is the disposition of the

1 court, the dispositive order in that case, how many  
2 appeals are taken, what's the basis of the opinion.

3 There are three states that provide public  
4 reporting on that that's easily accessible.

5 Q What are they?

6 A Wisconsin, Nebraska, and I provided it --

7 Q Alabama?

8 A Alabama -- as an appendix to my -- as an  
9 exhibit to my report.

10 Q Okay. And what has your research shown you  
11 with respect to the frequency of bypasses, to the  
12 extent you've been able to find information?

13 A The vast majority of bypasses are granted.  
14 The vast majority of bypasses are granted on the basis  
15 of the minor being sufficiently mature and  
16 well-informed to make the decision. Emergency  
17 bypass -- or emergency circumstances in which a bypass  
18 is not sought are exceptionally rare.

19 Q Has there been a trend in terms of the number  
20 of petitions being filed to obtain bypass?

21 A It depends on the state and how the minors  
22 perceive the -- or, more importantly, the minor's  
23 counsel perceives the court.

24 Q Okay. And I interrupted you. You were about  
25 to talk about the frequency of the emergency exception

1 being used. What research have you done there, and  
2 what have you found?

3 A When you look at -- and these were contained  
4 in Table 3 of my expert witness report.

5 In Alabama and Wisconsin, you can isolate the  
6 bypass hearing separately. The Nebraska statute, you  
7 can't isolate that, because one of the real problems  
8 in researching this area is that they aggregate  
9 abortions related to women age 15 to 19.

10 Q Okay. Now, if I may interrupt you for just a  
11 second. For definitional purposes for the record,  
12 when we talk about emergency exceptions, we're talking  
13 about girls who obtained an abortion in an emergency  
14 context, without having to go through a bypass, right?

15 A And quite possibly without obtaining consent  
16 or providing parental notice.

17 Q Right. Thank you.

18 A That's correct.

19 Q So go ahead. I interrupted you.

20 A So the table, what was particularly striking,  
21 was in Nebraska I had to use conformance with informed  
22 consent, because they do provide public reporting of  
23 that. And in that instance, from 2005 to 2010, there  
24 were only three, out of all the abortions provided in  
25 Nebraska for adult women, minor women, all the

1 abortions, there were only three emergency bypasses or  
2 emergency exceptions.

3 Q What was the total number?

4 A On average, the number of abortions in  
5 Nebraska is about 2700 per year, so over that  
6 five-year period, it would have been 13,000, 14,000.

7 Q What was the experience in the other states?

8 A The other two states, where you could  
9 actually get the minor separated out, again,  
10 exceptionally rare to have emergency.

11 The state of Wisconsin, in the years 2005 to  
12 2009 -- 2010 statistics weren't available when I  
13 prepared this table -- in those four years, not a  
14 single emergency was noted and reported to the  
15 department of health.

16 In Alabama, in the five years between 2005 to  
17 2010, only two, and Alabama averages about 800  
18 abortions on minors a year.

19 MR. CLARKSON: Thank you.

20 THE COURT: Alabama does how many per year?

21 THE WITNESS: Approximately 800, Your Honor.

22 THE COURT: That's minor abortions?

23 THE WITNESS: Yes, sir.

24 THE COURT: Ms. Crepps.

25 /////

1 CROSS-EXAMINATION

2 BY MS. CREPPS:

3 Q Professor Collett, let me start by asking you  
4 a little bit more about your experience with the rules  
5 committee that you have spoken about.

6 After that committee did its initial  
7 rule-making process, which there was, let me just see  
8 if I have this correct, someone within the court  
9 system drafted the rules, and then various members of  
10 the committee had an opportunity to comment on those.  
11 Is that correct?

12 A Bob Pemberton was the supreme court clerk  
13 that worked on that project. And he also invited  
14 suggested language, so I actually worked with him on a  
15 couple.

16 Q And after the rules were created, then the  
17 committee was meeting more on an ad hoc basis; is that  
18 correct?

19 A And we were reappointed. So there was a  
20 period -- I think I got my letter of reappointment in  
21 2002.

22 Q And since 2003, when you left Texas, then you  
23 haven't been actively involved as a member of the  
24 committee; is that right?

25 A That's correct.

1 Q You agree that it's critical to stop an  
2 illegal relationship between an older man and an  
3 adolescent as soon as possible?

4 THE COURT: Statutory rape.

5 THE WITNESS: Okay. I was about to say, what  
6 type of relationship.

7 BY MS. CREPPS:

8 Q Illegal relationship, statutory rape.

9 A Yes.

10 Q And you believe that one reason that parental  
11 notification is needed is because of the number of  
12 illegal relationships or relationships involving  
13 statutory rape that are occurring; is that correct?

14 A Yes.

15 Q Now, one of the articles that you rely on in  
16 support of that, I believe you quoted it from your  
17 expert report -- you may have gotten the year wrong --  
18 but it's "Adolescent Pregnancy: Current Trends and  
19 Issues, 1998." Is that correct? If you look at  
20 paragraph 9, page 4 of your report.

21 A The Glessner article, is that --

22 Q No. It's "Adolescent Pregnancy: Current  
23 Trends and Issues, 1998," the American Academy of --

24 A Okay. That's paragraph 7.

25 Q Oh, sorry. My bad.

1           A       That's why I was confused.

2                    That's simply a summary of the adolescent  
3 committee. That does not do independent research.  
4 That's correct.

5           Q       I believe, though, you testified that, based  
6 on this report, it's your expert opinion that  
7 statutory rape, or, I should say, relationships  
8 between older males and adolescents could account for  
9 66 percent of the relationships ending in pregnancy?

10          A       I think that was the Males study out of  
11 California.

12          Q       Let me represent to you that I was paying  
13 pretty careful attention, and I believe that you cited  
14 this article for that statistic. If that's incorrect,  
15 the record will certainly reflect that.

16                   I'm going to hand you a copy of the article.

17          A       Okay.

18                   MS. CREPPS: May I, Your Honor?

19                   THE COURT: Yes.

20          BY MS. CREPPS:

21          Q       If you look at the first page of this  
22 Article, there's --

23                   THE COURT: This is an article, again, by  
24 whom?

25                   MS. CREPPS: I'm sorry. This is the -- it's

1 entitled "Adolescent Pregnancy: Current Trends and  
2 Issues, 1998, by the American Academy of Pediatrics.

3 BY MS. CREPPS:

4 Q Did I say that correctly, Doctor? I mean,  
5 Professor?

6 A Subcommittee on adolescents.

7 Q Subcommittee on adolescents?

8 THE COURT: And it is not an exhibit?

9 MS. CREPPS: This is not one of the exhibits,  
10 Your Honor.

11 THE COURT: Okay.

12 BY MS. CREPPS:

13 Q If you look at the first page of the article,  
14 there's a section entitled "Trends in Adolescent  
15 Childbearing," and then under that, "Overview." Do  
16 you see that?

17 A I do.

18 Q And the first sentence of that section  
19 states: "Approximately 1 million teenagers become  
20 pregnant in the United States each year. Most of  
21 these pregnancies are among older teenagers, i.e.,  
22 those 18 or 19 years old."

23 Do you see that?

24 A I do.

25 Q And so in this Article, reference to

1 adolescent mothers includes 18- and 19-year-olds.

2 Isn't that correct?

3 A There are instances where they break it out  
4 separately, yes.

5 Q But generally, when they're speaking of  
6 adolescent motherhood, they are including 18- and  
7 19-year-olds, unless they specifically say otherwise?

8 A Yes.

9 Q So from this article, there's no way to draw  
10 conclusions about the fraction of adolescent mothers  
11 under the age of 18 who have partners that are older  
12 than 20. Isn't that correct?

13 A They rely on the two studies, one is by the  
14 Vera Justice Institute, which dealt with under 18.  
15 These are Footnotes 39 and 40 to this article. And  
16 that's the authority they give for their statement  
17 almost two-thirds of adolescent mothers have partners  
18 that are 20 years or older. If you look at the  
19 underlying, the studies dealt with under 18.

20 Q And the other study is the Males study; is  
21 that correct?

22 A I don't think it was the Males. I think it  
23 was the Boyer and Fine. Let me look. Again, it  
24 was -- no. I'm sorry. It's the -- let's find that  
25 statement.

1 Q Well, that's fine. I don't think we need  
2 that, that particular detail.

3 I'm going to hand you now a more recent  
4 version of this publication that was dated in 2009.  
5 And it's also entitled "Adolescent Pregnancies:  
6 Current Trends and Issues."

7 A And I misstated those footnotes. It's 29 and  
8 30. And it was the Landry study as well as the Vera  
9 Institute of Justice.

10 Q Were you aware that an updated version of  
11 this article had been published?

12 A I have seen this article.

13 Q And again, if you look at the first sentence,  
14 the introduction starting with the second sentence, if  
15 you're with me.

16 A Uh-huh.

17 Q It reads: "Since 1998, when the last  
18 statement on this topic was issued by the American  
19 Academy of Pediatrics, efforts to prevent adolescent  
20 pregnancy have increased, and new observations,  
21 technologies, and prevention effectiveness data have  
22 emerged. The purpose of this clinical report is to  
23 provide pediatricians with recent data on adolescent  
24 sexuality, contraceptive use in childbearing, as well  
25 as information about preventing adolescent pregnancy

1 in their communities and clinical practice."

2 So you would agree that this is an update of  
3 the 1998 article that you cite in your report; is that  
4 correct?

5 A Yes.

6 Q I'd like to have you look at page 282, in the  
7 left-hand column, under adolescents and their  
8 parents -- I'm sorry -- and their partners.

9 Now, if I have your previous testimony  
10 correct, and I'm not sure that we agree on that, but  
11 you cited the 1998 article as support for your view  
12 that up to 66 percent of adolescent childbearing  
13 involves older males.

14 Here, on page 282, the report states that,  
15 quote: The percentage of adolescent pregnancies in  
16 which the father is an adult is unclear. Studies  
17 range from 7 percent to 67 percent.

18 Did I read that correctly?

19 A You did read that correctly.

20 Q And if you again look at page 282, under  
21 Trends in Adolescent Childbearing, this report, like  
22 the 1998 report, states that, quote: Most of these  
23 pregnancies are among older teenagers, i.e., those 18  
24 or 19 years of age.

25 So again, this report is looking at

1 adolescents including 18- and 19-year-olds; is that  
2 correct?

3 A But, Ms. Crepps, the footnotes are to the  
4 same documents, the Taylor report that we talked  
5 about, the Landry report that we talked about, the  
6 Vera Institute of Justice.

7 Q So are you saying that you believe that the  
8 American Academy of Pediatrics, in their 2005 report,  
9 has gotten it wrong?

10 A No. I'm saying that their summary includes  
11 the information on page 281, where they say that  
12 younger teens are especially vulnerable to coercive  
13 and nonconsensual sex. Involuntary sexual activity  
14 has been reported by 70 percent of sexually active  
15 girls younger than 14, and 60 percent of those younger  
16 than 15 years.

17 And then if you look at the footnote for the  
18 statement you read to me about the 6 (sic) to  
19 67 percent, they rely on the Taylor report that I  
20 discussed with Mr. Clarkson earlier, as well as the  
21 Vera Institute that are the sources that they rely on  
22 in their earlier report.

23 Q Fine. So the 7 to 67 percent and the  
24 statement that says, "Adolescent pregnancies in which  
25 the father is an adult is unclear," you just disagree

1 with that characterization as it applies to the minors  
2 that you've just described?

3 A I think that the statement you pulled out is  
4 not the -- is not the majority thrust of the article  
5 on that topic.

6 Q But you understand that I was reading a quote  
7 straight from the article?

8 A I do.

9 Q All right.

10 Now, among the articles that you cite in  
11 support of adolescent pregnancies as a result of  
12 statutory rape -- well, you cite several additional  
13 articles; is that correct?

14 A Yes.

15 Q And most of those articles, with the  
16 exception of the Boyer article, which we're going to  
17 talk about in just a moment, all of these articles are  
18 looking at childbearing; is that correct?

19 A Yes.

20 Q They're not looking at pregnancies ending in  
21 abortion that are the result of statutory rape; is  
22 that correct?

23 A That's correct.

24 Q So I'd like to have you go ahead and pull out  
25 the Boyer article, or maybe let me see if you need me

1 to hand it to you. I have it here if you need it.

2 Is it correct that this is the only article,  
3 amongst the ones that you cite in support of your  
4 opinions regarding statutory rape, that actually  
5 mentions abortion?

6 A I do not have --

7 Q I can give you a copy.

8 A That would be very helpful.

9 I believe that -- the answer to your question  
10 is, I believe that is correct.

11 Q And this article looked at minors who had  
12 been both sexually abused and became pregnant prior to  
13 the age of 18; is that correct?

14 A Yes.

15 Q So looking at this article, on page 6,  
16 Table 1, here the study reports the outcome of first  
17 pregnancy amongst study participants; is that correct?

18 A Yes.

19 Q And it reports that among these study  
20 participants, 62 percent gave birth; is that correct?

21 A That's correct.

22 Q And 9.2 percent had an abortion; is that  
23 correct?

24 A That's correct.

25 Q You've also relied on "Live Teen Births in

1 Alaska" --

2 A Yes.

3 Q -- during 1991 through 1994. I believe that  
4 was one of the articles that you've mentioned.

5 And you rely on -- well, I was a little  
6 confused. Are you relying on that article, or the  
7 Glessner article for the statistic that up to  
8 66 percent of the births to teen mothers were the  
9 result of statutory rape?

10 A The Family Health Data Line, "Live Teen  
11 Births in Alaska" is -- was the initial publication.  
12 Members of that department expanded on it and included  
13 additional information in their article "Experience of  
14 Violence Among Teenage Mothers in Alaska." The  
15 language is identical in the two, related to that  
16 point.

17 Q And did I hear you correctly to say that this  
18 article, it states up to 66 percent; is that correct?

19 A I believe that's correct.

20 Q I'm going to hand you the Glessner article.

21 A Okay.

22 MS. CREPPS: May I, Your Honor?

23 THE COURT: Yes.

24 BY MS. CREPPS:

25 Q So looking at the Glessner Article, on page 1

1 in the last sentence of the paragraph before the  
2 conclusions. I need to pull that out and make sure  
3 I'm looking at the right place.

4 A Under "Methods"?

5 Q No. I just need a second here. I need a  
6 second to get my page number.

7 Yes. So I'm looking at on the first page,  
8 under "Results," which is in the summary on the left  
9 side.

10 A I see. I'm sorry. Thank you.

11 Q Are you with me?

12 A Yes, I am.

13 Q So here the authors state that at least  
14 38.9 percent, and up to 66.2 percent, of all births to  
15 unmarried teenagers younger than 16 resulted from  
16 second-degree statutory rape.

17 So here they're giving a range. You had said  
18 up to 66 percent. They're giving a range 38 to  
19 66 percent. Is that correct?

20 A They do that because one-third of the  
21 respondents did not identify the age of the father,  
22 and so they calculated the same percentage on those  
23 that failed to report that were included in the  
24 report. That's explained on the next page, which  
25 would be 384 carrying over to 385.

1 Q Right. And that's the best conclusions that  
2 they can draw from the data that they have; is that  
3 correct?

4 A I assume that to be the case. I hope they  
5 would include anything else they could have concluded.

6 Q So while we're in the Glessner article, now,  
7 you have talked about violence among minors. Again --  
8 well, again, the Glessner article is looking only at  
9 births, and not at abortion; is that correct?

10 A Out of PRAMS, that's right.

11 Q That's right. So one of the things that the  
12 Glessner article looked at was violence experienced by  
13 pregnant adolescents --

14 A That's correct.

15 Q -- both before, during, and after pregnancy;  
16 is that right?

17 A That's correct.

18 Q And the authors found that -- and I'm looking  
19 at page 85, at the very bottom of the page. The  
20 authors found that their analysis demonstrated that  
21 teenage mothers were approximately twice as likely to  
22 report having experienced violence during the previous  
23 two years, as older women. This relationship held,  
24 regardless of whether the period before, during, or  
25 after pregnancy was examined, but the magnitude of the

1 risk for teenage mothers was greatest after pregnancy.

2 Is that correct?

3 A That's correct.

4 Q And they go on to state, as a possible  
5 explanation for this, on page 387, on the right-hand  
6 side, at the end of the first paragraph on that, on  
7 the right-hand column, that: In addition, teenagers  
8 may have to contend with potentially violent persons  
9 in addition to their partners, including parents and  
10 other relatives who may resent the teenager's child.

11 That's correct, isn't it --

12 A Yes.

13 Q -- that that's their conclusion?

14 A Yes.

15 Q Wouldn't you agree that this study shows that  
16 even after childbirth, when presumably the parents  
17 knew about the pregnancy and knew that there had been  
18 a childbirth, that violence against adolescents  
19 increased?

20 A Yes.

21 Q Now, you've offered some opinions about  
22 minors informing their parents -- done with Glessner.

23 A Okay.

24 Q -- and I couldn't quite catch something that  
25 you said about the Michigan study, in terms of the

1 percentage of minors in that study who informed a  
2 parent or involved a parent, voluntarily involved a  
3 parent in their decision to have an abortion.

4 Do you recall what your testimony was on  
5 that?

6 A I don't remember the number that I gave you  
7 at that point, but it is in my written report.

8 Q Okay. So let's have you take a look at that.  
9 I believe that is in your report. That's the Rosen --

10 A Paragraph 12.

11 Q That's the Rosen study?

12 A Yes, it is.

13 Q And in your report, you state that the Rosen  
14 study reported 85 percent of adolescents electing to  
15 abort opted not to involve a parent.

16 Is that what your report says?

17 A That's what my report says.

18 Q So I'd like to have you take a look at the  
19 Rosen study. First of all, this is from 1980; is that  
20 right?

21 A That's correct.

22 Thank you.

23 Q So I'd like to have you turn to page 46 of  
24 that study.

25 A Uh-huh.

1 Q And there's a table in the middle. Do you  
2 see that?

3 A I do.

4 Q I apologize. The copies aren't so clear.

5 Now, this table reports the percentage of  
6 minors who sought advice from a parent at the time  
7 they first thought they were pregnant; is that  
8 correct?

9 A Yes.

10 Q And if you look at the numbers in this table  
11 and add up mothers and fathers, you see that only  
12 about 15 percent of minors sought advice from a parent  
13 at that point; is that right?

14 A Correct.

15 Q In the paragraph immediately below that, the  
16 authors report on what adolescents did when they  
17 confirmed a pregnancy; is that correct?

18 A Yes.

19 Q And here the authors state: "Once they were  
20 sure they were pregnant and began to face the  
21 situation, close to half of them, 43 percent, handled  
22 this decision without involving a parent ."

23 A Correct.

24 Q "This group was not limited, however, to  
25 those who chose abortion. This independence was about

1 equally true of those who planned to keep their child  
2 and those were planned an abortion."

3 So at the point that -- what the Rosen study  
4 says is not that 85 percent of minors chose not to  
5 involve a parent ever in their decision whether or not  
6 to have an abortion, but in fact 57 percent of them  
7 chose to involve a parent in their decision after they  
8 confirmed that they were pregnant; is that correct?

9 A Including those who chose to place a child in  
10 adoption, as well as birth, that's correct.

11 Q All right. I feel like we may have beaten  
12 the Henshaw-Kost study to death, but I'm going to wade  
13 in and ask you a few questions about it anyway.

14 A Okay.

15 Q Now, you indicated that you felt that a  
16 better study -- or this study would be better if it  
17 had included some kind of survey of parents; is that  
18 correct?

19 A Correct.

20 Q You understand, though, that for the minors  
21 who chose not to inform a parent of their abortion,  
22 there was no way to involve those parents in the study  
23 without compromising the minor's confidentiality?

24 A I do.

25 Q So within the confines of this study, that

1 wouldn't really have been possible?

2 A Well, no. Because there were minors who did  
3 involve parents, and they certainly could have  
4 surveyed them.

5 Q If the minors had agreed.

6 A Well, correct. But there's no validating of  
7 the information they've obtained, which is part of the  
8 problem with this whole process.

9 Q Is it that you think that minors either lie  
10 or misperceive about what they think how their parents  
11 are going to react?

12 A I think minors often misperceive how parents  
13 are going to react.

14 Q Now, you indicated that 45 percent of the  
15 minors voluntarily involved a parent; is that correct?

16 A In the Kost study?

17 Q Yes.

18 A Yes.

19 Q And another 16 percent of parents found out  
20 from someone other than the minors.

21 A In some other way. They have distinguished  
22 that on their table.

23 Q But it's true, isn't it, that for some of  
24 those -- and they don't report the percentage -- but  
25 for some of the those, the person who informed the

1 parent did so with the minor's consent; is that  
2 correct?

3 A Yes. Interestingly, only 1 percent, though,  
4 were indicated to be done at the suggestion of the  
5 physician who the minor consulted with, or the clinic.

6 Q Now, Henshaw and Kost, at Table 5, you  
7 indicated that you read from this table what the most  
8 common reasons are that minors don't tell parents.

9 Now, in your experience, based on all of the  
10 evidence that you reviewed, you wouldn't expect  
11 minors -- that the most common reason that a minor  
12 would not want to tell her parents is that she was  
13 afraid of abuse, would you?

14 A Physical abuse? No.

15 Q Right. Because physical abuse is not,  
16 thankfully, that common?

17 A Correct.

18 Q But looking at Table 5, there actually were a  
19 number of reasons that minors gave for not involving  
20 their parents, in addition to the top three or  
21 whichever you indicated before; is that correct?

22 A Correct. They could mark multiple reasons.

23 Q So in addition to the ones that I believe you  
24 mentioned, there was: The parent has too much stress  
25 already; didn't need the parent to help them decide;

1 thought it would cause problems between parents or  
2 parent and stepparent; thought parent would make them  
3 leave home; thought they would be punished in other  
4 ways; thought parent would try to make them continue  
5 the pregnancy; thought they would be beaten; and  
6 thought the parent would try to make them have an  
7 abortion.

8 So all of these were reported reasons why  
9 minors didn't involve a parent?

10 A Correct.

11 Q Now, I was hearing your testimony about  
12 Table 8 of the Henshaw and Kost study, and let me just  
13 ask if I was hearing you correctly.

14 Were you indicating that in Table 8, that the  
15 reference to "boyfriend" was solely a reference to  
16 adult boyfriends --

17 A No.

18 Q -- or just boyfriends in general?

19 Do you think that it's inappropriate for a  
20 pregnant minor to consult with the putative father of  
21 the pregnancy about what she wants to do with that  
22 pregnancy?

23 A No.

24 Q Now, you testified a little bit about the  
25 Texas experience about abortion and birth rates.

1           A       Correct.

2           Q       And the time period that you testified about  
3 was immediately before and immediately after  
4 implementation of the Texas Parental Notice Law; is  
5 that correct?

6           A       1998 to 2002.

7           Q       And I believe you mentioned the article by  
8 Dr. Joyce and Colman.

9           A       Theodore Joyce, yes.

10          Q       And are you familiar with the more recent  
11 article authored by Joyce and Colman entitled  
12 "Misclassification Bias and the Estimated Effect of  
13 Parental Involvement Laws on Adolescents' Reproductive  
14 Outcomes"?

15          A       Yes.

16          Q       And that was published in 2008?

17          A       I don't know the year.

18          Q       You didn't rely on this article in your  
19 report, did you?

20          A       I did not.

21                    Thank you.

22          Q       Now, in this Article, Dr. Joyce identifies  
23 some issues that can introduce misclassification bias  
24 into studies looking at the impact of parental  
25 involvement laws; is that correct?

1           A     Yes, he does.

2           Q     And specifically how that misclassification  
3 bias can impact reported abortion and birth rates?

4           A     Yes. This was the report I referenced when I  
5 mentioned that there was a study concerned about  
6 pushing 17-year-olds into having abortions at a later  
7 point, after attaining age 18.

8           Q     Well, that's why I was asking which article  
9 you were relying on, because I thought I then heard  
10 you say you were relying on the earlier article.

11          A     No.

12          Q     So you did --

13          A     That's why they adjusted to 18.4.

14          Q     And this article looks at the same dataset  
15 that you were referring to earlier; is that correct?

16          A     Yes.

17          Q     And Dr. Joyce notes that given three-quarters  
18 of the minors who conceive as 17-year-olds give birth  
19 at 18, misclassification bias can occur if a study  
20 looks at age of birth rather than age of conception;  
21 is that correct?

22          A     Correct.

23          Q     And that as a result -- and I'm now quoting  
24 from the article, the last full paragraph on page  
25 1881: This form of misclassification bias drives

1 estimates of the law's impact on birth rates toward  
2 the null and may even lead to the erroneous conclusion  
3 that birth rates may have declined or remained  
4 unchanged in response to the law.

5 A Correct.

6 Q That's correct?

7 And so you agree that looking at the age, at  
8 age at the time of birth rather than age at the time  
9 of conception, can introduce misclassification bias?

10 A Yes.

11 Q And that's in fact what Dr. Joyce and  
12 Dr. Colman did in their earlier article, was they  
13 looked at age at the time of the birth and time of  
14 abortion?

15 A Correct. But they concluded they still found  
16 a decline in the number of abortions.

17 Q They did find a decline in the number of  
18 abortions, but isn't it also correct that they found  
19 no change -- no impact on the rate of birth?

20 A Yes.

21 Q Now, you testified a little bit about minors  
22 in Alaska under the age of 15, I believe it was,  
23 obtaining abortions; is that correct?

24 A The dataset that's available from the  
25 department of health, yes.

1 Q Right. You would agree, wouldn't you, that  
2 the parents of a minor under the age of 15, in other  
3 words, 14 or younger, might feel that an abortion is  
4 in their daughter's best interest?

5 A Many parents believe that regardless of the  
6 age of the daughter.

7 Q Right. And it might be particularly true of  
8 the very young minors, the 14, 13, 12?

9 A Yes.

10 Q Now, I believe -- and correct me if I'm  
11 wrong, you may not have said this -- that you said  
12 that more than half of the minors under 15 elected to  
13 terminate a pregnancy; is that correct?

14 A No. I said they were twice as likely as the  
15 minors that were 16 and 17, according to the --

16 Q Oh, okay.

17 And in calculating that, you took the -- I  
18 think it was dividing the number of reproductive  
19 events by the total numbers of induced abortions and  
20 live births; is that correct?

21 A That was the statistic from -- I used the  
22 Alaska dataset, yes.

23 Q And so again going back to the  
24 misclassification bias that Dr. Joyce indicated,  
25 actually given that a pregnancy is nine months, thus,

1 the statistics that you cited did not take into  
2 account 14-year-olds who carried a pregnancy and gave  
3 birth at 15; is that right?

4 A Well, they still would have been accounted  
5 for in the abortion statistics, simply not on the live  
6 birth statistics.

7 Q Right.

8 You offered an opinion or provided some  
9 testimony regarding the frequency of reported uses of  
10 emergency exceptions in three states; is that correct?

11 A Correct.

12 Q And I believe you said that it was pretty  
13 rare that those were reported; is that correct?

14 A Yes. Publicly available, as opposed to  
15 reported.

16 Q Right.

17 The number of medical emergencies reported in  
18 a state would depend, would it not, on the definition  
19 of abortion within each state?

20 A I think more on the definition of a medical  
21 emergency.

22 Q Well, let's get to that in a second. But  
23 you've probably reviewed some definitions of abortions  
24 in various states; is that correct?

25 A Yes.

1 Q Some, for example, explicitly exclude ectopic  
2 pregnancy from a definition of abortion?

3 A Correct.

4 Q And some do not?

5 A Correct.

6 Q And so if a medical emergency involved an  
7 ectopic pregnancy in a state that considered that an  
8 abortion, that could impact the number of overall  
9 procedures done under the medical emergency provision.  
10 Isn't that right?

11 A Correct. Although, those are very rare,  
12 those definitions. It's usually the --

13 Q The definitions that include ectopic  
14 pregnancy?

15 A That exclude -- that include ectopic  
16 pregnancy. It's the intentional termination of a --  
17 most commonly, it's the intentional termination of a  
18 pregnancy. Now, of course, I'm looking at you, and  
19 I'm trying to --

20 Q The common definition would limit it to an  
21 abortion, to termination of an intrauterine pregnancy?

22 A Most often, yes.

23 Q And you've indicated that the Alaska  
24 definition of medical emergency is similar to that in  
25 other states; is that correct?

1 A I wasn't asked to look at that.

2 Q Okay. So you're not offering an opinion --

3 A Correct.

4 Q -- comparing that?

5 MS. CREPPS: All right. In that case, I have  
6 no further questions.

7 THE COURT: Further, Mr. Clarkson?

8 MR. CLARKSON: Only a couple.

9 REDIRECT EXAMINATION

10 BY MR. CLARKSON:

11 Q Just a couple of topics.

12 Ms. Crepps asked you whether or not -- she  
13 was talking about the Henshaw-Kost study on Table 8.  
14 You don't need to look at it. I just have a quick  
15 question for you.

16 She asked you whether or not it would be  
17 appropriate for the girl to consult the putative  
18 father about what to do with the pregnancy, and you  
19 answered and said yes, right?

20 A I did.

21 Q Would your opinion be the same if the father  
22 was an adult male that was committing a crime by  
23 having sex with her?

24 A I think it would be expected that she would  
25 consult with him, but inappropriate.

1 Q Right. Now, on the Glessner -- do I have  
2 this right? The Glessner study, which involves --  
3 it's the updated version of the Alaska study about  
4 live births?

5 A Correct.

6 Q On page 387 of that study, at the bottom of  
7 the right column, it's correct, is it not, that what  
8 that study reflects is two-third of all births to  
9 unwed teenagers 16 years of age, in which the father's  
10 age was documented, resulted from second-degree  
11 statutory rape, right?

12 A It actually has the "less than 16" symbol.

13 Q Thank you for that correction, so under 16.

14 But that has to do with women -- young girls  
15 who have given birth to their babies?

16 A Correct.

17 Q Where the information about the age of the  
18 father is documented --

19 A Correct.

20 Q -- in the hospital records, right?

21 A Well, or in the registry. They actually send  
22 out these studies and --

23 Q Okay. But if an abortion provider doesn't  
24 even ask the age of the putative father of the baby  
25 that's being aborted, how can you possibly get a

1 statistic on that with respect to those girls that  
2 abort?

3 A It wouldn't be possible.

4 MR. CLARKSON: Thank you.

5 THE COURT: Thank you for coming today.

6 THE WITNESS: Thank you very much, Your  
7 Honor.

8 (Witness excused.)

9 MS. CREPPS: You can just leave those up  
10 there. I'll pick them up.

11 MS. COLLETT: Okay.

12 MR. CLARKSON: We can clean up. You don't  
13 have to worry about that.

14 MS. COLLETT: Okay.

15 THE COURT: Any other witnesses?

16 MR. TREPTOW: We don't have any additional  
17 witnesses today, Your Honor. Tomorrow is Dr. Figley  
18 and Dr. Casey.

19 THE COURT: All right.

20 Anything else to raise?

21 MR. TREPTOW: Yes, Your Honor.

22 Counsel have discussed closing arguments, and  
23 we decided to ask you if you had any specific  
24 thoughts, any concerns, that you want the parties to  
25 address in closing, anything in particular, to help us