

IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY, OHIO

- - - - -

Paramount Advantage,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	Case No. 21CV004337
The Ohio Department of	:	Judge Julie Lynch
Medicaid, et al.,	:	Magistrate Jennifer Hunt
	:	
Defendants.	:	
	:	

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VIDEOTAPED DEPOSITION OF GLEB TSIPURSKY, PH.D.

- - - - -

Taken at Isaac Wiles & Burkholder, LLC
 Two Miranova Place, Suite 700
 Columbus, OH 43215
 October 22, 2021, 3:00 p.m.

- - - - -

Spectrum Reporting LLC
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(Via videoconference)

7
8
9 ALSO PRESENT:

10 Steven Voigt, Esq. (Via videoconference)
11 Michael Lane, Videographer

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1 A P P E A R A N C E S

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(Via videoconference)

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1 Friday Afternoon Session

2 October 22, 2021, 3:00 p.m.

3 - - - - -
4 S T I P U L A T I O N S

5 - - - - -
6 It is stipulated by counsel in attendance that
7 the deposition of Gleb Tsipursky, Ph.D., a witness
8 herein, called by the Defendant for
9 cross-examination, may be taken at this time by
10 the notary pursuant to notice and subsequent
11 agreement of counsel, that said deposition may be
12 reduced to writing in stenotypy by the notary,
13 whose notes may thereafter be transcribed out of
14 the presence of the witness; that proof of the
15 official character and qualification of the notary
16 is waived.

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I N D E X

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23	(Exhibits attached electronically.)	
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1 MS. TURK: Jennifer Turk of Benesch
2 Friedlander here on behalf of Humana Health Plan
3 of Ohio.
4 MR. WEISENBURGER: Eric Weisenburger
5 from Dorsey & Whitney here on behalf of
6 UnitedHealthcare.
7 MR. KUGLER: Andrew Kugler from Mayer
8 Brown on behalf of AmeriHealth Caritas.
9 MR. GROSSMAN: This is Benjamin
10 Grossman with Foley & Lardner here on behalf
11 Anthem.
12 MS. KOSEK: This is Kelly Kosek from
13 Hahn, Loeser & Parks on behalf of Aetna.
14 MR. VOIGT: Steven Voigt. I am chief
15 legal counsel at the Ohio Department of Medicaid.
16 MR. LIPPS: Jeff Lipps, Carpenter,
17 Lipps & Leland --
18 MR. KULEWICZ: John Kulewicz from Vorys
19 on behalf of Gainwell.
20 MR. LIPPS: Jeff Lipps, Carpenter,
21 Lipps & Leland on behalf of CareSource.
22 -----
23
24

1 THE VIDEOGRAPHER: The following
2 deposition of Gleb Tsipursky, Ph.D., is being
3 taken on October 22nd, 2021, at Two Miranova
4 Place, Suite 700, Columbus, Ohio, in the case of
5 Paramount Advantage verse The Ohio Department of
6 Medicaid, et al., in the Franklin County Court of
7 Common Pleas, Case No. 21CV004337.
8 The court reporter is Stacy Upp and the
9 videographer is Michael Lane. This deposition is
10 being recorded by Spectrum Reporting LLC.
11 We're on the record at 3:00. Will
12 counsel please announce their presence.
13 MR. JOHNSON: Brian Johnson of Isaac
14 Wiles, along with my colleague Matt Aumann. We
15 are here on behalf of the Ohio Department of
16 Medicaid and the director of the Ohio Department
17 of Medicaid, Maureen Corcoran.
18 MS. FRASER: Kirsten Fraser from Organ
19 Law on behalf of plaintiff Paramount Advantage.
20 MR. FISHER: John Fisher from Calfee,
21 Halter & Griswold LLP on behalf of Molina.
22 MR. BERLINER: Alan Berliner from
23 Thompson Hine on behalf of Buckeye Community
24 Health Plan.

1 GLEB TSIPURSKY, PH.D.,
2 being first duly sworn, testifies and says as
3 follows:
4 -----
5 CROSS-EXAMINATION
6 BY MR. JOHNSON:
7 Q. Good afternoon, Dr. Tsipursky. Did I
8 pronounce that correctly?
9 A. You did. Thank you. I appreciate it.
10 Q. I try.
11 I'm Brian Johnson. I'm one of the
12 attorneys representing the Ohio Department of
13 Medicaid and Director Maureen Corcoran. Thank you
14 for being here today.
15 Dr. Tsipursky, will you please state
16 your full name and your business record -- your
17 business address?
18 A. Yes. My name is Gleb, G-L-E-B,
19 Tsipursky, spelled T-S-I-P-U-R-S-K-Y. My business
20 is Disaster Avoidance Experts at 450 Wetmore Road,
21 Columbus, Ohio 43214.
22 Q. Okay. And you said that that's the
23 address for Disaster Avoidance Experts?
24 A. Yes.

1 Q. Has Disaster Avoidance Experts ever
 2 been retained by a state's Department of Medicaid?
 3 A. No.
 4 Q. Okay. And have you ever been retained
 5 to help with a Medicaid MCO procurement?
 6 A. No.
 7 Q. And I'm sure your -- your very able
 8 counsel has prepared you well. But there are a
 9 few general guidelines I'd like to go over with
 10 you. I'm sure Ms. Fraser has gone over those with
 11 you already.
 12 Are you under the influence of any
 13 alcohol or drugs or medication today that would
 14 inhibit your ability to understand my questions
 15 and to answer them fully and honestly?
 16 A. No.
 17 Q. Okay. If you don't understand a
 18 question that I ask you, please tell me and I'll
 19 rephrase it. If you answer a question, I'm going
 20 to conclude that you understood my question. Is
 21 that fair?
 22 A. That is fair.
 23 Q. Do you agree with me that you will ask
 24 me to clarify or rephrase if you don't

1 expert witness before?
 2 A. Yes.
 3 Q. Okay. But you weren't deposed as an
 4 expert witness?
 5 A. The cases never came to that.
 6 Q. Okay. Which cases have you been
 7 retained as an expert witness before?
 8 A. Several cases involving hiring
 9 discrimination.
 10 Q. And which -- what was the first case
 11 that you were hired as an expert witness?
 12 A. So I'm not -- I was -- in all of those
 13 cases, I signed an NDA. And so that is something
 14 I'm uncomfortable discussing.
 15 Q. Okay. Your counsel and I will talk
 16 about that at --
 17 A. Okay.
 18 Q. -- at a break and we can figure out how
 19 we'll deal with that.
 20 Dr. Tsipursky, has a court ever
 21 declined to recognize you as an expert witness?
 22 A. No.
 23 Q. Okay. You've never been disqualified
 24 to testify as an expert witness in court?

1 understand --
 2 A. I will ask you.
 3 Q. -- the question.
 4 Let's do our best not to speak over
 5 each other. I tend to, you know, like my own
 6 voice, and so I apologize for that in advance.
 7 But I will try to let you finish your answer. And
 8 if you would let me finish my question before
 9 beginning your answer as well, that will be
 10 clearer for our court reporter, okay?
 11 A. Confirmed.
 12 Q. Okay. And as you're doing, please
 13 answer out loud rather than with a nod or a shake
 14 of the head. And we will try to take a break
 15 every hour or so at least. But if you need a
 16 break before that, don't hesitate to ask, and
 17 we'll take a break if you need it, okay?
 18 A. That sounds good.
 19 Q. All right. Have you been deposed
 20 before, Dr. Tsipursky?
 21 A. No.
 22 Q. This is your first time being deposed?
 23 A. Yes.
 24 Q. All right. Have you ever served as an

1 A. Correct.
 2 Q. Okay. Can you tell me, Dr. Tsipursky,
 3 what did you do to prepare for your deposition
 4 testimony today?
 5 A. So I looked at a number of documents.
 6 Q. Okay.
 7 A. I have my notes on them if you want me
 8 to list them.
 9 Q. I would. I would like you to list the
 10 documents.
 11 A. Sure.
 12 Q. Yeah.
 13 A. Are you asking me what I did to prepare
 14 the report or what I did to prepare for the
 15 deposition?
 16 Q. Well, I'm going to ask you for
 17 preparation for the report in a moment. But right
 18 now I'm asking what you did to prepare for the
 19 deposition.
 20 A. Okay. So in order to prepare for the
 21 deposition, I of course spoke to Ms. Fraser, and I
 22 looked at a number of documents. And I'll go over
 23 them. I looked at my two books, Never Go With
 24 Your Gut: How Pioneering Leaders Make the Best

1 Decisions, from Career Press. The Blindspots
 2 Between Us: How to Overcome Unconscious Cognitive
 3 Bias and Build Better Relationships. I looked at
 4 the depositions of defense witnesses. I --
 5 Q. I'm sorry to int -- go ahead and finish
 6 and I'll follow up.
 7 A. Sure. I looked at the Mercer memo
 8 number 20 -- of 2019. I looked at the document
 9 with the results and overview of the evaluation
 10 process for all applicants. The managed care
 11 procurement award briefing document. The
 12 evaluation committee training. The quite period
 13 memorandum. The employee and contractor
 14 attestation non-disclosure. The Department of
 15 Medicaid Managed Care Organization agreement. The
 16 request for application. The comparisons of
 17 performance for managed care organizations in Ohio
 18 in 2020, 2019, 2014. The Pacific Health Policy
 19 Group Letter. Dr Notz's statistical report.
 20 Dr. Siskin's rebuttal report. And then Dr. Notz's
 21 testimony.
 22 MS. FRASER: Just one second. Speak
 23 more slowly.
 24 THE WITNESS: Okay. Thank you.

1 MS. FRASER: Stacy has to get every
 2 word that you're saying.
 3 THE WITNESS: Okay.
 4 BY MR. JOHNSON:
 5 Q. Thank you. And I -- I couldn't help
 6 but notice you were reading that off of a
 7 particular document. What document is that that
 8 you're reading off of?
 9 A. I took some notes to prepare for the
 10 deposition and remind myself.
 11 Q. Okay. I see.
 12 MR. JOHNSON: And so, Counsel,
 13 Ms. Fraser, we would request a copy of the notes
 14 that Dr. Tsipursky just referenced and was reading
 15 off of. If you could provide that to us, I would
 16 appreciate it.
 17 BY MR. JOHNSON:
 18 Q. Other than legal counsel,
 19 Dr. Tsipursky, who have you spoken with about your
 20 involvement in this litigation?
 21 A. Oh, I've casually spoken to clients
 22 when you're to reschedule various things and
 23 various acquaintances whose inputs I want to get
 24 on my perspective.

1 Q. Okay. Which acquaintances are those?
 2 A. Well, first of all, I spoke with my
 3 wife and business partner: Agnes Vishnevkin.
 4 Then let's see. To the acquaintances I spoke to
 5 -- gosh. I mean, the person I spoke to just now
 6 when I was -- said I had to run to my deposition,
 7 Iyana Foster, who is a prospective client. Then
 8 -- I don't recall the other -- the names of the
 9 others. I mean, I can look them up if you want.
 10 Q. Are you able to do that right now?
 11 A. No.
 12 Q. Yeah, I would be interested in knowing
 13 who you spoke to about -- did I understand you
 14 correctly, Dr. Tsipursky, that you spoke with
 15 certain acquaintances to gain their perspective on
 16 your -- your position in this case?
 17 A. Only my wife and business partner.
 18 Q. And that's the same person?
 19 A. Correct. Yes. So she also has
 20 expertise in bias, and obviously I wanted an
 21 external perspective on my take on things.
 22 THE REPORTER: Could you speak up,
 23 please.
 24 THE WITNESS: Yes.

1 BY MR. JOHNSON:
 2 Q. Did your wife and business partner
 3 review your report and the conclusions contained
 4 in that report?
 5 A. No. She -- I talked about my
 6 conclusions. And I did not write the report with
 7 her. She did not review it.
 8 Q. Did she write any portion of your
 9 report?
 10 A. No.
 11 Q. Dr. Tsipursky, when did you first learn
 12 about this case?
 13 A. I believe it was October 5th when I was
 14 contacted -- when a mutual acquaintance connected
 15 me and Shawn to discuss the possibility of me
 16 taking up this case.
 17 Q. And Shawn --
 18 A. Let me be -- no. Let me rephrase that.
 19 My acquaintance told me about the possibility of a
 20 contact on October 4th. And then he connected me
 21 to Shawn. So I guess technically I learned about
 22 the possibility of the case on October 4th.
 23 Q. And Shawn is Shawn Organ of Organ Law?
 24 A. That's correct.

1 Q. Okay. And who was your acquaintance
2 that connected you with Mr. Organ?
3 A. Brian Ahearn.
4 Q. Who is Mr. Ahearn?
5 A. Mr. Ahearn is a consultant and trainer.
6 He is in a field that's adjacent to mine, so we
7 know each other professionally.
8 Q. And after Mr. Ahearn connected you with
9 Mr. Organ, who contacted you from -- well, did
10 someone contact you from Organ Law?
11 A. Correct. Shawn did.
12 Q. Okay. And when was that call made?
13 A. I believe that was on October 5th. I
14 can check my records. I have the dates on my
15 calendar.
16 MS. FRASER: That's okay.
17 A. It might have been the day before or
18 after, so. No. I think it was actually the day
19 before, so he called -- he contacted me on October
20 4th. So Brian Ahearn I think contacted me on
21 October 3rd. And Shawn contacted me on October
22 4th. And then I came in to -- to Organ Law on
23 October 5th to review the case. I think that was
24 the timeline if you want the specific dates.

1 Q. I want as specific as you can give me.
2 So --
3 A. Okay.
4 Q. -- I appreciate that. Thank you.
5 So your first conversation at Organ Law
6 about this case was on October 5th, 2021?
7 A. In the building itself?
8 Q. Yes.
9 A. Yes. I believe so.
10 Q. All right. And you had a telephone
11 conversation with Mr. Organ the day before --
12 A. Right.
13 Q. -- on October 4th?
14 A. Yeah. I can check my -- oh, okay.
15 Q. We'll give you an opportunity to
16 provide us a copy of your calendar very shortly
17 after this deposition, so I appreciate that.
18 A. Uh-huh.
19 Q. Dr. Tsipursky, what -- what is your
20 hourly rate that you are charging for your time?
21 A. \$1,000.
22 Q. \$1,000 an hour?
23 A. Uh-huh.
24 Q. And is that the same for trial

1 testimony and deposition testimony? So any time
2 you put into this case, you're billing at \$1,000
3 an hour?
4 A. Correct.
5 Q. Okay. How much have you charged so far
6 for your services in this case?
7 A. Oh, I believe it was 29 hours.
8 Q. 29 hours so far through today?
9 A. The invoice I sent that was I believe
10 yesterday or before, the day before, that is what
11 I recall. I don't recall the specific time
12 through today.
13 Q. And do you anticipate -- well, what do
14 you expect to charge on the case as a whole?
15 A. It depends on whether it goes to trial.
16 Q. Okay. Well, I'm pretty sure it's going
17 to trial. Fairly certain. I'd be willing to --
18 to bet on it.
19 A. Bet an hour of my time.
20 Q. Dr. Tsipursky, what were you asked to
21 do in this case?
22 A. I was asked to review the documentation
23 in this case and evaluate whether there was the
24 prospect of bias against Paramount in this process

1 of the procurement.
2 Q. And has that assignment changed at all
3 or is that continuing -- that's still what you
4 understand your role to be in this case?
5 A. Yes. Evaluate and give an opinion.
6 Q. Regarding whether there was a prospect
7 of bias in the RFA process for MCO procurement?
8 A. Yes.
9 Q. Okay. Can you tell me, Dr. Tsipursky,
10 what do you know about the 2020 MCO RFA evaluation
11 process?
12 A. I have read/skimmed through the
13 documents that I mentioned before, depending on
14 their length. So my understanding is informed by
15 these documents first.
16 And what I understand is that there was
17 a -- Mercer was hired sometime in 2019, something
18 like that, to develop the process in collaboration
19 with ODM, the Ohio Department of Medicaid. And
20 they developed a process and then they -- there
21 was -- ODM issued an RFA to which a number -- 11
22 applicants responded. And then the -- and there
23 was various criteria which we can go into. Then
24 the -- there was a time when some evaluators were

1 chosen, seven evaluators, all from ODM. And they
2 were asked to on their own evaluate the -- all of
3 the applicants and score them on the 32 questions.

4 And separately after the -- and then
5 there was a consensus meeting. And we can talk
6 about the depths of the consensus meeting. But
7 there was a consensus meeting, after which there
8 was a consensus score reached on each of the 32
9 questions for each of the applicants.

10 And then there was a presentation as
11 the 33rd question, 33rd question. And there was a
12 scoring of that.

13 And that was the total of the scores.
14 I think there was a -- one twist where Buckeye
15 Health was -- got a high score, but it was
16 deferred due to the defrauding case. And then it
17 was eventually decided to take marginal -- and it
18 was eventually decided to accept Buckeye. So
19 that's my understanding of how the process went.
20 And there was also various other elements like
21 evaluations by PHPG and so on.

22 Q. Okay. Do you know how the individual
23 evaluators that you referenced were selected?

24 A. No, I do not recall that. I'm not sure

1 Thereupon, Tsipursky Exhibit A is marked
2 for purposes of identification.

3 - - - - -

4 BY MR. JOHNSON:

5 Q. Take a minute and review that document,
6 Dr. Tsipursky. Do you recognize that document?

7 A. That's correct. That's my curriculum
8 vitae.

9 Q. And is this up to date?

10 A. Yes, at the time I sent it. I don't
11 think there were -- was anything else significant
12 added to it after that.

13 Q. And at the top under the category of
14 Employment, your -- the first job listed is as CEO
15 of Disaster Avoidance Expert -- Experts, LLC. Do
16 you see that?

17 A. Uh-huh.

18 Q. And it says 2018 to present?

19 A. That's right.

20 Q. Is that your sole employment today?

21 A. Correct. Yes.

22 Q. Okay. And Disaster Avoidance Experts,
23 LLC was filed with the Secretary of State in 2018?

24 A. I believe so, yes.

1 if that was in the documents.

2 Q. Do you know who selected the individual
3 evaluators?

4 A. I don't know how they were selected or
5 who or what process was used to select them.

6 Q. Do you have any personal knowledge of
7 the areas of expertise held by the individual
8 evaluators?

9 A. I don't have sufficient information
10 about the areas of expertise held by individual
11 evaluators to say it might be the case that some
12 of their areas of knowledge overlaps with mine.

13 Q. I see. Okay.

14 A. That would be an example if there's
15 behavioral health involved.

16 Q. Dr. Tsipursky, did you receive all of
17 the information you asked for from Organ Law that
18 you felt you needed to complete an evaluation?

19 A. Yes.

20 Q. Okay. We'll look at what we're going
21 to mark as Tsipursky Exhibit A.

22 MS. FRASER: He's going to hand you the
23 document.

24 - - - - -

1 Q. Is that an Ohio LLC?

2 A. Yes.

3 Q. And I think you told me earlier
4 Disaster Avoidance Experts has never been retained
5 by any state's Department of Medicaid, correct?

6 A. Correct.

7 Q. Okay. And Disaster Avoidance Experts
8 has never been retained to help with a Medicaid
9 procurement?

10 A. That is correct.

11 Q. Okay. The second job listed here,
12 Dr. Tsipursky, is as an assistant professor at The
13 Ohio State University from 2011 to 2018; is that
14 correct?

15 A. That's correct.

16 Q. What classes did you teach at -- and
17 I'm sorry. That's at the Newark campus, correct?

18 A. That is the Newark campus. That's
19 right. Uh-huh.

20 Q. Okay. It's a beautiful campus.

21 A. It is really nice.

22 Q. Yeah.

23 What classes did you teach during your
24 times as an assistant professor at The Ohio State

1 University?
 2 A. Classes in history of Europe, Soviet
 3 Union, global history. I believe that those were
 4 the spectrum. There might have been -- I think
 5 there were some specialized class -- well, some
 6 components. So Soviet history, Russia history,
 7 within that sphere.
 8 Q. Okay.
 9 A. Classes within that sphere.
 10 Q. Okay. So you did not teach -- all
 11 within the history department?
 12 A. Correct.
 13 Q. At Ohio State?
 14 A. That's right.
 15 Q. None within the psychology department?
 16 A. Correct.
 17 Q. Okay. I see that you also taught as a
 18 lecturer at UNC Chapel Hill; is that correct?
 19 A. That's right.
 20 Q. And that was between 2008 and 2010?
 21 A. 2000 -- yes, that's right. Yep.
 22 Q. Okay. And what department were you a
 23 lecturer in at the University of North Carolina at
 24 Chapel Hill?

1 Q. Okay. What was the topic of your
 2 dissertation?
 3 A. It was published in the -- as the book
 4 Socialist Fund: Youth, Consumption, and
 5 State-Sponsored Popular Culture in the Cold War
 6 Soviet Union.
 7 Q. And I see you're pointing. I should be
 8 able to see it.
 9 A. That's right.
 10 Q. But it's --
 11 A. Yep. It's the third from the bottom on
 12 the CV.
 13 Q. Okay.
 14 MS. FRASER: The top.
 15 THE WITNESS: From the bottom. Oh,
 16 yes. Whichever. Whichever way I count it.
 17 Q. Socialist Fun: Youth Consumption, and
 18 State-Sponsored Popular Culture in the Cold War
 19 Soviet Union, that was your Ph.D. dissertation?
 20 A. That's exactly right.
 21 Q. From the University of North Carolina.
 22 I see.
 23 And was that dissertation the
 24 culmination of your Ph.D. studies at the

1 A. History.
 2 Q. The history department?
 3 A. Uh-huh.
 4 Q. What classes did you lecture in at the
 5 University of North Carolina?
 6 A. About the same classes as I mentioned
 7 before in European history and Russia Eurasian
 8 history.
 9 Q. Okay. None in the psychology
 10 department, for example?
 11 A. Correct.
 12 Q. Dr. Tsipursky, between your time at
 13 Ohio State and as a lecturer at the University of
 14 North Carolina at Chapel Hill, you list
 15 Mellon/ACLS Dissertation Completion Fellow at UNC
 16 Chapel Hill. And you'll have to forgive my
 17 ignorance. I have no idea what that is. Can you
 18 tell me what that is?
 19 A. It means that I received a grant to
 20 complete my dissertation. So I was not working as
 21 a lecturer to support myself.
 22 Q. And that grant to work on your
 23 dissertation, that was your Ph.D. dissertation?
 24 A. That is correct.

1 University of North Carolina?
 2 A. Yes.
 3 Q. Okay. Your dissertation -- or your --
 4 I'm sorry. Your CV also lists -- I'm sorry.
 5 Let's go back to your Ph.D. You --
 6 A. Sure.
 7 Q. You indicate on your CV that your Ph.D.
 8 in history focused on behavioral science?
 9 A. That is correct.
 10 Q. Can you explain to me how your Ph.D.
 11 focused on behavioral science?
 12 A. Sure. So I went into history because I
 13 wanted to study the -- the history is a social
 14 science, so how groups interact in historical and
 15 contemporary settings. So I was using
 16 psychological methodology and applying it to the
 17 context of the socialist Soviet Union to compare
 18 the very different modernity that was the Soviet
 19 Union to the United States. And seeing how people
 20 who are people and whose brains are the same, how
 21 they functioned in that society compared, inuring
 22 it to people who function in the American Society
 23 at about that time. And so that was my
 24 fascination.

1 So that is the history of behavioral
 2 science. Later onward, I transitioned to focus
 3 more on contemporary behavioral science.
 4 Q. I see.
 5 A. And that's why I got a -- the Decision
 6 Sciences Collaborative is part of where I was at
 7 the -- at Ohio State.
 8 Q. Okay. And so at Ohio State, the
 9 courses you taught were all in the arena of Soviet
 10 history?
 11 A. Uh-huh.
 12 Q. Russia history, eastern European
 13 history. But you were also part of the Decision
 14 Science Collaborative?
 15 A. That's true.
 16 Q. What is that?
 17 A. The Decision Science Collaborative is a
 18 collaborative among a number of departments that's
 19 focused on research in decision sciences. So my
 20 research topics transitioned from behavioral
 21 science in historical context to behavioral
 22 science in contemporary context. And the -- my
 23 publications reflect that. So my latest
 24 peer-reviewed articles reflect my focus, so

1 University?
 2 A. That's right. Well, I think it's
 3 technically a thesis.
 4 Q. Okay.
 5 A. But, yes.
 6 Q. What was the topic of your thesis?
 7 A. Whistleblowing in the Soviet Union, so
 8 specifically how people complained.
 9 Q. Okay.
 10 A. Uh-huh. And complaint behavior.
 11 Q. And what was your -- what was your
 12 degree from Harvard?
 13 A. It was in regional studies Russia. So
 14 looking at everything from politics, sociology,
 15 anthropology, history, of course, the psychology
 16 of that time, looking at the region itself and
 17 what happened there.
 18 Q. Okay. Dr. Tsipursky, were you born in
 19 the Soviet Union? Or --
 20 A. Yes. I was born in the Republic of --
 21 what is now the Republic of Moldova and used to be
 22 part of the Soviet Union.
 23 Q. In 2002 you received a Bachelor of Arts
 24 degree from NYU; is that correct?

1 essentially postgraduate training after I got my
 2 Ph.D. which transitioned more to behavioral
 3 science and how people behave in contemporary
 4 settings and decide.
 5 Q. I see.
 6 Your CV indicates a master's degree
 7 from Harvard University as well; is that correct?
 8 A. Uh-huh. That is correct.
 9 Q. And you're --
 10 A. I think it's technically an AM, which
 11 is the Harvard fancy name for it.
 12 Q. Okay. But it is the --
 13 A. Yes.
 14 Q. All right. Because Harvard is Harvard,
 15 they just switched the letters to be special?
 16 A. That's right. They want to be special.
 17 Q. Okay.
 18 A. It's like The Ohio State University.
 19 Q. I under. I understand.
 20 And you received your AM degree from
 21 Harvard in 2004?
 22 A. Uh-huh.
 23 Q. Did you write a dissertation as the
 24 culmination of your master's degree from Harvard

1 A. That is correct.
 2 Q. And what was that degree in?
 3 A. It was a double major in history and
 4 biology.
 5 Q. Did you write a thesis?
 6 A. No. Not for that. That was not
 7 required.
 8 Q. Did your history degree focus on any
 9 particular specialization?
 10 A. It was European history.
 11 Q. During your Ph.D. studies at the
 12 University of North Carolina, were you involved in
 13 any clinical analysis of behavioral science?
 14 A. Can you clarify what you mean by
 15 "clinical analysis"?
 16 Q. Did you participate in any experiments
 17 focusing on decision-making?
 18 A. Not in my Ph.D. work.
 19 Q. Okay.
 20 A. In my later work, I did. But not my --
 21 Q. In your later work?
 22 A. That's right.
 23 Q. But not as of through 2011 when you
 24 received your Ph.D.?

1 A. Correct.

2 Q. Okay.

3 A. Because I was looking, focusing on

4 history and of course -- well, let me rephrase

5 that.

6 It was -- I did not participate in

7 formal experiments. What I did was gather oral

8 history interviews, so which is not quite the

9 same. But I wanted to make sure to include that

10 in case for -- for full disclosure.

11 Q. Okay. Okay. I appreciate that. Thank

12 you.

13 A. Uh-huh.

14 Q. In your bachelor program at NYU, your

15 master's program or AM program at Harvard or your

16 Ph.D. program in history at the University of

17 North Carolina, did you take any classes focused

18 specifically on structuring and implementing a

19 state Medicaid procurement process?

20 A. No.

21 Q. Did you take in any of those three

22 programs any classes specifically focused on

23 facilitating Medicaid MCO procurement consensus

24 meetings?

1 A. You're still good.

2 Q. I'm sorry.

3 Do you consider yourself an expert in

4 the specific area of Medicaid MCO procurements?

5 A. I do not.

6 Q. Okay. Have you ever personally

7 facilitated a Medicaid MCO procurement?

8 A. No.

9 Q. Have you ever personally served as an

10 evaluator in a Medicaid MCO procurement?

11 A. No.

12 Q. Have you ever drafted an RFA for a

13 Medicaid MCO procurement?

14 A. No.

15 Q. Have you written any academic papers on

16 the specific topic of Medicaid MCO procurements?

17 A. No.

18 Q. In Exhibit A, your CV, Dr. Tsipursky,

19 are there any publications listed on this CV that

20 address the issue of Medicaid MCO procurements

21 specifically?

22 A. So your question is whether they

23 specifically mention Medicaid MCO procurement?

24 Q. Yes.

1 A. No.

2 Q. Do you have any clinical or

3 experimental experience in structuring and

4 implementing of state Medicaid MCO procurement

5 processes?

6 A. I do not.

7 Q. Do you have any clinical or

8 experimental experience in facilitating Medicaid

9 MCO procurement consensus meetings?

10 A. I do not.

11 Q. Did you take any classes at any level

12 of your education that taught you how to prepare

13 an opinion in a matter such as this one?

14 A. Yes, of course. So in terms of history

15 classes that taught me how groups function and

16 behave and psychology when looking at how groups

17 are structured and how groups behave in various

18 contexts, yes, I did.

19 Q. Okay. And so you believe you possess

20 the capability to prepare an expert report that

21 would be helpful to the Court in this matter?

22 A. Absolutely.

23 Q. Dr. Tsipursky, am I still saying that

24 -- I'm still --

1 A. They do not.

2 Q. Do you believe, Dr. Tsipursky, that you

3 possess the requisite underlying experience

4 necessary to render a relevant opinion in this

5 matter?

6 A. Given that people are people and brains

7 are brains, I absolutely do.

8 Q. So if your field of expertise is not

9 Medicaid MCO procurements, what is your field of

10 expertise?

11 A. My field of expertise is evaluating how

12 people behave and why they behave in biased ways,

13 a topic of cognitive biases and how they make

14 their decisions and how they mismanage risks in

15 these decisions, how they use faulty information

16 in the process of decision-making because of how

17 our brains are structured, and how to correct

18 these problems to make the best decisions. That

19 is what my expertise is.

20 Q. Okay.

21 A. Including in evaluation processes,

22 hiring, all sorts of decision-making, just like

23 the kind of decision-making that would be an MCO

24 procurement.

1 Q. Okay. I appreciate that.
 2 A. Uh-huh.
 3 Q. As I recall -- and we're going to turn
 4 to your report in just a minute -- your report
 5 talked about two levels of decision-making:
 6 thought and rationality-based decision-making.
 7 A. Uh-huh.
 8 Q. Forgive my lack of precise terminology.
 9 But more -- and also more of an instinctual
 10 decision-making process; is that fair to say?
 11 A. That's roughly correct. And there
 12 would be some complexity that we might need to
 13 nuance once we get to it. But we can accept that
 14 for a rough approximation.
 15 Q. Do you believe that if I recognize that
 16 those two types of decision-making exist in me, I
 17 am able to think my way around the instinctual
 18 decision-making and decide not to make a decision
 19 based on that level of decision-making and instead
 20 make a thoughtful, rational decision?
 21 A. Unless you use research-based
 22 practices, that is very unlikely.
 23 Q. Okay.
 24 A. Given what we know about how people

1 A. Let me look at this. I believe it is.
 2 Without reading every letter, I -- I could say --
 3 Q. It looks like it?
 4 A. It looks like it.
 5 Q. And this is your final report?
 6 A. I'm not aware that I have an option of
 7 supplementing a report.
 8 Q. Okay.
 9 A. I presume that this -- yes, in terms of
 10 the final report. In -- in terms of the report I
 11 gave to Shawn Organ, I reserve the right to add
 12 additional information that I get after the report
 13 and use that to inform my analysis of the case as
 14 it becomes relevant.
 15 Q. Okay. Would you just generally
 16 describe your approach to your analysis? What
 17 methodology did you use?
 18 A. So on the one hand, I reviewed the
 19 documents that I mentioned before with the
 20 exception of Dr. Siskin's report and Dr. Notz's
 21 testimony, deposition testimony to which I did not
 22 have access at the time because they were not
 23 available yet. And so that was one.
 24 And then I used accepted peer-reviewed

1 decide.
 2 -----
 3 Thereupon, Tshipursky Exhibit B is marked
 4 for purposes of identification.
 5 -----
 6 Q. We're going to take a look at another
 7 document that I hope you'll recognize. And we're
 8 going to mark this as Tshipursky Exhibit B.
 9 A. Uh-huh.
 10 Q. And if you could take a moment and
 11 review that document.
 12 MR. JOHNSON: Stacy, do you want one of
 13 these right now or --
 14 THE REPORTER: Can I have his when
 15 we're finished?
 16 MR. JOHNSON: Yeah.
 17 BY MR. JOHNSON:
 18 Q. Dr. Tshipursky, do you recognize that
 19 document?
 20 A. This is the report I wrote for Shawn
 21 Organ with Organ Law about my analysis of the case
 22 of the evaluation of whether biases were present.
 23 Q. And is this the complete and accurate
 24 copy of your report?

1 methods from behavioral science and
 2 decision-making on cognitive biases to evaluate
 3 whether given the documentation available the
 4 process was protected against overt bias, you
 5 know, palpable violations of fact and logic, or
 6 the -- against unintentional bias, the arbitrary
 7 and capricious dynamics.
 8 Q. And we -- we talked about this earlier.
 9 But did anyone draft any portion of this report
 10 other than you?
 11 A. No.
 12 Q. Okay. And other than your wife and
 13 business partner -- well, I take that back. I was
 14 going to ask you, did you submit it, the report,
 15 for review and revision to anyone other than your
 16 wife and business partner. But your testimony was
 17 that she is -- she did not review this report?
 18 A. She did not review it.
 19 Q. Did anyone other than your wife and
 20 business partner check your conclusions before you
 21 finalized your report?
 22 A. No.
 23 Q. You referenced a moment ago
 24 peer-reviewed articles that talk about the

1 processes that were subject to your analysis.
 2 What -- what peer-reviewed articles did you read
 3 that assisted you in preparing this report?
 4 A. So I referenced my two books in the
 5 article, and so I went back to them and I went to
 6 the bibliography. So in each of the cases for
 7 attentional bias, for example, the -- I went to
 8 the articles that were -- that formed the basis
 9 for attentional bias that were cited in my book.
 10 So I want to make sure to have the references
 11 cited. And so I reviewed those articles to make
 12 sure that my understanding of those articles was
 13 correct. And then made sure to apply that to the
 14 evaluation of the documentation.
 15 Q. And so are you -- is your testimony --
 16 and I want to make sure I understood -- stand
 17 this. That your two books constitute peer-review
 18 materials?
 19 A. No. My two books con -- are based on
 20 peer-reviewed articles. These are
 21 popularizations --
 22 Q. Okay.
 23 A. -- of peer-reviewed materials. So I
 24 went to the books to look at the references in the

1 Q. And what did you discover?
 2 A. I discovered that there was nothing
 3 substantially challenging. I think the only one
 4 that was challenged was on loss aversion, which I
 5 chose not to include, which is a major component
 6 of prospect theory, which is kind of how we
 7 behave, it's very -- informs decision-making. Of
 8 the articles, some of the recent articles on loss
 9 aversion were suggesting that there were -- that
 10 loss aversion is actually made out of
 11 subcomponents of other cognitive biases that
 12 together make up loss aversion. So we should not
 13 talk about loss aversion. There are some other
 14 articles which suggest that loss aversion does
 15 have reality beyond those components. So I
 16 decided given that there was some controversy
 17 about this, I would avoid discussing it.
 18 Q. Okay. Is your testimony,
 19 Dr. Tsipursky, that the books -- or the articles,
 20 I'm sorry, that are listed in the bibliography of
 21 your two books, you reviewed each of those
 22 articles?
 23 A. No. I reviewed the articles that were
 24 most relevant.

1 books, which were referencing peer-reviewed
 2 articles. And so then I used those peer-reviewed
 3 articles to refresh my memory of the cognitive
 4 biases to make sure before finalizing my report in
 5 this very important case that I -- my
 6 understanding was correct, and that's one.
 7 Second, that no new articles came out
 8 that would -- a science -- the nature of science
 9 is that new articles -- new findings can overturn
 10 old findings.
 11 Q. Sure.
 12 A. I want to make sure that no new
 13 findings came out that overtured some of the
 14 findings that I would be -- that I had in my mind.
 15 Q. And how did you make that analysis?
 16 A. I looked for each article, so I looked
 17 at the old -- older article -- I looked at the
 18 articles that were cited at the time the book was
 19 published. And then I looked at Google Scholar,
 20 which is a depository of scholarly articles for
 21 more recent articles published on that topic to
 22 see if there was anything that challenged some of
 23 the more -- if any -- more recent work challenged
 24 some of the older work.

1 Q. Okay.
 2 A. So let's say on confirmation bias, the
 3 classical articles on confirmation bias.
 4 Q. Okay.
 5 A. And then seeing if there is newer work
 6 on confirmation bias or intentional bias and group
 7 think.
 8 Q. Okay. Are you able to identify which
 9 articles those are from your books?
 10 A. Sure. Let me see.
 11 Q. And while you -- while you do that,
 12 let's go off the record for just a minute.
 13 THE VIDEOGRAPHER: We're off the
 14 record. The time is 3:44.
 15 (A short recess is taken.)
 16 THE VIDEOGRAPHER: We are back on the
 17 record. The time is 3:49.
 18 BY MR. JOHNSON:
 19 Q. Dr. Tsipursky, before we went off the
 20 record, you were checking the bibliography of your
 21 book for academic peer-reviewed articles that
 22 informed your report.
 23 A. Uh-huh.
 24 Q. Were you able to locate those articles?

1 A. Yeah. I'll -- I'll give you some.
 2 James Friedrich is the name of the author.
 3 "Primary error decision and minimization (PEDMIN)
 4 strategies in social cognition: And
 5 reinterpretation of confirmation bias phenomena."
 6 Psychological Review 100, Volume 100, issue 2,
 7 (1993): 298-319. And then -- that's more of a
 8 classical one.
 9 Ivan Hernandez and Jesse Lee Preston.
 10 Disfluency -- the title is "Disfluency disrupts
 11 the confirmation bias." And that's in the Journal
 12 of Experimental Social Psychology Volume 49, issue
 13 1 -- that's in 2013, so a more recent one -- 178
 14 to 182.
 15 Do you want me to go on? Is that
 16 helpful?
 17 Q. It is helpful. Yeah.
 18 A. Okay.
 19 Q. And so --
 20 A. Sure.
 21 Q. Those are two of the articles that you
 22 looked at?
 23 A. That's right.
 24 Q. Okay.

1 A. Martin Jones and Robert Sugden,
 2 "Positive confirmation and acquisition of
 3 information." In Theory and Decision, No. 50,
 4 issue 1 (2001): 59-99.
 5 And then Joshua -- another one is
 6 Joshua Clayman, "Varieties of confirmation bias."
 7 Psychology of Learning and Motivation 32, issue 32
 8 in 1995, pages 385 to 418.
 9 Then another one is Jeffrey J.
 10 McMillan and Richard A. White, "Auditors' belief
 11 revisions and evidence search: The effect of
 12 hypothesis frame, confirmation bias, and
 13 professional skepticism." Accounting Review
 14 (1993): 443-465.
 15 So those are articles I looked at for
 16 confirmation bias. I looked at more than the
 17 typical number of articles I looked at because
 18 just the confirmation bias was such a serious
 19 issue here.
 20 Q. Okay.
 21 A. So that's an example.
 22 Q. Okay. I appreciate that. Thank you.
 23 A. Okay. And I can go farther of course
 24 if you need me to.

1 Q. Dr. Tsipursky, what assumptions -- were
 2 you given any assumptions by counsel or by -- by
 3 your client that you incorporated into your
 4 report?
 5 A. So your question is was I given
 6 assumptions?
 7 Q. Yes. Were you told in preparing your
 8 report assume these things are true?
 9 A. Ah. Nothing like that.
 10 Q. Okay.
 11 A. I was given information.
 12 Q. Okay.
 13 A. And my assumption was that that
 14 information was complete and accurate.
 15 Q. Okay.
 16 A. But I was not given any assumptions of
 17 the kind that you described.
 18 Q. Okay.
 19 A. So just to clarify --
 20 Q. So --
 21 A. -- and for full disclosure.
 22 Q. And thank you. And so the statements
 23 set forth in your report, statements of fact
 24 contained in there were gleaned from your reading

1 of information and documents that you were given?
 2 A. My reading of information and documents
 3 and clarification questions that I asked of Shawn
 4 and Kirsten about how the process worked if there
 5 was something that I did not fully understand from
 6 the document.
 7 Q. Okay. And you assumed that the answers
 8 you were given, you believe that those were
 9 accurate and true?
 10 A. Yes. And they correlated -- and they
 11 clarified my misunderstanding -- or no, not -- my
 12 incomplete understanding of what was in the
 13 document. So they matched the evidence that was
 14 presented to me in the documents and they
 15 clarified the missing context or component.
 16 Q. Gotcha.
 17 So, for example, I believe your report
 18 refers to conflicts between ODM and Paramount?
 19 A. Uh-huh.
 20 Q. Do you recall that reference?
 21 A. That's right.
 22 Q. What conflicts are you referring to
 23 there?
 24 A. That was the context of -- of whether

1 there was a possibility of any -- that was a
 2 question that they asked. Whether there was a
 3 possibility of any evaluators coming into the
 4 process with a predisposition -- with negative
 5 predispositions against Paramount. And Shawn and
 6 Kirsten informed me -- I believe it was Shawn more
 7 specifically, informed me that there was a -- some
 8 kind of serious conflict between Paramount and ODM
 9 about the algorithm used to refer Medicaid
 10 patients to Paramount, which caused Paramount to
 11 lose a lot of money in 2019.
 12 Q. And so you -- you assumed the accuracy
 13 of that statement that there was in fact a
 14 conflict between ODM and Paramount regarding the
 15 algorithm, the auto-assignment algorithm in 2019?
 16 A. That is correct.
 17 Q. Okay. How would your conclusions
 18 change if you were to instead assume there was no
 19 conflict between ODM and Paramount regarding the
 20 auto assignment algorithm in -- in 2019?
 21 A. I believe in several places -- in a
 22 couple of places in the report, I mentioned this
 23 conflict as a potential cause of overt bias or
 24 even unconscious implicit bias that was brought

1 either called a bias or an effect?
 2 A. No. The -- what I'm referring to, the
 3 confirmation bias and so on are specifically
 4 cognitive biases. You know, there's various
 5 colloquial names which people use, like fallacies
 6 and so on. Those aren't scientific.
 7 Q. Okay.
 8 A. I'm talking very specifically about
 9 scientific, peer-reviewed, many times reproduced
 10 conclusions about how our brain goes awry.
 11 Q. Okay.
 12 A. And so the technical name for those is
 13 cognitive biases.
 14 Q. Okay. And so would the halo effect,
 15 for example, fall into a cognitive bias?
 16 A. Yes.
 17 Q. It would be a cognitive bias?
 18 A. That's right in fact.
 19 Q. And the horns effect also?
 20 Okay. And then am I correct, my -- my
 21 calculation of 16 or 17 also includes your
 22 reference to both a statistical and a performance
 23 sanity check. Am I understanding that correctly?
 24 Or is that sort of a--

1 into the evaluation process.
 2 Q. Uh-huh.
 3 A. Both by individual evaluators and in
 4 the consensus meeting. If there was indeed no
 5 conflict, those -- I would not make those
 6 references.
 7 Q. Was the 2019 auto-assignment algorithm
 8 anomaly the only conflict between ODM and
 9 Paramount that you were told about?
 10 A. I do not recall any other conflicts I
 11 was told about.
 12 Q. Okay.
 13 A. I'm not sure if something was mentioned
 14 and I do not currently recall it.
 15 Q. Dr. Tsipursky, your report includes by
 16 my calculation a reference to 16 or 17 different
 17 biases or effects that might have been involved in
 18 the MCO evaluation process. Does that sound about
 19 right?
 20 A. Yes. The technical name is cognitive
 21 biases, yes.
 22 Q. Okay.
 23 A. So let's use that terminology.
 24 Q. Okay. And so in your report it can be

1 A. That's not a cog -- that's not a
 2 cognitive.
 3 Q. Not a cognitive bias?
 4 A. That's right.
 5 Q. What would those be, just a -- a
 6 safeguard against --
 7 A. Uh-huh.
 8 Q. -- cognitive bias?
 9 A. Right. So there are two dynamics at
 10 work. One is the errors and one is how you
 11 protect them.
 12 Q. I missed the first. You --
 13 A. One is the errors.
 14 Q. I see.
 15 A. The cognitive biases.
 16 Q. Okay.
 17 A. That our mind makes because of how it's
 18 wired. And -- you know, I did -- I did clinical
 19 studies on them, I studied all of their effects,
 20 and I could talk about that more.
 21 And then the other area is how do you
 22 protect against them. And those were the 10
 23 dynamics -- those were the 10 -- the technical
 24 term for -- for these protections is called

1 debiasing. So that is an area where I have done
2 more of my work in behavioral science.

3 So, for example, if you look at my CV,
4 just the latest article listed, Fighting fake news
5 and post-truth politics with behavioral science:
6 The Pro-Truth Pledge. That describes a specific
7 intervention using debiasing techniques to address
8 the kind of cognitive biases that cause us to make
9 errors in our public engagement. So that's the
10 debiasing techniques.

11 So those are two -- so I pointed out
12 that there are a number of errors that can be
13 addressed, these cognitive biases, which can be
14 addressed by these techniques, debiasing
15 techniques, which need to be present in any
16 process which we want to be protected from overt
17 as well as implicit bias.

18 Q. Okay. Do you know of any state MCO
19 procurement in the United States that has
20 implemented your debiasing techniques that you
21 reference in your report?

22 A. I think I mentioned that we were not
23 engaged by any Medicaid departments. You know, my
24 -- more -- most of my work, whether it's as

1 Q. Uh-huh.

2 A. -- in 2014 to implement these
3 techniques.

4 Q. Okay. And I'm sorry, I -- I am trying
5 to follow what you said.

6 A. Uh-huh.

7 Q. Forgive me.

8 But to your knowledge, no state
9 department of Medicaid has implemented your
10 debiasing techniques that are referenced in your
11 report; is that correct?

12 A. That is correct.

13 Q. If you'll look at the bottom of your
14 report, there should be numbers where it says
15 Paramount and then followed by --

16 A. Uh-huh.

17 Q. If you could turn to page 022521.

18 A. Uh-huh.

19 Q. And if you'll look at the paragraph
20 under the bold heading What is Bias? about halfway
21 through that paragraph you write, "However, bias
22 is often implicit, where the decision maker does
23 not realize they are making biased judgments." Do
24 you see that?

1 formally as, you know, Disaster Avoidance Experts
2 or before that, I was a moonlighting academic,
3 which I've been doing for over a decade, that has
4 been with private companies. Because they're way
5 ahead of the curve of -- ahead of municipalities,
6 governments. I have been retained by a number of
7 municipalities and governments, for example, the
8 Denver Auditor's Office that are starting to
9 implement these techniques.

10 I have insufficient knowledge of
11 whether O -- whether departments of Medicaid have
12 been implementing these techniques. At the state
13 level, I do know that -- I believe it was 2014
14 that Barack Obama signed an executive degree to --
15 for the federal government to the integrate
16 behavioral science principles into all of its
17 activities. So I can imagine that perhaps the
18 federal government is doing it, and maybe the
19 state governments will follow. I just have no
20 knowledge of that area.

21 Q. Okay.

22 A. I just know at the very top level that
23 there has been a decree in 2014, executive
24 order --

1 A. Yes.

2 Q. What do you mean by that?

3 A. That's when decisions are arbitrary,
4 capricious, but the decision-maker is not
5 realizing that that's happening. So we talked
6 before about the difference between the rational
7 system.

8 Q. Uh-huh.

9 A. The rational way of thinking and the
10 emotional way of thinking. Most of our processing
11 is very much emotional. And it's often the case
12 that we are not aware of the biases that we fall
13 into, and we make arbitrary and capricious
14 decisions without realizing that that's what's
15 happening.

16 In some cases as I referenced in the
17 previous paragraph, it is an intentional decision.
18 So our logical rational system we know that we are
19 making biased decisions and that's deliberate,
20 overt, violations of logic and fact.

21 Q. Okay. So you believe that it is
22 possible that seven independent evaluators could
23 review 11 different applications each containing
24 32 questions that were very specific questions and

1 reach, independently reach the same conclusions
2 regarding Paramount Advantage, and that could all
3 be due to a bias that none of them are aware of?

4 A. That is what the research shows.

5 Q. Okay.

6 A. We are as human beings fundamentally
7 biased. And given that they are suffering from
8 what's called common source bias, which I
9 reference. They're all coming from a common
10 source and a common culture. It is very likely
11 that their bias will all be directed in the same
12 direction.

13 If you don't protect against bias, you
14 will get biased outcomes. It's the same -- my
15 evaluations of these things come from practical
16 experience working in businesses and helping them
17 create hiring processes.

18 As I'm sure we are all aware of,
19 there's a lot of bias potential in hiring
20 decisions. And when you are all coming from the
21 same position and perspective, as these evaluators
22 were, you're much more likely to reach a biased
23 conclusion if you don't protect against it. So in
24 order to not be sued for the hiring

1 professional background, knowledge, experience.
2 They have absolutely no diversity from that
3 perspective. Therefore, their bias is very likely
4 to be all in the same direction, from what we know
5 about how people work and function. It's just the
6 natural way we are unless we protect against bias,
7 which is why we should.

8 Q. Okay. At the beginning of your report
9 on the first page, Bates number Paramount 22519
10 and the following page 22520 --

11 A. Uh-huh.

12 Q. -- you -- you discuss three judicial
13 decisions in the general realm of procurement.

14 A. Uh-huh.

15 Q. You talk about the Problem Gambling
16 Foundation of New Zealand versus Attorney General
17 case, you talk about In the Matter of an Appeal by
18 Dynalife case, and you talk about the Lancashire
19 Care NHS Foundation Trust and Anor v. Lancashire
20 County Council case, correct?

21 A. Uh-huh.

22 Q. Could you describe for me how these
23 three cases provided the context or foundation of
24 the opinions in your report?

1 discrimination, you want to make sure that your
2 processes and systems are protected against bias.
3 And that's in a much, much lower scale decision
4 than \$23 billion.

5 Q. Okay. And do you agree with me,
6 Dr. Tsipursky, that when you say these evaluators
7 are coming from the same direction, same
8 perspective, you're talking only about the fact
9 that they all work at ODM; is that correct? Do
10 you agree with me that they're -- this is a
11 diverse group in terms of age, race, gender, the
12 list goes on?

13 A. The question --

14 MS. FRASER: I'm going to object to the
15 form. And you can answer.

16 A. Their demographics don't matter a bit
17 in this case, because the relevant component is
18 their professional background which is informed by
19 ODM. And they are making -- they're not going to
20 discriminate against Paramount based on
21 Paramount's race or gender or age. They're going
22 to be discriminating if they are based on their
23 professional knowledge, expertise, background,
24 experience. And they're all coming from the same

1 A. They provide no foundation.

2 Q. Okay.

3 A. They provided a context for me trying
4 to show that human beings are human beings across
5 the globe. My background and training is in --
6 partially in that historical context.

7 So my goal was to show that this is not
8 a uniquely American problem. This is a global
9 problem. We make decisions and are fundamentally
10 biased in all sorts of settings, not simply in the
11 U.S. So we should understand that human beings
12 are fundamentally biased and flawed everywhere.
13 It's not simply an American problem. And that is
14 how these cases are relevant to the rest of the
15 report.

16 Q. On page 22522, I begin to see
17 discussion in your report about protection from
18 bias. And one of the basic -- one of the
19 protections you reference is having a blinded
20 process; is that correct?

21 A. That's right. By which I mean --

22 Q. Okay.

23 A. -- having the evaluators not know who
24 the applicants are.

1 Q. Okay. So -- all right. I understand.
 2 Where have you seen a blinded process
 3 like you suggest here successfully implemented in
 4 a Medicaid MCO procurement?
 5 A. I do not have enough information of
 6 Medicaid MCO procurement. Not my area of
 7 expertise.
 8 Q. So you're not aware of any state in the
 9 United States that has successfully conducted a
 10 blind MCO procurement?
 11 A. I'm not aware of any state that didn't
 12 either.
 13 Q. Okay.
 14 A. It's not within my information.
 15 Q. Okay. Dr. Tsipursky, are you aware
 16 that blinded procurements are commonly viewed in
 17 the Medicaid world as unfair or disadvantage to
 18 incumbent MCOs?
 19 A. That reminds me some of the biases for
 20 how people refuse to change their hiring practices
 21 or they think that would be unfair to certain
 22 demographics and categories. It's a fundamentally
 23 flawed perspective of the field, if that is indeed
 24 the perspective of the field.

1 you describe as an enhanced consensus; is that
 2 correct?
 3 A. Yes.
 4 Q. Okay. What is an enhanced consensus?
 5 A. So enhanced consensus scoring is -- if
 6 you want to use consensus scoring, the research
 7 shows that the way to best address the problems of
 8 just simply averaging the evaluators is to only
 9 look at the outliers, not look at every one and
 10 only look at the highest and lowest scores. And
 11 take those and have the people discuss, have the
 12 people then decide later whether they want to
 13 remove them or not or stick with their original
 14 scores.
 15 So that is something that interestingly
 16 the PHPG letter suggested was actually used in
 17 this case, and completely wrongly of course. It
 18 -- it indicates that they either did not -- they
 19 did not evaluate the documentation correctly.
 20 They had a the wrong impression of what kind of
 21 process was used. They thought it -- it was
 22 enhanced scoring when they said that the consensus
 23 scoring model was such that only the outliers were
 24 removed. And that is just a clear indication that

1 Q. Okay.
 2 A. Because that's just not how human
 3 beings work. You know, it was just like it's --
 4 it's ludicrous in the same way as asking
 5 evaluators to forget the identities of those that
 6 are evaluating and just evaluate the application.
 7 It's not how human beings function. You're asking
 8 people to be robots. You're asking people to be
 9 Spock, Mr. Data. That's not how human beings
 10 function. And by suggesting that that is -- if it
 11 is indeed frowned upon, which is a -- which is an
 12 assumption which you are giving me, if it is
 13 indeed frowned upon, it's a fundamental flaw of
 14 the people involved in the procurement process and
 15 speaks to their lack of bias training and
 16 knowledge and understanding of what bias involves.
 17 Q. Do you know what -- can you tell me of
 18 any academic papers or treatises or peer-reviewed
 19 articles that recommend blinded procurements,
 20 specifically in the context of a Medicaid MCO
 21 procurement?
 22 A. That's not my field; therefore, I do
 23 not know.
 24 Q. Okay. On page 22523 you recommend what

1 they don't do a thorough job of evaluating.
 2 Q. Now, you said they -- they said only
 3 the outliers were removed?
 4 A. No.
 5 Q. Are you suggesting the removal of --
 6 A. The outliers were considered -- it was
 7 only -- the goal -- they said that the goal of the
 8 consensus meeting was to address the outliers, or
 9 something like that. I -- I don't have the exact
 10 quote in my memory. I think -- I might have
 11 written it down. Let me see.
 12 Yeah. On page 6 it says something like
 13 -- and this is not a quote, this is a paraphrase.
 14 This is on 022527. On the paragraph that starts,
 15 What about the final protection of defending
 16 against bias.
 17 In the middle of the paragraph it says
 18 that, "The PHPG letter seems to express confusion
 19 about the process. For example, on page 6, it
 20 states that the consensus process was used to
 21 prevent the potential for an individual evaluator
 22 to act as an outlier." And of course that's not
 23 what actually took place.
 24 So that's what they're describing as

1 intense consensus scoring where you look at
 2 outliers. And that is -- just indicates a very
 3 poor review of what was actually going on by PHPG.
 4 Q. What was -- what was actually going on?
 5 A. From my understanding of the
 6 depositions of -- it was not a consensus --
 7 enhanced consensus scoring. All the scores were
 8 discussed, whatever low, high. And then so it
 9 wasn't only discussion of, you know, unusually low
 10 or unusually high scores.
 11 And then there was a -- an agreement on
 12 one score, you know, whereas the best practice is
 13 for -- not for people to agree on one score, but
 14 for each evaluator after discussion to decide on
 15 their individual score and then average those. So
 16 using the consensus only to address potential
 17 outliers.
 18 And so the consensus meeting that took
 19 place here is just supremely vulnerable to things
 20 I talked about, like confirmation bias, group
 21 think. You know, the way that human groups
 22 naturally form where when they talk about an
 23 application and they come to a shared
 24 understanding of how an application is and

1 course especially if they were involved in
 2 formulating the questions, and then they can say,
 3 well, this is what we actually meant.
 4 Q. Uh-huh. Do you know whether your
 5 concept of an enhanced consensus has been
 6 implemented anywhere in the United States in an
 7 MCO procurement?
 8 A. Yes. Of course it has been
 9 implemented.
 10 Q. By -- by whom?
 11 A. I do not know -- I do not have specific
 12 knowledge of who was implemented. But I was
 13 looking in preparation for this report at best
 14 practices for procurement, and I saw that indeed a
 15 number of your sources recommended enhanced
 16 scoring as best practices for procurement. I
 17 can't tell you which ones specifically. I can
 18 provide you with information later if you would
 19 like.
 20 Q. So do I understand that you saw it
 21 recommended, but you're not aware of a state
 22 actually implementing your model of enhanced
 23 consensus in an MCO procurement process?
 24 A. Let me be clear. It's not my model.

1 therefore whether it's good or bad and they keep
 2 increasing or decreasing the score based on the
 3 impression that they come to rather than the
 4 quality of each individual score and the quality
 5 of each individual application.
 6 So that is something that is the
 7 potential for we're simply talking about
 8 unintentional, arbitrary and capricious.
 9 Q. Uh-huh.
 10 A. Which clearly from the statistical
 11 report is what's going on here, that there's at
 12 least arbitrary and capricious.
 13 Now of course it could be the case that
 14 several people or all evaluators or some of the
 15 evaluators came into the process with a
 16 predisposition for certain outcomes, for certain
 17 group -- for certain MCOs to be awarded, for
 18 certain MCOs not to be awarded, and they
 19 influenced the process. And that's especially --
 20 that's especially a problem when we have
 21 evaluators who have different levels of power.
 22 Who in their real life have different levels of
 23 power over each other in ODM, which is indeed what
 24 they do. So that's a very big problem. And of

1 It was recommended as a best practice by a number
 2 of procurement --
 3 Q. Sure.
 4 A. -- experts and practitioners. And what
 5 I saw was that it was recommended as a best
 6 practice. I am not aware of whether it was or was
 7 not implemented. But given that PHPG is an
 8 acknowledged leader in the field and it seems to
 9 believe from its letter that enhanced procurement
 10 process is what should be implemented, that
 11 indicates that -- it suggests the high possibility
 12 that it was implemented somewhere. But I do not
 13 know that for certain.
 14 Q. Okay. And I apologize when I said your
 15 model. I meant the con -- enhanced consensus
 16 described in your report. So that's what I was
 17 talking about.
 18 A. Sure.
 19 Q. Imagine this scenario, Dr. Tsipursky.
 20 The seven evaluators complete their individual
 21 scoring of the written applications for each
 22 applicant.
 23 A. Uh-huh.
 24 Q. And rather than having a consensus

1 meeting, those scores are simply averaged as the
 2 final result for each applicant.
 3 A. Uh-huh.
 4 Q. Do you know whether the results in this
 5 procurement that brings us all here today on this
 6 Friday afternoon would have changed?
 7 A. That's actually an irrelevant question.
 8 Because when we look at the consensus meeting, we
 9 see that it's fundamentally flawed, broken,
 10 capricious, potentially overt bias, potentially
 11 simply arbitrary and capricious, so we see that
 12 it's fundamentally broken.
 13 Given that we know that it's
 14 fundamentally broken, we can assume with a very,
 15 very high degree of probability that the
 16 individual evaluator scores were also broken. So
 17 their scores -- the average of their scores is
 18 completely whimsical and arb -- does not matter
 19 because it is the whole process is broken if we
 20 know that that component of the consensus meeting
 21 to which we have the data, that's the only one in
 22 which we can actually have some visibility is
 23 broken.
 24 Q. I appreciate your perspective that my

1 scored -- might have lowered the score of
 2 Paramount by something like 20 percent maybe. So
 3 I'm not sure where it would have ended up if the
 4 individual scores were evaluated. I suspect it
 5 would have been not that high. But given the
 6 biases, given the prospect of systematic bias
 7 against Paramount, that's not surprising.
 8 Q. You write that a -- on page 22523, that
 9 a -- you write, "A fourth basic protection from
 10 bias is having clear evaluation records." Do you
 11 see that?
 12 A. That is correct.
 13 Q. Okay. Do you know whether or not
 14 Ohio's MCO procurement satisfied nationwide best
 15 practices recognized in the Medicaid arena
 16 specifically for maintaining evaluation records?
 17 A. If it did, then that indicates a
 18 systematic problem and fault -- faulty approach of
 19 the -- the process itself in the field itself. I
 20 mean, we can look at what's happening in document
 21 -- with doctors, right? Doctors are supposed to
 22 wash their hands. That's -- let's all accept
 23 that. Doctors are supposed to wash their hands.
 24 When you look at studies of doctors washing their

1 question is whimsical, because I'm actually known
 2 for my sense of whimsy.
 3 The question, though, was in that
 4 situation, would the results have changed at all?
 5 A. I feel it would compromise my
 6 professional integrity to answer that question.
 7 Q. Okay.
 8 A. Because it suggests that there is
 9 relevance to their individual scores.
 10 Q. Okay. Let me press on your
 11 professional integrity. And I'm not asking you to
 12 violate some norm of your personal morality. I
 13 would never do that. I'm asking you simply to do
 14 some math.
 15 Did you calculate whether or not there
 16 would have been a different outcome were the
 17 individual scores simply averaged into -- and that
 18 result preconsensus meetings was used to make the
 19 MCO awards?
 20 A. I don't think I specifically went
 21 through and looked at all the math. I would
 22 speculate that it would -- if I remember correctly
 23 -- and this -- again, very -- with a vague
 24 recollection, the consensus meeting might have

1 hands, you see that they wash their hands at a
 2 very low rate. When they are observed, you see
 3 they wash their hands at a much higher rate, about
 4 I think twice the rate of when they are not --
 5 when they are not observed. And I can give you
 6 specific citations if you are curious.
 7 The -- and that's at the level of
 8 individual doctors, healthcare practitioners,
 9 right, rather than the \$23 billion process.
 10 That's a very, very simple indication of having
 11 clear evaluation records.
 12 Q. Uh-huh.
 13 A. When people know that they're being
 14 observed, they take steps in their minds and in
 15 their processes to guard against the behaviors
 16 that are pro antisocial, let's say it that way.
 17 The -- where -- that are -- go against the
 18 process, that go against objective fair
 19 transparent outcomes, whether it's not washing
 20 hands, which is very bad for medical health, or
 21 having a biased evaluation process, which is also
 22 very bad for medical health and general government
 23 noncorruption.
 24 Q. Is that a no?

1 A. I do not know -- again, this -- this is
 2 a question that asks me to compromise my
 3 professional integrity, which -- which is why I'm
 4 -- I'm answering it in the specific way that I am.
 5 Q. I appreciate that. I am not asking --
 6 I'm asking you whether you are aware --
 7 A. Uh-huh.
 8 Q. -- of whether Ohio's -- simply whether
 9 you're aware.
 10 A. Ah.
 11 Q. Do you know or not --
 12 A. Okay. My knowledge.
 13 Q. -- whether -- yeah.
 14 A. No.
 15 Q. You don't know. Okay.
 16 A. Correct.
 17 Q. And again as to your knowledge, can you
 18 identify -- especially in the area of maintenance
 19 of clear evaluation records, can you identify
 20 which states in the United States have conducted
 21 MCO procurements with different recordkeeping
 22 standards than Ohio?
 23 A. No.
 24 Q. Dr. Tsipursky, you also recommend

1 people know that they're being observed, they
 2 engage in behaviors that are appropriate. When
 3 people know that they're not being observed, they
 4 are much less likely to engage in behaviors that
 5 are appropriate and much more likely to engage in
 6 behaviors that are inappropriate.
 7 Q. Do you -- do you agree with me that
 8 this situation is less like an individual doctor
 9 deciding whether she will wash her hands or not
 10 than it is about a group of doctors deliberating
 11 together about whether they should wash their
 12 hands? That's a better scenario, isn't it?
 13 A. Well, when they had groups of doctors
 14 deliberating together about whether to wash their
 15 hands, we saw that the initial people at the
 16 forefront of advocacy of washing their hands got
 17 their -- very much suppressed. And actually the
 18 person who came up with the evidence that --
 19 scientific, clear evidence that washing hands
 20 leads to good hygiene died in an insane asylum
 21 because how he was treated.
 22 So what usually happens when a group
 23 gets together to discuss these things without
 24 external observers and has its own ways with its

1 thorough recording of the deliberations at a
 2 consensus meeting; is that correct?
 3 A. Uh-huh. Yes.
 4 Q. Okay. Do you know whether a policy of
 5 recording consensus meetings has ever been
 6 implemented successfully in a state's MCO
 7 procurement process?
 8 A. I don't know whether it has or hasn't.
 9 Q. You write that on page 22523 --
 10 A. Uh-huh.
 11 Q. -- at the end of the paragraph having
 12 to do with clear evaluation records, you write,
 13 "Again, such recording leads both evaluators and
 14 facilitators to consider potential external
 15 observers and thus minimize biases." Is that
 16 correct?
 17 A. That is correct.
 18 Q. So you believe, Dr. Tsipursky, that
 19 having the potential of external observers
 20 actually minimizes bias?
 21 A. As I just discussed with the example of
 22 doctors washing their hands, people --
 23 Q. Yeah.
 24 A. There's extensive evidence that when

1 own preferences and predilections is a combination
 2 -- is a group think, anchoring bias and so on,
 3 where they tend to stick to their preexisting
 4 behaviors.
 5 Q. Uh-huh.
 6 A. And -- as opposed to looking and
 7 following the best practices. So I think that if
 8 you have a group of doctors, if they were the ones
 9 who were deliberating on this process, they would
 10 -- because the process was not protected from
 11 bias, they would very much come to a biased
 12 outcome.
 13 Q. And so in your opinion the evaluation
 14 team would be less biased if their discussions --
 15 if they had in mind during their discussions the
 16 myriad possible external observers that are out
 17 there?
 18 A. Yes.
 19 Q. Is that correct?
 20 Okay.
 21 A. That's what the research shows.
 22 Q. Are there any instances where external
 23 observers would chill free discussion and
 24 therefore lead to a lower quality decision?

1 A. I'm not aware of any such instances.
 2 Q. Okay. Juries, for example?
 3 A. I'm not aware of the -- of such
 4 instances, so --
 5 Q. You would advocate for the recording of
 6 jury deliberations though?
 7 A. I don't know sufficient -- I don't know
 8 enough about juries and how they can be identified
 9 and what kind of potential negative consequences
 10 can come to people from being publically
 11 identified as having -- as being the one to put
 12 somebody in prison.
 13 I think the kind of consequences that
 14 would come to an evaluator from choosing certain
 15 med -- managed care organizations and versus not
 16 is very different than somebody going away for
 17 murder for 30 years and that person's friends and
 18 family knowing who specifically voted for it and
 19 who was advocating for it.
 20 Q. Uh-huh. Interesting.
 21 What about medical consultations? What
 22 about a group of doctors getting together to
 23 consult about a particular patient, would you
 24 advocate for the recording of those conversations?

1 A. Those are not evaluation dynamics.
 2 They're not trying to choose among a number of
 3 decisions, options, that -- that -- that is not a
 4 relevant comparison.
 5 Q. Really? Choosing among different
 6 treatment strategies would not fall under a group
 7 dynamic scenario?
 8 A. Not in this case. Because --
 9 Q. Uh-huh.
 10 A. -- they're not choosing among
 11 stakeholders to have a -- a conclusion, a certain
 12 conclusion they want to reach, that's one.
 13 Second, from my understanding of how
 14 medical rounds work, indeed the -- the results of
 15 such deliberations are very much publically
 16 discussed in doctor meet conferences about, you
 17 know, discussion, hey, this is what we did, this
 18 is what we decided, here are all the details,
 19 here's some of the mistakes that we might have
 20 made and here are some of -- some of the results
 21 that we are going to take as a result of these
 22 mistakes and here are some best practices.
 23 So my belief is that from what I know
 24 about some context of medical and research-based

1 practices, that doctors are doing that.
 2 Q. Okay. Further on page 22523, you write
 3 that, a fifth basic protection from bias is having
 4 diverse external evaluators. Correct?
 5 A. Uh-huh.
 6 Q. And then on page 22527, you suggest
 7 that perhaps those diverse external evaluators
 8 might be from other states or perhaps from
 9 academia; is that correct?
 10 A. Yes. Probably best to have a mix of
 11 both.
 12 Q. Okay. So in your opinion,
 13 Dr. Tsipursky, you believe a team made up of
 14 subject matter experts who are familiar with
 15 Ohio's next generation of managed care is actually
 16 a weakness?
 17 A. That is a fundamental weakness.
 18 Because they all come from the exact same
 19 perspective.
 20 Q. Uh-huh.
 21 A. And they are all likely to make the
 22 exact same mistakes. So this is the opposite of a
 23 diverse group. They are all likely to lead to the
 24 same conclusions and be biased in all the same

1 ways, versus having a diverse group of evaluators
 2 who would control and address each other's
 3 potential biases.
 4 Q. So this group all knew the structure of
 5 Ohio's next generation of managed care, correct?
 6 A. Uh-huh.
 7 Q. And they all knew the goals for Ohio's
 8 next generation of managed care. And they would
 9 have evaluated the applicants in light of their
 10 knowledge of Ohio's next generation of managed
 11 care, correct?
 12 A. No. Not correct.
 13 Q. Not correct?
 14 A. Because we can see there are different
 15 interpretations of the criteria, which I discussed
 16 as the first basic protection.
 17 Q. Uh-huh.
 18 A. We saw that we had different ideas
 19 about what experience involves. We saw they have
 20 different ideas about what -- what methods and
 21 capacity involves, methods of approach and
 22 capacity involves. We have direct evidence that
 23 you are wrong in your assumption.
 24 Q. Yeah. And so you believe that those

1 three terms, the methodology of approach,
 2 experience and capability, those are -- those are
 3 vague and ambiguous terms; is that correct?
 4 A. I believe so. And the evidence also
 5 shows that based on what the evaluators discussed
 6 as their interpretation of these terms.
 7 Q. Okay. And so if I were to ask you if
 8 you believe you had the requisite experience to
 9 render an expert opinion in this case, you would
 10 have stopped me and said I can't answer because
 11 that word "experience" is ambiguous, correct?
 12 A. No. I understand experience --
 13 Q. You do?
 14 A. -- the way I do.
 15 Q. Okay.
 16 A. I understand experience the way that I
 17 do.
 18 Q. Uh-huh.
 19 A. So I am answering from my own
 20 perspective. I have the requisite experience.
 21 Whether you understand what I am saying by the
 22 word "experience" is different.
 23 Q. Yeah.
 24 A. My goal is not to tell you what -- not

1 You would just answer my question?
 2 A. Because -- this is a specific context
 3 where the question is all about me.
 4 Q. Uh-huh.
 5 A. And all about my interpretation. My
 6 unique, subjective interpretation of these terms.
 7 Whereas this is about a shared understanding where
 8 evaluators have to have an external standards
 9 criteria which are completely undefined and
 10 understood in very different ways.
 11 Q. And so my question is irrelevant and
 12 again maybe whimsical?
 13 A. Well, it's a different context.
 14 Q. Okay.
 15 A. So I think in a different context your
 16 question would not be irrelevant and whimsical.
 17 Q. Okay.
 18 A. I think in this context it just does
 19 not compare.
 20 Q. I see.
 21 Okay. On page 22524, you talk about a
 22 "ninth basic protection is a performance 'sanity
 23 check'..." And we talked earlier --
 24 A. Well -- well, question.

1 to check what you understand.
 2 Q. Uh-huh.
 3 A. My goal is to share in this deposition
 4 what is my recollection. And my recollection is
 5 to my terminology and understanding of the term
 6 "experience."
 7 Q. And the same would be true of the word
 8 "capability"?
 9 A. In my own, ah --
 10 Q. For example, if I were to ask you do
 11 you believe you have the capability to render an
 12 expert opinion --
 13 A. Yes.
 14 Q. -- in this case.
 15 A. Yeah.
 16 Q. You -- you don't find that word vague
 17 or ambiguous?
 18 A. Correct.
 19 Q. You would answer it.
 20 Okay. And if I was to ask you about
 21 your own methodology and how you approached --
 22 A. Uh-huh.
 23 Q. -- the project, you don't find any
 24 vagueness or ambiguity in those terms, do you?

1 Q. Yeah.
 2 A. Before we get to the sanity checks, may
 3 we take a break?
 4 Q. Oh, absolutely. Yeah. We sure can.
 5 A. I think it's about time.
 6 THE VIDEOGRAPHER: We're off the
 7 record. The time is 4:37.
 8 (A short recess is taken.)
 9 THE VIDEOGRAPHER: This marks the
 10 beginning of media No. 2. We're back on the
 11 record. The time is 4:49.
 12 BY MR. JOHNSON:
 13 Q. Dr. Tsipursky, on page 22526 of your
 14 report, in the third paragraph there's a sentence
 15 that starts in the middle of that paragraph and it
 16 says, "According to the 'evaluation committee
 17 training' document, in the consensus meeting if
 18 different ratings were assigned, only then would
 19 the facilitator ask members to explain rationale."
 20 Do you see that?
 21 A. Yes.
 22 Q. What did you mean by that?
 23 A. Well, what I believed the evaluation --
 24 I think I paraphrased the evaluation committee

1 training meaning if everyone assigned the same
 2 score, there would be no discussion. That is what
 3 the evaluation committee training document stated.
 4 According to testimony by Markman on page 103 of
 5 her deposition, even if everyone got the same
 6 score, the Mercer facilitators would still lead
 7 everyone into a discussion, strengths and
 8 weaknesses, and then reassess everyone's score to
 9 come to a consensus, which we found out by looking
 10 at question 32 were all evaluators rated
 11 Paramount's application a three, where the final
 12 consensus score was a two.
 13 So I was pointing out that there was a
 14 lack of following the actual guidelines. So the
 15 process was not simply broken by not being
 16 protected from bias, but broken by not even
 17 following its own guidelines.
 18 Q. Okay. And where did you come to
 19 understand that discussion would only happen if
 20 there was a divergence in scores?
 21 A. I believe that's from the evaluation
 22 committee training document.
 23 Q. Did you read that yourself or --
 24 A. Yes.

1 asked to explain given that the same ratings were
 2 assigned that process does not appear to be
 3 followed.
 4 Q. But we'll agree with me that the word
 5 "only" is not in there; is that correct?
 6 A. From the structure of the English
 7 language, if the phrase says if different ratings
 8 were assigned, the implication to a reasonable
 9 external observer would be that "only" would be,
 10 if you wanted to be more specific and clear and
 11 redundant would be in there.
 12 Q. You think "only if" has the same
 13 meaning as "if"?
 14 A. I think that in a context where you are
 15 trying to write brief descriptors --
 16 Q. Uh-huh.
 17 A. -- of very concise descriptions, that
 18 is understood and implied, yes.
 19 Q. I see.
 20 A. It is not going to be the case in all
 21 situations. It only will be -- for example, if
 22 you have extensive room to describe the process --
 23 Q. Uh-huh.
 24 A. -- I would imagine that you would want

1 Q. -- were you told that?
 2 A. I read it myself.
 3 Q. Okay. Let me quickly --
 4 A. I might misremember it, but I read it
 5 myself.
 6 Q. Let me show you what we'll mark as
 7 Tsipursky C.
 8 A. Okay.
 9 -----
 10 Thereupon, Tsipursky Exhibit C is marked
 11 for purposes of identification.
 12 -----
 13 Q. If you could take a look at that
 14 quickly, but as long as you need.
 15 A. Sure.
 16 So it's point three. If different
 17 ratings were assigned, then facilitators would ask
 18 members to explain the rationale for the rating
 19 assigned to the question.
 20 Q. Okay. So --
 21 A. So that straight direct implication of
 22 the reading is the only time the facilitator would
 23 ask would be if different ratings were assigned.
 24 Given that the question -- the facilitator still

1 to write that to be super clear and specific and
 2 describe things. But given that there was a
 3 concise space, that is the implication of this.
 4 Q. The concise space. So it'd be harder
 5 to cram the word "only" in here and so it was left
 6 out? Is that what you're saying?
 7 A. I'm absolutely saying that someone who
 8 has written concise memos, you try to take out
 9 words that are unneeded if you want to be -- if
 10 you can. And that is an unneeded word for a
 11 reasonable external observer.
 12 Q. Okay. And so you agree with me that
 13 this says that in a situation where there are
 14 different scores, the facilitator will lead a
 15 discussion?
 16 A. Correct.
 17 Q. This does not address on its face a
 18 situation where the scores are the same?
 19 A. It appears to me that it does from a
 20 common reading of the English language.
 21 Q. I see.
 22 A. That if you have a reasonable external
 23 observer read this, they will come away with the
 24 same understanding that I do. Given points 3 and

1 points 4, facilitator probes members to help
 2 facilitate the discussions about any differences
 3 in the ratings. The implication -- so you have a
 4 process, facilitator asks people to state their
 5 initial rating. Then if there -- if there is no
 6 difference, then the facilitator doesn't do
 7 anything.
 8 Q. Do you --
 9 A. That is the implication of a reasonable
 10 external observer.
 11 Q. Do you agree with me, Dr. Tsipursky,
 12 that if your reading is correct, it would have
 13 been clear -- if the intention was to prohibit
 14 discussion when all the scores were the same,
 15 adding the word "only if" would have been far
 16 clearer than simply saying "if"?
 17 A. And that's the one of the big problems
 18 of this process, that it would have been very much
 19 clearer if you have in the description of what
 20 experience means.
 21 Q. Uh-huh.
 22 A. And if you have -- this whole process
 23 was broken in many ways.
 24 Q. Uh-huh.

1 other goals of writing this.
 2 A. Oh. It's --
 3 Q. Who explained those goals to you?
 4 A. It's understandable from reading --
 5 looking at the graphic that the goal -- one of the
 6 goals is to not write an extensive description
 7 which would go all over the graphic. They were
 8 kind of barely fitting in all the information
 9 here, so --
 10 Q. So being concise overtook clarity in
 11 this case, in your opinion?
 12 A. Yes.
 13 Q. Okay. Dr. Tsipursky, what specific
 14 evidence do you have that the evaluation team was
 15 actually impacted by what you call anchoring bias
 16 in this MCO procurement?
 17 A. Specific evidence -- well, the team was
 18 -- so your question is not the evaluation process,
 19 but specifically the evaluation team, the seven
 20 people.
 21 Q. Was actually impacted --
 22 A. Uh-huh. Okay.
 23 Q. -- by anchoring bias?
 24 A. So my evidence is that the statistical

1 A. And I think you identified another area
 2 where it's broken, so thank you for that.
 3 Q. Oh, you're very welcome. Was that a
 4 yes?
 5 A. Huh.
 6 Q. You agree that it would be clearer if
 7 this intended to prohibit discussion when scores
 8 were the same. I'm trying to get back to the
 9 question I actually asked you.
 10 A. Okay.
 11 Q. If the intent was to prohibit
 12 discussion when scores were all the same, "only
 13 if" would have been clearer than "if"?
 14 A. If the only intent of writing this
 15 consensus process outline was indeed to prohibit
 16 the scenario that you described, that would be
 17 indeed the statement.
 18 Q. Okay.
 19 A. As I stated before, that is far from
 20 the only goal of this writing this. And an
 21 external observer I believe, reasonable one, would
 22 understand it the way that I do.
 23 Q. Okay. And who told you what the other
 24 goals of writing this was? You said there were

1 outcomes of the scores were unexpectedly and
 2 unsurprisingly unusually lowered. And that might
 3 be for -- definitely for Paramount, might be for
 4 others. And then for others, it usually raised
 5 where it seemed that those that started with a
 6 lower score end up being lower after the consensus
 7 meeting. And those that started with a higher
 8 score appeared on average to end up higher, which
 9 is of course the whole -- the opposite of the
 10 point of the consensus meeting, which is supposed
 11 to try to address outliers as the PHPG letter
 12 explained, and that's really a fundamental flaw.
 13 The consensus meeting, you know, you
 14 don't -- so you absolutely don't need a consensus
 15 meeting if you just want to exacerbate the scores.
 16 Q. Uh-huh.
 17 A. Just add 20 percent and take away
 18 20 percent.
 19 Q. So statistical, a statistical anomaly?
 20 A. Yes.
 21 Q. What else? What other specific
 22 evidence do you have that the evaluation team was
 23 actually impacted by anchoring bias?
 24 A. Another piece of evidence is that the

1 evaluators were anchored to their definitions of
2 what the terms were, experience, capability, and
3 so on. And they did not discuss -- they appeared
4 to not have discussed these terms and come to an
5 understanding and so on. And so they were
6 informed by their own understanding and anchored
7 by it when using the evaluation.

8 Q. Do you agree that the same evaluators
9 evaluated all of the applicants?

10 A. Yes.

11 Q. Okay. So statistical outcomes were
12 unusually low. The evaluators were anchored to
13 the meaning of words. What other evidence,
14 specific evidence do you have that the evaluation
15 team was actually impacted by anchoring bias?

16 A. So I believe two members of the
17 evaluator team were involved in creating the
18 questions themselves and developing the process.
19 And they claimed, like Dr. Applegate, that they
20 were trying to -- let me --

21 Q. And that -- and that's evidence of the
22 actual impact of anchoring bias?

23 A. Let me finish my --

24 Q. I'm sorry. Go ahead.

1 Q. -- allowed for the possibility of
2 anchoring bias to play a role.

3 A. Uh-huh.

4 Q. The difference between that --

5 A. Uh-huh.

6 Q. -- and actual evidence that it did.

7 A. Okay.

8 Q. That it did play a role.

9 A. Okay.

10 Q. And I'm going to ask you -- by the way,
11 if it helps --

12 A. Yeah.

13 Q. -- I'm going to ask you about every one
14 of the biases that you named.

15 A. Okay. That helps.

16 Q. If it's easier to call these cognitive
17 biases as we did in the beginning --

18 A. They are cognitive biases.

19 Q. -- rather than taking the time, we can
20 do that.

21 A. Uh-huh.

22 Q. But that's what I'm -- that's what I'm
23 trying to distinguish.

24 A. Okay.

1 A. Thank you.

2 Let's see. So Applegate described in
3 her deposition testimony on page 73 how removing
4 bias would be another thing that's important. And
5 Applegate goes on to say this project was designed
6 to be as objective as possible. Given that she
7 was part of the process that developed this -- was
8 part of the team that developed this process and
9 she chose not to protect against anchoring bias,
10 that to me is an indication that she would be
11 informed by anchoring bias itself because she
12 was --

13 Q. So that itself is evidence of anchoring
14 bias?

15 A. I'm trying to understand exactly what
16 you're asking so that I don't -- I'm not confused.

17 Q. Well, let me -- let me --

18 A. Yeah. Let's -- let's clarify it.

19 Q. -- clarify.

20 A. So that I'm not confused.

21 Q. I am trying to distinguish between
22 testimony that the structure, the process,
23 whatever --

24 A. Uh-huh.

1 Q. The -- between the possibility of a
2 cognitive bias playing a role and actual evidence
3 that you have that it did play a role.

4 A. Uh-huh. Okay. So then if that is what
5 we're trying to determine, then we can't stick to
6 the evaluator team because it doesn't really
7 describe the evaluation process. Can we reframe
8 the question as what evidence do I have of the
9 evaluation process?

10 Q. Well, let me -- let me -- let me ask
11 you my question first.

12 A. Okay.

13 Q. And then we'll ask the next question,
14 okay? We'll ask your question second.

15 A. Okay.

16 Q. So I'm asking right now if you have
17 specific evidence that cognitive bias was --

18 A. Uh-huh.

19 Q. That the evaluation team was actually
20 impacted by cognitive bias in their evaluation of
21 the applications?

22 A. I think the evidence that I have is
23 that the evaluators -- there were serious
24 statistical problems, very unlikely to occur, that

1 was one.
 2 Q. Got it.
 3 A. That is one piece of evidence that I
 4 would have.
 5 And the other very big serious piece of
 6 evidence was that they came to a conclusion which
 7 fails the basic check of performance. That the
 8 performance of Paramount and CareSource were top,
 9 UnitedHealth was last, and UnitedHealth came out
 10 way ahead of everyone. Whereas, Paramount and
 11 CareSource -- Paramount, you know, came below and
 12 CareSource just barely squeaked in.
 13 So the evidence is statistical
 14 anomalies in the scoring in the consensus meeting
 15 and the conclusion itself not matching the
 16 performance.
 17 Q. The past -- and you would agree with me
 18 that that's matching past performance?
 19 A. Right. Which is the best indicator of
 20 future performance as we know.
 21 Q. Okay. Unless, of course, the future
 22 performance is a different activity than the past
 23 performance?
 24 A. If the future performance concerns

1 category here is the cognitive biases.
 2 Q. Okay. And your testimony is that the
 3 evidence that you have that those cognitive -- a
 4 cognitive bias or those biases actually impacted
 5 the evaluation team during the MCO procurement
 6 process are the statistical variation or the
 7 statistical -- the unexpectedly low statistical
 8 rate for Paramount and then the performance sanity
 9 check.
 10 A. Correct.
 11 Q. Correct?
 12 A. Just for the statistics, it's not
 13 simply the unusually lowered scores. But also the
 14 fact that there was something of a bandwagon
 15 effect, which was pretty present in group think
 16 dynamics, which -- so subcategories of cognitive
 17 biases where the earlier scores for Paramount were
 18 less unusually lowered than the later scores. So
 19 you could see that the scores -- so I think in the
 20 first 10 scores for Paramount maybe there were
 21 three anonymously low questions. And we can take
 22 a look at Dr. Notz's report. And in the last 10
 23 there were something like 6. So we can clearly
 24 see the statistical anomaly where people being

1 providing Medicaid managed care services to the
 2 population of Ohioans, maybe we're talking about a
 3 different procurement process here.
 4 Q. Okay.
 5 A. But I'm sure there might be some
 6 changes and twists to the plot. But it's
 7 providing managed care services to Ohioans who as
 8 far as I know have not changed --
 9 Q. Okay.
 10 A. -- during -- as a result of this
 11 procurement process.
 12 Q. And so to be clear, rather than talking
 13 about confirmation bias and availability bias and
 14 overconfidence bias, you go centric bias,
 15 et cetera, all of the biases and effects that are
 16 in your report fall under the general category of
 17 cognitive biases, correct?
 18 A. That is correct.
 19 Q. Okay.
 20 A. All of these are cognitive biases and
 21 each of them had potentially significant impacts.
 22 Q. Okay.
 23 A. And if we want to go and dig into them
 24 deeply. But overall, we can talk about them, the

1 people, getting together, thinking about these
 2 topics, getting -- confirming their biases,
 3 getting into a group think mode, affirming each
 4 other, and clearly from the statistical outcomes
 5 we can see that it's not simply the unusually
 6 lower score.
 7 Q. Okay.
 8 A. But the pattern of the unusually lower
 9 scores.
 10 Q. But just to summarize statistical
 11 anomaly --
 12 A. Uh-huh.
 13 Q. -- performance san -- what you describe
 14 as the performance --
 15 A. Yes. Performance --
 16 Q. -- sanity check?
 17 A. That's right.
 18 Q. Okay. Dr. Tsipursky, again back to
 19 this idea of specific evidence.
 20 A. Uh-huh.
 21 Q. Do you have any specific evidence,
 22 personal knowledge that the evaluation team or any
 23 individual members of the evaluation team had a
 24 preexisting opinion either positive or negative of

1 Paramount that actually impacted the evaluation of
 2 their application?
 3 A. From my understanding of human beings
 4 being how they are, I have a strong probabilistic
 5 estimate that those who are aware of Paramount's
 6 previous legal challenges and tensions with MCO
 7 definitely had the predisposition in the same way
 8 that, you know, you're not going to stop thinking
 9 about a magical blue elephant in the room. You're
 10 not going to be able to put out of your mind the
 11 fact that Paramount is Paramount and it had a
 12 paramount conflict so to speak with the MCO.
 13 So the people -- specifically I would
 14 imagine the people in higher roles, like
 15 Dr. Applegate and so on, would have had no option
 16 if they were not protecting against cognitive bias
 17 but to be prejudice against Paramount.
 18 Q. Uh-huh. That does assume, doesn't it,
 19 that ODM considered the 2019 auto-assignment
 20 algorithm anomaly to be a conflict, doesn't it?
 21 A. That assumes that -- yes, that -- ODM.
 22 That the individuals at hand.
 23 Q. Yeah.
 24 A. Yes.

1 it's absolutely not.
 2 Q. Have you ever had a boss yourself that
 3 actually did welcome feedback?
 4 A. No.
 5 Q. Have you had bosses who did not welcome
 6 feedback?
 7 A. Yes.
 8 Q. Who in fact shot the messenger?
 9 A. Yes.
 10 Q. That's been your experience?
 11 A. That's been my experience from working
 12 in many companies.
 13 Q. Uh-huh.
 14 A. And shoot-the-messenger effect is a
 15 well-studied phenomenon that it has been
 16 replicated many times where bosses claim that they
 17 want feedback, but the people they surround
 18 themselves with are people who are pretty likely
 19 called bootlickers who give them positive feedback
 20 and they don't realize it and get distanced away
 21 from company performance and company performance
 22 seriously declines. That is very much of a
 23 tendency. And that is how the world works if you
 24 don't protect yourself against cognitive bias. It

1 Q. Did you -- you've referenced
 2 Ms. Markman's deposition.
 3 A. Uh-huh.
 4 Q. Do you recall seeing testimony from
 5 Ms. Markman that ODM welcomes feedback regarding
 6 issues like the 2019 auto-assignment anomaly and
 7 the algorithm because it allows them to address
 8 problems sooner --
 9 A. Uh-huh.
 10 Q. -- rather than later?
 11 A. Yeah.
 12 Q. And that they appreciate that feedback?
 13 A. Yeah. It's called the boss open-door
 14 policy, who really appreciates feedback until he
 15 chews off your head --
 16 Q. Yeah.
 17 A. -- for giving you constructive
 18 criticism about the organization. It's called
 19 shoot-the-messenger effect. It's a serious
 20 problem. And I've been involved in many cases in
 21 organizations trying to fix broken cultures.
 22 Q. Yeah.
 23 A. Where feedback is welcome -- I'm making
 24 quotation marks for a reference -- but in reality,

1 takes a lot of effort to actually --
 2 Q. Yeah.
 3 A. -- welcome feedback. And it's not a
 4 natural intuitive human trait.
 5 Q. And it seems like you've experienced
 6 that for yourself?
 7 A. Oh, I have not experienced that
 8 particularly negatively. It has not negatively
 9 impacted my life.
 10 Q. Uh-huh.
 11 A. It's just something that my colleagues
 12 have informed me about bosses who I had in the
 13 past. And -- but it has not negatively impacted
 14 me.
 15 Q. People have only told you about it?
 16 A. Right.
 17 Q. Uh-huh.
 18 A. People have only told me about it of
 19 course in the context where I had a boss.
 20 Q. Sure.
 21 Do you have any specific evidence that
 22 any individual member of the evaluation team had a
 23 preexisting opinion about whether Paramount should
 24 win or lose the contract?

1 A. It would be the same as my previous
 2 answer. That given their awareness -- given the
 3 assumption that there were some tensions and
 4 conflicts and, you know, constructive critical
 5 feedback by Paramount, they had no choice. The --
 6 by the way that the human brain works.
 7 Q. And the human brain can't overcome that
 8 predisposition?
 9 A. If -- it can if you use effective
 10 research based debiasing techniques, which were
 11 clearly not present.
 12 Q. Okay. Can you explain to me what the
 13 halo effect is?
 14 A. Sure. So going back to what cog --
 15 where cognitive biases come from, a major
 16 component of where they come from is the fact
 17 we're not evolved for the modern environment.
 18 We're evolved for the savanna environment, when we
 19 lived in small tribes of 50 to 150 people.
 20 So one of the important dynamics of the
 21 tribalism, we had to be very tribal; otherwise,
 22 we'd be kicked out of our tribe and we'd die. And
 23 that means looking for people who look like us,
 24 share our values, share our predispositions,

1 things we like. And the same thing for the horns
 2 effect. We had to be hostile to opposing tribes;
 3 otherwise, they would take us over. In both
 4 cases, we'd die. And we are the descendents of
 5 those people who did not die.
 6 And so the halo effect refers to the
 7 component of tribalism where if you like one
 8 characteristic of someone or something, you will
 9 tend to give too high a value to all of their
 10 other characteristics without realizing it.
 11 And we see this all the time, it has
 12 been extensively researched in hiring and
 13 decision-making, including procurement of --
 14 corporate procurement to be clear. I'm not -- I'm
 15 not highly knowledgeable about public procurement.
 16 But, yeah, so the halo effect. The horns effect
 17 is the opposite.
 18 Q. Do you have any specific evidence,
 19 Dr. Tsipursky, that any evaluator had a material
 20 conflict of interest in the outcome of this
 21 procurement?
 22 A. Yes. I have specific evidence given
 23 that Marjorie Corcoran had a --
 24 Q. Maureen.

1 A. Maureen. I'm sorry.
 2 Q. That's fine.
 3 A. Maureen Corcoran had stocks in
 4 UnitedHealth and Centene. And given that they --
 5 that they value or have a material interest in
 6 keeping their jobs, that is certainly a material
 7 conflict of interest.
 8 Q. And you know that Director Corcoran
 9 owned stock in you said UnitedHealth --
 10 A. And Centene.
 11 Q. -- how?
 12 A. From an article in the Ohio business
 13 journal, I believe.
 14 Q. Okay. From a newspaper article?
 15 A. Yes.
 16 Q. Any other evidence?
 17 A. No. That is the material evidence.
 18 Q. Okay.
 19 A. Question: When you say team of
 20 evaluators, are you including the facilitators?
 21 Because I was only specifically referring to the
 22 seven facilitators. I want to make sure that my
 23 comments --
 24 Q. Yeah. Well, that's a very good

1 question. I was, too.
 2 A. Yeah. So --
 3 Q. So let's talk about Mercer.
 4 A. Okay. Happy too.
 5 I just wanted to make sure for -- for
 6 the record I was specifically referring to the
 7 seven evaluators.
 8 Q. Okay. And so what specific evidence do
 9 you have that either of the facilitators had a
 10 material conflict of interest in the outcome of
 11 this procurement?
 12 A. Well, Mercer works with private MCOs
 13 and, therefore, they have a material interest in
 14 the national MCOs, which would be much more likely
 15 to hire them or not hire them based on the
 16 outcomes of procurement processes.
 17 Q. And you know that -- that they are less
 18 likely to be hired or more likely to be hired
 19 based on the outcome of a procurement process?
 20 A. Of course. That's how capitalism
 21 works.
 22 Q. Uh-huh.
 23 A. When you have someone who gives you
 24 benefits from a procurement process, a consultant

1 who facilities you winning the procurement process
 2 versus somebody else, then of course that's --
 3 they are much more likely to hire you and work
 4 with you and support you going forward.
 5 Q. Uh-huh.
 6 A. And recommend you to state departments
 7 of Medicaid.
 8 Q. That's capitalism?
 9 A. That's capitalism. Beautiful system.
 10 Q. Dr. Tsipursky, are you -- you're not a
 11 statistician, are you?
 12 A. No.
 13 Q. You do not have an academic background
 14 in statistics?
 15 A. No. I've worked with statistics in my
 16 studies. When I did the clinical studies, I
 17 mentioned that. So I do not -- I do not have
 18 strong knowledge of statistics. But I have worked
 19 with, collaborate with statisticians. And I am
 20 comfortable with a reasonable level of statistics.
 21 Q. Do you -- do you believe -- do you have
 22 an opinion regarding whether the use of regression
 23 analysis is appropriate in a statistical analysis
 24 of this MCO procurement?

1 this 200 times, more than 200 times for the
 2 outcome to come to this conclusion. And that
 3 strains credibility for any reasonable external
 4 observer, which is from my limited legal
 5 understanding something that is what's used --
 6 Q. Okay.
 7 A. -- in the courts.
 8 Q. Dr. Tsipursky, do you agree that each
 9 of the applicants responded to the same RFA?
 10 A. I don't think that that's an accurate
 11 description of the situation. I would be highly
 12 surprised if the national applicants who are
 13 familiar with Mercer and Mercer's facilitation of
 14 the process did not have inside information, based
 15 on their previous experience and work with Mercer,
 16 and potentially, we have no idea, but information
 17 provided by Mercer, inside information about this
 18 process. So I think it would be inaccurate to
 19 describe it as applicants responding to the same
 20 RFA, given the high likelihood of internal
 21 information by the national chains of -- including
 22 ones, like, for example, Buckeye Health, which we
 23 know worked as an actual client of Mercer.
 24 Q. Uh-huh.

1 A. Oh, I think in this case it would have
 2 been more of an approximate result than Fisher's
 3 exact test.
 4 Q. Okay.
 5 A. Which is really much more clear. But
 6 again I am not -- I don't have enough information
 7 to go in depth into all that.
 8 Q. Would you agree with me that
 9 statistical significance does not equal causality?
 10 A. Statistical significance is related to
 11 the concept of the reasonable external observer in
 12 legality. So although there is no -- no
 13 causality, if a reasonable -- the approximate
 14 translation of academic speak or human speak or
 15 legal speak would be that a reasonable external
 16 observer would indicate that there is causality if
 17 there is something that has statistical
 18 significance, especially strong statistical
 19 significance. And in this case the negative
 20 outcomes for Paramount not simply had the accepted
 21 levels of statistical significance for academics,
 22 which is .05, but strong statistical significance,
 23 which is .01. In other words, I think that if I
 24 remember correctly the -- you would have to rerun

1 A. Or Centene is an actual client, so
 2 Buckeye Health is therefore.
 3 Q. And would that be true of the -- if I
 4 asked you, they all had access to the same model
 5 provider agreement attached to the RFA, would
 6 you --
 7 A. Same.
 8 Q. Same. Same thing. Because of the high
 9 likelihood of transmission of insider
 10 information --
 11 A. Uh-huh.
 12 Q. -- from Mercer, the scales were tipped?
 13 A. That's right.
 14 Q. Okay. Do you know when Mercer passed
 15 on that information?
 16 A. I have no idea if Mercer passed on that
 17 information. I said -- maybe my description was
 18 unclear.
 19 From their previous work with Mercer,
 20 so they would know the -- the kind of models that
 21 Mercer used and the kind of approaches that Mercer
 22 used, and therefore they have inside information
 23 based on their previous experience. That's
 24 definitely a case.

1 Q. Uh-huh.
 2 A. Mercer might also without -- I do not
 3 know this. It is something that might very well
 4 have happened. I do not know. Might have passed
 5 on information to specific national applicants.
 6 And we know that Mercer specifically works with
 7 Centene, so that might have happened, it might not
 8 have happened. I do not know. I'm making a
 9 strong claim about only the first component.
 10 Q. Uh-huh. Okay.
 11 Would your answer be the same if I
 12 asked you a question that seems simple when I
 13 wrote it down, but that each applicant -- the same
 14 evaluation team evaluated each applicant's oral
 15 presentation?
 16 A. Again, they had inside knowledge.
 17 Q. Inside knowledge.
 18 A. Yeah. Uh-huh.
 19 Q. Did each applicant have the same
 20 opportunity to submit questions during the Q&A
 21 period?
 22 A. I don't have enough information about
 23 the Q&A period.
 24 Q. All right. Is your answer the same if

1 A. So they would. Yep.
 2 Q. Are you familiar with the name Dr. Jon
 3 Krosnick? K-R-O-S-N-I-C-K.
 4 A. No.
 5 Q. You're not. Of Stanford University?
 6 Not aware of whether he is a world renowned expert
 7 in the area of implicit bias and cognitive bias?
 8 A. I've not heard the name, no.
 9 Q. Okay. You've not read any of his
 10 articles on the topic?
 11 A. Nothing that I recall off the top of my
 12 head, which doesn't mean I didn't read him -- his
 13 articles.
 14 Q. Sure.
 15 A. I pay more attention to the journals
 16 where the article is published than the author of
 17 the article.
 18 Q. Okay. Let's take --
 19 A. I know I didn't read any books by him.
 20 Q. Okay. Let's take five minutes. I may
 21 or may not have about 10 more minutes.
 22 MS. FRASER: Okay. Sounds good.
 23 THE VIDEOGRAPHER: We're off the
 24 record. The time is 5:26.

1 I asked you that -- would you agree that each
 2 applicant had the same opportunity to review ODM's
 3 answers to the questions submitted during the Q&A
 4 period?
 5 A. I presume the ones that worked with
 6 Mercer would have more knowledge of the kind of
 7 things that they're looking for.
 8 Q. Uh-huh. Would you agree with me that
 9 each applicant had the same deadline to submit
 10 their application?
 11 A. Yes.
 12 Q. Okay. Mercer didn't change the
 13 deadline for the --
 14 A. Not as far as I know.
 15 Q. All right. Would you agree that each
 16 applicant had the same opportunity to protest the
 17 RFA structure and process before the applications
 18 were submitted?
 19 A. Well, presumably -- no. Because the
 20 ones that were -- worked with Mercer previously
 21 would have internal information about how the
 22 structure works, so they had much more information
 23 about the situation.
 24 Q. About the --

1 (A short recess is taken.)
 2 THE VIDEOGRAPHER: We are back on the
 3 record. The time is 5:30.
 4 BY MR. JOHNSON:
 5 Q. I just have a couple more questions,
 6 Dr. Tsipursky.
 7 How did you -- in preparation of your
 8 report and analyzing the information you were
 9 given, how did you protect yourself from bias
 10 against the State of Ohio? How did you debias
 11 your own process of evaluating this information?
 12 A. One way was getting an external
 13 observer, which is my wife and business partner
 14 who's well aware of cognitive biases and how to do
 15 that. And that's one principal of the debiasing
 16 technique.
 17 Another one was taking an external
 18 perspective of saying, okay, if I was not being
 19 paid this money, how would I feel about this
 20 process. And I feel incredibly frustrated and
 21 angry -- not -- that's not the right term. Not
 22 incredibly. I would feel frustrated and angry
 23 that my tax dollars are used for this incredibly
 24 broken and biased process, which is rife with

1 opportunities for corruption that are bigger than
2 you can drive a truck through. So I took an
3 external perspective at what's going on from
4 within myself.

5 Q. How do you know you're taking an
6 external perspective and that your own cognitive
7 biases are not directing that external
8 perspective?

9 A. Because I have over 20 years of
10 experience training myself and addressing these
11 cognitive biases within myself. And I have
12 trained myself to calibrate well what my cog --
13 which my specific cognitive biases are. For
14 example, I know I'm vulnerable to the planning
15 fallacy, which means that I tend to come to -- my
16 intuition is to come to places late and have
17 projects run over time and budget. So as you
18 noticed, I came to this deposition something like
19 10 minutes early. And I finished projects several
20 days before deadline. Because I know that this is
21 a problem for me, so I specifically control for
22 it. And this is the practice of debiasing, and
23 which that is my area of expertise. That is
24 something I've applied of course to myself as well

1 A. What I asked her was to create, if she
2 was going to create a process for evaluation, what
3 would she do? And she said things like, well, I'd
4 have criteria, you know, they'd be 500 to 1,000
5 words. I would have, you know, blind scoring. I
6 would have evaluators who would come from
7 different states around Ohio. She didn't mention
8 academics. And a number of other similar things
9 like that. So I made sure that I did not -- I
10 asked her what she would do in this sort of
11 situation.

12 Q. Uh-huh.

13 A. And that's when I -- after that talked
14 to her. And she came up with most of these
15 protections.

16 Q. Okay. I see.

17 And you're -- you're able to take an
18 external perspective based on your years of
19 experience addressing these cognitive biases?

20 A. External perspective within myself,
21 yes. That's something that I do for less weighty
22 matters. For more weighty matters like this one,
23 I make sure to run them by my wife and business
24 partner. And she does the same when she is the

1 as helping executives of various sorts apply it to
2 their own lives and to their businesses.

3 Q. So including an external observer, your
4 wife and business partner, is one that you
5 testified that she didn't read your report?

6 A. Correct.

7 Q. You simple -- you summarized or told
8 her your conclusions; is that correct?

9 A. I told her the evidence, and then asked
10 her what the conclusions --

11 Q. Okay.

12 A. What conclusions she would draw.

13 Q. And again how in your own recitation of
14 the evidence --

15 A. Uh-huh.

16 Q. -- how did you prevent your own
17 cognitive bias from creeping in and --

18 A. Okay.

19 Q. -- maybe coloring --

20 A. I understand --

21 Q. -- your presentation?

22 A. I understand the nature of the question
23 better now.

24 Q. Okay.

1 lead consultant on a project.

2 Q. Did you build any other debiasing
3 safeguards into your review of the information you
4 were given?

5 A. Yeah. I used my standard five question
6 process for addressing debias, for addressing
7 biases when I was writing this report.

8 Q. Okay. And what are those five
9 questions?

10 A. I have to -- I'm trying to see if I
11 have a copy. There you go.

12 Q. Thank you.

13 MS. FRASER: You can --

14 Q. Yeah.

15 A. So just so you can follow along.

16 What important information didn't I yet
17 not fully consider? Is the first question. That
18 addresses things like the confirmation bias,
19 belief bias, outcome bias. And I can go into each
20 one. Information bias.

21 What dangerous judgement errors
22 (cognitive biases) didn't I address? That's, you
23 know, a number of them.

24 What would a trusted and objective

1 advisor suggest I do? That's an external --
 2 that's the external perspective one. And in lower
 3 stakes cases, it's sufficient for me to ask the
 4 question of myself. In higher stakes, I would
 5 actually go to an external advisor, which is my
 6 wife.
 7 Q. Which you did. Yep.
 8 A. And how have I addressed the ways this
 9 could fail? And so guarding against failure. You
 10 know -- which, you know, in this case one of the
 11 failures would be me being biased.
 12 Q. Uh-huh.
 13 A. And what new information would cause me
 14 to revisit this decision? So you gave an example
 15 of if -- if there was indeed no conflictual
 16 interaction between two -- in 2019 between
 17 Paramount and ODM, that would be one piece of
 18 evidence that would cause me to somewhat shift --
 19 Q. Okay.
 20 A. -- my conclusions.
 21 Q. Would it be important, Dr. Tsipursky,
 22 for your -- your outside person to be free of the
 23 same cognitive bias that you are seeking to guide
 24 -- guard against in yourself?

1 A. Yes. So my wife -- so I have the
 2 optimism bias, which means I tend to see the world
 3 full of opportunities.
 4 Q. Uh-huh.
 5 A. And that I tend to be -- you know,
 6 water in the glass is half full. You know, this
 7 bottle is a little bit full sort of person. And I
 8 see the world as full of rewards.
 9 She has the pessimism bias, which means
 10 the world for her is much more full of threats,
 11 it's a much more hostile environment. And it's --
 12 it's the -- this is mostly genetic. Well,
 13 depending on the research, maybe about something
 14 like 50, 40 percent genetic, maybe 50, 40
 15 experiential, and 10 percent circumstantial. And
 16 so I -- knowing that she has that opposite
 17 predisposition, that's really important. And of
 18 course she's highly trained in addressing
 19 cognitive biases and avoiding them. I can't think
 20 of a better person to -- that I can in a
 21 reasonable amount of time get to review my
 22 perspective.
 23 Q. Uh-huh. I don't have any more
 24 questions.

1 A. Okay.
 2 MS. FRASER: I don't have any
 3 questions. Any of the interveners have any
 4 questions?
 5 MR. AUMANN: We have to unmute them.
 6 MR. JOHNSON: They can unmute
 7 themselves.
 8 MS. FRASER: They can unmute
 9 themselves. Okay. Hearing none, we can adjourn.
 10 MR. JOHNSON: We're adjourned.
 11 MS. FRASER: And we will read and sign.
 12 THE VIDEOGRAPHER: This concludes the
 13 deposition. We are off the record. The time is
 14 5:39.
 15 MR. JOHNSON: I guess -- I guess for
 16 your sake, Stacy, I'd like to mark this as
 17 Tsipursky -- Tsipursky -- sorry -- Deposition
 18 Exhibit whatever the next one is.
 19 THE REPORTER: D.
 20 MS. FRASER: D.
 21 MR. JOHNSON: D, yes.
 22 -----
 23 Thereupon, Tsipursky Exhibit D is marked
 24 for purposes of identification.

1 -----
 2 (Signature not waived.)
 3 -----
 4 Thereupon, the foregoing proceedings
 5 concluded at 5:41 p.m.
 6 -----
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