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I N D E X

<u>PETITIONER'S WITNESS:</u>	<u>PAGE</u>
ROBERT FRESEN	
Direct Examination by Mr. Wimberger	4 - 9
Cross-examination by Mr. Schenk	10 - 19
Redirect Examination by Mr. Wimberger	19 - 22
Recross-examination by Mr. Schenk	22 - 25
Further Direct Examination by Mr. Wimberger	25 - 25
Further Cross-examination by Mr. Schenk ...	25 - 26

1 testified as follows:

2 THE CLERK: State your full name.

3 THE WITNESS: Robert Alan Fresen.

4 THE CLERK: Can you spell your last name?

5 THE WITNESS: F-R-E-S-E-N.

6 THE CLERK: Thank you.

7 THE COURT: Okay. You may be seated.

8 Mr. Wimberger.

9 D I R E C T E X A M I N A T I O N

10 BY MR. WIMBERGER:

11 Q Mr. Fresen, can you describe what you do for a
12 living?

13 A I'm a clinical social worker.

14 Q What does that mean?

15 A I am a -- a counselor at the Oneida tribe. I
16 work for the Employee Assistance Program. I have a
17 -- I'm a LCSW, a licensed social worker, in the
18 State of Wisconsin.

19 Q So over at the Oneida tribe, what would your
20 normal job duties entail?

21 A It would be seeing individuals who are tribal
22 employees and their family members. Give them help
23 for, kind of, a wide variety of human problems they
24 might encounter.

25 Q Okay. In the course of your job duties, did

1 you come into contact with Dale Wheelock?

2 A Yes, I did.

3 Q Do you see him here today in the courtroom?

4 A Yes.

5 Q Sitting at the respondent's table over there?

6 A Yes, he is sitting right there.

7 Q How did you come into contact with him?

8 A He called me and asked to meet with me.

9 Q In the scope of your employment as a counselor

10 to him?

11 A Yes.

12 Q Did you end up meeting with him?

13 A Yes, I did.

14 Q How long did you meet with him?

15 A I would say about an hour.

16 Q Is that the only time you really met with him?

17 A Yes.

18 Q Okay. Now we don't -- I don't -- I understand

19 you are bound by HIPAA rules and that is a sensitive

20 area for counselors of course, but what we are here

21 for today is things that may have caused you and

22 other people, like Barb Kolitsch, to be concerned

23 about certain things.

24 Did you come to have a conversation with

25 Dale Wheelock about the nature of his employment?

1 A What do you mean by the nature of his
2 employment?

3 Q Was he under investigation for something to do
4 with his job?

5 A Yes, he was.

6 Q Okay. Was that a cause of concern for him?

7 A Yes.

8 Q During the course of the conversation, your one
9 hour consultation, did he express ideations that he
10 was very upset about what was going on?

11 MR. SCHENK: I'll note my objection at
12 this point. This is confidential information
13 between counselor and his counselee.

14 THE COURT: I think I know where this is
15 headed. I'm going to reserve judgment on the
16 objection until I hear the whole testimony.

17 Go ahead.

18 **BY MR. WIMBERGER:**

19 Q Did he come to express some anger towards what
20 was going on at his job?

21 A I think he was -- he was very upset. I would
22 say he was in a state of distress about it, yes.

23 Q What is going on with his job is kind of
24 irrelevant. We don't really need to get into it.
25 Just how he he's reacted to what was going on.

1 He was under investigation as he said. Did
2 he start to point blame at people who were
3 initiating the investigation?

4 A No. I don't remember him pointing blame at
5 anyone.

6 Q Was he upset at people who were conducting the
7 investigation?

8 A We really didn't talk about an investigation.
9 No. He wasn't. That I recall.

10 Q Okay. Well, at some point in time did you
11 speak with Barb Kolitsch about your consultation
12 with Dale Wheelock?

13 A Yes, I did.

14 Q And was part of that consultation or part of
15 that discussion with Barb Kolitsch expressing a
16 concern that you had that Mr. Wheelock might be a
17 danger to others?

18 A What I told her was that he made no direct
19 threats against anyone.

20 Q What were the threats?

21 A There were no threats is what I said. He
22 didn't make any direct threats.

23 Q Okay. So what are the indirect threats then?

24 A Well, he -- um -- showed me that he has a
25 license -- a Wisconsin license to carry a concealed

1 weapon.

2 Q But I mean, that's legal. I mean, a lot of
3 people have weapons. Big deal. Why was this
4 concerning to you?

5 A Um -- well, I guess -- I've had some training
6 in workplace violence. When you have a very upset
7 employee, who is concerned about their job
8 situation, they feel threatened. Possibly their
9 income is gone. What Mr. Wheelock felt most
10 threatened about was he was told he couldn't go to
11 tribal buildings or properties and that he wasn't
12 sure if his health care was taken away. And um --
13 which he felt really threatened. The well being of
14 his family. And um -- so I wanted to -- he had told
15 me that he had just dropped off a letter to
16 Geraldine Danforth, who is the head of the human
17 resources department, and my program is in that
18 department. Barb Kolitsch is my supervisor. I
19 wanted to make her aware that this employee was very
20 upset about the situation and he had indicated to me
21 that he has a permit to carry a weapon, and I felt
22 that it was important that the human resources
23 department do everything they could to take care of
24 the situation.

25 To clarify with him and try and straighten

1 it out for him. That's why I called Barb Kolitsch.

2 Q And who is the person who was responsible for
3 Mr. Wheelock's situation at that time being
4 suspended or under investigation, or possibly
5 threatened in that matter?

6 A He was, um -- his direct supervisor was
7 Chairman Delgado, who is sitting to your right
8 there.

9 Q The petitioner, correct?

10 A Correct.

11 Q Now, I don't think we need to get too far in
12 detail, but there were some other mental health
13 things that came up that also caused a type of an
14 alarm to you as well with Mr. Wheelock?

15 A Yes.

16 Q Okay. How soon after that consultation did you
17 discuss the matter with Barb Kolitsch?

18 A I just -- my consultation with Mr. Wheelock was
19 on August 21st and in the afternoon. And I
20 discussed it with Barb Kolitsch the next morning,
21 August 22nd. First thing in the morning. Actually,
22 before she got to work.

23 MR. WIMBERGER: I have no further
24 questions.

25 THE COURT: Anything, Mr. Schenk?

1 MR. SCHENK: Yes.

2 C R O S S - E X A M I N A T I O N

3 BY MR. SCHENK:

4 Q Mr. Fresen, I'm handing you a copy of what's
5 been labeled as Exhibit No. 1. Can you tell me if
6 you recognize that particular document?

7 A It looks like the description of the Oneida
8 Employee Assistance Program on the Oneida Nation
9 website. The human resources page.

10 Q Okay. And the Employee Assistance Program is
11 the program that Mr. Wheelock used when he came to
12 see you, is that correct?

13 A That's correct.

14 Q Okay. Under that first portion of that
15 particular document that talks about the purpose of
16 EAP, can you read that portion to me please?

17 A "Professional services: The Oneida EAP offers
18 confidential, professional problem assessment,
19 short-term counseling, and referral to appropriate
20 community service providers, as well as follow-up
21 for the broad range of human problems such as
22 stress, depression, substance abuse, child/family,
23 grief, anger, financial and other personal
24 problems."

25 Q Okay. One of the first words there is

1 confidential, is that correct?

2 A That's correct.

3 Q And confidentiality was not followed in this
4 particular matter, was it?

5 A I believe it was.

6 Q So you maintain that everything that Mr.
7 Wheelock shared with you remained confidential
8 between you and he?

9 A No. Um, Barb Kolitsch is my immediate
10 supervisor, so --

11 Q So you are permitted to share information,
12 confidential client information, with your
13 supervisor?

14 A I believe so. She's part of the program.

15 Q Okay. You're a licensed clinical social
16 worker, correct?

17 A That's correct.

18 Q So you are bound by the ethical practices of
19 the typical social worker in the State of Wisconsin,
20 is that correct?

21 A That's correct.

22 Q Is there any portion of those rules of ethics
23 or rules of professional responsibility that state
24 that you are allowed to break confidentiality when
25 it comes to your supervisor?

1 A I'm not sure if there is.

2 Q Okay. You mentioned in your testimony earlier
3 that Mr. Wheelock was upset and in a state of
4 distress, is that correct?

5 A Yes.

6 Q Now, we need to get a little context here
7 going. When he was talking to you, can you describe
8 his overall demeanor?

9 A Um, I would say he was agitated.

10 Q Okay. Can you elaborate a little bit on that?

11 A He was, um, talking very fast. Showing me all
12 kinds of different documents that he had about his
13 situation. He was definitely upset about his
14 situation.

15 Q Do you typically see people that have
16 situations like his, where he is put on leave for
17 various reasons?

18 A From time to time we can.

19 Q And would it be fair to say that most of those
20 people are agitated about what is going on?

21 A Sure, sure.

22 Q Now, you indicated that he never had shifted
23 blame and never talked about the investigation.
24 That's what you said earlier, correct?

25 A That's correct. Right.

1 Q And he made no direct threats against anyone,
2 is that correct?

3 A That's correct.

4 Q Did he ever mention Ed Delgado's name?

5 A Yes.

6 Q What did he say?

7 A Well, um, he was concerned because Ed Delgado
8 is the chairman and the business committee of the
9 tribe had made a change in the structure of the
10 tribe in which there was no longer a general manager
11 or an overall manager. So he was concerned because
12 he -- he said the tribal chairman and policemen
13 walked him off the job and so he was reporting
14 directly to chairman. How could he appeal that?

15 He was concerned that he was, like, stuck,
16 and he didn't quite know what to do about it. That
17 was one of the things that was stressing him.

18 Q Did he ever express any kind of ill will
19 towards Ed Delgado?

20 A Well, I had asked him if they had any conflicts
21 and I got the impression that, um, Ed Delgado and
22 another -- um, um -- business committee member -- I
23 think it was Vince DeLarosa (phonetic), were trying
24 to pressure him. I had a sense that he felt he was
25 being bullied by them to change his opinion on a

1 particular issue that involved housing, and --

2 Q Okay.

3 A -- and who was going to build the houses.

4 Because he had been head of the housing, and he told

5 me that there was a meeting which he was in that

6 they had yelled at him, and he felt very

7 disrespected --

8 Q Okay.

9 A -- by that, he told me. He said -- and that's

10 -- what he told me about -- he said, you know, when

11 I was serving in the Navy, in Vietnam, the officers

12 never would have treated anybody that way or they

13 wouldn't be around very long.

14 Q All right. Now, here's my confusion -- well --

15 so for some reason you guys start talking about his

16 license to carry. Give us some context on that.

17 How did that come about?

18 A Well, after he told me about the altercation or

19 this incident that had happened --

20 Q Mhmm.

21 A -- he pulled it out, and -- his card -- he put

22 it in front of my face and he said, do I have to

23 start carrying guns to these meetings?

24 Q Because he felt threatened, right?

25 A Right, yeah.

1 Q Now, so that -- I just want to be clear here.
2 So that is when he pulled out the concealed carry
3 permit and he indicated to you that he felt like he
4 might need to start carrying guns, correct?
5 A Correct.
6 Q Okay. What was your reaction to that?
7 A Well, I said, no. I didn't think that was
8 really a good idea.
9 Q Okay. All right. How long after this
10 particular conversation happened -- strike that.
11 How much longer did this session go after
12 that particular revelation?
13 A I would say that was somewhere in the middle of
14 it.
15 Q Okay. But you didn't spend any more time
16 talking about it with him, did you?
17 A No.
18 Q Okay. So it couldn't have been too concerning
19 at that time?
20 A No.
21 Q Okay. All right. But it became concerning
22 afterwards?
23 A Yes.
24 Q Okay. Can you explain to me how that works?
25 A Well, um, I thought that after I thought about

1 it, that was pretty unusual. And I thought that I
2 had a responsibility to, um, let my supervisor know
3 that this employee, who they need to be helping out,
4 does possibly have a weapon.

5 Q Although, there were no direct threats?

6 A Correct.

7 Q Okay. So did you stew on this overnight and
8 was it bugging you or was it -- when did you finally
9 realize that you should maybe say something?

10 A I don't remember.

11 Q Okay. But you didn't call the police or
12 anything like that?

13 A No, I didn't.

14 Q You didn't contact any kind of authorities, did
15 you?

16 A No, I didn't.

17 Q Why did you go to your supervisor?

18 A Because, um, I wanted her to let the people
19 know at human resources that they need to help this
20 guy out and not to delay in taking care of his needs
21 or whatever.

22 Q Okay. So that was the purpose?

23 A And she works directly in the -- in the
24 department, yeah.

25 Q Okay. And I recall you saying that earlier.

1 So the reason you went to your supervisor was to
2 tell them that somebody needs to clarify this with
3 Dale --

4 A Right. Okay.

5 Q -- but not because you thought somebody was in
6 danger, correct?

7 A Well, not anyone in particular, but the
8 situation was kind of a high-risk situation. In
9 fact, Dale might have been the person most in danger
10 for all I knew.

11 Q Okay. And this was all expressed to -- is it
12 Ms. Kolitsch?

13 A Yes.

14 Q Now one of the reasons I talked about
15 confidentiality earlier is, I mean, when you talk to
16 your supervisor about this, do you know where it
17 goes after that point? Do you expect it is going to
18 stay with her or do you expect that it is going to
19 be thrown all over the place like this was?

20 A I expected it was going to stay with her, or
21 within the human resources department.

22 Q Okay. And I don't mean to belabor the point,
23 but is that typical procedure for somebody in
24 that -- in your position, if you have a concern like
25 that? Whether it be for an employee's clarification

1 or a fear of danger, to go to your supervisor?

2 A Well, it doesn't happen very often. And we
3 don't have a specific -- the tribe doesn't have a
4 specific violence in the workplace policy. So I
5 felt that was the -- it's kind of a judgment call, I
6 think --

7 Q Okay.

8 A -- for a clinical social worker. I thought
9 that was the best route to go.

10 Q Are you -- scratch that. Are you the head of
11 the department, the EAP department?

12 A Right now, no, I'm not.

13 Q Were you when this happened?

14 A Yes.

15 Q And isn't it true that the EAP department was
16 kind of under some tribal scrutiny of whether or not
17 it was effective?

18 A Yes. No, actually -- yeah, there had been some
19 scrutiny.

20 Q Can you describe to us what that was?

21 A One of the -- one of the managers felt that our
22 rate of seeing clients was -- was low. Too low.

23 Q Okay. So if the EAP program were to be
24 eliminated, that would eliminate some jobs, correct?

25 A Yes.

1 Q Including your own?

2 A Yes.

3 Q You're aware that Ed Delgado's the tribal
4 chairman, correct?

5 A Yes.

6 Q Now, looking back on it, Mr. Fresen, do you
7 think you did the right thing here?

8 MR. WIMBERGER: Objection. It's
9 irrelevant.

10 THE COURT: I'll allow it.

11 **BY MR. SCHENK:**

12 Q You can answer.

13 A Yes, I think I did the right thing.

14 Q So you felt like somebody was in danger after
15 speaking to Mr. Wheelock?

16 A I felt there was a potential for that case to
17 go badly.

18 Q Okay.

19 MR. SCHENK: Thank you, Mr. Fresen.

20 Well, just a sec.

21 Nothing further. Thank you, Mr. Fresen.

22 THE COURT: Mr. Wimberger, anything else?

23 MR. WIMBERGER: Yes, please.

24 **R E D I R E C T - E X A M I N A T I O N**

25 **BY MR. WIMBERGER:**

1 Q So you testified that Mr. Wheelock felt
2 threatened when he was speaking to you, correct?

3 A Yes.

4 Q And was that due to some escalated
5 conversations or yelling from Mr. Delgado and others
6 towards Mr. Wheelock?

7 A Well, that had -- there was an incident that
8 happened, but what I think he felt most threatened
9 by was the -- what he felt was taking away his
10 income and his health insurance and restricting his
11 access to tribal buildings.

12 Q But, specifically, he talked about being yelled
13 at?

14 A Yes, he did mention that.

15 Q And did he tell you that when some people yell
16 at him, it's war and you need to shoot them?

17 A No, he never said that.

18 Q Okay. If Barb Kolitsch were to have reported
19 that, would that be something only she would know?

20 That was not part of the conversation with
21 Dale Wheelock?

22 A No, it was not. I never said that to Barb.

23 Q Okay. Now, you've also testified that you
24 counseled others who have been suspended for various
25 reasons from their job duties. Did you report

1 threats on those other instances that it was a risk
2 to people?

3 A No, I can't remember doing that for anybody
4 that had been suspended from their job before.

5 Q So other people who have been in the same
6 situation as Mr. Wheelock, maybe because Mr.
7 Wheelock is a little bit higher in the management
8 level the ramifications would be greater, but other
9 people have been suspended from their job duties and
10 you decided not to report those?

11 As threats to -- general threats or specific
12 threats to --

13 A Right, sure.

14 Q And just for clarification, as far as reporting
15 incidents, there could be some gray areas, but if
16 you're counseling Jeffrey Dahmer, for instance, and
17 he says he eats people and Ed Delgado looks
18 delicious, are you going to have to report that?

19 MR. SCHENK: Objection. I'm not sure if
20 that's a hypothetical or what that is.

21 THE COURT: I'll allow it, if you can
22 answer it.

23 THE WITNESS: Yeah, I have a duty to
24 report and warn people if there is a direct
25 threat made against them in a session.

1 **BY MR. WIMBERGER:**

2 Q And so there are two types of obligations,
3 aren't there? There is -- you are actually
4 obligated by law to report direct threats, and there
5 could be a penalty to you, is that right?

6 A A penalty?

7 Q A criminal penalty or a civil penalty, if you
8 know there is a threat, and a reasonable person would
9 know it was a threat, and you failed to do anything
10 about it?

11 A Probably, yes.

12 Q But then there is a second kind of a level
13 where it's a bit of a discretionary thing. If you
14 think there is something there and just out of
15 abundance of caution you are allowed to -- there is
16 no HIPAA violation by being that cautious, is that
17 correct?

18 A I don't believe so.

19 MR. WIMBERGER: I have no further
20 questions.

21 THE COURT: Do you have anything else?

22 MR. SCHENK: Just a couple.

23 **R E C R O S S - E X A M I N A T I O N**

24 **BY MR. SCHENK:**

25 Q Mr. Fresen, you indicated that Dale never said

1 to you that -- and I quote this from an email sent
2 by Barb Kolitsch -- Dale said, "That if someone
3 yells at him it's like in war, just shoot them."

4 A No. That's wrong. I told you what he said
5 already. He said, you know, if our officers had
6 yelled at us in Vietnam, they wouldn't be around
7 that long.

8 Q No, I understand --

9 A I kind of knew what he meant by that --

10 Q -- and I understand --

11 A -- but no --

12 Q Can I finish my --

13 A -- that quote is inaccurate.

14 Q I'm just trying to clarify what was sent in
15 this email. It indicated that, to you, that he is a
16 Vietnam vet and has posttraumatic stress disorder,
17 is that correct?

18 A Yes.

19 Q In your experience, does posttraumatic stress
20 disorder create some of the instances that you
21 see -- that you saw with Dale?

22 A Yes.

23 Q Okay. All right. And let's see, did he
24 indicate to you that he was ordered not to enter any
25 tribal buildings?

1 A Yes, he told me that.

2 Q Okay. And did you recommend that he get help
3 for his PTSD?

4 A Yes, I did.

5 Q And you actually called and arranged for him to
6 be seen by a doctor to help with symptoms, correct?

7 A Yeah, I called the doctor and he said he could
8 work him in when he was aware that it wasn't -- the
9 main thing is he wasn't sleeping.

10 Q Okay. Mr. Fresen, don't take this the wrong
11 way because I don't know. I'm just asking. Okay?

12 A Okay.

13 Q It was asked earlier, and obviously if there
14 were direct threats, you are under an obligation to
15 say something. But it was suggested that when there
16 are indirect threats and you have suspicion, that
17 you should also say something. Is that part of your
18 code of conduct as a licensed clinical social
19 worker? I don't think we got a straight answer on
20 that one.

21 A Well, it's a -- kind of a balancing act between
22 the confidentiality of individual clients and public
23 safety, and my understanding is it's up to me to
24 make a professional judgment when I -- to share
25 things that could endanger the public.

1 MR. SCHENK: Okay. I have nothing
2 further.

3 THE COURT: Anything?

4 MR. WIMBERGER: Sure. I'm sorry this is
5 going on for double redirect.

6 FURTHER DIRECT EXAMINATION

7 BY MR. WIMBERGER:

8 Q You said that you knew what he meant when he
9 said not be around very long. That concerns me
10 because I was captain in the Marine Corps. What did
11 you take that to mean?

12 A Well, just from what I understand in talking to
13 veterans and friends who are Vietnam veterans and
14 reading, there used to be this thing they called
15 fragging. If they are -- if there was, you know, an
16 officer who was, excuse my language, like an
17 asshole, the guys would take care of him.

18 Q And in that relationship, at this time in the
19 business community, Ed Delgado would be his officer?

20 A That's right.

21 MR. WIMBERGER: Okay. No further
22 questions.

23 THE COURT: Mr. Schenk, anything?

24 MR. SCHENK: Just quickly.

25 FURTHER CROSS - EXAMINATION

1 BY MR. SCHENK:
2 Q And that's just an assumption that you made?
3 A Yes.
4 MR. SCHENK: Okay. Nothing further.
5 THE COURT: Okay. Anything else?
6 MR. WIMBERGER: No.
7 THE COURT: All right. Thank you. You
8 may step down.
9 (Proceedings continued on.)
10 (This is a partial transcript.)
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1 STATE OF WISCONSIN)

2 COUNTY OF BROWN)

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4 I, Angela J. Maroszek, court reporter, certify
5 that I reported the foregoing matter, EDWARD S.
6 DELGADO VS. DALE WHEELLOCK, Case Number 12 CV 1856,
7 on DECEMBER 6, 2012 at the Brown County Courthouse
8 in the City of Green Bay, Wisconsin before COURT
9 COMMISSIONER PHOEBE A. MIX.

10 I further certify that the foregoing transcript
11 has been carefully compared by me with my
12 stenographic notes as taken by me and thereafter
13 transcribed, and that it is a true and correct
14 transcript of the proceedings had in said matter to
15 the best of my knowledge.

16 Dated this 9th day of JANUARY, 2013.

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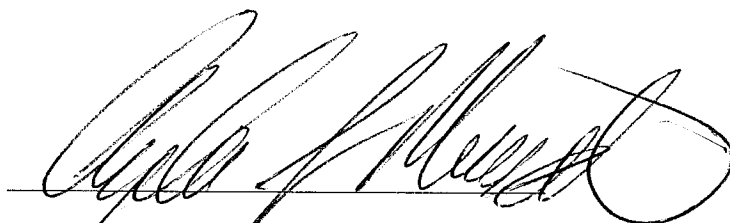
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Angela J. Maroszek
Certified Court Reporter