

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

MARY IRENE NIXON; KATHRYN L. MEACHAM; TONYA DAWN TOLBERT, Personal Representative for Estate of Phillip Spieker, deceased; RUSSELL D. EHRHARDT, Administrator of Estate of Betty Romp, deceased, f/k/a Elizabeth Louis Ostert; SUSAN DAWSON, Administrator of Estate of Clarence E. Fifer, deceased; HAZEL POTTER DORNBUSH, :
Plaintiffs, :

vs. :

STATE OF IOWA, :

Defendant. :

LAW NO: LACV 063696

FILED
07 JUL 13 PM 3:17
CLERK OF DISTRICT COURT
JOHNSON COUNTY IOWA

DEFENDANT'S STATEMENT OF MATERIAL FACTS FOR PURPOSES OF SUMMARY JUDGMENT

Defendant herein provides the following statement of facts filed in support of Defendant's Motion for Summary Judgment:

SUMMARY OF FACTS

This lawsuit arises from a 1939 study conducted by Professor Wendell Johnson of the University of Iowa and his graduate student Mary Tudor.¹ The gravamen of the Plaintiffs' claim is that, as residents at the Iowa Soldiers' Orphans' Home (ISOH), the Plaintiffs were told that they were stutterers or in danger of becoming stutterers. These misrepresentations, they or their representative claim, adversely affected them throughout each of their lifetimes. They also allege that the State intentionally and deliberately "concealed" the Tudor study, notwithstanding the

¹ Wendell Johnson passed away in 1965 and Mary Tudor passed away in 2006. Due to the more than sixty years that passed before this action was filed, Defendant has had great difficulty identifying and locating State of Iowa employees who were involved with Mary Tudor's study as well as other information relevant to this matter.

undisputed fact that this study has been on the shelf of the University of Iowa library for more than 65 years, during which time it has been available to the public and checked out by numerous people.²

A. **Mary Nixon Wrote a Letter to Tudor in 2001 That Contained False Statements and Then Swore to Keep These Facts Secret in an Attempt to Embellish the Impact That Mary Tudor's Study Had on Plaintiff.**

1. The newspaper articles of 2001 authored by James Dyer have been repeatedly referenced, cited and relied upon by Plaintiffs and their counsel in support of various allegations made in their Petition. (Exhibit 3 and Amended Petition). During discovery, it has become abundantly clear that much of the article was not based in fact, but instead was an embellished and inaccurate account regarding the impact of the study.

2. Plaintiff Mary Nixon admitted at her deposition that the letter she wrote to Mary Tudor at Dyer's urging and with his assistance was not accurate (the letter played a central role in Dyer's article) and contained many misrepresentations. She did not believe all of what she wrote in the letter. (Exhibit 133, p. 3101). She also had concerns about sending the letter because of its inaccuracies. (Exhibit 133, p. 3106). Despite these concerns, Mary Nixon never told anyone that the letter was false and mailed it to Dyer for delivery to Mary Tudor. (Exhibit 133, pp. 3106-3107).

3. Mary Nixon's letter to Mary Tudor was addressed to "The Monster", but Mary

² Although Plaintiffs allege that the State kept them from the records that prevented them from knowing of their involvement in this study, Plaintiff Susan Dawson confirmed that she was provided copies of Clarence Fifer's records in 2000 and was able to identify her father as a participant simply by reading the Tudor Study. (Exhibit 140, p. 3510-3514). Each Plaintiff throughout their lifetime similarly could have checked out the Tudor Study, compared the case study participant's birthdate to their own and known which case study applied to that Plaintiff.

Nixon never referred to Mary Tudor as a monster nor thought of her as one. (Exhibit 133, p. 3113). The article contained a heartwarming story about Mary Nixon, her friend Dorothy Ossman, and a special thimble given to Nixon by her mother. (Exhibit 133, p. 3117). Mary Nixon admitted that this story was, for the most part, made up. (Exhibit 133, p. 3117). The article stated that Mary Nixon had given up hope for adoption, but Nixon was never up for adoption. (Exhibit 133, p. 3119). The thimble sent to Mary Tudor was not the thimble Mary Nixon received from her mother, contrary to what the letter stated.

4. Mary Nixon was sworn to secrecy regarding the falsity of the letter. (Exhibit 133, p. 3107). In the letter, she stated, "You destroyed my life." (Exhibit 133, p. 3109). But, in a later Christmas card, Mary Nixon told Mary Tudor that it was not her fault. (Exhibit 133, p. 3085). However, Mary Nixon kept these misrepresentations secret from the State of Iowa until June 1, 2007. (Exhibit 133, p. 3107).

5. Mary Nixon read Dyer's two articles when they were published in the Des Moines Register. She knew at the time the articles were published that they contained numerous accounts of events that never happened. (Exhibit 133, p. 3129). Despite her knowledge of the fabricated statements and Plaintiffs' reliance on the article during discovery, Mary Nixon told no one about it. (Exhibit 133, pp. 3129-3130). She also never asked the Des Moines Register or the San Jose Mercury News to print a retraction of the story based on her misrepresentations. (Exhibit 133, p. 3130). Mary Nixon honored her agreement to keep the misrepresentations secret until she was deposed on June 1, 2007.

6. Mary Nixon did not advise the State of Iowa that the newspaper articles written by

James Dyer contained false statements of fact when she filed her claim and affidavit with the Iowa State Appeal Board asking for \$3,000,000.00 in damages. (Exhibit 133, pp. 3129-3130). She did not advise the State of Iowa that she was sworn to secrecy regarding the false statement of facts contained in the second letter to Mary Tudor when she filed her affidavit. (Exhibit 133, pp. 3129-3130).

7. After the article was published, Mary Nixon asked the staff at the Iowa Veteran's Home to prepare a letter to her lawyers indicating that she isolated herself from others. The Iowa Veteran's Home records indicate that they refused to comply with Mrs. Nixon's request because it would be a false statement. (Exhibit 1, p. 2).

B. At the Conclusion of the Studies, Wendell Johnson and Mary Tudor Determined That the Study Was Inconclusive and That None of the Participants of Group IIA Were Labeled as Stutterers by the Independent Judges.

8. Mary Tudor and Wendell Johnson concluded in 1939 that Mary Tudor's study was inconclusive. None of the participants of Group IIA (the Plaintiffs) were labeled as stutterers after the study. (Exhibit 128, pp. 2464, 2488, 2491, 2499, 2500, 2511, 2513, 2524-2525, 2533, 2534, 2549). The following exchange took place at Mary Tudor's deposition:

Q. Now, you talked to me earlier about when someone is a stutterer, sometimes it takes years of therapy to get them to where they don't stutter anymore. Were you aware of any studies that had been done that determined how much therapy it would take to undo the behavioral damage and the emotional damage done by this labeling study on these children?

A. *No. No. I had no information about that.*

Q. Were you aware of any studies back in 1939, '40, '41 time frame that established that it was even possible to undo the emotional and psychological damage that such a label could do on a child?

A. *No, because my study was inconclusive. None were labeled as stutterers after my study.*

Q. You said "none were labeled as stutterers."

A. *According to the judges and the people, none were labeled stutterers. The results were inconclusive.*³

Q. Okay. But irrespective or irregardless of whether they were stutterers in the minds of those judges that looked at them, you determined that there were some distinct behavioral changes in these children as a result of being labeled a stutterer; isn't that right?

A. *Just as there would be behavioral changes in any children that were in an experimental situation where something was trying to be proved.*

(Exhibit 128, pp. 2463-2464).

Q. Did Dr. Johnson feel that there had been damage done to the children?

A. *I don't really know what he felt. I know that neither one of us was very encouraged by the results.*

Q. What do you mean by that?

A. *We accepted the fact that we hadn't proved that labeling causes stuttering. We didn't feel that the results were that positive.*

(Exhibit 128, p. 2513).

9. Mary Tudor had five independent judges attend the first and last meetings with the 22 participants. The judges did not know the group in which Mary Tudor placed each

³ Mary Tudor confirmed that she was the only judge who knew what label had been attached to each subject during the experimental period. The individuals identified as judges A-D did not know what category and of the participants had been placed by Mary Tudor. (Exhibit 128, p. 2405).

participant. The judges evaluated the participants' speech and determined if they would be considered stutterers or not. (Exhibit 20, p. 113). At the conclusion of the study, all five judges independently concluded that no member of Group IIA stuttered. (Exhibit 20, pp. 174-175, 183-184, 192-193, 201-202, 209-210, 218-219).

C. Although Participants in Both Group IIA (Normal Speakers Labeled as Potential Stutterers) and Group IIB (Normal Speakers Labeled as Normal Speakers) Had Physical Movements Observed by the Judges, the Only Participants Diagnosed Stutterers at the End of the Study Were from Group IIB.

10. The judges did not find that a single participant of Group IIA (Nixon, Fifer, Meacham, Spieker, Potter-Dornbush, Ostert) stuttered at the end of the study.⁴ However, several members of Group IIB (normal speakers told they had good speech) did receive that diagnosis from at least one judge.⁵ The following samples of descriptive evaluations were given by the judges when they evaluated Group IIB (normal speakers told they had good speech) at the end of the study:

CASE 18
BEGINNING OF THE STUDY

Judge B.

“Adequate speech.”

(Exhibit 20, p. 122).

END OF THE STUDY

Judge B.

⁴ Kathryn Meacham admits, via Request for Admissions, that Judges A, B, C, and D concluded that she was not a stutterer at the conclusion of the study. (Kathryn Meacham Responses to Request for Admissions # 16-19, executed January 20, 2006, and herein attached as Exhibit 111, p. 1911-1912.

⁵ Group IIB was the control group. They were categorized as normal speakers at the beginning of the examination and were only complimented during the pendency of the study.

“Read rather readily but when asked to talk numerous questions failed to bring her out. She appeared unwilling to talk, Answered in monosyllables. Looked down continually and kept biting her nails. Appeared to be afraid of the group.”

(Exhibit 20, p. 122).

CASE 20

BEGINNING OF THE STUDY

Judge B.

“Normal Speaker.”

(Exhibit 20, p. 238).

END OF THE STUDY

Judge B.

“Talks in rather high strained sounding voice. Repeats some. Also prolongs parts of words. Seemed to be willing to talk and answer all question.” Stuttering.”

(Exhibit 20, p. 238).

CASE 21

BEGINNING OF THE STUDY

Judge A.

“Occasional repetitions of words.”

(Exhibit 20, p. 241).

END OF THE STUDY

Judge A.

”Repetitions, interjections, pauses, but with-out much tension. Stutterer.”

(Exhibit 20, p. 241).

CASE 22

BEGINNING OF THE STUDY

Judge B.

“Poor articulation.”

(Exhibit 20, p. 244).

END OF THE STUDY

Judge B.

“Articulatory case. Very nasal speech. Mild stuttering.”

(Exhibit 20 p. 244).

11. Several of the participants of Group IIB (normal speakers who were complimented and given no negative label) also received evaluations that they were “unwilling to talk”(Exhibit 20, p. 232), “looked down continually”(Id.), “kept biting her nails”(Id.), “mumbled a bit”(Id., p. 239), “some grimaces were noticed around the mouth and looks at floor all the time while talking”(Id.). These observations of physical behavior by participants in Group IIB came after they were told they were normal speakers and received only compliments from Mary Tudor.

D. Hazel Potter Dornbush and Mary Korlaske Nixon Have Had Actual Knowledge since 1939 That They Were Participants in Other Research Projects Conducted at the Iowa Soldiers' Orphans Home by the University of Iowa During Their Residency at the Home.

12. Hazel Potter testified that she was aware of research conducted by students from the University of Iowa:

Q. All right. Though in -- in summary, you knew that two to three times a year somebody from the University of Iowa would come to the Iowa Soldiers' Orphans Home and conduct some type of research or testing on the --

A. *Correct.*

Q. -- residents at the home.

A. *Correct.*

Q. And that's what gave you the feeling of being -- or characterizing yourself as a guinea pig.

A. *Correct.*

Q. ... You had that feeling of being used as a guinea pig during the -- I'll just limit it to 1939 until the time that you left there; is that correct?

A. *Yeah.*

(Exhibit 131, p. 2695). Hazel Potter confirmed that, as early as 1939, she knew the research was conducted by the University of Iowa and that she never made any effort to find out why the research was conducted. (Exhibit 131, p. 2693-2697). Hazel Potter testified that she knew Dr. Harold Skeels and was aware that he brought individuals from the University of Iowa to the Davenport facility to perform tests. (Exhibit 131, p. 2665-2666).

13. Hazel Potter was on actual notice that she was a participant in Mary Tudor's study. (Exhibit 128, p. 2485). Mary Tudor confirmed that Hazel Potter wrote her a letter. (*Id.*, p. 2485). Mary Tudor confirmed during her deposition on November 19, 2002, that James Dyer hand delivered a letter from Hazel Potter before he relocated to Atlanta. (Exhibit 128, p.2485). James Dyer was writing articles for the *Atlanta Journal-Constitution* in early 1999.

14. Mary Nixon also confirmed that she knew she was involved in many other experiments while in the home. (Mary Nixon's response to Interrogatory #10, executed January 30, 2006 herein attached as Exhibit 129, p. 2567). Plaintiff Nixon provided the following response to Interrogatory #10:

"I believe that I was involved in many other experiments while a resident in the home. I think I was involved in a growth study, and eye to hand coordination study and I recall being involved in a study where I went to Iowa City for some testing. I can't remember the names of any of the participants or anything more at this time."

(Mary Nixon's response to Interrogatory #10, executed January 30, herein attached as Exhibit 129, p. 2567).

15. Mary Nixon also testified regarding her knowledge of involvement in studies at the ISOH:

Q. Was it as you became an adult, you started to think back?

A. Yes.

Q. And you realized at that time that you were probably subjected to some studies?

A. Yes, sir.

Q. And when you made that realization that you were a participant of studies at the home, did you ever then go and try and find out what studies they were?

A. No, sir.

Q. Since 2001 when you found out about your participation in Mary Tudor's study, have you made any efforts to go discovery what other studies you were a part of?

A. No, sir.

Q. At one point were you taken to the University of Iowa to undergo some testing?

A. Yes, sir.

(Exhibit 133, p. 2971-2972)

E. **Plaintiffs' Medical, Employment and Education Records Generated After 1942 Do Not Reflect That Any of the Plaintiffs Had Problems with Their Speech or Suffered from Emotional Distress.**

16. Since Tudor completed her study in 1941, none of the Plaintiffs have sought any medical treatment for stuttering, stammering, articulation or any other speech defects.

MARY KORLASKE NIXON

17. Mary Nixon provided the following testimony at deposition regarding anxiety about talking during her time at the ISOH:

Q. Sure. Do you remember ever being nervous talking

to any of your teachers at school at any time that you were at the Davenport Home?

A. *No, sir.*

Q. Okay. Do you have any memory of ever being scared or nervous about talking to matrons at any time while you lived at the Davenport Home?

A. *No, Sir.*

(Exhibit 133, p. 2960).

18. Mary Nixon was a resident of the Iowa Veteran's Home from 2000 through 2004.

The following excerpts are taken from records obtained from the Iowa Veteran's Home regarding

Mary Nixon's speech:

- 3/29/00 No loss noted regarding articulation, voice or fluency. (Exhibit 137, p. 3258).
- 3/29/00 Behavior is appropriate and speech was normal. (Exhibit 1, p. 13).
- 4/03/00 Speech is normal. (Exhibit 137, 3262).
- 4/12/00 Resident exhibited no difficulty with communication ability. (Exhibit 137, p. 3263).
- 7/10/00 She loves to talk. (Exhibit 1, p. 6).
- 8/09/00 Pleasant and talkative throughout session. (Exhibit 1, p. 5).
- 3/04/01 Her speech is normal. (Exhibit 137, p. 3264).
- 3/07/01 Talkative throughout session. (Exhibit 137).
- 1/28/03 She is very pleasant in talking. (Exhibit 137).
- 3/18/03 Very pleasant in talking. (Exhibit 1, p. 16).
- 4/08/03 Verbal was marked as good.⁶

19. Mary-Nixon did receive psychological counseling and treatment for unrelated issues for several decades. Those sessions involved and discussed issues completely unrelated to her stay at the Iowa Soldiers' Orphan's Home. Mary Nixon was treated at Broadlawns Medical Center on July 23, 1998 and underwent a comprehensive psychiatric evaluation. Mary Nixon

⁶ This is just a partial list of comments made at Iowa Veteran's Home regarding Mary Nixon's speech.

indicated that her first husband was abusive towards her. (Exhibit 133, p. 2979). She was depressed during her first marriage because of the physical abuse. (Exhibit 133, p. 2986). Another primary complaint involved her abusive relationship with her father. (Exhibit 133, p. 2999). Mary Nixon received counseling for the abuse in the '50s. (Exhibit 133, p. 2985). She also reported emotional distress from allegations made about her second husband's relationship with her son. (Exhibit 133, p. 3019).

20. On October 1, 1987, Mary Nixon was examined by John Hartzell, Ph.D. at Broadlawns Medical Center. (Exhibit 2, p. 30). Dr. Hartzell was Chief of Clinical Psychology Services and made the following observations during this visit:

“The patient focused upon her difficulty in controlling the meddling attentions given her by her sister-in-law and claims that such unwanted intervention in her affairs is currently the primary reason for this series of migraine headaches which have persisted for over the past two weeks.”

(Exhibit 2, p. 30).

21. Mary Nixon reported in 1987 that she loved school and was an A and B student. (Exhibit 2, p. 28). At the time of Mary Tudor's study, Mary Nixon was twelve years old and in the fourth grade. (Exhibit 2, p. 28).

22. Approximately one month after she was admitted to the Iowa Veteran's Home, Mary Nixon provided responses to a detailed social history. On April 11, 2000, Mary Nixon reported the following:

“PSYCHIATRIC/SUBSTANCE ABUSE/DEPENDENCY HISTORY: Mary reports that she has never received any counseling or treatment for any psychiatric or emotional problems and no diagnosed conditions exist upon her admission. She has never had any thoughts of

suicide, homicide or hallucinations, but does report being depressed following her husband's death."

(Exhibit 69, p. 1378).

At that same time, Mary Nixon discussed her time at the Iowa Soldiers' Orphan's Home:

Mary does note that she was placed in an orphanage in Davenport called the Iowa Soldiers Orphan's Home in 1932. She reports this is where she spent the majority of her childhood. She does note that while she was in the orphanage, she attended the Catholic church and regularly attended church every week. She reports her mother was a homemaker and also worked in the laundry at a local hospital and was a hospital worker. Mary does report that her dad was very abusive and was an alcoholic. She also reports that he had a gambling problem, spending much of the money the family had earned. She reports that she was not very close to her father and, in fact, resents him to this day. Mary does report that she learned while in the orphanage to do without or make do with what you had. She reports that she was toughened up quite a bit by living in the orphanage and learned to keep to herself and mind her own business, or otherwise be punished for her actions. She does not appear to be overly resentful of this experience, but does wish she would not have had to live in an environment such as this.

(Exhibit 69, p. 1378).

Mary also reported that she "had many friends as she was growing up and feels she is a social person." (Exhibit 69, p. 1379).

CLARENCE FIFER

23. During his employment in the United States Navy as a senior level air traffic controlman, **Clarence Fifer acknowledged, under oath, that he never stuttered or stammered.** (Exhibit 4, p. 60). Fifer also affirmed that he had no psychiatric issues. (Exhibit 4, p. 60). As an Air Traffic Controlman, Clarence Fifer passed several articulation tests and his naval records establish that his articulation was clear and distinct. The air controlman medical

examination records do not indicate that Fifer had any stuttering, stammering, articulation or depression problems:

- 6/13/56 Articulation - Normal. Normal Psychiatric. (Exhibit 6, p. 66).
- 5/22/58 Articulation - Clear and distinct. Normal Psychiatric. (Exhibit 7, p. 68).
- 5/29/59 Articulation: Voice well modulated and pitched in medium range. Normal Psychiatric. (Exhibit 8, p. 70).
- 7/14/60 Articulation: Passed. Normal Psychiatric (Exhibit 9, p. 72).
- 10/30/62 Affirm that he never stuttered or stammered. (Exhibit 4, p. 60).
- 10/30/62 Fifer confirms that he has never had depression or excessive worry. (Exhibit 4, p. 60).

24. After leaving the Iowa Soldiers' Orphan's Home, Clarence Fifer attended Mt. Pleasant High School. During his two years of high school, Fifer received four A grades, ten B grades and one C grade. (Exhibit 5, p. 64). Clarence Fifer's school transcript makes no reference to any speech or other problems. (Exhibit 5, p. 64). Clarence Fifer also attended the University of Kansas and received an A grade in Business Law. (Exhibit 117, p. 1997).

25. Susan Dawson, personal representative of the Estate of Clarence Fifer submitted to deposition on June 28, 2007. Plaintiff Dawson indicated that Clarence Fifer did not speak to her about his residency at the ISOH:

Q. Did your father ever talk to you about his experience at the Davenport Home?

A. *Never.*

Q. He never told you about anything bad that happened to him?

A. *Never. He would not –*

Q. And he never told you about anything good that happened to him?

A. *No. He would not talk about his childhood.*

(Exhibit 140, p. 3474).

26. The following exchange took place at Susan Dawson's deposition:

Q. Did you ever have conversations with your father about whether or not he considered himself to be shy or withdrawn?

A. *I'm trying to think. Probably not with him.*

Q. Okay. Did you ever have any conversations with your father whether or not he was shy of speaking in public or frightened to speak in public?

A. *Not that I can recall.*

(Exhibit 140, p. 3499).

PHILLIP SPIEKER

27. After 1941, Phillip Spieker did not seek any professional treatment for stuttering, stammering or fluency disorders.⁷ (Tanya Dawn Tolbert's Responses to Request for Admissions #2 executed May 9, 2006 herein attached as Exhibit 108, p. 1874). Phillip Spieker was never diagnosed by a health provider as suffering from stuttering, stammering, or speech fluency problems. (Tanya Dawn Tolbert's Responses to Request for Admissions #2 executed May 9, 2006 herein attached as Exhibit 108, p. 1874).

28. Tanya Tolbert, personal representative for the estate of Phillip Spieker did not speak to Phillip Spieker regarding his stay at the Iowa Soldiers' Orphan's Home or Mary Tudor. (Tanya Dawn Tolbert's Answer to Interrogatory #8, 9, & 10 executed March 5, 2007 herein attached as Exhibit 107, pp. 1858-1863). Plaintiffs cannot identify any document created after

⁷ Defendants will not be given an opportunity to depose Tanya Tolbert at the time this Motion for Summary Judgment is filed. It is currently set for July 26, 2007 and Defendant anticipates that additional information will be provided in support of this motion.

1941 as evidence that Phillip Spieker suffered severe emotional distress as a result of his involvement in Mary Tudor's study. (Tanya Dawn Tolbert's Answer to Interrogatory #8(B) executed March 5, 2007 herein attached as Exhibit 107, p. 1861).

29. Phillip Spieker served in the military. Spieker's military record indicates that he had no problem or fear of a problem regarding his speech. On June 8, 1948, he was found fit for overseas duty and no history was given of any speech problems. (Exhibit 10, p. 74). Spieker underwent another medical examination on April 19, 1954 and received a normal psychiatric finding. The examination made no reference to speech problems. (Exhibit 11, p. 76).

30. Phillip Spieker was admitted to the hospital on November 27, 1956 for left knee injury. (Exhibit 12, p. 78). There was no mention of present or past speech problems, anxiety of speech problems or depression. (Exhibit 12, p. 78).

31. On January 20, 1994, Spieker was referred to Dr. Michael Gebel, Board Certified Neurologist, for a prior diagnosis of Parkinson's disease. (Exhibit 13, p. 83). Dr. Gebel conducted a complete neurologic examination and reported that "the patient is alert, *has fluent speech*. . . ." (Exhibit 13, p. 84). Dr. Gebel further concludes that there is no doubt that Mr. Spieker had a movement disorder. (Exhibit 13, p. 85).

32. On May 10, 1994, John S. Scott, M.D., Fellow of the American Academy of Neurology and Diplomat of the American Board of Neurology, saw Phillip Spieker for a persistent tremor. (Exhibit 14, p. 87). Dr. Scott noted that Spieker's speech was monotone and his gait impaired. (Exhibit 14, p. 87). There is no reference to any articulation or emotional problems. (Exhibit 14, p. 87).

33. Phillip Spieker underwent a Veteran's Compensation and Pension Examination

on May 17, 1994. (Exhibit 15, p. 89). Phillip Spieker was 67 years old at the time of this examination. (Exhibit 15, p. 89). The following was reported:

According to the veteran, he is wondering why he was sent to mental health clinic. He stated that he has never been in any mental health clinic before. He stated that he has never seen any psychiatrist or any psychologist or any mental health counselor for mental problems. *He denied any mental problems at this time.* . . . the veteran stated that he could not control his movement and he feels disgusted, "because I cannot do anything anymore." *He denied being anxious and being depressed.* . . . At present, the veteran stated that *he feels fine mentally and emotionally* but "I wish I could stop this shaking - I'm not nervous and I don't feel depressed. (emphasis added)

(Exhibit 15, p. 89).

HAZEL POTTER DORNBUSH

34. Although Hazel Potter received extensive medical treatment over the years, there is not one indication that she ever reported problems with her speech. There is also no indication that she ever reported any fear of stuttering or other speech disorders.

35. Hazel Potter testified that the only awareness she had of her speech after 1941 was when people asked her if she was from the South. (Exhibit 131, pp. 2652-2654). She did not consider herself a stutterer until 2001. (Exhibit 131, p. 2735). Although she has been seen by numerous doctors regarding numerous medical issues, Hazel Potter never raised any concerns regarding her speech or her mental health. She has never treated with any healthcare professional regarding her speech. (Hazel Potter Response to Request for Admission #2, executed January 20, 2006 and herein attached as Exhibit 102, p. 1783). She also never sought treatment for emotional concerns. (Hazel Potter Answer to Interrogatory #5, executed April 10, 2006, attached

as Exhibit 138). Hazel Potter provided the following testimony regarding the need for medical care:

Q. Have you ever been treated for any emotional distress or mental health issues?

A. *No, I haven't.*

Q. Have you ever felt the need to see a doctor for emotional distress or emotional concerns you had?

A. *No.*

(Exhibit 131, p. 2727). Hazel Potter knew that the State of Iowa would provide medical care to her until she turned 21 if it was sought or needed. (Exhibit 131, p. 2723).

36. After the Tudor Study was completed, Hazel Potter continued to engage in the same activities and became editor of the school paper. (Exhibit 131, pp. 2728, 2730).

BETTY ROMP

37. Plaintiff Russell Erhardt, personal representative for the estate of Elizabeth Ostert, did not speak to Betty Romp regarding her contact with Mary Tudor. (Russell Erhardt, Administrator of the Estate of Betty Romp, deceased, Answer to Interrogatory #8 (Set 2) executed April 9, 2007 herein attached as Exhibit 132, pp. 2783-2786). Plaintiff cannot identify any document created after 1941 which they can rely on in alleging that Betty Romp suffered severe emotional distress as a result of her involvement in Mary Tudor's study. (Russell Erhardt, Administrator of the Estate of Betty Romp, deceased, Answer to Interrogatory #8(B) (Set 2) executed April 9, 2007 herein attached as Exhibit 132, p. 2786).

38. The only statements made by Betty Romp regarding her time at the orphanage were provided by Russell Erhardt when he stated that "...his mother said that the orphanage was

not a nice place and that she never wanted to see a child go through what she went through there. She also stated that, at the orphanage, you could not have anything of your own because if the other children didn't take it, the staff would take it from you." (Russel Erhardt, Administrator of the Estate of Betty Romp, deceased, Answer to Interrogatory #10(A) (Set 2) executed April 9, 2007 herein attached as Exhibit 132, p. 2788).

KATHRYN MEACHAM

39. Plaintiff Kathryn Meacham testified that she does not recall any of her stay at the Iowa Soldiers' Orphan's Home. (Exhibit 134). She also testified that she has no memory of Mary Tudor. (Exhibit 134). Kathryn Meacham confirmed in her interrogatory responses that she does not remember any of the discussions she had with Mary Tudor. (Kathryn Meacham's amended response to Interrogatory #4; executed March 20, 2006, herein attached as Exhibit 115. Plaintiff Meacham has also confirmed that she has not received any treatment for psychological counseling from 1940 to 2002. (Kathryn Meacham's amended response to Interrogatory #4; executed March 20, 2006, herein attached as Exhibit 115. Kathryn Meacham has also admitted in Request for Admissions that she has not sought professional treatment for stuttering or fluency disorders. (Kathryn Meacham's response to Request for Admissions, #2; executed January 20, 2006 herein attached as Exhibit 111, p. 1906).

40. Kathryn Meacham testified that she thought of herself as an oddball and a freak because of her unwillingness to speak and/or socialize with others.⁸ (Exhibit 134). She indicated

⁸ Kathryn Meacham's sister was also a participant in Mary Tudor's study. She was case #18 and was only given positive comments and reinforcement. Although she only received positive comments, the judges made comments regarding changes in her willingness to speak. The post-study comments by the blind judges were very similar in nature for both Kathryn Meacham and her sister.

that after reading Mary Tudor's thesis, she understands why she feels this way. (*Id.*). She never sought treatment for these feelings. (*Id.*). Even after learning of her involvement in the Tudor Study, Meacham never sought medical attention. (Kathryn Meacham Response to Interrogatory #3 executed March 20, 2006 herein attached as Exhibit 115, pp. 1946-1947). (Kathryn Meacham Response to Request for Admission #2 executed January 20, 2006 herein attached as Exhibit 111. Kathryn Meacham has never been diagnosed as being a stutterer. (Kathryn Meacham Response to Request for Admission #13 executed January 20, 2006 herein attached as Exhibit 111, p. 1909).

F. **At the Direction of Wendell Johnson, Mary Tudor Continued to Meet with the Members of Group IIA and Provided Post-Study Therapy.**

41. Wendell Johnson requested that Mary Tudor return to the ISOH and provide post-study care to the six members of Group IIA. The last known record of Mary Tudor's post-study work appears to have taken place in the last week of August, 1940.⁹ In that report to Professor Johnson, Mary Tudor indicated that:

“The last week in August, I made my last visit to the Soldiers' and Sailor's Orphanage in Davenport. At this time I found that the six children upon whom I had placed the label “stutterer” had accepted my explanation, that their speech had improved and they were no longer stutterers - just as they had accepted all of the suggestions I have given them during the experimental period.”

(Exhibit 25, p. 413).

⁹ Although Mary Tudor believed that letter was drafted in December of 1939, the statements in the letter that “It would surprise me a great deal if any of these children were being influenced now by the therapy I used in working with them last year. They seemed to accept any type of suggestion and I imagine that the positive suggestion I gave them last spring and summer would have as great or greater an effect upon them than the negative suggestion I gave them during the experimental period.” (Exhibit 25, p. 415).

G. Wendell Johnson Was an Associate Professor at the University of Iowa and a Faculty Member of the Iowa Child Welfare Research Station in 1939.

42. Wendell Johnson was an Associate Professor at the University of Iowa in 1939. He held a B.A., M.A. and Ph.D. degree with a combined major in clinical psychology and speech pathology with a minor in physiology. (Exhibit 130, p. 2573). The University of Iowa employed him from 1932 until his death in 1965. (Exhibit 130, p. 2574).

43. Wendell Johnson held positions as research professor, research assistant, research associate, assistant professor, associate professor, and professor with the department of speech and psychology, during his forty year affiliation with the University of Iowa. He was director of the University of Iowa speech clinic from 1943 to 1955. He was also a Diplomat in Clinical Psychology with the American Board of Examiners in Professional Psychology. (Exhibit 130, p. 2574).

H. Wendell Johnson Was the Faculty Advisor for Mary Tudor During Her Graduate Studies and Was One of the University of Iowa Employees Who Worked with Mary Tudor in Developing Her Master's Thesis and Protocols for the Study.

44. Mary Tudor initiated her graduate studies in 1938. Mary Tudor was an approved candidate for the degree of Master of Arts and Master of Science in the Department of Speech Pathology. In preparation for her graduate study work, Mary Tudor met with Professor Wendell Johnson who suggested a topic for her graduate work. (Exhibit 128, p. 2524).

45. Mary Tudor was assigned a graduate committee of three professors to act as advisors, mentors, and supervisors during her graduate work. (Exhibit 128, p. 2341). Mary Tudor's faculty advisors were Wendell Johnson, Associate Professor in the Department of Speech Pathology and member of the Iowa Child Welfare Research Station; J.B. Stroud,

Associate Professor in the Department of Psychology; and Dorothy Davis, Assistant Professor in the Department of Speech Pathology. Wendell Johnson handled the stuttering aspects, Dorothy Davis handled the articulation issues involved in Mary Tudor's study and J.B. Stroud provided oversight, instruction and guidance regarding psychometrics issues. (Exhibit 128, p. 2341, 2358).

46. Wendell Johnson proposed the topic for Mary Tudor's thesis. He was already involved in a comprehensive study of children being brought to the speech clinic at the University of Iowa. At that same time, he was organizing a Works Progress Administration (WPA) project that took place at the ISOH from June 1939 through 1942.¹⁰ (Exhibit 99).

47. Wendell Johnson, Mary Tudor and other graduate students developed protocols, procedures and rules for Mary Tudor's study. (Exhibit 128). Professor Johnson was the head of Mary Tudor's faculty committee and met with her during the planning and operation stages of her study. (Exhibit 128, p. 2394).

48. A graduate student became an approved candidate only when their thesis subject was approved by the department and the Dean. (Exhibit 127, p. 2316). Mary Tudor's thesis topic was identified as an approved research topic within the Department of Psychology in 1939, and was reported in The Graduate College Report of that same year. (Exhibit 127, p. 2322). This official report was published by the University of Iowa on August 1, 1939. (Exhibit 127, p.2315).

49. After the thesis topic was developed, protocols were established, and Mary Tudor submitted the thesis topic to the Dean of the Graduate College, she became an approved candidate of the University of Iowa, Graduate College. Due to the graduate college rule that

¹⁰ The WPA program involving Wendell Johnson, C. Esco Obermann and George Stoddard is discussed in greater detail in this statement of facts.

thesis topic approval must be secured at least six months before the degree can be conferred, Mary Tudor's thesis was approved by the Department of Speech and Pathology, Dean and Graduate Council at some time prior to February 1939. (Exhibit 127, p. 2317).

I. **Mary Tudor's Study Was Conducted Pursuant to an Agreement Between the Iowa Child Welfare Research Station, University of Iowa, and the State Board of Control for State Institutions Whereby Graduate Students Received Training and the Children at the State Institutions Received Necessary Services.**

50. In 1917, the thirty-seventh General Assembly of the State of Iowa established the Iowa Child Welfare Research Station (ICWRS) as an integral part of the State University of Iowa. House Bill 388 (Iowa Code (1931) § 3950) stated:

The State Board of Education is hereby authorized to establish and maintain at Iowa City as an integral part of the state University, the Iowa Child Welfare Research Station, having as its objects the investigation of the best scientific methods of conserving and developing *the normal child*, the dissemination of the information acquired by such investigation and the training of students for work in such fields.¹¹ (emphasis added)

(Exhibit 31, p. 444).

51. Iowa Code (1931) § 3951 vested the management of the Research Station in a director appointed by the Board of Education and an advisory board of seven members who were

¹¹ The University of Iowa is still authorized to maintain a research institute regarding the study of normal children. *Iowa Code*, section 263.5 currently states: "The state board of regents is hereby authorized to establish and maintain at Iowa City as an integral part of the state University of Iowa the institute of child behavior and development, having as its objects the investigation of the best scientific methods of conserving and developing the normal child, the dissemination of the information acquired by such investigation, and the training of students for work in such fields." I.C.A. § 263.5.

appointed by the President of the University from the faculty of the graduate college.¹² Dr. George Stoddard was appointed as director in 1928 and held the position until 1942.¹³

52. The Graduate College reported in 1939 that: "In accordance with this act the Station was established in 1917 as an integral graduate department of the University and the coordinating center for work in child development and parent education in the three state educational institutions: The University of Iowa, Iowa State College, and Iowa State Teachers College." (Exhibit 127, p. 2318).

53. The ICWRS's relationship with other state institutions was described in the 1939-1940, *University of Iowa Studies, Aims and Progress of Research* No. 62:

"Through co-operative arrangements with the Board of Control of State Institutions, children in the following state institutions were available for observation and study: Soldiers' Orphans' Home at Davenport. . . ."

(Exhibit 127, p. 2318).

54. A memorandum drafted on December 4, 1934 by Dean George Stoddard of the ICWRS and Graduate College to President E.A. Gilmore confirmed that the Board of Control of State Institutions did not mandate that the ICWRS provide services:

It is to be noted that the Station does not undertake complete responsibility for the servicing of any institution, but renders its services incidentally to its needs for training and research facilities. The Board of Control and the Station simply have recognized an overlapping area in which both operate to their mutual advantage. The Station has never received an assignment of the responsibility for the technical and service needs of the many institutions under the

¹² The advisory board of the ICWRS consisted of the Deans of the different Departments.

¹³ George Stoddard was aware of the study conducted by Mary Tudor and reported the study in two separate annual reports. (Exhibit 37, p. 532-533. Exhibit 38, p. 547).

Board of Control. The Board has reserved such responsibility and such power to itself.

(Exhibit 45, pp. 673-674).

55. The relationship between the ICWRS and the ISOH was developed to advance the opportunities for the study of normal children and to provide resources for the children living at the orphanage. Dr. Skeels confirmed this in his annual report to the Board of Control in 1936 when he noted that "additional personnel is available from the Iowa Child Welfare Research Station in carrying on research studies of mutual interest and value to the institutions and the Child Welfare Station." (Exhibit 67, p. 1335).

J. The Board of Control of State Institutions Was Authorized to Manage and Control the Iowa Soldiers' Orphans' Home and the Legislature Vested It with Authority to Encourage Scientific Investigation at Its Institutions.

56. The Board of Control of State Institutions was created under the provisions of Chapter 118, and the laws of the twenty-seventh general assembly, which along with the amendments thereto, clothed the board with full power to manage, control and govern 17 state-run institutions. The authority and responsibilities of the State Board of Control was found in Chapter 166. Iowa Code § 3287 empowered the Board of Control to operate the ISOH during the first half of this century.

57. Iowa Code § 3287 stated in pertinent part:

"The board of control shall have full power to contract for, manage, control, and govern, subject only to the limitations imposed by law, the following institutions . . .

12. Soldiers' Orphans Home."

(Exhibit 31, p. 441-442).

58. The legislature vested the authority to the Board of Control (BOC) to encourage scientific investigation at the institutions. Iowa Code (1939) § 3329 stated:

Scientific Investigation. The board shall encourage the scientific investigation, on the part of the executive heads and medical staffs of the various institutions, as to the most successful methods of managing such institutions and treating the persons committed thereto, shall procure and furnish to such heads and staffs information relative to such management and treatment . . .

(Exhibit 31, p. 443).

59. At a State Board of Control meeting on November 24, 1933, it was recommended that, in order to utilize more fully existing resources, the work of the Department of Psychology be carried on cooperatively with the research staff of the Research Station. (Exhibit 65, p. 1305).

60. The Board of Control conducted quarterly meetings during the early 1930s. During the July 1931, meeting, R.E. Zerwekh, superintendent of the ISOH spoke in favor of research at the orphanage. He stated the following:

I mentioned laboratory. That is the additional that is needed right now -- laboratory services. Right here in Iowa we are spending thousands of dollars annually of the taxpayers' money for laboratory equipment and test bearing directly on children and leaving the results of those tests just beautiful theories without ever bringing child and laboratory together in a practical way. A few normal children are selected to be tried in these laboratory experiments and researches, but why should not the nearly 900 children in the two state institutions receive the benefit of such service? If better diet makes better children why not center the laboratory in the surroundings of the homes where Iowa's own children will benefit from Iowa's own dollars and acquired knowledge, where practice and the practical will be on speaking terms with theories and mathematical deductions.

(Exhibit 62, p. 1254).

61. In 1932, Superintendent Zerwekh continued to push his theory that incorporating

research possibilities in the orphanage would benefit the children. He stated that "...study of the child, the measuring of its tendencies, its responses and reactions is the prime service of our homes." (Exhibit 126, p. 2313).

K. The Board of Control Created a Department of Psychology to Work in Cooperation with the Iowa Child Welfare Research Station and the BOC and ICWRS Jointly Hired Associate Professor Harold Skeels to Run the Department of Psychology and Act as a Liaison for Studies and Research Taking Place at the ISOH and Other State Institutions.

62. In 1930 and 1931, research assistants at the ICWRS of the University of Iowa conducted child psychology studies with and for the benefit of the residents of the ISOH. (Exhibit 65, p. 1304). In addition to the collection of data pertaining to such studies, the research assistants rendered intelligence tests and made recommendations for transfer of dependent children to other state institutions. (*Id.*, p. 1304). The services provided by the ICWRS raised awareness of the need for psychological services and research in the state institutions. (*Id.* p. 1304).

63. On January 19, 1934, the Superintendent of the Bureau of Child Welfare, Superintendents of the six children's institutions, the Director of the ICWRS, and two research staff members of the research station, met and formally presented a plan regarding the formation of the Department of Psychology. (Exhibit 65, p. 1305). All of those in attendance approved the plan, and on February 1, 1934, they established the Department of Psychology of the Iowa Board of Control for State Institutions. (*Id.*, p. 1305). The scope of the Department of Psychology was defined as including the psychological services and testing for the Bureau of Child Welfare at the six state institutions for children operated by the Board of Control. (*Id.*, pp. 1305-1306).

64. In 1938, the University of Iowa published The Second Decade, A Review of the

Activities of the Iowa Child Welfare Research Station 1928-1938. George Stoddard, Director of the ICWRS, established the relationship between the Station and the ISOH. He stated:

“ . . . In 1925 the Iowa State Board of Education passed a resolution designating the Station as the co-ordinating center for the work in child development in the three institutions. This was done in order to avoid unnecessary duplication and to insure a constant exchange of information around the three centers.

Reference has been made to the relation between the Station and the Board of Control institutions. The State psychologist in the Board of Control is also a staff member of professorial rank in the Station. Research enterprises and technical programs are sponsored by the Station. The arrangement permits extensive testing and observation on the part of graduate students. The institution gains in the amount of technical service available to its children; the Station provides a better training program for its students and secures large sampling of children for research undertakings.”

(Exhibit 36, pp. 516-517).

65. The staff of the Department of Psychology in 1936, consisted of the head of the department, who was also a member of the staff of the IWCRS, a full time assistant psychologist and a full time secretary. Harold Skeels and the other members of the Department of Psychology had their offices at the ICWRS within the University of Iowa. (Exhibit 66, p. 1324).

66. With the formation of the Department of Psychology, the task of classifying the children and providing assistance to the children began. (Exhibit 125, p. 2303). As a result of individual tests and studies of a large number of children residing at the state institutions, a significant number of children were recommended for transfer to schools for the “feebleminded.” (Exhibit 125, p. 2303).

67. Additional personnel was made available from the ICWRS in carrying on research studies of mutual interest and value to the institutions and the Child Welfare Station. (Exhibit

66, p. 1324).

68. The BOC and ICWRS opened a preschool at ISOH.¹⁴ The preschool was staffed by teachers and students from the University of Iowa and provided opportunities for the residents at the ISOH to get additional education and services.¹⁵

L. The Department of Psychology Was Supervised by Associate Professor Skeels Who, along with ISOH Superintendent Syl McCauley, Acted as Liaison for Studies Conducted at the ISOH.

69. In 1934, Dr. Harold Skeels was responsible for conducting studies at the orphanage and providing psychological counseling and testing for the residents.¹⁶ Until he entered military service during World War II, Harold Skeels held dual positions as head of the State Board of Control, Division of Psychological Services and Associate Professor of the ICWRS.¹⁷

70. Marie Skodak was also simultaneously employed as an assistant psychologist in the Department of Psychology and an associate professor at the University of Iowa. (Exhibit, 73,

¹⁴ The preschool at the ISOH was very similar to the preschool laboratory that had been operated at the University of Iowa for several years. Extensive research and studies were conducted at the preschool laboratory at the University of Iowa. Many of the children attending the preschool laboratory at the University of Iowa were children of professors and staff.

¹⁵ The University of California, The University of Minnesota, Institute of Child Welfare, University of Michigan and University of Chicago all operated preschool, elementary or high school laboratories for the study of normal children. (Exhibit 47, p. 683).

¹⁶ Associate Professor Harold Skeel's salary was jointly paid by the BOC and ICWRS.

¹⁷ Dr. Skeels conducted research at the Soldiers' Home, worked with Wendell Johnson at the University of Iowa and oversaw the psychological examinations, counseling and recommendations of the children at the Soldiers' Home including some of the Plaintiffs in the instant action.

p. 1404).

71. The State Board of Control of State Institutions published biennial reports regarding the various state institutions. Dr. Skeels submitted regular reports on behalf of the Department of Psychology. In the 1936 report, Dr. Skeels made several comments regarding the Department of Psychology and a few excerpts can be found below:

Work at the state orphanages falls into six major areas: . . . Second, follow-up study of children in residence at the Home. . . . Fourth, the rendering of service to the Bureau of Child Welfare in connection with recommendations relating to foster home placement of children. *The superintendent of the Bureau of Child Welfare holds monthly conferences at the institution. At such conferences psychological reports on the study of children are submitted by the Department of Psychology. An attempt is made to work out an adequate life plan for each child.* Where foster home placement is contemplated the policy is to match the potentialities of the home with the abilities of the child. . . . Sixth, cooperation with the Child Welfare Research Station and other departments of the University of Iowa in carrying on research studies of mutual interest and value. Through such relationships additional clinical and research services are made available to these institutions. (emphasis added).

(Exhibit 66, pp. 1324-1325).

72. According to a report published in 1938 by George Stoddard, Director of the ICWRS, that agency together with the BOC shared the services of a psychologist, and sponsored testing and observation. "The institution gains in the amount of technical service available to its children; the Station provides a better training program for its students and secures large sampling of children for research undertakings." (Exhibit 36, pp. 1154-1155). In a 1935 report, Dr. Skeels noted that the cooperative arrangement allowed the Department of Psychology to carry on valuable research that it would not have been otherwise able to undertake, the results of which "have proved of definite value to the Board of Control and the institutions

involved.” (Exhibit 65, p. 1312). The Tudor study was one of many studies conducted pursuant to the cooperative arrangement. (Exhibits 37, p. 519 and 38, p. 540).

73. The Board of Control published its biennial report for the period ending June 30, 1938. This publication gives good insight to the Board of Control involvement with the children at the ISOH. The report confirmed the following:

When children are received at the institution they are immediately placed in the hospital and given the usual medical and psychological examinations. . . A case conference is held once each month by the Placement Committee. Children presenting behavior problems are discussed and an effort is made to learn why they are behavior problems, and plans are made to assist them. Much credit for many of these children finding themselves and making happy adjustments is due to our Department of Psychology.

(Exhibit 67, p. 1337).

74. In 1935, Dr. Skeels discussed monthly conferences held at the Iowa Soldiers' Orphans' Home:

At these conferences plans for each child in residence at these institutions are made. This department has reported at such conferences concerning the mental status of each child in resident at these institutions. Such information, supplementing other data on the children, has proved of value in matching the children to the demands made by the foster homes and in determining the types of placements best suited to the children's abilities.

(Exhibit 65, p. 1310).

75. The records of the actual monthly meeting have not been found, but it is clear that Dr. Skeels, the Department of Psychology and the Board of Control were closely monitoring the children in the orphanage and providing care when needed. (Exhibit 67, p. 1337). The Department of Psychology provided services to the children at the ISOH in excess of 240 times

during 1937 and 1938. (Exhibit 67, p. 1336). The visits served both the personnel and the students. Besides evaluation and aid to the children, they also instructed cottage mothers how to recognize and deal with problems some of the children may have. (Exhibit 67, p. 1337).

76. During a quarterly conference of the Board of Control in July of 1935, Harold Skeels submitted a paper where he expanded his comments regarding the cooperative projects between his Department of Psychology and the research station:

“The cooperative affiliation with the Iowa Child Welfare Research Station as envisaged in the establishment of the Department of Psychology of the Board of Control, has proved most satisfactory for all concerned. It has enabled the Department of Psychology to carry on a program of work far exceeding that which would have been possible through the staff of its own department working single-handed. Practically all of the research projects carried on cooperatively through the Iowa Child Welfare Research Station in the Institutions of the Board of Control have proved of definite value to the Board of Control and the institutions involved. These projects have included a wide scope embracing mental growth, physical growth, behavior and personality development.

Since the department has been established there have been thirty-eight trained workers from the University who have spent a total of over 600 days carrying on research work in the institutions of the Board of Control of direct clinical value to these institutions. The time equivalent of these workers has exceeded that of the regular staff of this department. . . .

Through the Department of Speech Correction valuable service has been rendered to two state orphanages. During the summer of 1934 a worker from the speech department spent about seven weeks at the Iowa Soldiers' Orphans' Home making a diagnostic speech survey and giving actual retraining work to a number of children having speech disabilities.

During the past school year, work has been done at the State Juvenile Home in connection with stutterers. This coming summer it is planned that two workers will devote full-time to this type of work. One worker will be at Toledo and one at Davenport. In addition to the

study of speech disabilities, these workers will also give attention to marked reading disabilities.”

(Exhibit 65, pp. 1312-1314).

77. As the relationship developed between the orphanage and the ICWRS, the services provided by the ICWRS to the ISOH were increased. (Exhibit 125, p. 2303). In addition to providing speech therapy, psychological services, and teachers for the preschool, the ICWRS held regular cottage mothers meetings.¹⁸ (*Id.*, p. 2303). These cottage mothers meetings were conducted in order to help the cottage mothers better understand the childrens’ problems related to certain maladjustments, behavior problems, and nervous tendencies. (*Id.*, p. 2303). The ICWRS provided speakers, conferences, a circulation library and the most approved methods in dealing with the children’s needs at the meetings. (*Id.*, p. 2303). These meetings were bi-monthly and included conferences on individual cases. (*Id.*, p. 2303).

78. In the Nineteenth Biennial Report of the Board of Control of State Institutions, The Bureau of Child Welfare provided the following information:

(c) Several cooperative projects have been made available to the wards of the state through the offices of the child welfare research station. . . . A speech defect survey was made by the department of psychology and retraining in speech and reading disabilities was instituted in some of the cases. More work is needed along these lines.

(Exhibit 125, p. 2304).

M. Members of the ICWRS Conducted Numerous Studies at the State Institutions.

79. As the diverse cooperative studies involving the ICWRS and the ISOH were completed, a few were published in the *University of Iowa Studies in Child Welfare* by the

¹⁸ The children resided in cottages and each cottage was assigned a cottage mother.

University of Iowa. One such study was completed by Katherine Elliott Roberts, Ph.D. entitled "*Learning in Preschool and Orphanage Children, An Experimental Study of Ability to Solve Different Situations According to the Same Plan.*" (Exhibit 59, p. 937). The subjects for her study were twenty-one children in two of the preschool laboratories of the ICWRS and nineteen children in the ISOH. Dr. Roberts indicated in her final report that the selection of the subjects from the ISOH was based on the mental age of the children rather than their chronological age. In her study, Dr. Roberts addressed some concerns regarding children living at the ISOH:

With the children that were available in the orphanage it was impossible to meet the conditions exactly, for there were not enough young children within the required IQ range to allow for discarding those whose mental ages brought the average of the orphanage group higher than that of the preschool group. In other words, there was a scarcity of young children in that particular orphanage whose intelligence was close to normal, for such children were placed in homes quite readily. . . . The experimenter was well acquainted with all the preschool children used as subjects, having been a research assistant in the Iowa Child Welfare Research Station for four years during which time many contacts were made with the children both in testing and group situations. With the orphanage children there was no difficulty in getting into rapport, for an experimental situation to them was a novelty full of much interest; they enjoyed being taken day after day for the "game," and other children begged to play too.

(Exhibit 59). Dr. Robert's statements confirm that regular contacts were occurring between the residents, students, research assistants and professors from the ICWRS.

80. Dr. Roberts was not the only one conducting studies at the ISOH during the 1930s.¹⁹ In addition to his responsibilities as head of the Psychology Division of the State Board of Control, as Associate Professor at the ICWRS, and overseeing studies conducted by others at

¹⁹ Defendant has identified several studies conducted at the institutions run by the Board of Control for State Institutions in its responses to interrogatories.

the ISOH, Dr. Skeels was conducting his own study on the children at the ISOH. Skeel's first study originating from the ISOH was published in December of 1938 in the *University of Iowa Studies, Studies in Child Welfare*. His study was entitled A Study of Environmental Stimulation and was completed in cooperation with Ruth Updegraff, Beth Wellman and Harold Williams.²⁰ (Exhibit 60, p. 1028). Dr. Skeel's team conducting this research consisted of professors, students, research assistants, and preschool teachers observing, testing and overseeing the children at the ISOH. (Exhibit 60).

81. Harold Skeels described his cooperative project at the ISOH. Dr. Skeels indicated:

This project was undertaken for the purpose of studying the effects of preschool education under the controlled conditions. . . Moreover, since there was at hand an opportunity of observing children in an orphanage, correlative aims were the study of the effects of introducing a preschool into an orphanage and the effects of orphanage conditions upon child development at the preschool age. . . . Consequently, plans were laid for the erection of a model preschool building on the orphanage grounds. This building was sponsored by the Iowa Board of Control of State Institutions and the Iowa Child Welfare Research Station. . . The proposed orphanage preschool offered a unique opportunity to extend the studies to include a group of underprivileged children of somewhat lower mental levels living under more constant controlled environmental influences than the multiple variables represented by individual homes.

(Exhibit 60, p. 1033).

82. In 1938, Dr. Skeels described the characteristics of the ISOH during the three years of his study:

²⁰ Many credit Dr. Skeels work as being the driving force behind the creation of the Head Start program.

The Iowa Soldiers' Orphans' Home is a state institution designed for the care and training of dependent and neglected children. Originally, admission was limited to soldiers' and sailors' orphans but later the scope was enlarged to include any resident children of the state wherein the problem was primarily one of dependence and neglect . . . The background of the children in residence in the orphanage is uniformly representative of the lower levels of society. All children are dependents and come from homes of neglect and improper guardianship. . . The co-operative preschool project was sponsored by the Preschool Education Committee of the Station, whose function it was to design the building, decide upon necessary equipment, and set up the research program. The trained teaching staff, including the head teacher and two assistants, was furnished by the Station and worked under the administrative supervisor of the preschool laboratories . . . The research study covered a period of three years . . . Children of preschool ages in residence at the orphanage at the beginning of the project were divided into two carefully matched groups, a preschool group and a non-preschool, or control group. . . Using this situation a number of research studies were initiated, all aiming to determine the effects of preschool experience upon the child's development.

(Exhibit 60, p. 1034).

The significance of the study was discussed by Dr. Skeels on page 183 of A Study of

Environmental Stimulation:

Such an undertaking required full measure of co-operation between the Board of Control of State Institutions, the orphanage, and the research workers. The liaison officer was the state psychologist for the Board who was also a staff member of the Iowa Child Welfare Research Station. . . . Consequently, it was decided to make the approach a broad one and to study many phases of development concurrently. The phases studied included intelligence, vocabulary, language achievements, information, motor achievements, social maturity, social adjustments, social behavior, and later school progress.

(Exhibit 60, p. 1214).

83. One of the areas tested by Dr. Skeels and his team was the language development of the children at the orphanage. He reached the conclusion that:

“Increasing losses in language quotient for both groups were found for the three intervals studies, six, twelve, and eighteen months.”

(Exhibit 60, p. 1113).

“The outstanding result of this section is, of course, that all of the children, with the exception of one subgroup, lost in language quotient during the period of the study.”

(Exhibit 60, p. 1114).

“There would seem to be little question that the orphanage environment was, as a whole, unfavorable to the development of language achievement as here measured, with the exception of those children whose relation to this group was inferior.”

(Exhibit 60, 1114).

84. Orlo Crissey, Ph.D also published a study conducted at the ISOH in the years leading up to 1937.²¹ *The University of Iowa Studies, Studies in Child Welfare* published Dr. Crissey’s study in 1937. Dr. Crissey’s final report was entitled Mental Development as Related to Institutional Residence and Educational Achievement. (Exhibit 58, p. 861). The aim of the study was to investigate the mental development of children in relation to their residence in institutional environments, where the individual has remained in the same general environment or has shifted from an environment designed for children of one mental level to another. The subjects for the study consisted of all children under the age of sixteen living at the ISOH and three other institutions including the Institution for the Feeble-minded at Glenwood.²² (Exhibit

²¹ Orlo Crissey and Marie Skodak married in 1966.

²² Although this lawsuit has only addressed the label given to the participants of Mary Tudor’s study, it can certainly be argued that labels were routinely applied to many of the children residing at these two homes. The label “orphan” has been repeatedly used to identify the children living at the ISOH when they were not orphans. The label “feeble-minded” (even by the Plaintiffs themselves in their pleadings) was attached to children who were sent to live at The

58, p. 866). The final report indicated that over five hundred children from the ISOH were tested during this study.²³ (Exhibit 58, p. 866).

N. At the Direction of Wendell Johnson, Mary Tudor and C. Esco Obermann Provided Post-study Therapy to the Members of Group IIA.

85. As part of the original research plan, Mary Tudor returned to the ISOH after the completed study to provide therapy to the participants of group IIA. (Exhibit 128, pp. 2460-2461). Mary Tudor returned to the ISOH for more than a year after the study and worked with the six participants. (Exhibit 128, pp. 2459-2461). Mary Tudor provided written updates to Wendell Johnson regarding her observations and progress. (Exhibit 128, p. 2463) (Exhibits 25, p. 410 and 26, p. 417).

86. Mary Tudor also recorded an occasion where C. Esco Obermann was at the ISOH providing therapy to at least two of the participants in group IIA.²⁴ (Exhibit 128, p. 2472). Mary Tudor did not go with Professor Obermann to the ISOH at that time.²⁵ (Exhibit 128, 2473).

C. Esco Obermann was a Professor with the University of Iowa in the Department of Psychology

Institution for Feeble-Minded at Glenwood and the School for the Feeble-Minded in Woodward. Many of the residents of the two institutions for the "feeble-minded" had previously been residents of the ISOH.

²³ Crissey identifies studies taking place in orphanages in England, Wurzburg, Texas and California. (Exhibit 58 pp. 874-875).

²⁴ Professor Obermann reported that two of the participant's speech was satisfactory. (Exhibit 128, p. 2473).

²⁵ Professor Obermann, under the direction of Wendell Johnson, worked at the ISOH as part of their WPA program. (Exhibit 99, p. 1666). Professor Obermann assisted with the study and would know the identities of the participants. (Exhibit 128, p. 2382). He also supervised the retesting of 5 out of 6 of the participants of group IIA in the month following Mary Tudor's study. (Exhibit 100).

and assisted Mary Tudor during the study. (Exhibit 128, p. 2381).

87. In 1939, C. Esco Obermann, professor of psychology and member of the ICWRS, assisted Mary Tudor in gathering the data for her study at the ISOH. (Exhibit 128, p. 2381). C. Esco Obermann was also involved in Mary Tudor's post-study therapy at the ISOH. After the conclusion of Mary Tudor's study, C. Esco Obermann evaluated the speech of cases 13 and 14 and found that their speech was satisfactory during one of the post-study evaluations and reverse therapy sessions. (Exhibit 128, pp. 2472-2473).

O. **The ICWRS Sponsored a Federally Funded Work Progress Administration (WPA) Study at the Iowa Soldiers' Orphan's Home from June 1939 until 1942 and Each of the Participants in Mary Tudor's Study Was Identified in the Report Which Has Been Available to the Public at the University of Iowa, State University of Iowa and National Archives for over 55 Years.**

88. The ICWRS and the Iowa State Department of Public Instruction sponsored a series of three federally funded Works Progress Administration (WPA) programs regarding remedial education.²⁶ (Exhibit 101, p. 1730). The Iowa Remedial Education Survey administered individual speech examinations in order to ascertain articulation errors, voice defects and stuttering. (Exhibit 101, p. 1735). As part of these federally funded programs, Wendell Johnson, Dean George Stoddard, and C. Esco Obermann oversaw speech, stuttering and articulation tests performed at the ISOH during the summer of 1939.²⁷ (Exhibit 101, p. 1730). The WPA program was divided into three parts and eventually expanded beyond the ISOH. (Exhibit 101).

²⁶ Wendell Johnson, Harold Skeels, George Stoddard and the advisory committee were developing these WPA programs as early as 1938. (Exhibit 98).

²⁷ Wendell Johnson and C. Esco Obermann initiated this study at the ISOH while Mary Tudor was completing her thesis. (Exhibits 99 and 100).

89. George Stoddard, Dean of the Graduate College at the University of Iowa and Director of the ICWRS, served as the sponsor's representative and as general director of the WPA program. (Exhibit 101, p. 1732). Professor Wendell Johnson acted as the technical director and Dr. C. Esco Obermann and George Wischner functioned successively as statewide supervisors. (Exhibit 101, p. 1732). This program had a technical advisory committee that included Dr. Harold Skeels. (Exhibit 101, p. 1733).

90. The WPA program tested all of the residents at the ISOH and then initiated treatment for children in need regarding speech and reading. (Exhibit 100, pp. 1681-1683). A report of the group of individual analysis of the data collected by the Iowa WPA Project #4892, during the summer of 1939, at the ISOH was completed by John W. Chotlos in 1939. (Exhibit 100, pp. 1681-1684). This report has remained in the libraries at the University of Iowa and Iowa State University since the 1940s. (Exhibit 123, p. 2291 and 124, p. 2299). It has also been available at the National Archives in Washington D.C. since that time. WPA report included a summary of sensory defects for the individuals tested at the ISOH. The names of all six participants in Group IIA are identified by name in this report. (Exhibit 100, p. 1686). The WPA report overseen by Professor Johnson and Professor Obermann confirmed that Mary Nixon, Kathryn Meacham and Phillip Spieker had no abnormal speech findings noted in the report. (Exhibit 100, p. 1686). Charles Fifer was not available for testing. Phillip Spieker and Hazel Potter were reported to only have articulation defects.²⁸ (Exhibit 100, p. 1686). **There was no finding of stuttering or stutter-like behavior in any of the Plaintiffs.** (Exhibit 100, p.

²⁸ Plaintiffs consultant confirmed that articulation problems and stuttering are two different conditions. (Exhibit 121, p. 2216).

1686).

91. The University of Iowa Special Collections Department has maintained in its collection: *A Report of the Group of Individual Analysis of the Data Collected by the Iowa WPA Project #4892, Remedial Education Needs Survey, During the Summer of 1939, at the Iowa Soldiers' Orphan's Home, Davenport, Iowa.* (Exhibit 100, p. 1681). This report was authored by John W. Chotlos. (Exhibit 100, p. 1680). This report has call number LB1121 Un3R. (Exhibit 100, p. 1681). Each of the Plaintiffs is identified in this report. (Exhibit 100, p. 1686).

92. Iowa State University (ISU) Library also has in its holdings the *Individual Analysis of the Data collected by the Iowa WPA project #4892, Remedial Education Needs Survey, during the summer of 1939, at the Iowa Soldiers' Orphans Home, Davenport, Iowa,* authored by John W. Chotlos, Statistician, WPA Project #4892. Call No. LB1121 Un3r. (Exhibit 124). Each of the six Plaintiffs are identified in this report. (Exhibit 100, p. 1686).

93. At the completion of initial testing at the ISOH, Professor Obermann wrote a report in December of 1939. (Exhibit 99, p. 1665). C. Esco Obermann reported the following:

"The survey at the Iowa State Orphanage has been completed, and a report has been made to the school's principal including recommendations for remedial procedures."²⁹

(Exhibit 99). Dr. Obermann also reported that twenty-four percent of the children had articulation defects and *only 4 of the children at the institution had stuttering problems.*

(Exhibit 99, p. 1670). The report identified two of the children who stuttered during the testing.

(Exhibit 100, p. 1686). No Plaintiff was identified in the report as an individual diagnosed with

²⁹ This report would have identified the members of Group IIA if they had been diagnosed with problems and remedial procedures would have been recommended. (Exhibit 100, p. 1684).

stuttering. (Exhibit 100, p. 1686).

94. Wendell Johnson issued a WPA summary report on August 10, 1942. (Exhibit 101, p. 1730). Dr. Johnson discussed the remedial help provided to the individuals identified as in need of assistance. (Exhibit 101, p. 1750). Dr. Johnson reported:

During the summer of 1941 the project was operated in the Iowa Soldiers' Orphans Home, giving service to 35 reading cases and 19 speech defectives, a total of 54 children. During the fall of 1941 and until March 31, 1942, the project was carried on in the orphanage and in five rural schools near Davenport in Scott County. In the orphanage during this period 28 children received instruction, 11 in speech and 17 in reading.

(Exhibit 101, p. 1750). The University of Iowa library has on its shelves *The Iowa Remedial Education Program Summary Report* by Wendell Johnson, dated August 10, 1942. (Exhibit 123, p. 2296). This report has remained available at the University of Iowa Libraries since its publication. It is cataloged as LA286.U5. (Exhibit 123, p. 2296). The report identifies the work performed at the Iowa Soldiers' Orphans home. (Exhibit 101, pp. 1734-1735).

P. **The University of Iowa Received Two Copies of Mary Tudor's Thesis and They Were Processed Just as Any Other Thesis Was Processed and Have Remained Available to the Public Without a Confidentiality Agreement since 1940.**

95. Since 1901, doctoral dissertations and masters theses have been approved by the Graduate College. (Exhibit 123, pp. 2291-2292). In 1939, The University of Iowa Graduate College required that two manuscript copies of the thesis be deposited by the student in the graduate office. (Exhibit 127, p. 2317). The two manuscripts were then transferred to the University Library. (*Id.*, p. 2317).

96. The University of Iowa Libraries has had two bound copies of Mary Tudor's thesis in its collection since 1939-1940 (the typewritten ribbon and first carbon copies). (Exhibit

123, p. 2292). A third copy, a photocopy, was added in 2005. Mary Tudor's original bound thesis was cataloged on receipt, with full author, title and subject records entered in the library catalog, and data has been submitted to relevant national catalogs and databases as possible and relevant. (*Id.*, p. 2292). There are accession notes on the acknowledgment page of the thesis confirming that it returned from the binder on October 30, 1939, cataloged by the Library on February 19, 1940 and placed in circulation near that time. (*Id.*, p. 2292). When each bound volume was accessioned by the University Libraries it was stamped with a unique serial number. (*Id.*, p. 2292). The two copies of Mary Tudor's master thesis have accession numbers 484230 (ribbon copy) and 484231 (first carbon copy) (*Id.*, p. 2292).

97. Mary Tudor's thesis was cataloged by the Library on February 19, 1940. (*Id.*, p. 2292). The stamp on the acknowledgment page confirms that it was cataloged at that time. It has been cataloged by the University of Iowa Libraries since it was originally approved by the graduate college and bound for circulation. (*Id.*, p. 2292). Although the location of the libraries where this thesis was kept between 1939-2001 has changed, the rest of the catalog information has remained the same:

Author	Tudor, Mary.
Title	An experimental study of the effect of evaluative labeling of speech fluency.
Published	1939
Format	Book
Location	Hardin Library For Health Sci Rare Book T1939 .T91 Main Storage (Main Materials) T1939 .T91 Special Collections, University Archives T1939 .T91

(Exhibit 123, p. 2292). The Special Collections Department maintains card catalogs for its collections. The card identifying Mary Tudor's thesis has been in the Special Collections reading

room since approximately 1974. (A true and correct copy of the 3 x 5 card identifying Mary Tudor's thesis; Exhibit 22).

98. Until 1974, both copies were placed in open circulation, could be charged out, and could be requested for inter-library loan. (Exhibit 123, p. 2292). In and about 1974, the two older copies were divided, with one copy remaining in open circulation and the other moved to University Archives. (Exhibit 123, p. 2292). Both copies were available for use, and the circulating copy could both be charged out by readers and borrowed by other libraries at the request of their clientele. (Exhibit 123, p. 2293). Use of the Archives copy was restricted to the Special Collections reading room. The Tudor thesis was handled in a routine manner and has been available to the public since 1940. (*Id.*, p. 2293).

99. At no time did the University of Iowa require anyone to execute a confidentiality agreement to review any copy of this thesis. (*Id.*, p. 2293). Hence, any member of the public could have come to the University of Iowa Libraries and, before about 1974, consulted either of the circulating copies during any business hours (assuming both had not been borrowed by other readers at that moment). (*Id.*, p. 2293). After about 1974, any member of the public could have consulted the circulating copy at will or have asked to consult the Archives copy at any time during the more restricted service hours of Special Collections. (*Id.*, p. 2293). There were no restrictions on Mary Tudor's thesis that were not on every other thesis at the University of Iowa. (*Id.*, p. 2293).

100. There are three copies of Mary Tudor's thesis in the University's library system. Two copies have been in the system since 1940; the third was added in 2005. (*Id.*, p. 2293). There is no indication that Mary Tudor's thesis had ever been removed from the system. (*Id.*, p.

2293). The thesis was always accessible by the public. (*Id.*, p. 2293). One copy is in the Main Library and is available for circulation. (*Id.*, p. 2293). It can still be checked out and taken from the library. (*Id.*, p. 2293). The other two copies are in Special Collections and the Hardin Library for Health Sciences. (*Id.*, p. 2293). These copies can be reviewed in the reading rooms but can no longer be checked out from the library. (*Id.*, p. 2293).

101. The University of Iowa has always made its catalog available to the public. (*Id.*, p. 2293). Mary Tudor's master's thesis was originally available in the library system's card catalog, with duplicate cards filed in numerous locations throughout the library system. (*Id.*, p. 2293). These card catalogs could be found in numerous locations throughout the library system. (*Id.*, p. 2293). In the 1960s, the library system started converting card catalogs to digital format. Nearly all of the information on catalog cards was online prior to June of 2001. (*Id.*, p. 2293).

102. Students and the general public could and can search online for Mary Tudor's thesis since records were converted to digital format. (*Id.*, pp. 2293-2294). This search can be run on the computers available in the University of Iowa Libraries and remotely using the internet. (*Id.*, p. 2294). Mary Tudor's thesis can be located online using the InfoHawk search engine, software that replaced an earlier system ("OASIS") in or about 2000. (*Id.*, p. 2294).

103. The University of Iowa also makes copies of theses whenever requested and provide the copy to any patron who pays the copy cost. Mary Nixon confirmed that, prior to 2001, she contacted the University of Iowa Library and was provided a copy of Mary Tudor's thesis. (Exhibit 133, pp. 2810-2811).

104. At deposition, Mary Tudor confirmed that people she knew had indicated that they had checked her thesis out over the years. (Exhibit 128, 2337-2347).

105. Mary Nixon and Susan Dawson contacted the University of Iowa and requested a copy of the Tudor study which was provided to each by the University. (Nixon Exhibit 24) (Exhibit 140, p. 3494). Neither Mary Nixon nor Susan Dawson was required to sign any confidentiality agreement. (Nixon - Exhibit 24) (Exhibit 140, p. 3496).

106. One of the copies of the thesis had a use list included in the first page. The use list identifies several times when the thesis was reviewed during the six decades. A copy of the redacted use list is attached as Exhibit 21.

Q. At the Time That Mary Tudor Completed Her Thesis, the University of Iowa Encouraged Outside Publication of Theses and Dissertations and Wendell Johnson Fell Behind in Attempting to Publish Research at the University.

107. The following statement was made in the 1930s regarding publication policies for theses and dissertations completed at the University of Iowa:

The University will have nothing to do with publication for the sake of publication and does not engage in the general business of publication. This practice of encouraging outside publication of the results of learned investigations in the University and merely supplementing those avenues by our own Studies, represents a most wholesome policy and is sound economically and in effective service.

108. In 1955, Wendell Johnson professionally published a comprehensive summation of research conduct at the University of Iowa and ICWRS entitled: Stuttering in Children and Adults: Thirty Years of Research at the University of Iowa. There has been a copy of this book available to the public at the University of Iowa since its publication. (Exhibit 123, p. 2292). The book provides additional insight into Dr. Johnson's concern with getting matters professionally published. Dr. Johnson addresses his problem with getting work published:

This book contains all previously unpublished papers and dissertations produced in the University of Iowa stuttering research

program with the exception of current research and twelve recent investigations for which other publication plans have been made, and eighteen older studies, all of which were M.A. theses. . . . There are two main reasons why the papers included in this volume have not been published previously. One is that sometimes the editorial processing of theses does not fare well in competition with the other preoccupations of those directly involved. The other is that for the six years from 1943 to 1948 I served as editor of the Journal of Speech and Hearing Disorders (formerly the Journal of Speech Disorders) and I was particularly economical of the limited space available in the Journal so far as papers produced at Iowa were concerned. Moreover, it did not seem advisable at the time to publish these papers elsewhere. As a consequence, by the end of 1948 the backlog of unpublished research had become sufficiently large to present a practical problem to which there seemed to be no immediate approach.

(Exhibit 83, p. 1475).

109. Wendell Johnson sent a letter to Professor E.C. Mabie, Head, Department of Speech at the State University of Iowa on July 5, 1940. (Exhibit 81, 1445). The letter contained the following comments:

Each year at this time, Dean Stoddard requests a report of studies done in the Child Welfare Research Station. In order to make the report fairly complete, I have included studies that were not definitely Station Research. It occurs to me that you would also be interested in having a copy of this report. The large number of studies completed but unpublished represents a backwash of growing concern to me, and I hope to be able to arrange my work in the next year or two so that it will be possible to deal with it.

(Exhibit 81, p. 1445).

R. Although Mary Tudor Never Thought about Publishing Her Thesis, it Was Reported, Described, and Analyzed in Classroom Lectures, Professional Conferences, Fiction and Non-fiction Books, Journals, Newspaper Articles, Official Reports and Was the Subject of Another Thesis.

110. Mary Tudor testified that she never spoke to Wendell Johnson about publishing

her work and that she was not concerned regarding whether her thesis was ever published. (Exhibit 128, p. 2348). As early as 1996, Mary Tudor did give permission to Jerry Halvorson, Ph.D. to use the information contained in the thesis for study, educational and documentary purposes. (Exhibit 91, 1617).

111. Although Mary Tudor never sought publication of her thesis, it was reported in several varying formats over the next 60 years.

CORRESPONDENCE

112. The first report of her study was made by Wendell Johnson in a letter and report, "Studies in Speech Pathology," he sent to Professor E.C. Mabie, Head, Department of Speech at the State University of Iowa on July 5, 1940. (Exhibit 81, p. 1145). The cover letter contained the following comments:

"Each year at this time, Dean Stoddard requests a report of studies done in the Child Welfare Research Station. In order to make the report fairly complete, I have included studies that were not definitely Station Research. It occurs to me that you would also be interested in having a copy of this report. . ."

(Exhibit 81, p. 1145). The 14-page report attached to Wendell Johnson's letter of July 5, 1940, identifies 12 studies that were completed and published or accepted for publication. (Exhibit 81, p. 1445). Wendell Johnson had personally authored four of the studies to be published. (Exhibit 81, p. 1445). There were also eighteen studies completed but not published or accepted for publication. (Exhibit 81, p. 1445). Mary Tudor's study was the fourteenth study referenced in the report. (Exhibit 81, p. 1445). The following information was provided in Johnson's report:

"Effect of evaluative labeling on speech fluency. By Mary Tudor. Twenty-two Children in the Iowa Soldiers' and Sailors' Orphans home were divided into four groups: (1) six normal speakers

who were told they were normal speakers, given positive evaluative labels; (2) six normal speakers who were told they were stutterers, given negative evaluative labels; (3) five stutterers who were told they were stutterers; (4) five stutterers who were told they were normal speakers. Dictaphone records were obtained from each child at the beginning and end of the experiment, as were fluency ratings by five judges, handedness and eyedness test scores, and IQ's."

(Exhibit 81, pp. 1454-1455). This correspondence and report are located in the University of Iowa Library, Special Collections. (Exhibit 123, p. 2296).

PUBLISHED REPORTS

113. George Stoddard, Director of the ICWRS, published the official Iowa Child Welfare Research Station Report for 1938-1939. (Exhibit 37, p. 520). The University of Iowa Libraries has also maintained a copy of the published Report of the Iowa Child Welfare Research Station, July 1, 1938 to June 30, 1939, in its collection. (Exhibit 123, p. 2294). It is cataloged as part of the Archives Serials collection. (Exhibit 123, p. 2294). Iowa State University (ISU) also has in its holdings the Report of the Iowa Child Welfare Research Station for the years 1938-1939 (Exhibit 37, p. 519) and 1939-1940 (Exhibit 38, p. 540)(Exhibit 124, p. 656). The Mary Tudor thesis is identified on pages 59 & 60. It is cataloged as HQ750 Io91r. (Affidavit of Tanya Zanish-Belcher; Exhibit 124, p. 2299). These reports have remained in the libraries and available to the public since 1940. The 1939 annual report identified all of the ongoing studies conducted by the Research Station during the proceeding year.³⁰ (Exhibit 37, pp. 522-523). Within his report of studies in speech pathology, Dr. Stoddard identified Mary Tudor work as completed but unpublished. Dr. Stoddard's published report described Mary Tudor's work as

³⁰ The report identifies studies taking place at the University of Iowa preschool laboratory, public schools, ISOH, hospitals and foster homes.

follows:

Effect of evaluative labeling on speech fluency. By Mary Tudor.

Twenty-two children in the Iowa Soldiers' and Sailors' Orphans' home were divided into four groups: (1) six normal speakers were told they were normal speakers, given positively evaluative labels; (2) six normal speakers who were told they were stutterers, given negatively evaluative labels; (3) five stutterers who were told they were stutterers; (4) five stutterers who were told they were normal speakers. Dictaphone records were obtained from each child at the beginning and end of the experiment, as were fluency ratings by five judges, handedness and eyedness test scores, and IQ's.

(Exhibit 37, p. 532-533). Dr. Stoddard confirmed in his published report that six normal speakers were told they were stutters and given negative evaluative labels.

114. The University of Iowa Libraries has copies of the University of Iowa, *Graduate College Programs, Announcing Candidates for Higher Degrees, 1901-1946* (University of Iowa Press).(Exhibit 123, p. 2294). The issue for 1937 is part of a bound run in the circulating collection (call number AS36.I95); has been microfilmed and is available in the Media Department; and is in University Archives Record Group 12. (Exhibit 123, 2294). Mary Tudor is identified as a candidate for the degree of Master of Arts and Master of Science with the following information included on page 26 of the official report:

Mary Tudor, B.A. State University of Iowa, 1938 Speech Pathology
Thesis: An experimental study of the effect of evaluative labeling
on speech fluency.
Committee: W. Johnson, Stroud, Davis
Wednesday, July 26, 10:00 A.M., E-15 EH

(Exhibit 123, p. 363, 2294).

115. Mary Tudor's thesis was also identified as an approved thesis in the report of the

Graduate College in the *University of Iowa Studies, Aims and Progress of Research*, No. 62 on August 1, 1939. It was identified as a thesis topic for a Master of Arts within the Department of Psychology:

**“An Experimental Study of the Effect of Evaluative Labeling
on Speech Fluency.”**

(Exhibit 127, p. 2322). This published report of the graduate college has been available to the public since 1940.

116. The *Report of the Graduate College, University of Iowa 1939-1940* can be found in the University of Iowa Library. The report was published in September of 1940. (Exhibit 71, p. 1390). On Page 13, Mary Tudor is identified as having received her Master of Arts degree in August of 1939. (Exhibit 71, p. 1391).

117. When Dr. Stoddard published the ICWRS report for 1939-1940, Mary Tudor's thesis was again discussed. (Exhibit 38, p. 547). The report identifies the nature of the study and the location where the study took place:

Effect of evaluative labeling on speech fluency. By Mary Tudor.
Twenty-two children in the Iowa Soldiers' and Sailors' Orphans' home were divided into four groups: (1) six normal speakers were told they were normal speakers, given positively evaluative labels; (2) six normal speakers who were told they were stutterers, given negatively evaluative labels; (3) five stutterers who were told they were stutterers; (4) five stutterers who were told they were normal speakers. Dictaphone records were obtained from each child at the beginning and end of the experiment, as were fluency ratings by five judges, handedness and eyedness test scores, and IQ's.

(Exhibit 38, p. 547). The University of Iowa libraries has a copy of the official Report of the Iowa Child Welfare Research Station, July 1, 1939 to June 30, 1940, in its collection. (Exhibit 123, p. 2294). It is cataloged as part of the Archives Serials collection. (Exhibit 123, p. 2294).

Mary Tudor's thesis is identified on page 44. (Exhibit 38, p. 547).

CLASSES AND MEETINGS

118. Wendell Johnson discussed Mary Tudor's work at a 1955 stuttering focus group attended by Joseph Stewart. Dr. Johnson stated that it was insignificant, and that there were no major findings regarding the origin of stuttering in support of the diagnosogenic theory of stuttering etymology. Nothing was said to Dr. Stewart indicating that he should not discuss Mary Tudor's study or that it was to be kept hidden. (Exhibit 122, p. 2287).

119. As a Professor at University of Wisconsin, River Falls, Jerry Halvorson spoke about Mary Tudor's study and had Mrs. Tudor call in and speak to his classes during the 1990s. (Exhibit 121, p. 2085-2086).

BIBLIOGRAPHIES

120. In 1941, Wendell Johnson completed a representative bibliography of all research related to speech and speech therapy. Mary Tudor's study is identified on Page six:

"98. Tudor., M. An experimental study of the effect of evaluative labeling on speech fluency. M.A. Thesis, Univ. of Ia., 1939. Ed. Psych. Phil. Library."

(Exhibit 82, p. 1468). Wendell Johnson not only identifies Mary Tudor's thesis but also provides it location in the library.

121. Another early bibliography referencing Mary Tudor's work is contained in Franklin Silverman, Ellen-Marie Silverman and Marie Meagher *Bibliography of Literature Pertaining to the Onset, Development, and Treatment of Stuttering During the Preschool Years*, published in the Journal of Fluency Disorders 4 (1979), p. 171-203. The authors provide the following reference on Page 199:

Tudor, M. An experimental study of the effect of evaluative labeling on speech fluency. Unpublished Master's thesis, State University of Iowa, 1939.

(Exhibit 84, p. 1496).

NON-FICTION BOOKS

122. As part of its collection, the University of Iowa Libraries has Wendell Johnson's book, Stuttering in Children and Adults, Thirty Years of Research at the University of Iowa (Exhibit 123, p. 2295). It was copyrighted in 1955 by the University of Minnesota. It has been assigned catalog number RC424 .J7638 1955 (copies in both Hardin and Main with a third copy in Special Collections assigned a temporary call number of 96-1102). It has also been assigned Library of Congress Catalog Card Number: 55-7696. The catalog records also indicate that it was published in Great Britain, India, and Pakistan. (Exhibit 123, p. 2295). This 1955 book by Wendell Johnson and R. Leutenegger professionally published a comprehensive summation of research conduct at the University of Iowa and ICWRS. (Exhibit 83, p. 1470). On page 450 of his 1955 book, Wendell Johnson includes a bibliography of University of Iowa studies regarding stuttering through 1954. Dr. Johnson identifies Mary Tudor's thesis:

"Tudor, Mary (Jacobs). An Experimental Study of the Effect of Evaluative Labeling of Speech Fluency. 1939"

(Exhibit 83, p. 1479). Mary Tudor is also listed in the index on page 471. (Exhibit 83, p. 1480).

123. The University of Iowa Libraries has a copy of Franklin H. Silverman's book Stuttering and Other Fluency Disorders in its collection. (Exhibit 123, p. 2295). This book was originally published in 1992. It has numerous pages discussing and citing Mary Tudor's Master's Thesis. (Exhibit 123, p. 2295). It is cataloged as Hardin Library RC424 .S57 1992. (Exhibit 123,

p. 2295). There are also copies of later editions in the Hardin Library for Health Sciences, cataloged as RC424 .S57 1996 and RC424 .S57 2004. (Exhibit 123, p. 2295).

124. Theodore J. Peters and Barry Guitar authored *Stuttering: An Integrated Approach to its Nature and Treatment* which was originally published by Williams and Wilkins in 1991. (Exhibit 86, p. 1505). It received a Library of Congress Catalog number. (Exhibit 86, p.1507). Mary Tudor's thesis, including her methodology, is discussed on page 60.

FICTIONAL BOOKS

125. In 1999, Plaintiff's consultant, Jerry Halvorson authored a book regarding Mary Tudor's study entitled Now Stutter My Orphan. Mary Tudor provided two days of videotaped statements for Mr. Halvorson. Franklin H. Silverman, Ph.D. wrote the foreword to Now Stutter My Orphan. Jerry Halvorson indicated in his book that Mary Tudor gave generously of her time and energy to help the author understand the intricacies of her work. Mary Tudor discussed this matter by phone and in person. Jerry Halvorson reported that Mary Tudor wished that the information be used for educational and documentary purposes.(Exhibit 92, p. 1625).

PROFESSIONAL JOURNALS

126. Franklin Silverman published in article analyzing Mary Tudor's study entitled, "*The 'Monster' Study*" in the Journal of Fluency Disorders 13 (1988), 225-231. (Exhibit 85, p. 1500-1503). This is the earliest reference to Mary Tudor's study as "The Monster Study" that has been located. This journal has been available at the University of Iowa Libraries and other libraries since its publication. This journal is located in the Hardin Library periodical section. (Exhibit 123, p. 2295).

NEWS ARTICLES

127. In 1992, The *Iowa City Mercury* news published a newspaper article written James Dyer, The Twisted Experiment of Dr. Wendell Johnson. (Exhibit 89, p. 1608).
128. Mary Tudor and her findings were discussed by Jerry Halvorson in preparation for a 1999 article. (Exhibit 95, p. 1655).
129. On August 16, 1999, the Saint Paul Pioneer Press and Knight Ridder/Tribune News Service published an article discussing the study. The headline was "Book Unveils Secret Study in Which Orphans were Trained to Stutter." (Exhibit 94, p. 1653).
130. The Chicago Tribune also published a news account of Mary Tudor's study. It was entitled "Ex-Stutterer's Book Exposes '30s Experiments on Children." (Exhibit 93, p. 1650).

GRADUATE THESES

131. Marla Ruth Patton, a master's candidate at the University of Arkansas submitted her thesis entitled "The Monster Study Revisited." Ms. Patton re-analyzed Mary Tudor's thesis, data, and research. Marla Patton's thesis was completed in 1992. (Exhibit 88, p. 1538). Marla Ruth Patton made the following comments regarding the original study:

"It would appear that Tudor's original experimental design was poorly designed and executed as it relates to the assignment of subjects to the experimental groups. . . When these fluency ratings were tested statistically, no clinically significant differences were found, suggesting that the four groups originally were alike in regards to overall perceived fluency. These results strongly suggest that those children placed in the stuttering groups (Groups one and two) and those placed in the non-stuttering groups (groups three and four) were essentially the same with regards to overall fluency at the beginning of the treatment protocol. In fact, the children Tudor (1939) placed in group one (stutterers) actually had a higher fluency rating than those placed in groups three and four who were supposedly non-stutters. Related to this is another concern in that three out of six children in

group three (the "monster" group- who were considered to be normal speakers actually had an original fluency rating below 3.0 which was considered to be below average on the five point perceptual fluency rating scale.

(Exhibit 88, p. 1577-1578).

S. Although it Has Been Stated That Wendell Johnson Distanced Himself from Mary Tudor, He Provided a Letter of Reference for Mary Tudor on August 19, 1942 and Agreed to Sponsor Her Entry into the American Speech and Hearing Association on January 17, 1957.

132. Wendell Johnson wrote a letter of recommendation for Mary Tudor on August 19, 1942. (Exhibit 28, p. 434). Wendell Johnson confirmed that he had asked Mary Tudor to return as an assistant in the psychological and speech clinics during summer sessions. (Exhibit 28, p. 434).

133. A letter was written by Wendell Johnson to Mary Tudor on January 17, 1957. (Exhibit 30, p. 438). In this letter, Professor Johnson confirmed that he would be more than glad to serve as her sponsor in connection with her applications to the American Speech and Hearing Association. (Exhibit 30, p. 438). He also recommends his book entitled Stuttering in Children and Adults to her in this letter. (Exhibit 30, p. 438). This is the same book that cites Mary Tudor's work.

T. All of the Records for Prior Residents at the Iowa Soldiers' Orphan's Home Are Confidential Records Within the Meaning of Iowa Code, Section 22.7 and Can Be Reviewed by Researchers After Executing a Confidentiality Agreement.

134. Although Plaintiffs allege in their amended petition that the State of Iowa intentionally and deliberately concealed the truth about the study and required confidentiality agreements before finally being given access to the documents that precluded them from knowing their involvement, Susan Dawson testified that she had access to the records without a

confidentiality agreement and she could tell simply by reading the thesis that her father was case #13. (Amended Petition and Exhibit 140, p. 3510-3519).

135. The Iowa Board of Control for State Institution and ISOH records that were retained regarding Clarence Fifer, Phillip Spieker, Mary Nixon, Hazel Potter, Kathryn Meacham and Betty Romp are confidential records pursuant to the Iowa Code. (Exhibit 136, p. 3251). As such, they cannot be viewed by the public. Confidential records are defined by Iowa Code, section 22.7:

1. The following information relative to individuals receiving services or assistance from the department shall be held confidential:
 - a. Names and addresses of individuals receiving services or assistance from the department, and the types of services or amounts of assistance provided, except as otherwise provided in subsection 4.
 - b. Information concerning the social or economic conditions or circumstances of particular individuals who are receiving or have received services or assistance from the department.
 - c. Agency evaluations of information about a particular individual.
 - d. Medical or psychiatric data, including diagnosis and past history of disease or disability, concerning a particular individual.
2. Information described in subsection 1 shall not be disclosed to or used by any person or agency except for purposes of administration of the programs of services or assistance, and shall not in any case, except as otherwise provided in subsection 4, paragraph "b", be disclosed to or used by persons or agencies outside the department unless they are subject to standards of confidentiality comparable to those imposed on the department by this division.

136. The State of Iowa does not keep all records. Only those records that are

determined to have historical significance are maintained. Iowa Code, section 305.2. states that: "Archives" means records that have been appraised by the state records commission as having sufficient historical, research, evidential, or informational value to warrant permanent preservation and that have been transferred to the custody of the state archives.

137. Mary Tudor and Wendell Johnson did not know the potential dangers or hazards to the emotional or psychological well-being of the children in the study. (Exhibit 128, p. 2365).

138. None of the Plaintiffs suffered severe emotional distress as a result of the claimed "outrageous conduct." (Exhibits 1-134 and 135, p. 3248).

139. The conduct of the State of Iowa in causing the claimed "severe emotional distress" was not outrageous in 1939. (Frank Lassman) (Exhibit 135, p. 3248).

140. No one on behalf of the State of Iowa intentionally inflicted emotional distress upon any of the Plaintiffs. (Exhibit 135).

141. No conspiracy existed between Wendell Johnson, Mary Tudor, C. Esco Obermann, other faculty members and members of the graduate students to conceal the existence of Mary Tudor's study from the public, including the Plaintiffs. There is no evidence that anyone made any effort to keep the Plaintiff's participation in this study from them. (Exhibit 1-135).

142. The Defendant State of Iowa acted as *in loco parentis* for the Plaintiffs as warden or the State in 1939 when the Tudor Study was performed.

THOMAS J. MILLER
Attorney General of Iowa


SCOTT J. IDLEMAN
Special Assistant Attorney General

Department of Justice-Special Litigation
Hoover State Office Building
Des Moines, Iowa 50319
(515) 281-6663
FAX: (515) 281-4902

FILED
07 JUL 13 PM 3:17
CLERK OF DISTRICT COURT
JOHNSON COUNTY, IOWA

Original filed
Copies to:

Eric Borseth
BORSETH, SIEBRECHT & SIEBRECHT
111 - 2nd Street S.E.
Altoona, Iowa 50009

Curt Krull
ROHRICK, KRULL & LUMBERG
505 Fifth Avenue, Suite 535
Des Moines, Iowa 50309

ATTORNEYS FOR PLAINTIFF MARY NIXON

Evan A. Douthit
Randall L. Rhodes
Benjamin C. Fields
DOUTHIT, FRETS, ROUSE, GENTILE & RHODES, L.L.C.
903 East 104th Street, Suite 610
Kansas City, Missouri 64131
ATTORNEYS FOR PLAINTIFFS MEACHAM;
TOLBERT; EHRHARDT; DAWSON & DORNBUSH

PROOF OF SERVICE
The undersigned hereby certifies that a true copy of
the foregoing was
 personally delivered
 mailed
 sent via telefax
to each party of record at their last known address
on July 12 2007
