

**IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
BORWARD COUNTY, FLORIDA**

**CASE NO: 07-0824**

**FEBRUARY 21, 2007**

**DIRECT EXAMINATION OF LARRY BIRKHEAD**

**QUESTIONS BY MR. MILSTEIN OF LARRY BIRKHEAD**

Q Mr. Birkhead, you have been sitting here during the course of this trial?

A Yes, sir.

Q You have been here today?

A Yes, sir.

Q You have heard the question before you with regard to financial remuneration as a result of the death of Daniel Smith and as a result of the death of Anna Nicole Smith?

A Yes, sir.

Q I am going to ask you same or similar questions, because I don't know ho if I can have the court reporter read them back, and she is happy about that.

Since the death of Daniel, Anna Nicole Smith's son, have you received any direct financial remuneration from any source from any press or any media?

A What was that last part?

Q Any – whether you received any money from any media press or public relations.

A In my profession, I'm a photographer and a reporter. The answer would be, yes, in the sense that I have photos that I have taken over the years, in this situation, of Anna Nicole and also her son and Mr. Stern or anybody that was around us for the last few years, that has been on archived with my employers and different magazine, newspapers and archived photos. So in that sense, I have, but I don't know if that answers your question.

Q So your answer is you received royalties form archived pictures?

A And I have since '98 or '99.

Q Have you sold any likenesses or pictures of Daniel or Anna Nicole Smith since the death of Daniel?

A There have been many sales of those photos.

Q You directly?

A Not directly.

Q Have you sold any videos?

A I don't own any videos.

Q Have you sold any sketches?

A No, I don't have any sketches.

Q Have you sold or contracted for any interviews?

A I have done interviews, but I have not contracted for any interviews. They have ran in conjunction with photos that I own the copyright to, that have possibly been sold to organizations that I did interviews for. I have not for the interview. But in conjunction with the story of Anna Nicole and her son, that's before this and after that.

Q After Daniel died?

A Yes, sir.

Q Did you receive any financial remuneration, any money, as a result of an interview that you have done since his death in September of 2006?

A No, sir.

Q Is it your testimony that you received royalties for any interviews or photograph prior to his death in February of 2006?

A Well, I have not received – because the way that the money is routed, at times it's delayed three or four times months away and it's been awhile. I might have received some. But what happens is every month, I get an invoice and it shows every single sale of photograph and that is handled by the person that negotiate the price. So I would say, yes, at this time, some of that has come my way.

#### QUESTIONS BY THE COURT OF LARRY BIRKHEAD

Q So you were freelancer?

A Yes, sir.

Q What do you make a year?

A It varies it. It depends.

Q What did you make last year on your tax return?

A I actually don't remember.

Q Did you make \$30,000?

A Greater than that.

Q Fifty thousand?

A More than that.

Q Eighty thousand?

A It was greater than that.

Q Where you live, do you pay rent?

A I do.

Q What is your rent?

A It's like fifteen hundred dollars a month.

Q Do you live alone in that place?

A Yes, sir. I wanted –

Q No, no. There is no question. I want it clarified, because you have answered, I think and I understand the answer, but I want to make sure the record is clear. Since September of 2006, you have not taken any photos or taken any old photos, other than those that have been archived?

A There has been photos – actually there were photos, after Mr. Stern appeared on talk show and said, I did not have a relationship with Ms. Smith, there was a photo that I sent out, that I would be compensated for through my photo agency since 1988.

Q To whom did you sell that photo?

A It's been everywhere. It was sent out in conjunction with the statement that I was not in a relationship, so that was my proof.

Q Let me get the time. When did you meet Ms. Smith, what year?

A In 2003.

Q And what event was it that you met her?

A I met her at the Barnstable Brown, in conjunction with a function at the Kentucky Derby.

Q What –

A She was there in 2003 and I had no contact until 2004. And after that event, Mr. Stern and I had contact about a future event and I was invited by Anna Nicole via Mr. Stern to attend that event and take photographs. And after that, I was asked to go to another event personally by Ms. Smith and our relationship went from professional to a personal relationship.

Q They hired you as their private photographer?

A Yes.

Q And to sell them?

A To sell them, which I continue to do so.

Q Was that successful?

A Yes, sir.

Q What was generated for them, ballpark?

A For Anna Nicole?

Q Yes.

A Her personally, there was not a return. But there was a conversation about the possibility that there was never any financial return to her, but it was a working relationship where she would –

Q What did you make in 2004 with that. You started to do it in 2004?

A No. I have been doing photography –

Q With her, with Anna Nicole.

A You know what, I could not give you an answer.

Q Percentage.

A Because Ms. Smith asked me to be her only one and not to photograph any other celebrities. After 2005, I would say mid 2004 to 2005, the majority of the income was based on photographs of other previous royalties that I had in archive.

Q When did it become professional to personal?

A I would say in July and August of 2004, we –

Q July of 2004?

A Yes, sir.

Q It became a personal relationship?

A Yes. And then in August of 2005, after a trip to Los Angeles with Anna Nicole and Mr. Stern and, I guess, several members of Anna Nicole's entourage –

Q What was Stern's relationship with her at that point in July of 2004?

MS. BARTH: Objection. Calls for speculation.

THE COURT: Well, it does – strike that. It does not call for speculation. I want to know his impression. What was his impression. It's hard to argue with me.

MR. MILSTEIN: And I cannot object.

Q What is the impression that you had?

A Well, he was her attorney, he was her publicist, her manager. He was her friend. He ran errands. He did personal things for her and he – he was kind of multitasking her.

Q Was he her most significant person that she relied upon?

A In what respect?

Q Who else did she depend upon?

A She did depend on Mr. Stern for his advice and input in her personal and professional matters.

Q Did you know whether or not they had an intimate relationship?

A No. The answer to that –

Q What is the answer?

A No, they did not, because I moved in with Ms. Smith in August of 2005.

Q How about in July of 2004?

A In July of 2004, we were in, I believe, I covered a couple of events, one of which was Kids Camp, where Anna was filming her reality show.

Q So in July of 2004, you began to have an intimate relationship with her?

A Yes.

Q And it blossomed again. Was that a short lived relationship?

A No. I moved in with her in August of 2005.

Q A year later. Well, were you exclusive during that year?

A Yes, sir.

Q She would be with you for that year from July of 2004 to August of 2005?

A Yes, sir.

Q And what was Stern's reaction with regard to your relationship with her?

A He interfered with our relationship.

Q Describe?

A There were times when Anna Nicole wanted to do public events and there were couple of instances where he canceled tickets that we had to basketball games. There was a time, because he was fearing that I would be seen in public, which is what I was told by Anna Nicole. And also –

Q Bring me to beyond August of 2005. How long did it last?

A I lived with her from August of 2005, 2004 to –

THE COURT: August of 2005. We are beyond the time where it's getting tiring. Some for the lawyers – any lawyer here could object and I would call it for the night. If any lawyer objects that it's too late, I will stop for the night and there is no prejudice or bias in the Court's eyes if you do.

MS. OPRI: We have no problem, but I would request the Court that and I thank you for the line of questioning, but I thought this was the money line of questioning. I reassert the right to question my own witness.

THE COURT: Yes.

MS. OPRI: Thank you.

#### QUESTIONS BY THE COURT OF LARRY BIRKHEAD

Q We are going to keep going, because we want to get it all in. You said August of 2005?

A But I wanted to go back to August of 2004.

Q Tell me about when you moved in with Anna?

A At her request, Mr. Stern, he had his own apartment at the time and he would come over in the afternoon and sleep on the couch down below our bedroom or he would have his run of the house, and sometimes he would stay there. Sometimes Anna Nicole would

be – I would have to ask him to leave or we would have to try to ensure our privacy in some way in her own room, but I stayed living there until April of 2005.

Q April of 2005 or 2006?

A No, 2004 to 2005 April of 2005.

Q April of 2005 I got it.

A The relationship did not end will not really because what happened was Anna suggested that because of the tension inside the house, it was not just Mr. Stern and there were other people in the home and we did not have a lot of time. She suggested the possibility of us obtaining a place through in another part of the city for us to go, kind of a safe haven or place to retreat to that I would have my things at because basically we were running out of space that we lived, so it was a better fit.

Q Did you find another place?

A Yes, sir. I moved my belongings.

Q But you still remained in the home?

A No, sir. We went back and forth. I went back and forth.

Q To both homes?

A On occasions.

Q With Anna Nicole?

A Yes. Most nights, yes, sir. It was not until – with one exception that I am aware of.

Q Let's not get into that.

A Just to back up, if I may, another reason why that I got my own place and our main place, the place was in my actual name but it was suggested by her and agreed upon by both of us was because Anna Nicole had suffered a miscarriage with my child and it was creating tension.

Q Month and year.

A In January.

Q What year:

A 2005. And she miscarried in February of 2005.

Q Then what happened?

A She thought I blamed her for the miscarriage, we had some tension and also because of interference internally in the home we decided we wanted to break away from some of the things in the home and felt it was best because I wanted to be an individual and maintain my own place and have my own place. Because I had come from Kentucky, to be in a relationship with her to be based on mutual feelings –

Q In April of 2005, you find that new place to live?

A Yes, sir.

Q How long did you remain in that place?

A I am still there.

Q Was she picking up the rent money?

A No, sir.

Q You were supporting it?

A Yes, sir.

Q Tell me about the Bahamas?

A Are we going that late tonight?

Q When does the Bahamas come into play?

A After the miscarriage and all we had, of course, a time in between.

Q What?

A There is a long timeframe in between and we maintained our relationship. There was a time in November and December of 2005, where Ms. Smith went to South Carolina. She was distraught over a video that aired and she said she wanted to get away.

Q What video?

A On Primetime Live, where her husband or her late husband said he did not promise her half of his estate.

Q This oil fellow?

A Yes, sir. He said it was all gifts.

Q There was a video of that?

A And she was very distraught and –

Q It affected her?

A Yes, sir. She medicated – she was medicated and she was kind of not herself, and she took off to there and we stayed in contact. I told her I was upset about her going –

Q What date?

A It was November. Between November 18<sup>th</sup> and November 22<sup>nd</sup>.

Q She takes of. Where does she go?

A She went to see a wealthy gentleman in South Carolina that I had introduced her to on a vacation.

Q You knew this fellow?

A Yes, sir.

Q You think she might have had a personal relationship with him on a personal note?

A Yes, sir.

Q In November of 2005?

A Through Christmas, through New Year's of 2006.

Q How long did she stay in South Carolina?

A For over a month. She came back New Year's Eve. When she came back on New Year's Eve, we reconciled.

Q What were you doing while she was gone?

A I spent Thanksgiving eating cheeseburgers, because we were supposed to spend it together.

Q How was your emotional state?

A I was upset because, you know, it was my understanding that we were in an exclusive relationship and she told me to come from a job that I was working on, on the east coast, to spend Thanksgiving and her birthday.

Q How would you describe her mental state around that date in November or December of 2005?

A In November and December she – in November, up to mid November before she left, I physically saw her, physically, in a state where she was kind of not the best.

Q Describe – let me ask it this way, did you feel she was in a depressed state?

A At that point, yes. But prior to that, I have no knowledge about her, you know, from the time I met her to the time that –

Q She comes back to you after New Year's?

A Yes.

Q What happens then?

A We reconciled our differences from the fact that she took off to South Carolina. I told her that I did not agree to some of the things. She was sending me some text messages and instant messages from South Carolina.

Q And you are back to having the same relationship prior to her leaving?

A Yes, sir.

Q How long does that go?

A Until she took off to the Bahamas.

Q What date?

A December 31<sup>st</sup>

Q Of 2006?

A It would be 2005.

Q December 31, 2005, you are back with her?

A To may of this year.

Q So she goes to the Bahamas on December 31<sup>st</sup> of 2005?

A No, sir.

Q Tell me the timeframe.

A She came back from California on December 31<sup>st</sup> of 2005.

Q That is what I have.

A Okay. I stayed with her in the home, in her home in Studio City consistently from December 31<sup>st</sup> to the end.

Q December 31<sup>st</sup> of 2005?

A To the first part of February.

Q February of 2006?

A 2006.

Q Aren't you mostly in this new home that you took?

A No.

Q Back to her home, but you kept the fifteen hundred dollars?

A I still had personal possession at the house.

Q February of 2006, what happens then, if anything?

A February in 2006, prior to Anna Nicole was preparing to go to the Supreme Court to fight for her late husband's estate case, however you want to say that. Anna Nicole informed me that we were expecting another child, since we had previously had the miscarriage.

Q When did she inform you of that?

A Right around Valentine's Day.

Q How long was she pregnant?

A She did not know for sure, but we were trying to figure out the timeframe.

Q Whether it was you or South Carolina?

A Well, I asked her and she smacked me and said, I am not a whore you dummy. So I took it as that and I made inquiry to the man in South Carolina.

Q Is the man in South Carolina single or a married man?

A Single.

Q Did you say he is a friend or yours?

A I would say he was not a close friend.

Q Surely, you don't like him anymore? Did you have any conversation with him since?

A Yes, sir, because of the chain of events that's happened since then. What happened since then. What happened after February of 2006 is, we stayed – I stayed in the relationship with Anna Nicole. She became agitated because once she told me she was pregnant, I tried to – I wanted to continue working and going things that would make me financially independent still and also would allow me to help take care of the baby.

Q How old are you?

A Thirty-four, Your Honor.

Q Any marriages?

A No, sir.

Q Any children?

A One.

Q How old?

A Five months or six months.

Q That's the little girl we are talking about?

A Dannielynn.

Q I am glad you are keeping your sense of humor.

A So after, I guess February on up until the time she left for the Bahamas, we planned for the child. We picked out baby names, we shopped for things on the Internet. She asked me to pick out a wedding ring for her. The day she got on the Supreme Court, she got on the Tiffany web site and asked me to pick out a ring for her and I told her that we might need to go to a different web site.

Q You were looking for Target or K-Mart?

A She wanted ten carats.

Q You would have to sell a lot of pictures.

A So we, you know, it was – I was a little nervous, excited.

Q Because you thought you were having your first child?

A And also because of the previous miscarriage. So at the time, like I said, I tried to do things that would allow me to be financially independent and she became agitated by that at me and took it that I did not want to spend time with her. That I was not excited.

Q Now, Stern, where is he in February of 2006? She tells you she's pregnant, where is Stern?

A Well, I saw him a few times on the couch that he would sleep on, on the level below us. I saw him, because he claimed he was working on the Supreme Court case that was represented here.

Q How about her mother?

A I didn't meet Ms. Arthur. At that time, I did not her.

Q But she embraced you one time in my courtroom.

A I met her since the passing of her grandson and her daughter.

Q Did you form any impression about her from your conversations with Nicole?

A Yes, sir.

Q Was it that impression on the video?

A No. Let me try to backtrack, I tried not to form an impression. I listened to what Anna said about her mother, but I am the type of person that likes to observe personally because I – before I make a decision on the type of character a person is.

Q And Anna Nicole's impression was similar to what the video showed?

A No, sir.

Q No?

A I will say this and let me clarify. Her mother, Anna Nicole always told me that she and her mother did not get along and they had their differences. But one of the first people when she got pregnant, she cried out for her mother, because she sent me a text message and said, I want my mommy.

Q She told you that?

A Yes.

Q Did her mommy call her on the phone?

A No, sir because at that point, she was getting ready for her appearance for the Supreme Court. I don't know if it transpired, I was not privileged to that. On other occasions she mentioned her mother and I mentioned the possibility of a reconciliation. And sometimes she would say absolutely not and sometimes she would be more able to listen.

Q This video that we say the other day, what is your impression, of someone who knows her so well, what was your impression of the state she was in?

A It became – it appeared to me by looking at the video that that was now becoming her normal state.

Q We will go slow, your accent is as thick as mine.

A It became clear by looking at the video that it brought back bad memories of her normal state, but I don't mean normal, what I consider normal but normal to her.

Q Under a normal set of circumstances, someone can object. He is not an expert on whether she was under the influence of drugs or alcohol, so I did not ask it that way. But I want to know what condition was she in when you saw her on that video. You knew her. Objection, so noted. I am allowing it.

A Her voice seemed slurred to me and not, you know, at times she seemed shaken, but I will say that she is saying things about her son and what she perceived as statements from her mother about her son –

Q Well, her son.

A -- passing.

Q This video is subsequent to Danny's death?

A Yes, sir.

Q All right. Let's come back a little bit. February of 2006, she is pregnant?

A Yes, sir.

Q What happens next, if anything.

A We planned, we prepared, we talked a couple of times marriage, we talked about the future, what it was going to be like. She sent me out to get things for the baby. I bought her presents for Mother's day, some maternity clothes. I bought her – she asked me to get her a wedding ring, she said she did not want to be a single mother, that she had done that before and she did not want to do it again and she said, come on, let's talk about marriage and all that stuff.

Q Marriage?

A Yes, sir.

Q Were you still breathing when that issue came up?

A Yes because the subject was approached multiple times, but now it had a different meaning because of the baby.

Q Were you considering that?

A I was considering that, but I did not want to do it for the wrong reasons, you know, because we just got over this two month incident where she took off to South Carolina and I wanted a more solid, grounded relationship where I did not want to do it just because she was pregnant and I wanted it to be the right time and I knew Mr. Stern's feelings about me and the relationship. I don't read the magazines but I did not want Britney Spears 55 hours wedding and I wanted it to be genuine.

Q She is pregnant?

A Yes, sir.

Q In February of 2006, when did she leave you?

A Not until we got into an argument a couple times before May she left.

Q Well, now she is pregnant, what happens next?

A In April of 2006, she called me to come to the hospital.

Q Were you still with her many of those nights?

A Yes.

Q In April of 2006, she told you to come to the hospital?

A Because she was having pains and she told me that she got rushed to the hospital and I was worried that something was wrong with her and the baby and she said don't worry, I am okay, the baby is okay and Anna said, you want to know what the baby is, I said, you went to the doctors without me because we were planning to go together. She said, don't get mad, I had to. I said, what is wrong, she said I am okay but I saw the baby, do you want to know. I said, no, I will wait until I get there and I came to the hospital and she was in the hospital for two weeks, because she was trying to get off medications or she was having an adverse reaction to the medication from the hospital, or previous medications she had taken before she went into the hospital. And at that time, I stayed with her for two weeks and slept in the hospital bed next to her while Mr. Stern slept on a cot.

Q For two weeks, in April 2006?

A Yes, sir.

Q Then what happened, if anything?

A At one point, she was – they had her on a drip trying to wean her off – am I allowed to say the drug name?

A That's all right.

MR. MILSTEIN: Standing objection.

MS. BARTH: Same objection.

A On multiple medications. And what happened was, Mr. Stern and she had packed a duffle bag.

Q She is pregnant and taking medication?

A She was taking medications before and during the pregnancy.

Q Were you concerned about that?

A I was very concerned about that.

Q Why?

A Because we had already had one miscarriage and every time she put something in her mouth, I thought that that's it.

Q It would affect –

A Yes, sir.

Q -- the welfare of the child.

A And her as well. And so we had a couple clashes in the hospital room because she and Mr. Stern brought a duffle bag and when they were not administering through the drips. They were taken out of the bag and taken on top of drugs and thwarted the efforts of the hospital to get her off the medication.

MR. RALE: Objection, foundation.

THE COURT: So noted. You may proceed.

A I am talking my personal.

Q You may proceed.

A Okay, So after that, she was at one point on a suicide watch in the hospital and I caught her getting up and she was ripping the I.V. out at night. I tried to help her back and forth in the bathroom and Mr. Stern was assisting her at the same time while we were in the hospital, she had good times and bad times, depending on how she was reacting to the treatment plan. She maintained a book, a baby book and put my thumbprint as the dad and she put her thumbprint as the mom. And I felt sorry for Mr. Stern, because I knew his interest in her and I did not want to offend him.

Q What was it?

A I think he was romantically interested in her and so --

Q He was romantically interested?

A And also his interest in her, his long standing interest, long before me.

Q So you believed in his bona fide friendship, that he was a friend and love partner?

A I, I --

Q Describe it.

A Well, yes. Can I tell you where I was going?

Q Okay.

A So at that time, I asked her, Howard is here, I feel bad for him. And she said to him, you put your thumbprint in the baby book here, and she put uncle Howard next to it. And we stayed in the hospital and she had complications from the plan they were putting her on. Her body was not agreeing with it.

One time she tripped over the I.V, cart and she was pulling out the I.V., I said -- she said I was yelling at her but I said her name loud because I did not want her to fall. And she got up as I was sleeping and when I got up, she took that as me yelling at her and she was sensitive as hell, and she asked me to leave or she would push the security button. And then two days later, she called me and said, where are you? I said, you asked me to leave and she did not remember.

Q Did she speak to her mother during that time in the hospital?

A Not that I am aware of. But after that stay in the hospital, she returned home, to her home in Studio City. And I came back and I think that was around right before Mother's Day, the first week in May, and there was still some, I guess, agitation about medications. So I would often times correct her and say, please don't take this and she would take the medication against -- she would not follow the labels on the medication. She would take sometimes double, whatever dosage she felt she needed. And I asked her why she did it

and she said she had a high tolerance. And I told her it could affect the baby, please don't.

And sometimes as a substitute to the drugs, even though they were prescription drugs, I suggested why don't we try something that would be over the counter that would be less harmful to her and the baby as a substitute. Sometime she would break out in a sweat from pain and she would tank me for helping her and I would massage her pregnancy pain as a substitute for any kind of medicine. And then there were other times when she would send me to the store to get her something that she was craving and I would come back like thirty minutes later – and one particular point she slipped into what I call a seizure like state, and I had to help her to the bathroom and pick her up and take her and put her –

Q Do you want to take a break for a second?

A No, that's okay.

Q What date was that: Was that June of 2006?

A May of 2006.

Q Were you living there in the home with her or your own place?

A Technically I had my own place, but I was staying there 24 hours a day.

Q Where was Stern?

A A lot of times he was gone. He was working for the Marshall case.

Q Move ahead in time. What happens in June?

A I may, I got in an argument with Mr. Stern and Anna Nicole, she was at a hair salon and she yelled at me because she wanted a pair of sunglasses and it was kind of irrelevant.

Q At the hairdresser place?

A Yes, sir. And she was visibly pregnant at the time and we were kneeling down from where she was to get her hair done because she wanted to take a photograph to market on her web site of her pregnancy and her and while she was there, we had gotten into an argument. I was trying to go invoice for photographs so once again, I could say – could stay financially independent and she got upset because I took that path rather than getting her a pair of sunglasses. She said she would get her own ride home, I called Mr. Stern, I got into an argument. I did not want to leave her, he said he would come and get her and that is the last time I saw her.

Q What month and year?

A May of 2006.

Q You have not seen her since May of 2006?

A Not after I called Mr. Stern.

Q You what?

A After the argument and he picked her up, it became a back and forth fight about some possessions that I left in the house, there was a diamond cross necklace.

Q You could not speak to Anna Nicole?

A Well, I could but she asked him to mediated so he, which he sometimes did with you know, her suggestion, sometimes without.

Q He would pick up loose ends for her?

A Yes, sir and he said if I did not get over there and act right that she would be with the real father. I said, excuse me, if you are saying I am not the father of the baby, then I don't want to go over there anyway because I have been over there cooking, helping

watching over her, caretaking, basically and I am having an attachment to this child that she is telling me this is mine and there is no point in this, why don't I get over there and act right, why would he state that, if she is going to be with the real father. Then I found out that Mr. Stern took her or suggested – I will not say suggested because it's hearsay.

MR. RALE: That's my objection.

A Mr. Stern, she told me Mr. Stern took her to the Bahamas. First to South Carolina to the man she was with in November or December, that it was his child and then later I found out she was in the Bahamas and made contact with her even though we had an argument.

Q Throughout May of 2006?

A Up until the time of her death.

Q You maintained contact?

A Telephone, IM, Internet.

Q No personal touching, I mean, being in the same room?

A No, sir. Because she went to the Bahamas and she had the baby there and all of these other events unfolded and so –

Q Tell me about Danny for a minute, tell me about Danny. Where was Danny sleeping when you all were together?

A In the lower level, two level below our bedroom or Anna's bedroom.

Q What was Anna's feeling toward Danny?

A She loved her son.

Q Did they have a healthy relationship?

A Yes, sir.

Q Did Danny have an impression about her prescription drug use?

A That from what I witnessed, was when Anna was ever on any prescription, it was at a level where she was not herself. I would still need to shut the door and not let him – not ever lock him out, but not welcoming him into the bathroom because either an assistant told me, or Mr. Stern suggested that Daniel should not see her like this or he would be upset if he saw her like this. So this would be the only conversation that I would have about any prescription drugs.

Q Do you have brother and sisters?

A I have a twin brother and two sisters.

Q Where do they live?

A Kentucky, Texas and California. One is in the courtroom.

Q And your parents are still alive?

A Yes.

Q In Kentucky?

A Yes.

Q Are they still together?

A No, sir.

Q When Danny died, did you go to the Bahamas?

A No, sir. I tried to contact Anna Nicole afterwards and I talked to her a few days after and I sent my condolences.

Q Did you ever get to the Bahamas before her death?

A Yes, sir.

Q Why?

A I was court ordered the paternity was to be completed on or before January 23<sup>rd</sup>.

Q In the Bahamas?

A Yes, sir, And when we were there—

MS. OPRI: May I make a note for the record, that the paternity test was ordered completed but we had recommended and said we will make it easy for her, so we suggested that we go there so it was not –

MR BIRKHEAD: The Bahamas was a place of convenience –

MR. RALE: That is not correct.

THE COURT: How long was the time line for you and Anna?

A Overall?

Q Yes.

A In a personal relationship, August of 2004 to May of 2006.

Q And knowing her was expanded to that?

A There was a timeframe.

Q Did she talk about death with you?

A Yes, sir. She talked about that, she always said she was going to die at the same age that Marilyn Monroe died.

Q Did she talk more about death when she was under the influence of prescription drugs?

A I would say no, not more often.

Q So she talked about it whether she was sober or she was under the influence of drugs?

A I have heard her say when she was under the influence that she wanted to die or something like that, as a figure of speech or a statement, but I don't think that she was serious about saying it. And I seen her on times where she would say that and she would do something, that I felt, was drastic.

Q Did she ever talk about where she wanted to be buried?

A Yes.

Q Where?

A Where Marilyn Monroe died.

Q What was the date and time?

A Ever since I met her.

Q But you lost her, from 2006, May of 2006, she went to South Carolina, she went to the Bahamas,

A I never had a conversation about where she personally wanted to be buried after May of 2006, but I had conversations with her about the fact that I disagreed with Daniel being buried in the Bahamas since his death. And she told me that, she said well, of course, reiterated the reason she was there was to avoid the paternity case and if I would put down my fight against her and did not want her to pay my legal fees, that she may let me see the baby. I said, why don't you bring Daniel home, that was not his home.

Q Stay with me a minute. The father of Dannielynn had to be either you, Stern or South Carolina.

A No, sir.

Q I say it would have to be one of those three, it cannot go beyond.

A Say me, one or two, if you want to include him.

Q Therefore, in your eyes, it had to be one of those three?

A Yes, sir.

Q South Carolina?

A Who had a vasectomy. So we are narrowing down here.

Q We are narrowing down. But you know, they have been known to fail once in a while.

A Well, he is willing to be here to expedite the situation.

Q You are starting to sound like a lawyer. So it's you and Mr. Stern?

A Yes, sir.

Q Those are the three?

A Yes, sir.

Q There is no one else.

A Because when I was – I would exclude those two others.

Q No, no, don't get into that, it would be self serving.

A Based on the doctor.

MS. BARTH: Objection.

Q Objection sustained. If you were the natural father of Dannielynn, according to some of the arguments here, you would stand in a stronger position than my Guardian Ad Litem being a stranger to this child. Do you have a recommendation where I should put Anna Nicole Smith's body?

A Yes.

Q Are speaking on behalf of the little girl or are you speaking on her behalf as the father of Dannielynn, not your opinion, what you think your little girl would want. This is assuming you are the father.

A I would say, I do have an opinion, but it's not just a cut and dry opinion.

Q I am going to allow you to expand. This is not a yes or no. It's why we are here.

A I would say that since she always had a desire to be in California and that was her home outside of just the paternity battle, that that's where I would prefer her to be.

Q In California?

A That is where I prefer her, since her son has passed away, I know he did not want to go to the Bahamas and he called California his home. I hate that he is there, so I am having a tough time with the decision.

Q You are, how about me?

A You are starting to sound like a witness.

Q He was a charming way about him.

A I say that –

Q I saw it in your gait a few days ago.

A I see.

Q That is why I always wanted you to stay here.

A I don't have enough suits and ties.

Q I am glad we can have a little softness. You're here and Stern is here as the potential father also. As serious as this is, you got to realize that we have to keep our personalities about us right. Tell me. You are going to tell us what you think.

A So to finish that, you know, if I am in a perfect world, they would still be here –

Q In a perfect world, I would have them all here, I would have jurisdiction over everything. If there was a perfect world, I would have jurisdiction over every thing like Milstein and I would do and I would resolve everything. I would mow it down but we do not have a perfect world, we have jurisdiction issues and other courses. You can move on. What do I do now?

A But you know, since Daniel is there, I mean, I guess the problem that I am having with it is, is that I am a California resident and if and when I get the daughter, that I know I believe is mine, she will not live in the Bahamas. So is that a place she is going to travel to see her brother and mother's grave?

Q It's a long car ride.

A Or do you, you know, consider upon agreement, bring Daniel back here and I hate to do that.

Q But that is serious matter, exhuming a body because it's a serious matter. It is something that we will talk about.

A You know, I don't want to separate the mother from the child. However –

Q Danny from Anna Nicole Smith?

A But I don't want them in the Bahamas, so I am having trouble with that.

THE COURT: I tried to get it all. If I got it all, I would be able to have a perfect solution, I would have a perfect written order on Friday. You see, but I don't have that. I got one arm tied behind my back and I never liked it and you don't like it, Mr. Milstein doesn't like it, do you?

MR. MILSTEIN: I don't like my arms tied behind my back, no.

THE COURT: So tell me you don't need to give anymore of an infinite answer than that.

MR. BIRKHEAD: I am just trying to be honest. It's not easy.

(Discussion between the judge and the attorneys. Court is in recess for the night)