

1 Q Okay. Walk us through what you observed with
2 her and how she handled the propofol.

3 A So I watched multiple cases in suits on the witness
4 Mrs. Hubbard, and so would see her basically take out a new
5 vial of propofol and a new needle a new syringe for the
6 patient and draw out the medication to get to the patient, and
7 then that case would be over, needle and syringe discarded.

8 And then the next case she'd take a new bottle of
9 propofol, open it up and give it to the patient, but knowing
10 that that first vial of propofol didn't use the whole thing
11 and so that's still sitting there with some medication in it.
12 So now we've moved into a second vial, a new vial and drawn
13 some up.

14 And then we go to the third case and we draw up
15 another bottle of propofol. So now at this point, I think we
16 have three or -- she may have had to redose in there, so four
17 bottles of propofol, that have been partially used on this
18 procedure table. And so as cases are going on, there are
19 multiple, partially used vials of propofol.

20 And then, I think by the fourth case she drew up
21 propofol from one of those open vials, and then -- and I just
22 have to refresh my memory here.

23 MR. WRIGHT: Are you -- identify what you're looking
24 at --

25 THE WITNESS: So, I'm sorry --

1 MR. WRIGHT: -- just for the record.

2 THE WITNESS: -- I'm looking at page 23 --

3 MR. WRIGHT: Thank you.

4 THE WITNESS: -- of those notes that's walking
5 through -- so -- yeah, so -- for the fourth case had a new
6 needle and syringe for that fourth patient and drew out
7 propofol from one of the open vials and then got out a new
8 needle and a new syringe and drew up propofol, kind of pulling
9 contents from a couple of those vials, and then got another
10 syringe and needle to -- to finish off the vials.

11 So throughout these series of cases had multiple
12 open bottles of propofol and then after a while drew up to get
13 enough in one syringe from multiple vials. I'm sorry, this
14 sounds very convoluted. I don't know how to explain it
15 better.

16 BY MR. STAUDAHER:

17 Q It -- was it essentially pooling of the -- of
18 the --

19 A Yes.

20 Q -- propofol?

21 A Right. At a point --

22 Q So --

23 A -- pooling to get a sufficient dose, so taking
24 contents from more than one to get that dose that you need.

25 Q So if I -- and I just want to clarify this, if I

1 can. If I understand you correctly, one partial bottle may
2 have sat there for quite a long time being unused; is that
3 correct?

4 A Well, I don't know what quite a long time is --

5 Q Well --

6 A -- because procedures were --

7 Q -- I know that you're talking about the speed of
8 the procedures, but at least it's there for a few patients; is
9 that right?

10 A Yes.

11 Q Okay. And then at some point that bottle may be
12 accessed one, two, three, four patients down the road --

13 A Right.

14 Q -- to then giving a dose to that fourth
15 patient --

16 A Yeah, to finish --

17 Q -- or something like that?

18 A -- off the vial, yes.

19 Q So and then even some of these multiple bottles
20 were drawn up and pooled together --

21 A Yes.

22 Q -- so the contents of one, two, three, four
23 bottles might end up in one syringe?

24 A Right.

25 Q Was that a concern, that kind of activity?

1 A Yes. I mean, along the same lines if they're
2 using propofol for multiple -- where she's using propofol for
3 multiple patients and then some of these vials are sitting
4 open for some period of time, and then we're pooling. So if
5 one vial gets contaminated, you can perpetuate if I go into
6 the next vial and don't use all that -- like, you can move
7 from vial to vial.

8 Q Was that something that you had noted in the
9 literature in the past of a mode of transmission or infection,
10 where people have been using bottles in that way, pooling and
11 the like?

12 A As far as viral hepatitis transmission, is what
13 you're --

14 Q Well, anything at first or -- first?

15 A Yeah, I mean, we get concerned about bacterial
16 transmission; but certainly, if you are reusing a needle
17 and -- so, again, so say -- I've drawn up propofol, I
18 administer it to the patient. You can get backflow of blood
19 into that syringe. If I reuse that syringe to go into a vial,
20 I'm essentially putting that blood into that vial. And then
21 if I use that vial for other patients, it can be the source
22 of -- of transmission.

23 Q Now, did you observe her using -- reusing
24 syringes --

25 A No.

1 Q -- at the time? So just reusing the propofol or
2 combinations thereof on different patients?

3 A Right. So it appeared that each time she was
4 entering a propofol vial, it was with an unused -- so a new
5 needle and a new syringe for each patient and that she would
6 discard used needles and syringes between patients.

7 Q Did this appear to be a common practice with
8 her, at least during your observations?

9 A Yes.

10 Q Did you ever observe this in anybody else that
11 you observed if you -- if you did so during the time you were
12 there?

13 A I don't think so because I think that was the
14 day, you know, we basically met with the facility and said,
15 you know, you can't keep doing this. You can't use these
16 vials for more than one patient; and so subsequent
17 observations, they were dedicating them for an individual
18 patient.

19 Q Did you ever talk to Mrs. Hubbard about this?

20 A I did.

21 Q What was her response?

22 A That, you know, she wouldn't do it anymore.

23 Q But she acknowledged she had been doing this?

24 A Yes.

25 MR. WRIGHT: Where --

1 MR. STAUDAHER: I'm sorry.

2 MR. WRIGHT: I'm sorry. It?

3 THE WITNESS: Yeah, sorry.

4 BY MR. STAUDAHER:

5 Q Doing it, are we talking about --

6 A That she had been using the propofol for
7 multiple patients. I also mentioned concerns about walking
8 around with an uncapped needle or recapping. Just some of the
9 things that I observed -- hand hygiene, or cleaning hands.
10 Just kind of recapping any concerns I had with the practice to
11 make sure she knew not to do that.

12 Q Did you disseminate this information to other
13 members of your team?

14 A Yes.

15 Q Were you on the lookout there for that kind of,
16 sort of activity with other CRNAs that you may have been
17 observing?

18 A Yeah. Yes.

19 Q Do you recall observing anybody else doing
20 anything like that?

21 A I don't recall, no, because Dr. Langley was
22 observing in the other room, I think. Mrs. Hubbard was the
23 main person I observed with the multi-patient use of propofol.
24 And then, like I said, we told them they couldn't do that and
25 so the clinic stopped doing that.

1 Q Did you ever interview or talk with any of the
2 other CRNAs beside Mrs. Hubbard?

3 A Yes.

4 Q And who else did you speak with?

5 A Mr. Lakeman. And I -- I mean, I -- I probably
6 talked to Mr. Mathahs at some point in the mix, not a, you
7 know, one-on-one interview, but we're there for nine days.
8 I'm sure I said hi to the other ones.

9 Q And before we get to Mr. Lakeman, I just want to
10 make sure I'm clear on this. Were you -- for the time you
11 were there -- you knew these samples were eventually going to
12 go off to be tested at CDC, correct?

13 A The patient?

14 Q Patient samples.

15 A Yes. We -- so the blood samples from the
16 patients were going to CDC, yes.

17 Q Okay. Did that happen during the time that you
18 were actually doing your investigation? Did you get any
19 results back from CDC about that at that time?

20 A I don't think we did at that time because that
21 testing takes a little while.

22 Q Eventually you are a part of a couple of reports
23 beside your trip report, correct?

24 A Correct.

25 Q What were those reports?

1 A So we did a report in the MMWR, which is the
2 Morbidity and Mortality Weekly Report.

3 Q And anything else?

4 A And we did a publication in a peer-reviewed
5 journal, Clinical Infectious Diseases or CID.

6 MR. STAUDAHER: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MR. STAUDAHER:

9 Q I'm going to show you what has been previously
10 marked as State's -- looks like 20 of these were stipulated
11 to, but I'll -- I'll check with counsel, but it's the MMWR
12 report which is listed, as he said, at 164; and the major
13 article, which was the CID report, is the -- is that Clinical
14 Infectious Diseases?

15 A Correct.

16 Q Which is listed as -- identified, in other
17 words, State's 165. Can you tell us if you're familiar with
18 these reports --

19 A Yes.

20 Q -- and if in fact you were part of the -- either
21 the authoring of them, the writing of them, or the
22 investigation of them?

23 A Yes. I am familiar with these reports. And
24 yes, I was a co-author. Dr. Langley is the lead author for
25 both of these, but I did contribute and was approved the final

1 content and submission for publication.

2 MR. STAUDAHER: At this time I'd move for admission
3 of State's 165 --

4 THE COURT: Any objection to those?

5 MR. WRIGHT: No, is it 164 or 165?

6 MR. STAUDAHER: 164 is the one that we have up there.

7 MR. WRIGHT: That one is good.

8 MR. STAUDAHER: And 165 is the clinical infectious
9 disease report.

10 THE COURT: Any objection Mr. Santacroce?

11 MR. SANTACROCE: No.

12 THE COURT: All right. Those will be admitted.

13 (State's Exhibit 164 and 165 admitted.)

14 MR. STAUDAHER: And if we need to refer to those at
15 any time, just let us know. We can provide those to you.

16 THE WITNESS: Thank you.

17 BY MR. STAUDAHER:

18 Q Do those summarize not just your findings at the
19 time you were there at the investigation, but incorporate
20 information from the genetic testing that was done later on as
21 well?

22 A Yes. I'd consider the CID report, or the
23 clinical infectious disease, as kind of the final, the one
24 that came when -- the latest in that, so that would be the --
25 the -- the --

1 Q Can you explain to us what the MMWR report is.
2 What does that stand for?

3 A So it stands for Morbidity and Mortality Weekly
4 Report. It's essentially, you know, a CDC publication that's
5 freely accessible on the website that we summarize, you know,
6 public -- you know, public health information. Sometimes you
7 write up, you know, outbreak investigation or, you know,
8 surveillance data. Whatever can be --

9 Q So is the -- is it fair to say the chronology of
10 these reports is that your trip report was first in line?

11 A Correct.

12 Q And has information up to a certain point,
13 correct? And then the MMWR report comes out after that?

14 A Yes. Correct.

15 Q And that has a little bit more information --

16 A Correct.

17 Q -- or the same?

18 A I mean, maybe a little bit more. Again, I have
19 to compare to see by the time -- because we have drafts of the
20 trip report and so I -- and I apologize. I can't recall if in
21 the trip report we had any of that detailed molecular testing.
22 I think we referenced some of that in the MMWR. And then the
23 case count with the molecular testing is kind of from the CDC
24 side finalized in this CID article.

25 Q So the CID article is last in line and includes

1 the -- at least the genetic testing information; is that
2 correct?

3 A Yeah, so the CID article was published in 2010.

4 Q Okay. Now, Ron Lakeman?

5 A Yes.

6 MR. WRIGHT: What do you call the final one?

7 THE WITNESS: So the -- the CID article --

8 MR. WRIGHT: CID article?

9 THE WITNESS: -- yeah, and so if you look at the
10 bottom-right corner, that's when it was published, which is
11 2010 Volume 51, the 1st of August; and then if you look at the
12 MMWR, that was published on May 16, 2008. And then our trip
13 report. We had, you know, drafts and so I think the drafts
14 that you all have is from May 15.

15 Q Okay. And -- ID stands for clinical infectious
16 disease?

17 A Correct.

18 Q Is that a journal?

19 A Yes.

20 Q Peer-review journal?

21 A Yes.

22 Q Now, Ron Lakeman, let's move to him.

23 A Okay.

24 Q Was he actually working at the clinic when you
25 were there?

1 A No.

2 Q How was it that you were able to make contact
3 with him?

4 A I looked -- I Googled him on the Internet.

5 Q So you were able to talk to him over the phone,
6 or did you travel to him? I mean, how -- how did that work?

7 A No. So he was -- and I don't know how -- maybe
8 the clinic told us. I can't recall how we found this out, but
9 that he was current -- currently living or working in Georgia,
10 and I'm, you know, live in Atlanta, Georgia. And so since he
11 was one of the nurse anesthetists working on days where we had
12 transmission of hepatitis, we felt like we should probably
13 touch base with him as well since we couldn't observe or
14 interview him during our investigation.

15 Q In fact, he was the only CRNA working on both
16 days, was he not?

17 A I don't recall if Mr. Mathahs was working in
18 July, but I know Mr. Lakeman was working on both days,
19 correct.

20 Q And if I -- and I -- we've got a chart with all
21 the names and so forth. I'll represent to you that Mr. --
22 Mrs. Hubbard and Mr. Lakeman were working on the 25th --

23 A Okay.

24 Q -- of July and that Mr. Mathahs and Mr. Lakeman
25 were working on the 21st of September.

1 A Okay. Thank you.

2 Q Does that sound familiar?

3 A Yes. I mean, that -- that sounds right, but --

4 Q So let's -- let's talk about your communication
5 with Mr. Lakeman. Walk us through how that goes.

6 A So I think I mentioned before, you know, CDC
7 can't, you know, start doing investigations independently
8 without kind of the invitation or the knowledge of the Health
9 Department. So since Mr. Lakeman was working in Georgia, we
10 went ahead and contacted the Georgia Health Department to tell
11 them about the investigation we'd done in Nevada; that this is
12 one of the healthcare workers that was there on those days.

13 He's currently working in Georgia, and that we
14 wanted permission to follow up with him to ask some questions
15 about practices at the clinic and also to make sure that his
16 current practices were okay because if he -- if there had been
17 anything unsafe in Nevada, we didn't want to perpetuate it in
18 Georgia. And so we communicated with them, and they said go
19 ahead and so I did.

20 Q So you talk with him on the phone --

21 A Yes.

22 Q -- right? Tell us -- well, did you take any
23 notes of your conversation with him?

24 A I did.

25 Q In relation to the call itself -- I mean, you're

1 talking on the phone with him during this -- I mean, did you
2 record the call or anything like that?

3 A So did not tape-record the call.

4 Q Okay.

5 A Wrote down, I think some notes and then kind of
6 cleaned them up to -- 'cause, you know, jotting in margins and
7 stuff, so then clean them up and then, you know, basically, as
8 I hung up and -- and so those notes are in -- in that same
9 document where I asked to review my notes before --

10 Q Sure.

11 A -- they'd be in there.

12 Q So I'm just trying to get the timing of that.
13 So you're taking notes as you're talking to him, and then you
14 do some cleanup of those notes based on what he said after you
15 hang up the phone?

16 A Yeah.

17 Q So we're talking about the same day, basically
18 about the same time of the call?

19 A Yes.

20 Q Okay. Tell us what it was that you asked him
21 and what he said on the phone.

22 A So can I go ahead and refer to those notes?

23 Q Sure.

24 A So this is the same thing that we looked at
25 before, I don't remember what exhibit, and it's page -- let me

1 just find it for you. It's page 8. CDC notes, page 8 is --

2 MR. WRIGHT: Thank you.

3 THE WITNESS: -- is where I have those.

4 MR. SANTACROCE: My notes aren't marked, so just take
5 a look at --

6 THE WITNESS: I'm sorry, sir.

7 MR. SANTACROCE: -- those?

8 THE WITNESS: Yes.

9 MR. SANTACROCE: Mine aren't Bate-stamped so --

10 THE WITNESS: Do you --

11 THE COURT: Do you want to --

12 MR. SANTACROCE: -- I'm going to have to --

13 THE COURT: -- come up, Mr. Santacroce --

14 MR. SANTACROCE: Yes.

15 THE COURT: -- and have a look at what she's looking
16 at?

17 BY MR. STAUDAHER:

18 Q So go ahead, if you would.

19 A So essentially, you know, asked where he was
20 currently working to get that information. I think basically
21 he called, said who I was, said where I was calling from, you
22 know, said -- we told him that we had been doing this
23 investigation and wanted to follow up to get some information.
24 Got a little bit of information about where he was working
25 now, what he was doing there currently in current practice,

1 and then went through his recollection of how things were done
2 at the clinic while he was working there and what his general
3 kind of M.O. or practice style was while he was working at the
4 clinic in Las Vegas.

5 Q Okay. So what did he say? What did you ask and
6 what did he say?

7 A So, you know, we talked about the vial sizes so,
8 you know, as a nurse assistant since 1985, is what I have
9 written here.

10 MR. SANTACROCE: I'm going to object to her reading
11 from the notes. If she wants to refresh her recollection,
12 that's fine --

13 THE WITNESS: Okay.

14 THE COURT: Okay. Read it over to yourself.

15 MR. WRIGHT: Can we approach for a moment?

16 THE COURT: Sure.

17 (Off-record bench conference.)

18 THE COURT: Ladies and gentlemen, at this point I
19 need to instruct you that anything that Mr. Lakeman said
20 during this interview is only to be considered as evidence
21 against Mr. Lakeman, and of course the weight or value that
22 you give to this, just like any other evidence, is strictly up
23 to you, the jury.

24 All right. Go on, Mr. Santacroce.

25 I'm sorry. Mr. Staudaher.

1 MR. STAUDAHER: That's fine. Go ahead.

2 THE COURT: It's an uncanny physical resemblance.

3 BY MR. STAUDAHER:

4 Q Okay.

5 A So apologies, I guess. I'm summarizing --

6 Q Okay.

7 A -- the conversation. So went through, you know,
8 how long he'd worked at this facility and at the Southern --
9 or the clinic that we were looking at in Las Vegas, and he'd
10 worked there for about three-and-a-half years; and basically
11 walked through, you know, what his recollection was as far as
12 the propofol vial sizes they were using there. And he, you
13 know, kind of reiterated what we had already learned, that
14 they typically use the 20 as well as the 50 cc vials, so
15 larger vials.

16 We asked -- because we had difficulty in figuring
17 out, you know, which room patients were in because it wasn't,
18 you know, a room assignment -- you know, asked about the
19 general practice. Did a nurse anesthetist typically stay in
20 one room? Would they ever swap rooms? Would they ever take
21 meds from one room to the next? And he indicated that, you
22 know, typically the -- he or the nurse anesthetist would stay
23 in one room throughout the day. Occasionally they would swap
24 rooms at lunch or to -- to relieve each other, but the meds
25 were supposed to stay, you know, in the room. They, you know,

1 didn't mention bringing them back and forth.

2 I brought up the reuse of syringes to access vials
3 of propofol which were used for other patients, which had been
4 observed by my colleague at the clinic, to find out if that
5 was something that he did. And he said that yes, that was
6 something that he did. He would essentially take a new needle
7 and a new syringe to draw out propofol for a patient, and if
8 they needed more medication, would reuse the syringe to get
9 more for that patient. And then that vial could be used for
10 subsequent patients, but that he never reused the same needle
11 and syringe on other patients.

12 And then he also shared -- I followed that up by
13 asking if that was his current practice in Georgia because if
14 it was, we would obviously be concerned. And he said that,
15 no, he did not do that currently. That it was the policy
16 where he was working that the propofol and the Lidocaine were
17 dedicated for each patient for their procedure in Georgia, and
18 then anything they didn't use was wasted and discarded.

19 And then, you know, he expanded on some concerns
20 that he had about other practices at the clinic, and
21 specifically mentioned concerns that the single-use biopsy
22 equipment was reused between patients. That the -- the
23 automated reprocessor that they used to reprocess the scopes
24 was often broken, and so he didn't feel that they were doing
25 appropriate reprocessing between patients, often just washing

1 with soap and water instead of doing a high-level
2 disinfection; that they would reuse the sheets between
3 patients. Wouldn't change the bedding. And I think those
4 were, you know, the main -- main crux of concerns and
5 conversation.

6 Q Now, when you first started talking to him on
7 the phone, did he express some concern that you might be
8 recording the conversation?

9 A Yes. He asked if I was -- if I was recording
10 the call, and I said I was not. So, yes.

11 Q Did you indicate to him that you would be taking
12 notes though of the conversation you were having?

13 A Yeah. So I indicated that, you know, I was
14 taking notes, but that -- you know, we're doing a public
15 health investigation. This wasn't a criminal investigation at
16 the time. And so, you know, I said, I'm not going to be
17 writing down your name if we refer to you in a report.

18 And as you'll see in, you know, the trip report and
19 stuff, we refer to them as, you know, nurse anesthetist 1, 2,
20 3, 4. So I said to him that that's how we would refer to him
21 and, you know, would appreciate his candor in sharing
22 information.

23 Q By the way, which CRNA is he in the -- in the
24 report?

25 A He is CRNA 4 in the report.

1 Q Now, as far as that was concerned, at the time
2 you're going through your investigation in Las Vegas, do you
3 know that this is ever going to become a criminal matter?

4 A No.

5 Q So you believe you're just going through the
6 process of doing an epidemiologic investigation?

7 A Right. And, you know, we -- we, you know, rely
8 on the healthcare workers to, you know, give us information;
9 and obviously, sometimes they want to tell us things that they
10 don't want their employer to know or others to know. And so
11 that's, you know, why I mentioned we're not going to put your
12 name in a report so that you can feel a little bit more
13 comfortable about what you share.

14 Q Now, as far as your conversation with him about
15 the recording, did he also ever mention to you anything about
16 denying --

17 MR. SANTACROCE: I'm going to object as to leading.

18 BY MR. STAUDAHER:

19 Q -- did he ever talk to you --

20 THE COURT: Well, try not to lead. Overruled.

21 BY MR. STAUDAHER:

22 Q Did he ever talk about --

23 THE COURT: Was there anything --

24 MR. STAUDAHER: Yes.

25 THE COURT: -- else mentioned about -- about --

1 THE WITNESS: Yes. So he asked if I was recording, I
2 said not -- I was not, and he agreed to talk to me, but said
3 that he would deny, you know, saying these things if it came
4 down to it.

5 BY MR. STAUDAHER:

6 Q Now, when you said -- and I want to flesh out a
7 couple of things that you mentioned. You said that he said
8 the CRNAs generally stayed in the rooms and would swap at
9 lunch or whatever; is that correct?

10 A Yes.

11 Q Any talk about he would -- if he went into a
12 room if there would ever be open bottles of propofol?
13 Anything along those lines?

14 A Yeah. So he, you know, indicated that if there
15 were, you know, syringes on the table, he wouldn't use those;
16 but if there was a partially used vial of propofol, that he --
17 he would use contents from that vial but would always, you
18 know, wipe the top with alcohol and use a new needle and new
19 syringe to draw up the dose for his patient.

20 Q Okay. So he would use open bottles of propofol
21 drawn up by somebody else, or at least opened by somebody
22 else?

23 A Correct.

24 Q Did he mention that he would go into the rooms
25 at lunches and breaks, things like that?

1 A I mean, you know, again, all I can say is that,
2 you know, they typically stayed with one room, but they would
3 occasionally swap rooms at lunch or for a break.

4 Q When he talks about the using of the same
5 syringe into -- and I'm talking about when he's describing
6 taking the -- the syringe on a patient, going into a bottle
7 with a new syringe, going into the patient, that he would go
8 back into the syringe -- or back into the same bottle with the
9 same syringe, and that that bottle might be used on a new
10 patient, correct?

11 A Correct.

12 Q Did that give you concern?

13 A Yes.

14 Q Okay. Why?

15 A You know, that has been tied to other outbreaks
16 of hepatitis. You know, essentially, I think as I said
17 before, you know, when you have your needle and syringe and
18 you -- and you put it into the patient's IV, you can get
19 backflow of blood into the syringe. And so if you go back
20 into a medication vial, even if you changed the needle, you
21 can introduce that blood into the vial. And then now you've
22 essentially got a bloody vial or a vial that has blood and
23 virus. If that person happened to be infected, that can be a
24 vector of transmission for other people.

25 So even if I use a new needle and syringe for the

1 next patient, I'm drawing up fluid that's been contaminated
2 with some other patient's blood and can infect them.

3 Q Is that in the literature a known, direct
4 transmission cause --

5 A Yes.

6 Q -- for hepatitis C?

7 A Yes.

8 Q So you sought -- you at least get him to admit
9 this to you over the phone?

10 A Yes.

11 Q Did you ever hear the word, "double-dip,"
12 anything like that?

13 A Yes.

14 Q Did he use that?

15 A Yes.

16 Q Those were his words?

17 A Yes.

18 Q Can you describe what he was saying when he used
19 those words?

20 A So essentially you're going back into the vial.
21 So, you know, like, when you take salsa and a chip and you eat
22 it and then you double-dip, you go back into the dip with that
23 chip that you have bitten into. You're putting your mouth
24 bacteria into that bottle of dip for other patients. So I
25 take my needle and syringe, I inject it into a patient. I

1 double-dip, I go back into the vial with that same syringe.
2 I've contaminated the medication or the dip or whatever you
3 want to call it, and then I'm using that for other patients.

4 Q Did he ever indicate to you that he was aware of
5 the risk of that process?

6 A So he mentioned that he -- you know, I said this
7 is not safe and he acknowledged that, you know, it was not the
8 safest practice, but that he would keep pressure on the
9 plunger to prevent -- to try to prevent backflow of anything
10 into the syringe from the patient.

11 Q So just so I'm clear on that. You questioned
12 him about the risk, the safety of the practice; he
13 acknowledged that?

14 A Yes.

15 Q That it was not a safe practice?

16 A Yes.

17 Q But he says that he does this pressure -- was it
18 negative pressure, positive pressure, no pressure, what kind
19 of pressure?

20 A Well, he'd keep pressure on the plunger to try
21 to keep anything from getting sucked back into the syringe,
22 was, I think, the intent.

23 Q Okay. So he's even using the same needle?

24 A I don't recall if he was using the same needle
25 or not, and it's not in my notes, so I can't speak to that.

1 Q But at least he's doing this thing -- funky
2 thing with that -- with the plunger.

3 MR. SANTACROCE: Objection to the characterization --

4 THE COURT: Yeah, that's sustained.

5 MR. STAUDAHER: Okay.

6 MR. SANTACROCE: -- funky thing.

7 MR. STAUDAHER: My words, I'm sorry.

8 BY MR. STAUDAHER:

9 Q -- doing this --

10 THE COURT: Yeah, that's sustained.

11 BY MR. STAUDAHER:

12 Q -- this process of holding the plunger or some
13 something to prevent that from occurring?

14 A Well, presumably, yes.

15 Q Well, did he say that or just that he thought
16 that that would --

17 A No, he said that that -- you know, that he would
18 do that.

19 Q Did he indicate why he was doing -- I mean, he's
20 not doing it in the current place he's working, right, when
21 you're talking to him? Did he indicate why he was doing it
22 back then?

23 A I don't think I specifically asked why he did it
24 back then. He was not doing it at this current place because
25 the facility practice was that they had dedicated meds for the

1 patient so there was no sharing.

2 Q Was there ever any concern on his part about
3 waste or about things along those lines --

4 A I mean --

5 Q -- supplies, costs, things along those lines?

6 A Yeah, he mentioned that the owner was concerned
7 with waste.

8 Q Now, you had mentioned --

9 MR. WRIGHT: Can we approach the bench?

10 THE COURT: Yeah. You know what? Actually, I was
11 going to call for a break in five minutes. Let's just take
12 our break now, ladies and gentlemen. We're just going to take
13 our morning recess about 10 minutes.

14 During the morning recess you're reminded you're not
15 to discuss the case or anything relating to the case with each
16 other or with anyone else. You're not to read, watch, or
17 listen to any reports of or commentaries on the case, person,
18 or subject matter relating to the case. Don't do any
19 independent research. Please don't form or express an opinion
20 on the trial.

21 Notepads in your chairs and follow Kenny through the
22 rear door.

23 (Jury recessed at 11:09 a.m.)

24 And, ma'am, during the break do not discuss your
25 testimony with anyone else. Okay.

1 THE WITNESS: Can I use the bathroom, then?
2 THE COURT: Yes, you're free to take a 10-minute --
3 THE WITNESS: Okay.
4 THE COURT: -- break as well.
5 THE WITNESS: Thank you.
6 THE COURT: Just don't talk about your testimony.
7 THE WITNESS: Fine.
8 THE COURT: All right.

9 (Outside the presence of the jury.)

10 THE COURT: I think I know what you're --

11 MR. WRIGHT: Your Honor --

12 THE COURT: -- going to say, but --

13 MR. WRIGHT: -- well, I -- I'm going to say it.

14 THE COURT: -- say it anyway.

15 MR. WRIGHT: We approached the bench during the
16 examination when the inter -- when she started to testify
17 about Ron Lakeman, this telephonic interview. And I asked the
18 question that -- who is this admissible towards, and the
19 answer was, Mr. Lakeman only. The Court asked if I would like
20 an instruction to that effect. The answer was yes. The Court
21 so instructed. The prosecutor stated that this is not a
22 Bruton issue, and there would be nothing about --

23 MR. STAUDAHER: I didn't think there would be a
24 Bruton issue. I thought --

25 THE COURT: Well, you --

1 MR. WRIGHT: Well, he --

2 THE COURT: -- Mr. Staudaher --

3 MR. WRIGHT: -- he intentionally elicited a Bruton --

4 THE COURT: -- yeah --

5 MR. WRIGHT: -- issue.

6 THE COURT: -- to be fair to Mr. Wright, you
7 deliberately -- there was no contemporaneous objection;
8 however -- which I would have sustained,-- but the only point
9 of that testimony wasn't against Mr. Lakeman. The only point
10 of that testimony to me was to show it was, you know, Dr.
11 Desai or his management was directing Mr. Lakeman to do these
12 things because certainly, you know, unless you're going to
13 say, well, somehow it minimized Mr. Lakeman's culpability or
14 something like that, but then, Mr. Santacrocce could have tried
15 to get that in as opposed to -- to you getting it in.

16 I would note that there was no contemporaneous
17 objection --

18 MR. WRIGHT: But --

19 THE COURT: -- it was -- they answered the question,
20 then you said, can we approach the bench.

21 MR. WRIGHT: Well, correct. What am I supposed to
22 do? The cat's out of the bag --

23 THE COURT: Well --

24 MR. WRIGHT: -- jump up and say take it back? I was
25 told at the bench there was no --

1 THE COURT: You were -- I --

2 MR. WRIGHT: -- Bruton issue, and they --

3 THE COURT: -- I agree.

4 MR. WRIGHT: -- would not elicit what he then
5 intentionally elicited.

6 THE COURT: I -- I agree with you, Mr. Wright. He
7 said you can -- approach the bench. I said it was admissible
8 against Mr. Lakeman. You asked for a limiting instruction. I
9 offered one. You said yes. State didn't oppose the
10 instruction. Mr. Santacroce didn't oppose the instruction and
11 wanted to make sure we added the weight or value and I did.
12 And I gave the instruction. And Mr. Staudaher said that there
13 was no Bruton issue. I think that's exactly what he said or
14 what I heard, that there would be no Bruton issue.

15 So that is what happened at the bench. And so, Mr.
16 Staudaher, what would you like to say?

17 MR. STAUDAHER: It was -- the -- and again, maybe it
18 was not the smartest thing to do, obviously, but it was meant
19 to get the information out that there was a reason that he did
20 this and it was cost savings, not necessarily --

21 THE COURT: Yeah, but --

22 MR. STAUDAHER: -- cost savings --

23 THE COURT: -- why --

24 MR. STAUDAHER: -- directed at Mr. -- or Dr. Desai,
25 but just that there was a reason why he did this then and not

1 where he is now. It was not meant to elicit a statement by
2 Dr. Desai or anything along those lines.

3 THE COURT: Well, right, but if it's --

4 MR. STAUDAHER: That's what Bruton is --

5 THE COURT: -- if it's --

6 MR. STAUDAHER: -- the statement --

7 THE COURT: -- no, if it's costs -- well, yeah, it's
8 a statement and he said it was cost saving. So who does that
9 implicate? You know, Mr. Lakeman is not worried about the
10 bottom line. It's Dr. Desai and management that's worried
11 about the bottom line. So the inference is against Dr. Desai.

12 Now, to be fair, Mr. Santacroce may have wanted to
13 get that in too, you know, under kind of a completeness idea
14 -- I don't know if he would have or not -- to minimize his own
15 client's culpability. For example, well, he's doing it, but
16 he's only doing it because he was told to do it by superior
17 people in the office, physicians who really, you know, should
18 be -- have some kind of supervisory role over the nurse
19 anesthetists who are not physicians. I don't know if it --
20 Mr. Santacroce would have gone there or not.

21 Mr. Santacroce, is that something -- someplace he
22 would have gone?

23 MR. SANTACROCE: I have no idea where I'm going.

24 MR. WRIGHT: Well, he can't in a joint trial.

25 THE COURT: No, I know.

1 MR. WRIGHT: He can move for a severance.

2 THE COURT: I'm just -- I'm just saying, here is what
3 I think we should do: I'm going to remind the jury, again,
4 anything that was said by Mr. Lakeman is only evidence against
5 Mr. Lakeman to the extent they choose to consider it and that
6 it cannot be considered against Dr. Desai. And I think if I
7 give the instruction again that will be remedied.

8 MR. SANTACROCE: I think that prejudices my client by
9 repeating it twice, the -- that you got to hold it against Mr.
10 Lakeman. I mean, that prejudices him if you give the
11 instruction twice.

12 THE COURT: Well, I don't really see the prejudice,
13 but Mr. Wright, do you want the instruction again?

14 MR. WRIGHT: No, I want -- first, I ask for a
15 mistrial, is my motion. The witness stated that it was the
16 owner who was cost conscious. Not management --

17 THE COURT: Yeah, the owner.

18 MR. WRIGHT: -- and there isn't no -- there's no
19 question in here, nor have I been arguing about --

20 THE COURT: That he's not --

21 MR. WRIGHT: -- who the owner is.

22 THE COURT: -- the -- the --

23 MR. WRIGHT: So it might have well said, Dr. Desai.
24 And so that is out. I move for a mistrial based upon it.

25 THE COURT: Mr. Staudaher, response?

1 MR. STAUDAHER: Well, first of all -- and again --

2 THE COURT: Ma'am, I need you to -- wait -- right.

3 Just wait out and the bailiff will get you when we're ready
4 for you.

5 MR. STAUDAHER: It was elicited to give his reason
6 why, not the statement. There was no statement that came in
7 by him, or was elicited and technically --

8 THE COURT: Well, it's -- of course it's a statement
9 whether it's a quote, Dr. Desai --

10 MR. STAUDAHER: It's not a -- he didn't say in his --
11 even -- that came out here that he was instructed by anybody.
12 It was -- it could have been his -- based on what we have
13 right now out before the jury, it could be his determination
14 that you've got to save costs and that he wanted to save
15 costs. That's it. There's no statement.

16 THE COURT: No, he said the owner wanted to save
17 costs. So I mean, I think your spin is a little -- frankly,
18 no disrespect, your spin is a little incredible. To say it
19 wasn't a statement, well, how did he convey the information?
20 It came through his statement. Whether she made a direct
21 quote or not a direct quote, it was pretty close to a direct
22 quote.

23 Mr. Lakeman said something like, the owner was
24 concerned about costs, which is completely credible that Mr.
25 Lakeman said that because we've been sitting here for four

1 weeks hearing witness after witness tell us that Dr. Desai was
2 concerned about costs. In that view -- in that regard, I
3 think it's kind of cumulative to -- you know, I don't know the
4 great prejudice here that Mr. Lakeman said that when, again,
5 we've heard witnesses come in and say Dr. Desai was concerned
6 about costs; Dr. Desai was concerned about the propofol.

7 So, I mean, it's not some new thing the jury is just
8 hearing from this gal from the CDC. It's something that every
9 other -- I mean, like I said, we've been sitting here for four
10 weeks and basically hearing that Dr. Desai was concerned about
11 costs. That he was extremely frugal. That -- pardon the
12 colloquial word, he was a cheapskate.

13 MR. WRIGHT: I brought all that out, frugality,
14 cutting chux in half. All of that. None of that had to do
15 with what -- telling somebody to reuse syringes.

16 THE COURT: Okay. First of all --

17 MR. WRIGHT: And this is the precise issue in the
18 case. On --

19 THE COURT: -- Mr. Wright, to be fair to the State,
20 that was not the testimony. The testimony was not, Dr. Desai
21 told me to reuse syringes. The testimony was the owner was
22 concerned about costs or something to that effect. So --

23 MR. WRIGHT: So -- which caused him to -- what -- the
24 questions were, why did you -- why would you use this syringe
25 again and reenter and use this little negative-pressure thing?

1 That's the -- that's what she was testifying about. And the
2 answer was because the owner is cost conscious.

3 THE COURT: Janie, play it back. Can you play that
4 little bit back? Because, you know, I reprimanded the State
5 for putting a spin on it that I felt was inaccurate. Let's
6 hear what -- exactly -- the way I heard it was, you know, why
7 would you do this, whether it's reusing the propofol or the
8 things, and he said because the owner was concerned about
9 costs or something to that effect.

10 Owner -- the word was used, I heard it. I agree.
11 So yes, it's against Dr. Desai, but I think it's cumulative to
12 the -- the way I heard it, it's cumulative with everything
13 else we've been sitting here for days and days and days.

14 MR. WRIGHT: But it's not cumulative that he was cost
15 conscious causing the reuse of syringes to --

16 THE COURT: Well, let's hear -- okay. Mr. Wright --

17 MR. WRIGHT: -- there is no evidence of that.

18 THE COURT: -- you saying what you remember and the
19 State saying what they remember, and me saying well, I
20 remember something else is silly when we have a tape of what
21 was exactly said. We can all sit here and watch the tape and
22 we don't need to spend time quibbling back and forth over each
23 other's memories.

24 Janie, can you queue that up?

25 THE COURT RECORDER: I found it but I'm not sure if

1 I can play it yet. Do you want to take a break while I do
2 that?

3 THE COURT: Yeah, I -- I for one need a break. So if
4 you folks need a break --

5 MR. WRIGHT: Yep.

6 THE COURT: -- do it right now and we'll come back
7 and Janie will find it and she, of course, may need a break.
8 A quick break.

9 (Court recessed from 11:19 a.m. to 11:27 a.m.)

10 (Outside the presence of the jury.)

11 (Audio/video playback, not transcribed.)

12 THE COURT: All right. That was the right part. I
13 mean, basically, the question wasn't, you know, why is he
14 reusing the syringes or why is he reusing the propofol. The
15 question was, well, did he say anything about waste. And then
16 the answer was he said that the owner was concerned about
17 waste, was essentially what I heard. So I don't think it's as
18 bad as being directly on the propofol or the -- the needles
19 and the syringes.

20 I mean, yes --

21 MR. WRIGHT: It's not bad --

22 THE COURT: -- it follows --

23 MR. WRIGHT: -- to directly ask the precise question
24 to elicit the answer which is improper and a constitutional
25 violation after there's a statement that it's not going to

1 happen?

2 THE COURT: All right. Mr. Staudaher, anything else
3 you want to say in your defense?

4 MR. STAUDAHER: No. That it was just not intentional
5 to elicit a statement by him. I know that that's -- it -- I
6 just was trying to get that cost as an issue out of that.
7 That's what I said.

8 THE COURT: I mean, look, A, it was somewhat
9 exculpatory as to -- as to Mr. Lakeman, although I do not
10 believe that that was the State's purpose. I think the State
11 acted improperly in eliciting the testimony. Now, whether you
12 were having a, you know, brain moment that you weren't
13 thinking clearly, or you were acting deliberately in
14 contravention of your representations at the bench, I don't
15 know.

16 I'm willing to give you the benefit of the doubt;
17 however, either way, this -- I think, Mr. Staudaher, you acted
18 inappropriately after the representation you made at the
19 bench, but like I said, I'm going to give you the benefit of
20 the doubt that you just weren't thinking and you just, you
21 know, want to -- I get it, you know, you're just dotting every
22 I and cross every T and eliciting every single piece of
23 information you can. I get it.

24 That's what you folks are doing, and so I'm going to
25 give you the benefit of the doubt that that's what you're

1 doing here as opposed to, you know, you -- you know, look, I
2 don't think you thought, okay, well, I said I wasn't going to
3 do it, but now I'm going to do it and this is admissible --
4 this isn't admissible against Dr. Desai but it's prejudicial
5 against him, so I'm going to pull this out. I don't think
6 that's what you're doing.

7 The bottom line is Mr. Wright has requested a
8 mistrial. I don't think that the State's error rises to the
9 level warranting a mistrial at this point. I would just
10 caution you, Mr. Staudaher, to be mindful in the future, and
11 if there's any doubt, approach the bench and say this is what
12 I want to ask, can I ask that, you know.

13 Or, you know, you've been a little leading and you
14 know, I think this is obviously a very intelligent witness;
15 you could have been asking more open-ended questions, was
16 anything else said. And then, I think if she blurted that
17 out, then certainly there could be the accusation on some kind
18 of misconduct by the State, which is kind of where, you know,
19 the record is right now.

20 Again, you know, I don't think that you deliberately
21 walked down that road and felt that you were violating what
22 you had represented at the bench. I really think that it was
23 more, you know, you just -- and this has been the practice
24 throughout the trial. You know, you're just eliciting all the
25 information you can get and you're crossing every T and

1 dotting every I and think that's what you were doing here, as
2 opposed to some kind of wilful misconduct, which I don't find
3 that.

4 I don't think that, you know, the testimony was
5 overly prejudicial, which would warrant a mistrial. And I
6 think -- again, I think it's cumulative of everything we've
7 heard from, you know, all of these other witnesses, over and
8 over and over again. So to isolate this and say, oh, well,
9 Mr. Lakeman saying this is much more prejudicial than what's
10 been said, I get it, Mr. Wright. You're saying, well, now,
11 we've put it directly in context with the reuse of the
12 propofol and more significantly the reuse of the syringes.

13 So yes, I get it it's more damaging. But clearly
14 the inference throughout this whole trial with all of the
15 other nurse anesthetists who have been saying he's cheap and
16 blah, blah, blah, has also concerned reuse of the propofol and
17 the concern over the propofol and, you know, I just don't find
18 that this kind of stands alone. I think it goes -- you know,
19 goes hand in hand with what we've already heard.

20 So I don't think that a mistrial is called for at
21 this point.

22 Now, with respect to --

23 MR. WRIGHT: Can I just --

24 THE COURT: -- a further instruction --

25 MR. WRIGHT: -- okay, but before we --

1 THE COURT: -- yes?

2 MR. WRIGHT: -- I just want to complete the record.
3 I view it more damaging than the Court does. This is a case
4 against two defendants. This -- it is now out through Mr.
5 Lakeman, interview, who I don't get to cross-examine and don't
6 get to call to the stand. My co-defendant is now -- did what
7 he did because the owner is a cheapskate. He -- this is --
8 this is the defense -- part of the defense Mr. Santacroce is
9 going to be using, and now, through the State's effort, me
10 without an opportunity of confrontation of Mr. Lakeman, they
11 have closed the circle on it deliberately. I'm not saying
12 willfully, but deliberately it occurred.

13 That was -- I sat here in a -- I first got concerned
14 and almost rose when the questions came about did he have any
15 other complaints there or something.usable We talked about
16 sheets and things. Well, I -- I -- I thought totally
17 cumulative, and I'm thinking, how does that usable against
18 Lakeman and not my client? But I let it slide, but I --
19 because I wasn't anticipating this. Which is precisely what
20 should not have happened in the case.

21 So I just disagree that it is -- it is simply
22 cumulative. It isn't cumulative in that it gives arguments to
23 Mr. Santacroce when we close the case. And it gives the jury
24 pause to think -- sit and think about let's see which guy are
25 we going to convict in this case type of situation.

1 So it is damaging to me in the big picture of the
2 case on the precise issue we're dealing with. Despite all the
3 clutter about bite blocks and all the crap we've heard for
4 days, the real issue is this syringe use, propofol use. And I
5 do see it more damaging the -- to the Court so I -- and the
6 only thing cumulative I see in here on that issue, as far as
7 I'm concerned, is cumulative misconduct. I mean, because this
8 is like the third time I'm standing here talking about a
9 mistrial.

10 THE COURT: I think it's the second time.

11 MR. SANTACROCE: Third.

12 THE COURT: Third, I'm sorry.

13 MR. WRIGHT: Right. Well, in any event, regarding an
14 instruction --

15 THE COURT: Right.

16 MR. WRIGHT: -- yes, I do want an instruction again
17 that all statements of Melissa Schaefer regarding the -- her
18 interview -- telephone -- or her conversation, interview,
19 whatever, of Ronald Lakeman, is admissible solely against Mr.
20 Lakeman, and cannot be considered against Desai. And I
21 request an instruction that the prosecutor, the State
22 improperly elicited and engaged in misconduct.

23 MR. SANTACROCE: I join in that.

24 THE COURT: Mr. Staudaher, anything else you want to
25 say?

1 MR. STAUDAHER: I don't have a problem with the first
2 part of the instruction, but the second part I do. I mean --

3 THE COURT: Here's what I think the solution is:
4 First of all, I know Mr. Santacroce objected to the
5 instruction. I don't find that the instruction is prejudicial
6 against Mr. Lakeman. Often we give these instructions over
7 and over again. There's an instruction that we'll give as
8 part of the packet at the end of the case. So I don't think
9 that that's really prejudicial or highlighting, oh, Mr.
10 Lakeman, you know, must be guilty or something like that.

11 I mean, they are Mr. Lakeman's statements. And so
12 to highlight again, or point out again, hey, they're
13 admissible against Mr. Lakeman, I don't -- you know, the jury
14 is going to give whatever weight they give it. And to say,
15 you can only consider this against Mr. Lakeman, oh, the person
16 who is making the statements, I don't see where that is a big
17 prejudice there.

18 I will tell the jury to disregard the last
19 question-and-answer from the witness. I think -- I don't need
20 to say that the prosecutors committed misconduct. I think
21 that that -- I mean, what does that really mean to a jury?
22 Where does -- where do they go with that? What are -- it
23 doesn't really give them direction as to what to do, and I
24 even found that there was willful misconduct to give the
25 statement.

1 So I think it's much more effective and really gives
2 the jury more guidance, which is really the point here. To
3 tell them --

4 MR. WRIGHT: Yes, I -- yes, I do.

5 THE COURT: -- you're to disregard the last question
6 and the last statement by the witness. And I'm going to
7 remind them that they are only to consider, and I think the
8 jury, you know, I don't really see the -- I guess --

9 MR. WRIGHT: I think anything -- anything, if I do
10 something obstruction-wise, if I talk to witnesses and tell
11 them they shouldn't talk or things, those things are
12 admissible when one party on one side does something like
13 that. Those are admissible and there are instructions by it,
14 just like flight and other kinds of things.

15 Misconduct, if I do something wrong that is
16 admissible and the jury has the right to know whether I'm
17 doing it rightfully or wrongfully.

18 THE COURT: Well, first of all, I guess what you're
19 --

20 MR. WRIGHT: Because I've heard in this case even --
21 from the start of the investigation and in all the interviews
22 of Metro, all the things we've been doing wrong to obstruct.
23 And I've seen none of it in the evidence. None of it. And
24 all I see as far as misconduct is on the other side.

25 THE COURT: Well, first of all, you may need to

1 refresh my memory, but the only -- which was a prior request
2 for a mistrial -- misconduct or implication that somehow you
3 or Ms. Stanish were, you know, trying to stop the
4 investigation or mislead the public, was the issue of the
5 meeting where the -- and I think that was Ms. Weckerly who
6 asked the question about, well, who was at the meeting, and
7 they said Mr. Wright. And I don't remember the witness --
8 which witness that was with. I think it was doctor -- the
9 doctor who wound up making the statement, Dr. Carrera, I
10 believe, Hilario Carrera, who made the statement, well, Mr.
11 Wright, Ms. Stanish were at the meeting.

12 You know, in terms of hiding the ball or anything
13 like that, I really haven't heard any other testimony against
14 anyone at this point that that's been going on, that there's
15 been hiding the ball, and it's coming also from the other side
16 that, oh, you know, Metro and the State, they seized all of
17 these files and it compromised patient care. And that's
18 really not against Ms. Weckerly or Mr. Staudaher, but, you
19 know, that -- so I -- you know, to -- I kind of misstated or
20 added something that's -- that really isn't so germane.

21 But to state again, that was the only time I heard
22 anything, which I -- again, I reprimanded the State for
23 that -- which I heard anything suggestive that somehow there
24 was a lack of cooperation or anything like that going on.

25 So I don't, you know, remember, at least, anything

1 else. So, you know, I don't know what else you're talking
2 about, that they've made some suggestion of misconduct on the
3 defense's part because, you know, you may need to refresh my
4 memory on that because I'm not remembering it.

5 MR. WRIGHT: I -- no, I wasn't --

6 THE COURT: -- and misconduct on Dr. Desai's part
7 certainly is not misconduct on the defense team's part. And
8 the misconduct there, I think, really has focused -- whether
9 it's, you know, cumulative or relevant or whatever -- has
10 focused on what happened prior to this with the exception,
11 again, and we've -- of the one thing with the Dr. Carrera's
12 statement to the media, or the, you know, public announcement.

13 So anything else you want to say, Mr. Wright?

14 MR. WRIGHT: No. And I wasn't -- I wasn't saying
15 there was other evidence in the case. I was talking about the
16 Metro interviews, and I reiterated it again because it
17 particularly irritates me and calls me from the inception
18 because I put on the record before because I had spoken with
19 the District Attorney before their crappy search took place
20 and told them absolute cooperation with David Roger, whatever
21 you want. Any records. We'll set it up. Compulsory process,
22 grand jury, no problem. Tells me to call two deputies and
23 work it out because the concern was patient records, patient
24 safety and everything else.

25 And so what happens? Turn around and like four days

1 later, massive search took everything and screwed them up for
2 18 months to unscramble their bogus search. By "bogus" I mean
3 needless. And then when I spoke to them about it, they said
4 it's because there was evidence of obstruction and shredding
5 records. And I said give me the affidavit. Well, I didn't
6 get it, for a couple years, and then when I get it not a thing
7 in there about that.

8 Misrepresentations were made to me, and so I wait
9 for the discovery. I want to see the evidence of shredding of
10 evidence that prompted that. And to this day I haven't seen
11 it.

12 THE COURT: Anything the State wants to add?

13 MR. STAUDAHER: Well, I'm not sure what that last
14 part has to do with what we're here discussing at the very
15 moment, but I mean, clearly that's another issue we could
16 raise at another time as to why Metro went in and what they
17 did and what -- and the process they went through.

18 THE COURT: All right.

19 MR. STAUDAHER: So --

20 THE COURT: Well, just dealing with the issue before
21 the Court right now, what I'm going to do is tell the jury
22 disregard and that Mr. Wright's request -- because the
23 mistrial request wasn't granted, I'm going to give an
24 additional instruction -- remind the jury that they're only to
25 consider it, and that's all I'm going to do. And I think that

1 that's, in my mind, sufficient.

2 And, Mr. Staudaher, obviously going forward if there
3 is anything else that could implicate Dr. Desai, you're not to
4 ask her about it. And if there is anything else, then you
5 need to go tell her that she's not to mention any statements
6 that Mr. Lakeman made that concern Dr. Desai or management.
7 Do you understand that?

8 MR. STAUDAHER: Yes. I can go out and do that right
9 now, Your Honor.

10 THE COURT: Okay. All right. Go tell her and then
11 we'll bring her back in and resume the questioning.

12 Yes? Did you want to address the --

13 MR. SANTACROCE: Well, I --

14 THE COURT: -- Court, or are you just standing?

15 MR. SANTACROCE: -- kind of overheard you ask what
16 the other mistrial motion was. It was when Mathahs was
17 testifying contrary to his proffer and the State went out and
18 took his lawyer and said --

19 THE COURT: Oh, right.

20 MR. SANTACROCE: -- you're violating the proffer
21 offer.

22 THE COURT: Well, no -- right. Well -- and then it
23 was found that he never -- that was never communicated to Mr.
24 Mathahs, so where's the harm? I didn't recollect the first
25 motion for a mistrial. Mr. Santacroce reminded the Court.

1 You can get the witness. And, Kenny, then get the
2 jury.

3 Ma'am, just come on back up and have a seat.

4 MS. STANISH: Judge, we got the final version of the
5 next witness's notes. Can we get two copies? One for Mr.
6 Santacroce.

7 THE COURT: Sure. Wait until the bailiff comes back.

8 MR. SANTACROCE: I have got one.

9 THE MARSHAL: I'm right here, Judge.

10 THE COURT: Oh, bring the jury in and then you can
11 make copies or have Sherrie make copies, okay?

12 THE MARSHAL: Ladies and gentlemen, please rise for
13 the presence of the jury.

14 (Jury entering at 11:49 a.m.)

15 THE COURT: All right. Court is now back in session.
16 Everyone may be seated. And, ladies and gentlemen of the
17 jury, I must admonish you to disregard the last question from
18 the State and the last answer from the witness. You are to
19 disregard that. And I would remind you that any statements
20 made by Mr. Lakeman, or any statements testified about from
21 Mr. Lakeman to this witness are admissible only as to Mr.
22 Lakeman.

23 And again, I would remind you that the weight or
24 value to be given to any evidence is strictly up to you, the
25 members of the jury. All right.

1 Mr. Staudaher, you may resume your direct
2 examination.

3 MR. STAUDAHER: Thank you, Your Honor.

4 BY MR. STAUDAHER:

5 Q Before we get -- go any further, I want to go
6 back to your trip report. And I think in the very last
7 portion of that, I believe you said it was page 13, if I'm not
8 mistaken. This is Exhibit No. 92, Bates No. 421, your page
9 13. And I'll display it -- oh, I guess we've lost our signal?

10 THE COURT: It's up. Oh, it's on -- I get the
11 monitor regardless of -- whether or not anyone else does --
12 now it's up.

13 MR. STAUDAHER: Okay.

14 BY MR. STAUDAHER:

15 Q You looked at the report and you mentioned that
16 the source -- the potential source patient in this, the IV was
17 started by CRNA 4; do you see that?

18 A Yes, I do.

19 Q And then under here on Case 1, which was on --
20 on the same date, this July 25 date that the CRNAs listed in
21 your report, anyway, CRNA 4 --

22 A Correct.

23 Q -- do you see that? I'm going to show you a
24 copy of something I want to -- wanted to ask you about that.
25 This is State's Exhibit 2, Bates No. 2350.

1 MR. STAUDAHER: May I step up here?

2 THE COURT: You may.

3 BY MR. STAUDAHER:

4 Q Before I get to that, I want to go back and look
5 at -- show you a couple of things. Now, anesthesia record
6 2346; do you see that? And this is Mr. Lakeman's anesthesia
7 record.

8 A Okay.

9 Q And back side of it as well.

10 A Okay.

11 Q And then as we go through the pages, you'll see
12 if we get to Bates No. 2350, under the area here that says, IV
13 -- IV -- the location, it's started by -- it has an LC; do you
14 see that?

15 A I do.

16 Q And under here --

17 MR. WRIGHT: I can't hear them.

18 THE COURT: Has an LC listed.

19 THE WITNESS: And I see that, yes.

20 BY MR. STAUDAHER:

21 Q Okay. And then up here we have the CRNA, being
22 Lakeman, the nurse being Drury, the technician being Smith and
23 the doctor being -- it looks like Desai, correct?

24 A Correct.

25 Q Do you know what LC stands for?

1 A I do not.

2 Q Okay. In this instance do you have some
3 recollection as to -- do you recall seeing these records at
4 all, and as to why that was designated as the CRNA 4, which
5 would have been Mr. Lakeman?

6 A These would have been the records that we
7 reviewed while we were at the facility and were abstracting.

8 Q Okay. So clearly if LC is not Mr. Lakeman, then
9 that would be something that would be incorrect in your
10 report; is that correct?

11 A Correct.

12 Q Okay. Now, with regard to in general your
13 review, I mean, you had this trip report that you filed, the
14 MMWR report gets filed. The CID report later on gets done.
15 In this -- whoops, I'm sorry. In the CID report, that was the
16 culmination of the investigation that you had done along with
17 the genetic analysis from the CDC; is that fair?

18 A Yes.

19 Q Looking back and anything that you have reviewed
20 since that time, have you changed your ultimate conclusions as
21 to what the cause of the outbreak was in this particular case?

22 A No, I have not.

23 Q And what were those conclusions?

24 A We felt that --

25 MR. WRIGHT: Foundation.

1 THE COURT: Ask her where she's --

2 MR. WRIGHT: We --

3 THE COURT: -- oh, okay.

4 BY MR. STAUDAHER:

5 Q We? Oh.

6 A Oh.

7 THE COURT: Are these just your conclusions?

8 THE WITNESS: I speak for [inaudible].

9 THE COURT: Okay.

10 THE WITNESS: Well, no. So the report is the
11 conclusions of the authors of the report, of which I am one
12 and there are others listed; but I guess I should speak just
13 for myself.

14 THE COURT: Okay. Well, did you concur with all of
15 the conclusions in the report?

16 THE WITNESS: Yes, I did.

17 MR. WRIGHT: And, Your Honor, are we still on the --
18 number -- the trip report?

19 THE WITNESS: No. He's asking about the Clinical
20 infectious diseases manuscript.

21 MR. WRIGHT: Okay. Is that an article?

22 THE WITNESS: It is. It's published in the
23 peer-review literature.

24 MR. WRIGHT: Okay.

25 THE COURT: And is that one of the exhibits --

1 MS. STANISH: Yes, it is.

2 THE COURT: -- Mr. Staudaher? And so we're all clear
3 what we're talking about here? Which exhibit is that?

4 MR. STAUDAHER: Let's just display it, Your Honor.
5 It's 165.

6 BY MR. STAUDAHER:

7 Q And your name actually appears as an author in
8 this paper; is that correct?

9 A Correct.

10 THE COURT: And, Doctor, again, you're familiar with
11 the conclusions in the report and you concur with it?

12 MR. WRIGHT: What report? I mean --

13 THE WITNESS: So -- sorry. Do you -- is -- I think
14 we're saying the same thing but using different terms. This
15 is a publication that we published in the peer review
16 literature that summarizes the investigation. So I mean --

17 MR. WRIGHT: Okay. But this isn't any official
18 report on this trip. This is an article in a magazine,
19 correct?

20 THE WITNESS: Well, it's --

21 MR. STAUDAHER: Well, it's not a magazine
22 specifically.

23 THE COURT: Okay. Can you kind of tell us, you know,
24 where this is published and if that's something that's done in
25 connection with all investigations or if this was unique or --

1 so we can kind of put this in some context.

2 THE WITNESS: Right. So anytime we do an Epi-Aid we
3 generate a report for the State summarizing what CDC did, what
4 conclusions, what recommendations. And then it's at really
5 the discretion of the team if you want -- if we go on to
6 publish the findings from that investigation.

7 In this circumstance we did, so we put out that
8 MMWR, the morbidity mortality weekly report which is a
9 publication that's available on the Internet. And then we
10 also drafted this manuscript, which is submitted to a journal.
11 So -- you know, New England Journal of Medicine, GEMMA, these
12 are some that you may be familiar with. Clinical infectious
13 diseases is a peer-review publication.

14 So you submit it to the editor of that journal. It
15 goes out for peer review, so it goes out for blinded review by
16 experts in the field based on the subject. They determine if
17 it is worthy of publication. And if they determine it worthy,
18 it gets published in this scientific journal. And so that's
19 what we mean by peer reviewed.

20 And so this article summarizes our outbreak
21 investigation -- the testing that was done at CDC, the field
22 work that we did at the clinic -- and puts together the
23 conclusions of how we think transmission occurred at the
24 facility. And so this is also, you know, publicly accessible.
25 You can search on PubMed, which is a search engine for public

1 scientific journals, to find it. Is that --

2 MR. WRIGHT: Okay. May I ask a question?

3 THE COURT: Sure.

4 MR. WRIGHT: Is it -- this is an article by the
5 authors for publication?

6 THE WITNESS: It is an article for publication, yes.

7 MR. WRIGHT: By the authors?

8 THE WITNESS: Yes.

9 MR. WRIGHT: Okay. And not by CDC?

10 THE WITNESS: No. There are employees from CDC that
11 are authors on this, but it is not a CDC publication. I don't
12 know that I fully understand your question, but --

13 MR. WRIGHT: Okay. Well --

14 THE WITNESS: -- it reflects work done -- it reflects
15 a summary of work done as part of our duties at CDC and
16 includes multiple authors from CDC.

17 THE COURT: So are all of the authors CDC employees?

18 THE WITNESS: No. No.

19 THE COURT: Oh, okay.

20 THE WITNESS: So I can walk --

21 THE COURT: Okay.

22 THE WITNESS: So it's up on the screen so --

23 MR. WRIGHT: Okay. Well, I --

24 THE COURT: Yeah, why don't you let us know who is
25 from the CDC and who is not.

1 THE WITNESS: So --

2 THE COURT: Warren Sands is not.

3 THE WITNESS: Right.

4 THE COURT: He's from the Southern Nevada Health
5 District?

6 THE WITNESS: Correct. So if you look at the
7 superscript, the number, it will tell you the affiliation of
8 the author. So do you want me to go through each person or
9 just tell you who is not from CDC? What's the easiest?

10 THE COURT: Probably just who is not.

11 THE WITNESS: Okay. So Brian Labus is not. Lawrence
12 Sands is not. He's also from Southern Nevada Health District.
13 Patricia Rowley [phonetic] is from Nevada. Ison Isam
14 [phonetic] is from Nevada. Patricia Amour [phonetic] is from
15 Nevada. And then the rest of the people on there are from the
16 Centers for Disease Control and Prevention --

17 THE COURT: Okay.

18 THE WITNESS: -- and were part of the investigation.

19 THE COURT: And the two -- and the other ones, Mr.
20 Isam and Ms. Amour, when she -- when you say they're from
21 Nevada, is that from --

22 THE WITNESS: Sorry, so --

23 THE COURT: -- the, you know, Bureau of Licensing and
24 Certification or the Health District or do you know?

25 THE WITNESS: Right. So Brian Labus, Lawrence Sands,

1 Patricia Rowley are from the Southern Nevada Health District.
2 Ison Isam is from the Nevada State Health Division. I believe
3 he's the State epidemiologist. And Patricia Amour is from the
4 Southern Nevada Public Health Lab in Las Vegas.

5 So the folks listed as co-authors here were all part
6 of this investigation, whether they were in Las Vegas, or as I
7 mentioned, our home team in Atlanta. They're also on there
8 because they helped generate the conclusions of this.

9 THE COURT: And let me ask you this: When an article
10 like this is accepted for compensation (sic), is there any
11 kind of monetary compensation or anything like that?

12 THE WITNESS: No.

13 THE COURT: Okay.

14 MR. WRIGHT: Can we approach the bench?

15 THE COURT: Sure.

16 (Off-record bench conference.)

17 BY MR. STAUDAHER:

18 Q With regard to the report itself --

19 A Which report?

20 Q -- and I'm talking -- well, I'm talking about
21 the published article --

22 A Okay.

23 Q -- in the peer-review journal that you
24 described --

25 A Okay.