

1 theft charge itself lists all the patients; isn't that
2 correct?

3 MS. WECKERLY: Not all of them.

4 THE COURT: Not all of them. There are a couple
5 theft charges.

6 MR. STAUDAHER: Two obtaining money under false
7 pretenses individually and then one theft count.

8 MS. STANISH: Okay. I wasn't sure if those were in
9 there or not.

10 THE COURT: Right. So basically I just want to make
11 sure that you folks got that as well?

12 MS. STANISH: We did.

13 THE COURT: And I haven't had a chance candidly to
14 read all of those -- over all those cases and everything, so.
15 Okay. Then just be at ease and when the other witness comes
16 in we'll resume.

17 (Jury reconvened at 3:14 p.m.)

18 THE COURT: All right. Court is now back in session.
19 Mr. Wright, you may resume your cross-examination of the
20 witness.

21 MR. WRIGHT: Thank you, Your Honor.

22 BY MR. WRIGHT:

23 Q Doctor Olson, are you a hepatitis expert?

24 A No, not necessarily.

25 Q Had any special training in hepatitis?

1 A Just what we get in medical school and through
2 what I've seen on the job.

3 Q Okay. You never -- have you ever -- did you --
4 before you became a medical examiner, were you in practice as
5 a physician?

6 A Well, when you're -- when you graduate from
7 medical school and you start your training you are, in fact,
8 in practice as a physician. I was in pathology residency and
9 then forensic pathology fellowship so, yes, I was practicing
10 as a physician, but I did not see patients in a clinical
11 setting.

12 Q Okay. So you never treated anyone like as a
13 physician with hepatitis C.

14 A Not to my recollection.

15 THE COURT: Keep your --

16 BY MR. WRIGHT:

17 Q You never anyone as a physician with hepatitis
18 C.

19 A Not to my recollection, no.

20 Q Okay. And are you a kidney specialist?

21 A No.

22 Q Okay. Now Exhibit AA1 before you -- I got
23 sidetracked on it. We were up through the sixth page. That
24 was the notification to the Southern Nevada Health District by
25 Dr. Jurani that Mr. Meana tested positive for hepatitis C,

1 correct?

2 A Yes.

3 Q Okay. And that was on January 2, 2008.

4 A Yes.

5 Q And on the previous page, January 2, 2008, Dr.

6 Jurani's clinic, his progress notes, it indicated that Mr.

7 Meana was to see a GI on January 15th, 2008. He had an

8 appointment scheduled, correct?

9 A Yes, according to this document.

10 Q Okay. And a GI would be going to someone who
11 deals with hepatitis C.

12 A Among other gastrointestinal complaints.

13 Q Okay. Page seven is a medical consultation
14 follow-up visit from Gastroenterology Center of Nevada dated
15 1/15/2008; is that correct?

16 A Yes.

17 Q And you have the exhibit there, I have a copy.
18 And the doctor who saw Mr. Meana was Dr. Eladio Carrera; is
19 that correct?

20 A Yes.

21 Q And he was referred for a consultation by Dr.
22 Jurani?

23 A Yes.

24 Q Consultation requested by Dr. Jurani.

25 A Yes.

1 Q Okay. Reason for follow up, hepatitis C,
2 correct?

3 A Yes.

4 Q "This is a 72-year-old male who apparently
5 recently diagnosed with hepatitis C in January 2008. Most
6 recent viral load in 12/27/07 indicated 5,980,000 with a log
7 of 6.8. The patient's liver profile indicated mild elevation
8 of alkaline phosphate 26." And it goes on with some other
9 technical stuff. "The patient's hepatitis acute panel only
10 positive hepatitis C virus. Currently he is without any right
11 upper quadrant pain, nausea, vomiting or jaundice. Apparently
12 the patient had remote history of dark urine, he denies any
13 dark urine for alcoholics stool," correct?

14 A It's actually acolic meaning that --

15 Q Okay.

16 A -- there's a --

17 Q I'm glad you're reading along.

18 A -- meaning that the stools are pale because they
19 don't have bile in them, which could indicate that the bile
20 duct is blocked.

21 Q Okay. It was noted on 4/11/07, "The patient was
22 with the normal level -- normal liver function at that time";
23 is that correct?

24 A Yes.

25 Q Patient has no known risk for hepatitis C;

1 however, he was born in the Philippines, he was in the
2 military, uncertain of vaccinations [indiscernible] given with
3 military personnel" --

4 THE COURT: Keep your voice up.

5 BY MR. WRIGHT:

6 Q Okay. I'm going to flip to the next page. Goes
7 through his -- his physical examination there, correct?

8 A Yes.

9 Q And then impression and plan. Why don't you
10 read those to me?

11 A Impression reads, "This is a 72-year-old male
12 with hepatitis C, markedly elevated liver function tests, high
13 viral load." Do you want the plan as well?

14 Q Yes, please.

15 A Number one under plan. "We will need to obtain
16 ultrasound previously ordered by Dr. Jurani. He had ordered
17 series of labs including alpha-1 antitrypsin, alpha
18 fetoprotein, ANA ASMA ceruloplasmin, iron, TIBC, hepatitis C
19 genotype profile 1, CBC PT PTT and TSH. Number Two. Patient
20 will follow up in two weeks time for review of labs and
21 ultrasound. Additional diagnostic testing and/or medical
22 treatment will be considered at that time."

23 Q Okay. And the next page is a follow-up
24 consultation two weeks later on 1/25/2008, correct?

25 A Yes.

1 Q And this time Mr. Meana, page two, it's Dr.
2 Clifford Carrol is who he saw, correct?

3 A Yes.

4 Q History of present illness, "The patient is a
5 72-year-old male with a diagnosis of genotype one A hepatitis
6 C. He has a low viral load and recently elevated liver
7 enzymes. He is a good candidate for treatment for
8 eradication," correct?

9 A That's what it says, yes.

10 Q And the treatment for eradication, if we go to
11 page two. I jumped over his physical again because it's just
12 the same. Page two, impression and plan, "Hepatitis C
13 genotype 1A with low viral load and decrease in liver enzymes.
14 I would like to initiate therapy with interferon
15 [indiscernible] and Ribavirin. Although he does not have
16 heart disease, I would like to start with 200 milligrams of
17 Ribavirin, two tablets in the morning, two tablets in the
18 evening as his age puts him at risk for anemia. I will follow
19 him every month and make recommendations based on his clinical
20 response since intervention. I thank you for allowing me the
21 opportunity to see this patient and GI consultation," correct?

22 A That's what it says, yes.

23 Q And the next three pages are the ordering of the
24 medication, correct?

25 A Yes.

1 Q For the next two pages of the approved payment
2 by -- essentially -- and then the third page is his schedule
3 to go to classes for the medication and treatment plan,
4 correct?

5 A Looks like I have most of that. Looks like
6 there's a duplication of two of the pages regarding payment
7 and then the class schedule for patients.

8 Q Right. We're at the same. The next, February
9 14th back with Dr. Jurani. And Mr. Meana hepatitis C
10 treatment will start injection and pills, cough, phlegm. Gave
11 him some medications, correct?

12 A Yes.

13 Q Okay. And we -- we know from reviewing his
14 records that he didn't start this treatment, correct?

15 A He didn't start treatment for I believe it was a
16 year.

17 Q Correct.

18 A Approximately one year later he did take some
19 treatment.

20 Q Okay. And if we go to -- I skipped one page
21 because it's just a longer letter in there requesting
22 documents, right?

23 A Yes.

24 Q Okay. Then we have Dr. Sood report of March
25 18th, 2009, correct?

1 A Yes.

2 Q Whoops. I've got -- all of a sudden
3 highlighting appeared. I better use yours. Ignore my
4 highlighting.

5 A Okay.

6 Q And we have, "Referred by Dr. Jurani as to Dr.
7 Socd. Patient, 74-year-old gentlemen with chronic active
8 hepatitis secondary to hep C. Patient has had his pegylated
9 interferon and Ribavirin injections for two -- for a few weeks
10 but he still has not started taking it. Every time he comes
11 in he has more questions. Now he says he does not know what
12 the dose of medicine is. The patient has been multiple times
13 given the prescriptions, has been given classes to go to, all
14 the natural history of the disease has been extensively
15 discussed with him. Now he has questions regarding side
16 effects and is worried that he probably did not want to take
17 it because he is doing good." Okay?

18 A Yes, that's what it says.

19 Q And then on the Assessment and Plan, I skipped
20 over his health exam. Assessment and Plan, "Chronic hepatitis
21 C secondary to hep C. The patient on pegylated interferon and
22 Ribavirin. The patient needs to start taking medicine. The
23 patient needs to attend classes that are being run to educate
24 patients. The patient needs to start the medication. As far
25 as the side effects, I explained to him. We will follow him

1 closely once in two weeks and then every month and if the side
2 effects are too much he can't handle, then we can always
3 decide regarding stopping medication or decreasing doses. The
4 patient seems to understand but I am not 100 percent convinced
5 about his ability to comprehend everything. The patient needs
6 to go to a class, needs a nurse and get his first injection.
7 The patient has been cleared by ophthalmology and psychiatry."
8 Okay?

9 A That's what it says, yes.

10 Q And then we have another report April 1st, a
11 couple weeks later. "Patient is a very pleasant 54 year old"
12 -- he lost 20 years there.

13 A Medications are amazing.

14 Q "74-year-old gentlemen with chronic active
15 hepatitis secondary to hep C. The patient has poor insight of
16 the natural history of the disease. He finally, after getting
17 clearance from ophthalmology and psychiatry, has started
18 treatment. The patient took one shot. Subsequently to taking
19 the one shot of interferon, the patient had myalgia and joint
20 pain. He says the wiring in my brain must have got activated.
21 He claims that he had a vehicular accident 20 years back, is
22 very sensitive to anything that would impact on his day to day
23 living and he does not want to continue medicine any further."

24 On the Assessment and Plan, "Chronic active hepatitis
25 C secondary to -- chronic active hepatitis secondary to

1 hepatitis C. After prolonged workup, finally the patient has
2 started treatment for pegylated interferon and Ribavirin.
3 After the first shot, because of the well-known side effects
4 of the medication, the patient has decided to discontinue. I
5 went through with the patient the options of continuing
6 medication, treat him symptomatically, went through the
7 natural history, also the possibility of having cirrhosis
8 carcinoma. The patient understands all that fully he says,
9 but would not want the treatment at this time. We will follow
10 the patient clinically in three months. Every six months the
11 patient will get an alpha fetoprotein and ultrasound check.
12 Synthetic function of the liver needs to be checked and if
13 there is any deterioration, consider a liver transplant
14 evaluation. Thank you, Dr. Jurani."

15 As you know from the medical records, thereafter he
16 did not -- Mr. Meana did not go forward with any further
17 treatment, correct?

18 A He didn't go forward with any further treatment
19 to try and eradicate the hepatitis C, no, he did not.

20 Q Thank you.

21 MR. WRIGHT: That's all the questions I have.

22 THE COURT: All right. Mr. Santacroce?

23 MR. SANTACROCE: Thank you.

24 CROSS-EXAMINATION

25 BY MR. SANTACROCE:

1 Q Doctor, when you went to the Philippines, what
2 did you understand your mission to be?

3 A My mission was to observe the autopsies and get
4 samples and bring them back.

5 Q Was it your intent at that time or were you
6 expected to write an autopsy report in this case?

7 A It was expected I would produce a report based
8 on what I saw and what I saw under the microscope.

9 Q Was it your mission to determine the cause of
10 death when you went over there?

11 A No.

12 Q So it wasn't your intent or mission to determine
13 cause of death, just to simply write an autopsy report or
14 report of what you observed; is that correct?

15 A Yes.

16 Q Now, when you went over there you testified that
17 the autopsy was done in a funeral home. Is -- is that a
18 typical place to do an autopsy?

19 A Depends on the jurisdiction. Based on my
20 conversation with the doctor who did perform the autopsy, that
21 seemed to be their standard operating procedure.

22 Q And when did you have this conversation with the
23 doctor that did the autopsy?

24 A When I met her on Monday morning the day the
25 autopsy was performed.

1 Q And how long did that conversation take place?

2 A I don't know, maybe an hour total.

3 Q Did she understand what your purpose was in
4 being there?

5 A Yes.

6 Q And who explained that to her?

7 A I did.

8 Q Who arranged for this doctor to do the autopsy?

9 A The family requested an autopsy through the
10 National Bureau of Investigation and I'm assuming that she was
11 assigned by her supervisor.

12 Q Well, what I'm getting at is was she paid by the
13 government or did the family pay her, did -- did Clark County
14 pay her, who paid her?

15 A My understanding is that she performed the
16 autopsy as part of her employment, so her employer, the
17 National Bureau of Investigation, paid her.

18 Q Okay. So she was employed to the National
19 Bureau of Investigation?

20 A Yes.

21 Q Is that a, if you know, an enforcement or law
22 enforcement agency of the Philippine government?

23 A Yeah. I was told that it's an analogous to our
24 FBI.

25 Q Okay. Now, do you know what -- what information

1 she had about this case and about Mr. Meana before she did the
2 autopsy?

3 A My understanding is that she spoke with the
4 family, she may have had read medical records. I don't know
5 the full extent of the information she had before she
6 performed the autopsy.

7 Q And you understood that -- well, you didn't
8 participate in the autopsy, correct?

9 A That's correct, I did not.

10 Q And your only function was to observe, gather
11 some tissue and blood samples.

12 A Yes.

13 Q Come back to the United States, do some testing
14 on them.

15 A Yes.

16 Q Unfortunately, you weren't able to test the
17 blood or the tissues for hep C.

18 A That's correct.

19 Q And then you came to a conclusion or a report
20 that you concurred with the coroner in the Philippines as to
21 the cause of death.

22 A I -- my findings, what I observed at his
23 examination as well as what I saw under the microscope agreed
24 with what the doctor wrote in her autopsy report.

25 Q But again, it wasn't your intent or purpose to

1 determine cause of death.

2 A That's correct, it was not.

3 Q So when there's a deviation between the autopsy
4 report in the Philippines and your report, your report is not
5 meant to determine cause of death.

6 A That's correct.

7 Q So if you had left out, for example, in your
8 report about the kidney problems, you didn't expect your
9 report to be used for that purpose. When I say that purpose I
10 mean in determining cause of death.

11 A That's correct.

12 Q And, in fact, it cannot be ruled out based on
13 the testing you did and the information you had as to whether
14 or not some sort of kidney failure or cirrhosis of the kidney
15 or fibrosis or however you call it, was the cause of death or
16 could have been the cause of death.

17 A Obviously, the clinicians thought that kidney
18 failure was part of his cause of death. And it's a well known
19 entity or syndrome in medicine that if you have liver failure,
20 liver failure can make your kidneys function poorly. So
21 doubtless, that's why his chronic kidney disease made it on to
22 the death certificate because he was in liver failure and his
23 kidneys then started working poorly.

24 Q Could it work vice versa?

25 A Not that I've ever heard, no.

1 Q Could kidney failure be the sole cause of -- of
2 death in a person?

3 A It can be, yes.

4 Q And -- and I'm not sure if I -- I understood
5 you. Were you aware that he had some liver problems and
6 kidney problems before he had gone to the clinic for his
7 procedure? Were you aware of that?

8 A I was aware that he had radiology studies
9 showing that he had some cysts. I'm not aware of any testing
10 that was done on his blood to show that he had abnormalities
11 related to those findings in his liver and his kidneys.

12 Q It could have been you just didn't have it?

13 A Based on what they reported, it's unlikely that
14 he had abnormalities, but I can't rule it out.

15 Q And what treatment did he have for his prostate
16 problem?

17 A He had had a -- it's called a turp transurethral
18 resection of the prostate. They basically go in and -- and
19 cut out some of the prostate. He had had that treatment some
20 years prior, maybe early 2000s. And I don't remember if he
21 had had anything more -- well, actually he did have something
22 a little bit more recently than that where they basically went
23 in and did the same thing. They cut out some of the prostate
24 tissue so he could urinate.

25 MR. SANTACROCE: I have no further questions. Thank

1 you.

2 THE COURT: Redirect?

3 MR. WRIGHT: Can we approach?

4 THE COURT: Sure.

5 (Off-record bench conference.)

6 THE COURT: Ladies and gentlemen, I neglected to
7 inform you immediately after the lunch break, but Exhibit 19
8 has been stricken by the Court. Therefore -- that was the
9 autopsy report from the Philippines. Therefore, ladies and
10 gentlemen, I must instruct you that you are not to consider
11 Exhibit 19.

12 MR. STAUDAHER: They won't have it, correct?

13 THE COURT: You won't have it, but to the extent you
14 recall it or made notes about it, cross that out. You're not
15 to consider Exhibit 19 in your deliberations and as it has
16 been stricken it will not be going back to the jury
17 deliberation room with you. Obviously, all of the other
18 exhibits, which are admitted, will go back with you.

19 All right. Go on, Mr. Staudaher.

20 REDIRECT EXAMINATION

21 BY MR. STAUDAHER:

22 Q Couple of things. You were asked -- you were
23 actually shown all of these records from I believe it was Mr.
24 Meana, at least some of the ones in Defense Exhibit AA1. Do
25 you recall that? Do you have it up there in front of you?

1 A I do.

2 Q Okay. Now one of the questions you were asked
3 by counsel is, was there any evidence in any of the records
4 you looked at or any evidence that you've seen up there that
5 Mr. Meana had any evidence prior to his visit to the clinic in
6 September 21st of 2007, any evidence that he had any elevated
7 liver enzymes, any evidence of any chemistry sort of support
8 for any kind of liver failure or liver problem?

9 A Yes. I was asked that and I did not see
10 evidence of that in the records that were provided.

11 Q As a matter of fact, I'm going to give you
12 some --

13 MR. WRIGHT: I object to that. Are you thinking I
14 asked that question? I can't even pronounce all that. I
15 asked one -- one question and that was --

16 THE COURT: May I see counsel up here?

17 (Off-record bench conference.)

18 BY MR. STAUDAHER:

19 Q Those records up there that we went through page
20 by page, do they detail some laboratory findings regarding
21 liver function tests at places?

22 A Yes. Defense Exhibit AA1 does, in fact, have
23 reference to liver function tests.

24 Q And those liver function tests after the --
25 well, let's -- let's go through a couple things here. And I'm

1 going to go through these page by page with you, okay? On the
2 very first page of this Exhibit was an ultrasound I think you
3 went through. Nocturia here. What is that?

4 A That means that you have to get up in the middle
5 of the night to urinate.

6 Q So as of the date of this exam on 4/13 of 2007,
7 it says clinical history. Is that why somebody would be
8 coming in for this test?

9 A Yes.

10 Q Okay. So what did you say it was again?
11 Trouble at night at with urination?

12 A No. You have to get up in the middle of the
13 night to urinate.

14 Q Okay. So that's the reason he comes in. And on
15 this finding it shows that he's got a -- a 2.1 centimeter
16 renal cyst on the right; is that correct?

17 A Yes.

18 Q And a 3.9 centimeter left renal cyst.

19 A Yes.

20 Q And a stone.

21 A Yes.

22 Q Now when you said you did the autopsy -- or you
23 didn't do the autopsy but when you observed the autopsy some
24 of that information came to you in the form of either the
25 report or the actual findings during autopsy; is that correct?

1 A Yes.

2 Q Now cysts by themselves, are -- do you know what
3 a benign cyst is?

4 A Yeah. It's a cyst that doesn't cause any
5 problems.

6 Q Okay. Have -- in your experience as a medical
7 examiner, have you done autopsies on people who had benign
8 cysts in their body?

9 A Yes.

10 Q In their organs?

11 A Yes.

12 Q In their kidneys?

13 A Yes.

14 Q In their liver?

15 A Yes.

16 Q Okay. Has that been the cause of death in these
17 people that you have done autopsies on?

18 A Generally not, no.

19 Q Okay. What do -- what do cysts do or don't do?

20 A If -- if they're single, if they're relatively
21 small, they typically don't do anything, they don't cause any
22 problems.

23 Q Okay. So if someone had in this instance -- and
24 what are the liver functions tests typically that show if
25 there's some sort of abnormality in the liver, what are those

1 called?

2 A They're called AST, ALT transaminase, that's
3 kind of the general class.

4 Q So if we looked at the AST first on Mr. Meana,
5 according to the medical records that you reviewed, and went
6 back to August 9th of 2003, and again normal range for that
7 particular test is 10 to 35 and the test results were 20.
8 Then on 4/24 of 2004 were 17. On 1/27 of '05 were 17. On 4/7
9 of '05 were 18. On 8/18 of '05 were 17. On 5/9 of '07 were
10 22?

11 MR. WRIGHT: Where are you?

12 THE COURT: What are you looking at?

13 MS. STANISH: Yeah, what are you testifying about?

14 BY MR. STAUDAHER:

15 Q And on 6/7 -- or on 2/16 were -- '07 were 18.
16 Is that in the normal range?

17 THE COURT: Mr. Staudaher, what are you reading from?

18 MR. STAUDAHER: A table that I made out of the
19 medical records that we have.

20 THE COURT: So this is a table that you compiled
21 yourself using which medical records?

22 MR. STAUDAHER: The medical records of Mr. Meana that
23 were provided in -- in discovery.

24 MR. WRIGHT: I've never seen this table.

25 THE COURT: From the United States? He made the

1 table --

2 MR. STAUDAHER: United States, not -- I'm talking
3 about --

4 THE COURT: Not the Filipino medical records, the
5 medical records from the United States.

6 MR. STAUDAHER: Correct.

7 THE COURT: All right. Would you mind showing your
8 table -- I understand it's not in --

9 MR. WRIGHT: I object --

10 THE COURT: -- I understand it's not an exhibit, that
11 you compiled that, would you just --

12 MR. STAUDAHER: Actually, I didn't compile it. It
13 was compiled for me but it's from those medical records.

14 THE COURT: Okay. But it's not an exhibit?

15 MR. STAUDAHER: No, it's not an exhibit.

16 THE COURT: And it hasn't been shown to the defense.
17 All right. That's fine. You need -- just if you don't mind
18 just showing that to the defense so they know what it is
19 you're reading from.

20 MR. STAUDAHER: And actually, this exact report has
21 already been provided to counsel as well. It's from one of
22 our experts who compiled the information, so they have it.

23 MR. WRIGHT: I've never read it.

24 MR. SANTACROCE: Who compiled it?

25 MR. STAUDAHER: Mr. Cohen or Dr. Cohen.

1 BY MR. STAUDAHER:

2 Q So those ranges of -- of AST or AST results, are
3 those normal?

4 MR. WRIGHT: I object to him testifying, Your Honor.

5 THE COURT: All right. First of all, ma'am, don't
6 answer the question unless you can say yes, those figures are
7 correct or sound correct from what you reviewed in the medical
8 records. And if you need a moment then to look at the medical
9 records, that's fine, just let us know that. Do you
10 understand what I'm saying? Just because he says, oh, it's
11 this 15, you know whatever. I'm assuming he's not talking
12 about inches because that'd be rather large but -- so if he
13 says something and you don't recollect that figure or you
14 don't remember it or something like that, let us know and then
15 Mr. Staudaher can show you the backup or whatever he needs to
16 show you so you know where he's coming from, if you don't
17 already. Okay?

18 THE WITNESS: Thank you, Your Honor. I don't recall
19 specifically seeing those particular lab results, so the
20 medical records would be helpful in refreshing my
21 recollection.

22 BY MR. STAUDAHER:

23 Q The medical records that you reviewed in this
24 case were the prior medical records in this particular case?

25 A Yes.

1 Q Okay. And in those records do you recall seeing
2 abnormalities, elevations, in those -- in those areas that I
3 just mentioned, the AST ALT?

4 A No, I don't. Before -- in the tests that were
5 run before September of 2007 I do not recall seeing
6 abnormalities or elevations.

7 Q Would that be an indication, if you had seen
8 elevations in the lab work before the 21st of September of
9 2007, would that have been an indication that maybe these --
10 there was something going on with his liver?

11 A Likely, yes.

12 Q I mean something that would be concerning and
13 needing -- needing clinical intervention.

14 A Yes.

15 Q Do people typically have operations or do they
16 have these little cysts removed at times?

17 A Generally if the cysts are small and they're not
18 causing any problems they don't remove them, no.

19 Q So if we look to the second page of the
20 document, which is in evidence at this point, do you see the
21 section where it says finding this -- this is the CT scan of
22 the abdomen and pelvis with contrast. Do you see that?

23 A Yes.

24 Q And this is again patient coming in with
25 nocturia, you said needing to urinate at night?

1 A Correct.

2 Q Okay. And that's the problem. And in here it
3 says -- I'm reading right here, "No focal hepatic lesions
4 seen." What does that mean?

5 A It means that they didn't see anything abnormal
6 in the liver.

7 Q Okay. But they do go forward and they say that
8 there's a six millimeter ovoid low attenuation lesion in the
9 lateral segment of the left hepatic lobe and a 10 millimeter
10 circumscribed ovoid low attenuation lesion in the right
11 hepatic lobe. Do you see that?

12 A Yes.

13 Q And it says these likely represent small hepatic
14 cysts.

15 A Yes.

16 Q Okay. Would those be considered benign cysts?

17 A Based upon their description and their size,
18 yes.

19 Q Especially when it says there's no focal lesion
20 that would be, as you said, a concern?

21 A Correct.

22 Q Now I'm going to come back to this, but I want
23 to go forward for one second and see the date of this is 6/7
24 of 2007, correct?

25 A Yes.

1 Q If you go forward to the ultrasound, which is
2 dated 12/11 of 2007, so six months later.

3 A Yes.

4 Q And this is after he's gotten even the hepatitis
5 at this point, correct?

6 A Yes.

7 Q So if we look at that and we see -- and I'll get
8 to this other part, but I want to go to this -- this line here
9 where it says, "In the left hepatic lob there's a six
10 millimeter cyst and in the right hepatic lobe there's a 10
11 millimeter cyst."

12 A Yes.

13 Q Do you see that? So six months later those
14 cysts remain exactly the same size as they were before.

15 A Correct.

16 Q Now would that indicate that there was a problem
17 with those cysts which would cause some sort of medical
18 condition or issue with the person's liver, with this
19 individual's liver?

20 A Unlikely.

21 Q Now one other thing on this very thing it says
22 status post cholecystectomy. What is a cholecystectomy?

23 A That's a surgery to remove the gallbladder.

24 Q And what does the gallbladder -- where does the
25 gallbladder sit first of all?

1 A It sits towards the front on the underside of
2 the liver.

3 Q Is it connected in some way to the liver?

4 A Yes, it is.

5 Q In fact, what does it do?

6 A The gallbladder stores bile, which is a fluid
7 produced by the liver that helps you digest fats primarily.

8 Q Is it part of the digestive system? I mean,
9 does it help to digest food?

10 A Yes, it does.

11 Q So the liver -- if I understand correctly, liver
12 produces the bile, bile's collected and stored in the
13 gallbladder and then released from the gallbladder for
14 digestion?

15 A Yes.

16 Q Now when somebody has their -- has a
17 cholecystectomy, does that indicate that there may have been a
18 problem with the gallbladder?

19 A Yes, usually.

20 Q Do they usually take out gallbladders when
21 there's a problem with the liver?

22 A Not unless there are two concurrent problems
23 that somehow impact the gallbladder.

24 Q But an isolated cholecystectomy, is that
25 isolated to the actual gallbladder itself and not the liver

1 usually?

2 A Correct.

3 Q When we look at that, if we go back to the
4 second page and I want to get down to this bottom part here.
5 Do you see where it says -- let's see if I can get the whole
6 thing in there. Distended extra hepatic bile ducts. Do you
7 see that?

8 A Yes.

9 Q Extra hepatic. Does that mean within the liver
10 or outside the liver?

11 A It means outside the liver.

12 Q Ah. So that's not even part of the liver?

13 A No.

14 Q So, "Distended extra hepatic bile ducts, distal
15 obstruction not excluded." What does that mean?

16 A That means that the bile ducts outside the liver
17 are distended or they're larger than normal size and that they
18 can't rule out the possibility that there may be a stone or
19 something else that it's obstructing or blocking the duct to
20 cause it to get big.

21 Q Now when it says changes of cholecystectomy,
22 what does that mean in relation to the previous sentence?

23 A Well, it means that they can tell that he's had
24 a cholecystectomy.

25 Q So is there anything related to that which may

1 have caused dilation of the ducts itself?

2 A Possibly.

3 Q Okay. So this could have nothing to do with the
4 liver itself, just the gallbladder and the duct system of the
5 gallbladder; is that correct?

6 A Yes.

7 Q Now we go forward and it says, "Probable small
8 cysts of the liver, hepatic nodule not -- is not excluded."
9 What does that all mean?

10 A They're just restating that they saw small cysts
11 in the liver, small little fluid collections in the liver and
12 that they can't rule out the possibility that there is a
13 nodule of some kind in the liver.

14 Q Now you mentioned that in the -- one of the
15 functions of the liver, it does a lot of different things,
16 right?

17 A Yes.

18 Q Is -- do -- is one of the functions of the liver
19 to produce what are called coagulation or clotting factors for
20 the body?

21 A Yes.

22 Q And when I -- when we say that, what does that
23 mean?

24 A It means the liver produces proteins that help
25 your blood to clot.

1 Q So are there tests that would show if somebody
2 was having some impairment in their ability to clot or to take
3 care of that kind of a problem?

4 A Yeah. There are a number of tests that can look
5 at that issue.

6 Q And some of the ones that were tested and I
7 wanted to go forward to the section -- I think there was a
8 record we showed that -- did you see a section when counsel
9 was going through this where they had done -- oh, here it is.
10 So this page here and it was down in this area where it was
11 the plan. I think you actually even read the plan if I'm not
12 mistaken.

13 A Yes.

14 Q The PT PTT, those -- do those have anything to
15 do with coagulation or clotting factors at all?

16 A Yes. They're -- they're measures of different
17 parts of the -- the clotting system.

18 Q Now, these other things up here the alpha one
19 antitrypsin, alpha fetoprotein, what -- are those related to
20 some sort of immune issue?

21 A They're related to various issues that can cause
22 liver damage.

23 Q Okay. And here we've got the PT PTT. Now this
24 is actually -- I should just go back. This is 1/15 of 2008,
25 so this is after infection, correct?

1 A Yes.

2 Q Now the PT PTT are related blood work that might
3 show, I don't know, platelets or anything like that that might
4 show issues with coagulation. Did you see in the medical
5 records prior to September 21st of 2007 any elevations or
6 abnormalities in the liver or in the clotting factors or
7 clotting factor test?

8 A No.

9 Q Would that have been -- if you had seen that,
10 would that have also been a potential indication there might
11 be a problem with the liver?

12 A That's possible, yes.

13 Q So beside those tests and the actual direct
14 enzyme test of the liver, is there anything else from a
15 chemistry testing perspective that would have shown liver
16 function? It would have been coming up in normal blood work?

17 A No, those are the main ones.

18 Q Okay. So again, we have any indication that he
19 had any problem with his liver prior to -- other than these
20 two benign cysts, prior to the 21st of September of 2007?

21 A No.

22 Q Did you see -- was there any indication later on
23 at autopsy that there was any kind of problem with cysts in
24 the kidneys or the liver or anything like that?

25 A No.

1 Q And I can bring any of that up to you. I mean,
2 I know it's not an admitted exhibit but you did look at it,
3 correct --

4 A I did.

5 Q -- I'm talking about the autopsy report.

6 A Yes.

7 MR. WRIGHT: Objection, hearsay.

8 MR. STAUDAHER: I believe she can actually rely on
9 that.

10 THE COURT: Well, she -- right, okay. Go on.

11 BY MR. STAUDAHER:

12 Q So you did rely on that and look at that in your
13 opinion?

14 A I did, yes.

15 Q Okay. Now with regard to the liver itself at
16 time of autopsy -- and I want to go to the autopsy for a
17 minute and may come back to these records in a bit. But at
18 the autopsy I want to be clear on -- on exactly -- I know you
19 said you didn't do the autopsy. We're clear, everybody's
20 clear on that, correct?

21 A Correct, I did not do the autopsy.

22 Q Now, you're in the room observing?

23 A Yes.

24 Q Did you -- were you there for the entirety of
25 the autopsy?

1 A Yes.

2 Q External examination?

3 A Yes.

4 Q Internal examination?

5 A Yes.

6 Q Individual examination of the organs as they

7 were extracted?

8 A Yes.

9 Q In fact, the tissue samples that you obtained

10 from the various organs, how, in fact, did you get those?

11 A I went up to the table after Dr.

12 [indiscernible] had finished her examination of all of the

13 organs and she gave me pieces directly.

14 Q So you're standing right there with the

15 particular organ right in your view?

16 A Yes.

17 Q You're that close?

18 A Yes.

19 Q Did you actually -- I mean, as far as the

20 autopsy itself, could you see what she was doing?

21 A Yes, I could.

22 Q So and this is during the entirety of the

23 autopsy?

24 A Yes.

25 Q So you're not relegated to the coffee room

1 somewhere in another building or anything?

2 A No.

3 Q When you are standing there observing, getting
4 the tissue samples, are you having any discussion with her
5 about what she's finding at the time as she's going through
6 this? Is she telling you kind of what's happening?

7 A No.

8 Q So you're just observing it directly?

9 A That's correct.

10 Q Now when you see the actual liver itself come
11 out, that particular organ, could you see if it looked like --
12 I mean you've -- I assume you've seen many, many normal organs
13 over the years.

14 A Yes.

15 Q Did this look like a normal liver?

16 A No, it didn't.

17 Q How did it -- what did it look like, first of
18 all?

19 A Well, it looked like a cirrhotic or scarred
20 liver.

21 Q Was that consistent with your microscopic
22 analysis, your microscopic analysis later on?

23 A Yes.

24 Q So visually it looks like that and then you see
25 it also under the scope.

1 A Yes.

2 Q Now when you see this -- this as you termed it
3 sclerotic liver, how does a -- how does a liver -- I mean how
4 does a liver change as cirrhosis occurs or sclerosis occurs
5 over time from normal to what you saw? What goes on with it
6 to cause those changes?

7 A What happens when someone is undergoing
8 cirrhosis is that the liver cells are being damaged. And when
9 cells are damaged they have to be replaced by something. The
10 liver is kind of special in that it can actually regenerate
11 itself. But the damage also leaves scar tissue. So what you
12 have is -- if you look at it under the microscope it looks
13 kind of like a honeycomb type arrangement where you have these
14 bands of scar tissue and in the center you have these
15 regenerative little nodules of cells that are trying to come
16 back and do the things that the liver is supposed to do.

17 So if you look at a liver before cirrhosis starts, it
18 generally has a smooth surface when you look at the surface.
19 And as liver damage progresses, that surface gets bumpier and
20 nodular. And so even if you don't look at it under the
21 microscope, if someone has cirrhosis, you can usually tell
22 because the surface doesn't look right, it looks bumpy.

23 Q Now you also had -- admit -- or excuse me,
24 testified that there was this ascites fluid, this fluid inside
25 the abdomen that gushed out when the abdomen was opened up; is

1 that right?

2 A Yes.

3 Q A lot of it?

4 A As I recall there were a couple of liters.

5 Q Liters meaning like if we -- for those of us who
6 aren't metric savvy, what is a liter in comparison to like a
7 quart or something along those lines?

8 A Well, if you but a two-liter soda -- soda
9 bottle, that's -- that's two liters, so it's a fairly large
10 container.

11 Q So that much fluid was in the gut?

12 A Yes.

13 Q Have you ever seen ascites fluid develop because
14 of kidney disease?

15 A No.

16 Q Is that pretty much an exclusive liver failure
17 type condition?

18 A Yes.

19 Q So that -- all that fluid that was there, that
20 two liters of fluid, is it fair to say would not have come
21 from the kidney issue?

22 A That's correct.

23 Q Did I understand your testimony that typically
24 liver failure precedes the kidney failure in situations like
25 you described here?

1 A Yes.

2 Q Is it unusual to see both at the same time in a
3 patient who has died of liver failure?

4 A No, it's not.

5 Q And why is that? What -- what goes on with the
6 liver failure that causes this damage to the kidneys?

7 A We don't actually understand why it happens.
8 It's -- it's simply a well-known association between liver
9 failure and worsening kidney function.

10 Q You were present during the autopsy, looked at
11 the slides. Do you believe, is it your opinion, that he died
12 as a result of isolated kidney failure?

13 A No.

14 Q Is it your opinion that the kidney failure
15 resulted from his liver failure?

16 A Yes.

17 Q And you're aware that he had high blood pressure
18 in the past?

19 A I am, yes.

20 Q And he had these little cysts in his kidneys as
21 well?

22 A Yes.

23 Q Have you seen those -- something like that,
24 little cysts that are -- were those considered benign or were
25 they something more than that?

1 A They're benign in my opinion.

2 Q Okay. So those benign cysts, have you ever seen
3 those cause death in somebody?

4 A Not the small just couple cysts, no.

5 Q What about the liver? Have you ever seen couple
6 -- two isolated small cysts -- I mean six millimeters is -- is
7 how big? Can you use your fingers to show us how big that is?

8 A Six millimeters is about a quarter of an inch.

9 Q And 10 millimeters obviously would be --

10 A It's close to half an inch.

11 Q Okay. So in the scheme of things -- the liver,
12 how big is the liver?

13 A Oh, boy you're asking me to do math. It's --

14 Q Just show us with your hands, if you would?

15 A It's usually about that size.

16 Q So a good size organ and with the -- and for the
17 record you were showing something that looks like the size of
18 a volleyball or something along those lines?

19 A Roughly, yes.

20 Q Okay. So two small cysts in that organ. Have
21 you ever seen anything like that cause death?

22 A No.

23 Q Have you ever seen those two cysts in a liver or
24 cyst like that in the liver cause renal failure?

25 A No.

1 Q Have you ever seen those two cysts in the liver
2 and/or two cysts in the kidneys cause the ascites that you saw
3 in this particular man?

4 A No, not if there's nothing else going on.

5 Q Was there anything else going on in this
6 particular individual, I mean separate and apart from the
7 liver failure causing this cascade of things that you talked
8 about?

9 A No.

10 Q No indication of prior disease which could have
11 contributed to that liver failure?

12 A No.

13 Q Any indication of prior disease that could have
14 contributed to this -- to the renal failure as you witnessed
15 it at the autopsy?

16 A Not to that degree, no.

17 Q Including your microscopic examination
18 afterward.

19 A Correct.

20 MR. STAUDAHER: Court's indulgence, Your Honor.

21 THE COURT: That's fine.

22 BY MR. STAUDAHER:

23 Q Based on everything you know in this case, and I
24 know you weren't primarily sent over there to determine cause
25 of death but you were present at the autopsy, did your

1 analysis, you've reviewed the prior medical records and the
2 post records of his hospitalizations at the Philippines.

3 A Yes.

4 Q And you were aware that he had hepatitis C prior
5 to and up to the time that he left to go to the Philippines.

6 A Yes.

7 Q I mean, you saw that documented in the records
8 from the United States.

9 A Yes.

10 Q Based on all of that, do you have an opinion as
11 to the cause of death in this particular individual?

12 A Yes.

13 Q What is that?

14 A In my opinion he died as a result of liver
15 failure due to chronic hepatitis C infection.

16 MR. STAUDAHER: Pass the witness, Your Honor.

17 THE COURT: Recross.

18 RECROSS-EXAMINATION

19 BY MR. WRIGHT:

20 Q Where's that ascites in your report?

21 A I don't mention it specifically.

22 Q Okay. Why not?

23 A Because my report deals primarily with the fact
24 that I went to the Philippines, that I observed the autopsy
25 and that I got tissue specimens to bring back and look at

1 under the microscope.

2 Q I thought you were -- I thought you stated that
3 you agreed with the cause of death from the certificate of
4 death, that your conclusion is consistent.

5 A Yes, it is.

6 Q I just heard that your conclusion is that it's
7 hepatitis C, correct?

8 A My -- my conclusion is that the hepatitis C
9 infection is primarily responsible and that that infection
10 resulted in his liver failure as well as kidney failure.

11 Q Okay. That isn't what they found, correct?

12 A That's not the phrasing that they used, that's
13 correct.

14 Q Not the phrasing? What's it say for the
15 immediate cause of death?

16 A It says hepatic and uremic encephalopathy, grade
17 four.

18 Q Okay. Uremic. What -- what is chronic kidney
19 disease?

20 A That's kidney -- kidney disease that's been
21 ongoing for a length of time.

22 Q Okay. And he had kidney failure, correct?

23 A Yes.

24 Q Okay. Chronic kidney failure, cause of death.
25 Both of those, correct?

1 A That's what they listed, yes.

2 Q Okay. They. You keep -- I can't get it
3 straight whether you went over and performed the autopsy or
4 not. Did you give a cause of death in your report?

5 A No, I did not.

6 Q Okay. Why now do you on redirect examination
7 decide to give a cause of death when you never performed the
8 autopsy?

9 A Because I was directly asked based upon what I
10 know, what my opinion is as to his cause of death.

11 Q Do you understand you can't rely upon the
12 autopsy in the Philippines --

13 MR. STAUDAHER: Objection. She can rely upon the
14 autopsy report.

15 BY MR. WRIGHT:

16 Q -- because it was stricken?

17 THE COURT: Well, no, that's sustained. I'll see
18 counsel up here.

19 (Off-record bench conference.)

20 THE COURT: Ladies and gentlemen, we're going to take
21 a quick break until 4:30.

22 During our quick break you are reminded that you're
23 not to discuss the case or anything relating to the case with
24 each other or with anyone else. You're not to read, watch,
25 listen to any reports of or commentaries on this case, any

1 person or subject matter relating to the case. Don't do any
2 independent research and please don't form or express an
3 opinion on the trial. Notepads in your chairs. Follow the
4 bailiff through the rear door.

5 And Doctor, during the break please don't discuss
6 your testimony with anyone else.

7 THE WITNESS: No, Your Honor.

8 (Jury recessed at 4:17 p.m.)

9 THE COURT: And Doctor, I am going to go ahead and
10 excuse you from -- for the break. We may cover things about
11 your testimony so --

12 THE WITNESS: Okay.

13 THE COURT: -- we need to do that without you present
14 as we would any other witness.

15 All right. Mr. Wright, we took a break to allow you
16 to note your objections --

17 MR. WRIGHT: Yes.

18 THE COURT: -- on the record because the discussion
19 became a little too extensive for something to be just done at
20 a bench conference and needs to be made a part of the formal
21 record in this case anyways. So -- you don't need to be here,
22 you can. Go ahead.

23 MR. WRIGHT: Okay. My problem is as she testified on
24 direct examination that she only went over to observe, not to
25 perform an autopsy and to gather samples of blood and tissue

1 by which she would test and make a report on the result of the
2 tests. And then she was asked on direct examination, did you
3 see the death certificate? Did you see the autopsy report, 18
4 and 19, and are those consistent with your own beliefs and
5 findings. And she answers yes, which of course I have a hard
6 time understanding because I have read them. And so then she
7 testifies, I cross-examine her. The autopsy report is
8 stricken. And then for the first time on redirect
9 examination, even though she had never previously ever given a
10 cause of death in writing or in testimony at the grand jury or
11 anywhere, she says I now conclude that the cause of death was
12 hepatitis C and what results from it. And, of course, that's
13 inconsistent with the --

14 THE COURT: With death --

15 MR. WRIGHT: -- death certificate and even --

16 THE COURT: Well, it's not entirely. To be fair,
17 it's not entirely inconsistent with the death certificate.
18 It's the primary cause along with a kidney issue.

19 MR. WRIGHT: Immediate cause is both. It's and, not
20 or, and, is the immediate cause in the death certificate. And
21 then if we go to the exhibit that's stricken, which as far as
22 I'm concerned is stricken, the -- nothing in this autopsy
23 performed for the family, cause of death -- immediate cause
24 hepatic failure. Antecedent cause; micronodular cirrhosis,
25 that's liver. Underlying cause, chronic hepatitis C. Other

1 significant conditions contributing, pneumonia, lungs
2 bilateral.

3 Now where -- where is the equal immediate cause of
4 death, which is the chronic kidney failure. He had kidney
5 failure. It's totally out of here. And she testifies, oh,
6 no, my findings are consistent. Then I say well, not with the
7 thing we're not allowed to talk about because it's not
8 admitted. So now I'm supposed to cross-examine her about this
9 report? She's not -- she's going to say, oh, no, look in
10 there somewhere, this or that. I want to confront the
11 witnesses. This is a murder case. Cause of death is what's
12 being disputed here. And it's not my fault that the State
13 didn't -- doesn't call the correct witnesses and put it on
14 right.

15 And so I -- I'm flummoxed as to where to go on her.
16 That's why I -- I objected hearsay the first time Mr.
17 Staudaher started to go in to it because I -- I don't know how
18 you strike something, tell them disregard it and even put it
19 in your notes, scratch it out. And now we're going to tell
20 them, well you can consider it. Or I can cross-examine her
21 about it but don't consider it. I mean, I don't know how to
22 unring this thing other than strike her testimony. She wasn't
23 called to give a cause of --

24 THE COURT: Well, let me see the witness disclosure
25 as to what she was designated as because I think it's fairly

1 obvious when you designate a coroner --

2 MR. STAUDAHER: I left my actual --

3 THE COURT: -- they're going to testify about coroner
4 stuff.

5 MR. STAUDAHER: And here's -- Your Honor, here's
6 another thing I want --

7 THE COURT: I mean, I think that that's fairly
8 evident, number one. Number two, experts rely on hearsay all
9 the time. And number three, what I said at the bench is this
10 issue with respect to the confrontation clause has not been
11 finally decided. But coroners rely on previous coroner
12 reports all the time because let's say somebody performed --
13 as we know there's no statute of limitations for murder and
14 coroners die, they move away, they refuse to come back as has
15 happened in this jurisdiction. And the remedy isn't digging
16 up the body. You know, many times the body isn't even around,
17 it's been cremated or whatever, and doing a new autopsy.

18 What happens in those cases is a new coroner, someone
19 else working at that coroner's office, comes in and relies on
20 the coroner's report and testifies that way and that's done
21 all the time as we all know. And it's something that's likely
22 to keep occurring unless we get a definitive ruling saying,
23 no, this is a confrontation clause violation for the very
24 reason that there is no statute of limitations on murder. I
25 mean, we have cases, murder cases in this jurisdiction that

1 are -- you know, I did one a few years ago, it was over a
2 20-year-old murder case. There are a few other ones that have
3 gone on recently that are DNA linked that are over 25, 30 --
4 you know. One was a girl I went to high school with. Over 30
5 -- was the victim -- over 30 years ago.

6 So, I mean, this is something that with respect to
7 coroner's reports is not an unusual thing. It happens all the
8 time and will continue to happen, as I said. Now this is an
9 unusual situation because the Court intended to have -- and I
10 thought was clear by my ruling, intended to have them bring in
11 the coroner from the Philippines. However, just generally --
12 general principles, like I said, coroners rely on the reports
13 all the time. The reports don't come in, they testify as
14 independent experts, you know, I've reviewed this and blah,
15 blah, blah and -- you know --

16 MR. SANTACROCE: Can I make my objection on the
17 record --

18 THE COURT: Sure.

19 MR. SANTACROCE: -- and you can respond to that as
20 well? First of all, I'm joining in Mr. Wright's objection.
21 But additionally, she wasn't disclosed to give a cause of a
22 death opinion and she specifically said that -- testified that
23 that wasn't her purpose. And yet on redirect examination the
24 State goes after her to opine as to the cause of death. We
25 had gone through this whole issue about these Filipino records

1 a long time ago. I was under the assumption they were going
2 to call the Filipino coroner. I had no idea this lady was
3 going to opine as to a cause of death. She did that, it goes
4 beyond the scope of the disclosure. They should have brought
5 in the coroner from the Philippines to determine cause of
6 death, which is the central and key issue in to the -- in this
7 murder case, not try to bootstrap it into somebody they didn't
8 disclose was going to give it. And furthermore, didn't --
9 didn't have the intent to give a cause of death opinion.

10 And now the jury's heard the cause of death through
11 this witness and we're stuck with that. We can't confront the
12 person that actually did the autopsy and issued the cause of
13 death and we're stuck with this. Now I don't know how we can
14 remedy that.

15 THE COURT: I'd like to see from someone what the
16 disclosure was --

17 MR. WRIGHT: I can't find it.

18 THE COURT: -- because in the cases that I've talked
19 about, and again there was a particular coroner some years ago
20 who left the coroner's office -- I should say medical examiner
21 left the -- pathologist, whatever you want to call her, left
22 the office, there was some bad blood, I don't know why,
23 refused to come in. So I'm personally aware of a number of
24 cases. Ms. Weckerly, do you know who I'm talking about?

25 MS. WECKERLY: I don't know the name of the --

1 THE COURT: It could predate you even. But I was a
2 Judge and I think a DA during the time period involved and,
3 you know, they had to have other people come in to -- to do
4 those. Now I will say that then the expert disclosure would
5 indicate this is who we're -- we're calling someone from the
6 office currently to come in and, you know, give those
7 opinions. So what is the disclosure?

8 MR. STAUDAHER: Two things -- I don't have the -- I
9 don't have the latest disclosure with me at the moment. But
10 two things. First of all, that -- this is the only coroner
11 that we noticed in the case as far as the expert witness
12 notices are concerned. Secondly, it is disingenuous for both
13 of these attorneys over here to indicate that they had no
14 knowledge that she was going to come in and opine as to cause
15 and matter -- cause of death in this particular case. I would
16 refer counsel and the Court to page 48 going in to page 49 of
17 the grand jury transcript in this particular case. Bottom,
18 question, "Do you have an opinion as to what the cause of
19 death -- or what -- as to what was the cause of death in this
20 particular case? Yes. What is that opinion? My opinion is
21 that he ultimately died as a result of chronic, active
22 hepatitis associated with hepatitis C infection. So you were
23 not necessarily given information about the criminal
24 investigation or anything --" and then it goes on and on.

25 But clearly that was disclosed in the grand jury

1 testimony way back, years ago. I mean that's the -- that's
2 her testimony. She did not come up to the Court in the -- in
3 this case, sit on the stand and for the first time, out of the
4 blue, opine this. This is something that they've known about
5 for the entirety of the case since the murder charges were
6 brought forth in this particular matter.

7 Now again, under NRS -- both NRS 50.285 and 50.275,
8 she is allowed as an expert and she's designated as an expert
9 in coroner things, I don't have the specifics at this time, to
10 opine and to use information which would otherwise even be
11 inadmissible, meaning hearsay, documents, reports -- you know,
12 records, things like that in her opinion. She can certainly
13 be queried and questioned and cross-examined about those
14 particular items and how much or what if any they had as
15 impact into to her ultimate opinion. But there is nothing in
16 the law that allows -- that says that she cannot use hearsay.
17 She cannot use a report if it's reasonably relied upon by
18 other professionals and experts in the area. And clearly,
19 autopsy reports, laboratory reports, medical records, those
20 are the kinds of things that she would rely upon in coming up
21 with her opinion, as she has testified.

22 So it's not improper for her to rely on anything in
23 this case, including the autopsy that she was at. This is not
24 even a situation -- as the Court said, it's an unusual one.
25 This isn't a situation where she's even just being brought in

1 to look at the results and photographs and so forth from a
2 prior autopsy because a coroner has died or something of that
3 nature. She actually went to the Philippines, she observed
4 the autopsy. She's -- she was standing there right with the
5 organs, she saw the ascites fluid gush out of his abdomen,
6 which was a -- an important thing. She saw all of that. She
7 had communications with the -- with the person who was doing
8 the actual autopsy to get the samples. She retrieves those
9 samples, she brings them back to the United States, she looks
10 at them herself under the microscope and she uses that also as
11 the basis of her opinion.

12 We've got her kind of in a quasi fashion in this
13 case, in the sense that she did things related to an autopsy
14 but she did not do the physical autopsy because of the
15 regulations that she could not do it in the Philippines. But
16 other than that, she was present for the entirety of the time.
17 I laid out as best I could with the foundation as to how she
18 was there, when she was there, what she observed, how close
19 she was, all of those things and that she actually observed
20 the tissue samples herself under the microscope.

21 So I think under the statutes of the case law and
22 under the notice as evidenced by the grand jury transcript,
23 that they knew that that was what she was going to testify
24 about and she testified about it consistently with that grand
25 jury testimony.

1 MR. SANTACROCE: The fact that they didn't disclose
2 another expert in that area, it's not my duty to tell the
3 State, hey, you guys forgot to put someone down to prove the
4 cause of death. I hope they didn't call them. And for them
5 to say well, that's the only one we noticed, you should have
6 known that, great, yeah, good, I hope you don't call that
7 person. For them to say that this lady gave an opinion in the
8 grand jury is immaterial to me in a criminal trial. They have
9 a burden of proof here more than they have in a grand jury and
10 they have to prove cause of death according to the rules of
11 evidence and they have to do it properly. They haven't done
12 it. And because they haven't noticed it I'm supposed to --

13 THE COURT: Yeah, I agree with you, Mr. Santacroce.
14 You know, it's not your job to point out deficiencies in the
15 notice if you see them. By the same token, the issue is
16 notice, whether or not you received fair notice that this is
17 what they were going to do and that this was the witness that
18 they would be calling.

19 Now, again, the statutes and the fact that experts
20 can rely on hearsay does not address the confrontation clause
21 issue. And as I said, you know, this was a topic of
22 discussion by Professor -- I always say his name wrong,
23 [indiscernible] the noted -- whatever, the noted
24 constitutional scholar. And apparently it's not clear what
25 the Supreme Court is going to do with respect to coroners'

1 reports. And that was his topic of discussion, as I said
2 earlier. I even said to Jerry [indiscernible] who was sitting
3 next to me, hey, this just came up in our case and blah, blah,
4 blah. Perhaps had I not been talking to Jerry [indiscernible]
5 I would have --

6 MR. SANTACROCE: You would have got the answer.

7 THE COURT: -- what's likely to occur. So that in my
8 view is a -- is a big issue. It's a big potential issue and
9 it's a somewhat unresolved issue. To the extent she was a
10 percipient witness for some of this and looked at the slides
11 and looked at the, you know, saw the liver, the big old liver,
12 which I don't think is the size of a volleyball. But --

13 MR. STAUDAHER: A normal liver, Your Honor, is.

14 THE COURT: Is the size of a volleyball?

15 MR. STAUDAHER: It's a very large organ --

16 THE COURT: Right, I know but it's --

17 MR. STAUDAHER: -- it stretches across the entirety
18 from over --

19 MR. WRIGHT: She went like this; he went like this.

20 MR. STAUDAHER: -- here all the way across.

21 THE COURT: It's more of the size of a -- I would say
22 a rugby ball or a football.

23 MR. STAUDAHER: We can fix that. Rugby ball. I
24 don't care.

25 THE COURT: In any event --

1 MR. WRIGHT: I just want to correct --

2 THE COURT: -- you know, and certainly she can
3 testify about the liquid coming out of the stomach and all of
4 those things and what that all means because she's an expert.
5 We agree on that. And she saw those things. So there's no
6 problem with any of those things. The only problem,
7 confrontation clause wise, potential, is to what extent she is
8 relying, in her opinion, that it was liver failure as opposed
9 to kidney failure or kidney failure caused by hepatic failure.
10 That's what she said. To what extent she's relying on the
11 coroner's report as opposed to her own training and her own
12 observations. That is the only confrontation clause aspect I
13 think that's implicated here.

14 What I would like to do, which I'm sure none of you
15 would like, is to have her come in here and I just want to
16 know, well, to what extent are you relying on the report and
17 to what extent are you relying on your own observations and
18 your conclusions of -- of the cause of death here.

19 MR. STAUDAHER: That's fine.

20 THE COURT: Does anyone mind me doing that, just off
21 the record?

22 MR. WRIGHT: Well, I -- I just want to respond first.
23 I mean, because if [indiscernible] talked about the Ninth
24 Circuit, I mean, this -- this -- this is an issue using an
25 expert to deny confrontation with an issue before Crawford.

1 I've litigated in the Ninth Circuit. If someone has something
2 that's inadmissible you can't hand it to an expert to slide it
3 in the back door. That was pre-Crawford confrontation
4 analysis and that's -- that's what I've argued about going
5 forward here when they stuck the Southern Nevada Brian Labus
6 on the stand. And --- and I see the same thing here. And how
7 I was misled, I mean sandbagged again.

8 If I had known at the grand jury -- if it had been
9 disclosed that the blood had been tainted or dilapidated,
10 whatever she called it, that she couldn't test it at all, I
11 would have been filing a writ. I read it differently because
12 I thought she tested the blood and it was positive hep C
13 because here's her question on page 30. "I observed what she
14 was doing and she was very helpful in obtaining tissue samples
15 and some blood for me at my request." And I go to page 43.
16 "And, in fact, at the autopsy that was done in the
17 Philippines, did they take blood and test it for hepatitis C
18 at the time? Yes, they did." Question, "And the results of
19 that, were they consistent with your findings that he had an
20 active hepatitis C infection at the time of his death? Yes."

21 Well, I thought she tested the damn stuff and
22 independently confirmed hep C and cause of death. Nowhere in
23 the grand jury was it revealed that the -- she didn't say,
24 well, yeah, they tested it but mine I couldn't test and
25 confirm because it had been destroyed. And so that's why I

1 thought, okay, she's going to be able to testify to cause of
2 death of her own knowledge. Then get in here, take her on
3 cross, learn that her whole trip over there was a waste of
4 time as far as tissues and toxicology report, where she
5 testified in the grand jury is the main thing you need to get
6 good blood and -- quantity and quality and that's why you go.

7 And so then I learn for the first time, no, she can't
8 even testify to this. And so now I'm being denied
9 confrontation on the autopsy report, which by necessity I have
10 to examine her with because she's now opined I independently
11 say cause of death and so now I need to impeach her with what
12 initially she was saying was consistent and she was making no
13 finding of cause of death on direct examination. We're just
14 getting whipsawed.

15 THE COURT: Well, does anyone have that -- I mean
16 here's the thing. If they disclosed her and I'd like to at
17 some point see what the expert disclosure was. As long as
18 it's within the disclosure, she can testify to that. Number
19 two, as an expert she can rely on the reports of other
20 experts, such as the coroner's report from the Philippines.
21 Number three, it's still somewhat undecided as to whether or
22 not in the cases of homicides that would constitute a
23 confrontation clause violation. As I said, it is a frequent
24 practice, not only in this jurisdiction but I'm sure across
25 the country, to not have the coroners who actually performed

1 the autopsies always come in and testify for various reasons;
2 they're retired, they're incapacitated, they've moved away,
3 they're dead. And it occurs, I'm assuming, with some
4 frequency in murder cases for the reasons I've said. I can
5 think of several cases in this jurisdiction that are well over
6 20 years old.

7 If you think about all the other jurisdictions and
8 how old the murder cases are, it's not unusual to have murder
9 cases -- especially now with DNA that are 20, 30 even longer
10 than that. I saw on TV a murder case that was over 30 years
11 old that somebody just got convicted on. So we know that
12 those are not the original coroners who performed the
13 autopsies. And they're not doing -- you know, because of
14 decomposition, you know, cremation, other things, some of
15 these you couldn't even do an autopsy if you wanted to do an
16 autopsy. So I think the law is unclear in this regard.
17 That's all I'm saying.

18 And I think it -- you know, if they say, no, it has
19 to be that same coroner, think it's going to have some far
20 reaching implications on what's going to happen with some of
21 these open murder cases that are years old and they're still
22 trying to find suspects for them. Because if the laws going
23 to be, no, it has to be that same coroner or it has to be a
24 new autopsy, then that's going to really change what's going
25 on out there in the real world, I would think.

1 So all I'm saying is it's not as clear-cut, Mr.
2 Wright, as you would like to suggest, in my view.

3 MR. WRIGHT: Crawford's a [indiscernible]. There's
4 no question about it. Before Crawford we used to drag in
5 grand jury testimony of witnesses, the government --

6 THE COURT: Well, I'm talking about what --

7 MR. WRIGHT: -- said under Ohio V. Roberts there's
8 sufficient indicia of reliability, so it's admissible.

9 THE COURT: I'm talking about what's happened since
10 Crawford came out, that there's -- you know, it's still going
11 on, people are still being convicted and I just am pointing
12 out that murder, because of the fact it has no statute of
13 limitations, is a unique condition where you're seeing this
14 with some degree of frequency. That's all I'm saying.

15 This is unusual. It's because they chose not to
16 bring the coroner in from the Philippines. But the issue, the
17 confrontation clause issue, is the same whether it's because
18 the coroner's dead and it's been 50 years, you know, in the
19 making for a case or whatever. That's all I'm saying. This
20 is something that occurs with a certain degree of frequency
21 because of the nature of the case --

22 MR. SANTACROCE: The distinction though --

23 THE COURT: -- that's my point.

24 MR. SANTACROCE: -- Your Honor, in this case and the
25 examples you cite is those experts are testifying to what

1 their own department did. In this particular case we have two
2 departments, we have a Filipino department, we have a Clark
3 County department and there's some conflicting evidence
4 between the two departments. So the analogy of the example
5 you gave is a little bit different. In that case we have one
6 report, one department, an expert from that department
7 testifying about what that department did. In this particular
8 case it's different. It's different. We don't have
9 confrontation against the department, if you will. Take the
10 coroner out of the equation. The department, the agency that
11 did the autopsy, we don't have that confrontation.

12 THE COURT: All right. Would you do me a favor, Mr.
13 Santacroe? Would you bring the witness in and I'd like to
14 know for my own edification and for the completeness of the
15 record what exactly it is she's basing her opinions on. And
16 then at some point would somebody please give me the expert
17 disclosure. So I'm going to have you act as our gopher.

18 MR. SANTACROCE: Thank you.

19 MR. STAUDAHER: Could -- could your -- I mean, we
20 don't have access to it here. Do your -- could your clerk or
21 JEA possibly print it out?

22 THE COURT: Was it filed or --

23 MR. STAUDAHER: Yes, it's filed.

24 THE COURT: -- it's filed actually with the --

25 MR. STAUDAHER: Yes.

1 THE COURT: -- Clerk of the Court?
2 MR. STAUDAHER: Yes.
3 THE COURT: Okay.
4 MR. STAUDAHER: So it's the last disclosure, expert
5 witness disclosure.
6 MR. WRIGHT: It was like the second amended or
7 something wasn't filed.
8 MR. STAUDAHER: Yeah, they got the other one.
9 THE COURT: Ma'am, come on back in up here and have a
10 seat. I just need to clear something up for the record
11 without the jury being present.
12 THE WITNESS: Okay.
13 THE COURT: You opined that you felt it was the
14 hepatic failure that was responsible for Mr. Meana's death,
15 the hepatic disease; is that correct, liver disease?
16 THE WITNESS: Yes.
17 THE COURT: Okay. Setting aside the report, what do
18 you base that opinion on?
19 THE WITNESS: I base that opinion on the appearance
20 primarily of his liver. It was -- it was scarred over. He
21 also had evidence when I saw him of liver failure. So his
22 skin was yellow, he had lots of areas where he was bleeding on
23 his skin and he had --
24 THE COURT: Do you mean like open bleeding or where
25 they -- older people get that bruising?

1 THE WITNESS: It's like the older people get the
2 bruising.

3 THE COURT: Now how can you tell that that's
4 different bruising from just older people have thinner skin
5 and thinner veins and get that bruising?

6 THE WITNESS: Because it was much more extensive than
7 you typically see in older people. And in older people it
8 tends to be on the forearms and the hands, places that they
9 may bump against or -- or otherwise injure. His was all over
10 his body. And that's more typical of the types of changes you
11 see in people who aren't making clotting factors as in people
12 who have liver failure.

13 THE COURT: Okay. Anything else that you are relying
14 on?

15 THE WITNESS: Those are the main.

16 THE COURT: Okay. And then how can you tell if
17 somebody has let's say independent kidney disease, you know
18 they coincidentally happen to have kidney disease for whatever
19 reason. How can you tell that his death wasn't due to the
20 kidney disease as opposed to the liver disease or a
21 combination of kind of an unrelated kidney disease or
22 malfunction and liver disease? Do you understand my question?

23 THE WITNESS: I do. And I -- I can't tease out his
24 underlying baseline kidney disease. I don't know if it was
25 very subtle in there or if it was really encouraged or made

1 worse by the liver failure. I don't believe he had evidence
2 in his labs of an element of kidney disease before he got the
3 hepatitis. That's when the kidney disease started becoming
4 apparent and that's my -- that's the reason for my opinion
5 that the kidney disease was primarily the result of his liver
6 failure influencing how his kidneys were working.

7 THE COURT: And I -- this may have been discussed and
8 if it was I don't recall. Was he ever on dialysis or anything
9 like that prior to his -- obviously prior to his death?

10 THE WITNESS: Prior to his death he was, yes. But
11 before he got hepatitis, no, he was not.

12 THE COURT: Okay. And how long was he on dialysis
13 prior to his death, do you know, from his records?

14 THE WITNESS: I know that there are specific
15 references to it in the Philippines' medical records. I -- I
16 don't recall specifically about references to dialysis in his
17 local hospitalization records.

18 THE COURT: Okay. Now had you been able to test the
19 blood that you brought back with you, what is it that you
20 would have been looking for?

21 THE WITNESS: Basically just a confirmation that he
22 still had hepatitis C in his blood.

23 THE COURT: Okay. Now if he had cirrhosis from
24 hepatitis, is it possible the hepatitis could, I mean, resolve
25 just and still have cirrhosis or how does that work?

1 THE WITNESS: Well, once you have cirrhosis it
2 doesn't go away unless you get a liver transplant. It's
3 unlikely in my opinion that he had cleared the hepatitis C
4 virus, just because when I looked at it under the microscope
5 he still had lots of inflammation in his liver, so the damage
6 was ongoing.

7 THE COURT: Okay. And then this bruising that you've
8 described, could that be caused by the kidney failure?

9 THE WITNESS: When kidney failure gets bad enough it
10 can upset the -- the -- I guess balance of clotting factors in
11 the blood and they may have some element of bleeding
12 associated with it.

13 THE COURT: Okay. I cannot think of any other
14 questions. Does anyone have any on this topic, have any other
15 questions to complete the record?

16 BY MR. STAUDAHER:

17 Q I just -- in what she has said so far, it
18 doesn't sound like -- I mean you're talking about medical
19 records, your direct observations, your microscopic
20 examination and so forth, that you did yourself; is that
21 correct?

22 A Yes.

23 Q Is that the basis of your opinion?

24 A Yes.

25 Q Would you --

1 today?

2 MS. STANISH: Yeah. We have -- one of our witnesses
3 is traveling in this afternoon.

4 THE COURT: So you have nothing for today? Is that
5 what you're telling me?

6 MS. STANISH: I could but I'd prefer not to because I
7 think it will get jammed up and I'd rather just do it all in
8 one fell swoop.

9 THE COURT: That's fine if we can really do it all in
10 one fell swoop. Do you see what I'm saying? But if then it's
11 going to go in to another day anyway, then I'd rather start
12 today. I mean, I don't know how much cross you have, how much
13 you're going to get into the medical records and stuff with
14 this witness.

15 MS. STANISH: Yeah, Mr. Wright's doing this cross.

16 THE COURT: I mean, it may just be if it's like 3:30
17 then I don't really care if it's --

18 MS. STANISH: Well, because we're not getting back
19 until 2:45.

20 THE COURT: That's fine.

21 MS. STANISH: All right.

22 THE COURT: Do you see what I mean though? I don't
23 want to say, okay, fine start tomorrow and then us be going
24 into, you know, a half day on another day. But if you don't
25 think -- I mean, you -- you folks know how long your cross is

1 likely to take.

2 MS. STANISH: Right.

3 THE COURT: So if you think it's really going to
4 be --

5 MR. WRIGHT: I don't know how long my direct's going
6 to be on our witnesses. I've never talked to them.

7 THE COURT: No, I'm talking about your cross today.
8 You have an idea of when you're likely to finish.

9 MR. WRIGHT: It's not going to be before lunch.

10 THE COURT: Well, I knew that.

11 MR. WRIGHT: Oh, okay. It could be quite lengthy.

12 THE COURT: Is that true or are you trying to
13 manipulate me?

14 MR. WRIGHT: Oh, no, no, it's true.

15 THE COURT: Well, sometimes he says quite lengthy and
16 it's not. I'm not saying you do this on purpose to accomplish
17 your objective, your scheduling objective. With what is it?
18 What kind of information -- oh, with your disinformation. All
19 right. Well, let's kind of -- I guess we'll take our break at
20 1:05. If they ever get out of --

21 THE MARSHAL: Ready, Judge?

22 THE COURT: Yes. Please bring them in.

23 (Jury reconvened at 12:16 p.m.)

24 THE COURT: All right. Court is now back in session
25 and you may resume your direct examination, Mr. Staudaher.

1 MR. STAUDAHER: Thank you, Your Honor.

2 BY MR. STAUDAHER:

3 Q When we left off I think we were talking -- at
4 least I was asking you some questions about things that
5 happened secondarily to a cirrhotic liver as far as
6 manifestation in a -- in a person's body. You talked about
7 the varices or these varicose sort of esophageal things that
8 were going on and some bleeding and the like. Is there also
9 some issue of since the blood is backing up, so to speak, as
10 you've described, does there -- is there any leakage of fluid
11 out of the blood vessels into the abdomen?

12 A Yes. That can actually occur for a variety of
13 reasons. One is that the blood's backing up. But another is
14 that one of the liver's functions is to make the proteins that
15 help hold the fluid in your blood vessels. So if the liver is
16 failing and isn't doing its job, then the blood vessels
17 essentially become leakier and so the fluid goes into places
18 where it shouldn't, including into the abdomen.

19 Q So a combination of the two then?

20 A Correct.

21 Q Now, is there a particular term that is used to
22 describe that -- that process or that fluid?

23 A Yes. When the -- when the fluid goes into the
24 abdomen it's called ascites and when the fluid just
25 essentially goes all over that's called anasarca.

1 Q Was there any evidence of either one of these in
2 Mr. Meana?

3 A Yes, there was.

4 Q Both or one or the other?

5 A He definitely had excess fluid in his abdomen
6 and from what I saw he looked to have excess fluid just
7 everywhere.

8 Q Now when you say excess fluid in the abdomen, is
9 it something that's visible from the naked eye on a person
10 that might have a significant amount of that?

11 A Yes. When you do an autopsy you open the
12 abdomen up and the fluid gushes out, so it's easy to see.

13 Q Is that something that's normal in a person who
14 does not have liver disease?

15 A No, it's not.

16 Q So is this something that you witnessed in Mr.
17 Meana?

18 A Yes.

19 Q And this was at the autopsy in the Philippines?

20 A Correct.

21 Q Now the liver itself, the autopsy report that
22 was done in the Philippines, we're going to get to yours in a
23 moment but I want to -- I want to ask you about that. You
24 said, if I understood you correctly, that there was nothing in
25 this report that was contrary to your own findings or

1 observations; is that correct?

2 A That's correct.

3 Q I'm showing you the first page of the autopsy
4 report, which is State's 19. And this is -- this only -- this
5 is the only page I'm really going to show you but it -- it --
6 I want to ask you some questions about some of the things that
7 are listed here. And this is my highlighting on this, it's
8 not contained in the original document.

9 A Okay.

10 Q But on this -- let me go out just a little bit
11 just to make sure before (INAUDIBLE) asking you about. The
12 lists up here where it says Summary of Pertinent Postmortem
13 Findings, can you tell us what those things mean?

14 A So the first one is pneumonia, that's infection
15 in the lung or lungs. Micronodular cirrhosis, secondary to
16 chronic to hepatitis C. So that's the scarring in the liver
17 that we've talked about and specifically it's because of the
18 chronic hepatitis C infection. Atherosclerosis in the
19 coronary arteries of the heart, that means blockages in the
20 arteries of the heart or heart disease. Atherosclerosis in
21 the kidney refers to that same type of blockage or hardening
22 of the arteries in the kidney. Hypertensive nephrosclerosis
23 in the kidney, that is scarring in the kidney in the part of
24 the kidney that does the initial filtration of the blood and
25 also the further filtration of the blood. That's basically

1 because of high blood pressure that the blood vessels scar
2 over. And the last one is listed is cortical cysts in the
3 kidneys and those are little pockets of fluid that can form in
4 the kidneys. They aren't necessarily related to ongoing
5 disease. Sometimes we see them in -- in people that don't
6 have any obvious disease.

7 Q Now, in those items that were listed up there
8 that you just went through, as far as hepatitis C causing any
9 of these, did it -- did it cause all of those things or just
10 one or the other or can you tell us?

11 A Well, directly, hepatitis C causes the
12 micronodular cirrhosis or the scarring in the liver. It can
13 also, as a consequence of the people being very ill, it can
14 lead to pneumonia but it doesn't directly cause pneumonia.
15 And the other items that are listed aren't directly related to
16 hepatitis C infection.

17 Q So the pneumonia is a secondary portion of it --
18 of the infection and what it does to the body and the primary
19 thing is what it does to the liver; is that fair?

20 A Yes, that's correct.

21 Q Now the things that are listed under cause of
22 death, can you tell us what -- what those are?

23 A So listed as the immediate cause is hepatic
24 failure, meaning liver failure. The antecedent cause is
25 micronodular cirrhosis or the scarring of the liver. And the

1 underlying cause is the chronic hepatitis C.

2 Q Now under the remarks section, do you see that?

3 A Yes.

4 Q What -- tell us what this means.

5 A So the -- it reads blood specimen obtained is
6 serologically positive for hepatitis C. I can't read --
7 relevant tissues are submitted for histological examination.
8 So the blood that Dr. [indiscernible] got during the autopsy,
9 she submitted that for testing for hepatitis C and it was
10 positive. And this also makes note of the fact that she
11 intended to look at the -- the tissues under the microscope to
12 see what she could see.

13 Q Now with regard to -- to that, I mean, obviously
14 there -- if I understand you correctly, there's an active
15 infection or -- or what of hepatitis C or at least is just --
16 what does serologically positive mean?

17 A Serologically positive means that, generally
18 speaking, that either virus particles, in this case RNA, were
19 found in the blood and/or antibodies that the specialized
20 proteins that the body uses to fight infections were found in
21 the blood.

22 Q Now as far as your results, coming back to the
23 United States, you've -- you've already told us some of the
24 things that you found. But specifically, what was your -- I
25 mean, were you able to arrive at a cause of death in this

1 case?

2 A I didn't specifically list a cause of death in
3 my report because I'm not actually the one who performed the
4 autopsy nor am I the one who filled out the death certificate.

5 Q So what would -- what would be the purpose of
6 your report then?

7 A My -- my report is essentially an account of
8 what I did when I went to the Philippines and what I saw in
9 the tissues that I brought back with me.

10 Q Knowing that, knowing your review of the medical
11 records before, your subsequent review of the medical records
12 after you did your report, as well as the autopsy findings
13 here, do you agree with the cause of death listed in this
14 autopsy report?

15 A Yes, I do.

16 Q Is there anything that you've learned subsequent
17 to coming back to the United States, reviewing the medical
18 records from the Philippines and -- and again, we've got those
19 if you need to refer to them at any point, that would call in
20 to question either these findings or your opinion regarding
21 these findings?

22 A No.

23 Q And did any of the tissue samples that you
24 actually did work on, was there -- and got results from, did
25 they in any way differ from what was contained in the report

1 from the Philippines?

2 A No.

3 Q As far as the evidence of prior liver disease,
4 things -- prior infection -- and I'm talking about your review
5 of the medical records with Mr. Meana prior to the September
6 21st date, did you -- did you find that there was any evidence
7 in the medical record of prior liver disease with Mr. Meana?

8 A No, I did not.

9 Q Any evidence of prior hepatitis C infection?

10 A No.

11 Q Knowing that and that he serologically tested
12 positive after that date, is it your opinion that he died as a
13 result of manifestations of his -- of his hepatitis C
14 infection?

15 A Yes.

16 MR. STAUDAHER: Pass the witness, Your Honor.

17 THE COURT: All right. Thank you. Cross.

18 CROSS-EXAMINATION

19 BY MR. WRIGHT:

20 Q What are hepatic, h-e-p-a-t-i-c abnormality?

21 A Hepatic abnormality is a general term meaning
22 that something to do with the liver is abnormal.

23 Q Okay. Did Mr. Meana have hepatic abnormalities
24 before he went to the clinic on September 21st, 2007?

25 A Not that I saw a record of in the medical

1 records that I examined.

2 Q You -- you had all of Mr. Meana's medical
3 records before you ever went to the Philippines, correct?

4 A I believe I had most of them, not -- I'm not
5 sure that it was a completely exhaustive copying of all of his
6 medical records.

7 Q Okay. Well what did you have?

8 A I had medical records from his primary care
9 doctor, from a neurologist, from --

10 Q I thought you testified in the grand jury that
11 you had received all of the records that existed on a disc
12 beforehand so that you could familiarize yourself with them
13 before you traveled to the Philippines.

14 A I'm assuming that the records that I received on
15 the disc were exhaustive, but I don't have a way of verifying
16 that.

17 Q Okay. You don't have them anymore?

18 A I do have them, yes.

19 Q Okay. Do you have them here?

20 A No. I don't have the disc with me.

21 Q Okay. Well look -- look at Exhibit AA1. Those
22 are some medical records of Mr. Meana. Have you seen those
23 before?

24 A Most of them, yes.

25 Q Okay.

1 MR. WRIGHT: I move their admission.

2 MR. STAUDAHER: No objection, Your Honor.

3 THE COURT: All right. AAl is admitted.

4 (Defendant's Exhibit AAl admitted.)

5 BY MR. WRIGHT:

6 Q Okay. AAl, page one, is a what?

7 A Page one is a report from Nevada Physicians
8 Imaging on a study conducted in April of 2007 on Rodolfo
9 Meana.

10 Q Okay. And is that -- it says it's a renal
11 ultrasound.

12 A Yes.

13 Q Okay. That Mr. Meana had chronic kidney
14 disease, correct?

15 A Yes.

16 Q And prior to ever going for his colonoscopy in
17 September 21st, 2007, correct?

18 A Yes.

19 Q Okay. And one of his -- one of his two causes
20 of death was kidney failure, correct?

21 A Yes.

22 Q And he had kidney disease before he ever went
23 and had a colonoscopy on September 21st, 2007, correct?

24 A He did.

25 Q Okay. And this is a renal ultrasound report by

1 Dr. Jane; is that --

2 A Yes.

3 Q -- correct? And then what -- what is the --
4 what does the impression mean? Is that the findings?

5 A Yes, essentially.

6 Q Okay. What are the findings?

7 A The findings are listed as number one, bilateral
8 renal cysts; number two, probable small seven millimeter
9 non-obstructive right renal calculus; number three,
10 prostatomegaly; number four, mild residual within the bladder
11 post void.

12 Q Okay. Now the first one, bilateral renal cysts.
13 Is -- is that talking about something on the kidney?

14 A Yes. They're little fluid filled sacks on the
15 kidneys.

16 Q Okay. And the second one, probable small seven
17 millimeter non-obstructive right renal calculus. What the
18 heck is that?

19 A He had a small stone in his right kidney that
20 was not obstructing, it wasn't blocking the flow of urine.

21 Q Okay. Number three, prostatomegaly.

22 THE COURT: Why don't you say it for us?

23 A Prostatomegaly. It means that he had an
24 enlarged prostate gland.

25 BY MR. WRIGHT:

1 Q Okay. Number four, mild residual within the
2 bladder post void, meaning?

3 A Means that after he had urinated he still had
4 urine left in his bladder.

5 Q Okay. Now page two of AA1 is another report,
6 it's a CT scan of the abdomen and pelvis with contrast by Dr.
7 Jane on June 7th, 2007, correct?

8 A Yes.

9 Q And there's a fine -- findings, a large
10 paragraph, I'll put -- I'll put it here while I'm talking
11 about. You can look at the original exhibit, I just have a
12 copy. Findings, then impression, that -- that's like the
13 diagnosis?

14 A It's essentially the summary of what they saw.

15 Q Okay. And so this -- this is June 2007, several
16 months before his colonoscopy.

17 A Yes.

18 Q Okay. And number one impression, marked
19 prostate enlargement, additional evaluation is respectively
20 advised.

21 A Yes.

22 Q Okay. He's got an enlarged prostate.

23 A Yes.

24 Q Number two, non-obstructing lower pole
25 calcification of the right kidney, no -- you read it.

1 A Okay. You got the first sentence right. The
2 second one reads no hydronephrosis is seen. There is evidence
3 of bilateral renal cortical cystic change confirmed on recent
4 renal sonography. The 27-millimeter probable extreme upper
5 pole cortical cyst of the left kidney is not seen
6 sonographically.

7 Q Okay. Number two is talking about the kidney,
8 correct?

9 A Correct.

10 Q And when it says that as seen on recent renal
11 sonography, presumably that means the one on the previous
12 page?

13 A Yes, presumably.

14 Q Okay. And then number three. Go ahead.

15 A Okay. Number three reads distended extra
16 hepatic bile ducts. Distal obstruction is not excluded.
17 Changes of cholecystectomy. Probable small cysts of the
18 liver.

19 Q Ah. What did that say?

20 A Probable small cysts of the liver.

21 Q Okay.

22 A Hepatic nodule is not excluded, consider dynamic
23 contrast enhanced CT of the abdomen to further assess hepatic
24 and renal abnormalities.

25 Q Okay. So this is saying consider dynamic

1 contrast enhanced CT of the abdomen to further assess hepatic
2 -- hepatic and renal abnormality, correct?

3 A Yes.

4 Q Okay. So he -- he -- there appears to be liver
5 and kidney problems prior to the colonoscopy, correct?

6 A Yes, by -- by ultrasound and by CT scan.

7 Q Okay. Now you had testified on direct that
8 there was no evidence or history whatsoever of any liver
9 problems prior to his colonoscopy, right?

10 A Yes, I did.

11 Q Okay. And we -- we see that, in fact, there was
12 hepatic and renal -- which means liver and kidney abnormality,
13 correct?

14 A Correct, yes.

15 Q Mild colonic diverticulosis. What's that?

16 A Colonic diverticulosis is a process where the --
17 the wall of the colon actually bulges out a little bit and
18 food become -- can become entrapped in those little balloons
19 or bulges.

20 Q Now we know on September 21st, 2007 he had a
21 colonoscopy or a procedure, I don't remember what it was to
22 tell you the truth, but at the clinic and thereafter by the
23 end of December he was diagnosed through a blood test of
24 having hepatitis C by Dr. Jurani. Are you aware of that?

25 A Yes, I am.

1 Q Okay. And there is a -- if you look at page
2 three of AA1, abdominal ultrasound, that's on 12/11/2007,
3 physician Dr. Jurani. You know that was his primary care
4 physician?

5 A As far as I recall, yes.

6 Q The -- from the findings, is that talking about
7 the liver and the kidney?

8 A Yes.

9 Q Okay. And then on the impression, scattered
10 hepatic and renal cysts as previously noticed on abdominal CT,
11 no acute abdominal finding.

12 A Yes, that's what it says.

13 Q Okay. So we still have -- after this -- this is
14 December the 11th, 2007 consistent with the June 2007 of liver
15 and kidney cysts, correct?

16 A Yes, that's correct.

17 Q Now do you know that his -- he was -- I don't
18 know if -- I guess diagnosed with hepatitis C, you have a
19 positive blood test. Is that what it's called? I'm diagnosed
20 with hepatitis C?

21 A Yes.

22 Q Okay. The -- in the fourth page of the exhibit,
23 this is Dr. Jurani's progress note, December 27, 2007, that's
24 -- he's got hepatitis C, correct?

25 A Yes.

1 Q Okay. And hypertension. What's that, high
2 blood pressure?

3 A Yes, that's high blood pressure.

4 Q Okay. G-E-R-D?

5 A G-E-R-D stands for gastroesophageal reflux
6 disease or often called reflux.

7 Q Okay. And January 2, I flip to the fifth page,
8 another Dr. Jurani note, hepatitis C, RNA 5,980,000, abdominal
9 ultrasound cysts. Has appointment with a GI on January 15th,
10 2008, correct?

11 A That's what it says, yes.

12 Q And we have on the sixth page, Dr. Jurani's
13 reporting of the hep C finding for Mr. Meana to the Southern
14 Nevada Health District. You're aware that physicians when
15 they find out a patient has hep C are required by law to
16 report it, correct?

17 A Yes.

18 Q And the disease or condition being reported is
19 hepatitis C, symptoms, patient said no symptoms. Are you
20 aware of that?

21 A I'm aware that that's what it says on the form,
22 yes.

23 Q Okay. Are you aware that he -- he -- the
24 patient, Mr. Meana was -- you read the medical records, he was
25 jaundiced, correct?

1 A Yes. He did report being jaundiced or having
2 yellow skin.

3 Q Okay. And other than that, it was your
4 understanding that there were no other symptoms.

5 A As far as I recall, yes.

6 Q Okay. Now you can set that aside. So knowing
7 he had liver problems and kidney problems as early as June
8 2007 and then he gets hepatitis C, are you -- you believe he
9 didn't have hepatitis C before December 27th, 2007, correct?

10 A It would be more accurate to say that he was
11 officially diagnosed in December of 2007. He had diagnosed
12 cysts on his kidneys and his liver prior to that. It's
13 unclear to me whether he was actually having symptoms or
14 problems associated with those cysts.

15 Q Okay. The -- you're aware from looking at his
16 medical records that he declined to be treated for hepatitis
17 C, correct?

18 A The records state that he -- I believe had one
19 injection of the medications to treat hepatitis C and reported
20 that he could not tolerate side effects from it and so
21 discontinued that treatment.

22 Q Okay. So he did not get treated for hepatitis
23 C, correct?

24 MR. STAUDAHER: Objection, mischaracterizes the
25 record.

1 THE COURT: Well, overruled, she can answer. You can
2 answer.

3 A According to his statements, he could not
4 tolerate the side effects so he did not continue his
5 treatment.

6 BY MR. WRIGHT:

7 Q Okay. The -- by treated I meant he didn't go
8 through the -- you understand it's like a 48-week treatment
9 program?

10 A Yes. It's an extended treatment program.

11 Q Okay.

12 A He did not complete that.

13 Q And, of course, you're -- you're aware he waited
14 until 2009 to initiate treatment.

15 A Yes.

16 Q Okay. So it was -- are you aware that your --
17 your chances -- if you're going to treat it and go on the
18 program that it is better to do it sooner rather than later?

19 A That would be my assumption. I'm not intimately
20 aware of the specific treatment plan as well as the pros and
21 cons of it.

22 Q Okay. And so ultimately, no 48-week treatment
23 plan in 2009 and the hepatitis C, which is chronic, correct?

24 A Yes.

25 Q Chronic hepatitis. And so he had chronic

1 hepatitis C and chronic liver -- chronic kidney disease,
2 correct?

3 A Yes.

4 Q Both untreated.

5 A The hepatitis C he did not receive the full
6 treatment for. The chronic kidney disease, he was likely
7 getting supportive treatment, but I don't recall what the
8 details were.

9 Q Okay. Then we go to -- you get notice that he's
10 going back to the Philippines, correct?

11 A Yes.

12 Q And you're to prepare to go over to participate
13 or watch the autopsy?

14 A To watch the autopsy.

15 Q Okay. You knew you couldn't participate?

16 A That's correct.

17 Q Okay. Before you went you knew that?

18 A Yes.

19 Q Okay. So you were just going as an observer.

20 A Yes.

21 Q Okay. And you were going to get blood and
22 tissue samples firsthand to bring back for your own analysis.

23 A Yes.

24 Q Okay. And so that -- that was your sole reason
25 for going.

1 A Yes.

2 Q And you took your supplies with you, meaning
3 your little storage containers for blood and tissue.

4 A Yes.

5 Q Okay. Went and got to the Philippines, it was
6 all ultimately arranged for an autopsy to occur, correct?

7 A Yes.

8 Q Where did the autopsy take place?

9 A The autopsy took place in a funeral home in the
10 metropolitan Manila area.

11 Q Okay. And the -- Mr. Meana's body had been
12 frozen?

13 A Yes, that's correct.

14 Q Okay. And is that the way you all do it here?

15 A No. That's not typically the way it's done in
16 the United States.

17 Q Okay. The -- and so you had to wait for him to
18 thaw?

19 A Essentially, yes.

20 Q Okay. And the -- you obtained blood samples and
21 tissue samples.

22 A Yes.

23 Q And your goal was to bring them back to the
24 United States and test them, those samples, for hepatitis C,
25 correct?

1 A That was the hope at any rate, yes.

2 Q Okay. What do you mean the hope? That's why
3 you went, right?

4 A Well, the hope was that I could look at the
5 liver under the microscope and do additional testing to
6 determine or to confirm that, in fact, there was hepatitis C
7 present in the liver.

8 Q Okay. And do the same with blood, correct?

9 A Yes.

10 Q Correct?

11 A Yes.

12 Q Okay. I mean because here in the United State
13 we rely big time on toxicology reports, correct?

14 A In some cases, yes.

15 Q Okay. Well that's why -- don't you all take
16 blood first?

17 A For our cases, yes.

18 Q Okay. And so you brought back the blood samples
19 and you went through all that -- your little -- kept them in
20 your little containers, kept them in the refrigerator, got
21 them here, all the way through customs, everything. Got back,
22 got them here, test the blood for hepatitis C and the results
23 were what?

24 A Well, I wasn't able to test the blood for
25 hepatitis C.

1 Q Because?

2 A Because it was degraded.

3 Q Okay. And so you then tested the tissue, the
4 liver tissue, for hepatitis C.

5 A No, I wasn't able to do that either.

6 Q That's why you went and brought it back,
7 correct?

8 A I went to observe and to get samples to bring
9 back and look at.

10 Q Okay. So all we have -- I mean really, as far
11 as your independent verification and an analysis, is you
12 watched the autopsy.

13 A Yes. I watched the autopsy and looked at the
14 tissues under the microscope and described what I saw.

15 Q Okay. And you -- you saw liver tissues, kidney
16 tissues, spleen tissues, right?

17 A Yes.

18 Q Did it have hepatitis C?

19 A I couldn't confirm that, no.

20 Q Okay. Kidney disease?

21 A Yes.

22 Q Okay. Cause of death -- where is the -- the
23 certificate of death, the immediate cause was hepatic and
24 uremic encephalopathy, four.

25 A Yes.

1 Q Okay. So that's liver and kidney.

2 A Yes.

3 Q Both?

4 A Yes.

5 Q Okay. So he had both of those prior to the
6 colonoscopy, correct?

7 MR. STAUDAHER: Objection, Your Honor --

8 BY MR. WRIGHT:

9 Q Liver disease and kidney disease?

10 THE COURT: Well, overruled. She can answer the
11 question.

12 A He had documented abnormalities in his liver and
13 kidneys prior to the colonoscopy.

14 BY MR. WRIGHT:

15 Q Okay. And sepsis is the antecedent cause.
16 Explain immediate and antecedent again. Immediate cause --
17 the moment life left him, that's the immediate cause, right?

18 A Essentially, yes.

19 Q Okay. So right at that moment that was liver
20 and kidney.

21 A Liver and kidney and you're forgetting
22 encephalopathy, which means that the failure of the liver and
23 kidney caused in turn his brain to not work right any longer.

24 Q Okay. Okay. So that's the encephalopathy.

25 A Yes.

1 Q That was the immediate cause of death. So the
2 brain not working properly was because of his hepatic and
3 uremic problems.

4 A That's correct.

5 Q Okay. And antecedent sepsis, that means -- now
6 what's antecedent cause mean again?

7 A Antecedent means comes before. So you have the
8 immediate cause and then coming before that is another cause.
9 In this case that's sepsis.

10 Q Okay. What's sepsis?

11 A Sepsis is an infection in the blood.

12 Q Okay. So he had blood infection.

13 A Correct.

14 Q And the blood infection was caused by?

15 A The blood infection was caused by the fact that
16 he was in liver failure and he was very sick and he got an
17 infection, which progressed.

18 Q Okay. And in kidney failure, correct?

19 A Yes.

20 Q Okay. Both?

21 A Yes.

22 Q Okay. Your report doesn't talk about the kidney
23 failure.

24 A My report specifically says he does have
25 scarring in his kidneys, which I rated as mild to moderate.

1 Q Okay. No, I mean on your -- I thought you were
2 agreeing -- your autopsy report -- is that what this is
3 called, the autopsy report?

4 A Yes.

5 Q Okay. Hepatitis C infection, genetically typed,
6 hepatic cirrhosis, splenic fibrosis, acute to subacute
7 pneumonia bilateral, nephrosclerosis, mild to moderate.
8 What's that?

9 A Nephrosclerosis means that he had scarring in
10 his kidneys.

11 Q Okay. And you have that down as number three,
12 correct?

13 A Yes.

14 Q Okay. The Philippines death certificate has the
15 cause, the immediate cause of death being both, correct?

16 A Yes, it does.

17 Q And what's that K169 next to it?

18 A I have no idea.

19 Q And so you were able to do no tests on blood or
20 tissue regarding hepatitis C.

21 A That's correct.

22 Q Okay. But in the Philippines autopsy report
23 there was a blood test done, right?

24 A Yes.

25 Q You read that. Remarks, blood specimen obtained

1 is serologically -- serologically positive for hepatitis C.

2 A Yes, that's what it says.

3 Q Okay. Did you see that blood test?

4 A I did not see the results directly of that blood
5 test.

6 Q Okay. I looked through all those records that
7 were sent with all these ribbons and everything but I can't
8 find it. Did you?

9 A I didn't see it in the copies that I received.

10 Q Relevant tissues are submitted for histological
11 examination. Is that what -- is that the same thing you did?

12 A Yes.

13 Q Okay. And that means you looked at the tissues
14 under a microscope.

15 A That's correct.

16 Q Okay. Did you send -- the blood was
17 non-testable.

18 A Correct.

19 Q That you brought back.

20 A Yes.

21 Q Okay. And the tissues you brought back you
22 testified at great length at the grand jury of how you put it
23 inside of a fixation that preserves it forever and all of
24 this, right?

25 A I don't know if I said forever, but I put it in

1 a preservative.

2 Q Okay. And you preserved it and got it all the
3 way back here and then sent it off to a lab to have it tested
4 for hepatitis C.

5 A We sent it -- the tissue to our laboratory,
6 locally, that prepares the slides and we asked them, please
7 test this for hepatitis C. And they said we don't have any of
8 the special reagents or the special chemicals that are needed
9 to do the hepatitis C testing. So then we asked the CDC in
10 Atlanta if they could test it, test the tissue for hepatitis
11 C. And they said we don't -- we don't have those special
12 reagents, we can't do that. So that's the reason why I
13 couldn't confirm in the samples I had that there was hepatitis
14 C in his liver.

15 Q Okay. And so we -- you just plain couldn't test
16 them?

17 A That's correct.

18 Q Okay. And we don't know -- the blood specimen
19 obtained is serologically positive for hepatitis C, that
20 conclusion could have been reached in various ways.

21 A Possibly, yes.

22 Q Okay. But we don't know because we don't have
23 it, correct?

24 A Correct.

25 Q We would need the coroner or whoever did this

1 and the correct records, right?

2 A Yes.

3 Q On this autopsy, peculiarly to me anyway, the
4 cause of death here in the autopsy as opposed to the death
5 certificate in the Philippines, this autopsy has immediate
6 cause of death hepatic failure, correct?

7 A Yes.

8 Q Okay. Whereas, the death certificate has
9 hepatic uremic, right?

10 A Yes.

11 Q Okay. So somehow from the death certificate to
12 the autopsy we dropped off the kidney problem, correct?

13 A Yes.

14 Q Okay. And then the -- you indicated you didn't
15 suggest to the folks at the funeral home the results of this
16 autopsy, correct?

17 A That's correct, I did not.

18 Q Okay. Where it says in the autopsy form
19 allegedly resulting from hepatitis C, who -- who told them
20 that there -- that it's allegedly hepatitis C as opposed to
21 kidney, chronic kidney disease and renal failure?

22 A Dr. [indiscernible] before she performed the
23 autopsy spoke with one of Mr. Meana's daughters and Dr.
24 [indiscernible] may also have had medical records from the
25 Philippines to examine. I would imagine that both of those

1 sources provided the information that he had hepatitis C
2 infection.

3 Q Okay. So this -- in our autopsy reports here,
4 does this follow the same as -- by our I'm talking about Clark
5 County, right? Do we -- do we have an allegedly resulting
6 from --

7 A No, we don't.

8 Q -- section? I mean, we do autopsies here, you
9 all go in and you all objectively, independently determine the
10 cause of death regardless of what someone suggests, correct?

11 A Sometimes it's solely our -- sometimes our
12 conclusions for cause and manner of death are based solely on
13 what we can see at autopsy. In other cases we have to rely on
14 medical records to inform us of what happened to this person
15 before they died.

16 Q I guess you answered that. The -- what I was
17 asking you, was you independently make a determination --

18 A Yes, based --

19 Q -- correct?

20 A -- on what we see at autopsy and sometimes what
21 we see in medical records.

22 Q Okay. And so but you don't put down there
23 allegedly resulting from hepatitis C in our forms, correct?

24 A We don't have a line like that in our autopsy
25 reports, no.

1 Q Okay.

2 THE COURT: Mr. Wright, I'm going to stop you. We're
3 going to take our lunch break.

4 MR. WRIGHT: Okay.

5 THE COURT: Ladies and gentlemen, we'll be in recess
6 for the lunch break until 2:45.

7 During the lunch recess you are reminded that you are
8 not to discuss this case or anything relating to the case with
9 each other or with anyone else. You're not to read, watch or
10 listen to any reports of or commentaries on this case, any
11 person or subject matter related to the case. Don't do any
12 independent research by way of the Internet or any other
13 medium. And please don't form or express an opinion on the
14 trial. Notepads in your chairs, follow the bailiff through
15 the rear door.

16 And ma'am, don't discuss your testimony during our
17 break. Okay?

18 THE WITNESS: I won't.

19 (Jury recessed at 1:02 p.m.)

20 THE COURT: All right.

21 MR. WRIGHT: I want to take a matter up.

22 THE COURT: Oh, okay. All right, ma'am, you're
23 excused for the lunch break. Again, don't discuss your
24 testimony with anyone on the lunch break.

25 THE WITNESS: Yes, ma'am. The exhibit is still up

1 here.

2 THE COURT: You can leave the exhibits there, the
3 courtroom's secured.

4 All right. Mr. Wright, you had a matter out of the
5 presence of the jury. Go ahead.

6 MR. WRIGHT: Yeah. I'm going to be moving to strike
7 these Philippine records as incomplete or requesting the
8 coroner -- I mean this was the entire issue we argued about
9 and now I've -- I learned that all she did was watch. That
10 entire trip to get the blood samples and tissue samples, got
11 zilch and they're relying upon incomplete record? I don't
12 even know the viral load because isn't even there. I've got a
13 certificate of death, which has chronic kidney failure and
14 chronic liver failure and then they do a little autopsy in the
15 funeral home that comes up differently. And now I don't even
16 have the blood test.

17 THE COURT: All right.

18 MR. SANTACROCE: I join in that.

19 THE COURT: All right. State, your response?

20 MR. STAUDAHER: Well, first of all, this -- this
21 witness didn't just do zilch -- do nothing. I mean she came
22 back and she looked at the slides that she had under the
23 microscope. She wasn't able to test the actual tissues for
24 hepatitis C to confirm that there was an active infection at
25 the time. But her -- her findings, her independent findings

1 of the tissue samples related to the liver and the other
2 organs that she found were not only consistent with but she
3 believed based on the records that were available, the medical
4 records here in the United States that counsel clearly has had
5 and the evidence that showed that there was test -- I mean she
6 can rely on -- on the fact that there was testing in the
7 Philippines and what it showed. That's one issue. But this
8 person is a genetic match to the virus that was essentially
9 contracted in the clinic and the medical records show --
10 although --

11 THE COURT: Yeah. We know he had hepatitis and that
12 it's the same hepatitis. I think where Mr. Wright is going is
13 he had preexisting liver disease and I think -- this is what
14 I'm getting, more significantly he had preexisting kidney
15 disease. And the coroner in the Philippines said he died from
16 liver and kidney disease and from sepsis. And I'm -- well,
17 I'm wondering, and I don't know if Mr. Wright -- this is the
18 direction he's taking, but can't kidney failure cause sepsis
19 and some of these things too?

20 So Mr. Wright, I think -- correct me if I'm wrong,
21 but I think his point is as we sit here, how do we know that
22 he was killed by the hepatitis --

23 MR. WRIGHT: Right.

24 THE COURT: -- C, which clearly he contracted at the
25 clinic and clearly is genetically linked. I don't think that

1 that's what he's disputing as opposed to kidney failure, which
2 caused the sepsis and --

3 MR. WRIGHT: Right.

4 THE COURT: -- all of the fluid retention and all of
5 these other things because we all I think kind of just know,
6 although we don't all understand the science, maybe you do,
7 that you, you know, you retain water and stuff like that when
8 you're in -- in acute renal failure. And perhaps you can -- I
9 mean don't the kidneys filter out your blood and that's part
10 of their function. Is that where you're going with all of
11 this? Hepatic versus --

12 MR. WRIGHT: Yes. Uremic.

13 THE COURT: -- you know, kidney, uremic failure.
14 That if it's uremic failure, then that's not caused by the
15 clinic because he had preexisting kidney disease. And I think
16 what she's probably going to say is it's all so intertwined,
17 his whole system is collapsing together. But I think that's
18 -- I'm supposing that's what she would -- would say. I don't
19 know, maybe not.

20 MR. STAUDAHER: Well, here -- here's the --

21 THE COURT: But I think that that's where Mr. Wright
22 is going is, you know, what's the cause of death? Is it the
23 liver failure? Is it the kidney failure? Or is it some kind
24 of inter -- I suspect what it is is it's intertwined. Once
25 your organs start going, it's like a cascade and, you know --

1 MR. STAUDAHER: Kidney failure does not cause
2 ascites. Kidney failure does not cause esophageal varices and
3 leakage of the tissues.

4 THE COURT: Yeah, but he didn't die from that.
5 That's --

6 MR. STAUDAHER: Kidney failure --

7 MR. WRIGHT: The blood that --

8 MR. STAUDAHER: -- I know that's -- but the issue is,
9 did he die -- is the -- the kidney failure is a result of the
10 hepatic failure. He dies as a result of both of those. He --
11 the only -- the only disease he had in his kidneys prior to --
12 at least according to the records that we have, is he had two
13 cysts in his kidneys, two cysts in his livers, there -- in his
14 liver. They're small cysts. They don't -- I mean she'll --
15 I'll ask her the questions on follow-up. Do you think that
16 those cysts had anything to do with anything related to his
17 death?

18 I mean the fact that on autopsy -- there's evidence
19 in the Philippine medical records autopsy that these two cysts
20 were present in his kidneys. There's no indication that those
21 cysts had any effect whatsoever on his organ system failure
22 either from a kidney standpoint, a neurologic standpoint, a
23 liver standpoint. The fact of the matter is he had liver
24 failure, which has, as you pointed out, a cascade of events
25 that occur as a result of that. From clotting factors to

1 obstruction issues to the fact that he ends up with
2 encephalopathy because of the buildup of ammonia and other
3 toxic by-products in his blood stream, all of those combined
4 to cause multi-system organ failure of which the kidneys are
5 part.

6 Now the fact that he dies in part of kidney related
7 things, it's the State's belief and I believe with this
8 witness that the -- that the kidney related things are a
9 direct result of his liver failure. That's the starting point
10 for all of this. Yes, did he ultimately die of sepsis, blood
11 infection and pneumonia? Yes, but the causes of those things
12 were the underlying liver disease and the underlying liver
13 disease is caused by the hepatitis C infection. And the
14 hepatitis C infection causing the liver disease is evidenced
15 by the tissue samples that she looked at, which is sclerosis,
16 which is cirrhosis of the liver confirmed in her own
17 examination.

18 So there's no indication at this point that there --
19 that any of her testimony should be stricken. I mean he can
20 certainly ask her about it. I will follow-up with -- on
21 cross-examination to figure some of these things out but he --
22 she can rely on the medical records and clearly the medical
23 records that he had in his possession, the defense, and the --
24 the doctor did before she goes to the -- before he goes to the
25 Philippines. And there's two hospitalizations we're talking

1 about over a two-week window. That's not all of a sudden what
2 caused his death. It was what he was having trouble with that
3 caused him to go to the Philippines because that's where he
4 wanted to die. He was not healthy from a liver standpoint or
5 anything else before he went there. And the fact that he had
6 active infection, which is documented in the medical records
7 here in this country, up to the point where he leaves to go to
8 the Philippines, does not obviate the fact that he died of
9 that disease process in the Philippines.

10 MR. WRIGHT: He can argue it all he wants. I have no
11 idea whether the hepatitis C contributed to his liver and
12 kidney problems at all. I have no idea. He had liver and
13 kidney problems before he got hepatitis C and then he has
14 hepatitis C, which was non-symptomatic and it was chronic.
15 And we've heard over and over, you can die of old age when you
16 have chronic hepatitis C. Or if you really have it, it can go
17 fast. He had asymptomatic, non-symptomatic hepatitis C.

18 And so I -- I don't know. All I know is the death
19 certificate had it as two, then they do a friendly autopsy and
20 it comes solely to the cause being hepatitis C and I want to
21 know the blood results. This is a confrontation issue. This
22 is what we fought about when they wanted to do all their --
23 no, you have no right to examine the coroner or anyone else.
24 These are medical records and they'll all be complete and
25 total. And now we learn she didn't do any blood testing, he

1 didn't do any -- she didn't do any tissue testing for it, she
2 didn't do any blood testing for it and -- and I don't know the
3 degree, the viral load of his hepatitis C at the time of his
4 death. Or if he even still had it because all I have is a
5 hearsay statement and they -- the report is not attached to it
6 anywhere. I went through all of those records you sent along.
7 And that's why we said you have to have the coroner and the
8 records here.

9 THE COURT: I said that, that they did have the
10 coroner but the records were admissible. But --

11 MR. STAUDAHER: We have the coroner. We don't have
12 to -- the Court never said that we had to drag the -- the
13 person who did the autopsy from the Philippines.

14 THE COURT: I think -- well, maybe the ruling wasn't
15 clear. I think the ruling was you must have the coroner. I
16 assumed the whole time we were fighting over the Filipino
17 coroner, but I'm going to look -- I'm -- I'm requesting the
18 minutes from my clerk right now. And that you could use the
19 medical records if properly authenticated just like you could
20 use any other medical records from anywhere in the country or,
21 you know, the fact that it was the Philippines, as long as you
22 did the whole State Department thing was fine.

23 Here's the deal. She did look at the liver so, I
24 mean, certainly she's testifying to her review of that from
25 her own knowledge. Is your theory, Mr. Staudaher, not that he

1 died of sort of symptomatic hepatitis, but that he died of the
2 cirrhosis that was a result of his chronic hepatitis
3 infection?

4 MR. STAUDAHER: Ultimately, yes.

5 THE COURT: Is that your theory?

6 MR. STAUDAHER: Yes. That his -- that his liver
7 disease got to a -- such a degree, the cirrhosis, which she
8 confirmed with her own -- own laboratory testing and that that
9 was obviously caused by the hepatitis C infection.

10 MR. WRIGHT: It's not obvious.

11 MR. STAUDAHER: And at that -- and that that
12 ultimately led to this cascade of horrors that occurred to
13 him because your liver is such an important organ of the body.
14 And if you have failure of that organ -- of that organ, you're
15 going to get all these happen to you. This is not something
16 that's -- that's not known in the medical literature or in the
17 medical community that if you have a liver failure, you're not
18 going to survive it. And the reason you don't survive it is
19 because you end up with multi-system organ failure from the
20 brain on down.

21 THE COURT: Anything else, Mr. Wright?

22 MR. WRIGHT: I -- I presumed at some point there was
23 going to be an expert in this case other than a show and tell
24 coroner who contributes nothing, who was going to have looked
25 at all of his medical records and can answer the question. I

1 don't know. I'm a -- I'm a layman. It -- what I want to know
2 is would he have died -- this cascading, all this mumbo jumbo.
3 For all I know, he would have died of his acute renal, chronic
4 kidney failure whether he had liver problems or not. I don't
5 know. But you can't tell from this. All I am is completely
6 suspicious when I see the certificate of death differ from the
7 Philippine autopsy.

8 THE COURT: Well, okay, here's the thing. I think
9 that all of that needs to be brought out on cross-examination,
10 you know, why the change. Why not rely on the Philippine
11 death certificate as opposed to her, this doctor's conclusion
12 that it's as a result of liver failure as opposed to -- I
13 don't know that -- in other words, I don't know that striking
14 her testimony is the appropriate remedy here because she's --
15 she did view the autopsy, she can testify to the autopsy
16 procedure. She did do her own examination of the liver,
17 limited though it was, she did do something. So I don't know
18 that striking her testimony is really --

19 MR. WRIGHT: I didn't move to strike her testimony.

20 THE COURT: I'm sorry. That -- I thought that was
21 what you moved to do?

22 MR. WRIGHT: No. I moved to strike these Philippine
23 records because it's [indiscernible] confrontation. I mean,
24 which is --

25 THE COURT: Which Philippine records?

1 MR. STAUDAHER: They're medical records. We've
2 got --

3 MR. WRIGHT: They're incomplete medical records.

4 THE COURT: Okay. Well you want -- you want the --
5 I'm assuming the records you want in is the autopsy -- is the
6 death certificate because that's supporting your theory that
7 it was -- it was renal failure. So which records --

8 MR. STAUDAHER: Actually --

9 THE COURT: -- are you trying -- I misheard you or I
10 forgot. Which records are you trying to strike then?

11 MR. WRIGHT: Autopsy I guess. I -- I'd strike them
12 all.

13 THE COURT: I --

14 MR. WRIGHT: I -- I wanted to confront in cross -- I
15 mean I don't see how I -- how I can effectively cross-examine
16 her on these records she didn't write, have any input at all
17 in.

18 THE COURT: First of all, I think the medical records
19 are like any other medical records that can come in if
20 properly authenticated. So to the extent some of these are
21 his hospital records leading up to this, I think that those
22 come in and, you know, I don't know if that's 20 or which one
23 that is.

24 MR. STAUDAHER: It's packet number there, it's
25 whatever the one there is.

1 THE COURT: Okay. So Exhibit 19 is what?

2 MR. STAUDAHER: That's the death certificate.

3 THE COURT: All right.

4 MR. STAUDAHER: I believe that that's -- it's either
5 18 or 19. The packet number one --

6 THE COURT: Oh, that is the summary of pertinent
7 postmortem findings. Is this the one you want to strike?
8 Eighteen is the death certificate and I'm assuming that's --
9 you're not striking that or you want everything stricken?

10 MR. WRIGHT: I would want everything stricken --

11 THE COURT: And then --

12 MR. WRIGHT: -- but if I can't have everything --

13 THE COURT: Well, no. I mean, I'm just trying to
14 understand what you're asking me for. I'm not --

15 MR. WRIGHT: What I'm asking is that --

16 THE COURT: And then 20 looks like the hospital
17 records from his time in the hospital in the Philippines. So
18 to me that has nothing to do with the autopsy or anything
19 else. These are separate records from a different entity than
20 the coroner's office so I don't understand the logic if you
21 don't have the proper person here to talk about the cause of
22 death, why you would need to strike his medical records from
23 the hospital in the Philippines --

24 MR. WRIGHT: I don't.

25 THE COURT: -- which I -- appears to be Exhibit 20,

1 correct?

2 MR. STAUDAHER: Correct.

3 THE COURT: Okay. So 20 we're good on. Here Denise,
4 you take them. So the issue then is 19, which is this autopsy
5 report and 20 -- 18, which is just the death certificate.

6 MR. STAUDAHER: Yes. And the death certificate isn't
7 -- I mean there's a hearsay exception for the death
8 certificate.

9 THE COURT: Right and the death certificate I know I
10 said that could come in. And, in fact, that kind of is
11 supporting your -- your theory that it's renal failure. So
12 the issue is packet number two -- I'm sorry, Exhibit 19, which
13 are these findings. I'm going to review the minutes. This
14 seems a little inconsistent with what I recall ordering. But
15 I'm going to review the minutes, I'm going to review the
16 briefing on the prior issue and see where we are on this. You
17 know, certainly she can testify, as I said, to everything she
18 witnessed in the autopsy and, you know, what was -- what was
19 done there. So --

20 MR. STAUDAHER: And if the Court will look as the
21 Court reviews that, please look at the entirety of the first
22 page of that because there -- there -- there is indication of
23 kidney, which is -- I think it says nephrolithiasis or
24 something like that at the very beginning, which is indicated
25 above what she claims is the cause of death. And then also if

1 you go back --

2 THE COURT: Yeah, cortical cysts kidneys bilateral.

3 MR. STAUDAHER: -- and if you go deeper into the
4 autopsy --

5 THE COURT: Hypertensive nephrosclerosis kidney, so
6 scarring due to blood pressure. Atherosclerosis, kidney.

7 MR. STAUDAHER: And then --

8 THE COURT: It's hardening of the kidney arteries
9 or --

10 MR. STAUDAHER: Sclerosis, yes.

11 THE COURT: Right.

12 MR. STAUDAHER: If you go deeper into that report
13 under the section kidneys, she describes exactly what she sees
14 including the cysts. So she did not believe --

15 MR. WRIGHT: Who's she?

16 THE COURT: The coroner in the Philippines.

17 MR. STAUDAHER: The coroner, the medical examiner who
18 did that work. So it's not like it's absent from the record
19 and that that's why it's unreliable according to counsel.
20 It's in the record. It's what that particular person believed
21 was the actual cause of death that they felt that the kidneys
22 did not have a significant impact on that -- the cyst issues
23 and the like. The fact that the person may have had renal
24 failure as a result of chronic hepatic failure is another --
25 another situation.

1 MR. WRIGHT: He wants to put the apple --

2 THE COURT: Yeah. I -- I mean, I'm looking at the
3 minutes here. Court order, "State's motion in limine to admit
4 Mr. Meana's medical records from the Philippines pursuant to
5 NRS51.115 is granted except for the medical certificate that
6 was purportedly generated at the request of the -- of the
7 patient." That should be the patient's family. "Which will
8 not be admitted under NRS51.115. Court further ordered
9 State's motion to admit Mr. Meana's death certificate pursuant
10 to NRS 51.155 is granted. However, the record is not properly
11 authenticated pursuant to NRS51.155 in the form provided to
12 the Court. The document may be admitted at trial only if the
13 State properly complies with the requirements of NRS51.155.
14 Court further ordered State's motion to admit the autopsy
15 report and laboratory findings is denied."

16 MR. STAUDAHER: At that time but we later --

17 THE COURT: At that time --

18 MR. STAUDAHER: -- then got the authenticated
19 records, brought them in to the Court and we -- we addressed
20 it again, to my recollection.

21 THE COURT: Okay. We -- because the -- the rational
22 wasn't about the authentication on the State Department stuff,
23 that was the death certificate. I don't recall coming back
24 again on this at a subsequent time.

25 MR. STAUDAHER: When we raised -- when we brought

1 this back up to the Court, my recollection and I -- and it's
2 not -- I may be wrong on this but I believe I was correct that
3 we brought these records in, all the records in with all the
4 ribbons. And part of the whole issue, we went through a whole
5 series of things that we were not going to break the seals
6 until counsel had come over and authenticated them.

7 THE COURT: I think we had a miscommunication and I'm
8 going to have to then look at the minutes there because that
9 may have just been that now we're complying with the seals and
10 everything else from the foreign authorities, which was the
11 complaint I had about the death certificate, that that didn't
12 comply with the seals and everything like that. So in any
13 event --

14 MR. WRIGHT: And, of course, my problem is I can't
15 cross-examine this witness about the -- the very issues in
16 that coroner's report when Mr. Staudaher's saying -- that's
17 why I said who is she. The she is the coroner in the
18 Philippines. He's telling me she obviously found this and
19 that and that the --

20 THE COURT: I have a question. How did the State go
21 from the motion to admit the autopsy report and laboratory
22 findings as denied to it's granted as long as it's properly
23 authenticated?

24 MR. STAUDAHER: I believe that when we came back that
25 we addressed this whole issue again with all of the records --

1 THE COURT: Okay.

2 MR. STAUDAHER: -- and that the Court --

3 THE COURT: My memory, but I'm going to look at the
4 minutes, my memory was that was just to talk about if the
5 ribbons, you know, were correct and that had met the
6 requirements from foreign records and this and that. But I'll
7 -- that's my memory of that, which then I thought everybody
8 said, oh, yes, that meets the requirements or whatever. Now
9 clearly, there would have been a misunderstanding on both
10 sides and apparently the same misunderstanding --

11 MR. STAUDAHER: Well, it had to be because we brought
12 forth --

13 THE COURT: -- because I'm reading -- I know, that's
14 what I just said. I mean, why argue with me if I'm saying the
15 same thing you're saying. You don't have to keep saying what
16 I'm -- I mean, I repeat myself plenty of times without you
17 repeating me too. So I don't understand how both sides got
18 from this minute order to the confusion that we're now faced
19 with. That's what I don't understand. I mean, I guess you
20 need a sledgehammer to hit everybody -- I mean, to me it's
21 clear but apparently it's not clear because the proof is in
22 the pudding and everybody misunderstood it apparently. I need
23 to go back over those other minutes.

24 Be that as it may, I mean it -- apparently it was
25 misunderstood by both sides equally because at the next

1 hearing the discussion would have gone differently than it
2 went. So I'm going to look back over that. I mean, in terms
3 of this, I think if she was watching I mean just in
4 cross-examining her, if she was watching the autopsy why can't
5 you get more in to what exactly she saw and they did that are
6 leading to these conclusions and how if she were doing the
7 autopsy -- okay, hepatic failure, what would you be looking
8 for to find hepatic failure. Well, I would be looking at
9 damage to the liver. And then what else would you be looking
10 at? And if it's the same stuff she looked at, then I don't
11 see what the difference would be. Do you see what I'm saying?

12 MR. WRIGHT: The difference is -- the difference
13 is --

14 THE COURT: I mean, what did this coroner do that
15 she --

16 MR. WRIGHT: -- I want confrontation.

17 THE COURT: -- observed -- I know, but if she's
18 standing right there --

19 MR. WRIGHT: She wasn't. She said she was
20 unobtrusive, stood back, never even talked to her at all until
21 she got the samples. That was her direct examination. She
22 didn't want to hover over her was her words. And it's the
23 same in the grand jury, she was an observer standing back.
24 And so now I want confrontation of the autopsy person, whoever
25 performed that, that's who I want to cross-examine. I want my

1 confrontation rights.

2 THE COURT: Does anyone -- well, does anyone recall
3 when that next hearing was on these records?

4 MR. STAUDAHER: Not right offhand, Your Honor. I can
5 go back and try to figure it out.

6 THE COURT: Well, I just didn't know if you had your
7 -- because I know you guys make notes in your paper files.

8 MR. STAUDAHER: I mean I thought we had actually --
9 there -- I thought -- I didn't think this was an isolated
10 single event. We discussed this over --

11 THE COURT: Well, I just remember at some point there
12 was some sealed things and you said you'd complied and then I
13 think they said -- and I didn't look at -- like, okay this is
14 this record and this is that record and if I did I wasn't --

15 MS. WECKERLY: I think there was a -- some --

16 THE COURT: I mean, I just don't know how both sides
17 got from Court further ordered State motions to admit the
18 autopsy report and laboratory findings is denied. And I -- I
19 honestly -- I'll tell you honestly, I expected to see the
20 coroner from the Philippines. That's what I expected. And
21 then when I didn't, I didn't know -- I didn't ask. I mean I
22 didn't say, where's the coroner -- I mean I didn't know if it
23 was agreed upon or she really observed enough that you felt
24 comfortable going forward. But I don't know how we get from
25 this minute order to where we're sitting here today.

1 MR. SANTACROCE: I had originally raised that issue
2 when they wanted to admit that report and -- and you said
3 well, it would come in but they would -- because I asked about
4 how am I going to cross-examine on the autopsy report and
5 death certificate and you said well, they're going to bring
6 the Filipino coroner over here. They would have to bring the
7 Filipino coroner. That's what you said.

8 THE COURT: That's what I thought. That's what I
9 thought this --

10 MR. SANTACROCE: And now we have her and I --

11 THE COURT: That's what I thought this meant. I mean
12 I didn't say you have to bring the Filipino coroner in because
13 it was -- because I -- the motion's denied so what does that
14 mean? I mean apparently it wasn't clear because you folks
15 didn't seem to think it was clear either.

16 MR. SANTACROCE: No. I expected the coroner to be
17 testifying, the Filipino coroner.

18 THE COURT: That's what I expected and then when I
19 heard it wasn't, nobody said anything so I thought, okay, well
20 maybe I'm missing something and I didn't say anything more.
21 All right then. Well, I'm going to have to think about this
22 and see where we are. And the State can try to figure -- I
23 mean, look, if she observed everything and really can say she
24 observed everything, then I think it's fine for her to go but
25 you need to do a better job of getting that out.

1 MR. WRIGHT: Well, how do I cross-examine her on the
2 -- the viral load of the blood?

3 THE COURT: Well, I don't know that -- how is the
4 viral -- I mean, I don't know, maybe it is relevant or maybe
5 it's not relevant. I mean to me if you have cirrhosis and we
6 know --

7 MR. STAUDAHER: It's long-term damage.

8 THE COURT: I mean, here's my rudimentary
9 understanding. If the hepatitis caused cirrhosis and we've
10 had abundant testimony that it can cause cirrhosis including
11 from Frank Nemec who's the expert in these things that, you
12 know, sometimes it takes 20 years but in, you know, rare
13 circumstances it can take less time than that. Okay. So if
14 he has cirrhosis from the hepatitis and the cirrhosis
15 ultimately led to his death, then I don't understand the need
16 to get a current viral load because they're not saying he died
17 of acute hepatitis. They're saying he died of cirrhosis of
18 the liver and ultimately liver failure as a result of
19 cirrhosis. We all know if you don't have a functioning liver
20 you're going to die of -- you're going to die.

21 MR. WRIGHT: Same with the kidneys.

22 THE COURT: Right, exactly, same with the kidneys.
23 That's a different issue than his viral load. On the issue of
24 the viral load --

25 MR. WRIGHT: Well, who do I cross-examine?

1 THE COURT: -- I mean to me I don't understand what
2 the relevance of the viral load would be. I mean maybe you
3 can -- we can find out from the witness.

4 MR. WRIGHT: Well, because maybe -- maybe I cleared
5 it.

6 THE MARSHAL: Counsel, stop interrupting the Judge.

7 THE COURT: Well, if you have chronic hepatitis -- I
8 mean if you have chronic -- if you have cirrhosis of the liver
9 ongoing and that -- that causes the deterioration to a point
10 where you no longer have sufficient liver function, that's
11 going to kill you regardless of what your viral load would be
12 at the time, I would imagine. But you can ask her about that.
13 So I'm not grasping the relevance of the current viral load.

14 MR. WRIGHT: They're presuming he had the cirrhosis
15 of the liver all from the hepatitis C as opposed to his own
16 hepatic abnormalities that existed before he had hepatitis C.
17 Now you're an expert telling me he got --

18 THE COURT: No, I'm not.

19 MR. WRIGHT: -- cirrhosis from this. And so how --
20 who do I cross-examine?

21 THE COURT: Well, you can cross-examine this gal.
22 Based on his existing liver condition, can we -- you know, can
23 we tell that that wouldn't have ultimately led to liver
24 damage, extensive liver damage or cirrhosis or extensive liver
25 scarring or something like that. I mean, I'm not saying I

1 know. I'm not purporting to be an expert. But, you know,
2 certainly these are questions that you can ask this person
3 whether she saw the autopsy close up or saw it from a
4 distance. She would be able to testify to these things as an
5 -- as a -- as a -- I mean, she's a physician, she's a -- I
6 mean a doctor, she's --

7 MR. WRIGHT: It's not her report. So I'm supposed to
8 take this surrogate -- watch -- who went over for show and
9 tell and she told the grand jury --

10 THE COURT: Well, can someone tell me --

11 MR. WRIGHT: -- her purpose was going there was to
12 get these samples --

13 THE COURT: Can I -- can I hear from the State how we
14 got to Court further ordered State motions to admit the
15 autopsy report and laboratory findings is denied. I wanted to
16 pull this before I got into this just to make sure the error
17 hadn't come from the Court because I remembered my ruling.
18 And as I'm sitting here I'm thinking, oh, my God, I hope
19 Denise didn't get -- or whoever the clerk was that day, didn't
20 write it down wrong. That's what I'm sitting up here
21 thinking. So I had her run in the back and pull this for me.
22 But State's motion to admit it is denied.

23 So the minute order is what the minute order was
24 supposed to say. I -- you know, and I just wanted to make
25 sure that it wasn't a mistake generated up here, but it

1 wasn't. So how did we get from that to this, State?

2 MR. STAUDAHER: It was my understanding is because it
3 was -- at least at that time because we had records that
4 didn't meet the --

5 THE COURT: No. That was -- that was the -- the --
6 State's motion to admit Mr. Meana's death certificate is
7 granted. "However, the record is not properly authenticated
8 in the form provided at the Court. This document may be
9 admitted at trial only if the State properly complies with the
10 requirements." That was that.

11 MR. STAUDAHER: That's correct but there were --

12 THE COURT: So then that -- the next one is it's
13 denied so why are you admitting one thing and denying the
14 other if the problem with everything is this State Department
15 issue or the foreign documents issue?

16 MR. STAUDAHER: That wasn't the only issue. The
17 minute order I don't think accurately reflects the entirety of
18 that whole exchange that took place. There was -- there were
19 some medical records that were attached --

20 THE COURT: Right and that says --

21 MR. STAUDAHER: -- and they were objected to.

22 THE COURT: -- motion in limine to admit Mr. Meana's
23 medical records from the Philippines is granted.

24 MR. STAUDAHER: Not those records. The Court I
25 believe instructed us that we had to get the -- like a COR

1 production, which --

2 THE COURT: Right.

3 MR. STAUDAHER: -- is what we went and did, which was
4 far more extensive than the -- the records that were
5 originally provided. Now beyond that we had the discussions
6 obviously about the autopsy report. It was my understanding
7 subsequent to that, pretrial, when this all -- when this all
8 came up that we addressed this issue again and the Court --
9 based on the fact that we had brought these records in, now
10 authenticated from the Philippines, that the Court was going
11 to allow them in.

12 They're clearly -- these were provided to defense
13 counsel in advance. We have not noticed the coroner from the
14 medical -- or from the Philippines in our witness notice so
15 there's no indication that they believe that that person was
16 coming. We had those records provided to them in discrete
17 packets. It's no question that they were buried or something
18 like that, they're discrete packets. Everybody knew what they
19 were, we provided them to the Court pretrial, everybody
20 appeared to be on the record that that was -- they were all
21 going to be admitted based on what he had done in the past,
22 which was pretrial litigation of this after the -- the hearing
23 that you've referenced in the minute order.

24 So I believe that everybody at that stage was on
25 notice and on board that those were the records and they

1 actually stipulated to them.

2 THE COURT: Well, that's what I thought at the
3 subsequent hearing because I didn't hear anything from anybody
4 else. I mean I don't know -- it -- it says denied. It
5 doesn't say denied unless you do A, B and C. It doesn't say
6 denied unless it's denied. Whereas everything else is well,
7 it's granted if you do this and -- so I mean it's true at the
8 last whenever it was that you said, okay, we've got all the
9 stuff with the ribbons and that. Nobody jumped up and said,
10 well, wait a minute, why is this coming in, the Filipino
11 coroner hasn't been noticed and that is true.

12 MR. WRIGHT: So it's a murder case. It's a murder
13 case where I'm disputing the cause of death and I want to
14 cross-examine the witnesses. I didn't know -- I didn't know.
15 The State pulled their normal slight of hand trick before the
16 grand jury. The first I knew of the blood being deteriorated
17 and it couldn't be tested is right here in this courtroom.
18 Why didn't you bring that out at the grand jury that the blood
19 couldn't be tested and the tissue couldn't be tested --

20 MR. STAUDAHER: First of all, I would like him to
21 address the Court instead of me. He's done this throughout
22 the trial --

23 MR. WRIGHT: -- it was not brought out.

24 MR. STAUDAHER: -- and I would like it to be done
25 properly if we're going to do this.

1 THE COURT: All right.

2 MR. WRIGHT: Like what done properly?

3 MR. STAUDAHER: You don't turn and address --

4 THE COURT: That's enough.

5 MR. WRIGHT: Okay. Excuse me. I --

6 THE COURT: Why was nothing said earlier --

7 MR. WRIGHT: -- I thought --

8 THE COURT: -- by the defense when it became clear
9 that there's some confusion going on here about them calling
10 the Filipino coroner and why this exhibit is coming in. I
11 mean, didn't any of you look at this minute order and say,
12 well, wait a minute why is this happening this way? I mean it
13 seems to me on this side of the room you folks anticipated
14 that they weren't calling the Filipino coroner.

15 MR. SANTACROCE: You mentioned it last week when we
16 were in chambers or coming out and you said well they're going
17 to call the Filipino coroner. We were talking -- the only --

18 THE COURT: Well --

19 MR. SANTACROCE: -- the only point that we -- when we
20 talked about this records with the ribbons and stuff was
21 authentication. I asked you specifically about confronting,
22 am I going to have a chance to cross-examine on the cause of
23 death and the death certificate.

24 THE COURT: I assumed they were calling the Filipino
25 coroner until a couple of days ago when they said this is all

1 we're going to have, Ms. Olson. Well, clearly Ms. Olson
2 didn't sound like the name of the Filipino coroner from these
3 certificates so -- and I think they said from our coroner's
4 office or whatever. That's the first I realized that, but
5 nobody else -- nobody said anything so I just assumed
6 everybody understood whatever the plan was.

7 MR. SANTACROCE: Are we as a defense supposed to tell
8 them who they have to call --

9 THE COURT: No but every -- all I'm saying --

10 MR. WRIGHT: They've been doing it in the
11 [indiscernible] case.

12 MR. SANTACROCE: -- I mean, you know --

13 THE COURT: -- all I'm saying --

14 MR. SANTACROCE: -- if we got to tell them we can --

15 THE COURT: Well, no, I agree. But all I'm saying is
16 no one acted surprised. I -- I thought from this minute order
17 that we would be hearing from the Filipino coroner, that was
18 my intent.

19 MR. SANTACROCE: As did I.

20 THE COURT: But again, no --

21 MR. WRIGHT: I did too, but I thought, okay, they're
22 not calling her. I thought we were going to have an expert
23 also on Meana's cause of --

24 THE COURT: Well, you knew we weren't because they
25 have to notice --

1 MR. WRIGHT: No, I didn't.

2 THE COURT: -- the experts and did you get an -- an
3 expert --

4 MR. WRIGHT: I got -- I got a list of 100 people,
5 Judge, and it all says the same thing. I thought someone was
6 going to rule out like, no, he would have died anyway of this
7 or that and him refusing to go forward with the treatment, you
8 know, is not an intervening cause and all this. I thought we
9 were going to have experts on that stuff. But I also thought
10 that this witness would -- would be tying it up because I
11 thought she tested the blood. I thought she had done
12 everything right because that wasn't disclosed at the grand
13 jury. They put on a big show about going over there and
14 bringing it back so carefully, even got the -- escorted
15 through customs and everything and in the refrigerator and
16 back here and rushed out and saved it and then this is the
17 first I learned. They concealed from the grand jury that it
18 -- they did not get blood, it deteriorated. That's the first
19 I've ever heard of it in the courtroom. I thought she was
20 going to be able to do some things. Now I figure out she
21 can't.

22 THE COURT: Anybody else have anything they want to
23 add?

24 MR. SANTACROCE: No, Your Honor.

25 MR. WRIGHT: Nope.

1 THE COURT: Yeah, I mean, that's -- apparently it
2 wasn't clear but no one endeavored to clarify that there was
3 clearly confusion here. Because, like I said, I anticipated
4 the Filipino coroner based on this. And you -- I guess still
5 would have to comply to get the foreign records in, I'm
6 assuming. I haven't read the statute, if somebody brings
7 them, if you still have to go through all of this, maybe you
8 don't.

9 MR. STAUDAHER: Actually, Your Honor, that is the
10 whole purpose of doing what we did.

11 THE COURT: To avoid bringing in a witness?

12 MR. STAUDAHER: Is to avoid bringing that person.

13 THE COURT: Right.

14 MR. STAUDAHER: I think we actually told the Court
15 that that the whole --

16 THE COURT: Right --

17 MR. STAUDAHER: -- purpose of us going through this
18 process --

19 THE COURT: -- but see, I looked at this -- and, in
20 fact, there's some recent Supreme Court case law out about
21 coroners and whatnot or something. I don't know, we talked
22 about it at the Judges Conference and I can't pull it out of
23 -- but that -- this is a confrontation issue and it's not
24 clear what the United States Supreme Court is going to do
25 about this. And I remember thinking at the class, oh, well

1 it's a good thing I told them not to have that Filipino
2 coroner come in. And, in fact, I said to Jerry
3 [indiscernible] who was sitting next to me, oh, we just had
4 this issue in the Desai case. So that really was what I
5 thought. You know, there may be a way around it for the State
6 at this point.

7 I mean, I'm perplexed -- I accept that there was
8 confusion. Okay? I accept that, that's clear. I'm perplexed
9 as to how that happened. I wish I had been aware of the
10 confusion earlier because I would have sought to clarify that.
11 Truly, I wasn't aware and even -- I still wasn't even thinking
12 when it became clear to me you weren't bringing in the
13 Filipino coroner and that was a couple days ago when we were
14 getting to where we were going to be resting and nobody seemed
15 to say anything. So I thought, okay, well maybe they figured
16 out a way to -- to get around all of that. I'm thinking well
17 maybe you pretrialed her and she saw everything closely enough
18 where she could testify to everything. That's really what I
19 was thinking.

20 I don't know how we got -- I think the minute order's
21 clear frankly, it's denied. I mean it's not denied A, B, C, D
22 or E, it's denied. Denied is denied. I thought implicit in
23 that would be bring in the Filipino coroner. Maybe I should
24 have said bring in the Filipino coroner. I didn't see that as
25 necessary. If there was confusion I think -- you know, I wish

1 the Court had been made aware that there was confusion. But
2 like confusion, if people -- if there's confusion, people
3 don't know they're confused because you thought you knew it
4 correctly, they may have thought something else. So, you
5 know, as we sit here right now there may be a way to -- for
6 the -- I don't know. I mean, I'm going to have to think about
7 this because this really is not what I foresaw coming.

8 And like I said, even when I was aware that you
9 didn't have the Filipino coroner, I really thought at that
10 point, oh, well, she must have been pretried and must have
11 seen everything enough that they're going to rely on her and
12 she's going to be able to do it. Not even thinking about the
13 blood and the tissue and all that other -- all that other
14 stuff. Although truthfully, obviously, you need to get this
15 out through her as a -- as an expert.

16 I don't know what the blood -- if we know he has the
17 disease, I don't know how significant the loss of the blood
18 really is. It may be significant, it may not be significant
19 because he's already been linked genetically. We know he had
20 hepatitis from this source. I mean that much is known. I get
21 it, you don't know what killed him.

22 MR. SANTACROCE: What did he die of?

23 THE COURT: No, I know. All right. Well, let's all
24 get lunch.

25 (Court recessed at 1:43 p.m. until 2:49 p.m.)

1 (Outside the presence of the jury.)

2 THE COURT: All right. We're back on the record out
3 of the presence of the jury. Is that door shut?

4 THE CLERK: Uh-huh.

5 THE COURT: I've reviewed everything --

6 MR. STAUDAHER: We have a witness in here. I
7 don't --

8 THE WITNESS: Oh, sorry, Your Honor.

9 THE COURT: I'm fine with her staying.

10 MR. STAUDAHER: I just wanted to let you know. Okay.

11 THE COURT: I'm not going to -- I've reviewed
12 everything; the history, the minutes, everything. I'm going
13 to grant Mr. Wright's motion to strike Exhibit 19. The other
14 two exhibits, the medical records and the death certificate, I
15 think that's 18 and 20 are still in. That conforms with the
16 Court's earlier minute order. And I've reviewed everything
17 and I don't think that there was any indication that the Court
18 intended to rule contrary to that.

19 With respect to the witness, she obviously can
20 testify as a percipient witness. She can also, of course,
21 testify as an expert witness. And so, you know, any
22 challenges to that would go to the weight of her testimony,
23 not to the admissibility of her testimony. So her testimony
24 stands. So that's that.

25 One of the jurors is late, the juror with the doctor

1 appointment, so just be at ease for a few minutes. We're not
2 really quite ready to start yet.

3 And another issue that is still kind of hanging out
4 in the wind is the issue of the instruction regarding Nancy
5 Sampson's testimony, the Metro analyst. If no one asked for
6 anything else then we're -- is that her name?

7 MR. STAUDAHER: Nancy Sampson, yeah.

8 MS. WECKERLY: Oh, yeah. I was just trying to
9 remember what the issue was.

10 THE COURT: Remember, they wanted an instruction that
11 she couldn't provide opinion testimony on the correct number
12 of dosage -- syringes per dose or syringe per patient because
13 that's medical testimony but the rest of her testimony could
14 stand. And then Ms. Stanish was supposed to write something
15 or do something, which has never happened. So --

16 MS. STANISH: I thought you did -- did a limiting
17 instruction at some point.

18 THE COURT: Not on her. I don't recall doing it. Do
19 you recall doing it?

20 MR. STAUDAHER: I don't if we did or not.

21 THE COURT: Yeah, I don't -- I'm almost virtually
22 certain.

23 MS. STANISH: All right. Well, I have a draft of my
24 instructions done. We'll consider adding that one to it.

25 THE COURT: Okay. So you just want it to go in the

1 instructions?

2 MS. STANISH: Yeah.

3 THE COURT: That's fine.

4 MS. STANISH: Okay.

5 MR. STAUDAHER: And the Court knows that we either --
6 we think the instruction issue on the theft we think is in one
7 of our previous ones, but I think we're going to submit a
8 second --

9 THE COURT: Right.

10 MR. STAUDAHER: -- a secondary one.

11 THE COURT: And then I also -- and I'm assuming the
12 defense got this as well. I haven't had an opportunity to
13 read the cases but I did get from the State some cases
14 relating to the theft and the -- how you aggregate the amounts
15 and I don't remember how many cases. But you sent that over
16 to the defense as well? And did you folks receive that?

17 MS. STANISH: Yes, Your Honor.

18 THE COURT: That was after our discussion like a few
19 days ago on the statute that says something -- I think
20 it's.165 -- 48.165 or I don't remember.

21 MR. STAUDAHER: 265. I think 205.165.

22 THE COURT: Right, something like that. I was close.

23 MS. STANISH: And if I --

24 THE COURT: I had two digits right.

25 MS. STANISH: -- if my recollection's right, the

1 Q Okay. And what did change was the redaction of
2 the names?

3 A Yes.

4 Q Okay. Now let's look at Sharrieff Ziyad. Okay?

5 A Yes, ma'am.

6 Q According to his medical records, what was his
7 anesthesia start time?

8 A The anesthesia start time would be over here and
9 it would be 7:05.

10 Q Okay. And the -- the doctor's note has it at
11 6:53, so there's some difference there. And what was the
12 anesthesia end time?

13 A 7:36.

14 Q 7:36. Now go, if you would, to the patient
15 right after him who we won't have a name for that person. Who
16 is -- like how did we label that person?

17 A That's patient number two.

18 Q Okay. And what time does patient number two's
19 anesthesia time start?

20 A 7:20.

21 Q Okay. So 15 minutes before Sharrieff's ends,
22 correct?

23 A Yes, ma'am.

24 Q Okay. And how -- how -- what does that patient
25 number two's end time, what is that?

1 A 7:51.

2 Q 7:51. Now, what's the next patient, is it three
3 or?

4 A Patient number four.

5 Q Okay. So patient number four, what time does
6 that anesthesia start?

7 A 7:35.

8 Q So that's also before the previous person's
9 ended, correct?

10 A Yes, ma'am.

11 Q Okay. Now let's look at -- if you would please,
12 the patient right before Michael Washington, what's the
13 anesthesia start and stop time?

14 A 7:55 is the start time for patient number six,
15 which is right before Michael Washington, and 8:26 is the end
16 time.

17 Q Okay. And so Michael Washington, who we have
18 the doctor's notes starting at 8:14, his procedure, according
19 to the doctor's note, is starting before that other patient is
20 done with anesthesia, right?

21 A Yes, ma'am.

22 Q Okay. What time is Michael Washington's
23 anesthesia time?

24 A His starts at 8:25 and his ends at 8:56.

25 Q And the person after him, what time does that

1 person's anesthesia start?

2 A That would be patient number nine, they start at
3 8:40 and they end at 9:15.

4 Q Okay. So starting before his ended; is that
5 fair?

6 A Yes, ma'am.

7 Q Okay. Now let's look at September the 21st. If
8 you could put that one up there for me, please? Now let's --
9 let's see. Mr. Rubino's doctor's notes starts at 9:50 and
10 what does his -- is that crooked? What'd you do there, Bob?
11 And so --

12 A Sorry.

13 Q That's okay. So Mr. Rubino's, his doctor's note
14 procedure time is 9:50. What is his anesthesia start time?

15 A Anesthesia is 9:45 and then it stops at 10:17.

16 Q Okay. And the next person who we now know is
17 Lakota Quannah, what time does his anesthesia start?

18 A Ten o'clock and it stops at 10:33.

19 Q Okay. So his time starts 17 minutes before Mr.
20 Rubino's is done?

21 A Yes, ma'am.

22 Q Okay. Now is Mr. Meana the next patient?

23 A Yes, ma'am.

24 Q Okay, now tell me the times for Lakota Quannah
25 again if you would, please?

1 A Lakota Quannah was 10 to 10:33.
2 Q Ten to 10:33. And then we have the doctor's
3 note starting for the next patient Rodolfo Meana at 10:22,
4 correct?
5 A 10:22, yes, ma'am.
6 Q Okay. So that's before Lakota Quannah's
7 procedure ends. And Mr. Meana's time on anesthesia is what?
8 A His time on anesthesia is 10:30 to 11:03.
9 Q Okay. So it overlaps as well.
10 A Yes, ma'am.
11 Q And I don't think we need me to go through the
12 rest of them. You can resume your seat. Thank you. Oh,
13 thank you.
14 A Uh-huh.
15 Q Now, I think it was Friday Ms. Stanish was
16 showing you some orders for propofol. Do you recall that --
17 A Yes.
18 Q -- before the weekend?
19 A Yes.
20 Q Okay. And one of the orders was from August
21 2007, correct?
22 A Yes, ma'am.
23 Q That was for Burnham?
24 A Yes, ma'am.
25 Q And the other orders for -- were from 2006 --

1 A Yes, ma'am.

2 Q -- is that right? All of those orders concerned
3 propofol, correct?

4 A Yes, ma'am.

5 MS. WECKERLY: That's all I have. Thank you, Your
6 Honor.

7 THE COURT: All right. Thank you. Recross?

8 MR. WRIGHT: Yes.

9 RECROSS-EXAMINATION

10 BY MR. WRIGHT:

11 Q Detective Whitely, do you know where the
12 propofol went?

13 A No, sir.

14 Q Okay. You had -- did you talk to Tonya Rushing
15 about it?

16 A Actually, come to think of it, I think there was
17 some discussion that it went to charity or something like
18 that.

19 Q Okay. The -- did you -- I mean by the time you
20 executed the search warrant, you, meaning law enforcement --

21 A Yes, sir.

22 Q -- on the 10th the clinics were closed, correct?

23 A Yes, sir.

24 Q Okay. And the propofol had been -- was not
25 there any longer, correct?

1 A No, sir.

2 Q Okay. And -- and the narcotics?

3 A I don't recall exactly which narcotics were
4 there and which weren't, as far as the Demerol and stuff like
5 that. I don't believe we found any of that.

6 Q Okay. It appeared the clinic had closed and the
7 medication, those medicines were gone already, correct?

8 A Yes, sir.

9 Q Now on the coercion accusation, coercion can --
10 what's -- what's coercion mean, pressure?

11 A It's pressuring somebody to do something against
12 their will.

13 Q Okay. And that can take many different forms,
14 correct?

15 A Yes, sir.

16 Q And you understood that Linda Hubbard was there
17 pursuant to a proffer agreement, correct?

18 A Yes, sir.

19 Q And that proffer agreement on Friday, I showed
20 it to you, and that's where she gets to come in and show what
21 she can give the State and they will evaluate it in deciding
22 whether they're going to make her a witness or leave her
23 criminally liable, correct?

24 A Yes, sir.

25 Q And so that -- that is a pressure upon a

1 witness, would you agree with that?

2 A If it would be a pressure to tell the truth
3 then, yes, sir.

4 Q Okay. And pressure to say what the State wants
5 to hear.

6 A No, sir. It's not what we want to hear --

7 Q Okay, well the actual --

8 A -- it's the truth.

9 Q -- I mean the actual letter says going to see
10 what you can do for the State, correct?

11 A As long as it's the truth, yes, sir.

12 Q Okay. And in order to get at the truth, one law
13 enforcement tactic is to use disinformation, correct?

14 A Yes, sir.

15 Q Okay. And disinformation -- now I'm not --
16 that's -- that's telling the witness a lie --

17 A Yes, sir.

18 Q -- right? And that's proper. I'm not saying
19 the lying to -- to the witness is an unlawful method of
20 interrogation, but it is a proper investigative technique,
21 correct?

22 A I generally don't use it but, yes, sir.

23 Q Okay. It looks like Levi uses it, doesn't it?

24 A And that's -- I can't answer that wholly yes or
25 no because I know that the McKesson subpoenas were ordered but

1 I didn't know when we got it. So I don't know if he went in
2 there with the understanding that we -- that they did have a
3 count of the needles or if he was making that up. It could
4 have been both ways.

5 Q Smells like he was making it up to me. We
6 know --

7 A Could have been.

8 Q -- we know she was in the grand jury, Linda
9 Hubbard went to the grand jury, appeared in front of the grand
10 jury, the investigative grand jury in July 2008, correct?

11 A Yes, sir.

12 Q And she goes in, testifies under oath in front
13 of all the grand jurors and you were there, correct?

14 A Yes, sir.

15 Q And District Attorney and essentially says no
16 one ever told her to reuse needles and syringes, correct?

17 A She said no, yes, sir.

18 Q Okay. And then a month later the FBI
19 interviewed her with a proffer along with Linda Rosel and
20 other representatives, correct?

21 A Yes, sir.

22 Q Okay. And she said the same thing at that time,
23 no one had told her to do that, correct?

24 A She said no.

25 Q Correct. She said no, no one told me to do

1 that.

2 A Yes, sir.

3 Q Okay. And then you all interview her. And from
4 -- it's -- it's less than two months from FBI interview to
5 your interview and Detective Levi says when he is telling her
6 to, "Think very carefully on this before you answer, think
7 about this, Linda. We have gone out and we have all of the
8 records of all of the needles and all of the syringes all
9 purchased." And those records show that there are more
10 needles, many more needles than there are syringes. That's
11 what he tells her, right?

12 A Yes, sir.

13 Q Okay. And we know you never did get the needle,
14 all of the needle records, correct?

15 A We did get the needle records, yes, sir.

16 Q You did?

17 A Yes, sir.

18 Q Okay. I thought you didn't get the needles and
19 didn't do any analysis of them.

20 A No. We got the needles and we counted them. We
21 just did -- we just didn't use it because --

22 Q Okay.

23 A -- we -- didn't show conclusively either way.
24 There were more needles than there were syringes and there
25 were more needles than there were patients. And I can get you

1 the number if you'd like.

2 Q Okay. And do you -- do you really think Levi
3 had all of that information and it was available on October
4 14th, 2008?

5 A I don't think at that time, no, sir.

6 Q Okay. Looks like Levi was using disinformation,
7 right?

8 A Well, it was disinformation that turned out to
9 be true but --

10 Q Okay. Well, he's bluffing because that's
11 investigative techniques, right?

12 A Yes.

13 Q And when you bluff sometimes you bluff someone
14 and they'll tell you the truth and sometimes you bluff someone
15 and they'll tell you what you want to hear and it's not true,
16 correct?

17 A We just take the statements at face value.

18 Q I know. But sometimes it's music to your ears
19 and sometimes it's not, right?

20 A Well, sometimes it's, you know -- the statement
21 is what the statement is. I can't tell you, you know, whether
22 or not it's music to my ears or not. I mean she basically was
23 saying, no, no, no to everything and then all of a sudden she
24 comes up with this statement, which is a detailed explanation
25 of what had happened --

1 Q Right.

2 A -- which is a lot more --

3 Q Let's -- we'll go through that detailed
4 explanation.

5 A -- viable explanation then just no.

6 Q Okay. Well, she was -- before adamant about it
7 and then we hit her with the think carefully about this
8 because the records show this, Linda. Of course, there were
9 time outs, off the record discussions --

10 A Those were at her lawyer's request, yes, sir.

11 Q Right. Her lawyer took her to the woodshed,
12 right?

13 A I don't know what happened, I wasn't --

14 Q You don't know what happens when her lawyer
15 takes --

16 A -- privy to that conversation.

17 Q -- talks to her?

18 A Yes, sir.

19 Q You don't know how he explains, look here's this
20 immunity agreement and the questions coming down, are you
21 going to be a defendant or are you going to get on the State's
22 team. You don't know if conversations like that take place,
23 right?

24 A I wasn't privy to that, no, sir.

25 Q All you know is they keep going off the record.

1 Now why would someone go off the record in a taped interview?

2 A Maybe the lawyer thought she was lying about it.

3 Q Well, she -- she then said -- in fact, when she
4 came back on the 15th she even asked like to confirm the
5 information. Said to Levi, there's many more needles than
6 syringes. Yes, that's correct. Of course, that's just the
7 disinformation play because the rules of investigation are,
8 you get to lie to the witness but they can't lie to you,
9 correct?

10 A Well, they can lie to us, yes, sir. They can
11 lie to us all they want.

12 Q Okay. Well, it's also a crime, correct?

13 A Yes, sir.

14 Q Okay. I mean it's a crime for them to lie to
15 you but it's not a crime for you to lie to them, right?

16 A It's misdemeanor obstructing, yes, sir.

17 Q For -- for the witness. In other words, I walk
18 in, I'm a witness, you get to lie to me and it's good police
19 work. But if I lie I commit a crime, right?

20 A That's what the Supreme Court has held, yes,
21 sir.

22 Q Okay. And so finally she says, okay, I talked
23 to -- I don't -- exactly what she say, I only saw it once or
24 something like that. Do you recall?

25 A You give me the statement I'll read it again.

1 She said something to the effect that --

2 Q "Yes, it's that -- okay, and --", I'm on page
3 23. "I know that there were times when people did reuse the
4 syringes and change needles and only -- we don't usually work
5 together. And the only time I really saw this was when I
6 first started working and Ron Lakeman was the nurse
7 anesthetist that was breaking me in to the job and to how to
8 do the paperwork and how to position the patient and do things
9 on a rapid basis, the way we did in the gastro unit. And I
10 questioned him about changing the needle and he said that's
11 the way it was done and that's not my practice." Okay? And
12 then as you -- so she's talking about seeing this when she's
13 getting broken in when she first started work, correct?

14 A That's what she's talking about yes, sir.

15 Q Okay. And we know that that's in August 2005,
16 correct?

17 A Yes, sir.

18 Q Because she testified she was interviewed by
19 Tonya Rushing and Dr. Desai in June 2005 and she went to work
20 in August 2005.

21 A Yes, sir.

22 Q And then she -- she tells you this -- with the
23 specific details how, "What was different about it? Well,
24 what was -- was different as to the way you had been trained?
25 It was from the 50 cc vial and he would take the syringe,

1 screw it into the dispensing top, draw it up. The spike?
2 Yes, put on another needle." She explains it. And of course
3 you know the problem with that rendition is there weren't any
4 50s in the clinic at the time she started work, right?

5 A I'd have to look at the time but this is
6 September -- or was it October 2005 and she started in August?

7 Q It was October 15, 2005. The first time 50s
8 were ever ordered into the clinics according to your records,
9 all records in existence.

10 A Okay.

11 Q And she's being broken in in August 2005 and is
12 telling this story about seeing Ron with a 50 cc as she is
13 broken in.

14 A Okay.

15 Q Seems something doesn't fit, correct?

16 A Yes, sir.

17 Q And then she says, and I talked to -- no, Ron
18 Lakeman told me that he talked to Jeff Krueger about it,
19 right?

20 A Yes.

21 Q Okay. And so Jeff Krueger, what's he say about
22 that?

23 A Something about the 5 cc syringes and she wanted
24 to get 5 cc syringes and Jeff Krueger says no.

25 Q Okay. What does Jeff say about it?

1 A I'd have to read the statement.

2 Q No, Jeff Krueger.

3 A Jeff Krueger, yes.

4 Q You'd have to read what statement?

5 A I don't get what you're trying to say. I'm not
6 understanding the question.

7 Q Okay. Did you interview Jeff Krueger about
8 Linda Hubbard's story she was telling you guys that Ron
9 Lakeman -- we got Linda, she's telling you I watched 50 ccs,
10 which we know weren't in existence at the time. And then she
11 tells you all that I -- Ron Lakeman told me that he talked to
12 Jeffrey Krueger about it. So if I'm an investigator I would
13 go talk to Jeffrey Krueger after I interviewed Linda Hubbard
14 to look for some corroboration, right?

15 A I thought he was asked that even up here when --
16 when he testified about the 5 ccs.

17 Q Correct. He talked about whether 5 cc syringes
18 could be ordered, nothing about reuse of needles and syringes.
19 Do you think Jeff Krueger talked about that?

20 A No.

21 Q And, in fact, when -- when Linda Hubbard was on
22 the stand testifying in here, she didn't say she was coerced.
23 Ms. Weckerly asked her, "Did you feel coerced during the Metro
24 interview?" And Linda Hubbard said, "The detectives were
25 challenging her and she felt that they did not believe what

1 she was saying." Right?

2 A Yes, sir.

3 Q And that's pressure, correct?

4 A That's what she testified to, yes, sir.

5 Q Okay. Well, that's pressure on anyone who's
6 sitting there being interrogated for a one, two, three, four,
7 fifth time and the decision's going to be am I going to get
8 prosecuted or am I going to say what the detectives want to
9 hear. Wouldn't you call that pressure?

10 A We never pressured her, no, sir.

11 MR. WRIGHT: Nothing further.

12 THE COURT: Mr. Santacrose, anything else?

13 RECROSS-EXAMINATION

14 BY MR. SANTACROCE:

15 Q The statements that you record for -- that you
16 do for Metro, was there an oath administered before those
17 interviews? In other words, the oath that you took here today
18 to tell the truth, do you administer that same oath before
19 they give their interview?

20 A No, sir.

21 Q Are they given that oath before the grand jury?

22 A I believe so, yes, sir.

23 Q Okay. And they're given that oath definitely in
24 court, correct?

25 A Yes, sir.

1 Q Okay. Now with regard to the chart that Ms.
2 Weckerly showed you -- I'm going to show you State's Exhibit
3 156. Can you tell me what times you were reading from, what
4 column?

5 A Great. You had to give me the small one.

6 Q Do you want the big one here?

7 A Yeah, please.

8 Q Come on down. Okay. When she went through all
9 those times -- which date do you have first of all?

10 A This is September 21st, 2007.

11 Q Let's start with the -- the -- the July one.
12 Okay. Which chart, which column were you reading from?

13 A That's the anesthesia column.

14 Q Uh-huh.

15 A And this is the procedure doctor's notes column.

16 Q The doctor's notes column times?

17 A Yes, sir.

18 Q Were you here when Dr. Frank Nemec testified?

19 A I was in and out. I could have been.

20 Q Okay. But those -- those times, were those --
21 are those received from a machine?

22 A Yes, sir.

23 Q Did you hear Dr. Nemec tell you that they didn't
24 always do those notes right after the patient? There might be
25 some minutes --

1 MS. WECKERLY: I'm going to object. Dr. Nemec never
2 worked at this clinic.

3 MR. SANTACROCE: I'm talking about Dr. Nemec's
4 procedures.

5 MS. WECKERLY: Then it's irrelevant.

6 THE COURT: Well, that's sustained.

7 MR. SANTACROCE: Well, he was testifying as an
8 expert.

9 MS. WECKERLY: Not on computers.

10 THE COURT: Well, no. That -- that's sustained, Mr.
11 Santacroce.

12 BY MR. SANTACROCE:

13 Q Okay. So those procedure times were from the
14 doctors when he typed in his notes after the procedure,
15 correct?

16 A That's what I understand, yes, sir.

17 Q Do you know when they did those times? When he
18 typed in those final notes?

19 A It was either the doctor or I think somebody
20 even said the nurses sometimes do it.

21 Q Do you know when they would do that?

22 A Whenever the time is on the chart, that's when
23 they do it.

24 Q Okay. So it wouldn't necessarily be right after
25 the procedure, would it?

1 A Well, I'm assuming from the records and
2 everything else that it happened before the procedure started
3 and then it was afterwards that they did the other end note.

4 THE COURT: I'm sorry. They did the other what?

5 A The -- the end time would be at the end of the
6 procedure.

7 BY MR. SANTACROCE:

8 Q Now, as she asked you to read the times for
9 Sharrieff Ziyad, the one in blue -- I'm sorry, I don't want to
10 stand -- can you all see that? Okay. And how many patients
11 were between the source patient and Michael Washington?

12 A Three.

13 Q And none of those three reported hep C, correct?

14 A I can't say that entirely.

15 Q Okay. Well, at least according to this chart,
16 they're not recorded on the chart.

17 A We're not aware of it, no, sir.

18 Q And then you have Michael Washington --

19 A Yes.

20 Q -- who reports getting hep C.

21 A Yes, sir.

22 Q And then the rest of the day is -- is -- at
23 least according to the chart, does anybody report having hep
24 C?

25 A I can't say that entirely. I can say that we

1 don't -- we're not aware of them having it hep C --

2 Q Well, that's --

3 A -- when they have got it or didn't get it.

4 Q Okay. You're not aware of it is what I'm
5 saying?

6 A Yes, sir.

7 Q Okay. And let's go to the 21st date. And after
8 Mr. Meana, how many patients does it show that you're not
9 aware of having hep C?

10 A One, two, three, four, five.

11 Q Okay. And then the next person that gets it?

12 A Just one in between those two.

13 Q Okay. And then go down to Lakeman's room.

14 A There's one in between Stacy Hutchinson and
15 Patty Aspinwall and one, two, three, four, five between Carole
16 Grueskin and Patty Aspinwall.

17 MR. SANTACROCE: That's all I have. Thanks.

18 THE COURT: Redirect?

19 MS. WECKERLY: Nothing else.

20 MR. WRIGHT: I forgot something.

21 THE COURT: Go ahead.

22 MR. WRIGHT: I was reminded. No, I had it on my list
23 and I didn't go into it.

24 THE COURT: That's fine. Just ask -- do it.

25 MR. WRIGHT: Okay.

1 FURTHER RECROSS-EXAMINATION

2 BY MR. WRIGHT:

3 Q The first -- first of all, just to be certain on
4 that date of October, I said 15, it looks like 13. Can you
5 read that little writing?

6 A I need to get glasses. I'm sorry. Which one
7 are we talking about, which part?

8 Q First eight -- the first 50 ccs ever ordered.

9 A Okay. It would be this highlighted day right
10 here?

11 Q Yep.

12 A October 13th, 2006 -- or 2005.

13 Q '05.

14 A Looks like a six, sorry.

15 Q It's actually the -- it's the 2005 --

16 A Yes, sir.

17 Q -- total. Okay. Now, I forgot when -- when Ms.
18 Weckerly was asking you on page 31 about having a big -- big
19 discussion this -- the way -- and this is has to do with a
20 outbreak back East, correct?

21 A That's what Ms. Hubbard was talking about?

22 Q Right.

23 A Yes, sir.

24 Q Okay. And this big discussion she's talking
25 about, the way I read this, this is a discussion she's --

1 she's explaining to you all the discussions she had when she
2 was working back East, correct?

3 A I'm not sure how to take that --

4 Q Okay.

5 A -- I'd have to read it to --

6 Q Let me --

7 A -- be able to interpret it better.

8 Q Let me read it. It says, "It was really
9 syringes that did it. And he was one of the first people that
10 came, a little guy named Heidia [phonetic] and he used -- he
11 came running in and he goes, you were right, you were right.
12 And I said you know you can't do this." Do you recall that?

13 A It says, "I told him about the -- the case in
14 New York." So let's see who him is.

15 Q Oh, read there -- the next portion where it says
16 we had the big discussion.

17 A Okay. "And we had a big discussion, the
18 gastroenterologist. It was a private practice, a family
19 practice physician that owed the center where -- that owed the
20 center where we worked. And we had had this big discussion
21 about, oh, you know, you have to really be careful that the
22 scopes and the rest of the stuff. And I said to him, I don't
23 think it's the scopes, I think it's probably syringes. And
24 then it came out later that it really was there." Levi says,
25 "In fact, it was." And then she said, "It really was -- it

1 was really syringes that did it and he was one of the first
2 people that came, a little guy named Heidia and he used -- he
3 came running in, he goes you were right, you were right. And
4 I said you know you can't do this."

5 Q Okay.

6 A I'm not sure.

7 Q The guy who came running in --

8 A It's kind of confusing.

9 Q -- the little guy I mean is Heidia, right?

10 A Yes.

11 Q Okay.

12 MR. WRIGHT: No further questions.

13 MS. WECKERLY: Nothing else.

14 THE COURT: Nothing else? We have a juror question
15 up here. Juror would like to know, according to the records,
16 do you know how long before and after September 21st, 2007 the
17 computer glitch in one of the procedure rooms existed?

18 THE WITNESS: I'm not entirely sure. I want to say
19 it was maybe -- I can't answer this entirely, I'd have to go
20 back and look. I know we looked at it, I just don't remember
21 if we found a day or two before or after that it occurred but
22 it wasn't long term as it shows in the July 25th record.

23 THE COURT: All right. Thank you. Ms. Weckerly,
24 any follow-up?

25 MS. WECKERLY: No, Your Honor.

1 THE COURT: Mr. Wright or Ms. Stanish, any follow-up?

2 MS. STANISH: No, Judge.

3 MR. WRIGHT: No.

4 THE COURT: Mr. Santacroce?

5 MR. SANTACROCE: No, Your Honor.

6 THE COURT: Do we have any additional juror questions
7 for this witness? All right. Detective, thank you for your
8 testimony. You are excused at this time.

9 THE WITNESS: Thanks, Judge.

10 THE COURT: State, call your next witness.

11 MR. STAUDAHER: State calls Dr. Alane Olson, Your
12 Honor.

13 ALANE OLSON, STATE'S WITNESS, SWORN

14 THE CLERK: Thank you, please be seated. And please
15 state and spell your name.

16 THE WITNESS: Thank you. My name is Alane Olson. My
17 first name is spelled A-l-a-n-e. My last name is spelled
18 O-l-s-o-n.

19 DIRECT EXAMINATION

20 BY MR. STAUDAHER:

21 Q Doctor Olson, what do you do for living?

22 A I'm a Medical Examiner at the Clark County
23 Coroner's Office.

24 Q And how long have you done that work?

25 A I've worked in Clark County since September of

1 2005 and before that I worked in Reno at the coroner's office
2 there.

3 Q Can you give us your background and training
4 that got you to the position you're in today?

5 A I have a Bachelor's Degree in Microbiology from
6 the University of Idaho. I spent one year in a Ph.D. program
7 at the University of Chicago and decided that wasn't for me so
8 I applied to medical school. I got in to medical school here
9 in Nevada, the University of Nevada School of Medicine. And
10 once I finished my M.D. degree I moved to Portland, Oregon and
11 spent five years at Orion Health Sciences University in a
12 training program for anatomic and clinical pathology.

13 Strictly speaking, pathology is the study of disease.
14 That's where I learned how to do autopsies. That's also where
15 I learned how to look at specimens that are removed during
16 surgery for cancer or if someone has pneumonia, they take out
17 part of the lung. So pathologists look at those two shoes and
18 they make diagnoses. We also run the clinical laboratories.
19 So if you've ever had blood drawn, a pathologist is the doctor
20 who's ultimately responsible for the quality of those results
21 that are reported.

22 So once I finished my residency in pathology, I moved
23 to Milwaukee, Wisconsin and spent one year at the Milwaukee
24 County Medical Examiner's Office in a forensic pathology
25 fellowship program. So that was subspecialty training in the

1 field of forensic pathology. Once I completed that training I
2 moved to Reno and worked at the coroner's office there for
3 just over five years. And I've been, as I said, in Clark
4 County for almost eight years.

5 Q So do you do autopsies as a part of that work?
6 I mean it sounds like it, but I just want to make sure.

7 A Yes. I do autopsies and other examinations with
8 a goal of determining cause and manner of death.

9 Q Now, in this particular case that you're
10 testifying in today, did you actually -- were you involved in
11 some way in an autopsy for a person by the name of Rodolfo
12 Meana?

13 A I observed the autopsy, it was -- as it was
14 performed.

15 Q We're going to get to the details of that in a
16 moment, but let's -- let's go back. When did you become aware
17 that this was something that you were potentially going to be
18 involved in?

19 A In 2011 my boss, Mike Murphy, who is the
20 coroner, was contacted by Metro and the District Attorney's
21 Office regarding this entire circumstance, in particular Mr.
22 Meana. And they wanted to be sure that we were aware of the
23 possibility that Mr. Meana might die and that if he did die we
24 would be involved in some way in the examination that occurred
25 after he had died.

1 Q Did you know where at the time that would
2 actually take place?

3 A At the time we were contacted, he was -- Mr.
4 Meana was in the United States but he subsequently went back
5 home to the Philippines.

6 Q So would your role be different in the
7 Philippines if you were observing or involved in some way than
8 it would be here if it had happened in Las Vegas, for example,
9 the death that is?

10 A Yes.

11 Q Tell us the differences and why.

12 A The difference is that I'm not licensed to
13 practice medicine in the Philippines. And so when you perform
14 an autopsy, that is, in fact, the practice of medicine. So if
15 he had died here in Clark County then I could have performed
16 the autopsy myself. But because he was in the Philippines
17 when he died, I was not entitled to do that. So I went and
18 watched the autopsy be performed.

19 Q And what was the purpose of you actually doing
20 that?

21 A It was pretty much at the request of Metro and
22 the District Attorney's Office who wanted to have someone
23 present to -- to see that it was done.

24 Q And was it also to observe how it was done in
25 comparison with what standard practice is, that kind of thing?

1 A Yes.

2 Q Were you also able to obtain samples, I mean
3 tissue samples and the like for your own investigation once
4 you returned to the United States?

5 A Yes.

6 Q Now, let's -- let's go back to that. So you --
7 at some point do you get a call that -- that you're needed?

8 A Yes. It was Friday, April 27th and I received a
9 call from my office telling me that Mr. Meana had died in the
10 Philippines and that I would be going to the Philippines.

11 Q Now, in advance of you ever getting this call or
12 -- or being actually en route to do observational work, had
13 you been provided with any prior medical records of Mr. Meana?

14 A Yes, I had been provided with medical records.

15 Q Now, the -- after he leaves the United States
16 and goes to the Philippines, were you aware that he had some
17 additional hospitalizations there?

18 A Yes, I am.

19 Q At the time, did you have records of those
20 hospitalizations?

21 A I did not, no.

22 Q So you had the pre-Philippines records but not
23 the Philippine records at the time you went there; is that
24 correct?

25 A That's correct, yes.

1 Q So walk us through how it is that you end up
2 going to the Philippines.

3 A So at -- at the request, as I've mentioned, I
4 was provided with a plane ticket and left Las Vegas about
5 11:00 that Friday night. I was traveling with a detective
6 from Metro who was born in the Philippines and it was thought
7 that he might be able to help figure out how to get this done
8 since I had no idea what the mechanism was for getting an
9 autopsy done in the Philippines.

10 We traveled on a commercial flight and ended up
11 landing in Manila at, I don't know, sometime Sunday morning.
12 By that time there had been communication between officers at
13 Metro and FBI agents who are stationed in Manila and between
14 them they had figured how to -- how to get an autopsy done and
15 that was through the auspices of the National Bureau of
16 Investigation in the Philippines. It simply requires that the
17 family request that an autopsy be done and they take care of
18 doing it. So we had access to the family, big part of the
19 family was actually on the same flight as we were. So we
20 talked at the airport and let them know that they needed to
21 request an autopsy, which they did.

22 In Philippine customs when someone has died, if there
23 is not going to be an immediate burial, they actually put the
24 body in a freezer. And so the autopsy couldn't be performed
25 immediately upon the family requesting it, the body had to be

1 taken out of the freezer and prepared for autopsy. So the
2 autopsy actually occurred on Monday the 30th of April. And
3 Detective Bagang and I had gone to the Office of the National
4 Bureau of Investigation in Manila and met with the doctor who
5 was going to perform the autopsy. We traveled with her to the
6 funeral home where the autopsy occurred. Detective Bagang and
7 I both watched the autopsy.

8 The doctor provided me with the samples that the
9 family had authorized me to have and following the completion
10 of her autopsy we went back to our hotel. I put the -- the
11 sample, tissue samples in a fixative or a preservative, put
12 them in the safe in my hotel room and that's where they
13 remained until we left the Philippines on Wednesday.

14 Q So once you leave the Philippines, I mean, are
15 -- I assume you remove these samples from your safe?

16 A Yes. I took the samples out of the safe, put
17 them in a sealed bag and hand carried them with me on the
18 flights back to the United States.

19 Q At any time did those leave your possession? I
20 mean -- so you give them to somebody in customs or the like
21 to --

22 A No. No, they never left my possession.

23 Q So when you get back to the United States,
24 meaning Las Vegas, what do you do?

25 A I took them to the office and put them in one of

1 the -- the rooms at the office where we prepare tissues for
2 glass slides.

3 Q Now these preparations were done by -- I mean
4 you have the gross tissue samples or biologicals and then you
5 prepare your own slides, you didn't rely on somebody in the
6 Philippines to do that for you?

7 A Correct. I brought the -- the tissue back with
8 me to the United States and it was then prepared for slides
9 starting at our office and then we -- we contract with a lab
10 that actually does the work of -- of processing that tissue so
11 we can look at it under the microscope.

12 Q I want to go back to the Philippines for a
13 moment. We'll get to what you did here later on. But when
14 you're in the Philippines you said that -- that there was a
15 period of time that the autopsy couldn't be done right away
16 because of it had to be prepared for the autopsy; is that
17 correct?

18 A Yes, that's correct.

19 Q When was the actual death?

20 A The actual death I -- our time it was, I
21 believe, on Friday the 27th, but I think that was actually
22 Saturday the 28th in the Philippines.

23 Q And there's a death certificate in the records
24 as well; is that correct?

25 A Yes, that's correct.

1 Q And these are all admitted into evidence. I
2 will -- I will bring them up to you if you need to look at any
3 of them during the course of this. Were you also subsequently
4 down the road provided with actual medical records from the
5 Philippines?

6 A Yes, I was.

7 Q Have you had a chance to review those?

8 A I have.

9 Q Have the records of the Philippines
10 hospitalizations, what occurred there, changed any of the
11 opinions that you have regarding this case?

12 A No, they haven't.

13 Q In fact, do they do anything to either support,
14 deny your opinions?

15 A They essentially support my opinion.

16 Q Now back in the Philippines, once -- explain to
17 us, I mean, this is kind of an unusual situation where you're
18 observing and taking tissue samples. Can you kind of walk us
19 through how it happens? I mean, I know that in the United
20 States you go through a process during an autopsy. Was a
21 similar process done in the Philippines when you observed it?

22 A Yes. The process -- the -- the whole mechanics
23 of it was very similar.

24 Q Okay. Can you describe -- I mean, do you do
25 typically external and internal examinations, look at organs,

1 all those kinds of things?

2 A Yes. When we do autopsies here and when they do
3 autopsies in the Philippines, you start with what's called an
4 external examination, which is exactly what it sounds like.
5 You describe what someone looks like on the skin surface and
6 that includes hair color, eye color, whether they had any
7 medical intervention, marks, scars, tattoos, evidence of
8 injury.

9 And then you go to an internal examination, which
10 involves making a Y-shaped incision on the front of the body
11 from shoulder to shoulder, down to the chest and then down to
12 the bottom of the abdomen. The skin is -- is cut away from
13 the body and taken to the sides so you can look at the rib
14 cage. The front of the ribs are then removed and that way you
15 can look at everything in the main body cavity as it rests.
16 Through this whole process you're looking to document evidence
17 of natural disease as well as evidence of injury. So once the
18 torso or the body cavity has been opened, all of the organs
19 are removed one by one and examined individually.

20 We also look at the head and you make an incision in
21 the scalp across the top of the head from ear to ear, you
22 separate the scalp and then you use a saw to take off the top
23 of the skull. You can then look at the brain and remove it
24 and again examine it for natural disease as well as injury.

25 Q So when you're observing -- I mean, is it the

1 same kind of thing that you do here essentially that you
2 observed in the Philippines? Was there anything unusual or
3 different about what they did?

4 A Nothing particularly unusual. Generally when we
5 start an autopsy, when we get to the -- the first part of the
6 internal examination we'll take blood. We typically run
7 toxicology testing. In the case of the doctor in the
8 Philippines, she essentially waited until the end to -- to
9 collect blood, likely because she didn't intend to do
10 toxicology and so she didn't need that much blood. That was
11 really the only difference aside from the fact that we use an
12 electric saw and they didn't actually have an electric saw.

13 Q So beside those -- those few -- two items that
14 you mentioned, was there anything that you -- during the time
15 you're watching this that you go oh, my gosh, you know, we
16 would never do that, that's going to compromise our -- our
17 samples, anything along those lines?

18 A No.

19 Q So is it technique then essentially the
20 difference? One doctor does something at the beginning, you
21 may do it at the end, but you both do it?

22 A Yes, that's correct.

23 Q So once you're there, I mean, you're in an
24 observational state, what -- what are you -- what kind of
25 interaction are you having with the person performing the

1 autopsy, if any?

2 A I didn't want to hover over Dr. [indiscernible]
3 shoulder so I -- I watched what she was doing but I did not
4 try to discuss with her what she was doing at the time. I
5 know how distracting it can be when someone does that with me
6 when I'm doing an examination. So I -- I watched, I talked
7 with her briefly after the examination when she was giving me
8 the specimens that I requested and that was essentially it.

9 Q Did you tell her what she should find?

10 A Did I --

11 Q Did you tell her what she should find in her own
12 investigation?

13 A No, I didn't.

14 Q Did she independently prepare an autopsy report
15 in the -- in this particular case?

16 A Yes, she did.

17 Q And did that basic -- was it based on the blood
18 samples and the tissue samples and things that she did
19 independent of what you did?

20 A Yes.

21 Q In that work, did you have any input as to what
22 she did, how she did her work at all?

23 A No, not at all.

24 Q Now, you then take your samples. Did you
25 request specific samples or did she just hand these off to

1 you?

2 A I requested specific samples, mainly the main
3 organs.

4 Q And why did you want those particular -- in
5 particular?

6 A Those are essentially the kinds of samples that
7 we look at routinely in the autopsies that we do here.

8 Q Now with regard to you obtaining those samples,
9 after -- after you have gotten the samples, did you have --
10 well, I've already asked you if you had any involvement in
11 their side of things. Did you have any involvement in the
12 preparation of the death certificate in the Philippines?

13 A No, I didn't.

14 Q Did you have any input to the person who
15 actually put the death certificate together?

16 A No.

17 Q So that was also independent?

18 A Yes, that's correct.

19 Q Once you returned to the United States, walk us
20 through what you did.

21 A Once I was back in the States I -- I can't
22 remember if I did it personally or if I had one of our techs
23 do it, but the -- the tissue samples that I brought back from
24 the Philippines were prepared and sent to the laboratory that
25 makes our glass slides. And we do that so we can look at it

1 under the microscope and make a diagnosis if there is
2 abnormality in the tissue. Once I had the chance to look at
3 the slides then I completed my report and signed it.

4 Q So as far as your report was concerned, what
5 kinds of things -- I mean, what tissues did you actually look
6 at?

7 A I looked at Mr. Meana's heart, lungs, liver,
8 kidneys, brain and spleen, I believe.

9 Q And you're referring to something. Can you just
10 tell us what it is you're referring to?

11 A I have a copy of my report.

12 Q Okay. If you need to refer to that to refresh
13 your memory at any time, please do so, just let us know you're
14 doing it.

15 A I will.

16 Q And set it aside. Did -- did that cover the
17 areas that you need to refresh?

18 A Yes, it did.

19 Q So can you tell us again the items or the areas?

20 A I looked at his heart, his lungs, his liver, his
21 kidneys, his brain and his spleen.

22 Q Now I don't -- I want to ask you about your
23 findings but I don't want you to -- I'm going to leave the
24 liver portion to the last. Okay?

25 A Uh-huh.

1 Q Let's talk about the other parts that you looked
2 at, the lungs, the heart and so forth. Did you find any
3 issues or any pathology in relation to any of those organs?

4 A Yes, I did.

5 Q Can you tell us what you found?

6 A In his lungs he had evidence of ongoing
7 pneumonia. Some of it looked like it was just starting and
8 some of it looked like it was established and had been going
9 on for a while. He had some scar tissue of fibrosis that was
10 present in his spleen and he had some artifacts from the
11 preparation process from essentially having been frozen, but
12 those were the only major findings aside from the liver
13 findings.

14 Q The tissues that you brought back with you, I
15 thought you said that you put them in some sort of material,
16 in solution before you brought them back; is that correct?

17 A Yes, they were in a preservative.

18 Q Did -- is that something that you got from the
19 Philippines to put the tissue samples in?

20 A No, I actually brought it with me. I had no
21 idea what might be available in the Philippines.

22 Q So you brought your own -- own supplies to get
23 the samples from the Philippines; is that correct?

24 A Yes, that's correct.

25 Q What is the purpose of the solution that those

1 tissue samples goes into?

2 A The purpose of that solution is to -- to
3 preserve them so that they don't start breaking down and
4 decomposing between when I get them and when I have the chance
5 to -- to send them to the lab for processing.

6 Q So does that essentially preserve them?

7 A Yes.

8 Q So this isn't something where you have a -- have
9 a tissue sample that's sitting around in your hotel room for
10 days and then you bring it back and try to work with it?

11 A No, that's not the way it was.

12 Q So once you actually are going through the --
13 the analysis, we've talked about one of the organs, let's go
14 through the rest of them. Did you find any other issues
15 beside the -- the lungs?

16 A The lungs and the spleen were the only two
17 organs that -- that had pathology associated with them.

18 Q Now, let's talk about that pathology on those
19 organs. Based on your analysis, your review of the medical
20 records and so forth, did you have an opinion as to what the
21 cause of those -- those particular issues were with those
22 organs?

23 A Regarding the lungs, people who have liver
24 failure and are hospitalized pretty frequently will end up
25 with pneumonia. So the -- the cause of the pneumonia that I

1 saw in his lungs is not a mystery. Likewise, people who have
2 liver failure will often have problems with their spleens. In
3 Mr. Meana's case he had some fibrosis or scarring in his
4 spleen and he had kind of a backup of -- of blood into his
5 spleen, which is also common in someone who has liver failure.
6 So the -- the changes that I saw in his lungs and his spleen
7 go along with the changes that were present in his liver.

8 Q What about any other organs beside the spleen
9 and the -- and the lungs? Any issues with those?

10 A No.

11 Q So let's move on --

12 A Oh, I'm sorry. He did have some scarring in his
13 kidney.

14 Q Was that any issue that would have contributed
15 to his death or anything like that?

16 A He had a history of high blood pressure. And in
17 addition, people who have liver failure can have worsened
18 kidney function, which actually was one of his problems. So
19 it does go along with his -- his liver disease but it's also
20 something that may have been starting before he developed
21 liver disease.

22 Q So I just want to understand it. At this point,
23 at least the pathology you found in the lungs and possibly the
24 kidney and the spleen, is it your opinion that that relates to
25 his liver disease?

1 A Yes.

2 Q So let's move on to the liver. Tell us what
3 your findings were with regard to that organ.

4 A His liver showed evidence of scarring and it
5 also had a lot of inflammation, meaning that there were cells
6 of the immune system present in his liver and they were
7 causing damage to the liver cells and that damage is what
8 leads to the scarring that I saw.

9 Q So was that consistent with what you were -- I
10 mean, tell us what that scarring is usually indicative of
11 typically. I mean, where do you get that kind of pathology?
12 What kinds of things cause it?

13 A That type of scarring can actually result from a
14 variety of different things. Oftentimes in the United States
15 it's the result of -- of chronic alcohol abuse. But it can
16 also result from chronic hepatitis, chronic active hepatitis,
17 most commonly hepatitis B and hepatitis C.

18 Q In the medical records was there any indication
19 that he had suffered from alcohol abuse or had a problem with
20 that during his time -- his lifetime?

21 A Not that I saw, no.

22 Q Did you see indications in the medical record
23 that he had been infected with hepatitis C?

24 A Yes.

25 Q Beside those two -- two things, the kind of

1 pathology you saw with the liver, are there other issues that
2 would cause that kind of an issue?

3 A When someone's exposed long term to certain
4 drugs or if they have a -- an autoimmune problem where the
5 body attacks itself, that may result in that kind of scarring.

6 Q Did you see evidence of that with Mr. Meana in
7 any of the medical records or the pathology specimens you
8 reviewed?

9 A No.

10 Q Now, as far as the -- well, you've seen the
11 autopsy report from the Philippines, correct?

12 A Yes.

13 Q You've seen the death certificate from the
14 Philippines also.

15 A Yes.

16 Q The findings that -- that appear in both of
17 those documents, were they different, the same or any way --
18 any way other than what you found in your actual observations
19 and examination?

20 A The wording is somewhat different but the -- the
21 take home message is that he died as a result of hepatitis C
22 infection.

23 Q In your findings, your opinion, did that support
24 that finding?

25 A Yes.

1 Q Now I'm going to show you a copy of the death
2 certificate and this is State's 18, because there's some
3 things on here that I want to make sure I understand and the
4 jury does too since not everyone has a medical background like
5 you do. So I want to take a look at that. Now as we go
6 through this, I want to just -- I'm -- I'll point out some
7 things to you and I want you to tell me what it means if you
8 -- if you know. First of all, we're talking about Rodolfo
9 Meana, correct, the same person?

10 A Yes.

11 Q And the date of death according to this death
12 certificate is?

13 A April 27th, 2012.

14 Q And it says his date of birth is?

15 A The 20th of February, 1935.

16 Q Now if we go down to the areas where it says
17 under -- under medical certificate, do you see that?

18 A Yes.

19 Q What does that mean on a death certificate?

20 A We don't phrase it quite that way in the United
21 States but in essence it's the medical certification of why
22 someone has died.

23 Q Okay. And under that section there are
24 different categories with different terms here. Can you tell
25 us what -- what these mean on this side over here as the

1 immediate cause, antecedent cause, underlying cause, other
2 significant conditions and then the items are listed in those
3 -- in those sort of spaces, can you tell us about those?

4 A Yes. So the immediate cause of death is exactly
5 what it sounds like, that's the reason that someone has
6 suddenly died. The antecedent cause means that that is the
7 condition that was present leading to the first or immediate
8 cause. And the underlying cause is basically what started
9 this whole cascade of events. And in Mr. Meana's case, the
10 immediate cause of death is listed as hepatic uremic
11 encephalopathy fourth grade or fourth degree. That basically
12 means that his liver and his kidneys had failed, they were
13 affecting his brain. That's what the encephalopathy means.
14 And those conditions arose because he had sepsis, which is
15 infection in the blood. And that condition arose because he
16 had hepatitis C and chronic kidney disease, meaning that he
17 had an infection in his liver and he had chronic disease in
18 his kidneys.

19 Q Now this is -- we're talking April 27th of 2012
20 for the death date, correct?

21 A Yes.

22 Q Are you aware based on the review of the records
23 that he contracted his hepatitis C supposedly, at -- in the
24 time of I think it was August -- excuse me, September 21st of
25 2007?

1 A Yes.

2 Q So approximately five years earlier.

3 A Correct.

4 Q Is that the normal course for somebody who has
5 hepatitis C leads to this condition with the liver?

6 A There's actually a fairly broad range of
7 reactions to hepatitis C infection. There are people who
8 experience a pretty short time course like Mr. Meana did. The
9 majority of the people who get hepatitis C infection seem to
10 go for 10 or 20 years before they have cirrhosis or scarring
11 in the liver and all of those things that can arise from
12 cirrhosis.

13 Q But the time frame we're talking about here, is
14 that reported? Is it something that is known?

15 A It is something that's known, yes.

16 Q So does this call in to question, that short
17 time period, does it call in to the question the -- the
18 findings that were in his death certificate at all?

19 A No.

20 Q Does it call in to question the findings that
21 you independently made of your own tissue samples in the lab
22 here in Las Vegas?

23 A No.

24 Q Now with regards to the liver and liver function
25 or failure thereof, we've heard the term cirrhosis at times.

1 Can you tell us what that is?

2 A Cirrhosis means that there's scarring in the
3 liver, so that there's been ongoing damage to the liver cells
4 and there's been scar tissue -- just like when you cut
5 yourself you get a scar. When there's damage in the liver
6 your body also makes scar tissue. So cirrhosis means that the
7 liver is scarred.

8 Q So what is -- what is the function of the liver?

9 A Ooh, the liver actually does a lot of different
10 things. It's important for taking toxins or toxic substances
11 out of the blood. It makes the proteins that help your blood
12 clot normally. It helps your body manage and regulate
13 carbohydrates and proteins and fats. The liver's what makes
14 cholesterol. There are all kinds of things that the liver
15 does that make it critical. You can't survive without a
16 working liver.

17 Q Essentially, does it act as a filter for the
18 body too?

19 A Yes. That's part of it's detoxifying -- or it
20 takes out substances that are harmful.

21 Q Now blood that gets in the body that goes back
22 to the heart to get pumped out to all the organs, does it have
23 to return through the liver?

24 A Yes, it does.

25 Q In the case where you have a -- a liver that's

1 scarred or cirrhotic, as you've described it, does that impede
2 or limit the flow of blood through the liver?

3 A Yes, it does.

4 Q Are there resulting things that happen to a
5 person as -- because their blood can't get through the liver
6 effectively?

7 A Yes, there are.

8 Q What -- what kinds of things happen?

9 A The blood has to find a way to get back to the
10 heart so it can be pumped around the whole circulatory system
11 again. So one of the ways that happens is that instead of
12 taking the -- the main highway through the liver to get back
13 to the heart, the blood goes through smaller veins or blood
14 vessels to get back to the heart. And when that happens you
15 can have bleeding as a result. People have what are called
16 varices or dilated veins in their esophagus and that's because
17 the blood can't take its normal course back through the liver
18 to get to the heart and so it goes around the esophagus. And
19 these veins get very large and they can ulcerate, meaning that
20 they -- they get eroded and they can cause bleeding.

21 They -- people can also develop gastritis or
22 inflammation in the stomach often because there are enlarged
23 blood vessels in the stomach, which cause irritation. They
24 can also bleed. In addition as I mentioned, the blood,
25 because it can't adequately or quickly enough go through the

1 liver, it kind of backs up into the spleen, which is kind of
2 over on the opposite side of the abdomen. The spleen can
3 become very enlarged and that can cause problems as well.

4 Q So if we have -- you said this erosion that it
5 would -- it causes bleeding in these sort of thinned out veins
6 or blood vessels that cause the -- I guess from the blood not
7 getting back to the heart; is that correct?

8 A Yes.

9 Q Would that be something that someone might need
10 blood transfusions or so forth because of that erosion and
11 bleeding?

12 A Yes.

13 Q Did you find evidence in the medical record from
14 the Philippines that Mr. Meana was requiring blood
15 transfusions near the time of his death?

16 A Yes, he was.

17 THE COURT: Mr. Staudaher, I'm going to interrupt
18 you. We're going to need to take a quick break --

19 MR. STAUDAHER: Sure.

20 THE COURT: -- before we take our lunch break a
21 little bit later.

22 Ladies and gentlemen, during the next quick break,
23 you're reminded that you're not to discuss the case or
24 anything relating to the case with each other or with anyone
25 else. You're not to read, watch or listen to any reports of

1 or commentaries on this case, person or subject matter
2 relating to the case. And please don't form or express an
3 opinion on the trial. Notepads in your chairs and follow the
4 bailiff through the rear door.

5 (Jury recessed at 12:03 p.m.)

6 THE COURT: One of the jurors, the fellow that's the
7 veteran, has to -- has some VA medical thing he has to do
8 today so we're going to break like 1:10ish for lunch, just so
9 you know.

10 MR. STAUDAHER: I don't have a whole lot left.

11 THE COURT: Okay. No, I -- and so that's why we took
12 our bathroom break now. And even if we're not done, we are
13 going to have to break for lunch. You know, normally I'd just
14 go until we finished with you but unfortunately, we can't do
15 that. So just to give you a heads up. And then does the
16 defense have anybody lined up for this afternoon?

17 MS. STANISH: We did. We kind of have her on
18 standby --

19 THE COURT: Okay.

20 MS. STANISH: -- so I'm not sure logistically --

21 MR. STAUDAHER: We've heard there's an issue with a
22 juror that needs to leave at 3:30 or something like that so --

23 THE COURT: No, today --

24 MR. STAUDAHER: Oh, it's not --

25 THE COURT: That was Friday.

1 MR. STAUDAHER: Oh, doctor's --

2 THE COURT: Today we can go late. So we just have
3 the issue with the juror at the lunchtime, which means we're
4 going to have to take like an hour and half for lunch, an hour
5 and 40 minutes. But then once we come back from lunch we can
6 go as long as we need to go. So --

7 MS. STANISH: So we'll be back to lunch at what time
8 do you think?

9 THE COURT: Well, I can't remember exactly. I think
10 we're breaking for lunch around 1:10.

11 MS. STANISH: Okay.

12 THE COURT: So we'll be back like 2:45.

13 (Court recessed at 12:05 p.m. until 12:13 p.m)

14 (Outside the presence of the jury.)

15 MS. STANISH: Judge?

16 THE COURT: Yes?

17 MS. STANISH: On scheduling, I'm kind of rethinking
18 it might be better to do Ms. Sims tomorrow because I'm
19 concerned that we're not going to get much accomplished with
20 her and I don't think the other witnesses that we have will
21 take that long.

22 THE COURT: So what are you telling me?

23 MS. STANISH: That I prefer to do -- start our case
24 tomorrow. One -- the other --

25 THE COURT: Does that mean you want to end early

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SEP 02 2014 09:18 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DIPAK KANTILAL DESAI,)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

APPELLANT'S APPENDIX VOLUME 37

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are we going, Your Honor?

THE COURT: About 3:35 or so.

MS. STANISH: Okay. This is the dreaded chart discussion.

BY MS. STANISH:

Q Detective, let me give this to you because this is too -- too tough to manipulate on that ELMO. Okay. Stand by. I've got to get you the chart.

A Okay.

Q What I'd like to present to you is a Proposed Exhibit Z1. We're at the end of the alphabet. And I'd like you -- if you need my readers, I have them.

A No, that's okay.

Q Well, I need them. Good. I'd like you to review for accuracy the information on this Proposed Exhibit Z1 that is derived from Government's Exhibit 156 and 157. So let's start with the top. And, you know, just compare this -- these columns with what you have here.

A Okay. Where is this from? No, I mean, where is this from?

Q This is -- this is a document that I'm proposing to introduce.

A Oh, okay. You're going by the yellow column, right?

Q Correct.

A That would be this right here?

Q Right.

A Okay. There's -- oh, we're on a different day now.

MS. STANISH: You know, Your Honor, what I might suggest is that I just let -- I know you want to go -- this might take a while for him to do the review. I don't mind just giving him a copy. I've already given a copy to the State.

THE COURT: Okay. Are you suggesting we take a break now so that the Detective can have more time to review that?

MS. STANISH: Well, if you want to end in 10 minutes I'd say --

THE COURT: Okay.

MS. STANISH: -- call it a wrap.

THE COURT: Okay. You don't have anything else? Okay. All right. Ladies and gentlemen, we are recessing early today to accommodate one of the jurors, so we'll go about 15 minutes earlier than what we'd planned on doing.

During the weekend recess, you are reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to any reports of or commentaries on this case, any person or subject matter relating to the case. Don't do any independent research by way of the Internet or any other

medium, and please do not form or express an opinion on the trial.

We will reconvene Monday morning at 9 a.m. Notepads in your chairs and follow the bailiff through the door.

(Jury recessed at 3:19 p.m.)

THE COURT: And, Detective, don't -- other than maybe talking about the chart right now in here with everybody or the lawyers, don't discuss the rest of your testimony over the weekend.

THE WITNESS: Yes, ma'am.

THE COURT: But if you want to talk about the chart with them and go over it now with Ms. Stanish and the State, that's fine.

MS. WECKERLY: Yeah, I don't mind if Ms. Stanish communicates where she got the numbers from so it --

MS. STANISH: Yes.

MS. WECKERLY: -- speeds it up.

THE COURT: Okay.

MS. STANISH: Yeah. Yeah, that's what I --

MS. WECKERLY: Well, I get where you got them from. I meant to him.

MS. STANISH: Right. Exactly. That's what I wanted to --

THE COURT: You don't care -- you don't want to stay around for her to do that; is that what you're saying?

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MS. WECKERLY: Well, I just meant I don't care that she --

THE COURT: Okay.

MS. WECKERLY: -- questions him --

THE COURT: Okay.

MS. WECKERLY: -- not in front of the jury.

THE COURT: Right. No, she was going to do that now. That's all I'm saying.

MS. STANISH: No, I was just going to walk him through the --

THE COURT: That's fine with the Court.

MS. STANISH: -- charts.

MS. WECKERLY: That's fine.

THE COURT: You know, the rest of it --

MS. WECKERLY: That's fine. I think it will go faster if we do it that way.

THE COURT: Right. Okay. Well, you don't need me.

(Court recessed for the evening at 3:21 p.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

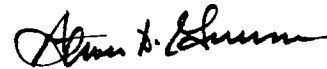
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C265107-1,2
)	CASE NO. C283381-1,2
vs.)	DEPT NO. XXI
)	
DIPAK KANTILAL DESAI, RONALD)	
E. LAKEMAN,)	
)	
Defendants.)	TRANSCRIPT OF
)	PROCEEDING

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 42

MONDAY, JUNE 24, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
	MARGARET M. STANISH, ESQ.
FOR DEFENDANT LAKEMAN:	FREDERICK A. SANTACROCE, ESQ.

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I N D E X

WITNESSES FOR THE STATE:

ROBERT WHITELEY

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1 **LAS VEGAS, NEVADA, MONDAY, JUNE 24, 2013, 9:14 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: Everybody good? Kenny? There you are.
5 Bring them in.

6 (Jury reconvened at 9:16 a.m.)

7 THE COURT: Someone, I'm not going to mention names,
8 forgot to hand out the notebooks, so...

9 THE MARSHAL: I'll take the blame.

10 THE COURT: Everyone can be seated. And then once
11 they get their notebooks, Ms. Stanish, then resume your
12 cross-examination.

13 And, of course, for the record, Court is back in
14 session. The record should reflect the presence of the State
15 through the Deputy District Attorneys, the defendants and
16 their counsel, the officers of the Court, the ladies and
17 gentlemen of the jury and Detective Whitely, of course, you
18 are still under oath.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right. And as soon as everyone gets
21 those, Ms. Stanish, you can resume your cross. All right, Ms.
22 Stanish.

23 MS. STANISH: Thank you, Judge.

24 CROSS-EXAMINATION (Continued)

25 BY MS. STANISH:

1 Q Good morning.

2 A Good morning.

3 Q Just a couple issues on the propofol before we
4 leave that subject. Is it correct that the clinic began
5 ordering the 50 milliliter vials in October of 2005?

6 A I don't know that for sure. I'd have to look at
7 the records but that sounds --

8 Q I'm glad to refresh your memory first thing --

9 A Please.

10 Q -- on Monday if we must. I'm going to hand you
11 your Officer Report, page 57 of 92. It was a long report.

12 A Yes, that's what it says. Okay. Okay.

13 Q Thank you. And does that refresh your Monday
14 morning memory?

15 A Yes, ma'am.

16 Q And so the 50 milliliter vials were ordered
17 starting in October of 2005, correct?

18 A That's what -- yes.

19 Q And I assume you got that by looking at
20 invoices?

21 A Yeah. I would have probably got that from
22 discussing with Nancy.

23 Q Now I want to move to a chart that you were
24 reviewing at the close of Friday.

25 MS. STANISH: And Your Honor, the parties have

1 stipulated after Detective Whitely's review to admit Defense
2 Proposed Exhibit Z1.

3 THE COURT: All right. Is that correct?

4 MS. WECKERLY: That's correct.

5 THE COURT: Z1 is admitted.

6 (Defendant's Exhibit Z1 admitted.)

7 BY MS. STANISH:

8 Q Okay. Detective Whitely, this chart reflects
9 information that has been extracted from your -- the State's
10 more colorful charts, Exhibits 157 and 156, correct?

11 A Well, that's the -- yes, ma'am, correct.

12 Q And on Friday you had the opportunity at the
13 close of business to review this information and compare it
14 with the State's two exhibits to ensure its accuracy, correct?

15 A Yes, ma'am, we went over it.

16 Q All right. And just to talk through the chart a
17 little bit and clarify a few points. This chart starts out
18 with the patients' names, correct?

19 A Correct.

20 Q And the dates and the types of procedures and
21 the doctor and CRNAs that were involved, correct?

22 A Correct.

23 Q What I'd like to clarify for the jury is these
24 various entries that relate to the time of the procedures and
25 show where this information came from using Governments -- or

1 State's Exhibit 157, the colorful chart for July 25th. The
2 doctor's notes and procedure, can you point on the screen
3 there where that came from if I got it there for you?

4 A I think the doctor's notes is going to be this
5 section right there all the way down.

6 Q So after the -- the -- what's designated as
7 report procedure start time and report procedure end time.

8 A Yes.

9 Q Now with respect -- can you see that all right?
10 You're squinting.

11 A Yeah, it's a little small. If you could blow it
12 up a little bit, please?

13 Q Okay, sure. Is that -- does that help?

14 A Yes.

15 Q And we have -- with respect to the procedure
16 time in minutes from the report, which is the difference
17 between the start and the end time, there's a one hour figure
18 going all the way down the column, correct?

19 A Yes, ma'am.

20 Q And is it fair to assume that there was a glitch
21 in the computer that day that added that one hour figure?

22 A I could assume that. I don't know for sure what
23 happened but --

24 Q It -- because we know that the start time is
25 relatively close to the nurse's entry for start time, correct?

1 A Yes, ma'am.

2 Q And the -- so when it -- going back to State's
3 Exhibit, Z1 --

4 THE COURT: You mean Defense Exhibit?

5 BY MS. STANISH:

6 Q I'm sorry, Defense Exhibit Z1. When it comes to
7 the times pertaining to July of 2007, we have an asterisk
8 there to indicate that the one hour was dropped off to come up
9 with these final total times at 19 minutes for Mr. Meana's
10 procedure and 15 minutes for Mr. Washington's procedure,
11 correct?

12 A Okay. Yes, ma'am.

13 Q And -- and then the final clarification I'd like
14 you to help us with is where on the chart do we find the last
15 vital sign tape, lead one procedure end time? That means the
16 time the monitor in the recovery room was turned off and the
17 vital sign taking ended?

18 A Did you want me to answer that on the chart
19 here --

20 Q Yeah.

21 A -- or in the patient chart?

22 Q Would you point to it on the chart, on your
23 State chart, big colorful chart?

24 A You can tell that because the -- well, first you
25 have -- you have two reads right here, the monitor read, which

1 was presumably inside the patient room when the procedure was
2 done. And then after that they went in the recovery room and
3 that would be the tape read that you see right there --

4 MS. STANISH: And Your Honor --

5 A -- and it'd be right there.

6 MS. STANISH: -- I spoke with Mr. Staudaher and we
7 agreed for purposes of clarification that it would be helpful
8 to the jury if I could write on this chart to delineate the
9 difference between the monitor tapes because they're in a bit
10 reverse order, so.

11 THE COURT: Any objection, Mr. Staudaher?

12 MR. STAUDAHER: No, Your Honor.

13 THE COURT: All right. Go ahead and do that.

14 BY MS. STANISH:

15 Q So the first one is the recovery room vitals,
16 correct?

17 A Yes, ma'am.

18 Q I'm going to write recovery. And then the --
19 what's labeled as monitor read two procedure start time and
20 the next column end time is the procedure room.

21 A Yes, ma'am.

22 Q All right. Very artistic. And so basically
23 what we have here with the colored columns is the yellow
24 column represents the procedure time just based on the
25 doctor's report where the button is pressed to start the

1 procedure and then pressed again to end it, correct?

2 A Yes, ma'am.

3 Q And then the brown shaded, tan shaded columns at
4 the far right reflect the times from the beginning of the
5 doctor's procedure note all the way to the last vital sign in
6 the recovery room, correct?

7 A It looks like what you did is you took the times
8 off the doctor's note, the beginning of the doctor's note, and
9 then you added it to the last recovery, which would have been
10 in the recovery room and then come up with the total minute in
11 the brown column.

12 Q Correct. Thank you for clarifying that. All
13 right. I want to show you what has been admitted as State
14 Exhibit 82 and 86. These are documents that were seized from
15 one of the premises, I believe. The first one, Government
16 Exhibit 82 is marked anesthesia and pain services and
17 compensation schedule. And number 86 is entitled
18 Gastroenterology Center of Nevada instructions to post
19 anesthesia charges. And I know you seized many, many
20 documents on that day many years ago. Can you tell us from
21 what location specifically those two documents were seized?

22 A I do not know for sure. I would have to see
23 what context this came out of, whether it came from the
24 computer or if it came from -- and just so you know, there was
25 another place where we were able to get documents and that was

1 from FMS, which was the storage place that all the documents
2 that we didn't seize go to after the search warrant.

3 Q Well, do those -- do you have some kind of code
4 that's assigned to those documents that permits you to with --
5 with some certainty, identify the location from which they
6 were seized?

7 A Yes. I'd have to see the bundle it came in. I
8 mean, it's -- it's -- this is just a small part of whatever
9 package it was involved with. So like the Gastroenterology
10 Center of Nevada instructions to post anesthesia charges, I
11 think this might have come from a computer, but I'm not 100
12 percent sure. But if I saw the overall package that it came
13 in, then I could tell you exactly where it came from. But
14 pulling them out individually, you know, it'd be hard for me
15 to tell.

16 Q I don't have a package, do you?

17 A Well, it'd be in the computer disc that you
18 received --

19 Q Okay.

20 A -- that had all the computer files in it. Or it
21 would be part of the whatever this came in, would probably be
22 a much bigger package.

23 Q The computer disc, does that just contain
24 numbers without specific document indexing?

25 A No. That -- you can go in there and you can

1 push whatever document you want and actually you push a number
2 -- you're right, you push a number and then the document pops
3 up and populates within the system.

4 Q Do you know what number those documents are?

5 A I'd have to see what cover sheet that came on.

6 Q As you sit here right now --

7 A No, I do not know.

8 Q -- you do not know where these documents came
9 from, correct?

10 A No, ma'am.

11 Q I don't either. All right.

12 A I can find out though.

13 Q Okay. Good.

14 MS. STANISH: All right. I have nothing further.
15 I'll put those back.

16 THE COURT: All right. Thank you, Ms. Stanish. Mr.
17 Santacroce, cross.

18 MR. SANTACROCE: Thank you.

19 CROSS-EXAMINATION

20 BY MR. SANTACROCE:

21 Q Detective, I want to go back to March of 2008
22 when you first were assigned to investigate this case.

23 A Yes, sir.

24 Q Can you tell the jury how that investigative
25 process begins? I mean, how do you get assigned a case?

1 A Well, the way it begins for us is it's just
2 whatever case comes along we decide who's going to take it. I
3 mean it's not -- there's no formal process of like, you know,
4 when I worked in robbery you'd actually have queues and people
5 would assign you cases in your queue and it would be populate
6 and those would be the cases you'd have to work. But for
7 here, because these cases are just the way they are, there's a
8 group of us that started working it and then I ended up
9 becoming the main detective that finished it.

10 Q But I mean, how does the case come to you? Does
11 the District Attorney institute the case or does the sheriff
12 institute the case? Who -- who's the one that sets the wheels
13 in motion?

14 A That would have been the briefing that I told
15 you about with Mr. Labus and the District Attorney's Office.

16 Q And was Sheriff Gillespie present for that?

17 A No, sir, I don't think he was.

18 Q Okay. Was anybody from -- other than you, was
19 there any -- was there a captain there?

20 A I think the highest in the chain of command
21 would have been my sergeant, if I remember correctly, which
22 was Dan Coe.

23 Q Okay. And was there a representative from the
24 District Attorney's Office?

25 A Yes, sir.

1 Q Who was that?

2 A I believe Dave Roger was there and --

3 Q So Dave Roger, explain -- in case anybody in the
4 jury doesn't know who that is, who's Dave Roger?

5 A He was the District Attorney at the time that
6 the -- we got the case.

7 Q So he oversaw all of the District Attorney's
8 Office. He was the District Attorney.

9 A Yes.

10 Q Okay. And who else from his office?

11 A You know I'd -- I'd have to look at my report,
12 it's in my report. I'd say maybe Scott Mitchell was in there,
13 but I don't want to say for sure.

14 Q Have you been -- ever been involved in an
15 investigation where the District Attorney was present to
16 initiate proceedings?

17 A I've done investigations where we've talked with
18 the District Attorney. I don't know if I've ever -- I don't
19 think I've ever been in one where he's been in there for the
20 initial briefing.

21 Q So did you get some indication that this was
22 pretty important to the District Attorney's Office?

23 A It's not so much it was important to the
24 District Attorney's Office, it was like a big deal all around.
25 I mean it was a big -- it was in the paper and everything

1 else.

2 Q A lot of publicity?

3 A Yes, sir.

4 Q In a typical investigation doesn't Metro do the
5 investigation and then submit the evidence to the District
6 Attorney's Office and they decide whether they're going to
7 file or not?

8 A Not in these cases. These type of cases,
9 they're big. They're very complicated so, you know, generally
10 with the cases that I've worked in the last few years, I've
11 always worked hand in hand with the DA's Office.

12 Q And when you say worked hand in hand, you had a
13 close relationship as you would uncover evidence, you would
14 turn that over or have a discussion with the DA's Office?

15 A Not on every step of the way but, yes, there
16 would be discussions if there was something that was --
17 something that we would identify it could be a potential legal
18 issue or something else and we'd run it by the DA's Office if
19 -- like when we did the investigatory grand jury, we ran that
20 by the DA's Office. So, yes, there's some stuff we worked
21 with but then there's other stuff that we did on our own, just
22 depend on the circumstances.

23 Q This case was a little bit more unusual than a
24 typical case that you have, right?

25 A It's more in depth, yes, sir.

1 Q And at that March meeting you said that Brian
2 Labus gave you a presentation, correct?

3 A Yes.

4 Q Okay. Gave a presentation to you, the DA's
5 Office, I believe your partner at the time was Tim Ford,
6 Detective Ford?

7 A Mike Ford.

8 Q Or Mike Ford?

9 A Yes, sir.

10 Q Okay. And the two of you were assigned to
11 investigate?

12 A No, not necessarily. It was -- it was primarily
13 me towards the end but there was another detective there
14 Warren Grey. Joe Kelley was involved, so there was a group of
15 us in the beginning. But then, like I said, after awhile it
16 thinned down, it became just me.

17 Q Well, it became you and Levi Hancock, right?

18 A Yes. Levi came later on and he took -- he
19 assisted me in the case.

20 Q How is it that Levi Hancock replaced Detective
21 Ford?

22 A I can't remember if that was -- Levi was new to
23 the squad, so I think Levi just -- we put Levi on as part of a
24 training, as part of, you know, helping me out.

25 Q Okay. So it had nothing to do with the fact

1 that Detective Ford had a different theory of the case and
2 believed that the scopes were the contamination cause?

3 A Absolutely not.

4 Q Okay. And how far into the investigation did
5 Levi Hancock take Detective Ford's place?

6 A It could have been months.

7 Q Okay. So going back to this meeting that Brian
8 Labus had with you, this was in March, early March of 2008,
9 correct?

10 A Yes, sir.

11 Q And the CDC had completed their investigation
12 the middle of January?

13 A Yes, sir.

14 Q A notification of some 63,000 people went out in
15 February?

16 A Yes, sir.

17 Q And then you get the case in March?

18 A Yes, sir.

19 Q And Brian Labus comes to you and he says this is
20 the theory we have, this is the mechanism for infection that
21 we believe caused all these problems, correct?

22 A Yes. He presented what they were investigating.

23 Q And that was that the --- it was unsafe injection
24 practices, which contaminated the propofol and caused the
25 infection.

1 A Yes, sir.

2 Q And when you get a piece of information like
3 that, a theory of the case, you set about to find evidence to
4 support that theory, correct?

5 A To find evidence to either support or deny that
6 theory.

7 Q Okay. But you went into the investigation with
8 an idea of what the theory of the case was.

9 A Yes, sir.

10 Q There wasn't much evidence for you to look at
11 except for the report from the CDC, the trip report, Southern
12 Nevada Health District report. Basically, that's all you had,
13 right?

14 A Which time are we talking?

15 Q March.

16 A Before the search warrant basically there was
17 just what he had advised us and what -- one of the reports
18 they had.

19 Q And the search warrant wasn't until what, March
20 15th?

21 A March 10th.

22 Q March 10th. And were you aware that when CDC
23 and Brian Labus came to their initial theory or conclusion,
24 they didn't have a lot of evidence. For example, they didn't
25 know which patients were in which room, they didn't know the

1 sequence of the patients, they didn't have any of that
2 information, correct?

3 A I'm not sure exactly how much they had at that
4 time. I just -- whatever they would have presented me is what
5 we went on.

6 Q Well, you sat in here and heard the testimony of
7 Gail -- Gail Fischer Langley and Melissa Schaefer and Brian
8 Labus, correct?

9 A Yes, sir.

10 Q And you heard them testify that they didn't have
11 any of that information, correct?

12 A Yes, sir.

13 Q Okay. You're the one that developed that
14 information, correct?

15 A Through the search warrants, yes, sir.

16 Q And when I say you I mean Metro or your team or
17 whoever.

18 A Sure.

19 Q Okay. And when did you finally uncover this
20 information, for example, as to the sequencing of the
21 patients?

22 A Well, we would have -- once we did the search
23 warrant we would have identified all the patient charts for
24 the two days. And then once we identified the patient charts,
25 that's when Nancy developed her chart that we see today, which

1 is the one that listed them in a potential order. So I can't
2 tell you how long afterwards, I mean --

3 Q These charts?

4 A Yes, sir.

5 Q When I say these charts, Exhibit 156 and 57?

6 A Yes, sir.

7 Q And do you know when Nancy actually finished --
8 well, there were several --

9 A Is there a date on there?

10 Q -- versions of this chart, right?

11 A Yes, sir.

12 Q So there was some refining process that had to
13 -- had to happen. For example, the computer glitch and some
14 other information that had to be revised, correct?

15 A I think and I'm not 100 percent sure, but I
16 think the computer glitch we knew early on so we were able to
17 put that in right away.

18 Q Okay.

19 A And that's how we were able to identify the two
20 rooms on the 21st.

21 Q Do you know what other revisions that this chart
22 -- as we see today underwent?

23 A Primarily the revisions that it went is we had
24 to redact all the names because of HIPAA -- HIPAA reasons, so
25 we redacted all the names. And then we had to go through all

1 the patient charts that they had and we had to redact all the
2 personal identifying information in those. So primarily it'd
3 just be that. Any other changes might be the way it's sorted,
4 whether it's sorted by nursing room or by the doctor's notes
5 or by the anesthesiologist that did the procedure -- or CRNA,
6 excuse me.

7 Q So you -- are you able to put a time frame on
8 when the final version of this exhibit, State's Exhibit 156
9 and 57 were finished?

10 A Sometime within this trial, right before.

11 Q Right before this trial?

12 A Yes, sir.

13 Q Okay. So from March of 2008 it took several
14 years to get all the final data on to this -- on these two
15 exhibits?

16 A No. We had the final data all on it, the only
17 thing that changed was the fact we had to redact the names of
18 the people that were listed on there because of HIPAA reasons.

19 Q When you say that these Exhibits 156 and 57 in
20 the form we see it today was just finished right before the
21 trial, what are you referring to? What was right -- what was
22 just finished?

23 A The names on the -- on the exhibit were redacted
24 because of HIPAA reasons. We couldn't put those names out to
25 the public.

1 Q When you conducted -- when you first began
2 conducting your investigation and executed your search
3 warrant, what were you looking for when you executed the
4 search warrant?

5 A We were looking for patient files, we were
6 looking for documents, we were looking for computers, we were
7 looking for medical equipment.

8 Q Okay. And let's talk about the -- let's talk
9 about the medical equipment. What specifically in the way of
10 medical equipment were you looking for?

11 A Propofol, syringes --

12 Q Okay. So let's take those individually. Did
13 you find any propofol?

14 A No.

15 Q Did you find any syringes?

16 A Yes.

17 Q Okay. And what size syringes did you find?

18 A Was it the 20 milliliter or the 10 milliliter?
19 They're in there.

20 Q Don't ask me --

21 A They're in there --

22 Q -- I don't know a milliliter from a centimeter.

23 A -- I think it's the 10.

24 Q So you found -- did you find 10 cc? I know
25 that?

1 A Yes. Yes, 10 ccs, yes.
2 Q You found 10 ccs?
3 A Yes.
4 Q Did you find any syringe logs?
5 A No, sir, we did not find any syringe logs.
6 Q Did you find any needle logs?
7 A No, sir, we did not find any needle logs.
8 Q Okay. So needles and syringes, no propofol.
9 Any Lidocaine?
10 A I want to say that I don't think we did. If we
11 did we didn't take it.
12 Q Okay. Any biopsy forceps?
13 A Yes.
14 Q Any bite blocks?
15 A Yes.
16 Q Scopes?
17 A We didn't take the scopes.
18 Q You did not take the scopes?
19 A No, sir. No, sir, we did not take the scopes.
20 Q You were aware that Detective Ford had a concern
21 that the mechanism of transmission was through scopes, right?
22 A That was one of the theories he put out there,
23 yes, sir.
24 Q Okay. But you found scopes on the facility,
25 correct?

1 A Yes, sir.

2 Q But you didn't take them?

3 A No, sir.

4 Q Anything else?

5 A About 100,000 patient files.

6 Q No, I'm not talking about equipment.

7 A Oh, equipment? The biopsy forceps, we got some
8 syringes, I think we might have taken a hep-lock and a snare.

9 Q You know those pictures we saw, the scopes
10 hanging up in the cleaning closet?

11 A Yes, sir.

12 Q Did you take those or did one of the analysis --
13 analysts take the pictures of that?

14 A Yes.

15 Q Okay. So you had -- Exhibit 130, you had all
16 these scopes available to you to take but you didn't take
17 them, correct?

18 A Yes, sir.

19 Q Did you take the monitors, the procedure room
20 monitors?

21 A I don't believe we did.

22 Q Did you take the blood pressure monitoring
23 equipment from the post op area?

24 A No, sir.

25 Q Did you take the Medivators?

1 A No, sir.

2 Q Did you take any of the cleaning things that
3 were in the scope processing room?

4 A No, sir.

5 Q Did you take any saline that was in the pre op
6 area?

7 A If there was we didn't take it, no, sir.

8 Q Okay. So you took what you took, mostly
9 records.

10 A Yes, sir.

11 Q And after that what did you proceed to do?

12 A Are you talking immediately after that or long
13 term or --

14 Q Well, in the next months, the next months that
15 followed?

16 A Well, the hardest thing we had to do was because
17 we had all those records, we had to get them organized so that
18 we could get them released to anybody in the public that
19 needed their medical records.

20 Q Did you hire a third-party administrator to do
21 that?

22 A Yes, sir.

23 Q And who was that?

24 A I don't recall the name of them.

25 Q And those folks -- those -- the third-party

1 administrators, what was their function?

2 A Their function was to take all the records, they
3 alphabetized them, we set up a room at our office with all the
4 records. They alphabetized them and then we had to set up a
5 procedure for people in the community that needed their
6 medical records to fill out a form. Once we got that form we
7 were able to release their -- a copy of their medical records
8 to them.

9 Q And then you set about analyzing those -- those
10 records?

11 A Not all 100,000, no, sir. We analyzed the ones
12 that specifically identified with those dates that we were
13 dealing with.

14 Q July 25th and September 21st specifically?

15 A Yes, sir.

16 Q So about 160 patient records, 154?

17 A 130.

18 Q 130?

19 A Yeah, 130, somewhere in there.

20 Q Okay. When did you actually set about
21 conducting interviews?

22 A We started conducting interviews immediately.
23 As soon as we were briefed we started talking to people and
24 conducting interviews.

25 Q Now you -- you talked about originally I think

1 there was three doctors under investigation; is that correct?

2 A Originally we were looking at all the doctors
3 that were involved in the clinic and practice.

4 Q Let's talk about the procedure. How is it that
5 you identify a target in a criminal investigation?

6 A Just any general criminal investigation if
7 somebody --

8 Q Yeah, in general.

9 A -- comes to us and they have --

10 Q And we're talking historical investigation.

11 A Right. If somebody comes to us and they've been
12 a victim of a crime or they know of a crime that's occurring
13 and they are able to articulate enough information to show
14 that there is, in fact, a crime, that a crime has occurred,
15 and they identify the people that they believe committed the
16 crime or they have evidence or testimony that would discuss
17 who potentially committed the crime and that's how we identify
18 targets in our investigation.

19 Q Now, in this particular investigation when you
20 testified that initially all the doctors were under
21 investigation, at some point some of those started to be
22 weeded out, correct?

23 A Yes, sir.

24 Q Okay. And -- and I assume you specifically
25 looked at the doctors that were performing procedures on those

1 dates?

2 A Yes, sir.

3 Q How was it eventually that all the doctors got
4 immunity except for Dr. Desai? Whose decision was it to grant
5 immunity to Dr. Carrol, Dr. Carrera, Dr. -- all these other
6 doctors that are listed here at the clinic, how -- how did
7 they all get immunity, whose decision?

8 A Well, only the District Attorney's Office can
9 grant the immunity, I can't do it. So that would have to be a
10 decision between my conversations with the District Attorney's
11 Office.

12 Q So at some point there was an order come down
13 from David Roger's office --

14 A I don't think it came from that high. I don't
15 think David Roger made the decision on who to grant immunity.

16 Q Okay. I don't want you to speculate.

17 A I -- I wouldn't know. I wouldn't know who the
18 DA's decision making process is, who they actually go to, if
19 they go to their team chief, if they go to the District
20 Attorney. I don't know how that flows out.

21 Q Well, at some point you understood that all of
22 the doctors had immunity.

23 A Use immunity, not full immunity.

24 Q Okay. And the use immunity was that anything
25 they said in the interviews could not be used against them in

1 a criminal investigation or a criminal charge, correct?

2 A Yes.

3 Q That's your understanding of use immunity?

4 A It's a proffer, yes, sir.

5 Q And that decision was made before you

6 interviewed any of the doctors.

7 A No. That's -- well, it would have to be made
8 before we interviewed them because we couldn't interview them
9 without the use immunity on the table. But if they would have
10 talked to us to begin with, then we would have talked to them
11 automatically.

12 Q Well, we know that didn't happen.

13 A No, sir.

14 Q Okay. So all the doctors got immunity, right,
15 except for Dr. Desai?

16 A I don't think all the doctors got immunity.

17 Q Well, at least all the doctors that -- Dr.
18 Carrol got immunity.

19 A Yes, sir.

20 Q Dr. Carrera got immunity.

21 A Yes, sir.

22 Q How about Dr. Herrero?

23 A I'm not quite sure if he did.

24 Q Okay, how about Mukherjee?

25 A I don't know. I'd have to see the immunity

1 letters.

2 Q Well, is it safe to say that none of them have
3 been charged by the State, correct?

4 A No, sir.

5 Q It's not correct?

6 A No, none of them have been charged by the State.

7 Q Okay. And then a decision came down to grant
8 certain immunities to the CRNAs, correct?

9 A Yes. In order to talk to some of the CRNAs we
10 had to come to the table and grant them immunity.

11 Q And then you proceeded to conduct your
12 interviews with each one of these folks that had immunity,
13 correct?

14 A Use immunity, yes, sir.

15 Q And specifically, you testified in your direct
16 examination as to Linda Hubbard's Metro interview.

17 A Yes, sir.

18 Q And the reason you testified to Linda Hubbard's
19 interview with Metro is because when she was on the stand here
20 she testified differently than in her interview, at least to
21 certain aspects, correct?

22 A I would not necessarily say differently, she
23 just said she didn't remember.

24 Q Okay.

25 A She said was coerced.

1 Q She said she was coerced.

2 A Yes.

3 Q Coerced at the police interview stage?

4 A I don't know who she was referring to. It
5 wasn't us.

6 Q Well, I know you're not going to say you coerced
7 her, you know. But I was talking about what she thought at
8 the time of her interview --

9 A I don't know who -- I don't know who she thought
10 if it was us or her attorney. I don't know.

11 Q I know you wouldn't coerce anybody but I don't
12 know about Hancock.

13 A Well, I was with him and I didn't see any
14 coercing going on.

15 Q Okay. All right. So the point is that you are
16 here to set the record straight as to Linda Hubbard's
17 testimony.

18 A The point -- yes, sir.

19 Q And part of that testimony was, at least in her
20 Metro interview that you testified to, was that Ronald Lakeman
21 supposedly told her certain things. And what were the things
22 that Ronald Lakeman supposedly told her?

23 A To reuse syringes.

24 Q And she also, at least in the interview, at
25 least what you testified to, was that Dr. Desai somehow told

1 somebody to do something?

2 A I testified to that or I read her transcript?

3 Q You read her testimony.

4 MS. WECKERLY: I'm going to object. That was vague.

5 THE COURT: Yeah. I mean if you --

6 THE WITNESS: Could you narrow that down for me,
7 please?

8 BY MR. SANTACROCE:

9 Q Sure. Well, we're going to go through it.
10 Okay? We're going to go through her procedure of how she was
11 interviewed by Detective Hancock with you present.

12 A Yes, sir.

13 Q Although you didn't say much.

14 A One line.

15 Q One line.

16 A Yes, sir.

17 Q We won't hold that against you. How many days
18 was she interviewed?

19 A Total or those that --

20 Q Total.

21 A I mean, are we talking the grand juries too? I
22 mean there's --

23 Q No, just with Metro. Because we know in the
24 grand jury she didn't say anything like she's testified --

25 A Three.

1 Q Huh?

2 A Three.

3 Q Three police, three Metro interviews. Was this
4 different then other -- other CRNAs?

5 A I couldn't tell you. I mean, we did over 100
6 interviews.

7 Q Well, how many interviewees did you conduct over
8 three days?

9 A She might have been it. I'd have to look at the
10 list.

11 Q She was it.

12 A Okay.

13 Q So only Ms. Hubbard had an interview which
14 lasted three days, correct?

15 A Yes, and Ms. Hubbard was the most difficult.

16 Q The most difficult to get any information,
17 incriminating information?

18 A No, the most difficult to talk to.

19 Q Okay. Well, do you remember the day she was
20 interviewed?

21 A The two I do remember were October 14th and
22 15th.

23 Q Okay.

24 A And then there was another one I believe that
25 was done.

1 Q Let's talk about the 14th and 15th, okay?

2 A Yes, sir.

3 Q And the State read you some of the partial

4 testimony that she had given on those dates and I want to go

5 over more of that testimony. Okay?

6 A Yes, sir.

7 Q So on the 14th she was being interviewed by Levi

8 Hancock. Who else was present in the room?

9 A Linda Rosel and the 14th I wasn't there.

10 Q Okay.

11 A And I know it says it at the top of the sheet

12 but --

13 Q Yeah.

14 A -- that would have been the transcriptionist put

15 that up there, but I wasn't there and it's on the recording

16 that I wasn't there. The 15th I was there.

17 Q All right. Well, I want to talk about the two

18 days because the time period and the chronologies are

19 important to set up the 15th and the testimony she gave on the

20 15th.

21 A Yes, sir.

22 Q Have you read the transcript from the 14th?

23 A Yes, sir.

24 Q You realize that there was several breaks taken

25 in that time period, correct?

1 A Yes, sir.

2 Q You were on and off the record.

3 A Yes, sir.

4 Q Mister -- Ms. Hubbard had her attorney there,
5 correct?

6 A Yes.

7 Q Okay. And I want -- directing counsel to page
8 18. I want to read some of this transcript. Okay?

9 A Okay.

10 Q Beginning with Levi Hancock since you're such a
11 good reader --

12 A Yeah, thanks.

13 Q -- why don't you read this?

14 A All right. Levi Hancock says -- well, let me
15 double check to make sure.

16 Q Yeah, Linda Hubbard's L1.

17 A Okay. "All right. When you stepped out I had a
18 chance to go back on the tape and listen to something that you
19 had said about the reuse of syringes". Linda Hubbard says,
20 "Yes." And Levi Hancock says, "What you said was they --
21 after the inspection." Linda Hubbard says, "Yes." Levi
22 Hancock says, "That you were instructed to reuse -- or I'm
23 sorry, you were instructed to use only one -- a single vial
24 for a single patient and that they wanted you to use new
25 needles every time you entered into --" And Linda Hubbard

1 says, "Syringes and needles." And Levi Hancock says,
2 "Syringes and needles every time you entered into a vial.
3 Okay?" "Yes, sir." You want me to read all that?

4 Q Oh, we're going to do a lot of reading.

5 A All right.

6 Q Do you feel coerced?

7 A Let me get comfortable. Let me get comfortable.

8 Q Okay.

9 A All right. So Levi Hancock says, "Based on your
10 statement you're leading me to believe that prior to that it
11 was different, the syringes and needles were reused while
12 entering into the vial" Linda Hubbard replies, "No, but if
13 the 20 ccs was for the same patient." And Levi Hancock says,
14 "Uh-huh." And Linda Hubbard replies, "We had -- we were
15 always using clean syringes but when we -- when you used a 50
16 cc we, you know, used a clean syringe, clean needle of course
17 and stuff. But if you were going to 20 ccs for one patient
18 there were times when we would go back in with the same needle
19 and syringe because it's the same patient." Levi Hancock
20 says, "Same patient, right?" Linda Hubbard says, "And then
21 toss the -- if there was anything left."

22 Levi Hancock says, "Okay. Now since you are -- or
23 since our last meeting and before you answer this, I want you
24 to think pretty clearly on it too. If you don't understand my
25 question, by all means I'll repeat whatever you don't

1 understand." Linda Hubbard replies, "Okay." Levi Hancock
2 says, "Since our last meeting with you we've had an
3 opportunity to go back and get all the purchasing records so
4 anything that was purchased, whether it was syringes, needles,
5 vials of propofol, we've gone back and were able to get those
6 records of what was purchased from the companies."

7 Q Okay, let me stop you there. Is that, in fact,
8 a true statement? Did you, in fact, have all of the
9 purchasing records of the propofol and the needles and
10 syringes?

11 A We got that at some point. I don't know if we
12 had that before this or after it.

13 Q Okay.

14 A So I couldn't tell you when we got the McKesson
15 records, but I would assume that we had this at this point
16 but --

17 Q I don't want you to assume. I'm asking you if
18 you know --

19 A Okay.

20 Q -- if you had --

21 A No. I do not know if we had it at the time.

22 Q Okay. Let's go on. So he's saying to her,
23 look, I want you to think about this pretty clearly and
24 carefully because we got all the records now --

25 A Right.

1 Q -- right?

2 A Right.

3 Q Go ahead.

4 A So -- I forgot where I was. Right there?

5 Q Yeah.

6 A "Now if those records would indicate to us that
7 there was a reuse of needles -- syringes, I'm sorry, reuse in
8 syringes, but needles would be replaced on the end of the
9 syringes. Do you recall having any pressure from anybody
10 saying yes, we reuse syringes but we would change out new
11 needles? Now understanding something, Linda, we have the
12 records of everything that was purchased and we can match up
13 the amount of the procedures that we've had, the amount of
14 vials that were used, the amount of needles that were used,
15 the amount of syringes that were used." And she says, "Okay.
16 Okay. We --"

17 Or Levi Hancock says, "Okay. We get a lot less
18 syringes being used and a lot more needles purchased. Do you
19 understand what that tends to lead to?" Linda Hubbard
20 replies, "No. This was --" And Levi Hancock says, "Do you
21 want --" and Linda Hubbard replies, "Before the Department of
22 Health visit or?" And Levi Hancock replies, "No, on -- on --
23 we've got -- we've gone back all the way to 2005."

24 Q Did you, in fact, go all the way back to 2005?

25 A I think those records include 2004 from

1 McKesson.

2 Q Okay.

3 A Okay. So Linda Hubbard replies, "So it's before
4 the Department of Health -- of Health's visit?" And Levi
5 Hancock replies, "Yes, yes, yes. You want to take a second?
6 Operator, we're going to go off the record just for a minute."

7 Q Okay. So at this point now in the procedure
8 they go off the record again.

9 A Right.

10 Q Okay. And what happens when they come back on
11 the record?

12 A Okay. It says, "Operator, we're back on the
13 record. The time is 10:30. Back to the previous question.
14 Linda, do you want to answer that?" Linda Hubbard says, "I
15 really -- I don't remember saying anything."

16 Q Okay. So after all of that -- all of that she
17 says I don't remember any of that? I don't remember anything,
18 correct?

19 A Yes, sir.

20 Q Okay. Go ahead.

21 A All right. So Linda Hubbard replies, "I just
22 --" and then M.P. is I believe Michael Pariente --

23 Q Yeah, her attorney.

24 A -- her attorney.

25 Q Her attorney pops in now.

1 A Her attorney says, "About the syringes." Linda
2 Hubbard replies, "About syringes and needles." Levi Hancock
3 replies, "Was there -- you don't remember anybody saying to
4 --" Linda Hubbard says, "Change the needles?" Levi Hancock
5 says, "To change the needles and reuse the same syringe."
6 Linda Hubbard says, "No."

7 Q Okay. Let's stop there. So when Levi asked her
8 do you remember anybody saying to you about changing the
9 needles, what does she say?

10 A "To change the needles and reuse the same
11 syringe, no."

12 Q So no one told her to reuse the syringes,
13 correct? At least according to that point in the
14 conversation.

15 A That's what she's saying at that time.

16 Q Okay. Let's go on.

17 A Levi Hancock says, "Okay." Linda Rosel says,
18 "Did you use the --" and she's an Attorney General
19 investigator. "Did you use the spike with the 50 cc vials?"
20 And Levi -- oh, I'm sorry, Linda Hubbard says, "Yes." Linda
21 Rosel says, "You did? Okay. So there would be no reason for
22 a needle when you use the spike." Linda Hubbard says, "To go
23 through the stopper you need a needle on -- needle on -- on it
24 to give it to the patient because we did not have a needleless
25 system."

1 Q Okay. Let's stop there for a minute. When you
2 did your subpoenas to McKesson, did you uncover any
3 information about the spikes, spike usage?

4 A I would imagine that would have been included
5 but I don't recall specifically that we --

6 Q And what is your understanding through your
7 investigation of the use of spikes?

8 A You plug the spike into the propofol and I think
9 you -- you withdraw it out of the propofol vial.

10 Q Without a needle, correct?

11 A Yes, sir.

12 Q So if you have a spike you don't use a needle,
13 just use a syringe to draw?

14 A Yes.

15 Q Then you put a needle on?

16 A Yes.

17 Q Put it into the patient through the hep-lock?

18 A Yes.

19 Q If you have to redose again, you come out, take
20 the needle off, throw it out because you can't go into the
21 spike with a needle, put the syringe up to the spike, get
22 another dose, put a clean needle on, back into the hep-lock,
23 correct?

24 A I believe that's the procedure she used.

25 Q Well, they're going to -- they're going to go

1 through it, so read it.

2 A Okay. All right. So -- all right. So Linda
3 Hubbard says, "To go through the stopper you had to put a
4 needle on to give it the patient -- to give it to the patient
5 because we did not have a needleless system." Linda Rosel
6 says, "But to fill up the bottle?" Linda Hubbard says, "To
7 fill up the syringe from the bottle, no." Linda Rosel, "Okay.
8 But then you put the needle on when you were going to give it
9 to the patient?" Linda Hubbard says -- sorry there's a lot of
10 Lindas and Levis and -- Linda Hubbard says, "Correct." Levi
11 Hancock says, "What about the syringe? What -- would that be
12 put back into the spike if you needed to draw?" And Linda
13 Hubbard replies, "No."

14 Q Let me just stop you there and ask you, were you
15 able to identify during your investigation which CRNAs used
16 spikes and which CRNAs did not use spikes?

17 A I don't recall off the top of my head which one
18 said did which, but there -- I think they did use different
19 systems.

20 Q So some CRNAs used spikes, some didn't.

21 A I believe so.

22 Q And --

23 A I'd have to go through their --

24 Q But right now as you sit here today, you can't
25 identify which ones used spikes and which didn't?

1 A No, sir.

2 Q Okay.

3 A All right. Where was I?

4 Q Right here.

5 A All right. "What about the syringes?"

6 Q This is Levi.

7 A Levi Hancock, "What about the -- what about that
8 syringe, would -- would that be put back into the spike if you
9 needed to draw?" Linda, "No."

10 Q Okay. So again, she's denying the reuse of the
11 needles, correct?

12 A Right.

13 Q Okay.

14 A Linda Hubbard -- Levi Hancock, I'm sorry,
15 "Linda, do you have anything else you want to add?" Linda
16 Hubbard says, "I don't think so." Levi Hancock says, "Just
17 one last question. From the outside of your attorney from the
18 last interview we had with you, have you spoken with any -- or
19 have you spoke with anybody else from the clinic?" Linda
20 Hubbard replies, "About anything that happened, anything about
21 the clinic, no."

22 Q Okay. And then what happens on -- on this 14th,
23 the last part of 14, the end of the 14th day?

24 A The last part says, "We are going to go ahead
25 and end the interview. It's 10:32. Same persons present."

1 Q Okay. So the interview on the 14th ends. Okay?

2 A Yes.

3 Q Then she comes back the next day. You're
4 present this time.

5 A Yes.

6 Q And it looks like her attorney's there, you,
7 Hancock and her --

8 A Yes, sir.

9 Q -- that's all that's present on the 15th, right?

10 A Yes, sir.

11 Q Now, Levi Hancock starts the questioning on the
12 15th. I want you to read that part.

13 A Okay. Levi Hancock says, "And this is kind of a
14 follow up from our interview yesterday. You had a time -- a
15 little bit of time to recollect and think about things so
16 that's what we're here to talk about. So if you just want to
17 go ahead and start, you remember my questioning yesterday,
18 correct?"

19 Q Okay. So let's go chronologically now. On the
20 14th you end the interview.

21 A Yes.

22 Q Apparently something was said off the record but
23 you weren't there because he comes back on the 15th and says,
24 you've had some time to think about this Linda, right?

25 A Yes.

1 Q Okay. And what was the very first question he
2 opened up with that she had time to think about?

3 A The question was about reusing syringes. And
4 Levi says, "Yes." She says, "Question about reusing
5 syringes?" Levi says, "Yes." Linda Hubbard says, "There were
6 far more needles ordered by the clinic then syringes." Levi
7 Hancock says, "Okay, you can go ahead."

8 Q Well -- well, how -- do you know how Linda
9 Hubbard knew that?

10 A I'm sure he would have told her.

11 Q Who would have?

12 A Levi.

13 Q Okay.

14 A All right. Okay. So Linda Hubbard says, "Yes,
15 is that okay? And I know that there were times when people
16 did reuse the syringes and change needles and the only -- we
17 don't usually work together. And the only time I really saw
18 this was when I first started working and Ron Lakeman was the
19 nurse anesthetist that was breaking me in to the job and to
20 how to do the paperwork and how to position a patient and do
21 things on a rapid basis the way the -- the way we did in the
22 gastro unit. And I questioned him about changing the needle
23 and he said that that's the way it was done. And that's not
24 my practice and it never had been my practice. And I talked
25 to Jeff Krueger about it because I wanted him -- I didn't -- I

1 didn't feel right wasting 10 cc syringes every time I drew up
2 5 ccs of the propofol."

3 Q Okay. So now -- can I have that back?

4 A Yes.

5 Q To sort of get the -- the full flavor of this.
6 She's confronted on the 14th, she denies reusing needle
7 syringes, she denies anybody telling her to, they go off the
8 record, come back on the record, she still doesn't admit
9 anything. They go off the record, they adjourn for the day,
10 you come back the next day. Levi Hancock says you've had time
11 to think about this Linda, you know, the question about
12 syringes and the reuse of them. What do you have to say about
13 that?

14 And unlike any other Linda Hubbard answer, she goes
15 on for a full paragraph, one, two, three, four, five, six,
16 seven, eight, nine, 10 -- 10 lines, unlike anything she's ever
17 done in this -- in the testimony here or in the interview.
18 And what does she say right after she comes back and the first
19 question? Ron Lakeman told me that this is how it was going
20 to be done. Yes, we're going to reuse needles and syringes.
21 At least that's what she implies here, right?

22 A Yes, that's what she said.

23 Q Okay. Now, she never said any of that on the
24 14th, did she?

25 A I believe on the 14th she said no.

1 Q Okay. But suddenly on the 15th she recollects
2 that she had a conversation with Ron Lakeman back in 2005.

3 A Yes, sir.

4 Q And this conversation was Ron Lakeman
5 instructing her on how he did things.

6 A Yes, sir.

7 Q Now, I want to continue on with the interview.
8 And here she's supposedly describing what Ron Lakeman told her
9 and he would take the syringe, screw it in the dispensing top,
10 draw it up. Hancock says, "Let me just be clear -- let me
11 just clear it up, the spike?" Linda says, "The spike, right."
12 Hancock says, "Okay." Linda says, "And then put another
13 needle on and reinject the patient and then after that was
14 done if he needed more he would take the same syringe, put it
15 back in the spike, draw up more, get a clean needle."
16 Describing what Ron Lakeman.

17 A That's the testimony, yes, sir.

18 Q We don't even know if Ron Lakeman used the spike
19 when he did his procedures, do we?

20 A We're just going by what she said.

21 Q Okay. Hancock says, "In this you said, this was
22 instructed to you around the time that you started." Linda
23 says, "It was -- it was seen." It was seen. Remember
24 Hancock's question? This was instructed to you? Then she
25 comes back and she says, "It was -- it was seen, really

1 wasn't. I saw the way he did it." Hancock says, "Okay. But
2 he implied to you that that was the way it was done." And
3 Linda says, "That -- that -- that was the way, right." And
4 Hancock says, "What did you take that to mean?" Okay? So did
5 -- did Linda Hubbard -- you were there, right?

6 A Yes.

7 Q You heard this.

8 A Yes, sir.

9 Q Was it Linda Hubbard observing Mr. Lakeman and
10 that she got some implication from it or did Mr. Lakeman
11 actually have a conversation with her?

12 A What she said is what she said. I mean I can't
13 infer what she meant or what she -- I told you she was
14 difficult and so what she said is what she said.

15 Q Then Hancock says, "What did you take that to
16 mean?" And she says, "That that was the way I should do it."

17 A Yes, sir.

18 Q Then she goes on in her interview and Hancock
19 asked her, "Did Dr. Desai ever observe you not doing this
20 practice?" That is not doing it the way she implied Ron did
21 it and Linda says, "Not changing needles? Yes." And Levi
22 Hancock says, "And what was his -- I'm sorry, not reusing
23 syringes." So Hancock clears it up. "Did he -- did Dr. Desai
24 ever see you reuse -- not reusing syringes?" Linda says,
25 "Doing it the way I would prefer to do it?" Hancock says,

1 "Yes." Linda says, "Yes." Hancock says, "The correct way."
2 And Linda says, "Yes." Hancock says, "Okay. And what was his
3 response to that since he had instructed you otherwise?" Dr.
4 Desai never instructed Linda any other way. She never
5 testified to that?

6 MS. WECKERLY: Objection. That misstates the
7 testimony that was read in on page 25.

8 THE COURT: Well, okay. At that point, had Linda --
9 you can ask the question that way, Mr. Santacroce. At that
10 point had she offered any information regarding Dr. Desai
11 telling her anything.

12 BY MR. SANTACROCE:

13 Q Had she offered any -- any information, any
14 testimony, that Dr. Desai had instructed her on how to reuse
15 needles and syringes?

16 A No, sir.

17 Q Okay. And then this is Levi Hancock, "Okay.
18 And what was his response to that since he had instructed you
19 otherwise?" Linda says, "He just kind of shrugged and he
20 really didn't say anything. Okay, but I know he noticed. I
21 know he noticed." Hancock says, "So he never said anything to
22 you at all about why are you not doing it the way I told you
23 to do it?" And Linda says, "No." Never said anything. I
24 added the never said anything part, she said no.

25 A Okay. Yes, sir.

1 Q Page 29, counsel. Hancock says, "And you never
2 heard Dr. Desai say anything to anybody about reusing syringes
3 or getting after anyone if they didn't reuse a syringe?"
4 Linda says, "I don't remember, I really don't." Page 30.
5 Hancock says, "And believe me, you're not the only one that's
6 telling us these same things. So I just find it hard to
7 believe this guy is so frugal that he's cutting the pads in
8 half, but yet if he sees other people not reusing syringes, I
9 find it hard to believe that he's not maybe saying something
10 about that." And Linda says, "I really don't remember a whole
11 lot of conversation about it." And she goes on to talk about
12 a New York hep C case.

13 Did you feel at any time during that interview on the
14 15th that you were present that Linda probably was feeling a
15 little coerced?

16 A No, sir.

17 Q Did you recognize that she had been changing her
18 story and testimony?

19 A Yes, sir.

20 Q Did you try to get her to commit to an answer?

21 A No, sir.

22 Q So throughout the interview she'd say one thing
23 at one time and another thing at another time to contradict
24 everything she had just said that your -- your take of it?

25 MS. WECKERLY: I'm going to object. These interviews

1 are on two different days.

2 MR. SANTACROCE: I'm talking about the day he was
3 present.

4 THE COURT: All right, the 15th.

5 THE WITNESS: Yeah, I was present. Her testimony is
6 what her testimony was. She seemed pretty straightforward on
7 it.

8 BY MR. SANTACROCE:

9 Q And very contradictory?

10 A And the fact that she was so descriptive.

11 Q And very contradictory?

12 A Not to that day, no, sir.

13 Q Okay. But when you read and compared the 14th
14 to the 15th, did you find it contradictory?

15 A There was some contradiction, yes, sir.

16 Q Now you talked about -- early on about the
17 difficulties of a historical investigation.

18 A Yes, sir.

19 Q And in this particular case you recognize the
20 difficulties of proving a historical case like this, correct?
21 And when you -- was that correct?

22 A All historical cases are difficult, yes, sir.

23 Q Okay. And in this particular case you voiced an
24 opinion that it would be near impossible to prove because you
25 didn't have the infected propofol, correct?

1 A No, sir. I said it would be more difficult to
2 prove because we have -- didn't have the vials, we didn't have
3 the syringes, we didn't have the stuff from that day.

4 Q And you didn't impound the scopes so you
5 couldn't -- couldn't conduct any kind of forensic testing on
6 the scopes, correct? Or you didn't?

7 A Considering it was four months after the initial
8 days, I don't think any forensic examination would be useful.

9 Q Well, did you know how long hepatitis C lived in
10 the environment?

11 A Is it 16 hours to four days or something like
12 that?

13 Q Did you know at the time that you did the search
14 warrant?

15 A Probably not, no, sir.

16 Q And isn't it your duty when you're doing a
17 search warrant to obtain as much evidence, be it incriminating
18 or exculpatory as you possibly can?

19 A We took what we thought was the best stuff to
20 take.

21 Q Well, isn't it your duty -- and I don't mean you
22 specifically, but the Metropolitan Police Department and the
23 District Attorney's Office to gather exculpatory -- that means
24 evidence favorable to the defense as well as it is to get
25 evidence that is incriminating?

1 A Yes, sir.

2 Q But in this particular case you didn't get,
3 impound, or do any kind of forensic analysis on the scopes.

4 A No, sir, we did not.

5 Q You didn't impound any of the procedure room
6 computers.

7 A That I believe we did take.

8 Q I'm talking about the statistical, the blood
9 pressure and all of that.

10 A I don't think blood pressure cuffs hold data. I
11 mean, I don't see how --

12 Q Well, they certainly hold times that have we --
13 we've learned have become very important in this case,
14 wouldn't you agree?

15 A I don't know if they do or not.

16 Q Okay.

17 A I don't know enough about blood pressure cuffs
18 to make that decision.

19 Q Well, perhaps we're talking about two different
20 things. I'm talking about the equipment that was located in
21 the post op area that the patients were hooked up to monitor.

22 A I think if -- if we took -- I know we took
23 computers from there and we took these servers. So if that
24 stuff was kept anywhere, it'd be kept within those items. But
25 I couldn't tell you if it was or wasn't, if they -- the blood

1 pressure monitor cuffs actually keep times or don't keep
2 times. I know there's a strip that's on the patient charts
3 and we have those. But as far as the cuffs, I don't think
4 there's any type of times that can be obtained from those.

5 Q Okay.

6 THE COURT: Mr. Santacroce, I'm going to --

7 MR. SANTACROCE: I'm done, Your Honor.

8 THE COURT: Oh, okay. The jury was requesting a
9 break. So ladies and gentlemen, we're just going to take a
10 quick break, about 10 minutes.

11 During the break you're reminded that you're not to
12 discuss this case or anything relating to the case with each
13 other or with anyone else. You're not to read, watch, listen
14 to any reports of or commentaries on this case, any person or
15 subject matter relating to the case. And please don't form or
16 express an opinion on the trial. Notepads in your chairs and
17 follow the bailiff through the rear door.

18 (Jury recessed at 10:23 a.m.)

19 THE COURT: Attorneys -- is the door shut? We have
20 two questions up here. One looks fine, one doesn't look so
21 fine to me, but you all look at it and decide. You may have
22 seen the first one.

23 (Court recessed at 10:24 a.m. until 10:48 a.m.)

24 (Outside the presence of the jury.)

25 THE COURT: All right. Kenny, bring them in. Is

1 everyone fine with --

2 MS. STANISH: One of them.

3 THE COURT: I mean, do you know how long before and
4 after from the records I think is fine. Does anyone object to
5 in your experience is she telling you the truth?

6 MR. SANTACROCE: Yes.

7 MR. WRIGHT: Yes.

8 THE COURT: Yeah. The other one I thought was fine
9 if -- if we ask him based on the records.

10 (Jury reconvened at 10:51 a.m.)

11 THE COURT: All right. Court is now back in session.
12 Ms. Weckerly, you may conduct your redirect examination.

13 REDIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q Now, Detective, why didn't you impound the
16 scopes?

17 A Reason why we didn't impound the scopes is
18 because -- well, I mean at the time -- or -- we didn't get
19 information that the scopes were the reason that the infection
20 occurred so we did not impound the scopes because A, the
21 length of time they'd be there, B, the difficulty of
22 impounding the items like that and C, the fact that we didn't
23 have information that the scopes were the cause of the
24 hepatitis C.

25 Q And are you aware of any forensic testing that

1 could have been done on those scopes that would -- would have
2 been reused for about four months after the September 21st
3 incident?

4 MR. SANTACROCE: Objection, beyond his knowledge --

5 THE COURT: If he knows.

6 MR. SANTACROCE: -- unless there's a foundation laid.

7 THE COURT: You can answer. Don't speculate though.

8 THE WITNESS: Rephrase that again, please.

9 BY MS. WECKERLY:

10 Q Are you aware of any sort of forensic testing
11 that could have been done on these scopes that were used on
12 patients for four months after the infection date?

13 A No, ma'am.

14 Q Now the -- the -- I guess the -- the blood
15 pressure monitor in recovery and the rhythm strip from the
16 procedure room, those readings are in the patient charts,
17 correct?

18 A Yes, ma'am.

19 Q So whatever information that could be derived
20 from -- from that equipment is actually in the charts
21 themselves?

22 A Yes, ma'am.

23 Q Are you aware of any other information that
24 could have been gathered from the -- the blood pressure
25 monitor in recovery or the rhythm strips that were obtained --

1 or that were used in the procedure rooms?

2 A No, ma'am.

3 Q Now you were asked about a comment that you made
4 in a -- in an interview about whether or not you'd be able to
5 prove the case, right, a historical case --

6 A Yes.

7 Q -- that they're hard to prove. What did you --
8 what did you mean by that comment when you said it in the
9 interview?

10 A Well, when you -- when you talk about proving a
11 case in a historical context, everything you get is after the
12 fact. So you have to get all the information after the fact,
13 you have to get the patient charts, you have to get the
14 propofol records, you have to get the statements. So that's
15 basically what I meant was it's -- it's harder to prove after
16 the fact than it would be if somebody was sitting there
17 watching what happened and observed the situation itself.

18 Q Eyewitness crimes are -- are different.

19 A Right.

20 Q Now, let's talk about the -- the interviews with
21 Linda Hubbard. You were not present on the interview that --
22 that took place on October the 14th, the day before, correct?

23 A No, ma'am.

24 Q That -- do you know where it took place though?

25 A I want to say Michael Pariente's office, but I'm

1 not 100 percent certain.

2 Q So that would be her attorney?

3 A Yes, ma'am.

4 Q Okay. But you were present on the 15th?

5 A Yes, ma'am.

6 Q Where did that one take place?

7 A Her attorney's office.

8 Q How was it that you got to interview her again
9 on the 15th?

10 A Well, I think we had some unfinished questioning
11 to do is reference the reuse of syringes, so I think that we
12 just set it up the day before to come back the following day
13 because -- I'm not sure what happened at the end of the day
14 the first day, whether it got cut short or whatever else but,
15 you know, I couldn't answer that 100 percent.

16 Q Was -- was your interview on the 15th with the
17 consent of her lawyer?

18 A Yes.

19 Q Did you like pick her up and drag her down to
20 her lawyer's office to do the interview on the 15th?

21 A No.

22 Q Did you force her or could you even force her to
23 do the interview on the 15th?

24 A No, that's why we go through their attorney. If
25 they have an attorney present, we make sure we arrange through

1 them to do any interviews and have any conversations within
2 their presence.

3 Q Could she have refused to interview on the 15th?

4 A Absolutely.

5 Q Could her -- her attorney have refused to allow
6 her to interview on the 15th?

7 A Absolutely.

8 Q When you did interview her on the 15th, did you
9 tell her what you wanted her to say?

10 A No, ma'am.

11 Q Did you tell her who you wanted her to
12 implicate?

13 A No, ma'am.

14 Q Did you give her any sense of what you wanted
15 her to revise from the 14th?

16 A No, ma'am.

17 Q Now Mr. Santacroce asked if during the interview
18 that you were present for whether it was just a matter of her
19 seeing Ron Lakeman engage in the practice of reusing syringes
20 and going back into a vial of medication or whether she
21 actually had a conversation with him about it. Do you recall
22 being asked that on cross?

23 A Yes, ma'am.

24 Q Do you remember her response or her description
25 of a conversation that she had with Mr. Lakeman from that

1 interview?

2 A Yes, ma'am.

3 Q Okay. Did she in the conversation say that
4 Lakeman told her that's the way it was done?

5 A Yes, ma'am.

6 Q Meaning the reuse of the syringe and going back
7 into the vial of medication.

8 A Yes, ma'am.

9 Q So it wasn't just seeing, she had a
10 conversation.

11 A Yes, ma'am.

12 Q Do you recall her saying what her response was
13 to Ron Lakeman about that sort of practice?

14 A That she didn't do it that way.

15 Q Okay. Did she say that she didn't do it that
16 way or I couldn't do it that way?

17 A She might have said I couldn't do it that way.

18 Q Okay. Did she describe what Lakeman did after
19 she told him that, that she couldn't follow that practice?

20 A Yes.

21 Q What did -- what did she say that Ron Lakeman
22 did after she informed him I can't do it that way?

23 A I don't want to paraphrase off the top of my
24 head, can I --

25 Q Okay. This is page 24.

1 A Okay. She said, "I told Ron I couldn't do it
2 and then talked to Jeff and then --"

3 Q And then wait, no, I told --

4 A Oh. She said, "I told Ron I couldn't do it."

5 Q Okay. And then what did Ron do?

6 A And then he talked to Jeff. I'm sorry.

7 Q Okay. So there was some conversation about this
8 between -- according to Ms. Hubbard, between herself and Mr.
9 Lakeman and then Mr. Lakeman, according to Ms. Hubbard, talked
10 to Jeff Krueger about it?

11 A Yes.

12 Q Now Mr. Santacroce asked you if she was ever in
13 -- if she ever said in the interview that she was instructed
14 by Dr. Desai to do this practice the way Ron Lakeman did. And
15 I think you said, and maybe I heard you wrong, that she never
16 said Desai instructed her; is that correct?

17 A Well, I mean instructed, I mean maybe I got that
18 wrong. Instructed meaning showed her how to do it or whatever
19 else but, you know, it depends on the context. I think he did
20 say something -- I'd have to read the transcript.

21 Q Okay. This is going to be the middle of page
22 25. What did she say about Dr. Desai?

23 A She said, "Dr. Desai wanted me to use, you know,
24 to do it the way that Ron did it and I said --" and that's it.

25 Q And she goes on to say that she didn't follow

1 that practice and Dr. Desai didn't argue with her about it to
2 be --

3 A Right. Yes, ma'am.

4 Q -- to be fair, right? And that he never said
5 anything to her, correct?

6 A Yes, ma'am.

7 Q In addition to saying she wasn't pressured by
8 Desai to use Ron Lakeman's methods, Mr. Santacroce asked you
9 sort of about a reference she made in a conversation she had
10 with Desai and this will be at page 31. Mr. Santacroce asked
11 you if she had any further conversations with Desai about it
12 and I think you said there wasn't one. If you could just read
13 her response.

14 A Ms. Hubbard states, "I really don't remember a
15 whole lot of the conversation about it because I had told him
16 about the case in New York where hep C had been spread from
17 one patient to another."

18 Q Okay. So Linda Hubbard's saying that she had a
19 conversation with Desai about a spread of hepatitis C and this
20 is -- this is why she doesn't want to use this practice.

21 A Yes.

22 MR. SANTACROCE: I'm going to object to the last
23 portion of that as editorializing.

24 MS. WECKERLY: Were you -- I mean, you can read the
25 context of the interview.

1 THE COURT: Well, you can clear it up. Try to make
2 it clear, Ms. Weckerly, you know, if you're quoting her or
3 not.

4 MS. WECKERLY: Okay.

5 THE COURT: So that's it clear that it's your words,
6 not Ms. Hubbard's words.

7 BY MS. WECKERLY:

8 Q Okay. I'll go -- I'll -- I'll clarify. Further
9 on page 31, can you read this next paragraph that describes
10 that conversation?

11 A Okay. Linda Hubbard says, "And we had a big
12 discussion, the gastroenterologist. It was a private
13 practice, a family practice physician that owed the center
14 where we worked and we had had this big discussion about oh,
15 you know, you have to really be careful that the scopes and
16 the rest of the stuff. And I said to him I don't think it's
17 the scopes, I think it's probably syringes. And then it came
18 out later that --" end of -- end of what she said.

19 Q Okay. And that's a discussion she had with Dr.
20 Desai?

21 A Yes.

22 Q Now the -- if you could -- you can step down and
23 help me get this easel. Thank you. And if you can just flip
24 it around.

25 MS. WECKERLY: And with the Court's permission, I'm

1 going to have him come off of the witness stand.

2 THE COURT: That's fine. That's fine.

3 BY MS. WECKERLY:

4 Q Okay. So let's put up -- this is July the 25th.
5 Okay. And then I'm going to put up Z1, which Detective, can
6 you stand on that side so --

7 A Sure.

8 Q -- thank you. Now, let's start -- well, let me
9 -- when we're talking about this chart prepared by Nancy
10 Sampson, when you say there were different sorts made of the
11 chart, what do you mean by that?

12 A Well, when you got an Excel spreadsheet you can
13 sort different sections of the chart. So you can sort it by
14 this column right here to order it through that column or you
15 can sort it by this column right here, which will create an
16 order of the numbers all the way down that column. So you can
17 do different sorts to different areas.

18 Q Okay.

19 A Doesn't mean you're changing the actual numbers
20 itself, it just means you're putting them in sort of the
21 numbers that they go in.

22 Q So the data didn't change, it was just however
23 -- what sort you were using or which column you were using to
24 organize it by?

25 A Right.