

1 Q And you testified earlier that sometimes you
2 got there early and you would set up both rooms.

3 A I did usually, yes.

4 Q You'd set up 20 in Room No. 1, 20 in Room No.
5 2?

6 A Correct.

7 Q And those were all new sealed bottles of
8 propofol when you started the day?

9 A Yes.

10 Q I believe Mr. Staudaher asked you a question
11 about would someone -- and forgive me. I'm not quoting this.
12 I'm just saying it how I heard it. If you heard it different,
13 you tell me. That toward the end of the day if there was some
14 propofol leftover in a bottle and another procedure had to go
15 on you'd get that used bottle or something like that? Explain
16 that to me.

17 A When we had two rooms running, if one of the
18 anesthetists finished that day and he had a partial bottle
19 left, and this room over here maybe still had one or two
20 patients to go, we would use the -- use up what was left over
21 in that room to bring over to the other room, yes.

22 Q But that would only be at the end of the day.

23 A Yes.

24 Q Never in the middle of the day and never in
25 the morning.

1 A Not that I ever saw.

2 Q Only at the end of the day.

3 A Yes.

4 Q I want to go over this term that I learned
5 today, micromanaging. Okay. Tell me what micromanaging is,
6 again?

7 A In my way of thinking it's someone that is
8 very involved in the entire procedure, knows exactly what's
9 going on with everything in the organization, the cost of
10 everything in the organization, the cost of everything in the
11 organization, time factors, all of that type of thing. And,
12 of course, the employees.

13 Q And in every organization you would expect to
14 have someone like that; correct?

15 A Yes, I guess you would have some kind of a
16 management, yes. I don't know if they'd be a micromanager,
17 but --

18 Q Okay. But I'm not so much concerned about
19 that as I am as to who was in charge over there. Okay. We've
20 already talked about Dr. Desai.

21 A Correct.

22 Q But there were other people there in charge;
23 correct? Tonya Rushing, who is she?

24 A She was in charge of nurses as far as I know,
25 in charge of us. She was the -- Dr. Desai, and then it was

1 Tonya Rushing was in charge of anybody else. I think she was
2 even in charge of the doctors as far as I recall.

3 Q And was she in charge of billing?

4 A That I don't know. She was involved in it,
5 I'm sure. I mean, we learned lots through the papers, you
6 know. I mean, that's the only way we knew.

7 Q I'm not talking about what you learned through
8 publicity. We tell the jurors not to rely on publicity. We
9 don't want our witnesses spouting that up either, okay?

10 A Okay.

11 Q So I only want you to tell me what you knew
12 when you were working there.

13 A Well, I knew very little.

14 Q Okay. Knew very little.

15 A Yes. As far as billing, I knew nothing
16 really. I mean --

17 Q Were the CRNAs -- my point is were the CRNAs
18 involved in any kind of management decisions at all?

19 A Never.

20 Q Were they involved in any kind of billing
21 decisions ever?

22 A Never. Never.

23 Q You came to work and you did your job, you got
24 paid, and you went home.

25 A That's it.

1 Q You had nothing to do with scheduling
2 patients; correct?

3 A No.

4 Q If they scheduled 1 or 50, you had nothing to
5 do with that?

6 A That's right.

7 Q Who is Dr. Carrol?

8 A He was the one that was -- I always felt was
9 in control -- or, I mean, in the line of duty behind Dr.
10 Desai. Because he was always at that clinic at Shadow Lane
11 and he was there. If Dr. Desai was gone, he would be the one
12 in charge of everything.

13 Q So you think he was a decision maker?

14 A Yes.

15 Q So we have Dr. Desai, Dr. Carrol, Tonya
16 Rushing, all decision makers?

17 A Yes.

18 Q Ron Lakeman, not a decision maker?

19 A Not that I knew of.

20 Q Well, did you ever get any directives from
21 Ron?

22 A No. Never.

23 Q Did you ever bet any orders from Ron Lakeman?

24 A No.

25 Q Okay. Who was Eladio Carrera?

1 A One of the -- I think he was the physician
2 that was there the longest, if I recall right. Another one of
3 the gastroenterologists.

4 Q Performed procedures there?

5 A Yes.

6 Q And who was Dr. Faris?

7 A Another gastroenterologist that came only, I
8 think, once a week or something like that. He was practicing
9 in the hospitals otherwise.

10 Q Now, we talked a lot about the times with Dr.
11 Desai and Clifford Carrol. They were fast; right?

12 A Yes.

13 Q What about Carrera and Faris?

14 A Much slower.

15 Q How long would their procedures take?

16 A At least 30 minutes, some of them could be 45.

17 Q So they would go that long?

18 A Yes, they would.

19 Q Now, at some point the CDC was notified of a
20 hospital epidemic, outbreak, whatever you want to call it.
21 They came to the facility and actually observed people such as
22 yourself doing their job; correct?

23 A Correct.

24 Q Ron Lakeman wasn't there because he had
25 already left the employment of the endoscopy center long

1 before they came; isn't that correct?

2 A They came, I think, probably January, and I
3 think Ron left in November, if I'm not mistaken.

4 Q So Ron wasn't there. He wasn't observed doing
5 anything to your knowledge?

6 A Not to my knowledge.

7 Q Did you ever steal anything from any patients?

8 A Steal?

9 Q Yeah.

10 A No.

11 Q Did you ever steal anything from an insurance
12 company?

13 A Did I?

14 Q Yeah.

15 A Not intentionally that I know of.

16 Q Well, in order to steal it has to be
17 intentional. Did you steal anything from an insurance
18 company?

19 A No. I mean, I wasn't paid by the insurance
20 company, so I don't know what your question is dragging at.

21 MR. SANTIACROCE: Court's indulgence.

22 THE COURT: That's fine.

23 MR. SANTIACROCE: I have no further questions. Thank
24 you, Mr. Mathahs.

25 THE WITNESS: Thank you.

1 MR. SANTACROCE: Best of luck to you, sir.

2 THE COURT: All right. Thank you, Mr. Santacroce.

3 Ladies and gentlemen, we're going to have to take
4 our evening recess, or our weekend recess actually, at this
5 point. We will reconvene Monday morning at 9:00 a.m.

6 Before I excuse you for the weekend recess I must
7 admonish you that you're not to discuss the case or anything
8 relating to the case with each other or anyone else. You're
9 not read, watch, or listen to any reports of or commentaries
10 on this case or any subject matter relating to the case.
11 Don't do any independent research on any subject connected
12 with the case, and please don't form or express an opinion on
13 the trial.

14 If anyone else has some questions, you can just hand
15 your questions to the bailiff on the way out. Otherwise, put
16 your notepads in your chairs, follow Kenny, and we'll see you
17 all back here Monday at 9:00.

18 (Jury recessed at 4:05 p.m.)

19 THE COURT: Mr. Mathahs, during the weekend recess
20 don't discuss your testimony with anybody else who may be
21 called as a witness in this case. Obviously, you can talk to
22 your lawyers and what not.

23 Okay. That's it. See you guys back Monday at 9:00.

24 (Court recessed for the evening at 4:06 p.m.)

25

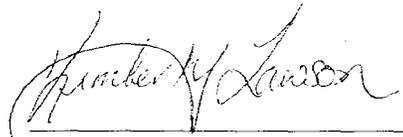
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STATE OF NEVADA,)	CASE NO. C265107-1,2
	)	CASE NO. C283381-1,2
Plaintiff,	)	DEPT NO. XXI
vs.)	
)	
DIPAK KANTILAL DESAI, RONALD	)	TRANSCRIPT OF
E. LAKEMAN,	)	PROCEEDING
)	
Defendants.)	

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 13

MONDAY, MAY 13, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
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FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
FOR DEFENDANT LAKEMAN:	MARGARET M. STANISH, ESQ. FREDERICK A. SANTACROCE, ESQ.

Also present:	MICHAEL V. CRISTALLI, ESQ.
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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 13, 2013, 9:06 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right, good morning. The jurors are
5 all here, so Kenny if everyone's ready. Kenny, you can bring
6 them in.

7 Did you guys have a chance to look at the juror
8 questions that were up here? Okay.

9 MR. WRIGHT: No.

10 MR. STAUDAHER: No.

11 THE COURT: Then we'll do it after Mr. Wright's
12 testimony. We've accumulated five that they gave to the
13 bailiff on the way out.

14 MR. WRIGHT: Okay.

15 THE COURT: Yesterday -- Friday rather.

16 (Jury reconvened at 9:08 a.m.)

17 THE COURT: Court is now back in session. The record
18 should -- everyone can be seated. The record should reflect
19 the presence of the State with the deputy district attorneys,
20 the presence of the defendants and their counsel, the officers
21 of the Court and the ladies and gentlemen of the jury.

22 And when we'd taken our weekend recess, Mr. Mathahs
23 was on the stand. So Mr. Mathahs, you may come back up here
24 to the witness stand, please. And, sir, just have a seat.
25 You are still under oath. Do you understand that, sir?

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1 THE WITNESS: Okay.

2 THE COURT: Sir, you are still under oath. Do you
3 understand that?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Mr. Wright, you may begin your
6 cross-examination.

7 CROSS-EXAMINATION

8 BY MR. WRIGHT:

9 Q Thank you. Good morning, Mr. Mathahs.

10 A Good morning.

11 Q We know each other, correct?

12 A Yes.

13 Q Okay. There was a time when you were sitting
14 here with Dr. Desai and with Mr. Lakeman as a defendant in
15 this case, correct?

16 A Correct.

17 Q Now I want to go back to your -- start back at
18 the beginning with your education. Okay?

19 A Okay.

20 Q And so tell the jury in greater detail how you
21 became a tech and ultimately a nurse, starting with years and
22 where -- where you went to school.

23 A The lab tech was a -- a school in Minneapolis.
24 I think it -- I don't recall the name of it anymore. It's
25 been 40, 50 years ago. But anyhow, that's where I went to

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1 school for two years there and became a lab tech, and I worked
2 in the lab, ran a lab for eight years before I decided to go
3 back to nursing school and with the idea of going into
4 anesthesia.

5 Q Okay. And were you from Minnesota? Is that why
6 you went to school there?

7 A Northern Iowa.

8 Q Northern Iowa.

9 A Yes.

10 Q Okay. How old are you, sir?

11 A Seventy-seven.

12 Q Okay. And was -- was that -- did you go to high
13 school?

14 A In Iowa.

15 Q Okay. And was that like a two-year trade
16 school, junior college or what would you call it back then to
17 become a tech, medical tech?

18 A I think it was -- probably you'd call it a trade
19 school today.

20 Q Okay. And you graduated and became a medical
21 technician --

22 A Correct.

23 Q -- is that correct? And then you actually
24 worked as a medical technician for eight to ten years?

25 A Yes.

1 Q Okay. And where was that?

2 A At the Dallas County Hospital in Perry, Iowa.

3 Q Okay. And after that hospital work, that's when

4 you decided to go back to school to become a nurse?

5 A That's correct.

6 Q Okay. And where did you go to school for that?

7 A Iowa Central College in Fort Dodge, Iowa.

8 Q Okay. How long a --

9 A It was an AD program, two-year program.

10 Q Okay. And you graduated?

11 A Yes.

12 Q Okay and became a registered nurse, LPN, what do

13 you --

14 A RN, but I became that after I was already in

15 anesthesia school.

16 Q Okay. So once you became a nurse you -- you

17 then wanted to specialize in anesthesia; is that correct?

18 A Correct, correct.

19 Q And you go -- after becoming a nurse you go

20 additional education to become a nurse anesthetist, right?

21 A Correct. I was two years at the Mayo Clinic in

22 Rochester.

23 Q Okay. A two-year program and you graduated?

24 A Yes.

25 Q Okay. And that's Mayo Clinic, the world famous

1 Mayo Clinic?

2 A That's it.

3 Q Okay. And so at that point are you -- what
4 we've been calling here in the courtroom, a CRNA?

5 A Well, after you take the national exam you are,
6 yes. And I -- I graduated in June -- I guess 1st of July in
7 '70, so I didn't really have a chance to take it until the
8 fall of '70 and didn't get the results until early '71.

9 Q Okay. So you were then a -- a -- you took a
10 national -- a national test to become a certified registered
11 nurse anesthetist?

12 A That's correct.

13 Q Okay. And then in 1970 -- beginning of '71, now
14 that you're a CRNA, where do you go?

15 A In to California, Southern California.

16 Q Okay. And you were -- if I understand it, you
17 were in Southern California from 1971 up until your retirement
18 in 2002?

19 A That's correct.

20 Q Okay. And during those 31 or 32 years in
21 Southern California, what -- where were you located and what
22 were you doing generally?

23 A I was in Rancho Cucamonga and I was in the
24 practice of giving anesthesia for different hospitals,
25 different groups, different surgeons.

1 Q And were you in practice with others?

2 A Yes.

3 Q Okay. Was it a CRNA group?

4 A Yes.

5 Q Okay. And so how many others in your group?

6 A It started out with myself and another one, but
7 over probably five, six years we were up to about 10 or 12
8 other CRNAs all working together as a group. It was called
9 the Cucamonga anesthesia Group.

10 Q Okay. And that was started by yourself,
11 correct?

12 A Correct.

13 Q Okay. And as a -- that -- that group made
14 itself available to any physicians, hospitals, doctors, anyone
15 who needed a nurse anesthetist; is that correct?

16 A Yes or you might say just anesthesia, you know,
17 privileges. Yeah, we could give anesthesia for.

18 Q Okay. You had privileges. What does that mean?

19 A Well, at the hospitals or the clinics that we
20 were on -- was on, we were on the staff just like a physician
21 would be. Fill out, you know, that and we would attend
22 meetings and all of those types of things. It would have been
23 no different than a physician being on the staff at a
24 hospital.

25 Q Okay. So that -- you -- your -- your group

1 covered like three counties in Southern California?

2 A We were in Orange County, San Bernardino and
3 Riverside, yes.

4 Q Okay. And there are numerous hospitals there
5 and you would -- in order to be privileged at a given
6 hospital, you would apply and show that you have the
7 credentials and are up to date with your licensing, correct?

8 A Correct.

9 Q And when all of that is in order, that's
10 demonstrating you are competent, licensed and you know how to
11 do it, right?

12 A Correct.

13 Q Okay. And you were -- if -- if there was a
14 hospital you'll -- that called you and you weren't
15 credentialed, you couldn't go there. Someone else in your
16 group that was credentialed there would go there?

17 A Well, our group was all -- pretty much as far as
18 I know, the same credentials, yeah.

19 Q Okay.

20 A So we were all able to go -- had privileges to
21 wherever we are on staff.

22 Q Okay. Interchangeably, you all would just set
23 up schedules and you would go out to the various hospitals to
24 do anesthesia services?

25 A Correct.

1 Q Okay. And after -- after 32 years you decided
2 to retire?

3 A Yes.

4 Q Okay. And are still living in Southern
5 California?

6 A Yes.

7 Q And you didn't stay retired?

8 A I didn't. No, it was very difficult.

9 Q Okay. You've been working more than 40 years
10 and had a routine, correct?

11 A Yes.

12 Q Okay. And is that why retirement -- you had too
13 much time on your hands?

14 A I think you could say time was probably wearing
15 on me, yes.

16 Q Okay. And so you -- you were looking -- even
17 though you retired, you tried it for a while and then you
18 thought about going back to work. Is that fair?

19 A I retired I think it was in -- first of July of
20 '70 -- or I mean 70, 2002 and just stayed comfortable for a
21 few months and then I saw the ad. They were looking for
22 anesthesia at the Gastro Center here in Las Vegas and so I
23 looked into it, and that's how I --

24 Q Okay.

25 A -- came here.

1 Q There was an advertisement seeking a CRNA at the
2 Gastro Center in Las Vegas, Nevada, correct?

3 A Correct. That was in our AANA magazine.

4 Q Okay. And did -- were you interviewed for the
5 job?

6 A Yes.

7 Q Okay. And who interviewed you?

8 A Tonya Rushing and Dr. Desai.

9 Q Okay. And that would have been at the end --
10 late in 2002; is that correct?

11 A October or late November, somewhere in that
12 area, yes, I don't recall exactly.

13 Q Okay. And they offered you a job?

14 A Yes.

15 Q Okay. You accepted?

16 A Yes.

17 Q Okay. And I think you said on your direct
18 examination you were coming on full time, correct?

19 A Yes.

20 Q Ultimately, you went to half time after a few
21 years --

22 A Correct.

23 Q -- correct? But initially full time and you
24 were earning \$120,000 per year plus bonuses?

25 A Correct.

1 Q Okay. Now when -- when did you start?

2 A Full time would have been sometime in January of
3 '03.

4 Q Okay. And you had to get your Nevada license.
5 You weren't licensed in Nevada at the inception, right? When
6 you were offered the job?

7 A No, I was not.

8 Q Okay. And so you needed to apply in Nevada
9 because you were licensed in California, CRNA, correct?

10 A Correct.

11 Q And so you applied here and you have to take
12 tests or is it just reciprocity?

13 A Reciprocity.

14 Q Okay. So you got your licensing and then went
15 to work. And at the time, the -- you went to work at the
16 Gastro Center and there was an endoscopy clinic there and at
17 the beginning it was a one procedure room operation; is that
18 correct?

19 A That's correct.

20 Q Okay. And when you -- when you started, were
21 you the only CRNA or were others there?

22 A There were others.

23 Q Okay. And that was I think you said Ann
24 Lobianbo?

25 A Correct.

1 Q Okay. And who else?

2 A Ralph McDowell.

3 Q Okay. And at the time, was there more than one
4 clinic that was operating in Las Vegas for this Dr. Desai's
5 clinic?

6 A Yes. There was on Burnham, the one on Shadow
7 Lane.

8 Q Okay. So did -- did you work mainly at Shadow
9 Lane?

10 A At the beginning I think I went back and forth a
11 little.

12 Q Okay. So at the time it was what we called the
13 Burnham Clinic, right?

14 A Correct.

15 Q Shadow Lane Clinic?

16 A Correct.

17 Q And you had Ann -- how do you say her name?

18 A Lobianbo I think it is.

19 Q Lobianbo.

20 A Yeah.

21 Q And she was a CRNA?

22 A Correct.

23 Q The same as you, correct?

24 A Yes.

25 Q And Ralph McDowell.

1 A Yes.

2 Q Anyone else at the -- when you arrived?

3 A No, that was it.

4 Q Okay. And who -- who -- were you need to be
5 taught how to be a CRNA by Ann or Ralph?

6 A I was instructed or mentored in the way they
7 were doing the procedures for the center because they -- Ann
8 had been here I think for a year or maybe longer and I think
9 Ralph probably about the same.

10 Q Okay.

11 A And the way they wanted it done, yes.

12 Q Okay. And they were showing you the ropes of
13 how it worked; is that correct?

14 A Correct.

15 Q And but as far as like teaching you how to be a
16 CRNA, you already were one and you were simply coming on as an
17 equal to them, meaning they were CRNA and you were a CRNA,
18 correct?

19 A Correct.

20 Q Okay. And then in what Ralph or Ann told you in
21 showing you the ropes at the beginning, did you see anything
22 wrong?

23 A I was questioning the time situation, yes.

24 Q Okay. That -- and is that the billing time?

25 A The time that was -- had to be on the anesthesia

1 records, yes.

2 Q Okay. So you questioned -- right at the
3 beginning you questioned Ann about that?

4 A Yes.

5 Q Okay. And other -- other than the billing,
6 okay, on the procedures, how it was going to take place, what
7 you were doing, did you see anything where you went whoa, wait
8 a minute, that's contrary to practice?

9 A Not that I'm aware of, you know. I mean,
10 talking about anesthesia or are you talking about that?

11 Q Anesthesia.

12 A Yeah. No, I'm not -- the thing that I said in
13 the beginning when they were -- when I first came on they were
14 using Versed or Valium and Demerol or Fentanyl, which was
15 prolonging the patients from waking up and returning back to,
16 you know, leaving the -- leaving the facility. And I was the
17 one that suggested we might start using propofol and do away
18 with the narcotics.

19 Q Okay. And had -- had you -- you were familiar
20 with propofol?

21 A Very much.

22 Q From your practice in California?

23 A Yes.

24 Q And I can't remember when propofol was invented,
25 1987 or something?

1 A It came in the glass vials that we had to break
2 the tops off, that's all I remember about it.

3 Q Okay. Originally, when propofol was a new --
4 new drug or quick acting sedative -- anesthesia?

5 A Right.

6 Q It -- it came in little glass ampules, right?

7 A Yes.

8 Q And so, there was no rubber stopper or anything
9 else, it was a glass -- like a little tiny glass test tube?

10 A Almost and it had a top on it that we had to
11 break off to, you know, extract the --

12 Q Okay.

13 A -- propofol.

14 Q It was totally sealed in glass?

15 A Correct.

16 Q Okay. And snap the top off?

17 A Uh-huh, cut your finger.

18 Q Okay. And then draw it out like with a needle
19 and syringe?

20 A Correct.

21 Q Okay. And then obviously, it went from glass
22 ampules to propofol -- what -- the propofol bottles, which
23 we've seen pictures of here in the courtroom, like a 20 and a
24 50, a little bottle with a rubber top after you snapped the
25 seal off of it; is that correct?

1 A That's correct. I don't think 50 milliliters or
2 cc's were around for quite awhile after the 20 came out, and
3 that was -- 20 or was it a 10? I don't remember. Ten or 20
4 milliliter --

5 Q Okay.

6 A -- but that was the first and then 50, I -- I
7 don't know when that came in to play.

8 Q Okay. They -- they -- they came out more --
9 more -- let me put it this way: In your practice in Southern
10 California when you were doing propofol, how many CRNA
11 procedures did you do in your 32-year career?

12 A Surgeries? Thousands. I couldn't -- I -- I
13 don't know -- I never kept track, but it was thousands.

14 Q Okay. Many of them in the latter part of your
15 career with propofol?

16 A Yes.

17 Q Okay. And at -- in Southern California, you
18 were mainly -- you were using 20s or maybe 10s at some point?

19 A Correct.

20 Q Okay. Now you come here, the clinic, Dr.
21 Desai's clinic, they were still using the drugs you said?

22 A Correct.

23 Q Okay. And those are narcotics?

24 A Well, the Fentanyl or Demerol are narcotics,
25 yeah. The others an amnesiac, Valium or Versed just gives you

1 a little amnesia is what it gives you, you know.

2 Q Okay.

3 A So you really don't know what's going on.

4 Q And those have traditionally been used for
5 sedatives, anesthesia before propofol?

6 A Correct.

7 Q And it -- there -- there's a longer wake up time
8 for the patient with those type of drugs?

9 A With the narcotic, yes, and it prolonged it
10 quite a bit.

11 Q Okay. And so you suggested going to propofol --

12 A Yes.

13 Q -- correct? And the -- the suggestion was taken
14 and the clinic ultimately went completely to propofol except
15 for the rare exception when someone couldn't take it for some
16 reason?

17 A Correct.

18 Q Okay. And at that time, if someone -- what,
19 could you be allergic to propofol or --

20 A Propofol contains egg albumin and some people
21 are allergic to eggs so we always had to make sure that they
22 were not allergic to any type of egg substance or anything
23 like that.

24 Q Okay. And if someone was allergic, you would
25 then go back to the previously used methods?

1 A Correct.

2 Q Correct? But that was infrequent?

3 A Very infrequent, yes.

4 Q Okay. Now, you worked mainly with which -- now
5 I'm back at the clinic now, starting when you were full time.

6 A Okay.

7 Q When -- when did you go to half -- half time or
8 part time?

9 A Part time, let's see. I think the only full
10 time that I worked was '03 and '04 and [indiscernible] in '05.

11 Q Okay. So 2003, 2004 you were working full time?

12 A Correct.

13 Q Okay. Who -- which doctors mainly were you
14 working with?

15 A Dr. Desai, Dr. Carrol, Dr. [indiscernible] and
16 Dr. Sharma would come in when I -- and I think in '03 Dr.
17 Herrero was there some and Dr. Faris.

18 Q Okay. Now, when you go -- 2003, '04, in 2005
19 you become part time; is that correct?

20 A I think the -- actually --

21 Q Approximately.

22 A -- I think I actually quit, yeah, in the latter
23 part of '05 and part of '06, yes, uh-huh.

24 Q Okay.

25 A So I was gone -- I was out of the state for a

1 while.

2 Q Okay. Did you -- you wanted to go back to North
3 Carolina and spend time with a daughter?

4 A Correct.

5 Q Okay. And the -- you -- you came back and then
6 were rehired part time?

7 A Yes.

8 Q Okay. Now you worked part time -- and -- and
9 what would part time be? Half days or just so many days a
10 week?

11 A I think it was usually -- I would come in and
12 open up. I would usually be there a little after six, get it
13 -- get everything set up and then I would try -- try and get
14 out of there by noon. That's when they would want me to be
15 out of there, by noon, after I had relieved the person, you
16 know, on -- who was in the other room and somebody would
17 probably be coming in and take my place.

18 Q Okay. For your first -- until you -- until 2005
19 when you're full time, okay, you would be -- it was always
20 your practice, you were an early bird, first one there; is
21 that right?

22 A That's right.

23 Q Okay. So you -- you would come in, set up the
24 procedure room as far as the anesthetist go?

25 A Correct.

1 Q And so that meant getting out the -- like a tray
2 of propofol?

3 A We usually got it -- it was locked up and one of
4 the nurses would open the cabinet and give it to us. We would
5 usually -- I always -- if I recall right, it was set up. I
6 think it was we'd get a whole box and I think there were 20
7 bottles in a box, so we'd set up each room with the same
8 amount of propofol.

9 Q Okay.

10 A And make sure the syringes, needles and alcohol
11 swabs and that type of thing were there.

12 Q Okay. And at the time you -- you -- you would
13 get there at six, procedures normally start at seven?

14 A Correct.

15 Q Okay. And you would make sure each -- well,
16 first, I don't want to get ahead. But initially, there was
17 one procedure room, right?

18 A Yes.

19 Q Okay. Then it went to two sometime in 2004?

20 A I think it was maybe summertime of '04,
21 somewhere in there, yeah, uh-huh.

22 Q Okay. So when we got to the two procedure
23 rooms, you're -- you're talking about setting both of them up
24 with the supplies that the CRNA would need for the day?

25 A Correct.

1 Q Okay. And you'd set up both of -- both of them
2 even though you're only going to be working in one?

3 A Correct.

4 Q Okay. And that -- that would be supply --
5 bottles of propofol, needles, syringes, Lidocaine?

6 A Lidocaine, alcohol, alcohol swabs, yeah,
7 anything that would be pertinent. Suction catheters,
8 whatever, oxygen masks and that type of thing.

9 Q Okay. Saline solution?

10 A It was probably there. I don't remember us, you
11 know, having -- setting it up but --

12 Q Okay. Lidocaine is used how when you are using
13 propofol to put a patient to sleep?

14 A It can be used, it can be mixed with propofol
15 and some people claim that propofol by itself can cause a
16 little irritation to the vein when it's injected. The
17 Lidocaine is supposed to do away with that irritation.

18 Q Okay. And when -- did you use Lidocaine with
19 propofol?

20 A Not all the time, rarely.

21 Q Okay. But if -- if you did use Lidocaine with
22 propofol, okay?

23 A Yes.

24 Q Would the procedure be -- you take your 10 -- 10
25 size syringe -- what is that, 10 --

1 A Ten milliliters.

2 Q -- 10-milliliter syringe and you decide you're
3 going to use Lidocaine so that it doesn't sting the patient.
4 Is that -- would that -- I mean does it like sting when it
5 goes in?

6 A I've never had it sting on me but that's what
7 they say, it stings, yes.

8 Q Okay. So if it does sting and a patient's
9 sensitive and they don't want the propofol to sting and you're
10 using Lidocaine, you would start with the brand new needle and
11 syringe, right?

12 A Correct.

13 Q And you would first draw Lidocaine; is that
14 correct?

15 A A cc.

16 Q Two cc's?

17 A One, one milliliter --

18 Q Okay.

19 A -- one cc.

20 Q So you would take one cc of Lidocaine and then
21 you would take -- take -- fill up the syringe, nine remaining
22 cc's with propofol?

23 A Correct.

24 Q Okay. So that the Lidocaine and propofol are
25 mixed together?

1 A Correct.

2 Q Okay. And then that is injected into the
3 patient?

4 A Correct.

5 Q Okay. And you would take the -- the --
6 hypothetically, you would take a brand new needle and syringe,
7 right?

8 A Yes.

9 Q And you would use it for the Lidocaine?

10 A Yes.

11 Q And then you would use it -- and is Lidocaine a
12 single use or multi-use?

13 A Multi.

14 Q Okay. So the Lidocaine is a multi-use bottle,
15 vial?

16 A Bottle.

17 Q Bottle, okay. A multi-use bottle meaning you're
18 going to keep -- keep using it. It's not just going to be
19 used one time and tossed?

20 A Correct.

21 Q Okay. So you would get Lidocaine and then use
22 the same needle and syringe, go into the propofol bottle,
23 correct?

24 A No. I would -- I would always change the
25 needle. I never went from --

1 Q Oh, okay.

2 A -- one -- one vial to another without changing a
3 needle.

4 Q Okay. Even -- even on -- even on the -- the
5 Lidocaine, the hypothetical -- before we get to the re-dosing
6 a patient --

7 A Right.

8 Q -- just starting out first time. The patient
9 I'm going to give Lidocaine, propofol mix, go into the
10 Lidocaine I have drawn one cc, right?

11 A Right.

12 Q Now I'm going to get propofol. Your practice
13 was take off the needle --

14 A Put on a new one.

15 Q -- yeah. Same syringe, take off the needle, get
16 a brand new needle --

17 A Correct.

18 Q -- put it on?

19 A Correct.

20 Q Okay. Take the old needle, throw it in the
21 sharps container?

22 A Correct.

23 Q Okay. And now you have a new needle, new
24 syringe, go into the propofol?

25 A Correct.

1 Q Okay. Draw the propofol. Do you -- are you
2 going to then inject the patient or do you put on a new needle
3 again?

4 A No, I inject with that needle.

5 Q Okay.

6 A Yeah.

7 Q The -- and that is the way you have been taught?

8 A That's the way I practiced. I mean, I just
9 cautious --

10 Q Okay.

11 A -- and just that's the way I always practiced.

12 Q Okay. And you believe that to be aseptic and
13 clean, sterile?

14 A As aseptic as it's possible, yes.

15 Q Okay. And so then you dose the patient, okay?

16 A Yes.

17 Q And a -- a determination is made, the procedures
18 going along, propofol is fast acting and fast unacting.

19 A Right.

20 Q You think the patient needs another dose, right?

21 A Okay.

22 Q Okay. And under -- under that circumstance, you
23 would have propofol vials still sitting there, correct?

24 A Correct.

25 Q And you'd have the needle and syringe from the

1 patient sitting there?

2 A Correct.

3 Q And you would take the needle and syringe and
4 you'd take the needle off --

5 A Correct.

6 Q -- correct? Because that's the safe practice,
7 the way you were --

8 A Correct.

9 Q -- you have always done it. Toss it in the
10 sharps container, get out a brand new, clean, sterile needle,
11 put it on and then re-enter the propofol vial --

12 A Make sure there's a negative pressure so you're
13 not going to be getting anything into the needle, yes.

14 Q Okay. And when you -- and I'm speeding it up,
15 but when you re-enter the propofol vial, it has a rubber stop
16 -- a rubber top --

17 A Correct.

18 Q -- right? Where -- when you first opened it you
19 took a sealed top off --

20 A Correct.

21 Q -- right?

22 A Metal.

23 Q Metal top. And then under it is this rubber
24 membrane that the needle slides through?

25 A Correct.

1 Q Okay. And so even before going into that rubber
2 membrane, you take a little swab in alcohol and you wipe that
3 rubber membrane, right?

4 A Correct.

5 Q Okay. And that's to keep out bacteria --

6 A Bugs.

7 Q -- germs, right?

8 A Correct.

9 Q Okay. So when I'm talking about re-dosing, you
10 have the syringe, you've got on your brand new needle and then
11 you would take alcohol, wipe -- wipe off the top of the
12 propofol bottle, go into it again and you would keep negative
13 pressure. Tell us in layman's terms, tell the jury what that
14 means and why you were doing it.

15 A It would be so that there would be no chance
16 that anything that would be remaining in the syringe, if there
17 was anything, could possibly get into the needle or into the
18 propofol bottle.

19 Q Okay. And so by -- by making sure of negative
20 pressure, what -- what do I physically do with the syringe?
21 Do I push it a little bit? Pull it back a little -- I mean --

22 A Pull it back. You'd be pulling the plunger
23 back.

24 Q Okay. I pull the plunger back a little bit,
25 correct?

1 A Correct, uh-huh.

2 Q Okay. Then enter it?

3 A Yes.

4 Q So that the pressure outside of the bottle is
5 greater than the pressure inside the bottle?

6 A Correct, correct.

7 Q So that there -- if it isn't -- or maybe it's
8 vice versa, I'm mixed up.

9 A I'm not sure, exactly.

10 Q In any event, you would do that each time,
11 negative pressure, so that nothing in the needle and syringe
12 any way could get into the propofol vial?

13 A Correct.

14 Q Was your -- or in the syringe. Not in the
15 needle because you put on a new needle.

16 A Correct.

17 Q Okay. And then you re-dose. Okay. Now, moving
18 on to part-time. You had retired again in 2002, 2003,
19 sometime in 2005, went back, saw your daughter, back out to
20 Las Vegas and you -- you agreed to come back part time?

21 A Actually, I think we went and spent two or three
22 months down at an RV camp in Southern California in January,
23 February and March, so that probably would have been, I don't
24 know, somewhere in '05 and then spring of '06 before I ever --
25 it would have been after April, I know, before I came back.

1 Q Okay. It would have been after April of --

2 A '06.

3 Q -- '06. Okay. And at that point your part-time
4 work would be like -- like five days a week but you would just
5 try to leave by noon?

6 A Yes, pretty much had to be out by noon.

7 Q Okay. And the -- that -- that schedule
8 continued up through 2008 when the clinics closed.

9 A Well, in the fall -- let's see. '06, we were
10 gone again in summer of '07 for a while and fall of '07 I --
11 we left already I think the last part of September and didn't
12 come back until late sometime in January of '08. So
13 sporadically in and out during those -- those months in there.

14 Q Okay. You would leave for -- because you had
15 worked a lot and you wanted some retirement, so you would take
16 intermittent weeks off to go to California or back where
17 family is?

18 A Well, we'd go back -- we have a boy that has a
19 big church and a college in California and we'd go back. In
20 '07 we helped open up the -- the new bookstore. We were there
21 for almost four months that time.

22 Q And each -- each time when you returned you
23 would go back -- when you got back to Las Vegas after your
24 trips, you'd go back to work maintaining the part-time
25 schedule.

1 A Correct.

2 Q Okay. And -- and that remained -- you were
3 still working in 2008 until the clinics closed.

4 A Correct.

5 Q Okay. But before -- when you were working full
6 time in 2002 -- pardon me, 2003, '04, into '05, clinics using
7 all 20 -- 20s for propofol?

8 A Yes. That's all -- that's all we had at that
9 time.

10 Q Okay. And then were -- were you at the clinic
11 when 50s, I -- I call them, the bigger bottle, became
12 available to the clinic?

13 A I think it was '05 when I came back they were
14 there. I had no -- no voice in, you know, when -- when they
15 came, how they came or whatever.

16 Q Okay. At one point you left, they were all 20s,
17 came back there were 20s and 50s?

18 A Correct.

19 Q Okay. And 20s or 50s could be used based upon
20 what was available or based upon the choice of the CRNA,
21 correct?

22 A It was usually what was available or whatever
23 the nurse had given us that day.

24 Q Okay. And the nurse would give you whether it
25 was 20s or 50s, you'd get a flat -- a tray of propofol if

1 that's the amount she was giving you, correct?

2 A That's correct.

3 Q Okay. And at -- at the end of the day, say she
4 gave you a tray with twenty-five 20s and at the end of the day
5 there were -- you were -- you were all done, I'm at your
6 full-time period of work --

7 A Correct.

8 Q -- okay. So that you're there like at the end
9 of the day. If there's still seven full ones, vials of
10 propofol and maybe one-half because it hadn't been completely
11 used. Okay?

12 A Correct.

13 Q And all -- all the rest are used up and are
14 tossed, correct?

15 A Correct.

16 Q And then the full ones are given back to the
17 nurse for a return, correct?

18 A Correct.

19 Q The partial is tossed?

20 A Correct.

21 Q Okay. And you're -- you were aware that
22 propofol has a, when opened, when opened shelf life, correct?

23 A Short, yes.

24 Q Okay. In other words, when I say when opened,
25 does the bottles of propofol that are sealed with a metal cap

1 on it, those maybe will go bad at some point in storage. Did
2 they have a use date on them? Do you know?

3 A Yes, they do have a date.

4 Q Okay. So they have a shelf life when they are
5 sealed by which they must be used, right?

6 A Correct.

7 Q Okay. Now aside from that shelf life when
8 they're sealed, when you get one and you're going to use it,
9 vial of propofol, and you take the metal top off, right then
10 and there removing the metal top, we -- we now have a when
11 opened shelf like kick in, correct?

12 A I don't know if it's then or after you actually
13 puncture the --

14 Q Oh, okay.

15 A -- the stopper, the rubber stopper because that
16 -- it has a negative pressure in there and I think it would
17 probably be at that point.

18 Q Okay. So it's -- you open it and then the first
19 time you enter it --

20 A Correct.

21 Q -- it -- the negative pressure is then gone and
22 it now has been opened and punctured one time?

23 A Correct.

24 Q Okay. And at that -- at that point, there is a
25 time within which it must be used, correct?

1 A Six hours, yes.

2 Q Okay. And -- and that six hours to use the
3 vial, your understanding is comes from the fact that it
4 doesn't have a preservative in it that makes it last any
5 longer.

6 A That's correct, it doesn't.

7 Q Okay. And other -- other -- some other
8 multi-use things like Lidocaine, that's a multi-use bottle,
9 right?

10 A Correct.

11 Q It's your understanding that has some
12 preservative in it and I might not be using the correct
13 language, but it has something in it that protects it from
14 bacterial infection. That means you can use it for days.

15 A Correct.

16 Q But with propofol you've got six hours to use it
17 and if you don't, when six hours comes along, you should toss
18 it because bacteria could grow by then and it could become
19 contaminated.

20 A It's possible, yes.

21 Q Okay. Now when you're back 2005 or whenever it
22 is, 50s are then available. I'm talking about propofol vials.

23 A Okay.

24 Q You used both, 20s and 50s, whatever was
25 available and they gave you.

1 A That's it.

2 Q Okay. And did you -- you -- you also worked at
3 the Burnham Clinic?

4 A Yes.

5 Q Okay. And the same 20s and 50s available there?

6 A To my recollection, yes.

7 Q Okay. And in fact would -- would there be an
8 interchanging of supplies between Shadow Lane Clinic and
9 Burnham Clinic?

10 A Yes. I would get frequent calls from Jeff, the
11 supervisor, to stop by because I live in Summerlin and when
12 I'm on the way to Burnham to stop by and pick up propofol or
13 syringes or needles or something that are needed at the
14 Burnham Clinic.

15 Q Okay. So that -- that would be Jeff Krueger?

16 A Jeff Krueger, yes.

17 Q Okay. And so he -- you would be going like to
18 Burnham on a given day and he'd call you, you're in Summerlin,
19 stop by Shadow Lane, Burnham needs propofol, needles and
20 syringes or -- or something --

21 A Right, correct.

22 Q -- and so you would get them and take them over
23 there?

24 A Correct.

25 Q Okay. You were working up through 2008 and you

1 were there at the clinic when CDC, Center for Disease Control,
2 and the Southern Nevada Health District and various people
3 came into the clinic and did observations, correct?

4 A Yes.

5 Q Okay. And do you recall if that was in early
6 January, 2008?

7 A I just remember '08, January, but I couldn't say
8 it was early, late or when.

9 Q Okay. What -- whatever day it was, CDC and it's
10 all of record --

11 A Okay.

12 Q -- but you are actually there on that date,
13 right?

14 A Yes.

15 Q And -- and you were actually observed by a -- do
16 you remember the name of the doctor from CDC?

17 A Other than she was a pediatrician, no, I don't
18 remember her name.

19 Q Okay. Schaefer ring a bell?

20 A Oh, that could be.

21 Q Okay, Dr. Schaefer. And so by -- by observing
22 your procedure -- I -- meaning she came into the procedure
23 room, correct?

24 A She was in and out, uh-huh.

25 Q Okay. And she watched a -- do you remember, was

1 Dr. Carrol doing a procedure? Do you happen to recall?

2 A I don't recall it, but Dr. Carrol was probably
3 there that day, yes.

4 Q Okay. But she -- Dr. -- the CDC doctor watched
5 you go through a -- either an upper or lower endoscopic
6 procedure, correct?

7 A Okay.

8 Q Okay. And by watching, I mean, you weren't
9 doing the procedure, a doctor was, you were just doing your
10 CRNA duties.

11 A Correct.

12 Q Okay. And you -- do you recall -- you -- you
13 utilized your standard procedure, correct?

14 A Correct.

15 Q Okay. Do you recall that you re-dosed a patient
16 that she watching?

17 A Do I recall it? No. But if that's the way it
18 was, yes.

19 Q Okay. Well, you recall a conversation with her
20 after she observed your procedure, correct?

21 A Somewhat.

22 Q Okay. The -- well, it -- utilizing your same
23 procedure, your standard procedure, you would have dosed the
24 pager -- patient, right?

25 A Correct.

1 Q And assuming the patient needed a re-dose, more
2 propofol, you take the same needle and syringe, change the
3 needle, get out a brand new needle, put it on, reenter
4 propofol vial and dose the patient again?

5 A Correct.

6 Q And toss -- assuming you were done and there was
7 no second or third re-dose, you would toss the needle and
8 syringe.

9 A Correct.

10 Q Okay. Have you ever used a needle and syringe
11 between patients at anytime in your life?

12 A Never.

13 Q Okay. And that -- that's in your 32 years in
14 Southern California and your five years at Desai Clinics here,
15 you never reused syringe, needle between any patients?

16 A Never.

17 Q Now the CDC doctor observes your procedure and
18 you do recall having a conversation with her?

19 A Yes.

20 Q Okay. And did -- do you recall generally that
21 she pointed out and asked you about your re-dosing the patient
22 using the same syringe?

23 A Do I recall it? I mean, I know we had a
24 conversation and I'm sure she might have said something. I
25 don't recall the exact, you know, verbiage.

1 Q Okay. I'm going to show you something and have
2 you look at it and see if it refreshes your recollection.

3 A Okay.

4 Q Okay.

5 MR. WRIGHT: May I approach the witness?

6 THE COURT: You may.

7 BY MR. WRIGHT:

8 Q Show you an interview, not yours, Gayle
9 Fishcher. Okay?

10 A Oh, Fishcher, okay.

11 Q Yeah. So I want you just to read it and then
12 see if that refreshes your recollection. It's over five years
13 ago, correct?

14 A Yes.

15 Q And the markings are mine.

16 A Okay.

17 Q So I mean just --

18 MR. STAUDAHER: Counsel, could I have the page,
19 please?

20 MR. WRIGHT: Pardon?

21 MR. STAUDAHER: Could I have the page, please?

22 MR. WRIGHT: Sixteen and 20.

23 BY MR. WRIGHT:

24 Q Read -- just to get a sense of it. You can
25 start there and read all of 16 as much as you want to.

1 A Okay. Who's this RW?

2 Q That's the -- Mr. Whitely. I should -- I should

3 of --

4 A Because I didn't --

5 Q That's the -- the questioner is RW, that's

6 Detective Whitely.

7 A I didn't think it was me.

8 Q It's questions and answers.

9 A Okay.

10 Q Okay. And of course GF is Gayle Fishcher.

11 A Correct.

12 Q Okay. And then also look at page 20.

13 A Okay.

14 Q Does that help refresh your recollection

15 about --

16 A Yeah, uh-huh.

17 Q -- the conversation? Did you answer?

18 A Yes. I'm sorry.

19 Q Oh, okay, I'm sorry, I didn't hear you. The --

20 having reviewed that, what -- what additionally do you recall

21 about that conversation?

22 A I think it was brief, I don't think there was,

23 you know, much instruction at it. It's sort of questioning

24 how it was done and why it was done and who ordered us to do

25 it and that type of thing.

1 Q Okay. Did you tell her, Dr. Fishcher, that that
2 was what you would normally do, meaning the changing of the
3 needle and reusing the syringe?

4 A Yes.

5 Q Okay. Did you tell her that you wouldn't, you
6 know, you would never reuse a needle at any time?

7 A Correct.

8 Q Okay. But that a syringe, you know, he used --
9 I reuse syringes and I clearly understand and I didn't
10 understand this was a problem.

11 A That's what I said. I don't recall it, but if
12 that's what I said, yes.

13 Q Okay. And that -- you were being truthful with
14 her, correct?

15 A Correct.

16 Q Okay. You -- you believed you were using safe
17 injection practices.

18 A Safe and aseptic, yes.

19 Q Yeah. And she -- she's telling you just
20 changing the needle isn't enough, right?

21 A Correct.

22 Q And you said I understood that that is safe, the
23 way I do it, and have always done it, right?

24 A Correct.

25 Q And you stated you knew it was not proper to

1 reuse needles, but you thought it was okay to reuse the
2 syringe with a new needle, correct?

3 A In a proper way, yes.

4 Q Okay. And that's what you believed then and
5 that's what you told her, correct?

6 A Correct.

7 Q She disagreed and said no reuse of syringes at
8 all. Is that a fair characterization?

9 A Yes.

10 Q So going forward from that time, whenever it was
11 in January, 2008, you were instructed to change your practice
12 of when re-dosing, change your practice, don't get out a new
13 needle and think that that's safe and put it on a syringe and
14 re-dose. Instead, going forward, everything -- toss every
15 needle and syringe, get out a new needle and syringe going
16 forward, correct?

17 A Correct.

18 Q And then you -- you told Dr. Fishcher that --
19 that -- that is what you had been told to do, correct?

20 A Correct.

21 Q Okay. And -- okay. Now, the -- moving from
22 January, 2008 you were aware there was a hepatitis outbreak, a
23 cluster, whatever you want to call it, hepatitis C
24 transmission had been tied to the clinic where you worked on a
25 couple of given dates.

1 A That's what we were told, yes.

2 Q Okay. And new -- new -- after CDC, do you know
3 who BLC is?

4 A No.

5 Q Okay. Bureau License from the State.

6 A Okay.

7 Q Okay. After CDC, BLC, Southern Nevada Health
8 District had all been there, new -- new protocols were
9 implemented and a new plan going forward. Did you understand
10 that?

11 A Yes.

12 Q Okay. And the new protocols were the single --
13 single use needle and syringe, right?

14 A Correct.

15 Q And single use propofol vials?

16 A Correct.

17 Q Meaning don't reuse any propofol on any other
18 patient, correct?

19 A If it's been used on a patient, don't use it on
20 another one, correct.

21 Q Okay. So needle and syringe gone, propofol,
22 even if there's some left, toss it.

23 A Exactly.

24 Q And that was part of the plan of correction
25 going forward, correct?

1 A Correct.

2 Q Okay. And then by the end of February or into
3 March, the clinics closed, correct?

4 A Correct.

5 Q And then you were aware the search warrants were
6 executed?

7 A Through the media is the only way I knew.

8 Q Okay. And the -- well, ultimately, you were
9 aware because you were charged criminally, correct?

10 A That was years afterwards.

11 Q Okay. But you were ultimately aware that police
12 went in and seized all of the computers and all the medical
13 records and everything there.

14 A Correct.

15 Q Okay. And so March -- and that -- that occurred
16 in March, 2008, because we've got the dates.

17 A Okay.

18 Q You're then retired by closure of the clinics.

19 A Correct.

20 Q Okay. And did you go out and get another job or
21 just retire?

22 A Quit, retired. I mean, we surrendered our
23 license or gave them up or took them or whatever they did.

24 Q Okay. Complaints were filed by the Southern
25 Nevada Health District against you and the other CRNAs. By

1 complaints I'm talking about with the nursing board, correct?

2 A I -- could be, I don't know. I'm not aware of
3 it but --

4 Q Okay. Well, you -- you know your license was
5 taken.

6 A Correct.

7 Q Okay. You understood that that was a result of
8 the investigation there at the clinic.

9 A Yes.

10 Q Okay. And do you know who -- who had licensed
11 you, the Board of Nursing?

12 A Yes, State of Nevada.

13 Q Okay. And did you -- or maybe, did you
14 surrender your license?

15 A That's what we were instructed to do, yes, by
16 the attorney that was representing us.

17 Q Okay. Do you remember that attorney's name?

18 A It was one hired by the clinic.

19 Q Was it Karen Ross?

20 A No.

21 Q Or Ms. [indiscernible].

22 A No. She's -- she's a -- also an RN attorney,
23 Gayle -- no, not Gayle, I'm sorry.

24 THE COURT: Did all of the CRNAs have the same
25 attorney at that point?

1 THE WITNESS: Those that were working at the clinic,
2 yes.

3 THE COURT: Okay.

4 BY MR. WRIGHT:

5 Q But they hired an attorney -- or made an
6 attorney available to assist you with the licensing dispute
7 that you all individually had with the nursing board; is that
8 correct?

9 A Correct.

10 Q Okay. And you've remained retired since then.

11 A Yes.

12 Q Okay. And then you're -- you became aware that
13 there was an ongoing criminal investigation.

14 A Wasn't aware but I, you know, heard it in the
15 news, media and that type of thing, things were going on.

16 Q Okay. Did you expect to -- an indictment to be
17 returned against you?

18 A Never.

19 Q Never, okay. You -- you did not believe you had
20 done anything wrong, correct?

21 A Correct.

22 Q And you had a -- at what point did you become
23 aware that you were -- you were a target of the investigation?

24 A Sometime in June of '10 I think it was.

25 Q Okay. You were indicted in June, 2010, correct?

1 A Correct.

2 Q Do you remember getting a notice sent to you, a
3 letter that's called Notice of Intent to Seek Indictment where
4 the prosecutor tells you ahead of time I'm going to indict
5 you?

6 A No, I did not.

7 Q Okay. But the first you heard about it is when
8 you got indicted. Is that fair?

9 A I would say that's fair, yes.

10 Q Okay. And at that point were you represented by
11 criminal counsel?

12 A No.

13 Q Okay. So up -- up until then, you know from the
14 newspapers that there's an investigation going on?

15 A Correct.

16 Q You don't have any concerns because you have not
17 engaged in any wrongdoing.

18 A Correct.

19 Q And you don't go hire a criminal lawyer.

20 A No.

21 Q Beforehand.

22 A No.

23 Q Okay. And so the first you know you are
24 indicted by the Clark County Grand Jury, correct?

25 A Correct.

1 Q Okay. And then you hire a lawyer.

2 A Well, back it up --

3 Q Okay.

4 A -- I think before that we -- I had Booke
5 [phonetic]. I don't remember his name, you know, the fellow
6 that passed away.

7 Q Bucky Buchanan.

8 A Buchanan.

9 Q Okay.

10 A Yes. He was representing me and then, of
11 course, he passed away and then I think his son sort of took
12 it over or something.

13 Q Okay. So you -- you had been consulting with
14 Bucky Buchanan who is -- who is a criminal defense attorney.

15 A Had hired him, I don't think I saw him over one
16 time, you know, just --

17 Q Okay. You -- you hired him. He did pass away
18 and so you -- you didn't replace him and you didn't anticipate
19 any problems being brought upon you, correct?

20 A Correct.

21 Q And when you are indicted, you get arrested.

22 A Correct.

23 Q Okay. Go to Clark County Jail.

24 A Yes.

25 Q Okay. In order -- let's see, you were -- you

1 were then 73 years old?

2 A Seventy -- probably 75 or 6.

3 Q Okay. Have any criminal record?

4 A Never.

5 Q Okay. And so you're in jail and how much is the
6 bail?

7 A They wanted --

8 MR. STAUDAHER: Objection, Your Honor. Relevance on
9 his bail.

10 THE COURT: He can answer.

11 A Half a million dollars.

12 BY MR. WRIGHT:

13 Q Okay. Did you have that in your wallet at home?

14 THE COURT: I'll -- I'll see counsel.

15 BY MR. WRIGHT:

16 Q Did you have that readily --

17 THE COURT: Mr. Wright, I said I'll see counsel.

18 MR. WRIGHT: I'm sorry. I didn't hear you.

19 THE COURT: That's okay.

20 (Off-record bench conference.)

21 THE COURT: Ladies and gentlemen, we're going to take
22 a quick recess until about 10:30. And once again, you're
23 reminded that during the recess you are not to discuss the
24 case or anything relating to the case with each other or with
25 anyone else. You're not to read, watch, or listen to any

1 reports of or commentaries on the case, any person or subject
2 matter relating to the case by any medium of information.
3 Please don't do any independent research on any subject
4 connected with the trial. And please don't form or express an
5 opinion on the case.

6 If you would all please place your notepads in your
7 chairs and follow the bailiff through the rear door.

8 (Jury recessed at 10:15 a.m.)

9 THE COURT: Mr. Mathahs, I'm going to ask you to have
10 a seat in the vestibule for right now while we argue about
11 something in here.

12 THE WITNESS: Oh, okay.

13 THE COURT: But I had asked your attorney to stay in
14 the room, please. And then, ma'am, you'll have an opportunity
15 to confer with Mr. Mathahs privately in the vestibule but you
16 can be present. I just -- to the extent we may be talking
17 about future testimony, I obviously don't want him here to
18 hear that. All right.

19 Counsel had objected to the line of questioning,
20 which -- although I did allow the one question on bail,
21 getting into posting the bail and all those things as getting,
22 in my view, I thought maybe irrelevant. Mr. Wright stated
23 no, it goes to his motivation to testify and to plead guilty.
24 So Mr. Wright, what have you to say about that on the record?

25 MR. WRIGHT: Well, I -- I believe that he changed --

1 entered into a plea agreement and pled guilty to the five
2 charges, even though he believes he was factually -- did not
3 commit the offenses. However, the threat of the murder
4 indictment and the additional charges and the expenses
5 involved; the defense attorney, the bail, everything that had
6 come down on him was part of the motivation for cooperating
7 and therefore pleading to something -- a crime he didn't
8 commit.

9 THE COURT: I mean, I think it's a subject of fair
10 cross-examination as to his motives and whatnot. You know,
11 certainly the witness is free to say, no, I pled guilty
12 because I realized I was guilty or, you know, whatever. The
13 testimony is going to be what it is.

14 MS. WECKERLY: How is that not part of a privileged
15 conversation between himself and his lawyer, the reasons why
16 he pled or --

17 THE COURT: Well, his own motivation, I mean you
18 think what you think in your head. Obviously, he can't go
19 into a privileged communication. But if I murdered someone
20 and then I tell my lawyer, hey, I murdered someone, that
21 doesn't mean they can't ask me you murdered someone because
22 you happened to also tell your lawyer. Obviously, Mr. Wright
23 can't get into privileged communications or what he talked
24 about and -- and his lawyer needs to go talk to Mr. Mathahs
25 and advise him as to what he can answer or what may call for

1 privileged communication because I'm certainly not going to
2 step on that in any way.

3 And I know Mr. Wright, if the situation were
4 reversed, wouldn't want the Court to step on any
5 communications and advice he received from counsel. So
6 obviously, we can't get into advice from counsel or anything
7 like that.

8 MS. WECKERLY: The other -- the other thing I'd say
9 is his opinion as to whether the legal -- whether or not he
10 was legally guilty or not isn't relevant. He doesn't get to
11 decide what the law is or, you know, he was guilty or not
12 guilty according to what the law is. That's not his call.

13 THE COURT: No, and he can't ask him if he's guilty
14 or not guilty. He can ask him, you know, did you believe
15 you'd done something wrong, which I think he's actually
16 already done. You know, when you pled guilty, did you believe
17 that you'd done any -- did you or did you -- I mean, I think
18 he's kind of covered it.

19 MS. WECKERLY: Well, from the State's perspective,
20 and I've advised his counsel, he's now in violation of his
21 proffer because he's testified differently on direct than he
22 did on cross.

23 THE COURT: Meaning that -- and I'm assuming what the
24 State means by that is the fact that he's now said, no, he
25 thought it was perfectly safe to reuse the syringe into the

1 bottle of propofol and that that was a standard of practice
2 that he'd been doing for 32 years or whatever.

3 MR. STAUDAHER: Which is diametrically opposed to
4 what he testified to on -- on direct examination --

5 THE COURT: Right, which was no --

6 MR. STAUDAHER: -- as well as what he stated in his
7 proffer.

8 THE COURT: -- he'd never seen anybody do that
9 before.

10 MR. STAUDAHER: Right. And he stated that in his
11 proffer as well. This was not an Alford plea. He pled and
12 was canvassed on this whole issue, not just the financial part
13 of it, but the other aspects of it too. He didn't think he
14 did anything wrong. He's got an immunity agreement with the
15 feds so he didn't get prosecuted under the fed -- or under the
16 financial crime. So clearly, there must be some issue there
17 that he's concerned about and thinks that he did something
18 wrong, which is completely different than what he just
19 testified to.

20 And I believe under 51.55 at this point that
21 certainly I can cross-examine him or treat him, lead him and
22 ask him -- treat him as an adverse witness at this point when
23 I go up and do re -- redirect. I believe he was in that
24 position earlier --

25 THE COURT: No, he was very cooperative on direct.

1 There was nothing --

2 MR. STAUDAHER: It doesn't mean that they have to be
3 cooperative. It means that they have to stand in an adverse
4 position under the statute. We don't have to have him get
5 angry or cross --

6 THE COURT: No, no, I understand that. But on direct
7 he was completely, you know, he'd agreed to testify, he had
8 agreed to testify truthfully. So at that point in time, you
9 know, just because someone's previously been charged by the
10 State does not automatically make him an adverse witness. You
11 know, obviously, if he called him and there was no agreement
12 and he'd previously been convicted and was hostile and we
13 dragged him here from the prison, that's a different
14 situation. But just because someone stood accused at a prior
15 time and entered into a plea negotiation with the State, does
16 not make them an adverse witness.

17 MR. STAUDAHER: Well, we're beyond -- we're beyond
18 that.

19 THE COURT: That's not the state of the law.

20 MR. STAUDAHER: But we're beyond that. We're at a
21 point where not just what happened today but --

22 THE COURT: You can certainly -- you know, in terms
23 of impeaching him, you can certainly lead him on that and
24 certainly with respect to the agreement and all of those
25 things and he pled guilty and he admitted the facts and blah,

1 blah, blah, you can certainly lead him on those -- on those
2 things, which are the, I'm assuming the things that are in
3 direct contradiction and where you would want to go.

4 MS. WECKERLY: Yes.

5 THE COURT: You know, there may be other areas you
6 want to get into, but to me those are obviously the most
7 obvious. Mr. Wright?

8 MR. WRIGHT: I believe it is improper for the State
9 to have told this witness or his counsel that he is breaching
10 his plea agreement for testifying truthfully.

11 THE COURT: Right. Basically that will be up to the
12 Court.

13 MR. WRIGHT: They are threatening him. They are
14 threatening this witness because his testimony changed from
15 direct. And that is prosecutorial misconduct to tell a
16 witness if they vary from their direct examination testimony,
17 we are withdrawing the plea bargain. That is absolutely
18 improper conduct. It violates the plea agreement itself where
19 he's obligated to tell the truth. And the truth of the matter
20 is, they knew from Gayle Fishcher and other witnesses what he
21 had said to her. That's her report and her testimony at the
22 grand jury and to Metro Police as to what he said, that he
23 understood and believed what he was doing was proper and all
24 they did was threaten him, get him to plead guilty and then
25 spoon feed him a version to tell on direct, which is contrary

1 to the truth. And you can't now threaten the witness while
2 he's testifying, which is what they have done.

3 MS. WECKERLY: First, we didn't tell the witness.

4 THE COURT: Right. The witness --

5 MS. WECKERLY: Second, I didn't say the substance of
6 what the violation was. I said he's now in breach of his --

7 THE COURT: Well, it's pretty obvious though what the
8 substance of the violation is. I mean, it's what is different
9 -- what is substantial and different that he testified to on
10 cross-examination.

11 MS. WECKERLY: But we didn't --

12 THE COURT: And the big thing to me, and I've been
13 listening to all of this, the big thing, the whole critical
14 thing is those -- is the reuse of the syringes. That is the
15 critical thing in this case. So whether the first time he
16 said -- now for the record Mr. Cristalli is now here. Whether
17 he said 32 years or 33 years, I mean, there may have been
18 minor inconsistencies. But it's obvious to anybody that the
19 big inconsistency here, the important inconsistency is the
20 fact on direct examination he said, no, we don't reuse the
21 syringes, and then on cross-examination he said, no, I thought
22 it was perfectly fine to just change the needle, reuse the
23 syringe as long as we applied negative pressure.

24 So to me, that's -- that's the crux of the case.
25 Could you reuse the syringe or not, A. And then could you

1 reuse the propofol or not, B. If you weren't reusing the
2 syringes, even though the vial was labeled single use, you
3 could have probably used -- reused the propofol safely,
4 although that was contraindicated by the warning as I
5 understand it from the manufacturer on the vial. That's the
6 second issue. But the big issue to me is the syringes.

7 So whether he heard or whatnot, I mean the man is
8 obviously a person of reasonable intelligence and he would
9 know that, number one. Number two, for the record, that is
10 why I excused him. So although Ms. Weckerly did pull his
11 attorney into -- into the hallway, I saw that, he may have
12 observed that. He wouldn't know what they were talking about.
13 It could have been scheduling, could have been a million other
14 things. So I don't find that the State indicated to the
15 witness by pulling his attorney into the vestibule area, that
16 he was in breach.

17 I also find the witness has been excused from the
18 courtroom and so he has not heard the State's position that he
19 was in breach. So in terms of trying to intimidate the
20 witness, he wouldn't be aware of what's going on in here right
21 now unless he heard the conference at the bench but I, you
22 know, I can't say that was misconduct on the part of the State
23 at that point.

24 MR. WRIGHT: Well, I don't want the threat to be
25 communicated to him through counsel.

1 MS. WECKERLY: That's fine.

2 MR. STAUDAHER: Yeah. We just want to make sure the
3 Court's on record -- or we're on record as far as our position
4 at this point.

5 MR. WRIGHT: I don't mean these two counsel --

6 THE COURT: No.

7 MR. WRIGHT: -- the witness's counsel.

8 THE COURT: His counsel.

9 MS. WECKERLY: That's fine.

10 THE COURT: Well, I'm getting a little uncomfortable
11 now standing in the middle of Mr. Mathahs and his counsel
12 who've now been made aware of the situation. So, you know,
13 here -- let me just say this. It's up to the Court whether or
14 not the -- Mr. Mathahs is in breach of the agreement to
15 testify truthfully or not.

16 Now, obviously, this is going to be, I'm assuming,
17 Mr. Cristalli, this is going to be very contested. I don't
18 assume he's going to, you know -- so we're going to have to
19 have a hearing about this at some time in the future. We're
20 going to have to -- the Court's going to have to hear more
21 specifically, how did the offer of proof go down? You know,
22 how leading was that? Did they spoon feed him, as suggested
23 by Mr. Wright or was this a narrative? You know, how -- why
24 did his story change and other things. And then the Court
25 will make a determination, was the testimony truthful or not

1 truthful.

2 I mean, the State's gone on record in front of
3 counsel that they're going to argue that it wasn't truthful.
4 And at the end of the day, as I understand the agreement,
5 it'll be up to the Court to make that determination. But I
6 don't think the time to do that is in the middle of this
7 trial. I think the time to do that is a subsequent hearing
8 once this trial is over.

9 And to give Mr. Mathahs's attorney a fair opportunity
10 to be heard at that time because then it becomes obviously of
11 interest to Mr. Mathahs's attorneys. You know, at that point,
12 he's been told to testify truthfully. He was admonished by
13 the Court prior to his testimony and I can't -- you know, I
14 can't coach him or what -- and I know you're not suggesting
15 that, but I can't pull him in here and tell -- you know, I
16 mean I think we go forward. You know, his attorneys
17 understand the State's position.

18 MS. WECKERLY: We don't -- we don't want him reminded
19 him of anything.

20 THE COURT: No.

21 MS. WECKERLY: He's under oath. He's still
22 technically on the witness stand. We just want the Court to
23 be aware that now we'd like to be able to lead him because we
24 view him as in breach of the agreement --

25 THE COURT: Right. I mean -- I think --

1 MS. WECKERLY: We're not asking for anything to be
2 relayed to him.

3 THE COURT: -- you can certainly lead him on the
4 important areas, the change in his testimony from direct to
5 cross and the agreement and, you know, the benefit and what he
6 said in his plea at the time of the plea canvass and -- and
7 whatnot. I mean, I certainly think that that's fair and is in
8 direct contradiction of what he's now testified to. So, yes?

9 MR. WRIGHT: The -- I -- I don't believe he's in
10 breach. I understand you'll say that later, but as a
11 predicate to where I'm going, I want to read his plea
12 agreement. Obligation to be truthful, overriding all else, it
13 is understood this agreement require from Keith H. Mathahs an
14 obligation to do nothing other than to tell the truth. It's
15 understood between all the parties to this agreement that
16 Keith Mathahs at all times shall tell the truth both during
17 the investigation, while testifying on the witness stand.
18 Mathahs shall tell the truth no matter who asks the questions,
19 including, but not limited to, investigators, prosecutors,
20 judges and defense attorneys. That's his sole obligation on
21 the plea agreement, to tell the truth. But I -- I don't want
22 the -- his attorneys, having heard that, Mr. Cristalli and
23 Ms --

24 MS. MORGAN: Morgan.

25 MR. STAUDAHER: Ms. Morgan.

1 MR. WRIGHT: -- Morgan going out and delivering the
2 message from the State that he's in jeopardy because of his
3 testimony. That is --

4 THE COURT: No, I agree. I think -- I think what we
5 should do is in a moment, after we've had a little break, if
6 anyone needs one, resume his testimony. And then assume, you
7 know, he's under oath, he'll be reminded that he's under oath
8 and then you can cross-examine him. And then, like I said, I
9 think certainly on those areas, leading questioning is fine by
10 the State on the areas that I've said he's in direct
11 contradiction on his cross-examination. And then at a
12 subsequent time, the Court will make the determination, and,
13 you know, based on kind of the allegations that have been made
14 by Mr. Wright, maybe, you know, we'll need to do a hearing.

15 At that point in time, Mr. Wright really doesn't have
16 an interest anymore. It's Mr. Cristalli will be carrying the
17 water on that, so to speak. And at that time Mr. Cristalli
18 can be heard, and we'll make a determination as to how we
19 proceed regarding Mr. Mathans before his sentencing and we can
20 have a full hearing at that time. I think that's the best way
21 to proceed, but I would ask his counsel, you know, this
22 technically we could have still been going with his testimony.
23 And so really, you know, the break was kind of taken because
24 they can hear us with the way people are seated in the
25 audience because we couldn't fit them all in the witness stand

1 so we took the break. So, you know, realistically there
2 wouldn't necessarily have been a break and an opportunity for
3 counsel to speak with him.

4 I don't want, you know, any -- anyone to say anything
5 to Mr. Mathahs that could alter his testimony one way or the
6 other. And certainly, Mr. Cristalli, if it comes down to it,
7 we do have to have some kind of a hearing on truthfulness when
8 you have an opportunity to have your client speak on that
9 issue as well.

10 MR. STAUDAHER: Go ahead, I'm sorry.

11 MR. CRISTALLI: Your Honor, the only thing we'll
12 advise the Court is at all times during the course of our
13 representation of Mr. Mathahs, all communications to him have
14 been to give truthful testimony in regard to this case.

15 THE COURT: Right. The only thing I would say or I
16 can do it myself, is that if anyone asks a question that calls
17 for him to give advice or talk about discussions he had with
18 his attorney, he doesn't have to talk about that. Now you may
19 -- he may actually -- you may -- you and he may prefer that he
20 say oh, that, my lawyer advised me to do that, but he
21 certainly doesn't have to waive the privilege if he wants to
22 obviously, but he certainly doesn't have to testify about
23 anything.

24 I don't know if you've gone over that already with
25 him or if you would like the Court to bring him in and advise

1 him again that if any questioning goes into his conversations
2 with counsel, either things you told him or things he told
3 you, that he certainly doesn't have to testify about that.

4 MR. CRISTALLI: Yeah, I don't think there's any
5 reason to have a waiver --

6 THE COURT: Remind him?

7 MR. CRISTALLI: -- of my privilege with my client.

8 THE COURT: Okay. Do you want me to remind him is my
9 question?

10 MR. WRIGHT: I haven't asked any.

11 THE COURT: No, well, Ms. Weckerly --

12 MR. WRIGHT: I didn't intend to.

13 THE COURT: Okay. Well, do you want me to remind him
14 or not?

15 MR. CRISTALLI: Well, it sounded like you were going
16 in that direction.

17 THE COURT: Mr. Cristalli?

18 MR. CRISTALLI: I mean, I -- I mean, I can advise him
19 myself. If it appears that there's a question that may
20 violate that privilege, then Your Honor, I would ask to -- to
21 admonish him that he doesn't have to answer that question.

22 THE COURT: All right.

23 MR. STAUDAHER: And, Your Honor, the concern I have
24 related to that is that even at the bench, Mr. Wright
25 indicated that he was going to basically ask why did you enter

1 into this agreement if in fact you think you're innocent,
2 essentially. And that may spill into what Mr. Cristalli had
3 conversations with what he was facing, the evidence and so
4 forth, I don't know. But I'm just saying that it gives me
5 great concern that that might be entering into the purview of
6 an attorney-client communication.

7 THE COURT: Well, that's something Mr. Cristalli and
8 Mr. Mathahs need to be concerned about. And Mr. Wright is now
9 mindful of that issue. And so Mr. Wright, you know, phrase
10 your questions. Mr. Cristalli, do you want me to advise your
11 client that if it calls for communication, he doesn't have to
12 answer. My -- or do you want to just whisper to him and
13 advise him of that again?

14 MR. CRISTALLI: Well, yeah, of course I'll advise him
15 of that. And once again, I'll reiterate, Your Honor, if it
16 appears to be a question that will be in reference to a
17 communication which his attorney, which is privileged, we ask
18 that that question not be answered. But I will have that
19 communication with him and certainly I would anticipate the
20 Court interjecting if it appears that that --

21 THE COURT: Yeah, if it appears. I may not know. I
22 may not be aware if that calls for communication or not. I
23 mean, Mr. Wright is not going to say what did your lawyer tell
24 you or what did you tell --

25 MR. WRIGHT: No, but --

1 THE COURT: -- he's not going to tell -- ask it in
2 that way. It will be more subtle, clearly.

3 MR. WRIGHT: I am mindful of the issue, however, I
4 don't want you to think I'm going astray, I'll tell you where
5 I'm going. I mean, the last thing I'm going to do is ask what
6 did your lawyer tell you or why.

7 THE COURT: And that's what I just said. Obviously,
8 it's not going to be clear like that, it would be something
9 subtle that might call for privileged communication.

10 MR. WRIGHT: Right. But I do intend to go into his
11 own writ of habeas corpus, filed by him, in which he stated
12 that for propofol use -- and he stated with the affidavit of
13 his counsel on it that everything in there is true and
14 correct, that reuse of propofol was standard practice and done
15 constantly. That is his admission and his pleadings that I
16 intend to go into. So when I do talk about it I -- I mean,
17 I'm not trying to get into Mr. Cristalli's conversations with
18 him, but I didn't want to mislead you if he like doesn't know
19 about the pleading or anything else, I have it and I'm going
20 to utilize it.

21 THE COURT: Well, if he knows if he read it and he
22 verifies that that's true because if he didn't swear out an
23 affidavit, if it's a statement of facts in the pleading, then
24 Mr. Cristalli may have written that and how do we know where
25 it came from?

1 MR. WRIGHT: Well, I'll -- I'll ask him how -- how --
2 Mr. Cristalli's work is true and correct. I'll ask him where
3 -- ask him where he got that information. If he was resists
4 me on it, I don't know if he'll resist on it, I didn't get
5 that far yet.

6 THE COURT: Because just because a lawyer writes
7 something in a statement of facts or something like that --

8 MR. WRIGHT: Well, it's not --

9 THE COURT: -- doesn't mean -- as you know, doesn't
10 mean the client has read anything and understood it and --

11 MR. WRIGHT: It's not a statement of facts, it's a
12 writ and I file it and say everything I -- everything in there
13 is true and correct. That is an adoptive admission by this
14 client through his lawyer. This -- it is.

15 MR. STAUDAHER: That's absolutely -- I mean, it's --
16 again, it goes to the heart of an attorney client
17 communication.

18 MR. WRIGHT: Doesn't go to the heart. It's -- it's
19 the same thing if I make representations at a bail hearing.
20 It's an adoptive admission of my client and the State uses it
21 against me. It's not hearsay. It's not an adoptive
22 admission. I have had my representations used against my
23 client because I am the agent -- the agent and it's an
24 adoptive admission -- admissible. And that -- if he resists,
25 I will then do it that way. I don't think he's going to -- I

1 think he's going to admit that that was his belief.

2 THE COURT: Well, then ask him. But here's the
3 thing. First of all, I've never seen the situation that
4 you've talked about where a criminal defense attorney has
5 stood up at a bail hearing and made representations and then
6 later at the trial of that particular defendant those
7 attorneys' representations are used somehow against the client
8 in the trial.

9 MR. WRIGHT: Yes.

10 THE COURT: I've never seen that.

11 MR. WRIGHT: You have too many cases.

12 THE COURT: Well, I mean, I'm assuming the only way
13 you could do that is if the client testifies.

14 MR. WRIGHT: No, it's an admission.

15 THE COURT: I've never --

16 MR. WRIGHT: Of the party opponent by his --

17 THE COURT: I know --

18 MR. WRIGHT: -- authorized agent.

19 THE COURT: All right. Well, I've never seen that
20 done. I'm sure if you say you've seen it, you have, but I've
21 personally in the numerous trials as a Judge, as a lawyer,
22 whatever, I've never -- when you say that, I -- I can't think
23 of a single instance where I have seen that done, number one.

24 Number two, even if it had been done, what you're
25 talking about are oral representations made in open court

1 where the defendant is either seated next to you in --
2 probably in the cases of your client -- their clients again,
3 they're typically out of custody. Because they have the
4 financial wherewithal to make bond. So typically, they're
5 sitting next to you or in the rare cases they're sitting over
6 there in custody. So they're hearing the representations.
7 But now we're talking about written representations that are
8 made by a lawyer and then filed and so --

9 MR. WRIGHT: And sworn to.

10 MS. WECKERLY: By the lawyer, not by Mr. Mathahs.

11 MR. WRIGHT: No, no.

12 THE COURT: By the lawyer.

13 MR. WRIGHT: No, correct.

14 THE COURT: I mean --

15 MR. WRIGHT: You mean an agent. The lawyer is
16 speaking for the client.

17 THE COURT: Mr. Wright. Mr. --

18 MR. WRIGHT: I speak for my client --

19 THE COURT: Mr. --

20 MR. WRIGHT: -- every word I say is attributable to
21 him.

22 THE COURT: Mr. Wright, I am not going to make law
23 and I -- or I'm not going to say that every word out of a
24 lawyer's mouth is somehow adopted by his client. Now -- or
25 every written pleading. You know, in a similar arena that's

1 different. But in a criminal case, I am not going to say that
2 whatever the lawyer says now somehow has been adopted by a
3 criminal defendant.

4 Again, a civil arena is different. Yes, absolutely
5 it is part of -- you know, it's used. But in a criminal case
6 where you have greater protections and everything like that,
7 some lawyer stands up and says something and you've got some
8 yutz sitting over there with, you know, a sixth grade
9 education, they're supposed to, oh, okay, well this is an
10 adoptive admission and I haven't said anything and my agent,
11 this lawyer over here, is saying this thing.

12 Now, with your clients they tend to be a different
13 type of client. But let's take that to the logical extension
14 what I've just said. You've got some PD standing up arguing,
15 some guy sitting over there with a sixth grade education half
16 asleep and he's supposed to now be bounding and tied to every
17 word out of his lawyer's mouth. That's what you're
18 suggesting. And somehow be used against him --

19 MR. WRIGHT: Correct. And I'll tell you in this
20 courthouse when it was used. I filed [indiscernible] was the
21 district attorney and filed a notice and a laid out specific
22 alibi. Okay? In pretrial pleadings. And then withdrawal
23 notice of alibi and withdrawal everything. They wanted to use
24 the false alibi, okay, in their case in chief.

25 THE COURT: Well --

1 MR. WRIGHT: And it was admissible because it -- why
2 is it not? It wasn't hearsay --

3 THE COURT: Okay.

4 MR. WRIGHT: -- and it was an admission and it was
5 pleading.

6 THE COURT: Well, we're going -- if anyone needs to
7 use the restroom --

8 MR. SANTACROCE: I need to just make a brief
9 record --

10 THE COURT: All right.

11 MR. SANTACROCE: -- on this, Your Honor. I'm going
12 to join in Mr. Wright's objection, prosecutorial misconduct.
13 The fact that the State in the middle of two days of
14 cross-examination gets up in the middle of that examination,
15 takes the witness's lawyer into the hallway and tells that
16 lawyer that your client has now violated the plea agreement is
17 coercive and it is misconduct. And the only effect that they
18 could possibly be looking for was some coerciveness to get
19 this witness back in line because the witness was telling the
20 truth and was going contrary to the prosecution's theory.

21 And for that reason -- and the fact is they -- State
22 made an objection. We went to the bench, and we were -- the
23 discussion was very loud, the witness is only four feet away
24 from the bench discussion. He heard the prosecutor say that
25 he was in violation of the plea agreement and the conduct is

1 misconduct, inappropriate and --

2 THE COURT: As I said, you know, I don't know what
3 Mr. Mathahs was thinking. But when Ms. Weckerly took his
4 lawyer into the vestibule area, it could have been for a
5 number of things and so I don't know that he's going to think,
6 oh, wow, she's saying I'm in violation of the agreement and
7 blah, blah, blah.

8 Number two, you know, you can't have it both ways.
9 If I say Ms. Weckerly's suit is black and then on cross I say
10 Ms. Weckerly's suit is white, I'm either telling the truth one
11 time or the other time. So you can't say two inconsistent
12 things and be testifying truthfully. I mean, by definition
13 there's -- there's an issue there.

14 MR. SANTACROCE: But they could rehabilitate him.

15 THE COURT: Well, we'll look -- you know, down the
16 road this is maybe Mr. Mathahs's issue. Down the road there's
17 going to be a transcript of all of this and there will be a
18 very careful line by line comparison with what was said on
19 direct and what was said on cross. But as I said, you can't
20 say it's A and then say it's B and be telling the truth both
21 times. It doesn't -- I mean, it doesn't work that way.

22 MR. SANTACROCE: That's not the point. The point is
23 the coerciveness of the State, to bring that out in the middle
24 of cross-examination when they can bring that out at the
25 appropriate time before the Court.

1 MR. STAUDAHER: That wasn't why we were before the
2 bench.

3 MS. WECKERLY: Just to correct the record, I had no
4 idea the Court was going to take a break. I -- we want to
5 tell the Court we're going to treat him as an adverse witness.
6 I told counsel I don't want anything communicated to him. I
7 consider him in violation of the agreement. If nothing's
8 communicated and he gets back up on the stand, it's like we
9 never took a break and it's harmless. But his counsel is now
10 on notice that we consider him in breach, which they need to
11 be because they're representing him.

12 THE COURT: I find that there's been no misconduct
13 for the reasons Ms. Weckerly stated, the reasons the Court has
14 stated. If anyone needs to use the facilities let's do it and
15 get started again.

16 (Court recessed at 10:44 a.m. until 10:48 a.m.)

17 (Outside the presence of the jury.)

18 THE COURT: Just bring your client back and we'll put
19 him back up on the witness stand.

20 Mr. Mathahs, come on back up here to the witness
21 stand, please, and have a seat. It's Day 12, Mr. Wright. My
22 monitor shows your notes, but I'll turn it off. Whether the
23 other monitors do or not. I'm going to turn it off. I turned
24 mine -- I turned my monitor off because that's easier than
25 making you move your notes.

1 MR. WRIGHT: Thanks.

2 THE COURT: I had Janie turn the other monitors off
3 so you could keep your notes there, but my monitor always has
4 it.

5 MR. WRIGHT: I was wondering.

6 (Jury reconvened at 10:50 a.m.)

7 THE COURT: All right. Court is now back in session.
8 Everyone may be seated. Mr. Wright, you may resume your
9 cross-examination.

10 MR. WRIGHT: Thank you.

11 BY MR. WRIGHT:

12 Q When we left off you were in the Clark County
13 Jail.

14 A Okay.

15 Q You -- you were released, obviously?

16 A Yes.

17 Q You post bond?

18 A Yes.

19 Q Okay. Did you have to use a bail bondsman?

20 A Yes.

21 Q Okay. Is that expensive?

22 A Very.

23 Q Okay. There -- thereafter you hired a criminal
24 defense attorney because you realized you had been indicted,
25 correct?

1 A Correct.

2 Q And do you remember -- who did you hire?

3 A Michael Cristalli.

4 Q Okay. And Mr. Cristalli represented you from
5 the time you hired him up through the acquittal, correct?

6 A Correct.

7 Q Looking to see if he was here.

8 A I don't think so.

9 Q Okay. His associate is here, correct?

10 A Correct.

11 Q Ms. Morgan?

12 A Correct.

13 Q Okay. And that -- that was June 2010 --

14 A Yes.

15 Q -- that you were charged, correct?

16 A Yes.

17 Q And at the time you were indicted with my
18 client, Dr. Desai, and with Ron Lakeman, another CRNA you
19 worked with, correct?

20 A Correct.

21 Q And on the use of propofol, use of propofol
22 vials. Okay? Using the propofol vial until it's empty.
23 Okay?

24 A Yes.

25 Q Treating it like a multi-use vial. Okay?

1 A Okay.

2 Q You were aware that that had been a standard
3 practice to do that, correct?

4 A Correct.

5 Q And you were aware that that had been done at
6 Dr. Desai's clinics where you were and elsewhere, correct?

7 A Correct.

8 Q And in fact, do you -- do you recall once --
9 once you're charged June, 2008, your lawyer then files various
10 motions. Were you aware of that?

11 A Yes.

12 Q Okay. And did you get what we called discovery?

13 A Possible. I don't recall it right at the
14 moment.

15 Q Okay. Well, the grand jury transcript?

16 A Yes.

17 Q Okay. Did you read that?

18 A Most of it.

19 Q Okay. And discovery means evidence turned over
20 by the prosecutors.

21 A Okay.

22 Q And did you look at grand jury transcript and
23 other evidence?

24 A Yes.

25 Q Okay. And do you recall what a writ of habeas

1 corpus is?

2 A No.

3 Q Okay. Do you -- do you recall your lawyer
4 filing a motion of some type challenging your indictment and
5 taking the position on your behalf --

6 MR. STAUDAHER: Objection, Your Honor. I think it
7 violates what we talked about earlier.

8 THE COURT: Well, he -- he can answer the question.
9 He can ask the question.

10 BY MR. WRIGHT:

11 Q Filing a motion with the court and taking a
12 position as the lawyer for you that multi-use of propofol
13 vials with aseptic technique is a standard ongoing practice.

14 A You're asking me if he filed that for me?

15 Q Yeah.

16 THE COURT: If you were aware that he did that.

17 A I am not aware, I'm sorry.

18 THE COURT: All right. Move on, Mr. Wright.

19 BY MR. WRIGHT:

20 Q Okay. That if he did, that is true, correct?

21 A If he did, yes.

22 Q Okay. Right. And what he -- if he filed a
23 motion on your behalf representing that multi-use of propofol
24 with aseptic technique is a standard practice that was ongoing
25 and encouraged at the time of these offenses.

1 MR. STAUDAHER: Objection to the extent of vague and
2 ambiguous with regard to --

3 THE COURT: Yeah, that's sustained. Well, standard
4 practice where encouraged, encouraged by -- I mean --

5 MR. STAUDAHER: And also, we haven't established
6 whether it's patient to patient, within the same patient --

7 THE COURT: Yeah, that -- there -- I mean --

8 MR. WRIGHT: You can establish it on cross.

9 THE COURT: Well, Mr. Wright --

10 BY MR. WRIGHT:

11 Q The multi-use -- the multi-use of single use
12 propofol within the boundaries of aseptic technique -- let me
13 see if this refreshes your recollection.

14 MR. WRIGHT: I'm approaching with his writ.

15 THE COURT: Just read it quietly to yourself.

16 THE WITNESS: Okay.

17 MR. STAUDAHER: And I will object as long as the
18 question stands where it's vague and ambiguous as to whether
19 it's patient to patient or between patients.

20 MR. WRIGHT: I can restate it.

21 THE COURT: All right. Mr. Wright, I've already told
22 him he has to restate the question. I felt that his prior
23 question was vague, ambiguous and overly complex.

24 BY MR. WRIGHT:

25 Q Is the multi-use of single-use propofol vial

1 within the boundaries of aseptic technique a regularly
2 accepted and encouraged practice at the time of the offense
3 conduct, meaning 2007?

4 MR. STAUDAHER: Objection. Same objection and the
5 fact we're now not talking about necessarily the clinic.

6 THE COURT: Okay. Well, ask -- by practice, are you
7 asking at the clinic or practice in the community as a whole
8 or -- all right.

9 MR. WRIGHT: I didn't write it.

10 THE COURT: Well, Mr. -- either did Mr. Mathahs.

11 MR. WRIGHT: His lawyer did.

12 THE COURT: Okay. Mr. Wright, rephrase the question.

13 BY MR. WRIGHT:

14 Q Okay. Using propofol, multi-use, between
15 patients, use propofol not done, use it again on another
16 patient. Okay?

17 A Okay.

18 Q When I say multi-use, that's what I'm talking
19 about.

20 A Okay.

21 Q Doing that, I'm going back to 2007, which is the
22 time of the offense conduct. Okay?

23 A Okay.

24 Q Doing that at that time, using aseptic
25 technique, that use of propofol was a standard encouraged

1 practice in the community, correct?

2 A I don't know about encouraged, but it was a
3 standard practice.

4 Q Okay. In the community?

5 A Yes.

6 Q Now we go along, you're indicted June 2010.
7 There comes a time, if you recall, four years later. Let's
8 move in to 2012. Okay?

9 A Okay.

10 Q You're still under indictment the whole time,
11 right?

12 A Correct.

13 Q You were indicted -- do you remember how many
14 crimes were alleged against you in the original indictment?

15 A Twenty-eight, 29, something like that.

16 Q Okay. And if you add it up -- and that had to
17 do with billing, correct?

18 A Correct.

19 Q Okay. And reckless endangerment and offenses
20 for causing the hepatitis C spread to these patients, right?

21 A Correct.

22 Q There were 28 different crimes and they were
23 totaling -- sentencing --

24 MR. STAUDAHER: Objection, Your Honor.

25 THE COURT: That's sustained, rephrase. Approach.

1 (Off-record bench conference.)

2 BY MR. WRIGHT:

3 Q First indictment. You were charged with 28
4 crimes, right?

5 A Okay.

6 Q At the -- and you knew those were felonies.

7 A Yes.

8 Q Okay. And you knew those added up to a lot of
9 years in prison.

10 A Yes.

11 Q Okay. And jumping to 2012, four years later,
12 case is still pending, right?

13 A Yes.

14 Q Okay. And then you get a notice of intent to
15 seek another indictment. Do you recall that?

16 A Yes.

17 Q Okay. And that notice in July -- end of July,
18 2012 was noticing you that the State was intending to do what
19 to you?

20 A Prosecute us for murder.

21 Q Okay. And the -- that increased the exposure,
22 the penalties to you, correct?

23 A Correct.

24 Q And based upon that, did you agree to go talk to
25 the prosecutor?

1 A Yes.

2 Q Okay. Now, had you previously -- I jumped over
3 something there. Had you previously gone and talked to the
4 feds, federal prosecutors?

5 A Yes.

6 Q Okay. With that -- that -- do you recall if
7 that was back in 2010 after you had been indicted by the
8 State?

9 A Yes.

10 Q Okay. And you -- when I say you went and talked
11 to the federal prosecutors, you went with your lawyer,
12 correct?

13 A Correct.

14 Q Okay. Mr. Cristalli?

15 A Correct.

16 Q And the federal prosecutors were contemplating
17 prosecuting you for billing fraud.

18 A Correct.

19 Q And you went with your lawyer and gave a -- an
20 interview under terms of a proffer agreement. Do you recall
21 that?

22 A Yes.

23 Q Okay. Do you know what a proffer agreement is?

24 A Not truly.

25 Q Okay. Well, it was something where you could go

1 in and talk to them and they would hear what you have to say
2 and then they would decide whether they're going to make you a
3 witness or a defendant. Is that true?

4 A Okay.

5 Q I mean, was that your understanding of it?

6 A I understand now, yes.

7 Q Okay. And so you -- you went in and talked to
8 the federal prosecutors with your lawyer, correct?

9 A Correct.

10 Q Okay. And then you -- you were not prosecuted
11 federally, correct?

12 A Correct.

13 Q But you still have the State case?

14 A Correct.

15 Q Now, jumping back to you getting your notice of
16 intent to seek murder indictment, you go in and get
17 interviewed with the prosecutors before they indict you for
18 murder, correct?

19 A I don't recall.

20 Q Okay. Well, do you -- do you not recall the
21 date or do you not recall the interview?

22 A I remember talking, you know, in last fall but I
23 -- I thought it had already been -- I mean the indictment had
24 already been already.

25 Q Okay. Well, the -- do you recall getting like a

1 notice of intent to seek indictment on July 31, 2012?

2 A I don't recall it, but if you -- I got it I'm
3 sure I did, yes.

4 Q Okay. And your interview --

5 MR. WRIGHT: Approach the witness?

6 THE COURT: You may.

7 BY MR. WRIGHT:

8 Q Your interview. What's that date?

9 A August 7th, 2012.

10 Q Okay. And you were indicted for murder on
11 August 10th, 2012.

12 MR. STAUDAHER: Objection, Your Honor. Indicted for
13 murder?

14 MR. WRIGHT: What'd I say wrong?

15 THE COURT: I'm sorry?

16 MR. WRIGHT: I don't understand.

17 THE COURT: I don't either.

18 MR. STAUDAHER: I'll withdrawal it, Your Honor.

19 THE COURT: Go on.

20 BY MR. WRIGHT:

21 Q Were you indicted for murder three days later?

22 A Yes.

23 Q Okay. And the purpose of the interview with Mr.
24 Cristalli, that was to enable you to attempt to cooperate with
25 the prosecutor and get a plea bargain. Is that fair?

1 A Yes.

2 Q Okay. And so that you wouldn't be charged with
3 murder, right?

4 A Correct.

5 Q And in going in for that cooperation interview,
6 did -- did you prepare a list of things that you could testify
7 about?

8 A Probably. I don't recall, but I might have.

9 Q Okay. Did -- did you bring in -- do you recall
10 bringing in notes and a list of things that you could testify
11 about for them?

12 A Yes.

13 Q Okay. And was that list of things a lot of the
14 stuff you testified on direct examination about like bite
15 blocks, cutting chunks in half, using extra K-Y Jelly and that
16 kind of stuff?

17 A Yes.

18 Q Okay. Now, were -- were you able -- after you
19 were interviewed on July 7th, were you able to reach a plea
20 agreement with the district attorney before you got indicted
21 again?

22 A Before?

23 Q Yes.

24 A No.

25 Q Okay. You then get indicted for murder,

1 correct?

2 A Correct.

3 Q Along with Dr. Desai and Ron Lakeman.

4 A Correct.

5 Q Okay. And you have to -- did you get arrested
6 again?

7 A No. I think she gave us time to get the bail --

8 Q Okay.

9 A -- taken care of in an afternoon, if I recall.

10 Q Okay.

11 THE COURT: Are you talking about the previous Judge?

12 THE WITNESS: No, you I think did.

13 THE COURT: I've never been confused with Stephanie
14 Miley before. I should be flattered.

15 THE WITNESS: I thought it was you. If it wasn't,
16 I'm sorry.

17 BY MR. WRIGHT:

18 Q The -- okay. But in any event, you went before
19 a judge. You were already out on a half million dollars bail
20 bond, right?

21 A Correct.

22 Q And now the district attorney is turning up the
23 heat with a murder indictment, correct?

24 A Correct.

25 Q Okay. And they want more money for bail, right?

1 A Correct.

2 Q How much was that?

3 A I think they got it reduced to \$50,000 for Ron
4 and I.

5 Q Okay. Did they want 250?

6 A Could have been. I don't recall, you know, the
7 numbers now, but it could have been.

8 Q Okay. But in any event, you had to get an
9 additional bail bond --

10 A Yes.

11 Q -- of 50 and you remained out?

12 A Yes.

13 Q Okay. And then you -- within a number of months
14 with this new murder indictment, you reached a plea bargain,
15 correct?

16 A Correct.

17 Q And with the murder indictment you -- you knew
18 you were facing life in prison, correct?

19 A Correct.

20 Q And that entered into your consideration on
21 going in and making your deal with the prosecutors.

22 A Correct.

23 Q And that -- that deal resulted in a written plea
24 agreement that we call -- called a plea bargain, right?

25 A Correct.

1 Q And you agreed to plead guilty to certain
2 charges and the murder would be dismissed, correct?
3 A Correct.
4 Q And did you have negotiations about your
5 penalty?
6 A I think Mr. Cristalli did. I don't know that I,
7 you know --
8 Q Okay. Did -- did the -- you were interested in
9 how long you would go to prison.
10 A Correct.
11 Q And that was negotiated, correct?
12 A Yes, correct.
13 Q Okay. And it ended up in plea bargain where
14 your sentencing exposure, that means what you could get --
15 A Correct.
16 Q -- is 28 months minimum, 72 months maximum.
17 Does that sound right?
18 A Yes.
19 Q Did -- and of course you could only get that
20 deal if you entered into another written agreement agreeing to
21 testify for the State, correct?
22 A Correct.
23 Q And that's why you're here.
24 A Correct.
25 Q Okay. And in that -- that's a -- do you recall

1 the December 10, 2012 -- December 10, last year that you
2 entered into the agreement and came into Court in front of
3 Judge Adair and pled guilty and agreed to testify?

4 A I remember it's December. I don't remember
5 exact date, but if it was the 10th, it was the 10th.

6 MR. WRIGHT: Approach the witness.

7 THE COURT: You may.

8 BY MR. WRIGHT:

9 Q This -- there's a -- a third amended indictment.
10 That's December 10th, 2012 --

11 A Yes, okay.

12 Q -- okay. They filed something new for you to
13 plead guilty to, correct?

14 A Correct.

15 Q Your guilty plea agreement is December 10, 2012?

16 A Correct.

17 Q And your agreement to testify December 10, 2012.

18 A Correct.

19 Q And you signed each of those documents, correct?

20 A Correct.

21 Q Now your agreement to testify -- this is an
22 agreement entered into between yourself and the Clark County
23 District Attorney's office.

24 A Correct.

25 Q And you agreed to cooperate voluntarily with the

1 Clark County District Attorney's Office and the Las Vegas
2 Metropolitan Police Department in the investigation and
3 prosecution of Dr. Desai and Ronald Lakeman, correct?

4 A Correct.

5 Q And you agree you will provide true information
6 and testify fully and truthfully in all court proceedings.

7 A Correct.

8 Q And -- and you agree that the over -- overriding
9 all else, it's understood that your obligation is to be
10 truthful regardless of who is asking you questions.

11 A Correct.

12 Q Now, you had -- before entering into this
13 agreement to cooperate and plea bargain on December 10th, you
14 had already been interviewed, debriefed at length on August
15 7th, correct?

16 A Correct.

17 Q And that's when you told them about all of the
18 wrongdoing you say you witnessed at the clinic.

19 A Correct.

20 Q And you told them, the police and the district
21 attorney, this was true and correct, correct?

22 A Correct.

23 Q And so the district attorney, when he enters
24 into this agreement, already knew what you were going to say,
25 correct?

1 A I assume --

2 MR. STAUDAHER: Objection. Speculation, Your Honor.

3 THE COURT: Rephrase.

4 BY MR. WRIGHT:

5 Q When you entered into this agreement, you had
6 already been interviewed for hours in a cooperation interview
7 to tell them what you could testify about, correct?

8 A Correct.

9 Q And they -- you told them that was the truth,
10 correct?

11 A Correct.

12 Q And you -- the prosecutor, at the time of the
13 plea agreement, already knew what you would tell them and
14 testify to, correct?

15 A Yes.

16 Q And part of the plea agreement, after all your
17 promises to tell the truth, final clause says, "It is further
18 understood that this entire agreement, your deal, will become
19 null and void and Keith Mathahs will lose the benefits of this
20 agreement for any deviation from the truth," correct?

21 A Okay.

22 Q I mean, do you recall that?

23 A If that's what it says.

24 Q Okay, well --

25 A Okay.

1 Q You -- you understood that if you deviate from
2 what you had told them you were in jeopardy?

3 MR. STAUDAHER: Objection, Your Honor, that's deviate
4 what told, no, that's not what it says. It says the truth.

5 THE COURT: All right stick to the language of the --
6 BY MR. WRIGHT:

7 Q Okay. You had already told them what you had,
8 correct?

9 A What I knew, yes.

10 Q Okay. And you told them that was the truth when
11 you went in to make your cooperation agreement, correct?

12 A Correct.

13 Q So they knew what you would say, right?

14 A I assume they would, yes.

15 Q Okay. And so part of the deal is it is null and
16 void if there is any deviation from the truth, right?

17 MR. STAUDAHER: Objection, Your Honor --

18 THE COURT: He said from the truth.

19 MR. STAUDAHER: Okay.

20 BY MR. WRIGHT:

21 Q Correct?

22 A Correct.

23 Q Of course, you had already told them what the
24 truth was when you went in for your cooperation interview,
25 right?

1 A Correct.

2 Q When you went -- came into this courtroom and
3 pled guilty, aside -- aside from your cooperation agreement to
4 testify, you also have your guilty plea agreement, correct?

5 A Okay.

6 Q That's the one December 10th?

7 A Correct.

8 Q And you came in to this courtroom and pled
9 guilty, correct?

10 A Yes.

11 Q And do you recall what you pled guilty to?

12 A The exact -- not exactly the different accounts
13 I don't recall, no.

14 Q Okay. Count One, criminal neglect of patient
15 resulting in death.

16 A Okay.

17 Q Would -- would that be Mr. Miana?

18 A Yes.

19 Q Okay. Criminal neglect of patients. That would
20 be the other patients.

21 A Okay.

22 Q Is that correct?

23 A Yes.

24 Q Insurance fraud.

25 A Yes.

1 Q Obtaining money under false pretenses.

2 A Okay.

3 Q And conspiracy.

4 A Okay.

5 Q Is that right? And you were facing -- you had
6 -- you actually -- first you were facing 28 charges like that,
7 right?

8 A Yes.

9 Q Then they added murder as a 29th --

10 A Okay.

11 Q -- right?

12 A Yes.

13 Q And then in order to -- after you did your
14 cooperation interview, they let you plead to five counts,
15 right?

16 A Correct.

17 Q And you were -- aside from what they promised
18 you in your plea agreement, you were facing --

19 MR. STAUDAHER: Objection, Your Honor.

20 THE COURT: Well, overruled. Go on with your
21 question.

22 BY MR. WRIGHT:

23 Q You were facing on Count One, what's that?

24 A Twenty --

25 MR. STAUDAHER: Objection, Your Honor.

1 THE COURT: I'll see counsel up here.

2 (Off-record bench conference.)

3 MS. STANISH: Oh, excuse me. Mr. Santacroce said
4 that he entered in some exhibits.

5 THE COURT: Oh, I'm sorry. So --

6 MS. STANISH: That'd be his or do you --

7 THE COURT: Right.

8 MS. STANISH: Okay. It's our first.

9 MR. WRIGHT: Besides A?

10 THE COURT: I was asking Ms. Husted because I'm not
11 aware of what -- so the jury's clear. Let's make Mr.
12 Lakeman, it will be letters with a 1 following it and Dr.
13 Desai, defendant Desai, it will be letters with a 2 following
14 it. That way it's clear for the jury when they get -- get the
15 exhibits in the back. Because otherwise they'll be two A's
16 and two B's and two C's, which is impossible or difficult for
17 them to keep track of and it's confusing in the argument. So
18 let's do it that way then. Maybe I'm the only one -- right.

19 MR. WRIGHT: A1 and B1.

20 THE COURT: Right.

21 MR. WRIGHT: So we're -- okay, I got you.

22 THE COURT: All right. Then Mr. Lakeman's going to
23 be two.

24 MR. WRIGHT: Approach the witness, Your Honor.

25 BY MR. WRIGHT:

1 Q Desai's proposed A1, just look at it. Does that
2 look like your guilty plea agreement? Recognize the
3 signature?

4 A Right, uh-huh, correct.

5 Q And it's dated December 10, 2012?

6 A Correct.

7 Q Defendant Desai's B1 agreement to testify.
8 That's your signature?

9 A Yes.

10 Q Thank you. On -- where -- where I was on your
11 guilty plea agreement --

12 A Okay.

13 Q -- you were facing five charges, correct?

14 A Correct.

15 Q And they had various amounts of years you could
16 theoretically be facing, but you had entered into an agreement
17 to a set amount at the most, correct?

18 A Correct.

19 Q And it was agreed at the sentence, any
20 sentencing would run concurrent rather than consecutive. Do
21 you recall that?

22 A Yes.

23 Q Okay. And that means even if you got like 28
24 months on Count One, 28 months on Count Two, 28 months on
25 Three, 28 months on Four, 28 months on Five, all you'd get is

1 28 months, right?

2 A Correct.

3 Q That's what concurrent means, they're running at
4 the same time.

5 A Correct.

6 Q And if it was consecutive, it just adds up on
7 top of each other.

8 A Correct.

9 Q And you understood that this was a conditional
10 plea agreement, correct?

11 A Correct.

12 Q And it was conditional in the sense you and the
13 district attorney agreed to it, right?

14 A Correct.

15 Q And agreed to this sentencing exposure that we
16 just talked about, right?

17 A Yes.

18 Q But Judge Adair ultimately will be sentencing
19 you possibly, correct?

20 A Correct.

21 Q And what if she said I want to give you more
22 than 28 under this, 28 months. Okay? What if she said I want
23 to give you 15 years? You have the right to do what?

24 A Object, I guess. I don't know.

25 Q Well, yeah, that --

1 A I don't know.

2 Q -- plus --

3 THE COURT: And we've seen how well those work in
4 here.

5 BY MR. WRIGHT:

6 Q You get the -- this is a conditional plea in the
7 sense that if the Court should not go along with it, you have
8 the right to withdraw, back up out of the plea bargain and go
9 back to square one.

10 A Okay. I understand you now, okay.

11 Q Is that -- I mean is that your understanding --

12 A Yes.

13 Q -- of what it was?

14 A Yes.

15 Q Okay. And part -- part of your plea bargain was
16 you would agree to pay in a restitution. Do you recall that?

17 A Yes.

18 Q Okay. A restitution would be like anything to
19 victims, right?

20 A Correct.

21 Q But it was also agreed that the restitution
22 shall not duplicate any amounts paid as civil awards or in
23 settlements, right?

24 A Correct.

25 Q In other words, you're -- you're aware that

1 various victims in this criminal case have been paid money
2 through civil lawsuits, right?

3 A Correct.

4 Q And so you -- you don't have to double pay them,
5 right?

6 A That's correct.

7 Q Now, having entered into this and entered those
8 pleas, it -- it was also agreed at the same time that your
9 bail would be reduced, correct?

10 A The half a million would be taken away, yes.

11 Q Okay. Is that because -- were you still paying
12 a premium on it?

13 A It had been paid when we originally were
14 indicted.

15 Q Okay. You needed that half million dollar bail
16 bond reduced, go away, to what if you'd already paid for it?

17 A I don't know. Judge took it away, that's all I
18 know.

19 Q Did you put up collateral or something?

20 A No, no.

21 Q Okay. So in any event, as part of the plea
22 bargain was your bail's dropped from 550,000 to 50,000.

23 A Correct.

24 Q And it was agreed -- this was in December, 2012,
25 but it was agreed the sentencing would be continued until

1 after you perform by cooperating, correct?

2 A Correct.

3 Q Okay. So even though normally sentencings come
4 like within three months, your deal was you have to wait so
5 that you can fulfill your cooperation agreement, correct?

6 A Correct.

7 Q And then ultimately you'll be sentenced.

8 A Correct.

9 Q I'm going to go to your testimony regarding 31
10 minutes anesthesia time. Okay?

11 A Okay.

12 Q The -- as I understand it, you were told to put
13 down more than 30 minutes on your anesthesia records --

14 A Correct.

15 Q -- correct? I think you testified in here on
16 direct, Dr. Desai and Ann Lobianbo told you that when they
17 taught you the ropes when you first started working.

18 A That's correct.

19 Q Okay. And the -- you explained I believe that
20 Dr. Desai talked to you about there being a global anesthetist
21 fee under some of the contracts. Do you recall that?

22 A Yes, I do.

23 Q And do you recall that that conversation with
24 Dr. Desai about a global fee, that that was in the context of
25 a conversation with him about cost containment?

1 A I don't recall the cost containment part of it,
2 no.

3 Q You don't recall that?

4 A No.

5 Q Do you recall telling the federal prosecutors
6 that that was the genesis, that's what that conversation was
7 about?

8 A Well, when I asked, that's what I was told, that
9 it was a global fee that he was paid for anesthesia services,
10 which was \$65.

11 Q Are you aware that like Sierra Health and HPN
12 paid \$65 a global fee for anesthesia?

13 A I'm not aware which companies, but I was aware
14 of the \$65, yes.

15 Q Okay. And did you tell the federal prosecutor
16 -- now this, I'm going back to 2010, that's when you were
17 meeting with the feds with Mr. Cristalli.

18 A Okay.

19 Q Did you tell them that you had a conversation
20 with Dr. Desai, which was in the context of cost containment
21 when Dr. Desai told you that you got a global -- that he got a
22 global fee of \$65 for the anesthesia?

23 A If that's what I said, yes.

24 Q Okay. Well, is that true?

25 A Yes. I -- I don't know what you're saying about

1 the containment. That's some verbiage that I don't know that
2 I would have said, but I mean it might have been added to it
3 or something.

4 Q Okay. See if this refreshes your recollection.
5 Read this right there.

6 THE COURT: Just read it to yourself.

7 MR. WRIGHT: Page three.

8 A You know, the containment is what's throwing me
9 off. I don't --

10 BY MR. WRIGHT:

11 Q Okay. Do you -- do you deny telling the federal
12 prosecutors that?

13 A If they got it there, no, I can't deny it, I
14 would have said it. But I don't --

15 Q Okay. Well, would that be in a -- in a
16 discussion about the -- the costs of procedures, cost
17 containment discussion?

18 A It would have been for the anesthesia part of
19 it, yes, uh-huh.

20 Q Okay. I think you also, on direct examination,
21 must respond to her various anesthesiology -- your charts for
22 anesthesia were gone through, right?

23 A Correct.

24 Q And on there there were some checks for what I
25 call vital signs, right?

1 A Correct.

2 Q Okay. And I think you said on direct in here
3 for the prosecutors that Dr. Desai told you to put those
4 checks down after, long after the procedure was over.

5 A Dr. D and Dr. -- I mean Ann Lobianbo, that's --
6 it was the instructions that the chart was supposed to look
7 like it was a full 30 or 31 minutes, yes.

8 Q Okay. Do you recall telling the federal
9 prosecutors that you made the vital signs match the anesthesia
10 time and that at no -- no time did anyone tell you to do that?

11 A No, I don't.

12 Q Okay. Let's see if this refreshes your
13 recollection. Page two. Read that to yourself.

14 A I don't recall saying that, no, I don't.

15 Q Is it -- is it -- is what you told the federal
16 prosecutors correct?

17 A To the best of my knowledge, yes.

18 Q Do you know Melvin Hawkins?

19 A Yes, I remember him.

20 Q What was he?

21 A A surgical tech.

22 Q Worked there for a number of years?

23 A Yes.

24 Q Nice guy?

25 A He was always busy working.

1 Q Nice?

2 A Always nice to me.

3 Q That's all I was asking.

4 A Oh, okay.

5 Q Want to go to your testimony here on direct
6 examination about whether or not you and Ron Lakeman, when and
7 for what reasons you all might change rooms. Okay?

8 A Okay.

9 Q And at the clinic there's two procedure rooms,
10 right?

11 A Correct.

12 Q Each one -- well, sometimes there was a third
13 CRNA, right?

14 A Correct.

15 Q Infrequent?

16 A Infrequent.

17 Q Okay. And if there was a third, then there
18 could be more what?

19 A Going between -- or going -- making a circle,
20 going around between rooms and to the recovery area and --

21 Q Okay.

22 A -- going back into the other room.

23 Q Well, on the days in question here, July 25th,
24 September 21, you're aware there were two CRNAs and not three,
25 right?

1 A The July date you're talking about I was out of
2 state, so I don't recall that.

3 Q Okay. I mean, did you -- did you see it like in
4 the indictment and in the discovery?

5 A Yes.

6 Q I mean, you were actually charged for the July
7 21 date, correct?

8 A I saw that.

9 Q Okay. I mean it made no difference to the
10 district attorney you were out of state.

11 MR. STAUDAHER: Objection, Your Honor.

12 THE COURT: That's sustained.

13 BY MR. WRIGHT:

14 Q It made no difference to the grand jury that you
15 were out of state and had nothing --

16 MR. STAUDAHER: Objection, Your Honor.

17 BY MR. WRIGHT:

18 Q -- to do with it.

19 THE COURT: That -- that's -- Mr. Wright, that's
20 sustained as to the form of that question, whether it made a
21 difference.

22 BY MR. WRIGHT:

23 Q Did it make any difference to the grand jury in
24 returning the indictment --

25 THE COURT: Mr. Wright, I sustained that --

1 MR. STAUDAHER: Objection, Your Honor.

2 THE COURT: -- question as to the form of what made a
3 difference to the grand jury. You can ask him, you were
4 indicted for this even though you weren't in the state or you
5 weren't in the state on this date or whatever. But what the
6 prosecutors thought or what the grand jury may have thought is
7 not the subject a fair question to this witness.

8 MR. WRIGHT: Okay. I'm sorry to have kept repeating
9 that. I thought it was my phraseology that was off.

10 BY MR. WRIGHT:

11 Q You were indicted for the July 21 incident.

12 A Yes.

13 Q Okay, now --

14 MR. STAUDAHER: Your Honor, I believe it's July 25th,
15 just for the record.

16 THE COURT: I'm sorry, I couldn't --

17 MR. WRIGHT: July 25th, I misspoke.

18 THE COURT: All right. July 25th.

19 BY MR. WRIGHT:

20 Q Thank you. When there's two CRNAs on duty.
21 Okay?

22 A Okay.

23 Q Two procedure rooms going, at -- at the clinic,
24 seven a.m., two physicians there, gastroenterologists start
25 performing procedures. Okay?

1 A Okay.

2 Q You -- you stay in one room except for certain
3 circumstances, correct?

4 A Correct.

5 Q And if -- if it was you and Ron Lakeman working
6 on a given day, he'd be in one room, you'd be in a different
7 room.

8 A Correct.

9 Q And the propofol always stayed in the same room,
10 correct?

11 A Yes.

12 Q And the needles and syringes stayed in a
13 separate room.

14 A Correct.

15 Q And all of the supplies for that matter that the
16 CRNA used stays in each room and is not taken to a different
17 room.

18 A Correct.

19 Q And that was the way it had been the entire time
20 you were working there when there were two rooms, right?

21 A Correct.

22 Q And there was absolutely no need for propofol,
23 needles, syringes, supplies to be sent back and forth from
24 room to room.

25 A Each room had -- had an abundant supply, yes.

1 Q Okay. And when you are treating a patient, by
2 treating I mean providing anesthesia to a patient.

3 A Okay.

4 Q A patient rolls in, you've either already talked
5 to the patient outside or you're talking to the patient for
6 the first time in the procedure room. Okay?

7 A Correct.

8 Q Most of the time you have a file there that has
9 like a history and physical on it, correct?

10 A Correct.

11 Q Because the -- the patients don't just show up
12 for their endoscopy, for their procedure and that's their
13 first time ever at the place, right?

14 A Not unless it's an emergency or something.

15 Q Okay. But your -- your normal routine
16 screening, the patient has already been to the gastro site,
17 the doctor's office, and has been interviewed, a history and
18 physical taken, a determination that you're going to have a
19 colonoscopy made and then it's scheduled for a later date,
20 right?

21 A Correct.

22 Q Okay. And then when that patient comes rolling
23 in, you've got that history and physical if -- if there -- if
24 -- we're following the normal procedure if it's there,
25 correct?

1 A If it was there, yes, uh-huh.

2 Q Okay. And it was normally there.

3 A I would say most of the time. There were times
4 that there were none.

5 Q Okay. Could have been an emergency.

6 A Could have been.

7 Q Okay. But if -- if -- if it's already there you
8 look at it and take advantage of the records.

9 A Absolutely, yes.

10 Q Okay. And if it's not there you ask the patient
11 various questions.

12 A Yes.

13 Q Okay. About bad past experiences, are you
14 allergic to eggs. I mean, there's standard questions you want
15 to know to make sure it's safe for them to undergo the
16 anesthesia.

17 A Yes, absolutely.

18 Q You would ask them those questions.

19 A Yes.

20 Q Okay. And then once -- once you're satisfied
21 from the history or physical or talking to them, and it's your
22 determination to go forward, the procedure starts. And by the
23 procedure I'm talking about the start time being -- let's see,
24 the doctor's there, he's going to perform the colonoscopy,
25 right?

1 A Yes.

2 Q Okay. The -- there's a nurse present, a
3 registered nurse, correct?

4 A Correct.

5 Q There's also a tech present, correct?

6 A Correct.

7 Q And then you're the fourth person.

8 A Correct.

9 Q That's assuming everything's there ready, the
10 tech's ready, the equipment's ready, the nurse is ready, the
11 doctor's there ready, you inject the anesthesia, right?

12 A Correct.

13 Q Okay. At any time when the patient goes to
14 sleep and patient remains asleep or close to asleep until the
15 colonoscopy, the procedure, whether it's an endoscopy or a
16 colonoscopy, until it's done, right?

17 A Correct.

18 Q Okay. And the scope was withdrawn from the
19 mouth or the other end.

20 A Right.

21 Q And then that's like the end of the medical
22 procedure.

23 A For the doctor, yes, other than doing --
24 completing the computer part of it.

25 Q Okay. That's entering in the things. There's

1 photographs taken --

2 A Right.

3 Q -- of inside and everything else.

4 A Correct.

5 Q Okay. And then you are -- you are caring for
6 the patient who's quickly coming to.

7 A Correct.

8 Q And at the time the patient's got that little
9 thing on your -- your finger for --

10 A Pulse oximeter.

11 Q Yeah and it's got blood pressure --

12 A Correct.

13 Q -- heartbeat, heart rhythm --

14 A Right.

15 Q -- all those things are hooked up to computers
16 and things.

17 A Oxygen, uh-huh.

18 Q Right. And you're watching all of that to make
19 sure everything's safe.

20 A Correct.

21 Q Okay. And so when -- when the symptoms are all
22 -- the patient is healthy and is going to be -- heart rate
23 good, O2 good, everything A-OK, out to the recovery room,
24 right?

25 A Correct.

1 Q Until -- from the time you inject the anesthesia
2 to where you have made the determination the patient is
3 comfortable enough and it's safe enough to move the patient to
4 the recovery room, have you left the patient's side?

5 A No, I wouldn't have left the side of the
6 patient.

7 Q Okay. So that -- and you wouldn't because
8 you're the anesthetist and you're the one monitoring
9 everything for the anesthesia portion of it.

10 A Correct.

11 Q And if anything goes wrong you need to be right
12 there.

13 A Absolutely.

14 Q So if you had to go to the bathroom or something
15 you wouldn't just say time out, doc, and walk out?

16 A No.

17 Q Okay. And you wouldn't say I think I got to go
18 over to the other procedure room and see how Ron's doing.

19 A No.

20 Q Okay. Never, never, never would you ever leave
21 from starting until safely complete.

22 A No, I would not leave a patient, it's
23 abandonment.

24 Q And you don't know -- I mean and it -- that's
25 the same for every CRNA to your knowledge.

1 A To my knowledge.

2 Q Now, the only times you may go to the -- a
3 different procedure room and like to go over and do a
4 procedure in Ron Lakeman's room. Okay?

5 A Okay.

6 Q Would be first, lunch breaks.

7 A Correct.

8 Q Okay. And that -- they start at like seven in
9 the morning and then there were staggered lunches for the two
10 CRNAs.

11 A Correct.

12 Q Around 11?

13 A Probably around 11:30.

14 Q Okay. And then one CRNA would go to lunch.

15 A Correct.

16 Q And then come back half hour later and then like
17 you would go to lunch for a half hour.

18 A Correct.

19 Q Okay. Now during those -- during those times,
20 we're now down to one CRNA during the lunch hour.

21 A Correct.

22 Q Okay. And so at that time you may on occasion
23 go over to -- I'll call it Ron Lakeman's room where he's the
24 CRNA for the day and do a procedure, participate in a
25 procedure in that room.

1 A Right.

2 Q Okay. But you wouldn't be doing two procedures
3 in one room.

4 A Never.

5 Q I mean two procedures in two different rooms at
6 the same time.

7 A No, never.

8 Q Okay. So when -- when there's evidence and
9 testimony about this changing of rooms, it would be you
10 completed fully a procedure in your room. Okay?

11 A Okay.

12 Q Patient's safe, you can now leave bedside and
13 then a doctor may be waiting because Ron Lakeman's at lunch
14 and then you go over and you perform a complete procedure in
15 Ron Lakeman's room.

16 A That's correct.

17 Q Okay. And once again, even if Ron -- suppose
18 Ron came back from lunch and you're halfway through the
19 procedure. You stay with the procedure.

20 A You finish the patient, yes.

21 Q Okay. You don't just slap hands and take off.

22 A No.

23 Q Okay, full procedure. And so then, when you
24 complete a procedure there in Ron Lakeman's room, you may go
25 back over and it's ready to start another one in the -- your

1 room.

2 A Correct.

3 Q Okay. And then Ron Lakeman comes back from
4 lunch and you get to go to lunch and Ron may do the same type
5 of changing.

6 A Sure.

7 Q Okay. And to your knowledge, recollection, you
8 -- you would never, when you were changing rooms like that,
9 you wouldn't carry the propofol from your room over to Ron's
10 room while he goes to lunch.

11 A No, I wouldn't.

12 Q Okay. So you wouldn't carry needles and
13 syringes.

14 A No.

15 Q And you don't carry them around in your pockets.

16 A No, I don't.

17 Q Everything is there in each room separately.

18 A Yes.

19 Q Okay. And so during the lunch hour there could
20 be changing. And additionally, you said something about
21 bathroom break.

22 A That would be the other one, yes.

23 Q Okay. Now a bathroom break, can you recall a
24 specific time when that happened?

25 A No, I can't.

1 Q Okay. The -- I guess if some emergency came up
2 you would go spell -- relieve Ron Lakeman, right?

3 A Okay.

4 Q But you -- if you did, you would have been done
5 with your procedure.

6 A Yes.

7 Q Because you aren't going to leave the patient.

8 A No, I'm not.

9 Q Because Ron has to go to the bathroom.

10 A Right.

11 Q Okay. If anything, you're done and you may go
12 relieve him just like a lunch hour type of proceeding.

13 A Exactly the same.

14 Q Meaning, you would -- if he really had to go for
15 whatever reason, you would go do a procedure in that room.

16 A Yes.

17 Q But that -- that is if it ever happened, that is
18 so infrequent that you have absolutely no recollection of
19 anything like that ever occurring.

20 A I don't recall it, but, you know, it could have.

21 Q Okay, it's possible.

22 A Possible.

23 Q But you don't remember it?

24 A No, I don't.

25 THE COURT: Counsel, approach.

1 (Off-record bench conference.)

2 MR. WRIGHT: We're almost to lunch. We are at lunch.

3 THE COURT: Oh, okay. All right, ladies and
4 gentlemen --

5 MR. WRIGHT: I'm done.

6 THE COURT: -- I guess we'll move into the lunch
7 break then. Why don't we take until 1:15 for the lunch break.
8 And before I excuse you, I must admonish you that you're not
9 to discuss the case or anything relating to the case with each
10 other or with anyone else. You're not to read, watch, listen
11 to any reports of or commentaries on this case, any person or
12 subject matter relating to the case. You're not to do any
13 independent research by way of the Internet or any other
14 medium. And please don't form or express an opinion on the
15 case. You may place your notepads in your chairs. I saw
16 maybe some of you have questions, if you want to hand them to
17 the bailiff as you exit, that's fine.

18 (Jury recessed at 12:11 p.m.)

19 THE COURT: All right, Mr. Mathahs, you're excused
20 for the lunch break. During the lunch break you're not to
21 discuss your testimony with anyone who may be a witness in
22 this case unless the prosecutors need to talk to you for any
23 reason.

24 MR. CRISTALLI: I didn't know if counsel wanted him
25 admonished about speaking about -- with his own counsel during

1 the break at all.

2 THE COURT: Right. Basically don't discuss your
3 testimony. All right, sir, you're excused.

4 MR. WRIGHT: He -- he doesn't talk to the State or to
5 us?

6 THE COURT: Right.

7 MR. WRIGHT: Oh, okay.

8 MS. WECKERLY: Okay. Yeah, I misunderstood -- I
9 misheard you.

10 MR. CRISTALLI: Or -- or his attorney.

11 MR. WRIGHT: Right, right, that's fine. Yes.

12 THE COURT: So, sir, you're excused. You're free to
13 leave for the break. 1:15 is when we'll be back.

14 Did you get any new questions? All right. I've got
15 six sheets up here of pending questions and if -- I'm sorry?
16 I'm just going to leave them up here and then if you folks
17 want to look at them before you leave for lunch and when you
18 get back from lunch, you can do that. Is there anything we
19 need to put on the record before we take our lunch break?

20 MR. WRIGHT: No, Your Honor.

21 THE COURT: All right.

22 MS. WECKERLY: Just -- I would like to put one thing
23 on the record.

24 THE COURT: All right. Sir, can we have the door
25 shut? Thanks.

1 MS. WECKERLY: I just want the record to be clear
2 when we took the break and discussed that Mr. -- that the
3 State's opinion was Mr. Mathahs was in breach of his agreement
4 with the State, his attorney -- neither his attorneys nor the
5 State's attorneys nor the defense counsel informed him that
6 the State considered him in breach, so there couldn't have
7 been any influence on his testimony.

8 MR. WRIGHT: Not to my knowledge.

9 THE COURT: Right. I mean, I didn't see anyone
10 inform him. The record's clear the Court admonished his
11 lawyers not to inform him and no one else left the room.

12 MS. WECKERLY: Thank you.

13 MR. CRISTALLI: Well, I can only speak for myself, I
14 didn't inform him. I don't know what anybody else did or
15 didn't do.

16 THE COURT: Right. And like I said, I didn't see
17 anyone else leave the room except for Mr. Mathahs and his
18 attorneys. They were admonished not to inform him, so we have
19 to assume that they didn't.

20 MS. WECKERLY: Correct.

21 THE COURT: Nothing really changed --

22 MS. WECKERLY: No.

23 THE COURT: -- in his testimony from the break until
24 when he came back, so. And then I'd ask the defense when
25 you're done with the questions just to put them back up here

1 and State, you can look at them now or at the break.

2 Just scheduling, Mr. Staudaher, what do you -- I'm
3 going to let you do redirect before we do the juror questions.
4 What do you anticipate for redirect?

5 MR. STAUDAHER: Probably -- it could be an hour, I
6 would think.

7 THE COURT: Okay, all right. Go to lunch.

8 (Court recessed at 12:14 p.m. until 1:18 p.m.)

9 (Outside the presence of the jury.)

10 THE COURT: For the record, we had six pages of juror
11 questions up here. Did everyone have a chance to look at the
12 juror questions?

13 MR. STAUDAHER: Yes.

14 MR. WRIGHT: Yes.

15 THE COURT: Mr. Santacroce?

16 MR. SANTACROCE: Yes.

17 THE COURT: Any objection to any of these juror
18 questions?

19 MR. WRIGHT: No.

20 MR. STAUDAHER: No, Your Honor.

21 THE COURT: All right, then. After redirect I'll be
22 asking the juror questions. Are we ready to start?

23 MR. STAUDAHER: Yes, Your Honor.

24 THE COURT: Mr. Mathahs, come back up to the witness
25 stand.

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(Jury reconvened at 1:21 p.m.)

THE COURT: All right. Court is now back in session.
Mr. Staudaher, you may begin your redirect examination.

MR. STAUDAHER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STAUDAHER:

Q Mr. Mathahs, I want to go through a couple of things with you. Before we do, I'd like if you would to step down from the stand and I'll ask you about this chart. You were asked by Mr. Wright about moving from room to room and you said sometimes a bathroom break, if I'm recalling correctly, and also lunch. Is that fair?

A Correct.

Q Just so you're oriented. This is the 21st of September, 2007 and we're talking about two different rooms. As you can see here, you're in this room and Mr. Lakeman is in this other room.

A Correct.

Q If you look around this time frame here, right around the noon hour, between 11 something and one or 12 something, you can see Mr. Lakeman appears in your room.

A Right.

Q Does that look like it was probably the lunch period or the lunchtime, around the noon hour, give o take?

A I would think so.

1 Q The same thing. If you look down here we can
2 see that you are in this other room, Mr. Lakeman's room,
3 around the same general time, around the noon hour.

4 A Right.

5 Q Does it seem like the lunch hour period down
6 here?

7 A Yes.

8 Q So we've got two windows, two periods of time
9 when both of you are in each other's room around the noon
10 hour; is that correct?

11 A Correct.

12 Q And if I understand you correctly, that would be
13 a traditional lunch break or lunch relief.

14 A Correct.

15 Q Now in addition to those two times, though, that
16 we're talking about, I want to make sure we have them correct,
17 you're here, right here, this is the point where you were in
18 the room for the lunch break and Mr. Lakeman's in your room
19 for the lunch break. If you go up here, back up to right
20 around the 10:00 hour, you see that your name appears on a
21 patient on that particular record.

22 A Yes.

23 Q So that's in addition to the lunch break.

24 A Yes.

25 Q So you actually -- and this is a summary of some

1 records that I've shown you and admitted. Okay? But just
2 acknowledge that this is accurate, that you are in Mr.
3 Lakeman's room in the morning time, which is not associated
4 with the lunch relief.

5 A Yes.

6 Q Go ahead and have a seat, if you would.

7 A (Witness complies.)

8 Q Now, the patient that was referenced here and on
9 the record here is number 18. I'm going to show you the
10 original file. So I'm not going to display this for the jury
11 because it's got names and so forth. We've got a redacted
12 version if we need to. But because signatures and so forth
13 sometimes are difficult to see when they're on a copy, I
14 wanted you to see the original just to make sure.

15 A Okay.

16 Q This patient here, and you don't need to say the
17 name, but I want to go to the anesthesia record for the 21st.

18 MR. STAUDAHER: And this, for the record, that we're
19 look at is 47R. All of these, my understanding are stipulated
20 to admission, the patient records.

21 THE COURT: Okay. So it's actually been admitted
22 with the redactions as 47R?

23 MR. STAUDAHER: And it's also been admitted as
24 Court's exhibit, this particular one.

25 THE COURT: Okay. Which is the original that doesn't

1 have the redactions.

2 MR. STAUDAHER: Correct.

3 THE COURT: Okay.

4 MR. STAUDAHER: This one corresponds to what has been
5 designated as a redacted copy of patient 18.

6 THE COURT: Okay.

7 BY MR. STAUDAHER:

8 Q So I'm going to go to the anesthesia record, if
9 you would. Do you see this anesthesia record?

10 A Yes.

11 Q Now, this is the original in pen, correct?

12 A Correct.

13 Q Does that bear your signature?

14 A Yes.

15 Q Any question that that's your signature?

16 A No.

17 Q So if this record comes from the patient down
18 here in the other room at around the 10:00 hour, somewhere in
19 there, and we already know the times on these things are
20 false, correct?

21 A Right.

22 Q Not even close to real.

23 MR. SANTACROCE: I'm going to object to that. That
24 misstates the testimony.

25 THE COURT: That's sustained.

1 MR. STAUDAHER: Well, I'm asking, are the times
2 false.

3 MR. SANTACROCE: I'm going to object. Foundation.
4 Which time?

5 THE COURT: For the record, Mr. Staudaher, for
6 clarity, you're talking about the times on that exhibit?

7 MR. STAUDAHER: No. I'm actually talking about the
8 anesthesia times that have been documented for the entire day.

9 THE COURT: Okay. All right.

10 MR. SANTACROCE: It misstates the testimony.

11 THE COURT: Well, he asked him a question, Mr.
12 Santacroce. I sustained it as to the attorney kind of
13 editorializing and prefacing. So state your question and then
14 he can answer it if he can.

15 BY MR. STAUDAHER:

16 Q The times, and just so we're clear where I'm at,
17 I'm talking about the anesthesia times that you put down on
18 the record for that entire day for each patient that you did.
19 These times right here on the anesthesia record.

20 A Ending time would be wrong, yes.

21 Q What about the beginning time?

22 A Should be correct, I would think.

23 Q You would think? Well, what would be your
24 traditional way of putting down the times? Would you start
25 with what you believe was the accurate time and then just put

1 it out 30 minutes or 32 minutes, 31 minutes?

2 A Yes.

3 Q So it's your testimony that this 10:15 period of
4 time should be an accurate time?

5 A Should be as accurate as I can recall it.

6 MR. SANTACROCE: I can't hear the witness.

7 THE COURT: Sir, I know you're turning away from the
8 microphone. So try to speak into the microphone so everyone
9 can hear you. And can you state your answer again.

10 A I said the starting time was as accurate as I
11 can recall it would be. The ending time would probably be the
12 one that was falsified.

13 BY MR. STAUDAHER:

14 Q Again, just so we're clear on the record, the
15 vital signs for that entire time would have been also false;
16 is that correct?

17 A Not the entire time, but as of when the
18 procedure was finished it would have been, yes.

19 Q So at least there's false entries on this
20 record.

21 A Yes.

22 Q Now, I want to go to the actual page which has
23 the machine time. Do you see that?

24 A Yes.

25 Q Okay. So the machine time here says 10:13 as a

1 start and 10:23 as an end.

2 A Okay.

3 MR. SANTACROCE: I'm sorry. Do you have a Bates
4 number on that?

5 MR. STAUDAHER: This is the original document. I
6 don't have it Bates numbered.

7 MR. WRIGHT: Can we approach?

8 THE COURT: Yeah, you can go ahead and look at it.

9 BY MR. STAUDAHER:

10 Q So on this one it says, the machine time says
11 10:13 and the actual end time of the procedure is 10:23.

12 A Correct.

13 Q So that's a couple minutes off, but it's kind of
14 close, correct?

15 A Correct.

16 Q So during at least the window of, according to
17 the machine, was the machine more accurate than your actual
18 record, machine time?

19 A The ending time would have been. The beginning
20 time -- sometimes the machines are off as well, but, you know.

21 Q But is the machine time literally the window of
22 time that the patient's in the room?

23 A Yes, correct.

24 Q Okay. So from 10:13, according to this record,
25 from 10:13 to 10:23 the patient is in the room?

1 A Correct.

2 Q And you're over there during that entire time

3 because you wouldn't leave during a procedure.

4 A I would not.

5 Q I'm just going to go through some of these.

6 We're looking here at 47A, which also -- which is back in your

7 room. Okay? So all the rest of these records are back in

8 your room with the exception of the one that I just showed

9 you. Okay?

10 A All right.

11 Q If we go to the anesthesia record, this one is

12 in the afternoon at 2:15 to 2:47.

13 A Correct.

14 Q If we go to the machine time, and this one is in

15 two pieces. Do you see that?

16 A Yes.

17 Q So 2:16 to 2:33.

18 A Correct.

19 Q So that kind of matches up with what you said

20 before, correct, 2:15 to 2:47?

21 A Correct.

22 Q End time's more than it should be.

23 A Yes.

24 Q 47B, see the anesthesia time starts at what?

25 A Ten.

1 Q And goes to 10:33?
2 A Thirty-three.
3 Q Now, the anesthesia or the machine record goes
4 from what?
5 A 10:05.
6 Q To 10 --
7 A Sixteen.
8 Q Okay. 10:05 to 10:16. Now, if I look back on
9 the machine time, which is 47R, that machine time starts at
10 10:13 and ends at 10:23.
11 A Uh-huh.
12 Q The machine times show that you were in two
13 rooms at the same time. Can you explain that?
14 A Let's start over. You've lost me somewhere.
15 Q I want you to look at these two records here.
16 Look at the taped times because we know at least the start
17 times and stop times of those were accurate, correct?
18 A Okay.
19 Q So in 47R the machine time says you're there
20 from 10:13 to 10:23.
21 A Okay.
22 Q In Exhibit 47B it says you're there from 10:05
23 to 10:16.
24 A Okay. But if it's a different room the machines
25 are not set the same.

1 Q Okay. So the times on the machines could be off
2 by a few minutes?

3 A I don't know how many, but they certainly were
4 off.

5 Q Have you ever been in a situation where you
6 could actually physically be in both rooms at the same time?

7 A Physically? No. Impossible.

8 Q Would there ever be a time when you would be
9 monitoring two patients at the exact same time?

10 A Never.

11 Q So those can't be right. You couldn't --

12 A Cannot.

13 Q -- those times even on the machine, when
14 compared one to another, one room to another, couldn't be
15 correct.

16 A Accurate. Could not be accurate.

17 Q Just to, as we go through these, I want to
18 finish off the patients. And these are the infected patients
19 that I'm showing you. Again, this is Mr. Rubino's chart.
20 This is 47C. Do you see that your anesthesia time says 9:45
21 to 10:17.

22 A Correct.

23 Q So that would, the 10:17 would be an overlap,
24 but you said that that one wasn't correct.

25 A That's not right.

1 Q If we look at the machine time, it says 10:49 to
2 -- or 9:49, rather, to 10:00.

3 A Correct.

4 Q So even though your start time here says 9:49,
5 your anesthesia record says 9:45.

6 A Okay.

7 Q So it's off still.

8 A Could be. Might have seen the patient before
9 they came in the room too, and that would have been a start
10 time for us. I'm not sure. I don't recall all of that.

11 Q You know how many patients you did that day,
12 right? You can look in the chart.

13 A I don't know.

14 Q Was it not your testimony earlier that you
15 pretty much were in the room, you didn't have time to go out
16 and talk to patients?

17 A Ordinarily, we didn't, yeah.

18 Q I'm showing you Ms. Orialanes' [phonetic] chart,
19 which is 47D. This one probably would have been later in the
20 morning. It says 11:45, according to your anesthesia record,
21 to 12:18.

22 A All right.

23 Q Do you see that?

24 A Yes.

25 Q The machine time says 11:44 to 11:56.

1 A Okay.

2 Q So in that instance, 11:44 is close to 11:45,
3 correct?

4 A Correct.

5 Q But the end time is wrong again.

6 A Correct.

7 Q Gwendolyn Martin, if we look at the anesthesia
8 record, it's 1:15 to 1:47. Do you see that?

9 A Yes.

10 Q The machine time is 1:12 to 1:23.

11 A Okay.

12 Q 47F, which is Rodolfo Meana, the anesthesia
13 record has 10:30 to 11:03.

14 A Correct.

15 Q If we go to the machine time, it says you
16 started at 10:24 and went to 10:35.

17 A Okay.

18 Q Does that look right?

19 A Yeah.

20 Q So 10:24 and your start time here says 10:30. I
21 mean, it's off by six minutes.

22 A We were not, you know, we didn't see the times
23 on the machines. We were going by a watch or a clock or
24 something, you know. So there was a variation of times.

25 Q So is it fair to say that of all the times we're

1 talking about here, and clearly the ones you have wrote down
2 in the anesthesia record are not right. Fair?

3 A Pretty fair, yes.

4 Q We know that the machine times in the room
5 aren't even accurate based on what we just went through.

6 A Correct.

7 Q And even the variations, some people use clocks,
8 some people use different things. So we're talking about some
9 variation.

10 A Yes, totally.

11 Q So even in the records there where it showed
12 that it looked like you were in two rooms at the same time,
13 you would acknowledge that that couldn't happen.

14 A Could not have happened, no.

15 Q So if it shows you're in the same room at each
16 time, what does that mean?

17 A Start over. I'm sorry.

18 Q If it shows you're in the same room at each
19 time, what does that mean, ultimately, about the times?

20 A They're off. They're inaccurate.

21 Q Now, let me go in kind of a backwards form here
22 from where we went. You said you wouldn't leave a patient's
23 room because it would be considered patient abandonment; is
24 that right?

25 A Correct, yes.

1 Q If there was an emergency, somebody passes out
2 and you're in the middle of a procedure and it's just two of
3 you there, how would that be handled?

4 A You mean one of my patients passed out or what?

5 Q No. Two CRNAs in two separate rooms, bathroom
6 emergency, emergency of some kind which either takes that
7 other anesthetist out of the room or incapacitates them. You
8 with me?

9 A Okay.

10 Q You're dealing with your patient. Now there's a
11 patient who's left completely unattended. How would you
12 handle that situation?

13 A Probably call a physician to come over and
14 handle the situation or if the nurses couldn't handle it, if
15 it was in the recovery area. I mean, I just didn't leave the
16 room with the patient under anesthesia.

17 Q Okay. So at least if there was a situation
18 where you had to run from one to the other in a situation like
19 that, you would employ the physician to watch the patient?

20 A Yes.

21 Q Now, I'm going to talk to you about a few things
22 that you said on direct examination and that you said on
23 cross-examination. Okay? Because ultimately, we're just here
24 for the truth. All right?

25 A That's all I want to give.

1 Q I know that that's -- we've had an agreement to
2 tell the truth and I just want to make sure that I understand
3 some of the things you said and some of the things in direct
4 and cross to me and I'm going to ask you about them.

5 A Okay.

6 Q Didn't seem to match up all that well.

7 A Okay.

8 Q So I'm just going to ask about them and if you
9 can, try to explain what is reality. You said that you were
10 really cautious when you did your work. Fair?

11 A Yes.

12 Q And that you used, I think if I got the term
13 right, you did your sort of procedures as aseptically as you
14 possibly could.

15 A Correct.

16 Q Used alcohol pads on the bottle and all that
17 stuff.

18 A Yes.

19 Q Now, you said before also that Desai would give
20 you a hard time about using too many alcohol pads, right?

21 A Well, that was cleaning the skin for starting an
22 IV and all those types of things, yes.

23 Q So he wouldn't want you to clean the skin?

24 A No, he didn't say not to clean it. But, I mean,
25 it was, you know, cautious, watch what we were doing about

1 using too many.

2 Q You mentioned that when you were doing this
3 propofol -- I mean, you're going back in the bottle and you're
4 using propofol from one patient that's been used on a patient
5 on an additional patient.

6 A Right.

7 Q Are we clear? This isn't within the same
8 patient. You got me?

9 A Yeah.

10 Q If I have it correct, and let me make sure I've
11 got this right here, you believed, if I understand correctly,
12 that that was appropriate to do, to use propofol from one
13 patient to the next. Is that fair?

14 A Are you talking about the bottle?

15 Q The bottle.

16 A Yes.

17 Q Okay. And why would that be appropriate to do?

18 A Why would it be appropriate to do? It was a
19 multi-dose vial, for one thing.

20 Q Propofol is a multiple-dose vial?

21 A Yes.

22 Q Have you -- how many times have you used
23 propofol in your career?

24 A Many, many, many.

25 Q Have you ever read the package inserts?

1 A Well, I know it's been changed now, but I don't
2 think it was at that time.

3 Q Is it your testimony that back in 2007 that the
4 bottles and the propofol inserts all said that this was
5 multiple use?

6 A I'm not sure if they did or they didn't. I
7 can't answer for sure.

8 Q When you were in California was there ever --
9 did you ever use medication from one patient like that, like
10 propofol, we'll talk about that since that's the issue here,
11 did you ever use a bottle of propofol on one patient and then
12 turn around and use that same bottle that you had entered and
13 used on one patient on the next patient?

14 A No.

15 Q I said 33 years because I thought you said that
16 initially, but 32 years.

17 A No, 33 is right.

18 Q Thirty-three. So in 33 years you never did
19 that?

20 A We didn't use propofol the whole time, but no, I
21 did not. When I used propofol or any of them I did not go
22 from using it on one patient and then into another patient,
23 no.

24 Q You worked with a group of 12 other CRNAs?

25 A Correct.

1 Q Were they the same 12 the entire 30 plus years?

2 A No. It changed a few of them along the way once
3 in awhile.

4 Q So there were more than that ultimately?

5 A Yeah. I think maybe 14, 15, 16, somewhere in
6 there.

7 Q It was your group, you ran it?

8 A Well, I started the group, yes. I mean, I was
9 not really an overseer, but I put it together and we worked
10 as, you know, with each other trying to just share everything
11 that we could.

12 Q Did you see anybody else during the entire time
13 you were in California, other colleagues of yours even just
14 within your group, ever do what I described, use a bottle of
15 propofol or a single-use item like that and move it from one
16 patient to another?

17 A Not that I recall, no.

18 Q Is that anything that you would have condoned at
19 the time?

20 A No.

21 Q Why not?

22 A It's just not practice, it's just --as aseptic
23 and as cautious as you can be, it could still be a problem.

24 Q Why would it be a problem, potentially?

25 A Like cross-contamination it could have been, you

1 know, from one to the next, one patient to another.

2 Q So there is a risk of that?

3 A There is a risk, sure. I don't know how big a
4 risk, but I know there is a risk, yes.

5 Q Now, you had mentioned that at least in Mr.
6 Wright's questioning of you that there was a change in the
7 bottles. One went from an ampule, which is snap off the glass
8 neck or whatever to gain access to the propofol.

9 A Correct.

10 Q And then another bottle which was an enclosed
11 sealed container with a rubber stopper you had to pierce.

12 A Correct.

13 Q And you said that that rubber stopper was under,
14 I think, negative pressure, you believed.

15 A Correct.

16 Q So what happens to a syringe that has a needle
17 attached to it that has any propofol still in it when you
18 puncture a brand new bottle of propofol?

19 A If there's anything in the syringe it would get
20 drawn into the vial or bottle.

21 Q It would eventually pull it into that bottle,
22 wouldn't it?

23 A Yes.

24 Q So if the syringe had been used on a patient,
25 let's say there was a -- you said you would take a remnant

1 bottle from one patient to the next and then you would use
2 that on a patient. Let's just say for some reason because of
3 a breach, whatever, that that bottle is contaminated, that
4 partial bottle is contaminated. Are you with me?

5 A Yes.

6 Q So you go to start the anesthesia on the next
7 patient. In a situation like that with remnant bottle, let me
8 ask you that first of all, would you start with the remnant
9 bottle on that patient or would you start with a new bottle
10 and then just use the remnant one to augment your dosing if
11 you needed it?

12 A You're talking about if I would stay in the same
13 room?

14 Q You're in the same room the whole time.

15 A Okay. All of the bottles would be used up, you
16 know, one would be used before you'd start another one.

17 Q Okay. So we've got a partial bottle in one room
18 that's been used on a patient. You take that partial bottle
19 and we go to use it on the next patient, draw up propofol and
20 let's, for argument sake, just say that that bottle for some
21 reason is contaminated.

22 A Okay.

23 Q You don't have enough to get through that next
24 patient out of that bottle. Okay?

25 A Okay.

1 Q You go into a new bottle, brand new bottle.
2 What's going to happen to what's in that syringe which now
3 contains contaminated propofol?

4 A The syringe, like I said, would be -- I think
5 would be void of any propofol because I'd be putting on a new
6 needle. But I don't know. I suppose there's a chance that it
7 could have -- something got into the needle and into the vial.

8 Q Did you say that the bottle, the new bottle is
9 under negative pressure?

10 A Yeah.

11 Q So -- and you said that it would draw what was
12 in the needle syringe combination into the bottle because of
13 that negative pressure.

14 A Unless you were holding back on the plunger,
15 yeah.

16 Q Okay. So it would be a fight between you
17 pulling back on the plunger and the bottle pulling what's in
18 the plunger back into the bottle.

19 A Correct, opposite way, yeah.

20 Q You'd have to be really diligent to have more --
21 well, as soon as you release the pressure on the plunger,
22 isn't the plunger going to go into the bottle?

23 A It depends if -- like he was asking if there was
24 Lidocaine in it, then it would not be. You'd be drawing back
25 against that.

1 Q Okay. But if we have a bottle that's already
2 under negative pressure and let's say you're really good and
3 you put the needle in without any of that being sucked into
4 the bottle and you put more negative pressure to draw out
5 propofol, does that make the negative pressure in the bottle,
6 as you've withdrawn it, even greater? You've removed volume
7 from a fixed space, correct?

8 A Possibly could, I'm not sure.

9 Q You're aware there's a risk in doing all of
10 that, correct?

11 A Yes, absolutely.

12 Q And that's one of the reasons why you never did
13 it in California. Is that fair?

14 A Right.

15 Q So you didn't do it in 32 years in California
16 because of that very problem.

17 A Right.

18 Q You did it here, though, in Las Vegas.

19 A Yes.

20 Q At any point during your time here in Las Vegas,
21 did you believe that that risk was eliminated, that there
22 would be no risk at all?

23 A I can't imagine that the risk could be totally
24 eliminated, no. I mean, you know, you're as careful and
25 aseptic as you possibly can be, but there still could be a

1 risk.

2 Q So here's one of those parts that I was going to
3 ask you about, about something you said in cross versus
4 something you said on direct. That is what I understood you
5 to say on direct. In cross-examination, if I got it down
6 right, you said that there was no chance that things could get
7 into the syringe or bottle. Is that accurate or is the thing
8 you just said accurate?

9 A I would said that no, something could get in
10 there. You know, anything could happen.

11 Q Is it fair to say that using this negative
12 pressure thing that you did would possibly minimize the risk
13 but would not eliminate it?

14 A Minimize it, absolutely.

15 Q And as cautious as you are, you're aware that
16 there is a risk of contamination from doing the practice of
17 using propofol in a bottle like we described from one patient
18 to the next.

19 A Yes.

20 Q Now, you mentioned that you did this needle
21 changing thing, right?

22 A Correct.

23 Q And I think your testimony was that you never
24 used a syringe that had been used on a patient from patient to
25 patient.

1 A Right.

2 Q Did you acknowledge that at least on a patient,
3 that you would reuse the same syringe on the bottle of
4 propofol that you had?

5 A Yes.

6 Q So -- when we see the dosing on some of those
7 patients, when it's, you know, 50 mg., 50 mg., 60, 40,
8 whatever it is, multiple doses on virtually every patient,
9 correct?

10 A Correct.

11 Q Because even though these are short procedures,
12 the real time of the procedure is short, you're still having
13 to give multiple doses. Is that fair?

14 A Correct.

15 Q So because you could only get the 10 cc
16 syringes, you're going to have to at some point during
17 virtually every procedure go back into the bottle of propofol,
18 new or used, after you had actually contacted that syringe
19 with the patient's bloodstream.

20 A Ordinarily, yes, if you're going to give more.

21 Q Virtually every one of these patients, correct?

22 A There were some that didn't, but most of the
23 time, yes.

24 Q On your -- do you recall that there were out of
25 60 patients in a day, even a handful that would just get less

1 than 10 cc's of propofol?

2 A Don't even know it would be a handful, but it
3 would be minimum, sure. I mean, depends on age and their
4 condition and all that type of thing.

5 Q But the vast majority would require more
6 contacts with the bottle.

7 A Correct.

8 Q Now, you said that on direct examination
9 initially that if Desai was in the room you wouldn't waste
10 anything, at least that he could see. Is that fair?

11 A That's true.

12 Q You did mention that there were times when you
13 would waste the propofol, you would squirt it into the
14 container, you would throw it in the sharps container or
15 something.

16 A Right.

17 Q That Desai would come around and look in the
18 sharps container to see if you'd thrown away a syringe that
19 had propofol in it or a bottle that had some still in it.

20 A Correct.

21 Q And you said he would yell at you if he found
22 that there was a syringe or a bottle in that situation.

23 A Of being wasteful, yes.

24 Q When he saw that those bottles and syringes were
25 in the sharps container on the occasions that he did, and I

1 know you tried to minimize that, but on those occasions, what
2 would he yell at you?

3 A Of being wasteful and how much each bottle of
4 propofol cost.

5 Q So is it fair to say that during these yelling
6 periods that he was indicating that you should not waste that
7 and use that on the next patient?

8 A I guess that's what he was referring to, sure.
9 If there was enough there to use it, yeah.

10 Q Now, you were also asked some questions and I
11 didn't -- I don't think I asked you these on direct, about the
12 20 and 50 cc bottles. Do you remember that?

13 A Yes.

14 Q Started off with 20s and then later on you were
15 getting the 50s.

16 A Right.

17 Q Once the 50s came in to play for you, which did
18 you prefer to use?

19 A Twenties.

20 Q So if you had a choice between a 20 and a 50,
21 would you use --

22 A I would have always used the 20 if we had them
23 available. A lot of times they weren't available.

24 Q And why would that be?

25 A Because I just preferred using the smaller

1 amount because it would be -- not being wasteful, you don't
2 have such a big bottle.

3 MR. STAUDAHER: State's Exhibit 45A, Your Honor. May
4 I approach? Actually, I'll just display it now since they're
5 stipulated to.

6 BY MR. STAUDAHER:

7 Q I'll show you the page from that exhibit which
8 shows propofol 500 mg. Do you see those?

9 A I do.

10 Q Now, those would be the 50 cc bottles, right?

11 A Correct.

12 Q And this -- are you familiar with this form?

13 A I remember it, yes, from then.

14 Q It says propofol sign-out log.

15 A Correct.

16 Q If we go to the 21st and the 21st of September,
17 2007. Do you see both of those there?

18 A Ye.

19 Q I'm going to go across to this signature line
20 for the person accepting the medication. Do you see those
21 signatures?

22 A Yes.

23 Q Are you familiar with them?

24 A I'm sorry?

25 Q Are you familiar with those signatures?

1 A Yes.

2 Q Whose are they?

3 A Mine.

4 Q So at the beginning of the day or during the day
5 if you needed more propofol, you would have to be the one to
6 go check out additional propofol.

7 A One of the nurses would get it for us, yes.

8 Q But you had to sign for it.

9 A Correct.

10 Q So is there a reason why there are two separate
11 entries for the propofol on that day? There's one on the 21st
12 here and then there's another one on the 21st here.

13 A That's one for each room.

14 Q So you would check it out for each room?

15 A In the morning, yeah. I would set each room up
16 individually, yes.

17 Q Okay. So in this instance, you see that it says
18 18 bottles, vials were accepted, were given. If we got up
19 here just so we have -- and these are -- the next column is
20 return vials. It says zero return.

21 A Correct.

22 Q And this one, 20 were checked out and 14 were
23 returned.

24 A Okay.

25 Q So clearly used, right?

1 A I'm sorry?

2 Q They were clearly used. There were 18 bottles
3 used here and six bottles used there.

4 A But that's a different date.

5 Q Okay. Let's just make sure we're clear on this.

6 A I'm sorry.

7 Q So you checked out two separate batches of
8 propofol, 50 mg bottles -- excuse me, 500 mg bottles, 50 cc
9 bottles and 18 of them were checked out and none returned.

10 A Okay.

11 Q Twenty checked out, 14 returned, which means an
12 additional six were used, correct?

13 A That's what it looks like. Sort of scribbling.
14 I don't know if that's 14 or if it's 11 or what it is.

15 MR. STAUDAHER: May I approach, Your Honor?

16 THE COURT: You may.

17 A I can see it, but I don't -- it's not my
18 writing, you know.

19 BY MR. STAUDAHER:

20 Q Does that make it clear for you?

21 A It looks like 14, yes.

22 Q And if we go to the 20 cc bottles, it says 200
23 mg up here, correct?

24 A Right.

25 Q Those would be the 20s, as you said.

1 A Right.

2 Q We go down to the 21st. There's only one entry
3 this time. Do you see that?

4 A Yeah.

5 Q It goes 19th, 21st.

6 A Right.

7 Q So you would set up both rooms, but in this case
8 there's only one entry. Your signature again?

9 A Right.

10 Q Let's move across. And it says four bottles
11 used or checked out and four bottles returned.

12 A Okay.

13 Q So you didn't, at least on the 21st, on this day
14 the only bottles you used that day were 50s.

15 A I don't know which room they were put in, the
16 20s were put in. That I can't answer, you know, if it would
17 have been in Ron's room or if it would have been in my room.

18 Q There were no checked out 20s that were used
19 that day, according to this.

20 A According to that, no.

21 Q You said your preference was the 20s?

22 A Ordinarily, yes.

23 Q Now, why would -- you said that you -- maybe I
24 asked this and you said it, I apologize if you did. You said
25 you preferred the 50s, but the 20s were something that -- I

1 preferred the 20s but the 50s were something that you had
2 available to you.

3 A Well, they were --

4 Q Did you have any reason why you would not want
5 to use a 50 versus a 20?

6 A It's a bigger bottle to hang onto and trying to
7 draw out of and the 20 is just so much smaller and easier to
8 use. For me it was anyhow.

9 Q Would you acknowledge that using a 50 cc bottle,
10 which would mean you would have to go into it a lot more
11 often, would increase the risk of contamination of that bottle
12 and potentially infection of the patient if that bottle was
13 used on subsequent patients?

14 A Yes, it could.

15 Q So you had a choice that day to use 20s or 50s
16 and apparently, according to the record, no 20s were used.

17 A That's what it said.

18 Q Now, you were asked a question by counsel about
19 did supplies ever get taken from Burnham to Shadow Lane or
20 Shadow Lane to Burnham. Do you recall that?

21 A Yes.

22 Q And you actually talked about that in your
23 proffer statement that you gave to the DA's Office and police,
24 correct?

25 A Okay.

1 Q And I just want to make sure I'm clear on this.
2 Which direction would supplies go, from Shadow to Burnham or
3 Burnham to Shadow?

4 A Ordinarily, from Shadow to Burnham, but
5 occasionally, we'd bring them back up to Shadow. But that
6 would have been a rare -- for me anyhow.

7 Q So when you said that you were asked sometimes
8 to take supplies -- you lived out in where? Would that be
9 something where you would take supplies from Shadow and on
10 your way home take it to Burnham?

11 A No. On my way -- I lived -- be called, Jeff
12 would call me and then I would stop in the morning to pick it
13 up and take it to Burnham on my way to Burnham.

14 Q Is that when you would work at Burnham?

15 A Yes.

16 Q Okay. And how often would that occur in say a
17 month?

18 A You mean the supplies going back and forth?

19 Q Well, you said --

20 A Or that I worked there?

21 Q Let me take it step by step. If I understand
22 you correctly, going from Burnham to Shadow was a very rare
23 occurrence.

24 A Correct.

25 Q It was more likely that if supplies moved at all

1 it would be from Shadow to Burnham.

2 A Yes.

3 Q Depleting the supply of propofol, syringes and
4 the like at Shadow, if at all?

5 A Yes.

6 Q So if you were to come and pick up supplies from
7 Shadow, you would be taking it out to Burnham and then you
8 would be working at Burnham; is that right?

9 A Correct.

10 Q In a typical month, if to the best estimate you
11 can give me, and that's all I'm entitled to, unless you know
12 an exact number and I doubt you do, how many times in a month
13 would you take supply from Shadow to Burnham?

14 A I would say probably maybe two.

15 Q Okay. Now, you were asked some questions about
16 when I think Dr. Fishcher was there questioning you or -- or
17 maybe it was Melissa Schaefer that questioned you initially.
18 Do you recall who it was?

19 A I think --

20 Q The two people from the CDC, the women that were
21 out there.

22 A The only one I ever saw or talked to was Gayle,
23 I think, Fishcher was it?

24 Q Fishcher, okay. So you talked with her and told
25 her what, about the reuse of supplies? Syringes and propofol

1 as we talked about?

2 A I was doing what I was instructed to do.

3 Q And who instructed you to do that?

4 A Well, it was Ann, that's the way she told me and
5 that's the way Dr. Desai said too.

6 Q So when they told you to reuse the syringes and
7 propofol, that was both Annamarie Lobianbo and Dr. Desai who
8 said that?

9 A Yes.

10 Q Now at the time, we're talking about at least
11 what was observed and Mr. Wright went through that with you,
12 the observed thing that the CDC saw was you with a patient
13 drawing up propofol, using that syringe needle combination,
14 penetrating the hep-lock on a patient connected to the
15 patient's bloodstream and administering medication. You with
16 me so far?

17 A Yes.

18 Q And taking that needle syringe combination,
19 removing the needle, putting a new needle on it and going back
20 into the bottle of propofol to withdraw additional medication.

21 A Correct.

22 Q And that you would then use -- do however many
23 other doses you would do. But bottom line is, you went into
24 the bottle on a couple of different occasions after the
25 syringe needle combination had gone into a patient.

1 A Correct.

2 Q And then they saw that -- saw you take that
3 leftover bottle to use on a new patient.

4 A Correct.

5 Q And you said that that scenario was widely used
6 at Shadow Lane?

7 A Yes.

8 Q And here's one of these things I wanted to ask
9 you about. How many places did you work in Las Vegas beside
10 the endoscopy centers?

11 A None.

12 Q So beside your experience in California, 33
13 years, and your experience here, did you work anyplace else
14 doing anesthesia work?

15 A No.

16 Q And in California, you worked with all those
17 other CRNAs, but it sounds like you worked in a variety of
18 settings as well.

19 A Correct.

20 Q Different doctors, different procedures and the
21 like.

22 A Correct.

23 Q And you used propofol many times in the past.

24 A Correct.

25 Q Matter of fact, you were I think you said were

1 the one who introduced it to the Shadow -- at least suggested
2 that it be used at Shadow Lane or the endoscopy centers?

3 A Correct.

4 Q Now, in a situation where you're using the
5 syringes and the propofol and so forth, you were asked a
6 question about, well, gosh this is widely used. This -- this
7 has happened widely in Las Vegas and your answer was, at least
8 on cross, yes. But I wanted to ask you this. What were you
9 basing that off of because your experience was just at the
10 endoscopy centers?

11 A Well, I have friends that are anesthesiologists here
12 working for Southwest and other areas, anesthesiologists.
13 That's the practice that was going on in hospitals and surgery
14 centers here in the valley.

15 Q So you talked to other people about that?

16 A Yes.

17 Q Was this after the case became something of
18 notoriety or was this before?

19 A After.

20 Q Prior to your seeing -- I mean when you talk
21 about a lot of other people, how many are we talking about?
22 Are there a lot of CRNAs here in town?

23 A Southwest has about 15.

24 Q And you went over and called them all or talked
25 to them?

1 A No, no, no. I mean, some of them are my
2 friends. So I, you know, we talked about the situation and
3 about the multiple dose vials and like I said, I've got
4 anesthesiologists here in town that are friends and the
5 multiple dose vials were used in hospitals.

6 Q Okay. I want to be clear on this though --

7 A Okay.

8 Q -- it's important. When you were talking to
9 them about using propofol multiple times, are you talking
10 about a single bottle of propofol being used on a single
11 patient, maybe going in a number of times on the same patient?
12 Is that what you were asking them about?

13 A Start over. I'm sorry, I lost you there.

14 Q When you were talking to these other CRNAs,
15 anesthesiologists, whatever --

16 A Yes.

17 Q -- about reuse of propofol, was it the same
18 bottle on the same patient? Going in, patient, in, patient,
19 that kind of thing?

20 A They were using multiple -- I mean one bottle
21 could be used on multiple patients.

22 Q Did you describe for them the actual scenario
23 that we talked about or was this something where they kept a
24 bottle and they went in with a brand new needle and syringe
25 every time?

1 A That could have been, I'm not sure on that. I
2 -- I don't know if we discussed that type of thing.

3 Q Okay. So this wasn't necessarily giving that
4 scenario of the going back into the same bottle and then using
5 that bottle that had been accessed -- that had come in contact
6 with the person's bloodstream to the next patient?

7 A I was just referring to the fact that bottles
8 were used on multiple patients.

9 Q Now, you also were asked some questions about
10 going to the feds. Do you remember that?

11 A Yes.

12 Q And you did a proffer with them.

13 A Yes.

14 Q And did they grant you immunity or something in
15 that case?

16 A I don't remember immunity, but they said they
17 weren't interested in me. They wanted me to be a witness for
18 them.

19 Q Okay. And when you talked to them you didn't
20 really talk about the propofol reuse, correct?

21 A I'm not sure if we did or not. You know, it's
22 been three to four years ago --

23 Q Your focus -- was their focus not on the billing
24 issues and the --

25 MR. WRIGHT: Objection. Leading.

1 THE COURT: Well, overruled.

2 BY MR. STAUDAHER:

3 Q Was their focus on the issue of financial
4 issues, the anesthesia billing issues, the false times, things
5 like that?

6 A Probably more so I think, yes.

7 Q Did you acknowledge to them that you knew what
8 you were doing was wrong? At least from that sense, the
9 financial side of things?

10 A Yes.

11 Q Okay. Did you acknowledge that you knew that
12 that information was going to go to insurance companies and
13 would be used to reimburse?

14 A That's what they decided, yes, that's where it
15 was going. I mean a lot of things --

16 Q Make sure --

17 A -- lot of things we didn't know.

18 THE COURT: Let him finish.

19 BY MR. STAUDAHER:

20 Q I'm sorry.

21 A I was just going to say a lot of things we
22 didn't know until afterwards, you know, about billing and all
23 of that type thing because we weren't -- we weren't privy to
24 that.

25 Q Did you not tell them that you knew what you

1 were doing was not right?

2 A Yes. I -- I didn't say that. I'm saying that a
3 lot of things came out that we didn't know about, the billing
4 factor and all that type of thing afterwards.

5 Q The point is, the things that you were doing
6 that you knew about --

7 A Yes.

8 Q -- you knew were wrong?

9 A Yes.

10 MR. SANTACROCE: Objection. Asked and answered three
11 times.

12 MR. STAUDAHER: I don't know that it was ever
13 definitively answered.

14 THE COURT: Well, he answered now. Move on. It was
15 overruled.

16 BY MR. STAUDAHER:

17 Q With regard to the things that I have talked to
18 you about with regard to the propofol and Mr. Wright has
19 talked to you about with regard to the propofol, you're aware
20 and you acknowledge that that is wrong.

21 A Yes.

22 Q Never did it before, just here.

23 A Right.

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

25 Pass the witness, Your Honor.

1 THE COURT: All right. Recross, Mr. Santacroce.

2 RECROSS-EXAMINATION

3 BY MR. SANTACROCE:

4 Q When you just acknowledged from Mr. Staudaher
5 that the reuse of the propofol you acknowledged was wrong,
6 you're acknowledging that now after the fact; isn't that
7 correct? Now that you've come to know all this information?

8 A Yes.

9 Q You didn't think it was wrong at the time you
10 were doing it, correct?

11 A No, I didn't really.

12 Q I want to just go over these times again because
13 I'm a little confused. And I'll represent to you that that
14 chart and the times on it, were prepared by the State. So I
15 have some questions about that. When you recorded the times
16 the patients came into the room, that was recorded on a
17 anesthesia record, correct?

18 A Yes.

19 Q And the machines, when would the machines be
20 hooked up?

21 A Soon as the tech got to it or we got to it.
22 After, you know, I had to interview the patient before we
23 could get anything hooked up.

24 Q So the patient would come into the room.

25 A Yes.

1 Q You would interview him or a tech would hook up
2 the machines --

3 A Correct.

4 Q -- correct?

5 A Yeah.

6 Q They'd turn on the machines and they would start
7 to run --

8 A Correct.

9 Q -- correct? And you acknowledged that the start
10 times on the anesthesia records were accurate; isn't that
11 correct?

12 A As far as the time that I had would have been
13 accurate, yes.

14 Q Okay. And the only times that weren't accurate
15 was the total time of the procedure, that had to be 31 minutes
16 or more, correct?

17 A Yes.

18 Q Now, so you have the time you got the patients
19 with an anesthesia record, which you say is accurate.

20 A Yes.

21 Q Then we have somebody hooking up the machines,
22 which could have been a minute or two later or a minute or two
23 before you actually wrote down your time, correct?

24 A Yes.

25 Q And then we have some other times recorded. Who

1 recorded the start of the procedure time?

2 A A nurse.

3 Q And that was recorded not on the anesthesia
4 records, correct?

5 A Correct.

6 Q It was recorded on the nurse's records, correct?

7 A Correct.

8 Q So the procedure times recorded by the nurse are
9 recorded on her records.

10 A Yes.

11 Q And we went through those the other day.

12 A Yes.

13 Q And those were accurate. There's been no
14 accusations that any nurses made up times, is there?

15 A No.

16 MR. STAUDAHER: Objection Your Honor.

17 Mischaracterizes the testimony. He doesn't -- he didn't -- I
18 objected to him being able to testify about that.

19 THE COURT: Right. That's sustained as to the last
20 question.

21 BY MR. SANTACROCE:

22 Q And then who recorded the times that the
23 patients went into the recovery room?

24 A I did. If it was my patient I would have.

25 Q Okay. And where would that have been recorded?

1 A Record of anesthesia.

2 Q Okay. There's also another entry, is there not?

3 What if a nurse took the patient to the recovery room?

4 A I would have ended it before I went, you know,

5 left the room.

6 Q My question is, who would record the time that

7 the patient went to the recovery room if you didn't take the

8 patient there?

9 A Their nurse.

10 Q And that would be recorded on the nurse's notes.

11 A Yes.

12 Q Okay. So we have a possibility of four people

13 recording times, correct?

14 A Yes.

15 Q You, from the time they come in the room, the

16 person that hooks up the machine and turns on the machine,

17 correct?

18 A Correct.

19 Q Then you have two nurses, one that records the

20 procedure start time on her notes and the person that takes

21 them to the recovery room recording it on the nurse's notes,

22 correct?

23 A Correct. And like I said, there was no standard

24 clock in the room like this here, so everybody was using their

25 own timepiece.

1 Q So when counsel, State asked you on Rubino, you
2 had recorded 9:45 and the machine says 9:49, four minutes.
3 That's fairly accurate, right?

4 A Pretty close.

5 Q I mean it would take about that long. Correct?

6 A Would be --

7 Q Start the machine and hook it up?

8 A Would be, yes.

9 MR. SANTACROCE: I have no further questions, thank
10 you.

11 THE COURT: All right. Mr. Wright, recross.

12 RECCROSS-EXAMINATION

13 BY MR. WRIGHT:

14 Q Mr. Mathahs, your conversations with other CRNAs
15 and other anesthesiologists in the community --

16 A Yes.

17 Q -- that took place after January, 2008, correct,
18 sir?

19 A Correct.

20 Q At the time it was a big topic of discussion
21 within the anesthesia community and medical community.

22 A Yes, it was.

23 Q And it was about how could this have occurred
24 where there was this transmission of hepatitis C?

25 A Correct.

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1 Q And it was in those discussions with your
2 contemporaries working at Southwest, Sunrise, other hospitals
3 that you learned that they were all using propofol until it
4 was empty and throwing it out --

5 A Yes.

6 Q -- correct?

7 A Correct.

8 Q And you had been doing that for the previous
9 five years, from 2008 to 2003, right?

10 A Yes.

11 Q And you were never consciously aware that you
12 were jeopardizing patients and putting them at reckless risk
13 by your practices, correct, sir?

14 A Correct.

15 MR. WRIGHT: No further questions.

16 THE COURT: Mr. Staudaher?

17 MR. STAUDAHER: Just one.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. STAUDAHER:

20 Q I just want to be clear on this.

21 A Okay.

22 Q You said on -- this is another one of these
23 things where you said one thing on direct and I want to make
24 sure I've got it clear because I didn't --

25 MR. WRIGHT: Objection. He isn't saying one thing,

1 one thing, one thing.

2 MR. STAUDAHER: Well, I'm just asking. Okay?

3 THE COURT: Okay, Mr. Staudaher, just generally don't
4 need to --

5 MR. STAUDAHER: That's fine.

6 THE COURT: -- provide commentary or editorializing
7 before the questions, just ask the questions.

8 MR. STAUDAHER: Thank you, Your Honor.

9 BY MR. STAUDAHER:

10 Q Did you not testify on direct examination that
11 when Desai told you to do this, reuse stuff that you had never
12 done before, that you expressed the risk to him and that he
13 told you to do it anyway?

14 A I don't remember the exact conversation but,
15 yes, I'm sure it was had, yes.

16 Q So you expressed -- just so we're clear, in
17 whatever words, you expressed that there was a risk in doing
18 that to Dr. Desai and he ordered you to do it anyway and you
19 did it.

20 A Yes.

21 MR. STAUDAHER: Nothing further.

22 THE COURT: Mr. Wright?

23 FURTHER RECROSS-EXAMINATION

24 BY MR. WRIGHT:

25 Q You -- you now know that if the CDC and the

1 Southern Nevada Health District are right on their hypothesis
2 of how this was transmitted that there could be a risk,
3 correct?

4 A Correct.

5 Q Back then, before the Labus, Brian Labus
6 Southern Nevada Health District hypothesis, you were not aware
7 or cognizant of this risk by your practices, correct?

8 A Not according to that. According to what they
9 have said now, no, I wasn't.

10 Q Okay. You thought you were practicing safe
11 protective medicine, anesthesia practice for your patients the
12 way you were doing it.

13 A Yes.

14 Q And if you thought you were doing something
15 recklessly, saying hell with it, I'm going to put patients at
16 risk, you would not have done it, right, sir?

17 A No, I wouldn't. No, I wouldn't have.

18 Q Thank you.

19 THE COURT: Mr. Santacroce?

20 MR. SANTACROCE: No more questions.

21 THE COURT: I've got some juror questions up here.

22 THE WITNESS: Okay.

23 THE COURT: And I'm just going to ask them in no
24 particular order. Was the call from Pacific Care originally
25 for you or for Dr. Desai?

1 THE WITNESS: It was originally -- someone came and
2 told me that I had a phone call.

3 THE COURT: All right. And then if the call was for
4 you, why did you not object to Desai taking it?

5 THE WITNESS: Because he's in charge, he was the
6 owner of the facility.

7 THE COURT: Were the syringes used to flush the
8 scopes labeled single use or multi-use?

9 THE WITNESS: Are we talking about the 50 cc
10 syringes? I -- I don't know if they would have been -- I'm
11 sure -- I don't know.

12 THE COURT: Don't speculate if you don't know.

13 THE WITNESS: I can't -- I don't know.

14 THE COURT: Was Dr. Carrol higher ranking than Dr.
15 Desai or was Dr. Desai Dr. Carrol's boss or what was the
16 relationship there?

17 THE WITNESS: Dr. Desai was the boss of everyone.

18 THE COURT: All right. Did you thoroughly wash your
19 hands between patients?

20 THE WITNESS: Many, many, many times.

21 THE COURT: All right. Did you always or were there
22 times you didn't?

23 THE WITNESS: I always did.

24 THE COURT: All right. Did you change your gloves --
25 well, first of all, were you wearing latex gloves?

1 THE WITNESS: No.

2 THE COURT: All right. So you handled the patients
3 and the -- and the needles and syringes gloveless, just with
4 your bare hands?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Then I'm going to sort of rephrase
7 the question. Would you touch a brand new needle, same
8 patient, new needle, would you do that without washing your
9 hands between taking off the used needle and applying the
10 clean needle?

11 THE WITNESS: Well, the needles are -- come in a
12 sterile container so you never touch them with your hands.

13 THE COURT: So you just touch the outside of the
14 container?

15 THE WITNESS: Well, yeah, the -- the shield. There's
16 a -- that goes over the top of the sterile needle, yeah. You
17 never touch the needle itself.

18 THE COURT: What was your hand washing practice? Was
19 it before the patient and then at the end of the patient or
20 did you wash your hands sometimes in the middle of a procedure
21 or did you have a practice regarding hand washing?

22 THE WITNESS: It would have been all three. If you
23 -- if we got blood on our hands or something, we would have
24 washed in between but it would have been ordinarily before and
25 after.

1 THE COURT: All right. Did you know that Mr. Rubino
2 had hepatitis C before the procedure? Before you began the
3 procedure with him?

4 THE WITNESS: I would have to look at the chart. I
5 don't recall.

6 THE COURT: All right. You testified that the
7 environment at the clinic was horrible. What made you stay so
8 long? Why did you stay so long?

9 THE WITNESS: The reason I stayed was because we
10 purchased a home here and I just sort of felt that I was
11 stuck, you know, I -- that's why I stayed.

12 THE COURT: Did any alarm bells ring to you when the
13 cost of -- the cost or prices of materials were brought up but
14 you received a bonus every few months?

15 THE WITNESS: Could you read that again?

16 THE COURT: Well, did you think it was curious or did
17 an alarm go off that costs seemed to be a factor, yet you were
18 receiving bonuses periodically?

19 THE WITNESS: I didn't -- never -- it never entered
20 my mind, no, because, I mean, my -- my bonus was so minimal
21 compared to what the rest were getting, so.

22 THE COURT: All right. During the history and
23 physical questioning of each patient before a procedure, were
24 questions asked on whether the patient had or had been exposed
25 to hepatitis C or other infectious diseases?

1 THE WITNESS: Yes, it was thoroughly gone through.

2 THE COURT: As a CRNA, are you required to have
3 education credits during your licensing period? I think that
4 means like continuing education.

5 THE WITNESS: Yes. It was every -- 30 or 45 units, I
6 don't recall, every two years we had to have.

7 THE COURT: Okay. And by unit would that equal an
8 hour?

9 THE WITNESS: It's one hour, one hour.

10 THE COURT: Okay. He answered the next one. Are
11 there certain classes you were required to take in order to
12 renew your license or to keep your license current?

13 THE WITNESS: It would just be the continuing
14 education.

15 THE COURT: Okay. But within that there's not
16 particular subjects or are there particular subjects that you
17 must take periodically in order to stay current?

18 THE WITNESS: We took CPR and ACLS, which is Advance
19 Cardiac Life Support classes and that's put out by the Red
20 Cross and that was every two years.

21 THE COURT: Every two years?

22 THE WITNESS: Yes.

23 THE COURT: So you were required to take that class
24 again at two-year intervals?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 THE WITNESS: To continue your license with it, yeah,
3 uh-huh.

4 THE COURT: All right. Thank you. Mr. Santacroce,
5 do you have any follow-up or any additional questions?

6 MR. SANTACROCE: No, Your Honor.

7 THE COURT: Mr. Wright?

8 MR. WRIGHT: No, Your Honor.

9 THE COURT: Mr. Staudaher?

10 MR. STAUDAHER: No, Your Honor.

11 THE COURT: Do we have any additional juror questions
12 for this witness? No? All right. Sir, I see no additional
13 questions. Please don't discuss your testimony with anyone
14 else who may be a witness in this matter and you are excused.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Thank you. Just follow the
17 bailiff. And the State may call its next witness.

18 MR. STAUDAHER: Patty Aspinwall, Your Honor.

19 THE COURT: All right.

20 MR. WRIGHT: He's going to handle that. I'm going to
21 be back in two minutes.

22 THE COURT: That's fine.

23 MR. WRIGHT: Thank you.

24 PATTY ASPINWALL, STATE'S WITNESS, SWORN

25 THE CLERK: Please be seated. Will you please state

1 and spell your first and last name for the record?

2 THE WITNESS: Patty Aspinwall.

3 THE CLERK: And can you spell that for us, please?

4 THE WITNESS: Patty, P-a-t-t-y, Aspinwall,
5 A-s-p-i-n-w-a-l-l.

6 THE COURT: All right. Thank you. Mr. Staudaher.

7 MR. STAUDAHER: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. STAUDAHER:

10 Q Ms. Aspinwall, I'm going to direct your
11 attention to a few years back to September 21 of 2007. Do you
12 know that day?

13 A Yes.

14 Q Did you undergo a procedure at the Endoscopy
15 Center of Southern Nevada on that day?

16 A Yes.

17 Q Can you tell us what kind of a procedure it was?

18 A Just a regular colonoscopy.

19 Q Now, prior to going to the clinic on that day,
20 how did you end up there?

21 A I had gone to my doctor a week or so prior to
22 that and she suggested that due to my age it was time to have
23 a colonoscopy done.

24 Q So the doctor was who?

25 A Dr. Castleman.

1 Q So was this just a screening or were you having
2 some problem in addition to that?

3 A I was having some -- some issues.

4 Q So it was a combination of the two?

5 A Yes.

6 Q So tell us how it was. You leave Dr.
7 Castleman's office, do you go over there and just have the
8 procedure or do you see him in advance?

9 A I see him in advance. Dr. Castleman's office
10 had made the appointment for me for him. Don't remember the
11 date, but I went in to see him early one morning. He agreed
12 with Dr. Castleman that I needed to have a colonoscopy and
13 scheduled it for September 21st.

14 Q And as far as that's concerned, you go in and
15 who was the doctor again that you saw?

16 A The first time?

17 Q When you were at the clinic, yes.

18 A Dr. Desai I saw the first time.

19 Q Okay. And do you see him in the courtroom
20 today?

21 A Yes, I do.

22 Q Can you point to him and describe something that
23 he's wearing for the record?

24 A He's right there.

25 MR. STAUDAHER: Let the record reflect the identity

1 of Dr. Desai, Your Honor.

2 THE COURT: It will.

3 BY MR. STAUDAHER:

4 Q Now, he said -- you said the first time you went
5 and saw him.

6 A Right.

7 Q Was there -- were there other times?

8 A Only for my follow-up. I didn't -- well, my
9 follow-up after my colonoscopy I did not see him, I saw
10 another doctor.

11 Q Who was that?

12 A I don't recall her name.

13 Q But a female?

14 A Yes.

15 Q Was this back at the medicine side of the
16 clinic?

17 A Yes.

18 Q Same location though?

19 A Yes.

20 Q Was this at Shadow -- 700 Shadow Lane?

21 A Yes.

22 Q So let's walk through the -- the day that you go
23 to have the procedure. Tell us what happens.

24 A Well, I went into the --

25 Q First of all, when you arrived, all that, just

1 walk us through it.

2 A Okay. My appointment was set for about 9:15 or
3 so, we got in there about 9:00, signed in, did all my
4 paperwork that I -- that was requested and sat down. The room
5 only had two seats left, that's it. Everybody else, once they
6 stepped in they all had to stand and wait. I kept going up to
7 the window and asking them when they were going to take me in
8 because it kept getting later and later in the morning, my
9 husband needed to be at work at noon and they kept saying any
10 time now. They finally came and got me around 11:30ish and
11 took me back.

12 Q So just so I'm -- I'm clear. When you first
13 arrived there's that many people in the waiting room?

14 A Yes.

15 Q So you -- did you take the last two seats then?

16 A Yes.

17 Q Now before you get back to the waiting room to
18 sit down, you said that you had gone up and checked in?

19 A Right.

20 Q Can you describe for us what took place when you
21 checked in?

22 A Basically, it was just gave my name, they gave
23 me some paperwork to fill out, name, address, insurance
24 information and then I turned it back to them.

25 Q Who was your insurance carrier at the time?

1 A There was United Healthcare and Blue Cross Blue
2 Shield.

3 Q At some point after the whole procedure is done,
4 do you get some paperwork back from them? I mean, something
5 that showed what the claim was or how much you had to pay,
6 that kind of thing?

7 A No. I think I just had to pay a co-pay.

8 Q Okay. Did you get any paperwork back from
9 Anthem Blue Cross Blue Shield showing that there had been
10 anything done?

11 A Not --

12 Q Any billing to them, anything like that?

13 A Not at this -- that I recall.

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

15 THE COURT: Sure.

16 BY MR. STAUDAHER:

17 Q I'm going to show you what's been marked as
18 proposed State's 96.

19 A Okay.

20 Q And ask you if you've ever seen that document,
21 if that looks familiar?

22 A Oh, yes, this does, yes.

23 Q Okay. And what is that?

24 A This is the service for the anesthesiologist.

25 Q So did you receive this at some point?

1 A At one point I did, yes.

2 Q Okay. So this is a document that came to you
3 and that you had in your possession.

4 A Yes.

5 Q And I know that it's not the original, but it's
6 a facsimile of that?

7 A Yes.

8 MR. STAUDAHER: Move for admission of State's
9 proposed 96, Your Honor.

10 THE COURT: Any objection?

11 MS. STANISH: No, Your Honor.

12 MR. SANTACROCE: No, Your Honor.

13 THE COURT: All right. That's admitted.

14 (State's Exhibit 96 admitted.)

15 BY MR. STAUDAHER:

16 Q Just so we're clear on this as we go. And let's
17 just go through it a little bit. It shows your name?

18 A Yes.

19 Q And your insurance carrier, which is
20 UnitedHealthcare here.

21 A Right.

22 Q And you said Anthem Blue Cross Blue Shield; is
23 that right?

24 A They were -- they were my secondary at that
25 point.

1 Q Okay. So these are the secondary insurance
2 carriers.

3 A This here is my -- my primary insurance.

4 Q Okay. So you had actually two different
5 insurances.

6 A Yes.

7 Q You mentioned that there was -- I think it was
8 down here you said an anesthesia charge?

9 A Yes.

10 Q And then obviously the payments that were done
11 for that, correct?

12 A Right.

13 Q Now the co-pay that you had to pay at the time,
14 what -- what was that, if you recall?

15 A It could have been \$10 or \$20.

16 Q So there was some money you had to pay up front.

17 A Right.

18 Q When you get to the -- after you pay your
19 co-pay, do whatever you -- you fill out and sit down, you said
20 you were there from about nine, what, until about 11:30?

21 A About 11:30 when they took me back.

22 Q During the time that you're in the waiting room,
23 does it get more crowded?

24 A Yes.

25 Q Noticeably so?

1 A Yes.

2 Q You had mentioned that there were people
3 standing at some point. Did that happen during that period of
4 time?

5 A Yes.

6 Q In general, how full was it beyond the seats
7 that were there?

8 A I know that the wall, there was a door right
9 there at the wall where people were standing were there and
10 there were people standing back there.

11 Q So this is a place where these are all patients
12 going -- waiting to have their procedures done?

13 A Yes.

14 Q Now in -- before you got there that day, had you
15 had do anything the day before, the night before?

16 A Well, I had to drink the stuff that they make
17 you drink before. You start about 4:00 in the afternoon to
18 clean you out.

19 Q When you got there how did you feel?

20 A I felt fine.

21 Q So you had --

22 A Tired but fine.

23 Q -- you had cleaned out and you were just waiting
24 to go back.

25 A Yes.

1 Q So when they finally take you back there, tell
2 me what happens. Does your husband come with you, first of
3 all?

4 A He doesn't come with me at -- then. He doesn't
5 come back with me back there. They take me to a room to
6 undress. They take me back to another room where I'm to put
7 my clothes and then they take me to another room where I sit
8 to put the hep-lock, I think it's called, where they put that
9 in your arm for the anesthesiologist.

10 Q And you're motioning on your left arm. Do you
11 know which arm it was?

12 A I think it was my left arm because I was sitting
13 in a chair -- no, I'm sorry, it's my right arm.

14 Q Okay. And did you watch that procedure take
15 place?

16 A Yes.

17 Q Okay. So you're sitting -- you're sitting in a
18 chair when it happens. And you -- you kind of motion to your
19 part right at the crook of your elbow on the inside of your
20 elbow.

21 A Right in here, yeah.

22 Q Is that where they put in the what you termed
23 hep-lock?

24 A Yes.

25 Q Tell us what -- how that went. First of all, do

1 you know who it was that put this in?

2 A I want to think it was a -- it was a nurse, but
3 there was a gentlemen up talking, explaining what he was doing
4 and why they were doing what they were doing. That they were
5 putting this in so that when you got into the room they could
6 just inject you with the anesthesia -- I can never say that
7 word correctly.

8 Q Anesthetic?

9 A Yes, thank you. So basically, he said you just
10 go in. When you come out they'll check your blood pressure
11 and you'll be ready to go.

12 Q So you think a female actually inserted it but a
13 male was talking to you when this was going on?

14 A Yes.

15 Q When they were putting this in your arm, again,
16 did you watch from start to finish what -- what they did or
17 what she did?

18 A Well, yes and no, because I don't like needles
19 or anything like that. So I kind of knew they were just
20 putting something there but I don't know -- actually, I don't
21 even know how it attached. I know it was just something that
22 they put there.

23 Q So when they poked you in the arm you weren't
24 looking at the arm?

25 A No.

1 Q Did you feel it?

2 A Yes.

3 Q After they did that, did you turn and look at
4 what was going on?

5 A No.

6 Q So at some point do you see that -- what they've
7 done to your arm? I mean, do you see them tape it down? Do
8 you see anything like that?

9 A I'm assuming it's taping down but I'm not
10 positive because it -- it stays there, it doesn't -- it --
11 because I get up and walk away, so it -- it doesn't fall off
12 or anything so I think they must have taped it.

13 Q Did you ever see at anytime that you were there,
14 anybody grab a syringe of anything and inject it with -- with
15 something?

16 A No.

17 Q Is that something you think you would recall if
18 you would have seen it?

19 A I think so.

20 Q So they put this in, you don't see the injection
21 or any injection and then what happens to you?

22 A They take me back to the curtain area where they
23 put me on a bed. They roll me into the room. They ask me --
24 a nurse asked me my name, my phone number, so forth. I told
25 her. She asked me the doctor's name. I couldn't remember my

1 doctor's name for the life of me at that point. I made a joke
2 to the man that was standing here, he didn't laugh. I guess
3 that kind of bothered me because I was really nervous. Next
4 thing you know I'm -- I'm in -- the next thing I know I'm in
5 my room. Back -- I'm back in the curtain area. I don't -- I
6 don't remember anything after that.

7 Q So the procedure you don't remember. Do you
8 remember a doctor coming in and talking to you?

9 A No.

10 Q Now the man that you were talking about, do you
11 know who was actually going to give you the anesthesia?

12 A Yes. I know he was the one that was going to --
13 because I -- he turned to me and started counting -- and said
14 start counting and then that was it.

15 Q Did you see him inject anything into your arm?

16 A No.

17 Q So the man just tells you to start counting and
18 you count and then you go to sleep.

19 A Uh-huh.

20 THE COURT: Is that a yes? You have to answer a yes
21 or no --

22 THE WITNESS: I'm sorry, yes.

23 THE COURT: -- because this is being taped.

24 BY MR. STAUDAHER:

25 Q When you wake up, you said you were in some

1 other area.

2 A I'm back in my curtained area.

3 Q The place you had started?

4 A Yes, well, yes, where I started. I wasn't in
5 the -- I wasn't in the preparation room or the operation room
6 or whatever you call it anymore. I'm back in the other room
7 where I had started.

8 Q When you wake up is there anybody there?

9 A No, I'm alone.

10 Q No nurse?

11 A No.

12 Q Did you ever see the man who told you to count
13 back?

14 A No.

15 Q Did you ever see your doctor come out and talk
16 to you?

17 A No.

18 Q The whole time you were there?

19 A The whole time I was there I didn't see one
20 doctor.

21 Q Did you ever see at any time the man who told
22 you to count back?

23 A No.

24 Q At some point when you're back there what do you
25 do?

1 A I woke up and a woman walked in and checked my
2 blood pressure. She said your blood pressure is really high,
3 I'll be back. The next minute, there's a gentlemen back, the
4 guy that actually had taken me from the office to take me into
5 the curtain area to change, he was back and he was unhooking
6 the blood pressure cuff. And I said, my blood pressure is
7 really high, is everything okay. He didn't speak really good
8 English. He didn't understand what I was asking. So then he
9 led me over to the nurses' station and had me sit down.

10 When the nurse came out to get me or the -- the woman
11 who gave me my results, I realized I didn't have a voice. I
12 couldn't -- I couldn't talk. It was like I woke up with this
13 voice and I woke up with a -- laryngitis. I wasn't sick when
14 I went in but I was -- it's almost like I was sick when I came
15 out. She advised me that they had found a polyp but it was
16 fine, go home, rest up, come back in a couple of weeks.

17 Well, when I came back I saw the woman doctor, she
18 advised me that I had irritable bowel syndrome, that there
19 really wasn't anything that they could do and go home and
20 that's what I did.

21 Q And let's go back to the waiting room area now.

22 A Okay.

23 Q If I understand you correctly, you've -- you've
24 gone out and you wake up, there's nobody there initially.
25 Eventually a nurse comes over and takes a blood pressure, says

1 it's high and then she says she'll be back and leaves.

2 A Uh-huh.

3 Q Now, before this person came out that had
4 originally led you back into the room, did you see that nurse
5 again during --

6 A No.

7 Q -- the interim? So she wasn't able to get back
8 before he came over, unhooked you and led you over to the
9 place where you were discharged from.

10 A Right.

11 Q Now, that blood pressure thing that you were --
12 I mean he disconnected you -- disconnected you from that.

13 A Yes.

14 Q The nurse at any point during that process, did
15 the nurse who originally came out and talked to you, did she
16 -- did you see her again?

17 A No.

18 Q So you just never saw a nurse after that at all.

19 A No. I walked from the curtained area to the
20 seating area outside the other nurse's office.

21 Q Were you able to walk fine?

22 A I'm thinking I did, but, yeah.

23 Q Did you have to have help walking out?

24 A I -- I think he might have helped me a little
25 bit because I was feeling weak, but I don't -- I don't recall

1 really.

2 Q And just so we're clear. The man who -- who led
3 you to the area where you were told to sit in a chair --

4 A Uh-huh.

5 Q -- who brought you back, is that -- is that the
6 same man who was in the procedure room who did your anesthesia
7 stuff?

8 A The man who took me -- the man who brought --
9 who took me from the -- the room or the -- outside the office
10 to the dressing room to the room where I laid down on the --
11 on the bed, he was the one that came back and took me back.
12 He wasn't the anesthesiologist.

13 Q Okay. That's what I was asking.

14 A Okay.

15 Q So it's a different man.

16 A It was a different man, yes.

17 Q Now, you go home, you come back to the clinic,
18 you get that information. What happens after that?

19 A October 17th I think was the date that I woke up
20 feeling really, really sick to my stomach. Had a party
21 planned for my sister, it was her 60th birthday party, so we
22 planned to go to that and I was sick the whole day. I thought
23 I must have some form of bladder infection because when I went
24 to the restroom my urine was brown. So I went to Dr.
25 Castleman on Monday after the Saturday and she gave me an --

1 she said it wasn't a urinary tract infection but there was
2 some kind of bacteria there, so she gave me something for it.
3 So I started taking that, kept getting worse and worse and
4 worse.

5 One morning I got up and I said to my husband am I
6 yellow and he said yes, you need to go to the doctor. So I
7 went back to Dr. Castleman and at that point she said you need
8 to go to Mountainview Hospital next door because there's
9 nothing I can do for you here. They have all the tools, they
10 have all the equipment in which they can test you very
11 quickly.

12 Q So describe for me some -- beside you said
13 yellow and you said this dark urine, did you have any other
14 symptoms?

15 A I had weakness in my legs, my joints hurt, had
16 trouble going to the restroom and nauseous.

17 Q So generally sick then?

18 A Yeah.

19 Q You go to -- end up at Mountainview Hospital.
20 What happens to you there?

21 A I get there about 11:00 in the morning. They
22 take me in about 9:00 that night. Explained to me that there
23 was something wrong with my liver, but they didn't really know
24 what it was. They admitted me. The next day Dr. Seni who was
25 the doctor who was -- was there at the time, came in, talked

1 to me a little bit, said she hadn't got all the -- the blood
2 work yet back, she would be back that evening.

3 That evening she came back in, she started
4 questioning my husband and I -- a lot of different very
5 personal questions about our lives up until this point. She
6 started telling us stories about the different types of
7 hepatitis. At this point I'd never really ever heard of
8 hepatitis, I've lived a really clean life, always taking very
9 good care of myself. But now I'm looking at this as oh, my
10 gosh, what have I -- what have I contracted or what has --
11 what has transpired in my 40 years, 50 years. So she said
12 tomorrow Dr. Faris will be coming in and he'll be seeing you
13 and he'll want to do further testing. She went home.

14 The next morning Dr. Faris comes in and he says, so
15 tell me what's going on. And I said well, Dr. Seni was here
16 last night, she said I have hepatitis C. He says you don't
17 have hepatitis C. He said I don't know what you have, but you
18 don't have hepatitis C. Why would she tell you you have
19 hepatitis C? I said, I don't know, I just am going by what
20 she said I had. So he said well, we need to do further
21 testing on this.

22 So he had me do more ultrasounds, more x-rays, more
23 -- more tests and when he came back two days later he never
24 says anything about what it could possibly be, he just said
25 well, your RNA hasn't come back yet. I had no idea what an

1 RNA was, let alone hepatitis C at this point.

2 He said well, I'm going to be going on vacation but I
3 think it's okay for you to go home, there's nothing we can do
4 for you. I think you should go home, but I'm going to be on
5 vacation next week but I want you to come in and see me as
6 soon as you get out because this is very, very serious. So
7 Dr. Seni came in and she said you're too sick to go home, we
8 can't -- we can't let you go home. Now this is like a week
9 before Thanksgiving and this is Friday night so we stayed, I
10 stayed through Monday.

11 Monday, Dr. Seni finally let me go home. As soon as
12 I got home I called Dr. Faris's office and they said he's on
13 vacation. I said, well, he specifically told me that I needed
14 to call him as soon as I got out of the hospital to come in
15 and see him because this is very serious and we need to get it
16 taken care of. So she said well, you can see one of his
17 assistants. I said well, I want to know what the RNA is and
18 find out what we need to do -- do next.

19 So I went in on Tuesday, the doctor walked in and
20 said, you're yellow, you need to be in the hospital. I said I
21 just got out of the hospital and I'm here to find out what my
22 RNA results are and what my next step is. He says well, I
23 can't really help you because that's Dr. Faris's situation and
24 he's on vacation.

25 Q Where is this at? Where did you go?

1 A This was at Dr. Faris's office on Tenaya and
2 Cheyenne.

3 Q Same group though, correct?

4 A Pardon me?

5 Q Same group of doctors that had given you your
6 procedure?

7 A Right, right.

8 Q So go on.

9 A Okay. So I went home and I made an appointment
10 to see Dr. Faris the following week when he came back. When
11 he came in -- well, first, I was in the office and he said I
12 need to see Patty Aspinwall right now while I was already
13 there. And so he came in and I said I heard you yell out my
14 name and I was just getting ready to come to the door and tell
15 you I'm already here. And he says well, you know this is
16 really serious, we really need to do something. However,
17 sometimes hepatitis C will clear itself, so we're not going to
18 do anything for at least six months. We're not going to do
19 anything because it will clear itself. So he said we're going
20 to test you every month and see how it goes.

21 So for the next few months -- actually, it really
22 wasn't a few months because this was in November, December,
23 January, I had an appointment with Dr. Faris on President's
24 Day. Three days prior to that I get a call from the CDC
25 telling me that I got hepatitis C at the Endoscopy Center.

1 The same day that I got that call from the CDC I also got a
2 call from Dr. Faris's office saying that they could not see me
3 on Monday because he was going to be going part-time and I
4 would have to rearrange my schedule to go in with his
5 schedule. So I started thinking oh, my -- oh, my gosh, what
6 do I do, you know, now I have this from here.

7 One of the things too that the CDC said was Dr.
8 Carrol's office will take care of all of the -- all of your
9 money, anything that you -- all your bills. Anything that
10 you've incurred, Dr. Carrol's office will take care of that.
11 Up until then I didn't realize that Dr. Carrol, and Dr. Faris
12 and Dr. Desai were all one, they were involved together. I
13 thought it was Dr. Desai and then Dr. Carrol. It wasn't
14 until later that I found out the three of them were all in
15 this together.

16 Q So -- okay. So do you -- do you continue to
17 follow up with them?

18 A Actually, I did not. I got a call from Dr.
19 Faris on Friday -- I mean, I'm sorry, on Monday, on
20 President's Day. Earlier that day, I had gone to get my blood
21 work because when -- I'm sorry, let me go back a little bit.
22 When I called the doctor back on Thursday, the day after they
23 called and left a message --

24 Q What doctor? What doctor did you call back?

25 A Dr. Faris's office. I called Dr. Faris's office

1 to reschedule the appointment. She said Dr. Faris will only
2 be working part time and you can't see him until April. I
3 said I can't wait until April, I need to see Dr. Faris now.
4 She said well, you can see a nurse practitioner but you cannot
5 see Dr. Faris until April. I said fine, I'll find me another
6 doctor. So I went in looking for another doctor.

7 On Monday, Dr. Faris's office called -- no, I take it
8 back. Dr. Faris called himself and said I just got your
9 numbers back and it doesn't look good. You need to come in
10 and start the medication. He said you have -- you need to
11 talk to my nurse and she will schedule you an appointment and
12 you should come in.

13 Q Well, do you know what medicine they were
14 referring to?

15 A It was interferon and one of the other ones
16 that --

17 Q [indiscernible]

18 A Yes.

19 Q Okay.

20 A Okay.

21 Q So you -- you at least get told you need to have
22 this therapy?

23 A Right.

24 Q Did you follow up and get the therapy?

25 A No.

1 Q What did you do?

2 A Well, after I got off the phone with Dr. Faris
3 I called Dr. Lopez, made an appointment with him for
4 Wednesday. When I went to Dr. Lopez, he said don't do
5 anything. He said, you know, you're a healthy woman, don't do
6 anything at this point. So we didn't. We continued seeing
7 him. However, we saw four other doctors in the time frame to
8 get more opinions on what I was given. You know, first I was
9 told to take it, then I was told not to take it, then I was
10 told to take it, then I was told not to take it.

11 Q Did you end up taking it at all?

12 A No, I have not.

13 Q So you've never taken the interferon therapy?

14 A No.

15 Q Has it ever been recommended to you by any of
16 these doctors definitively to go ahead and go through that
17 therapy?

18 A Only Dr. Faris.

19 Q And as far as that's concerned, did anybody
20 explain to you what the side affects were, what it meant to go
21 through that therapy?

22 A Yes, Dr. Lopez did.

23 Q How long would it be and the like?

24 A Yes.

25 Q Okay. Is that why you elected not to do it?

1 A Yes.

2 Q What do you -- what's your situation now?

3 A My enzyme levels are good, they -- they -- they
4 fluctuate every day, all the time.

5 Q When you say enzyme levels, are you talking
6 about liver enzymes?

7 A My liver enzyme levels.

8 Q Okay.

9 A I try to keep myself healthy, that's all I can
10 do at this point. That's all -- that's all I feel I can do at
11 this point.

12 Q Do you get periodically tested for the virus or
13 anything like that? I mean, any blood work that goes on?

14 A Every six months I go in for ultrasound and
15 blood work. And I see a -- now I see Dr. Nemeec because Dr.
16 Lopez is no longer in town.

17 Q So as far as the treatment, is it just kind of
18 static? You get tested and -- for the things you mentioned
19 and you're not on any medication per se at this point?

20 A Right.

21 Q Has anybody ever told you that you're -- you
22 know, you don't have the virus anymore? It's all -- it's all
23 gone --

24 A No, no, no. He's always said -- he says every
25 time I go in there, he says it's active, it's there.

1 Q Okay. And -- and you also have seen the blood
2 work that shows changes in your enzymes.

3 A Yes. Actually, I go and get my -- my blood
4 results every six months and can, you know, kind of look at
5 them together, compare the two.

6 MR. STAUDAHER: Pass the witness.

7 THE COURT: All right. Cross.

8 CROSS-EXAMINATION

9 BY MS. STANISH:

10 Q Good afternoon.

11 A Hi.

12 Q My name's Margaret Stanish, I represent Dr.
13 Desai. Have you heard that there's new drugs coming out to
14 treat hepatitis C?

15 A Yes.

16 Q Are you -- do you know at this time whether
17 you're going to take any of that?

18 A I'm considering it, but I -- I have not
19 investigated it. My doctor says it's going to be out some
20 time next year and he will keep me updated on the symptoms and
21 -- and how well it's been doing with the other subjects.

22 Q So your plan is to -- at least continue what
23 you're -- have been doing for the past several years, that is
24 monitor your condition.

25 A Right.

1 Q And you've been doing healthy things like
2 watching your diet and so on.

3 A Right.

4 Q I just want to clarify a -- a couple points when
5 you were describing your September 21st visit to the
6 Colonoscopy Center. All right?

7 A Uh-huh.

8 Q First, you get there and you wait.

9 A Uh-huh.

10 Q Have you waited at the other doctor's offices?

11 A Yes, I have. However, when I went in
12 specifically because I had talked to other people who had
13 issues at this particular office, that it takes them a long
14 time. When I went in, up to the front desk, which I had just
15 recalled, because I told them my husband had to be to work at
16 noon and so I needed to be out earlier.

17 Q Okay.

18 A So they said that they would -- they would try
19 to get me in as soon as possible.

20 Q All right. And the -- I thought I understood
21 you to say that the waiting room was full of patients,
22 correct?

23 A Right.

24 Q Is it the case that it wasn't just patients, but
25 it was also the people who were there to escort them or pick

1 them or drop them off?

2 A I'm sure there -- that was the case as well.

3 Q And kind of jumping around, I know I'm jumping
4 around a bit. But you had the procedure done, you were in the
5 recovery room and as I -- and you came to while you were in
6 the recovery room, correct?

7 A Right.

8 Q And when you came to, were you hooked up to a
9 monitor or something?

10 A I was hooked up to the blood pressure monitor.

11 Q And then a nurse came by and told you you had --
12 your pressure looked somewhat high.

13 A Right.

14 Q And then she left and you didn't see that woman
15 again.

16 A Right.

17 Q At some point, I -- I understood you to say that
18 a man came and escorted you to where?

19 A Well, he escorted me to the area where the -- a
20 nurse, I'm assuming she was a nurse, where she provided my
21 results.

22 Q At --

23 A Some of the results.

24 Q All right.

25 A Okay.

1 Q A discharge nurse?

2 A Right.

3 Q And she gave you written instructions and verbal
4 instructions.

5 A I think it was verbal. She may have given
6 written, I don't recall. But she did show me, you know, the
7 -- the test where they show that there was a polyp that they
8 had removed, but it was going down for testing for cancer.

9 Q At what -- did you get dressed before visiting
10 with that discharge nurse or did you get dressed before or
11 after getting discharged?

12 A After I saw her.

13 Q Okay. So you're in a -- you're in your gown
14 visiting the discharge nurse. Does that sound right?

15 A Well, my husband was standing -- my husband was
16 right next to me at that point. I must have dressed, yeah.

17 Q Yeah, you wouldn't have walked out in that gown.

18 A Well, I -- yeah, okay, I probably got dressed in
19 the room and then walked out because I -- I recall my husband
20 being there with me.

21 Q All right. So the -- the man who escorted you
22 from the recovery room took you to a dressing room?

23 A Yes, the same one where I was at before.

24 Q That makes sense.

25 A Yes.

1 Q And then, did some -- when did your husband join
2 you?

3 A It would have been sometime after I came out of
4 the dressing room. I honestly don't remember even how --
5 excuse me, he got from -- from the front office to where I
6 was, but I assume either I went and got him or they brought
7 him out back because we walked out the back way, we walked out
8 the backdoor.

9 Q And -- but before walking out you visited with
10 the discharge nurse.

11 A Yes.

12 Q And you described to her how you felt like you
13 had laryngitis and she gave you instructions for after care.

14 A Yes. Well, actually, I didn't say anything to
15 her about the laryngitis because I thought it was just because
16 -- I honestly didn't know why I had a scratchy voice. I just
17 thought maybe I snored really loud, I don't know, you know.
18 But it went on for weeks, it didn't just end, you know, the
19 next day, it went on for weeks.

20 And when I went back to the doctor I told her, I
21 said, I had laryngitis, I said I didn't have a sore throat but
22 I had laryngitis. And she said well, sometimes when you go
23 through these procedures your immune systems are -- are -- are
24 weak so you tend to get a cold. I didn't have a cold, it was
25 just my voice, I just didn't have one. So I wasn't -- I

1 didn't feel sick.

2 Q Okay. And speaking of your immune system, am I
3 to understand you really didn't need -- your decision was
4 after talking to multiple doctors and getting different
5 opinions, your decision was you're going to let your immune
6 system try to fight off the hepatitis C virus?

7 A Actually, just keep it in check as -- as much as
8 possible.

9 Q Keep it in check so that it -- your -- your --
10 your -- the blood tests that you have been getting every six
11 months or so are showing that the hepatitis C is in check.

12 A It's still active.

13 Q Correct. But it's -- you're not having
14 symptoms.

15 A No, I'm not.

16 Q And if -- if you did you would visit with your
17 doctor and decide whether to get additional --

18 A Yes --

19 Q -- treatment.

20 A -- if I was to go back to where I was five years
21 ago I would definitely go back and start reexamining.

22 Q And am I to understand that you had a discussion
23 with the nurse that administered the anesthesiology before you
24 went under?

25 A I did. Well, I made a joke but I don't remember

1 what the joke was now.

2 Q He didn't think it was funny, he didn't laugh.

3 A No, he didn't laugh. Actually, he never even
4 turned around and looked at me. So I thought that was kind of
5 odd because, you know, I'm laying here on the bed and the
6 nurse was over here and he was standing here with his back to
7 me and I said something and he -- he didn't say anything, he
8 didn't turn towards me. I don't even -- never even saw his
9 face.

10 Q And then once you were out you don't have much
11 recollection of what happened thereafter?

12 A No.

13 Q All right. At some point in time, did you
14 retain an attorney to represent you in civil litigation?

15 A I did, but it wasn't until after I had been in
16 touch with the CDC.

17 Q And so that would have been, as I understand
18 your testimony, ma'am, a few days before President's Day when
19 the CDC contacted you, you thereafter retained an attorney.

20 A Yes.

21 Q And can you tell us approximately how many days
22 after getting the notification from the CDC, how long
23 thereafter was it before you hired an attorney?

24 A Maybe a week, week and a half.

25 Q Did you change attorneys at any time?

1 A Yes.

2 Q And when did that occur?

3 A I think it was maybe four months after we hired
4 Ahab that we went to Billie Marie Morrison's office.

5 Q So Billie Marie Morrison represented you four
6 months after the notification --

7 A Uh-huh.

8 Q -- and who was your first attorney?

9 A Ahab Omar, I think was his name.

10 Q Okay. And did you eventually reach settlements
11 in the litigation?

12 A Yes.

13 Q And can you tell us who the defendant -- well,
14 let me ask you this. Did you receive a settlement?

15 A Yes.

16 Q And would you describe for us the settlement,
17 the monies that you received?

18 A We received 300,000 from the medical and --

19 Q I'm sorry. When you say medical, do you mean
20 the clinic?

21 A I'm sorry. That was from the -- the doctors.

22 Q Okay.

23 A And 2.6 million from the pharmaceutical.

24 Q Do you know what pharmaceutical that was?

25 A I know one was Teva.

1 Q Is that the manufacturer of the propofol?
2 A Yes.
3 Q Anybody else?
4 A I don't recall the other -- the other ones.
5 Q Were there other ones?
6 A I think there was one other one with that, but I
7 don't recall.
8 Q Was there a pharmacist?
9 A I don't think so.
10 Q Are you currently waiting on any other
11 settlement?
12 A Yes, one more from our HMO.
13 Q I'm sorry?
14 A From our HMO.
15 Q You have Blue Cross and Blue Shield -- or what
16 -- who is -- who were your insurance companies?
17 A I actually have UnitedHealthcare and Blue Cross
18 Blue Shield.
19 Q And so when you say HMO, you're talking about
20 UnitedHealthcare?
21 A Yes.
22 MS. STANISH: Court's indulgence.
23 THE COURT: Okay.
24 MS. STANISH: Nothing further. Thank you, Your
25 Honor.

1 THE COURT: Mr. Santacroce.

2 MR. SANTACROCE: Thank you.

3 CROSS-EXAMINATION

4 BY MR. SANTACROCE:

5 Q Good afternoon, Mrs. Aspinwall.

6 A Hi.

7 Q I just have a few questions about the time
8 period from when you were taken out of the waiting room but
9 before you went into the procedure room. Can you describe
10 that for me?

11 A From the waiting room to the procedure room, the
12 time frame?

13 Q The time in between.

14 A I can tell you this, that I got in there -- they
15 took me in at 20 minutes to 12 and they took me out at 10
16 minutes after 12. That is when I clocked out and went home.
17 So the nurse or the gentlemen that took me into the changing
18 room, the dressing room, took me back to the little room where
19 the bed was, where I put my stuff, then I went into the room
20 where they put the little hep-lock there, went back to that
21 room with the bed and then into the procedure room.

22 Q Okay. Do you have any medical training at all?

23 A None.

24 Q You used the term hep-lock. How are you
25 familiar with that term?

1 A Just through my settlements, things that we
2 discussed.

3 Q Okay. Because when you -- you gave an interview
4 to Detective Whitely, correct? Is that a yes?

5 A Yes.

6 Q Okay. And in that interview you described it as
7 a shot like thing. Do you remember that?

8 A No.

9 Q Okay. That shot like thing, I'm assuming was
10 the hep-lock you were referring to --

11 A Yes.

12 Q -- is that correct?

13 A I think so.

14 Q And I believe you testified that you didn't
15 actually watch the nurse put the hep-lock in, correct?

16 A Right.

17 Q And that was a female nurse that did that?

18 A Yes.

19 Q And I believe you testified that -- that -- and
20 correct me if I'm wrong, this is my recollection, that it
21 didn't fall off so they must have put tape on it, correct?

22 A Correct.

23 Q So you didn't actually see them put tape on it,
24 right?

25 A No.

1 Q So it's fair to say that you didn't watch any of
2 that procedure where the hep-lock went in and they taped it --

3 A Just felt it.

4 Q -- just felt it, correct?

5 A Right.

6 Q The times that you mentioned when you got there
7 and when you left, how -- how did you determine those times?

8 A I looked at my watch. I was very concerned
9 about my husband being to work on time. So when they took me
10 in I happened to look at my watch and then when we left I
11 said, you've got -- it's -- it's 10 after 12, you're already
12 late for work. And he still had to take me home. So I was --
13 I was really paying attention to the time frame so he wouldn't
14 get in trouble.

15 Q Okay. Do you remember in the interview with
16 Detective Whitely, I believe you testified that you were in
17 the recovery room for between 15 and 20 minutes, correct? Do
18 you remember that?

19 A No.

20 Q Do you remember that you told Detective Whitely
21 that after you were in the recovery room for about 15 or 20
22 minutes you left and it was about 12:00?

23 A No, I don't remember that.

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

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. STAUDAHER:

4 Q Just so I'm clear, you went -- were taken back
5 at about 10 minutes to 12?

6 A About -- I seem to recall 20 minutes to 12.

7 Q Twenty minutes to 12, okay. And so 20 minutes
8 to 12 and then ten minutes after 12 is when you were walking
9 out of there?

10 A Yes.

11 Q Thirty minutes total?

12 A Yes.

13 MR. STAUDAHER: Nothing further, Your Honor.

14 THE COURT: Any recross?

15 MR. SANTACROCE: Yes.

16 RECROSS-EXAMINATION

17 BY MR. SANTACROCE:

18 Q When you got into the procedure room, were you
19 hooked up to a machine?

20 A I have no idea.

21 Q So you don't recall --

22 A I was just -- my arms were out like this.
23 That's -- that's all I remember.

24 Q But you could have been, you just don't
25 remember?

1 A Right, right. I don't know.

2 Q You don't remember any kind of sticky things on
3 your arm or your chest or anywhere like that?

4 A No.

5 Q You don't remember the anesthesiologist asking
6 you some questions?

7 A No. I remember the nurse, but I don't remember
8 anything after that.

9 Q And the only thing I think you told in your
10 interview was the only thing you remember is waking up in the
11 recovery room?

12 A Right.

13 Q Thank you.

14 THE COURT: Ms. Stanish, anything else?

15 MS. STANISH: No, Your Honor.

16 THE COURT: Anything else from the State?

17 MR. STAUDAHER: No, Your Honor.

18 THE COURT: Any juror questions for the witness? No?

19 All right, ma'am. I'm about to excuse you, but before I do I
20 must admonish you to please not discuss your testimony with
21 anyone else who may be called as a witness in this case.

22 THE WITNESS: Okay.

23 THE COURT: Thank you and you are excused and you can
24 just exit the courtroom.

25 And ladies and gentlemen, we're going to go ahead and

1 take a break until about 3:15. During the break you're
2 reminded that you're not to discuss the case or anything
3 relating to the case with each other or with anyone else.
4 You're not to read, watch, or listen to reports of or
5 commentaries on this case, any person or subject matter
6 relating to the case. Don't do any independent research and
7 please don't form or express an opinion on the trial.
8 Notepads in your chairs and follow the bailiff through the
9 rear door.

10 (Jury recessed at 3:02 p.m.)

11 THE COURT: Who -- who's next?

12 MS. STANISH: Herrero, Dr. Herrero.

13 MR. STAUDAHER: And that's actually our last witness
14 in this case.

15 (Court recessed at 3:02 p.m. until 3:13 p.m.)

16 (Inside the presence of the jury.)

17 THE COURT: Court is now back in session. The State
18 may call its next witness.

19 MR. STAUDAHER: States calls Dr. Herrero to the
20 stand, Your Honor.

21 CARMELO HERRERO, STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated. Sir, would you please
23 state and spell your name?

24 THE WITNESS: Carmelo, C-a-r-m-e-l-o, last name
25 Herrero, H-e-r-r-e-r-o.

1 THE COURT: Thank you. Mr. Staudaher.

2 MR. STAUDAHER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. STAUDAHER:

5 Q Dr. Herrero, what do you do for a living?

6 A I'm a gastroenterologist.

7 Q How long have you done that work?

8 A I've been practicing for 15 years.

9 Q Can you tell us a little bit about your
10 background and training that led you up to that?

11 A I did my medical school in Puerto Rico, Ponce
12 School of Medicine. Did my residency in internal medicine at
13 Hahnemann University in Philadelphia. Subsequently, did a
14 gastroenterology fellowship at the same university in
15 Philadelphia.

16 Q Where did you go after that?

17 A Moved to Las Vegas in 1998.

18 Q 1998?

19 A '98.

20 Q Is this the place you practiced since that time?

21 A That is correct.

22 Q So stayed in town the whole period between then
23 and now?

24 A Correct.

25 Q Did you ever work -- well, tell us the places

1 you've worked in town.

2 A From 1998 to 2007 I was part of the
3 Gastroenterology Center of Nevada.

4 Q Now, since or during that window of time, did
5 you work in the same location all the time or did you vary to
6 the different clinics and centers?

7 A Multiple locations.

8 Q Where did you work?

9 A Worked at a clinic in Henderson, Horizon Ridge.
10 Worked out of a clinic at Burnham Avenue. Worked out of
11 clinics with University Medical Center. At some point I also
12 worked out of a clinic for the Veterans Administration. And
13 then, numerous hospitals in the city.

14 Q Did you ever work at Shadow Lane?

15 A Yes, I did.

16 Q So you worked at many of the associated clinics
17 of the endoscopy centers?

18 A Correct.

19 Q Do you know an individual by the name of Dipak
20 Desai?

21 A I do.

22 Q Do you see him in court today?

23 A Yes, I do.

24 Q Would you point to him and describe something
25 that he's wearing for the record, please?

1 A He's wearing a black jacket and a gray tie.

2 MR. STAUDAHER: Let the record reflect the identity,

3 Your Honor.

4 THE COURT: It will.

5 BY MR. STAUDAHER:

6 Q With regard to your role in the practice, whose
7 practice was it, first of all?

8 A It was considered a partnership, but it was the
9 original founder member was Dr. Dipak Desai.

10 Q Were you a partner?

11 A Yes, I was.

12 Q And so what role did you play in the
13 partnership?

14 A For the most part, we were all practicing
15 clinicians, taking care of patients on a daily basis.

16 Q So who ran the operation?

17 A Dr. Desai.

18 Q Anybody else?

19 A He also had a chief operating officer, Tonya
20 Rushing, who would help in the day-to-day operations of the
21 practice.

22 Q When it came to issues of actual import, meaning
23 anything that really had any significance to the practice, was
24 Tonya the one that had the final word or was that Dr. Desai?

25 A I would say it was Dr. Desai.

1 Q Was he -- or were you ever party to various
2 meetings and so forth, partnership meetings where Dr. Desai
3 was present?

4 A Please ask the question again.

5 Q Were you party to, did you attend membership or
6 sort of meetings where all the different partners get together
7 and discuss the practice, what's going to happen, things like
8 that?

9 A Yes, I did.

10 Q Was there ever votes on how things would happen
11 or was there sort of direction as to how he wanted things to
12 be done?

13 A More of a direction. It was not necessarily a
14 process or a vote. It was more of an information session of
15 the things that were transpiring in the practice and the
16 things they were going to do.

17 Q Did you have any say in the practice?

18 A Day-to-day operations, no. I would express
19 opinions on particular issues every once and then, like
20 everybody else in the practice.

21 Q So what was his role? I mean, I know you say
22 that he's the head of the practice, he makes the decisions,
23 but what kinds of decisions is he making?

24 A For the most part, everything that has to do
25 with operations, which offices get opened, which clinics get

1 opened, when to hire new physicians, when to expand to new
2 hospitals, how to negotiate contracts for the practice.
3 Anything that had to do with the business aspects of the
4 practice he was in charge.

5 Q What about the CRNAs?

6 A Also.

7 Q So he was in charge of them?

8 A He was in charge of hiring the CRNAs and -- yes.

9 Q You said hiring. Is that the only thing he did
10 was just hire them and then they were on their own?

11 A Well, there's a process that I have become aware
12 of since then in which policies --

13 Q Let's wait for just a second.

14 A Yes.

15 Q I don't want to talk about things you've become
16 aware of since then. I'm talking about the state of affairs
17 when you were back working up to 2007 when you stopped
18 working.

19 A Right.

20 Q So what was your knowledge of his interaction
21 with the CRNAs at that point?

22 A He will be basically dictating how the work will
23 take place through the day.

24 Q Anything else?

25 A Specifically, not that I can think of. I mean,

1 just general.

2 Q Now, were you aware that there was billing for
3 the CRNAs?

4 A Yes.

5 Q Did you participate in getting reimbursed for
6 CRNA billing?

7 A No.

8 Q So you didn't get any part of that?

9 A There was never a direct payment from that. My
10 understanding how the process worked was that reimbursements
11 from facility fees, anesthesia fees and professional fees were
12 going to a pool and that will get distributed among all the
13 partners depending on the interest the partners had.

14 Q Did you ever become aware at any point that
15 there was a specific pot of money set aside for the CRNA
16 billing and that that was divided up?

17 A Afterwards. After I left the practice.

18 Q And you again, just so we're clear, you didn't
19 participate or get any payments from that fund? You didn't
20 get disbursements from the CRNA pool of money?

21 A There was no direct payment coming from the CRNA
22 money. Like I said, it was a distribution based on the
23 reimbursements for the endoscopy centers.

24 Q So are you in the practice as really a partner
25 or an independent contractor? I mean, how would you describe

1 yourself?

2 A I would describe myself as an independent
3 contractor. Partnership, I guess in the legal sense, was how
4 it was filed in terms of the paperwork for the operations of
5 the practice. But we were not really partners in the sense of
6 voting or making decisions. We would basically come to work
7 every day, take care of our patients, finish the day, go home
8 to our families. And every once in awhile we will have
9 business meetings to discuss various issues of the practice.
10 But there was no actual process.

11 Q So membership partner meetings. What would
12 happen during these besides just being told how the practice
13 was going to go forward?

14 A It will be different agendas to the meetings.
15 The meetings could be related to discussion of new contracts
16 or pursuing new contracts. Sometimes it would be related to
17 issues regarding patient care in the hospital. Sometimes it
18 would be regarding complaints from referring physicians,
19 strategies to stay in the market. Those are some of the
20 things that we would discuss in those meetings.

21 THE COURT: How many physicians are of the so-called
22 partners?

23 THE WITNESS: Well, the number changed throughout the
24 years. I believe that by 2008 when the practice ceased to
25 exist --

1 THE COURT: Just when you were there, not later.

2 THE WITNESS: Again, from the very beginning there
3 was probably five or six by the end of the practice, probably
4 12.

5 THE COURT: Okay. Go on, Mr. Staudaher.

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

7 THE COURT: You may.

8 BY MR. STAUDAHER:

9 Q Showing you what's been admitted by stipulation
10 as State's Exhibit 98 and also 97. I'm going to ask you about
11 97 first. Have you ever seen any kind of organizational chart
12 like that before in the practice?

13 A No.

14 Q Look at that, if you would, and tell me if that
15 comports with what you think the organization was, who
16 reported to whom in the practice.

17 A Seems accurate.

18 Q Okay. And I'm going to leave this one up here.
19 I'm going to give you a few minutes to just flip through that,
20 if you would, and tell me if you recognize or have ever seen
21 that document. The tabbed portions are the things I put on
22 there.

23 A Yes, I have seen this document.

24 Q What is it?

25 A It's an agreement regarding the practice for the

1 endoscopy centers.

2 Q That was Exhibit 98. You're part of this
3 agreement, correct?

4 A Correct.

5 Q Before I get into that in more detail, I want to
6 show you 97. You said this kind of matches up, although you
7 haven't seen this actual chart, you didn't see anything that
8 was different other than what you believed it to be, correct?
9 I mean, the way things were in the practice.

10 A Correct.

11 Q Now, I'm going to shift up. We see that there's
12 a large number of people down here, sort of clerical staff,
13 billing department and the like. Do you see that?

14 A Yes.

15 Q As we move back up, at the very top is managing
16 partner and that's Dipak Desai and everything flow below him.
17 Is that fair?

18 A Yes.

19 Q Now, as managing partner, what was it your
20 understanding that the managing partner did related to this
21 organization that you were part of?

22 A My understanding was he was, again, in charge of
23 the operations of the practice. He would be in charge of
24 contract negotiations. He would be in charge of overseeing
25 distribution of funds. He would be in charge of managing the

1 finances of the practice. He would be in charge of the hiring
2 of staff and for that matter, the firing of staff. He would
3 be the one signing the checks coming out of the practice.

4 Q Was there any part of the practice that he
5 didn't deal with, specifically?

6 A Not that I'm aware of.

7 Q And what I mean by that, too, is did he immerse
8 himself to the level of maybe supplies, ordering or at least
9 being aware of what supplies needed to be ordered or how they
10 would be utilized at the various clinics, scheduling, things
11 like that.

12 A My understanding is yes.

13 Q Is that your experience when you were dealing
14 with him in the clinics that that was the case?

15 A Yes.

16 Q Was there -- although on the organizational
17 chart he's listed as everything flowing into him, it does not
18 appear as though there's a co-equal or a second in command on
19 that chart. Is that fair?

20 A That's fair.

21 Q And I notice that down here there's a box called
22 CRNA. Do you see that?

23 A Yes.

24 Q It has various lines going to this Tonya Rushing
25 you told us about as well as staff physicians, like yourself;

1 is that right?

2 A Yes.

3 Q What control, if any, did you have over the
4 CRNAs?

5 A The control I would have would basically be
6 related to the actual patient management at the time of the
7 procedure.

8 Q So just in the endoscopy suite, so to speak?

9 A Correct.

10 Q And that's the only time you really dealt with
11 them was during a procedure then?

12 A Correct.

13 Q Now, as far as the agreement and this is just
14 the first page of the agreement, a lot of paper here, correct?

15 A Yes.

16 Q Specifically, I'm just going to go forward to
17 the section where it talks about -- and I know this is hard to
18 read. Can you read that on your screen up there?

19 A Yes.

20 Q Talking about distribution of assets and so
21 forth. How were you paid as part of being a partner in a
22 group? What percentage did you own, if any, and the like?

23 A I do not recall the specific percentage and it's
24 probably listed there on the contract, but basically, at the
25 end of the month, I believe it was a monthly basis, perhaps it

1 A Yes.

2 Q And the -- was it your experience that there
3 would be no shows?

4 A Yes, there would be.

5 Q Did that happen often?

6 A Well, I'm sure on any given day that not every
7 patient showed up. I would say that would probably be rare
8 for every single patient to show up.

9 Q So there's always --

10 A Some days -- you know, but some days most did
11 show up.

12 Q All right. And if you know, colonoscopies
13 require the patients to prepare for the procedure the day
14 before by drinking some unattractive fluids; correct?

15 A Yes.

16 Q And cleaning out their system; correct?

17 A Yes.

18 Q And would there be times where patients did
19 not adequately cleanse themselves?

20 A Yes.

21 Q Did that happen often, if you recall?

22 A On occasion. I wouldn't say quite frequently.

23 Q What would happen to those patients that
24 didn't properly cleanse?

25 A They'd have to be rescheduled and go through

1 the prep again.

2 Q And those patients, so just so I'm clear on
3 this, if I -- I come in for my appointment and is someone
4 going to ask me about my prep, if I --

5 A Yes.

6 Q -- did a good job? And who would that be
7 normally?

8 A Must have been the nurse that was asking the
9 questions pre-procedure.

10 Q And then if that person didn't properly
11 cleanse, they would be sent to reschedule the appointment?

12 A Usually -- I'm not sure.

13 Q Oh, you're not sure.

14 A I'm not sure whether most patients usually
15 would say they prepped like they were supposed to and you
16 wouldn't find out until the procedure was actually going on
17 that maybe it didn't work so well for them.

18 Q And if it didn't work so well, would that mean
19 the procedure would be cut short?

20 A Yes. Well, no, they usually did, you know,
21 the whole procedure just to see if -- what they could
22 visualize.

23 Q Uh-huh.

24 A And if they thought that, you know, they
25 didn't get as good a, you know, visualization they should

1 have, yes, they'd have to be re-prepped.

2 Q And you --

3 A They might change the prep to something
4 different for them.

5 Q Okay. And you know that because you had to
6 review the preliminary report?

7 A Yes.

8 Q And is the preliminary report, is that a
9 computer generated --

10 A Yes.

11 Q -- document? And what does that look like?

12 A There were some color pictures of different
13 areas of the colon, and the esophagus and stomach, if they
14 were they were doing the upper endoscopies also. And then,
15 you know, like a synopsis of what was seen.

16 Q All right. So if you happen to have the
17 patient who didn't cleanse properly and that was discovered
18 during the procedure, would they be instructed to reschedule?

19 A Yes.

20 Q Would patients arrive on time for their
21 appointments?

22 A I didn't have anything to do with --

23 Q Oh, that's right.

24 A -- when they --

25 Q I'm sorry.

1 A -- came in.
2 Q You're not in the front desk.
3 A No.
4 Q You were in the back. Right. Where do you
5 work now?
6 A Rhode Island Hospital.
7 Q That's right. I asked you that. Are you full
8 time, part time?
9 A Full time.
10 Q Okay. I have nothing further. Thank you.
11 THE COURT: Mr. Santacroce.
12 MR. SANTACROCE: Thank you, Your Honor.
13 CROSS-EXAMINATION
14 BY MR. SANTACROCE:
15 Q Ms. Scambio -- I'll let her clear first. You
16 begin your employment at Endoscopy Center in January of 2006;
17 correct?
18 A Yes.
19 Q And your testimony was that you stayed there
20 for five months?
21 A Yes.
22 Q So you would have left sometime in June of
23 2006?
24 A Yes.
25 Q And your -- you were in charge of the

1 discharging of patients, basically going over their records
2 before discharge?

3 A Along with a couple of other LPNs, yes.

4 Q So you weren't the only one that was doing
5 that in any one particular shift?

6 A No.

7 Q And you were -- your desk was in the recovery
8 room?

9 A No.

10 Q Where was it?

11 A It was to the left of the nurse's station.
12 There was another little room with a desk and a computer and a
13 few chairs in there that we would bring the patient in and
14 their family member.

15 Q Was that closed off --

16 A Yes.

17 Q -- from the recovery room?

18 A Yes. Not even near the recovery room.

19 Q Nowhere near it?

20 A No.

21 Q So the patients would go from the recovery
22 room, into your office, discharge?

23 A They would actually go -- there was another
24 area across from the nursing desk to the right that had four
25 or five chairs over there that they would come and sit and

1 wait for us to go over their results.

2 Q Okay. But I want to be clear. You couldn't
3 actually see the recovery room, or you could?

4 A I could.

5 Q But you were very busy, weren't you?

6 A Yeah.

7 Q So your attention wasn't directed at the
8 recovery room all the time?

9 A No, it was more towards the chairs where the
10 patients waited for me to bring, or one of the other nurses to
11 bring them in to go over their results.

12 Q So when you testified that you didn't see a
13 CRNA wheel a patient into the recovery room, you couldn't
14 really see because you were busy, weren't you? Isn't that a
15 fair statement?

16 A I didn't -- wasn't sitting looking at the
17 recovery room all day, but at the times maybe one of the other
18 nurses was doing discharge results over the -- in the room, I
19 might have been on the phone which was at the desk for an hour
20 or two calling patients from the previous day. So, yes, you
21 had a good luck at the recovery area.

22 Q But your attention wasn't devoted to that the
23 whole time you were on your shift?

24 A No.

25 Q So it would be fair to say that you don't know

1 if the CRNAs ever wheeled the patient into the recovery room
2 or not, isn't that true?

3 A Not for sure.

4 Q Not for sure.

5 A Not for the whole day, no.

6 Q Okay. Now, isn't it also true that in the
7 recovery room there was a recovery room nurse?

8 A Yes.

9 Q And that was an RN; correct?

10 A Yes.

11 Q And you are an LPN?

12 A Yes.

13 Q Can you tell me the difference between an LPN
14 and an RN?

15 A An RN has more schooling. LPN goes to school
16 for one year. RNs go for anywhere from two to four years, and
17 they can do legally more -- more things than an LPN.

18 Q So there was an RN in the recovery room with
19 the patient.

20 A It wasn't really a recovery room. It was a
21 recovery area.

22 Q I'm sorry. Recovery area. And there was four
23 beds in there?

24 A Yes.

25 Q And there was an RN in there?

1 A Yes.

2 Q And isn't it true there was also an RN in the
3 procedure room?

4 A Yes.

5 Q And what were the RNs, if you know, what were
6 the RNs responsibility in the recovery room?

7 A I wouldn't know exactly for sure.

8 Q And what were the RNs responsibilities in the
9 procedure rooms, if you know?

10 A I don't know. I was never in a procedure
11 room.

12 Q And, in fact, you never witnessed any
13 procedures by the --

14 A No, I didn't.

15 Q -- by the CRNAs; correct?

16 A Correct.

17 Q And, in fact, you weren't employed on July 25,
18 2007, or September 21, 2007; correct?

19 A Correct.

20 Q So you can't testify as to what happened at
21 all in 2007; correct?

22 A Correct.

23 MR. SANTACROCE: I have no further questions.

24 THE COURT: Any redirect?

25 MS. WECKERLY: Just two questions.

1 REDIRECT EXAMINATION

2 BY MS. WECKERLY:

3 Q When -- when you were -- when you were on the
4 phone scheduling patients for the -- the follow up
5 appointment --

6 A I scheduled the follow up appointment that
7 day.

8 Q Oh, okay. So with the patients?

9 A In the -- in the discharge room, yes.

10 Q When -- when you were doing that, what was the
11 -- how were you instructed to schedule the people?

12 A There were four slots every 15 minutes. So
13 four patients would be scheduled in follow up in one 15-minute
14 slot.

15 Q Okay. So four patients per 15 minutes --

16 A Yes.

17 Q -- for the follow up appointment.

18 A Yes.

19 Q And you mentioned that you worked with, in
20 discharge, with another LPN, and there were times when you
21 were directly meeting with the patients going over their
22 results.

23 A Yes.

24 Q And at that time your attention was probably
25 not on the recovery area.

1 A Yes.

2 Q There were times when you were on the phone,
3 and was that for an extended period of time?

4 A Well, we had to make follow up calls for every
5 patient's procedure from the day before, so it could be most
6 of the morning.

7 Q Okay. And it was during those times that you
8 did not observe CRNAs or doctors in the recovery area?

9 A Yes.

10 Q Thank you.

11 THE COURT: Any recross?

12 RECCROSS-EXAMINATION

13 BY MS. STANISH:

14 Q Just for purposes of clarification, the folks
15 that were coming in for their follow up appointments, would
16 they go to a different facility than where you were working?

17 A I believe there was a couple of offices around
18 the valley. There was one right at the endoscopy center on
19 Shadow Lane that I worked with. It wasn't in that same room,
20 but it was in -- in the same building.

21 Q Did it have a separate waiting room, or did it
22 share --

23 A Yes, they had a separate waiting room.

24 Q Okay. And the people in the waiting room in
25 the area where -- in the part of the building where you

1 worked, the people would be accompanied by their escorts
2 coming in and going out --

3 A Yes.

4 Q -- normally?

5 MS. STANISH: Nothing further.

6 THE COURT: Mr. Santacroce?

7 MR. SANTACROCE: Nothing.

8 THE COURT: Ms. Weckerly?

9 MS. WECKERLY: Nothing, Your Honor.

10 THE COURT: All right. I'll see counsel up here at
11 the bench, please.

12 (Off-record bench conference.)

13 THE COURT: Ma'am, we have some juror questions
14 here. And in no particular order I'm just going to ask these.

15 How many discharges did you do in a typical day, in
16 a typical, you know, eight-hour work period?

17 THE WITNESS: Me, myself, or -- or like for the day?

18 THE COURT: Just yourself.

19 THE WITNESS: I have no idea. It was quite a few.

20 THE COURT: You know, more than 10?

21 THE WITNESS: Definitely more than 10.

22 THE COURT: More than 20?

23 THE WITNESS: Probably, yes.

24 THE COURT: Okay. What was the average time from
25 start to finish that it took you to discharge someone,

1 including the paperwork --

2 THE WITNESS: And scheduling the appointment.

3 THE COURT: -- and all of that, talking to them?

4 THE WITNESS: Uh-huh. Maybe 10 minutes.

5 THE COURT: About ten minutes?

6 THE WITNESS: Uh-huh.

7 THE COURT: Okay. Were the follow up visits

8 scheduled with the same doctor who had performed the

9 procedure?

10 THE WITNESS: Not always, no.

11 THE COURT: Not always. Was there some method to

12 who the follow up visits were scheduled with? How did you --

13 how did you do that?

14 THE WITNESS: Actually, a lot of the patients would

15 -- a different doctor would do the procedure on a patient than

16 who they saw in the office prior to the procedure most of the

17 time. And I believe then we would schedule the follow up with

18 the doctor who actually had seen them originally.

19 THE COURT: Okay. And was every patient scheduled

20 for a follow up appointment?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Are you -- were you pressured to

23 discharge the patient quickly?

24 THE WITNESS: If we had patients waiting, yes.

25 THE COURT: Okay.

1 THE WITNESS: Because sometimes we'd be in with one,
2 and there might be two or three more patients waiting to be
3 discharged to go over their instructions.

4 THE COURT: Okay. Was it -- was somebody, you know,
5 in the clinic pressuring you, or did you just feel pressured
6 yourself because, you know, patients are backing up and
7 sitting there and --

8 THE WITNESS: Yeah, I was pressured myself probably.

9 THE COURT: Okay. Can you give examples of unsafe
10 practices or conditions that you observed?

11 THE WITNESS: I didn't actually observe any
12 procedures, so just to me and my experience it felt like that
13 procedures were being done very quickly.

14 THE COURT: All right. Was there -- you said four
15 patients per 15 minutes. Was that regardless of whether, you
16 know, somebody had a tumor that was, you know, observed in the
17 colonoscopy or, you know, a hemorrhoid or whatever?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 THE WITNESS: And the computer system that we used,
21 you would open it up and there would be like four spots for
22 every 15 minutes to fill a patient in for discharge -- I
23 mean, for a follow up visit.

24 THE COURT: Okay. And that was universal?

25 THE WITNESS: Uh-huh.

1 THE COURT: Is that yes --

2 THE WITNESS: Yes.

3 THE COURT: -- for the record?

4 THE WITNESS: Yes.

5 THE COURT: This lady right here --

6 THE WITNESS: I'm sorry.

7 THE COURT: -- is our court recorder and there's a
8 tape. That's why they make you say yes or no and have to
9 establish what the distances are and things like that because
10 we can't see hand gestures.

11 All right. Ms. Weckerly, do you have any follow up
12 to those last questions, those juror questions?

13 MS. WECKERLY: No, thank you, Your Honor.

14 THE COURT: Does the defense have any follow up?

15 MS. STANISH: Briefly.

16 THE COURT: Okay.

17 BY MS. STANISH:

18 Q As part of the instructions would the patients
19 or their escorts receive written instructions?

20 A Yes, we would have the family member sign
21 them, I believe, and they would get a copy.

22 Q Thank you.

23 THE COURT: Mr. Santacroce?

24 RECROSS-EXAMINATION

25 BY MR. SANTACROCE:

1 Q You said that it seemed unsafe because it seemed
2 quickly to you; correct?

3 A Yes, and sometimes patients were still
4 staggering a little bit when they were brought to my room.

5 Q You -- prior to working for the endoscopy
6 center, you had never worked for an endoscopy or gastro center
7 before; correct?

8 A No.

9 Q And you haven't worked for one since; correct?

10 A Correct.

11 Q So you weren't familiar with the procedures or
12 the times that were involved; correct?

13 A Not working at one, but I had been to a few
14 with family members as the family person with them, and it --
15 whenever I have been to one it was run totally different.

16 Q I'm talking about in your professional career.

17 A Not in my professional.

18 MR. SANTACROCE: Thank you.

19 THE COURT: Ms. Weckerly, any other follow up?

20 MS. WECKERLY: No, Thank you.

21 THE COURT: Any additional juror questions for this
22 witness? Nothing?

23 All right. Ma'am, thank you for your testimony.
24 Please don't discuss your testimony with anyone else who may
25 be a witness in this case.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: All right. Thank you, ma'am. You are
3 excused at this time.

4 Ladies and gentlemen, we're going to just take a
5 quick recess until 10:30. During the recess, once again,
6 you're admonished that you're not to discuss the case or
7 anything relating to the case with each other or with anyone
8 else. You're not to read, watch, or listen to any reports of
9 or commentaries on the case, any person or subject matter
10 relating to the case, by any medium of information. Don't do
11 any independent research, and please don't form or express an
12 opinion on the trial. If you'd all please place your notepads
13 in your chairs and follow the bailiff through the rear door.

14 (Jury recessed at 10:19 a.m.)

15 THE COURT: May I see counsel at the bench.

16 (Off-record bench conference.)

17 THE COURT: And just -- well, I also just want to
18 put on the record that Mr. Mack Brown, as you'll recall during
19 jury selection I asked him, Ms. Stanish asked him, are you
20 sure your employer pays, and he said, oh, no, it's no trouble
21 with serving. And I think we'd even said, well, what a good
22 corporate citizen the Venetian is and blah blah blah. It
23 turns out --

24 MR. STAUDAHER: They're not a good corporate
25 citizen?

1 THE COURT: I don't want to say --

2 MR. WRIGHT: Sheldon isn't as rich as we thought.

3 THE COURT: I don't want to say that. They do pay
4 for jury service, but only ten days. And so he brought in a
5 letter from someone at the Venetian, basically. It's really
6 to him, it's not to me, but saying that they only pay for ten
7 days of jury service.

8 Now, obviously, he didn't ask anybody, he just
9 assumed they would pay him. He didn't bother to ask anybody
10 until Monday, after Monday, when, oh, he's actually already
11 serving. So he does work Saturdays and Sundays, so he's paid
12 for those days. So really it's three days a week that he's
13 missing. As of right now, this week, it would be five days
14 because I'm counting the three days that he would work this
15 week.

16 I'm counting the day -- well, I don't even know what
17 day they came in to fill out the form and what day he came in
18 for questioning. So he may only be three days out, or it
19 could be five days depending on what -- so we'll have to talk
20 to him again. So, you know, he's still within the 10 days.

21 MS. WECKERLY: We're probably not going to finish in
22 that.

23 THE COURT: No, well, except, it's 3, 6, 9, that's
24 three weeks.

25 MS. WECKERLY: Right.

1 THE COURT: So then really, you're only looking at
2 another three weeks. So let's keep him in the back of our
3 minds. I don't know that we need to talk to him today, but he
4 is talking to the bailiff and concerned about it. You know,
5 again, he assured us, and I remember even I think Ms. Stanish
6 was very thorough with all of the jurors about, you know, are
7 you sure this isn't a hardship. And I remember that because
8 didn't -- I mean, I was thinking, oh, the Venetian, they're
9 such good corporate citizens.

10 MR. WRIGHT: Why do we have to wait to talk to him?
11 Can't we just see if it's going to affect his --

12 MR. SANTACROCE: No.

13 MR. WRIGHT: No?

14 MR. SANTACROCE: I don't --

15 THE COURT: Well, I mean, here's the thing.

16 MR. SANTACROCE: -- want to start, you know --

17 THE COURT: I want to find out, first of all, what
18 hours does he work because they're not cleaning those pools, I
19 can tell you right now, when they're full of people -- I
20 worked at a pool -- when they're full of people floating on
21 rafts. They clean those pools later, in the morning or
22 after --

23 MR. WRIGHT: Pool? He's a canal guy.

24 THE COURT: Oh, he was the canal guy. I thought he
25 was the swimming pool guy.

1 MR. WRIGHT: Pools and -- he said the canals.

2 MS. WECKERLY: Yeah.

3 THE COURT: But they have -- I mean, maybe they do
4 the -- you know, they're not doing that in the middle of the
5 day when you're full of tourists, I don't think. I mean, you
6 may have to have people onsite. So I want to remember what
7 hours he's working, he definitely can work the weekends, and
8 see if there's any flexibility with him before we call him in
9 and say, oh, yes, okay, we're going to excuse you.

10 Because, again, we, I think, bent over backwards to
11 make sure he could be compensated. And it's not our fault,
12 meaning collectively, he didn't check until Monday. I'm
13 mindful and I'm concerned about it, but I don't think we need
14 to question him today.

15 MR. SANTIACROCE: I agree.

16 MR. WRIGHT: I agree.

17 THE COURT: I want to get more information. I want
18 to know, did he -- was that his day of work when he came in to
19 fill out the questionnaire? Was it his day of work when he
20 came back from questioning? I'm going to go back over the
21 record. I want to know, is he five days in or is he three
22 days in to what he's going to be compensated for. So before I
23 talk to him I need a little more information.

24 MR. SANTIACROCE: And it could start a chain reaction
25 back there.

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MR. WRIGHT: Right.

THE COURT: Absolutely. Right.

MR. WRIGHT: He had an employed spouse also.

THE COURT: Right. Right. And he, you know, he's working -- he doesn't want to sit here five days and work two days, but he's working Saturdays and Sundays.

MS. STANISH: He may have personal leave, too.

THE COURT: No, so all I'm saying is we're not hitting -- you know, we're not hitting up into the time he's not compensated for yet. Most days in he has is five, and it may be as few as three.

MR. SANTACROCE: Right.

THE COURT: All right.

MR. WRIGHT: Go ahead and bring --

THE COURT: All right. So bring in Juror No. 17.

THE MARSHAL: It's only about 50 feet from wall to wall.

THE COURT: Well, see, I was close. I said -- I said yards, but I meant feet.

(Pause in the proceedings.)

THE COURT: And just to the media. Obviously, you can't film this, any interviews with the jurors, and please don't use the names of the people who are seated as jurors right now.

(Juror No. 17 enters the courtroom.)

1 THE COURT: You can just sit in your seat. Good
2 morning.

3 JUROR NO. 17: Good morning.

4 THE COURT: First of all, I want to thank you for
5 reporting what you observed to our bailiff. And it may not be
6 fresh in your mind because we've been -- haven't really had a
7 chance to have a break and call you in. But I just wanted to
8 discuss with you for the record what it is that you observed
9 that Juror No. 3 was doing that you then reported to our
10 bailiff.

11 JUROR NO. 17: Just tell you the way I told the
12 bailiff?

13 THE COURT: Right. Exactly.

14 JUROR NO. 17: She was very unhappy about being on
15 the jury, and she'd been clear about that from the beginning.
16 Nobody was happy about a six to eight week trial, but she was
17 extremely unhappy and was making comments about how she would
18 be homeless and no one helped her and she had small children
19 and she couldn't feed them.

20 And so then I know that she had come in and spoke
21 with you and came back that day. She was still saying that
22 she was still going to be homeless and just all these horrible
23 things were going to happen, that even her mother wouldn't
24 help her. So I just kind of blew that off as her just being
25 angry. And then she had made a comment that she wasn't --

1 that it wasn't over as far as her having to stay on the jury.
2 She said, you know, it's not over yet.

3 Then later that day after we had the testimony of
4 one of the witnesses, one of the attorneys had asked, and I
5 don't remember who, how much the total sum of his civil case
6 was. And the older man told him to add it up or something
7 like that. And then when we went back into the jury room, she
8 made a comment that she can't believe the attorney would ask
9 him to add it up and, you know, was just like angry.

10 And then she said, oh, I guess I'm not supposed to
11 say that. I guess I'm just a bad juror, aren't I? So I took
12 that to mean that she was going to find a way to get off the
13 jury, whatever that meant, and if that meant talking about the
14 case in front of us in the jury room that would continue to
15 happen.

16 THE COURT: All right. And when you first heard her
17 complaining, who was she complaining in front of? Was it all
18 of the jury?

19 JUROR NO. 17: Everybody. Just, you know, everybody
20 was kind of like, oh, six weeks at first, you know, like, oh,
21 and that kind of thing. But hers was beyond just -- I mean,
22 we're all inconvenienced, but I think we all pretty much
23 understand that this is important and why that it's worth it.
24 And I don't think that she felt that way, but I don't know how
25 she felt. But that wasn't the impression that I got from her.

1 THE COURT: So you're all just sitting back there
2 and she's just kind of just saying that out loud pretty
3 much --

4 JUROR NO. 17: It was almost as if it only affected
5 her, that nobody else there was inconvenienced, nobody else
6 there was missing work, nobody else there had anything to do
7 but her.

8 THE COURT: Okay. And then when she later said, oh,
9 it's not over, who did she say that to? Was she saying
10 that --

11 JUROR NO. 17: Apparently when she came back in, she
12 had come in and talked to you, I'm assuming, about her trying
13 to leave. And I'm assuming that you said no. And when she
14 came back into the room she was angry, and she said that it
15 wasn't over yet. And she said -- and this was generally.
16 She's just kind of having a temper tantrum and said that, you
17 know, she wasn't going to be homeless and went on with how she
18 would have no money and she can't take care of her children
19 and that sort of thing.

20 THE COURT: Uh-huh. So she was saying this to kind
21 of --

22 JUROR NO. 17: The whole room.

23 THE COURT: -- the whole room. She wasn't --

24 JUROR NO. 17: There wasn't --

25 THE COURT: She wasn't in --

1 JUROR NO. 17: She was not specifically --

2 THE COURT: -- the hall or on the phone --

3 JUROR NO. 17: -- talking to me.

4 THE COURT: -- or anything like that?

5 JUROR NO. 17: No.

6 THE COURT: Okay.

7 JUROR NO. 17: She was mad.

8 THE COURT: Okay.

9 JUROR NO. 17: It was from walking to the door back
10 to her seat and while like picking up her purse and sitting
11 back down is kind of when she was saying all those things.

12 THE COURT: Okay. And so do you know who else heard
13 her say these things?

14 JUROR NO. 17: I think we all kind of heard her say
15 these things. But there's times in there when people are
16 talking and I'm reading or something and I don't listen, but
17 as a general -- maybe a couple people didn't hear it, but
18 these were general statements.

19 THE COURT: Okay. All right. Thank you. And,
20 again, you did the right thing by reporting them because
21 obviously, you know, our goal is to have the jurors comply
22 with the Court's orders. And as I, you know, I keep saying
23 it, but it's so critical, you know, not to --

24 JUROR NO. 17: I don't want to invest all of this
25 time coming --

1 THE COURT: Exactly.

2 JUROR NO. 17: -- and people from my work are
3 covering for me. There's a lot of people that are involved in
4 making sure that I can do this. And I don't want to be three
5 weeks into this and have something done where we're all kicked
6 off and you have to start over.

7 THE COURT: Absolutely. And that's just what I was
8 going to say because it is a huge investment for the jurors
9 and for the system and everyone involved in this case of time
10 and expense and everything like that. And so, you know, it is
11 so important that when something like that happens you tell us
12 because it's exactly what you say, we don't want something to
13 happen where it's all sort of, you know, in the middle. You
14 know, whatever happens at the end of the day, the Court takes
15 no position, but, you know, it's part of -- again, it's so
16 critical to keep --

17 JUROR NO. 17: I would want --

18 THE COURT: -- an open mind.

19 JUROR NO. 17: -- to be treated fairly if I was on
20 trial.

21 THE COURT: It's so critical to keep an open mind
22 and wait until you've heard everything and then discuss it as
23 a -- as a group. So, really, thank you so much.

24 Does anyone have any questions?

25 MR. SANTACROCE: I just had a question about the

1 comment she made about adding up the numbers with the -- with
2 the witness. Was that done in the jury room when all the
3 jurors were present, or was it just done to you?

4 JUROR NO. 17: No, that was in the jury room when
5 she says I can't believe they asked him to add up the numbers.
6 And I just felt like she was just having a fit. I didn't feel
7 like that was something that was going to affect my decision
8 making, so I wasn't really sure if that was crossing the line,
9 but I thought maybe I had better say something because --
10 just because it was something that was said in the trial.

11 MR. SANTACROCE: Uh-huh.

12 JUROR NO. 17: So -- but -- and that's when she -- I
13 think she did that to prove that she was a bad juror because
14 that's when she said I guess I'm not a good juror.

15 MR. SANTACROCE: Well, we appreciate you coming
16 forward. Thank you.

17 THE COURT: Yeah, we really appreciate it. And
18 just, you know, like I said, there are ramifications for juror
19 misconduct. So thank you very much.

20 Any other questions?

21 All right, ma'am. And fair to say other jurors
22 heard it but that some jurors may have been reading or --

23 JUROR NO. 17: We weren't all focused on her. I
24 mean, we noticed her presence because she was walking through
25 the room. We were all sitting. She wasn't whispering, but I

1 can -- the only reason it upset me was because it was from
2 here. We already know that she kind of -- and people were
3 kind of just tuning that out because we pretty much accepted
4 this is how it's going to be and just deal with it, and she
5 had not.

6 THE COURT: Okay. All right. Thank you.

7 JUROR NO. 17: All right.

8 THE COURT: Please don't discuss -- you know, they
9 may wonder, well, why were you called in and, you know,
10 singled out. So please don't discuss this with -- with the
11 other jurors.

12 JUROR NO. 17: Okay.

13 THE COURT: All right. Thank you. And Kenny will
14 lead you in the back.

15 (Juror No. 17 exits the courtroom.)

16 THE COURT: And, of course, the Court still has the
17 option of issuing an order to show cause against Juror No. 3.

18 MR. SANTACROCE: Well, just for the record, when we
19 first heard about this we thought it was just between this
20 juror and the one that was excused, and now we find out
21 comments were made in the jury room, and it kind of causes a
22 concern to me. I don't know how Mr. Wright and Ms. Stanish
23 feel about it, but I'm very concerned that this was done was
24 in front of all the jurors and she was the only one that came
25 forward? Why didn't any of the other jurors come forward?

1 THE COURT: Well, in terms of that, you know, they
2 may not have appreciated, oh, this is juror misconduct by, you
3 know, violating -- violating the oath. I could have asked
4 this juror, well, were the other jurors aware that you came
5 forward and reported it to the bailiff. Other jurors may have
6 been aware that she reported it. I don't know. I probably
7 should have asked that question, but I didn't -- you know,
8 none of us asked it. But it's possible the other jurors know
9 that she reported it as well.

10 Plus, we pretty much took immediate action. She
11 reported it, and the very next morning we had the hearing with
12 Juror No. 3 and then she was excused. So it's possible other
13 jurors would have reported it had they had -- I mean, I know
14 they didn't that morning, but had they had an opportunity to
15 report it. So, you know, again, it's not like she brought in
16 additional information or anything.

17 (Juror No. 4 enters the courtroom.)

18 THE COURT: Come on in, ma'am. Just have a seat.
19 You can just sit in your regular seat. And we kind of didn't
20 have a chance to bring you in when you reported that you
21 recognize one of the witnesses to the bailiff because we've
22 been trying to move through this. So now I'm bringing you in
23 just to ask you on the record about that. My understanding is
24 when Dr. Bui, was it --

25 JUROR NO. 4: Yes.

1 THE COURT: -- testified, you recognized his face.

2 JUROR NO. 4: Yes.

3 THE COURT: Okay. And you were a patient of his
4 about ten years ago --

5 JUROR NO. 4: Yes.

6 THE COURT: -- is that right?

7 JUROR NO. 4: Yes.

8 THE COURT: Okay. And I don't mean to pry, but what
9 did you see Dr. Bui for?

10 JUROR NO. 4: He was just a family physician.

11 THE COURT: Okay. Did you have a regular
12 relationship with Dr. Bui, meaning you saw him, you know,
13 periodically, or did you -- was it a one-time deal or --

14 JUROR NO. 4: It wasn't a one-time deal, but it was
15 really only when I needed to see him. It's not like I -- I
16 didn't even go annually to see him. It was just whenever
17 something came up, I would call that medical center and he was
18 the doctor that I had always seen, so I would see him.

19 THE COURT: Okay. And is there anything about the
20 fact that once you saw Dr. Bui and recognized him and remember
21 having seen him about a decade ago, is there anything about
22 that that would impact your ability to be fair and impartial
23 in this case?

24 JUROR NO. 4: No. No, I just thought you needed to
25 know that.

1 THE COURT: Yes, and I appreciate that. Because,
2 again, we do need to know that and I thank you. I appreciate
3 that you immediately reported it to Kenny. And like I said,
4 we would have -- you know, we kind of had this on things --
5 things to do to bring you in to ask you -- ask you about that.
6 But, yes, you absolutely did the right thing by immediately
7 letting the bailiff know that you recognize one of the
8 witnesses.

9 Does anyone have any questions for Ms. Enin
10 (phonetic) Smith?

11 MR. SANTACROCE: I don't.

12 MR. STAUDAHER: No, Your Honor.

13 THE COURT: All right. Thank you, ma'am. I'm going
14 to have Kenny take you back. And if the jurors want to know
15 what we talked about, please don't discuss it with them.

16 JUROR NO. 4: Okay.

17 THE COURT: All right. Thank you. You're -- you
18 can go into the back. We're just going to turn around and
19 bring you back in in a few minutes, but --

20 (Juror No. 4 exits the courtroom.)

21 THE COURT: All right. Let's get Mr. Cristalli and
22 his client. Somebody.

23 MR. STAUDAHER: Oh, I can get him.

24 THE COURT: You know, yeah, it's heard when you have
25 the jurors in the back. I don't like to do it this way, but

1 we figured with this kind of a case it was better to have them
2 in the back where we can monitor what they're seeing. Also,
3 there are some -- at least one, possibly more, former patients
4 who have been here and the audience, so --

5 As soon as we talk to Mr. Mathahs we can all take a
6 two or three minute break and then we'll move into his
7 testimony.

8 MS. STANISH: Your Honor, I'm sorry, but can we have
9 a little bit longer? We need to confer with our client and
10 use the restroom.

11 THE COURT: Okay. How -- how long do you need to
12 confer with your client?

13 MS. STANISH: Five, ten minutes.

14 THE COURT: Where's Mr. Mathahs?

15 MR. CRISTALLI: He's here.

16 THE COURT: I need to see him.

17 MR. CRISTALLI: Oh, okay.

18 THE COURT: Come on in, Mr. Mathahs, along with your
19 attorney Mr. Cristalli and Ms. -- okay.

20 Basically, Mr. Cristalli, the State just wanted, you
21 know, out of an abundance of caution I'm just going to, you
22 know, go over a few things with your client before he
23 testifies.

24 MR. CRISTALLI: Okay.

25 THE COURT: Okay. Mr. Mathahs, come on in. You

1 don't need to come to the witness stand, but I just want you
2 to come a little bit closer so I don't feel like I have to
3 speak so loudly.

4 All right. Mr. Mathahs, my understanding is that in
5 connection with entering your guilty plea in this matter,
6 you've also entered into an agreement to testify; correct?

7 MR. MATHAHS: Correct.

8 THE COURT: And by doing that you understand that
9 you're waiving giving up any Fifth Amendment right you might
10 have had, even though you've pled guilty and kind of given
11 that up. You understand all of that?

12 MR. MATHAHS: Right.

13 THE COURT: And you must respond to the questions,
14 whether they be from the State, the defense attorneys, the
15 Court, or the jurors, so long as this Court, meaning me, rules
16 that they're appropriate questions. Do you understand all of
17 that?

18 MR. MATHAHS: Okay.

19 THE COURT: Okay. And I believe that the agreement
20 is that in exchange for the benefits of the agreement --

21 And, Mr. Staudaher, can you just state what those
22 are so it's clear?

23 MR. STAUDAHER: Actually, there was a stipulated --
24 at least we entered into. Your Honor, clearly, is not bound
25 by that. But if, in fact, at the end that stipulated

1 agreement is not entered into -- or not sentenced by you, that
2 he would have a chance to withdraw his plea and actually go to
3 trial.

4 THE COURT: Okay.

5 MR. STAUDAHER: Essentially.

6 THE COURT: But I -- I believe that contingent on
7 the State not arguing is that he testify truthfully. Is
8 that --

9 MR. STAUDAHER: Oh, absolutely.

10 THE COURT: -- part of the agreement?

11 MR. STAUDAHER: Yes. No, we retain the right to
12 argue regardless, but he has to testify truthfully at the time
13 of trial, and that's where we're at now.

14 THE COURT: Okay. And that it will be up to the
15 Court to make that --

16 MR. STAUDAHER: Make the determination.

17 THE COURT: -- determination; correct?

18 MR. STAUDAHER: Correct.

19 THE COURT: Do you understand all of that, Mr.
20 Mathahs?

21 MR. MATHAHS: Yes.

22 THE COURT: Okay. Is there anything else the State
23 would like me to cover with Mr. Mathahs?

24 MR. STAUDAHER: I don't believe so. If Mr.
25 Cristalli has some --

1 THE COURT: Mr. Cristalli, is there anything else
2 you would like me to cover with your client?

3 MR. CRISTALLI: No, Your Honor.

4 THE COURT: All right. And obviously you'll be here
5 in the courtroom during the testimony.

6 All right. We're going to take a quick break, Mr.
7 Mathahs and Mr. Cristalli, so if you could just go back into
8 that waiting area. All right. Thank you.

9 All right. We'll go ahead and give you some time to
10 confer with your client and we'll just take a break.

11 (Court recessed at 10:41 a.m., until 10:55 a.m.)

12 (Inside the presence of the jury.)

13 THE COURT: All right. Court is now back in
14 session.

15 And the State may call its next witness.

16 MR. STAUDAHER: The State calls to the Stand Keith
17 Mathahs.

18 THE COURT: All right.

19 KEITH MATHAHS, STATE'S WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. And if
21 you could please state and spell your first and last name for
22 the record.

23 THE WITNESS: Keith; K-E-I-T-H M-A-T-H-A-H-S.

24 THE COURT: All right. Thank you.

25 Mr. Staudaher.

1 DIRECT EXAMINATION

2 BY MR. STAUDAHER:

3 Q Mr. Mathahs, before we get started with your
4 formal questioning, I want to go through a couple of
5 preliminaries with you.

6 A Okay.

7 Q Is it true that you were originally a
8 defendant in this case?

9 A Yes.

10 Q And you have subsequently pled guilty in this
11 particular case?

12 A Yes.

13 Q The charges to which you pled guilty are
14 criminal neglect of patients resulting in death, criminal
15 neglect of patients resulting in substantial bodily harm,
16 obtaining money under false pretenses, insurance fraud, and
17 conspiracy; is that correct?

18 A Yes.

19 Q Those events all pertain to the things that
20 occurred at the Shadow Lane campus here in Las Vegas, Clark
21 County, Nevada?

22 A Correct.

23 Q When I say that Shadow Lane campus, it's
24 really a clinic over there, the Endoscopy Center of Southern
25 Nevada, is that fair?

1 A Correct.

2 Q Now, in your -- in pleading guilty you've
3 agreed to testify here today; is that fair?

4 A Yes.

5 Q And to give an honest and truthful testimony
6 for the Court?

7 A Yes.

8 Q I want to go back a little bit, and for you
9 it'll be quite a ways back. Let's talk about your background
10 and training that led you up to become who you were at the
11 time you worked at the clinic. Go ahead and tell us what your
12 background was.

13 A Oh. I -- after high school I went to college
14 in Annapolis for becoming a lab tech, so I'm certified in lab
15 tech. After eight years of working in the lab I went back to
16 school and became an RN. And after being an RN, I was
17 accepted into the Mayo Clinic at Rochester to go through the
18 anesthesia program.

19 Q Can you explain -- I mean, when you went
20 through the anesthesia program did you get a certification or
21 a license or something as a result of that?

22 A We were -- got a diploma. Actually, the
23 certification came through the AANA, the Association of
24 American Nurse Anesthetists.

25 Q So what is that organization?

1 A It's a national organization that CRNAs, or
2 certified registered nurse anesthetists belong to.

3 Q And you belong to that?

4 A I do, yes. Uh-huh.

5 Q How long were you a member?

6 A Probably close to 40 years.

7 Q So up until the time that you stopped working
8 at the clinic?

9 A Yes.

10 Q And when was that?

11 A It would have been '08.

12 Q And during the time that you worked as -- or
13 that you were part of the association, and you said it was the
14 American Association of Nurse Anesthetists?

15 A Correct.

16 Q Were you on their membership roll as an active
17 member the whole time?

18 A I was from 1979, yes. Uh-huh.

19 Q I assume you had to fill out membership
20 applications or dues or up, you know, renewals as time went
21 on?

22 A Renewals, dues, but at the beginning it was an
23 exam, you know. I think it lasted two days or something like
24 that that we took an exam, you know, that was to get into the
25 certification part of it.

1 Q Did you get some sort of publication as a
2 result of that, meaning a journal or a newsletter or something
3 periodically from them?

4 A Yes.

5 Q Did you continue to receive that, those kinds
6 of correspondence from the 1970s up until the time that you
7 stopped working at the clinic in 2008?

8 A Yes.

9 Q Was there any period of time in which you were
10 not a member?

11 A No.

12 Q So you received all correspondence from them
13 to the best of your knowledge?

14 A To the best of my knowledge, yes.

15 Q And they always had your address, current
16 address, and the like?

17 A Yes.

18 Q Now, as a CRNA, can you tell me exactly what
19 you do?

20 A Evaluate the patient to see if they're capable
21 of going under anesthesia and getting a history and physical
22 from them. And that includes medication and any things that
23 they have in the past, that they might have had surgeries or
24 anything like that or complications with an anesthetic or
25 anything like that. And then going ahead and giving, planning

1 and giving an anesthetic to the patient.

2 Q Do other professionals do the same kind of
3 visit or job that you would do as a nurse anesthetist?

4 A You're talking about a CRNA?

5 Q Yeah, other CRNAs. I mean, clearly, there
6 must be some more of those than just yourself.

7 A Absolutely.

8 Q Are there other professionals that -- that
9 work in a like capacity to a CRNA to your knowledge?

10 A MDs anesthesiologists, yes.

11 Q What's the difference between an MD
12 anesthesiologist and a CRNA?

13 A MDs have their medical degree, where we have a
14 nursing degree plus anesthesia. And they have their MD degree
15 plus anesthesia.

16 Q But you do similar things?

17 A Exactly the same things, yes.

18 Q Is there any restriction on -- on your
19 practice since you're not an MD?

20 A We always are under the -- have to be under
21 the supervision of a physician, yes.

22 Q When you say physician, does it matter what
23 physician it is?

24 A As long as an MD. I think even podiatry, I
25 think, falls under being a physician that could, you know, say

1 we need an anesthetic for this patient.

2 Q So your understanding of your 40 years in --
3 in this practice in various jurisdictions; correct? I mean,
4 you weren't always in Las Vegas?

5 A No, I wasn't.

6 Q And you practiced where else?

7 A Southern California.

8 Q Was that for the duration of the 40 years
9 before you came here?

10 A 33 years, yes.

11 Q Oh, I'm sorry. So 40 years total, 33 years --

12 A Yes.

13 Q -- in California?

14 A Correct.

15 Q Now, as we go through this it's going to be
16 important the court recorder can get down all the words that
17 are being said here.

18 A Okay.

19 Q And I know in normal speech you know where I'm
20 going to go, so you start to answer before I'm done. And
21 same --

22 A I'm sorry.

23 Q -- thing with me. I can see where you're
24 going, and maybe I ask you a different question before you're
25 done. For the purposes of the clarity of the record, if you

1 could wait until I finish my question, I'll try to do the very
2 same and wait until you finish your answer.

3 A I'll do my best.

4 Q Okay. Thank you. Now, as far as your time
5 frame in California, did you work at just a single location or
6 more?

7 A No, multiple hospitals and clinics.

8 Q Did you work with MD anesthesia people during
9 that time?

10 A Not with -- I mean, you're talking about with
11 as far as employment?

12 Q They were employed in the same group, for
13 example, at times.

14 A No, we were always an independent group that
15 functioned independently of the MDs.

16 Q Now, you said that you were part of an
17 independent group.

18 A Yes.

19 Q Was this a group that you were just an
20 employee of, or was it something you ran?

21 A It was a group that I started in 1971, and it
22 grew to the point of being 12 anesthesiologists that we formally
23 worked together. I mean, none of us had any more power than
24 any other -- any one of the others, but we just worked
25 together.

1 Q So you would provide anesthesia services to
2 whoever called for you?

3 A Different hospitals, different surgery
4 centers, and the like, yes. Uh-huh.

5 Q During the time that you had your sort of
6 business, was that -- did you have a supervising MD
7 anesthesiologist on staff or at least available for
8 consultation, anything like that?

9 A No, I did not.

10 Q So when you were -- essentially when you had
11 to have some supervisory doctor with you, are you talking
12 about during the procedure itself?

13 A During the procedure, the surgeon, yes, would
14 be the supervising person at that time.

15 Q Who is ultimately responsible in a situation
16 like that for the care of the patient?

17 A We were. The anesthesiologists would be.

18 Q So would it be fair to say that you could shut
19 a case down if you felt that the patient wasn't a candidate
20 for the procedure?

21 A Yes, we should and could.

22 Q And the practice that you had in California
23 for the 33 years, were there times when patients would come in
24 and you felt that it was not appropriate to give them an
25 anesthetic?

1 A Yes, that would be, you know, decided when we
2 had our interview with the patient if they were competent to
3 undergo anesthesia and if they had some kind of medical
4 history that would contradict it or whatever. Sure.

5 Q So talk to me about that. The normal course,
6 and I'm talking about your experience before you came to Las
7 Vegas, when you would have a patient that you were going to do
8 an anesthetic procedure on, how would that go? Would that be
9 somebody you would call the night before to talk to, would it
10 be somebody you met in the morning, would you wait until they
11 were in the procedure room? How -- how would your interaction
12 with the patient begin and continue until the patient was
13 undergoing its actual procedure?

14 A It could go both ways. If they were in the
15 hospital, we usually made rounds in the evening, saw the
16 patient, then ordered pre-ops if they were to have a pre-op in
17 the morning. If it was done in like a surgery center, day
18 setting type surgery center, we would see the patient in the
19 morning.

20 Q In the situations where it wasn't that way,
21 where it was, let's say, you went to an outlying surgery
22 center or an ambulatory care center or something like that --
23 did you do that, first of all?

24 A Yes.

25 Q When you went into those situations, had you

1 been able to contact the patients before in all of cases?

2 A Not always, but sometimes we would try and
3 call them, you know, by phone the evening before.

4 Q So in those instances where that was not done,
5 where you just got to the facility and had not spoken to the
6 patient previously, how would it go?

7 A Could you repeat that, please?

8 Q In situations where you had not spoken to them
9 the night before, but you arrive at, say, an ambulatory care
10 facility and you're going to do a procedure, how would your
11 interaction proceed at that point?

12 A we would absolutely see them in the morning
13 before they came into the operating room, try and meet them,
14 you know, in the post recovery room or wherever so that we
15 could interview them and that type of thing.

16 Q Okay. So when you interviewed them, that was
17 not in the -- typically in the procedure room itself?

18 A Correct.

19 Q Is that a point where if you interviewed
20 somebody in advance, that if they had a problem you would make
21 an election to either go forward or not go forward?

22 A Correct.

23 Q For example, if they had come in to you and
24 said that they had eaten in the last -- or had a big breakfast
25 right before they came in.

1 A They would have been cancelled right there.

2 Q Now, I want to -- I want to move to -- or I
3 want to ask you some specifics about that pre-procedure sort
4 of evaluation.

5 A Okay.

6 Q Was there a requirement, or is there a
7 requirement that there be a history and physical on the
8 patient before you actually interview them?

9 A Yes, there is to be an H&P, or history and
10 physical, on the chart before we actually should interview
11 them and before the procedure goes, yes.

12 Q Is that something that you would do the
13 history and physical on, or would that be something that the
14 doctor that you're going to do the work with would have done
15 before you?

16 A It would have been done by the physician that
17 was going to do the surgery or one of his associates, and then
18 we come along and do our own history and physical with our
19 anesthetic record.

20 Q What is the purpose of that?

21 A The double?

22 Q Yes.

23 A Just to make sure that we're satisfied with
24 what the patient has said or what they've given to the doctor
25 because sometimes we could run into a conflict or all the

1 medications might -- might not be on the chart that the
2 patients are going to tell us about and that type of thing.
3 We just want to make sure everything is -- is proper.

4 Q Is it also to make sure that if there's
5 something in the history and physical that you want to
6 specifically follow up on that might be germane to your
7 anesthetic that you're about to give that you have that
8 ability to do so?

9 A Yes, especially some lab work or something
10 like that that might not have been caught, that might be
11 abnormal or something like that that might change the
12 anesthetic plan or maybe cancel it altogether.

13 Q Are some of the questions that you typically
14 ask a patient, do they have anything to do with their prior
15 history of anesthetic use? Meaning, have they had a
16 procedure, have they been under anesthesia before, and how
17 they reacted to it?

18 A Yes, that's one of the very pertinent
19 questions you would want to know.

20 Q And why is that an important question?

21 A Well, if someone has had maybe an allergy to a
22 certain medication or something like that or had some kind of
23 a severe reaction to one of the agents that you're going to
24 use or something like that. You would certainly want to know
25 about it to stay away from it.

1 Q So on a patient's record that they had
2 undergone a procedure and they'd been given certain anesthetic
3 agents and they had been under for a period of time, would
4 that be something that would make you more comfortable that
5 they might be able to tolerate the anesthetic that you would
6 be putting them under?

7 A Yes, it would. I mean, if the -- if the time
8 was a factor, sure.

9 Q So it's important to have -- I mean, is it
10 fair to say that the record itself, the medical record is
11 important in a case?

12 A Absolutely.

13 Q Is it important that the medical record be
14 accurate in a case?

15 A Yes.

16 Q I want to move you away from California for a
17 minute and to Las Vegas, if we can.

18 A Okay.

19 Q When did you come to Las Vegas?

20 A 2003.

21 Q And roughly when in 2003?

22 A I think I started in January.

23 Q So at the beginning of the year in 2003. Did
24 you come to work at any particular place at that time?

25 A I started at the facility on Burnham. I mean,

1 sorry, not Burnham, on Shadow Lane.

2 Q So you're talking, when you say the facility
3 on Shadow Lane, are we talking --

4 A Gastro -- gastro center. Uh-huh.

5 Q So the Endoscopy Center of Southern Nevada?

6 A Correct.

7 Q Now, has it gone through some name changes
8 over the years while you were working there?

9 A Not that I'm aware. It could have. I don't
10 recall.

11 Q For the purposes of your testimony today I'm
12 going to assume when you talk about the clinic or the
13 endoscopy center that it is the Shadow Lane location at 700
14 Shadow Lane here in Clark County, right over there by Valley
15 Hospital unless we -- unless it is at a different location,
16 and then I want you to tell us it's in a different location.
17 Okay?

18 A Okay.

19 Q So just so we're clear so we know which
20 facility we're talking about.

21 A I'm talking about -- I started at the Shadow
22 Lane facility.

23 Q So when you say start, does that mean you
24 eventually worked elsewhere?

25 A Yes, I did.

1 Q Where else did you work?

2 A I worked at the Burnham facility and one on
3 Rainbow.

4 Q So what was -- what was happening out at
5 Rainbow?

6 A I'm sorry. Can you --

7 Q Were procedures being done out at Rainbow?

8 A Yes, the facility was new. I don't remember
9 when it opened, but I was giving the anesthetics out there
10 after the facility opened. Yes. Uh-huh.

11 Q Had it been opened very long before the actual
12 clinic on Shadow Lane was closed?

13 A A few months, maybe four months.

14 Q So relatively new?

15 A Yes.

16 Q The Burnham facility that you referenced, that
17 had been open longer?

18 A I don't know when it opened. It had moved
19 from the top floor down to the bottom floor sometime during
20 the time that I was here and worked there. But I don't
21 remember the -- recall the years when it happened.

22 Q Eventually you start -- I mean, you work at
23 the Shadow Lane location.

24 A Correct.

25 Q Now, when you started working there, who were

1 the doctors that you worked with?

2 A When I started, it would have been Dr. Desai,
3 Dr. Carrol, Dr. Carrera, and I think Dr. Herrero was there at
4 that time, maybe Dr. Sharma.

5 Q So Dr. Desai was one of the physicians you
6 worked with?

7 A One of the main ones, yes.

8 Q During the time that you were working, and
9 that was from 2003 until we -- until we essentially had the
10 clinic closed in 2008, is that fair?

11 A Yes.

12 Q During that time is it fair to say that you
13 worked with Dr. Desai a lot?

14 A Yes.

15 Q Was the main body -- or main location where
16 Dr. Desai worked the Shadow Lane location?

17 A I think that's the only place I ever worked
18 with him, yes. Other than --

19 Q Was there?

20 A Than other two, I don't believe he ever --
21 that I ever worked with him there.

22 Q Did you work five days a week or six or seven?
23 I mean, how often were you at Shadow Lane?

24 A When I started I was five days a week, and
25 then there were some Saturdays that were put on as well. I

1 don't -- can't recall how many.

2 Q Now, the time period that we're talking about
3 at the Shadow Lane location, if it closed in 2008 and you came
4 there at the beginning of 2003, I mean, that's a number of
5 years; correct?

6 A Yes.

7 Q During that time did you go anywhere else,
8 meaning anywhere outside of Las Vegas to another location and
9 do work?

10 A No.

11 Q Comparing the time that you had in California
12 to the time you had in Las Vegas at Shadow Lane, was there a
13 difference in how things were operated?

14 A Yes.

15 Q A significant difference?

16 A I felt there were.

17 Q We're going to get into some of the details of
18 that in a moment, but when you were working at Shadow Lane,
19 when you came to work there initially and as time went on, did
20 things change in how things were done at Shadow Lane during
21 the time you worked there?

22 A As far as procedures? I mean, we can -- a lot
23 more procedures.

24 Q So the procedures increased over time?

25 A Yes.

1 Q Did it ever become a situation where it
2 became, in your view, unmanageable?

3 A Yes.

4 Q Can you describe for us the typical situation,
5 typical day at Shadow Lane?

6 MR. WRIGHT: Time frame, please.

7 BY MR. STAUDAHER:

8 Q Well, we'll break it down. When you first
9 came to work there back in 2003.

10 A When I first started, that was in the old
11 facility, and I think it was '04 sometime that they rebuilt
12 the facility on the same floor, and then there were two -- two
13 operating rooms. But when I came in '03, there was just a
14 single room and it was -- we only would do somewhere between
15 25 and maybe 32 patients a day or something like that.

16 Q Did that change to the point where it closes?
17 I mean, 25 to 30 patients a day. What were you up to at the
18 end?

19 A Well, usually somewhere between 60 and 75 to
20 80.

21 Q So a big difference.

22 A Big difference.

23 Q So did you notice that ramping up over time,
24 or was it just all of the sudden a big increase?

25 A Well, when the new facility opened, it was a

1 big -- big push to do more and more all the time.

2 Q And that was in 2004?

3 A It was either '04 of '05 when it opened. I
4 don't recall the exact date.

5 Q As time went on from whenever it changed and
6 became sort of a revamped facility there at Shadow Lane up to
7 the point where you're doing the 60, 70, 80 patients a day,
8 did -- was it a constant increase in numbers, or did it stay
9 pretty constant for most of that time?

10 A You're talking about from the time that it
11 opened?

12 Q In 2004 when they revamped it, until it
13 closed.

14 A In 2004 we were still not up to running that
15 many patients. It gradually kept going up and up, you know,
16 over the years. I would say we would probably maybe do 40 or
17 so, you know, when we started in '04, and then it just
18 gradually kept going up in numbers.

19 Q So your numbers almost doubled in that period
20 of time --

21 A Yes.

22 Q -- is that correct?

23 A Correct.

24 Q Now, when you would typically go into the
25 facility, and let's talk about the time when the numbers are

1 higher, in the -- in the anywhere from 60 to 80 patient range
2 that you mentioned, can you give us an idea of what your day
3 was like when you went to work?

4 A I usually tried to -- I'm one that -- I'm, I
5 guess, a Type A. I like to have things set up properly. I
6 would start at 6:00 in the morning and try and get all of the
7 rooms, both of the rooms set up, you know, with the proper
8 amount of propofol, syringes, and needles and everything that
9 were needed for the day. So I'd try and get both rooms set up
10 to make sure. And I usually would be the first one to give an
11 anesthetic for the day. I would start at, you know, usually
12 around 7:00 when the doctor would finally get there.

13 Q And so if you start around 7:00, is that when
14 the first patients are being done?

15 A Yes.

16 Q And then you would go until about when?

17 A You mean in the evening?

18 Q Yes.

19 A It could be as long as 6:00 or even later.

20 But --

21 Q On average --

22 A -- nearly --

23 Q -- thought, what was the hour of operation of
24 the clinic?

25 A I'm sorry. I didn't --

1 Q On average, what were the hours of operation
2 of the clinic?

3 A We would start at 7:00, and usually try and
4 finish by 4:00 or 4:30 or 5:00.

5 Q Was it -- is it fair to say that -- that 5:00
6 is when you tried to at least be done with patients at that
7 point, whether you stopped procedures earlier to get to that
8 or not?

9 A Usually try to have one room finished by 5:00,
10 yes.

11 Q And in this instance, on a daily basis did
12 people not show up sometimes?

13 A Yes, they did.

14 Q Was there any issue of scheduling more
15 patients than you physically could do, and what I mean by that
16 is double booking or tripe booking or anything like that?
17 Did you ever -- were you ever aware that that was going on?

18 A Yes.

19 Q Was that a regular occurrence on a daily
20 basis?

21 A As far as I remember it was pretty much
22 because patients were complaining a lot about sitting so long
23 waiting to have their procedures done, yes.

24 Q When you're in the -- and we've gotten a
25 layout, and I -- forgive me, I don't have it with me right

1 now, but a layout of the facility. As far as where you were
2 during the day, were you at different locations in the
3 facility, or did you remain in one place predominantly?

4 A The rooms -- you mean when we started giving
5 the anesthetics? We usually stayed in the same room if there
6 were two anesthesiologists or three anesthesiologists there.

7 Q If there was just one anesthesiologist, what would
8 happen?

9 A You would have to go between the rooms.

10 Q So you would go from one room to the other and
11 back and forth?

12 A Correct.

13 Q Now, the time period, and I would imagine that
14 if you're talking about 60 to 70 to 80 patients in a day, that
15 you're pretty busy.

16 A Very, very busy.

17 Q Did you ever have concerns that the speed, the
18 number of patients was somehow compromising patient care?

19 A We tried not to compromise patient care on our
20 part, but, you know, we felt that it definitely was, yes.

21 Q When we're talking about those numbers, and
22 let's -- let's start off with a situation where you're going
23 room to room.

24 A Okay.

25 Q You're the only anesthesiologist, you're going from

1 one room to the other and then back again. Do you ever take
2 breaks?

3 A Not usually. I mean, if I -- when I started
4 in '03, I mean, I didn't know what a break was. I would be in
5 the room from when I started in the morning until I left at
6 night.

7 Q In fact, was there some sort of medical
8 condition you developed as a result of having to stay in the
9 room and never leaving it?

10 A In '03 the facility that we were in was just a
11 little cubicle. It was not air conditioned, and it was very
12 hot in there, and, yes, you would perspire. I absolutely
13 ended up with foot rot.

14 Q So you can't even get up and leave the room,
15 and you actually developed foot rot because you can't move
16 around.

17 A That's exactly -- well, --

18 MR. WRIGHT: Object to the --

19 THE WITNESS: -- I couldn't go out.

20 MR. WRIGHT: -- questioning, the summations, and
21 leading.

22 THE COURT: Well --

23 MR. STAUDAHER: Actually --

24 THE COURT: -- it's kind of summing out, but don't
25 -- don't lead or restate in your own words.

1 MR. STAUDAHER: I'll try not to restate. And if I
2 do and I get it wrong, please correct me.

3 THE COURT: You can -- I mean, to orientate the
4 witness, you can restate for that purpose.

5 MR. STAUDAHER: All right.

6 BY MR. STAUDAHER:

7 Q Now, related to that, that's when you're in
8 one room; correct?

9 A Yes.

10 Q When you were -- when it was a situation where
11 there were two rooms and there were two anesthetists, did you
12 also remain in the same room the whole day?

13 A The only reason that we wouldn't have remained
14 in the room would have been to give a lunch break to whoever
15 was in the other room.

16 Q Were there any times when during, you know, it
17 wasn't a lunch period time for a lunch break, but earlier or
18 later in the day that somebody just -- they had a bathroom
19 emergency or something along those lines and you might go from
20 one room to the other?

21 A We would cover, yes.

22 Q So there were instances when that would occur?

23 A Yes.

24 Q In the situation where you're in the room,
25 though, are you able to have enough time when you have these

1 numbers at 60 to 80 patients a day go out and see people in
2 the pre-op area and deal with them?

3 A Not usually. We would talk to them when they
4 were rolled into the procedure room.

5 Q So you're in the procedure room and the first
6 time you see the patient typically is when they roll into the
7 procedure room?

8 A If there's just two of us there, yes.

9 Q If there's one of you there, would it be even
10 more busy for you as being a single person?

11 A It absolutely was, yes.

12 Q In those instances, would you ever go out and
13 interview patients and put in their IVs and do all that stuff
14 out in the pre-op area?

15 A The only chance we would have had is we would
16 have been switching doctors, you know, to do the procedures
17 and the doctor that would have been coming was -- wasn't there
18 yet. That would have been the only way would have gotten --

19 Q Did that --

20 A -- time --

21 Q -- happen very often?

22 A Not really.

23 Q So let's go on the back end of the procedure.
24 Whoever it is, whenever the procedure is done, is it something
25 where you have to stay in the room after the patient rolls out

1 before the next one comes in or --

2 MR. WRIGHT: I'm going to object to this line of
3 questioning. I mean, the method of questioning, excuse me. I
4 mean, let's just ask what he did.

5 MR. STAUDAHER: Actually, that's not what I --

6 THE COURT: Okay.

7 MR. STAUDAHER: -- believe I --

8 THE COURT: All right.

9 MR. STAUDAHER: -- am entitled to do.

10 THE COURT: Ask your question, Mr. Staudaher.

11 BY MR. STAUDAHER:

12 Q With regard to coming out of the room, did you
13 stay in it? The patient leaves the room. Do you stay in the
14 room, typically?

15 A We could have. We could have gone out. It
16 was -- it just depended on the patient. If the patient wasn't
17 quite awake enough for my satisfaction, I would have gone out
18 to the recovery area with them.

19 Q When you're talking about numbers in the 60 to
20 80 patients per day, and these -- each one of these procedures
21 takes a fixed amount of time, does it not? I mean --

22 A Yes.

23 Q -- roughly?

24 A Yes.

25 Q In reality, were you leaving the rooms to

1 follow the patients out?

2 A More -- staying in the room more than we left.

3 Q Was it more rare occurrence or a more common
4 occurrence for you to leave the room and follow out to the
5 recovery area to deal with a patient?

6 A It would have been a more rare occurrence to
7 go out.

8 Q So you're in the room when the patient comes
9 in and you're in the room when the patient goes out, fair?

10 A Yes.

11 Q Could you describe for us the -- what happens
12 in between. I mean, we've got -- and I'm talking about from
13 the point the patient exits the room until the next patient
14 actually physically rolls in. What goes on?

15 A The nurse would try and set the computer up
16 for the next patient coming in. And when the patient got in
17 the room, we would be hooking them up to the electrocardiogram
18 monitor, pulse oximeter, make sure the IV is functioning if
19 there was an IV in. Otherwise, we'd have to start the IV as
20 well.

21 Q Okay. Now, I'm talking about -- I know that's
22 when the patient actually gets in the room because you're
23 talking about doing things to the patient; correct?

24 A Yes.

25 Q But as -- what I'm talking about is what I'm

1 going to term turnover time. I don't know what you would call
2 it, but that's what I'm going to use for the moment. Meaning
3 the patient actually physically exits room, and before the
4 next patient physically breaches, comes right through the
5 doorway into the room, what goes on in that room?

6 A Nothing that I am aware of. I mean, they're
7 probably changing the scope out is all.

8 Q Any cleaning of the room?

9 A Not that I ever was aware of.

10 Q Okay. Any -- so no cleaning to your
11 knowledge? They just rolled the next patient in?

12 A Yes.

13 Q What was the time frame between the time one
14 patient leaves and the next patient rolls in, typically on one
15 of these days that you described?

16 A It could have been a minute, it could have
17 been less, it could have been two minutes. Somewhere in that
18 area.

19 Q You think it could have been less than a
20 minute?

21 A It could have been. I'm not sure.

22 Q I mean, if we sat here and ticked off a
23 minute, I mean, there is a physical amount of maneuvering that
24 has to happen, correct, for a patient, one patient --

25 A Correct.

1 Q -- to the next? Is it fair to say that it was
2 a relatively short window of time?

3 A Short, yes.

4 Q In the minutes or even less, possibly?

5 A Yes.

6 Q So if that's happening, if that's the kind of
7 turnover that we're talking about, do you really ever have a
8 chance to walk out and deal with a patient if they're bringing
9 the next one in within a patient of the first one leaving the
10 room?

11 A The only thing you're going to be dealing with
12 a patient is when they arrive in the room. Really you don't
13 have time to go out and talk to them in the room -- or, I
14 mean, in the recover area.

15 Q When you're back there inside the room and the
16 new patient rolls in, what is -- tell me what you actually do
17 to the patient at that point.

18 A Well, I want to start interviewing them.
19 Usually -- I mean, if there was a tech available, they would
20 hook up the monitors for us. And, I mean, I would have to --
21 if there wasn't an IV, I would be responsible getting the IV
22 started and -- and trying to interview the patient, get a
23 history and physical, you know, for my satisfaction.
24 Sometimes there was, sometimes there wasn't one on the chart
25 so that we would have some idea why the patient was there, why

1 -- why they came for a procedure, and that type of thing.

2 Q Okay. Were you ever pressured in any way to
3 move that along?

4 A All the time.

5 Q By whom?

6 A Well, the physician.

7 Q A particular physician or more than one?

8 A Well, Dr. Desai was usually the one that would
9 be pushing us to move along faster.

10 Q Do you see him in court today?

11 A Yes, I do.

12 Q Could you point to him and describe something
13 that he's wearing for the record, please?

14 A Right there at the end of the defendant's
15 table.

16 MR. STAUDAHER: Will the record reflect the identify
17 of Dr. Desai, Your Honor?

18 THE COURT: It will.

19 BY MR. STAUDAHER:

20 Q On the back end, once the patient leaves the
21 room, I know that you said you didn't see anybody doing
22 anything in the room, but you -- you is who I'm asking -- what
23 did you do before the next patient came in to hook up to have
24 a procedure done?

25 A Finish my chart from probably the last

1 patient, get that ready to be, you know, submitted to the
2 patient and the recovery room nurse, and then make sure that I
3 had propofol and things drawn up ready to -- or even if I had
4 to start an IV, I would have everything ready that I needed to
5 get going before we would be able to do the procedure.

6 Q Now, isn't it true that the -- the chart left
7 with the patient, typically?

8 A But the anesthesia record is separate. We
9 kept that, you know, until we were finished with it, and then
10 it would go out. We'd give it to either the nurse in the room
11 or the recovery room nurse to go with the chart, then.

12 Q So they would, then, take that record, even
13 though the patient is gone, they would take that record out to
14 wherever the patient was?

15 A To the recovery area, yeah. Uh-huh.

16 Q And that's typically where the patient went
17 was out into the recovery area?

18 A Yes.

19 Q In the times that you went out to the recovery
20 area, how did the patients get positioned in those sort of --
21 we understand there were four stalls of -- of patients, beds
22 or gurneys or whatever you call it. How would they be
23 positioned? A Well, usually there was one -- one

24 or two ready to come into a room, and so then there would be
25 an empty bed -- or, I mean, not an empty bed, but an empty

1 stall where the patient coming out of the room would go into
2 and then get hooked up to the monitors again.

3 Q When they wheeled the patients from the room
4 that you were in doing the procedure to the recovery room, in
5 those instances where you observed it, did the patient go in
6 head first into the stall or feet first into the stall? If
7 you recall.

8 A I don't recall.

9 Q Now, I want to step back from that. We're
10 going to come back to it in a moment, but I want to go back in
11 time a little bit. When you were first coming into the clinic
12 in 2003, up to the time that you left, was there ever to your
13 knowledge any kind of supervising anesthesia MD person there?

14 A If there was, I never saw anyone.

15 Q Do you know who Thomas Yee is?

16 A I've heard the name, but I don't know him at
17 all, no.

18 Q Do you know a person by the name of Satish
19 Sharma?

20 A No, I don't.

21 Q Ever seen either of those people around in the
22 clinic to the best of your knowledge?

23 A No, I haven't.

24 Q Did anybody ever tell you at any point that
25 they were your supervising anesthesiologist?

1 A I heard the word Yee mentioned, and that was
2 only because Anne, I think, worked with him down at a hospital
3 in North Las Vegas.

4 Q Did you ever supervise anybody? I mean, what
5 was your role as far as a CRNA at the clinic?

6 A Just a CRNA. I had no supervisory position at
7 all.

8 Q Are you familiar with the drug propofol?

9 A Yes.

10 Q Can you tell us what it is?

11 A It's a complete anesthetic agent. It can be
12 used as sedation as well, but it's -- we use it as a complete
13 anesthetic agent.

14 Q Was that a drug that was always used at the
15 clinic during the time that you were there?

16 A No.

17 Q Can you describe when that came in and how --
18 came into use and how?

19 A Well, when I first started in '03 they were
20 using versed or valium. I don't recall, Demerol or fentanyl
21 sort of as an amnesia type medications and the patients were
22 taking a longer time to recover from that. And that's when I
23 suggested that we bring in propofol because it is such a short
24 acting medication.

25 Q When you say short acting, what are you

1 talking about?

2 A Well, depending on the amount given, but
3 usually they're awake within five minutes after the last
4 injection would be given. They would be totally awake and
5 recall where they're at and that type of thing.

6 Q So it would be something they could recover
7 from very quickly as well?

8 A Yes.

9 Q And so the onset, how quickly did it act?

10 A Very rapidly.

11 Q So if there was a situation in a patient's
12 room, and I'm going to ask you first of all if -- well, if
13 this ever happened where you were in a patient's room where
14 the patient was starting to wake up, and in your opinion may
15 have needed some additional medication, is that something you
16 could have given a small dose and the patient would have gone
17 under for a very short period of time?

18 A Yes.

19 Q Did you have situations like that where
20 patients began to wake up and move and you felt that they
21 needed, as a clinician, additional medication to put them
22 under?

23 A Yes, I did.

24 Q In those situations, were you ever told not to
25 give any medication?

1 A Yes, I was.

2 Q Who told you not to do that in those
3 instances?

4 A Dr. Desai would have been the one.

5 Q Did that happen on a regular basis?

6 A I would say yes it did, yes.

7 Q So a patient -- just so we've got a clear
8 picture of this. A patient, in your opinion, needs additional
9 medication to have a safe comfortable procedure.

10 A It wouldn't happen every time, but it would
11 happen quite regularly, yes.

12 Q But in your opinion was that something that
13 was, as the person doing the anesthesia, something you would
14 have normally given to the patient?

15 A Yes, I might have -- should have done it, and
16 a lot of times I did give it without him knowing it, yes, just
17 to keep the patient, you know, in sedated stated.

18 Q Did he ever see you doing that and then
19 yelling at you for doing it?

20 A Yes.

21 Q Was that also something that happened fairly
22 often?

23 A It could happen frequently, yes.

24 Q I mean, we're not talking about isolated
25 events, are we?

1 A No.

2 Q With regard to -- getting back to the
3 anesthesia, the propofol part of this, once propofol was
4 introduced into the practice, was it used fairly regularly
5 thereafter?

6 A It became the agent of choice, yes. Uh-huh.

7 Q Did every anesthesia person use propofol after
8 that?

9 A Pretty regularly unless there was someone that
10 might have been -- had an allergy, you know, that would have
11 been related to it, then we would switch over to valium and
12 Demerol or fentanyl or something like that.

13 Q How often did that kind of a thing happen?

14 A Very rarely. I mean, maybe once -- once a
15 week, maybe once every other week, something like that.

16 Q How many times would you say you've used
17 propofol over the years?

18 A Thousands.

19 Q Thousands?

20 A Thousands.

21 Q Did you use it back in California during the
22 33 years you worked there?

23 A Yes, I did.

24 Q Is it fair to say that you're familiar with
25 that drug?

1 A Very familiar.

2 Q How it's used, what it's indications are, and
3 contraindications?

4 A Yes.

5 Q And what, to you, is an indication for use of
6 a drug like that?

7 A Well, if it's going to be a regular surgery,
8 it's known as an induction like sodium pentothal used to be
9 used, and it would be an induction agent, then you would
10 switch over to your anesthesia agents, gas, nitrous oxide,
11 oxygen, and an agent that you'd be vaporizing in the machine,
12 and that's how it would have been used. But here in the
13 clinics when you're doing short procedures, it's used as the
14 total agent because it's such short acting, you know, the
15 patient awake shortly after your finished.

16 Q Because it's so short acting, does that
17 require you to give multiple doses of the medication during
18 the procedure?

19 A Yes.

20 Q Even for short procedures lasting ten minute
21 or less sometimes?

22 A Depending on the patient's, you know,
23 stability and weight and that type of thing. You might get
24 away with, you know, one injection for ten minutes, but
25 probably not. It probably would require more.

1 Q Now, during the time that you're -- you're
2 there, what kinds of procedures are taking place back in the
3 procedure room? And I'm talking about the whole time. What
4 do they do at the clinic?

5 A You're talking about here in Vegas?

6 Q Yes, in Vegas.

7 A Well, upper endoscopies and colonoscopies and
8 we would put in the tubes, feeding tubes, that type of thing.

9 Q So the main predominant procedures were what?

10 A I would say colonoscopies and upper
11 endoscopies.

12 Q In those types of procedures, did they take
13 the same length of time to do typically?

14 A Depended on the physician who was, you know,
15 doing the procedure and what -- you know, it varied from time
16 to time.

17 Q Let's talk about Dr. Desai for a moment. On
18 average, and I know it can vary depending on what was going
19 on, but on average you saw him do thousands of these things
20 over the years?

21 A I'm sure it was.

22 Q How long did it take him to do an upper
23 endoscopy, or an EGD, I think, is what it's called.

24 A EGD, yeah.

25 Q Correct.

1 A It would take, I would say, a maximum of five,
2 maybe, you know, two to three minutes.

3 Q So two to three minutes, maybe up to a maximum
4 of five minutes?

5 A Yes.

6 Q The colonoscopies, how long would those take?

7 A I would say that could be from five minutes,
8 up to a maximum of ten.

9 Q Okay. So we're talking about relatively short
10 windows of time, is that fair?

11 A Correct.

12 Q Now, during that time did you ever hear -- and
13 I'm talking about any time during this window that you worked
14 there, did you hear Dr. Desai bragging about how fast he could
15 do procedures?

16 A Yes.

17 Q Did he do that -- and what would he say
18 typically?

19 A Just that he was able to do them in a very
20 short period of time. I don't recall the exact words, but I
21 know I heard it different times.

22 Q So you said different times, so that's more
23 than once?

24 A Yes.

25 Q A lot more than once?

1 A I don't know how many, but it was more than
2 once.

3 Q Did he ever give any of the other clinicians,
4 other physicians, a hard time about maybe taking more time?

5 A One in particular that I recall. There were a
6 couple of them, maybe. Yes. Uh-huh.

7 Q Okay. And who was that that he gave a hard
8 time to?

9 A Dr. Carrera and Dr. Faris.

10 Q Felt that they -- their procedures were longer
11 than they should have been?

12 A Yes.

13 Q What kinds of things would he say when he was
14 discussing them?

15 A Well, sometimes I wasn't aware of it, you
16 know. I mean, he would call them into their office -- his
17 office, but I've heard him talk very abusive to Dr. Carrera
18 about the procedures and, you know, that he needed to hurry up
19 and get things going and that type of thing.

20 MR. STAUDAHER: I'm referring now to State's Exhibit
21 4, and Bates Numbers DA Endoscopy 261 and 26 -- excuse me,
22 2601 and 2602, for the record and for counsel.

23 BY MR. STAUDAHER:

24 Q I'm going to show you a document that I want
25 you to tell me some information about as we go. And first of

1 all, let's get down the very bottom. Do you see the signature
2 down here?

3 A Yes, that's mine.

4 Q You recognize that?

5 A Yes.

6 Q And as we go through some of the documents
7 that we're going to go through, you can draw on the screen
8 with your nail, fingernail.

9 A Oh, okay.

10 Q And you can just tap it down there to make it
11 go away if we need to.

12 A Okay.

13 MR. WRIGHT: Is that Exhibit 4?

14 MR. STAUDAHER: I'm sorry?

15 MR. WRIGHT: Is that Exhibit 4

16 MR. STAUDAHER: Exhibit 4, Bates Numbers 2602 and
17 2601.

18 MR. WRIGHT: Bates Numbers don't do anything for me.

19 MR. STAUDAHER: Well, for the record.

20 BY MR. STAUDAHER:

21 Q So in this particular case, I just in general
22 want to ask you some things. This area up here, this multi
23 box area at the top where I see some checkmarks and other
24 marks, what is that area used for in your experience or in
25 this case? This is your record, is it not?

1 A It's a graph that we use for recording our
2 blood pressure, our pulse.

3 Q And across the top do you see that there are
4 times listed here as well?

5 A Yes, and every -- well, let's see. Wherever
6 the dark line comes down to the bottom, we counted it as a
7 15-minute increment.

8 Q Okay. And I actually have the original
9 records of these if you need to look one, if something is a
10 little faint for you. But these are --

11 A No, I can see this.

12 Q -- a redacted copy to remove certain
13 information from it. Okay? Now, as far as the records here
14 of the blood pressure, heart rate, and the like that you
15 mentioned on the small box area of this, is there a specific
16 -- any significance, rather, to the actual different boxes? I
17 mean, what do these represent as we go across the page?

18 A Well, starting out the blood pressure would
19 have been somewhere around 130 over, it looks like 80, maybe
20 82, somewhere in that area.

21 Q Let me stop you there. That's not what I was
22 asking. Just in general, without the hash mark or the
23 different markings there, what do these boxes represent as
24 they go across?

25 A Oh. Time segments.

1 Q What is the time typically?

2 A Between the ones where they come down through
3 the bottom, it would be -- each one of the little lines would
4 be five minutes.

5 Q So each one of --

6 A So I took --

7 Q -- each one of these is five minutes?

8 A Correct.

9 Q And then this one here is 15?

10 A Correct.

11 Q So these are 15s, and these individual ones
12 are five; is that --

13 A Yes.

14 Q -- correct?

15 MR. STAUDAHER: And I was referring to the middle
16 portion of the document, Your Honor, of 2601 for the record.

17 THE COURT: All right.

18 BY MR. STAUDAHER:

19 Q When we get down here to this portion, and I
20 see some numbers listed here. Do you see those?

21 A Yes.

22 Q And we're referring to an area that says SaO2.
23 What is that?

24 A That's the oxygen saturation levels.

25 Q So you're measuring those --

1 A Yep.

2 Q -- along the same time range of, it looks like
3 every 15 minutes you're doing that; is that correct?

4 A Correct. That was the pulse oximeter that
5 would be on their finger.

6 Q Okay. And then where it says EKG, what is
7 that marking there?

8 A Just, yes, that it was on -- on the patient.

9 Q And where it says oxygen or O2 per minute, it
10 looks like liters per minute --

11 A Two.

12 Q -- what is that?

13 A Just the line that the oxygen was on the
14 patient.

15 Q Now, the next line says actually the words
16 propofol on it. Do you see that?

17 A Right.

18 Q Is that the anesthetic agent that you talked
19 about earlier?

20 A Yes, it is.

21 Q When I look over here and I see these
22 different numbers of 50, 50, 60, 60, what are those?

23 A Those are the amount of propofol that was
24 given in increments. 50 milligrams and then 50, and then 60
25 milligrams and then 40.

1 Q So at the very end over here it's got a total
2 and it says what?

3 A 200 milligrams.

4 Q Now, propofol that came in bottles that you
5 used, how many milligrams of propofol were in a single
6 milliliter within the bottle?

7 A 10.

8 Q So it was a ten to one ratio?

9 A Yes.

10 Q So a 20 cc bottle of propofol, then, would
11 have 200 milligrams of the drug in it?

12 A Yes.

13 Q So is it fair to say that at least this
14 corresponds to 20 cc or 20 milliliters of the drug?

15 A It absolutely is.

16 Q Now, over here there's also an indication that
17 there was actually a procedure done. What is that?

18 A That's where it was a colonoscopy, but there
19 was a polyp and they took out the polyp, a polypectomy.

20 Q Now, on the right hand side of the screen
21 there is some printed material here. Do you see that?

22 A Yes.

23 Q And the first thing says -- and I'm doing this
24 for the record because just to know where we are on the
25 diagram. It says anesthesia and monitoring equipment checked

1 before induction, and there's a mark. What is the mark?

2 A That it was checked and that it was working.

3 Q Okay. H&P reviewed.

4 A Yes.

5 Q And is that a history and physical?

6 A That would have been their history and
7 physical, yes.

8 Q Patient identified.

9 A We always ask the patient, you know, and the
10 procedure that they were going to be having, yes.

11 Q Patient evaluated immediately prior to
12 induction.

13 A That would have been our H&P that we did, and
14 it's usually on the back of our anesthesia record.

15 Q And that would be, as you testified, in the
16 procedure room, typically?

17 A Yes.

18 Q And then the next one is patient positioned
19 self lateral, left lateral position prior to procedure, and
20 it's marked yes; is that correct?

21 A Yes.

22 Q Now, this next one here it says cath size, and
23 it's got a circled thing here. What is this?

24 A That's the angiocath. The size is 22 gauge.
25 GA means gauge. And --

1 Q Now, you said angiocath. Does angio mean
2 blood vessel --

3 A Yeah.

4 Q -- or vein?

5 A Yes.

6 Q And cath means what?

7 A Well, it's actually a little -- the angiocath
8 itself is actually two parts. There's a metal needle that you
9 use to put into the patient, and then you slide off a little
10 plastic tube into the vein, and the metal part comes out. So
11 that's -- that's what that all pertains to.

12 Q So you're designating which type and which
13 size of that particular item was in the patient; is that
14 correct?

15 A Exactly.

16 Q Is there any indication on this form as to
17 whether or not you put that device in or not? And there may
18 not be. I'm just asking.

19 A I don't -- I don't see that there is, no. It
20 says it's in the right hand.

21 Q So is this -- this is right and this is hand
22 down here under IV site?

23 A Right. Correct.

24 Q IV fluids down below. It says -- what is
25 that?

1 A None.

2 Q Did you in your experience ever use bags of IV
3 fluids in patients for these types of procedures?

4 A At the clinic, no, unless it would be a real
5 exception of something that we might had to have started an IV
6 on someone.

7 Q And then at the very right hand corner of this
8 we have the date, obviously, and then what is -- what is
9 depicted here in this spot?

10 A The 9:45 is the -- in the morning, that's the
11 time we started, and then 10:17 is when patient was turned
12 over to recovery.

13 Q Okay. We're going to talk about that in just
14 a minute. Let's go to the back of the sheet.

15 A Okay.

16 Q Now, there's -- there are various things
17 listed here on the record. Do you see that?

18 A I do.

19 Q And you said that it's your experience to
20 actually go through this with the patient once they get into
21 the room?

22 A Yes.

23 Q Is that right?

24 A Yes.

25 Q Now, just so I'm clear on this, we -- you said

1 that the turnover time could be anywhere from less than a
2 minute to just a few minutes, meaning one patient exiting and
3 the next patient entering.

4 A Correct.

5 Q Once the patient actually gets into the room,
6 it's your job to hook them up to the devices, I mean, the
7 monitors and so forth?

8 A It could be, but usually we try to have a tech
9 do that because we were busy trying to, you know, get our --
10 this pre-op evaluation done.

11 Q Did you try every time to at least review the
12 history and physical that was on the charts so you were aware
13 of what medical issues the patient may have?

14 A I tried all the time, but wasn't always
15 successful, yes.

16 Q Okay. When you say you weren't always
17 successful, what do you mean?

18 A It was a hurry that we wouldn't be pushed not
19 to have to finish it. I mean, you know, just get going.

20 Q And who would be pushing you to do that?

21 A The physician, the doctor.

22 Q Which doctor?

23 A Dr. D.

24 Q Okay. When --

25 A Desai.

1 Q -- you say Dr. D, you mean --

2 A Desai.

3 Q -- Dr. who?

4 A Desai.

5 Q Okay. So just so we're clear on this, the
6 anesthesia record that you're filling out to do your little
7 sort of evaluation of the patient, he would push you to start
8 before you were done doing it?

9 A Yes.

10 Q Did you feel that that was appropriate?

11 A No.

12 Q Did you feel comfortable with that?

13 A No.

14 Q Did you feel that that in any way compromised
15 the patient potentially?

16 A Yes.

17 Q Let me go back to the first page.

18 MR. STAUDAHER: And for the record, we were just
19 looking at States Bates No. 2602. We're back to 2601.

20 BY MR. STAUDAHER:

21 Q I want to ask you about -- well, let's --
22 let's talk about the time down here, first of all. And we've
23 got a lot of records we can look at, but we're not going to
24 look at everything. Those times down there, what does that
25 add up to in this case?

1 A A little over 30 minutes.

2 Q In fact, if it's 9:45 to 10:17, that would be
3 32 minutes, would it not?

4 A Yes.

5 Q Is there any significance to 32 minutes of
6 time on an anesthesia record working at the endoscopy center?

7 A It's something that was instructed to us that
8 that was what it had to be, that they had to be 30 minutes or
9 longer, the time -- time factors.

10 Q Now, you worked 33 years in California.

11 A Yes.

12 Q In 33 years in California, did you ever put
13 down time on an anesthesia record that wasn't accurate?

14 A No.

15 Q You come to Las Vegas, and if they're telling
16 you a time before you've even done this patient that this
17 needs to be, would that -- I mean, it certainly could be
18 accurate if the patient had actually taken that long; is that
19 correct?

20 A That's correct.

21 Q But you're pre told that this record and all
22 others you do needs to be greater than 30 minutes?

23 A Yes.

24 Q Who told you that?

25 A When I started it was Ann Lobiondo and Dr. D.

1 both emphatically made clear that that's what had to be done.

2 Q Now, specifically, Dr. Desai, after you
3 started, did this ever come up again where he reiterated that
4 in any way?

5 A Many times. If we would have messed up on the
6 records, they would be evaluated somewhere along the line and
7 they'd come back to us and tell us to make sure it was done
8 properly.

9 Q But specifically, Dr. Desai, did he tell you
10 over the time repeatedly to do this?

11 A At times, yes.

12 Q Now, I'm going to look over here to the area
13 where that 32-minute time period is on this particular
14 patient. And on this particular patient we also have a whole
15 listing of sort of these checkmarks for blood pressure,
16 respiration, O2 sats, all that stuff that you mentioned;
17 right?

18 A Correct.

19 Q Those markings go out for the full time, the
20 full 30 -- 30 plus minutes; correct?

21 A Correct.

22 Q Now, we -- we'll go over to the chart in a
23 minute, but I'll represent to you this is Rodolfo Meana's
24 chart. And we have a big board that has the summary
25 information on it that we'll --

1 A Okay.

2 Q -- I'm going to bring you down to it in just a
3 bit. But suffice it to say that the procedures didn't last
4 that long, did they?

5 A Ordinarily, no.

6 Q So we've got Dr. Carrol on this one, though;
7 correct?

8 A Yes.

9 Q And you said he was one of the faster ones,
10 too?

11 A He used to brag about how fast he could do it,
12 yes.

13 Q So if this is not an accurate time, it's far
14 less -- and what was the average time that they're doing these
15 procedures? I mean, you said Dr. Desai was five to ten
16 minutes for a colonoscopy. Dr. Carrol, where was he in the
17 ballpark range?

18 A Tried to be about the same somewhere.

19 Q So if we're doing a procedure that's five to
20 ten minutes and we've got 32 minutes of anesthesia time and 32
21 minute of vital signs and the like marked down here, is that
22 accurate?

23 A No, it isn't.

24 Q Okay. And is this something you put down on
25 this record?

1 A Yes, I did.

2 Q Why did you do that?

3 A Because that's what I was told it had to be.

4 Q By who?

5 A Dr. D.

6 Q Did he explain to you why he wanted it that

7 way?

8 A I -- I was told all along that there was a

9 global fee for anesthesia and that time didn't make any

10 difference. So I guess I was told different things, but I

11 don't remember how many times I was told.

12 Q But you knew that this was false information;

13 correct?

14 A Yes.

15 Q And you knew that was a patient record that

16 somebody down the road might rely on, like yourself.

17 A Yes.

18 Q But you agreed to put down this false

19 information?

20 A Yes, we did.

21 Q Now, even though Dr. Desai told you that there

22 was a global fee for anesthesia, did you ever question him or

23 refuse to do this?

24 A I don't remember about refusing, no. I mean,

25 I was just told that's what we had to do.

1 Q If you didn't do it, what happened?

2 A I probably wouldn't have been working there.

3 Q But would Dr. Desai do or say anything to you
4 if you didn't do it right?

5 A It would -- I don't know if it would be him,
6 but it would come back through the upper office. We used to
7 say, you know, that the record would come -- go up to Tony or
8 somewhere, and then they would come back down maybe a day or
9 two later or a week later and tell us to correct the, you
10 know, the times and all that type -- type of things that
11 needed to be corrected. So I don't know if it was Dr. D.
12 telling her what had to be or, you know, us directly. But, I
13 mean, we knew it. It was an implied -- an implied order.

14 Q But did he follow up on that to make sure -- I
15 mean, was it coming from him basically where he's told you
16 this before and yelled at you for that?

17 A He would check the charts at different times,
18 yes.

19 Q Now, let's go back to California. Let's take
20 a break and go back to California for just a minute. You were
21 doing 33 years of anesthesia work in your own group as by your
22 testimony.

23 A Correct.

24 Q Who billed for you?

25 A We had a billing service.

1 Q Now, the billing service that you used, what
2 basis did they use to bill the patients?

3 A Are you talking about the anesthesia -- I
4 mean, the ASA codes you're talking about?

5 Q Both, but I'm saying how would -- how would
6 they know what to bill for your services first?

7 A Well, we -- we would have to look and see what
8 the procedure was, if it was an appendectomy or gall bladder
9 or whatever, there would be a certain code number that would
10 be put down for that, and then the billing company would go
11 according to that, you know, and know that. But then our time
12 would be on the record as well so that they would be billing
13 the time, plus whatever the code gave them.

14 Q So the code would give a base amount; is that
15 right?

16 A Yes. Uh-huh.

17 Q And then how much time you were in the room
18 would be added to that?

19 A Correct.

20 Q So is it fair to say that time is money in
21 anesthesia billing?

22 A Yes, it can be. Sure.

23 Q Okay. And in your 33 years of experience in
24 California, you put down these same types of hash marks on
25 records; right?

1 A Yes.

2 Q And when you got to the end you had a time
3 that was listed for the procedure?

4 A Right.

5 Q Did you ever fabricate any records over in
6 California?

7 A No, I didn't.

8 Q And is it fair to say that you were aware that
9 this record would be used to go to an insurance company to
10 eventually get reimbursement for your services?

11 A Looking back, yes. But at the time, you know,
12 it was -- we had no idea what was going on as far as billing.
13 I mean, it was a very secretive type thing. Money was -- was
14 not talked about. I was not aware that there was a billing
15 service and that going on.

16 Q Well, let's talk about your experience in
17 California. You were aware when these forms were submitted
18 that they were sent to the insurance company for
19 reimbursement, clearly.

20 A Correct.

21 Q And that the amount of time you put down would
22 depend on -- would actually correlate with how much money you
23 got back; correct?

24 A Yes.

25 Q So in those instances would you ever fabricate

1 any of the information on these forms?

2 A You're talking about here or there?

3 Q In California.

4 A No, absolutely not.

5 Q So when you came out here and Dr. Desai said,
6 you know what, global fee doesn't matter. Just put this down
7 as 32 minutes. I mean, clearly you're putting information
8 down that isn't accurate.

9 A That's right.

10 MR. SANTACROCE: I'm going to object as it was asked
11 and answered.

12 THE COURT: Well, overruled.

13 Go on.

14 BY MR. STAUDAHER:

15 Q So why was it, even though he's telling you --
16 and why does it matter what you put down if there's just a
17 global time for anesthesia. You could have put down one box.

18 A It was so the record would look proper, I
19 guess, again --

20 Q There we go.

21 A -- going to the insurance company. Yes.

22 Q That's what I'm talking about.

23 A Yeah.

24 Q So you knew it was --

25 MR. WRIGHT: Objecting to --

1 BY MR. STAUDAHER:

2 Q -- going to go to the insurance --

3 MR. WRIGHT: -- the guess.

4 THE COURT: Yeah.

5 MR. STAUDAHER: Well, we can -- I'll go back, Your
6 Honor. That's okay.

7 THE COURT: Don't -- don't speculate. So ask the
8 question. You can ask it a different way.

9 BY MR. STAUDAHER:

10 Q 33 years of experience doing this; correct?

11 A Yes.

12 Q You know these records go to the insurance
13 company; correct?

14 A Yes.

15 Q When these records go to the insurance company
16 you get reimbursed for them; correct?

17 A Correct.

18 Q So you know that this -- what you're putting
19 down here is going to go to the insurance company.

20 A Correct.

21 Q So when Dr. Desai tells you global fee, put
22 this down, why don't you not just do it? Excuse me. That was
23 a bad way to ask that. Why do you do this even though you
24 know it doesn't matter, or at least he's telling you it
25 doesn't matter?

1 A I can't answer you, truthfully. I don't know
2 why we did it. I don't know why I did it. I don't know.
3 Because of that we -- that's what we were told we had to do, I
4 guess.

5 Q What is a billing unit? In time, what is a
6 billing unit?

7 A 15 minutes of -- of time.

8 Q Is that pretty standard across every place
9 you've ever worked?

10 A Yes, as far as I recall.

11 Q Does it matter whether you're an
12 anesthesiologist, an MD, or a nurse anesthetist?

13 A No.

14 Q So the time is the time.

15 A Time is time.

16 Q Do you know if there's a difference in the
17 amount of -- if the amount of reimbursement for a CRNA for 15
18 minutes of time versus an MD for 15 minutes of time?

19 A I think some of the plans have a different --
20 like Medicare probably would be a difference.

21 Q But in the instances that you worked, I mean,
22 you worked in those facilities, you did your own work, was
23 there a difference between like if you went in for a -- in
24 California, if you went in for a colonoscopy procedure and did
25 it versus an MD doing it, do you know if there would be a

1 difference in reimbursement?

2 A I don't know.

3 Q Okay. But in your experience it was a fixed
4 amount of money?

5 A Correct.

6 Q For upper endoscopies, do you remember what
7 the code was that was used?

8 A I do not.

9 Q Do you remember what the base units that were
10 given for those procedures?

11 A I do not.

12 MR. SANTACROCE: Can I ask you to have him speak up,
13 please.

14 THE COURT: All right. You said I do not, was
15 that --

16 THE WITNESS: Yeah.

17 THE COURT: And then just -- that black box there is
18 the microphone.

19 THE WITNESS: Thanks.

20 THE COURT: Just be mindful. It's kind of hard to
21 hear in here.

22 BY MR. STAUDAHER:

23 Q When you did these procedures, I mean, and you
24 write down these forms, if you were -- let's go back to
25 California where you were [inaudible] for sure. If you get

1 into another increment, meaning you're past the 15 minutes and
2 you're into the next 15 minutes, can you bill and would you
3 bill for that time?

4 A If it was up to 10 minutes, we would bill.
5 Otherwise, we did not bill.

6 Q So if you went 15 minutes and -- let's say,
7 actually, 17 minutes, you wouldn't bill for the other unit?

8 A No, I would not.

9 Q That's what you did in California?

10 A Correct.

11 Q Okay. And yet you're told that you have to
12 bill for more than 30 minutes, 31 or 32 minutes here; is that
13 correct?

14 A Correct.

15 MR. STAUDAHER: Court's indulgence, please.

16 THE COURT: That's fine.

17 MR. STAUDAHER: Your Honor, could we approach for a
18 moment?

19 THE COURT: Sure.

20 (Off-record bench conference.)

21 BY MR. STAUDAHER:

22 Q Let's talk about the records, too. This is
23 your record, the one that you -- I mean, this is actually your
24 record on this particular patient; right?

25 A Correct.

1 Q Did you see other records that were done at
2 the clinic, the nursing records on the charts and things like
3 that during the time that you were there?

4 A You're referring to patients that I had or
5 other CRNAs?

6 Q Well, let's talk about ones for you, first of
7 all. Did you see other -- and I'm not talking about the CRNA
8 records like this at this point. I'm talking about the other
9 -- you know, there was a pre-op procedure form, there was a
10 post-op procedure form, there was a procedure form, that kind
11 of thing. Did you see those kinds of records?

12 A Most of the time, yes.

13 Q Do you know what the term precharting means?

14 A Yes.

15 Q What does that mean?

16 A It's where something is put on the chart
17 before it actually happened.

18 Q Did you see that going on at the clinic?

19 A Yes.

20 Q On a regular basis?

21 A Yes.

22 Q Daily basis?

23 A Yes.

24 Q Lots of charts?

25 A I think probably most of them.

1 Q Why was that, do you know?

2 A Because the nurses would tell us they just
3 didn't have time to do it all when the patients were out there
4 and the -- the rapidity of things that were going on.

5 Q So if I understand you correctly, you've seen
6 records filled out before the patient's even gotten a
7 procedure done?

8 A Certain parts of it, yes.

9 Q I mean, parts that you would have to have the
10 procedure done to fill out, correct, if you did it
11 legitimately?

12 A Correct.

13 Q Now, in fact, I mean, you said that at some
14 point if -- I want to make sure I'm clear on this. Before the
15 patient actually gets into your room, the record that you
16 receive with the patient would have information filled out by
17 the nurse in advance for things that had not yet happened?

18 A Yes.

19 Q The general atmosphere that was in there, I
20 know you've talked about the issue of having your foot rot and
21 so forth, but as far as the -- the speed and the pressure and
22 so forth, I mean, what was the general atmosphere around, not
23 just the procedure room that you were in, but around the
24 staff? How did the staff react to this time -- time crunch?

25 A Very stressful. I mean, it was just speed,

1 speed, speed, speed, come on, let's go faster, and that type
2 of thing.

3 Q And did it give you concern about not just
4 what you were doing, but other people were rushed so much that
5 they might cause trouble, cause mistakes?

6 A Yes, I did.

7 Q Why did you all do it?

8 MR. WRIGHT: Speak for himself.

9 BY MR. STAUDAHER:

10 Q Okay. Why did you do it?

11 A Looking back, I don't know why. I purchased a
12 house here, I guess, and maybe that was the reason. We moved
13 here, you know, and if I had known things beforehand I would
14 have never come. That's the way it would have been.

15 Q When you came here, what was your -- what was
16 your starting salary back in 2003?

17 A I think it was 120,000 a year.

18 Q Were you given any kind of bonuses as things
19 -- as time went on during the year?

20 A We were to get a \$5,000 bonus, I think, every
21 four months.

22 Q So another 20,000. So about 140,000 is what
23 you started with?

24 A Yes.

25 Q Is that what you were making back in

1 California?

2 A No.

3 Q Or is that better?

4 A Less.

5 Q Less? So you were making more in California?

6 A Oh, yes.

7 Q Now, you -- were you still actively working in
8 California or had you stopped working? What was the --

9 A No, I had retired in June or July of '02.

10 Q And I know we're going to take a break in
11 about five minute for lunch, but I want to cover one area
12 before we -- we do that.

13 MR. STAUDAHER: And I need one document before we do
14 that, Your Honor.

15 THE COURT: That's fine.

16 Did you have the job prior to moving from California
17 to Las Vegas?

18 THE WITNESS: I worked for myself.

19 THE COURT: Okay. So you hadn't been hired yet, or
20 had you -- was the job in place before you moved?

21 THE WITNESS: The job was in place. I was hired in
22 like in November of December something like that of '02.
23 Yeah. I didn't move up here until sometime in January.

24 THE COURT: Okay.

25 MR. STAUDAHER: They're looking at the document,

1 Your Honor.

2 BY MR. STAUDAHER:

3 Q PacifiCare.

4 A Yes.

5 Q One insurance company specifically. The --
6 the insurance company PacifiCare, was it treated differently
7 than some of the other insurance companies, at least the
8 patients that came in?

9 A Are you talking --

10 MR. SANTACROCE: I didn't hear your question. I'm
11 sorry.

12 BY MR. STAUDAHER:

13 Q I said was PacifiCare -- were PacifiCare
14 patients treated differently than other patients of other
15 insurance companies?

16 A Some were. I don't remember if it was '03 or
17 '04. It must have been '04 that there was -- they were
18 treated differently. I mean, before that I don't think they
19 were.

20 Q Okay. So what happened after '04? How were
21 they treated differently?

22 A We were given the directive that we could not
23 do PacifiCare patients simultaneously or one right after the
24 other. There would have to be another patient or two patients
25 in between the patients. You know, if there were two

1 PacifiCares, there'd have to be two patients or one patient in
2 between them.

3 Q So there had to be interruption --

4 A Uh-huh.

5 Q -- and you could never have two together?

6 A That's what we were told, yes.

7 Q Okay. Why was that?

8 A Why was it? I was because I think there was a
9 phone call somewhere along the line that came to my attention,
10 but I -- I never --

11 MR. SANTACROCE: I'm going to objection to
12 foundation, how he knows this.

13 THE COURT: Well, all right. Lay a foundation.

14 MR. STAUDAHER: What is the problem? You've seen
15 these in advance.

16 MR. WRIGHT: We object to the highlight.

17 MR. STAUDAHER: Okay. I'm going to show him and ask
18 him specifics.

19 MR. WRIGHT: Okay. Is this the exhibit?

20 MR. STAUDAHER: Yeah, this is the exhibit.

21 MR. WRIGHT: Okay. Well, why did we highlight it?

22 MR. STAUDAHER: You saw the exhibits are highlighted
23 because I want a specific [inaudible].

24 MR. WRIGHT: Can we approach, Your Honor?

25 THE COURT: Well, let's -- I don't know about you,

1 but I could use lunch. Why don't we go ahead and take our
2 lunch break now. We'll have an hour for lunch. So that's --
3 basically we'll be back from the lunch break at 1:15.

4 And, ladies and gentlemen, during the lunch break
5 you're of course reminded again that you are not to discuss
6 the case or anything relating to the case with each or with
7 anyone else. You're not to read, watch, or listen to any
8 reports of or commentaries in this case, any person or subject
9 matter relating to the case by any medium of information.
10 Don't do any independent research by way of the Internet or
11 any other medium, and please do not form or express an opinion
12 on the trial.

13 Would you all please place your notepads in your
14 chairs and follow the bailiff through the rear door.

15 (Jury recessed at 12:10 p.m.)

16 THE COURT: And, Mr. Mathahs, you're excused for the
17 lunch recess. I don't know if they want you to hang around or
18 not. But --

19 MR. STAUDAHER: No.

20 THE COURT: -- as far as the Court's concerned,
21 you're excused to go to lunch. And the only thing I would
22 tell you is the admonition not to discuss your testimony with
23 anybody who may be a witness in this case. Obviously, you can
24 talk to your lawyers --

25 THE WITNESS: Okay.

1 THE COURT: -- about it if you want to. Okay. Sir,
2 thank you, you are excused.

3 Everyone can be seated. All right. Since the jury
4 has been excused, Mr. Wright, you had wanted to approach the
5 bench but we don't need to --

6 MR. WRIGHT: Okay.

7 THE COURT: -- have a bench conversation,
8 apparently, about the exhibits. I'm assuming that's what you
9 wanted to approach the bench about?

10 MR. WRIGHT: Yes.

11 THE COURT: Okay.

12 MR. WRIGHT: The exhibits are all highlighted.
13 These are the Court's exhibits.

14 THE COURT: Okay.

15 MR. WRIGHT: And they're -- this isn't the way they
16 were. I mean --

17 THE COURT: Right.

18 MR. WRIGHT: -- they've been highlighted by the
19 State. I simply never experienced where we highlight the
20 exhibits and then they go to the jury room and it was placed
21 on there by the prosecutor. I never have.

22 THE COURT: Mr. Staudaher.

23 MR. WRIGHT: So I object to that.

24 MR. STAUDAHER: They are the actual words. Whether
25 they're -- it does no difference to me pointing to a specific

1 place on the record, but it shows the -- it shows the jury
2 where I want them to look --

3 THE COURT: Okay.

4 MR. STAUDAHER: -- when I'm talking to the person --

5 THE COURT: Here's the thing.

6 MR. STAUDAHER: -- when we have a document.

7 THE COURT: You can use the highlighted exhibits,
8 but we can also admit non-highlighted exhibits.

9 MR. STAUDAHER: I don't have any problem with that.

10 THE COURT: And you have to explain that this was
11 done by you and it's not the condition of the exhibit at all.

12 MR. STAUDAHER: That's fine. I don't have an issue
13 with that.

14 THE COURT: And then, you know, we'll have
15 non-highlighted exhibits to show that this is really the
16 condition, and then when you put the exhibit up just make it
17 very clear that these highlights -- highlights were added by
18 you so you could direct the witness or something like that.

19 MR. STAUDAHER: Fair enough.

20 THE COURT: And as long as it's clear on the record
21 who did the highlighting and for what purpose, I'm fine with
22 that.

23 Would you be fine with that, Mr. Wright?

24 MR. WRIGHT: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. WRIGHT: The exhibits and the one that go to the
2 jury don't have any highlight.

3 THE COURT: Right.

4 MR. STAUDAHER: That's fine.

5 MR. WRIGHT: Okay.

6 MR. STAUDAHER: I don't have a problem with that.

7 THE COURT: Okay.

8 MR. STAUDAHER: I just want to --

9 THE COURT: But he could publish, clearly, the
10 highlighted exhibit so the jurors can, you know, follow along
11 with that. All right. Anything else we need to do?

12 MR. SANTACROCE: My last objection you didn't rule
13 on that about foundation.

14 THE COURT: I said Mr. Staudaher, lay a foundation.

15 MR. SANTACROCE: Oh, I didn't hear you.

16 THE COURT: Because it wasn't --

17 MR. STAUDAHER: Oh, I don't even remember what
18 the --

19 THE COURT: -- clear to me how he knew about that,
20 so you need -- and then he said he'd overheard a telephone
21 call, so I think that's how he knows, but --

22 MR. SANTACROCE: Okay. Who, what, when, and where.

23 THE COURT: Well, I know. I said he can -- at first
24 I was concerned was he speculating that he said he overheard it
25 on a telephone call.

1 So maybe, Mr. Staudaher, you can make that
2 clearer --

3 MR. STAUDAHER: Certainly, Your Honor.

4 THE COURT: -- how he learned about this. He
5 overheard a telephone call, where was the phone call,
6 etcetera.

7 MR. STAUDAHER: Yes. And then later on you'll hear
8 other -- well, I'll get it in, Your Honor.

9 THE COURT: Anywho, or how. So I did -- I did tell
10 him that, Mr. Staudaher, but he and Mr. Wright were conferring
11 over the exhibits, so I don't think Mr. Staudaher heard, and
12 then we took our break. So the witness --

13 MR. STAUDAHER: Thank you, Your Honor.

14 THE COURT: You can kind of --

15 MR. WRIGHT: Thank you.

16 THE COURT: -- back up a little bit, Mr. Staudaher,
17 with the witness.

18 MR. STAUDAHER: I'll just start -- I just started
19 the PacifiCare thing.

20 THE COURT: Right. Okay.

21 (Court recessed at 12:14 p.m., until 1:19 p.m.)

22 (In the presence of the jury.)

23 THE COURT: All right. Court is now back in
24 session. Everyone may be seated.

25 And, Mr. Mathahs, you are still under oath.

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

3 MR. STAUDAHER: Thank you, Your Honor.

4 BY MR. STAUDAHER:

5 Q We were just starting to talk about
6 PacifiCare, but I want to ask you two questions kind of back
7 on the pre-charting issue before we get to that. One of the
8 things that you had talked about a moment earlier when you
9 were on the stand was the fact that some of these charts would
10 be brought into the room before patients -- and filled out to
11 some degree before the patients were even brought in, is that
12 fair?

13 A Yes.

14 Q Okay. In fact, at some point did you ever see
15 any records that were -- that essentially had the patient
16 discharged from the facility before they even came into the
17 room for the procedure?

18 A It's possible. I can't recall right at the
19 moment, but it's possible.

20 Q Okay. I have left up there, I just put up
21 there a moment ago a copy of a statement that you gave during
22 -- or prior to your pleading guilty in this particular case.
23 So if you need to refer to that, I might refer you to some
24 specific pages. Okay?

25 A Okay.

1 MR. STAUDAHER: For counsel, I'm referring
2 specifically to page 7 of the document.

3 BY MR. STAUDAHER:

4 Q And you can grab that. I'd like you to look
5 at it and refresh your memory. It's near the bottom of the
6 page, the last couple questions and answers at the bottom of
7 the page. Read that to yourself and then put it aside when
8 you're done and tell me if that doesn't refresh your memory as
9 to that issue.

10 A Okay.

11 Q Does that refresh your memory?

12 A Yes.

13 Q Okay. So as far as the chart, any indication
14 that at times at least the charts were filled out completely
15 before they were brought into the room, patients, that is.

16 A They could have been, yes, absolutely.

17 Q Is that what you said in your -- in your
18 statement?

19 A I'm talking about -- you're talking about the
20 nurse's charts?

21 Q Yes, nurse's charts. I'm not talking about
22 your charts.

23 A Right. I said yes, the entire chart could
24 have been filled out except for times, I guess.

25 Q In fact, if you go to the, I think it's the

1 one, two, three, four, the second answer to the bottom, do you
2 indicate in there that they would even have the patients
3 discharged from the facility before they even came into your
4 room?

5 A Correct.

6 Q I'd like to move to the PacifiCare. You can
7 set that aside, if you would. If you need to refer to it
8 later on, we'll do that. Okay?

9 A Okay.

10 Q I want to ask you about the PacifiCare issue.
11 Now, you said before the break that you couldn't have
12 PacifiCare patients back to back. Do you recall that?

13 A I recall when the directive came down. Yes.
14 Uh-huh.

15 Q And was that the way it was until you stopped
16 working?

17 A Yes.

18 Q I'm going to direct your attention to Exhibit
19 81. I'm going to display that in a moment, but before I do so
20 there is some highlighting that is on this document. And I
21 will represent to you and to the jury that that is something
22 that was not contained in the original document and something
23 that I have done so that I can direct you to the areas of the
24 document that I want to ask you questions about. Okay?

25 A Okay.

1 Q And there will be a succession of document I
2 show you thereafter that are in the same way. The
3 highlighting is something I put on there to -- to facilitate
4 us getting to the information that I want to ask you about.
5 Okay?

6 A Okay.

7 Q It will not be something that will be
8 contained on the exhibits when they go back to the jury room.
9 A clean copy will be provided. Okay?

10 A Okay.

11 MR. STAUDAHER: May I display, Your Honor?

12 THE COURT: Yes.

13 BY MR. STAUDAHER:

14 Q Now, you had mentioned the time period that
15 you believe that this information was disseminated to you was
16 in 2004; is that correct?

17 A As far as I can remember back. I think it was
18 '04, yes.

19 Q And as you can see, even the date of this
20 particular memo is January 23, 2004. Do you see that?

21 A Yes, I do.

22 Q In here is some discretion -- or some
23 discussion about the fact that there are to be 42 patients
24 scheduled in Endo 1 in time slot allotted. Do you remember me
25 asking you questions about double booking and the like?

1 A Yes.

2 Q And you said that that did occur?

3 A Yes.

4 Q Actually, this memo talks about that directly,
5 does it not? That fill up all the time slots before any
6 double booking?

7 A Correct.

8 Q And then it actually gives an example of what
9 double booking is. Do you see that?

10 MR. WRIGHT: I'm going to object to the
11 summarization and leading.

12 THE COURT: Well, go on. Try not -- just be
13 mindful, Mr. Staudaher.

14 MR. STAUDAHER: Yes.

15 BY MR. STAUDAHER:

16 Q I want to -- so there's discussion there about
17 the double booking; correct?

18 A I see that, yes.

19 Q Now, I want to refer to No. 3, this area here.
20 Does this comport -- does this match up with the things that
21 you were told about not having PacificCare patients back to
22 back?

23 A Yes.

24 Q So in this particular example, there is
25 actually an example given of how to schedule patients with

1 different insurance companies, do you see that?

2 A I do.

3 Q So HPN, as an example, then PacifiCare, then
4 Aetna, then PacifiCare?

5 A Correct.

6 Q Okay. Is that the way that you did things,
7 not just you, but the whole clinic did things when you worked
8 there after 2004?

9 A Yes.

10 Q Do you know why that was done?

11 A It was because of the -- evidently the --

12 MR. WRIGHT: Objection.

13 THE WITNESS: -- insurance company --

14 MR. WRIGHT: Foundation.

15 THE COURT: All right. Lay a foundation.

16 BY MR. STAUDAHER:

17 Q Do you know why? Let's -- let me see, were
18 you ever --

19 THE COURT: Well, he can answer yes or no --

20 MR. STAUDAHER: Okay.

21 THE COURT: -- and then how do you know -- how do
22 you know, you know, did someone tell you, did you overhear a
23 conversation, etcetera?

24 BY MR. STAUDAHER:

25 Q Do you know why this was done?

1 A Yes.

2 Q Why?

3 MR. WRIGHT: Well --

4 THE COURT: How do you --

5 MR. WRIGHT: -- how?

6 THE COURT: -- know -- how is it that you --

7 MR. STAUDAHER: I'll go through --

8 THE COURT: -- learned why --

9 MR. STAUDAHER: -- the steps, Your Honor.

10 THE COURT: -- this was done?

11 BY MR. STAUDAHER:

12 Q How did you learn this?

13 A That this memo came out, you mean? It was

14 because of the fact that a phone call had come from an

15 insurance company.

16 MR. WRIGHT: Foundation.

17 THE COURT: Did you overhear the phone call or did

18 someone tell you about the phone call or how did you learn of

19 the phone call?

20 THE WITNESS: Someone came and told me that I had a

21 phone call from an insurance company and Dr. Desai was doing

22 the procedure and he stopped the procedure and said I will

23 take it.

24 THE COURT: All right. Go on, Mr. Staudaher.

25 BY MR. STAUDAHER:

1 Q Okay. So this is -- actually Dr. Desai is
2 present when all of this is going on?

3 A Yes.

4 Q So tell us what happened.

5 A Well, he -- after he came back, that's when
6 the decision was told to me that we are not to do back to back
7 patients. I just thought it was PacifiCare. I didn't realize
8 that there were other insurance companies. At least I don't
9 recall that.

10 Q So this is something Desai comes back and
11 tells you?

12 A Yes.

13 Q Okay. So Desai tells you specifically, you
14 personally, that you're not to have PacifiCare patients back
15 to back, you're supposed to separate them?

16 A Correct.

17 Q And in that example, so we're clear, going
18 back to 81, it's talking about PacifiCare, not other insurance
19 companies being separated, and then it gives an example of how
20 to separate them; correct?

21 A Correct.

22 Q So after that conversation with Desai, is that
23 what you would all do thereafter?

24 A I know I did, and I'm sure the rest of them
25 were instructed. I know Ann was instructed because she had

1 told me the same thing, you know, that's the way it had to be
2 done.

3 Q Okay. So this is something that clearly --

4 MR. WRIGHT: I object to --

5 BY MR. STAUDAHER:

6 Q -- Dr. Desai is --

7 MR. WRIGHT: -- hearsay. I mean, we can ask him
8 proper questions where he won't elicit that.

9 MR. SANTACROCE: And I'm going to object as to
10 speculation as to the other ones. He only said one.

11 THE COURT: It's sustained as to speculation. It's
12 overruled as to what he personally knew and what was told to
13 him by other people in the clinic who were doing the same
14 thing.

15 Go on.

16 BY MR. STAUDAHER:

17 Q But let's be clear on this. Dr. Desai was the
18 one who at least at one point told you this specifically?

19 A Yes.

20 MR. WRIGHT: Asked and answered.

21 MR. STAUDAHER: Well, we're --

22 MR. WRIGHT: That's --

23 MR. STAUDAHER: -- going back to make sure.

24 THE COURT: Okay. Just overruled.

25 MR. WRIGHT: I object.

1 BY MR. STAUDAHER:

2 Q Is that correct?

3 MR. WRIGHT: I object, Your Honor. I don't know --

4 MR. STAUDAHER: Your objection is on the record,
5 sir.

6 MR. WRIGHT: My objection is we don't need to go
7 back to make sure on every question.

8 THE COURT: That's correct. I mean, we had an
9 interruption, so I allowed Mr. Staudaher to go back to where
10 he was prior to the objection and the Court's sustaining part
11 of the objection and overruling part of the objection. So now
12 we know where we are and please proceed.

13 BY MR. STAUDAHER:

14 Q With regard to the reason that Desai wanted
15 you to do that, did he ever tell you specifically as to why
16 that should be done?

17 A I recall that it was because of the fact that
18 the insurance companies were getting bills, you know,
19 consecutively, you know.

20 MR. WRIGHT: Can we have a foundation.

21 MR. STAUDAHER: This is discussion with Dr. Desai.

22 MR. WRIGHT: I'd like a foundation as to when and
23 where.

24 THE COURT: All right. When did you -- Mr. -- can
25 you lay a foundation. When did this conversation occur, was

1 it in the clinic, etcetera.

2 BY MR. STAUDAHER:

3 Q And we'll go to that in a minute. You have
4 the conversation after the phone call with Dr. Desai; correct?

5 MR. WRIGHT: Objection.

6 MR. STAUDAHER: I'm just bringing --

7 THE COURT: Overruled.

8 MR. STAUDAHER: -- us back.

9 THE COURT: I mean, again, we're getting back to
10 where we were before the discussion on the objection.

11 So go on, Mr. Staudaher.

12 BY MR. STAUDAHER:

13 Q So in relation to Dr. Desai telling you this
14 should be done, the part about why it should be done, was that
15 in the same conversation or was that later?

16 A As far as I recall it would have been at the
17 same time because of the back to back patients.

18 Q And so what was the explanation, then?

19 A That we couldn't do them back to back because
20 of the times, the time factor and the insurance company was
21 questioning, which I didn't know. But, I mean, that's what
22 they called about was they were questioning why the times were
23 overlapping, I'm sure.

24 Q But that's what he's telling you?

25 A Yes.

1 Q The insurance company is calling, we can't do
2 them back to back because of the time?

3 A Yes.

4 Q Now, you had mentioned -- you had mentioned
5 that there were some items that were actually utilized for
6 doing your anesthesia work; correct?

7 A Correct.

8 MR. STAUDAHER: As a matter of fact, may I just
9 approach, Your Honor?

10 THE COURT: You may.

11 BY MR. STAUDAHER:

12 Q Showing you what has been -- this is Exhibit
13 -- let's see, Exhibit 70I, 72A, 72B, 70H, and 70G.

14 MR. STAUDAHER: I believe these were all stipulated
15 to admission, if I understand.

16 THE COURT: Is that correct?

17 MR. WRIGHT: Yes.

18 THE COURT: All right. Those are all admitted,
19 then.

20 (State's Exhibit 70I, 72A, 72B, 70H and 70G admitted.)

21 BY MR. STAUDAHER:

22 Q Do you recognize these various items?

23 A Absolutely, yes.

24 Q Are they things you used in your practice?

25 A Every day.

1 Q Every day.

2 MR. STAUDAHER: May I publish, Your Honor?

3 THE COURT: You may.

4 BY MR. STAUDAHER:

5 Q When I was talking to you before, you
6 mentioned a device called an angiocath, do you recall that?

7 A Yes.

8 Q And showing you --

9 MR. STAUDAHER: I'm going to have to actually take
10 it out of the package. I'll put it back in, Madam Clerk.

11 MR. SANTACROCE: Can you tell me what exhibit that
12 is?

13 MR. STAUDAHER: This is 72B.

14 BY MR. STAUDAHER:

15 Q So what are we looking at here?

16 A That's the angiocath with a sterile tube that
17 slides off of it right in the package itself the way it would
18 come from the factory.

19 Q So there's -- inside this container -- we
20 won't undo it, you can look through it, it's semi-transparent
21 down at this end over here --

22 A Right.

23 Q -- is that correct?

24 A Correct.

25 Q And in there it appears to be a needle with

1 some sort of white plastic sheathing over the top of it.

2 A Yes.

3 Q What is the difference -- what is what white
4 plastic sheathing?

5 A That was the tube, the little plastic tube
6 that would have been inserted into the vein after you
7 punctured the vein with the metal portion of the needle.

8 Q So if I understand correctly, the needle with
9 the sheath goes into the vein, then the needle is withdrawn
10 and the sheath remains?

11 A Correct.

12 Q Is that what allows you to get access to the
13 person's blood system?

14 A Correct.

15 Q So you can administer medication?

16 A Correct.

17 Q Is that what you used to do that?

18 A Yes. Uh-huh.

19 Q So this is one device. We have another one,
20 which is Exhibit 72A. The first one was yellow. This one is
21 blue in nature, but it looks very similar. What is the
22 different between the two?

23 A This one says 22 gauge, which would be a
24 little larger. And the yellow one is a 24, which would be a
25 little smaller.

1 Q So they were just different sizes?

2 A Just different sizes.

3 Q Length or width?

4 A I'm sorry?

5 Q Length or width, the diameter of the needle?

6 A Oh, the diameter. You would evaluate it when
7 you're looking at a vein. Smaller veins you'd use the
8 smaller.

9 Q Showing you what has been marked and admitted
10 as 70I. Can you tell us what that item is?

11 A That's just the port that you would put on the
12 IV. I mean, after the needle was in the person, and then it
13 would be so you could use it on the end where it's --

14 Q Use your fingernail.

15 THE COURT: If you touch it --

16 THE WITNESS: Oh, your nail?

17 THE COURT: -- that'll make a mark.

18 THE WITNESS: Okay. There. That, there's a port
19 there, that's where actually the needle would go in. It's
20 silicon or rubber or something that you can push a needle into
21 it and give the medication, and the medication would go this
22 way into the patient.

23 BY MR. STAUDAHER:

24 Q Okay. So on this end over here, does this --
25 is this the part that screws into the angiocath that you would

1 put into the patient?

2 A Yes.

3 Q And this part on the end here is where the
4 needle would go into, and then into the patient?

5 A That's -- yes, that's the port end. Uh-huh.

6 Q Okay. And is this the type of device that you
7 would use at the clinic?

8 A Yes.

9 Q Is this also known as what's called a
10 hep-lock?

11 A Yes.

12 Q And why is it called that, do you know?

13 A Because sometimes a patient would have had a
14 catheter left in, an angiocath left in, and they would have
15 been given heparin so that you wouldn't have -- have any
16 clotting or something like that. It would prevent clotting of
17 the blood in the -- in the IV itself around the angiocath.

18 Q Do you all use heparin in that capacity at the
19 clinic?

20 A No.

21 Q So that's just the name for what it's used
22 for?

23 A Yes.

24 Q Okay. And I'll show you this -- this last
25 item here which is 70 -- wow, it's hard to see unless I can

1 turn off the light -- 70H. Do you see that?

2 A No, I can't really see what it is.

3 Q It's really tough, isn't it? Is that better?

4 A I can see a little port on top, but I can't
5 see if it's a --

6 Q Let me bring it up to you so you can look at
7 it and tell us what this is.

8 A Oh, okay. I see now what it is.

9 Q What is it?

10 A That is a port that could have been placed
11 into a propofol bottle. A propofol bottle has a rubber
12 stopper on it, and that could be placed into that stopper, and
13 then you could use this port for drawing your propofol out
14 into a syringe.

15 Q Would that be used on the smaller bottles or
16 the larger bottles, or does it matter?

17 A It wouldn't matter. You could use it on
18 either one.

19 Q Okay. So in this particular instance, this --
20 and I know it's very difficult to see unless you're right down
21 on top of it.

22 A Right.

23 Q There's sort of a plastic sheath over this
24 end; is that correct?

25 A Correct.

1 Q And that looks to come to a real point inside.

2 A That's the --

3 Q Is that the part that pierces that rubber
4 stopper?

5 A Yes, that's the one that pierces into the
6 bottle.

7 Q And then it looks like there's also another
8 place on the other end where you can screw on a syringe of
9 some nature?

10 A Yes. Uh-huh.

11 Q And is that how you would draw the medication
12 out?

13 A Yes. Uh-huh.

14 Q The one last item, I think I said that was the
15 last, but this is the last. 70G, what are we looking at here?

16 A It's a Becton Dickinson 10 milliliter syringe.

17 Q Now, are these the -- I mean, are you familiar
18 with the use of these in the clinic?

19 A Yes.

20 Q Where were they used?

21 A That's not -- we used for anesthesia, we would
22 draw up our propofol, and those or any other medication that
23 you might need to give would all be drawn up in this type of a
24 syringe.

25 Q So you didn't have larger ones for that

1 purpose, 20 cc syringes, anything like that?

2 A No, we never had any.

3 Q Did you ever request any?

4 A Yes.

5 Q Who did you request those to?

6 A Probably our supervisors and were turned down.

7 Q Do you know why?

8 A I'm sure it was cost factoring.

9 Q Do you know -- did you ever talk to Dr. Desai
10 about this specifically?

11 A I probably did. I don't recall, you know,
12 specifically, but I probably did because it just made more
13 sense to use the 20 milliliter than this one.

14 Q Okay. Now, I want to talk to you now that
15 we've been looking at different supply issue about supplies.
16 Was there an issue about no wasting supplies in the clinic?

17 A Absolutely.

18 Q When you say absolutely, can you tell us some
19 of the things that you're referring to?

20 A Well, the propofol, for one of the things, was
21 absolutely something that was forbidden to waste. Syringes, I
22 mean, angiocaths, anything like that. If we had to restick
23 someone because we missed the vein or somebody had missed the
24 vein, you know, or something like that, that would be
25 considered a waste and we would be talked to about it.

1 Q Who would talk to you about it?

2 A Well, if Dr. D. Was there and saw, he would
3 be talking to us about it.

4 Q What would his tone be when he was talking to
5 you about it?

6 A Angry.

7 Q So -- and, again, I'm putting up on the screen
8 an angiocath which was from 72B. It's the yellow one. Is
9 this a device you can use more than one time?

10 A No.

11 Q Single use device?

12 A Single use.

13 Q If you used this device to try and puncture a
14 vein on a patient and Dr. Desai was there, did you ever get
15 reprimanded about having to use another one, or anything like
16 that?

17 A Yes, I did.

18 Q What would he want you to do?

19 A Well, if -- you couldn't use this one over. I
20 mean, you'd have to use a new one. That would be it, you
21 know.

22 Q Would he want you to use this one over again
23 if you could?

24 A If you could.

25 Q Is that something you would normally do in

1 your practice in the 33 years you were -- before you came
2 here?

3 A No, I was not limited to that type of thing.

4 Q So even something like this you were -- you
5 were having trouble with as far as him giving you a hard time
6 about using it?

7 A Yes.

8 Q When it came time to using these devices, were
9 you ever in a situation where you were having a hard time
10 starting an IV or it was taking too long and Dr. Desai was
11 there?

12 A Yes.

13 Q Can you describe for me any instances that you
14 had where Dr. Desai may have intervened in that situation?

15 A Yes, he would give you about one chance to do
16 it, and if you didn't do it he would grab the needle and try
17 and do it himself or proceed to do it himself and then just
18 leave the blood running out while we'd try and get the port on
19 so we could go ahead and tape it and get the patient sedated.

20 Q So you're telling me he would insert the
21 device into the vein, and then just walk away?

22 A Yes.

23 Q And when this has been inserted into the
24 patient, now that's in communication with the blood stream;
25 correct?

1 A That's right.

2 Q So what is happening to the patient's blood
3 during this time?

4 A Running on the arm and running on us trying to
5 get the port on to get it stopped.

6 Q Beside that item, were there other items that
7 you couldn't -- couldn't use any more of or you tried to limit
8 the amount of use that there was or waste associated with
9 those items?

10 A Tape was a big -- big item. I mean, if we --
11 if there was too much tape on an angiocath or something like
12 that, we'd -- we'd hear about it.

13 Q So he would give you a hard time about using
14 too much -- you're talking about this plastic tape that you
15 put down?

16 A Yes. Uh-huh.

17 Q About too much of that?

18 A Yes.

19 Q Anything else beside tape?

20 A You're talking now about anesthesia, or in
21 general of the clinic.

22 Q General in the clinic where you were and could
23 observe that kind of thing going on.

24 A Well, I heard many times about too much K-Y.

25 Q When you say heard, I want to at this point

1 tell you that I'm talking about either Dr. Desai saying it
2 directly to you, or you overhearing him saying it to somebody
3 else when you are in his presence, essentially. Okay?

4 A Well, this would -- I would have overhead him
5 telling the technicians about using too much K-Y jelly or
6 whatever, you know, for doing the scopes and having the
7 doctors use less because of the cost factor.

8 Q So K-Y jelly, let's talk about that stuff.
9 What is it used for?

10 A Lubricant on the scope.

11 Q Is it necessary to have that stuff on the
12 scope to use it?

13 A It certainly makes the scope slide a lot
14 easier.

15 Q And one of the issues when the scopes are
16 going in, you're trying not to perforate an intestine or
17 something; correct?

18 A Correct.

19 Q So -- and also patient comfort, I would
20 imagine?

21 A Yes.

22 Q So when the situation is that he's giving the
23 techs a hard time about using too much K-Y jelly, what is he
24 talking about? Don't squirt as much on, or what was he doing?

25 A They would place it on a 4x4 and he would

1 watch how much was placed on the 4x4, yes.

2 Q He would actually watch that and comment about
3 how much was on the 4x4?

4 A Oh, yes. If there was too much, they would
5 know very much about it.

6 Q What about things like the 4x4s themselves
7 that you're talking about. Those are little gauze 4x4 pads?

8 A Correct.

9 Q What about those? Would he give anybody a
10 hard time about using too many of those?

11 A Well, I'm not sure. I'm sure it was probably
12 brought up. I don't recall hearing it, but, I mean, it could
13 have been.

14 Q Okay. What about during the procedure, are
15 you aware that there is a larger syringe, 50 or 60 cc syringe
16 that's used to flush the scopes?

17 A Yes.

18 Q Did you see those used in the clinic in the
19 rooms where you were working?

20 A In the room, yes.

21 Q When Desai was there, was there any issue
22 about those being reused or not reused?

23 A Well, they were always reused over and over in
24 the room, yes, same syringe.

25 Q Over and over again, patient to patient?

1 A Yes.

2 Q Did you hear him ever yell at anybody about
3 that issue, about not reusing them or trying to open up a new
4 one, anything like that?

5 A I don't specifically, but I'm sure it was
6 brought up, you know, because it was just an item that was to
7 be reused over and over.

8 Q So your observation was that it was reused
9 over and over?

10 A Oh, yes. I saw it used many times.

11 Q As a matter of fact, did you ever see him open
12 up new ones throughout the day at all?

13 A First case of the day would have been when it
14 was -- the new one would have been opened.

15 Q So when we've got 60 plus patients rolling
16 through there, we're talking about one syringe for all of
17 those patients?

18 A Well, for each room there would have been a
19 syringe --

20 Q Well, two syringes for all of the patients?

21 A Correct.

22 Q Okay. Do you know what a bite block is?

23 A I do.

24 Q What is it if you can tell us?

25 A When you're going to do an EGD or an upper

1 endoscopy, it's a bite block that goes in there between their
2 teeth so they don't bite the scope. And there's a hole on it,
3 and there's a ridge on each side of it, and it goes under
4 their teeth on the bottom and the top, and then the scope can
5 slide through the bite block so that they don't bite the
6 scope.

7 Q Okay. Were those reused?

8 A Yes.

9 Q On a regular basis?

10 A Yes.

11 Q And these are ones that -- I know -- did you
12 know anything about how they were cleaned or anything like
13 that?

14 A No, I don't.

15 Q You just know that they weren't opening up new
16 ones for --

17 A Right.

18 Q -- new patients? What about snares and
19 forceps, anything like that?

20 A They were reused over and over and over until
21 they were broken.

22 Q And these are items that would go in to take
23 biopsies and the like?

24 A Yes.

25 Q What about the -- was there anything like a

1 bowl that was used for irrigation fluid to go into the scopes?

2 A That's the bowl where the 50 cc syringe would
3 have been in, yes. There was a bowl there with clean water
4 and one for dirty water, but --

5 Q And were those changed out?

6 A No.

7 Q Did you ever hear him yell at anybody in your
8 presence about actual costs of the items themselves? You
9 know, that's three cents, that's one cent, anything like that?

10 A Yes, many times.

11 Q Can you tell us about that?

12 A Well, sheets for instance. If a patient would
13 be cold, you know, one of the nurses would put a sheet on
14 somebody. He would take it off and fold it up and put it back
15 in the cupboard, and it would be three cents to clean that
16 sheet or something like that. That's what the nurses would be
17 -- they would all -- he would holler at the nurses about that,
18 not to use them.

19 Q Okay. So it was going to cost him three cents
20 to clean a sheet, so he would -- the doctor would actually
21 take it off the patient, fold it up and put it back on a shelf
22 for use on another patient?

23 A Yes.

24 Q Anything else like that that any of the cost
25 of some of these items -- did he ever say that that cost me so

1 much or that cost me so much when he would see it not used in
2 the way he wanted?

3 A Yes, we would hear it quite frequently on
4 different subjects, different objects that were being used.

5 Q What about -- any comments about alcohol pads
6 used, anything like that?

7 A I don't think we had alcohol pads. I think we
8 were using just cotton balls and then, you know, putting
9 alcohol on them.

10 Q What about the chucks? You know what those
11 are; correct?

12 A Those were always cut in two and used.

13 Q And the chucks are what, exactly?

14 A I don't know exactly. I think they're 17
15 inches or something.

16 Q No, no, no. Not the size, but just what are
17 they?

18 A Oh, it just goes under the patient when
19 they're having a colonoscopy, under the rear of a patient so
20 when the procedure is going on.

21 Q Now, I know you mentioned a few things, and so
22 these are the things that collect the fluids that might spill
23 out of a patient kind of thing?

24 A Correct.

25 Q You had mentioned that at least the whole

1 issue about money at different times, and I wanted to ask you
2 this. Based on your hearing and conversations directly with
3 Dr. Desai, did you ever get the impression from him, either
4 directly or just by his actions, that money was an issue to
5 him?

6 A A big issue.

7 Q Did he ever say that?

8 A Yes.

9 Q What would he say?

10 A Well, I think he knew exactly what every item
11 in the facility costs, and if somebody had to use one over or
12 something like that, you were yelled at and told, you know,
13 what that item costs and how much you were wasting and that
14 type of thing.

15 Q Now, you mentioned propofol. You've don't
16 anesthesia for 30 some odd years; correct?

17 A Correct.

18 Q These items here like this angiocath, you know
19 the relative values of those various items, I assume?

20 A Yes.

21 Q And whether they're expensive or not
22 expensive; correct?

23 A Yes.

24 Q Propofol in the mix, was that one of the more
25 expensive or least expensive items in the mix?

1 A It would have been the most expensive item
2 that we used as far as an anesthetic agent.

3 Q Now, you said that Dr. Desai was really
4 fixated on propofol at one point.

5 A Yes, very much.

6 Q Can you tell us about that?

7 A I don't remember the year again, but it was --
8 came up when they felt -- or he felt that we using too much
9 propofol, and that instead of injecting -- if we needed to
10 give more propofol, we should just inject some saline to flush
11 the -- the catheter, and what little bit would be in there
12 would go into the patient.

13 Q So if I understand you correctly, and I'm
14 showing, again, Exhibit 72B, that little tiny needle or -- or
15 sheath over the needle would contain some propofol --

16 A Yes.

17 Q -- at the end --

18 A Yes.

19 Q -- when you injected it?

20 A Yes.

21 Q Instead of you giving more propofol to a
22 patient, he instructed you to actually flush that out with
23 saline?

24 A Yes.

25 Q He specifically said that?

1 A Yes.

2 Q With regard to propofol again, did you -- were
3 you ever in a room with Dr. Desai when a patient was starting
4 to wake up, move around during the procedure?

5 A Yes.

6 Q In normal situations that you had been in,
7 what would you do in that instance?

8 A Give the patient more anesthetic, more
9 propofol.

10 Q Would Desai allow you to do that?

11 A Most times, no, he would not.

12 Q So the patient is actually now writhing around
13 or moving around on the table and you feel it's appropriate to
14 give more anesthesia, and he won't let you do it?

15 A Yes.

16 Q What about the other end of the operation,
17 before the patients -- and I say operation. It wasn't -- it
18 was a colonoscopy or an upper endoscopy; correct?

19 A Correct.

20 Q Before the patients are anesthetized, you're
21 back there you're either doing your form or you're getting
22 ready to do it, are you with me?

23 A Yes.

24 Q You have not given anesthesia. Did Desai ever
25 start procedures before a patient had anesthesia onboard?

1 A Yes, he did.
2 Q How did the patients react to that?
3 A Look at us for help.
4 Q And he would just continue?
5 A Continue and we'd try and give the anesthetic
6 as fast as we could.

7 Q In those instances, is the patient moving
8 around when you're trying to give the anesthetic?

9 A Yes.

10 Q Was it difficult for you to get the needle
11 into the port on this -- and I'm showing 70I again, the port
12 on this little hep-lock thing?

13 A Well, at times it would be, yes, because
14 they'd be moving their arms and they'd be moving their body.
15 It was -- you know, they were moving around on the gurney.

16 Q Did you ever stick yourself with a needle in
17 those instances or some instances like that when it was
18 occurring?

19 A I have been stuck three or four times, yes,
20 over that.

21 Q Because of that very thing?

22 A Yes, moving around.

23 Q When -- is this something that he wasn't aware
24 that the patient was awake still?

25 A He was very much aware.

1 Q Did you tell him that I haven't given
2 anesthesia yet?

3 A That's right.

4 Q What would he do?

5 A Continue on. Just give it.

6 Q He would just tell you to give it?

7 A Yes.

8 Q And he would proceed?

9 A Yes.

10 Q Did he ever stop and wait until you had done
11 that and then proceed?

12 A Not that I recall.

13 Q Now, the frequency of this happening, is this
14 a one-time occurrence, or did this happen on a more frequent
15 basis?

16 A It was not a one-time occurrence, and it
17 didn't happen every time, but it happened quite frequently.

18 Q In a typical week, would it happen more than
19 once?

20 A Yes.

21 Q Roughly in a typical week, how often would it
22 occur when you were there?

23 A I'm just guessing. I would say maybe 10.

24 Q So a number of times during a week?

25 A Oh, yes. Many.

1 Q Now, the other end of the procedure, not --
2 and literally the other end, when the -- when the patient is
3 about done with this procedure or near the end or at least
4 he's moving around and Desai isn't done -- are you with me?

5 A Yes.

6 Q Did that happen? I'm talking about where you
7 wanted to give more anesthesia and he ordered you not to do
8 it?

9 A Yes.

10 Q In those instances, did that happen on a
11 frequent, infrequent basis? What was the frequency?

12 A It was quite frequent.

13 Q So let's talk about the end of the procedure
14 for a moment. And I'm not talking about a situation in which
15 you need to give more anesthesia or whatever. Let's just
16 assume for the moment that this is one where the patient is
17 still under. Did you observe the scopes coming out of the
18 patients, meaning out of their bottoms?

19 A Yes.

20 Q When the scopes came out of the bottoms, did
21 Desai take the scope out differently than the other doctors
22 did?

23 A At times, yes.

24 Q And what do you mean by that?

25 A Well, once in awhile we would get a patient

1 that, you know, wasn't doing that well and might have a slow
2 pulse or bradycardia or something. He would whip it out just
3 in a bit hurry.

4 Q So he would just yank the scope out?

5 A Yes.

6 Q When you yank the scope out of somebody, what
7 would happen?

8 A Whatever was in there was flying around the
9 room and on my and everyone else that was in the room.

10 Q So you actually got fecal material on you from
11 him pulling and yanking a scope out of a person?

12 A Many times.

13 Q Did ever hit any other place in the room
14 beside the people?

15 A Yeah, on the walls. I've seen it on the
16 ceiling, floor.

17 Q Now, remember we talked awhile ago about the
18 turnover time between patients?

19 A Yes.

20 Q You said it was really quick, between 30 --
21 well, less than a minute, I don't think you gave me seconds,
22 but less than a minute up to just a few minutes.

23 A Correct.

24 Q In the instances where that kind of thing
25 happened, was there enough time for somebody to come in and

1 clean the room?

2 A No.

3 Q Did you ever see anybody come in and clean the
4 room during that time?

5 A No.

6 Q Let's talk about reuse of -- of -- you know,
7 people wore gowns there. I'm talking about the coverings or
8 the aprons or whatever it was --

9 A Right.

10 Q -- is that correct? Would Dr. Desai in your
11 presence ever limit or give people a hard time about using too
12 many of those?

13 A Yes. I didn't wear one. The doctors wore
14 them and so did the techs. And they were a lot of times, you
15 know, talked about it and said not to use that many and were
16 allowed to have one sometimes for a whole week.

17 Q Now, the gowns are to protect -- to keep this
18 stuff, this fecal material from getting on the person and the
19 like; is that right?

20 A Correct.

21 Q Did -- when he wouldn't let them change the
22 gowns or the -- or the -- or whatever, were they clean or was
23 there any problem with that?

24 A They were dirty a lot of times.

25 Q When you say dirty, we're talking about fecal

1 material?

2 A Yes.

3 Q So they've got gowns with fecal material on
4 them that they want to change and he won't let them do it, is
5 that fair?

6 A That's correct.

7 Q Do you know what a sharps container is?

8 A Yes.

9 Q Did you have those in your rooms?

10 A We had one or two in each room. Uh-huh.

11 Q What are the -- what's the purpose of a sharps
12 container?

13 A That's where the disposable items would go,
14 especially the needles, syringes, that type of thing.

15 Q And I've just displayed again for the record,
16 72B, the angiocath that you described. The angiocath itself,
17 is that considered as sharp?

18 A The metal portion coming out of it is, yes.

19 Q So after that would be used, where would that
20 needle go?

21 A Into the sharp.

22 Q And what else would go into the sharps
23 container?

24 A The portion, the plastic portion, or the outer
25 shell, would go into the waste basket. But the propofol

1 bottle a lot of times or syringes that we had used with
2 needles on them and that would all go into the sharps bottle
3 -- or container. Sorry.

4 Q When Desai came into a room with you or if you
5 saw this with somebody else, let's talk about you, first of
6 all. Okay? When Desai came into a room, did he ever go over
7 to the sharps container and look around inside the sharps
8 container?

9 A Yes.

10 Q Do you know why he did that?

11 A Looking to see if we had thrown anything away
12 that we shouldn't have.

13 Q You mean like what?

14 A Excessive propofol or something like that.

15 Q So if you had -- if you had discarded a
16 partial bottle of propofol and he saw it in there, what would
17 happen?

18 A I probably would have gotten fired.

19 Q Did he ever yell at you for doing that kind of
20 thing?

21 A Yes.

22 Q Did you employ some mechanism when you
23 actually wasted -- I mean, you didn't want to use the propofol
24 on another patient -- so that he didn't see that?

25 A Yes, I usually tried to squirt it into a

1 wastebasket, just the liquid itself, you know, so that he
2 wouldn't see that it was being wasted.

3 Q Did he ever watch what was in your syringes or
4 in the bottles? Did he pay attention to what was going on
5 over there with the propofol?

6 A All the time.

7 Q Now, did he ever yell at you about syringes
8 that may have had propofol left in them that he saw in the
9 sharps containers?

10 A Yes.

11 Q When he yelled at you what did he say?

12 A Look at how much you've wasted, what is that?
13 He probably told me how much it costs.

14 Q Did he ever instruct you to use syringes with
15 propofol remaining in them on another patient?

16 A No, I never heard that.

17 Q He never asked you to do that?

18 A No.

19 Q What about the bottles of propofol? If you
20 hadn't used a whole bottle of propofol on one patient, did he
21 ever tell you to save that and use it on the next patient?

22 A That was just common practice. That's the way
23 it was done.

24 Q Okay. Everybody did it that way?

25 A That's what we were instructed to do, yes.

1 Q Instructed by whom?

2 A Dr. Desai.

3 Q When -- related to that -- that whole thing
4 with the propofol, though, I want to get back to if you have
5 ever observed others in the same situation that you were in
6 when Dr. Desai came in and either rattled around the sharps
7 container or reprimanded somebody because they were wasting
8 propofol or the like, did you ever hear or see any of that?

9 A Yes.

10 Q In those instances, what would -- what would
11 happen? What would he do?

12 A He would rant and rave about wasting --
13 wasting material, wasting propofol, and probably tell you how
14 much it cost.

15 Q Now, sir, I want to ask you something about
16 the syringes and all that stuff. Would you ever use a syringe
17 that you had used on one patient on another patient?

18 A Never.

19 Q To your knowledge did you ever do that?

20 A No.

21 Q Same question, but now something else with
22 bottles themselves. Did you ever have bottles of propofol
23 that you had used on one patient that you then used on another
24 patient?

25 A Yes.

1 Q And that was under the direction of Dr. Desai,
2 if I think I understand you?

3 A Yes.

4 Q Now, third scenario, did you ever have a
5 bottle of propofol that you had to reenter on the same
6 patient? And what I mean by that, let me set it up so you
7 understand what I'm talking about. You have a -- let's start
8 off with a brand new bottle of propofol and you have a
9 patient. You open the bottle of propofol, you draw out the
10 medication, and you take that syringe needle combination and
11 you go into the hep-lock and you administer medication to the
12 patient. Are you following me so far?

13 A Yes.

14 Q You've done that, clearly.

15 A Yes.

16 Q Now, in that situation, if you needed to
17 re-dose the patient with some additional propofol and you
18 didn't have any remaining in your syringe that you had used,
19 did you ever take that syringe and go back into the bottle of
20 propofol?

21 A We would take the needle off and put on a new
22 needles, and then reenter the -- with the same syringe into
23 the bottle and draw up again, yes.

24 Q Was that common practice?

25 A That was common practice.

1 Q Were you instructed to do that?

2 A Yes.

3 Q By whom?

4 A Dr. Desai.

5 Q You've been doing this for 33 years before you
6 came to Las Vegas?

7 A Yes.

8 Q Are you aware that there is at least a risk of
9 potential contamination even changing out the needle in that
10 situation?

11 A Yes, there is.

12 Q Did you ever express your concerns about doing
13 this to Dr. Desai?

14 A Yes.

15 Q What was his response?

16 A It's to save money, just go ahead and do it.

17 Q So he instructed you to do it even though you
18 made him aware of the risk?

19 A Yes.

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

21 THE COURT: That's fine.

22 BY MR. STAUDAHER:

23 Q Oh. Related -- I asked you some questions
24 about putting in the IV and sometimes he would push you out of
25 the way and leave blood dripping out or whatever. Do you

1 remember that?

2 A Yes.

3 Q That's a situation where he would kind of
4 intervene in your area, is that fair?

5 A Correct.

6 Q Now, beside the other issues of him telling
7 you what to do, did he ever at any point become frustrated
8 because you weren't moving fast enough?

9 A Most of the time, yes.

10 Q In those situations where he became impatient
11 or frustrated because you weren't moving fast enough and you
12 had not given the anesthetic yet, do you recall any situations
13 where he just came around, grabbed the anesthetic, and just
14 pushed it in himself?

15 A Yes.

16 Q Did that happen more than a few times?

17 A When it happened frequently -- I mean, I
18 shouldn't say frequently, but it has happened, I don't know, I
19 can't tell you how many times.

20 Q But this is -- not just once or twice?

21 A No.

22 Q If you could describe for me what you felt the
23 -- I mean, did you feel -- let me ask it a different way. I'm
24 sorry. Withdrawn. The atmosphere within the clinic --

25 A Horrible. Everybody was under such pressure.

1 And when he would come around it was just like trying to walk
2 on an eggshell because everybody was so cautious of what you
3 were trying to do and being -- and doing the best that you
4 could do. It was just a totally different atmosphere with him
5 there or one of the other physicians.

6 Q So the staff was affected differently by who
7 was there?

8 A Absolutely.

9 Q Again, I'm going to show you a series of
10 documents, just portions of them, and again the highlighted
11 portions were done by me.

12 A Okay.

13 Q They will not be on the original document that
14 go back to the jury. 82. Sorry, it's not that very easy to
15 read. I'll represent to you that these are items that were
16 recovered when the police did the search warrants that were
17 records of the clinic. Okay?

18 A Okay.

19 Q This document is entitled anesthesia, pain
20 management services, and compensation schedule. Do you see
21 that?

22 A Yes.

23 Q On this, and I know it's hard, can you read
24 that at all, sir, or not?

25 A Yes, I can read it.

1 Q Okay. And down here, this talks about how
2 anesthesia is billed at the clinic; correct?

3 A Correct.

4 Q That --

5 MR. STAUDAHER: And is it okay if I read this, Your
6 Honor, because it's so small, to the jury?

7 MR. WRIGHT: Can we approach, again?

8 THE COURT: I'm sorry. Sure.

9 (Off-record bench conference.)

10 MR. STAUDAHER: May I proceed, Your Honor?

11 THE COURT: Please.

12 BY MR. STAUDAHER:

13 Q First of all, have you ever seen this document
14 before yourself to the best of your knowledge?

15 THE COURT: Do you need to look at the whole
16 document?

17 THE WITNESS: Yes, I'd like to see the top of it.

18 THE COURT: Why don't you show him the whole
19 document.

20 BY MR. STAUDAHER:

21 Q This is 82, State's 82, just so it's on the
22 record what we're looking at. Just flip through it and take
23 as much time as you need. Just let me know when you're done.

24 A I don't recall it, no.

25 Q This does talk about, at least this document

1 talks about anesthesia billing; correct?

2 A Yes. Correct.

3 Q I'm going to read this to you and I want you
4 to tell me if this is what the practice is -- if this practice
5 is what you followed at the clinic. Okay?

6 A Okay.

7 MR. SANTACROCE: Can I just know what exhibit that
8 is?

9 MR. STAUDAHER: This is Exhibit 82. It's Bates
10 Number page 12 -- excuse me, 12101.

11 BY MR. STAUDAHER:

12 Q Let's read the highlighted portion that I
13 highlighted. The base unit value and the sum of base units
14 for the surgical procedure performed, time units and modifying
15 units where appropriate. The source of anesthesia base units
16 is primarily the American Association of Anesthesiologist,
17 ASA, relative value guide.

18 THE COURT: It's says society.

19 MR. STAUDAHER: Excuse me. Society. I'm sorry.

20 BY MR. STAUDAHER:

21 Q Did you use that in your practice, that value
22 guide when you were practicing?

23 A Yes.

24 Q Okay. And a thing called crosswalk, are you
25 familiar with that?

1 A No, I'm not.

2 Q For all anesthesia services, anesthesia time
3 begins when the anesthesiologist begins to prepare the patient
4 for induction of anesthesia in the operating room, or in an
5 equivalent area, and ends when the anesthesiologist is no
6 longer in personal attendance. Is that what you did?

7 A Yes.

8 Q Okay. So just so we're clear on that before
9 we go any further, your practice was that anesthesia time for
10 you in the clinic was when the patient rolls into the room and
11 you have contact with them and you're starting to do your work
12 to when that patient leaves the room.

13 A Correct.

14 MR. SANTACROCE: Asked and answered.

15 THE COURT: Well, overruled.

16 BY MR. STAUDAHER:

17 Q Is that correct?

18 A Yes.

19 Q Okay. Standard time factor allowance is based
20 on 15 minute increments, meaning on time unit equals 15
21 minutes. Do you see that?

22 A Yes.

23 Q Does that -- does that comport with your
24 practice in the clinic?

25 A Yes.

1 Q Does that comport with your practice before
2 you came to Las Vegas?

3 A Yes.

4 Q Now, this is also a document what seized, I'll
5 represent to you, by the Metropolitan Police Department during
6 execution of a search warrant. And it is a portion of a
7 policy and procedure manual at the clinic. It says Endoscopy
8 Center of Southern Nevada --

9 MR. SANTACROCE: Excuse me. Can I have the exhibit
10 number?

11 MR. STAUDAHER: It's Exhibit No. 83, it's Bates No.
12 10264. And you see it says deep sedation policy.

13 BY MR. STAUDAHER:

14 Q Do you see that up there where it says --

15 A Oh, yes, I do. I'm sorry.

16 Q Have you seen this before?

17 A Not that I recall, no. I don't know. Is
18 there a date on it?

19 Q Not on this page, but you were aware that
20 there was a policy procedure manual in the clinic; correct?

21 A Yes.

22 Q Have you seen those before?

23 A Yes.

24 Q Have you read through them and -- and
25 recognized certain parts of it?

1 A I'm sure I did, yes. Uh-huh.

2 Q Do you remember the procedure policy from the
3 clinic back when you were working?

4 A Not really.

5 Q Okay.

6 A Sorry.

7 MR. SANTACROCE: I can't hear him.

8 THE COURT: I'm sorry?

9 MR. SANTACROCE: I could hear.

10 THE COURT: He said, no, sorry.

11 BY MR. STAUDAHER:

12 Q So under Section 2 labeled policy, Number A,
13 did you see that?

14 A Yes.

15 Q I'm going to read this. It says, and it's
16 talking about sedation; correct?

17 A Yes.

18 Q It says if administered by a CRNA, the
19 attending physician will order and co-supervise with an
20 anesthesiologist contracted with the Endoscopy Center of
21 Southern Nevada II, LLC. All sedation practices in the
22 Endoscopy Center of Southern Nevada II, LLC, shall be
23 monitored for outcomes through quality improvement review. If
24 a CRNA is utilized, it shall be under the provisions of
25 Chapter 632 of NRS, an anesthesiologist contracted with the

1 Endoscopy Center of Southern Nevada II, LLC, will provide
2 co-supervision for the CRNA while he/she is administering and
3 caring for patients receiving sedation. The CRNA will report
4 directly to both the supervising anesthesiologist and
5 attending physician. Do you see that?

6 A I do.

7 Q Now, was it your testimony earlier that there
8 was never an anesthesiologist that you worked with or there
9 was a co-supervisor or anything like that at the clinic?

10 A Never.

11 MR. SANTACROCE: I'm going to object to foundation
12 as to what deep sedation is.

13 MR. STAUDAHER: Okay. I'll ask him.

14 THE COURT: All right.

15 BY MR. STAUDAHER:

16 Q What is deep sedation?

17 A Deep sedation is where I would use propofol
18 and there wouldn't have been a narcotic involved that -- you
19 know, like I said, propofol is very short acting, and it would
20 keep them quiet while a procedure was going on, but they would
21 be awakened very momentarily after we were finished.

22 Q So that would cover the use of propofol?

23 A Yes.

24 Q Okay. Exhibit 84, Bates No. 10160. Have you
25 ever seen this document related to anesthesia charting?

1 A No, I have not.

2 Q Do you see your name listed among other CRNAs
3 on this document?

4 A I do.

5 Q Now, I had asked you before if you remember
6 the procedure codes for a colon and an EGD and you said no;
7 correct?

8 A Correct. I do not.

9 Q According to this record procedure code for a
10 colon is 810 -- and I'm eliminating the first two zeros. It's
11 810 and an EGD is 740; is that correct?

12 A Correct.

13 Q The units here, are these the base units that
14 we're talking about?

15 A Yes.

16 Q So five for each, and then it says plus and
17 time, do you see that?

18 A Yes.

19 Q And up here it says one unit per 15 minutes.

20 A Correct.

21 Q And then it's just got some general
22 information about the patient and so forth; correct?

23 A I think that's going into your ASA
24 classification there.

25 Q Okay.

1 A One, two, and three, yes.

2 Q Exhibit 86, Bates No. 10158, entitled
3 Gastroenterology Center of Southern Nevada, instructions to
4 post anesthesia charges, do you see that?

5 A Yes.

6 Q Have you seen this document before?

7 A No, I haven't.

8 Q Do you see where it says up here using the
9 information from the anesthesia record. Do you see that?

10 A Correct.

11 Q Now, that is the record that you would fill
12 out in the endoscopy center?

13 A The clinic, yes.

14 Q Fill out the charge slip. So is there -- was
15 there any -- I mean, clearly you know that when you fill out
16 the anesthesia record to get paid, that record that you filled
17 out is going to go to the insurance company eventually;
18 correct?

19 A Correct.

20 Q It says the time -- here on the third one it
21 says the time and physical status of the patient can be found
22 on the record. To figure the units for time, calculate how
23 many 15 minute increments there are. A portion should be
24 rounded off to the next unit. And then it gives an example.
25 32 minutes would be three units. Do you see that?

1 A Yes, I do.

2 Q Exhibit No. 88, also from the procedure manual
3 where it says cleaning procedure for rooms. Do you see that?

4 A Yes.

5 Q Have you ever seen or do you recall seeing
6 this out of the procedure manual?

7 A Not -- not that I recall, no.

8 Q And this is, for the record Bates No. 9578.
9 Starting on No. 3, each procedure gurney is to then be
10 thoroughly -- this is after the procedure -- thoroughly washed
11 or thoroughly washed down with cavicide solution or
12 sani-cloths disinfectant wipes and allowed to dry. Do you see
13 that?

14 A Yes.

15 Q After the area has dried, a fresh set of linen
16 is put on the procedure gurney, along with the protective pad
17 and made ready for the next patient. Do you see that?

18 A Yes.

19 Q Routine -- No. 5, routine terminal cleaning
20 includes the above mentioned procedures and the following (a)
21 wipe off all furniture and moveable equipment in the room with
22 cavicide, to include canisters and return to its proper place.
23 Do you see that?

24 A Yes.

25 Q Clean the gurney with cavicide, remove loose

1 pads, clean the area beneath. Do you see that?

2 A Yes.

3 Q Check the walls for soil and clean as needed,
4 to include baseboards and air vents. Do you see that?

5 A Yes.

6 Q Spot clean the floor and remove blood and any
7 other waste product. Do you see that?

8 A Yes.

9 Q After terminal cleaning, all personnel wash
10 hands before leaving the area. Do you see that?

11 A Yes.

12 Q To your knowledge, did you ever see that kind
13 of thing going on in the rooms between these patients?

14 A Never.

15 Q Exhibit No. 89, Bates No. 9570. Also from the
16 policy and procedure manual from the Endoscopy Center of
17 Southern Nevada entitled pre-surgical evaluation policy. Do
18 you see that?

19 A Yes.

20 Q Under C -- first of all, have you ever seen
21 this document to the best of your knowledge or remember it?

22 A Don't remember it.

23 Q Under C, all patients will have pre-surgical
24 assessment and evaluation by the attending physician an CRNA
25 or anesthesiologist immediately prior to the procedure. Did

1 that ever occur?

2 A Well, the CRNA, we would have done -- that's
3 what I was explaining on the back of our anesthesia record.
4 That's what we would have done.

5 Q But you saw that this was the CRNA or
6 anesthesiologist and the physician. Do you see that?

7 A Well, I was -- the physician would probably
8 have been on the history and physical done by them is what I'm
9 thinking. But anesthesiologist, we never had
10 anesthesiologists there.

11 Q But where it says immediately prior to the
12 procedure, did you ever see the doctor come in and do any kind
13 of evaluation on the patients before the procedures took
14 place?

15 A If we had questions about things, they might
16 put a stethoscope to their chest or something, but that would
17 be it.

18 Q Was that a frequent occurrence?

19 A No.

20 Q Propofol, you said that you're familiar with
21 that; correct?

22 A Yes.

23 Q Exhibit No. 90, Bates No. 9178. Have you ever
24 seen this policy before?

25 A No.

1 Q Now, taking you down here to the highlighted
2 section where it says single dose, unpreserved vials will be
3 discarded at the end of the day or within 24 hours of opening
4 with the exception of propofol, which is to be discarded in
5 six hours from opening. Do you see that?

6 A I do.

7 Q Does that comport with the practice that you
8 had?

9 A That's what -- yes. Uh-huh.

10 Q So why would there -- why would propofol have
11 to be discarded within six hours?

12 A It does not contain a preservative in it.

13 Q What does that mean?

14 A It can grow bugs and bacteria inside of it if
15 it's opened. Air gets to it.

16 Q So regardless of whether it moved from patient
17 to patient or room to room or whatever, you would have to
18 discard it after six hours at a minimum?

19 MR. SANTACROCE: I'm going to object and move to
20 strike that propofol moving from room to room.

21 THE COURT: All right. The preface of the question
22 is stricken.

23 So, Mr. Staudaher, just restate your question with
24 the question part, which, I guess, would be --

25 MR. STAUDAHER: That's fine.

1 THE COURT: -- regardless of how it was used, was
2 the propofol discarded six hours after opening?

3 THE WITNESS: Yes, it was -- it never lasted that
4 long in the bottle. I mean, we were going through many, many
5 bottles a day.

6 BY MR. STAUDAHER:

7 Q Well, let me ask you about that. At the end
8 of the day did anything unusual happen with regard to
9 propofol, unused bottles?

10 A If I was the last one there, I would always
11 draw it up and squirt it into the bucket or, you know, into
12 the red container or something. I never put the container in
13 there with propofol itself.

14 Q Okay. Did you ever have people come around at
15 the end of the day and give you partially used bottles of
16 propofol to use on the last few patients so you wouldn't have
17 to open up anymore?

18 A If someone was in the other room and that room
19 had finished and we were still going in like the room I would
20 be in, yes.

21 Q Okay. So would you use the propofol in that
22 situation?

23 A Yes.

24 Q So that would be a situation where a bottle
25 may have been opened up in another room and brought into your

1 room and you were supposed to use it and did, is that fair?

2 A Exactly.

3 MR. SANTIACROCE: What did he say? I didn't hear.

4 THE WITNESS: Yes, we would use it.

5 BY MR. STAUDAHER:

6 Q No. 91, Exhibit 91, Bates No 9657. Have you
7 ever seen this where it says anesthesia service certification?

8 A I don't recall it, no.

9 Q Also from the procedure that you see down
10 here?

11 A Yes.

12 Q Highlighted portion, the contracted
13 anesthesiologist and supervising physician will be responsible
14 for that adequate supervision for anesthesia services
15 performed. Do you see that?

16 A Yes.

17 Q And if you go down here, your name appears on
18 No. 3?

19 A Right.

20 Q And then the anesthesiologist that's listed is
21 Dr. Thomas Yee, co-supervising anesthesiologist. Do you see
22 that?

23 A I do.

24 Q And ever know that he was even supposed to be
25 your supervisor?

1 A I never saw the man.

2 Q Have you ever heard the term micromanager?

3 A Yes.

4 Q Would you classify Desai as a micromanager?

5 A Very much.

6 Q Did he know and was involved in every aspect
7 of the practice?

8 MR. SANTACROCE: Your Honor, I'm sorry. I don't
9 know what the term micromanagement means.

10 MR. STAUDAHER: Well, he does. That's why I'm
11 asking him.

12 THE COURT: Well, wait a minute. When -- why don't
13 we just ask him. When you say micromanager, what does that
14 mean to you?

15 THE WITNESS: To me it means that he is involved in
16 every portion of the practice and he knows exactly what's
17 going on in every portion of the practice, the cost of
18 everything that comes into the clinic, when it's used, how
19 much it's used, how much it costs, and how much he's being
20 reimbursed for it.

21 MR. STAUDAHER: Exhibit 85. This one has no
22 highlighting on it at all, Your Honor.

23 THE COURT: Okay.

24 BY MR. STAUDAHER:

25 Q Have you ever seen a memo, and this is dated

1 January 11, 2007, ever seen a memo, and it looks like it is
2 actually signed by Dr. Desai down here.

3 A Yes.

4 Q Ever seen a memo or any -- first of all, have
5 you ever seen this memo before?

6 A No.

7 Q The things that are in this memo, have you had
8 a chance to review it? Are those things that were told to you
9 or that you practiced in the clinic?

10 MR. WRIGHT: What number is that?

11 MR. STAUDAHER: Oh, I'm sorry. That is Exhibit No.
12 85, Bates No. 10867.

13 THE WITNESS: I've never seen that before. It looks
14 like it's something that, you know, has been written and
15 wanting people to follow it. I mean, even reading number
16 eight there, do you drink, do you smoke, and then saying you
17 don't need to ask those questions?

18 BY MR. STAUDAHER:

19 Q Was that the practice? I mean, did you ever
20 hear Dr. Desai say -- I mean, this is signed by him; correct?

21 A This was done in '07.

22 Q Correct.

23 A And I don't know as I was practicing at the
24 clinic at that time, so --

25 Q Were you there when the Health District came

1 in?

2 A Yes.

3 Q Okay. So you were one of the ones that the
4 Health District actually observed and you --

5 A Yes.

6 Q -- talked to them? So if they came in after
7 the date of this or around the date of this memo, would you
8 have been working there?

9 A Can you move it? I think it says January
10 11th. I -- I think I was gone. I was in California. And I
11 think we came back around the middle of the month. So it
12 would have been -- this, I did not see it.

13 Q Okay. I'm not saying did this get
14 disseminated to you -- well, I did ask that, and you said no;
15 correct?

16 A Right.

17 Q The information that's contained in here, did
18 you ever have anybody talk to you about this, or was this a
19 policy that was in place at the clinic to your knowledge?

20 A It's -- it's probably one that should have
21 been, but I don't know as anyone ever talked to me personally
22 about it, no.

23 Q I'm just going to read it.

24 A Okay.

25 Q Reference: CRNA. Number one, please make sure

1 that CRNAs and RNAs will not take more time to start an IV
2 access line than physician takes time to do the colonoscopy.

3 Two, please assign a specific RN to start the IV for
4 the CRNA who may feel that they may need help to have somebody
5 start IV.

6 Three, please have all the CRNAs sit together and
7 figure out what pertinent minimum questionnaire they want to
8 ask the patients.

9 Four, I have been observing with all the CRNAs, they
10 ask all the different kinds of questions to the patients, but
11 at the end of the day, they all give the same amount of
12 medication irrespective of answer they might have received
13 from the patients or any questionnaire.

14 Five, CRNA needs to understand that this is not a
15 socializing time with the patients. They have to learn how to
16 ask a pertinent relative question to the patients.

17 Six, CRNA needs to talk with the patient in a
18 professional way and not in conversation, which looks childish
19 and with any kind of -- and with any kind of sounds making. I
20 think I read that right.

21 Seven, it is very important that CRNAs do not get
22 into fight with the patients and trying to humiliate the
23 patient by asking them stupid questions.

24 Eight, it is very important to ask the patient
25 question whether they smoke or drink, but there is no need to

1 ask do you drink daily, weekly, monthly, or yearly. That is
2 the most humiliating way of asking the question and needs to
3 be stopped.

4 Nine, all CRNAs need to figure out with the patient
5 who comes in for colonoscopy, do they need to have a question
6 asked about the denture. Do you see that?

7 A Yeah.

8 Q So those are specifics about what you do
9 during your evaluation process; right?

10 A Yes, they are.

11 Q Now, is -- is -- are questions about dentures,
12 whether you wear them or not, important at all?

13 A Yes.

14 Q Why would that be?

15 A It depends on if they're tight or not. If
16 they -- if they're not, they -- when they're under anesthetic
17 or under sedation they could come loose, fall out, get broken
18 or something like that.

19 Q And what might that compromise if that was the
20 case?

21 A Their airway.

22 Q And what is the most important thing that an
23 anesthesia person has to -- has to take care of during the
24 procedure?

25 A Their airway.

1 Q So something that would directly impact the
2 airway, he's directing you to, hey, don't ask patients about
3 that?

4 A Yes.

5 Q Also on there specifically was questions
6 about, well, yeah, ask if they drink and smoke, but don't ask
7 them their history related to that. Is it important if they
8 say they do to find out the extent?

9 A Absolutely.

10 Q Does that affect in some ways the medications
11 that you give or how you treat a patient of what you have to
12 look out for when you do your anesthetic?

13 A Well, if they're an alcoholic, you certainly
14 are going to be giving an anesthetic different to them than if
15 they weren't. If they had a drink, you know, once a day or
16 once a week or whatever.

17 Q Do you recall coming into the -- talk to the
18 -- or when the Health District came in? When the Health
19 District came in --

20 A Yes.

21 Q -- do you recall that? And when the Health
22 District came into the practice, they -- they were there for a
23 period of time and then came down and did some observations;
24 is that right?

25 A That's my understanding. I never saw them

1 before they came into our room.

2 Q So the first time you saw them was when they
3 came into your room?

4 A Yes.

5 Q Were you at least aware that they had been
6 onsite for a couple of days before that?

7 A I was not aware, no.

8 Q You weren't. When they came in, they watched
9 you do a procedure; is that right?

10 A Yes.

11 Q After you were done doing the procedure, did
12 they question you about what had happened, what you did during
13 the procedure?

14 A Well, you're talking Health District now. I
15 never saw any Health District. I saw somebody from CDC.

16 Q I'm sorry. I misspoke. I'm talking -- that's
17 what I'm referring to is the CDC. When I say Health District,
18 I was using them --

19 A Okay.

20 Q -- combined with the CDC. But if it was the
21 CDC, they came into your room?

22 A A physician from CDC came into my room, yes.

23 Q Now, after that procedure, for the procedures
24 you were doing, were you talked to by the CDC personally?

25 A In general, yes. Uh-huh.

1 Q Did they ask you about the practices that you
2 were -- that they observed you doing?

3 A I'm sure they did. You know, I don't really
4 recall anything in particular, but I think they did, yes.

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

6 THE COURT: Sure.

7 MR. STAUDAHER: I'm showing on Bates No. 4203 of the
8 CDC trip report, which is Exhibit No. 92, page 5 of the
9 exhibit itself, but that was the Bates number.

10 BY MR. STAUDAHER:

11 Q Now, I know that this is not something that
12 you read. And this is a highlighted portion again that is
13 something I put on there. But I wanted to direct you because
14 it's a multi-page document. I want you to read that. It's
15 not your statement like the transcript is over here, but it
16 talks about what you told the CDC. Okay? I want you to read
17 that and see if it doesn't refresh your memory on -- on what
18 they observed and asked you about and how you answered.

19 THE COURT: Just read it quietly to yourself.

20 MR. STAUDAHER: Yes. Not out loud. Sorry.

21 THE WITNESS: Yes.

22 BY MR. STAUDAHER:

23 Q Does that refresh your memory?

24 A Yes.

25 Q Okay. Did you say those things?

1 A Yes.

2 MR. STAUDAHER: May I display, Your Honor?

3 MR. SANTIACROCE: I'm going to objection.

4 THE COURT: Yeah.

5 MR. STAUDAHER: I can ask him.

6 THE COURT: Okay. Why don't you just ask him --

7 MR. STAUDAHER: Sure.

8 THE COURT: -- if that refreshes his memory as to

9 what he told --

10 MR. STAUDAHER: That's fine.

11 THE COURT: -- the physician from the CDC

12 BY MR. STAUDAHER:

13 Q What did they ask you and what did you say?

14 A They asked specifically about the propofol,

15 how it was used, and about reentering a bottle of propofol,

16 never with the same -- on the same patient -- we always used a

17 different syringe on the different patient, but using a

18 different needle on there and that's what they were asking

19 about.

20 Q So I have this clear, they were asking you

21 about their observations of you reusing a syringe on the same

22 bottle of propofol on the same patient?

23 A Yes.

24 Q So just that scenario we talked about before

25 where you go into the bottle, then you go into the patient,

1 then you change out a needle and you go back into the bottle.

2 A Back into the bottle.

3 Q So they saw that and they asked you about it?

4 A Yes.

5 Q And you admitted that you did that?

6 A Yes.

7 Q And they asked you -- then they saw you take
8 that bottle that you had done that with and go to the next
9 patient to use that bottle?

10 A Yes, it was used until it was empty.

11 Q And you admitted that you would do that?

12 A Yes.

13 Q You know that that at least poses a potential
14 risk to a patient?

15 A Yes, it did.

16 THE COURT: Was there just one person from the CDC
17 there that talked to you, or was it just one?

18 THE WITNESS: There was only one that was -- I think
19 she might have had another one with her, but I never saw,

20 THE COURT: Okay. So you only talked to one person.

21 THE WITNESS: One person period, yeah.

22 BY MR. STAUDAHER:

23 Q And going to Exhibit No. 87, Bates Numbers
24 10148 and 10149. Show you the document, and we'll see zoom
25 out just a little bit and ask you if you've ever seen this

1 before.

2 MR. STAUDAHER: Well, let me approach, if I may,
3 Your Honor, so he can --

4 THE COURT: That's fine.

5 MR. STAUDAHER: -- see the whole document.

6 BY MR. STAUDAHER:

7 Q Look at both pages. Look it over. Just take
8 as much time as you need.

9 A I don't every recall seeing it, no.

10 Q This has to do with you being a CRNA --

11 A Correct.

12 Q -- and everybody else that was; right?

13 A Correct.

14 Q The document is entitled an affidavit. Do you
15 see that?

16 A Yes.

17 Q So nobody ever came to you and had you try and
18 swear this out as -- and it's even dated in March of 2008, do
19 you see that?

20 A I see that. I don't recall it. I really
21 don't.

22 Q It even has on here I make out this affidavit
23 voluntarily on my own behalf and free will, all that. Do you
24 see that?

25 A Yeah, and by a notary. I just don't recall

1 anything like that.

2 Q Clearly, the first line says I'm a Certified
3 Registered Nurse Anesthetist, and it goes through and talks
4 about -- has blanks for your schooling and --

5 MR. SANTACROCE: Your Honor, I'm going to object.
6 He's never seen it before. What's the relevance?

7 MR. STAUDAHER: I'm getting to that point, Your
8 Honor.

9 THE COURT: All right. Well, and there's water
10 there.

11 THE WITNESS: Thank you.

12 THE COURT: I notice you're coughing.

13 Is this admitted?

14 MR. STAUDAHER: Yes, I believe so.

15 THE COURT: Okay.

16 BY MR. STAUDAHER:

17 Q As we move down the document, clearly talking
18 about being a CRNA; correct?

19 A Yes.

20 Q And down here on No. 5, it says I understand
21 that there are certain allegations about ESCN, is that the
22 Endoscopy Center of Southern Nevada, the initials for it?

23 A I think so, yes.

24 THE COURT: Well, they're -- it's backwards.

25 MR. STAUDAHER: It's backwards?

1 THE COURT: I mean, it's ESCN.

2 MR. STAUDAHER: Yes.

3 THE COURT: It should be ECSN.

4 MR. WRIGHT: Can we approach, Judge?

5 THE COURT: Sure.

6 (Off-record bench conference.)

7 THE COURT: So you have never seen this affidavit
8 before?

9 THE WITNESS: I don't recall ever seeing it, no.

10 THE COURT: Okay. And this isn't -- isn't similar
11 or it's not an affidavit that you recall ever signing?

12 THE WITNESS: No.

13 THE COURT: All right. What's your question for Mr.
14 Mathahs?

15 MR. STAUDAHER: It's going to be very simple.

16 BY MR. STAUDAHER:

17 Q I want you to look specifically at, actually,
18 6, 7, and 8, and 9, actually, if you can read that. Did you
19 read those or can you see them all?

20 A No.

21 Q I'll zoom back out so you can see the whole
22 thing. I'm sorry. 6, 7, 8, and 9.

23 A Okay.

24 Q Okay. Is that true?

25 A No. 7 certainly isn't, I never reused a

1 syringe on the same patient, which we did. Is that what
2 you're --

3 Q Okay. Is No. 6 true?

4 A Correct. That is very true.

5 Q So 7 is not true. How about 8?

6 A I never reused a needle, no.

7 Q Okay. This one here where it says you never
8 reused syringes on the same patient is not true?

9 A No, it's not true.

10 Q Could you come down here for one moment,
11 please?

12 THE COURT: Sir, just go ahead and step down.
13 That's fine.

14 BY MR. STAUDAHER:

15 Q This is -- you can stand right here. This is
16 a summary chart. I know it's very difficult to see for the
17 jury looking [inaudible]. But a summary chart of an incident
18 day of September 21, 2007, one of the days that you worked.
19 As a matter of fact, if you look in where it says -- this
20 column here, you can see that you worked -- at least it's your
21 name appears in all the record on the patients here on that
22 day. Divided up into -- into two rooms because you were in
23 one room and --

24 A Right.

25 Q -- other anesthesiologist -- or other

1 anesthesia person was in the other room.

2 A Right.

3 Q On this day it appears as though Ronald
4 Lakeman was working as well. Do you see that?

5 A I do.

6 Q You start off over here where it says
7 anesthesia time calculated for the records. You see those
8 times?

9 A Yes.

10 Q Do those bear any reality? This is -- this
11 would have been your calculated anesthesia time on the
12 records. They're all above 30 minutes.

13 A Oh, I got you. Okay.

14 Q Okay.

15 THE RECORDER: I'm sorry. I didn't hear his answer.

16 MR. STAUDAHER: He said I got you.

17 THE WITNESS: I understand what he was saying
18 that --

19 MR. STAUDAHER: Would it help to have this as we go
20 through this?

21 THE RECORDER: Yeah.

22 BY MR. STAUDAHER:

23 Q Okay. I'll give that to you. Are these
24 accurate times?

25 A No.

1 Q If we go across to the procedure log time,
2 which is for the nurse's time that she puts down in the
3 procedure room, and the stop time, which is supposedly based
4 off of the tape read times from the machine that you're in the
5 anesthesia room. Okay?

6 A Okay.

7 Q You see the times here are listed eleven
8 minutes, four minutes, three minutes, nine minutes and the
9 like for most of it?

10 A Correct.

11 Q Are those more similar to what you normally
12 have in the procedure room?

13 A I am sure they would be more accurate, yes.

14 Q Now, you -- I had asked you a question earlier
15 about moving from room to room. Do you remember that?

16 A Yes.

17 Q You said at lunch time you might relieve?

18 A Yes.

19 Q And you said there was also if there was a
20 bathroom emergency or some reason why you might need to go
21 over to the other room you might do that?

22 A Yes.

23 Q I'm showing you here on the times as we go
24 down, and, again, these times are based on your record, so
25 they can't be accurate; correct?

1 A Correct.

2 Q But if we look at the times over here during
3 the day when things are happening, we know that around 9:49
4 there was a patient by the name of Kenneth Rubino who was
5 treated, and you treated that patient.

6 A Okay.

7 Q And I've got the file over there. I can show
8 you if you need it. All right?

9 A Okay.

10 Q Then that's that time. So at approximately
11 9:49 to 10:00. Do you see that?

12 A Yes.

13 Q Down here on Ron Lakeman's -- in Ron Lakeman's
14 room, you'll notice that right here at about 10:13 according
15 to the nurse record, which you said is more accurate, at about
16 10:13 it shows you in that room actually doing a procedure.
17 Do you see that?

18 A Yes.

19 Q And that one is on page No. 18 in this
20 particular case. So clearly you had to have gone from this
21 room to this room to actually be on the anesthesia record
22 here; is that correct?

23 A Yes.

24 Q Do you remember this day itself?

25 A No, not at all.

1 Q Okay. Do have any reason to dispute that
2 based on what your testimony is that you might have gone
3 across for some reason, bathroom break or the like?

4 A No.

5 Q So you appear in the record on this date at
6 10:13, which is after the close or finish of Kenneth Rubino's
7 procedure; correct?

8 A Okay.

9 Q Does that look right?

10 A Yes.

11 Q 10:13. You end at 10:00 here. Now, it
12 appears as though you come back to this room because at 10:05
13 it looks like you're in this room again. So some of these
14 times don't necessarily match up, do they? 10:05 to 10:16,
15 10:13 to 10:25, 10:24 to 10:35. So clearly you go over,
16 you're there for awhile, and then you come back; is that
17 correct?

18 A Yes.

19 Q In this instance I will represent to you that
20 the infected patients that we have from the -- Kenneth Rubino
21 is the source patient of the infections.

22 A Okay.

23 Q And the ones in green are affected patients.

24 A Okay.

25 Q So we have infected patients in the room you

1 were in after the source patient following -- and you're the
2 anesthesia person there except for around the lunch hour when
3 Ronald Lakeman comes in the room.

4 A Okay.

5 Q And he's in the room on the record, and then
6 following that you've got a patient and that patient becomes
7 infected.

8 A Okay.

9 Q You come down here where you look at where you
10 come into the room, and the patient just before you come into
11 the room becomes infected, and then thereafter we have
12 infections going on after you return back to your room. Do
13 you see that?

14 A Yes.

15 Q Now, in this instance, obviously, you're on
16 the record here on this particular patient, but we have --

17 MR. SANTACROCE: Can you specify which patient
18 number that is?

19 MR. STAUDAHER: I'm sorry. This is Patient No. 18.

20 BY MR. STAUDAHER:

21 Q We have you on the record there. If it was a
22 bathroom emergency or something where you had to just go
23 across quickly, is it possible that you went over -- have you
24 ever done it where you went over and just finished up the end
25 of a procedure with somebody, and then did their patient until

1 they could get back?

2 A It's possible. I don't recall it.

3 Q Well, I know you don't recall this, but would
4 that match up with the speed of what you're doing to try to
5 relieve somebody?

6 MR. SANTACROCE: Objection. Leading.

7 THE COURT: That's sustained.

8 MR. STAUDAHER: All right.

9 THE COURT: Ask -- you need to ask that a different
10 way.

11 BY MR. STAUDAHER:

12 Q If you were to go over, would it -- have you
13 ever gone over and relieved somebody for the end of a
14 procedure if they had an emergency for some reason, whatever
15 reason?

16 A If they had an emergency. I don't recall any
17 time that I did that, but it could have happened, yes.

18 Q Well, at least according to the records you're
19 in both rooms around the same time?

20 A Yes.

21 Q The beginning of the day it looks like
22 Clifford Carrol is there as the single doctor; correct?

23 A Yes.

24 Q And then later on Dipak Desai comes in, and
25 then some of the other doctors, also.

1 A Correct.

2 Q At the beginnings of the day in some
3 instances, or many instances, you tell me, did one doctor just
4 do his procedures in the day, and then other doctors came in
5 in the afternoon?

6 A Yes, some of them did. Dr. Carrol was
7 [indecipherable] and was at the clinic all the time, so he
8 would pop in and out at different times.

9 Q So if patients are going -- if doctors are
10 going from room to room and you're staying in one room, are
11 they just turning patients over as fast as they possibly can?

12 A Yes.

13 MR. STAUDAHER: I have nothing further, Your Honor.

14 THE COURT: All right. Perhaps we should take a
15 break.

16 May I see counsel at the bench, please?

17 (Off-record bench conference.)

18 THE COURT: Let's go ahead and take until 3:10 for
19 our break. And during the break you're reminded that you're
20 not to discuss the case or anything relating to the case with
21 each other or with anyone else. You're not to read, watch, or
22 listen to reports of or commentaries on the case, person, or
23 subject matter relating to the case. Don't do any independent
24 research, please don't form or express an opinion on the
25 trial. Notepads in your chairs, and follow Kenny through the

1 rear door.

2 (Jury recessed at 2:53 p.m.)

3 THE COURT: Mr. Mathahs, if you need a break, you
4 know, we're just going to start back up at 3:10, so you're
5 free to leave the courtroom.

6 And you wanted to put something on the record. And
7 you -- are you requesting this be done out of the presence of
8 the witness?

9 MR. WRIGHT: It doesn't matter.

10 THE COURT: Okay. Everybody can sit down. You
11 don't all need to --

12 You're lawyer wants you, so --

13 MR. WRIGHT: Exhibit 87 is the --

14 THE COURT: Affidavit.

15 MR. WRIGHT: -- affidavit. And I -- I do withdraw,
16 attempt to withdraw my agreement. When I viewed all the
17 evidence, whenever, weeks ago, for stipulation, I did not see
18 this document. I didn't see it on the table.

19 MR. STAUDAHER: It was in the file this morning. I
20 tried to -- I tried to -- I don't dispute that you didn't see
21 it.

22 MR. WRIGHT: I'm not talking about in the file this
23 morning. I'm talking about when I went over with you all the
24 evidence, looked at the logs, everything else, and said all of
25 these hospital records, all of that stuff, we aren't going to

1 fight chain of custody or anything else. I did not know there
2 was a March 2008 unsigned affidavit that was obviously
3 prepared for something by counsel. I was not cognizant of
4 this when I said I have no problem with those records going
5 in.

6 MR. STAUDAHER: And just for -- to short circuit
7 that, it's not in those records. Just so I know, the records
8 you came over on Friday and looked, or whatever day it was you
9 looked at, that record is not in there.

10 MR. WRIGHT: Okay.

11 MR. STAUDAHER: That is in the discovery --

12 THE COURT: Had Mr. Wright been given the records
13 before? I mean, what led you to believe that it was a record
14 that Mr. Wright was stipulating to?

15 MR. STAUDAHER: Because this morning I brought over
16 the records specifically that I was going to go over with this
17 individual, which included additional things that aren't
18 contained over there.

19 MR. WRIGHT: I didn't know that. I mean, I
20 literally thought these -- I thought -- and I'm not saying --

21 MR. STAUDAHER: Okay.

22 MR. WRIGHT: I mean, this is my miscommunication. I
23 thought all this stuff was simply out of there, you know, and
24 it was already in. And I didn't know there were new things
25 sitting here. And I even had copies made of this so that I

1 could view the exhibits that he just utilized --

2 THE COURT: Okay.

3 MR. WRIGHT: -- this morning.

4 MR. STAUDAHER: The only thing that was --

5 MR. WRIGHT: Because I --

6 MR. STAUDAHER: Right. And the only thing was --

7 MR. WRIGHT: -- I said, I don't have, you know, like
8 my copies or anything.

9 THE COURT: Right.

10 MR. WRIGHT: But I did not look at them. I mean, I
11 looked at some. I mean, I flipped through them, saw the FEA,
12 you know, and things. But I'm --

13 MR. STAUDAHER: Right.

14 MR. WRIGHT: -- I'm just telling you, until it
15 occurred here in the courtroom, I hadn't even been cognizant
16 of that.

17 MR. STAUDAHER: With the exception of the FEA
18 document that he saw and agreed to before, the rest of it was
19 in a folder that I brought over this morning to --

20 THE COURT: Okay. I don't believe that it was a
21 deliberate attempt of Mr. Staudaher to sneak in an exhibit. I
22 know you're not suggesting that, but just so it's clear when
23 somebody down the road who may be handling this doesn't say,
24 oh, you know, looks like Mr. Staudaher snuck something in.

25 I think, you know, it was just a misunderstanding

1 between the two of you. Going forward I would ask if there
2 are different exhibits or new exhibits that you're going to be
3 introducing that day, just make sure opposing -- I just
4 noticed we're missing half the -- half the group here.

5 MR. WRIGHT: I thought he was here.

6 THE COURT: Well, maybe he'd like to be here. I'm
7 going to take a really quick break. It's not his objection,
8 but going forward, Mr. Staudaher, just make sure if there's
9 something new that you tell them. My understanding from the
10 conversation at the bench is that that was an item that was
11 seized that was on the computer and it was seized as part of
12 the search warrant; correct?

13 MR. STAUDAHER: It was seized in the search warrant.
14 I'd have to double check to make sure it was on a computer.

15 THE COURT: Okay. Well, wherever.

16 MR. STAUDAHER: Okay.

17 THE COURT: Because I'm sure you had a separate
18 search warrant for the computer --

19 MR. STAUDAHER: Yes.

20 THE COURT: -- or that was part of the search
21 warrant. So it's admissible as an item that was seized
22 pursuant to a search warrant executed on the premises.
23 Obviously, if it's not stipulated to, you have to get it in
24 through the police officer who actually found it or was
25 overseeing the search. But this one, it's a done deal. I

1 find that there's really no prejudice because it would have
2 come in anyway through the police officer.

3 I understand, Mr. Wright, you're objecting because
4 you don't think it's relevant it was unsigned --

5 MR. WRIGHT: No.

6 THE COURT: -- and it's clearly written by a lawyer.
7 I asked at the bench, this wasn't attached to an email from a
8 lawyer that you somehow downloaded, in which case we've got a
9 real problem, we have a problem here. Mr. Staudaher said, no,
10 he didn't think so because obviously if this is part of a
11 communication from a lawyer or something like that you
12 shouldn't be opening those and reading them and downloading
13 stuff.

14 So I would have an issue with that if his lawyer
15 that sent that to him. I think it's evident, no disrespect to
16 anybody, but looking at the items that were actually authored
17 by Dr. Desai and comparing it to that, I think it's pretty
18 clear Dr. Desai did not write that because it doesn't appear
19 he has the, at least written English skills to do so.

20 Having said that, it is an item in the possession of
21 the office that was seized pursuant to a lawfully, you know,
22 executed search warrant. So to me it would be admissible.
23 You know, to me, that relevancy is that they're making, you
24 know, kind of a knowledge of guilt idea, that you've got
25 assertions in this affidavit that are contradicted,

1 apparently, if you believe the testimony, by what was actually
2 going on.

3 So to me, the fact that you're -- that there's
4 something here, you know, who sent it, who wrote it, where he
5 got it, all that stuff, I think that's cross-examination and
6 that goes to the weight of the exhibit, not its admissibility.
7 But, again, you know, I think the relevance is it was in their
8 possession and it's assertions that are different from what
9 the practice was.

10 And even though that was never signed by Mr.
11 Mathahs, it's sort of, if you look at the whole affidavit,
12 it's the total thing like this is what the practice was, not
13 just this one, you know, isolated thing. So I think it's
14 relevant for those reasons.

15 MR. WRIGHT: But who wrote it and what was the
16 context? It's March 2008.

17 THE COURT: Well, we don't know that's -- that's --

18 MR. WRIGHT: Well, then that's what --

19 THE COURT: If it wasn't stipulated to, he
20 wouldn't --

21 MR. WRIGHT: I'm not. I'm withdrawing my
22 stipulation.

23 THE COURT: Okay.

24 MR. WRIGHT: I did not know it. This wasn't -- I
25 stipulated to documents I went over and looked at --

1 THE COURT: I understand.

2 MR. WRIGHT: -- a week ago.

3 THE COURT: All right.

4 MR. WRIGHT: So I am saying through inadvertence
5 this is not a document I had stipulated to.

6 THE COURT: All right.

7 MR. WRIGHT: So I did not stipulate this in.

8 THE COURT: Okay. Here's the deal. Mr. Staudaher,
9 when you have the police officer testify, you're going to have
10 to lay the foundation for that document, how it was found,
11 where it was found, what other documents, you know, whatever.

12 And then, you know, if it's just some document
13 laying around and you don't tie it into Dr. Desai, I mean, I
14 still would probably admit it as it's there in the office and
15 it was seized pursuant to a search warrant, and then you can
16 certainly argue or, you know, cross that we don't know who
17 wrote the document, we don't know, you know, if Dr. Desai ever
18 even read the document or anything like that. So, I mean, to
19 me that goes more to the weight rather than the admissibility.

20 And, you know, it was there. Assuming they tie it
21 in with a police officer or a detective, whoever is going to
22 do it, that, yes, it was there, it was in the office, it was
23 these other things, whatever. Again, if it's attached to an
24 attorney email or communication or something like that, there
25 may be --

1 MR. WRIGHT: Or if it was in a legal file.
2 THE COURT: Right. There's other issues, then.
3 Mr. Wright, you didn't write the affidavit, is that
4 fair to say?

5 MR. WRIGHT: That's fair to say.

6 (Court recessed at 3:01 p.m., until 3:09 p.m.)

7 THE COURT: Are you ready, Mr. Santacroce?

8 MR. SANTACROCE: I'm sorry, Your Honor. I'm trying
9 to get these files together.

10 THE COURT: That's okay. I know it was a little out
11 of order.

12 MR. SANTACROCE: 18.

13 MR. STAUDAHER: Just make sure she knows.

14 MR. SANTACROCE: Who?

15 MR. STAUDAHER: Her.

16 MR. SANTACROCE: I have 18, Patient 18.

17 THE COURT: Just make sure -- more importantly make
18 sure she gets them back before you leave today.

19 THE CLERK: What exhibit number is that, Mr.
20 Santacroce?

21 THE COURT: 18. Wasn't it 18?

22 THE CLERK: It's not 18.

23 THE COURT: Just for the record, at the conclusion
24 of Mr. Mathahs's direct testimony, Mr. Wright approached the
25 bench and indicated he'd like about an hour to confer with his

1 client, and that was at about 3:00. And due to the late hour
2 -- late hour of the day that we didn't want to take a break
3 for an hour, it was agreed at the bench that Mr. Santacroce
4 would do the first cross-examination, and then we'd take an
5 evening recess to make the reasonable accommodation so that
6 Mr. Wright could confer with his client over the weekend
7 recess.

8 Is that correct, Mr. Wright?

9 MR. WRIGHT: Yes, it is, Your Honor.

10 THE COURT: All right. I'd like to start at 9:00 on
11 Monday. Everyone good with 9:00? And what can we anticipate
12 for Monday?

13 MS. WECKERLY: I've given them sort of a forecast
14 for the week. I don't -- I think in the morning it'll
15 probably be the cross of --

16 THE COURT: Right.

17 MS. WECKERLY: -- Mr. Mathahs. And then I have two
18 other witnesses that I told them --

19 THE COURT: Okay.

20 MS. WECKERLY: -- for the afternoon.

21 THE COURT: Are they --

22 MS. WECKERLY: One is a victim, and one is a doctor.

23 THE COURT: A doctor who worked at the clinic or --

24 MS. WECKERLY: Yeah.

25 THE COURT: -- a referring doctor?

1 MS. WECKERLY: No, he's one of the clinic partners.
2 But I don't there -- it's more on the business structure, so I
3 don't think --

4 THE COURT: Okay.

5 MS. WECKERLY: -- it'll be lengthy.

6 THE COURT: So not about procedures or anything?

7 MS. WECKERLY: Right. And I'll give -- I just
8 haven't, yet, because he was picking up exhibits. I'll give
9 the same list --

10 THE COURT: Okay.

11 MS. WECKERLY: -- to Mr. Santacroce.

12 THE COURT: So Ms. Weckerly, how many witnesses
13 behind are we from where you thought we'd be? Although, I
14 think we're moving pretty fast, actually.

15 MS. WECKERLY: A lot.

16 THE COURT: You way, way --

17 MS. WECKERLY: How's your Fourth of July looking?

18 THE COURT: -- overestimated. How many -- like
19 what's a lot like? Seven?

20 MS. WECKERLY: 10. 10.

21 MR. SANTACROCE: Thank you, Your Honor. I think I'm
22 ready to go.

23 THE COURT: Would you let Kenny know we can bring
24 the jurors in now.

25 MR. SANTACROCE: Do you have any objection to

1 marking 18, Patient 18?

2 MR. STAUDAHER: No, as far as I -- oh, marking it
3 separately? That's fine.

4 MR. SANTACROCE: No, you can mark it as yours. I
5 don't care, but they aren't marked.

6 MR. STAUDAHER: Yeah, you can mark it.

7 THE COURT: Just next in order?

8 THE CLERK: Do you know where this is from?

9 MR. STAUDAHER: That's from this box here. Those
10 are all the redacted files. It's from this box here.

11 THE CLERK: Thank you.

12 MS. WECKERLY: Actually, it's only nine behind.

13 THE COURT: Well, your boss was asking me.

14 MS. WECKERLY: Oh.

15 THE COURT: Well, he said how's it going, and I
16 said, well, I think we're moving really fast, but I know your
17 deputies think that we're not moving really fast because they
18 keep having people waiting out -- out in the hall. That was
19 the conversation just so the defense knows. We weren't
20 conferring about the case or anything like that.

21 MR. STAUDAHER: Oh, Your Honor, for the -- for the
22 clerk I wanted to --

23 MR. WRIGHT: And she said Weckerly has been
24 [inaudible].

25 MR. STAUDAHER: I just wanted to put on the --

1 THE COURT: I said -- no, he's just, how are you
2 going? I said, oh, I think it's moving good.

3 MR. STAUDAHER: I wanted to put just a housekeeping
4 issue on the record. We brought over that chart today. We'll
5 bring over a smaller version so that --

6 THE MARSHAL: Ladies and gentlemen, please rise for
7 the presence of the jury.

8 Hold on. Hold on. Do you need a moment?

9 MR. STAUDAHER: No, that's fine.

10 THE COURT: No, come on in.

11 (In the presence of the jury.)

12 THE COURT: All right. Court is now back in
13 session.

14 And, Mr. Santacroce, you may begin your
15 cross-examination of the witness.

16 MR. SANTACROCE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SANTACROCE:

19 Q Good afternoon, Mr. Mathahs.

20 A Good afternoon.

21 Q We spent quite a considerable time talking
22 about what Dr. Desai did and what you did. But as you know,
23 there's two men on trial here, so I want to focus your
24 attention on the other person in the room --

25 A Okay

1 Q -- Ronald Lakeman. Do you know Mr. Lakeman?
2 A Yes, I do.
3 Q How do you know him?
4 A We worked side by side.
5 Q So for how long of a period of time?
6 A I think -- I think Ron came in '04, if I'm not
7 mistaken, until the clinic closed.
8 Q So for several years, four years, you worked
9 right next to Ron every day --
10 A Yes.
11 Q -- correct?
12 A Off and on. Yes. Uh-huh.
13 Q So you know him very well?
14 A Well, I think so.
15 Q Okay. I'm going to start backward where Mr.
16 Staudaer left off. Okay? And I'm going to ask you some
17 questions about the chart. So if you want to step down, feel
18 free to do that. You may need the microphone.
19 THE COURT: Do you want him to step down?
20 MR. SANTACROCE: Yes.
21 THE COURT: Okay. Sir, go ahead and step down.
22 BY MR. SANTACROCE:
23 Q Mr. Staudaer explained to you how this chart
24 was set up; correct? In other words, these were the cases you
25 did except for the one that Ron came over and did at lunch

1 time for you; correct?

2 A Correct.

3 Q And the first patient, it wasn't the first
4 patient of the day, but the first patient we're discussing
5 here is a Kenneth Rubino; correct?

6 A Correct.

7 Q Do you have any independent recollection of
8 Mr. Rubino?

9 A None at all.

10 Q Do you have an independent recollection of
11 this day at all?

12 A No, I don't.

13 Q The chart says that the procedure started at
14 9:45. Now, we talked about these times being inaccurate.
15 These times I'm referring to are the procedure times of 33
16 minutes, 32 minutes, all of these were inaccurate; correct?

17 A Correct.

18 Q The procedure start times, do you have any
19 idea of whether or not those are accurate or not?

20 A I would say they are accurate, yes. I mean, I
21 usually use my cell phone, you know, as a watch. There was
22 not a clock in the room, so --

23 Q Would you record on the patient's record what
24 time the procedure started?

25 A When the patient came in. And I don't think

1 we put down the time when the procedure started. But when the
2 patient arrived in the room and came under our control.

3 Q Okay I want to show you what's been marked as
4 State's Exhibit No. 4. It's the patient file for Kenneth
5 Rubino. I'm going to show this to you and help refresh your
6 recollection. And specifically I'm showing you the anesthesia
7 record.

8 A Okay.

9 Q Would you take a look at that and tell me if
10 there's any indication as to what the start time is?

11 A It's marked 9:45.

12 Q And what does this chart say?

13 A 9:45.

14 Q So the start time was accurate?

15 A Yes.

16 Q And I'm going to also show you another
17 document in the patient record, also in Kenneth Rubino's file,
18 and specifically Bate No. 002605. And can you tell me what
19 this document is?

20 A That's the record kept by the nurse that would
21 have been in the room.

22 Q And what time -- and she would have a little
23 bit different time, wouldn't she, because she would record the
24 procedure time when that started.

25 A Yes.

1 Q What's the time that she records the procedure
2 start time?

3 A 9:49.

4 Q So four minutes after you got the patient, the
5 procedure started; correct?

6 A Right.

7 Q Now, I want to show you the same -- same
8 chart, different document, this will be Bates stamped 002606,
9 and ask you if you can identify what that record is.

10 A That's the recovery room area where the
11 patient was evaluated when they came out to the -- to the
12 recovery area.

13 Q And what time did the patient get to the
14 recovery area?

15 A Here or --

16 Q Yes.

17 A -- or down here? There's two times here.
18 10:02.

19 Q Okay. So it's different than the chart end
20 time on this chart because we've already established that the
21 total procedure time was incorrect.

22 A Correct.

23 Q So the procedure, the patient gets to you at
24 10:45, the procedure starts at 9:45 -- I'm sorry, 9:45, the
25 procedure starts at 9:49, and the patient is in the recovery

1 room at what time?

2 A 10:02.

3 Q 10:02. Okay. That's for Kenneth Rubino.

4 Now, you did another patient between Kenneth Rubino and the
5 time that you went and did a patient in Ron's room; correct?

6 A Yes.

7 Q And that patient is identified on the chart by
8 No. 55C; correct?

9 A That's what it says there, yes.

10 Q I want to refer your attention to State's
11 Exhibit 93, and ask you to take a look at the anesthesia
12 record and tell me -- and this is Bates No. 0004772. Tell me,
13 what time did that patient come into your room?

14 A I've got it recorded at 10:00.

15 Q What time does it say on the chart?

16 A 10:00.

17 Q So that's accurate; correct?

18 A Yes.

19 MR. STAUDAHER: Objection, Your Honor. That's --
20 he's testified that the times on the records are not
21 necessarily accurate, but it's the same as on the record.

22 THE COURT: All right. That's -- that's sustained.
23 So it's the same as the other record.

24 BY MR. SANTACROCE:

25 Q The time on the anesthesia record is the same

1 as the -- what's on the chart.

2 A Yes.

3 Q And that's the time you would have received
4 that patient in the room?

5 A Yes.

6 Q I'm going to show you Bates stamp PF0004775.

7 And, again, this is the nurse's record. What time did the
8 procedure for patient 55?

9 A 10:05.

10 Q Okay. And showing you -- okay. That'll
11 suffice for that. So it started at 9:45 and finished -- or it
12 started, the procedure started at --

13 A 10:00.

14 Q And I'm showing you Bates stamp 0004776. What
15 time did the patient get into the recovery room?

16 A 10:17.

17 Q Now, you testified that you went into Ron's
18 room to do a patient because he had -- I believe you said a
19 bathroom break; correct?

20 A If that's what it was. I'm not sure.

21 Q Well, for whatever reason you went to his room
22 and did a patient.

23 A Yes.

24 Q And the patient you did in that room was
25 identified as Patient 18 by the State; correct?

1 A Correct.
2 Q I'm going to show you Patient 18's file.
3 Referring to Bates stamp 0003309, and this is the anesthesia
4 record. Tell me what time you received that patient.

5 A 10:15.

6 Q And what does the time say on the chart?

7 A 10:15.

8 Q So the start -- the times you received the
9 patients appear to coincide with the records; correct?

10 A Correct.

11 Q Showing you the same Patient 18, Bates stamp
12 PF0003312. Tell me what time the procedure started.

13 MR. STAUDAHER: With the -- I'll object to with
14 according to what the record shows is not necessarily when.

15 THE COURT: That's fair. According to the record.

16 BY MR. SANTACROCE:

17 Q What time?

18 A 10:13.

19 Q Now, there was another patient in Ron's room
20 that was done right prior to Patient No. 18. That was Stacy
21 Hutchinson; correct?

22 A Yes.

23 Q According to the records, and this is State's
24 Exhibit 5, Bates stamp 002819, what time does the anesthesia
25 record say that Ron received the patient Stacy Hutchinson?

1 A 9:55.

2 Q What time does the chart say?

3 A 9:55.

4 Q So those two times coincide; correct?

5 A Correct.

6 Q I want you to tell me according to the nurse's

7 record how long the procedure was. I'm referring to Bates

8 stamp 002822.

9 A Procedure starts at 09:55.

10 Q And when did Ms. Hutchinson get into the

11 recovery room according to the patient record 002823?

12 A 10:05.

13 Q Now, do you remember what time we said Patient

14 55's procedure ended?

15 A I don't. Sorry.

16 Q Let me refresh your recollection.

17 A 10:17.

18 Q So Ms. Hutchinson, according to the start and

19 stop times and recovery room records, was already in the

20 recovery room when you were still doing Patient 55C; isn't

21 that correct?

22 A Yes.

23 Q Now, when you came over to Ron's room to do

24 Patient 18, that's after Stacy Hutchinson.

25 A Yes.

1 Q You don't have a recollection as you sit here
2 today whether you brought a propofol bottle from your room to
3 do Patient 18. do you?

4 A No, I don't.

5 Q And if you look at the propofol amounts that
6 were used on Kenneth Rubino and Patient 55C, you testified
7 earlier as to what these numbers indicate; correct?

8 A Correct.

9 Q And can you tell me how much propofol you used
10 on Rubino?

11 A 200.

12 Q In cc how many is that?

13 A Oh, that's 20 cc.

14 Q And how much did you use on the second
15 patient?

16 A That would have been 170.

17 Q Okay. So total amount --

18 A 17 cc.

19 Q How much is that total for both patients?

20 A 37.

21 Q So there would have been -- if you used a new
22 bottle for Rubino, and we don't know that you did, if you used
23 Rubino and Patient 55C, you would have used 37 cc on those two
24 patients; correct?

25 A Correct.

1 Q Given the fact that Stacy Hutchinson was
2 already in the recovery room when you came over to Ron's room
3 to do Patient 18 --

4 MR. STAUDAHER: Objection, Your Honor.
5 Mischaracterizes the actual state of the evidence and
6 testimony. He's already said that every record is falsified.

7 THE COURT: Well, okay.

8 MR. SANTACROCE: No --

9 MR. STAUDAHER: He can't say that that's --

10 MR. SANTACROCE: -- that's not --

11 MR. STAUDAHER: -- when the patient was there.

12 MR. SANTACROCE: -- what's been said.

13 THE COURT: Okay.

14 MR. WRIGHT: Objection.

15 MR. SANTACROCE: That's not what's been said.

16 THE COURT: All right.

17 MR. WRIGHT: That was --

18 THE COURT: Sustained.

19 MR. WRIGHT: -- not his testimony.

20 THE COURT: All right. Again, the jury is
21 instructed they'll recall what the state of the evidence is.

22 And, Mr. Mathahs, if Mr. Santacroce says something
23 and that's not what you testified to and we don't catch it,
24 obviously, you can point it out.

25 BY MR. SANTACROCE:

1 Q Have I mischaracterized or misstated any of
2 your testimony so far?

3 A I honestly couldn't tell you. I'm sorry. I
4 really couldn't tell you.

5 Q All right. If I do, you tell me. Okay?

6 A If I catch it.

7 Q All right. So you -- Rubino was the source
8 patient on this date.

9 A Correct.

10 Q On September 21st; correct?

11 A Yes.

12 Q The next patient you do, 55C, it's a different
13 color and Mr. Staudaher explained the colors, they can't
14 confirm that this patient has hep C; correct?

15 A Correct. Yes.

16 Q Now, we go down to the patient you did,
17 Patient 18 in Ron's room.

18 A Correct.

19 Q The patient doesn't have hep C; correct?

20 A Correct.

21 Q Patient Hutchinson who is already in the
22 recovery room, procedure done when you get to Ron's room, has
23 hep C.

24 A That's right.

25 Q Can you explain to me how that happened?

1 MR. STAUDAHER: Objection, Your Honor.

2 BY MR. SANTACROCE:

3 Q Do you have an opinion?

4 MR. STAUDAHER: Speculation.

5 MR. SANTACROCE: If he has an opinion.

6 THE COURT: State your question again.

7 MR. SANTACROCE: I asked him if he has an opinion as
8 to how this patient could be affected, and this patient not be
9 affected.

10 THE COURT: No, he can't speculate as to what might
11 have happened. He can only testify as to what he recalls
12 happening or what his practice was in those situations. So I
13 don't want the witness to speculate as to what might have
14 happened.

15 MR. SANTACROCE: Very good.

16 BY MR. SANTACROCE:

17 Q Then we come back, you come back from Rcn's
18 room, and you do Mr. Meana.

19 A Correct.

20 Q And Mr. Meana turns up infected.

21 A Okay.

22 Q And then you do one, two, three, four, five
23 more.

24 A Correct.

25 Q They're not infected.

1 A Correct.

2 Q And then you do Sonia Orellano. She's
3 infected.

4 A Right.

5 Q Then you do one more, not infected.

6 A Correct.

7 Q Then you do one more, Gwendolyn Martin,
8 infected; correct?

9 A Correct.

10 MR. STAUDAHER: Your Honor, may we approach for a
11 moment?

12 THE COURT: All right.

13 (Off-record bench conference.)

14 THE COURT: All right. Mr. Santacroce, rephrase
15 your question.

16 BY MR. SANTACROCE:

17 Q When Mr. Staudaher was up here at this board
18 and he was describing to you what the colors were, he told you
19 that orange was the source patient; correct?

20 A Correct.

21 Q And green was an infected patient; correct?

22 A Correct.

23 Q What's the color of Kenneth Rubino?

24 A Pink.

25 Q So source patient?

1 A Yes.
2 Q And what's the color of Rodolfo Meana?
3 A Green.
4 Q What's the color of Patient 16?
5 A White.
6 Q No color.
7 A No color.
8 Q Patient 15?
9 A No color.
10 Q Patient 31?
11 A No color.
12 Q Patient 27?
13 A No color.
14 Q Patient 23?
15 A No color.
16 Q Sonia Orellano?
17 A Green.
18 Q Patient 28?
19 A No color.
20 Q Gwendolyn Martin?
21 A Green.
22 Q Patient 34?
23 A No color.
24 Q 35?
25 A No color.

1 Q 38?
2 A No color.
3 Q 57C?
4 A I guess --
5 Q Yellow?
6 A -- the same as the one up here?
7 Q Yellow?
8 A Yellow.
9 Q Number 41.
10 A White.
11 Q No color?
12 A No color. Sorry.
13 Q Patient 44?
14 A No color.
15 Q 45?
16 A No color.
17 Q 47?
18 A No color.
19 Q 50?
20 A No color.
21 Q 51?
22 A No color.
23 Q 54?
24 A No color.
25 Q 53? No color?

1 A No color.

2 Q What's the patient that you did in Ron's room?

3 A No color.

4 Q Now, all of these patients up here in this
5 section except for the 12:00 patient which has no color was
6 done by Ron, the 12:00 one; correct? 12:15?

7 A Yes.

8 Q Okay. Kenneth Rubino you did?

9 A Correct.

10 Q Patient 55C you did?

11 A Correct.

12 Q Rodolfo Meana you did?

13 A Correct.

14 Q Sonia Orellano you did?

15 A Correct.

16 Q Gwendolyn Martin you did?

17 A Correct.

18 Q Ron Lakeman didn't do any of those patients;
19 correct?

20 A No, he didn't.

21 Q He didn't see them, he didn't -- didn't
22 perform any medical services to those patients?

23 A Not that I'm aware of.

24 Q Okay. You can take your seat. Now, I want to
25 talk to you about the CRNAs at the endoscopy center.

1 A Okay.

2 Q You were one of them.

3 A Correct.

4 Q Ron was one of them.

5 A Correct.

6 Q Who else was CRNAs?

7 A Ralph McDowell, Ann Lobiondo, Vince Mione,
8 Linda Hubbard, Vince Sagendorft, and then there was a Glass
9 and I don't remember her name.

10 Q And all of those people you mentioned worked
11 at the endoscopy center?

12 A Yes.

13 Q Were CRNAs?

14 A Correct.

15 Q I believe you testified when you got to the
16 clinic Ann Lobiondo told you about billing 31 minutes;
17 correct?

18 A Her and Dr. D., yes.

19 Q Okay. When Ron came to the clinic, this was
20 after you had gotten there --

21 A Yes.

22 Q -- correct? You told Ron that he had to bill
23 at 31 minutes; correct?

24 A I was his mentor, yeah. I guess I was just
25 trying to tell him what needed to be followed, you know, what

1 was house rules.

2 Q House rules.

3 A Yeah.

4 Q You never saw Ron have a meeting with Dr.
5 Desai or Tonya Rushing or anybody in upper management that
6 told -- that they got together and cooked this 31 minutes up
7 and that they were going to use that, did you?

8 A No.

9 Q This was a policy and procedure that had been
10 in place in the clinic since before you got there.

11 A Before I arrived, yes.

12 Q And every single CRNA that you just named
13 billed the same way; isn't that correct?

14 A As far as I knew, yes.

15 Q Now, when you put your 31 minutes down on the
16 chart, were you aware that the billing department would send a
17 bill which had your name as the anesthesiologist in -- in some
18 sort of computer typing format, not your signature anyway, and
19 would send that off to the insurance companies to be paid?

20 A At the time I guess I paid no attention to it.
21 But, I mean, we really weren't involved in that part of it and
22 we just never paid any attention to it. But I -- in
23 retrospect, yes.

24 Q I'm not talking about retrospect.

25 A Okay.

1 Q I'm talking about what you knew on July 25,
2 2007, and September 21, 2007.

3 A I -- I was not really aware of a billing
4 factor, you know, that was going on at that time, no.

5 Q Did you ever receive a check from an insurance
6 company made payable to you for anesthesia services?

7 A Never.

8 Q Did any -- to your knowledge did any of the
9 CRNAs ever receive a check from an insurance company for
10 anesthesiology services?

11 A I am not aware of it.

12 Q You were paid a salary; correct?

13 A Yes.

14 Q As were all of the CRNAs?

15 A That's --

16 Q As far as you know?

17 A As far as I know.

18 Q And that salary wasn't tied to how many
19 patients you did, was it?

20 A No.

21 Q You got that salary whether you did one
22 patient or 50 patients.

23 A Yes.

24 Q Now, I want to talk to you a little bit about
25 the practices you used to anesthetize patients.

1 A Okay.

2 Q Can you tell me the procedure you used --

3 well, in your words tell me how it was done.

4 A Are you talking about starting from the very

5 beginning or --

6 Q Sure.

7 A Are you talking about taking the history and

8 physical, or where do you want me to start?

9 Q No, I mean the actual mechanism.

10 A Oh, okay. Well, I had to make sure that I had

11 an IV that was in proper place, you know, I --

12 Q Okay. Let's stop and start talking about the

13 IV.

14 A Okay.

15 Q You didn't always put IVs in patients;

16 correct?

17 A Correct.

18 Q In fact, most of the time the IVs were started

19 in the pre-op room by another nurse; correct?

20 A Correct.

21 Q I'm going to show you this chart. Can you see

22 that okay?

23 A I can.

24 Q Have you ever seen that before?

25 A Never.

1 Q Okay. This purports to be a diagram of a flow
2 chart for September 21, 2007, the date we were talking about
3 on that chart. If you'll notice, the first person on this
4 chart on top is Kenneth Rubino. And you already testified
5 that you did him and he was the source patient; correct?

6 A Right.

7 Q Do you see in the middle there, Lynnette
8 Campbell?

9 A Yes, I do.

10 Q Who is Lynette Campbell, if you know?

11 A One of the nurses at the clinic.

12 Q And what was her job?

13 A She functioned as an RN in the room or in the
14 -- in the prep room or whatever, you know.

15 Q Would she start IVs on patients?

16 A Yes, she would.

17 Q And there's another gentleman named here,
18 Jeff Krueger. Who is that?

19 A He would have been Lynette's supervisor.

20 Q And he would also do IVs?

21 A Yes.

22 Q So at least on this day the diagram shows that
23 the IVs were started by Lynette Campbell and Jeff Krueger. Do
24 you have any reason to doubt that?

25 A No, I don't.

1 Q So back to your description of the IV process.

2 A Well, the IV would -- you'd put on a
3 tourniquet and look for the nicest vein or the biggest vein
4 that you'd want to put an IV in. Some of them want -- this is
5 called the antecubital area up here in the elbow. Some of
6 them would poke in there, some of them would put down here in
7 the wrist, some of them would go in the hand, so it just
8 depended where they would find, you know, the nice size vein
9 that they could place the catheter in.

10 Q And so then you stick that hep-lock in. I
11 think you --

12 A The angiocath with the hep-lock, and it would
13 be taped in, yes.

14 Q Okay. And can you describe for me what
15 flushing means?

16 A Flushing means when you've got a bottle of
17 saline and you've got a syringe and you've got fluid in the
18 syringe and you would hook it up to the IV -- or not the IV,
19 but to the catheter in the arm or in the patient and you'd
20 flush it so there would be no blood in the catheter itself.

21 Q Or obstructions?

22 A Or obstructions to make sure it was in
23 properly and working properly, yes. Uh-huh.

24 Q And sometimes that flushing would have a
25 backflow of blood sometimes?

1 A It could. Sure.

2 Q Isn't it true that Jeff Krueger was known to
3 have flushed everything? Wasn't that his reputation at the
4 clinic?

5 A I honestly can't tell you because --

6 Q Okay. That's fair.

7 A -- I mean, I've seen him start IVs, but I --
8 you know, I don't know.

9 Q Did you see him flush any of those?

10 A Oh, I'm sure I did. Sure.

11 Q So you've seen Krueger actually flush
12 hep-locks?

13 A Yes.

14 Q Now, go on with your narration about the
15 process.

16 A So you want me to start --

17 Q After the -- after -- well, let me ask you a
18 question about that. Where were these IVs started? What
19 room?

20 A Usually in the holding room. We called it a
21 holding room where there were maybe -- let's see, maybe about
22 four like recliner chairs in there and the patient would be
23 brought into that room after they had already changed. They
24 had on a gown, they would go in there and they would be --
25 that's where the IVs would be started. And then they'd go

1 from there to a recovery area where there would be an empty
2 gurney. And then from there it would be going into our
3 procedure room.

4 Q Okay. Now, tell me about when they get to
5 their procedure room with an IV. What happens?

6 A You mean to make sure that it's working or --

7 Q No, just tell me what you do.

8 A Well, the first thing I would do is, you know,
9 make sure there's an H&P that I had done on the patient. I
10 would make sure the patient is hooked up to all the monitors,
11 the pulse oximeter, the EKG, and that type of thing. Oxygen
12 would have to be placed on them and get them in position. And
13 then they'd be ready to go with the procedure, then I'd be
14 giving the propofol over in the IV area.

15 Q Okay. And the HP -- H&P you did on every
16 patient?

17 A Yes, I did. The ones I did, personally did.

18 Q Your patients. That's what I'm talking about.

19 A Yes, I did my patients, yes.

20 Q Okay. So tell me now about the injection of
21 propofol.

22 A Well, it depends on the classification of the
23 patient. You know, we had ASA1s, ASA2s, 3s, 4s, and that type
24 of thing. Depending on the patient, the weight of the
25 patient, the age of the patient. I mean, you would start out

1 with maybe like 5 cc, 50 milliliters of propofol, and just see
2 what your reaction is going to be. If it was an older
3 patient, that might be enough for the procedure. You don't
4 want to overdose them and have them go into a respiratory
5 arrest or something like that where they'd stop breathing for
6 you.

7 Q Okay. Did you ever pre-fill syringes with
8 propofol?

9 A Yes.

10 Q So when you started in the morning, would you
11 pre-fill a bunch of syringes?

12 A Yes.

13 Q And you would use those syringes until they
14 were used up?

15 A Yes.

16 Q And as you empty the bottle you would throw it
17 away?

18 A Yes.

19 Q And those would be all different syringes;
20 correct?

21 A Correct.

22 Q And then you would take a clean, a septic,
23 sterile needle --

24 A Right fresh out of the paper.

25 Q Brand new.

1 A Yes.

2 Q And you would insert the syringe and needle
3 into the propofol bottle?

4 A Yes.

5 Q With draw 5 of 10 cc, whatever you needed.

6 A Right.

7 Q Inject it into the hep-lock?

8 A Yes.

9 Q Is that a fair statement?

10 A Yes.

11 Q You testified that sometimes a patient would
12 wake up or seem to come back --

13 A Move around.

14 Q -- in the middle of the procedure, and you
15 would re-inject that person as we saw Mr. Rubino. He had --

16 A Right.

17 Q -- 20 cc.

18 A Yes.

19 Q So if you gave Mr. Rubino 5 cc at a time,
20 would you use four syringes?

21 A No.

22 Q Okay. Tell me how that happens.

23 A Well, the syringe would have been -- we were
24 only allowed to have 10 -- 10 milliliter syringes, so that
25 would hold 100 milligrams. So that would have been two

1 injections of 50 milliliters each there, or if you're giving
2 100, it would be one syringe and then you would put on a new
3 needle and refill the syringe with propofol.

4 Q Okay. So when you used one of the prefilled
5 syringes all gone, you put a new needle, go back into the
6 bottle, withdraw another 5 or 10 cc; correct?

7 A Correct.

8 Q And you'd still have all those other filled
9 bottles on your tray; correct?

10 A Correct.

11 Q Filled syringes?

12 A Yes.

13 Q Okay. So then he wakes up again and you give
14 him another 5 cc, same syringe, clean needle.

15 A Well depending on -- you would evaluate the
16 patient, age, weight, how long it was going to take. You
17 probably would have drawn up 10 cc, so you would have had
18 enough in there for --

19 Q Well, let's take Mr. Rubino's case. Okay?

20 A Okay.

21 Q You don't have to get down. The chart says
22 that it's 50, 50, 60, 40.

23 A Okay. That's two syringes.

24 Q Two syringes?

25 A Yes.

1 Q Well, one syringe twice; right?

2 A Right. Yeah. One syringe filled twice, yes.

3 Q Okay. So it wasn't two of the syringes you
4 had on your tray.

5 A No, no.

6 Q One syringe filled twice, two different
7 needles.

8 A Correct.

9 Q Is that the procedure that all the CRNAs used
10 at the clinic based on your experience and interacting with
11 them and talking to them?

12 A You know, I don't recall talking that much
13 about how other people or how the nurse anesthetists gave
14 their anesthetics. But I think that if we were in the room,
15 you know, we would be with another one of the anesthetists,
16 that's what we would see is the same type of procedure, yes.

17 Q Okay. So all of them did the same thing,
18 basically?

19 A As far as I am aware, yes.

20 Q Okay. They may have drawn up 10 -- or given
21 some 20 milliliters instead of 5.

22 A Correct.

23 Q But basically the same procedure?

24 A Correct.

25 Q Now, you said you've been practicing 30 years,

1 40 years?

2 A 40 years total.

3 Q And you were a member of the AANA?

4 A AANA. Correct.

5 Q And --

6 A Retired.

7 Q Huh?

8 A Retired now.

9 Q Okay. In any event you receive bulletins from
10 that organization; correct?

11 A Yes.

12 Q There was a bulletin that's been circulating
13 around here from 2002 that says one and one. Do you know what
14 that means?

15 A I'm not following. No.

16 Q Okay. Basically one syringe, one needle,
17 throw it out.

18 A Okay.

19 Q Are you aware of that directive from your
20 association?

21 A If I saw it, I don't recall it, no. I mean,
22 it's just --

23 Q Well, you testified earlier that you got all
24 of it.

25 A I got the -- but I --

1 Q You testified you received all of their
2 bulletins. So I'm asking you do you recall seeing anything
3 like that?

4 A No, I don't.

5 Q Despite that bulletin in 2002, the procedure
6 you described was the procedure that was used in -- since you
7 got to the clinic; right?

8 A Yes.

9 Q Do you know if it's still a procedure used in
10 other clinics or in other facilities?

11 A Yes, it is.

12 Q Do you know if it's the same procedure used in
13 other facilities throughout the country?

14 A I can't speak for other facilities in the
15 country, but I know it was widely used here in Las Vegas.

16 Q Even after the hep C outbreak?

17 A Well, I think some changes came about because
18 of all of the publicity and everything that was going on.

19 Q But as far as you know the procedure was still
20 being used?

21 A Yes.

22 Q When you got to the clinic in the morning, I
23 think you -- let me -- let me go back first. I read somewhere
24 in one of your statements you said CRNAs were autonomous. Do
25 you recall that?

1 A No.

2 Q Technically it's an interview that you gave
3 the State Attorney General's office on December 28, 2010. I'm
4 going to show you this and ask you if you recognize it. Not
5 the document, but the interview.

6 A I don't recall, no.

7 Q Did you give an interview to the State
8 Attorney General's Office on September 28, 2010?

9 A No, I did not. I don't know who it is.

10 Q Okay. Do you ever recall making a statement
11 -- do you remember giving a proffer to the United States
12 Attorney -- Attorney's office, feds, the feds?

13 A Yes.

14 Q Okay. I'm going to reshew you this document.
15 This purports to be your proffer.

16 A That's from them? Okay.

17 Q Okay.

18 A I didn't know there was --

19 Q You gave a proffer.

20 A Yes.

21 Q In that proffer you said that CRNAs were
22 autonomous. Do you recall that?

23 A No, I don't.

24 Q I'm going to find it for you. I thought I had
25 highlighted it, but apparently I didn't. I'll find it and

1 come back --

2 A Okay.

3 Q -- rather than waste time.

4 THE COURT: Does anyone need a break?

5 JURY PANEL: No.

6 THE COURT: Okay.

7 BY MR. SANTACROCE:

8 Q CRNAs in Nevada are allowed to practice -- Mr.
9 Wright found it for me. Page 2, I'd ask you to take a look
10 and read that first paragraph.

11 A Okay.

12 Q What -- what did you tell them in your proffer
13 regarding CRNAs and doctor supervision?

14 A That in California it was not required.

15 Q How about Nevada? It's true that Nevada
16 doesn't require it either, does it?

17 A Other than the supervision physician that's
18 doing the procedure.

19 Q There has to be an MD there; right?

20 A Right.

21 Q It doesn't have to be an anesthesiologist.

22 A No.

23 Q It doesn't have to be a supervisor. It could
24 be an MD, it could be a podiatrist?

25 A Yes, as far as I know.

1 Q So going back to the beginning of the day when
2 you started your shift, propofol had to be checked out to you;
3 correct?

4 A Right.

5 Q Is it a controlled substance?

6 A No.

7 Q But at least at the clinic it was under lock
8 and key; correct?

9 A Correct. Yes.

10 Q And you would have to check it out in the
11 morning; correct?

12 A Yes, one of the nurses would do it.

13 Q And at the end of the day you would turn back
14 in all that's left you didn't use; correct?

15 A All the full bottles. All the empty ones were
16 discarded -- I mean, the partial ones were discarded.

17 Q So at the end of the day you threw them out?

18 A Absolutely.

19 Q Returned the full ones back to the locker?

20 A Correct.

21 Q I want to talk about the beginning of your
22 day. When you started your day, how many propofol bottles did
23 you start with?

24 A If I recall, I think it was usually about 20
25 that was set up in each room.

1 were so stressed out that you felt you could violate a court
2 order. This is a very serious matter. You know, it's a great
3 deal of time and expense for the court.

4 It's a great deal of time and expense for the State
5 and the prosecutor's office and their investigators, and it's
6 been a great deal of time and expense for the defense team
7 over there. So, you know, for you to cavalierly think that
8 comments don't matter and that if you're stressed out you can
9 violate the Court's order is simply not the case.

10 I mean, I'm sure this is stressful for everyone,
11 including the people who are sitting here on trial. And so
12 it's important that you understand that your conduct is
13 subject to sanctions. And that can include, I think, a hefty
14 financial sanction of \$500. Now, you know, you were stressed
15 out about money before. I'm not saying I'm going to impose
16 that. But I'm saying that I could impose that.

17 And in extreme cases of juror misconduct, jail time,
18 the Clark County Detention Center is an option. So, you know,
19 I'm sorry. You know, I appreciate that you were stressed out.
20 We tried to be very sympathetic to you. You had an
21 opportunity to fill out the questionnaire. You know, we
22 talked to you here and it seemed like you had a flexible job.

23 We talked to you again and told you that we were
24 sympathetic to your needs and we'd try to work around them. I
25 thought it was pretty clear that you would be excused if you

1 couldn't work around them. So I'm sorry. I feel absolutely
2 no sympathy for the fact that you violated this Court's order,
3 this Court's direct and clear and explicit order by speaking
4 about something that you were not supposed to speak about in
5 the presence of the other jurors.

6 Now, you know, we are hopefully going to get to the
7 bottom of this, whether it was to your husband or who heard
8 what and what have you. At this point in time I am going to
9 dismiss you. You are free to leave. I need you to check out
10 back through jury services.

11 And frankly, you know, had you not done that, had you
12 not committed that misconduct, you would have just been
13 excused on a hardship ground. So you've taken this places it
14 did not need to go frankly.

15 JUROR NO. 3: I do apologize, and I don't -- I didn't
16 do whatever I did intentionally. I think I just kind of spoke
17 of it just with the way I was feeling. So I do apologize for
18 everybody that's been affected.

19 I don't want you to think that, you know, I was like
20 sitting here thinking like, you know, whatever, they're not
21 going to do anything about it, because you did tell me clearly
22 yesterday that you were going to be speaking to my job. So I
23 don't want you to think that I intentionally did the things
24 that I did. I just -- I'm going through so much right now
25 that I can't even --

1 THE COURT: Right. And we -- we were dismissing you.
2 What I'm concerned about is again, you know, I think the Court
3 was sympathetic. I think that, you know, we told you we would
4 try to see if something could be worked out. You know,
5 obviously in the presence of all the attorneys this was all
6 done.

7 And, you know, you were told directly do not do this.
8 And, you know, for whatever -- you know, again, we're going to
9 get to the bottom of this, but it appears that it was done
10 anyway. And, you know, with respect to the comment on the
11 questioning of Mr. Washington, you say it didn't happen. You
12 say you didn't say those things. We're going to try to get to
13 the bottom of it, because these admonitions are very serious.

14 And, you know, like I said, you know, this isn't a
15 game. This isn't a joke. This is a very serious proceeding
16 and everyone's put a tremendous amount of time and expense
17 into this. And if we get to the end of the day and we don't
18 have enough jurors, it starts all over. And, you know, that's
19 a huge burden for the State, the prosecutor's office, to the
20 court and jury services, and for the defense team over there.

21 So, you know, this is very serious and, you know, it
22 didn't have to -- it didn't have to go down this road with
23 those comments being made in violation of the Court's order.
24 It could have gone another way and you still would have been
25 excused, so.

1 JUROR NO. 3: I do, I do apologize.

2 THE COURT: That's all I'm saying. You are
3 dismissed. You know, I don't believe you have any reason to
4 have any contact with any of the other jurors, but you are of
5 course admonished that you're not to discuss with them or
6 anyone affiliated with them in any way the reason that you've
7 been dismissed. You are not to discuss with the jurors or
8 anyone affiliated with them the discussion that you and I have
9 had in here today. Do you understand that?

10 JUROR NO. 3: I do understand.

11 THE COURT: That is a court order. And so if we
12 learn somehow, and believe me, we tend to learn things, that
13 you have somehow violated that court order, then you will be
14 subject to sanctions and I may not feel as generous next time
15 as I do today. And I'm sorry for your hardship.

16 Like I said, you know, it was one thing after
17 another, and each hurdle that came up we tried to work with
18 you. You know, the doctor situation, we said, okay, well,
19 we'll start late if you need to go to the doctor, or we'll
20 break early if you need to go to the doctor, just keep the
21 bailiff informed.

22 The other situation, you know, we said, okay, well,
23 if you need to be at an HOA meeting in Green Valley, we'll
24 break early, just let us know. So I think the Court really
25 tried to accommodate you and it seems to me it was just one

1 thing after another. Oh, you're not going to get dismissed
2 for this, what about this. Oh, you're not going to get
3 dismissed for that, what about this, you're not going to get
4 dismissed.

5 So, you know, eventually, like I said, after the
6 situation with your employer we would have dismissed you
7 anyway. It didn't need to come -- it didn't need to come to
8 this, this issue of your misconduct. I'm sorry that it did.

9 You know, maybe -- you're young and maybe you just
10 didn't appreciate how serious this whole proceeding is and how
11 serious we take the admonitions that we give to the jurors,
12 and how important it is that the jurors follow those
13 admonitions. If you ever are called as a juror and selected
14 in the future, I hope that you'll be mindful of that.

15 JUROR NO. 3: I certainly will be.

16 THE COURT: All right. Thank you.

17 JUROR NO. 3: Thank you.

18 THE COURT: And just check out through jury services.
19 The bailiff's just going to lead you out.

20 JUROR NO. 3: Thank you.

21 (Juror No. 3 dismissed, exits the courtroom.)

22 THE COURT: Well, I think if we want to, we can
23 engage in further inquiry later in the day. It's not
24 something we need to do right now. It would be my preference
25 to just get started. If anyone needs just two or three

1 minutes to take a break --

2 MR. WRIGHT: When we start, you're going to
3 re-admonish the panel?

4 THE COURT: Yes. Yes. I'm going to re-admonish them
5 at that time.

6 MR. WRIGHT: Okay. Thank you.

7 (Court recessed at 10:14 a.m. until 10:18 a.m.)

8 (Outside the presence of the jury.)

9 THE COURT: All right. Kenny, would you get them.

10 (Pause in proceeding.)

11 (Jurors reconvene at 10:20 a.m.)

12 THE COURT: Court is now back in session. The record
13 should reflect the presence of the State through the deputy
14 district attorneys, the presence of the defendants and their
15 counsel, the officers of the court, and the ladies and
16 gentlemen of the jury.

17 Good morning, ladies and gentlemen. You will notice
18 a missing chair in the jury box. I just want to remind all of
19 you that juror misconduct is a very serious offense, and it is
20 punishable by sanctions, including a financial sanction and in
21 extreme cases incarceration in the Clark County Detention
22 Center. Again, in extreme cases.

23 I also want to remind all of you that it is your
24 duty, if you become aware of the misconduct of another juror,
25 to inform the Court, and you would inform the Court by

1 informing our bailiff, Officer Hocks. And finally, I just
2 want to take a moment to speak about the admonition that I
3 give all of you at the break. And I know, you know, it kind
4 of is like wah-wah, wah-wah, like the voice of the teacher in
5 the Peanuts cartoon and probably people stop listening to it.

6 But when I say do not discuss this case or anything
7 relating to the case with each other or with anyone else,
8 that's a serious prohibition. And you may think, well, why
9 can't I talk about it even with a couple of the other jurors.
10 And sometimes, you know, jurors form little groups, maybe they
11 go to lunch together or whatever.

12 The reason we don't want you talking to anyone,
13 including even other jurors about it is because that
14 undermines the deliberation process. And one of the most
15 important aspects of the jury system is the deliberation
16 process. And the idea is that if you form little groups and
17 pre-discuss the evidence and start to form opinions, that
18 excludes other members of the jury.

19 And then when you get in the back, after the case is
20 entirely over, there have been discussions that not all of the
21 jurors have been privy to and have been involved with. And so
22 number one, we want you to keep an open mind until you've
23 heard everything in the case. And during jury selection, I
24 believe all of you promised that you would do that.

25 And number two, a very important part of the process

1 is the idea that we bring together the collective wisdom of
2 the community, people from all walks of life who are selected
3 as jurors. And the idea is we want everyone's insight and
4 everyone's input in the deliberation process. And if we get
5 groups of jurors kind of branching off and talking about the
6 evidence, just their little group, that undermines that part
7 of the process and then you don't have the full participation.

8 So, you know, I know sometimes at the breaks I give
9 the admonition and people are thinking, well, you know, it's
10 been two hours, I've got to run to the restroom or whatever.
11 But I just want you to be mindful and think about that that is
12 important and why that is such an important admonition that I
13 do give, and to just be mindful that you do need to wait until
14 the end and you do need to make sure that everybody is
15 involved in your discussions of the evidence.

16 Because that's what the process is all about. It's
17 about everybody discussing it together, everyone giving their
18 opinions, not people getting into groups and, you know,
19 preforming opinions and things like that.

20 So that's all I wanted to begin the day with. And I
21 believe we're -- is Dr. Patel here to resume his testimony?

22 MR. STAUDAHER: I saw him outside, Your Honor, so he
23 should be here.

24 THE COURT: All right. Dr. Patel will be recalled to
25 resume his testimony.

1 SHAILESH PATEL, STATE'S WITNESS, PREVIOUSLY SWORN

2 THE COURT: You are still under oath. Do you
3 understand that?

4 THE WITNESS: Yes.

5 THE COURT: Thank you, sir.

6 And Ms. Stanish, you may question Dr. Patel.

7 MS. STANISH: Thank you, Your Honor.

8 CROSS-EXAMINATION (Continued)

9 BY MS. STANISH:

10 Q Good morning, Dr. Patel.

11 A Good morning.

12 Q Welcome back. Sir, I only had a few more
13 questions to ask you, but just to kind of backtrack to catch
14 up from where I left off yesterday, as I recall, you had
15 testified that in November of 2007, Mr. Washington tested
16 positive for hep C, correct?

17 A [No audible response.]

18 Q And an antibody for hep B?

19 A That is correct.

20 Q And as I understood your testimony, and please
21 correct me if I misstate anything, that suggests to you that
22 at some time in the past, prior to 2007, he did indeed have
23 hep B; is that correct?

24 A Yes.

25 Q And I think I left off, you had described the

1 risk factors associated with hepatitis B, and is it a fair
2 statement to say that the risk factors for hepatitis B are the
3 same for hepatitis C?

4 A Yes.

5 Q And could you summarize for us again those risk
6 factors?

7 A Risk factors that involve the exposure to body
8 fluids from somebody who has infection. So it could be blood
9 transfusion in the past, if you had surgery, if you had high
10 risk behavior like intravenous drug abuse, or you had multiple
11 partners for your sexual activity. And tattoos, if you
12 have -- you know, if you went to a tattoo parlor and if you
13 get tattoos on your body.

14 Q And you had also described for us some surgery
15 that Mr. Washington underwent in 2005 that involved putting a
16 stent in, up an artery to clear a blockage in the heart; is
17 that correct? Am I describing that right?

18 A Yeah. He has cardiac catheterization and he had
19 angioplasty. That means opening up the heart artery and
20 putting a stent there. I'm not sure about the date, about
21 2005.

22 Q And I think where we actually left off, at least
23 according to my notes, is that we were discussing fatty liver,
24 and you were educating us on what a fatty liver is. And just
25 to go back to some time frames, prior to 2007, had you noticed

1 that Mr. Washington had some -- a fatty liver?

2 A No.

3 Q Okay. I must have misunderstood you then. All
4 right. At what point did you detect that he had a fatty
5 liver?

6 A I -- in December of 2007, I made a referral to
7 gastro center. I did not make a referral to gastro center,
8 but I made a referral to our GI, gastroenterology department,
9 and they went ahead and sent it to gastro center and their
10 specialist requested that we should have a CAT scan. So it
11 was ordered by our gastroenterology department coordinator,
12 and that CAT scan shows that he has mild fatty infiltration.

13 Q All right. And maybe that's -- that refreshes
14 my poor memory. Does hepatitis B affect the liver?

15 A Yes.

16 Q And does that -- can you tell us what kinds of
17 things hepatitis B can do to a liver?

18 A Hepatitis means inflammation of liver, and if
19 it's hepatitis B, it means it's because of the B virus, you
20 know, and it's infecting or affecting the liver. And
21 hepatitis itself means inflammation of the liver. And
22 subsequently, if you get over with it and then you may have
23 some inflammation left in your liver or you may not have any
24 inflammation, and depending upon how the body responds.

25 Q And maybe you covered this already, but you

1 didn't personally decide what gastro center Mr. Washington
2 would be referred to; is that correct?

3 A No. As I said earlier that I work for the
4 primary care, and there is a medicine department who is a
5 specialty department in VA. And anytime I need a consult or I
6 need a specialist, I make a referral to our gastroenterology
7 consult electronically. And there is a coordinator, since we
8 didn't have any gastroenterology specialist in the VA, they
9 are the one who decide where to send this patient to. So I
10 had nothing to do who to send.

11 Q Understood. And as a -- in your experience at
12 this time frame in 2007, was it your experience that the VA
13 would commonly refer patients to the gastro center of Southern
14 Nevada for consults?

15 A Yes. Gastroenterology consults, yeah. That was
16 done by the medicine department.

17 Q Correct. I understand.

18 MS. STANISH: The Court's indulgence.

19 THE COURT: That's fine.

20 MS. STANISH: I have nothing further. Thank you.
21 Thank you, Doctor.

22 THE COURT: All right. Thank you. Mr. Santacroce.

23 MR. SANTACROCE: I don't have any questions for
24 Dr. Patel.

25 THE COURT: All right. Mr. Staudaher.

1 MR. STAUDAHER: Yes. I have just a couple of
2 follow-up. And Jane, if you would please turn on the doc cam.

3 May I approach, Your Honor?

4 THE COURT: You may.

5 REDIRECT EXAMINATION

6 BY MR. STAUDAHER:

7 Q Doctor, showing you what has been previously
8 marked as State's Proposed Exhibit 3, and I know you've seen
9 it before, but I want you to look through it again and just
10 see what those are.

11 A I see two medical record, one related to Mr.
12 Michael Washington. It's a VA medical record. The dates are
13 November 29, which was -- the first one is of a nurse's note,
14 and second one is my colleague's, Dr. Nita Kaul's progress
15 note that is November 29. And --

16 Q Of 2000?

17 A 2007. And then I had done a telephone call to
18 Mr. Washington on November 30, 2007.

19 Q So some lab work as well?

20 A Yes.

21 Q Okay. Are these copies of records that you have
22 that you've seen before, part of your medical record for
23 Mr. Washington?

24 A Yes.

25 MR. STAUDAHER: Your Honor, at this time I'd move for

1 admission of State's Proposed 3.

2 THE COURT: Any objection to three?

3 MS. STANISH: No, Your Honor.

4 MR. SANTACROCE: No.

5 THE COURT: All right. Three is admitted.

6 (State's Exhibit 3 admitted.)

7 MR. STAUDAHER: May I publish, Your Honor?

8 THE COURT: You may.

9 MR. STAUDAHER: Specifically, and these are
10 Bates-numbered documents, for counsel and for the record, I'm
11 referring to a DA Endoscopy Number 2021.

12 BY MR. STAUDAHER:

13 Q I'm going to ask you a couple of things. You
14 had already previously testified about some of the lab results
15 that were liver function tests and the like. Do you recall
16 that?

17 A Yes.

18 Q Okay. And one thing I wanted before I ask you
19 that, I want to ask you something that Ms. Stanish said, that
20 this cardiac catheterization that was done on Mr. Washington
21 in the past, I think you said 2005; is that right?

22 A Cardiac catheterization was done on May 31, 2007
23 too. He had several --

24 Q 2007?

25 A Yeah. He had several cardiac catheterization,

1 you know.

2 Q So he had a couple of them in the past?

3 A Yes.

4 Q Now, those, she referred to them as a surgery.

5 Is this something where somebody goes in and gets cut open and
6 ends up in the hospital for days, or what?

7 A No. You had a small cut in your right groin and
8 they pass the catheter, you know.

9 Q And you go home the same day, right, typically?

10 A Most of the time.

11 Q So something where they put a large sort of
12 device inside your blood vessel, go up and do the
13 catheterization, then they take it out?

14 A That is correct.

15 Q And then you're done?

16 A Yes.

17 Q Okay. As far as the results though, here of
18 this report, I want to zoom in on this a little bit and ask
19 you a couple of questions.

20 MR. STAUDAHER: For the record, we're looking at the
21 middle portion of the exhibit, Your Honor.

22 BY MR. STAUDAHER:

23 Q The area that I've got listed here currently,
24 ferritin protein, albumin, AST, ALT and the like, do you see
25 all those?

1 A Yes.

2 Q Now, if I move -- I'll move it over, but I want
3 to -- I want you to look at specifically, tell me which ones
4 of those, if any, are liver function tests or liver function
5 sort of hallmark tests that you would look at to see if
6 somebody had a problem with their liver.

7 And just so you know, this screen, you can actually
8 write on it. Take your finger and you can just draw on it
9 like that.

10 A Okay.

11 Q And then if you need to clear it for some
12 reason, you just tap it down there in the corner. Can you
13 point out for us, if you would, the actual liver function
14 tests? Just with your fingernail, just draw on the screen.

15 A It starts with the protein albumin.

16 Q So I'll help you out here. What you've marked
17 is this one here; is that correct?

18 A Yes.

19 Q Albumin?

20 A Protein, albumin, alkaline phosphatase, AST,
21 ALT, LDH, total bilirubin, direct bilirubin, and GGT we call
22 it, gamma -- GGT.

23 Q What is this one at the top that's the ferrin --
24 or ferritin one?

25 A Ferritin is a blood test that is mainly looked

1 for -- it's mainly used for anemia blood tests, you know, that
2 is like an iron binding protein.

3 Q Is that associated with the liver at all?

4 A It is associated with liver.

5 Q So this entire group of tests is referred to --
6 are they referred to as liver function tests?

7 A That is correct.

8 Q So if I'm -- and I'm going to move across now so
9 we can see -- well, actually, let's look at them before we get
10 to the normal values. But I notice that there are H's all
11 along these tests here; is that correct?

12 A That is correct.

13 Q What does that H indicate?

14 A That means they are elevated as compared to the
15 normal.

16 Q If we look at specifically the AST, ALT and the
17 gamma GTP, did those look to be significantly elevated?

18 A They are.

19 Q Okay. And if you move across to the normal
20 range -- and again, let's just go ahead and clear that if we
21 can, so that we don't [inaudible].

22 It looks as though the normal ranges for each of
23 those items that we talked about, the AST and so forth, and
24 we're talking about 5 to 37, I think it is, for the AST, and
25 the ALT is 5 to 40. We've got numbers in the 6 to 500 range.

1 A That is correct.

2 Q Is that considered very elevated?

3 A Yes. That's very elevated.

4 Q And even this one down here, this gamma GTP is
5 7,773, and over here it says the normal range is 7 to 51; is
6 that fair?

7 A Yes.

8 Q Now, when you saw him back in the office
9 immediately follow -- I know the date on this, it appears to
10 be the visit was on 11/30.

11 A It's -- this note is my documentation of primary
12 care telephone notes, so I made the telephone call. It's not
13 a visit with me in person.

14 Q Fair enough. So when he came back to see you,
15 did you have these results at least at that point?

16 A I saw him in December and I had those results,
17 yes.

18 Q In December you had the results.

19 A Yes.

20 Q Okay. So around the time that you see him near
21 the time of this test, you didn't have the results that you
22 sent him out for the test; is that correct? Do I need to zoom
23 out?

24 A What I'm saying is that on November 30, 2007, I
25 saw those abnormal result and I made a telephone call to

1 Mr. Washington.

2 Q And also on this test are the different items
3 we've been talking about with regard to the hepatitis tests;
4 is that correct?

5 A That is correct.

6 Q Now, if I understand you correctly, you
7 indicated that the hepatitis B surface antigen antibody and
8 the hepatitis B core antibody, although being reactive,
9 indicated that it was a prior infection, it wasn't active at
10 the time; is that right?

11 A That is correct.

12 Q The only active infection that he had where
13 there was a virus present doing things in his system was the
14 hepatitis C virus, according to this record?

15 A From these three tests, you know, all I can say,
16 that he had previous B infection and he's positive for
17 hepatitis C antibody on November 27, 2007.

18 Q Current [inaudible]?

19 A Yeah.

20 Q So a prior hepatitis B infection and a current
21 hepatitis C infection?

22 A I can't say that based on this result only.

23 Q Oh, you can't?

24 A Yeah.

25 Q So do you correlate the findings that you have

1 there with the clinical sort of presentation of the patient to
2 make your diagnosis, or to make a determination as to whether
3 somebody's infected or not infected, that kind of thing?

4 A What I -- I think if you go farther, I mean, I
5 have made that what kind of diagnosis I made. I said because
6 of his high enzyme elevation and I made the diagnosis of acute
7 hepatitis, you know. I didn't make any other diagnosis.

8 Q Okay. Let me go to that. Let's see. It's
9 exhibit -- it's the same exhibit, Bates No. 2022. And the
10 things you were just mentioning -- let me zoom out for that so
11 you have the entirety of the record up there. If you need
12 more, just let me know. Is this what you're talking about,
13 where it says, Acute hepatitis, hepatic jaundice, high total
14 and direct elevated alkaline P4, or PO4, but double --

15 A Phosphatase, yeah.

16 Q -- double --

17 A But, you know, it's a spelling mistake. It's a
18 doubt has an obstruction.

19 Q Oh, okay. Doubt an obstruction, that would be
20 something you would be concerned about possibly --

21 A And questionable viral etiology.

22 Q So it had to be sent out to confirm whether
23 there was an active virus and what it was?

24 A I have a plan there that I made referral to GI
25 clinic referral.

1 Q So at least clinically presenting with the lab
2 results that you have in this at the end of November,
3 December, when he's physically in front of you, when you see
4 him he's got jaundice you're talking about. So that's the
5 yellowing of the skin or eyes or something?

6 A At November 30, 2007, this is from a telephone
7 call I made. He saw me in December 7, 6 or 7 of 2007. So he
8 was not physically in front of me.

9 Q But when you say hepatic jaundice on the 30th of
10 November, you must have seen him before that though?

11 A That is based on the diagnostics. It's based on
12 the lab value that's a liver function test.

13 Q Okay. When you saw him eventually in person,
14 did he have that finding?

15 A Yes.

16 Q Okay. So at this point you know he's got active
17 hepatitis and he's got at least reactions to hepatitis B and
18 C, but you don't know what's active and what's not active?

19 A Yes.

20 Q So that's why you do the referral for the viral
21 study, to have somebody say, okay, he's got this one or he's
22 got that one or both?

23 A Yes. I made referral and I rely on GI clinic
24 and infectious disease clinic.

25 MR. STAUDAHER: I have nothing further, Your Honor.

1 THE COURT: All right. Thank you. Any recross?

2 MS. STANISH: No, Your Honor.

3 THE COURT: Mr. Santacroce?

4 MR. SANTACROCE: No, Your Honor.

5 THE COURT: Any questions from the jury for this
6 witness? All right. I see no juror questions.

7 Doctor, thank you for your testimony. You are
8 excused at this time.

9 THE WITNESS: Thank you.

10 THE COURT: And the State may call its next witness.

11 MS. WECKERLY: The next witness, Your Honor, is
12 Dr. Casalman.

13 STEPHANIE CASALMAN, STATE'S WITNESS, SWORN

14 THE CLERK: And would you please state and spell your
15 name.

16 THE WITNESS: Dr. Stephanie Casalman,
17 S-t-e-p-h-a-n-i-e, C-a-s-a-l-m-a-n.

18 THE COURT: Thank you. Ms. Weckerly.

19 DIRECT EXAMINATION

20 BY MS. WECKERLY:

21 Q Good morning, Doctor. Can you tell the members
22 of the jury a little bit about your educational background?

23 A Sure. I went to undergraduate school at
24 University of California at San Diego, and then I went to
25 medical school at Touro University in San Francisco. And I

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1 did most of my residency in Las Vegas.

2 Q And when did you come to Las Vegas?

3 A 1999, for part of my med school is my --

4 Q And when did you start practicing here on your
5 own?

6 A 2004.

7 Q And what area of medicine do you specialize in?

8 A Family medicine.

9 Q And are you your own separate practice?

10 A No.

11 Q You're with a group?

12 A I'm employed, yes.

13 Q And that was since 2004 at the same place?

14 A Correct.

15 Q During your -- well, are you one of the doctors
16 or have you been a doctor of a lady by the name of Gwendolyn
17 Martin?

18 A Yes.

19 Q She's a patient of yours?

20 A She was a patient, yes.

21 Q She was. When did you first start seeing Ms.
22 Martin?

23 A Her first visit was November 4th of 2005.

24 Q And when she first came to you in November of
25 2005, was there -- was it just for a checkup, or was there

1 some sort of health issue?

2 A Just to get established, I believe.

3 Q And do you remember her age at that point?

4 A At that point she was 57. I can look it up if
5 you want me to.

6 Q Yeah. If you have her record there and that
7 would refresh your recollection.

8 A I do. She was, sorry, 58 years old.

9 Q Okay. So she -- in 2005, she comes to you just
10 to sort of start seeing a doctor and she's 58?

11 A Correct.

12 Q And did you order any kind of tests on her first
13 visit, or did you do any kind of evaluation of her health?

14 A I did order blood work.

15 Q And that blood work that you ordered, what would
16 it screen for?

17 A I tested her for diabetes. I tested her general
18 liver and kidney profiles, electrolyte screenings. I checked
19 her for anemia, a thyroid test and a cholesterol profile.

20 Q And did any of those results cause you concern
21 as a doctor in 2005?

22 A Not at -- no.

23 Q If -- you're familiar with hepatitis C?

24 A Yes.

25 Q Is one of the indicators or possible indicators

1 of hepatitis C, would that show on any of the tests that you
2 administered in 2005 on her?

3 A It might.

4 Q Would it maybe affect liver function?

5 A It maybe would affect liver function.

6 Q But not necessarily; is that fair?

7 A [No audible response.]

8 Q Okay. After that initial testing, did you
9 continue to see Ms. Martin for a period of time?

10 A Yes.

11 Q During that time period, were there any problems
12 that developed in her health that you were aware of?

13 A Let me -- can I take a look here?

14 Q Sure, if that will refresh your recollection.

15 A She came in complaining of hip pain one time.
16 She was sick another time.

17 Q Okay. Were you ever confronted with any kind of
18 symptoms that you in your training would be consistent or
19 possibly indicative of someone suffering from hepatitis C?

20 A No.

21 Q At some point did you refer her for an
22 endoscopic or colonoscopy procedure?

23 A Yes.

24 Q What was the reason that you made that referral
25 for her?

1 A She had been complaining of constipation for a
2 number of months, and it had been over 10 years since her last
3 colonoscopy.

4 Q And so when you made the referral, was it for
5 both procedures, a colonoscopy and an endo --

6 A I just made the referral to see the
7 gastroenterologist.

8 Q Okay. And when you make the referral, do you
9 refer to particular locations, or what was your practice at
10 that time?

11 A I mean, usually we refer to whoever's covered on
12 the health plan, whoever's close to our office or their house,
13 and then also just by what the -- who the practice was
14 referring to.

15 Q And at that time did you refer to the Endoscopy
16 Center of Southern Nevada?

17 A My office did refer it over there, yes.

18 Q And so you made that referral, and did you ever
19 become aware of her having gone and gotten those procedures?

20 A Well, I'm not sure. I did get some reports from
21 them, but I'm not sure at what time I got the reports.

22 Q Okay. But I mean, you have them now, so you
23 know if she went?

24 A Yes.

25 Q Sometime after that referral, did you have any

1 contact with her, you know, in later months about health
2 problems that she was having?

3 A Yes, I did.

4 Q And do you recall the date that you were
5 contacted by either her or her husband about some health
6 issues she was having?

7 A She had come in to see -- well, I had to do the
8 referral twice, and then she came in to see me after the
9 second time on November 6th of 2007.

10 Q And on November the 6th of 2007, did she
11 actually come into your office?

12 A Yes.

13 Q And so you saw her visually obviously?

14 A Yes.

15 Q What was the problem on that date?

16 A That date she was complaining of nausea,
17 vomiting and being very weak and fatigued.

18 Q And based on your observations, did you -- did
19 you order any further testing, or did you make an evaluation
20 of her?

21 A I did. I ordered blood work and an x-ray of her
22 abdomen.

23 Q And did you get the results from that?

24 A I got the results of the x-ray, which were
25 negative. Later on I got the results of the blood work.

1 Q And what did the blood work indicate?

2 A The blood work at that -- do you mind if I look?

3 Q Go ahead.

4 A The blood work at that point in time indicated

5 that she -- her liver function tests were elevated.

6 Q And I'm not a doctor, so is it extremely

7 elevated or mildly elevated, or how would you classify it?

8 A I mean, I'm not a gastroenterologist. I would

9 say it's mild, mild to extreme. It's kind of hard to say.

10 Q Enough to where you noticed it and that required

11 like further testing or further investigation?

12 A By the time I received the blood work, I had

13 already sent her to the hospital.

14 Q Okay. So you get those a little bit later?

15 A Yes.

16 Q So she comes on the 6th, and then tell me how it

17 is that you become aware that she goes to the hospital.

18 A On November 9, 2007, her husband called the

19 office and stated that her -- she was turning yellow, so my

20 office told her to go directly to the emergency room.

21 Q And yellow would be an indication of being

22 jaundiced?

23 A It could be, yes.

24 Q So you tell Ms. Martin's husband to take her to

25 the hospital?

1 A Yes.

2 Q And as her primary care doctor, does the
3 hospital send you reports about her being admitted to the
4 hospital?

5 A Yes.

6 Q And did you get any subsequent reports about a
7 diagnosis or her blood work?

8 A I got her hospital records, yes.

9 Q And in those records, did it have any indication
10 of what her -- what her problem was?

11 A By looking at the discharge summary from that
12 day, it said that she had -- do you want me to list the
13 diagnosis they wrote down here?

14 Q Sure.

15 A It said, Transfer diagnosis, painless jaundice,
16 hepatitis improving, rule out hepatitis C viral infection.
17 They were pending the final confirmation.

18 Q And was there actually a final confirmation
19 done?

20 A I actually never got that.

21 Q Okay. Do you know whether or not she went to
22 the health department and got tested?

23 A I don't know.

24 MS. WECKERLY: Okay.

25 (Pause in proceedings)

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1 MS. WECKERLY: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 BY MS. WECKERLY:

5 Q Dr. Casalman, I just want to ask you to look at
6 what's been marked as State's Proposed Exhibit 10, and ask you
7 if you've ever seen these documents.

8 A Can I look in here?

9 Q Sure.

10 A Because they might be in here. This is a
11 different -- yes, it's in the record here.

12 Q Okay. And is your record the same as mine? Is
13 it dated 11/9/07?

14 A Yes.

15 Q Okay. And I'm wondering if you can flip with me
16 to this last page here.

17 A Yes.

18 Q And it says there's an assessment.

19 A Oh, that would be -- I think it was -- this one.

20 Q And the assessment on Number 1, what is that?

21 A It says, Acute hepatitis.

22 Q Okay. Is that a diagnosis for Ms. Martin?

23 A Yes.

24 Q Okay. So that was the diagnosis made at the
25 hospital?

1 A Yes.

2 MS. WECKERLY: And if I could just put that on --
3 well, the State moves to admit 10.

4 MR. WRIGHT: No objection.

5 THE COURT: Any objection to 10?

6 MS. STANISH: No, Your Honor.

7 THE COURT: All right. Ten is admitted.

8 (State's Exhibit 10 admitted.)

9 THE COURT: You may publish.

10 BY MS. WECKERLY:

11 Q And Dr. Casalman, I'm just pointing -- do you
12 see where I'm pointing here, that diagnosis of acute
13 hepatitis?

14 A Yes.

15 Q And that was the diagnosis for, and I'm just
16 going to show the beginning of her record, of Gwendolyn Martin
17 on November the 9th of '07.

18 A I mean, her --- she was admitted on the 9th.
19 This looks to be dictated on the 11th, yes.

20 Q Okay. So a couple days later, and it was from
21 MountainView medical center?

22 A Yes.

23 Q Okay. So she was ultimately diagnosed with
24 acute hepatitis at some point?

25 A Yes.

1 Q Were you also the referring doctor for a lady by
2 the name of Patty Aspinwall?

3 A Yes, I was.

4 Q And when did you first see Ms. Aspinwall?

5 A Her first visit with me was August 8th of 2007.

6 Q And the purpose for her coming to see you on
7 August the 8th was just to establish a primary care doctor, or
8 did she have a problem?

9 A She was establishing primary care doctor and
10 having some breast tenderness, it looks like.

11 Q And when you first saw Ms. Aspinwall, can you
12 tell me how old she was?

13 A Fifty-four years old.

14 Q And during the -- during your care of
15 Ms. Aspinwall -- actually, you're still her doctor; is that
16 correct?

17 A Yes, I am.

18 Q At some point did you refer her for a
19 colonoscopy?

20 A I did the referral on her first visit.

21 Q And the reason for that?

22 A She needed some kind of colon cancer screening,
23 being over 50 years old.

24 Q So it was kind of a prevention -- or a just
25 checking to make sure you're okay thing?

1 A Correct.

2 Q And again, your group referred to the Endoscopy
3 Center of Southern Nevada?

4 A Yes.

5 Q And her records that you have, I'm sure, now
6 indicate that she went for the procedure?

7 A Yes.

8 Q Sometime after September the 21st of 2007, did
9 Ms. Aspinwall come see you again with any health related
10 issues?

11 A She did.

12 Q Do you remember what date it was, or can you
13 look and tell us what date it was that she saw you?

14 A She came in to see me on November 13th of 2007.

15 Q Okay. And when she saw you in -- you said
16 November 13?

17 A Yes.

18 Q Of '07, what was her problem on that date?

19 A She was complaining of a decreased appetite,
20 nausea, and feeling very itchy all over, and also she noticed
21 that her urine was dark.

22 Q And based on that presentment, what was your
23 assessment?

24 A Well, I noticed she was icteric and jaundiced,
25 so I sent her to the emergency room.

1 Q What does icteric mean?
2 A Meaning yellowing of the eyes.
3 Q Okay. And jaundice of the skin?
4 A Yellowing of the skin.
5 Q Okay. So you sent her to the emergency room as
6 well?
7 A Yes.
8 Q Do you know what hospital she went to?
9 A I believe she went to MountainView, but I don't
10 have those records.
11 Q Okay. Were you informed of any tests that were
12 run on her at the hospital?
13 A No.
14 Q Did you -- were you ever as her doctor apprised
15 of a diagnosis made of her back at that time period?
16 A I believe I only knew about it when she came
17 back in to see me.
18 Q So you weren't given any records at that time?
19 A No, I wasn't.
20 Q Are you aware now of whether or not Ms.
21 Aspinwall is positive for hepatitis C?
22 A Yes.
23 Q Prior to her going for the colonoscopy, did you
24 have any blood work done on her that would have indicated the
25 presence of hepatitis C?

1 A No.

2 Q Did you assess any risk factors that she might
3 have had that would make you order such a test?

4 A I didn't have any reason to order the test at
5 the time.

6 Q But now as you're -- now you're still treating
7 her as a doctor, you're aware that she is positive for that?

8 A Yes.

9 MS. WECKERLY: I'll pass the witness, Your Honor.

10 THE COURT: All right. Cross.

11 CROSS-EXAMINATION

12 BY MS. STANISH:

13 Q Good morning.

14 A Good morning.

15 Q How are you?

16 A Okay.

17 Q I just have a few questions for you. Let me
18 begin with Ms. Martin. What's that?

19 When did you see her last?

20 A Her last visit was the November 6, 2007 visit.

21 Q And prior to that you had seen her for how many
22 years?

23 A Since 2005.

24 Q So 2005 to November '7, when you referred her
25 for the -- to the hospital?

1 A Yes.

2 Q Do you know why you didn't see her afterwards?
3 Do you have any idea?

4 A I don't know why.

5 Q Were you later involved in giving depositions in
6 civil litigation with respect to Ms. Martin?

7 A Yes.

8 Q And is that also the case with respect to
9 Ms. Aspinwall?

10 A Yes.

11 Q Now, you continue to treat Ms. Aspinwall,
12 correct?

13 A Yes.

14 Q And are you -- I wasn't quite clear. It didn't
15 sound like you had received information from her hospital stay
16 when you directed her to go to the ER.

17 A That's correct.

18 Q And is she being treated by a liver specialist
19 or a GI doctor, do you know?

20 A She's currently seeing a gastroenterologist.

21 Q And does your treatment of her, are you treating
22 her for any other medical conditions that relate to the
23 hepatitis C?

24 A Not -- no.

25 Q How often have you seen Ms. Aspinwall since she

1 was diagnosed with hepatitis C?

2 A I believe I see her back somewhere between every
3 six to eight months. Do you want me to see how many times
4 I've seen her?

5 Q I don't need the exact figure, but that's
6 helpful. You see her twice a year, is that what I understand?

7 A Correct.

8 Q Okay. And you're not treating her for anything
9 related to the hepatitis C?

10 A No.

11 MS. STANISH: The Court's indulgence, please.

12 THE COURT: That's fine.

13 (Pause in proceedings)

14 MS. STANISH: No further questions, Your Honor.

15 Thank you.

16 THE COURT: All right. Mr. Santacroce, any cross?

17 MR. SANTACROCE: I have no questions for

18 Dr. Casalman.

19 THE COURT: Any redirect?

20 MS. WECKERLY: No, Your Honor.

21 THE COURT: Any juror questions for this witness? No
22 juror questions.

23 All right. Doctor, thank you for your testimony.

24 You are excused at this time.

25 And the State may call its next witness.

1 MS. WECKERLY: Thank you. The State calls
2 Dr. Antuna.

3 (Pause in proceedings)

4 FULGENCIO ANTUNA, STATE'S WITNESS, SWORN

5 THE CLERK: And would you please state and spell your
6 name.

7 THE WITNESS: My name is Fulgencio Antuna,
8 F-u-l-g-e-n-c-i-o. Last name is Antuna, A-n-t-u-n-a.

9 THE COURT: All right. Thank you. Ms. Weckerly.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Good morning, Doctor. Can you describe for the
13 members of the jury what your educational background is
14 briefly?

15 A Yes. I hold a doctor of medicine degree from
16 Universidad Central Del Este in the Dominican Republic. I did
17 a year of pathology in 1982 at Monmouth Medical Center,
18 [unintelligible] affiliate. And then I did my internship at
19 St. Vincent's in Staten Island, New York, and two years of
20 internal medicine at the University of Nevada, School of
21 Medicine.

22 Q And your --

23 A Completed in 1986.

24 Q Thank you. And you've been practicing medicine
25 in Las Vegas since then?

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1 A 1986.

2 Q In your practice, do you have a patient by the
3 name of Sonia Orellana-Rivera?

4 A Yes, I do.

5 Q How long have you been her doctor approximately?

6 A Approximately probably eight, seven, eight, nine
7 years.

8 Q Is she in fact still your patient?

9 A Yes, she is.

10 Q Do you treat her husband too?

11 A I treat her husband, yes.

12 Q Back in 2007, you were obviously Ms. Orellana
13 Rivera's doctor?

14 A Yes, ma'am.

15 Q During that time period, did you refer her for a
16 colonoscopy?

17 A Yes, I did.

18 Q Do you recall when it was that you made the
19 referral, just approximately?

20 A I believe it was around September of 2007.

21 Q And could that be when she had gotten the
22 procedure, in September of 2007?

23 A I don't recollect that, ma'am.

24 Q Okay. And can you give us the approximate age
25 of Ms. Rivera? Do you know her age?

1 A She was born in 1970.

2 Q So to your knowledge, at this point in time you
3 know she went to get a colonoscopy?

4 A Yes.

5 Q And that was at the Endoscopy Center of Southern
6 Nevada?

7 A I believe it was.

8 Q Was that a practice area -- would you normally
9 refer people to them, your patients?

10 A I refer patients to different
11 gastroenterologists in town.

12 Q Is part of that dependent on their insurance or
13 who might be able to see them sooner?

14 A Not at all. It's part of just being sure that
15 you work with three or four groups of people that are
16 competent and comfortable with what they're doing.

17 Q Okay. And Ms. Rivera went to -- but you know
18 now Ms. Rivera went to the Endoscopy Center?

19 A Yes, ma'am.

20 Q Prior to her going to the Endoscopy Center, had
21 you ever ordered any blood work on her?

22 A Yes. Routine blood work.

23 Q And in that routine blood work, did you ever see
24 anything that caused you any concern about her health, or did
25 she appear to be pretty healthy?

1 A She does have a hypothyroid condition which I
2 was treating her for. So her thyroid level was monitored
3 about every four months.

4 Q Did you ever see any symptoms prior to her going
5 for the colonoscopy that would make you concerned that she
6 might have contracted hepatitis C?

7 A Not that I can recall.

8 Q And if you saw symptoms like that, I assume you
9 would have ordered further testing as her doctor?

10 A I would have.

11 Q And were you aware of any risk factors that she
12 might have had that would make that kind of test advisable in
13 her case?

14 A Not to my recollection. She was married.

15 Q After she got her colonoscopy done, did she ever
16 contact you about her health or problems she was having?

17 A We were contacted first by the Clark County
18 Health Department, and then she came in afterwards.

19 Q Okay. And when you were contacted by the health
20 department, was it about her?

21 A No, ma'am. It was a massive fax blast to
22 probably all physicians in Clark County.

23 Q And it was about a possible hepatitis outbreak?

24 A Yes, ma'am.

25 Q And you saw Ms. Orellana Rivera after that?

1 A Yes.

2 Q After you got the notification?

3 A Yes.

4 Q And when you met with her on that date, what was
5 the reason for that visit?

6 A All patients were to be screened from any -- any
7 endoscopy center. That's what I chose to do.

8 Q Okay. And she underwent that screening?

9 A Yes, ma'am.

10 Q And what were the findings with her on the
11 screening?

12 A She was, I believe, positive for hepatitis C.

13 Q And has -- has she ever had complications with
14 that or has -- I mean, what has her treatment been in -- with
15 regard to that, I guess?

16 A She has times and periods of being tired and
17 fatigued, and she was being seen and treated by Dr. Hykel
18 [phonetic], who is a gastroenterologist in town.

19 Q And is that a -- a gastroenterologist, is that a
20 specialization that people with hepatitis C typically go to
21 for treatment?

22 A Yes, and there is also subspecialists called
23 hepatologists.

24 Q And does she see a hepatologist too, or just
25 Dr. Hykel?

1 A To my knowledge, just Dr. Hykel.

2 Q Okay. And then you still see her for her other
3 medical needs?

4 A Yes, I do.

5 Q Thank you, sir.

6 MS. WECKERLY: I'll pass the witness, Your Honor.

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

8 CROSS-EXAMINATION

9 BY MS. STANISH:

10 Q Good morning, Dr. Antuna.

11 A Good morning.

12 Q How are you?

13 A Well.

14 Q Let me just start with the decision to have
15 Ms. Orellana come back to your office. That was in response
16 to a fax blast, as you say, from the health district, correct?

17 A I believe it was.

18 Q And can you -- do you know when about you had
19 Ms. Orellana come into your office?

20 A I don't recollect the exact date, ma'am.

21 Q Do you recall when you visited with her whether
22 she was exhibiting any physical symptoms?

23 A I don't recall right now.

24 Q Did you review your medical records prior to
25 this testimony?

1 A Yes.

2 Q And how long ago did you do that?

3 A Probably about a week or two ago.

4 Q Did you provide it, those medical records to the
5 district attorney or metropolitan police?

6 A No. They provided me some records.

7 Q You didn't give them your records?

8 A No, ma'am.

9 Q All right. And while we're on the subject,
10 did -- the health district sends a fax to you and it sounded
11 like it went out to other doctors.

12 A I think so.

13 Q And you were directed to screen any patients
14 that were referred to the gastro clinic; is that correct?

15 A Yes.

16 Q After you did that, did anyone from the health
17 district contact you?

18 A I contacted them. It's a physician's duty to
19 notify the epidemiology department of any state or county
20 local system to have any kind of viral or communicable
21 diseases.

22 Q Well, let me back up. When you had her come in,
23 did your office draw the blood, or did you send her to a lab?

24 A The office drew the blood, but it's sent to
25 Quest Laboratories.

1 Q And does Quest notify the health district, do
2 you know?

3 A They should, but I don't know their bylaws and
4 regulations. I know physicians are supposed to, any
5 communicable disease.

6 Q So you contacted the health district?

7 A Certainly.

8 Q Did -- were -- did you talk to anyone in
9 particular that you can recall?

10 A No, ma'am. It's a form you fill out, and that's
11 sent to the department of epidemiology.

12 Q So you fill out a written form and send it in?

13 A Yes. Yes.

14 Q And in response to that, did you have any
15 contact from anybody in the health district, CDC or any health
16 organization?

17 A Not to my knowledge.

18 Q And were you interviewed by anybody from the Las
19 Vegas Police Department?

20 A No, ma'am.

21 Q And so am I correct in assuming the only persons
22 you've had contact with were the district attorneys who asked
23 you to be here to testify as you have today?

24 A Yes, ma'am.

25 Q And how long have you treated Ms. Orellana, from

1 what year to present?

2 A Including approximately 2005 until present.

3 Q And are you since 2007, when you had the blood
4 test done, have you treated her for any symptoms related to
5 the hepatitis C virus?

6 A I only treated her for hypothyroidism, or
7 underactive thyroid.

8 MS. STANISH: The Court's indulgence. Thank you.
9 Nothing further, Your Honor.

10 THE COURT: Mr. Santacroce, any cross?

11 MR. SANTACROCE: I don't have any questions for the
12 doctor.

13 THE COURT: All right. Redirect?

14 MS. WECKERLY: No redirect, Your Honor.

15 THE COURT: Any juror questions for this witness?
16 All right. I see no juror questions. Doctor, thank you for
17 your testimony. You are excused at this time.

18 THE WITNESS: Thank you, Your Honor.

19 MS. WECKERLY: May we approach?

20 MR. STAUDAHER: May we approach?

21 THE COURT: You may.

22 (Off-record bench conference.)

23 THE COURT: Ladies and gentlemen, apparently that
24 was -- those were the only witnesses scheduled for this
25 morning, so we're going to go ahead and take an early lunch

1 today, and we'll be in recess for the lunch break until 12:45.

2 Before I excuse you for the lunch break, I must
3 admonish you again that you're not to discuss anything
4 relating to the case with each other or with anyone else. You
5 are not to read, watch or listen to any reports of or
6 commentaries on this case, any person or subject matter
7 relating to the case by any medium of information. Do not do
8 any independent research by way of the Internet or any other
9 medium, and please do not form or express an opinion on the
10 trial.

11 If you would please all place your notepads in your
12 chairs and follow Officer Hocks through the rear door, we'll
13 see everyone back here at 12:45.

14 (Jurors recessed at 11:15 a.m.)

15 THE COURT: All right. We'll be in recess
16 until 12:45. Hopefully the State can get a witness here by
17 then, any witness. Anybody.

18 MR. STAUDAHER: Anyone that's available. We'll try
19 to get somebody.

20 THE COURT: And just on scheduling, may I just
21 comment, we did get a late start yesterday because of the
22 issue that came up with the juror that we had to address. But
23 Mr. Santacroce and Mr. Wright were right on the money in their
24 estimates of how long their opening statements would be. So
25 they didn't go long or anything. Just a comment.

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1 MR. STAUDAHER: No, that's true. It's not -- it's
2 just that we're -- to coordinate --

3 THE COURT: Right. I know. You didn't want doctors
4 sitting out in the hall again, you know, I get it. You were
5 lucky you got them back here.

6 MS. WECKERLY: Well, and we also conferred with
7 defense counsel on who we could have in the morning and get
8 done. So this is what we have.

9 MS. STANISH: But I understood there was a change of
10 witnesses. Some couldn't make it.

11 THE COURT: Well, they -- you know, the juror may
12 be -- the jury may be happy to get a longer lunch. I think
13 Mr. Wright is happy --

14 MR. WRIGHT: I'm happy.

15 THE COURT: -- that he gets a longer lunch and more
16 of a break with Dr. Desai to discuss some of the testimony
17 this morning. So it works out fine. Mr. Santacroce's
18 probably hungry. He's been complaining we don't, you know,
19 take enough breaks. So we'll see everybody back at 12:45.

20 (Court recessed at 11:17 a.m. until 12:47 p.m.)

21 (Outside the presence of the jury.)

22 MS. WECKERLY: Not on behalf of the State.

23 THE COURT: Okay. And we don't have to do any of the
24 waivers or anything?

25 MS. WECKERLY: Well, I don't think we do on our next

1 witness.

2 THE COURT: And that'll be at least an hour?

3 MS. WECKERLY: No.

4 THE COURT: Okay. Because I don't want to -- I don't
5 want to break less than an hour. Unless they may not be here
6 yet either. Do we have anybody that's here now?

7 MR. STAUDAHER: They're supposed to be at 12:45 until
8 1:00.

9 THE COURT: Yeah. As soon as the first comes --

10 MR. STAUDAHER: The first person shows up, whoever
11 he is?

12 THE COURT: -- we'll put him on.

13 MR. STAUDAHER: Okay.

14 THE COURT: Who's supposed to be here at 12:45?

15 MR. STAUDAHER: Well, it was supposed to be Ziyad
16 Sharrieff.

17 (Pause in proceedings)

18 MR. STAUDAHER: We do have one witness, but that's
19 Patty Aspinwall, who is the -- one that they're -- they were
20 trying to get their file for her, so.

21 MS. STANISH: She was added to the list today --

22 MR. STAUDAHER: Yes.

23 MS. STANISH: -- so we didn't come with the file.

24 THE COURT: So you're not ready for her, in other
25 words.

1 MS. STANISH: Well, we called -- I called my office
2 and we're trying to get her file over here.

3 MR. STAUDAHER: And then we should, in just a couple
4 of minutes, five minutes, we are supposed to have some of the
5 witnesses arriving, so I believe we can get going.

6 (Pause in proceeding.)

7 THE COURT: We're still waiting on a witness?

8 MR. STAUDAHER: Yes, Your Honor.

9 (Pause in proceeding.)

10 THE COURT: Anybody here yet? All right. They're
11 here.

12 MR. STAUDAHER: We can do Kenneth Rubino.

13 THE COURT: And we don't need to do anything ahead of
14 time?

15 MR. STAUDAHER: No, not with Rubino.

16 THE COURT: Okay. Kenny, bring the jury in. We're
17 ready to start.

18 (Pause in proceedings)

19 (Jurors reconvene at 1:05 p.m.)

20 THE COURT: Court is now back in session. The record
21 should reflect the presence of the State through the deputy
22 district attorneys, the presence of the defendants and their
23 counsel, the officers of the court, and the ladies and
24 gentlemen of the jury. And the State may call its next
25 witness.

1 MR. STAUDAHER: The State calls Kenneth Rubino to the
2 stand.

3 KENNETH RUBINO, STATE'S WITNESS, SWORN

4 THE CLERK: Please state and spell your name.

5 THE WITNESS: My name is Kenneth Rubino,
6 K-e-n-n-e-t-h, R-u-b-i-n-o.

7 THE COURT: Thank you. Mr. Staudaher.

8 MR. STAUDAHER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. STAUDAHER:

11 Q Mr. Rubino, I'm going to take you back in time a
12 little bit to actually the year 2007, when you went to the
13 endoscopy clinic of Southern Nevada. Do you recall that?

14 A Yes, I do.

15 Q Let's even go back further in time. Prior to
16 that date, had you ever been diagnosed with an infectious
17 disease known as hepatitis C?

18 A Yes. In the year 2000 I was diagnosed with
19 hepatitis C. My doctor at the time was a doctor by the name
20 of Bromlin [phonetic]. It was some routine blood work and it
21 came up that I had hepatitis C.

22 Q So Dr. Bromlin was your doctor?

23 A Initially, yes.

24 Q So you say initially. Did that change at some
25 point?

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1 A Yes, it did. He then referred me to Dr. Lazeery
2 [phonetic], who worked at the endoscopy clinic at that time,
3 to discuss treatments and et cetera.

4 Q When you say endoscopy clinic, are we talking
5 about the same one I just mentioned, the Endoscopy Center of
6 Southern Nevada?

7 A That is correct.

8 Q Is that located over on 700 Shadow Lane?

9 A That is correct.

10 Q Here in Clark County, Nevada?

11 A That is correct.

12 Q The doctor that was there -- and it was V, it
13 started with a V, Vizari [phonetic]?

14 A Yes.

15 Q That doctor, did he continue to treat you after
16 that?

17 A He treated and then he moved his practice, from
18 what I understand, to California. He then referred me to
19 Dr. Clifford Carrol, the same -- who works also out of that
20 same clinic.

21 Q So Dr. Carrol became your physician?

22 A That is correct.

23 Q Now, when you say that he's your doctor, is he
24 just your primary care doctor, or is he dealing specifically
25 with this issue of the hepatitis C?

1 A No. He's specifically dealing with the
2 hepatitis C.

3 Q Did you have another doctor that was a primary
4 care doctor in addition to that?

5 A Yes. Dr. Panikkar [phonetic] is my primary care
6 doctor.

7 Q So the interaction that you have with Dr. Carrol
8 is strictly for that issue, the hepatitis C?

9 A That is correct.

10 Q Any question -- and I know this sounds silly,
11 but I just want to make sure for the record. Any question
12 that Dr. Carrol at the Endoscopy Center of Southern Nevada
13 knew that you had hepatitis C?

14 A Absolutely.

15 Q Were you treated actually for that condition at
16 that facility?

17 A We discussed options for treatment. I had,
18 under Dr. Vizari, had a treatment, and I was considered a
19 non-responder to that treatment. My visits with Dr. Carrol,
20 we used to -- we'd go for blood work first, and then I would
21 make an appointment to see him and we would -- I would ask him
22 if there's any new treatments for the hepatitis C.

23 He -- on several occasions we discussed what the --
24 if I were to try that same treatment again, what the quality
25 of life would be and what the chances of it actually making it

1 go away, and so I decided not to. But we often discussed it
2 at our -- at my appointments with him.

3 Q So and we're going to get to this down the road.
4 I may ask you this question again as we get to different
5 stages. But at least at that point and clearly, you're not
6 trying to hide the fact that you had that particular illness;
7 is that correct?

8 A No. That's what I was --

9 Q And you were being treated by a doctor for that
10 specific condition?

11 A That's correct.

12 Q Now, when you are treating with Dr. Carrol, at
13 some point do you end up getting referred or having at least a
14 plan to have a colonoscopy done?

15 A Dr. Carrol had asked me when was the last time I
16 had a colonoscopy, and I think it was several years prior to
17 that. And he said, "Well, you're due. I think you should. I
18 would recommend that you have one." So that's what got the
19 ball rolling with the colonoscopy.

20 Q You get referred to actually the same clinic to
21 have it done. I mean, I assume you were going to the medicine
22 side and then the Endoscopy Center is a procedure side?

23 A Correct.

24 Q So you're over on the medicine side with Dr.
25 Carrol and you get referred to the procedure side to have the

1 procedure actually done?

2 A That is correct.

3 Q You mentioned -- before we get to that, you
4 mentioned the word "nonresponder."

5 A Yes.

6 Q Can you tell us in your -- as best as you know,
7 what that means?

8 A It was a combination therapy of pills and
9 injections. I forgot what the medicine was called.

10 Q Did you ever take interferon?

11 A Interferon, that was the -- that was the
12 medicine. And it did not -- it did not do anything to -- to
13 the hepatitis C to make it get better or go away.

14 Q Now, for you, I understand that various -- when
15 you took -- underwent that therapy, the pills and the
16 interferon, did they indicate to you that people respond to
17 that in different ways, that it affects people in different
18 ways?

19 A Yes. It was like having the flu, the feeling of
20 having the flu when you're on that medication, when I took the
21 injections and the pills. The injections, I believe, were
22 three times a week, if my memory serves me, and the pills, I
23 believe, were daily. But it did make you feel like you had
24 the flu. It was a very uncomfortable feeling.

25 Q And how long did that go on?

1 A Approximately six months.

2 Q So the treatment of both the multiple, the
3 three -- was it three injections per week, did you say?

4 A Correct.

5 Q And the pills every day, how many pills were you
6 taking?

7 A I don't recall exactly. I want to say two, but
8 I'm not completely sure.

9 Q So the pills were every day --

10 A Correct.

11 Q -- the injections three times a week, and that
12 went on for six months?

13 A Correct.

14 Q So this feeling of having -- was it -- if you
15 class -- have you ever had the flu before?

16 A Yes, I have.

17 Q In the scheme of things, you knowing what the
18 normal flu feels like, was this less intense, more intense;
19 where did it fall in the spectrum?

20 A It was as intense, I would say, as having the
21 flu. It was --

22 Q So you felt like you had the flu for six months
23 during this treatment?

24 A Yes. Correct.

25 Q You get to the end of the six month period of

1 treatment and you don't respond?

2 A More blood work was taken and there were no
3 signs of improvement.

4 Q So at that point, that had happened in the past
5 though, before you were referred for the colonoscopy?

6 A That's correct. That is when I was seeing
7 Dr. Vizari.

8 Q Now, you get referred by Carrol to have the
9 colonoscopy done. I understand -- do you remember the date
10 that this occurred?

11 A The date that we planned the colonoscopy? It
12 was my prior visit to see him, and --

13 Q Actually, I meant the date that it actually
14 occurred, the procedure itself.

15 A Yeah. It was in September, but if I can refer
16 to my notes, I have it written down. I'm not --

17 Q Please do. Anything you need to refresh your
18 memory, if that will help you, go ahead and look at it.

19 MS. STANISH: Your Honor, may we look at those notes
20 for a moment?

21 THE COURT: All right. Just to see what he's
22 looking at.

23 MS. STANISH: Yes, please.

24 THE COURT: That's fine. You can approach.

25 MS. STANISH: Thank you. Not that I don't understand

1 the need to refresh memory. I just want to see what you got
2 there.

3 THE COURT: Sir, the defense attorneys are just going
4 to kind of take a peek there --

5 THE WITNESS: Sure.

6 THE COURT: -- over your shoulder, just so they can
7 see what you're looking at.

8 THE WITNESS: It's the grand jury testimony.

9 THE COURT: Okay. So you're just looking, for the
10 record, at your grand jury testimony --

11 THE WITNESS: That's correct.

12 THE COURT: -- to refresh your memory?

13 THE WITNESS: Yeah.

14 THE COURT: Okay.

15 THE WITNESS: All right. I was looking for that
16 date.

17 MS. STANISH: Do you have any other notes here?

18 THE WITNESS: These are invoices. This is a copy of
19 something that I just kept in that folder.

20 MS. STANISH: Sure.

21 THE WITNESS: And this was a voluntary statement I'd
22 given to Dr. Bob Whitely.

23 MS. STANISH: All righty. Thank you.

24 BY MR. STAUDAHER:

25 Q Did that refresh your memory?

1 A Yes, it did, and I lost the page. September
2 21st of 2007.

3 Q So on that date you're scheduled to have a
4 procedure done. About what time do you arrive at the clinic
5 in the morning?

6 A It was early. It was approximately 7:00
7 o'clock, between 7:00, maybe 7:15.

8 Q So when you arrived there, were there many
9 patients there at that point? That's the first part of the
10 day.

11 A No. There were very few.

12 Q Are you with anybody when you go to the clinic?

13 A My wife came with me.

14 Q What happens to you once you get inside?

15 A We go to the desk outside and start filling out
16 some paperwork. We -- my wife had filled the paperwork out
17 for me, she usually does. And we go back to the front desk
18 receptionist person, and they just said, Sit down and wait a
19 little bit and we'll call you back to get the procedure
20 started.

21 Q What was your -- did you have insurance at the
22 time?

23 A Yes, I did.

24 Q What was the insurance carrier that you had?

25 A Blue Cross Blue Shield.

1 Q Were there any copays or anything that you had
2 to pay to go and have the procedure done that day, if you
3 recall?

4 A Yeah. On the invoice, I have two invoices from
5 there. The Endoscopy Center showed a copay of \$100, and the
6 anesthesia showed a copay of 61.28.

7 Q So that's what you had to pay right then that
8 day, a copay?

9 A Yes.

10 Q Okay. So you fill out the paperwork, you pay
11 your copay, then you go sit down?

12 A Correct.

13 Q What happens next?

14 A Shortly we were called to come to the back to
15 get ready for the procedure.

16 Q Now, prior to being called back, when you filled
17 out that paperwork, did you see -- did you fill out anything
18 that indicated that again, that you had hepatitis C, anything
19 like that at that point?

20 A I don't remember if it was specifically asked on
21 that form.

22 Q Later on, do you mention that or talk to
23 somebody else about that later on?

24 A When I was discussing, when the nurse back there
25 was preparing me, she asked several questions, am I allergic

1 to anything. She took, I believe, my blood pressure. I did
2 tell her that I had hepatitis C.

3 Q So even on that day, not just that Carrol knew,
4 but the staff that you were working with, you informed them
5 that you were hepatitis C positive?

6 A Yes.

7 Q When you told that to the nurse, I mean, did she
8 make any kind of a reaction or did -- was it just something
9 that she kind of noted?

10 A None that I -- none that I could recognize. I
11 didn't see any kind of reaction.

12 Q She didn't say, oh, my God, or anything like
13 that?

14 A I tell everyone for every medical procedure that
15 I go to that I have hep C. I...

16 Q Let me ask you, what is the reason why you
17 disclose this to healthcare professionals when you go in?

18 A I don't want anybody contracting it from me. If
19 it's a procedure -- I mean, even my dentist, you know, if
20 there's blood involved, whether it be a blood test, blood work
21 where they can contract it, I want them to know that so that
22 they take the necessary precautions.

23 Q So is it fair to say that that's something that
24 you go out of your way to make sure everybody knows so they
25 don't --

1 A Yes, I do.

2 Q -- so they don't get injured?

3 A Yes, I do, absolutely.

4 Q Now back to where you were in front of the
5 nurse. You've gone -- you've been taken back. Does your wife
6 accompany you at this point, or are you --

7 A Yes. My wife was back there with me.

8 Q So you changed into some other kind of attire?

9 A Yes. They gave me a gown. There was a bathroom
10 type room where I would change in, got into the gown, and gave
11 my clothes, I believe I just put them in a bag and gave them
12 to my wife when I got out. Came back out to the room where I
13 was being prepped with the gown on.

14 Q Now, this nurse that you talked to, male or
15 female?

16 A Female.

17 Q Was she the only person you talked to before you
18 actually went back to the procedure room?

19 A The anesthesiologist came in for a brief period,
20 asked me if I was allergic to anything, spent maybe a minute
21 or two with me, had a few questions.

22 Q Did you mention to him that you were also hep C,
23 since he was the anesthesia person?

24 A Not a hundred percent sure, but I -- I would
25 tend to think I tell everybody that's involved with any kind

1 of medical procedures that --

2 Q Is that your custom and practice --

3 A Yeah.

4 Q -- to do that with everybody you deal with --

5 A Yes.

6 Q -- in the medical side of things?

7 A Yes.

8 Q And we know you did it for sure on that morning
9 back in that prep room area.

10 A Yes, I did.

11 Q So once he comes out and talks to you for this
12 brief time, is he just asking you general questions about your
13 health again, or what?

14 A Yes. No, they were just general questions.

15 Q And did he fill out anything as he was talking
16 to you, write any kind of things down, any notations, anything
17 like that?

18 A I don't recall. I know the nurse was taking
19 some sort of notes, and I don't recall if he had the clipboard
20 also. I don't remember that he did.

21 Q At some point does he -- I mean, does he stay
22 with you, does he leave, what happens?

23 A He leaves and he says, In a little while we're
24 going to call you back there and we'll get started.

25 Q So what did you do then?

1 A Just waited in the room. They put an IV in to,
2 I guess that's where they hook you up to the anesthesia when
3 you get in the room. So they put an IV in --

4 Q Where did they put that --

5 A -- the nurse did.

6 Q Where did they put that in?

7 A I believe it was in the forearm.

8 Q So you're mentioning kind of on the -- for the
9 record, on kind of the top of your arm --

10 A Yeah. I'm pretty sure that's where it went.

11 Q -- midway down?

12 A Yeah.

13 Q And the arm you're referring to is your left
14 arm?

15 A That's correct.

16 Q The device that they used to poke into the vein,
17 was that something that was left in place, or did they just
18 stick you in the vein?

19 A No. It was left -- it was taped on. It was --
20 the needle was inserted and then it was taped on and, I guess,
21 I don't know what that particular thing is called, but it's
22 a -- it's where they put the IV in when you get into the
23 surgical room.

24 Q Have you ever heard the term heplock, or heparin
25 lock?

1 A I've heard it from you when we discussed, you
2 know -- so that's the first time I heard of a heplock --

3 Q You know it was something that you --

4 A -- it being referred to as a heplock.

5 Q Okay. But it was -- but if I say the word
6 heplock, you're -- that's what I'm referring to and you -- so
7 you know that we're on the same thing.

8 A Okay. Yes.

9 Q Okay. So even though you don't know the name of
10 it, it was some device that they used to poke a needle into
11 and do whatever; is that right?

12 A That is correct.

13 Q So you have that inserted, and who put that in?

14 A The nurse did.

15 Q And you say nurse. Is it the female nurse, not
16 the anesthesia person?

17 A That is correct.

18 Q Female nurse puts this in. Now, did you watch
19 her do this? Were you paying attention to it?

20 A I never look directly at them when they're
21 putting it in, and then once it's in, I turned my head and
22 looked.

23 Q Okay. So you turn your head after it's stuck
24 in. I know how that is.

25 A Yeah.

1 Q But once you turn back and look at it, did you
2 ever see that person pick up a syringe of anything and put it
3 in there and inject it with anything?

4 A No, I did not.

5 Q So they put it in, tape it down and that's about
6 it?

7 A That is correct.

8 Q So you go then from there where?

9 A The next would be into the, I guess you call it
10 the operating room where the procedure was done.

11 Q And when you went in the room, do you remember
12 who was in that room when you got in there?

13 A Dr. Carrol was in there, the anesthesiologist,
14 and I don't know if it was one or two other assistant type
15 people that were in there.

16 Q So the same person, the anesthesia person that
17 came out and talked to you is the same person that was in the
18 room when you went back, or was it --

19 A That is correct. Yes.

20 Q -- a different one?

21 Same person?

22 A Same person.

23 Q So you get back into the room. Do you remember
24 how they positioned you, where you were, that kind of thing?

25 A Laying on a table. Dr. Carrol says, Are you

1 ready? I said, Yep, let's fire away.

2 Q Did the anesthesia person say anything to you
3 after you got in the room?

4 A Other than he was letting me know when he was
5 going to -- when he inserted the -- when he started to insert
6 the anesthesia, I think he told me to count back from ten, and
7 I think I got to seven before I guess I passed out.

8 Q Did you see him put that syringe or needle or
9 whatever it was into there to give you the anesthesia?

10 A Yes.

11 Q Okay. Before that happened, before he actually
12 put the syringe in with the medicine to put you to sleep and
13 had you count, at any time prior to that, did anybody stick
14 that what I'm calling the heplock, the device on that IV thing
15 that you were talking about, did anybody stick that with
16 anything and inject you with anything?

17 A No.

18 Q So the first time that gets accessed and
19 injected with anything is the anesthesia person back in the
20 anesthesia room right before you go to sleep?

21 A That is correct.

22 Q Now, I assume you went to sleep; is that fair?

23 A Yeah.

24 Q When you wake up, because obviously you're here
25 today, you woke up, right?

1 A [No audible response.]

2 Q When you wake up, where are you?

3 A In a recovery room. In a recovery room. It
4 must have been a separate room. Groggy. Then I remember
5 being wheeled back out to the initial room that I -- when I
6 came in to get prepped in, and that's where my wife and we
7 waited a little while for me to shake the grogginess so we can
8 get over the anesthesia.

9 Q Were you still on a table, on a bed?

10 A No. I was on a bed.

11 Q So when you wake up you're on a bed in a room
12 near the place you had the procedure done?

13 A [No audible response.]

14 Q Your wife comes out?

15 A Yes.

16 Q And she's with you?

17 A Correct.

18 Q Was there anybody else taking care of you at
19 that time, or kind of watching over you?

20 A I believe the nurse. Dr. Carrol did stop by
21 afterwards and spent a couple minutes, told me that he found a
22 polyp, a polyp or two, and he snipped them. He was going to
23 send them to a laboratory for testing, that everything went
24 well and that was about it.

25 Q Now, the nurse that you're talking about that

1 was, and I'm going to call it in the recovery area because
2 it's the last place you went after the procedure, correct?

3 A Yes.

4 Q In the recovery area, the nurse that came out
5 and dealt with you there that kind of was with your wife, was
6 that the same nurse that you had dealt with in the preop area
7 before you went back to the room?

8 A Yes, it was the same person.

9 Q So the same person before and the same person
10 after?

11 A Yes.

12 Q The anesthesia person that you mentioned that
13 did the procedure on you in the procedure room, did that
14 person ever come out during the time you were there and talk
15 to you, do anything?

16 A No, not after the initial contact prior to the
17 procedure.

18 Q So saw him before and obviously in the room, but
19 not afterward?

20 A Correct.

21 Q Did you at any time see that person again before
22 you left the facility that day?

23 A No.

24 Q After Dr. Carrol stops by and tells you about
25 the polyp, how long are you in the facility before you leave?

1 A A relatively short time. I didn't have too much
2 of a conception of time. I was woozy.

3 Q To the best of your estimate. Okay. If you
4 know.

5 A I want to say maybe 40 minutes, 45 minutes or
6 so. I was discussing that with my wife and she, you know,
7 just from a time frame, we must have gotten home by about
8 10:00 o'clock, 9:30, 10:00 o'clock, so I couldn't have been
9 there, back that long. I was still pretty woozy when I left,
10 then the drive home, so. The initial question was how long
11 was I in the recovery?

12 Q Yes. After you got -- when you woke up about
13 how long, to the best of your recollection, if you can answer
14 that.

15 A I want to say about a half an hour to 45
16 minutes.

17 Q So it took awhile for you to wake up and get
18 stable?

19 A Yeah. Yeah, be able to stand up and walk.

20 Q Now, after you left the facility that day -- I
21 mean, you're here today, correct?

22 A Yes.

23 Q How -- did anybody contact you about any problem
24 that may have arisen related to your endoscopy that you did,
25 and whether it was a professional entity, meaning police or

1 the health district or anybody, did anybody contact you after
2 that?

3 A Yes, later on. And again, I don't have that
4 time frame.

5 Q That's fine. But did somebody contact you and
6 talk to you about what had happened at the clinic that day?

7 A Yes. I did do an interview with Metro --

8 Q With the police?

9 A -- in April. I have it dated as April 22, 2008.

10 Q Okay. Now I want to step over to the insurance.
11 I know we touched on that just a moment ago, but I want to ask
12 you a few questions about your insurance. We talked about the
13 copays. But did you, in the course of -- I mean, with this
14 insurance company, because this was Blue Cross, correct?

15 A Correct.

16 Q Was it Anthem Blue Cross?

17 A It says here Blue Cross Blue Shield of Georgia.
18 It's through my --

19 Q So you have some actual records up there
20 related to --

21 A Yes. These are the documents, the copies of the
22 documents that they send to you. It's called an explanation
23 of benefits.

24 MR. STAUDAHER: May I approach, Your Honor?

25 THE COURT: You may.

1 MR. STAUDAHER: And this has been previously shown to
2 counsel.

3 BY MR. STAUDAHER:

4 Q I want to show you a portion of State's Proposed
5 59, and ask you to look at a couple of things to see if these
6 are -- I know these are a smaller version of that and I'll
7 blow them up in a minute. But does this look familiar to you
8 or not?

9 A Health insurance [inaudible].

10 Q You may not have seen this one?

11 A No, I did not see that.

12 Q Okay. The next portion you may or may not have
13 seen -- I'm just trying to find out what you actually have or
14 have seen. Does this look familiar to you, where it says
15 anesthesia and billing charges and things like that?

16 A No.

17 Q What about the next page, which would be 487?
18 And these are all marked GJ Desai, and then a number.

19 What about the next one, which is 488?

20 A No.

21 Q 489?

22 A No.

23 Q 490?

24 A No.

25 Q And 91?

1 A No.

2 Q Now, when we get to this form here, which is
3 actually 492, do you see it has your name here?

4 A Correct.

5 Q And at least the -- it looks like there's a
6 person, a provider by the name of Keith Mathahs. Do you see
7 that?

8 A Yes, I do.

9 Q Okay. The date of service is 9/21 of 2007?

10 A Yes.

11 Q And does this appear to be an insurance form
12 that you would have received at one point related to your
13 endoscopy procedure?

14 A Yes, it does.

15 Q Okay. And I think that's the only one we have
16 for you. But you have a couple of others as well with you
17 that show things like [inaudible].

18 A These are explanation of benefits from Blue
19 Cross Blue Shield.

20 Q Indications that you actually had a procedure
21 and the insurance company paid on that procedure?

22 A I'm sorry. I didn't hear.

23 Q Is your -- the paperwork, the things that you
24 received, is there an indication that your insurance company
25 was billed, charged and paid for that procedure?

1 A Yes.

2 Q According to your records, do you know what the
3 charges were for the procedures? And I believe there were a
4 couple different charges. There may be -- you may see a
5 facility charge, a doctor charge and an anesthesia charge. Do
6 you see those?

7 A Yes, I do. Amount charged, provider amount
8 allowed, and then provider responsibility, and then
9 co-insurance and copay.

10 Q Did you have any other insurance beside the Blue
11 Cross Blue Shield?

12 A No, I did not.

13 Q So what did they pay on the facility charge?

14 A The amount allowed on the -- I think this is the
15 anesthesiology one. Yes, it is. The amount allowed was
16 \$306.40.

17 Q What was charged?

18 A The amount charged was \$560.

19 MR. STAUDAHER: Your Honor, I'm going to move for
20 admission of State's Proposed 59 of the page specifically that
21 he referenced, which was 492.

22 MS. STANISH: No objection.

23 THE COURT: All right. So you're just moving for the
24 one page, or the whole --

25 MR. STAUDAHER: That's correct. This is going to

1 come in through another witness, but I wanted to publish this
2 particular page.

3 THE COURT: Okay. All right.

4 MR. STAUDAHER: I didn't hear from Mr. Santacroce.

5 MR. SANTACROCE: I have no objection.

6 THE COURT: All right. You may publish that page.

7 MR. STAUDAHER: Thank you, Your Honor.

8 THE CLERK: Is that page 142?

9 MR. STAUDAHER: This is 192.

10 THE CLERK: Oh, I'm sorry.

11 (State's Exhibit 59, page 492 admitted.)

12 BY MR. STAUDAHER:

13 Q So on this record, do you see up here that it
14 says Anthem Blue Cross Blue Shield, up here in the --

15 A Yeah.

16 Q What you're going to look at is --

17 THE COURT: And you can look on your monitor, sir,
18 right there, if that's easier for you.

19 THE WITNESS: Oh.

20 MR. STAUDAHER: And if for some reason you want to
21 write on this, you just take your fingernail and draw on it,
22 and you can just tap it down to make it go away.

23 THE WITNESS: Okay.

24 BY MR. STAUDAHER:

25 Q Okay. Now, as far as this one here, and I'm

1 referring -- I'm going to zoom in on this a bit so that we can
2 move around on the documents. Do you see the first part up in
3 the upper right-hand corner, it says, "Anthem Blue Cross Blue
4 Shield"?

5 A Yes.

6 Q And it's -- it says, "Attention billing," and
7 it's talking about over here Keith Mathahs. Do you see that?

8 A Yes.

9 Q 700 Shadow Lane?

10 A Correct.

11 Q And then over here, your name?

12 A Yes.

13 Q And then the actual date of service, which is
14 right here?

15 A Correct.

16 Q And then the charges which mirror the charges
17 you just referred to, we go along this whole line here. And
18 let me zoom in on that one more time. Maybe twice more.
19 Start over here where it says, "Date of service, 9/21 of
20 2007."

21 A Yes.

22 Q Now, there's a procedure code here that says
23 810. Do you see that?

24 A Yeah. I see that.

25 Q If we move across, it says, "Total charges,

1 \$560"?

2 A That is correct.

3 Q Amount allowed, \$306.

4 A Correct.

5 Q And if we move across, keep going, there's a
6 portion here that said, "Other insurance." You didn't have
7 any, you said.

8 A That is correct.

9 Q And then it says the provider's liability,
10 this 253.60, do you see that?

11 A Yes.

12 Q Do you know what that is? Was that something
13 that you ended up having to pay or not, or do you recall?

14 A I do not recall.

15 Q Okay. And then it says, "Subscriber's
16 liability," which would have been you, it would have been \$41
17 and --

18 A And 61, is that?

19 Q Forty-one -- actually it says, I think, 61.28,
20 when I look at this.

21 A Yes. Yes.

22 Q Okay. If we -- sorry. It's a little bit
23 whitening out there. I'll try and get that so it doesn't do it.
24 This says approved payment amount is 245.12. Do you see that
25 for that particular line?

1 A Right.

2 Q Okay. So in this particular case, the amount
3 allowed for the charges was 306, back here.

4 A Yes.

5 Q And that corresponds with the paperwork that you
6 have?

7 A Yes, it does.

8 Q Do you remember if you got a secondary bill from
9 the Endoscopy Center?

10 A I don't believe I did.

11 Q So your insurance paid it and you don't know
12 that you paid any additional beyond your copay; is that fair?

13 A That is correct, yeah.

14 Q Now, almost done with you. One last thing. I
15 want to go back to the issue of you were talking to your
16 healthcare providers in advance, giving them notice that you
17 are a hepatitis C positive patient. I think you told us that
18 that was because you didn't want anybody to get infected.

19 A Yes.

20 Q Did you subsequently learn, in the process of
21 coming in before the police or testifying before the grand
22 jury, that certain persons were actually infected in this
23 case, and that you were attributed to be the source patient
24 for that, those infections?

25 A Did -- when did I --

1 Q No, no. Let me -- a bad question.

2 A I'm sorry.

3 Q Did you become aware at some point that certain
4 persons had become infected with the hepatitis C virus, and
5 you were the person that was, at least the records --

6 MR. WRIGHT: Can we approach the bench?

7 THE COURT: Yes, sir.

8 BY MR. STAUDAHER:

9 Q -- in indication showed was a hepatitis -- was
10 the source patient?

11 A Yes.

12 THE COURT: Mr. Staudaher, wait a minute.

13 Mr. Wright's making an objection.

14 (Off-record bench conference.)

15 MR. STAUDAHER: I'm going to rephrase the question.

16 THE COURT: All right.

17 BY MR. STAUDAHER:

18 Q After -- after you got involved with the police,
19 and did the health district also get involved with you at some
20 point?

21 A Yes.

22 Q Were you required to go down and give a blood
23 sample to the -- or not required, but did you -- did they ask
24 you to come down and give a blood sample?

25 A Yes, they did.

1 Q So you provided that --

2 A Yes, I did.

3 Q -- for the investigation in this case. And I'm
4 not talking about just the police investigation. I'm talking
5 about the health district investigation.

6 A Yes, I did.

7 Q So you -- and tell me, if you would, how that
8 was and where did you go down to have this done, who did it.

9 A I believe it was on Shadow Lane too, the
10 headquarters for the health district, in the -- went down
11 there, got -- had the blood work done. That was it.

12 Q So you actually went to the health district
13 and --

14 A Yeah, I went there --

15 Q -- had blood drawn?

16 A -- to them, and then --

17 Q And you knew that that's what -- that what we're
18 here for is what that was about?

19 A Yes.

20 MR. STAUDAHER: I have nothing further.

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

22 Mr. Santacroce.

23 CROSS-EXAMINATION

24 BY MR. SANTACROCE:

25 Q Good afternoon, Mr. Rubino.

1 A Good afternoon.

2 Q Mr. Rubino, on September 21st of 2007, you went
3 to the Endoscopy Center for a colonoscopy; is that correct?

4 A That is correct.

5 Q What time did you arrive at the clinic?

6 A Approximately between 7:00 and 7:30.

7 Q And after you had filled out the paperwork that
8 you had to fill out, you waited until a nurse came back and
9 got you; is that correct?

10 A That is correct.

11 Q And the nurse comes back to get you and it's a
12 female nurse, correct?

13 A That's correct.

14 Q And where did she take you?

15 A To an area to get me prepared for the
16 colonoscopy.

17 Q And can you describe that area? How many beds
18 were in that area?

19 A I couldn't tell you off the top of my head.
20 Maybe two or three.

21 Q There was more than one, correct?

22 A Yeah.

23 Q Were you the only person in that area, or were
24 there others?

25 A I believe I was the only one at that time.

1 Q Did others come in while you had been there?

2 A Not that I noticed. They could have, but I
3 wasn't -- I was more worried about what was going to go on
4 with me than the activity around me.

5 Q Were there any curtains separating the beds?

6 A There were curtains, yes.

7 Q Was your curtain closed?

8 A Not all the time.

9 Q Now, tell me what this female nurse does in that
10 particular room.

11 A She had some paperwork for me to -- she was
12 filling out some paperwork, asking me some questions. She
13 took blood pressure, temperature, and she also put the, as was
14 referred to as the heplock, inserted that. Pretty much that's
15 what she did.

16 Q And isn't it true that she started an IV on you?

17 A She started an IV?

18 Q Yeah.

19 A She inserted the heplock and it was taped up.
20 There was nothing else that was hooked up to.

21 Q Do you know what an IV is?

22 A Something that you take intravenously.

23 Q So something that's connected to something and
24 fluid drips in --

25 A Correct.

1 Q -- is that your understanding of an IV?
2 A Correct.
3 Q And when you use that term, IV, that's what
4 you're referring to?
5 A [No audible response.]
6 Q Is that a yes?
7 A Yes.
8 Q Have you discussed your testimony with anybody
9 prior to coming here today?
10 A Other than my wife, no.
11 Q Do you remember giving an interview to the
12 metropolitan police department regarding this case?
13 A Yes.
14 Q Do you remember telling them -- and I believe
15 you have a copy of it; isn't that correct?
16 A Yes.
17 Q If you look at the page, the top of page 7, do
18 you have that?
19 A Yes, I do.
20 Q Those initials next to that, KR, is that you,
21 Kenneth Rubino?
22 A There's nothing on this that's initialed. Oh,
23 those initials. Yes. I'm sorry.
24 Q Okay. It says -- this is your answer to
25 question --

1 MR. STAUDAHER: Objection, Your Honor. That's not
2 the appropriate way to handle these kinds of questions.

3 THE COURT: All right. That's sustained.

4 BY MR. SANTACROCE:

5 Q Do you want to take a look at that, Mr. -- did
6 you ever tell the metropolitan police department that they
7 give you an IV?

8 A I don't remember specifically, unless I was
9 referring to the heplock being inserted.

10 Q You didn't say heplock there, did you?

11 A I'm not familiar -- I wasn't familiar with that
12 term. I just considered anything stuck in my arm as an IV.

13 Q Well, you just told me what you considered as an
14 IV about a minute ago. That included something, a bag with
15 fluid dripping into the needle; isn't that what you told me a
16 few minutes ago?

17 A Yes.

18 Q And further down there, did you ever tell
19 metropolitan police department that you were sitting in a bed
20 with an IV?

21 A Is that still -- oh, it's on page 7, you said?

22 Q The bottom of that paragraph.

23 A Okay. What I was referring to when I was using
24 the term IV in this instance was the fact that they -- the --
25 what is now known to me as a heplock, not a bag with anything

1 dripping or anything like that into it. But I just --

2 Q So it's your testimony that your idea of an IV
3 was different when you gave this statement to --

4 MR. STAUDAHER: Objection, Your Honor. He's
5 explained what he meant. That's argumentative at this point.

6 THE COURT: Well, no. He can ask the question.

7 BY MR. SANTACROCE:

8 Q Was your understanding of an IV different when
9 you gave that statement to the metropolitan police department
10 as it is today that you just described?

11 A Yes, it is.

12 Q Now, you testified that -- your words, I
13 believe, as I recollect, was that an anesthesiologist came
14 into the room and asked you some questions?

15 A That's correct.

16 Q And you described that person as a male
17 individual?

18 A That's correct.

19 Q Different than the person that had started the
20 IV, or heplock or however you want to describe it today?

21 A Yes. He was introduced as the anesthesiologist.

22 Q And that anesthesiologist was not this gentleman
23 right here, was it?

24 Stand up, please.

25 A To be honest with you, I would not remember his

1 face.

2 Q Okay. Well, Mr. Staudaher went over the records
3 with you, and that record indicated that your, quote,
4 anesthesiologist was a person by the name of Keith Mathahs.
5 Would you have any reason to doubt that was correct?

6 A No. I have no reason to doubt it.

7 Q And do you remember -- well, clearly you
8 remember who your doctor was. It was Clifford Carrol,
9 correct?

10 A That is correct.

11 Q And Clifford Carrol performed the procedure on
12 you on September 21st of 2007; isn't that correct?

13 A Yes, he did.

14 Q Now, after you left the procedure room -- well,
15 strike that.

16 I believe you testified that when you were given the
17 anesthesia, they told you to count back from ten to one, and
18 you got to seven. So about three seconds and you were out,
19 correct?

20 A That is correct.

21 Q And when you woke up, you woke up on a bed in a
22 recovery room, or in the procedure room?

23 A I believe it was on a bed in the recovery room.

24 Q But it was a different room than the procedure
25 had been performed in, correct?

1 A Yes.

2 Q And it was a different room where the IV or
3 heplock had been started, correct?

4 A Yes.

5 Q And how long were you in that room?

6 A A relatively short period of time that I can
7 remember. Again, I was woozy from the anesthesia, so I
8 couldn't give you a definitive amount of minutes, whether it
9 be 10, 15, 5. I'm not really sure how long I spent in there
10 until I was wheeled out. It might have -- my perception of
11 time just coming out of anesthesia is a little hazy.

12 Q So you can't tell me if it was 15 minutes or an
13 hour or a half-hour?

14 A Well, it wouldn't -- it definitely wasn't an
15 hour or a half an hour, because it wasn't in the -- the whole
16 procedure from soup to nuts didn't take that long.

17 Q Do you remember in that same interview with the
18 metropolitan police department that you told the investigator
19 that you couldn't tell if it was 15 minutes or if it was an
20 hour or a half an hour? Do you remember telling the
21 investigator that?

22 A If I would be able to see what page you're
23 looking at, I can verify that or not.

24 Q Try page 7.

25 A Yeah. I couldn't tell you if it was 15 minutes

1 or an hour or a half an hour. I just remember being in there
2 for a little while.

3 Q So today, as you sit here today some 5 1/2 years
4 later, is it your testimony that it only -- you were only in
5 there for a few minutes?

6 MR. STAUDAHER: Objection. Asked and answered, Your
7 Honor.

8 THE COURT: Overruled. He can answer the question.

9 THE WITNESS: My testimony was in there, yeah, that I
10 was in there for a relatively short period of time.

11 BY MR. SANTACROCE:

12 Q I want to just go back to the -- backtrack a
13 little bit, and I apologize for this, but in the room, the
14 prep room where you received the hepllock or IV, you said you
15 had turned your head away when it was put in?

16 A When the initial put the needle in, yes, until
17 the pinch is done.

18 MR. SANTACROCE: I have no further questions. Thank
19 you.

20 THE COURT: Thank you. Ms. Stanish.

21 CROSS-EXAMINATION

22 BY MS. STANISH:

23 Q Good afternoon, Mr. Rubino.

24 A Afternoon.

25 Q I just want to -- I always do that. This

1 thing's tricky.

2 I just want to first start by clarifying a few
3 timelines with you, okay?

4 A Okay.

5 Q I understand that you were first diagnosed with
6 hepatitis C back in the year 2000.

7 A That is correct.

8 Q And was it around that time that you tried that
9 medicine regimen that Mr. Staudaher discussed with you?

10 A I believe it was several years later, maybe two
11 or three years later that I --

12 Q That's what I was going to ask you to clarify.

13 A Yeah.

14 Q Several years is two or three years; is that
15 what you're saying?

16 A Yeah.

17 Q So around the year 2000, 2003 perhaps you tried
18 this medicine regimen and it didn't work for you?

19 A Correct. And all those medical records of --
20 that were in my medical -- my folder that Dr. Vizari gave to
21 Dr. Carrol when I transferred, he transferred me as a patient,
22 so to speak. So those dates would be exactly in there about
23 when that --

24 Q I'm not going to fuss with you on dates.

25 A Okay.

1 Q I'm with you. Time frame. What I wanted to
2 understand is after you had that regimen of trying the
3 medication, you decided you didn't want to try further
4 medicine regimens; is that correct?

5 A Correct. Unless there was a new, a new
6 medicine, a new more improved version of that medicine that
7 would give me an opportunity to fight this disease.

8 Q And are you -- by the way, are you fighting this
9 disease with alternative medicine technique?

10 A The only -- I use an herb called milk thistle,
11 and that's the only thing that I take for the hepatitis C
12 right now.

13 Q And as well --

14 A I do have a new doctor that I'm seeing, and he's
15 saying that there's a possibility of something down the road
16 exciting going on with that, so.

17 Q That was actually going to be my next question,
18 sir. After you stopped seeing Dr. Carrol, who did you go to
19 for your GI care?

20 A My internal medical doctor, Dr. Panikkar, had
21 referred me to a doctor that I saw once and he left town. He
22 moved his practice. So for a while I hadn't seen anybody.
23 And then she then referred me to the doctor that I'm using
24 now.

25 Q And who is that?

1 A Dr. Nemeč.

2 Q And it's your understanding that there's new
3 medication that's going to become available to you?

4 A Next year.

5 Q And you had -- so you saw Dr. Carroll from the
6 year about 2002, '3 --

7 A Maybe, '3, '4.

8 Q -- up to 2007, when you had --

9 A Whenever Dr. Vizari left and then up to 2007, up
10 until the time I had the colonoscopy.

11 Q And you were seeing him on a periodic basis for
12 the hepatitis C monitoring; is that correct?

13 A That is correct.

14 Q And only one time did you have a colonoscopy,
15 and that was on that September 21, 2007 day that we were
16 discussing, right?

17 A That is correct.

18 Q Never had a colonoscopy before?

19 A I did have a colonoscopy before. I don't
20 remember -- I've had many medical procedures. I've had
21 several lithotripsies. I did have a colonoscopy before. This
22 was the second time, but I think it was either three or four
23 years prior that I had the first -- I don't remember which
24 doctor I did it with.

25 Q That's okay. That's all right. I just wanted

1 to understand how familiar you may have been with the
2 colonoscopy procedure, because it -- and so let me move now to
3 your contact with law enforcement in this case. We've already
4 discussed that a bit.

5 The -- after you had your colonoscopy, the first
6 contact was with Las Vegas Metropolitan Police, or was it with
7 someone from the health district?

8 A The health district had contacted me. And I'm
9 not sure which came first, the health district and/or the
10 detective that called me.

11 Q Maybe just to help you with the time frame, as
12 you pointed out, the date of your interview with Detective
13 Whitely was April 22, 2008, correct?

14 A That is correct.

15 Q And do you -- I thought I understood you to
16 say --

17 A I would say that the health department contacted
18 me before that.

19 Q Are you -- do you know, or you're not sure?

20 A I'm not -- I'm not a hundred percent sure.

21 Q Well, would this help you? Because I thought I
22 understood you to say, sir, that you had to get blood -- give
23 blood, or give a sample of blood to the health district?

24 A That's correct.

25 Q All right. And so when you were contacted by

1 the health district, did they send you a letter or phone you?

2 A I believe they -- it was a telephone call. I
3 don't remember receiving any correspondence in the mail. I
4 believe it was a telephone call, and I'm -- if I had to put a
5 percentage on, I'd say I'm 90 percent sure it was prior to my
6 interview with Las Vegas Metro.

7 Q And did you actually go to the health district
8 facility that's located on Shadow Lane, or very close there?

9 A Yes, I did.

10 Q And when you went there, did you just go see a
11 lab tech who drew blood from you?

12 A Yes, I did.

13 Q Did you speak with anybody there, give them --
14 were you interviewed? Did someone try to get information from
15 you?

16 A I don't remember the dialogue verbatim, but I
17 said the reason why I was there was because I do have hep C,
18 I'd been diagnosed with hep C, and -- and that's the reason.

19 Q To get tested. But was there -- were you
20 directed to come in and speak to anybody in particular there?

21 A No. I was not interviewed there.

22 Q So you just went to get the test there?

23 A Yes.

24 Q Some lab person stuck you again with a needle
25 and drew blood?

1 A Yes.

2 Q And did you only have -- did you only have to go
3 to the health district one time, or did you have to go another
4 time?

5 A It was just one time.

6 Q In preparation for -- well, let me ask you this:
7 When the police officer visited with you -- well, how did your
8 interview come about on April 22, 2008? Do you remember?
9 Were you called? Did someone come knocking on your door?

10 A It was a phone call from the detective, and he
11 said that he would like to interview me on the record to --
12 with regard to the colonoscopy and the hepatitis C, that whole
13 deal.

14 Q And --

15 A It wasn't his words exactly. Those are my
16 words.

17 Q Sure. That's okay. And that conversation was
18 tape recorded?

19 A Not at my end.

20 Q Oh, no, not you. But you have a transcript
21 that -- in front of you there, right?

22 A Yes.

23 Q Okay. So did Detective Whitely tape record the
24 conversation?

25 A Yes.

1 Q It wasn't like wearing anything secret. He just
2 had a tape recorder right there, correct?

3 A Correct.

4 Q And before he started the tape recording, was
5 there any discussion about the case or what occurred at the
6 clinic?

7 A No. He just said, "I'm going to ask you some
8 questions, and answer them as -- answer them honestly and to
9 the best of your recollection, and I'm going to record this."

10 Q All right. And after that interview -- and I'm
11 going to come back to this a little bit later. But after that
12 interview, do you remember whether or not you spoke to Metro
13 again?

14 A I don't remember if I had any other dialogue
15 with them with regard to that. As far as my memory serves me,
16 no.

17 Q All right. Were you ever interviewed -- other
18 than what you've described for us going to the health
19 district, were you ever interviewed by anyone from the
20 Southern Nevada Health District?

21 A No.

22 Q Were you ever interviewed by someone from CDC,
23 the Centers for Disease Control?

24 A No, I was not.

25 Q Never?

1 A No.

2 Q Now, you testified in front of the grand jury,
3 correct?

4 A Correct.

5 Q And that was on March 11, 2010, correct?

6 A Now I have to verify that, the dates.

7 Q Sure.

8 A I don't see the date on here.

9 MS. STANISH: Here. May I approach, Your Honor, just
10 to move it along?

11 THE COURT: You may.

12 MS. STANISH: [Indicating.]

13 THE WITNESS: Okay. Yes, that is correct.

14 BY MS. STANISH:

15 Q Before you went into the grand jury room and
16 gave your testimony, did you do anything to prepare for your
17 testimony?

18 A Other than mentally go over everything that
19 happened in my mind, no.

20 Q Did you speak to a prosecutor or to detectives
21 before going into the grand jury?

22 A Other than them explaining to me what the
23 procedure is, that was the conversation, this is what happens
24 in a grand jury, I ask you questions, you answer them honestly
25 and...

1 Q Did you review -- did they review with you your
2 medical records before you went in to the grand jury?

3 A I don't have any recollection of going over
4 anything like that prior to.

5 Q Now, let me just go back and hit a few more
6 points on the procedure day, if you'd go back to me -- to
7 September 21st of '07. I understand it that the times are not
8 clear to you, and am I right to say your -- do you have
9 difficulty remembering dates and time like most human beings?

10 A Yes, I do.

11 Q And you basically -- is it a fair statement that
12 when you first interviewed with Metro, there was a great focus
13 on trying to establish when you got to the clinic and when you
14 left?

15 A Yes.

16 Q And did you eventually figure it out with the
17 assistance of your wife that you probably left the clinic at
18 about what time?

19 A I'm thinking it was approximately 9:30, 10:00.

20 Q And you are -- you're taken to the prep room and
21 a nurse interviews you, correct?

22 A Yes.

23 Q And then a -- the anesthesiologist, or what I'm
24 going to refer to as a CRNA, interviews you?

25 A Yes.

1 Q And there was -- do you remember how long the
2 anesthesiologist, the CRNA spoke with you?

3 A It was fairly brief. It was maybe five minutes.

4 Q Would you -- do you have your grand jury
5 testimony in front of you there?

6 A Yes, I do.

7 Q Do you see how -- the little numbers at the top?
8 Would you just take a look at, find --

9 MS. STANISH: How about I approach, Your Honor,
10 just to --

11 THE COURT: Mm-hmm.

12 MS. STANISH: May I? Thank you.

13 BY MS. STANISH:

14 Q Just so we're reading off the same page. It's
15 105, right there, 109. I'm going to refer to these numbers.
16 Okay?

17 A 109 and 110.

18 Q And if you would, just read to yourself this
19 portion [indicating]. I'm refreshing your memory.

20 A Okay.

21 Q And after reading that, sir, is the -- do you
22 recall your answer was that the -- or do you now recall that
23 you spoke with the CRNA, the anesthesiologist from five to ten
24 minutes?

25 A Yes.

1 Q And just to clarify for me, this insertion of
2 what now is known as the heplock, when did you learn that
3 term, heplock?

4 A Upon speaking to the district attorney's office.

5 Q Okay. When did you speak with the district
6 attorney about the term heplock?

7 A It was several weeks ago.

8 Q All right. In preparation for your testimony
9 today?

10 A That is correct.

11 Q All right.

12 A I don't remember the exact date.

13 Q Okay. Several weeks ago. And I'll come back to
14 that in a moment. When you were in the grand jury, at that
15 time did you know the term heplock? Was it explained to you
16 then?

17 A I believe he used the term heplock. He used the
18 term heplock and asked me a question. And my response is,
19 They left part of a needle -- again, I wasn't --

20 Q And if I could draw your attention to page 110,
21 right around line 4 or 5, if you would just read that to
22 yourself, please.

23 A Okay.

24 Q And then just to move this along, if you would
25 read to yourself the -- well, let me ask you this: They put

1 the heplock in and it looks like sometimes you refer to it as
2 an IV.

3 A Yes.

4 Q And when Mr. Staudaher is asking you questions,
5 he refers to it as what?

6 A As a heplock now, once he explained to me what
7 he meant and we understood that we were talking about the same
8 thing.

9 Q All right. Fair enough. And the nurse, the
10 female nurse puts in the heplock, correct?

11 A That is correct.

12 Q You don't look. You don't want to see it.

13 A I don't look when she insert -- the initial
14 insertion, but once she does, I'm fine.

15 Q And what is your recollection of what happened
16 once that heplock was inserted?

17 A It was taped so that it wouldn't move. That's
18 it.

19 Q Did you watch her put the tape on?

20 A Yeah.

21 Q And did -- was it flushed? Do you know what I
22 mean by that term?

23 A Was anything inserted into it, no.

24 Q Now, and you're certain of that as you sit here
25 now?

1 A Yes.

2 Q Take a look, if you would, please, on page 110.
3 Begin -- read to yourself beginning at line 23, and then read
4 down to line 25, which goes over to the next page.

5 A Okay.

6 Q And perhaps read the rest of page 111 to
7 yourself.

8 A Okay.

9 Q Is it a fair statement that when you were asked
10 these questions about what happened to the heplock, IV,
11 whatever we're going to call it, your response was that you
12 don't recall that anything was done with the heplock?

13 A Okay. That's the way it's stated on the papers,
14 so and I might have said -- I must have said that if that's
15 the way it's stated.

16 Q Well, in this --

17 A Not that I have -- I have no recollection of
18 anything like that.

19 Q Sure. I understand. That's why I'm having you
20 refresh your memory with the transcript. This testimony
21 occurred on March 11, 2010, correct?

22 A Correct.

23 Q And so this was pretty long after you had the
24 procedure on September 21, 2007; fair statement?

25 A Yes.

1 Q Fair statement that it was also pretty long
2 after you had your initial interview with the detective in
3 April of 2008?

4 A Yes.

5 Q And now you -- when you interviewed a few weeks
6 ago to prepare for your testimony, was there more discussion
7 about this heplock and having it flushed?

8 A Yes, there was.

9 Q Okay. I'm almost done. Bear with me. I just
10 want to check through these things.

11 I know you were woozy and still a little tired on
12 your way out of the clinic and it was a long time ago. But do
13 you recall going out of the clinic into the waiting room area?
14 If you recall.

15 A Not specifically, but I don't remember what the
16 exit pattern was there.

17 Q Did you have a choice as to what clinic you went
18 to? Or, you know, you went to Dr. Carrol. Did you go there
19 by choice? Did you have a choice of doctors with Blue Cross?

20 A I trusted Dr. Carrol in many --

21 Q Why is that?

22 A He had been easy to relate to and talk to about
23 the hepatitis and about treatments. When he suggested a
24 colonoscopy, you know, he said, You haven't had one in a
25 couple of years. I agreed. I didn't -- I didn't think or ask

1 if there were any other options or any other places to go to.
2 I just went with what I know.

3 Q And did -- am I to understand that Dr. Carrol
4 did in fact speak to you after your colonoscopy was done?

5 A Yes.

6 Q And he told you that he discovered a couple of
7 polyps?

8 A Yeah, that he snipped them --

9 Q He snipped them.

10 A -- and he sent them off and he thinks everything
11 will be fine. And I did have a follow-up visit with him
12 several weeks later, once the lab results came back in.

13 MS. STANISH: The Court's indulgence. Thank you.

14 (Pause in proceedings)

15 MS. STANISH: Nothing further. Thank you, sir.

16 THE COURT: Thank you. Redirect.

17 MR. STAUDAHER: Just a couple.

18 REDIRECT EXAMINATION

19 BY MR. STAUDAHER:

20 Q You just heard the whole discourse, you've read
21 some stuff up there about the statement about the injection of
22 anything after that, your term, IV was put in --

23 A That's correct.

24 Q -- remember that?

25 A Yeah.

1 Q And I went through the whole thing. I said,
2 Did -- when we got to the procedure room, you said that's the
3 first time you remember anybody ever sticking anything into it
4 and pushing any fluid into you; is that correct?

5 A That is correct.

6 Q So before that, even though you used, I don't
7 recall, you know, that ever happening, I mean, is it just that
8 you don't remember anything like that, any of the events, or
9 that the first time anybody ever put anything into your IV
10 site was when you were going to go to sleep?

11 A That is correct. There was nothing put into the
12 IV site other than when I got into the procedure room.

13 Q And the last question you were asked, you said
14 you trusted Dr. Carrol.

15 A Yes.

16 Q And he was your doctor and you believed in him?

17 A Yes.

18 Q You relied on him?

19 A Yes, I did.

20 Q Thank you.

21 MR. STAUDAHER: Nothing further.

22 THE COURT: Any recross?

23 RE-CROSS-EXAMINATION

24 BY MR. SANTACROCE:

25 Q Mr. Rubino, despite your testimony here today,

1 despite your testimony or your interview with metropolitan
2 police department, your sworn testimony at the grand jury, is
3 your testimony today under oath that nothing was inserted into
4 that heplock prior to going into the -- the procedure room,
5 correct?

6 A Yes, it is.

7 Q Is that your testimony?

8 A Yes, it is, sir.

9 MR. SANTACROCE: Nothing further.

10 THE COURT: Mr. -- I'm sorry. Ms. Stanish.

11 MS. STANISH: Nothing further, Your Honor.

12 THE COURT: Anything else from the State?

13 MR. STAUDAHER: No, Your Honor.

14 THE COURT: Do we have any juror questions for this
15 witness? All right. Sir, thank you for your testimony.
16 Please don't discuss your testimony with anyone else who may
17 be called as a witness in this case.

18 THE WITNESS: Okay.

19 THE COURT: All right. Thank you, sir, and you are
20 excused.

21 All right. Ladies and gentlemen, I think we're going
22 to go ahead and take a brief recess for approximately ten
23 minutes.

24 Before I excuse you for the brief recess, I must
25 again admonish you that you're not to discuss the case or

1 anything relating to the case with each other or with anyone
2 else. You're not to read, watch or listen to any reports of
3 or commentaries on this case, any person or subject matter
4 relating to the case. You're not to do any independent
5 research by way of the Internet or any other medium, and you
6 are not to form or express an opinion on the case.

7 Once again, if you'd all please place your notepads
8 in your chairs and follow the bailiff through the rear door.

9 (Court recessed at 2:16 p.m. until 2:26 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: All right. We'll go on the record with
12 Ms. Killebrew's client. And who do we have?

13 MS. KILLEBREW: Good morning [sic], Your Honor. Nia
14 Killebrew, 4553. Stacy Hutchison.

15 THE COURT: All right. And my understanding is
16 Ms. Hutchison, in connection with one or more of the civil
17 cases, has signed a confidentiality agreement; is that
18 correct, wherein she agreed that she would not disclose a
19 settlement or the terms of the settlement?

20 MS. KILLEBREW: Correct. With all defendants, Your
21 Honor, an executed settlement.

22 THE COURT: Okay. Basically, Ms. Hutchison, the
23 State had asked that, you know, if you testify and I allow
24 these questions, that I direct you to answer them
25 notwithstanding any private agreement you may have entered

1 into in connection with your civil suit. Do you understand
2 that?

3 MS. HUTCHISON: [No audible response.]

4 MS. KILLEBREW: Do you understand? Do you need me to
5 repeat it?

6 THE COURT: Do you understand that?

7 MS. HUTCHISON: [No audible response.]

8 THE COURT: Basically, you -- the idea being you
9 can't enter in a civil suit and say you're not going to
10 testify to something if in connection with this criminal
11 prosecution you're asked a question, and this Court deems that
12 it's relevant and the subject for fair questioning by the
13 defense in their cross-examination. Do you understand?

14 MS. HUTCHISON: So I do have to answer that question?

15 THE COURT: You do have to answer.

16 MS. HUTCHISON: Okay.

17 THE COURT: You know, subject to the rules of
18 relevancy and things like that. And basically what I -- you
19 know, it just concerns though, your particular part of the
20 case. They can't get into, you know, what the lawyers made or
21 other people that were plaintiffs in the matter, related
22 matters or anything like that. Okay. Do you have any
23 questions for me?

24 MS. KILLEBREW: Just so it's clear for the record,
25 Your Honor, your order is as directed specifically to

1 Ms. Hutchison that she is to testify pursuant to your order
2 and direction of the Court, subject to of course, counsel's
3 objection given the confidentiality provisions, to disclose
4 the net amount of the settlement she received, not the gross
5 amounts, nor the global amount received in settlement?

6 THE COURT: Correct. Definitely not the global
7 amount and what the lawyers made or the costs or anything like
8 that, she doesn't need to get into that. The global amount is
9 completely irrelevant, so there can't be any questioning about
10 that. Just your own personal involvement, not the involvement
11 of other plaintiffs or anything like that.

12 I don't know if she was joined with plaintiffs or,
13 you know, whatever. But other people are not at all relevant.
14 So, you know, if there were to be a question relating to that
15 and there was an objection, the Court would sustain it.

16 MS. KILLEBREW: For -- I don't know if it serves the
17 expediency of the court, Your Honor, there is several of my
18 other clients that are anticipated to testify.

19 THE COURT: Okay.

20 MS. KILLEBREW: Do you want to address this as each
21 client comes so you can admonish them individually --

22 THE COURT: Exactly.

23 MS. KILLEBREW: -- is that preferred?

24 Okay. Very good.

25 THE COURT: And I think this is your only client

1 that's anticipated to testify today; is that correct?

2 MS. KILLEBREW: Today, correct.

3 THE COURT: Okay.

4 MS. KILLEBREW: But there are others in the future, I
5 believe.

6 THE COURT: And if you, you know, if it's easier for
7 you, however you want to schedule it, if you just want to be
8 here one time with all of your clients, we can do it that way.

9 MS. KILLEBREW: Okay.

10 THE COURT: Whatever's more convenient. Okay.

11 MR. WRIGHT: And if they all know, so we don't have
12 to probe the net number for any and all litigation they were
13 involved in.

14 MS. KILLEBREW: I've already undertaken to -- to
15 refresh their recollection on this.

16 MR. WRIGHT: Okay. Thank you.

17 THE COURT: And Ms. Killebrew, did I cover that to
18 your satisfaction?

19 MS. KILLEBREW: Yes, I believe, as long as the record
20 reflects my objection on behalf of the settlement agreements
21 entered into with the defendants, and that the Court has
22 specifically directed Ms. Hutchison in this case to testify
23 and disclose the net amounts of her settlement, I believe the
24 record is clear in that regard.

25 THE COURT: Okay. Right. Basically, I don't think

1 that you can limit an accused's right to cross-examine you by
2 virtue of the fact that you may have entered into a settlement
3 agreement with someone else.

4 MS. KILLEBREW: We just want to cooperate with the
5 Court, at the same time minimize any exposure --

6 THE COURT: Right. I know. Minimize any --

7 MS. KILLEBREW: -- under our contractual obligations.

8 THE COURT: -- repercussions. And you don't want the
9 other side to somehow use that as a way of reneging on the
10 agreement or breaching the agreement.

11 MS. KILLEBREW: Thank you. I appreciate your
12 understanding.

13 THE COURT: All right. Thank you. And obviously
14 this Court was not involved in terms of making any
15 determinations that the civil settlement agreements would
16 preclude testimony and questioning in relation to this matter;
17 meaning that was never brought, you know. It should have been
18 anticipated possibly by both sides.

19 MS. KILLEBREW: Well, Your Honor, just for the
20 record, there was a good faith determination of the
21 settlement --

22 THE COURT: Right. That's different.

23 MS. KILLEBREW: -- and approval of the settlement
24 agreements in connection with that by another judge obviously,
25 and we respect your order. Just want it to be clear for the

1 record.

2 THE COURT: Right. And that was though, in
3 connection with the civil case?

4 MS. KILLEBREW: Correct. Yes.

5 THE COURT: All right. Thank you.

6 MS. KILLEBREW: Thank you.

7 THE COURT: All right. The next up is Mr. Ham.
8 Where is your client?

9 MR. HAM: Yes, Your Honor. My client was informed
10 right before we agreed to do this that they weren't going to
11 be needed until tomorrow, so they've --

12 THE COURT: Oh, okay.

13 MR. HAM: They are on their way back up here though,
14 and should be here momentarily.

15 THE COURT: Are they going to be testifying today?

16 MR. HAM: I believe they were told to come back
17 tomorrow morning, so.

18 THE COURT: Okay.

19 MR. STAUDAHER: Based on the way things are going
20 right now, we don't know that -- we don't feel we can get to
21 that client, so we don't want to have them waiting around.

22 THE COURT: That's fine. We can do it at any time.
23 The only issue is obviously we have to do it prior to the time
24 that a person testifies.

25 MR. STAUDAHER: Mr. Ham though was, I believe, hoping

1 that -- I don't know if he just wants the Court to admonish --
2 be here to put it on the record, his objection and why, and
3 then have the Court maybe admonish Ms. Aspinwall before she
4 testifies. I don't know if he wants to be here for that,
5 but...

6 MR. HAM: Well, I would prefer to have -- to do it
7 all at once, but I'm --

8 THE COURT: Okay.

9 MR. HAM: -- obviously sensitive to the issues that
10 are going on here, so.

11 THE COURT: Okay. Here's the deal, Mr. Ham. You
12 know, I would feel more comfortable if you were here, but if
13 you just want to note your objection and have me speak with
14 her without you being here, I can do that of course.

15 MR. HAM: I'd rather not, Judge --

16 THE COURT: Right. And I appreciate that.

17 MR. HAM: -- if we can avoid that.

18 THE COURT: Number two, if she --

19 MR. HAM: I'm hoping they walk through the door as
20 we're talking.

21 THE COURT: -- shows up today, we can do this on our
22 next break or after we recess for the evening.

23 MR. HAM: Okay. And if not, it's okay with you, Your
24 Honor, if we do this tomorrow morning before she testifies?

25 THE COURT: Absolutely. That's absolutely fine.

1 MR. HAM: Thank you, Judge. I appreciate it.

2 THE COURT: All right. Thank you.

3 All right. Everyone ready?

4 Would you tell Kenny to bring them in.

5 (Pause in proceeding.)

6 MR. HAM: Judge, my clients are here. Is it too
7 late? Should we do it tomorrow?

8 THE COURT: You know what. He's just getting the --

9 MR. HAM: We should do it tomorrow.

10 THE COURT: Sorry.

11 MR. HAM: Thank you.

12 (Jurors reconvene at 2:35 p.m.)

13 THE COURT: Court is now back in session. The record
14 should reflect the presence of the State through the deputy
15 district attorneys, the presence of the defendants and their
16 counsel, the officers of the court, and the ladies and
17 gentlemen of the jury. And the State may call its next
18 witness.

19 MS. WECKERLY: The next witness is Sharrieff Ziyad.

20 THE COURT: All right.

21 SHARRIEFF ZIYAD, STATE'S WITNESS, SWORN

22 THE COURT: Thank you, sir. Have a seat.

23 THE CLERK: Please state and spell your first and
24 last name for the record.

25 THE WITNESS: S-h-a-r-r-i-e-f-f, Sharrieff.

1 Z-i-y-a-d, Ziyad.

2 MS. WECKERLY: May I proceed?

3 THE COURT: You may, Ms. Weckerly.

4 DIRECT EXAMINATION

5 BY MS. WECKERLY:

6 Q Mr. Ziyad, I'd like to direct your attention
7 back to July of 2007. During that period, were you living in
8 Las Vegas?

9 A Yes, I was.

10 Q And could you keep your voice up, or maybe pull
11 that microphone a little bit closer.

12 THE COURT: See that black box. Yeah, if you'd pull
13 that closer and maybe scoot in a tiny bit. That's good.

14 MS. WECKERLY: Thank you.

15 BY MS. WECKERLY:

16 Q During that time period, did you know or -- did
17 you know whether or not you had over your lifetime contracted
18 hepatitis C?

19 A Yes, I did.

20 Q And were you under the care of a doctor in Las
21 Vegas because you had that infectious disease?

22 A Yes, I was.

23 Q And do you recall the name of the doctor that
24 was treating you in Las Vegas for that?

25 A Dr. -- Dr. Donald over in the medical center.

1 Yeah.

2 Q Okay. And did you also have a primary care
3 doctor treating you, you know, just for other medical stuff?

4 A Well, they sent me to certain doctors. Dr. Hess
5 [phonetic], primary care.

6 Q Dr. Hess?

7 A Yes.

8 Q At some point did a doctor refer you to have a
9 colonoscopy done?

10 A Yes. The Las Vegas Liver Clinic.

11 Q I'm sorry?

12 A Las Vegas Liver Clinic.

13 Q They referred you?

14 A Yes.

15 Q And that was in sometime before July of 2007?

16 A Exactly.

17 Q And did you have an appointment with any doctor
18 prior to you actually having the colonoscopy done, the
19 procedure itself?

20 A Did I have a -- did I see a doctor prior to
21 having it?

22 Q At the Endoscopy Center. I asked a bad
23 question.

24 Did you have an appointment at the Endoscopy Center
25 before you actually had the colonoscopy done?

1 A Yes. I had an appointment.

2 Q Who was that with?

3 A Dr. Desai.

4 Q And when you met with Dr. Desai, did you meet
5 with him in his -- like a medical office?

6 A Yes.

7 Q And was it at that time that you discussed the
8 procedure that you were going to have being a colonoscopy or
9 an endoscopy?

10 A Yes.

11 Q And at the time you met with Dr. Desai, did you
12 disclose to him that you were positive for hepatitis C?

13 A Yes, I did.

14 Q Was it -- was it part of, you know, the
15 discussion that you had with him as a physician and
16 incorporating into your discussion about your medical care?

17 A Exactly.

18 Q You ultimately had a procedure scheduled at
19 Dr. Desai's clinic on July the 25th of 2007?

20 A Yes.

21 Q Sir, do you recall what time of day your
22 procedure was?

23 A It was in the morning.

24 Q And I know it's a while ago, but do you remember
25 if it was in the late morning or early morning?

1 A Early morning. I was the first patient.

2 Q You were the first patient of the day?

3 A Yes.

4 Q When you went into the clinic and as the first
5 patient of the day, was it crowded, or was it pretty empty
6 when you got there?

7 A It was pretty empty.

8 Q And what was the first thing you did? Did you
9 go up to a receptionist or check in?

10 A Yes. And you fill out paperwork, and told me my
11 insurance wasn't going to pay for the anesthesia, that I had
12 to pay \$100 before they could do the procedure.

13 Q That's what the receptionist told you?

14 A Yes.

15 Q So you had to pay \$100 out of your pocket right
16 then for anesthesia?

17 A Yes.

18 Q Do you recall if you paid that in cash?

19 A Yes, I did.

20 Q Okay. At the time, sir, did you have -- you
21 mentioned that your -- that there was like an issue with your
22 insurance, whether or not it was going to cover it.

23 A That's what they said. The insurance
24 automatically had covered it.

25 Q Okay.

1 A Blue Cross Blue Shield, they covered it all.
2 Q So you had Blue Cross Blue Shield insurance?
3 A Yes.
4 Q But the clinic told you you'd still have to pay
5 \$100 for the anesthesia?
6 A Yes.
7 Q Did you fill out other paperwork checking in,
8 that sort of thing?
9 A Exactly.
10 Q Do you recall if on any of that paperwork that
11 you filled out that morning, whether or not you had indicated
12 that you had hepatitis C?
13 A Yes. He knew this.
14 Q Okay.
15 A It all in the paperwork. When they sent me to
16 him, it's in that paperwork.
17 Q I'm going to show you a document. Okay, sir.
18 One second.
19 A No problem.
20 (Pause in proceedings)
21 MS. WECKERLY: May I approach the witness, Your
22 Honor?
23 THE COURT: [No audible response.]
24 MS. WECKERLY: May I approach the witness?
25 THE COURT: Yes. I'm sorry.

1 MS. WECKERLY: That's okay.

2 BY MS. WECKERLY:

3 Q Sir, I need to show you a document, and this is
4 for the record in State's Proposed Exhibit 1, and it's a copy
5 obviously. But this looks like a document that you filled out
6 that morning; is that correct?

7 A Exactly.

8 Q Okay. And sir, if you look on that document, it
9 actually has your signature on the bottom --

10 A Right.

11 Q -- is that right?

12 A That's right.

13 Q And on the document it asks you to indicate
14 whether you have certain conditions, and you underlined on
15 there hepatitis?

16 A Right.

17 Q And then you circled yes?

18 A Yes.

19 Q Okay. So you filled that out on the morning
20 before your procedure?

21 A Exactly.

22 MS. WECKERLY: May I publish this, Your Honor?

23 THE COURT: You may.

24 BY MS. WECKERLY:

25 Q And sir, can you see on the screen in front of

1 you right there?

2 A Yes, I can.

3 Q This is the document I just showed you, correct?

4 A Right.

5 Q And right here it says, "Hepatitis," correct?

6 A Right.

7 Q And you circled yes?

8 A Exactly.

9 Q And on the bottom is where you signed, correct?

10 A Exactly.

11 Q So that was disclosed not only at your prior

12 appointment with Dr. Desai, but also the morning of your

13 actual procedure?

14 A Right.

15 Q Now, when you -- you said you checked in and you

16 indicated what kind of insurance you had and that you also had

17 to pay \$100, correct?

18 A Right. They already knew what kind of insurance

19 I had.

20 Q Okay.

21 A I filled out a form before we even got this far.

22 Q More forms?

23 A Yes.

24 Q After you checked in, did you have to wait a

25 little bit, or did you get called right back?

1 A Well, they told me to sit over in the waiting
2 area there for a minute.

3 Q And then did someone eventually call you back?

4 A Yes, they did.

5 Q When you got called back, do you remember what
6 kind of room you were in?

7 A It was like a little hospital with beds in it,
8 you know, down the hall, bed here, bed there.

9 Q And did you lay on a bed?

10 A Yes, I did.

11 Q Were you -- prior to doing that, did you have to
12 change your clothes or get out of your clothes and get into a
13 gown?

14 A Yes.

15 Q Do you remember if anyone put a needle, an IV or
16 a heplock kind of thing in your arm?

17 A Yes. He put that in my arm.

18 Q Do you remember who put that in your arm?

19 A Another doctor.

20 Q Not Dr. Desai?

21 A No.

22 Q Do you -- did this other doctor that put that in
23 your arm, was it male or female?

24 A He was a male.

25 Q And was that person present during your actual

1 procedure?

2 A I don't know. He was the one that said he was
3 going to put me out.

4 Q Okay. So this was the actual person who gave
5 you the anesthesia?

6 A No. He told me -- he was the actual person that
7 gave me the anesthesia, but he told me he was going to put me
8 out. But I told him, "How are you going to put me out and
9 where's my records? You don't have no records. Where's my
10 records?"

11 Q Okay. Let me back up just a little bit to make
12 sure I understand. Okay. You check in, and then you go
13 straight back to the procedure room?

14 A Exactly.

15 Q Okay. So you're never in what we would call
16 like a preop area with a nurse?

17 A Yes. I explained to you about the insurance and
18 she telling me I'm paying \$100 and all this. I paid her.

19 Q Okay.

20 A They asked me who -- is there anybody here going
21 to take me back home; yes, they're there, so it's okay. Well,
22 you step in the room. I step in the room. They gave me the
23 gown, change, I changed. Okay. Get up on the bed, I got up
24 on the bed. He explained to me what that particular doctor
25 was going to do. He put the needle in my arm, tape it and

1 whatever, and so.

2 Q The doctor that explained to you what he was
3 going to do and put the needle in your arm --

4 A Right.

5 Q -- that's the same -- let me ask you this: What
6 kind of questions did that doctor ask you?

7 A He didn't ask me nothing. He asked me does it
8 feel warm. I said, Yeah, it's, you know.

9 UNKNOWN SPEAKER: I'm sorry. I didn't hear that,
10 Your Honor.

11 THE COURT: Sir, can you say that again?

12 THE WITNESS: He asked me how does it feel, does it
13 feel warm. I said, It feels okay. He said, Is it okay? I
14 said, Yeah, it's okay.

15 BY MS. WECKERLY:

16 Q Did he ask you any questions about whether or
17 not you had eaten, or if you were allergic to any medications,
18 anything like that?

19 A Not that I can remember.

20 Q Okay. Anything else about your health history
21 did he ask?

22 A He asked me -- he asked me did I take all the,
23 you know, stuff that you're supposed to take where you clean
24 out. I told him yes, you know. He says, So you're ready to
25 go? Yes, I'm ready to go.

1 Q Okay. And so and then he's the same person that
2 injects you; is that right?

3 A This is different from putting the needle in,
4 right?

5 Q Well, that's my question. Is the person that
6 put the needle in the same person who put you to sleep?

7 A Yes.

8 Q The same exact person?

9 A Right. But he wasn't putting me to sleep,
10 because I told him he don't have no records. How are you --
11 what are you putting me to sleep for when you don't -- you
12 don't have no records. And then when he said, Well, your
13 records will be here in a minute, and Dr. Desai stepped up and
14 he said, Your record's coming.

15 Q Okay. So the anesthetist was going to
16 administer -- put you to sleep or give you medication before
17 your records were there?

18 A Exactly.

19 Q And you obviously were concerned about that?

20 A Right.

21 Q And then you see, you indicated Dr. Desai. Do
22 you actually see him in the courtroom?

23 A Yeah. He's sitting right there [indicating].

24 MS. WECKERLY: May the record reflect the witness has
25 identified Dr. Desai.

1 THE COURT: It will.

2 BY MS. WECKERLY:

3 Q So Dr. Desai actually comes in the room before
4 you're under medication?

5 A Exactly. Right. Right.

6 Q And what did he say when he walked in?

7 A He told him go on and put me out.

8 Q Okay. And do your records ever get to the
9 procedure room?

10 A Yes, they did. As soon as he -- I was almost
11 going out, they hand him the records.

12 Q Okay. They hand Dr. Desai the records?

13 A I was getting drowsy and I see them -- saw them
14 hand him the records.

15 Q Okay. Before you actually went out or went
16 under, who was in that room?

17 A Him, the doctor. I think the nurses left. The
18 doctor and him, they were there. I don't remember nothing
19 else.

20 Q The doctor that was going to put you out and
21 Dr. Desai?

22 A Yes. The doctor that put that thing in me and
23 Dr. Desai told him to go on and put me out.

24 Q Okay. And then I assume you're out during your
25 procedure?

1 A Yeah. I'm pretty sure I was.

2 Q What's the first thing you remember after?

3 A Well, I remember somebody telling me, You can
4 finish recovering in the waiting room, and I thought I was
5 able to walk to the waiting room. And I get up and I'm
6 stumbling, about to fall on my head and everything, and they
7 grabbed me and helped me keep my balance. I wasn't back all
8 the way yet.

9 They sat me outside and I sat there, and I was trying
10 to come to myself, you know. And pretty soon the person who
11 was supposed to take me home came and I was still drowsy, and
12 I cleared up out there, you know. I didn't understand that
13 one.

14 Q Let me ask you a couple more questions. Okay.
15 Sir, when you first -- when you were first awake a little bit,
16 were you in the -- that procedure room or a different room?

17 A I was in that room where they put me out at.

18 Q The procedure room?

19 A Yes. That's where they did everything at.

20 Q Okay. And then did someone actually help you
21 get up off that bed?

22 A Yeah. I couldn't get all the way up. I was
23 still drowsy and I was --

24 Q Okay. You're still under the anesthesia --

25 A Exactly. Right. Right. Under the anesthesia.

1 Q And where did that person take you?

2 A Out the door into the waiting room, where people
3 are waiting to talk to that girl that you talk to about the
4 insurance and make the plans for the procedure and all that.
5 It's a waiting area outside behind there.

6 Q Okay. So like a room with chairs?

7 A Exactly.

8 Q And if I'm understanding you, you still felt
9 like you were under the anesthesia?

10 A Ain't no felt nothing. I almost falling down
11 stumbling.

12 Q Okay. You couldn't walk?

13 A They just picked me up and sat me in the chair.

14 Q And how -- and you had to sit there awhile
15 before you were oriented?

16 A Yes, ma'am.

17 Q Okay. And while you were sitting there, did
18 Dr. Desai ever come out and say, look, here's what I found?

19 A Mm-hmm.

20 Q Did he ever come out and say, you know, are you
21 feeling all right?

22 A No. That was over with.

23 Q Did you ever see him again?

24 A Yes, I did.

25 Q That day?

1 A No.

2 Q Okay. How about the guy that put you under with
3 the -- that put in the needle and gave you the anesthesia, did
4 that person come out and say, how are you doing, are you --

5 A No. I don't remember nobody coming out.

6 Q Okay. So no one came out?

7 A No.

8 Q Did anyone at all discuss your results or what
9 they found?

10 A Not that I can remember, no. My wife took me,
11 put me in the car and took me home.

12 Q So your wife was there?

13 A Yes.

14 Q And so after, I assume, you were able to walk
15 she takes you home?

16 A Right.

17 Q And you said that you had -- you saw Dr. Desai
18 after that at sort of a follow-up appointment?

19 A Exactly. Right.

20 Q Do you remember how long after your procedure
21 that follow-up appointment was?

22 A A week to two weeks.

23 Q A week or two weeks?

24 A Right.

25 Q At some point, well, several months after that,

1 were you ever contacted by the health district?

2 A Yes, I was.

3 Q And did they ask or request that you come down
4 and give a sample of your blood?

5 A Yes, all of that.

6 Q I'm sorry?

7 A Yes.

8 Q Did you do that?

9 A I did what they told me to do.

10 Q Okay. You did what they asked. And did you
11 also get contacted by the Las Vegas Metropolitan Police
12 Department?

13 A Yes, I did.

14 Q And did you interview with them?

15 A Right.

16 (Pause in proceedings)

17 BY MS. WECKERLY:

18 Q And sir, just so that the record's clear, did
19 you have an upper endoscopy or a colonoscopy? Do you
20 remember?

21 A They went down my throat.

22 Q So an endoscopy?

23 A Right.

24 MS. WECKERLY: May I approach the witness, Your
25 Honor?

1 THE COURT: You may.

2 BY MS. WECKERLY:

3 Q Sir, I'm showing you what's been marked, this is
4 State's Proposed Exhibit 59, and I just want to ask you if you
5 recognize some documents, and if you'd just let me know. Have
6 you ever seen that one?

7 A Yes, I have.

8 Q Okay. Is that about your medical procedure? It
9 has your name on it.

10 A Yes, it is.

11 Q Okay. And that was -- it says it's a health
12 insurance claim form?

13 A Right.

14 Q Okay. And can you read this?

15 A 7/25/07.

16 Q And what is the -- what is that for?

17 A The numbers?

18 Q That's the date, right?

19 A This is the date.

20 Q Yeah. 7/25/07. And is there an amount there?

21 A \$550.

22 Q \$550. And what's the name right here?

23 A Lakeman, Ron.

24 Q Ron Lakeman?

25 A Right.

1 Q And what's -- what does it say right here?

2 A Endoscopy Center of Southern Nevada.

3 Q Okay. And so that's a claim form for insurance,
4 an anesthesia charge for Ronald Lakeman on 7/25/07 for you,
5 right, for your treatment?

6 A I don't know.

7 Q Is your name on the top?

8 MR. SANTACROCE: What was that answer?

9 THE WITNESS: Yeah, my name is on there.

10 MS. WECKERLY: He said his name's on the top.

11 THE WITNESS: Yeah. That's my name.

12 MS. WECKERLY: Let me ask you --

13 THE WITNESS: How would I know about that though?

14 BY MS. WECKERLY:

15 Q Well, have you seen that, this form?

16 A I'm pretty sure I have, ma'am.

17 Q Okay. So it's probably the -- and this is your
18 insurance, right? There's your name.

19 A [Inaudible.]

20 Q Okay. That's all right. Have you seen this one
21 at all?

22 A [No audible response.]

23 Q Okay. Do you know what -- what is that?

24 A That's anesthesia.

25 Q That's the anesthesia charge for your procedure?

1 A Right.

2 Q Okay. And it was \$560; is that what that says?

3 A That's what it says.

4 Q And then there's -- there's a portion that

5 was --

6 A [Inaudible.]

7 Q -- 206?

8 A \$6.82.

9 Q How about this form, have you seen that?

10 A Yeah, I've seen that.

11 Q Was that submitted to you?

12 A [Inaudible.]

13 Q I'm sorry?

14 A I probably still have it in my notes.

15 Q You probably still have this bill?

16 A Mm-hmm.

17 Q Okay.

18 A Can I ask you a question?

19 Q I am. I'm just going to put up the document.

20 Can you see that on your screen, sir?

21 A Yes, I can.

22 Q Okay. And I'm pointing to the very top there.

23 There's your name, correct?

24 A Right. Right.

25 Q And it says that this is a -- on the very top it

1 says, "Health insurance claim form" --

2 A Right.

3 Q -- is that correct?

4 A Exactly.

5 Q Okay. And if I would just move the document a
6 little bit, the date 7/25/07, is that correct?

7 A Yes, ma'am.

8 Q And moving the document, that says \$560?

9 A Right.

10 Q And the name here --

11 A Ron Lakeman.

12 Q -- Ron Lakeman.

13 And the Endoscopy Center, correct?

14 A Right.

15 Q And the second document I showed you, let's
16 start from left to right. That's your name, correct?

17 A Right. Birthday.

18 Q And that's your birth date. And there's a date
19 of service, correct?

20 A Right.

21 Q 7/25/07?

22 A That's right.

23 Q And it has like a description of a health issue?

24 A Right.

25 Q Is that why you got the upper endoscopy?

1 A Right. Well, the liver clinic sent me to him.
2 They -- I was hurting in my stomach.

3 Q Okay. Then it says, "Anesthesia," right?

4 A Right. Twenty-four.

5 Q Okay. And then just moving along, it says,
6 \$560?

7 A Right.

8 Q And then it looks like a 206.82 --

9 A Right. 206, 82.

10 Q -- paid, correct?

11 A That's what it says.

12 Q This one, I think, is -- can you read that one,
13 sir, or is it --

14 A Yes.

15 Q -- too small?

16 A I can see it.

17 Q Okay. There's your name again, correct?

18 A Right.

19 THE COURT: May I see counsel at the bench for a
20 moment.

21 (Off-record bench conference.)

22 THE COURT: All right. Ms. Weckerly, go on.

23 BY MS. WECKERLY:

24 Q The -- sir, this is my last question. These
25 three pieces of paper I showed you, you all -- you recognize

1 all three as being associated with your insurance payment on
2 this procedure?

3 A Right.

4 Q Thank you, sir.

5 MS. WECKERLY: The Court's indulgence.

6 I'll pass the witness, Your Honor.

7 THE COURT: All right. Thank you. Cross, who would
8 like to go first?

9 CROSS-EXAMINATION

10 BY MR. WRIGHT:

11 Q Hello, sir. My name's Richard Wright. I
12 represent Dr. Desai. On your -- the day of your procedure at
13 the clinic, July 25, 2007, the \$100 payment, I want to ask you
14 about that, okay?

15 A No problem.

16 Q Did you -- you stated it was for anesthesia or
17 something?

18 A That's what the lady told me.

19 Q Okay. Do you have a copay with --

20 A We turn it in to the clerk up there in the
21 courthouse. You told me to bring it, turn it in to the clerk.
22 I did that in 2007, when we first started this thing.

23 Q Okay.

24 A They started it, you know. I don't know nothing
25 about it, but anyway.

1 Q Did you get the \$100 back?

2 A No, I didn't.

3 Q Okay. Do you recall when you were interviewed
4 by the metropolitan police department?

5 A Yes, I do.

6 Q Okay. Do you recall them asking and you said
7 you got the \$100 back?

8 A No. I didn't tell him that.

9 Q Okay. Let me -- could it have been a copay for
10 your insurance?

11 A A copay for my insurance?

12 Q Yes.

13 A The copay was only \$20. She told me I had to
14 pay \$100 before they could do anything with me about
15 anesthesia, because the insurance don't pay for the
16 anesthesia, but Blue Cross already paid for it.

17 MR. WRIGHT: Okay. May I approach the witness?

18 THE COURT: You may.

19 BY MR. WRIGHT:

20 Q What I have here, sir --

21 A Okay.

22 Q Is a transcript of your interview with the
23 police department.

24 A Right.

25 Q Okay. What I'm doing is I'm going through page

1 7 of the interview. And RW, that's Detective Whitely. SZ is
2 yourself.

3 A Right.

4 Q Would you read this bottom part of page 7 and
5 the top part of page 8? Read that to yourself and then I'll
6 question you about it.

7 A I don't know where that -- how that got in
8 there. I don't know.

9 Q Okay.

10 A How it got in there, I remember talking to him
11 and I remember the whole interview. They didn't pay me no
12 \$100 back.

13 Q Okay.

14 A Now, if you want to talk to my wife, you can
15 talk to her. She was standing right there.

16 Q And --

17 A I mean, really, the \$100 don't even matter. It
18 doesn't even matter at this point it's been so long. I did --
19 they didn't give me no \$100.

20 THE COURT: Sir, there's water there too, in that
21 pitcher, if your throat's getting dry.

22 THE WITNESS: Thank you, ma'am.

23 It don't even matter at this point.

24 BY MR. WRIGHT:

25 Q Okay. I understand. But the -- it states --

1 what you're telling me is it states that in your police
2 interview, but that isn't correct?

3 A No, it's not correct, sir.

4 Q Okay. And do you believe you told the police
5 that, or they simply got it wrong?

6 A While I was talking he was supposed to have
7 gotten every word I said. I don't know how that happened.

8 Q Okay.

9 A But like I say, I'm not really worrying about it
10 because I know that it's not proper.

11 Q Now, is it because -- I'm back to your procedure
12 on the 25th now, okay?

13 A All right.

14 Q And do you recall going to what we call the
15 recovery room out of the procedure room before you're walked
16 into the waiting room to meet your wife?

17 A No.

18 Q Okay. And so if you went into the recovery room
19 and your records show that, you simply were still asleep and
20 don't remember it, correct?

21 A Probably so.

22 Q Okay. And so your first recollection is when
23 you were being walked into the waiting room?

24 A Exactly.

25 Q Okay. And when you returned, you were then

1 scheduled a further appointment, correct?

2 A Yes, I was, I think.

3 Q After your endoscopy, your upper procedure --

4 A Okay.

5 Q -- right?

6 A Right.

7 Q And that endoscopy, you had been sent there

8 because of a diagnosis looking at a lymph node or something?

9 A Lymph node, right.

10 Q Okay. And so you had the endoscopy and then you

11 had an appointment to return in a couple weeks?

12 A Right.

13 Q Okay. And you did return?

14 A I did.

15 Q Okay. And who did you see when you returned?

16 A I think I saw Dr. Desai.

17 Q Okay. Do you recall -- do you recall meeting a

18 physician --

19 A No, I didn't. I saw somebody else.

20 Q Okay.

21 A It was a lady.

22 Q Okay. A physician's assistant?

23 A Exactly. Right.

24 Q Okay.

25 A She gave me some medicine, a prescription for

1 some medicine, and told me that I would be all right.

2 Q Okay.

3 A Whether you believe it or not or whoever believe
4 it or not, my stomach was tore up inside and it hurt for
5 months behind that. And I never did understand it. They told
6 me to go back to the Liver Clinic, and then he referred me to
7 a doctor, a gastrologist, you know, up there. I forgot that
8 doctor's name.

9 Q Okay. Do you recall seeing -- on the day you
10 went back, do you recall that the diagnosis was gastritis?
11 Does that ring a bell?

12 A It sounds pretty familiar.

13 Q Okay. And do you recall that aside from the
14 young lady, a physician's assistant, that you saw a Dr.
15 Carrol? Does that ring a bell?

16 A I don't know whether it was Dr. Carrol or not,
17 but --

18 Q Do you recall seeing a doctor at the same time
19 with the young lady?

20 A Yes.

21 Q Okay. But you don't -- and do you recall that
22 that -- you don't remember that doctor's name?

23 A I don't. I know she was a -- I don't remember
24 the doctor's name.

25 Q Okay. Do you -- fair enough. Thank you, sir.

1 A Welcome, sir.

2 THE COURT: Mr. Santacroce, any questions?

3 MR. SANTACROCE: Yes, thank you.

4 CROSS-EXAMINATION

5 BY MR. SANTACROCE:

6 Q Good afternoon, Mr. Ziyad. How are you?

7 A Pretty good. And yourself, sir?

8 Q Great, thank you. You testified that you
9 arrived at the clinic at about 7:00 a.m.; is that correct?

10 A Somewhere in there.

11 Q Prior to going to the clinic for your procedure,
12 you had met with Dr. Desai on a different day; is that
13 correct?

14 A Yes. What are you saying, the day that I had
15 the procedure?

16 Q Before that did you meet with Dr. Desai?

17 A Yes, I did. Right.

18 Q And you gave Dr. Desai sort of a history of your
19 medical background, correct?

20 A Right.

21 Q And you told Dr. Desai at that time that you had
22 hepatitis C?

23 A Yes, sir.

24 Q You also told Dr. Desai at that time that you
25 had cirrhosis of the liver?

1 A Yes. He knew.

2 Q You also told Dr. Desai at that time that you

3 had, quote, a loss of memory; is that correct?

4 A Exactly.

5 Q And you had a loss of concentration?

6 A Right.

7 Q And did you tell him anything else about any

8 other problems that you might have had?

9 A No. Not dealing with him, no.

10 Q Okay. Then you, after that interview or

11 sometime later, you went back to the clinic and had the

12 procedure done, correct?

13 A Right.

14 Q And you arrived at about 7:00 a.m.; is that

15 correct?

16 A Somewhere in that order.

17 Q And they -- a nurse took you from the waiting

18 room -- strike that.

19 You filled out some insurance papers first, correct?

20 A Paid the \$100.

21 Q Paid your \$100. And then a nurse came back and

22 took you into a procedure room?

23 A And put me on the first bed. I never will

24 forget.

25 Q So you went from filling out insurance papers

1 right into a procedure room and no stops in between?

2 A She told me to put the gown on, so I had to go
3 in the facility and change, you know.

4 Q And the person that told you that was a female?

5 A I'm pretty sure it was, sir. I can't really
6 say, because I dealt with men and women at that moment, so.

7 Q So you're not clear as to whether it was a
8 female or a male?

9 A No. Somebody told me to put the dress on, put
10 this gown on, this white gown.

11 Q Okay.

12 A I went in and changed.

13 Q Then after you put the gown on, what happened?

14 A They told me, come on into that room and lay up
15 on this first bed, or the first patient, lay up on the bed,
16 and that's what I did.

17 Q Did they walk you into the procedure room, or
18 did they wheel you on a bed?

19 A I was on -- no, I walked in the procedure room.

20 Q In the gown?

21 A In the gown.

22 Q On top of the bed?

23 A And got on the bed.

24 Q Who was in the room?

25 A Doctor.

1 Q Dr. Desai?

2 A No.

3 Q Who doctor?

4 A I don't know the doctor's name. I guess it was
5 his assistant.

6 Q How many people were in the room?

7 A At that particular time, him and a nurse.

8 Q When you say him, who do you mean by him?

9 A His doctor who was putting a needle in my arm.

10 Q Okay.

11 A And the nurse, she was waiting for him to tell
12 her what to do.

13 Q Was it a female nurse?

14 A I'm pretty sure it was a female nurse. There
15 wasn't but one lady and a man in the room that I can remember.
16 There were beds in there, but I don't remember whether anybody
17 was in them or not.

18 Q Was it dark in that room?

19 A No, it wasn't dark.

20 Q Did the nurse ask you any questions?

21 A No, she didn't --

22 Q The female nurse, did she --

23 A No, not that I can remember.

24 Q Did the male that was in the room at the time
25 ask you any questions?

1 A He told me he was going to put the needle in my
2 arm and asked me how it feel, was it warm. I told him that
3 was okay.

4 Q Did they hook up any kind of blood pressure --

5 A Yes, did.

6 Q -- device on you?

7 A Whatever they supposed to do they did.

8 Q Well, I don't know what they did to you and what
9 they were supposed to do. That's why I'm asking you. So bear
10 with me, if you would, please.

11 A No problem.

12 Q Thank you. They put a blood pressure thing,
13 cuff on you?

14 A Blood pressure cup?

15 Q Did they put any kind of equipment on you to
16 measure your heart rate?

17 A Oh, yeah, they did all that. Yeah.

18 Q They did all that?

19 A Yes, sir.

20 Q And there was a bunch of machines in the room
21 that you were hooked up to; is that correct?

22 A An IV and stuff like that.

23 Q Oh, you had an IV?

24 A Yeah.

25 Q A bag that was hanging --

1 A Right.

2 Q -- into your arm?

3 A Yeah.

4 Q Okay. And then this other male person told you
5 that they were going to put you to sleep?

6 A Yeah. He told me he was going to put me to
7 sleep.

8 Q And Dr. Desai wasn't in the room at that time
9 when he told you he was going to put you to sleep?

10 A No.

11 Q But at some point before you went to sleep, Dr.
12 Desai came in the room?

13 A Exactly.

14 Q And then you were put to sleep?

15 A After Dr. Desai told him to put me to sleep.

16 Q So you told Dr. Desai to put you to sleep, they
17 put you to sleep?

18 A Right. Because I told him, you don't have no
19 records, where's my records, because I wasn't, you know, I
20 started to get up. What are you putting me out for, you don't
21 have no records on me and how do you know what you're doing
22 to me.

23 Q I understand.

24 A Okay.

25 Q So you tell Dr. Desai -- or Dr. Desai comes in,

1 you tell him to put you to sleep, they put you to sleep --

2 A No, I didn't tell him to put me to sleep. He
3 told me he was -- told the guy to go and put me to sleep, the
4 doctor, those doctors, told him go ahead and put him to sleep.

5 Q Okay. So the doctor told the other guy in the
6 room to put you to sleep?

7 A Right.

8 Q And you went to sleep?

9 A And I went to sleep.

10 Q And you had your procedure?

11 A And I had my procedure.

12 Q So you got some anesthesia, right?

13 A If that's what you call it. I went out.

14 Q But you weren't given a bill for anesthesia that
15 you didn't get, right? I just want to make sure you got --
16 you went to sleep.

17 A I went to sleep.

18 Q Good. And when you woke up, where did you wake
19 up?

20 A On the table.

21 Q In the same place?

22 A That I can remember, yes.

23 Q Okay. And then what happened after that?

24 A It might be a little slight recovery room they
25 put me in. I don't remember. All I remember is somebody

1 bring -- telling me, come on, you can finish recovering out
2 here in the visit -- in the area where people sit, you know,
3 to take care of whatever they're going to do.

4 Q And you don't remember how long you were in the
5 procedure room, correct?

6 A No. I'm supposed to be coming back to life. I
7 don't know.

8 Q And I think you made it.

9 A All I know is I'm stumbling out -- I'm stumbling
10 out going into the room to wait for whoever was going to take
11 me home. I'm not back yet, so how -- I can't remember all
12 that.

13 Q I know.

14 A I'm drowsy.

15 Q I've been through the same thing. I understand.
16 I got to ask the question.

17 A I understand, sir. Yes, sir.

18 Q Okay. So you don't remember?

19 A No.

20 Q And you don't remember how long you were in the
21 recovery room?

22 A No, I don't.

23 Q And you don't remember how long you were in
24 there from the beginning to the end?

25 A No, I really don't.

1 Q Thank you very much. I appreciate it.

2 A Yes, sir.

3 MR. SANTACROCE: No further questions.

4 THE COURT: Redirect.

5 MS. WECKERLY: Just one question.

6 REDIRECT EXAMINATION

7 BY MS. WECKERLY:

8 Q And I'm referring to the voluntary statement on
9 page 10. Just one more question, sir.

10 A No problem.

11 Q Do you remember if the police asked you if the
12 anesthesiologist was the person that put the IV or heplock in
13 your arm, the needle? Do you remember discussing that in your
14 interview?

15 A He might have asked me that, but --

16 Q If I showed you that, would that help refresh
17 your recollection?

18 A It might help. It might help.

19 Q Okay. And again, it's page 10, Counsel.

20 I'm just going to come up here, okay?

21 A No problem.

22 Q And that's Detective Whitely, right, and that's
23 you?

24 A Right. Detective Whitely.

25 Q And he says, "Was it the guy that put you to

1 sleep that put the IV in there, or somebody else?"

2 A Yeah. That was him. It was him.

3 Q But can you --

4 A It was him. I remembered like it happened.

5 Q I believe you, but can you just read your answer
6 for me there, sir?

7 A "Yeah. Yeah, it was him. It was him because I
8 remember him taking it down."

9 Q Okay. Thank you very much, sir.

10 A It'll all come back.

11 THE COURT: I have a couple of juror questions up
12 here. Now, you said that you changed from your street
13 clothing into the gown; is that right?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: And that was before you went into the
16 procedure room?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: And then do you recall when you changed
19 back into your street clothing and out of the gown?

20 THE WITNESS: I don't remember that.

21 THE COURT: Okay. Was that before and when you found
22 yourself in the waiting room, were you wearing the gown or
23 were you wearing your street clothes?

24 THE WITNESS: I was wearing my street clothes.

25 THE COURT: But you don't remember changing?

1 THE WITNESS: I don't even remember changing.
2 THE COURT: And then another juror wants to know when
3 you were taken, I guess, back to the room with the chairs, you
4 said you stumbled. Do you remember testifying about that?
5 THE WITNESS: Right. Yes.
6 THE COURT: Okay. Do you recall when you stumbled if
7 you fell to the ground?
8 THE WITNESS: Yes, I did.
9 THE COURT: Okay. Did you cut yourself or were you
10 bleeding, you know, in any way when you fell?
11 THE WITNESS: No, I didn't bleed. I just fell on my
12 face and, you know, stumbling across my shoes.
13 THE COURT: Okay. And then someone helped you up?
14 THE WITNESS: Yeah. My wife was there then and the
15 lady to help me sit up, and sitting in the chair and I was
16 still drowsy.
17 THE COURT: And do you remember putting your shoes on
18 prior to that time?
19 THE WITNESS: No, I don't, ma'am.
20 THE COURT: Okay. State, any follow up from that?
21 MS. WECKERLY: No, Your Honor. Thank you.
22 THE COURT: Defense, any follow up?
23 MR. WRIGHT: No.
24 MR. SANTACROCE: No, Your Honor.
25 THE COURT: Any additional juror questions for this

1 witness? Okay. The bailiff will retrieve the juror
2 questions. I'll see counsel up here.

3 (Off-record bench conference.)

4 THE COURT: All right. A juror had a question, and
5 Ms. Weckerly, perhaps you can help with an exhibit.

6 MS. WECKERLY: Yes. And Your Honor, for the record,
7 it's Exhibit 59.

8 THE COURT: Okay.

9 MS. WECKERLY: Sir, can you read that name that I'm
10 pointing to on this insurance record again, please?

11 THE WITNESS: Ron Lakeman.

12 MS. WECKERLY: Ron Lakeman. And that was on the
13 anesthesia bill that I showed you earlier for your insurance?

14 THE WITNESS: I think so, wasn't it?

15 MS. WECKERLY: Okay. Thank you, sir.

16 THE COURT: Any follow up based on that question?

17 MR. WRIGHT: No.

18 MR. SANTACROCE: No, Your Honor.

19 THE COURT: Any additional juror questions?

20 Sir --

21 THE WITNESS: Yes, ma'am.

22 THE COURT: -- thank you for your testimony. Please
23 don't discuss your testimony with anybody else who may be a
24 witness in this case.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Thank you, sir, and you are excused.

2 And the State may call its next witness.

3 MS. WECKERLY: Dr. Son Bui.

4 SON BUI, STATE'S WITNESS, SWORN

5 THE CLERK: Please state and spell your first and
6 last name for the record.

7 THE WITNESS: My name is Son Bui. First name is Son,
8 S-o-n. The last name is Bui, B-u-i.

9 THE COURT: All right. Thank you. Ms. Weckerly.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Doctor, can you briefly describe your
13 educational background?

14 A Yes. I graduated in 1996 from Chicago
15 Osteopathic Medicine in Chicago. I did residency in
16 University of Illinois --

17 THE COURT: You can't hear.

18 Yeah, you have a really soft voice.

19 THE WITNESS: Oh.

20 THE COURT: See that box right there, that's the
21 microphone, so can you try to speak a little bit louder.

22 Ladies and gentlemen, if you still can't hear him,
23 just give the signal and we'll make him hold the handheld
24 mike.

25

1 BY MS. WECKERLY:

2 Q Let's try that again.

3 A I graduated from Chicago Osteopathic Medicine
4 in 1996. I did three years of residency in Chicago also,
5 University of Illinois, Chicago, and then I went and came out
6 to Las Vegas 1999.

7 Q And what -- oh, go ahead.

8 A And I graduated as family practice.

9 Q And so in 1999 is when you started practicing in
10 Las Vegas?

11 A Yes.

12 Q And sometime after that did you become the
13 doctor to a lady named Stacy Hutchison?

14 A Yes.

15 Q Do you remember what year it was she became your
16 patient?

17 A It's pretty far back, but the farthest note I
18 have is 2005.

19 Q 2005?

20 A Yes.

21 Q And how old was she then, or how old is she now?

22 A She's 43 now. So she's probably around 30,
23 30-something years old at the time.

24 Q And when Ms. Hutchison came to see you, you were
25 just her regular family doctor?

1 A Yes.

2 Q Did she -- when she first started seeing you,
3 did she have any particular health issues that you were
4 concerned about, or was she relatively healthy?

5 A She was relatively healthy. She came in for a
6 basic, you know, urgent care, sore throat, UTI, and then
7 developed high blood pressure.

8 Q Okay. In your -- in your treatment of Ms.
9 Hutchison, did you ever run blood tests on her?

10 A Yes. We ran blood tests at least annually.

11 Q At least annually. Would those blood tests have
12 detected or indicated possible hepatitis C infection?

13 A We ran a -- that panel a couple times.

14 Q And did she ever get a positive reading before
15 September 21st of 2007?

16 A No.

17 Q So you ran blood tests on her and that was never
18 a positive reading that you saw?

19 A Correct.

20 Q At some point did you refer her for a procedure
21 at the Endoscopy Center of Southern Nevada?

22 A Yes. I referred to GI, which is gastrology, but
23 I never referred her to -- to do the procedure. I just
24 referred her for --

25 Q For an appointment?

1 A -- for her symptoms. Yes.

2 Q Okay. And so what was her health issue that
3 made you do that referral?

4 A I did skim over the notes. I didn't go through
5 it thoroughly, but from my recollection it was because she was
6 having some right upper quadrant discomfort.

7 Q Right upper --

8 MR. WRIGHT: I couldn't hear that.

9 THE WITNESS: Right upper abdominal pain, discomfort.

10 MS. WECKERLY: Did you hear it that time?

11 MR. WRIGHT: Yes.

12 BY MS. WECKERLY:

13 Q Okay. And so you referred her to just go to a
14 specialist --

15 A Yes.

16 Q -- in gastroenterology?

17 A Yes.

18 Q And did you refer to a specific place, or did
19 you -- does someone else in your office do that? How does
20 that referral work?

21 A We just -- I just -- you know, I just say please
22 refer to gastrology, but I really do not write the names on
23 the referral.

24 Q Okay. So you're never sure where they're going
25 to go for the follow-up?

1 A Yes. It's usually based upon insurance.

2 Q Okay. Was she -- well, to your knowledge at
3 this point where we are now today, do you know that she in
4 fact went for a colonoscopy and an endoscopic procedure at the
5 Endoscopy Center of Southern Nevada?

6 A Yes. She had both procedures done.

7 Q She had both?

8 A Yes.

9 Q One of those procedures was on September 21,
10 2007?

11 A Yes.

12 Q Did you see Ms. Hutchison after that date at
13 all?

14 A Not until after she was hospitalized.

15 Q And did you become -- were you notified that she
16 went to the hospital?

17 A I don't remember if I was notified until after
18 the fact. I don't remember that.

19 Q But at some point you became aware she was
20 hospitalized?

21 A Oh, yes.

22 Q And as her primary care doctor, would you have
23 been apprised of what the situation was or what her problem
24 was that caused the hospitalization?

25 A I was surprised.

1 Q But did you know what the problem was though,
2 what the --

3 A Yes. She came in and told me.

4 Q Okay. So you saw her at some point after that?

5 A Yes.

6 Q And what were her symptoms?

7 A It wasn't really her symptoms that she was
8 having. It was more she was just in shock.

9 Q Okay. She was upset?

10 A Yes. She was upset, yeah.

11 Q And have you -- have you since seen her medical
12 records indicating that she's positive for hepatitis C?

13 A Yes, she was positive. Yes.

14 Q And in the time you saw her after the procedure,
15 were you her treating doctor for some time after that?

16 A Yes. Up until recently, when she moved to
17 Oregon.

18 Q So she stayed with you for a while, but now
19 she's since moved?

20 A Yes.

21 Q In your more recent treatment of her, were you
22 the doctor that treated her for the hepatitis C, or would she
23 have gone to a different doctor?

24 A I referred to another gastrologist.

25 Q Who specializes in that type of treatment?

1 A Yes.

2 Q Now, you indicated that prior to her procedure
3 on September 21, you had run blood tests on her that would
4 have detected or maybe been positive for hepatitis C or would
5 indicate that, correct?

6 A Yes.

7 Q What was the most -- what was the latest test
8 you ran in relation to September 21st of '07?

9 A Let me take a look at the labs.

10 Q Okay.

11 A It was the May 16, 2007.

12 Q And so her blood was actually tested on that
13 date and she was negative for hepatitis C?

14 A Yes.

15 Q Were any tests run on her by you after that,
16 that maybe measured any kind of like liver impairment or any
17 trouble with her liver that would possibly be related to
18 hepatitis C, or was that the latest blood test that you
19 actually ran for her?

20 A Before -- that was the latest before she went to
21 the hospital.

22 MS. WECKERLY: Okay. May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 MS. WECKERLY: Sir, I am showing you -- this is

1 State's Proposed Exhibit 6.

2 THE WITNESS: Yes.

3 BY MS. WECKERLY:

4 Q And it has a date of May the 16th, and this is
5 for Ms. Hutchison, correct?

6 A Yes.

7 Q And this would have been the test that indicated
8 that she was negative on that date?

9 A Yes.

10 Q Can you show me where that -- whoops.

11 A The hepatitis C right here, anti hep C antibody.

12 Q Okay. And it shows her as negative?

13 A Yes.

14 Q I'm just going to put that on the overhead here.
15 Sir, this is the document I just showed you, correct?

16 A Yes.

17 Q And where I'm pointing right here indicates this
18 was the indicator of whether or not she was positive or
19 negative for hepatitis C, and it says negative?

20 A Yes.

21 Q And this is the date received, it's May 16th,
22 and the date recorded is May 17th of '07?

23 A Yes.

24 Q Thank you, sir.

25 MS. WECKERLY: I'll pass the witness, Your Honor.

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

2 CROSS-EXAMINATION

3 BY MS. STANISH:

4 Q Good afternoon.

5 A Hi.

6 Q Why did you run the hep C panel on Ms.
7 Hutchison?

8 A The reason why I ran the hep C panel is because
9 she was having some -- I diagnosed her with right upper
10 quadrant -- right upper abdominal pain.

11 THE COURT: Is that where your liver is?

12 THE WITNESS: Yes.

13 MS. STANISH: Good question.

14 BY MS. STANISH:

15 Q Where is your liver [indicating]?

16 A Yes, that's correct. Right below the ribs on
17 the right side.

18 Q When did you say you stopped treating Ms.
19 Hutchison?

20 A January of 2013.

21 Q And you saw her -- she went to the hospital,
22 correct?

23 A Yes.

24 Q And did you receive those hospital records?

25 A Yes. When I saw her I requested the records.

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1 Q And do you recall how soon after she was
2 hospitalized you next physically saw her?

3 A Weeks later.

4 Q Okay. And as -- was she -- do you know if she
5 was taking medication for the hepatitis C?

6 A I do not recall that.

7 Q Your records would indicate what medication she
8 was taking, wouldn't they?

9 A Yes. My record would indicate that, but also
10 the hospital record would indicate that too, as a discharge.

11 Q Well, maybe I -- it's a bad question. Let me --
12 let me set the stage. What I'm trying to get at, sir, is I'm
13 trying to understand after she was hospitalized what kind of
14 treatment did she receive.

15 A Oh, okay. Well, the treatment would have come
16 from the gastrologist.

17 Q Do you know if she took medication?

18 A I think she did.

19 Q And do you know for how long she took that
20 medication?

21 A I do not recall that.

22 Q Was it the -- do you know what the medication
23 was?

24 A No, I don't remember.

25 Q And would you have written that in your files,

1 identified what the medication your patient was on?

2 A The nurses usually write that down, but we
3 usually rely on the gastrologist referral -- consulting sheet
4 to come back.

5 Q And you've been treating her for up until '09 --
6 ch, gosh, this year --

7 A Yes.

8 Q -- January of 2013?

9 And is -- I don't know if I'm using the right term,
10 but help me out if you can. In your more recent treatment of
11 her, is she showing symptoms of hepatitis C?

12 A The most recent treatment was more for upper
13 respiratory infection.

14 Q I'm sorry?

15 A Upper respiratory infection.

16 Q Was that something to do with hepatitis C, or
17 just --

18 A It's more for upper respiratory infection.

19 Q So not connected to hepatitis C?

20 A I do not believe so.

21 Q How often did you see her after her
22 hospitalization?

23 A I probably see her every several months.

24 Q Once a year, twice a year?

25 A Probably every two to four months.

1 Q And why are your -- why are you seeing her that
2 often?

3 A Maybe primarily because her anxiety.

4 Q Okay. So she was upset, as you said earlier, so
5 it dealt more with anxiety?

6 A Yes. Anxiety and the complication of the
7 treatment that she had from the blood tests.

8 Q Do you know how long the treatment lasted?

9 A I don't remember.

10 Q If this all occurred in 2008, do you know how
11 long treatment usually lasts for hepatitis genotype 1a?

12 A Six to 12 months.

13 Q Okay. And so let's talk about after that period
14 of time occurred.

15 A Okay.

16 Q Okay. Had the hepatitis C been brought under
17 control, do you know?

18 A I saw the recent lab, that there was not
19 detected.

20 Q And you would do blood work on her occasionally?

21 A I would do blood tests, but usually just more
22 for sugar, kidneys, liver, cholesterol. Because I would do
23 bloods in my realm of specialty, and I wouldn't want to
24 overlap what the gastrologist does.

25 Q Fair enough. So you were doing the liver

1 functioning tests?

2 A It would include. It would include in the
3 complete metabolic profile.

4 Q So the blood tests -- oh, by the way, did you --
5 did the -- was it a GI that was treating her for the hepatitis
6 C, or a liver specialist?

7 A A gastrologist.

8 Q Okay. And did the gastrologist keep you
9 apprised of what her condition was by sending you consults
10 and --

11 A Yes.

12 Q -- paperwork?

13 And you reviewed those?

14 A Yes.

15 Q And after she had finished the regimen with the
16 medication, the blood tests showed that she was cleared for
17 hepatitis C? Is that the -- I don't know if that's the right
18 word.

19 A Yes. From what I remember, there was a test
20 that came back that it was not detectable.

21 Q Did you have to participate in any civil
22 litigation in this related to Ms. Hutchison?

23 A I did a deposition.

24 Q Did anybody -- when was the first time you were
25 contacted by law enforcement?

1 A Law enforcement?

2 Q Yeah. And by that I mean metropolitan police,
3 the district attorney's office, anyone who wears a badge or
4 has one tucked away.

5 A To my recollection, this is my first time --
6 really, this is my -- kind of like the first -- I don't
7 remember ever talking to a DA.

8 Q All right. Have you ever discussed Ms.
9 Hutchison's case with anybody from the Southern Nevada Health
10 District?

11 A Not that I remember.

12 Q Have you ever discussed her case with anybody
13 from the CDC, the Center for Disease Control, the feds?

14 A No.

15 MS. STANISH: The Court's indulgence.

16 THE COURT: That's fine.

17 MS. STANISH: Nothing further.

18 THE COURT: Mr. Santacroce.

19 MR. SANTACROCE: I have no questions for the doctor.
20 Thank you.

21 THE COURT: Redirect?

22 MS. WECKERLY: No redirect, Your Honor. Thank you.

23 THE COURT: Juror questions. Any juror questions?

24 All right. Doctor, thank you for your testimony. You are
25 excused at this time.

1 THE WITNESS: Thank you.

2 THE COURT: State, you may call your next witness.

3 MS. WECKERLY: The next witness is Stacy Hutchison.

4 THE COURT: Is everybody okay without a break on the
5 jury? Okay.

6 STACY HUTCHISON, STATE'S WITNESS, SWORN

7 THE CLERK: Please state your first and last name for
8 the record.

9 THE WITNESS: Stacy Hutchison.

10 THE CLERK: And can you spell that, please.

11 THE WITNESS: First and last?

12 THE COURT: Both, please.

13 THE WITNESS: S-t-a-c-y, H-u-t-c-h-i-s-o-n.

14 THE COURT: All right. Thank you. Ms. Weckerly.

15 DIRECT EXAMINATION

16 BY MS. WECKERLY:

17 Q Ms. Hutchison, I'd like to talk to you about
18 events in 2007. At that time, were you living in Las Vegas?

19 A Yes.

20 Q And was your doctor the man who just left the
21 courtroom?

22 A Yes.

23 Q Dr. Bui?

24 A Yes.

25 Q During, I guess, the early part of 2007, at some

1 point did you go to him with some issue with maybe some pain
2 in your abdominal area?

3 A Yes.

4 Q And based on that, did he suggest that you have
5 a referral with a specialist in gastroenterology?

6 A Yes.

7 Q Do you remember going to an appointment, or
8 going to like a medical appointment with a specialist?

9 A Yes.

10 Q Where did that take place?

11 A That took place, the facility off of Tenaya.

12 Q Okay.

13 A And I saw Lisa Franks at that time.

14 Q And so you had a medical office meeting with
15 Lisa Franks?

16 A Yes.

17 Q And based on that meeting, were some tests
18 ordered for you, or procedures?

19 A Yes.

20 Q And what were those procedures?

21 A She suggested to have an upper GI and a lower GI
22 done.

23 Q And that's an endoscopy and a colonoscopy?

24 A Yes. Sorry.

25 Q That's okay. Both procedures?

1 A Yes.

2 Q And that was sometime before September 21st of
3 2007, correct? Because you have the procedure on -- one of
4 the procedures on that date.

5 A Yes.

6 Q And do you remember where it was that you
7 actually had these procedures done, where like the street or
8 what the place was called?

9 A On Shadow Lane.

10 Q Is it the Endoscopy Center of Southern Nevada?

11 A Yeah. My husband drove me.

12 Q Okay. And so he probably knows the exact
13 address, right?

14 A Yes.

15 Q So you had an appointment scheduled for one of
16 the procedures on September 21st of 2007, correct?

17 A Yes.

18 Q And you actually have a second procedure a week
19 later; is that right --

20 A Yes.

21 Q -- at the same place?

22 Do you remember having to drink any fluid or do any
23 kind of what's called prep for your procedure?

24 A Yes.

25 Q And what was that, if you recall, like, or what

1 did it seem like?

2 A It was stuff I had to pick up from the pharmacy
3 and add water to it and drink it 20 hours -- 24 hours before
4 having the procedure done.

5 Q And could you eat before the procedure?

6 A No.

7 Q So you're kind of -- by the time you get there,
8 you're --

9 A Hungry.

10 Q -- hungry and probably uncomfortable; is that
11 fair?

12 A Hungry and thirsty, but not uncomfortable.

13 Q When you arrived on September 21, what procedure
14 were you going to have that day?

15 A A colonoscopy.

16 Q And do you remember if your appointment was in
17 the morning, in the afternoon? Do you have any idea what time
18 it was?

19 A It was in the morning.

20 Q First thing, or later morning, if you recall?

21 A It was probably around 8:00 o'clock in the
22 morning.

23 Q That you arrived?

24 A Yeah.

25 Q And so your husband and you go to the clinic; is

1 that right?

2 A Yes.

3 Q And he's driving?

4 A Yes.

5 Q And when you get to the clinic and you walk in,
6 I assume you're in sort of a waiting room check-in area?

7 A Yes.

8 Q What did that -- what did that look like to you;
9 was it crowded, not crowded?

10 A Once I arrived to the facility, you go in to do
11 a check-in, which is -- and you do your copay right there, and
12 we sat down and it was very full. He probably had like 40, 50
13 patients in there.

14 Q So 40 or 50 patients are in the waiting room?

15 A Patients sitting, yeah. I don't know if they
16 were patients. I don't know if they were waiting for their,
17 you know, the people that were in procedures. I didn't strike
18 a conversation with anybody.

19 Q Okay. And you said you check in and you pay a
20 copayment?

21 A Yes.

22 Q What -- what type of insurance did you have?

23 A Health Plan of Nevada.

24 Q HPN. And did you have to pay a copay that
25 morning?

1 A Yes.

2 Q And do you remember how much it was? Or if you
3 don't, that's okay.

4 A I can't recall. It's five years ago, so.

5 Q But you paid something, but you also probably
6 had to show your insurance card or proof of insurance,
7 something like that?

8 A Yes, I did.

9 Q So after you check in, do you sit back down with
10 your husband for a little bit?

11 A Yes.

12 Q And that's when you kind of observe this 40 or
13 50 people in the waiting area?

14 A Yes.

15 Q Did someone eventually call you into another
16 room to change into a gown?

17 A It took about an hour and a half before they
18 called me back there.

19 Q So you had to wait a little bit?

20 A Yes.

21 Q And then who -- who was it that called you, or
22 what did the person look like that called you into the next
23 area?

24 A It was a female. I'm assuming a nurse called me
25 back and took me over to the changing room.

1 Q And did they have dressing rooms where you get
2 out of your regular clothes and into a gown so they can do the
3 procedure?

4 A Yes.

5 Q After you changed your clothing, what did you do
6 with it? Did you give it to your husband, or do you remember?

7 A No. They give you a bag, and then she escorted
8 me over to another area where there were two other people
9 sitting. And I sat in an empty chair where they were putting
10 in the PICC line, or what -- I don't know what they call it.

11 Q Is it like a needle that goes in your arm?

12 A Yeah.

13 Q Accessing a vein?

14 A Yeah, for the anesthesia.

15 Q Okay. And you said there were two other people
16 there?

17 A There were two other people sitting. There was
18 three chairs.

19 Q So three patients?

20 A Two -- so it was three chairs, two patients, and
21 I sat in the empty chair.

22 Q Okay. And at that location, did someone put in
23 your -- you called it a PICC line or an IV, something like
24 that?

25 A Mm-hmm. Yes. Sorry.

1 Q Yes?

2 And do you remember that person at all, a woman, man,
3 anything like that?

4 A I can't recall.

5 Q Okay. How about this. After the person put
6 that in your arm, do you remember anything about those
7 circumstances? Like did you watch the person put it in, or
8 are you someone that --

9 A Oh, no. I watch everything.

10 Q You watched every --

11 A Yes.

12 Q So what did you see?

13 A Once -- the person has a tray that has all their
14 medical stuff on it, so when they -- I have to say she or he.

15 Q Okay. Well, or you could say nurse.

16 A Okay. Nurse. When the nurse came over, I
17 watched them tear open the thing and swab my hand and put the
18 PICC line in and then put a Band-Aid over it, and then popped
19 open the saline top and rubbed it with alcohol and then rubbed
20 my top with alcohol, and she told me that they had to flush it
21 to make sure that the vein was good, so then that way the
22 anesthesia can get inside the vein.

23 Q And you watched all that?

24 A Yes. It was done in front of my face.

25 Q Okay. And did you see all that packaging being

1 unwrapped?

2 A Oh, yeah. Everything was ripped open. The
3 person was wearing gloves and everything, so yeah.

4 Q So all parts of it were opened in front of you?

5 A Yes.

6 Q And obviously you're not someone who gets weak
7 seeing a needle go in them.

8 A No. Hm-mm.

9 Q And you said she flushed it, or the nurse
10 flushed it?

11 A The nurse, yes.

12 Q Did you know what that fluid looked like at all?

13 A It was clear.

14 Q It was clear. And after that, did you stay in
15 that chair or did you move into another area?

16 A Once the, I guess, an open bed came open,
17 somebody came and escorted me over to an open bed, and that's
18 where I put my clothing underneath in a bag, and they laid me
19 on the bed and told me to wait, that we'd be -- that I would
20 be rolled into the procedure room.

21 Q Okay. So the next step is the procedure room;
22 is that right?

23 A Yes.

24 Q And you're laying on a bed that sounds like it
25 rolls?

1 A Yes.

2 Q And your stuff, your clothes are underneath you
3 sort of? .

4 A Mm-hmm.

5 Q Is that yes?

6 A Yes. Sorry about that.

7 Q That's okay. Do you remember anything about the
8 procedure room, like who was in there or what it looked like,
9 anything like that?

10 A They -- the nurse rolled me in and there was
11 one, one person. So when I rolled in, and so I was on my
12 side, on my right side. So I was leaning laying. So I had
13 one person here [indicating] and another person here
14 [indicating], and then the operating equipment here
15 [indicating], and then the -- Dr. Desai came in and introduced
16 everybody. I don't remember everybody's name.

17 And he explained about, you know, the tube and the
18 monitor. And then the guy behind my head said that he was
19 going to put some white milky stuff in me with the vial, the
20 anesthesia inside me, so and all's -- I'll feel a warm tingly
21 sensation and I'll fall asleep, and before I know it, you
22 know, I'll be done.

23 Q Now, the guy that said he was going to put the
24 white milky anesthesia in you --

25 A Yeah.

1 Q -- did that person ever come out and talk to you
2 when you were sitting in those three chairs with the two other
3 patients getting your IV or PICC line put in?

4 A No.

5 Q Did that person ever come out and say, you know,
6 hey, do you have any allergic reactions to medication, have
7 you ever had a bad reaction to being put under anesthesia,
8 anything like that?

9 A No.

10 Q So the first time you talk to that person is
11 when --

12 A I was rolled into the procedure room.

13 Q And they -- and that person, you said it was a
14 he?

15 A Yes.

16 Q He says, I'm going to put you under, it may feel
17 tingly?

18 A Yes.

19 Q Okay. And prior to him doing that, you said
20 Dr. Desai comes in?

21 A Yes.

22 Q And I mean, do you recognize Dr. Desai?

23 A Yes.

24 Q Do you see him here?

25 A Yes, I do.

1 Q Can you point to him and describe what he's
2 wearing today?

3 A [Indicating.] He's the gentleman with the
4 salt -- salt and pepper hair, glasses.

5 MS. WECKERLY: May the record reflect --

6 THE COURT: What color shirt?

7 THE WITNESS: Oh, teal.

8 THE COURT: It will reflect identification.

9 MS. WECKERLY: Of Dr. Desai.

10 THE COURT: Yes.

11 BY MS. WECKERLY:

12 Q So Dr. Desai kind of tells you who everybody is
13 in the room?

14 A Yes.

15 Q And then the anesthetist says they're going to
16 inject you, or he's going to inject you with the milky vial --

17 A Yes.

18 Q And I assume sometime after that you lose
19 consciousness or you fall asleep?

20 A Oh, yeah, immediately.

21 Q Okay. And did you remember -- I mean, have I
22 left out anything you might have remembered, or is that pretty
23 much before you fall asleep have we covered it?

24 A No. I don't --

25 Q You don't remember anything else?

1 A No. I just fell asleep, so.

2 Q Okay. What's the first thing you're aware of
3 after the procedure, like where were you?

4 A I was back into what's like a makeshift room
5 with curtains. So I woke up and the PICC line, their IV was
6 out of my hand. So I went ahead, got dressed and walked out
7 the door.

8 Q Okay. Because your clothes are underneath you,
9 right?

10 A Yeah.

11 Q So was anyone -- was there a nurse there saying,
12 hey, are you all right?

13 A No. No. No. So no, I -- I didn't know I was
14 supposed to stay. So what happened was me and my fiance at
15 the time walked out the door, and all the sudden a male nurse,
16 as soon as I got almost into the car, said, Wait, Ms.
17 Hutchison, you can't leave. You have to come back and get
18 checked out. And I didn't -- I mean, I didn't know. So he
19 brought me back in.

20 Q So let me just back up a little bit. You're in
21 a -- when you wake up, you're in a different room than the
22 procedure room; is that fair?

23 A Yes.

24 Q And did you see other people or...

25 A No. It was like a makeshift room with just

1 curtains around it.

2 Q So there was just a curtain around your little
3 area?

4 A Yes.

5 Q And so you were able to get dressed kind of in
6 there by yourself?

7 A Yes.

8 Q And then there was no nurse talking to you at
9 that time, correct?

10 A No.

11 Q Did the anesthesia person come out and say are
12 you all right, how are you feeling, anything like that?

13 A No.

14 Q How about Dr. Desai?

15 A No.

16 Q Then you leave and I assume that your
17 fiance/husband --

18 A Mm-hmm.

19 Q Is that a yes?

20 A Yes.

21 Q And you guys started heading out because you
22 think you're all done, right?

23 A Yes.

24 Q And you said you almost got to your car and what
25 happened?

1 A And then a male nurse chased me out and he said,
2 "Ms. Hutchison, you can't leave yet. You need to be checked
3 out."

4 Q Okay. So what happens?

5 A So I go -- we go back in. My fiance sits in the
6 waiting room. And we go to -- he sits me down with the lady
7 who checks you out. And the lady who checks you out just goes
8 through don't eat this, don't eat that, you know, you might be
9 nauseous, make sure I have a ride home.

10 Q Okay.

11 A And they also rescheduled me a follow-up
12 appointment.

13 Q So they tell you like have a light diet or
14 something the rest of the day?

15 A Yes.

16 Q And did she tell you what the findings were of
17 your procedure at all?

18 A No. She just said that they -- that they would
19 tell me my findings at my follow-up visit.

20 Q Okay. And just to be clear, you don't see the
21 anesthesia person or Dr. Desai at all that day?

22 A Yes.

23 Q I mean other than in the procedure room, right?

24 A Yes.

25 Q Okay. So you get to leave after that, right?

1 A Yes.

2 Q Okay. So you leave. And did you have your next
3 procedure done before the follow-up appointment?

4 A Yes.

5 Q Okay. And how long -- what was the next date
6 for the procedure, which would be the upper endoscopy, right?

7 A It would have been one week.

8 Q Okay. So the 28th?

9 A Okay.

10 Q Is that right?

11 A Yes.

12 Q If the first one was on the 21st?

13 A Yes.

14 Q Was -- do you recall what time of day that
15 appointment was?

16 A In the morning.

17 Q Same -- was it the same procedure that you went
18 through that you just described for the 21st, where you go in
19 and --

20 A Yes.

21 Q -- do your copay and sit?

22 A Yes.

23 Q Were there as many people there on the 28th?

24 A Yes, there were.

25 Q Was it the same kind of long wait that you

1 experienced before?

2 A Yes.

3 Q Was it pretty much the same procedure in the
4 what I would call like the preop area, where the nurse --

5 A Yes.

6 Q -- puts in the what did you call it, a PICC
7 line?

8 A PICC line.

9 Q Okay. Did you see the packaging again on that
10 date, or do you recall?

11 A Yes.

12 Q Okay. And then you go in for the procedure
13 again?

14 A Yes.

15 Q Same doctor?

16 A Different doctor.

17 Q Different doctor for the 28th?

18 A Yes. It was Dr. Carrol.

19 Q And do you remember, was there anything that you
20 remember about that procedure on the 28th that's like of note,
21 or was it -- you know, did it go pretty smoothly, same thing,
22 where the anesthetist puts you under and that [inaudible]?

23 A Yes.

24 Q On the 28th, did the anesthesia person come and
25 talk to you in the preop area where you got your PICC line?

1 A No.

2 Q Did the anesthesia person interview you at all
3 about being sedated or whether you had eaten or anything like
4 that?

5 A I can't recall.

6 Q Okay. That's all right. And then I assume you
7 go under again?

8 A Yes.

9 Q And this time do you wake up in the recovery
10 room?

11 A Yes.

12 Q But you kind of know --

13 A I have to stay.

14 Q -- you can't just leave, right?

15 A Yes.

16 Q Is anyone with you when you wake up on the 28th?

17 A No.

18 Q Still no nurse?

19 A No.

20 Q Did Dr. Carrol come talk to you?

21 A No.

22 Q How about the anesthesia person?

23 A No.

24 Q No one -- no one in the procedure room comes and
25 talks?

1 A No.

2 Q But there is a -- did you check out with anyone
3 on the 28th?

4 A I poked my head out to see if I can get somebody
5 to check me out.

6 Q Okay. So you had to kind of flag someone down?

7 A Yes.

8 Q Did that person check you out or --

9 A Yeah. They escorted -- yes, they escorted me to
10 the changing room. I changed and saw the check-out nurse.

11 Q And then I assume you leave again?

12 A Yes.

13 Q Sometime after that, did you start experiencing
14 some health problems?

15 A I experienced health problems about three weeks
16 after.

17 Q Okay. And can you describe for the members of
18 the jury what you were feeling like, what it felt like those
19 weeks later?

20 A It felt like flu-like symptoms. I wasn't
21 holding down food. At about two weeks I started dropping a
22 lot of weight. And I always say that heavy people don't drop
23 weight that fast, and I went to the UMC Quick Care. And I --
24 they said I had a bladder infection.

25 But two days after my emergency room -- another

1 emergency, but there was the UMC Quick Care place that I went
2 to, I couldn't hold down water two days later, so I felt there
3 was something wrong so I went to the emergency room.

4 Q And what hospital did you go to for the
5 emergency room?

6 A Spring Valley Hospital.

7 Q Which is still in that same area, down where you
8 got the endoscopy, or --

9 A No. Spring Valley Hospital is located on
10 Rainbow and Hacienda.

11 Q Okay. So you go there and do they admit you?

12 A After they drew some blood from me, they saw
13 that my liver enzymes were like through the roof.

14 Q Your liver enzymes?

15 A Enzymes, yes.

16 Q Okay. And based on that, that reading or that
17 test finding, they admit you to the hospital?

18 A Yes.

19 Q And while you're at the hospital, do you now
20 what's wrong with you initially?

21 A No.

22 Q Is someone coming to explain, hey, here's what
23 we found, anything like that?

24 A No. I was in the hospital for a total of 2 1/2
25 weeks.

1 Q You were there 2 1/2 weeks. The whole time you
2 were there, were you still feeling the nauseous and the unable
3 to keep --

4 A The nauseous, the not being able to hold food
5 down. After three days being admitted in the hospital I
6 turned yellow. My eyes were yellow. The urine was, you know,
7 dark. And after several different blood tests they still
8 didn't find out what was wrong with me. I went through
9 ultrasounds. I went -- I think I went through an MRI. They
10 were doing the all abdomen to see what was wrong.

11 Because my blood wasn't really saying what was wrong
12 with me, but the liver enzymes were just high, because they're
13 supposed to be really low. Then two weeks after being in the
14 hospital they decided to do a liver biopsy to -- and that's
15 when they found out that I had hepatitis C.

16 Q And who was the one that finally tells you that?

17 A That was horrible. The health district.

18 Q And do you even know how they knew before you?
19 Do you know that now?

20 A No. I don't. I'm supposedly -- sorry.

21 Q It's all right.

22 THE COURT: Just take your time. Let us know if you
23 need a break.

24 THE WITNESS: It was a horrible day. Do you
25 understand? When a person has a contagious disease, the

1 hospital is supposed to contact the health district
2 immediately. The health district called me and told me I had
3 hepatitis C.

4 The doctor didn't even have the results. The head
5 nurse didn't have the results. I had to hear it from my
6 health district and I didn't [unintelligible] the doctor. My
7 poor mother, she was so upset and I didn't -- they had to call
8 her. She was at work. Sorry.

9 MS. WECKERLY: Are you okay? We can wait a second.

10 THE WITNESS: Go ahead.

11 BY MS. WECKERLY:

12 Q Okay. When you found out and you got that call
13 from the health district, you were still in the hospital?

14 A Yes, I was.

15 Q Okay. And so no doctor had even talked to you
16 at that point?

17 A No.

18 Q So you get this call. Does some doctor ever
19 come and explain what their findings were to you?

20 A No. I didn't find out from the doctor until the
21 next morning. And when the health district calls you, they
22 ask you questions that are disgusting. Because I've always
23 been a clean person, so when you get that call and they ask
24 you, you know, do you have any tattoos, do you have any
25 piercings, have you been out of the country, how many sex

1 partners do you have, do you --

2 MR. WRIGHT: Foundation objection, or hearsay
3 objection.

4 THE COURT: Overruled.

5 THE WITNESS: You don't understand. It made me feel
6 like I was a dirty person and [unintelligible] a clean person.
7 But I'm sorry, you guys. We're off track. Go ahead.

8 BY MS. WECKERLY:

9 Q That's okay. So you get that call and it's the
10 next morning, correct --

11 A Yes.

12 Q -- that a doctor tells you you're positive for
13 hepatitis C?

14 A Yes.

15 Q Now, after you get that information, obviously
16 it's very upsetting and I'm not trying to minimize that.

17 A No. It's okay.

18 Q Do you go see your regular doctor sometime after
19 that?

20 A In the hospital I had a gastroenterologist, a
21 Dr. Manuel, and I was referred to go and see him because he
22 was overseeing my care on that part.

23 Q So there's a Dr. Manuel or Manwell [phonetic]
24 at --

25 A Manuel, yeah.

1 Q -- at Spring Valley Hospital who is assigned to
2 your case?

3 A Yes.

4 Q And do you -- you have contact with that doctor?

5 A Yes. The doctor had contact with me for like
6 four days prior, before my diagnosis.

7 Q Okay. And do you ever go see your general
8 practitioner or your family doctor, Dr. Son Bui, after --

9 A Bui.

10 Q -- after being released from the hospital?

11 A Yeah. Yeah. I told him what happened to me,
12 so.

13 Q Let me just ask you this: What happens in
14 between Dr. Manuel talking to you and you being released from
15 the hospital? Is there any discussion about your health or
16 any further testing they need to do or anything like that?

17 A Dr. Manuel wanted me to get more blood results
18 done and see him back in like a week and a half.

19 Q And so you have to give more blood?

20 A Yes.

21 Q And then at some point are you released?

22 A Yes.

23 Q And then after that is when you go see your
24 regular doctor?

25 A Yes.

1 Q Dr. Bui?

2 A Yes.

3 Q And when you go and see him, are you still kind
4 of wondering how you could have this diagnosis?

5 A Yeah. I was devastated, because I had --
6 because of my right side pain, and there's so many organs on
7 the right side he didn't know what was wrong with me. So
8 prior to that, four months, five months prior to that we did a
9 big hepatic panel, and which included the hepatitis C virus,
10 and it came out negative.

11 Q So you knew you were negative then?

12 A Yes.

13 Q Okay. And so you go and see him though, after
14 your release from the hospital. Do you have any idea how --
15 at that point in time how you had contracted the hepatitis C?

16 A No. The only conclusion, and I'm saying
17 conclusion with [unintelligible], is because when you research
18 of what I found out with hepatitis C is a blood transmitted
19 disease which can only be transmitted through a needle. And
20 so if you go back of where I've been for needles, I mean, it
21 was --

22 Q It was the two procedures?

23 A It was the two procedures.

24 Q Does your doctor though, back then refer you
25 back to the endoscopy clinic?

1 A Yes. He told me that since --

2 MR. WRIGHT: Objection. Hearsay.

3 THE COURT: Overruled.

4 BY MS. WECKERLY:

5 Q Did you go back -- did you go back to the
6 endoscopy clinic after you were released from the hospital and
7 after you saw Dr. Bui?

8 A Yes.

9 THE COURT: And is that because Dr. Bui told you or
10 recommended --

11 THE WITNESS: Told me to follow through --

12 THE COURT: Okay. Go on, Ms. --

13 THE WITNESS: -- with him.

14 THE COURT: -- Weckerly.

15 BY MS. WECKERLY:

16 Q So you go back and who do you have an
17 appointment with back at the Endoscopy Center of Southern
18 Nevada?

19 A Dr. Manuel.

20 Q And when you meet with him, what does he say?

21 A He looked -- when he looked at my blood work, he
22 said it looked like that I was clearing myself up of hepatitis
23 C, and I've never heard of anybody clearing themselves up of
24 hepatitis C. And then I said, "So how do you think I got it?"
25 And he says, "We don't have any clue how you got it."

1 MR. WRIGHT: I'm going to object to hearsay, Your
2 Honor.

3 MS. WECKERLY: Let me -- okay.

4 THE COURT: You may be getting into hearsay, so.

5 MS. WECKERLY: I'll ask a different question.

6 THE WITNESS: Okay.

7 BY MS. WECKERLY:

8 Q At some point when you go back to the Endoscopy
9 Center, you said you meet with Dr. Manuel?

10 A Yes.

11 Q And he was the person that was treating you at
12 Spring Valley Hospital as well, correct?

13 A Yes.

14 Q And so did you know when you see him at the
15 hospital that he's actually part of the clinic, the endoscopy
16 clinic?

17 A I knew at the time when he gave me his card.

18 Q Okay. Do you ever talk to Dr. Desai after
19 you're released from the hospital?

20 A After Dr. Manuel told me that I was going to
21 clear myself up --

22 MR. WRIGHT: Objection.

23 THE WITNESS: -- of hepatitis C --

24 THE COURT: All right. I think you just need to
25 answer the question. And the last question from Ms. Weckerly

1 was: Did you after that see Dr. Desai at any point again?

2 THE WITNESS: Oh, yes.

3 BY MS. WECKERLY:

4 Q Was that the same day? Was that the same day
5 that you saw Dr. Manuel?

6 A No.

7 Q Different day?

8 A Different day.

9 Q Okay. So you go back there again and is that
10 appointment to discuss your situation with Dr. Desai?

11 A Yes.

12 Q And I assume you go to your appointment?

13 A Yes.

14 Q And is this in the medical offices rather than
15 the procedure area?

16 A Yes.

17 Q You meet with Dr. Desai?

18 A Yes.

19 Q And what is the discussion about your situation?
20 What does he say?

21 A He said that my viral signs were going down and
22 that the hepatitis C looked like it was clearing itself up,
23 and that I was in an acute stage.

24 Q That you were or were not in an acute stage?

25 A That I'm in an acute stage.

1 Q So yes, acute?

2 A Yes, acute.

3 Q Okay.

4 A When I -- I freaked out in his office,
5 because --

6 Q Okay. And I think I know what freaked out
7 means, but describe what that -- describe what you mean by
8 that.

9 A Hysterically crying, wondering how I got this,
10 where it came from.

11 Q What does he do?

12 A And he said that he was -- he would get his
13 boss, Dr. Carrol, to come in and explain to me better on my
14 situation with my blood work. And Dr. Carrol didn't do any
15 better, so I was still hysterically crying.

16 Q Okay. And so as you're -- as you're there
17 crying and upset, he says he's going to go get his boss --

18 A Boss, Dr. Carrol.

19 Q -- Dr. Carrol, to come talk to you?

20 A Yeah. They --

21 Q Does he leave the room?

22 A He leaves the room, yeah, because just --

23 Q So were you by yourself?

24 A Yeah. Dr. Desai guaranteed me that my hepatitis
25 C would go away and so did Dr. Desai [sic], they both did,

1 because of the viral signs.

2 Q Let me just ask you a couple of clarification
3 questions, okay?

4 A Okay.

5 Q He says he's going to go get his boss, Dr.
6 Carrol, and he leaves the room; is that right?

7 A Yes.

8 Q And so you're there by yourself, I assume still
9 pretty upset?

10 A Crying, called my mother.

11 Q Okay. Does Dr. Desai return?

12 A Yes.

13 Q And is he with someone at this point?

14 A Dr. Carrol.

15 Q And you know who Dr. Carrol is now?

16 A Yes.

17 Q And actually, he did your other --

18 A Procedure.

19 Q -- your second procedure.

20 When they're both back with you, does Dr. Desai say
21 anything else?

22 A No. He leaves the room.

23 Q Okay. So he leaves and it's just you and Dr.
24 Carrol?

25 A Yes.

1 Q And Dr. Carrol has discussions with you about --

2 A About the same discussion, which is I was in the
3 acute stage, it was looking like I was going to clear myself
4 up, guaranteed me that it was going to go away, and then --

5 MR. WRIGHT: Object to the hearsay, Your Honor.

6 THE WITNESS: -- I -- I asked --

7 THE COURT: Excuse me. I'll see counsel up here.

8 (Off-record bench conference.)

9 BY MS. WECKERLY:

10 Q We left off, and I don't want you to tell me the
11 exact conversation, but you have a further conversation with
12 Dr. Carrol; is that fair?

13 A Yes.

14 Q After Desai leaves. And is it fair to say that
15 you were still upset --

16 A Yes.

17 Q -- even after that conversation?

18 At some point you leave the clinic, correct?

19 A Yes.

20 Q After -- after that, or in this whole chain of
21 events, were you ever contacted by the health district to give
22 a blood sample?

23 A Yes.

24 Q And did you go down there and give a sample?

25 A I already had blood at the Quest Diagnostics.

1 Q At Quest. So you said they could use that
2 blood?

3 A And the CDC went ahead and took the vial.

4 Q Okay. So they got the blood from there?

5 A Yes.

6 Q During this time period, did you -- and I want
7 to kind of move back to the very beginning when you check in
8 for your procedure --

9 A Okay.

10 Q -- the very first one. You said you had
11 insurance?

12 A Yes.

13 Q Do you remember who your insurer was?

14 A Health Plan Nevada.

15 Q Health Plan of Nevada, you said that. And let
16 me just show you one document, if I could.

17 MS. WECKERLY: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MS. WECKERLY:

20 Q Ms. Hutchison, I'm showing you some documents --
21 can I come up with you, is that okay?

22 A Yeah.

23 Q Okay. This is State's Exhibit 61. Is it all
24 right if I move that?

25 A Yeah. That's not mine. Go ahead.

1 Q Looking at this first page, I just want to ask
2 if you've ever seen this document. And if you have, you have.
3 If you haven't, it's no big deal.

4 A No.

5 Q You don't recognize that?

6 A Hm-mm.

7 Q Do you recognize -- probably not this one either
8 then, correct?

9 A No.

10 Yes. That's --

11 Q Have you seen this one?

12 A Yeah. I get that through the mail.

13 Q Okay. And this has Health Plan of Nevada
14 written on the top left there, correct?

15 A Yes.

16 Q And this would have been your address back then?

17 A It's my current address.

18 Q Okay. And right here we see a date.

19 A Yes.

20 Q Can you read that?

21 A Mm-hmm.

22 Q What does it say?

23 A 9/21.

24 Q And can you read that? Your eyes are better
25 than mine if you can.

1 A Is that anus? Am I saying that right?
2 Q I think it's annus.
3 A Okay.
4 Q And let's look at the next page. It's the
5 same -- have you seen that?
6 A Yeah. Upper gastro something. Oh, on 9/28.
7 Q So that's the second procedure, right?
8 A Yes.
9 Q Okay. Let me put those on the overhead. Maybe
10 we can get them bigger.
11 Can you see on your screen there -- I'm going to move
12 it closer, but okay. So this is you, correct?
13 A Yes.
14 Q And then up here is your -- that's your
15 insurance company?
16 A Yes.
17 Q And this is actually your explanation of
18 benefits; is that right?
19 A Yes.
20 Q And it says 9/21/07, correct?
21 A Oh, yes.
22 Q And this is the procedure, correct?
23 A Yes.
24 Q And it says \$560?
25 A Yes.

1 Q And what's this name right here?

2 A Ron Lakeman.

3 Q So it's for his bill, correct?

4 A Yes.

5 Q And the second --

6 MR. SANTACROCE: I'm going to object to that, and ask
7 that that be stricken. There's no foundation as to know if
8 that's his bill or not.

9 THE COURT: Well, that's what it purports to be.

10 MS. WECKERLY: Okay. It appears --

11 MR. SANTACROCE: His name appears on it.

12 MS. WECKERLY: And it's an anesthesia bill.

13 THE COURT: All right. Overruled.

14 MS. WECKERLY: Correct? Here's the second --

15 MR. SANTACROCE: What's the ruling?

16 THE COURT: I said it's overruled. Go on.

17 BY MS. WECKERLY:

18 Q Okay. This is the second page I showed you; is
19 that fair?

20 A Yes.

21 Q And there's your name again and this is your
22 insurance?

23 A Yes.

24 Q And then this is also your explanation of
25 benefits?

1 A Yes.

2 Q And oops. This is the date of your second
3 procedure, the 28th?

4 A Yes.

5 Q And that's your upper endoscopy or procedure?

6 A Yes.

7 Q \$560?

8 A Yes.

9 Q And there's a different name here for the
10 provider, correct?

11 A Yes.

12 Q And it's Linda Hubbard; is that right?

13 A Yes.

14 Q Same fees though, and all that.

15 MS. WECKERLY: May I have the Court's indulgence for
16 just one second?

17 THE COURT: Sure.

18 (Pause in proceedings)

19 BY MS. WECKERLY:

20 Q Ms. Hutchison, can I just back up. On the date
21 of your first procedure on the 21st, the date of the
22 colonoscopy, are you with me?

23 A Yes. I'm listening.

24 Q Okay. And you said that -- you described going
25 into the prep area with the nurse where she's unwrapping

1 everything.

2 A Yes.

3 Q And you saw, you said, the needle and the
4 alcohol, everything taken out of new packages?

5 A Yes.

6 Q And you said that your PICC line, as you
7 describe it --

8 A Yes.

9 Q -- was flushed.

10 A Yes.

11 Q Did you see what that was flushed with?

12 A A needle.

13 Q Okay. Did that --

14 A So she has to go into the bottle with the needle
15 to get the saline out.

16 Q And the bottle, was that -- did you see that
17 opened as well?

18 A Yes.

19 Q And so that was opened from a new container as
20 well?

21 MR. SANTACROCE: Objection. Leading.

22 THE COURT: It is a little leading.

23 BY MS. WECKERLY:

24 Q Okay. How would you describe it?

25 A It was a bottle about that big [indicating] and

1 it had a top on it and it pops off.

2 Q And you heard the pop?

3 A Yes.

4 Q Thank you.

5 THE COURT: Pass the witness?

6 MS. WECKERLY: Yes. Sorry.

7 THE COURT: All right. Mr. Wright.

8 MR. WRIGHT: May we approach the bench?

9 THE COURT: Sure.

10 (Off-record bench conference.)

11 THE COURT: All right. Ladies and gentlemen, we're
12 going to go ahead and take our evening recess at this point
13 then.

14 And ma'am, unfortunately, you do have to then come
15 back tomorrow.

16 THE WITNESS: What time do I need to be here?

17 THE COURT: Counsel, approach again.

18 It would be probably the earlier the better for you,
19 I'm assuming?

20 THE WITNESS: Yeah.

21 (Off-record bench conference.)

22 THE COURT: Ladies and gentlemen, we're going to go
23 ahead and take our evening recess at this point. We'll
24 reconvene tomorrow morning at 9:00 a.m.

25 Before I excuse you for the evening recess, I must

1 remind you that you're not to discuss this case or anything
2 relating to the case with each other or with anyone else.
3 You're not to read, watch or listen to any reports of on
4 this -- reports or commentaries on this case, any person or
5 subject matter relating to the case by any medium of
6 information. You're not to do any independent research on any
7 subject connected with the trial, and you're not to form or
8 express an opinion on the case.

9 If you would all please leave your notepads in your
10 chairs, and follow the bailiff through the rear door.

11 (Jurors recessed at 4:24 p.m.)

12 THE COURT: And ma'am, during the evening recess,
13 please don't discuss your testimony with anybody else who may
14 be a -- any other witnesses in the case, all right?

15 THE WITNESS: All right.

16 THE COURT: Thank you.

17 And she's excused. Is she free to leave?

18 MS. WECKERLY: Yes, until tomorrow.

19 MR. STAUDAHER: I was going to have a conversation to
20 tell her attorney --

21 THE COURT: That's fine. That's why I'm asking. So
22 you want her to hang around so you can --

23 MR. STAUDAHER: Not her, just her attorney.

24 THE COURT: Oh, okay.

25 MR. STAUDAHER: Just to explain kind of what's going

1 on, or maybe the Court can do that.

2 THE COURT: Do you have any questions, Ms. Killebrew?

3 MS. KILLEBREW: I suppose she's to return at 9:00
4 a.m. in the morning?

5 THE COURT: Yes. She has to return at 9:00. Just so
6 you know, one of the jurors has her kid in Safe Key across
7 town, and so we had to let her leave early. Mr. Wright has --
8 has to have some special accommodations for his client, and so
9 he needed a break. And we would have gone late, so I
10 apologize that you have to come back tomorrow.

11 THE WITNESS: It's okay.

12 THE COURT: My preference would have been to stay
13 just late and finish you today, but, you know, with Safe Key,
14 if you're not there right away, they call.

15 THE WITNESS: They call --

16 THE COURT: Right. And so we have to let the juror
17 go because we don't want, you know, Child Haven getting called
18 in on that. So I apologize.

19 In terms of interviewing the other juror, Mr. Wright,
20 my assessment was you had complained yesterday that you
21 weren't getting enough time between the close of the evening
22 session and the beginning of the morning session to confer
23 with your client.

24 So that's why I'm breaking now, as opposed to tying
25 up another, you know, 20 minutes with questioning that person,

1 to give you enough time to confer with your client so that we
2 can get started right at 9:00 a.m. tomorrow, and then let the
3 witness leave as, you know, early as possible. So that's why
4 I thought it was better -- I'm trying to accommodate you -- to
5 do it that way.

6 MR. WRIGHT: Thank you.

7 THE COURT: Because otherwise we'd be in the same
8 boat, ending after 5:00 and starting, you know, wanting to
9 start at 9:00, so.

10 All right. Well, that's everything. I don't think
11 there was anything we had to put on the record or anything
12 like that. Okay. Thank you, ma'am. You're excused.

13 (Court recessed for the evening at 4:27 p.m.)

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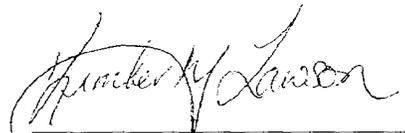
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STATE OF NEVADA,)	CASE NO. C265107-1,2
)	CASE NO. C283381-1,2
Plaintiff,	)	DEPT NO. XXI
vs.)	
)	
DIPAK KANTILAL DESAI, RONALD	)	TRANSCRIPT OF
E. LAKEMAN,	)	PROCEEDING
)	
Defendants.)	
)	

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 12

FRIDAY, MAY 10, 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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KARR REPORTING, INC.

1 LAS VEGAS, NEVADA, FRIDAY, MAY 10, 2013, 9:30 A.M.

2 * * * * *

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now back in
5 session. The record should reflect the presence of the State,
6 the defendants and their counsel, the officers of the court,
7 and the ladies and gentlemen of the jury.

8 And the State may call its next witness.

9 MS. WECKERLY: Thank you, Your Honor. The State
10 calls Jean Scambio.

11 THE COURT: All right.

12 JEAN SCAMBIO, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. And if
14 you could please state and spell your first and last name for
15 the record.

16 THE WITNESS: Jean, J-E-A-N, Scambio, S-C-A-M-B-I-O.

17 THE COURT: Thank you.

18 Ms. Weckerly.

19 DIRECT EXAMINATION

20 BY MS. WECKERLY:

21 Q Good morning.

22 A Good morning.

23 Q How are you employed?

24 A How?

25 Q Uh-huh.

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1 A I was a nurse at the --
2 Q And what --
3 A -- endoscopy center.
4 Q -- type of nurse?
5 A An LPN.
6 Q What does --
7 A A practical nurse, licensed practical nurse.
8 Q Okay. And I know this is a little bit
9 awkward, but we'll have to not talk over each other, so just
10 wait. I know you know the answer to how you're employed --
11 A Uh-huh.
12 Q -- but just wait until I say it --
13 A Okay.
14 Q -- and I'll wait for your answer. Okay.
15 A Uh-huh.
16 Q What kind of training have you had that allows
17 you to work as an LPN?
18 A Well, I did a year of schooling like 35 years
19 ago.
20 Q Okay.
21 A And I worked in a county hospital in Rhode
22 Island for 22 years, and then another five years in a
23 radiation oncology office there before I moved to Las Vegas in
24 2005.
25 Q So you came to Las Vegas in 2005. Did you

1 work somewhere when you arrived in 2005?

2 A Yeah, I worked at Home Health Agency for about
3 seven or eight months first.

4 Q And what is that?

5 A Going into patient's homes doing blood
6 pressures, diabetic teaching, wound care, things like that.

7 Q So it's in-home treatment for --

8 A Yes.

9 Q -- for patients who aren't able to go to a
10 hospital or need kind of day to day care?

11 A Well, yeah. Usually they had been discharged
12 from the hospital and they needed, you know, some little short
13 term care at home to get them back on their feet.

14 Q Okay. At some point did you work at the
15 Endoscopy Center of Southern Nevada?

16 A Yes.

17 Q And when did you start working there?

18 A I believe it was January, the end of January
19 in 2006.

20 Q Okay. Who hired you?

21 A Ms. Rushing.

22 Q That would be Tonya Rushing?

23 A Yeah, she did my interview.

24 Q And you so you think you worked there in
25 January of 2006.

1 A Uh-huh.

2 Q What position were you hired into?

3 A It was mostly in the discharge of the -- of
4 the clinic, going over discharge instructions, kind of like
5 preliminary test results and scheduling follow up visits, and
6 then also we would do call backs the next day to see how
7 patients were doing at home.

8 Q Okay. Let me ask you a couple questions about
9 that. You weren't the person that checked patients in once
10 they arrived at the clinic before -- before their procedure?

11 A No.

12 Q And you didn't work in the pre-op area
13 installing a hep-lock or a needle or anything into the patient
14 prior to their procedure?

15 A No.

16 Q And were you ever in the procedure room when
17 you worked there?

18 A No.

19 Q And the way I understand it there was a
20 recovery area prior -- that you went to prior to the
21 discharge.

22 A Yes.

23 Q And you were in that last stop?

24 A Yes.

25 Q From where you actually physically worked in

1 the discharge area, could you see into the recovery area?

2 A Yes.

3 Q As the -- the discharge nurse, I believe you
4 said your duties were to give the -- the patients their
5 results and schedule a follow up appointment?

6 A Yes.

7 Q And then you also were to, I guess, call them
8 the next day to see what their reaction was to their
9 procedure?

10 A Yes. There was two or three of us, and we
11 kind of like rotated the duties, LPNs --

12 Q Okay.

13 A -- doing those -- those things.

14 Q When -- when you were working during the time
15 you were there, what was your typical shift, your work hours?

16 A We rotated a little bit just to stagger coming
17 in and leaving. Generally, I would say I did either like 8:00
18 to 4:30 or 8:30 to 5:00. And then one of the other nurses, I
19 believe, almost always did the earlier shift, like 7:30 to --
20 to 4:00, I believe.

21 Q Now, you said that you reviewed the discharge
22 instructions and also the test results with the -- with the
23 patients.

24 A Yes.

25 Q What types of things were you telling the

1 patients about their procedure?

2 A Well, they printed out a preliminary report
3 after every procedure was finished, so we would kind of look
4 at what was stated in this document and go over like a general
5 synopsis of what it -- what it said.

6 Q And were you comfortable doing that?

7 A No.

8 Q Why not?

9 A Because on occasion there was possibly results
10 that really didn't look good, and I didn't feel it was up to
11 me to be telling patients that they possibly had tumors.

12 Q Did you -- did you feel like you had the
13 medical background to be discussing that type of result with a
14 patient?

15 A Not really.

16 Q And were you -- were you concerned about the
17 -- the accuracy of the information you might be giving the
18 patient?

19 A Yes.

20 Q When you had that -- that duty, did you ever
21 ask a doctor to come out and discuss the results with the
22 patient instead of you doing it?

23 A There were only a few doctors that, in my time
24 I was there, that if they saw something that really seemed
25 concerning would actually go in and talk to the patient in the

1 discharge room.

2 Q And who were those doctors that would come out
3 if you --

4 A I don't remember their names.

5 Q You don't remember their names?

6 A There were so many doctors that --

7 Q Do you remember if Dr. Desai would come out?

8 A No, when I was there he -- I don't remember
9 him doing that many actual procedures.

10 Q And obviously you were aware of who he was?

11 A Yes.

12 Q Did you ever see him in your area, in the
13 discharge area?

14 A The discharge area had like a nurse's desk,
15 and up on the counter was the daily schedule that would be
16 taped to the desk so, you know, we could see who was going to
17 be coming in and take the next person in. He would come out
18 and look at that and schedule frequently. And if patients
19 didn't come in or cancel, they would get crossed off.

20 Q And did you ever hear him comment or --

21 A Yeah.

22 Q -- say anything?

23 A He didn't seem happy when we were having like
24 quite a few no-shows for the day.

25 Q He didn't seem happy?

1 A No.

2 Q Well, how did you -- how could you tell that?

3 What would he do?

4 A I don't know. I don't remember exactly what
5 he said, but it just seemed like there was grumbling about,
6 you know, not enough patients being seen for the day.

7 Q Not enough patients for the day. But those
8 comments weren't directed at you.

9 A No.

10 Q You could just hear it?

11 A Yeah.

12 Q Is that yes?

13 A Yes.

14 Q Okay.

15 A Sorry.

16 Q What was the -- the atmosphere like at the
17 clinic during the time you were there?

18 A It was very fast paced, very stressful, there
19 was always roomfuls of patients. The waiting room was always
20 very full, patients were angry about how long they had to wait
21 to come in, get out. It just wasn't a nice atmosphere.

22 Q And in your recollection, how many patients do
23 you remember being seen a day?

24 A I believe on like just any given day on the
25 schedule there was anywhere from 65, 70 or so, I believe.

1 Q Yeah, and it was -- I think you described it
2 as very crowded.

3 A Oh, yeah.

4 Q How quickly were the patients moved through?

5 A It seemed like after their procedure they'd be
6 brought into the recovery area. I think about two sets of
7 vital signs every 15 minutes may have been done. And then
8 they would be gotten up and dressed and brought over to a
9 seating area to wait for one of us to go over their results
10 and schedule their follow up appointment.

11 Q Okay. And how long -- I mean, were patients
12 in one area very long, or how -- how did it seem to you?

13 A In one area?

14 Q In one area of the -- of the clinic, like in
15 pre-op or in recovery or --

16 A Well, they moved through pretty quickly.

17 Q Okay. And it was just always high volume --

18 A Yes.

19 Q -- is your recollection?

20 A Yes.

21 Q Did you stay -- did you stay there a long time
22 working?

23 A No, five months.

24 Q Five months. Why only five months?

25 A Once I got actually totally trained, oriented

1 to the position, got a feel for how the place was -- the
2 facility was run, and I didn't really care for it, it was
3 nothing like I had ever seen back in Rhode Island in an
4 office, and then the time to find another job and leave.

5 Q How soon did you start looking for another
6 job?

7 A I don't remember for sure, maybe three --
8 three and a half, four months maybe.

9 Q After you were there?

10 A Uh-huh.

11 Q Is that yes?

12 A Yes.

13 Q Were you worried about your license?

14 A I didn't feel comfortable there. I felt that
15 the place was unsafe and I just didn't feel comfortable, yes.
16 I felt like something may happen there. I thought it more
17 would be -- might be missed -- missed cancers, you know,
18 because it seemed to me that they were putting way too many
19 patients through there and that they weren't in the procedure
20 rooms very long.

21 Q You mentioned that you rarely saw doctors come
22 out to the recovery area and deal with patients. How about
23 the CRNAs? Did you see them come to the recovery area very
24 much?

25 A No, not that I remember.

1 Q And you said that you left after five or six
2 months?

3 A [Nods head yes].

4 Q Is that yes?

5 A Yes.

6 Q And then you're -- are you working in the
7 healthcare field now?

8 A Yes.

9 Q And so you've -- how long have you worked in
10 total in the healthcare profession?

11 A I graduated from nursing school from 1977, so
12 it's almost 36 years.

13 Q And I know you did the home care, but have you
14 worked in other kind of outpatient surgical facilities?

15 A No.

16 Q Have you worked in emergency rooms or
17 something similar to the endoscopy center?

18 A The only thing that would be similar would be
19 the radiation oncology office that I worked at. They did
20 radiation procedures on -- on patients.

21 Q And was that a similar atmosphere in terms of
22 the number of patients that were seen or how quickly patients
23 were moved through?

24 A No.

25 Q Anything like what you experienced --

1 A No.

2 Q -- at the endoscopy center?

3 A No.

4 Q Thank you.

5 MS. WECKERLY: I'll pass the witness, Your Honor.

6 THE COURT: All right. Cross.

7 CROSS-EXAMINATION

8 BY MS. STANISH:

9 Q Good morning.

10 A Good morning.

11 Q I'll let you pour your water. Where are you
12 currently working?

13 A I work at Rhode Island Hospital right now.

14 Q So you're back in Rhode Island?

15 A I am back in Rhode Island, yes.

16 Q The -- Tonya Rushing was the one that
17 interviewed you?

18 A Yes.

19 Q And was there any kind of negotiation on your
20 salary with her?

21 A I pretty much -- she asked me what I would,
22 you know, was asking for a salary, and I stated what I -- what
23 I thought I should be paid, and she -- from what I remember
24 she told me that was a little more than what they usually pay
25 there, but if I was agreeable to not getting a raise for

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1 awhile that she would pay me that.

2 Q All right. And as I understand it you were
3 the discharge nurse.

4 A Yes.

5 Q And you shared that responsibility with two
6 other nurses on a rotating basis?

7 A Yes.

8 Q Can you please identify for us the other two
9 nurses if you remember?

10 A One woman's name was Lorraine. I don't
11 remember her last name. She's actually the LPN that trained
12 me, and then there was another woman who, I think she worked
13 part time in our clinic, her name was Martha.

14 Q Martha --

15 A And I believe the one more was -- was it
16 Sharon?

17 Q Oh, so there were three other woman who --

18 A Yeah.

19 Q -- had that position.

20 A Yeah.

21 Q And when you -- you were trained by Lorraine,
22 you say?

23 A Yes.

24 Q Okay. How long did that process take?

25 A I don't remember for sure. I don't remember

1 whether it was two or three weeks.

2 Q You were an experienced nurse. It wasn't that
3 hard for you to figure out?

4 A Yes.

5 Q And just a question on the preliminary test
6 results that you had to discuss with the patients. I
7 understand you were uncomfortable with that.

8 A Yes.

9 Q When you did those -- when you had those
10 discussions with the patients after the procedures, were they
11 usually accompanied by their escorts?

12 A Yes.

13 Q Okay. So they --

14 A They always had a --

15 Q Why --

16 A -- family member.

17 Q I'm sorry for talking over you.

18 MR. SANTACROCE: They always had a what? I didn't
19 hear that.

20 THE WITNESS: They almost always -- always -- well,
21 actually, they always did have to have a family member with
22 them because they were, you know, being anesthetized.

23 THE COURT: And they can't drive afterwards.

24 THE WITNESS: Exactly. Yes.

25 BY MS. STANISH:

1 Q That's what I was going to ask. They can't
2 drive. And in addition to discussing the preliminary test
3 results, which I'll come back to, did you also discuss with
4 the patient and the escort instructions for after care?

5 A Yes.

6 Q And what -- what would that include generally
7 speaking?

8 A Pretty much what they could eat and drink for
9 the day. I believe there was something to the effect that
10 they shouldn't sign any legal papers within the next 24 hours.
11 If they had any problems to call a facility.

12 Q Do you know why they couldn't sign any legal
13 papers?

14 A It has something to do with being
15 anesthetized. Any procedure that you have, surgeries,
16 anywhere they will pretty much tell you not to get into any
17 legal signings because it still could be, I guess, affecting
18 you.

19 Q Is it a fair statement that patients are
20 sometimes fuzzy after --

21 A Yes, that's why they would have to have a
22 family member along with them being -- being driven.

23 Q I have to repeat what Pam told you. Let me
24 finish my question first.

25 A I'm sorry.

1 Q Because it is a weird situation, isn't it?

2 A Uh-huh.

3 Q So the -- is part of the escort's job, if you
4 will, not only to drive the patient safely home, is it also to
5 listen to what you have to say as a discharge nurse?

6 A Yes.

7 Q All right. And you -- you had the -- you were
8 scheduling follow up appointments with doctors; correct?

9 A Yes.

10 Q And what was the purpose of those follow up
11 appointments?

12 A Usually if there were biopsies done, by the
13 time they were seen in their follow up they would have those
14 results and the doctor would go over the final results with
15 them.

16 Q And so when you would get this preliminary
17 report, would it basically say things like, well, we found a
18 hemorrhoid or we took out, what do you call those things --

19 A Polyps.

20 Q -- polyps? Is that basically what we're
21 talking about?

22 A Yes.

23 Q And in some -- occasionally there would be
24 something more serious where they would have to take a biopsy
25 that would have to be studied later on to determine if it was

1 cancerous; is that correct?

2 A Yes.

3 Q So really the doctor would have to be -- wait
4 for those biopsies; correct?

5 A To go over the final results, yes.

6 Q Right. So there's not much you could tell the
7 patient or a doctor at the time of checking out; is that
8 correct?

9 A Right. Yes.

10 Q And if a patient asked you a medical question
11 that you didn't know the answer to, am I right to assume you
12 would say I don't know, you'll have to wait until the follow
13 up appointment and discuss I with the doctor.

14 A Of course. Yes.

15 Q And the next day you would -- your
16 responsibility was to call up the patient and to ask them how
17 they were doing?

18 A Yes.

19 Q All right. And did you record those results
20 or document it in some way?

21 A Yes, there was a follow up call sheet.

22 Q And would you also remind them when the follow
23 up appointment was?

24 A Yes.

25 Q Did -- did you conduct patient surveys?

1 A The patients were given surveys, yes.

2 Q And were you the one to hand them the survey.

3 A I don't remember in what part of the process

4 they were given their surveys.

5 Q So they were actually given a paper document,

6 a survey?

7 A Yes.

8 Q And do you know what kinds of questions were

9 on that survey?

10 A I don't remember.

11 Q All right.

12 A I guess their overall happiness with -- with

13 their procedure, the whole -- the whole process from start to

14 finish.

15 Q All right. And did you have anything to do

16 with the surveys, like calling up patients regarding the

17 surveys?

18 A No.

19 Q All right. So your contact with the patients

20 by telephone was simply to make sure they were comfortable and

21 okay --

22 A Yes.

23 Q -- as well as to remind them of their follow

24 up appointment.

25 A Yes.

1 Q Why did you do that?

2 A To see if they were having any problems from
3 -- especially if they had biopsies, they could have bleeding.
4 Just to see how they were feeling the next day.

5 Q Now, let me talk to you a bit about the three
6 other women who served as discharge nurses. I understood when
7 you were testifying on direct that you had staggered shifts
8 with one other gal. What about the other two women, when
9 would they come in?

10 A One of them always came in the early shift. I
11 believe her name was Sharon. That was from 7:30 to 4:00, I
12 believe. Me and Lorraine were basically -- we switched off.
13 And Martha did not work at the facility every day.

14 Q And when you say you switched off with
15 Lorraine, I'm not sure I understand what you mean.

16 A One day she would come in 8:00 to 4:30 and I
17 would come in 8:30 to 5:00, and then other days I would come
18 8:30 to 5:00 and she would come 8:00 to 4:30. So one of us
19 would always be there a little bit later.

20 Q But you worked five days a week?

21 A Yes.

22 Q All right. So are there four discharge
23 nurses --

24 A Yes, there were --

25 Q -- working on any --

1 A -- at times.

2 Q -- given day?

3 A Yes.

4 Q All right. How many -- if you remember,
5 because I know this was --

6 A Seven years.

7 Q -- seven years ago; right?

8 A Uh-huh.

9 Q Do you know how many people were employed at
10 that time?

11 A Overall, I have no idea. I don't remember.

12 Q Fair enough. And when you got there in 2006,
13 January 2006?

14 A Yeah, the end of January. Yes.

15 Q Were there two procedure rooms operating, or
16 just one at that time.

17 A Two.

18 Q And do you know, or if you -- do you recall
19 whether there was a transition of the clinic going from one
20 procedure room to two procedure rooms?

21 A I don't understand what you mean.

22 Q Yeah, that wasn't good, was it? Do you know
23 whether or not there was -- before you got there were you
24 aware of whether or not there was only one procedure room
25 operating?

1 A I'm not aware of that.

2 Q Do -- were you aware that there was an
3 expansion of the clinic?

4 A At the time I was there I believe they were
5 opening up another clinic at -- at a different location.

6 Q I see. How is it you learned of this job
7 opening?

8 A I believe I saw it in the Review Journal.

9 Q Let's see, the recovery area, can you describe
10 that area for us, please, if you remember?

11 A If this was the facility, the nursing desk
12 would up here, and straight through there were maybe four or
13 five beds off to the right with curtains that would go around
14 them.

15 Q I have to stop you because --

16 A Okay.

17 Q -- you're making gestures.

18 A I'm sorry.

19 Q That's okay. I just want to --

20 A I'm trying to --

21 Q -- explain for the record that you are -- when
22 I asked you what the recovery room looked like you put your
23 hands forward pointing to this courtroom --

24 A Uh-huh.

25 Q -- and if you are -- let's pretend for the

1 moment that the witness stand is your station as the discharge
2 nurse. And pretend I just got out of a colonoscopy.

3 A Uh-huh.

4 Q Where should I be in the recovery room? How
5 far should I be from you?

6 A You were --

7 Q Here?

8 A No, further. There were four beds -- I
9 believe it was four beds to the right. Probably back to the
10 door up to -- maybe a little bit further, maybe up to the desk
11 there.

12 Q So I'd have to go out of the courtroom to go
13 to the furthest --

14 A Yes, probably.

15 Q Okay.

16 A Uh-huh.

17 Q Understood.

18 A And the nurse's station was up at the front,
19 and then there was another small office to the left of the
20 nurse's station that had a little computer in there and a
21 couple of chairs and we would call the patient and the family
22 member in there and go over their results and schedule their
23 follow up appointment.

24 Q I'm not really good with distances. Any idea
25 how far that might be?

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A Uh-huh.

MS. STANISH: What do you think, Judge? You've been in this courtroom a long time.

MR. WRIGHT: Some Judges have it measured out.

THE COURT: Well, I'm sorry, Mr. Wright. At break I'll pace it out for you. Well, actually, Kenny will pace it out for you.

MR. WRIGHT: All right.

THE COURT: I don't know, but a fairly large room, is that fair?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Probably a little bit larger than this room --

THE COURT: Okay.

THE WITNESS: -- maybe lengthwise. Maybe not quite as wide.

MS. STANISH: I guess I go by football fields. That's got to be at least 30 yards, 40.

MR. STAUDAHER: What?

MS. STANISH: 30 yards?

MR. STAUDAHER: No.

MS. STANISH: Really, I'm a baseball --

THE COURT: Well, I was going --

MS. STANISH: -- fan. That's first base.

1 THE COURT: -- to say 50 yards. And I'm thinking of
2 the 50 yard dash from grade school, and I'm thinking, well,
3 where would that eraser be? And so, I don't know. We'll --
4 we'll measure it out --

5 MS. STANISH: That's fine.

6 THE COURT: -- at the break.

7 MS. STANISH: I just want the record to be clear and
8 I'm not good at measurements without a measuring tape.

9 BY MS. STANISH:

10 Q Would you please describe for us, ma'am, what
11 the -- the place where the patients would, you know, lay down
12 to recover or be rolled in on the gurney, I should say?
13 Describe for me that area of the recovery room.

14 A Like I said, there was approximately four
15 gurneys like side by side, and there was little curtains that
16 would go around them.

17 Q So there were privacy curtains around the --
18 each gurney?

19 A Yes.

20 Q You've worked at hospitals --

21 A Yes.

22 Q - primarily for 22 years?

23 A Uh-huh. Yes.

24 Q And I don't know if the hospitals are
25 configured the same as ambulatory surgical centers in this

1 regard, but is it unusual in your experience for patients to
2 be in a recovery room separated by curtains?

3 A No.

4 Q It's not makeshift, is it?

5 A No.

6 Q It's something that is --

7 A It's even --

8 Q -- common?

9 A Yes, even in hospital rooms there's -- if it's
10 a two-bed or a four-bed room it has a curtain that would go
11 around the bed.

12 Q Correct. Okay. Were the -- how far were the
13 recovery area -- how far was the recovery area from the
14 procedure rooms?

15 A Directly across.

16 Q And could you estimate how many feet from the
17 recovery room to the procedure room?

18 A To the procedure room door or to --

19 Q Yeah.

20 A 20 maybe.

21 Q Is that your --

22 A Yeah. I mean, it was fairly close. I'm not
23 good with measurements, either.

24 Q I understand. I identify. Do you know how
25 many doctors would be there on any given day?

1 A At times there was only one, and usually at
2 the most two, I believe, from what I remember.

3 Q Did the doctors work in shifts?

4 A Yes.

5 Q Do you recall that -- I know we're talking
6 about 2006 here. But in 2006 --

7 A Uh-huh.

8 Q -- when you were there, do you recall what the
9 shifts of the doctors were?

10 A It tended to be broken down to morning or
11 afternoon, I believe. Certain doctors would be there in the
12 morning, and certain in the afternoon. And sometimes one of
13 them might have been there all day.

14 Q That reminds me. The scheduling sheet that
15 you had.

16 A Uh-huh.

17 Q Was that kind of a computer generated --

18 A Yes.

19 Q -- document?

20 A Yes.

21 Q And would it have the patient names and the
22 time of their appointment?

23 A Yes.

24 Q And I believe you said there were
25 approximately 65 patients scheduled on any given day.

1 something's wrong with you, and he's going to do them as fast
2 as he possibly can. And you'll see that theme over and over
3 and over again.

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Clerk of Supreme Court

4 And not anything went on in this clinic that didn't
5 pass his muster. There will be memos that you'll either hear
6 about or actually see in which he is dictating the very
7 minutest details of control over that practice. You've got
8 doctors that will come in here and tell you that they have a
9 title of like operations manager, when in fact they didn't
10 operate anything. They couldn't make a decision.

11 You'll hear about Desai, that he, in 2007, actually
12 after these occur, these two infections occur at the clinic,
13 September 2007 he goes over to India. And he's flying back on
14 an airplane and he suffers a stroke, has to divert to Taiwan.
15 He eventually comes back to the United States. Nobody is in
16 charge of that clinic. The first time he is going to
17 relinquish control.

18 So he meets with his partners, because he can't do
19 the procedures right because he's impaired. And you'll hear
20 that at that time it was, you know, Clifford Carrol, the --
21 one of the doctors, the staff physician, staff physicians over
22 here. Clifford Carrol was one of them. He was the one who
23 was kind of told you're going to handle the Shadow Lane
24 Endoscopy Center kind of thing. Albert Mason gets the Burnham
25 clinic, that kind of thing. He kind of doled it out.

1 Well, what was the first thing that Clifford Carrol
2 did when he got in there? He has a meeting with the staff.
3 Desai said he's going to be taking himself out of the practice
4 for three to six months, take himself out, you guys run it.
5 Clifford Carrol comes in and he has a meeting, and he said,
6 the first thing we're doing is reducing the patient numbers.
7 We're not going to have 70, 80 patients booked in a day and do
8 60 to 70 patients a day. It's just not tenable.

9 Everybody will come in here and tell you that the
10 relentless pressure of running patients through that clinic,
11 people were even concerned for the patient care for themselves
12 that somebody was going to make a mistake. They had to
13 pre-chart and do things like we've described.

14 That when that institution of sort of the delegation
15 of responsibility was in place, that although they reduced the
16 patient numbers, but gosh, all the sudden the patient numbers
17 started coming back up for some reason and we couldn't figure
18 it out. And within two weeks, two weeks he comes back and he
19 has a meeting -- or he has a meeting with Carrol and he wants
20 to know how things are going.

21 Carrol tells him what he's done, and Desai berates
22 him. And miraculously he's better, and he comes back in and
23 takes over control of the clinic again. And guess what
24 happens to the patient numbers. They go right back up.

25 You will hear over and over again that he is the man

1 on top of this, except for when it comes to calling up, you
2 know, stepping up to the plate. You'll hear that when this
3 all broke, when the clinic was kind of under the microscope in
4 the press and everything else, in February of 2008 there was a
5 news conference. And you'll hear that in that news
6 conference, they were going to have to make a statement.

7 You'll hear that, gosh, the likely guy would be maybe
8 the guy who manages, who runs the practice, but he couldn't do
9 it, didn't want to do it. You'll hear that Dr. Carrera was on
10 vacation with his family, and he got called on vacation as
11 he's coming back to town, and they wanted him to come to have
12 a meeting. So he's like, well, I'm in the car with my family,
13 come on, how long is it going to be, and I come on down.

14 So he gets down -- he gets back to town and he goes
15 down there, and he finds out that they want him to make the
16 statement to the press. Well, now, he's not -- he's not even
17 one of the higher-ups. I mean, he's part of the group
18 certainly. He's one of the partners kind of, so to speak.
19 But he's like, Well, why do I have to make it? Well, nobody
20 else could do it.

21 They finally agreed -- or he finally agrees to go
22 ahead and do that, but he will do it under one condition, that
23 Desai is standing on that podium with him when he makes the
24 press conference, so when he reads the statement, the prepared
25 statement.

1 So the time for the press conference comes and
2 they're going to go up to the podium, and all of the sudden
3 Desai has some medical issue and he cannot go up on stage, so
4 he doesn't. So who's up there? Clifford Carrol and Eladio
5 Carrera.

6 Now, if there was ever any indication that the
7 practices which were admitted to by Ronald Lakeman were not
8 known, this is a letter. It's dated in December -- or excuse
9 me, September of 2002. And this was by the American
10 Association of Nurse Anesthetists. It was an urgent letter
11 that went out in response to an outbreak that had occurred
12 through the use of unsafe injection practices.

13 They sent it out to all the members of the profession
14 at that time, and Ronald Lakeman was one. Keith Mathahs was
15 one. And in that they talk about specifically making sure
16 that all nurse anesthetists across the country know that
17 needles are not to be reused, that syringes are single use
18 items and should not be reused on the same patient or from
19 patient to patient.

20 Not on the same patient, or from patient to patient.
21 That once the syringe is completely emptied it should not be
22 even refilled, even if used on the same patient. 2002.
23 They're urging them to follow the AANA standards and make sure
24 that the practice is consistent.

25 Now, Rodolfo Meana. Rodolfo Meana is an individual

1 that we'll talk about in just one second. But I want to go
2 back for just a moment and talk about some of those cost items
3 that we were talking about with regard to where patient care
4 gets compromised.

5 Desai wanted limitation on those items that I told
6 you about, the KY Jelly. In addition to that, he gave people
7 a hard time about using too much tape, too much tape on the
8 IVs. And the tape was essentially -- I think it was 78 cents
9 a roll, for a whole roll of it. Syringes were 7.4 cents
10 apiece. KY Jelly was 29 cents a tube. The Chux were less
11 than a penny apiece. Alcohol pads were less than a penny
12 apiece. Lab coats were about two bucks.

13 The lab coats, they would have fecal material
14 splattered on them, and he would give people a hard time about
15 wanting to change them. No blankets, they're too expensive.
16 One sheet per patient. Sometimes those sheets would even be
17 reused.

18 Desai was so fast at his procedures, you'll hear
19 that -- you'll even hear the term "cracking the whip," that he
20 would yank the scopes out of patients sometimes so quickly
21 that fecal material would come out onto the table, maybe onto
22 the floor and onto the wall, that the GI tech that was there
23 in the room had to act like a catcher for the scope, because
24 if that scope hit the ground he was in trouble.

25 He yanked the scope out, patient -- next patient,

1 over and over and over again. And he was in such a hurry that
2 patients would be back there and sometimes on not an isolated
3 event, sometimes they would be not -- they wouldn't have any
4 medication onboard for their anesthesia, and he'd start the
5 procedure anyway. They'd be writhing around, moving around.
6 It didn't matter to him --

7 Same thing at the end of the procedure, or near the
8 end. The person starts moving around, the CRNA wants to give
9 a little more medication -- that propofol is fast acting. It
10 comes on quickly and goes off quickly. Don't give anymore.
11 And what was the single most expensive item in that whole mix?
12 Propofol. Propofol was, I believe, for a 20 ml bottle was
13 about \$15.19 a bottle. Do not waste anything.

14 Rodolfo Meana, he's a patient that ends up dead.
15 Before we get to him and his plight, one last part. You're
16 going to hear from Clifford Carrol, who is a doctor working at
17 the clinic. And he was one of the ones who took over and
18 reduced the patient load for awhile. You're going to hear
19 that Clifford Carrol was sued. You're going to hear about
20 this Rexford lawsuit, by a patient named Rexford.

21 And during the time that he was being sued -- and
22 this is actually in the beginning part of 2008, when he was
23 being sued, he was deposed, meaning they put him -- they went
24 in a room and a lawyer was asking him some questions, that
25 kind of thing. And during that deposition, the issue of this

1 30 minute thing came up. He didn't know what this is about.

2 So after the deposition he goes and he talks to
3 Desai, and he says to Desai, you know, I got asked about this
4 30 minute thing, what's that about? Oh, don't worry, it's not
5 no problem, no problem, don't worry about it. He goes back
6 and he has to either continue his deposition or it was another
7 day, I can't remember which, but he gets asked it again. It
8 comes up again.

9 He goes back and he talks to Desai again. Desai's
10 response this time is, Don't worry, we're not committing any
11 fraud. So this didn't settle well with Dr. Carrol. He
12 actually starts paying attention a little more. He goes in to
13 do a procedure one day shortly thereafter, and he's looking
14 around and he sees that, gosh, the nurse anesthetist is there
15 and the anesthesia record is there and he hasn't started the
16 procedure yet.

17 And he looks down and he sees that that anesthesia
18 record is filled out completely, vital signs, all that stuff.
19 It's done. He looks at it and he goes, What's this? He goes
20 and he confronts the business manager, Tonya Rushing. She
21 doesn't know what the heck's going on. Then he goes down and
22 he confronts Desai.

23 And this is the thing you will hear over and over
24 again, about how his knowledge of these things is present, how
25 his manipulation is present whether it's him in the process

1 directly or not. When confronted, he doesn't say, oh, well,
2 you know, I don't know what you're talking about, let's fix
3 this or who's doing that. No.

4 He sheepishly looks and he looks down, okay, okay,
5 okay, we'll do it right from now on. From that point forward
6 the times dropped from 30-plus minutes, 31, 32 minutes down
7 to 8, 10 minutes, 11 minutes, so much so that these anesthesia
8 records for billing went to a separate entity.

9 Tonya Rushing, who is one of the business managing
10 people there, got as a little bone -- she had a side company
11 that billed anesthesia, and she would get a piece of that
12 action if that happened; meaning she would get a percentage of
13 what was billed. She worked for Desai. She was his like
14 personal assistant essentially.

15 So that those forms went off, they would be gathered
16 up and they would be taken over to where her business was
17 across town, and there would be this young man that would be
18 filling -- just taking the data entry, putting it into the
19 computer. His name's Ron Cerda [phonetic]. You'll hear from
20 him.

21 And you'll hear that when he was putting the data
22 into the computer, that all the sudden on almost like a light
23 switch one day, 32, 31 minutes, whatever, and he's putting
24 every single form was down there at the 8, 10, 11 minute mark.
25 He thinks something's wrong. He -- it is markedly different

1 enough that he feels he needs to contact somebody and make
2 sure it's right. Yes, it's right, that's what we're doing
3 from now on.

4 Now, as I said earlier too, the witnesses in this
5 case are a mixed bag. Some of them, you're going to have to
6 determine their credibility, what parts, if any, to believe of
7 their testimony. Because what you'll hear over and over again
8 is, you know, either nothing was wrong, nothing was wrong, or
9 yes, I knew this was wrong, I saw this, I saw other people do
10 this, but I never did it.

11 Very few, if any, will admit to some of the actual
12 practices that we know were observed and were present in the
13 practice. A lot of -- a lot of witnesses in this case were
14 pretty uncooperative afterward for the investigation, required
15 us granting them immunity, or they always had to have their
16 lawyers present whenever they talked to anybody.

17 Even leading up to this trial some who were not even
18 culpable, who came into the practice, saw what was going on
19 and quit after a day or three days, are not being that
20 cooperative. It's a difficult case from that standpoint, and
21 you'll see that as the evidence comes out.

22 The issue was that essentially Desai was the one in
23 charge. Desai called the shots. Desai knew what was going
24 on. Desai did everything. And what ends up happening is not
25 only are people infected with the hepatitis C virus that they

1 have as a friend for life, but this man up here wasn't so
2 lucky. This man up here got cirrhosis that accelerated
3 markedly. And you'll hear a description of what happens to
4 him in the trial.

5 When one gets cirrhosis of the liver -- the liver is
6 the filter for the body, the blood filter for the body
7 essentially. It's almost like a sponge, you envision it that
8 way. Blood flows in, gets filtered and flows back to the
9 body. If the sponge pores are blocked, what happens? Blood
10 doesn't go through. It pressurizes the system below it. It
11 shouldn't be under pressure. It's a venous system, not an
12 arterial system.

13 And what you'll hear is that that pressure causes
14 things like ascites. You'll hear that term. And it's where
15 somebody's tummy, abdomen blows up like a balloon and it's
16 full of fluid. It's full of fluid because the veins inside
17 the peritoneum, the lining of the abdomen and the mesentery,
18 the stuff that holds all the organs together and supplies
19 those organs with blood start to engorge.

20 And when they engorge and become pressurized in a way
21 that they haven't been or shouldn't be, they start to weep
22 fluid. Not blood, but fluid. And that fluid collects in the
23 abdomen and it gets bigger and bigger. And if you evacuate
24 it, it comes back, because the liver doesn't work anymore.

25 And because the liver doesn't work anymore, the

1 toxins in your blood start to go up, and they infect your
2 brain and your ability to think and mentate. And your liver
3 function is not only kaput, but then all of the resulting
4 things affect your kidneys and every other organ until you
5 essentially succumb.

6 And that is usually a long process, and usually with
7 people who have a history of alcoholism or something along
8 those lines. He did not have that. He was not infected
9 before he goes to the clinic. And those patients that are
10 infected in this case are genetically matched to the source
11 patients for those days.

12 That man becomes this a short time later, and notice
13 his abdomen. This is what he looked like shortly before his
14 death. You will see a deposition taken, or not a deposition,
15 but -- well, it's a videotape deposition of him, and you'll
16 see how he reacts in that.

17 And within a couple of weeks after the deposition was
18 done, this is where he was. And he died a horrible
19 preventable death because that man and that man over there
20 took it upon themselves to assume the risks for a patient and
21 to compromise the care of a patient, and to harm a patient for
22 the sole purpose of profit. That's it.

23 Patient care was relegated to the basement. Concern
24 for patients was relegated to the basement. And this
25 gentleman, who left after that deposition within days to go

1 back to the Philippines, which was his dying wish, to go back
2 there and die, did exactly that.

3 This is his death certificate from the Philippines.
4 He was born in '35, and he died September -- April 27th of
5 2012. The cause of his death was hepatic uremic
6 encephalopathy. Big words. Hepatic means liver. Uremic has
7 to do with the kidneys, because his kidneys were failing. And
8 encephalopathy because everything up here was going haywire
9 because of the toxins.

10 What he dies of, an antecedent, or also a related
11 cause was sepsis infection, because things aren't working well
12 in your body. Every organ system is shutting down. Every
13 organ system. But the underlying cause, ladies and gentlemen,
14 the underlying cause is hepatitis C. That's what the
15 underlying cause of his death was. These are the immediate
16 causes. That's the underlying cause. And chronic kidney
17 failure.

18 I'm basically done. I know it's been long, and you
19 need to go to the bathroom or go home. But suffice it to say
20 this is an important case. This is an important case not just
21 for the State of Nevada, but for the seven victims that are in
22 this case, six of which are still alive.

23 And one you will hear from, Carole Grueskin, who will
24 not come and testify before you, but her caregiver will,
25 because she's had such a marked cognitive decline, mental

1 decline, which has been attributed to or exacerbated by this
2 infection, that she doesn't even know essentially who she is.
3 You can't even ask her a question. Two people who have had
4 severe, one not just life-threatening, but life-killing
5 results as for pennies.

6 Pennies, ladies and gentlemen. Fractions of pennies
7 on procedures to cut patient care, to compromise that care, to
8 assume the risk for a patient without the patient even
9 knowing. How many patients of those individuals there do you
10 think would have agreed to have a procedure at that clinic
11 under those conditions had they known even a fraction of what
12 was about to happen to them?

13 In our society, in our society the entirety of the
14 medical care system is based on trust. You have to be able to
15 trust your doctor. You have to be able to put your life in
16 that doctor's hands, or those healthcare providers' hands if
17 they are such that they can do things like put you to sleep
18 and then do something to you, cut you open and operate on you.

19 You have to be reliant on the fact that they will do
20 the right thing, that they will not in a sense put you and
21 your condition aside and look upon you as a commodity. A
22 commodity, that's all you are in that clinic. And everybody
23 knew about it. Everybody was complicit. Those individuals
24 who are charged were directly related and associated with the
25 death of Mr. Meana and the infections caused to those patients

1 who have been charged in this case.

2 Ladies and gentlemen, at the end of this case, at the
3 end of this case, at the end of the trial, after all of the
4 evidence has been submitted to you, the State will submit to
5 you that we will have proven beyond any reasonable doubt that
6 Dipak Desai and Ronald Ernest Lakeman are guilty of the
7 charges of murder in the second degree, of performance of an
8 act in reckless disregard of persons or property, of criminal
9 neglect of patients resulting in substantial bodily harm, of
10 theft, obtaining money under false pretenses, and insurance
11 fraud. We will ask you at that time to return a guilty
12 verdict to each and every charge. Thank you.

13 THE COURT: Thank you. May I see counsel at the
14 bench.

15 (Off-record bench conference.)

16 THE COURT: Ladies and gentlemen, we're going to take
17 our evening recess at this time. We'll be in recess until
18 9:00 a.m. tomorrow morning.

19 Before I excuse you for the evening recess, I must
20 admonish you that you're not to discuss the case or anything
21 relating to the case with each other or with anyone else. You
22 are not to read, watch, listen to any reports of or
23 commentaries on this case, any person or subject matter
24 relating to the case. You are not to do any independent
25 research by way of the Internet or any other medium, and you

1 are not to form or express an opinion on the case.

2 If you would all please place your notepads in your
3 chairs and then in a moment follow the bailiff through the
4 double doors. He will give you instructions on parking
5 tomorrow, where to meet tomorrow. Any other questions or
6 concerns, please address the bailiff in the hallway, and if
7 it's something he needs to bring to my attention he will at
8 that point.

9 All right. Thank you, all of you. Notepads in your
10 chairs, and through the double doors.

11 (Jurors recessed at 4:34 p.m.)

12 MR. STAUDAHER: Your Honor, could we make -- before
13 the media leaves, if -- we need to make an announcement at
14 least about that issue with regard to the source patients,
15 that they refrain from using the name of the source patients
16 in this case.

17 Ladies and gentlemen, I know that this is an open
18 forum, you can do what you want to do. But we would ask you
19 if you would please to refrain, if you can, the use of the
20 source patients' names in your reporting of this case. They
21 are concerned -- you know, obviously they were not victims,
22 made victims in the case, and they were just asking for your
23 discretion in that regard. So we told them that we would ask
24 you and we hope that you will abide by their wishes.

25 THE COURT: All right. Thank you, Mr. Staudaher. I

1 just wanted to also place on the record that at the bench
2 following Mr. Staudaher's opening, which ended roughly at
3 4:35, the Court gave the defense the option of Mr. Santacroce
4 doing his opening statement this evening, because I believe
5 his is around 45 minutes or so by his estimate.

6 And for the record, Mr. Wright and Mr. Santacroce
7 both requested that Mr. Wright go first, and that the opening
8 statements for the defense go forward tomorrow together. Is
9 that correct, Mr. Santacroce?

10 MR. SANTACROCE: That is correct, Your Honor.

11 THE COURT: Is that correct, Mr. Wright?

12 MR. WRIGHT: Yes, it is.

13 THE COURT: All right. I just wanted it to be put on
14 the record that you did have the option of going forward
15 today. And is there anything else we need to discuss on the
16 record?

17 (Negative responses.)

18 THE COURT: All right. May I see counsel at the
19 bench.

20 (Off-record bench conference.)

21 (Court recessed for the evening 4:37 p.m.)
22
23
24
25

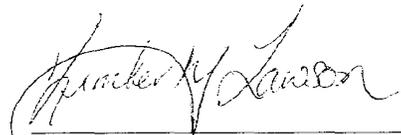
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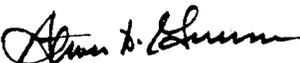
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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,)	
	)	TRANSCRIPT OF
Defendants.	)	PROCEEDING
_____)	

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 9

TUESDAY, MAY 7, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
FOR DEFENDANT LAKEMAN:	MARGARET M. STANISH, ESQ. FREDERICK A. SANTACROCE, ESQ.

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1 LAS VEGAS, NEVADA, TUESDAY, MAY 7, 2013, 9:40 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. So the plan is on the record,
5 we'll bring Ms. Robinson in and question her. Kenny, just
6 bring Ms. Robinson in by herself. Oh, they're in the back.

7 UNKNOWN SPEAKER: Is she also the one that was heard
8 complaining by jury services?

9 THE COURT: No. That was Ms. Mayo, Mayo Habile
10 [phonetic]. I'm sure she was -- is that door shut?

11 THE CLERK: Hm-mm.

12 THE COURT: When they're in the back, that door
13 always needs to be shut. So you were only gone one day. Oh,
14 I thought it was longer.

15 (Pause in proceeding.)

16 (Ms. Robinson, Juror No. 3, enters the courtroom.)

17 THE COURT: Good morning, Ms. Robinson.

18 JUROR NO. 3: Good morning.

19 THE COURT: First of all, I'm sorry for all of the
20 difficulties that all of this is causing, you know. As you
21 know, you filled out the questionnaire, and then you came in
22 for questioning and you expressed some concerns about the
23 homeowners meetings. And, you know, we thought, well, we can
24 work around that if you let us know, by releasing you early,
25 and, you know, giving you time to go to the meetings and all

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1 of that. So we thought that we'd addressed that issue.

2 And then I guess you called my JEA and indicated
3 you'd just discovered that you are pregnant. And
4 congratulations, I guess. And, you know, we said, okay, well,
5 we'll accommodate that issue if you, you know, if you can
6 schedule your visits to the doctor. Because of course we
7 expect you to go to the doctor. We're not going to tell you
8 don't go to the doctor, don't take care of your baby. So, you
9 know, mornings or afternoons or whatever, we'd work around
10 that.

11 And now, when I came in this morning, I have the
12 letter regarding compensation from your job. Let me first
13 tell you, we've been through the jury selection process, as
14 you know. You know, we had all the people come in and fill
15 out the questionnaires and then we had you back to be
16 interviewed. And now we've excused, as you saw yesterday, all
17 these people and this is the jury.

18 So it's not like, you know, this far into the
19 process, when we get new information like this from your
20 employer, we can just say, okay, we'll let you go and start
21 the -- you know, as you can, I'm sure, appreciate, and start
22 the process all over, because the trial has started. You
23 know, there's already been the opening statement and
24 unfortunately, we can't like rewind that and play it over.

25 JUROR NO. 3: I understand that, but --

1 THE COURT: So let me just say, you know, we don't
2 want anyone to suffer. You know, we don't want anything bad
3 to happen to your children. We don't want you to lose your
4 home or anything like that obviously.

5 So, you know, what I, I guess, wanted to talk to you,
6 is there something, some way we can, you know, I guess, work
7 this out, something some way that you can serve and maybe get
8 partial compensation or something like that from your
9 employer? Because, you know, I would just note the dates of
10 the email are May 6, which was yesterday. So this is kind of
11 new information.

12 JUROR NO. 3: I mean, I've spoken to my boss. The
13 email that -- I did send an email. I don't know if it went
14 through, but I forwarded the email from HR. They only pay up
15 to five days.

16 THE COURT: Right.

17 JUROR NO. 3: After that is PTO, and I don't -- I
18 only have 30 hours. I am the sole provider for my family.

19 THE COURT: Because your husband's out of work.

20 JUROR NO. 3: He's out of work. I mean, even if he
21 does get a job, it doesn't make any sense because his paycheck
22 would go to daycare. So and my job is -- although I can miss
23 HOA meetings, it's based on performance. I know they can't
24 legally fire me, but if I'm going to be gone, whoever's going
25 to take over my spot has no history on these committees that I

1 work with. It's beyond -- I'm just -- I'm to the point where
2 I didn't even sleep last night because I'm so stressed out.

3 THE COURT: Okay. Let me ask you this: How are you
4 compensated again?

5 JUROR NO. 3: I'm salary.

6 THE COURT: Okay. And then you make what a week?

7 JUROR NO. 3: Every two weeks I make a little bit
8 over 1700. I have rent. I have insurance. I have a loan
9 on -- I have two cars, my husband's and I's. I pay the car
10 notes.

11 THE COURT: So you make about \$850 a week?

12 JUROR NO. 3: Yeah.

13 THE COURT: And let me ask you this: Normally you
14 work during the day and then sometimes you go to the meetings
15 at night, correct?

16 JUROR NO. 3: I work from -- I'm off on Mondays,
17 because we do four tens until November. Then I work Tuesday
18 to Fridays. I have a total -- now I have a total of seven
19 communities. They all meet. I may work from 7:00 to 5:30,
20 and then board meetings start at 6:00 p.m.

21 THE COURT: Okay. Now, you will be able to make the
22 board meetings because we will make sure. Just your
23 obligation is to tell us ahead of time and to tell the bailiff
24 so he can tell me, and I can tell the lawyers so they don't,
25 you know, fly in a witness that they're -- you know, could run

1 late for those days. So, you know, we can --

2 JUROR NO. 3: What I'm worried about is money.

3 THE COURT: Right.

4 JUROR NO. 3: I don't have money --

5 THE COURT: Well, but I mean, if you're going to the
6 board meetings --

7 JUROR NO. 3: I don't get paid for that. I don't get
8 paid -- because I'm salary. That's why I'm salary. I don't
9 get extra hours. If my meeting is lasting three hours, four
10 hours, what I can do is I can come in late the next day or
11 leave the office early. I don't -- we don't get paid.

12 THE COURT: Okay. But isn't that part of your job to
13 attend the --

14 JUROR NO. 3: It's part of my job duty, yeah.

15 THE COURT: Well, I mean --

16 JUROR NO. 3: I don't mean to be rude or anything.
17 I'm just -- I feel like vomiting right now. I am like -- I
18 don't know what to do.

19 THE COURT: Okay. Well, we're going to see if we can
20 work to solve this problem. All right. So don't, you know --
21 we want you to be a juror, and so we'll see if we can work to
22 resolve this problem. That's where we are right now. Okay.
23 We're not going to say we can't resolve the problem. We're
24 going to try to work to resolve it. That's where we are right
25 now. Okay. So don't cry. We're not there yet.

1 JUROR NO. 3: I'm just stressed out.

2 THE COURT: Did you talk to your boss about, you
3 know, if you could be compensated for like working on the
4 weekends?

5 JUROR NO. 3: They won't do that.

6 THE COURT: They won't. So they won't pay your
7 salary --

8 JUROR NO. 3: If you even -- they don't pay us salary
9 if we -- if I was even to come in on a Saturday and work, I'm
10 not going to see extra money on my paycheck.

11 THE COURT: Right. And that's most salaried
12 positions. But, you know, if you're getting the work done and
13 you're coming in on the weekends, then a lot of times they're
14 not going to take your salary away as long as you do it.

15 I understand in a salaried job, you know, we've all,
16 you know -- like we've all had salaried jobs where you get
17 your work done. If you have to work late or you have to work
18 on the weekend, you get your work done and it's just your
19 salary. But what I'm saying is, is your boss going to take
20 away your salary if you're getting your job done by coming in
21 on the weekends or coming in early or something like that?

22 JUROR NO. 3: The emails specifically state that's
23 based off of the employee handbook. They only pay you up to
24 five days. So my five days start today, because I don't work
25 on Mondays. After five days is up, I can use 30 hours of PTO,

1 which isn't even four days, and after that's done that's it.

2 It's unpaid --

3 THE COURT: Right. But what I'm say --

4 JUROR NO. 3: -- no matter if I come in.

5 THE COURT: Okay. But what I'm saying is maybe your
6 employer -- it doesn't sound like you've discussed this with
7 your employer. Maybe your employer would be willing, if you
8 come in on the weekends or, you know, part time in the
9 mornings or something like that, maybe they would be willing
10 not to take away, or to pay you all or part of your salary.
11 It doesn't sound like that's an option that's been pursued.
12 Is that true?

13 JUROR NO. 3: It's not an option, but I will call
14 them. But here's the situation with that. When I come in on
15 weekends, there's no way for them to validate. Like someone
16 has to be there to see that I am working.

17 THE COURT: Okay. They don't look to see, you know,
18 that you did the --

19 JUROR NO. 3: I don't clock in and out.

20 THE COURT: -- that your job is done?

21 JUROR NO. 3: No. I have seven communities. Each
22 one is different. I have one board member who is psychotic
23 and spends most of his time emailing for all kinds of things.

24 THE COURT: Right. But what I'm saying is --

25 JUROR NO. 3: It's not like -- it's --

1 THE COURT: Tell me what you do, say if you had gone
2 to work today. Tell me what you do. You know, you show up at
3 work, and tell me exactly what it is --

4 JUROR NO. 3: It's different every day. I go into
5 work, check emails, make sure voice mails are done. Put
6 together an action list. I had meetings back to back. Last
7 week I had three board meetings back to back.

8 THE COURT: And those were in the evenings though,
9 correct?

10 JUROR NO. 3: Those were all the evenings. We had to
11 make sure minutes are done. We have to make sure action items
12 are sent to the board. There's legal issues that takes place
13 with those. Most of the communities in town had just finished
14 with a lawsuit with a bunch of investors. So there's a lot of
15 meetings, email communication, phone communication with board
16 members explaining what's going on with their attorneys.

17 It's not just like a regular 9:00 to 5:00 job.
18 Things happen. Emergencies happen. Even when I'm not
19 working, on weekends I will get an emergency phone call
20 because someone had a leak or a gate was hit.

21 THE COURT: Okay. Well --

22 JUROR NO. 3: If you picture that, my job already as
23 an HOA manager, I know I signed up for it, is already a
24 stressful thing of its own. So to sit here, to worry about
25 what I'm going to do with my money and what's going to

1 happen -- because I know they can't fire me. But if I'm gone,
2 all the hard work I put in with these accounts trying to clean
3 them up is just going to go down the drain, because --

4 THE COURT: Ma'am.

5 JUROR NO. 3: -- the next person is not going to know
6 what to do.

7 THE COURT: Ms. Robinson, what I'm trying to do, and
8 right now, like I said, this is we're trying to find solutions
9 here right now. If -- what I'm trying to see is if maybe your
10 employer will pay you all or part of your salary if you did
11 some of this work, you know, emailing.

12 You can do emailing responses at any time. Phone
13 calls, you can do phone calls, you know, in the morning before
14 we start if we start later. You can do phone calls in the
15 afternoon. You can do attending the meetings in the evening.
16 You can, you know, do the minutes and other things like that.

17 JUROR NO. 3: I'll talk to my job. But I just don't
18 think you guys fully understand. Like this isn't -- if I can
19 get my job to write something explaining exactly what my role
20 is --

21 THE COURT: You don't need to ask your job to do
22 that.

23 JUROR NO. 3: I mean, it's not something -- it's -- I
24 don't just do customer service. I have an assistant that
25 works below me. I have to make sure that her work is done.

1 If I'm not in the office, she's really not going to know what
2 her duties are going to be except for the day to day stuff,
3 which is doing violation reports.

4 THE COURT: Right.

5 JUROR NO. 3: If something comes up, she's not going
6 to know what to do because her manager's not in the office and
7 can't get ahold of me. And that's going to just piss people
8 off, board members, because most of them are retired and have
9 no control in their lives, so they try to control what we do.
10 So it's -- I can't even like go further into what it is. Like
11 I'm right now, I feel like just vomiting.

12 THE COURT: Okay. Well --

13 JUROR NO. 3: Some guy was just telling me just go
14 apply for unemployment. Like I've been doing this for --

15 THE COURT: We're not telling you to --

16 JUROR NO. 3: No, that's not going to work.

17 THE COURT: Like I said, what we want to try to do is
18 see if there is some way we can find a solution where you'll,
19 you know, be able to do some work and receive some salary for
20 your efforts for your job and still serve as a juror. That's
21 what we're looking at, is trying to find a solution. And, you
22 know, it doesn't sound to me, you know, that everything in
23 your job is something that requires you to be in the office at
24 a particular period of time.

25 JUROR NO. 3: There's managers that try to say the

1 excuse that they have to go on property almost every day, and
2 their work in the office is behind.

3 THE COURT: Right.

4 JUROR NO. 3: I mean, it's to the point where I can
5 bring work home, and I've already thought about it. I can
6 bring work home because I can remote in, but it's not the same
7 when you're not in the office.

8 THE COURT: And I understand. But we're asking
9 you -- you know, it's not a perfect world. And unfortunately,
10 we've gone this far in the jury selection and every single
11 person up there is making sacrifices to serve on the jury.
12 And that's part of being, you know, a citizen frankly. And
13 I'm sure if you were in a dispute, you would want people who
14 are willing to serve as jurors.

15 And so every single person is inconvenienced and we
16 try to have people as inconvenienced as little as possible.
17 And all I'm saying to you is, you know, even if you're going
18 to be inconvenienced, if there are solutions, then let's try
19 to find them.

20 JUROR NO. 3: I'll call my job.

21 THE COURT: And the solutions aren't, you know -- and
22 I'm happy, you know, I'll talk to your office. Because this,
23 you know, they understand you've tried to get out of jury
24 duty. You know, if everyone who tried to get out of jury duty
25 got out of jury duty, then unfortunately, we wouldn't have

1 enough people to serve.

2 And so I don't expect you to lose your, you know,
3 home or your apartment. I don't expect you to lose your car.
4 I don't expect you to not feed your children, and I don't
5 expect you to not see your physician. Okay. I want you to
6 understand that. And if we can find a way that we can
7 accomplish you not having to have any of those results and
8 still serving as a juror, then we're going to try to do that.
9 That's all I'm saying to you.

10 And I don't mean to be unsympathetic or anything like
11 that. So I don't want you to feel nauseated or so stressed
12 out, because I'm not here to tell you that you're going to
13 have to serve and your family's going to wind up homeless.
14 Okay. That's not what this is about. What this is about
15 right now is trying to see if there's a solution that maybe is
16 a little bit burdensome on you, but that you could still be
17 able to serve as a juror, and maybe is a little bit burdensome
18 on your employer.

19 But frankly, I think part of being an employer and
20 being a corporation that operates in our community is being a
21 good corporate citizen and making allowances so your people
22 can serve, and not saying hard and fast, oh, no, our people
23 can't serve, we expect all of the other employers to make
24 sacrifices, but we're not going to.

25 So that's all I'm saying, is I hope we can find a

1 solution that may be a little difficult but, you know, gets
2 your employer on board, you know, that you can serve. And
3 like I said, I'm not -- I'm not here to put you out on the
4 streets or anything like that.

5 JUROR NO. 3: No, I understand that.

6 THE COURT: So please relax, you know.

7 JUROR NO. 3: I understand that. I'll call my
8 employer and speak to them. If I have to speak to the owners,
9 I will.

10 THE COURT: Okay. Well, we'll do it. We'll do that
11 for you. Because at this point, you know, it's between the
12 court and your employer, all right, and not between you and
13 your employer. I don't want to put you crosswise with your
14 employer. It's between the court and your employer. So I
15 want that very clear. We don't expect you to get crosswise
16 with your employer.

17 I don't expect you -- you know, I want you to relax.
18 I don't expect you to, you know, again, lose your car or
19 anything like that. We're going to see if we can find a
20 solution. Okay. If we can't find a solution, then we'll deal
21 with that when we get there. All right.

22 And again, you know, it's between the court and your
23 employer. I can't make your employer do this and accommodate
24 you, but as I said, you know, if they want to be in business
25 in this community and represent all these homeowners

1 associations, and they want to avail themselves of the court
2 system, and to me, part of that is being a good citizen in our
3 community, and that means allowing people to serve.

4 Now, I can give your employer that opportunity and
5 they can accept it or they can reject it. And if they reject
6 it, well, then it is what it is and, you know -- you know,
7 that's how they choose then to be in this community. So
8 again, I don't want you to be worried about it or anything
9 like that. Like I said, what we're going to do is see if we
10 can find solutions here, okay?

11 JUROR NO. 3: Did your assistant receive the emails
12 that I forwarded?

13 THE COURT: You sent for -- my JEA received that you
14 sent at 7:25, "Please see below," and then there is an email
15 from Charlene Sanford [phonetic] and an email from Michelle
16 Nieto-Deck [phonetic], and I'm assuming she's your supervisor.

17 JUROR NO. 3: Yeah. She's my boss.

18 THE COURT: Okay. And then Charlene Sanford is more
19 the corporate --

20 JUROR NO. 3: She's the HR.

21 THE COURT: -- person?

22 Okay. All right. Basically, we're going to go ahead
23 and let you go back with the other jurors. You know, they may
24 wonder of course, oh, what did they talk to you about. You
25 are not to discuss what we've discussed in here and your

1 personal issues relative to jury service with any of the other
2 jurors. Do you understand?

3 JUROR NO. 3: Yes.

4 THE COURT: All right. Thank you. Like I said, you
5 know, I don't want you to worry. I don't want you to feel
6 sick and stressed out. We're going to see if we can find a
7 solution to this problem. If we can't, then we'll know that.
8 But I'd like to at least try to exhaust some other
9 possibilities. Okay. All right. So just relax and it'll be
10 okay.

11 Take her back.

12 (Juror No. 3 exits the courtroom.)

13 THE COURT: What do you want to do going forward? My
14 proposal is to see what her job says, and then see where we
15 are at that point. And if her job, like I said, doesn't want
16 to be a good corporate citizen, then that's up to them, and
17 then obviously we'll have to excuse her. Is everyone in
18 agreement that that's how we should proceed at this point?

19 MR. SANTACROCE: Yes.

20 MR. WRIGHT: Yes.

21 THE COURT: Okay. So shall we then get started with
22 opening statements?

23 MR. SANTACROCE: Can I just put some observations on
24 the record?

25 THE COURT: Sure.

1 MR. SANTACROCE: That at some point it looked to me
2 like she had started crying during your conversation with her.
3 Basically she was very emotional, and I don't know if the
4 record can catch that with just the questioning. So I just
5 wanted to put that on the record.

6 THE COURT: Okay. She did seem to be emotional. You
7 know, I don't want anyone to become physically ill because
8 they're serving as a juror. Okay. I mean, if we're there
9 with this woman, then I'm going to excuse her now. You know,
10 I don't want somebody to be -- especially someone who's
11 pregnant. Okay. I don't want to be responsible for that.

12 Does anyone feel that she's at a situation where we
13 need to excuse her now? I mean, I --

14 UNKNOWN SPEAKER: No.

15 THE COURT: She seemed calm to me. What's the
16 State's view?

17 MR. STAUDAHER: I mean, I agree with the Court. I
18 think at this point, by the time you got finished talking to
19 her, she was calmed down it seemed like. There was even, to
20 my view, a glimmer of hope that maybe we could work out some
21 solution, as you put it. That she is not one that is
22 essentially at this point, I think, one we have to release.
23 Maybe we have to at some point.

24 But at this stage, she is an African-American
25 individual. We have an issue with the make-up of the jury

1 anyway, so we want to make sure that we have this jury keep as
2 many of the jurors here on board as possible. And I think if
3 the Court does what it intends to do and we come back with
4 information that says -- well, however it goes, we'll make a
5 decision then.

6 THE COURT: Defense, are you -- again, you know, I
7 don't want to cause a miscarriage, God forbid, or anything
8 like that, so.

9 MR. WRIGHT: I agree with the Court's observation.
10 If we can possibly get her employer to bend, good. If we
11 can't, she's going to have to go.

12 MR. SANTACROCE: I agree with that.

13 THE COURT: Okay. Kenny, would you just pull her to
14 the side, make sure she's okay, tell her, you know, just
15 relax.

16 THE MARSHAL: Okay. Do you want me to get everybody
17 in the courtroom first?

18 THE COURT: No, no.

19 THE MARSHAL: All right.

20 THE COURT: Just say I just want to make sure, the
21 judge wants to make sure you're okay. Don't engage in any
22 further conversation with her.

23 All right. I think that's all we need to do for
24 right now. We'll see if these people from her job call us
25 back.

1 If somebody wants to open the door and let everybody
2 get back set up. If anyone needs to use the restroom, do it
3 right now, and then we'll move right into the opening
4 statements from the defense.

5 (Pause in proceedings.)

6 THE COURT: Is everyone ready to begin?

7 (Affirmative responses.)

8 THE COURT: Kenny, go ahead and bring the jury in.

9 (Pause in proceeding.)

10 THE MARSHAL: Ladies and gentlemen, please rise for
11 the jury.

12 (Jurors reconvene at 10:11 a.m.)

13 (Richard Wright's opening statement previously transcribed.)

14 (Off-record bench conference.)

15 (Jury recessed at 10:30 a.m.)

16 (Pause in proceedings)

17 THE COURT: Basically, we excused the jury because it
18 seemed like there was more of a dispute at the bench than just
19 concerned the objection, which was to the burden of proof. I
20 overruled the objection.

21 It's fine to discuss that a burden of proof in a
22 civil case is only a preponderance of the evidence and --
23 generally, and proof beyond a reasonable doubt in a criminal
24 case. However, you can't give broader instructions on the
25 law, as the instructions on the law come at the end of the

1 case and have not been decided upon yet.

2 So Mr. Wright, up here at the bench we got into a
3 discussion as to now where are you going with your argument,
4 and whether or not you intend or hope to get into a discussion
5 of the law rather than the evidence, which you either intend
6 to present or what you think the evidence, regardless of who
7 presents it, is going to show in this case?

8 MR. WRIGHT: Yeah. I don't call it the law. I
9 absolutely call it I am going to tell them the elements of the
10 crimes which he is charged with. Those come right out of the
11 statute. I'm not giving jury instructions. I think a jury
12 needs to know before I tell them what I think the evidence
13 will show and what show -- what they are supposed to be
14 looking for. It's the exact road map I explained to them when
15 I opened.

16 First I'm going to talk about the general principles
17 of a criminal case. Then I'm going to talk to you --

18 THE COURT: That was all fine and no one objected to
19 that, and that's perfectly fine.

20 MR. WRIGHT: Then I'm going to talk to you all about
21 the elements of the crime that he's charged with, so that you
22 all will know when I go through the evidence what it is you
23 are looking for.

24 MR. STAUDAHER: That is exactly the problem. That
25 then -- well, why do we even have instructions? Just throw

1 the statute book back there and say here we go. And that's
2 not what we do. We -- those are not settled. They don't know
3 what theory, for example, in the murder that we ultimately
4 will be proceeding under. We gave them the ones that are
5 there.

6 But the evidence, as it comes out, the jury and the
7 judge, you, will instruct them on the elements that are there,
8 what that means, and we have to go through that and settle
9 those. This is not the forum or the time, in opening
10 statement, to lay out the elements and what is the law that
11 they have to follow as their road map.

12 It's what evidence will be presented in the case or
13 what evidence won't be presented, and how to interpret that or
14 whatever. It's not the law at this point. That's given at
15 the end of the trial. After both sides have had the trial
16 done, we settle the jury instructions, and then the judge,
17 you, can instruct them on the law.

18 This is not the time to instruct them on the law.
19 It's the time to show what evidence is going to be presented
20 and what essentially their take on it will mean.

21 THE COURT: All right. Tell me --

22 MR. SANTACROCE: Your Honor, may I be heard?

23 THE COURT: Well, right now, no, because this
24 concerns Mr. Wright's opening.

25 MR. SANTACROCE: It's going to concern mine.

1 THE COURT: Well, all right. Mr. Wright -- I'm going
2 to finish with Mr. Wright, because we're in his opening and
3 the issue right now concerns what Mr. Wright would like to
4 say.

5 So Mr. Wright, what exactly is it that you want to
6 say? Because again, you know, in a way, I'm concerned that
7 you're trying to put the cart before the horse; meaning
8 instruct them on the law prior to the presentation of evidence
9 through your opening statement.

10 Now, I think as a general principle, you know, if
11 you're just saying, you know, like these are the elements of
12 burglary and entry with the intent to commit this and that.
13 But, you know, the way this indictment reads is fairly
14 complicated and it's different theories of liability. And I
15 certainly don't want to create a situation where you're
16 focusing maybe on proving the elements and ignoring the
17 theories of liability.

18 And to then start discussing theories of criminal
19 liability, I think now we're definitely getting into
20 instructions on the law and really again, as I said
21 colloquially, putting the cart before the horse here. So
22 that's my concern. You know, this isn't a simple indictment
23 like a burglary where you have a principal actor and that's
24 it.

25 So I think Mr. Staudaher touched on that a little

1 bit, where you're talking about different theories and then,
2 you know, is it that you want to explain the theories and now
3 we're really going to get into something where I think you're
4 really moving into an instruction on the law, and that's my
5 concern here.

6 So I guess my -- you know, I would be less concerned
7 about it, like I just said, if this were a very simple
8 indictment and really we're just limited to, you know, one
9 principal and the direct elements of the crime. But so maybe
10 you can enlighten me, and then if I understand what it is that
11 you want to do, you know, I can try to make a more informed,
12 at least, decision.

13 MR. WRIGHT: I want to tell the jury what they're
14 charged with and what the crime is. I don't understand why we
15 want to conceal that from the jury and why the State doesn't
16 want them to know it. I want to use the statute. I've never
17 had an opening where I'm not allowed to use the statute and
18 then go through the elements with the evidence.

19 If you call -- the fact that this is a difficult,
20 poorly drafted, confusing, should have been dismissed
21 indictment cries out for clarification. You point out this
22 isn't simple. What are they supposed to be looking for when
23 they hear all of this evidence coming in? What's the crime
24 I'm supposed to be looking out for?

25 THE COURT: Well, they're supposed to be looking for

1 the -- they're supposed to be looking for the truth and
2 they're supposed to be looking at what all the facts are, and
3 then at the end, like in every other trial, they get the law
4 and they go in the back and they try to assess, well, what has
5 the State proven, what do we believe the facts are from the
6 evidence that's been presented, and how does that apply to the
7 law in this case. I mean, that's -- I think it --

8 MR. WRIGHT: Well, if you're instructing me I can't
9 tell them the law or the statute, I can't throw them the
10 statute and I can't tell them the elements of the crime, I'll
11 abide by it.

12 MR. STAUDAHER: Your Honor, this is opening
13 statement. It is not --

14 MR. WRIGHT: I understand what it is.

15 MR. STAUDAHER: -- closing argument. I mean, Your
16 Honor is the one who gives the law, not Mr. Wright, and that's
17 the issue.

18 MR. WRIGHT: Okay. You put the statute up and tell
19 them the elements.

20 THE COURT: Mr. Wright, I don't think you need to be
21 facetious at this point. Like I said, you know, I understand
22 your argument that, you know, you want the jury to just focus
23 on certain elements when they hear the evidence, and I can
24 understand why you would want them to do that.

25 But I also don't think it's inappropriate for the

1 jury to consider all of the facts as presented, and then from
2 all of the evidence make their determination as to what they
3 think the truth is, what they think the facts are --

4 MR. WRIGHT: I will tell them that.

5 THE COURT: -- without trying to -- I don't know that
6 this is the State's concern, but without somehow trying to
7 narrow that focus without giving them full instructions on all
8 of the theories of liability that the State has pled.

9 And just, you know, in response to your comment that,
10 well, it's a poorly drafted pleading that should have been
11 dismissed, that's been thoroughly litigated. That was
12 litigated here. That's been litigated in front of the Nevada
13 Supreme Court. So we are where we are and the indictment has
14 been held to stand.

15 So that is my concern with allowing parsing out of
16 the law and everything like that. You know, I think, you
17 know, generally commenting on the difference between civil and
18 criminal is certainly appropriate. The constitutional
19 principles, making sure that they're focusing on those
20 constitutional principles, I think, is certainly appropriate.

21 But my feeling is this: That, you know, you can't
22 just isolate one theory of liability from the other theories
23 of liability. You can certainly point out the difference
24 between criminal neglect and civil neglect, and if that's what
25 you're seeking to do by way of this, I think that that's

1 appropriate and that's also been the subject of comment in our
2 voir dire with the prospective jurors. I certainly think
3 that's appropriate if that's how you want to use the statute.

4 But I would just say generally -- I'm still not
5 exactly sure how you want to use this. But I would say
6 generally, you know, opening statement is not a time to
7 provide instruction on the law, and opening statement is not a
8 time for the defense to try to limit what the theories are and
9 to tell the jurors, look, just focus in on this, when there
10 are other theories that the State may be trying to present.

11 And so that's my concern. You know, I've articulated
12 that as best as I can. And hopefully, you know, going
13 forward, I'm not exactly sure how you wanted to use this. But
14 if you're saying, you know, it's not ordinary negligence, it's
15 beyond that, it's aggravated, reckless or gross, I would let
16 you say that. But again, I -- Ms. Stanish is nodding -- I
17 hope you understand what the Court's concerns are and what I
18 won't allow you to do.

19 MR. WRIGHT: I don't understand the Court's concerns.

20 THE COURT: Okay.

21 MR. WRIGHT: I wasn't arguing theories. I wasn't
22 arguing conspiracy, aiding and abetting, theories of
23 liability.

24 THE COURT: We don't know what your --

25 MR. WRIGHT: I am arguing, well, I never had to

1 preview it before for a Court, and I've never been stopped
2 before in telling the elements of the offense and where I
3 think the evidence will and will not go. And I haven't --

4 THE COURT: And that's -- Mr. Wright.

5 MR. WRIGHT: -- been stopped in presenting the
6 statute to the jury.

7 THE COURT: Mr. Wright, that's all certainly, you
8 know, fine. Mr. Staudaher may have kind of jumped the gun a
9 little bit. Like I said, what you started with was perfectly
10 fine and again, the Court overruled Mr. Staudaher's objection.
11 However, based on what you said here at our conversation at
12 the bench became concerning as to what you intended to do.

13 And my concern is this, that you cannot, you know,
14 try to instruct the jury on the law at this point, and you
15 cannot -- and my concern with that is in somehow focusing the
16 jury to the exclusion of various theories of liability or
17 something like that that have been pled. So that is my
18 concern. And when you say, well, I didn't intend to instruct
19 them on theories of liability, that right there may be the
20 problem, depending on what you make of your argument.

21 You know, the indictment is again, complex. Like I
22 said, you know, it is what it is. It's been litigated.

23 MR. WRIGHT: I intend to focus --

24 THE COURT: The State's been allowed to proceed on
25 that. And so, you know, what you've done in other cases,

1 that's what you've done in other cases. I can't comment on
2 that. But, you know, like I said, you can tell them, you
3 know, the difference between civil and criminal, that, you
4 know, it's not an ordinary negligence standard. We discussed
5 that already in voir dire.

6 You can say what you want from the statute is, you
7 know, the act or omission is aggravated, reckless or gross,
8 it's a departure. That's all fine if that's where you wanted
9 to go with this. You know, maybe we're not -- I'm not sure
10 exactly what it is that you wanted to do, but I think that
11 that would be appropriate.

12 All I'm saying is, you know, don't -- don't in your
13 presentation, you know, point only to certain things to the
14 exclusion of other theories and other things, so that it would
15 be an inaccurate representation of what the instructions would
16 be at the end.

17 MR. WRIGHT: I won't.

18 THE COURT: And again, you know, the point of opening
19 statement is -- you know, and that's a subject of debate.
20 Some judges and some legal scholars think that the jury should
21 be instructed on the law in the beginning, so they know what
22 they're doing, and that's -- but as you know, the procedure
23 here in the Eighth Judicial District is to instruct the jury
24 immediately before closing statements.

25 You know, regardless of when we instruct the jury,

1 the point is that the instructions are given by the Court and
2 approved by the Court after discussion and argument by both
3 sides. So that's my concern. You know, you say you don't
4 understand it. You know, I've tried to articulate it as best
5 as I can.

6 I've indicated what you can -- you know, certainly if
7 that's what you wanted to use the statute for, that those are
8 the elements, that it's not ordinary negligence, it's this
9 higher thing, then that's fine. And that's already been
10 commented on frankly, in the jury selection process. So
11 that's all fine. Do we understand where we are going forward?

12 MR. WRIGHT: I think so.

13 THE COURT: All right. Mr. Santacroce, if you have
14 additional questions before your opening statement, then we
15 can -- let's bring those up before you begin your opening
16 statement, so we don't have to take a break in the middle.

17 MR. STAUDAHER: Your Honor, before that comes in, I
18 just want to -- I'm concerned now. Are we going to be putting
19 statutes up before the jury --

20 MR. WRIGHT: I'm going to --

21 MR. STAUDAHER: -- and presenting that, because
22 that's going to be the instruction by this Court at the end.
23 And again, I must say that this is --

24 THE COURT: Well, that instruction comes -- I mean,
25 that comes directly from the statute.

1 MR. WRIGHT: It's the statute.

2 MR. STAUDAHER: Of course.

3 THE COURT: So I don't think that there's any real
4 concern that that's not going to be the instruction. But like
5 I said, you know, you can, you know, he can't try to limit the
6 theories of liability or limit things in other ways, and there
7 are a number of the other thing, you know. And I'm sure you
8 wouldn't do that. He's focusing right now on the criminal
9 negligence. Obviously there's other charges here and things
10 like that.

11 So Mr. Staudaher, if you believe that Mr. Wright goes
12 beyond what the Court has said is allowable, then certainly
13 stand up and say, you know, objection, inappropriate for
14 opening, you know, or whatever the basis of your objection
15 might be.

16 MR. STAUDAHER: I just hate to interrupt him in his
17 opening if -- but okay.

18 THE COURT: I mean, I don't see a need to approach
19 the bench again is what I'm saying, and that may be less
20 disruptive so to speak.

21 And then Mr. Santacroce, like I said, whatever
22 concerns you have, we'll address those prior to your opening
23 statement.

24 MR. SANTACROCE: Well, I'm unclear as to the Court's
25 ruling.

1 THE COURT: Well, Mr. Santacroce, it's not necessary
2 that you be clear at this point in time because you're not
3 making the opening statement. Mr. Wright is making the
4 opening statement. It's important that Mr. Wright be clear,
5 but not that you be clear. Because frankly, you know, Mr.
6 Wright's opening statement was estimated to take about two
7 hours. We're roughly what, 25, 30 minutes into it. So we
8 have another hour and a half.

9 We'll clearly be taking some sort of a break prior to
10 that time, and we will certainly give you whatever time you
11 need to address your concerns, and the Court will endeavor to
12 explain its ruling and what you're allowed to do as best as it
13 can. So I don't know that we need to take the time right now,
14 in the middle of Mr. Wright's opening statement, to address
15 what you may be doing sometime this afternoon.

16 MR. SANTACROCE: Fair enough.

17 THE COURT: All right. Kenny, bring them in.

18 (Jurors reconvene at 10:49 a.m.)

19 (Richard Wright's opening statement previously transcribed.)

20 THE COURT: Thank you, Mr. Wright.

21 Ladies and gentlemen, I believe it is lunchtime. In
22 a moment we will take our recess for lunch break. It is now
23 noon. I will give you until 1:10 for the lunch recess.

24 Before I excuse you, I must again admonish you that
25 you're not to discuss the case or anything relating to the

1 case with each other or with anyone else. You are not to
2 read, watch, listen to any reports of or commentaries on this
3 case, any person or subject matter relating to the case by any
4 medium of information. You are also not to do any independent
5 research by way of the Internet or any other medium. And
6 finally, please do not form or express an opinion on the
7 trial.

8 Would you all please place your notepads in your
9 chairs and follow our bailiff through the rear door.

10 (Jurors recessed at 12:00 p.m.)

11 THE COURT: All right. I'd like the lawyers and the
12 defendants back at 1:00 o'clock, so that we can discuss and
13 hopefully resolve any issues or questions regarding
14 Mr. Santacroce's opening statement prior to the time he
15 begins, so hopefully we can avoid any interruptions in Mr.
16 Santacroce's opening statement.

17 Is that acceptable, Mr. Santacroce?

18 MR. SANTACROCE: Very acceptable, Your Honor. Thank
19 you.

20 THE COURT: All right. We'll see you all back here
21 at 1:00 o'clock. The courtroom will be closed, so we need
22 everyone to please exit.

23 (Court recessed at 12:01 p.m. until 1:05 p.m.)

24 (Outside the presence of the jury.)

25 THE COURT: Where is Mr. Staudaher? Was that just

1 him?

2 MS. WECKERLY: No. I'll grab him.

3 THE COURT: Is this door shut?

4 THE MARSHAL: The doors are locked.

5 THE COURT: Okay. And this door is shut?

6 THE MARSHAL: Yes.

7 THE COURT: All right. Thank you. I wanted to just
8 place this on the record concerning Juror Rachel Robinson. As
9 the attorneys know, we met in chambers this morning regarding
10 her situation and it was requested of the Court that the Court
11 take some steps to see if her employer would accommodate her
12 service as a juror.

13 And so in the presence of the attorneys this morning,
14 the Court contacted the two people that we received -- that
15 were part of the email traffic, Ms. Robinson's supervisor and,
16 I believe, a Ms. Sanford, who was more in charge of human
17 resources, according to the email. And the Court left voice
18 mail messages for both of them essentially saying who I was
19 and that we received their copies of the emails, and that I
20 was contacting them regarding Juror Rachel Robinson.

21 At the lunch break, the beginning of the lunch break,
22 I received a return telephone call from Ms. Sanford of human
23 resources. And I explained the situation to her and I said
24 that Ms. Robinson wanted to be excused -- essentially this is
25 my recollection, so I'm paraphrasing a great deal here.

1 Ms. Robinson wanted to be excused and was very upset and
2 concerned about being compensated.

3 And I informed the woman, you know, it wasn't that
4 simple of a matter, that we had already gone through jury
5 selection and that it was an inconvenience for all of the
6 jurors and she'd already been selected and that we were hoping
7 we could somehow reach some kind of solution, that I didn't
8 want Ms. Robinson, you know, to not pay her bills or be
9 homeless or lose her car or anything of that nature, and that
10 we had discussed the issue of the HOA meetings during the jury
11 selection, and the Court had indicated to her that she would
12 be able to attend all the HOA board meetings, that we would
13 even break early if she had meetings in Green Valley or
14 something like that as long as she notified us ahead of time.

15 And then I said, you know, is it the kind of thing
16 where she could maybe do her duties in the morning, make phone
17 calls, things like that at our lunch breaks, or exchange
18 emails, that sort of thing, and receive all or part of her
19 salary. And Ms. Sanford indicated that there was a 24-hour
20 policy regarding returning phone calls from the HOA members,
21 and I indicated I didn't see that that would be a problem, as
22 we don't start right at 8:00 a.m.

23 We never start at 8:00 a.m. You know, we might be
24 starting 9:30 or 10:00. She could certainly return calls in
25 the morning. She could certainly return calls after we broke,

1 you know, at 5:00 or thereabouts, and she could certainly
2 return phone calls and emails, you know. If she had a laptop
3 or an iPhone or something like that, she could certainly
4 return emails, return phone calls during the lunch break.

5 So I asked if they as a good corporate citizen, to
6 encourage jury participation, could see if there was some way
7 they could pay her all or part of her salary so long as she
8 continued to perform much of her or some of her duties in that
9 way. And so Ms. Sanford indicated that that was not their
10 policy to do that.

11 And I said, Well, you know, can you make an
12 exception, I don't want Ms. Robinson to be retaliated against
13 in any way, so I wanted it to be clear that this wasn't, you
14 know, the Court was asking based on where we were in the
15 process, and that she had asked to be excused and we had told
16 her no, she would not be, you know, we were not excusing her
17 at this point.

18 And although, you know, I pretty much indicated that
19 if they said no, she would be, you know, be excused, but I
20 said, We don't expect people, you know, to lose their homes,
21 we don't expect people who are so upset, you know, that
22 they're crying or physically ill to serve as jurors obviously,
23 I said, you know.

24 She said, well, that wasn't their policy, that she
25 was not in a high enough position that she could make a

1 decision, but that she would have to meet with various
2 higher-ups in the organization and see what they -- sort of
3 see what they could do.

4 My sense is they're probably not going to make an
5 accommodation, but I don't have an answer. She said she'd try
6 to get back with me in the afternoon. Then depending what she
7 says, I'll inform you and decide where to go from there. So
8 that's where we are and that's as accurately as I can recall
9 the conversation. I wanted to inform you and place that on
10 record. All right.

11 MR. STAUDAHER: Could I address one issue?

12 THE COURT: Sure.

13 MR. STAUDAHER: I don't know if we're planning to
14 take a short break after Mr. Santacroce's opening.

15 THE COURT: Well, if it's 30 minutes or less, no. If
16 it's, you know, an hour or so, then definitely.

17 MR. STAUDAHER: Based on that --

18 THE COURT: Unless you need to like set up something.

19 MR. STAUDAHER: No, that's not the issue. The issue
20 is that the first witnesses that we have that are actually
21 here in the vestibule as we speak, the attorney for them --
22 they are the Washingtons. This is Ms. Patty Weiss. She is
23 their attorney.

24 One of the concerns I think I raised to the Court in
25 chambers previous to this trial even going forward was the

1 concern that the victims in this case who are party to
2 lawsuits that have confidentiality agreements, that if
3 questions were asked about that, that they couldn't
4 voluntarily just come up with that, that the Court would have
5 to order them to do so.

6 THE COURT: Right. But we're going to do that out of
7 the presence --

8 MR. STAUDAHER: But on the record.

9 THE COURT: -- of the jury, but out of the record.
10 Now, obviously if they go beyond sort of the basics, you filed
11 a lawsuit and this and that, if it's something that the
12 State -- you know, obviously you can't be making objections or
13 anything like that. But, you know, if the State feels that
14 it's getting into something that's irrelevant, then certainly
15 the State is free to object on relevancy grounds.

16 You know, basically the fact that there were lawsuits
17 goes to, you know, bias and their motivations, or it can be
18 argued that it goes to that, so I'm letting it in. But, you
19 know, if they -- if it becomes irrelevant, then certainly the
20 State can then at any time lodge a relevancy objection and
21 I'll, you know, rule on it. If I overrule the objection, then
22 obviously they have to answer.

23 But certainly we can put on the record the agreement
24 and I'll say, well, this is, you know, a criminal prosecution
25 and the rights of the defendant have to be protected, and

1 therefore, if I feel it's a relevant question, then
2 notwithstanding any private agreement they've entered into,
3 even if it's been approved by another district court, they do
4 have to answer.

5 MR. STAUDAHER: Now, that being said, I want to make
6 sure that -- and that's one of the reasons why Ms. Weiss is
7 here, that both the defense parties are aware that there
8 was -- there was not just a settlement that was with this one
9 individual, they were part of a more global settlement.

10 So it would bring in -- and I know that there was an
11 allusion to this during opening statements, but there were
12 multiple plaintiffs involved in those things --

13 THE COURT: Right.

14 MR. STAUDAHER: -- which would indicate that there
15 are multiple instances, or other -- because there was an issue
16 of whether there were other clusters out there or so forth. I
17 think it would lend itself to possibly opening the door to
18 that, which I don't have an issue with. I'm just making sure
19 that everybody's on board with this.

20 And also that Dr. Desai was actually a party and did
21 settle, and that these witnesses are subject to a
22 confidentiality agreement with Dr. Desai specifically, so they
23 would -- if they're asked to essentially answer the questions,
24 that they're foregoing -- or he is foregoing that issue with
25 regard to them personally because they were a part of an

1 individual lawsuit with him.

2 Is that fair?

3 THE COURT: Is that understood? Any objection to
4 that from the defense, Mr. Wright, Ms. Stanish? No.

5 And then, Counsel, your concerns?

6 MS. WEISS: Yes. Actually, I don't think it's a
7 concern as much for the plaintiffs that they were involved in
8 the lawsuit, the lawsuits were settled. It's the amount of
9 the lawsuit, because they are confidential. And by the
10 agreement, it has to be a court order to make sure that they
11 don't have to give the money back.

12 THE COURT: Okay.

13 MS. WEISS: So if they say --

14 THE COURT: Now, I know that -- is it -- were they
15 part of the whole big global settlement?

16 MS. WEISS: They settled with Nevada Mutual on behalf
17 of Mr. Lakeman and Mr. Desai.

18 THE COURT: Okay.

19 MS. WEISS: That was the first settlement.

20 THE COURT: Okay.

21 MS. WEISS: The amount is confidential and my
22 understanding is that Nimick [phonetic] was going to object to
23 the amount being told in open court.

24 MR. STAUDAHER: Not Nemec.

25 THE COURT: He was going to object --

1 MR. STAUDAHER: Not Nemec. It's Nevada Mutual
2 Insurance.

3 THE COURT: Oh, I'm sorry. I thought you meant Nemec
4 like Frank Nemec. I'm thinking what does Frank Nemec -- I
5 know he's an expert in the case, what does he have to do with
6 that.

7 MS. WEISS: I'm sorry. Nevada Mutual, which is the
8 insurance company for the doctors. So there's a
9 confidentiality agreement with them, which is separate.
10 There's a confidentiality agreement with Mary Greer, who's a
11 pharmacist, and there's a confidentiality agreement with Teva
12 and Baxter, who are the product defendants, and that's the
13 major global settlement --

14 THE COURT: Right.

15 MS. WEISS: -- that was rendered.

16 THE COURT: Right.

17 MS. WEISS: And there's, you know, my understanding,
18 there's 70 or 80 different plaintiffs. We don't represent
19 them all. I'm here for just two of the victims, the
20 Washingtons, and then also Sonia Rivera.

21 THE COURT: Right. Here's my comment on the Teva. I
22 mean, I'm semi aware of the amount of the global -- I don't
23 remember the exact figure, but I'm pretty much aware of what
24 it was on that global settlement. I know obviously the
25 attorneys took their share and then it was divided up.

1 I mean, the reason I was so fortunate to get the
2 criminal prosecution is because, I don't know if you recall,
3 but I was handling the consolidated civil cases.

4 MS. WEISS: Right. Hail Hilty, which is my case. So
5 yeah, [inaudible].

6 THE COURT: Right. And so I, you know, have some
7 memory of this, although it was a while ago. And then I know
8 that there was some basis for how it was divided up among the
9 various plaintiffs. My sort of initial response to all of
10 this is I don't think it's relevant what the lawyers got. I
11 don't think it's relevant what the other plaintiffs may have
12 gotten.

13 So in those terms, I would direct both sides to stay
14 away from the global settlement, because they're going to hear
15 these huge numbers, and I think it's going to be completely
16 misleading to the jury, number one. Number two, as I said
17 before, you know, what the lawyers made on this I don't think
18 is relevant, and what other plaintiffs may have made I don't
19 think is relevant.

20 And so I don't see that that should even be coming
21 in, because as I just said, first of all, then now you're
22 intruding on their privacy and they're not even maybe related
23 to the victims in this case. And second of all, I think that
24 just that sounds like such a huge amount without them
25 appreciating, okay, this goes to costs and these were all the

1 experts that they had to have, and then this goes to the
2 lawyers, and this was all divided up among the lawyers, and
3 now you've got these different plaintiff groups.

4 I think that just a number is completely misleading
5 and confusing, and I don't want to open a whole separate, you
6 know, issue on how that was all handled and it was approved by
7 the court. So it was approved here, and Judge Togliatti spent
8 a long time, settlements, other judges were involved, and so
9 that's too much of a side issue. So is everybody clear on the
10 limitation there?

11 I think in terms of the plaintiffs themselves,
12 that -- this, you know, whoever is under oath right now, that
13 could be the subject of fair game. But to go beyond that I
14 don't think is appropriate.

15 MR. STAUDAHER: Just what that person may have
16 received?

17 THE COURT: Right. Yeah. Is everyone fine with
18 that?

19 MS. WEISS: I just have an objection, that if you can
20 order them to tell, because I mean, the --

21 THE COURT: Right.

22 MR. STAUDAHER: Yes. That has to be done.

23 MS. WEISS: If you order them to tell, and also
24 because, I mean, there is an amount that was given to the
25 Washingtons. They got a huge verdict against Teva, and

1 they're concerned for their privacy and safety. They're both
2 elderly and he's very ill. If you could maybe like do what
3 you're doing now, and have the jury present when they testify
4 about the amount, but not the media and all the attention.
5 Because I mean, I think that is a concern for them.

6 MR. SANTACROCE: I'm going to object to that, Your
7 Honor.

8 THE COURT: Yeah. So they received a jury verdict,
9 correct?

10 MS. WEISS: They got a verdict, and subsequent to the
11 verdict there was a settlement with that defendant. They
12 settled with these guys before.

13 THE COURT: Right. I understand. And then the
14 settlement -- I mean, basically what did they wind up getting?

15 MS. WEISS: In their pockets?

16 THE COURT: Right.

17 MS. WEISS: I'd have to -- I mean, honestly, I'd have
18 to go back and look at that.

19 THE COURT: So they're not even going to know?

20 MS. WEISS: They may not know the amount they
21 actually -- because there was -- it was done and there was
22 payout to, you know, in different ways and structures and
23 things like that. I'm not sure if they're going to know that
24 answer.

25 THE COURT: I don't know that that's even terribly,

1 you know, relevant. We could do a ballpark. I mean, here's
2 the thing.

3 MR. WRIGHT: I want to know.

4 THE COURT: As you know, this is a public forum.
5 This is a case that has a huge amount of public interest.
6 And, you know, it is the great exception rather than the rule
7 that the media is ever excluded.

8 The only reason that actually they had just been
9 excluded is to discuss a private situation with a juror that
10 frankly, at this point, could have involved some other health,
11 for lack of a better word, issues that I don't feel the media
12 needs to be privy to at this point in time. So that's why we
13 closed the door.

14 In terms of the trial process and the evidence that
15 the jury's going to consider, I think that that is germane for
16 the public to know, and so I'm very reluctant -- defense has
17 objected, you know. I think it's the extreme situation. I
18 mean, we have, you know, people who testify in criminal trials
19 about, you know, children who testify not necessarily on
20 camera, but children who testify about sexual abuse, and we
21 don't exclude the media there.

22 So I don't see that this is like such a heightened
23 situation where we have to exclude the media. People like --
24 you know, rich people who are victims, well-known people, you
25 know, they give their residential addresses. Now, I

1 understand this is probably going to be -- this is a little
2 bit reel to reel. I don't know if it's being broad -- well,
3 just on the Internet and that's like all over the country. So
4 I have to say no to excluding any portion of their testimony
5 from the media.

6 MR. STAUDAHER: But you will order them to do it, so
7 that there's no issue with their confidentiality?

8 THE COURT: Right. So Mr. -- right. Exactly.

9 MR. WRIGHT: Well, and I would hope, I mean, they --
10 if you refresh their recollect -- I don't want to have to
11 probe them to get the amounts, you know, I mean, to get
12 them --

13 THE COURT: Do we know what the, Mr. Wright --

14 MR. WRIGHT: I don't.

15 THE COURT: I mean, I don't think we need, you know,
16 dollar and cents. I mean, is it over between five and ten
17 million?

18 MR. WRIGHT: No. I want to know the --

19 THE COURT: Is it between 20 and, you know, 25
20 million? I mean, to me, if it's 21.5 million or 23 million
21 isn't really a big difference.

22 MS. WEISS: Well, no. We know the exact amount they
23 settled for net -- or gross. I'm talking now, because it
24 sounds like you're limiting it to the net amount that they
25 recovered. I could try to get that amount for you and try

1 [inaudible].

2 THE COURT: Or they could say --

3 MR. WRIGHT: [Inaudible.]

4 THE COURT: Right. I mean, just basically, like I
5 said, especially concerning the global settlement and the
6 amount of the global settlement, I don't want that to come in.
7 That's not relevant to anything here and, you know, how much
8 the different lawyers made off that, that's totally
9 irrelevant.

10 MS. WEISS: Yeah. If you want a net figure, that's
11 why I was saying there's a difference between the gross. Of
12 course we know the gross figure. It's just the net figure
13 after everything came out.

14 THE COURT: Yeah. That, I don't know how hard that
15 is for you to calculate, because there's, you know, it's
16 obviously more complicated.

17 So Mr. Santacroce, how long do you anticipate for
18 your opening?

19 MR. SANTACROCE: About an hour.

20 THE COURT: Okay. Why don't we do this. Let's move
21 into Mr. -- first we're going to deal with your pre-opening
22 issue, we're going to do Mr. Santacroce's opening, then we'll
23 take a break.

24 In the meantime, ma'am, if you could try to calculate
25 that, we'll take a break, I'll advise your clients, and then

1 you can say what that is. And if there is any questions or
2 issues with the lawyers, we'd bring that up at that time.

3 MR. WRIGHT: On any amount from any source, meaning
4 the settlement with my client and/or --

5 MS. WEISS: We don't want to [inaudible] what your
6 client's settlement, correct?

7 THE COURT: Yes, just the clients.

8 MR. WRIGHT: Right. I'm not saying global. I'm just
9 saying how much was for Mrs. Washington.

10 MS. WEISS: How much did Dr. Desai pay, how much did
11 this -- okay.

12 MR. WRIGHT: Correct.

13 THE COURT: Yeah, that's it. And only them, nobody
14 else. Okay. I think we're all saying the same thing.

15 MS. WEISS: I appreciate it.

16 THE COURT: All right. Thank you.

17 Kenny, you can let the media set up.

18 And Mr. Santacroce, what was your -- after seeing
19 what Mr. Wright did, that excellent closing argument [sic]
20 Mr. Wright made, do you have any questions regarding what you
21 can do?

22 MR. SANTACROCE: Yes. I want to know if I can refer
23 to the language in the indictment specifically related to the
24 murder charge, and read some of the language in the indictment
25 as it relates to my client.

1 THE COURT: Any objection? I mean, it's already been
2 read to the jury.

3 MR. STAUDAHER: Yeah. I don't have a problem with
4 him reading the language in it.

5 THE COURT: Okay. That's fine.

6 All right. If anyone needs to use the restroom, do
7 it right now, so we don't have to hopefully take a break
8 again.

9 (Court recessed at 1:24 p.m. until 1:27 p.m.)

10 (In the presence of the jury.)

11 (Mr. Santacroce's opening statement previously transcribed.)

12 (Court recessed at 2:09 p.m. until 2:16 p.m.)

13 (Outside the presence of the jury.)

14 MR. STAUDAHER: Your Honor, Mr. Santacroce in his
15 opening had some documents and chart. I haven't seen it or I
16 don't recall if it's part of discovery. Let's go ahead and
17 make sure we make that part of the court record like we did
18 with our PowerPoint.

19 THE COURT: Mr. Santacroce --

20 I'm assuming you're talking about the chart with the
21 heads and then the lines.

22 MR. STAUDAHER: No, no. That's part of discovery.
23 I'm talking about the other one, where it listed the studies
24 and things like that.

25 THE COURT: Oh, okay. Mr. Santacroce --

1 MR. SANTACROCE: The only copy I have --

2 MR. STAUDAHER: Just make a copy is all.

3 THE COURT: We'll make a copy for you. We're full
4 service here. So we'll make a copy and we'll make that a
5 court's exhibit. That'll be, what are you on, Court's
6 Exhibit 3?

7 MR. STAUDAHER: And if you could make another copy
8 for us too.

9 MR. WRIGHT: Me too.

10 MS. STANISH: Could we get a copy too, please.

11 MR. STAUDAHER: So a copy for us, as well as court's
12 exhibit.

13 THE COURT: All right, then. Are we ready with
14 the --

15 THE MARSHAL: Mr. Staudaher.

16 MR. STAUDAHER: Oh, yes. I'm sorry.

17 THE COURT: Are we ready with the next witness?

18 MR. STAUDAHER: Yes, we are.

19 THE COURT: Okay.

20 MS. WECKERLY: The first witness.

21 THE COURT: The next -- has it only been two days?
22 Doesn't it seem like a month?

23 MS. WECKERLY: It's moving really fast.

24 THE COURT: It's been kind of a month though, because
25 we started what, two weeks ago. Last month.

1 MS. STANISH: The 22nd.

2 MS. WECKERLY: Are you admonishing them on the --
3 ordering them --

4 THE COURT: On the record, yeah.

5 MS. WECKERLY: I know on the record. I'm sorry.
6 Out -- before they start, or when do you want to do that?

7 THE COURT: Okay. I thought that the next witness
8 was the victim that needed the admonition, correct?

9 MR. WRIGHT: Both.

10 MR. STAUDAHER: Actually, both of the next witnesses.

11 THE COURT: Okay. Now, my understanding was the
12 request was that I admonish them out of the presence of the
13 jury.

14 MS. WECKERLY: Yes.

15 THE COURT: That's what I intend to do right now. Is
16 that your question?

17 MS. WECKERLY: Yes.

18 THE COURT: Okay. Yes, I think it's more appropriate
19 to admonish them out of the presence of the jury than in the
20 presence of the jury. So my understanding was before we could
21 start we had to admonish them. So let them come in along with
22 their lawyer. If the media comes in, I don't care, but I --
23 you know.

24 THE MARSHAL: You don't care about the media?

25 THE COURT: No, I don't care.

1 MS. WECKERLY: They're husband and wife, so.
2 THE COURT: Okay.
3 MR. STAUDAHER: And he's very hard of hearing, so I
4 don't know if --
5 THE COURT: I don't know that we actually need to
6 drag them up -- they can both come in at the same time. I
7 don't know that I need to drag them up to the witness stand.
8 MR. STAUDAHER: Right.
9 THE COURT: Come on in. I don't know that your
10 clients need to come up to the witness stand for this part.
11 MS. WEISS: Okay. I'm not sure what we're doing, so.
12 THE COURT: Oh, the -- I'm admonishing them.
13 MS. WEISS: Oh, okay.
14 THE COURT: For the record, we need counsel's name.
15 MS. WEISS: Patty Weiss.
16 THE COURT: Okay. And then your clients are?
17 MS. WEISS: Michael Washington and Josephine
18 Washington.
19 THE COURT: All right. Mr. and Mrs. Washington, can
20 you hear me?
21 JOSEPHINE WASHINGTON: Yes, I can.
22 THE COURT: Sir, can you hear me?
23 MICHAEL WASHINGTON: [No audible response.]
24 THE COURT: Okay. You can come closer if you can't,
25 if you want to come stand closer.

1 MS. WEISS: Okay. Make sure you can hear the judge.
2 He is hard of hearing.

3 THE COURT: Okay. I talk loud, but if you can't hear
4 me, we have earphones for you. All right?

5 MICHAEL WASHINGTON: [Inaudible.]

6 THE COURT: No. We have special earphones that can
7 actually go over your hearing aids.

8 MS. WEISS: Yeah. I think he'll need that.

9 THE COURT: Okay. Well, there they are. We'll
10 practice. I always wanted to do that. Can you hear me now
11 better?

12 MICHAEL WASHINGTON: Yes.

13 THE COURT: Okay. My understanding is, Mr. and
14 Mrs. Washington, that pursuant to a negotiation in connection
15 with the civil cases you signed confidentiality agreements; is
16 that correct?

17 JOSEPHINE WASHINGTON: Yes, it is.

18 THE COURT: Okay. And that those agreements, like
19 any settlement, were those approved then by the Court or not,
20 it was just a separate agreement?

21 MS. WEISS: There was one that had [inaudible]
22 approved by the Court, and the other ones were just
23 negotiation terms.

24 THE COURT: All right. So it was just the good faith
25 settlement that was approved?

1 MS. WEISS: Correct.

2 THE COURT: All right. Even though you've signed an
3 agreement with another party, that does not preclude the
4 defense from being able to conduct a thorough
5 cross-examination of you in this trial as part of their
6 defense of the accused, Mr. Lakeman and Dr. Desai. Do you
7 understand that?

8 JOSEPHINE WASHINGTON: Yes.

9 THE COURT: And I have to let them do that as part of
10 insuring that their due process rights in this proceeding are
11 protected. So basically, I'm ordering you, notwithstanding
12 any civil agreements that you have signed, that you must
13 answer the questions put forward by either the State or the
14 defense attorneys. You must answer them truthfully concerning
15 your settlement and the amount of the settlement, even if in
16 your confidentiality agreement you agreed not to do that. Do
17 you understand?

18 JOSEPHINE WASHINGTON: Yes.

19 THE COURT: Sir, Mr. Washington, do you understand?

20 MICHAEL WASHINGTON: I think I do.

21 THE COURT: Okay. Basically what I'm telling you is
22 in my view, the accused's rights to conduct a thorough
23 cross-examination kind of supersede any agreement that you may
24 have entered into. And if you're going to testify in this
25 case as a witness, they have to be able to cross-examine you.

1 So even if you said, you know, told the insurance
2 company or whatever that you weren't going to talk about it,
3 if it's a question and I allow the question to go forward, you
4 must answer truthfully. Do you understand?

5 MICHAEL WASHINGTON: Yes.

6 THE COURT: Do you understand, Mrs. Washington?

7 JOSEPHINE WASHINGTON: Yes.

8 THE COURT: Okay. State, Mr. Staudaher and
9 Ms. Weckerly, did I cover that admonition adequately in your
10 estimation?

11 MR. STAUDAHER: As long as it's --

12 THE COURT: Yeah. I was going to ask her next.

13 MR. STAUDAHER: Yes. From our perspective, yes, Your
14 Honor.

15 THE COURT: All right. Ma'am, Ms. Weiss, did I cover
16 that admonition adequately?

17 MS. WEISS: Well, clearly there's a court order
18 standing right now saying that regardless of what the
19 confidentiality was, you're ordering them as the judge in this
20 case to answer the questions that you deem relevant?

21 THE COURT: That's correct. Any question that is not
22 objected to or is objected to and I overrule the objection
23 they must answer truthfully.

24 MS. WEISS: I understand [inaudible].

25 THE COURT: All right. Do you understand?

1 JOSEPHINE WASHINGTON: Yes.

2 MICHAEL WASHINGTON: Yes.

3 THE COURT: All right. Very good. You can return
4 with them to the vestibule.

5 MS. WEISS: Should he leave these on, because he's up
6 first.

7 UNKNOWN SPEAKER: He's first.

8 THE COURT: Oh. You know what. We won't have him
9 walk in with those. We'll just have them present at counsel
10 table.

11 MR. STAUDAHER: Did those help? Did those help you?

12 MICHAEL WASHINGTON: Yes, it did.

13 THE COURT: Okay. Did you let the media know we're
14 going to start?

15 THE MARSHAL: I did not.

16 THE COURT: And then as -- you can just let them
17 know, and then immediately, Kenny, go get the jurors.

18 THE MARSHAL: Yes, Your Honor.

19 (Pause in proceeding.)

20 (Jurors reconvene at 2:25 p.m.)

21 THE COURT: All right. Court is now back in session.

22 The record should reflect the presence of the State through
23 the deputy district attorneys, the presence of the defendants
24 and their counsel, the officers of the court, and the ladies
25 and gentlemen of the jury. And the State may call its first

1 witness.

2 MR. STAUDAHER: The State calls to the stand Michael
3 Washington.

4 THE COURT: Sir, please remain standing facing our
5 court clerk, this lady right here. And sir, if you're a
6 little bit hard of hearing, we have some headphones, and those
7 may help you hear better, okay?

8 MICHAEL WASHINGTON: Yes.

9 THE COURT: So just put those on, and this lady right
10 here, Ms. Husted, is going to -- just put them on -- is going
11 to administer the oath to you.

12 MICHAEL E. WASHINGTON, STATE'S WITNESS, SWORN

13 THE CLERK: You can be seated. And sir, could you
14 state and spell your name.

15 THE WITNESS: My name is Michael Washington,
16 M-i-c-h-a-e-l, E, Washington, W-a-s-h-i-n-g-t-o-n.

17 THE COURT: We're hearing some noise. Is that coming
18 from -- do you have hearing aids in?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Are the microphones making the
21 sound worse for you, or...

22 THE WITNESS: Well, it was ringing there.

23 (Pause in proceeding.)

24 THE COURT: Okay. That will not work then.

25 MR. STAUDAHER: Maybe I'll just try and talk loudly,

1 Your Honor.

2 THE COURT: And what we can do to assist you is we
3 have a handheld microphone. And so, Mr. Washington,
4 Mr. Staudaher is going to try talking there with that
5 microphone. If that doesn't work, we're going to give him a
6 handheld microphone.

7 MR. STAUDAHER: Okay. And I can use that. Sir, can
8 you hear me?

9 THE WITNESS: Yes, I can hear you.

10 MR. STAUDAHER: I'll try to speak loudly enough that
11 you can hear me, okay?

12 THE WITNESS: Great.

13 MR. STAUDAHER: If at any time during the questioning
14 I drop down in my volume of questions, I mean as far as you
15 not being able to hear me, please let us know.

16 THE WITNESS: Yes.

17 MR. STAUDAHER: Okay. I'll also try and talk a
18 little slower, so that you can see or get the words all out,
19 okay?

20 THE WITNESS: Yes.

21 DIRECT EXAMINATION

22 BY MR. STAUDAHER:

23 Q Sir, I'm going to take you back in time a little
24 bit to not just a -- the time frame is July 25th of 2007, but
25 I want to take you back even further than that, okay?

1 A Yes.

2 Q Now, you know why you're here today, correct?

3 A Yes.

4 Q At some point prior to July 25th of 2007, did
5 you go to your doctor and get referred to the Endoscopy Center
6 of Southern Nevada for a colonoscopy?

7 A Yes, I did.

8 Q Who was the doctor that you went and saw?

9 A Dr. -- I can't quite remember his name now.

10 Q Does Patel sound familiar to you?

11 A I beg your pardon.

12 Q Does Patel, the word --

13 A Yeah. Dr. Patel.

14 Q Patel. Okay.

15 A That's who was --

16 Q So when you went -- was he a doctor that you had
17 seen before? Was he your primary doctor?

18 A Yes. Dr. Patel was my primary doctor.

19 Q So you had been seeing him for quite some time?

20 A Yes.

21 Q At the time that he refers you to go and have
22 the colonoscopy done, did you have any medical problem, or was
23 it just for screening? What was the reason?

24 A The problem was just for screening, that I was
25 over 60 years old and had not had a scope, completed the

1 physical. And that was part of the physical, by having that
2 test.

3 Q How long after you went and saw the doctor did
4 you go to the clinic? Was it the next day, a week later, how
5 far?

6 A I'm not sure of that day that I -- I won't give
7 that to you.

8 Q I want to talk to you again about before you
9 actually go to the Endoscopy Center, okay?

10 A Mm-hmm.

11 Q And you have to answer yes and no. You can't
12 just nod your head in this one, the courtroom, okay?

13 A All right.

14 Q All right. Because the court recorder is taking
15 down all the words that are being said and we've got to make
16 sure we have a transcript of it, okay?

17 A Yes.

18 Q Now, before you went to the clinic, had you ever
19 had any issues with regard to signs or symptoms of hepatitis?

20 A No.

21 Q Had you ever had any sickness where somebody had
22 said you had a liver problem?

23 A No.

24 Q Cirrhosis?

25 A No.

1 Q Cancer of the liver, anything like that?

2 A No.

3 Q Any indication whatsoever that you had -- you
4 know what jaundice is, do you not?

5 A Yes, I do.

6 Q The yellowing of the skin and eyes and so forth?

7 A Yes.

8 Q Did you ever have any of those kinds of symptoms
9 before you went to the clinic?

10 A No. Let me think for a minute. When I left
11 Dr. Patel -- no, not before I went to the clinic.

12 Q Not before? Okay. And again, the time frame
13 I'm talking about is before you went to the clinic. Okay.

14 A No. I did not have any --

15 Q Now, you eventually go to the clinic, correct?

16 A Correct.

17 Q And after -- and we're going to talk about that
18 in just a moment, but now I want to talk to you about after
19 the clinic. After you went to the clinic, did you start to
20 develop some kind of a problem?

21 A After the clinic and after the test, yes.

22 Q Tell us about that. About how long was it after
23 you went to the clinic that you started to have trouble?

24 A I'm not sure about that one. I could not give
25 you a --

1 Q Well, was it a month, months?

2 A Yes. It was around a month.

3 Q So a few weeks afterward?

4 A Yes.

5 Q During that time frame when you start having
6 these problems, what kind of problems were they?

7 A One was that my eyes turned yellow. I had a
8 problem with my -- with urine being very, very dark like that,
9 and problems with the stomach.

10 Q Now, had you had those kinds of problems at any
11 time in your life before you went to the clinic?

12 A No, I did not.

13 Q So this was the first time you had experienced
14 those kinds of problems?

15 A Yes.

16 Q Okay. Now, I'm kind of jumping around, but now
17 I want to move back to the time when you were -- when you went
18 to the clinic for your treatment. Okay. You go to the
19 clinic. Do you remember who the doctor was that you were
20 dealing with that day?

21 A I was going to deal with Dr. Desai, was going to
22 do the test.

23 Q Was this over on the Shadow Lane clinic?

24 A Yes. The Shadow Lane clinic.

25 Q So you go over there. I want you to walk me

1 through the day, from the first time you get there until you
2 leave. Were you with anybody, first of all?

3 A Yes. My wife was with me.

4 Q When you got to the clinic, about what time of
5 day it was, to the best of your recollection?

6 A At 8:00 o'clock that morning.

7 Q 8:00 o'clock?

8 A Yes.

9 Q Was that when your appointment was, or just when
10 you arrive?

11 A We was notified of an early appointment.

12 Q So you go at 8:00 o'clock?

13 A Yes.

14 Q When you get to the clinic, what happens? What
15 do you do first?

16 A What did I do first?

17 Q Yes.

18 A I have to sign in at the desk at the clinic.

19 Q And then what happened after you signed in?

20 A After I signed in, I was picked up by --
21 escorted by the nurse to the area that you have to go to.

22 Q Okay. Now, before you did that, at any time did
23 you have to wait in the waiting room at all?

24 A It was a very short wait.

25 Q So were there any other patients --

1 A It wasn't maybe ten minutes.

2 Q -- there at that -- I'm sorry. I was talking
3 over you and I'm not supposed to do that.

4 So please finish your answer, sir.

5 A It was a very short time.

6 Q So from the time you get into the clinic until
7 you actually go back for whatever they're going to do to you,
8 you didn't have to wait very long?

9 A Yes. True.

10 Q When you were there though, are there other
11 patients in the clinic at that time?

12 A Yes.

13 Q A few, a lot? I mean, what was the volume?

14 A I beg your pardon.

15 Q How many patients were there? Not an actual
16 number. Were there a lot or were there just a few?

17 A I cannot give you an answer on that. I do
18 not --

19 Q You don't remember?

20 A -- remember that. Right.

21 Q So once you sign in and you start to go back,
22 where is the first place that you go?

23 A The first place I went to was the dressing room
24 with the nurse. She escorted me back to the dressing room.

25 Q Was your wife with you at that time?

1 A Yes.

2 Q Okay. So she went back to the dressing room
3 with you?

4 A Yes.

5 Q What did they have you do?

6 A They had me take off my clothes and put on a
7 gown.

8 Q After you did that, where did you go next?

9 A Next we was into -- finally into the examination
10 room where the test was going to be.

11 Q Okay. Did they do anything to you before you go
12 into the procedure room?

13 A Yes.

14 Q Let's talk about that for a minute. What kinds
15 of things -- I mean, what did you do? What happened?

16 A The nurse gave me an IV in my arm, left arm.

17 Q Okay. Where in your arm was it, if you recall?

18 A Right in here [indicating].

19 Q So they put a needle in your arm?

20 A Yes. They put a needle in there and also they
21 hung a bottle up over the top of the bed that I was in.

22 Q So they have a bottle hanging up there. Did
23 they connect the bottle to you, or did they just put this
24 thing in your arm?

25 A They connected the bottle to the IV.

1 Q So you go in there. When they put this device
2 in, was it something that they had to tape down or do
3 something to after they stuck the needle in your arm?

4 A Yes. They did have to tape it down.

5 Q Did they ever use the term, like a heplock or
6 something like that?

7 A I don't recall heplock.

8 Q Okay. But it was something that was sticking in
9 your vein in your arm?

10 A Yes. Right.

11 Q So was this a nurse or a doctor that came out
12 and did this?

13 A This was a nurse who did this.

14 Q As far as your interaction with that person,
15 after they put that sort of IV in your arm, did they ever
16 flush it with any kind of syringe of anything?

17 A Well, yes. They had to flush out, the blood out
18 of their line, so that was that IV that was up, they ran
19 something through it. They had to clear the blood out of the
20 line down there where the needle was.

21 Q So that's what they connected up and then that
22 flushed some of the blood out; is that right?

23 A Correct.

24 Q When you had that IV put in, was there blood
25 that came -- you know, you could see blood in your arm where

1 they poked it?

2 A Yes.

3 Q Now, the person who did that for you, was that
4 person involved in any kind of procedure with you after that,
5 the person who put the IV in your arm?

6 A There was times that that person kept -- it was
7 two times. One, they pushed me into the room where they was
8 going to run the test, and then after the test was finished
9 she pulled my bed out --

10 Q So she helped you get in and then she helped you
11 get out; is that right?

12 A True.

13 Q So when you're in that area where they put the
14 IV in, did anybody ever come up and plug anything into it and
15 inject anything to you while you were waiting before you went
16 into the procedure?

17 A No.

18 Q So you just waited until they were ready to take
19 you back?

20 A True.

21 Q How long did you wait there before you went
22 back?

23 A I'm not sure of that, but it's maybe -- maybe 10
24 to 15 minutes.

25 Q So once you get back to the room, was it that

1 same nurse that you -- took you into the room then?

2 A She took me into the test room and then left.

3 Q What happened when you got into the test room?

4 A Went into the test room, I was right there and
5 waited for them to put the -- give me medicines to put me to
6 sleep.

7 Q Were you sitting down, lying down, what --

8 A No. I was lying on the bed, the stretcher.

9 Q Were you on your back?

10 A Yes, on my back.

11 Q So at some point do they make you move, roll
12 onto your side or anything like that?

13 A No. I never rolled on my side.

14 Q Now, you said that there were -- was there
15 anybody in the room when you got inside the room?

16 A Yes. There was Dr. Patel -- a doctor was there,
17 and also there was a technician there who was dispensing
18 drugs.

19 Q Okay. So let's talk about the technician. Is
20 that the person that put -- when you say dispensing drugs, did
21 somebody put you to sleep eventually?

22 A Yes. It was him.

23 Q It was that person?

24 A Yeah. He gave me the solution.

25 Q And was that a male?

1 A Yes.

2 Q Did you have any -- when you first get into the
3 room, was that male there? Did he come in the room later?

4 A Yes. He was there.

5 Q When you first get in the room?

6 A Yes.

7 Q So when you get into the room that male's there.
8 Did he ask you any medical questions, like what's your history
9 or anything like that?

10 A No.

11 Q Did you have any real discussion with him at
12 all?

13 A No. No discussion with him at all.

14 Q Did he ever say anything to you the whole time
15 you were in the room?

16 A No. He just spoke to me, said good morning,
17 that was about it.

18 Q So he introduces himself. And you said that he
19 was the one that was dealing with the medicines?

20 A Repeat that again.

21 Q That was dealing with the medicines.

22 A Yes.

23 Q Now, the doctor who actually does your
24 procedure, I think you said it was Dr. Desai; is that right?

25 A Yes.

1 Q Did he -- did you see him come into the room at
2 some point?

3 A Yes. He came into the room.

4 Q And then what happened after he came into the
5 room?

6 A He just spoke, said, Good morning, and then they
7 gave me my solution.

8 Q Now, the person who gave you the solution was
9 this technician you said that was in the room?

10 A Yes.

11 Q Do you know who that was?

12 A No. I do not.

13 Q But he was the one who actually pushed the
14 medication in?

15 A True.

16 Q Did you see him do that?

17 A No. I didn't see him push it in from -- draw it
18 up or anything. All I did was saw him when he, you know, the
19 injection in my arm. That's about all.

20 Q But did you see that actually happen?

21 A What?

22 Q The injection itself.

23 A Yes.

24 Q Okay. When that occurs, I assume that you fell
25 asleep fairly soon after that; is that right?

1 A Yes.

2 Q When you wake up, where are you?

3 A When I wake up I was in the test room, then the
4 nurse came in and gave -- pushed my bed out.

5 Q So you actually woke up in the same room that
6 you had the procedure done in?

7 A Yes.

8 Q When that nurse comes back into the room and
9 takes you out, did that man who put you asleep, put you to
10 sleep, was he still in the room?

11 A As far as I could see, yes.

12 Q Okay. You didn't see him walk out with you for
13 instance?

14 A No. I did not.

15 MR. SANTACROCE: Objection. Leading.

16 THE WITNESS: No.

17 THE COURT: Overruled.

18 BY MR. STAUDAHER:

19 Q So when you get out to the recovery room, or the
20 place that they took you -- my word, not yours. I'm sorry.
21 After you leave the endoscopy or the -- as you called it, the
22 test room, where did you go next?

23 A What room -- repeat that. For the test room?

24 Q The room that you said you had the test in, the
25 procedure in.

1 A Yes.

2 Q Where did you go next?

3 A Next we was pushed out into the waiting area
4 sort of right there by the nurse.

5 Q And how long were you out there roughly?

6 A Oh, I would say about 20 minutes, because they
7 had to -- had to take the IV loose.

8 Q Okay. So they eventually take that IV out at
9 some point?

10 A That's true.

11 Q And then do you leave shortly thereafter?

12 A Yes. I changed from -- into my clothing, yes.

13 Q And then leave?

14 A Yes.

15 Q At any point when you were out in the recovery
16 area, that place that they took you to after the test, did you
17 ever see that man who put you to sleep again?

18 A No. I did not see him.

19 Q So he never came out to you and ministered to
20 you, did anything with you out in the recovery area?

21 A Not that -- I didn't see him.

22 Q What about Dr. Desai, did you see him after your
23 test?

24 A No, I did not.

25 Q So he didn't come up to your bedside at any

1 point and say anything to you or --

2 MR. SANTACROCE: Asked and answered.

3 THE WITNESS: No.

4 THE COURT: Go on, Mr. Staudaher.

5 BY MR. STAUDAHER:

6 Q Did not, never saw him?

7 A No.

8 Q Before you left the building though, did Dr.
9 Desai or anybody else come up and talk to you about your test
10 or anything like that?

11 A No. There was another technician there that
12 explained the results from the test.

13 Q So it was somebody different than the previous
14 people you had already seen?

15 A Yes. Right.

16 Q And then did you leave after that?

17 A Yes.

18 Q Now, you said your wife was there during the
19 time you were in the clinic, correct?

20 A Yes.

21 Q When was the -- when did your wife separate from
22 you when you first started the process? I mean, did she go
23 back into the procedure room with you?

24 A She went back to where I changed clothes and I
25 got -- I was on the cart and getting ready to be pushed into

1 the test room by the nurse.

2 Q So after you go to the test room, does your wife
3 come in there with you?

4 A No. She was not. She had to stay outside.

5 Q So when you finally get to the other end when
6 you're getting ready to leave, at what point does your wife
7 come back in, do you make contact with your wife again?

8 A My wife was waiting for me right there beside
9 the nurse that went over the information from the test, and
10 then we left.

11 Q So she then takes you home?

12 A Yes.

13 Q And you said -- now let's move away from the
14 clinic for a moment and move forward in time, to the time that
15 you said you started having these symptoms, the dark urine and
16 so forth. Okay. When you started having the problem.

17 A The what?

18 Q When you started having the problem later on,
19 we're going to move to that time period, okay?

20 A Yes.

21 Q So when that started happening to you, what did
22 you do? I mean, was this something that was disturbing to
23 you?

24 A No.

25 Q So you were kind of noticing that something

1 wasn't right, but did you eventually go to the doctor about
2 it?

3 A No. I didn't have to go to the doctor from
4 that -- directly from that test, no.

5 Q No, no, no. Let's back up and make sure we're
6 clear. I'm not talking about after you get off the test. I'm
7 talking about later on, when you start having the trouble with
8 your stomach and your -- and your urine turning dark, your
9 eyes turning yellow, that kind of thing.

10 A Yes.

11 Q Did you eventually go to the doctor when that
12 started happening?

13 A Yes.

14 Q Who did you go see at that time? Was it also
15 Dr. Patel?

16 A Dr. Patel.

17 Q When you go back to Dr. Patel, did you call him?
18 Did you just go into his office? What happened?

19 A I called him and he gave me an appointment.

20 Q So you go in to see him and what happens?

21 A What happened was he went over some information,
22 but he couldn't do -- he was very -- he had to get me another
23 date with another doctor right there, because he was busy and
24 didn't have enough time to go through everything.

25 Q So you see another doctor?

1 A Yes.

2 Q Do you see Dr. Patel at some point again?

3 A After I visit this other nurse, yes, or other
4 doctor, I do go back and see Dr. Patel.

5 Q Do you end up in the hospital at any point?

6 A I beg your pardon.

7 Q Do you go to the hospital at any point?

8 A Yes.

9 Q Tell us about that.

10 A Well, it was the hospital, what was the name.
11 It's something where the doctors do their examinations and
12 things at. What happened was he started explaining the test
13 results, what the results were.

14 Q You're talking about like blood or something
15 like that?

16 A Yes. He took -- he had drawn blood on that
17 first meeting, and blood, and sent it out to be tested.

18 Q Now, did you have to go to the hospital because
19 of your -- what was going on with your body?

20 A No. I didn't have to go to the hospital for
21 nothing that was wrong with my body when it first started. I
22 was over 60 years old and I had not had that type colon exam
23 in my career.

24 Q Okay. I'm talking about going past the exam
25 time, when you have these problems and you go to Dr. Patel,

1 you said you eventually had to go to the hospital, right?

2 A I had to go to the -- down at the clinic where
3 they had given the test at.

4 Q You had to go back to the clinic where they did
5 the test?

6 A Where they do the test, I had the first go from
7 Dr. Patel. They scheduled me through the records section at
8 the Veterans Administration, and then I had to report over to
9 that clinic to sign off on the papers and get things straight
10 so that I'd be ready for their tests.

11 Q Okay. And what tests were those? What test was
12 that?

13 A That was the test for the colon.

14 Q The colonoscopy?

15 A Yeah, colonoscopy.

16 Q Okay. I'm talking about after you had the
17 colonoscopy and after you went back and saw Dr. Patel when
18 you're starting to have your problems. Okay. That's the time
19 period I'm at right now.

20 A Yes.

21 Q Okay. When you went back to Dr. Patel and the
22 other doctor, what happened after that?

23 A Well, the test came out positive. Hepatitis was
24 beginning to show up. And that's when he went over the
25 information for all of the different tests that he had run

1 from drawing blood samples from me and urine samples from me.

2 Q And then what happened next?

3 A What happened next was eventually, about four
4 weeks later I had a real bad problem. That's when my skin, my
5 eyes turned yellow and my skin was giving me problems, and my
6 stomach -- not my skin. My stomach was giving me problems.
7 We went to another doctor.

8 Q Okay.

9 THE COURT: Can all the jurors hear the witness?
10 Okay.

11 THE WITNESS: And that information was explained was
12 what happened.

13 BY MR. STAUDAHER:

14 Q Okay. What happened after that?

15 A After that, Dr. Patel, I went to see him again
16 from that doctor, and he said that he's going to have --
17 you're positive for hepatitis. He's got to call the city,
18 city board, to notify them that they have a person who has --
19 who had hepatitis.

20 Q And what -- so did you have -- and that
21 obviously happened, right?

22 A Beg your pardon.

23 Q That happened?

24 A Yes.

25 Q Then what was the next thing that happened with

1 you?

2 A The next thing that happens to me was they --
3 the board, the health -- health for the hepatitis area -- I
4 mean the area here, they started asking me some questions.
5 This person from Georgia, he wanted to know what went on, had
6 I been -- lot of questions. Did I drink, did I smoke, did
7 I -- was I a homosexual, involved in sex like that. And then
8 they took the samples that they got from me and sent them to
9 CDC to run tests on them.

10 Q So you answered a whole bunch of questions and
11 then they got blood to send to the CDC?

12 A Yes.

13 Q Now, during this time, the problems that you
14 were having that you mentioned earlier, were you still having
15 those problems?

16 A Yes. We were still having those problems. They
17 had not cleared up right away. They eased up a little bit,
18 like the pain was a little dropped off some, and my yellow
19 around my eyes had dropped down a little bit. But it wasn't
20 completely evaporated.

21 Q To this day, do you have any problems related to
22 that?

23 A Today?

24 Q Yeah, today.

25 A Today, yes. I have serious problems.

1 Q What is that?

2 A One is that the hepatitis is acting up. I have
3 to have liquid, the water in my stomach drawn away. And they
4 also have to give me advice on some medication they're going
5 to give to me and I had to take it. But as far as anything
6 else, no. I'm still very critical. I can hardly get along.
7 I can hardly walk and I hardly can eat anything. And these
8 things, I've lost weight. I've lost to about 250. I'm down
9 to 193.

10 Q Wow. So you've lost quite a bit of weight?

11 A Yes. And they're still trying to find a
12 medication that will come out the first of the year, every
13 year that can cure this, the liver problem, because I cannot
14 take that present medication to cure liver. I will die if I
15 take that. I can't take it.

16 Q So let's talk about that for a moment. What --
17 are you talking about interferon therapy?

18 A Yes.

19 Q So you -- did you ever take that medication?

20 A No. I could never take that medication.

21 Q Why is that?

22 A Because it's -- the hepatitis I have, the type I
23 have and the way it is constructed, it will not let me take
24 that medicine without the -- being seriously ill.

25 Q So is it something your doctors have told you,

1 or is it something you just decided on your own?

2 A No. This is what a doctor told me that we went
3 to see about the liver. He explained to me that I could not
4 take that particular medication because it would kill me.

5 Q So if I understand you correctly, you're hoping
6 for a medication down the road that will help you --

7 A Yes.

8 Q -- but right now you're still suffering from all
9 these problems related to an infection you got five years ago?

10 A Yes.

11 Q Now, you had mentioned that -- one of the things
12 you said was that they have to draw fluid off of my stomach.
13 Do you remember that?

14 A Yes.

15 Q Is that where they like poke a needle or
16 something into your abdomen and pull fluid out of it?

17 A Yes.

18 Q Okay. So not your stomach to eat in, but your
19 belly area down here?

20 A Right.

21 Q Have they ever mentioned to you the word
22 "ascites"?

23 A Site?

24 Q Ascites.

25 A Ascites. I heard of it, but I don't know what

1 it is and I don't remember what it is. I know it was spoken
2 once around me.

3 Q Okay. You just have to go in and have this
4 done?

5 A Yes.

6 Q How often do you have to have that done?

7 A It was once every four weeks. Now it's going to
8 be once every week.

9 Q So it's happening more often?

10 A Yes.

11 Q When you go in there, how long does that take?
12 I mean, is it something you can just go in and walk in and
13 walk out, or do you have to be there for awhile?

14 A Oh, you have to be there awhile laying on a
15 table. And of course, after they put that puncture on you,
16 then they hook that machine up to draw the fluid out of your
17 midsection.

18 Q Do you know why they have to draw this fluid out
19 of your midsection?

20 A From where I know is that it can cause serious
21 problems to other organs if it's not removed and you got all
22 this fluid floating around. So they have to remove it, bring
23 it down to a natural level.

24 Q So when you say that, when they're having to do
25 this fluid, do you know why that fluid is coming into your

1 stomach, or your abdomen all the time?

2 A Yes. When you have hepatitis, it's one of the
3 things that does happen. Your liver does not push that fluid
4 into your intestinal tract, so it stays right there and you
5 can get bigger and bigger because it's not moving.

6 Q So this is because of the hepatitis?

7 A Yes. The hepatitis is active.

8 Q So you have not -- have you been tested again to
9 see if you're -- if you have virus that's active, or is this
10 just something that's resulted from a prior infection?

11 A Wait a minute. Repeat that again.

12 Q Bad question. Let me try and rephrase that.
13 Have you been tested recently to see if you have
14 active virus in your system?

15 A Active what?

16 Q Virus. The hepatitis virus.

17 A Yes. They have run tests on that hepatitis
18 quite a few times and found out that it is active and it's
19 creating problems.

20 Q Now, one of the -- do you remember quite a -- a
21 couple years ago coming before the grand jury and giving some
22 testimony in this case?

23 A Do I remember, you said?

24 Q Do you remember -- do you remember me asking --

25 A Yes.

1 Q -- you some questions at the grand jury a few
2 years ago?

3 A Yes.

4 Q When you were down there, were you able to, I
5 mean, answer questions faster, a little more mentally there at
6 the time?

7 A No. Not no faster, but I might have been a
8 little slower because I had to think clearly and give you the
9 true answer.

10 Q Fair enough. Have you had any effects of your
11 ability to think, to do things from a mental perspective
12 because of the hepatitis?

13 A There is one thing that goes on. That is -- I
14 cannot call the name of it, but it affects your memory. Your
15 memory is very spared.

16 Q Have you heard the term "encephalopathy" before?

17 A Yes.

18 Q Has anybody ever diagnosed you with having that
19 problem?

20 A I don't recall them diagnosing me, but I
21 probably -- it might have come out, but I don't remember it.

22 Q Okay. And to this day, other than the things
23 you've mentioned, is there any other issue that you have
24 related to the hepatitis?

25 A Yes. There's -- it is actually almost

1 destroying my walking. I have -- I can hardly walk. I have
2 my balance is off. And I don't -- I have very serious
3 problems trying to eat. And the other thing is that my
4 stomach keeps getting bigger and bigger, and then I have to
5 see the doctor and have that fluid drawn off.

6 MR. STAUDAHER: I have no further questions.

7 THE COURT: All right. Cross.

8 MR. STAUDAHER: One second, Your Honor.

9 THE COURT: Oh, I'm sorry.

10 (Pause in proceedings)

11 MR. STAUDAHER: Your Honor, I'm sorry.

12 THE COURT: That's fine.

13 BY MR. STAUDAHER:

14 Q Your insurance, when you went and had the
15 procedure done, which was your -- you know, who covered
16 your -- the cost of your treatment for the colonoscopy?

17 A Oh, the Veterans Administration.

18 Q When you went in to actually, you know, get --
19 fill out your paperwork, did you have to do any kind of copay
20 or anything like that?

21 A I had to do what?

22 Q A copay. Did you have to pay any money at the
23 time?

24 A No. I did not.

25 Q Did you ever receive a bill afterward?

1 A No. I did not.

2 Q So the VA took care of all of that?

3 A True.

4 Q But did all the bills have to get submitted to
5 the VA?

6 A Yes.

7 Q And did the VA actually help set up the
8 appointment to go to the colonoscopy?

9 A Yes, they did. That's what recommended me over
10 to that clinic and got the appointment there. That's where
11 the test was, because they scheduled me to go over to that
12 clinic on -- and get me -- and get the appointment set up.

13 Q Fair enough.

14 MR. STAUDAHER: Thank you.

15 THE COURT: All right. Cross, Mr. Wright.

16 MR. WRIGHT: Thank you.

17 CROSS-EXAMINATION

18 BY MR. WRIGHT:

19 Q Mr. Washington, my name is Richard Wright.

20 MR. STAUDAHER: Mr. Wright, your pad.

21 BY MR. WRIGHT:

22 Q Can you hear me?

23 A Yes. I can.

24 UNKNOWN SPEAKER: Explain your messy handwriting.

25 THE WITNESS: I can hear you now.

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1 THE COURT: Oh, Mr. Wright, your notes are on the --
2 take those off, because it's on. It's broadcast.

3 MR. WRIGHT: Oh, I thought it was off.

4 THE COURT: You can put them there, but you need to
5 turn the equipment off.

6 MR. WRIGHT: Okay.

7 (Pause in proceeding.)

8 THE COURT: Oh, it's on my monitor.

9 MR. WRIGHT: You're not supposed to be looking.

10 THE COURT: And I'm reading your notes. All right.
11 To make it easy for you, Mr. Wright, I -- the Court will shut
12 off its monitor.

13 MR. WRIGHT: It's all right.

14 THE COURT: And that way you can put your notes back
15 up there, and I have turned off my monitor and nobody else can
16 see. So feel -- just put -- my monitor's off.

17 MR. WRIGHT: Check it. The judge is smart.

18 BY MR. WRIGHT:

19 Q My name's Richard Wright. I represent Dr. Dipak
20 Desai. I'm an attorney. Okay, sir?

21 A Yes.

22 Q Okay. How old are you, Mr. Washington?

23 A Seventy-two.

24 Q Seventy-two. You're retired Air Force; is that
25 correct, sir?

1 A Correct.

2 Q And you came to Las Vegas when you retired from
3 the Air Force?

4 A Very shortly after.

5 Q Okay. In about what year?

6 A Yes.

7 Q About what year did you retire and come to Las
8 Vegas?

9 A About 1980.

10 Q Okay. And before you go to the clinic and get
11 your colonoscopy and end up sick, before that time had you had
12 any serious medical issues?

13 A No. I didn't have any serious medical issues
14 before I got the problem.

15 Q Any medical conditions at all?

16 A Yes. There were routine. I had a cold, a very
17 bad cold. I had to get the -- schedule an appointment with
18 the eye doctor to get the eye drops for my eyes.

19 Q Okay. So previously in your life, never any
20 medical issues, heart problems, anything else like that,
21 correct?

22 A No.

23 Q Okay. That's correct, you were perfectly
24 healthy?

25 A What, in the military?

1 Q I didn't --

2 A Or after I got out?

3 Q Before you retired you were in good medical
4 health, right?

5 A Yes.

6 Q Okay. And then until we know you went and had
7 your colonoscopy, we have your medical records, and so that
8 was on July 25, 2007, okay?

9 A Yes.

10 Q Okay. And so for those 17 years here in Las
11 Vegas, you were healthy and had no medical issues?

12 A Yes. I was healthy.

13 Q Okay. And no medical issues?

14 A No real serious medical issues, no.

15 Q Okay. So then because you were 60, you decided
16 to get a colonoscopy, or your doctor advised it?

17 A No, I -- that's who advised it, yes, Dr. Patel.
18 We scheduled an appointment to have a physical, and that's
19 when it came out.

20 Q Okay. And he referred -- Dr. Patel's a VA
21 doctor?

22 A Yes.

23 Q And he referred you to Dr. Desai?

24 A No. What he did was they turned the report in
25 to the records section at the Veterans Administration, and the

1 Veterans Administration scheduled me to go see Dr. Desai and
2 get the appointment, correct.

3 Q Okay. And when is -- was your first time at the
4 clinic on July 25, or did you go previously for an appointment
5 to schedule your colonoscopy?

6 A I'm saying I went to -- was to get the
7 appointment, yes, but nothing else, no.

8 Q Okay. Well, you -- before July 25, you went to
9 the clinic to meet with like a physician's assistant?

10 A No. They meet at the desk right there and get
11 my name on the list for an appointment.

12 Q Okay. Do you remember in May going and meeting
13 with a physician's assistant at the clinic, a tall lady, and
14 then she scheduled your colonoscopy for July 25?

15 A Yes.

16 Q Do you recall that?

17 A As far as I can remember, yes, I --

18 Q Okay. And at the -- I don't want to lead you,
19 and I don't want you just to agree with me. Do you remember
20 the first meeting in May at the clinic?

21 A Over at which clinic are you referring to?

22 Q Where you had your colonoscopy.

23 A What are the dates you're asking for?

24 Q Do you recall -- how did you schedule your
25 colonoscopy at the clinic? Did you go in first and have a

1 meeting with someone and they tell you here's what you do for
2 a colonoscopy, you're going to have to not eat, you're going
3 to have to drink liquids and we've got an appointment for you?
4 Do you remember anything like that?

5 A No. The first thing you had to do was you had
6 to sign in and then they go over, establish an appointment for
7 you.

8 Q Okay. So you signed on some day before July 25?

9 A Yes.

10 Q Okay. And do you remember when that was?

11 A No. I do not.

12 Q Okay. Was that the only time you were there
13 before July 25?

14 A That one time to sign in and get started for the
15 appointment, yes.

16 Q Okay. And at that time did they give you
17 instructions on how to prepare, like to drink stuff?

18 A Like what?

19 Q Like to don't eat before the procedure and what
20 time to be there and instruction.

21 A Oh, yeah. They run across these instructions
22 for you.

23 Q And did they give those all to you on your first
24 meeting?

25 A Yes.

1 Q Okay. And did you meet with the doctor or with
2 a physician's assistant, do you remember?

3 A Physician assistant.

4 Q And was it a young lady?

5 A I think it was a physician assistant, let's put
6 it that way.

7 Q Okay. Was it a female?

8 A Yes. It was a male.

9 Q Okay. And so then you come back on July 25,
10 that's your scheduled appointment, right?

11 A I'm not sure of that appointment. I don't want
12 to give you some false information.

13 Q Okay. Well, the day -- we have your -- all of
14 your medical records. And so July 25, 2007 is the date of
15 your procedure. Okay. So on that date, that's the day you
16 get there. Your wife, Josephine, accompanies you, correct?

17 A Yes.

18 Q Okay. And you go in and essentially have your
19 procedure. You're put to sleep and you receive a colonoscopy,
20 correct?

21 A True.

22 Q Okay. And then you saw Dr. Desai there,
23 correct?

24 A I saw him in the test room. That's all.

25 Q Correct. When you got the procedure, you saw

1 Dr. Desai?

2 A Yes.

3 Q You saw the person who put you to sleep?

4 A Correct.

5 Q Did you see another tech, another person in
6 there to assist?

7 A There was one, I think. It might have been an
8 equipment operator, because was standing over there turning on
9 equipment.

10 Q Okay. And then you were put to sleep, had the
11 colonoscopy, and then woke up and went out, and after 20 or so
12 minutes you were done, correct?

13 A True.

14 Q And a person told you the results of the test
15 that you had just undergone, right?

16 A Correct.

17 Q Okay. And do you recall what that was?

18 A I cannot recall the name of that term where they
19 find a problem in your -- when they're doing that colon. I
20 cannot -- the physical information on that I cannot remember.

21 Q Okay. Did -- there was -- an issue had arisen
22 during the colonoscopy that this person told you about; is
23 that fair?

24 A What's this now?

25 Q An issue. Did they find something wrong during

1 the colonoscopy?

2 A Yes. I was there, they had that information on
3 to whether there was a -- there's a medical problem that it
4 was.

5 Q And so did they then schedule another
6 appointment?

7 A No.

8 Q Okay. What did they tell you to do about the
9 problem that they had found?

10 A That's when I went back to see Dr. Patel.

11 Q Okay. So you went back to see Dr. Patel because
12 of what they had found during the colonoscopy?

13 A Yes.

14 Q And so tell me about that visit with Dr. Patel.

15 A Beg your pardon.

16 Q Tell me, when you went back to Dr. Patel and
17 told him what had been determined by the colonoscopy, what
18 happened at that meeting.

19 A No, I did not give him that information. He got
20 the record from the clinic. I read it and saw what
21 information there was and what the problem was.

22 Q Okay. And then what did -- did he discuss with
23 you whatever the problem was?

24 A Yes, he did.

25 Q And then what were you -- what was the result?

1 A Was it a polyp something? It was some kind of
2 medical term and I'm positive, and he explained what it was
3 and the best way to handle it.

4 Q Okay. Are you talking about when Dr. Patel told
5 you that you were positive for hepatitis C?

6 A Wait a minute. You're running two things
7 together.

8 Q I'm not trying to, sir.

9 A Well, you are.

10 Q Well, I'm sorry.

11 A You're running a medical test that we did and
12 you're also running with hepatitis.

13 Q I apologize, Mr. Washington. I'm not trying to
14 run these things together, and I -- let me back up again.
15 Okay?

16 A Yes.

17 Q And if I do misstate something or you think I'm
18 doing -- mixing things up or something, speak up and stop me,
19 okay?

20 A Yes, sir.

21 Q Okay. The -- you got a colonoscopy and there
22 was some problem detected and that -- those records of your
23 colonoscopy were sent to Dr. Patel.

24 A True.

25 Q Okay. And then you went and saw Dr. Patel?

1 A Yes.

2 Q Okay. And then that visit with Dr. Patel was to
3 talk about the results of your colonoscopy?

4 A True.

5 Q Okay. And then did Dr. Patel, what did he
6 diagnose? What did he tell you, you needed to do?

7 A I cannot give you the medical term to what it
8 was, but he explained what that medical problem was that was
9 tested and found.

10 Q Okay. And so thereafter, so Dr. Patel has told
11 you the results of your colonoscopy and what they found
12 medically, and thereafter, going on down the road, you start
13 becoming ill, correct?

14 A True.

15 Q Okay. And that's all of the symptoms you have
16 described here, which were the yellow, jaundice eyes, dark
17 urine, not feeling well. And do you call Dr. Patel?

18 A I went to see Dr. Patel, yes, because that
19 problem came up. And then -- yeah.

20 Q Okay. And at that time Dr. Patel sent you for
21 blood work, blood tests, or did he do them?

22 A No. You have to go down to the laboratory for
23 the blood test.

24 Q Okay. And then he gets those test results from
25 your -- from the laboratory, right?

1 A Yes.

2 Q And that's when it's determined you have -- you
3 tested -- you may have tested positive for hepatitis; is that
4 correct?

5 A Yes.

6 Q And then did they do -- did Dr. Patel order more
7 confirmatory tests?

8 A What Dr. Patel did was he sent me over to
9 another doctor, an emergency appointment to take care of me
10 right away, and trying to get these things under control and
11 find out what was going on.

12 Q And then did you -- and then you were at that
13 point, you -- it's been determined you've been diagnosed with
14 hepatitis, correct?

15 A Yes.

16 Q Okay. And then you told the jury that Dr. Patel
17 told you he's required to notify the authorities of the test
18 result, correct?

19 A Yes. The emergency doctor called him back and
20 gave him that certain information, and he -- so Dr. Patel
21 said, I have to call, that they're going to need that.

22 Q Okay. And thereafter you were interviewed by
23 someone from CDC, correct?

24 A Yes.

25 Q And they ask you a bunch of questions designed

1 to find out if you had various risk factors. Did you
2 understand that?

3 A Yes. That's what was going on.

4 Q Right. And so they also arranged to draw blood
5 from you to send to CDC for further testing?

6 A True.

7 Q And thereafter in your treatment, did you return
8 to the clinic where you had had your colonoscopy?

9 A No. Well, yes, one time there's a doctor, where
10 we got a call from one of the doctors. I can't recall his
11 name. And he talked to me.

12 Q Do you recall, does the name Dr. Clifford
13 Carrol --

14 A Yes.

15 Q -- sound familiar?

16 A That's who it was.

17 Q Okay. And do you recall, did he call you or did
18 you call him?

19 A He called me.

20 Q Okay. And did you go in to his office to visit
21 him?

22 A Yes.

23 Q Okay. And did you -- you went with Jo, your
24 wife?

25 A Did I what?

1 Q Did you go with your wife?

2 A Yes.

3 Q And do you have a -- do you recall when that
4 was, like month time of the year?

5 A No. I do not.

6 Q Okay. The -- your meeting with -- your meeting
7 with Dr. Carrol, you knew he was a physician with the same
8 clinic as Dr. Desai, correct?

9 A True.

10 Q And what was that meeting for?

11 A That meeting was for that he explained that the
12 hepatitis was there, and with giving him a chance he would try
13 and cure me of it.

14 Q Okay. And did anything come of that?

15 A No, it did not. I would not let anybody else
16 touch me for the VA doctors over there running that test.

17 Q Okay. Did he offer his services to you --

18 A Yes.

19 Q -- to try to assist --

20 A Yes, he did. He said -- he did offer his
21 services to me.

22 Q And thereafter you're being treated for
23 hepatitis. And were you diagnosed with hepatitis C?

24 A Yes.

25 Q And hepatitis B?

1 A I don't know. All I know is came out was, it
2 might be on the medical records, but all I know was a
3 hepatitis C. There was another -- how do you want to say it.
4 Another --

5 Q Diagnosis?

6 A Something else was there too. Now, I don't know
7 if that was B or what. I cannot tell you that.

8 Q Okay. Did you -- did you believe that you
9 got -- contracted, got hepatitis B and hepatitis C from your
10 colonoscopy at the clinic?

11 A Can you explain that?

12 Q I'm saying do you think that you got, acquired
13 hepatitis B and hepatitis C from your procedure, your
14 colonoscopy at the clinic?

15 A I believe when they -- with the test involved,
16 yes, that was where I caught the hepatitis from, was right
17 there in that -- in that test room.

18 Q Yes, sir. And what I'm asking you is do you
19 recall stating that your hepatitis B and hepatitis C, that you
20 caught that at the clinic?

21 A I know nothing about the B. I know the
22 hepatitis C was developed.

23 Q Okay. Do you recall testifying previously in
24 depositions with your lawyers in the civil cases?

25 A Do you mind explaining that? Why would I be

1 [unintelligible] the lawyers like that, huh? Would you
2 explain that, what you're saying?

3 Q I don't think I -- I don't think I asked it the
4 right way, Mr. Washington. I'm saying did you give -- do you
5 know what a deposition is?

6 A Yes.

7 Q Okay. Did you give depositions in your civil
8 litigation?

9 A Do you mind explaining that [unintelligible]?
10 What does it affect that I'm supposed to be giving this
11 information?

12 THE COURT: Is there a point in time that you went
13 and some lawyers asked you questions, and there was probably a
14 court reporter taking down information, and then your lawyer
15 was there and he or she might have asked you questions? Did
16 that happen at some point?

17 THE WITNESS: I seen the one who gave me the
18 information on the color test.

19 THE COURT: Okay. Maybe Mr. -- I was trying to be
20 helpful, but maybe Mr. Wright can -- he's going to ask the
21 question a different way.

22 MR. WRIGHT: Right. Do you remember -- I'm going to
23 approach the witness, Your Honor.

24 THE COURT: You may.
25

1 BY MR. WRIGHT:

2 Q Do you remember, sir, the deposition of Michael
3 Ellsworth Washington, February 6, 2009?

4 A Mm-hmm. The District Court, Clark County. What
5 are you asking? Is it --

6 Q This is a transcript of you being questioned in
7 the civil litigation.

8 A Okay.

9 Q Do you remember that?

10 A Yeah. I remember answering the questions.
11 That's all I can say, is I was called in for questioned.

12 Q Okay. And do you remember being asked, Are you
13 claiming in this case that you contracted both hepatitis B and
14 C from the Endoscopy Center, and do you recall answering yes?

15 A I don't recall that. My memory is not good
16 enough. I don't --

17 Q Okay. The -- do you know if you have hepatitis
18 B and C?

19 A At the present time, I know I have hepatitis and
20 I know that there is a problem with it because it's --

21 Q Okay.

22 A -- a very rare type of hepatitis that I have.

23 Q Were you -- I'm sorry. I interrupted you.

24 Were you ever hospitalized after you got the
25 hepatitis C?

1 A No.

2 Q Okay. And did -- and does -- do you know what
3 the doctors call chronic hepatitis and acute hepatitis?

4 A No.

5 Q Okay. Do you know if you presently have chronic
6 or acute?

7 A The honest thing I can tell you is that I know I
8 have active hepatitis.

9 Q Okay. Well, I didn't hear you.

10 A Now, that's it. I cannot give you any other
11 what the medical information.

12 Q You know you have hepatitis --

13 A Yes.

14 Q -- and you don't know if it's chronic or acute?

15 A No.

16 Q Okay. Fair enough. And you're presently being
17 treated by whom, sir? Who is your doctor right now treating
18 your hepatitis?

19 A I cannot recall his name right now. I can't
20 think --

21 Q Is it a specialist?

22 A Yes. He is a liver specialist.

23 Q Okay. And the -- because of what happened at
24 the clinic you hired lawyers, correct?

25 A I what?

1 Q You got a lawyer, you hired lawyers? A lawyer.
2 An attorney like me.
3 A Yes.
4 Q Okay. To litigate, to sue somebody for what
5 happened to you?
6 A True.
7 Q True. Okay. And you did sue someone, correct?
8 A Confidential information.
9 Q Pardon?
10 A Confidential information.
11 THE COURT: Sir, you have to answer the question,
12 okay?
13 THE WITNESS: Yes, we did go through that.
14 BY MR. WRIGHT:
15 Q Okay. And you won -- do you know how many
16 lawsuits you brought?
17 A How many what?
18 Q Lawsuits.
19 A That was what?
20 Q How many -- do you know how many lawsuits you
21 brought?
22 A No. I do not.
23 Q Okay. Are they done, over?
24 A You mean the lawsuits that I went through --
25 Q Yes.

1 A -- are you asking me are they complete --
2 Q Yes, sir.
3 A -- now?
4 As far as I know, yes.
5 Q Okay. And how many lawsuits were there?
6 A I do not know. I don't remember.
7 Q Okay. You won, right?
8 A Excuse me.
9 THE WITNESS: Do I have to answer that?
10 THE COURT: Yes, sir, you do have to answer the
11 question.
12 THE WITNESS: Yes.
13 BY MR. WRIGHT:
14 Q And how much did you win?
15 A I won \$25,000 from the drug company that made
16 the drug. I received 30,000 from the pharmacist that worked
17 with it. And I also received 400,000 from against Dr.
18 [indicating].
19 MR. WRIGHT: Okay. Just a moment.
20 (Pause in proceedings)
21 BY MR. WRIGHT:
22 Q Are you saying you won \$25,000?
23 A \$25 million.
24 Q Pardon?
25 A 25 million.

1 Q Okay. Million dollars.
2 A Yes.
3 Q I'm sorry.
4 A I'm sorry. I [unintelligible]. That was 25
5 million.
6 Q \$25 million from the drug manufacturer?
7 A True.
8 Q Okay. And what was the next amount?
9 A 30,000 from the pharmacist.
10 Q Now, it's 30,000?
11 A Yes.
12 Q From? From who?
13 A 400,000 from the doctor.
14 Q I'm sorry. I'm just not understanding you.
15 A \$400,000 from Dr. Desai that came through, as
16 far as I know. How it was hooked up I cannot explain it, but
17 I know it was \$400,000 issued.
18 Q Okay. What's the grand total?
19 A You add it up. I don't have a pen here.
20 Q I'm having a hard time getting the numbers, sir.
21 THE COURT: I think the total speaks for itself.
22 BY MR. WRIGHT:
23 Q \$25,430,000.
24 A Yes.
25 Q Is that right?

1 A Yes.

2 MR. WRIGHT: Okay. The Court's indulgence for a
3 moment.

4 Thank you, sir.

5 THE COURT: Mr. Santacroce, cross.

6 MR. SANTACROCE: I don't have any questions for
7 Mr. Washington. Thank you.

8 THE COURT: All right. Thank you. State, redirect.

9 MR. STAUDAHER: No, Your Honor.

10 THE COURT: No redirect?

11 MR. STAUDAHER: No redirect.

12 THE COURT: All right. Do we have any juror
13 questions for this witness? All right. I see no juror
14 questions. Mr. Washington, thank you for your testimony.
15 Please don't discuss your testimony with anybody else who may
16 be a witness in this case.

17 THE WITNESS: I understand.

18 THE COURT: Okay. Thank you, sir, and you are
19 excused, and just go ahead and follow the bailiff through the
20 double doors there.

21 All right. Ladies and gentlemen, I think before the
22 State calls its next witness we're just going to take a brief
23 recess until 3:45. I must admonish you again that before our
24 brief recess you're not to discuss anything relating to the
25 case with each other or with anyone else. You're not to read,

1 watch or listen to any reports or commentaries on this case,
2 any person or subject matter relating to the case. You're not
3 to do any independent research, and you're not to form or
4 express an opinion on the case.

5 Please place your notepads in your chairs and follow
6 the bailiff through the rear door.

7 (Jurors recessed at 3:31 p.m.)

8 THE COURT: The Court's in recess.

9 (Court recessed at 3:32 p.m. until 3:44 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: Kenny, bring them in.

12 State, you got anybody else for today other than
13 Mrs. Washington?

14 MR. STAUDAHER: Yes. We have --

15 MS. WECKERLY: Oh, yeah. We have four witnesses out
16 there.

17 MR. STAUDAHER: -- Mrs. Washington and four doctors
18 out there. The doctors are short. We really -- if we could
19 possibly do it at --

20 THE COURT: Are you asking us to stay late?

21 MR. STAUDAHER: If we need to for these four.

22 MR. WRIGHT: I object.

23 MR. SANTACROCE: Me too.

24 THE COURT: Who are the doctors?

25 MS. WECKERLY: They're the referring doctors.

1 MR. STAUDAHER: They're the referring doctors.

2 They're just to say --

3 MR. WRIGHT: Well, then put them on.

4 MS. WECKERLY: She's got to go out of town --

5 MR. STAUDAHER: She's got to go back to Texas --

6 MS. WECKERLY: -- because he has to get treatment.

7 MR. STAUDAHER: -- because he has to get treatment.

8 THE COURT: So she can't -- she has to go today?

9 MR. STAUDAHER: Yes.

10 MS. WECKERLY: Yes. Because he's got treatment
11 scheduled to treat this.

12 THE COURT: Well, now, these referring doctors, does
13 Dr. Desai doesn't really have any knowledge about the
14 referring doctors, or does he? I mean, let's at least do the
15 first referring doctor, and we'll see what all it is that
16 they've got to say and how detailed the questions are.

17 I mean, if there's a lot of cross-examination, then
18 we're not going to be able to get to them all today. If it's
19 really easy, yes, Mr. Washington was my patient, he was over
20 60, I recommend all patients over 50 get a routine colonoscopy
21 and so I sent him there, then that's, you know, not much. If
22 it's going to be more -- and then, you know, he came and he
23 had a polyp and he had a diverticulitis and then he had --
24 bring them in.

25 (Jurors reconvene at 3:46 p.m.)

1 THE COURT: That's going to be too much.

2 All right. Court is now back in session. The record
3 should reflect the presence of the State, the defendants and
4 their counsel, the officers of the court, and the ladies and
5 gentlemen of the jury. The State may call its next witness.

6 MS. WECKERLY: Thank you. The State calls Josephine
7 Washington.

8 THE COURT: All right.

9 JOSEPHINE WASHINGTON, STATE'S WITNESS, SWORN

10 THE CLERK: Ma'am, would you please state and spell
11 your name.

12 THE WITNESS: My name is Josephine Washington,
13 J-o-s-e-p-h-i-n-e, W-a-s-h-i-n-g-t-o-n.

14 THE COURT: All right. Thank you. Ms. Weckerly.

15 DIRECT EXAMINATION

16 BY MS. WECKERLY:

17 Q Mrs. Washington, are you married to Michael
18 Washington?

19 A Yes, I am.

20 Q Is that the man who just left the courtroom in
21 the sort of darker blue suit?

22 A Yes.

23 Q I want to draw your attention to July of 2007.
24 During that month, did your husband have a procedure done at
25 the Shadow Lane clinic of the Endoscopy Center of Southern

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1 Nevada?

2 A Yes, he did.

3 Q Ma'am, do you recall if prior to having the
4 procedure, the colonoscopy, do you recall if he went to any
5 kind of appointment there prior to the procedure?

6 A Yes, we did.

7 Q And how far before the procedure was that
8 appointment?

9 A It was sometime in June. I do not remember the
10 exact date at this time.

11 Q Did you accompany your husband?

12 A Yes, I did.

13 Q And do you remember who you met with at that
14 earlier appointment?

15 A It was a PA. I do not remember the name. I
16 wish I did, but I do not.

17 Q And you said PA. What does that mean?

18 A A physician's assistant.

19 Q And do you actually have a medical background?

20 A Yes, I do.

21 Q What is your background?

22 A I'm a registered nurse.

23 Q And did you -- are you working now?

24 A No. I'm retired.

25 Q Did you work as a nurse prior to your

1 retirement?

2 A Oh, yes. Of course.

3 Q How long did you work?

4 A Forty-six years.

5 Q As a nurse? What type of nursing did you do?

6 A Almost everything. In 46 years you do a lot.

7 Q So you and your husband went to the appointment
8 maybe in June, but sometime before the actual procedure in
9 July?

10 A Yes, we did.

11 Q What was the purpose of that appointment?

12 A They wanted to inform my husband what the
13 procedure would be about and the medication that he would have
14 to take, you know, to cleanse the colon, and when to come back
15 to the clinic and what to expect.

16 Q Okay. And I assume when you heard those
17 instructions, they were instructions that you were probably
18 familiar with?

19 A Yes, they were.

20 Q Let's talk about the actual date of the
21 colonoscopy, which was July the 25th; is that right?

22 A Yes.

23 Q Did you drive your husband to the appointment?

24 A Yes, I did.

25 Q And do you remember if it was in the morning

1 or --

2 A It was in the morning, early morning.

3 Q And describe what you saw as you went into the
4 clinic.

5 A Oh, just the regular clinic, people there
6 sitting waiting. And my husband had to sign in and then we
7 sat in the waiting room.

8 Q Did you go up with your husband when he signed
9 in, or did you sit?

10 A No. I went up with him to the window.

11 Q Okay. And do you remember if he had to show any
12 type of proof of insurance or anything like that?

13 A He had to show his VA card, yes.

14 Q And that's Veterans Administration insurance?

15 A Yes, it is.

16 Q And do you remember if he had to make any kind
17 of copayment or anything like that?

18 A No, he did not.

19 Q No copay?

20 A No.

21 Q And then I assume you two sat down in the
22 waiting room?

23 A Yes, we did.

24 Q Do you remember how long you had to wait before
25 he was kind of called into the next area?

1 A It was not very long, no.

2 Q And what would you describe the next area as,
3 given that you're a nurse?

4 A The next area they told him he had to go to was
5 the procedure area, so she wanted to take him back and change
6 his clothing and then go to the procedure area.

7 Q And did you go with him to the second part?

8 A No, I did not.

9 Q Okay. Prior to him going into the procedure,
10 did you see anything done medically to your husband?

11 A No, I did not.

12 Q Did you see any needles or heplocks being placed
13 in him?

14 A No, I did not.

15 Q Okay. When you get to the procedure area, were
16 you back there with him?

17 A No, I was not.

18 Q Okay. You were in the waiting room the whole
19 time?

20 A Yes.

21 Q Did you ever see a nurse interact with your
22 husband?

23 A Only when she came, you know, to get him to go
24 back to the procedure room.

25 Q What did you see at that point?

1 A Just her taking him back to the procedure room.
2 Q Okay. And you stayed in the waiting room?
3 A Yes, I did.
4 Q And he goes into the procedure area?
5 A Yes.
6 Q And you stayed out, I assume, where other people
7 were waiting?
8 A That is correct.
9 Q Did you ever go into the procedure room or in
10 the back area at all?
11 A Yes, after the procedure was completed.
12 Q Okay. Was that a different room than where you
13 had originally waited?
14 A Yes, it was.
15 Q And when you went to that area, what did it look
16 like?
17 A It was just a room with the gurney and where she
18 was taking his -- she was removing his IV and informing what
19 they had found.
20 Q And when you say she was removing his IV, who
21 was the person, or what would you describe that person as?
22 A It was a nurse. Excuse me.
23 Q Did you ever meet with a doctor after your
24 husband had the procedure?
25 A No, I did not.

1 Q Did any doctor ever come out and tell you any
2 results?

3 A No. Only the nurse.

4 Q Only the nurse. And did any anesthesiologist
5 ever come out and make sure your husband was okay?

6 A No.

7 Q Did you ever see any doctor at the bedside?

8 A No.

9 Q Did the person who removed the IV give you any
10 kind of results that you heard regarding your husband?

11 A Yes. She told my husband that he had
12 diverticulitis, and --

13 Q Do you know what that is?

14 A Yes. It has to do with the colon and a pouch
15 area in the colon.

16 Q Okay. So it's like irritation in the colon?

17 A Yeah.

18 Q Based on that diagnosis, did you have any
19 follow-up appointments with any doctors for the --

20 A No. No, we did not.

21 Q Okay. Tell me what happened after the
22 procedure.

23 A After the procedure and he -- they removed the
24 IV, he got dressed and she informed him about the
25 diverticulitis and told him that he need to eat a lot of

1 roughage and et cetera. She explained that to him. She also
2 informed him that they had performed a liver -- I'm sorry, a
3 colon biopsy, that they had performed that, and that he would
4 receive follow-up call after that.

5 Q In the -- following the procedure, did your
6 husband have any health problems that you observed?

7 A You mean later?

8 Q Yes.

9 A Oh, yes.

10 Q Describe how long it was after the procedure
11 that he had problems.

12 A In the latter part of August he began to
13 complain about feeling tired and not having much appetite.
14 But I didn't really focus on it, I have to be honest. I
15 didn't focus on it at all. And not until in September, when
16 he began to complain about pain in his right side and feeling
17 tenderness, and then he began to lose weight. And he was
18 losing weight so rapidly and he had no appetite.

19 And then in October it was really bad. He had lost a
20 lot of weight. He was 256 pounds and, I mean, he had lost all
21 the way down. He was really, I mean, losing really rapidly.
22 And at that time I really, I got worried and he, you know, and
23 asked him to go to the doctor. I didn't go with him that
24 time, and he went to see Dr. Patel. And he told me that Dr.
25 Patel drew some bloods and et cetera and et cetera, and

1 examined him.

2 And then later on in October, when he began to
3 complain more -- it was in October, the last part of October,
4 I think. You know, it's been so long I don't remember the
5 exact dates.

6 Q That's okay.

7 A But then I noticed that he, I mean, the no
8 appetite and a lot of weight loss. And then I went in one
9 morning, he called me, he said, Jo, come look, come look. And
10 I went in and looked and his urine was dark. I mean, a dark
11 gold, just, you know, really gold.

12 Q And with your training and your background --

13 A I knew he was spilling bilirubin. I mean, you
14 would know.

15 Q You knew what it was?

16 A Yes.

17 Q And so based on what you observed, what did you
18 two do?

19 A I immediately called the VA and explained his
20 symptoms and what had been happening, and asked if we could
21 get an appointment, an emergency appointment that day. And
22 they told me yes, and we went in and we saw a Dr. Kaul. Anita
23 Kaul, I think her name was. I think that was her name. But
24 we went to see her. I remember her name was Kaul, K-a-u-l.

25 We went in to see her, and she went and reviewed the

1 labs that they had taken back in either the latter part of
2 September or the first part of October, and she told him that
3 from looking at his labs she felt that he had hepatitis C, he
4 had acute hepatitis C.

5 Q And did she do further blood testing?

6 A Yes, she did. She told him she was going to
7 have further testing done and she was going to draw more
8 bloods and more testing done, and she wanted us to make an
9 appointment right away to go see his internist, who is Dr.
10 Patel.

11 Q His -- oh, his regular doctor --

12 A Yes.

13 Q -- Dr. Patel?

14 A Absolutely.

15 Q Did you ever have to take your husband to the
16 health district to give blood, give a blood sample there for
17 testing? Do you recall that?

18 A He did. He went to the health district, because
19 when we -- yes, he did go, but that was after it had been
20 reported by Dr. Patel that he had hep C.

21 Q Okay.

22 A That was after the summer.

23 Q So he sees Dr. Patel, who confirms that he has
24 hepatitis C --

25 A Yes.

1 Q -- and then he goes to the health district --

2 A Right.

3 Q -- and gives more blood?

4 A Right. Dr. Patel, we went to see Dr. Patel
5 again. He stated that he did have hep C and that he had to
6 report it to the health district. And then the health
7 district called my husband and told him that it had been
8 confirmed that he had hep C, and that it may be there were
9 other cases, and she didn't tell him how many.

10 She just said there were other cases and she asked
11 him some questions, and then she -- at that time she had told
12 us to call Dr. Carrol at the clinic to see what he would do
13 for us.

14 Q To see what he would do for you?

15 A Yes.

16 Q Did you and your husband go back to the clinic
17 and meet with Dr. Carrol?

18 A Yes. We -- indeed. We called Dr. Carrol and he
19 set up an appointment for us to come in, and we went in and
20 sat down and talked to him, and he stated that he -- when he
21 started talking to Michael, he said after he reviewed his
22 record he said, I had my pad ready to write out your
23 prescription and put you on interferon treatment. He says,
24 But after reviewing your chart, you are not a candidate for
25 the treatment. He said, I would not recommend it.

1 Q And were you -- I mean, did you and your husband
2 want him to get treatment from Dr. Carrol?

3 A Well, at that time, you know, we wanted to get
4 treatment from anyone that was -- if it was going to eradicate
5 the hep C, you know.

6 Q Sure.

7 A And at that time we did not know for sure, you
8 know, where the hep C came from. We, you know, we had an
9 idea. The only place, it had to be the clinic, because that's
10 the only procedure he'd had. So but, yes, we did, and we
11 would have taken it.

12 Q But at the time you meet with Dr. Carrol,
13 there's no report out from the health district or the CDC
14 about all these cases coming from the clinic --

15 A No. No. No.

16 Q -- is that fair?

17 A No.

18 Q You meet with him before all that?

19 A Right. Yes.

20 Q And he offers to provide treatment --

21 A Right.

22 Q -- for your husband?

23 A That is correct.

24 Q And you -- do you know what interferon treatment
25 or therapy is?

1 A Basically, yes, somewhat. And I know that it is
2 really hard and it's really -- you have to be really in good
3 health and strong in order to take it. And it works,
4 according to the record, 50 percent of the time. It doesn't
5 work on everybody. It doesn't work for everybody. So when
6 you take it, you're taking a chance, you know, so.

7 Q And based on your husband's health, he wasn't a
8 good candidate for it?

9 A No, he was not.

10 Q Even since that time has he ever been able to
11 undergo the interferon treatment?

12 A No, he has not.

13 Q Since that time up until now, what physical
14 changes have you noticed in your husband?

15 A Oh, my gosh. Oh, there are so many. My
16 husband, he just -- he's tired. He's not able to walk long
17 distances anymore. He used to be an avid bowler. He cannot
18 bowl anymore because he can't keep his balance. And his
19 appetite is poor.

20 Now his liver's really acting up. He's gotten to
21 where he has ascites on his abdomen, and his legs are swelling
22 now. And he's become confused at times, you know. He may be
23 clear like this minute and then the next minute you ask him
24 something he's not as clear. He's just as -- he's not as
25 clear as he used to be, you know.

1 Q Let me ask you a couple questions about that.
2 He said that he's not able to walk long distances.

3 A No, he cannot.

4 Q Can you describe to me like what -- how short or
5 how -- you know, where he would need a ride, that kind of
6 thing?

7 A Just for instance, from the attorney's office
8 across the street to the courthouse, he wouldn't have been
9 able to do that and then come up those steps.

10 Q And you said he can't bowl anymore.

11 A No.

12 Q Was that something --

13 A No. He was an avid bowler. He bowled three
14 times a week on a league and -- we did. So a lot of our
15 lifestyle -- our lifestyle has just gone to pot really. We
16 bowled three times a week. He used to shoot pool in there on
17 Tuesday afternoons with his friends and, you know, just he's
18 not able to do any of these things anymore.

19 Q And you said he has -- you even used the medical
20 term -- ascites in the abdomen?

21 A Yeah, which is fluid in the abdomen.

22 Q Fluid in the abdomen?

23 A Yes.

24 Q Is he getting treatment for that?

25 A Yes. He's had to be tapped twice because his

1 abdomen is, you know, distended so much. So they've basically
2 drained off so many liters of fluid, and then they give him a
3 medication which is called albumin to replace his proteins,
4 and so he has to do that.

5 And now, with us in Texas, we found a hepatologist in
6 Texas that is going to follow him closely, and they're going
7 to be tapping him and giving him albumin every week to try to
8 help control the fluid. Hopefully that will control it. And
9 then there's a new treatment that's coming out, we hope and we
10 pray, the first of the year, and they want to place him on
11 that and see can they eradicate the hep C.

12 Because if they can eradicate the hep C, then he can
13 be a transplant patient. But he can't even get a liver
14 transplant with the hep C still -- him still having hep C.
15 And he's so weak, they need to get a decent weight on him. I
16 don't know if -- he's very thin now and he's not the man that
17 he was before all of this happened.

18 Q So I mean, is it fair to say the goal is to try
19 to get him healthy enough --

20 A Yes.

21 Q -- so maybe he could be a candidate for --

22 A Maybe, yes.

23 Q -- for a transplant?

24 A But they have to eradicate it. They have to
25 eradicate the hep C. Because it would be useless to give him

1 a transplant, you know, a liver transplant and still the hep
2 C, because the hep C still can attack the new liver. So it
3 just -- the doctor said it'd just be useless to do that.

4 Q When is his next appointment to get the ascites
5 tapped, as you put it, drained?

6 A Yes. We are due like the 15th. We're leaving
7 on the 14th and he goes the very next day.

8 Q So coming up?

9 A Yes.

10 Q I want to just go back to the procedure day at
11 the clinic.

12 A Okay.

13 Q So back in the clinic on July the 25th, how long
14 would you say it was in time from the time he's called back
15 out of that first waiting room until the time you see him in
16 the recovery room?

17 A Approximately 25 to 30 minutes.

18 Q And fairly around a half-hour, give or take --

19 A Right.

20 Q -- is that what you're saying?

21 A Mm-hmm.

22 Q And do you know -- as a nurse, do you know what
23 a saline flush is?

24 A Saline flush?

25 Q Mm-hmm. What is it?

1 A You mean an IV?

2 Q Yeah, on an IV.

3 A Oh, yes.

4 Q What is that?

5 A Where you hang a bag of saline and you flush the
6 IV. You start an IV and just do the butterfly, and just flush
7 it through to make sure that it's in the vein.

8 Q Do you know whether or not your husband had that
9 done to him on the day of this procedure?

10 A He -- he stated that the nurse started the
11 little IV, the butterfly in him in one room, and then she took
12 him into the other room and the male nurse put -- connected
13 the port up, you know, so that they could put the medication
14 in.

15 Q So no saline flush by a nurse?

16 A No. It was the male nurse.

17 Q Thank you, ma'am.

18 MS. WECKERLY: I'll pass the witness.

19 THE COURT: All right. Who would like to go first?
20 Mr. Santacroce, go ahead.

21 CROSS-EXAMINATION

22 BY MR. SANTACROCE:

23 Q Your husband just said a few minutes ago that
24 the nurse started the IV, and then she hung a saline bag --

25 A Right.

1 Q -- and then flushed the IV. Do you have any
2 reason to doubt that?

3 MS. WECKERLY: And I'm going to object, Your Honor.
4 I don't actually think that was his testimony.

5 THE COURT: Well, overruled. And ladies and
6 gentlemen, from time to time, you know, a lawyer may remember
7 something one way, the other lawyer may remember it some other
8 way. I may remember it incorrectly or I may not remember at
9 all.

10 So whenever a lawyer asks a question that says the
11 evidence was this or that, if that's not your recollection of
12 the evidence, then of course your recollection of what the
13 evidence was should control regardless of what either side may
14 say, or what the Court may remember, because my recollection
15 could be wrong, so.

16 BY MR. SANTACROCE:

17 Q So my recollection was that your husband
18 testified that the nurse started the IV, hung a saline bag,
19 and flushed the IV and he saw some blood. Do you have any
20 reason to doubt his testimony?

21 A I doubt that. Because that's not what my
22 husband told me.

23 Q Okay. But you didn't see --

24 A No, but he didn't tell me that.

25 Q You need to let me finish the question.

1 A Oh, no problem.

2 Q Okay. You didn't see the nurse start the IV,
3 correct?

4 A No, I did not.

5 Q And you didn't see whether there was a saline
6 bag, correct?

7 A No, I did not.

8 Q And you didn't see whether the nurse flushed
9 that --

10 A No, I did not.

11 Q -- IV?

12 You testified that a nurse took your husband back
13 into a procedure room and then the nurse removed the IV, which
14 you witnessed, correct? You witnessed the removal of the IV?

15 A Yeah. I witnessed the removal of the IV.

16 Q Was it the same nurse that took him back into
17 the procedure room?

18 A That I do not remember.

19 Q The nurse that removed the IV, was it a female?

20 A Yes, it was.

21 Q And the nurse that took him in the procedure
22 room, was it a female?

23 A But I can't say they're the same females.

24 Q Okay. But they were both female?

25 A Yes. But I cannot say they were the same.

1 Q Okay. Did your husband have any medical
2 problems prior to having the colonoscopy?
3 A He had -- he was hypertensive, he had glaucoma,
4 and he was diabetic.
5 Q Was he on diabetic medication?
6 A Yes, he was.
7 Q Was he on blood pressure medication?
8 A Yes, he was.
9 Q Did I read somewhere that he had had a heart
10 attack?
11 A Yes, he did.
12 Q When was that?
13 A I think that was in 2005.
14 Q And I believe I read somewhere that he had heart
15 stents; is that correct?
16 A Yes, he did.
17 Q And the heart stents, was it an actual surgical
18 procedure to have the heart stents put in?
19 A Yes, it was.
20 Q And when was the heart stents put in?
21 A At the same time of the surgery.
22 Q And what year was that again?
23 A 2005. 2005 or 2002. I can't remember. I don't
24 remember. It was either 2002 -- I think it was 2002. I think
25 it was 2002.

1 Q I don't think -- oh, one other question. Did he
2 have hepatitis B?

3 A No.

4 Q To your knowledge he does not have --

5 A Never.

6 Q Never.

7 A And the medical records will show that he never
8 had it.

9 Q Okay. Thank you.

10 MR. SANTACROCE: I have no further questions.

11 THE WITNESS: No problem.

12 THE COURT: All right. Mr. Wright.

13 MR. WRIGHT: Yes.

14 CROSS-EXAMINATION

15 BY MR. WRIGHT:

16 Q You all went to see Dr. Carrol, Clifford Carrol?

17 A Yes.

18 Q At the -- and the purpose of that was because he
19 was offering assistance; is that correct?

20 A He was offering treatment, yes.

21 Q Okay. And he evaluated your husband?

22 A Yes.

23 Q Okay. And the test results; is that fair?

24 A Yes.

25 Q Okay. And he determined that he wasn't a

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1 candidate for interferon treatment?

2 A That is correct.

3 Q Okay. And did he offer any other suggestions?

4 A No.

5 Q Okay. And was that diagnosis of -- or that
6 recommendation of Dr. Carrol, was that consistent with
7 [inaudible]?

8 A With what? You have to speak up.

9 Q Was that consistent with what you later learned
10 from other doctors?

11 A Yes.

12 Q Okay. And you were a nurse. You know acute
13 hepatitis C from chronic hepatitis C?

14 A Absolutely.

15 Q And what is your husband's condition presently?

16 A At present?

17 Q Yes.

18 A At present it's chronic, because it's acute when
19 the first onset.

20 Q Okay. So he presently has chronic hepatitis
21 C --

22 A Yes.

23 Q -- correct?

24 A Right.

25 Q Okay. And on the -- ultimately you all sued

1 various people because of what had happened to your husband,
2 correct?

3 A We had one lawsuit, yes.

4 Q Okay. Did you have one --

5 A No. We filed -- we filed one lawsuit together
6 for the people who were guilty of infecting my husband, all
7 the people that we felt were guilty of infecting my husband.

8 Q Okay. And were you a plaintiff in it?

9 A Was I what?

10 Q I mean, did you file -- were you a party? Did
11 you sue also?

12 A Yes, I was. Yes.

13 Q Okay. And did you win settlements?

14 A Yes, we did.

15 Q Okay. I'm asking you individually.

16 A Did I -- no. It was collective of me and my
17 husband together. The settlement was for my husband and I.

18 Q Okay. I didn't know that. That's why I'm
19 asking.

20 A Okay.

21 Q So the numbers we were provided by your husband
22 was \$25,430,000. That was jointly --

23 A Yes, it was.

24 Q -- between each of you, correct?

25 A Yes. That was for the two of us.

1 Q Okay. Thank you very much.

2 MR. WRIGHT: Nothing further.

3 THE COURT: All right. Thank you. Redirect.

4 MS. WECKERLY: Yes. Just briefly.

5 REDIRECT EXAMINATION

6 BY MS. WECKERLY:

7 Q Mrs. Washington.

8 A Yes.

9 Q Mr. Santacroce was asking you some questions
10 about some testimony that we heard from your husband. Has he
11 suffered, in your observation, a cognitive decline since all
12 this happened?

13 A Yes, he has.

14 Q And can you just give us a little bit more of a
15 sense of what the issues are?

16 A He doesn't remember, you know, facts, and
17 sometimes he even doesn't remember names of individuals that
18 he previously knew. He'll recognize their face but he said, I
19 can't remember their name. Or he'll have certain -- he may
20 remember today see, your name is Jane, but tomorrow he might
21 not remember you were Jane. He'll just know your face. And
22 like he say, I just say, Hi, how are you, you know, that kind
23 of thing. Or he doesn't remember a lot of just common things,
24 you know, everyday things.

25 Q So it's --

1 A It's just -- it's confusion.

2 Q -- primarily with his memory?

3 A Yeah. It's his cognitive status has changed.

4 It's just --

5 Q And has it gotten worse over time?

6 A Yes, it has.

7 Q Back closer to when these events occurred,
8 meaning right after you learned that he was positive for
9 hepatitis C, when he described what occurred with him at the
10 Endoscopy Center, did he describe getting a saline flush from
11 the nurse, or did he say the nurse only placed in the IV --

12 A That's what he said.

13 Q -- and there was no flush?

14 A He stated that the nurse placed in the IV, she
15 just hung the bag of saline, then he wheeled him over and the
16 other nurse, he said a tall male, started, you know, connected
17 up the heplock to -- he didn't know heplock, but he said it
18 connected up something to that, the IV where she started.
19 She -- he connected it up and he was the one that pushed the
20 medication in.

21 Q So the one who pushed the medication in is the
22 one that ultimately hooked up to your husband?

23 A Yes, that hooked it up, yes.

24 Q And Mr. Wright asked you about the lawsuits that
25 you filed.

1 A Right.

2 Q One of -- was one of the defendants a drug
3 company?

4 A Yes.

5 Q And does that drug company make propofol?

6 A Yes, it does.

7 Q And that was the medication used on your husband
8 in this procedure?

9 A Yes, it was.

10 Q And do you know if you are the only litigant,
11 the only plaintiff in this case?

12 A No, we are not.

13 Q Okay. I mean, to your knowledge there is more,
14 more than you?

15 A Multiple cases, yes.

16 Q And the settlement that you got, what are you --
17 what are you and your husband doing with that money?

18 A We can't do much of anything. What can we do?
19 He can't travel anymore. He can't bowl anymore. What do we
20 do?

21 Q Are you paying your doctors for now his
22 treatment?

23 A His medical treatment, that's the only thing,
24 and that's where we spend most of our time now, from one
25 doctor to another, from one specialist to another trying to

1 see what can be done, you know. He destroyed my husband's
2 life.

3 Q Thank you.

4 THE COURT: Recross.

5 MR. WRIGHT: Yes.

6 RECCROSS-EXAMINATION

7 BY MR. WRIGHT:

8 Q How many other -- I'm sorry, ma'am.

9 THE COURT: Ma'am, just take a minute. There's some
10 tissues up there.

11 THE WITNESS: I'm sorry.

12 THE COURT: Do you want a drink a water or anything?

13 Kenny, get her -- dispense a cup of water, please.

14 Let me know if you need a break. Otherwise just, you
15 know, take your time.

16 (Pause in proceeding.)

17 THE COURT: We'll be on cross -- recross.

18 BY MR. WRIGHT:

19 Q On the lawsuit against the manufacturer of the
20 propofol, okay?

21 A Yes.

22 Q How many other plaintiffs? How many other
23 [inaudible]. You indicated that you were just one party in
24 that lawsuit.

25 A From my understanding, there are other people

1 that have filed lawsuits too. According to the newspaper and
2 everyplace, we are aware of a lot of cases that filed
3 lawsuits. We were not the only one.

4 Q I understand that. I thought you were saying
5 that you had sued the pharmaceutical company and you were just
6 one [inaudible] getting a portion of some judgment.

7 A No. That is not what I stated.

8 Q Okay.

9 A What I was stating is that what I thought you
10 were asking, were there other parties that had sued the
11 pharmaceutical company and I told you yes, from my knowledge
12 there are other people. I don't know who those individuals
13 are, but according to the newspapers and everything there are
14 other parties. There were other people infected, so they
15 filed suits too, lawsuits also.

16 Q They weren't part of your lawsuit?

17 A No, they were not.

18 Q Yours was only yours --

19 A Yes.

20 Q -- and that settlement --

21 A Yes.

22 Q -- was only yours and no one else shared it?

23 A No, just ours. Just my husband and myself.

24 Q And it wasn't part of a bigger settlement?

25 A No, it was not.

1 Q The conversation you had with your husband
2 regarding the heplock, the starting of the heplock --

3 A Yes.

4 Q -- when did that take place?

5 A He told me when they took him back and they
6 asked him remove his clothing --

7 Q I'm sorry. Your -- you weren't there?

8 A No, I was not.

9 Q Okay.

10 A All I can do is tell you what he -- what he
11 stated to me, that when they took him back --

12 Q I understand that.

13 A Yes.

14 Q Let me finish.

15 A Okay.

16 Q What I'm asking you is he told you what
17 happened --

18 A Yes, that is correct.

19 Q And I'm asking you when did he tell you what had
20 happened back there?

21 A Oh, right after when he came out in the
22 procedure and we were going, you know, riding home and et
23 cetera.

24 Q Okay. Well, then so he told you right
25 afterwards about the heplock, how it had been placed, right?

1 A Yeah. He just --

2 Q Okay. And do you recall when you were
3 interviewed by the police like in April of 2008?

4 A Yes.

5 Q Okay. You and Michael Washington?

6 A Right.

7 Q Okay. And at that time you and Michael
8 Washington didn't know who or how the heplock had been placed,
9 correct?

10 A I don't remember that, no. I do not.

11 Q Okay. The -- let me show you and see if it
12 refreshes your recollection.

13 (Pause in proceedings)

14 BY MR. WRIGHT:

15 Q Do you remember being interviewed with Edward
16 Bernstein?

17 A My attorney, one of our attorneys.

18 Q Okay. And were you interviewed with him with
19 the police?

20 A Yes.

21 Q Was he present when the police interviewed you
22 and your husband?

23 A Yes.

24 Q Okay. And at that time, did Michael state he
25 received a heplock, but he did not remember when and where he

1 got it? Do you recall that?

2 A No, I can't tell you. No. I do not remember
3 that.

4 Q You don't remember him saying that or you don't
5 remember that --

6 A I don't remember him saying that. No, I don't.

7 Q And at that time did you tell the police, well,
8 I remember because he told me, and explained to them what had
9 happened?

10 A I don't -- I don't know if I did or not. I
11 can't remember that back far.

12 Q Okay.

13 A I don't remember that.

14 THE COURT: Mr. Wright, the jury's having a little --
15 some trouble hearing you.

16 MR. WRIGHT: Okay.

17 THE COURT: So I need you to speak up, try to speak
18 into the microphone there.

19 And then, ladies and gentlemen, if you're still
20 having trouble, just indicate and we'll make Mr. Wright hold
21 the handheld microphone.

22 BY MR. WRIGHT:

23 Q Okay. So don't recall if you told the police
24 that when they interviewed you?

25 A No. I do not remember every word I said to

1 them, no.

2 MR. WRIGHT: Okay. Nothing further.

3 THE COURT: All right. Oh, I'm sorry. You didn't do
4 recross. Go ahead.

5 MR. SANTACROCE: That's okay.

6 THE COURT: No, no. I mean, if you have any
7 additional questions, you can also --

8 RECROSS-EXAMINATION

9 BY MR. SANTACROCE:

10 Q The conversation you had with your husband
11 regarding the heplock, that was after the procedure was done
12 back in 2007?

13 A It was -- yeah, it was after the procedure was
14 done and, you know, it hadn't -- we talked over the long term,
15 meaning, you know, going over it. At that time his memory was
16 good. So, you know, in preparing for the trial and all that
17 kind of stuff, we'd go over -- we've gone over the -- what
18 happened to him, so. You know, he repeated it many times, so.

19 Q And he -- and he gave depositions in the civil
20 case, correct?

21 A Yes, he did.

22 Q And he explained that in the civil depositions,
23 correct, about the heplock?

24 A I'm sure he did.

25 Q He was very specific today, saying that he

1 received an IV, that the saline bag was hung up, that it was
2 flushed, and that he saw blood. That was my recollection of
3 his testimony. It was very specific. He's the one that used
4 the word "flushed." Are you saying that that is inaccurate,
5 his testimony's inaccurate?

6 A All I can say is that is not what he stated to
7 me.

8 Q Okay. And you're telling us that his memory is
9 not as good as it used to be, correct?

10 A That is correct.

11 Q When he testified that the two of you received
12 \$25,430,000, was that accurate?

13 A Yes. That is correct.

14 MR. SANTACROCE: Nothing further.

15 THE COURT: Anything else from the State?

16 MS. WECKERLY: No, Your Honor.

17 THE COURT: All right. Do we have any juror
18 questions for this witness? All right. I see no juror
19 questions.

20 Ma'am, Mrs. Washington, I'm about to excuse you.
21 Please don't discuss your testimony with anyone else who may
22 be a witness in this case, okay?

23 THE WITNESS: Okay.

24 THE COURT: Thank you, ma'am, and just follow the
25 bailiff from the courtroom. You are excused at this time.

1 And then, State, call your next witness.

2 MR. STAUDAHER: The State calls Dr. Patel to the
3 stand.

4 MR. WRIGHT: Can we approach the bench, Your Honor?

5 THE COURT: You may.

6 (Off-record bench conference.)

7 SHAILESH PATEL, STATE'S WITNESS, SWORN

8 THE CLERK: And please state and spell your name.

9 THE WITNESS: My name is Dr. Patel. First name is
10 Shailesh, S-h-a-i-l-e-s-h. The last name Patel, P-a-t-e-l. P
11 like Peter.

12 THE COURT: Thank you. Mr. Staudaher.

13 DIRECT EXAMINATION

14 BY MR. STAUDAHER:

15 Q Doctor, what kind of a physician are you?

16 A I'm an internal medicine physician.

17 Q And how -- did you practice here in town?

18 A I have been with the VA. I'm practicing for the
19 Veterans Administration.

20 Q How long have you done that?

21 A I have been with the VA since 1997, and over
22 here since 1998.

23 Q Do you know a patient by the name of Michael
24 Washington?

25 A Yes.

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1 Q And have you had a chance before you came into
2 court today to review the record of Mr. Washington, at least
3 the record that you have of him?

4 A Yes.

5 Q Were you his physician and if so, in what
6 capacity?

7 A I am -- actually, I was his primary care
8 physician. So as an internal medicine, we have a patient who
9 is assigned to us, and so Mr. Washington was my primary care
10 patient.

11 Q Is he your current patient?

12 A No.

13 Q So when did he cease to be your patient?

14 A Somewhere in February of 2012.

15 Q And backward beyond before that, how long --
16 when did he first come to you and how long was he your
17 patient?

18 A I have been seeing him since 1999.

19 Q So quite a long time?

20 A Yes.

21 Q In reviewing his medical records, I wanted to
22 ask you a couple of questions. First of all, were you aware
23 that he went for an endoscopic procedure in 2007, specifically
24 July of 2007?

25 A Yes.

1 Q Was that a referral from your office to have
2 that done?

3 A Yes. My colleagues referred.

4 Q And whether it's you directly or in your review
5 of the medical record which you rely upon, can you tell us
6 what the reason was for the referral?

7 A It was a screening colonoscopy we ordered as a
8 part of a screening exam.

9 Q So at the time that this referral was done, was
10 there any medical problem that you were sending him for
11 because of the screen related to it?

12 A It was my colleague who referred this patient,
13 so I just want to be clear about that.

14 Q Certainly. But in your view of the medical
15 record, which is your record, right?

16 A Yes.

17 Q Was it strictly screening, or was there some
18 sort of medical problem that you were sending him to the
19 clinic for in addition?

20 A It was a screening test.

21 Q Now, prior to that screening test, and this is
22 the time period I'm talking about, 1999 all the way up to
23 2007, July 25th is when the procedure was done, correct?

24 A That is correct.

25 Q So up to that point had Mr. Washington ever

1 been, to your knowledge through your review of the records,
2 ever been diagnosed with hepatitis C, B, A, anything?

3 A No.

4 Q You, I assume, over the years may have had blood
5 work done on him?

6 A Yes.

7 Q The blood work, would that include like
8 chemistries, things like that of the blood?

9 A Yes, chemistry.

10 Q Would the chemistries include liver function
11 tests?

12 A Yes.

13 Q Would liver function tests have been something
14 that you would have reviewed over the years?

15 A Yes.

16 Q So you -- is it fair to say that that happened
17 more than once, it was a regular kind of thing over the years?

18 A That is correct.

19 Q Did you ever see any incidence where there was
20 an elevation in any liver function test which would have made
21 you think that he had a problem with his liver?

22 A No.

23 Q Was there any evidence of liver cancer or
24 anything like that with Mr. Washington?

25 A Not that I know.

1 Q Not that you're aware of --
2 A Yes.
3 Q -- from your treatment and records --
4 A Yes.
5 Q -- and so forth, correct?
6 A Yep.
7 Q And again, as far as his sort of situation, was
8 there any medical problem that related to his liver;
9 cirrhosis, cysts, fatty liver, anything that would be a
10 concern to you?
11 A Well, he had fatty liver, but that was on the
12 CAT scan exam. But that's the only thing I know.
13 Q And is that something that's pathological in the
14 nature of something that would cause an impairment to his
15 liver function?
16 A Yes, it can.
17 Q Was it during the time that you were seeing him?
18 A No.
19 Q Now let's move forward in -- oh, before I get
20 there. Were there any risk factor -- I assume when you do --
21 see a patient as a primary care physician, you do histories
22 and physicals periodically; is that right?
23 A That is correct.
24 Q During the time you do a history and physical,
25 do you also get kind of a social history or a review of

1 systems as it's called?

2 A Yes.

3 Q In that do you ask questions like alcohol use,
4 sexual contacts, things like that to give you an idea of what
5 the lifestyle was of the person?

6 A Yes.

7 Q Was there any indication that you had prior to
8 him going to the clinic, from a lifestyle perspective, that he
9 had any risk factors for hepatitis C?

10 A No.

11 Q No blood transfusions from any procedures that
12 he'd had done, anything like that?

13 A I'm not certain about that.

14 Q Okay. But at least according to your records,
15 was there any record of anything like that in the case?

16 A Not in my records, no.

17 Q So let's move forward in time past the screening
18 date of July 25. Did you ever see him again after the test?

19 A Yes.

20 Q Did he have any problem when he came back to
21 you?

22 A I saw him in October or November.

23 Q Okay. And what was the issue?

24 A That visit was medication refill visit, you
25 know. And he had mild enzyme elevation of the AST and ALT.

1 Q Was it something -- was it something that was
2 different than what you had seen before in all the testing you
3 had done in the past?

4 A That's correct.

5 Q Did it alarm you?

6 A It alarmed me in a sense that I had to order
7 [unintelligible] test, you know, and that's what I did.

8 Q And what was elevated at that time?

9 A AST and ALT was elevated.

10 Q Can you tell us what those are?

11 A Both of them, AST and ALT, are liver enzymes,
12 and they were twice the normal that what I used to see before.

13 Q Okay. As far as those tests are concerned, you
14 ordered the secondary test because of those; is that fair?

15 A That is correct.

16 Q When he's -- when he's before you on that visit,
17 is he showing any outward signs or symptoms of any problem?

18 A Not when I saw him in November earlier. Earlier
19 somewhere in November 2007.

20 Q Are you talking about this is the first time you
21 see him for this problem, or was this later -- or earlier
22 rather?

23 A I'm talking about a visit in November after he
24 had the blood work done that was in October.

25 Q Okay. So in October you see this, you have some

1 concerns, you have the blood work done, and then you see him
2 in November?

3 A Yes. That's correct.

4 Q So when he comes back in November, what's the
5 situation?

6 A Well, that's where I notice that he had little
7 bit elevation of liver enzyme, you know.

8 Q Oh, I'm sorry. So liver enzymes are elevated in
9 November. What do you do, or what happens to him after that?

10 A Well, I ordered another test, you know, to make
11 sure that what are the reason for this elevation of liver
12 test, you know.

13 Q And what was the test that you ordered?

14 A We ordered hepatitis screening test.

15 Q Did you get the results of those?

16 A Yes.

17 Q And what were they?

18 A His hepatitis C, B were positive. And our lab
19 does other tests, you know. If hepatitis C is positive, they
20 ordered the viral count.

21 Q So was that done?

22 A That was done automatically as per our lab's
23 policy.

24 Q So the initial test showed this positivity for
25 hepatitis B and C?

1 A Yes.

2 Q The tests that you did subsequent to that, what
3 did those show?

4 A I had a high hepatitis C virus level.

5 Q And what about the hepatitis B?

6 A Hepatitis B, the patient was already immune to
7 it, you know. So that means he has developed immunity, so we
8 don't look for hepatitis B virus at that time.

9 Q Okay. So the hepatitis C virus was active, and
10 whatever was going on with the hepatitis B was just the
11 antibody or something that you were looking for, or that you
12 saw?

13 A Yes. The patient had developed antibodies so
14 that, you know, in that case if the core antibody's positive,
15 we don't look for hepatitis B.

16 Q So that means that it's -- could that have
17 been -- could somebody -- what about the vaccinations that are
18 done for hepatitis, anything like that? And I'm talking about
19 hepatitis B vaccinations obviously, because there is no
20 hepatitis C vaccination, correct?

21 A Yes.

22 Q If you have a hepatitis B vaccination, do you
23 end up with a core antigen that shows positive on further
24 tests?

25 A If you have hepatitis B vaccination, you will

1 not get positivity for core antibody, no.

2 Q And is that what you had in this particular
3 case?

4 A This patient had core antibody positive. That
5 means he must have had infection and he got over with it.

6 Q Okay. So that would have been in the past?

7 A Yes.

8 Q So what you were dealing with right now was an
9 acute hepatitis C viral infection; is that correct?

10 A What I saw was hepatitis C virus positivity when
11 I saw him in November.

12 Q In November, when you saw him, was he then
13 exhibiting any outward symptoms, any jaundice, any abdominal
14 pain, anything that was going on?

15 A As far as I remember, when I saw him in
16 November, it was the medication refill visit at that time. We
17 do do screening tests, you know, anytime patient is visiting
18 us, so that's where I noticed the liver enzyme elevation.

19 Q So when the tests came back that show that it
20 was positive for hepatitis C, an active infection, what
21 happened next? What did you do?

22 A We obviously wait for hepatitis C virus and -- a
23 count, you know, and also ordered the ultrasound of the liver,
24 you know, to make sure that why his enzymes were elevated.

25 Q So what did the ultrasound show?

1 A Ultrasound shows there was no obstruction,
2 because we look for, you know, if somebody's -- you have to
3 understand that I saw him in November and then my colleagues
4 saw him again in November, a little bit later part, you know.
5 And that's where the enzymes were very high, you know. So
6 we --

7 Q Then he came back to you again?

8 A Why he came back to me, because I had to call
9 him in November because we had very, very high enzyme at that
10 time, extremely high enzyme.

11 Q So between the first time when you saw the
12 elevation until he goes to see your colleague and then he
13 comes back to you, the elevation of those enzymes had gone
14 way, way up; is that fair?

15 A Yes. So the -- I saw him in November earlier,
16 the first or second week, and at that time I had the blood
17 work from October. So I ordered the hepatitis C test and a
18 viral load test. And then patient comes and sees in later
19 part of November, 26 or 27, I'm not sure, but he sees my
20 colleague. And at that time he had jaundiced, and my
21 colleague ordered another blood test. And at that time he had
22 very, very high enzymes.

23 So that's where I call around November 28 to see, to
24 make sure that we want to do liver test -- I mean, ultrasound
25 of the liver to make sure why do you have jaundice.

1 Q So when you saw him after your colleague did,
2 did he have jaundice?

3 A That would be in December I saw him, in December
4 7th or 6th.

5 Q So that was a while later. Did he have jaundice
6 at that time?

7 A Yes, he had jaundice.

8 Q Okay. Did he have any other symptoms that he
9 was exhibiting at that point beside jaundice?

10 A I'm not sure whether he had constitutional
11 symptoms or not, but I think not that I recollect right now.

12 Q Dark urine, anything like that that he --

13 A He did have dark urine, that's true.

14 Q So the -- what are the standard symptoms for
15 somebody that comes in with hepatitis?

16 A Lack of appetite, you know, dark urine. You
17 start showing the yellowness of your skin, your eyes get
18 yellow and you feel weak and tired.

19 Q Weight loss, things like that, clay colored
20 stools, all of those things?

21 A Yeah. In advance case, you know, you might --
22 if you have obstruction, then you don't see any color in your
23 stool, which is usually yellow. So it's white stool.

24 Q And in this case did he have the weight loss as
25 well?

1 A Not that I recollect right now.

2 Q But you do recollect the dark urine and the
3 jaundice for sure?

4 A That is correct, yes.

5 Q Then after that, what did you do? Did you refer
6 him somewhere? Did you continue to treat him?

7 A I referred him to gastrointestinal clinic, GI
8 referral again.

9 Q And where was that?

10 A We make referral to our gastroenterology
11 department, and they contract out to endoscopy group.

12 Q Do you know where he went after that?

13 A He went to gastro center.

14 Q The place where he had his colonoscopy?

15 A That is correct.

16 Q So he gets referred back to the place where he
17 had had his colonoscopy?

18 A That is correct.

19 Q After he went there -- I mean, you've obviously
20 been his -- was his doctor thereafter, correct?

21 A Yes.

22 Q Up until 2012, I think you said?

23 A Yes.

24 Q When you were dealing with him after that, did
25 he continue to have issues? I mean, was he further being

1 treated? For example, did he ever receive treatment like
2 interferon therapy?

3 A I did refer him to an infectious disease doctor,
4 and the conclusion was that he wanted to wait, not proceed
5 with the treatment.

6 Q Who, the patient or the infectious disease
7 person?

8 A I think it was a joint discussion as far as I am
9 reading the infectious disease note, you know. That's what my
10 recollection is.

11 Q Was there anything that precluded him from
12 having that therapy, to your knowledge?

13 A He might have comorbidities, you know, that's
14 why.

15 Q But that wasn't your realm? You weren't dealing
16 with that?

17 A No. That is not my specialty.

18 MR. STAUDAHER: I have nothing further, Your Honor.

19 THE COURT: All right. Cross.

20 CROSS-EXAMINATION

21 BY MS. STANISH:

22 Q Good afternoon, sir. Can you tell us how long
23 you were doctor -- I'm sorry, Mr. Washington's doctor, for how
24 long?

25 A Since September of '99.

1 Q And were you his primary doctor, or were there
2 other doctors that treated him?

3 A I was his primary care doctor, but once in a
4 while, if I'm not there, they will see other doctors too.

5 Q And educate us a bit about the VA. Did you have
6 his entire medical record prior to 1999? I mean, did that
7 medical record follow him from wherever he was in the military
8 to the VA office where you were?

9 A No. I had the records from the previous doctor
10 in the VA prior to '99. And obviously I obtained the history
11 and physical myself.

12 Q And I'll come back to that in a moment. I want
13 to jump now to what you had to tell us about some of the liver
14 tests that you had done and the results, in particular the
15 hepatitis B, bravo. Is -- I want to make sure I understood
16 what you testified to earlier. He tested positive for both
17 hepatitis C and B, correct?

18 A Yes.

19 Q And did I understand you to say that at one time
20 he was infected with hepatitis B?

21 A Well, when I saw the result of hepatitis
22 screening that is A, B and C, the C was positive. The B
23 had -- we do two antibodies. One is surface antibody and we
24 do core antibody. And if somebody has surface antibody and
25 core antibodies positive, that means they are -- they are

1 immune to it, you know. And his hepatitis A test was
2 negative.

3 Q Right. I under -- I think I understood that,
4 that by the time you get these results back they show some
5 kind of immunity to hepatitis B. But I thought I understood
6 you to say in response to Mr. Staudaher's question that he had
7 this -- he now was immune to hepatitis B. My question is:
8 Based on your training and experience and these test results,
9 was there a time where -- when he was likely infected with
10 hepatitis B?

11 A That's correct.

12 Q Can you elaborate on that, please?

13 A Based on my knowledge as a primary care, that if
14 somebody's immune to hepatitis B, that means he had hepatitis
15 B in the past.

16 Q All right. Now let's go back to the medical
17 records. I understand that you inherited the medical records
18 from the previous VA doctor who treated him. Do you recall
19 seeing anything in his medical records that disclosed the fact
20 that he had hepatitis B?

21 A No.

22 Q And it's possible, is it not, that somebody
23 could have hepatitis B, hepatitis C, ABC, whatever letter, and
24 not know it?

25 A It is possible.

1 Q But you saw nothing in Mr. Washington's records
2 that would indicate he did in fact have hepatitis B at one
3 point?

4 A Not from the test that I was following.

5 Q I mean from his medical records in general. You
6 have a lot of records on him, I assume?

7 A Yes.

8 Q And I understood you to say that you took a
9 social history from him.

10 A Yes.

11 Q Educate us a bit on hepatitis B, to the extent
12 you can as an intern -- internist. As an internist, you have
13 training on hepatitis in general, do you not?

14 A Yes, in general. So what is your question? I'm
15 sorry.

16 Q Well, let me just lay a little foundation here.
17 Do you treat many people for various types of hepatitis C or
18 B?

19 A No.

20 Q But you identify people who have hepatitis?

21 A Yes.

22 Q Then once you identify them, you refer them on
23 to a specialist?

24 A That is correct.

25 Q Do you know what are the risk factors that would

1 lead somebody to having hepatitis B? What kind of behavior
2 would I have to engage in to be a likely candidate for
3 hepatitis B?

4 A You had to have exposure to blood or body fluid,
5 and that could be surgery or if you had had infected blood, or
6 if you came in contact with anybody's body fluid in any shape,
7 or if you were using IV drugs, you know. Those are the risk
8 factors.

9 Q Do you -- when you do the -- when you did the
10 social history for Mr. Washington, did that social history
11 include a discussion of these kinds of risk factors or
12 behaviors?

13 A Not in that detail.

14 Q You wouldn't talk to -- you wouldn't collect
15 from him information about whether he had surgery before? I
16 know my doctor always seems to ask me a lot of things that
17 I --

18 A We [unintelligible]. I mean, if I -- I usually
19 ask for the surgery, no doubt about it, you know.

20 Q Would you ask about use of controlled
21 substances, intravenous drug use?

22 A Yes. That one I ask.

23 Q Do you -- what would you ask with respect to
24 anything that would be blood or body fluid borne, anything in
25 that regard?

1 A I don't think I asked him about that, you know,
2 because not that I can see from my documentation.

3 Q I want to talk a bit about the -- well, let me
4 ask you this: How often did you see Mr. Washington over a
5 course of time? Did he come in annually or less than
6 annually?

7 A No. He always came annually. I might have seen
8 every, I would say, three, four, five months interval.

9 Q Since you -- just to get me a timeline on this,
10 you started seeing him in 1999 --

11 A Yes.

12 Q -- and then you would visit with him how often
13 through --

14 A Every three to five months.

15 Q Beginning in 1999?

16 A Yes.

17 Q Why so often?

18 A Because he has other medical problems too.

19 Q And what are those medical problems at that
20 time?

21 A He has diabetes, coronary artery disease,
22 hypertension, obesity. He has sickle cell trait. And hearing
23 problem, he has a hearing loss. And I think I already
24 mentioned about diabetes.

25 Q Just to educate us a bit on some of the blood

1 tests that you would periodically give him, I understand from
2 Mr. Staudaher's questioning that you would have liver
3 functioning tests administered; is that correct?

4 A That's correct.

5 Q And a liver functioning test will show whether
6 or not there's -- what the level of enzymes are in the liver;
7 is that correct?

8 A Yes.

9 Q Something like that?

10 A Yeah.

11 Q Am I right in that? Am I explaining that
12 correctly? I mean, if I'm a three-year-old, how would you
13 explain to me what a liver function test does?

14 A A liver function is a blood test which tests for
15 a couple of enzymes, protein, and that tells us the status of
16 liver function.

17 Q And does the liver function fluctuate at any
18 given time? I guess the enzymes is -- I didn't word that
19 right. I'm sorry. Do the enzyme levels change over time?

20 A No. They have a normal limits, you know. They
21 don't go beyond that. They are not the same number all the
22 time, but they have a range, you know. So they do fluctuate,
23 but they have a narrow range, you know. They stay within the
24 range.

25 Q These liver function tests are not designed to

1 determine whether the person has hepatitis C or B, correct?

2 A Yeah. We cannot say that it is B or C, because
3 we have to have the test. So you're right, enzymes are not
4 designed to diagnose --

5 Q You have to have a qualitative hepatitis C or
6 hepatitis B blood panel, correct?

7 A That is correct.

8 Q And that's ultimately what you've described here
9 that Mr. Washington eventually did receive, correct?

10 A That is correct.

11 Q What did you mean in response to Mr. Staudaher's
12 question about Mr. Washington having a fatty liver?

13 A That was a test that was done somewhere in
14 November on a CAT scan that shows that he had the fatty liver.

15 Q Oh, so that was in November of 2008. You had
16 mentioned that he was obese throughout your treatment of him
17 since the 1990's; is that correct?

18 A That is correct.

19 Q And that doesn't have anything to do with --
20 does his weight have anything to do with that?

21 A Well, you can have fatty liver if you are very
22 obese, you know. But not -- I don't recall that we ever did
23 the test for it.

24 Q So he could have had liver issues, but it wasn't
25 something that was tested for until 2008; is that fair to say?

1 A We didn't do ultrasound or CAT scan, but we did
2 do blood work for the liver function test, you know.

3 Q Okay. The liver function test that we already
4 discussed. All right. And were you aware that he had some
5 heart surgery, I think, in around 2005 or so?

6 A I remember I thought he had a stent, not the
7 heart surgery.

8 Q What is that?

9 A That means a cardiac catheterization and
10 somebody puts a spring-like device to open up the blood
11 vessels. That's the stent, you know.

12 Q Is that what goes up -- they cut through the leg
13 and put something up the vein?

14 A That is correct.

15 Q It's surgery, correct?

16 A Yes. It's a procedure.

17 Q And going back to the referral to the endo
18 center, you've said you sent him there for a screening
19 colonoscopy. Was there a particular reason why you thought he
20 needed to have a colonoscopy?

21 THE COURT: I see. Kenny.

22 Keep going, Ms. Stanish.

23 Ladies and gentlemen, we're going to try to go past,
24 a little bit past 5:00 today to finish up with this witness.
25 Is there anyone who has child care responsibilities? Is that

1 the note? Okay.

2 MS. STANISH: I'm almost done with my cross, Your
3 Honor.

4 THE COURT: What time do you have to pick your
5 daughter up?

6 JUROR NO. 4: I have to be there by 6:00.

7 THE COURT: I'm sorry. By 6:00?

8 JUROR NO. 4: Yes.

9 THE COURT: And where is she located?

10 JUROR NO. 4: She's at Greenspun, which is in
11 Henderson.

12 THE COURT: Okay. And you're obviously parked across
13 the street, correct?

14 JUROR NO. 4: Yes.

15 THE COURT: So what's the latest that you can leave?

16 JUROR NO. 4: Cutting it close, now, yes.

17 THE COURT: We did promise them that we would
18 typically be leaving by 5:00.

19 MS. STANISH: Sure, absolutely.

20 THE COURT: And so and the bailiff sometimes asks
21 ahead of time, but I know I asked him and I know he didn't.
22 So I'm sorry, Doctor, you are going to have to come back
23 tomorrow.

24 Ladies and gentlemen, I'm going to go ahead then and
25 excuse you and dismiss you until 9:30 a.m. tomorrow morning,

1 when we'll get started again.

2 Before I release you for today though, I must
3 admonish you that you're not to discuss the case or anything
4 relating to the case with each other or with anyone else.
5 You're not to read, watch or listen to any reports of or
6 commentaries on the case, any person or subject matter
7 relating to the case by any medium of information. Don't do
8 any independent research, and please don't form or express an
9 opinion on the trial.

10 If you would all please place your notepads in your
11 chairs and follow the bailiff through the rear door, we'll see
12 you at 9:30 tomorrow.

13 (Jurors recessed at 5:01 p.m.)

14 THE COURT: Sorry, Doctor, but they do have to --
15 with Safe Key they have to pick up by a certain time or they
16 call Child Haven or something, so.

17 State, in the future, if we think that there will be
18 an issue with trying to go long or you have experts or
19 something, let us know ahead of time, because then the bailiff
20 can ask them in a break. Sometimes they can make alternate
21 arrangements, but Safe Key is pretty strict on the time. A
22 lot of these daycares are pretty strict on the time. So just
23 make sure we know ahead of time so that we can at least give
24 them an opportunity. And I did tell them that we're typically
25 going to be ending at 5:00, so.

1 Sorry, Doctor, you have to come back. All right.
2 You're excused. I don't know if they want you to hang around
3 to talk, but that's up to the State.

4 Mr. Staudaher, heads up. Will you be calling the
5 other physicians first thing tomorrow, or you don't know yet?

6 MR. STAUDAHER: Pam has gone out to talk to them, so
7 I don't know when they'll be able to come back, but we'll
8 rework our schedule.

9 THE COURT: All right.

10 MR. STAUDAHER: I know one of them had a -- I don't
11 think was able to come back for tomorrow because of a full day
12 of patients.

13 THE COURT: Okay. Mr. Wright, do you want to be
14 heard at this point on the issue regarding the victims
15 describing their symptoms, or...

16 MR. WRIGHT: No. I'll object when it comes up. I do
17 object to any interview taking place of the witness while he's
18 on the stand testifying, but I mean --

19 THE COURT: I'm sorry. I don't understand.

20 MR. WRIGHT: I don't want the State interviewing him
21 before he finishes his examination.

22 THE COURT: Oh.

23 MR. STAUDAHER: Are you talking about this witness?

24 THE COURT: You're talking about this witness.

25 MR. WRIGHT: Yeah.

1 MR. STAUDAHER: No, I'm not.

2 THE COURT: All I meant is they might talk to him
3 about scheduling or something else, and they're obviously fine
4 to --

5 MR. WRIGHT: I wasn't suggesting they were. I was
6 just unclear.

7 MR. STAUDAHER: That's fine.

8 THE COURT: Okay. To do that. That's all I meant,
9 that he had to hang around if the State wanted him to, but I
10 was fine excusing him, so. So there's nothing else that we
11 need to discuss today; is that correct?

12 MR. WRIGHT: I do -- I'm going to make a record
13 tomorrow on the lack of accommodations for my client. I am
14 going to go back and --

15 THE COURT: Well, first of all, you didn't request an
16 accommodation after the witness, Mr. Washington, or the
17 witness, Mrs. Washington.

18 MR. WRIGHT: That's correct.

19 THE COURT: Okay.

20 MR. WRIGHT: What I have requested is they cannot
21 take -- we were going to have shorter days and we have had
22 9:00 to 5:00. Okay. And he is too exhausted. He cannot even
23 consult with me. When we get back I'll make my record, you
24 can say he's malingering or whatever. But the things I asked
25 for and thought we were going to get have not occurred, and he

1 is too tired. He slept on the couch during lunch.

2 THE COURT: Okay. My understanding or my impression
3 was the way we have left it was that there were certain
4 witnesses that were ones where you would really need to confer
5 with your client about those witnesses, and we would kind of
6 play it by ear in terms of taking breaks and things like that.

7 So, you know, maybe you and I had a misunderstanding,
8 but my impression was that -- I mean, I guess you have an
9 ongoing objection, and that's noted on the record, that you
10 wanted early days, and I said no --

11 MR. WRIGHT: I went through the list on it.

12 THE COURT: -- we're generally not going to have
13 early days. And then other than that, in terms of breaks or
14 specific witnesses, I thought that we would deal with those as
15 they came up, meaning you would alert the Court. So maybe we
16 had a misunderstanding.

17 Of course, you have an ongoing objection that you
18 wanted short days, and I said I wasn't going to issue a
19 blanket order that we were going to have short days. I said
20 that we were going to be handling it on a day-by-day basis
21 according to who was testifying.

22 So you did at the bench note that you would object to
23 going late today to accommodate the doctors that the State had
24 indicated were in the hallway. And as it happened, we didn't
25 go late today, meaning past 5:00, because the juror had a

1 conflict, so.

2 MR. WRIGHT: I guess we did mis-communicate, because
3 the record I thought I made was I was requesting time at the
4 end of direct, on certain witnesses I would ask for it and
5 these witnesses I did not need. But I need to consult with
6 him when I return to my office about today's entire events,
7 plus what we are doing tomorrow.

8 And that's why I said I wanted -- and I gave you the
9 precise hours that I thought I needed, and I understand you
10 said no. But I thought you said we were going to accommodate
11 in some fashion, and I'm just saying it has not happened. And
12 I'll go back, talk with him and figure out what he --

13 THE COURT: Well, first of all, this is the first --

14 MR. WRIGHT: -- about today, and then prepare for
15 tomorrow.

16 THE COURT: I'm sorry that we're speaking over each
17 other. This is our first day of testimony. So the only thing
18 that happened this morning was your opening statement, which
19 I'm assuming you didn't need to consult with him about.

20 MR. WRIGHT: Correct.

21 THE COURT: Then we had Mr. Santacroce's opening
22 statement, which I'm assuming you didn't have to consult with
23 him about. So the only thing that's happened today is Mr. and
24 Mrs. Washington, and they've both been excused, but you didn't
25 ask for a break to consult with your client about either one

1 of those.

2 Now we have Dr. Patel, who has begun his testimony
3 and, you know, certainly in terms of what he's testified about
4 going forward as it affects your cross or whatever, you, you
5 know, he's too tired to consult with you today. You have
6 the --

7 MR. WRIGHT: He doesn't have the abilities. I can't
8 make him go 18 hours a day. Okay.

9 THE COURT: Right. And so --

10 MR. WRIGHT: And so it isn't he's simply too tired.
11 It is getting it out of him because of his injuries, whatever
12 they are, and it isn't that I can keep doing it with him into
13 late at night, what happened today. That's why I asked for
14 the shortened procedures, so I could consult with my client
15 and utilize him, learn what it was today as I did with the
16 jury duty, and I'm just making the record that that -- I don't
17 see that happening.

18 THE COURT: Okay. Well --

19 MR. WRIGHT: I'm not going to be able to do it and be
20 ready at 9:30 in the morning.

21 THE COURT: Okay. Well, all I'm saying, this is our
22 first day of testimony. So, you know, to me, I guess what
23 you're asking is for what with respect to testimony, because
24 this is our first day of testimony. We only had --

25 Janie, what time did we start the testimony with

1 Mr. Washington?

2 And I understand you're looking at it in the
3 aggregate. We got here to start at 9:00, and then we had the
4 openings. But all I'm saying is, well, okay, set the openings
5 aside in terms of what you need to talk to him about, because
6 you don't need to talk to him about that. So now we have a
7 few hours of testimony and it's our first day of testimony.
8 So, you know --

9 MR. WRIGHT: I'll shortcut it. Because of his
10 deficiencies, I won't talk to him about the openings we had
11 today and what he thought about it.

12 THE COURT: Well, I don't why that that's relevant --

13 MR. WRIGHT: Okay. It's not.

14 THE COURT: -- to your defense.

15 MR. WRIGHT: I won't consult with him.

16 THE COURT: That's all I'm asking.

17 Well, what do you need to -- I mean, I'm asking, and
18 it may -- and I don't mean to be flippant, but why do you need
19 to consult with him about something that's already occurred,
20 meaning your openings? You know, those were --

21 MR. WRIGHT: Mine I don't particularly.

22 Mr. Santacroce's I do. I didn't --

23 THE COURT: Okay. That's -- that's germane, or
24 that's a good point that you do, and so --

25 MR. WRIGHT: And I do it when?

1 THE COURT: Well, you know, you've indicated that
2 Dr. Desai is better in the morning.

3 MR. WRIGHT: Right. And so I get him here at 6:00,
4 let's say I talk to him tonight about tomorrow's witnesses,
5 and I'll have him in my office at what, 6:00? All I'm
6 stressing and I understand the record and I'm not just saying
7 I want an ongoing objection, I am trying to get the ongoing
8 accommodations as issues come up.

9 THE COURT: Okay. Well, as issues come up then, I
10 think what you need to do is say, okay, I need this amount of
11 time, or I need, you know, to break earlier today or start
12 later --

13 MR. WRIGHT: That's what I need.

14 THE COURT: -- on the next day. And we're starting
15 at 9:30. But, you know, to me a normal time start of business
16 is 8:00 a.m. And if Dr. Desai is a morning person, you know,
17 to me to be at the office by 7:00 a.m. is not, you know,
18 unreasonable, but certainly 8:00 a.m.

19 I mean, the justice courts here start at 7:30, and I
20 think 8:00 a.m. is a normal time, you know. That's when, you
21 know, some courts start. I know at the DA's office the
22 official start time, I always tried to be there by 8:00 a.m.
23 So all I'm saying is I don't think it's unreasonable to
24 suggest that Dr. Desai be to your office by 8:00 a.m. to
25 begin, you know, discussing and preparation.

1 MR. WRIGHT: Okay. Because I have nothing else to
2 do.

3 THE COURT: And 7:00 a.m. is -- well, 7:00 a.m. isn't
4 that --

5 MR. WRIGHT: Everything is ready, all the files are
6 ready, everything I'm going to do when I learn out of a couple
7 hundred witnesses, you just think that's all magically ready.
8 Have you defended a case like this --

9 THE COURT: Well --

10 MR. WRIGHT: -- or prosecuted one like this? This
11 is -- requires a great deal of lawyer work aside from the
12 consultation work with my client. And I just think you're
13 taking a cavalier approach to what I am going through in
14 trying to defend it with him in his condition.

15 THE COURT: Well, first of all, I don't mean to take
16 a cavalier approach. Secondly, no, I have never defended a
17 case, nor have I prosecuted an eight-week case, but I
18 certainly have prosecuted complex fraud cases. And some of
19 this -- you know, you've had months to get ready.

20 So some of this should have been things that were
21 prepared ahead of time in terms of your approaches to
22 witnesses, what, you know, you thought you'd like to cover and
23 things like that. These are not things that are coming up
24 spur of the moment.

25 Now, I understand, you know, what Mr. Santacroce, I

1 don't know how much you talked ahead of time with him or what
2 you knew he was going to say in his opening statement, how
3 much cooperation there was there. So some of that may have
4 been new and surprising. But all I'm saying is in terms of,
5 you know, it's not like each day is a surprise and there, oh,
6 who is this witness and what are they going to say and that's
7 all new and news.

8 So I don't mean to be cavalier. All I'm saying is I
9 think a lot of this is anticipated and could have been
10 prepared ahead of time in the months leading up to this trial,
11 and could have been discussed with Dr. Desai ahead of time.
12 Now, in terms of things that are different or new that occur
13 each day, I understand that may be something that you need to
14 brief him on, you know.

15 But all I'm saying is I don't know how unforeseen any
16 of this is really going to be to where it's something that you
17 need to do on a day-by-day basis. So I certainly didn't mean
18 to suggest I was being cavalier or I was minimizing the time
19 you spend on this case. All I'm saying is a lot of this is
20 stuff everybody's known about for a long time and you've had a
21 long time to -- I know we disagree on that.

22 But the Court gave you, I believe, nine additional
23 months to get ready for this for the first date I had when the
24 case was transferred into this department. I believe it was
25 nine months. And there was an additional time given before

1 that from the time Judge Mosley had it. And actually, there
2 was a first set, so that's some months. I don't remember how
3 many months.

4 And then there was a second setting, and that was, I
5 believe, nine months. And then before that there was time and
6 continuances in front of Judge Mosley. So that's all I'm
7 saying, that, you know, I'm not looking at this as, oh, it's
8 all new information that you have to share and have Dr. Desai
9 digest and discuss with him. All I'm saying is I think that
10 there -- a lot of this could have been done --

11 MR. WRIGHT: The testimony in the courtroom he's
12 supposed to have heard before?

13 THE COURT: No. I'm not suggesting the testimony,
14 but I'm suggesting the substance of the testimony --

15 MR. WRIGHT: No, he hasn't heard the substance of the
16 testimony.

17 THE COURT: Well --

18 MR. WRIGHT: He hasn't heard the substance of
19 Mr. Washington's, nor have I heard the substance of it. I
20 haven't heard -- I thought I had the wrong file. I'm
21 thinking, is this the guy with the heart attack and every -- I
22 mean, with all of these medical problems. I'm thinking I've
23 got the wrong file. That's why I'm saying, Are you sure you
24 didn't have this, that, this and everything else.

25 Nor did I anticipate or expect the testimony of

1 Dr. Patel. And I don't know any way where I would have known
2 that. I have a file on Washington. I have a file on all my
3 witnesses like that. And that's the problem. I got 200 of
4 these things. And so on a given day I'm getting ready for 14
5 of them to haul over here in boxes.

6 And then I'm going to sit with him and explain what
7 we're doing tomorrow, and then tonight I'm going to go back
8 and talk about what happened here. And that's why someone
9 with diminished capacity is given additional time, so that
10 they can consult and participate in their own defense. I'm
11 not just supposed to jump in as a surrogate and handle it for
12 him.

13 THE COURT: State, anything on this issue of timing
14 and what should or should not have been anticipated?

15 MS. WECKERLY: No. I mean, we did tell him what
16 witnesses we were going to be calling and we intended, you
17 know, to continue to do that.

18 THE COURT: Continue to do that.

19 MS. WECKERLY: In terms of timing, I mean, I think
20 some of the issues with the jurors that we've had have been
21 unforeseen or unexpected and have sort of delayed our actual
22 start in the mornings.

23 THE COURT: You know, basically, I'm going to direct
24 the State to continue to tell you ahead of time who --

25 MR. WRIGHT: They have.

1 THE COURT: -- who the witnesses are. The only --
2 you know, maybe you and I mis-communicated and we can deal
3 with this on a case-by-case basis. But all I was saying,
4 Mr. Wright, is, you know, you say these accommodations -- this
5 is the first day. This is the first day that we've heard the
6 testimony.

7 And so perhaps I should have asked you to approach
8 the bench and asked what time you wanted to start, and I
9 didn't do that. And maybe in the future we can -- the Court
10 will do that. That's not a big thing for me to do. Whether
11 or not I start when you ask me to, I can't promise that. But
12 certainly that's what we can do going forward.

13 Like I said, I believed that as you needed to take a
14 break between the testimony you would request that. That
15 wasn't done and you said, okay, you didn't intend to. But
16 we've only had like 2 1/2 hours of testimony here today. So,
17 you know, to me, to say, oh, these accommodations aren't being
18 made, you know, really, as I just said, you know, the morning
19 and yesterday was all the opening statements.

20 We're only on the testimony for this afternoon, for
21 the later part of the afternoon. So just, I guess, be
22 mindful, Mr. Wright, of what I expect, which is when you feel
23 like you need more time or something like that, then, you
24 know, approach the bench and ask for it.

25 MR. WRIGHT: Yes, Your Honor.

1 THE COURT: You know, because I'm not a mind reader
2 and I don't know what -- I mean, I have a general sense that
3 percipient witnesses who had contact with Dr. Desai, that
4 those are witnesses you may need more time on. Beyond that,
5 you know, I'm not necessarily going to know where you need
6 more time and where you don't need more time.

7 So what I'm saying is it's your obligation to at
8 least ask for it, and then the Court will make a determination
9 whether or not you're given that time or accommodation or what
10 have you, or whether you're not.

11 MR. STAUDAHER: Your Honor, one issue related to
12 that, and it comes to obviously we're going to continue to try
13 and give them a heads up on who we're calling, and that really
14 depends in large part on scheduling and schedules of those
15 witnesses.

16 However, we don't want to be in a situation like we
17 were today, where we have doctors that are waiting out -- and
18 believe me, they're not happy at all about clearing their
19 patients and then having to be back either. I don't know when
20 they plan to be back. But we have some that are saying
21 basically, I'm done, call my lawyer kind of thing. And
22 that's, you know, we don't want to be in a situation like
23 that.

24 So if we get a list over that we think we're going
25 through this witness, this witness, this witness or whatever,

1 and the defense anticipates that there's going to be extensive
2 cross-examination, or that these witnesses are going to be
3 particularly long and that's an unrealistic, you know, lineup,
4 then we need to know that too, so that we don't have people
5 sitting there that are going to have to come back day after
6 day.

7 THE COURT: I mean, just a couple of things. You
8 know, don't put the witnesses -- I understand today you had
9 the -- you know, we started a little bit late because of some
10 issues with the jury, or a juror, you know. But just be
11 mindful that, you know, Mr. Wright doesn't even want to go to
12 5:00 o'clock. So we're going to try to end at 5:00 o'clock.
13 Be mindful, now we've identified a juror who has child care
14 issues where she has to pick her kids up in Green Valley at
15 6:00.

16 So what I'm saying is don't schedule the day so
17 heavily with witnesses that you're going to have problems
18 getting back here, that we're going to be running up on this
19 every day, number one. And number two, when you have
20 witnesses -- I understand today every witness was a problem.
21 But when you have witnesses like physicians, you know, try to
22 pull them up earlier in the day so we don't run into this.

23 And I understand the Washingtons, you had to get them
24 done because of their issues with, I guess, medical procedures
25 or whatever, tests. So, you know, just in the future, call

1 the -- I mean, just summarily, let's call the doctors first.

2 MS. WECKERLY: Yeah. I mean, part of it is we're
3 dealing with they want to come at a certain time because
4 that's when it's easier for them in their patient load. So I
5 mean, we're juggling a lot of things.

6 THE COURT: No, I understand. Doctors can be
7 difficult as witnesses and they're not here as experts, and so
8 they're less accommodating.

9 MS. WECKERLY: But I'll confer with Ms. Stanish,
10 Mr. Wright and Mr. Santacroce and try to get a reasonable
11 estimate on who we can get on.

12 THE COURT: Okay. And then, you know, if the doctors
13 are essential and they give you a problem about coming back,
14 then you can raise that issue with the Court and make whatever
15 requests you think are appropriate, and then we'll deal with
16 that at that time.

17 So anything else we need to discuss for today?

18 MR. WRIGHT: No, Your Honor.

19 MR. SANTACROCE: No, Your Honor.

20 THE COURT: All right. We'll see you all back here
21 at 9:30.

22 (Court recessed for the evening at 5:23 p.m.)
23
24
25

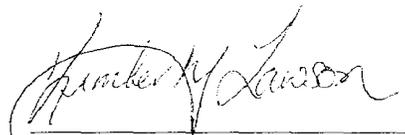
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
 Plaintiff,)
)
 vs.)
)
 DIPAK KANTILAL DESAI, RONALD)
 E. LAKEMAN,)
)
 Defendants.)
 _____)

CASE NO. C265107-1,2
CASE NO. C283381-1,2
DEPT NO. XXI

**TRANSCRIPT OF
PROCEEDING**

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

WEDNESDAY, MAY 8, 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.

Also Present: NIA KILLEBREW, ESQ.

RECORDED BY JANIE OLSEN COURT RECORDER
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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 8, 2012, 9:53 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Where is -- we're waiting on Ms. Stanish,
5 and --

6 (Pause in proceedings)

7 THE COURT: Just for those of you with cameras,
8 you're welcome to stay in the courtroom, but we are going to
9 have -- and this includes the still media. We are going to
10 have a brief hearing out of the presence of -- the general
11 presence of the jury that concerns a juror. It is not to be
12 filmed or photographed in any way. Again, it's a public
13 forum. You can sit here and take notes or whatever, but
14 you're not to film.

15 (Mr. Staudaher enters the courtroom.)

16 THE COURT: I just told them they could stay, but
17 they can't film this or record it with audio recording.

18 (Pause in proceeding.)

19 THE COURT: All right. To place on the record when
20 everyone's ready. All right. As the attorneys know and we've
21 discussed and has been placed on the record previously, there
22 have been a number of issues with the service of Juror No. 3,
23 Ms. Robinson, including claims of hardship. She was advised
24 that, you know, the Court would see if we could come up with a
25 solution so that she could still serve, and hope that her

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1 employer, if contacted, would be able to come up with a
2 solution so that she could continue to serve as a juror.

3 She was strictly admonished that she was not to
4 discuss anything relating to her claims of hardship and
5 possible excusal with the other members of the jury, obviously
6 for fear that might encourage other jurors who decided they
7 weren't that eager to serve after all to make new claims
8 relating to hardship and whatnot.

9 Additionally, obviously the jury has been repeatedly
10 admonished to not discuss the case or anything relating to the
11 case --

12 Oh, I'm sorry. You need to go back. Just wait in
13 the hallway, please.

14 -- with each other or with anyone else. Yesterday,
15 after the jury was dismissed and before I came home -- or
16 before I left for home, my bailiff informed me that he had
17 been privately contacted in the hallway by another juror,
18 Juror No. 17, and told that -- that Juror No. 3 had been
19 griping and complaining in the jury room regarding her
20 hardships and other burdens and serving as a juror.

21 And additionally, she had discussed the questioning
22 relating to Mr. Washington and had criticized Mr. Wright for
23 asking -- specifically criticized Mr. Wright, not using
24 Mr. Wright's name, but said and she couldn't believe that they
25 had asked that poor man to try to add those figures up.

1 Obviously this conduct would violate two admonitions
2 on the part of the Court, and I shared that with the
3 attorneys. I shared that with the attorneys who were still
4 here last night. Mr. Santacroce had already left. And I
5 shared that in chambers. We were able to catch all the other
6 attorneys before they left for the day.

7 And then, Mr. Santacroce, when you got here and the
8 others were here, I shared that with you in chambers as well
9 prior to the coming in this morning; is that correct?

10 MR. SANTACROCE: Yes, Your Honor.

11 MR. STAUDAHER: Yes, Your Honor.

12 THE COURT: All right. And my understanding is that
13 based -- both sides accept this as juror misconduct and are
14 concerned about it. Is that correct, Mr. Staudaher?

15 MR. STAUDAHER: Yes, it is, Your Honor.

16 THE COURT: And anything else?

17 MR. STAUDAHER: I'm sorry.

18 (Pause in proceedings)

19 MR. STAUDAHER: Yes, Your Honor. There's -- the only
20 issue is that the only concern that the State had was
21 regarding the first admonition of the judge -- that the Court
22 had made, which was the financial one that was a direct order
23 to her. The other one we thought was less problematic, but we
24 agree that that is technically something that the juror should
25 not engage in.

1 THE COURT: You mean the second admonition?

2 MR. STAUDAHER: Yes, the second admonition.

3 THE COURT: And the first admonition you are
4 concerned about?

5 MR. STAUDAHER: Right. The financial one. The issue
6 where you directly told her not to discuss that, and that is
7 exactly what she went back and did, so.

8 THE COURT: Right. Almost within a few hours of the
9 admonition that had been given by the Court. So it's not like
10 there were a few days in between the admonition and the time
11 the admonition was violated.

12 Mr. Santacroce, did you want to say something?

13 MR. SANTACROCE: Yes. I'm concerned about both
14 admonitions. I think they're equally serious. I'm concerned
15 about her discussing the evidence of the case with other
16 jurors when that's strictly prohibited at this juncture in the
17 trial. I have requested that each of the jurors be polled or
18 questioned as to what they heard, when they heard it, what
19 effect it had, and I think that it's cause for concern at this
20 point.

21 THE COURT: All right. Mr. Wright and Ms. Stanish.

22 MR. WRIGHT: I agree with Mr. Santacroce, agree she
23 should be excused as you were doing it.

24 THE COURT: And Mr. Santacroce, I believe you're also
25 requesting she be excused?

1 MR. SANTACROCE: Yes.

2 THE COURT: And is that the State's request as well?

3 MR. STAUDAHER: Yes, Your Honor.

4 THE COURT: All right. All parties are in agreement
5 that this juror be excused and that she be excused this
6 morning; is that true?

7 MR. STAUDAHER: Yes.

8 MR. WRIGHT: Yes.

9 THE COURT: All right. With respect -- obviously the
10 Court's very concerned that this juror, I think deliberately,
11 violated two orders from the Court about what to do and
12 committed misconduct. With respect to that tarnishing or
13 tainting the other members of the jury, the Court is less
14 concerned in terms of any taint on the, you know, fairness
15 with respect to their consideration of the evidence or
16 anything like that.

17 First of all, she did not comment on anything that
18 she had learned outside of the courtroom. She didn't do any
19 independent research or bring in any news articles or anything
20 of that nature. Secondly, she didn't comment on the evidence
21 per se, although she shouldn't have been commenting on the
22 questions or anything relating to that. But certainly her
23 comment would have been appropriate or would have been
24 something she could have made in the deliberation itself.

25 Had she waited until they were all deliberating and

1 wanted to say that about the question to Mr. Washington, that
2 would have been perfectly fine. So I think in view of that,
3 I'm not concerned that she somehow tainted the jurors in that
4 regard. You know, certainly we'll keep it open. Whether we
5 need to question them all or not, I don't think we need to do
6 that at this point for the reasons that I just said.

7 What I am going to do, based on the request of both
8 sides as well as the Court's grave concerns about what she's
9 done and what she may continue to do in the future, I think,
10 that's even more concerning to this Court, I am going to
11 excuse her this morning. Her conduct is sanctionable. I'm
12 not going to -- you know, I'll leave that open.

13 I am going to remind the jurors before we take our
14 break, whenever our first break is, I am going to remind them
15 of their duty of course, not to commit misconduct, of their
16 duty to inform the Court if they observe other jurors
17 committing misconduct.

18 And I'm going to remind them of why they're not to
19 discuss the evidence and try to explain to them the point of
20 them not getting in little groups and discussing anything that
21 goes on during the trial. And I think hopefully that will,
22 you know, address any future problems or anything like that.

23 All right. Anything else? I'm going to go ahead and
24 bring -- have the bailiff --

25 MR. STAUDAHER: No, Your Honor.

1 MR. WRIGHT: No.

2 THE COURT: Do I need to throw a ball at the door or
3 something? I don't know. Would you stick your head --

4 MR. STAUDAHER: Oh, I can --

5 THE COURT: She's going to go out into the hallway.
6 No, no. It's okay. The court clerk is going to do it.

7 (Juror No. 3 enters the courtroom.)

8 THE COURT: Ms. Robinson, as you know, we spoke
9 yesterday and you expressed concerns with hardship. And I
10 think the Court was pretty sympathetic to that and indicated
11 that we hoped that a solution could be found where you could
12 accommodate the interests of your employer through doing your
13 work, some of the HOA meetings at night and on the weekends,
14 and that they would continue to pay your salary and you could
15 serve. Unfortunately, your employer has indicated that that's
16 not a possibility.

17 However, what's more concerning to the Court today is
18 the fact that you were clearly admonished by me not to discuss
19 your financial hardship or anything relating to that in any
20 way back in the jury deliberation room with the other members
21 of the jury. You were also told as a part of the larger group
22 and admonished repeatedly that you were not to discuss this
23 case or anything relating to the case with each other or with
24 anyone else.

25 And it's come to the Court's attention that you did

1 in fact discuss and complain about the fact that you had to
2 serve and you were concerned about paying your bills and your
3 car payments or what have you, and that that was done in front
4 of the other jurors and with the other jurors after the
5 Court's admonition. And I'm giving you an opportunity to
6 speak to that at this time.

7 JUROR NO. 3: I think everybody in that room, to be
8 honest, but everybody is kind of on the same stress level.
9 Even prior to us being chosen as jurors, when we were sitting
10 out there being, you know, waiting to be interviewed, that was
11 one of the big, big concerns with everybody downstairs in jury
12 services.

13 I mean, there's a couple people that I've seen from
14 the very beginning, and everyone is kind of really to each
15 other, hey, you know, the situation, what's going on --

16 THE COURT: Well, first of all, that may be true, but
17 the bottom line is the report was about you, number one. And
18 number two, you are the person that we -- that I admonished in
19 here. So I'm not interested in what other people -- you think
20 other people are feeling or other people may be stressed out.
21 I mean, you know, it sounds to me like you admit that that did
22 happen.

23 JUROR NO. 3: I'm sure it did. I'm beyond to the
24 point where I'm like really stressed out. I don't know what
25 to do. I can't think.

1 So I may have said something not realizing that
2 others may have heard me. I was on the phone yesterday, in
3 the little hallway before you go into the actual room, with my
4 husband just kind of letting him know I don't know what's
5 taking place right now. So I don't know if that was heard or
6 not, but I'm not going to sit here and say, no, I didn't say
7 it. But I may have.

8 THE COURT: Okay. The Court also has information and
9 I received information that you were discussing the case, and
10 that you specifically mentioned that you couldn't -- you
11 didn't like or you couldn't believe that they were asking
12 Mr. Washington to calculate or add up those numbers.

13 JUROR NO. 3: No.

14 THE COURT: So you're saying that never happened, you
15 never said that?

16 JUROR NO. 3: No.

17 THE COURT: All right. And if other jurors were to
18 say they overheard you saying that, that would not be true?

19 JUROR NO. 3: I don't recall -- I don't -- once we
20 had that done yesterday, nothing that was discussed in here
21 was discussed in there. Everybody went in there, got back on
22 their phones and their iPads.

23 THE COURT: Well, and again, that includes something
24 you may have said on your phone or something like that.

25 JUROR NO. 3: I didn't talk on the phone yesterday.

1 I was checking work emails from my phone, so I don't --

2 THE COURT: I thought you were talking to your
3 husband in the hallway.

4 JUROR NO. 3: No. I was before we came out here and
5 after we had met with Mr. Washington. Whatever was discussed
6 here, it wasn't brought out like that in there.

7 THE COURT: Okay. So you're saying you never said
8 anything about Mr. Washington, or you --

9 JUROR NO. 3: No.

10 THE COURT: -- never complained about the questions,
11 or you never made a comment about any of the questions?

12 JUROR NO. 3: [Inaudible.]

13 THE COURT: I'm sorry?

14 JUROR NO. 3: No.

15 THE COURT: Okay. I'm going to go ahead and dismiss
16 you, but it's important that you understand --

17 JUROR NO. 3: I do.

18 THE COURT: -- that basically violating the Court's
19 orders constitutes juror misconduct. And I'm sorry that
20 you're stressed out, and I thought I made it pretty plain that
21 we, you know, you would be excused if it turned out to be a
22 true financial hardship.

23 So in my view there's absolutely no excuse for your
24 conduct. Once you knew that and that was explained to you, to
25 now say, oh, you were so stressed out and the other jurors