IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY JAMES RIVES, M.D.; and LAPAROSCOPIC SURGERY OF NEVADA, LLC, Appellants/Cross-Respondents, vs. TITINA FARRIS and PATRICK FARRIS, Respondents/Cross-Appellants.	Case No. 80271
BARRY JAMES RIVES, M.D.; and LAPAROSCOPIC SURGERY OF NEVADA, LLC, Appellants, vs. TITINA FARRIS and PATRICK FARRIS, Respondents.	Case No. 81052

APPELLANTS' APPENDIX
VOLUME 19

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

[1] These additional documents were added after the first 29 volumes of the appendix were complete and already numbered (6,493 pages).

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DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS, ET AL.,	CASE#: A-16-739464-C
Plaintiffs,	DEPT. XXXI
vs.	
BARRY RIVES, M.D.,	
Defendants.	

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
WEDNESDAY, OCTOBER 16, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 3

APPEARANCES:

For the Plaintiffs: KIMBALL JONES, ESQ.
JACOB G. LEAVITT, ESQ.
GEORGE F. HAND, ESQ.

For the Defendants: THOMAS J. DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

Case Number: A-16-739464-C

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Las Vegas, Nevada, Wednesday, October 16, 2019

[Case called at 9:31 a.m.]

[Outside the presence of the Prospective Jury]

THE COURT: Okay. We're on the record, it's 9:30. I've got counsel here, case 739464, outside the presence of the jury. As all aware that there was an objection raised yesterday to the witness, Mary Jayne Langan. And, Madam Clerk, do we have the correct spelling, by chance?

[Court and Clerk confer]

THE COURT: Counsel for Defense, you raised the objection, do you want to give us the correct spelling of Ms. Langan's last name, please?

MR. DOYLE: I just need to --

THE COURT: oh, no worries. It's okay, we'll get it.

MR. DOYLE: I have the records.

THE COURT: We show it as L-A-N-G-A-N. Does anyone --

MR. JONES: That's my understanding, Your Honor.

THE COURT: Okay. Is that close enough, everybody knows who we're talking about?

MR. DOYLE: Yes.

MR. JONES: Yes, Your Honor.

THE COURT: Okay. So give or take a letter or two, that's our understanding, it was Mary Jayne Langan, L-A-N-G-A-N, is what we understood by looking at the -- we looked at Plaintiff's pretrial

memorandum, pursuant to EDCR 2.67, filed on 9/30/2019, so we took the spelling from that. If somebody disagrees on a different spelling, that's the one we took it from. Okay.

So there was an objection raised. That objection was stated, not only filed in response to the first time that that name was brought forth by a Plaintiff in the ninth supplemental, also raised in Defendant's individual pretrial memoranda, and brought forth to the Court.

So as you all know, because the Court went through this analysis with regards to Plaintiff's motion to strike. You all are familiar, obviously, with NRCP 37(c)(1). "Failure to disclose or supplement an early response," right, or in this case, actually, it's a failure to disclose under (c)(1), email the standards of 37(c)(1).

When you look at 37(c)(1) you see that the party failed to provide information, or identify a witness, as required by Rule 16.1(a)(1), 16.2(d), or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless.

In addition to or instead of the sanction, the Court on a motion, or after giving an opportunity to be heard -- excuse me, and after and giving the opportunity to be heard, and may order payment, and inform the jury of the party's failure may impose other appropriate sanctions. The request here was, well, it wasn't through a motion, it was through the objections and the process.

So really, it's the same aspect, gave everyone an opportunity to be heard, you both had an opportunity to be heard yesterday. You all

knew about the objection, previously, and so you chose, presumably, not to bring it to the Court's attention earlier, through any motions, through OST or anything like that, you chose when you decided to bring it to the Court.

So you brought it orally, you didn't bring it through a written motion, so you each had the opportunity to orally argue what you wished to argue, but the Court looks at the standard. So we have to look at the standard, was it substantially justified or it's harmless? Well, the Court doesn't find it's substantially justified. I appreciate the candor of Plaintiff's counsel.

As you know the Court asks at the end, whether or not the issue was, was she hidden, or was it just failure to discover? Well, it's failure to discover, but the Court doesn't see it as a failure to discover, because as brought out on a couple of different points. One, she was in the records, she was in the St. Rose records.

While parties may have not seen her earlier, that's really -- the parties had an opportunity to find her, earlier, because it wasn't disputed that she was there, is was that she wasn't seen there. Well, not seeing her in a case from 2016 doesn't mean that she wasn't there, and she was a registered respiratory therapist.

So whether there may have been some initial, I guess confusion, whether she was St. Rose or somebody else, she was on the record, should have been identified, she could have been found, it's a 2016 case. The Court doesn't find disclosing her in September of 2019 with a trial set for October 14, 2019, which everybody knew about, since

you all's request pursuant to "X" number of extensions, since January of 2019.

Everyone's fully aware of when the trial was going to be, the Court doesn't find that that's substantially justified. Even if the Court would kind of see the difference between a Mary and a Mary Jayne, you still have a Mary at St. Rose, doing the role that she's doing, you still have from 2016.

You still have tons of different opportunities and ways to potentially find her, all sorts of different ways from discovery. I mean, this Court doesn't need to go through those litany of different ways, there's a whole bunch of different ways. And as various trial counsel, you all know those various ways, so she could have easily been, so it's not substantially justified.

So then you look to see if it's harmless. Well, counsel for Defense has explained why from his viewpoint it's not harmless, and the Court agrees. The Court doesn't see that it's harmless, because it's in the middle of trial, and even if you view it from the date initially disclosed and discussed, September 11th, the 2.67, not even taking into account that Plaintiff stated, and I appreciated the candor that they say they knew about it about a month ago, not the month before that, I'm taking the September 11th, because that's when it was first disclosed to Defense counsel.

So was it harmless, even taking into account, and the Court takes no position, because there is a disputed opinion between counsel whether there was or was not an offer to take the deposition. So even if I

were to give the benefit of the doubt to Plaintiff, that they did offer it, and I'm not saying it was, or was not, but even with that benefit of the doubt, September 11th, with the trial of October 14th, so far after when experts have already been disclosed, and there's been so much of the pretrial preparation, so the Court can't see that it's harmless, because Defense counsel stated that they would have tried to dispose her, and that it could have had a different aspect.

She is one of the medical, potential based professionals, which was at St. Rose, did some of the care and treatment, the Court can't say that it's harmless. Defense counsel stated that it would have been prejudicial to his client's case. The Court hasn't heard any response that it wouldn't have been prejudicial, and so in looking at all those factors, the Court can't find it's harmless.

And so since looking at the straight NRCP 37(c)(1), that would mean that Ms. Mary Jayne Langan, or Mary Langan, however you want to phrase her, would need to be precluded under the rules. The Court was looking if there was any equity argument, that the Court should be taking into account, independently. The Court can't see that there'd be any equity argument in this case that should be taken independently.

Once again, because she was in documents, and she was in documents that were readily available. In fact, regardless -- readily available to both sides. Because it's Plaintiff's own records, and I appreciate Plaintiff may not have known the individual's name, specifically, but at least she had some idea who Mary was, and she could have, maybe -- I'm not saying she should have, but easily identifiable to

her counsel, very own Plaintiff wanted to say who the various people that, you know, she worked with, and even if she didn't remember the individual there was a variety of different ways since 2016, 2017, 2018 through July 24th, 2019, pursuant to last extension on discovery, that she could have been added, and she wasn't.

And so the Court wouldn't even find that there's any additional equity-based argument that the Court's taking into account, and so therefore the objection is sustained, and Ms. Mary Jayne Langan, will not be able to testify; that's the Court's ruling. Okay.

MR. JONES: Thank you.

THE COURT: Does anyone need any clarification or follow-questions?

MR. JONES: No, Your Honor.

THE COURT: Counsel for Defense --

MR. DOYLE: No, Your Honor.

THE COURT: -- do you need clarification or follow-up questions?

MR. DOYLE: No, Your Honor.

THE COURT: Okay. So that's what the Court saw. That was the only outstanding matter that the Court saw it needed to take care of from any quote: "ruling" standpoint.

The Court does need to prepare the marshals, double check, and we had a juror missing, so he's double checking for our jurors. The Court is going to, in light of some things that happened yesterday, the Court needs to reiterate something, and I'm going to do it -- I'm going to

just generically use the word "counsel" okay, and don't anyone -- because I'm just going to generically use the word "counsel," because that's the word that this Court is going to choose to use.

There are clear rules of evidence on what are proper objections, and what are not property objections. Experienced counsel know what are proper objections, and what are not proper objections. Each parties' clients will continue to get a fair, impartial, fully appropriate trial. Do not want to have their counsel, by making inappropriate objections, to in any way imped their client's ability to get their fair, impartial trial.

So I will remind counsel that they need to follow the rules, they need to make proper objections. The parties don't make objections. Of course they know what the appellate authority says about the waiving them, but they need to be proper objections. Everybody knows the rules of evidence, everybody knows both factually, and legally what can and cannot be said, and people also know what factually is in existence in this case, and what legally can be said.

So all counsel need to ensure that what they're doing is appropriate, so that everyone's clients' best interests are taken into account. I know that the Court doesn't say any further on that, I'm sure it's going to be fully complied with. Thank you so very much for listening to that.

Marshal, do we have all of our jurors?

THE MARSHAL: No, Judge. We are missing one.

THE COURT: Is that in the box, or in the gallery?

THE MARSHAL: It's in the box 443, Tesfaye Andei.

THE COURT: Okay. So number 20 is again running late today. So counsel, it's about 10 minutes late. If you remember yesterday he came in about 15 minutes. Do you want to wait a few more minutes to see if Mr. Tesfaye Andei arrives?

MR. JONES: We prefer to wait a few minutes, Your Honor.

THE COURT: Counsel for Defense, is that amenable to you as well?

MR. DOYLE: Yes, Your Honor.

THE COURT: Okay. So let's wait a few more minutes.

Then at this juncture, because we did not receive any notification any reason that -- do we have any reason to believe he's not coming, correct? He didn't indicate anything yesterday, right? So we have every reason to believe he's just running late again today; is that correct? Is that correct? Yeah. We have every reason to believe. Okay. I just want to make sure, okay.

Since I do have another moment, then, I'm just going to remind the parties again, is remembering at all times when we're referencing the EDCR, do remember, and I'm sure everybody already knows this, there is the administrative order 19033, from March 12th, 2019, that equally applies to that EDCR. So it has some modifications to the EDCR, and I'm sure you're all also -- all are familiar that has to be taken into account, as well, with regards to the EDCR.

So at this juncture, where we're at, is once our jury comes back in, Defense counsel, you're in the midst of your voir dire

questioning, so we'll let you finish up. The hope is, that you know, you can get your jury selected and then we go into opening statements. We'll of course take the lunch break, and then I'm not sure now for opening statement, the Court has a question. The Court, once again depending on timing, okay, the Court is -- if it's a timing issue, if it has to be broken up before and after the lunch break, once again, depending on the timing of selecting the jury, the Court generally will not interrupt somebody in the midst of their opening statement.

So I would like to get an estimate of the time of each person, of your opening statements, so we can try and accommodate that, since you all said you already exchanged some slides and things. In fact, thank you, we've already got slides.

Plaintiff's counsel, your opening statement?

MR. LEAVITT: Your Honor, just over an hour. I timed it. It's going to take about an hour.

THE COURT: Okay. So when you say about an hour, I'm sure you can appreciate, I need to go clock minutes, not necessarily attorney minutes, because some people's hour may be a lot longer than 60 minutes, which are clock minutes.

MR. LEAVITT: Correct.

THE COURT: So would you mind kind of just -- I'm not sure exactly what your minutes are. So can I have it in minutes, approximately?

MR. LEAVITT: Sure. I was running between 55 and an hour-5.

THE COURT: Okay. So about 65. Thank you. I appreciate it. And, Defense counsel? In minutes too, please?

MR. DOYLE: Forty-five to 50.

THE COURT: I do appreciate it, thank you.

MR. DOYLE: And, Your Honor, you mentioned --

THE COURT: Just wait, just a second.

MR. DOYLE: Okay.

THE COURT: Hold on a second.

THE MARSHAL: Still no change.

THE COURT: Still no -- just one second.

[Court and Marshal confer]

THE COURT: Sorry, Defense counsel. You started to say something? Please go ahead.

MR. DOYLE: You mentioned something about having received slides, but I just spoke to Plaintiff's counsel, we figured it out.

THE COURT: It was?

MR. DOYLE: Oh, from --

THE COURT: This was provided to the Court. It says Ferris v. Rives, Defense visuals?

MR. DOYLE: Right. And I --

THE COURT: That's what I was referring to the slides.

MR. DOYLE: And I provided Plaintiff's counsel the ones I'd like to use for opening statement, I'm just waiting for a response.

THE COURT: The Court was not provided any objections from anyone, in a timely manner, so the Court, at this juncture just was

what it was, and the Court just mentioned -- the Court has what it has, and the Court just reads along when you all do your openings. If I'm presented with something, I'll be glad to read along, and I just say thank you.

MR. LEAVITT: Your Honor, we did object to them. They were exchanged, we objected to them --

THE COURT: You objected -- I'm sorry, did you provide anything to the Court?

MR. LEAVITT: No, Your Honor, we did not.

THE COURT: Okay. I just -- that's why the Court said it didn't receive anything; because I didn't, okay.

MR. LEAVITT: Okay.

THE COURT: So did you let Defense counsel know that you objected?

MR. LEAVITT: We did, Your Honor. And they objected to ours, so we withdrew ours.

THE COURT: And was anyone going to let the Court know about this at some point before opening statements, since you're at the very end of the voir dire process, or how are you, and were you planning on letting the Court know, by chance, if you wanted the Court to address anything? Were you just going to have the jury wait outside, and -- I mean, if there was objections, doesn't somebody maybe think that --

MR. LEAVITT: Yes, Your Honor. The exchange between counsel is they were going to whittle it down. He provided those with me this morning, we withdrew ours completely.

THE COURT: Okay.

MR. LEAVITT: And so I just --

THE COURT: So do you --

MR. LEAVITT: -- received them.

THE COURT: -- have any objections to Defendant's whittled down one?

MR. LEAVITT: I do. I have a few objections. They're not -- the pages aren't numbered.

THE COURT: Well, here's --

MR. DOYLE: No, they're numbered.

MR. LEAVITT: Oh, they are.

THE COURT: Okay. Counsel --

MR. LEAVITT: Where are they numbered?

THE COURT: Counsel, here's what's --

MR. LEAVITT: Oh, there.

THE COURT: -- going to make the most sense, right?

MR. LEAVITT: Right.

THE COURT: Let's; a) let me check with Marshal, to see if we have all our jurors, okay; b) we're going to probably take a morning break, to see if you all can work that out --

MR. LEAVITT: Okay.

THE COURT: -- all right? And then the Court's not going to have any idea, because remember I don't have a little down. I have this nice, very thick, so I will have no idea what you're talking about --

MR. LEAVITT: Fair enough.

THE COURT: -- right? Because no one's given the Court anything. So remember, once again, as much as I would love to have a crystal ball, I don't. So if you don't provide me something I won't know what you're referring to.

So in the absence of being provided something, that's my polite way of saying, if somebody is going to contest something, please give me a copy so I at least -- okay. I'd like to be fully informed and fully prepared. I take what I do very seriously, I like to be fully prepared. So --

MR. LEAVITT: Absolutely, Your Honor.

THE COURT: So why don't you --

MR. DOYLE: I can provide --

THE COURT: You have a copy of yours?

MR. DOYLE: May I approach?

THE COURT: Of course you may. Thank you so much. Okay. So let's find out --

[Court and Marshal confer]

THE COURT: Hang on a second. Let's see if we can try and take care of our juror issue first.

[Pause]

THE COURT: Okay. So the Marshal is going to check. First, we're checking with jury services to see if we have a phone number, to find out about Juror Number 20, Mr. Andei, badge number 443.

Marshal, would you mind checking one more time --

THE MARSHAL: Okay.

THE COURT: -- just to see?

And just to let you know, you're more than welcome to be anywhere. We now don't have any jurors that are going to sit in the right gallery, so you are no longer limited to the back row. Because we only are going to have jurors on the left gallery, the first two rows.

So from an observation standpoint you're more than welcome to stay there if you want, but you don't have any jurors sitting, coming in the right gallery, so you're welcome anywhere there, okay.

So the same thing, if you all have anybody from an observation standpoint, and the same thing, since I have not heard any objection from Plaintiff's counsel, I'm taking in the -- nothing's been raised, so people are more than welcome to use that table, because I've not heard any issues. My view is, if somebody raises an issue, then I will address it, okay.

MR. JONES: Your Honor --

THE COURT: Is that fair?

MR. JONES: Yes.

THE COURT: Okay.

MR. JONES: We have -- well, we are making an objection, we're going to figure that out separate.

THE COURT: I'm sorry. I was referencing the second table issue, as of the --

MR. JONES: Oh, I apologize. Thank you, Your Honor.

THE COURT: -- two days you all had said it was perfectly fine, that whoever could sit at the second table, and they did not need to be introduced. Since you have not said something differently, the Court

takes it as, if you end up having an issue you'll let the Court know, otherwise people can remain at the second table --

MR. LEAVITT: Perfectly fair Your Honor.

THE COURT: -- unless you raise it. Is that fair enough?

MR. JONES: Yeah. Absolutely.

THE COURT: That's what this Court was going with. Okay.

MR. JONES: Your Honor, we have one additional issue.

THE COURT: Just a sec. We now have all prospective jurors here, is that correct --

THE MARSHAL: Correct.

THE COURT: -- Marshal?

So would you maybe, like to get the jury picked first, in fairness to all the jurors, right?

MR. JONES: Yes, Your Honor. It's just the jury instructions. Both sides have them -- the curative jury instruction. We weren't able to agree --

THE COURT: Okay.

MR. JONES: -- we both have our own --

THE COURT: Okay. Then --

MR. JONES: -- and I would just like to submit them --

THE COURT: -- why don't you hand --

MR. JONES: -- to the Court.

THE COURT: Can you please each provide me your curative -- you're talking about the curative jury instruction pursuant to the evidentiary hearings of September 26th and October 7th --

MR. JONES: That is correct, Your Honor.

THE COURT: -- is the partial remedy?

MR. JONES: Yes. Precisely.

THE COURT: Feel free to present the Court with both of them.

[Counsel confer]

THE COURT: Are the two alternatives indicated, so that --

[Counsel confer]

THE COURT: And are these pre-instructions, or at the time the jury instructions are given at the end of the case.

MR. LEAVITT: Pre-instruction.

MR. JONES: Pre-instruction.

THE COURT: Sorry, which one?

MR. LEAVITT: Pre-instruction, Your Honor.

THE COURT: So there's an agreement that it can be a pre-instruction, it's just two alternative methods; is that what it is, two alternative requests?

MR. JONES: It's our understanding, Your Honor.

THE COURT: Okay.

MR. DOYLE: Yes. And our would be labelled D-18. I see Plaintiff has their labeled P-16, and ours should say D-18, by my count.

THE COURT: I wouldn't know, since none of the other ones had an Ds on it, or any numbers on it.

MR. DOYLE: I counted.

THE COURT: Okay. So I'll insert the 18. So at this juncture

we now have all our prospective jurors, would you like them to be called in?

MR. JONES: Yes, Your Honor.

THE COURT: Okay. Thank you. And your last observer, heard an understood, and she chooses to be in the back row, versus table?

UNIDENTIFIED SPEAKER: I just didn't want to interrupt at all.

THE COURT: The Court takes no position one way or another. I'm just not sure if you heard that exchange. So once again, people are welcome to be anywhere in that gallery, if they choose to be so. The three individuals that were welcomed to be at the table previously, Plaintiff's counsel say they have no objection, and they can stay at the table if they wish to; is that correct?

MR. JONES: Exactly, Your Honor.

MR. LEAVITT: That's correct, Your Honor.

THE COURT: And your additional person can be anywhere on your side, as well. You know, now you can pull up another chair on your side, if you want to.

MR. JONES: Absolutely.

THE COURT: Okay. So you understand. Okay. Because from the Court's position, unless somebody raises an objection, those are for you all. Okay. Feel free. Okay. Jury is coming in, in just a second. And, yes, you are correct in turning off your phone. Thank you. And you have your pocket mic and you're set on that? Perfect. Okay.

[Court and Clerk confer]

THE COURT: Is someone from your office notifying Ms. Mary Jayne Langan, so she doesn't inadvertently show up?

MR. JONES: Absolutely. Of course, Your Honor, yes.

THE COURT: Okay.

MR. JONES: We already notified her she wouldn't be here today.

THE COURT: Okay. No worries, I just wanted to make sure.

MR. JONES: Thank you.

THE COURT: I would hate for someone to inadvertently show up and be sitting out in the hallway.

MR. JONES: Us too.

MR. DOYLE: I have to turn this off when we come to sidebar, correct?

THE COURT: Anytime, yes.

MR. DOYLE: I don't think I --

THE COURT: Otherwise, you'd be broadcasting to the entire courtroom what we're saying.

MR. DOYLE: Okay.

THE COURT: The other way is, you can also take it off your lapel and put it down.

THE MARSHAL: Ready, Judge? Everybody ready?

MR. DOYLE: Yes.

THE COURT: Yes. Thank you so much.

THE MARSHAL: All rise for the jury.

[Prospective Jurors in at 9:54 a.m.]

[Within the presence of the prospective jurors]

THE MARSHAL: All jurors are accounted for. You may be seated.

THE COURT: Welcome. Well, welcome back ladies and gentlemen. I hope everyone had a very nice relaxing evening. You know the very first question I'm going to ask -- well, after I welcome you, of course, right? Everyone did follow the Court's admonishment, right?

GROUP RESPONSE: Yes.

THE COURT: I didn't hear you back there in the gallery?

GROUP RESPONSE: Yes.

THE COURT: Thank you so much. I do appreciate it. And thank you for the courtesy. I saw some people taking off their hats and making sure that their phones are completely off. I do appreciate it. That's so very polite of you that came in too.

Just a friendly reminder, a couple of people were a little bit late. We were glad and ready to get started on time, so unfortunately when you come a little bit late, it does mean that we have to wait for everyone to be here. But without further ado, as you recall we were in the midst of Defense counsel asking voir dire questions.

So, Defense counsel, feel free to continue with your voir dire questions. Thank you so much.

MR. DOYLE: Thank you, Your Honor.

Good morning everyone.

GROUP RESPONSE: Good morning.

MR. DOYLE: I hope you all slept well, I did.

How many of you have had the experience of trying to remove wallpaper from a wall, anyone? Mr. Johnson?

PROSPECTIVE JUROR 441: Johnson, 441.

MR. DOYLE: Tell me about the experience you had removing wallpaper?

PROSPECTIVE JUROR 441: Oh, just taking it -- peeling it off the wall, and I had stuccoed the ceiling up again, or replace the sheetrock, and replace the whole wall, and recover.

MR. DOYLE: Were you able to peel the wallpaper off in one piece, or did you --

PROSPECTIVE JUROR 441: No just --

MR. DOYLE: Okay.

PROSPECTIVE JUROR 441: -- piece-by-piece.

MR. DOYLE: The wallpaper was stuck to the wallboard?

PROSPECTIVE JUROR 441: Yeah. I stuck it too good.

MR. DOYLE: The first time?

PROSPECTIVE JUROR 441: The first time.

MR. DOYLE: Did you try and remove it all in one piece?

PROSPECTIVE JUROR 441: No, it was just -- no, I just took it off piece-by-piece, moved right along.

MR. DOYLE: Okay. Have you ever tried to take, you know -- have you ever paid a bill, put the slip in the envelope, lick the envelope close, and then realized the check was sitting there, and you needed to get the envelope back open again, to get the check in?

PROSPECTIVE JUROR 441: Yes. Yes, sir.

MR. DOYLE: And can that prove to be a difficult task?

PROSPECTIVE JUROR 441: It can prove, yes.

MR. DOYLE: Things can tear and rip?

PROSPECTIVE JUROR 441: Correct.

MR. DOYLE: Who else has had an experience with wallpaper. Mr. Barrios?

PROSPECTIVE JUROR 366: Barrios, 366. Yeah. It's not an easy task.

MR. DOYLE: Have you tried to remove the wallpaper, and tried to get it off in one piece?

PROSPECTIVE JUROR 366: It doesn't happen.

MR. DOYLE: No

PROSPECTIVE JUROR 366: No.

MR. DOYLE: How about with an envelope or peeling a label off an envelope. Ever had that experience?

PROSPECTIVE JUROR 366: No. My wife does the bills.

MR. DOYLE: Okay. All right.

Mr. Hernandez?

PROSPECTIVE JUROR 387: Hernandez, 387.

MR. DOYLE: If I recall correctly you mentioned that you like remodeling shows:

PROSPECTIVE JUROR 387: Yes.

MR. DOYLE: And have you watched remodeling shows where a painter, for example, might use a brush, and another painter might use a roller instead?

PROSPECTIVE JUROR 387: Yes.

MR. DOYLE: Do you understand the concept, that when faced with a given task that there can be different tools that one could use to accomplish that task?

PROSPECTIVE JUROR 387: Yeah.

MR. DOYLE: Some people might be more comfortable using a roller?

PROSPECTIVE JUROR 387: Yes.

MR. DOYLE: Some people might be more comfortable using the paint brush to accomplish the same task.

Who works on cars? Anyone do their own mechanics? Mr. Harker, if we could get the microphone down.

PROSPECTIVE JUROR 370: Harker, 370.

MR. DOYLE: Do you do your own auto repair?

PROSPECTIVE JUROR 370: Most of it.

MR. DOYLE: All right. Do you sometimes have a selection of tools available to you, that you can use to accomplish a given task?

PROSPECTIVE JUROR 370: Yes. Hammer and a screwdriver.

MR. DOYLE: All right. Those are probably the basics for car repair. I assume you would, you know, if someone needs to, let's say, for example, nail a nail, some might use a hammer, some might use a nail gun?

PROSPECTIVE JUROR 370: Nail guns.

MR. DOYLE: You would use a nail gun?

PROSPECTIVE JUROR 370: For a lot of -- for a lot of nailing, I

would.

MR. DOYLE: Okay. But do you understand the concept that there might be some people who are more comfortable using a hammer, rather than a nail gun?

PROSPECTIVE JUROR 370: Yes.

MR. DOYLE: Do you have an quarrel with the notation -- there's been a discussion about tools, do you have any quarrel with the notation that if there's a given task to be accomplished, there might be a selection of tools to accomplish that task?

PROSPECTIVE JUROR 370: Yeah. It kind of depends on your level of expertise, you might have a novice versus someone who's more professional, and their line of tools may be better as a professional, and a novice may not have the means to either, you know, own that tool, or know how to use that more -- you know, that more efficient tool. He may not need it, because he may not do the task as often, also.

MR. DOYLE: But, you know, for example, fixing cars, can there be different kinds of wrenches that you can use?

PROSPECTIVE JUROR 370: Yes.

MR. DOYLE: And, you know, if you have to, do you typically use metric, or the English?

PROSPECTIVE JUROR 370: I'm a metric guy.

MR. DOYLE: Okay. I can never do that conversion. But, you know, if you need to take -- if you need to unbolt something, do you have a selection of wrenches that you could use to accomplish that?

PROSPECTIVE JUROR 370: Yes.

MR. DOYLE: And have you, over the years, developed a certain preference for certain particular type of wrench, if you have to do a particular type of job?

PROSPECTIVE JUROR 370: Air tools work better.

MR. DOYLE: Okay. Less strain?

PROSPECTIVE JUROR 370: Quicker, more efficient.

MR. DOYLE: Anyone else at home, perhaps a hobby, or perhaps at your work where you use tools and you fix things, either at home, or at work, and you have a selection of tools or devices that you could use. Anybody in that situation, and if so, just pop your hand up, please.

Ms. Fossile?

PROSPECTIVE JUROR 444: Yeah. Fossile, 444. Yeah. I do some sewing and you use different scissors between cutting paper and fabric.

MR. DOYLE: And do you have more than one kind of scissors that you could use for paper or fabric?

PROSPECTIVE JUROR 444: Yes. When I can find -- find them. If I remember where I put them, yeah.

MR. DOYLE: All right. Now as long as you have the microphone, Ms. Fossile, if I recall correctly you test video games.

PROSPECTIVE JUROR 444: Yes.

MR. DOYLE: And when you're testing video games, if you suspect something is not correct, but it hasn't revealed itself, do you typically keep watching and testing until the issue does reveal itself?

PROSPECTIVE JUROR 444: Yeah. Just depending on the severity of the issue, and what task I'm on.

MR. DOYLE: Explain that for me, please?

PROSPECTIVE JUROR 444: If I see an issue that isn't that huge of a severity, and I'm on task that is a higher severity, we typically will then only try to research a bug, right at that moment, that is a high severity, otherwise we would have to just write it down and put it on the back burner for later.

MR. DOYLE: Have you ever been in a situation again when you're testing video games where you -- you're trying to fix a problem, but you don't know exactly what is wrong or what the problem is?

PROSPECTIVE JUROR 444: Yes.

MR. DOYLE: How does that come up in your work?

PROSPECTIVE JUROR 444: It's very frustrating. With -- at least with the current developer that we're working with because they typically want 100 percent repro [phonetic] on how to figure out how to do -- make that issue occur again.

MR. DOYLE: Okay. So but you as the testing person, how do you go about evaluating and assessing that?

PROSPECTIVE JUROR 444: Very -- just different metrics. Let's see. In my position, I'm usually one of the ones who can figure out what's going on, so I don't always need help from someone who is more experienced. But yeah, if I need further help, then yeah, I get somebody who's more -- have more experience or just to get a different perspective.

MR. DOYLE: Okay. Have you ever been in a situation where you're trying to fix a problem and you're doing your best to fix that problem; but then in doing so, there's yet another problem?

PROSPECTIVE JUROR 444: Yes.

MR. DOYLE: Again, that comes up in your job testing video games?

PROSPECTIVE JUROR 444: Yeah.

MR. DOYLE: Has anybody else been in that situation or have that situation at work where you're called upon to look at a problem or a situation, assess it, figure out, try to figure out what is wrong and as you're trying to correct or fix the problem, you cause yet another problem? Anyone encounter that sort of situation in their work or perhaps at home if you're fixing something? Anyone?

Ms. Baker.

PROSPECTIVE JUROR 424: Baker, 424.

MR. DOYLE: We didn't get to talk yesterday.

PROSPECTIVE JUROR 424: That's okay.

MR. DOYLE: I know. My notes from two days ago say party to lawsuit, but that's all I jotted down. Could you tell me what that was about?

THE COURT: And counsel is, of course, not asking that anything that may be subject to any confidentiality agreement, any settlement agreement which you cannot disclose any type of information, that would go for anyone if you're subject to anything and you get asked a similar type question. It's only things that you are able

to disclose and anything that, obviously, is pending or if there's something of such confidential nature that you're not sure, you can always whisper it into the marshal's ear, and we can -- I can have counsel approach the bench. Okay?

MR. DOYLE: Thank you for the clarification.

THE COURT: No worries. It's just some people don't understand that that's not something you're being asked in open court to disclose. Go ahead.

MR. DOYLE: Okay.

THE COURT: Thank you so much.

MR. DOYLE: With that thought in mind, what can you tell me about the lawsuit?

PROSPECTIVE JUROR 424: It's an ugly story, but it was 13 years ago. So I don't mind talking about it. And all the parties are pretty much -- the party who was accused is deceased so I can talk about it. My sister was murdered by her husband who then committed suicide. And I was assigned as the guardian for their two children. And I was involved in the lawsuit against his estate both as the guardian for the children and the -- and on behalf of my parents.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 424: And myself.

MR. DOYLE: And did that end in a way that was satisfactory or unsatisfactory for you?

PROSPECTIVE JUROR 424: Yes, it was satisfactory.

MR. DOYLE: Okay. And then another note that I made about

you was something about surgery and mesh. Was this a surgery with mesh that was for you, yourself, or were you referring to a family member or close friend?

PROSPECTIVE JUROR 424: No, I don't have -- I don't have mesh. I had a lap band surgery and then it had to be revised.

MR. DOYLE: Oh. Okay. The lap band surgery that you had and the fact that it had to be revised was there something about the fact that you had to have the revision, or the first surgery didn't work that made you upset or angry at the first doctor?

PROSPECTIVE JUROR 424: When I signed the consent form, I was told that there was a chance that the lap band would slip. And after about five years, it did slip. And so they had to go back in and put in a new lap band.

MR. DOYLE: Did you go back to the same surgeon?

PROSPECTIVE JUROR 424: I did.

MR. DOYLE: Okay. And was that here or elsewhere?

PROSPECTIVE JUROR 424: In Texas.

MR. DOYLE: Okay. And as a result of having that second surgery, any problems or difficulties afterwards?

PROSPECTIVE JUROR 424: None until just recently, and it slipped again. So I have to decide whether I want to redo it or not.

MR. DOYLE: Okay. Well, good luck with that then. And Ms. Baker, if my notes are correct, I'm not going to speak specifically about pumpkin pie, but that you like to bake pies and cakes?

PROSPECTIVE JUROR 424: I do, yes.

MR. DOYLE: And do you find that baking is both a -- there's a science to it and an art to it?

PROSPECTIVE JUROR 424: Absolutely. Yes.

MR. DOYLE: Explain to me that notion of baking having science and art.

PROSPECTIVE JUROR 424: Right. So when you are creating something, you can feel free to be as creative as you want in the decorating part. But the actual baking there has to be a correct balance of ingredients so that the cake or cookies or whatever rises to the correct, you know, correct height and gets done all in the same manner, all evenly. You have to be very careful about measuring.

MR. DOYLE: So have you ever been in a situation when you've been baking, you've done all the measurements right, you've followed the recipe or however you keep track of the measurements, you've done everything you've done before; but on one particular occasion, it doesn't rise?

PROSPECTIVE JUROR 424: Yes.

MR. DOYLE: Or on -- have you had an occasion where it hasn't cooked evenly throughout?

PROSPECTIVE JUROR 424: And your cheesecake cracks, yes.

MR. DOYLE: And when that's happened to you, to what did you attribute the fact that it didn't rise, or it didn't cook evenly all the way through even though you followed the --

PROSPECTIVE JUROR 424: I blame the weather.

MR. DOYLE: -- recipe, if you will, and the recipe you used

perhaps dozen of times before?

PROSPECTIVE JUROR 424: I blame the weather. I never blame myself.

MR. DOYLE: Okay. All right. Anybody else that bakes? I can't remember now. I thought there might have been -- okay. Thank you, Ms. Baker.

Mr. Diaz.

PROSPECTIVE JUROR 357: Diaz, 357.

MR. DOYLE: I'm coming back to the tool notion I -- because I -- if I recall correctly, you spoke about lawn mowers?

PROSPECTIVE JUROR 357: Yes.

MR. DOYLE: Do you use a push mower or a power mower?

PROSPECTIVE JUROR 357: I haven't used a lawn mower in years.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 357: And when I did, it was for my mom's house. It was a riding lawn mower.

MR. DOYLE: Okay. So you didn't have to --

PROSPECTIVE JUROR 357: I broke it so --

MR. DOYLE: Okay.

PROSPECTIVE JUROR 357: I broke it. My brother fixed it.

MR. DOYLE: All right. But in terms of mowing the lawn, I assume you're okay with the notion that some people might like to use a power mower and some people might like to use the push mower, some others might just like to ride and perhaps --

PROSPECTIVE JUROR 357: Yes.

MR. DOYLE: -- watch TV and have a beer?

PROSPECTIVE JUROR 357: Yes.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 357: Yes, I do understand that. Yes.

MR. DOYLE: Okay. Do you work with tools at all?

PROSPECTIVE JUROR 357: The main tools I work with would be my handcuffs, my baton and my notebook and my pen.

MR. DOYLE: All right. Probably not a lot of variations on handcuffs and batons?

PROSPECTIVE JUROR 357: No.

MR. DOYLE: Okay. If we could hand the microphone to Ms. Thomas, please.

PROSPECTIVE JUROR 418: Thomas, 418.

MR. DOYLE: Good morning.

PROSPECTIVE JUROR 418: Good morning.

MR. DOYLE: There were some questions yesterday about sports and sports teams.

PROSPECTIVE JUROR 418: Uh-huh.

MR. DOYLE: And you play basketball?

PROSPECTIVE JUROR 418: Yeah, I did. Not really now.

MR. DOYLE: Were there any other sports that you engaged in regularly besides basketball?

PROSPECTIVE JUROR 418: Nope.

MR. DOYLE: And in basketball, what's the role of the

referee?

PROSPECTIVE JUROR 418: To call out what the player did wrong or to -- yeah.

MR. DOYLE: Did you sometimes have disagreements with the referee and a decision they made about you?

PROSPECTIVE JUROR 418: Yeah.

MR. DOYLE: And did -- was -- how would you go about resolving that in your mind?

PROSPECTIVE JUROR 418: I -- normally, I'd just be mad. And just next play just change what I did --

MR. DOYLE: Okay.

PROSPECTIVE JUROR 418: -- from the first time. The next play I'll change it up.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 418: Do something different.

MR. DOYLE: You mentioned the other day you were one of the jurors that said something about not being able to judge, and I wanted to follow up on that. Could you explain what you were thinking the other day when you made that comment?

PROSPECTIVE JUROR 418: Yeah. I just couldn't go about judging somebody for what they did because who am I, you know what I'm saying? We all got our faults or whatnot. I wouldn't want nobody judging me because of something that I did. Or I may think that it was right, but to them it's like nah, it's wrong so --

MR. DOYLE: How would you feel if you're selected as a juror

in this case and you have to listen to the evidence and judge the evidence and judge the witnesses and come to a decision?

PROSPECTIVE JUROR 418: It will be a -- it will be difficult because, like I said, I'm not -- I couldn't live with that. But I mean, obviously, if I was picked, I wouldn't have a choice so I would do it.

MR. DOYLE: Okay. If you were picked to sit on this jury, do you have some question in your mind given your thoughts about judging whether you could be completely open and neutral, if you will?

PROSPECTIVE JUROR 418: I can be neutral and open.

MR. DOYLE: Okay. Thank you.

PROSPECTIVE JUROR 418: Uh-huh.

MR. DOYLE: I suspect during this trial, there's going to be some medical illustrations, perhaps images of inside a person's body. Is anyone so squeamish -- I mean I -- my wife loves horror movies. I can't stand them. But is anybody so squeamish that they think they'd have a hard time if you had to look at a medical illustration or an image of inside somebody's body? Let's go to Ms. Costa.

PROSPECTIVE JUROR 448: Costa, 448.

MR. DOYLE: Tell me what you were thinking -- excuse me. Tell me what you were thinking as I was asking that question.

PROSPECTIVE JUROR 418: My stomach instantly turned. Just the thought of having to look at images of like a broken bone or like anything like that, I get instantly queasy.

MR. DOYLE: What about medical illustrations rather than, you know, say a specific photograph of inside a specific person's body

but illustrations of what it looks like inside the body? Would those cause you to be --

PROSPECTIVE JUROR 418: Like a drawing? As long as it's not morbid.

MR. DOYLE: Well, color illustrations, yes.

PROSPECTIVE JUROR 418: If it does not look morbid, then it's okay. But if there's actual pictures, then that I can't handle.

MR. DOYLE: And when you say actual pictures, what do you mean by that?

PROSPECTIVE JUROR 418: Like real people, real things.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 418: Real body parts, blood, all that. Can't do it.

MR. DOYLE: Okay. Okay. I don't think we're going to have that.

PROSPECTIVE JUROR 418: Okay. Just in case.

MR. DOYLE: Okay. If you could give the microphone to Ms. Liddell, please.

PROSPECTIVE JUROR 391: Liddell, 391.

MR. DOYLE: I saw your hand go up.

PROSPECTIVE JUROR 391: Oh, yes. I turn my head away when anything is like -- even TV or -- I can't even see my own blood drawn.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 391: I'm sorry. I took my daughter to

the ER and I passed out right next to her. So I -- I'm sorry.

MR. DOYLE: Okay. Well, I don't think there's going to be anything that's going to be graphic like that.

PROSPECTIVE JUROR 391: Okay.

MR. DOYLE: So, all right. I think, Mr. Hocking, you had your hand up.

PROSPECTIVE JUROR 412: She said -- oh, Hocking, 412. She said everything that I was going through.

MR. DOYLE: And I hate to make you verbalize it, but would you mind?

PROSPECTIVE JUROR 412: I just get squeamish.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 412: I could almost feel the pain that they are suffering.

MR. DOYLE: Explain that, please.

PROSPECTIVE JUROR 412: When I see an injury, it's like it's my body. It's unexplainable but, you know, that's the way it is.

MR. DOYLE: Let me ask you a different question, Mr. Hocking, and then I might come back to that based upon something we were talking about yesterday. And my question is, are you concerned that your beliefs will keep you from being a fair and impartial juror?

PROSPECTIVE JUROR 412: Most likely.

MR. DOYLE: And why do you believe it's most likely that your beliefs will keep you from being fair and impartial?

PROSPECTIVE JUROR 412: Like I told you yesterday, I do not

judge anybody. I will not judge.

MR. DOYLE: And do you believe that if selected as a juror in this case that your beliefs will cause you not to judge anyone in this case, either side?

PROSPECTIVE JUROR 412: Most likely.

MR. DOYLE: And if -- and that's -- there's nothing wrong with that and that's perfectly fine. We just need to know this sort of information in advance. It sounds like this would not be a good case for you to sit on?

PROSPECTIVE JUROR 412: Definitely not.

MR. DOYLE: And this would not be a good case for you to sit on definitely not because why?

PROSPECTIVE JUROR 412: I just wouldn't be comfortable.

MR. DOYLE: And I'm hearing you say, and don't let me put words in your mouth and please correct me if I'm wrong, but given your beliefs and perhaps adding into it any illustrations or drawings we might have, what I'm hearing is that you're not going to be able to be fair and impartial to either this side or my side?

PROSPECTIVE JUROR 412: Correct.

MR. DOYLE: Okay. I forget who -- I don't know if it was yesterday or two days ago, but who were the football people? That liked -- oh, Mr. Root. Could we have the microphone to Mr. Root?

PROSPECTIVE JUROR 361: Root, 361.

MR. DOYLE: How often -- or how much do you like football?

PROSPECTIVE JUROR 361: I watch every Sunday. I try to

catch Thursday games. My wife [indiscernible] when they [indiscernible].

MR. DOYLE: There was some questions about the quarterback and the role of the quarterback. Do you remember those?

PROSPECTIVE JUROR 361: Yeah.

MR. DOYLE: In professional football, who's actually calling the offensive plays?

PROSPECTIVE JUROR 361: The head coach or the offensive coordinator.

MR. DOYLE: And in professional football, who's actually calling the defensive plays?

PROSPECTIVE JUROR 361: Defensive coordinator, some of that's the head coach.

MR. DOYLE: And do you find that too often be true in college football as well?

PROSPECTIVE JUROR 361: Yeah, definitely.

MR. DOYLE: So where does the quarterback fit into all of that other than just maybe having a good arm or can run fast?

PROSPECTIVE JUROR 361: Well, sometimes they give him, you know, permission to change the play as they're making decisions at the line or -- yeah, something like that.

MR. DOYLE: So the quarterback in your experience isn't someone who's just standing alone making all of the decisions themselves? They're part of a team of people that are assisting with making those decisions?

PROSPECTIVE JUROR 361: That's correct.

MR. DOYLE: And then the linemen probably just have to follow the decisions?

PROSPECTIVE JUROR 361: Yeah.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 361: Exactly.

MR. DOYLE: Okay. Both on the offensive and the defensive lines?

PROSPECTIVE JUROR 361: Yeah.

MR. DOYLE: Anyone else have those same thoughts or perhaps different thoughts about football and professional football and how it actually works? Anyone? Mr. Inscore.

PROSPECTIVE JUROR 388: Inscore, 388. Pretty much exactly what he said. Quarterback can call audibles to change up the play if he sees the need to.

MR. DOYLE: Okay. Does anybody have a quarrel with that notion that at least in professional and college football that the quarterback is just part of a team of people making decisions about what to do? Anybody have a quarrel with that notion or think it's actually something different? Mr. Barrios, I see you're nodding your head. Maybe we'll just give you the microphone for a moment.

PROSPECTIVE JUROR 366: Barrios, 366.

MR. DOYLE: Do you watch football?

PROSPECTIVE JUROR 366: I do on occasion.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 366: And yes, the quarterback depends on what the defensive is giving him, he could change the play --

MR. DOYLE: But often --

PROSPECTIVE JUROR 366: -- at the line.

MR. DOYLE: But often the quarterback is just part of a group of people making the decision?

PROSPECTIVE JUROR 366: That's correct.

MR. DOYLE: Okay. If we could give the microphone to Ms. Hightower, please.

PROSPECTIVE JUROR 417: Hightower, 417.

MR. DOYLE: If I remember correctly, you grew up with five brothers?

PROSPECTIVE JUROR 417: Yes.

MR. DOYLE: And I suspect growing up there were times when one of your brothers was pointing the finger at you and maybe you were pointing the finger at another brother or the brothers were pointing the fingers at each other and what I'm trying to find out is, you know, how would your mother or father go about solving that type of situation?

PROSPECTIVE JUROR 417: Well, I was daddy's little girl, so they knew not to mess with me.

MR. DOYLE: I'm sorry, I didn't hear that.

PROSPECTIVE JUROR 417: Daddy's little girl. They knew not to mess with me.

MR. DOYLE: Oh, is that -- okay. Were you the youngest?

PROSPECTIVE JUROR 417: No.

MR. DOYLE: Oldest?

PROSPECTIVE JUROR 417: Second to the oldest.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 417: Uh-huh.

MR. DOYLE: Well, then let's talk about your brothers. I assume growing up you saw situations where, you know, maybe there's a broken plate in the kitchen and two of your brothers are in there and they're going it was him that broke it.

PROSPECTIVE JUROR 417: Uh-huh.

MR. DOYLE: How would your father deal with that sort of situation?

PROSPECTIVE JUROR 417: A plate, that was nothing. That would usually be, like, just cut it out now, that will be enough.

MR. DOYLE: Well, let's say something more serious, something more serious happened and one brother is saying the other brother did it and the other brother said the other brother did it. Were there situations like that when you were growing up?

PROSPECTIVE JUROR 417: Yes. Well, when you break a window.

MR. DOYLE: More serious than a plate?

PROSPECTIVE JUROR 417: Yeah.

MR. DOYLE: So how did your dad deal with a broken window and one brother saying the other brother and vice versa? How did your dad go about --

PROSPECTIVE JUROR 417: With the --

MR. DOYLE: -- dealing with that blame game?

PROSPECTIVE JUROR 417: With the, you know, who done it and there were witnesses and so we -- it was like you can tell on yourself because we all not getting in trouble.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 417: So you need to tell on yourself.

MR. DOYLE: Now, in this case, you know, Mrs. Farris is blaming Dr. Rives for some problems that she has. Do you feel comfortable, even though maybe it was just situations with your brothers, do you feel comfortable sitting and listening to both sides and trying to sort through what happened like your father would do with the broken window?

PROSPECTIVE JUROR 417: I don't know. That's more serious that's going on here.

MR. DOYLE: Yeah.

PROSPECTIVE JUROR 417: Way more serious.

MR. DOYLE: You take care of disabled people? Do I remember --

PROSPECTIVE JUROR 417: They don't have to be -- needs a caregiver. They don't have to be disabled. But it's just older people sometimes, you know, their people maybe want to go out of town and don't want to take grandma, and I'll sit in. And they don't have to be disabled.

MR. DOYLE: Do you -- is this something you do privately or

through an agency?

PROSPECTIVE JUROR 417: Privately.

MR. DOYLE: How long have you been doing this?

PROSPECTIVE JUROR 417: Oh, she was seven at the time. I haven't done it in a while, but she was seven at the time. She's 27 now.

MR. DOYLE: So how many years has it been since you took care of someone that needed help?

PROSPECTIVE JUROR 417: Well, I was -- about two years ago taking this lady's father, like, back and forth, like, to the casino, make sure he went to the grocery store and stuff like that. He was in -- around the senior citizen. I don't want to say old folks. Senior citizen.

MR. DOYLE: Okay. And then you mentioned that you have taken care of some people with disabilities over the years?

PROSPECTIVE JUROR 417: Yes. The wife to this man. He -- his wife I don't know what she had, but I used to go over give her her showers and feed her and, you know, get her out of bed and stuff like that.

MR. DOYLE: What I'm wondering is given your experience taking care of senior citizens and taking care of people with disabilities, if, you know, if someone comes into court and says well, I'm disabled because of something somebody else did, you know, based upon your own personal experiences and background, do you have any thoughts or feelings about how you might react to that?

PROSPECTIVE JUROR 417: Well, the little girl well she died an adult. She was cerebral palsy. And something like this did happen,

and they won. But she was in a wheelchair forever, you know, because of I guess when her mother was in labor they didn't want to believe what was going on. And the little girl came out like that before [indiscernible].

MR. DOYLE: Was that here in Las Vegas?

PROSPECTIVE JUROR 417: No, it was [indiscernible].

MR. DOYLE: Where was it?

PROSPECTIVE JUROR 417: In New York.

MR. DOYLE: New York. Okay. And how -- have you done caregiving here in Las Vegas or was that all back --

PROSPECTIVE JUROR 417: No, no.

MR. DOYLE: -- east coast?

PROSPECTIVE JUROR 417: The situation happened in New York, and they moved here. She was age seven here when I got her.

MR. DOYLE: Okay. I have some general questions. And if you have a response, if you wouldn't mind just putting your hand up for a moment. Do any of you or someone close to you go outside -- well, let me start over. All of you, of course, live here in Las Vegas, but those -- do any of you or a family member or close friend who lives in Las Vegas go outside of Las Vegas for medical care for any reason? Anyone? Let's start with Mr. Root. Or we can go to Mr. Beck, too.

PROSPECTIVE JUROR 386: Beck, 386. Both my in-laws regularly traveled down to Mayo Clinic in Phoenix.

MR. DOYLE: Is there -- what's -- and I'm not going to ask you about, you know, what their medical problems or issues are. What I'm interested in just finding out is there a reason they go there rather than

staying here for care or going to Los Angeles, for example?

PROSPECTIVE JUROR 386: The issues they had, they had for a couple of years and weren't getting it solved. So they went down there and were able to find a quicker treatment for it.

MR. DOYLE: Okay. Were you involved in their care when they were receiving care for those problems here?

PROSPECTIVE JUROR 386: Yes.

MR. DOYLE: What feelings or impressions did you form about the medical providers who were taking care of your parents here?

PROSPECTIVE JUROR 386: I didn't really have an opinion on it. They just had better luck with the doctors that they had down there, so they continued to travel down there so --

MR. DOYLE: Okay. Sometimes luck is a good thing.

PROSPECTIVE JUROR 386: Yeah.

MR. DOYLE: Okay. Mr. Root I think had his hand up. If we could pass it down.

PROSPECTIVE JUROR 361: Root, 361.

MR. DOYLE: Yeah. Your last name.

PROSPECTIVE JUROR 361: Root, 361. I have a heart condition that I go to Cleveland for, Cleveland Clinic in Ohio.

MR. DOYLE: And is that -- you've been doing that for quite some time?

PROSPECTIVE JUROR 361: Since I was 18.

MR. DOYLE: Okay. Anybody else that had their hand up?

Next general question is, have you, any member of your

family or a close friend had surgery and during the surgery there was some complication or problem that developed? Anyone? And if you have an answer, just pop your hand up. Okay. No hands.

Next, have you, any member of your family or a close friend had surgery and there was a complication that occurred after the surgery? Anyone been in that situation? And I'm sorry is it Heelley or Hilley?

PROSPECTIVE JUROR 419: Hilley.

MR. DOYLE: Sorry. Ms. Hilley.

PROSPECTIVE JUROR 419: Hilley, 419. My mom and myself. I had mentioned that she had shoulder surgery done through workers' comp and the surgeon didn't, I don't know, didn't do something right the first time and there was something involved with chipped bones or whatever. So she went to another surgeon and had the issue corrected.

And then with myself, I had the gastric sleeve, and the surgeon didn't remove enough of my stomach. And asked -- well, said that they would do a revision. But I mean if you didn't do it right the first time, I'm not going to go back to you. And I just left it alone.

MR. DOYLE: Okay. Given the experience that your mom had and that you had with doctors and the medical profession, what do you think about sitting as a juror in this case which is a medical malpractice case and given the life experiences that you have had?

PROSPECTIVE JUROR 419: I mean I feel that -- I feel kind of a couple ways about it. You know, I mean I understand that surgeons are human. They're not perfect. I get that. But at the same time, I also feel

that if the evidence is presented and the surgeon was at fault, I can, you know, weigh out the evidence from both sides, you know. Or if a surgeon wasn't at fault based on the evidence, then, you know, I could make a decision based on whatever I'm presented with.

MR. DOYLE: And let me ask you I mean if the evidence in this case showed that Mrs. Farris does have a disability, does have significant injuries and damages, if the evidence shows that but the evidence also shows and convinces you that Dr. Rives did not do anything wrong, that his care was appropriate and within the standard of care, would you be able to in that situation find in favor of Dr. Rives?

PROSPECTIVE JUROR 419: I would -- the biggest person, and I don't want to use anyone's names, you know, but I would find in favor of the evidence that was presented, that made the most sense, that is more -- the most true to me.

MR. DOYLE: Okay. The others of you as you were listening to that question I just asked Ms. Hilley, did you have any different thoughts going through your head as you were listening to my question or her answer? Let me ask you, Mr. Harker.

PROSPECTIVE JUROR 370: Harker, 370. Can you repeat the question?

MR. DOYLE: Yes.

THE COURT: Counsel, can you come up here? Madam Court Reporter, can you please turn on some white noise.

[Sidebar at 10:33 a.m., ending at 10:34 a.m., not transcribed]

THE COURT: You have that put back on? Perfect. Thank

you.

MR. DOYLE: I think so.

Mr. Harker, what do you think about the general notion if someone comes to court and has evidence that they've suffered a disability, they have substantial injuries and damages but that at the end of the case when deliberating in the jury room you are convinced that the Defendant did not do anything wrong, the care was appropriate, would you have any difficulty letting that person go without any award or any money?

PROSPECTIVE JUROR 370: I wouldn't have any difficulty with that.

MR. DOYLE: Why not?

PROSPECTIVE JUROR 370: It would be based on the evidence, obviously. And the evidence didn't show that there was any, you know, it was done properly. No issues with the procedures, then I don't have a problem with that.

MR. DOYLE: All right. And does anybody have a problem or quarrel with the notion that the plaintiff in a case like this has the burden of proof to convince you with their evidence? Does anybody have a problem with that notion?

A couple of additional areas of medicine that likely will come up in this case I wanted to see if anyone has any special knowledge or experience with. Laparoscopic surgery?

UNIDENTIFIED PROSPECTIVE JUROR: [Indiscernible].

MR. DOYLE: Okay. We've talked about -- yeah. We got it

covered. Laparoscopic abdominal wall hernia repairs?

We've talked about diabetes and diabetic neuropathy. Anyone have any special knowledge or experience of -- with diabetic wounds or ulcers on, for example, feet? Ms. Williams-Deloach, I assume you do, but we don't need to go there. But anybody else?

Anybody have any special knowledge or experience with something called -- and again, Ms. Williams-Deloach, I know you know all of these, so you don't have to raise your hand -- a tracheostomy? Something called a colectomy? A bowel perforation? Systemic inflammatory response syndrome?

Okay. I'm going to sit down in just one moment. But I just want to end with a couple of questions. And, you know, having listened to us now for a couple of days, is there any -- is there still someone that I haven't talked to or opposing counsel hasn't talked to, Mr. Jones, is there someone who is still or who is feeling uncomfortable about sitting as a juror in a malpractice case other than the people we've already talked to? Anyone? Okay.

My last question is I just want to find out there've been a lot of questions and a lot of information that's gone back and forth. And I always end by asking is there a person or perhaps more than one person that still has something rolling around in their mind that you've been waiting to share with us, but you haven't been asked just the right question or the question just the right way? Anybody else have any remaining thoughts that you think are important for Mr. Jones or I to know about? Okay. Ms. Williams-Deloach.

PROSPECTIVE JUROR 382: Williams-Deloach, 382. In hindsight to my response yesterday, I wanted to correct something.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 382: So most people don't know when I said a definition of a jerk, they don't know what I meant. So I wanted to clarify. So basically what I met was when we have people in the medical field that doesn't listen to the other opinions of other people, I find them to be what I stated yesterday. But -- and normally if I have a problem that's because most of the medical people -- not most of them, but some of them they don't listen to other people's opinion.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 382: So that's why I said it was a jerk, but that was inappropriate.

MR. DOYLE: Okay. Thank you. Anybody else? That's always going, going, gone. Thank you all.

And I would like to approach.

THE COURT: Okay. So counsel, would you both like to approach for a brief moment? Do you need a moment before you approach for a moment?

MR. DOYLE: Yeah, one moment, please.

THE COURT: Okay. Sure. Just remember your pocket microphone might still be on. Just make sure -- you might want to turn it off.

MR. DOYLE: I have.

THE COURT: Okay. No worries. Thank you so much.

If the prospective juror members need to stand up for a quick second and stretch, it's going to be a moment or two so if you need to stand or stretch, feel free to do so. That means you in the gallery too if you need to stand up and stretch. We just ask you not to talk. But if you want to stand up and stretch, feel free to stand up and stretch.

[Sidebar at 10:40 a.m., ending at 10:56 a.m., not transcribed]

THE COURT: Okay. Ladies and gentlemen, here's what we're going to do.

[Pause]

THE COURT: Counsel, can you re-approach one quick second? I'm sorry. My apologies. If you don't mind real quick. Thank you. Sorry, Madam Court Reporter.

[Sidebar at 10:56 a.m., ending at 10:58 a.m., not transcribed]

THE COURT: Okay. So ladies and gentlemen, the Court's going to thank and excuse Mr. Ken Beck, badge 386. We appreciate your time. Thank you for your willingness to serve on this case. The Court's also going to thank and excuse Mr. Hocking, badge 412. We appreciate your willingness to serve on this case. Look forward to seeing you both on longer cases. Would love to see you, like, on a nice long construction defect case. Okay.

UNIDENTIFIED PROSPECTIVE JUROR: Thank you.

THE COURT: Would love to see you all. Thank you so much. As a courtesy, myself and my team will of course stand.

Thank you so much. Okay. That means we have two empty seats. And so Madam Clerk is going to first fill seat number 7.

THE CLERK: Yes, Your Honor.

THE COURT: And then fill seat number 12. Thank you so much.

THE CLERK: Yes, Your Honor. Tara Collins, badge number 0450 will be in seat 7.

THE COURT: And you might as well let the next person start walking out too because --

THE CLERK: Yes, Your Honor. Tommy Daniel, badge number 0451 will be in seat 12.

THE COURT: I just meant before you all sat right back down since you were looking to be called. Thank you so much. Okay. Thank you so very much. Okay. Marshal, can we be seated then.

THE MARSHAL: Please be seated.

THE COURT: I do appreciate it. Thank you so much. Okay. The marshal's going to hand --

THE MARSHAL: I already did.

THE COURT: Okay. He's one step ahead. He's wonderful. Feel free -- the microphone's heading your way. Welcome to the comfy seats in the back row. So if you could just answer those questions. And you know the first two, right, the easy ones.

PROSPECTIVE JUROR 450: Forgive me if I start choking to death.

THE COURT: No worries. There's water. Do you have your water with you?

PROSPECTIVE JUROR 450: I do. Thank you.

THE COURT: Okay. Thank you so much.

PROSPECTIVE JUROR 450: Juror 450, Collins. Currently I work for the school district. I work with disabled children as a teacher's aide. I also did work for a -- the sheriff's civil department doing garnishments and protection orders and civil suits. My husband's name is Joel. He's a fireman. I have two kids, 27 and 17. I was born and raised out here. Never been a juror before. Civil trial. Child support, is that considered a civil trial?

THE COURT: Okay. No worries.

PROSPECTIVE JUROR 450: That's about it. My aunt's a retired CO. My cousin sells life and health insurance. I graduated high school. And that's about it.

THE COURT: Okay. I appreciate it. Can you pass it to the front row to Mr. Daniell so he can answer those same questions? And then we will go straight to Plaintiff's counsel right afterwards. Thank you so much.

PROSPECTIVE JUROR 451: Daniell, 451. Current job, I am a licensed union plumber. My spouse's name is -- currently is Sandy Daniell. I'm currently married. Working on resolving that problem. My spouse works at -- it's called Senior Helpers. I have four children, seven grandchildren. I've lived in Clark County 11 years. Never been a juror. Never been involved in a civil or a criminal suit. No family in law enforcement or insurance. My level of education is high school graduate. And no, I've never been part of a lawsuit.

THE COURT: Okay. I do appreciate it. Why don't you keep

the microphone. The marshal's going to take the sheet.

And Plaintiff's counsel, feel free to commence with your voir dire questioning for just our two newest members only. Thank you so very much.

MR. KIMBALL: Okay. Welcome this morning the two new folks.

Tara Collins, what I'm going to do is I'm going to go through a bunch of questions. I know you already heard almost everything I said. I'm going to ask you some of the specific questions that I've already asked, and I'm just going to kind of bounce between the two of you. Just -- and I'll basically ask, it's for either one of you to say something. And then I'll have the other one just kind of respond. All right. And some of it will just be yes and no. Okay.

Are either one of you intimidated by having to judge a doctor as opposed to a layperson or just some other type of person?

PROSPECTIVE JUROR 450: No.

PROSPECTIVE JUROR 451: No.

MR. KIMBALL: Are either one of you concerned and think that if they find for the Plaintiff, they wouldn't want to do that because it might hurt the doctor's livelihood or reputation?

THE COURT: So Mr. Daniell, thank you. Give your badge number.

PROSPECTIVE JUROR 451: I'm sorry. Daniell, 451. Personally, probably not because I'll never see either one of them again. Or you know, follow the rest of their life.

MR. KIMBALL: Okay. So you don't think you'd have a problem with it because you don't know them personally?

PROSPECTIVE JUROR 451: A problem? I mean, I'm like everyone else. I really don't feel that I would be a very good judge of the character. I'm really not comfortable with that, judging someone, you know. I wouldn't be comfortable with someone judging me, you know. Especially with my work, you know, in my -- in my work. I don't want somebody to judge my work, whether I've done it right or wrong. It's just the way I feel.

MR. KIMBALL: Okay. Okay. And so you mentioned you're a plumber?

PROSPECTIVE JUROR 451: Yes.

MR. KIMBALL: Okay. And you're with the union?

PROSPECTIVE JUROR 451: Yes.

MR. KIMBALL: And so that, kind of -- as a result -- I'm just trying to rephrase. You might be a little bit -- you might feel the inclination to side a little bit with the doctor based on the idea that man, what a pain in the neck that he has to have somebody evaluating what he did, I'd really hate to have someone do that to me?

PROSPECTIVE JUROR 451: Yeah. More or less. Yeah.

MR. KIMBALL: Okay. And if I say it wrong, please correct me. I'm not trying to put any words in anybody's mouth. I hope you -- I hope -- but is that about right?

PROSPECTIVE JUROR 451: Yes.

MR. KIMBALL: Okay.

PROSPECTIVE JUROR 451: I wouldn't want somebody from another profession coming in and critiquing my work, you know. And I don't critique other's works.

MR. KIMBALL: Got it.

PROSPECTIVE JUROR 451: Whether out of my profession or in my profession.

MR. KIMBALL: Okay. Okay.

PROSPECTIVE JUROR 451: People do things the way they do because that's how they -- it's the way they do it.

MR. KIMBALL: Okay.

PROSPECTIVE JUROR 451: I may put in plumbing one way. Another guy may see it another way.

MR. KIMBALL: Got it.

PROSPECTIVE JUROR 451: You know?

MR. KIMBALL: Okay. And so because of that, I mean, I'm seeing kind of two things potentially that may or may not -- you know, may not make you a great juror for this case, right, just to be frank. But I'm going to kind of walk through it to make sure I'm right, okay, because if I'm wrong, I'm wrong. On the one hand, you're concerned about the idea that, you know, because of your profession and you realize that somebody like me, I wouldn't know anything about plumbing, it wouldn't be fair for me to judge what you've done in your work; is that --

PROSPECTIVE JUROR 451: Correct.

MR. KIMBALL: -- is that what you're saying?

PROSPECTIVE JUROR 451: Yeah.

MR. KIMBALL: So as a result, because of that, you would not feel comfortable being a judge regarding what the doctor did or didn't do?

PROSPECTIVE JUROR 451: That's correct.

MR. KIMBALL: Okay. As a result, because of that feeling that you have, I mean, you have -- I think I saw that you have, like, doctorate level education in what you do; is that right? Or I did misunderstand --

PROSPECTIVE JUROR 451: No.

MR. KIMBALL: -- what was written down there? Oh okay. But you have significant training and you -- and you're certified in what you do?

PROSPECTIVE JUROR 451: Yes. I've been doing plumbing since I was 16.

MR. KIMBALL: Okay. Okay. So because of that, would that cause you to be a -- to basically not be able to actually offer judgment in this case given the fact that you just wouldn't think it would be fair to do so?

PROSPECTIVE JUROR 451: That's possible. Yes.

MR. KIMBALL: Okay. In addition to that, do you think that it would cause you to potentially favor one side over the other, being the doctor's side because you don't feel that that's really a fair thing for him?

PROSPECTIVE JUROR 451: No.

MR. KIMBALL: No? Not that? Okay. So in terms of -- so judgment --

PROSPECTIVE JUROR 451: I actually basically wouldn't

really favor either side to tell you the truth.

MR. KIMBALL: Okay. Okay. So you would just withhold your judgment?

PROSPECTIVE JUROR 451: Pretty much. Yes. Probably.

MR. KIMBALL: Okay.

PROSPECTIVE JUROR 451: More than likely.

MR. KIMBALL: Okay. And so if it came down to it at the end, right, you just wouldn't take any side, so you basically would just be a nonparticipant on the jury?

PROSPECTIVE JUROR 451: Yeah. It would take a lot to go either way. Yes.

MR. KIMBALL: Okay. All right. Okay. Do you feel that in -- I mean, obviously, you would be -- in anything that you did, you would be as fair, as impartial as you possibly can be. But given your background and everything you put into your own profession, and this issue with judgment on another profession, do you think it would cause you just under the circumstances that we have here, it would cause you to not be able to be fair and impartial just in this circumstance because of that?

PROSPECTIVE JUROR 451: I'm not really sure --

MR. KIMBALL: Okay.

PROSPECTIVE JUROR 451: -- to tell you the truth.

MR. KIMBALL: Okay. So under the circumstances, although you'd do everything you could evaluating the evidence, at the end of the day you're just not sure that you could commit to the Court that you could, given these limited circumstances in our honor system we have,

be fair and impartial given your experiences and background; is that fair?

PROSPECTIVE JUROR 451: Yes.

MR. KIMBALL: Okay. All right. Thank you. I appreciate it. Let's go ahead and pass it up that way.

Tara.

PROSPECTIVE JUROR 450: Collins, 450.

MR. KIMBALL: You -- I didn't catch your reaction to my question because we were up front. So --

PROSPECTIVE JUROR 450: That's because I'm not feeling good. There's not much reactions.

MR. KIMBALL: Oh. Are you okay? Like --

PROSPECTIVE JUROR 450: Yeah. I'm just getting over a cold. It's moving down to my chest, so --

MR. KIMBALL: Sorry.

PROSPECTIVE JUROR 450: That's all right.

MR. KIMBALL: Are you concerned -- so the question that I asked previously, is anyone concerned that they think that they wouldn't want to find for the Plaintiff because it might hurt the doctor's livelihood and reputation?

PROSPECTIVE JUROR 450: I don't think so. Not if he showed true --

MR. KIMBALL: Negligence?

PROSPECTIVE JUROR 450: -- negligence.

MR. KIMBALL: Okay. Thank you. All right. For both of you, if the Plaintiffs prove their case, do you have a problem saying that Dr.

Rives violated the standard of care and must be held accountable?

PROSPECTIVE JUROR 450: We all should be held accountable if we're not doing right.

MR. KIMBALL: Would you be inclined to give Dr. Rives the benefit of the doubt, even a little, because he happens to be a surgeon?

PROSPECTIVE JUROR 450: No.

MR. KIMBALL: Okay. In a civil case like this, the jury is asked to resolve disputes based on the preponderance of the evidence, right. So I don't know if you saw me awkwardly doing this yesterday, right, I'm doing it again today. If there's a slight shift, if one side proves just by a little that they're more right than the other side, then that side is victorious and wins. Okay. Are you okay with that standard, preponderance of the evidence, that either side can win by just a little bit?

PROSPECTIVE JUROR 450: That's how it's going to have to be I guess. That's how it is in sports, too.

MR. KIMBALL: Okay. Thank you. Go ahead and pass the mic up. Thank you, Tara.

Tommy.

PROSPECTIVE JUROR 451: Daniel, 451. You know, preponderance of the evidence is -- to me it's -- and I'm sorry, no disrespect. But preponderance of evidence kind of is who is the best bs'er, you know. Who can sway your opinion more this way than that way. I mean, beyond a shadow of a doubt is a little bit different deal. But preponderance of evidence is who had the better story to me.

MR. KIMBALL: So given that you feel that way, do you feel like it would be pretty difficult for you, just given who you are, to kind of decide a case in that way based on --

PROSPECTIVE JUROR 451: That's correct.

MR. KIMBALL: -- preponderance?

PROSPECTIVE JUROR 451: Yes.

MR. KIMBALL: Okay. That wouldn't be something you'd be able to do just because you just don't think it's a fair standard?

PROSPECTIVE JUROR 451: Yeah. Pretty much.

MR. KIMBALL: Okay. All right. And there's nothing that I could say to change your mind on that or anything, right? This is who you are. This is --

PROSPECTIVE JUROR 451: It's -- yeah, you know.

MR. KIMBALL: All right. Thank you.

PROSPECTIVE JUROR 451: And I'm sorry about that.

MR. KIMBALL: In fact, you know, you shouldn't be sorry at all. It's -- we all have our own experiences. We all come from where we come from. It's even -- because you heard what other people have said, and so there's a bravery to that. I mean, so you shouldn't feel, you know, anyway. The fact that you're saying exactly how you feel about it is totally appropriate, and that's what you should do. So I thank you. Thank you very much.

Your Honor, I don't have any further questions. May we approach?

THE COURT: Yes, you may approach. Counsel, would you

like to approach?

[Sidebar at 11:14 a.m., ending at 11:15 a.m., not transcribed]

THE COURT: Thank you. Okay. The Court's going to thank and excuse, Mr. Daniel, badge 451. Thank you. I appreciate it. Go out the double doors. I hope to see you on one of my nice long construction defect cases. I'd love to have a plumber on that. I appreciate it.

PROSPECTIVE JUROR 451: Thank you.

THE COURT: Thank you so much. And as he's walking out, Madam Clerk, can you fill that empty seat, please?

THE CLERK: Yes, Your Honor. Keondra Krenshaw, badge number 0455 will be in seat 12.

THE COURT: Okay.

MR. KIMBALL: What happened to -- could we approach?

THE COURT: Just one moment.

THE CLERK: That was my mistake.

THE COURT: Sorry, there was an error. Our apologies.

THE CLERK: Gary Phasouk, badge number 0452 will be in seat number 12. Sorry, Your Honor.

THE COURT: Thank you. I don't know, people are so anxious to get in the box, you know what I mean? Sorry. But thank you. I appreciate it. Seat number 12. I do appreciate it. Thank you, sir. As you're heading to the box, what we're going to ask is -- can I impose on my wonderful court reporter -- would you just hand me that sheet? Is the microphone over there? The microphone should be over there. Thank you. You've already got the microphone. We just need to get you

the sheet. My wonderful court recorder, since our Marshal is assisting someone in the restroom, she's going to hand you that sheet, so we don't waste any seconds. Okay. She's multitasking because everyone on my team -- everyone can sit down. I'll play marshal, too. So we'll get you taken care of.

So if you wouldn't mind answering those questions, please. Thank you so much.

PROSPECTIVE JUROR 452: Gary Phasouk, 452. Current job, I work at M&Ms world on the strip. So I am currently employed. I do not have a spouse or a partner. No children. I have lived here my whole life, so around 30 years. I have never been a juror before. No one in my family is in the law enforcement, or no one is also insurance company either. I have completed some college. And I've never been a party to a lawsuit, civil or criminal. Never.

THE COURT: Okay. I do appreciate that. Since the marshal's assisting somebody else, you can just -- if you don't mind holding on to that sheet for a quick second while counsel for Plaintiff just starts asking you some of his voir dire questions. I appreciate it. Thank you so much.

Counsel, you've already got the microphone. You're taken care of. Perfect.

MR. KIMBALL: All right. Gary, I'm going to be directing all of my questions at you, and I will try to not take up too much time. Okay. Gary, are you in any way intimidated by having to judge a doctor as opposed to another person, a layperson?

PROSPECTIVE JUROR 452: No, I am not.

MR. KIMBALL: Okay. Are you concerned at all should the Plaintiff show or prove their case -- should the Plaintiffs prove their case; would you be concerned at all to find against the doctor because it might hurt his livelihood or reputation?

PROSPECTIVE JUROR 452: Nope, I would not.

MR. KIMBALL: Okay. Gary, what are you passionate about in life?

PROSPECTIVE JUROR 452: I am passionate about videogames. And I actually have a YouTube career. So I really love doing that kind of thing, going to conventions and stuff.

MR. KIMBALL: You have a YouTube career?

PROSPECTIVE JUROR 452: Yeah. I do that on the side alongside, you know, me working at M&Ms World. So --

MR. KIMBALL: Awesome.

PROSPECTIVE JUROR 452: -- I record myself talk about stuff and, you know, make money off of YouTube.

MR. KIMBALL: Cool. What do you talk about usually, or do you have any area that you kind of focus in?

PROSPECTIVE JUROR 452: I focus in both videogames as well as my own personal life. I have actually done standup comedy here on the strip before, so I do a little of that on YouTube as well.

MR. KIMBALL: Fantastic. As we sit here right now, Gary, do you feel as though you would be favoring one side versus the other?

PROSPECTIVE JUROR 452: Actually, I do feel I would favor one side over the other. My father was also in a court case before.

MR. KIMBALL: Uh-huh.

PROSPECTIVE JUROR 452: And I was actually not satisfied with how his was handled. So I think I would be a little all for one side more than the other just due to my own personal experiences.

MR. KIMBALL: Okay. Which side would you tend to favor, if you don't mind?

PROSPECTIVE JUROR 452: The Defendant's side.

MR. KIMBALL: Okay. And why would that be? And please understand, I'm not trying to dig into your -- if there's something private that you don't want to say in front of the group, I'm never asking for that, so just let me know and we'll handle it a different way if it is.

PROSPECTIVE JUROR 452: So in my father's case, I feel that a lot of evidence was shown for his support. But overall, I believe an overall consensus was not made. And I feel that something was just done wrong in his particular case. And that case is following him for the rest of his life just because a consensus was never really made. He's still able to work and everything, but it's still kind of like hanging around him. And I feel like there was a little injustice with his case.

MR. KIMBALL: What does your father do?

PROSPECTIVE JUROR 452: He is a chef. He's worked at many restaurants here in the strip, in casinos. He's been working as a chef for over, like, 50 years. So a good cook.

MR. KIMBALL: Okay. Okay. And so because -- there was an incident I take it that happened, and someone sued him?

PROSPECTIVE JUROR 452: Yes.

MR. KIMBALL: Okay. And then that's kind of trailed him afterwards?

PROSPECTIVE JUROR 452: Yes. There has been some issues with him getting jobs after the case because of course where he was working before he could no longer work at that establishment. So he had to move to another location.

MR. KIMBALL: Yeah. Well, thank you. I appreciate you sharing that. As a result of these experiences that you've had -- we all come with different experiences. I mean, if you put enough whipped cream on it, I'll eat the pumpkin pie, right. But or if, you know, I'm going to offend somebody, I still will. Right. But at the end of the day there -- we all have where we come from, right. And I know that that is a very kind of silly way of talking about something that is actually very serious, right. We have real lives where real things have happened, and I try to make light of it with that. But in your circumstance given your background, would it be fair to say that you would be biased in favor of the Defense as we start out this case?

PROSPECTIVE JUROR 452: Yes. I believe I would.

MR. KIMBALL: And there's nothing that we could do to change your mind on that because this is something engrained in you of something that you've seen from a very tragic event in your life; is that fair?

PROSPECTIVE JUROR 452: Yeah. It's very personal to me since it happened to my father.

MR. KIMBALL: Okay. All right. Gary, thank you. I don't

have any further questions.

May we approach, Your Honor?

THE COURT: Of course you may approach. Madam Court Reporter, would you like to turn on some white noise? Counsel, would you both like to approach?

[Sidebar at 11:23 a.m., ending at 11:24 a.m., not transcribed]

THE COURT: So counsel for Defense is going to ask some questions. Go ahead, counsel for Defense. So counsel for Defense is going to limit his questions to Ms. Collins in seat number 7 and Mr. Hoke [sic] in -- sorry, I'm mispronouncing your last name, sir. Sorry.

PROSPECTIVE JUROR 452: The H is silent, so it's Phasouk.

THE COURT: Phasouk. Thank you. Okay. I appreciate it. So counsel for Defense, feel free to ask questions of the jurors seated in seat 7 and 12. Thank you.

MR. DOYLE: We'll leave the microphone with Mr. Phasouk. Mr. Phasouk, I just wanted to ask you a couple questions. Do you understand this is a completely different case than your father's case?

PROSPECTIVE JUROR 452: Gary, 452. Yes, I do understand it is a completely different case.

MR. DOYLE: I assume none of the people involved in this case had any involvement in your father's case?

PROSPECTIVE JUROR 452: Yes. No one involved. Yes.

MR. DOYLE: And understanding this is a completely different case, are you willing to try to set aside your feelings that you've expressed earlier that come from your father's own case?

PROSPECTIVE JUROR 452: If I am chosen, yes, I would try to. Yes.

MR. DOYLE: Explain what you mean by if you were chosen you would try. What do you mean by that?

PROSPECTIVE JUROR 452: I would do my best to evaluate the evidence and try my best to be impartial and to put aside what happened to my father's case while looking at this case if I was chosen to be here on the jury.

MR. DOYLE: And have you ever -- and I can't remember, have you ever been on a jury before?

PROSPECTIVE JUROR 452: No. I've never been on one before.

MR. DOYLE: And are you willing to give it your best effort to set aside your father's experiences?

PROSPECTIVE JUROR 452: Yeah, I would give it a try. I would give it my best shot.

MR. DOYLE: And why would you do your best job?

PROSPECTIVE JUROR 452: Just want to do my part. Even though this is a personal thing for me, I do understand that this is completely unrelated though. So I would try to put it behind because I just understand that this is different.

MR. DOYLE: You've said a couple of times that you will try to put it aside. What do you rate the odds of success?

PROSPECTIVE JUROR 452: If I would be honest I'd say 50/50.

MR. DOYLE: Okay. All right. As you were sitting out in the

back listening to all the questions that I was asking of the different jurors yesterday as well as today, was there any particular question or something that was said perhaps by another juror where you said to yourself at that moment, oh, I need to remember that if I'm chosen and seated, I'll want to bring that up? Any thoughts like that?

PROSPECTIVE JUROR 452: Yeah. I believe when you asked about, like, whether someone would feel squeamish or not over, like, pictures of the human body or illustrations, I would be fine with illustrations. I actually have a problem with just the color red for me. It reminds me too much of the color of blood. So whether or not it's an illustration or an actual picture of someone's insides, I actually have a problem with the color red in general.

Where I work at M&M's World, we have different color uniforms, and I refuse to wear the red color just because it just reminds me of the color of blood. Even if I see pictures out in the street I kind of have to do a double take whenever I see red. That's the only issue I have with that.

MR. DOYLE: As I was asking the questions yesterday and today, any other thoughts that came to mind, or perhaps comments made by others that again, you flag in your mind to bring up and address if you were selected to sit in the box at this point?

PROSPECTIVE JUROR 452: No. I think that was it.

MR. DOYLE: Okay. Why don't we give the microphone to Ms. Collins?

PROSPECTIVE JUROR 450: Collins, 450.

MR. DOYLE: Same question to start with. As you were sitting back there, assuming that you paid careful attention, but sometimes that's hard to do when you're not actually sitting in --

PROSPECTIVE JUROR 450: I paid attention, but I'm --

MR. DOYLE: I'm sorry?

PROSPECTIVE JUROR 450: I said I paid attention but I'm a little bit in a fog. I can't remember some of the questions that were asked.

MR. DOYLE: All right. Would you mind telling us your last name and the badge number, so we have that?

PROSPECTIVE JUROR 450: Again? Collins, 450.

MR. DOYLE: Okay. What do you mean you're in a fog?

PROSPECTIVE JUROR 450: I'm congested. Head cold. I'm, like, in a daze.

MR. DOYLE: Is this something that's been going on for a long time or recently?

PROSPECTIVE JUROR 450: Like, three, four days.

MR. DOYLE: How do you think it's going to affect your ability to sit as a juror if you're chosen?

PROSPECTIVE JUROR 450: I'm hoping I'll be better before then.

MR. DOYLE: Okay. So if you were sitting back there and listening to the questions that I was asking, and listening to the comments by the other jurors, did you have any thoughts go through your mind that you said to yourself I'll need to remember this and bring

it up if I'm brought up front?

PROSPECTIVE JUROR 450: No.

MR. DOYLE: Let me just touch on a few questions and see if it jogs any responses by you. Has a member of your family or close friend ever been a plaintiff or a defendant in a lawsuit?

PROSPECTIVE JUROR 450: In a lawsuit? No, I don't believe so. No.

MR. DOYLE: Any medical training?

PROSPECTIVE JUROR 450: Medical what?

MR. DOYLE: Medical training.

PROSPECTIVE JUROR 450: My mom was a nurse's aide.

MR. DOYLE: Any other family members with medical training?

PROSPECTIVE JUROR 450: No.

MR. DOYLE: How about legal training?

PROSPECTIVE JUROR 450: My aunt was a retired CO. But not legal, like, lawyer or anything like that. No.

MR. DOYLE: And where did she work as a CO?

PROSPECTIVE JUROR 450: CCDC, right across the street.

MR. DOYLE: Any member of your family or close friend that has a condition that limits their social, work, or recreational activities?

PROSPECTIVE JUROR 450: I have a cousin's son that was born with I think it's cerebral palsy or something. He's wheelchair bound and non-verbal.

MR. DOYLE: How old?

PROSPECTIVE JUROR 450: But that was a birth thing. I don't know exactly what caused the issue.

MR. DOYLE: How long ago was that?

PROSPECTIVE JUROR 450: He's 13.

MR. DOYLE: Do you know if there was a lawsuit because of that?

PROSPECTIVE JUROR 450: She thought it'd be too hard to prove negligence with the hospital.

MR. DOYLE: Was that here or elsewhere?

PROSPECTIVE JUROR 450: Yes, sir.

MR. DOYLE: Have you yourself ever sought a second medical opinion for any reason?

PROSPECTIVE JUROR 450: I haven't sought a second opinion on something. But I have gone to the doctors and had a bad inkling and decided not to go. And then a month later, I saw him on the news.

MR. DOYLE: Did you actually receive any care from that doctor?

PROSPECTIVE JUROR 450: No.

MR. DOYLE: All right. Have you ever received care from a doctor yourself, and afterwards you were unhappy, disappointed, or angry with the care?

PROSPECTIVE JUROR 450: No, because thankfully I haven't had anything severely enough besides, like, colds and stuff like that to see a doctor, so.

MR. DOYLE: How about a family member or close friend that's been in that situation?

PROSPECTIVE JUROR 450: My mother, she went to the doctor back and forth for probably, like, a month and a half. And they kept saying she was just constipated or whatever. And she had colon cancer. And she's no longer with us. But I don't -- I didn't feel the need to sue or anything like that because time framing, I don't need -- I think even at that point it was already spread through. So -- but they were misdiagnosing her.

MR. DOYLE: Was that here in Las Vegas?

PROSPECTIVE JUROR 450: Yes, sir.

MR. DOYLE: Was it in a doctor's office, or something that happened in a hospital?

PROSPECTIVE JUROR 450: The misdiagnosis I think was, like, urgent care type places until there was more severe symptoms. And then that's when we took her to a physical hospital and found out.

MR. DOYLE: Did she go to one of the St. Rose hospitals?

PROSPECTIVE JUROR 450: No. It was not St. Rose.

MR. DOYLE: Do you yourself have a general impression of the quality of medical care available in Las Vegas, good, bad, or indifferent?

PROSPECTIVE JUROR 450: I don't know if it's bad. But I know some people have gone out of state. I had a girlfriend whose son had a brain tumor, and she had to try to find treatment elsewhere. I had a sister-in-law, mental health, wasn't good facilities here. And she's no

longer with us. But I don't think there's enough doctors and stuff out here because I know you'll -- you know, you go, you set an appointment, and you'll sit in their office for an hour and a half before you're even seen because there's not enough to help the majority of people in this town.

MR. DOYLE: Have you ever given any thought as to why there aren't enough doctors in Las Vegas?

PROSPECTIVE JUROR 450: It's hot during the summer? I don't know. No, I have no idea.

MR. DOYLE: Have you had any experience with any of the St. Rose Hospitals, good, bad, or in between?

PROSPECTIVE JUROR 450: I have not.

MR. DOYLE: The -- I think you said a cousin went out of state for medical care for a brain tumor?

PROSPECTIVE JUROR 450: No. My girlfriend's son.

MR. DOYLE: Girlfriend's son. Was it because there was someone -- because someone wasn't available with the expertise here in Las Vegas?

PROSPECTIVE JUROR 450: No. It was, like, St. Jude's or something like that. They went to different treatments. But then they couldn't even help either. So then she sought treatment in Mexico.

MR. DOYLE: If you become sufficiently ill or sick, will you go see a doctor, or perhaps go to an urgent care center of emergency room?

PROSPECTIVE JUROR 450: Of course.

MR. DOYLE: But some people have beliefs that cause them

not to seek medical care, or perhaps limit that care. That's why I asked the question.

PROSPECTIVE JUROR 450: I believe in the higher being. But I believe we have people on this earth trained for us to go see.

MR. DOYLE: Do you have a general opinion about medical malpractice lawsuits?

PROSPECTIVE JUROR 450: No. I mean, I believe they should be there if there's actual real negligence. But I know some of them are false.

MR. DOYLE: And what do you mean by actual real negligence versus false, if you could explain that?

PROSPECTIVE JUROR 450: Just accusing a doctor of something, or a doctor really truly doing something to cause a lawsuit.

MR. DOYLE: Do you think you'd be a good juror if you were selected as a juror in this case?

PROSPECTIVE JUROR 450: I think I'd be fair and give my best ability.

MR. DOYLE: Do you have any doubt or thought in your mind that maybe you wouldn't be a good juror for this kind of case, or any kind of case?

PROSPECTIVE JUROR 450: I've always thought myself to be a very fair, open person.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 450: Openminded and not judging.

MR. DOYLE: And simply because we're here today, does that

already cause you to wonder about Dr. Rives and wonder if he did something wrong?

PROSPECTIVE JUROR 450: No, because I haven't heard what's going on.

MR. DOYLE: Okay. You're willing to keep an open mind?

PROSPECTIVE JUROR 450: Yes.

MR. DOYLE: Are you willing to listen to all the evidence?

PROSPECTIVE JUROR 450: Yes, sir.

MR. DOYLE: Are you willing to withhold any decision or judgment until both sides have been able to present the entirety of their cases?

PROSPECTIVE JUROR 450: Uh-huh.

MR. DOYLE: And do you have any quarrel with the notion that Dr. Rives has decided to come to court and defend himself and his care?

PROSPECTIVE JUROR 450: I would hope any person would want to do that.

MR. DOYLE: If they feel they didn't do anything wrong?

PROSPECTIVE JUROR 450: Yes, sir.

MR. DOYLE: You would hope they would come to court?

PROSPECTIVE JUROR 450: Yes.

MR. DOYLE: These different topics, just stop me if something rings a bell. Laparoscopic surgery, abdominal surgery, mesh, hernia repair, diabetes, diabetic neuropathy, intubation, tracheostomy, colotomy, colectomy, colostomy, bowel perforation, systemic

inflammatory response syndrome, sepsis, critical illness, polyneuropathy, foot drop, any of those?

PROSPECTIVE JUROR 450: I've heard of some of them. But I do not have the medical experience. So if I have heard the name, it doesn't mean I know what it is.

MR. DOYLE: All right. Have you ever known someone who had a serious medical condition and carefully followed their doctor's advice and recommendations?

PROSPECTIVE JUROR 450: Do I know someone who's done that?

MR. DOYLE: Yeah.

PROSPECTIVE JUROR 450: Most the people I know do that.

MR. DOYLE: And the people that you know that have followed their doctors' advice, recommendations, and instructions, have they had any bad or negative outcomes in that situation?

PROSPECTIVE JUROR 450: Not that I can recall.

MR. DOYLE: Do you have -- do you know people or have friends who have not followed their doctors' advice?

PROSPECTIVE JUROR 450: Yes.

MR. DOYLE: Do you know any such people who have gone on to have problems, or difficulties, or complications because they didn't follow their doctors' advice?

PROSPECTIVE JUROR 450: I don't know about doctors' advice. Just not living well. Things happen.

MR. DOYLE: What do you mean by not living?

PROSPECTIVE JUROR 450: Well, if you don't take care of yourself. If you don't exercise, you don't eat right, you drink a lot, you smoke a lot, you're going to have health issues, or you don't take your proper medicines for whatever issues you are having, it can cause more severe issues.

MR. DOYLE: Okay. And do you have friends or family that have not taken care of themselves and have gone on to develop problems as a result?

PROSPECTIVE JUROR 450: I had an uncle. He happened to have dialysis, something like that.

MR. DOYLE: Three times a week to get the kidney --

PROSPECTIVE JUROR 450: Uh-huh.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 450: Because he didn't take care of himself.

MR. DOYLE: Now, at work do you work generally by yourself or part of a team?

PROSPECTIVE JUROR 450: Different moments, team. Lunch time, PE team, it's usually a team. In the classroom it'll be me and the teacher. And sometimes depending on if someone needs assistance using the restroom, I might have to go get another aid from the other room to double assist.

MR. DOYLE: And when you're working as a team at school, do you generally rely on the other members of the team?

PROSPECTIVE JUROR 450: Rely on them if I need them, yes.

MR. DOYLE: Do you know anyone on the jury panel here or out in the back area?

PROSPECTIVE JUROR 450: No.

MR. DOYLE: Again, my last question, is there some thought that's still rolling around in your head that Mr. Jones didn't ask the right question, I didn't ask the right question, that little questionnaire that you had didn't ask the right question, that still you think is something that we should know about that would help us choose a jury in this case?

PROSPECTIVE JUROR 450: I can't think of anything at this moment, no.

MR. DOYLE: Okay. Thank you very much.

PROSPECTIVE JUROR 450: You're welcome, sir.

THE COURT: Counsel, do you need -- wish to say something, or do you need to approach? What would you like to do?

MR. DOYLE: Don't need to approach.

THE COURT: So you --

MR. DOYLE: Pass.

THE COURT: Pass for --

MR. DOYLE: For cause.

THE COURT: You pass the two jurors for cause? Okay.

MR. DOYLE: Yup.

THE COURT: Counsel, we have one outstanding matter, so I do actually need you to approach if you don't mind real briefly. Thank you so much.

Madam Court Reporter, if you wouldn't mind turning on a

real quick white noise.

[Sidebar at 11:42 a.m., ending at 11:44 a.m., not transcribed]

THE COURT: The Court's going to thank and excuse badge number 452, Mr. Phasouk.

PROSPECTIVE JUROR 452: Yes. You did it, Your Honor.

THE COURT: I did it. Yeah. Okay. Thank you. Please go to the double doors.

Madam Clerk?

THE MARSHAL: Please rise for the juror.

THE COURT: Thank you so very much. Madam Clerk is going to call the name she meant to call before. See, she's on a mission.

THE CLERK: Thank you, Your Honor. Keondra Crenshaw will be in seat number 12, and that's badge number 0455.

THE COURT: You knew you were wanted, you just had to wait a few more minutes. Ms. Crenshaw, the marshal's going to -- marshal, do you have the sheet to give Ms. Crenshaw? He'll give you the seat and the microphone is --

THE MARSHAL: Be seated, please.

THE COURT: Thank you. Okay. The microphone's heading right to you. Thank you so very much. I appreciate it. And you know the first two ones, right, last name and last three digits of your badge number. So you can start with that.

PROSPECTIVE JUROR 455: Crenshaw, 455.

THE COURT: There you go. Thank you so much.

PROSPECTIVE JUROR 455: And my current job, I'm an

account executive for a collection company. I'm engaged. My fiancé is active duty military. I don't have any children. I've been back in Clark County for two years. I just moved back from Alabama. I've never been a juror before. My stepfather is in law enforcement. No family in insurance company. My level of education is some college. And I've never been a party of a lawsuit.

THE COURT: Okay. I do appreciate it.

Plaintiffs' counsel feel free to finish your questions of our newest juror seated in seat number 12, Ms. Crenshaw. If you're close by, the microphone can always pick you up there at the small podium.

MR. JONES: Yeah.

THE COURT: Or you can just use the pocket mic. Whichever you wish.

MR. JONES: Keondra Crenshaw; is that right?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: All right. Which branch is your fiancé in?

PROSPECTIVE JUROR 455: In the Air Force.

MR. JONES: Okay. Which makes sense. That's why you're here?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: Is that it?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: Okay. Nellis?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: When are you guys getting married?

PROSPECTIVE JUROR 455: I don't know yet. We've been experiencing a lot of, like, deployments and different things, so.

MR. JONES: That can be taxing, can't it?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: What are you passionate about?

PROSPECTIVE JUROR 455: Education and my country, my freedom.

MR. JONES: Awesome. Do you come from -- so you said your father was in law enforcement?

PROSPECTIVE JUROR 455: He is.

MR. JONES: Okay. And in Alabama; is that right?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: Okay. And how long have you and your fiancé been together?

PROSPECTIVE JUROR 455: Six years.

MR. JONES: Okay. All right. Fantastic. You talked about you are an account executive in collections?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: Okay. What do you collect on? Just anything?

PROSPECTIVE JUROR 455: Mostly major credit cards.

MR. JONES: Okay. All right. Awesome. Thank you. How big is your team that you run?

PROSPECTIVE JUROR 455: On our team it's about 20 of us.

MR. JONES: Okay. Cool. Are you intimidated in any way by having to judge a doctor as opposed to a layperson or someone else?

PROSPECTIVE JUROR 455: No.

MR. JONES: Okay. Are you concerned at all for finding against the doctor because it might hurt the doctor's livelihood and reputation?

PROSPECTIVE JUROR 455: No.

MR. JONES: In the Plaintiffs prove their case do you have any problem saying that Dr. Rives violated the standard of care and must be held accountable?

PROSPECTIVE JUROR 455: No.

MR. JONES: You've heard all these questions from both sides. Is there anything that you've heard that makes you feel, like, bias for one side versus the other, or anything like that?

PROSPECTIVE JUROR 455: No.

MR. JONES: Okay. You feel you could be a fair and impartial juror?

PROSPECTIVE JUROR 455: Yes.

MR. JONES: Okay. All right. Thank you.

PROSPECTIVE JUROR 455: Thank you.

THE COURT: Counsel, do you need --

MR. JONES: I pass, Your Honor.

THE COURT: You pass? Okay. Counsel for Defense, feel free to ask your questions to the juror sitting in seat number 12. Go ahead.

MR. DOYLE: Good morning, Ms. Crenshaw.

PROSPECTIVE JUROR 455: Good morning.

MR. DOYLE: What have your experiences -- well, have you received medical care?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: What have your experiences have been with the medical care that you've received?

PROSPECTIVE JUROR 455: Good.

MR. DOYLE: Have you received medical care in Las Vegas?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: Alabama?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: Good experiences in both places?

PROSPECTIVE JUROR 455: Yes, sir.

MR. DOYLE: How about the experiences of your fiancé in medical care? I assume he's getting it through the --

PROSPECTIVE JUROR 455: It's really good.

MR. DOYLE: -- through the VA? Any medical training?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: Legal training?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: Have you ever received medical care yourself, and afterwards you were unhappy or angry with the care?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: Has that happened to someone in your family or close friends?

PROSPECTIVE JUROR 455: No, sir.

MR. DOYLE: In listening to the questions -- were you trying to pay attention as we were asking the questions over the past couple days?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: And were you listening to the comments by the other folks here?

PROSPECTIVE JUROR 455: I was.

MR. DOYLE: Was there any question that Mr. Jones asked where you said to yourself, well, if I'm selected to sit up here I need to remember that question because I have something to say about it?

PROSPECTIVE JUROR 455: No, sir. Nothing stood out.

MR. DOYLE: Was there a question that I asked anyone where you said to yourself, well, I need to remember this thought if I'm called up?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: How about in any of the comments by the different jurors, did -- was there anything somebody said that struck you as being memorable that you wanted to share with us if you were selected?

PROSPECTIVE JUROR 455: Just, you know, with them a lot of them being on the same page as you want to treat everybody fairly. You don't want to judge someone just based off who they are, their occupation. So that just stuck out to me that you want to be fair across the board.

MR. DOYLE: You said you have some college. Is there a

particular area or focus that you had?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: What?

PROSPECTIVE JUROR 455: Nursing.

MR. DOYLE: And are you planning on continuing your nursing career?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: Have you worked in the nursing field in any capacity?

PROSPECTIVE JUROR 455: No. But it's close in my family.

MR. DOYLE: Tell me about the medical profession or --

PROSPECTIVE JUROR 455: My mother --

MR. DOYLE: -- nursing profession in your --

PROSPECTIVE JUROR 455: My mother is a registered nurse.

MR. DOYLE: In Alabama?

PROSPECTIVE JUROR 455: Yes, sir.

MR. DOYLE: Any doctors in the family?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: Now, have you -- are you -- do you want to get a BSN?

PROSPECTIVE JUROR 455: I do.

MR. DOYLE: Do you have current plans to enroll to become a registered nurse?

PROSPECTIVE JUROR 455: I do. This semester I just decided to take a break.

MR. DOYLE: Okay. So you're -- you've already been working towards your BSN?

PROSPECTIVE JUROR 455: Yes, sir.

MR. DOYLE: How close or far are you?

PROSPECTIVE JUROR 455: About a year left.

MR. DOYLE: Have you given any thought to when you become a registered nurse what type of area you would like to focus on?

PROSPECTIVE JUROR 455: Yes. I want to be a neonatal nurse.

MR. DOYLE: Take care of the preemies and other newborns that --

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: -- that are born with problems?

PROSPECTIVE JUROR 455: Correct.

MR. DOYLE: Why a neonatal nurse?

PROSPECTIVE JUROR 455: Just because, you know, I've seen many births and I've experienced it with nieces and nephews, and I feel like that's where it really starts, you know what I mean? Like, when people first have their children, I always -- I want to make a difference. I want to be remembered. And I feel like when, you know, children are born, you don't go into it expecting that your child is going to be born having an issue or a problem, but you do want to have those people that are there and that are supportive through that hard time. And I want to be one of those people.

MR. DOYLE: Have you ever volunteered or worked yet in a

NICU?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: As part of the nursing program will you have clinical rotations?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: Have you done any clinical rotations?

PROSPECTIVE JUROR 455: No. Just because since I've transferred back from Alabama, it's just been a transition.

MR. DOYLE: Okay. So you started the BSN in Alabama?

PROSPECTIVE JUROR 455: I started it here.

MR. DOYLE: Okay.

PROSPECTIVE JUROR 455: Yeah.

MR. DOYLE: Okay. Do you think you'd be a good juror for this case?

PROSPECTIVE JUROR 455: I do.

MR. DOYLE: Have you had an anatomy class?

PROSPECTIVE JUROR 455: I have not.

MR. DOYLE: A physiology class?

PROSPECTIVE JUROR 455: No.

MR. DOYLE: You know by virtue of all of those -- I'm not going to go through that long list of different items, you know, which included the diabetes and the tracheostomy and all of that. As I was going through that list did you say to yourself well, I am familiar with that because of the nursing training I've obtained so far?

PROSPECTIVE JUROR 455: Exactly. Yes. And then there's

some that stand out more than others.

MR. DOYLE: Which one or two stood out?

PROSPECTIVE JUROR 455: As far as the -- referring to diabetes.

MR. DOYLE: Is there diabetes in your family?

PROSPECTIVE JUROR 455: There is.

MR. DOYLE: Do you understand the difference between type 1 and type 2 diabetes?

PROSPECTIVE JUROR 455: I do.

MR. DOYLE: Do you understand some -- the need for some people to require insulin?

PROSPECTIVE JUROR 455: Yes.

MR. DOYLE: Do you have some understanding based upon your family what complications can occur if a person does not take care of themselves and their diabetes is uncontrolled?

PROSPECTIVE JUROR 455: Yes. I've experienced that.

MR. DOYLE: What have you seen in your own experience in terms of what happens if someone allows their diabetes to be uncontrolled?

PROSPECTIVE JUROR 455: Well, you know, when this person first found out they had diabetes, they were in denial of it and not taking care of theirselves [sic] properly. So I did see the effects that it had of them not taking their medicine properly. They did end up in the hospital and go into a diabetic coma. So then after that, being able to get them on track and them going to the doctor regularly, I've seen the

difference between them not taking care of their self properly and then doing what was advised for them to do.

MR. DOYLE: And the complications of diabetes, peripheral neuropathy, the pain and sensory changes in your feet, and lower legs, and perhaps in the hands, is that something you're familiar with?

PROSPECTIVE JUROR 455: I am.

MR. DOYLE: Through personal experience or school?

PROSPECTIVE JUROR 455: Yes. Through personal experience.

MR. DOYLE: Family members or friends?

PROSPECTIVE JUROR 455: With myself.

MR. DOYLE: Okay. Anything else?

PROSPECTIVE JUROR 455: No, sir.

MR. DOYLE: So that -- is there something still rolling around in your mind that again, we just haven't asked the right question before I sit down?

PROSPECTIVE JUROR 455: There isn't.

MR. DOYLE: Okay. Well, thank you very much.

PROSPECTIVE JUROR 455: Thank you.

MR. DOYLE: You're welcome. Pass.

THE COURT: Okay. Okay. Since both sides have passed, counsel, I do need you to approach for a second.

Madam court recorder, can we -- show us a little bit of white noise? Okay.

[Sidebar at 11:55 a.m., ending at 11:57 a.m., not transcribed]

THE COURT: Okay. So counsel for Plaintiff?

MR. JONES: Yes, Your Honor. We pass for cause.

MR. DOYLE: As do we pass for cause.

THE COURT: Okay. So ladies and gentlemen, what it means for pass for cause, what that means is we have our 20 prospective jurors that we're going to get down to the ten. Which means unfortunately for those of the gallery, we really wanted you to come join us, but we can't have you as well. We hope to see you on another case.

So what we're going to do is we're going to do this in two prongs. For those of you in the gallery, we really do appreciate and thank you for your patience. I know it's very, very hard to sit in a gallery for two and a half days. But you can appreciate what we're trying to do is get -- wanted to make sure the attorneys had a full opportunity to ask as many questions as they wanted to, complete their voir dire, but also to not send everyone out -- well, they wanted to fully complete their voir dire.

And so at this juncture though however, those of you in the gallery, we thank you for your time. You are excused. Okay. So --

THE MARSHAL: Please rise for the jurors.

THE COURT: Okay. But my caveat -- you heard the caveat I said yesterday, right? Everybody understands that, right? And you'll abide it, yes? I won't be seeing any Facebook postings, YouTube postings, or anything like that, correct?

GROUP RESPONSE: Correct.

THE COURT: We do check. Thank you. Have a great one. I

appreciate it. Thank you for your time. Best to every one of you. We hope to see you another time in Department 31. Okay. Thank you. You're taken care of.

Okay. For those of you here, what we're going to do with those of you here in the box, in order to -- we've got two choices. And you're going to prefer my choice one, but I'm going to give you two choices. Okay. Choice one is we send you out for lunch until 1:30 so that the attorneys can exercise their peremptory challenges and we know which of the ten of you are staying with us. Choice two is you hang out in the hallway for about half hour -- well, half hour, forty-five minutes or so, or maybe longer, while the attorneys exercise their peremptory challenges, and then we have an idea of who may be here.

Most people would always pick my choice one because that way you have an opportunity to go to lunch, they exercise their peremptory challenge, we come back, and then we find out who's doing. I presume choice one is what everyone wants, right?

GROUP RESPONSE: Yes.

THE COURT: Yes. Okay. That's what I thought. Okay. So ladies and gentlemen, what I'm going to do is I'm going to give you obviously the recess admonishment and have you come back at 1:30 so they have full sufficient time, they can exercise their peremptory challenges. And to the extent we need to do something outside your presence, we hope to minimize any of your waiting. You can come back here, and we'll know which ten of you we have the wonderful pleasure -- that stays with us, and which ten of you we unfortunately have to say

goodbye to. Okay.

So ladies and gentlemen, during this lunch recess you are admonished not to talk or converse among yourselves or with anyone else on any subject connected to the trial or the voir dire process. You may not read, watch, or listen to any report or commentary of the trial or the voir dire process, or any -- or speak with any person, or contact any person connected with the trial or the voir dire process by any medium of information, including without limitation social media, text, tweets, newspapers, television, internet, and radio. And you understand that includes everything even though I'm not listing every particular type that that includes. You understand it includes everything.

Do not visit the scene or the events mentioned during the trial. Do not undertake any research, experimentation, or investigation. Do not do any posting or communications on any social networking sites or anywhere else. Do not do any independent research including but not limited to internet searches. Do not form or express any opinion on any subject connected to the trial or the voir dire process until the case is fully and finally submitted to you.

I do fully appreciate that all of you may be hopefully thinking that you'll be staying with this case. But it is so very, very important not to discuss this case in any manner. Okay. Please do not do that. I have your words that you will follow this, right? Thank you.

IN UNISON: Yes.

THE COURT: Have a wonderful, nice, and relaxing lunch. We'll see you back at 1:30. The marshal's going to take you out this hall

so I can talk to counsel for a quick moment. We can minimize the time for you all. Thank you so much. And we don't know if it's cold or hot, so you may want to take your jacket with you. I don't know what the weather's like outside, just for your sake.

UNIDENTIFIED SPEAKER: 87 I think.

THE COURT: I don't know. They don't let me out once I'm here in the morning. I am just saying -- so. Okay. I appreciate it. Thanks so much. Just watch your head on your way out. I appreciate it.

[Prospective jurors out at 12:01 p.m.]

[Outside the presence of the prospective jurors]

THE COURT: Okay. So counsel, here's what we're going to do. So the jury's -- we're now outside the presence of the jury. We have two updated copies that have the most recent names of the prospective jurors, okay? I'm going to -- one has stamped original; one doesn't. Okay. So who's going to promise me they're not going to scribble on it? Okay. Because what we can -- what I was going to try and do --

Will you make one more copy?

THE CLERK: Sure.

THE COURT: Do you mind?

I'm going to ask my Madam Clerk to make one more -- print one more copy so I can each give you one that's not the original so that you can make your notes on which your five are going to be. I'm going to ask you to come back at 1:15. And then we're going to give you the original one so that you can then just transfer, right, so that we have each of your peremptory challenges just transferring them onto here,

right. So that you can do that, and then we can get this taken care of for you. It'll be the most efficient way. Unless you are all having lunch together and you want me to give you the original so you can do it in the intervening time. Are you all planning on doing that?

MR. JONES: No, Your Honor.

THE COURT: Okay. So would you both prefer blank ones, and then you can just quickly insert your challenges on -- you peremptory -- you can do your strikes on the original? Is that the way you prefer it versus giving one of you all the original one?

MR. DOYLE: No. A copy is fine. But of course, I mean, we're not going to know 100 percent who we're going to strike because of course it depends on who they strike, so.

THE COURT: Well, that's why I was more inclined to give you all the original as well so that you can take care of that all efficiently before you come back to the Court. That's -- okay. So I'm going to do that. I'm going to give you each a copy. And then I'm going to give Plaintiff the one that's marked original. So by the time you get back here at 1:15, right, you will have made your own decisions, right, and then you can have filled out the one that's marked original going back and forth, right?

MR. DOYLE: Okay.

THE COURT: Because it gives you time to discuss among your respective groups, right, who your thoughts are. But then I've given Plaintiff's counsel the original because you're the one that's going to mark the first one anyway. Okay. And then you can go back and forth

with Plaintiff. So when you get back here at 1:15 -- if you need me to push it to 1:20, I'll push it to 1:20. I just don't want to have the jury waiting any longer because you're going to need to start openings, and I don't know if you're going to try and get a witness on. Given your times, you can get a witness on today.

MR. JONES: Right. Yeah. Absolutely.

THE COURT: So we're going to just go straight back. So 1:15 is preferable. If you need to stretch it to 1:20 at maximum, okay, we can do it. So that way you all can have exercised your challenges. The courtroom will be open at 1:15, so if you need to do it. But let's not have the jury waiting, right?

MR. DOYLE: We'll meet out in the hall at, like, ten to 1 and take care of it.

THE COURT: Okay.

MR. DOYLE: Something like that.

THE COURT: Okay. Like I said, the courtroom will be open at 1:15, so that way my team's got their hour.

MR. DOYLE: But it sounds like you want us to have the form done by 1:15?

THE COURT: 1:15, 1:20 at the latest.

MR. DOYLE: Yeah.

THE COURT: Right. Because that will give you more than enough time to go and have your lunch. And then --

MR. DOYLE: And then we'll meet back outside and take care of it.

THE COURT: Right. Then you can go back and forth and do those --

MR. DOYLE: Okay.

THE COURT: -- do your peremptory challenges, right?

MR. DOYLE: Yes.

THE COURT: Okay. And then if there's any issues, the Court can address that before we have the jury come back at 1:30. And then they can be excused, sworn in, and you can go straight into your opening statements, right? Does that work for everybody?

MR. DOYLE: Yes.

MR. JONES: Correct, Your Honor.

THE COURT: Okay. Perfect. I do appreciate it.

MR. DOYLE: Thank you.

THE COURT: Thank you so very much. I wish everyone a nice and relaxing lunch. And okay, if there's nothing else then we're going to off the record. Enjoy.

[Recess taken from 12:04 p.m. to 1:21 p.m.]

[Outside the presence of the prospective jurors]

THE COURT: Okay. The Court's on the record. We're outside the presence of the jury. And I have no attorneys.

The Court told counsel 1:15 at the latest by 1:20. It's 1:22. I've got no attorneys.

And, Marshal, we have most of our jurors ready --

THE MARSHAL: Yes.

THE COURT: -- to come in as well?

And so I appreciate that the observer says that the attorneys are working on it. All the attorneys are supposed to be here and are supposed to be here already, and ready to be prepared to move forward, because there is matters that needed to be argued outside the presence of the jury, and the Court has no good -- presented no good reason -- no good cause why there is no counsel here when the Court did specifically state it over and over, and yet there is nobody here.

So we are going to stay on the record and see when counsel chooses that they wish to appear. Again, the Court was very clear 1:15, at least no later -- and trying to give them a little extra time by 1:20. And so I'm going to -- if anybody has any access to contact people by text or email, et cetera, please reach out to them, and tell them they were supposed to have been here, and that obviously if they wanted any of their matters taken care of outside of the jury's presence that needed to get taken care so the jury was not supposed to have to be waiting.

Marshal, can you confirm our jury, please? Thank you so much.

And yes, the Court is staying on the record. We're going to see -- just don't understand the needlessly adding to the proceedings.

Okay. I still don't have trial counsel. I now at least a client here. I have a jury consultant, and I have an observer. I still have no trial counsel. It's 1:25.

UNIDENTIFIED SPEAKER: Mr. Doyle is in the restroom.

THE COURT: We told all counsel everyone had -- they said it was more than sufficient time. We need to be here by 1:15, at the latest,

no later than 1:20 to give them max amount of time. They said they could be here. Still have no trial counsel here.

[Pause]

THE COURT: 1:26, I now have at least Defense counsel. So I now have Plaintiffs' counsel coming in.

I remind all counsels at 1:26, by the computer, you all were all asked to be here at 1:15, no later -- at the very, very latest by 1:20, Counsel, all prepared to get going with all your peremptories already exercised.

Counsel, when the Court says that, we said it specifically to ensure that the jury was not waiting. As you know, the Court has been waiting for you all. You all said it would be plenty of time that you could get lunch and exercise all your peremptory challenges.

The Court sees no good cause for why you all could not have been here by that time. So have you exercised all your peremptory challenges? If so, please hand the sheet -- has it been signed by everyone?

MR. LEAVITT: Yes, Your Honor.

THE COURT: And is the top part set in the numeric order that you each exercised your peremptory challenges, so it has all the P1s, P2, P3, P4 --

MR. LEAVITT: Correct.

THE COURT: -- P5, and all the D1s? And then it has all the last three digits of the badge numbers of each of the jurors in the lower right-hand corner?

MR. DOYLE: That is correct, Your Honor.

THE COURT: And has been signed by each of the counsel? Okay. Please bring it forward. Thank you so much.

Counsel, if you can appreciate, these poor jurors this was their third day. All right.

MR. LEAVITT: Okay, Your Honor.

THE COURT: So we've got P-1. Okay. So you all have exercised all of your challenges; is that correct?

MR. LEAVITT: Yes, Your Honor.

MR. DOYLE: Yes, Your Honor.

THE COURT: Okay. So it looks like -- wait a second. Hold on one moment.

So is it -- is Juror Number 7 challenged or not challenged? Is that a scribble out, or is that an exercise of a challenge?

UNIDENTIFIED SPEAKER: It's just a scribble.

MR. DOYLE: It's a scribble out.

THE COURT: I really need counsel, not the jury consultant to speak, please.

UNIDENTIFIED SPEAKER: Sorry.

THE COURT: It's counsel's responsibility.

MR. DOYLE: It's a scribble.

THE COURT: Thank you. Okay. So you've got -- so the Court sees is that you'll have -- who'll end up being seated is:

Root, Badge 361 will be Juror Number 1;

Barrios, 366, will be Juror Number 2;

Fossile, 444, will be Juror Number 3;

Collins, 450, will be Juror Number 4;

Hernandez, 387, will be Juror Number 5;

Crenshaw, 455, will be Juror Number 6;

Hightower, 417, will be Juror Number 7;

And Thomas 418, will be Juror Number 8.

Those will be four jurors that will be going -- excuse me -- those will be the eight jurors that will be going back to deliberations. Is that the intention of the parties?

MR. LEAVITT: Yes, Your Honor.

MR. DOYLE: Yes.

THE COURT: Okay. And then Alternate Number 1 would be Peacock, 426, and Alternate Number 2 would be Johnson, 441. Is that the intention of the parties?

MR. LEAVITT: Yes, Your Honor.

MR. DOYLE: Yes.

THE COURT: Of course, Peacock and Johnson -- and actually no one would know who are the alternates and who are not the alternates until the time actually of deliberations. Everyone understands that and that's the intention of the parties; is that correct?

MR. LEAVITT: That is correct, Your Honor.

MR. DOYLE: Yes.

THE COURT: Okay. And so this is the intention of the parties. Everyone has exercised all the challenges. The Court not hearing anything else with regard to those jurors.

The Marshal went to go get the jurors to have them lined up and brought into the court.

Okay. At this juncture then, Madam Clerk, were you able to -- I'll give you this so that you can get it taken care of.

And so what Madam Clerk does is she reads the names and the badge numbers of the individuals who are not selected. Okay. And then they would line up at the double doors just to confirm that obviously there's ten individuals. They're lined at the double doors and there's ten individuals that are still in the box.

And then we would then have the marshal have the jurors sit in two sets of five. Okay. The first five individuals would be in the back row. Okay. Starting with Mr. Root and going to Ms. Crenshaw. Okay. And then Ms. Hightower would be in the first seat in the front row. And then it would end with Mr. Johnson in the fifth seat in the front row.

That the intention of the parties, right? Yes?

MR. DOYLE: That's fine.

MR. LEAVITT: Yes, Your Honor.

THE COURT: Okay. And the marshal will be handing out -- we've got our ten juror notebooks with pens all ready for our jurors? Yes. Okay.

Do we have all 20 prospective jurors here?

THE MARSHAL: Outside, yes.

THE COURT: Okay. So, Marshal, we have all the jurors selections done and handed to the clerk, so as soon as the prospective jurors come back in Madam Clerk is going read the names of those

individuals who will be staying with us. Those names that will not be called will go to the double doors, which is our standard practice.

Then we'll confirm we have the ten and ten. Then they'll be reseated. And then Madam Clerk will then read -- she'll then swear in the oath administered to the jury. The Court will then go through the explanation -- introduction and explanation of the trial process. Okay. And then afterwards, the explanation of the trial process so then we commence with opening statements.

Now, you all have said that there was an objection to some of Defendant's -- whether you want to call them slides, PowerPoints, the pieces of paper that were handed to the Court, so does that need to be addressed? If so, do you wish to address it right now, or do you wish to address it before Defendant starts their opening? When do you wish to address it, if at all?

[Plaintiff and Defense Counsel confer]

THE COURT: Or did it get resolved?

MR. DOYLE: It did get resolved. The only thing would be the jury instruction to cure it.

THE COURT: Is that going to be at the time of opening? When were you all intending to have it happen?

MR. LEAVITT: At the time of opening, Your Honor.

THE COURT: Oh, well. You all didn't say at the time of opening. You just said a pre-instruction. Okay.

MR. LEAVITT: That's my -- when I said --

THE COURT: Okay. So --

MR. LEAVITT: Fair.

THE COURT: -- when is the parties intention, because the Court was dealing with the others because you didn't tell me that this was resolved, so I was dealing during the lunch break with those and looking at the potential slides. So we now have two instructions: a P16, and a D18. So what is your intention? Is it -- what is the intention of the parties of when this would be happening?

MR. LEAVITT: My understanding of pre-instruction, Your Honor, and that's probably my --

THE COURT: No worries.

MR. LEAVITT: -- dealing with other courtrooms --

THE COURT: Yeah, I remember the NRCPs got us -- well, specific provision --

MR. LEAVITT: -- obviously is pre-instruction would be read before openings.

THE COURT: If that's what the parties are specifically requesting, then the Court is going to be fine. If the parties are stipulating that's the parties are specifically requesting.

MR. DOYLE: We're not stipulating to that, Your Honor, because we still haven't settled and discussed the jury instruction.

THE COURT: Well, timing is one thing. Content is the other. The question -- the Court's first question is timing, right. That's what I was asking: Did you all have an agreement as to timing?

MR. DOYLE: No.

THE COURT: Okay. So what is your position, as far as the

timing of the pre-instruction?

MR. DOYLE: It should be given with the instructions at the end of the case.

THE COURT: Wait a second. Didn't I ask you all earlier in the day and you all both agreed it a pre-instruction?

MR. JONES: That was my understanding, Your Honor.

MR. DOYLE: Well, then I guess pre --

THE COURT: So a pre-instruction is not -- the Court did ask that specific distinction between at the time of the jury instructions at the end of the case versus a pre-instruction, as specifically defined in the Nevada Rules of Civil Procedure. So that's why the Court did ask that question.

You all both told me earlier today it was a pre-instruction, but you disagreed whether it was P16 and then you had me write it in 18 for D, so am I hearing something different now?

MR. DOYLE: No. I guess we're talking about when is pre-instruction before or after opening statement. I mean --

THE COURT: Okay.

MR. DOYLE: -- I don't want to take the jury's time to settle the instruction which would be necessary if it's going to be given before opening statement. I suggest it be given after opening statement before evidence begins, which I --

THE COURT: Is that agreeable to Plaintiff? Folks, I really thought you all had this resolved between -- the Court did specifically direct you to do that on October 7th, so this was all taken care of before

trial started -- that you had to agree on the timing, right, and then the -- and then agree, either A, you either had an agreed upon instruction, or B, it was supposed to be submitted before trial started, right. So that was supposed to be before even commencing jury voir dire, which neither of you met, right.

The actual proposal of if it was not agreed upon so that the Court would have time to address this before we had any prospective jurors in here so that we didn't have people waiting, so --

MR. DOYLE: Your Honor, I received Plaintiffs' instruction.

THE COURT: It doesn't matter.

MR. DOYLE: Okay.

THE COURT: You either both were -- you were supposed to talk among yourselves between October 7th -- before October 14th, which gave you all the way from October 7th -- the whole week, right, to get the Court something. That was the instruction. Nobody told me that that -- you couldn't comply with it, so presumably you both could have gotten on the phone or, done something, email, whatever.

If you didn't agree, you could have submitted it -- both submitted to the Court independently if someone didn't reach out to the other person. Then the other side could have easily independently submitted something to the Court.

It's not a finger pointing contest, folks. You each independently heard what the Court said. You both independently either spoke to each other and came to an agreement, or you didn't, and you both independently knew it was due beforehand. So it didn't happen, so

now we're at where we're at. The Court is trying to address it.

So it's really -- simply the question is: Did you even discuss and agree upon timing? Since I'm now hearing two different things it doesn't sound like you did, or maybe one -- you understand this is not supposed to be fluid. You all --

MR. DOYLE: Correct, Your Honor.

MR. LEAVITT: We did. Mr. Doyle came over and asked me if I was going to address this in my opening statement after you had asked if this was a pre-instruction and I told him yes, I am going to address this in my opening statement.

THE COURT: Okay. And was -- do you agree with that, Mr. Doyle, or you do not agree with that?

MR. DOYLE: I agree that that was the conversation we had earlier today.

THE COURT: Did you have -- did you comply with the Court's direction that you all were supposed to come to an agreement as to timing before trial started?

MR. DOYLE: Apparently not.

THE COURT: Did you --

MR. LEAVITT: My understanding this morning was that's -- when you asked -- when the Court asked, I said yes, this is a pre-instruction, that was my understanding. Mr. Doyle came and approached. We said okay in your opening -- because he probably didn't know I was doing opening -- so do you plan on using it in your opening and I said yes. It's a pre-instruction.

MR. DOYLE: The issue is we could not agree upon the instruction. I received their version. I responded Monday morning. I was waiting for a response.

THE COURT: Did you provide them with a proposed pre-instruction?

MR. DOYLE: I did Monday morning.

THE COURT: No, before Monday morning, because by Monday morning it was already late to the Court.

MR. DOYLE: I didn't -- I didn't receive theirs until Sunday afternoon and I can tell you --

THE COURT: I'm just saying, you both knew you were supposed to give it to the Court --

MR. LEAVITT: Correct.

THE COURT: -- right?

MR. DOYLE: Correct.

THE COURT: And if it was supposed to get a judicial day before Monday that definitely is not Sunday night and you both knew that, so --

MR. LEAVITT: Correct.

THE COURT: -- okay. I'm just trying to see if anyone attempted to even comply with the Court's instruction.

MR. JONES: Yes, Your Honor, we drafted --

THE COURT: If either side gave the other one Friday or earlier, a simple yes or no. Plaintiff, did you give Defense Friday or earlier a proposed pre-instruction?

MR. JONES: No, Your Honor.

THE COURT: Defense, did you give Plaintiff a proposed pre-instruction Friday or earlier?

MR. DOYLE: No. I waited until I --

THE COURT: Okay. So neither of you complied. That's really --

MR. JONES: That's correct.

THE COURT: -- simple question I was trying to ask. Okay. So we're past that.

MR. JONES: We are, Your Honor.

THE COURT: You both continue to not comply. So now, we're at where we're at. Did you have any discussion, as far as the timing, of when the pre-instruction?

MR. JONES: This morning, Your Honor.

THE COURT: Okay. Did either of you bother to read the Nevada Rules of Civil Procedure, as modified since March 2019, as it addresses pre-instructions? Defense counsel?

MR. DOYLE: I have not. At least -- or since modification. It's their instruction, so --

THE COURT: I'm just wondering if you all are arguing from some place of where you have actually read the rule, or are you just arguing for the sake of arguing, folks. I'm really just trying to get some sense, because if you stipulate and agree, fine. We'll modify it. If you're just shooting from the hip, just tell me and let's not.

Okay. So I thought you all had come to an agreement on

timing, so if you haven't, let's -- right now you have a jury still waiting, right.

MR. JONES: Correct.

THE COURT: So what we're going to do is we're going to call the jury in so ten individuals can go on with their lives, right.

MR. JONES: Very good.

THE COURT: And the other jurors are going to come -- okay. So now the Court is going to do that, so --

MR. JONES: Very good.

THE COURT: -- ten members of our community aren't going to have to wait any longer in fairness, right, because you've agreed who the ten people are staying with this case. They can come in. They can find out who is going to stay with the case. They can be sworn in. They can hear the Court's introductory remarks and then we'll decide what the next step is.

Marshal, please get our jury. Thank you, sir.

THE MARSHAL: Yes, Your Honor.

[Pause]

THE MARSHAL: All rise for the jury.

[Prospective jurors in at 1:41 p.m.]

[Within the presence of the prospective jurors]

THE MARSHAL: All jurors are accounted for.

THE COURT: I do appreciate it. Thank you so very much, Marshal.

Well, welcome back, ladies and gentlemen. We took a few

extra minutes. And you can appreciate that guess what, they wanted you all, but they can't have you all, so took a few extra moments, so in just a moment Madam Clerk is going to read the names of the ten individuals who will be staying with us -- okay -- the names and the badge numbers. If your name is not called, what we'll ask you to do is we're going to ask you to go to the double doors and we're just going to count, because what ends up happening sometimes is we've actually had people who try and stay with us. Okay. So we need to make sure we have ten here and ten up there.

Okay. So for those of you who'll be leaving us, really, I'm very, very sincerely want to thank you and, you know -- three days -- although it has been three full days, but you've been asked a lot of different questions. Whether you've been asked completely the entire time, or partly in the gallery, and partly coming here, and you've asked and answered each other's questions forthrightly, so we really do appreciate that you've taken the time to be here and to fully answer the various questions, and to do your civic duty. So a heartfelt thanks on behalf of, not only myself, my team, and for counsel, their clients.

As well as for those of you who will not be staying with us, those who will be staying with us, we look forward to seeing you a little bit longer.

So at this juncture, Madam Clerk, will you please read the ten names and badge numbers of the individuals who will be staying with us?

THE CLERK: Yes, Your Honor.

Kyle Root, Badge Number 0361.

Felix Barrios, Badge Number 0366.

Ashley Fossile, Badge 0444.

Tara Collins, Badge 0450.

Francisco Hernandez, Badge 0387.

Keondra Crenshaw, Badge 0455.

Belinda Hightower, Badge 0417.

Darea'l Thomas, Badge 0418.

Cindy Peacock, Badge 0426.

And Roger Johnson, Badge 0441.

THE COURT: Okay. So those of you who will not be staying with us, I know we broke up your trio, I feel sad, but those of you who will not be staying with us, please go to the double doors.

THE MARSHAL: Please rise for the jurors.

THE COURT: Okay. If your name was not called, please go to the double doors. We just -- like I said, we just need to do a quick count to see the ten and ten.

Okay. Perfect, we've got ten and ten. So really a heartfelt thanks. Thank you so very much for your willingness to serve on this jury. And we hope to see you down the road in another case. Best of luck in your various careers and everything we've learned about you and too bad I missed out on some good baking I guess and some other things.

Last name and everything perfect. Appreciate it. Thank you so much.

[Prospective jurors out at 1:44 p.m.]

THE COURT: Thank you.

Okay. So for those of you who stayed with -- staying with us, we're going to do a couple of real quick things. While they're walking out the door, what we're going to need to do is we're going to get you in two sets of five while my marshal is starting to have them sort -- so, you know, Mr. Root, we're going to move you over one seat, so we're going to have five and five so you can appreciate one, two, three, right?

We're going to move down two, so we get to five, right, in the back row. And Ms. Peacock and Mr. Johnson, you're going to go to the end two seats. No. You're going to be in order number, so, Mr. Johnson, you're going to be in that very fifth seat.

So, Ms. Crenshaw, can we get you in front of Mr. Root. And then move down, please, Ms. Hightower, Ms. Thomas, there you go.

Okay. Have I done this correctly? I have done it correctly.

Okay. So we're going to sit down because the marshal is going to tell us we get to sit down, right?

THE MARSHAL: Please be seated.

THE COURT: I appreciate it. Thanks so much.

Okay. Although, you're going to stand back up in just a second, because Madam Clerk gets to swear you in as soon as you get those notepads, and then we'll walk through a couple of brief explanations. Madam Clerk. Whoops.

THE CLERK: Right.

THE COURT: I'm about ten seconds ahead of where I need to

be, so -- and hopefully, those notebooks match where you're sitting in the seat numbers, right?

GROUP RESPONSE: Yes.

THE COURT: Okay. So, Madam Clerk, can you please swear in -- you are now jurors instead of prospective jurors.

Madam Clerk, can you please swear them in?

THE CLERK: Yes, Your Honor.

Will the jury please stand and please raise your right hands?

[The jury panel was sworn in by the Clerk]

THE CLERK: Thank you. Please be seated.

THE COURT: Okay. So, ladies and gentlemen, welcome now as sworn jurors here in Department 31.

Okay. So what I'm going to do at this juncture is let me walk you through a little bit of the brief introduction of the process of a trial. Okay. What I'm going to say to you now, however, is in no way a substitution for the detailed jury instructions that you're going -- substantive jury instructions and a pre-instruction that you're going to get, okay, with regards to this case.

So let me walk through a brief introductions. First -- and some of these are going to be repetitive, so some of the things that you heard during the voir dire process -- first, you must base your verdict solely on the evidence presented in the courtroom, not on anything you may hear from anyone else or in the outside information you may have.

You're admonished that no juror may declare to a fellow juror any fact relating to this case or his or her own knowledge, and any

juror discovers during the trial, or after the jury has retired for deliberations that he or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such to myself via the marshal. Okay. So for example, you heard several of the names and list of witnesses, right? So say all of a sudden as one of those witnesses comes in, guess what, oops, I forgot, you know. That person is my neighbor. Okay. You'll need to let the marshal know. The marshal, in turn, will let the Court know. We'll let counsel know, and we'll address that.

Okay. Or if you hear somebody else say, oops, guess what I saw my neighbor, or something like that, right. So we just need to know. Okay. So if you find out -- or all of a sudden you realize guess what, there's a whole bunch of facts and information that I didn't realize that I knew I know about this case, please, you need to let us know, but do let the marshal know, and then he, in turn, will let the Court know, and we'll let counsel know.

Okay. So those are a couple of different examples. So if you've not previously said something, we need to make sure we know that and then that will be brought forth to counsel and we'll get it taken care of.

As I mentioned earlier, during the course of the trial the attorneys for both sides, the parties, and the witnesses, and the court personnel, other than the marshal, are not permitted to converse with members of the jury. So I already have explained to you that if you see us either inside the courthouse, right, or even outside the courthouse,

we're not being rude. Okay. We just can't talk to you. So please do not take that personally.

Another thing that kind of briefly mention, you probably already saw this during the voir dire process. You will see counsel and their clients -- and I know Plaintiffs' counsel actually mentioned this partly during the voir dire process -- being here part of the times during the trial they may need to leave during different parts of the trial. You need to disregard that. Whether counsel, you know, are here with their clients, or here and out of the courtroom -- right -- you need to disregard that.

People have different things going on, so sometimes you'll see different people here, in and out. Okay. You need to disregard that.

And let me sidetrack, actually, there's another thing. So you probably saw throughout the voir dire process sometimes I'm working on my computer. Sometimes I'm taking different notes. Sometimes you might see my JEA. Actually, you saw my law clerk in here somewhat yesterday. My ex-tern who I introduced on Monday, also been in and out. You need to disregard that. Particularly like when I'm taking notes and doing different things, remember, I've got a full caseload.

There's bunches -- you know, you are, of course, most important case on my docket -- right -- but remember I also had to be fully prepared for each and every other one of my -- oh, there's my clerk coming back in -- so each and every one of my about 800 other cases. So fully motioned calendars, in addition to doing all your trial things, signing orders, and different things. So you need to disregard it.

Nothing that I'm doing on those other cases, or should be in any way any interpretation, or viewed by you in any manner whatsoever on any view that the Court would have on this case. Okay. I need to be fully prepared on each and every one of my cases, so you may see me taking notes, may be seeing me on the computer, may see I may need to mention something real briefly and quietly either to my marshal, court clerk, sometimes my JEA may pop in real quickly, et cetera. Okay. And you all understand that, right? Okay. So don't take any mental note whatsoever.

I mentioned the Marshal. He's the only one that can speak to you. And he's the one who's going to provide you information about parking, and all sorts of just generalized things. Now, he can't discuss the case, obviously, with you in any substantive manner.

You can't discuss it among yourselves, even though now you're seated jurors. The only time it can be discussed is at the time of jury deliberations at the end of the case in the jury deliberation room. And everybody understands that. Okay.

So a couple of other things need to make sure that you understand is you may not individually investigate this case in any manner. You've heard me -- and you'll continue to hear me say throughout this case at any breaks, lunch, overnight, et cetera, what are generally called the admonition, right. And it goes through the various things that you can't do, that you can't post; you can't independently investigate; do any research. Okay. That's so very important. You cannot do that throughout this entire case, right.

The only reference for information is the evidence you'll be hearing here in the courtroom from the witness testimony. There'll be documents, et cetera. Okay. That's what you take into consideration.

You don't go home and Google things. If you hear a term, you can't go home and Google it, or whatever your particular search engine is. I'm not picking -- you know, picking Google versus something else. Okay. Because I still can't even talk ice cream, but you understand what I'm saying, you know, can't do any of that.

In the courtroom what you're hearing from the witnesses and the various documents, et cetera. Okay. So you must adhere to that.

Okay. You can't visit the scene. If you hear about certain places, you can't go and visit and say, who I want to independently go and look at that place. You can't do that. Okay. You must only base fair and impartial based on what you hear in court. Okay.

So you're not to visit the scene, or in the acts, or occurrences that may be mentioned during the trial. Okay. This is not the type of case we're going to need to do a scene visit. Okay. Sometimes we do that in our construction defect cases. This is not the type of case we're going to do that so that exception would not apply.

Okay. So you can't do any independent investigation, whether that be words, whether that be trying to find out who people are. No, you can't do any of that, et cetera.

Now, let me kind of give you a broad oversight of what is the process of the case. It's intended to serve basically as a brief introduction to the trial of the case. Once again, it's not a substitute for

the detailed instructions of law, which will be provided to you.

This is a civil case. That was already discussed with you. The civil case is commenced by a plaintiff against a defendant, or defendants. Okay. The case is based on a complaint filed by the plaintiffs and is served upon the defendant. The defendants then file an answer and the complaint, in which they admit certain allegations and deny other allegations. The allegations which are denied are contested is what this trial is about.

Do counsel waive the full reading of the pleadings?

MR. JONES: Yes, Your Honor.

MR. DOYLE: Yes, Your Honor.

THE COURT: Okay. So since they have waived the formal reading of the pleadings, you are probably very happy because that means the Court does not need to read the pleadings word for word -- okay -- which is saving time.

So, ladies and gentlemen, you should clearly understand a couple of different things: that the pleadings, which is things like the complaint and the answer, et cetera, in this case, are not since evidence of the allegations they contain. Each party has the burden of proving their respective claims by a preponderance of the evidence.

And the preponderance of the evidence was already generally discussed during voir dire. Okay. And there's a lot of different ways that people phrase preponderance of the evidence, and by the time you get to the jury instructions there's going to be kind of an agreed upon definition, because there's a lot of ways that people informally

refer to preponderance of the evidence.

Sometimes people say more likely than not. Sometimes -- and you say Plaintiff counsel he used kind of a visual aspect of it. Sometimes people say if they look at the scales of justice, it's tipped slightly more to the party that has it. Okay. Sometimes people say percentages. They say a little bit more than 50 percent. A lot different ways. Okay. Informally referring to it. And really those are utilized because this is not a criminal case.

Okay. In a criminal case, which this is not, there's a different burden. Okay. And if you watch any of the crime shows -- right -- they don't talk about preponderance of the evidence. Preponderance of the evidence is for a civil case. This is a civil case, so that's why look at preponderance of the evidence. So anything that you have in your mind about any of the criminal shows you watch, that is not the standard here, because this is a civil case.

Everybody understands that, right? I'm seeing affirmative nods. Yes. Seeing all affirmative. I'm missing an affirmative nod in the back there -- yes? Okay. There we go.

Okay. So with the structure, the purpose of the trial is about the disputed issues in the matter and whether the parties have met their respective burdens. It's your primary responsibility, as the jury, to find and determine the facts.

Okay. Under our system of justice, you are the sole judge of the facts. You are to determine the facts of the testimony you hear and the other evidence, including the exhibits that are introduced in court. It

is up to you to determine the inferences which you feel may be properly drawn from the evidence.

The parties may present sometimes what's called objections. You already got to hear some objections during the voir dire process. Okay. You cannot hold it against an attorney if he or she raises an objection on behalf of their clients. Okay. It's up to them to determine if they feel that they need to raise an objection on a particular aspect that they think that they need to do so. Okay. Whether they do or don't, you can't hold it against them if they do. You can't hold it against them if they don't. It's their determination whether they think that they need to raise an objection.

You've already heard -- and you heard this during the voir dire process -- the Court sometimes sustains an objection. If he sustained the objection, that means when the evidence is that you cannot take the evidence into account. So let me give you an example. Say one side is asking a question and a witness actually starts to try and answer the question before the Court has a chance to make a ruling on an objection, but the Court then sustains the objection. If the witness has started to answer the question, you must disregard that answer that has started to be said. Okay. Because sometimes the timing is not perfect. Okay.

If for example -- we're going to go through your juror notebooks in just a second, because they've got multiple purposes -- if for example you started to write down that answer in your juror notebook, you need to scratch it out. Okay. Sometimes I may say

scratch it out. Even if I do not tell you to scratch it out, you know you can't consider it, and you have to scratch it out. Everybody understands that?

Okay. Now, sometimes I'll overrule an objection. If I overrule the objection, that means you can take the answer or the information into account.

Okay. And then sometimes -- and you saw this during voir dire -- there is kind of a third option -- the counsel decides that they're going to withdraw the question and rephrase it themselves, and you've heard the Court say already a couple of times during voir dire, that means the Court need not rule. Okay. And if they're withdrawing it, then hopefully the answer hasn't already come out, right. But if they're withdrawing it, and they're rephrasing it, then they're asking a whole new question. Okay. And then the Court will address if that new question raises an objection or not.

Okay. Everybody understands that? I'm seeing affirmative nods. Great. Okay. So some cases we get a lot of objections, sometimes we don't. And like I said, it's up to the attorneys to decide whether they feel something they need to raise an objection or not.

And you've also already seen during the voir dire process that sometimes when a party raises an objection they're just supposed to basically state the basis of the objection. From a time-saving standpoint, instead of sending the jury out each and every time that there's an objection, sometimes the Court may need a point of clarification. You already saw this during the voir dire process. I may call counsel to

bench. Turn on the white noise so that I can get a point of clarification on their basis of what their objecting on.

Okay. Sometimes it's real easy when they just say it in court, but sometimes I need a little bit further clarification of what they're objecting to. I may call them to the bench just from an efficiency standpoint, rather than sending you all out each and every time. Okay.

If I think it's going to be rather lengthy, then you may be enjoying stretching your legs in the hallway. Okay. Everybody understands that with an objection.

Okay. So remember anything you hear outside the courtroom, however, is not evidence.

Now, there's another thing, a question itself is not evidence. Okay. An attorney asks questions to elicit evidence from the witnesses, right. The answer is the potential evidence, but the question itself is not evidence. The question is an attorney asking a question to try and elicit evidence, i.e., testimony from the witness. Okay. So because an attorney is saying it, that's not evidence.

Okay. And we're going to walk through in just a few moments opening statements, et cetera. Okay.

So you must not be influenced in any degree -- and you heard this a little bit during the voir dire process, right -- you cannot be influenced in any degree by any personal feelings of sympathy for, or prejudice against either party. Both the Plaintiff and Defendant are entitled to the same fair and impartial consideration.

In considering the weight and value of the testimony of any

witness you may take into consideration the appearance, attitude, and behavior of the witness; the interest of the witness in the outcome of the case, if any; the relationship of the witness to the Plaintiff or Plaintiffs, or the Defendant or Defendants; the inclination of the witness to speak truthfully or not; and the probability or improbability of the witness's statements, and all of the facts and circumstances in evidence. Thus, you may give the testimony of any witness just such weight and value as you believe the testimony of the witness is entitled to receive.

There's two types of evidence: direct and circumstantial evidence. Direct evidence is evidence or testimony by a witness about what the witness personally saw, heard, or did. Circumstantial evidence is testimony or exhibits which are proof of a particular fact from which if proven you may infer the existence of a second fact.

Okay. The other day -- actually, it was I guess about a week or so -- okay -- it doesn't rain that often here in Vegas, right, but direct evidence, you're outside -- right -- Tiny Tim song, raindrops keep falling -- were falling on your head, right -- direct evidence it was raining.

Okay. If, however, say, right before you went and got your car beautifully detailed -- right -- it's spotless. It's looking beautiful. Okay. And I'm going to say your house has desert landscaping, right, so you don't have sprinklers, because you don't need them. Okay. So your beautiful, spotless car, you park in the driveway. You don't have any sprinklers. You go home. Go to sleep. Kind of hear a little pitter patter. You're hoping it's not something else up in your roof, right, or in your eaves. Okay.

Sounds like a pitter patter of something. You walk out the next day and guess what, there's little what looks like water spots all over your car. That would be circumstantial evidence -- right -- that it rained during the night. You heard little pitter patter. You're assuming it's not something that you hope is not up right in your roof, and second, you see little water spots on your car.

You can take into account both direct and circumstantial evidence. Okay. And the weight that you give direct and circumstantial evidence is up to you. Okay. So you get to decide how much weight you give both direct and circumstantial evidence.

Just because something may be direct evidence versus circumstantial evidence doesn't mean that one is given less or more. It's up to you to decide how much weight you give both direct and circumstantial evidence.

Opening statements, which you're going to hear in a few moments, and closing arguments, which you hear at the close of all the evidence, are not evidence. Okay. What they are is the attorneys' attempts to try and help you understand the evidence.

Opening statements -- the word opening is an introduction of what they say -- each side says they feel that the evidence is going to provide. Okay. So it's opening statements and introduction to tell you what they think is going to be proven or not proven in the case. Okay.

Closing argument is a summation at the end of what they feel that the evidence did or did not prove. Those are statements by counsel they, themselves, are not evidence. Okay. They're just to help

you guide.

Okay. Once again, I mentioned a question itself is not evidence. A question is only to provide some basis for the answer. The answer is the testimony of a witness and that would be evidence.

Until the case is submitted to you, you must not discuss it with anyone, even with your fellow jurors. After it's submitted to you, you must only discuss it in the jury room with your fellow jurors.

It is important that you keep an open mind and you not decide any issue until the entire case has been submitted to you under the instructions from me, which will be the jury instructions will be -- which will be the law by which you, as the finders of fact, the jury will decide the case.

If at any point you cannot hear a witness, please raise your hand as an indication.

Also, if you need to use the restroom -- we'll try and take breaks about every 90 minutes or so, so try and go -- try and take a morning break, lunch, and then an afternoon break. Okay. And let us know. But if you need more, just let us know. Okay. And we'll get that taken care of for you. If you need accommodations, let us know. As you heard me say earlier, be glad to take good care of you. Okay.

I already mentioned before that no statement, ruling, remark, or comment which I may make during the course of the trial, or that I made during the voir dire, which I didn't make any, is any indication how you should decide the case, or influence you in any way in your determination of the facts.

I already mentioned that at times I'm taking notes, being on the computer, et cetera, and I mentioned the fact that that's because I need to be fully prepared for every case on my docket. Okay. And so I do that in order to be fully prepared.

At times, rarely, I may sometimes even ask a witness a question. That should give you no more determination of the value of that particular question versus if a question came from either Plaintiff or Defense counsel. Okay. It's up to you to listen to all of the information provided by each of the witnesses and for you to determine how you would view their information.

Now, let me explain a little bit about your juror notebooks. Okay. You were given the juror notebooks. Okay. Juror notebooks hold a lot of different opportunities for you to do different things. One, it gives you an opportunity throughout the case to take as many notes as you want. Okay. And don't worry, we have as many notebooks as you possibly want to utilize. Okay. So we're glad to do that. We'll give you as many different pens if you run out of ink. Okay. So you have that as well.

The second purpose of the juror notebooks is you, as jurors, also have an opportunity to ask questions, but you ask questions in a little bit different format than counsel does. Okay. So when we go through the process of the trial when it's a Plaintiff's witness, the Plaintiff would ask the questions first in a verbal format generally, unless we had depositions that are being read, but in this case, I don't anticipate that we have any depositions, but Plaintiff would ask their questions and then

Defense counsel has an opportunity to cross-examine.

Okay. And then you, as the jurors, once all those questions have been exhausted, if you have any questions, you would write down your questions. Guess what? You write your last name and last three digits of your badge number, right. And so then you would write down your question, but couple of things you need to take note. Okay.

First, witness needs to be on the stand. So please if a witness is testifying say tomorrow -- right -- don't think of the question next Monday. We can't call the witness back so he or she can answer your question. Okay. So it needs to be while the witness is on the stand, right.

And I'm going to tell you in advance, there's some questions that you may wish to know the answer to, which will be the type of questions that can't be asked. Okay. And there's a variety of different reasons. Some just can't be asked because the nature of the law, or nature of the particular case, or it may because of a ruling that the Court made or may not be the particular question for that particular witness. Okay. So don't be offended if your question doesn't get asked.

Or sometimes your question has to maybe be modified just a little bit before it gets asked. Okay. But some cases we have a lot of questions asked by jurors, and some cases we don't hardly have any, or none at all, and it's really up to each case, and each potential juror. Okay. So it's some people don't at all, and some people do. It's really up to you.

Okay. But if you do, what you do is you just write it -- well, I

still have one school teacher, so I could kind of make my example -- right -- what we ask you not to do -- sorry -- as the -- please don't use the quarter inch piece of paper and write the question. Okay. What we ask you to do is, you know, write your last name and your badge number at the top of a full sheet of paper. Write your question in, you know, some type of height that we can actually read, you know. I do have reading glasses. I try not to use a magnifying glass too much. Okay. And then rip out the entire sheet of paper.

Okay. And then what you do, is just kind of put it in that front little bar area, and the marshal at convenient times will just come and pick up those questions and then we wait appropriately. And then have the questions asked before the witness -- once the counsel finish their questions and then we have the -- they come to bench, counsel does, and look at the questions. And the appropriate ones get asked of that particular witness.

Okay. And then once again, when the witness is done, and already off the stand, we can't call the witness back to ask juror questions. Okay. And juror questions do not come in a verbal format. They only come in the written format. Okay. Everybody understands?

And then the third purpose obviously to the juror notebook, in addition to taking the notes, and you have questions, is in a little bit I'm going to try and give you a general -- at the end of the day a general idea of what we think our schedule is going to be. So you can rip that out.

You do leave your juror notebooks in your chairs, obviously,

during breaks and at the end of each day, and the marshal will ensure that they're there for you the following day.

Okay. Kind of give you a general idea of juror notebooks. Okay. So let me tell you a little bit about the structure of the trial. The structure of the trial is the Plaintiff's attorney will make an opening statement, which is an outline to help you understand what Plaintiff expects to prove. So after they give their outline of what they expect to prove, then the Defense attorney may, but does not have to make an opening statement. Opening statements, as I mentioned a moment ago, are not evidence but serve as an introduction to the evidence which a party making the statement intends to prove, or their position on the case.

The Plaintiff afterwards then has an opportunity to present whatever evidence he or she deems is appropriate. Counsel for the Defense may then cross-examine the witnesses that Plaintiff calls. So Plaintiff goes first for direct-examination, then Defense counsel has an opportunity to cross-examine. Then Plaintiff has an opportunity to do what's called redirect, right, recross back and forth until all the questions that each side wants to ask. Okay. And that's when if there were any juror questions for a particular witness we then do juror questions at the end of that. Okay.

Just to let you know, sometimes there may be a situation during Plaintiff's case in chief by agreement of the parties because the witnesses time their scheduling that they may say that a Defense witness may go during Plaintiff's case in chief just because of scheduling. If that

happens, don't worry, I'll let you know. Okay. And if that happens, what would happen in that situation is Defense counsel would ask the questions first because it would be a Defense witness. And then Plaintiff's counsel would have an opportunity to cross-examine. If that does happen, we will definitely give you a heads up that that's happening. Okay.

So after Plaintiff has an opportunity to have all of his and her -- since we have both a male and female, that's why I'm doing his and her witnesses, okay, the Defendant has an opportunity to call whatever witnesses he chooses to do so. But once again, Defendant does not have to call witnesses, but they can call their witness as they choose to do so. Any witness as I mentioned a moment ago that Defense calls, Plaintiff then has an opportunity to cross-examine, but does not have to cross-examine. And it would be the same reverse; cross-examination by Plaintiff's counsel, and then redirect by Defense counsel back and forth until the questions are fully exhausted. Okay.

As I mentioned, Defense is not obligated to present any evidence. If they choose to do so like I said, they can call witnesses. Each side can then try to introduce exhibits. Some exhibits may be introduced by stipulation of the parties. If they're not introduced by stipulation of the parties, then they have to seek to admit the exhibits through witness testimony and different methods. And you'll hear them say, I'd like to introduce it. If it's introduced by agreement, it comes in. If the other side objects, then the Court has to make a ruling. And you'll hear that throughout the case. Okay.

As I mentioned, you will be able to ask questions. Those questions have to be of a factual nature. You can appreciate they can't be the ultimate conclusion, and they can't be legal issues, right. They have to relate to this case. Okay. We can't give you advice on parking tickets and other things. Okay. I'm sure that was self-evident, but sometimes I mention that because you'd be surprised what sometimes we get. Right. Okay.

Once again, it's up to you to determine the weight you give to any of the answers. And as I mentioned a moment ago, just because a particular question is asked either by Plaintiffs' counsel, Defense counsel, one of your fellow jurors, or even if the Court were to decide to ask a question, that doesn't mean that the answer to that should be given any different weight. It's up to you to give the weight you deem the answer to the question regardless of who asked that question. Okay.

So after all the evidence has been presented what ends up then happening is you get the jury instructions, which is the law of the case. And then the parties have an opportunity to do closing arguments. Closing arguments is a summation of what they feel the evidence is. But before we actually get to jury instructions I mentioned Plaintiff gets to call all their witnesses, Defense calls all their witnesses.

Plaintiff then has an opportunity to do what's called a rebuttal case. They can call follow-up witnesses if they choose to do so. Plaintiff does not have an obligation to do a rebuttal case. Sometimes they do. Sometimes they don't. And you can't take any inference of it one way or another whether they choose to do so or not. Sometimes

there's some witnesses they want to respond to in Defense's case. Sometimes they do. Sometimes they don't. If they do, it would follow the same format as the ones that they did in your case in chief meaning they would go first, ask questions, and Defense counsel would have an opportunity to do cross-examination back and forth. Then the jury would have an opportunity if they wanted to ask questions. Okay.

And then it would be the jury instructions. And then it would be closing arguments. After closing arguments are completed, then the jury goes for deliberation. Okay. There may be an issue. Like I said, some witnesses may come out of order. We do not anticipate in this case that there would be any testimony coming in through audio visual, but sometimes we do. And that may change if somebody -- if an issue happens with one of the witnesses. But sometimes we have people coming through the screens. They come in audio visually. If so, we'll let you know. And you can hear and see everyone. We've got -- it'll be on two different screens. And sometimes via deposition testimony. We don't anticipate that in this case, but sometimes that may happen as well. And so we do that as well through deposition testimony. Okay.

And counsel has an opportunity to walk around. They may have the witnesses sometimes get off the stand. Sometimes they may be drawing a little bit on a board. Sometimes they may have PowerPoints. Okay. All things to allow you to do it. If at any time you can't see, or you can't hear, like I said, just let us know. We will get that taken care of for you.

Okay. So once you go back to deliberations, like I said, at the

end of the case, you can only discuss the case in the deliberation room and only with your fellow jurors. After you finish with your deliberations, you would have verdict form in there. You will have your exhibits all in there with you. And then you would complete the verdict form. And then you'd come back, and jury service would be completed.

So at this juncture a couple things I do have to quickly remind you about is that you can't talk to each other of course about the case until the conclusion of the case. You cannot make any determinations about this case until the conclusion of all the evidence, and then only in the jury deliberation room. I remind you that we cannot talk to you, and we are not being rude. Okay. It's just we can't talk to you either outside the courtroom in any manner whatsoever.

I remind you, like I said, people may be coming in and out of the courtroom, and you can't take any note of that. Like I said, you'll see different observers come in and out. No note of that. You'll see some people are kind of a little bit more high-tech, some people a little bit more low-tech. You can't take that into account. People just present their evidence the way that they wish to do so, and that's perfectly fine.

Also, we don't anticipate any news coverage. But sometimes there's people who just generally cover the courthouse. So sometimes they pop in here every once in a while. Don't take any notice of that one way or another. It just happens sometimes. Also, sometimes we have school children. We've got some wonderful programs where school children come to the courthouse and sometimes watch a case every once in a while, or people, whether it be elementary school age or up to

high school age. And sometimes people for their paralegal studies and other things sometimes come in and watch cases. So don't take any note of that one way or another. It just happens. It's a public courtroom. People are more than welcome to come in.

And also, like I said, if you ever recognize a witness or somebody, please let the marshal know, who will in turn let us know.

And at this juncture, does the jury have any questions? You understand everything the Court said? Everybody understands? Okay. What we're going to do -- because we're about to go into opening statements, and it really sometimes takes a little bit of technology to get things started. Instead of having you sit there, my guess is you probably want to maybe notify the people you need to notify that you're going to be on jury duty.

You probably want a nice 10-minute break right now because you'd rather have it now than have it close to 5:00. So why don't I give you an admonition. I'm going to say 15 minutes so you can kind of do something. But you probably want me to give you a ballpark on the best dates that I know right now. Would that be helpful rather than waiting until the end of the day? Okay.

So let me try and give you ballparks. Now, remember, these are estimates and ballparks with a couple caveats. One, the attorneys in my motion calendar show up on time. Right. And two, that they don't argue too long. And three, that things I can't anticipate don't happen. So there's a couple of caveats. Let me get that taken care of for you, and then we'll send you out on a quick break and we will let counsel get set

up for their opening statements. Okay.

So it's just going to take me a moment for my computer to let me on because it likes to not let me on sometimes. Oh, I should've mentioned while I'm doing this, juror letters, you all downstairs in jury services, you know, you could've printed out things and you got the little cards. By the way, the marshal's also going to hand you -- get you more permanent jury badges that are a little bit more solid. You do want to keep those other ones because of the scanability.

But if somebody needs an additional letter from me with my signature on it for your respective places of work, the marshal at the end of the day is going to have forms that you can fill out and we can get those. It usually takes a day or so because, you know, I look at them at the end of the day. My JEA will have to work on them tomorrow. So we'll be glad to get those to your respective employers. But just make sure you write at least legibly enough. And then he'll also ask you to make sure because sometimes it's hard to identify whether people -- gender wise, so if you could put Miss or Mister, so that we don't inadvertently misstate what somebody is, right, because we want to make sure we correctly identify them.

So let me tell you our best estimate of timing on days. Okay. And this is best estimate. Tomorrow is the 17th. The 17th, we are -- counsel, I think -- counsel, do you anticipate we're starting at 1:00 because I have my pre-trial conferences taking us close to the noon hour?

MR. DOYLE: That's fine.

MR. JONES: That's fine, Your Honor.

THE COURT: I'd -- I've got seven pre-trial conferences. Probably I'm going to say between 12:30 and 1:00 tomorrow. Okay. That's my best estimate. So I will know more towards the end of the day, but 12:30 to 1:00 starting tomorrow. Friday, 9 a.m. Monday the 21st, 9 a.m. Tuesday the 22nd is between 10:45 and 11 a.m. The 23rd, my best estimate for the 23rd is 10:00. It may be closer to 9:30. I'm going to try and move some things. I may have some flexibility. But I'm going to say 10:00 now, but we may be able to have some flexibility there. The 24th is -- let's say 10, 10:15 on the 24th. And Nevada Day is a holiday. And the 28th would be 9 a.m. And the 29th, I can't estimate at this point right now because there's some things I'm going to try and move right now. Yes?

UNIDENTIFIED JUROR: Do you anticipate those days ending at 5?

THE COURT: Pardon? We try and end a few minutes before 5. But if you wanted to err on the side, yes. We try and end about ten minutes to 5. So to say we end between ten minutes of 5 and 5:00 is the best estimate. Okay. We try and end a little before 5, but if you say 5:00 it's on the safe side. Okay.

Would you like my Madam Clerk to repeat those dates and times for you? Does anyone need them repeated, or are you sharing? Do you need them repeated, or --

UNIDENTIFIED JUROR: No. I just have a question.

THE COURT: Okay. If -- is it on one of the dates and times

because my marshal can assist you probably for most everything else.

UNIDENTIFIED JUROR: It's in regards to how long the case is. If I can get an estimate for --

THE COURT: Estimate --

UNIDENTIFIED JUROR: I'm still on probation at work.

THE COURT: Sure. It's estimated to go to the jury hopefully the 29th, maybe early afternoon on the 30th. Okay. Hopefully end of day on the 29th, but maybe the 30th. Best estimate because jury selection took a little bit longer than originally anticipated. So that's best estimate.

UNIDENTIFIED JUROR: Can we get written notification stating that it could go that long?

THE COURT: The -- if you ask for a -- the marshal will explain this at the end of the day. I don't want to -- the reason why I don't want to take too much time --

UNIDENTIFIED JUROR: Okay.

THE COURT: -- is because every minute I take now is one minute less --

UNIDENTIFIED JUROR: Right.

THE COURT: -- of them doing their openings, which will make the case longer. The quickest answer is the letters that I write, we say our best estimate of when it's going to end. Okay. If I need to write a second letter because it goes a day over that, then I'm glad to do so if that's needed by anyone.

Okay. So the letter I would most likely write right now would

say end of day the 29th. But I'm going to double check with counsel to see if it's more likely to be the 30th before I would write those letters since it'll take me a day to write them anyway. Okay. So that's what I would do. And then I would remind all jurors that if we get done earlier than the date on the letter, they do need to go back to work because obviously, they do. Okay.

UNIDENTIFIED JUROR: Thank you.

THE COURT: So at this juncture ladies and gentlemen, let me give you an admonition so that I can get people to get set up for their opening statements and let you -- so I'm going to say -- it probably should only take -- it should only take about ten minutes, so I'm going to say 2:30. But if it's going to be a few more minutes, my marshal will let you know. Okay.

So ladies and gentlemen, during this ten-minute recess until 2:30, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with the voir dire and the trial. You may not read, watch, or listen to any report or commentary of the trial, the voir dire process, or any person connected with the trial or the voir dire process by any medium of information, including without limitation social media, text, tweet, newspapers, television, internet, radio, everything I'm not stating specifically you understand is also included.

Do not visit the scene of the events mentioned during the trial and the voir dire process. Do not undertake any research, experimentation, or investigation. Do not do any posting or

communications on any social networking sites or anywhere else. Do not do any independent research including but not limited to internet searches. You should not form or express any opinion on any subject connected with the trial or the voir dire process until the case is fully and finally submitted to you. I said that a little bit quicker, but did everyone hear everything that I said. I need affirmative yeses.

GROUP RESPONSE: Yes.

THE COURT: Yes?

GROUP RESPONSE: Yes.

THE COURT: I'm missing one from Ms. Hightower.

JUROR 7: Yes.

THE COURT: Perfect. Thank you so much. Okay.

THE MARSHAL: All rise for the jurors.

[Jury out at 2:21 p.m.]

[Outside the presence of the jury]

THE COURT: Okay. So counsel, what you can fully appreciate is I did that for the very purpose so that we could address --

MR. DOYLE: Sure.

THE COURT: -- your issue as to the pre-instructions. So you can appreciate I sometimes do things -- and just so if you need to get a technology.

So counsel for Plaintiff, do you need to do a technology while one person is still on the pre-instruction aspect?

MR. LEAVITT: No, Your Honor. I just plan on using the paper.

THE COURT: Okay.

MR. LEAVITT: Sorry to call it paper, but --

THE COURT: No worries. I've got a couple colored pens. Are you going to be set with that?

MR. LEAVITT: I am. Do you mind --

THE COURT: Okay.

MR. LEAVITT: -- if I go -- is -- where is the best place --

THE COURT: Are you going to be arguing the pre-instruction, or is -- who's going to be?

MR. LEAVITT: I will.

THE COURT: Okay.

MR. LEAVITT: I will, Your Honor.

THE COURT: Then let's get that first taken care of so that we -- so that you know which part's going out. Okay. So let's get to it.

And counsel for Defense, I see -- is that a tech? I assume you were here -- do you need a tech check on something from your end? I'm just trying to see if you all can multitask so that we can get you taken care of, and so no one's incurring any additional expense, and everyone is fully prepared for everything that they need to do. Does someone from Defense side need to do something while I'm talking to you about the pre-instruction? If Plaintiff doesn't need a technology, does Defense need something?

MR. DOYLE: I think we're good.

THE COURT: Are -- you're hooked up, and you're good, and you can run things -- everything you need to run though?

MR. DOYLE: Yeah. Good.

THE COURT: You're set? Okay.

MR. DOYLE: Yes.

THE COURT: Perfect. Okay. I want to make sure everyone has everything ready that they need. Okay. So you all are familiar with NRCP 51?

MR. LEAVITT: Yes, Your Honor.

THE COURT: I gave you enough time while I was talking to the jury, and talked slowly, and went through things, so everyone had a chance to pull up, right, on your respective devices if you chose to do so. Okay. So obviously you have the new rules, right, under -- 51's got the new provisions with the preliminary instructions. So the aspects are -- I have two proposals. So the Plaintiff, I'm going to give you two to three minutes on why you think yours is better than Defense. And then Defense, you can respond why yours is better than Plaintiffs' consistent with what the Court ruled. Go ahead.

MR. LEAVITT: Very good, Your Honor.

THE COURT: Or however you'd like to phrase it. However you'd like to address why the Court should give P-16 versus D-18. Or maybe you think I should give D-18. Whatever your position is. Please feel free to explain what your position is.

MR. LEAVITT: Sure, Your Honor. Given the issues in the case, we believe that P16 -- not D-18 -- P-16 lays out exactly what would cure -- partially cure the harm. It states members of the jury must infer that the failure to timely disclose evidence prior. So we have the *Bass-*

Davis language. However, the reason I cited *Reingold v. Wet 'N Wild, Bass-Davis* does not take into account -- well, it does the -- the supreme court does the analysis. In *Bass-Davis* it was an unintentional.

THE COURT: Uh-huh.

MR. LEAVITT: And *Reingold* it was intentional. So what I did was I looked up when I pulled the language. And so when it's unintentional, the harm would be less. Here we believe, and it's the position that it was intentional. We have -- not to rehash, the Court knows this doctor and his counsel who were both on that case had plenty of time to cure, fix, however. So that's our position on it. I'm not going to belabor the point any longer.

THE COURT: Okay. Counsel for Defense, go ahead, your position, please.

MR. DOYLE: So concerning Plaintiffs' instruction, the objection I have with it is it seems to be a combination of two different concepts. As the Court is aware, you have NRS 47.250, subpart 3, which creates a rebuttable presumption that evidence would be adverse if produced. But in order for that to occur you have to have willful or intentional spoliation, is what the case language uses, plus an intent to harm. And then that would tie into the 2018 version of Nevada Jury Instruction 2.15.

I don't believe there's any evidence in this case of intent to harm. So I do not believe the rebuttable presumption is the appropriate instruction. This Plaintiffs' instruction also combines certain aspects of Nevada Jury Instruction 2.4, the 2018 version, which is the permissible

inference instruction where a party fails to produce evidence without a satisfactory explanation. The jury can draw an inference. Such evidence would've been unfavorable to that party.

In addition, the instruction as given, I don't think the case name -- I'm sorry, the case number is necessary and potentially could confuse the jury and cause someone to maybe go look it up. In the third line of the instruction it says, you know, *Vickie Center* case under oath, did not disclose the case. It's unclear, are we speaking about interrogatory, deposition, or both.

Then in the second paragraph, members of the jury -- the language you must infer, that does not appear in either the rebuttable presumption language or the failure -- or fail to produce evidence. And then skipping down two lines it says legally and ethically. I mean, there's nothing -- that language does not appear in either instance. And then you skip down to the next line where the beginning of the sentence says you must infer. Well, really, if that's the permissible inference -- I think this is perhaps the permissible inference aspect of the instruction. It should say should be permissible, but it's not mandatory.

And then you skip down to the next line where we have the word prejudicial, and that does not appear in either 2.5 or 2.4. And I believe the word that is used in the instructions is adverse.

So I think given the totality of the circumstance, there's -- without intent to harm it would be inappropriate to give the rebuttable presumption instruction based upon my reading of the transcript from last Thursday, and my understanding of what the Court was saying. I

think the Court was talking about Nevada jury instruction 2.4, the permissible inference instruction. And that was the basis for which I prepared the instruction that I submitted on behalf of Dr. Rives. But stepping back for a moment, just for the purposes of the record, we give -- I mean, we object to giving any sort of instruction along these lines. But having that objection be overruled then, we are off --

THE COURT: Wait. I'm sorry. Counsel, you didn't object on the 7th. Don't you think this is way too late? The Court made its ruling and you did not object on the 7th. That ruling -- the Court -- I will tell you on that part, the Court finds that is waived, waived, and waived. The Court made this ruling on the 7th. You did not at any point object to it on the 7th, 8th, 9th, 10th. Instead what you did is you provided something to the Court today in the midst of trial on the 16th, giving the Court no opportunity. And now orally even afterwards now saying you objected even after when you first provided this. That's so waived, counsel, because if you felt that it was objectionable, you could've told the Court on the 7th, given an opportunity to be heard then, presented the Court some authority, some opportunity.

Counsel, that part, okay, is really concerning to this Court because you keep -- the Court makes a ruling. You don't object. The Court moves forward. You violate the deadline. You don't give the Court any chance to even look at what any analysis is. And then even in the midst now with argument when you know that the jury's only got a few minutes outside, for the first time say that you object to the Court's ruling from the 7th, when you didn't even say it the first time when you

handed this to the Court today. You didn't say it the second time when we were trying to do it. Now the third time in the middle of your response now you add a new factor when the only thing we were supposed to be doing is -- was going to be 16 or 18. And now there's an objection to a ruling the Court made on the 7th. Counsel, that really is concerning to this Court, this pattern of doing that.

MR. DOYLE: Your Honor, I read the transcript from last Thursday. The Court's instruction was to Plaintiffs to draft an instruction to give it to the Defense, to give the Defense an opportunity to respond or submit an alternative instruction. I received Plaintiffs' instructions Sunday afternoon. I responded to them about what I needed to do. I wanted to double check the transcript, which I had available to me very early Monday morning.

The instruction that I have submitted -- that was submitted to you today, I submitted to Plaintiffs at about 8:30 on Monday morning with the assumption that then they were going to get back to me to further discuss what we were going to do given the Court's indication that they draft the instruction, provide it to me, I respond, and then we go from there. I was waiting for something from Plaintiffs.

THE COURT: Counsel, but the Court was saying to the extent that you are objecting that the Court was going to give an instruction is what the Court was saying. You didn't object to it at the time. The Court made the ruling that you were objecting to the idea of an instruction. That time has passed because if you had wished to object to the Court doing that, you had time to do that.

With regards to the transcripts, you were here at the hearing. You could have taken notes. Remember, you didn't even think you needed to show up to the hearing in person. Remember you asked for court call, and the Court granted it. You chose to show up in person, which was fine. Remember that was a continued hearing because of the issues of what you filed the Friday before. Things did not get finished on the 7th, which is why it had to be continued because remember, you all had specifically only asked for an hour. And when I say you all, I'm taking your office.

Okay. Your office had only requested an hour for an evidentiary. And because you hadn't even asked for the evidentiary, the Court specifically offered it because it was never in the prior pleading with regards to the opposition of the spoliation motion. It was the Court sua sponte offered the evidentiary hearing. Your colleagues only wanted a total of an hour given the total of the hour in the evidentiary hearing. That was the 7th. Okay.

So you were at the hearing on the 26th. Remember, the hearing started on the 26th, continued on the 7th. And then because of the issues of what you filed without any Court permission, on the 4th in the afternoon in the afternoon and did not provide the Court a courtesy copy, that had to be addressed first. Which then you still got your hour for your evidentiary hearing because I had to hold up the other case, which you all knew specifically I was scheduling based on whatever time you needed, and I was scheduling immediately after another case. And I say you all, your office knew who was here. We did the exact

scheduling. Okay.

So that is what the Court was referring to is that nobody raised an objection when you had all three attorneys here about the Court's ruling in lieu of terminating sanctions that there would be an instruction similar to a *Bass-Davis* type instruction, although not on all force because this was not spoliation, but in that type of concept. If someone had raised any type of issue on that date, this Court would have of course addressed it on that date. No one did. You raise it for the first time on the 16th in the late afternoon when you know that there's a jury outside and you each want to do your opening statements, and you know they have a witness.

This Court finds that it is way waived because not only did you have the time to do it last Thursday when you had all three attorneys here, you also had time afterwards. If you choose to contact the -- and try and order a transcript on Friday and choose not to take any type of notes when you have all three attorneys here, that's really your choice. And you order -- and you know the minimum turnaround time for a transcript is 24 hours. You could've ordered the disc that day. They would've given it to you. You chose you wanted a transcript, the minimum 24 hours.

So you got it Monday morning, which is even less than one judicial day. Right. So you got it even less than a judicial day because you got it Monday morning. So you got it less than a judicial day. You knew when trial was. You didn't only order one transcript; you ordered multiple transcripts. And you had people working all weekend to try and

accommodate you. They're more than glad to do so. But it was less than a judicial day. So if you waited to do that instead of drafting something and responding, that is not an issue. That's your choice. But it doesn't alleviate of the responsibility of last Thursday if you had a concern about the Court's ruling, you could've raised it last Thursday.

The Court finds that it's waived because you did not raise it last Thursday. You had three attorneys from your office, or affiliated offices, or however you'd like to phrase it, here. No one raised it. No one raised the issue on any of the days of the hearing. And the Court only had to continue that hearing because the conduct of Defense counsel. And so it didn't allow everything to be completed on the 7th. And so that's the Court's position with regards to that.

As far as the substantive pre-instruction, it was told that the parties needed to meet and confer. There wasn't a view that somebody had to wait or do whatever. It needed to get done so that this could get done. It can get done any time. NRCP 51 explains what NRCP 51 says. It'd be nice if you all read it. But that is what it is.

As far as the substance of it, yes, the Court does think that there was intentional conduct because there was -- by your client's own statements at the hearing, he intentionally decided not to read the discovery responses. He stated that. He stated that he -- I'm paraphrasing. He had had you in other cases. He relied on counsel. He went and looked at -- I think that -- he didn't call it the tote, he called it something else. He looked to the end to look only for the verification because he had you in other cases and relied that you had answered

everything correctly.

So that is an intent not to read the interrogatories. That is intentional conduct. It's not like he inadvertently missed it and didn't carefully read it. He said he intentionally did not look at it. He only looked for the verification because the Court, if you recall, even asked the follow-up question, I'm paraphrasing, how he knew to find the verification. And he phrased the particular way on how he said he knew where to look at it because he had had you -- you had been his counsel in prior cases. He intentionally looked for that and found it and only did that, and then had a woman, Ms. Rojas -- I'm doing this from memory, so I may be off on the person's name. But it was the person who signed the verification at the hospital sign it, who had signed other things. And then had it sent back. He did that. That is intentional because he chose -- his own choice was not to read any of those.

MR. DOYLE: I understand that.

THE COURT: And so that's what -- the Court did find that was intention. The second prong as far as the willfulness with regards to *Bass-Davis* -- and I don't know why -- *Bass-Davis*, more recently *Franchise Tax Board*, right. *Franchise Tax Board* is the most recent, which I think someone in this -- it was Charminisky [phonetic] actually counsel. I was about to say counsel in the gallery might have been, but I think Mr. Charminisky was on that case, not counsel who is in the gallery. Is the most recent analysis of *Bass v. Davis* where it walks through the *Franchise Tax Board v. Hyatt*, H-Y-A-T-T, right, where it talks about how to interpret the *Bass v. Davis* case. But once again, those are

spoliation. But it does talk about the willfulness and intentional conduct, and then the willfulness for the harm type aspect, right?

MR. DOYLE: Intent to harm.

THE COURT: Have you read *Franchise Tax Board v. Hyatt* --

MR. DOYLE: I --

THE COURT: -- because if you're going to correct me on what *Franchise Tax Board v. Hyatt* says, I'm going to ask you did you read the case.

MR. DOYLE: I have not read the case. I read --

THE COURT: So please do not correct the Court on what *Franchise Tax Board v. Hyatt* says if you haven't read the case, please. So as the Court before was interrupted, counsel -- please don't interrupt the Court. Is there any reason to have interrupted me?

MR. DOYLE: No, Your Honor.

THE COURT: So in the analysis of the most recent case, *Franchise Tax Board v. Hyatt*, as distinguished from *Bass v. Davis*, the analysis is a little different, which is what the Court was about to say. So the Court --

THE COURT RECORDER: I can't hear you, Judge. Sorry.

THE COURT: Pardon? You want me to speak up?

THE COURT RECORDER: Yes, please.

THE COURT: Okay. So the Court now needs to look at which of the pre-instruction is going to be more appropriate. I will tell you that some of the issues raised in this, and how the timing in which you have raised this presents a challenge for this Court to evaluate these in light of

what it was. This Court was trying to use the concept of spoliation for some type of pre-instruction that gets the point across. Although *Bass-Davis* and *Franchise Tax Board* is not directly on point, but it gets the concept of conduct that is done and what that intent is.

So no, this Court was not thinking of that specific jury instruction because that specific jury instruction is not on all fours, and neither are these cases. And the Court even said similar to. I would paraphrase it similar to or like. I don't recall the exact words I would have used on that particular date. I have probably done a few hundred hearings. I know I've at least done a 15-page decision on a trial since then, and several things else, as well as several things in this case since that time. So the exact word I used, I'm not exactly sure. But I'm pretty darn close.

So that being said, the concept has to come across to the jury about the nature of the intentional conduct. So the analysis of trying to say rebuttable presumption is not going to be applicable here. So you can't take that specific *Bass-Davis* rebuttable presumption language because this is not spoliation type case. You have to take the concept of the intentional conduct. That's what this Court was trying to emphasize. I was trying to give something that was more similar to it. Okay.

So if you take the fact that -- one moment, please. Okay. Right. Because directly out of *Franchise Tax Board v. Hyatt*, which was the sentence I was about to say before interrupted was this Court has recognized that a district court may impose a rebuttable presumption under NRS 47.250(3), when evidence was willfully destroyed, or the

Court may impose a permissible adverse inference when the evidence was negligently destroyed. And there's a citation to *Bass-Davis*, okay, under it. And it does not have the additional language that is specifically *Bass-Davis* in the *Franchise Tax Board* case. So that was the distinction this Court was about to state before interrupted.

So -- and then it talks about the difference between rebuttable presumption. Okay. So -- and then it talks about -- and in the case because in the *Franchise Tax Board v. Hyatt* case, if you all read it, that was about the various electronic information. The backup tapes were inadvertently deleted. The backup tapes. Okay. So that was something that was negligent done. So it talks about in the present case -- this is the Court is citing in *Franchise Tax Board v. Hyatt*. In the present case, the district court concluded that FTB's conduct was negligent, not willful, and therefore the lesser adverse inference applied, and the burden did not shift to FTB. But the district court nonetheless excluded the proposed evidence that FTB sought to. Okay.

And then the court explained there that the district court should've permitted FTB to explain the steps it took to collect the relevant emails because there is specifically found in that case that it was negligent because the backup tapes were inadvertently destroyed. But the point the Court was going to make is that in *Franchise Tax Board v. Hyatt*, that line that the Court just read was just about the distinction when evidence was willfully destroyed or may impose a permissible adverse inference from the evidence when negligent, when destroyed. So it didn't go into that certain second prong of *Bass v. Davis* and the

intent to harm the other individual. At least the distinction made in *Franchise Tax Board* did not have that second prong that appears in *Bass v. Davis*. But yet it cites *Bass v. Davis* with the very sentence that the Court just read because it says *Bass v. Davis*, 122 Nevada at 447-48, 134 P3D at 448 -- oh sorry -- yeah, 122 Nev. at 447-48. So that's where the Court was looking at that type of language.

That being said, Defense counsel's statement about combining a rebuttal concept with an inference concept could confuse the jury. And there is no reason to put a case number in an instruction because there's no reason to have a case number. You both seem to agree that the *Vicky Center* case should be stated in both. I do think that Defendant's first paragraph about both the interrogatories and the deposition is necessary because those were two prongs that the Court did specifically state because it was both aspects of that because the interrogatories were an ongoing issue because interrogatories were from early on in the case until -- at least the first version was that there wasn't a verification until on or about mid to late September.

But then there was a second version that laparoscopic did do a verification earlier on. But that seemed like Plaintiffs' counsel was aware of that, but Defense counsel wasn't specifically aware of that sometime. So there was some confusion on the timing of the verification. But regardless, the reason why I'm saying the confusion is because something was argued differently, as you all know, on September 26th then was argued on October 7th. So that's why the Court is giving the benefit of the doubt and just saying confusion. I'm

not saying anything else. I'm trying to give everyone the benefit of the doubt. I'm using the term confusion.

So with regards to interrogatories and depositions. So -- now, the concept is -- and it's not legally and ethically because clients don't necessarily have an ethical obligation. Attorneys have an ethical obligation. Clients have a legal obligation. So it would not be correct to include the word ethically in an instruction when it relates to the Defendant who is a non-attorney because that would not be appropriate. So --

MR. LEAVITT: Okay.

THE COURT: -- the concept of including that it's prejudicial you both agree on, and that would be appropriate. Now, the standard in whether this should be an inference, I don't think the language about what the definition of an inference is would be appropriate in this circumstance because this is not the prong of going from a straight spoliation. This is not that. This is to get across the concept that look, this was not terminating sanctions because -- for the reasons the Court's explained.

However, this was egregious conduct. But you're not going to say to a juror that the Defendant engaged in egregious conduct. This was trying to find a way that allowed the Plaintiff not to be prejudiced in some remedy short of terminating sanctions because of Defendant's conduct. So the remedy was to try and find a way to accurately state what Defendant did. Did not talk about -- did not disclose the *Center* case. Okay. And what's the ramifications of why he did not disclose the

Center case.

It was intentional. So the word intentional -- whether you want to use intentional or willful. I think intentional is more accurate because it potentially said that he went into a certain spot in the email. So that was more intentional than "willful" conduct because willful sometimes has more of a legal term than intending to go to a particular part. But once again, if you all would prefer to use the word willful versus intentionally agreed then the Court doesn't have a position. But there was a conscious decision -- so what -- however you phrase it, conscious decision or intentional may be better choices of words than willful. But once again, if you all want to use the term willful and you both agree then the Court's fine with it. That is an appropriate concept.

The Court can't find that -- the Court would -- excuse me. The Court would also find that there -- the pattern of this being continued and not disclosed after the deposition, the interrogatories, and the verification not being fixed, yes, is indication that it would be unfavorable. So let me hear each of yours position as to what the Court was indicating because only I -- I thought I made it clear where the Court was going with this.

But in light of what I've said, is there something that you're now going to propose Plaintiffs' counsel? Let me hear Defense position after you oppose it.

MR. LEAVITT: No, Your Honor. And I apologize. I went over *Ryan Gould* because it dealt more with intentional. I just wanted to make that --

THE COURT: Okay. No worries.

MR. LEAVITT: -- make that clear. No. I think you should say intentional. That's what he did. I think it's -- as the Court pointed out, the conduct was egregious. Curing this -- as you know, the Plaintiffs' position was what it was, or --

THE COURT: Okay.

MR. LEAVITT: -- remains. But --

THE COURT: Can I interrupt you for one quick second?

MR. LEAVITT: Yeah.

THE COURT: If you were to delete your sentence about Dr. Barry Rives was legally and ethically obligated to disclose lawsuits --

MR. LEAVITT: Yeah.

THE COURT: -- and you delete the case number --

MR. LEAVITT: Yup.

THE COURT: -- does that meet your needs or not? That's not a ruling. That's a question. That's a question. And then I'm going to ask if it meets Defense counsel's standards.

MR. LEAVITT: That would meet Plaintiffs' needs. I just conferred with counsel, but yes.

THE COURT: Counsel for Defense, does that meet your needs?

MR. DOYLE: Can I have a moment to --

THE COURT: Of course you can.

MR. DOYLE: May I speak to Mr. Eisenberg?

THE COURT: You're -- it's an interesting challenge what

you're asking the Court to do. You have somebody who's here who is in an observational capacity because he's not counsel of record. I mean, the Court's never going to preclude someone from talking to someone. I mean, you've got a jury out. I mean, I'm trying to get you through opening statements. So -- I mean, you're the attorney of record in this case. I'm asking if it meets your needs.

MR. DOYLE: And I'm asking for the opportunity to speak briefly to Mr. Eisenberg.

MR. LEAVITT: Your Honor --

MR. DOYLE: And if not, that's fine.

THE COURT: The Court's not -- the Court does not preclude people from talking to other people. It's an interesting challenge.

MR. LEAVITT: Can we put him -- I would suggest we put him on the record that he's here to consult with him, just as my counsel -- or not my personal counsel, I apologize.

MR. DOYLE: The Court said something about the first paragraph in the D18 instruction that we offered. It says the Court decided not to incorporate that language that -- are we just going to be working with Plaintiff's proposed instruction?

THE COURT: I thought Plaintiff was adding the word interrogatories to their first paragraph already. That's what I thought they had done.

MR. DOYLE: Oh, okay.

THE COURT: I thought they had added interrogatories already when the Court had asked the question. If they hadn't, I don't

know, I can't see where I am at the bench way over there to Plaintiff's counsel's table.

MR. LEAVITT: Yeah.

MR. DOYLE: So the first paragraph would read, "Members of the jury, Dr. Barry Rives was sued for medical malpractice in case *Vickie Center v Barry Rives, et al.* Dr. Rives was asked about the *Vickie Center* case under oath, and he did not disclose it," or words to that effect, "in interrogatories in the case"?

MR. LEAVITT: I'm willing to adopt the last sentence and just put -- and add it in, say, "When he answered interrogatories, and at his deposition in the case, he did not identify the *Center v. Rives* case." That's --

THE COURT: Okay. Do you maybe want to show Defense counsel what you're suggesting so that --

MR. LEAVITT: Sure.

THE COURT: -- you all can take a moment and look at it.

Marshal, can you please let our poor jurors know?

[Counsel confer]

THE COURT: I ask counsel how much longer it's going to be. Because, as you know, the Court's not precluding anyone from talking to anyone. I -- the Court doesn't take that position.

[Counsel confer]

THE COURT: I'm not making a ruling yet. I'm just trying -- the things that you all were supposed to have done before the trial started, I'm trying to get you go do it now.

MR. LEAVITT: Your Honor, we just as soon keep it under oath because, again, he was under oath at the --at his deposition, plus he hasn't made -- we plan on handling it.

THE COURT: Okay. The Court's not taking a position yet.

MR. LEAVITT: Yeah.

THE COURT: I'm just asking you all what --

MR. DOYLE: I would like -- I would like the first paragraph to read, "Members of the jury, Dr. Barry Rives was sued for medical malpractice in *Vickie Center v. Barry Rives, M.D., et al.* Dr. Barry Rives was asked about the *Vickie Center* case under oath in interrogatories, and he did not disclose the case."

THE COURT: Interrogatories and his deposition, or just interrogatories?

MR. DOYLE: I think the deposition -- well, having -- I think the deposition is much more fuzzy in terms of, you know, going back and forth as to what was he looking at and not. I don't know that there's a -- I don't know that we have the willful -- the --

THE COURT: If you want to know what the Court's ruling was, the Court's ruling is, yes, it was willful because your colleague, Chad Couchot, was at the deposition, it's dated on the 26th, that it was him -- he, for the first time, and he was at the deposition, that he's the one who brought up Sinner. He meant to say *Center*. Now, there's a question about whether he said the word Sinner, or he said the word *Center*, and the Court gives everyone the benefit of the doubt, so I'm presuming he said the word *Center* and the word Sinner got typed in

there. But because -- feel free to skim back to the, you know, transcript of the 26th, but the Court did ask that question. So that was -- as you know, I wasn't there on the 26th of September at the deposition, so I had to rely on the counsel who was there.

MR. DOYLE: I guess I've lost track of exactly what the Plaintiff wants.

MR. LEAVITT: Sure, I'll --

THE COURT: Sure.

MR. LEAVITT: I'll read it. Dr. Barry Rives, second line -- we'll take out the case number. That's fair.

THE COURT: So are you starting with your P-16 or are you starting with Defense counsel's D-18 so the Court can read along?

MR. LEAVITT: I apologize, Your Honor. P16, second --

THE COURT: Okay.

MR. LEAVITT: "Members of the jury," second para -- second sentence, "Dr. Barry Rives was asked about the *Vickie Center* case under oath, and he did not disclose the case in his interrogatories or at his deposition. " That's how we would prefer it to be read.

MR. DOYLE: And then is that the entirety of the instruction?

MR. LEAVITT: I thought we had the second paragraph. The second paragraph, I can read.

MR. DOYLE: Well, no, but I've raised a number of issues with the language in the second paragraph.

THE COURT: Sure. Why doesn't Plaintiff read it or show it to Defense counsel and see if you could agree on what it is.

MR. LEAVITT: On the second paragraph, I'll make it easy, we agree to take out the sentence that begins, "Dr. Barry Rives was legally and ethically obligated." We'll take out that whole sentence. That's Plaintiff's proposal.

MR. DOYLE: Well, I have a couple of thoughts. In the second to last line, we still have "prejudicial", which I believe the language should be adverse, not prejudicial. But also, "must infer" is -- I take issue with those as well for the reasons I've already stated. And I also take exception to the last sentence that says, "The Court found no satisfactory explanation for why Dr. Barry Rives did not disclose the Vickie Center case to Plaintiffs." I think that's unnecessary and --

THE COURT: Court's going to have to make a ruling at this point because if you're not -- I mean, counsel, you can appreciate why the Court's made it so abundantly clear that you all needed to get this done so that -- the very reason we weren't doing what's happening right now in fairness to your jury.

MR. LEAVITT: Yes, Your Honor.

THE COURT: Because -- okay. And you're going to have to address your own opening statements because we're not staying past the 5:00 hour because you all chose to disregard a Court directive and not do this. So you're going to have to accommodate and get this done before 5:00. It's as simple as that. So --

MR. LEAVITT: Very good, Your Honor.

THE COURT: So here's what the Court's ruling is going to -- so, counsel for Plaintiff, please read your modification in the first

paragraph.

MR. LEAVITT: My -- the modification in --

THE COURT: Well, read the first paragraph as you've said you wanted it read. Because I don't have it in handwriting. So is the first sentence -- just read it as you want it to be. And I heard Defendant's objection. I took notes on that. So let me see what yours is, please.

MR. LEAVITT: Yes, Your Honor.

"Members of the jury, Dr. Barry Rives was sued for medical malpractice in case *Vickie Center versus Dr. Barry* -- or *Barry James Rives, M.D., et al.*," period. "Dr. Barry Rives was asked about the Vickie Center case under oath, and he did not disclose the case in his interrogatories or at his deposition."

THE COURT: Okay. And the next paragraph would read what?

MR. LEAVITT: "Members of the jury, you must infer that the failure to timely disclose evidence of a prior medical malpractice lawsuit against Dr. Barry Rives is unfavorable to him."

THE COURT: Okay.

MR. LEAVITT: Next sentence, "You must infer that the evidence of the other medical malpractice lawsuit would be prejudicial to him in this lawsuit had he disclosed it."

Next sentence, "This Court found no satisfactory explanation for why Dr. Barry Rives did not disclose the *Vickie Center* case to Plaintiffs."

THE COURT: Okay. Let me tell you a few thought from the

Court. I don't think that there's any support for the word "must" because even the most --

MR. LEAVITT: Okay.

THE COURT: -- harsh --

MR. LEAVITT: Fair enough.

THE COURT: -- instruction always -- remember, that takes away from the jury. The jury has to have an opportunity -- the jurors are the trier of fact, so they have to have an opportunity to make their own decision. It has to be something short of must. In other words, can or may or something short of must, but it has to leave in the province of the jury to make their determination.

MR. LEAVITT: Okay.

MR. LEAVITT: May I propose?

THE COURT: Yes, you may.

MR. LEAVITT: "The jury should"?

THE COURT: Once again, that takes it --

MR. LEAVITT: Okay.

THE COURT: -- outside the province of the jury.

MR. LEAVITT: Very good.

THE COURT: It has to be a discretionary concept that allows the jury to make that determination.

MR. JONES: I think may.

THE COURT: That's what's necessary.

MR. LEAVITT: "May," Your Honor.

MR. DOYLE: That's fine.

THE COURT: Okay. "May", in both places, right? Both line 7 and line 10?

MR. LEAVITT: Yes, Your Honor.

THE COURT: Okay. I don't believe the word "prejudicial" -- I would agree with Defense counsel in this regard. I think prejudicial is a legal term that -- I think more consistent with the caselaw, while it's not directly on point with *Bass-Davis,* I think something -- well, you proposed "adverse", something in that line, not necessarily -- whether it's that word or something in that line is explaining the concept that it's adverse or something in a simile-type concept would be more appropriate, because prejudicial has so many different ways that it can be interpreted and not necessarily the way you want it interpreted in this particular instruction.

I think it can cause confusion to the jury because prejudicial, as you know, is used in a lot of other context that have nothing to do with this type of instruction. So I would be concerned that that could be confusing to the jury. Because, you know, prejudicial is used in EEO cases.

MR. LEAVITT: Fair. I haven't done one of those in years. Harmful --

THE COURT: But you understand what the Court's saying. That's why I don't think that word choice -- although this Court is usually not a wordsmith, I have to be careful in an instruction that the Court's going to authorize with that word has so many different meanings.

MR. LEAVITT: Absolutely, Your Honor, and thank you for

that. I would propose harmful.

MR. DOYLE: I would propose adverse, which is the language used in the instructions --

THE COURT: Okay.

MR. DOYLE: -- in cases, I believe.

THE COURT: Okay. From the Court's standpoint, the Court does see those as similes. I do realize that if you choose a word that's not otherwise already being used by the Appellate Courts, that presents, sometimes, a challenge. The Court takes no position because the Court sees those equally. However, it's up to you whether you want a particular single word, when there's one word that has been used in cases in the past for a similar type instruction, whether you choose -- that maybe you want to use that same word that's been used by Appellate Court cases multiple times, whether you may -- and it's already in a jury instruction, whether you want to use that word or you want to pick your own new word. That's -- I'm just asking what you want.

MR. LEAVITT: Very good, Your Honor. We'll go with adverse. I believe Defense --

THE COURT: So it's going to say -- I assume adverse is not going to be objectionable to the Defense since that was the one you proposed, is it?

MR. DOYLE: I proposed adverse, yes.

THE COURT: So you're agreeable to it?

MR. DOYLE: Right, subject to -- to all the comments I've made today, of course. Yes.

THE COURT: Okay. So we have some agreement.

Okay. Now we get to the last sentence. It seems that's the last one. Okay. Conceptually, counsel for Plaintiffs, you are correct, but the way it's phrased would not be correct. Because what the concern here is the way you have phrased is that you are -- after you heard the Court's introductory remarks about not taking what the Court said, this very sentence could be doing the very thing that the Court said that the jury should not be doing.

So conceptually, the idea saying that the Court made a ruling would be appropriate, but the way that this is phrased could cause some concerns. If you're asking for the concept of that this pre-instruction is being given based on a Court ruling --

MR. LEAVITT: Right.

THE COURT: -- something -- the Court's not telling the parties how to do it. That concept that this instruction is being given based on a Court ruling or a Court order or something -- or a Court ruling, or something in that regard, that is factually accurate. To say the Court was making, quote, "a satisfactory or lack of satisfactory determination," no, that's not what this Court did. The Court found that the conduct was not proper within the appropriate standard and felt that the conduct needed a sanction. It wasn't the full sanction that Plaintiffs were seeking, and the Court found that a lesser sanction would meet the needs and would be appropriate in this particular case.

So that's why I'm saying conceptually you have the idea, but the way you have phrased it would not be -- you're really inserting the

Court in a not-correct manner. Because Courts makes [sic] rulings and determination. I don't, quote, find things satisfactory or not satisfactory.

MR. LEAVITT: Okay. Your Honor, I have a proposal on the last line that we're discussing. Plaintiffs would be -- we'd propose, "Dr. Barry Rives did not disclose the *Vickie Center* case to the Plaintiffs, and no satisfactory explanation as to why."

THE COURT: You're taking out the Court?

MR. LEAVITT: Correct.

THE COURT: You mean, further, the evidence of the other medical malpractice lawsuit, is that right? Medical -- the word malpractice is missing?

MR. LEAVITT: Yes.

THE COURT: Lawsuit would be adverse to him in this lawsuit had he disclosed it, and -- are you putting an and. I'm not sure what you're doing. Are you putting a new sentence or you're doing and, or what are you doing?

MR. LEAVITT: New sentence.

THE COURT: Okay. Sorry. What's the new sentence?

MR. LEAVITT: "Dr. Barry Rives did not disclose the Vickie Center case to" --

THE COURT: To Plaintiffs.

MR. LEAVITT: -- "Plaintiffs, and no satisfactory explanation as to why."

THE COURT: Counsel for Defense --

MR. LEAVITT: Or ,"with no satisfactory explanation as to

why."

THE COURT: And with -- counsel for Defense?

MR. DOYLE: I object to giving the last sentence at all. It's putting the -- and I believe it's appropriate to -- I mean, now --

THE COURT: What would be the basis --

MR. DOYLE: -- now it's being offered in a vacuum in terms of explanation being satisfactory or not.

THE COURT: What's the subject for that sentence? Is it's Plaintiff's position or --

MR. LEAVITT: It's Plaintiff's position, but nothing was -- nothing was provided.

THE COURT: Okay.

MR. LEAVITT: The jury doesn't need -- obviously, it's not going to hear about the evidentiary hearing. But that was -- that's what was found.

THE COURT: Right, but you don't have a subject for that sentence. Understand what I'm saying? It's dangling. Grammatically, it's dangling.

MR. LEAVITT: As to why no explanation was given or -- all right. I see what you're saying.

MR. JONES: "Dr. Rives did not disclose the *Vickie Center* case to Plaintiffs with no satisfactory explanation as to why it was not disclosed." Okay. I see what you're saying.

MR. LEAVITT: Yeah.

THE COURT: It's -- the first sentence -- the first part of the

sentence is duplicative of what's said previously. And so if you're adding it -- duplicative, then you'd have to have some concept of why you're adding a duplicative sentence.

MR. JONES: How about this? "No satisfactory explanation for why Dr. Barry Rives did not disclose the *Vickie Center* case to Plaintiffs has been given," or, "has been found."

THE COURT: Counsel for Defense?

MR. DOYLE: The sentence is unduly harsh and punitive. It's not necessary to accomplish the legal goal that Plaintiffs are trying to accomplish. And it's not supported by the caselaw. And it's going beyond.

THE COURT: What's the concept that you're trying to get across in that last sentence?

MR. LEAVITT: Just that there's been -- there's no satisfactory answer as to why. That's -- that is pulled out of, I do believe -- I don't have the *Bass-Davis* instruction in front of me, but I looked up the *Bass-Davis* case, and when I read the -- read through the *Bass-Davis* and the *Reingold versus Wet 'n Wild*, that's where I pulled that sentence from, is somewhere within there, upon reading both. But, basically, that's what we're trying to get at. Look, the sanction is just --

THE COURT: Okay. Well --

MR. LEAVITT: -- arguably shy of case terminating. That's what we're trying to get at. Look, hey, he hasn't given one. He hasn't given an explanation. He had all this time, and yet he sat on his hands until some -- him and his counsel sat on their hands until it was brought

up by Plaintiff's counsel in a motion, and that's where we sit. It's never been found.

MR. DOYLE: It was disclosed at his deposition, the *Center* case, and I don't have the rule in front of me, but -- I left it in my room. But in terms -- the rule that requires ongoing supplementation, if you -- there is language in that rule that talks about unless the info -- unless the information has been otherwise disclosed, or words to that effect. So the information was disclosed at the time of the deposition, so there is a -- there is a legal question about the requirement under the statute for the disclosure. It was disclosed and supplemented.

THE COURT: Counsel, NRCP, not statute, but how was it disclosed? You -- the attorney --

MR. DOYLE: At the --

THE COURT: -- Chad Couchot, of your office, is the one who said Sinner. Your client did not in response to interrogatory number 3 when questioned, right? So it wasn't. And then there was no -- you cannot tell this Court, at least, on September 26, October 7th, and October 10th -- or 10th -- Thursday. Thursday was October 10th, correct? Okay.

On none of those days did anyone ever provide to this Court that there was any supplementary verification to the interrogatories at any time prior to Plaintiff's filing their motion for spoliation sanctions. So if you're saying that there was, then that is brand-new, new news. Those interrogatories were never supplemented. In fact, to this day, the interrogatories, right -- the interrogatories were not -- the verification,

under the first version, was never provided until late in September 2019.

Under the second version, there was -- the laparoscopic one had been provided, but your office didn't know about it. But the interrogatories themselves, to include the *Center* name, can you show that those ever, prior to September 2019, prior to Plaintiffs filing their motion for terminating sanctions, can you show that your office ever supplemented those interrogatories?

MR. DOYLE: The interrogatories were not supplemented, but the information was provided at the time of the deposition.

THE COURT: Counsel, two different rules, two different questions. And the supplementation came from an attorney, not your client, right?

MR. DOYLE: Correct.

THE COURT: Okay. That's what -- so that was the question that was being asked. So if you're saying an attorney, when the client doesn't state it at a deposition, the attorney saying the word Sinner, S-I-N-N-E-R, because that's what the deposition says, and then does not ever say Vickie Center, C-E-N-T-E-R, does not ever supplement interrogatories, the client doesn't ever -- because the client, right, does the answers, right? The attorney does the objections. Those interrogatories are never supplemented, but somehow that's okay?

MR. DOYLE: Your Honor, we've been over this multiple times and my preference would be just to finalize the instructions so we can get to opening statements.

THE COURT: No.

MR. DOYLE: I don't have anything more to add or say.

THE COURT: Okay. Sorry, counsel, I was trying to give you the benefit of the doubt because I thought you were saying that there was a statute that said that that counted as supplementation. So I thought that's what you're saying, and so I was trying to understand what you were saying. So --

MR. DOYLE: Well, I'd prefer just to stand on what I've said before that, and if we could just resolve the instruction language and do the opening statements.

THE COURT: Okay. Okay. So if Plaintiff wished to add something about -- well, this instruction is going -- you know, pursuant to a ruling of the Court, or something like that, the Court would -- but the Court can't -- the Court can't say -- can't take that there's no satisfactory explanation because that takes --

MR. LEAVITT: Okay.

THE COURT: -- it out of the hands of the jury, okay?

MR. LEAVITT: Right.

THE COURT: So that's why this Court was asking that question. Because the way you currently have it written, because it takes it out of the hands of the jury, even the way you've modified it. Once again, you can't take it out of the hands of the jury. The jury gets to decide whether there is or is not --

MR. LEAVITT: Right.

THE COURT: -- a satisfactory explanation. It's inconsistent with your prior statements on may infer. Okay? So either the Court's

going to have to delete it or you're going to have to provide something that -- some language that gets across the point you want to get across, but is an appropriate way to get across that point. It is -- okay. So, counsel for Plaintiff, I'll give you one last shot --

MR. LEAVITT: Sure.

THE COURT: -- at it. And I'm appreciative that --

MR. LEAVITT: I appreciate it, Your Honor. We -- I would be fine with, "This is instruction is given pursuant to a prior Court ruling," and that's it. And that will work. That would suffice.

THE COURT: Counsel for Defense, do you have an objection to that?

MR. DOYLE: Nothing in addition to what I've already stated.

THE COURT: Okay. The Court's going to -- so then you would delete the last sentence of, "This Court found," that sentence, and put instead, "This instruction is given pursuant to a prior Court ruling"?

MR. LEAVITT: Yes.

THE COURT: The Court is going to find that that's appropriate in light of the totality of what the Court ruling is. That's an accurate statement. It's just saying the instruction is giving you the context on why you're giving the instruction now versus giving it at the end. It's to give you some context. The Court would find that that would be informational to the jury. It does not provide anything other than informational purpose of what it is. It's not adding any added gravamen, for lack of a better word, to the instruction. It's just saying why it's being given now from a temporal standpoint, and that what is being given

versus anything else.

And the rest is pretty much almost the same as what was proposed by Defendant in their proposed Defendant 18. Although, the Court does find it's more appropriate not to necessarily give a definition of an inference, because that is not -- it's an incomplete analysis, so it would not have been appropriate to give the explanation provided by Defendant in the first place, and it's not complete with what the Court's ruling was. So it would not have been appropriate to give what was suggested on lines 9 through 11 in Defendant's in any manner. And pretty much, otherwise, it's basically the same.

Because it's a "may". It allows the jury to make the determination. It's going for infer versus inference. Okay? So -- and, in fact, interestingly enough, Defendant's is the one that actually said failed to do so without a satisfactory explanation. So -- but, yet -- so, but Plaintiff didn't want to use those words, that's fine. So the Court doesn't see that it's inappropriate to use it the way they've done it.

So -- and Defendants also included the fact that it was already relevant information. So if Plaintiff's -- what I understand is Plaintiff's is, with the concessions requested by Defendant, in essence, is, "Members of the jury, Dr. Barry Rives was sued for medical malpractice in case Vickie Center versus Barry James Rives, M.D., et al. Dr. Barry Rives was asked about the Vickie Center case under oath and he did not disclose the case in the -- in the interrogatories or at his deposition."

Now, you have "Members of the jury" again. Did you want that second time "Members of the jury"? The second time? The way

you have it written is "Members" --

MR. LEAVITT: No, we can remove that.

THE COURT: Pardon?

MR. LEAVITT: It's redundant. We can --

THE COURT: Right, or -- sorry. You do or do not?

MR. LEAVITT: I do not. We can remove it.

THE COURT: Okay. So then we delete "Members of the jury". Then it says,

"You may infer that the failure to timely disclose evidence of a prior medical malpractice lawsuit against Dr. Barry Rives is unfavorable to him. You may infer that the evidence of the other medical malpractice lawsuit would be adverse to him in this lawsuit had he disclosed it. This instruction is given pursuant to a prior Court ruling."

Is that what Plaintiff is proposing?

MR. LEAVITT: Yes, Your Honor.

THE COURT: Okay. Counsel for the Defense, have you been fully heard on all your objections?

MR. DOYLE: Yes, Your Honor.

THE COURT: Okay. We can bring the jury back in, Marshal.

[Court and staff confer]

THE COURT: Okay. I was supposed to -- we were supposed to take a break at 3:30. Ms. Challenge and I -- my team has not had a break all afternoon. I don't know what I'm going to do with this jury. And we were supposed to do a conference call, because we were

supposed to take a break at 3:30 so that my team could have a break, and then we were going to do a conference call, which we're going to have to let them know somehow.

[Court and staff confer]

THE MARSHAL: All rise for the jury.

[Jury in at 3:22 p.m.]

[Within the presence of the jury]

THE MARSHAL: The jurors are accounted for. Please be seated.

THE COURT: Okay. Thank you so much.

Welcome back, ladies and gentlemen. It was ten minutes somewhere.

Okay. Ladies and gentlemen, we told you the next step in the case is the opening statements. Prior to opening statements, there is a pre-instruction that the Court is going to read.

Members of the jury, Dr. Barry Rives was sued in a medical malpractice case in case *Vickie Center v. Barry James Rives, M.D., et al.* Dr. Barry Rives was asked about the *Vickie Center* case under oath, and he did not disclose the case in his interrogatories or at his deposition. You may infer that the failure to timely disclose evidence of a prior medical malpractice lawsuit against Dr. Barry Rives is unfavorable to him. You may infer that the evidence of the other medical malpractice lawsuit would be adverse to him in this lawsuit had he disclosed it. This instruction is given pursuant to a prior Court ruling.

At this juncture, counsel for Plaintiff, you may commence

with your opening statement.

PLAINTIFF'S OPENING STATEMENT

MR. LEAVITT: Thank you, Your Honor.

Good afternoon. A brief introductory to myself, just my name. My name is Jacob Leavitt. I am counsel with Kimball Jones.

According to the National Health Institute, more than 250,000 people die a year due to medical error. What brings us to the court today, to the courthouse, this court of law, are safety rules; safety rules that surgeons must follow.

MR. DOYLE: Objection, Your Honor. Statements not supported by the law.

THE COURT: Overruled.

MR. LEAVITT: There are safety rules that keep patients safe from serious injury or harm. I'm going to discuss three. The first safety rule is a surgeon should cut what he -- what he should cut. Cut only what he should cut, my apologies. And I apologize, I'm going to use he in this case because Dr. Barry Rives is a male. This safety rule prevents -- or provides safety to patients from both injury and death.

The second safety rule is one very similar. All surgeons must do their surgery carefully and skillfully.

I apologize, I'm not very technologically advanced. I prefer to do these this way.

The third is a surgeon should never let ego get in the way of the proper patient care. These safety rules protect all patients from serious injury or death.

Let me give you a little background. Dr. Barry Rives, seated at this table, is a general surgeon. He owns a company. That's in the caption as well. You will see that at the end. It's Laparoscopic Surgery of Nevada. Dr. Barry Rives has done well over 500 laparoscopic hernia repairs.

So let me bring you to why we're here. July 3rd, 2015, Dr. Rives has a full day ahead of him of surgeries. One of his patients is my -- now my client, Titina Farris. Titina Farris is in need of a hernia repair. Now, the actual term is a -- that Dr. Rives will be performing is a laparoscopic incarcerated incisional hernia repair. Now, that is a mouthful. So in this case, the evidence is going to come out, and it's going to tell you what it is. This is a -- even though it's a mouthful, it's a simple surgery. Typically, you'll hear lots of experts, some of them will tell you, it's about a 30- to 45-minute surgery. So Titina, and her husband, Patrick, anticipated that they would go home soon. In some instances, it's a day surgery. I'm sure we've all heard that.

Now, laparoscopic. What does the word laparoscopic mean? And I think it's easier to use my hands at this point. Laparoscopic means a laparoscope. So you go in and look, almost like a periscope when you're in a submarine. So you go -- it would be reversed, right? You're go -- you're going inside the body to look. Now, so in this case, we're talking about the abdominal area, the belly. So she's getting a hernia repair in this area. This -- right? Now, the other way to do a hernia repair -- some will use the word traditional; the other word is open -- is an open procedure where they'll cut eight to ten inches open. They pull

back and they can do the surgery and repair it that way. There's the other, which is this -- what we're here about today.

Laparoscopic surgery just means that what they do is they go, and they cut typically a quarter-inch to half-inch size holes. They take something called a trocar. They put it in. Now, that trocar -- if I use the word -- I use the word conduit. So they put -- they can put instruments through it. For example, they go in, they put this instrument, the laparoscope, they can see -- they can look around. In this surgery on July 3rd, 2015, there's something called incisional. So incisional means that it's where something has -- the abdominal wall has been either cut before it's been damaged, okay?

And then incarcerated -- and that -- the word kind of speaks for itself. Incarcerated means something is kind of captured in there. And in 2014, Titina had Dr. Rives -- this is kind of a repeat surgery for him. So in 2014, she had a hernia repaired, and he went in, and in that instance, he's going to provide testimony to this -- they did an open procedure. They went in, they pulled out something called a lipoma. It was incarcerated as well. That's a fatty -- like fatty cells. So he goes in, cleans that out. He puts a mesh in, stitches her up.

And then several months later, in 2015, she gets -- Titina has an incarcerated hernia, again, but this time, the incarceration involves her colon. So on July 3rd, she goes in. July 3rd, 2015 is the day of the surgery. So let me explain to you what the evidence will show.

Now, before I get there, let me be clear. We are not here regarding the 2014 surgery. We're here regarding the July 3rd, 2015

surgery. So Titina Farris, with her husband, Patrick, whom you saw behind me at my table over here, they're going in. They actually -- and they'll testify, they're walking in hand-in-hand, going to the surgery. Titina goes back. They lay Titina on a table, surgical table. They give her the anesthetic. She goes under. She's unconscious.

Now, Dr. Rives begins the surgery. He inserts the needle like tube, the trocars, into her belly. The next step is, is he makes room inside the belly so that his instruments can -- he can maneuver. He starts to cutaway -- so he has to see what he's doing, he starts cutting away the -- some fatty tissue, and then he finds the mesh from 2014, right? This mesh kind of looks like your grid, I guess, hashtag, or close enough. He puts it in -- or he goes in, he's like uh-oh, here's the mesh, okay. Well, the mesh is -- there's a problem. The mesh is connected to the colon.

So the colon, for those who may not know, is the last approximately five feet of the intestinal tract that pushes the fecal matter outside of our bodies. The colon is a very tender tissue. And when you're handling the colon, it will be testified to by experts is, you have to be careful and skillful. This is tender tissue. This tissue isn't like say the bottom of my foot, right, where I have -- or where there's calluses. This is very tender. As a result, they danger of the patient goes up if the surgeon uses the wrong tools.

There are two common instruments that can be used in this type of surgery to remove tissue from threads. There's something that is -- the term is cold scissors, and there's something called a thermal device, thermal meaning heat. Let me explain something. These

instruments that you put down a conduit, they may look similar to an untrained eye. What they are -- and I'm sure Dr. Rives, when he gets up to testify, he'll do a better job explaining it. But there's the business end and then there's the handling end. They're -- oftentimes there's a trigger on them. There's like scissors, right?

The evidence will show through testimony that a thermal device is contraindicated when dealing with the colon. Contra, right, means against. Indicated means force. So not for it.

Now, there's a reason -- you're going to hear testimony from surgeons, and these thermal devices, right, they heat. They use heat to cut tissue. So the difference is, cold scissors cut tissue but so does a LigaSure, is the term -- is the actual name of it, which is a thermal device. Let me explain to you how a LigaSure works. A LigaSure, what it does is, it has -- there's some tissue, comes in, goes like that. The LigaSure heats up enough to pulverize the tissue. Then in the LigaSure, if you could imagine, there's a little knife that comes through. So it clamps down, heats it. When that's done, a little cutting device goes through and cuts it. And that's how it gets through tissue.

Now, the problem is, is that intense heat for a LigaSure can spread, as I said, radiate out, to nearby tissue. And it can cause things such as a -- damage to surrounding tissue. Now, if that tissue is one thing or another -- we are looking at the colon in this case. The evidence is going to show that the mesh is here connected to her colon, we have kind of a thread, and that needs to be separated out, so a LigaSure is used.

Now the reason, they'll testify, the heat can cause burning to this tissue, which can cause a hole in the colon. So if the tissue gets burned, and it doesn't cause an immediate hole, it can deteriorate over some time and then create a hole. Now once that tissue falls apart it opens up. This is obviously bad, because if you don't know that the tissue was burned, necessarily, this can cause a problem if you don't look around and make sure that you've done, acted carefully and skillfully.

Now the evidence we'll know, not to give you a complete anatomy lesson, is the colon is filled with feces, or poop. Now feces and poop, when it comes in contact with anything inside you, inside the patient's body it infects it; it infects everything that it touches.

Now there's a lining of the belly and the abdomen, called the peritoneum, it's right here, I've got a big example for you. Now that has a thin issue that separates body parts from other parts of the body. So we're talking about the peritoneum, right here in what I call the "belly," it's right up here, and he's going in and he's doing the surgery.

Now when the peritoneum gets infected, this is called fecal, right, or from feces poop, peritonitis. Now fecal peritonitis infects the organs. If you have fecal peritonitis, then you can get, you'll hear this term a lot, "sepsis." Sepsis happens when there's an overwhelming immune response to an infection. This is when the body calls out all guards and starts fighting the infection.

Sepsis is very serious; people die from it. The longer people have sepsis, the more likely they are to die from it, or the longer they

have it they can suffer a permanent injury. When your body become septic it first tries to save all your organs, to stay alive. Everything unite, come here. As a result, what happens is, they're pulling resources from other parts of the body; the extremities, we call them.

And if a surgeon doesn't get what you call "source control," okay, where's the infection, control it, the person remains septic, which can ultimately lead to death, or a permanent injury, depending on how long it's been sitting there. In this case, I'll give a spoiler alert, there's holes in the colon. Dr. Rives will testify that there were at least two.

Now getting back to the surgery, July 3rd, 2015. He sees the mesh connected to the colon. Dr. Rives can use tiny "cold scissors" were -- the terms sometimes used, just scissors, or he can convert at this time to an open surgery to see more of what's going on, or he can use a LigaSure device that goes in, as I explained, and heats up, polarizes the tissue, cuts it, he decides the last.

Now he uses that LigaSure to separate mesh from the colon, and as I stated, he creates two visible holes on Titina's colon. The evidence will show that Dr. Rives, in open testimony, he was able to use what you call a "surgical staple" to staple the hole shut, or stapler, sorry; it's a stapler. But Dr. Rives cannot recall how many staples he used. He is unsure if he took out any of the old mesh, he doesn't know. Dr. Rives does not recall the exact size of the two holes, but he estimates that they're about 1 centimeter.

Dr. Rives finishes the surgery by putting in a second sheet of synthetic mesh, going out and closes the laparoscopic holes that are into

Titina's belly for all the ports that he used for the conduits, to get the instruments in, and he sends her off to the recovery room. Next day, next day, she develops fecal peritonitis, which means feces is infecting the inside of her body. She becomes septic, her organs begin to shut down.

Tina is rushed out of the recovery and sent to the intensive care unit. The evidence will show that there are several specialty doctors called in to give opinions to Dr. Rives. The evidence will show that the infectious disease specialist tells Dr. Rives he suspects the peritonitis. But the infectious disease specialist is not the surgeon, and cannot tell Dr. Rives, because he's not the surgeon, what to do. He says, "This is what I suspect, this is my assessment."

The pulmonologist is called in, the lung doctor, all right? Because they have to incubator, take that tube, put it in, so she can breathe. The pulmonologist, the guys for the lungs, her doctor says, hey, yes, she's septic, fecal peritonitis is what I suspect. But the pulmonologist is also not her surgeon, cannot tell Dr. Rives, the surgeon, what to do.

Patrick is there, her husband, day-after-day, he is there at her side. He sees Dr. Rives, every day. "What's going on with my wife, why is she like this?" Patrick will testify, "Patrick, did you go to school for ten years; you're not the doctor." Dr. Rives chooses not to do surgery, on July 4th, he chooses not to do surgery, July 5th. He chooses not to do surgery July 6th, 7th, 8th. Let's go to the 9th, Patrick is concerned, her husband, he's not getting satisfactory answers here.

The hospital sends a surgeon to give a second opinion, on the 9th. Dr. Rives still doesn't do a surgery on the 9th. During all of this the ICU doctors, the intensive care unit, because she's septic, they give her antibiotics, these antibiotics keep her alive, they're fighting the infection. But even with all the antibiotics to Titina remains septic. She has a high white blood cell count; white blood cells are what go in to fight infection.

She's distended, she's swollen in her abdomen. Remember, we're on the 9th. Some days her white blood cells go down, they get a little better, but they only go back up. Titina's white blood cells, which shows the amount of -- the fighting that's going on to save her life, never drops below 17,000; septic is 12,000.

Staying on the 9th, Dr. Rives chooses not to take Titina back to surgery, despite her distention. I won't go through all her symptoms at this time, but you have distention in the area where the surgery happened. Her white blood cells are high. Now Patrick will tell you, he's seen Titina pregnant, this is much bigger, he's concerned. Titina's legs begin to swell, due to the extended time of septic state that she's in.

The ICU doctor orders CT scans, not Dr. Barry Rives, he doesn't order CT scans. There will be testimony that CT scans are often unreliable for colon injuries, so is it surprising when the CT scan and the blood cultures come back non-conclusive. On July 10th Dr. Rives chooses not to perform surgery, despite a high white blood cell count, distention in her abdomen, her belly area, swelling on her legs.

On July 11th Titina develops a new fever, things are not

good. Dr. Rives doesn't perform surgery on July 11th, he doesn't perform surgery on July 12th. He doesn't perform surgery on July 13th, he doesn't perform surgery July 14th. July 15th, Patrick, Titina's husband, he's in his wit's end, he's done.

He'll testify that he's done begging the nurses and anybody that will listen to him, to save his wife, including Dr. Barry Rives. He'll testify that he goes to hospital administration for help. He demands Dr. Barry Rives be taken off Titina's case and that a new surgeon be assigned to Titina, a surgeon, no other specialty, a surgeon.

The hospital administration says, okay, got to schedule a meeting, 16th, the day after, 9 a.m. Okay. Well, Dr. Barry Rives was told about this. July 15th, late that night, around 10:00 p.m., Dr. Rives come into Patrick, says, "Look, I want to take her back, I want to do surgery." The trust is gone, members of the jury, trust is gone.

It is now 12 days after Dr. Rives cut two holes in her colon and tried to fix them. It's 11 days since she's been in the intensive care unit. The next morning at the meeting, Patrick and the family are there, they tell Dr. Rives, no, we want a careful and skillful, non-ego driven surgeon to take care of Titina. Dr. Hamilton goes in, she takes Titina back, the same scenario, puts her on the operating table for surgery.

Evidence will show that as Dr. Hamilton did the open reduction, air comes out, air release. The evidence will show that when they look inside, surprised there's feces in there. The tissue was so discolored it's difficult to see what they're looking at. They find Dr. Barry Rives' mesh that he put in, and staples, they were all rejected. They find

one of the holes in the side, one of the holes mentioned.

Now when I mentioned -- that you'll see the word "defect," there's a defect in the colon, because what happens is, they cut out of part of the -- they injured part of the colon, they send it back to a pathologist, the pathologist looks at this. So the defect, there are three defects, they're not defects, or holes like when earrings are taken out, one of them, states the size of a quarter. Apparently, I'm not loud enough, I thought I was, I apologize.

So Dr. Hamilton decides the damage is too great. I'll move that, show that there's a happy medium here. Dr. Hamilton determines that there's no -- that some of the tissue is too far gone, the damage is too great to save all the bowel and intestine, so she cuts off part of the intestine and bowel that's damaged.

They connect the remaining healthy intestine to a tube on the side of her belly. This is done to allow the remaining colon to heal with time, but it also means that Titina can't use the bathroom, as she did before. The tube connected to her intestines runs into a bag, called the colostomy bag, so this is where, for the next year, so all of Titina's feces drains.

Now Dr. Hamilton saves Titina's life. Titina's life will never be the same. As a result you're going to hear testimony from a neurologist, and several other doctors. A neurologist is a nerve doctor. She developed, because of the sepsis, clinical care neuropathy, nerve destruction that's caused by the extended time of being septic.

The most obvious result of the condition that Titina has, is

what is termed as "foot drop." That means when you pick up your legs your feet drop. Titina will testify she likes to wear boots now, because it does lend some support to her feet. Titina's feet, for the rest of her life have no muscle or nerve function, she can't articulate her foot. Tina walked into the hospital for this elective surgery, had a hernia repair, she had to be wheeled out.

Before July 3rd, 2015, she didn't need assistance to walk, she didn't need a walker. Now Titina will never walk again without assistance. You will hear how Titina fought through the pain and the tears, during physical therapy, learning how to walk when you can't feel and move your feet. You'll hear, and I won't go into all of them, but just small things she lost the ability to do. She had to retrain herself on how to do it. Here's a small one that she told me, that shocked me, putting on her socks. She can't -- that was a challenge for a while.

Tina did not give up, she's a fighter. We're here because Dr. Rives cut what he should not have cut, was not careful and skillful, and let his ego get in the way of his care with Titina. You may hear, Dr. Barry Rives is here, he may testify that he did nothing wrong. You'll have to decide, what is the truth? The other thing that you'll have to decide whether he was negligent, because if you decide that, what it will cost to make up for the term we use as harms and losses suffered by not only Titina, but her husband. If you remember one thing, remember this, admit the wrong and make it right.

Now you are going to hear alibies, we call -- or the other word is defenses. Now we came to trial today, we have to look at what

the Defense's excuses are going to be --

MR. DOYLE: Objection, Your Honor.

MR. LEAVITT: -- the alibies.

MR. DOYLE: Argumentative.

THE COURT: Overruled.

MR. LEAVITT: We consider that perhaps the second issue, carefully and skillfully, maybe Dr. Rives is just sloppy. We dug into his history; we found some troubling things. The evidence will show, first, we found that Dr. Rives failed his Boards. Dr. Rives is not board certified. Dr. Rives never told Titina that he was not board certified. When asked about this we expect Dr. Rives will claim he actually passed the written test, but failed the oral test. There's no evidence of that, all we know is Dr. Barry Rives is not board certified. The evidence will show after he failed the Boards he didn't try again.

Dr. Rives may tell you that throughout his career he held some important positions. He may tell you that he's a competent surgeon, that he doesn't need to be board certified, but the evidence will show, because you're going to see many experts, that their experts are board certified. One of their expert's name is Dr. Juell, board certified. Dr. Adornato, board certified. Dr. Erlich, board certified.

In addition, you heard the jury instruction that was read to you by the Judge. The Court read a jury instruction before this trial began, this is the beginning, the evidence will show that Dr. Rives did not provide Plaintiff's counsel, or Plaintiff with the Vickie Center case. He had a duty under oath to do so, he did not. What's the alibi there?

You'll see there's another alibi, CAT scans. Dr. Rives will claim that he was relying on CAT scans, but he didn't order any. So he's going to say, look, one of the alibis, because we took his deposition, is he was waiting on the 15th because he needed a CT scan to say, "free air and fluid." You're going to see those CT scans.

We've investigated this issue. The experts will come in and tell you, look CT scans are non-conclusive. You can't really solely on a CT scan. You're here to determine to be the judge of the facts. White blood cell count high, fever, distention in the area, where the surgery happened, but relying solely on a CT scan as an alibi.

The second, another alibi that you may hear, this is -- it came up in deposition, is something called the "cascade" the cascade effect. I call it the magical cascade theory. So what this is, is ignore the fact, this alibi, that Dr. Rives cut two holes in the colon, that he saw, that were visible. Ignore the fact that Titina developed fecal peritonitis, in the same area of the operation.

Now this comes from Dr. Juell, the Defense expert. He says, look, what happened was, is she had been laying on her back, and she threw up a little and it went into her lungs. You will need to decide if there's any evidence of this. Then consider the fact that this throw-up called "aspiration" is the term, can create pneumonia or some other lung irritation. Now Dr. Juell is a general surgeon, he's not a pulmonologist, but this the cascade effect, right? That could cause inflammation in the lungs, and that could get down into the peritoneum, and then it can cause infection. You'll have to decide if that's possible.

The facts show holes in the colon. So again, this magical cascade of everything coming down, and it's all these other things are coming, and it's this cascade, like a waterfall of things that are happening to her, but then there's the holes in the colon.

Now Dr. Kim Erlich, he's an expert for the Defense. He's going to say, I assume, with the deposition, that he believes Dr. Rives may have failed to clean up all the poop, when he closed her up. The bottom line is this, the sepsis, we now know, because she had the surgeries, and they went in, they pulled the pieces out, that she had fecal peritonitis, she was septic.

Another alibi is, this may be too complex for anybody to comprehend, this is too technical. It's an alibi, holes in the colon, the evidence is going to show that, fecal, poop, peritonitis, all right here, this is as simple as dirt. There's another alibi, preexisting conditions. Defense may get up here and tell you about all her medical problems. Sure, she's not 20 anymore.

Note that are on her medical history, diabetes. We knows she has diabetes. He'll tell you about back pain. Folks, we're not looking for back pain. They're going to talk about foot pain. We're not talking about foot pain, we're talking about now, bang, foot drop. Clinical care neuropathy. You'll hear the term neuropathy, she's diabetic. Okay. We know that, but you're going to have to determine the cause.

Is it this clinical care laying septic from July 4th to July 15th, distended with fecal matter in your own body? We're not asking for Dr. Rives to pay for any of her diabetes. They're going to bring up a

shoulder impingement that she had. Folks, we're not here about a shoulder impingement. We're not here about the back pain, we're not here about high blood pressure, and we're not here about diabetes.

These are alibis to distract from the real issue. The evidence will show Dr. Rives chose to use a LigaSure, and a LigaSure is contraindicated near a colon; she developed fecal peritonitis. We're not asking for anything in her past, we're asking for what happened to her; for destroying her feet, permanently taking away her ability to walk unassisted, taking away her freedom, her mobility as she was before.

For making Titina independent on others, where she used to be, prior to getting sepsis, an independent person. We're asking for a full and fair amount, to give her, her life back; not asking for more, not asking for less. I oftentimes here this: "We're sorry this happened, Titina's a good person." Folks, we're not here for sorry, we're not here for sympathy, neither party deserves it. What we're here for is a full and complete clinical accounting of the harms and losses sustained at the hand of Dr. Barry Rives.

Now there's another alibi, Dr. Rives was careful. He didn't want to just jump right in, when she had this distention in her belly, even though he did surgery on her colon, and the other specialist saying, lungs, infectious disease, fecal peritonitis. Poop in the belly, that's what I translates, poop in the belly. He was in there. Says, he may come up and say look, I'm careful and cautious, don't want to go right back in.

He says it's a big surgery, big risk; big risk for who? If they went in and found that the belly was clean sooner, they could have ruled

it out. Well, we now know the belly wasn't clean, there was feces in there. It's invested, but that could have been done sooner. Now could it have been a big surgery, because he was the last one in there? Maybe he knew. Remember, Dr. Barry Rives was the only person inside Titina's abdomen on July 3rd. 2015.

There's another alibi, teamwork. During trial, I have to deal with this in my opening, they may bring up teamwork. Hey, medical is part of a team. The suggestion maybe it's just not his fault, Dr. Barry Rives, somebody else's. The specialist called in, the lung doctor, infectious pulmonologist, infectious disease doctor, they are not the surgeon. In fact, nothing happened until a newer surgeon was appointed.

The new surgeon was appointed, go back in, take out the air, take out the infection. There wasn't a hesitation there. The fact of the matter is, the evidence will show that Dr. Barry Rives failed to act, okay. He goes in, he cuts holes in the colon, he fixes them, okay, but then ignores the rest.

July 4th, when she becomes septic, over 12,000 white blood cell count, all the way to July 15th. When he gets pulled off on July 16th they go back in. And that's the "could happen to anyone" alibi. Things happen, there's complications during surgery. Yeah, there are. When you use a thermal heating device you increase the risk to the colon; increasing the risk by using a thermal heating device to cut, instead of cold scissors.

Now as this trial gets put on you're going to see Plaintiff's

experts; you're going to hear lots of -- you're going to hear testimony. You're going to hear how much the medical bills were in the past. You're going to hear how much she's going to need to get through her life, what we call a "minimal lifecare plan" in the future.

You're going to hear from Dr. Justin Willer, he's a neurologist, he'll be here tomorrow, I believe. He's going to get up, he's going to give these Plaintiffs, over here, he's going to talk about this case, what he found. He's going to explain why the neglect of sepsis causes foot drop.

You're going to hear from Dr. Barchuk who's a specialist in physical rehabilitation. He's going to testify of what's it going to take for Titina to get through the remainder of her life with this condition that was caused by Dr. Barry Rives; but they'll blame her, they're going to blame her; bear that in mind, they're going to blame Titina.

MR. DOYLE: Objection, Your Honor, argumentative.

MR. LEAVITT: Fair enough, I'll move on, Your Honor.

THE COURT: Okay. The jury will disregard that last sentence, okay, last statement.

Counsel, please move on. Thank you.

MR. LEAVITT: Thank you.

You're going to hear from these folks, and you're going to have to decide who is telling the truth, you, as jurors, will decide; your job is so important. I can't express that enough. You are here to judge the facts that you hear, here.

What I gave you is a roadmap of what the evidence will

show. You have notebooks, you have the ability to listen and hear, and think. Now, cut only what you should cut, carefully and skillfully, an ego, admit the wrong, make it right. By the end of trial you will see all the evidence that both sides present. At that time you have to decide, is this simple as dirt, that he did this, or was it Titina's fault?

Thank you.

THE COURT: Thank you. Counsel, for Defense feel free to commence with your opening.

DEFENDANTS' OPENING STATEMENT

MR. DOYLE: Thank you. Good afternoon, everyone.

Some points. First, the surgery on July 3rd, 2015 was necessary; let me give you some background. The background is that Dr. Rives had seen Mrs. Farris in 2014. Dr. Chaney had referred Mrs. Farris for to Dr. Rives, for what's called a lipoma, it's a fatty collection that occurs in the abdomen. Dr. Rives saw her on July 31st, 2014, and he scheduled a surgery to remove that lipoma on August 7, 2014, to remove it.

But when he removed the lipoma, as he will explain to you, he found underneath it an unexpected hernia that he had to address and repair, and he repaired it with mesh. You will learn, ladies and gentlemen, that the hernia recurred, and you will hear why; and you will hear that it was an incarcerated hernia when it recurred.

And what an "incarcerated hernia" means, you have a hernia sack and a loop of bowel gets caught in the hernia sack, and when there's a loop of bowel in the hernia sack that sack can compress the

bowel, causing ischemia, and loss of blood to the bowel, and death of the bowel, and a serious injury to the bowel.

And so because of the fact that Mrs. Farris, in 2015 had this recurrence of her hernia, and now bowel is inside the hernia sack and is at risk for being compressed, and squeezed and dying, the surgery was indicated. But before performing surgery Dr. Rives was not able to predict what he would find once he gets inside of her.

Next point. At surgery on July 3rd, 2015, he in fact found a portion of the bowel inside the hernia sack, and the portion of the bowel inside the hernia sack is called the transverse colon. What he also found, though, is that this transverse colon, which is part of the large bowel, had become stuck to the mesh he had put in, in 2014, by what are called "adhesions." And some people have a lot of adhesions, some people have few adhesions after an earlier surgery, and it's just a function of how well someone can heal.

But the evidence will show, ladies and gentlemen, that when Dr. Rives encounter the transverse colon stuck to the mesh, inside this hernia sack, in order to get the transverse colon out of the hernia sack to take care of the incarceration, he had to free up the transverse colon from the mesh.

And you will learn, and the evidence will show that he carefully detached the segment of the transverse colon that had become adhesed or stuck to the mesh by these adhesions. And when he was doing that, it's a combination of you're pulling, you're tugging, you're using different instruments to free up the transverse colon from where

it's stuck to the mesh. You have to cut those adhesions; you have to free up the transverse colon so you can get it out of the hernia sack and put it back where it is supposed to be.

And in doing all of that he inadvertently caused two small holes in the transverse colon; and that's not an issue in this case, ladies and gentlemen. Even Mrs. Farris' expert witness general surgeon agrees that this is something that happens to everyone.

MR. JONES: Objection, Your Honor. Misstates.

THE COURT: Sustained. It's opening statement, that needs to stay on this point.

MR. DOYLE: I'd ask that we have single counsel.

MR. LEAVITT: Fair enough, Your Honor. I'm sorry.

THE COURT: Sorry.

MR. LEAVITT: Same objection, if you want me to stand, I'll be happy to.

THE COURT: Okay. No, if you're taking the opening --

MR. LEAVITT: I'll do the objections for the opening, yeah.

THE COURT: Okay. Thank you.

MR. DOYLE: The evidence will show that there is no criticism of Dr. Rives for the fact that he had to create these two inadvertent holes, or that these two holes --

MR. LEAVITT: Same objection, Your Honor.

THE COURT: Just a sec. Let me hear the end of the sentence, first, so we don't --

MR. LEAVITT: Fair enough.

THE COURT: -- have two people speaking at the same time, sorry.

MR. DOYLE: The evidence will show by way of the expert witnesses that there is no criticism of Dr. Rives, because these two small holes occurred. The evidence will show that this --

MR. LEAVITT: Same objection, Your Honor. I can't tell if that's the end of a sentence or not.

THE COURT: Okay. The objection is --

MR. LEAVITT: The objection is, is it misstates evidence.

THE COURT: This is opening statement. The Court doesn't have it before it, the Court's going to have to sustain at this point, because the Court doesn't have anything independent in front of it.

Go ahead.

MR. DOYLE: All right. The evidence will show, ladies and gentlemen, that Dr. Rives also appropriately repaired these two small holes, using a stapling device. And the evidence will show that there's no criticism of using a stapler to close these holes. And the evidence will show that there's no criticism of his method and means of closing these holes.

The evidence will show that he thoroughly inspected the bowel. The repairs looked okay, the bowel, he could see looked okay, and the evidence will show, based upon Dr. Rives' testimony that there was no third injury.

MR. LEAVITT: Objection, Your Honor. Again, misstates facts.

THE COURT: The Court's going to overrule that objection, since the clarification was based on his own client's testimony, with that qualification. That's why the Court's overruling that one objection --

MR. LEAVITT: Okay.

THE COURT: -- because a point of clarification. Thank you.

MR. DOYLE: Dr. Rives will testify, and the medical records in evidence will show that Mrs. Farris was given antibiotics, called prophylactic antibiotics, because of the surgery that she had. The evidence will show by way of Dr. Rives' testimony and the medical records, that after the surgery she went to what's called the post-anesthesia care unit, and she did well for the rest of July 3rd.

On July 4th her condition declined, and yes, she developed sepsis. The evidence will show, ladies and gentlemen, that she did not develop sepsis because of a staple line failure, or a third hole. The evidence will show that when the surgery occurred on July 3rd, there is spillage, if you will, not a feces, but a bacteria that are contained within the bowel. And the evidence will show that the prophylactic antibiotics given at the time of surgery don't always kills all of the bacteria, and the presence of these microscopic bacteria inside the abdomen can cause sepsis.

You will also hear, by way of Dr. Juell, and it will be Dr. Erlich who will explain to you from his infectious disease point-of-view, the microscopic bacteria escaping, and how the prophylactic antibiotics cannot kill all of them, but how those bacteria can cause sepsis. Dr. Juell will explain to you when he testifies, that in his opinion there was

aspiration of stomach contents. Aspiration, these contents get into the lungs, irritate the lungs, can call -- something called pneumonitis or pneumonia, and that is a trigger of sepsis.

The evidence will show, based upon the testimony of Dr. Rives, and the medical records, and the expert witnesses who will testify, that he followed her diligently from July 4th to July 15th. He saw her every day, he spoke to the family on a regular basis, and he was not by himself, he was part of a team of doctors, who in some form or fashion were communicating with one another each day.

And this team of doctors who were taking care of Mrs. Farris, included a hospitalist, a critical care specialist, an infectious disease specialist, a nephrologist, which is a kidney doctor, and a cardiologist, which is a heart doctor. And you will also hear, ladies and gentlemen, or see, based upon the medical records that are in evidence in this case, that on July 9, 2015, at the request of Mrs. Farris' family, there was a second general surgery opinion.

A different general surgeon saw Mrs. Farris that day, at the request of the family, and actually his name is Dr. Greg Ripplinger, we have his records in evidence, and he's a member of Dr. Hamilton's group, who did the later surgery. The evidence will show, based upon the evidence in this case, ladies and gentlemen, that Dr. Ripplinger saw her on July 9 for a second opinion. He did not recommend surgery that day, he recommended getting a CT scan to see what was going on inside the abdomen, and based upon that, what that CT scan showed, then he would react.

If we could have this slide, it's now page 5. Page 5, there we go. The evidence will show, ladies and gentlemen, that these -- there are various types of imaging studies that were ordered by the team that was taking care of Mrs. Farris, including CT scans and x-rays of the abdomen. And the evidence will show, ladies and gentlemen, based on the imaging studies, and please keep in mind, when Dr. Rives testifies, and when the experts testify in this case, the evidence will show that you're not relying on just one piece of information, or one study, or one particular test, you're looking at the whole picture, and you're looking at all the data and all the information available at the time.

But the evidence will show, ladies and gentlemen, and Dr. Rives will testify about this and Dr. Juell will testify about this, that there was a CT scan done of the abdomen on July 5th. There's no evidence of a leak from the transverse colon, or anywhere else in the bowel. Per Dr. Ripplinger's recommendation on July 9th, there's another CT scan, and this is done with what's called triple contrast.

You put in a radio opaque material that you have drink, and it also is put in up through the rectum. But this radio opaque, it's just like chalky substance. It flows throughout the bowel, and then the CT scan can look and see if any of this material is coming out of the bowel somewhere, from a hole perhaps.

The CT scan on July 9th, 2015, with this contrast coming up from the rectum, and down from the mouth, and all the way through the bowel, including the transverse colon, no evidence of a leak. None of this material is flowing from inside the bowel to outside into the

abdomen.

July 12th there's what's call a plain film of the abdomen, again, no evidence of a leak. But now on July 15th, ladies and gentlemen, because Mrs. Farris' condition had taken a turn for the worse, at about this time, another CT scan is performed on July 15th, and that CT scan is Dr. Rives, and Dr. Juell, and perhaps other will explain to you, now shows material outside of the colon, outside of the bowel that's not supposed to be there; air and fluid. So the 5th no leak, the 9th no leak, the 12th no leak, and now on the 15th you have a leak.

Let's go to page 4. Ladies and gentlemen, the evidence will show that a decision, Dr. Rives' decision to perform another operation would require a big operation, whether he did it on July 5th, 6th, 7th, or any other day for that matter, a big operation with big risks, a lot of cons. And keep in mind, ladies and gentlemen, the evidence will show, even from Dr. Hurwitz, Mrs. Farris' expert general surgeon, that if Dr. Rives had gone back in on July 9, and even if he had gone back on July 8th, 7, 6 or 5, if he had gone back in on any of these days, Dr. Rives would have performed the same surgery that Dr. Hamilton performed on the 16th.

It would have been necessary to remove a piece of the transverse colon, create the colostomy, the same surgery. The exact same surgery done on the 16th would have been required, if done any earlier. Prior to July 15, Dr. Rives, the evidence will show, had in mind each day, when he testifies, the possibility that her condition -- her condition is not improving as one would expect, or what would be typical.

He will testify, and the evidence will show, that he had in mind each day, and he saw her each day, the possibility of another injury to the bowel, a problem with the staple line that he had created on July 3rd, and I might have forgotten to mention this, but the stapler the guy mentioned, you know, the surgery that he did on July 3rd is what's called a laparoscopic surgery, where yes, you have ports, and you insert a different instruments, and different devices, and you hare manipulating these devices from the outside while you're watching on a monitor what's going on in the inside.

And what he used to repair those two small holes that he inadvertently created on July 3rd, was what's called an endoscopic GIA stapler, and it's a device commonly used to repair this type of injury to the bowel, and what it does, it's not like the kind of stapler you might think of, when you're going staple a couple of pieces of paper together, but what it does, is it fires pre-determined loads of staples that end up closing off the wound inside the abdomen. A common device commonly used.

So Dr. Rives, each day, he was seeing Mrs. Farris was thinking about, well, is there a problem with one of the staple lines, had something happened to it? He was thinking each day, was there some other post-operative problem that is causing what's going on, and he evaluated the evidence each day, ladies and gentlemen.

The evidence will show that prior to July 15th, based upon the medical records in evidence, as well as the witnesses who will testify, that between July 4th when Mrs. Farris took a turn for the worst,

and about July 14th, or 15th, when she again took a turn for the worst, between those two points in time she was improving in some ways. She was stable in other ways, and she was not getting worse overall.

And then Dr. Rives has the input form Dr. Ripplinger. Dr. Rives has the input from the CT scans and the x-rays that are being done. He has the input from the other laboratory tests that are being done. He has the input from the other specialists who are the team, taking care of Mrs. Farris, about what they think is going on, what they think might need to be done.

And when Mrs. Farris' condition did take a turn for the worse, again around September 15th, or so, after having taken a turn for the worse on the 4th, but then getting better and improving, she takes a turn for the worse; again, around July 15th.

And because of that turn for the worse they order a CT scan on July 15th, that I had up there earlier, that showed the dramatic evidence now of a perforation in the colon, with evidence of that in the abdomen. It was not something that was done just on a routine basis, or because somebody thought it would be nice to get a CT scan, it was done because of the change in her condition.

And that CT scan showed evidence of the hole, and Dr. Rives recommended surgery that day to Mr. Farris, on July 15th, based upon the CT scan findings, he recommended that she have surgery right away. Mr. Farris wanted to think about it. He wanted to wait overnight; the records will show you. And the next morning, apparently Mr. Farris and the family decided they wanted a different general surgeon to take care

of Mrs. Farris, and to do the surgery.

Dr. Rives will tell you he was fine with that. You know, there's no ego here, he will tell you he was fine with it. He was fine with the family's request to get a second opinion from Dr. Ripplinger. He was fine with the request that he step aside and let another general surgeon do the surgery. He was fine with all of that. He didn't put up a fight, didn't make a stink. There's no ego here, ladies and gentlemen.

In terms of the damages, there's been a little bit of a discussion about that, and I'll discuss damages in more detail at the end of the case, I just want to make a couple of points for now. Mrs. Farris did have a number of medical problems, as of July 3rd, 2015. The evidence will show she had seen Dr. Chaney for a number of years, about once a month, and her main issue was uncontrolled, Type 2 diabetes.

And as a complication of this uncontrolled diabetes, Dr. Chaney and others had diagnosed a peripheral neuropathy, a diabetic peripheral neuropathy in both of her feet, causing pain and sensation changes. And she's taking medications before July of 2015 to treat this diabetic neuropathy, Gabapentin and Cymbalta.

And, yes, she has other problems. There were problems with her weight, and hypertension and increased cholesterol and triglycerides, and yes, there was shoulder pain, and there's back pain, and she's taking a number of different medications for all of these, including different pain medications.

And it's not blaming her, but the point of all this, ladies and

gentlemen, is if you get to the issue of damages at the end of the case, and when you are evaluating the issues of damages, and looking at her current condition, you have to keep in mind what percentage pre-existed July 3rd, and what is new since July 3rd. And whatever is new since July 3rd, what is due to the -- it's actually critical illness polyneuropathy, CIP, what is due to the CIP, but then also what is due in her current condition to her other medical problems?

And keep in mind, ladies and gentlemen, that the evidence show that -- number 7. The evidence will show, ladies and gentlemen, that critical illness, polyneuropathy, I'm going to call it CIP, that is the cause of the foot drop. And the evidence will show that that's a static condition, meaning, it's not going to get worse over time. What it is, is what's going to be, but the evidence will also show, ladies and gentlemen, that her problems that can worsen over time.

I want to tell you a little bit about Dr. Rives. Born and raised in Los Angeles, UC San Diego. Attended Hahnemann University in Philadelphia, where he obtained a master's degree in pharmacology, and a medical degree in 1988. Did his general surgery residency at Kern Medical Center in Bakersfield, finished that in 2003. Came to Las Vegas in 2003, and joined another local surgeon, where he practiced for a period of time before starting his own practice in 2007.

And his practice is called, Laparoscopic Surgery of Nevada, and yes, it's a company, yes, it's a professional corporation, but he's' the only doctor. It's a solo practice, it's not some large giant practice or corporation. Dr. Rives will tell you that the focus of his practice over the

years has been laparoscopic surgery of all kinds, inside the abdomen.

The formal name now for this, is called "Minimally Invasive Surgery." He will explain to you his training and experience which began in his residency and has continued throughout his career, his many courses, his many conferences, all the while maintaining and perfecting his skills as a general surgeon who does laparoscopic surgery.

And Dr. Rives will share with you that by July 2015 he had performed thousands of laparoscopic surgeries of all kinds. Taking out the appendix, taking out the gallbladder, and also hernia repairs. The evidence will show that as of July of 2015, Dr. Rives was well qualified and skillful as a laparoscopic general surgeon.

And, yes, you will learn he's not board certified. He'll tell you and he'll explain why. Dr. Rives will tell you, he took the written examination many years ago and passed. He took the oral examination which you have -- it's got a -- it's two-step process. He took the oral examination many years ago and he didn't pass, and he'll explain why, he's not embarrassed, he's not shy about that, he'll explain to you why he didn't try again to become board certified.

But Dr. Rives will also explain to you and share with you, and the expert witnesses will agree with this, that you don't need to be board certified to practice in Nevada, or anywhere else. And it hasn't hindered his practice in any way. He's had privileges at various hospitals over the years in town. You have to apply, you have to evaluated, and you have to be granted permission to practice in a hospital.

He's had privileges over the years in virtually every hospital

in Las Vegas, and currently his privileges and his practice are focused on Southern Hills, and two of the St. Rose Hospitals. At St. Rose, San Martin, he was chief of surgery for a number of years and has a similar position now at Southern Hills.

I've given you already, ladies and gentlemen, a little overview of his care. I just wanted to mention the names of the other physicians who were involved, besides Dr. Ripplinger, there was Dr. Akbar, a hospitalist, Dr. Zaidi, a cardiologist, Dr. Mooney, a critical care specialist. Dr. Shaikh, infectious disease, Dr. Lin [phonetic], critical care, Dr. Gupta, nephrology, Dr. McPherson, critical care, Dr. Ali [sic], a hospitalist. Dr. Cordero-Yordan, cardiologist, Dr. Broder, cardiologist, Dr. Tandon, nephrologist, Dr. Rebentish, infectious disease, and Dr. Osman, another general surgeon.

These are all doctors that were involved in her care between July 4th and July 16th. Multiple physicians on multiple days, all of whom were aware of her clinical course, the laboratory data and the imaging studies, and what those imaging studies showed.

Now concerning the defense of Dr. Rives. First, I'm going to mention Dr. Adornato, a neurologist in northern California, he's semi-retired. He's an adjunct clinical professor at Stanford, has been in private practice for many years. He will be the one testifying on behalf of Dr. Rives about diabetes, uncontrolled diabetes, and how uncontrolled diabetes causes a peripheral neuropathy. He will be testifying about Mrs. Farris' diabetes and her uncontrolled diabetes for a number of years prior to July of 2015, and that it caused a peripheral

neuropathy, and the symptoms that she was experiencing prior to July of 2015, and how it is a progressive disease.

He will also testify about the CIP, and the foot drop, and how that is static. And Dr. Adornato will share with you that his evaluation of her current condition, her current complaints of pain, he attributes less than ten percent to the CIP, and the rest of the peripheral neuropathy and her chronic pain syndrome. The numbness in the feet, he attributes less than one-third of the numbness in her feet to the CIP, the rest to the peripheral neuropathy, the diabetic related complication.

Mobility issues, he apportions about a half of that to the CIP, and about a half of that to peripheral neuropathy because of the diabetes. You'll hear from Dr. Kim Erlich, I mentioned him earlier, an infectious disease specialist. He's the medical director of infectious disease at a hospital in the San Francisco Bay area. He'll testify about sepsis in general. Mrs. Farris' sepsis, and from an ID infectious disease perspective, the cause of her sepsis, like Dr. Shaikh, the bacterial contamination on July 3rd, microscopic, not visible. The prophylactic, antibiotic not killing all the bacteria.

And he will tell you and share with you from his perspective, that there was no hole in the bowel, it was spillage of feces, or however you want to call it, or phrase it, until long after July 4th. And in fact, sometime between that abdominal x-ray on July 12th, and that CT scan on July 15, is when the hole must have occurred.

Dr. Erlich will also testify that Mr. Farris was treated for this bacterial contamination inside of her abdomen, that her sepsis gradually

improved over time and got better, and that the physicians caring for her, as part of the team, thought she was getting better, and that her sepsis was improving, and she was well on the road to recovery, until she had this turn for the worse around July 15.

You will also hear from Dr. Brian Juell, a general surgeon in Reno, private practice, a clinical assistant professor at the University of Nevada School of Medicine, who specializes in hernia repairs. You will hear from his perspective as a general surgeon, the cause of the sepsis.

He'll use the clinical information in the records, the CT scans, the x-rays, and he will explain to you, ladies and gentlemen, why there was no hole in the transverse colon or anywhere else in the bowel. There was no hole on July 4th, there was no hole on July 9th, there was no hole on July 12th, that a hole must have opened up sometime after July 12th, and before that CT scan on July 15th.

He'll explain to you that from his perspective the sepsis was caused by some respiratory problem, something in the lung, problems with the lung. And he will use all of the information available and explain to you, ladies and gentlemen, why in his opinion Dr. Rives' care of Mrs. Farris, at all times in all aspects, in all regards, that Dr. Rives' care was reasonable, appropriate and within the standard of care, that there was no malpractice in this case.

Dr. Juell will share with you that surgery on July 3rd was indicated, because of the possibility of this bowel becoming ischemic and dying. The two holes, recognized complications, happens to all general surgeons who have to dissect adhesions. Dr. Juell will share

with you that the two holes were repaired well, and it was appropriate to continue to follow Ms. Farris, and not to return her to surgery any earlier than July 15th, when that CT scan showed a very dramatic change on the inside of her abdomen.

The decision to return her to surgery on July 15th by Dr. Rives was appropriate, based upon the then clinical and CT evidence of a hole. And, you know, why was there a hole in there? You know, now with the benefit of hindsight and taking all of the information and looking back, probably what happened is one of those staple lines came apart, sometime after July 12th, and Dr. Juell will share with you how that happens, and why it happens.

And, Dr. Hurwitz, the expert witness for the Farris's will also share with you that there's a certain percentage of staple repairs that fail. I think in his deposition he said as much as ten percent of the time, staple lines can fail, and a hole can open up, and he's had that happen to himself.

Ladies and gentlemen, I'm going to sit in a moment. Please keep an open mind. Wait until you've heard all the evidence before making a decision, and the evidence will show, ladies and gentlemen, that Dr. Rives did not commit malpractice and he's not legally responsible for what occurred.

Thank you.

THE COURT: Counsel, can you please both approach, for one quick moment?

MR. JONES: Yes, Your Honor.

THE COURT: Thank you so much.

[Sidebar at 4:52 p.m., ending at 4:54 p.m., not transcribed]

THE COURT: Thank you so much.

[Court and Clerk confer]

THE COURT: Okay. Well, ladies and gentlemen, so we're going to end it for the day, we'll do 12:30 tomorrow. Okay. So 12:30, because I was able to move a couple of my things, that's what we're doing, is try to get you as much trial time to get you done as quickly as possible.

Okay. So I'm going to read you the admonition for overnight. The Marshal will -- she's already one step ahead, see how he's already gotten your badges. Look at that, okay. We'll get that taken care of. Anyone that needs the letter, so we'll get that taken care for you.

So ladies and gentlemen, tomorrow we'll start with the Plaintiff's case in chief with our first witness. But of course, during this overnight recess, you're admonished not to talk or converse among yourselves, or with anyone else on any subject connected with the trial, or of course the voir dire process, as well.

You may not to read, watch or listen to any report, or commentary of the trial, or the voir dire process. You may not discuss with any person connected with the trial, or the voir dire process, or any medium of information, including without limitation, social media, texts, tweets, newspapers, television, internet, and radio. And you understand that anything that I've not specifically stated, is of course also included.

Do not visit the scene or the events mentioned during the

trial, or the voir dire process. Do not undertake any research, experimentation, or investigation. Do not do any posting or communications on any social networking sites, or anywhere else. Do not do any independent research, including, but limited to internet site searches.

Do not form or express any opinion, on any subject connected with the case, until the case is fully and finally submitted to you at the time jury deliberations, With that we wish you a very nice evening. Please do leave your jury notebooks on your chairs, they'll be there for you in the morning. Have a nice relaxing evening.

THE MARSHAL: All rise for the jurors.

[Jury out at 4:56 p.m.]

[Outside the presence of the jury]

THE COURT: Okay. And please do take all your items. We will have a full motion calendar tomorrow, so we'll other people in the courtroom. Appreciate it. Thank you so much. Okay.

So counsel feel free once again, Plaintiffs, put your [indiscernible] over there, Defendants [indiscernible] over here. Feel free. And of course I'll have a full courtroom of different matters all morning, so we'll move into that, and then into lunch hour and then to your trial. So we wish you a very nice evening and we will see you tomorrow, to start promptly at 12:30, okay.

So the Court will be open a few moments before then, just really depending when we get done with our morning calendar, to ensure my team gets their full lunch break. Okay. So I do appreciate it.

Feel free to quickly wrap up, and enjoy the hallway [sic], have a great evening. Thank you so much.

[Court and Marshal confer]

THE COURT: Okay, perfect. At this juncture Madam Court Recorder is going to go off the record.

[Proceedings adjourned at 4:57 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Jessica B. Cahill

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708