

1 to use barrier protection. It's not even recommended if you
2 stay in that relationship. There's a .6 percent per year risk
3 of transmission in that situation. So sexual contact can
4 actually facilitate an infection, but it's not a very
5 efficient way of doing it.

6 And there are some other ways. But blood
7 transfusions, blood-to-blood contact is primary and number
8 one. And if you go back in history a little bit, you'll hear
9 that in 1967 the hepatitis virus was actually discovered, that
10 prior to 1970, if you got a blood transfusion in this country,
11 30 percent of the people, 30 percent of the people or 33
12 percent of the people would get hepatitis. Didn't know what
13 it was.

14 Now, after the hepatitis -- and that was at the time
15 the hepatitis B virus was discovered, they instituted a few
16 years later screening mechanisms, screening mechanisms so that
17 they could ensure that the blood supply would be better. And
18 it went from -- and in instituting that, it went -- the
19 percentage of infections or from -- caused from blood
20 transfusions dropped from about 33 percent to about 10
21 percent.

22 Fast-forward in time to about 1973, hepatitis A was
23 discovered. But hepatitis A is not blood borne. It's food
24 borne. It's fecal/oral contamination. So that's really not
25 the same issue.

1 But if we move forward in time even beyond that to, I
2 believe it was 1989, the hepatitis C virus was discovered.
3 And when the hepatitis C virus was discovered, within a couple
4 of years, I think the very next year they had a screening test
5 for that, and it dropped the blood-borne infections down to
6 1.1 percent.

7 In the following two years they came up with a
8 secondary screening procedure, which essentially eliminated
9 the risk. Right now in this country, at least back then in
10 this country, the risk for transmission of hepatitis C from a
11 person from a blood transfusion was one in 2 million units of
12 blood transfused. Big change.

13 So hepatitis C is an important virus because it
14 causes -- it's the single largest cause of blood-borne
15 infection in the country. The country itself at that time,
16 there were about 3.2 million Americans who were actually
17 infected, and the issues related to that are as follows.

18 I mean, you hear about needle sticks. And for
19 comparison, HIV, hepatitis B and hepatitis C, from a single
20 exposure needle stick, the risk of transmission for HIV is
21 about .3 percent. The risk for hepatitis C is about 3
22 percent. And for B it's about 30 percent. So it's not the
23 most infectious agent, but it is the single largest
24 infected -- or infectious communicable disease in the country.

25 One of the issues with that is the clinical

1 presentation. You will hear, when these people get on the
2 stand, these victims get on the stand and tell you what
3 happened, that there's a standard kind of presentation. Not
4 all the symptoms are there for every person.

5 But what you will hear is that the standard symptoms
6 are jaundice, yellowing of the skin especially, or you'll hear
7 the term "icterus," or icteric, meaning around the whites of
8 the eyes, those get yellow, can get yellow. Those are usually
9 some of the first symptoms.

10 Right upper abdominal quadrant pain, where the liver
11 resides. Might have some nausea, some vomiting. General GI
12 disturbance. Lethargy, you're not feeling well. You're sick.
13 Clay-colored stools. Dark urine. Enough that you would go to
14 your healthcare provider if you were having an acute
15 infection.

16 Now, most of the people that get infected with
17 hepatitis C don't exhibit symptoms. As a matter of fact, it's
18 about 41 percent -- excuse me. It's about half or more of --
19 no, no. I'm sorry. 10 percent, less than 10 percent of
20 actual infections result in acute disease. But of those that
21 result in acute disease, about 41 percent of those cases
22 require hospitalization.

23 Now, you'll hear that the vast majority of the people
24 here required hospitalization. That's where they find out
25 that it's going on. There's only one person that had an

1 asymptomatic presentation. It was discovered on screening
2 after the fact. You'll hear from her. But the rest of them
3 all ended up in the hospital. And of those you're going to
4 hear that -- you know, that the virus has different types.

5 There's six different genotypes of the virus. Six.
6 And they're designated one through six. And of each of those
7 there's some subtypes, and they're usually designated by a
8 letter. And in this country, in the United States, the number
9 one subtype is 1A. All of these individuals have 1A, followed
10 by 1B and 2B, at 58 percent and 21 percent and 13 percent
11 respective.

12 Now, the onset of symptoms also is important, because
13 after an infection, within two weeks to six months you will --
14 if you're going to get acute phase sort of symptoms, that's
15 when it will happen. Average time is about seven weeks, and
16 you'll hear that the patients fell near that range but a
17 little bit more. The two transmission dates again, July 25th
18 of 2007 and September 21st of 2007.

19 Now, of the people who get infected and have acute
20 symptoms that know about it, 50 to 80 percent of those enter
21 what's called a chronic phase, where they have virus in their
22 body. It may or may not flare up at times, but it's a chronic
23 infection. It can cause cirrhosis of the liver. It can cause
24 other things.

25 And you'll hear that 20 percent of those individuals

1 get cirrhosis of the liver, and some go on to get cancer. But
2 and typically you'll also hear that, you know, most people die
3 of other things, even if they've got this and they get -- they
4 eventually develop cirrhosis, they die of other things.
5 Because it's usually a long process, maybe 30 years. That's
6 not what happened in this case.

7 On the 21st of September 2007, because of viral load,
8 meaning the number of viral particles in the body, because of
9 the virulence, meaning how aggressive the virus was, on that
10 day alone we have infections in six different people, and one
11 of those resulted in the person getting cirrhosis within five
12 years. Very unusual. It's reported, but it's not usual.
13 Cirrhosis within five years and dead, that's what we have.

14 Now, Clark County talked about incidence of that.
15 You're going to hear that in Clark County, Nevada, that the
16 incidence of hepatitis C infections was about zero to four in
17 a year. And hepatitis, because it's the number one
18 communicable disease blood borne illness in the country that
19 it is required by law that that be reported, be reported to
20 the health district.

21 And the health district is charged by law with
22 investigating cases like that and confirming them. If they
23 confirm them, they have to report them to the Nevada State
24 Health Division. So that little zero to -- zero to four a
25 year, and the average in Clark County at the time was of 1.4

1 patients, 1.4 reported cases per year. So that's the
2 backdrop, ladies and gentlemen.

3 So what happened in this case? Well, on December 4th
4 of 2007, the health district is notified. It's not when the
5 actual, you know, people are in the hospital, but the
6 notification doesn't come to the health district. They're
7 required, it's mandatory that people, doctors who observe, get
8 a confirmed case report it. Now, do some people not do that?
9 Clearly. But that's what the law says.

10 And in this case, on December 4th of 2007, an acute
11 case of hepatitis C was reported to the health district. That
12 person had no real risk factors except for two things. They
13 had had a dental procedure done, so there was access to their
14 blood system through the dental procedure, and they had had
15 two endoscopic procedures performed, that person, at the
16 Endoscopy Center of Southern Nevada, Case 1.

17 Now, the health district takes some time to actually
18 investigate these. But during the process of investigating
19 these, about two weeks later, on the 17th of December of 2007,
20 what happens? Another case comes in. This individual had
21 actually had a procedure done on the 25th of July, whereas the
22 first individual had a procedure done on September 21st of
23 2007, both at the Endoscopy Center of Southern Nevada. That
24 was essentially his only real risk factor.

25 So now they've got two cases that the common

1 denominator in the cases is that they had endoscopic
2 procedures performed at an outpatient ambulatory care center.
3 They get on the phone on January 2nd with the CDC to get some
4 advice. The same day, the same day they get notified of yet a
5 third infection.

6 So in a period of just a few weeks, the health
7 district now has three cases reported to them of acute
8 hepatitis C, patients in the hospital. At that point they're
9 not asking the CDC for advice anymore. They're asking the CDC
10 to help them, to come out. They formally requested assistance
11 from the CDC.

12 Now, ladies and gentlemen, the CDC comes to town and
13 as we said during your voir dire process where we were
14 questioning you, the location where this clinic is, is over
15 on -- it's 700 Shadow Lane. It's over by Valley Hospital and
16 UMC. It's right over there. Well, at the time before the
17 health district was closed because of whatever was going on
18 with the building, the health district was actually located
19 across the street and down just a little bit. So they were
20 right there.

21 The CDC comes to town. They have a meeting at the
22 health district. You'll hear Brian Labus tell you about this,
23 what took place, and a few of them went over to start doing an
24 investigation. They called, which was at the time the Bureau
25 of Licensing and Certification, which licenses these types of

1 centers, and representatives from both entities came down
2 there. They go over to the clinic.

3 The first three days they're in the clinic, ladies
4 and gentlemen, all they're doing is looking at charts.
5 They're not looking at any procedures. They're not looking at
6 anything. So health district comes over, the CDC's over
7 there, the BLC's over there, and clearly the staff knows that
8 they're there.

9 They've been there for days looking at their charts,
10 and now they're moving to the phase where they're going to
11 look at actual procedures. Now the health district and the
12 CDC personnel are actually physically sitting in the rooms
13 watching the procedures take place and observing the staff.

14 And these breaches in what's called universal
15 precautions that you will hear about were so engrained in the
16 staff, that even knowing that they were under the microscope,
17 that the CDC was in house, had been there for three days and
18 now is going to observe them in a procedure, what happened?
19 They did it in front of them. The CDC observed unsafe
20 injection practices, which is what is believed to have caused
21 the infections in this particular case directly. This isn't
22 through a third party.

23 Now, Ronald Lakeman over there, he didn't work there
24 on that day. He had moved away. But Mr. Lakeman was
25 contacted by telephone because he had been on the records as

1 being a CRNA, a certified registered nurse anesthetist, on
2 both days where the infections took place. They call him up
3 on the phone, one of the CDC people, and they ask him about
4 his technique.

5 They had already heard from the other people. They
6 had observed it happening. They had questioned them. They
7 have learned that it was pretty common practice, so they
8 needed to confirm with Mr. Lakeman. He admits to it. He
9 admits to what was called double-dipping, where you take a
10 bottle --

11 MR. SANTACROCE: Your Honor, I'm going to object to
12 that term, "double-dipping." There's no -- can we approach?

13 THE COURT: Sure.

14 (Off-record bench conference.)

15 THE COURT: That's overruled. Ladies and gentlemen,
16 opening statements are just the attorneys' opportunity to tell
17 you what they anticipate the evidence in this case is going
18 to be. At the end of the day what will be important is your
19 recollection of what the evidence actually is, which is the
20 testimony and the exhibits.

21 Please continue, Mr. Staudaher.

22 MR. STAUDAHER: Well, they've got him on the phone
23 and they ask him how he does the procedures. And by golly,
24 it's exactly the way they just observed it, that there's a
25 bottle of medication that is supposed to be a single use, and

1 you'll see an example of that. It's not the bottles that were
2 there. It's just an example, in just a moment.

3 But he would take a needle/syringe combination, go
4 into the bottle of medication, draw out medication, take that,
5 put it into what was called a heplock, and you'll see some
6 pictures of that too, into the vein, inject the patient, and
7 then remove the needle, not remove the needle, but whatever,
8 take it and go with the same syringe back into the same bottle
9 and use it on the same patient. Then that bottle is then used
10 on the next patient.

11 You'll hear from the CDC personnel, from the
12 epidemiologists involved in this investigation that that
13 bottle is considered contaminated at that point. So you've
14 got Ronald Lakeman, Ronald Lakeman, the guy who's sitting over
15 there admitting to that practice. Now, here's the important
16 part that you'll hear, not just that that practice was taking
17 place, but that he was aware of the risk of a transmission.

18 He said he was aware of the risk, but he instituted a
19 procedure that he thought he minimized the risk, that he would
20 use negative pressure on the syringe when he was going into
21 the vials to minimize the risk of contamination and infection.
22 He then added one last thing.

23 He told the CDC person who was talking to him, who
24 you will hear on the witness stand, that not only was he aware
25 of the risk and took measures to diminish that risk, but if

1 the CDC person ever told anybody about this and he was ever
2 questioned about it, he would deny ever talking to them on the
3 phone.

4 So they're at the clinic -- and there's two things
5 here. The first one you had -- we'll go back to that for just
6 one second. The Endoscopy Center of Southern Nevada was in
7 that building. Right next door adjacent to it is part of a
8 group that's separate, separate entities, was the
9 Gastroenterology Center, the medicine side of the practice.

10 So that's the layout. The waiting rooms. And the
11 reason that these pictures are shown, the waiting room is
12 empty now. But during operations, especially in the morning,
13 that's not the way that looked. You'll hear that it was very
14 common, like every single day that they operated, that they
15 would double and triple book patients. Patients would be
16 packed into this waiting room standing room only.

17 Now, these are patients who have undergone a
18 procedure, or are about ready to undergo a procedure that
19 requires certain preparation. And that preparation involves
20 the consuming of a large amount of fluid. If anybody has ever
21 done this in the jury you would know that. But for those of
22 you who haven't, you consume a large quantity of fluid which
23 has some medicines and salts and things in it that makes you
24 evacuate your bowels.

25 So the night before, you're supposed to drink this

1 solution and it causes you to spend most of your night sitting
2 on the toilet. So these patients come in here not feeling
3 particularly great. Some of them are diabetic. Some of them
4 aren't doing so well. They haven't eaten. And they come and
5 they sit here and they sit here and they sit here for hour
6 after hour waiting to go back.

7 Why? Because that man can't be inconvenienced for
8 one minute, one second. He doesn't want there to be a gap
9 anywhere in that patient load, that there is never to be a
10 room open when you can shove a patient in there for a
11 procedure. So that room right there gets packed full and it
12 stays full.

13 But if you're lucky enough to eventually get out of
14 the room, you go to this place right here, which is where you
15 would get what was called a heplock placed. And all that is,
16 is it basically is a device that allows them to have access to
17 your blood system. It goes into your veins like a little IV,
18 and it allows you to put a needle in there or attach a syringe
19 and administer some medication.

20 So there wouldn't be a waste of time in the procedure
21 room, because they're really pumping them through you'll hear,
22 they have this occur in a preop area. But that's where the
23 actual heplocks are placed most of the time, with the
24 exception of usually the first patient or two of the day.

25 And on the 25th of July of 2007, that's exactly what

1 happened when Ronald Lakeman was back in his procedure room.
2 He was the CRNA that day. And the very first patient of the
3 day, Mr. Sharrieff Ziyad, comes into the clinic and doesn't
4 stop here. He goes from his getting prepared right back to
5 the procedure room, and Mr. Lakeman is the one who puts in his
6 heplock.

7 No nurse. No little flushes of saline, things you'll
8 hear about later on. That's what happens. He's the one that
9 puts it in there. There's no intervening source of anyone
10 coming in and doing that for him. That patient, by the way,
11 was a known hepatitis C carrier. It's on his chart. The
12 clinic knew about it, and yet he's the very first patient of
13 the day.

14 You will hear a nurse come in and testify that when
15 she was at the clinic, she was one of the earlier ones, she
16 came, she left, she came back, that she tried to institute a
17 plan, a policy within the group to have patients like
18 Mr. Sharrieff placed at the end of the calendar -- the
19 calendar, end of the schedule rather.

20 End of the schedule, so that if there was a breach in
21 the regularly used and practiced universal safety precautions,
22 if there was some detriment, breach in that, that it wouldn't
23 cause potential harm for other patients. When she came back
24 to the clinic later on, you'll hear that that wasn't the case
25 anymore. And you'll hear that the reason it wasn't the case

1 essentially was because they don't have time to be doing that.

2 Now, the devices that we're talking about -- and
3 these next series of four pictures that you're going to see
4 are not items that were taken from the scene. They're
5 demonstrative evidence presented to you to show you what we're
6 talking about.

7 These are examples of IV catheter sites, of little
8 angio caths, as they're called, angio meaning blood vessel,
9 cath meaning catheter that goes into the blood vessel. And
10 these are different sizes that are used to get access to
11 somebody's blood system.

12 This is how it typically goes if it's in the top of
13 the hand. You see them using a device like that to access a
14 vein right here. Next one is actually in a vein. And this is
15 an important point, because you'll see that there will be a
16 flash of blood, and that's how they know they're in a vein.
17 You'll hear that from these witnesses. What that means is
18 there is -- there is blood there, patient blood.

19 This is a picture of just a series of different types
20 of heplocks. The end here actually fits into the other end of
21 that device, and that this is the port by which you can
22 access it, puncture it with a needle and administer
23 medication.

24 And the next picture you'll see is a combination
25 thereof, with the catheter and a device plugged onto it,

1 screwed onto it, this portion. And that's how they would gain
2 access to your blood system so they could give you repeated
3 doses of medication.

4 This is back to the clinic. This is from the clinic.
5 This is a typical endoscopy suite where they would do the
6 procedures. The patient would be there, the nurse and the
7 doctors. You'll see an overhead diagram of it in a little
8 while -- you know, during the course of the trial, that will
9 show you how the setup was.

10 But that's what the rooms looked like. After you got
11 done in that procedure room, they came out to the recovery
12 area. And you'll note that the orientation of the bed, the
13 head of the bed away from the wall is the way all these beds
14 are lined up.

15 Zayad, Sharrieff, he's the first patient of the day
16 on the 25th of July 2007. He's a known hepatitis C carrier.
17 He is known by the clinic. It's not just that he knows. They
18 know. It's on his chart. Ron Lakeman's aware. Everybody's
19 aware because it's on his record.

20 Now, Ziyad, Sharrieff and Michael Washington appear
21 on the same day. And Mr. Washington is the second reported
22 case that I told you about earlier. He's the one who comes in
23 and he's the second reported case to the health district. He
24 doesn't have hepatitis C. Well, yes, because that's a DMV
25 photo of him. He does currently have hepatitis C. He's

1 positive for it. You'll hear from him probably tomorrow.

2 But this man got his hepatitis C from Mr. Sharrieff.
3 Kenneth Rubino, this is a patient who is not -- didn't get
4 infected by the clinic. He is a source patient of the
5 infections on the 21st. He's one of the earlier patients. He
6 wasn't the first patient of the day, but he was one of the
7 earlier patients. He has his procedure.

8 A little tidbit that you'll hear, after he has his
9 procedure there are 45 patients in the clinic that get treated
10 after him. Statistically those patients, because he's the
11 source patient and because there are other people that get
12 infected after him in the unsafe injection practices that
13 you'll hear about, those 45 patients had a 31 million times
14 greater rate of contracting hepatitis C than the average
15 person in the population just by virtue of the fact that they
16 were at the clinic and he was before them.

17 He was a known carrier. He had it on his chart. He
18 was being treated for hepatitis C by the clinic. When he came
19 in for his procedure that day, he made sure that everybody
20 knew, because he didn't want to cause any trouble, cause any
21 infections. He did everything he possibly could to protect
22 everybody else.

23 He even told -- and it wasn't Mr. Lakeman, it was
24 Mr. Mathahs who was the other CRNA that day, he told him
25 before he did the procedure. But it wasn't good enough,

1 because Stacey Hutchison, Rodolfo Meana, Patty Aspinwall,
2 Gwendolyn Martin, Sonia Orellana, Carole Grueskin, all of
3 them, all of them got hepatitis C matched to the virus from
4 Kenneth Rubino.

5 So on the 25th you have Ziyad, Sharrieff giving it to
6 Michael Washington -- not giving it directly, but the clinic
7 through the use of the unsafe injection practices. And you'll
8 hear about Kenneth Rubino infecting all of those people, or at
9 least his blood infecting all of those people on that day.

10 Now, this is not from the clinic. When the police
11 went and did -- executed their search warrants at the clinic,
12 you'll hear that there was no propofol there anymore. They
13 gave it back or something happened. It was gone. They
14 couldn't even impound them. But this is a representation, a
15 demonstrative piece of evidence that shows you what the
16 bottles typically look like.

17 We don't even know if they were exactly those
18 bottles. Propofol comes in a couple -- or has come over the
19 years in a couple of different forms. Sometimes they're
20 ampules, which means they're just completely glass enclosed
21 with a scored neck, you snap it off. It's at atmospheric
22 pressure. You draw the fluid out and you use it. Or in this
23 case vials that had caps on them.

24 These are the types that at least -- at least that
25 type of a setup is what is described as being used at the

1 clinic at that time. Now, this bottle in the middle, it says,
2 "1 gram, 100 milliliter." No indication there was even a
3 bottle that big there.

4 They did -- they used the 20s, 20 milliliter bottles
5 and the 50 milliliter bottles. Once these were introduced,
6 the 50 milliliter bottles, that's the ones that -- or that is
7 the one that the CRNAs actually preferred, because they could
8 get access to it more easily.

9 You will see on the bottle and the package insert,
10 you're going to see a couple things. Single use patient only.
11 Single use patient vials. It's on the labels. It's on the
12 bottles. It's known by people who use the drug. The way they
13 would take it out typically, out of a vial was they -- and
14 again, this is not somebody at the clinic. This is another
15 picture from another source just used as demonstrative
16 evidence. A syringe with a needle, inserting it into the
17 bottle, drawing out medication.

18 Now, you'll hear that one of the issues with this is
19 that when you either put fluid into an enclosed container like
20 that, put in air to get the fluid out or you just draw it out,
21 you change the pressure inside that container. You either
22 pressurize it or you essentially create a vacuum. So that if
23 you withdraw fluid without putting air or something into it,
24 what happens when the syringe needle goes in? It pulls what's
25 ever into the needle into the bottle.

1 You do it the other way around, you pressurize it,
2 whatever is in the bottle gets pushed down the needle into the
3 syringe. Either way, that's the reason why you'll hear that
4 you don't reuse syringes, you don't reuse propofol bottles or
5 any bottles like that, that are marked for single use.

6 Here's what the health district came up with, what
7 they believe based on their investigation was the mechanism by
8 which the infections took place. That there was a clean
9 needle, a clean vial of propofol that was -- had some
10 medication drawn out of it, that that went into an infected
11 patient. That virus from the infected patient got into the
12 solution within the syringe itself.

13 Some individuals indicated or claimed that they
14 removed the needles and replaced the needles before they went
15 back into a new vial of propofol. As you'll see and from the
16 studies that have been out there, you'll hear that even
17 touching a bottle like that can cause -- or touching an
18 infected patient with that, just touching, not drawing back
19 and forth, can cause contamination of the solution inside.

20 So with an infected syringe even with the needle
21 removed, putting a new needle, introducing virus into the new
22 bottle, then taking a clean syringe, if you were going to use
23 a clean syringe on a new patient, withdrawing that from the
24 contaminated bottle and now using that on the next patient,
25 that's one mechanism.

1 There are other mechanisms if you were to reuse the
2 syringes on different patients, but the evidence you'll hear
3 is less clear on that point. But there is no question that
4 the bottle went from patient to patient.

5 Now, this is a preface to what you're about to see,
6 the next two slides. After the investigation took place and
7 Rodolfo Meana and Carole Grueskin and Michael Washington and
8 Gwendolyn Martin, all of them, when all of them were
9 essentially tested, they had to send -- and this isn't just
10 them. This is everybody from those days.

11 There's 60-plus patients each day. All of them were
12 tested and the samples were sent off to the CDC for analysis.
13 And this is the number that was given to them by the CDC when
14 they came in that corresponded to the patient. Those numbers
15 you'll see on the next slides appear on what's called a
16 phylogenetic chart, or a dendrogram of same nature, and it
17 shows genetic relatedness.

18 And I'm not going to get into that with you here,
19 because you're going to hear a person talk about that in more
20 detail. But suffice it to say this is the identification, and
21 the reason they're in different colors is because that's the
22 way they appear on the next screen.

23 This is the dendrogram. This, all of these things up
24 here are part of what's called the HANES study, HANES three
25 participants. And that's, if I get it right, it's the

1 National Health and Nutrition Examination Study, and there's
2 been a few of those in our nation's history, and this was the
3 third one. And these participants where they used as sort of
4 a control those patients who were known hepatitis C carriers,
5 who were of the same genotype 1a, they tested this population
6 against them to see how genetically related they were to other
7 people.

8 Within the groups we see sort of a tree coming off, a
9 branch. That means that the groups here are related to each
10 other here and here. And the colors that you see designated
11 here correspond to the colors on the previous screen. I'll go
12 back to that and see -- I'll go back to that just so you can
13 see it.

14 Now, this is the cluster from the 21st of September
15 of 2007. This is the cluster from July 25th of 2007. What's
16 interesting about this cluster, and we'll get to that right
17 now, is that when they first -- the CDC first had the samples
18 come in, the only sample they had was NV30. And NV30 was
19 Michael Washington, so he is the infected patient on that day.
20 He's the infected patient. They didn't have the source
21 patient. They had just the infected patient.

22 But from this chart that they produced, they knew --
23 they predicted that there would be a person that would match
24 and be in this area. They predicted it. And lo and behold,
25 Sharrieff Ziyad fell within that category. When they put him

1 on the chart, he fell right there. It was exactly the way
2 they expected it. It was a person that was related.

3 And you'll hear that the genetic relatedness of the
4 viruses ranges from about 96 percent to 100 percent in these.
5 Of the cluster on the 21st of September, again, this is source
6 patient and infected patients all are clustered off of that.

7 Now, at the clinic, some of the things you're going
8 to hear about are -- well, and that the health district looked
9 into were other possible ways or sources of contamination that
10 these people could have gotten infected. Could it have been
11 the endoscopy scopes that were used. Could it have been a
12 rogue nurse trying to infect people.

13 Could it have been saline flushes in that IV room,
14 that they would put those IVs in sometimes and flush them with
15 some saline, maybe somebody else contaminated it. They looked
16 at all of those things. Not the same nurses. Not the same
17 scopes. They weren't processed the same way, didn't have the
18 same procedures necessarily.

19 But this picture depicts, and the next two depict the
20 endoscopy scopes. They had 18 scopes at this facility. Six
21 of those scopes were used for upper endoscopies. Twelve
22 scopes were used for colonoscopies. They're different sizes,
23 different lengths, that kind of thing.

24 But the reason these pictures are here is to show you
25 not just what the scopes look like themselves -- those are the

1 tubes that go up into somebody's colon or down somebody's
2 throat -- but this area down here. At the end of the day they
3 would go through the normal cleaning process, and you'll hear
4 about the cleaning process.

5 They would hang these scopes up at the end of the day
6 to air dry for the next morning. You'll hear from a number of
7 different people that, you know, sometimes they came in, in
8 the morning and there's some fecal material down there drained
9 out of the scopes that were supposedly clean. So that's one
10 of the reasons why the CDC looks into this, is gosh, they're
11 not getting adequately cleaned.

12 Because remember, these scopes don't just turn over
13 once a day. There's 18 scopes total, 12 of them for
14 colonoscopies. And on each of those incident days alone
15 there's, I believe, 67 procedures done on one day and 64
16 procedures done on the next day. The average amount of -- or
17 number of patients that were seen and treated at the clinic on
18 a daily basis in 2007 was over 60. Sixty a day.

19 It takes approximately 20-plus minutes, depending on
20 the cycle of the machine, 17. There's some cleaning before,
21 but a half an hour or so to process the scopes. So each one
22 of the scopes that were used were used multiple times
23 throughout the day. None of the patients, by the way, had the
24 same scope. It just talks to the cleanliness and the adequacy
25 of the cleaning that was done.

1 Because you know at the end of the day you'll hear if
2 that's the case, that was probably the case all the way along
3 the line when they were cleaning. You'll hear even that
4 sometimes they would take a scope out, from one witness, and
5 bring it into the room and they would notice it had some fecal
6 material on it. It wasn't cleaned up well.

7 These devices here are called Medivators. There's
8 two of them. They were at the clinic, and they could put a
9 couple of scopes in those at once. And in those Medivators
10 you'll hear what they would process the scopes, they would run
11 solution through them. Before they put them in there they
12 would go through a cleaning process.

13 But the people that were back here, some were trained
14 better than others. Some were just pulled in off the front
15 desk so to speak to come back there, get a little rudimentary
16 training about how to clean things up, and they'd do it.
17 Maybe they changed the solutions, maybe they didn't.

18 Sometimes there were people back there that were
19 looking at the solutions, didn't even know how to do it or how
20 they were to be tested. And there would be fecal material in
21 the solutions that should be cleaned for the next scope, and
22 they'd just dump it all in there. And that's important in a
23 minute.

24 But here's another device, and this is from the --
25 this is not demonstrative. This was actually impounded. 60

1 ml syringe. 60 milliliters. It's a big syringe, and it's
2 used to flush the scopes out during the procedures back in the
3 procedure room. When the colonoscopy is taking place,
4 sometimes the channels get lodged with fecal material
5 [inaudible], and they need to be flushed out.

6 Well, what would happen is those syringes would get
7 contaminated. They would get fecal material on them and in
8 them. And you'll hear that cost cutting, don't waste
9 anything. They've used the same scope the whole day on
10 patient after patient after patient. Same thing with that,
11 although to a lesser degree.

12 You'll hear that one of the things that Dr. Desai did
13 was he wanted -- he wanted you to get the maximum you could
14 out of everything. This is an example. This is a package of
15 what's a biopsy forceps. A disposable biopsy forceps. See
16 that? Disposable biopsy forceps, and it does say disposable.
17 Single use only. Now, the issue with this is that these
18 devices, like the snares and other things that were in the
19 clinic, were such that they would be reused.

20 You'll even hear people like Jeff Krueger will come
21 in here and tell you at one point that, you know, they had a
22 talk with Desai about you can't do this, you can't reuse this
23 stuff. This is single use only. It's been inside a patient.
24 Yeah, there have been times in the past there were reusable
25 snares and forceps and things like that. We don't have them.

1 Okay, okay, that's the way it will be. And then the
2 next thing you hear is he's getting a call from some staff
3 member who went around him -- where Desai went around him and
4 is trying to get him to use the stuff again.

5 These are called Chux. They're non-absorbent pads.
6 There's plastic on the one side. There's a paper barrier on
7 the top. Those go underneath the patient to protect the --
8 everything around and underneath the patient from the stuff
9 that comes out of the patient when a colonoscopy is being
10 done.

11 Now, those cost -- and we'll get into some of the
12 costs in just a moment. But those cost -- they got better
13 prices as things went along, but around a penny or less
14 apiece. He had his staff cut them in half to save money. Cut
15 them in half.

16 These are called bite blocks. Now, for upper
17 endoscopies, the EGDs that you'll hear about, in order to
18 protect -- those scopes are very expensive, and people's teeth
19 are very expensive, or can be if you knock one out. So you
20 will hear that what they would do is they would take this bite
21 block, which is disposable, they would take that bite block
22 out and it would -- they would fit into your mouth, and then
23 they would put the scope through it to do your procedure.

24 Now, the scope going through that device was meant to
25 protect your teeth and meant to protect the scope. These

1 things are cheap, about a buck apiece or whatever. You'll see
2 on the packaging it says single use only, single use. At the
3 clinic, single use was not necessarily in the vernacular,
4 because sometimes those things were used over and over and
5 over again.

6 And they weren't just rinsed off and slapped into the
7 next patient's mouth. They were thrown into the same soup
8 that the scopes that came out of the last few patients' rear
9 ends, be floating around in fecal -- fecal soup, so to speak,
10 were used, and then those went through the processors and
11 supposedly got cleaned for the next patient.

12 Syringes. These are 10 cc syringes. And when I say
13 cc, 10 milliliter syringes. That's the syringe that was used
14 during the procedures for the administration of the drug
15 propofol. Just the back of it, but one thing that's important
16 to note on the syringes, if it wasn't readily apparent to
17 anybody, is that my gosh, those are single use only as well.
18 Not supposed to reuse the plastic syringe, which cost about
19 7.4 cents apiece.

20 Now, this gives you an example of the reuse, and
21 you'll see this. This is upper endoscopies performed on those
22 bite blocks you just saw a moment ago. This is for all
23 locations, all clinic locations. The Shadow Lane clinic --
24 you'll hear that there were two clinics that were operating,
25 one at Shadow Lane where the two incidents occurred, and also

1 one at the Burnham facility where Desai didn't practice very
2 much. He didn't actually physically go there very often.

3 This is how many bite blocks were used per the
4 patient load that they had that had those kinds of procedures.
5 And if we look at that, we can see at Shadow Lane there were
6 5,040 upper endoscopies performed, there were 2,250 bite
7 blocks purchased and use -- well, purchased.

8 We don't know if they were all used. But purchased
9 for that many patients. There is no way that they weren't
10 being reused, despite the fact that you'll hear people say
11 that that was the case. Shadow Lane, number of bite blocks,
12 number of patients.

13 Here's one talking about the -- the propofol vials,
14 remember we talked a little bit. You're going to hear about
15 vials that moved from patient to patient, and the CDC actually
16 saw that happen. Well, in this case -- this is a comparison
17 of the two days, the two incident days.

18 You're going to see that of the patients that were
19 there on July 25th of 2007, there were 65 patients at the
20 clinic that day. Twenty bottles of propofol were checked out
21 and used that day. On 9/21, there was 63 patients and 24
22 bottles of propofol were used, clearly not enough for one for
23 each patient. Well, maybe that's just an isolated event, two
24 days.

25 This chart shows you the way it was -- that same

1 information for an entire year, the entire year of 2007.
2 You'll see the bottles of propofol, if we bring that in to
3 blow this up a little bit, that at Shadow Lane there were
4 4,957 patients through Shadow Lane. Fourteen -- excuse me. I
5 said four. It's 14. 14,957 patients in that year came
6 through for procedures. That's how many vials of propofol
7 they purchased and used, 67 -- or 6,764.

8 At Burnham you can see that it was a different ratio,
9 but still, clearly more patients than bottles of propofol.
10 The total, the grand total, even if there was some indication
11 that there was massive movement of propofol or something
12 between the clinics, which there will not be any evidence of,
13 23,576 patients between the two clinics, 11,844 bottles of
14 propofol.

15 Syringes. Now, talk about reuse of materials.
16 You're going to hear varying statements -- and again, ladies
17 and gentlemen, you are going to be instructed at the end that
18 you are the ones who make the determination as to the
19 credibility of the witnesses that come before you. But those
20 witnesses that come before you, you weigh what they say. And
21 you're going to hear varying degrees of knowledge of what was
22 going on.

23 One underlying thing that you will hear is that,
24 yeah, things weren't going well, I really didn't like what I
25 saw but I never did it, I didn't do it. One of those things

1 goes to the reuse of syringes. Everybody will talk about, or
2 a lot of people will talk about the fact that propofol bottles
3 went from patient to patient, but there will be nobody that
4 says that a syringe went from patient to patient.

5 In fact, you'll have some people that will say that
6 the syringes themselves, they used -- they would load a whole
7 bunch of them up and they would use multiple syringes on
8 patients. And you'll see in a moment that there were multiple
9 doses of propofol per patient on a typical procedure.

10 So if that was the case and you were drawing them up,
11 because remember, those 10 cc syringes, those 10 milliliter
12 syringes can only contain 10 cc. And a lot of times they
13 would draw up a single milliliter of lidocaine, an anesthetic
14 agent, because propofol, when it goes in, it burns. So it
15 would be even less.

16 So a comparison of how many syringes they had during
17 that time, to see if they had multiple syringes per patient,
18 it doesn't show that. Shadow Lane, this is the number of
19 patients, this is the number of syringes. It's almost a 1/1
20 ratio. Now, at Burnham it was a little bit different. It was
21 almost two syringes per patient.

22 The total still is not enough syringes to have even
23 two per patient. In fact, the numbers show that at Shadow
24 Lane, the number of patients they had was 14,957. They had
25 17,100 syringes used at that clinic. A little over a syringe

1 per patient.

2 Now, the information that you're going to see later
3 on in charts comes from in part these propofol logs -- or not
4 propofol logs, but these procedure log books. There was one
5 for each day. There's three that will be particularly
6 relevant for this case, and you'll see those. They're all
7 sitting over there for the whole year.

8 But this is what we talked about earlier. You're
9 going to hear these people come in and tell you about the
10 atmosphere, the pressure, the relentless patient load, the
11 moving of the patients through where you don't have time to
12 put down even accurate information on the records.

13 There are about four sheets of paper related to an
14 endoscopy procedure that were common to all of the charts that
15 you're going to have over there to see. There was a -- when
16 the patient comes in, a little sheet like this. Then when the
17 patient has the pre-procedure assessment, then the
18 post-procedure assessment you'll see these. And on them
19 you're going to see that there are times missing.

20 On this one, the patient apparently comes in at about
21 9:35. The pre-procedure assessment time, and this one is
22 9:40, keep track of those in your mind as we go, 9:40 is the
23 pre-procedure assessment before they go back and before they
24 actually have the procedure.

25 The endoscopy nursing record, this is the one that

1 gets filled out when the patient is in the room by the nurse.
2 In the room there's a nurse, there's a GI tech, there's a
3 doctor and there's a patient, and a CRNA. Now, on this record
4 you'll see that the start of the procedure was at 9:49, and
5 the end time for the procedure was at 10:00 o'clock. Eleven
6 minutes. Eleven minutes is how long the procedure lasted.

7 This is the record of the machine that they were
8 connected to, and you'll see that that actually corresponds in
9 this case. It's 9:49 to 10:00 o'clock, so 11 minutes. As
10 that thing gets started, they roll in the door, they hook them
11 up to the machine, it takes its first read.

12 And when the patient -- just before the patient rolls
13 out of the door to the recovery room they take one last read,
14 pull the paper off the chart, slap -- or off the machine, slap
15 it on the chart and it goes. So that's how long the patient
16 is in the room, 11 minutes.

17 In this one you'll see that we've got a post
18 procedure time of 10:02. Now I want to go back and show you
19 something. The end procedure time is 10:00 o'clock. You're
20 going to hear that they used a formula to put times down. The
21 times that are on the records, and one of the reasons why the
22 health district had so much problem was because they don't
23 make any sense.

24 Two minutes gets added to that time. And by golly,
25 two minutes is what we see as the post procedure assessment

1 time. Then the formula was you take five minutes and add it
2 to that time, and you get the time to DC the heplock, that
3 thing that was in -- and DC means to remove. Well, gosh, that
4 record is the same five minutes later. That was the same time
5 that they would use for what was called the physician at
6 bedside.

7 So you should see the same there, and by gosh, it's
8 the same number. And you will hear that there was almost
9 never any physician at the bedside. Not just Desai, but any
10 of them. They didn't go out. That's what they would put down
11 on the record.

12 And lo and behold, from the time that the doctor --
13 the DC of the heplock and the doctor at bedside, they would
14 take 30 minutes and add it to that time to get the time of
15 discharge, which would be in this case 10:37. In fact, the
16 lady who wrote this up, she'll come in and tell you that she's
17 not even sure any of that writing is hers on that record.

18 Now, when they were out in the recovery room area,
19 after they'd hit the recovery room, this is the same patient
20 by the way, hits the recovery room at 10:01. They're hooked
21 up immediately, within one minute. That's the last read
22 before they walk out the door. 10:37. 10:16.

23 In the room, the procedure is done on a computer.
24 And you'll see that in this particular case, this is one of
25 the patients, you can see who was present. This is Kenneth

1 THE COURT: I'm sorry?
2 MR. STAUDAHER: It should read just like that.
3 THE COURT: It does. It's, Defendants and Keith
4 Mathahs.
5 THE COURT: What are you on?
6 MR. SANTACROCE: Last one.
7 MS. WECKERLY: We're on our ninth.
8 THE COURT: State, you've done your ninth?
9 MR. STAUDAHER: (Nods head.)
10 THE COURT: And so we are waiting on the defendant's
11 ninth.
12 Has the ninth challenge been exercised?
13 MR. SANTACROCE: He's writing it down as we speak.
14 THE COURT: Okay. Then hand that to the State so
15 they can see who it is.
16 You guys are writing the numbers and the names like I
17 said to do?
18 MR. STAUDAHER: Yes, exactly like you said.
19 MR. WRIGHT: Yes.
20 THE COURT: Okay. Good.
21 MR. WRIGHT: That's why it takes me so long to find
22 it.
23 THE COURT: No, it's okay.
24 MR. WRIGHT: No, I got it.
25 THE COURT: But otherwise it's going to be really

1 confusing for the court staff if we don't have the number and
2 the name.

3 MR. WRIGHT: No, we've got it.

4 THE COURT: All right. Would you please show it to
5 the State.

6 All right. For the record, it is now 11:35. Both
7 sides have exercised their peremptory challenges.

8 MR. STAUDAHER: Does the court wish me to approach
9 with the list?

10 THE COURT: Yes. Both sides have had an opportunity
11 to see the nine -- We're on the record. -- have had an
12 opportunity to see the nine challenges that were exercised by
13 the other side, and does anyone have any challenges to the
14 peremptory challenges exercised?

15 MR. SANTACROCE: Yes, Your Honor.

16 THE COURT: All right. Mr. Santacroce.

17 MR. SANTACROCE: Actually Ms. Stanish is going to
18 make the argument.

19 THE COURT: All right. Ms. Stanish, go ahead.

20 MS. STANISH: Your Honor, beginning with Juror No.
21 458 whose race is African American, we assert a Batson
22 challenge. With respect to -- do you want to just do them one
23 at a time, or --

24 THE COURT: Okay. Is he the only African American
25 excuse by the State?

1 MR. SANTACROCE: Yes.

2 THE COURT: All right. Well, I counted and I hate to
3 do this, but I believe there were seven African Americans in
4 the pool of 36, and there were seven African Americans and my
5 understanding is the State has excused one African American
6 out of those seven, and so in order to make a Batson challenge
7 you need to show a pattern or practice.

8 MR. SANTACROCE: Well, we are not done.

9 THE COURT: Oh, I'm sorry. That's why I asked are
10 there any other African Americans who have been excused.

11 THE COURT: All right.

12 MS. STANISH: Well --

13 THE COURT: Actually there are two.
14 Valente-Libanotis, was she African American?

15 MR. STAUDAHER: Yes -- well, I don't know if she is
16 or not.

17 MR. WRIGHT: Yes.

18 MR. STAUDAHER: I can't remember.

19 THE COURT: Wasn't she the one that had the fight
20 with Mr. --

21 MS. WECKERLY: Yes.

22 MR. STAUDAHER: Yes, exactly.

23 THE COURT: So look at you here, defense. You made
24 this whole big thing how you would have to exercise a
25 challenge for her.

1 MR. WRIGHT: They did it first.

2 THE COURT: And they did it for you.

3 MR. STAUDAHER: Actually, we did it with our very
4 last strike, Your Honor.

5 MR. WRIGHT: They did it. We didn't have to.

6 THE COURT: I know. They did it for you. There goes
7 that issue right out the window.

8 MR. SANTACROCE: What issue is that?

9 THE COURT: The issue on -- that they wanted her
10 excused for cause because you would have to -- the defense
11 would have to exercise a challenge removing this woman who I
12 should've excused for cause, and I said, No, I don't think
13 she's a for cause challenge, and the the State actually
14 excused her as their ninth challenge.

15 MR. SANTACROCE: Well, they did it before us, Your
16 Honor. So that --

17 THE COURT: Well, so you didn't have to do it. So
18 there goes that argument.

19 MR. SANTACROCE: No, it doesn't --

20 MR. WRIGHT: But I have five others that I --

21 THE COURT: Well, wait a minute. Mr. Santacroce, the
22 record speaks for itself.

23 MR. SANTACROCE: Yes, I know.

24 THE COURT: They excused her as their ninth
25 challenge. You guys objected to her, but you didn't have to

1 excuse her. So it is what it is.

2 MR. SANTACROCE: Right.

3 THE COURT: Now, she I believe was also may have been
4 -- I think she was mixed race.

5 MR. SANTACROCE: Correct.

6 THE COURT: Can you look on your questionnaire. I
7 think she checked African American and Caucasian.

8 MR. SANTACROCE: I think she was mixed.

9 THE COURT: By her own -- you know, by her own
10 reporting.

11 So continue, Mr. Santacroce.

12 MR. SANTACROCE: Well, I'm not making the argument.
13 Ms. Stanish is.

14 THE COURT: Oh, I'm sorry. Ms. Stanish, yes.

15 MS. STANISH: Moving to the other Batson challenges,
16 Your Honor.

17 THE COURT: Okay.

18 MS. STANISH: As I understand it you are not going to
19 require the State to voice a neutral ground for --

20 THE COURT: Well, I was about to make my ruling on
21 that or to say, well, I only count one, but now I realize
22 there's two, two out of seven, and then what's the -- finish
23 your challenge.

24 MS. STANISH: Well, I have four --

25 THE COURT: I mean, are you making individual Batson

1 challenges, or you making an aggregate Batson challenge as to
2 people of color generally, or what are you doing?

3 MS. STANISH: Your Honor, I have four peremptories
4 that I'm challenging.

5 THE COURT: Okay. Go ahead.

6 MS. STANISH: With respect to Jurors 370 and 386,
7 those two individuals were Hispanic.

8 THE COURT: I don't believe Mr. Archuletta was
9 Hispanic. He was the young man who said he put on his form
10 that he enjoyed -- his pastimes included drinking and smoking,
11 and he indicated that he did that because he'd hoped he
12 wouldn't be chosen, and I said, Well, the main issue is, is it
13 true. Do you enjoy a drinking and smoking, and he said, Yes,
14 he's fond of drinking and smoking.

15 And based on prior answers to his question, I assumed
16 -- perhaps incorrectly -- smoking didn't necessarily -- wasn't
17 necessarily limited to tobacco products. We'll just put that
18 out there that way.

19 MS. WECKERLY: He acknowledged that.

20 THE COURT: In fact, he admitted that he had used
21 marijuana in the past, referencing his appearance.

22 MR. WRIGHT: Judge, if I could object. Who's
23 explaining the reason for the challenge, the Court or the
24 State?

25 THE COURT: No. No. I'm making sure I know the

1 right person, and I don't remember that he was Hispanic, but
2 let's look at his form and see what his reporting was.

3 MR. STAUDAHER: His reporting was that he was 75
4 percent white, 25 percent Latino.

5 THE COURT: Okay. All right. And then the other
6 Latino gentleman would've been Badge No. 386, Mr. Figueroa.
7 So that's two Hispanics, and I don't remember -- I counted
8 possibly three in the total panel, but I could be mistaken
9 there.

10 MS. STANISH: I didn't see any others, Your Honor, as
11 far as Hispanics.

12 THE COURT: I think there were a couple of others,
13 but I could be mistaken. I mean, I just don't have a
14 recollection of the forms that well. So that's your Hispanic.
15 And then your other two challenges, Ms. Stanish?

16 MS. STANISH: There were four altogether. So the
17 last one would be Juror No. 650 who acknowledged that she was
18 a lesbian.

19 THE COURT: Okay. So, first of all, let's begin with
20 the African Americans. You've got two out of seven. I'm not
21 sure that that qualifies as a pattern and practice.

22 However, State, would you like to State your
23 race-neutral reasons for the two African Americans that you've
24 excluded?

25 MS. WECKERLY: As to Mr. Sandifer, Your Honor, he --

1 when asked by Mr. Staudaher if he would find the defendants
2 guilty if we prove the case beyond a reasonable doubt, it took
3 three times for him to acknowledge that he would do that, and
4 then he said, If it's absolutely proven, suggesting he had
5 some higher standard in his mind than the reasonable-doubt
6 standard.

7 I guess as to -- are they challenging Ms. Libanotis?
8 The State -- you know, she was a potential appellate issue to
9 be honest, and so we exercised a perempt.

10 As to African-Americans though, I would note that Ms.
11 Cindy Ennon-Wilson, Mr. Mack Brown, Ms. Regyna Booker, Ms.
12 Rachael Robinson and Mr. Amand Keller all appeared to be -- at
13 least to me, I didn't check all the questionnaires -- but they
14 all appear to be African American. So --

15 THE COURT: Visually.

16 MS. WECKERLY: Yes. So they'll be overrepresented on
17 the panel as a matter of fact.

18 THE COURT: Right. I don't see -- again, I don't see
19 a pattern of practice there.

20 You know, certainly as to Ms. Valente-Libanotis,
21 there was a lot of argument about keeping her on for various
22 reasons, and I don't need to reiterate those. I think that
23 the record is more than complete on that, and so it makes
24 sense that as their ninth challenge the State struck her,
25 removing any potential appellate issue. So I don't find that

1 there is any kind of race discrimination going on based on
2 their challenges.

3 Turning to the two Hispanics, Mr. Archuletta who
4 self-identifies as 25 percent Hispanic and Mr. Figueroa -- and
5 I don't recall if he identified as a hundred percent Hispanic
6 or mixed race.

7 State? And I counted potentially three Hispanics,
8 but I could be mistaken on that. Again, the record will speak
9 for itself, but we may have to go back to the questionnaires.

10 MR. STAUDAHER: Which was the third, Your Honor?

11 MR. SANTACROCE: Figueroa.

12 THE COURT: Yes?

13 MR. STAUDAHER: I know that -- well, why don't we go
14 down the list here. Which was the first one, Your Honor?

15 THE COURT: Mr. Archuletta. He was the young man --

16 MR. STAUDAHER: Mr. Archuletta, he lied on his
17 questionnaire. I mean --

18 THE COURT: Well, I don't think he lied on his
19 questionnaire because he said he did enjoy smoking and
20 drinking.

21 MR. STAUDAHER: Well, I'm not talking about just
22 that.

23 THE COURT: Oh.

24 MR. STAUDAHER: He said that he put things in his
25 questionnaire that he really didn't espouse because he

1 believed that if he put those things there he would get
2 essentially kicked, that he -- there was a number of issues
3 related to him that I think were essentially showing that he
4 at least wasn't forthcoming in his questionnaire whether it
5 was a frank lie or omission or whatever. I mean, here he was
6 more forthcoming, but those are certainly questions that we
7 had, and it gave us concerned that he would be a good juror.
8 So that was Mr. Archuletta.

9 MS. WECKERLY: He didn't show up either.

10 MR. STAUDAHER: Oh, and that was the other issue is
11 he didn't show up one time or twice or whatever. It was the
12 third time I think before he even actually showed up, and we
13 didn't even know he was going to show up. He just appeared
14 out of the blue.

15 THE COURT: He just appeared, right.

16 MR. STAUDAHER: So as far as Mr. Figueroa -- is that
17 the right --

18 THE COURT: Right. It's your sixth challenge, Badge
19 386.

20 MR. STAUDAHER: One of the issues in the case from
21 the State's perspective, Your Honor, is that we don't want a
22 disproportionate number of young jurors on this panel,
23 especially with relation to the types of evidence that is
24 going to come in. Mr. Archuletta was one of those. We did
25 let go of Ms. Curro I believe for the same reason,

1 inexperienced, young.

2 And Mr. Figueroa actually falls into that same
3 category. He also in the way he answered -- and I know this
4 is not captured on the record as far as the hard transcript --
5 but in the way he answered, his demeanor to us came across as
6 not somebody who was antagonistic but just was -- had a
7 laissez-faire sort of attitude in our estimation. In
8 addition, the issue with him and -- it was just a feel.

9 It wasn't necessarily an issue of a frank thing that
10 he said, but I noted that on almost nobody in my questioning
11 did I mark down whether it was a plus, minus or something.
12 He, I did do that for. I don't know what he said that
13 prompted me to do that, but the things that we were concerned
14 about with him was his attitude in the court, his young age
15 and some of the issues that we believed might come up before
16 the jury that we want to have a proportionate -- a
17 proportionate amount of juror members who are in fact in our
18 pool who are older if we can do so.

19 We also kept other Hispanics. One of them was Ms.
20 Ruiz. She was just the last one that got added. We didn't
21 strike her. So they're other minorities. There's
22 Asian-Pacific individuals and mixed-race individuals on the
23 jury. There is a large overpopulation of minorities
24 represented on the jury. Whether one is struck for one reason
25 or one for another we don't believe it looks like there is any

1 pattern to the strikes that we did, and we certainly can
2 articulate, I think, valid reasons why we have struck those
3 that we have struck.

4 THE COURT: All right. Again, I don't see a pattern
5 here, but I also see that there's race-neutral reasons
6 abundant as to Badge 370, Mr. Archuletta, and they have
7 articulated race neutral reasons as to Mr. Figueroa, Badge 386
8 which are credible.

9 Finally, to their challenge that you struck Ms. Lisa
10 Curro -- I believe Lisa Curro because she's a lesbian,
11 identified herself as a lesbian during jury-selection process,
12 that was done I believe in response to a question from the
13 Court where the Court had said, Oh, your boyfriend, or
14 identify what does he do. And then she said, Oh, it's a girl.
15 And that was how I think she was identified as a -- I guess
16 lesbian or bisexual or who knows.

17 MR. SANTACROCE: She said lesbian. She did say
18 lesbian.

19 THE COURT: Okay. Oh, I don't recall her saying
20 lesbian. I just remember her saying, It's a girl.

21 MR. SANTACROCE: No, she said it.

22 THE COURT: There was nothing in the questionnaire to
23 indicate peoples' gender preferences, and so first of all, I
24 don't know how we'd established a pattern and practice because
25 that really --

1 MR. WRIGHT: There aren't any other --

2 THE COURT: Well, how do we know?

3 MR. STAUDAHER: Well, how do we know? That's the
4 issue.

5 MR. WRIGHT: From my judging of reading all the
6 questionnaires. You tell me which one is if you disagree.

7 THE COURT: Oh, please. We are not going to do that.

8 MR. STAUDAHER: Oh, come on. That's part of the
9 issue of people that maybe don't want to come out of the --
10 there is not a way that you can definitively tell who is, and
11 it's not a protected class, and we don't have an issue with
12 being able to strike for one reason or another in that regard.
13 We didn't even articulate or ask questions of any other juror
14 members, and that was not even asked of her. I didn't even
15 recall that she actually said that she was a lesbian.

16 THE COURT: I don't recall her saying that. She did
17 say that her partner, who I think is in charge of something at
18 the Chevrolet -- it was the Court's erroneous assumption that
19 it was a man, and I said -- I either said, Your boyfriend, or
20 I said, you know, what is his, does he contribute more to the
21 income, the household income or something like that. And then
22 she said, It's a girl. And then the Court said, Oh, sorry.
23 And then I felt bad that I had said sorry because I didn't
24 want her to think that that implied that I was making a
25 judgment or something like that which I certainly wasn't.

1 And I remember the dialogue pretty clearly because my
2 own feeling then was I hope she didn't think that I was making
3 any kind of a judgment of her because I certainly wasn't, but
4 I had made an erroneous assumption based on her answers to the
5 questionnaire and really had engaged in some gender
6 stereotyping regarding the job of her domestic partner, and I
7 made the assumption that that was a man's job, the parts
8 supervisor, something like that are typically male jobs.

9 Frankly --

10 MR. STAUDAHER: Let's be honest with --

11 THE COURT: -- I made a gender assumption that that
12 would be a job that a man would have, and so I felt a little,
13 oh, okay. I'm making gender assumptions here.

14 But again I don't know -- there was nothing to
15 identify people by their sexual orientation on the
16 questionnaires. There's one person. You say that's the only
17 one. I don't know if that's the only one, if there are other
18 lesbian, gay, bisexual people that were part of the panel. I
19 have no idea.

20 You know, to the extent they've made it an issue --
21 again, I don't know how we could identify a pattern or
22 practice here because I don't know who is and who isn't. Some
23 of them it's obvious that their spouse would have been --
24 well, you know, if they say that they were married here, we
25 can assume that they're married to someone of the opposite

1 sex. Obviously they could've been married in other states and
2 married to a same-sex person. So, you know --

3 MR. STAUDAHER: Well, this girl also had a child, and
4 that's the reason why she left high school early. That was
5 her reason. She got to the end. She had a pregnancy. So, I
6 mean, I don't know what her true gender is. That wasn't even
7 entered into our mix of determining why or what we picked
8 different people for.

9 It's not an issue that we believe is out there in the
10 sense that if it was going to be an issue, then all of the
11 juror members would have had to have been queried on that
12 particular thing. We would've had to find out what their
13 actual orientation was because I don't believe that just
14 looking at somebody you can assume that they're gay, lesbian,
15 bisexual, transgender, that you can just do that. If they
16 come across and they want to express that, that's fine, but
17 there's no pattern here because we just don't know who else is
18 or is not of any particular orientation.

19 MS. STANISH: Your Honor.

20 THE COURT: Yes.

21 MS. STANISH: This juror did self-identify her sexual
22 orientation. No one else did. This -- gay people are a
23 cognizant group in our society. Our client is entitled to a
24 fair cross-section of this society, and there is case law on
25 this point. I mean, this is relatively new, but, you know,

1 the military accepts gays into the military --

2 THE COURT: Frankly, Ms. Stanish, if I thought a
3 pattern of excusing lesbian and gay people, I would probably
4 consider that worthy of a Batson challenge notwithstanding the
5 state of law, and that, you know, isn't universally considered
6 a protective -- protected class, but, you know, I agree with
7 you. It is a cross-section of the community, and I would be
8 concerned by that kind of -- because it's discrimination, and
9 I would be concerned by that.

10 And, you know, if we look back at the case law, you
11 know, people -- you know, part of it is not just your rights,
12 but it's the rights of people to be jurors.

13 MS. STANISH: Exactly.

14 THE COURT: And so, you know, I would be deeply
15 concerned by that if that was occurring because obviously
16 people have a right to be jurors regardless of their sexual
17 orientations; however, I can't say that I see a pattern or
18 practice here. Because while she chose to self-identify in
19 response to a question from the Court where I, you know, was
20 confused about the gender of her partner, I don't think we can
21 say who else may have been falling into that category. So I
22 don't see a pattern and practice there by one person. So
23 that's where we are on that.

24 If, you know, State, if you want to give your I guess
25 orientation-neutral reason --

1 MS. STANISH: If I --

2 MR. WRIGHT: One out of one?

3 THE COURT: -- I guess that's how we would phrase
4 it --

5 MS. STANISH: And, Your Honor, just -- even if it's
6 just one person, if there happened to be just one African
7 American, we can still make that Batson challenge. So we are
8 doing it with respect to her.

9 THE COURT: Okay. And that's fine, Ms. Stanish. As
10 I said, I don't see a pattern and practice here. I think that
11 there's a problem because we didn't ask people to identify
12 their sexual orientation. It just kind of came up by
13 happenstance, and for some people, you know, that can be fluid
14 throughout their lives. People can -- you know, obviously she
15 had a child in high school. Many people are in marriages, and
16 then, you know, in later years they decide to become, you
17 know, a different orientation or whatever.

18 So I don't think we can make assumptions about some
19 of these people because they were previously married to
20 somebody of the opposite sex, and now they're divorced.
21 Because I think for many people that's a fluid thing --
22 typically women -- in their lives.

23 Does the State want to -- just to protect the record
24 -- state an orientation-neutral reason?

25 MR. STAUDAHNER: Certainly, Your Honor. There were a

1 couple. Again, she was young. She didn't finish high school.
2 That was another issue. She -- and I know the reason that she
3 said she left high school was because of the pregnancy, but it
4 still withstands that she's -- you know, 1984 was her year of
5 her birth, and she didn't get a GED.

6 And she is working part-time at Star Nursery, and she
7 even put down in her questionnaire that she felt that she
8 could not serve for six weeks because she wouldn't get paid.
9 She had rent and bills and so forth. Now, you did -- Your
10 Honor did inquire as to whether her domestic partner could
11 help with the bills, but there was nothing ever definitive in
12 that. Yes, that person would step up, but they would have to
13 talk about it is what I recall her saying.

14 In this particular instance, she was one who actually
15 expressed that she had a hardship financially. She is in a
16 position where she has a child that she has to take care of.
17 She is making very little money. Anybody that is working
18 part-time at a job and doesn't get paid when they're here for
19 jury service and has bills and rents -- and rent and a child
20 to take care of, we feel that there are plenty of jurors we
21 let go for those very same reasons, that the Court allowed for
22 hardship purposes.

23 So we believe that those are -- excuse me --
24 orientation-neutral reasons why we let her go.

25 MR. SANTACROCE: Your Honor, for the record, I need

1 to join in to those Batson motions as well as state for the
2 record that five out of the nine challenges exercised by the
3 State were minority challenges.

4 MR. STAUDAHER: Objection. There wasn't -- I don't
5 consider her to be a minority unless you consider her
6 orientation to put her in the minority. There may be actually
7 a large number of transgender, gay, lesbian or bisexual
8 individuals in the country. I don't know that anybody's ever
9 surveyed it to see what percentage of the population it is.

10 MS. STANISH: It's 10 percent.

11 THE COURT: Well, you know, actually -- well, this is
12 totally an aside -- but I had a bet with my law clerk, and I
13 said 10 percent, and I actually looked it up on the Internet
14 because I thought it would be 10 percent, and actually there
15 is evidence out there -- to the extent you believe the
16 Internet -- that it's actually lower than 10 percent, but I
17 thought that it would be 10 percent, but apparently it's
18 lower, but again you're relying on a lot of self-reporting and
19 things like that. So it is what it is.

20 MS. STANISH: I think they're a minority group.

21 THE COURT: Well, again I think we've all made our
22 record on everything with respect to that. I'm going to try
23 to announce these people in the order of their number, lowest
24 to highest who's going to be excuse so it's not obvious, oh,
25 the State's excusing this person or that person.

1 As I'm looking at the list, 426, Ms. Safronov and
2 then you put 426 for Jayson Tomboc. What is the correct
3 number for Ms. Safronov?

4 MR. WRIGHT: 426 is Safronov. 434 is Jayson Tomboc.

5 THE COURT: Oh, shoot. I'm writing on the original.

6 MR. WRIGHT: It's all right. We agree on the record
7 you can.

8 THE COURT: I'm writing the number -- I'm writing the
9 -- I've just made a couple of notations on this so that I can
10 read them off in numerical order.

11 MR. SANTACROCE: Jason Tomboc is 454.

12 THE COURT: All right. If anyone -- here's what
13 we're going to do. If anyone needs to use the, you know,
14 restroom or whatever, let's do it in the back right now.

15 And then we're going to bring them in. I'm going to
16 excuse the ones that have been excused. I'm going to go into
17 the admonition. Ms. Husted will read the indictment. We'll
18 take our lunch break. At that point when we come back from
19 lunch, the State will open. Depending on what time it is --

20 MS. STANISH: In connection with that, we still need
21 to discuss the photograph of the grave because --

22 THE COURT: Yes. Right. We'll do that after we do
23 this whole jury thing.

24 MS. STANISH: All right.

25 THE COURT: And we'll do that before we eat lunch.

1 We'll do that.

2 (Proceedings recessed 11:56 a.m. to 11:59 a.m.)

3 (In the presence of the panel of prospective jurors.)

4 THE COURT: You can all be seated. All right. Court
5 is now back in session. The record should reflect the
6 presence of the State, the presence of the defendants and
7 their counsel, the officers of the Court and the ladies and
8 gentlemen of the prospective jury panel.

9 Ladies and gentlemen, during our somewhat lengthy
10 break, all of the peremptory challenges have been exercised.

11 When I call your number, please stand. Badge No.
12 129, Cory Johnson; Badge No. 276, Darren Heller; Badge No.
13 291, Todd Nash; Badge No. 370, Charles Archuletta; Badge No.
14 378, Todd Hargett; Badge No. 385, Angela Valente-Libanotis;
15 Badge No. 386, Xavier Figueroa; Badge No. 426, Deana Safronov;
16 Badge No. 454, Jayson Tomboc; Badge No. 558 (sic), Joseph
17 Sandifer; Badge No. 573, Philip Chavis; Badge No. 604, Lora
18 Hendrickson; Badge 650, Lisa Curro; Badge No. 16 -- I'm sorry
19 -- Badge No. 656, Tommie Woolley; Badge No. 723, Steven Brown;
20 Badge No. 796, Lisa Manley; Badge No. 808, Sage Sidley --
21 Shadley.

22 MR. SANTACROCE: Your Honor, may we approach?

23 THE COURT: You may. Oh, I'm sorry. Badge No. 723,
24 Steven Brown.

25 PROSPECTIVE JUROR NO. 723: That's right.

1 MR. SANTACROCE: May we approach, Your Honor?

2 THE COURT: Sure.

3 (Off-record bench conference.)

4 THE COURT: And finally, Badge No. 306, Edward
5 Simpson.

6 All right. Ladies and gentlemen that are standing, I
7 want to thank you very much for being here, your willingness
8 to serve and being a part of this lengthy jury process. You
9 are all excused at this point in time, those of you who are
10 standing. Thank you again. Please go back down to the third
11 floor and check out through jury services. You are excused.

12 (Remainder of panel of prospective jurors excused 12:04 p.m.)

13 THE COURT: All right. Ladies and gentlemen, it's
14 been a long morning. Before we take our lunch break I am
15 going to go through the few introductory remarks, and Ms.
16 Husted will be reading the indictment for you.

17 Before we do that though, I'm going to have you --
18 well, we'll keep you where you are for right now, and then
19 when we come back from the lunch break, Officer Hawkes will
20 line you up in the correct number so that you can be seated in
21 the correct jury chairs according to your number.

22 All right. If you would all please rise, the clerk
23 will now administer the oath to the members of the jury.

24 (Jurors sworn.)

25 THE COURT: You may be seated. Thank you. All

1 right.

2 Ladies and gentlemen, you have been selected as the
3 jury in this case, and I will now take a few minutes to talk
4 to you about what to expect in the trial. My comments are
5 intended to serve as an introduction to the trial. At the end
6 of the trial I will give you more detailed instructions in
7 writing, and those instructions will control your
8 deliberations.

9 This is a criminal case brought by the State of
10 Nevada against the defendants. The case is based on an
11 Indictment. The clerk will now read the Indictment and state
12 the pleas of the defendants.

13 Ms. Husted.

14 THE CLERK: Yes, Your Honor.

15 (Reading of Indictment not transcribed.)

16 THE COURT: All right. Thank you, Ms. Husted.
17 Ladies and gentlemen, you should distinctly understand that
18 the Indictment just read to you is simply a description of the
19 charges made by the State against the defendants. It is not
20 evidence of anything. It does not prove anything; therefore,
21 the defendants start out with a clean slate. The defendants
22 have pled not guilty and are presumed innocent.

23 This is a criminal case, and there are two basic
24 rules you must keep in mind. First, a defendant is presumed
25 innocent unless and until proved guilty beyond a reasonable

1 doubt. A defendant is not required to present any evidence or
2 prove his innocence. The law never imposes upon a defendant
3 in a criminal trial the burden of calling any witnesses or
4 introducing any evidence. Second, to convict, the State must
5 prove beyond a reasonable doubt that the crime was committed
6 and that each defendant is the person who committed the crime.

7 It will be your duty to decide from the evidence to
8 be presented whether the defendants are guilty or not guilty.
9 You are the sole judges of the facts. You will decide what
10 the facts are from the evidence which will be presented. The
11 evidence will consist of testimony of witnesses and documents
12 and other things received into evidence as exhibits.

13 You must apply the facts to the law which I shall
14 give you and in that way reach your verdict. It is important
15 that you perform your duty of determining the facts diligently
16 and conscientiously for ordinarily there is no way of
17 correcting on erroneous determination of facts by the jury.

18 You should not take anything I may say or do during
19 the trial as indicating my opinion as to how you should decide
20 the case or to influence you in any way in your determination
21 of the facts. At times I may even ask questions of witnesses.
22 If I do so, it is for the purpose of bringing out matters
23 which should be brought out and not in any way to indicate my
24 opinion about the facts or to indicate the weight or value you
25 should give to the testimony of a witness.

1 There are two kinds of evidence, direct and
2 circumstantial. Direct evidence is testimony about what the
3 witness personally saw, heard or did. Circumstantial evidence
4 is indirect evidence. It is proof of one or more facts from
5 which one can find another fact.

6 By way of example, if you wake up -- excuse me -- in
7 the morning and see the ground, the sidewalks and the streets
8 are all wet and water is running down the gutters, you may
9 find from those facts that it rain during the night. It is
10 proof of one or more facts from which you can find another
11 fact. Conversely, if you were awake during the night and saw
12 the rain fall, that would be direct evidence which is
13 something you personally saw.

14 You may consider both direct and circumstantial
15 evidence in deciding this case. The law permits you to give
16 equal weight or value to both, but it is for you to decide how
17 much consideration to give to any evidence.

18 Certain things are not evidence, and you must not
19 consider them as evidence in deciding the facts of this case.
20 They include statements and arguments by the attorneys,
21 questions and objections of the attorneys, testimony I
22 instruct you to disregard and anything you may see or hear if
23 the court is not in session even if what you see or hear is
24 done or said by one of the parties or by one of the witnesses.
25 Remember, evidence is sworn testimony from the witness stand

1 while court is in session and documents and other things
2 received into evidence as exhibits.

3 There are certain rules of law which control what can
4 be received into evidence. When a lawyer asks a question or
5 offers an exhibit into evidence and the lawyer on the other
6 side thinks it is not permitted by the rules, that lawyer may
7 object. If I overrule the objection, the question may be
8 answered or the exhibit received. If I sustain the objection,
9 the question cannot be answered, and the exhibit cannot be
10 received. Whenever I sustain an objection to a question,
11 ignore the question, and do not guess or speculate as to what
12 the answer might have been.

13 Sometimes I may order evidence stricken from the
14 record and tell you to disregard or ignore such evidence.
15 This means that when you are deciding the case you must not
16 consider the evidence which I have told you to disregard. It
17 is the duty of a lawyer to object to evidence which that
18 lawyer believes may not be permitted under the rules. You
19 should not be prejudiced in any way against the lawyer who
20 makes objections on behalf of the party the lawyer represents.

21 Also, I may find it necessary to admonish a lawyer.
22 If I do so, you should not be prejudiced towards the lawyer or
23 client because I have found it necessary to admonish him or
24 her.

25 You are not to concern yourself in any way with the

1 sentence which the defendants might receive if you should find
2 them guilty. Your function is to decide whether the
3 defendants are guilty or not guilty of the charges. If and
4 only if you find a defendant guilty, then it becomes the duty
5 of the Court to pronounce sentence.

6 At the end of the trial you will have to make your
7 decision based on what you recall of the evidence. You will
8 not have a written transcript to consult, and it is difficult
9 and time-consuming for the court recorder to play back lengthy
10 testimony; therefore, I urge you to pay close attention to the
11 testimony as it is given.

12 If you wish, you may take notes to help you remember
13 what witnesses said. If you do take notes, please keep them
14 to yourself until you and your fellow jurors go to the jury
15 room to decide the case. Do not let note taking distract you
16 so that you do not hear other answers by witnesses. You
17 should rely upon your own memory of what was said, and not be
18 overly influenced by the notes of other jurors.

19 Do not make up your mind about what the verdict
20 should be until after you've gone to the jury room to decide
21 the case and you and your fellow jurors have discussed the
22 evidence. It is important that you keep an open mind.

23 A juror may not declare to a fellow juror any facts
24 relating to this case of which the juror has knowledge. If
25 any juror discovers during the trial or after the jury has

1 retired that that juror or any other juror has personal
2 knowledge of any fact in controversy in the case, that juror
3 shall disclose that situation to me in the absence of the
4 other jurors. This means that if you learn during the course
5 of the trial that you have personal knowledge of any fact
6 which is not presented by the evidence in the case, you must
7 declare that fact to me. You communicate to the Court through
8 one of the uniformed bailiffs.

9 During the course of this trial, the attorneys for
10 both sides and all court personnel other than the bailiff are
11 not permitted to converse with members of the jury. These
12 individuals are not being antisocial. They are bound by
13 ethics and the law not to talk to you. To do so might
14 contaminate your verdict.

15 The trial will proceed in the following manner. The
16 deputy district attorney will make an opening statement which
17 is an outline to help you understand what the State expects to
18 prove. Next, the defendant's attorney may but does not have
19 to make an opening statement. Opening statements serve as an
20 introduction to the evidence which the party making the
21 statement intends to prove.

22 The State will then present its evidence, and counsel
23 for the defendant may cross-examine the witnesses. Following
24 the State's case, the defendants may present evidence, and the
25 deputy district attorneys may cross-examine those witnesses;

1 however, as I have already said, a defendant is not obligated
2 to present any evidence or to call any witnesses.

3 After all the evidence has been presented I will
4 instruct you on the law. After the instructions on the law
5 have been read to you each side has the opportunity to present
6 oral argument. What is said in closing argument is not
7 evidence. The arguments are designed to summarize and
8 interpret the evidence. Since the State has the burden of
9 proving the defendants guilty beyond a reasonable doubt, the
10 State has the right to both open and close the closing
11 arguments. After the arguments have been completed you will
12 retire to deliberate on your verdict.

13 Jurors are now permitted to ask questions of the
14 witnesses. You will be distributed notepads. If you have a
15 question for one of the witnesses, I ask that you wait until
16 the attorneys for both sides have had the opportunity to
17 question the witness because very often one of the attorneys
18 will ask your question. If not, please write it down using a
19 full sheet of your notebook paper, and then get either my
20 attention or the bailiff's attention, and the bailiff will
21 retrieve the question from you.

22 Please do not be offended if I don't ask one of your
23 questions. That doesn't mean it's not an interesting question
24 or something like that, but the questions from the jurors are
25 governed by the same rules of evidence which control what

1 questions the lawyers can ask. So your question may call for
2 hearsay or some other type of inadmissible evidence, and for
3 that reason I may not ask it.

4 That concludes my introductory remarks. May I see
5 counsel at the bench, please.

6 (Off-record bench conference.)

7 THE COURT: All right. Ladies and gentlemen, in a
8 moment we're going to take our lunch break. We'll be giving
9 you an hour for the lunch break. That'll take us until 2:35.

10 Before I excuse you for the lunch break I must
11 admonish you again that you're not to discuss the case or
12 anything relating to the case with each other or with anyone
13 else. Anyone else includes members of your family and your
14 friends. You may of course tell them that you have been
15 selected as a juror in a criminal jury trial and of course the
16 estimated length of the trial, but please do not discuss
17 anything else relating to this matter.

18 Additionally, you are not to read, watch or listen to
19 any reports of or commentaries on this case, any person or
20 subject matter relating to the case by any medium of
21 information. Do not do any independent research by way of the
22 Internet or any other medium. Do not engage in any social
23 media commentary on the case by way of Twitter, Facebook or
24 any other means of social media, and please do not form or
25 express an opinion on the trial.

1 Additionally, you've all been given blue badges that
2 identify you as Department 21 jurors. It is very important
3 that you wear these badges when you are in and around the
4 building so that people can recognize you as jurors and
5 someone doesn't and never and lay talk about the case in your
6 presence.

7 I'd like all of you now to please rise and follow our
8 bailiff through the double doors. Any questions on where to
9 meet after lunch or where to go for lunch or anything like
10 that, please address Officer Hawkes in the hallway. We'll see
11 you all back here at 2:35.

12 (Jury recessed 1:33 p.m.)

13 THE COURT: All right. Then we'll be in recess for
14 lunch. The courtroom will be secured.

15 So, Attorneys, you can leave your things. For the
16 cameras, I don't want to take responsibility for them. I can
17 tell you the courtroom will be locked. So if you all feel
18 safe leaving them set up, then that's fine with me.

19 MS. STANISH: Judge.

20 THE COURT: Yes?

21 MS. STANISH: Do you want to address the photograph?

22 THE COURT: Oh, yes. We have to address the
23 photograph on the record before we take our lunch break. My
24 understanding -- where's Mr. Wright? Oh.

25 My understanding is Mr. Santacroce as well as Ms.

1 Stanish, Mr. Wright want to make an objection to a proposed
2 exhibit that the State intends to use in their PowerPoint; is
3 that correct?

4 MR. SANTACROCE: That's correct.

5 MR. WRIGHT: Yes, Your Honor.

6 THE COURT: And that would be --

7 MR. STAUDAHER: You actually have it, Your Honor.

8 THE COURT: And for the record, that would be the
9 photograph of Mr. Meana's gravestone.

10 MR. STAUDAHER: That's correct. It would be right at
11 the end, near the end of it.

12 THE COURT: And the basis for the objection? It's
13 not already obvious.

14 MR. SANTACROCE: Your Honor, there is no probative
15 value whatsoever in that photograph. It's purely meant to
16 inflame the passions of the jury. It's more prejudicial than
17 probative. It merely shows a gravestone with a picture of a
18 young Mr. Meana. So it has no relevance at all.

19 MR. WRIGHT: And there will be plenty of photos in
20 fact through allowing in his deposition which is a videotaped
21 deposition of him. There will be no confusion as to who he
22 is. The death of Mr. Meana is not going to be disputed.

23 THE COURT: State -- I mean, I would note just what
24 we are describing is a cross gravesite with a picture of young
25 Mr. Meana. It's kind of a broad, like a distant shot showing

1 the ground, the gravesite generally.

2 Mr. Staudaher?

3 MR. STAUDAHER: Yes. I mean, it's not like there's
4 any -- you know, it's not an autopsy photo or anything like
5 that. It's just showing --

6 THE COURT: What's the probative value of Mr. Meana's
7 gravestone?

8 MR. STAUDAHER: Well, it's not just a gravestone.
9 It's a gravestone and the picture associated with it. It's
10 not just his -- his marker so to speak. It shows the man that
11 he used to be, and that's what this --

12 THE COURT: Is that what he looked like when he got
13 this treatment though --

14 MR. STAUDAHER: No.

15 THE COURT: -- or is this a picture from --

16 MR. STAUDAHER: That's a picture -- obviously a
17 younger picture. He was quite elderly when he succumbed to
18 his illness, but we don't think it's necessarily objectionable
19 from that standpoint. It's not something that does anything
20 other than to show the culmination of what happened to him.

21 THE COURT: I don't know that it's all that
22 probative, but I don't really know that it's all that
23 prejudicial either. It's kind of a distant shot of a young
24 Mr. Meana.

25 Can you put it up on your PowerPoint so I can see

1 what it's going to look like?

2 MR. STAUDAHER: Yes, Your Honor.

3 THE COURT: Because from this it's just like a little
4 picture of a thing. Like I said, I don't think it's terribly
5 probative of anything because, you know, whether he was buried
6 with a cross on his grave or a marker on his grave or --

7 MR. STAUDAHER: It's up now.

8 THE COURT: I don't see that as terribly prejudicial.
9 I mean, I think the State probably wants to introduce it as
10 kind of a dramatic portrayal of Mr. Meana's death like you
11 would maybe in a film or something.

12 MS. STANISH: This is not a film. It's a courtroom.

13 THE COURT: I understand.

14 MS. STANISH: It's just trying to inflame the jury.

15 MR. SANTACROCE: It's not a fine-arts project. We're
16 not doing movies here, Your Honor. This is --

17 THE COURT: I didn't suggest that. I mean, what's --
18 I mean, what's really the probative value of this? If this
19 was what Mr. Meana looked like during his life, I would say,
20 yes, sure you're allowed to use the picture -- I mean, during
21 the time that he suffered from this or became a patient or
22 something, but --

23 MR. STAUDAHER: Well, I mean, it clearly indicates
24 that he has died. I mean --

25 MR. WRIGHT: We'll stipulate.

1 MR. SANTACROCE: We stipulate.

2 MR. STAUDAHER: The issue is that he was buried, that
3 was part of the reason why he -- you know, we've already had
4 this argument about the fact --

5 THE COURT: So your point is that he's buried in the
6 Philippines --

7 MR. STAUDAHER: In the Philippines, yes.

8 THE COURT: -- and that's why he left the country
9 because he wanted so desperately to be buried in his homeland
10 and to pass away in his homeland?

11 MR. STAUDAHER: Exactly. And, I mean --

12 MR. WRIGHT: Stipulate to that --

13 MR. STAUDAHER: -- that's part of what's been part of
14 the argument here with regard to even allowing in his
15 testimony.

16 MR. SANTACROCE: How does that show where he's
17 buried?

18 MR. STAUDAHER: Well, the -- actually the person that
19 would introduce this at trial would be obviously the daughter
20 who was present and took the shot.

21 MR. SANTACROCE: She can testify that he's buried in
22 the Philippines. We don't need a picture of a cross and a
23 picture of a 20-something-year-old man when he died in his
24 '70s.

25 THE COURT: Yes, I think it's a little -- I mean,

1 like I said, I don't think it's that probative of anything.
2 You know, it's not gory or anything, and really from a
3 distance in this shot -- you all say it's a military uniform
4 -- I can't tell what he's wearing. It could be almost like a
5 Boy Scout -- I mean, I really can't tell if it's a cadet-type
6 uniform, a military uniform, you know --

7 MR. STAUDAHER: Well, I can certainly zoom in on just
8 the name and the picture if that's what the Court would want.

9 THE COURT: Well, no, I think it's actually better
10 the way it is, the broad shot that it's just a grave marker as
11 opposed to really highlighting, oh, he's military, and that's
12 why he was buried, you know, with this military uniform --
13 picture of him in a military uniform, which from a distance,
14 the way I'm looking at it I can't really tell, you know --
15 tell what it is here.

16 All right. I don't think -- again, I don't think
17 it's really probative of anything. I don't find that it's
18 terribly prejudicial, but kind of weighing in both, I think
19 the only point in introducing that is to create some kind of
20 cinematic flair if you will which I don't blame you for
21 wanting to do. I mean, that's good PowerPointing, but I don't
22 really see the relevance of it. So if you can take it out --
23 again, I don't really see it as terribly prejudicial either,
24 but I do think it's just part of, like, to create a cinematic
25 -- cinematic flair, and I think it does that, but I don't know

1 that that's really appropriate for your opening statement.

2 MR. STAUDAHER: Is that -- is the Court ruling that
3 it wouldn't come in at all in the trial or just in opening
4 statements?

5 THE COURT: Well, I mean, if you can try to show --
6 or, you know, it somehow becomes -- listen, if they're making
7 a big issue of the treatment and everything like that, it may
8 be coming in then as to why he went to the Philippines and
9 didn't get the treatment and all of that stuff. If, you know,
10 that's going to be a big focus, then I think that's fair game
11 for the State to say, look, this is him, and it looks like a
12 military cemetery and that, you know, his daughter -- you
13 know, this was where, you know, where he's buried, and I think
14 then it's fair game to go there.

15 MR. STAUDAHER: Okay.

16 THE COURT: All right.

17 MR. STAUDAHER: Thank you.

18 THE COURT: Because that's part of the explanation.
19 You know, it looks to me -- if you look back -- this is a
20 military cemetery in the Philippines. He wanted to be buried
21 there just like American military veterans want to be buried a
22 lot of times and Veteran's cemeteries in this country. So
23 then I think that could be part of the explanation.

24 MR. STAUDAHER: Okay.

25 THE COURT: And in that case -- but at this point,

1 you know, I'm kind of holding off on whether it's going to be
2 admitted or not. All right.

3 MR. STAUDAHER: Fair enough, Your Honor.

4 THE COURT: All right. Then break and we'll see you
5 back here.

6 (Proceedings recessed 1:42 p.m. to 2:42 p.m.)

7 (In the presence of the jury.)

8 THE COURT: All right. Court is now back in session.
9 The record should reflect the presence of the State through
10 the deputy district attorneys, the presence of the defendants
11 and their counsel, the officers of the Court and the ladies
12 and gentlemen of the jury.

13 And as I told you before at the break, the next step
14 in the proceedings is the opening statements. So the State
15 will make the first opening statement.

16 But before Mr. Staudaher proceeds, I neglected to
17 tell you that at any time during the proceedings if you start
18 to feel ill or you need a break, just raise your hand, and
19 again get my attention or the bailiff's attention, and we'll
20 make sure that we take a break. Sometimes I may go a little
21 bit long, and it may be too long for some of you, particularly
22 of some of you suffer from any kind of illness or something
23 like that. So just make sure if you do need a break or you
24 feel ill or something like that you do let us know.

25 All right. Kenny, what I'd like you to do -- it

1 doesn't matter if my view is obstructed, but make sure you can
2 move the monitor so that the ladies and gentleman in the
3 front --

4 THE MARSHAL: I was just going to ask. Can everybody
5 see the TV good enough?

6 THE COURT: Everyone can see it all right? All
7 right. Thank you.

8 Mr. Staudaher, you may now proceed.

9 MR. STAUDAHER: Thank you.

10 STATE'S OPENING STATEMENT

11 MR. STAUDAHER: Ladies and gentlemen, we've just gone
12 through a long period of jury instruct -- or jury selection,
13 and you are the members of the jury that are going to hear
14 this case. And in this case, what you will hear in a moment,
15 or not today, but tomorrow rather, is a central issue. And
16 the central issue is this. It goes to the issue of a
17 fundamental breach, a fundamental breach in a relationship.

18 A fundamental breach in one of the most intimate and
19 important relationships that a person could ever have, beyond
20 that of even spouses, girlfriends, significant others,
21 whatever. This is a relationship between a doctor and a
22 patient. It's sacrosanct.

23 In the situation where a patient finds themselves in
24 need of care, in need of medical advice, in need of
25 intervention, something beyond their control, they turn to a

1 healthcare professional that they trust. And that person is
2 their doctor traditionally.

3 That trust is center and front of everything. The
4 entire medical care system cannot exist if that trust is not
5 in place. You cannot be put to sleep, go under the knife,
6 have someone perform a procedure on you, get advice, take
7 medications, change and alter the course of your life on the
8 advice of an individual if you can't trust that that
9 individual has your best interests at heart.

10 Now, in every person's life, every single one of us
11 at some point, at some point in our life we will access the
12 medical care system. And because every single person will
13 access the medical care system at some point in their life, at
14 the beginning, middle, end, combinations thereof, some more
15 than others, it doesn't matter. Every one of you, every one
16 of us in this country will need to rely on others in the form
17 of medical advice at some point in our lives.

18 Now, as in all professions, there are good people,
19 there are bad people; meaning that people are less trained or
20 less important or less interested, and some who are trying to
21 do the right thing. Doctors in this society sit on the top of
22 the economic strata in most communities, whether it be a small
23 town or a large city. And there's a reason for that. They
24 have to undergo vast amounts of training, many, many years of
25 putting their life on hold so to speak, so that they can get

1 the skills necessary to do what they need to do.

2 But that being said, there are good doctors and there
3 are not so good doctors. This is not about a doctor who was
4 not so good, who did something that was just a little
5 careless, who performed malpractice. No. We're talking about
6 something that went well beyond that.

7 The reason that you are here, the reason that this
8 case is here, and the reason that those gentlemen are sitting
9 at that table is because one thing; criminal acts occurred,
10 criminal acts that transcended what would be normal
11 malpractice.

12 Now, malpractice in the traditional sense is
13 inadvertence, carelessness, something that happened to a
14 patient, something untoward, something that wasn't so good. A
15 sponge was left in. The operating room got things mixed up
16 and they operated on the wrong limb. Medications were
17 prescribed that shouldn't have been, patients were harmed as a
18 result. This is not that. That is not what we're talking
19 about today.

20 We're talking about what you will hear in this case
21 goes on to criminal actions where the patient -- where the
22 care of the patient was so secondary, was so down the list of
23 priority that the patients were shortchanged, their care was
24 compromised and they were harmed, and ultimately one died as a
25 result of what happened at the clinic.

1 Ladies and gentlemen, caregivers that perform their
2 job in a professional manner, try to do the right thing and
3 just make mistakes, there's the civil side for that. And you
4 may even hear in this case as we go along that this should
5 really be a civil case. I submit to you that after you hear
6 all the evidence as it comes in, that this will be far from
7 any civil case. It is a criminal case.

8 Now, the acts that we're talking about, although
9 malpractice acts can cause harm and death as well, when you
10 have a situation where you have somebody through -- well,
11 engaging in a purposeful foreseeable act that they know could
12 harm a patient, and their motivations are for other reasons.
13 In this case you'll hear about the motivations.

14 But in that sense, those issues that drive a person
15 to do what they do or not do what they do that causes harm to
16 a patient in this case become criminal because of what?
17 Money. You're going to hear this over and over again in this
18 case, money, greed.

19 You'll hear some examples in a moment of some of the
20 evidence that will be presented to you at trial. But suffice
21 it to say that patient care was not part of the mix, that the
22 individuals, the patients who went to Dr. Desai, to his clinic
23 for the purpose of getting care. And in the surgical center
24 that he had, it was an outpatient surgery center. They didn't
25 do surgery, but they performed endoscopic procedures there.

1 And you'll hear about the types of procedures which
2 predominated what they did there. They were upper
3 endoscopies, and you'll hear the term "EGD," often where they
4 stick a tube down into the mouth and down the throat, and
5 colonoscopies, where they stick a tube in the other direction.
6 Those are what they did there.

7 Now, the type and subset of population that came to
8 the clinic were really two different types. They were people
9 that had reached a certain age, typically 50 or older, who
10 needed to have screening procedures to see if there was a way
11 that they could get sort of a head start on potential cancer
12 down the road. A screening.

13 These are people that didn't go to the clinic because
14 they were sick or because they had to have some sort of
15 intervention that only Dr. Desai could provide. These are
16 people that put their trust in him, put their trust in the
17 medical system, trusting that they would be treated as a
18 patient. But that's not what you're going to hear in this
19 particular case.

20 You're going to hear that those patients who went in
21 for screening end up with hepatitis C, an infectious virus
22 that affects one's liver. The term "hepatitis," hepa meaning
23 liver, the itis is an inflammation of, it's an infection of
24 the liver. You're going to hear that that virus, and we'll
25 talk about that in a moment as well, is kind of a unique

1 virus. It's unique in the sense that it's from a family of
2 viruses, but it's unique in how it does what it does to the
3 human body.

4 And we have in this case a total of seven patients,
5 seven individuals who came to the clinic on two separate days
6 who ended up with a viral infection they can't get rid of that
7 caused them sickness, pain, heartache, emotional upset, and
8 ultimately for one, death. You'll see some of those people.
9 You'll even see the person who died through a video
10 deposition, or at least a partial one that was done before
11 he -- at least a couple weeks before he died.

12 Now, the issue of greed, it's not just about money.
13 It's not just about doing a procedure so that you can get the
14 money. I mean, all doctors, all people want to make money.
15 Nothing wrong with that. It's the free enterprise system.
16 But when the medicine of business and the business of medicine
17 get blurred, and it just becomes business, and patients are
18 shortchanged as a result of that, that's where we have
19 problems.

20 And in this case you are going to hear terms like
21 cattle. They were run through the clinic like cattle.
22 Literally there were so many patients going through the
23 clinic, that were being pushed through the clinic at
24 unbelievable rates, and you're going to see charts of just the
25 two incident days as an example, but they're not an example.

1 They are the norm.

2 Day in, day out, patient in, patient out, as fast as
3 they possibly could turn them over. Get them in, get them
4 out, get them out the door. It didn't matter what the status
5 was. It didn't matter what their conditions were. They moved
6 patients. And why were they moving patients? Not for the
7 patient's benefit, but for his benefit [indicating]. For his
8 benefit, his pocket.

9 Now, every person that's going to come in here and
10 testify, most of the clinic staff, they're going to be all
11 levels; doctors, nurses, staff members, GI techs. Everybody
12 that was associated with that clinic -- not everybody, but a
13 good portion of them are going to come in here and talk to
14 you. They're going to give testimony. And all of them will
15 have a snapshot, a piece, a piece of what was going on at the
16 clinic.

17 Nobody had the overarching view of what was happening
18 except for one person, and he's sitting over at that table
19 [indicating]. One person ran the show, from doctor to nurse
20 to tech to supervisor to staff to clerical people. One
21 person, one person only called the shots.

22 Now, in the process of pushing patients through, that
23 wasn't all. If that would have been the end of it, maybe we
24 wouldn't be here, maybe we would be here. But in the process
25 of pushing patients through to maximize profit, to maximize

1 profit, to maximize profit, not only were the patients
2 shortchanged because of the speed of the procedures, the
3 number of procedures, how they were treated or not treated in
4 the clinic, but the materials.

5 The very things that they were used -- that were used
6 on them in their treatment, those items, those items, ladies
7 and gentlemen, were shortchanged. KY Jelly, tape, alcohol
8 pads, gowns, gloves, blankets -- or not blankets. No
9 blankets, they're too expensive. Sheets, just time to clean
10 between patients. That's the kind of thing that you're going
11 to hear about.

12 Now, not only was there the limitation on the
13 supplies, but because there was this pressure -- and one of
14 the things you will hear over and over again is this
15 overarching pressure, this atmosphere within that practice to
16 run patients through. You're going to see some charts in a
17 few minutes, some actual charts from the cases, where it was a
18 situation where they had to move people through so fast they
19 just started fabricating things on the record.

20 They couldn't write it down fast enough, so they had
21 to do it in advance, before the patients are even dealt with
22 sometimes. Or if they're being dealt with, we can't even take
23 the time to look up at the clock to put down the right time,
24 we just got to write in by a formula what the time should be.

25 So when the health district finally gets out to this

1 facility and they go through it, and they're looking at the
2 records, record after record after record and it's not making
3 any sense, none of it does.

4 And your medical records, ladies and gentlemen,
5 there's a thing called HIPAA, the healthcare act talks about
6 it. It prevents the -- it prevents your medical information
7 from just being disseminated elsewhere. And in this case
8 you're going to have access to medical records of all the
9 patients that were there.

10 Now, the patients that were at the clinic who were
11 not named in the indictment, all of their personal information
12 is redacted, meaning it's been taken out or covered up. But
13 you'll have the records to compare if you want to. And you'll
14 hear about those patients, and you'll see a chart with all of
15 the patients listed on it. But we protect that health
16 information.

17 The Health Insurance Portability and Accountability
18 Act of 1996, which is what that means, that's the act that
19 allows people to have their health information protected, that
20 was held more closely than was the patient's care in this
21 facility.

22 Now, as far as the different terms that I heard -- I
23 told you that you would hear about as far as how the clinic --
24 at least analogizing to how the clinic was run. Cattle, they
25 were moved through there like cattle. It was an assembly

1 line, the patient load, the pressure of patients coming in and
2 out over and on and around every aspect of the practice.
3 Triple booking, double-booking patients.

4 This isn't an airline, ladies and gentlemen. This is
5 a medical care facility, or was. The fact that these are the
6 terms that the staff at the facility were using about what was
7 going on at the clinic should give you some insight as to what
8 was going on.

9 Now, what happened at the clinic. The clinic itself,
10 it focused on patients kind of as a dollar source. But you're
11 going to hear that after the events in question on those two
12 days in the patients that reported or was reported to the
13 health district, that it spawned a patient notification of
14 residents in Clark County. 63,000 patients got letters, or
15 they were tried -- they tried to contact them, the health
16 district, Southern Nevada Health District.

17 63,000 patients, 3.4 percent of the population of
18 Clark County. Translated into families where people are,
19 that's 9.4 percent of the entire family population of Clark
20 County had a family member that was involved or got letters in
21 some way, was directly touched by what happened at that
22 clinic. 63,000 patients were notified.

23 The hepatitis C outbreak that took place at the
24 Endoscopy Center of Southern Nevada, that hepatitis outbreak
25 was the largest such outbreak in U.S. history. The largest.

1 There had been 33, up to this point. And all the information
2 I'm giving you is as of the date that the clinic closed, the
3 end of the time period, so when all of this, all of these
4 people had essentially the information that they did.

5 It's not five years down the road. It's back then.
6 So back then, as of the date of this outbreak occurring, there
7 had been 33 prior outbreaks of hepatitis B and hepatitis C in
8 the country, 33. This outbreak eclipsed all others, meaning
9 it was the largest of all others.

10 As a matter of fact, you will hear that not only was
11 it the largest, but there were more patients involved in this,
12 more patients exposed to the hepatitis C virus in this one
13 single event at that clinic than in all 33 prior outbreaks
14 combined. It was the large -- it resulted in the largest
15 patient notification in U.S. history. It was a big deal.

16 Now some issues related to the transmission. I mean,
17 how does it occur. I mean, the hepatitis C virus -- there's a
18 number of different hepatitis viruses out there, and it's
19 transmitted primarily through blood-to-blood contact. You
20 have to come in contact technically with the blood. That's
21 where it happens mostly. You'll hear that it also can be
22 transmitted sexually, but usually not in a monogamous type of
23 a relationship. It's usually multiple sexual partners.

24 So if you have a multiple -- even if you have an
25 infected spouse, a significant other, and you don't even have

1 to use barrier protection. It's not even recommended if you
2 stay in that relationship. There's a .6 percent per year risk
3 of transmission in that situation. So sexual contact can
4 actually facilitate an infection, but it's not a very
5 efficient way of doing it.

6 And there are some other ways. But blood
7 transfusions, blood-to-blood contact is primary and number
8 one. And if you go back in history a little bit, you'll hear
9 that in 1967 the hepatitis virus was actually discovered, that
10 prior to 1970, if you got a blood transfusion in this country,
11 30 percent of the people, 30 percent of the people or 33
12 percent of the people would get hepatitis. Didn't know what
13 it was.

14 Now, after the hepatitis -- and that was at the time
15 the hepatitis B virus was discovered, they instituted a few
16 years later screening mechanisms, screening mechanisms so that
17 they could ensure that the blood supply would be better. And
18 it went from -- and in instituting that, it went -- the
19 percentage of infections or from -- caused from blood
20 transfusions dropped from about 33 percent to about 10
21 percent.

22 Fast-forward in time to about 1973, hepatitis A was
23 discovered. But hepatitis A is not blood borne. It's food
24 borne. It's fecal/oral contamination. So that's really not
25 the same issue.

1 MR. STAUDAHER: -- for him --

2 THE COURT: -- a witness?

3 MR. STAUDAHER: -- he possibly could be.

4 THE COURT: Any objection to having him sitting in
5 the courtroom?

6 MR. WRIGHT: No objection.

7 MR. SANTACROCE: Not from me.

8 THE COURT: Okay. Is that it? Do we need to do
9 anything else? Okay.

10 Now, what's your intention with respect to the
11 exhibits and premarking the exhibits and all of that?

12 MR. STAUDAHER: Well, I know Ms. Husted is not here,
13 but I have spoken with your standing clerk this morning, and
14 it's our intention to at least start that process so that it
15 will be less taxing for her --

16 THE COURT: Okay. Have you --

17 MR. STAUDAHER: -- as well as the --

18 THE COURT: -- coordinated with her when she needs to
19 be available to --

20 MR. STAUDAHER: -- no. I will do that --

21 THE COURT: -- receive these exhibits? Okay.

22 MR. STAUDAHER: -- but there's a lot --

23 THE COURT: When I'm --

24 MR. STAUDAHER: -- that we need to bring over, and I
25 don't know if we want to bring it all over -- I don't know how

1 much space we have and how we can accommodate it, but I will
2 tell the Court --

3 THE COURT: Okay.

4 MR. STAUDAHER: -- that based on what our -- we all
5 met. All counsel met yesterday in -- over at our office, and
6 we spent quite a lot of time going through the charts, the
7 things that we were going to put in our PowerPoint we talked
8 to them about --

9 THE COURT: Right.

10 MR. STAUDAHER: -- showed them copies of as the Court
11 directed us to do. All of that information was shown and gone
12 over, but we need to bring over the bulk of the materials,
13 which are the -- there's summary documents, essentially
14 they're going to come in, but then there's all the supporting
15 documents for those summary documents, and those are in a
16 number of boxes.

17 And so we're trying to limit the volume, but that is
18 the bare minimum that we need to bring over and start getting
19 marked, or at least have access to for both sides during the
20 course of the trial. So we would like to coordinate that, but
21 I don't know where we physically will house or locate that --
22 those materials.

23 THE COURT: Okay. Well, that's your coordinate with
24 our court clerk, and then, just for the record, for their
25 opening PowerPoint they -- or they showed you, correct, Mr.

1 Santacroce? Mr. Wright? Ms. Stanish?

2 MR. WRIGHT: Yes.

3 MR. SANTACROCE: Yep.

4 THE COURT: They showed you the exhibits they intend
5 to use and there's no objection to the use of that -- those
6 exhibits; is that correct?

7 MR. SANTACROCE: That's correct.

8 MR. WRIGHT: That's correct.

9 THE COURT: Okay.

10 MR. SANTACROCE: For demonstrative purposes.

11 MR. STAUDAHER: Yeah, there's -- there are a couple
12 of things that we had talked about, for example, some pictures
13 of -- you know, there was no propofol at the clinic when
14 they -- when the search warrants were executed.

15 THE COURT: Right. So you're going to show it, just
16 for demonstrative purpose --

17 MR. STAUDAHER: Exactly. And they don't --

18 THE COURT: -- and you're going to say --

19 MR. STAUDAHER: -- seem to have an issue with that.

20 THE COURT: -- this is just to give you an idea of
21 what the vial would --

22 MR. STAUDAHER: Exactly.

23 THE COURT: -- look like, or something --

24 MR. STAUDAHER: So there's a couple --

25 THE COURT: -- like that?

1 MR. STAUDAHER: -- of items like that, but not very

2 --

3 THE COURT: Okay.

4 MR. STAUDAHER: -- many.

5 MR. SANTACROCE: And we, likewise, have shared what

6 we are going to use, and there was no objection --

7 MR. STAUDAHER: That's correct.

8 MR. SANTACROCE: -- I believe?

9 THE COURT: Okay. So, Mr. Staudaher, let's just
10 briefly talk about scheduling. You have now revisited your
11 clearly erroneous estimation of how long your --

12 MR. STAUDAHER: Yes, I have --

13 THE COURT: -- opening would take? And now what --
14 what do we think?

15 MR. STAUDAHER: I think it could be upwards of two
16 hours, Your Honor.

17 THE COURT: All right. So that means two and a half
18 hours. And then, so, Mr. Wright, you had said how long? Two
19 hours? Okay. And then, Mr. Santacroce, you thought maybe 45
20 minutes to an hour?

21 MR. SANTACROCE: That's it, Your Honor.

22 THE COURT: Okay. Well, that's obviously, basically,
23 over five hours just for that. And then I have to give them
24 the admonition, we have to go through -- we have to eat lunch,
25 we have to go through the jury selection process. So it's

1 quite obvious that's all we're going to get to Monday.

2 MR. STAUDAHER: So we will schedule -- start
3 scheduling witnesses, then, for Tuesday?

4 THE COURT: Yeah, I mean, a minimum of five hours,
5 just for the openings.

6 MR. STAUDAHER: Right. Do we have an idea --

7 THE COURT: A minimum.

8 MR. STAUDAHER: -- of what the schedule for the --
9 for the week is, so we can -- I mean, as far as start time, at
10 least?

11 THE COURT: Well, I was ready to start at 9:00 every
12 day. I'd like to start 9:30 on Tuesday.

13 MR. STAUDAHER: Okay.

14 THE COURT: I'll probably do my own civil calendar on
15 Wednesday, and I haven't looked at it yet, so 9:30-10 for
16 Wednesday. You know, seeing kind of -- again, we'll play it
17 by ear because each day we'll tell the jury, you know, come
18 back at this time or whatever. So, you know, a good day we
19 look at, I would say six hours of trial. I mean, that's a
20 lot, but six hours of actual trial time. We'll be way less
21 than --

22 MR. WRIGHT: I renew my objections.

23 THE COURT: -- that. That's a really good day, you
24 know what I'm saying? That's -- and as you've seen in jury
25 selection, if I say a five-minute break, that means a

1 five-minute break in here or a ten-minute break, what have
2 you. So we don't take long breaks, you know, unless you need
3 them to confer with your client or whatever and we can take
4 longer for lunch if you want. You know, I don't want to take
5 two hours for lunch, but we can take more than an hour.

6 MR. STAUDAHER: Did you say 9:00 on Monday, though,
7 to start --

8 THE COURT: Yeah. Monday --

9 MR. STAUDAHER: -- okay.

10 THE COURT: -- is 9. That's when the people have
11 been told to come back. I'd like you guys here, basically,
12 8:45.

13 Okay. Nothing else for me?

14 MR. STAUDAHER: No.

15 MR. WRIGHT: No, ma'am.

16 MR. SANTACROCE: I have nothing else, Your Honor.

17 THE COURT: We -- all right.

18 (Court recessed for the evening at 12:33 p.m.)
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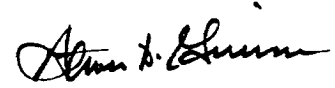
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 8

MONDAY, MAY 6, 2013

APPEARANCES:

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

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000623

I N D E X

OPENING STATEMENT:

By Mr. Staudaher

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1 LAS VEGAS, NEVADA, MONDAY, MAY 6, 2013, 9:23 A.M.

2 * * * * *

3 (Outside the presence of the panel of prospective jurors.)

4 THE COURT: All right. Good morning. Just an update
5 on the other sort of prospective jurors, the 6 are all here.
6 Of the 35 that we've already qualified 1 is missing, and so my
7 JEA is contacting that missing person to see where they are,
8 but we haven't heard from them this morning and whatnot.

9 So let's go ahead. And pursuant to our discussion in
10 chambers and our agreement that we should have an additional
11 alternate, let's call in the alternates beginning with Jayson
12 Tomboc, Badge No. 454.

13 Good morning, Mr. Tomboc. When we were last here,
14 you indicated some concern about missing work and being
15 compensated for missing work; do you recall that?

16 PROSPECTIVE JUROR NO. 454: Yes.

17 THE COURT: And you were going to check with your
18 employer and get back with us, but we never heard from you.
19 Have you checked with your employer?

20 PROSPECTIVE JUROR NO. 454: I have.

21 THE COURT: And what was the result of that?

22 PROSPECTIVE JUROR NO. 454: They are compensating me
23 for it.

24 THE COURT: Okay. Terrific. So there would be no
25 financial difficulty with you serving; is that correct?

1 PROSPECTIVE JUROR NO. 454: Yes, ma'am.

2 THE COURT: All right. Thank you, sir. Anything
3 from either side? Go ahead and give the microphone to -- or
4 just leave

5 it there in the chair. Don't discuss what we've just
6 discussed with the other prospective jurors and just go back
7 out and have a seat in the hallway.

8 All right. It looks like Jayson Tomboc, Badge 454
9 can be added and become our 36th juror, and he will be added
10 based on his badge number, Badge No. 454. So he becomes --

11 So, Kenny, we're going to have to add another chair.
12 -- he would go between Joseph Sandifer and Deana

13 Safronov. May I see counsel up here.

14 (Off-record bench conference.)

15 THE COURT: All right. Kenny is also checking on the
16 status of Mr. Wente who we have not heard from and has not
17 appeared this morning. So as of right now we're back to 35
18 prospective jurors.

19 Also, in chambers I did make counsel aware that we
20 had received a phone call from another one of our prospective
21 jurors who has become pregnant or just learned of her
22 pregnancy, and we all agreed that she would be given
23 accommodations if she needed to visit the doctor or something
24 like that if she were chosen.

25 Still no answer. All right. We'll go with Badge No.

1 353, Mr. Franco.

2 Good morning, Mr. Franco. Have a seat. When we last
3 spoke, I believe you were going to check and see about how you
4 would be compensated if you had to serve; is that correct?

5 PROSPECTIVE JUROR NO. 353: That is correct.

6 THE COURT: All right. And were you able -- we
7 didn't hear back from you. Were you able to check, and do you
8 have more information to share with us this morning?

9 PROSPECTIVE JUROR NO. 353: Yes, ma'am, I do have
10 information on that. Since I am in a part-time status with
11 the Clark County I don't qualify for being compensated.

12 THE COURT: All right. So you did check with your
13 boss at Parks and Rec?

14 PROSPECTIVE JUROR NO. 353: Yes, I did.

15 THE COURT: And based on that, I guess that would be
16 a -- you wouldn't be paid for the entire period?

17 PROSPECTIVE JUROR NO. 353: That is correct, just the
18 minimum.

19 THE COURT: Okay. All right. And did you check
20 about maybe substituting with some weekend work or anything
21 like that?

22 PROSPECTIVE JUROR NO. 353: I talked about it, but
23 then again our -- it all depends on if we have reservations,
24 and that is, you know, on on-call basis. So again that's not
25 guaranteed.

1 THE COURT: Okay. All right. Sir, thank you. Go
2 ahead and put the microphone in the chair. Again, don't
3 discuss what we've just discussed with anyone else, and please
4 have a seat back out with the other jurors.

5 Counsel, approach, please.

6 (Off-record bench conference.)

7 THE COURT: Kenny, next up is Lisa Ruiz, Badge 441.
8 Good morning, Ms. Ruiz.

9 PROSPECTIVE JUROR NO. 441: Good morning.

10 THE COURT: I wanted to follow-up with you today on
11 the situation with your son coming from Japan on leave, and
12 you weren't sure exactly when he would be --

13 PROSPECTIVE JUROR NO. 441: I still don't have a
14 date.

15 THE COURT: Oh, you still don't know.

16 PROSPECTIVE JUROR NO. 441: I e-mailed him just to
17 see if he was back, and so I still don't have anything.

18 THE COURT: Okay. Now -- and, again, what were your
19 work hours?

20 PROSPECTIVE JUROR NO. 441: 7:30 to 4:30.

21 THE COURT: Okay. So either way, either you're going
22 to be here as a juror potentially, or you're going to be at
23 work when your son is here.

24 PROSPECTIVE JUROR NO. 441: With the exception of
25 taking time off once I knew, but -- yeah.

1 THE COURT: Oh, okay. Well, and no word there, okay.
2 Well, I am sorry to hear that. If you are selected and your
3 son does come in and you need to leave early a day here or
4 there, just try to let us know, okay?

5 PROSPECTIVE JUROR NO. 441: Okay.

6 THE COURT: All right. Again, don't discuss what's
7 just transpired with anyone else, microphone in the chair, and
8 just follow Kenny through the double doors.

9 PROSPECTIVE JUROR NO. 441: Okay.

10 THE COURT: Thank you, ma'am. Kenny, 633, Shirley
11 Young. Ma'am, just have a seat up there again, please. I
12 wanted to follow up on a few things. First of all,
13 regarding your employment at the Palace Station I think there
14 was some, I guess, confusion, uncertainty as to whether or not
15 you would be compensated and how that would work with your
16 employer. Have you had an opportunity to discuss that issue
17 with your employer?

18 PROSPECTIVE JUROR NO. 633: No, not at this time.

19 THE COURT: Oh, so you still don't know?

20 PROSPECTIVE JUROR NO. 633: No, I don't know. I'm
21 sorry.

22 THE COURT: Okay. So if you're selected, then I
23 guess you'll find out.

24 PROSPECTIVE JUROR NO. 633: I guess I will.

25 THE COURT: Okay. So --

1 PROSPECTIVE JUROR NO. 633: I'm pretty sure I am, but
2 this is my first time. So I don't know.

3 THE COURT: Okay. So after jury selection you didn't
4 talk -- or the last time you were in here you didn't talk to
5 anyone about it?

6 PROSPECTIVE JUROR NO. 633: Our HR department was
7 closed on Friday.

8 THE COURT: Oh, okay. I'm assuming the policy would
9 be the same at all Station Casinos. Is that --

10 PROSPECTIVE JUROR NO. 633: Yes.

11 THE COURT: Okay. And you just don't know what the
12 policy is for Station Casinos?

13 PROSPECTIVE JUROR NO. 633: No. I'm sorry.

14 THE COURT: Okay. And then I also wanted to follow
15 up about Dr. Patel. You didn't recall his first name; is that
16 correct?

17 PROSPECTIVE JUROR NO. 633: Correct.

18 THE COURT: Okay. But do you think you would
19 recognize the Dr. Patel that you're familiar with?

20 PROSPECTIVE JUROR NO. 633: Probably not. It's been
21 too long.

22 THE COURT: Okay. Now, is there anything about the
23 fact that you knew Dr. Patel at one -- you know, at one time
24 that if you heard some testimony from him in this case that
25 would cause you to either, you know, automatically believe or

1 disbelieve his testimony, or could you listen to it and
2 consider it as you would the testimony of anyone else?

3 PROSPECTIVE JUROR NO. 633: I'd consider it as
4 testimony.

5 THE COURT: Okay. Just like any -- anyone else?

6 PROSPECTIVE JUROR NO. 633: Anyone else, yes.

7 THE COURT: Okay. Does the State have any follow-up
8 with Ms. -- I'm

9 sorry --

10 MR. STAUDAHER: Young.

11 PROSPECTIVE JUROR NO. 633: Young.

12 THE COURT: -- with Ms. Young?

13 MR. STAUDAHER: No, Your Honor.

14 THE COURT: I was going to call you Ms. Brady, but I
15 knew that was wrong.

16 Does the defense have any follow-up with Ms. Young?

17 MR. SANTACROCE: I just have one question.

18 THE COURT: Sure, Mr. Santacroce.

19 MR. SANTACROCE: Dr. Patel performed a colonoscopy on
20 your husband?

21 PROSPECTIVE JUROR NO. 633: No. He had gone to Dr.
22 Patel, and then he decided he wanted to go to an Asian doctor.
23 My husband -- ex-husband was Asian. So he had an Asian doctor
24 do it.

25 MR. SANTACROCE: Okay. And that was at Desert

1 Springs Hospital?

2 PROSPECTIVE JUROR NO. 633: Yes, it was.

3 MR. SANTACROCE: Thank you.

4 THE COURT: All right. Nothing else. Ma'am, in a
5 minute I'm going to have you join the other prospective jurors
6 in the hall. As before, you are not to discuss anything
7 that's transpired. All right. Go ahead and follow Kenny
8 through the double doors.

9 I'm asking Sharry to come in so that we can get an
10 update on Mr. Wente. It's possible --

11 Was jury services going to call if he showed up
12 downstairs, Kenny?

13 THE MARSHAL: No, Your Honor.

14 THE JEA: I have called him, and I did leave a
15 message. I did call jury services to have them call me if he
16 shows up.

17 THE COURT: Okay. So he hasn't shown up?

18 THE CLERK: Not that I know of. I didn't talk to
19 anybody. I think they're pretty busy down there.

20 THE COURT: Okay. All right. Lawyers, here's what
21 we can do. We can either substitute -- not in that number but
22 where her number would fall -- Ms. Ruiz for Mr. Wente and go
23 forward, or we can just keep Mr. Wente where he is kind of as
24 the empty chair, assuming just something happened this morning
25 and go through jury selection and consider him as one of the

1 36 even if he's not here yet.

2 MR. WRIGHT: I need to have a moment to confer.

3 THE COURT: Okay. I mean, I don't know how you, you
4 know, want to do it.

5 Kenny, why don't you run down to jury services, see
6 if he's back down there, line them up in numerical order, and
7 we're going to have to add maybe --

8 THE MARSHAL: I already put another chair there.

9 THE COURT: Oh, you added a chair, okay.

10 (Pause in the proceedings.)

11 MR. WRIGHT: We're making Tomboc the final -- we're
12 adding him to make us have six alternates; am I correct?

13 THE COURT: Correct. Right.

14 MR. WRIGHT: Okay.

15 THE COURT: Now, the issue is do we keep -- if Mr.
16 Wentz hasn't shown up, do we just kind of keep Mr. Wentz as
17 part of the list and just have an empty chair there for him
18 hoping that, you know, he's not -- something horrible hasn't
19 happened where he just forgot to show up, or, you know, if he
20 is a juror, then he's going to be here, or do we substitute
21 Ms. Ruiz and make her one of the 36. That's the issue right
22 now.

23 Now, obviously if when Kenny goes downstairs he's
24 down there, it's not a problem, but as of right now we haven't
25 been able to find him.

1 Now, Sharry, when you called him initially to come in
2 today, was he fine, or --

3 THE JEA: No, because I had to leave messages for
4 him.

5 THE COURT: Okay.

6 THE JEA: So he is one that I had to leave a message
7 for.

8 THE COURT: Sharry had to leave numerous messages for
9 him before.

10 But you did finally speak to him?

11 THE JEA: (Shakes head no.)

12 THE COURT: Oh, you've never spoken to him?

13 THE JEA: Huh-uh. But the last message was to show
14 up today.

15 THE COURT: Oh, okay. I thought you'd spoken to him.

16 THE JEA: No.

17 THE COURT: Okay. Well, maybe then we should
18 substitute in Ms. Ruiz for him.

19 MS. WECKERLY: If there's been no real --

20 THE COURT: Yes, I misunderstood that.

21 MR. WRIGHT: I need to confer.

22 THE COURT: In that case I would say we can't count
23 on Mr. Wente.

24 MS. WECKERLY: Unless he's down there.

25 THE COURT: My inclination is to substitute in Ms.

1 Ruiz for Mr. Wentz in the number she falls, and then -- this
2 doesn't concern you folks -- Court's going to issue a show
3 cause order on Mr. Wentz and whatever sanctions are imposed.
4 Obviously that's not an issue for you guys.

5 But I thought Sharry had spoken to everybody in
6 person to get their confirmation. Obviously she did really
7 well because 34 of the 35 showed up, and all of the other
8 people showed up today. So that would be what I -- my
9 inclination is to do.

10 Yes?

11 MR. WRIGHT: Have we resolved the Pomykal, Mayo
12 issue? I mean --

13 THE COURT: Well, basically, you know, to --

14 MR. WRIGHT: I mean, I thought you were, you know,
15 like, going to question them about their --

16 THE COURT: Well, I -- okay. I can if that's what
17 you'd like. I mean, Ms. Pomykal -- for the record -- she sent
18 -- after she'd been through jury service -- selection
19 indicated she could serve, indicated, I believe -- is she the
20 one that's a fourth or fifth grade teacher where she deals
21 with young children and what I would consider to be a fairly
22 hectic, possibly stressful environment -- sent a letter from
23 her physician saying that she suffers from MS and is unable to
24 serve, and basically that was the first any of us ever heard
25 of that.

1 To me that's not grounds -- I mean, I think, you
2 know, if she'd brought the letter in at the outset, I think we
3 probably would've agreed to excuse her; however, she went
4 through the entire selection process, never mentioned this
5 condition, never mentioned a problem with serving, and I
6 think, you know -- I can't remember exactly with her -- but,
7 you know, pretty much on both sides open-ended questions were
8 asked, you know, well, is there anything, you know, you'd be
9 worried about serving or -- you know. She didn't say
10 anything, and I think once she got to where, oh, she actually
11 might have to come in, now she comes up with this letter.

12 And, again, you know, she has a job that forces her
13 to deal with young children in a daily environment in the
14 public school system. So it's not like she's in one of these
15 little schools, you know, with 10 kids. My inclination is not
16 to excuse her, but certainly we can question her about it, and
17 certainly we can take breaks, and I can tell her, look, if
18 you're feeling symptomatic or you need a break or something
19 like that, we can excuse her, or we can substitute 633 for
20 her, but I wasn't inclined to excuse her.

21 The other woman --

22 MR. WRIGHT: Rhonaree Mayo.

23 THE COURT: Yes.

24 MR. WRIGHT: I wasn't suggesting on either that
25 action be taken.

1 THE COURT: Okay.

2 MR. WRIGHT: I was simply asking --

3 THE COURT: If my intent was --

4 MR. WRIGHT: Okay.

5 THE COURT: I'm happy to question them again if
6 anyone wants me to or feels that we should --

7 MR. WRIGHT: No.

8 THE COURT: -- but to my view, the time for them to
9 have disclosed these situations were during jury selection,
10 and I think both sides -- as I said before -- took steps to
11 ask open-ended questions. You know, is there anything else
12 you can think of, questions like that, and they didn't offer
13 these things, and to me, you know, these other people that
14 we've just brought in, we have left things up in the air with
15 them, and so I don't know that we should be revisiting these
16 because now they've come up with, you know, something that
17 they didn't.

18 Again, if Ms. Pomykal is selected, I am certainly
19 happy to tell her, look, you know, if you need a break, if you
20 need to move around, something like that -- plus, we are
21 having to make reasonable accommodations for Dr. Desai. So I
22 think incumbent in those reasonable -- or included -- excuse
23 me -- in those reasonable accommodations are things for the
24 jury. They're going to get breaks. They're going to get
25 early days. They're going to get late days. So I think by

1 considering the accommodations for Dr. Desai we are including
2 accommodations for any jurors with sort of, I guess, special
3 needs or health issues or anything like that.

4 Is the State comfortable with that?

5 MS. WECKERLY: Yes.

6 MR. STAUDAHER: Yes, Your Honor.

7 THE COURT: Is the defense, Mr. Wright, are you
8 comfortable with that?

9 MR. WRIGHT: Yes.

10 THE COURT: Mr. Santacroce, are you comfortable with
11 that?

12 MR. SANTACROCE: I think you've cleared it up because
13 I was concerned. With all these people with accommodations,
14 are we ever going to get done done with this thing? But I
15 think if you incorporate those accommodations in with Dr.
16 Desai, it shouldn't be a problem.

17 THE COURT: Right. I mean, as you know, I mean, my
18 desire was to go 9 to 5 every day, but, you know, with the Dr.
19 Desai situation, what Mr. Wright has said, I'm afraid we're
20 not going to be able to do that. We certainly couldn't do it
21 in jury selection.

22 So I think these jurors if they're selected -- I
23 mean, that's something to keep in mind during your peremptory
24 challenges. If, you know, the people that you feel you need
25 to challenge, you know, maybe that's four or five people. You

1 have some extra challenges. I don't know. Maybe use those
2 for these people that have some other difficulties that could
3 maybe hinder the process a little bit. That's certainly up to
4 you.

5 Anyway, so those would be the accommodations that
6 they could make their arrangements during the time that -- I
7 just feel that the other potential jurors who are left, I
8 think that their hardships out we these other newly reported
9 hardships from the people who made the cut of the first 35.

10 So I'm inclined to make Mr. Tomboc as he's already --
11 he's included as part of the 36. Ms. Ruiz is going to be
12 included as part of the 36. Ms. Wiley -- and I think, you
13 know, I don't know what weather Station Casinos compensates or
14 not on the other gal, but --

15 MR. SANTACROCE: How about Franco, what did you
16 decide on him?

17 THE COURT: Oh, I think he does have a hardship, Mr.
18 Franco, because he's not being paid, and he's only a part-time
19 parks and rec employee. Is everyone fine with that?

20 MR. WRIGHT: Let's wait until we get this thing set
21 before we let anybody else go.

22 THE COURT: Oh, no. No. No one is being let go.

23 MR. WRIGHT: Oh, okay.

24 THE COURT: I mean, basically here's what I'm
25 proposing. Adding Mr. Tomboc, 454 and he would be added

1 between, as I said, Mr. Sandifer and Ms. Safronov, adding Ms.
2 Ruiz, Badge No. 441.

3 MR. STAUDAHER: She would be in front of Mr. Tomboc,
4 correct?

5 THE COURT: And she would be before Mr. Tomboc, and
6 since Mr. Wentz apparently has not shown up he will be removed
7 from the pile, and the Court will issue a show-cause order to
8 him.

9 MR. WRIGHT: Could I have --

10 THE COURT: You may have a moment.

11 MR. WRIGHT: Thank you.

12 THE COURT: All right. So revise your lists, and
13 then we're going to go forward. Does everyone -- do you guys
14 have the form, or do you need it from us, the peremptory
15 challenge form?

16 MR. SANTACROCE: I have one.

17 MR. STAUDAHER: We have a form.

18 MR. WRIGHT: I need another one. I've lost mine.

19 THE COURT: Okay. And you're going to use a shared
20 form for the final?

21 MR. SANTACROCE: Yes.

22 THE COURT: And that'll be the court's Exhibit.

23 (Pause in the proceedings.)

24 THE COURT: All right. Ms. Stanish, you'd indicated
25 what about Mr. Wentz? The record wasn't on before.

1 MS. STANISH: Well, our preference would be to retain
2 Mr. Wente as a panel member and to try to contact him at his
3 employer. We do have the name of his school available, and as
4 Your Honor mentioned before, we could keep the seat open for
5 him.

6 THE COURT: And what's the basis for that request?

7 MS. STANISH: You know, Your Honor, we've already
8 calculated our perempts. As you know, we only have nine
9 between two of us. So that's our preference.

10 MR. WRIGHT: And he's qualified and competent and was
11 going to be a juror, and we have no knowledge as to why he
12 isn't here, and so we're just --

13 THE COURT: We don't have any knowledge as to why he
14 isn't here, number one, but as you'll recall, I mean, Kenny
15 got numbers from them before they came in. Before I excused
16 each potential juror who had been passed for cause, I said,
17 Make sure, you know, Kenny, Officer Hawkes, whatever has a
18 telephone number where you can be reached. Make sure he has a
19 good number for you because you may be called back. It is
20 your duty to report when we tell you to.

21 And so he was aware that we would be trying to
22 contact him, and he hasn't called back. Sharry has left
23 numerous messages including when I finally told her the last
24 message should be, you must respond or the Court may issue an
25 order to show cause which can be followed by a bench warrant

1 for your arrest and still nothing, and so I don't know that
2 the Court has an obligation to do some kind of investigation
3 now looking up other potential numbers for Mr. Wentz to
4 include him in the group.

5 You know, we've passed another woman for cause, Ms.
6 Ruiz who can certainly take -- take that place in there who
7 had been passed for cause before, and, you know, she didn't
8 have any more information. You know, I think we were all
9 sympathetic about her son. He's, you know, returning from
10 Japan. We want her to, you know -- he's in the service. We
11 want her to spend time with him, but, you know, she didn't
12 have any more information for us.

13 Additionally, Mr. Staudaher has pointed out that Mr.
14 Wentz was initially a no-show on the day that he was supposed
15 to first come in, and he had to be contacted by jury services
16 and told to come in, that he must report. So now we have a
17 history of somebody who either wilfully doesn't follow
18 directions or has some kind of hearing problem with following
19 directions or has some kind of cognitive or memory problem
20 with following directions.

21 As I said in chambers, I have one goal and one goal
22 only in this trial, and that goal, the only goal I have really
23 is to get to a point where it's submitted to 12 people who can
24 go in the back and deliberate. That's it. What happens after
25 that I have no interest in one way or the other.

1 But to me to take extraordinary measures to include
2 Mr. Wente as part of our group when he has a history of not
3 showing up when he's supposed to, when he hasn't shown up
4 today, when we haven't received a call or anything like that,
5 to me that just invites him not showing up again and us having
6 to right away pull in the alternate or us delay the morning
7 session because he's not here on time. You know, we start at
8 9:30, and he's not here at 10, and then we wait.

9 And I don't really think that's something the defense
10 wants in view of the record that you've made that Dr. Desai
11 gets tired as the day goes on. So I don't think we want to
12 set ourselves up to have a 9:30 or a 9 o'clock start or
13 whatever and everybody be waiting around for jurors who for
14 whatever reason can't seem to follow direction and can't get
15 here on time.

16 And as I said already, you know, is the error with my
17 staff, or is the error with Mr. Wente? I have to think the
18 error is with Mr. Wente when my staff, my JEA here was able to
19 contact 40 people and get confirmations and get them all here
20 to the place they were supposed to be at the time they were
21 supposed to be here. 40 people versus one person, so who's
22 the problem with, really? I mean, I think the proof is in the
23 pudding so to speak on that question.

24 THE JEA: We have one more load coming up, but the
25 rest are all out in the hallway.

1 THE COURT: Okay. Mr. Staudaher or Ms. Weckerly,
2 what's the State's position on this?

3 MR. STAUDAHER: I think the Court addressed it very
4 aptly, and I think the main issue at this point is that we
5 don't have contact with him even though that's -- those are
6 the numbers, the contact information he provided the Court as
7 being the best contact information when he left here.

8 Despite whatever happened with him and why he didn't
9 show up in the first place, at least at that point he was on
10 notice that we were trying to get him. It was important. He
11 needed to show up, and whatever information he provided to the
12 Court should be good information, and if the Court has had
13 numerous opportunities to try and contact him and still at
14 this point in time does not have a contact with him, we don't
15 need to send police out or whatever to try and track down a
16 potential juror.

17 I mean, this is an individual that shows he is not
18 reliable at showing up. This process cannot be essentially
19 stopped by one person.

20 THE COURT: Hijacked by one person. And, you know, I
21 agree. He passed for cause. He seemed like he would be fine.
22 He seemed like a responsible person to me based on his job and
23 other factors, but he was told again and again a number where
24 you may be reached, and, again, I don't think that there's any
25 legal requirement that the Court take some kind of

1 extraordinary step to do its own investigation now and look up
2 his school and call the principal.

3 And, you know, let's act this out in our minds. It's
4 been, what, 81 -- okay, 32 years since I was a student at a
5 Clark County public high school, but let's think about this.
6 I'm sure it's not too different. You call the principal's
7 office, right, and you get somebody, oh, you know, I'm Sharry
8 in Judge Adair's chambers, and we're looking for Mr. Wente.
9 May we speak with the principal or the vice principal or
10 someone, and then they're going to send maybe somebody down
11 the hall to find out where he is, and then, what, we're
12 supposed to wait around for him to come and to call us.

13 I just think it's beyond what the obligations are to
14 secure the attendance of a juror, and I think it -- it's a
15 foreboding of problems to come, and, as I said, I don't want
16 to be in a position where we're stuck waiting around or where
17 we're right away having to call in an alternate.

18 And, Mr. Wright, I don't remember if it was a Friday
19 or a prior day, but you expressed concern with only having
20 five alternates, and over the weekend I began to become
21 concerned about that, and we met in chambers this morning, and
22 the Court agreed let's make another alternate. Let's make
23 sure we get to the last day of this trial. We've got 12
24 breathing people who can go in the back and deliberate, and to
25 me to start out now with one potential juror that we know is

1 questionable doesn't make a lot of sense to me and is just a
2 further delay in the process.

3 MR. SANTACROCE: Just for the record, Your Honor, I'm
4 joining in on that motion or request or whatever it was.

5 MR. WRIGHT: I wasn't suggesting sending out police
6 and conducting an investigation.

7 THE COURT: No. I know and that's why --

8 MR. WRIGHT: What I asked for was we know he's an
9 employee of Sunrise Mountain High School. We know he's a
10 Clark County School District employee. We know from reading
11 his questionnaire he's a responsible citizen. We know from
12 hearing the diatribe from Mr. Staudaher that that's one of his
13 peremptories he doesn't want to have to utilize.

14 This isn't just some fungible thing where we slide
15 people in and out. He was brought in here, questioned,
16 qualified, passed for cause, and I simply want to be certain
17 of his unavailability. I don't know what numbers were given.
18 I don't know all of the times he was told this and that. All
19 I know is he isn't here at the present time. There may be a
20 valid explanation for it, and that's all I was asking, attempt
21 to contact him and leave the spot for him with someone else
22 available until we are ready to start because maybe he'll come
23 walking in the door.

24 THE COURT: Well, absolutely, Mr. Wright. If he
25 comes walking in the door -- I mean, we've told jury services,

1 Contact us.

2 MR. WRIGHT: I'll call the high school. I'm happy to
3 do it. Just give me a break, a recess. I've got my cell. I
4 don't -- he's been disparaged here. I didn't get any of that
5 out of the questioning that took place. He's a band teacher
6 and a high school music teacher.

7 THE COURT: Well, first of all, Mr. Wright, I
8 certainly didn't disparage him, and I think I said he appeared
9 to be somebody who would make a good juror. He has appeared
10 to be a very credible person. I don't remember if that was
11 the word I used, but I just now said something to that effect.
12 I said, From his answers he seemed to be somebody who would be
13 a good juror.

14 But what I do know is the other things I said on the
15 record. What I do know is he was told to leave a good number.
16 What I do know is he's the one person out of 41 people who
17 didn't manage to make it back today. What I do know is he
18 didn't show up on the day he was initially supposed to show
19 up. What I do know is that he was told, Please leave a number
20 where we know you can be reached. And he wasn't reached, and
21 he didn't return calls. He didn't answer messages. That's
22 what I do know.

23 Now, did something -- I don't know. I hope -- like I
24 said, I hope, God forbid, he hasn't been injured terribly,
25 that he isn't in the hospital. I don't know. But all I'm

1 saying is I don't think it's the Court's obligation to
2 research why he isn't here this morning.

3 Now, you suggest that that's a simple call to the
4 school. So the best case scenario I guess would be he's in
5 the band room, and, oh, I forgot to come in, or the worst case
6 is he's not in the band room or the music room, whatever, and
7 he's called in sick or hasn't shown up for work, and then that
8 would suggest some horrible situation has occurred, but all
9 I'm saying is I don't think that that's our obligation to take
10 those extra steps to get him in here.

11 And I would agree with you. I think he -- you know,
12 he's a band teacher. I mean, I vaguely remember him, and I
13 think -- my impression was that he would make a good juror.
14 So I'm somewhat surprised by this, but I do -- as I said, I do
15 know these other things, and so, you know, that's just my
16 feeling.

17 I don't care whether we have him or not. I mean, all
18 I care about, as I said, is getting through the end of the day
19 with people who show up on time so that we can move this thing
20 forward as quickly as possible and as easily as possible for
21 everyone concerned, everyone concerned in this.

22 MR. WRIGHT: Well, but my only reason -- I do care
23 whether we have him or not because I look at who was exposed
24 to publicity and who wasn't, and I have someone now who had --
25 came in with no opinion we had to get him to back up on and

1 set aside and rehabilitate and all of this, and now we're
2 sliding in those that are different than he. So I do want
3 him, and if by chance it is -- he's simply not available here,
4 I want to give him every opportunity to be here because I
5 wanted him as a juror.

6 THE COURT: Mr. Staudaher?

7 MR. STAUDAHER: I mean, I'll say I think the Court's
8 described it. He did -- you know, this individual -- the only
9 concern the State has is -- I mean, if he's here, he can
10 serve. I don't have an issue with that, or we can go through
11 the process and whittle it down, and whether he's part of the
12 package or not at the end is another issue, but he's not here,
13 and I think the Court is right.

14 What's the next step? If we have -- if tomorrow we
15 seat all these jurors and we have one not show up including
16 Mr. Wentz, do we have to go through the process of calling
17 the school and doing these things to try and find out where
18 these people are? That's part of the issue about being --
19 about serving as a juror, and part of why the Court admonished
20 these people to not talk to anybody about it and also to stay
21 in communication with the Court because they might be called.
22 So I'm just going to submit it on that, Your Honor.

23 THE COURT: All right. What was the name of the
24 school that he worked at? Mr. Wright, what was the name of
25 the school?

1 MR. WRIGHT: I'm sorry?

2 THE COURT: What was the name of the school?

3 MR. WRIGHT: Sunrise Mountain High School, Clark
4 County School District.

5 THE COURT: All right. Kenny is still bringing up
6 the jurors in the elevator. So we'll just be sort of at ease
7 for a few minutes until they're all here.

8 (Pause in the proceedings.)

9 THE COURT: What I'm going to do is -- for everyone's
10 memory, recollection -- is we are going to have -- when Denise
11 calls the role, I'm going to ask them to stand up so you can
12 jog your memories as to who everybody is. All right.

13 MR. WRIGHT: Thank you.

14 THE COURT: That's the best way I can think of to
15 accommodate the concern about, you know, remembering who's
16 who. Ms. Ruiz and Mr. Tomboc are being substituted in.

17 So, Kenny, make sure they're in numerical order, and
18 then bring in just our 36.

19 (Panel of prospective jurors entering 10:22 a.m.)

20 THE COURT: All right. Court is now in session. The
21 record should reflect the presence of the State through the
22 Chief Deputy District Attorneys Mr. Staudaher and Ms.
23 Weckerly, the presence of the defendant Dr. Desai along with
24 his counsel Margaret Stanish and Richard Wright, the presence
25 of the defendant Mr. Lakeman along with his counsel Mr.

1 Santacroce, the officers of the court and the 36 prospective
2 jurors who have all been passed for cause.

3 Good morning, ladies and gentlemen. You are all back
4 here today because as you know you've been through the
5 process. We began this process two weeks ago today, and it
6 took us a number of days of questioning numerous jurors, well
7 over a hundred, to reach the point where we've qualified all
8 of you.

9 We're going to now have a roll call, and as you can
10 imagine because it's been such a lengthy process and, you
11 know, some of you may have been questioned a couple weeks ago
12 some of us might have a little bit of difficulty recollecting
13 -- matching a face with your questionnaire. So when Ms.
14 Husted our court clerk calls your name in the roll call,
15 please stand when you answer present or here, and just face
16 the attorneys so they can make sure they recognize you and
17 remember you from the questioning that's taken place in the
18 past.

19 Ms. Husted, would you please call the roll in
20 numerical order.

21 THE CLERK: Yes, Your Honor.

22 (Roll called of panel of prospective jurors.)

23 THE COURT: All right. Ladies and gentlemen, thank
24 you.

25 Does the State have the form for the peremptory

1 challenges?

2 MR. STAUDAHER: Yes, we do, Your Honor.

3 THE COURT: All right. The State may fill out its
4 first challenge, and then pass that to the defense and so
5 forth.

6 Ladies and gentlemen, what's going on right now is
7 both sides are given nine peremptory challenges in this case.
8 That is part of the process that is designed to ensure that
9 each side has a completely fair and unbiased jury.

10 If you are excused pursuant to one of the challenges,
11 please don't be offended in any way. It is as I just said
12 simply part of the process designed to ensure that both sides
13 are confident that they have a jury composed of 18 people who
14 are completely open-minded and who have no bias or prejudice
15 toward or against either side.

16 We're just going to keep all of you in the room as
17 the attorneys pass the paper exercising their challenges back
18 and forth so that if they need to be refreshed in their
19 memories by looking at one of you to see, okay, yes this is
20 the person who corresponds to this or that questionnaire,
21 they'll be able to do that.

22 Once all of the challenges have been exercised or
23 waived we'll take a quick recess, and then we'll be bringing
24 all of you back in and announcing who has been excused and who
25 has been selected as a juror in this case.

1 If you are one of the lucky ones who has been
2 selected, what we'll then be doing is the Court takes about 15
3 or 20 minutes to give you some introductory instructions. At
4 the conclusion of the trial, I give detailed instructions in
5 writing, and those detailed instructions at the conclusion of
6 the trial control your deliberations.

7 Following the initial instructions by the Court the
8 attorneys will have the opportunity to make their opening
9 statements, and that will probably take all of today, and then
10 beginning tomorrow we will begin with the testimony from the
11 witnesses.

12 In terms of scheduling, we'll probably begin each
13 morning around 9:30, maybe 10 o'clock, and we always try to
14 end by 5 p.m., and some days we may be ending earlier. I know
15 some of you had to stay until 6 o'clock, maybe even later
16 during the jury-selection process. The reason we stayed late
17 on those days is because we try to make sure people don't have
18 to take an extra day off of work just to come back for jury
19 selection. So that's why we try to run those days late, but
20 we try to end at least by 5 every day.

21 The reason for that is because -- as I'm sure you've
22 read in the paper and have heard -- the County budget is very
23 tight right now, and they don't want to pay overtime to the
24 court -- these fine people right here -- the court staff.
25 Obviously the Court does not get overtime, but we have been

1 encouraged very strongly by the County to make sure that we
2 try to end by 5 as much as we can. So again that overtime for
3 staff doesn't come into the County budget -- come out of the
4 County budget I should say.

5 And for those of you who are not selected, obviously
6 you'll be excused, and then you'll be free to leave just as
7 soon as we complete this part of the process.

8 I want to thank all of you for your patience in this
9 process. I know at a minimum each of you that's here today
10 has had to take at least three days off to be here, the day to
11 fill out the questionnaire, the day that you came in and we
12 questioned you here in the courtroom and then of course today,
13 and so I recognize even for those of you who are not going to
14 be chosen there's already been some inconvenience, and I want
15 to thank you.

16 But I'm sure you can all appreciate how important
17 jury selection is to the process and how important it is that
18 both sides feel confident that they've gone through the
19 process, that they've, you know, adequately questioned people,
20 that they've had an opportunity to adequately question people
21 and that they finally at the end of the day have a jury that's
22 composed of open-minded and neutral people.

23 And so, again, this is somewhat unusual because of
24 the publicity and whatnot in the case that the process has
25 taken a little bit longer than what we typically see, and like

1 I said, I know at a minimum each and every one of you has
2 already had to devote -- you know, this is at least your third
3 day. Some of you may have been here four days, and so thank
4 you for that.

5 And some jurors come in one day, the trial lasts a
6 day, and then the third day they deliberate and they're done.
7 I can tell you that is pretty unusual. You know, this trial
8 is obviously on the end of lengthy trials, but the average
9 trial is at least a week. Many trials are longer,
10 particularly civil trials in this jurisdiction which rarely
11 last only a week.

12 The good news is you will get paid because now you've
13 had to be here three days. I think that's the cutoff. Also,
14 if you're selected, you won't have to park where you've been
15 parking. You'll be able to park directly across the street
16 once you're selected as a juror. So that should make things a
17 little better.

18 When I'm driving home after a long day of trial or
19 jury selection, you know, I'm always passing the people hiking
20 back over to the big red thing, and I always feel bad for them
21 because, you know, sometimes, we've gone late in the day
22 because we try to do as many people as we can, and I always
23 see, you know, people trudging, and they're all tired, and
24 usually fortunately they're walking in groups which makes it a
25 little bit, you know, safer being downtown and sometimes at

1 night.

2 I wish we had closer parking for people because I
3 think that really is far especially for older people and maybe
4 people with, you know, not severe disabilities where they're
5 going to get to park closer, but, you know, milder
6 disabilities, but it's kind of what we're left with with what
7 was available downtown here.

8 I see some of you looking around there at the
9 cameras. There may be cameras in here during the trial phase
10 of this case. The media is never allowed to film members of
11 the jury as they come and go or sit in the jury box. So don't
12 be concerned about that in any way. If you are selected, you
13 will never -- your image will never be captured on film. That
14 is not allowed.

15 And sometimes you may note if you are selected and
16 there are cameras, they actually point them up towards the
17 ceiling so that I know they're not filming the jury. I know
18 sometimes people worry about that. They don't want to be on
19 TV. They don't want to have their image captured, but that's
20 not a concern because we never allow the media to film or to
21 take still photographs or anything like that of members of the
22 jury.

23 You know, in Federal Court, they don't have cameras,
24 and sometimes if you watch the news, you can see the court
25 sketches, and sometimes they'll actually sketch the jurors.

1 To my knowledge we don't have anyone coming in to do sketches
2 or anything like that. So it'll just be, you know, filming
3 and possibly some stills, but I don't want anyone to be at all
4 concerned. You won't be photographed or anything like that.

5 Some of you may want to be photographed. If that's
6 the case, then that's just up to you.

7 Mr. Staudaher, what number are we on?

8 MR. STAUDAHER: I believe we are on the fifth strike
9 for the State.

10 THE COURT: All right. Is that your sixth, Mr.
11 Staudaher?

12 MR. STAUDAHER: This will be our sixth now.

13 MR. WRIGHT: We need to take a moment, Your Honor,
14 after this.

15 THE COURT: We'll be taking a break.

16 MR. SANTACROCE: No. He means between perempts.

17 THE COURT: Oh. Well, go ahead State. Then I'll see
18 counsel at the bench. I would tell jokes to fill up this dead
19 time, but I could get in trouble. They probably wouldn't be
20 very funny anyway.

21 I am looking around, and I see a few faces like, oh,
22 I hope they pick me, and I see faces, oh, I hope they don't
23 pick me.

24 I can tell you this -- and really almost to a person
25 -- in the over 22 years that I've been a lawyer either as --

1 you know, working as a lawyer trying cases myself or now as a
2 Judge, I've spoken literally to thousands of people who have
3 served as jurors, and, you know, many of them didn't want to
4 serve. They tried to come up with excuses and this and that.

5 And I can tell you really almost to a person, once
6 people served and talked to them after the case is completely
7 over, I can tell you almost to a person, you know, easily,
8 confidently I can say 99 percent of them are happy that they
9 had to -- that they had to do it, and they find it to be a
10 very interesting and rewarding experience.

11 I can't say a hundred percent because every once in a
12 while you get someone who says, you know, it was stressful, or
13 it was difficult, or they aren't glad that they had to do it,
14 but really, like I said, comfortably, 99 percent of the people
15 who do it, they're glad that they had to do it, and they find
16 it interesting, and they find it rewarding.

17 And I've even run into people that served as jurors
18 on trials I did as a lawyer, you know, at, like, Walmart or
19 whatever, and I am told I have a fairly distinctive voice, and
20 they'll say, Are you Valerie Adair. I remember you. And I
21 can -- I can tell you people still remember trials, you know,
22 from decades ago that were jurors, and they say, still,
23 decades later that's -- you know, I'm so glad I did it. That
24 was one of the best things I've ever done. I've even had
25 people, you know, say to me that was one of the most

1 significant things that I've ever done in my life and things
2 like that.

3 So while I am looking at you now and I see some of
4 you -- I'm just guessing here trying to read your minds based
5 on your expressions -- are thinking oh, maybe they won't pick
6 me. You know, if they do, it's certainly important. It's
7 obviously a very significant part of our process, a
8 significant part of one of our constitutional rights, but
9 people do find it rewarding --

10 May I see counsel at the bench. -- although it can
11 be challenging.

12 (Conference at the bench not recorded.)

13 THE COURT: Ladies and gentlemen, we're going to take
14 a quick recess. We're going to take about 10 or so minutes
15 for recess, and, you know, if you need to use the restroom or
16 anything like that, that should give you enough time.

17 Before I excuse you I must admonish you. You are not
18 to discuss anything relating to the case with each other or
19 with anyone else. You're not to read, watch, listen to any
20 reports of or commentaries on this case, any person or subject
21 matter relating to this case, and you're not to form or
22 express an opinion on the trial.

23 If you would all please stand and then just follow
24 our bailiff Officer Hawkes through the double doors, we'll see
25 you back here in about 10 or so minutes. We'll make it 11:10,

1 and everyone please remember where you're seated because
2 you'll have to return to those seats.

3 (Panel of prospective jurors recessed 10:57 a.m.)

4 THE COURT: Mr. Santacroce -- Kenny, would you please
5 just remain in the hallway to make sure nobody's talking to
6 them and they're not doing anything they're not supposed to
7 do.

8 All right. For the record, just a second before the
9 break my JEA Sharry informed me that Mr. Wentz was on the
10 phone, and I directed her to find out where he was and what he
11 had to say about why he didn't appear and everything like
12 that. So we'll learn that. I'll put it on the record, but I
13 think even if, you know, he's parking or whatever, I think we
14 are too far along in the process to bring him in at this
15 point.

16 Is there anyway we can finish the perempts on the
17 paper without marching everybody back in, or do we need to
18 bring them all back in?

19 MR. STAUDAHER: We don't need them.

20 THE COURT: Defense? Because I just really -- I, you
21 know, had that fascinating talk about the parking. I just
22 can't think of anything else to say.

23 MR. WRIGHT: No, we don't need them.

24 THE COURT: Okay. All right. So take -- if you need
25 to use the restroom or whatever, take your break right now,

1 and then let's finish the forms so we can bring them all in,
2 and they don't have to sit here in that uncomfortable silence.
3 All right.

4 MR. WRIGHT: And before we go on with them, if we
5 could figure out what happened with Mr. Wenthe --

6 THE COURT: Yes. I'm going to go right now. I'm
7 going to take a very brief break myself, and then we'll learn
8 from Sharry. I'll just have her come in and tell us.

9 MR. WRIGHT: Thank you, Your Honor.

10 (Proceedings recessed 10:59 a.m. to 11:11 a.m.)

11 (Outside the presence of the panel of prospective jurors.)

12 THE COURT: For the record, my JEA spoke with Mr.
13 Wenthe who returned her call from today.

14 Correct?

15 THE JEA: Yes.

16 THE COURT: And claimed that he didn't receive the
17 message --

18 THE JEA: Yes, that's correct.

19 THE COURT: -- telling him to show up. And then what
20 did he say, that there had been a gas leak --

21 THE JEA: He just -- yeah. He said they evacuated,
22 and he's a band teacher, and they're very busy, and he
23 apologized, but he claimed he didn't -- he claimed he didn't
24 get the message. So I don't know what to tell you.

25 THE COURT: And apparently said he didn't call back

1 this morning, I guess, because there was a gas leak at the
2 school. So that's all we can --

3 Right, Sharry, that's really all you can add?

4 THE JEA: Yes.

5 THE COURT: All right. Has the defense exercised
6 their sixth challenge on the form?

7 MR. SANTACROCE: Yes, we're just about to right now.

8 THE COURT: Kenny, they're going to fill out the rest
9 of the form, and then we'll bring them all in.

10 THE MARSHAL: Okay.

11 MR. WRIGHT: I would request he be brought in to the
12 pool.

13 THE COURT: Well, I think, you know, we've gone too
14 far without --

15 MR. STAUDAHER: We've started striking.

16 THE COURT: -- without the -- without him being here.
17 You know, a decision was made, and I think I have to stand by
18 that decision. Also, I mean -- again, okay, today now there's
19 a gas leak, and that's why he didn't return the call promptly,
20 you know, when, you know, I'm assuming close to 9 o'clock.
21 That's when court staff started calling him, and it was almost
22 right before the break which was a couple minutes of 11. So I
23 think that that may be indicative of further difficulties.

24 So Court stands by its decision, and, you know,
25 you're already on your sixth challenge with who's here, and so

1 that request is denied.

2 MR. WRIGHT: Okay. He could come in and be the first
3 alternate in the alternate pool, and we haven't completely
4 exercised our challenges. It sounds like he has a valid
5 explanation to me, and I presume his cell phone and everything
6 is off when he's in school, and so --

7 THE COURT: Well, that would make sense for today,
8 but that wouldn't make sense for why he didn't get the message
9 for the other days, and I think there has to be -- I don't
10 know what the State's position is on adding him as sort of the
11 empty chair or making him another alternate, a first alternate
12 or what have you, but I think at some point in time there has
13 to be a certain amount of certainty.

14 And what's the State's position on that?

15 MS. WECKERLY: Your Honor, we started striking jurors
16 with the people we had in front of us, and for -- you know,
17 great now he calls in when we're halfway through the process.
18 What, we'd have to wait until who knows when for him to show
19 up. I mean, I don't know why he gets more accommodation than
20 anybody else, and everybody else the Court has said could
21 serve, and so we're fine with the Court's ruling, but we don't
22 want to start back up again or start over and, you know,
23 evaluate the pool with him in it.

24 THE COURT: Right. Again, I think there has to be
25 some kind of certainty. You know, like I said, everybody else

1 managed to get here, and so it is what it is, but these other
2 people were passed for cause as well.

3 MR. WRIGHT: But they weren't randomly in the same
4 order. That was a drawn panel. This isn't just some bucket
5 of water. This was a randomly selected jury panel that we
6 followed randomly. He is for cause. He is available, and he
7 is still here, and the peremptories haven't all been
8 exercised, and he didn't have the bias that was rehabilitated
9 as others, and so I simply object for the record because he's
10 here and available, and we can select him.

11 THE COURT: Well, first of all, he, you know, may be
12 available, but he's not here, meaning in the courthouse.

13 MR. WRIGHT: Well, we don't know.

14 THE COURT: In the courthouse.

15 MR. WRIGHT: I don't need to see him. I can --

16 THE COURT: Right.

17 MR. WRIGHT: Right. So we can go right ahead and put
18 him in. I know what he looks like.

19 THE COURT: State -- Well, maybe the State doesn't
20 know. I mean, again, I don't know why -- I understand you
21 want to treat him specially because you feel that he's more
22 unbiased or maybe, you know, a better juror for your client.

23 I think the record is what the record is, and I don't
24 think -- you know, if mistakes were made in qualifying jurors
25 for cause, then mistakes were made, and the Nevada Supreme

1 Court -- if we get there -- can deal with that, but I don't
2 think that we need to somehow treat Mr. Wente differently than
3 we would treat any other juror who, you know, didn't call,
4 didn't show and called two hours after they were supposed to
5 be here and an hour into the jury selection process or an hour
6 into the exercise of the peremptory challenges.

7 In terms of the record and whatever legal obligation
8 the Court may have other than what I -- you know, my sense is,
9 does the State want to weigh in on that?

10 MR. STAUDAHER: No, Your Honor.

11 MS. WECKERLY: No, Your Honor. I mean, the Court has
12 to -- this happens all the time.

13 THE COURT: Right.

14 MS. WECKERLY: People don't show up, and we can't --

15 THE COURT: Right.

16 MS. WECKERLY: We keep going. We don't wait for one
17 person.

18 THE COURT: I'm sorry. Where are we?

19 MR. STAUDAHER: Eight.

20 THE COURT: Okay. We're talking about Mathahs, that
21 he's still in there.

22 MS. WECKERLY: It is in there.

23 THE COURT: The clerk was concerned, but that's fine.

24 MR. STAUDAHER: Right. It should read just like that
25 though.

1 what happened during the day, and then additionally, what's
2 going to happen tomorrow. Aside from him -- me having him
3 updated from transcripts and things.

4 My request is partial daily transcripts at -- and at
5 the expense of the court. I mean, this is the request I am
6 making because he is of diminished capacity and he's
7 handicapped and needs to be accommodated.

8 MS. STANISH: And if I could make a suggestion in
9 that regard. The District Attorney has been trying to project
10 for us, at least in groups, what their witnesses may be, so we
11 may be able to in advance identify witnesses that need to be
12 transcribed and maybe the -- the Clark County staff could
13 augment, rather than -- contracting it out to save money?

14 No, it --

15 THE COURT: It's just we --

16 MS. STANISH: -- won't work?

17 THE COURT: -- don't have -- I mean, I think there's
18 three gals, right, Janie?

19 MS. STANISH: No floaters?

20 THE COURT: Transcribers for all district court
21 that's -- that just work on transcription. That's all of the
22 departments. How many? What 34 departments or whatever? And
23 so they -- you can't -- we are not allowed to direct one gal
24 just to do the dailies. And obviously, you know, typically,
25 the old fashioned way where you had the court reporter, there

1 were two court reporters who did it, so that one gal would
2 take off and do her dailies for that day, and then you'd have
3 a new gal come in.

4 Now that we have the court recorder system, we have
5 to farm it out because we don't have the -- we just don't have
6 the staffing -- the capability to do it. That's the -- and --
7 that's as simply as I can --

8 MR. WRIGHT: Okay.

9 THE COURT: -- say it.

10 MR. WRIGHT: And my -- the final request Margaret
11 touched on is I'm going to -- I mean, they have been telling
12 us the fashion in which it's going to go, you know, as blocks
13 of witnesses, but I am going to need to know the witnesses for
14 the next day on each -- each given day to -- to be able to
15 discuss with -- after talking with Dr. Desai about what
16 happened today. What -- what is coming up tomorrow.

17 And so I -- that's -- and -- I mean, I had already
18 talked to them about that because I've got over 100 boxes, and
19 I just need to know which witnesses are coming up, but
20 additionally, I simply need to know it for Dr. Desai.

21 So those are all the requests that I make.

22 THE COURT: All right. Does the State want to
23 respond to these -- just one by one, and then I'll go over --
24 go over all of them?

25 MR. STAUDAHER: Oh, as far as all of these are

1 concerned?

2 THE COURT: Yeah.

3 MR. STAUDAHER: Your Honor, we feel that we are in a
4 little bit of a -- I can respond to some of them, but I think
5 for -- for a number of the things that he went through as far
6 as a list of -- for about shorter days or fewer days or
7 whatever, I mean, we're just going to have to submit that to
8 the Court because I don't think that we can weigh in on
9 limiting his accommodation, at least from the State's
10 perspective.

11 But as far as the question regarding the witness
12 list or the witnesses. To the extent that we can -- we can
13 provide that as it -- as we go, we will certainly endeavor to
14 do that. But -- but the problem is that sometimes we have to
15 switch our order up at even the last minute, or a witness that
16 we -- we give them, we ended up making -- may not be able to
17 call that witness for some reason.

18 So with that -- with that knowledge that it -- it's
19 not set in stone as to these witnesses per se, but we will on
20 a daily basis try and give them a head's up as to who we think
21 we're going to be calling for the next day. It also depends
22 on how far we get in a particular day with certain witnesses
23 and how that might alter their schedules and when they can
24 come in. Because it's a very dynamic thing from our side.
25 We've got a lot of people and a lot of schedules we're

1 juggling.

2 So that's in part why we can't just say, okay,
3 here's a -- here they all are, listed in the same -- same
4 order. So we will try to be as accommodating as we can with
5 regard to that, but just so that everybody's clear that I
6 don't -- I just don't want anybody standing up and saying,
7 hey, they said they were going to call this person, this
8 person, or this person, and they only called that guy, and
9 then they brought somebody else in.

10 That's not what we will do but it could happen. But
11 on -- in a general basis we will try to be accommodating.

12 THE COURT: Okay. And then the issue of he wants you
13 to phrase your questions a certain way --

14 MR. STAUDAHER: No. We're --

15 THE COURT: -- so that it's simple.

16 MR. STAUDAHER: -- we're not going to change our
17 questions around, and I don't think that this is a way to -- I
18 don't want to have to be worried about how to structure my
19 questions so that Dr. Desai can supposedly answer those
20 because, as the Court's aware, it's our position that he's
21 malingering and not really -- has the -- the impairment that
22 he does.

23 THE COURT: All right. On -- you know, obviously the
24 Court has to take into account the reported condition of Dr.
25 Desai, but I also have to balance, you know, the proceedings,

1 inconvenience to the jurors, and other things. And so I'm
2 going to start with the 9:30 to 1:00. That simply is not a
3 long enough trial day, and I think that, you know, I believe
4 our estimate of six weeks was based on a full day, correct?
5 Not on a partial day.

6 So we told these people six weeks into June. Well,
7 if we go 9:30 to 1:00, now what does that mean? July? And
8 so, you know, to me, I don't think we can change the game
9 right now and have these partial days when jury selection was
10 based on an assumption -- we told people, oh, well, typically
11 we end by 5 and blah, blah, blah.

12 I don't think we can now change the scheduling when
13 we've got our panel of jurors and gave them an estimate based
14 on a full day, No. 1.

15 No. 2, you know, it's difficult to find people who
16 can do six weeks or eight weeks. Well, now if you're talking
17 about, you know, three months or something like that, I think
18 it becomes further burdensome to them. So I would say no to
19 the 9:30 to 1. We can start at 9:30, at your request, Mr.
20 Wright. Some days, maybe we'll start at 10. You know, we'll
21 go to a lunch break, and we can give you an hour and fifteen
22 minutes or an hour and a half for lunch, and you're welcome,
23 you know, I know you have to -- I don't know where your office
24 is, but I know you have to walk back --

25 MR. WRIGHT: Across the street.

1 THE COURT: -- oh, okay. So you'd rather walk back
2 to your office?

3 MR. WRIGHT: Yes.

4 THE COURT: Okay. I was going to say, you know, if
5 we can accommodate you by letting you use the conference room,
6 I'll make that accommodation or whatever to save time for you.
7 I'm happy to do that. You know, normally we kick the lawyers
8 out because that inconveniences my staff, but, you know, I'm
9 not concerned with that so much, and -- but that again, is
10 inconvenient to the Court staff, but I'll do that, you know,
11 if that would help you, but you say no.

12 But, you know, we can start at 9:30, 10 some days,
13 but I feel like we at least have to go to 4, possibly 5. But
14 as it goes on, if it seems that that's really a long day, I
15 mean, we'll -- we all get tired here. We all got tired
16 through jury selection. Then we can modify that, but I'm not
17 willing to not do essentially, full days on this.

18 MR. WRIGHT: Okay. Could --

19 THE COURT: And as I said, I mean, I think we -- you
20 know, we picked a -- a jury based on the assumption of full
21 days, and we'll see how, you know, maybe some days we'll take
22 a Friday off, or we'll end early some days. And I think all
23 of us, you know, myself, the staff, and the lawyers, you know,
24 as the -- and the jurors, you know, they may want an afternoon
25 off, and they may want a Friday off just to get things done in

1 their lives and we can certainly accommodate that, but I'm not
2 going to make a hard and fast rule that every Friday is going
3 to be off or every day is going to be 9:30 to 1.

4 So, you know, maybe on, you know, certain days, you
5 know, if it's a particular witness from the prior day or
6 something like that, you want to renew the motion, and as I
7 said, you know, there may be times if -- however long this
8 drags on, you know, if it's really, you know, that we may say
9 to the jury, take -- we're going to take the Friday off or
10 we're going to end early on some days. You know, certainly
11 we're -- you know, we can be flexible in that regard, but as I
12 just said, I'm not willing to make a hard and fast rule 9:30
13 to 1:30 every day.

14 MR. WRIGHT: Okay.

15 THE COURT: Or a 9:30 to --

16 MR. WRIGHT: Could --

17 THE COURT: -- 1 because I just don't --

18 MR. WRIGHT: -- could I respond on that --

19 THE COURT: -- think that's --

20 MR. WRIGHT: -- one --

21 THE COURT: -- sure.

22 MR. WRIGHT: -- as you go through them? All right.

23 The -- he does not have the ability in my judgment to put in
24 long days. The long days he put in -- by the final jurors on
25 those days, his abilities were diminished and he -- I couldn't

1 even go back and talk to him at the office. He was tired and
2 needed to go home. So now I'm supposed to go until 4 or 5:00,
3 then go back, take him back after a full day in court, and sit
4 with him and have this and then go over what's for the next
5 day.

6 That's the whole purpose --

7 THE COURT: Well --

8 MR. WRIGHT: -- of shortened diminished hours because
9 of his cognitive deficits and his inability to fully express
10 himself without me pulling it out. I am not going -- I don't
11 care to balance the inconvenience to the jurors against my
12 client's health and his right to a full, fair trial. I don't
13 want to kill myself, I don't want to kill him in trying this
14 case.

15 I don't know how I can do 9:30 to 5, and then
16 accomplish all I have to do with him. And I do treat every
17 client -- I understand I -- I have the luxury of a lesser
18 caseload and even the dummies I take time with and talk to
19 them about everything. I mean, I interact. I don't jump in
20 and make the decisions for them. I consult with them, I let
21 them make the call on things.

22 THE COURT: Right.

23 MR. WRIGHT: And I know PDs don't always have the
24 luxury of being able to do that, but I do it, and I don't know
25 because for me with jury selection it was a test and it was

1 easier because each time it's just a juror, it's not recalling
2 anything in the past or interacting and thinking and I could
3 get it down. But I am truly concerned about his -- his
4 capacity diminishes further by the end of a day. And so when
5 he's mentally exhausted and the words are harder to put
6 together and get out to me, then I'm supposed to go back and
7 work with him about what happened and --

8 THE COURT: Okay. Well, first of all, Dummies is not
9 a -- is not a word this Court uses.

10 MR. WRIGHT: I would -- that was just me talking
11 about the --

12 THE COURT: All right. Well, secondly, you know, Mr.
13 Wright, I mean, here's the thing. First of all, there is the
14 whole -- we're not even touching on the issue of exaggeration
15 and malingering and everything like that, but, you know, we
16 told the jury through jury selection -- and I understand your
17 -- your focus has to be 100 percent on your client and what's
18 good for your client, and, you know, taking as much time as
19 you can with your client and everything like that, but I have
20 to be mindful too, that when we picked a jury, you know, we
21 told them a certain period of time, and, you know, we may only
22 have four alternates as it's turning out, you know, we're
23 already contacting people who are coming up with new problems
24 too, that we discussed in chambers, that they never mentioned
25 really during jury selection.

1 And so that's troubling to me because what does that
2 mean in a six or eight week trial if already two of these
3 people, you know, one, we got a note from the doctor that I
4 read to you in chambers, and the other one is now saying,
5 well, she's not going to be covered by insurance if she, you
6 know, serves as a juror.

7 So I have to be mindful that I need to get to the
8 end of the day with 12 jurors who have heard all the evidence
9 and who can deliberate on this, and all I'm saying is, you
10 know, the time to me to have made some of these decisions was
11 before jury selection.

12 I do not believe that for every single day we need
13 to go to 9 -- from 9:30 to 1:00. What I'm telling you is if
14 there are particularly important days -- and by "important" I
15 mean, testimony that directly -- percipient witnesses who
16 provide information that Dr. Desai may refute, may have
17 personal knowledge about, witnesses that you've mentioned,
18 those are the ones you're going to need the transcripts, then
19 perhaps those days we can take a -- you know, we'll miss lunch
20 and break earlier in the day or something like that.

21 But I'm not going to issue a blanket ruling that
22 says every single day it's going to be 9:30 to 1:00 regardless
23 of who's testifying and regardless of whether or not Dr. Desai
24 is going to have to weigh in on the testimony or what have
25 you. And so, you know -- and once the testimony is over, you

1 know, let's just say the first day is the CDC lady -- or
2 man -- male or female who is going to testify about the
3 scientific stuff, much of which you're already going to know
4 what it is, and, you know, you -- to me, you know -- I mean,
5 I've never been a defense attorney, you know, obviously you --
6 you know better than I do what your plan -- you know, what you
7 need to do, but, you know, why do you need to go over that
8 with Dr. Desai before the next day's witness who, let's say,
9 is somebody else that he really doesn't have any personal
10 knowledge about or ability?

11 To me, the better way to do this is to, you know, do
12 it witness by witness. And what witnesses are the ones you're
13 really going to need to prepare for, or what witnesses are the
14 ones that you're really going to need a break for, not just to
15 have some blanket thing that regardless of what we're doing
16 that day, we're going to end at 1 p.m.? I mean, I'm just --

17 MR. WRIGHT: Okay. But --

18 THE COURT: -- not willing to -- to go there at this

19 --

20 MR. WRIGHT: -- okay.

21 THE COURT: -- point.

22 MR. WRIGHT: Okay. Just --

23 THE COURT: And I -- you know, it's just --

24 MR. WRIGHT: -- my -- my response is he's just as
25 exhausted at 1:00, regardless of what's going on in here,

1 okay? That has been my experience.

2 THE COURT: Well, we were --

3 MR. WRIGHT: And I --

4 THE COURT: -- you know, and frankly, Mr. Wright, we
5 were -- I was exhausted. I think we were all exhausted
6 through the jury selection process. I, myself, was absolutely
7 exhausted as I told you folks at several bench conferences. I
8 can't speak for the lawyers, but I would assume if -- if I was
9 exhausted, you folks were probably exhausted. They were long
10 and exhausting days.

11 MR. WRIGHT: But your mental faculties didn't
12 diminish. You got brighter. He -- this doesn't happen with
13 the -- he -- he sundowns, whatever you call -- whatever the
14 medical term is, he gets worse as the day goes on. And so the
15 time you're leaving me to work with him on the day and prepare
16 for the next is when he's the least -- when he's exhausted and
17 his cognitive deficits have become more severe.

18 That's -- that's what I'm telling you and why it
19 needs to be a limited time. And fortunately we -- if it's an
20 issue with the jury, we didn't excuse the hardships. We need
21 more alternates then. I mean, if that's going to be an issue
22 and the idea is we can't accommodate him -- and I didn't bring
23 this up. I expected the case to be stopped by the Supreme
24 Court. It was that simple with me, okay?

25 So did I bring up special accommodations and

1 everything? No. I thought the Supreme Court would grant our
2 writ, and -- and so --

3 THE COURT: So --

4 MR. WRIGHT: -- then I go through --

5 THE COURT: -- well, they didn't, Mr. Wright. And,
6 you know, you should have anticipated the possibility that
7 they wouldn't grant the writ and that we would go forward.
8 And, you know, I made -- I think I've been making it very
9 clear since the, you know, nine months ago at the calendar
10 call that I expected people to be getting ready, and when I
11 made the ruling -- oh, I can't remember -- I think it was the
12 calendar call day for this matter, you know, I said, we're
13 going forward. And we started selecting a jury.

14 And what I'm hearing from you is, well, I -- you
15 know, I was going through the motions, I was selecting a jury,
16 but I didn't really think we would be empaneling a jury.

17 MR. WRIGHT: Correct.

18 THE COURT: Well, here we are --

19 MR. WRIGHT: So I --

20 THE COURT: -- and, you know, I'm not going to reopen
21 the jury selection process and now call everybody back in and
22 so, oh, well, okay, now if this takes until July can you --
23 can you folks do it?

24 MR. WRIGHT: I'm not --

25 THE COURT: Like I said, I'm willing to make

1 reasonable accommodations. I don't believe that reasonable
2 accommodations are, as you've requested, going only from 9:30
3 to 1:00 every day, regardless of who the witnesses are,
4 regardless of how many breaks we've taken during that
5 particular day, regardless of whether or not the CDC expert or
6 whoever the -- it is is someone who is basically testifying
7 from their report, giving information that you already know,
8 that is something Dr. Desai probably isn't going to be
9 commenting on anyway. I don't see a reason to do that.

10 Now, you know, as this goes -- I mean, it's
11 somewhat, you know, a flexible process. As this goes forward,
12 you know, you can -- we can address this issue as things
13 arise, as, you know, witnesses come up that you need more time
14 with, then you can -- you can address the issue at that time.
15 But as I said, I'm not just willing to say it's only going to
16 be from 9:30 to 1.

17 Now, if we start and there are, you know, numerous
18 difficulties or, you know, you can -- you come back in and
19 renew your motion or something like that, we can revisit the
20 issue. What I'm telling you is at --

21 MR. WRIGHT: Okay. I'm --

22 THE COURT: -- this point in time --

23 MR. WRIGHT: -- that's what I'm --

24 THE COURT: --- I am not willing to limit the trial
25 days --

1 MR. WRIGHT: -- okay.

2 THE COURT: -- to four days a week as you've
3 requested and limit the trial time to 9:30 to 1.

4 MR. WRIGHT: Okay. And I'm just objecting and
5 saying, I disagree. And I thought the Supreme Court in
6 denying the writ said, keep track of it and see how the
7 accommodations go and --

8 THE COURT: Right. They said --

9 MR. WRIGHT: -- everything.

10 THE COURT: -- reasonable --

11 MR. WRIGHT: So I sat there, kept track of it, did
12 everything --

13 THE COURT: And we allowed you to --

14 MR. WRIGHT: -- evaluated my --

15 THE COURT: -- do everything.

16 MR. WRIGHT: -- I understand you did, and I took all
17 of that into consideration, eval'ed it -- evaluated my client
18 and how I'm going to be forward with the case, presenting to
19 the Court the problems that I now have, and I -- I sense I'm
20 being criticized for not having brought it up sooner, the
21 problems I have now experienced the last five days. I'm not
22 clairvoyant. I am reporting what occurred and what I think
23 the remedies are for it. And we do have other jurors
24 available that -- it's not requalifying them, I'm saying, seat
25 10 alternates. We have enough.

1 If that's going to be a problem on getting him a
2 fair trial, get enough jurors in the box.

3 THE COURT: Well, first of all, let me just make this
4 clear. The Court is not suggesting that by going longer days
5 initially I think Dr. Desai is not getting a fair trial. I
6 think he will get a fair trial going longer days with shorter
7 days as needed, depending on who the witnesses are and whether
8 or not they're percipient witnesses and whether or not Dr.
9 Desai has any knowledge relevant to what their testimony is.

10 But if he has no knowledge relevant to their
11 testimony, I'm failing to appreciate why you would need a
12 short day for those particular witnesses, other than the fact
13 that Dr. Desai is getting tired.

14 MR. WRIGHT: But what -- for the non-percipient
15 witnesses he's supposed to take naps in here?

16 THE COURT: No, that's not what I'm --

17 MR. WRIGHT: I'm talking about --

18 THE COURT: -- suggesting.

19 MR. WRIGHT: -- when I'm done with him, when we're
20 done with the day and I have to go back and work with him,
21 that he is mentally exhausted and the words don't -- are even
22 more difficult to pull out of him.

23 THE COURT: Okay. He --

24 MR. WRIGHT: They're mixed up more.

25 THE COURT: -- okay. Mr. -- does the State wish -- I

1 mean, because if -- the scheduling obviously impacts the State
2 and how the State's, you know, contemplated going forward on
3 this. And so does the State have anything they'd like to add,
4 or does the State want to weigh in in any way?

5 MR. STAUDAHER: Well, I mean, I -- to the extent that
6 I think the Court has articulated, the accommodations, if
7 there's a particular day or they run into an issue and they
8 need a shorter day, we don't have an issue with that. I do
9 agree that I don't want to see us have just a very truncated
10 everyday schedule and then have fewer days during the week
11 when we're actually -- this trial will never end.

12 With that -- and I don't have an issue with us
13 starting later in the morning, if that's the best time that he
14 has to work with his client, maybe they talk in the morning
15 about the --

16 THE COURT: Right. That's what I was going to say.
17 I was going to start at 9:00 and have endeavored and I've
18 gotten volunteers among the judges who have agreed to handle
19 my calendars and whatnot, you know, I was planning on starting
20 at 9:00 or 9:30 every day, but you've just indicated that the
21 morning is the best time, and I -- I assume you're somewhat of
22 a morning person yourself, Mr. Wright?

23 So if you want to start at 10 a.m. and, you know,
24 meet with your client for three hours prior to the start of
25 trial, we can move the time to 10 from the 9:00 I had

1 envisioned. I'd be happy to do that -- happy to do that as
2 well.

3 MR. WRIGHT: Well --

4 THE COURT: And that might help you more because now
5 you've got him fresh in the morning?

6 MR. WRIGHT: -- I appreciate that. I'm just talking
7 about the shortened amount of time in court. I -- I mean,
8 really, whether it's 9:30, 10:30, I'm talking about at -- the
9 longer it goes, and I -- I kept track of all that he said in
10 the interviews of different jurors, the more simplistic and
11 it -- he -- the -- he wasn't as good mentally the more tired
12 he became. And he's going to be tired in this courtroom for a
13 long day whether it's percipient, not percipient, or anything
14 else, he's going to be equally exhausted is my point.

15 And so that's why I am just stressing the shortened
16 period of time in the courtroom so that I can fully consult
17 and work with him.

18 THE COURT: Anything else, State?

19 MR. STAUDAHER: No, Your Honor.

20 THE COURT: All right. Here's the deal. Monday
21 we're starting at 9 a.m., you know, you haven't --

22 MR. WRIGHT: I understand that.

23 THE COURT: -- expressed whether -- whether you want
24 -- you prefer the 9:30 start --

25 MR. WRIGHT: No, I --

1 THE COURT: -- or you'd rather have a 10 a.m. start
2 or whatever. So, you know, as I said, if there are some days
3 and some -- you know, the jurors may want the occasional
4 Friday off as well, you know, they're going to get tired. So,
5 you know, sometimes we may do a four-day week, but I'm not
6 going to order that, you know, every week is a four-day week
7 as you've requested, and I'm not going to order that we only
8 have partial days. And, you know, it seems to be that - and I
9 understand, I believe, Mr. Wright, that you're completely
10 earnest in your representations to this Court, I believe that.

11 But, you know, there's been a pattern of trying to
12 delay things, and now there's a request that even though we're
13 going forward with the trial, well, we're going through with
14 the trial, but take even longer, you know, now you want
15 four-day weeks, and you want partial days and whatnot. So,
16 you know, we can start at 9:30 or 10, we won't do the 9 a.m.
17 start that the Court had envisioned. I said we'll give you
18 over an hour for the lunch break. You know, you've indicated
19 you'd rather walk across the street, taking up time for your
20 lunch break, but the Court has indicated that at your choice
21 we will make the court facilities, meaning the conference room
22 or the courtroom itself open and available for you, even
23 though that causes some, you know, difficulty or inconvenience
24 for court staff. I've indicated we would do that.

25 The Court has indicated we would do that. The Court

1 has indicated we will take frequent breaks. As we have been
2 doing and has been requested again. The Court is not willing
3 to circumscribe the questions that the State may ask in any
4 way, as you've requested. The State is free to question the
5 witnesses however they want to, subject, of course, to the
6 regular rules of evidence, you know. You can't use compound
7 questions and things like that.

8 With respect to the daily transcripts. At this
9 point in time, you know, you haven't indicated whether you
10 want a written transcript, or you want the JAVS that the Court
11 is willing --

12 MR. WRIGHT: Written.

13 THE COURT: -- to make available to you.

14 MR. WRIGHT: Written.

15 THE COURT: Okay.

16 MR. WRIGHT: I thought I -- I thought I did state
17 that.

18 THE COURT: Okay. Well, there was talk about it, and
19 then Ms. Stanish said, well, she was concerned, but then I
20 didn't know if moving it. At this point in time I'm going to
21 order that's going to be at the Defense expense, but that you
22 can order partial daily transcripts, meaning, you can select
23 the testimony that you want a transcript of, and that will be
24 what the Court -- Court transcriber prepares for you.

25 All of these issues are flexible. As we go through

1 the case, if there are new issues arise or you want to revisit
2 these issues, you're free to do so, but at the beginning of
3 the case I'm not willing to -- to say, you know, we have to --
4 as I said, you know, only limit it to four days a week or
5 whatever you -- ever. You know, honestly, I'm sure I'm going
6 to be getting tired as the case goes on, and I may be happy to
7 take a Friday off, or to end early on particular days. So you
8 may not get much argument from me from my own, you know,
9 self-interest.

10 But, you know, starting out right now, fresh -- you
11 know, and again, I wanted to start today, but we accommodated
12 again, you know, the Court has accommodated the two days
13 requested, the Thursday and Friday before we even moved into
14 opening statements. So I feel like I've been making a lot of
15 accommodations, or pretty much doing everything that's been
16 asked of the Court so far. You know, you wanted -- I wanted
17 one -- I said I'd give you Thursday, I wanted to do openings
18 today. Both sides said, No, we need another day, even though
19 you've had, you know, months to do this. I said, Okay, fine.
20 You can have the Friday then.

21 I gave you each -- this doesn't relate to Dr. Desai,
22 but I gave you each a day off the first week of jury
23 selection, so the lawyers would have time to file their briefs
24 in the Supreme Court. Again, I know that doesn't concern Dr.
25 Desai, but that was the Court's effort to help the lawyers out

1 so that they wouldn't have to stay up all night writing a
2 brief and then show up in court the next morning. You know,
3 so -- you know.

4 I've -- I think tried to do everything I can to both
5 accommodate your client and accommodate the lawyers. But, you
6 know, I'm not willing to, you know, do things that I don't
7 feel are necessary, that I think are going to -- or that I
8 absolutely believe are not necessary. I may have granted
9 things that I thought were unnecessary, but I did -- allowed
10 them anyway. So I want to make that clear. But --

11 MR. WRIGHT: I --

12 THE COURT: -- you know, and again, it's flexible --

13 MR. WRIGHT: -- I wasn't criticizing --

14 THE COURT: -- Mr. Wright -- it's flexible. You
15 know, as this goes on, you know, we're looking at eight weeks
16 here. So as this goes on, you know, you can keep saying,
17 well, this issue came up or that issue came up or whatever,
18 but, you know, to -- to begin, I'm not going to -- I'm not
19 going to do this.

20 MR. WRIGHT: I wasn't criticizing the Court or
21 complaining and I agree and appreciate the accommodations that
22 have been afforded to counsel and our requests, and I wasn't
23 being critical of that. I am just simply, having read the
24 Supreme Court opinion, knowing now we -- where we now stand
25 and everything, and I just call it accommodations. I mean,

1 but what I'm talking about is part carving out particular
2 necessities to afford him, who is handicapped, and his
3 position, these things that put him in a competent position.

4 And so those are the things that I'm talking about.

5 THE COURT: All right. You know -- again, you know,
6 we can address these issues almost on a daily basis if we need
7 to do that, but, you know, if the State becomes concerned that
8 we're not making enough accommodations, certainly the State
9 can say we're fine with ending at 1:30 or whatever. But
10 again, you know, there's been a pattern of delays here, and to
11 me, you know, now making short days, four days a week, it's
12 just more -- more delays, not with the trial itself, but with
13 getting to where we want to be, which is the jury
14 deliberating, and, you know, hopefully reaching a verdict one
15 way or the other, or telling us they can't reach a verdict,
16 but some sort of, you know, conclusion, if you will, one way
17 or the other.

18 And to do that in, you know, as little time as we
19 can do given the situation. Given the situation.

20 MR. WRIGHT: I really do think I see this case going
21 longer than we forecasted for the jury, so I do think the
22 Court should seriously consider more alternates than we have
23 because I don't want this to -- I don't want this to end --

24 THE COURT: No, I think --

25 MR. WRIGHT: -- for lack of alternates either. And

1 we happen to have some that we could do that with that
2 isn't -- I mean, isn't any requalifying or anything else.

3 THE COURT: All right. And do -- what other issues
4 do we have?

5 MR. SANTACROCE: Margaret? Or should I go?

6 THE COURT RECORDER: I'm sorry, I didn't hear that,
7 Mr. Santacroce?

8 MR. WRIGHT: Go ahead.

9 THE COURT: I kind of forgot that wasn't the only
10 thing.

11 MR. SANTACROCE: I have two issues, Your Honor.

12 THE COURT: Okay.

13 MR. SANTACROCE: My first is a motion in limine to
14 strike the testimony of the CDC investigator, Dr. Schaefer, I
15 believe her name was. We had a telephonic conversation with
16 Mr. Lakeman on or about January 2008. The facts are this:
17 The CDC investigator called Mr. Lakeman on the telephone
18 sometime in January of 2008. She identified herself as an
19 investigator from CDC and asked if he would talk to her? He
20 was reluctant at first, but she promised him anonymity, and in
21 fact, told him that his name would never be used, that he
22 would be assigned a number, and that would only be referred to
23 in any CDC reports by that number.

24 On that basis, Mr. Lakeman openly and freely spoke
25 to the investigator. As it says in her testimony, he

1 cooperated -- he was cooperate -- cooperative with the
2 investigator. Now, the State wants to use this testimony that
3 he gave or this questioning he gave, which was not under oath,
4 he was not advised of any criminal investigation because at
5 that time I don't even believe there was any. He wasn't
6 advised of any ramifications of talking to the CDC
7 investigator, and was, in fact, promised anonymity.

8 Now the State wants to come in and use this
9 testimony against him, and we believe that's highly
10 prejudicial and should not be allowed in. It's not without
11 law to back that up. In the Whistle-Blower Protection Act,
12 there's two classes of people that are protected. The second
13 class of person specifically says, those who are requested by
14 a public body to participate in an investigation by that
15 public body or in a court action, these people are protected
16 from retaliation because

17 No. 1, the Act is to protect and protect against
18 public safety. And in fact, the CDC investigator in question
19 here specifically says, We give anonymity -- I think it was in
20 her interview with the Metropolitan Police Department -- she
21 says, We give anonymity or nobody would talk to us, and we
22 have to protect the public safety, so we offer that anonymity.

23 Based on those factors, I believe that her testimony
24 regarding any telephonic conversation with Mr. Lakeman should
25 be stricken. If the Court is not inclined to do that, then

1 what we're specifically looking for is striking the language
2 where she says that Mr. Lakeman said that he would deny that
3 the conversation ever took place. We feel that that statement
4 is highly prejudicial and it's more prejudicial than
5 probative.

6 THE COURT: Does the State -- I would have
7 appreciated this being in writing, but --

8 MR. SANTACROCE: Well --

9 THE COURT: -- State -- that's okay. State, do you
10 wish to respond?

11 MR. STAUDAHER: Certainly. First of all, a CDC
12 person -- this -- he was not charged criminally at that time.
13 He wasn't in custody. It was a telephone conversation by --
14 by somebody investigating it from an epidemiologic standpoint.
15 They have no standing in this state or this jurisdiction to
16 grant immunity to anyone in any situation. He freely talked
17 to them to -- regardless of whatever they said. Even police
18 are allowed to make a ruse and --

19 THE COURT: That's what I --

20 MR. STAUDAHER: -- you know, that kind of thing.

21 THE COURT: -- was going to say. Government
22 officials -- I mean, typically, it's the police or the --
23 well, I don't know, I'll just go with the police because I'm
24 more familiar with those cases, but they lie to people all the
25 time to get them to talk. I mean, that's like par for the

1 course almost.

2 MR. SANTACROCE: Well, do you want me to --

3 MR. STAUDAHER: And it's --

4 MR. SANTACROCE: -- respond to that?

5 THE COURT: Well, no, but, I mean, we all know it's
6 true.

7 MR. SANTACROCE: But this isn't the police.

8 THE COURT: Right. This is -- well.

9 MR. SANTACROCE: This is protect the public safety on
10 an epidemic outbreak of a contagious disease.

11 THE COURT: But let me ask you this --

12 MR. SANTACROCE: I've heard --

13 THE COURT: -- isn't the, you know, if anyone should
14 be asserting that they don't want to have to testify or they
15 don't want the information to come in against Mr. Lakeman, to
16 me the issue of keeping the public discourse open regarding
17 disease and infection and things like that, that should be the
18 CDC's concern, not your concern. If, you know -- I mean,
19 that's the whole point of that is that, of course you want
20 people communicating with the CDC because that helps them in
21 their public health goals. Something that --

22 MR. SANTACROCE: But --

23 THE COURT: -- you know, the prosecutor's office
24 isn't necessarily concerned with at -- at this, you know,
25 that's not the function of the prosecutor's --

1 MR. STAUDAHER: We are --

2 THE COURT: -- office.

3 MR. STAUDAHER: -- we are concerned with --

4 THE COURT: Right. What I wanted to say is that's
5 not the -- the function of the DA's office to worry about
6 public health issues.

7 MR. STAUDAHER: And again, this is a completely
8 different ballgame than a standard epidemiologic
9 investigation, looking into -- trying to find the root cause
10 of an infection or something to protect the public. I mean,
11 this is criminal activity, at least alleged by the State in
12 this particular case and charged by the State in this
13 particular case.

14 The Whistle-Blower statute -- and I haven't had a
15 chance to review all -- all the law because we don't have any
16 cites to that, but I suspect that -- that the reference that
17 Mr. Santacroce is referring to is to protect the individual
18 giving the information against retaliation from their employer
19 or somebody that they're associated with, who may have
20 influence over them. Not retaliation by a governmental entity
21 who might bring charges against them for their own criminal
22 acts that they're admitting to at the time.

23 There's no --

24 MR. SANTACROCE: That's absolutely --

25 MR. STAUDAHER: -- there's no basis --

1 MR. SANTACROCE: -- incorrect, by the way.

2 MR. STAUDAHER: -- there's no basis whatsoever for
3 the assertion by Mr. Santacroce that the statements made by an
4 investigator for an entity that does not have standing in this
5 court, is not a police agency under the State of Nevada, or --
6 and associated with them that in any way needs to be
7 suppressed, clearly is a problem.

8 The issue with regard to whether or not there's, you
9 know, more prejudicial than probative, that analysis doesn't
10 even come into play here. He made the statements, clearly
11 they're prejudicial. The fact that he says and admits to the
12 actions that he was questioned about, saying that he
13 double-dipped, that he admitted to doing that, to taking a
14 needle/syringe, going into a vial of propofol, going into a
15 patient, going back into the vial of propofol, knowing the
16 risk -- and his statement, actually, to the CDC was, yeah, I
17 knew there was a risk, but I used negative pressure on the
18 syringe to minimize the risk.

19 I mean, that shows his culpability in the acts that
20 he admitted to the CDC person. Those statements are clearly
21 relevant in this proceeding. Clearly relevant to his
22 understanding, his knowledge, his culpability in the crimes
23 that he's charged with, and clearly relevant and -- and
24 probative to this Court and the jury in their determination as
25 to his guilt or innocence.

1 There is nothing in that that would allow this
2 statement to be suppressed. He made it. He -- he even said
3 he would get up in the court and -- or not court, but he would
4 deny it if he was ever confronted with it in the future. So
5 if he wants to get up on the stand and deny it, he can
6 certainly do that. But that is his ability or decision, not
7 Mr. Santacroce's, getting this Court to intervene to -- to
8 essentially suppress something that is truly relevant evidence
9 in this case.

10 MR. SANTACROCE: He's right about the protection
11 against retaliation from the employers, but there's a long
12 line of cases that extend that protection forward. In Garrity
13 v. New Jersey, police officers protected from post-shooting
14 statements. Can't be used against them. There's other lines
15 -- other cases that take this protection even further.

16 And in this particular case, this man gets called
17 from the CDC by an investigator who says, you can tell me
18 anything you want, it's anonymous, we're going to give you a
19 number, you'll never be identified, so he openly tells them,
20 even though he's -- he's not been advised of any kind of
21 repercussions, what he did and he was very cooperative
22 according to the CDC investigator.

23 And now, let's see, eight -- some four years later,
24 this statement where he was advised it would be protected, is
25 going to be used against him and misconstrue his words that he

1 would deny that the conversation ever took place in the
2 future. That statement in and of itself without any kind --
3 taken out of context is more -- more prejudice than probative.
4 It needs to be stricken. If the Court doesn't want to strike
5 all of the testimony regarding the telephonic conversation, at
6 least that statement should be stricken by the Court.

7 THE COURT: All right.

8 MR. STAUDAHER: The -- one last issue. I just want
9 to make sure the Court is aware of this. This all came out at
10 the grand jury. This testimony came out at the grand jury.
11 There were notes taken by the CDC person, that -- those have
12 been provided to the defense. This has been known for years.
13 And here we are at the precipice of trial, bringing a motion
14 in limine to suppress a statement that has been known and out
15 there in the transcripts and is -- this person is going to
16 testify who heard it. They will be subject to
17 cross-examination. He can question to his heart's content
18 about the context in which the question -- or the statement
19 came in, as well as the entirety of the statement and how
20 it -- how it even took place.

21 So it's not like this hasn't been out there.

22 THE COURT: All right. Anything else, Mr.
23 Santacroce?

24 MR. SANTACROCE: No. Thank you, Your Honor.

25 THE COURT: All right. I'm going to deny the motion.

1 First of all, I think the -- as we pretty much all agree, the
2 point of these statutes is to limit or preclude civil
3 repercussions and retaliation by the employer. With respect
4 to the probative versus prejudicial effect, I think the -- you
5 know, the probative value outweighs the prejudicial, I mean,
6 it -- you know, it's prejudicial, they wouldn't want to use it
7 if it wasn't prejudicial.

8 But the probative value, you know, is -- goes to a
9 knowledge of guilt and, you know, I think that that's
10 probative. And again, you know, you can -- you know, if you
11 think that the statement is taken out of context or doesn't
12 mean what it sounds like it means or something like that, you
13 can elicit that on cross-examination.

14 So, you know, the motion is denied for those
15 reasons.

16 MR. SANTACROCE: Okay. I have one other issue.

17 THE COURT: All right.

18 MR. SANTACROCE: The second issue I have was the
19 Court's ruling that it was going to allow the video deposition
20 of Mr. Meana to be shown to the jury. Now, I filed an
21 opposition -- a written opposition to that -- I wasn't here on
22 the day it was argued, Mr. Wright argued it for me, but I've
23 been advised by more learned counsel than myself that I need
24 to place this on the record, so that's what I'm doing.

25 I'm formally objecting to the use of the video

1 deposition of Mr. Meana for these reasons: First of all, it
2 violates the confrontation clause of the United States
3 Constitution. Mr. Lakeman, and I as his counsel, didn't have
4 an opportunity to cross-examine Mr. Meana. If the Court
5 recalls, it was a video deposition where he was in a
6 healthcare facility, we all assembled here in court, the State
7 got to ask all of their questions that they wanted, and then
8 they passed it off to the Defense.

9 Well, Mr. Wright started the cross-examination, went
10 on for a few questions, and then we were advised by the
11 healthcare facility that Mr. Meana could no longer go on.
12 Now, at -- present at that time was also Attorney Cristalli,
13 who represented Mathahs, myself, and Mr. Lakeman. Neither Mr.
14 Cristalli nor myself had an opportunity to cross-examine Mr.
15 Meana. And neither did Mr. Wright have the opportunity to
16 fully examine Mr. Meana.

17 It is patently unfair and a violation of the
18 Constitution and Confrontation Clause to allow that deposition
19 to be shown to the jury when we had no opportunity to
20 cross-examine. And for those reasons, we're asking the Court
21 to reconsider its decision and not allow the video deposition
22 of Mr. Meana to be presented to the jury.

23 THE COURT: Who would like to respond?

24 MS. WECKERLY: Your Honor, the Court's already made a
25 ruling on this. In fact, we were seeking to admit several

1 statements. The Court excluded the, in my mind, the bulk of
2 the request and let in this one narrow part of the State's
3 motion. Certainly the questions that were asked by Mr. Wright
4 covered what could have been testified to by Mr. Meana as to
5 all the defendants because it was all about his treatment
6 and -- and it wouldn't have been unique to Mr. Lakeman or Mr.
7 Mathahs for that matter.

8 And also, the other -- the other sort of supporting
9 testimony that will be presented through other doctors, they
10 can certainly cross-examine that -- cross-examine those
11 witnesses as to his medical condition before and after. And
12 so it was just basic facts from Mr. Meana, and I think -- I
13 would ask the Court not to reconsider its ruling at this
14 point.

15 MR. SANTACROCE: Briefly, Your Honor. It's not the
16 State's decision or call to say what and how I could
17 cross-examine or what applies and satisfies my
18 cross-examination. It's obviously -- obvious that Mr. Lakeman
19 and Dr. Desai have some very different defenses in this case.
20 And I didn't have an opportunity to cross-examine Mr. Meana as
21 to the defenses that apply to Mr. Lakeman.

22 THE COURT: Mr. Wright?

23 MR. WRIGHT: I join in it, and I -- I didn't fully
24 cross-examine him. I wasn't even halfway through. I never
25 even got to the real issue in the case which was his election

1 to not undergo treatment, which is going to come into the
2 causation. I never got to that. That was, like, in February
3 or something.

4 THE COURT: All right. Well, some of that there may
5 be ways you can bring that out through other witnesses. You
6 can seek to have a stipulation or an instruction by the Court.
7 You're instructed Mr. Meana did not seek treatment for
8 hepatitis. You may be able to enter into a stipulation with
9 the State on some of these issues.

10 So some of that may be addressed with the State and
11 some of those concerns may be, like I said, we can deal with
12 those other ways. You may be able to get that testimony in
13 through other, you know, these sort of, what Ms. Weckerly
14 calls supporting witnesses. And as I said, I think at the
15 hearing, you know, everybody in this room knew that there was
16 a time constraint, that Mr. Meana was in -- in poor shape,
17 that we didn't know how long he'd last in the deposition.

18 And I think I said this at the last hearing, you
19 know, you elected, Mr. Wright, how to proceed in your
20 cross-examination. And if you spent a lot of time on
21 cross-examination that, you know, you felt didn't get to the
22 heart of the matter, that was your decision. So --

23 MR. WRIGHT: I --

24 THE COURT: -- right or wrong, I know you don't agree
25 with that, but I think that's --

1 MR. WRIGHT: -- no, I did not know --

2 THE COURT: -- what I said --

3 MR. WRIGHT: -- you said everyone in this room knew
4 he was going to pull -- elect --

5 THE COURT: No, I didn't say --

6 MR. WRIGHT: -- not to come back. I didn't. They
7 said he was coming back. We took a recess. It was going to
8 resume.

9 THE COURT: No, we all --

10 MR. WRIGHT: Then he voluntarily chose not to be
11 cross-examined further. That's the record.

12 THE COURT: Well, I don't --

13 MR. WRIGHT: I had no idea that was ended when it
14 ended.

15 THE COURT: -- I didn't -- okay. You try to put
16 words in my mouth. I didn't say, We all knew it was going to
17 end. I said, We all knew that there's, you know, timing
18 issues, and that he was weak. We all knew that. We all knew
19 the guy was dying. We all knew the guy wanted to go to the
20 Philippines to die there. So, I mean, to say that this is,
21 you know, I accept you were surprised it ended when it did,
22 but, you know, everybody knew what the issues were with Mr.
23 Meana.

24 And so, you know, and it's reasonable. You know,
25 the guy is dying. He's going to get tired. I mean, we've

1 been talking how tired Dr. Desai is getting. I mean, hello,
2 this guy is an -- I don't remember how old was he?
3 70--somethign? Or 60--something? He's an older man to begin
4 with. He's dying of hepatitis. He's in this facility. You
5 know, is it any big surprise that under, you know, extensive
6 questioning the guy is going to get tired and maybe have to
7 take a break, or maybe have to stop? We would all get tired
8 under extensive questioning.

9 So to me, I mean, to say, oh, wow, this was a big
10 surprise, I don't know how this could be such a big surprise.
11 That's all I'm saying.

12 MR. SANTACROCE: Your Honor --

13 THE COURT: You're surprised, I accept your
14 representation, but all I was saying, not about that
15 particular day or when we broke that day --

16 MR. WRIGHT: It was continued.

17 THE COURT: -- or anything else, all I'm saying is
18 well, we knew the guy was dying.

19 MR. WRIGHT: It was continued and we were coming
20 back. And then we got a phone call saying his family decided
21 they're -- he isn't going to do it anymore.

22 THE COURT: Well, I was surprised we didn't have
23 another session, but as I understood it, you know, time was
24 more of the essence that he -- my -- the way I understood all
25 of this, what was -- I essentially presented to the court was

1 that Mr. Meana knew he was going to die, and he wanted to
2 travel to the Philippines so that he could die in the
3 Philippines. That's how I understood this. And what I
4 understood was that it became apparent that his health was
5 maybe in -- you know, he was in worse shape than what they
6 thought, and they wanted to make sure he would be able to
7 travel to the Philippines so that he could die there. That's
8 how I understood this.

9 And not, oh, we don't want to finish the deposition
10 or this or that, but the family was more concerned with
11 prolonging his life as long as possible and making sure that
12 he got to the Philippines where he wanted to die.

13 MR. SANTACROCE: Your Honor, if we all --

14 THE COURT: So that's how I --

15 MR. SANTACROCE: -- knew --

16 THE COURT: -- recollect this. The record is going
17 to speak for itself, you know, we've been making extensive
18 records on everything, you know, your memory, my memory,
19 that's how I remember it.

20 MR. WRIGHT: Okay. Just -- the -- I'm -- I'm not
21 arguing any of that, the record is what it is. I just don't
22 know of an exception to the Confrontation clause that allows
23 this in.

24 THE COURT: All right. Well, I've already ruled on
25 it. I don't know that I have to make any additional record.

1 You know, if you're -- if it's such a violation of the
2 Confrontation clause, then, you know, Dr. Desai's conviction
3 or Mr. Lakeman's conviction if we ever get there, should be
4 reversed. I don't see it that way, and I've already made
5 numerous comments on this, and, you know, I would say this.
6 Yes, Mr. Santacroce, you know, you have a separate right to
7 cross-examine any witness on behalf of your client, but -- and
8 again, the record will speak for itself, and if it ever gets
9 to an appeal, certainly, hopefully, someone will do a very
10 good job on this from -- you know, and really rely a lot on
11 the record.

12 But if you look at the testimony, you can see, well,
13 what would have been cross-examined here? And what would the
14 questions have been? And, you know, it -- regardless of who
15 you represent there are some -- only some questions you can
16 ask because that's all the testimony was about. And I think
17 what Ms. Weckerly is saying is if Mr. Wright covered those
18 questions, then, you know, what else would have been asked by
19 Mr. Santacroce or Mr. Cristalli. I think that's --

20 MR. SANTACROCE: How can they say --

21 THE COURT: -- that's the issue.

22 MR. SANTACROCE: -- okay. I'm not going to argue
23 with the Court.

24 THE COURT: Well, like I said --

25 MR. SANTACROCE: The Court has made its decision.

1 THE COURT: -- you know, I'm not saying you can't
2 make a record, but at the end of the day it's going to come
3 down to what was the testimony of Mr. Meana, what was the
4 cross-examination of Mr. Wright?

5 MR. SANTACROCE: I don't think that comes down to it
6 at all.

7 THE COURT: Well.

8 MR. SANTACROCE: I think I have an inherent --

9 THE COURT: I said you do --

10 MR. SANTACROCE: -- unalienable right to
11 cross-examine a witness on behalf of my client before any of
12 that video comes in, regardless if I ask the same questions
13 over and over again. The State is not clairvoyant. Mr.
14 Wright and I are not on some mind connection where he's going
15 to ask the same questions that I've asked. We have different
16 defenses. We have different priorities.

17 I have a right to question and cross-examine a
18 witness, and then have it to be used against me is
19 unconscionable.

20 THE COURT: State?

21 MR. WRIGHT: It seems like they -- they could put the
22 case on without it. I mean, their case -- just to --

23 THE COURT: Look, here's the --

24 MR. WRIGHT: -- just presume he had died. I mean, I
25 don't understand the exception to the confrontation clause

1 under Crawford that exists. When -- when -- if they thought
2 he was going to die they could have put it on sooner. They
3 didn't. They chose when to seek to preserve his testimony.
4 And then, we get accused of -- well, knowing it should have
5 happened. But they can -- if he had died without any
6 deposition.

7 The case still goes forward. All of the ways Ms.
8 Weckerly suggested, the same things can be brought out. I
9 just don't understand how under the right of confrontation it
10 gets in.

11 THE COURT: State?

12 MS. WECKERLY: Your Honor, I -- I don't remember how
13 many weeks ago we argued this. Mr. Santacroce not only didn't
14 file an opposition at that time, he didn't show up for the
15 hearing.

16 MR. SANTACROCE: I did file an opposition.

17 MS. WECKERLY: I didn't receive it. I mean, I --

18 MR. SANTACROCE: I filed it.

19 MS. WECKERLY: -- I just wonder why are we here
20 arguing about this now? I understand the need to preserve a
21 record, but I -- I just -- at some point we can't revisit
22 every single ruling. The Court's made their ruling. The
23 State is going to exclude, obviously, what was excluded by the
24 Court, and we're comfortable with the Court's ruling and we're
25 going to present the evidence according to the Court's issued

1 order.

2 MR. SANTACROCE: For the record, I did file a written
3 opposition in this case --

4 THE COURT: Right. There was some --

5 MR. SANTACROCE: -- and this issue.

6 THE COURT: -- and the record speaks for itself, but
7 I think that they hadn't been served and it was filed late or
8 something like that. So that's where we are.

9 Any new issues?

10 MR. SANTACROCE: I'm done with mine.

11 THE COURT: Mr. Wright, any new issues?

12 MR. WRIGHT: No, Your Honor.

13 THE COURT: State, any new issues?

14 MR. STAUDAHER: Yes, Your Honor. And this is going
15 to be, I hope, a very limited one. This goes back to the
16 issue of the medical records from the Philippines. Subsequent
17 to the Court's last ruling we went through an extensive
18 process to get a ultracertified, if I may make such a
19 statement --

20 THE COURT: From --

21 MR. STAUDAHER: -- record from the Philippines of the
22 -- we went ahead and got a new death certificate, even though
23 I think the Court had previously ruled that the other one was
24 sufficient, could come in. We got the autopsy --

25 THE COURT: Well, I think what I had said last time

1 was I didn't think that the letter from some employee at maybe
2 the Embassy, according to the return address on an envelope
3 was sufficient from the United States --

4 MR. STAUDAHER: Yes.

5 THE COURT: -- to say that it was a State Department
6 employee, when I think they worked for DOJ or something, and
7 that's, I think, what I said, but --

8 MR. STAUDAHER: Well, we went beyond that --

9 THE COURT: -- okay. That's fine.

10 MR. STAUDAHER: -- and we've gotten all the different
11 levels, the State Department and everybody to certify. We
12 actually, before we even -- when we received the records we --
13 before we broke the seals on them, defense counsel
14 collectively, I know they're having sort of a joint thing
15 going on, Mr. Santacroce wasn't able to come over, but a
16 representative of Mr. Wright's office was able to come over
17 for both defense counsel to review the documents before they
18 were essentially unsealed.

19 All of the broken seals and the certificates and the
20 correspondence are all intact. Those were all scanned and
21 Bates numbered and sent to the defense. We did not Bates
22 number or alter the documents in any way of the ones that we
23 did receive, but now we have certified copies of the medical
24 records -- a complete copy of the medical records, which we
25 did not have before. We have the autopsy report and the

1 related findings of -- laboratory reports of those, which are
2 certified as well, as well as copies of the death certificate
3 which are certified.

4 We intend to introduce those documents, but I know
5 that the Court may want to see them, obviously, and check
6 those out themselves. It's just an issue that I'm raising
7 now, Defense Counsel came over yesterday and they reviewed
8 those, as well. And they've been -- they've been -- they
9 received them, so...

10 THE COURT: I guess the question, then, is does
11 Defense Counsel have any objection -- not the previous
12 argument, but objection, basically, on the State Department
13 and whether or not they've now conform with the statute and
14 the certified copies, whether, in fact, they're truly
15 certified, and the authenticity of the documents. Is there
16 going to be any objection on that?

17 MS. STANISH: No, Your Honor.

18 THE COURT: Okay.

19 MS. STANISH: It seemed to satisfy the foreign
20 records --

21 MR. WRIGHT: Just on --

22 MS. STANISH: -- requirement.

23 MR. WRIGHT: -- on authentication.

24 MS. STANISH: On authentication, only, yes.

25 THE COURT: That's all I'm asking.

1 MS. STANISH: Yes.

2 THE COURT: I know you're keep -- I just -- we don't
3 need to have reargument about whether or not they should admit
4 the records because the Court's ruling was related to the
5 authentication of the records. So that's why I'm asking any
6 new objection on authentication? Have they addressed the
7 Court's concern with the State Department and all of that
8 stuff.

9 And that was the extent that your -- that was why
10 your motion was granted in that -- on that issue.

11 So, Mr. Santacroe, were you fine with the form and
12 the authentication of the documents?

13 MR. SANTACROCE: No objection --

14 THE COURT: Okay.

15 MR. SANTACROCE: -- authentication. I reserve all
16 other objections as to relevancy, hearsay, confrontation
17 issues.

18 THE COURT: Okay.

19 MR. STAUDAHER: Well, that -- that lends itself to
20 the next issue, which is admission of those documents. We --
21 they are certified, custodian of records productions from each
22 entity related to both the -- and all individual pages within
23 the documents have their own special stamp and signature on
24 them from the entity that provided them. In addition to
25 the -- the letter that is the custodian of records letter, as

1 well as all the authentication documents that goes along with
2 those.

3 So we believe there is a valid exception that allows
4 us to put those in without having to --

5 THE COURT: Right.

6 MR. STAUDAHER: -- bring somebody from the
7 Philippines to do so. And we're going to move for their
8 admission under this point.

9 THE COURT: Any objection based, again, not on
10 whether they should be admitted or not substantively, but on
11 the authentication issue?

12 MR. SANTACROCE: Well, I'm not sure. Are we -- are
13 we separating --

14 THE COURT: He's asking just to admit the records as
15 kind of self-authenticating given the certified nature of the
16 records and the fact that they've gone through the State
17 Department?

18 MR. SANTACROCE: Well, then perhaps the Court can
19 help me out here. I'm a -- I'm going to make objections as to
20 hearsay within hearsay in those documents. I'm going to make
21 objections as to my inability to cross-examine the people that
22 made medical opinions as to the cause of his death. So if
23 that relates to authenticity, then I have a problem.

24 THE COURT: No. I think what Mr. Staudaher -- what
25 you're asking is can you just put the records in without

1 having a witness say, These are these records --

2 MR. STAUDAHER: That's correct.

3 THE COURT: -- is that what you're asking --

4 MR. STAUDAHER: That's correct.

5 THE COURT: -- to do?

6 MR. STAUDAHER: Yes. And we will supply them to the
7 Court to look at beforehand if the Court wants to make a
8 further review before making a ruling on that, but that's what
9 we intend to do.

10 THE COURT: Okay.

11 MR. SANTACROCE: But are they going to have --

12 THE COURT: Now --

13 MR. SANTACROCE: -- a witness that's going to opine
14 as to the cause of death and how they got there?

15 THE COURT: I told them they had to bring the coroner
16 in.

17 MR. SANTACROCE: Okay.

18 MR. STAUDAHER: We have a -- we have a --

19 THE COURT: But I'm letting --

20 MR. STAUDAHER: -- I will --

21 THE COURT: -- the medical --

22 MR. STAUDAHER: -- tell the Court --

23 THE COURT: -- records in.

24 MR. STAUDAHER: -- yes. The medical -- the medical
25 examiner is going to come in. The actual experts that are

1 involved in this case have been sent copies of those records.
2 So to the extent that that affects or changes or alters in any
3 way their previous -- you know, it's the standard thing that
4 we have with --

5 THE COURT: Right.

6 MR. STAUDAHER: -- an expert. So the records need to
7 come in because they're going to be part of the record, at
8 least from our perspective, and we are going to have witnesses
9 that will testify about them with the exception --

10 THE COURT: Right. And I'm letting --

11 MR. STAUDAHER: -- of the death certificate.

12 THE COURT: -- the medical records in, just like I
13 would let the medical records in if they came from UMC. The
14 fact that they're from the Philippines required additional
15 steps with respect to the State Department and other things
16 that you would have to have for foreign records. Other than
17 that I'm letting them in as medical records, just like you
18 would let in medical records from UMC or Summerlin Hospital or
19 anyplace else.

20 So same way you would do it. Is that clear?

21 MR. STAUDAHER: That's clear.

22 THE COURT: All right.

23 MR. STAUDAHER: But we also have the two other
24 records, the autopsy and related records, then, that went
25 through that same process --

1 THE COURT: And those, though, are going to come in
2 with a witness, correct?
3 MR. STAUDAHER: Correct.
4 THE COURT: Okay. So that's --
5 MR. STAUDAHER: And also --
6 THE COURT: -- a different issue.
7 MR. STAUDAHER: -- and also, the ones that would not
8 necessarily come in through the witness would be the certified
9 death certificates. I would -- I think the Court already
10 ruled on that.
11 THE COURT: Right. I already said you could just
12 introduce the certified --
13 MR. STAUDAHER: Does the Court wish us to bring --
14 THE COURT: -- death certificate.
15 MR. STAUDAHER: -- those over in advance to have the
16 Court review them, and --
17 THE COURT: You can just give them to me on Monday.
18 MR. STAUDAHER: -- okay. Well, actually, we -- I
19 think we're going to bring over some of these things --
20 THE COURT: All right.
21 MR. STAUDAHER: -- today.
22 THE COURT: Okay. All right. What else do you need
23 to raise? Is that it?
24 MR. STAUDAHER: That's it. Do you have anything
25 else?

1 THE COURT: Okay.

2 MR. STAUDAHER: No, we don't have anything else.

3 THE COURT: In terms of getting the exhibit --

4 MR. WRIGHT: Can I have one second?

5 THE COURT: Kenny will help you with how they do it.

6 THE MARSHAL: I can come in early on Monday and get
7 it all set up.

8 THE COURT: Why don't we do it now? I mean, as soon
9 as we're done -- after lunch, whenever you want. I don't
10 care. That way there's no, if you get hit by a bus on the way
11 to work, we'll have 35 chairs set up and we won't be running
12 around at 9 a.m. saying, oh, my God, where are we going to put
13 all these jurors?

14 THE MARSHAL: Yes, Judge.

15 MR. STAUDAHER: Oh, and just so the Court is aware,
16 we addressed this with Counsel yesterday --

17 THE COURT: Of course, we would be so grief-stricken
18 we wouldn't be able to do our work that day, but setting that
19 aside.

20 MR. STAUDAHER: -- Robert Whitely, who is the lead
21 detective in this case, may be coming in and sitting with us
22 at times or in the court or not in the court. Counsel didn't
23 seem to have an issue with him being in the courtroom, even
24 though he is -- it's a potential --

25 THE COURT: He's going to be --

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 08:59 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DIPAK KANTILAL DESAI,	)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

APPELLANT'S APPENDIX VOLUME 3

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 26 2013

BY Denise Husted
Denise Husted

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -VS-

13 DIPAK KANTILAL DESAI,
14 #1240942
15 RONALD ERNEST LAKEMAN,
16 #2753504

Defendant(s).

CASE NO: 10C265107-1 /
C-12-283381-1

DEPT NO: XXI

FIFTH AMENDED
INDICTMENT

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, DIPAK KANTILAL DESAI and RONALD
20 ERNEST LAKEMAN accused by the Clark County Grand Jury of the crime(s) of
21 INSURANCE FRAUD (Category D Felony - NRS 686A.2815); PERFORMANCE OF
22 ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN
23 SUBSTANTIAL BODILY HARM (Category C Felony - NRS 0.060, 202.595);
24 CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL BODILY
25 HARM (Category B Felony - NRS 0.060, 200.495); THEFT (Category B Felony - NRS
26 205.0832, 205.0835); OBTAINING MONEY UNDER FALSE PRETENSES (Category
27 B Felony - NRS 205.265, 205.380) and MURDER (SECOND DEGREE) (Category A
28 Felony - NRS 200.010, 200.020, 200.030, 200.070, 202.595, 200.495), committed at and

1 within the County of Clark, State of Nevada, on or between June 3, 2005, and April 27,
2 2012, as follows:

3 COUNT 1 - INSURANCE FRAUD

4 Defendants and KEITH MATHAHS did on or about July 25, 2007, knowingly and
5 willfully present, or cause to be presented a statement as a part of, or in support of, a claim
6 for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the
7 Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
8 contained false or misleading information concerning a fact material to said claim; and/or
9 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
10 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
11 concealed or omitted facts, or did contain false or misleading information concerning a fact
12 material to a claim for payment or other benefits under such policy issued pursuant to Title
13 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS –
14 BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
15 performed on SHARRIEFF ZIYAD were more than the actual anesthetic time and/or
16 charges, said false representation resulting in the payment of money to the Defendants and
17 KEITH MATHAHS and/or their medical practice which exceeded that which would have
18 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
19 responsible under one or more of the following principles of criminal liability, to wit: (1) by
20 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
21 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
22 or procuring each other, and/or others to commit said acts, Defendants and KEITH
23 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
24 to commit this crime.

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1 COUNT 2 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
2 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

3 Defendants and KEITH MATHAHS did on or about July 25, 2007, then and there
4 willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons
5 or property resulting in substantial bodily harm to MICHAEL WASHINGTON, to wit:
6 transmitting the Hepatitis C virus to MICHAEL WASHINGTON, in the following manner,
7 to wit: by directly or indirectly using and/or introducing contaminated medical instruments,
8 supplies, and/or drugs upon or into the body of MICHAEL WASHINGTON which were
9 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
10 responsible under one or more of the following principles of criminal liability, to wit: (1) by
11 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
12 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
13 or procuring each other, and/or others to utilize a patient care delivery system which directly
14 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
15 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
16 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
17 in order to fraudulently increase the insurance billing and/or money reimbursement for the
18 medical procedure performed on the said MICHAEL WASHINGTON; specifically, as to
19 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
20 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
21 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
22 were pressured to commit the said acts described above; specifically, as to DEFENDANT
23 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
24 that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient
25 procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or
26 perform an unreasonable number of patient procedures in a single day all at the expense of
27 patient safety and well being, and which resulted in substandard care and jeopardized the
28 safety of MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this

1 crime, Defendants and KEITH MATHAHS acting in concert throughout.

2 COUNT 3 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
3 BODILY HARM

4 Defendants and KEITH MATHAHS on or about July 25, 2007, being professional
5 caretakers of MICHAEL WASHINGTON, did act or omit to act in an aggravated, reckless
6 or gross manner, failing to provide such service, care or supervision as is reasonable and
7 necessary to maintain the health or safety of said MICHAEL WASHINGTON, resulting in
8 substantial bodily harm to MICHAEL WASHINGTON, to wit: transmitting the Hepatitis C
9 virus to MICHAEL WASHINGTON, said acts or omissions being such a departure from
10 what would be the conduct of an ordinarily prudent, careful person under the same
11 circumstances that it is contrary to a proper regard for danger to human life or constitutes
12 indifference to the resulting consequences, said consequences of the negligent act or
13 omission being reasonably foreseeable; said danger to human life not being the result of
14 inattention, mistaken judgment or misadventure, but the natural and probable result of said
15 aggravated reckless or grossly negligent act or omission, to wit: by directly or indirectly
16 using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or
17 into the body of MICHAEL WASHINGTON which were contaminated with the Hepatitis C
18 virus; Defendants and KEITH MATHAHS being responsible under one or more of the
19 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
20 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
21 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
22 others to utilize a patient care delivery system which directly or indirectly limited the use of
23 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable
24 number of patients per day, and/or rushed patients or patient procedures, Defendants and
25 KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently
26 increase the insurance billing and/or money reimbursement for the medical procedure
27 performed on the said MICHAEL WASHINGTON; specifically, as to DEFENDANT
28 DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and

1 KEITH MATHAHS and said others to perform said acts and created a work environment
2 where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to
3 commit the said acts described above; specifically, as to DEFENDANT LAKEMAN,
4 engaging in conduct against universally accepted standards of medical care, that he limited
5 the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures
6 which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an
7 unreasonable number of patient procedures in a single day all at the expense of patient safety
8 and well being, and which resulted in substandard care and jeopardized the safety of
9 MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this crime,
10 Defendants and KEITH MATHAHS acting in concert throughout.

11 COUNT 4 - INSURANCE FRAUD

12 Defendants and KEITH MATHAHS did on or about July 25, 2007, knowingly and
13 willfully present, or cause to be presented a statement as a part of, or in support of, a claim
14 for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the
15 Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
16 contained false or misleading information concerning a fact material to said claim; and/or
17 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
18 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
19 concealed or omitted facts, or did contain false or misleading information concerning a fact
20 material to a claim for payment or other benefits under such policy issued pursuant to Title
21 57 of the Nevada Revised Statutes, by falsely representing to VETERANS
22 ADMINISTRATION that the billed anesthesia time and/or charges for the endoscopic
23 procedure performed on MICHAEL WASHINGTON were more than the actual anesthetic
24 time and/or charges, said false representation resulting in the payment of money to
25 Defendants and KEITH MATHAHS and/or their medical practice which exceeded that
26 which would have normally been allowed for said procedure; Defendants and KEITH
27 MATHAHS being responsible under one or more of the following principles of criminal
28 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other

1 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
2 commanding, inducing, or procuring each other, and/or others to commit said acts,
3 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
4 pursuant to a conspiracy to commit this crime.

5 COUNT 5 - INSURANCE FRAUD

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
7 and willfully present, or cause to be presented a statement as a part of, or in support of, a
8 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
9 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
10 contained false or misleading information concerning a fact material to said claim; and/or
11 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
12 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
13 concealed or omitted facts, or did contain false or misleading information concerning a fact
14 material to a claim for payment or other benefits under such policy issued pursuant to Title
15 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
16 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
17 procedure performed on KENNETH RUBINO were more than the actual anesthetic time
18 and/or charges, said false representation resulting in the payment of money to Defendants
19 and KEITH MATHAHS and/or their medical practice which exceeded that which would
20 have normally been allowed for said procedure; Defendants and KEITH MATHAHS being
21 responsible under one or more of the following principles of criminal liability, to wit: (1) by
22 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
23 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
24 or procuring each other, and/or others to commit said acts, Defendants and KEITH
25 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
26 to commit this crime.

27 ///

28 ///

1 COUNT 6 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
2 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

3 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
4 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
5 persons or property resulting in substantial bodily harm to STACY HUTCHINSON, to wit:
6 transmitting the Hepatitis C virus to STACY HUTCHINSON, in the following manner, to
7 wit: by directly or indirectly using and/or introducing contaminated medical instruments,
8 supplies, and/or drugs upon or into the body of STACY HUTCHINSON which were
9 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
10 responsible under one or more of the following principles of criminal liability, to wit: (1) by
11 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
12 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
13 or procuring each other, and/or others to utilize a patient care delivery system which directly
14 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
15 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
16 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
17 in order to fraudulently increase the insurance billing and/or money reimbursement for the
18 medical procedure performed on the said STACY HUTCHINSON; specifically, as to
19 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
20 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
21 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
22 were pressured to commit the said acts described above; specifically, as to DEFENDANT
23 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
24 that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient
25 procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or
26 perform an unreasonable number of patient procedures in a single day all at the expense of
27 patient safety and well being, and which resulted in substandard care and jeopardized the
28 safety of STACY HUTCHINSON and/or (3) pursuant to a conspiracy to commit this crime,

1 Defendants and KEITH MATHAHS acting in concert throughout.

2 COUNT 7 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
3 BODILY HARM

4 Defendants and KEITH MATHAHS on or about September 21, 2007, being
5 professional caretakers of STACY HUTCHINSON, did act or omit to act in an aggravated,
6 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
7 and necessary to maintain the health or safety of said STACY HUTCHINSON, resulting in
8 substantial bodily harm to STACY HUTCHINSON, to wit: transmitting the Hepatitis C
9 virus to STACY HUTCHINSON, said acts or omissions being such a departure from what
10 would be the conduct of an ordinarily prudent, careful person under the same circumstances
11 that it is contrary to a proper regard for danger to human life or constitutes indifference to
12 the resulting consequences, said consequences of the negligent act or omission being
13 reasonably foreseeable; said danger to human life not being the result of inattention,
14 mistaken judgment or misadventure, but the natural and probable result of said aggravated
15 reckless or grossly negligent act or omission, to wit: by directly or indirectly using and/or
16 introducing contaminated medical instruments, supplies, and/or drugs upon or into the body
17 of STACY HUTCHINSON which were contaminated with the Hepatitis C virus; Defendants
18 and KEITH MATHAHS being responsible under one or more of the following principles of
19 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
20 each other in the commission of the crime by directly or indirectly counseling, encouraging,
21 hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care
22 delivery system which directly or indirectly limited the use of medical instruments, and/or
23 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
24 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
25 with the intent to commit said crime in order to fraudulently increase the insurance billing
26 and/or money reimbursement for the medical procedure performed on the said STACY
27 HUTCHINSON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
28 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
2 MATHAHS and others were pressured to commit the said acts described above; specifically,
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
7 single day all at the expense of patient safety and well being, and which resulted in
8 substandard care and jeopardized the safety of STACY HUTCHINSON and/or (3) pursuant
9 to a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
10 throughout.

11 COUNT 8 - INSURANCE FRAUD

12 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
13 and willfully present, or cause to be presented a statement as a part of, or in support of, a
14 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
15 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
16 contained false or misleading information concerning a fact material to said claim; and/or
17 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
18 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
19 concealed or omitted facts, or did contain false or misleading information concerning a fact
20 material to a claim for payment or other benefits under such policy issued pursuant to Title
21 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF
22 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure
23 performed on STACY HUTCHINSON were more than the actual anesthetic time and/or
24 charges, said false representation resulting in the payment of money to Defendants and
25 KEITH MATHAHS and/or their medical practice which exceeded that which would have
26 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
27 responsible under one or more of the following principles of criminal liability, to wit: (1) by
28 directly committing said acts; and/or (2) aiding or abetting each other in the commission of

1 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
2 or procuring each other, and/or others to commit said acts, Defendants and KEITH
3 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
4 to commit this crime.

5 COUNT 9 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
6 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

7 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
8 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
9 persons or property resulting in substantial bodily harm to RUDOLFO MEANA, to wit:
10 transmitting the Hepatitis C virus to RUDOLFO MEANA, in the following manner, to wit:
11 by directly or indirectly using and/or introducing contaminated medical instruments,
12 supplies, and/or drugs upon or into the body of RUDOLFO MEANA which were
13 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
14 responsible under one or more of the following principles of criminal liability, to wit: (1) by
15 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
16 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
17 or procuring each other, and/or others to utilize a patient care delivery system which directly
18 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
19 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
20 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
21 in order to fraudulently increase the insurance billing and/or money reimbursement for the
22 medical procedure performed on the said RUDOLFO MEANA; specifically, as to
23 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
24 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
25 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
26 were pressured to commit the said acts described above; specifically, as to DEFENDANT
27 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
28 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH

1 RUBINO and RODOLFO MEANA which were subsequently contaminated with the
2 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said
3 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
4 and/or between treatment rooms before, during or after the endoscopic procedure performed
5 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
6 body of RODOLFO MEANA and others and/or (3) pursuant to a conspiracy to commit this
7 crime, Defendants and KEITH MATHAHS acting in concert throughout.

8 COUNT 10 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL
9 BODILY HARM

10 Defendants and KEITH MATHAHS on or about September 21, 2007, being
11 professional caretakers of RUDOLFO MEANA, did act or omit to act in an aggravated,
12 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
13 and necessary to maintain the health or safety of said RUDOLFO MEANA, resulting in
14 substantial bodily harm to RUDOLFO MEANA, to wit: transmitting the Hepatitis C virus to
15 RUDOLFO MEANA, said acts or omissions being such a departure from what would be the
16 conduct of an ordinarily prudent, careful person under the same circumstances that it is
17 contrary to a proper regard for danger to human life or constitutes indifference to the
18 resulting consequences, said consequences of the negligent act or omission being reasonably
19 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
20 or misadventure, but the natural and probable result of said aggravated reckless or grossly
21 negligent act or omission, to wit: by directly or indirectly using and/or introducing
22 contaminated medical instruments, supplies, and/or drugs upon or into the body of
23 RUDOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants and
24 KEITH MATHAHS being responsible under one or more of the following principles of
25 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
26 each other in the commission of the crime by directly or indirectly counseling, encouraging,
27 hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care
28 delivery system which directly or indirectly limited the use of medical instruments, and/or

1 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
2 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
3 with the intent to commit said crime in order to fraudulently increase the insurance billing
4 and/or money reimbursement for the medical procedure performed on the said RUDOLFO
5 MEANA; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
6 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform
7 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
8 MATHAHS and others were pressured to commit the said acts described above; specifically,
9 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
10 standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the
11 treatment of KENNETH RUBINO and RODOLFO MEANA which were subsequently
12 contaminated with the Hepatitis C virus and thereafter directly or indirectly shared,
13 exchanged or transferred said contaminated medical supplies, and/or drugs between himself
14 and KEITH MATHAHS and/or between treatment rooms before, during or after the
15 endoscopic procedure performed on KENNETH RUBINO which resulted in the
16 transmission of the Hepatitis C virus into the body of RODOLFO MEANA and others and/or
17 (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS
18 acting in concert throughout.

19 COUNT 11 - INSURANCE FRAUD

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
21 and willfully present, or cause to be presented a statement as a part of, or in support of, a
22 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
23 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
24 contained false or misleading information concerning a fact material to said claim; and/or
25 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
26 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
27 concealed or omitted facts, or did contain false or misleading information concerning a fact
28 material to a claim for payment or other benefits under such policy issued pursuant to Title

1 57 of the Nevada Revised Statutes, by falsely representing to SECURE HORIZONS and/or
2 PACIFICARE that the billed anesthesia time and/or charges for the endoscopic procedure
3 performed on RUDOLFO MEANA were more than the actual anesthetic time and/or
4 charges, said false representation resulting in the payment of money to Defendants and
5 KEITH MATHAHS and/or their medical practice which exceeded that which would have
6 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
7 responsible under one or more of the following principles of criminal liability, to wit: (1) by
8 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
9 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
10 or procuring each other, and/or others to commit said acts, Defendants and KEITH
11 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
12 to commit this crime.

13 COUNT 12 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
14 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

15 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
16 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
17 persons or property resulting in substantial bodily harm to PATTY ASPINWALL, to wit:
18 transmitting the Hepatitis C virus to PATTY ASPINWALL, in the following manner, to wit:
19 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
20 commission of the crime by directly or indirectly counseling, encouraging, hiring,
21 commanding, inducing, or procuring each other, and/or others to utilize a patient care
22 delivery system which directly or indirectly limited the use of medical instruments, and/or
23 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
24 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
25 with the intent to commit said crime in order to fraudulently increase the insurance billing
26 and/or money reimbursement for the medical procedure performed on the said PATTY
27 ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
28 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, KEITH
2 MATHAHS and others were pressured to commit the said acts described above; specifically,
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
7 single day all at the expense of patient safety and well being, and which resulted in
8 substandard care and jeopardized the safety of PATTY ASPINWALL and/or (3) pursuant to
9 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
10 throughout.

11 COUNT 13 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL
12 BODILY HARM

13 Defendants and KEITH MATHAHS on or about September 21, 2007, being
14 professional caretakers of PATTY ASPINWALL, did act or omit to act in an aggravated,
15 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
16 and necessary to maintain the health or safety of said PATTY ASPINWALL, resulting in
17 substantial bodily harm to PATTY ASPINWALL, to wit: transmitting the Hepatitis C virus
18 to PATTY ASPINWALL, said acts or omissions being such a departure from what would be
19 the conduct of an ordinarily prudent, careful person under the same circumstances that it is
20 contrary to a proper regard for danger to human life or constitutes indifference to the
21 resulting consequences, said consequences of the negligent act or omission being reasonably
22 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
23 or misadventure, but the natural and probable result of said aggravated reckless or grossly
24 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or
25 abetting each other in the commission of the crime by directly or indirectly counseling,
26 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize
27 a patient care delivery system which directly or indirectly limited the use of medical
28 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number

1 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH
2 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the
3 insurance billing and/or money reimbursement for the medical procedure performed on the
4 said PATTY ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or
5 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
6 others to perform said acts and created a work environment where DEFENDANT
7 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
8 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
9 universally accepted standards of medical care, that he limited the use of medical supplies,
10 and/or drugs and rushed patients, and/or patient procedures which in turn allowed
11 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number
12 of patient procedures in a single day all at the expense of patient safety and well being, and
13 which resulted in substandard care and jeopardized the safety of PATTY ASPINWALL
14 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
15 MATHAHS acting in concert throughout.

16 COUNT 14 - INSURANCE FRAUD

17 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
18 and willfully present, or cause to be presented a statement as a part of, or in support of, a
19 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
20 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
21 contained false or misleading information concerning a fact material to said claim; and/or
22 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
23 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
24 concealed or omitted facts, or did contain false or misleading information concerning a fact
25 material to a claim for payment or other benefits under such policy issued pursuant to Title
26 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
27 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
28 procedure performed on PATTY ASPINWALL were more than the actual anesthetic time

1 and/or charges, said false representation resulting in the payment of money to Defendants
2 and KEITH MATHAHS and/or their medical practice which exceeded that which would
3 have normally been allowed for said procedure; Defendants and KEITH MATHAHS being
4 responsible under one or more of the following principles of criminal liability, to wit: (1) by
5 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
6 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
7 or procuring each other, and/or others to commit said acts, Defendants and KEITH
8 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
9 to commit this crime.

10 COUNT 15 - INSURANCE FRAUD

11 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
12 and willfully present, or cause to be presented a statement as a part of, or in support of, a
13 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
14 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
15 contained false or misleading information concerning a fact material to said claim; and/or
16 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
17 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
18 concealed or omitted facts, or did contain false or misleading information concerning a fact
19 material to a claim for payment or other benefits under such policy issued pursuant to Title
20 57 of the Nevada Revised Statutes, by falsely representing to UNITED HEALTH
21 SERVICES that the billed anesthesia time and/or charges for the endoscopic procedure
22 performed on PATTY ASPINWALL were more than the actual anesthetic time and/or
23 charges, said false representation resulting in the payment of money to Defendants and
24 KEITH MATHAHS and/or their medical practice which exceeded that which would have
25 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
26 responsible under one or more of the following principles of criminal liability, to wit: (1) by
27 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
28 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,

1 or procuring each other, and/or others to commit said acts, Defendants and KEITH
2 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
3 to commit this crime.

4 COUNT 16 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
5 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
7 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
8 persons or property resulting in substantial bodily harm to SONIA ORELLANA-RIVERA,
9 to wit: transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, in the following
10 manner, to wit: by directly or indirectly using and/or introducing contaminated medical
11 instruments, supplies, and/or drugs upon or into the body of SONIA ORELLANA-RIVERA
12 which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS
13 being responsible under one or more of the following principles of criminal liability, to wit:
14 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
15 commission of the crime by directly or indirectly counseling, encouraging, hiring,
16 commanding, inducing, or procuring each other, and/or others to utilize a patient care
17 delivery system which directly or indirectly limited the use of medical instruments, and/or
18 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
19 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
20 with the intent to commit said crime in order to fraudulently increase the insurance billing
21 and/or money reimbursement for the medical procedure performed on the said SONIA
22 ORELLANA-RIVERA; specifically, as to DEFENDANT DESAI, that he directly or
23 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
24 others to perform said acts and created a work environment where DEFENDANT
25 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
26 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
27 universally accepted standards of medical care, that he obtained the medical supplies, and/or
28 drugs utilized in the treatment of KENNETH RUBINO and SONIA ORELLANA-RIVERA

1 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or
2 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs
3 between himself and KEITH MATHAHS and/or between treatment rooms before, during or
4 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the
5 transmission of the Hepatitis C virus into the body of SONIA ORELLANA-RIVERA and
6 others and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
7 MATHAHS acting in concert throughout.

8 COUNT 17 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
9 BODILY HARM

10 Defendants and KEITH MATHAHS on or about September 21, 2007, being
11 professional caretakers of SONIA ORELLANA-RIVERA, did act or omit to act in an
12 aggravated, reckless or gross manner, failing to provide such service, care or supervision as
13 is reasonable and necessary to maintain the health or safety of said SONIA ORELLANA-
14 RIVERA, resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, to wit:
15 transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, said acts or omissions
16 being such a departure from what would be the conduct of an ordinarily prudent, careful
17 person under the same circumstances that it is contrary to a proper regard for danger to
18 human life or constitutes indifference to the resulting consequences, said consequences of
19 the negligent act or omission being reasonably foreseeable; said danger to human life not
20 being the result of inattention, mistaken judgment or misadventure, but the natural and
21 probable result of said aggravated reckless or grossly negligent act or omission, to wit: by
22 directly or indirectly using and/or introducing contaminated medical instruments, supplies,
23 and/or drugs upon or into the body of SONIA ORELLANA-RIVERA which were
24 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
25 responsible under one or more of the following principles of criminal liability, to wit: (1) by
26 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
27 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
28 or procuring each other, and/or others to utilize a patient care delivery system which directly

1 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
2 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
3 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
4 in order to fraudulently increase the insurance billing and/or money reimbursement for the
5 medical procedure performed on the said SONIA ORELLANA-RIVERA; specifically, as to
6 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
7 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
8 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
9 were pressured to commit the said acts described above; specifically, as to DEFENDANT
10 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
11 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
12 RUBINO AND SONIA ORELLANA-RIVERA which were subsequently contaminated with
13 the Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred
14 said contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
15 and/or between treatment rooms before, during or after the endoscopic procedure performed
16 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
17 body of SONIA ORELLANA-RIVERA and others and/or (3) pursuant to a conspiracy to
18 commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

19 COUNT 18 - INSURANCE FRAUD

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
21 and willfully present, or cause to be presented a statement as a part of, or in support of, a
22 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
23 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
24 contained false or misleading information concerning a fact material to said claim; and/or
25 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
26 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
27 concealed or omitted facts, or did contain false or misleading information concerning a fact
28 material to a claim for payment or other benefits under such policy issued pursuant to Title

1 57 of the Nevada Revised Statutes, by falsely representing to CULINARY WORKERS
2 HEALTH FUND that the billed anesthesia time and/or charges for the endoscopic procedure
3 performed on SONIA ORELLANA-RIVERA were more than the actual anesthetic time
4 and/or charges, said false representation resulting in the payment of money to Defendants
5 and KEITH MATHAHS and/or their medical practice which exceeded that which would
6 have normally been allowed for said procedure; Defendants and KEITH MATHAHS being
7 responsible under one or more of the following principles of criminal liability, to wit: (1) by
8 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
9 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
10 or procuring each other, and/or others to commit said acts, Defendants and KEITH
11 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
12 to commit this crime.

13 COUNT 19 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
14 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

15 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
16 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
17 persons or property resulting in substantial bodily harm to CAROLE GRUESKIN, to wit:
18 transmitting the Hepatitis C virus to CAROLE GRUESKIN, in the following manner, to wit:
19 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
20 commission of the crime by directly or indirectly counseling, encouraging, hiring,
21 commanding, inducing, or procuring each other, and/or others to utilize a patient care
22 delivery system which directly or indirectly limited the use of medical instruments, and/or
23 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
24 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
25 with the intent to commit said crime in order to fraudulently increase the insurance billing
26 and/or money reimbursement for the medical procedure performed on the said CAROLE
27 GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
28 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
2 MATHAHS and others were pressured to commit the said acts described above; specifically,
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
7 single day all at the expense of patient safety and well being, and which resulted in
8 substandard care and jeopardized the safety of CAROLE GRUESKIN and/or (3) pursuant to
9 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
10 throughout.

11 COUNT 20- CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL
12 BODILY HARM

13 Defendants and KEITH MATHAHS on or about September 21, 2007, being
14 professional caretakers of CAROLE GRUESKIN, did act or omit to act in an aggravated,
15 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
16 and necessary to maintain the health or safety of said CAROLE GRUESKIN, resulting in
17 substantial bodily harm to CAROLE GRUESKIN, to wit: transmitting the Hepatitis C virus
18 to CAROLE GRUESKIN, said acts or omissions being such a departure from what would be
19 the conduct of an ordinarily prudent, careful person under the same circumstances that it is
20 contrary to a proper regard for danger to human life or constitutes indifference to the
21 resulting consequences, said consequences of the negligent act or omission being reasonably
22 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
23 or misadventure, but the natural and probable result of said aggravated reckless or grossly
24 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or
25 abetting each other in the commission of the crime by directly or indirectly counseling,
26 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize
27 a patient care delivery system which directly or indirectly limited the use of medical
28 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number

1 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH
2 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the
3 insurance billing and/or money reimbursement for the medical procedure performed on the
4 said CAROLE GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or
5 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
6 others to perform said acts and created a work environment where DEFENDANT
7 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
8 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
9 universally accepted standards of medical care, that he limited the use of medical supplies,
10 and/or drugs and rushed patients, and/or patient procedures which in turn allowed
11 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number
12 of patient procedures in a single day all at the expense of patient safety and well being, and
13 which resulted in substandard care and jeopardized the safety of CAROLE GRUESKIN
14 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
15 MATHAHS acting in concert throughout.

16 COUNT 21 - INSURANCE FRAUD

17 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
18 and willfully present, or cause to be presented a statement as a part of, or in support of, a
19 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
20 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
21 contained false or misleading information concerning a fact material to said claim; and/or
22 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
23 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
24 concealed or omitted facts, or did contain false or misleading information concerning a fact
25 material to a claim for payment or other benefits under such policy issued pursuant to Title
26 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF
27 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure
28 performed on CAROLE GRUESKIN were more than the actual anesthetic time and/or

1 charges, said false representation resulting in the payment of money to Defendants and
2 KEITH MATHAHS and/or their medical practice which exceeded that which would have
3 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
4 responsible under one or more of the following principles of criminal liability, to wit: (1) by
5 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
6 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
7 or procuring each other, and/or others to commit said acts, Defendants and KEITH
8 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
9 to commit this crime.

10 COUNT 22 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
11 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

12 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
13 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
14 persons or property resulting in substantial bodily harm to GWENDOLYN MARTIN, to wit:
15 transmitting the Hepatitis C virus to GWENDOLYN MARTIN, in the following manner, to
16 wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
17 commission of the crime by directly or indirectly counseling, encouraging, hiring,
18 commanding, inducing, or procuring each other, and/or others to utilize a patient care
19 delivery system which directly or indirectly limited the use of medical instruments, and/or
20 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
21 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
22 with the intent to commit said crime in order to fraudulently increase the insurance billing
23 and/or money reimbursement for the medical procedure performed on the said
24 GWENDOLYN MARTIN; specifically, as to DEFENDANT DESAI, that he directly or
25 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
26 others to perform said acts and created a work environment where DEFENDANT
27 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
28 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against

1 universally accepted standards of medical care, that he obtained the medical supplies, and/or
2 drugs utilized in the treatment of KENNETH RUBINO and GWENDOLYN MARTIN
3 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or
4 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs
5 between himself and KEITH MATHAHS and/or between treatment rooms before, during or
6 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the
7 transmission of the Hepatitis C virus into the body of GWENDOLYN MARTIN and others
8 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
9 MATHAHS acting in concert throughout.

10 COUNT 23 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
11 BODILY HARM

12 Defendants and KEITH MATHAHS on or about September 21, 2007, being
13 professional caretakers of GWENDOLYN MARTIN, did act or omit to act in an aggravated,
14 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
15 and necessary to maintain the health or safety of said GWENDOLYN MARTIN, resulting in
16 substantial bodily harm to GWENDOLYN MARTIN, to wit: transmitting the Hepatitis C
17 virus to GWENDOLYN MARTIN, said acts or omissions being such a departure from what
18 would be the conduct of an ordinarily prudent, careful person under the same circumstances
19 that it is contrary to a proper regard for danger to human life or constitutes indifference to
20 the resulting consequences, said consequences of the negligent act or omission being
21 reasonably foreseeable; said danger to human life not being the result of inattention,
22 mistaken judgment or misadventure, but the natural and probable result of said aggravated
23 reckless or grossly negligent act or omission, to wit: (1) by directly committing said acts;
24 and/or (2) aiding or abetting each other in the commission of the crime by directly or
25 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
26 and/or others to utilize a patient care delivery system which directly or indirectly limited the
27 use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an
28 unreasonable number of patients per day, and/or rushed patients or patient procedures,

1 Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to
2 fraudulently increase the insurance billing and/or money reimbursement for the medical
3 procedure performed on the said GWENDOLYN MARTIN; specifically, as to
4 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
5 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
6 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
7 were pressured to commit the said acts described above; specifically, as to DEFENDANT
8 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
9 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
10 RUBINO and GWENDOLYN MARTIN which were subsequently contaminated with the
11 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said
12 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
13 and/or between treatment rooms before, during or after the endoscopic procedure performed
14 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
15 body of GWENDOLYN MARTIN and others and/or (3) pursuant to a conspiracy to commit
16 this crime, Defendants and KEITH MATHAHS acting in concert throughout.

17 COUNT 24 - INSURANCE FRAUD

18 Defendants and KEITH MATHAHS did on or between September 20, 2007 and
19 September 21, 2007, knowingly and willfully present, or cause to be presented a statement
20 as a part of, or in support of, a claim for payment or other benefits under a policy of
21 insurance issued pursuant to Title 57 of the Nevada Revised Statutes, knowing that the
22 statement concealed or omitted facts, or contained false or misleading information
23 concerning a fact material to said claim; and/or did assist, abet, solicit or conspire to present
24 or cause to be presented a statement to an insurer, a reinsurer, a producer, a broker or any
25 agent thereof, knowing that said statement concealed or omitted facts, or did contain false or
26 misleading information concerning a fact material to a claim for payment or other benefits
27 under such policy issued pursuant to Title 57 of the Nevada Revised Statutes, by falsely
28 representing to PACIFIC CARE that the billed anesthesia time and/or charges for the

1 endoscopic procedure performed on GWENDOLYN MARTIN were more than the actual
2 anesthetic time and/or charges, said false representation resulting in the payment of money to
3 Defendants and KEITH MATHAHS and/or their medical practice which exceeded that
4 which would have normally been allowed for said procedure; Defendants and KEITH
5 MATHAHS being responsible under one or more of the following principles of criminal
6 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other
7 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
8 commanding, inducing, or procuring each other, and/or others to commit said acts,
9 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
10 pursuant to a conspiracy to commit this crime.

11 COUNT 25 – THEFT

12 Defendants and KEITH MATHAHS did between July 25, 2007 and December 31,
13 2007, then and there knowingly, feloniously, and without lawful authority, commit theft by
14 obtaining personal property in the amount of \$250.00, or more, lawful money of the United
15 States, from STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
16 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
17 MEANA, and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE
18 PARTNERS OF NEVADA, UNITED HEALTH SERVICES, VETERANS
19 ADMINISTRATION and SECURED HORIZONS, by a material misrepresentation with
20 intent to deprive those persons of the property, in the following manner, to-wit: by falsely
21 representing that the billed anesthesia time and/or charges for the endoscopic procedure
22 performed on STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
23 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
24 MEANA, were more than the actual anesthetic time and/or charges, said false representation
25 resulting in the payment of money to Defendants and KEITH MATHAHS and/or their
26 medical practice, which exceeded that which would have normally been allowed for said
27 procedure, thereby obtaining said personal property by a material misrepresentation with
28 intent to deprive them of the property, Defendants and KEITH MATHAHS being

1 responsible under one or more of the following principles of criminal liability, to wit: (1) by
2 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
3 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
4 or procuring each other, and/or others to commit said acts, Defendants and KEITH
5 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
6 to commit this crime.

7 COUNT 26 - OBTAINING MONEY UNDER FALSE PRETENSES

8 Defendants and KEITH MATHAHS did on or between September 20, 2007, and
9 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,
10 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money
11 of the United States from GWENDOLYN MARTIN and/or PACIFICARE, within Las
12 Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing that
13 the billed anesthesia times and/or charges for the endoscopic procedures performed on
14 GWENDOLYN MARTIN were more than the actual anesthetic times and/or charges, said
15 false representation resulting in the payment of money to Defendants and KEITH
16 MATHAHS and/or the medical practice, which exceeded that which would have normally
17 been allowed for said procedures Defendants and KEITH MATHAHS being responsible
18 under one or more of the following principles of criminal liability, to wit: (1) by directly
19 committing said acts; and/or (2) aiding or abetting each other in the commission of the crime
20 by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or
21 procuring each other, and/or others to commit said acts, Defendants and KEITH MATHAHS
22 acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit
23 this crime.

24 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

25 Defendants and KEITH MATHAHS did on or between September 21, 2007, and
26 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,
27 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money
28 of the United States from SONIA ORELLANA-RIVERA and/or CULINARY WORKERS

1 HEALTH FUND, within Las Vegas, Clark County, Nevada, in the following manner, to-wit:
2 by falsely representing that the billed anesthesia times and/or charges for the endoscopic
3 procedures performed on SONIA ORELLANA-RIVERA were more than the actual
4 anesthetic times and/or charges, said false representation resulting in the payment of money
5 to Defendants and KEITH MATHAHS and/or the medical practice, which exceeded that
6 which would have normally been allowed for said procedures Defendants and KEITH
7 MATHAHS being responsible under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other
9 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
10 commanding, inducing, or procuring each other, and/or others to commit said acts,
11 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
12 pursuant to a conspiracy to commit this crime.

13 COUNT 28 – MURDER (SECOND DEGREE)

14 Defendants and KEITH MATHAHS did on or between September 21, 2007 and April
15 27, 2012, then and there willfully, feloniously, without authority of law, and with malice
16 aforethought, kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus
17 into the body of RODOLFO MEANA, based upon the following principles of criminal
18 liability, to-wit: (1) by the killing occurring under circumstances showing an abandoned and
19 malignant heart; and/or (2) during the commission of an unlawful act, to-wit: criminal
20 neglect of patients, and/or performance of an unlawful act in reckless disregard of persons or
21 property, which in its consequences, naturally tends to destroy the life of a human being;
22 and/or (3) the killing being committed in the prosecution of a felonious intent, to-wit:
23 criminal neglect of patients, and/or performance of an act in reckless disregard of persons or
24 property, which in its consequences, naturally tends to destroy the life of a human being, by
25 directly or indirectly using and/or introducing contaminated medical instruments, supplies,
26 and/or drugs upon or into the body of RODOLFO MEANA which were contaminated with
27 the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or
28 more of the following principles of criminal liability, to wit: (1) by directly committing said

1 acts; and/or (2) by aiding or abetting each other and/or others including uncharged
2 confederates in the commission of the crime(s) of criminal neglect of patients, and/or
3 performance of an act in reckless disregard of persons or property by directly or indirectly
4 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
5 others to utilize a patient care delivery system which directly or indirectly limited the use of
6 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable
7 number of patients per day, and/or rushed patients or patient procedures all at the expense of
8 patient safety and/or well being, and which resulted in substandard care and/or jeopardized
9 the safety of RODOLFO MEANA, Defendants and KEITH MATHAHS acting with the
10 intent to commit the crime(s) of criminal neglect of patients, and/or performance of an act in
11 reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to commit the
12 crime(s) of criminal neglect of patients, and/or performance of an act in reckless disregard of
13 persons or property, Defendants and KEITH MATHAHS acting in concert throughout.

14 DATED this _____ day of May, 2013.

15 STEVEN B. WOLFSON
16 DISTRICT ATTORNEY
Nevada Bar #001565

17
18 BY

19 MICHAEL V. STAUDAHER
20 Chief Deputy District Attorney
21 Nevada Bar #008273
22
23
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25
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27
28

Names of witnesses testifying before the Grand Jury:

ARMOUR, PATRICIA, NV. HEALTH DISTRICT

ASPINWALL, PATTY

BAGANG, MAYNARD, LVMPD

CAMPBELL, LYNETTE, RN

CAROL, CLIFFORD

CARRERA, HILARIO

CERDA, RYAN, HEALTH CARE BUSINESS SOLUTIONS

DESAI, SAEHAL

DROBENINE, JAN, CDC LAB SUPERVISOR

DUENAS, YERENY, INSURANCE CLAIMS

GONZALES, PATRICIA, BLUE CROSS DIRECTOR DEPT.

GRUESKIN, CAROLE

HAWKINS, MELVIN

HUTCHINSON, STACY

KALKA, KATIE, UNITED HEALTH GROUP INV.

KHUDYAKOV, YURY, CDC

KRUEGER, JEFFREY ALEN, RN

LABUS, BRIAN, NV HEALTH DISTRICT

LANGLEY, GAYLE, CDC PHYSICIAN

LOBIANBO, ANNAMARIE, CRNA

MARTIN, GWENDOLYN

MEANA, RODOLFO

MYERS, ELAINE, CLAIMS DIRECTOR

NEMEC, FRANK, GASTROENTEROLOGIST

OLSON, ALANE, MEDICAL EXAMINER

RIVERA, SONIA ORELLONO

RUBINO, KENNETH

1 RUSHING, TONYA, OFFICE MGR.
2 SAGENDORF, VINCENT, CRNA
3 SAMPSON, NANCY, LVMPD
4 SAMS, JOANNE, VET ADMIN. CODER
5 SCHAEFER, MELISSA, CDC PHYSICIAN
6 SHARMA, SATISH, ANESTHESIOLOGIST
7 SIMS, DOROTHY, BUREAU OF LICENSING AND CERTIFICATION
8 SPAETH, CORRINE, CLAIMS DIRECTOR
9 VANDRUFF, MARION, MEDICAL ASSISTANT
10 WASHINGTON, MICHAEL
11 YEE, THOMAS, ANESTHESIOLOGIST
12 YOST, ANNE, NURSE
13 ZIYAD, SHARRIEFF

14
15 Additional witnesses known to the District Attorney at time of filing the Indictment:

16 ALFARO-MARTINEZ, SAMUEL
17 ANWAR, JAVAID, 3006 MARYLAND PKWY #400, LVN 89109
18 ARBOREEN, DAVE, LVMPD
19 ARMENI, PAOLA
20 ARNONE, ANTHONY, LVMPD
21 ASHANTE, DR.
22 BAILEY, PAULINE, 3416 MONTE CARLO DR., LVN 89121
23 BARCLAY, DR. ROBERT
24 BIEN, KATHY, 3800 DALECREST DR. #1117, LVN 89129
25 BLEMINGS, RENATE, 2100 PLAIN ST., PAHRUMP, NV 89060
26 BROWN, DAVID
27 BUI, DR.
28 BUNIN, DANIEL

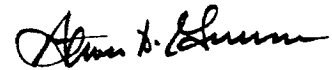
1 BURKIN, JERALD, FBI SA
2 CALVALHO, DANIEL CARRERA
3 CARAWAY, ANTOINETTE, 1407 BAREBACK CT., HNV 89014
4 CARRERA, ELADIO, 612 CANYON GREENS DR., LVN 89144
5 CARROLL, CLIFFORD, 10313 ORKINEY DR., LVN 89144
6 CASTLEMAN, DR. STEPHANIE
7 CAVETT, JOSHUA, 7829 TATTERSALL FLAG ST., LVN 89139
8 CHAFFEE, ROD, 9303 GILCREASE #1080, LVN 89149
9 CLEMMER, DANA MARIE, 4913 FERRELL ST., NLVN 89034
10 COE, DANIEL, LVMPD
11 COHAN, DR. CHARLES, POB 4144, SAYLORSBURG, PA
12 COOK, KATIE, FBI S/A
13 COOPER, DOUG, CHIEF INV., NV. ST. BOARD OF ME
14 CRANE, AUSA
15 CREMEN, FRANK
16 DESAI, DIPAK, 3093 RED ARROW, LVN 89135
17 DESAI, KUSAM, MD
18 DIAZ, ALLEN, LVMPD INTERPRETER
19 DIBUDUO, CHARLES
20 DORAME, JOHN
21 DRURY, JANINE
22 ECKERT, PHYSICIAN ASST.
23 ELLEN, DIANE
24 FALZONE, LISA, 8024 PEACEFUL WOODS STREET, LVN 89143
25 FARIS, FRANK
26 FIGLER, DAYVID
27 FISHCHER, GAYLE, 1600 CLIFTON MAIL STOP #G37, ATLANTA, GA. 30333
28 FORD, MIKE, LVMPD

1 FRANKS, LISA, PHYSICIAN ASST.
2 GASKILL, SARA
3 GENTILE, DOMINIC
4 GLASS-SERAN, BARBARA, CRNA
5 GRAY, WARREN, LVMPD
6 GREER, MARY, 3462 SHAMROCK AVE., LVN 89120
7 GREGORY, MARTHA
8 HAHN, JASON, LVMPD
9 HANCOCK, L., LVMPD #7083
10 HANSEN, IDA
11 HARPER, TIFFANY
12 HARRIS, ORELENA (HOLLEMAN), 2816 DESERT SONG, LVN 89106
13 HERRERO, CARMELO, 1864 WOODHAVEN DR., HNV 89074
14 HIGGINS, HEATHER, INV. NV. ST. BOARD OF ME
15 HIGUERA, LILIA, 3504 FLOWER, NLVN 89030
16 HITTI, DR. MIRANDA
17 HOWARD, NADINE, HEALTH FACILITIES SURVEYOR
18 HUBBARD, LINDA, 515 PARK ROYAL DR., NLVN 89031
19 HUGHES, LAURA, AG INV.
20 HUYNH, NGUYEN, 3004 HAZY MEADOW LN., LVN 89108
21 IRVIN, JOHNNA
22 JOHNSON, SHONNA S., 22 VIA DE LUCCIA, HNV 89074
23 JONES, LISA, CHIEF NSB OF LICENSURE AND CERTIFICATION (BLC)
24 JURANI, DR.
25 KIRCH, MARLENE
26 KAUL, DR.
27 KAUSHAL, DR. DHAN
28 KELLEY, J., LVMPD #3716

1 KHAN, IKRAM, 3006 S. MARYLAND PKWY, #465 LVN 89109
2 KNOWLES, DR.
3 KOSLOY, LESLEE, RN, HEALTH FACILITIES SURVEYOR
4 LAKEMAN, RONALD, 700 SHADOW LN #165B, LVN 89106
5 LATHROP, CAROL, 1741 AUGUSTA ST., PAHRUMP, NV 89048
6 LATHROP, WILLIAM
7 LEWIS, DR. DANIEL
8 LOBIONDA, CRNA
9 LOPEZ, J. JULIAN, 7106 SMOKE RANCH RD. #120 LVN 89128
10 LUKENS, JOHN
11 MAANO, PETER, RN
12 MALEY, KATIE, 4275 BURNHAM #101, LVN
13 MALMBERG, GEORGE
14 MANTHEI, PETER, 7066 AZURE BEACH AZURE ST., LVN 89148
15 MANUEL, DR. DAVID
16 MARTIN, LOVEY
17 MASON, ALBERT
18 MATHAHS, KEITH, 10220 BUTTON WILLOW DR., LVN 89134
19 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN 89138
20 MCGOWAN, SHANNON, 5420 CARNATION MEADOW ST., LVN 89130
21 MCILROY, ROBIN, FBI
22 MILLER, JAMES
23 MIONE, VINCENT, 2408 W. EL CAMPO GRANDE AVE., NLVN 89031
24 MOORE, DAVID
25 MUKHERJEE, RANADER, MD
26 MURPHY, MAGGIE, 10175 W. SPRING MTN RD. #2012 LVN 89117
27 NAYYAR, SANJAY, MD
28 NAZAR, WILLIAM

1 NAZARIO, DR. BRUNILDA
2 OM, HARI, LLC MGR
3 O'REILLY, JOHN
4 O'REILLY, TIM
5 PAGE-TAYLOR, LESLIE, CDC
6 PATEL, DR.
7 PENSAKOVIC, JOAN
8 PETERSON, KAREN, 2138 FT. SANDERS ST., HNV
9 PHELPS, LISA, 784 MORMON PEAK ST., OVERTON, NV 89040
10 POMERANZ, AUSA
11 PRESTON, LAWRENCE, 801 S. RANCHO DR., STE C-1, LVN
12 QUANNAH, LAKOTA
13 REXFORD, KEVIN
14 RICHVALSKY, KAREN, 3325 NIGUL WAY, LVN 89117
15 ROSEL, LINDA, FBI SA
16 RUSSOM, RUTA, 4854 MONTERREY AVE., LVN 89121
17 SAGENDORF, VINCENT
18 SAMEER, DR. SHEIKH
19 SAPP, BETSY, PHLEBOTOMIST
20 SCAMBIO, JEAN, 2920 YUKON FLATS CT., NLVN 89031
21 SCHULL, JERRY, 5413 SWEET SHADE ST., LVN
22 SENI, DR.
23 SHARMA, DR. SATISH
24 SHARMA, VISHVINDER, DR. 3212 CEDARDALE PL., LVN 89134
25 SHEFNOFF, NEIL, 755 E. MCDOWELL RD., PHOENIX, AZ 85006
26 SMITH, CHARNESSA
27 SOOD, RAJAT
28 STURMAN, GLORIA

1 SUKHDEO, DANIEL, 3925 LEGEND HILLS ST. #203, LVN 89129
2 TAGLE, PEGGY, RN
3 TERRY, JENNIFER, LVMPD INTERPRETER
4 TONY, DR.
5 VAZIRI, DR.
6 WAHID, SHAHID, MD
7 WEBB, KAREN, 1459 S. 14TH ST., OMAHA, NE
8 WHITAKER, GERALDINE, 701 CARPICE DR. #17B, BOULDER CITY, NV 89005
9 WHITELY, R. LVMPD
10 WILLIAMS, SKLAR, RESIDENT AGENT, 8363 W. SUNSET RD. #300, LVN 89113
11 WISE, PATTY
12 YAMPOLSKY, MACE
13 ZIMMERMAN, MARILYN, 550 SEASONS PKWY, BELVIDERE, IL 89040
14
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27 09BGJ049A-C/10F03793A-C/09BGJ119A-C /sam-MVU
28 LVMPD EV #0802292576
(TK11)



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 7

FRIDAY, MAY 3, 2013

APPEARANCES:

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

RECORDED BY JANIE OLSEN COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

000534

1 LAS VEGAS, NEVADA, FRIDAY, MAY 3, 2013, 10:48 A.M.

2 * * * * *

3 (Outside the presence of the prospective jury panel.)

4 THE MARSHAL: All rise. Department 21 is now in
5 session. The Honorable Judge Valerie Adair presiding.

6 THE COURT: All right. Good morning.

7 THE MARSHAL: Thank you. You may be seated.

8 THE COURT: Before we move into the pretrial motions
9 and other things, I wanted to place on the record some changes
10 regarding the jury selection that the Court decided to make in
11 view of Mr. Wright's comments when we concluded on Wednesday
12 that he felt that he would like to actually see the jurors in
13 order to sort of jar his memory as to who was who.

14 After we concluded, I thought about it for a little
15 bit and then I had a conference call with all of the attorneys
16 wherein I proposed that we bring all 35 people back on Monday
17 and go through the roll and seat them in numerical order so
18 that everyone could see them, and then pass back and forth the
19 sheet for the preempts in the presence, but obviously without
20 them knowing what -- what people were doing, so that the
21 lawyers could look at them.

22 And, Mr. Wright, you indicated you would prefer
23 doing the jury selection in that manner; is that correct?

24 MR. WRIGHT: Yes, Your Honor.

25 THE COURT: And then, Mr. Santacroce, you indicated

1 that you were fine with doing the jury selection in that
2 matter, and I don't recall if you preferred it or --

3 MR. SANTACROCE: Yeah, I would agree.

4 THE COURT: Okay. And State was fine with that,
5 correct?

6 MR. STAUDAHER: Yes, Your Honor.

7 THE COURT: All right. So in view of that we have
8 been contacting the 35 people, meaning my staff and -- and
9 telling them to report. My JEA has managed to reach all 35 of
10 them, and they all know that they have to be here Monday at
11 9:00. So that's where we are on that. I've discussed in more
12 detail the jury selection process regarding the form and how
13 it will go back and forth and the time to make objections and
14 Batson challenges, things like that, and in chambers and -- my
15 understanding is both sides are fine with the proposed manner
16 of jury selection now that the jurors are actually coming in.

17 Is that correct, Mr. Wright?

18 MR. WRIGHT: Yes, Your Honor.

19 THE COURT: Is that correct, Mr. Santacroce?

20 MR. SANTACROCE: Yes.

21 THE COURT: Is that correct, Mr. Staudaher?

22 MR. STAUDAHER: Yes.

23 THE COURT: All right. Does anyone -- before we move
24 on to another topic, does anyone have any questions regarding
25 how we're going to pick the final 16 or 17 members of our

1 jury?

2 MR. SANTACROCE: No, Your Honor.

3 MR. STAUDAHER: Not for the State.

4 THE COURT: All right.

5 MR. WRIGHT: No questions.

6 THE COURT: All right. That was, I think, the only
7 housekeeping, and you've all been given copies of the forms
8 that will -- or the form, you know, you'll just use one back
9 and forth -- that will be used for the exercise of the
10 preemptory challenges. So have that with you.

11 All right. I think that was the only thing the
12 Court wanted to place on the record regarding jury selection.

13 Ms. Stanish?

14 MS. STANISH: Your Honor, if I may. We moved last
15 time we were in court for additional peremptories as well as
16 continued voir dire, and we would like to supplement that
17 motion with copies of media reports relating to this case. So
18 I've already served this on the parties, if I -- and gave a
19 copy to the clerk that we may file this in open court, Your
20 Honor.

21 THE COURT: All right.

22 MS. STANISH: It was for you to --

23 THE COURT: That's fine.

24 MS. STANISH: -- consider that -- the media in light
25 of your decision.

1 MR. SANTACROCE: And to the extent --

2 THE COURT: Mr. Santacroce?

3 MR. SANTACROCE: -- thank you. To the extent I
4 haven't done so before, I'm going to join in that motion and
5 the supplement.

6 THE COURT: All right. State?

7 MR. STAUDAHER: We'll submit it, Your Honor.

8 MS. STANISH: Well, and I -- I -- I'm sorry, there
9 are -- I did mean to correct my -- the record because I erred
10 when I identified one of the jurors that we identified for
11 cause, and I corrected it in this supplement. We did not
12 challenge for cause Juror No. 249. So there were four that we
13 did challenge for cause, based on pretrial publicity and
14 expressed bias.

15 THE COURT: Okay.

16 MS. STANISH: Okay?

17 THE COURT: State, is that correct?

18 MR. STAUDAHER: That is correct, Your Honor.

19 THE COURT: All right. What's next?

20 MR. WRIGHT: Yes, Your Honor, I'm going -- this is
21 going to do with accommodations I'm going to be requesting.
22 And I'd first like to report to the Court my experiences
23 during five days of jury selection, Monday, Tuesday, we had
24 Wednesday, Thursday off, then Friday, then Monday, Tuesday,
25 Wednesday of this week.

1 THE COURT: Correct.

2 MR. WRIGHT: The -- the Court accommodated my
3 requests for Dr. Desai to allow me any time we reached a juror
4 who we most likely would be keeping, they weren't immediately
5 excused, accommodated me so that I could take Mr. -- Dr. Desai
6 into the private, what do you call that, anteroom?

7 THE COURT: The -- yeah, I call it the vestibule --

8 MR. WRIGHT: Okay.

9 THE COURT: -- but just for the record because this
10 won't be immediately apparent in the written transcript, so
11 everybody knows what we're talking about, there is, like, a
12 vestibule area between the doorway leading directly into the
13 courtroom and then the doorway leading to the outer hall, and
14 then, in that area is a private room containing a conference
15 table and some chairs that is separated by a, obviously, a
16 door which may be closed, so all conversations that occur in
17 the room are private and other than, I think there might be a
18 small window in the door, like all of the other doors, there
19 are no windows or anything like that, so whatever goes on in
20 the room is pretty much private.

21 Is that --

22 MR. WRIGHT: Yes.

23 THE COURT: -- is a correct description of the room?

24 MR. WRIGHT: Yes, it's a --

25 THE COURT: Okay.

1 MR. WRIGHT: -- private conference room right off the
2 court, and so I was allowed to use it any time we got to a
3 passed for cause or for-cause challenges denied --

4 THE COURT: Right.

5 MR. WRIGHT: -- I was allowed to go with Dr. Desai
6 and Margaret Stanish and myself and talk to Dr. Desai and get
7 his observations and input on each individual juror. And my
8 experience has been that he is observant and -- on each
9 individual juror, when I talk to him after -- right then,
10 after each individual juror -- he was comprehending it,
11 understanding it, knew everything except their physical
12 description. And that's because he does not look at them, and
13 because -- and these are my words, these aren't medical
14 terminology. I don't know aphasia from short-term amnesia or
15 anything else, but essentially, he listens and can absorb it
16 better, rather than doing two things at once, like, listening
17 and/or writing or something.

18 He's at his optimum by simply listening and taking
19 it in. And so, therefore, I would talk to him and he was best
20 in the morning because we had long days and the -- he -- my
21 observations are he -- he took it all in and understood, and
22 then, I'm in there saying, what do you think of this juror?
23 Get -- tell me what you think of them, your observations.

24 THE COURT: Right.

25 MR. WRIGHT: And he is -- the problem isn't his --

1 we're getting out verbally his -- his -- what he wants to get
2 out. It is labored. It takes time, but it gets there, and
3 sometimes it's almost like pantomime and there are words that
4 are mixed up, like, double-negatives and things where I
5 miscommunicated with him, but communicated with him and I
6 believe got it straight.

7 THE COURT: Right. So you believe, you know, yes, he
8 likes the, you know, guy that worked at parks and recreation
9 --

10 MR. WRIGHT: Correct.

11 THE COURT: -- but he didn't like the gal that -- you
12 know, just as -- by way of example, the gal who worked at the
13 Palace Station or what have you, you felt that you understood
14 that?

15 MR. WRIGHT: Correct.

16 THE COURT: Okay.

17 MR. WRIGHT: And when I talked to them -- at the end
18 of each time, he knew it -- by the time I would ask him at the
19 end of the day -- because I was testing him on this -- I would
20 say tell me about -- and I'd use a juror's name who we had
21 heard earlier in the morning, and he couldn't recall it. And
22 even when I told him what they are, the wheelchair guy, or
23 this guy or that guy, he didn't have the same recollection he
24 did have, and he mixed them up.

25 However, I did have, and took down all that -- that

1 he had already --

2 THE COURT: His contemporaneous impressions?

3 MR. WRIGHT: -- correct. And the -- so for each of
4 those it worked out. As it went on he -- he got more, and I
5 think it was tired, and it became more simplistic and using
6 incorrect words backwards, like, if I say one to five, I must
7 have told him fifty times, one, I love a one, I can't stand a
8 five. I was ranking them one to five on jurors, and he --
9 he -- if he really loved them, it was a five for him. I'd
10 say, no, and go over it.

11 But that I could work through because I understood
12 what he was -- where we were mixed up on it.

13 THE COURT: Right. For example, if he said one, you
14 could say, you mean you really hate him, and if he said, no,
15 that guy was great, or, you know, something --

16 MR. WRIGHT: Right. He --

17 THE COURT: -- then you'd say, oh, no, that's a five
18 or however.

19 MR. WRIGHT: -- right. And he would mix up bias and
20 no bias, and I'd, just, finally go with thumbs up or thumbs
21 down type of a thing. But he was comprehending and
22 understanding. I would point out that that doesn't entail --
23 I mean, jury selection is one thing, it doesn't entail memory
24 of events long past and what we're going to do in the trial.
25 His -- he would know what he wants to say and have problems

1 in -- and I'm talking about his presentation to me that I am
2 observing -- he would have problems in finding the word and
3 getting it out, and we would guess at it.

4 Like, finally we -- we ended up for an analytical
5 person would be, you know, one, two, three, four, five, type
6 thing was the easiest way to explain it. And so that --
7 that's how we progressed through jury selection. Moving into
8 the trial, I gave the Court a copy of -- or I gave the Court a
9 cite to People versus Phillips 16 New York 3rd 510, a 2011
10 opinion, and I -- I am requesting -- and in that case a person
11 had aphasiac -- paraphasiac condition from stroke caused --
12 I'll just call it brain damage, as opposed to the --
13 distinguishing between what the brain damage was, and I am
14 requesting accommodations that -- they were all enclosed in a
15 footnote in there in the opinion, and the first one was that
16 the trial be held four days per week.

17 Secondly, with the exception of jury selection and
18 any other reasons of special necessity, the trial will be
19 conducted each day from 9:30 a.m. until 1 p.m., so that
20 counsel and defendant may confer with each other in the
21 afternoon.

22 I am going to have to be -- at the end of the court
23 day, not only conferring with him slowly and laboriously about
24 what happened, but also conferring about what's coming up on
25 the next day. So it's just not telling -- getting -- as the

1 Court knows -- any -- any prep as what went on today and
2 what's going on tomorrow.

3 And additionally, the third one, the Court will be
4 willing to take frequent breaks in the proceedings as needed
5 to enable the defendant and his counsel to confer. I mean,
6 the Court has already accommodated every request that I had
7 made during jury deliberation --

8 THE COURT: Selection.

9 MR. WRIGHT: -- select -- I'm sorry, yes, selection.

10 Fourth, the Court will afford the defendant a recess
11 after the direct testimony of each prosecution witness to
12 enable counsel to confer with the defendant about the
13 witness's direct testimony.

14 I think there will be many technical witnesses that
15 that would not be necessary. I mean, I don't view that as --
16 this --

17 THE COURT: So are you talking about percipient
18 witnesses? Maybe an employee at the clinic or something --

19 MR. WRIGHT: Correct.

20 THE COURT: -- like that?

21 MR. WRIGHT: Right. Obviously, like, a CDC person or
22 truly even a victim who was treated by a different doctor, I
23 don't -- I don't need any --

24 THE COURT: Right. So if somebody's testimony is, I
25 was referred to the clinic by my physician, Dr. whatever, and

1 I don't remember who my certified nurse anesthetist was, but I
2 was treated by Dr. whatever, and then, I later learned that I
3 had hepatitis or -- or something --

4 MR. WRIGHT: Right.

5 THE COURT: -- to that effect, that wouldn't involve
6 Dr. Desai. Conversely, if a patient came in and said, yes, I
7 directly remember Dr. Desai, he came in and talked to me
8 before the procedure --

9 MR. WRIGHT: Correct. And I --

10 THE COURT: -- what have you. So essentially, what
11 you're requesting is a recess after direct testimony for any
12 percipient witness that had direct contact with Dr. Desai, or
13 information directly relating to his conduct at the clinic; is
14 that --

15 MR. WRIGHT: Yes.

16 THE COURT: -- fair? Okay.

17 MR. WRIGHT: And the fifth one in here has already
18 been accomplished. In accordance with the Court's direction,
19 the prosecution has provided open-file policy -- open-file
20 discovery and all Rosario material, whatever that is in New
21 York, I don't know, to the --

22 THE COURT: Probably, like, Brady material or
23 something.

24 MR. WRIGHT: -- yeah. To the defense well in
25 advance. That -- I mean, we have open-file -- more -- more

1 than open-file discovery, more than I want.

2 Sixth, the attorneys will make their best efforts to
3 structure their questions of witnesses to elicit short,
4 unlayered responses, while avoiding leading questions to the
5 greatest extent possible.

6 Seventh, the defendant and counsel have been
7 furnished a copy of the videotape of the incident. Well, that
8 doesn't apply here, but I mean, that offense was caught on
9 video as an --

10 THE COURT: Right.

11 MR. WRIGHT: -- attempt --

12 THE COURT: And any exhibits you've been given and
13 all of that, so...

14 MR. WRIGHT: Correct. Let's see. Ninth, the parties
15 are instructed, should the defendant choose to testify,
16 attorneys should restate their -- we can address his testimony
17 --

18 THE COURT: I'm sorry --

19 MR. WRIGHT: -- if it comes to that.

20 THE COURT: -- oh, that's way down the -- way --

21 MR. WRIGHT: Right.

22 THE COURT: -- down the road.

23 MR. WRIGHT: The parties may obtain daily copies of
24 expedited transcripts at their own expense. The Court will
25 make the court reporter --

1 THE COURT: And have you requested dailies on this,
2 Janie?

3 MR. WRIGHT: I -- I have not, yet. And the --
4 because I -- I need to know the expense and whether it will be
5 shared and everything else because I don't have the -- it
6 depends on how expensive it is, and if it's too expensive, I
7 will ask the Court to do it. I don't know what it costs for
8 dailies.

9 THE COURT: Yeah, I don't know what it costs either.

10 THE COURT RECORDER: 7.50 for an original and one.

11 THE COURT: 750?

12 THE COURT RECORDER: \$7.50 a page.

13 THE COURT: 7.50 a page --

14 THE COURT RECORDER: For an 0 and 1.

15 THE COURT: For an original and then one copy is what
16 it costs. Now --

17 MR. WRIGHT: What's -- so what's that mean if the
18 State gets one?

19 THE COURT RECORDER: Then it's 9.50 a page for an 0
20 and 2.

21 MR. WRIGHT: Okay. So does that mean it's 4
22 something each?

23 THE COURT: Janie, let's just say -- take a capital
24 murder case, what do the -- which we have to do dailies,
25 although the State pays -- I mean, the -- that's covered by

1 the county, do you know what those would run? I mean, I think
2 we've had --

3 THE COURT RECORDER: Well, if we go all day,
4 generally it runs about, roughly 200 pages for just an 0 and 2
5 for -- if there's just two parties, it's 9.50 times, say, 200
6 pages a day, so that's what it comes each.

7 MR. WRIGHT: So it's, like --

8 THE COURT RECORDER: And if Mr. Santacroce wants a
9 copy, then it's an 0 and 3 and that would be 11.50 a page.

10 THE COURT: Well, but you guys can make your own --

11 MR. WRIGHT: Okay. So if it's --

12 THE COURT: -- they don't like you to make your own
13 copies, but realistically, if you got a copy for yourself, I
14 mean, it's always one copy, that's the system, but we
15 wouldn't -- I mean, if you got them and you made a Xerox and
16 gave it to Mr. Santacroce so he could look at it, that's up to
17 you.

18 MR. WRIGHT: But if I -- does -- and if I get it the
19 State gets it. I'm just trying to figure out if we cut it --
20 I don't want to pay more than the State pays.

21 THE COURT: Right. Well -- are they -- the dailies
22 are filed?

23 THE COURT RECORDER: They are filed.

24 THE COURT: See, the dailies are filed with the --
25 they're filed, so they become part of the record. So that --

1 even if the State doesn't get a copy, once it's on the
2 computer, anybody can get it. Once it's in Odyssey, in a way
3 that's accessible by the lawyers, obviously, the -- the public
4 can't get it -- anybody can go -- just like if you've filed
5 the preliminary hearing transcript is filed then with the
6 clerk of the court, you can access that on Odyssey and print
7 it out.

8 So the dailies are actually official transcripts.
9 So any time an official transcript is prepared, the court
10 recorder files that with the clerk, and it becomes part of the
11 record in the case.

12 The other thing you could do is, Janie, we have to
13 have something set up because obviously my court recorder
14 cannot be expected to sit in here, you know, for eight hours
15 or seven hours, or whatever the case may be, and then stay up
16 all night typing a daily. So, you know, if you request
17 dailies every day, then we have somebody set up to do them.
18 If you sporadically request a transcript, we will try to
19 accommodate you, understanding, as I just said, I'm not going
20 to direct my court recorder to work an eight-hour day and then
21 stay up until midnight or one in the morning typing your
22 transcript. I mean, that's just not fair to her.

23 MR. WRIGHT: I understand.

24 THE COURT: So --

25 MR. WRIGHT: So is that --

1 THE COURT: -- you know, one thing you can do is
2 this, if you would like a daily turnover of particular
3 testimony we can try to accommodate that, you would be billed
4 out at the, whatever the rate for dailies is, and we just
5 wouldn't necessarily have somebody in place, so we'd have to
6 send it out and see who could do it.

7 THE COURT RECORDER: I've checked into it and
8 there's somebody that -- I thought he might want that -- and
9 there is somebody standing by that she can take daily
10 copies --

11 MR. WRIGHT: Okay. So it's --

12 THE COURT RECORDER: -- whenever you want.

13 THE COURT: All right. So you can do partial
14 dailies. I would be willing -- typically we don't order that,
15 but to make accommodations in this case, the Court would be
16 willing to accommodate you with partial dailies, meaning,
17 let's say there's testimony from the gal at the CDC or
18 whomever, and you don't feel that that's something that you
19 need a daily of, okay, then we won't -- don't ask for that,
20 you know, but if you have a testimony from an employee from
21 the endoscopy center and you feel that that's something you
22 need a transcript of, then obviously you can request the
23 transcript of that and then the copy is available for the
24 State and Mr. Santacroce as well.

25 Now, if I order that for -- for you, the only thing

1 I would have to add is then, of course, if the State wants a
2 daily of a -- or a partial daily of another witness for their
3 closing or whatever, then I have to also accommodate the State
4 and order that daily or partial daily. But I can order -- we
5 can order partial dailies, that's fine.

6 MR. WRIGHT: Okay.

7 THE COURT: I'll let you do that.

8 MR. WRIGHT: So if we -- if it's --

9 THE COURT: And that's cheaper, obviously.

10 MR. WRIGHT: -- and if it's -- if it was just
11 dailies, as I understand it, it's about \$2,000 a day, 9.50
12 times 200?

13 THE COURT RECORDER: Right.

14 MR. WRIGHT: Okay. And that -- and that would all be
15 paid by the defense? Okay. And none by the State?

16 THE COURT: Right.

17 MR. WRIGHT: Well, can I make it that it not be --
18 how do I get it and they don't get it?

19 THE COURT RECORDER: Can I -- can I weigh in on
20 this?

21 THE COURT: Well, no. Janie can only weigh in on the
22 rules.

23 THE COURT RECORDER: And that's what I was going to
24 say, is that it's --

25 THE COURT: Oh, okay.

1 THE COURT RECORDER: -- the rule says that --
2 actually, you should be able to get it and the State should
3 not be able to get it unless they pay for it, which would --
4 they would then have to pay the 2.50 per page, instead of the
5 7.50. But if you wanted to split that, which we do all the
6 time --

7 MR. WRIGHT: Right. That's what I'm trying to do.

8 THE COURT RECORDER: -- but they'd have to agree to
9 it and want it.

10 THE COURT: Right. We can't order it. And again,
11 once it's part of the public record --

12 MR. WRIGHT: Okay.

13 THE COURT: -- once it's part of the record with the
14 clerk's office, then anybody --

15 MR. WRIGHT: Okay.

16 THE COURT: -- can get it.

17 MR. WRIGHT: Okay.

18 THE COURT: Once it's filed with the clerk's office.

19 MR. WRIGHT: What say the State?

20 MS. WECKERLY: Yeah, I don't think we can --

21 MR. STAUDAHER: Well, I don't think we want to
22 obligate our office to \$30,000 or so of transcripts for the
23 case. I mean, that's what we're talking about if it was a
24 monthlong trial and it was \$1,000 a pop for a day --

25 THE COURT: Right.

1 MR. STAUDAHER: -- and I don't know that we -- we're
2 going to need or want, necessarily, daily transcripts --

3 THE COURT: Right. Like I said, though, if the State
4 requested daily of somebody that they wanted the transcript to
5 be used in their PowerPoint at closing or something like that
6 --

7 MR. STAUDAHER: And I'm sorry for sitting down, Your
8 Honor.

9 THE COURT: -- then you guys get the copy of whatever
10 it is that they requested. So, you know, I know sometimes the
11 State likes to -- particularly in capital cases where you have
12 the transcript anyway, you know, they like to put the quotes
13 in their closing PowerPoints, you know, if you're going to do
14 that then you have to buy the transcript.

15 MR. STAUDAHER: Sure.

16 THE COURT: And then the Defense gets a copy of
17 whatever it is you guys ordered.

18 MR. STAUDAHER: Sure. I mean, we -- I don't have an
19 issue with if there's individual people, either us, if there's
20 somebody that we want --

21 THE COURT: Right.

22 MR. STAUDAHER: -- doing that, but I -- I can just
23 tell the Court right now, there's no way I'm going to be able
24 to --

25 THE COURT: Yeah, Mr. Staudaher, I mean --

1 MR. WRIGHT: Okay.

2 THE COURT: -- fairly --

3 MR. WRIGHT: Okay.

4 THE COURT: -- he can't bind his office for a \$30,000
5 commitment without talking, either to Mr. Lawley or Mr.
6 Wolfson, I'm assuming, or somebody in his office with the
7 authority to say, go ahead and bind the office.

8 MR. WRIGHT: Okay. Well --

9 THE COURT: Fair, Mr. Staudaher?

10 MR. STAUDAHER: That's fair.

11 THE COURT: I mean --

12 MR. STAUDAHER: But I don't, also, have any issue
13 with -- if there is a particular witness that they want or
14 that we want that -- respectively, I would -- if we got one, I
15 would produce it to the Defense. So that's not an issue if
16 there's a witness that comes up that they are particularly
17 interested in. But as far as full daily transcripts, I'm not
18 going to be able to -- or Ms. Weckerly are not even going to
19 have the time to go through them, realistically.

20 Maybe if the -- on the individual witnesses or
21 specific portions of testimony. But it wouldn't be a --
22 something that we would require or need for this particular
23 case.

24 MR. WRIGHT: Okay. Well, my view is -- I appreciate
25 it, and I was just asking. My view is the -- the Court should

1 accommodate him and provide it because he is handicapped, the
2 same as if he was in here and couldn't speak a given language,
3 he doesn't pay for his interpreter.

4 THE COURT: Right.

5 MR. WRIGHT: If he has rare -- if he has a disability
6 or you're looking to accommodate him so that we can try him,
7 and despite of his diminished capacity, I think it is the
8 State's obligation to do that. So that's my request.

9 THE COURT: Okay. I'm going to consider the issue of
10 the transcripts.

11 MR. WRIGHT: Okay.

12 THE COURT: What you need to do, Mr. Wright, is
13 figure out, realistically, you know, what transcripts you're
14 going to be wanting, you know. Because if Dr. Desai isn't
15 going to really need to comment on some of these experts and
16 some of these other -- regardless of who pays for it --
17 because these are going out. That's what -- here's the --
18 here's the thing.

19 These are not typed in house, and so these are
20 basically people who are sort of subcontractors, if you will,
21 with the courts, who then, you know, not even -- who then type
22 these transcripts. So they're under no -- we have to pay
23 them, in other words. So this is actually currency, you know,
24 hard money that has to come from somebody's budget. It's
25 either going to come from, you know, the Defense side, it's

1 either going to have to come out of the District Attorney's
2 budget, or it's going to have to come out of the district
3 court budget.

4 Now, you know, occasional transcripts here and there
5 can probably be typed in house. But if you're talking about a
6 substantial portion of the dailies or complete dailies,
7 they're going to have to go out. And so, you know, if the
8 Court is going to pay for that, which I'm not saying the Court
9 is going to pay for it, but what I'm saying is somebody has to
10 pay for it.

11 It's not like I can just direct court recorders and
12 there's a million sitting around that are already on the
13 county payroll that we can then say, hey, you need to type
14 this daily. So whoever is going to be typing it, like I said,
15 it's kind of an independent contractor idea, and then we have
16 to pay that person to do it.

17 So just so you understand, it's actually -- would
18 then be a cost either out -- out of -- if you're not paying
19 it, it's either coming out of the District Attorney's Office
20 budget or it's coming out of the District Court budget. Just
21 so --

22 MR. STAUDAHER: Your Honor --

23 THE COURT: -- just so you know how that works.

24 MR. STAUDAHER: -- may I make a suggestion? I think
25 the Court actually addressed this as an accommodation before,

1 or at least the opportunity for accommodation. If -- one of
2 the main issues is the fact of remembering witnesses, what
3 they said, how they acted, if they came across the evidence
4 that was presented, that kind of thing. The Court has already
5 indicated that because the JAVS system is active in this
6 courtroom, that at the end of the day for the whole day or
7 particular witnesses that that disc could be burned or that --

8 THE COURT: Yeah, that's something I'm also
9 considering --

10 MR. STAUDAHER: -- and certainly --

11 THE COURT: -- Mr. Staudaher.

12 MR. STAUDAHER: -- that would be maybe even more
13 effective than having Mr. -- or Dr. Desai try to read
14 transcripts, if that's indeed -- if he has legitimate, you
15 know, issues. So that's another suggestion, and that wouldn't
16 cost anybody anything, except for the cost of the disc to burn
17 it.

18 THE COURT: It does cost.

19 MR. STAUDAHER: Well --

20 THE COURT: I mean --

21 MR. STAUDAHER: -- I don't know.

22 THE COURT: -- here's the other thing, Mr. Wright,
23 where I was going with that whole thing about it's coming out
24 of somebody's budget, either district court's budget or -- or
25 whoever's budget it's coming out of. The bottom line is, even

1 if I were to order some kind of dailies as a reasonable
2 accommodation, you know, if -- if it's witnesses, you know,
3 who he doesn't need to read because they're expert witnesses
4 or they're witnesses who are basically just saying I was
5 treated by another physician or something like that, let's not
6 waste anybody's money getting those.

7 So I would ask you to limit your request to those
8 witnesses that Dr. Desai actually needs to review and consider
9 their testimony, and can offer you something meaningful or
10 comment -- you know, comment on or whatever, that you need for
11 your defense. Not witnesses he's not even going to be
12 commenting on because then that's just a waste of money either
13 for you or the State or -- or the Court.

14 MR. WRIGHT: That sounds reasonable.

15 THE COURT: Okay.

16 MR. WRIGHT: And my only caveat is I'm envisioning
17 cross-examination and so if it's all of a sudden
18 cross-examination about something that I don't have and
19 haven't gone over him with again, towards the end of the
20 trial, I mean, then it's problematic. I mean, that's my
21 own -- what I --

22 THE COURT: Let me ask you this. I know, you know,
23 you -- just by nature of who you are, you tend to do a lot of
24 fraud defendants and high end -- what I'll call kind of
25 high-end defendants because, I mean, the ones I know you from

1 when I was at the DA's office, you know, relatively
2 sophisticated people, and I think that probably relates to
3 your reputation in the community and the likely cost of your
4 services, but I do know that you have -- I can remember from
5 years back you've done some murder cases and other things, and
6 I can just comment based on my own experience, both as a
7 prosecutor and as a Judge, that the average defendant in some
8 of the more violent crimes, you know, homicides, robberies,
9 things of that nature, certain thefts, tend to be or often are
10 of very low intelligence.

11 You know, there are many cases through capital
12 cases -- I would say the majority of capital cases, when you
13 get to a penalty phase, there is abundant evidence of low IQ,
14 special programming in schools, you know, special education,
15 things like that, if it's not outright low IQ, behavioral
16 issues, learning disabilities, attention deficits,
17 hyperactivity, difficulty paying attention, and just in
18 talking to them throughout the trial process, obviously it's
19 often just even apparent to the Court, you know -- and when I
20 say, Talking to the defendants, as you know, a lot of times,
21 you know, they pipe up from the in-custodies when we're here
22 on the calendars, they don't like their lawyer, they want
23 this, they want to know why they're not -- you know, it's
24 pretty evident a lot of these people are of -- of pretty low
25 IQ.

1 And as I said, that's always presented during the
2 penalty phase, and that -- and we all know that there have
3 been statistical analyses done on, you know, defendants and
4 incarceration rates of people of low IQ, and -- and, you know,
5 capital -- how many times a death penalty is sought against
6 those people.

7 And so my question to you is -- and maybe you don't
8 have a lot of experience with this because of the nature, as I
9 said, of who you are and how expensive you are, quite frankly,
10 because most people who are of low IQ -- or -- and are
11 committing violent crimes are also of low economic means, and
12 their families are of -- of very limited economic means.

13 So the reality is they don't have the ability to
14 hire you. And so my question to you is I'm just wondering,
15 what do you do with those people because, I mean, you know,
16 most of them you could show them -- I mean, they can barely
17 read. So, I mean, to show them a transcript, they're not even
18 going to be able to read it. And you mentioned, you know,
19 well, he -- Dr. Desai can't say that this person is analytical
20 or not.

21 If I took 10 defendants out of those boxes on a --
22 on a calendar and I said to them, All right. Well, do you
23 think this is an analytical person or not, they wouldn't --
24 they wouldn't be able to -- to really opine on that because I
25 don't think they'd have the -- now, some of them are quite

1 smart regardless of the kinds of crime, and maybe have had
2 limited opportunities, other things, but my -- my question, I
3 guess, to you is what kind of -- if you've even had this
4 experience?

5 How do you accommodate these people of such low
6 intelligence that I -- you know, I mean, I think you could
7 take a month with them, and I don't know --

8 MR. WRIGHT: I talk to them in --

9 THE COURT: -- yeah, I am --

10 MR. WRIGHT: -- in their own language.

11 THE COURT: -- I'm just wondering if you've even had
12 that experience?

13 MR. WRIGHT: Yes, I have. And I talk to them in a
14 language that they're used to. And so, rather than
15 analytical. I mean, there are -- almost everyone, even the
16 dummies, they normally commit dumb crimes. I mean, violent
17 crimes and things. This happens to be a smart crime. I mean,
18 sophisticated, for lack of a better word, and the -- this has
19 to do with the Wilson test and the Wilson factors.

20 I mean, this is a case in which it's going to be
21 relevant what happened and then what was the risk -- if this
22 was the unsafe practice and was that perceived or not by the
23 individuals, what did they know, when did they know, and was
24 it perceived as a serious risk. All that requires interaction
25 with my client, dumb or smart.

1 So, I mean, this Taylor case --

2 THE COURT: Yeah, I mean, all I --

3 MR. WRIGHT: -- was simple. It was a knifing caught
4 on video of the guy's wife in the -- in the lobby.

5 THE COURT: -- yeah --

6 MR. WRIGHT: There wasn't going to be factual
7 disputes on it.

8 THE COURT: -- right. But I'm just saying that, you
9 know, a lot of these defendants, quite frankly, you know, they
10 couldn't weigh in in any sort of a meaningful way in jury
11 selection because they just don't have the sophistication, and
12 they don't have the, you know, basically, intelligence, and
13 they don't have the -- I mean, it's -- you know, intellectual
14 IQ is something that's often talked about, but social IQ is
15 also a big factor in these kinds of cases.

16 MR. WRIGHT: Well --

17 THE COURT: And they don't have the social IQ even to
18 weigh in, and so I'm just commenting that, you know --

19 MR. WRIGHT: -- well, I --

20 THE COURT: -- to me, I mean, we're executing people
21 in this country that, to me, can't meaningfully assist in a --
22 I'm not saying I'm not going to make reasonable
23 accommodations, but, you know, I -- I just have to just add my
24 own editorial --

25 MS. STANISH: You know, Your Honor --

1 THE COURT: -- here and I'm sorry I'm talking too
2 long, but, you know, I've sat through so many capital cases
3 where you have a defendant that just kind of sits there and
4 the lawyers go about their business and there's relatively
5 very little interaction. And I understand this is a more
6 sophisticated kind of a case and -- and this and that, but I'm
7 just maybe thinking out loud here, and just wondering, you
8 know, we're all focusing, oh, well, Dr. Desai has had these
9 strokes and his cognition is limited and this and that, but
10 you have so many criminal defendants in this country facing
11 much more severe penalties that, you know, just by nature of
12 birth and other things.

13 MS. STANISH: Yeah --

14 THE COURT: So I'm thinking --

15 MS. STANISH: -- I want --

16 THE COURT: -- out loud.

17 MS. STANISH: -- okay. And thinking out loud, Your
18 Honor, as well, in my research on this issue of accommodation,
19 some jurisdictions, mostly in the East, accommodate people
20 like that. They have rehabilitative specialists who sit next
21 to these people who are of low intelligence and help
22 facilitate the attorney with them.

23 So, I mean, just because the --

24 THE COURT: Yeah.

25 MS. STANISH: -- the bar is so low because of,

1 perhaps, funding and -- and volume of cases --

2 THE COURT: Yeah, I --

3 MS. STANISH: -- doesn't mean we want to drop --

4 THE COURT: -- I can only --

5 MS. STANISH: -- the bar.

6 THE COURT: -- I can only comment on what my
7 observations are in this jurisdiction, over 22 years and
8 that's my observation --

9 MS. STANISH: But it -- the --

10 THE COURT: -- but be that as it may --

11 MR. WRIGHT: Okay. I --

12 THE COURT: -- you know, the Court has endeavored to
13 make reasonable accommodations, as you recognized through the
14 jury selection. The Court will continue to try to make
15 reasonable accommodations throughout the trial phase. But,
16 you know, the Court can't make all accommodations, and I don't
17 think I'm required to. But we'll make reasonable
18 accommodations and I'll, you know, do my best to -- to do
19 that.

20 So --

21 MR. WRIGHT: Okay.

22 THE COURT: -- the last thing was the issue of the
23 transcripts. We're kind of --

24 MR. WRIGHT: Right.

25 THE COURT: -- still considering that. You're going

1 to determine what transcripts you're actually going to need.
2 I did note that when Mr. Staudaher was mentioning the fact, we
3 can give you a JAVS recording. Ms. Stanish, you were kind of
4 nodding, like, that wouldn't work or something --

5 MS. STANISH: I'm not sure --

6 THE COURT: -- like that?

7 MS. STANISH: -- it would because some -- depending
8 on how you can navigate through it, it can take a -- I -- a
9 lot of time to try to get to the right spot in a, you know,
10 four-hour testimony or what have you --

11 THE COURT: Yeah. It's just like playing any other
12 disc. You have the thing where you push play, and then the
13 thing on the bottom, and you can drag your cursor to the time
14 that you want to -- so, you know, that's a little bit
15 dependent on your own note-taking and, you know, if you write
16 down the time that the -- or near the time the comment was
17 made, or the testimony was given that you want to look at, you
18 can drag your cursor to -- or your -- drag the little arrow to
19 that time.

20 So you don't have to sit there and listen to all
21 four hours or whatever.

22 MR. WRIGHT: Okay. Well, I -- I'd just comment that
23 that -- utilizing that method of doing it, I -- I mean, would
24 require me asking for even shorter court days because I -- I'm
25 going to at the end of each day -- I mean, talk to him about